

# CRIMINAL LAW OR PENAL LAW: WHICH ONE IS IT?

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## **ABSTRACT:**

The teaching of Spanish Law in English responds to the dynamics of European integration and to the set of policies carried out in the European Higher Education Area. By offering training in English, universities can enhance the linguistic training of their graduates, improve their understanding of other legal systems, and attract international students. However, this objective is accompanied by several challenges. The first of these is the need for both teachers and students to be proficient in the language. The transition to an English language curriculum requires a high level of linguistic competence on the part of teachers along with continuous language improvement. Similarly, students must possess the language skills necessary to understand complex legal concepts and to participate effectively in debates. Teaching Spanish national law in English poses specific challenges, such as pedagogical adjustments, creating legal materials in English and achieving linguistic clarity while maintaining legal precision. Specific problems arise in the context of criminal law, such as navigating nuanced legal terminology, understanding different legal systems, or explaining legal categories that do not exist in other jurisdictions.

**PALABRAS CLAVE:** criminal law, teaching, English.

## “CRIMINAL LAW” O “PENAL LAW”: ¿CUÁL ES?

### ABSTRACT

La enseñanza del Derecho español en inglés responde a la dinámica de integración europea y al conjunto de políticas llevadas a cabo en el Espacio Europeo de Educación Superior. Al ofrecer formación en inglés, las universidades pueden potenciar la formación lingüística de sus egresados, mejorar su comprensión de otros sistemas jurídicos y, además, atraer a estudiantes internacionales. Sin embargo, este objetivo va acompañado de varios retos. El primero de ellos es la necesidad de que tanto profesores como estudiantes dominen el idioma. La transición a un plan de estudios en inglés requiere un alto nivel de competencia lingüística por parte de los docentes junto con una mejora continua del idioma. Del mismo modo, los estudiantes deben poseer las destrezas lingüísticas necesarias para comprender conceptos jurídicos complejos y participar eficazmente en los debates. La enseñanza del Derecho nacional español en inglés plantea retos específicos, como los ajustes pedagógicos, la creación de materiales jurídicos en inglés y el logro de la claridad lingüística manteniendo la precisión jurídica. En el contexto del derecho penal surgen desafíos particulares, como la navegación por una terminología jurídica llena de matices, la comprensión de los distintos sistemas jurídicos o la explicación de categorías jurídicas inexistentes en otros ordenamientos.

**KEYWORDS:** derecho penal, docencia, inglés.

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## SUMMARY

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## 1. INTRODUCTION

The Spanish University System has made great progress in its internationalisation process in recent years. After establishing itself firmly in mobility programmes, especially the Erasmus programme, but not only, it is now focusing on a comprehensive and ambitious language policy. A crucial component of this policy is teaching in English. This change responds to a variety of reasons, ranging from academic and political aspects to economic considerations. In addition to adapting to the academic requirements of the European Higher Education Area (EHEA), the internationalisation of the university demonstrates its commitment to building a broader European citizenship, based on a cosmopolitan perspective<sup>1</sup>.

Forgetting for a moment the context in which this process is taking place, it is legitimate to ask whether legal education should be included in this trend. In other words, is it academically appropriate, or simply desirable, for Spanish law schools to teach in English? Beyond the obvious benefits in terms of language proficiency and the attraction of foreign students, it is questionable whether it is also beneficial for the training of our students as future lawyers. In this brief contribution we will try to develop some of the arguments in favour of this complementary aspect of training in English for a lawyer, even when his or her dedication will be focused on national law.

The other aspect on which we will focus is the difficulties of teaching law in general, and criminal law in particular, in a second language, from the linguistic competence required to the search for the appropriate vocabulary. Since it is always a challenge to explain a complex subject in a language that is not one's own, it is particularly difficult to adapt law to teaching in English because of the great differences in our legal traditions.

## 2. WHY TEACH SPANISH NATIONAL LAW IN ENGLISH

In academic circles, teaching law in English appears to prioritize international, comparative, and supranational law over Spanish national law. This

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<sup>1</sup> ALCÓN SOLER, E. La universidad multilingüe, *Revista de Docencia Universitaria* (REDU), nº 9, 119-129

trend, whether for globalizing national students or integrating foreign ones, seems to give a greater importance to international/foreign law over domestic law. Despite the globalization of commerce and legal matters, domestic law remains relevant. Certain areas may be subordinate to international or community law, but a third aspect must be considered: the demand for legal services in Spain in English, not in a different legal framework.

Tourist-heavy regions in our country house a sizable community of non-Spanish-speaking residents, often with significant purchasing power. They require legal guidance on domestic law matters, yet their limited Spanish proficiency necessitates English communication. Additionally, when collaborating with foreign counterparts, these residents often encounter colleagues unfamiliar with the intricacies of the Spanish legal system. It's evident that attaining this goal doesn't solely involve translating a legal glossary or immersing oneself in such language, but rather requires a comparative training approach. This approach facilitates a comprehensive grasp of both the similarities and differences between legal systems and institutions. Nevertheless, it's essential to emphasize the importance of understanding domestic law. The ultimate objective is to equip professionals with the ability to elucidate the nuances and workings of the Spanish legal system to their non-Spanish-speaking clients and peers<sup>2</sup>.

In contrast to models that focus on fully internationalizing academic training and service provision in a global context, which often revolve around teaching subjects like international law or comparative law, this alternative approach would essentially embrace what is known in other domains as "glocalization"<sup>3</sup>. In essence, it involves adapting global principles and standards to suit local conditions. Surprisingly, there is limited educational offerings that take this approach into account as a reference point, despite a clear demand for legal services of this nature. It is worth noting that the level of linguistic proficiency and knowledge of other legal systems required for providing such services is considerably lower than what is needed for operations exclusively within a global and international framework.

### 3. CHALLENGES

#### 3.1 Language competence of teachers and students

It is essential to acknowledge that the proficiency level of teachers in English is a crucial factor directly impacting the effectiveness of quality teaching. Addressing the challenge of English language instruction requires the establishment of a robust accreditation system for qualified educators. This initiative is outlined in the "Strategy for the Internationalisation of Spanish Universities 2015-2020"<sup>4</sup>, authored by the Ministry of Education, Culture, and Sport, which provides a

<sup>2</sup> DE LUCCHI LÓPEZ-TAPIA, Y. Internacionalización de la Universidad (2.0): la enseñanza del derecho a través del inglés, *Revista Jurídica de Investigación e Innovación Educativa*, nº 22, 2020, 188.

<sup>3</sup> MANCUSO, S. Law and glocalization, *Handbook of Culture and Glocalization*, edited by ROUDOMETOF, V. y DESSI, U, Edward Elgar Publishing, 2022, 76-91.

<sup>4</sup> Available in the following link: <https://sede.educacion.gob.es/publivena/estrategia-para-la-internacionalizacion-de-las-universidades-espanolas-2015-2020/universidad/21475>

framework based on three key areas: accreditation, training, and incentives. In this brief paper, we will focus on the first aspect, accreditation, as it plays a pivotal role in achieving optimal quality standards in the teaching and learning process.

In contrast to educational levels like Primary School, which have well-defined qualifications for bilingual teachers, the higher education sector lacks standardized criteria for accrediting teachers who wish to instruct in English<sup>5</sup>. Consequently, each university has the discretion to set its own requirements regarding language proficiency for English instruction. For instance, the University of Malaga recommends a minimum C1 level accreditation according to the CEFR (Common European Framework of Reference for Languages) but does not make it mandatory<sup>6</sup>. It is advisable to establish a consistent criterion applicable to all universities, as suggested in the Language Policy Framework for the Internationalization of the Spanish University System, prepared by CRUE (Conference of Rectors of Spanish Universities)<sup>7</sup>.

In our perspective, it is highly recommended to implement a dedicated accreditation examination for English language instruction, akin to the approach taken by the University of Vigo, which has instituted the HELA (Higher Education Lecturing Accreditation). HELA comprises a specialized accreditation exam designed for faculty members who teach in English. This examination evaluates whether educators lacking official language accreditation possess the essential linguistic competencies required to effectively teach in a foreign language. It assesses language proficiency, fluency, communication aptitude, oral presentation skills, and the ability to engage with students<sup>8</sup>.

Nevertheless, we acknowledge that the level of obstacles and supplementary prerequisites for accrediting teacher competence tends to decrease as educators' willingness to teach in English wanes, particularly when the incentives are limited. Therefore, we hold the view that while standardizing the criteria for accrediting teacher competence is imperative, it is equally crucial to enhance its tangible recognition. Thankfully, as time progresses, promoting English-language instruction is poised to become more effortless, as the emerging generation of university instructors usually possesses superior language skills since they may have studied in a bilingual environment or, at least, were aware of the importance of learning English from an early stage of their education.

Accrediting a teacher's abilities to teach classes in English is a determining factor, but accrediting students' knowledge of the language is no less important. In this regard, the coming years will also favour a smoother transition to university for bilingual students for the same reasons mentioned earlier for teachers. Nowadays,

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<sup>5</sup> MARTÍN DEL POZO, M.A. Formación del profesorado universitario para la docencia en inglés, *Revista de Docencia Universitaria* (REDU), vol. 11(3),2013, 209.

<sup>6</sup> DE LUCCHI LÓPEZ-TAPIA, Y. Internacionalización de la Universidad (2.0): la enseñanza del derecho a través del inglés, cit, 190.

<sup>7</sup> Available in the following link: [https://www.crue.org/wp-content/uploads/2020/02/Marco\\_Final\\_Documento-de-Politica-Linguistica-reducido.pdf](https://www.crue.org/wp-content/uploads/2020/02/Marco_Final_Documento-de-Politica-Linguistica-reducido.pdf)

<sup>8</sup> DE LUCCHI LÓPEZ-TAPIA, Y. Internacionalización de la Universidad (2.0): la enseñanza del derecho a través del inglés, cit, 190.

learning English is a top priority in lower education levels and even from a cultural and social perspective.

However, it's important not to overlook the challenges and issues that can arise within a bilingual university teaching environment. Essentially, the concept of an "international classroom" encompasses students with diverse backgrounds, distinct idiosyncrasies, and varying levels of language proficiency. While most universities typically mandate an English proficiency level equivalent to B1 or B2 for enrolling in English-taught courses (in our view, B1 may be insufficient, especially for disciplines like law, where intricate terminology and language usage are integral to evaluation), we often encounter groups comprising a range of sub-levels spanning from B2 to C2. When you factor in the presence of native English speakers in these groups, the situation becomes more complex, necessitating instructors to navigate an intermediate terrain to establish a sort of linguistic consensus, so to speak<sup>9</sup>.

This issue has prompted certain universities, such as the University of Salamanca, to exclude Erasmus students from English-taught courses due to concerns about exacerbating the challenges<sup>10</sup>. While it is valid that Erasmus students could benefit from integration into non-international classrooms to enhance their immersion in the local language, it's equally true that these students, primarily hailing from English-speaking countries, often grapple with significant language barriers when it comes to Spanish. Given that instruction often occurs in small groups, the feasibility of maintaining separate classes for Erasmus and Spanish students becomes impractical. Therefore, it becomes imperative to address the varying proficiency levels through a more personalized and individualized teaching approach, allowing the teacher to bridge the gap effectively.

### 3.2 Challenges when teaching Spanish national law in English

Unlike empirical, technical, theoretical, or humanistic disciplines, a considerable portion of legal subjects holds a predominantly national character, meaning their applicability is primarily confined to a specific country's jurisdiction. A unique aspect that renders English-language teaching particularly challenging, an aspect which is absent in other domains of knowledge. Despite efforts to standardize regulations through the incorporation of European directives in certain areas or the prominence of Anglo-Saxon legal frameworks in international law, the legal domain largely retains its character as a national legal system. Consequently, this circumstance gives rise to at least two distinct challenges when it comes to English-language legal instruction.

The initial challenge pertains to the lack of teaching materials and regulatory documents available in English. When opting for a teaching approach that doesn't

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<sup>9</sup> For more information on this topic: GÓMEZ LÓPEZ, A., SOLAZ PORTOLÉS, J. J., SANJOSÉ LÓPEZ, V. Competencia de lengua inglesa de estudiantes universitarios españoles en el contexto de EEES: nivel de dominio lingüístico, estrategias metacognitivas y hábitos lectores, *Revista de educación* n° 363, 2014, 154-183

<sup>10</sup> DE LUCCHI LÓPEZ-TAPIA, Y. Internacionalización de la Universidad (2.0): la enseñanza del derecho a través del inglés, cit, 191.

centre around the international facets of the legal field in question (such as international tax law, international criminal law, or international procedural law), or comparative law, instructors often encounter a scarcity of English-language texts and normative documents. Consequently, they must invest significant effort in crafting customized teaching materials. Additionally, this deficiency needs to be factored into the evaluation of students' performance.

However, it's worth mentioning that in recent times, there has been a noteworthy emergence of reference materials catering to the instruction of Spanish law in English. These include works by authors like Ana María Prieto del Pino, such as "Lessons of Spanish Substantive Criminal Law" (Aranzadi, 2017), Yolanda Bergel Saínz de Baranda's "Handbook on Spanish Civil Patrimonial Law" (Tecnos, 2019), Sonia Martín Santiesteban and Luz Martínez Velencoso's "Handbook on Spanish Civil Law (Part 1): Law of the Person" (Publicacions de la Universitat de València, 2016), and María Jesús Guerrero Lebrón, Zofia Bernarz, and Antonio Galacho Abolafio's "Commercial and Economic Law in Spain" (Kluwer Law International BV, 2018)<sup>11</sup>. Furthermore, the Ministry of Justice maintains a section on its website containing translations of key legal texts, including the Criminal Code, the Civil Procedure Act, and the Criminal Procedure Act, among others. It's worth noting that in some cases, these translations may require updates to align with the most recent legal reforms<sup>12</sup>.

The second and more intricate challenge confronting those aiming to teach law in English is a phenomenon known in the realm of translation and interpretation as "anisomorphism"<sup>13</sup>. It's essential to recognize that language and culture do not directly mirror or faithfully represent reality; instead, they construct, categorize, and taxonomize a reality that unfolds as a continuous spectrum before us. The structures, concepts, and diverse modes of expressing this reality do not adhere to a natural or predetermined classification; rather, they are contingent, shaped by the interests and experiences of distinct societal groups.

This complexity intensifies when dealing with legal institutions, which share similar social functions but often defy easy establishment of equivalence in their internal design and the roles played by their participants. Categories, forms of legal relationships, the legal capacity of individuals or entities, and more, all exhibit significant variations across legal systems, even within the same legal tradition, such as civil law or common law. Moreover, these legal concepts can evolve and undergo modification over time. As aptly noted by Ibáñez Marsilla, "many legal concepts lack an equivalent in other languages," highlighting that in legal matters,

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<sup>11</sup> DE LUCCHI LÓPEZ-TAPIA, Y. Internacionalización de la Universidad (2.0): la enseñanza del derecho a través del inglés, cit, 191

<sup>12</sup> For example, the last version of the criminal code was edited in 2016: [https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal\\_Code\\_2016.pdf](https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf)

<sup>13</sup> MARTÍNEZ GARCÍA, A., DE TORRES PEREA, J. M. El aprendizaje del inglés jurídico y la enseñanza del Derecho Español en lengua inglesa. Sobre una experiencia pionera en España, *Noticias Jurídicas*, 2014 (<http://noticias.juridicas.com/conocimiento/articulosdoctrinales/4920-el-aprendizaje-del-ingles-juridico-y-la-ensenanza-del-derecho-espanol-en-lenguainglesa-sobre-una-experiencia-pionera-en-espana/>)

we often employ different terminology in each language to describe realities that, on many occasions, diverge significantly from one another<sup>14</sup>.

#### 4. PROBLEMS SPECIFIC TO CRIMINAL LAW

We shall now proceed to delve into the challenges encountered by Criminal Law professors when instructing in the English language. Our primary focus will be on the examination of linguistic barriers and disparities within legal systems, thereby providing a more nuanced perspective on this subject matter.

The realm of Criminal Law, and law in general, demands a profound understanding of specialized legal terminology. Professors are compelled to acquaint themselves with the intricacies of terms and expressions in English, ensuring that students grasp their precise connotations.

Teaching Criminal Law in languages such as German or Italian presents a notably less arduous task when compared to English, as there exists a shared foundation in the general theory of criminal law. However, the situation differs considerably when contemplating Anglo-Saxon legal systems. In these instances, the categorizations do not align precisely, rendering the task of identifying the exact word or concept quite challenging due to the absence of a 100% correlation. The genesis of these disparities can be traced back to the profound cultural and historical distinctions inherent in our respective nations, which have, in turn, manifested themselves within our legal systems.

In terms of vocabulary, we encounter a dual phenomenon of false friends and close friends. False friends denote words that bear a resemblance to those in our linguistic repertoire but are never employed in a congruent context or carry entirely disparate meanings. Conversely, close friends represent words that do not share close linguistic resemblance with our customary usage yet possess akin meanings. However, it is crucial to emphasize that while these terms may share a similar meaning, distinctions must be explicitly delineated.

Let us now examine a few illustrative examples:

Commencing with a prime example of a false friend, "autor" does not equate to "author" within the legal domain. This discrepancy poses a formidable challenge when teaching. In the pedagogical context, instructors are not mere repositories of knowledge, but rather proficient conveyors who elucidate intricate concepts through varied approaches to ensure student comprehension. During spontaneous discourse, the propensity to succumb to false friends is markedly heightened, as the initial word that springs to mind is often one resembling our customary usage. In the legal lexicon, the accurate term to denote the "autor" in English is "the principal," "the principal offender," or "the perpetrator" of a criminal offence.

Let us now immerse ourselves in the realm of the "teoría jurídica del delito", commonly referred to as criminal theory in some texts. The terminology within criminal theory frequently presents a challenge in terms of exact translation, as

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<sup>14</sup> IBÁÑEZ MARSILLA, S. La evaluación de los estudiantes en el PIE Enseñanza del Derecho en inglés de la Facultad de Derecho, *Revista d'innovació educativa* n° 9, 2012, 153.



these concepts are not inherently familiar within the framework of Anglo-American law. Nonetheless, we may identify cognate terms that bear a semblance.

First, we consider the concept of "tipicidad" in the context of the act. Describing an act as "típico," as commonly understood, signifies that the alleged offender has satisfied each constituent element of the definition pertaining to a specific offense. Due to the absence of a criminal code within their legal system, attaining a precise translation for "tipicidad" proves to be an elusive endeavour.

But it is true that it includes both "tipo objetivo" and "tipo subjetivo", elements that are like the *actus reus* (guilty act with objective elements of the offence) and *mens rea* (guilty mind), which are the requirements of Anglo-American criminal law. So, we can use those terms, but we must be aware of the differences and explain them if we are to use those terms.

Then the "antijuricidad" could be translated as the wrongfulness of the act. It serves to determine whether the alleged offender's act was "antijurídico" or wrongful (sometimes also translated as "unlawful") and whether there are justification defences ("causas de justificación") that would render the act lawful. These justification defences work in the same way ours do, but the "causas de justificación" we have, do not fully coincide with the justification defences they have, so that's something we must explain to both Spanish and international students.

In a third step we find "culpabilidad", which could be translated as culpability or blameworthiness. Here we examine the "causas de inimputabilidad", that could be translated accurately as excuse defences. We find ourselves in a similar situation we did before, these excuse defences work in the same way ours do, but they do not fully coincide, so that's something we must also explain to both Spanish and international students.

## 5. CONCLUSION

Legal systems exhibit considerable diversity across nations, leading to instances where professors may find themselves instructing students acquainted with alternative legal frameworks. Notably, the legal systems of the United States and the United Kingdom diverge significantly from our own. Therefore, it becomes imperative for us to study their legal systems, not with the aim of providing exhaustive explanations, but rather to enable us to delineate the distinctions between their legal framework, concepts, and terminology as compared to our own.

So, which term is more accurate: Penal law or criminal law?

Since we have predominantly employed the terms "crime" or "criminal theory," it is evident that the more precise term is "criminal law." However, it is noteworthy that the term "penal" does indeed exist within the legal lexicon. It is commonly used when referencing matters related to punishment, penalties, or punitive institutions. Thus, when one refers to the "penal system", they are essentially discussing the implementation of sanctions by state authorities, sanctions that are defined and governed by the principles of criminal law. Just one more example of how difficult it is to teach criminal law in English.

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