

Legal translation as communication of knowledge: On the creation of bridges

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Abstract

The basic claim of this paper is that the central competence of professional legal translators when translating legal terms and concepts is the ability to choose target text words that relevantly represent source text concepts. The criterion of 'relevance' is connected to the requirements of the target text communicative situation and the projected task of the legal translator to create a bridge which enables the expert target text reader to grasp the relevant aspects of the source text concept. In order to describe the elements of this task, I suggest viewing legal translation as an instance of knowledge communication that gives the translator the role of an intermediary agent. While the comparative process is a specific type of comparative law, the insights gained can be suitably presented and compared in the form of lexical frames. These characteristics and tools should be emphasized in legal translation didactics in order to offer students concrete steps to use when acquiring the complex competence of professional legal translators.

Keywords

Legal translation, frames, knowledge communication, comparative law, didactic approach

1. Setting the scene

This article is part of a series of works which constitute an ongoing project of mine (cf. list of references). The central challenge that is common to all of these works is determining how to produce scientifically sound descriptions of the processes underlying legal translation, which is understood as “a translational activity that involves language of and related to law and legal process” (Cao, 2010, p. 191), in order to develop didactic approaches that specifically target legal translation students. I want to enable them to grasp what professional translators, i.e., translators who practice legal translation for a living, actually do in such contexts, with a special emphasis on legal documents as expert-expert communication. The central competence that interests me is how these legal translation professionals choose between different lexical alternatives and other types of formulations in order to produce a target text that conveys the legally relevant content of the source text in a format that is acceptable to legal expert readers like lawyers or judges¹. Professional legal translators typically develop this competence in the form of cognitive procedures that are automated in order to gain the necessary speed for their processes. Hence, they typically cannot specify the criteria they rely on and the principles they follow in much detail. This makes acquiring the competence potentially difficult for translation students, as they are measured against the standards of professionals. I therefore find it relevant to set up theories and models aimed at making these principles and standards explicit². In this article, I set out to answer the following questions:

- What are the central characteristics of the communicative process that legal translators are involved in when performing their task?
- How may the criteria applied in and underlying the choice between alternative formulations be phrased?

By making such characteristics and criteria explicit, my hope is to be able to create a more direct learning path for translation students in my practical didactical work and to speed up their acquisition of the automated level of competence. This goal, however, will not be pursued here, as the focus is on conceptual work.

The focus of my approach is on legal translation as a communicative effort embedded in the context of disciplinary knowledge and carried out by active translators, in the sense of functional translation theories (cf. section 2 below). These basic assumptions make it relevant to draw on insights from the study of expert knowledge, its construction, structure and communication, as presented in my previous works on knowledge communication. While these works have focused on the conceptualization of the knowledge to be conveyed (frame approach) or on methods of constructing a necessary knowledge base for making the relevant formulation decisions (translation-oriented comparative law), this paper focuses on the characteristics of the process of legal translation when described from a knowledge perspective.

Before I dive into the presentation of concepts and basic assumptions, I have a word of caution: As will be apparent, especially in Figures 1 and 2, this approach has been developed from my own practice of teaching translation between national legal systems. The ideas will also be relevant in multilingual settings like the EU or the UN. However, some adjustments will likely have to be made to the models and argumentation.

¹ Cf., e.g., Holl (2012) for an overview of central and influential suggestions for techniques that are relevant when making such choices. Furthermore, Scarpa, Peruzzo and Pontrandolfo (2017) present numerous examples of arguments for concrete choices between different possible renderings in the process of translating the Italian Code of Criminal Procedure.

² Cf. Griebel (2013, 2017) for a project with the same basic aim, but with more focus on the actual cognitive processes.

I will begin section 2 by briefly sketching out the basic traits of the concept of functional translation (Skopos approach). Section 3 describes the specifications of the Skopos approach that emerge from the knowledge focus. Finally, in section 4, two consequential aspects of adopting a knowledge communication perspective (describing legal concepts in a frame format and developing an approach to research on comparative law based on the idea of concepts as part of interpersonal knowledge) are briefly presented.

2. Functional translation as a frame of reference

As presented above, the notion of the translator as an active agent presenting texts to receivers in the target context is central to the ideas behind my work on legal translation. From this follows that I base my approach on the now traditional approach of viewing translation as an act of purposive communication, the so-called Skopos Theory, according to which the basic definition of a translation is the following: “Ein Translat ist ein Informationsangebot in einer Sprache z der Kultur Z, das ein Informationsangebot in einer Sprache a der Kultur A funktionsgerecht imitiert” (Vermeer, 1986, p. 33)³.

The central aspect of the approach reflected in the quote, and which is of relevance to the argumentation in this article, is that a translated text (i.e., a target text (TT)) is to be seen as relatively independent from its source text (ST) and as a rendering of information by translators who have made active decisions based on their insights into the source and target situations and cultures and the communicative task emerging from the relation between the two situations. In legal translation, this idea was first prominently propagated by Šarčević (1997). A translated text may thus be seen as a bridge that allows TT readers to access aspects of the source situation which are considered relevant by the translator. The following Figure 1 intends to show the communicative situation of such legal translations.

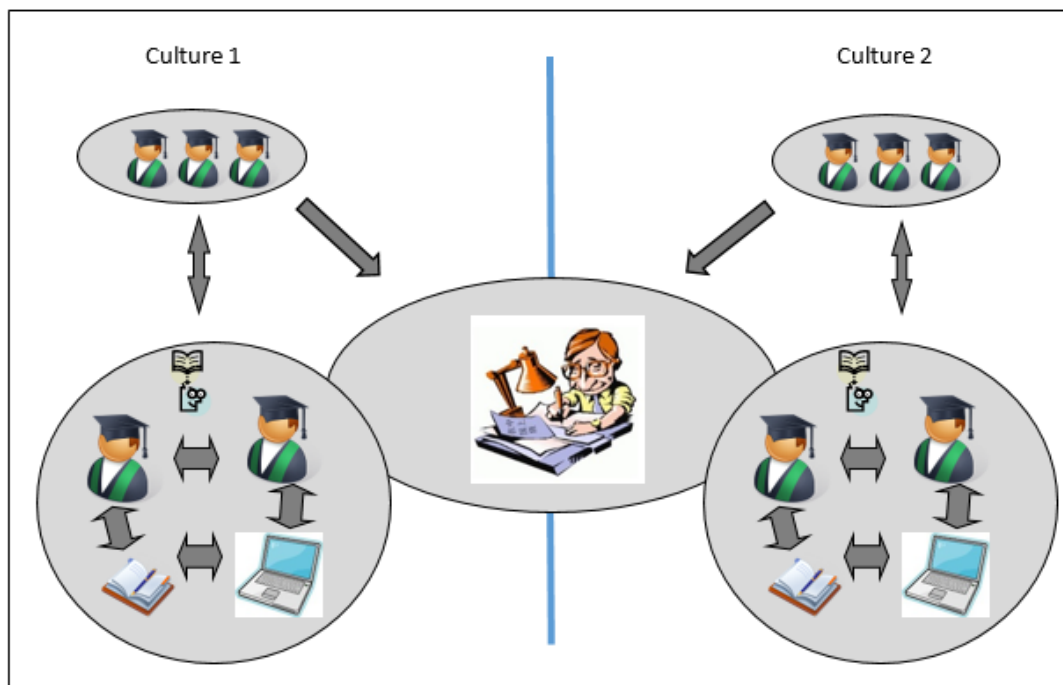


Figure 1. Legal translation with an active translator – functional approach (Engberg, 2016b, p. 43).

The upper part of the model represents the collective expert knowledge, while the lower part represents concrete expert communicative situations in two cultures, connected via the translated text produced by the translator.

³ A translation is the presentation of information in language t of culture T which imitates the presentation of information in language s of culture S.

In this view, a translator is positioned between two cultures, but with access to both. The process of translating is intended to connect two communicative situations: The original communicative situation of the ST, e.g., a decision by a German court in a case, on the one hand, and the communicative target situation, e.g., a Danish lawyer interested in the argumentation in the German court case as part of his or her academic work, on the other. The translation should enable the TT reader to gain access to relevant aspects of the ST based on the formulations made by the translator exercising his or her textual agency (Scott, 2019, p. 53). The source and target communicative situations as well as the work of the translator (lower part of the model in Figure 1) are dependent on access to the specialized disciplinary knowledge of the respective legal fields (upper part of the model). For the translator, comparative knowledge of overlaps and differences furthermore constitutes a necessary basis for creating a TT that is loyal to the interests of ST and TT communicators, respectively (Nord, 1989). Characteristically, the translator is positioned outside of the knowledge-structuring communicative situations that the ST and TT are part of (Griebel, 2013, p. 231, 2017, p. 109). In the model, this is indicated by the unidirectional arrows from the disciplinary knowledge to the translator⁴.

3. Legal translation as knowledge communication: Describing the communicative process of legal translation

The approach to legal translation that I have been developing is placed in the wider context of the Knowledge Communication Approach emerging from a group of researchers at Aarhus University (cf. Kastberg, 2018, 2019; Porup Thomassen, 2015). The approach may be summarized in the following description:

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. (Engberg, 2016a, p. 37)

The traditional conceptualization of knowledge, normally attributed to Plato, is that it is characterized as justified, true belief. In this view, there is a difference between what individuals believe and what is (intersubjectively) true and therefore counts as knowledge. A contemporary definition is thus that knowledge is that which we can agree upon is true. In the Knowledge Communication Approach, this distinction is not adopted. Instead, the term 'knowledge' is used for the shared as well as the individual knowledge. Actually, the only empirically accessible knowledge is the individual knowledge. Shared knowledge is only empirically accessible via its individual holders and their conceptions of knowledge as being shared and hence intersubjectively reliable. For this reason, knowledge is conceptualized with a simultaneous emphasis on its characteristic of being a collective phenomenon and the role of individuals and their insights when describing and explaining knowledge and knowledge developments: Specialized knowledge is seen as the insights held and shared by individuals belonging to a peer group which is constituted by its sharing and mutual construction of such knowledge in communicative interaction (Engberg, 2007, pp. 4-5). This view is already

⁴ Hence, in Engberg (2002, p. 387) I talk about the legal translator as a classical portrait painter rather than the designing architect, which is how I would characterize the legal experts in the process of creating and structuring legal knowledge.

represented in Figure 1 in the form of double arrows between the individual communicative interactions in the lower part of the model and the collective knowledge of the legal community in culture 1 and culture 2, respectively, in the upper part of the model.

Within this framework, and based on the general idea of functional translation introduced above, a Knowledge Communication Approach to the translation of legal terminology may be presented as follows:

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 TT situation in order to enable a receiver to construct the intended cognitive structure. (Engberg, 2015, p. 5)

From the general functional approach represented in Figure 1 above, we recognize the active translator (from the quote: *strategically choosing, present, enable*) as well as the TT as a functionally relevant rendering of information found also in the ST (*knowledge represented in the source text*).

Adopting a knowledge communication view then leads to several specifications of the functional approach to translation. First, terms are to be seen as pointers to concepts understood as templates of units of understanding (Temmerman, 2000, pp. 122-123). They point the reader to structured disciplinary knowledge constructed, upheld and potentially changed through communicative interaction between members of a discipline. In this way, terms are pointers to extensive, specifically focused knowledge widely accepted within a discipline. Importantly, the process of understanding a term in a specific context does not mean that all the knowledge in the template is activated mentally. The template only functions as potential meaning. When used in a text, any term will entail a certain focus, highlighting the aspects relevant in the individual textual situation through the combination with other terms and other chunks of disciplinary and situational knowledge. This textual focus means that the reader is encouraged to approach the template from a specific perspective, making certain aspects more relevant than others in the concrete process of understanding (Temmerman, 2000, p. 123). Hence, by adopting the knowledge communication perspective in the functional approach to translation, we can view the process of reading and understanding the actual meaning in the ST as the first and most important step in the translator's process of constructing relevant knowledge: What is the potential meaning of this term (i.e., the template), and which parts of this potential meaning are most central in this specific textual context? For example, when a *Landgericht* is mentioned in the final judgement as the institution making the decision in a German court case, many of the details concerning the structure and the many tasks of a *Landgericht* and its position in the German judicial system are not essential. The most important aspects of a judgement are that the court is a competent issuer of legal decisions in the type of case at hand, and probably whether the case is decided in first or second instance.

The second specification concerns the relevance of the focused knowledge elements in the target situation (as phrased above: *aspects exactly relevant ... in the target text situation*). This may be seen as a specification of the idea of a functionally relevant rendering of the ST information in the TT situation. It is important to consider whether all the aspects of the terminological concept that are deemed central in the ST are also relevant in the TT situation. In professional legal translation, that will often be the case. This is due to the prevalence of a general documentary approach to translation in the legal field, which again is dependent on the types of situation in which legal translation is often carried out. For example, the two

central aspects of a *Landgericht* mentioned above (that the court is competent to issue the judgement, i.e., that it is a court, and whether it issues the judgement as a court of first or second instance) will also typically be central to the TT reader of a translation of such a decision. The third and most important specification of the general functional approach lies in the idea that the active translator has to use formulations that will enable the TT readers (in our case: legal experts) to construct a personal cognitive structure that is in accordance with the cognitive structure that the translator has decided is the most adequate in the concrete TT situation. This means that the translator should mainly consider how to make the relevant focused knowledge from the ST situation available to the mental construction processes of the TT reader⁵. Focus is thus on the communicative process of foretelling the knowledge base of the prospective receivers in the target situation and, on this basis, selecting the most adequate elements of the cognitive structure to be explicated (cf. also Iluk & Iluk, 2019, pp. 187-189). This may include explicating elements not mentioned but inferred by the ST readers. Continuing the example above, it may be relevant to choose a TT rendering that makes it clear to, for instance, US legal expert readers that the court is German and which type of federal US court is the closest equivalent to a *Landgericht*, in order to help such readers construct the relevant knowledge structure. Hence, in a US context, the formulation *Appeal Court (Landgericht XX)* may be a relevant rendering in a judgement in an appeal case, despite the fact that – as opposed to a *Landgericht* – an *Appeal Court* cannot function as a court of first instance. The argument is that the difference is not relevant in the TT situation as long as the TT reader can construct knowledge on the basis of the TT formulation, which contains the aspects that the translator has deemed most central in the ST as well as the TT situation in the first steps above. The specifications are presented in the adjusted model in Figure 2:

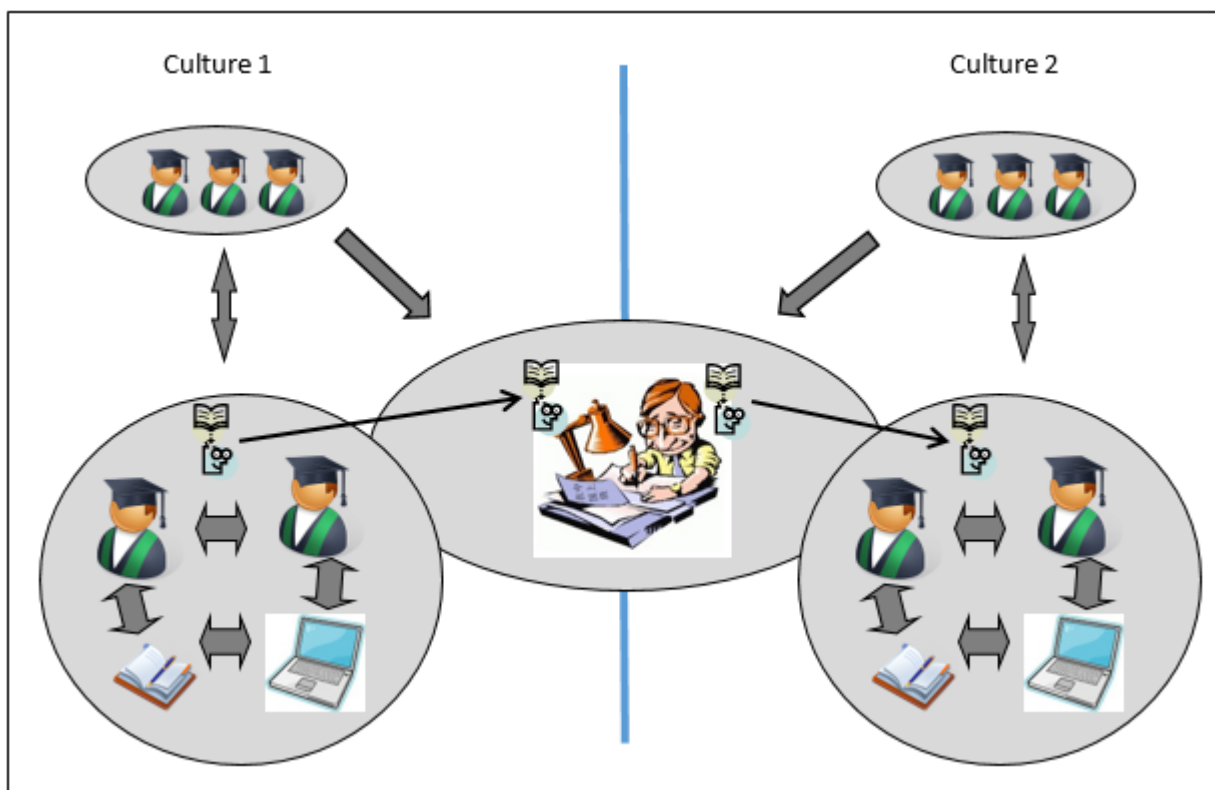


Figure 2. Legal translation with an active translator – Knowledge Communication Approach (Engberg, 2016b, p. 50)

⁵ Temmerman (2000, p. 121) even considers this idea, the optimization of understanding in specialized communication, to be the central issue of the scientific discipline of terminology.

The difference between Figure 1 and Figure 2 lies in the focus on the translator as someone who understands and conveys knowledge based on this understanding. This is shown through the added arrows and knowledge symbols, demonstrating that the translator understands the knowledge communication present in the source situation and transforms this understanding into a knowledge structure that is adapted to the TT situation and presented in a way that will enable the TT readers to grasp the relevant aspects and thus gain a relevant understanding (Griebel, 2013, 2017; Simonnæs, 2013, p. 150). Hence, legal translation is not mainly a textual procedure. It is a communicative effort carried out by an active translator working not only as an information broker, but also as a knowledge broker (Engberg, 2015; Obenaus, 1995, pp. 4-5).

By way of conclusion, the following consequences of the characterization of legal translation as knowledge communication are central in a description of the process with relevance to the didactics of legal translation:

Translators must:

- know or get to know the concept behind an ST term well enough to be able to decide which part of the concept is most important in the contextual understanding of the term
- decide which part of this contextual understanding is most relevant in the concrete target situation
- select concepts in the target culture and (get to) know these well enough to be able to find a formulation that enables target culture readers to construct a relevant/intended cognitive structure and thus understand the text in a relevant way.

Being able to perform these tasks is part of the translational competence according to the EMT Board (2017, p. 8), especially being able to “[a]cquire, develop and use thematic and domain-specific knowledge relevant to translation needs”. As already mentioned, professional translators have learnt to do this fairly automatically and are thus able to, quickly and based on intuition, assess the quality of their own suggestions as well as suggestions made by others. For students of legal translation, on the other hand, it is essential that they are able to assess the importance and relevance of the aspects of a concept and ways of making conscious choices between potential target-language renderings of source-language terms. Viewing legal translation as knowledge communication enables us to use our insights into the structure of individual knowledge as well as ways of constructing, collecting and conveying knowledge as tools for understanding the process, thereby making it easier for translation students to acquire a professional assessment competence.

4. Consequential aspects of the knowledge perspective: frames and translation-oriented comparative law as tools for making decisions

As stated above, this paper focuses on the basic idea of viewing legal translation as knowledge communication and the conceptual consequences of this for translation didactics. However, before turning to my concluding remarks, I will briefly sketch out the consequences of a Knowledge Communication Approach to the description of legal translation on the format of structuring knowledge to be compared and evaluated, on the one hand, and on the methodological approach to comparative law with relevance to legal translation, on the other.

4.1. Frames as a tool for structuring knowledge for comparison

In a recent publication (Engberg, 2018), I argue that the concept of frames as developed in general terms by Konerding (1993), Busse (2012) and Ziem (2014) and with a specific view on legal communication by Busse (2015) is a relevant descriptive tool for assessing the content

relations between ST and TT formulations. In this concept, frames are seen as the building blocks of the so-called *verstehensrelevantes Wissen*, the empirically assessable knowledge relevant to understanding texts in the same way as members of the intended target group (Busse, 1987). Frames are structured in dimensions (slots, sub slots etc.) and material (fillers) typically applied to represent the dimensions in communication. Through an analysis of ST and TT formulations, of the frame represented by these formulations, and especially of the slots explicitly highlighted or implicitly left for inferencing, it is possible to describe the relations and overlaps between ST and TT formulations. This way, we can assess the potential quality of the knowledge to be constructed from the TT formulation based on the Knowledge Communication Approach, i.e., the knowledge potentially conveyed to the TT readers. It is important here to talk about 'the knowledge potentially conveyed', as only empirical studies of actual processes of understanding would be able to assess what knowledge is actually constructed by specific readers. Due to the constructivist character of the Knowledge Communication Approach, it is not possible to predict with certainty how specific readers will interpret a TT formulation, as the result is dependent on the specific knowledge base of the individual reader. However, a text-based analysis may give insights into the potential of the chosen formulations and thus give especially students of legal translation a tool for choosing between alternatives.

4.2. Comparative law approach adjusted to the needs of the legal translators

The traditional legal approach to comparative law may be summed up in the following definition:

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. (Husa, 2015, p. 19)

What is important here is that comparative law is presented with a focus on the problems of legal research. This focus governs the object investigated by comparative legal research 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" (Husa, 2015, p. 21). Hence, much work has been directed at describing legal families (Zweigert & Kötz, 1996). Apart from this type of macro-comparisons, legally oriented comparative law studies may also have the form of micro-comparisons, having legal rules, individual legal concepts or legal institutions as their object (Husa, 2015, p. 101). Micro-comparisons are the ones most relevant for translational purposes. In this connection, comparative law has developed the method of problem functionalism, which 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 (p. 124). 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 traditional terminology work (cf. e.g., Sandrini, 1996). However, as I have argued in previous work (Engberg, 2013), the focus on the underlying legal problem and its solution will not always cover the needs of legal translators. Hence, more conceptually oriented approaches with the possibility of focusing on other dimensions of a concept rather than on the functional problem are more promising (Brand, 2007). Such approaches have been developed in the field of cultural sociology in a wide sense, and are interested in the sociological construction of law and its symbolic and performative representation (Gephart, 2006). Even more to the point, some transfer- and understanding-related approaches have been developed:

- Meyer (2016) 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 on a performative view of culture, studying the actual co-creation of cultural symbols in foreign-culture texts.
- Monjean-Decaudin and Popineau-Lauvray (2019) suggest a concept-based method for transferring legal meaning in translation which applies *inflexion de signifié* 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 the ST and TT concepts, which helps create a bridge for target culture readers to approach source-culture concepts.
- Bestué (2019) 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, in a broad way, collect information with potential relevance from many perspectives, including possible and non-preferred translations, definitions and textual context as well as features from the disciplinary knowledge. On this basis, the translator is supposed to make decisions specifically relevant for the situation at hand.

With inspiration from all of these approaches, I have suggested a three-perspective lens with relevance to translators which takes into account the actual multi-faceted character of legal concepts as part of legal knowledge. I propose to describe legal concepts from the following three perspectives (Engberg, 2017, 2020):

- The perspective of national legal cultures, focusing on differences between national legal concepts and on the influence from aspects of the national culture governing a culturally adequate understanding.
- The perspective of law as a functional and epistemic system, focusing on the influence of general legal thinking on the structure of the concepts (differences and similarities).
- The perspective of law as the result of interpersonal knowledge communication, focusing on the importance of language use on meaning and variation of the concept, based on corpus studies.

Such a three-sided lens allows us to look at legal concepts as they are actually performed (Meyer, 2016), 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 results from looking at concepts from the three different perspectives are structured according to the idea that legal concepts have a frame structure (cf. section 4.1 above) and can be stored in rich translation-independent records (Bestué, 2019). Subsequently, translators carrying out their knowledge-oriented communicative task ‘inflect’ their understanding of the ST concept and the intended relation between source and target formulation (Monjean-Decaudin & Popineau-Lauvray, 2019) based on the recorded aspects in order to create a bridge which enables the TT reader to access the relevant aspects of the ST concept (cf. section 3 above). In this way, the frame approach and the concept-oriented comparative law flesh out the framework of the knowledge-oriented description of legal translation.

5. Conclusions and perspectives

By way of conclusion, the basic idea propagated here is that a central competence of professional legal translators is to evaluate differences and overlaps between legal concepts from the source and target systems. This comparative knowledge is essential in order to formulate TTs that allow expert TT readers to grasp the knowledge presented in STs in a way

that is relevant to the prospective TT communicative situations. The task of the translator is to build a bridge for expert legal TT readers. In order to develop this bridge-building competence, two didactical tools may aid translation students:

- On the one hand, teaching them how to implement specifically relevant approaches to comparative law with a focus on understanding the different meanings and on identifying similarities and differences (cf. Engberg, 2020 for a broader scrutiny of approaches with specific relevance to legal translators, supplementing the ones presented in section 4.2).
- On the other hand, introducing them to frames as tools for systematically structuring the insights gained from the comparative investigation and for carrying out the micro-comparisons relevant to making the decisions (cf. Engberg, 2018 for a didactically relevant example of the ideas presented in section 4.1).

Both tools focus on content and aim at giving the students criteria for looking for relevant overlaps in the formulation process.

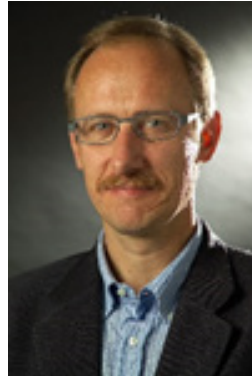
However, these tools with their focus on conceptual legal knowledge are not sufficient to solve all knowledge communication problems which a professional legal translator is confronted with, and which students of legal translation should therefore be prepared for. For the TT legal expert reader to assess relevant communicative goals pursued in the ST situation, the bridge-building (i.e., knowledge-communicating) translator must also help the TT reader construct knowledge concerning which speech acts are carried out (Engberg, 1997). Furthermore, it may be relevant to build a bridge that enables the TT legal expert reader to follow the ST argumentative structure (Trklja & McAuliffe, 2019). The construction of knowledge of both types (knowledge about communicative goals and argumentative structure) tends to be dependent on the formulaic character of the linguistic material chosen in the form of genre conventions, for instance. Hence, corpus analysis, key words, etc. play a significant role in this context. In this way, it becomes evident how complex the task of the legal translator is. From the point of view of didactics, this complexity requires further tools to be presented to translation students, supplementing the ones suggested here.


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