Looking for Knowledge in Language for Law

Preliminaries for a Knowledge Communication Approach to Comparative Law

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Abstract: The purpose of this contribution is to present some of the cornerstones of a conceptualisation of legal language that is relevant for a knowledge communication approach to comparative law. Point of departure is the idea of legal language as the language of a discipline that basically reflects the knowledge structures of legal thinking. Following a knowledge communication approach, the author draws upon the characteristics of cognition and human knowledge construction as explanatory tools. From here follows that comparative law (for legal or for translational purposes) is oriented towards comparing the legal knowledge held by experts in different legal settings. The essay presents a small selection of approaches developed for this task and end the deliberations by highlighting three perspectives—law as a function system, law as a national culture, law as the result of interpersonal communication—that the author sees as basic in order to grasp the many facets of legal knowledge relevant for comparative purposes.

Keywords: Legal knowledge, Law as a discipline, Cognition and disciplinary communities, Translation, Multiperspectivist approach.

Summary: 1. Introduction; 2. The knowledge communication approach; 2.1. Knowledge and specialisation; 2.2. Cognition and culture: The basic machinery behind disciplinary knowledge; 3. Legal knowledge, comparative legal studies, and legal translation; 4. Perspectives as tools for accessing legal knowledge; 4.1. Perspective of law as a functional and epistemic system; 4.2. Perspective of national legal cultures; 4.3. Perspective of law as the result of interpersonal knowledge communication; 5. Concluding remarks.

1. Introduction

As always in any brief linguistic expression like a title, the title of the journal in which this contribution appears (*Comparative Law and Language*) may be interpreted in different ways, depending upon the suggested relations between the elements. In my present text, I want to focus the interest on comparisons of aspects of language and law in their interaction (Comparative Law-and-Language, instead of the also possible Comparative-Law and Language). This means that my focus is upon the idea that law and language are each other’s prerequisites: The law must be expressed in language in order to exist in the world—and the language elements used must be selected in order to comply with the expectations of the receivers in order to be understandable in the intended way and let the law come to existence. One way of conceptualizing this idea in the realm of comparative legal studies is to say that my focus is upon comparing the legal knowledge of different jurisdictions as constructed through

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linguistic means. In section 2, I will get back to the concept of knowledge underlying this conceptualisation. Before doing that, however, it is central to state that concerning the relation between language, law, and knowledge my point of departure is one of linguistic constructivism. This approach may be translated into the following assumption: *Meanings in communication and thus the knowledge that participants take away from the communication are constructed by combining existing knowledge about law and about conventional language use with the language chosen in the communication*. Let me offer a few comments to this basic assumption:

- The idea that meaning is constructed by communicative participants in the conversational interaction has as its consequence that understanding is seen as a creative process rather than just being a process of decoding: in a conversation, receivers build up understanding gradually, drawing upon assumptions about the context of the conversation, their own intentions with the conversation and their knowledge base as it exists before the beginning of the conversation.
- The knowledge base that receivers use for the construction of meaning is consequently fluid in the way that it depends upon conversational experience: Each interaction may either support or change the individual communicator's knowledge base. In this way, individual knowledge depends on the interactions in which communicators have participated.
- The knowledge of a discipline like law consists of that knowledge of the members of this discipline, of which they assume that they share it with other members. Their assumptions about sharing knowledge are built upon communicative experiences like university education and conversations with other members of the discipline.
- This means that the conceptual legal knowledge that we want to find when doing comparative work in law is reflected in and simultaneously dependent upon communication.

Legal communication is thus an example of communication that creates legal knowledge especially through communicative interactions involving legal experts. This type of communication may be termed "specialised communication" (German: *Fachsprache*). For studies focusing on the knowledge aspect of such communication, the term Knowledge Communication Approach has been coined and developed.[2] In my contribution, I will discuss some of the elements of the basic constructivist assumption above with point of departure in this approach.

Importantly, the contribution departs from previous work and should function as an overview over the basic pillars of my work on comparative law especially oriented towards the requirements of legal translation. Hence, the different sections depart from previously published work, mainly Engberg (2020)[3] and Engberg (2022)[4]. The structure of this contribution is that section 2 focusses upon the cognitive-pragmatic underpinnings of specialised knowledge and the basics of the Knowledge Communication Approach; section 3 relates these considerations to

[2] For an overview of literature and the characteristics of the knowledge communication approach, *cf*. U. Porup Thomasen, *Exploring the Communicative Dimensions of Knowledge-Intensive Innovation : an Ethnographic Insight into the Innovation Culture Initiative of Novo Nordisk*. Department of Business Communication, 2015, pp. 57–117; P. Kastberg, *Knowledge Communication. Contours of a Research Agenda*, 2019; J. Engberg, A. Fage-Butler, P. Kastberg (eds.), *Perspectives on Knowledge Communication: Concepts and Settings*, 2023.

[3] J. Engberg., *Comparative law for legal translation: Through multiple perspectives to multidimensional knowledge*, in *International Journal for the Semiotics of Law*, 33(2), 2020, pp. 263–282.

[4] J. Engberg, *LSP and Transdiscursive Knowledge Communication*, in E. Isaeva (ed.), *Specialized Knowledge Mediation: Ontological & Metaphorical Modelling*, 2022, pp. 61–77.

comparative legal studies, with special emphasis upon comparative law for translational purposes. Finally, section 4 suggests three perspectives to be used when collecting the knowledge relevant for such comparative legal studies.

2. The Knowledge Communication Approach

2.1. Knowledge and specialisation

The Knowledge Communication approach focuses on the knowledge of experts and the communication of expert knowledge. By this concept, I understand the following:

> The study of knowledge communication aims at investigating the intentional and decision-based communication of specialised knowledge in professional settings (among experts as well as between experts and non-experts) with a focus upon the interplay between knowledge and expertise of individuals, on the one hand, and knowledge as a social phenomenon, on the other, as well as the coping with knowledge asymmetries, i.e., the communicative consequences of differences between individual knowledge in depth as well as breadth.[5]

In this paper, the first-mentioned characteristic of knowledge communication is the central one: Knowledge communication is about how disciplinary knowledge exists as a socially recognised fact (*knowledge as a social phenomenon*), but at the same time is empirically only accessible as the knowledge of individual carriers from the discipline (*knowledge of individuals*). And due to the constructive character of communication for the generation and preservation of the knowledge introduced above, the cognitive and communicative processes of the members of the discipline play a very central role for content and structure of the disciplinary knowledge.

The disciplinary knowledge and the conversational understanding and development of it does not occur in an empty space but is embedded in contexts characterised by domain specialisation. In the sense relevant here, the term "specialisation" indicates a context where experts from a specific field are central participants. Kalverkämper[6] lists the following aspects that are centrally relevant for a pragmatic characterisation of a specialised domain:

> A specialised domain is (a) what is institutionalised as such, (b) from the point of view of social and factual needs is motivated as a unified complex, (c) functions efficiently as an identified field of work, and (d) is accepted through social convention (by whatever groups). (My translation)[7]

Law is an example of such a specialised domain. As law is connected to research and is carried by university education, it is relevant to characterise it not only as professional domain, but actually as a discipline and to talk about legal knowledge as disciplinary knowledge.

[5] J. Engberg, *Conceptualising Corporate Criminal Liability: Legal Linguistics and the Combination of Descriptive Lenses*, in G. Tessuto, V. K. Bhatia, G. Garzone, R. Salvi, C. Williams (eds.), *Constructing Legal Discourses and Social Practices: Issues and Perspectives*, 2016, p. 37.

[6] *cf*. H. Kalverkämper, *Fach und Fachwissen*, in L. Hoffmann, H. Kalverkämper, H.E. Wiegand (eds.), *Fachsprachen. Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft*, Berlin, 1998, p. 8.

[7] Original formulation: *Fach ist, was (a) als solches institutionalisiert ist, (b) von der (sozialen und sachlichen) Bedarfslage her sich als ganzheitlicher Komplex motiviert und (c) als identifizierbares Arbeitsfeld mit Effizienz funktioniert und (d) durch soziale Konvention (von welchen Gruppen auch immer) akzeptiert ist*.

Disciplinary knowledge is academically based knowledge connected to institutionalized settings (universities) and to "an identified field of work" (cf. definition above). Disciplinary knowledge is characterized along the lines of different disciplinary epistemologies, describing phenomena that may be the focus of several disciplines but in a specific way in accordance with the pragmatic needs of the discipline.[8] According to the quotation above, disciplines as specialised domains may be seen as social constructions that are upheld both from the outside and the inside through communication and ensuing acceptance of the existence and content of the domain or discipline.

This constructed and constructing character of disciplines is perfectly in accordance with the idea that the shape of a discipline's knowledge is based upon the communicative exchange between individual experts. Individuals learn from speaking to other experts about what is the accepted knowledge of the discipline, in educational as well as in professional settings. However, this accepted knowledge changes over time. An important source for this kind of change are communicative exchanges in which experts with new insights convince other experts from the discipline of the power of these insights. Hence, knowledge exchange between experts is the bread and butter of creating and upholding a discipline—and also one of the reasons why the process of understanding in conversation cannot be seen as a mere decoding process.

For the purposes of the central topic in this contribution, comparative legal studies, what I have said so far about the characteristics of disciplinary knowledge means that what we are interested in accessing is the knowledge constructed, shared and communicatively upheld in two different, but related specialised domains: The legal domain of two different jurisdictions, be they regional, national or multi- or supranational. Before diving deeper into what this means for approaches to comparative law, however, a short excursion into the basic human machinery underlying the emergence and acceptance of domains and disciplines and the knowledge connected to them is relevant.

2.2. Cognition and Culture – The basic machinery behind disciplinary knowledge

We have seen above that a discipline is constituted by a group of people that, based on their shared knowledge belonging to a specific expertise, see themselves as belonging to the same discipline and are accepted as such from outside. In other words, expertise and its constituting knowledge are characteristics of a disciplinary culture. By "culture", I mean a conglomerate of accepted ways of interacting, in which specific, generally accepted symbols function as indicators of the group constituting the culture. In this way, communicating expertise constitutes the disciplinary culture. Knowing that you as an expert belong to a specific disciplinary culture presupposes specific cognitive abilities and ways of thinking about the world that seem to be special for humans. Central in this context is the ability to achieve interpersonal understanding in considerable depth. The cognitive psychologist Michael Tomasello has suggested that the emergence of *shared intentionality* in human evolution is central in this context. It can be seen as the motor behind developing the kind of highly complex collaboration and communication that characterize modern humans and distinguishes them from higher primates.[9]

The ability of modern humans to share intentionality means that we are able to adopt the perspective of others, adjust to it and thus consciously have joint attention on things and concepts in our situational context, as well as pursue the same goals in a coordinated way. The relevant type of shared intentionality that functions as the basis of culture and thus of experts' disciplines is what Tomasello calls *collective intentionality*. For a culture to emerge, it is

[8] *cf.* C. PENNAROLA, *From knowledge to empowerment: The epistemologies of ESP*, in *International Journal of Language Studies*, *13*, 2019, p. 9; K. ADAMZIK, *Fachsprachen. Die Konstruktion von Welten*, Tübingen, 2018.

[9] *cf.* M. TOMASELLO, *Origins of Human Communication*, Cambridge, 2008; M. TOMASELLO, *A natural history of human thinking*, Cambridge, 2014.

necessary that the members of the culture share the perception that a larger group exists to which "we" (the individual and others of the same kind) belong.[10]

Collective intentionality is characterized by three basic aspects:

> Modern human individuals came to imagine the world in order to manipulate it in thought via *"objective" representations* (anyone's perspective), *reflective inferences connected by reason*s (compelling to anyone), and *normative self-governance* so as to coordinate with the group's (anyone's) normative expectations. (emphasis added)[11]

This personal view of oneself as part of a larger "we" is a social phenomenon. We know (or at least presume) that what we know is not just our own insight, but that anyone else from our "we" would know the same.

This is the basic machinery underlying the emergence of cultures—and of disciplines, which are examples of knowledge-based, i.e., epistemic cultures. Collective intentionality is an apparently hard-wired part of human cognition that automatically makes us aware of specialized disciplinary contexts and of the shared knowledge connected to and constituting the epistemic culture. Comparative law is about accessing these disciplinary cultures, finding relevant objects to compare and assessing the knowledge shared by the members of the discipline. An important consequence of that is that we need to get access to the thinking inside the culture, which means joining or at least observing from the outside the disciplinary conversation, that constructs, develops and upholds the shared knowledge. This is naturally a challenging task. But the sunny side of it is that all humans are cognitively hard-wired for collective intentionality and thus may access new epistemic cultures—as long as we accept that our own shared knowledge must not be the basis of the thinking of other epistemic cultures.

3. Legal knowledge, comparative legal studies, and legal translation

Comparative law and legal translation are closely related activities—they work across the barriers of languages and legal systems, they intend to create bridges enabling users to see relations between different legal and linguistic settings and understand the unfamiliar, and they rely upon each other in their activities. Despite the fact that the focus of performers of comparative law and of legal translators are somewhat different, there is enough overlap concerning focus, methods, and basic assumptions for them to be directly comparable and to learn from each other.[12]

Central for the argumentation in this contribution is the comparability of comparative law and legal translation and the ensuing consequence of being fruitful fields for each other for gaining new insights: Comparative legal studies can only be carried out with access to legal sources from different legal systems—which will often be phrased in different languages. If the expert does not know all the languages involved, as is not uncommon, especially if more than two systems are involved in the comparison, it is necessary to translate. Even when only two systems are involved, a certain amount of translation will still be necessary in order to be able to compare the meanings of texts from different systems. Hence, it is important that comparatists are aware of the concept of translation applied by the concrete translator in order to be able to assess overlaps and differences between the studied concepts from different systems. On the other hand, when doing legal translation, a prerequisite when intending to create good translations of legal texts is to have sufficient knowledge about the legal systems behind the

[10] M. TOMASELLO, *A natural history of human thinking*, *op. cit*., p. 123.

[11] M. TOMASELLO, *A natural history of human thinking*, *op.cit*., p. 1.

[12] J. HUSA, *A New Introduction to Comparative Law*, Oxford / Portland, Oregon, 2015, pp. 125–127.

source and target texts and also specific comparative knowledge about significant differences. For this, methods and results from comparative legal studies as reflected not only in the academic legal studies themselves, but also in legal dictionaries, terminological databases and similar sources are central to reaching a relevant result.

The links between the two activities or disciplines as well as their respective characteristics mean that they both fall under the basic concepts of the Knowledge Communication Approach presented above. Activities in both disciplines involve experts on the sender side and usually also on the receiver side of the communication, working within their field of expertise: experts of comparative legal studies communicate their analyses for other experts, be it in academic or administrative settings of legal drafting; legal translation experts communicate the meaning of a source legal text, often to expert receivers in the target text culture. As we saw above, the Knowledge Communication Approach presupposes that communication of knowledge takes place between individuals based upon knowledge as a social, i.e., shared phenomenon. This means that individuals draw upon personal knowledge they presume to be shared when understanding one another. A prerequisite for both disciplines, in order to reach valid and useful results, is a relevant level of comparative knowledge in order to assume what knowledge may be shared. Secondly, knowledge of individuals may be and typically is different among the individuals. Hence, communicating knowledge presupposes some insights into the relevant differences in individual knowledge between communicators in order to cope with knowledge asymmetries.[13] As a consequence of conceptualising comparative law and legal translation as instances of knowledge communication, the communicative activities of both disciplines must be seen as having to target the specific conditions of (types of) individuals seen as the intended receivers of the translation or the comparative legal study. For the existing knowledge base governs the possible understanding. When making a comparative legal study, therefore, the reporter must take into account the purposes of the concrete targeted receivers as well as their knowledge background. The same applies to legal translations.

The following definition sums up the traditional legal approach to comparative law in the form of a blueprint:

> It is possible on the general level to present a blueprint definition and say that comparative research of law aims at lining up different legal systems in order to generate information. Comparative law is aimed at the legal systems of different States (or State-like formations) or their segments that are significant for research problems.[14]

Important is here that comparative law is presented as focusing upon problems of legal research. This focus governs the object investigated by comparative legal research as well as the chosen methodology.

Similarly, legal translation, and especially the translation of legal concepts, may be defined in the following way:

> Translating terms in legal documents consists in strategically choosing *relevant parts* of the complex conceptual knowledge represented in the source text in order to present the aspects exactly *relevant* for this text in the target text situation in order to enable a receiver to *construct the intended cognitive structure*. (my emphasis)

[13] *cf.* J. ENGBERG, *Conceptualising Corporate Criminal Liability: Legal Linguistics and the Combination of Descriptive Lenses*, cit., p. 37.

[14] J. HUSA, *A New Introduction to Comparative Law*, *op. cit.*, p. 19.

In this definition, I have highlighted the words that indicate a focus in legal translation on choosing aspects relevant in source as well as target situations with the aim of enabling the target text receiver to construct the intended meaning und thus gain the intended knowledge about concepts in the source text situation. Hence, both comparative legal studies and legal translation work are shaped and differentiated according to their different foci and objects – but still have a considerable amount of shared interest.

Concerning the object, "[c]omparative law aims at general legal knowledge that is not State-specific in nature as in national legal research".[15] Hence, much work has been directed into describing legal families.[16] Apart from this type of macro-comparisons, legally oriented comparative legal studies may also have the form of micro-comparisons, taking legal rules, individual legal concepts, or legal institutions as their object.[17] Micro-comparisons are the ones most relevant for translational purposes. For these, comparative law has developed the method of problem functionalism. This term means that comparative researchers are interested in describing the (legal) problem that is to be solved by, e.g., a (new) legal rule and then investigate how the same problem is solved in a different legal system.[18] The comparative legal researcher gains insights into similarities and differences between rules, concepts, or institutions of different legal systems by way of a problem-oriented common description.

This approach is often used in connection with legal translation in traditional terminology work.[19] However, as I have argued in previous work[20], the focus upon the underlying legal problem and its solution that is typical of traditional comparative legal studies will not always cover the needs of legal translators. The problem is that this focus tends to restrict the view of the researcher to normative and legalistic issues of drafting in order to achieve specific normative goals. Translators may typically not restrict themselves to such normative aspects but have to include also other aspects related for instance to differences in cultural traditions between the source and target context, in order to produce a relevant target text. This means that more conceptually oriented approaches with a possibility of focusing on other dimensions of a concept rather than on the functional problem solving are more promising.[21] Such approaches have been developed in the field of cultural sociology in a wide sense interested in the sociological construction of law and its symbolic and performative representation.[22] Even more to the point, some transfer- and understanding-related approaches have been developed:

- Meyer[23] has developed a method for enabling readers from one culture to read and understand legal texts from a foreign culture in accordance with the cultural characteristics of this foreign culture. The approach is based upon a performative view of culture, studying the actual co-creation of cultural symbols in foreign-culture texts.
- Monjean-Decaudin and Popineau-Lauvray[24] suggest a concept-based method for transferring legal meaning in translation which applies the method of *inflexion de signifié*

[15] J. Husa, *A New Introduction to Comparative Law*, *op. cit.*, p. 21.

[16] As a central example, *cf.* K. Zweigert, H. Kötz, *Einführung in die Rechtsvergleichung*, Tübingen, 1996.

[17] J. Husa, *A New Introduction to Comparative Law*, *op. cit.*, p. 101.

[18] J. Husa, *A New Introduction to Comparative Law*, *op. cit.*, p. 124.

[19] *cf.*, *e.g.*, P. Sandrini, *Comparative Analysis of Legal Terms: Equivalence Revisited*, in C. Galinski, K. D. Schmitz (eds.), TKE 96, Frankfurt am Main, 1996, pp. 342–350.

[20] J. Engberg, *Comparative law for translation: The key to successful mediation between legal systems*, in A. Borja Albi, F. Prieto Ramos (eds.), *Legal Translation in Context: Professional Issues and Prospects,* 2013, pp. 9–25.

[21] O. Brand, *Conceptual Comparisons: Towards a Coherent Methodology of Comparative Legal Studies*, in *Brooklyn Journal of International Law*, *32*(2), 2007, pp. 405–466.

[22] *cf.*, as an example, W. Gephart, *Recht als Kultur. Zur kultursoziologischen Analyse des Rechts*, Frankfurt am Main, 2006.

[23] A. Meyer, *On the Integration of Culture into Comparative Law*, in G. Tessuto, R. Salvi (eds.), *Language and Law in Social Practice Research*, 2015, pp. 268–289.

as a tool for translators. Basically, the idea is that the translator broadly assesses the meaning of the ST concept and of potentially relevant TT concepts and then formulates goals for the intended relations between source and target concept which helps create a bridge for target culture readers to approach source culture concepts.

- Bestué[25] proposes to apply a so-called translation-oriented terminological entry for storing and structuring the results of comparative studies of centrally relevant legal concepts. The idea is to collect in a broad way information with potential relevance from many perspectives, including possible and non-preferred translations, definitions, textual context as well as features from the disciplinary knowledge. On this basis, the translator is then supposed to make decisions specifically relevant for the situation at hand, based upon comparative insights.

With inspiration from many such approaches, I have in previous work suggested a three-perspective lens with relevance for translators, which takes into account the actual multi-facetted character of legal concepts as part of legal knowledge[26], which I will present in the following section. The widening of scope is certainly relevant for the purposes of legal translation. I propose it here, because I think it would also be a relevant approach for comparative legal studies, because such studies are also instances of expert knowledge communication and thus may gain from including more conceptual aspects.[27]

4. Perspectives as tools for accessing legal knowledge

I propose to describe legal concepts from the following three perspectives:

- The perspective of law as a functional and epistemic system, focusing upon the influence of general legal thinking upon the structure of the concepts (focus: similarities, commensurability).
- The perspective of national legal cultures, focusing upon characteristics of national legal concepts and upon the influence from aspects of the national culture and the general context governing a culturally adequate understanding (focus: differences, rather incommensurability).
- The perspective of law as the result of interpersonal knowledge communication, focusing upon the importance of language use upon meaning and variation of the concept, based upon corpus studies (focus: similarities and differences, symbols, reflections of context)

When using a three-sided lens like the one suggested here, we look at legal concepts as they are actually performed[28], i.e., at how terms are actually used in communication in ST and TT situations and what this reveals about different dimensions of the meaning of the concept. The

[24] S. MONJEAN-DECAUDIN, J. POPINEAU-LAUVRAY, *How to Apply Comparative Law to Legal Translation: a New Juritraductological Appraoch to the Translation of Legal Texts*, in L. BIEL, J. ENGBERG., M. R. MARTÍN RUANO, V. SOSONI (eds.), *Research Methods in Legal Translation and Interpreting: Crossing Methodological Boundaries*, London, 2019, pp. 115–129.

[25] C. BESTUÉ, *A Matter of Justice: Integrating Comparative Law Methods into the Decision Making Process in Legal Translation*, in L. BIEL, J. ENGBERG, M. R. MARTÍN RUANO, V. SOSONI (eds.), *Research Methods in Legal Translation and Interpreting: Crossing Methodological Boundaries*, London , 2019, pp. 130–147.

[26] J. ENGBERG, *Developing an Integrative Approach for Accessing Comparative Legal Knowledge for Translation*, in *Llengua i Dret*, 68, 2017, pp. 5–18, doi:http://dx.doi.org/10.2436/rld.i68.2017.3014; J. ENGBERG, *Comparative Law for Legal Translation: Through Multiple Perspectives to Multidimensional Knowledge*, cit., pp. 270–279.

[27] Compare also A. KOCBEK, *Legal Terminology at Arm's Length - the Multiple Dimensions of Legal Terms*, in *Linguistica*, 53(2), 2013, p. 35.

[28] A. MEYER, *On the Integration of Culture into Comparative Law*, *op.cit*, pp. 271–273.

results from looking at concepts from the three different perspectives can be stored in rich translation-independent records.[29] Subsequently, translators carrying out their knowledge-oriented communicative task "inflect" their understanding of the source concept and the intended relation between source and target formulation[30] based on the recorded aspects in order to create a bridge through which the TT reader may have access to the relevant aspects of the ST concept.[31]

The multiperspectivist approach to generating knowledge covers different approaches to comparative legal studies and thus enables comparatists and legal translators alike to take advantage of a wealth of different sources of relevant information in a structured way. In other work[32], I have proposed frames from Frame Semantics[33] as a relevant instrument for collecting and structuring the knowledge accessed in comparative studies of law from the multiperspectivist lens. In order to avoid overstretching the focus of this contribution, however, I will here limit myself to presenting the three perspectives suggested above.

4.1. Perspective of law as a functional and epistemic system

This is the perspective underlying the method of problem functionalism used for micro-comparisons described above. In comparative legal studies from this perspective, the researcher gains insights into similarities and differences between rules, concepts, or institutions of different legal systems, generally with more focus on similarities than on differences. Comparatists focus on structuring central legal knowledge on concepts that they gather from the study of legal textbooks and similar discipline-internal sources according to hierarchical relations in so-called conceptual systems. As indicated before, focus tends to be on normative aspects of the concepts. One common characteristic of comparative studies under this perspective is that they are based upon the idea of legal concepts as parts of a functional system (in the terms of Luhmann 1984)[34] or an epistemic system (in the terms of Knorr-Cetina 1999)[35], which are not limited by the boundaries of national legal systems but expand across such systems. So, the legal discipline is seen as an overarching epistemic culture, which may have different subcultures related to different jurisdictions. However, the members of different subcultures share enough collective intention (in the sense presented in section 2.2. above) to be able to understand the foreign legal systems. This also means that they rely upon a basic concept of cultural characteristics as at least potentially universal.[36] This basic assumption is the main reason why studies carried out from this perspective tend to focus upon similarities and compatibility, but naturally also look for differences.

[29] C. Bestué, *A Matter of Justice: Integrating Comparative Law Methods into the Decision Making Process in Legal Translation*, *op. cit*, pp. 138–141.

[30] S. Monjean-Decaudin, J. Popineau-Lauvray, *How to Apply Comparative Law to Legal Translation: a New Juritraductological Appraoch to the Translation of Legal Texts*, *op.cit.*, pp. 126–128.

[31] J. Engberg, *Legal Translation as Communication of Knowledge: On the Creation of Bridges*, in *Parallèles*, 33(1), pp. 6–17.

[32] Especially J. Engberg, Methodological Aspects of the Dynamic Character of Legal Terms, in *Fachsprache*, 31(3-4), 2009, pp. 126–138; J. Engberg, *Comparative Law and Legal Translation as Partners in Knowledge Communication: Frames as a Descriptive Instrument*, in F. Prieto Ramos (ed.), *Institutional Translation for International Governance: Enhancing Quality in Multilingual Legal Communication*, London, 2018, pp. 37–48.

[33] *cf.*, e.g., D. Busse, *Frame-Semantik. Ein Kompendium*, Berlin, 2012; C. J. Fillmore, *Frame Semantics*, in The Linguistic Society of Korea (ed.), *Linguistics in the Morning Calm*, Seoul, 1982, pp. 111–137; A. Ziem, *Frames of Understanding in Text and Discourse*, Amsterdam/ Philadelphia, 2014.

[34] N. Luhmann, *Soziale Systeme : Grundriss einer Allgemeinen Theorie*, Frankfurt am Main, 1984.

[35] K. Knorr-Cetina, *Epistemic Cultures: How the Sciences Make Knowledge*, Cambridge, 1999.

[36] R. J. Evanoff, *Universalist, Relativist, and Constructivist Approaches to Intercultural Ethics*, in *International Journal of Intercultural Relations*, 28, 2004, pp. 441–444.

4.2. Perspective of national legal cultures

In current comparative law, the approach of problem functionalism is very powerful, among other things probably because it relies upon a universality-oriented conception, which is very welcoming to comparisons and to seeing similarities. However, there is another strong research field in comparative legal studies taking a different stance. Their take on cultural characteristics is relativist rather than universalist.[37] Researchers working under the perspective of national legal cultures emphasize the importance of the unique socio-cultural context of each nation and the ensuing conceptual differences. Work carried out from the perspective of seeing law as a functional and epistemic system, on the other hand, focuses upon overarching characteristics of socio-legal functionality. According to Hendry, the two strands are so different in their basic views that it would be relevant to talk about two different research fields, i.e., universalistic and functional Comparative Law vs. context-oriented Comparative Legal Studies.[38]

A central figure in Comparative Legal Studies is Pierre Legrand. His position on the context-dependence of legal meaning may be seen in the following quote:

> The meanings that the interpreter brings to the act of interpretation were internalized by him as he was thrown into a tradition (linguistic, legal, and otherwise) that constituted him as the individual he is (and as a member of the tradition). The basic point is that the individual's sphere of understanding is, in important ways, inherited and that it arises irrespective of any subjective preferences.[39]

Within the discipline of studying law comparatively, the differences between the principal assumptions of the two research fields are so deep that it is difficult to position oneself as a researcher between the two. Lawyers working as comparatists must take a stance on what group they belong to. However, the question is whether the results found in studies carried out from the two different perspectives actually have to exclude each other. Especially for translators, I would think, this is not the case, as translators have the advantage that they may be eclectic concerning the sources of the disciplinary knowledge they need in order to create a relevant knowledge base: Translators need to build conceptual knowledge sufficient for them to understand source and target text relevantly; if work from a research field helps achieve this goal, it is useful—no matter whether the assumption of the researcher on cultural characteristics is universalist or relativist. Focus will tend to be on differences in such work, but knowledge about differences is equally interesting for translators as knowledge about similarities. And I would venture the heretical guess that this could also be the case in other types of legal comparison, too.

4.3. Perspective of law as the result of interpersonal knowledge communication

The two perspectives described in 4.1 and 4.2 work "outside-in" in their analysis in the way that they start either in overarching functional epistemic systems or in a national cultural context and then work their way into demonstrating reflections of the context into the conceptual world. The last perspective to be treated here distinguishes itself from these approaches by using an

[37] R. J. EVANOFF, *Universalist, Relativist, and Constructivist Approaches to Intercultural Ethics, op. cit*., pp. 444–449.

[38] J. HENDRY, *Legal Comparison and the (im)Possibility of Legal Translation*, in S. GLANERT (ed.), *Comparative Law - Engaging Translation*, London, New York, 2014, p. 88.

[39] P. LEGRAND, *Word/World (of Primordial Issues for Comparative Legal Studies)*, in H. PETERSEN, A. L. KJÆR, H. KRUNKE, M. R. MADSEN (eds.), *Paradoxes of European Legal Integration*, Aldershot, 2008, p. 220.

"inside-out" direction in the analysis. This is the equivalent of a constructivist approach to (the emergence of) cultural characteristics.[40] In this perspective, the dimensions and characteristics are found by looking at legal communication and following the constructive meaning-making process represented here, preferably in actual dialogues, or in staged dialogues in the form of argumentative presentations about the pros and cons of different descriptions of the same concepts.

Methodologically speaking, investigations of this type may be carried out from a quantitative as well as a qualitative point of departure. Quantitative approaches like, e.g., studies by Goźdź-Roszkowski and Pontrandolfo[41] look for formulation patterns in large corpora of different types of legal texts. The result of such studies is insights into collocational tendencies, i.e., into what words occur together more often than others. These insights are relevant on their own when writing texts in the form of so-called phraseology, i.e., knowledge about what words to use together so that texts comply with conventions of the legal cultures. Additional to the context of writing, collocational patterns may render information about conceptual structures, as the pattern may tell us something about the hierarchical structure of a concept. Comparing collocational patterns from different legal cultures may reveal similarities and differences in the shared knowledge bases of individuals from these legal cultures. Qualitative approaches in this context are less frequent, but the approach of Meyer[42] presented above in section 3 is a case in point. The idea here is again to draw upon different instances of communication about the legal concepts in focus. But instead of relying upon quantitative methods to find differences and similarities, Meyer suggests a number of principles to be applied in order to sharpen the eyes of investigators for potential differences and similarities.

5. Concluding remarks

With the presentation of three different perspectives, I have reached the end of my argumentative journey towards a multiperspectivist lens with relevance for comparative legal studies departing from a knowledge communication point of view. The basic tenet is that comparative legal studies are interested in comparing the shared knowledge of members of one legal culture with the shared knowledge of members of another legal culture. Because this is so, we should take seriously the actual breadth of such knowledge. On the one hand, it spans universalist as well as relativist components, making at least potentially relevant even results from opposing points of view inside the same legal culture. On the other hand, it is reflected in any kind of communicative interaction on the concepts to be investigated, as long as the interaction is carried out by experts belonging to the culture. Hence, because of the complexity of the knowledge to be assessed and built up in order to understand texts relevantly a multiperspectivist approach to comparative legal studies is highly useful, if we want to grasp the legal concepts in their actual complexity.

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[41] S. GOŹDŹ-ROSZKOWSKI, G. PONTRANDOLFO, *Evaluative Patterns in Judicial Discourse: A Corpus-Based Phraseological Perspective on American and Italian Criminal Judgments*, in *International Journal for Law, Language and Discourse*, 3(2), 2013, pp. 9-–69.

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