# Legal translation and "traditional" comparative law – Similarities and differences

**Ingrid Simonnæs**

NHH Norwegian School of Economics
Ingrid.Simonnas@nhh.no

> "[...] legal translation occurs between legal systems and [...] some of the most challenging exercises in comparative law are translations." (Šarčević, 1997, Preface)

*The aim of this paper is to describe some similarities and differences encountered when comparing legal translation and comparative law as separate yet interrelated disciplines. To this end, their respective objectives and methods are broadly outlined. This is followed by a case study on translations of a specific legal text into English and German which have been produced by candidates sitting the Norwegian National Translator Accreditation Exam. In this paper, I intend to show that comparative law "in the traditional sense" (Friedman, 1990, p. 49) is much concerned with issues of translation and show that there are not only similarities but also differences.*

## 1. Introduction

Obtaining new insights is, in general, the purpose of the method of comparison (Novalis).[1] In this paper the comparison is between two different disciplines: translation studies that have evolved from linguistics (Snell-Hornby, Pöchhacker, & Kaindl, 1994) and which are part of the humanities, on the one hand, and the study of law, on the other. Because law spreads into virtually every area of life and society, it crosses the boundaries between the social sciences and the humanities.

To compare two objects or concepts generally presupposes that they are similar with respect to at least one aspect ("*tertium comparationis*"). Judgements about similarity depend partly on the properties of the objects or concepts being compared and partly on what the person judging considers relevant to the assessment; similarity thus has both objective and subjective sides to it. It is therefore not surprising that different definitions exist of what constitutes a *tertium comparationis*.

In *comparative law* there is no unanimous understanding of what should be considered as *tertium comparationis* (Brand, 2006–2007; Örücü, 2006, pp. 442–443).[2] Usually one agrees that two concepts can be

compared *if* their function is the same or they solve the same problem – this is called the functional approach. According to the communicative-functional approach in *translation studies*, the *tertium comparationis* that must be taken into account by a translator in order to choose an appropriate translation strategy are the purpose and the intention of the relevant communicators.

One subdiscipline of the study of law is comparative law. The purpose of comparative law is to compare different legal systems and in using this method the investigator can make observations and gain insights. This is not possible when the investigator studies only his or her national law. Merryman, Clark and Haley (1994, p. 1) argue, therefore, in their introduction, first, that teaching "comparative law" could more accurately be called teaching "foreign law", since the description of foreign legal systems is seen as its principal aim and, secondly, that it could be argued that "true comparative law" is rather rare. Seen from their point of view, one central reason for studying foreign law is that foreign legal systems fulfil the role of a source of ideas and/or examples of different ways of defining and dealing with common social problems (Merryman *et al.*, 1994, p. 1). In such a case, one country and its particular legal system may adopt aspects of another country and its legal system by introducing "legal transplants".[3] Another important reason is seen in the fairly recent attempt at the international unification of private law, which necessarily calls for the description and evaluation of different kinds of private law system. Even if Merryman *et al.* (1994) are speaking of "unification", I would still argue for the applicability of private law to harmonisation as a "weaker" form of unification.[4]

In a recent handbook on comparative law (Örücü & Nelken, 2007), it is stated that comparative law has often been criticised for lacking in theory and being Eurocentric and primarily private law-oriented. But due to globalisation/harmonisation/democratisation, legal areas other than private law are now gaining in importance. Nevertheless, the empirical material for this paper (section 3) is drawn from the subdomain of family law in the area of private law. The reason for this is the claim of its having undergone a "silent revolution" (Boele-Woelki & Sverdrup, 2008) in recent years in Europe/EU and hence its importance to many legal systems.

Friedman (1990) claims that comparative law "in the traditional sense, is concerned, above all with issues of translations" (p. 49), a position which, in my opinion, is well suited for the purposes of this paper's approach.

The remainder of this paper is organised as follows. Section 2 starts with some general remarks on methodological similarities and differences for both legal translation and legal comparison, with a special focus on the concept of interpretation in the subsections that follow. Section 3 presents a case study on legal translation in the field of family

law, reflecting recent changes in the Norwegian and English legal systems. The concluding remarks are given in section 4.

## 2. Some general remarks on methodological similarities and differences

Interpretation is the common methodological approach for both disciplines. But "interpretation" itself is ambiguous, being classified differently in legal comparison and translation studies. Bühler (1999) rightly points out that it is taken for granted (in the philosophy of the humanities and of the social sciences) that "interpretation" (p. 117) unambiguously refers to only one well-defined activity – such as "assigning meaning to something" (p. 117) – and argues that "attempts to give a unitary account of interpretation fail to do justice to the multifariousness of the activities commonly called 'interpretation'" (p. 117). Due to space constraints, this topic cannot be dealt with in detail here. However, underlining that the rules of interpretation differ in both disciplines should suffice for the moment.

### 2.1. Interpretation in legal studies

In legal studies one rightly maintains that interpretation is vital, both for the purpose of understanding the wording of the pertinent legislative text as one special type of legal text (for instance, a single provision) and for the ensuing applicability of the legal rule in question.

Interpretation in legal studies is not the same as interpretation (= understanding) in legal translation (see subsection 2.2). Different legal scholars have pointed out that there usually cannot be one correct interpretation of the law (e.g., Nerhot, 1990, p. 193). They claim that jurisprudential interpretation must carefully avoid the *fiction* (emphasis added) that a legal norm admits of only one "correct" interpretation. A similar view is held by Fischer (1984, p. 60). To Nerhot (1990, p. 195) the legal rule is a result of, not a starting point to, interpretation. In Curzon (2002), the interpretation of statutes (one specific genre of legal texts) is explicated as "a contextual approach designed to identify the *purpose* of a statute and to give effect to it" (p. 226, emphasis added). The method(s) used for identifying the purpose of a legislative text may vary between different legal systems.

How, then, is interpretation, i.e. the identification of the purpose of a statute, "when there is no obvious meaning to a statutory provision" (Curzon, p. 226), dealt with in the Norwegian, German and English legal systems?

For legal interpretation there exists a particular methodology (at least within the German (and Norwegian) legal systems) based on the

work of Savigny, a famous 19th-century German lawyer (Savigny, 1951). His legal methodology, in which he differentiated between three main interpretation methods in legal interpretation, that is, grammatical, historical and systematic, and since supplemented by the teleological interpretation (the purposive approach), is still applied. The first step in interpretation is always the grammatical interpretation, where the investigator looks for the literal meaning of the pertinent text. Since (common) language is inherently vague and since legal language shares this feature, the judge often needs to apply other approaches when deciding on a particular case. In addition to legislative texts *per se,* other legal sources may be used to clarify a particular case.

### 2.2. Interpretation in translation studies – with special respect to legal translation

For the purposes of this paper, I restrict the term "legal translation" to authoritative texts (legislative texts as specific texts translated for a specific purpose). Its objective is to compensate for the inherent conceptual incongruence between two legal systems by producing a translation that promotes uniform interpretation and application in both source and target legal systems. By comparing the translation with its source text, the translator's objective is to convey to the addressee(s) the "legal equivalence", as Herbots argues: "Le texte d'arrivée doit avoir la même signification juridique (c'est-à-dire *qu'il aura les mêmes conséquences en droit*) que le texte de départ"[5] (Herbots, 1987, p. 822, emphasis added). Kisch concludes, "Bref, la question de *l'équivalence est une question d'ordre pragmatique*"[6] (1973, p. 412, emphasis added).

It is commonly acknowledged that (the activity of) translating presupposes an interpretation (an effort at grasping the sense) of the source text in its context and that legal translation differs from other Language for Specific Purposes (LSP) translation such as medical or technical translations (Simonnæs, 2009b, p. 164). Adhering to the pragmatic-functionalist approach, the primary function of legislative texts is regulatory (prescriptive) and as such these texts differ from other LSP texts.

As one cannot translate what has not been understood, interpretation as a means of understanding is therefore of the utmost importance in translation studies. This is generally accepted. And understanding in many cases presupposes an interpretation (grasping the sense) of the linguistic expression(s) because legal language often is "largely incomprehensible […] sometimes even for lawyers" (Beaugrande 1987, p. 178). The interpretation (grasping the sense) in turn is based on the translator's pre-understanding (Gadamer's *Vorverständni*s: Gadamer, 1988) of the particular problem at hand.

When it comes to understanding a foreign legal system, this implies that the translator should at least have some basic knowledge of the other legal system and legal culture.

Legal system and legal culture are inherently interwoven (Sunde, 2010), the difference being, as argued by Friedman (1990, cited in Kötz, 2005), that the study of legal culture "takes as an axiom the fact that two societies can have similar 'legal systems' in some formal sense; and yet different systems in terms of living law or actual practice" (p. 93). From this it follows that the translator must be aware of the most obvious similarities and differences between the systems and cultures being analysed. The Norwegian and German legal systems, in particular, do share a lot of similarities due to the influence of Roman law on their development. Consequently, one might expect similarities, but one must also be aware of the peculiarities of each system. Of vital importance to translation is ensuring that the legal effects are the same in both the source language and culture and the target language and culture.

### 2.3. Legal comparison – a prerequisite for the translator?

According to Zweigert and Kötz (1996, p. 14), the literature on legal comparison as a method is rather scarce, and they claim at the same time – rightly so – that the primary function of legal comparison, as with all other scientific methods, is the pursuit of knowledge. However, to be able to gain knowledge about the foreign legal culture *x*, the scholar from culture *y* needs to understand or grasp the sense of the expressions in that language (= language *x*) when no translation is available. Even if a translation is available, the problem still prevails, since it is now the translator who must first have understood the linguistic expressions in language *x and* the original author's message, not simply the words, before he or she can successfully translate into the addressee's language. By doing this, the translator is partially applying a method of legal comparison, e.g. when comparing the court system or other legal institutions, such as marriage, in two different legal systems. The Norwegian court system differs considerably from the German system due to the fact that Norway is a unitary and Germany a federal state, and that same-sex marriages are not recognised in the German legal system.[7]

When having to compare pertinent legal institutions, one obviously cannot expect a translator who is not a lawyer to be able to apply the chosen method (i.e., a functional method of comparative law)[8] with all its subtleties. Šarčević (1994) rightly points out that legal translators need training in legal hermeneutics and must be able to foresee how the text will be interpreted by a competent court. The ideal solution would, of course, be for the legal translator – a person with some knowledge of the pertinent legal domain – to work in a team with a lawyer where both would gain from being aware of the other's frame of reference.

### 2.4. Translation strategies: from literal to communicative translation

Historically, legal translation followed mainly the source-oriented translation strategy, that is, a literal translation, rather than the target-oriented translation strategy. After the so-called "cultural turn" in the 1980s, when factors other than purely linguistic ones began to be taken into account, the translator's translation strategy may shift according to the purpose (Vermeer's *skopos;* Vermeer, 1996)[9] of the translation. Other scholars would rather describe this approach as taking the particular communicative situation into account, thereby drawing on the Lasswell Formula (*Who says what in which channel to whom, and with what effect?*) (Lasswell, 1948 p. 37), which in turn takes us back to Hermagoras of Temnos (2nd century BC) and his rhetorical advice of *quis quid quando ubi cur quem ad modum quibus adminiculis* (who, what, when, where, why, in what way, by what means). However, as Šarčević (2000, pp. 18–19) rightly argues, this approach cannot be applied to legal translations without restriction because these texts are subject to special rules that govern their use in the mechanism of the law.

When translating legislative texts, the translator will usually have adhered closely to the wording of the source text (e.g., in a recent publication on the Norwegian Dispute Act (*tvisteloven*) translated by Bessing, Schrader and Lipp (2011, p. 135)). In Simonnæs (2009a), I was able to demonstrate how translation theories affect the translation of such texts using the functional-pragmatic approach as one particular modern translation theory and to investigate translation solutions in the field of lexical and syntactic problems on the basis of a small corpus of legal texts from the Norwegian National Translator Accreditation Exam (*Translatøreksamen*). The translation brief and the legal force of a particular text strongly influence the translation strategy to be applied. Whenever the legal force of the source text supersedes that of the target text, the strategy of the translator should be nearer the 'documentary' (Nord, 1989) end of the continuum.

## 3. Case study on translation into German and English in the field of family law: recent and related changes in the Norwegian legal system

I now turn to some observations from the point of view of a practitioner and teacher in legal translation, using a recent example from the *translatøreksamen.* The source text, *Forskrift om fastsetjing av medmorskap av 15.12.2008 nr. 1362*, had to be translated *i.a.* into English and German. The Regulation was a direct consequence of other, more recently adopted legislative changes in Norway, such as *felles ekteskapslov* (the Common Marriage Act), the Children Act (*lov om barn*

*og foreldre*), the Act relating to adoption (*adopsjonslov*) and the Biotechnology Act *(bioteknologilov*).

Many European countries already allow same-sex marriages, even a Catholic country like Spain. In contrast, in the United Kingdom, same-sex couples have until recently only been allowed to enter into civil partnerships, a separate union that nonetheless provides the legal consequences of marriage. Since July 2013, this has changed.[10]

The topic of fertility treatment for lesbian couples, as in the text under scrutiny, should therefore be highly relevant to a translation assignment across borders and legal systems.

In what follows, I use two examples from the lexical choices of the candidates.

### 3.1 Forskrift

The heading of the text reveals that this is a type of secondary legislation. Knowledge of the hierarchy of legal sources in the target legal system is presumed to be known to the candidates. Furthermore, the candidate may use all kinds of reference work, with the exception of access to the internet. She or he might, for example, consult a *Norwegian–English legal dictionary* where each entry is accompanied by some context, which is crucial to finding the adequate translation.

(1) *forskrift* provision; requirement; rule, regulation; direction [cf. *bestemmelse; instruks; regel]*
(2) […]
(3) Nærmere forskrifter om […] kan gis av departementet – The Ministry may give more detailed regulations concerning […] (Lind, 2009).

Most candidates have consequently opted for 'regulation' in the heading of the relevant Regulation. In contrast, the candidates translating into German used *Vorschrift,* a false friend of the Norwegian *forskrift*, the expected and correct translation being *Verordnung*.

### 3.2 Medmor / medmorskap

Another well-known challenge for the translator is the translation of culture-bound legal concepts. In the source text we find, for instance, the pivotal concepts of *medmor* and *medmorskap* designated by medmor / medmorskap [literally: comother / comotherhood]. These terms were recently introduced to cover the concepts of *medmor* and *medmorskap* arising from the new form of parenthood in a same-sex marriage of two women. As mentioned above, the Common Marriage Act (*felles*

*ekteskaplov*) no longer distinguishes between same-sex and heterosexual marriages. A new form of parenthood based on modern assisted reproductive technology (ART) was consequently introduced in same-sex marriages between two women, thus abandoning the traditional view of parenthood based on a father and a mother. But this new legal understanding of parenthood applies only to children born after 1 January 2009, whereas parenthood for children born before 1 January 2009 has to be declared as stepchild adoption. This change gave rise to the concept of *medmor* designating a woman in a same-sex relationship (marriage or non-marital cohabitation) who has *not* given birth. The child has to be conceived

- after assisted reproductive technology (ART) treatment
- with sperm from an identifiable and registered donor and
- with written consent to ART treatment *prior* to the treatment

Now, faced with legal concepts specific to a particular legal system such as *medmor*, the translator has first to determine whether there is a comparability "quant à la substance" (Kisch, 1973, p. 411) in the target legal system. If this is not the case, the translator must strive to convey the meaning of the concept by describing and/or explaining what lies at the heart of the concept (concept nucleus, *Begriffskern*, Jesch, 1957, p. 172) and at its periphery (*Begriffshof*, *ibid*.).[11] To find out whether there is a comparability "quant à la substance" in the target legal culture, the English and German legal cultures must be compared to the Norwegian one with respect to the regulation of same-sex relationships, hence applying one kind of functional approach of comparative law. The German legal system does not allow same-sex marriages; in the English legal system this was not the case in 2011, when the text had to be translated (cf. endnote 10). Consequently, there are no legal concepts similar to the Norwegian *medmor* and *medmorskap* and the translator had to apply an appropriate strategy to cover the linguistic and legal gap.

Since *medmorskap* was introduced as a new legal concept by the Children Act, the candidate has had to be creative in finding an adequate designation. But do translations of legal texts allow for creativity? Šarčević argues that legal translators can indeed be creative (2000, p. 282), drawing on examples from bilingual and bilegal[12] (common law and civil law) Canadian legislative texts 2000, pp. 284–287) What can candidates do when source and target texts do not belong to the same legal culture and system, as in the example under discussion?

With respect to the different strategies a translator can apply when coping with translation problems at a conceptual level, Šarčević (1997, p. 255), citing Akehurst (1972), makes the point that when there is no adequate functional equivalent, the best solution is to use neutral terms, "i.e. non-technical terms". The use of neutral terms is especially recommended when the intention is that the source term and its

equivalent should have a meaning independent of a particular legal system. Since full equivalence can rarely be obtained due to the system-specificity of legal terms, Sandrini (1996) rightly claims that the concept of equivalence must be revised and argues for an approach that aims rather at a complete *documentation* of a particular concept instead of a complete conceptual correspondence.[13]

Theoretically, the candidates have a wide range of strategies to choose between (Chesterman, 2000). Literal translation (of particular terms within the text) is usually the norm, particularly if we are talking about documentary (*sensu*: Nord, 1989) translations. This would be the proposed strategy for the relevant terms. A quick look at the translations reveals the following renderings:

- (English) "joint mother", "co-mother", "joint status as mother" and "joint maternity", "joint status as mother", "co-motherhood" and "co-maternity"
- (German) "Teilmutter", "Mitmutter" and "Teilmutterschaft", "Mitmutterschaft"

The first strategy applied by the candidates is to use a calque of the Norwegian term where the same prefix is used: *co-mother/co-motherhood, Mitmutter/Mitmutterschaft*. The Norwegian prefix *med,* which corresponds to the preposition 'with', is highly productive and is used with a wide range of nouns: *medforfatter, medeier, medarbeider*, etc. The prefixes *co-* in English and German as well as *mit-* in German are equally productive and are used with the same types of noun: *medforfatter* (*co-author, Co-Autor*)*, medeier* (*co-owner, Miteigentümer*)*, medarbeider* (*co-worker, Mitarbeiter)*. Those who have opted for this solution have used their linguistic knowledge about word formation with productive prefixes in their respective target languages. One might assume that they started out by searching for other expressions in Norwegian where the prefix *med* is used and have then translated *medmor(skap)* using the same pattern. As one can see from the examples above, the use of these prefixes is by no means limited to legal language.

The other strategy is less transparent. The prefix *med* has been replaced in English by an adjective also conveying the idea of motherhood being shared. Interestingly, the adjective "joint" in English has a certain legal ring as documented in legal expressions such as *joint stock company, joint will, joint liability*, *joint custody, joint venture* (Curzon, 2002). The translation into *Teilmutter(schaft)* follows a similar strategy: the designation seems to have been coined from *Teileigentum* (*'part ownership'*) and other compounds with "*teil*" as, for example, *Teilcharter* ("*partial charter*"), regulated in the German Civil Code, *BGB*. These terms also convey the idea of sharing.

The choice of the adjective in the English rendering and of compounding in German seems to be motivated both in English and

German by the desire to stay within the legal register. Candidates who have opted for these solutions therefore draw not merely on their linguistic knowledge, but also on more specific knowledge regarding legal language. Their choice is therefore understandable in the light of general linguistic knowledge combined with knowledge about traditional legal register. The proposed translations might therefore function adequately in the given context.

## 4. Concluding remarks

The aim of this paper has been to highlight some similarities and differences between legal translation and "traditional" comparative law. In broad outline, their respective objectives and methods were first described from a theoretical point of view. This was then followed by a case study on translations of a legislative text into English and German produced by candidates sitting the Norwegian National Translator Accreditation Exam. I have chosen to focus on the micro level, that is, on concepts and their designations. The reason for doing so is that, in my view, the challenge in translating legislative texts is easily documented by comparing the concepts of the source text embedded in their legal culture or system and finding comparable concepts (such as *forskrift* and its equivalents in English and German) due to the similar hierarchy of legal sources. However, when the translator is confronted with a legal gap (such as the non-existence of the concept *medmor* due to the different legal solutions in family law), she or he must find a way to convey the meaning. The few examples I have been able to indicate possible ways of doing so. The most applied strategy seems to be to keep to a close – word for word – translation strategy as advocated in the literature.

Notwithstanding the fact that only a few examples are given, what I have tried to show in this paper is that comparative law "in the traditional sense" (Friedman, 1990, p. 49) is closely concerned with issues of translation, although there are, of course, not only similarities but also differences.

## References

Akehurst, M. (1972). Preparing the authentic English text of the E.E.C. Treaty. In B. A. Wortley (Ed.), *An introduction to the law of the European Economic Community* (pp. 20–31). Manchester: Manchester University Press.

Basedow, J., Hopt, K., & Zimmermann, R. (Eds.). (2005). *Hein Kötz. Undogmatisches: Rechtsvergleichende und rechtsökonomische Studien aus dreißig Jahren*. Tübingen: Mohr Siebeck.

Beaugrande, R. de (1987). Determinacy distributions in complex systems: Science, linguistics, language, life. *Zeitschrift für Phonetik, Sprachwissenschaft und Kommunikationsforschung, 2*, 147–190.

Bessing, J., Schrader, J., & Lipp, V. [translators] (2011). The Norwegian 2005 Dispute Act in Norwegian and in German and English Translation. In V. Lipp & H. Haukeland Fredriksen (Eds.), *Reforms of civil procedure in Germany and Norway* (pp. 135–447). Tübingen: Mohr Siebeck.

Boele-Woelki, K. (2008). European challenges in contemporary family law: Some final observations. In K. Boele-Woelki & T. Sverdrup (Eds.), *European challenges in contemporary family law* (pp. 413–423). Antwerp: Intersentia.

Boele-Woelki, K., & Sverdrup, T. (Eds.). (2008). *European challenges in contemporary family law*. Antwerp: Intersentia.

Brand, O. (2006–2007). Conceptual comparisons: Towards a coherent methodology of comparative legal studies. *Brooklyn Journal of International Law, 32*(2), 405–466.

Bühler, A. (1999). Die Vielfalt des Interpretierens. *Analyse & Kritik, 21*, 117–137.

Chesterman, A. (2000). Memetics and translation studies. *SYNAPS Fagspråk, Kommunikasjon, Kulturkunnskap, 5*, 1–17.

Chesterman, A. (2010). Skopos theory: A retrospective assessment. In W. Kallmeyer, E. Reuter, & J. F. Schopp (Eds.), *Perspektiven auf Kommunikation: Festschrift für Liisa Tittula zum 60. Geburtstag* (pp. 209–225). Berlin: SAXA.

Curzon, L. B. (2002). *Dictionary of law*. (6th ed.). London: Longman.

Fischer, M. W. (1984). Hermeneutik als Lebensform?: Hermeneutik und Strukturtheorie des Rechts. *ARSP – Archiv für Rechts- und Sozialphilosophie, 20*, 51–73.

Friedman, L. M. (1990). Some thoughts on comparative legal culture. In D. S. Clark (Ed.), *Comparative and private international law: Essays in honor of John Henry Merryman* (pp. 49–57). Berlin: Duncker & Humblot.

Gadamer, H.-G. (1988). On the circle of understanding. In J. M. Connolly & T. Keutner (Eds.), *Hermeneutics versus science?: Three German views. Essays by H.-G. Gadamer, E. K. Specht, W. Stegmüller* (translated, edited and introduced by J. M. Connolly & Th. Keutner) (pp. 68–78). Notre Dame, IN.: University of Notre Dame Press.

Heck, P. (1932). *Begriffsbildung und Interessenjurisprudenz*. Tübingen: Mohr.

Herbots, J. H. (1987). La traduction juridique : Un point de vue belge. *Les Cahiers de Droit, 28*(4), 813–844.

Jesch, D. (1957). Unbestimmter Rechtsbegriff und Ermessen in rechtstheoretischer und verfassungsrechtlicher Sicht. *Archiv des öffentlichen Rechts, 82*(2–3), 163–249.

Kisch, I. (1973). Droit comparé et terminologie juridique. In M. Rotondi (Ed.), *Inchiesti di diritto comparato* (pp. 402–423). Padova: Cedam.

Langer, M. (2004). From legal transplants to legal translations: The globalization of plea bargaining and the Americanization thesis in criminal procedure. *Harvard International Law Journal, 45*(1), 1–65.

Lasswell, H. D. (1948). The structure and function of communication in society. In L. Bryson (Ed.), *The communication of ideas: A series of addresses* (pp. 37–51). New York, NY: Cooper Square.

Lind, Å. (2009). *Norsk-engelsk juridisk ordbok*. (3rd ed.). Oslo: Cappelen akademisk forl.

Merryman, J. H., Clark, D. S., & Haley, J. O. (1994). Introduction to comparative law. In J. H Merryman, D. S. Clark, & J. O. Haley (Eds.), *The civil law tradition: Europe, Latin America, and East Asia.* (pp. 1–2). Charlottesville, VA: Michie Comp.

Michaels, R. (2006). The functional method of comparative law. In M. Reimann & R. Zimmermann (Eds.), *The Oxford handbook of comparative law* (pp. 339–382). Oxford: Oxford University Press.

Minor, J. (Ed.), (1923). *Novalis Schriften*. Bd. III. Jena: Eugen Diederichs. [cited as Novalis]

Nerhot, P. (1990). Interpretation in legal science: The notion of narrative coherence. In P. Nerhot (Ed.), *Law, interpretation and reality: Essays in epistemology, hermeneutics and jurisprudence* (pp. 193–225). Dordrecht: Kluwer Academic.

Nord, C. (1989). Loyalität statt Treue: Vorschläge zu einer funktionalen Übersetzungstypologie. *Lebende Sprachen, 34*(3), 100–105.

Örücü, E. (2006). Methodology of comparative law. In J. M. Smits (Ed.), *Elgar encyclopedia of comparative law* (pp. 442–454). Cheltenham: Elgar.

Örücü, E., & D. Nelken (Eds.). (2007). *Comparative law: A handbook*. Oxford: Hart.

Sandrini, P. (1996). Comparative analysis of legal terms: Equivalence revisited. In C. Galinski & K. D. Schmitz (Eds.), *TKE '96 – Terminology and Knowledge Engineering. Proceedings Fourth International Congress on Terminology and Knowledge Engineering, 26.-28. August 1996, Vienna, Austria* (pp. 342–350). Frankfurt: Indeks.

Šarčević, S. (1994). Translation and the law: An interdisciplinary approach. In M. Snell-Hornby, F. Pöchhacker, & K. Kaindl (Eds.), *Translation studies: An interdiscipline* (pp. 301–307). Amsterdam: John Benjamins.

Šarčević, S. (1997). *New approach to legal translation*. The Hague: Kluwer Law International.

Šarčević, S. (2000). Creativity in Legal Translation: How much is too much? In: A. Chesterman, N. Gallardo San Salvador & Y. Gambier (Eds.), Translation in Context. Selected Contributions from the EST Congress, Granada 1998. Amsterdam / Philadelphia: Benjamins. 281–292.

Simonnæs, I. (2009a). Übersetzungstheorien und Gebrauchstexte – Anwendung und Auswirkung auf das Übersetzen von Rechtstexten: Eine exemplarische Analyse. *Babel – Revue internationale de la traduction, 55*(2), 124–141.

Simonnæs, I. (2009b). Verstehen und Interpretation in der intralingualen Rechtskommunikation: Voraussetzung und Anwendung in Theorie und Praxis. *trans-kom 2*(2), 160–172, http://www.trans-kom.eu/ihv_02_02_2009.html

Simonnæs, I. (2012). *Rechtskommunikation national und international im Spannungsfeld von Hermeneutik, Kognition und Pragmatik*. Berlin: Frank & Timme.

Snell-Hornby, M., Pöchhacker, F., & Kaindl, K. (Eds.), (1994). *Translation studies: An interdiscipline.* Amsterdam: John Benjamins.

Sunde, J. Ø. (2010). Champagne at the funeral: An introduction to legal culture. In J. Ø. Sunde & K. E. Skodvin (Eds.), *Rendezvous of European legal cultures* (pp. 11–28). Bergen: Fagbokforlaget.

Vermeer, H. J. (1996). A skopos theory of translation: Some arguments for and against. Heidelberg: TEXTconTEXT.

Watson, A. (1993). *Legal transplants: An approach to comparative law*. Athens, GA: University of Georgia Press.

Wesenberg, G. (1951) *Juristische Methodenlehre: Friedrich Karl von Savigny*. Stuttgart: Koehlerer.

Zweigert, K., & Kötz, H. (1996). *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts.* Tübingen: Mohr.

Government of Canada. Where Our Legal System Comes from. http://www.justice.gc.ca/eng/csj-sjc/just/03.html (01.11.13)

Legislation.gov.uk, Marriage (Same Sex Couples) Act 2013. http://www.legislation.gov.uk/ukpga/2013/30/contents (01.11.13)

---

1 "Auf Vergleichen, Gleichen läßt sich wohl alles Erkennen, Wissen usw. zurückführen" (*Novalis Schriften*, 1923 p. 45).

2 Örücü raises the question if that should be "the 'common function' between institutions and rules, or the common goal they are meant for to achieve, or the 'problem', or the 'factual situation they are created to solve or the 'solutions' offered?" (2006, pp. 442–443).

3 The designation 'legal transplant' was first used by Watson (1993) and has since been seen as a main device in comparative law for analysing the importation of foreign legal practices (Langer, 2004, p. 5).

4 Following Boele-Woelki (2008, p. 414), the difference lies in the fact that 'unification' of the law leads to the application of identical rules whereas the 'harmonisation' of the law is less far-reaching.

5 "The target text shall have the same legal meaning (i.e. the same legal consequences) as the source text." (author's translation).

6 "In sum, the question of equivalence is a question of pragmatics." (author's translation).

7 However, the current state seems to be changing. Germany's Constitutional Court (Bundesverfassungsgericht) has recently awarded registered partnerships the same inheritance rights as married spouses and changes in the tax legislation are to come.

8 Michaels (2006, pp. 340-342) maintains that the functional method has become "both the mantra and the *bête noir* of comparative law" and argues convincingly that there is not 'the' functional method, but many. In referring to functionalism as **'**the' dominant method of comparative legal studies Brand (2006–2007) refers to the functionalist's belief that the "'function' of a rule, its social purpose, is the common denominator (*tertium comparationis*) that permits comparison" (Brand, 2006–2007, p. 409), however not without showing to some real problems with the functional method and proposing his own approach.

9 For a critical assessment of the *skopos* theory within the functional approaches in translation studies cf. Chesterman (2010). Cf. also Simonnæs (2012, p. 133), discussing the similarities of "purpose" in legal studies and translation studies.

10 On 17 July 2013 the Marriage (Same Sex Couples) Act 2013 was enacted allowing for the marriage of same sex couples in England and Wales.

11 Cf. Heck (1932, p. 52), who used the same designations, as far as I know, for the first time.

12 In Canada common law is practised in the English-speaking provinces and civil-law in the French-speaking province of Quebec. (http://www.justice.gc.ca/eng/csj-sjc/just/03.html)

13 A complete documentation in this context could be given in the translator's footnote.