

Translating Law: What Role for Comparative Legal Analysis?

Dr.iur. Dr.phil. Sieglinde E. Pommer, LL.M. (Harvard)
APART-Scholar, Austrian Academy of Sciences (2010-2013)
spommer@post.harvard.edu

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Introduction

- **Law = global discourse?**
 - legal communication = complex interplay of cultural values, concepts, principles, rules
- **Comparative law's quest for a legal meta-language**
 - facilitate international legal cooperation and harmonization
- **What role for legal translation?**

Interdisciplinarity

- Legal translators as legal cultural mediators?
- CL = important step in LT?
 - Required competence of a legal translator?
- Equal complementary disciplines?
 - Major task = to effectively communicate legal information across legal traditions and languages
- Comparability <> translatability

Comparative Legal Analysis

- **Classifications of legal systems**
- **Why, What, How to Compare?**
 - **Hierarchy of sources of law**
 - **Divergent role of legal actors**
 - **Court structure, procedural aspects**
 - **Classification, branches of law**
 - **Interpretation, application, and argumentation techniques**
- **Critical Comparative Law: new trends**

Cultural Implications

- **Legal culture**
 - = highly variable and extremely inclusive
 - multiplicity of referents
- **Role of language in culture?**

Comparability of Legal Concepts?

- **Functional equivalence?**
 - **surprisingly similar legal solutions, often by different means**
- **Indeterminacy of legal concepts**
- **Universal concepts? <> Shared meaning?**
- **How to introduce conceptual particularities into conceptual horizon of target law system?**
 - **eg. “trust”: the rise of a global concept**

Significance of Comparative Law for Legal Translation

- **Transplant theories**
 - “legal irritant”
 - Interaction with host to produce “new divergences”
- **“Degrees of transferability”**
 - What conditions for “traveling well” across legal cultures, languages, jurisdictions, levels, fields of law?
- **Transfer <> transformation?**

Particular Challenges

- What “unit for comparison”?
- Conceptual <> terminological change
- Interlocking of legal orders: reciprocal influences
 - Common <> civil law convergence?
 - Cross-fertilization of systems
- Poverty of comparative law theory
- Intercultural adaption

Interdisciplinary Methodology?

- **Joint problem-solving = more than juxtaposition**
- **Parameters:**
 - **Functionality <> teleology**
 - **Relevancy <> contextualization**
 - **Equivalence <> fidelity to the original**
 - **Criteria for adequacy and acceptability**

Some Examples:

- English as a legal language
- Common law <> civil law
- Civil/criminal/administrative law
- What is so special about EU law?

Conclusion

- Important role of comparative law on theoretical and practical levels
- More and more lawyers translate
 - More and more non-native speakers work in second or third language
- Similarity vs. foreignness
- Literal vs. free translation of legal texts

Compare further:

- Pommer, S. (2012): ***Law as Translation?*** The Hague/London/Boston: Kluwer Law International.
- Pommer, S. (2006): ***Rechtsübersetzung und Rechtsvergleichung***. Frankfurt/Main et al.: Peter Lang.