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Comparative Law for Legal Translation: Through Multiple Perspectives to Multidimensional Knowledge

Jan Engberg[1]

Abstract
With this paper, I suggest a multiperspectivist approach for assessing conceptual legal knowledge with relevance for the translation of legal terms in translation between two or more different legal systems. The basic quest is to present a set of categories and analytical approaches for legal translators to generate (collect) and classify knowledge necessary for their professional conceptual needs. In this paper, I will focus on the translational, juridical, and cognitive basics of such an approach. In order to cope with the broad range of possible translational purposes in different translational situations and choose relevantly between alternative formulations, translators need methods and strategies in order to construct the necessary conceptual knowledge. This presupposes a broad knowledge structured in ways that enable the translator to recognize relevant characteristics of legal systems and relevant differences between different legal systems. Concerning translational theory, the basis is the functional theory of translation as adapted to legal translation, based upon the idea of translation as choice between alternatives and distinguishing between documentary translation, at one end of a scale, and instrumental translation, at the other. This basis and the distinction presuppose relevant knowledge from comparative law. Hence, existing approaches and fundamental tenets concerning comparative law inside and outside of translation are presented. In order for knowledge to be presented in a manageable way with relevance to translators, I work with the approach of concept frames as basic unit of knowledge gathering and categorization. This way of presenting knowledge is embedded more generally in a knowledge communication approach, focusing on knowledge asymmetry. Within this general framework, the multiperspectivist approach combines insights from cultural studies (especially the study of law-as-culture), law as a disciplinary social system, and communicative interaction generating meanings in legal communication, also across national borders.

Keywords Legal translation · Comparative law · Knowledge communication · Conceptual approach · Functional translation

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1 Introduction

Comparative Law and Legal Translation are close relatives—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 [16, 29], there is enough overlap concerning focus, methods, and basic assumptions for them to be directly comparable and to learn from each other [28, pp. 125–127].

The present paper focuses on the last-mentioned characteristic, the characteristic of relying upon each other: Doing comparative legal studies presupposes access to legal sources from different legal systems phrased in different languages. If the expert does not know all the languages involved, which 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 to know which concept of translation has been applied when discussing the use of translations in practical comparative legal studies: What kind of service is translation expected to offer to the comparatist? On the other hand, when doing legal translation, a prerequisite to create good translations of legal texts is to have sufficient knowledge about the legal systems behind the 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.

Before getting into these application-oriented considerations about how the disciplines are instrumental to each other in the remainder of the paper, however, it is relevant to elaborate upon a basic concept uniting the two disciplines Comparative Law and Legal Translation. Basically, doing legal translation as well as doing comparative legal studies may be seen as purpose-oriented instances of Knowledge Communication. By this concept, I understand the following:

> The study of Knowledge Communication aims at investigating the intentional and decision-based communication of specialized 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 [18, p. 37].[1]

[1] For an overview of literature and the characteristics of the Knowledge Communication Approach, cf. work by Kastberg [30] and Porup Thomasen [47].

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. Central in this context is, first, the idea 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. In both disciplines in focus in this paper, this also presupposes 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. One consequence following from this assumption is that knowledge communication always targets the specific conditions of (types of) individuals. The same text will never be understood in the same way by receivers with a different knowledge background, even though they speak the same language. For texts themselves do not carry knowledge, but only the material to be used when constructing knowledge on the side of the receiver. 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.

One of the consequences of adopting a knowledge communication approach is that it makes it relevant to investigate the descriptive advantages of a multidimensional approach to modelling the meanings to be rendered in translations or in comparative legal studies. For knowledge is generally stored in associative networks. This network character gives rise to the possibility of focusing different dimensions of a concept, dependent upon which parts of the network are given primary relevance in a given situation. This characteristic may well be modelled in the format of frame semantics (cf. Sect. 4.1).

The basis for carrying out knowledge communication activities in the field of comparative law and of legal translation is access to a relevant knowledge base. The base is constructed through focused investigations. In earlier work [19] I have proposed a multiperspectivist approach to such investigations specifically for the purposes of legal translation. In Sect. 4 I will elaborate upon this idea. At this stage, however, it is already important to note that I work with a terminological differentiation between the terms *dimension* and the term *perspective*: I use *dimension* to mean a content aspect of a legal concept (like the dimension of history or of sanctions); I use *perspective* to mean a way of approaching the study of law for comparative purposes (as in a functionalist or a national context approach).

Based upon these assumptions, this paper intends to support the following claims:

- Comparative law must come to terms, methodologically, with the fact that a translation will always be targeted to the needs of an intended receiver and work consciously with this in the choice of translations and translation tasks.
- Legal translation must come to terms, methodologically, with the fact that comparative legal studies will differ in the chosen focus, not only in topic, and also in knowledge dimensions (legal function, legal characteristics, cultural aspects) and

investigative perspective and work consciously with this in the choice of methods and results.
- Knowledge-oriented approaches to meaning (based on frame semantics) have affordances concerning the ability to model different dimensions of a concept together, which support efficient conscious choices in practical comparative law as well as in practical legal translation.

Concerning the structure of the paper, I begin with a brief presentation of the central characteristics of a Knowledge Communication approach to the process of translating for legal purposes (Sect. 2). In Sect. 3, I focus on what legal translation may yield and what it cannot yield for work in the field of comparative law. Finally, in Sect. 4 I present a multiperspectivist approach to translation-relevant comparative legal studies and suggest some relevant approaches to acquiring the relevant multidimensional knowledge.

2 Knowledge Communication Approach to Legal Translation

Using the Knowledge Communication Approach and its concepts for researching legal translation and especially for the study of how to translate legal terminology, the activity may be described in the following compressed form:

> Translating terms in legal documents consists of 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 [17, p. 5].

Encountering a word in the source text which the translator recognizes as a legal term prompts automatic activation of the relevant part of his or her background legal knowledge. The activated knowledge constitutes the basis of understanding by rendering potentials. The selective process of choosing a way to render a source language term in the target language then consists of applying three kinds of filters to the translator's activated basic and global knowledge.

- First filter: Which aspects of the all-encompassing conceptual knowledge connected to the term is actually central in the source text situation?
- Second filter: Which of these aspects are relevant in the target text situation, and what are the similarities and differences in relation to target-language concepts?
- Third filter: What formulations may best enable receivers to establish the intended mental picture based upon their existing knowledge base?

In connection with each filtering, translators may recognize knowledge deficits that will make it relevant for them to widen their knowledge base in order to create satisfactory knowledge units. Where the first-mentioned filter is traditionally included in translation process descriptions from the point of view of functional translation, the focus in the two remaining filters upon not only general systematic (shared)

similarities and differences, but also hypotheses of the knowledge base of the (individual) receivers are often not kept apart.[2] Emphasizing this distinction stresses the fact that the goal of the translation is to enable individual readers to construct an intended cognitive structure. Translation is thus not merely about making a target text. Rather, translation is about creating opportunities for individuals in the target text situation to construct knowledge relevantly similar to knowledge normally constructed by individuals in the source text situation. This is the main contribution of the Knowledge Communication Approach to the characterization of the process of legal translation and the decisions to be made in this process.

Having established the central characteristics of legal translation as seen from the point of view of the Knowledge Communication Approach, I now proceed to see how this way of looking at translation influences the conceptualization of the role of translation in comparative law.

3 Translation in Comparative Law

In general, translation as part of the methodology of legal comparison is not problematized to any deeper degree [22, p. 2]. For example, in a recent introduction by Husa:

> In most cases, sufficient knowledge of the foreign language in question is required by either the researcher or those assisting him or her. The situation is improved by the fact that nowadays provisions from the main categories of the legal system are to a great extent available as official translation in best known languages (mostly in English, sometimes in French or German) [27, p. 190].

Translations are presented as generally unproblematic sources for comparative work. And by 'translations' I mean not only formal translations of the official type, but also the reading of foreign language texts based upon foreign language competence, chosen in dependence upon the actual needs of the comparatist. The following remarks apply to formal as well as more informal translation types. However, Husa [28, pp. 193–196] is also aware of the special problems that comparatists (and translators) meet when working with legal texts from different legal systems. These are specifically related to legal language as a specialized sublanguage differing in meaning from everyday language, as well as to its relation to specific institutions, norms, processes, legal culture and legal history that have to be understood according to the respective system in order to achieve the rather deep understanding necessary for comparative purposes. The consequence for Husa is to emphasize his position on foreign language competences at the beginning of the statement above:

[2] Cf., however, Matulewska for examples of such a distinction and arguments for the importance of individual circumstances in the translation situation for the choices to be made [38, pp. 75–81].

> All the factors mentioned above emphasize the need to resort to material in the original language or at least in key issues to examine the content of the foreign law (also) directly in the original language [28, p. 195].

Consequently, comparatists cannot rely fully upon translations, but must also have direct access to the wording of the original text. Some authors take this skeptical position towards translation one step further and actually reject the possibility of translating legal texts successfully [32]. I find this an unrealistic position to take. The main reason is that a vast number of people earn a living from performing legal translation and have a vast number of satisfied customers. Furthermore, legal cooperation and supranational legal institutions and systems exist and thrive. Hence, authors rejecting successful legal translation must mean something else. Most likely, the rejection must be of the possibility to create a text in a target language, in which there is a 1:1-relation between all words in the source and target text. Such a detailed position is much more likely to be correct, due to the characteristics listed by Husa above. According to Hendry [27, pp. 98–99] accepting or rejecting the possibility of actually understanding foreign law through translation is an important characteristic when understanding different comparatists, as it reflects a difference in basic position towards the discipline of comparative law: Comparatists accepting translation as a relevant tool belong to the more functionalist branch, whereas comparatists rejecting translation as a relevant tool belong to the more contextualist branch. As I argue in Sect. 4, a comparative law methodology with maximum relevance for legal translators should draw upon results from both of these perspectives on the comparative study of law.

Among comparatists accepting translation as a relevant tool, we find discussions about the type of translation to be chosen with a view to their specific disciplinary needs. De Groot [26, p. 159] states that "[i]nteresting, relevant differences should not be 'lost in translation': those differences have to be explained." The idea is that the translator should not hide differences by choosing target-language legal terms with a certain, but not full overlap [near or partial equivalence apud Šarčević [44, p. 238]. Instead, differences must be made clear. Along the same lines, Baaij [1] talks about the danger of translation strategies that enhance intelligibility of target text by using terminology known to the receiver. This type of strategy, which he calls a 'receiver-oriented strategy', runs the risk of hiding information relevant for comparison:

> … the greater the cultural or contextual differences involved, the more the receiver-oriented legal translator needs to depart from the linguistic structures and legal-cultural references of the source legal text [1, p. 109].

Behind this lies the fear that the translator may be an interpreting filter between the original text and the comparatist. Instead, he presents as more apt a so-called literal or 'linguistic' translation strategy [1, pp. 112–114]. As an example, the Dutch term "Bezit" is better translated into English by the non-terminological noun 'having' instead of by the common-law term 'possession'. The reason is that there are differences between the common-law concept and the Dutch concept,

which may not be noticed by an English-speaking reader encountering the common-law term [1, p. 117].

The cited authors point to an important question in the choice of strategy. However, it is also important to use the exact terms when describing the problem: As partial equivalence is the rule in concepts across legal systems, it will normally be necessary in legal translation to make formulation and word choices in accordance with an interpretation of the needs of the receiver. As an example, Šarčevič in an analysis of the translation of legal instruments in bi- or multilingual jurisdictions in order to produce authenticated texts demonstrated that the goal here must be to achieve texts that express the same legal intent [45, p. 333]. Of course, this approach may not be in accordance with the needs of a comparativist and thus may not be the optimal choice for a translator. However, what Baaij suggests as an alternative ('linguistic') strategy is also a translation following a receiver-oriented strategy based upon the translator's knowledge of both legal systems and of the needs of the receiving comparatist. There is most likely a confusion here of the terms 'receiver-oriented translation strategy' and 'instrumental translation strategy'. The first is a reformulation of the basis of one of the most influential functional approaches to translation, that is, Skopos Theory:

> Ein Translat ist ein Informationsangebot in einer Sprache z der Kultur Z, das ein Informations-ange-bot in einer Sprache a der Kultur A funktionsgerecht imitiert [48, p. 33].[3]

In this view, on which the Knowledge Communication Approach to legal translation presented in Sect. 2 is based, a translated text is always an attempt to communicate information to a receiver and to produce a (target) text that fulfills the needs of this receiver, simultaneously being relevantly loyal to the source text. This presupposes a certain orientation of the translated text towards its receivers and their knowledge base, as they are to understand a text from a context different from their own. As developed by Nord, in this context translators may follow strategies positioned between two ends of a scale reaching from *documentary* to *instrumental translation strategies* [42]. Documentary strategies (which may also be called *foreignizing strategies*) are oriented towards documenting aspects of source text and culture, whereas instrumental translation strategies are oriented towards creating a translated text that may fulfill the purpose of the source text, but under the conditions of the target text situation.[4] What Baaij warns about is rather an instrumental strategy, whereas what he wants is a documentary strategy. In both cases, however, the translation will be receiver-oriented and based upon the translator's interpretation of overlaps, differences and their respective importance for the purposes of the receivers and thus upon comparative knowledge about the involved legal systems. Just like a context-free and education-independent understanding of legal texts in the mother tongue is

[3] A translation is an information offer in a language t of the culture T, which imitates an offer of information in a language s of the culture S in a functionally adequate way (my translation).

[4] Hendry [27] distinguishes along the same lines between metaphrase (documentary approach) and paraphrase (instrumental approach).

not possible, a context-free literal translation strategy does not exist. Husa states this in the following way: "In practice the comparatist has to translate (*and simultaneously interpret*) from one language to another even if it is not done on paper or with a computer" [28, p. 196; emphasis added]. Users of translation 'read' the original texts through the interpretation of a translator. However, the wider and more facetted the comparative knowledge base held or created by the translator is, the more likely it is that the translator may produce a translated text helpful for the intended readers (in this case, comparativists). Hence, the communication of knowledge about foreign law in a relevant way, taking into consideration the presumed knowledge base of the receiver, is the key to solid comparative legal studies.

For comparatists and translators alike, this actually demonstrates the necessity of not generally relying upon a monodimensional approach, but to keep the eyes open for multiple dimensions, enabling a change of perspective if need be from the point of view of the interests of the researcher, the nature of the investigation or the nature of the investigated object. In these terms, we may rephrase Baaij's criticism of specific translation strategies: What Baaij has observed is actually that a *monodimensional* approach to translation focusing upon the legal intent is not the right approach for all receivers, as other perspectives of legal concepts than the central legal intent pursued with them may be relevant for some receivers. Legal translators must be able to accommodate such interests, too. Therefore, legal translators must have a *multidimensional* approach to comparative legal knowledge as a central tool for acquiring the relevant knowledge at their disposal that enables them to adjust to the specific receiver needs in the translation situation at hand.[5]

My main interest in this paper, however, lies in proposing relevant ways of conducting comparative legal studies for legal translators. For the remainder, therefore, I wish to outline the contours of a multiperspectivist approach to comparative law for translators and give some suggestions to concrete approaches that could be used to acquire relevantly multidimensional knowledge under different perspectives.

4 Comparative Law for Translators: Combining Perspectives and Dimensions

Let us briefly sum up the argumentation so far: Based upon the idea of legal translation as an instance of knowledge communication, the quality of translation depends upon the amount of relevant (comparative) knowledge that the translators have at their disposal in order to perform their knowledge communication task. Such knowledge must be multidimensional in its content and structure in order to allow knowledge communicators to adjust to specific needs in the target situation, in our case to translators' needs in specific translational situations, i.e., for specific knowledge communication tasks. In this section, I will argue that it is preferable that the approach to *generating* such knowledge is multiperspectivist.

[5] Cf. Kocbek [33, p. 35] for a similar position on the necessity of including many conceptual dimensions "in order to gain a full picture … of legal terms".

I propose to describe legal concepts from the following three perspectives presented in my previous work [18, 19]:

- 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)

The multiperspectivist approach to generating knowledge covers different approaches to comparative legal studies and thus enables legal translators to take advantage of a wealth of different sources of relevant information in a structured way. The input from each of the perspectives may be structured according to a number of dimensions, of which some will be more relevant for specific translation situations than for others. When the information is taken up by individual translators, categorized, and structured according to the needs of this type of knowledge communicators, information becomes knowledge [10]. In this connection, the concept of conceptual frames is relevant as the main organizational unit in a translation-relevant version of comparative law. The outline of the building blocks of a translation-relevant approach to comparative law in the remainder of this paper therefore starts with a brief outline of the characteristics of this organizational unit in Sect. 4.1. Section 4.3 presents some concrete investigative approaches that may be employed within the different perspectives. Before entering this level of detail, however, Sect. 4.2 presents a meta-approach to the concept of law, which I see as a major potential source of translation-relevant dimensions for the conceptual legal frames, viz., the Law-as-Culture approach.

4.1 Conceptual Frames as Organizers of Conceptual Knowledge

The first building block, the *conceptual frame*, offers a framework for structuring or organizing the generated knowledge formally. Frames are structures consisting of conceptual elements which we presume model knowledge structures in long-term memory of individuals. The basic building blocks of the structures are *slots*, i.e., underspecified attributes or dimensions of central relevance for understanding the concept. Slots contain more specified knowledge elements, which prototypically are used to fill the slots in communicative events, hence called *fillers* [2, 3, 7, 14].

Such individual structures emerge from the individual's own experiences, but also in interaction with knowledge structures of other individuals in the form of learning from their reported experiences and communicatively sharing own experiences with

others. In this way, frames are models of knowledge relevant for communicative interaction and understanding in a collective. We understand each other, because we are able to construct frames that are structurally (*slots*) and content wise (*fillers*) adequately similar to the frames of the (community of the) person we communicate with, either based upon already stored knowledge or as new insights from combining input with stored knowledge.

When translating concepts between two or more cultures according to standards of functional translation, translators need a relevant knowledge base, i.e., insight into what knowledge is relevant in order to understand a concept the way it is understood by the members of the legal field [9 pp. 44–45, 15]. This means that translators must build up a knowledge base from domain-internal sources like encyclopedia, statutes, textbooks, academic articles, etc., but also from sources that are more peripheral from the point of view of traditional legal studies, such as newspaper articles or books about basic cultural aspects. In the words of Busse [8], what the translators collect and generate from these sources is *Verstehensrelevantes Wissen*, i.e., knowledge relevant for the conforming understanding. The central advantage of a frame approach is that it models connections between elements of a concept along relevant dimensions and therefore is less tied to specific languages than predominantly lexical approaches: "the frame-semantic approach to lexical organization makes it possible to relate words across languages in a systematic way" [5, p. 152]. Furthermore, it allows modeling the actual multiplicity of dimensions of legal concepts.

4.2 Law-as-Culture Approach

Phrased informally (so as to circumvent discipline-internal detailed debates of legal science not relevant for the purposes of this paper), law can be described as an independent discipline interested especially in describing systems of norms enforceable by the state as well as the background of how such norms are established, achieve validity, and develop over time. This focus upon the norm and its immediate circumstances is expressed prototypically in the introductory pages to Hans Kelsen's seminal work "Pure Theory of Law":

> The judgement that an act of human behavior, performed in time and space, is 'legal' (or 'illegal') is the result of a specific, namely normative, interpretation. … The norm which confers upon an act the meaning of legality or illegality is itself created by an act, which, in turn receives its legal character from yet another norm. … That means that the contents of actual happenings agree with a norm accepted as valid [31, p. 4].

Not all approaches to law are so radical as this. However, seeing the aspects mentioned in the definition as central characteristics of the law is prototypical of law as a discipline. In the terms used in this paper, I would call this a relatively monodimensional approach. It is a perfectly valid approach to law as a discipline, but for a legal translator such an exclusive focus on the dimension of the norms is generally too narrow to build up the necessary basis for meeting the requirements of different receivers of translations and their situational needs.

Within law and at the margins of law as a discipline we find approaches trying rather to combine the study of law with other disciplinary views, like Legal Linguistics or Sociology of Law. One approach from the field of sociology with specific interest for the purposes of this paper is the Law-as-Culture approach, especially as represented by the work by Werner Gephart [21]. It is a socio-cultural approach which emphasizes the influence of factors like group, values, history and worldviews on law. It is especially interesting as a background for the interests of language experts like translators, because we know from studies in Legal Linguistics that there are clear correspondences between such factors and the linguistic form of legal texts.

In his book, Gephart suggests four dimensions according to which law may be described from the point of view of law not only being 'Law-as-Law', but also being 'Law-as-Culture' [21, pp. 292–300]:

- *Dimension of Law as norm* Legal rules as expression of normative thoughts connected to the social group and their values—law as system of rules of a social group
- *Dimension of Law as organization* Social structures supporting the performance of law connected to values of national culture
- *Dimension of Law as symbol* Perspective of formal elements for inherently legal meanings—wigs and robes, but also linguistic elements like terms with a legal characteristic
- *Dimension of Law as act-oriented ritual* Culture-bound rituals with a role in performing the law—for instance traits of generic identity of court decisions

Applying this idea of law as a cultural entity gives us a set of different categories when looking for knowledge and categorizing the knowledge chunks we find, enabling the translator to achieve a multidimensional and relevantly structured insight into the legal concepts investigated.

4.3 A Multiperspectivist and Multidimensional Approach to Comparative Law

In this subsection, I wish to present in greater detail the three different perspectives mentioned above, mainly through approaches that in my view can be used when investigating legal communication from the respective perspective. The central idea is that translation-relevant comparative law should do two things:

- Deliver characteristics of legal concepts with a focus upon relations of similarity and difference to concepts from other legal systems—as candidates for *fillers* in the conceptual frames that translators must build in order to make relevant formulation decisions in accordance with the translational situation.
- Deliver dimensions of such legal concepts (as candidates for *slots*), also as a source for translators when building relevant conceptual frames.

In her work on the multiple dimensions relevant to describe legal terms from the point of view of the so-called socio-cognitive approach to terminology, Kocbek presents the following dimensions as potentially relevant: text type, area of law, history, ideology, and metaphor [33]. These are sensible, but hardly sufficient in all cases. Through the perspectives and the approaches belonging to them, translators have access to many more dimensions that are potentially relevant to their decisions.[6]

4.3.1 Perspective of Law as Functional and Epistemic System

The following definition presents the basic characteristics of the traditional legal approach to comparative law, the functional approach:

> 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 [28, p. 19].

Focus here is on solving the problems of legal research. This focus governs the investigated object as well as the chosen methodology. Concerning the object, "(c) omparative law aims at general legal knowledge that is not State-specific in nature as in national legal research" [28, p. 21]. Hence, much work has been concentrated upon describing legal families [49]. Apart from this type of macro-comparisons, functionally oriented comparative law studies may also take the form of micro-comparisons, taking legal rules, individual legal concepts or legal institutions as their object [28, p. 101]. Such comparisons are traditionally carried out between legal concepts of different national legal systems [horizontal comparison, [28, p. 111]. However, recent developments in the nature of legal systems following globalization, the functional approach has widened its scope to include *vertical comparisons*, i.e., comparison between legal systems at national and at supra- or transnational level [28, p. 111]. Both aspects are potentially relevant to translators' purposes, also due to the fact that translational practice and specific tasks is equally influenced by the processes of (legal) globalization.[7] Especially for micro-comparisons, the ones most relevant for translational purposes, comparative law has developed the method of problem functionalism, meaning that the comparing researcher intends to describe the (socio-legal) problem (like dissolution of marriage) intended to be solved by, e.g., a legal rule and then investigate how the same problem is solved in a different legal system [28, p. 124]. In this way, the researcher gains insights into similarities and differences between rules, concepts or institutions of different legal

[6] From a practical point of view, Bestué [4] 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 broadly potentially relevant information from many perspectives, including possible and non-preferred translations, definitions, textual context as well as features from the disciplinary knowledge.

[7] Thanks to one of the anonymous reviewers for pointing out this idea.

systems, generally with more focus on similarities than on differences. In translation-related work, this approach is often used in traditional terminology work [cf., e.g. the work by Sandrini [43]]. In this type of work, focus is on structuring central legal knowledge generated from the study of legal textbooks and similar discipline-internal sources according to hierarchical relations in so-called conceptual systems. In terms of the dimensions from the Law-as-Culture approach, the aspects gathered here typically belong to the dimension of law as norm (if focus is, e.g., upon statutes and sections hereof) and of law as organization (if focus is, e.g., upon the judicial system).

Within the field of comparative law, Emerich [e.g., 12, p. 302] proposes an approach which takes as its point of departure the open-minded studies of legal concepts like, e.g., 'possession' in common law and in civil law in order to find similarities. The idea is to describe the concepts under scrutiny in the respective system and then in a second step establish a transsystemic concept that may be said to underlie the respective systemic approaches. Hence, the method presents central characteristics of the concepts and produces dimensions, in which transsystemic overlaps are visible. This approach may be oriented towards the metadimension of law as norms and the idea from functionality of socio-legal problems as basic, but it may also include dimensions from the metadimension of law as an act-oriented ritual, when emphasizing, e.g., the dimension of communication in the legal concept of possession in the transsystemic description [12, p. 325]. It thus content wise takes a broader view than traditional functionalist approaches. The same may be said about another conceptual approach from within the discipline of Comparative Law, the idea of Conceptual Comparison presented by Brand [7], although it tends to concentrate on the metadimension of law as norm. This approach also investigates legal concepts from different systems thought to be comparable from the point of view of their conceptual dimensions and then in a second step establishes overarching concepts containing dimensions and characteristics common for the investigated concepts. Both approaches may naturally yield input to translational decisions in the form of concrete results from studies performed within them. However, they may also function as sources especially for conceptual dimensions beyond the tradition, which the translator needs when constructing the relevant conceptual frames.

Finally, another type of comparative work very widespread in translation-related branches is the comparative study of genres, i.e., of textual patterns traditionally used [e.g., 6, 13]. Such approaches generate knowledge on conventional or ritualized ways of performing similar legal-textual actions in different national legal settings. Input from such investigations may contribute to the dimension "law as an act-oriented ritual" from the Law-as-Culture approach and thus help widen the scope of the generated knowledge from the focus on law as norm.

Common to all of these approaches, which naturally do not constitute any encompassing list, is that they are based upon the idea of legal concepts as parts of a functional system (in the terms of Luhmann) or epistemic systems (in the terms of Knorr-Cetina) which are not limited by the boundaries of national languages, but expand across national languages and national systems. This also means that they rely upon a basic concept of cultural characteristics as at least potentially universal [20, pp. 441–444]. This basic assumption is the main reason why these concepts

tend to focus upon similarities and compatibility. Furthermore, such conceptual systems must not be limited to functional dimensions (as they are in the traditional problem functional methodology) but may encompass all the dimensions from the Law-as-Culture approach presented above.

4.3.2 Perspective of National Legal Cultures and Contexts

Within the discipline of Comparative Law besides the traditional research field relying upon a universality-oriented conception there is a strong research field taking a different stance. Their take on cultural characteristics is more relativist than universalist [20, pp. 444–449]. Where work from the research field behind what was presented in Sect. 4.3.1 focuses upon overarching characteristics of socio-legal functionality, researchers working under the perspective of national legal cultures emphasize the importance of the unique socio-cultural context of each nation. According to Hendry we should actually talk about two different research fields, i.e., the universalistic and functional Comparative Law versus the contextually oriented Comparative Legal Studies [27, p. 88].

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 [36, p. 220].

Within the discipline of Comparative Law, the differences between the principle assumptions of the two research fields are so deep that it is difficult to position oneself as a researcher between the two. It is necessary to take a stance on where one belongs. On the other hand, translators have the advantage that they may be eclectic in this context: If work from a research field contributes relevant dimensions and concrete input to the conceptual knowledge that the translator needs in order to make relevant translational decisions, such work is relevant—no matter whether the assumption of the researcher on cultural characteristics is universalist or relativist. It is especially useful for a translator having the task of translating for the purposes of comparatists like Baaij in the situation described in Sect. 3 above to have input from a researcher with an emphasis upon specific context (national view) rather than upon overarching function or similar characteristics (functionalist view). From such work, the translator will receive a sharper focus upon the significant differences.

Naturally, it is hardly possible for a practicing translator to support fully the idea of incommensurability visible from quotes like the one above from Legrand, as it runs counter to the possibility of making translations. However, some approaches exist that do not buy in on the idea of incommensurability but which are mainly interested in describing legal systems and concepts from the point of view of the respective systems. Phrased differently, such approaches seek to know the deeper characteristics of each system, before they compare and find possible similarities.

Following this approach and directly related to the needs of translators, Monjean-Decaudin and Popineau-Lauvray [41] suggest a concept-based method for transferring legal meaning in translation which applies the method of *inflexion de signifie* as a tool of translators. Basically, the idea is that the translator broadly assesses the meaning of the source text concept and of potentially relevant target text concepts and then formulates goals for the intended relations between source and target concept which help create a bridge for target culture readers to approach source culture concepts. The idea is to look for overlaps between the source and target culture concepts in order to support bridge-building. But the bridges are not built at system level, only at the level of the concrete translation situation.

Another example of a translation relevant approach that belongs to this group is the parametric approach developed by Aleksandra Matulewska and her colleagues from Poznan [23, 37, 39]. The idea is to describe legal concepts from one legal system, e.g., that of Poland. As an example we here cite the first three levels of the parameters for property-related Polish terminology [39, pp. 35–37]:

1. Dimension of being property

1.1. Dimension of being goods

1.1.1. Dimension of being a tangible good separated from the environment/nature (constituting a thing)

…

1.1.2. Dimension of being a tangible good not separated from the environment/nature

…

1.1.3. Dimension of being a tangible not constituting a thing

…

1.1.4. Dimension of being intangible goods

…

1.2 Dimension of being a right

1.2.1 Dimension of being a proprietary right

….

1.2.2 Dimension of being an intellectual property right

Concepts are described along specifically relevant parameters in order to get as precise a description as possible of the concept within its specific national context. These parameters are then used as the basis for comparison with similar legal concepts in other systems. In this case, it is possible to calculate distances between the Polish and the foreign concept by assessing degree of similarity on the different parameters, because the Polish concept and its conceptual structure function as baseline.

In a second comparative step relevant for concrete translations, the relative distance between possible translations of the source term is calculated:

> The very first step of comparative analysis is focused on the meaning of the terms in the legal context. Then the analysis of the source-text unit compared with translandive text unit is performed regarding the relevant dimensions of the terms. The set of minimal dimensions used to calculate the similarities and differences between the compared terms are: genre, lect, branch of law, sub-branch of law as well as various optional dimensions [23, p. 21].

On this basis, translators may decide which possible target-language term is most suitable in a specific translational situation. 'Parameters' are also called 'dimensions', equivalating what I call conceptual dimensions in this contribution. The list of parameters used for describing legal terminology may thus function as a source for relevant dimensions in concepts from other legal systems than Polish.

4.3.3 Perspective of Law as Result of Interpersonal Knowledge Communication

Where the two perspectives described so far tend to work 'outside-in' in their analysis, starting either in overarching epistemic systems or in a national cultural context, the last perspective to be treated here uses an 'inside-out' direction in the analysis. This is the equivalent of a constructivist approach to (the emergence of) cultural characteristics [20, pp. 449–451]. In this perspective, the dimensions and characteristics are found by looking at legal communication and following the constructive meaning-making process represented here.

An important comparative dimension for legal translators is to know about collocations and phraseological units, in order to know the formulation traditions of a legal system. From the point of view of law as an act-oriented ritual, this linguistic dimension is relevant for translators in its own right: What collocations exist in relevant legal systems, how are they related to each other?[8] Another approach is to use studies of collocations and phraseology in order to describe aspects of the legal systems under scrutiny. Examples of such work are work by Dobrić Basaneže [11], Scarpa [46], and Goźdź-Roszkowski and Pontrandolfo [25]. The collocation and phraseology approaches are characterized by being based upon corpus methodology, i.e., on the quantitative study of language units in legal communication. Interest is in following the constructive meaning-making process that takes place in legal communication by following the formulation patterns.

A different, more qualitative approach is developed by Meyer [40]. She works with a method for enabling readers from one (legal) culture to read and understand legal texts from a foreign culture in accordance with the cultural characteristics of this foreign culture by acquiring relevant (comparative) background knowledge of the foreign culture. The approach is based upon a performational approach to culture, i.e., the idea that cultural characteristics are not stable, but are (re-)created in

[8] Cf., e.g., work by Księżyk on German and Polish [34, 35] and by Goźdź-Roszkowski on collocational patterns of near-synonyms in American law [24].

the communicative interaction of participants in the culture. Hence, outsiders to a culture may gain access to the foreign culture by working open-mindedly with texts and other cultural signs of the foreign culture and assess through linguistic analysis, what linguistics means are typically used in communication to create which meanings. The central idea is to offer a tool to people with an interest in foreign legal systems that gives them access to the specificities of these systems by following the process in which specific symbolic meanings like for instance the meaning of the cross in Bavarian schools emerge in a specific context.

5 Concluding Remarks

The main interest in this paper has been to investigate the practical and disciplinary links between comparative law and legal translation. The two disciplines are united in the interest in similarities and differences of legal systems at the level of actual legal concepts. However, they are divided in their disciplinary interests: comparative legal studies should render insights into the compared legal systems in order to fulfill the purposes and interests of legal experts in the way law is organized. Even when the traditional approach of conceptualizing Law-as-law is abandoned for a Law-as-Culture approach, the interest still mainly lies in the normative meta-dimension. Legal translators, on the other hand, need insights that can help them make the formulation decisions that they need in order to enable inter-systemic communication of the legal content for different readers. Comparative law and legal translation are bound together in the way that they need each other in order to carry out their studies. However, they only need parts of each other's 'services.' Hence, it is necessary to be conscious about needs and possible expectations. In Sect. 3, I have presented some considerations about the possible (and not possible) role of translation as a service for comparative law. Subsequently, in Sect. 4, I have presented the outline of a methodological system that may enable translators to systematically access and categorize knowledge they need in order to make their formulation decisions. The observations, suggestions and proposed systems are to be seen as input to a development which should be implemented.

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