

Legal Text and Pragmatics: Semantic Battles or the Power of the Declarative in Specialized Discourse

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Abstract Legal jargon is rooted in assertions which take on the characteristics of declarative speech acts if they become the basis for a court ruling. Based on this premise this paper develops the paradigm of Semantic Battles and shows: Dominance and power are also exercised through semantics! When viewing language as a means for asserting certain views on controversial topics in intellectual domains (e.g. medicine, economics, natural science, history, law, etc.), quasi disputes arise within debates among professionals with regard to appropriate terminologies and definitions, in other words, “semantic battles” take place. Language directs the constitution of facts within the framework of knowledge; knowledge is developed through language. The contribution examines the forms and functions of the discourse of professionals in various scientific fields. The declarative speech acts of law, therefore, consist of assertive speech acts of scientists from various fields. This form of exercise of power through language must be made transparent if a state of law (“Rechtsstaat”) demands loyalty from its citizens.

Keywords Semantic battle • Power • Declarative speech • Legal language

1 Introductory Thoughts

Consciousness is reflected in the word like the sun is reflected in a droplet of water. The word is a microcosm of consciousness, related to consciousness like a living cell is related to an organism, like an atom is related to the cosmos. The meaningful word is a microcosm of human consciousness. (Vygotsky 1934/1962)

The linguistic surface information of texts and conversations exhibits characteristic indicators of specific ways of thinking. If one sees language use as a means for enforcing certain viewpoints on so-called facts or rather social facts, linguistic approaches instruct the constitution of facts and their affiliated frames of knowledge

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(for ‘frames of knowledge’ see also Busse 1991, 1992 and for ‘frames in discourse analysis’ see Konerding 1993, 2005, 2007, and Ziem 2008).¹ The development and spread of knowledge is directly linked to the respective language usage. This knowledge is linguistically adapted for the purpose of communication. The shaping of viewpoints for the enforcement of interests is thus tied to linguistic signs and their semantics. To be able to establish a certain linguistic access to public discourse means that a specific perspective of linguistically constituted facts is imposed. The perspectivity of linguistic units in the professional constitution of facts is thus understood to be an indispensable prerequisite (see also the explanation of *semiotic captivity* (*semiotische Gefangenschaft*) in Felder 2009b, 32, or Felder 2009a, 29).

In the interest of linguistic investigation, such a wide topic area needs to be stated more precisely with regard to the domains of knowledge (cf. the concept of the research network “Language and Knowledge” in Felder (2008), where linguist specialists work together with professionals of the subject area, who are interested in linguistics, in their respective areas of expertise). The topic may then be roughly demarcated via the following questions: with the help of which linguistic elements is meaning according to a predetermined order intersubjectively constituted, how is it conveyed, and how can such processes of knowledge development be described with the help of linguistics?

During the structural analysis of such processes (i.e. during the conjunction of the objective and subjective sphere through linguistic signs) I assume, that conceptualizations in sign sequences can be made explicit as communicatively learnt and experienced forms of knowledge. Specific sign sequences and sign combinations (Zifonun 2000) can with time be stabilized as linguistic and social patterns of perception and objectification. Such patterns can be delineated in texts through conventionalized signs and sign systems, or rather style traditions (in the meaning of Scherner’s (1994) approach of the understanding of texts as “tracking” or “sign-reading”). And these patterns can be understood as linguistically constituted cultural products. Looked at from the point of view of epistemology, these natural linguistic structuring devices order the contents of our mind/imagination and form part of the constitutive parts of perceived meaning. This is why linguistic elements are idiomatic steering devices.

¹The term *frame of knowledge* is here used as a hypernym for the terms *frame*, *schema*, etc. and includes all the different forms of the knowledge conglomerates that aid understanding and which have been identified by linguistic text analysis up to date (whether isolated or network concepts) (Busse 1992, 37 and Busse 1992, 74 ff.). Frames of knowledge consist of concepts; individual parts of these concepts are called connotations, when they describe an aspect of a greater whole (i.e. a concept) or of a specimen of a category. Concepts are embedded in a network of relationships and thus into a frame. They represent knowledge about facts and thus constitute specialized knowledge. Controversial questions in a domain of knowledge are decided in view of well-known concepts, which are influenced by the frames of knowledge (or rather: through the formation of a certain knowledge conglomerations/dispositions or the filling of so-called slots in schemata). These concepts can in part be made clear through definitions. In this context, the interaction between action (usage), cognition and reference needs to be explained from a semantic point of view (“regulative reference concepts”).

By *idiomatic* I understand here the characteristic specificities of language usage in a whole social group – here the professional expert and the institutionalized media communication (cf. Felder 2009a: 24). In the context of the analysis of texts and conversations, the following question is of particular interest: thanks to which qualities language as a system (both in the sense of linguistic knowledge and production) can serve as an orientation of behavior. The idiomatic organization of linguistic knowledge mirrors itself in the specific form of our frames of knowledge and is at the same time the frame for orientation and understanding.² Speakers, therefore, use linguistically denoted differentiations in order to articulate experiences and ideas (e.g. the term *nano* (Zimmer 2009) or our linguistic usage of *mobbing* and the world experiences and living conditions associated with it); at the same time, such usage again becomes part of the linguistic knowledge, and this process informs the usage of language in given situations.

In his critique of reason Kant pointed out, that the things we understand are not the things in themselves, but appearances. This changed the point of view from the level of being to the level of expression about being. With his concept of symbolic forms Cassirer (1964) pointed out that a priori moments constitute insight first of all, not only through the structure of reason, but that insights are also informed by the cultural forms of objectification perception of the world. The forms of representation of the facts of life are mainly linguistic signs (i.e. act through linguistic signs). Any perspectivation that comes with linguistic action is an a priori condition of perception. In this way, any cultural formation of signs has an immanent perspectivity (a fundamental semiotic category). This can be understood when we describe, how linguistics signs relate to behavior, i.e. how socially relevant facts are displayed.

The patterns of perception that have been developed by humans and which are culture specific in the form of linguistic signs contain the possibility, to make our processes of perception more diverse and to intentionally make them more perspectival. The semantic vagueness of signs of natural languages in principle assists rather than impedes understanding. That is, the semantic vagueness of the individual signs forces us into linguistic processes of objectification and understanding and to not only understand these signs as patterns, but also as entities, which only achieve their concrete function in the specific context.

Thus, what is of particular interest is the structure of collective knowledge, which manifests in linguistics signs and concatenations of signs, which again co-orient our processes of objectification of concrete ideas (cf. Schmidt 1996: 16): perception is not determined by, but instructed through language.³ The following elucidations follow the constructivist paradigm only in part, because, if one looks at them critically, the sociological and cognitive-psychological models of communication can be accused of a marginalization of linguistic knowledge. For even though they talk

²This corresponds to Feilke's concept of a "common-sense competence", cf. Feilke 1994: 373 ff.

³S. J. Schmidt (1996: 16) states in his work with the telling title *The Worlds of the Media*: "Signs and concatenations of signs [can] orient cognitive and communicative processes, but they cannot determine them."

a lot about language, language and linguistic competence is hardly ever seen as (linguistic) product of knowledge of a distinct communicative and cultural community. This is no wonder, for both the analysis of lexical structural patterns and the understanding of the perspectivity of syntactic organizational patterns – from grammatical morphemes over syntactic correlations to fundamental grammatical principles of organization – are difficult. In the attempt to make explicit the mental forces that arise out of the ability to speak in the context of *energeia*, Humboldt described the structural power of linguistic processes of objectification in a both strange and plausible definition of the term: “form can only be understood as a law, a direction and a procedure” (Humboldt 1906: 455). What Humboldt is referring to here are inner-linguistic differences. In the methodological approach taken here, the most important element is to discover the lexical and grammatical patterns of organization as well as the principles of formation that work in them. These different principles of formation are the original entrance for the influence of language on thought – as already pointed out by Humboldt.

This brings me to the first question, i.e. how perspectivity can be established in linguistic forms. For this reason, discourse analyses take text into account, both at the level of the sentence and at the level of lexical and grammatical forms (cf. the program of pragma-semiotic text analysis on the basis of linguistic media analysis in Felder 2009a).

The distinction often used in the media sciences between *actuality* (*Wirklichkeit*) and *reality* (*Realität*) (Schmidt 1996) is helpful here: *Actuality* here means the tangible world that can be experienced and grasped through the senses, *reality* means the medially reproduced and thereby inevitably constructed scenario thereof. In view of this differentiation, we as media recipients of the so-called age of information are to a large degree confronted with reality, i.e. with linguistic products that pretend to be actual. When absorbing socio-politically relevant events we consequently deal with created materials that have transformed actuality into reality. The linguistic and symbolic signs and concatenations of signs of the mass media are, therefore, a selected segment of the world viewed from the specific perspective of an interest-led constitution of reality in the spectrum of diverse actualities.

2 Definition of the Approach “Semantic Battle”⁴

Meanings are also manipulated by power and dominance (Felder 2006, 13). This hypothesis brings the linguistic constitution of technical objects or rather facts to the forefront and thus touches on the linguistic area of semantics. If one furthermore takes the pragmatic assumptions into account, which have made the investigation of linguistic actions their aim, the question arises, how different linguistic strategies of

⁴The explanations are based on introductory article “Semantic battles in domains of knowledge. An introduction to competition between naming, meaning and technical fixation” in *Semantic Battles*, which I edited in 2006.

action (in denoting and signifying) can be described. With such a goal – with respect to socially relevant domains of knowledge or rather sciences – one automatically touches on more or less subtle forms of dissent. These kinds of dissent, however, often take place – not always explicitly but implicitly – in conventionalized technical and communicative discourses. Not all these technical debates can be easily understood by laypersons, because they often also mirror different understandings of technical terms. This brings us to the problem of different meanings (meaning accentuation), which quite obviously contradicts the widely held belief that technical discourses are unambiguous.⁵ The difficulty, however, is – and this exacerbates the problem – that such “hidden” differences in meaning can be indicators for certain sciences without this connection becoming clear to the generally interested *zoon politikon*.

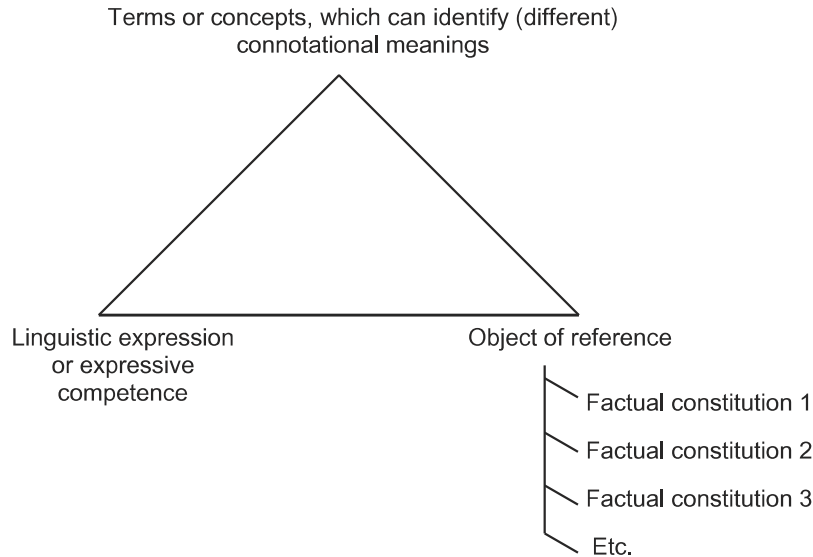
This is not unproblematic in so far as such semantic battles are often fought quite vigorously over decades and can become part of the history of science. At the same time, it needs to be made clear that these battles have a hand in constituting the object of research. Thus, they are a necessary prerequisite for the understanding of important research questions, since most of the technical terms belong to a whole school or rather a defined, methodically organized research interest. The implementation of specific technical terminologies and the discussion of facts in the sciences, social sciences and humanities thus are an attempt to structure the world, or rather a part of the world from a central perspective as a systematic space from a particular point of view.

“Semantic battles” or linguistic standardization conflicts take place in most subject areas. “Semantic battle” is here – to first give a general definition – understood as the attempt of a subject area to implement certain linguistic forms as expressions of specific, patterns of thought led by specific interests and actions.

For even though texts and not terms constitute research facts, terms do play a central role. The individual cases will show, how following linguistic rules, terms are formed, stereotyped, confirmed or modified through researchers and sometimes multipliers (lobbyists) who constitute facts through the formation of linguistic terms in their speeches. For it is not the terms themselves that of themselves as entities refer to facts as different entities, but the other way around: the researchers who know the relevant literature are the actors in the process of constitution through their usage of technical terms. For through their usage, they constitute, confirm and change terms in the process of the fixation of facts.

For a terminological explanation, I will differentiate with the help of the well-known semiotic triangle (Ogden and Richards 1923).

⁵ Cf. for example Roelcke (1991), Gardt (1998), Felder (2003: 179ff.).



Differentiation of the semiotic triangle (Ogden and Richards 1923)

The formation of a term or a concept⁶ (through the specific and repeated usage of a certain linguistic expression) will be termed here an *attempt at meaning fixation* (*Bedeutungsfixierungsversuch*, cf. Wimmer 1979, 1998). Identical expressions can evoke terms or concepts with diverging connotations and thus help the specific factual constitution (here the *process of meaning fixation*, described by Wimmer (1979, 1998) as *Referenzfixierungsakt*, i.e. *referent fixation*). *Guiding principles* or *concepts* are defined as – and I am taking up an investigation on political language use here (Felder 1995) – concepts or terms of linguistic content, which text producers in the constitution and explanation of facts unconsciously make use of or consciously try to implement (Felder 1995, 3 ff., 47 ff.). The described facts vary, depending on the specific concepts and terms. Such differences can be identified via the connotations as aspects of meaning or accentuations. The replication of attempts of semantic and fact fixation of a debated fact is at the heart of the research interest. Meaning should in this context not be understood as an entity, but as a postulation of meaning or rather an interpretative hypothesis that is comprised by the textual and situational interpretations.

⁶Concept here means a cognitive unit or content, which allows characteristics or connotations to be identified (cf. Felder 2003: 43). This still does not touch upon the question, in how far these units are of linguistic nature or not. As Barsalou puts it: “By *concept* I mean the descriptive information that people represent cognitively for a category, including definitional information, prototypical information, functionally important information, and probably other types of information as well” (Barsalou 1992: 31).

By way of the comprehension of the linguistically communicated constitution of facts (the referential action) of the expert (linguistic precedent, reconstruction of the former naming fixation, etc.) other experts not only develop the meaning of an expression, but also possible action patterns, after whose example current denotational fixations can be continued, modified or replaced. This – the assertive positioning of certain connotations of technical terms and/or in the implementation of naming fixation as action patterns – constitutes “semantic battles” in scientific, specialized and general discourses of different domains of knowledge.

3 The Position of the Approach “Semantic Battles” in Discourse Linguistics

The debates to be looked at in discourses (cf. Warnke 2007 and Warnke and Spitzmüller 2008a, b) are the ones in which the protagonists are social actors, who try to shape texts and conversations through their idiomatic usage (cf. e.g. Müller 2007b; Vogel 2009). Such texts and/or conversations (which need to be carefully sorted and compiled in a corpus, cf. the Heidelberger Korpus http://www.gs.uni-heidelberg.de/sprache02/hd_korpus/ and Bubenhofer 2009) need to be analyzed for social contextualization from the point of view of discourse linguistics and in view of diverging conceptualizations and action strategies (Busse 2007 and 2008; Konerding 2005, 2007 and 2008). This leads to contentious centers of discourse in the texts that are to be investigated. By contentious centers I understand a competition that is manifested in language games about the controversial acceptance of meaning interpretation, options for action, assertive claims, knowledge guidelines and values in societies. Thus, discourses come to form orientational frames and central variables are always repositioned in the process of meaning formation.

Discourse here is understood, in the sense of Busse and Teubert (1994), as texts that

- deal with an object, a topic, or a concept, that have semantic relations and/or interact on the level of assertion, communication, function or goal orientation,
- stay within the specified borders of the research program with regard to the time, area, social extract, communicative area, text type and other parameters,
- and form an intertextual continuity through implicit or explicit (i.e. realizable through text or context semantics) referencing (Busse and Teubert 1994: 14).

Fraas and Klemm (2005) complete this linguistics inspired by Foucault with the following discourse dimensions, which have also been noted by Warnke (2007) and Warnke and Spitzmüller (2008a, b) in their approach:

- (a) Discourses as associations of texts linked by content
- (b) Discourses as amalgamations of topics in texts
- (c) Discourses as networks of signs, tracks and trails of knowledge segments
- (d) Discourses as reference values for individual texts

- (e) Discourses as forms of textual dialogues
- (f) Discourses as forms of correspondence of systems of thought and arguments
- (g) Discourses as interaction in society
- (h) Discourses as virtual text corpora

Two of the methods of discourse analysis two will be mentioned here. They take a similar approach but still differ in the specificities. On the one hand, I want to bring up my proposal of a linguistic discourse analysis (Felder 2009a), which I discussed under the paradigm of pragma-semiotic text analysis. Starting from a lexical, syntagmatic and syntactic-semantic analysis from a text semantic point of view, illocutions are systematized in a pragmatically oriented investigation and the speaker attitudes, which are indicated at the text surface, are explained. In addition, certain discourse topics will be analyzed in more detail with regard to topoi and argumentational structures (Wengeler 2003). This will be done at the levels of investigation *lexis – syntagma – syntax – text* (including the intertextual referencing structures), and the text-image-relations, all under the paradigm of pragma-semiotic text analysis. This model is based, amongst others, on the ideas of Polenz (1988), Scherner (2000) and Gardt (2007) and is inductively oriented: departing from the intensive study of the text interpretational hypotheses are offered on the basis of pertinent linguistic criteria – from specific individual instances to overall context.

As a second approach I want to mention Warnke's and Spitzmüller's (2008a, b) multi-level model of discourse analysis, which is structured more deductively. At the heart stand three dimensions: the intratextual level (which is mainly text analytic, i.e. lexeme, proposition and text oriented), secondly, the transtextual (discourse oriented) level and thirdly, the dimension of discourse actors taking into account also the media, the discourse position and the interactional roles of author and addressee. For each level the relevant linguistic methodologies and terminologies are conjoined.

A problem in both models has been pointed out by Konerding: "they still seem rather complimentary-aggregational, less theory-led and systematized or oriented in a convincing way towards an empirically successful research strategy" (Konerding 2009: 90). He correctly points out that the systematic connection between the individual research levels does not become clear and thereby reminds us of the desideratum of linguistic theory, that is that it needs to have a practical operability in actual research projects to develop and prove empirically: "the neglected but central and discourse constitutive concepts of *topic* and *topic discussion* will undoubtedly have to play a central role here" (Konerding 2009, 171).

4 Different Levels of Semantic Battles: Expressive Level (Denotation) – Content Level (Concepts) – Factual Level (Real-World Objects)

“Semantic battles” – as we said above – denotes the attempt to implement certain linguistic forms as expressions of specific interest-led action and thought patterns in a domain of knowledge. This can be achieved in various ways: through definitions or through meaning and fact fixation. Here the semantic battle is differentiated as an implicit or explicit conflict about the fittingness of linguistic expression with regard to three perspectives:

- the level of designation and definition: a number of expressions give prominence to different aspects of a fact;
- the level of meaning: one and the same expression has different connotations and accentuations;
- the level of facts and reference objects: seemingly identical or actually identical reference objects are differently constituted – either in the same expressions or a (supposedly) related (on the level of meaning or factual) manner of expressions.

With the help of attempts at implementation of definitions as action patterns and/or in the assertive positioning of certain connotation of technical terms and/or in the respective idiomatically influenced constitution of facts can semantic battles be fought in individual sciences.

The term *semantic battle* has been used for some time now in critical discourse analysis (e.g. Keller 1977; Klein 1989; Liedtke et al. 1991; Stötzel 1990), but historical and political linguistics that are interested in historical semantics also use this term (e.g. Koselleck 1972 and 1979; Bergsdorf 1979, 1983, 1985, 1988 and 1991), and last but not least, also politics that is oriented towards practical power and interest implementation also makes use of the term (e.g. Biedenkopf 1973 and 1975; Glotz 1985; Hombach 1991).

In most subject areas we find semantic battles or linguistic standardization conflicts that are fought in discourse, and which influence our general thinking and behavior. In this context Foucault introduced the term “dispositive” as a discourse form, in which power, justice and truth are linked and the practices, which satisfy human desires (*désir*) and social hardship (*urgence*), institutionalized (Foucault 1983, 105 f.). According to Foucault, sex is such a dispositive (Foucault 1978, 119 f.). Justice is another one (Foucault 1975; Seibert 2004, 12 ff). *Dispositive* here means a certain acceptance of certain behaviors, discourses, identities and forms of knowledge, etc.

The dispositive constitutes an intervention into the power relations (as e.g. the dispositive power) of certain social hardships. It bundles or functionalizes highly heterogeneous elements such as laws, discourses, (governmental) subsidies, etc. and functions as a means of analysis, with the help of which we try to establish, how a certain pattern could originate and what effects it makes possible. The dispositive

allows individuals an appropriation of knowledge, which they need in order to act in a (useful) manner in the world. A fundamental medium of dispositives is language (cf. also Busse et al. 2005; Liebert and Weitze 2006).

5 Examples of Semantic Battles at the Level of Denotation

I want to give two examples for semantic battles on the level of terms and definitions: on the one hand, the debate about cloning (discussed by Zimmer 2006) and, on the other hand, the contraposition of the terms *leading culture* (*Leitkultur*) and *metaculture* (*Metakultur*).

Zimmer (2006) shows with the help of the example of the so-called therapeutic cloning,⁷ how scientists try to form or change technical terms and their respective meanings in discourse via semantic battles. He already faces the problem of denoting in the presentation of the research problem, where he is in the difficult position of needing to name a term, whose definition and content, however, are still forming. But since authors already need to designate in order to communicate, Zimmer opted for the term “therapeutic cloning” as the most common one. (He therefore either puts the term in inverted commas or precedes it with “so-called”).

Zimmer (2006) analyses the prominent debate between theologians and medical scientists in the German newspaper *Frankfurter Allgemeine Zeitung* (FAZ) in the years 2000 and 2001. The articles by doctor Oliver Brüstle and Karl Friedrich Sewing, on the one hand, and by the theologian Dietmar Mieth, Ulrich Lüke and Eberhard Schockenhoff, on the other hand, form the heart of the analysis. Here we will only look at the terms *therapeutic cloning* and *research cloning*:

In the texts analyzed for this article the doctors argued for the term *therapeutic cloning* and the theologians rejected the concept. Between these two groups there is dissent both on the level of semantics and on the level of denotation with regard to the linguistic constitution of *therapeutic cloning*.

Both groups used the term in the first phase of the debate. The concepts behind this term, however, are completely different. The advocates of *therapeutic cloning* explicitly situate the technique in the context of healing and therapy. The potential for the development of new treatments is seen as so great, that moral doubts can be put aside. In their eyes, the end justifies the means. The adversaries see *therapeutic cloning* first and foremost as a technique, whose therapeutic potential is still a long way away, but whose ethical consequences are grave. This goes back to the the applicability of the principle that who wants to help may not intervene in the rights of others, especially not in human lives. *Therapeutic cloning* creates human life

⁷“While cloning of whole human beings is – apart from a few exceptions – being rejected by politics, science and the general public, the production of cloned human embryos with the help of core transfer to obtain embryonic stem cells is highly debated. This form of cloning is generally called *therapeutic cloning*. Therapeutic cloning aims to create cells and tissue that may at some point be used for treatment of e.g. neurodegenerative illnesses” (Zimmer 2006: 74).

only to then destroy it again for the extraction of stem cells. For the adversaries, therefore, *therapeutic cloning* belongs to the paradigm of consumptive embryo research (Zimmer 2006, 94).

According to Zimmer these competitions of definition with regard to the usage of the term *cloning* (i.e. *therapeutic cloning* vs. *research cloning*) can be made clear, when the respective connotations, which the respective protagonists try to give prominence to, are deleted. In the context of the supportive usage of the term *therapeutic cloning* these are the connotation of ‘promise of healing’ and ‘acceptance of research in society’, whereas the advocates of the term *research cloning* want to implement the connotation of ‘open outcome research’ and ‘assertive positioning of the purpose’. It becomes clear that the advocates of the term *therapeutic cloning* include the concepts of ‘healing’ and ‘therapy’ into the approach. The advocates of the term *research cloning*, however, point out that the latter is the more accurate term, since it forms part of consumptive embryo research and this implies that research outcomes cannot be predicted. The term *research cloning* does not – unlike the term *therapeutic cloning* – promise healing.

Zimmer summarizes his research as follows:

If one looks at the relevance the two concepts of meaning have achieved in public opinion, it seems that the battle between the researchers has been decided in favor of the advocates of the paradigm of healing. The view of *therapeutic cloning* as a technique, with the help of which healthy organic tissue that is not rejected by the body’s immune system can be produced. In addition, the term *therapeutic cloning* is neither relativized in any way nor replaced by other terms.

A semantic change has, however, taken place the scientific jargon in recent years. The opponents of therapeutic cloning started to replace the term *therapeutic cloning* quite early on with the term *research cloning*. The advocates at first stuck to the term *therapeutic cloning*. Only later did they search for new ways out such as using technical terms, for example, “directed cell reproduction” (gezielte Zellvermehrung). In the end, however, they also adopted the term *research cloning*. The meanings behind the term, however, remain unchanged. Researchers, who support research cloning, continue to see the technique as a step in the development of new therapies, whereas the oppononets continue to see the technique in the context of consumptive embryo research.

The skirmish over the denotation of *therapeutic cloning* was won by the advocates of a strict protection of the embryo, but the concepts behind the word remain very different. Time will tell, whether the new term *research cloning* will be adopted by the general public, which is strongly influenced by the hope for new therapies (Zimmer 2006, 95).

Secondly, I want to point out the semantic competition, which takes place around the public debates about social cultures and their relation between each other with regard to compatibility and dominance.

The question under discussion here, to put it pointedly, is: How implicit or explicit is the semantic battle about the terms *leading culture* and *metaculture*? The expression *leading culture* is already controversial in itself, its significance no less so. Sometimes people, who use this term, are accused of a nationalistic tendencies:

the use of the word itself is seen as a shibboleth of an attitude, where the expression already reveals the political affinity of the user. I will here not deal with the question, how the term *leading culture* is used,⁸ but restrict myself to the question, whether alternative termini are already in use in the media. One of the possible replacements is the term *metaculture*. A search in the easily accessible newspaper corpora gives only sparse results. One instance can be found in the article by the philosopher Peter Sloterdijk.

Neither more nor less is to be expected of Islam, which will undoubtedly become a leading figure in Europe in the future. What is to be expected in a long-term plan is the Europeanization of Islam and not the Islamization of Europe. This requirement does not express a European arrogation. It forms part of an emerging global project, which expects of all cultures, including the religious ones, a common metaculture, i.e. a globally suitable civilization (Focus Magazin 6.03.2006, 84–86).

Another instance reflects on the question, how diverse cultures can be captured in a city, and whether the term metaculture is helpful in this context (taz 7.01.2002, 14). A third instance regards the author Claudio Magris, who says about his city Trieste: “Trieste only became a great city because of its foreign citizens, who were quickly Italianized and who incorporated the new and the old, the important middle-European element. The metaculture and civilization interested me, which these people created in the face of constant danger of life” (Die Welt, 11.11.2004). A fourth instance seems to be due rather to journalistic creativity, i.e. when an article on the lack of common sense in the stock market is subtitled: “On the mass-psychological metaculture of postmodern finance markets” (Die Welt 14.06.1999, 11). The term is not used in the article itself.

Metaculture has the potential to take up certain connotational aspects of the expression *leading culture*, without needing to distance itself from a conservatively labeled user group. Who uses the expression, of course, also claims new areas, which in time may become ideologically marked (social-communicative fission while taking into account the prototypical social structures, which use the word *leading culture*). A relatively new term (without a history of usage) for a known phenomenon has the potential to become the keyword of certain (different) thought traditions.

6 Examples of Semantic Battles at the Conceptual Level

Semantic battles at the semantic level do not struggle for adequacy of expression, of terms with regard to reference objects – for which the instances cited above on cloning and the social and political situation in social communities with people from different cultural backgrounds serve as examples. Rather, what we are dealing with is an uncontested (because unstated) expression with regard to its connotations, which in themselves may be subject to debate. We are dealing here with the

⁸On this question see for example Fritzsche (2006) or Potthoff et al. (2007).

question, which connotations are to be attributed to the expression and which aspects should be seen as inadequate semantic aspects.

This will be sketched in the following, using the example of *generational justice* and *globalization*. Both concepts differ greatly in one aspect: *Generational justice*, on the one hand, is undisputed, because the idea itself is in itself seen as obvious and appropriate. What is debatable is only, which components (characteristics of living conditions) should be included in the concept and which should not – and of course also how these should be assessed. *Globalisation*, on the other hand, describes a fact in the world, which – despite all its semantic fuzziness – is seen as a given by most discourse agents. The fact itself as a political issue, however, is highly debated.

Generational justice is first and foremost a desired state (an orientational value), not a fact like globalization (although there do exist some, who do not see the world as globalized, most media depicts the world as a globalized one). Therefore, the discussion centers around how close we are (really or apparently) to the orientational value and which components it comprises.

To illustrate the attempts at meaning fixation of *generational justice*, I did a simple search in Lexisnexis (on 24.04.2009) for the following German newspapers: *Der Tagesspiegel*, *Die Welt*, *Frankfurter Rundschau*, *taz*. I wanted to see, which aspects of meaning could be gathered from the usage of the terms in the articles and in how far the status and acceptance of these semantic aspects were implicit or explicit (in the texts).

A first analysis of the newspaper texts with the focus of attempts at meaning fixation, suggested the following connotations:

- ‘Factual linkage with other forms of justice such as distributive justice, equal opportunities, with effects on climate change for later generations and with constitutional rights as, for example, human rights’
- ‘Generation debt’
- ‘The need for a strong or weak state, federal regulation’
- ‘Tax and distributive policies’
- ‘Double burden: through current contributions for pensioners and reductions for oneself as pensioners of tomorrow; cost-cutting measure: pension augmentation and/or pension contribution augmentation’
- ‘Effects of nature and environment conservation’
- ‘Inclusion of the aim of generational justice in the constitution (*Grundgesetz*), Art. 20b’
- ‘Self-responsibility of the individual versus collective responsibility of the state’.

Summary: Depending on the *weltanschauung* of the discourse protagonists the term *generational justice* is used with differing importance of certain connotational aspects as particularly central components. And this semantic battle (i.e. the attempt to implement certain thought and action patterns) is fought implicitly rather than explicitly. The discursive strategy consists of an assertive illocution, which foregrounds those connotations as indispensable, which serve the plausibility of the own argumentation. It then attempts through an inductive argument a transition so

as to convey a particular conclusion as compelling from specific, self-made premises – this is, of course, done via a seemingly logical deduction (Kienpointner 1992).

When discussing the word *globalization* (cf. Liebert 2003 for a linguistic discussion of the term) the question arises, how this term is more useful than *internationalization* or *multinationalization*. This brings in the aspect of whether – in comparison to the age that preceded globalization – we really are living in a qualitatively new condition, which makes a new term advisable or even necessary. Such terms – which come into use in speech communities in quick succession and are sometimes used inflationally – imply that their semantic meaning is both by degree and qualitatively different from the semantic content of similar terms and that the usage of the term instead of already established terms such as, for example, *internationalization* point towards new living conditions.⁹

The assessment in terms of content of the fact of globalization sometimes colors the usage of globalization opponents in such a way that critics only use the word in a marked manner (i.e. in inverted commas or with the distancing attribute *so-called*) and thus pejoratively. The term is to be visibly strategically marked for negativity as a label of disavowal so to speak. The word *globalization* has thus a similar usage dilemma as the word *euthanasia* (cf. Felder 2009c): How am I to act, if I do not want my linguistic usage to automatically decry me as belonging to a certain group of globalization advocates or opponents? Possible solutions – taking into account linguistic strategies – are:

1. Usage of the termini: when terms that are seen as problematic such as e.g. *globalization* are used, it is advised to metalinguistically point this out and mark the individual usage with regard to the usage of known interest groups in the discourse.
2. The usage of a variety of similar terms for reasons of terminological definition and division can achieve a positive estimation of the connotations of cluster 1 and give cluster 2 a pejorative connotation.
3. Avoidance of the terms that are seen as problematic: this strategy works through paraphrasing if applied on its own. The danger of, thereby, being grouped among a certain denomination is thus minimized, but the expenditure of formulating would be much higher with regard to precision, economy and comprehensibility and, in addition, would have to be brought into a form which both the recipient and the speaker would feel to be authentic.

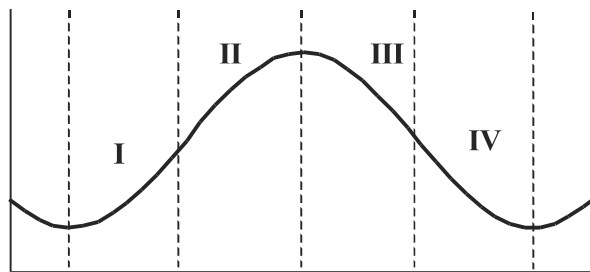
⁹In the context of restrictions of free trade by the first world, for example, it is pointed out that the advocates of globalization, who use the word in an unmarked sense, are strictly speaking not allowed to do so, because they do not fight the restriction of globalization and thus find themselves in the contradiction of proclaiming the advantages of a globalized world, but where its disadvantages impede their interests, they stay silent and accept a non-globalized world, which benefits them. As a linguist I only mention this content-related evaluative problem to be able to give plausible interpretative hypotheses of the different motives for the usages. The physician and biologist Ernst Ulrich v. Weizsäcker summarizes his observations as follows: “All human beings associate both hopes and fears with the term *globalization*. Conspicuous is the following: Who influences the global events, typically speaks positively of globalization. Who feels powerless in the face of them, is overwhelmed by fears. (Source: <http://www.globalisierung-online.de/info/text2.php> – last accessed 20.10.2015)

7 Examples of Semantic Battles with Regard to the Active Fixation of Facts

The multilayered problem that the fundamental phenomena of our daily lives are not ontological givens, but only develop or are constituted through language, is the basis of the linguistic dimension of attempts at the fixation of facts. I want to illustrate this with an example of the reporting on the economic and cyclical policy, which are based on the publications and statements of so-called leading economic research institutes. Since no one can experience an economic upturn or downturn empirically through the senses, it is a linguistically constituted phenomenon. However, when the present state of the economy is collectively accepted as a prototypical phase of a downturn (a crisis or depression), it is only natural, that we, for example, feel we are seeing more unemployed people during the normal working hours in our urban centers, which we again (causally) connect with the current and collective knowledge about the diagnosed and constituted state of the national and international economy. We thus compare our media constituted models of reality with the empirically and sensually observable.

When we try to retrace how, for example, cyclical estimations are established in the collective knowledge of the memory, we can go back to autumn 2007 when both the media and the economic research institutes declared that Germany was experiencing an economic upturn. This changed, as we know, in the late summer of 2008, when a general worldwide economic depression (financial and world economic crisis) was announced. Experts today all use the model of business cycles and have defined a certain number of characteristics as necessary or sufficient for the classification of the economic phases. The question now is, how the characteristics that underlie the categories can be empirically measured and how many characteristics and with what intensity need to be diagnosed to fulfill the characteristics of a category. These questions are often discussed in the public media by telegenic economic experts (there only seem to be a handful of those available) or economic research institutes, which show with the help of graphics, etc. where we are on the scale of the since our school days deeply ingrained economic phases. In this way facts are constituted and paraphrased as follows: "the German economy is right now in phase X". The business cycle is understood as forming part of general economic processes, which as a rule can be subsumed under (wavelike) fluctuations of the economic situation. The business cycle describes the overall process of the recurrent up- and downturns of economic activities. Four phases are today usually distinguished: expansion, peak (together called upturn), crisis or contraction, depression or trough (together also known as downturn). To clarify this, a few fundamental characteristics of the upturn will be named with the help of an economics dictionary (Gabler Wirtschaftslexikon 2004) improved capacity utilization, rising private investments and wage bill, increasing national income, heightened private consumption. The characteristics of a peak are described as follows: production methods in full time use, growth of actual national income, strong price increases, disruption in the financial markets (Gabler Wirtschaftslexikon 2004).

Now we have reached the central problem of determining how these characteristics can be related to a complex reality. So the question arises, whether these characteristics are empirically present and measurable or not. If some or all characteristics are constituted as empirically diagnosable, the phenomenon can be understood to be a (concrete/material) figure, which can be referred to by the terms *upturn* or *peak*. Or, to put it another way: the phenomenon of an upturn or a peak is only taken to be a given once it has been named. Or to paraphrase again: Such formulations constitute attempts at fact fixation. The current state needs to be determined, labeled and fixed.



I. Expansion II. Peak III. Crisis/Contraction IV. Trough/Depression

This form of fact fixation becomes especially obvious, when economic research institutes express the current state of the economy in different ways, even though they point more or less at the same location on the above diagram of a prototypical business cycle and base themselves on more or less the same data. As was the case in autumn 2007.

Therefore, I here present extracts of the announcements, which “leading monetary institutes” (their term) publish. First, it pays to take a look at the self-estimation of the institutes, which can be found on the respective webpages. The *Institut der deutschen Wirtschaft (IW)*¹⁰ describes its self-given task as follows:

The IW is Germany’s leading private economic research institute [...] Our task is to promote a better understanding of economic and social processes among politicians, opinion makers and the general public. We analyze facts, reveal trends, explain economic developments and publish our proposals. (Source: <http://www.iwkoeln.de>)

The “understanding of economic processes”, thus is not based on empirically measurable and quantifiable indicators, as the economic layperson might have been inclined to assume, the understanding is rather to be “promoted” (or in the German version “determined and improved”). This admits an implicit semantic battle. The perception of economic processes is to be formed.

Very similarly – even if ideologically differently situated – the Macroeconomic Policy Institute (IMK) in Düsseldorf:

¹⁰The name is not translated by the institute itself but would be: Institute of the German Economy.

The IMK was founded in early 2005 to strengthen the macroeconomic perspective both in economic research and in the economic policy debate. The IMK analyses the business cycle on the basis of a coherent macroeconomic modeling framework. In their empirical research the IMK's researchers rely on modern Keynesian economic theory as well as state-of-the-art econometric methods. (Source: <http://www.boeckler.de>)

This institute admits its consolidation of a particular point of view, which according to them, has so far been neglected. These two self-images show, that economic facts are also not ontologically given and are, thus, just waiting for an empirical recording, but need to be constituted and aspectually perspectivized (according to the individual preconceptions) by experts. This exemplifies the extraordinary relevance of the third level of the approach "semantic battle", on which the different implicitly and explicitly executed attempts at fact fixation by social protagonists are reproduced. At its core, it deals with the determination of who is capable of shaping a current reality that is not perceivable with the senses, and which discursive means are used.

If one thinks about the psychological effect on behavior of economic subjects in dependence of the media reporting on current and business developments of the general economy, the attempts at fact fixation of the economic experts can hardly be said to be innocent pastimes. On the contrary, they are signs of the extraordinarily powerful position of the linguistic structuring of individual discourse agents.¹¹ The perception of the economic situation is influenced by the medial portrayal (creation of facticity through economic think-tanks). Keeping this in mind, we need to mention with regard to the linguistic access on the general economic situation in the autumn of 2007 some peculiarities. When one looks at the description of the two named institutes in more detail, one cannot help but notice the following:

- Both institutes use the term *upturn*, but try to give it different main connotations. Controversial connotations are the status of the indicators *higher corporate profit* and the meaning of the *distribution of income* taking the question into account, which social groups profit from the upturn.
- The headlines for the current economic situation "a slightly reduced upturn" (IW) versus "Germany threatened by downturn" (IMK) make clear that the seemingly or really identical living conditions are differently arranged – linguistically speaking.
- Both institutes base themselves on similar gross domestic products (GDP), but come to different interpretations with regards to the question, whether the upturn still continues and what effects this will have on the labor market.

A further example for the fact fixations comes from the medical arena. Domasch took the possible introduction of the preimplantation genetic diagnosis in Germany in the years 2000 to 2002 as the subject for her investigation of publicly controversially discussed discourses (cf. the relevant works by Domasch 2006 and 2007). An essential element of this discussion was the struggle for linguistic means of naming new and controversial facts. Embryos are used for the investigations with regard to

¹¹For a linguistic research in the context of economic crisis see Wengeler and Ziem (2010).

the genetic disposition in the context of the preimplantation genetic diagnosis (PGD). The facts are first of all ontically constituted, the linguistic terms does not at first seem to play a role. Still, to communicate the results of medical investigations, they need to be linguistically transmitted, so that from the point of view of laypersons facts are only constituted through the linguistic frame. What does it mean for couples, when the potential parents of an embryo are told of a disposition for red-green-blindness? Such facts force people to take decisions. Similarly to the economic reference object of the preceding example, one can at first assume an ontic and linguistically independent fact, that will be formulated in a way to elicit similar concepts in the respective addressees and thus create various aspectual facts. In PGD or prebirth diagnostic embryos are checked for genetic dispositions and get labeled as “healthy” or “fitting”, or the embryos do not get “implanted” but “discarded”: the are left to “die” (*absterben*, for linguistic aspects see Domasch 2007). The investigation traces the topicalization of language in the programmatic texts of the time and shows, that the systematic search for metalinguistic elements results in a plentitude of linguistically topicalized labels, which in their differentiation with regard to content aim at central controversies of the debate. This points towards the importance of linguistic terminology in public space makes clear that the constitution of knowledge about “progress” in medical technology is linguistically instructed.

Overview of the Levels in the Approach *Semantic Battle*

1. Specifics of the terminological competition: controversy over the correct term

Ex. → *Therapeutic cloning* versus *Research cloning*

Ex. → *Leading culture* and *Metaculture*: Each term seems to access a seemingly ontic correlate.

2. Specifics of semantic fixation: Controversy about the fitting semantic aspects of an in itself uncontroversial term (semasiological)

→ “Generational justice”, which needs to be fixated as a value and, therefore, needs to be semasiologically clarified.

→ *Globalization*, of which it seems that we are able to experience it directly or empirically!

3. Specifics of fact fixation: The fact that is to be shaped (and not to be directly experienced) and that is constantly being referred to does not seem to be aspectually perspectivized through the respective linguistic usage (onomasiological)

Ex. → Economic classification within the business cycles

Ex. → Within the prebirth diagnostic embryos are examined for their genetic dispositions and the discovered characteristics are linguistically constituted and labeled.

8 Semantic Battles – Keyword-Concept – Discourse Analysis

The perception of semantic battles in the current article comprehends mainly the investigation of (controversial) concepts of action, i.e. points of condensation and crystallization in terms of content. The concepts that guide actions are not only to be analyzed as individual lexemes, but also through a complex analysis of the multitude of speech acts of different speakers in diverging conversation and text types. These concepts will however, condense in key words, so that these will automatically be put at the centre of investigations for reasons of practicality. The same is true here, as space will not permit a thorough discussion on various levels (but see Felder (2009a) for a research program). For a in depth analysis of the discourse customs in the context of the current debate about the consequences of the neurobiological research findings for the humanities a thorough investigation is necessary and thus (still) a desideratum.

Out of practical reasons often only keywords are investigated as points of condensation and crystallization in discourse analysis. These are then analyzed from the viewpoint of semantic ascription, which are discursively attributed to the expressions by the individual discourse agents (for a pragmatic semantics of lexemes and a usage oriented lexical semantics cf. Hundsnurscher 1998). If one analyses the central semantic aspects in discourse from a resultative point of view (Hundsnurscher 1991; Gloning 1996), the following becomes clear, which has been mentioned above but will be looked at in more detail here.

1. Synoptically summarized, a dynamic concept is here the basis of the applied understanding of keywords (Liebert 2003): Consequently keywords display the following characteristics,
 - they mirror the self-image of a person or a group in discourse,
 - they are discourse determinative,
 - their contextual meaning is the main one,
 - they display a multitude of meanings,
 - they are sometimes controversial.
2. Words do not exist in isolation in the human mind, but build an interdependent sum of elements with other related words (in a dynamic extension of a rather structuralist viewpoint of *semantic fields*). The starting point for such a semantic field theory is the fact that there do exist usages of expressions that correspond in some semantic aspects (content) and are different in others. This viewpoint correlates with the basic assumptions of semantic field theory, which Gloning (2002, 728) defines as follows: “(i) classification of the lexicon; (ii) mutual determination of meaning of lexical elements (iii) hypothesis of the ‘world view’ of language; (iv) semantic change as change in the web of semantic fields; (v) usages of words as semantic field members; (vi) process of lexical decomposition” for the explication of semantic similarities and differences.
3. These two aspects of the keyword conception and the semantic field theory can be understood in the paradigm of semantic battles as strategic instruments for the

determination of linguistic access (i.e. specific, interest-led patterns of action and thought) on the level of expressions, meanings and/or the facts constituted in this way (language as power) and to be more than mere meaning explication.

In the light of this theoretical background the following questions pose themselves for the investigation of discourse:

- Which keywords are controversial and how can they be explained in more detail through the paradigm of semantic battles?
- In how far can the approach of semantic battles with its levels of denotation, meaning nuances and attempts at fact fixation lay open these linguistic strategies?

9 Semantic Battles in the Legal Field

Characterizing semantic battles essentially involves investigating the (controversial) concepts that drive actions, that is, those points around which the content condenses and crystalizes. On the expressive side, the action-driving concepts cannot be described merely through an analysis of individual lexemes; rather, what is chiefly needed is a complex analysis of multiple speech acts by different discourse participants in divergent text and conversation types (Felder 2003, 203). Nonetheless, those concepts do crystalize into key words, which for reasons of research practice have taken center stage in academic studies again and again – as can be seen in the paradigm of jurisprudential textual work (Felder 2003; Li 2011; Vogel 2012; Luth 2015).

In this paradigm, working with texts is the central characteristic of a legal functionary's activities (Busse 1992, 1993/2010; Müller et al. 1997; Felder 2003). For this reason, the depiction of legal acts is programmatically referred to as “jurisprudential textual work” (Felder 2003). Legal theoretician Friedrich Müller (2007a) calls this jurisprudential work with texts “legal work,” and in his legal methodology the experts who write the laws and those who apply them are called “legal workers.” These designations propagate a point of view that emphasizes the role of the jurisprudentially acting subject in concretizing legal prescriptions. I also subscribe to this view, and my aim here is to characterize the speech acts performed by legal workers in the battle over the applicability of verbal formulations and the accompanying perspectives.

When describing jurisprudence, it must be pointed out that working with an interweave of different text types (e.g. aside from legal texts, also expert opinions from other scientific disciplines) stands at the forefront of a legal professional's activities, and that the work of comprehending jurisprudential activities should not be restricted to those professionals' dealings with individual legal texts. Moreover, it should be kept in mind that while legal texts with their potential for directing actions do represent the point of departure for jurisprudence, their importance for determining the course of justice must be viewed in relation to other texts arising

from internal communication within the legal field, such as legal commentary, professional jurisprudential literature or supreme court decisions (Müller et al. 1997; Felder 2003).

The focus mentioned above, on the role of the jurisprudentially acting subject in concretizing legal prescriptions, presupposes the following: a legal norm is not an entity given *ante casum* by the texts of laws and constitutions, but rather it is only formed and concretized once a legal functionary becomes involved – in interdependence with the state of affairs being negotiated and the chosen legal text.

The legal norm as a prescription for actions and conduct is only partly contained within legal texts. Even an expert on jurisprudence does not take the norm directly out of a legal clause, in the sense of a container metaphor; rather, he places real-life situations – the so-called “case” – in relation to one or more legal prescriptions, and from this linkage he arrives at an appropriate legal norm for the case at hand. Therefore, this approach centers on the question of how the legal text codified in the law books and the social situation or reality placed in relation to it (the construction of “social facts” (Searle 1995) or “realities”) come to be linked with each other in the legal norm (which is more than just the legal text). This question can only be answered at the level of an interweave of jurisprudential texts. As mentioned above, different jurisprudential texts must be considered in the process. A distinction must be made between 1) text types with normative force (with the potential to concretize or shape norms) such as the texts of laws and constitutions; 2) text types that represent legal-text exegesis, such as legal commentary, legal scholars’ discussions of court decisions in the professional literature, or head notes from courts; and 3) text types that represent case law (concretization of norms), i.e. court rulings, decisions. Accordingly, while the texts of laws are of central importance, they alone do not contain the actual legal norm in the sense of a storage metaphor; rather, the texts of laws require further elaboration in legal discourse through application and interpretation. They merely contain a partly explicated directive potential with complex implications, presuppositions, and a range of experience in the discursive use of legal texts in relation to prototypical real-life situations.

In accordance with these prerequisites, a semantic-pragmatic analysis based on action theory comes into play at the point where language has an effect on the jurisprudential “processing of reality”; namely, in the “taking of normative positions on a situation,” which all too often – in Seibert’s formulation – turns into the “construction of reality” (Seibert 1981). Jurisprudence takes hold of the social “reality” (social situation) to be evaluated right at the source: at the categories, which are viewed and described in jurisprudential terms for the elements of a crime. In criminal offenses, theft for example, the descriptive elements (words) used to render the process tangible are themselves suggestive in nature; thus, a labeling has already taken place before the situation can even be construed. Seibert points out that human actions (through their assignment to categories = labeling of actions) have already been socially pre-organized and pre-interpreted. In this way, he elucidates the depiction of the jurisprudential act of “construal of a situation,” i.e. the jurisprudentially pre-processed or pre-interpreted selection and preparation of elements of a situation, as the objective of norm application. This preparation, however, cannot simply

be juxtaposed with the exegesis of the legal text as another form of interpretation (“understanding”); rather, legal-text interpretation and (jurisprudential) interpretation of social reality are combined in a process of jurisprudential action. In this context, Jeand’Heur (1998) aptly speaks of the “preparatory function,” which is intrinsic to the use of specialized legal texts, and through which the “case” is transformed into a legally relevant “state of affairs” in the first place. The concept of “jurisprudential textual work” is used here to illustrate how a legal professional – taking the facts of a case and legal texts as a jurisprudential knowledge framework – “pre-processes” real-life situations from the knowledge framework of the everyday world (Jeand’Heur 1998).

Jurisprudential acts are thus to be understood as the text-aided integration of a situation into jurisprudential schemas for processing reality. The application of laws consists in large part of transforming extralegal states of affairs into legal states of affairs (i.e. institutionally defined and constituted states of affairs) based on various knowledge frameworks. Specific forms of knowledge make it possible to draw inferences and to explore unmentioned or implied states of affairs, and they are adaptable to some extent. In this sense, the concept of “jurisprudential textual work” employed here within the approach to legal theory known as Structuring Legal Theory is not to be understood as a self-contained theory aiming to “deductively derive, using on its own basic concepts, what a legal text is in essence and what should be the nature of the activities of legal functionaries based on that text.” Rather, it comes into play in the middle of jurisprudential texts.

Structuring Legal Theory is to be understood as an accompanying reflection of the practice of law, in which the deciding criteria of jurisprudential rationality are already present in scattered form. It takes as its task the ordering of these elements into a preliminary model, open to new developments. The theoretical assumptions are thus not the prerequisites but the results of an analysis of practice, and the rationality criterion is not one that has been imported from philosophy and retroactively applied to law, but one that is immanent to language games. (Müller et al. 1997, 15)

The postulate of legal fixation has long been criticized in the strongest terms, and not only from within the above-described paradigm. As just one example, we may quote Winfried Hassemer, former Vice President of Germany’s Federal Constitutional Court:

It is obviously preposterous, in the face of the insights gained as to the vagueness and porosity of legal terms or the differences in each judge’s prior understanding of them, to insist that a judge must adhere strictly to the law. He cannot do so. The consequence of such a demand, ostensibly based on the rule of law, is not that court rulings will adhere more exactly to the legal prescriptions, but rather that they will pretend as if they were only following the law. (Hassemer 1994, 259)

This statement can bear fruit within the context of interest here, through the insight that court proceedings are not “epistemological processes” for investigating the concrete norm that is to be derived from the matter at hand together with the legal text (i.e., the outcome of the case); rather, they are the field where semantic battles are fought, where the parties seek to gain control of the legal text for their own purposes. (Christensen and Kudlich 2008, 207) From this point of view, the judge’s role

is defined by the fact that on the one hand, his office empowers him to “decide” the conflict between the parties on the level of the designation, the meaning, and the fixation of the state of affairs, and on the other hand he is himself a participant in semantic battles and bears the burden of justifying the decision.

10 Conclusion

The levels of description explained above help us to make clear that such discourses are by no means only determined by the content, but also fundamentally by the historical and area-specific words in use, which can develop a life of their own. Knowledge about attitudes towards such topics as e.g. “neurobiological findings on the consequences of the self-image of humans” form part of a mode of presentation in the specialist publications and the media, and are condensed into describable keywords in the phase of discursive usage formation. Experience has shown that discourse about innovation, for example, in the area of bio- and nano-technology are not simply formed out of the information of the agents in science and economy. Much rather, they are influenced by complex laws, which are based in the functioning of pluralistic democracies, scientific and media systems as well as communicative practices. Last but not least, topics are embedded in the scientific premises and collective stereotypes of the public. The development of a discursive position through the researchers of different scientific cultures, which does not only have to be coherent in the respective science, but must also be accepted by the public, thus requires sufficient knowledge of the specialized discourse of the respective domain of knowledge, as well as in depth knowledge of strategies and practices of transformation in the communication of specialized knowledge in lay circles and, thirdly, experience in the analysis of media discourse, which is shaped by laws difficult to grasp.

When certain linguistic usages become prominent (for example Zimmer’s 2006 *therapeutic cloning* or *research cloning*), certain expressions will be used at first sporadically then prototypically and can achieve the role of patterns in general social discourses (the fixation of specific combinations of signs in discourses). We here need to take into account that individual formulations (linking of linguistic signs) as free syntagmata can consolidate themselves in the development of discourse and obtain an increasingly static character. This happens from the development to the usage, i.e. the habitualization and conventionalization, up to the stereotypicality (Beckmann 2001) of schemata-led knowledge usage. This linguistic sedimentation instructs and shapes the social discursively-negotiated knowledge through perspectivized and preferred language patterns.¹²

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