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Natural semantic (legal?) metalanguage. What can legal theory learn from Anna Wierzbicka?

Abstract: Natural Semantic Metalanguage (NSM) is a semantic theory originated by Anna Wierzbicka. It provides a list of "semantic primes" – concepts that are claimed to be primary (i.e. they cannot be explained in simpler terms) and universal (i.e. are lexicalised in all human languages). They offer a unique tool for a cross-linguistic and cross-cultural analysis of meaning. The paper's thesis is that NSM may prove useful in legal contexts. Several possible areas of application are identified. Firstly, NSM could enhance the comprehensibility of legal texts, which are notoriously difficult for laypeople to read. Secondly, NSM could be used for semantic analyses of legal terms, which typically lack coherent methodology. Thirdly, NSM could provide a much-needed common point of reference (or *tertium comparationis*) in comparative law. Fourthly, NSM could help draft multilingual and culture-neutral documents in international law.

Keywords: Natural Semantic Metalanguage, legal language, legal semantics, plain legal language, comparative law

1 Introduction

There should be nothing controversial in saying that law is a linguistic device and that theories about language constitute an important source of inspiration for legal scholars. The most famous example is probably Herbert Hart's theory of open texture, which was inspired by the ideas of several prominent philosophers: Friedrich Weissmann, Ludwig Wittgenstein and John L. Austin (Hart 2012; Zeifert 2022, 412–414). Although its scope and significance are still the subject of heated academic discussion (Endicott 2008; Stavropoulos 2001; Müller Fonseca 2018), it has undoubtedly contributed to our understanding of legal language, statutory interpretation and the concept of law itself.

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In this article, I would like to present a semantic theory that has barely been noticed by legal scholars, namely the Natural Semantic Metalanguage theory by Anna Wierzbicka. It differs significantly from most other theories about language that have been applied in law. It comes from the realm of theoretical linguistics, lexical semantics and cultural studies, rather than philosophy of language, formal semantics or cognitive psychology. It may not challenge our concept of law, but it addresses two topics that have often been ignored in the legal theoretical literature, yet whose importance in a globalised world is only growing: clarity and the translatability of legal language.

2 Natural Semantic Metalanguage

2.1 Anna Wierzbicka as a linguist

Natural Semantic Metalanguage (subsequently referred to as 'NSM') is a semantic theory originated by Anna Wierzbicka, now a Professor Emerita in Linguistics at the Australian National University in Canberra (Australia). Wierzbicka was born in 1938 in Warsaw (Poland). She began the career at the Institute of Literary Research of the Polish Academy of Sciences, where she received her PhD and habilitation. In 1972, she emigrated to Australia and started work at the Australian National University in Canberra, where she has spent the rest of her academic career, continuing cooperation with academics from other countries, mostly Poland and Russia (Gladkova/Larina 2018, 500).

Wierzbicka's position in contemporary linguistics is peculiar, though there should be no doubt that she is an extremely influential scholar (Ye/Bromhead 2020, 1).[1] Because of her national and linguistic background, she is particularly renowned in European academia. For instance, "in Russian linguistics, one is unlikely to find another author who is cited as widely and passionately as Wierzbicka" (Gladkova/Larina 2018, 500). However, she is also very difficult to label in theoretical terms.

Her closest affiliation seems to be with Cognitive Linguistics. She made semantics the primary area of her linguistic inquiry as early as in the 1970s, in the era still dominated by Noam Chomsky and his transformative-generative grammar. She had adopted many core ideas of the second wave of cognitive linguistics, such as the notion of prototypes, human cognition-based perspective on meaning,

1 Wierzbicka's h-index of 87, as shown by Google Scholar (05.07.2022), places her among the most prominent linguists still alive, including: George Lakoff – 107, Ray Jackendoff – 83 and Steven Pinker – 99, with Noam Chomsky being outside anybody's reach – 184.

questioning the strict division between semantics and pragmatics, or treating grammar as meaningful, before they were even articulated in the famous writings of Eleanor Rosch, George Lakoff, Charles Fillmore and Ronald Langacker. When Cognitive Linguistics was conceived as a discipline, she was there; she attended the foundational academic conference in Leipzig in 1980 and was published in the very first issue of "Cognitive Linguistics" journal (Goddard 2018, 3–4).

At the same time, Wierzbicka has been notably critical about some aspects of Cognitive Linguists, such as using prototype as a "catch-all" notion (Wierzbicka 1996, 148–167). Unlike most cognitive linguists, she has not sought for inspiration in cognitive psychology, but rather in general philosophy, literary theory, lexicography and anthropology. Most importantly, she has remained a very outspoken advocate of semantic invariants and componential analysis, thought of a very distinctive type. As a result, Wierzbicka is rarely listed among the key figures of Cognitive Linguistics, with her theory typically being labelled as "borderline cognitive" (Brala 2003, 163; see also: Geeraerts 2016, 12). Couple this with rarely seen consequence in developing her own scientific programme and a highly polemical style, and you build a picture of a very unique, independent, and inspiring thinker.

2.2 The basics of the NSM theory

In the mid–1960s, a fellow linguist – Andrzej Bogusławski – instilled in Wierzbicka the idea of *alphabetum cognitationum humanarum* – 'the alphabet of human thought' (Bartmiński 2011, 220). It was the "golden dream" of the German philosopher Gottfried Wilhelm Leibniz (1646–1716). Leibniz believed that there must be a set of *indefinibilia*, concepts so basic that they cannot be defined, because otherwise no comprehension would be possible (Wierzbicka 1996, 11). In other words, the fact that we understand anything must be attributed to the existence of some basic set of concepts that are understood intuitively or "in themselves". Later, these were described as "primitive concepts" or "semantic primitives". They were expected to be common for all humans, i.e. universal. In fact, this idea was shared by many great thinkers of XVII century, including Leibniz, Descartes, Arnauld and Pascal (Wierzbicka 1996, 11–13). However, it remained at the level of philosophical speculation, was quickly deemed utopian and eventually abandoned in XVIII century. In 1977, John Lyons expressed the common view that there remain no advocates of the most extreme form of "semantic universalism", namely the idea that "there is a fixed set of semantic components that are universal in that they are lexicalized in all languages" (Lyons 1977, 331–332). However, this is exactly the idea that has been driving Wierzbicka's work since the 1970s.

Wierzbicka took the "golden dream" of XVII century rationalist philosophers as a starting point for modern linguistic research. In her 1972 book, *Semantic Primitives,* she hypothesised a list of 14 universal lexical units called "semantic primitives" (Wierzbicka 2021, 319–320). After moving to Australia, she established a close collaboration with scholars from various regions around the world. The most notable is Cliff Goddard (currently from Griffith University in Queensland, Australia) who actually came up with the name *Natural Semantic Metalanguage* and who has been the second main contributor to the NSM theory (Wierzbicka 2021, 319). Together with international collaboration came contact with various non-European languages. This allowed Wierzbicka to ground the search for linguistic universals in empirical, cross-linguistic studies of many different languages. Quite surprisingly, the comparative research began revealing more and more semantic similarities across languages, causing the list to grow. Today, after more than four decades of research covering approximately thirty different languages, the list has reached 65 elements (Wierzbicka 2021, 320).

Table 1: The list of semantic primes (English).

I, YOU, SOMEONE, SOMETHING~THING, PEOPLE, BODY	substantives
KINDS, PARTS	relational substantives
THIS, THE SAME, OTHER~ELSE	determiners
ONE, TWO, SOME, ALL, MUCH~MANY, LITTLE~FEW	quantifiers
GOOD, BAD	evaluators
BIG, SMALL	descriptors
KNOW, THINK, WANT, DON'T WANT, FEEL, SEE, HEAR	mental predicates
SAY, WORDS, TRUE	speech
DO, HAPPEN, MOVE	actions, events, movement
BE (SOMEWHERE), THERE IS, BE (SOMEONE/SOMETHING)	location, existence, specification
(IS) MINE	possession
LIVE, DIE	life and death
WHEN~TIME, NOW, BEFORE, AFTER, A LONG TIME, A SHORT TIME, FOR SOME TIME, MOMENT	time
WHERE~PLACE, HERE, ABOVE, BELOW, FAR, NEAR, SIDE, INSIDE, TOUCH	place
NOT, MAYBE, CAN, BECAUSE, IF	logical concepts
VERY, MORE	augmentor, intensifier
LIKE	similarity

The current list of semantic primes is presented in Table 1. For ease of use, they are grouped into various "onto-syntactical" categories. Several caveats should be made here. Although often presented in that way, semantic primes are not, strictly speaking, words (lexemes); "Semantic primes exist, not at the level of whole lexemes, but as the meanings of lexical units" (Goddard/Peeters 2010, 463). They are often referred to as *word-meanings* and understood as concepts expressed in language in the form of either separate words, bounded morphemes, or fixed phrases (phrasemes) (Wierzbicka 2021, 327). They may have combinatorial variants used in various grammatical contexts (known as *allolexes*), i.e. *I*/*me* in English. On the other hand they can have polysemic extensions, in which case they refer to only one of several meanings of a particular word. For instance, the Polish exponent of the semantic prime *feel* is *czuć*. However, in Polish *czuć* is a polysemous word and can also be translated as 'to smell' (Wierzbicka 1996, 25–28).

With over 7,000 languages spoken around the world, proving that some element is lexicalised in *every* language is virtually an impossible task. The universality claim of NSM is therefore a hypothesis that is yet to be fully confirmed. So far it has been tested on approximately thirty languages from all parts of the world and from diverse language families.[2] Granted, it amounts only to a very small sample of all human languages. At the same time, however, it is roughly thirty times more than most other semantic theories ever take into consideration. This is actually a recurrent theme of criticism employed by Wierzbicka against linguists, psychologists and philosophers alike: that they base their theories about language, meaning and thinking on concepts expressed solely in English, without acknowledging the fact that other languages do not have words capable of conveying the same meaning: "[. . .] the conviction that one can understand human cognition, and human psychology in general, on the basis of English alone seems short-sighted, if not downright ethnocentric" (Wierzbicka 1997, 8; Levisen 2018).

Semantic primes are claimed to be not only *universal*, but also *primary* (or *primitive*), meaning that they are "so simple that they cannot be further explained or defined. They are analogous to chemical elements, which cannot be broken down into any other elements. A semantic primitive, in principle, is a meaning that

2 Including: English, Russian, French, Spanish, Polish, Danish, Italian, Ewe, Amharic, Arabic, Malay, Japanese, Mandarin Chinese, Cantonese, Korean, Vietnamese, Mbula (PNG), East Cree, Yankunytjatjara, Koromu, and others. Information from the Natural Semantic Metalanguage website: https://intranet.secure.griffith.edu.au/schools-departments/natural-semantic-metalanguage/what-is-nsm (28.07.2021).

resists further explanation or decomposition" (Goddard 2018, 310). Not all universal meanings have to be primary. Concepts such as *man*, *woman*, *mother*, *sun*, *moon*, *stars*, *head*, *hands*, or *legs* are likely to be lexicalized in all human languages (Goddard/Peeters 2010, 468). However, they can be further analysed into simpler terms. This is why they are not included in the list. The chemistry metaphor is useful once again here: they can be thought of as fixed compounds made of basic elements and called *semantic molecules*. Because of their pervasiveness, they also play an important role in the NSM framework (Goddard/Peeters 2010, 467–469).

Semantic primes constitute the lexicon of Natural Semantic Metalanguage. It is complemented by the "universal grammar", i.e. the combinatorial (syntactical) properties of semantic primes (Goddard/Peeters 2010, 473). These involve information that primes of a certain category can combine with primes from another category (i.e. substantives with specifiers), as well as syntactical frames for predicate primes that specify their valency options. Formal realisations of sentences in different languages may vary (i.e. word order in a sentence), but the underlying combinatorial properties remain unchanged (Goddard/Peeters 2010, 473).

Semantic primes, together with universal grammar, form the Natural Semantic Metalanguage. This is a mini-language, a carefully crafted subset of all natural languages that provides a unique a tool for semantic representation. It is mostly used to formulate semantic explications. This is a sort of reductive paraphrase – an attempt to say the same thing, but using only semantic primes and their universal grammar. The main feature of NSM is its translatability. Paraphrases formulated in NSM can be expressed in any of the thirty-some languages currently "supported" by NSM theory, without any distortion in meaning. In other words, once we "break down" a word, sentence or idea into NSM explication, its meaning can be grasped by anybody, regardless of linguistic and cultural differences.

2.3 Some examples

Let us now turn to some examples. First is the meaning of the English verb *to kill*. It is a classic example used by generations of linguists and most famously defined as 'cause to die' or 'cause to become not alive'. These definitions, as intuitive and trivial as they may seem, have been subjected to convincing critique (Wierzbicka 1975, 491–492). Some of their deficiencies should be clear for anybody with a legal background. For instance, they do not account for the difference between direct and indirect causation. If Peter leaves his child in his car on a hot summer day, there is a risk that he will 'cause her to die', but we would not normally say that

he will 'kill' her. The following NSM explication of *to kill* seeks to amend those shortcomings (Goddard/Peeters 2010, 465):

Someone X killed someone Y =
someone X did something to someone else Y
because of this, something happened to Y at the same time
because of this, something happened to Y's body
because of this, after this Y was not living anymore

First, notice that a NSM explication involves paraphrasing not a single, isolated word, but rather the whole sentence. This is an important feature that helps overcome the problem of polysemy. Next, the meaning of the word in question (here: *to kill*) is paraphrased in a series of sentences using only semantic primes and their universal grammar. Note how this paraphrase avoids the problems mentioned above. Instead of a simple 'cause – effect' structure, it describes several steps that include an action by the agent X with an immediate effect on the patient Y, followed by a change in Y's body, followed by Y's death.

Secondly, consider two English adjectives: *sad* and *unhappy* (Goddard/Peeters 2010, 466):

X felt sad =
someone X felt something bad
someone can feel something like this when this someone thinks like this:
"I know that something bad happened
I don't want things like this to happen
I can't think like this: I will do something because of it now
I know that I can't do anything"

This paraphrase depicts a prototypical cognitive scenario that serves as a reference situation for the reader. It is a typical NSM strategy for dealing with words expressing emotional and volitional states that are notoriously difficult to define. Obviously, *sad* is an indeterminate concept in the sense that there are an unlimited number of reasons for, as well as symptoms of, being *sad*. NSM deals with this indeterminacy by focusing instead exclusively on the mental state of the subject and employing a subjective (i.e. human) as opposed to objective, perspective to define the term.

Now, consider the explication of the word *unhappy*.

X felt unhappy =
someone X felt something bad
someone can feel something like this when this someone thinks like this for some time:

"some very bad things happened to me
I wanted things like this not to happen to me
I can't not think about it"
this someone felt something like this
because this someone thought like this

Sad and *unhappy* have very similar meanings. However, *unhappy* includes a stronger negative evaluation. We may say "I feel a little sad", but not: "I feel a little unhappy". In addition, *unhappy* is more personal. We may (and even should) be sad because of the Russian aggression against Ukraine, but we are normally unhappy only because of things that have happened to us. The differences between the NSM explications of both words articulate these subtle nuances of meaning, which are often lost in more traditional definitions. At the same time, they both successfully avoid the vicious circles (defining *ignotum per ignotum*) that often plague lexicographical works (Goddard 2018, 307).

2.4 Escaping theoretical dichotomies

As the above explications show, NSM's approach to semantic analysis is quite original. It escapes the popular dichotomies often used to classify linguistic theories. First, it is both formal and natural. It is formal because it employs well-specified and explicit vocabulary and grammar, i.e. a formal system of notation. At the same time, it is natural. Semantic primes are not artificial symbols without meanings, but concepts carved out of natural language. Linguists and philosophers often invent sophisticated, highly technical metalanguage for their analyses, for instance:

1) Bachelor → N, N1, . , N,; (Physical Object), (Living), (Human), (Adult), (Male), (Never-married); < SR >. (Katz 1964, 743)

2) $$\mathrm{TO\,X} = \begin{pmatrix} +\mathrm{b}, -\mathrm{i} \\ \mathrm{DIM\ 1d\ DIR} \\ {}_{\mathrm{Space}}\mathrm{BDBY}^{+}\left(\left[{}_{\mathrm{Thing/Space}}{}^{\mathrm{X}}\right]\right) \end{pmatrix}$$ (Jackendoff 1991, 36)

The problem is that such technical descriptions still need to be "translated" into natural language in order to be understood by anyone except for their creators. As put by Lyons: "any formalization is parasitic upon the ordinary everyday use of language in that it must be understood, intuitively, on the basis of ordinary language" (Lyons 1977, 12). Substituting words with symbols, spelling them in capital letters or putting in brackets do not automatically make meanings any more specified or intelligible. Apart from that, it is doubtful whether it does a good job of explaining ordinary language concepts if lay people cannot make any sense of it (Goddard 2018,

308). Instead, NSM employs a carefully selected set of ordinary words as a system of notation. That is why NSM explications, like those provided above, do not require much description to be intelligible. They are more or less self-explanatory.

Secondly, NSM escapes the philosophical opposition between linguistic rationalism (i.e. like Chomsky) and empiricism (i.e. like Lakoff). In a sense it is rationalist, even idealist or "platonic" (Geeraerts 2016, 6), as it aims at reconstructing the human conceptual system through an explicit *lingua mentalis*. At the same time, it is empiricist because the *lingua mentalis* is not a result of *a priori* considerations, but of comparative, cross-linguistic studies of different languages (Goddard 2018, 316).

Thirdly, NSM completely breaks apart the dichotomy between linguistic universalism and relativism. More precisely, it is both radically universalist and radically relativist (Goddard 2018, 320). The basic premise of NSM is that all human languages have a common core of lexically expressed meanings. It means that each and every semantic prime has a representative in any given human language. As put by Goddard: "This is certainly the strongest claim about universally lexicalised meanings to be found in the contemporary linguistic literature" (Goddard 2001, 3). On the other hand, Wierzbicka is heavily inspired by the ideas of Humboldt, Boas, Sapir and Whorf, to mention only the most prominent theorists from the "relativist camp". Much of her scientific work can actually be described as "neo-Whorfian" (Goddard 2003, 48). She has always seen language and culture as closely connected and mutually affecting one another. She initiated a whole new discipline of *ethnosynthax* that studies grammar as a vehicle of culture (Wierzbicka 1979). She has put a lot of scientific effort towards warning against the perils of treating English as the "default" language of human thought (Wierzbicka 2014). In other words, the strong claim about linguistic universals does not stop her from investigating the matrix of culture-specific senses, norms and traditions. On the contrary, it is only through the Natural Semantic Metalanguage – the ultimate *tertium comparationis* – that we can recognise and appreciate the infinite diversity of linguistic systems. Paradoxically, "[t]he hypothesis of 'linguistic relativity' makes sense only if it is combined with a well thought-out hypothesis of 'linguistic universality' (Wierzbicka 1997, 22).

3 NSM and the law

3.1 Previous applications

NSM theory has so far not drawn much attention from legal scholarship. It is occasionally referred to by authors with a linguistic background. For instance, Peter Tiersma briefly mentions NSM in his discussion about the possibility of drafting stat-

utes in plain language. He admits that it is an interesting approach, but concludes that the length of NSM paraphrases, as compared to normal statutory language, would probably exceed the advantages of clarity it provides (Tiersma 2006, 48–49). Lawrence Solan quotes Wierzbicka on several occasions while discussing some more theoretical aspects of language, namely the opposition between the classical and prototype approach to lexical semantics. He correctly recognises that she holds a somewhat middle position – claiming that word meanings do have definitions, but these definitions refer to mental states, images and scenarios, rather than objective features of the objects "out there", and thus often lead to prototypical effects (Solan 1998, 70–74; Solan 2001, 257). There are certainly more references to Wierzbicka in the legal-linguistic literature (see: i.e. Bajčić 2017, 115–116; Galdia 2017, 413; Durant 2018, 37; Ainsworth 2018, 266), though they are rarely longer than a few sentences.

Interestingly, some NSM scholars have published papers on legal matters. Cliff Goddard contributed to the ongoing debate on statutory interpretation with his 1996 article *Can linguists help judges know what they mean? Linguistic semantics in the court-room* (Goddard 1996). The paper addresses the controversy about the use of dictionary definitions by judges and discusses some potential alternatives that are especially appealing to linguists as expert witnesses. It also introduces the lawyer-reader to the NSM theory and provides NSM explications of several legally-significant concepts, such as *enterprise, reckless*, and *sudden*. The overall conclusion by Goddard is pessimistic, however. He states that the usefulness of linguists (and linguistics) as experts on meaning in legal practice is quite limited, both because of the specific role of ordinary meaning in law application and the underdevelopment of semantics as a scientific discipline (Goddard 1996, 269–270).

Ian Langford, a student of Wierzbicka, published an article on the semantics of selected crimes (Langford 2000) and later wrote a doctoral dissertation entitled *The semantics of crime: a linguistic analysis* (Langford 2002). His main idea was to "add to our knowledge about the semantics of crime in English by analysing the meaning of expressions referring to crimes in both ordinary and legal language" (Langford 2002, 3). He uses corpus research to discover the ordinary meaning of words such as *murder, rape, robbery, hijack* and *assault*, as well as statutory definitions or legal textbooks to establish their legal meaning. Then he formulates NSM explications of their meanings. Finally, he proposes several forensic applications of NSM, including: court interpreting and translating, formulating statutory definitions, police cautions, and jury instructions (Langford 2002, 337–367).

Finally, Anna Wierzbicka herself wrote a paper *'Reasonable man' and 'reasonable doubt': the English language, Anglo culture and Anglo-American law* (Wierzbicka 2003). This is a very interesting, albeit purely linguistic, discussion about two fundamental concepts of Anglo-American law. In her typical, diachronic analysis, full of literary examples, Wierzbicka reconstructs a surprising historical

change in meaning. She also proposes NSM explications for *reasonable man* and *reasonable doubt*.

Altogether, NSM's potential has not been fully utilised in law. On the one hand, legal scholars tend to view it as a curiosity with no direct application in the legal domain. On the other hand, the contribution from NSM scholars was so far, all things considered, fairly insignificant. Additionally, in their analyses, NSM scholars naturally adopt a linguistic perspective that a lawyer or jurist may find slightly naïve and unrealistic.[3] Still, I believe that there is much more for legal scholars to be learned from Anna Wierzbicka and her colleagues. I will now proceed to discuss several possible applications of NSM theory in a legal context.

3.2 Comprehensibility of legal texts

One obvious area of the application of NSM is the comprehensibility of legal texts. Legal texts are notorious for being incomprehensible for laypeople. The complains about legal language being obscure and complicated go back to at least the sixteenth century, when it was mocked by intellectuals such as Sir Thomas More and Jonathan Swift (Langford 2002, 15–20). In 1963, David Mellinkoff published his seminal book *The Language of the Law* (Mellinkoff 2004), starting a new discipline of legal linguistics. Arguably the most influential part of the book is the scathing critique of contemporary Legal English. Mellinkoff identified nine main characteristics of the genre contributing to its "uncommon touch", most of which concern vocabulary (Mellinkoff 2004, 11–23). Over the years, more scholars turned their attention to legal language and broadened our understanding of its distinctive features, their origins and functions. For instance, in his influential 1999 book *Legal Language*, Peter Tiersma paid a lot of attention to formal (i.e. grammatical and stylistic) aspects of legal documents (Tiersma 1999, 51–86).

The critique of legal language, expressed in the academic world by Mellinkoff, Tiersma, and many others, also took a more practical form. The 1970s saw the emergence of the plain language movement, starting in the banking sector but quickly expanding into legal spheres. It has been especially influential in English speaking countries. Many governments have adopted drafting guidelines for administrative agencies, such as the U.S. Plain Writing Act of 2010 or the Australian Plain English Manual of 1993. The idea of plain legal language is to enhance the comprehensibility

3 Consider, for instance, Langford's proposal that "[. . .] in writing a criminal code, the conceptual structure can take the ordinary meanings as a starting point and as it were, 'gloss' the extra legal components of meaning on to the ordinary meaning" (Langford 2002, 331), which assumes that the "ordinary meaning" of legal terms is commonly known and uncontroversial.

of legal documents: “Plain language has to do with clear and effective communication – nothing more or less” (Kimble 1994, 52). There are countless official documents, guidelines, booklets, manuals and scholarly papers that propose ways and means of achieving this goal, addressing various aspects of written communication.

There are some striking similarities between plain language and NSM theory. Plain language, just like NSM, focuses on the clarity and intelligibility of linguistic expressions. According to Butt, “it is language that communicates directly with the audience for which it is written. It allows the reader to understand on a first reading. It is organised in a way that meets the reader’s needs, not the writer’s needs” (Butt 2012, 28). NSM seeks to achieve this through the use of a very limited subset of natural language, namely semantic primes. Plain language advocates, quite similarly, suggest avoiding technical, archaic, formal, foreign or otherwise unusual vocabulary (Garner 2001, 62). Plain language shares the founding idea of NSM that complex ideas can be expressed through simple linguistic forms: “Plain language may not be able to simplify concepts, but it can simplify the way concepts are expressed. Used properly, plain language clarifies complex concepts” (Butt 2012, 30). Plain language also promises to deliver clarity without sacrificing precision: “Plain language is usually *more* precise than traditional legal style. The imprecisions of legalese are just harder to spot” (Kimble 1999, 50). The transparency provided by plain language techniques make it easier to identify and deal with possible deficiencies: “plain language helps expose errors. In contrast, legalese tends to hide inconsistencies and ambiguities, because errors are harder to find in dense, convoluted prose” (Butt 2012, 32). A very similar notion is expressed by Wierzbicka with a reference to NSM paraphrases: “[w]hen a formula (. . .) is found wanting from a legal point of view, its inadequacies can be clearly identified, and an improved formula can be devised” (Wierzbicka 2003, 21).

Apparently, there are many common points between the general goals and assumptions of NSM and plain language, and this fact has actually been acknowledged by some NSM scholars (Goddard/Wierzbicka 2015, 2). When we look into details, however, we note significant differences. First and foremost, advocates of plain language usually refrain from direct appeal to linguistic theories. They ground their advice mostly in common sense and anecdotal examples, rather than in empirical research or statistical data (Assy 2011, 377–380). This approach is radically different from that of NSM scholars, who rely on extensive, cross-linguistic studies. Secondly, plain language methods seem to be targeted at structure, style, grammar and even graphic design, rather than at the vocabulary used in legal writing. It is actually presented as one of its virtues (Kimble 1996, 2). Granted, plain language is a diverse enterprise and there is no established canon of plain drafting principles, but this tendency becomes clear after consulting some of the most influential works by plain language advocates (Schiess 2003, 71–75).

Recommendations addressing the problem of vocabulary are less common. They are either very general, such as: "cut unnecessary words", "prefer shorter words to long ones, simple to fancy"; "use familiar words"; "do not use jargon" (Schiess 2003, 71–74) or very specific, such as: "use must instead of shall" (Schiess 2003, 74); "avoid doubles and triples" (Garner 2001, 67). For instance, in a very influential textbook by Bryan A. Garner, in a chapter entitled "Choosing your words", only four out of nine listed principles actually address vocabulary directly. The rest concern grammar and reference, i.e. "turn *–ion* words into verbs" or "refer to people and companies by names" (Garner 2001, 62–84). Plain language advocates suggest using "simple", "familiar" or "strong" words, but rarely – if ever – take the effort to explain what counts as "simple", "familiar" or "strong". At the same time, "[w]hat is impressionistically 'plain' in English isn't necessarily either simple or universal (Goddard/Wierzbicka 2015, 2). Consider the following definitions of *reasonable man/reasonable person* – a fundamental concept of Anglo-American legal culture:

1) 'a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence)' (Merriam-Webster.com Legal Dictionary, https://www.merriam-webster.com/legal/reasonable%20person (28.07.2022)).
2) 'A legal standard used in negligence (personal injury) cases. The hypothetical reasonable person behaves in a way that is legally appropriate. Those who do not meet this standard – that is, they do not behave at least as a reasonable person would – are considered negligent and may be held liable for damages caused by their actions' (Nolo's Plain-English Law Dictionary, Legal Information Institute (https://www.nolo.com/dictionary/reasonable-person-term.html (28.07.2022)).

The first definition is a standard definition from a popular online legal dictionary. The second definition is a plain-English legal definition from a commercial plain English dictionary. When we compare these two definitions, we may notice that the plain version uses simpler vocabulary and simpler grammatical constructions. It avoids the vicious circle of defining *reasonably* using the word *reason*. It reduces the number of difficult terms used to explicate the meaning of *reasonable man*, such as *prudence*, *care, foresight* and *intelligence*. It avoids complex phrases such as *in relation to* or *by which to measure,* as well as enumerations, such as *conduct, conclusion, or expectation* or *measure or determine*. However, the definition does little to explain what *reasonable person* actually means. It is certainly not enough to define *reasonable person* as someone who 'behaves in a way that is legally appropriate', because the reasonable person standard is usually used to

determine what is legally appropriate. It also goes without saying that the reasonable person standard is not only used in personal injury cases, but has a much more universal significance. Lastly, some of the vocabulary used in the definition can hardly be described as "plain", for instance: *negligence*, *hypothetical*, *appropriate*, *considered*. Now, compare this approach to the NSM explication of *reasonable man* provided by Wierzbicka herself (Wierzbicka 2003, 6):

I think that X is a reasonable man. =
  I think about X like this:
    X can think well about many things
    When something happens to X, X can think well about it
    Because of this, X can think about it like this:
      'I know what is a good thing to do now'
      'I know what is a good thing not to do now"
  If other people think about it for some time they can think the same
  When I think about X like this, I think: this is good
  I don't want to say more
  I don't want to say that X is not like many other people

We can see that the latter is a very different approach to defining *reasonable person*. It avoids circularity, namely it does not use *reason* to define *reasonable*. It does not introduce other concepts of similar complexity, like *prudence*. It uses only a few semantic primes that are intuitively understood. In addition, it does not attempt to define *reasonable person* as an abstract notion, but instead it takes human cognition as a point of departure and depicts a prototypical scenario of what a person may think. In addition, it explicitly introduces several important elements that were left out in the plain language definition: It states that the mental capacity of a *reasonable man* is not unlimited. It states that *reasonableness* relates to practical everyday experience rather than abstract speculations and calculations. It states that a *reasonable person* is not an extraordinary one, and so on.

Overall, it seems that NSM can offer substantial support for the idea of drafting clear and comprehensible legal documents. It shares the basic ideas of plain language, but is much more methodologically robust and is based on years of empirical research. In addition, NSM concentrates on vocabulary, which seems to be a weak point of most plain language guidelines and the plain language movement in general.

3.3 Semantic analyses

Another potential area of application is legal semantics. Semantic analyses are indispensable both for legal theory and legal practice. Statutory interpretation, doctrinal analyses and the drafting of a legal text – they all include semantic considerations.

Jurist and linguist Lawrence Solan has noticed that "[m]ost battles over legal interpretation are battles about meanings of words" (Solan 2001, 244). However, there are no standardised tools for legal semantic analyses. They are usually carried out using a mix of intuition, dictionary definitions and specific legal vocabulary, including technical terms and foreign (i.e. Latin) words. This poses several problems. Semantic analyses found in legal books, judicial decisions and dictionaries are often circular, indeterminate and unintelligible. As noted by Goddard, "the tradition in lexicography and law alike [is] to eschew simple language in favour of more complex and learned vocabulary"(Goddard 1996, 265).

The very purpose of NSM was to provide a novel and adequate tool for semantic analyses: "The NSM approach can be viewed as a principled and linguistically sophisticated development of traditional ideas about verbal definition" (Goddard 1996, 258). However, its basic assumption differs greatly from many other approaches to lexical semantics. It provides a way of expressing subtleties of meaning using simpler, not more complex, vocabulary. The previous explication of *reasonable man* serves as an example. Now I would like to provide another one. For this I have chosen a concept from criminal law, namely *recklessness.* It refers to the mental (or subjective) element of crime. It is one of the forms of culpability or types of *mens rea*. Other types of *mens rea* in Anglo-American law usually include *intention* and *negligence*. These are interesting concepts because they refer to mental processes that are subjective and notoriously difficult to define. Mental elements of crime are traditionally divided into cognitive (intellectual) and volitional (attitudinal) part (Blomsma/Roef 2019, 179; Duff 2019, 5). There is no "objective" reality to describe, only desires, wants and beliefs. At the same time, I believe this makes them particularly suitable objects of NSM paraphrases.

Recklessness is a form of culpability characteristic for most Common law countries. It constitutes a middle ground between intent and negligence and may be preliminarily defined as 'the conscious taking of an unreasonable risk' (Blomsm/Roef 2019, 189–190). However, its definitions may vary between different jurisdictions and even between different lines of judgments in one jurisdiction. My analyses here are based directly on two English cases widely discussed in the literature on the subject: *Caldwell*[4] and *R v G*[5] (Blomsma/Roef 2019, 191–192). The concept of recklessness in English law has been changing over the years. The 1982 R v *Caldwell* case overruled the previous interpretation of recklessness and established an objective test for recklessness. It has been criticised for blurring the distinction between recklessness and negligence, and hence many other Common law countries have

4 R v Caldwell (1981) 1 All ER 961.

5 R v G and another (2003) UKHL 50.

rejected it (Langford 2002, 133). The decision was overruled in the 2003 *R v G and another* case that once again established the subjective test. The differences between these two accounts of recklessness are quite subtle. They revolve around the notions of awareness, foresight, obviousness, risk, (un)reasonableness, etc. Below, I propose NSM explications of these two legal meanings of recklessness, which instead are formulated using only a handful of semantic primes, such as *think*, *know*, *want*, etc.

Caldwell recklessness:

"A person is reckless as to whether property is destroyed or damaged where:

1) he does an act which in fact creates an obvious risk that property will be destroyed or damaged and
2) when he does the act he either has not given any thought to the possibility of there being any such risk or has recognised that there was some risk involved and has nonetheless gone on to do it."

In other, slightly more abstract, words: "A person acts recklessly when he either realises there is a risk and takes it anyway, or when he fails to see a risk that, by the objective standard of a reasonable man, he ought to have seen"(Blomsma/Roef 2019, 191).[6]

This definition may be turned into the following NSM explication:

X does something recklessly =
X does something
Something bad may happen because of it
  a) It may be like this:
     X knows that something bad may happen because of it
     When X does it, X does not want to think about it
  b) It may be like this:
     X does not know that something bad may happen because of it because he does not want to think about it
     When other people think about it they will think: "something bad may happen because of it"
When other people think about it they will think: "it is not a good thing to do now"
X may know that other people will think this way.

6 Consider also the original passage: "[A] person charged with an offence [. . .] is reckless as to whether or not any property would be destroyed or damaged if (1) he does an act which in fact creates an obvious risk that property will be destroyed or damaged and (2) when he does the act he either has not given any thought to the possibility of there being any such risk or has recognised that there was some risk involved and has none the less gone on to do it."

The explication is divided into two sections, because of the distinction in the cognitive requirement introduced in *Caldwell*. Section (a) paraphrases the typical situation in which a person is aware of the risk: "he [. . .] realises there is a risk and takes it anyway." In NSM words it can be paraphrased as "X knows that something bad may happen because of it." The line "When X does it, X does not want to think about it" serves to delineate reckless risk-taking from intentional risk-taking, which, conversely, should be interpreted as a kind of intent, i.e. a different form of culpability. It also expresses the notion of disregarding the risk, which in the above definitions is expressed indirectly by the words *nonetheless* and *anyway*.[7] Section (b) paraphrases the alternative situation in which a person is not aware of the risk he should have been aware of: "fails to see a risk that [. . .] he ought to have seen." I have chosen the line "he does not want to think", rather than simple "he does not think", because it better captures the blameworthiness of not thinking about the consequences expressed by the words *fails to see* and emphasises the fact that he could have known about the consequences if he had "given any thought to the possibility of there being such a risk." The reasonable person standard is captured by the reference to what people will think about the whole situation. Alternatively, we could, of course, make reference to the NSM explication of reasonable man provided by Wierzbicka. The last two lines, common for both sections, refer to the requirement that the risk taken by the offender be obvious, unreasonable or unjustifiable. Here, again, the concept of *other people* serves as a proxy for the standard of reasonable person (Blomsma/Roef 2019, 192).

Now, compare this with the alternative *R v G* recklessness:

"A person acts recklessly [. . .] with respect to –

i. A circumstance when he is aware of a risk that it exists or will exists;
ii. A result when he is aware of a risk that it will occur;

And it is, in the circumstances known to him, unreasonable to take that risk."

NSM paraphrase:

X does something recklessly =
X does something
Something bad may happen because of it
X knows that something bad may happen because of it

7 For reference, consider the definition of recklessness from the American Model Penal Code: "A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation" (Section 2.02, 2c).

When X does it, X does not want to think about it
When other people think about it they will think: "it is not a good thing to do now"
X may know that other people will think this way.

This explication is shorter, as it only includes section (a) from the previous definition. For the sake of simplicity, the distinction between recklessness with respect to a circumstance and result is ignored here, as in many doctrinal definitions. The subjective standard of recklessness requires that the offender is aware (*knows*) of the risk created by his actions. However, the awareness requirement does not relate to the unreasonableness of the risk. This is captured by the last two lines introducing the "objective" criterion: "When other people think about it . . ." Alternatively, this could be substituted with a reference to the explication of the concept of *reasonable man*.

As you can see, these paraphrases use only the very restricted NSM vocabulary and simple grammatical constructions. They avoid complex vocabulary traditionally used in this context, such as *awareness*, *(un)reasonable*, *realisation*, *disregard*, *circumstance*, etc. Yet, they arguably succeed in explaining the semantic complexity of the respective concepts and neatly present the subtle differences between them. The cognitive (intellectual) element (awareness) is expressed by the universal word *know*. The volitional element is expressed by the universal word *want*. In recklessness, the volitional element is barely present (Blomsma/Roef 2019, 190), hence it is presented in a negative form: "does not want to think." Paraphrases such as these are short, unambiguous, precise, simple and self-explanatory. They can be used for various legal and forensic purposes, including doctrinal analyses, judicial interpretation of statutes and precedents, writing police warnings and jury instructions (Langford 2002, 337–367). They can also be used in comparative law as a means for comparing concepts from different languages and different legal systems, as will be discussed in the next section.

3.4 Comparative law

One of the main methodological issues in comparative law is the problem of a common comparative denominator or *tertium comparationis* (van Reenen 1995, 176; Brand 2007, 409–459). Every comparison of two or more different legal traditions, systems, or institutions presupposes some common ground between them that makes the comparison possible (Hoecke 2015, 27). *Tertium comparationis* forms the conceptual apparatus with which the comparatist approaches his discipline and "provides (or fails to provide) him with the key to access the positive legal reality" (van Reenen 1995, 198). Comparative legal scholars continue to debate on the nature, role and very existence of *tertium comparationis*. Some see it in the function

of legal institutions: "incomparables cannot usefully be compared, and in law the only things that are comparable are those which fulfil the same function" (Zweigert/Kötz 1998, 34; Michaels 2006, 367). Some seek it in the supranational ideal, "higher", or natural law, Gustav Radbruch's *richtige Recht* (van Reenen 1995, 177). Others claim that it can only be found in objective social reality (van Reenen 1995, 184). Still others propose a certain philosophical concept of law to serve as the *tertium comparationis* (van Reenen 1995, 197). Moreover, some comparative legal scholars deprecate the very idea of *tertium comparationis* as misleading, arguing that there can be no such thing as a neutral referent (Frankenberg 1985, 415).

Mark van Hoecke has expressed the opinion that the continued search for *tertium comparationis* in comparative law, understood as some external, neutral, objective element, is misguided. What is really needed is creating a language capable of describing concepts from different legal cultures in a relatively neutral way: "[i]nstead of looking for *tertia comparationis*, legal comparatists should, indeed, through their research, develop such a comparative second-order language" (Hoecke 2015, 28).[8] In a roughly similar vein, Oliver Brand has argued for a conceptual approach in comparative law methodology. In his theory, the role of *tertium comparationis* is played by concepts which meet certain criteria of neutrality, unambiguity, and context-independence (Brand 2007, 440). He hopes that this method, over time, "will establish a common reference system in the form of the concepts that it develops" (Brand 2007, 463).

It seems that NSM is perfectly suited to fill the roles sketched out above, and much more. It is a second-order language (i.e. metalanguage) designed to analyse and compare concepts from various languages and cultures – "an invaluable descriptive tool for the analysis and contrastive study of meaning-related phenomena in all languages: a *tertium comparationis* for cross-linguistic study and language typology" (Goddard/Peeters 2010, 460). It is also truly universal, based on cross-linguistic research and explicitly targeted against ethnocentrism in any form. As a side note, it is worth mentioning that both comparative law and NSM claim to have the same spiritual father in German philosopher Gottfried Wilhelm Leibniz (Frankenberg 1985, 427; Eser 1997, 495).

Let us continue with the topic of the subjective element of crimes. Different national (and international) bodies of law distinguish close, but not identical types of *mens rea*. The terminology includes numerous English and Latin terms (not to mention terms from other languages), which are similar, but never quite

8 Van Hoecke is actually quite sceptical as to the possibility of working out the really universal metalanguage and he explicitly contents himself with a second-order language of merely bilateral validity (Hoecke 2015, 28).

equivalent: *direct intent, indirect intent, oblique intent, conditional intent, dolus, dolus directus, dolus indirectus, dolus eventualis, recklessness, negligence, conscious negligence, unconscious negligence, culpa*, etc. The vocabulary used to define these terms is also highly problematic, often Latin-laden or metaphorical: "*Mens rea* [. . .] is still one of the most complex areas of criminal law, in most part, because so many imprecise and vague terms are used to define the mental element" (Badar 2013, 16). As a result, comparative legal studies of *mens rea* are inherently risky, as the researcher first needs to overcome conceptual sinking sands and deal with terminological ambiguities. Comparative and international law scholars like to remind that "writing about intent in different jurisdictions and legal systems entails great challenges" (Lekvall/Martinsson 2020, 101). Once again, this makes *mens rea* the perfect testing ground for NSM in a comparative law context.

In the previous section, I provided an NSM explication of the meaning of recklessness. However, recklessness has no direct counterpart in most Civil law jurisdictions. Instead, Roman-influenced legal systems typically adopt a broader notion of intent, encompassing not only direct and indirect intent, but also what is known as conditional intent, often called *dolus eventualis*.[9] The relation between recklessness and *dolus eventualis* is a very popular subject of comparative analyses. There is an ongoing debate about whether they should be viewed as effectively equivalent or distinct (Lekvall/Martinsson 2020, 104). One's opinion is often a matter of perspective: "To a criminal lawyer trained in the civil law it is fairly uncontroversial to consider *dolus eventualis* as a subcategory of intent. [. . .] But to a U.S. criminal lawyer, the idea that *dolus eventualis* is a form of "intent" is nonsensical [. . .] (Ohlin 2013, 83). The difference between the two is by no means purely academic. For instance, in international criminal law it amounts to "nothing less than the distinction between the terrorist and the soldier"(Ohlin 2013, 130).

Most authors agree that *dolus eventualis* covers some, but not all, cases of Anglo-American recklessness (Duff 2019, 6). Both concepts are claimed to serve a similar function, yet focus on slightly different aspects of the offender's mental state (Blomsma/Roef 2019, 189–190). However, their exact relation is difficult to establish. Part of the problem is terminological. As already mentioned, we lack a neutral language to describe legal concepts, even less if we consider concepts not only from various legal cultures, but also encoded in various languages. This problem basically disappears once we reach for NSM paraphrases.

9 A noticeable exception is the criminal law of South Africa, which, although it generally subscribes to the Common Law family, traditionally recognises *dolus eventualis* as a form of intent (Awa 2019, 152–165; Tsuro 2016, 2).

Obviously, neither recklessness nor *dolus eventualis* present crystal-clear, established conceptual categories. As already discussed, recklessness has several definitions. For the following analysis, I will use the explication of *R v G* recklessness as formulated in the previous section.[10] It offers a good approximation of how this concept is currently understood in most Common law jurisdictions:

X does something recklessly. =
X does something.
X knows that something bad may happen because of it
When X does it, X does not want to think about it
When other people think about it they will think: "it is not a good thing to do now"
X may know that other people will think this way.

Analogically, there are numerous interpretations of *dolus eventualis*. I will refer to the definition provided in the Polish Criminal Code from 1997. It generally conforms with the concept of *dolus eventualis* as defined in other civil law countries, such as Germany or Sweden, but it adds a slightly more "exotic" touch and an additional linguistic challenge to the analysis. First, consider the original Polish version:

Czyn zabroniony popełniony jest umyślnie [*dolus eventualis*], jeżeli sprawca [. . .] przewidując możliwość jego popełnienia, na to się godzi.[11]

Luckily, we have a Polish version of the NSM. Therefore, to avoid the risk of distorting meaning in the translation process, the definition should be turned into a Polish NSM explication:

Osoba X robi coś umyślnie [dolus eventualis] =
X robi coś
X wie, że coś złego może stać się z tego powodu
Kiedy X to robi, X myśli:
"Wiem, że to może się stać. Chcę to zrobić"

Now that we have a Polish NSM explication, we can translate it into potentially any other language, because the vocabulary and grammar used in it are allegedly

10 Here, I cut the second line "Something bad may happen because of it" as, outside of the previous context, it is redundant. It merely repeats the information explicitly encoded in the next line "X knows that something bad may happen because of it."

11 The following direct translation may be offered: 'A prohibited act is committed intentionally, if the perpetrator [. . .] foreseeing the possibility of its commission, agrees to it'. The ending phrase "na to się godzi", translated here as 'agrees to it' has a slightly archaic feel to it. Alternatively, it may be also translated as 'accepts it' or 'reconciles with it'. Both translations conform with the vocabulary used in academic discussions about *dolus eventualis* in other countries, see i.e. (Blomsma/Roef 2019, 187; Lekvall/Martinsson 2020, 103–104).

universal. All translations should be considered semantically equivalent versions of the same explication. Here is the English version:

> Someone X does something intentionally *(dolus eventualis)* =
> X does something
> X knows that something bad may happen because it
> When X does it, X thinks:
> "I know that it may happen. I want to do it"

Finally, we may compare this explication with that of recklessness. The first two lines of each are identical. The perpetrator does something and he is aware that it may result in committing a crime (here referred to as "something bad"). We may conclude that the cognitive (intellectual) component of both types of *mens rea* is the same. This conforms to the views expressed in the comparative law literature (Blomsma/Roef 2019, 189–190; Duff 2019, 5; Chiesa 2018, 591–592). The difference lies in the volitional (attitudinal) component. Recklessness does not require any particular attitude towards the possibility of committing a crime. On the contrary, *dolus eventualis* requires a certain kind of attitude from the perpetrator. Depending on the adopted theory, it can be described as *acceptance* or *indifference* (Chiesa 2018, 590; Kowalewska 2013, 57–78). I believe that the paraphrase is broad enough to encompass both accounts. Note that the explication of *dolus eventualis* does not share the last two lines of the recklessness explication referring to the objective probability of the risk and unreasonableness of undertaking it. This is due to the fact that the Polish Criminal Code is deliberately silent on this matter (Kowalewska 2013, 65). Similarly, in German law there is no threshold of the probability of risk, unlike in some other civil law jurisdictions (Blomsma/Roef 2019, 183). If needed, in a particular context, those two lines can be added to the formulation.

A full-fledged comparative analysis would naturally require much more, i.e. an explication of the remaining modes of culpability in both legal traditions. However, even such a limited comparison reveals crucial similarities and differences between common law recklessness and civil law *dolus eventualis*. Additionally, it does so in a simple, self-explanatory, easily translatable way. It avoids complex, culture-dependent vocabulary. It is ready to be extended to other languages, due to the universality of NSM formula. It is worth noting that the topic of applying NSM to comparative law in EU context was already hinted by Bajčić in her brilliant 2017 book on legal semantics. She expressed the opinion that the NSM approach in a legal context "would soon hit a wall due to the nature of the law and unique categories of each legal systems" (Bajčić 2017: 115). I believe that the contrary is true. The undisputed uniqueness of conceptual categories from various legal systems (and languages) makes the NSM approach all the more suitable. As the long debate on *tertium comparationis* proves, comparative law craves for universal metalanguage.

3.5 Supranational law

This leads us to the next area of possible application of NSM, namely law in a cross-linguistic and cross-cultural environment, most notably supranational law. In this context, translation becomes "one of the central linguistic operations in law" (Galdia 2017, 270). This is a very broad and diverse topic, often discussed from the perspective of legal translation or drafting multilingual EU law (Ainsworth 2014; Biel 2014; Chromá 2014; Prieto Ramos 2014; Šarčević 2015; Bajčić 2017). To maintain the previous focus on criminal law, I will instead discuss it from the perspective of international criminal law.

International criminal law rests on the assumption that some crimes are universal and should therefore be punishable regardless of the nationality of the perpetrator, the content of respective national criminal law, the place of their commission, etc. They are "particularly grave offences of concern to the world community as a whole" (Einarsen 2012, 4). At the same time, there is no universal language to talk about those crimes, to define them in legal acts, to provide communication in the courtroom and so on. As a result, legal translation is indispensable to the successful application of international criminal law. International criminal institutions typically employ whole units of professional translators and heavily rely upon their work: "[v]irtually every aspect of the International Criminal Court's work is dependent upon translation and interpretation" (Swigart 2017, 208).

Translation is arguably even more challenging for international criminal law than for other branches of international law or EU law. There are several reasons for this. Firstly, international criminal institutions, such as the International Criminal Court (ICC), have to deal with an unparalleled number of languages. For instance, ICC has two working languages, six official languages, and a virtually unlimited quantity of communication languages and situation languages. In 2013, it was expected to support a total of 45 different languages (Tomic/ Montoliu 2013, 224–230). Secondly, many of those languages are labelled by linguists as *languages of lesser diffusion*. Such languages are often non-standardised, meaning that they may lack written tradition, dictionaries and linguistic experts, not to mention any existing legal terminology. All this makes translation extremely difficult (Tomic/ Montoliu 2013, 234–237; Swigart 2017, 206–209). Thirdly, international criminal institutions are highly dependent on witness testimony, as they usually lack an autonomous evidence-gathering capacity and they often deal with crimes committed in regions with low rates of literacy (Karton 2008, 36–37). Courtroom interpreting is arguably the most stressful and demanding type of translation. Additionally, it often involves the difficult task of translating emotional states, colloquial vocabulary, euphemisms, ethnic epithets and slurs (Karton 2008, 38; Tomic/Montoliu 2013, 236–237). Lastly, there is the problem of "cultural dissonance" between the institu-

tion and its beneficiaries (Kelsall 2010, 1). The basic doctrines and concepts of international criminal law are undoubtedly Western in origin. At the same time, they are mostly applied to non-Western societies and individuals.[12] This phenomenon also has a linguistic dimension. Despite legal and political efforts, English has become the sole dominant language of international criminal law (Swigart 2017, 212–215). This poses the risk of ethnocentrism, i.e. treating English concepts as universal and self-explanatory: "[w]ith English at present being the main lingua franca there is a danger that international criminal justice will continue to see itself through the eyes of that language of law and all the cultural luggage that comes with it" (Bohlander 2014, 513).

NSM, once again, seems like a tailor-made solution. It promises the universal metalanguage that is truly neutral and fully translatable. It is highly sensitive to the cultural aspect of language, well equipped to deal with cultural norms, values and practices (Wierzbicka 1997). Most importantly, it is explicitly anti-Anglocentric (Wierzbicka 2014; Goddard 2018, 315). Wierzbicka insists that the number of culture-specific words in English is much greater than most of its users – even language experts and academics – would ever expect. This includes plain English words such as *male, female, mind, fact, friend, reason, sex, deal* as well as more sophisticated vocabulary, such as: *right, wrong, fairness, evidence, violence, victim, commitment, cooperation, competition, intention, freedom, feasible, reasonable, humane, inhumane, respect, equality, domination, discrimination, degradation*, etc. (Goddard/ Wierzbicka 2015, 11–12). Many of these words do not have direct equivalents even in most European languages, not to mention languages of lesser diffusion that can be heard in the ICC's courtroom. Using them carelessly in cross-linguistic communication poses obvious risks.

Notice that some of these words seem virtually indispensable in the international criminal law context. It appears that many crucial words in the legal English vocabulary are culture-specific and difficult to translate. How can we effectively grant rights to victims of international crimes if we cannot directly translate either *right* or *victim* into the languages spoken by societies that should benefit from them? How can we prosecute sexual violence as a universal crime if neither *sex* nor *violence* have equivalents in the languages of persons who suffered it?[13]

Consider, once again, the mental element of crimes. The problems identified previously in this respect are multiplied in an international context. According to the Rome Statute, international criminal law requires intent and knowledge for

12 So far, all the trials conducted before the ICC have involved a defendant from Africa. This is one of the reasons why the ICC is sometimes accused of neo-colonialism (Benyera 2018, 3–4).

13 For an interesting proposal of a language-neutral definition of torture in the NSM framework see (Mooney 2018).

criminal liability before the ICC. There is a lot of confusion, however, as to how exactly the concept of intent should be understood. Despite almost twenty years of the ICC's jurisprudence, it is "still rife with ambiguities and inconsistencies" when it comes to the topic of criminal intent (Marchuk 2014, 156). Different legal traditions and different national jurisdictions cherish varied notions of intent. As a result, "judges from different countries serving on international courts and tribunals are probably influenced by how this concept is defined and understood in their respective legal systems" (Lekvall/Martinsson 2020, 108). The judges, fully aware of the controversies surrounding the notion of intent in comparative law, "inadvertently transposed a certain degree of confusion in international criminal law" (Marchuk 2014, 156).

The concept of intent is provided with a statutory definition in Article 30(2) of the Rome Statute:

> [. . .] a person has intent where:
> (a) In relation to conduct, that person means to engage in the conduct;
> (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

As the abundant literature on the subject may attest, this definition has not ruled out all possible interpretive doubts (Lekvall/Martinsson 2020;, Ambos 2003; Marchuk 2014, 134–157; Badar 2013; Singh 2020; Van der Vyver 2004). For instance, it is not clear whether *dolus eventualis* or recklessness are supported by it (Badar 2009, 441–468). In addition, it is far from obvious how the relation between general intent, as defined in Article 30, and specific intent, provided in more details in the Elements of Crimes, should be construed (Ambos 2003, 12–40; Marchuk 2014, 134–156; Van der Vyver 2004, 69–72). According to experts, the Rome Statute's definition of intent is unacceptably loose (Marchuk 2014, 156), uses "ambiguous and psychologically imprecise wording" (Mantovani 2003, 32) and "require[s] further clarification and elaboration" (Ambos 2003, 40).

Another problematic aspect is the translatability of the definition. As already mentioned, the word *intention*, despite its seemingly universal significance for criminal law, is an English-specific word. This makes the concept of intention very far from being universal and self-explanatory. It is doubtful whether the definition does a good job of explaining the term *intent* to people from non-Western cultures. Notice that it uses other complex and arguably English-specific or at last Euro-specific expressions, such as *conduct*, *circumstance*, *consequence*, *ordinary course of event*, etc. Now consider the following NSM paraphrase of the definition of *intent*:

Someone X has intent. =
X does something
(a) When X does it, X thinks: "I want to do it"
(b) Something may happen because of it
When people think about it they will think: "It will happen".
It may be like this: When X does it, X thinks: "I want it to happen"
It may be like this: When X does it, X thinks: "I know that it will happen"

The paraphrase makes it plain to see why the definition draws so much academic discussion and conflicting opinions. Section (a) is rather uncontroversial as it obviously covers cases of direct intent (*dolus directus*) – when the perpetrator consciously aims at committing a crime. Section (b) covers two situations. The first is, once again, uncontroversial. The second, however, bears striking similarity to the previous explications of *dolus eventualis* and recklessness. The main difference between Article 30's intent and *dolus eventualis* is that the latter requires acceptance of the risk (stronger volitional element) without requiring certainty about the consequences (weaker cognitive element).

The above issues are already being discussed in the literature. Some authors have expressed the view that Article 30 does cover *dolus eventualis* and even recklessness: "One could infer from Article 30 [. . .] of the Statute, that the mental element [. . .] comprises not only intent *(dolus),* but also recklessness *(dolus eventualis)"*(Mantovani 2003, 34). Others insist that the provision does not accommodate lower forms of *mens rea*, such as indirect intent or recklessness, because the definition "clearly indicates that the required standard of occurrence is close to certainty" (Badar/Porro 2017, 318). They point to the difference between *will occur* and *might occur*, which was explicitly referred to by the Preparatory Committee and later by the ICC itself (Badar /Porro 2017, 318–319; Badar 2009, 441–442).

Settling this dispute is not my ambition. Rather, I would like to underline that all those subtle semantic differences between various forms of *mens rea* discussed in the legal literature are successfully captured by the proposed NSM paraphrases. The NSM is obviously simpler than the language of the Rome Statute and jurisprudence, as it uses only a handful of primitive concepts. At the same time, I believe it does not sacrifice precision. Arguably, it is even more precise. For instance, expressions like *virtual certainty*, *practical certainty*, *close to certainty*, *certain unless extraordinary circumstances intervene* are substituted with a simple cognitive scenario which encapsulates both the subjective and objective elements: "When people think about it, they will think: 'It will happen'. When X does it, X thinks: 'I know that it will happen.'"

On top of that, NSM paraphrases are universal. This means that they are not bound to any specific language or legal tradition, such as Common law or Civil law. Instead, they may be freely translated into virtually any language and then dis-

cussed in a language-neutral and culture-neutral way. This seems to be particularly important for international criminal law because of its inherently multilingual and multicultural nature. For instance, an African language of lesser diffusion is likely not to have words for *intention*, *cognition*, *volition*, *recklessness*, *reconciliation*, *ordinary course of events*, etc., but it is almost guaranteed to have words for *think, want, happen, people*, etc.

4 Conclusions

The list of possible legal applications of NSM presented in this article should by no means be read as closed. My intention was to bring the NSM theory to legal theory and to provide some examples of how it can be utilised. There is certainly much more to NSM still to be discovered. There are also, as with the implementation of all scientific theories, some problems to be discussed.

Firstly, I am aware that the NSM paraphrases presented in this article may strike readers as simplistic, naïve, or even "childish" (Goddard/Ye 2014, 11–12). They certainly do not resemble traditional statutory definitions or legal analyses. However, if we resist that first impression and actually apply them in the appropriate legal context, we will be able to judge their suitability. I have tried to show that it is surprisingly high, at least in the presented areas.

Secondly, an obvious objection to NSM is that the paraphrases are too long, difficult to "unpack", and we cannot realistically expect them to substitute legal language. With this I fully agree. Writing statutes or judgments in NSM is undoubtedly a utopian idea that nobody has ever supported. Even NSM scholars advertise it "not as the sole language of communication, but as an auxiliary or supplementary language" (Goddard/Wierzbicka 2015, 1). In law, this may mean formulating explications of key concepts for the purposes of explaining them to laypersons, translating them into other languages, or comparing them with other concepts.

Thirdly, one may argue that NSM is too "ambitious" for legal purposes. After all, do we really need concepts that are primary and universal in our legal analyses? Is it actually beneficial if we submit to the methodological rigour of NSM? Apparently, the proponents of NSM have already recognised this problem. They recently launched the Minimal English project, which can be described as an attempt to take NSM "out of the lab" (Goddard/Wierzbicka 2015, 1). It is an application and extension of NSM, "intended for use by non-specialists, and for a wide and open-ended range of functions" (Goddard/Wierzbicka 2015, 1). It consists of semantic primes, universal semantic molecules and other expressions that are relevant for a particular domain of discourse and easily translatable. It is not a

rigid methodology, but rather a flexible system open for future modifications (Goddard/Wierzbicka 2015, 12). The hope of its creators is that it can become "a global minimal lingua franca for the elucidation of ideas and explanation of meanings – not only in scholarship but also in international relations, politics, business, law, ethics, education, and indeed in any context where it is important to explain precisely what one means (Goddard/Wierzbicka 2018, 8).

Finally, there is one more general-theoretical remark to be made. I am aware that the overall tone of the article may feel a little too optimistic. Law has witnessed the "colonisation" of countless linguistic, psychological, sociological and other theories, but they were never able to displace legal problems in their entirety. Obviously, I do not see NSM as a miraculous panacea for all linguistic issues in law. Its utility may in fact be quite limited: "a metalanguage is a tool designed to serve specific ends, and [. . .] as the ends are different, so different tools will be appropriate" (Riemer 2006, 377). For instance, while NSM does a pretty good job with abstract concepts, such as *sad*, *unhappy*, *intention*, *recklessness*, etc., it is gets much more messy with concrete concepts, such as *cup*, *fruit*, *tiger*, etc. (Allan 2020; Geeraerts 2009, 119–127). This can be perhaps attributed to the fact that NSM focuses on intensional, rather than extensional, aspects of linguistic meaning (Goddard 2018, 329). It attempts to capture the conceptual knowledge of language users, but does not seem to offer a ready-made explanation of the connection between conceptual knowledge and reality (Geeraerts 2009, 124–125). NSM explications tend to capture the prototype of a conceptual category rather than the full scope of its possible applications (Wierzbicka 1996, 148–169). To use a classic legal example: an NSM explication of *vehicle* is not likely to help us decide whether a bicycle is a vehicle (Hart 1958, 607). My point is, however, that this should not automatically discourage us from making use of NSM theory where suitable. If it can guide us in writing clearer, more culture-neutral and more translatable legal texts, then it is definitely worth pursuing.

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