



UiO  **University of Oslo**

Appraisal and comparative methods

Archidis -

Marburg 1-12. August 2011

Introduction by Geir Magnus Walderhaug



What do I want to do?

- Today
- Discuss "comparative"
- Tomorrow
- Try to look at how we can construct comparisons that give meaning
 - The study of "fields" done by Pierre Bourdieu
 - Standard social science research method

My interest in our field

- I want to understand how documents change peoples everyday life and regulates their actions
- I want to understand how documents form the basis for institutional goals and actions
- I want to understand how governance and polity gives a new agenda for social aims, and regulates interaction between people and organisations

What is comparative?

- What do we want to compare?
- Must ask relevant questions to attain wanted end-results
- Cannot compare oranges and carrots (?)
- Might be able to compare
 - Function of carrots in Sweden
 - Function of oranges in France

Not many studies in our field

- There might be some material out there
- "we" might know where to collect data

- Some studies, nothing for ready use
- Two quick examples...

Jennifer Marshall, PHD (2006)

- **Accountability through Appraisal Documentation**
- At each institution,
- this comparative analysis emphasizes the architecture of appraisal documentation; the availability of appraisal documentation; and the opportunity for public input during the appraisal process.

Gillian Oliver, a study

- Oliver, G. (2004). Investigating information culture: Comparative case study research design and methods. *Archival Science* 4(3-4), 287-314.

The posters...

- Self-description
- Basis for comparison?
- But some elements:
 - All countries have a legal basis
 - All countries have a practice of appraisal

Posters ... (cntd.)

- We can make a list of content from each country
 - Not comparison
- We can compare the text of the laws
- We can compare the effect of the laws
- We can compare practice of appraisal
 - Forget the laws

Posters ... (cntd.)

- What varies is to what extent and in what manner the law regulates the practice.
- And that is only in principle!

- To what extent are the laws and regulations followed in each individual case?

Who is involved?

- Law:
- The makers of law
- The interpreters of law
 - Government
 - Courts
 - Archives
 - "appraisers"
- It is an intricate system of groups interacting!

What types of comparative study?

- Most areas have a comparative method
- What is relevant for us?
 - Linguistics
 - Social science
 - Law
 - Other subjects

Trento -

- "The greatest confusion continues to prevail about what is being compared, about the purposes of comparison, and about appropriate techniques" 1952 and 1999
- Trento thesis 1988 and 2001

The first Trento thesis

”Comparative law, understood as a science, necessarily **aims at the better understanding of legal data**. Further tasks such as *the improvement of law or interpretation* are worthy of the greatest consideration but nevertheless are *only secondary* ends of comparative research.”

The second Trento thesis

”Comparative law studies various phenomena of legal life operating in the past or the present, considers legal propositions as historical facts including those formulated by legislators, judges and scholars, and so verifies what genuinely occurred. In this sense, comparative law **is an historical science.**”

The third Trento thesis

”There is no comparative science without **measurement of the differences and similarities** found among different legal systems. Mere cultural excursions or ***parallel exposition of fields is not*** comparative science.”

The fourth Trento thesis

”Comparative knowledge of legal systems has the specific merit of **checking the coherence of the various elements present in each system** after having identified and understood these elements. In particular, it checks whether the unrationalized rules present in each system are compatible with the theoretical propositions elaborated to make the operational rules intelligible.”

The fifth Trento thesis

”Understanding a legal system is not a monopoly of the jurists who belong to that system. On the contrary, the jurist belonging to a given system, though, on the one hand, advantaged by an abundance of information, is, on the other hand, **disadvantaged more than any other jurist by the assumption that the theoretical formulations present in his system are completely coherent with the operational rules of that system.**”

What can we conclude?

- **better understanding**
- **is an historical science**
- **measurement of the differences and similarities**
- **checking the coherence of the various elements**
- **are theoretical formulations present in his system are completely coherent with the operational rules of that system**

Law or function of law?

- So do we want to study law as it understands itself?
- Can we find an "archival understanding" of the influence law has on archival practices?
- Are there are other areas that can help us to understand the interaction between law and archive?