



Two Legal Systems and the Term Homicide

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How can homicide vary from country to country?

Each legal system has its own vocabulary. It is the translator's job to search for terms that often do not fully correspond to the meaning of the word in the source language, or which may not even exist in the target language. Nevertheless, using the appropriate word does not only depend on a good dictionary. It also depends on the translator's technical knowledge.

Hence, a legal background contributes significantly to the translator's and interpreter's professional success, as such knowledge will be crucial for avoiding erroneous translations such as *homicídio-suicídio* and *homicídio involuntário* (meant to correspond to the English terms "homicide-suicide" and "involuntary manslaughter," respectively), which have no equivalents in the Brazilian system, despite their appearing in renown Brazilian bilingual dictionaries. Expressions such as these only confuse readers and make it difficult to understand the text, consequently preventing a complete understanding of the target legal system.

If we research the crime of homicide in the Brazilian and English systems, we will surely find terms such as *homicídio*, *homicídio simples*, *homicídio culposo*, *homicídio culposo simples*, *homicídio culposo qualificado*, *homicídio doloso*, *homicídio qualificado*, *homicídio privilegiado*, *homicídio*, *homicídio simples*, *homicídio culposo*, *homicídio culposo simples*, *homicídio culposo qualificado*, *homicídio doloso*, *homicídio qualificado*, *homicídio privilegiado*, **homicide**, **manslaughter**, **voluntary manslaughter**, **involuntary manslaughter**, **constructive manslaughter**, **gross negligence manslaughter** and **murder**.

These are the terms that I will attempt to translate as precisely as possible by means of a perfunctory analysis of the Brazilian and English legal systems and by outlining in general terms the crime of homicide in both legal systems. Finally, I will conclude with a list of Portuguese/English terms of likely equivalents.

The Brazilian System

Homicide is the death of one person caused by another. It is included in article 121 of the Special Section of the Brazilian Penal Code and in extravagant laws such as the Law on Hideous Crimes, the Road Traffic Code and the Military Penal Code. However, we will limit this brief study to a review of article 121 of the Brazilian Penal Code, as it contains practically all of the terminology used in the Brazilian legal system.



This is a crime against life subject to trial by jury, as is the case of abortion (articles 124 to 128), infanticide, (article 123) as well as inducement and instigation to or assistance with suicide (article 122). For all of these crimes, the value in question is human life. The crime of homicide (article 121 of the Penal Code) has its sub-divisions: *homicidio simples* (caput); *homicidio privilegiado* (§ 1); *homicidio qualificado* (§ 2); *homicidio culposo* (§§ 3, 4 and 5) and *homicidio doloso* (§ 4). The *caput* of article 121, the briefest in the legal text under consideration, states: "To kill someone. Sentence – imprisonment from 6 to 20 years." The penal type defines *homicidio simples*.

However, this penalty can be reduced. In order to receive the benefit of a less severe sentence, the defendant must prove that he/she committed the crime:

- for a reason of relevant social significance (e.g. a father who kills the man who raped his daughter; euthanasia could also be classified here.)
- for a reason of relevant moral significance (e.g. a citizen who kills a traitor to the country.)
- under the influence of an overwhelming emotion (e.g. someone who kills owing to religious fanaticism.)
- immediately following an unjust provocation by the victim (e.g. a fit of anger.)

In these instances, the crime would be defined as *homicidio privilegiado*, and the circumstances subject to consideration by the jury.

The following paragraph describes *homicidio qualificado*, which results in a sentence of imprisonment of 12 to 30 years. Homicide will fall under this category when committed:

- for base reasons, including payment (previously received) and a promise of reward (e.g. a husband who kills his wife because she is unwilling to become a prostitute commits a crime of *homicidio qualificado* for base reasons)
- for futile reasons (e.g. a man who kills another for a can of beer)
- with the use of poison, fire, explosives, smothering, torture or other insidious or cruel means, or which may result in common danger
- treacherously, by ambush or by means of dissimulation that makes defense by the victim difficult or impossible (e.g. a classic example of this last case would be someone who commits a crime after drugging the victim)
- in order to assure performance, dissimulation, impunity or to benefit from another crime (e.g. a man who kills his crony in order not to be reported commits the crime of *homicidio qualificado* seeking to remain free from blame)

Following this very brief explanation, the definition of *homicidio doloso* should also be clarified. The crime of *homicidio doloso* is a crime committed intentionally. In other words, the agent desired or accepted the risk of causing the victim's death, differently from what happens with *homicidio culposo*, whereby the perpetrator acts unwisely, negligently or with a lack of skill. The *homicidios qualificados* in § 2 are all *homicidios dolosos*.



The *homicídio culposo* described in §§ 3 and 4 is a crime committed by an agent who did not wish for the resulting death. It may be caused by negligence (oversight in the general obligation to exercise caution), unwise action (a dangerous action) or lack of knowledge (unable to effectively perform an activity or function). *Homicídio culposo* may also be *qualificado* when:

- it arises from non-compliance with the technical regulations of a profession, activity or function
- the agent does not provide immediate aid to the victim
- the agent does not seek to mitigate the consequences of his/her action
- the agent flees the scene to avoid arrest for being caught in the act

Should none of the above situations take place (§ 4), *homicídio culposo* shall be defined as *simples*. A unique aspect of *homicídio culposo* is the fact that a judge may refrain from applying the standard sentence if the consequences of the violation affected the agent in such a serious manner that a penal sanction should become unnecessary, as for example in the case in which the agent becomes paralytic or in the case of the death of the agent's child. In short, these instances constitute homicide in the Brazilian legal system. Let us now turn our attention to the English system.

The English System

The observer will notice the first expressive difference between the two systems when examining the legal texts that typify homicide in England and Wales. It is interesting to note that the crime of **murder** is not described in legal text, or rather, in a law or a code. This is because the English system is based on jurisprudence (and not on customary law as most people would imagine). Consequently, the task of finding a Portuguese term approximate to the English **murder** will require an analysis of the criminal elements in English jurisprudence and doctrine. In the English system, **homicide** may be considered as: *the unlawful killing of a human being*. As this is deemed the most serious crime in the legal system, it also carries the most severe punishments.

Homicide is the class under which **murder** and **manslaughter** are classified. Therefore, the crime of **murder**, which carries the most severe punishments in the English legal system (life imprisonment), is considered a common law offense (a crime included in jurisprudence and one with no definition in a legal text), being defined by Coke as the following:

"Murder is when a man of sound memory, and the age of discretion, unlawfully killeth within any county of the realm any reasonable creature in rerum natura under the king's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt etc. die of the wound or hurt, etc. within a year and a day after the same."



ENGLISH	PORTUGUESE	COMMENTS
offence against the person	crime contra a pessoa	
common law offence	crime tipificado pela jurisprudência	
malice aforethought, intent	dolo	
necessity, defense of justification.	estado de necessidade	
by commandment of the law, justification	estrito cumprimento do dever legal	
justification, defense of justification	excludente de antijuridicidade	
by commandment of the law, justification	exercício regular do direito	
homicide	homicídio	
voluntary manslaughter (diminished responsibility)	homicídio cometido por agente inimputável	In Brazil, an agent shall be exempted from guilt when, due to mental illness, incomplete development or retardation, he/she was fully incapable of understanding the unlawful nature of the event, or behaving in accordance with this understanding when the crime was committed or during the act of omission (art. 26, Penal Code).
involuntary manslaughter	homicídio culposo	When there is negligence and ignorance.
involuntary manslaughter: 1. gross negligence manslaughter; 2. constructive manslaughter	homicídio culposo do sistema inglês	
constructive manslaughter (involuntary manslaughter)	homicídio culposo resultante da prática de outro ato intencional	Aggravation due to the outcome (art. 19, Penal Code.) When the outcome aggravates the penalty, only the agent guilty of the crime shall be held responsible.
murder	homicídio doloso	
voluntary manslaughter (provocation)	homicídio privilegiado (injunta provocação da vítima)	
voluntary manslaughter (provocation)	homicídio privilegiado (sob violenta emoção)	
voluntary manslaughter	homicídio privilegiado do sistema inglês	There are three possible defenses: 1. diminished responsibility; 2. suicide pact; 3. provocation. The only one that has an equivalent in the Brazilian system is provocation. Based on art. 26 of the Penal Code, there is no penalty in Brazil for the first case. The second case shall be considered murder, attempted murder, or inducement to, instigation to or assistance with suicide.
murder	homicídio qualificado	Normally, this crime is characterized as being motivated by an unjustifiable reason.
murder	homicídio simples	
diminished responsibility	inimputável	
self-defense, justifiable homicide	legítima defesa	
suicide pact	pacto de morte	In the Brazilian system, the survivor shall be accused of murder or the crime of inducement to, instigation to or assistance with suicide, even when they themselves intended to commit suicide.
judicial pardon	perdão judicial	In the case of manslaughter that affects the victim in such a way as to render a penalty unnecessary.
life imprisonment	prisão perpétua	
provocation	provocação, injunta da vítima	
attempted murder	tentativa de homicídio	
heat of passion	violenta emoção	

List of legal terms and their corresponding definitions in Portuguese



Using this concept, we are able to point out the elements that define **homicide** as a crime of **murder**. They are:

- a capable agent;
- the death of one person caused by another;
- unjustified death;
- malice;
- when the victim's death occurs within a period of a year and a day as a result of his/her wounds (This prerequisite was abolished by the 1966 Law Reform Act.)

As demonstrated by the division of the above definition, the crime of **homicide** and the crime of *homicídio* do not display the same elements, making it difficult to use the correct terminology and preventing a perfect parallel between the Brazilian and English systems. Nevertheless, this issue will become clearer after we examine the term **manslaughter**.

Under different conditions, the crime of **murder** may not qualify as **manslaughter**, a crime resulting in a less severe sentence. A similar situation occurs in the Brazilian system when *homicídio simples* does not qualify as *culposo* or *privilegiado*, for example, or when *homicídio* is not considered a crime in light of one of the excluding factors (legitimate self-defense, state of necessity, strict compliance with legal obligations, regular exercise of law) as described in articles 23 to 25 in the General Section of the Brazilian Penal Code.

Hence, there are two types of **manslaughter**: voluntary and involuntary. **Voluntary manslaughter** occurs when the defendant avails him/herself of the three statutory defenses described in the 1957 Homicide Act: provocation, diminished responsibility and suicide pact. The defendant may avail him/herself of the general defenses applicable to all crimes, including: mistake, ignorance of law, intoxication, insanity, duress, etc. which as a rule in Brazil are known as attenuating and aggravating circumstances (*atenuantes* and *agravantes*). Nonetheless, I include here only those defenses described in the Homicide Act:

- **diminished responsibility**: Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing (Homicide Act 1957.)
- **provocation**: The jury will decide whether the defendant was in fact provoked and whether provocation was enough to make a reasonable man do what the defendant did (1957 Homicide Act.)



- **suicide pact:** It is the common agreement between people having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact (Homicide Act 1957.)

Finally, before establishing a relationship between the two systems in the third and final part of this article, allow me to comment on **involuntary manslaughter**. The crime of involuntary manslaughter occurs when the agent has no intention of committing (*mens rea*) murder. Below are some examples: Punching the victim, who falls and dies, threatening someone with a loaded firearm which fires accidentally.

The crime of **involuntary manslaughter** can be subdivided into two main categories: **constructive manslaughter** and **gross negligence manslaughter**.

Constructive manslaughter occurs when the agent practices unlawful and dangerous acts that can lead to physical harm or death. Evidently, the agent does not intend to cause death, which arises from unlawful and dangerous conduct. However, the agent did intend to perform the unlawful and dangerous act.

Gross negligence manslaughter is also described in jurisprudence and was defined in *R v Bateman* (1925) [19 Cr App R 8]:

(...) the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment."

The dividing line between the categories of **involuntary manslaughter** is not clear, and in many cases, a crime is classified under both.

Conclusion

The subtleties of each system make the translator's task laborious. Although there are similar meanings in each system, none are identical. The clearest example is that of *homicídio privilegiado* (privileged homicide.) Albeit this crime exists in both the Brazilian and the English systems, the elements in each are largely different, making it difficult to employ a uniform vocabulary.

How can the translator overcome these obstacles? In light of the technical aspects associated with this field, it is very dangerous to use *homicídio-suicídio* to describe voluntary manslaughter that results from a suicide pact. Readers who run across an expression like this one will surely understand nothing.



Perhaps a better solution (with the exception of the term's broader context) would be a translation based on definitions. For example, **voluntary manslaughter** could be translated as *homicídio privilegiado do sistema inglês* with an additional explanation of what is the privilege involved; e.g., whether it refers to a suicide pact, diminished responsibility or provocation. Hence, the translator will convey the true sense of the word in the source language instead of employing terms that the reader cannot understand.

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