English Criminal Law Terms: Typological Approach

E.S. Kapshutar

Lomonosov Moscow State University (Moscow, Russia)

Англоязычные термины уголовного права: типологический подход

Е.С. Капшутарь

Московский государственный университет имени М.В. Ломоносова (Москва, Россия)

English law terminology has been an object for numerous studies both in Russia and abroad and is becoming more and more important nowadays. However, the variety of the branches of law that encompassing very different notions and terms causes a certain difficulty for a terminologist. A comparative-contrastive study of law terms (which is directly connected to such a field as comparative law) is often not a study of terms themselves but a study and comparison of judicial systems. Furthermore, if a scholar considers English-speaking countries, there is a need to distinguish between the British (English) Law and American judicial system. Comparison of the Anglo-Saxon system (also known as Common Law, or Case Law system) with the Statutory Law (that of Russia) implies a careful study of these two completely different systems, as well as a thorough typological analysis of various specific features the terminology possesses, including morphemic, morphological, etymological, collocational and other characteristics. Such an overview allows seeing clearly the ways the terminology under study has been formed and its ways of development. The article is concerned with the most prominent features that are typical for English Criminal Law terminology.

Key words: legal terminology, English Criminal Law terminology, Russia Criminal Law terminology, typological approach, terminology studies.

Англоязычная терминология уголовного права неоднократно становилась объектом исследования и, несомненно, является одним из наиболее интересных объектов исследования в настоящее время. Однако большое количество отраслей права создает определенные сложности для терминолога. Сравнительно-сопоставительное изучение англо- и русскоязычных терминов юриспруденции (напрямую связанное со сравнительным правоведением) представляет собой скорее сравнение и сопоставление правовых систем. Более того, говоря об англоязычной терминологии права, необходимо помнить о различиях британской и американской систем. Сравнение англосаксонской системы (также известной как прецедентное право) с романо-германской семьей права (существующей в России) требует тщательного изучения обеих систем (особенно в случае сравнения американской и русской систем), а также досконального изучения типологических особенностей терминов, что включает в себя морфемные, морфологические, коллокационные, этимологические и другие характеристики. Подобный обзор позволяет более ясно понимать то, каким образом сложились данные терминологии, а также дает возможность прогнозировать их дальнейшее развитие. Данная статья посвящена особенностям англоязычной терминологии уголовного права.

Ключевые слова: юридическая терминология, англоязычная терминология уголовного права, русскоязычная терминология уголовного права, типологический подход, терминоведение.

Generally speaking, **Criminal Law** is a body of rules that deals with crime. It should be distinguished from the **Civil Law** where the aim of the court is to compensate the victim for injuries wrongfully caused by the defendant.

In Statutory Law there exists a notion of **Criminal/Penal** and **Criminal Procedure Code (уголовный и уголовно-процессуальный кодексы)** while the Case Law does not require such a code.

The basic notions of Criminal Law are expressed with the help of the following terms:

- *mens rea* and *actus reus* (*субъективная и объективная стороны преступления*)
- *crime* and *punishment* (*преступление и наказание*).

The *actus reus* is a central aspect of Criminal Law. It defines the harm done to the victim and the wrong per-

formed by the defendant. In many cases this involves proof that the defendant caused a particular inquiry/harm [1, p. 213], while *mens rea* is a particular state of mind the defendant had while committing the most serious crimes [1, p. 144].

As for the most widely used notions of the Criminal Law, British and American law dictionaries register different terms for the notion *преступление*. In Oxford Law Dictionary *преступление* is given as *crime* and is defined as "any act which the sovereign has deemed contrary to the public good" [2, p. 144] while in Barron's Law Dictionary it is given as *offense* and is defined as "any violation of law for which a penalty is prescribed, including both felonies and misdemeanors" [3, p. 305]. In British system it is also stated that "the modern tendency is to refer to crimes as *offences*" [2, p. 378]. The second definition gives ground for even further research — there are terms *felony* and *misdemeanor*. This fact is connected with the following concept: in American Criminal Law there is a division according to the degree of crime. This division is as follows: *felony* is considered to be the most serious crime, *high crime* is opposed to minor *misdemeanor* and includes the following crimes: *rape, murder, kidnapping, battery, aggressive assault, treason, robbery, grand theft, fraud, burglary, racketeering, espionage*.

One of the approaches that can encompass almost all the specific linguistic features of the Criminal Law terms is typological approach. This approach includes morphological semantic, formal, etymological and many other characteristics of terms.

As the study of the etymology of Criminal Law terms has shown, the majority of these terms come from the Latin language via Old French. A number of terms, however, were added during the Renaissance period, mostly via French. Nowadays, there are still a number of terms in their original form, such *as mens rea, actus reus, pro bono publica, quantum meriut, ipsi dixit*, etc.

The first Criminal Law terms appeared in the English language at the end of the Old English period and at the beginning of the Middle English period: *bailiff, court, trial, bar, defence*.

The term crime appeared in the English language only in the 15th century via Old French *crimen* which is "judgment, accusation, offence" and is a derivative from the Latin word *criminalis*. Another basic Criminal Law term *punishment* belongs to the same chronological — from Old French *puniss* that was formed from the Latin verb *punire* "to punish".

Such basic terms of the Criminal Law as *legal* and *legality* were present in the Proto-Indo-European language. This reconstructed form is **leg* which, possibly, meant "collection (of rules or laws)" and "task or assignment".

The Criminal Law terms that name particular crimes were borrowed from French mostly from the 12th until the 16th centuries. However, the term *theft*, for example, was used in the Old English period (from West Saxon *þiefð* borrowed via Latin). Such terms as *robbery* and *damage* appeared in the English language during the 13th century — the former from Old French *roberie* and the latter from Old French *damage* — "loss caused by injury" which was formed from Latin damnum — "loss, hurt, damage".

Larceny and *fraud* appeared in the language in the 14th century. The term *burglary*, which was borrowed in the 16th century, comes from Latin *burgus* "fortress, castle". *Blackmail*, which was borrowed during the same century, has an interesting etymology: it comes from Old English *mæðel* "meeting, council" and is not connected with the word "mail".

As new types of crimes begin to appear (for example, *Internet crimes*) new terms respectively appear in the language, therefore, the formation of the Criminal Law terminology is still in the process of development.

Apart from specific etymological features, Criminal Law terminology also possesses a number of specific morphological features. The majority of Law terms are formed morphologically, with the help of suffixes. Among these suffixes are the following:

Nouns:
- -(a)tion/-ion — codification, criminalization, coercion, prosecution;
- -ment — punishment, agreement, judgement;
- -ence — negligence, sentence, evidence;
- -y — custody, liberty, robbery, battery, burglary, felony.

Adjectives:
- -al — penal, criminal, carnal;
- -or — major, minor (crimes);
- -y — petty, deadly, risky.

A number of **prefixes** have been singled out as recurrent in this terminology:
- Uni- — unilateral (treaty), uniform;
- Un- — unlawful, unfair, undue;
- Under- — underwriter, undertaking, underlease;
- Ante- — ante-bellum, antenuptial;
- Anti- — anti-avoidance, anticompetitive, antitrust;
- Non- — non-insane, nonfeasance, non-molestation;
- Over- — overrule, overtake;
- Pre- — pre-action, preassault;
- Re- — re-examination, re-hearing.

There also exists a possibility to bring an affix into correlation with a certain notion within the terminology. For example, the suffix -*ing* adds the meaning of a process: *rehearing, engaging, causing*; suffix -*er* usually denotes a person: *lawyer, offender*; however, in some cases it has the meaning of a process: *joinder* which means "uniting of several causes of action or parties in a single suit" [3, p. 289].

Another specific feature is that the majority (81% [4, p. 6]) of Law terms is represented by nouns. In the present paper, typical structural models have already been mentioned. These models also include some adjectival

and adverbial constructions. A small number of verbs are also present in this terminology (either verbs themselves or *verb+noun models: to punish, to give amnesty/pardon, to invade (property)*, etc). There are also such models as *noun+preposition+noun — arrest of judgment, verb+verb — bait and switch* (a type of fraud associated with retail sales, wherein the store lures customers by advertising that some products are offered at very low prices, but induces them to buy other expensive products, citing the excuse that the advertised product is no longer available or is not of good quality).

Among other recurrent models there are also the following:

- *noun+noun* — justice court, confiscation order, privilege law;
- *adjective+noun* — capital punishment, preventive detention, statutory offence;
- *preposition+noun* — ad hoc, ab initio, in delicto, against the evidence;
- *adjective+preposition+pronoun* — actionable per se, malum per se, actionable per quod.

A number of consubstantial terms are present in Law terminology: *article, assignment, attempt* — these are words that also exist in the General Language but have another meaning. Such terms as *testament, canon, confession* also were borrowed from religious terminology. However, the majority of consubstantial terms are connected with the sphere of economics and finance — *assests, bankruptcy, contract, competition, compensation*, etc — and politics — *decree, statute, legislature*.

Among the system of the Criminal Law terms there exist roots with a high derivational capacity — for example, *Law* — lawyer, lawful, unlawful, lawsuit; *Crime-* — criminal, criminalistics, crimen (Latin).

A large group of terms that illustrate generic-specific relations are also present:

- *Offence (against)* — international law and order, public order, the person, the state, relating to the road traffic;
- *Offence triable* — only on indictment, only summarily, either way;
- *Open* — court, procedure, space;
- *Right (of)* — abode, action, audience, support, common, silence, reentry;
- *Rule in* — Strong v Bird, Re Petitt;
- *Rule of* — rule of law, court;
- *Standard* — basis, contract, criterion and many others.

A number of nomenclature units are included into terminological dictionaries of Criminal Law terms. These units include: names of Laws (*Canon Law, Common Law, Cease and Desist Order Law*), Bills (*Bill of Rights, Bill of Lading, Bill of Exchange*), cases (*Shelley's Case, Wild's Case*).

In the legal language there are also terms based on metaphors — *frustration of contract (невозможность исполнения контракта), peppercorn rent (номинальная арендная плата), perished goods (испорченные товары)*, etc.

As for the content plane analysis, Criminal Law terms have a number of specific features. Firstly, these features include numerous synonyms:

misdemeanours — minor crimes (преступления малой или средней тяжести);

felonies — high crimes (тяжкие преступления);

seriousness — gravity of a crime/offence (степень тяжести преступления);

cumulative punishment — consolidated sentencing — accumulative sentence (совокупность преступлений);

imprisonment — incanceration — custodial (помещение под стражу);

defendant — accused — offender — convict (обвиняемый);

offender — criminal — misdemeant (виновное в преступлении лицо);

criminal incapacity — nonimputability (невменяемость);

repeated — repetitive crime (рецидив);

aforethought — deliberate — intended — intentional — wilful crime ((пред)умышленное преступление);

criminal — felon — offender — perpetrator — infringer — delinquent (преступник).

As for the basic terms, such as *crime* and *punishment*, specific features are the following:

- these terms are generic for numerous specific terms:

Crimes — against humanity, against the person, against public and security order, against state power, against peace and security;

Punishment — light punishment, commuted punishment, lenient punishment, remitted punishment, cruel punishment, harsh punishment, severe punishment, unremitted punishment, brutal punishment, drastic punishment, serious punishment, stiff punishment.

As the term has a systemic nature, i.e. it is related to other elements of a terminological system, many terms form antonymous relations. This pairs can be formed in two ways — either semantically:

crime — punishment;

claimant — defendant, etc.

Or morphologically — with the help of affixes:

direct evidence — indirect evidence;

lawfull — unlawfull;

remitted punishment — unremitted punishment.

The terms of Criminal Law can be classified into the following structural types:

- root terms: *abet, abuse, adduce, adjourn, act, alibi*;
- derivative terms: *abandonment, abduction, accusation, acquittal, adjudication*;
- compound terms: *counterfeit, blackmail, copyhold, cybercrime*;
- compound derivative terms: *counterclaimant, blackmailer, blackmailed*.

According to the semantic aspect, terms can be motivated and unmotivated [5, p. 63–64]. For example, the *unmotivated terms* are *decree, offence*. Motivated terms can be divided into: *partially motivated terms* — terms whose meaning can be only partially explained by meanings of the words on the basis of which these terms were coined: *declaratory theory, direct evidence, intertemporal law*, — and *fully motivated terms* whose meaning can be fully explained by the meaning of their structural elements: *declaration* meaning "the formal document setting forth plaintiff's cause of action, which includes those facts necessary to sustain a proper cause of action and to advise defendant of the grounds upon which he is being sued" [3, p. 139], *intention* meaning "the state of mind of one who aims to bring about a particular consequence" [2, p. 289].

To draw a conclusion, all the above mentioned specific features of the Criminal Law terminology demonstrate that the Criminal Law terms are, firstly, a limited group of terms. However, this terminology continues to develop today since new types of crimes continue to appear and there is a need to name them. Secondly, these terms possess certain typical morphological, lexical, semantic and structural characteristics. Finally, terms of the Criminal Law have always been connected with words of the General Language, which has resulted in a number of synonymous groups or pairs that can be found in various language corpora.

Библиографический список

1. Herring J. Criminal Law. Text, Cases, and Materials. Fourth Edition. — Oxford, 2010.

2. Oxford Dictionary of Law. Seventh Edition. — N.Y., 2009.

3. Gifis S.H. Law Dictionary. — N.Y., 2010.

4. Анисимова А.Г. Теория и практика перевода терминов гуманитарных и общественно-политических наук. — М., 2008.

5. Гринев-Гриневич С.В. Терминоведение. — М., 2008.