

Mediating Culture in Legal German Teaching Theoretical Reflections on a Culture-Oriented Approach

Almut Meyer

Faculty of Law, University of Turku, Finland

Email: almut.meyer@utu.fi

[Abstract] Legal German teaching at the Faculty of Law of Turku focuses on the mediation of culture. For this purpose an interpretation model has been developed for systematically exploring the cultural dimensions of legal texts. To embed this cultural approach into legal studies, examples of cultural concepts within legal studies are presented. Legal scholars recognize the significant role of culture in understanding law within intercultural contexts. Moreover, interdisciplinary cooperation between legal and cultural studies is suggested. Concepts of culture within law are not extensively discussed here. Instead, the focus is on epistemological aspects to distinguish the link between the law and legal language learning.

[Keywords] intercultural competence; interpretation model; cultural exploration; interdisciplinary cooperation

Introduction

The significance of cultural knowledge as a core competence in the legal professions has been empirically ascertained for the context of German-Finnish cross-border activities (Meyer, 2011, 2012). As such, legal German teaching at the Faculty of Law of the University of Turku (Finland) focuses on the mediation of culture. This cultural knowledge is also referred to as intercultural competence, and is established as a didactic learning objective. The learner acquires cultural knowledge in interpretative-constructive procedures that are conducted by a theory-based interpretation model. Legal texts are the subject of interpretation in which cultural contents are represented (Risager, 2006, p.22). By exploring the (implicit) cultural dimensions of legal texts, the learner accesses the (legally) relevant cultural phenomena. As such, prerequisites are created for understanding texts within their cultural, and especially legal, context. In this procedure of text-based cultural exploration, the relationships of reference between legal texts and cultures are established; law is conceived of as culture.

Although this text interpretation approach is rooted in cultural studies, this paper argues for its compatibility with legal studies. Exploring the cultural dimensions of legal texts does not only belong to the field of (foreign) language learning and teaching but can also be considered integral to legal studies. The significance of culture for understanding the law is increasingly well recognized among legal scholars, although culture per se is not new in the legal discourse (Glenn, 2010; Husa, 2012; Gephart 2006, 2011; Häberle, 1982; Frankenberg, 1985; Beck, 2011). Here, this approach is discussed against the background of specific area of law to embed it into the discipline. The epistemological question is whether this cultural approach, which investigates the diversity and complexity of the cultural dimensions of legal texts using an interpretative-constructive approach, can contribute to understanding other law practices. This paper briefly presents first, the underlying concept of culture and the interpretation model. Thereafter, this concept is discussed theoretically in relation to the perception of culture within the law, to localize it epistemologically in respect to jurisprudence. Thus, the leading question is whether culture is acknowledged in the processes of understanding other legal systems as a constitutive element.

Concept of Culture

The aim of this study is not to define the complex and manifold concept of culture, but rather segment it into manageable units. These units are cultural phenomena constituting elements of culture which we encounter in legal texts. Such segmentation refers to the idea that cultural items are preceded or followed by contexts and thus are explained. My concern here is to make these cultural items explicit by applying

this concept of context and addressing legal texts with typical juridical questions, for example, 'who', 'what', 'where' and 'when'. Answering these questions provides information about the environments in which cultural phenomena occur. Exploration can focus on certain contexts depending on epistemological interest, and, moreover, the text in question (Herndon, 1981, p.25). Furthermore, this approach corresponds with the intertextuality of juridical work, and also allows focus on specific interests in teaching situations, (for example Busse, 1992, p.36-37, 2000, p.809-810; Müller, 1991, p.31-31). With respect to language teaching, this means that the learner gains cultural knowledge through the exploration of these contexts.

Additionally, context is associated with conceptualizations of culture within interpreting ethnology, because their hermeneutic implications fit the essential core of foreign language didactics, as well as legal sciences or judicial work. As such, culture comes into being through the permanent reading of phenomena that surround us in our lives. Relationships between individuals and their surroundings are constructed in a continuous process of interpretation that can be understood as the on-going construction of meanings. Interpretation, conceived of as the process of constructing cultural knowledge, functions methodologically as a relevant bridge between the law and language teaching. The application of law always involves interpretation, a linguistic understanding and reading legal texts (Busse, 1992, p.18), since the linguistic fiction of the 'legislative intent' as persistently and immutably fixed in texts, is seen as an obsolete metaphor in the history of legal science (Müller, 1976, p.128).

The Interpretation Model

The interpretation model originates in the ethnomusicological concept of 'music as culture'. This anthropological concept underlines that music is produced, received and defined as such by man and comprehends culture as "the sum total of their thoughts and actions, learned and transmitted through the centuries of adapting to the natural and human world"(Titon, 1992, p.xxi). A similar anthropological access to culture can also be perceived in the philosophical understanding of culture as elements of human activity and comprehension of the world (Konersmann, 2003, p.10). The model offers a systematic way to investigate and understand any music-culture, by offering a framework for questions such as, who, when, where, and why, with respect to music. Searching answers to these questions implicates the interpretation of music as culture. Music conceived 'as culture' is generally understood as a paradigm within ethnomusicology. This predominantly anthropological change from 'music in culture' to 'music as culture' marked the turn from ethnocentric approaches in music studies. The juxtaposition of 'Western' and so called 'non-European' music has been characteristic of ethnocentricity, which fails to do justice to the diversity of music culture of the world. The introduced interpretation model is perceived as one realization of the theoretical concept that implements this anthropological change of paradigm.

In the following, this model has been applied to the subject matter of interpreting cultural phenomena in legal texts. In addition to the original model, the recipient and text are placed at the center, as an anthropological understanding suggests.

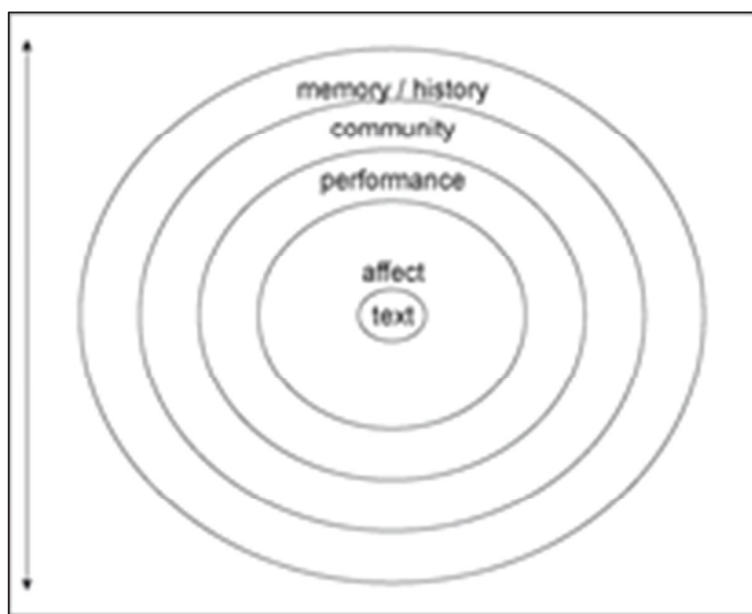


Figure 1. Interpretation model

Legal texts are interpreted from the perspective of affect, performance, community, memory and history. These have a reciprocal relationship and enable us to assign meanings to the text. The reception of the text is understood as performance, the key action that allows texts to come into being and so, enables their effects. Without being received by a recipient, texts would not be considered at all. Konersmann (2003) applies a performance aspect in a far-reaching conceptualization of culture: all cultural creativity and efforts are in vain as long as they are not confirmed by reception (2003, p.10).

The performance of texts occurs in time and space, which are represented in the model as aspects of community, memory and history. A detailed exposition of the model would go beyond the scope of this paper and therefore it will be elucidated only in its main ideas (Meyer, 2012).

- *Affect* determines the particular subjects of interpretation. Such affectemes attract the reader's interest for further investigation. From the perspective of the language learner, this may be incomprehensible words or otherwise expressions in the text which arouse interest. A similar approach within the context of intercultural communication exists in the "rich point" (Agar, 1994, p.100) or the respective "hotspot" idea (Heringer, 2004, pp.174-175) which are defined as culturally enriched words that are incomprehensible for the reader. Here, this method is not adopted, because it presumes already existing cultural knowledge. Thus, the method is rather meant for the expert than the novice.
- *Performance* is conceptualized in an ethnological sense (Turner, 1982, pp.90-91). It emphasizes human activity by a kind of staging cultural phenomena. This staging of cultural phenomena can be seen as a prerequisite of any serious attempt to understand other cultures (Wirth, 2002, p.38). An essential characteristic of the performance-term is that it encompasses the performer, as well as the performed and the recipient.
- *Community* places legal texts into wider social contexts that produce, influence and receive them. This aspect also accentuates the interactive relationship between the text and the recipient, who is a member of larger social contexts.
- *History and memory* investigates cultural phenomena in terms of transmission processes of cultural heritage over the time.

At this point the question arises of how this interpretative approach of cultural explorations of legal texts can be embedded into legal studies. That leads further to the question of cultural conceptualizations within the law, more precisely the relationship between culture and law: Can we track down a 'cultural

awareness' that ascribes crucial significance to cultural knowledge when we want to understand foreign legal systems. If so, at a theoretical meta-level the introduced cultural approach can be added as a methodological tool in jurisprudence. In the following, approaches to culture in the law are briefly outlined. Descriptions are, however, of an introductory kind and without doubt require further thorough investigation.

Selected Approaches to Culture in the Law

The discussion of cultural issues in the field of jurisprudence is nothing new and numerous publications refer to a current, even increasing interest among legal scholars in cultural issues. A tightly focused, although not complete overview of the discourse within comparative law is provided by Beck (2013) and Örüçü (2004). Here, it is neither my intention to detect how cultural matters like cultural rights of, for example, academic freedom, or the language rights of minorities are dealt with in the positive law, nor to engage in the epistemological discussion about 'legal culture versus legal tradition'. Instead, my aim is to search in an epistemic sense for approaches towards cultural knowledge, which is conceived of as an essential contribution to understanding the (other) law in its culture-bound dimensions. Thus, an overarching theoretical discussion of the conceptualization of culture in jurisprudence is beyond the scope of this paper. Still, some characteristics of the epistemic discourse are briefly presented to identify a starting point for the interpretative approach for culturally exploring legal texts, as discussed earlier in this paper. Such a starting point, for cooperation between cultural and legal studies, begins with raising awareness of ethnocentric approaches, and the limits of pure jurisprudential methods as obstacles to understanding foreign law.

Legal Linguistics

In this context, legal language translation is a natural area of investigation according to the role it accords to culture. Within Europe, matters of translating legal languages are reinforced by the processes of legal harmonization. Translation problems in particular highlight the challenges faced by translators and eventually legal (European) harmonization processes. According to Husa (2012), within the drafting of legislation, legal meanings are communicated through legal languages and legal cultures. These plurilingual and pluricultural settings bring the translator epistemologically closer to comparative legal studies because legal harmonization not only deals with linguistic matters, but also with the cultural aspects of legal content. Therefore, an interdisciplinary approach is suggested to achieve a deeper understanding of the other legal system. This is attainable by drawing on linguistic as well as legal expertise (Husa, 2012, p.179). A substantial contribution to deeper understanding of the law is to penetrate to layers beyond the linguistic level to what Husa refers to as the "legal grammar": the "legal-epistemic level of language" that sets legal concepts (2012, p.167). Such an interdisciplinary practice would facilitate the translator to comprehend the legal contents of legal texts and as a result, an ability to communicate it into another language (2012, p.180).

Kjaer (2004) also exposes the intercultural character and difficulties of integrating European legal harmonization from the perspective of legal linguistics and recognizes that successful communication across different legal languages and cultures is possible. Referring to a hermeneutical framework, a common understanding can be achieved through communicative action if the actors "base their interpretation on the same [...] tacit suppositions about the world". Here, Western legal culture is perceived as one constitutive element of this common ground upon which a mutual understanding can be established (Kjaer, 2004, pp.395-396).

Both authors ascribe culture a significant role in the context of understanding foreign law. A profound knowledge of the cultural dimensions and concepts of the law are prerequisites to adequately understand other legal systems and furthermore, for any legal harmonization processes. Whereas Husa (2012) seems to stay within the jurisprudential paradigm by emphasizing the legal-epistemic level that bears legal concepts, Kjaer (2004) mainly justifies her point of view with hermeneutic theories. The key to successful cross-cultural communication lies in the dialogue, in which a common language has necessarily to be established on the basis of a common pre-understanding of the world (2004, pp.395-396). Nonetheless, in the context of language teaching, it remains unclear how these deeper layers of law

or a common understanding can be systematically explicated. In this respect, Peters and Schwenke (2000), who also pleads for interdisciplinary and intercultural cooperation to combine legal and non-legal know how, give a more concrete outline of the cultural knowledge required by legal comparatists: "They must know something about the historical, social, economic, political, cultural and psychological context which made a rule or proposition what it is" (2000, p.832). An interdisciplinary approach is simply necessary because on the one hand comparatists cannot acquire such a thorough and overarching knowledge and on the other "interdisciplinarity and comprehensiveness are a condition sine qua non for avoiding erroneous, de-contextualized evaluations of legal solutions" (2000, p.833).

Constitutional law

The above stated need for a cultural understanding, of the other legal system, in order to communicate legal contents in border-crossing environments, is supported by another field of jurisprudence as well. With reference to Häberle (1982) the constitutional legislation process demonstrates the insufficiency of a traditional juridical approach since positive law in force does not yet exist. Furthermore, constitutional texts are the outcome of processes of transferring cultural traditions and are drafted by culture-bound legislative authors or instances. Thus, methods of cultural studies can offer access to the cultural backgrounds in question that decisively determine constitutional legislation processes. (Häberle 1982, 31-32). Moreover, comparative constitutional studies, especially in the context of federal states are understood as particularly appropriate for the way of thinking of cultural sciences because federalism arises from its cultural diversity (1982, p.33). In the comparison, cultural studies have to elucidate constitutions in their cultural conditions and highlight them as culture-bound variations of the fundamental type of Western constitutional democracy (1982, pp.34-35).

The culture of constitution not only plays a role in the drafting process but also in regard to the interpretation of constitutional law. Häberle (1982) points out that from an epistemic-hermeneutical perspective, individual cultural premises influence both the judicial suppositions of the interpreter and objectively the interpretation of the legal expert. The explication of the law text through historical or teleological interpretation soon encounters cultural backgrounds, which have to become part of the interpretation processes, and therewith disciplined (Häberle, 1982, p.27). Within the paradigm of cultural sciences, the interpretation of the constitution is enabled to read legal texts in their cultural contexts (1982, p.79). This idea is based on the opinion that a wide-range of cultural crystallizations, sustainably affect the interpretation, changes and legislation of the constitution. Interpreters are not solely responsible for interpreting the constitution, but the facts of political life and cultural crystallizations 'beside', 'before' or 'after' legal texts determine in a deeper sense the processes of constitutional development 'in' the texts as well (1982, p. 23). The total of constitutional and cultural constitutional texts allows the narrowness of legal texts to be enlarged (1982, p.76).

Häberle epistemologically poses cultural studies as an additional, yet essential approach in constitutional theory (1982, p.77) to conceive the constitution in its dimensions of space and time, that is, the cultural environments of constitution, and the cultural processes of its production and reception (1982, p.76). A cultural study approach is indispensable, in so far as it realizes the cultural nature of constitutions as an objective of constitutional studies (1982, p.77). Although Häberle is a distinct representative of the culture-oriented constitutional theory, he mentions its limits as well; legal texts require enlightenment, immersion and enlargement through cultural con-texts. Yet, legal texts have to remain as legal texts, they cannot get lost in the width of culture (1982, pp.76-77).

The concept of con-texts, reflected from a text-linguistic perspective, implies intertextuality that is a common feature of legal sciences, linguistics and language didactics as well. Intertextuality can be depicted as a net of interrelated texts, which are in general the basis, medium and outcome of legal work. In these intertextual nets, texts which in relation to cultural sciences highlight legal texts under social, political and historical aspects constitute an equal source of legal interpretation. From the above it can be concluded that Häberle goes beyond the strict juridical way of thinking and convincingly opens up legal interpretation for a cultural approach. This idea of con-texts can be clearly recognized in respect to texts and their cultural contents in the field of language teaching. Thus, from the side of jurisprudence a basis

for interdisciplinary cooperation is clearly set.

Criminal Law

As a final example of an approach to culture, criminal law is chosen, since it gains growing importance due to globalization processes: criminality does not stop at national borders. In addition to legal harmonization in Europe, internet, economical and environmental crimes express the internationalization of this area of law. On the one hand it is increasingly identified that foreign criminal law codes have to be included in the national application of law, legislation and criminal law theory. However, on the other hand there exists a discontent with comparative studies in criminal law that do not contribute, for example, to the elimination of cross-border economic crimes (Beck, 2013, p.69).

In response to this, intercultural comparative studies are needed. (Beck, 2013, p.65). Regarding comparison, cultural studies are suggested as an additional method to foreground neglected aspects for example, the cultural roots of rules (Beck, 2013, p.71). Here, comparative activity is humanistically conceived of as the search for insight and relativization of the existing truth. Comparing criminal law does not mean scratching at the surface of norm texts; it rather, reaches into the depths of legal systems. Qualifying law as one aspect of culture enables us to understand how the coexistence among people is regulated. (2013, p.68) Furthermore, the comparatist has to be aware of their own cultural ties that need to be revealed (2013, p.77), which is a prerequisite for coping with ethnocentric viewpoints (Frankenberg 1985, p.443).

At the same time, this is a starting point for approaching law from a cultural perspective (2013, p.77). With respect to an intercultural comparison, interdisciplinary cooperation is necessary, because a legal scholar mostly has insufficient knowledge to adequately outline the cultural background of law and its cultural embeddedness (2013, p.80). To reach a deeper understanding of the law, the rules which are the objects of comparison have to be investigated from the perspective of, for example, language, history, economy, social structures and development of ethics. A central task for the comparatist then is to select relevant cultural information (2013, p.86).

Similar to the other above outlined areas of legal studies, an obvious desideratum for cultural approaches to the law is stated in relation to criminal law as well. In contrast to other examples, the latter offers most clearly an epistemic framework in which cultural sciences are placed in an essential role. Legal and cultural studies are not perceived as competing with each other but rather as disciplines cooperating at the same level each within its own paradigm. Thus, cultural studies aim at the core of jurisprudence by supplying it with important cultural information and seem to fundamentally challenge the legocentric assumption of law as immutable and neutral (Frankenberg, 1985, p.445). Nevertheless, questions pertaining to the kind of information needed or moreover, how information is acquired remain unanswered. From this it can be concluded that language teaching could participate in such an interdisciplinary setup, especially with a specific concept of culture.

Conclusions

A culture-oriented approach in teaching legal German (as a foreign language) is also legitimated from the perspective of legal studies. In this context it is considered sufficiently justified when legal scholars recognize the essential role of culture in respect to understanding other legal systems. Although single fields of cultural investigations are mentioned, they do not offer systematic methods of how to approach culture. From the perspective of language teaching, this gap opens the opportunity to integrate intercultural expertise. In the case of legal German, an interpretation model is developed for the purpose of systematic exploration of the cultural dimensions of legal texts. As a result of these explorations, cultural knowledge is gained in constructive-interpretative processes. In relation to intertextuality, this knowledge constitutes intercultural competence, a net of cultural information. Important here is that the acquisition of intercultural competence starts from the legal text and allows a systematic exploration of its cultural dimension in question that is not limited to certain issues beforehand. Thus, the interpretation processes are rooted in the law and therefore, contribute to a deeper understanding of other legal systems.

Finally, since language is neither separable from culture, nor should cultures be reduced to bilateral

relations, this concept of culture pleads for the maintenance of linguistic and cultural pluralism. The establishing of a one and only lingua franca does not facilitate the understanding of problems with other legal systems, whereas conceiving law within its cultural contexts constitutes a sustainable approach.

References

- Agar, M. (1994). *Language shock. Understanding the culture of conversation*. New York: William Morrow and Company, Inc.
- Beck, S. (2011). Strafrecht im interkulturellen dialog. Zur Methode der kulturbezogenen Strafrechtsvergleichung. In Beck, S. (Ed.), *Strafrechtsvergleichung als Problem und Lösung* (pp. 65-96). Baden-Baden: Nomos.
- Busse, D. (1992). *Recht als Text*. Linguistische Untersuchungen zur Arbeit mit Sprache in einer gesellschaftlichen Institution. Tübingen: Niemeyer.
- Busse, D. (2000). Textlinguistik und Rechtswissenschaft. In Brinker, Klaus et al. (Eds.) *Text- und Gesprächslinguistik*. Ein internationales Handbuch (pp. 805-811). Berlin etc.: de Gruyter.
- Frankenberg, G. (1985). Critical comparison: Re-thinking comparative law. *Harvard International Law Journal*, 26(2), 411-455.
- Gephart, W. (2006). *Recht als Kultur*. Zur kultursociologischen Analyse des Rechts. Frankfurt: Klostermann.
- Gephart, W. (2011). *Law as culture. For a study of law in the process of globalization from the perspective of the humanities*. Frankfurt a. M.: Klostermann.
- Glenn, P. (2010). *Legal traditions of the world. Sustainable diversity in law* (4th ed.). Oxford: Oxford University Press.
- Heringer, H. J. (2004). *Interkulturelle Kommunikation*. Grundlagen und Konzepte. Tübingen: Francke.
- Herndon, M. (1981). *Music as culture*. (2nd ed.). Darby, PA: Norwood Editions.
- Häberle, P. (1982). *Verfassungslehre als Kulturwissenschaft*. Berlin: Duncker & Humblot.
- Husa, J. (2012). Understanding Legal Languages: Linguistic Concerns of the Comparative Lawyer. In: Baaij, C. J. W. (Ed.), *The Role of Legal Translation in Legal Harmonization*. Alphen aan den Rijn: Kluwer Law International, 161-181.
- Kjaer, A. L. (2004). A Common Legal Language in Europe? In: Van Hoecke, M. (Ed.), *Epistemology and Methodology of Comparative Law* (pp. 377-398). Oxford: Hart Publishing,.
- Konersmann, R. (2003). *Kulturphilosophie zur Einführung*. Hamburg: Junius.
- Meyer, A. (2011): Wozu brauchen finnische Juristen Deutsch? Eine Bedarfsuntersuchung. In Reuter, E., Bonner, W. (Eds.), *Beiträge zur finnischen Germanistik* (pp.333-345).
- Meyer, A. (2012). Intercultural competence in legal German teaching: A didactical implementation. *Journal of Language and Communication in Business*, 48, 35-53. Retrieve from <http://download2.hermes.asb.dk/archive/download/hermes-48-4-meyer.pdf>
- Müller, F. (1976). *Juristische Methodik* (2nd ed). Berlin: Duncker & Humblot.
- Müller, F. (1999). Warum Rechtslinguistik. In Erbguth, W.; Müller, F.; Neumann, V. (Eds.), *Rechtstheorie und Rechtsdogmatik im Austausch. Gedächtnisschrift für Bernd Jeand'Heur* (pp.29-42). Berlin: Duncker & Humblot,
- Örücü, E. (2004). The enigma of comparative law. Variations on a theme for the twenty-first century. Leiden: Martinus Nijhoff Publishers.
- Risager, K. (2006). *Language and culture. Global flows and local complexity*. Clevedon: Multilingual Matters, Ltd.
- Titon, J. T. (1992). *Worlds of music. An introduction to the music of the world's peoples* (2nd ed). New York: Schirmer Books.
- Turner, V. (1982). Dramatic ritual / ritual drama. Performative and reflexive anthropology. In Turner, V (Ed.), *From Ritual to Theatre. The Human Seriousness of Play* (pp. 89-101). New York City: Performing Arts Journal Publications.
- Wirth, U. (2002). *Performanz. Zwischen Sprachphilosophie und Kulturwissenschaften*. Frankfurt am Main: Suhrkamp, 9-60.