



Legal Concepts as Social Representations

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Abstract

The nature of concepts is a subject of study of various disciplines, from philosophy to cognitive sciences, leading to fragmented understandings and conceptual dissociations. Legal concepts have been studied in an interdisciplinary manner across all these disciplines, suffering from similar fragmentation. Recently, the interdisciplinary crossroads between law and cognitive sciences have brought forward the notion of legal concepts as mental representations. However, this approach largely overlooks the systemic, historical, and societal elements essential to comprehending legal concepts. The aim of this paper is to advocate for the Social Representations Theory as a useful framework that bridges cognitive and socio-cultural dimensions of meaning and can provide a holistic approach to understanding legal concepts. This paper unfolds in three sections. The first section contextualizes the social representations approach within the law and language framework, emphasizing the societal influences on thought and meaning. The second section explains the notion of social representations, building upon Serge Moscovici's definitions and Ivana Marková's arguments for the necessity of this approach to accommodate the social dimension of meaning. The third and last section underscores the claim that legal concepts are, in essence, social representations, advocating for the usefulness of this approach in legal scholarship, both paradigmatically and methodologically, consequently arguing for an inclusion for a stronger focus on the social dimension of legal meaning.

Keywords Concept · Legal concept · Social representation · Meaning-making · Social dimension of meaning · Mental representation · Legal language

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1 Introduction

There is a widely accepted idea that concepts are essential for human life and interaction. They serve as a foundation for various aspects of human cognition, language or mathematical reasoning [1, 2]. However, there is no consensus on the nature of concepts [3, pp. 19–20; 4], and different academic disciplines approach them from different perspectives. This lack of consensus results in strange conceptual dissociations and disconnects in our understanding. While general linguistics focuses on linguistic meaning [5] and semiotic on the reference of the symbols [5, 6], for logic, concepts are (un)structured abstract entities that identify objects [7]. Some philosophical constructions view concepts and word meanings as abstract objects or a capability to distinguish between objects [8]. Psychology approaches concepts as mental objects or representations [9–12], while recent neuroscientific research claims that nothing as a concept even exists. This so-called extensive variability of conceptual representation thesis is based on a claim that all concepts are essentially ‘ad hoc’ representations and they never correspond to the representations of others [13]. Yet people understand each other, are capable of communication, and are capable of participating in meaning-making.

The study of concepts in law has long abandoned the restrictive approach of jurisprudence of concepts [14] and may be traced along the lines of disciplines mentioned above. The literature spans considerations of linguistic meaning in law [15–17], conceptualization as a theme of legal semiotics [18–20], philosophical considerations of legal concepts [21, 22] and legal categorization [23–25], finding connecting links to prototype theory [26]. Furthermore, there have been attempts to bring this knowledge together and provide introductions to further studies, such as those by Fränberg [27] or van der Pfordten [3].

In a recent article, Jakubiec [28] argues that law and legal theory should understand legal concepts as mental representations, given the fact that this approach is currently the default one in cognitive science [29, 30]. Yet he concludes that this approach by itself is lacking and suggests that to understand a legal concept, we should not only consider its cognitive dimension but also the characteristics of a given legal system in which the concept is used, and its historical roots. This conclusion is unsurprising: a single mental representation in one’s mind could hardly provide the necessary knowledge we seek when analysing a legal concept. Therefore, Jakubiec suggests that any study of conceptualization in law should further include a study of a given legal system, and its history.

While I wholeheartedly agree with this conclusion, I also believe that it is still lacking a crucial dimension. Both legal systems and their historical considerations are products of societies and their wider culture and beliefs. To fully understand legal concepts, we need to take yet another step further and explore the social dimension of conceptualization.

Social psychology offers a special framework to understand and study this dimension: the social representations approach, or Social Representations Theory (SRT). This approach connects cognitive approaches to conceptualization with the socio-cultural ones [31, p. 54]. It spans disciplinary boundaries, bringing

together psychology, sociology, anthropology and communication studies (including linguistics and semiotics) with a single purpose: to explore and explain the interaction between the individual and social in the construction of knowledge via representations [32, 33].

While researchers in social psychology occasionally seek to explore law-related phenomena [34, 35] and while the social representations approach has been occasionally used to study law-related concepts and phenomena [36, 37] it remains largely unrecognized within the fields focusing on the study of meaning in law, legal semiotics in particular.

The aim of my paper is to show that the social representations approach is well suited to cover the missing social dimension in Jakubiec's considerations of legal concepts. Furthermore, it offers an independent and holistic approach to the exploration and analysis of legal concepts. I further aim to show that the holistic nature of the social representations approach may serve as a connecting framework, bringing the loose ends of various approaches to concepts together and as such is well suited in approaching the understanding of legal concepts.

Therefore, the aim of this paper is threefold:

1. To introduce the social representations approach and explain what social representations are;
2. To show how does this approach fit within the interdisciplinary study of meaning in law;
3. To show that legal concepts are, in essence, social representations, and to study them as such may bring insights unknown to a classical doctrinal approach.

Accordingly, this paper is divided into three sections. The first section of this paper will situate the social representations approach to a wider law and language framework that is already established and found useful in legal scholarship and legal semiotics. I will place this approach within the social nature of language and meaning making: our thinking is influenced by implicit presuppositions that are shaped by the society, its culture, and traditions we live in [6, 38, 39] and that are shared by the society.¹

In the second section, I explain the notion of social representations. To that end, I will break down the clarification of this notion as provided by Serge Moscovici who coined this notion and first used it in 1960s to study social meaning [33] and use it to structure my analysis. I will build my arguments alongside the structure of argument for the necessity of the social representations approach in understanding meaning construction and change in a society as used by Ivana Marková, one of the most prominent social representations scholars [38, 40]. I will show that considering legal concepts purely as mental representations leaves unfilled gaps, especially when it comes to the social dimension of meaning.

¹ Compare Marková [38, p. 1] in the context of researchers' presuppositions influencing their research.

In the third and final section, I will show that legal concepts are social representations and that only a shift in perspective is what allows for a truly holistic approach to legal concepts, one that sufficiently considers the social dimensions of law, the realities it creates, and that may be methodologically more accessible to legal scholars.

2 Social Dimension of Meaning, and Law

Any consideration of legal concepts necessarily starts with the words—signs—that signify them. The social nature of signification has been elaborated upon already by Ferdinand de Saussure. He explained that the meaning as a link between the signified and signifier is socially conditioned [5, pp. 44–52]. This socially conditioned link may be further understood as a mental link that people create between the symbols and referents, as Ogden and Richards pointed out, stressing the arbitrariness of symbols [6, p. 11].

Language is the primary tool facilitating social interaction and communication. Since law is a purposeful social activity, it is impossible to separate it from language [28, p. 1851; 41].

A great body of texts focuses on the nature of legal language, its terminology and grammatical structures, (in)comprehensibility to lay persons [16, 17, 42] as well as its capabilities to establish a (speech) community [43, 44, p. 52; 45, p. 173; 46, 47, 48, p. 51; 49, 50, 51, p. 1]. It is the last point that directs our attention towards the social dimension of meaning and, consequently, meaning sets and practices, such as law. The language of law is based on concepts and conceptual structures that come into existence throughout their use in the legal practice. A community is then defined by participation in a set of shared norms, same types of evaluative behaviour and abstract patterns [52, pp. 120–121] while at the same time, these patterns and types of evaluative behaviour are created and produced by and within the community.

Law is based around social interactions. These—as well as cognitive processes and habits—are embedded in the society and its culture [38]. This means that they are very closely connected to the various systems of communication within a given society, that include traditions, collective memories, or myths [38, p. 3]. These, as well as specific know-how skills and processes of formation and transformation of knowledge constitute what may be called commonly shared social knowledge [38, p. 4]. This commonly shared social knowledge is not static: Traditions change, memories evolve, social structures are reshaped. At the core of the commonly shared social knowledge is a tendency to stability as well as a tendency to change [38, pp. 4–6]. Therefore, the mental link Ogden and Richards talk about when explaining meaning is something that is constantly conditioned by the given community, its culture and tradition, in short, its shared social knowledge.

The concept of commonly shared social knowledge—similarly as the common sense I will be talking in more detail about later in terms of social representations—seems to refer to everyday, lay (non-expert) knowledge. However, various areas of social activity need different types of knowledge. Specialized areas of social

activity thus require not only the non-expert shared social knowledge but also specific ‘know-how’, processes, structures, interpersonal relations, etc. [53]. Law may be understood as such a specialized area of social activity; one that permeates everyday life, creates realities and relationships between persons where there would be none without it, as well as one that needs highly specialized knowledge and skills.

I have mentioned above that already de Saussure thought of language as a social phenomenon: language is a relatively stable social fact but at the same time ever-changing through the individual acts of speech [38, p. 18; 5]. Saussure’s insights have been brought into contemporary psychology dealing with interdependencies between personal and social phenomena. Marková points out that it remains problematic that research often tends to split the individual from the social [38, p. 19]. When conceived as ontologically separate, such theories fail to explain the interdependence between the personal and the social [38, p. 19, 54, p. 484]. A strong focus on the individual aspect of meaning-making (usually by means of mental representations) and separating it from practices in which they are being used leads to conceptualizing meaning as a static entity the individual carries around. The cognitive focus in contemporary interdisciplinary study of meaning may draw our attention away from acknowledging the settings in which it is being produced [55, pp. 103–104], leading to a loss of understanding of the conceptual structures in which we—as social animals—operate.

These considerations may lead us to believe that the concepts we use in our everyday life are not merely individual mental representations nor a set of individual mental representations [25, 38, 56]. This is the paradigm used by the social representations approach, that sees concepts as results of shared experiences, knowledge and beliefs that are products of social interactions [57, pp. 57–58].

The answer to the failure to explain the interdependence between the personal and the social given by proponents of the social representations approach is built upon the premise that the human capacity to make sense of signs and create new ones, to communicate, share experience is rooted in the society, its history and culture [38, p. 23]. This capacity is then specifically activated in social situations in which the society comes to contact with phenomena that touch human life in a fundamental manner or have the capacity to disrupt it, in essence have fundamental effects on social thinking and communication [38, pp. 23–24]. This brings us to the theory of social representations as a powerful and useful tool to study these phenomena [38, p. 24].

3 Social Representations and Conceptualization in Law

The notion of social representations has been coined and first elaborated upon by Serge Moscovici in the early 1960s when trying to explore the understanding of the concept of ‘psychoanalysis’ among lay public [33]. His interest in conceptualization was grounded in a strong belief that

it is the pre-established images and paradigms that both determine the choice and restrict the range of reactions [...] emotional reactions, perceptions and rationalizations [that] are not responses to an exterior stimulus as such, but to

the category in which we classify such images, to the names we have given them... [58, p. 61].

In Moscovici's view, concepts and other social phenomena cannot have any role or purpose within a social group unless they are 'represented' by such a group. He understands social representations as collective elaborations 'of a social object by the community for the purpose of behaving and communicating' [59, p. 251]. They are something the social group creates—constructs—through communication and that perform symbolic roles, representing various kinds of social or socio-cultural, physical as well as mythical objects to social groups [60, p. 730] to that extent that we no longer see them as 'the way we [...] understand a concept' but we 'see them as the concept itself' [61, p. 197; 62].

Several points arise from these explanations:

1. Social representations are not a set of individual mental representations.
2. Social representations are a matter of collective, or social, construction.
3. Social representations are properties of social groups.
4. Social representations represent objects to social groups.
5. For all needs and purposes, social representations *are* social objects.

Let me use them as guiding points in addressing the issues they raise as well as the scientific roots of the social representations approach, drawing the links to law in order to argue the suitability of this approach in the understanding of legal concepts.

3.1 Social representations are not a set of individual mental representations

Social representations are often confused with mental representations. Yet mental representations are essentially irrelevant to the concept of social representations [38, p. 8]. To understand why this is the case, let me first introduce this notion.

The notion of 'representation' is a socio-psychological construct that plays a symbolic role in social thinking; it represents something to someone [63, p. 132].² Wachelke [63, p. 132] explains it via the notion of 'cogneme' that has been coined by Codol [66] as a label for the basic unit of any theoretical system in the context of cognitive processes: representation may be explained as a mutual dependence between the cognemes of an individual, and objects [63, p. 132]. The notion of representation itself thus represents one way of approaching the relations between language and reality. A representation may be understood as an object with semantic properties [30].

The issue of how humans represent the world has a long history in Western philosophy, from ancient Greek thought (in the idea of mimesis) to the contemporary notion of mental representations, an essential concept in cognitive theories of mind [38, p. 8].

² Literature sometimes speaks of 'representing an object' [64, p. 96], sometimes equalling the object to its representation (see further discussion in this text. See also [64, p. 114; 65, p. 169; 74, p. 21]).

The notion of mental representations is built on an idea that knowing something that is outside the mind is dependent on constructing its representation and expressing it in language [38, p. 8]. Historically, the notion of mental representations evolved from linking them to the correct use of words and to the idea that there is something as *correct* mental representations to making them properties of mechanisms, as Marková explains [38, pp. 8–11].

The theories subscribing to the idea of mental representations—representational theories of mind—see concepts as psychological entities, or more precisely as mental objects with semantic properties [30]. A question remains as to what is the relationship between these entities and language and what is the relationship between language and reality [9, pp. 25]. This is, naturally, a very old question, one with varying answers across the history of philosophy. Already John Locke [67] who thought about representations as mental images warned about equalling words with things rather than representations of things because such an approach leads to imperfections of knowledge [38, p. 9; 68]. Neither Locke's or later Fodor's [69, p. 82] ideas of mental representations as physical or computational mechanisms [38, pp. 9–11] provide sufficient answers as to the relationship between these mental entities, language, and reality. As Marková [38, p. 13] points out, mental representations do not tell us anything about the reality that surrounds us because theories of mind have disposed of reality as an object of knowledge and study, reinforcing their solipsistic presuppositions regarding the independent structures of mental representations.

Therefore, despite all the knowledge and understanding the theories of mental representations bring, they find it difficult to explain the interactions between the individual and the society and their interdependence [38, p. 19]. As Marková [38, p. 18] claims, the answer to these difficulties is an approach that would manage to conceptualize the interdependence between thought and language as the problem with language and thought is that they are at the same time relatively stable and variable. To that end, we need to consider the individual's relationship to their environment, in the wider context of a society and its historical and cultural framework.

Recently, the theories of mental representations have been introduced in detail into the setting of legal conceptualization by Jakubiec [28]. He believes that as a prevalent approach in contemporary understanding of concepts the mental representations approach needs to be incorporated into legal research. He, too, recognizes that this approach does not cover all the dimensions we need in order to understand legal concepts, citing the necessity of legal and historical context [28, pp. 1851–1852]. What is missing from the his approach, however, are the wider social and environmental dimensions.

3.2 Social Representations are a Matter of Collective, or Social, Construction

Given the functioning of the societies and various socialization processes it is not very likely for each individual to create and construct their knowledge independently. This is where social psychology steps in with its focus on the exploration of social thinking and social learning, focusing on the never-ending questioning of to

what extent is knowledge the result of individual effort and to what extent it is the result of social discourse and consensus [70, pp. 30–11].

The social representations approach is unique in the sense of connecting the individualistic approaches to conceptualization (such as mental representations approach [9, 12] or attitude theory [61, referring to 71]) with those considering social processes. As such, it is capable of encompassing humans' everyday ways of understanding and rationalizing,³ focusing on the common sense knowledge shared by the individuals within a social group. Social groups have a tendency to constantly construct and reconstruct this common sense as well as other forms of understanding that create the images and patterns without which no community may function [74, p. 32].

One may wonder why take common sense knowledge as the main focus of study. Flick and Foster explain that the social representations approach understands common sense knowledge as necessary for meaning-making within any community [61, p. 196; 75, p. V–VII]. However social representations are the 'different kinds of folk theories, common sense and everyday knowledge' [76]. In Moscovici's understanding, common sense is not necessarily a matter of being 'ordinary' but rather that of being shared by the community [68]. He points towards the consensual universe a community necessarily collectively creates as a by-product of social communication [58].

The social representations approach has its roots in the notion of collective representations introduced by Émile Durkheim. Durkheim [77] understood collective representations as thoughts, values and beliefs that come into being through various social processes and practices, such as rituals. These collective representations are not just a set of individual mental representations; they are the results of shared complex social practices [77, p. 12]. Moreover, they are what allows the society to function and serves as a basis of social order [78]. For Durkheim, a prime example of such a collective representation is religion. The repetitions of various religious rituals and practices keep (re)creating social connections that maintain the collective memory and narratives of the social group [79, p. 22; 77, 80].

Durkheim's notion of collective representations was later elaborated upon by a social anthropologist Lucien Lévy-Bruhl [81, pp. 3–4] who believed collective representations are not only something shared by a social group, but also something capable of influencing its members. Furthermore, they are passed—communicated by various means—between members of a social group and from generation to generation. Neither Durkheim's, nor Lévy-Bruhl's conceptions envisaged these collective representations as something that would belong to the individuals. Rather, they belong to the social group as a whole. As evident from the guiding points of my

³ The notion of common sense may seem to create a strong link between the social representations approach and folk psychology. Folk psychology is used to denote the theories humans use to predict behaviour of others within an everyday way of understanding and rationalizing [72] or 'a set of beliefs and practices about psychological issues in a particular culture' [73]. While both social representations and folk psychology are cognitive frameworks used by individuals to navigate social world, they refer to fundamentally distinct theories: while social representations focus on the social meaning, folk psychology is concerned individual-level cognitive processes.

argument introduced at the beginning of Chapter 3, this is something Moscovici's notion of social representations builds upon.

Moscovici was originally interested in exploring the common sense. He introduced the notion of social representations in a study on lay understanding of 'psychoanalysis' in 1960s [33]. In his opinion, no mind is free from prior social and cultural conditioning, which means that human minds can see only what this conditioning allows us to see [74, p. 23]. Intriguingly, this presupposition is in line with the latest neuroscientific findings [82].

Social representations are constructed in the process of communication. What does this construction look like? Moscovici explains that the social process of social representation consists of two sub-processes: anchoring and objectification. In order to represent something—and any object or phenomenon, physical or social, may become an object of social representation [40, p. 191]—we first need to bring this originally unfamiliar notion into the sphere of our understanding, usually by comparing it to something we already know and understand. This process is called anchoring. Consequently, we connect the represented object to and through already familiar objects. This process is called objectification [74, p. 42]. Anchoring involves categorization: we tend to take the unfamiliar and try to fit it into categories we already use and accept. In this process, we are limited by the categories available in the language we use, the physical spaces in which we live and the physical behavioural restraints [74, p. 43]. It means that we anchor new phenomena to existing themata, metaphors as well as emotions [56, pp. 9–10].

Objectification is a more active process than anchoring as it requires linking the abstract object to a physical one, often by means of a metaphor [74, p. 49]. A typical example used in literature is the concept of god in western religions: it is often objectified through the image of a father [83]. A recent study on the social representation of the dignity of a judge showed how the abstract object of dignity is objectified through a dramatic persona of a dignified judge [57].

These two processes are communication-based. Any kind of research into social representations is a research of communication [39; 84, p. 114]. This communication is not limited to use of language only; additionally, it is a matter of images, emotion, or attitudes [56, p. 6]. The communicative process of the construction of social representations comprises the pragmatic context of language-based communication as well [39, p. 165].

The idea that law is constructed by speech is nothing new in legal theory. The constitutive nature of legal discourse has been widely discussed by various legal scholars [5, 41, 85, 86] and has since been accepted into the mainstream legal theory. Probably already famously James Boyd White [41, p. 684] postulated law as a branch of rhetoric, which he understood as 'the central art by which community and culture are established, maintained, and transformed.' The constitutive nature of legal discourse is also reflected in Pierre Bourdieu's [87] notion of juridical labour that collectively produces—constructs—the social world.

Marková [38] explains that social representations (both as the processes of construction of meaning as well as the results of these processes [75, p. 13]) are dialogical in nature. She recognizes that her claims stem from neokantian ideas about the communicative nature of the world [40, p. 115] as well as Bakhtin [88,

pp. 276–277], who believed that the world emerges through living utterances. For Marková, human mind, the nature of thinking and communication is generated by what she calls ‘dialogicality’, as a phenomenon rooted and constructed within communication. As I have recently explained elsewhere [31] given the widespread use of the image of dialogue in law it is not difficult to understand that legal meaning is constructed in dialogical communicative exchanges between legal actors as well as lay subjects of law.

Given Moscovici’s explanation of social representations, as well as the manner scholars write about this notion and its roots in communication and dialogue, the word and associated concept of ‘construct’ or ‘construction’ is often used.

Even though there have been recent attempts to abandon the concept of ‘social construct’ in favour of ‘social kind’ in the philosophical discourse, the social representations approach as explained here and as used in social psychology, has strong roots in social constructionism and keeps using the concept of ‘social construction’ to designate the socially conditioned processes of meaning-making. The point made by this paper is not supporting any extremist claims that just because our knowledge and the way we exist in societies and make meaning of the world is socially or environmentally conditioned, scientific facts are irrelevant, as Latour worries [89, p. 227].

As Moscovici’s first research into social representations shows, common sense or the lay ideas and images of an emerging new discipline (i.e. psychoanalysis in 1960s) is capable of uncovering meanings that might otherwise remain hidden. Furthermore, this approach is well suited to study changes in social meaning and knowledge. In this context, Marková points out that meaning making is built around two contrasting tendencies: a tendency towards change and a tendency towards stability. These tendencies are experienced in terms of conflict. We may wish for change and at the same time fight to preserve traditions. In her opinion, however, everything we experience and communicate in life we experience and communicate as change and transformation, either forceful or gradual [38, pp. 4–5].

This tendency is recognized in law as well. Law strives for certainty. Abundance of legal definitions, interpretive guidelines, or the use of precedent may stand witness to this endeavour. Recently, thinking of the legal certainty has led into discussion on the use of AI and predictive justice as a means of reaching more consistent judicial decision-making [90]. Yet language and meaning is far from stable and not even definitions fully counter such a tendency.

Given the importance of social knowledge and its influence on social change, it is crucial to have a paradigm available that allows us to understand the society better. The social representations approach offers a way of study of how these meanings are constructed in a social group, not how they should be used or that they should or may replace scientific facts. It allows for understanding the society better and for uncovering shifts in perception and change in a society as well as change and evolution of legal meaning. Only then we can as a society properly take responsibility for the constructed social objects that shape and influence its functioning.

It follows from the above that any discussion on meaning-making devoid of its social context is severely lacking.

3.3 Social Representations are Properties of Social Groups

Even though the social representations approach originally focused on lay knowledge it does not mean that this notion cannot be used for exploring expert meanings. Let's take law as an example.

In law, or more specifically, in individual legal systems, various processes of meaning construction and reconstruction exist. Understanding and using law presupposes the knowledge of various methods of interpretation, hierarchy of legal norms and their bindingness, etc. Therefore, understanding and using law presupposes knowledge of all these law-specific processes [57, p. 63].

We need to take these area-specific processes in mind when exploring expert meaning. Exploring social representations of legal concepts implies taking into account these law-specific elements in addition to the lay and common sense elements that inevitably seep into the social group's representations. Even in expert areas of knowledge, common sense is of essence, because it not only helps creating the world that surrounds us but socializes us as well. [61, p. 197; 40].

Since social representations are something that belongs to a specific social group, different groups may represent the same object in different ways. Social groups may be created and delineated by various qualities, experiences or relating to chosen phenomena. As mentioned above, a social group may, for example, consist of speakers of the same language or practitioners of a sport, or profession.

As discussed above, based on the language use, collective narratives, and rituals [11, 91] lawyers and laypersons may be considered different social groups even when they belong to the same society, culture, and tradition [92, 93]. Consequently, the representations of the same law-related object differ between the lawyers and laypersons, as research shows [94, 95], outside the thematic area of law, see [96]. What follows from the influences between non-expert and expert understanding is that '[t]he point at which a particular group anchors an object in its conceptual field is influenced by the dynamic of its relations with other groups.' [97, p. 144].

In professional or expert areas, the social gains an additive built around the specialized knowledge one may acquire only via specialized training. Various kinds of skills and practices are passed from one generation of law experts to another not only via specialized education and vocational training but via scholarly and normative legal texts as well [compare 98, p. 191]. Social objects playing specific roles in these specialized areas of knowledge and practice must be represented as any other. They are usually called 'professional representations' and are understood as a specific category of social representations. Battaile, Blin, Mias and Piasser explain them as being '[n]either a scientific knowledge, nor a common sense' [99, p. 63]. In their opinion, professional representations are constructed and contextualized in professional interaction by those whose professional identities they form: 'These identities correspond to groups in a specific professional field, in connection with salient objects of this field.' [99, p. 63] Professionalization—that is the process of obtaining specialized knowledge and skills in a given field—is consequently 'a process of structuring one or several representations of one or more salient objects of a given professional field.' [100, p. 58] As one undergoes the specialized training, their

understanding—that is their representations of professional objects—change [100, p. 56].

I have explained above that social representations are constructed in the process of social communication. This is not a ground-breaking notion, of course, and has been used well outside social psychology in areas such as law [43, 86, 101]. What is interesting is the connection to the communication within different social groups and the possibility that the same term/word/sign may have different meanings to different social groups. Thus, a proper use of a meaning involves the cooperation between groups of individuals who possess the various aspects of such a meaning [98, p. 186].

The elegance of the notion of social representations is that they do not belong to the individuals but to the social group as a whole [102, p. 416]. They are not a sum of individual representations; while they are essentially shared, they also contain contradictions [56, p. 5]. This also entails that individuals do not have a grasp of the full meaning of a sign, i.e. the full representation [compare 98, p. 184]. Similarly, as Gestalt and post-Gestalt theorists stress and empirically prove, a social group as a whole operates on the basis of meanings that cannot be simply equated to the aggregate of individual ones [25].

Yet the notion of social representations goes beyond that as it would be imprecise to imagine social representations as something that would be wholly shared across the members of a given social group. Moscovici explains that social representations are socially distributed, whereas some elements of the representations may be shared, some are not. This distribution has been explained in terms of centrality of shared meanings, that is differentiating either between a core and periphery of a social representation [103], or more gradually in terms of prototype theory and its theoretical descendants [104, 105].

Thinking of core and periphery of social representations may seem somewhat natural for a Western lawyer. Mainstream legal theory is well acquainted with Hart's notion of open texture of law [106]. This notion is built around an idea that legal concepts have their cores—meanings that the given social group agrees upon—and penumbras—meanings that not everyone in a given legal group agrees upon [106]. Yet he was not the first who thought about legal concepts in these terms. Already Phillip Heck in 1930s [107, 108] differentiated between *Begriffskern* and *Begriffshof* in a very similar manner and his approach has been often adopted into Central-European legal thinking [109, 110]. This conception of legal concepts then seems to form our mainstream legal understanding.⁴

Graduality of meaning in terms of core/periphery is the centre of the structural approach to social representations. In this approach, advanced by Abric and so-called Aix-en-Provence school, social representations are a 'structured set of information, beliefs, and attitudes on a given object' [100, p. 56] organized around central core and periphery. Central core consists of shared cognitions with high agreement in a given social group, ones that are non-negotiable and that determine the meaning

⁴ It is not the purpose of this paper to tackle these further, suffice to say that the core/periphery thinking goes across linguistic, philosophical and cognitive studies. See for example [111–113].

of given social representation [100, p. 56; 103]. To be able to do that, the central core is stable and consensual, culturally and historically conditioned, and normative [103, p. 76].⁵

Peripheral elements are negotiable within given social group and their function is to allow the social representation to interact with contexts. Abric calls periphery an interface that connects the core of social representations with/to the reality of its use and existence [103, p. 76–77]. Therefore, peripheral elements may be individual-dependent and consequently flexible and less stable than the central core elements.

This approach shows that for a social representation to fulfil the role needed in a given social group, individuals do not have to fully agree on all the facets of its meaning. Moreover, it is this distribution of meaning that allows any real communication between the individuals and what allows for any kind of meaning-making process [39, p. 168; 102, 115]. This is well in line with the dialogical explanation of meaning-making explained above.

While a social representation—and therefore a professional representation—is distributed across the individuals in a given social group, research suggests that different representations (professional and non-professional ones) of the same object may coexist and can be distinguished by activation context [100, p. 62], meaning that the meanings go back and forth: the professional knowledge may be transformed to common sense knowledge, and vice versa [compare 116, p. 123] and a group may use different central systems depending on the context of practice (lay or professional) [100, p. 56].

To sum up, a social (or professional) representation is a property of a given social group. This does not mean a full consensus on a meaning and role of a given object, the representation is distributed across the members of such a group. Moreover, as an individual can be a member of different social groups, they have an access to different representations and are able to distinguish between them. It seems to follow from this conclusion that one sign (a word or a phrase) may point to different objects to different social groups.

3.4 Social representations represent objects to social groups

The distributive nature of social representations implies a degree of vagueness, even though more concrete objects or phenomena may be (or even must be) socially represented as well.

Law is built around concepts with different degrees of concreteness. While concepts such as ‘vehicle’ (to borrow a well-known Hart’s example) could be

⁵ Calling the core as normative implies that core elements of social representations make it what it is and what it does within a given social group. To be understood, one needs to be able to reach for the core elements. The communicative processes of social representation formation are social in nature, similarly as various other processes, such as norm formation in terms of traditions, or customary law. Shared knowledge has a strong normative and dynamic nature. Social majorities (or individuals and groups with a strong social capital) may push the change of meaning, i.e. social representations [114]. To fully tackle the relationship between social representation construction and norm formation in terms of customary law is out the scope of this paper.

considered as concrete, concepts such as democracy, justice, or ownership would be more abstract. One may argue that sometimes, these abstract concepts have legally binding definitions that should make them more ‘concrete’ or ‘less vague’. Yet even a legal concept that has a definition still retains a dimension of vagueness, simply because of the necessary ambiguity of language-based definitions [57, p. 112].

It has also been argued that because all concepts involve generalizations, they are abstract and vague to a certain extent [117, p. 238]. Abstract concepts are not entity concepts but rather relational concepts, which means that do not refer to many intrinsic properties but rather to a common relational structure [117, p. 239; 118]. Abstract concepts further show high variability across individuals: Hart’s example of the concept of vehicle would generate more agreement in meaning than the concept of justice or democracy [117, p. 230; 119].

Villani et al. [120, cited in 117, p. 240] showed that individuals tend to acquire abstract concepts through language and require higher input of other people to truly grasp the meaning. This characteristic is what Borghi calls social metacognition [117, pp. 239–240]. In her opinion, ‘[a]bstract concepts are concepts for which people need others more. [...] Others can provide an external scaffolding, either through their presence or indirectly (e.g., through written texts). They can offer information, but also provide different perspectives on a word’s meaning and help refine it.’ [117, p. 241].

Abstract concepts further generate a rather high level of uncertainty [117, p. 243]. To investigate such concepts, we need to use approaches that are capable of addressing this uncertainty and the social dimension of the concept and its acquisition [117, p. 243]. Wachelke even claims that the social representations approach is well suited when there is a degree of ambiguity in the social object since it invites the need to make inferences about it, and various aspects of that object are salient in various social groups [60, p. 731].

The social dimension of social representations makes them linked not to humanity as a whole⁶ but to social groups, that is groups of individuals sharing traditions, myths, processes of meaning-making, training, interpersonal relationships etc. Therefore, this dimension is necessary for understanding legal concepts as social representations since law cannot fulfil its role, as Roversi writes, if not within a social group [121]. If we say that social representations represent something to someone, we make a very crucial claim as to their intentionality. They have an essential purpose to fulfil in a given social group: they serve as facilitators of meaning-making, communication and understanding.

Let me use the example of the legal concept of ownership. The idea of owning something is built on a number of legal norms and related practices. It has social consequences and facilitates social—often legally constructed—interpersonal relationships. Moreover, it constructs an idea of a link between an individual and the owned object. For ownership to fulfil any kind of role—legally or socially constructed—it must be represented in the given social group, usually consisting of individuals that are subjects of related applicable legal norms. Consequently, the

⁶ It is out of scope of this paper to delve into the discussion on cognitive universalialia.

social representation of ownership—and related concepts of ‘to own’ or ‘owner’—becomes a social object of its own right. It becomes a legal (and social) fact [121]. It brings us to the conclusion that for all needs and purposes, social representations are social objects.

3.5 For all Needs and Purposes, Social Representations are Social Objects

The purpose of a representation is to represent something to someone. What is represented is the social object. In explanation, we may even attempt to say that the representation replaces the object at hand. This is not to say that a represented physical object ceases to exist, or that a common-sense representation replaces a professional one.

In his work originating the social representations approach, Moscovici chose to study psychoanalysis—not as a scientific theory but as a social object, exploring its social representations among lay public. His study showed the various elements of the meaning of ‘psychoanalysis’ beyond its scientific definition and use [33]. This does not mean that a social representation would replace a scientific theory. It does allow us to see, however, how does the world of science contrast with what can be called common sense [122].

Marková writes:

One cannot understand the concept of social representation without taking a fresh look at common sense knowledge. Humans are born into symbolic and cultural phenomena and they do not invent everything by themselves in their individual experiences. These facts do not need to be laboured. Cultural phenomena, into which we are born, like the modes of social thinking, collective ceremonies, social practices and language, are transmitted from generation to generation through daily experience, communication, collective memory and institutions, often without much individual effort and without much cognisable changes. These phenomena form the large panorama of our social realities and become imprinted in our common sense knowledge. [38, p. 135]

Returning to Moscovici’s study psychoanalysis, apart from ‘psychoanalysis’ as a scientific theory and as its professional representation by the social group of experts (psychologists, researchers in psychoanalysis, etc.), there is ‘psychoanalysis’ as represented by the laypersons.

If social representations are to a certain extent built around what is consensual and what we already know [58, p. 17] (hence the basic processes of representation of making the unfamiliar familiar I explained above), this dimension would differ in various social groups.⁷ Science, on the other hand, is about discovering something new [122]. Moscovici believes that

⁷ Hermeneutics brings the concept of preunderstanding into consideration at this point. To delve into this particular dimension would be outside the scope of this paper.

[...] the sciences are the means by which we understand the reified universe, while social representations deal with the consensual. The purpose of the first is to establish a chart of the forces, objects and events which are independent of our desires and outside of our awareness and to which we must react impartially and submissively. [58, p. 21–28, cited by 122, p. 195]

However, it is important to note that social representation of scientific knowledge plays a significant role in communicating science to the public.

Thus, it would be incorrect to say that common sense knowledge equals a social representation of a given object or phenomenon. It is, however, an indispensable part in knowledge construction (or rather re-construction, as Moscovici stresses [74, p. 63]) and should we wish to understand processes of social meaning-making, it cannot be overlooked.

Representations are substitutes for things or people [74, p. 63]. In the processes of representation we create an entity that is ‘distinct from any other and corresponds to our representation of it.’ [74, p. 63] In Moscovici’s words, ‘[t]he most remarkable result of [the] reconstruction of abstractions as realities is that they become detached from the group’s subjectivity, from the vicissitudes of its interactions and therefore from time, and thus they acquire permanence and stability.’ [74, p. 63] Justice, democracy, public order, or a right, to name just a few, are concepts used in law with a varying degree of abstractness and, therefore, vague dimension. These phenomena are represented by the social groups, may it lawyers or laypersons, conservatives or progressivists, etc. The intangible nature of these concepts makes their representations the realities we relate to, even though our ‘relating’ results in their re-production [74, p. 63].

4 Legal Concepts as Social Representations

In a recent paper, Jakubiec calls upon the legal community to ‘not ignore the developments of science when debating nature and functions of legal concepts’ and to ‘not forget about the heritage of legal theory’ [28, p. 1852]. To that end, he argues that legal concepts should be understood as mental representations while taking into account the systemic, and historical dimensions of their meaning. Thus, he believes that legal concepts should be explained on three levels: cognitive, historical, and systemic [28, p. 1851]. On the cognitive level, legal concepts should be understood as embodied mental representations. This claim should not be seen as in any way controversial. It has been established above that approaching human concepts as mental representations is the prevalent approach in contemporary cognitive science [2, 11, 123, 124] and there is no reason why we should treat legal concepts differently. Yet Jakubiec recognizes that legal scholarship might need some adjustments to this approach and by adding the systemic and historic dimension of legal concepts tries to cover the social—and within it the expert—dimension of legal concepts.

It has been shown in the preceding text that stressing the social aspect of legal conceptualization can hardly be seen as controversial or new; legal conceptualization occurs within a specific legal environment, or legal culture. Theories of legal

culture work with the historical, social, and attitudinal elements as well as behavioural patterns [125, reflected by 126, p. 556]. In this line of thinking, a given legal culture is the product of the representational processes of a given social group, in our case for example a legal community since the concepts used in any human communication have a history and exist within community-specific communicative and meaning structures.

Furthermore, as discussed above, understanding concepts cannot entail only the study of brain activity. Understanding legal concepts should not be any different. Legal concepts are parts of legal systems as communicative structures based on shared meanings. They are closely linked to the community they serve and at the same time help creating; they are constructed and re-constructed by systems of practice.

These systems of practice should not be understood in a restrictive manner as systems of, say, legal processes. The practices we speak about here go much further and may be understood as an amalgamation of behaviour, meaning-making and interpretive practices and competencies of specialized discourse. All this happens within what Wenger calls a community of practice [49]. Legal community, both in a narrower (legal experts and practitioners) as well as wider (including laypersons who need to navigate given legal system) sense is such a community of practice. The discourse and behaviour then represent—and provide—the communicative space in which meanings are constructed. The social representations approach takes all this into account. It connects the personal and the social and offers a more complex understanding of legal concepts. And, as Marková [38] stresses, one that does not require knowing individual mental representations of the members of the given community.

Approaching legal communities as communities of practice allows us to take into account various processes and structures that have arisen from specific cultural and historical contexts. The historic and systemic dimensions Jakubiec envisages as two extra dimensions necessary to understand legal concepts are obviously an attempt to include the social into legal conceptualization. So are the practices—that is, the processes of meaning-making and understanding of realities as well re-constructing them by using them. Specificities of individual legal systems that we tend to focus on are nothing but results of histories of symbolic and cultural phenomena, modes of social thinking, practice, and language into which we are born and that are transmitted through our experiences, education, or training [compare 38, p. 135].

The social representations approach answers the complexity introduced by law as a specialized area of knowledge, allowing us to see beyond individual mental representations, recognize the influence the social has on them and in turn recognize the ways individuals as members of social groups partake in the dialogical processes of construction of legal concepts.

Furthermore, this approach allows us to see the differences in representations between various social groups within one legal system. They may be explained, for example, in terms of core and periphery of meaning and the extent of agreement on central elements between laypersons and experts as two distinct social groups.

If I have explained above that for all needs and purposes, social representations are social objects, it shows how vague legal concepts *are* inevitably their social

representations. When no authoritative definition exists (and, since definitions are language-based, despite the existence of an authoritative definition), abstract legal concepts are what the social group, i.e., the society of the given legal system, makes them to be through scholarly attempts at definitions or explanations, case-law, media contributions, individual interpretations, and related everyday practices.

The social representations of vague legal concepts in legal communities are further influenced by the fact that their members—lawyers—are not just permanently enclosed within a single conceptual system. They are at the same time members of different social groups that operate on the basis of other conceptual systems while using the same words. A lawyer thus works from within various competing and contrasting languages [127]. This consequently means, as White points out when discussing the relation between law and language, that law is open to various ways of thinking—and talking—which is a crucial element for its democratic legitimacy [127, p. 5]. Moreover, this means that these various competing and contrasting conceptual systems are capable of influencing one another through the minds of the lawyers.

Recently, a qualitative pilot study into the social representation of ‘public order’ conducted in the context of the Czech legal system showed how moral and value judgments kept being introduced into the lawyers’ understanding of this concept [57]. Similarly, a study into the social representation of the ‘dignity of a judge’ done in the same legal context showed how meanings totally unrelated to the legal system the respondents came from entered the representation [57].

These studies showed that the social representations approach is capable of uncovering these influences coming from different conceptual systems among which the lawyers navigate, even though many authors—especially the Continental legal environment—would have us believe otherwise [128–130].

Continental legal thinking has been heavily influenced by legal positivism and—in the Germanic and Central European settings—legal normativism, streams of thought drawing strong lines between ‘legal theory’ and ‘legal practice’ [129–131]. Well within the lines of these traditions, it is not difficult to spot the wariness—especially in Central European legal scholarship—to open legal theory to ‘methodologically syncretic’ trends that Kelsen and Weyr were so strongly speaking against [128, pp. 338–339]. It results in ‘legal sociology’ and ‘legal psychology’ being considered disciplines not belonging under the umbrella of legal theory, which in turn results in lawyers not being interested in reading the already scarce research.

Yet, the social nature of language and communication makes law all but cut from reality and social facts. Along the lines of Marková’s explanation above, as well as the established law and language scholarship [41, 43, 45], the language is what creates law, and the practice of law is in turn what creates the community, which in turn influences the conceptualizations, and back. This circle of constant construction and re-construction of reality through language practice i.e., through social representations of (legal) phenomena, is what constitutes law. In this line of thinking, law is not a discrete set of norms, nor is it a discrete language practice. If it is open to influences brought about by society, its culture and use of ordinary language, legal scholarship needs to be open to

the ways of exploring these influences in order to understand law at all. The opposite may create an echo chamber lacking a real connection to the social realities.

5 Concluding Remarks

The social representations approach is a paradigmatic way of understanding social objects and phenomena [64, p. 95]. The elegance of this approach rests in its ability to explore everyday as well as expert meaning in a society [64, p. 95]. Social representations are systems of values, ideas and practice that provide societies with codes for communication and categorization [56, p. 5]. They are an extremely useful means of categorizing new phenomena, making them familiar to the already existing systems of understanding in a society. As such, this approach is extremely useful to provide that complex information on legal concepts that neither the doctrinal, nor the cognitive approaches are able to do.

Approaching and exploring legal concepts through the lens of social representations provides a valuable perspective. Since this approach is based on the interconnectedness of language, culture, and social practices, including the practice of law, it allows us to see legal concepts as deeply rooted in their social context. Thus, legal concepts may be understood as ways of knowing and organising legal reality and creating and maintaining social relations. The same holds for social representations.

The social representations approach has an explorative dimension. Knowing how the society conceptualizes crucial legal and social concepts such as justice, equality, or democracy on the one side, and concepts such as public order or dignity of a judge on the other is crucial in understanding the society and the law's role in it.

This does not mean that a social representation should dictate any kind of behaviour or normative arguments. Rather, it may serve as a valuable tool for legal practitioners to make a more informed and grounded interpretations of legal concepts.

To conclude, the social representations approach offers a unique multi-dimensional perspective on legal concepts. It emphasises the fact that law is a living, evolving, and socially embedded construct that is built on the individuals' and communities' perceptions and use of legal concepts. By exploring the social representations of legal concepts legal scholars may acquire a more profound understanding of legal meaning as a complex interplay between law and society.

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