

Note

"On the Spanish Translations of "Crimes and Misdemeanors""

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ON THE SPANISH TRANSLATIONS OF "CRIMES AND MISDEMEANORS"

Résumé

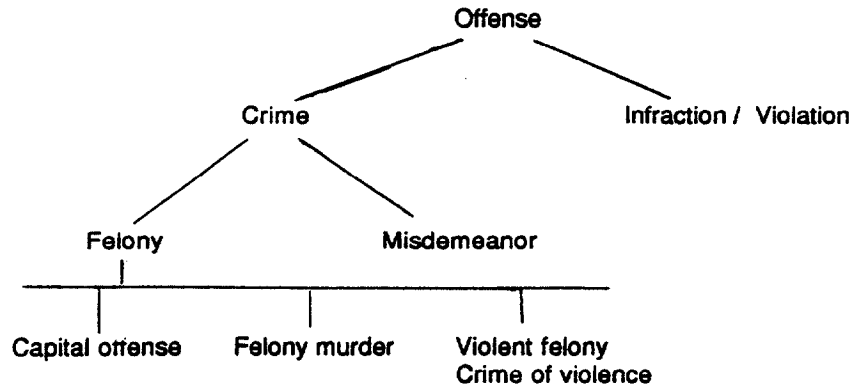
Le nombre croissant de justiciables hispanophones aux États-Unis rend nécessaire une interprétation précise en espagnol de la procédure juridique. L'analyse des textes de lois américains et hispaniques permet d'appréhender clairement chaque concept et d'établir des équivalences adéquates entre les termes des deux langues.

During the past decade the number of court cases involving Spanish-speaking persons in the United States has increased significantly. Consequently, there has been an equally significant need to render an accurate interpretation of the legal process into Spanish, a basic requirement for assuring due process and equal access to justice for linguistic minorities. However, a major problem experienced by judiciary interpreters has been the lack of appropriate Spanish equivalents for many terms of a common-law legal system traditionally expressed only in English. In response to the need for a standardized lexicon to convey common-law concepts in Spanish, the State Justice Institute in Washington provided funding for a research project to develop such a resource (Benmaman 1988). This project produced the *Bilingual Dictionary of Criminal Justice Terms*, published in 1991. The corpus of English terms to be reformulated into Spanish was comprised of the labels of high frequency penal code offenses and the most common terms used in criminal procedure.

Once this corpus of English terms was identified, the need for a very clear understanding of the meaning of these terms as used in the common-law legal system of the United States became evident. Without a clear conceptual understanding of each term, the search for an appropriate designation in Spanish would have been futile.

In researching the concepts underlying the various terms applied to the major categories of offenses and to certain acts committed in violation of the law, it was found that a number of these labels could be outlined in a hierarchy of related concepts.

Figure 1



A review of the major legal dictionaries confirms that at the apex “offense” represents the generic concept of ‘a wrongful, punishable act.’ *The Dictionary of Criminal Justice Data Terminology* defines it in the following manner:

“‘Offense’ in the broadest legal usage means crimes, delinquent acts, status offenses, infractions, and the like...” (1981: 61)

Such an act that carries sanctions can be further divided into three discrete categories: felony, misdemeanor, and infraction / violation. If we focus specifically on criminal offenses, as opposed to the broader category which includes criminal and non-criminal offenses, the definition can be modified to read: ‘a wrongful act punishable under criminal laws.’ The designation in the penal codes of most states for a criminal offense is ‘penal offense’ or simply, ‘offense.’ In this specific context ‘offense’ becomes synonymous with the term ‘crime’, defined as: “An act of omission or commission in violation of law which carries criminal consequences and for which incarceration is a possible penalty.” (1981: 61) *Black’s Law Dictionary* further states “... While many crimes have their origin at common law, most have been created by statute; and in many states have been codified. ...Crimes are classified for various purposes, the principal classification being that which divides crimes into felonies and misdemeanors.” (1979: 334)

The difference between these two categories is simply that a felony is a criminal offense punishable by a term of imprisonment exceeding one year or by death, whereas, misdemeanor is a criminal offense punishable by a term of imprisonment of less than one year (*Dictionary of Criminal Justice Data Terminology*: 82, 132).

A third related category, “infraction” can be listed with the two just described. However, this category is

always distinguishable from criminal offenses. It is defined as “a violation of state statute or local ordinance punishable by a fine or other penalty or by a specified, unusually limited period of incarceration.” (1981: 108)

In researching Spanish legal sources, the term found to be conceptually equivalent to the generic “offense” is “*infracción*”. Ossorio defines it as “*Transgresión, violación o quebrantamiento de alguna ley, pacto o tratado*” (1987: 330). Pina writes: *Infracción-Acto realizado contra lo dispuesto en una norma legal o incumpliendo un compromiso contraído* (1988: 303).

A term search for felony and misdemeanor, however, poses a greater problem. The distinction between the two must be clearly reflected in the Spanish terms which represent the respective conceptual equivalents. In an attempt to learn more about the classification of the offenses listed in the two categories, “felony” and “misdemeanor”, a review of numerous penal codes of different states was conducted. It was found that in both categories of offenses, the severity of the offense, whether it be such acts as robbery or assault (felonies), or disorderly conduct or loitering (misdemeanors), is indicated by numerical or alphabetical quantification **within** each designated category. A particular offense may be listed as a class 1, class 3 or class 5 felony, class A or B misdemeanor, and so on. Thus, quantifiers reflecting the severity of the offense are expressed internally within each category and do not affect the discrete division between the two classifications.

The most common Spanish term used when referring to serious offenses or crimes is the word *delito*. Spanish legal sources concur in their definitions of *delito*, making this the appropriate equivalent for “felony”. How then is “misdemeanor” to be reformulated? Interpreters and other legal personnel commonly use *delito* for both categories of offenses, and apply external quantifiers to make the distinction

between the two. Hence, *delito mayor*, or *delito grave* for "felony" and *delito menor* or *delito de menor cuantía* for "misdemeanor". Some even use *felonía* for "felony". Of these examples, the only term which is used in Spanish legal references is *delito grave*. However, this is the specific designation for violent crimes as opposed to crimes in general. *Mayor* and *menor*, although creative inventions, tend to confuse the legal/semantic distinctions between "felony" and "misdemeanor". To illustrate the problem: how would one refer to a lesser felony, *delito mayor menor*? Or a lesser misdemeanor, *delito menor menor*? As for *cuantía*, as in *delito de menor o mayor cuantía*, Pina explains that *cuantía* refers to the amount of money demanded as damages in a lawsuit (1988: 196). And *felonía*, a commonly misused term, means disloyalty, betrayal or some similar ugly act (1988: 271).

The Spanish sources consulted generally define the term *delito* as "el acto típicamente antijurídico, culpable, sometido a veces a condiciones objetivas de penalidad, imputable a un hombre y sometido a una sanción penal." (Ossorio 1987: 212) If we were to limit ourselves to this definition only, we would have to conclude that all punishable criminal offenses, regardless of the gravity of the offense, are *delitos*. However, further analysis of the penal codes of various Hispanic countries, as well as Spanish legal dictionaries, revealed that two distinct designations are sometimes made, and more importantly, that they relate to each other in the same fashion as "felony" relates to "misdemeanor". Ossorio states: "Mas el delito tiene en algunos códigos y en algunos autores un sentido restringido, porque emplean ese nombre para designar las infracciones de menor gravedad que el crimen y de mayor que la falta o contravención. Se trata de una cuestión relacionada con la división bipartita o tripartita de las infracciones penales..." (1987: 212) Infante, in describing *delito* writes: "Hecho culpable, ilícito, típico y antijurídico, cuya comisión es sancionada con una pena. El acto ilícito sancionado con una pena leve se considera *falta* y si con una pena grave *delito*." (1988: 107) And finally, in his discussion of *falta*, Ossorio writes: "Para algunas legislaciones las faltas deben estar incluidas en el código penal por constituir una de las tres categorías de las infracciones penales (*crímenes, delitos y faltas*)." (1987: 312) Also noteworthy is the division in the penal code of Spain. Book II is entitled *DELITOS Y SUS PENAS* and Book III is entitled *DE LAS FALTAS Y SUS PENAS* (1988: 102, 252).

The supportive data presented here amply justifies adoption of the terms *delito* and *falta* as equivalents corresponding to "felony" and "misdemeanor". There are multiple advantages in doing so: first, use of two terms simplifies and clarifies both conceptually and linguistically the distinction between the two classes of offenses; second, such use precludes the need for adding external qualifiers in order to distinguish between two different concepts within one term; third, use of these two terms is based on a distinction which not only exists in the penal codes of

some Hispanic countries but also parallels the bipartite division within the common-law category of criminal offenses.

For the third class of offenses in our chart, "infracción", we posit the Spanish term *contravención*. Even though it is frequently defined as an *infracción*, Ossorio is more specific. "*Contravención o más propiamente falta es la infracción de disposiciones municipales o policiales. Por regla general, las contravenciones están sometidas para su juzgamiento a las propias autoridades municipales o de la policía.*" (1987: 175) In one sense this is a continuation of the definition of *falta*, and it could be argued that the literature at times speaks of *falta* and *contravención* as synonymous. However, the non-criminal nature implied in its definitions is sufficient to warrant assigning this term to the category of least severe offenses. *Contravención leve* or *falta leve* might be more specific given the vagueness expressed. However, if we wish to eliminate the use of external quantifiers and remain faithful to the discrete classification of the English, then *contravención* becomes the term of choice.

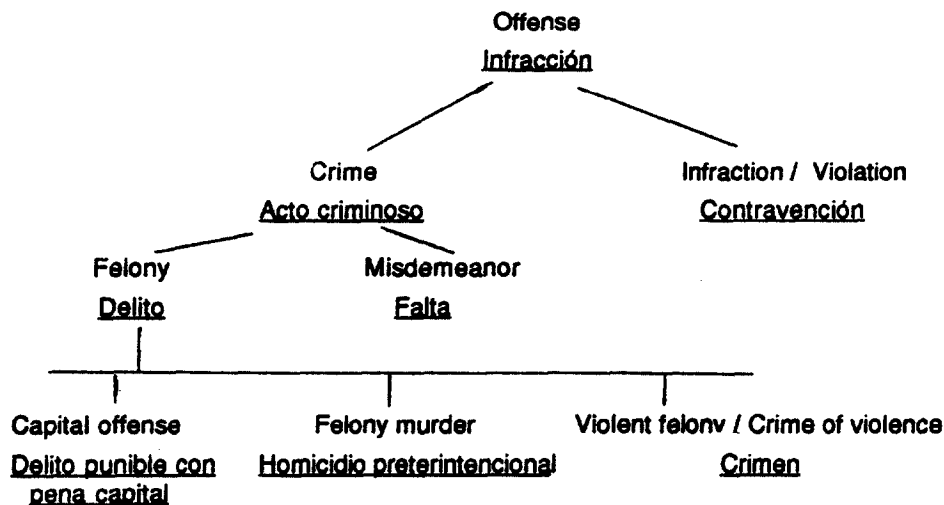
Now that the classification of offenses have been assigned appropriate equivalents in Spanish, let us turn to the various sub-categories of felonies. In some of the quotes cited earlier, reference was made to the term *crimen*. Spanish legal sources concur that *crimen* refers to the most serious offenses and is generally defined as "un delito grave". Infante further adds: "Se aplica especialmente cuando su consecuencia es la muerte de la persona agredida. El Código Penal castiga este delito con la máxima pena." (1988: 91) This definition is quite appropriate to the offense classified as a "violent felony" or "crime of violence" in common law. Such an offense is characterized by the use of extreme physical force (murder, forcible rape, assault and battery with a deadly weapon). Hence a *crimen* is a "violent crime," whereas a "crime" is an *acto criminoso* or *delito* or *falta*.

The term "felony murder" is a frequently misunderstood label. The definition in *Black's Law Dictionary* is the following: "At common law, one whose conduct brought about an unintended death in the commission or attempted commission of a felony was guilty of murder." (1979: 556) Fortunately, a conceptually equivalent term does exist in Spanish, *homicidio preterintencional*. *Preterintención* is defined as the following: "El acto productor de un resultado delictivo que va más allá de lo que fue la intención de quien lo ejecuta, pero a condición de que el medio empleado no sea previsiblemente adecuado para producir el resultado más grave. Así pues, había preterintención en el caso de golpear a una person con la mano sin otro propósito que el de lastimarla, y causar la muerte." (Oss 1987: 606)

And finally, the term "capital offense" nearly defines itself. It is a crime that carries the death penalty. And the Spanish equivalent best suited is a simple translation: *Delito punible con pena capital*.

Figure 2 provides the Spanish terms offered for the hierarchy of English terms presented in Figure 1.

Figure II



This article has presented documentation to accompany the terms offered as appropriate equivalents for the major categories of offenses and several related terms in common law criminal procedure. We believe the information and arguments provided are sufficiently cogent to make these terms part of the standardized vocabulary that is used when speaking about common-law legal procedure in Spanish.¹

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Note

1. The author gratefully acknowledges the contributions of Scott R. Loos in the search for appropriate conceptual equivalents for these categories of common-law criminal offenses.

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