Verdachte, Defendant or *Acusado*?

Can a Third Legal Language Aid Legal Translators?

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Introduction

Legal translation is becoming more commonplace as we are living in an increasingly globalised world. Legislation and legal texts nowadays often traverse multiple countries, as businesses expand, people migrate, and organised crime spills over borders. Moreover, treaties and supranational organisations become more authoritative and start to overrule national legislation, for example in the European Union, which intends to harmonise its legislation in its member states, in all of its twenty-four official languages (Šarčević, 2006: 26).

In short, there is a growing demand for legal translation from governments, businesses, and academic institutions. However, despite this surge of interest, theorists and scholars have not taken an unanimous position in outlining an optimal approach in conducting legal translation between two languages. In fact, some translation theorists still do not consider legal translation an independent, stand-alone branch of the academic field of translation studies (Šarčević, 1997: 1).

Can there even be an optimal translation approach if scholars do not agree on the nature of the discipline of legal translation itself? Indeed in general translation, there is no optimal translation process which is tailor-made for each and every text. Many of our translation choices rely on different factors, such as the purpose of a text and its intended readership. These considerations are the same for all translations, but the authoritative status of some legal texts and their underlying cultural legal background constitute an extra factor in legal translation. They distinguish legal translation from all other forms of translation.

Even though there are established proposed translation strategies for legal translations, I wanted to consider another one, a trilingual translation approach. This would ideally feature using a third language and legal culture to mediate between two others. To my surprise, this is an approach that no translation theorists (literary or legal) have considered, causing a gap in translation studies.We could argue that this gap makes sense, brought forth by economic restrictions – creating two translations of the same text might simply be too time consuming and of little to no interest for professional translators working on a tight schedule with limited resources. However, Simard argues that each new

translation of a text, in whichever language, gives us new information about the lexical, grammatical and pragmatic make-up of the source text (1999: 2), and therefore can serve as a basis to produce a better translation. Could this also be true in a legal context? Can a third legal language help in giving more information about a legal source-culture, therefore enabling better translations of a source text?

In this thesis, the main translation directions will be English to Dutch and Dutch to English, corresponding with the main subject of the MA course for which I wrote this thesis. The third, auxiliary legal language I will employ will be Spanish, a language in which I am proficient and which takes up an interesting role in mediating between English and Dutch, particularly in legal translation. While Dutch and English are both West Germanic languages, only Dutch legal language predominantly uses terminology of Germanic origin. English primarily uses Latinate vocabulary in its legal variant, like the Romance Spanish language. We may thus expect many cognates between these two languages that function as functional equivalents. In terms of legal culture, however, Spanish law is arguably much closer to its Dutch counterpart, as their law systems are of continental law origin, as opposed to English common law. This proximity of Spanish to the other two languages, with terminological similarity to English and legal similarity to Dutch, makes its function as a mediate language all the more interesting.

In order to find the answer to the thesis research question, I will start off by discussing the specific features of legal texts. Chapter 1 will furthermore introduce legal translation as a distinct field of translation studies, and discuss trilingual translation in the context of linguistic studies. In general, the chapter will put forward that knowledge of a local legal culture of the source and target language is a prerequisite for legal translators.

This will set the stage for the second chapter, in which I discuss the cultural backgrounds of the legal languages involved in this thesis, including the history of their codified law. As providing an overview of the entire legal systems of Spain, England and the Netherlands would be far too extensive for the purpose of the thesis research question, I have decided to let the thesis focus solely on criminal law, an area of law which is as topical and relevant as the next. Chapter 2 will therefore also discuss aspects

of criminal law in general, especially those parts which are deemed universal in the Western world. Such concepts influence a translator's work and are especially relevant when dealing with seemingly similar cultures, like those of the countries discussed in this thesis.

In chapter 3, I will combine the linguistic and legal discussions of the preceding chapters and discuss general translation strategies for non-equivalence. This will be followed by a concise overview of the terminology of substantive and procedural criminal law in Spain, the Netherlands and England. This summary will provide functional equivalents of terms between the languages by comparing definitions of ostensibly universal aspects of criminal law. It will moreover anticipate possible translation difficulties in the subsequent chapter, serving as a reference.

Chapter 4 will finally explore the thesis research question by providing comprehensively annotated translations of legal texts, mediated by a Spanish translation. I will discuss the helpfulness of each mediate text in general, but also that of individual phrases and terms. This chapter will thus combine the research and overview of the previous chapters with actual translation in practice in an effort to find out the usefulness of the mediate translation.

Ultimately, trying to answer the research question is a vital exercise for legal translators in any case, as it encompasses translation, legal and comparative law studies. The relevance of such interdisciplinary study lies in the essence of the legal translation itself. The importance of the accuracy of legal translation and its consequences is aptly stated by Baker, in her translation coursebook *In Other Words* (2011): "(…) how we render the speech of the defendant in a courtroom (…) has an impact on the way our readers (…) will perceive the character in question, the veracity of a defendant's testimony, the reliability of a witness's statement, the credibility of an asylum seeker's account of his or her persecution (…)" (2011: 288). Even though we can assume that many legal texts will feature literary translation challenges as well, Baker argues that legal translations have effects that go further than in literary translation. With this in mind, she calls upon translators to accurately represent what a source text is aiming to convey. Accurately representing legal implications in translation is impossible without knowing the two involved legal systems thoroughly, but is it possibly

further aided by the knowledge of a third legal language? This is a consideration I shall further investigate in this thesis.

Chapter I: Legal Translation Theories and a Third Language

Introducing legal translation and language

Legal translation[1] takes up a special place in the broader field of translation studies, which is subdivided by Vîlceanu into literary, general and specialized or technical translation (2010: 3). Legal translation belongs to the latter category, but it was long neglected in both legal and translation studies as being a mere linguistic issue and was regarded as inferior to more general translation studies (Šarčević, 1997: 1). Both lawyers and linguists considered legal terminology to be easily translatable between languages. To them, legal translation simply amounted to literal or word-for-word translation, without any of the subtleties and stylistic challenges of literary translation.

In recent times, there has been growing scholarly interest in specific translation issues, legal translation among them. This is partly due, as the introduction pointed out, to the growth of international relations and supranational organisations (Šarčević, 2006: 26). As a result, legal translation has come to be regarded as a serious academic discipline over the past decades.

What is legal translation exactly? As its name suggests, it is a translation of legal discourse, in our case the legal text. According to Sager et al., legal texts are essentially a "communicative occurrence between specialists" (Sager, Dungworth, McDonald, 1980: 210). The reader of the legal text is not primarily the citizen to whom it applies, but also legal specialists other than the author, who can use the text to determine its validity or administer justice, for example. Legal translation thus differs from literary translation, where translation serves first and foremost as a means of conveying meaning from a writer to a much broader readership (disregarding the critical assessments of reviewers or peers).

However, there is still no universal consensus about the position of legal translation as a stand-alone discipline within translation studies. Cao, for example, argues that there is sufficient overlap between general, technical and legal translation for them not to be regarded separately (2007: 20). Legal translation nevertheless differs considerably from other specific-purpose translations. Most concepts in humanities and sciences, for example, feature universal cognate terms which are easily translatable, as

[1] Even though interpreting is also a form of translating, this thesis will concern only the translation of texts.

these disciplines are not bound to a specific national culture. Legal texts on the other hand are based on an underlying local legal culture and legislation, which is heavily specialised. Most legal terminology does not feature in a dictionary that is not specifically aimed at legal language (Cornelius, 2011: 127-128).

Many legal texts in various languages and systems furthermore suffer from so-called "legalese"[2], an abundance of archaisms and long-established formulas. Legalese is apparent inthe English phrase "null and void" (a so-called *doublet*, using two nouns which are near-synonyms) and in the Dutch use of archaic words such as *onderhavig* and *voornoemd* (Van Weerst and Vanden Heede, 2010: 53). Legal Spanish is no different in this aspect, as Spanish legal texts often generate confusion in those who are unfamiliar with the legal culture surrounding the text (García-Tesoro, 2011: 15).

The syntactic structure of many legal sentences may pose further difficulties for legal translators, for example when sentences contain multiple subordinate clauses (most legal texts having a high incidence of relative and adverbial clauses (Vîlceanu, 2010: 1)), or rather when sentences are too short and open to a variety of interpretations (Stroia, 2013: 145). The latter case is nonetheless rare, as according to Salmi-Tolonen most legal sentences are longer than sentences in other text types (2004: 1170). Estimates show that the average complex sentence in English legal texts consists of seventy to hundred words (Danet & Bogoch, 1994: 230).

Legal issues of legal translation

The primary function of a legal translation is to create a "parallel text" which creates an understanding over different languages and legal systems (Cornelius, 2011: 125). The quality of a legal translation is therefore measured by the pragmatic assessment of its successful interpretation and application. This especially holds true for authoritative legal translations, which Šarčević distinguishes from non-authoritative legal translations, which are not legally binding (2006: 27, 28). The legal effects of authoritative legal translations make the process of translating such texts more legal than linguistic (Sacco, 1990: 34). Because of this, another substantial difference between legal and general translation

[2] According to Baker, the *–ese* suffix is often used to denote " disapproval of a muddled or stilted form of writing" (2011: 20).

is the number of restrictions to which the legal translator is bound. The legal translator "(…) is more restricted than in any other form [of translation]" (Newmark, 1981: 47).

There is ample need for legal translations within a single legal system, as Article 6 of the European Convention on Human Rights guarantees: "Everyone charged (…) has the (…) [right] (…) to be informed (…) in a language which he understands". Multilingual countries such as Belgium and Switzerland have a uniform legal system involving multiple national languages. In Canada, Federal and Québécois legislation have created a habit of drafting acts in French and English at the same time.[3]

However, the translation of legal texts not only involves different languages, it also frequently involves two different legal systems. The difficulty of this specific legal translation lies in the double nature (legal and linguistic) of the translation itself. The primary factor which influences the difficulty of a legal translation is the degree of similarity between the source and target legal system. The second is the similarity of the two languages involved (Berteloot, 1999: 103). Therefore, legal translation between Swedish and Danish (two countries which share a Civil Law system and mutually intelligible North Germanic languages) is decidedly simpler than translating a Burmese legal text into Persian, where the two legal systems involved are Common Law and Sharia Law, and the languages are Sino-Tibetan and Indo-European, respectively. As I noted in the introduction, Spanish then plays an interesting role as a mediate legal language in this regard, being more similar to English in its legal terminology but more similar to Dutch in its legal culture.

Legal translation is further complicated because of what Šarčević calls "conceptual incongruity" (2006:27), the discrepancy between the definitions and boundaries of legal concepts in different languages and legal systems. In general translation studies, this incongruity is what Baker calls "non-equivalence at word[4] level", where the target language lacks a complete equivalence with the source language word (2011: 18). Examples of non-equivalence include culture-specific concepts, a semantically complex word, and the non-existence of either a more general word (superordinate) or a

[3] The actual act of co-drafting goes beyond translation, and according to Šarčević it should be considered "simultaneous writing" (2006: 28).
[4] I use "word" here to refer to compound nouns and phrases. Baker herself treats non-equivalence with either words or phrases as two different things, but she offers similar translation strategies.

more specific one (hyponym). Conceptual incongruity not only occurs in different legal systems, but also within countries which ostensibly have a similar legal system, as with the term *décision* in French law, which covers two more precise terms in German law (*Beschluss* and *Entscheidung*), but three distinct terms in Dutch law (*beschikking*, *beslissing* and *besluit*; Šarčević, 2006: 27).

Cognates which seem readily translatable into a target language with what Baker would call its "dictionary equivalent" (2011: 11) are sometimes also conceptually incongruous. Legal French *contrat* and *dettes*, for example, differ substantially from the English cognates of *contract* and *debts*. Legal terms in one language can have a different definition in the legal system of another country, as German *Sache* corresponds to a distinct legal concept in Austrian law than in German law, while English *domicile* differs in England and the United States (Šarčević, 1997: 232). Furthermore, a specific legal concept that exists in one legal system can be non-existent in another (Cornelius: 126), and while lawyers have made efforts to standardize specific concepts, conceptual incongruity also abounds in international law (Šarčević, 2006: 27).

Types of legal texts and translation

Legal texts are by no means homogeneous. I already noted the distinction between authoritative and non-authoritative texts. This is the most important division between legal texts, but there are more distinctions. While theorists have disagreed over definitive classifications, Cao makes a reliable attempt by subdividing legal texts into legislative texts (statutes, treaties, basically legislation written by lawmaking authorities), judicial texts (written by lawyers and judicial officers within a judicial process), legal scholarly texts (written by legal scholars and lawyers, including commentaries and explanations) and private legal texts (subdivided into texts written by lawyers such as contracts, leases and wills, but also by lay people, such as private agreements and testimonies; Cao, 2007: 21-24). Each text type requires a different translation approach.

Legal translations are divided by both Cao (2007: 22-24) and Harvey (2002: 178-181) into three categories. The first category concerns normative purpose translations, meant to produce an equally authentic legal text, whether in multilingual jurisdictions or international law. These translations are

essentially authoritative (in both source and target language) and are established in close cooperation with legislators. The second category includes translations for informative purposes, encompassing translation of all types of legal texts for the purpose of providing information about a legal system or procedure. These translations are always non-authoritative, but may have legal status in the source language, for example the translation of an article in the Dutch Criminal Code for a textbook on comparative law.

The third, largest category involves the largest part of a legal translator's activities and concerns translations for a "general or judicial purpose" (Harvey, 2002: 178). These translations function "as documentary evidence" (Vîlceanu: 4-5) and constitute texts such as statements, pleadings, contracts, correspondence and certificates. Texts in this category can be written by lay persons, making their legal essence more a matter of purpose (or *skopos* in translation studies terminology) than of content. Translations of this type do not necessarily have legal effect, and they sometimes have more in common with literary translation than the other two types.

Further functionsof legal translation

Apart from mediating between texts, legal translation is essential in achieving legal harmonisation in supranational and multilingual political entities such as the European Union. Legal harmonisation is the reduction of legal differences between legal systems through "non-cooperative or cooperative adaptation processes" (Parisi & Carbonara, 2007: 367). This has become increasingly necessary because of diminishing geographical and political barriers which traditionally hampered trade and interaction between legal systems (Parisi & Carbonara: 367-368).

According to Baaij et al., translations have a double function in this regard. They do not only harmonise EU legislation, but also "[bridge] the advancement and the completion of the EU's internal market and (…) the protection and promotion of language diversity and equality in Europe" (2012: 1). Language diversity is an important issue on the EU's internal agenda as its legislation is currently enacted in twenty-four languages, and the multilingual character of EU legislation calls for a more uniform interpretation of the law.

Legal translation strategies

The only prescribed method of translating a legal text up until the twentieth century was literal translation. It was then that translators of lesser used legal languages decided to challenge that strategy's rigid demands.[5] In the past decades, theorists and lawyers have made attempts to establish general principles of legal translation. Stroia describes two general styles of contemporary legal translation. The first, translating in "the letter of the law", is oriented towards the source culture, placing a strong emphasis on the original text. The other involves translation in the "spirit of the law", which places a focus on the target legal culture and its socio-cultural context (Stroia: 145). These two general strategies are by no means a solution to all translation problems, especially not in the case of conceptual incongruity.

Furthermore, attempts at standardisation of legal translation strategies have not been universally successful, as principals of legal translations prefer different translation strategies. While Canadian French translators get to translate freely to maintain linguistic purity in French, Swiss translators to French are advised by legislators not to alter the length of sentences out of fear that they might impose their own interpretation of a text on the translation. Likewise, translators in international law are told to refrain from deviating from the formal style of the original text, and to let ambiguities in the source text unsolved in the target text. In European Union texts, many standard legal forms have become so prevalent that translators have become even more restricted than in other types of legal translation (Šarčević, 2006: 28).

Another approach to legal translation

Baker argues that the translator has to regard texts as messages rather than as a complex series of lexical and grammatical items. Equivalence, in her opinion, should ideally be achieved on a textual rather than on a lexical or grammatical level (2011: 121, 131-132). In legal translation, this might argue for simpler translations, and indeed lawyers and linguists have called for simpler language in

[5] It is perhaps no surprise that this happened in Switzerland for the first time, where headstrong French translators who believed in language equalityproduced a rather free translation of the Swiss Civil Code from the original German text. A translation by a certain Rossel was deemed "heretical" by Cesana, a Swiss attorney, who subsequently revised the former's translation. According to Rossel, Cesana was not competent enough to revise or criticize his French as he was not a native speaker of the language. Cesana's rigid literal translation, he said, was not French, but merely used French words (Šarčević, 1997: 37-40).

legal writing in general, to make them more accessible to lay persons. This is the case in the Netherlands,[6] while legalese in English has in recent years come under more scrutiny (Butt, 2001: 28). There is no such tendency in Spanish as of yet, but Spain's youngest Penal Code only has a short history and its legal language seems to be held in high regard, along with academic writing skills in general (see Gutíerrez-Álvarez, 2007, but also the more critical Montero-Annerén & Morales-Pastor, 2005).

If we consider that the average English legal sentence length is seventy to hundred words (see above), should translators still aim to copy that sentence length to mimic the original text, as Swiss translators are ordered to do? In some instances this might be plausible. One can imagine translators to want to stick closely to the source text in terms of diction and register, particularly if the writer of the source or target text wants to convey a message with that style, for example for humorous effect or to show the linguistic peculiarities of the source text. Yet if we focus on the target culture, it is possible that following the source text too closely leads to an unnatural kind of language in the translation. The legal translator has to be aware of the balance between accuracy and naturalness, and avoid source text patterning.

Disregarding Stroia's two approaches (source-culture oriented and target-culture oriented), can translators take the liberty to disregard the legal style of a source text and write in a clear, concise and conceptually neutral style in the target text? The answer to this question depends on the purpose of the translation and its readership, as always, but also on the principal commissioning the translation. These factors influence the degree of freedom which the translator can afford. Of course, there are some essential features of a legal text which the translator cannot do away with in translation, such as legal terminology. But redundant aspects of an English legal text such as the aforementioned doublet and other archaisms can be disposed of in translation without losing the meaning, message or legal implications of the source text.

[6] See, for example, the title of Gerits's book, *Betere taal – meer recht* (or "Better language, more law"). Van Weerst en Vanden Heede wrote their guidebook for legal students because, they say, "*Juristen [sterk] zijn in moeilijke zinsconstructies, lange zinnen, overvloedig gebruik van passief (...) en het ambtelijk jargon*" ("Lawyers are good at [writing] difficult sentence structures, long sentences, superfluous use of the passive, and official jargon."; 2010: 1).

The intended readership is essential for taking such liberties. Even though there have been calls for legal language to be more understandable for a more general audience, this idea is not widespread among lawyers. Indeed, Dutch and Spanish lawyers reading a "dumbed-down" translation of an English text may frown at the type of language in the text before them. This is what Baker meant with meeting the readers' expectations (2011: 258); legal texts are mostly reserved for use among specialists. They expect a higher register in a conventional style in either source or target language, in the same way one expects an academic text on literature to be free from slang and colloquialisms in its running text.

"Trilingual" legal translation and auxiliary languages

Even though every legal translation requires a different approach, is there perhaps another translation approach that is helpful to the legal translator? Can translation through a third language benefit the work of the legal translator? As noted in the introduction, there has been little research into the possibility of a third auxiliary language to help in the act of translating in translation studies in general, let alone in legal translation. This might indicate a lack of any serious consideration by theorists and academics. Indeed Francis and Gallard call the translation of words "an inherently bilingual task"[7], because the identification of a word triggers a stimulus from one language to the other (2005: 1082), a very basic approach to translation.

There have nevertheless been some studies in actual trilingual translation, although not necessarily within translation studies. Conejero et al. (2003) created a corpus of Spanish, Catalan and English speech in order to better assist statistical machine translations between these three languages. De Groot and Hoeks (1995) studied conceptual and word mediation between one native and two non-native languages in a psycholinguistic study to lexicosemantic memory.[8] Mtuze (1988) gives an overview of the problems that the lexicographers of the trilingual Xhosa – English - Afrikaans dictionary faced during the drafting.

[7] They do hold however, that a trilingual translator has an advantage over bilingual translators, in that they should ideally be able to translate in six different directions.
[8] Unfortunately, their study focused on language acquisition rather than translation.

The latter is the most relevant of the abovementioned studies. According to Mtuze, the drafting of the dictionary would start with the Xhosa editor, who would give a Xhosa definition accompanied by a description in English and a translation. The English editor would check these and discuss them with the editorial board. Finally, once a translation had been accepted, the Afrikaans editor would render an Afrikaans equivalent of the Xhosa term, with the help of the English rendition (note that the editor knew all three languages).

Work on the dictionary proved more complicated by the fact that the Xhosa language stems from an entirely different culture than the English and Afrikaans languages, and as a result the editors were constantly faced with conceptual incongruity. Lawyers in earlier centuries had introduced legal terms in Xhosa straightly from tribal vernacular, creating for example the established Xhosa legal term"*ukuthwala*", meaning "to abduct". In Xhosa culture however, this implies that a woman above a marriageable age is abducted. The Xhosa language does not consider the possibility of a man or girl being abducted, and therefore the English and Afrikaans rendition of the Xhosa word had to include "of a woman" and "*as vrou*" (Mtuze, 1988: 30) in explicitation.

More relevant research to trilingual translation was done by Simard. In his paper, aptly titled "Three Languages Are Better Than Two" (1999), he conclusively states that "(…) the more languages, the merrier" (2). According to him, when multiple translations of the same source text are compared to each other, each new version not only tells us about the translation process between two languages, but also gives new information about both the linguistic make-up and the content of the source text.[9] In this light, trilingual translation could concern a source text (or a source clause or paragraph, wherever the necessity lies) and its translation, cooperating to form a third translation. I will revisit this method in chapter 4.

Lastly, I should mention that Brusov University in Yerevan has courses for trilingual translation and interpretation in Russian, Armenian and English. Although I could not retrieve how they taught trilingual translation itself, the course's website claims that "[the] students' skills are based on the

[9] Although Simard's research was in the field of computational linguistics, his essay can be viewed in the light of translation studies. In his own words: "(…) whatever the intended application, three languages are better than two" (1999: 2).

excellent command of their working languages (…) and a thorough familiarity with translation (…) theory" (Brusov State University, 2011). If this is indeed the sole prerequisite for successful trilingual translation, then I could argue that chapter 4 of my thesis is superfluous. However, I would still like to know exactly how a third language can aid a legal translator.

As far as the abovementioned studies are concerned, one can safely assume that Simard's claim that another translation of a text gives us more information about the source text is right in the majority of cases. The mediate text should give the legal translator translation options that are also available in his target language. It should furthermore provide clarification of the source text's propositional meaning and its stylistic merit, and shed light on its legal content outside of its local form. In any case, there is absolutely no harm in consulting another translation of a source text, whether in the same target language or not. However, the specific demands of legal translation make the role of another target language all the more interesting. I will investigate this role in the following chapters.

Summary

This chapter showed that legal translation differs considerably from other types of translation because of the peculiarity of legal texts. This peculiarity largely stems from its more formal register, the underlying local background and the altogether different purpose for which they are written. Nevertheless, there are many general translation issues which are also applicable to legal texts.

I discussed the legal environments in which the translations take place, and elaborated on the function and characteristics of legal texts. The chapter furthermore evaluated textual equivalency, wondering if legal translations can feature concise language. Lastly, I discussed research into trilingual translation which can help me find the answer to my research question, with Simard arguing that three languages are always better than one. If that is so, what about three legal cultures?

Chapter II: Criminal Law and the Criminal Law Systems of Spain, the Netherlands and England

Comparative law

According to some legal translation theorists, many lawyers already have trouble reading legal texts from their own legal background and system. Translated legal texts for them are even harder to understand, especially when they are produced by translators with no legal background (Cornelius: 130). Translators must then be knowledgeable about the legal systems and languages between which they are mediating (Cornelius, 2011: 121-122), and most legal translation theorists put a strong emphasis on a translator's legal training (Šarčević, 2006: 26).

A comparative legal overview of the three national legal systems with which this thesis is concerned is then in order. Comparative law essentially involves finding comparisons and differences between legal systems. According to Saidov, the research conducted in comparative law studies aims to "elucidate the laws (…) of modern legal systems and to improve national legislation" (Saidov, 2003: 9). Comparative law is beneficial in legal studies and can influence lawmaking, find solutions to interpretation problems, and allow for a better understanding of individual legal systems (Heller & Dubber, 2011: 1). The legal translator also benefits, as comparative law studies not only discuss concepts in legal systems, but also translate them in equivalent terms or other renditions.

From the nineteenth century onward comparative law studies started to involve criminal law, which until then had been regarded as representative of the absolute power of a state and as not to be compared. Comparative law studies indirectly led to the creation of codified books of criminal law throughout continental Europe, for example the Dutch *Wetboek van Strafrecht* in 1886 (Bosch, 2008: 85). Over time, scholars have studied comparative criminal law more systematically, with some legislators in the past decades attempting to revise their penal codes accordingly, as the Dutch did to the *Wetboek van Strafvordering* in 1993 (Nijboer, 2005: 1).

"Universal" criminal law

Even though the legal system of every nation is different, Fletcher argues that the questions asked in criminal law are the same everywhere. According to him, criminal codes are local answers to these

global questions (Fletcher, 1998: 5). In his book *Basic Concepts of Criminal Law*, he discusses certain issues which he considers to be near-universal[10] and their local variations. I will discuss some general concepts here[11], shying away from more philosophical and less practical matters discussed by Fletcher, and paying special attention to differences between Civil Law and Common Law, the biggest distinction between the criminal law systems I compare.

The criminal act

First of all, criminal law makes a distinction between two types of wrong, both of which are illegal and punishable, although with different degrees of sentencing according to society's moral judgment. Those "*malum in se*", or "wrong in itself", include crime such as rape and theft, which society generally considers to be morally as well as criminally wrong. Those "*malum prohibitum*", or "wrong as prohibited", can entail such things as hunting, tax evasion, and drug use. Fletcher calls the latter form a statutory wrong (1998: 80) because society does not deem them as reprehensible (indeed some could argue for its legalisation) as *mala in se*. In chapter 3 I will show that these two types of wrongs correspond to different kinds of offences.

Offences in all three legal systems feature an act requirement; something must be either done (act) or omitted (omission) for it to be punishable by penal justice, meaning that punishment is only enacted for human actions. Omissions can be defined as conduct which neither feature an action nor an intention but which nevertheless carry liability. In order to establish the consequences of acts and omissions, jurisdictions universally follow the principle of *sine qua non*, or the "but for"-test. This can establish causation: "But for" Billy placing explosives, would Jane have died ("X causes Y if, in the absence of X, Y would not have occurred"; Fletcher: 62)?

All offences are related to human causes, but we can further divide them into crimes of harmful consequences and crimes of harmful actions. The former consist of actions which do not necessarily

[10] Fletcher actually only deals with criminal justice systems in *Rechtsstaaten*, the continental European state of law where the government's power is constrained by law, as opposed to the police state, where governments arbitrarily exercises the power of law enforcement. In England, the *Rechtsstaat* is commonly known as a state governed by the rule of law. Fletcher does not discuss dictatorial countries which are neither a *Rechtsstaat* nor governed by the rule of law, although its government may purport it to be. It remains to be seen how much of criminal law's basic concepts can be considered to be truly universal.

[11] With the aid of Gooch and Williams dictionary of law enforcement, the only one which corresponds directly to Fletcher's English terminology.

lead to the harm done, such as shooting at someone, which could result in a victim dying, which is harm that can also come about through natural events. The occurrence of the harm itself does not implicate a human being per se. With crimes of harmful action, the crime is directly related to the harm done. When someone is raped, the violation is a direct result of that; it never occurs as a natural event (Fletcher: 59-61).

Justifications and excuses

Offences in criminal law always consist of several elements laid out in substantive rules, which can differ over legal systems. The elements of an offence can be countered by properly raised defences, such as self-defence or insanity. The latter would negate both attribution of the crime and culpability, because the offender had no idea what his act entailed (Fletcher: 100). The severity of the culpable offence, if there are no defences against the elements, can further be mitigated (thus not excused) in a plea by the defence. Mitigating factors can be the personal circumstances in which a defendant may find himself, but also his expressions of remorse and guilt (Gooch & Williams: 244).

Defenses such as self-defense must be based on proportionate behaviour and happen within a timeframe of imminence. The first factor is perhaps the most obvious; a defendant cannot claim self-defence in the killing of someone guilty of trespassing or even burglary, generally speaking[12] (Fletcher: 133-134). As for the second factor, the pre-emptive strike negates the imminence needed in self-defence as it happens too soon, just as retaliation would happen too late (Fletcher: 134-135).

The defendant

The standard of proof is another criminal law universal. It constitutes the level of evidence and persuasion required in a case, which differs according to where the burden of proof (the imperative for a party in a criminal law trial to prove questions of fact and law) lies. The prosecution is typically presumed to prove the guilt of a defendant "beyond a reasonable doubt" (which Fletcher compares to 99% certainty of guilt); if there is still doubt in the judge or jury's mind, the defendant may be

[12] But the Dutch *Minister van Justitie* (Minister of Justice) Fred Teeven called the death of a burglar in 2012 "an occupational hazard" (RNW, 2012). The couple who fought and subdued the burglar in their house and ultimately caused his death by asphyxiation was not charged with his death, as the *Openbaar Ministerie* ("the Public Prosecution Service") deemed the use of violence to be "noodzakelijk en geboden" ("necessary and imperative"; NRC, 2013).

acquitted (Fletcher: 14). Civil law systems such as those of Spain and the Netherlands maintain the same standard of proof in civil and criminal law trials, whereas English common law maintains different standards in criminal (proof beyond reasonable doubt) and civil law trials (balance of probabilities, which Fletcher compares with a 51% persuasion rating). It is therefore not uncommon in England for defendants acquitted in a criminal law trial to be tried again in a civil law court (Gooch & Williams: 345; Fletcher: 17).

A further major difference between the defendant in common and civil law trials is the fact that the former can waiver a trial after a guilty plea from a defendant, after which sentencing can begin immediately. In civil law systems, the prosecutor has to prove the truth of the charges put forward, and a guilty plea does not conclude a trial. Furthermore, in common law even untrained defendants can defend themselves in a trial, something which is unheard of in civil law systems (Fletcher: 51-55).

Harm and abandoned attempts

Criminal law is seemingly harm-centred; where there is no harm, there is usually no victim thus no crime. However, sometimes we can distinguish an intention to commit a crime which is then prevented, leaving an attempted crime. The question then remains whether the attempter is guilty, and we will see in chapter 3 that the answer is not so universal. In any case, the harm-centred conception of crime has been challenged in recent legal thinking, and a majority of theorists tend to support a culpability-centred conception of crime. This holds that any actual harm is irrelevant to the degree of culpability and punishment; all that matters is that an actor had criminal intent and began to act upon it (Fletcher: 173-174). This conception has led to the establishing of guilt for attempted crimes such as snatching at an empty handbag (Gooch & Williams: 24). However, though people can be as guilty of attempted murder as they can be of murder itself, the former is almost always punished less severely. According to Fletcher, this is in agreement with our "ordinary sensibilities, [which] tell us that (...) it is worse to kill than to shoot and miss"[13] (1998: 173).

[13] To shoot and miss from range is one thing, but even pulling the trigger of a faulty or empty gun to someone's head only amounts to attempted murder (Pollard, 2014).

In determining what constitutes an abandoned attempt (which we can distinguish from attempts which failed), we can consider several "attempt-affirming grounds". These grounds mainly have to do with the impact of parties other than the offender in the abandonment (Fletcher: 182), and they too differ slightly between the three legal systems.

Culpability in groups

Some crimes are carried out by groups, even when carried out by one principal (those ultimately responsible for a crime, as opposed to the aiding secondary). In trials, the prosecution will assess the degrees of participation (Fletcher: 188-189) and determine the principals and secondaries, and perhaps instigators of a crime. Groups can also account for crimes with an equal degree of participation (Gooch & Williams: 175), such as drug trade, genocide and kidnapping. In recent decades, groups have furthermore come to be seen as legal entities for which there are distinct legal punishments, such as prohibition[14] and dissolution.

Common law systems furthermore have the concept of vicarious liability (a concept which has a large overlap with tort law), which holds a person directly liable for the actions of another, for example a henchman or employee acting on a superior's orders (Gooch & Williams: 375). According to Fletcher, this is a concept that is non-existent in continental law systems (1998: 195), but there is some overlap between vicarious liability and the using of another person as an instrument in Spanish and Dutch law (Gooch & Williams: 4, 376).

Purposes of punishment

A final feature uniting criminal law in various countries is the motive for punishment of offenders, the ulterior motive of the existence of criminal law. Punishments serve various purposes. A well known motive is deterrence, in which prospective criminals refrain from committing crimes for fear of punishment, and particular criminals who are being punished are deterred further by having endured it.

[14] This tendency can be seen in current affairs, in the prohibition of the Dutch association *Martijn*, which advocated the legalisation of sexual relations between adults and children. After years of appeals by the group the Dutch *Hoge Raad* (Supreme Court) last year upheld the order to the group's prohibition and dissolution (Coevert, 2014). In the UK in June 2014, the Home Office proscribed ISIL as a "terrorist group" which "promotes sectarian violence" (Home Office, 2014: 13-14). Spain has been reluctant to prohibit and order the dissolution of groups, perhaps due to its recent history as a dictatorship, but it has proscribed political parties in the Basque Country who were tied to groups such as ETA. The judiciary did this not through direct prohibition, but by enacting a law which prohibited political parties who supported violence (Ley Orgánica 6/2002: 23600).

Another purpose of punishment is incapacitation, in which society is protected from offenders by effectively removing them from society during a prison sentence or community service. Rehabilitation is often the ultimate goal of punishment, in which the convicted offender is ideally transformed into a law-abiding citizen instead of falling back to recidivism (Fletcher: 33-35). In chapter 3 we will see that the types of punishments are very much alike in Spain, the Netherlands and England.

Society in general ultimately considers corrective justice to be a retribution, a redressing of the imbalance between the victim and the offender. A wrong has been done to the victim, now the offender must pay, effectively reducing the criminal to the position of the victim. Through this, punishment also counters an offenders' dominance over others and establishes the state as the dominant factor in society, with a monopoly on the use of physical force and restrictive powers (Fletcher: 37-38).

Principles of jurisdictions

As we saw in the abovementioned overview of criminal law, there is a distinction between common and civil law systems as to the principles they abide by. Fletcher points out that the legality principle of civil law entails a constitutional duty to punish, whereas common law jurisdictions have the concept of prosecutorial discretion, allowing prosecutors to "pick and choose among possible defendants in order to maximize their efficiency" (Fletcher: 207-208), arguably much like the Dutch concept of "*sepot*". Civil law lawyers would, according to Fletcher, frown at the common law custom of plea bargaining (1998: 89), where defendants admit guilt in exchange for the prosecution dropping a more serious charge (Gooch & Williams: 280).

Fletcher concludes his overview of universal criminal law with an epilogue as to what the actual practice of criminal justice entails; our "collective experience of the agencies of arrest, prosecution, and judging" (Fletcher: 210). In the following part of the chapter, I intend to set out and capture this experience by describing the history and principles of Spanish, Dutch and English criminal law. This will set the stage for the search for equivalency and the actual practical side of translating legal concepts between these three languages in chapter 3 and 4.

The Origins of Spanish Criminal Law

The legal history of Spain may seem relatively young, as the country's current Constitution (in full *La Constitución española de 1978*) only dates back to 1978, a result of the political and democratic reform that changed the nation after the death of dictator-general Franco. It provided the foundation for the rest of Spain's current legal system and criminal law code (Villiers, 1999: 11). However, there are several historical factors which influenced the creation of this young Constitution.

During the Spanish Peninsular War against Napoleon, Spanish revolutionaries established an assembly in Cádiz (called, in the plural, *las Cortes*) with representatives coming from all Spanish provinces. This effectively took away the centralist tendency of the previous monarchy and facilitated a more diverse and localized form of government, which was nevertheless represented on a national level. The *Cortes* drafted a constitution in 1812, heralding the age of Spanish constitutionalism (Villiers, 1999: 3). The history of Spanish penal codes would come to coincide largely with the course of this new age (Tomás y Valiente, 1988: 21).

The first Constitution required the drafting of an accompanying penal code, in line with the liberal nineteenth-century emphasis on codification. The drafters of the first Penal Code ("*El Código Penal*") of 1822 were greatly influenced by the ideals of the Enlightenment, especially by Cesare Beccaria's *On Crimes and Punishments*. This treatise condemned harsh sentences, such as torture and the death penalty. As a result, the first Spanish Penal Code tried to hold back the sentencing of such excessive forms of punishment, as well as restrict judicial discretion in both court proceedings and sentencing (Heller & Dubber, 2011: 489). Throughout the ninenteenth century, several codes followed each other in quick succession.

During the tumultuous era that engulfed Spain in the 1930s, legislators of successive factions each drafted new penal codes which reflected their own political views. Republican legislators in 1932 abolished the death penalty for the first time. Yet by the time Franco had established his fascist regime after the civil war, the new Penal Code once more took on a more authoritarian and corrective stance, including for instance the offences of conspiracy and incitement. This was in line with the

government's attempt to quell any prospective insurgencies among regional and political dissidents (Tomás y Valiente, 1988: 38).

Franco died in 1975 and Spain's new king paved the way for democracy, which ultimately lead to the creation of a new constitution in 1978. This Constitution contained references to a new democratic penal code, with Article 9 stating that the Constitution itself guarantees the "non-retroactivity of punitive provisions" ("*la irretroactividad de las disposiciones sancionadoras*"). Article 15 states that "everyone has the right to life" and "under no circumstances may be subjected to torture or inhuman or degrading punishment or treatment" ("*todos tienen derecho a la vida* (…) *en ningún caso puedan ser sometidos a tortura ni a penas o tratos inhumanos o degradantes*"). The death penalty was soon banned altogether.

Article 25 of the Constitution would further hint at the drafting of a new penal code, stating that "no one may be convicted or sentenced for acts or omissions which when committed did not constitute a criminal offence, misdemeanor or administrative offence under the law then in force" ("*Nadie puede ser condenado o sancionado por acciones u omisiones que en el momento de producirse no constituyan delito, falta o infracción administrativa, según la legislación vigente en aquel momento*"). This paragraph declares that Spanish law abides by the legality principle, a key component in many continental law systems, which can be summarised by the Latin idiom "*nulla poena sine lege praevia*" ("no punishment without a previous law"; Díez & Chiesa, 2011: 490).

The second paragraph of Article 25 defines the nature of any punishment, stating that sanctions which entail "imprisonment and security measures" ("*penas privativas de libertad y las medidas de seguridad*") are solely aimed at reeducation (*reeducacíon*) and cannot consist of forced labor ("*no podrán consistir de trabajos forzados*"). The article further sets out the basic facilities in a penitentiary, as a "person sentenced to prison (…) shall be entitled to (…) access to cultural opportunities and the overall development of his or her personality" ("*el condenado a pena de prisión* (…) *tendrá derecho* (…) *al acceso cultural y al desarrollo integral de su personalidad*"; Constitución española, 1978; Villiers, 1999: 100).

Principles of Spanish Criminal Law

The aforementioned fundamental rights, stipulated in the new Constitution, became the foundation of a penal code which was in key with the radical democratic reforms of the 1970s and 80s and which represented that Constitution's social and humanitarian value. Several criminal law reforms were enacted in these decades, finally culminating in the creation of the Spanish Penal Code of 1995 (*Código Penal de 1995*). Dubbed the "Penal Code of the Democracy" ("*Código Penal de la Democracia*"), the new Code came into force in May 1996. The rules of its jurisdiction were set out in other laws, specifically the Judiciary Act (*Ley Orgánica del Poder Judicial*), while stipulations for a criminal law trial were contained in the Rules of Criminal Procedure (*Ley de Enjuiciamiento Criminal*; Heller & Dubber: 490).

Modern-day Spain is divided into autonomous communities ("*comunidades autónomas*"), along the lines of historical and linguistic boundaries. Each administrative division has a large degree of independence from the central government in Madrid. The political division of Spain is unique in that it is a de facto federation, but it claims to be a unitary state in its Constitution (The Economist, 2008). Though there is only one Penal Code for the entire country (Díez & Chiesa: 493), some autonomous communities have their own constitution (called "statutes of autonomy", "*estatutos de autonomía*") which may stipulate that certain crimes be tried at a different court than usual. In chapter 3 we will furthermore see that criminal procedures largely take place within these autonomous communities.

The Penal Code of 1995 is based on the principles of legality, culpability and minimal intervention. The latter is in line with the "*ultima ratio*" principle, seeing penal measures as a last resource where other sanctions would fail (Villiers, 1999: 100). It is supposed to work as a restraint against excessive criminalisation and in this way clearly opposes the more repressive codes of the previous Franco government (Bengoetxea et al., 2013: 3). Díez and Chiesa accuse the Spanish state of often failing to abide by this principle, pointing out its numerous prosecutions of white-collar crimes (2011: 492).

The legality principle had, as we saw, already been encoded in the Constitution. It guaranteed that citizens would not be convicted for crimes which were not yet punishable by legislation at the time of

the offence, effectively prohibiting retro-activity. If amendments to criminal law provisions are more benign towards a defendant, then he or she may ask the court to be tried under the more lenient provisions. Double jeopardy is derived from this legality principle, and prohibits the state of convicting a person twice for the same offence. It also bars the state from conducting civil and criminal investigations of the same conduct simultaneously. The principle furthermore requires Spanish criminal law to be statutory, which virtually makes Spanish criminal common law non-existent. According to Díez and Chiesa, defendants who appeal their convictions at the Constitutional Court (*Tribunal Constitucional de España*) frequently point out infractions of this rule by courts which use analogies in their rulings (2011: 491).

The culpability principle is another fundamental concept of Spanish criminal law. It holds that there should be no punishment for those who did not act with the express intent, or "a culpable *mens rea*" (literally "guilty mind" in Latin), to commit the crime in question, and moreover protects those who do not understand the nature of their offence, such as the mentally handicapped (Villiers: 100).

An interesting and relatively odd basic tenet of Spanish criminal law is article 23 of the Judiciary Act, which provides for the implementation of the universality principle. The article sets out Spanish law's jurisdiction over Spanish citizens and for crimes committed in Spanish territory, but also provides a clause claiming universal jurisdiction over severe crimes such as terrorism, human trafficking and piracy ("*Conocerá jurisdicción española de los hechos cometidos* (…) *fuera del territorio nacional cuando sean susceptibles de tipificarse, según la ley española, como alguno de los siguientes delitos:* (…) *Delitos de piratería, terrorismo,* (…) *trata de seres humanos*"). The National Court (*Audiencia Nacional*) deals with cases arising from the application of the universality principle, and in recent times this high court has assumed jurisdiction over cases from Chile, Guatemala, Argentina and Tibet. Lawyers have criticised the Court for its interventionist approach (Díez & Chiesa: 490).

The Origins of Dutch Criminal Law

The history of modern Dutch criminal law also begins in the Napoleonic era, when the Netherlands was a puppet state of France. During this administration, Dutch legislators drafted the first complete

codification of criminal law, the *Crimineel Wetboek voor het Koningrijk Holland* (literally translated "criminal lawbook for the Kingdom of Holland"), which replaced previous feudal and local laws. At first glance, this historical Code is quite modern, carefully laying out its jurisdiction in the first article of its "*algemeene bepalingen*"("general provisions"); "*De criminele wetten van het koningrijk betreffen allen, ingezetenen of vreemdelingen,* (…) *die zich aan eenige misdaad schuldig maken*." ("The criminal laws of the kingdom apply to all, citizen or foreigner, who are guilty to any crime"; Crimineel Wetboek, 1809: 2).

This first codification of Dutch criminal law did not last long. When the Kingdom of Holland was incorporated into the French Empire, the so-called Napoleonic Code (the actual "*Code civil des Français*") would come to heavily influence both Dutch civil and criminal law. In 1811, only two years after the *Crimineel Wetboek* had come into force, the French *Code Pénal* replaced it as the criminal law code. When the Netherlands regained its independence, the new king drafted a constitution which survives to this day, albeit heavily revised and expanded, with fourteen constitutional amendments between 1814 and 1983, the year in which it was revised completely (*Algehele grondwetsherziening van 1983*). The French Penal Code was nevertheless kept at the time of independence, although it was expanded upon by the *Geesel- en Worgbesluit* (literally the "Lash and Strangle Order") which allowed for punishments which previous French codes had abolished[15] (Berkvens et al., 2012: 165).

Gradually, inhumane punishments were abolished in the Netherlands, with corporal punishment being outlawed in 1854 and the death penalty in 1870 (Bosch: 82-83). This ultimately lead to the creation of the Dutch *Wetboek van Strafrecht* (literally "lawbook of criminal law"). It was drafted in 1881 but came into force in 1886, after several modifications and revisions. The jurisdiction of the Code is included within, but it lacked procedural provisions, which were set out in the 1926 *Wetboek van Strafvordering* ("Criminal Procedural Code"). Legislators created both *wetboeken* as well as later revisions after comparative criminal law studies (Nijboer: 1). These codes are not the only source of

[15] It seems plausible that lawyers first saw this amendment as a sign that legislators under the new king Willem I thought that the Penal Code was too mild, but paradoxically they considered it to be too strict. In their opinion it allowed for little room for judges to decide on appropriate punishment.

criminal law in the Netherlands, as the twentieth century saw the drafting of several other criminal law acts, such as the *Opiumwet* ("Opium Law") and the *Wet op wapens en munitie* ("Weapons and Ammunition Act").

Principles of Dutch Criminal Law

The principle of legality is encoded in Article 16 of the Dutch Constitution. As in Spanish law, the principle follows the Latin maxim of "*nulla poena sine lege*", which is phrased in the Dutch Constitution as "*Geen feit is strafbaar dan uit kracht van een daaraan vooraf gegane wettelijke strafbepaling*" ("No act is punishable without a preceding legal criminal provision"). This principle is reiterated in the first article of the Dutch Penal Code (as in its Spanish counterpart).

A characteristic principle of Dutch criminal law is the "*opportuniteitsbeginsel*" ("principle of opportunity", or rather the principle of prosecutorial discretion – a principle Fletcher considered more or less unique to common law (1998: 207)). This principle is included in the Dutch Criminal Procedural Code (included in Article 12 and phrased in Article 167 as "*van vervolging kan worden afgezien op gronden aan het algemeen belang ontleend*": "[the prosecutor] can refrain from prosecution on grounds derived from the common good") and enables the public prosecutor to refrain from prosecuting a suspect, which is called "*sepot*" ("dismissal"). This principle is in stark contrast with the criminal law systems of several other countries, where refraining from prosecution itself is illegal (Bosch, 2008: 75).

Dutch criminal practice long had retribution as its main aim, but that gradually shifted to the prevention of crime through deterrence and rehabilitation. The focus of the punishment in recent decades similarly shifted from the perpetrator and his social surroundings to the victim and their next of kin (Bosch: 73; Deen, 2003).

The Origins of English Criminal Law

Criminal law in England differs substantially from the continental (or civil) law systems of Spain and

the Netherlands. England and Wales[16] have a different legal system, that of the common law or case law, which has no statutory laws or codification. Instead, English courts use rulings and verdicts from previous cases in their judicial proceedings, a concept known as "*stare decisis*"("to stand by things decided"), which calls for the upholding of previous decisions (Ashworth: 532-534).

The common law system is derived from Norman law, which was introduced in England after 1066. Back then, a chancellor could issue a writ to an applicant to bring a case before a royal court, among which were criminal law cases (Law & Martin, 2013: 321). The courts gradually formed the law of precedent by constantly referring back to decisions made in other cases, which became binding for all courts. This would become the founding principle of precedential or common law, which is nowadays prevalent in many Anglo-Saxon countries (Saidov, 2003: 228-229).

For the lack of clear codification, summarizing the history of English criminal law may seem difficult. However, legislators and lawyers have made attempts at regulating English law. Writers in the seventeenth and eighteenth centuries started systematizing common law by reflecting on common tendencies among judicial proceedings and decisions. This has become a practice which continues to this day, when the influence of academic lawyers, albeit more indirect, is still widely recognised (Ashworth: 534).

The systemization and scrutiny of English criminal law brought about major changes in the nineteenth century, when legislators drafted several important statutes which are still in force to this day. Acts such as the Malicious Damage Act of 1861 reflected the changing circumstances during the Industrial Revolution. In the twentieth century, the newly established Law Commission took to the objective of further codifying English criminal law, and slowly but surely more and more aspects are becoming codified, with several major acts coming into force, such as the Theft Act 1968, the Criminal Damage Act 1971, and in more recent times, the Sexual Offences Act 2003 and the Fraud Act 2006. Academic lawyers drafted a criminal code in 1985 which was adopted by the Law Commission four years later, but to this day there is still no sign of an upcoming criminal code for the jurisdiction of England and

[16] Known as "English law" and referred to as such throughout this thesis.

Wales. The largest part of its criminal law is still dependent on previous judicial decisions (Barker, 2008: 301).

Principles of English Criminal Law

Unlike its Spanish and Dutch counterparts, English criminal law does not have specific underlying principles to which it abides, in accordance with its laws of precedence. The principle of legality, prevalent in Dutch and Spanish law, has not been adhered to by English lawmakers even to this day. The House of Lords, which has the power to pass bills, in 1962 created the offence of corruption of public morals, which allowed a court to convict a defendant for exactly that offence. In 1992, the House furthermore took away a husband's immunity from being convicted for rape of his wife. The European Court of Human Rights nevertheless ruled that this did not violate the legality principle of its own Convention, asit deemed it a logical continuation of the ongoing development of the law (Ashworth: 532-533).

Like Spanish criminal law, English case law has established a sense of proportionality with respect to punishing, with the Criminal Justice Acts of 1991 and 2003 establishing it as a cornerstone of English sentencing. The 2003 Act furthermore states the five main reasons for punishments as retribution, crime reduction through deterrence, rehabilitation, protection of the public, and reparation. Each of these purposes should correspond to the proportionality principle, meaning that if a court wants to convict someone in the interest of reparation, the punishment should be proportionate to that end. An exception to this rule is public protection, which is included in the amendments of the Criminal Justice Act 2003 as allowing for imprisonment for an undetermined amount of time, including life imprisonment (Ashworth: 534).

Summary

In this chapter, I showed how comparative law is an essential part of lawmaking procedure. It is beneficial for both lawyers and translators, as translation for a large part consists of mediating between differences in culture and terminology. I further argued that despite comparative law focusing on the differences and similarities of several legal systems,criminal law has an underlying universal

framework. Through the rule of law, codification, and a more humane view on punishments, western democracies have developed local answers to these questions, which resonate with each other in their universality.

However, each legal system is unique in its criminal legal culture, and especially in its legal language. The origin of each legal system discussed in this thesis lies in different places. English law is the oldest, expanding upon a centuries-old medieval tradition of following decisions by previous courts. Dutch criminal law was inspired by Napoleonic reform of law in general in the early nineteenth century, from which its current Penal Code is largely derived. The first Penal Code of Spain was also influenced by French codified law and Enlightenment ideals, but its history is characterised by numerous revisions, replacements and decades of dictatorship before finally coming together in the current democratic Code.

As a result of these different origins, both the legal languages of the three systems and the conceptual boundaries of their terminology are intrinsically distinct. Both are of vital importance to the legal translator's work, and therefore, I shall elaborate on them in the following chapter.

Chapter III: Legal Terminology and Equivalents

Translating legal texts

As mentioned in chapter 1, Baker argues that translators should prioritise textual equivalency over lexical equivalency. This is especially true in the case of legal translation, where the translation of complex sentences and jargon is ultimately subservient to the overall message of the text itself. That message's successful delivery is dependent on several textual factors. Lexical cohesion, for example, is a cohesive device which legal texts frequently use, especially through the repetition of words. Baker notes that Spanish and English are very similar in their tolerance of lexical repetition (2011: 219), or reiteration, and legal texts need this tolerance for clarity. If we take for example Article 2 of the Dutch Penal Code, "*De Nederlandse strafwet is toepasselijk op ieder die zich in Nederland aan enig strafbaar feit schuldig maakt*" ("Dutch criminal legislation is applicable to anyone who is guilty of any offence in the Netherlands"[17]), we see a reiteration of *Nederland* (though now a proper noun instead of an adjective) rather than a reference, such as "*het land*" ("the country") would be.

Context deals with the reader's understanding of what is being said in a text. If we take the definition of the legal text as a communicative experience between specialists, then we can claim that any legal text relies on context – it cannot stand on its own. Though this is true for most texts (reading a text requires not only linguistic but also real-world knowledge), legal texts should prove more difficult for the average reader. They not only employ specialist vocabulary, but also differ grammatically and operate on a higher register. Furthermore, legal texts assume the readers' familiarity with the legal and cultural background of the text and their knowledge of legal concepts.

Baker states that translators therefore constantly assess the target reader's knowledge and access to background information (2011: 255-257). Since the intended reader of a legal translation needs a translation, the legal translator may assume that most of them are unfamiliar with the source culture of a text. If so, the translator must be able to harmonise the reader's expectations of the text and his interest in it (2011: 258).

[17] The lexical cohesion is actually undermined in the translation because of the introduction of a word with another etymology ("Dutch" rather than "Nederlands").

Legal texts' frequent use of idioms as opposed to the more flexible collocation gives the translator an extra challenge. Yet fixed expressions are more than "the sum of [their] words", and according to Baker, they capture stereotypical aspects of experience in language (2011: 67). In the case of legal language, idioms and expressions such as the aforementioned doublet not only indicate a legal language's long history, but also the formal register of legal culture. This is an aspect of legal texts that must be considered in translations as well.

Translating conceptual incongruity

Conceptually incongruous terms, which essentially involve non-equivalence, can often be translated by linguistic means such as explicitation, borrowings or neologisms. Explicitation occurs when "(…) the complex meaning of a [source language] word is distributed over several words in the [target language] text (…)" (Klaudy & Karoly, 2003: 2), a strategy Baker calls paraphrasing. Translators of other text types may choose to refrain from using such strategies for stylistic reasons, but legal translators sometimes have no other option to achieve equivalency (Šarčević, 2006: 27). Baker further suggests replacing a source language hyponym with a superordinate as a translation strategy (2011: 23), for example when translating Dutch *moord*[18] (which corresponds to English "pre-meditated murder") with the English general term **unlawful homicide**. This term is further subdivided into **murder**, **manslaughter** and **infanticide** (Gooch & Williams, 2007: 185), and using the superordinate in translation is inaccurate and even unacceptable for most purposes.

Other strategies[19] offered by Baker for conceptual incongruity are the use of a loan word (copying the term from the source text), a loan word followed by an explanation (paraphrase), or calque (2011: 33). Calques are loan translations, a literal and strict translation of the foreign term through its lexical elements or translatable morphemes. The reader of a translation is, however, unlikely to understand calques when he or she has no knowledge of the legal system of the source text (Stroia: 144). In that

[18] For clarity's sake, I have decided to render each language's terminology in a different typeface from this chapter onward. English legal terms will be represented in **bold**, Spanish will be underlined and Dutch is featured both *italicised and underlined*. I use the plural and singular forms of nouns interchangeably, in accordance with the phrasing of the particular sentence. Spanish nouns which have both a masculine and feminine form are written in the masculine form. I have left out the appropriate articles (el/la/los/las, de/het) for nouns, as most concepts are noted in an indefinite form, but also because using them would result in a messier make-up of the text. Spanish and Dutch quotations will be in italics, between quotations mark, followed by an English translation.
[19] Baker offers multiple translation strategies for non-equivalence, but most of them allow the translator liberties which most legal translators cannot afford. I especially consider translation by omission or translation by illustration as incompatible with legal translation.

case, paraphrases are often necessary.

A final translation strategy is cultural substitution. This strategy is also called "functional equivalence", and some translation theorists consider it an ideal method of translation (Weston, 1991: 23). It involves substituting a legal concept from the source language with a near-identical concept in the target language. Of course, where conceptual incongruity is concerned, we expect there to be no identical concept,but take the above example of Dutch *moord* again, which has no exact equivalent in English criminal law but needs a paraphrase ("pre-meditated") to correspond precisely to its Dutch counterpart. When we leave out the pharaphrase we can speak of cultural substitution, as it is clear that translating *moord* with the sole noun **murder** is different from the Dutch definition of *moord* ("*het opzettelijk en met voorbedachte rade een ander van het leven beroven*" ("intentionally and with premeditation take someone else's life"; Van Kaspel & Clijn, 2012: 232) and substitutes it for its near-equivalent in English, for which premeditation is not a requirement (Gooch & Williams, 2009: 238).

Functional equivalence between the three legal systems

In the next section of this chapter, I will discuss criminal terminology and definitions in each language and introduce their near-equivalents in the other languages, elaborating on their similarities and the boundaries of their meaning, but also on linguistic differences. This concise overview will function as a reference guide for chapter 4, in which I will do the actual translating. It will furthermore answer part of my research question, as the discussion of functional equivalents will establish the role of Spanish as a mediating language and legal culture through its terminology.

As I mentioned in the introduction, the role of legal Spanish is interesting, as Spain's legal system is arguably closer to Dutch. Both countries share a civil law system with codified law inspired by the same principles (see chapter 2). In terms of legal terminology however, we may expect Spanish and English to be more similar, despite the fact that English and Dutch are both West Germanic languages and Spanish is of Romance origin. The reason for this is that English legal terminology is heavily influenced by French and Latin. A salient example of this terminological resemblance is the term **law** itself, which is the cognate ley in Spanish, but *wet* in Dutch. This disparity, between the similarity in

legal cultures and terminology, will be apparent throughout this chapter.

Terminology and equivalents[20]

Let us first start by considering the phrase **criminal law**, which constitutes the underlying subject of this thesis alongside translation issues. The English word defines itself as law which has to do with crime, whereas the direct Dutch translation of *strafrecht* places a focus on the ultimate goal of criminal law, the punishing (*straffen*) of the guilty. The Spanish take a similar approach with the phrase derecho penal ("penal law"[21]), even though the adjective criminal is also perfectly applicable to derecho in Spanish. This is akin to American criminal law, which prefers the use of the adjective "penal" over "criminal", for example in the statutory Model Penal Code (Fletcher: 1-2).

Dutch and Spanish criminal law are completely codified, and their *Wetboek van Strafrecht* (**criminal code**) and Código Penal ("penal code") are the most important bodies of that codified law. Both of them are **organic laws**[22] (ley orgánica/*organieke wet*), laws which govern the functions of the legal bodies (*organen*/órganos, "organs") of a state demanded by the country's constitution (the *Grondwet* and Constitución, respectively). They are **acts**(*wet in formele zin*/ley formal), drawn up and enacted by the legislative and executive powers (*wetgevende en uitvoerende macht*/poder legislativo y ejecutivo). Although English law purportedly has no codification due to its **common law**[23] nature, it has acts (**Act of Parliament**, *wet van het parlement*/ley del parlamento) which together make up its **statutory law** (*statutaire wet*/ley estaturaria). English criminal law is further complemented by its **case law** (*precedentenrecht* or *jurisprudentierecht*/derecho de casos), which is established by **precedents** (*precedent*/precedente).

[20] When I translate Spanish fiscal with Dutch *officier van justitie*, I do not mean to suggest these as one-on-one translations or conceptually accurate translations, but merely suggest equivalent functions in the target legal system. As English is the main language of this thesis, I will sometimes translate Dutch and Spanish terms into English literally. Because I use both monolingual (legal) dictionaries and lexicons in all possible directions, I will not cite consistently, but only refer to them where I use quotationsor where I specifically use a term from that dictionary. As it is unfeasible to discuss each and every legal term as comprehensively as possible, I will sometimes introduce equivalents and translations without elaboration. My justifications for using them in practice will come in the annotated translations in chapter 4. Furthermore, there are many official translations between the three languages, and other translations have gained prominence as established translations of source-culture terms. I will not necessarily use these terms all the time. Finally, this overview only covers a part of criminal law which I judged to be relevant and concise. Large parts of criminal law are not discussed at all.

[21] Although English "penal law" can refer to criminal law, historically this phrase concerns acts which sought to further entrench the Church of England as the sole religious authority in Britain by opposing Catholic and nonconformist Protestant preaching (Champ, 2009).

[22] The Spanish legal system is the only one of the legal systems discussed here that explicitly uses the term "organic law".

[23] Dutch often leaves this term untranslated as *common law*, but paraphrases such as *precedentenrecht* and the more calque-like *gewoonterecht* are also common. The latter is however inaccurate and actually an equivalent of English **customary law**. In Spanish, **common law** is calledderecho anglosajón ("Anglo-Saxon law").

Criminal law is concerned with **crime**, a colloquial word which in Dutch is translatable to both *misdaad* and the legal term *delict*. More specifically, English law has the concept of **offences,** which in Dutch would render *strafbaar feit* (literally "punishable fact"). Spanish criminal law has the interchangeable cognates of crimen and delito. Delito is the Spanish generic term for any crime, whereas crimen has the implication of being a severe criminal act, a delito grave ("serious offence"). The concept of crime can be further subdivided. Any **crime** or *delict* is a delito in Spanish criminal law, but delitos are further split, creating a tripartite division in the Spanish classification of offences. As stipulated in Article 13 of the Código Penal, "son delitos graves las infracciones que la Ley castiga con pena grave" ("severe crimes are the violations [of the law] which the Law penalises with severe punishment"), whereas "delitos menos graves" ("less serious crimes") are penalised with a corresponding "pena menos grave" ("less severe punishment"). The falta[24] is punished even more mildly; "son faltas las infracciones que la Ley castiga con pena leve" ("faults are the violations [of the law] which the Law penalises with light punishment").

Dutch *delicten* are similarly divided into *misdrijf*, which is defined as "*ernstig strafbaar feit* (...) *waarop* (...) *als hoofdstraf gevangenisstraf is gesteld*" ("serious offence to which imprisonment is set as main punishment"; Van Caspel & Klijn: 230), and *overtreding*, which Van Caspel & Klijn define as a "*minder ernstig strafbaar feit (als tegenstelling tot misdrijf)*" ("[a] less serious offence (as opposed to an indictable offence)"; 2012: 272)).

At first glance, English criminal law also distinguishes only two types of crime, or rather two types of **offences**: **indictable offences** and **summary offences**. According to Gooch and Williams, the former entails "most serious common-law offences" (2007: 198), and for this we might equally expect prison sentences as punishment. A **summary offence** is "a minor offence (e.g. common assault and battery)" (Gooch & Williams: 349), and these two concepts are closely related to their Spanish and Dutch counterparts. Some offences are **triable either way**, in whose case the **magistrates' court** decides on the **mode of trial** (Law & Martin: 379). One could therefore conclude that English law, like Spanish law, recognises three types of offences. Offences that are **triable either way** are then roughly like the

[24] Literally a *mistake* or *omission*, but legally it translates directly to *vergrijp* and **summary offence.** Etymologically the word could translate more easily into English **fault**, which is a colloquial synonym for a **summary offence.**

delito menos grave, a category which also finds itself in between a more serious and a milder category of offences. Unlike its English counterpart, however, the delito menos grave is not subsequently determined to be tried like a falta or a delito.

Court system

By definition, the classification of an offence as **indictable** or **summary** directly determine the court of first instance ("Loosely, the court in which a case is tried"; Law & Martin, 2013: 142). Indictable offences are tried at the **Crown Court** (making them **indictable**, or "eligible for jury law") and summary offences are tried "summarily" at a **magistrates' court**. The **magistrates' court** deals with the same sort of cases as a Dutch *politierechter* ("police judge") or *kantonrechter* would in a *rechtbank* ("court"). The **magistrates' court** (presided over by **magistrates**[25] or the **district judge**) can sentence someone up to six months in prison and a fine of up to £5,000 (Law & Martin, 2013: 534), whereas the Dutch *politierechter* can give a maximum prison sentence of a year and fines for *overtredingen* are limited to €7,600 (Loonstra, 2011: 412). A **Crown Court** is comparable to a Dutch *rechtbank*, where more serious offences (*misdrijven*) are tried in front of a jury and multiple judges. The latter phenomenon is called *meervoudige kamer* (plural chamber", a three-judge section (Foster: 145) in Dutch, whereas the *politierechter* is an *enkelvoudige kamer* ("single chamber", or **single judge**).

England and the Netherlands divide their jurisdiction into **local justice areas** (as established by the Courts Act 2005) and *arrondissementen* ("districts") respectively. These districts do not necessarily correspond to political boundaries, as they do in Spain. The court where cases are first heard (Juzgado de (Primeria Instancia e) Instrucción/Paz[26], "court of (first instance and) hearing/peace") is always located within the municipal boundaries where the offence was perpetrated. Delitos are only heard by the Juzgado de Instrucción (just as in the case of a **magistrates' court**), but are never tried there. Each Spanish province furthermore has a Juzgado de lo Penal ("court of [those things] penal"), where delitos can be tried if they are judged as less serious. If not, this court is bypassed and the trial will be

[25] The Spanish term magistrado is an obvious false friend in this regard; in Spain, a judge has to have at least three years of experience in one specific body of law to become a magistrate (Oosterveld-Egas et al., 1990: 324). Dutch *magistraat* comes closer, with its definition being any "*rechterlijk ambtenaar*" ("judicial official") with legal training (Van Caspel & Klijn: 319).

[26] Juzgados de Paz are only found in very small cities and are slowly becoming obsolete (British Consulate, 2014).

held at an Audiencia Provincial ("provincial court").

In the case of **appeals**, differences in procedural hierarchy between England and the Netherlands on the one hand and Spain on the other grow further. An **appeal** is a *(hoger) beroep* in the Netherlands and a recurso de apelación in Spain. Their definitions are the same as the English one; "[An] application for the judicial examination by a higher tribunal of the decision of any lower tribunal" in English law (Gooch & Williams: 16). In England, appeals against a **magistrates' court's** decision are usually tried at a **Crown Court**, while appeals to decisions of a **Crown Court** go directly to the **Court of Appeal** (Gooch & Williams: 301). Appeals to the *rechtbank* are dealt with by a *gerechtshof* ("court of justice"). There are four *gerechtshoven* in the Netherlands, but there is only one **Court of Appeal**. Appeals to decisions of the **Court of Appeal** and a *gerechtshof* end up at the highest court of appeal, respectivelythe **Supreme Court of the United Kingdom** in London, and the *Hoge Raad* in The Hague.

The four *gerechtshoven* of the Netherlands are located within the four so-called *ressorten*[27], divided into ten *arrondissementen*. Spanish law is bound to judicial boundaries of the comunidad autónoma ("autonomous community") and their provincias ("provinces")[28], especially in the case of appeals. Appeals against decisions by a Juzgado de Instrucción and a Juzgado de lo Penal are both handled at the Audiencia Provincial. The latter is the court of last resort in a province, after which one must apply to a Tribunal Superior (de Justicia de las comunidades autónomas) ("superior courts of justice of the autonomous communities"), which is located in the capital of the autonomous community. However, appellants can also choose to appeal decisions of an Audiencia Provincial at the Tribunal Supremo, the Supreme Court (*Hooggerechtshof*) of Spain in Madrid (Villiers: 128).

High profile crimes, such as those against the Crown (la Corona) and terrorism are first evaluated at the Juzgado Central de Instrucción, bypassing all other courts. This Juzgado then decides whether these cases are tried at the Juzgado Central de lo Penal[29] or at the Audiencia Nacional[30]. The latter

[27] They are ostensibly arranged by geographical proximity and are not necessarily bound to provincial borders.
[28] There are seventeen communities, subdivided into fifty provinces (excluding the exclaves of Ceuta and Melilla).
[29] Both these courts are not to be confused with their lower-tier courts, which do not carry the Central-modifier.
[30] Notoriously, the perpetrators of the 2004 Madrid train bombings were tried here (Audiencia Nacional, Sentencia 65/2007).

furthermore deals with the appeals lodged against the Juzgado Central de lo Penal (Villiers: 128-129; iAbogado, 2014).

It becomes clear that the Spanish criminal court system differs considerably from its English and Dutch counterparts. The latter two have simpler hierarchical structures, and the only court which ostensibly serves the same purpose in all three legal systems is the supreme court, respectively represented in the **Supreme Court**, the *Hoge Raad* and the Tribunal Supremo. However, only the latter two truly overlap, as they both only deal with **cassation** (*cassatie*/casación), which means that in reviewing appeals, the courts are only allowed to consider procedural mistakes (either violations of law or breaches of procedure (Foster: 150)) by lower courts. The English **Supreme Court**, on the other hand, is allowed to look at the facts of the offence at hand.

Phases of criminal procedure

Criminal procedure is divided roughly into three phases, which in the Netherlands are that of *opsporing*, *vervolging* and *terechtzitting*, as stipulated by the *Wetboek van Strafvordering*. The other two legal systems follow the same pattern, and the terms can be translated into English with **investigation**, **prosecution** and **trial**, respectively. The Spanish Ley de Enjuiciamiento Criminal employs the terms fase de instrucción ("instruction phase", also averiguación), fase intermedia ("intermediary phase", or persecución) and juicio oral ("oral trial", and vista de la causa "(re)view of the case"), all interchangeably (Roca, 2011).

Opsporing is the classic example of investigating a case as a result of a reasonable suspicion that an **offence** has been committed. Another instance of *opsporing* or *opsporingsonderzoek* (**criminal investigation**/investigación criminal) is the general investigation into crimes of a purported criminal organisation. Van Caspel and Klijn define *opsporingsonderzoek* as"*onderzoek van strafbare feiten door de politie en het Openbaar Ministerie, ten behoeve van onderzoek ter terechtzitting*" ("investigation into offenses by the police and the public prosecution service, for the purpose of investigation [at a trial] in court"; 2012: 265).

In England, **indictable offences** are prosecuted in the name of the Crown, whereas **summary offences**

can be tried by persons **laying an information**[31]. An allegation of having committed an indictable offence is additionally called **lodging a complaint**. Both are similar to Dutch *aangifte doen*, where there is no distinction between the two forms of **reports** (Foster: 137), but *misdrijven* are equally prosecuted by the state (*officier van justitie*) and *overtredingen* can feature a private *aanklager*, or **complainant** (**plaintiff** in English civil law). The *aangifte* then is a request to start **criminal procedures** (*strafvervolging*), but the *Openbaar Ministerie* is not obliged to do so (Van Caspel & Klijn: 3). Neither *aangifte*, **information** nor **complaint** are necessary for criminal proceedings to be initiated, asoffences can also be noted by police **on patrol** (*op surveillance*/en patrulla). Some offences, however, do need a report to be prosecuted, such as Dutch *klachtdelicten*, "[*delicten die*] *slechts op klacht vervolgbaar* [*zijn*]" ("offences which are only prosecutable through a complaint"; Van Caspel & Klijn: 198). Examples of these are offences such as **libel** (*smaadschrift*/injuria).

Spanish criminal law, like English, distinguishes between two types of **report**. The first is a denuncia ("denouncement"), which is an admission of knowledge of the fact that an offence has been committed (Merino-Blanco, 2006: 152) to the authorities. Atestados policiales (literally "witness declarations of the police"), or **police reports** (*processen-verbaal*), are also a denuncia. The other form of report, the querrella ("complaint"), differs from the denuncia in that the one who filed it will not be a party to the criminal proceedings, except as testigo (**witness**/*getuige*).

Prosecution

During the first stage of **investigation**, a **suspect** (*verdachte*/imputado) is put forward by **investigating officers** (*opsporingsambtenaar*/funcionario de la policía judicial). In England, Spain and the Netherlands this position is held by an employee of a police force[32], either an officer or detective. In the Netherlands the *opsporingsambtenaar* is anyone tasked with the "*opsporing van strafbare feiten*" ("locating offences"; Van Caspel & Klijn: 265), which includes the police officer who writes out a fine to speeding motorist, but also those tasked with **arresting** (*aanhouden*/detener). In Gooch and Williams' definition (see the preceding footnote), those tasked with the latter are **detectives**

[31] Comparable to the more colloquial "pressing charges" in civil law.

[32] According to Gooch and Williams, investigating officers are members of a police force who are not police officers (2003: 83, 210)). I reckon they mean that **investigating officers** are always **detectives**, which coincides with the translation Oosterveld-Egas et al. give for Dutch *rechercheur*, which is the same as for *opsporingsambtenaar* (1990: 155, 177).

(*rechercheur*/policía de investigación), who operate in the **Criminal Investigation Department** of a **police force**, whereas each of the ten Dutch *politieregio´s* have *rechercheafdelingen*. In Spain, similar cuerpos de investigación criminal (“criminal investigative bodies”) are linked to departments of the Policía Nacional (“national police”).

The Spanish **public prosecution service** (*Openbaar Ministerie*/Ministerio Público), the Ministerio Fiscal, is the legal body with the duty to bring legal action before courts.The latter is equivalent to the Dutch *Openbaar Ministerie* and the English **Crown Prosecution Service**. These three prosecuting bodies are respectively represented in courts by a fiscal (“prosecutor”), an *officier van justitie* and a **Crown Prosecutor**. Their roles in criminal proceedings slightly differ, a result of the differences between the adversarial approach of English criminal law and the mixed inquisitorial and adversarial system of Dutch and Spanish criminal law.

The offender

A person who **commits** (*begaan*/cometer) a crime can be called various things in various phases. When he or she is first apprehended by the police or taken into **police custody** (*voorlopige hechtenis*/detención preventiva), we speak of a **detainee**, detenido (a nominalised adjective) and *arrestant*. Even though Dutch criminal law refers to the *arrestant* as *verdachte* throughout the entire criminal process, the *Wetboek van Strafvordering* does differentiate between two types of *verdachte* in Article 27, stipulating that “[*als*] *verdachte wordt voordat de vervolging is aangevangen, aangemerkt degene te wiens aanzien* (…) *een redelijk vermoeden van schuld aan een strafbaar feit voortvloeit*” (“before the prosecution has begun, as suspect is held as he to whom arises a reasonable suspicion of guilt to [commiting] an offence”). When the prosecution phase has begun, the *verdachte* is the one against whom the prosecution is directed.English criminal lawalso makes this distinction, but denotes this with two different terms. The **suspect** becomes the **defendant** during the later prosecution and **trial** phase. Furthermore, **defendant** is used interchangeably with the term **accused**, especially in criminal proceedings (Gooch & Williams: 109-110).

Spanish law employs multiple terms for *verdachte* and these “*no se emplean consecuentemente en la*

legislación y jurisdicción españolas" ("are not used consistently in Spanish lawmaking and jurisdiction"; Egas-Repáraz et al., 1990: 219). Initially, **suspects** are known as imputados or more colloquially as sospechosos. According to the type of **punishment** (pena/*straf*) that the supposed offence warrants, a *verdachte* in Spain can await different types of trial, of which the most common are the procedimiento ordinario ("ordinary proceedings") and procedimiento abreviado ("shortened proceedings"). The former deals with more serious offences which are liable to at least nine years of prison sentence, whereas the latter deals with crimes liable to lesser punishments (Merino-Blanco: 157). The *verdachte* is either called procesado (during a procedimiento ordinario) or imputado (during a procedimiento abreviado) during the prosecution phase, until the **trial** phase has started, when the *verdachte* becomes an acusado (Roca, 2011).

Suspects can be called to a magistrates' court by the issuance of a (**writ of**) **summons**, which is a *dagvaarding* in Dutch. In Spanish law, it is either an emplazamiento or citación.The former does not indicate a specific date and time, but only a stipulated time limit (Egas-Repáraz et al.: 56).

Aiding and abetting

As noted in chapter 2, not all crimes are committed by one person. Especially in the case of **indictable offences**, there are sometimes multiple **defendants**. English law distinguishes between **principals** and **accessories** (together **accomplices** to a crime), in which the former are those who physically perform the offence and the others those who"aid and abet" the **principal**. **Accessories** can also be those who have procured or ordered the crime, and by statute these can be tried as **principals** in English criminal law, as the Accessories and Abettors Act 1861 states; "[Accessories] shall be liable (…) to be tried (…) and punished as the principal offender". Some people, such as children,can never be tried as **principals** when the crime is ordered or instigated by another (Law & Martin: 7, 422).

Dutch criminal law distinguishes between *daders* (literally "perpetrators"), which it defines as "*zij die het feit plegen, doen plegen of medeplegen*" ("those who commit, make commit or participate in the act"; Art. 47, *Wetboek van Strafrecht*). **Accessories** are known as either *medeplegers* (**joint principals**), who have committed a crime alongside others and are punished as *daders*, or

medeplichtigen (**accessories**) who have aided the *dader* by providing "*gelegenheid, middelen of inlichtingen*" ("opportunity, means or information"; Van Caspel & Klijn: 222). Dutch criminal law further has the concept of *mededader* ("co-perpetrator"), who is essentially a *dader* because he took upon him one of the tasks of the crime, regardless of whether that task constituted a *misdrijf* in itself. The Dutch Penal Code does not accept liability for *medeplichtigheid* (**complicity**/complicidad) to *overtredingen* (Art. 52).

Spanish criminal also distinguishes between autores and cómplices, who are liable in the case of both delitos and faltas (unlike in Dutch criminal law). Autores are like **principals**, but they are also those who do something without which the act "*no se habría efectuado*" ("would not have been carried out"; Art. 28, Código Penal), and this broad definition includes, for example, people in whose absence the crime would not have been committed, or those delivering the murder weapon. Cómplices are those who are not expressly defined as autores in Article 28 of the Penal Code but who "*cooperan* (…) *con actos anteriores o simultaneos*" ("who cooperate with preceding or simultaneous acts"; Art. 29, Código Penal).

The act itself

The existence of a **victim** (*slachtoffer*/víctima) is sometimes an essential part of a crime, because it expresses the very nature of the harm done and shows the **actus reus** (Latin, literally *schuldige handeling* and acto culpable) of a crime. This is one of the two elements which together with the **mens rea** ("guilty mind", *schuldige geest* or mente culpable) is necessary in common law to secure a **conviction** (*veroordeling*/condena) of **criminal liability** (*strafrechtelijke aansprakelijkheid*/responsabilidad penal). In civil law systems, the **mens rea** is considered a subjective element of a criminal's mind and intention is not always needed for a conviction. The **mens rea** can nevertheless determine the validity of **excuses** and **justifications** in all three legal systems.

The **actus reus** can be either an **act** (*handeling*/acto, for example, the appropriation of property), a **consequence** (*gevolg*/consecuencia, e.g. death) or an **omission** (*nalatigheid*/negligencia, in failure to prevent death; Gooch & Williams: 7). The **mens rea**, on the other hand, establishes the state of mind

of the offender and therefore the degrees of his or her **intent** (*opzet*/intención). Further aspects determined by **mens rea** are **negligence** (*nalatigheid*, *schuld door culpa*, negligencia criminal) and **recklessness**. The latter can be translated literally into Dutch as *roekeloosheid*, but it is also *voorwaardelijk opzet*, a "*schuldvorm waarbij het* (…) *niet gewilde gevolg door de dader op de koop toe genomen wordt*" ("form of guilt in which the unwanted consequence is accepted by the offender"; Van Caspel & Klijn: 398). Spanish law calls this form of **guilt** (*schuld*/culpa) dolo eventual, which is "*cuando el agente se representa como posible un resultado dañoso* (…) *no obstante* (…) *aceptando sus consecuencias*" ("when the author perceives a hurtful consequence to be possible, [nevertheless] accepting its consequences"; Egas-Repáraz: 156).

The definition of the offence of murder

Let us reconsider a fundamental aspect of substantive criminal law,crimes themselves. Offences that capture the public imagination well often involve killing. Here, I will comprehensively discuss the definitions and conceptual boundaries of the terminology on homicide in the three different legal systems.[33]

In English criminal law, **murder** is defined as "unlawful homicide that is not manslaughter or infanticide" (Law & Martin: 360). It is **homicide** in the sense that someone's life has been taken by someone else, and its unlawfulness lies in there being no defence for the **actus reus** of the crime. In any case, one can conclude that English law has a category of **lawful homicide**, which includes instances such as killing an enemy soldier in wartime and a boxer accidentally killing his opponent with an authorised blow (Brookman, 2005: 6). Even though Dutch and Spanish law will not criminally prosecute someone in such cases, they do not have a comparable category to English **lawful homicide**.

Murder, a subset of **unlawful homicide**, requires a **mens rea** of **malice aforethought** (*boos opzet*/mala intención), which is the express **intent** to kill or cause **grievous bodily harm** (*zwaar lichamelijk letsel*/lesiones graves). The latter can be either physical or psychological, and causing harm which ultimately leads to the death of the victim amounts to **murder** too.

[33] Due to the sheer number of offences (the UK government lists over 400 indictable offences alone (Offence Classification Numbers, 2010)), my aim is to present general characteristics of well known indictable and summary offences.

Dutch *moord* also involves "unlawful homicide", but apart from the express *opzet* (**intent**/intención) of taking a life, it also requires *voorbedachte raad* (**premeditation**/premeditación). *Voorbedachte rade* is a "*voorafgaande overweging bij de dader van de daad en haar gevolgen* (…) *kalm overleg*" ("prior consideration by the offender of the act and its consequences, calm deliberation"; Van Caspel & Klijn: 395). The "calm deliberation" is an essential difference between *voorbedachte rade* and **malice aforethought**. The latter does not require calm consideration, or in the words of Gooch and Williams, "[it] is unnecessary (…) for the intention to kill to be forethought (i.e. premeditated)" (2009: 238). *Voorbedachte rade* is however an essential element of the crimes of several Dutch *misdrijven*.

Like English, Spanish criminal law has one word for all instances of death caused by another, homicidio; "*El que matare a otro* (…) [*es*] *reo de homicidio*" ("He who [should][34] kill another is guilty of homicide"; Art. 138, Código Penal). *Moord* and the near-equivalent **murder** are comparable to Spanish asesinato, which the Spanish Penal Code (Art. 139) describes as "*el que matare a otro*" ("he who [should] kill another") with either of the following circumstances; "*con alevosía; por precio, recompensa o promesa; con ensañamiento*".

The Spanish term alevosía is somewhat different from both *voorbedachte rade* and **malice aforethought**. It incorporates elements of both but adds a factor in which the perpetrator abuses the trust that exists between him and the victim. As a translation of alevosía, Egas-Repáraz et al. give *arglist*, which is defined by Van Caspel and Klijn as a "*versterkte vorm van opzet*" ("added type of intent"; 2012: 28). In Dutch **civil law** (*burgerlijk recht*/derecho civil), *arglist* is further described as being of "*kwade trouw*" ("of bad faith"), and this could function as a translation in criminal law too. In English criminal law, **bad faith** is a term used exclusively in **civil law**, and Arias-Eibe gives **perfidy** as a translation for alevosía (2005: 2). However, the term **perfidy** is a **war crime** (*oorlogsmisdaad*/crimen de guerra) in **international criminal law** (*internationaal strafrecht*/derecho penal internacional). This concept does have in common with alevosía that it requires the perpetrator to act upon the trust of the victims (for example showing a white flag, then attacking).

[34] A loose translation of the Spanish subjunctive mood.

Ensañamiento is another element rendering homicidio asesinato. The term is best translated as the colloquial **cruelty** and *wreedheid*, as the Spanish Penal Code defines it as "*aumentando deliberada* (...) *el dolor del ofendido*" ("purposefully increasing the pain of the offended"). This happens, for example, when the murderer tortures the victim while keeping him alive before delivering the final blow.

Finally, asesinato can be "*por precio, recompensa*" ("for a price [or] reward"; Art. 139). Asesinato then does not necessarily need either the calm deliberation of *moord* or the specific intent of **murder**. Rather, these elements are incorporated into other motivations and methods. When a homicidio features more than one of the aforementioned elements, the Spanish Penal Code prescribes a minimum prison sentence of twenty years (Art. 140).

Murder in English law is defined further as "not **infanticide**" (*kinderdoodslag*/infanticidio), which is by definition always committed by the mother and requires her to show that "the balance of her mind was disturbed" by childbirth or lactation, otherwise the killing of the child amounts to plain **murder** (Gooch & Williams: 199). In the Netherlands, a distinction is made between *kindermoord*, which is when the killing is decided upon by the mother before childbirth, and *kinderdoodslag*, which is essentially **infanticide** shortly after childbirth (Van Caspel & Klijn: 197-198), as the killing after childbirth assumes a disturbed mental state. In Spain, infanticidio is like its English cognate **infanticide**, in that it is presented as a circunstancía atenuante (a **mitigating circumstance**/*verzachtende omstandigheid*) for the crime of asesinato. In all three legal systems, the atenuante does not diminish **culpability** (*strafbaarheid*/responsabilidad criminal), but the severity of the penalty imposed.

Murder is finally defined as"not **manslaughter"** (Law & Martin: 360), which is subdivided into **voluntary** and **involuntary manslaughter**, both of which have functional equivalents in Spanish and Dutch law (see below). In the former, the **mens rea** required for **murder** is present but specific **mitigating circumstances**[35] reduce the crime to **voluntary manslaughter**. **Involuntary**

[35] These are **diminished responsibility**, the existence of a **suicide pact** between victim and perpetratoror **provocation**.

manslaughter distinguishes three types; **gross negligence manslaughter** (being more negligent than "the average reasonable man" (Gooch & Williams: 175)), **unlawful act manslaughter** (committing and intending a dangerous act without intending its lethal consequence), and **reckless manslaughter** (see the above discussion of **recklessness**).

Voluntary manslaughter can be equated to *doodslag*, as Van Caspel and Klijn note that "*voorbedachte raad stempelt doodslag tot moord*" ("premeditation marks manslaughter as murder"; 2012: 101).The three forms of **involuntary manslaughter** are all incorporated in the term *dood door schuld* (literally "death through guilt"), which is by definition negligent killing. The Dutch Penal Code further distinguishes, like English law, between regular *dood door schuld* and *schuld* through *roekeloosheid*, which is directly comparable to **reckless manslaughter**.

Spanish definitions on killing other than asesinato are arguably less comprehensive, and the equivalent to both *doodslag* and **voluntary manslaughter is** homicidio, which is defined as "*el que matare a otro*" ("he who [should] kill another"). The circumstances surrounding the killing can render a homicidio either asesinato or homicidio imprudente ("reckless homicide"), which corresponds to **involuntary manslaughter** and *dood door schuld*. The Spanish Penal Code further distinguishes between these delitos by their minimum prison sentences.[36] Article 142 of the Spanish Penal Code lists several circunstancias agravantes (**aggravating circumstances**/*verzwarende omstandigheden*, the opposite of a **mitigating circumstance**) of the homicidio imprudente, which are liable for more severe punishments. Due to the overlap of the terms in the three legal systems, the circumstances of the homicide should ideally define which translation would be preferable in a given situation.

Summary offences

Indictable offences always give the **convict** (*veroordeelde*/condenado, reo[37]) a **criminal record** (*strafblad*/certificado de antecedents penales). This is not necessarily the case for **summary offences**. There are fewer *overtredingen* than *misdrijven* in Dutch criminal law, judging by the number of

[36] Spanish law does not always offer different terminology for particular offences. Homicidio imprudente is one crime, but there are distinct ways in which it is carried out, each with different penalties (Art. 142).
[37] The Spanish term condenado is used for people who receive a prison sentence. Reo can be used both as an adjective and as a noun and simply means "guilty".

articles (55) the *Wetboek van Strafrecht* reserves for them compared to *misdrijven* (328). The Spanish Penal Code likewise features four pages on faltas, whereas it has 117 describing delitos. As for English law, the list of Offence Classification Numbers totals about 96 **summary offences**, and a far greater number of **indictable offences**. The reason for this disparity may lie in the fact that many acts committed by **legal persons**[38] (*rechtssubject*/sujetos de derecho) can be prosecuted through civil law procedures (Gooch & Williams: 361).

Additionally, English law **torts** have much overlap with minor offences (as illustrated in chapter 2), and common law allows for simultaneous civil and criminal trials. This is not the case in the Netherlands and Spain, however, from which we can conclude that criminal law in general is more concerned with more serious offence. Both common and civil law systems then deal with other minor infractions of the law through other branches of law.

The Spanish Penal Code often describes faltas as certain actions which are "*no definidos como delitoen este Código*" ("not defined as a 'delito' in this Code"; Art. 617, Código Penal). An example of this is the causing of a lesión, which is defined specifically as not a delito de lesions, but as "*el que golpeare* (…) *a otro sin causarle lesión*" ("he who hits another without causing injury"). Another feature of the falta is the absence of names for offences, as faltas are only described by details of the circumstances. Offenders of faltas are furthermore not called reo ("guilty") as in the case of delitos (for example in reo de asesinato (Art. 139, Código Penal)), but simply "he who" (el que, identical to the Dutch phrasing *hij die* in the *Wetboek van Strafrecht*). Some faltas are described by their relation to delitos, such as that of hurto in which "*el valor de lo hurtado no excediera de 400 euros*" ("the value of the stolen [property] [should] not exceed 400 euros[39]"), otherwise it becomes a delito. English law similarly has offences **triable either way** which become **summary offences** in certain conditions, such as **criminal damage** in which the estimated damage is under £5,000.

[38] Either a **natural person** (*natuurlijk persoon*/persona física), which is a human being with corresponding **rights and obligations** (*rechten en plichten*/derechos y obligaciones), or a **juristic person** (*rechtspersoon*/persona jurídica), a group of people which operate collectively in law. In this thesis, I mostly deal with **natural persons** as there are simply more crimes involving them.

[39] The Spanish and Dutch metric system differs significantly from the British imperial system. In all cases, however, I would strongly recommend sticking to the original currencies of any legal text, **euros** (the plural prescribed by the European Commission Directorate-General for Translation, 2011) and **pound(s) sterling** (*pond*/libra esterlina), and to the original units of measurement, **miles** (*mijlen*/millas) and **kilometers** (*kilometers*/kilometros).

Road traffic offences (*verkeersovertredingen*/infracciones de tráfico) in England are often **summary offences**, such as **speeding** (*snelheidsovertreding*/exceso de velocidad). While in England all minor offences related to traffic are part of criminal law, most Dutch *verkeersovertredingen* are dealt with through *bestuursrecht* (**administrative law**/derecho administrativo), and in Spain traffic laws are similarly regulated by the provincias. The Spanish Penal Code does include delitos contra la seguridad vial ("offences against road safety") which are criminally prosecuted, and Dutch law similarly has *verkeersmisdrijven*, drawn up in its *Wegenverkeerswet* ("road traffic law"). These two terms can both be translated as **indictable motoring offences** in English, most of which are **triable either way**.

Inchoate offences

An **attempt** is "any act that is more than merely preparatory" and as mentioned before, it includes offences of which "the commission is impossible" (Gooch & Williams: 24), such as **burglary** in an empty building. **Attempts** are a subdivision of **inchoate offences**, which furthermore include **incitement** and **conspiracy** to an offence, which also "constitute steps towards the complete offence" (Gooch & Williams: 195). **Incitement** ("persuading someone else to commit a crime" (Gooch & Williams: 195)) can itself be **attempted** and **incited** and, but **conspiracy** ("an agreement (…) [involving] the commission of an offence" (Gooch & Williams: 83)) cannot. **Attempts** can be punished statutorily as completed offences, as section 4 of the Criminal Attempts Act stipulates. In reality, judges will often consider the circumstances to provide less severe punishments.

The Criminal Attempts Act 1981 does not rule out attempts at **summary offences**, unlike the Dutch Penal Code. Article 45 holds that only *pogingen tot misdrijven* ("attempts at [indictable] offences") are *strafbaar* (**punishable**/punible). A *poging* is defined as "*wanneer het voornemen van de dader zich door een begin van de uitvoering heeft geopenbaard*" ("when the intention of the perpetrator has been revealed through the beginning of the execution"; Art. 45, *Wetboek van Strafrecht*). Principle punishments for *pogingen* are less severe, but additional punishments are the same as for completed offences. Dutch law furthermore interdicts *voorbereiding* ("preparation") to criminal offences, which is when the perpetrator purposefully acquires items to the commission of an offence. Both *voorbereiding* and *poging* are by definition non-existent in Dutch law if the perpetrator cancels the

execution by his own volition (Art. 46, *Wetboek van Strafrecht*).

The Spanish Penal Code states that both "*el delito consumado y la tentativa del delito* [*son punibles*]" ("the completed [indictable] offence and the attempt at the [indictable] offence are punishable"; Art. 15, Código Penal). Faltas are only punishable when completed, with the exception of those contra las personas ("against the person") and contra el patrimonio ("against the [national] heritage"). There is a tentativa when the individual begins the execution of the offence, akin to the Dutch definition. If the would-be perpetrator voluntarily refrains from the execution of the offence, he or she will be "*exento de responsabilidad penal*" ("exempt from liability"). This does not mean, like in Dutch law, that there was never a tentativa at all, but rather that the person is not held liable for the attempt. If a third party other than the police intervenes during the course of a tentativa, and this convinces one of the offenders in a group to "decidedly" try and stop the execution of the offence, then they are exempt from liability. Dutch law in such cases will most likely rule that there was no *poging* at all; "*voorbereiding noch poging bestaan indien het misdrijf niet is voltooid tengevolge van omstandigheden van de wil van de dader afhankelijk*" ("preparation nor attempt exist if the offence is not completed as a result of circumstances depending on the will of the offender"; Art. 46b, *Wetboek van Strafrecht*).

Other inchoate offences involve other preparatory measures towards the execution, such as conspiring towards committing an offence. The offence of conspiración in Spanish law is the same as its English cognate **conspiracy**, involving two people agreeing to commit a crime. They have a functional equivalent in Dutch law *samenspanning*, which is defined as "[*wanneer*] *twee of meer personen overeengekomen zijn om het misdrijf te plegen*" ("when two or more people have agreed to commit the offence"; Art. 80, *Wetboek van Strafrecht*).

The Spanish equivalent of English **incitement** (literally incitación) is either of three offences; provocación (inciting through mass media), inducción (involving the eventual execution of an offence incited by provocación) or apología (diffusing ideas praising crime; Art. 17-18, Código Penal). Spanish criminal law furthermore has the unique concept of proposición ("proposition"), in which the

offender "*ha resuelto cometer un delito* [*e*] *invita a* (…) *otras personas a ejecutarlo*" ("has decided to commit an indictable offence and invites other persons to [join him in] executing it"). The latter definition is also incorporated in the Dutch rendition of **incitement**, *uitlokking*, which holds that those liable are among others people who "*door het verschaffen van gelegenheid* (…) *het feit opzettelijk uitlokken*" ("intentionally provoke the offence by providing opportunity"; Art. 47, 48, *Wetboek van Strafrecht*). Spanish provocación is similar to Dutch *aanzet tot haat of discriminatie*, but unlike Spanish law, the incitement solely has to beuttered in public rather than through mass media.

Jury and defences

English law tries **indictable offences** with the aid of a **jury** (*jury*/jurado), which determines the guilt of the defendant. While such an institution is non-existent in the Netherlands, recent Spanish governments have implemented the tribunal del jurado ("jury court") in certain high-profile cases. A Spanish jurado differs from the English **jury** in that it has nine miembros de jurado (**jurors**/*juryleden*) rather than twelve. While the implementation of the jury trial tried to involve citizens in public matters (Merino-Blanco: 148-150), it has had a controversial history in Spain, and its future is unclear (El País, 2012).

I already discussed **defences** (*strafuitsluitingsgronden*/eximente) briefly in chapter 2. Due to their universality, the concept of a **defence** is largely the same in the three legal systems and between Spanish, English and Dutch law, there are no defences that a third system lacks (although *noodweerexces* could be considered an exception, see below). One of the disputed elements of a crime may be its unlawfulness, for which there are **justifications** (*rechtvaardigingsgronden*/causas de justificación), among others **necessity** (*noodtoestand*/estado de necesidad), which involves an offence to prevent a greater offence from being committed. **Self-defence** (*noodweer*/legítima defensa) is defined in Dutch law as "*wettige zelfverdediging* (…) *geboden* [*tegen*] *een wederrechtelijke aanranding van eigen of andermans leven*" ("lawful self-defence against an unlawful assault of one's own or another's life"; Van Caspel & Klijn: 242). This definition is the same in England and Spain, rendering the terms functional equivalents.

Excuses (*schulduitsluitingsgronden*/causas de inimputabilidad) can be mounted as **defences** against charges. The difference between **excuses** and **justifications** is evident from the terms themselves; in the latter, the offender's act is justified, whereas in the case of **excuses**, the offender is merely excused, or rather, exculpated. The most striking **excuse** may therefore well be *ontoerekeningsvatbaarheid* ("unaccountability") of the offender, which in England requires a **mental disorder**. In Spain, such people are careciente de la capacidad de culpabilidad ("lacking capacity of liability"). Further excuses include **duress** (*overmacht*/fuerza mayor), which concerns a person being forced to commit an offence under "actual or threatened physical force" (Gooch & Williams: 129).

Dutch has the system-bound excuse *noodweerexces*, in which the offender crosses the boundaries of necessary **self-defence** (see the discussion in chapter 2) after an assault, caused by a "*hevige gemoedsbeweging*" ("violent disposition"; Van Caspel & Klijn: 243). Even though the act is unlawful, the offender is excused.[40]According to Gooch and Williams, if a person uses more force in his self-defence than necessary in English law and, for example, kills his attacker, he is not excused unless he can show there was **provocation** (2009: 327). This term is akin to *noodweerexces* in that it is defined as "conducts or words which [cause] someone to lose his self-control" (Law & Martin: 436).

Unlike *noodweerexces*, **provocation** is not considered a **general defence**. This means that the burden of proof is with the defender to show that a reasonable man in his position would be equally disturbed by the vicitim's behaviour, excusing or mitigating the offender's loss of self-control (Gooch & Williams: 296-297). Spanish law does not have a category of excuses that is comparable to either *noodweerexces* or **provocation**. Nevertheless, the following definition, defining those who are exempt from liability, leaves much to the judges' discretion: "*El que al tiempo de cometer la infracción penal, a causa de cualquier* (…) *alteración psíquica, no pueda* (…) *actuar conforme a* [*la*] *comprensión* [*del ilicitud del hecho*]" ("He who at the time of the offence, through whatever psychological change, cannot act according to the comprehension of the unlawfulness of the act"; Art. 20.1, Código Penal).

Spain excuses offenders below the age of 18, as it has a special penal code for minors. In the

[40] See chapter 2 and footnote about the *sepot* in the case of the couple who beat a burglar to death.

Netherlands, minors below the age of 12 are not held criminally liable. In England, liability is from the age of 10 upwards, but the violent murder of James Bulger in 1993 by children set a precedent for children to be able to be tried as an adult if the prosecution could show they knew the difference between right and wrong. As a result, England and Wales have one of the lowest minimum ages of criminal responsibility in the world (Williams, 2013).

Punishments

Dutch law differentiates between *hoofdstraffen* (**principal punishments**/penas principales) and *bijkomende straffen* (**additional punishments**/penas accesorias). *Hoofdstraffen* are *gevangenisstraf*[41] (**prison sentence**/prisión), *taakstraf* (**community order**/trabajo en beneficio de la comunidad) and *geldboete* (**fine**/multa). *Bijkomende straffen* include the diverse *ontzetting van bepaalde rechten* (penas privativas de otros derechos/**deprivation of specific rights**), *verbeurdverklaring* (decomiso/**forfeiture**[42]) of certain goods, and finally the *openbaarmaking van de rechterlijke uitspraak* (**publication of the judicial decision**/publicación de la sentencia). The latter is identical in Spain and is also a matter of warning the public.

The Spanish Penal Code has penas privativas de libertad ("punishments depriving liberty"), penas privativas de otros derechos ("punishments depriving of other rights") and multas (**fine**/*boete*). All three can be either penas principales or penas accesorias. The Código further grades penas as graves, menos graves or leves ("severe, less severe, light"). The most common penas (**punishments**/*straffen*) for faltas are leve. A common pena principal for faltas is the trabajo en beneficio de la comunidad ("work in benefit of the community"), which is measured in a number of days, as opposed to hours for the direct equivalents *taakstraf* and English **community order**.

The multa is ascribed a number of days or months (the so called sistema de días-multa, "fine of the system of days") , with a minimum of ten days and a maximum of two years for personas físicas and five years for personas jurídicas. The daily minimum fee of the multa is 2 euros and its maximum 400

[41] Called *hechtenis* when it is imposed for an *overtreding*, which is equal to English **detention** and Spanish detención, both indicating a limited amount of time.

[42] According to Gooch and Williams, **forfeiture** does not intend "to recover the proceeds of criminal conduct" (2009: 162). This is nevertheless one of the main aspects of *verbeurdverklaring*, as apart from being a *vermogensstraf* ("capital/financial penalty"), it deals with specific goods which "*geheel of grotendeels door middel van* (…) *het strafbare feit zijn verkregen*" ("are entirely or partially acquired through the offence"; Van Caspel & Klijn: 371).

(taking into account the financial means of the defendant), but 30 and 5000 euros respectively for juristic persons. A court can thus sentence someone, for example, to a fine of thirty days with a fee of six euros a day, rather than order the payment of a fixed amount. *Geldboetes* in Dutch criminal law are conversely divided into six categories, with the *eerste categorie* ("first category") amounting to 405 euros and the sixth to 810.000 euros. Fines for *lichte overtredingen* are, like most *verkeersovertredingen*, dealt with administratively rather than criminally.

In England, **fines** for summary offences are similarly divided in scales, with the first scale being 200 pounds and the latter fifth 5,000. **Fines** for conviction on indictment can are usually **additional**, and their sums are at the discretion of the judge. English courts in general have a large degree of discretionary power and only more serious offences have statutory minimum penalties. Gooch and Williams list **imprisonment**, **fines**, **community sentences**, **confiscation order**, **hospital order** and **discharge** as potential penalties in English criminal law (2009: 329). The latter entails the release of aconvicted defendant without punishment. This may be either **absolute** or **conditional** (the convict cannot commit a similar offence within a certain time period), and the latter is also found inDutch and Spanish law, as *voorwaardelijke vrijlating* and libertad condicional, respectively.

Summary

This chapter discussed general translation strategies in the context of legal translation and the supposedly ideal translation of functional equivalence. Subsequently, this chapter contained a concise overview of the criminal terminology of Spain, the Netherlands and England and Wales. It showed differences and similarities between the three countries in their classification and definitions of offences, prosecution bodies, phases of criminal law procedure, et cetera.

In terms of the role of Spanish as a mediating language in a legal context, this chapter showed that there is a plethora of cognates which are also functional equivalents between English and Spanish. These range from such general terms as **criminal investigation** and investigación criminal (as opposed to Dutch *opsporingsonderzoek*) and **imprisonment** and prisión (Dutch *gevangenisstraf*) to more specific legal concepts such as **homicide** and homicidio (a hyponym which Dutch legal language

lacks) and **infanticide** and infanticidio (for which Dutch employs the Germanic *kindermoord*). Furthermore, while chapter 2 showed that Dutch and Spanish criminal law share similar origins and legal principles, this chapter proved that Spanish legal terminology and definitions alternate between proximity to English and Dutch equivalents. This determines its suitability as a mediating language between English and Dutch legal translations.

The focus on the conceptual boundaries of the legal terminology as showed in this chapter is of great help in legal translation. It gives the translator a clear indication of whether an equivalent term in the target legal culture can be used in a specific translation, or whether he has to resort to a more neutral translation. Much of this depends on the background of the ordered translation and its possible legal effects, as I will show in the next chapter. There, I will explore how the difference in text and translation types influences the preference for a specific translation. This final chapter will furthermore explore the question of the third language as an aid in legal translation, using the overview and terminology presented above.

Chapter IV: Translations

The translations

In this chapter, I will translate excerpts from English and Dutch substantive and procedural law, each mediated by a Spanish translation. I highlighted the possible importance of Spanish as a mediating language in legal translation before, and the previous chapter showed the usefulness of Spanish cognates and functional equivalents. In this chapter, I will explore the actual usefulness of Spanish texts in practice. The purpose of the mediate translation will be to give as much information about the legal content of the source text, all the while trying to harmonise the stylistic preferences of Spanish legal texts and the linguistic make-up of the source text. The translations will feature both source culture and target culture oriented translations, as introduced by the text and further explained in the footnotes. I will extensively annotate the target texts in footnotes to account for translation choices and the consideration of legal differences.

In answering the thesis research question, I will discuss the usefulness of the mediate translation in the process of translating. Furthermore, I will compare the finished translations and the source text to see whether they give more information about the other's linguistic make-up, but especially about legal implications. The ultimate question to be answered is whether three languages are indeed better than two, as Simard claims.

Dutch source text

"*Wet van 3 maart 1881*

Wij WILLEM III, bij de gratie Gods, Koning der Nederlanden, Prins van Oranje-Nassau, Groot-Hertog van Luxemburg, enz., enz., enz.

Allen, die deze zullen zien of hooren lezen, salut! doen te weten:

Alzoo Wij in overweging genomen hebben, dat het noodzakelijk is een nieuw Wetboek van Strafrecht vast te stellen;

Zoo is het, dat Wij, den Raad van State gehoord en met gemeen overleg der Staten-Generaal, hebben

goedgevonden en verstaan, gelijk Wij goedvinden en verstaan bij deze, vast te stellen de navolgende bepalingen, welke zullen uitmaken het Wetboek van Strafrecht."

(Excerpt from the *Wetboek van Strafrecht*)

Spanish (mediate) translation

"Ley de 3 de[43] marzo 1881

Nosotros[44] Guillermo[45] III, por la Gracia de Dios[46], Rey de los Países Bajos, Príncipe de Orange-Nassau[47], Gran Duque de Luxemburgo, etc., etc., etc.

Todos, que este[48] vieren y entendieren[49], ¡saludos![50], sabed[51];[52]

Así como[53] Nosotros[54] hemos considerado[55], que es necesario estipular[56] un nuevo Código Penal[57];

Así es que Nosotros, escuchado el Consejo de Estado[58] y de común acuerdo[59] con los Estados

[43] The Spanish Penal Code is a so-called Ley Orgáníca, just as its Dutch counterpart. Because the source text lacks the outright classification as an *organieke wet*, the simple translation with Ley is adequate enough in this sense.
[44] Dutch uses the "royal we", a use of nosism also known in Spain as plural mayestatico. Even though the introduction to the Spanish Penal Code (drafted 110 years later than the Dutch) by the Spanish king does not feature its use (instead, Yo is written with a capital y), I have opted to include it in the translation due to its familiarity for the Spanish reader.
[45] Names of royalty are, as a rule, Hispanicized in the Spanish of Spain. Therefore, the historical *Willem de Derde* is known as Guillermo III.
[46] A direct equivalent of the Dutch phrase. The Spanish Penal Code does not use it, possibly as a result of the more secular and less absolutist era in which it was drafted.
[47] Curiously, Spanish does not traditionally Hispanicize this French-German toponym.
[48] The Dutch text makes it unclear to what *deze* refers. Spanish demonstrative pronouns need to correspond to gender though, and while the generic esto is also a possible translation, I deduced that it refers to masculine código.
[49] Even though the full meaning of Dutch *zien of horen lezen* is not wholly captured by the Spanish vieren y entendieren (subjunctives literally meaning "[they who should] see and hear/understand"), the fixed expression vieren y entendieren is used in all enacting clauses in Spanish. The archaic form of modern Dutch *horen* with two o's is not transposed to the Spanish, as the formal subjunctive expression already expresses the higher register.
[50] Both a cognate of the Dutch *salut* as well as a formal greeting in Spanish.
[51] Dutch *doen te weten* ("are to know") can be easily expressed in the plural imperative in Spanish, as is custom in Spanish enacting clauses. In a more literal translation, han de saber (literally "[you] have to know") would be more appropriate, but this is not a widespread collocation pattern in Spanish.
[52] Punctuation is kept the same through most of the translations, except where noted.
[53] The more archaic Dutch *alzoo*, which refers ahead to *zoo is het* in the subsequent sentence (interpreted as meaning "just as … so is"), is rendered in the more common but equally formal and accepted así como … así in Spanish.
[54] The capital in *Wij* to refer to the king is kept, as this is also customary in Spanish enacting clauses (see the case of Yo above). The personal pronoun is actually superfluous here in Spanish, as the finite verb already indicates the first person plural. However, personal pronouns can be used for emphasis, and in this peculiar case of the use of the majestic plural, I have used Nosotros throughout the translation.
[55] Written Spanish prefers the verbalisation of Dutch *in overweging nemen*. A more literal translation astomado en consideración is possible, but much less frequent in Spanish texts.
[56] *Vaststellen* has many translations into Spanish, but in the supposed sense of "drafting", estipular is the most equivalent in terms of propositional meaning. If the intended meaning in Dutch is the actual ratification of the *Wetboek*, then aprobar or fijar would be more adequate, but that does not necessarily follow from the text. *Vaststellen* in that sense is used later on in the text.
[57] The term Código Penal does not refer to any specific penal code. There is a Código Penal in almost all Spanish speaking countries, and non-Spanish penal codes are usually translated as Código penal de…. Since the text is a translation of the Dutch *Wetboek* I feel there is no need to further specify it as "de los Países Bajos", which I upheld for other culture-bound institutions in this translation.
[58] An institution which did not feature in chapter 3, the Dutch *Raad van State* is lexically equivalent to its Spanish counterpart Consejo de Estado, rendering full equivalency. As with the Código Penal, this Spanish term does not solely refer to the Spanish institution (which would take de España as specification).
[59] Spanish acuerdo itself has a different propositional meaning, overlapping with Dutch *overeenkomst* (the ultimate result of *overleg*), but in the collocation de común acuerdo it serves as an equivalent expression of *in gemeen(schappelijk) overleg*.

Generales[60], hemos[61] aprobado y entendido[62], así como[63] Nosotros aprobamos y entendemos por la presente[64], lo[65] fijar[66] de las estipulaciones siguientes, las[67] cuales constituirán[68] el Código Penal."

English (target) translation

As it is unlikely that the Dutch Penal Code will ever be translated and take legal effect in England, this translation too will be source culture oriented. For the purpose of the translation, its supposed audience will be academic readers, professors and students of comparative law who have taken an interest in Dutch criminal law.

"Act[69] of 3rd March 1881[70]

We[71] William III[72], by the grace of God[73], King of the Netherlands, Prince of Orange-Nassau, Grand Duke of Luxemburg, etc., etc., etc.

All, who shall[74] see or hear this read[75], greetings![76] are to know[77];

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[60] The *Staten-Generaal* is translated directly as "general states", or rather "states general" in Spanish. Its Spanish equivalent are the Cortes Generales, but that term refers solely to the Spanish bicameral institution, due to the medieval origin of the corte ("court").

[61] Agreeing with the first person plural nosotros.

[62] This translation assumes that Dutch *verstaan* is used as a past participle rather than as the present indicative.

[63] The Dutch archaic conjunction *gelijk* (which has retained its meaning in Belgian Dutch) can only be rendered in the more colloquial Spanish así como. This is also the case in the phrase *gelijk ook wij vergeven* and así como nosotros hemos perdonado in the common Dutch and Spanish translations of the Lord's Prayer.

[64] Dutch *bij deze* has multiple possible translations in Spanish, but the Código Penal itself uses the formal, register-bound por la presente (literally "by the current").

[65] The source text lacks a clear direct object of *goedvinden*. As it is the entire subsequent clause that is the object, the use of the article nominalises the verbs, making the clause easier to understand.

[66] Here, *vaststellen* is clearly used in the definition of approving or decreeing the provisions made by the Code, a meaning for which fijar is best suited.

[67] If the noun referred to is definite, the corresponding pronoun again takes the definite article in Spanish, whereas it is implied in Dutch.

[68] Spanish does not have an equivalent of the auxiliary verb *zullen*; rather, the future tense is expressed in this verb form.

[69] The more generic term **law** is an alternative here, but as I argued in chapter 3, both the Dutch and the Spanish Penal Codes are factually **acts** in English law, a term which is more easily understandable for English students of law and still does justice to the Dutch . Looking at the Spanish translation, I did not translate the *wet* as the similarly factual ley orgánica in the Spanish translation, both because it features an extra modifier and because the *organieke wet* in Dutch is implied in the necessity of the *Wetboek*.

[70] Although English legal texts usually prefer a straight-forward date notation, acts and other texts often use the suffix denoting the ordinal number, preceded by the definite article **the**, as we shall see further on. The example of the preferred Spanish date notation can be of help here in establishing that even in source culture oriented translations, we can use the target culture date notation without undermining source culture preference or content.

[71] The majestic plural is used here too, as it is a form that is not unknown in England. Like in the Spanish translation, its use preserves both the archaism and the function of the term. The "royal we" in translation, we can conclude, is appropriate in target cultures which have seen its use, and preferably, has a monarch as a head of state (as England, Spain and the Netherlands all have).

[72] The anglicization of names of historical kings is common in academic English writing. It has however gone out of fashion and English media nowadays, unlike their Spanish counterparts, call the incumbent king Willem-Alexander rather than William. Nevertheless, as the Dutch Penal Code is a historic document featuring a king which English-speaking historians know as William III, this option is the most plausible. Again, looking at the Spanish translation gives us an idea of the possibility of transposing the name at all.

[73] As much a fixed expression in English as it is in Spanish and Dutch.

[74] Dutch *zullen* expresses slightly less modality than English **shall**, but **will** would have expressed too much certainty. Looking at the Spanish subjunctive makes **shall** an even clearer option.

[75] In the Spanish enacting clause of the Penal Code, we see an equivalent fixed expression used for the formulaic Dutch *zullen zien of horen lezen*. No such equivalent exists in English, and therefore a more literal translation is suitable here. **Read** is therefore in its past participle form as a translation of the Dutch *hooren lezen*, which is in my opinion to be interpreted as meaning "being read to".

[76] The Dutch *salut* is an archaic use of a French word which, unlike Spanish, has no cognate in English (except for the concept "salutation"). The interjection **greetings** does capture the evoked, formal meaning of *salut*.

[77] Whereas the Spanish translation takes the equivalent imperative of the Código Penal, English has no equivalent imperative phrase in its enacting clauses (see the following text), and so I have opted to translate *doen te weten* more literally.

As[78] We[79] have taken into consideration[80], that it is necessary[81] to draft[82] a new Penal Code[83]; So it is[84] that We, having[85] heard the Council of State[86] and by mutual agreement[87] with the States-General[88], have approved and understood, as[89] We approve and understand herewith[90], to adopt[91] the following stipulations, which[92] will constitute the Penal Code."

The role of the mediate translation

The mediate translation underlined the archaic and formal register of the source text, using equivalents from Spanish legal texts throughout. The use of the majestic plural and the translation of the royal name were shown as possibilities by the mediate translation. In terms of equivalency of expressions, we may already conclude that this is one aspect in which mediate translations are not very helpful; there either is an equivalent expression between the source and target language or not. However, there are regularly lexically equivalent idioms and expressions between the mediate and the target language which are closer than that of the source text.The mediate translation here furthermore demonstrated the neutral translations of the Dutch legal institutions of the *Raad van State* en the *Staten-Generaal*, both of which take a lexical loan translation.

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[78] As in the Spanish translation, the Dutch archaism *alzoo…zoo* is sacrificed in this translation, for clarity's sake. As in the Spanish translation, the text's antiquity and linguistic peculiarity are of a lesser concern for the translation and legally superfluous.
[79] The capital is used to emphasise the fact that the writer uses the majestic plural. The Spanish translation could serve as a guideline in keeping the uppercase letter.
[80] While the Spanish translation preferred the verbalisation of *in overweging nemen*, the English clause is allowed to be almost an exact lexical copy of the Dutch source text, as the English **take into consideration** is as formal and widespread as the Dutch.
[81] Dutch *noodzakelijk*, etymologically Germanic, is rendered in the Latinate cognates of **necessary** and necesario. English and Spanish share a large Latinate vocabulary of cognates,which rarely are false friends. In translating a Germanic word from Dutch, the mediating translation almost universally proves helpful.
[82] *Vaststellen* has multiple possible translations in English too. The Spanish cognate of **stipulate** proves unhelpful, even misleading, in this case. In the sense of *een wet ontwerpen*, **draft** comes closest to the original Dutch meaning.
[83] As in the Spanish translation, the term **Penal Code** can refer to any penal code, and this reference to the Dutch one does not warrant a further specification as in **…of the Netherlands**. As English law furthermore lacks a penal code of its own, confusion with the target culture penal code, which is possible in Spanish, is out of the question in this translation.
[84] In the Spanish translation the pronoun *het* is incorporated in the finite verbes, but in English the formal Dutch *zo is het* can be translated word for word.
[85] In the source text, the auxiliary verb *hebben* or *hebbende* is implied through the use of the past participle *gehoord*, but its omission is not grammatical in contemporary English, unlike in Spanish.
[86] **Council of State** is a lexical calque which keeps the semantic structure of the source text. An alternative would be **state council**. Unlike the similar term and cognate Consejo de Estado in Spanish, English law's **Counsellors of State** is not an advisory board, but a group of persons who exercise royal functions when the monarch is unavailable. An equivalent legal body to the Dutch *Raad van State* is the English **Privy Council**.
[87] The English **agreement**, like acuerdo, does not have the same meaning as *overleg*, but the collocation with **mutual** is given by several dictionaries as a direct translation of Dutch *in gemeen(schappelijk) overleg*.
[88] As in Spanish, the English translation is a direct loan translation of the Dutch word. Apart from the historical French States-General, there are no other States-General, so this term can only refer to the Dutch institution.
[89] *Gelijk* here faces the same complication in translation as in Spanish, in that there is no equivalent archaism with the same meaning. Therefore, the unmarked **as** is used.
[90] *Bij deze(n)* can either take English **hereby** or the slightly more marked **herewith**. I chose the latter to reflect the overall archaic style of the source text. The Spanish fixed expression por la presente is not useful in this instance.
[91] As Dutch *vaststellen* has multiple meanings, its two appearances are rendered differently in both the Spanish and English translation. Here, **adopt** is used in the sense of adopting the **stipulations** in the Penal Code as legally binding,
[92] The Spanish translation is of no help here, as it adds a determiner which would be ungrammatical in the English translation.

English source text

"**Criminal Law Act 1967**

1967 CHAPTER 58

An Act to amend the law of England and Wales by abolishing the division of crimes into felonies and misdemeanours and to amend and simplify the law in respect of matters arising from or related to that division or the abolition of it; to do away (within or without England and Wales) with certain obsolete crimes together with the torts of maintenance and champerty; and for purposes connected therewith. [21st July 1967]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:"

(Excerpt from the **Criminal Law Act 1967**)

Spanish (mediate) translation

"Ley[93] de Derecho Penal[94] 1967[95]

1967 CAPÍTULO (*Número*) 58[96]

Una Ley[97] para enmendar la ley[98] de Inglaterra y Gales[99] por derogar[100] la división de delitos[101] en "felonies" y "misdemeanours"[102] y para[103] enmendar y simplificar la ley con respeto a los[104] asuntos

[93] Any **Act of Parliament** is a ley in Spanish. Contrary to the previous text however, the **act** is not a ley orgánica because English law has no single constitutional text which prescribes the regulation of affairs by law.
[94] Though derecho penal in running texts is written in lower case as in English, nouns in titles are often capitalised in Spanish, as is the case in the title of the Código Penal itself.
[95] The source text does not use a preposition to link the act to a year. Spanish leyes orgánicas similarly omit de, as the Código Penal is officially titled Ley Orgánica 10/1995.
[96] As in novels, a legal **chapter** is also a capítulo in Spanish. But in this specific case, the English **chapter** puts this act in relation to other acts decreed this year, meaning it is actually "act number 58". I have included this explicitation in parentheses. The italicised typography denotes that it is not present in the source text.
[97] Since the act refers to a specific Act of Parliament, the capital is kept in the translation, which is also the preference of Spanish legal texts, where the name of theLey is capitalised throughout the text.
[98] The **law** in general is also ley,so the latter is used twice in different meanings in the translation. The difference between the countable and uncountable noun is expressed in the indefinite article and the uppercase of the first instance of the word.
[99] The translation uses the established Spanish exonyms for the English endonyms of England and Wales, as they are both instantly recognisable and legally relevant.
[100] Both the cognate abolir and derogar are suitable translations of **abolish**, but the former is a so-called defective verb in Spanish, meaning its usage is severely limited in terms of person, tenses and modes. Therefore, the equally equivalent derogar is a better option here.
[101] As chapter 3 showed, delito is a generic term for any offence in Spanish. This corresponds to the way **crime** is used in the source text, being subdivided into felonies and misdemeanours.
[102] The translation takes uses loan words from the source text, because this is the only way in which the text would legally make sense. Having established the jurisdiction as that of England and Wales would make it unnatural to see the Spanish equivalents (delitos and faltas)

proviniendo[105] de o relacionados con esta[106] división o la abolición de ella[107]; para suprimir[108] (dentro o fuera[109] de Inglaterra y Gales) ciertos delitos anticuados[110] junto con los “torts” (*actos ilícitos*)[111] “maintenance” y “champterty”[112]; y por propósitos vinculados con el mismo[113]. [21 de julio de 1967]

Que se apruebe[114] por la más Excelente Majestad[115] de la Reina, por y con[116] el consejo y el consentimiento de los Lores Espirituales y Temporales[117] (*que constituyen la Casa de Lores, la Cámara Alta del Parlamento*[118]), y Comunes (*la Cámara de los Comunes, la Cámara Baja del Parlamento*)[119], reunidos en el presente Parlamento, y por la autoridad de los mismos[120], como sigue[121]:”

Dutch (target) translation

Like the translation of the previous text, this translation will be oriented towards the source culture, having no legal effect. The supposed purpose of the translation will be to feature in a series on legal

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in the target text, especially since current Spanish law has a tripartite division of offences rather than the two mentioned in the English source text. Another possibility would be giving these legal equivalents in parentheses, but I judged that to be unnecessary in this specific translation. Ultimately, since this particular Act would bring about a change in terminology, the terms to be changed should at the very least be mentioned.

[103] The English particle **to** is repeated in the source text in the sense of “in order to”. Spanish lacks the particle and the corresponding function of the infinitive, so it repeats para.

[104] Spanish prefers the use of the definite article in this case, because the **matters** are further specified.

[105] As Spanish employs the subjunctive mood much more regularly than English, this could have been an instance where the target text takes the subjunctive rather than the present participle of the source text. However, **arising** denotes a high degree of certainty, and therefore the Spanish verb takes the gerund as well.

[106] Spanish has two distal demonstratives, aquello and ese, whose usage varies. However, in this specific case where the **division** has been mentioned before in the sentence, the proximal demonstrative este denotes the proximity of the word better and makes for a more natural Spanish translation.

[107] The source text uses the slightly marked **of it** which follows the noun rather than the unmarked possesive **its**. The **of it**-construction is preserved in the Spanish translation. The usage in Spanish is however significantly less marked, especially in legal texts.

[108] **Do away** in contemporary English is informal, in the sense of “getting rid of”. Though its use in the source text was possibly of a higher register in its time, the Spanish suprimir incorporates the current English ambiguity, but is more neutral and suitable for legal texts.

[109] The archaic alliterative **within or without** has no similar fixed (alliterative) equivalent in Spanish, but dentro o fuera de España is used in Spanish Civil Law documents.

[110] Although the cognate obsoleto is another possible translation here, the RAE defines itas referring to words which are rarely used, whereas anticuado also means “not of this time”, “out of fashion”, “inappropriate”. More convincingly though, the Código Penal uses anticuadoin relation to delitos.

[111] The English concept of the tort is rather different than its equivalent in Spanish law. The acto ilícitois close enough to be given as an equivalent in parentheses though, as like **torts** it can be either penal or civil.

[112] As these are two particularly Civil Law torts, they are of less interest to my thesis. Even though **maintenance** is close to Spanish alimentos, the fact that it is obsolete nowadays makes giving a translation or equivalent rather irrelevant. **Champerty** to my knowledge has no equivalent nor translation in Spanish.

[113] Con el mismo literally means “with the same”. In this sense it is the only plausible translation of **therewith**, as it is equally formal.

[114] While English **be** has an imperative function, it uses a subjunctive form in a rather formulaic way (Williams, 2007:145). The Spanish subjunctive form is less marked and lacks the imperative function of the English original, but it expresses a clear hope and is frequently used in Spanish legal texts. The se-marker makes the verb passive.

[115] Spanish royals usually take the title Su Majestad, a direct equivalent of English **Her Majesty**, and so the source text clause is translated literally into Spanish.

[116] While por y con is less used in Spanish, it is an accurate translation of **by and with**.

[117] These are accepted and long-established Spanish translations of the English terms. This justifies their translation, as opposed to keeping the legally and linguistically obsolete **misdemeanour** and **felonies** earlier in the translation.

[118] These explanatory clauses clarify and justify the direct translation of the names of the Lords. Another possibility was translating them as either Cámara Alta (“upper house”), or Cámara de los Lores with an explanation. This solution however sustains both the textual integrity of the source text and the informative function of the target text.

[119] A similar solution to that of the Lords, but comunes(“the lower house”) is repeated in the parentheses. La Cámara de los could have gone in parentheses in front of Comunes, but this distorted the readability of the text and undermined the source text structure.

[120] The English **the same** makes no distinction between singular and plural, but the context implies the latter is meant here.

[121] A literal and formal equivalent often seen in the Código Penal.

language in different countries, and its supposed audience will be any Dutch reader interested in foreign languages, legal or not.

"*Strafrechtwet 1967*[122]

1967, HOOFDSTUK[123] *58*

Een Wet[124] *om de wet van Engeland en Wales te wijzigen*[125] *en de verdeling van delicten*[126] *in "felonies" en "misdemeanours"*[127] *af te schaffen*[128] *en om*[129] *de wet*[130] *te wijzigen*[131] *en te*[132] *vereenvoudigen ten aanzien van*[133] *zaken die voortkomen*[134] *uit of gerelateerd zijn*[135] *aan die verdeling of de afschaffing daarvan*[136]*; om bepaalde verouderde delicten af te schaffen*[137] *(binnen of buiten*[138] *Engeland en Wales),*[139] *samen met de "torts"*[140] *"maintenance" en "champerty"*[141]*; en voor kwesties die daarmee in verband staan. [21 juli 1967]*

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[122] Dutch *wet* can come last in a compound with the other noun, such as in the *Opiumwet*, or first in a phrase, such as in *Wet op de economische delicten*. Since the former is closer to English legal style (where Act always comes at the end), I have opted to go with *Strafrechtwet* rather than *Wet Strafrecht*.

[123] As in the Spanish translation, the English **chapter** is a *hoofdstuk* but its meaning in this sense has to be clarified, as the Spanish translation exemplifies. In the context of this particular translation, where not interrupting the running text is preferable, the term **chapter** can ideally be explained in a footnote. Since footnotes here are already used in defending translation choices, I imagine the text to be something as follows: "*Met 'hoofdstuk' wordt hier bedoeld het nummer van de wet in de volgorde van wetten die dit kalenderjaar al zijn verschenen*".

[124] Since it refers to a particular law, this word is capitalised. It furthermore retains the capital of the source text word and differentiates it from *wet* in a more general sense used later in the sentence. This was the same in the Spanish translation.

[125] While both the Spanish and English cognates of **amend** can mean "to improve" or "alter", Dutch *amenderen* is much more restricted in its use and can only mean "to make amendments". Even though this particular was to change English law, it was not an amendment in the strictest sense of the word. Therefore, I have opted to go with *wijzigen*, which is just as apt in this case.

[126] Even though *strafbare feiten* would be a more suitable translation in terms of anticipating the division of offences, **crimes** has the connotation of being a more serious offence, as does Dutch *delicten*. Spanish uses a cognate of the latter Dutch word with the exact same double meaning.

[127] As in the Spanish translation, keeping the original terminology makes the most sense in this case, as they are to be altered in legislation.

[128] In archaic legal texts, the infinitive could precede the noun phrase like in Spanish and English, but this would be highly marked, unlike the source text.

[129] As **to** is superfluous in this sense as a repetition of **to** earlier on in the text, the translation also repeats *om*, just as the Spanish.

[130] Like in the Spanish translation, *wet* gets a lowercase 'w' in this general sense.

[131] Even though **amend** in this sense comes closer to *amenderen*, I have decided to repeat the similar *wijzigen*, as this is also the case in the source text and the Spanish translation.

[132] The repetition of the particle **to** where two infinitives are connected by a conjunction is optional in English, and the source text clearly holds the verbs **amend** and **simplify** to be in close connection as there is only one particle **to** (which is also used in the sense of "in order to"). This would be ungrammatical in Dutch. Note that there are no complications at all in Spanish, where there is no infinitive particle.

[133] Unlike Spanish, Dutch has no complex preposition containing a cognate of **respect**, but *aanzien* is very close semantically.

[134] Using the present participle *voortkomende*, as in Spanish and English, is a possibility here but would be more marked in Dutch, therefore the present indicative is used.

[135] Having made the previous translation choice necessitates the use of the determiner *die*, which in turn requires an auxiliary verb linking to *gerelateerd*.

[136] In imitation of the style of the source text, the translation uses the possessive *daarvan*, which succeeds the noun. Unlike the Spanish translation however, this is as unusual in Dutch legal texts as in English.

[137] While Spanish has a translation that incorporated both the modern meaning and the previous neutral register of **do away with**, Dutch lacks this.

[138] Unlike Spanish, there is no Dutch equivalent expression **within or without**.

[139] The word order of Dutch warrants a comma here which is non-existent in the source text. Another possibility would be placing *af te schaffen* after "champerty", but this would deviate further from the source text.

[140] As in the Spanish translation, **torts** is kept as a loan word. Its Dutch equivalent, the *onrechtmatige daad*, is too different to be used as a direct translation. An explanatory footnote could provide it nevertheless, and set out the difference between the two terms. The Dutch *onrechtmatige daad* is exclusively a civil law matter, unlike its English and Spanish counterparts.

[141] Since these torts are long since abolished, translating them into contemporary Dutch without context would be confusing (the mediate translation faced the same problem with the same solution). As with **torts**, it would perhaps be best to give a description of the individual definitions of these torts, if at all.

Laat[142] *het bepaald zijn*[143] *door de Koningins meest Excellente Majesteit*[144]*, door en met het advies en de toestemming van de Geestelijke en Wereldlijke Lords*[145]*, en Gemeenten*[146]*, in dit huidige Parlement samengekomen, en door de autoriteit van diezelfden*[147]*, als volgt*[148]*;*"

The role of the mediate translation

The mediate text established a precedent for the target translation for the use of loan words, or rather the retaining of the original terminology of the source text where necessary. The mediate text's explicitation of **torts** with its Spanish equivalent was of no use in the target text however, a fact of which the legal translator should be aware. Like the mediate translation, the target text furthermore used one translation for the distinct English terms of **act** and **law**, both differentiated by using the upper case. Owing to the imaginary linguistic focus of the target text, the explicitation used by the Spanish text to further specify the **Houses of Parliament** was unnecessary in the Dutch translation. It would however have given the translator good suggestions in other translation purposes.

Dutch source text

"*Boek 1. Algemene bepalingen*

Titel I. Omvang van de werking van de strafwet

Artikel 1

1 Geen feit is strafbaar dan uit kracht van een daaraan voorafgegane wettelijke strafbepaling.

2 Bij verandering in de wetgeving na het tijdstip waarop het feit begaan is, worden de voor de verdachte gunstigste bepalingen toegepast.

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[142] *Laat* expresses the imperative function of the source text, but loses the subjunctive form, which was very natural in the Spanish translation. An alternative would be translating **be** with *moge*, but this would make the translation lose the imperative function and express only hope of enacting.

[143] The use of the participle requires this auxiliary verb, which furthermore acts as the only direct translation of **be**. Alternatively, the entire phrase could be rendered as *wees(t) (het) nu bepaald*, but this would be unnatural in Dutch and much more marked than the English source text.

[144] A rather literal translation. There is no equivalent established Dutch phrase (the *Wetboek van Strafrecht* does not refer to the King other than to his titles), but Dutch monarchs can be referred to as *Zijne Majesteit* or *Excellentie*.

[145] To my knowledge there is no established Dutch translation of the Lords in the same style as Spanish lores. I have therefore opted for a calque, but keeping the term **Lords**, which is essential in this case. Once more, an explanatory footnote could clarify that the upper house of Parliament is meant.

[146] In Spanish, Comunes is both a cognate and translation, stemming from a direct translation of **House of Commons** as Cámara de los Comunes. No such cognate translation exists in Dutch, and most Dutch mentions of the English lower house refer to it as *Lagerhuis*. The translation *Huis der Gemeenten* used to be common however, stemming from the fact that the representatives in **commons** represented specific communities.

[147] Like the Spanish translation and unlike the source text, the Dutch translation specifies the plural.

[148] As in the source text and the Spanish translation, this phrase is placed far from the clause it belongs to, which is the actual enacting beginning the paragraph.

Artikel 2

De Nederlandse strafwet is toepasselijk op ieder die zich in Nederland aan enig strafbaar feit schuldig maakt.

Artikel 3

De Nederlandse strafwet is toepasselijk op ieder die zich buiten Nederland aan boord van een Nederlands vaartuig of luchtvaartuig aan enig strafbaar feit schuldig maakt.

(…)

Titel II. Straffen

Artikel 9

1 De straffen zijn:

a) hoofdstraffen:

1 gevangenisstraf;

2 hechtenis;

3 taakstraf;

4 geldboete;

b) bijkomende straffen:

1 ontzetting van bepaalde rechten;

2 verbeurdverklaring;

3 openbaarmaking van de rechterlijke uitspraak.

2 Ten aanzien van misdrijven die worden bedreigd met een vrijheidsstraf of een geldboete of ten aanzien van overtredingen die worden bedreigd met een vrijheidsstraf kan in plaats daarvan een taakstraf worden opgelegd. Een taakstraf bestaat uit een werkstraf, zijnde het verrichten van onbetaalde arbeid, of een leerstraf, zijnde het volgen van een leerproject, of een combinatie van beide.

3 In het geval gevangenisstraf, hechtenis, vervangende hechtenis daaronder niet begrepen, of een taakstraf wordt opgelegd, kan tevens een geldboete worden opgelegd.

4 In geval van veroordeling tot gevangenisstraf of tot hechtenis, vervangende hechtenis daaronder niet begrepen, waarvan het onvoorwaardelijk ten uitvoer te leggen deel ten hoogste zes maanden bedraagt, kan de rechter tevens een taakstraf opleggen.

5 Een bijkomende straf kan, in de gevallen waarin de wet haar oplegging toelaat, zowel afzonderlijk als te zamen met hoofdstraffen en met andere bijkomende straffen worden opgelegd."

(Excerpt from the *Wetboek van Strafrecht*)

Spanish (mediate) translation

"Libro[149] 1[150]. Disposiciones generales[151]

Título I[152]. De[153] la extensión de la aplicación[154] de la ley[155] penal

Artículo 1

1. No hay[156] hecho punible[157] excepto[158] en virtud de una sanción penal[159] anterior prescrita[160] por ley.

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[149] Both the Dutch and Spanish penal codes are subdivided into **books** (libros/*boeken*) and **titles** (títulos/*boeken*). Spanish further distinguishes **chapters** (capítulos/*hoofdstukken*), groupings of articles with the same subject.

[150] The Código Penal uses Roman numerals in its book numbers, but I have opted to stick to the Dutch preference in this sense, to convey the make-up of the source text.

[151] Both a direct translation as well as the general name of the first book of the Spanish Penal Code.

[152] The Código Penal's first title is actually preliminar ("preliminary"), followed by Título I, which sets out the different types of offences. The articles are very much like their Dutch counterparts in terms of content.

[153] Títulos are always followed by a description of its content preceded by de, "about". Even though this preposition is absent in the source text, we could argue that it is implied in the sentence (as in "*over de omvang van de werking…*").

[154] Although not a straightforward dictionary equivalent, *werking* here is meant in the sense of application of the law, as in "how it takes effect". Furthermore, this is the description the Código Penal gives to its opening articles; de la aplicación de la Ley.

[155] The Código Penal uses a direct equivalent of *strafwet* as ley penal.

[156] Third person indicative of the verb haber, meaning "there is". This is a common form in legal Spanish to denote the non-existence of something, for example in no hay pena sin.. ("there is no punishment without").

[157] A literal equivalent which is also often found in the Spanish Penal Code. In the previous translation we saw delito as a term for offences in general, but in the light of the legal implications of that word (as being different from a falta) makes its use impractical here. The Código Penal itself refers to *feiten* as either acciónes or omisiones.

[158] Dutch *dan* is used in the archaic sense of "except for". Spanish lacks an equivalent archaic word with the same meaning.

[159] Literally, a dispoción penal, but the Penal Code more frequently uses sanción penal, literally the rather double "penal measure of punishment".

[160] Prescrita is here both part of the translation of *voorafgegaan* (in the sense of "written up beforehand") as well as of *wettelijk* (in the sense of "existing law").

2. En el caso de un cambio[161] en la legislación después del momento en que se produjo[162] el hecho, se aplicarán[163] las disposiciones[164] más favorables[165] para el reo[166].

Artículo 2

El ley penal neerlandés[167] se aplica[168] a cada reo[169] de cualquier[170] hecho punible en[171] los Países Bajos.

Artículo 3

El ley penal neerlandés se aplica a cada reo de cualquier hecho punible a bordo de un buque[172] o aeronave[173] fuera de los Países Bajos.

(...)

Título II. Penas

Artículo 9

1. Las penas son[174]:

a) penas principales[175]:

1 prisión;

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[161] The indefinite *verandering* either requires an indefinite article (which is not in the source text) or a plural (without article) in Spanish.
[162] *Begaan* is usually translated as cometer, and cometer un hecho is an acceptable Spanish collocation. However, in the passive form, producirse un hecho is the preferred collocation.
[163] This particular form of aplicarse, the third person plural passive future tense, is a direct translation of *worden toegepast* and is found throughout the Código Penal.
[164] Without the modifying *straf-*, the *bepaling* is simply a disposición.
[165] As *gunstig* is used adjectively, so is favorable here. An alternative option would be using the subjunctive form of the verb favorecer, which is the preferred usage in the Spanish Penal Code, as in "que más favorezcan al reo".
[166] Whereas the Dutch Penal Code seems to consider the hypothetical offender merely a suspect, its Spanish counterpart considers him or her guilty in the general provisions. Reo can also mean *verdachte*, but it is used throughout the Código Penal to mean "one guilty of" (see chapter 3 for alternative Spanish translations for *verdachte*).
[167] In colloquial Spanish as in English, the phrases neerlandés and holandés are used interchangeably to refer to anything Dutch. When referring to linguistic matters, holandés is preferred, especially when opposed to Belgian Dutch. In this more formal instance, setting out the jurisdiction of the Penal Code, neerlandés is more apt in referring to the entire country, rather than the more expressive holandés (historically referring only to the provinces of Holland).
[168] The passive participle with auxiliary verb (as in está aplicable) is rare in Spanish legal texts (see Vidal, 1998), therefore the passive with se is used instead.
[169] Spanish has no equivalent for the inchoative *zich schuldig maken aan*, therefore I translated *[hij] die zich schuldig maakt* as the result of the *schuldig maken*, being a reo. The translation now literally reads "each guilty [person]" rather than "anyone guilty of".
[170] *Enig* is used in the sense of any, or *een of ander*. Spanish cualquier is of a less high register but can be found throughout the Código Penal.
[171] Either en or dentro are possible here, but the Spanish Penal Code solely uses en España to refer to its jurisdiction. The previous translation used dentro however, to distinguish it better from its antonym fuera.
[172] A buque is essentially a seaworthy vessel. The Código Penal uses buque throughout.
[173] Just as *luchtvaartuig*, any airborne vehicle is meant here. This equivalent is also used frequently in the Spanish Penal Code.
[174] The Código Penal introduces its punishments per category, as in "son penas graves:", followed by a list, but this is not the case in the source text.
[175] As shown in chapter 3, most of these terms are readily translatable and both literal and legal equivalents.

2 detención[176];

3 trabajo[177] en beneficio de la comunidad;

4 multa[178];

b) penas accesorias:

1 la privación de ciertos derechos[179]

2 decomiso[180]

3 publicación de la sentencia[181]

2. Con respecto a delitos[182] que se castiguen[183] con una pena privativa de libertad[184] o una multa,[185] o con respecto a faltas que se castiguen con una pena privativa de libertad, se puede[186] imponer en vez de ellas[187] trabajo[188] en beneficio de la comunidad. El[189] trabajo en beneficio de la comunidad consiste en una pena laboral[190], lo que es[191] hacer trabajo sin pago, o una pena sancionadora-educativa[192], lo que es seguir un proyecto de estudios, o una combinación de ambos[193].

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[176] While *hechtenis* in Dutch law is defined as any imprisonment from one day up to a year, Spanish detención usually only takes some days. We speak of prisión from three months upwards, so the translations and equivalents of *hechtenis* and *gevangenisstraf* overlap, and they can be used depending on the context of the source text. Since *hechtenis* is expressly used here to differentiate it from *gevangenisstraf*, I have opted to go with detención.

[177] Even though the source text *taakstraf* is singular, the exact equivalent in Spanish is more often found in the plural. Nevertheless, I have opted to provide the less common singular to be closer to the source text.

[178] The modifiying *geld* disappears in Spanish. Whereas *boete* in modern colloquial Dutch has the same meaning as multa (i.e. a pecuniary penalty), *geld* is added in the Penal Code to distinguish it clearly from *boete* in the sense of the more spiritual penance.

[179] The Spanish Penal Code, in listing its punishments, provides each privación independently, such as in la privación del derecho a.

[180] Despite not being mentioned specifically as a punishment in the Spanish Penal Code, decomiso is a valid propositional translation of *verbeurdverklaring*.

[181] As with decomiso, this literal equivalent is mentioned throughout the Código Penal, but not as a punishment.

[182] Even though delitos are further subdivided in Spanish law in delitos graves and menos graves, their definitions closely resemble those of *misdrijven* and the extra subdivision does not make delitos less of an exact legal equivalent.

[183] Spanish legal language only uses amenazas for actual physical threats and exclusively in the context of perpetrating offences. Delitos are therefore not amenazado, but rather castigado with a certain pena. The use of the subjunctive indicates the modality of the Dutch *bedreigd worden* rather than *gestraft worden*.

[184] Literally a "punishment depriving of freedom", this includes prisión and all other *vrijheidsstraffen*.

[185] The source text lacks the comma here but in terms of legibility and clarity I felt it would not be amiss in the target text.

[186] I preferred the subjunctive here to clearly express the distant possibility. However, poderse in a collocation with imponer is solely found in the indicative in the Código Penal.

[187] *Daarvan* can denote either the singular or plural and the context is also unclear (is there only one pena that can be replaced, or multiple?), but since it refers to various penas, I decided that the plural was more apt in this case.

[188] Spanish scarcely uses articles when referring to punishments, so trabajo en.. can be read as un trabajo en...

[189] The definite article here specifies that the concept of the punishment is discussed here.

[190] A calque, as Dutch *werkstraf* is no real legal concept, but rather a specification of what a *taakstraf* entails.

[191] Translating the present participle as in siendo would make the Spanish translation rather unnatural. Siendo is used for different purposes in Spanish legal texts, notably in describing someone's state, profession or function during specific events.

[192] An equivalent term of *leerstraf*, which is like *werkstraf* not a legal concept, is non-existent in Spanish criminal law, even in juvenile law. However, the Código Penal mentions punishments with a sancionadora-educativa (punishing educational) element, and so that is the modifier I used here.

[193] Ambos here indicates a neutral gender, reflecting the fact that trabajo is masculine and pena feminine.

3. En el caso en que se impone[194] prisión, detención, no incluyendo en ella detención subsidiaria[195], o trabajo en beneficio de la comunidad, se puede también imponer una multa.

4. En casos[196] en que se imponen prisión o detención, no incluyendo en ella detención subsidiaria, de que la parte sin suspensión de condena[197] suma seis meses a lo más, el juez también puede imponer un trabajo en beneficio de la comunidad.

5. Una pena accesoria se puede imponer, en los casos en que la ley permita[198] su imposición, tanto separadamente como conjunta con penas principales y con otras penas accessorias."

English (target) translation

For the purpose of this particular translation, we can imagine that the British Parliament has decided that the Netherlands has the most practical and best functioning Penal Code and that it should come into effect in England and Wales in the form of an Act. However, the assignment is for the institutions and terminology of English criminal law to remain in use, resulting in a largely target culture based translation.

"Book[199] 1. General provisions[200]

Title[201] I. Extent[202] of the effect[203] of the Criminal Law Act[204]

Article[205] 1

[194] The finite verb comes before the the subject here, as opposed to the source text. The subjunctive is changed to the indicative, because the source text does not include *worden bedreigd*, but rather *worden opgelegd*.
[195] The idea of a pena subsidiaria is not mentioned in the Spanish Penal Code, therefore I have settled with this calque.
[196] The source text lacks an article, in which case Spanish mostly takes a definite article or an indefinite plural.
[197] In the case of this syntactically and lexically challenging source text, I have decided to translate solely its meaning. The *onvoorwaardelijk ten uitvoer te leggen deel* is then interpreted as the length of the sentence that has to be sat out at any case. *Ten uitvoer te leggen* has been omitted in the translation for clarity's sake, as it is a syntactic construction that is rare in natural Spanish and has no legal implications.
[198] The subjunctive once more denotes the distant possibility.
[199] Although not a term usually seen in codified English law, its use here stems from the sense of the larger division in a written work, like Spanish libro.
[200] Used independently, *bepalingen* can be translated as **stipulations** (see the first translation of this chapter), but in a collocation with **general**, **provisions** is more widely used.
[201] In English law, **titles** are the headings of an Act of Parliament.
[202] Unlike Spanish, titles of divisions in codified English law do not start with "Of the…", so the translation lacks an article like the source text.
[203] As in the Spanish translation, *werking* retains the sense of taking **effect**.
[204] Since this translation uses target culture terms, the individual *wet* here is translated as **act**. Since "criminal act" would be rather ambiguous in the context of the title, I inserted **law** for clarification, even though the source text did not read *strafrechtwet*. In the hypothetical scenario where the Dutch Penal Code actually becomes English law, however, its title may very well be Criminal Law Act.
[205] English Acts do not refer to its subdivisions as **articles**, but rather as **sections**. Within Acts of Parliament, these are not named, but are merely introduced by a number (see the next source text for examples). Alternatively then, we could argue doing away with the term **articles** in this translation. It is however used in other aspects of English law, such as in **Orders in Council**. Since this text is ultimately a translation

1. No act[206] is punishable but from[207] the force of a thereto[208] preceding legal criminal provision[209].

2. In case of changes[210] in legislation[211] after the moment in which the act is[212] committed, the most favorable provisions for the defendant[213] will be applied[214].

Article 2

The English[215] Criminal Law Act is applicable toanyone guilty[216] of any offence[217] within[218] England and Wales[219].

Article 3

The English Criminal Law Act is applicable to anyone guilty of any offence without[220] England and Wales, on board an English or Welsh vessel[221] or aircraft.

(…)

Title II. Punishments[222]

Article 9

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of the Dutch Penal Code, I have decided to keep the term **article**. Note that the Spanish translation is not useful in this instance, as its codified law simply uses different terminology.

[206] *Feit* implies a *handeling*, and English **fact** does not necessarily reflect that implicit meaning (unlike hecho). Even though criminal actions can consist of acts and omissions, I think **act** (as in a "factual act") covers the meaning of *feit* well.

[207] An equally archaic construct as Dutch *dan van..*, with the same meaning and register.

[208] This term is more archaic in English than its Dutch counterpart. Alternatively, it could be omitted from the translation as it is quite redundant in this sentence.

[209] This could as well have been translated as **penal provision**, to emphasise the *straf* in its sense of specifc punishment, but **criminal provision** is a well-established translation of *strafbepaling*.

[210] The translation takes the plural, because "change in legislation" would seem to suggest a complete overhaul of legislation, rather than minor changes. Alternatively, "a change in legislation" is also possible.

[211] The definite article is dropped in the translation due to **legislation** being an uncountable and abstract noun.

[212] A present tense like the source text, but **was** would have been equally apt here.

[213] Syntactically this passive sentence differs much from the Dutch, where the verb phrase encloses the rest of the phrases. Any other word order in English would result in an archaic and perhaps unnatural text.

[214] Even though the English language uses the passive voice less than Dutch, we already saw that legal texts were an exception to this rule. Furthermore, since there is no agent (in a prepositional phrase) in the source text, coming up with one in the target text requires some creative liberty (which this particular translation arguably permits). See footnote 252 below for an alternative.

[215] An instance of cultural substitution; since the Dutch text is being adapted to the English jurisdiction, the source text references to the Netherlands are, of course, to be transposed by references to the new jurisdiction (in this case, England/Wales).

[216] Like Spanish, English lacks the Dutch inchoative *zich schuldig maken*. Instead, one simply is guilty, just as the Spanish reo.

[217] While a simple *feit* (see footnote 223 above) is an act, the *strafbaar feit* ("punishable fact"), which does not further specify the type of crime, is effectively an **offence** in English law.

[218] Slightly archaic, but an effective designation in English legal texts, as well as common opposite **without** (see the previous translation and below).

[219] Supposing the joint criminal jurisdiction of England and Wales remains intact.

[220] This usage is more archaic than **within**, but it is nonetheless common in English legal texts in collocation with that term.

[221] Like Spanish, English does not have equivalents for *vaartuig* and *luchtvaartuig* which include the same morphemes.

[222] **Penalty** would be an alternative translation option.

1. The punishments are:

a) principal punishments:

1 imprisonment;

2 detention[223];

3 community sentence[224];

4 fine[225];

b) additional punishments:

1 the deprivation of specific rights[226];

2 forfeiture[227];

3 publication of the judicial[228] decision.

2. In respect of[229] indictable offences[230] which are liable to[231] a punishment depriving of freedom[232] or a fine, or in respect of summary offences[233] which are liable to a punishment depriving of liberty, the court[234] can instead impose a community sentence[235]. A community

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[223] Like its Spanish cognate detención,**detention** is not an exact equivalent of the Dutch (punishment of) *hechtenis*, as both its implementation (it is not a punishment) and the maximum duration vary between the two legal systems. It is however the closest equivalent in the English target culture, defined as "depriving a person of his liberty". As this translation is meant to serve a dramatic change in English criminal law, the definition of **detention** could ultimately change as well.
[224] Dictionaries recommend the neutral **community service**, but the legal equivalent of *taakstraf* in England and Wales is a **community sentence**, which is furthermore an umbrella term for several specific **community orders**.
[225] The lexical element *geld* in *geldboete* disappears from its English equivalent, as it did in Spanish multa.
[226] As English criminal law lacks codification of punishment, *ontzetting van rechten* is not a legal concept in English criminal law, therefore the translation is a calque. English courts do have the power to impose equivalent sanctions included in *ontzetting van rechten*, such as **removal** from office and **disenfranchisement**, however.
[227] Once more, the definitions of the terms slightly vary (see chapter three, footnote 60), but they are sufficiently equivalent (in the sense of deprivation of property after a criminal conviction) to be used as translations.
[228] Publication of a decision is not considered a punishment in English criminal law, therefore I translated by use of a calque. **Court decision** would have been another apt translation here, but since *rechterlijk* is an adjective, I preferred **judicial** in this phrase.
[229] English legal texts frequently use this phrase, see the second source text of this chapter for example.
[230] The English legal equivalent of *misdrijf*.
[231] A target culture translation of *bedreigd worden*. The latter has no clear legal function in Dutch and can therefore be translated freely.
[232] As English law does not group its punishments, there is no equivalent umbrella term for *vrijheidsstraffen* or penas privativas de libertad. Therefore, a calque is once more used.
[233] The English legal equivalent of *overtreding*.
[234] This phrase is made active by the insertion of **the court**, as I felt the passive voice in translation would be too contrived, and too source language oriented. Even though the agent is absent in the source text, it undoubtedly refers to courts, as they are the legal bodies ultimately imposing sentences.
[235] See footnote 243.

sentence consists of a labour punishment[236], which is[237] carrying out unpaid work, or an educational punishment[238], which is taking[239] a learning project[240], or a combination of these.

3. In case[241] the court[242] imposes[243] imprisonment, detention, not including alternative[244] detention, or a community sentence, it[245] can also impose a fine.

4. In case of conviction to[246] imprisonment or to detention, not including alternative detention, of which the minimum term[247] does not exceed[248] six months[249], the judge can also impose a community order.

5. An additional punishment can, in cases in which the law[250] permits[251] its imposition, be imposed[252] separately as well as together with principal punishments and other additional punishments."

The role of the mediate translation

Due to the fantastic purpose of the target text, the mediate translation proved less helpful in this occasion as the translation was decidedly target culture oriented. As discussed in chapter 1, this general approach of translating in the "spirit of the law" places emphasis on the use of target culture phrasing and terminology. Additionally, the mediate translation constantly emulated the source text's

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[236] Calque of *werkstraf*.
[237] *Zijnde* could have well been translated as **being**, but since *het verrichten* also takes the –ing suffix in translation, I opted to go with the relative clause.
[238] As with *werkstraf*, I decided to go with a semantically similar calque translation here. A more source culture oriented translation would result in **learning order**.
[239] Dutch *volgen* corresponds to **taking** in terms of taking a course.
[240] Once more, a quite literal calque translation of the Dutch. The collocation **learning project** is nevertheless found quite often in English.
[241] A literal equivalent of the Dutch phrase, with the exception of the omission of the definite article.
[242] The insertion of the active agent "**the court"** somewhat shuffles word order.
[243] Making the sentence active requires the finite verb to change its position to right after the noun phrase.
[244] It is unclear to me whether English law knows the concept of *vervangende hechtenis* (detention for non-payment of a fine or non-delivery of forfeited goods), making this calque a risky target culture oriented translation. The term **alternative** is used frequently in English law though, for example in the term **alternative verdict**.
[245] **It** refers to **the court** here.
[246] Usually the preposition is used in combination with the participle **convicted**, but it is also adequate here, as in the phrase "liable on conviction to…".
[247] This is the phrasing the **Sentencing Council** uses to refer to minimum time of imprisonment. It furthermore uses the term **determinate** and **indeterminate prison sentences**, but their definitions are slightly different from the meaning of *onvoorwaardelijk ten uitvoer te leggen deel*.
[248] A more formal translation than the more literal **at most**.
[249] Like the Spanish translation, the English target text significantly differs from the source text both syntactically and lexically. I judged the Dutch text to be too complex in terms of meaning and syntax. As I argued in chapter one, it is acceptable for translations to 'simplify' the source text if it has the same meaning and thus legal effect. In this sense, not all syntactic or even lexical elements of the source text are translated, only its meaning.
[250] **Law** is meant in the general sense here. It is more obvious in the target text, because of the alternative translation of *wet* as **act**.
[251] **Allow** was another potential translation here. Since **allow** and **permit** do not differ in register, markedness or their occurrence in legal texts, either could have been used.
[252] This verb phrase changes position to the front in the target text, next to the auxiliary verb.

frequent use of the passive, a phrasing which would have been both unclear and unnatural in the English target text. The mediate translation can nevertheless be said to be helpful in providing cognate translations for English terminology, as many terms involving punishments share the same etymology in Spanish and English. Furthermore, the Dutch phrase *ten aanzien van* takes a lexically similar phrasing in the English and Spanish expressions.

English

"**13 Child sex offences committed by children or young persons**

(1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 if he were aged 18.

(2) A person guilty of an offence under this section is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

14 Arranging or facilitating commission of a child sex offence

(1) A person commits an offence if—
(a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and
(b) doing it will involve the commission of an offence under any of sections 9 to 13.

(2) A person does not commit an offence under this section if—
(a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and

(b) any offence within subsection (1)(b) would be an offence against a child

for whose protection he acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if

he acts for the purpose of—

(a) protecting the child from sexually transmitted infection,

(b) protecting the physical safety of the child,

(c) preventing the child from becoming pregnant, or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of

causing or encouraging the activity constituting the offence within subsection (1)(b) or the

child's participation in it.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6

months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding

14 years."

(Excerpt from **Sexual Offences Act 2003**)

Spanish (mediate) translation

"13[253] Delitos sexuales[254] contra niños[255] por menores[256] o personas jóvenes[257]

[253] I follow the standard English subdivision standards here, but in a specifically target culture oriented translation, we could add artículo in front of this section number. Another option would be specifying it as a sección.

[254] A calque of the English source text. The Código Penal rather speaks of agresión sexual, abuso sexual and more generally in the case of adults, of delitos contra la libertad sexual. These are all legal equivalents of the umbrella term **sex offence**.

[255] The phrase **child sex offences** on its own may seem rather ambiguous; is the child the offender or the victim? I tried to avoid that ambiguity by using the preposition contra, in this case "against" (though a is also a possible translation, but the Código Penal only employs this preposition in combination with specific offences, such as acoso sexual and abuso). Niño (though linguistically masculine, of unspecified gender) is a direct translation of **child**, and the plural indicates its indefiniteness as is usual in the Código Penal. It is important to note that it uses the word niño in reference to victims, but less often than the more legally relevant menor ("minor").

[256] Niños are never mentioned as offenders in the Spanish Penal Code, and therefore I have used its more legally relevant term here. Alternatively, niño can be used here however to reflect the repetition of the word in the source text.

[257] Jóvenes on its own is also a possible translation here, as it implicitly includes **persons**, but its usage is more colloquial.

(1)[258] Una persona menor[259] de 18[260] años[261] comete[262] un delito[263] si hace[264] cualquier cosa[265] que sería[266] un delito bajo cualquier de las secciones[267] 9 a 12 si tuviera[268] 18 años.

(2) El reo[269] de un delito bajo esta sección puede estar condenado[270];

(a) en juicios de faltas[271], a prisión a un plazo que no excede[272] 6 meses o a[273] una multa que no excede el máximo estatutario[274],[275] o ambos;

(b) en juicios de jurado[276], a prisión a un plazo que no excede 5 años.

14 Organizar[277] o facilitar la comisión[278] de un delito sexual contra niños[279]

(1) Es reo[280] de un delito el que[281][282]–

(a) intencionadamente organizare o facilitare[283] algo que intenta[284] hacer, intenta que otra persona lo[285]

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[258] As in all translations, I have here too kept the typographical make-up of the source text.
[259] "**Under**" in terms of age is rendered as menor in Spanish, while menor also means a **minor**.
[260] The Código Penal writes numbers with reference to age both in full (as in dieciocho) and in numerals, with a slight preference for the latter.
[261] Often, de edad is added after años when specifying someone's age. In the Código Penal however, this usage is limited to ages written out in full.
[262] Cometer un delito is more source culture oriented. The actual Spanish phrasing refers to those committing an offence as el que …, es reo de ("he who …, is guilty of").
[263] See footnote 120 above.
[264] Clauses with si are rare in the Spanish Penal Code, as the most common definition of crime begins with el que. Still, si is the only straightforward translation of **if**. Clauses with si rarely use a present subjunctive, as it usually denotes a distinct possibility rather than uncertainty.
[265] **Anything** here seems to mean "whatever" here rather than "something". If the latter is meant, then algo would have been a more appropriate translation.
[266] The conditional tense in Spanish, as prescribed by the auxiliary **would** in the source text.
[267] A target culture translation should ideally refer to artículos here.
[268] The imperfect subjunctive reflects the uncertainty mentioned in the source text by **if he were aged**.
[269] As persona, a literal and equivalent translation of **person**, is feminine, reo would have to agree with the gender and become rea. The latter form is extremely rare, however, and is not mentioned in any Spanish legal documents. I have therefore opted to translate **a person guilty of** with el reo de, which covers the English meaning as a reo is always a person.
[270] **Liable** refers to the subsequent clauses and is in grammatical accordance with them, forming one sentence. Since the resulting sentences differ slightly in translation, I have translated "**being liable**" as puede estar condenado ("can be convicted"). Condenado is a verbal translation of **conviction**, in the form of a past participle used as an adjective.
[271] Spanish has no real equivalent of a **summary conviction** as opposed to a **conviction on indictment**, but sumario does have the meaning of "shortened" in legal Spanish, and sumariamente would be the corresponding adverb. The latter would have been an acceptable translation, but since I translate **conviction on indictment** with a specification as condenado en [un] juicio de jurado, I felt it was more fitting to use the same syntactic elements in both paragraphs to better contrast the two terms. Both juico de falta and juicio de jurado are furthermore terms in usage in legal Spanish, and their lexical make-up coincidentally describe the difference between **summary trials** and **trials on indictment**.
[272] The present indicative is more usual in legal Spanish in these cases, rather than the present participle of the source text.
[273] The source text does not repeat the preposition **to** here, but I felt it was necessary for clarity's sake.
[274] A literal translation of the source text, as its meaning is instantly recognisable. Spanish fines are reckoned in number of days, so their maximum is usually referred to as extensión maxima. The latter would have been a more target culture oriented translation.
[275] The comma is absent in the source text, but makes the text's meaning clearer.
[276] Spanish lacks a clear translation of the meaning of **indictment**, as well as an equivalent. Therefore, I have settled with this explicitation which is also an equivalent legal term, albeit with a degree of conceptual incongruity (not all Spanish delitos are tried by juries, as opposed to **indictable offences**).
[277] There are multiple Spanish translations of **arrange**, all equally fitting in this particular translation.
[278] Perpetración is also found in Spanish law in relation to delito, but the Código Penal exclusively uses commission de delito.
[279] A repetition of the section's titular translation of **child sex offence**.
[280] Even though una persona comete un delito si would be a more literal translation here, I wanted to repeat the reo used in the previous translation of **a person** for consistency's sake. This makes the translation particularly more target culture oriented, as it imitates the language of the Código Penal rather than being an accurate translation of English phraseology.
[281] El que is already a translation of **he** in the following paragraph. The phrase itself is featured throughout the Spanish Penal Code.
[282] **If** is omitted in this translation because of el que, which is followed by the subjunctive in the following paragraph.
[283] Here, the Spanish uses the future subjunctive, as is common in the Penal Code when defining offences.

haga[286], o cree que otra person lo hiciere[287], en cualquier parte del mundo, y

(b) al hacerlo[288] cometiere[289] un delito bajo cualquier de las[290] secciones 9 a 13.

(2) No comete[291] un delito bajo esta sección el que –

(a)[292] organizare o facilitare algo que cree que otra persona hiciera, pero que él[293] no intenta hacer o que no intenta que otra persona haga, y

(b) sirve[294] de protección de un niño víctima de cualquier delito en subsección[295] (1)(b).[296]

(3) A los efectos[297] de subsección (2), sirve de protección de un niño el que[298] actua[299] con el propósito de–

(a) proteger el niño de infecciones de transmisión sexual,

(b) proteger la integridad física[300] del niño,

(c) impedir que la niña[301] se[302] embarace, o

(d) promover el bienestar[303] emocional del niño por dar[304] consejos, y no con el propósito de obtener

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[284] The translation omits the personal pronoun **he**, because it is implied in the third person singular subjunctive and el que in the preceding clause.
[285] Neuter third person pronoun, referring back to algo. This usage is frequent in both colloquial and legal Spanish.
[286] Since the intention expressed here depends on the other person, the subjunctive expresses the uncertainty.
[287] In order to distinguish it from the relative uncertainty of haga in the previous sentence, the future subjunctive expresses more uncertainty than the present.
[288] This translation amounts to "in doing so" in back translation. Lo is a direct translation of **it** in the source text, both of which refer to **something** in the preceding paragraph.
[289] Due to the free rendition of subsection 1, this translation necessarily differs slightly from the source text in order to make sense. The target text reads "in doing so commits an offence", conveying the same meaning while omitting **involve** and using a verb for **commission**.
[290] The definite article is a grammatical necessity here in Spanish, but it is absent in the source text.
[291] Continuing in the same vein as the previous stipulations, a persona is again omitted, instead using a translation with el que. The Código Penal does not stipulate negations of guilt (as in no es reo de… el que), otherwise that would be a more fitting translation here.
[292] As in the preceding paragraphs, the third person pronoun is omitted in the translation throughout due to the presence of el que in the introductory phrase and the implicit agent in Spanish verb forms.
[293] Inserted to specify that the text still refers to el que, rather than otra persona.
[294]**Acting** as protection becomes "serving" as protection in Spanish (cf. Dutch *dienen*).
[295] Something of a calque, using a cognate of **subsection** with similar morphology. Subsección is a rare word in Spanish, but it is accepted as a translation of legal English. The Spanish Penal Code does not use it, but this translation follows the established English subdivision already. A more fitting target culture translation would render apartado (the first subdivision of an artículo in the Penal Code) or párrafo (any paragraph, not limited to legal texts).
[296] To make this paragraph grammatical and have meaning in combination with the section heading, the slightly confusing source text is rendered much simpler in translation. The redundant **would be an offence** is omitted, and **for whose protection he acts** is placed in front to follow el que directly. Instead of an offence being against the child, it is now a víctima of it.
[297] A target culture oriented translation, used in the Código Penal to refer back to earlier articles and stipulations.
[298] As with the source text, which continually refers to **a person**, the translation consistently refers to el que, omitting **if** each time.
[299] In this sense, **act** is closer to the cognate actuar than to server, though the latter is a possible translation.
[300] This is the phrase used in the Spanish Penal Code to refer to "physical safety", while it literally means "physical wholeness".
[301] As we can make sure that the referent is feminine, the generic el niño is replaced by the specific la niña.
[302] **Becoming pregnant** is rendered in the reflexive embarazarse in Spanish.
[303] A literal equivalent of (the lexical elements of) **well-being** which is nevertheless common in written Spanish, though not so much in legal Spanish. The Código Penal rarely refers to emotional well-begin at all, but rather to integridad moral, or "psychological integrity".
[304] **The giving** loses the definite article in the translation, as Spanish does not know the nominalisation of the present participle. **Giving** instead becomes the infinitive.

satisfacción[305] sexual o con el propósito de causar o alentar la actividad[306] que constituye el delito en subsección (1)(b) o la participación del niño en ella.

(4) El reo de un delito bajo esta sección puede estar condenado[307];

(a) en juicios de faltas, a prisión a un plazo que no excede 6 meses o a una multa que no excede el máximo estatutario, o ambos[308];

(b) en juicios de jurado, a prisión a un plazo que no excede 14[309] años."

Dutch (target) translation

The Spanish mediate translation came out more target culture oriented, and I endeavour to do the same in the Dutch target translation. The purpose of this translation will be an elucidation of English criminal codified law for Dutch legal specialists, which are familiar with Dutch legal terminology. The translation is not intended to have any legal effect.

"*13[310] Zedendelicten tegen kinderen[311] gepleegd door kinderen[312] of jongeren[313]*

(1) Hij die[314] nog niet de leeftijd van achttien[315] jaren heeft bereikt[316] pleegt een delict indien[317] hij enige handeling verricht[318] die een delict[319] zou zijn in een der[320] secties[321] 9 tot 12 indien hij wel[322] de leeftijd van achttien jaren zou hebben[323] bereikt.

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305 Gratificación is a false friend in this respect. The Spanish Penal Code does not refer to sexual gratification, so there is no clear legal equivalent in Spanish.
306 The plural las actividades would have been more natural in legal Spanish (an offence more frequently consists of multiple activities), but the source text specifically refers to only one activity that makes up this particular offence.
307 As the phrase in subsection 13(2) is repeated in the source text, so is its translation in the target text (see footnote 290).
308 See footnotes 291-296.
309 The only element which is different from subsection 13(2).
310 As in the Spanish translation, I will follow the English format. For the sake of this translation however, the translator could add in a footnote that English Acts are made up of sections rather than articles. Alternatively, he or she could opt for the addition of *Artikel* in front of section numbers, and translate references to **sections** and **subsections** with their Dutch Penal Code equivalents of *artikel* and *lid*.
311 *Zedendelicten* is an umbrella term for sexual offences in Dutch law (sometimes used interchangeably with *zedenmisdrijf*, which nevertheless constitutes more serious offences). The modifier **child** in **child sexual offences** could be added directly in front of it as a modifier, but *kinderzedendelicten* is never used in Dutch legal terminology. Instead, *zedendelicten tegen kinderen* is used as a translation, employing the emphatic *tegen* which is only implicit in the source text. The plural is used just like in the Spanish translation to indicate the indefinite character of the word, but *een kind* is also a possible translation.
312 *Kinderen* up to 12 cannot be prosecuted in Dutch law (as opposed to English law, see chapter three), and as a result they are never mentioned as potential perpetrators in Dutch criminal law. However, this translation is clear in its meaning in the sentence, and it is furthermore not supposed to have legal effect in Dutch law.
313 Dutch legal terminology varyingly uses terms as *jongeren* (ages 12 to 18), *adolescenten* (16 to 23) and *jeugdige personen* (under 18). Since I think *jongeren* is meant with **young persons**, I have decided to use that equivalent, deeming *jonge personen* too general.
314 Like Spanish el que, this is the standard phrasing in the *Wetboek van Strafrecht* for referring to a person (of any gender).
315 Dutch legal texts writes ages and years out in full, and I have decided to do so for all numbers in this text.
316 Standard phrase for referring to minors in the Dutch Penal Code. It is also found frequently in combination with *hij die*, but mostly interposed by relative clauses.
317 The most used subordinating conjunction in the Dutch Penal Code to denote conditions.
318 Target culture translation of **he does anything**, once more present in the Dutch Penal Code.
319 The *Wetboek van Strafrecht* almost solely refers to general offences as *strafbare feiten*, but since the title of this section already contains *delicten* as a translation of **offences**, I decided to be consistent with this terminology throughout the translation.

(2) Hij die[324] *zich schuldig maakt aan een delict in deze sectie kan worden gestraft*[325]*–*

(a) bij een overtreding[326]*, met gevangenisstraf van ten hoogste zes maanden*[327] *of*[328] *geldboete van ten hoogste het statutaire maximum*[329]*,*[330] *of beide;*

(b) bij een misdrijf, met gevangenisstraf van ten hoogste vijf jaren.

(14) Het verschaffen van gelegenheid of middelen[331] *voor het*[332] *plegen*[333] *van een zedendelict tegen kinderen*

(1) Hij[334] *pleegt een misdrijf indien–*

(a) hij opzettelijk gelegenheid of middelen verschaft voor[335] *iets*[336] *met het oogmerk*[337] *dat te doen, dat een ander dat doet, of waarvan hij gelooft dat een ander*[338] *dat zal doen*[339]*, in enig deel van de wereld,*[340] *en*

(b) bij[341] *de handeling*[342] *een delict wordt gepleegd*[343] *volgens een der secties 9 tot 13.*

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[320] Target culture translation of **any of**, used throughout the Dutch Penal Code. Another possible transltion is *in enige van*, which does not appear in Dutch criminal law texts, but does appear in contracts and statutes.

[321] As in the Spanish translation, this is a heavy source culture oriented translation. It could alternatively be translated with *artikel*.

[322] Adds positive emphasis to the verb.

[323] Translation of the English subjunctive **were**.

[324] As in the Spanish translation, I will continue to use this translation for **a person** consistently.

[325] **Liable** has multiple meanings in Dutch. The most neutral translation would be to translate this sense of "**liable to [penalty]**" with "*strafbaar met [straf]*", but this phrasing is restricted to Belgian Dutch. The Dutch Penal Code rather uses "*wordt gestraft*", yet since being **liable** contains a possibility, *kan* is added in the translation.

[326] Since the Dutch legal system has a completely different court system than its English counterpart and the concept of jury trials ("on indictment") is unknown to it, I have decided to translate **on … conviction** with the equivalent types of offence which initiate the different trials.

[327] Using the standard phrasing in the *Wetboek van Strafrecht*, through which the source text **for a term** is omitted.

[328] In the Dutch Penal Code, *geldboete* does not take the indefinite article in this combination with a preceding punishment.

[329] The **statutory maximum** in Dutch law for fines is the *zesde categorie*, but that would not make sense through the English context of the source text (where fines are divided into five categories). Therefore, I have translated **statutory maximum** literally. Alternative translations for **statutory** include *wettige* and *wettelijk voorgeschreven*, but these use are not used more often in combination with *maximum* (which is never modified in the Dutch Penal Code).

[330] As in the Spanish translation, the comma adds clarity in the sentence.

[331] Phrasing in the *Wetboek van Strafrecht* for participation in offences, and so an equivalent translation of **arranging or facilitating**.

[332] The definite article is absent in the source text, but this is the standard formula in the Dutch Penal Code.

[333] An alternative translation would be *het begaan*, which is used less often.

[334] *Hij die*, my preferred translation for **a person** through precedent, is ungrammatical in this particular sentence. Therefore I have omitted *die* in this case, although *indien* could be replaced by *die*, rendering *hij pleegt een misdrijf die*, but that would be rather unusual.

[335] The translation *verschaffen* requires the insertion of this preposition.

[336] A literal translation of **something**. *Iets* is not often used in Dutch legal texts, possibly as a result of it being quite vague.

[337] An equivalent translation of **to intend**, this is the standard albeit slightly archaic phrase to denote intention in the Dutch Penal Code.

[338] As in *hij die*, equivalents of **another person** are rendered solely by *een ander* in the *Wetboek van Strafrecht*.

[339] *Zal doen* is actually only used in the *Wetboek van Strafrecht* followed by *of nalaten*. *Gelooft* already expresses modality, but I still felt the auxiliary verb was necessary for understanding the text, rather than using only the indicative.

[340] A literal translation of the English noun phrase, but nevertheless not without precedent in Dutch law texts. It is used for example in the enacting clause of the *Instellingsbesluit Kruis voor Recht en Vrijheid* ("creation order of the cross for justice and freedom") of 1951.

[341] My loose translation of **involve**, in which the word itself is omitted, involves a passive verbalisation of **commission**. This requires a prepositional phrase to connect *de handeling* to it.

[342] This translation is a nominalisation of the source text present participle *doing*. The target text omits the personal pronoun **it** because of the nominalization.

[343] Passive verbalisation of **commission**.

(2) Hij pleegt geen misdrijf volgens deze sectie indien[344]*–*

(a) hij gelegenheid of middelen verschaft voor iets waarvan hij gelooft dat een ander dat zal doen, maar niet met het oogmerk om het zelf[345] *te doen of dat*[346] *een ander dat doet, en*

(b) enig delict in subsectie[347] *(1)(b) een delict is tegen een kind dat hij ter bescherming dient.*[348]

(3) Ten aanzien van[349] *subsectie (2) is hij die dient ter bescherming*[350] *van een kind degene die*[351] *handelt met het oogmerk om*[352]*–*

(a) het kind te beschermen tegen seksueel overdraagbare infecties,

(b) de lichamelijke veiligheid[353] *van het kind te beschermen,*

(c) te voorkomen dat het kind zwanger wordt,

(d) het kinds emotionele welzijn[354] *te bevorderen door het geven van advies, en niet met het oogmerk om seksuele bevrediging*[355] *te verkrijgen,*[356] *of met het oogmerk om de handeling*[357] *die het delict in subsectie (1)(b) behelst*[358] *of de deelname van het kind daaraan*[359] *te veroorzaken of daartoe*[360] *te bewegen.*

(4) Hij die zich schuldig maakt aan een delict in deze sectie kan worden gestraft–[361]

(a)bij een overtreding, met gevangenisstraf van ten hoogste zes maanden of geldboete van ten hoogste

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[344] The same sort of translation as in subsection (14)(1).
[345] Used for emphasis. It furthermore makes up for omitting the personal pronoun **he** in the translation.
[346] The repetition of **intend** in the source text is not followed by a repetition of its translation, as *met het oogmerk* also goes for the next phrase.
[347] Like in the Spanish translation, this is a source culture oriented calque of **subsection,** which has a different equivalent in Dutch law texts. *Lid* is a viable alternative translation.
[348] Even though the phrasing of the translation is unusual in Dutch, it conveys the peculiar meaning of the source text, which is further explained in the following subsection.
[349] A phrase frequently used in the *Wetboek van Strafrecht* to refer back to other stipulations and terms.
[350] The phrasing of paragraph (2)(b) is repeated in the translation here.
[351] Insertion of *degene*, to refrain from a repetition of *hij die*. This also enables the omission of **if** in the translation.
[352] *Met het oogmerk* is here not used as a translation of the verb **intend**, but as a more literal but still equivalent translation of **for the purpose of**.
[353] Though not mentioned in the Dutch Penal Code, this calque of **physical safety** is used in texts on child abuse, among other things.
[354] Like the Código Penal, the Dutch Penal Code hardly mentions emotional states, if at all. This is then a calque of a somewhat vague legal term, but *emotioneel welzijn* can also be found in other Dutch texts.
[355] The collocation *seksuele bevrediging* is more common in Dutch than the other equivalent of *seksuele voldoening*. *Bevrediging* can furthermore itself refer to sexual satisfaction, as is true for **gratification**.
[356] I inserted the comma here to enhance the understanding of the provision in the target text.
[357] *Handeling* is, as noted before, the preferred terminology in the *Wetboek van Strafrecht* to refer to any **activity**. It uses other possible translations, such as *daad* and *activity*, significantly less often.
[358] One of the many possible translations of source text **constituting**. Other candidates were *bestaan uit*, *omvatten*, both of which are used interchangeably in the *Wetboek van Strafrecht*.
[359] The pronominal adverb *daaraan* refers back to *de handeling*.
[360] This pronominal adverb is required by the verb *bewegen* and again refers back to *de handeling*.
[361] Like in the Spanish translation, the phrasing of the source text, which is a repetition of subsection (13)(2), can be repeated in the target text, with the exception of the different penalty in paragraph (4)(b).

het statutaire maximum, of beide;

(b) bij een misdrijf, met gevangenisstraf van ten hoogste veertien jaren."

The role of the mediate translation

As the source text's definitions and phrasing is rather vague at times,the mediate text can either clarify these ambiguities or be so close to the source text grammatically and lexically that they directly propose a similar translation in the target text. Take the following sentence, for example;**something that he believes another person will do, but that he does not intend to do or intend another person to do.** The mediate translation does not solvethe unclear and woolly statement of the phrasing, and neither does the target text. While such a translation can be said to be defective for other translation purposes, I believe that the ambiguity is the express purpose of the source text – the interpretation and application is to the discretion of the judge. This ambiguity is carried over to the target text through the mediate translation.

Dutch source text (First page of *dagvaarding*)

2247

Arrondissementsparket te Haarlem

Dagvaarding van verdachte

Br/LKC

De officier van justitie in het arrondissement Haarlem
dagvaardt

parketnr
15005068/1-B20
VP

naam	[redacted]
voornamen	Paul
geboren op	[redacted] november 19[redacted]
te	Aalsmeer
wonende te	Aalsmeer
adres	[redacted]

Voor inlichtingen omtrent het eventueel aanwenden van rechtsmiddelen (verzet, hoger beroep of beroep in cassatie) kan de verdachte zich wenden tot de griffie van de rechtbank binnen 14 dagen na de terechtzitting.

om te verschijnen op MAANDAG, 25 MEI 1981 , te 10.10 uur,
ter terechtzitting van de politierechter in de arrondissementsrechtbank te Haarlem, Jansstraat 81,

teneinde terecht te staan ter zake dat

dat hij op of omstreeks 3 december 1980 in de gemeente Aalsmeer in een woonhuis, een radio-elektrische zendinrichting -al dan niet zijnde een radiotelegraaf of -telefoon, als bedoeld in artikel 3 van de Telegraaf- en Telefoonwet 1904 (Staatsblad no. 7)- aanwezig heeft gehad, terwijl aan hem, verdachte, als houder van die zendinrichting toen niet een bij of krachtens die wet voor de aanleg, de exploitatie of het gebruik van die zendinrichting vereiste machtiging was verleend;

deelt mede,

deelt voorts mede,

1e dat verdachten het recht hebben getuigen en deskundigen te doen dagvaarden of op de terechtzitting mede te brengen, die zij in het laatste geval bij de aanvang van de behandeling van hun zaak aan de politierechter moeten opgeven;
2e dat verdachten binnen acht dagen na de betekening van de dagvaarding, echter vóór de aanvang der terechtzitting, een bezwaarschrift daartegen kunnen indienen ter griffie van de rechtbank, welke indiening dient te geschieden door inlevering van dat bezwaarschrift ter griffie, hetzij door verdachte persoonlijk, hetzij door zijn raadsman, hetzij door een door verdachte schriftelijk gemachtigde;
3e dat verdachten, indien toevoeging van een raadsman nog niet heeft plaats gehad, de bevoegdheid hebben zodanige toevoeging te verzoeken
a) aan de voorzitter van de rechtbank, indien de verdachte – anders dan krachtens een bevel tot inverzekeringstelling – rechtens van zijn vrijheid is beroofd;
b) in alle andere gevallen aan de raad van rechtsbijstand (bureau voor rechtshulp) te Haarlem;
4e dat de politierechter kan bevelen, dat verdachten, die niet op de terechtzitting tegenwoordig zijn, op een door hem te bepalen tijdstip ter terechtzitting aanwezig zullen zijn, en daarbij tevens de medebrenging van verdachten kan gelasten;
5e dat vanwege hem, officier van justitie, als geen getuige(n) zal(zullen) worden gedagvaard of opgeroepen

HAARLEM, – 3 APR. 1981
De officier van justitie,

P

005711F-41 1980

221-1ab-PKL

Spanish (mediate) translation[362]

"Fiscalía[363] del distrito judicial[364] en Haarlem[365]

Citación[366] del[367] acusado[368]

El fiscal[369] en el distrito judicial de Haarlem cita[370] a[371]

appelido[372]: -

nombre[373]: Paul

nacido el[374]: - de noviembre 19-

en: Aalsmeer

viviendo en[375]: Aalsmeer

dirección: -

para asistir[376] el lunes 25 de mayo 1981[377] a las 10.10 horas de su mañana[378], al acto del juicio oral[379] del juez de policía[380] en el juzgado del distrito judicial[381] de Haarlem, dirección[382] Jansstraat 81,

[362] The source text is an official document, carrying additional information around the actual text's body (such as *parketnr*, *221-tab-PKL*, et cetera). I will leave these out of the translation, and translate only the body of the text in order from top to bottom, and I will not fill in parts of personal details which have been blurred out.

[363] A *parket*, a colloquial term that has obtained legal meaning in Dutch, corresponds to a fiscalía in Spanish, which refers both to the Ministerio Fiscal as well as its local offices.

[364] The Dutch *arrondissement*, a term solely used in reference to court districts, has no equivalent in Spanish, as judicial territories in Spain correspond to the political regions of the country. Therefore, I used the explicatory distrito judicial as a translation of *arrondissement*.

[365] Since 2010, the *arrondissement* of Haarlem merged into the greater *arrondissement* of Noord-West-Holland, but this was not yet the case in the year of this particular *dagvaarding*.

[366] There are two types of *dagvaarding* in Spanish; those which indicate a fixed date for the suspect to appear in court is the citación.

[367] I used the definite article in this case to clarify the meaning of the phrase.

[368] Since this writ indicates the start of trial proceedings, the *verdachte* is now considered an acusado in Spanish law (see chapter three). A more source culture oriented translation could involve stressing the suspicion of guilt about the defendant, such as sospechoso.

[369] The Spanish equivalent of the *officier van justitie*. Sometimes capitalised to denote the general institution, but written in lower case when referring to one particular prosecutor. A source culture translation would involve a calque containing the lexical elements of Dutch, as in oficial de la justicia.

[370] *Dagvaarden* in Dutch has the exclusive meaning of "calling to appear before court", yet its Spanish equivalent citar lacks this exclusivity and also means "fixing a date". Other potential translations could include this explicitation, as in cita a la vista.

[371] Indicates direct object.

[372] The Spanish equivalent of *(achter)naam*.

[373] Unlike its Dutch cognate *naam*, Spanish nombre refers to someone's first name rather than their surname.

[374] Spanish citaciones use fecha de nacimiento (*geboortedatum*), if the date of birth is listed at all. I nevertheless use a linguistically Spanish equivalent though, dropping the preposition for the definite article in the translation.

[375] Citaciones state full addresses without introduction. Habitar would have been a more accurate translate of *wonen*, but viviendo en ("living in") is more common in Spanish than the closer habitando en ("having residence in").

[376] *Verschijnen* in a general sense is aparecer in Spanish, but before a court the register-bound verb comparecer is common. However, the latter's equivalent *terechstaan* is used in the following sentence, and therefore I have used the equivalent asistir, see footnote 396 below.

[377] The comma between the day and a corresponding time is uncommon in legal Spanish texts, so I omitted it in the translation.

[378] Even though the 24-hour notation already denotes the time as morning, Spanish writs of summon mostly add the conventional phrase de su mañana ("of its morning"), with su referring to the day.

[379] Asistir al acto de juicio oral is a standard phrase in Spanish citaciones equivalent to *ter terechtzitting (verschijnen)*, often followed by the role of the citado therein. Since that role is already mentioned in the subject of the writ and in the subsequent phrase, I did not repeat it here.

[380] A loan translation of the source text (as given by Egas-Réparaz: 168), as there is hardly a Spanish equivalent that corresponds to the exact function of *politierechter* while also retaining its lexical elements (juez correcional would come closest to being a legal equivalent, but that does not implicate the *enkelvoudige kamer* of the single judge). If necessary the translator can use explicitation, preferably in a footnote, to illustrate the *politierechter*'s function as being solely for *overtredingen*. An alternative would be using explicitation in the text itself, as in the proposed translation by Egas-Repáraz as juez de sala unipersonal de lo penal.

con el fin de comparecer ante el juez[383] al caso de –

que él[384] en o alrededor del 3 de[385] diciembre en el municipio[386] de[387] Aalsmeer en una vivienda[388], tuvo[389] un aparato de emisión[390] radioeléctrico, si ha sido o no[391] radiotelegráfico o telefónico[392] a tenor[393] del artículo 3 de la Ley de Telégrafo y Teléfono de[394] 1904 (Boletín del Estado[395] número 7), mientras que a él, el[396] acusado, como tenedor[397] de ese aparato de emisión,[398] entonces no se[399] le[400] había otorgado[401] la autorización[402] requerida por o en virtud de esa Ley[403] para la instalación, la explotación o el uso de ese aparato de emisión;

notifica,

-[404]

notifica adémas,

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[381] While Egas-Reparáz consider juzgado alone an equivalent of *arrondissementsrechtbank* (as in "a local court", see chapter three), I felt it was imperative to translate the previously translated *arrondissement* as distrito judicial again.
[382] I inserted this noun to note to the reader of the target text that a street name follows. *Jansstraat* as such might not be recognisable as an address to the Spanish reader.
[383] Often used in collocations with comparecer.
[384] The *hij* of the source text is the first use of *hij* referring to the particular masculine gender.
[385] An imperative preposition used in the Spanish date notation, also in legal texts.
[386] Spanish has three translations of *gemeente*: the specific ayuntamiento (a pars pro toto using the term for "city council" to refer to the entire municipality), the neutral municipalidad, and the more specific municipio. The latter refers to municipalidades within clearly delineated borders which have a degree of self-government. Since Spain and the Netherlands both know this term and its legal implication, I have used municipio in the translation of *gemeente*.
[387] As in footnote 341, an imperative preposition.
[388] Strictly speaking, casa also has the meaning of *woonhuis*, but vivienda has the added meaning of "living in", and it is the term used to refer to residential houses in the Spanish Penal Code.
[389] The double *aanwezig hebben* has no lexical equivalent in Spanish, where tener presente or en presencia means "to be aware of". Therefore, the element *aanwezig* is omitted in the target text. The present perfect simple (*voltooid tegenwoordige tijd*) of the source text is rendered in the preterite in Spanish, and it switches positions from after to before the direct object.
[390] The Código Penal uses the equivalent aparato de transmisión, but transmisión has more meanings in Spanish other than *zenden*, as opposed to the more specific emisión.
[391] Equivalent phrase of the source text which also has the same lexical meaning.
[392] The target text adjectivises the source text nouns. This is possible because it does not denote an entirely different device, but merely discusses the technological nature of the *zendinrichting*.
[393] Target culture oriented translation, used in the Código Penal. In the previous text we also saw a los efectos de as a possible translation for referential phrases.
[394] Standard preposition in titles of Spanish laws when referring to dates.
[395] Both a neutral translation of *Staatsblad* as well as close to the Spanish equivalent, which is called Boletín Oficial del Estado. I capitalised the nouns to emphasise the fact that it is an official publication, while omitting oficial to make sure that the Dutch version is meant. Since this particular issue of the publication probably has no (official) Spanish translation, the translator could also use the loan word *Staatsblad*, or refer to it in a footnote.
[396] The definite article is inserted here for emphasis. The Dutch usage of specifying *hij* as *verdachte* would be much more marked in Spanish.
[397] One of the possible translations of *houder*, but the only one which also incorporates the meaning of "he who holds".
[398] I inserted the comma here for clarity, and because it seems to be missing in the source text accidentally.
[399] As there is no agent in the source text, I made the target text passive too.
[400] Spanish often repeats the indirect object with this pronoun.
[401] The finite verb comes before the direct object, as is natural in Spanish.
[402] As most modifiers and modifying phrases in Spanish come behind the modified noun, autorización (which always takes the definite article) comes first in the sentence here.
[403] The capital expresses the aforementioned law, as specific laws are always referred to in upper case in Spanish.
[404] There seems to be spaced here for extra communication, but the *officier van justitie* does not use it.

1.º[405] que los acusados[406] tienen el derecho a hacer citar[407] testigos y peritos o aportarlos[408], los cuales[409] en el caso de lo último deberían[410] mencionar en el comienzo de su causa al juez de la policia;

2.º que los acusados, dentro de ocho días después de la notificación de la citación, sin embargo[411] antes del comienzo del juicio oral, pueden presentar una queja[412] a la secretaría del juzgado, cuya[413] presentación debería ocurrir por la entrega de la queja a la secretaría, sea[414] por el acusado en persona, sea por su abogado[415], sea por uno[416] apoderado por escrito por el acusado;

3.º que los acusados, a no haber tenido lugar el nombramiento[417] de abogado, tienen la competencía de rogar por tal nombramiento

a) al presidente del juzgado, si al[418] acusado – de otro modo que en virtud de una orden de detención preventiva[419] – se privó de libertad conforme a derecho;

b) en todos los otros casos al consejo de la asistencia judicial[420] (*bureau voor rechtshulp*,[421] "oficina de asistencia jurídica") en Haarlem;

4.º que el juez de policía pueda[422] ordenar, que acusados[423] que no están presentes en el juicio oral[424] estarán presentes para asistir[425] al juicio oral en un momento a fijar por él, y con esto además[426] pueda

[405] This is the method in which the Código Penal lists its ordinal numbers. I have not seen listings such as these in citaciones.
[406] Spanish prefers using the definite article when referring to specific legal parties, without referring to actual particular acusados.
[407] A strict translation of the source text, but a usage that is not uncommon in Spanish.
[408] Aportar is the equally formal Spanish equivalent of *medebrengen*. The accusative suffixed los refers back to the masculine plural peritos y testigos.
[409] Spanish rendition of *die*, literally "the which".
[410] The conditional phrase denotes the probability of the action, as in the implied *zouden moeten opgeven* in the source text. As before in this translation, the finite verb is fronted.
[411] Formal translation of *echter*, where the colloquial pero could also have sufficed.
[412] The Spanish equivalents for *bezwaar* are queja ("complaint") or protesta, but the latter is more general and needs the modifier escrita to be an acceptable equivalent to *bezwaarschrift*.
[413] Referring back to feminine queja.
[414] The conjunction *hetzij* has the third person present subjunctive form sea in the target text, which refers back to the entire preceding clause.
[415] The *raadsman* in this case is an *advocaat*, and translated as such. Spanish has no equivalent terms for *raadsman* which include the meaning of someone giving advice.
[416] For clarity's sake, I have translated the indefinite article *een* as the neuter pronoun uno ("someone"), making *gemachtigde* an adjective rather than a noun in the target text.
[417] Target culture oriented translation, as in Spain laywers are not assigned (designación), but named (nombramiento).
[418] Privarse takes the preposition a before the direct object.
[419] Almost an exact legal equivalent of *inverzekeringstelling*, with a slight difference in the maximum time of detention.
[420] A loan translation, since the institution mentioned is clearly Dutch; the Spanish know the concept of asistencia judicial, but not a consejo for it.
[421] Since the source text deliberately specifies the *raad van rechtsbijstand* with a proper noun, I felt it was necessary to mention it in the target text, followed by a calque translation.
[422] The subjunctive here once more denotes the possibility of the event.
[423] I deleted the comma of the source text in the target text for legibility.
[424] Deleted this comma as well.
[425] To better set it apart from the previous sentence, *op de terechtzetting aanwezig zijn*, I used asistir to denote the addition of *ter* in *ter terechtzetting aanwezig*.
[426] Además is a translation of both *daarbij* and *tevens*, but *daarbij* possibly means "with it", which I translated it with con esto.

mandar la conducción de acusados;

5.º que por él, fiscal[427], - no se[428] citarán o llamarán a testigos.

Haarlem, 3 de abril de 1981

El fiscal,

[signatura]

{Para informaciones acerca de la utilización eventual de recursos judiciales[429] (oposición, apelación, casación[430])[431] el acusado pueda dirigirse a la secretaria del juzgado dentro de 14 días después del juicio oral.}

English (target) translation

Procedural texts are arguably easier to translate, as they have a clear intended reader – in this case, it is a letter to the suspect, or defendant – and in many cases the target text operates within one of the two legal cultures associated with the languages between which the translator mediates. In this case then, we assume the accused is a native English speaker, a resident of the Netherlands but has indicated that he does not understand the Dutch *dagvaarding*. He prefers to read an English translation. This target text is then significantly more source culture oriented than the previous legislative texts.

"Public[432] prosecution service's office[433] at the district court at[434] Haarlem

Summons[435] of the[436] accused[437]

The public prosecutor[438] in the district[439] of[440] Haarlem summons

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[427] The meaning of this sentence in Dutch is unclear to me. Does *hem* refer to the *verdachte* or the *officier van justitie*? Why does the latter not take the required determiner? As a result of this, I have translated it as literal as possible.
[428] Made passive like the source text.
[429] Recurso alone can also mean *rechtsmiddel*, but I added the modifier judicial to further specify it.
[430] Casación always entails an apelación, so *hoger beroep in* is not translated in that phrase.
[431] All of these terms are used in collocation with the phrase recurso de in Spanish. Since that term is already mentioned before in the sentence, I left it out in this case.
[432] The **public prosecutor's office** here actually requires the qualification **local** or **district** (as in *arrondissement*), but since it is specified that it is located at the **district court**, I found the modifier superfluous in this case.
[433] An 'explicatory' translation of *parket*, which is defined in Dutch law as the offices of the public prosecution service at courts.
[434] The source text uses the slightly more formal *te* rather than *in*, for which **at** is the equivalent.
[435] Also fully called **writ of summons**. Since the propositional Dutch translation of **writ** is *bevelschrift* or *akte*, I left it out in this case.
[436] I used the definite article in this case to further clarify the meaning of the phrase (that is to say, a particular defendant is being summoned), just like in the Spanish translation.
[437] As in the Spanish translation, since the **summons** marks the beginning of the trial phase, the **suspect** now becomes the **accused** in English law (a cognate of acusado), even though Dutch still considers him or her to be a *verdachte*. An equally eligible translation would be **defendant**, a synonym of **accused** used alongside **defendant** in English law.

name: -

first name: Paul

born on[441]: - November 19-

in[442]: Aalsmeer

residing[443] in:

address: -

to appear on Monday, 25 May 1981, at 10.10 a.m.[444], at criminal trial[445] by the single judge[446] in the district court at Haarlem, Jansstraat 81,

with the purpose of standing trial in the case of[447]

him[448] having had present[449] on or around 3 December 1980, in a residence[450] in the municipality of Aalsmeer, a radioelectric transmitting apparatus[451], which may or may not be[452] a radiotelegraph or telephone, as meant in article[453] 3 of the Telegraph and Telephone Act[454] 1904 (*Staatsblad*[455](Government Gazette) no. 7), while to him, the accused[456], as detentor[457] of that

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[438] While a fully source text oriented translation would use the calque **officer of justice**, this term has no meaning in English whatsoever, and in this case should always be specified as the more neutral **public prosecutor**. Note that a target culture oriented text, in which this writ would for example take legal effect in England, would feature the translation **crown prosecutor**.
[439] *Arrondissement* will be translated as **district** throughout this translation, as established earlier on.
[440] As in Spanish, I added the preposition here.
[441] While English forms (like in Spanish) usually use the compound noun **birth date**, the same is true in Dutch. Therefore I decided to stay as close to the source text as possible, using both the participle and the preposition in the translation.
[442] The previous translation of *te* used the equally formal **at**, but that preposition is not compatible with the place-name in this case (**at** in the previous translation specified the location of the court in the city of Haarlem).
[443] Like the source text and the Spanish translation, this target text employs the present participle.
[444] British English uses both the 24-hour clock (designated "military time" in the United States) and the 12-hour clock (a.m./p.m. notation). Legal documents such as writs frequently use the latter.
[445] To appear *ter terechtzitting* is **at trial**, and the modifier **criminal** here refers ahead to the *politierechter*, for which Foster proposes the translation **single judge in the criminal section** (2009: 150). As I deemed this translation too unwieldy in this case, I specified the **criminal** aspect of the *politierechter* in another part of the sentence.
[446] Another neutral and explicitative translation, as the *politierechter* operates in an *enkelvoudige kamer*, as opposed to the *meervoudige (straf)kamer* (which features multiple judges) used for more serious offences.
[447] A source text oriented translation which features all lexical elements of the source text. **In the case of** is then a quite literal translation of *ter zake dat*, with *ter zake* having multiple possible translations into English.
[448] Due to the particular phrasing of the previous clause, this statement of the facts is phrased somewhat differently than the source text, with the nominative *hij* becoming accusative in the target text.
[449] The entire verb phrase is fronted in the target text.
[450] Like Spanish, the target features one word rather than the compound *woonhuis* of Dutch, nevertheless incorporating the same meaning.
[451] Also plain **transmitter** in English, but I wanted to translate both lexical elements in this case, as the source text too could have sufficed with using *zender* alone.
[452] Loose translation of *al dan niet zijnde*, which features the same implication in a fifty percent possibility.
[453] Source text oriented, as this text refers to Dutch legislation. As we saw in the previous translation, the English equivalent is **section**.
[454] A literal translation of the title. It is clear that the specific Dutch law is meant, but for clarity's sake the translator may include the Dutch name as well, either in the text (with the translation in parentheses) or in parentheses.
[455] As this particular issue of the *Staatsblad* is not likely to feature an English translation, I used the original Dutch title, as is standard in references.
[456] Reiteration of **accused** creates lexical cohesion in the text, as opposed to using **defendant** here.
[457] The *houder* is someone with no legal right to a property (Foster: 24), as is the case here. The English cognate **holder** would conversely a rightful owner of specific **choses**.

transmitting apparatus, at that time[458] was not granted[459] a by[460] or by virtue of[461] that Act[462] required authorisation for the installation[463], exploitation or use of that transmitting apparatus;

communicates,

furthermore communicates,

first[464], that the[465] accused have the right to have[466] witnesses and experts[467] summoned[468] or bring them[469] along[470] to trial, in the latter case having to report them to the single judge at the start of the trial of their case;

second, that the accused can lodge[471], within eight days after the service of the summons but before the start of the trial, an objection against it[472] at the registry of the court[473], of which the submission[474] should be by handing in the objection at the court registry, either by the accused personally, or by his counsel, or by a proxy authorised[475] by the accused;

third, that the accused, when assigning[476] of counsel has not yet taken place, have the authority to request such assigning

a) to the president of the court, if the accused – other than in pursuant of[477] an order of police

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[458] While **then** is also possible here, the text refers to one specific point in time. **At that time** better reflects that confined period.
[459] As before the verb phrase is fronted, to coincide with the negation.
[460] Literal translation of the preposition of the source text, while expressing the same meaning.
[461] **By virtue of** is equivalent to *krachtens* in relation to specific laws.
[462] Having translated the *wet* that is referred to, I reiterate **Act** here.
[463] *Aanleg* can mean **construction** or **aanbrenging** among other things, but in this sense of "constructing a transmitting apparatus", **installation** is more adequate.
[464] As the source text *1e* refers to ordinal numbers, I chose to write these out in full in the target text. An alternative option which is closer to the source text is writing the ordinals as **1st**, **2nd**, **3rd**,etc.
[465] Insertion of the definite article to indicate that **accused** are the subject of the sentence and are to be understood as a noun rather than an adjective. This usage is reiterated throughout the remainder of the translation.
[466] *Te doen* with the infinitive is rendered in the equivalent **have** with the past participle in the target text.
[467] Sometimes also called *getuigendeskundige* in Dutch (equivalent to the English **expert witness**,one who gives **expert evidence**), I left out the modifying *getuige* in the target text too, just as in the Spanish translation.
[468] See footnote 483 above.
[469] I inserted the pronoun here, referring to **witnesses and experts**, which was unnecessary in the phrasing of the source text.
[470] **Along** is a translation of the adverb *mede* in the verb *medebrengen*. The marked, formal archaic register of *mede* (which is *mee* in contemporary usage) is lost in the translation.
[471] While *indienen* alone means **submit** or, more colloquially, **hand in**, in a collocation with **objection** it is rendered by the verb **lodge**.
[472] Referring to the **summons**, a translation of source text *daar* in *daartegen*.
[473] While the English equivalent uses either **bailiff** or **clerk** to refer to *griffiers*, internationally the term **registrar** is used (for example at the International Criminal Court). A *griffie* is then a **court registry**, but since the subsequent preposition phrase also uses *van de rechtbank*, I omitted the modifier **court** in the target text.
[474] While an **objection** is lodged, **lodging** is not a common nominalisation, therefore I used the synonym **submission** in this instance.
[475] Two word translation of the Dutch *gemachtigde*, which in itself refers to a person. In the target text, the agent is expressed by the word **proxy**.
[476] While VanDale offers the translation **assignment** for the semantically complex *toevoeging*, Foster proposes the rather lengthy translation of **assigning an attorney-at-law to persons whose financial means are limited** (2009: 151), an explicitative translation. I have used only the **assigning** of his proposed translation, as the implicit *raadsman* is named further on in the source text and the rest of *toevoeging*'s meaning for lay people is also implied in Dutch.
[477] *Krachtens* in combination with *bevel* has **in pursuant of** as its translation, rather than **by virtue of**, as we saw before.

custody – is deprived of his freedom in justice[478];

b) in all other cases to the Legal Aid Board ("bureau voor rechtshulp"[479]) at Haarlem;

fourth, that the single judge can order that the accused who are not present at trial, will be present at trial at a moment to be decided upon by him, and therein can also bid[480] the bringing of the accused;

sixth, that because of him, public prosecutor[481], - no witnesses will be summoned or called up

Haarlem, 3 April 1981

The public prosecutor,

[signature]

{For information[482] concerning the possible employment of legal remedies (opposition, appeal or appeal in cassation[483]), the accused can approach the secretary of the court within 14 days after trial.}

Role of the mediate translation

Both the mediate translation and the target text are significantly more source culture oriented than in previous translations. As such, the mediate translation's use of terminology is of little help in this translation, as Spanish and English both have quite different source culture translations of Dutch terminology, as illustrated by the distinct translations of **single judge** and juez de policía, fiscalía and **public prosecution service's office**. There is a use to the mediate translation however, as the word order of the Spanish text is identical to that of the target translation. That text then clarifies the source text, which furthermore uses a droll style of language in describing the offence. Unlike the previous translation this clarification is helpful and perhaps even necessary, as the target text is intended to be read by a lay person who should understand its meaning rather than interpret or apply it.

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[478] **In justice** is a rather free translation of *rechtens*, incorporating its meaning of "by law".
[479] As in the Spanish translation, since the name of this institution is specified in the source text, I did the same in the target text. If necessary, a loan translation could be included, as in **office/department for legal aid**, but that is also included in the term **Legal Aid Board**.
[480] A more formal translation than **order**, like the marked source text *gelasten*.
[481] Like the Spanish translation, I did not know whether to include an article here. I decided to stick as close to the peculiar phrasing of the source text as possible.
[482] As it is an uncountable noun, **information** is rendered singular in the target text as opposed to *inlichtingen* in the source text.
[483] All three terms here are neutral translations of the Dutch terms, and not equivalents in English law.

English source text

“**Judiciary of England and Wales**

Central Criminal Court

30 January 2013

Sentencing remarks of Mr Justice Fulford

R

-v-

Tony McCluskie

I have no doubt you killed your sister because she was furious with you for letting the sink overflow in the bathroom of your mother’s flat on 1 March 2012, against a background of the longstanding family relationships. I accept that Gemma expressed anger at you early that morning and warned you that if you did not treat your mother’s home with more respect in the future, you may have to leave, but that said I unhesitatingly reject your account, as given by you in evidence in this trial, that she had used significant foul language towards you, or that she had belittled or threatened you, in the past. Your accounts to the police in early March contain none of the matters you were later to allege against her, and I consider the way you described your relationship in the significant interview on 6 March and in your witness statement is determinative of this issue. Gemma was, on the compelling descriptions the jury heard during this trial, a young woman with a huge zest for life; she was a warm-hearted woman who was loved dearly by a great many people. She will be greatly missed. Your sister may well have been fiery on occasion and no doubt expressed herself forcefully but in my view she did not in any sense do anything that even begins to justify what you did to her.

I accept that this was a particularly challenging period in your life: things were not going well between you and your partner, Teri Arnull; your mother had been desperately unwell for a significant period of time; there was talk of redundancies at work; you were hopelessly addicted to the powerful type of cannabis known colloquially as "skunk"; and you were living a significantly withdrawn existence – spending most of your time when not at work in your room – in the same house as your hugely popular and outgoing sister.

(…)

The starting point for the period you must serve before parole in your case can even be considered is 15 years.

Having considered the authorities that have been brought to my attention and bearing in mind the facts I have rehearsed, together with the aggravating and mitigating factors, and particularly the appalling way you acted after the murder, the minimum term will be 20 years imprisonment. Once that period has passed, it will be for the parole board to determine whether you are to be released, and if so, when. Deduction of time served to date is automatic."

(Excerpt from the **Sentencing Remarks** from Mr Justice Fulford, 2013)

Spanish (mediate) translation

"Poder Judicial[484] de Inglaterra y Gales

Juzgado Central Penal[485]

30 de enero de 2013[486]

Motivaciones de la sentencia[487] del Su Señoria Justicia[488] Fulford[489]

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[484] The **judiciary**, referring to the power of the administration of justice by the state, is equivalent to Poder Judicial in Spanish.
[485] One of many possible translations in this case. This translation is both a near-equivalent of the English **Central Criminal Court** as well as a translation of its lexical items. However, the actual Spanish court has the addition of de lo ("of [that]"), rendering this translation safe from confusion with its counterpart. Other more calque-like translations are Tribunal Central Criminal and Juzgado Central Criminal.
[486] Using the Spanish formal date notation.

La Reina[490]

-contra-[491]

Tony McCluskie

No tengo[492] ninguna duda[493] que mataste a tu hermana porque ella[494] estaba[495] furiosa contigo por dejar que el fregadero se desbordara[496] en el cuarto de baño del piso[497] de tu madre el 1 de marzo de 2012, ante los antecedentes[498] de las relaciones familiares antiguas. Acepto que Gemma expresó ira hacia ti por la madrugada[499] y te advirtió que si no tratases[500] a la casa de tu madre con más respeto en el futuro, quizás[501] tuvieres que salir, pero dicho eso rechazo decididamente[502] tu versión, que diste[503] en tu atestado[504] en este juicio, que ella usaba[505] palabrotas[506] expresivas hacia ti, o que ella te denigraba o te[507] amenazaba en el pasado. Tus atestados ante la policía en los primeros de marzo[508] no[509] contienen ninguno de los asuntos que después alegarías[510] que ella habría hecho[511], y considero la manera en que

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[487] An explicitative translation. As the **sentencing remarks** are motivations of a particular sentence, I have used the Spanish equivalent motivación here.
[488] A partly literal translation of the English title of this judge, which includes the Spanish equivalent title Su Señoría.
[489] Proper noun.
[490] English **R** stands for "regina", Latin for "[the] queen" (Latin has no article), which I translated in full in Spanish. The title of the monarch is actually representative of the Crown though, and so the translation la Corona is also a possibility. The prosection in Spain indeed does not operate in name of the Crown, but there are crimes contra la Corona, like in England.
[491] **-v-** stands for "versus", also written out in full in the translation. I also kept the adjacent hyphens in the target text.
[492] The personal pronoun "I" is omitted in the target text, as it is implied by the first person ending of this verb. One could however argue that since the entire text is written from the first person perspective of the judge, the personal pronoun Yo could be featured in the target text once, here at the beginning. But even though "I" is in the initial position, it is not used for emphasis in the text, which is the only instance in which Spanish requires the personal pronoun to be used in the first person.
[493] Alternatively, the verb dudar could arguably be used here, as that use is more common in Spanish than in English.
[494] The personal pronoun is used here because estaba has the same form in the first and third person singular, thus avoiding confusion between the agent.
[495] The target text uses the imperfect because the sister was furious for an indefinite period of time.
[496] Passive imperfect subjunctive is used in the target text because dejar is used in relation to waiting for something to happen (in this case, the sink overflowing).
[497] Like English **flat**, piso refers both to the building and the residential area within. Its usage is limited to continental Spanish.
[498] An equivalent translation of the idiom **against the background**.
[499] **Early morning** is one word in Spanish, madrugada**.**
[500] Once again, the target text uses the imperfect subjunctive because of the demand for the future expressed in the past in the source text.
[501] "Maybe", inserted to translate the meaning of the modal verb **may** in the source text.
[502] I placed this adverb after the verb to make sure that decididamente refers to the verb rather than to dicho eso.
[503] I used the active voice here rather than the passive of the source text, as that usage would be heavily marked in Spanish.
[504] **Giving in evidence** is best rendered as atestado in this particular instance, which is a declaration made by the defendant in Spanish law. **In evidence** can also mean "to do conspicuously", but I am not sure if this is the case here.
[505] The imperfect is used here, because the timespan of the adverbial **in the past** is not specified. We can assume that it involves a longer period of time.
[506] The term palabrotas incorporates the meaning of **foul language**.
[507] The target text reiterates te for clarity.
[508] **Early in March** can be translated as temprano en marzo, but a more natural translation is en los primeros de marzo, referring to the first days in March.
[509] This no introduces the double negation in combination with ninguna, as is common in Spanish.
[510] The conditional in the target text expresses the fact that he was to do it later.
[511] **Allege against her** is rendered in the target text as "that she would have done [according to you]". In Spanish, one cannot alegar something against someone in the manner of the source text.

describiste vuestra[512] relación en la interrogación[513] importante[514] de 6 de marzo y en tu declaración de testigo[515] como[516] decisivo en este asunto. Gemma era, por las descripciones convincentes que el jurado oyó durante este juicio, una joven mujer con mucho[517] entusiasmo por la vida; era una mujer cordial a que[518] muchas personas amaban mucho. Le van a echar de menos mucho.[519] Puede ser que tu hermana estaba fogosa a veces y no hay duda que se expresaba con fuerza[520] pero en mi opinión no hacía[521] nada, de ningún sentido,[522] que incluso empieza a justificar lo que hiciste con ella.

Acepto que esto era un periodo particularmente arduo en tu vida: las cosas no iban bien entre tú y tu pareja, Teri Arnull; tu madre había estado desesperadamente mal por un plazo de tiempo considerable; se hablaba[523] de despidos[524] en tu[525] trabajo; estabas totalmente adicto a un tipo poderoso de cannabis conocido en el lenguaje coloquial[526] como "skunk"[527]; y estabas viviendo una vida[528] considerablemente retraído – pasando la mayor parte[529] de tu tiempo libre[530] en tu habitación – en la misma casa que tu hermana, quien era[531] enormemente popular y sociable.

(...)

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[512] **Your** in the source text obviously indicates the plural, as expressed here by vuestra.
[513] **Interview** clearly indicates an **interrogation** here.
[514] A rather different translation of **significant** than in the previous instance of the word in the source text.
[515] Slightly different from the atestado, which is given in court, this declaration is both a direct translation of the lexical elements of the source term as well as an equivalent term in Spanish law (along with the more broad term deposición).
[516] The English phrasing, using **consider** and **is**, would be heavily marked and even unnatural in Spanish. Therefore, I used como instead.
[517] Rather than the source text **huge**, entusiasmo rather takes the quantifying mucho.
[518] A que makes the sentence active, as is more common in Spanish sentences with amar.
[519] The passive sentence with **missed** as in the source text is uncommon in Spanish, and so the active voice is used here. The sentence takes muchas personas from the previous sentence as the agent. Mucho is repeated, this time as a translation of **greatly**, establishing lexical cohesion and thus coherently connecting the two sentences; the sister will be missed greatly because she was loved greatly.
[520] A more natural translation than the equivalent adverb fuertemente.
[521] Either the preterite or the imperfect can be used in Spanish here, as the Judge does not specify to what period of time he is referring. He could either mean "what she did right before he assaulted her" or "what she had been doing leading up to him assaulting her". I found the latter more adequate in this occasion.
[522] I added the commas here for clarity, as the verb phrase is not split in the target text.
[523] **Being talk of** is rendered in the passive hablarse in Spanish.
[524] **Redundancy** here is meant in the sense of dismissal by employees becoming redundant. The latter fact is not represented by the Spanish despido, but it is irrelevant for the meaning of the text. The judge's point is to illustrate the defendant's fear of being laid off.
[525] Tu here specifies that the job belonged to the defendant being addressed here, something which the source text only implies.
[526] The rather constructed adverb of coloquialmente is not common in Spanish, and so I have used this prepositional phrase to express the meaning of **colloquially**.
[527] The quotation marks indicate the specific term that the judge refers to. **Skunk** is a neologism to which there is no Spanish equivalent, at least to my knowledge. The term is however sufficiently introduced in the source text to warrant no further explanation in the target text.
[528] Vida is equivalent to **existence** in this particular phrasing. The cognate existencia is less appropriate here, despite being a dictionary equivalent.
[529] **Most** is necessarily rendered in this equivalent translation as "the biggest part".
[530] **Time not at work** is rendered in the target text as "spare time", since that is essentially what the source text implicates. Any Spanish translation which does feature the negation of time spent at work would be considerably more impractical in the running text.
[531] The source text has end focus towards **sister**. This is not possible in Spanish, because both the existence of two adjectives as well as the modifying adverb require the adjectives to follow the noun. To recreate the end focus with the textually equally important adjectives, I introduced a relative clause here.

El punto de partida[532] para el plazo que debes estar en prisión[533], hasta[534] que se puede incluso considerar libertad provisional[535] en tu caso,[536] es 15 años.

Habiendo considerado[537] los precedentes[538] a que me[539] han[540] llamado la atención y teniendo en cuenta[541] los hechos que he enumerado, junto con las circunstancias[542] agravantes y atenuantes, y en particular[543] tu manera de actuar[544] vergonzosa después del homicidio[545], el plazo mínimo de prisión estará 20 años. Una vez pasado ese periodo, la comisión de libertad provisional[546] decidirá[547] si te excarcelare[548], y si es así, cuando. La[549] deducción del tiempo ya en prisión[550] hasta la fecha[551] es automático."

Dutch (target) translation

As with the previous text, it is considerably easier to invent an intended purpose for this translation of a procedural legal text. We can imagine that the defendant (or rather, convict) addressed in this text is either on parole or set free and has committed another offence in the Netherlands, where he is to stand trial. Rather than reading through the entire case, the prosecution can make do with reading the sentencing remarks (which are essentially a summary and rationale of the conviction) to analyze his history of violent and manipulative behavior, of which these remarks give proof. This translation will

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[532] A literal equivalent of the English term. To my knowledge, **starting point** does not have any further legal meaning in English other than its literal meaning.

[533] The English concept of **serving** (a prison sentence) has no one word equivalent in Spanish, so instead this translation by paraphrase is used in the target text.

[534] **Before** here implies "until", for which hasta is the equivalent. Alternatively, antes de que is an acceptable literal translation.

[535] The legal equivalent term for **parole**, incorporating the meaning of conditional release after a certain amount of time served in prison.

[536] I added the commas in the sentence for clarity. The target text arguably sticks quite close to the source text, hampering a clear understanding of the sentence in Spanish without them

[537] This literal translation of the source text is a bit more formal and marked in Spanish than it is in the source text, but nevertheless serves this translation.

[538] **Authority** in the source text has the meaning of precedente, as in the nature of English case law.

[539] Rather than atención taking the possessive pronoun, the attention is directed towards someone in Spanish.

[540] While the source text is in the passive, the nature of Spanish grammar allows for an active voice with an unspecified agent.

[541] Equivalent idiom to **bearing in mind**. Like habiendo, teniendo uses the present participle (the gerund) in imitation of the English text.

[542] Although factores is a possible translation, agravantes and atenuantes are more often found in collocation with circunstancía (as is the case in English).

[543] As earlier in this translation, the adverb with the suffix –mente is a possibility. The phrase en particular is however more commonly used, and its meaning is also slightly different.

[544] **The way you acted** is nominalised in the target text, as manera de actuar is a well-established collocation in Spanish.

[545] From the definitions given in chapter 3, we can conclude that **murder** often equals asesinato, but not always. As we do not know the circumstances of this particular case (which are not specified in this excerpt), I have translated **murder** with the more safe superordinate homicidio.

[546] A loan translation, using the lexical elements of the source text. The earlier translation of the term **parole** is reiterated here.

[547] The future tense in Spanish and the subsequent future subjunctive incorporates the meaning of "it will be".

[548] In the target text, the **parole board** becomes the active "releaser". A literal translation of the source text grammar would result in unnatural Spanish.

[549] Spanish requires a definite article in this case.

[550] Once again, there is no equivalent of **served** in Spanish. The translation here expresses the meaning of **time served** as "time already [spent] in prison".

[551] It is not specified whether **to date** refers to today or to a point in the future, but we can safely assume it is the former. Nevertheless, the equivalent Spanish expression is hasta la fecha.

then perhaps be more target culture oriented than the previous translation of the summons, whose use was limited to one legal jurisdiction. However, we already saw in the Spanish mediate translation that this text contains less legal terminology than other texts in this chapter. It seems more like a description of events and of characters than an actual procedural text and we could even argue that this is more of a literary translation, but this type of text is by no means less important in legal translation.

"*Rechterlijke Macht*[552] *van Engeland en Wales*

Centrale Rechtbank voor Strafrecht[553]

30 januari 2013

Commentaren over het vonnis[554] van de edelachtbare heer mr.[555] Fulford

-De kroon-[556]

-tegen-

-Tony McCluskie-

Ik twijfel er niet aan[557] *dat jij je zus gedood hebt omdat ze woedend op je was voor het laten overstromen van de wasbak*[558] *in de badkamer van je moeders appartement op 1 maart 2012*[559]*, tegen de achtergrond van de oude familieverhoudingen*[560]*. Ik aanvaard*[561] *dat Gemma vroeg in de ochtend*[562] *haar boosheid tegen je uitte en je waarschuwde dat als je je moeders huis niet met meer respect zou behandelen*[563]*, je wellicht*[564] *zou moeten vertrekken, maar dat gezegd hebbende*[565] *verwerp ik zonder te*

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[552] Like the Spanish translation, a translation by an equivalent (and paraphrase) of the semantically complex **judiciary**. The capitalisation indicates that this is an established term in the source culture, while the absence of an article indicates the absence of it in that term.
[553] One of the possible translations featuring a direct translations of the lexical elements of the English term. Other acceptable translations include *Centrale Strafrechtbank* and *Hoofdrechtbank voor Strafrecht*. The Dutch equivalent term would be simply *rechtbank*, perhaps specifying *meervoudige kamer*. The equivalent is however of no use here, as this case undoubtedly took place in an English court.
[554] While the Spanish translation used the equivalent term motivación, *commentaar* in Dutch better encapsulates both the motivation for the sentence as well as the feelings surrounding it. There is no legal equivalent in Dutch.
[555] Dutch equivalent of source text **Mr Justice**.
[556] Unlike the Spanish translation, I translate the word the **r** represents, which is **the Crown**. The full formula of English criminal law cases is always **the Crown versus thedefendant**, a phrase I translated into the target text.
[557] The verb **have** is omitted in this translation, instead using the verb *twijfelen* as a translation for **having doubt**.
[558] Either *gootsteen* or *wasbak* in Dutch, but since it was in the bathroom, we can safely assume it to be the latter.
[559] Preferably, I would put the date in another place in the sentence, for example after *zus* to specify the date of the murder. However, it is unclear if the date refers to the murder or to the overflowing of the sink, and so I left it in the same position in the target text.
[560] I expected this latter clause to be in another place in the source text, where I reckoned it would make more sense in relation to the conviction of the judge about the murder. Since its position in the source text is just as marked as it would be in the target text, I left it there in translation.
[561] *Aanvaard* here has the same meaning as aceptar in the Spanish translation, a formal way of expressing belief in something.
[562] The temporal adjunct switches places with the direct object in the target text, reflecting Dutch preferences.
[563] Either *zou behandelen* or *behandelde* is possible in this case, both expressing a conditional sense.
[564] *Wellicht*, like Spanish quizás, translates the meaning of the defective modal verb **may**.

aarzelen[566] *jouw verklaring*[567]*, die je tijdens deze terechtzitting ter getuigenis gaf, dat zij obscene taal tegen jou had gebezigd, of dat ze je in het verleden*[568] *had gekleineerd of bedreigd.*

De verklaringen die je[569] *vroeg in maart tegenover de politie gaf*[570] *bevatten geen van de beschuldigingen*[571] *die je later tegen haar zou uiten, en ik beschouw de manier waarop*[572] *je jullie verstandhouding omschreef in het belangrijke vraaggesprek*[573] *van 6 maart en in je getuigenverklaring beslissend in deze kwestie. Gemma was, volgens de boeiende*[574] *omschrijvingen die de jury tijdens deze terechtzitting hoorde, een jonge vrouw met veel levenslust; ze was een warmhartige*[575] *vrouw die bij heel wat*[576] *mensen erg geliefd was. Ze zal erg worden gemist. Je zus kan nu en dan zeker fel zijn geweest en ze heeft zich ongetwijfeld ook krachtig geuit maar mijns inziens*[577] *heeft ze op geen enkele manier ook maar*[578] *iets gedaan dat zou kunnen*[579] *rechtvaardigen wat jij haar aangedaan*[580] *hebt.*

Ik aanvaard dat dit een bijzonder moeilijke periode in je leven was: het[581] *ging niet goed tussen jou en je partner, Teri Arnull; je moeder was al geruime tijd*[582] *vreselijk ziek; er werd gesproken*[583] *over ontslagen*[584] *op werk; jij was hopeloos verslaafd aan een krachtig soort cannabis dat in de spreektaal*[585] *bekendstaat als "skunk"*[586]*; en je leefde een behoorlijk teruggetrokken bestaan – als je*

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[565] *Hebbende* is inserted in the target text to correspond with the equivalent Dutch phrase of **that said**.
[566] Adverbial phrase, a translation of the source text adverb.
[567] Multiple Dutch words are contenders for the translation of **account** here, among others *verslag*, *relaas*, *verhaal*, etc.
[568] It is unclear whether **in the past** refers to both the using of the foul language and the belittling and threats, or only to the latter. The use of the commas in the source text makes me assume the latter however, and so I changed the position of the temporal adjunct in the target text.
[569] Inserted here to make the text more natural in Dutch.
[570] As above, *verklaringen* are often found in collocation with the verb *geven* in Dutch.
[571] As the **matters** were **alleged** against his sister, we can safely assure that they were *beschuldigingen*. The target text then changes the expressiveness from verb to the noun, from neutral (uiten/**matters**) to accusatory (*beschuldigingen*/**allege**).
[572] Required by Dutch grammar, as opposed to the optional English **in which**.
[573] I admittedly am unsure of the meaning of the source text term and whether it has any legal significance in the source culture. Nevertheless, I have translated its lexical elements literally and legally neutral.
[574] While the Spanish translation only covers the "convincing" meaning of **compel**, Dutch *boeiend* incorporates both its convincing and interesting element.
[575] An equivalent idiom to **warm-hearted**, both in meaning and form.
[576] Equivalent of **a great many**.
[577] Source text oriented translation of **in my view**, using a slightly more formal term in the target text.
[578] *Ook maar* translates the emphasis placed in the source text by **did not in any sense do anything**.
[579] Loose translation of **even begins to**, of which a literal translation would be unusual in Dutch. The reiteration of *ook maar* could be added here.
[580] A verbal translation of the phrase **to do tosomeone**, in both languages having a very negative connotation.
[581] **Things** is omitted in the translation, which instead takes the equally colloquial equivalent *het*.
[582] *Al geruime tijd*, a fixed expression in Dutch, incorporates the meaning of "significant period of time".
[583] While the source text expression uses a noun in **talk**, the Dutch equivalent uses a verb.
[584] As in the Spanish translation, **redundancies** is translated with *ontslagen* rather than with the sense of "being superfluous".
[585] Like Spanish, Dutch lacks a common adverbial translation of **colloquially**, and so it is rendered in this phrase.
[586] While **skunk** is apparently originally from the Netherlands, it is in my opinion not sufficiently known there either to be used without quotation marks.

niet op werk was, bracht je het gros van de tijd door op je kamer[587] *– in hetzelfde huis als je enorm populaire en extraverte zus.*

(...)

Het uitgangspunt voor de periode die je in de gevangenis moet doorbrengen[588] *voordat voorwaardelijke vrijlating in jouw geval ook maar kan worden overwogen is 15 jaar*[589]*.*

De precedenten die tot mijn aandacht zijn gebracht overwogen hebbende en de feiten die ik opgenoemd heb in gedachten houdende[590]*, samen met de verzwarende en verzachtende omstandigheden*[591]*, en in het bijzonder de ontstellende manier waarop je je gedroeg na de moord, zal de minimum gevangenisstraf*[592] *twintig jaar bedragen*[593]*. Als die periode eenmaal*[594] *is verstreken, is het aan de commissie van voorwaardelijke invrijheidstelling*[595] *om te beslissen of je vrijgelaten kan worden, en in het geval dat zo is, wanneer. Vermindering van de tijd die tot op heden in de gevangenis is doorgebracht*[596] *gebeurt*[597] *automatisch.*"

The role of the mediate translation

The source text is arguably more literary than legal. It uses very few legal terms and the focus is on the narrative and the convincing and conclusive arguments of the judge. In the latter sense, a mediate translation can be equally helpful in establishing the reasoning make-up of the source text, even when the latter's language is concise and clear enough as it is. Like the previous translation then, the mediate translation clarifies the source text's reasoning further, and further suggests a clear translation. Finally, the Spanish text also proposes adecuate paraphrasing translations of specific English legal terms such as **judiciary** and **parole board**, both of which have no legal equivalents in Dutch.

[587] Since Dutch cannot use the present participle as in the source text, the word order in the sentence changes significantly.
[588] The only one word translation of **serving** in this sense is *zitten*, but that usage is colloquial and hardly fitting language for a judge. Therefore, I have opted for a similar paraphrasing (neutral) translation as in the Spanish translation.
[589] Alternatively, the archaic *jaren* can be used here, as is common throughout the *Wetboek van Strafrecht*.
[590] The use of the present participle in this sentence is translated into the target text, as these are common usages in legal Dutch, as they are of English. They do take up different positions within the sentence, as required by Dutch grammar.
[591] Like in the Spanish translation, *factoren* was a possible translation but the collocation with *omstandigheid* is more common.
[592] **Term** and **imprisonment** are jointly represented in the target text as *gevangenisstraf*.
[593] *Bedragen* is a verb used in collocation with a specific quantifiable punishment; as such, it is a translation of **be** in the source text.
[594] **Once** is rendered by *als…eenmaal* in the target text.
[595] VanDale suggests the translation *paroolcommissie* for **parole board**, but this is too source culture oriented to make any sense in Dutch, where *parool* is far from a legal term. The *Wetboek van Strafrecht* uses the term *voorwaardelijke invrijheidstelling*, and it is that equivalent for **parole** that I used in this paraphrasing translation.
[596] A reiteration, reflecting the different phrasing of the source text, of the earlier translation of **serve**.
[597] Rather than using a form of the verb *zijn* in translation, *gebeuren* is more natural here.

Conclusion

This thesis explored the usefulness of a third legal culture and language in translation. In doing so, I discussed the background of legal translation theory and what distinguishes a legal text from other types of text. The thesis discussed how legal culture is prevalent throughout legal language, and that these local legal cultures and languages together contribute to conceptual incongruity. I furthermore showed that the legal translator is far more restricted than translators of other types of texts because of their legal implications, and I discussed the legal translator's objective of delivering a parallel text which, if necessary, can stand alone with authoritative function in the target culture. Despite calls for greater textual than stylistic equivalency by legal translation theorists, the legal translator still functions in a legal environment, legal texts being a communicate experience between specialists who prefer a higher register.

Chapter 2 therefore outlined the legal culture surrounding legal translation in the three legal systems of the Netherlands, England and Wales, and Spain. I discussed the importance of comparative law for both lawyers and translators, and introduced universal elements of criminal law to provide a background for the legal translator to work in and overcome conceptual incongruity. Finally, I discussed the origins and principles of the legal systems with which the thesis is concerned, as universal criminal law is not as universal as it purports to be. There, I showed that Spain and the Netherlands share a similar legal system, as opposed to that of England.

The similarity between Spanish and Dutch criminal law makes the role of Spanish as a mediating language all the more interesting, as its criminal terminology is more similar to that of England. Chapter 3 discussed these similarities, and defined the conceptual boundaries of terms in the three legal systems. I strived to find functional equivalents in certain aspects of criminal law. which turned out to be difficult in certain circumstances, especially in the case of courts and the definition of the offence of murder. Other terms proved to be more easily translatable, and Spanish terminology indeed regularly proposed cognate terminology with functional equivalence, partly establishing its usefulness in translation between English and Dutch.

The previous chapter finally explored the possible use of involving a third legal language and culture in legal translation by looking at the practice of using a mediate translation between a source and a target text. The mediate translations turned out to be valuable, and they showed the stylistic features of the source text and provided translation strategies such as using loanwords and neutral calque translations where needed. As in chapter 3, the Spanish text sometimes provided cognate functional equivalents for Dutch legal terms in English, further aiding the work of the translator. The mediate translation furthermore functioned as an explanatory text, explaining the meaning of complex source text sentences. Where it did not explain ambiguity, it mostly proved that the source text expressly intended the vagueness, and the final target text could be equally ambiguous. Finally, the mediate translation helped in further establishing the narrative flow of the source text.

Does a third legal language then really help the legal translator? Are three languages always better than two, as Simard claims? Yes. A legal translator who is well versed in the legal backgrounds and languages between which he or she is mediating, can further improve his translations by using a third legal language of which he is knowledgeable. The mediate translation says a lot about the linguistic and legal makeup of the source text.

However, the effectiveness of this approach remains to be seen. In translating, the translator can easily find himself confused between the source text and the mediate text's terminology if he is uncautious. Focusing too much on the mediate translation can lead to him or her patterning that text too closely, leading to confusion in terminology and a loss of the ultimate goal of the target text. Furthermore, providing a second translation of a source text can be said to be simply too time consuming for translators working on a tight schedule with limited resources. This can be circumvented by using a legal translation in the mediate language by another translator, if possible, an approach I would gladly recommend to every translator.

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