

English→Spanish Legal Dictionaries on Probation

By Sandro Tomasi

This article is based on my own study of legal dictionaries, penal codes, and criminal procedure codes, in which I researched how the term probation, as it applies to the criminal justice arena, ought to be translated into Spanish. As you will see, this term has been incredibly mistranslated by most bilingual legal dictionaries. At the same time, no bilingual legal dictionary to date is 100% accurate. This being the case, it is important to keep in mind that the following article was not written to criticize the overall quality of the dictionaries mentioned here. It is simply a study on how best to translate the term in question (probation).

The goal of a bilingual legal dictionary is to provide an accurate translation of a source-language term and to provide different alternatives when contextual variations make it necessary to do so. An explanation in the target language may be required when there is no equivalent term or concept in the target system. In this situation, a formulated term may be welcomed, but only after it is thoroughly researched to make sure that it does not interfere with existing legal terminology.

Legal translating can be tricky due to the inherent differences between the source and target languages and the legal systems in their respective countries. Naturally, this is likely to lead to differences of opinion among experts on how to translate any one particular term. Discrepancies among bilingual legal dictionaries may also be due to the resources used and the background knowledge and experience of the individual author. Moreover, even when working with languages and legal systems where numerous reference works are available, such as English and Spanish, there are times when these dictionaries provide translations that are not

completely accurate or that are erroneous altogether.

Before reviewing the Spanish translations for the term probation, it is important to first understand what the term means in English. *Black's Law Dictionary* (6th and 7th editions) defines probation as a: "sentence imposed for commission of crime, whereby a convicted criminal offender is released into the community under the supervision of a probation officer in lieu of incarceration. ... For this

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purpose the defendant must agree to specified standards of conduct, and the public authority operating through the court impliedly promises that if he makes good, his probation will continue; however, his violation of such standards subjects his liberty to revocation.” This definition allows us to understand that probation has five basic elements. That is, that probation:

- 1) Is a sentence imposed for commission of a crime;
- 2) Is in lieu of incarceration;
- 3) Involves a convicted criminal offender being released into the community under supervision;
- 4) Requires the defendant to agree to specified standards of conduct; and
- 5) States that liberty may be revoked if the defendant fails to abide by the agreed upon standards.

Going beyond *Black's* definition of probation, it may also be helpful to understand that a probation sentence may be modified or revoked at the

court's discretion. Furthermore, if a sentence of probation is revoked, a court may impose any other sentence that initially could have been imposed.¹

Let us now begin by quickly discarding one of the alternatives offered by the bilingual legal dictionary authors (see Figure 1, page 41). Dahl misses the mark with one of his translations for probation by offering *libertad bajo fianza* (release on bail).

Libertad Condicional

It is absolutely mind-boggling how 12 English-into-Spanish legal dictionaries, including some of the most respected publications to date, have translated probation as *libertad condicional*. At first glance, this would seem to be correct because probation is, in a way, a “conditional release.” The question here is, does *libertad condicional* hold the same legal meaning as probation does in English? The first step that a legal translator can take in order to verify the accuracy of a target-language term in a bilingual legal dictionary is to confirm the meaning of the term in monolingual legal dictionaries. Having already confirmed the English meaning for probation, the next step is to see how the monolingual legal dictionaries in Spanish define *libertad condicional*.

Fernández de León defines *libertad condicional* as: “La concedida al penado merecedor por su conducta de ser puesto en libertad antes del total cumplimiento de su condena, quedando sometido a la libertad vigilada para en caso necesario ser reintegrado al establecimiento penitenciario a efectos de que cumpla la pena remitida condicionalmente.” Cabanellas², one of the foremost experts on legal terminology in Spanish, dedicates five paragraphs to describe *libertad condicional* in his authoritative eight-volume *Diccionario enciclopédico de* ➔

derecho usual. The author states: “Beneficio penitenciario consistente en dejar en libertad a los penados que hayan observado comportamiento adecuado durante los diversos períodos de su condena y cuando ya se encuentren en la última parte del tratamiento penal, siempre que se sometan a las condiciones de buena conducta y demás disposiciones que se les señalen, a menos de ser reintegrados al establecimiento penal para cumplir el tiempo faltante, con el mal antecedente de esa frustración durante la ensayada *libertad* y retorno a la convivencia normal en sociedad.”

The Spanish Penal Code describes *libertad condicional* by stating: “Se establece la libertad condicional en las penas privativas de libertad para aquellos sentenciados en quienes concurran las circunstancias siguientes: 1.^a Que se encuentren en el tercer grado de tratamiento penitenciario. 2.^a Que hayan extinguido las tres cuartas partes de la condena impuesta. 3.^a Que hayan observado buena conducta y exista respecto de los mismos un pronóstico individualizado y favorable de reinserción social, emitido por los expertos que el Juez de Vigilancia estime convenientes.” The term *libertad condicional* appears in most Latin-American penal codes (see Figure 2, page 42) and holds the same conceptual meaning as the above descriptions.³

It is clear that *libertad condicional* is the legal counterpart to parole, which has a well-established use in the Anglo-American criminal justice arena. This is confirmed in *Black’s Law Dictionary*, which defines parole as a “conditional release from imprisonment which entitles the parolee to serve the remainder of his term outside the confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order.” Interestingly enough,

all of the bilingual legal dictionaries that included the term parole displayed *libertad condicional* for its translation as well—this time, accurately so. So how is it possible that the vast majority of English-into-Spanish legal dictionaries have erroneously offered *libertad condicional* as the translation for the term probation?

There are a few reasons. First, there have been minor misunderstandings between the terms probation and parole in English for which *Black’s* has found it necessary to distinguish between the two. It states: “‘Probation’ relates to judicial action taken before the prison door is closed, whereas ‘parole’ relates to executive action taken after the door has closed on a convict.” Second, no neo-Roman law country whose official language is Spanish has an exact legal counterpart to the Anglo-American system of probation. And third, there is even some confusion among legal scholars in these countries on the use of the term *libertad condicional*. This is illustrated by Ossorio, who says, “Constituye un dislate, al que no son ajenos algunos profesionales del Derecho, confundir esta institución con la *libertad provisional* o con la *condena condicional* (v.)” To further investigate what this blunder is all about, a cross-reference search on *condena condicional* in Cabanellas’ dictionary provides further proof that such a mistake should be avoided at all costs. Cabanellas states: “Constituye vulgarismo jurídico confundir esta figura con la de la *libertad condicional*, y más aún con la *libertad provisional* (v.). Sin perjuicio de ampliar los respectivos conceptos en las voces citadas, indicaremos como substancial diferenciación que la *libertad provisional* se otorga durante el proceso; la *condena condicional* se traduce en la suspensión de la condena (requiere fallo y no haber empezado a

cumplir la pena); mientras la *libertad condicional* se concede a los que, ya sufriendo condena, son liberados anticipadamente, en forma condicionada por su buena conducta.” While it is evident that there is some confusion as to the use of terms in Spanish, confirming the meaning of *libertad condicional* in a monolingual legal dictionary, and even more so, in most penal codes, would have undoubtedly proved that *libertad condicional* means parole and not probation.

Based on the fact that *libertad condicional* has such a broadly codified and established legal meaning, it is my opinion that variations of this term—e.g., Collin and Melcion’s *libertad condicional a prueba* or Romañach’s *libertad condicionada*—may be easily confused for parole.

Condena Condicional

Authors Lega and Oriolo offer the term *condena condicional* for probation (see Figure 1), while Benmaman, Connolly, and Loos offer a variation on the term: *condena condicional probatoria* (more on *probatoria* below). It seems as if these authors may have carried out more extensive research for their translation of probation by surpassing the *libertad condicional* “hurdle,” because they have made the distinction between being released right after conviction and being released after serving a minimum prison term. Nonetheless, let us analyze further what is meant in legal Spanish by *condena condicional*. The *Diccionario jurídico mexicano*, an authoritative four-volume work, describes *condena condicional* as: “una institución, de carácter jurídico-penal, cuya finalidad es la suspensión de las sanciones, impuestas a los delincuentes, cuando carezcan de antecedentes de mala conducta, sea la primera vez que delinquen, la pena

consista en prisión que no exceda de dos años (cumpliendo los demás requisitos del a. 90 del CP), para intentar su reintegración a la convivencia social.” The Spanish authoritative four-volume work, *Enciclopedia jurídica básica*, includes: “consistente en suspender el cumplimiento de la pena (o su imposición, según los sistemas), a condición de que el sujeto no vuelva a delinquir o cumpla otra serie de requisitos o cargas legalmente previstos.” Although the specifics may vary from one country to another, *condena condicional* is a system that is very close to probation, allowing a convict of a minor offense to be released into society under certain conditions with the understanding that if those conditions are not met, the defendant will have to serve the sentence that was previously looming over his head.

Before we continue, it is important to note two things. First is that, unlike *libertad condicional*, when a convict is “on release” with conditions, *condena condicional* does not mean that the offender is “serving a sentence” with conditions. To the contrary, the established legal meaning for *condena condicional* is that there is a sentence, but it will only be carried out if the conditions of release are not met. Díaz de León addresses this misnomer, as part of his 11-page definition of the term, when he comments that *condena condicional* amounts to a “condena de inexecución condicionada.” It is also important to note that even though Mexico⁴ is the only country to codify the term *condena condicional* as a title, others—e.g., Colombia, El Salvador, and Uruguay (*suspensión condicional de la ejecución de la pena*); Peru and Spain (*suspensión de la ejecución de la pena*); and Paraguay (*suspensión a prueba de la ejecución de la pena*)—have estab-

lished the term as a synonym to their codified terminology. This is probably the reason why Lega and Oriolo also offered their own variation: *ejecución condicional de la pena*.

The *Enciclopedia jurídica básica* goes further and makes a comparison between the systems of *condena condicional*, probation, and *sursis* (a similar system used in Europe): “De todos estos sistemas los más extendidos son el angloamericano de *probation* y el franco-belga del *sursis*. En el sistema de *probation*, el proceso de imposición de la pena se divide en dos momentos: En el primero, el juez declara la culpabilidad, pero no impone la condena, dejándola en suspenso durante un período de prueba, en el cual el sujeto es sometido a medidas de control y a medidas positivas asistenciales y de *reinserción*, consistentes en el cumplimiento de ciertas cargas [trabajos para la comunidad, participación en programas de *reinserción*, reparación del daño ...], bajo la vigilancia de un funcionario encargado de su seguimiento (*probation officer*)...” In fact, there have been many comparative studies between probation and *condena condicional*, such as the following two works which happen to share the same revealing title, *Suspensión condicional de la pena y «probation»*: Maqueda Abreu (1985) and Nuñez Barbero (1970).

For all the comparisons that have been drawn between probation and *condena condicional*, one would think that these terms constitute an accurate translation. It is my opinion, however, that they do not because *condena condicional* is a conditional sentence that is not carried out; probation, on the other hand, is a sentence that is carried out. This is governed by the Comprehensive Crime Control Act of 1984, which makes probation a

sentence in and of itself.⁵ Nevertheless, I do believe that there is already a legal counterpart to *condena condicional* in U.S. criminal law. The term for this is suspended sentence, which *Black’s Law* describes as: “A conviction of a crime followed by a sentence that is given formally, but not actually served. A suspended sentence in criminal law means, in effect, that the defendant is not required at the time the sentence is imposed to serve the sentence.” The difference with probation is that the defendant is serving an imposed sentence, albeit noncustodial, and that the prison sentence will be set and carried out if the sentence of probation is revoked.

Libertad a Prueba and Probatoria

Authors Alcaraz Varó and Hughes, Rivera García, and Robb offer *libertad a prueba* for the translation of probation in their dictionaries. Even Morales Lebrón places probation (written in English) in parentheses right next to the *libertad a prueba* entry in his monolingual Puerto Rican legal dictionary. *Libertad a prueba* is almost identical to the Anglo-American system of probation, and can be found in the Puerto Rican criminal procedure code. However, it seems to me that this term is not probation as it is currently defined in the U.S., but a suspended sentence instead. The Puerto Rican criminal procedure code, as a commentary to Section 1026, *Sistema de libertad a prueba*, adds: “El sistema de sentencia suspendida o libertad a prueba son términos que se emplean indistintamente para referirse a una misma institución.”⁶ So here we have it, under definition of Puerto Rican law, *libertad a prueba* is the same as a suspended sentence. Maybe this is why Meilij de Romero came up with *sentencia en suspenso (a prueba)* for probation. ➡

Interestingly enough, evidence tends to show that probation was a suspended sentence before the Comprehensive Crime Control Act of 1984. The fourth edition of *Black's Law Dictionary* (1968) gives a different case-law description of probation than its sixth edition published 22 years later. The earlier version states the following: "allowing a person convicted of some minor offense (particularly juvenile offenders) to go at large, under a suspension of sentence, during good behavior, and generally under the supervision or guardianship of a probation officer." This definition is in contrast to the one I cited earlier from the probation edition, which established probation as a sentence. What is also interesting is that it took a few years for probation to complete its metamorphosis in the 1970s from a suspended sentence into a sentence. This is evidenced in the fifth edition of *Black's Law Dictionary* (1979), where it displays two contrasting case-law definitions for probation. One of the cases described it as a sentence and the other as a suspended sentence. The important lesson to be learned here is that as laws change, terminology and/or translations of such may need to do so as well. All of the authors that offered *libertad a prueba* would have been accurate if we were talking about probation in the 1960s, even though *condena condicional* or *suspensión de la ejecución de la pena* were, by far, more established terms for the same in Spanish-speaking countries.

Many authors offer *probatoria* as a translation for probation, but all the Spanish-monolingual legal dictionaries used in this study that listed this term defined it as "pertaining to evidence." Rivera García is the exception, and is the only one to define the term as an early prison release for good behavior. None of the codes I

reviewed support Rivera García's contention, but offered, instead, terms such as *obligatoriedad probatoria* and *término probatorio*, displaying further proof that the legal term *probatoria* pertains strictly to evidence. The exception to this rule is found in Puerto Rican case law (not its statutes) where this colloquialism appears repeatedly, demonstrating its current level of acceptance by the courts. Indeed, Puerto Rico has its own laws and terminology, but it is important to know that *probatoria* is not a sentence in and of itself, as probation is in the U.S., and that it is used to describe its own codified terms, *libertad a prueba* and *sentencia suspendida*.

Alcaraz Varó and Hughes further contend that *libertad probatoria* would be suitable. However, this compounded term can be found in Article 173 of the Paraguayan Criminal Procedure Code, and refers to admitting evidence. It defines *libertad probatoria* as: "Los hechos y circunstancias relacionados con el objeto del procedimiento podrán ser admitidos por cualquier medio de prueba, salvo las excepciones previstas por las leyes." Once again, this demonstrates the widespread legal usage of the term *probatoria* in relation to evidence.

Generic Terms for Probation

Libertad vigilada is offered by Collin and Melcion, Ramos Bossini and Gleeson, and West. It is fine to describe probation as such; however, this term may be associated with either *libertad condicional* or *condena condicional* in civil law countries. Traditionally, a *Juez de Vigilancia* would supervise convicts who were on *libertad condicional*, hence *libertad vigilada*. But as supervision has become a more popular tool in the neo-Roman law systems of *condena condicional*, the term has been applied

generically for both. What's more, in some countries, even the *Juez de Vigilancia* is in charge of supervising both as well. Aside from *libertad vigilada*, terms such as *tratamiento en libertad*, *período de prueba*, *régimen a prueba*, and *régimen de vigilancia* may also be used to describe probation, parole, and any other noncustodial sentences or releases.

Probación

The term *probación* has not been included in any of the bilingual legal dictionaries I reviewed. However, Goldstein does include it in his *Diccionario de Derecho penal y criminología* and offers Cuello Calón's description of the Anglo-American system of probation. At first, one may be inclined to think that it is absurd to use this cognate, which has no legal meaning in Spanish. True as this may be, Goldstein is not off base, since the term *probación* does conjure up similar images. Let us go outside of the legal arena for one moment and confirm the definition of *probación* with the master lexicographer María Moliner. The first of the two meanings she offers is *prueba*. Just as in old English, probation is evidence or proof. The second meaning reads as follows: "En las *órdenes religiosas, prueba de vocación que se les hace a los novicios por espacio de un año por lo menos." The 30-volume *Enciclopedia jurídica española* also includes *probación* and explains it as Moliner does. Of course, neither of these two references is talking about convicted seminarists on probation, but they do lend credence to the use of *probación* in the criminal justice arena because it subjects a person to a probationary period. This may even be why some other legal scholars have chosen to include the Spanish cognate in their comparative studies on probation, e.g., *Bases para el desarrollo de*

un sistema de Probación en Venezuela (Bravo Dávila, 1981) and *La probación: Método de tratamiento individual del delincuente* (Canestri, 1981).

There are, however, many legal scholars around the world who have also performed comparative studies on probation, but have chosen to keep this term in English.⁷ But what happens when a term is kept in English as it is being discussed in a foreign language? Little by little, as an English word gets repeated over and over again, it becomes engrained into the vernacular of a foreign language. This sort of thing, as court interpreters across the U.S. are able to confirm, has Spanish speakers uttering the likes of “*provecho*” and “*probeishon*.”

Closing Thoughts

It is my belief that the research on how to translate probation has proved that *libertad condicional* is an erroneous translation for probation, and should be used for parole instead. The term *condena condicional* and the Puerto Rican terms, *libertad a prueba* and *sentencia suspendida*, were all equivalent to probation when the Anglo-American system was a suspended sentence. However, once probation became a sentence in and of itself, I think these three terms were better left for comparative studies only rather than precise translations thereof. Currently, I believe that *condena condicional*, *libertad a prueba*, and *sentencia suspendida* are legal

counterparts of suspended sentence. It may very well be that the systems of *condena condicional* and *libertad a prueba* will be enacted in their respective countries as sentences in and of themselves, and allow courts discretion on their modifications and re-sentencing procedures just as probation has in the United States. Until then, I don’t think either of these terms would constitute an accurate translation of probation.

The term *probatoria* offers an interesting twist because, legally, it only refers to evidence. However, it has gained colloquial acceptance in Puerto Rico as the equivalent of *libertad a prueba*. On the other hand, it is also used in some parts of the ➔

Figure 1: English-into-Spanish Legal Dictionaries

Term	Alcaraz Varó/Hughes	Benmaman/Connoly/Loos	Cabanellas/Hoague*
probation	libertad condicional o a prueba, libertad probatoria, [explanation of “probation” in Sp.]; probatoria	condena condicional probatoria, [usage: once full term established, may use only <i>probatoria</i>]	libertad condicional
	Collin/Melcion	Dahl	Espasa
	libertad vigilada, libertad condicional a prueba	libertad bajo fianza, libertad condicional	libertad condicional
	Kaplan*	Lega/Oriolo	Mazzucco/Maranghello
	libertad condicional	ejecución condicional de la pena, condena condicional	libertad condicional
	Meilij de Romero	Muñiz Castro	Ramos Bossini/Gleeson
	sentencia en suspenso (a prueba)	libertad condicional, probatoria	libertad condicional, libertad vigilada
	Rivera García	Robayo	Robb
	libertad a prueba	prueba, libertad condicional	libertad condicional o a prueba, probatoria (PR)
	Romañach	Solís/Gasteazoro*	West
	probatoria; libertad condicionada	1. libertad condicional. 2. [explanation of “probation” in Sp.]	libertad vigilada

* It is a great injustice to authors Cabanellas/Hoague, Kaplan, and Solís/Gasteazoro that their dictionaries are commonly referred to by the publishers’ names—Butterworth’s, Wiley’s, and sometimes Aspen’s, and West’s, respectively—rather than their own.

Figure 2: Penal and Criminal Procedure Codes from Spain and Latin America (terms used for parole)

Argentina	Colombia	Cuba	Ecuador
libertad condicional (aa. 13 a 17 del CP y aa. 505 a 510 del CPP)	libertad condicional (a. 64 del CP)	libertad condicional (a. 58 del CP)	libertad condicional (aa. 87 a 93 del CP)
El Salvador	España	Guatemala	México
libertad condicional (a. 85 del CP)	libertad condicional (aa. 90 a 93 del CP)	libertad condicional (aa. 78 a 82 del CP)	libertad preparatoria* (aa. 84 a 87 del CP y aa. 583 a 593 del CPP)
Nicaragua	Panamá	Paraguay	Uruguay
libertad condicional (aa. 108 a 113 del CP)	libertad condicional (aa. 85 a 89 del CP)	libertad condicional (a. 51 del CP y aa. 496 a 497 del CPP)	libertad anticipada

CEC, Código de Enjuiciamiento Criminal; CP, Código Penal; CPC, Código de Procedimiento Criminal; CPP, Código Procesal Penal, Código de Procedimientos Penales (Mx.).
 * The *Diccionario jurídico mexicano* lists *libertad condicional* and indicates its synonymous use to *libertad preparatoria* by referring the reader to the latter entry.

U.S. to translate the sentence of probation. Notwithstanding, this is probably due to the historical lack of qualified court interpreters throughout most parts of the country, and the shortcomings of the bilingual legal dictionaries that have been published.

After performing exhaustive research on the translation of probation, I concur with authors Bravo Dávila, Canestri, and Goldstein on using the term *probación* for this Anglo-American system when addressing an audience in Spanish.⁸ This is one of the rare cases when a new term is warranted because there is no exact legal counterpart. The cognate holds similar meaning in Spanish, and, in my opinion, is available for scrupulous application in the legal context. *Probación* has gained some colloquial acceptance in the U.S. and would be easily recognized by other Spanish speakers used to hearing the cognate in English. Furthermore, due to the vast comparative studies on probation and noncustodial systems, there are many

legal professionals in Spain and Latin America who would easily understand the term *probación* in the context of U.S. criminal law.

Due to the fact that legal translation is such a complex discipline—which involves translating from one language to another, from one legal system to another, and which may even include updating terms as language and legal systems evolve—one should always be aware of ad hominem fallacies and accepting expert opinion uncritically. It is by these criteria and all of the preceding documentation that I recommend to any person who consults English-Spanish legal dictionaries to treat them as if they have been sentenced to lifetime probation (*probación perpetua*).

Notes

1. 18 U.S.C. § 3565.
2. Although his full name, Cabanellas de Torres, is not given in the reference works that are

cited, it is important to know that he is the author of several monolingual dictionaries and should not be mistaken for his son, Cabanellas de las Cuevas, co-author of the “*Diccionario jurídico/Law Dictionary*.”

3. Uruguay is the only country that differs. Article 131, Section B, of the Uruguayan Penal Code establishes that *libertad condicional* is given, upon conviction, to a defendant that was granted a pre-trial release (*libertad provisional*). *Libertad anticipada* is their codified term for parole.
4. Art. 50 bis. of the Mexican penal code (*vigilancia de la autoridad*) establishes the ability to impose court supervision for a defendant who receives a *suspensión condicional de la ejecución de la sentencia* (i.e., *condena condicional*).
5. 18 U.S.C. § 3561.

6. 1 Der. Civ. 619, n. 41 (1968-CDC-012).
7. “La Probation aux Etats-Unis” and “La probation en France” from the *Revue de Droit Penal et de Criminologie*, June 1965 and March-April 1970, respectively; “Probation e assistenza post-penitenziaria in Inghilterra e nel Galles,” *Probation. Rassegna comparata di legislazione e pratica* (Klare, 1973); *Probation e istituti analogos* (Devoto).
8. Depending upon context, a brief explanation may need to be given to inform a target audience (usually foreign legal professionals, since defendants are quick to inform themselves) about what this noncustodial sentence means in U.S. criminal law. For this, I propose the following: *Probación. Institución angloamericana equiparable a la condena condicional, pero que a su vez constituye una pena en sí, obligando al penado a someterse bajo la vigilancia de un funcionario encargado de su seguimiento y cumplir con las condiciones impuestas por el juez mientras se encuentre en libertad.* You may continue with: *Si el reo beneficiado reincide durante el plazo fijado de la probación, será sujeto, a discreción del tribunal, a una modificación de ésta o será reconenado a una pena privativa de libertad correspondiente al delito por el cual se le concedió dicho beneficio.*
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