Transnational Legal Communication: Towards Comprehensible and Consistent Law

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Abstract

Transnational legal communication seeks to identify transnational legal regimes and attempts to establish channels and technics for comprehensible communication of the legal information to specified groups of recipients. It also strives to conclude about possible inconsistencies in law. The approach is based on the cooperation of scientists within the area of law and applied linguistics and the coordination of their efforts, in order to conduct research from various perspectives, share conclusions and develop more complete approaches as well as achieve and mutually use more multilateral research results. It strives to reconcile legal research and linguistics research despite of their very different paradigms. The paper aims to explain the nature of legal communication and to establish its general research questions and objectives. The study is going to find an answer to the question what methods are to be used to communicate law comprehensively to its recipients and to draw conclusions on the consistency of legal regimes to be communicated. It accentuates that the solidarity necessary to achieve the objective of comprehensible and consistent law goes beyond the particular interests of individual sciences and is the foundation of the existence of the transnational legal communication community, non-dependending on the place of living and the scope of practical knowledge.

Keywords Legal communication · Transnational law · Linguistics · Experimental logic · Pragmatism · Open texture

*„If thought corrupts language, language can also corrupt thought”
(G. Orwell 1946).*

1 Introduction

1.1 Problem Statement

The process of learning to respond to direct and indirect instructions begins already in early childhood. During the socialization period, various activities related to responding

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to instructions are developed and strengthened. Behaviours associated with the adoption of instructions change in age and professional context. Individuals encounter then more and more communications of unknown senders that do not reach them directly, but as an accumulated result of the activity of entities or institutions acting as intermediaries in the communication process. A situation in which individuals do not meet the author of the instruction addressed to them or in which it is impossible to determine at all who formulated a given instruction is common, if not dominant in social life. It is difficult to determine the author of customary norms (e.g. the elder shakes the hand first) or moral norms (e.g. do not lie), let alone getting their content directly known. And yet the content of these norms has a real impact on society. The author of the law in force in the territory of a state is the legislator. The law is distinguished from other types of social norms through formalised law-making procedures within authorised institutions. The rule is that the law must be published, that is made publicly known, revealed or announced, in order to apply. This is characteristic only for legal norms and is not equivalent in the process of creating other social norms. Individuals get to know the instructions directed at them through indirect contact with the legislator or subordinate institutions. In fact, the individuals rarely read the original, unmodified legal acts they are provided with. They often do not know where to look for them, and even if they find them, they often do not understand their content.

Current law, in result of its fragmentation and transnationality, has become extremely abstract and depersonalised. This is also true for most of the process of providing and acquiring orientation in its content. Law, especially when perceived as structured knowledge, is widely considered to be key to security, progress and well-being of people. It would therefore reasonably be expected that the community of law has developed, through systematic reflection, a stable apparatus for effective legal communication. However, it has obviously not. The extensive academic literature has analysed the general relationship between law and language but has focused mostly on legal theory and legal translation without exploring the wider nature of the area and giving holistic, and pragmatic recommendations. Linguistic research of law has so far boiled down to legal language analysis referring to legal norms expressed in language signs. The debate to date seems to be superficial and particular. There is now a need to take a deeper reflection on this issue in order to discover the nature of legal communication and grasp its normative and practical field.

1.2 Research Questions

The use of language is an inseparable element of every legal system. The legislator uses language to create law, and law must ensure that disputes over the effects of language use are resolved authoritatively. It is necessary to examine the consequences of potential disagreement about the meaning and use of language expressions, as well as the possibility of resolving such disputes. Understanding and interpreting language expressions used in law-making ought to take into account the way in which legal effects depend on the manner in which the expression is used. The effectiveness of law is closely related to its comprehensibility. The law is comprehensible for the recipient only if it serves their communicative needs. Consistency of law is one of the conditions of comprehensible law. Therefore, the state of comprehensibility of law provides information on its consistency. Legal communication, in order to provide scientific work on the comprehensibility and the consistency of law, has to have its own paradigm referring to the nature of social world and the way in

which it may be investigated. The main research question this paper seeks to answer is: *What methodology ought to be followed to communicate law comprehensively?*

The main research question is specified into the following subquestions that, altogether, allow determining what information is to be communicated to whom, in what way this information is to be formulated, and which of the preliminary results of the research are considered to be assumptions for further cognition.

1.2.1 The WHAT-Question

Any dogmatic justification for the development of an objective universal order for the protection of common goods in international law does not explain the effect of such norms on third parties, beyond the very limited content-related norms of *ius cogens*. The value-based constitutionalization interprets community's international law as an "order of values", but it does not solve the problems of the openness and indeterminacy of these values as well as potential conflicts between values. A more open, pluralistic and discursive approach is more adequate, as it enables the creation of a concept of international law based on a theoretical discourse as a "human" law that applies to individuals. The pure concentration on domestic law is also inappropriate because of globalisation and entering supranational and transnational orders into domestic regulations. Thus, legal communication shifts its attention to transnational law, as governing transnational activities. In order to communicate law, it is necessary to separate a transnational regime of regulations that ought to be subject to communication. The first research subquestion is: *How a transnational legal regime regarding a specific subject that is relevant to a particular community can be distinguished?*

1.2.2 The WHOM-Question

The reception of law is impaired by communicative and perceptual difficulties, specific to its recipients. In order to communicate law, it is necessary to address the information on a legal regime to a particular recipient or a community of recipients. The second research subquestions is therefore: *How to single out groups of recipients of law for the communication on a distinguished transnational legal regime?*

1.2.3 The HOW-Question

Law is increasingly being formulated using terminology, the meaning of which is unclear due to the lack of authoritative guidelines. This reflects the legislator's strategy to deal with technological change or social development. This strategy is to ensure the flexibility of law by formulating it using general terminology, which remains indefinite or only partially defined. Legal texts are, in general formulated in a language that is difficult to be perceived by layman. In order to communicate law, it is necessary to organise and provide the information in a consistent way that allows for its comprehensible reception. The third research sub-question is therefore: *What way of thinking for organisation and explanation of legal information has to be followed in order to communicate law consistently and comprehensibly?*

1.2.4 The WHICH-Question

The comprehension of law can be examined and measured. The results can be used to draw conclusions regarding the improvement of legal content as for its consistency and comprehensibility. Putting emphasis on consistent interpretation and appropriate explanation of legal standards can restore the transparency and authority of institutions, enhance civic trust, enable better participation of citizens in democratic politics and governance and thus, combating inequalities amongst communities. Thus, the process of legal communication and the activities contributing to better comprehensibility of law are capable of bringing recursive gain not only to the addressed recipients but also to the community of law as a whole. The fourth research sub-question is therefore: *Which information resulting from the research on the comprehensibility of law allows for drawing conclusions on the consistency of law?*

1.3 Hypotheses

The research is based on the following assumptions:

- (1) If legal communication can make scientific work, it has its own methodology.
- (2) If legal communication can proceed in communicating law, it is possible to distinguish relevant, communicable legal regimes.
- (3) If law can be communicated comprehensively, it is possible to distinguish recipients whose comprehension can be assumed and examined.
- (4) If law can be communicated comprehensively, there is a way of thinking for the organisation and explanation of legal information.
- (5) If legal communication is effective in providing information on the consistency of law, there must be indications on its inconsistency in the process of communication.

1.4 Delimitations

The paper concentrates on what does the cognitive work in the area of legal communication involve. In particular, it refers to what legal communication is and what are the epistemologies and methods serving the creation of information about the object of legal communication. The paper seeks to outline the nature of legal communication from the point of view of its subject, and from a general social point of view. It considers the objects of cognition in the area of law to be transnational legal regimes including legislation, jurisprudence and legal doctrine. Further, it considers the objects of cognition in the area of linguistics to be: elements of objective reality such as facts, events, phenomena, processes, etc.; physical, mental or emotional actions and behaviours; human creations, both physical and spiritual; human states, thoughts and feelings, imaginations, thought constructions, etc., as well as linguistic statements expressing those thoughts, imaginations or thought constructions (Grucza 1983a, b). From a subjective point of view, that is from the point of view of researchers in law and linguistics, the purpose of legal communication is limited to the activities to distinguish and to obtain knowledge of a given legal regime and to establish channels and technics of its effective communication. From a social point of view, the purpose of legal communication is limited to the increase of the body of knowledge referring to the comprehensibility of law and contributing to its consistency.

1.5 Limitations

The paper does not serve to develop a philosophical ground for reflection on a social model of communication. Nor is it a voice in the discussion on the genesis of the concept of communication. The boundaries of the research are set by law and applied linguistics. The research does not take into account other disciplines such as psychology or sociology despite their obvious potential of contributing to the implementation of legal communication. The research is rooted in theoretical assumption and leads, finally, to theoretical conclusions. However, it necessarily requires empirical input. Therefore, it does not serve an in-dept and comprehensible presentation of achievements of legal theorists, but rather seeks to take pragmatic advantage of selected aspects of their thoughts. Similarly, the concept of legal communication is narrowly derived from the selected ideas of Franciszek Studnicki (which, in fact, finally served the development of legal informatics rather than interdisciplinary research in the field of law and linguistics), without broader discussion of other references to communication as such. The discussion purposely excludes the contribution of Niklas Luhmann to the development of studies on communication because of its little orientation on individuals. The paper presents the basics and the methods of legal communication and cannot be, therefore, regarded as a comprehensive elaboration but rather as a platform for further research.

1.6 Structure

The paper is organised as follows. First there is a brief review of paradigms of science, highlighting the concept of multifaceted legal research as particularly suitable to conduct research on legal communication. Next, I will introduce and discuss the notion of legal communication, reflecting on the ideas of legal philosophers, particularly Franciszek Studnicki. I will also reach for Franciszek Grucza's anthropocentric linguistics referring to inseparability of language and knowledge. Based on the former, I will summarise the concepts underlying my understanding of what legal communication is and serving the basis for the reasoning in the research on legal communication. I will refer to: transnationality of legal regimes, open texture, and experimental thinking. I then elaborate methodological approach to legal communication based on pragmatism and the above-mentioned epistemologies, serving the initiation of a stable apparatus for research, education and practice in the area of legal communication. I will end with conclusions providing short answers to the research questions.

2 Towards the Integration of Sciences

The purpose of this section is to explain the nature of science through the concept of paradigm referring to the nature of social world and the way in which it may be investigated. Thus, different approaches will be compared and their position to each other will be illustrated. Further, this section attempts to contextualise the paradigm of legal sciences and, based on this, to highlight the approach that the best serves the nature of legal communication.

2.1 Paradigmatic Nature of Science

A paradigm means a set of concepts and theories that are widely accepted by the scientific community of specialists in a given field (Kuhn 1970). It enables the advancement of knowledge, solving further problems and not returning to the issues already resolved. One of the most common approaches, proposed in 1979 by Gibson Burrell and Gareth Morgan, defines four basic paradigms dominating in social sciences in general.¹ The criteria for distinguishing these paradigms would be social orientation (regulation and change) and assumptions about cognition (objective and subjective). From the intersection of these dimensions, four disproportionate paradigms arise: functionalism, interpretivism, radical structuralism, and radical humanism. This is a concept deeply rooted in the philosophy of science and reaching for the sources of the basic cognitive dilemma putting in opposition the objective (neo-positivist) vision of science based on the methodology of natural science and a subjective (or intersubjective) project drawing on the tradition of hermeneutics and seeking to use “understanding” methods. This concept emphasises interdisciplinary threads, slightly obscuring the specificity of individual scientific disciplines.

According to Burrell and Morgan (1979), all social scientists approach their subject via explicit or implicit assumptions about the nature of the social world and the way in which it may be investigated. The assumptions refer to ontology, epistemology, human nature and methodology.

The assumptions of an ontological nature concern the very essence of the phenomena under investigation, for example, whether the “reality” to be investigated is external to the individual or the product of individual consciousness. The authors distinguish here between nominalism and realism. The nominalist position assumes that the social world external to individual cognition is made up of names, that is concepts and labels that are used to structure reality. The “names” are artificial creations—tools for describing, making sense of and negotiating the external world. Realism, being the opposite, postulates that the social world external to individual cognition is a real world made up of hard, tangible and relatively immutable structures. According to this, the social world exists independently of an individual’s, who is seen as being born into and living within a social world with its own reality. The social world is placed ontologically prior to the existence and consciousness of any single human being (Burrell and Morgan 1979).

Assumptions of an epistemological nature refer to the grounds of knowledge, that is the way in which human beings understand the world and communicate this as knowledge to fellow human beings. The epistemological assumptions entail ideas, first of all on the dichotomy of „true” and „false”. They are based on looking at the nature of knowledge itself: whether it is hard, real and capable of being transmitted in tangible form, or whether it is soft, subjective, spiritual or even transcendental, based on experience and individual insight; whether it can be acquired, or whether it has to be personally experienced. The authors distinguish here between positivism and anti-positivism. The positivist approach seeks to explain and predict the effects of searching for regularities and causal relationships between its components. The epistemology of anti-positivism does not search for laws or basic regularities in the world of social affairs. For an anti-positivist, the social world is essentially relativistic and can only be understood from the point of view of individuals directly involved in the activities being investigated. Anti-positivism rejects the “observer”

¹ See for its application e.g.: Tjeldvoll (1995).

position that characterises the positivism as an important observation point for understanding human actions. Therefore, one can “understand” only by referring the participant’s reference point to action. From this perspective, social sciences are seen as more subjective than objective (Burrell and Morgan 1979).

Assumptions concerning human nature and in particular the relationship between human beings and their environment lead to determinism and voluntarism. The first is expressed in the view that human beings and their experiences are regarded as products of the environment; one in which humans are conditioned by their external circumstances. This perspective is expressed in the search for universal laws explaining and governing the observed reality. The latter attributes to human beings the role of creators of their environment (Burrell and Morgan 1979).

Different ontologies, epistemologies and models of human nature are likely to incline social scientists towards different methodologies. Burrell and Morgan (1979) distinguish here between the nomothetic and ideographic approach. If one takes the realist, positivist and determinist approach, then they will focus on the search for universal laws explaining and governing the observed reality. This nomothetic approach to social sciences emphasises the importance of basing research on systematic protocol and technique in order to test hypotheses in accordance with the canons of scientific rigor. It uses scientific tests and quantitative data analysis methods. If one takes the nominalist, anti-positivist and voluntarist approach, then they will concern with an understanding of the way in which the individual creates, modifies and interprets the world in which he or she exists. The emphasis is on explaining and understanding what is unique and specific to the individual, rather than what is general and universal. This ideographic approach calls into question whether there is an external reality that is worth exploring. It emphasises the relativistic nature of the social world and strives for the analysis of subjective relationships generated by “entering” the situation and involvement in everyday life, as well as the importance of enabling the subject to reveal his characteristics during the investigation.

2.2 Pragmatism in Social Sciences

Burrell and Morgan sought to illustrate two broad and somewhat polarised, subjective–objective perspectives: the subjectivist approach to social science comprising nominalist ontology, anti-positivist epistemology, voluntarist human nature and ideographic methodology, and the objectivist approach to social science involving realist ontology, positivist epistemology, determinist human nature and nomographic methodology. With time, these contradictory paradigms have reached a state of coexistence contributing to the emergence of a new perspective of research. This point of view, grounded in the philosophical school called pragmatism, is based on the statement that researchers should apply any philosophical and/or methodological approach that works best for the research program being studied (Tashakkori and Teddlie 1998; Datta 1994). Pragmatism has its roots in the works of scholars and philosophers of the turn of the 19th and early 20th century: William James, C. S. Pierce, John Dewey and Oliver Wendell Holmes, as well as contemporary philosophers such as Richard Rorty and Donald Davidson (Menard 1997). It represents the American approach to philosophy and emphasises whether something, e.g. philosophical assumptions, methodology or information, are useful for obtaining desired or expected results. The value of the “usefulness” depends on the researcher’s beliefs and interpretation of the meaning and significance of a set of ideas defined by their goals and common to their community (Reichardt and Rallis 1994).

In order to illustrate the position of the pragmatism towards the positivism and the anti-positivism, three elements should be emphasised (Goles and Hirschheim 2000): ontology (the nature of reality), epistemology (acquisition of knowledge) and axiology (the role of values in research). As for ontology, positivists claim that there is an external, objective reality that exists independent of the individual. Anti-positivists argue that reality is ambiguous, that each individual interprets it in a unique way. Pragmatists believe that there is an objective reality that exists outside the individual. However, this reality is rooted in the environment and experience of each individual and can only be imperfectly understood. Which version of reality the researcher chose depends on how well this choice gives the expected or desired results. The main difference is that the object is defined how it helps the researcher achieve his goal. As for epistemology, positivists believe that knowledge is objective and is acquired by examining empirical evidence and verifying hypotheses to discover general or fundamental regularities. In contrast, anti-positivists believe that knowledge is relative, and that reality is too complex to be cognise from one perspective. Pragmatists are in the middle—they perceive the process of acquiring knowledge as a continuum and not in terms of the opposing and mutually exclusive poles of objectivity and subjectivity. Thanks to this, they can choose the approach and methodology most appropriate for a particular research question, providing a conceptual basis for both quantitative and qualitative tools. As for axiology, positivists believe that researchers are neutral observers, using scientific techniques that allow them to go beyond human prejudices so that they can contact reality and document facts. They try to minimise their personal values and theoretical inclinations and ensure the internal and external validity of their work (Reichardt and Rallis 1994). Anti-positivists see research as related to the values of the respective researcher. They confirm their prejudices and subjectivity, arguing that the alternative perspectives generated by this approach offer a more accurate reflection of the complex and multi-faceted reality (Goles and Hirschheim 2000). Pragmatists admit that individual values play a significant role in research, but they believe that achieving the objectivity is unattainable. They consider values to be only relevant and important to the extent that they affect what to study and how to do it. Pragmatists decide what they find important to be studied based on their personal value systems. They examine the subject matter in a manner consistent with their value system, including variables and analysis that they believe are the most appropriate to find the answer to the research question (Tashakkori and Teddlie 1998).

Legal sciences perfectly fit into the social scheme. Contemporary science of law uses not only instruments developed in legal sciences, but more and more often reaches for empirical methods taken from other sciences. This approach is reflected in the concept of multifaceted legal research that treats law as an ontologically complex subject for which methods, techniques, and conceptual grid of various types of sciences are appropriate.² In the understanding of the Polish legal theorists Wiesław Lang (1986), Kazimierz Opalek (1985) and Jerzy Wróblewski (1969a, b, 1986), the methodological multiplicity of jurisprudence requires recognition of the need to use a multitude of research methods and techniques. In this sense, the postulate of methodological multiplicity of jurisprudence is synonymous with the so-called external integration of legal sciences, understood as the

² More on the origin of the concept of methodological multiplicity of jurisprudence and approaches to law as complex structures: Opalek (1962).

postulate of using methods, techniques and the conceptual apparatus of other sciences in the appropriate way (Opalek 1985).³ This is a consequence of the observation that there are common problems in social sciences and humanities, which naturally provoke mutual use of the achievements of individual disciplines and cooperation in research. Institutional and sociological conditions conducive to the division of sciences, advanced autonomy and specialisation lead to the disintegration of sciences and to losing sight of these problems. Opalek (1968) points out that the concept of “integration of sciences” serves three ways of integration: firstly, as the desire to unify research carried out within different sciences, secondly, as the pursuit of research coordination and, thirdly, as the pursuit of cooperation between individual disciplines. The essence of the dispute whether or not to combine anti-positivism and positivism in relation to legal sciences is, however, seeking an answer to the question of whether and to what extent empirical and non-empirical methods applied in other sciences are useful and applicable within the law.

2.3 Summary

In science, there is an increasing fragmentation and specialisation, while loosening cooperation and dialogue. This also applies to legal sciences, in which more and more new branches are emerging, and the existing ones are more and more specialized and fragmented. In-dept reflection on this unfavourable fact paves the way for interdisciplinary integration processes. I consider the coordination of scientific efforts to be the most effective model. It shares the utilitarian approach with the American pragmatism and, simultaneously, preserves the nature and the autonomy of individual sciences. The most effective form of science integration is to bring about active and planned cooperation between representatives of various fields of science. Thus, it becomes possible to study issues previously unknown or unknown aspects of previously studied issues. The most important benefit would be the possibility of undertaking research on significant issues that have been completely new for legal sciences, especially on previously neglected planes.

3 Ontological Roots of Legal Communication

Legal communication is the whole process of providing legal information to its recipient and of gaining legal orientation, both as a result of learning about the sources of law, as well as on the basis of experience and knowledge of non-legal norms, such as morality or custom. The ontological roots of this concept will be explained from two perspectives: the one oriented on the information to be provided and the second oriented on its recipient and their internal knowledge.

3.1 The Flow of Messages About Legal Norms

A few noted legal concepts refer, to some extent, to the above understanding. However, none of them can be regarded as complete and none of them explicitly mentions the notion of legal communication. One of the most influential American philosophers of law, Lon

³ See also: Studnicki (1957), Wróblewski (1961), (1965), (1969a, b), (1973), Lang (1962), Opalek (1966), Zawadzki (1966), Borucka-Arczowa (1973), Sokolewicz and Zawadzki (1973), Woleński (1985).

L. Fuller is known for his ardent defence of the idea of broadly understood advertising of law and access to its content. He expressed this in his famous polemic of H. L. A. Hart (1958), where he put forward an extremely strong thesis that there could be no greater legal monstrosity than a secret statute. The requirement to publish law belongs to the so-called morality of duty, i.e. certain basic, even minimal rules of social life. Fuller also formulated the postulate of legal clarity as one of the most important components of the rule of law. He introduced eight desiderata (1969), that is generality, publicity, nonretroactivity, clarity, noncontradictoriness, obeyability in practice, constancy and congruency, aiming to promote and protect individual independence. However, he did not propose any systematic approach to the processes of legal communication, and his considerations on this subject were quite general. The thread on the importance of communication in a legal and society-wide context is also present in the reflections on law made by Jürgen Habermass (2005). He was the author of the idea of equating recipients of law with its creator, so that entities who were to comply with the law were feeling also like its authors. However, this concept has been criticised as overly idealistic (Dudek 2014). Both Fuller's and Habermass's considerations do not directly address the issue of legal communication, and their views are to be interpreted from a number of other analyses. More structured considerations on the subject matter were undertaken by Willem J. Witteveen (1999). He attempted to describe the assumptions adopted in legislative practice. He proposed two models of communication to serve this description: a message model and a textual model. Witteveen aimed to highlight the premises underlying each of the models. Even he admitted himself that these models, because of their simplicity, are clearly unable to capture all actual processes of communication through legislation. As such, they cannot aspire to depict the actual processes of communicating the law and serve as a tool for their analysis. Witteveen based his concept on the metaphor of symphonic activity, where the legislator is a composer and the legal text is a score. The thus understood semiotics of legislation should make it possible to rethink the art of institutional design, as proposed by Fuller. The above concepts, despite their importance for the development of legal science, do not, however, constitute a comprehensive description of the phenomenon of legal communication.

A much more detailed stand is occupied by Franciszek Studnicki. In Studnicki's opinion (1959, 1962a, b, 1965, 1969), a necessary condition for the impact of legal norms on human behaviour is that individuals become aware of a given norm and learn about its requirements. If legal norms are not known, they can neither be taken into account by individuals as the basis of their specific actions, nor let them explain these actions. Therefore, for given norms of law that are formally binding in the territory of a given state to function in a real, and not just indirect way, it is necessary to properly conduct many complex communication processes, primarily those in which individuals obliged to comply with the law acquire knowledge of it.

Studnicki assumes that the addressees of legal norms are all entities, whether natural persons, legal persons or various institutions, the activities of whom are assigned the property of compliance or non-compliance with the law (1965, 1969, 1978a). He rightly observes that due to many groups of recipients of legal norms it is very difficult to talk about the general comprehensibility of messages on legal norms. Therefore, he clearly suggests that the communication of law be relativized to certain specific processes relevant to these processes that characterise distinguishable groups of recipients, such as the ability to understand the terms used by the legislator. Such groups can be distinguished based on, for example, the professional or ethnic affiliation of their representatives. Recognising this problem, which can be described as pluralism of the legal audience, Studnicki believes that one should consider the possibility of communication on legal norms by means of various

messages, adapted to the properties of given groups of recipients (1959).⁴ He recalls that in bilingual or multilingual states, the legislator announces two or even more messages about the same norm. Therefore, he poses the question whether it would not be appropriate, in the event that the common characteristics of individual groups of addressees show greater differences, make it the rule to direct information about the norm to members of individual groups using different wording for each group, even if the groups represent no ethnic differences.⁵ Thus, Studnicki attempts to classify recipients of law pointing to their heterogeneous nature.

Legal norms expressed by means of formally binding law are, in his opinion, not equally important for all individuals that are generally to comply with the law. The knowledge of some norms may be a necessity for some individuals, or even something obvious and commonly required of them, whereas for others the referring to these norms can be completely incidental. Studnicki claims (1969) that the optimal saturation of a given human population with legal information should be a state in which each of its members would have some basic orientation and a certain resource of such information, which they receive and remember as it is necessary due to the requirements of their social roles—while being able to easily obtain information when they prove necessary. He divides legal information into three classes. The first is called basic information, as it falls into a fairly general category of certain cardinal information related to, among others, the constitution, the principles of “more important branches of law” or the corresponding procedures (Studnicki 1962a, b, 1965, 1978a, 1978b). As he claims, the state of these legal information can be considered satisfactory when it enables initial orientation in such situations in which knowledge of legal norms is of some importance. In particular when it allows the accurate rejection of certain solutions as incompatible with the requirements of the law. In other words, it can be said that basic knowledge allows for general orientation in the requirements of a given system of generally applicable domestic law, which are somehow common to all individuals remaining within the scope of this system. They usually refer to norms indicating what one cannot do in certain situations, irrespective of the particular characteristics of the individual whose activities are subject to legal qualification. The second class is the so-called knowledge of the minimum role (Studnicki 1962a, b, 1965, 1969, 1978a). It relates to legal norms, the knowledge of which is necessary to properly fulfil specific social roles. The third class, the so-called ad hoc information, concerns the widest category of legal norms, the knowledge of which is neither basic nor required from individuals who perform given social roles, but it is needed depending on the situation in which the individual is currently located (Studnicki 1978a). In other words, ad hoc information is used when needed. At the same time, Studnicki postulates that the first and the second class of information should be actively forwarded, whereas the third class of information should be only made available.

Studnicki indicates (1965, 1969) that law very often regulates particular spheres of human life in the same way as it is done by other normative orders, such as morality, custom or religion. Due to this “convergence effect”, it is possible, and in practice even common, to comply with the law despite the lack of legal knowledge. This is not based on knowing the law itself, but on knowing and accepting moral norms. If individuals follow norms of extra-legal normative orders that regulate a certain sphere of human activity in the same way as legal norms (e.g. prohibit or order the same ways of acting), then of course

⁴ The suggestion that there are many types of “recipients” of legal norms is also included in the considerations of Bell (1999: 71) and Macdonald(2001: 24).

⁵ The idea of formulating legal acts in several language versions is implemented to some extent in practice, e.g. in the European Union.

in a specific way it will also be ensured that individuals' actions comply with the law itself. However, it is worth noting that the mechanism understood in such a way refers primarily to the category of the first class of information described above, and not to the minimum role or ad hoc information (Dudek 2014).

Studnicki distinguishes four types of "convergence effect" mechanisms (Studnicki 1965, 1969). The first type is the orientation according to pragmatic patterns. Pragmatic patterns are ways of dealing with certain repetitive and typical life situations adopted in specific communities. Knowledge of these patterns is obtained during socialisation, so one can reasonably speak about their cultural origins. Some pragmatic patterns may arise from a basic culture—largely shared by all members of a given society—but may also be characteristic of more particular subcultures. In the environment of a particular individual, a lot of pragmatic patterns can be used. It is, however, impossible for one individual to be able to assimilate them all, just as it is impossible to know all the legal norms of a given legal system. Moreover, such complete mastery of legal norms and pragmatic models does not seem necessary. Pragmatic formulas have an important function to perform to economise the individual's effort in society. Their knowledge releases from the necessity to determine the proper course of action in each situation. How many and what specific pragmatic patterns a particular individual knows, is therefore highly correlated with his social role. The basis of pragmatic formulas are both the technical requirements for carrying out the given activities and specific social norms, e.g. moral norms. In general, therefore, it can be said that pragmatic patterns show how to act in a given community, and what is the usual practice in a given sphere of social life. The second type of indirect orientation mechanism is axiological orientation. Studnicki argues that the values expressed through law in some way reflect the values of the human community that led to the creation of a given law and is subordinated to it. The values professed by a given society are absorbed by individuals during socialisation. For Studnicki, the success of socialisation of an individual from the perspective of axiology is not only to internalise values, that is to treat them as their own—but also to tolerate specific values, which, however, need not necessarily be fully accepted by the individual. The third type is the orientation according to stereotypes of legal institutions. In a given society, perceptions about various legal institutions functioning in it are shaped and consolidated. When such presumptions are largely shared by representatives of this society and do not undergo rapid changes, it can be said that they are generally understood stereotypes. Admittedly, they often give a distorted and extremely simplified picture of the institutions to which they refer. However, in certain situations the conduct adequate to a given stereotype may be beneficial for the acting person. Stereotypes, therefore, allow for the economisation of effort, because they relieve the need to independently check for the requirements of the law or the operational reality of its institutions. They also constitute a reference point for knowledge obtained by individuals as a result of their own actions. For this orientation to be effective, specific stereotypes, according to which entities orient their behaviour, should relatively faithfully convey the most important details of a given norm or the whole institution. The last indicated type is imitative orientation. Describing this mechanism, Studnicki assumes that individuals count on the fact that more important, from their position, changes in legal regulations will be sufficiently reflected in the behaviour of others that will serve them as a model for their own behaviour.

3.2 Inseparability of Knowledge and Word

The connection between knowledge and language, that is, the inseparability of thought and speech, was already stated by W. von Humboldt (1968; transl. by J.O): "It is clear from the

interdependence of thought and word that languages are not really a means to present the reality that has already been recognised, but much more to discover the previously unrecognised". I will illustrate this connection with the concept of anthropocentric theory of languages, that was formulated by Franciszek Grucza, and that originated in works of Jan Nieciśław Baudouin de Courtenay. According to this concept, only languages of concrete individuals can be objects of linguistic investigation, because only concrete individuals and their concrete languages really exist. Languages exist really, that is completely, only within individuals, in their brains, being a part of their linguistic equipment (Grucza 1983b). Grucza defined human language as a property of an individual, on the basis of that this individual is able to: shape and express structures of particular utterances; pursue certain goals through these utterances; attribute certain values to these utterances; recognise analogous utterances produced by other individuals; decipher and understand the value, and especially the meaning of these utterances (1983b).

Grucza claims (1983b) that each language is a kind of practical knowledge and a component of certain practical skills and can only exist as a property of an individual. That means that each specific human language includes not only a certain scope of knowledge, but also a certain portion of specific operational efficiency—both mental (including intellectual) and muscular. However, no practical knowledge, nor any skill, exists on its own, i.e. in a "pure" form (Grucza 2017). One can speak about the (real) existence of a language of any group of people or community—regardless of its size and quality—provided that it is understood either as a logical cross-section, i.e. as a common part, or as a logical sum of languages of all its members. A community that has not created a sufficiently general (common) language is a community that is somewhat imperfect, or even underdeveloped. However, although each community needs a sufficiently general (common) language, the uniformity of the language is not necessary. Because it is impossible to observe a language directly, the quality of language of a given individual can be assessed only on the basis of a text they formulate on a relevant area of reality. Similarly, knowledge can be only reconstructed on the basis of observation and analysis of texts produced by individuals. The quality of knowledge largely depends on the quality of language in which it is expressed and the quality of texts on the basis of which it is reconstructed: reproduced and assimilated (Grucza 2002).

This concept of language is appropriate not only for community languages but also for specialist languages (comprehensively: Sambor Grucza 2008a, b, 2010a, b). One of the manifestations of the civilisational development of humanity is the ever-further, subtler division of work, the ever-expanding specialisation of various (more or less "closed") partial communities in performing some kind of creations. Each group of individuals specialising in some kind of creation, has, over time, created their specific language. Depending on the extent to which the work performed by a given part of any community is creative, their language changes sooner or more slowly into the respective specialist language. Each specialist language is on the one hand a certain product, and on the other a specific mark of individuals engaged in common creations. Simultaneously, it is a factor that gives them the character of a certain community. Specialist languages were not, however, created, and they do not exist, above all, to "mark" the civilisational development of humanity and/or individual communities. The basic reason for their creation and the main reason for their existence is "contained" in their instrumental functions (Grucza 2002).

Specialised texts are characterised by the occurrence of certain lexical units (terms), which are constitutive for the generation and the cognitive reception of knowledge. Specialist languages, and within them also terms, are creations and at the same time tools of specialized groups of individuals. Terms—their formal state, their knowledge and ability to

use them—are not only a determinant of human communication skills, but also, not least, human cognitive and productive skills. Terms are in every respect more specialized than common words, and thus—they have a much lower range of applicability than common words (Grucza 1991). Grucza pointed to the emergence of new information and communication barriers with the increase in the number of terms, but also with the divisions of modern societies, both vertical and horizontal. On the one hand, modern societies are falling apart into ever new groups using increasingly hermetic languages, while on the other some of these groups are increasingly changing their languages. This situation may not only generate communication conflicts, but even lead to communicative manipulations. However, the driving force for the conflicts is not so much the nature of the terms themselves, but above all the intensive pace of their growth. Instead of clarifying and organising communication, their avalanche development has the opposite effects, i.e. barriers and communication disruptions. The vertical and horizontal fragmentation of societies implies the inability to master all terms created and functioning in even one language or within one field. Both the significant role played by terms and their unprecedented quantitative expansion make modern communities also in a linguistic plane face a completely new challenge. For this reason, it is necessary to find entirely new ways to control the terms, so that they serve communities in accordance with the intention that underpin their creation. Their current way of functioning appears to be paradoxical—on the one hand, it increasingly allows, on the other hand, it hinders both cognitive and productive progress (Grucza 1991).

Grucza expressed the conviction (2010a) that it is urgent to establish a special sub-domain of linguistics, which he proposed to name “legislative linguistics”. He advocated linguistics to contribute not only to identifying deficits in legal texts, but also to systematically explaining where they come from and/or what they consist of, as well as to indicating what can/must be done to eliminate the deficits or at least minimise their effects. In his opinion, the field of legislative linguistics must be urgently constituted so that linguistics is able to deal with the analysis of legal texts in a systematic and professional manner—in accordance with their specificity.

3.3 Summary

Studnicki’s concept refers to the process of providing and gaining legal orientation. It also takes into account learning about the sources of law in line with accumulation legal knowledge on the basis of experience and knowledge of non-legal norms. The stress on distinguishable groups of recipients and the pragmatic approach are highly conform with the subject matter of legal communication.⁶ Of great practical value is also his indication to the convergence mechanisms, since they can be used analogically for providing deliberate information on law. The division of legal information into three classes is useful to the extent in which it differentiates the legal information with regard to its relevance to the particular group of recipients. However, it does not provide further systematic proposal on how to distinguish the „pieces” of legal information that ought to be communicated. It thus faces the problem from the human oriented perspective (promulgation) but abstracts from the perspective of law. It should be also noted that his concept does not refer specifically to interdisciplinary research and does not aim at a comprehensive approach to giving and

⁶ See e.g. on communication to employees as social groups distinguished according to their knowledge: Maciejewski and Gawłowicz (2017), Gawłowicz and Maciejewski (2017).

obtaining comprehensible information about the law and even less about the conclusions on its consistency. The concept can, therefore, only answer the question on what legal communication in the meaning of providing legal information is or should be, but not about the way of its understanding or doing.

Grucza's contribution to the determination of the status of legal communication consists in his strong statement that there is nothing like external, general knowledge or external, general language. He systematically considered terms as the expression of knowledge and postulated to find ways to control them, so that they serve communities and not hinder their developments. He rightly noted that their current way of functioning is paradoxical—on the one hand, it increasingly allows, on the other hand, it hinders both cognitive and productive progress. His important indications that, firstly, languages and knowledge can be examined only through the reconstruction from texts produced by individuals who feature this language and this knowledge and, secondly, that one can refer to communities sharing language and/or knowledge, are fundamentals for legal communication as it refers to the recipients of legal information and their capacities. Although his approach to law was rather narrow, hence he referred to legislative linguistics only (Osiejewicz 2017), it can be effectively extended to the whole concept of legal communication and cover all sources of law and all areas of legal work. That means, in fact, that the contribution of linguistics to the development of law and to the well-being of its recipients may be, in fact, much more important than he assumed.

The very vital conclusion resulting from the above is that the authors perceived the “reality” to be investigated in the completely opposite way. For Studnicki this reality was external to the individual—made up of hard legal norms and other fixed orders of conduct. Grucza saw this reality as the product of individual consciousness, made up of labels such as „language”, „term” and „text” that are used to structure reality. Legal communication being oriented on both legal norms and individual consciousness comprises thus both: realistic and nominalistic ontology. Therefore, both these concepts can be regarded as ontological understructure of legal communication and serve as a meaningful starting point for further research.

4 Epistemological Assumptions and Stances

Legal communication is the whole process of distinguishing legal information through searching for regularities and causal relationships between its components, and then communicating this as knowledge to its recipients. The epistemological roots of this concept will be explained from three perspectives: the one oriented on the legal information to be distinguished, the second oriented on the knowledge to be reconstructed from this information, and transmitted, and the third oriented on the organising the knowledge to be transmitted to the recipient.

4.1 Transnationality of Legal Regimes

In his 1956 *Storrs Lectures on Jurisprudence* (1956), Judge Philip Jessup shifted attention from international law, as governing relations between states, to transnational law, as governing transnational activities. He famously defined transnational law as “all law which regulates actions or events that transcend national frontiers,” which includes public international law, private international law, and “other rules which do not wholly fit into such

standard categories.” Because of stronger focus on the category of “other rules” and their private character (Shaffer 2016), in the subsequent evolution, attention was shifted from the concept of *transnational law* to the concepts of *transnational legal ordering* and *transnational legal orders* (Shaffer and Coye 2017). These concepts refer in particular to new areas of governance, where the dominant role is played by not states and their institutions, but by social and private groups as well as by organisations and enterprises (see i.a.: Goldstein et al. 2000; Djelic and Quack 2009; Djelic 2011; Djelic and Sahlin-Andersson 2006; Zangl and Zürn 2011).

This concept was afterwards developed, this time shifting attention from transnationality of law to global governance. At the dawn of a new millennium, researchers in the field of sociology of law, John Braithwaite and Peter Drahos (2000) observed that a huge number of regulations are neither introduced into the legal order nor enforced by states. However, existing regulations are often written and can be enforced by individuals from different states and different institutions. These authors focused on private standards, social practices and patterns of influence in industry and professional bodies. They attempted to answer the following questions: who is functioning in this hidden area; where are the rules; how they gain power; what types of rules move from one domain to another and which of them do not move? The aim of their research was to disseminate knowledge about activities leading to global regulation in a more just manner, in order to strengthen the situation of entities remaining outside the process. Studies on the functioning of public authority as a form of administration were undertaken several years later by Richard Steward, Nico Krisch and Benedict Kingsbury. These authors abandoned the distinction whether power is exercised by courts or private entities, and whether it has been included in the conventional hierarchy of public authority or is scattered on a global scale. By adopting this perspective, they asked whether the desirable characteristics and elements of administrative law, such as transparency, participation, the ability to be heard and judicial control could constitute measures to improve global governance (Kingsbury et al. 2005; Kingsbury 2005; Kingsbury and Krisch 2006). At the same time, a group of researchers, represented, among others, by Charles Sabel, proposed new concepts of governance for the international order (Sabel 2001; Dorf and Sabel 1998; Sabel and Simon 2004). Taking into account the assumptions of democratic experimentalism and innovative institutional solutions, separated from the more traditional ways of thinking about legal regulation, they tried to reconcile the concepts of democratic legitimacy and economic efficiency. Another intellectual movement, territorially dispersed and diverse in terms of worldview, focused on the study of the relationship between international law and the third world, seeking the permanent importance of colonialism for the structure of global law and political life. Its representatives attempted to identify problems that had not been solved by transforming the dominions into formal sovereigns, and the solution of which was considered necessary to ensure the participation in the institutions of intergovernmental life and to take responsibility for the territorial government (Dunoff and Trachman 2009). All the concepts bring important insight into the structure of contemporary law.

The theory of systems that was formulated in the 1990s by Niklas Luhmann served to be a basis for a concept of legal regimes. Luhmann analysed law and politics as social systems, fulfilling in a modern society specific functions and serving each other as well as other functional systems (1995, 1997, 2004). He regarded politics and law as systems not so much autonomous as autopoietic, i.e. closed functional systems that reproduce themselves (comprehensively: Teubner 1993). He analysed (1997) law and politics from the perspective of a functionally diverse society, which he perceived as a global community, with its own global structure and its own problems, resulting from this functional differentiation.

He noticed that at the world level, the political system is no longer organised by the state, so that the legal system in the world society (compare: Amstutz and Karavas 2009) is confronted with specific new challenges. Luhmann pointed to the existence of threats to the unity of world law consisting in its fragmentation resulting from the lack of a unified conceptual and dogmatic network, a clear hierarchy of legal norms, and a strong hierarchy of judiciary. In his opinion, these features result from the lack of centralised organs, from their specialisation, from differences in the structure of norms, from the existence of parallel or competitive regulations, as well as from the spread of international law and the differentiation of derivative norms. The fragmentation of world law is, according to Luhmann (1998), a derivative of a much deeper, multifaceted fragmentation of the whole world society, which means that one should expect progressive splitting of the law as a result of social conflicts. The international society is splitting up at an increasingly rapid pace with autonomous social systems that transcend territorial boundaries and are constituted throughout the world.⁷ Increasingly faster differentiation causes these autonomous social systems to grow into the rank of separate, global formations. Their mutual relations and their relations to other environments that determine the scope of freedom of these systems cause further complications. The growing authorisation of various functional systems implies social processes responsible for the increasingly frequent collisions of legal norms, for the progress of fragmentation and for the distribution of instances of conflict resolution (Willke 2003).

According to Luhmann (1988), each social system consists of countless meaningful communications, whereas society is only possible where communication is possible. The communication is an ongoing, without interrupting sustained operation, which reproduces itself and leads to the development of social systems (Luhmann 2011). Social systems are thus not stable, stagnant structures, but they consist of a multiplicity of “events”, and they are able to communicate about the environment. Luhmann considers the legal system to be an autopoietic and differentiated (sub)system within the society (social system), the core elements of which are neither legal norms nor actors and organisations, but communications. In the autopoietic legal system, the specialty of the subsystem are communication events in form of legal acts (Luhmann 1987). These communication acts or events are able to change legal structures. Due to the normative openness, the legal system is able to learn and adapt as a reaction to the changing environment (e.g. the legal system can note and observe changes of the political, educational or economic system; Luhmann 1983).

Inspired by the theory of Luhmann, Günther Teubner and Andreas Fischer-Lescano continued considering the fragmentation of law, stressing the ubiquitous reductionism of modern discourse in this area. In their opinion (2007), bringing fragmentation to the problem of collision of norms leads to legal reductionism, while referring to the political foundations of the collision of norms—to political reductionism. They described the process of spreading international law, referring to the multifaceted fragmentation of the law of world society, that is, global space, which differentiates itself into a countless number of autonomous systems. They treated the fragmentation of law as a derivative of the fundamental, multifaceted fragmentation of the global community. They concluded (2007) that any law (national or international, private or public) is closely related to the sectoral system, aimed at maximising its own rationality. For a given legal system, geographical boundaries have been replaced by functional, systemic delimitation, which means that the national differentiation of law has been covered with sectoral fragmentation. The social sectors reproduce

⁷ Also, in the terminological aspect, compare: Gucza (2002).

structural conflicts between different functional systems within the law. As a consequence, there is a whole range of regimes in which national, international and supranational legal acts are visible (e.g.: Osiejewicz 2018).

The research into this problem resulted in the concept of “regime complex” (Compare e.g.: Colgan, Keohane and Van de Graaf 2012; Baccini et al. 2013; Van de Graaf 2013). This term refers to a series of overlapping and non-hierarchical institutions regulating a given substantive area.⁸ Its conceptual scope can be defined as the superior system of public and private institutions that are important and active in a given sphere of world politics.⁹ This does not, however, mean the harmonisation of legal orders. On the contrary, it means the creation of a new form of internal differentiation and the shaping of a new fragmentation. Thus, the world law is being differentiated into transnational homogeneous legal regimes specific to the regulated subject. As Teubner and Fischer-Lescano concluded, the aim of legal research should be to identify specific regulatory systems, and then to study their creation and inter-systemic interaction, in search of a general model. They consider it legitimate to ask questions about what constitutes a given system, how systems change and how they interact, how conflicts between systems are resolved and how these systems are protected.

The transnational approach, calling for legal consistency, can be practically presented on the example of the compensation regime for the expropriation of transnational investments. Initially, a number of Western states consistently maintained the position that compensation for expropriation should be in line with the triple standard. In its traditional form, this standard meant that if a restoration to the previous state (*restitutio in integrum*) was not possible, compensation was to be made by paying the sum corresponding to *damnum emergens* and *lucrum cessans*, and the payment was to be “prompt, adequate and effective” (the so-called Hull formula; Schrijver 2008). The developing countries, on the other hand, have consistently denied the existence of a generally accepted practice in this area. The pursuit of consensus resulted in the adoption of the appropriate compensation formula contained in the Declaration on permanent sovereignty over natural resources (1962) with intentional ambiguity that was repeated in the Charter of Economic Rights and Duties of States (1974). Thus the supporters of the triple standard, as well as advocates of the new doctrines referring to the “ability to pay”, “excess profits”, as well as “unjust enrichment” were able to use these terms in their favour. The Draft United Nations Code of Conduct on Transnational Corporations (1990) left all options open, ensuring that “the State adopting those measures should pay adequate compensation taking into account its own laws and regulations and all the circumstances which the State may deem relevant”.

Several multilateral treaties refer to the issue of the compensation standard. When it comes to the moment of payment, the traditional wording “fast” or “immediately” is sometimes replaced by the words “without undue delay” (Art. 3 (iii), OECD Draft Convention on the Protection of Foreign Property, 1967) and by “without delay” (Art. 14 (2), ASEAN Comprehensive Investment Agreement, 2009). The Unified Agreement for the Investment of Arab Capital in the Arab States (1980) stipulates that compensation must be paid within a period not exceeding one year from the date on which the expropriation decision became final (Art. 9 (2)). The Investment Agreement of the Organization of the Islamic Conference (requires a “prompt payment” (Art. 10 (2a)). Also the North American Free Trade

⁸ The term defined by Raustiala and Victor (2004).

⁹ The term defined by Biermann et al. (2009).

Agreement (NAFTA, 2001) uses the traditional term “without delay” (Art. 1.110 (3)). The Energy Charter Treaty (2004) provides that expropriation should be combined with the payment of prompt compensation (Art. 13 (1.d)). When it comes to the value of the compensation, the OECD Draft Convention on the Protection of Foreign Property (1967) stipulates that the measure of expropriation should be combined with the payment of “just compensation” (Art. 3 (iii)). Such compensation should represent the real value of the property affected by expropriation and should be transferable to the extent necessary to be effective for the eligible party. Also the American Convention on Human Rights (1969) refers to the concept of “just compensation” (Art. 21 (2)). The Unified Agreement for the Investment of Arab Capital in the Arab States (1980) provides for “fair compensation” (Art. 9 (2)), whereas the Investment Agreement of the Organization of the Islamic Conference (1981a, b) requires “adequate and effective compensation to the investor in accordance with the laws of the host state regulating such compensation” (Art. 10 (2a)). The NAFTA (2001) specifies that such compensation shall be “equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (‘date of expropriation’) and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value”. Moreover, the compensation will be “fully realizable” and “freely transferable” in any currency from the host country (Art. 1110 (2–6)). The Energy Charter Treaty (2004) uses the standard of “quick, appropriate and effective” compensation (Art. 13 (1)). The case-law of the Iran-United States Claims Tribunal has incidentally specified the above issue. The *Amoco* ruling (1987) clearly states that the future capitalization of income that may be generated by such activity after the transfer of ownership as a result of expropriation (*lucrum cessans* – the judgment concerned compensation for “goodwill and commercial prospects”) should not be taken into account. In *Ebrahimi* (1984), the Tribunal pointed out that the extra remuneration for *lucrum cessans* is dependent on the prior characterization of the takeover as unlawful. In *Phillips Petroleum* (1989), the Tribunal applied the uniform standard and interpreted it as a requirement for compensation representing the “full equivalent of the property taken”.

4.1.1 Open Texture

The legal semiotic concept of open texture was formulated by Friedrich Waismann (1951), a student of Moritz Schlick and a member of the Vienna Circle. In principle, Waismann accepted the vision of language adopted in this group and, in particular, considered the definition as the basic method of characterising concepts. The sources of the Waismann’s concept of open texture should be sought in the constructivist view on language that Ludwig Wittgenstein presented in the 1930s. In general, one can say that his theory presented in the paper “*Verifiability*” (1951) is a creative development of ideas that Wittgenstein had in mind before (Quinton 1997).

In the characterisation of Waismann’s concept (1951) attention should be paid to three elements. Firstly, open texture, in the author’s view, is a feature only of empirical concepts—such as “cat” or “gold” and, as the author points out, of the most, if not all, of such concepts. Waismann states that the open texture does not refer to non-empirical concepts, such as those in the field of mathematics or geometry (e.g. triangle) or concepts related to games (e.g. chess). Secondly, Waismann insists that the open texture of empirical concepts, as he understands them, is fundamentally different from vagueness. The main difference

lies in the fact that the vagueness as a feature of some empirical concepts (such as “heap” or „pink”) can be eliminated by appropriate definition measures that clarify the rules for the use of a particular term. By contrast, open texture is an indispensable feature, in the sense that subsequent definitions of an empirical concept can always be corrected and amended. Thirdly, the open texture reveals itself and refers to the use of empirical terms in extremely unusual or unforeseen situations, and even those for which we do not even allow for the possibility that they may occur. For example, Waismann takes into account an imaginary situation in which the open texture reveals that if an animal that has all the characteristics of a cat and behaves like a cat has suddenly grown to gigantic size, one would say that it is still a cat? Or if a substance that looks like gold and positively passes all the chemical tests for gold would emit an unknown kind of radiation, would we still call it gold? Although such situations do not occur, they are potentially possible. That, according to Waismann, is enough to show that we can never completely rule out the occurrence of an unforeseen situation in which we have to change the definition of a term. This is because our knowledge of facts is incomplete, i.e. in the sense that there is always possible that something unforeseen may be revealed. He refers to completely new, unimaginable experiences and new discoveries influencing our overall interpretation of given facts. The incompleteness of our knowledge is fundamental and indelible, even as we enrich our knowledge. Therefore, we can never be absolutely sure that we have included everything that should be included in our definition, so that the process of definition and its improvement is continued and never reaches the final state. The situation will always remain the same: no definition of an empirical concept will cover all possibilities. As a result, the incompleteness of the verification rests on the incompleteness of the definitions of concepts we use, and the incompleteness of the definition is rooted in the incompleteness of the empirical description. This is one of the reasons why the judgments about a material object cannot be finally verified.

Waismann’s concept refers, indeed, rather to the relation of empirical concepts to external knowledge than to attributes of empirical concepts themselves (Czepita 2010). Our knowledge, that is, a series of statements that we believe to be true, is about the relationship between one or the other attribute, and it is true only for a particular moment. It may be that the statement about the relations between the considered attributes, which was peculiar to our knowledge of a given moment, because we then regarded it as correct, is no longer peculiar to the knowledge from another moment, because we then claim this assertion for mistaken. We can never be sure that our knowledge of the relationships between the considered attributes contains only true assertions and that we know all relations between different attributes. The relationships between attributes may change—attributes may necessarily coincide at some point in time, while at another point in time, such a relationship no longer occurs. Waismann referred the open texture only to empirical concepts because only these are related to empirical knowledge. In non-empirical concepts, such as the concept of a triangle or a geometric formula, the question of open texture does not arise at all.

Waismann boldly considers hypothetical situations, the emergence of which would require rejecting the fundamental assertions of our knowledge. This is precisely the important difference between the original grasp of Waismann’s open texture and its reinterpretation presented by Herbert L. A. Hart (Bix 1991). Hart confines himself to analysing situations that have not yet happened, but our current knowledge does not suggest that they cannot happen in the future. Hart referred to Waismann’s approach in „The Concept of Law” (1998), where he stated that human legislators cannot have knowledge of all possible combinations of circumstances that may arise in the future. Therefore, he claims that it is not possible to fully define the purposes of the provision. He gives an example of the following rule of conduct: “vehicles cannot move in the park”. It is intended to maintain order

and peace in the park, that is why the prohibition of entering the park by cars, buses and motorbikes is obvious. The matter gets complicated when we start to consider electric toy cars or wheelchairs with electric drive. According to Hart, we did not foresee these cases that are on the outskirts of the rules and in areas left open by the theory of precedents. Both the openness of the law and the need for fully secure rules are socially desirable. Establishing perfectly rigid and predictable rules in certain spheres of life does not guarantee achieving the goals of the legislator. The openness of the law allows legal norms to be applied in a flexible way, adapted to the changing reality. The more important it becomes in such cases to determine what knowledge a given term carries.

Waismann's general semiotic concept of open texture underlies and explains the evolutive interpretation and transnational application of the European Convention of Human Rights (ECHR). The open-textured language of the ECHR that stipulates standards rather than detailed rules leaves open wide range of interpretative choices to the European Court of Human Rights ("ECtHR") in light of contemporary social and cultural concepts. It allows for striking a balance between development and stability and maintaining the scope of the rights both up-to-date and effective. The "living instrument" approach first appeared in *Tyrer* (1978), which opened the extensive use of the evolutive interpretation by the ECtHR. In *Marckx* (1979), just a few months after *Tyrer's* decision, the ECtHR referred to two international conventions to indicate the existence of generally recognized standards and the evolution of attitudes in modern societies. In *Karner v. Austria* (2003), the ECtHR voiced particularly with regard to the right of homosexuals to enter into the tenancy of the deceased partner. The position of the ECtHR was considerably extended in *Kozak v. Poland* (2010) that was based on the ruling of the Supreme Court in Poland stating that the standards of the judiciary with reference to the de facto relationship of heterosexual couples (concubinage), which differ partially from the provisions on marriage, cannot be applied analogously in the absence of the relevant provisions regarding homosexual couples. In the Court's opinion, against the inclusion of cohabiting homosexual communities that are organized on the model of heterosexual relations, into the concept of concubinage speaks the well-established tradition, also in the linguistic sense. The ECtHR explained that the legitimate interests of one of the states in the area of protection of family life and the institution of marriage cannot justify discriminatory sexual orientation measures, as is the case in Poland. The ECtHR referred to its earlier position in *Karner*, pointing out that the state actually has some discretion in assessing the need for different treatment. The blanket exclusion of persons living in a homosexual relationship from succession to tenancy, however, cannot be considered by the ECtHR to be necessary to protect the family in its traditional sense. The ECtHR also emphasized that given the fact that the ECHR is a living instrument that should be interpreted in the light of present-day conditions, the state should necessarily consider developments in society when choosing measures to protect the family and respect family life. The state should also take into account changes in the perception of social and civic issues, including the fact that there is not only one way or choice in the area of private or family life. By applying the evolutive interpretation, the ECtHR for the first time argued that couples having a homosexual relationship could have a "family life". In 2012, the Supreme Court in Poland had again to answer the question of whether homosexual couples should have the same right to tenancy as unmarried heterosexual couples. This time the Court brought the rights of such couples to the level that was expressly relied on the position of the ECtHR in *Kozak*. By that means, the ECtHR caused amendments in Polish law and dictated the social acceptance of the rights of homosexual couples in this regard.

4.2 Experimental Logic

The concept of pragmatic legal reasoning assumes that creativity and subjectivity are the foundation of a complex system of legal institutions. Other approaches to legal reasoning attempt to eliminate these aspects by constructing a strictly formal system (Bix 2004). However, complex human reasoning in every area, including legal, is multifaceted and pragmatic in the fullest sense of these expressions. Unlike formal logical approach based on the “if—then” syllogism, pragmatic legal reasoning allows for flexible choice of effective tools of reasoning and communication, tailored to the circumstances of a given case. The experimental logic of John Dewey, an American philosopher creating at the turn of the 19th and 20th centuries, promotes achieving this agility.

In his short essay “*Logical Method and the Law*” (1924), Dewey presented a theory aimed at offering those involved in the legal decision-making process “a single way of treating cases for certain purposes or consequences in spite of their diversity”. He believed that the analytical system that stands behind the law is consequentialist: „meaning and worth are subject to inquiry and revision in view of what happens, what the consequences are, when it is used as a method of treatment” (Dewey 1924). For Dewey (and other pragmatists: Levy 1991), human reasoning is a system of trial and error. Individuals work most efficiently when they are flexible enough to be able to try new ideas smoothly and visually. Thanks to this, they can draw on a wide range of conceptual schemes, using those that best suit the given situation. A specific analytical skill useful in a given situation may prove to be completely useless in another situation, not necessarily significantly different. One should then reach for another, more useful skill. Dewey believed that this kind of intellectual dexterity leads to the achievement of goals and the most rational and useful results. In his opinion, this is the best reasoning, based on the so-called experimental logic.

In Dewey’s opinion, legal reasoning reflected a phenomenon he called “a common structure or pattern” of human inquiry (1938). In this sense, legal reasoning is based on the general paradigm of human thinking: individuals use their “Renaissance” abilities in a similar way, regardless of the ventures they are involved in. The structure of reason is not fixed and abstract. Dewey parted from the rationalist philosophical tradition represented by Rene Descartes and Immanuel Kant and adopted a more fluid and practical form of thinking, designed to follow a straight path to practical results, not abstract concepts of mind or cognition, developed by other epistemologists and logicians (Rorty 1982). In simple language, thinking is good if it works. It works when, thanks to it, individuals achieve what they want to achieve. Dewey did not agree with the rationalist tradition, emphasising that there are closed, solid and true forms of intuition and logic on which the human mind rests. For Dewey, human reasoning is an experimental process of inquiry and reflection (1938, 1910). Instead of focusing on the philosophy of mind, as rationalists did, Dewey perceived the human mind in the light of everyday experiences and orienting human knowledge to the goals or consequences of actions. He pointed out the need to ask practical, natural questions. In his opinion (1938), one should not look for universal truths, but methods used here and now, which are the best methods available to achieve specific results. This position indicates a significant departure from traditional epistemology (Mendell 1994). Whereas the traditional epistemology looks for logical constants, Dewey categorises experience in a useful and practical way and identifies the following stages of reasoning (1938): (I) identifying an undefined situation; (II) localising the problem; (III) determining the solution to the problem; (IV) reasoning regarding the solution; (V) the operational nature of the importance of facts in solving the problem. A common structure or pattern of reasoning

includes five logically separate steps that can be used to determine whether action will be useful or not: (i) the difficulty experienced, (ii) its location and definition, (iii) options for a [possible] solution; (iv) reasoning about options, (v) further observation and experience leading to their acceptance or rejection. The steps in this process reflect the way in which people usually objectively and practically think about problems. Importantly, Dewey does not propose a new way of thinking, but tries to describe the way that as he considers (1910), individuals usually think.

Dewey believed that legal decision makers maintain fiction to conceal the process actually used in legal decision making (1924). This fiction is expressed in the idea that legal decisions must be taken in accordance with strictly formal logic principles having a syllogistic character. Dewey doubted that such logic could actually be the heart of a highly developed legal system (Bix 2004). In his view, legal reasoning based on it leads to mechanical case-law, in which legal provisions are automatically applied to factual situations in such a way as to determine the correct decision with absolute logical certainty. In his opinion, this kind of syllogistic reasoning in law is neither possible nor desirable. Dewey does not deny that the spirit of Aristotle's formal logic is related to his theory of experimental logic. However, he does not agree with the strict application of the syllogistic form, because in his opinion there is a disproportion between actual legal development¹⁰ and the strict requirements of logical theory based on syllogism.

Dewey identified the desire for logical formality with the need to strive for consistency (Muyumb 2014). The use of previously prepared and known concepts may give a sense of stability: a guarantee of protection against sudden and arbitrary changes in rules that determine the consequences of actions. Dewey believed, however, that it was an illusory sense of protection, which is strengthened by the habit adopted once. The obligation to demonstrate formal, syllogistic logical consistency in the process of making legal decisions results from the habit, driven by its own internal inertia (MacCormick 1983). Dewey believed that there was another kind of logic in the lawyer's work: logic of consistency. In an attempt to explain his alternative view (1924), Dewey defined logical theory as a procedure used to make decisions in cases where subsequent experience shows that these were the best decisions that could be made under given circumstances. This definition allows rationalisation of previous decisions. According to Dewey, legal rules should primarily create coherent generalised logical systems based on consistency in the application of law. He admitted that there are situations in which formal logic may be applied in legal reasoning, however, he maintained that formal logical consistency should not be the main goal of the legal system. Formal logic should be used insofar as it serves pragmatic decision making.

For Dewey (1924), logic is a means of intellectual survey, analysis and insight, and can be modified, like other tools, when used in new conditions to achieve new goals. A consistent and universal understanding of logic would be unreasonably restrictive, because arguments or logically coherent principles in the Aristotelian understanding could not change over time. Logical principles—regardless of their form—are tools that are never meant to become absolutely static. They must first of all be useful in practice so that their use is justified. To the extent they are not useful, they should be rejected in favour of more appropriate rules. Treating legal principles as abstract “systems” is counterproductive and makes the law mechanical and detached from its social function.

¹⁰ According to Dewey (1924), the way the Anglo-American legal system works, with particular reference to customary law, is close to the experimental process.

4.3 Summary

The considerations of this chapter revealed the dichotomy in understanding of „legal content” to be communicated to its addressees. In order to communicate law, it is first indispensable to distinguish and extract a (transnational) legal regime or a regime complex. This is a purely positivist work, oriented on tracking sectoral regulations. The relevance and accuracy of the knowledge the legal regime carries can be, however, examined taking the open texture approach. Through the reconstruction of knowledge actually expressed through legal terms, this concept helps to determine and verify the factual scope of regulations referring to the specific regime as well as their consistency.

Because Dewey refers explicitly to the necessity to adjust the understanding of law to the changing civilization, as well as moral and cultural conditions, his understanding is conformed with the concept of open texture in legal communication. Experiences always involve a process of interpretation. Therefore, the reference to the experience of the recipients of law helps to formulate the information and express the knowledge in such a way that it is comprehensible for the recipient. In this way it is possible to equal two, apparently opposite assertions: the one that the world exists apart from our understanding of it (as legal regimes do), and the second that the world is created by our perception of it (as results from our empirical knowledge). In this sense, the information on law is necessarily constrained by its positivist nature but, on the other hand, the understanding of law is inherently limited to the interpretation and the experience of the individual recipient. Thus, knowledge transmitted and obtained through the process of legal communication consists of warranted assertions that result from taking action to extract legal information, reconstruct and transmit knowledge, and experience the outcomes on each stage of the scientific work.

5 Consequences for the Inquiry Logics and Research Design

The areas of research that were presented in chapter 2 and 3 introduce very different, almost conflicting ontologies and epistemologies, which lead, in general, to different methodologies. The purpose of this section is to elaborate basic assumptions for the methodology of legal communication. The difficulty lies in reconciling the nomothetic approach involving a general systematic protocol of legal regimes and the ideographic approach emphasising the relativistic nature of the perception of law and the importance of serving the communicative needs of an individual. These approaches can be brought together through the creative application of Opalek’s postulate of cooperation undertaken by representatives of law and another science. The researchers should aim to the interdisciplinary integration processes between law and linguistics, however, not by unifying research but as the pursuit of in-dept support and cooperation serving the interest of the community of research. The research on a given, particular, problem should be carefully planned, divided into stages and undertaken in the spirit of cooperation in research and mutual use of the achievements.

The basic product of every science is the cognition of its object. The object of cognition of legal communication are transnational legal regimes, as well as linguistic elements of objective reality such as facts, events, phenomena, processes, etc.; physical, mental or emotional actions and behaviours; human creations, both physical and spiritual; human states, thoughts and feelings, imaginations, thought constructions, etc., and linguistic statements

expressing those thoughts, imaginations or thought constructions, that refer to the comprehension of legal information carried by these transnational legal regimes.

On the one hand, one can formulate questions about the states of things that are presumed to exist contemporarily, in the past or in the future. On the other hand, one can ask about each state of things, how it is or why it is so and not different. Legal communication poses, in general, the following questions: (1) What is the state of legal regulations that are presumed to exist in a particular transnational legal regime?; (2) What is the state of terminology of the given transnational legal regime?; (3) What legal knowledge is carried by the terminology of the given transnational legal regime?; (4) How legal knowledge that can be reconstructed from the legal regulations and the terminology of the given transnational legal regime can be communicated comprehensively to a particular community of practice?; (5) What is the state of comprehensibility of the legal information communicated to the receiving community of practice?; (6) How consistent is the respective transnational legal regime and how this consistency can be improved?

Two types of questions can be distinguished here (Grucza 1983a, b). The first type are questions about the state of things within a given object of cognition—they determine the plane of the empirical scientific work. The purpose of empirical work is to obtain empirical knowledge, that is, sensual statement of the properties of objects included in the set underlying the subject of a given science and to provide their description in a reporting form. Legal communication undertakes on the empirical plane: to distinguish regulations that are presumed to exist in a particular transnational legal regime (1); to distinguish key terminology that comprises the given transnational legal regime (2); and to examine the comprehensibility of legal information provided to the community of recipients. The second type are questions about why things are in the state of affairs as it is derived from the answers to empirical questions—they determine the plane of the theoretical scientific work. The purpose of theoretical work is to obtain theoretical knowledge, that is, to explain the stated properties and relationships between these properties. Legal communication undertakes on the theoretical plane: to examine legal knowledge that is carried by the terminology of the given transnational legal regime (3); to determine ways and channels for the communication of legal information to the community of recipients (4); and to examine the consistency of the respective transnational legal regime and to make proposals for its improvement (6). The comprehensive research on international legal communication shall be thus designed to combine empirical and theoretical parts forming recursive circles.

There is a strong relationship between the two stages of scientific work, for theoretical scientific work refers to the results of empirical (observational) scientific work (Nowak 1977). Cognitive processes are cyclically recursive and in a specific cognitive process the empirical and the theoretical work occur, in fact, simultaneously (Ackoff 1969). The recursion is likely to occur between stage (1) and (2), if it turns out that the terminology does not cover all relevant regulations or is misleading in other way. Also the preliminary results of stage (5) may force the researchers to go back to stage (4) in order to improve the comprehensibility or the precision of the information provided. The distinction between the empirical and theoretical plane is not solely based on the difference of the cognitive method, but above all on the difference of the tools used in the process of creating knowledge: in the empirical plane there are the senses, in the theoretical plane there is the mind.

There are hierarchical relationships between the distinguished phases and planes of cognitive work, so one can also talk about the hierarchy of their partial objectives. This applies equally to the empirical and theoretical levels (Grucza 1983a, b). Legal communication has four objectives: (1) to identify a complex of transnational legal regimes, which refer to the respective subject matter—undertaken through the reconstruction of its constitutive

legal concepts and through the identification of expression forms determining the linguistic scope of these concepts; (2) to provide information on law to a particular community of practice featuring the same characteristics in a way that facilitates the comprehension of legal standards (3) to examine and to measure the comprehension of legal information and drawing conclusions as for its improvement; (4) to translate the activities contributing to better understanding or an increase in the body of knowledge referring to the comprehensibility of law into practical proposals aiming at improving the comprehensibility and the consistency of law. The objectives (2) and (4) are of the higher rank, whereas the objectives (1) and (3) takes the secondary position. Both the primary objectives refer to the theoretical work, whereas the empirical work is indispensable to lead to the acquired results of the theoretical work. All the objectives serve the purposes of legal communication, which are: (1) to distinguish and to obtain knowledge of a given legal regime and to establish channels and technics of its effective communication (subjective perspective); (2) to increase the body of knowledge referring to the comprehensibility of law and to contribute to its consistency (social perspective).

This approach requires the introduction of a mixed methods research, which is considered to have particular potential for “communities of practice” (Wenger Wenger 1998a, b; Wenger and Snyder 2000). It is, therefore, consistent with the previously described Studnicki’s concept of addressing social groups and Grucza’s concept of community languages. This paradigm, the intellectual roots of which are to be found in the early work of D. Campbell and D. Fiske (1959) on mixing methods (Greene et al. 1989), allows for including quantitative (e.g., experiments, surveys) and qualitative (e.g., focus groups, interviews) methods. The pragmatism is generally regarded as the philosophical partner for the mixed methods approach (Denscombe 2008). It provides a set of assumptions about cognition and inquiry that underpins the mixed methods approach and distinguishes the approach from purely quantitative approaches that are based on a philosophy of (neo)positivism and from purely qualitative approaches that are based on a philosophy of interpretivism or constructivism.

The general steps in the research cycle are to be as follows: distinguishing a research object, identification of a gap in the empirical body of knowledge, exploration of the issue, establishing the theory induced from observations, deduction of hypotheses drawn from that theory, empirical test to assess the validity of the theory, and explanation of the stated properties of the object of cognition and relationships between these properties.

The legal research will be both, theoretical and empirical. The legal theoretical research serving observation of transnational legal regimes shall use traditional methods applied in legal studies. The main one will be the dogmatic method consisting in the analysis of legal acts, as well as semiotic meta-creations such as court rulings, diplomatic practice and other state’s activities within the field of research serving the implementation of its specific objectives. Also, the historical-comparative method shall be used as it makes it possible to formulate conclusions verifying the hypotheses about evolution of transnational law and its consistency.

The empirical legal research aims to gather knowledge systematically by analysing the effects on the law on the basis of observations (Schneider and Teitelbaum 2006). It involves the systematic and objective collection and classification of observations of social events, circumstances or processes relevant for the operation or the understanding of the law in society (van Boom et al. 2018). The empirical research in law assumes that that positive law should focus on the behavioural effects of legal instruments or view law in its social context or as a reflection thereof. It should provide a realistic view on what the law is, what it does and how it can be improved rather than to present the

law as having a unified, cohesive mode of understanding, a distinctive viewpoint or a specific style of interpretation or reasoning (Del Mar 2017). This part of research will be thus more concerned on how a research problem is researched (qualitatively/quantitatively) as opposed to what problem is researched that belongs to the theoretical part. Empirical legal research will help to understand what law does and does not represent to its recipients, and ought to explain what exactly determines the comprehensibility of the law and how it can be improved. It may provide insight into deliberate reasoning and unconscious processes in legally relevant decision making. It may ensure proof of causal relationships and bring evidence of why certain legal rules do not achieve their intended goals, why they produce unproductive side effects and even how they can be attained more effectively with alternative legal arrangements. Hence, empirical research ought to enrich, underpin and also debunk doctrinal research (van Boom et al. 2018). Empirical research is expected to be more objective than the doctrinal research thanks to its limitation to describing or explaining the study topics derived from objective findings and to position them theoretically. This is because the empirical research uses sources differently than the doctrinal research (more: Epstein and Martin 2014; Lawless et al. 2010). Whereas in doctrinal legal research authority arguments often play a role, the evidence in empirical legal research is determined by universal criteria such as reliability and validity.

The legal empirical research in the area of data collection includes observation (i.e. gathering new data by observing behaviour) and questioning (i.e. collecting new data by means of asking questions, either through interviews, a questionnaire, or both), as these methods intend to measure reality. Regarding the analysis of already available data (e.g. collected and available through archives, documented as the outcomes of administrative or judicial proceedings, or Big Data), it is to be pointed out, however, that the analysis of law, legislation, jurisprudence and doctrine can be classified as either empirical or doctrinal research, depending on the way the material is studied. Whereas textual interpretation of law and a law comparison is to be considered doctrinal legal research, making quantitative calculations is considered to belong to the empirical research. Although data collection is part of the process of conducting empirical legal research, the availability of data makes it easier to gather and, subsequently, analyse information. For instance, network analysis, in a legal context, can be used as a citation analysis that allows testing how authoritative judicial decisions are: the ones that are cited more frequently are presumed to be more important (Fowler et al. 2007; Whalen 2016). Another means of research are legal experiments, in which researchers manipulate one variable to see its effect on another. They are the most suitable to maximise control and make causal claims about relationships. Two types of studies are available here. The one are laboratory experiments, that provide the most complete level of control (Segers and Hagenaaars 1999). The second are field experiments, that involve experimentally examining an intervention in the real world rather than in the laboratory, by creating a very specific context in which everything except the independent variable is maintained constant and the amount of variables studied is typically limited (van Boom et al. 2018). If there is necessary to obtain information from a large group of individuals in order to formulate conclusions that are generalisable to a larger population, the researchers will need to conduct surveys in order to use samples that are representative for these larger populations. Whereas surveys allow for quantitatively describing attitudes, orientations and behavioural intentions in a large population (Golden 1976), case studies can be particularly suitable when attempting to explain a single situation in its unique, separate, peculiar or distinct character, idiosyncratic detail, or to understand the meaning of contingent, unique, and often cultural or subjective phenomena.

The linguistic research is to be empirical, only. It includes, i.e.: linguistic discourse analysis, which is concerned with how specific features of language in texts can be interpreted in relation to its context; computational analysis of linguistic corpora in order to determine the usual meaning of words, and pragmatics-based approach. This research can be supported i.e. by electro-thermal reaction tests, eye-tracking tests supported with EEG, tomography, and virtual reality technology in order to prove and/or ensure the comprehensibility of legal regulations. The outcomes of the linguistic research will provide results that enable theoretical cognition in the area of linguistics, that is explaining the stated properties of the respective objects of cognition and relationships between these properties.

6 Conclusion

The legal community it is not about the confrontation of particular interests, but about the union of various interests creating a new, common interest: comprehensibility and consistency of law. This is the common interest that is a factor binding the international legal communication community, composed of public and private domestic and international law entities involved in the creation and application of law and having the common goal of achieving certainty of law and gaining trust of its addressees. The solidarity necessary to achieve this purpose goes beyond the particular interests of individual entities and is the foundation of the existence of the transnational legal communication community, non-depending on the place of living and the scope of practical knowledge.

This section aims to provide a compact response to the research questions, which has guided the selection of sources and their interpretation undertaken in the paper.

What methodology that ought to be followed to communicate law comprehensively?

Legal communication has its own specific nature, comprising seemingly contradictory paradigms of ontology, epistemology and methodology. It is based on interdisciplinary pragmatic approach that allows for giving useful effects and for solving practical legal problems. This approach serves to make a systematic, purposeful and legal analysis that can be tailored to the needs of particular communities of practice. It refers to a recursive process of doctrinal and empirical research, looping initial conceptualisations and carrying out additional research as it advances. The legal (doctrinal and empirical) and linguistic methods applied at particular stages of the research are tools meant to help research teams consisting of lawyers and linguists find meaningful answers to the research questions with both doctrinal and pragmatic relevance. That means that transnational legal communication focuses on doctrinal, normative, instrumental and empirical research to obtain the knowledge how the law works, what its effects are, and what impact a new or reformed rule may have. It further also enhances legal analysis by providing economically tailored empirical input reasoning, e.g. by testing assumptions, or by evaluating reforms. The involvement of linguistics in legal research is indispensable of systematic and professional analysis of legal texts, serving not only to identify deficits in terms of legal coherence and transparency, but also to systematically explain where they come from and what they consist of, as well as to indicate what can or has to be done to eliminate them or at least minimise their effects.

How a specific transnational legal regime regarding a specific subject that is relevant to a particular community can be distinguished?

In the framework of transnational legal networks, it is possible to distinguish specific regulatory systems. The identification of a respective regulatory regime is possible through

diachronical or synchronical reconstruction of its constitutive legal concepts and through the identification of expression forms determining the linguistic scope of these concepts. The determination of the scope of knowledge carried by a particular term allows the final assignment of regulations to a given legal regime within that the given term is supposed to be included.

How to single out groups of recipients of law for the communication on a distinguished transnational legal regime?

Law can be communicated to a particular community featuring the same characteristics. The reception of law is impaired by communicative and perceptual difficulties, specific to users of a particular community of practice, whose members share common knowledge referring e.g. to state of development, civilisation, language or profession. The effectiveness of legal communication depends on how the information is organised and consciously dedicated to the recipient, his communicative needs and his language competences. The beneficiaries of transnational legal communication can be all entities featuring the competence of making, applying and executing legal norms (states, international organisations with law making competence) as well as every addressee of law (citizens, human beings), legal practitioners, and legal translators and interpreters as facilitators and intermediaries in the communication on law.

What way of thinking for organisation and explanation of legal information has to be followed in order to communicate law consistently and comprehensibly?

The application of experimental logic allows for reformulation of legal texts based on formal logic and for providing information on law to a particular community featuring the same characteristics in a way that facilitates the comprehension of legal standards. Furthermore, the said comprehension of law can be examined and measured, which allows for recursive improvement of the quality of communication.

Which information resulting from the research on the comprehensibility of law allows for drawing conclusions on the consistency of law?

The results of examinations on the comprehensibility of law and the related activities aiming to improving its comprehensibility can be directly translated into conclusions on the consistency of law. Every time there is a need for a recurs in the methodological approach there is an indication that at this point the law lacks on consistency. Practical terminological research on comprehensible legal communication may also effectively reveal inconsistency, non-transparency and non-compliance of law. It is capable to show blurred boundaries of legal terms, their non-accuracy or normative disconnections.

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