CRIMINAL LAW GLOSSARY: THE EQUIVALENCES OF THE TERMS *BURGLARY, SHOPLIFTING AND SMUGGLING* ANALYZED THROUGH THE AMERICAN AND BRAZILIAN PENAL CODES

GLOSSÁRIO DE DIREITO CRIMINAL: AS EQUIVALÊNCIAS DOS TERMOS *BURGLARY, SHOPLIFTING* E *SMUGGLING* ANALISADAS DE ACORDO COM OS CÓDIGOS PENAIS AMERICANO E BRASILEIRO

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RESUMO: O presente artigo visa demonstrar as dificuldades enfrentadas na tradução de linguagem forense, focando nos problemas que ocorrem quando se traduz termos de um sistema legal que tem um Código Penal diferente da cultura alvo. O objeto de estudo utilizado foi um Glossário de Direito Penal criado através da linguística de *corpus*, o qual contém os cinquenta termos mais frequentes usados em jornais americanos online que descrevem diferentes tipos de crime. Com o intuito de demonstrar os problemas originados dos diferentes sistemas legais, três crimes foram analisados: *burglary, smuggling* e *shoplifting*. Os resultados obtidos demonstraram que, nestes casos, uma correspondência perfeita entre o termo original e a tradução não foi possível, uma vez que ou o crime não existe no Brasil ou possui elementos diferentes em comparação ao crime americano. Desta feita, o tradutor de linguagem forense deve ter mente que, quando os sistemas legais não são idênticos, uma identidade total entre os termos não deve ser esperada. Apesar disso, para alcançar uma tradução adequada e o efeito legal correto, é importante analisar o contexto no qual a linguagem está sendo usada.
Palavras-chave: Linguística Forense; Tradução; Direito Penal; Linguística de *Corpus*.

INTRODUCTION

The study of forensic linguistics encompasses a wide range of forensic texts, which includes the study of text types and forms of analysis of documents as diverse

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as Acts of Parliament, private wills, court judgments and summonses, and the statutes of States and government departments, thus, comprehending a wide scope of legal cases.

This paper presents an analysis of the difficulties faced when translating Legal English terms into Portuguese, focusing in the problems originated by two different Penal Codes: the American and the Brazilian ones.

As for terms, we have adopted Cabré's (2003, p. 182) assumptions on the Theory of Terminology. The first one is "a set of needs, a set of practices to resolve these needs and a unified field of knowledge"; the second one is that elements of terminology are the so-called *terminological units*, which are multi-dimensional (they are, at the same time, units of knowledge, units of language and units of communication). Their description covers the cognitive (the concept), linguistic (the term) and sociocognitive/communicative/pragmatic (situation) components. This multi-faceted feature distinguishes them from other units of language with the same structural features (words) and from the units that also express specialized knowledge (specialized, morphological and phraseological units). In approaching the object of terminology as a field of study and in an attempt to formulate a theory in which the various strands of terminology can be combined, she introduces a model, which she calls the *theory of doors*. The model represents the plural access to the object in a way that directly addresses the central object - the terminological unit, whether starting from the concept, term or the situation. Hence, the *theory of doors* does not deny the multi-dimensionality of the object, which allows the description of real data in all their complexity.

Considering this multi-faceted approach, we opted, as our object of study, the legal terms *burglary, shoplifting and smuggling* taken from a list of the fifty most frequent terms used in online American journals[3] - our corpus of study - to describe different types of crime. These terms were selected, among others, to be included in a Criminal Law glossary created for the discipline of Lexical Studies, in 2012, of the School of Languages at the Pontifical Catholic University of Rio Grande do Sul.

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[3] CNN <www.cnn.com>; New York Times <www.nytimes.com>; Miami Herald <www.miamiherlad.com>

1 DEALING WITH THE EQUIVALENCE ISSUES OF ENGLISH LEGAL TERMS

Forensic linguistics is a specialized area that requires additional attention especially from novice translators – who have little or no experience and come across legal texts for the very first time –, regarding the meaning of the term in a given context. In other words, it is essential that the translator is aware of the legal effect of the term in order to decide upon the most appropriate equivalence to convey the message given. Using the definition provided by Vinay and Darbelnet (1995, p. 31), equivalence is the process of replacing elements in the source text (ST) with corresponding elements in the target text (TT) so as to "replicate the same situation as in the original whilst using completely different wording (*ibid*, p. 342). This approach can be used – in contrast to the more conventional notion of equivalence – if translating more directly would result in a translation which loses meaning or impact, or which is missing the idiomaticity or flow of a corresponding text originally produced in the target language.

For example, the understanding of the legal implications that one term has is especially important in a contract, where rights and obligations are generated for both parts. Moreover, the attention to legal effect is emphasized when Penal Code systems differ between the languages and cultures involved, thus demanding from the translator (be either novice or expert with no knowledge about the topic to be translated) a deeper understanding about both legal codes. It is important to have in mind that, since there are differences among languages, laws and cultures, a direct translation of terms and expressions should not be expected.

In that sense, Cao (2010, p. 87) remarks: "In short, complexities and difficulties may arise from translated laws, unknown or unforeseen in monolingual laws for the simple fact that the languages and legal traditions may be different giving rise to different implications."

Due to the complexity involving forensics terms, a legal dictionary may not be sufficient in helping legal translators because it may not provide the necessary information about the contexts in which terms are used in the target code in order to assist the professional in his choice of words. Rosário and Lage (2012), when analyzing Noronha's Legal Dictionary, explain that:

> Noronha (2003), on the other hand, sticks to the domesticating way of translating – using paraphrases when the ideal term is not reached. Because of the absence of a context, some terms in the English to Portuguese are

translated in a more superficial way, but it does not constitute a flaw, since the New York Code itself works with terms that are more general.

The idea of domestication and foreignization of a term, especially when dealing with legal terms, does not provide a complete and adequate answer to the difficulties regarding terms that do not have an identical correspondent in both Legal Systems, thus compromising either the original legal effect or the full understanding of the reader in the target culture.

Domestication and foreignization are two basic translation strategies, which provide both linguistic and cultural guidance. They are termed by American translation theorist L. Venuti (1995). According to him, the former refers to an ethnocentric reduction of the foreign text to target-language cultural values, bringing the reader back home whereas the latter is an ethnodeviant pressure on those (cultural) values to register the linguistic and cultural difference of the foreign text, sending the reader abroad. (VENUTI, 1995, p. 20). Domestication designates the type of translation in which a transparent, fluent style is adopted to minimize the strangeness of the foreign text for target language readers, while foreignization means a target text is produced which deliberately breaks target conventions by retaining something of the foreignness of the original (SHUTTLEWORTH; COWIE 1997, p. 59).

Hence, when it comes to find the equivalences for forensics terms, the translator must bear in mind that the aim of the translation ought to be the correct legal effect, even if, when doing so, the cost of processing for the reader is higher. According to Perna (2008, p. 150-151)[4]:

> Our argument here is that, in the case of legal translation, the factor that guarantees relevance is the enhancement of the benefit. Translation of legal terms must focus on the achievement of the legal effect, since its success will be measured by the results that the translation will have in real life. Therefore, the cost of processing that the translator will demand from the reader should not be reduced at the expense of the benefits. In other words, the cost of processing will be high if it guarantees the maximum benefit, a factor that, in the case of legal translation, especially contracts' translation, is the legal effect intended (our translation).

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[4] Nosso argumento aqui é o de que, no caso de tradução jurídica, o fator que deve garantir a relevância é o aumento em benefício. A tradução jurídica deve objetivar a obtenção dos efeitos legais desejados, já que seu sucesso será medido pelos resultados que ela terá na prática, portanto, o custo de processamento que o tradutor imporá ao leitor não deve ser reduzido às expensas do benefício. Em outras palavras, o custo de processamento será alto se este garantir o máximo de benefícios, fator que, no caso da tradução jurídica e, em especial, da tradução de contratos, é o efeito legal pretendido.

One way of achieving the intended legal effect is to increase the contextual elements of the term being translated, providing the reader with the differences between the term elected in the target culture and the original one. This is even more significant when translating official documents because it will require an accurate understanding from both parts of the rights and obligations that the document is imposing.

Thus, in order to comprehend the phenomena of translation of legal terms, especially when the target and source language have different legal systems, it is necessary to analyze the context in which the language is being used and make the adjustments to obtain the correct legal effect.

2 THE CRIMINAL LAW GLOSSARY

This section describes the methodology for the creation of the glossary as well as the issues encountered in the process of choosing the most appropriate equivalents in Portuguese for the terms *burglary, shoplifting and smuggling*.

2.1 METHODOLOGY

The first step for creating the Criminal Law Glossary consisted of a corpus with 5.741 words in the specialized area of criminal law, which were saved in a Word document. The data was randomly selected from online American journals (CNN, Miami Herald and The New York Times), more specifically from news in English related to crimes in the years of 2012-2013. In this sense, this corpus preserved the authentic aspect of corpora, which is defined by Zanettin (2012) as texts "written for purposes other than linguistic research".

After compiling the corpus, it was necessary to clean the data from the *noise*, which means to delete parts of the texts such as numbers, tables, figures, and references, usually taken out for terminological research. The next step was to upload the corpus to the platform *Corpógrafo5* to obtain a list of the most frequent terms and phraseologies. From this list, we selected manually the terms and phraseologies semantically relevant for this study, i.e., the ones directly related to the definition of

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5 A suite of integrated tools for individual or group research. It helps the user to compile, clean and treat corpus, among other functionalities. Available at http://www.linguateca.pt/corpografo.

crime or its elements, reducing our corpus to 2.963 lexical items ("judge", "bail", "suspects" and the expression "dry ice explosions" are examples of this selection).

To comply one of the requirements of the course, which was to choose the most fifty frequent terms and/or phraseologies of a specialized field, and for the purpose of analyzing difficulties encountered in finding equivalents to legal items in the language pair English-Brazilian Portuguese, we ended up choosing the terms listed in the table below to be included in the Criminal Law glossary.

1.Aggravated Assault	14.Fraud	27.Murder	40.Threat
2.Arson	15.Genocide	28.Parole	41.Trespass
3.Bankruptcy	16.Harassment	29.Perjury	42.Grand Jury
4.White collar crime	17.Hate crime	30.Probation	43.Tainted evidence
5. Burglary	18.Homicide	31.First-degree murder	44.D.A
6.Conspiracy	19.Indictment	32.Rape	45.Bail
7.Crime	20.Inquiry	33.Robbery	46.Conviction
8.Criminal Act	21.Intent	34.Second-degree murder	47.Appeal
9. Dealer	22.Intruder	35.Self-defense	48.Blackmail
10.Death penalty	23.Kidnapping	36.Suicide	49.Smuggling
11.Espionage	24.Manslaughter	37.Theft	50. DUI
12.Extortion	25.Misdemeanor	38.Statutory Rape	
13.Felony	26.Mistrial	39.Shoplifting	

Table 1: Word List.

Once the terms were chosen, they were placed in a terminological sheet - identical to the one below - in which information about them were included, such as definitions, sources, contexts, equivalents in Portuguese and general comments (if necessary).

The *context*, for example, refers to the passage or sentence in the news where the term appeared. Even though some words were found more than once in the corpus, the context chosen was the one that would allow a better understanding of the meaning of the term; and the *category of the term* refers to whether the term is obsolete, normalized, a neologism, slang or an abbreviation (KRIEGER; FINATTO, 2004). In terms of grammatical category, the terms were classified as either nouns, verbs or adjective, verbal or noun collocations.

Terminological sheets were created for each entry as Word documents and a total number of 50 term sheets were produced for the course. Below, an example of a term sheet containing information about one of the entries chosen.

Id. 1	
Entry	Appeal
Definition 1	To ask a higher court to reverse the decision of a trial court after final judgment or other legal ruling.
Definition 2	Not found.
Entry source	Online American journals
Source of definition 1	http://dictionary.law.com
Source of definition 2	
Context	"A California police officer won his **appeal** Monday at the Supreme Court, after being sued for chasing a suspect onto private property without a warrant". www.cnn.com
Theme	Crime News
Term category	Standardized
Grammatical category	Verb
Equivalent in Portuguese	Apelação
Dictionarized term	Yes
Comments	This appeal is stated in the article 593 of the Brazilian Criminal Procedure Code.
Author (s)	Gabriela Garcia and Patricia Varisco

Table 2: Terminological Sheet.

3 PROBLEMS ENCOUNTERED AND WAYS TO ADDRESS THEM

The difficulties encountered in finding Brazilian Portuguese equivalents for the English criminal terms were mainly due to the differences between American and Brazilian Penal Codes, as previously stated. Thus, finding equivalent words that maintained the legal effect of the term was not simple, and important to highlight that the Brazilian Portuguese equivalence options we found for *burglary, shoplifting* and *smuggling,* our objects of study, do not rule out the possibility of existing more adequate English types of crime that correspond to the Brazilian ones used as analogues.

3.1 BURGLARY

One of the terms selected from the corpus to integrate the glossary was *burglary,* extracted from the CNN website[6] in the following context: "No students were in the building at the time of the late-night *burglary* at Rachel B. Noel Middle School, and classes were expected to go on as usual Tuesday, he said."

We can also find this term in the New York Times website[7]: "The burglary itself went off largely without a hitch, except for when Mr. Forsyth, the designated lock-picker, had to break into a different entrance than planned when he discovered that the F.B.I. had installed a lock on the main door that he could not pick."

According to the online Law Dictionary[8], burglary can be described as:

> The crime of breaking and entering into a structure for the purpose of committing a crime. Originally under English common law burglary was limited to entry in residences at night, but it has been expanded to all criminal entries into any building, or even into a vehicle.

From this definition, it is possible to highlight two main elements that compose the crime of burglary: a) one must break and enter a structure; B) one must have the specific intent to commit a crime.

The crime that would be the most equivalent to *burglary* in Portuguese is *violação de domicílio*, which is stated in the article 150 of the Brazilian Penal Code as "to enter or remain, secretively or cunningly, or against the direct or tacit will of the owner, in someone else's house or premises" (our translation)[9].

Therefore, in the Brazilian crime of *violação de domicílio,* the elements that constitute the crime are: a) one must enter or remain in someone's house b) one must be against the owner's will or without their permission.

 Hence, the equivalent crime of *burglary* in the Brazilian Code does not demand the specific intent of entering the house to commit a crime as in the American System.

This means that, to be arrested for burglary in the United States, it must be proved that the author had the purpose of committing another crime (if he actually

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committed the crime is not relevant), whereas in Brazil, the fact that you entered the house is enough and whether you had a criminal intent or not is irrelevant. For example, you could enter the house to spend the night without the owner's permission while they are on vacation and it would still be considered a crime according to Brazilian law.

Another difference to be pointed out regards the object of the crime. The breaking and entering in the burglary crime can be done against any type of structure, whether it is a house, a public building or even a vehicle (NUCCI, 2010, p. 710). On the other hand, *violação de domicílio* does not extend its elements to any structure other than the ones that are inhabited by someone.

Commonly, the term *burglary* is used inappropriately to describe a theft, given the reason that, in most of the burglary cases, the defendant actually commits a theft after entering the building. However, the intent of the burglar can be to commit any other crime, such as assault or sexual harassment, which rules out the possibility to translate the term, in an abstract context, as the equivalent of theft.

In the Criminal glossary created, this problem was solved by adding a commentary in the terminological sheet, explaining that in the Brazilian equivalent – *violação de domicílio* – the special intent was not required.

However, if the scenario were, for example, the translation of subtitles, where this enhancement of information would not be possible, the translator should take into consideration the crime committed by the burglar in order to choose the most adequate term and convey the correct meaning. So, if the burglar entered the house to steal something, the translation should be done as *furto*.

3.2 SHOPLIFTING

One other term that was included in the corpus was *shoplifting,* which was extracted from the CNN`s website[10] in the following sentence: "A single mom down on her luck was caught *shoplifting* at Miami supermarket, but she didn't get hauled off to jail".

This term can also be found in Miami Herald website[11]: "Five members of a Phoenix-area family are accused of stealing more than $15,000 worth of lingerie and

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[10] <http://www.cnn.com/2013/10/22/us/cop-helps-shoplifter/>. Accessed on November 13, 2013.
[11]<http://www.miamiherald.com/2014/08/11/4284178/5-family-members-arrested-in-shoplifting.html#storylink=cpy> Accessed on August 13, 2014.

other clothing from retail stores, and authorities said the group also might have shoplifted in northern Arizona".

According to the American Law, shoplifting is[12] "the crime of stealing goods from a shop or store by deliberately leaving without paying for them". In other words, shoplifting is a specialized type of theft that happens inside a shop or a store and that does not involve violence.

This specific category of crime does not exist in the Brazilian Penal Code, so the analogue crime in Portuguese would be *furto simples*, which is "to steal, for yourself or for someone else, something movable that belongs to others" (our translation)[13]. Moreover, *furto simples* is the equivalent of theft in the American system and does not differentiate the place where the crime happens.

In the Criminal Law glossary, *shoplifting* was translated as *furto em estabelecimento comercial* in order to encompass all the elements in the crime. In terms of analogue crime, the correct equivalence would be *furto (simples)*. This choice was explained in the commentaries section in the terminological sheet.

Hence, the translator should identify if the context provided by the text (or TV series, movie) includes the fact that the theft happened inside a shop or a store. If it does, it is not necessary to include this extra element in the translation because *furto* would be enough to understand the legal effect.

On the other hand, if the context does not specify the place where the theft happens, it is important that the translator uses *furto em estabelecimento comercial* in order to provide the reader/viewer with the correct legal effect.

3.3 SMUGGLING

Another word, which was difficult to find an equivalent for, was *smuggling,* a term that was extracted from the following context in CNN's website[14]: "Federal officials say it was built by the powerful Sinaloa drug cartel to smuggle drugs into the United States".

In the New York Times website[15], the term was found in this context: "The economics of the smuggling scheme are straightforward: the alcohol can be bought in

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[12] Oxford Advance Learner's Dictionary Online. Accessed on April 22, 2014.
[13] Subtrair, para si ou para outrem, coisa alheia móvel.
[14] <http://ac360.blogs.cnn.com/2013/11/07/> . Accessed on November 25, 2013.
[15]< http://www.nytimes.com/2000/08/19/nyregion/a-smuggling-operation-with-a-russian-twist.html> Accessed on August 13, 2014.

the United States and shipped to Russia for far less than it would cost a Russian company to produce it legally or illegally in that nation, law enforcement officials said".

This crime is defined[16] as "the illegal transport of goods, especially across borderlines. Smuggling is engaged in to avoid taxation or to obtain goods which are prohibited in a certain region".

When analyzing this term, it is possible to notice that there are two different definitions embedded in one crime. One can commit smuggling either a) to avoid taxation or b) to obtain goods, which are prohibited.

In the Brazilian Penal Code, there is not a singular word, which can encompass both crimes. The first definition of smuggling would be correspondent to *descaminho* whereas the second would be equivalent to *contrabando.*

Even though there are two words to describe *smuggling* in Portuguese, they are both discriminated in the article 334 of the Brazilian Penal Code as "to import or export forbidden goods or to elude, completely or in part, the rightfully payment or tax due by the entrance, exit or consumption of goods" (our translation)[17] .

As we can see, the first definition of smuggling (*descaminho)* – to avoid taxation – is described in the last part of the article while the second (*contrabando*) – to obtain prohibited goods – is stated in the beginning. *Smuggling,* however, is usually translated in dictionaries as *contrabando,* which, depending on the context of the word usage, it can portray the incorrect legal effect.

If someone commits smuggling in order to avoid taxation, it means that the object of the crime is a product that is legal and not forbidden. The crime happens only because the taxations were not paid. On the other hand, if someone commits smuggling to obtain prohibited goods, it does not matter whether the taxes where paid or not, because the actual product is illegal.

In the Criminal Law glossary, this problem was solved by using both words as the equivalent of *smuggling* in Portuguese. In the commentary section, it was explained which term corresponded to which of the definitions provided for the crime smuggling.

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[16] <http://definitions.uslegal.com> Accessed on November 27, 2013.
[17] Importar ou exportar mercadoria proibida ou iludir, no todo ou em parte, o pagamento de direito ou imposto devido pela entrada, pela saída ou pelo consumo de mercadoria.

This is an issue that can be overcome by novice translators if they consider the context in which the word is being used to be able to choose the equivalent in the other language, which has the closest concept.

FINAL COMMENTS

Translation of forensic language is a growing field of study and requires from the novice translator an enhanced attention regarding the legal effects of the terms. Owing to the fact that legal terms often generate obligations and rights to both parts, the translator should analyze all the elements that compose the term in order to choose the most adequate equivalence.

In sum, the complexity of this type of translation is increased when legal systems of the target and original culture are different, thus creating barriers in the search for an equivalent concept that contains the correct legal effect. Hence, the translator must bear in mind that, in those cases, a full coherence and identity of terms should not be expected. It is fundamental to analyze the context in which the language is being used and make the necessary adjustments for an appropriate equivalence and adequate legal effect, necessary for the understanding of the message conveyed.

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ABSTRACT: This article aims to demonstrate the difficulties encountered in the translation of forensics language, focusing in the problems that occur when translating terms from a legal system that has a different Penal Code than the target culture. The object of study was a Criminal Law Glossary created through *corpus* linguistics, which contains the fifty most frequent terms used in Online American Journals to describe different types of crime. In order to demonstrate the problems that originated from the different legal system, three crimes were analyzed: burglary, smuggling and shoplifting. The results showed that in those cases a perfect correspondence between the original term and the translation was not possible, either because the crime does not exists in Brazil or due to the fact that it has different elements than the American crime. Thus, the translator of forensic linguistics must bear in mind that when the legal systems are not the same, a full identity of terms should be not expected. Nonetheless, to achieve an adequate translation and the correct legal effect, it is important to analyze the context in which the language is being used.
Keywords: Forensics linguistics; Translation; Criminal Law; *Corpus* Linguistics.