

*Almut Meyer**

Intercultural Competence in Legal German Teaching: A Didactical Implementation

Abstract

On the basis of a qualitative needs analysis conducted among Finnish jurists, cultural competence was found to be one of the most important skills required in legal occupations. This finding raises the question of how to teach 'cultural competence' to law students. In this study, culture is principally conceived of as a way of life and how we construct meanings from the world surrounding us. Intercultural competence is, in the context of this study, constituted through cultural knowledge, which in turn enables us to understand other cultures. This article discusses the didactical implementation of cultural competence in legal German courses at the law faculty of the University of Turku. The didactical approach presented sees culture in relation to legal texts, as juridical work is always text-based and because texts contain cultural phenomena, which are relevant to understanding legal contents. In this study, legal texts are dealt with from a hermeneutic-constructive perspective to interpret systematically their cultural content. Correspondingly, an ethnological-hermeneutic interpretation model forms the core of the theory-conducted interpretations of cultural phenomena. Hence, intercultural competence is acquired through those interpretations.

After a few introductory remarks, the article briefly presents a needs analysis, and then proceeds to the theoretical framework of the interpretation model, followed by a case study and its didactic realisation.

1. Introduction

For five decades language studies in Finnish, Swedish, English and German have formed an integral part of the law studies in the Faculty of Law at the University of Turku. The development of teaching planning has mainly been distinguished by subject-oriented research, in this case essentially legal linguistics. Discussion and changes within Finnish universities in connection with the European integration processes (Bologna Process) and quality management induced a fundamental re-thinking of the teaching of legal German. As a teacher of German and of foreign language for specific purposes, my research has focused on aspects of teaching legal German, and more specifically questions of course design. In order to adjust teaching planning to meet concrete needs for German language knowledge in legal professions, I have collected empirical data in interview studies with Finnish jurists¹. This article focuses on a partial result of the empirical investigation: the ascertained significance of cultural knowledge in legal professions and its didactical implementation. This kind of cultural knowledge is also referred to as **intercultural competence**, which is needed in a professional context. Intercultural competence is then in didactical terms set as a training aim. The main question this article addresses is how that learning objective could be attained? Thus, the subject matter is the construction of such cultural knowledge. The purpose is not to contribute to the already existing manifold definitions of culture, but rather to develop a holistic didactical concept, according to Risager (2006: 22), related to cultural contents represented in legal texts. On the basis of legal texts, the learner gets access to the legally relevant cultural phenomena that the text contains. Those phenomena exist independent of the law, however, they are necessary prerequisites to understand the text in its cultural, and especially legal,

¹ For detailed representations of the interview studies see Meyer 2011. To my knowledge this interview investigation is the first in Finland that concentrates only on jurists.

* *Almut Meyer*
University of Turku
Faculty of Law
FI-20014 TURKU
almut.meyer@utu.fi

context. Access to those implicated cultural phenomena is constructed through interpretation processes, which can be conceived of as explorations of the cultural dimensions of the text². In this way meanings of cultural phenomena are generated. At the core of this hermeneutic method of constructing meanings is a theoretical model that allows for systematic interpretations. After these introductory remarks, I will turn to the needs analysis and focus on its method and the partial result of intercultural competence needed in professional contexts.

2. The method of the needs analysis

Empirical information was collected in 2008 and 2009 in semi-structured interviews of twelve Finnish jurists in Turku and Helsinki who, according to the information gathered, use German in their professional communication. The interviews are a practical tool of investigation, since jurists in this study willingly gave detailed answers. The interest of the jurists to participate in the investigation correlates with their high level of awareness of the linguisticity of law in general, because legal work is based on and comes into being through language (Müller 1999: 31).

In general the purpose of the qualitative interview study was to get access to the everyday world of the jurists and especially to learn how they describe their language needs in occupational situations (Kvale/Brinkmann 2009: 29). The data obtained about typical legal problems between Finnish and German (contracting) parties is central, because they highlight the significance of cultural knowledge in legal contexts. A total of ten lawyers, one judge and an advisory official were interviewed—and the sample included ten males to two females. The interviewees were mostly personal contacts or found through the German-Finnish Chamber of Commerce.

The interviews of the twelve jurists were recorded as audio documents and later transcribed³. The number of subjects interviewed was determined by the limited time and resources available for the investigation in question. Twelve qualitative interviews are considered to form a legitimate source for the purposes of this study

Semi-structured interviews have been chosen, because they allow for queries as well as clarification to avoid misunderstandings⁴. In particular, the results are comparable since the interviewees answered the same questions (Long 2005: 37). The questions are not strictly organised and so, follow the principle of openness, which allows unexpected answers or adjustments of the topics as well. Once the data were collected, they were transcribed and subjected to a qualitative content analysis. The individual answers obtained were organized according to categories that are based on the material, which fulfilled the didactical purpose of the study. (See Mayring 2002: 114 and Kvale/Brinkmann 2009: 278). In addition, divergent answers are taken into account as long as they give relevant information about language needs.

As a partial finding concluded from the data, the significance of cultural knowledge can be pointed out as one of the most important competences that are needed in legal professions. This result is the point of departure for the following theoretical reflections on how to implement the stated need of intercultural knowledge into teaching. This question is reflected against an ethnological background that offers an adequate interdisciplinary frame for the subject matter.

3. Conceptualising culture

From the data it can be concluded that in general jurists see knowledge of another culture as a necessary prerequisite in order to understand the law of the country in question. The data demonstrated that experiences from everyday life can open up a window to understanding other cultures

² It is important to keep in mind that cultural dimension, i.e. where cultural issues take place, are of a complex kind. Those places are not geographically restricted to the target and learner's language, but may also touch other cultures. Risager speaks about this in relation to "cultural flow" (Risager 2006).

³ For a detailed depiction of the interview investigation see Meyer 2011.

⁴ The questions crucially aimed at the jurists' language learning biography, situations in which German is used, problems arising in Finnish-German relations, and reasons for problems in Finnish-German communication.

in general, which also may help the jurists in their work. In legal matters, insufficient linguistic skills are not seen as a reason for law cases, but a lack of knowledge of the other culture is. A quotation from the interview illustrates what the jurists think about culture:

One should try to follow where the language is used, follow the culture and everyday life, because the significance of words arises from those two things. (...) Be part of their life and have a look at what they [Germans] eat, how they make their bed or how they treat their dogs – then you understand their way of thinking.⁵(Respondent 11)

In legal professions, intercultural competence is certainly important beyond everyday routines. In order to develop sensitivity and understanding in intercultural cross-border activities, it is important not to restrict one's own culture-bound thought patterns. As one jurist states: "If you know how they are wired it is a pleasure to deal with a German."⁶ (Respondent 10)

To be able to address different cultural phenomena in this study, the complex and exhaustively defined term 'culture' needs to be clarified. Therefore, in this article I am not undertaking to finally define this complex term, but rather start from manageable units and then come to a subject-adequate cultural 'definition in progress'. Those units are **cultural phenomena** seen as constitutive parts of culture, which we encounter in legal texts. Such segmentation refers to the idea that cultural items are preceded or followed by contexts and thus are explained. A context may be any reference point as well. My concern here is to make these cultural items explicit by applying the concept of context and addressing texts with typical juridical questions like, e.g. 'who', 'where', 'when', 'what', 'why' and 'how'. The answers to these questions give information about the environments or contexts in which cultural phenomena occur (Herndon 1981: 25). This approach to the segmented complex notion of culture seems to be justified for several reasons. With respect to language teaching it means that the learner gains cultural knowledge through the exploration of these contexts. The exploration can focus on and emphasize certain contexts according to the item in question (Herndon 1981: 25). Furthermore, this approach corresponds with the intertextuality of juridical work (see Busse 1992: 36-37, 2000: 809-810, Müller 1991: 31-32), and also allows one to stress particular contexts, which are of specific interest in teaching situations.

In the following, the **concept of context** is associated with conceptualisations of culture within interpreting ethnology that essentially contributes to the theoretical background. The hermeneutic implications of these conceptualisations fit the essential core of foreign language didactics, as well as legal sciences or juridical work. Culture comes into being through the permanent reading of phenomena that surround us in our lives. Relations between individuals and their surroundings are constructed in continuous processes of interpretation. These relations can be seen as a network of interpretations, and thus culture can be understood as an on-going process of the construction of meanings. The following quotation illustrates this thought (Geertz 1973: 5):

... Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretative meaning.

Interpretation, understood here as the constructing process of cultural knowledge through interpretation, functions methodologically as a relevant connecting link between law and language teaching. From the perspective of legal linguistics, the further connecting of elements are the originated webs of significances that correspond to the text level, and also with the intertextuality of legal texts. Thus, the question arises of how these webs of significance are to be spun in terms of legal texts.

5 Original: Pitäisi pyrkiä sitä seuraamaan, ... niiden maiden, missä sitä kieltä käytetään, sitä kulttuuria ja joka päivästä elämää, koska sanojen sisältö kumpua sieltä, näistä kahdesta asiasta.(...) vaan pääset siihen elämään mukaan ja näet mitä ne syö, miten ne petaa sänkynsä. Ihan tämmöisistä asioista, miten ne kohtelee koiraansa. Sillä tavalla sinä opit sen ajattelutavan.

6 „Wenn man weiß, wie die ticken, dann ist es angenehm, mit ihnen Dinge zu regeln.“ (Respondent 10)

For that purpose a model is introduced to provide a systematic method of exploring the implicit meanings of cultural phenomena in legal texts. This procedure of text-based cultural exploration elucidates the close relationship between the text and its implicit cultural contents and therefore guarantees that the interpretations are linked to the subject (law) through the texts⁷.

4. The interpretation model

The interpretation model originates in ethnomusicology, in the anthropological **concept of music as culture**⁸. This concept underlines “the fact that music is a way of organizing human activity”. The term culture does not mean ‘high culture’ or ‘elite arts’, but rather “a people’s total way of life”, “the sum total of their thoughts and actions, learned and transmitted through the centuries of adapting to the natural and human world” (Titon 1992: xxi). The original model offers a systematic way to approach, investigate and understand any music-culture, by giving an outline for questions like what, who, when, where, and why, with respect to music. Searching for answers to these questions implicates the interpretation and understanding of music as culture. In the following, this concept has been applied to the subject matter of interpreting cultural phenomena in legal texts. To legitimate my approach I refer to Gephart (2011), who criticises the “tendency of excluding law from its ambit” and reminds us of the fact that in the past “law was perceived as a foundational element of culture”. Furthermore, this interdisciplinary theoretical frame can be understood as taking part in the “rediscovery of law as an object relevant to the central questions of contemporary cultural studies” (Gephart 2011: 9-10). Cultural studies have always been the core of ethnological methods, and therefore offer an adequate interdisciplinary framework. The transposing of the idea of law as culture could then be characterized as a “‘cultural turn’ of legal analysis” or, in this study, of interpreting legal texts in its cultural dimensions (Gephart 2011: 10)⁹.

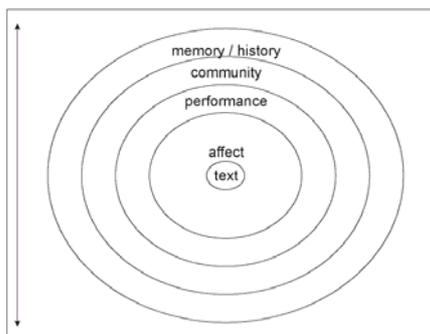


Figure 1. Interpretation model

In addition to the original model, texts are placed into the centre of this interpretation model, because of their central function in law and judicial work. Therefore, legal texts and their cultural phenomena are interpreted under the aspects of affect, performance, community, memory and history. These aspects are organised in concentric circles and correspond with the segmentation of culture into the contexts of cultural phenomena. The aspects are not separated from each other,

7 See Rieger (2004: 105), who speaks for “eine Kulturwissenschaft mit wissenschaftlicher Bodenhaftung”.

8 Music conceived ‘as culture’ is in general to be understood as a paradigm within ethnomusicology. This mostly anthropologically influenced change from ‘music in culture’ to ‘music as culture’ marked the turning away from ethnocentric approaches in music studies. The juxtaposition of ‘the Western’ and the so called ‘non-European’ music is characteristic for the ethnocentric approach, which could not do justice to the diversity of music cultures. The introduced interpretation model is seen as one realization of the theoretical concept that implements this anthropological change of paradigm.

9 Gephart’s term ‘law as culture’ marks a change of paradigm in the field of legal studies, as well as correspondingly to musicology: here, the reconciliation of cultural dimensions in law. This article does not deal with ‘the culture’ term, but rather concentrates on cultural phenomena, which are constitutive elements of cultures. So, ‘law as culture’ means in this article law as culture-bound phenomena.

but reciprocally relate to each other. Legal texts are the starting point of the reception process, in which the reader reacts to what he has read. The reception is understood as a **performance** of the text or as the key action that allows texts come into being and enables their effects. Without being received, texts would not be considered at all. The reception, seen as a performance, takes place in time and space, which are represented in the model by the aspects of community, memory and history. In the following discussion, these interpretation aspects are theoretically outlined and later demonstrated in a case study. Consequently, the performance aspect is more extensively discussed than others in order to highlight the original concept of linguistics, which is now seen from an ethnological perspective and within a cultural and legal context. In this study, the notion of performance differs from its linguistic roots. The performance of legal texts is similarly conceived as the performance of music texts: the basic idea of performing in its literal sense is applied.

4.1. Affect

Texts speak to the reader, evoke reactions that, for example, make someone smile, nod their head or create pictures in front of their inner eye. These effects, the emotional impact they cause, and what the recipient experiences, is referred to as affect. Thus, stimulating affects exist on one side of the text, and on the other side are the recipients themselves. These stimuli are used in analogy to comparable linguistic terms defined as **affectemes**. They can be, from the perspective of the language learner, new, incomprehensible, or somehow interest-arousing expressions of the text. Therefore, affects determine in the text the particular subjects of interpretation and, in addition, initialize interpretation processes. Because the text and the recipient intercommunicate with each other, the interpretation process is characterized by its interactivity.

A similar approach also exists in the anthropologically originated ‘Hotspot’ Method, which could only be applied in a highly reduced way within this context, as hot spots need to be determined beforehand as expressions of cultural significance and relevance. Heringer’s ‘Hotspot’ Method (2004: 162) finds its roots in the “Rich Points” idea of Michael Agar (1994: 100). Rich Points are defined as culturally enriched words that are incomprehensible and, therefore, need investigation. Thus, this method excludes an open and unprejudiced approach towards texts (Heringer 2004: 174-175)¹⁰. From a methodological point of view, locating such hot spots presumes the existence of previously constructed cultural knowledge, but is only developed during the interpretation process. This implies that the cultural content has to be evaluated in advance, and therefore this method remains rather a tool of the expert than one of the novice.

4.2. Performance

The anthropologically, or more precisely, ethnomusicologically based performance aspect needs clarification of the term performance. Performance in the field of language theory originates from Austin’s speech theory, and has been subsequently used in connection with the competence term in Searle’s speech act theory and in the communication theory of Habermas (Krämer 2002: 325-326). In this study, a precisely defined performance term is necessary in order to avoid misleading conceptualisations of the term, which has been from the outset controversial due to its ambiguity and universal applicability (Wirth 2002: 10). From a historical perspective, in science the performance concept initially was a clearly defined term in speech act theory, however it has become an umbrella term in cultural studies. With changes in the meaning of performance, its interest in knowledge recognition has also shifted from the “conditions of functional success” of the speech act theory to its “conditions of phenomenal materialisation”¹¹.

¹⁰ According to Heringer in intercultural communication there exists a notion of Rich Points, which he conceptualizes as Hotspots, or Hotwords (Ahrens 2006).

¹¹ The original quotation: „Das Erkenntnisinteresse hat sich von den ‘funktionalen Gelingensbedingungen’ der Sprechakttheorie auf ihre phänomenalen Verkörperungsbedingungen“ verschoben (Wirth 2002: 10).

According to Turner (1982), performance is understood in an ethnological sense as bringing cultural phenomena “home to us in their fullness, in the plenitude” of their meaning. The idea of this ethnological concept is that of “getting ‘inside the skin’ of members of other cultures” (90-91). An essential characteristic of the term is that it encompasses the performer, as well as the performed and the recipient. This kind of staging of cultural phenomena can also be seen as a prerequisite of any serious attempt to understand other cultures (Wirth 2002: 38). Thus, this concept places special emphasis on human activity and is used in this context as an interpretation aspect for the theoretical and systematic exploration of cultural phenomena.

The notion of performance is also a matter for legal discourse. From the point of view of legal theory, performance does not only imply something that is given, but adds something through its action (Christensen/Lerch 2004: 72). This legal linguistic concept of performance dissociates itself on the one hand from an understanding in linguistics according to which performance is conceptualised as the actual realisation of general language structures and on the other hand from the traditional concept of jurisprudence where the prior structure of law remains unaffected by its realisation (Christensen/Lerch 2004: 72). As a consequence, the concept of representative performance is substituted by the presentative. Just as **presentative performance** is constitutive for the creating of evidence in proceedings, it is in this context constitutive for the origin of culture or the acquisition of cultural knowledge (Christensen/Lerch 2004: 72-73).

In response to these terminological remarks, performance will be exposed in relation to the interpretation model. Performance of the text brings both affects and their impact into being, because only the reading or listening reception of texts enable the affects to unfold their effects. Performances inherently follow agreed-on rules as a prerequisite for coherent and reasonable communication (Titon 1992: 4). The texts themselves, as the object of the performance, are in line with linguistic rules and conventions, for example, lexical, grammatical, and structural and text type parameters. The community-specific regulation of a performance does not exclude an unconscious or intended offence against the rules, but is, as a matter of fact, an essential presupposition for variations, exceptions, discrepancies and offences that are defined by regularity.

The ontological character of texts makes them accessible to the recipient and therefore, texts, seen as an outcome of culture, represent the tangible side of culture from a semiotic perspective. Furthermore, text performances are demarcated from ordinary life (Titon 1992: 3), especially legal texts: a read out court decision, a default summons or texts written in a foreign language do not usually belong to everyday routines. Receiving, understanding or especially dealing with legal texts regularly implies some extra effort.

The above-mentioned examples of performance situations as such share common features, but nevertheless have to be further distinguished with respect to the positions of their performers within a legal context. A judge reading out the court’s decision to an accused is a representation of the state’s jurisdiction and his way of acting is regulated by legislation¹². Whereas the fined citizen who has received a default summons is in a weaker position in this hierarchical state-citizen relationship in comparison to the stronger position held by the judge. He has to bear the consequences of his misconduct. Another feature of performance, different from the already mentioned performances is for example, a German legal text read by a Finnish law student. He approaches the foreign language text as a member of a different legal system or culture and with an external perspective. This feature of performances allows for awareness of and reflection on the relation between the recipient and the other culture.

Performances take place in time and space. Court buildings or courtrooms, for example, are understood as places of justice, which are not only seen as the substantial product of a legal culture, but rather as the architecture of law that emblematically elevates the claim of the validity of the law. According to this concept, such places of justice are the fossilized expressions of a particular legal culture, which seeks to segregate the sacred into different forms that are different from the

¹² Here, a constitutional democracy is presupposed.

profanity of everyday life outside the courtroom (Gephart 2006: 27-28). Places of publication and reception are also understood as performance locations, so that the interactive relation between the reader and the text is recognised under this aspect of interpretation. Performance locations of (legal) texts can be public, as is the case with law or court decisions, or private, if the texts in question are official, but are not of public interest.

Raising the issue of the performer places special emphasis on the interactive relation between the reader and the text, because it includes both the performer's and the recipient's socio-cultural context in the interpretation process. For the exploration processes it is not relevant whether the performer and recipient are identical.

This aspect can be applied to both the whole text, as well as to single expressions, or the affectemes. In the latter cases, the concrete context the expression refers to is understood as a possible place of performance. The affecteme "Muslim headscarf", mentioned in a decision of the German Federal Constitutional Court of Bavaria (Germany), could be an illustrating example: the performance venues of the headscarf would be those places where it is actually worn.

Performance has purpose, which is, in the case of legal texts, originally given by the institutional framework of the law. Depending on the function of the legal text in the judicial system, performances pursue purposes, which are evaluated and interpreted during the performance. If, for example, the rendering of a judgement comprises the purpose of a performance, the evaluation by each recipient will definitely be of a different kind, and thus, might finally lead in some cases to the repealing of the judgement. Then, the mode of interpreting the texts underlying the decision is a consequence of (social) changes. Hence, the interpretation aspect of performance meets the requirements of the dynamics of text interpretations that is distinctive for the exegesis of jurisprudence.

Such changes in reading texts already imply the repeatability of performances, not to speak of the unquantifiable readership. Along with the repetition of performances, a modification of the repeated is included ("Anderswerden des Wiederholten", Krämer 2002: 331). As an example, legislative texts are modified by deleting, adding or extending articles to account for changes in social-political reality. This requires, as a result of repeated text reception, that the need for modification has been ascertained.

The kinetic perspective of interpretation is only, to a limited extent, applicable to legal texts, nevertheless it can give specific information about the culture. This interpretation aspect necessarily pre-supposes the physical presence of the recipient during the performance and can be, for instance, where the phrase "in the name of the people" is employed in publicly presented texts. The concrete behaviour of the performer, in this example the judge, forms the object of the cultural exploration. The outer appearance of the judge gives in itself reason to explore the cultural context, as the judge's robe is, against a Finnish background, in need of explanation, since Finnish tradition does not recognise judges' robes. Starting from this official robe, insights into basic concepts of (juridical) culture are revealed, only if the robe is understood as a symbol-loaded element of rituals. According to a sociological understanding, in the dress of justice the religiously elevated judge comes to light: the judge priest (Gephart 2006: 28). Furthermore, the articulation, gesture and expression of the chief judge can also be culturally explored, because they are determined by a code of procedure or legal policy. Criminal judges, for instance, probably read court decisions in relation to the accused and the statutory offence. The attitude and way in which a judge communicates to "repeat offenders" in drug-related crimes might be observable, especially if distaste towards the accused can be concluded from the judge's behaviour: chewing gum during the pronouncement of the judgement virtually provokes the reflection of such a performance¹³.

The partial aspects segment the complexity of a performance and encapsulate basic cultural values. Standardised human behaviour during a performance, apparent as such an encapsulation,

13 At the end of a trial at the Criminal Landcourt (Vienna) the Chief Judge was chewing gum while she pronounced her judgement in a drug-related trial.

is a cultural focus of multi-layered significances (Herndon 1981: 42-43). Thus, kinetic aspects are used for the cultural exploration processes.

4.3. Community

Each performance is situated in its specific community whose members carry with them the traditions and norms that make up its culture (Titon 1992: 5). Therefore, (legal) texts are also situated in their community that produces and receives them. The interactive relation between the text and the community of recipients is also accentuated since the readers themselves, as members of a community are situated in larger social contexts as well. Communities are characterised by the heterogeneous structure of individuals, often with diverse psycho-social backgrounds, and this again affects how texts are read.

Communities also have an effect on the production of texts: social developments, modified legal opinions, or the implementation of EU law into national law, can have an impact. Text producing communities can be, for instance, the single authors of jurisprudential writing, or above all, the institutions of the legal system, such as courts or parliaments. In foreign language teaching, such institutional communities generally are a crucial starting point for cultural explorations, as the learner can apparently grasp differences in the legal systems.

As shown above, communities exist on the recipient's side outside the texts and can be pointed out within the texts as well, by exploring the particular affecteme. Referring to the above-mentioned headscarf, possible communities to be explored could be headscarf users in Western and Eastern communities.

The exploration of culture according to the aspect of community implies cognitive elements that are part and parcel of reception processes, as reading and understanding texts requires knowledge structures. The building and enlargement of those cognitive competences are the key tasks of language teaching.

4.4. Memory and history

Memory and history are placed in the outermost circle of the model, yet they interact with the inner circles. Affects, performances and communities have their own historical context and are subject to changes in time. The aspect of memory and history is closely connected to the previous one that explores culture paradigmatically. The article will now explore culture within syntagmatic contexts. Both perspectives of interpretation, the paradigmatic and syntagmatic, complement each other.

Abstractly seen, the cohesion of the model is explainable against the cultural semiotic thesis of the non-heritability of culture. If culture cannot be inherited within human communities, and therefore is conceptualised as non-hereditary memory, then symbolic dimensions are addressed. In this study, the question is raised on how cultural products or the cultural contents of texts are transmitted to the following generations, since human beings process information and create symbols as products. Thus, cultural products are set in their social range, and in the frame of human relations and humanity. Subsequently, transmissions are less understood as entities than as the sophisticated fabric of action and institutions (Assmann/Assmann 1994: 117).

Communities are situated in history and come into being through memory (Titon 1992: 5). Here, memory means processes of passing on written legal texts, their cultural implications included. Deviating from Titon's model, oral texts are not recognised in this context. Although the origins of jurisdiction are of an oral kind, today legal texts prevail in the written form. Further, orally made binding agreements are exceptions and cannot be considered from a didactical point of view.

The prerequisites of memory are performances which are received by communities. Once more, texts and their cultural implications can only be performed and passed on if they are recorded, saved, performed or received. In those cases where texts are, due to a lack of reading com-

petence, not read or the cultural contents of an (im)material kind no longer exists, the transmission does not succeed.

In this context the term ‘tradition’ can immediately be suggested. Nonetheless, it is substituted by the notion of transmission to emphasize the communicative character of the passing on and memorising of culture. The subjects of transmission are both to be performed and received so as not to fall into oblivion. Thus, it is of no importance whether breaks occur in the transmission processes, as long as forgotten texts are reintegrated into the memory stock of the community. The term ‘tradition’ can signify the result of transmission, reception and memorizing processes without focussing on transmitting processes (see Assmann 2005: 34). Such a perspective prevents interpretive access for cultural explorations.

In human communities individual perceptions and memory capacities form the basis of memory and are socially influenced by the communities in question. Private remembrances of individuals are interactively established, or in other words, they always arise on the grounds of sociality (Assmann/Assmann 1994: 117). Memory is of crucial significance in creating a meaningful world (Altmayer 2004: 157). Hence, memory shows a sociogeneus character that is expressed in the concept of the ‘social memory’ characterized by Maurice Halbwachs: memories come into being through communities and in turn communities come into being through memories (Assmann /Assmann 1994: 118). To communicate individual memories for the establishment and preservation of communities, memories have to exist on a collective and generally comprehensible level (see Engberg 2009: 127).

In its essence, memory can be official or unofficial. This distinction is admittedly relevant for music, but is also applicable in the context of legal language, in spite of its institutionally bound character. Law is comprised of dispositive elements that allow for individual text arrangements to a certain extent in text production (for example contracts). In the case of a dissent, originally private memories might become official if a change of paradigms in the interpretation of law has taken place. In addition, the cultural contents implied in legal texts do not exclusively deal with legal matters understood in a narrow sense.

Titon’s concept of official memory has a parallel in the concept of the collective memory, which is defined as a way of institutionalised memory (Altmayer 2004: 158). For the model, this aspect has the function of ethnologically reflecting the affecteme with the perspective of an official memory. Implicitly, the interpretation recognises from which perspective the affecteme is presented: from an emic (introperspective) or etic (outer perspective) perspective. Is culture presented in its specific context or according to an external viewpoint? The model has been constructed to understand culture from an inner perspective that interprets the phenomena of the living environment in accordance with their specific culture-bound terms, or in other words, to read texts as culture. So, the frequently proposed concept of ‘culture as text’ (see Bachmann-Medick 2004) is turned around to allow a methodological and theoretically consequent implementation of the underlying constitutive-constructive idea of culture.

5. Case study

Thus far, the interpretation model has been described and justified against a theoretical background. In this section, methods of its implementation are exemplified. The example given is chosen from authentic teaching material designed for law students at the law faculty of the University of Turku: A decision of the Constitutional Court of Bavaria, dated 15th of January 2007, prohibiting the Muslim headscarf for teachers in Bavarian schools during classes. Decisions of this German court are in general relevant, since Finland does not have a corresponding court institution, and therefore constitutional law discourse and legal constitutional policy in Germany are followed. From the perspective of language learning, it is important to develop reading comprehension skills in regard to such a linguistically demanding text genre. The issue of this particular headdress, and more generally speaking, the socio-political consequences of immigration pol-

itics in the light of both power politics and fundamental rights have been current for some time. The Muslim headscarf is not only a controversial topic discussed in Germany but, for example, in France and Belgium as well, where the burqa is currently prohibited in public. Similar issues are current in Switzerland, where the minarets of a mosque were rejected by a national referendum.

From the Finnish point of view, the prohibition of the Muslim headscarf for teachers is difficult to accept from a legal aspect, because in the students' opinion, its prohibition violates the fundamental right of the freedom of religion.

For this reason, the headscarf can be taken as an affecteme, or rather as the starting point of the cultural exploration. In the following, the affecteme 'headscarf' is interpreted according to the aspects of the above-introduced model.

5.1. Affects

The cultural exploration begins with the 'headscarf', because it draws the learner's attention, and they literally stumble over this word. The aroused affects are widespread, from amusement, irritation to inquisitiveness, or possibly also pictorial associations, such as *burka* and *yarmulke*.

Emotionally seen, affects can be viewed negatively and even result in the rejection of involvement with the other culture. In such cases, it is especially important to initialize cultural exploration to enable the learner to build up a knowledge-based and conscious attitude towards the investigated matter.

5.2. Performance

Headscarves and headdresses are performed, they are worn. Therefore, for example, for the scarf-wearer – the performer –, situations of use, space, time, behaviour and the purpose are to be explored. These first steps of interpreting the headdress under the aspect of performance are pictured from the bottom up in the three white boxes on top of each other. The other four white boxes represent the main characteristics of performances as discussed earlier. The possibilities for further explorations are shown (in coloured boxes) as exploration paths in the tree diagram. Furthermore, the other tree diagrams that follow do not present all the exploration that would be possible, but are meant to be continued further.

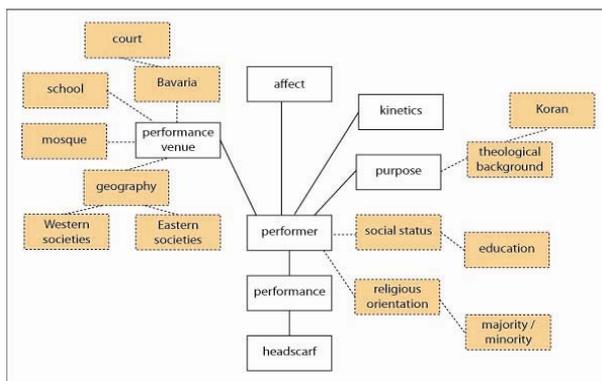


Figure 2. Performance aspect

Applied to a concrete teaching situation, the initial points for didactical deductions could be as follows: Who is wearing a Muslim scarf, when, where and for what reason? The actual involvement with the culture, or the acquisition of knowledge, takes place in answering the posed questions that are theoretically motivated in the model. The engagement is based on text material that is collected in relation to perception of interest, the competence of the learner and the investigated subject.

Starting from this tree diagram, the exploration can be continued according to specific interests, needs or language skills. In regard to the headscarf, questions such as “Who are they? Do they belong to the orthodox or liberal wing? Are they a member of a Muslim diaspora? Do they live in non-Islamic societies? What sort of educational or social background do they have?” may arise. The performance places can initially be geo-politically located on a large scale, whereas the context of local dimensions focuses on public places, such as institutions (school, street, houses of worship, churches) and private places. The question of the purpose is also aimed at religiously, as well as politically, motivated aspects of the investigation of the scarf. In concrete terms, it is on one hand a matter of a justification of the scarf and, on the other the interests associated with the scarf.

The performance aspect is also applicable to the whole text of the court decision. The text as a whole, as well as its geographically or institutionally locatable performance places: the Federal State of Bavaria and the Constitutional Court.

5.3. Community

In this context, communities that are seen as bearers of culturally bound traditions and norms are of interest. A matter of investigation could be the community in Bavaria or Germany, including its social, political, ideological and historical dimensions in the 21st century. Again, the headscarf is the starting point and interpretation paths are illustrated from the bottom to the top.

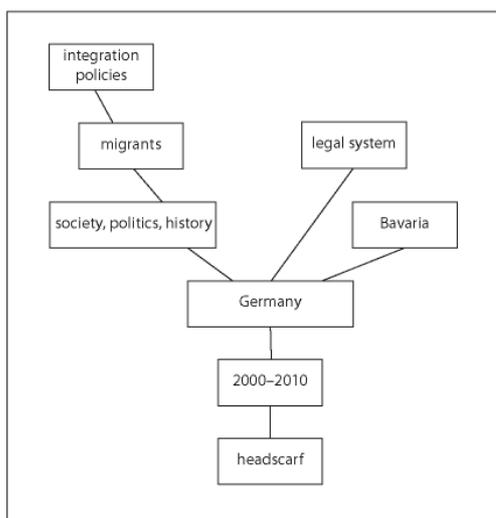


Figure 3. Community aspect

The matter disputed in a German court is the headscarf seen as a religious symbol, whereas the wearing of headscarves does not give rise to legal disputes in other communities such as, for instance, Finnish society. Apparently, the scope of investigation has to be limited by emphasising relevant aspects, such as the demographic structure, the religious affiliation or the constitutional system. All these questions mediate insights into cultural connections.

Islamic communities form sub-communities of the broadly defined communities of the 21st century, and directly shift the focus of the exploration onto the scarf and its use. A background of migration distinguishes most of the scarf-wearing Muslims in Germany, so that (politically current) questions of integration politics, asylum policy or discrimination against foreigners need to be investigated. In contrast, those Muslims who confess their faith, but do not wear a scarf, could also be investigated.

5.4. Memory and history

The Islamic scarf always raises the central question of the justification of this alleged compulsory dress code. Non-Muslims often introduce into the discussion the religiously justified power-political aspects that are supposed to be the ‘real’ reasons for the scarf.

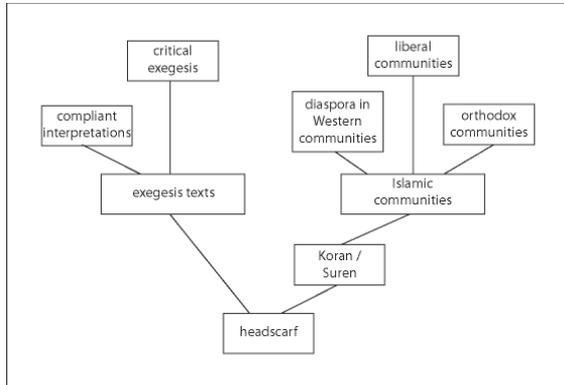


Figure 4. Memory/History aspect

At this point, neither such politically charged issues are going to be settled, nor are Islamic studies going to be practised, but a method of investigating the scarf in its own specific cultural context is shown.

From the perspective of memory and history, the passing on of scarf traditions are investigated in diachronic terms. Thus, the primary sources of *Koran* verses and *surahs*, or secondary sources, such as exegetic academic texts, are considered as appropriate texts for cultural explorations. As transmission processes do not only have temporal, but also spatial and social dimensions, they are geographically and socially locatable, thereby allowing the aspects of community and memory / history to complement each other.

6. Didactical realisation

Finally, after the theoretical justification and explanation of the model, some concrete examples of teaching material are given. The tasks and exercises are linked to the branches of the tree diagrams as pictured above. Thus, theory-based cultural exploration is didactically realised. The following materials have been conceptualised for a legal German course at the law faculty of the University of Turku in the Spring term of 2010. The nine exercises are designed for a teaching unit, in which the decision of the Constitutional Court of Bavaria about the Muslim headscarf of teachers is dealt with.

6.1. Teaching material

Starting with the performance aspect, the first two introductory exercises for spoken production are seen in the diagram as ‘performer’, ‘purpose’ and ‘performance places’ and are essential elements of performances.

Exercise 1:

1. MÜNDLICHE PAARARBEIT: Wer trägt wann eine Kopfbedeckung?

Überlegen Sie sich zu den Bildern (s. u.) konkrete Situationen / Kontexte und beschreiben Sie diese. Machen Sie sich Stichworte.

Exercise 2:

2. Warum werden Kopfbedeckungen getragen?

Überlegen Sie, warum Kopftücher getragen werden.

Beispiele möglicher „Kopftuchkontexte“.

1



2



3



4



5



6



Exercise 3:

In the next introductory exercise, the learner's (recipient's) social background is involved, because the learner is asked to think about their own experiences with Muslims and headscarf wearing Muslims. This task goes beyond the aspect of performance as cultural exploration and is also integrated in relation to the community. At this point of the implementation of the model, the mutual impact of the circles is given expression.

3. Haben Sie Erfahrungen mit Musliminnen, die ein Kopftuch tragen?

Z. B. Erfahrungen aus der Schule, dem Urlaub, in Ihrer Wohngegend?

Exercise 4:

The religious background of the headscarf is approached on the basis of academic texts, in this case a doctoral dissertation dealing with the “Islamic scarf of teachers as a lack of qualification in the civil service law” (Manz 2004). Both the proponents and opponents of the scarf use the selected *surahs* of the *Koran*.

Von einem Kleidungsstück zum Frauenbild – Frauen im Koran

In der „Kopftuch-Debatte“ geht es auch immer wieder um seine (symbolische) Bedeutung und um die „richtige“ Koranauslegung. So schreibt Suzanne Manz in ihrer Doktorarbeit von 2004:

„Einige Musliminnen tragen aus religiösen Gründen einen Schleier oder ein Kopftuch. Es ist innerhalb des Islams umstritten, ob eine Verpflichtung zur Verschleierung besteht oder nicht. Die Befürworter berufen sich auf den Koran und die Hadithe. Sie nennen gewöhnlich die Koranverse 33, 59:

„O Prophet, sage deinen Gattinnen und deinen Töchtern und den Frauen der Gläubigen, sie sollen etwas von ihrem Überwurf (*viita*)¹⁴ über sich herunterziehen. Das bewirkt eher, dass sie erkannt werden und dass sie nicht belästigt (*häiritä*) werden.

Und Gott ist voller Vergebung (*anteeksianto*) und barmherzig (*armollinen*).“
(Manz 2004: 9)

Welches Frauenbild lässt sich aus den beiden Koranzitaten erschließen(*avautua*)?

Exercise 5:

The text of the fifth exercise is taken from an online-publication of the Federal Centre of Political Education and exemplifies the discourse about the scarf in Western societies. Here, the constitutional problem is briefly outlined from a Western democratic point of view. The text enlarges upon the headscarf-subject by introducing its constitutional dimensions and refers to the aspect of performance, its purpose and theoretical background (as shown in the tree diagram ‘Performance aspect’). Article 3 of the German constitution (Grundgesetz) is added to the material, for it is qualified to demonstrate intertextuality as a typical feature of the legal language.

14 The words in brackets are Finnish translations for the underlined German expressions.

Symbolische Mehrdeutigkeit des Kopftuchs

Besondere verfassungsrechtliche Probleme wirft die symbolische Mehrdeutigkeit des Kopftuchs auf. Das Kopftuch steht auch für einen politischen Islamismus, dem freie, demokratische Wahlen, Grundrechte, die Trennung von Staat und Kirche und die Gleichberechtigung aller Religionen fremd ist und der mit dem Grundgesetz nicht konform geht. Das Kopftuch gerät so in den Dunstkreis verfassungsfeindlicher Symbole. Eine "wehrhafte Demokratie" darf möglicherweise von seinen Staatsdienern erwarten, auf ein "missverständliches" Kleidungsstück zu verzichten. Andererseits könnte sich eine solche Kollektivhaftung aller Kopftuchträgerinnen als unverhältnismäßig darstellen und nur die individuelle Motivation zum Tragen des Kopftuches entscheidend sein.

Ähnliche Fragen wirft die vielseitige Deutungsmöglichkeit des Kopftuchs im Hinblick auf die Gleichberechtigung von Mann und Frau auf. Ein fundamentalistischer Islam billigt den Geschlechtern nicht die gleichen Teilhabechancen zu und beharrt auf einer klassischen Rollenverteilung. Das Kopftuch soll diese Überzeugungen dann sichtbar zum Ausdruck bringen. Art. 3 Abs. 2 GG dagegen verpflichtet den Staat auf die Gleichberechtigung von Mann und Frau. (Heinig 2005.)

tuoda esille

joutua jonkun

vaikutus-

aluulle

„torjuntakykyinen“,

vahva

osallistumis~

pysyttäytyä

Artikel 3

(1) Alle Menschen sind vor dem Gesetz gleich.

(2) Männer und Frauen sind gleichberechtigt. Der Staat fördert die tatsächliche Durchsetzung der Gleichberechtigung von Frauen und Männern und wirkt auf die Beseitigung bestehender Nachteile hin.

(3) Niemand darf wegen seines Geschlechtes, seiner Abstammung, seiner Rasse, seiner Sprache, seiner Heimat und Herkunft, seines Glaubens, seiner religiösen oder politischen Anschauungen benachteiligt oder bevorzugt werden.

Niemand darf wegen seiner Behinderung benachteiligt werden.

Exercises 6, 7 and 8:

The purpose of these exercises is to teach the attainment of new vocabulary. In regard to cultural exploration, they refer to the aspects of community and memory / history. The constitutional court argues about its decision with the Western and Christian tradition and values that justify the prohibition of the scarf in schools. These values are the cornerstone of education, and are also written down in law in some of the federal states of Germany.

6. Adjektive und nominale Ausdrücke: Kombinieren Sie¹⁵.

Achten Sie auf die korrekte Adjektivendung.

christlich-abendländisch / glaubhaft / hoheitlich / islamisch / islamisch / laizistisch / muslimisch /
 religiös oder weltanschaulich / staatlich / unzulässig /
 schulrechtlich / verfassungsmäßig / ~~verfassungsrechtlich~~

.....	verfassungsrechtliche	Regelung
.....		Symbole
.....		-e Konfession, -s Bekenntnis (2)
.....		Bildungs- und Kulturwerte
.....		Erziehungsauftrag
.....		...

7. Nominale Ausdrücke und Verben: Ordnen Sie zu.

aufstellen / ausdrücken / beanstanden / eingreifen / erheben / genügen / gewährleisten /
 untersagen / verbürgen / verkörpern / verletzen / ~~vermitteln~~ / vermitteln
 versagen / verstoßen

-e Überzeugung, -e Haltung
in die Glaubens- und Religionsfreiheit, in Rechte
gegen das Bestimmtheitsgebot
Bildungsziele, Grundwerte (2)	glaubhaft vermitteln
.....

8. Ergänzen Sie die fehlenden Präpositionen. Es gibt mehr Präpositionen als Lücken.

an / auf / auf / auf / auf / durch / gegen / in / in / von

1. Die Antragstellerin hat eine Norm des Bayerischen Erziehungsgesetzes Popularklage erhoben.
2. Die angegriffene Norm greift den Schutzbereich der Glaubens- und Gewissensfreiheit ein. Christlich-abendländische Kulturwerte sind der Bayerischen Verfassung verankert.
3.

¹⁵ Please note that exercises 6 to 9 are not completely given, but only the first tasks.

Exercise 9:

The last exercise is meant to practise linguistic structures and summarises the content at the same time, by tracing the line of argument of the court.

9. Trennbare Verben: Verbinden Sie die Satzanfänge mit den jeweils passenden Satzenden.			
Wie heißen die Infinitive der Verben?			
1.	Die islamische Religionsgemeinschaft greift	A	eine religiöse oder weltanschauliche Überzeugung aus.
2.	Äußere Symbole und Kleidungsstücke drücken in bestimmten Fällen	B	die Grundrechte der Eltern und Schüler gegenüber.
3.	Art. 59 Abs. 2 Satz 3 BayEUG stellt	C	in die Glaubens- und Religionsfreiheit ein.
4.	D

6. Conclusion and outlook

In Finnish-German legal relations, intercultural knowledge emerged in a qualitative interview investigation as one of the most needed competences for Finnish jurists in professional contexts. The empirically ascertained professional need of cultural knowledge is the point of departure for the theoretical reflections of this article that merge in an illustrative case study. The conducting question was how cultural knowledge could be mediated in teaching legal German as a foreign language for Finnish law students. For that purpose, an ethnological-hermeneutic interpretation model is introduced to provide a systematic method to explore the cultural phenomena of legal texts by interpretation from an inner perspective. The model is grounded in the ethnomusicological concept of music as culture that supplies also a theory-based method to understand legal subject matters as culture. The interpretation of legal texts focuses on cultural phenomena that exist independently from the law, but are relevant to understand legal texts. Cultural issues are interpreted under the model aspects of affect, performance, memory and history, which together are complementary and thus form a holistic approach to the cultural explorations.

The case study, to which the model is applied, is a decision from the German Constitutional Court of Bavaria that prohibits teachers to wear in classes the Muslim headscarf. The text is chosen because it is relevant, as well as a text type for its societal and political (global) dimensions. These are, among others, the positive versus negative freedom of religion and Islamic discussions with respect to integration politics. The court decision throws light on German constitutional conceptualisations in regard to fundamental rights and legal practise. The examples of possible cultural exploration paths are pictured in tree diagrams, which show that the model offers the learner a tool to systematically construct cultural knowledge according to their specific interests. The demonstrated didactical realisation of the theoretical model refers to its interpretation aspects. The material of the concrete exercises is based on texts, which contain the cultural information in question.

The didactical implementation demonstrated in this article is not only restricted to the Finnish-German context or to the German language, but it is rather applicable to other languages or cultures as well, which do not necessarily require inter-cultural relations. Explorations can also be done in a mono-cultural context. Furthermore, the interpretation model meets methodological needs in language just as well as in comparative legal studies. In this way, the relevance of the model is underlined and also its interdisciplinary approach legitimated.

Furthermore, the interpretation of legal texts has to be expanded to other cultural elements, such as law and legal language. Therefore, the concept of law as culture-bound phenomena would gain broader theoretical foundations. To answer one emerging question, whether the model succeeds in mediating cultural knowledge, more empirical investigation should be done. A broadened theoretical and empirical bases of this interdisciplinary approach towards law as cultural

phenomena might constructively contribute to the methodological discourse in legal comparative studies concerning the understanding of other law and legal cultures.

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