

Natalia Deptala

University of Warwick School of Law, United Kingdom

e-mail: natalia.deptala@gmail.com

ORCID: 0000-0003-4691-4409

THE CONCEPT OF DELINQUENCY IN MESOAMERICA: FOCUS ON THE AZTECS AND THE MAYA

Abstract

This paper focuses on the concept of delinquency in addition to prevention and suppression methods and the idea of guilt in pre-Columbian Mesoamerica, while treating its inhabitants as highly-developed indigenous peoples. The first section of the study examines the ideas of law and justice in terms of the particular policies that shape people's way of life in every society. The premise for addressing law in this manner is that one can only comprehend it via ongoing experience. The main focus of this paper is placed on the earlier timeline, when two crucial civilisations existed in Mesoamerica. Both the Maya and the Aztecs built vast, densely inhabited, and extremely efficient empires. However, even a large human society cannot function without order and there is no order without law. Committing a crime or a tort is incompatible with the desirable values and norms that govern the society and causes harm and hazard. Taking into consideration also the detrimental consequences of a forbidden act, the psychological determination of the delinquent and his or her personal attitude towards the act, the concepts of guilt and shame cultures should be brought to attention. From a historical point of view, a delinquent's feeling of guilt was given consideration during criminal trials in Europe as early as in the Middle Ages, while in Mesoamerica this concept had already existed. Furthermore, some of pre-Columbian Mesoamericans distinguished between intentional and accidental acts, which had an impact of final judgments.

KEYWORDS

the Aztecs, criminal law, delinquency, the Maya, Mesoamerica

SŁOWA KLUCZOWE

Aztekowie, prawo karne, przestępczość, Majowie, Mezoameryka

1. INTRODUCTION

The phrase ‘*créese que deben tener alguna manera de justicia para castigar los malos*’¹ could be translated as ‘I believe that there exists a judicial system to punish the wicked’. This sentence found its place in the second decade of the sixteenth century among the voluminous correspondence between Hernán Cortés and the monarchs: King of Spain Charles V Habsburg and his wife Queen Isabella of Portugal. Conquistadors commanded by Hernán Cortés became a part of the indigenous culture as soon as they arrived in Mexico in 1519. The conquistadors were eventually assimilated into the native culture despite efforts to introduce European traditions and ideals from the Old Continent. They were granted the chance to take part in a variety of regional activities, fests, etc. while being regarded with both interest and fear by the local communities. Later, as eyewitnesses, they noticed a number of events that demonstrated the Aztecs had a legal order. It was a specific kind of justice that regulated the system in an area belonging to a larger geographical organization with a cultural wealth, known as Mesoamerica.² Such context might be noticed in the memoirs of Bernal Díaz del Castillo,

¹ S. Toscano, *Derecho y organizacion social de los Aztecas*, México 1937, p. 24.

² It should be noted that the very term Mesoamerica is at the same time a twentieth-century neologism, with a meaning of historical region and cultural area in North America. The territory is believed to extend from approximately central Mexico through Belize, Guatemala, El Salvador, Honduras, Nicaragua, and northern Costa Rica. It was Paul Kirchhoff who suggested such a substantive and incorporating solution to define the newly discovered part of the fifteenth-century world. Although his theses assumed a broad temporal and spatial context and focused on the separation of certain local characteristics, such as the cultivation of similar, if not identical, plants, specific calendar and numerical systems, an akin vision of the world (e.g. man as an object of gods and mythological beings) and ritualistic aspects and sports (e.g. ritual ball game), it was still a purely a linguistic creation with a metaphysical meaning (R. Bartlett, *The Making of Europe: Conquest, Colonization, and Cultural Change, 950–1350*, Princeton: Princeton University Press 1993, p. 269). Nevertheless, despite its critique, the term ‘Mesoamerica’ remains a productive benchmark and source aiding the understanding of the world. Using the concept of Mesoamerica as a framework, I gathered scattered references with interpretations of the physical remains of the

one of Cortés's companions.³ He claimed that the Spanish newcomers had the chance to take part in an appeal hearing soon after arriving in the New World⁴ that was held in the capital of the Aztec state, Tenochtitlan.⁵ Frey de Sahagún implied in his writings that 'The central state's management and supervision of every Aztec's life, from birth to death, culminated in the social order that existed in Tenochtitlan and the general manner of life of its residents.'⁶

As for the Maya, inhabitants of areas to the south of the Aztec civilization, they organized their own state covering the Yucatán peninsula, the territory of modern Belize, part of Guatemala, Honduras and El Salvador. It is crucial to note that the Aztecs had been developing their empire for nearly 200 years until the Spanish invasion, while the beginnings of the Maya civilization date back to circa 2,500 years earlier, during the middle Pre-Classic Period. Despite the many similarities in political, social, economic and cultural terms, the legal order of the various *altepeme* and Maya states was different.⁷ In the area of criminal law, where particular parallels outweighed variances, this issue did not seem to be apparent. Because of this, it is possible to treat Mesoamerican city-states' criminal law as a unified legal area.⁸ It should be stressed that this area of Mesoamerica could boast a unique heritage in terms of legal solutions, especially as regards criminal law. Compared to other parts of the world, a concept of guilt was developed there quite early, with a division into wilful and unintentional guilt present in the consciousness of the inhabitants of pre-Columbian America. This distinction was based on the recognition of intentional and accidental acts, which was the basis for imposing appropriate penalty, varying in severity and depending on the committed act. On the European continent, such distinction was indeed introduced as

past from a number of sources over a broad time span and integrated these to propose a general long-term structure for indigenous Mesoamerican archaeology.

³ B. Díaz del Castillo, *Pamiętnik żołnierza Korteza, czyli prawdziwa historia podboju Nowej Hiszpanii*, selected and translated by A. L. Czerny (*Historia verdadera de la conquista de la Nueva España*, 1632), Warszawa 1962, p. 3.

⁴ S. Toscano, 1937, *op. cit.*, p. 31.

⁵ It should be noted that on the grounds of external relations, besides functioning as an independent entity, Tenochtitlan cooperated with the two neighbouring city-states called *altepeme* (Texcoco and Tlacopan) and they formed the Triple Alliance (Ēxcān Tlahtōlōyān). However, the inhabitants of these three areas, named Tenochca, Acolhua and Tepaneca, were defined using one common name: the Aztecs. Their most important and prevailing feature was that they belonged to a larger cultural group, known as the Nahuatl. Moreover, it brought together a much larger number of smaller ethnic entities, combining the language, beliefs, and material achievements of nearly twenty different societies. See M. E. Smith, *The Aztecs*, 3rd edn, New York 2012, p. 4.

⁶ B. Hamann, *The Social Life of Pre-Sunrise Things. Indigenous Mesoamerican Archaeology*, 'Current Anthropology' 2002, Vol. 43(3), the Wenner-Gren Foundation for Anthropological Research, pp. 356–357.

⁷ *Ibid.*, pp. 357–358.

⁸ P. Vyšný, *Grundprobleme der Erforschung des aztekischen Rechts*, 'Societas et Jurisprudencia' 2015, Year III, No. 3, p. 76.

early as during the Roman Empire, with the terms of *dolus malus*, which means intentional guilt, and unintentional guilt, depending on the degree of negligence, or *culpa*.⁹ However, after the fall of the Western Roman Empire, the achievements of Roman legal culture were vulgarised and it was only in the late Middle Ages that this social character of crime was rediscovered. However, the phenomenon of acceptance of the degree of guilt was preceded by a few hundred years of tribal time, when the concept of both crime and guilt was understood in a simple, uncomplicated manner.

2. SOURCES AND FORM OF LAW IN MESOAMERICA

Before moving on to the delinquency aspect, it should be noted that a majority of the knowledge about the Aztec legal order derives from the primary historical (written) sources of the times of the post-Hispanic conquest. It is commonly believed that previous achievements had not survived the passage of time, being forgotten or destroyed during the Spanish invasion. In fact, shortly before the conquest of Mesoamerica, the Aztecs were in the middle of codifying their laws in a written form.¹⁰ It should be emphasised that the indigenous writings served as a basis for the exposition, justification, and extension of topics that were both obvious on the page and well-known in the culture, rather than as the assertion or source of a set and established text.

However, the Spanish missionaries deliberately destroyed the few written judicial and legal documents that existed because those were considered incompatible with European religion and belief. Other manuscripts were burned by the Spanish army or destroyed by moisture and negligence. As a result, the limited information available on the Aztec legal order comes from Spanish chroniclers and soldiers. During the direct conquest of Mexico, and for a long time afterwards, Europeans documented their observations, scrupulously recording all thoughts. Although the fate of indigenous law under the new Spanish rule is an interesting issue in and of itself, Spanish and later documents still give an outlook on the idea of law and rule. In addition, one may learn a bit about how the legal system treated plaintiffs and defendants as well as how the system worked in practice.

⁹ See Bartolus de Saxoferrato, *In secundam partem digesti veteris. Commentaria*, Venetiis 1575, ad 16, 3, 32; A. B. Schwarz, *Figura hominis diligentis in re culpae juridicae*, Romae 1952, p. 20.

¹⁰ As it is often emphasised, especially in the book *Texcoco: Prehispanic and Colonial Perspectives* by Jongsoo Lee and Galen Brokaw, Texcoco is the place where documentation on the pre-Columbian law was rather plentiful.

These sources documented both societal coherence and social disintegration but also how indigenous notions of morality and law intertwined.

The basis for research and discussion are in fact three codes¹¹ written in the second half of the sixteenth century. This group includes the *Florentine Codex*¹² written by the Franciscan friar Bernardino de Sahagún, the *Codex Mendoza*¹³ and the *Libro de oro y tesoro indico* (The Golden Book), also known as the *Codex Ixtlilxochitl*¹⁴. The latter work in particular deserves attention because it is a collection of sixty-five criminal laws compiled by the Iberian scholar Fray Fernando de Alva Cortés Ixtlilxóchitl, who claimed that these laws came directly from the original Aztec code from the early sixteenth century.¹⁵ The legal references in the other two codes include the relationships and descriptions provided by the native Aztecs, and are taken from their songs and anthems. This was due to the fact that a huge number of Aztec laws were never written down using pictograms and existed only in oral tradition, passed down this way from generation to generation.

The Aztecs had some knowledge of law, even if they did not provide a general description of their system of law and order or methodically research, define and analyse its forms, contents or social functions. The Aztec legal system was considered very complex and directly reflected the values, culture and history typical of these people. Peter Vyšný suggested a few areas which had great significance for shaping this viewpoint. According to him, in particular, the Aztecs could see the law as an essential component and tool for upholding the supernatural world order. Secondly, enforceable rules of conduct matched widely held values, patterns (ideals) of 'good' behaviour of the populace both in public and in private. Furthermore, the law was associated with duties that all people (men, women, and children) had towards the state, family members and in other relationships. Law and order was believed to be an ever-present, relentless, and dangerous force which would destroy anyone who would not respect it. The Aztec understanding of law and rule may be therefore associated with the well-recognized, archaic

¹¹ A code in the historical sense of the word is meant, which is simply a book.

¹² B. de Sahagún, *Florentine Codex: General History of the Things of New Spain*, 12 vols, edited and translated by A. J. D. Anderson and Ch. E. Dibble, Salt Lake City: University of Utah Press/Santa Fe: School of American Research, 1950–1982 (original title: *Historia general de las cosas de Nueva España (1547–1577)*).

¹³ *Códice mendocino, o, Colección de Mendoza: Manuscrito mexicano del siglo XVI que se conserva en la Biblioteca Bodleiana de Oxford*, 1979.

¹⁴ J. García Icazbalceta (ed.), *Nueva colección de documentos para la historia de México*, 5 vols, 1886–1892, México: Editorial Salvador Chávez Hayhoe 1941.

¹⁵ *Aztec and Maya Law: Aztec Legal System and Sources of Law*, Tarlton Law Library, 8 November 2018, <https://tarlton.law.utexas.edu/aztec-and-maya-law/aztec-legal-system> (accessed 10.02.2023).

concept of law.¹⁶ The maintenance of social order, as well as general respect for the institutions of power, the judiciary and education system was the basis of the legal order, which is a kind of example of customary law with elements typical of the common law system.¹⁷ These norms were interpreted and applied by Aztec judges at different levels of the judiciary.¹⁸ The Aztec judges were not necessarily bound by old customs and, moreover, had freedom to act, which was right and reasonable under the circumstances. There was a kind of precedent in judicial practice, as in some situations judges imposed penalties used previously in similar situations.

As the Maya civilization reached its peak bloom before the Spanish invasion, the amount of primary material associated with the legal system is now very limited. Most of the Maya manuscripts and codes were destroyed by Spanish priests, and the surviving codes focus mainly on astronomy, mathematics, history, calendars and religious rituals. After the conquest, the Maya wrote various books, including *Popol Vuh* and *Books of the Jaguar Shaman*. Both of these sources contain information about the Maya history, myths and religious traditions. Conquistadors and Spanish missionaries additionally documented their observations. Bishop Diego de Landa wrote a detailed Maya chronicle entitled *Relación de las cosas de Yucatán*. The manuscript contained information about history, culture and hieroglyphics. In the end, scientists have relied on the ceramic, painting, hieroglyphic texts and anthropological research of the contemporary Maya in order to learn more about their ancestors.

The laws from the late period that governed the various Maya states were issued by the *halach uinic*, who was the supreme ruler, and his council, or by the council alone if the state had no *halach uinic*. City and village supervisors, i.e. *bat-abs*, were responsible for implementing these laws and they served as administrators of smaller towns. A *batab* also ruled in civil and criminal cases. Court cases were generally dealt with quickly in public meeting houses known as *popilna*. The court proceedings were conducted orally, without keeping written records.

¹⁶ P. Vyšný, *The Aztec Concept of Law*, 6th SWS International Scientific Conference on Social Sciences ISCSS, 2019, pp. 51–58.

¹⁷ F. Flores García, *La administración de justicia en los pueblos aborígenes de Anáhuac*, UNAM: 'Revista de la Facultad de Derecho de México' 1965, Vol. 15(57), p. 86.

¹⁸ It is worth mentioning that the structure of the judicial system was a three-stage one. As in modern times, the Aztecs had courts of first instance (called *Teccalli*), the appellate courts (called *Tlacxitlan*) and the Supreme Court. However, they also established specialised courts such as the *calpulli* courts, which functioned as neighbourhood courts. Moreover, there were courts which dealt with economic, fiscal, craft and general internal affairs of a given *altepeme*. In the context of criminal law, individual instances dealt with cases involving the offender. There were trials with ordinary people before *teccalli*. There was a possibility to appeal against an unsatisfactory verdict and the subsequent court hearing was held in front of *Tlacxitlan*, which was also the court of first instance for aristocracy and warriors. F. Avalos, *An Overview of the Legal System of the Aztec Empire*, 'Law Library Journal' 1994, Vol. 86(2), pp. 259–276.

Witnesses were required to testify under oath. There is evidence to suggest that parties were represented by people who acted as their representatives. The *batab* verified the evidence, assessed the merits of the case, determined whether the crime was accidental or intentional and, on the basis of all the collected information, he determined the appropriate penalty. It is important to point out that there was no form of appeal against the *batab*'s decision, as was the case in the Aztec system. The only possibility to change the legal effect was for the victim or his family to pardon the accused, thus reducing their punishment.¹⁹

3. DELINQUENCY IN MESOAMERICA

The idea of crime has taken root in the everyday life of the community and has become an inseparable part thereof.²⁰ This reasoning stems from the belief that the usual routine, which is synonymous with following the applicable norms and rules, is sometimes violated. People often engage in activities that, depending on their current needs, goals, attitudes or life experiences, modify, disrupt, bypass or manipulate the existing social relationships and structures for private gain. It is undisputed that the most complete depiction of such actions is the very concept of a desire to commit a forbidden act.²¹ Therefore, it can be concluded that for the Maya, Aztecs, and other peoples living in Mesoamerica, the understanding of delinquency was very similar to that of today. As a prohibited act, it was and still is contrary to the values and norms of the society concerned, causing every member of the population harm but being punishable.

In the context of the Aztec legal order, their more advanced teaching of criminal law classified crimes according to their seriousness, severity and impact on socio-political issues. Serious crimes (*tetzauhtlahtlacolli*) included various attacks on the state, i.e. *tlatoani*, elite and social order, as well as murder, robbery, theft, adultery and public excessive alcohol consumption.²²

Another category of crimes were those against the state or the ruler, in Nahuatl known as *tlatoani* (literally 'he who speaks'). The most serious act in this case

¹⁹ Ch. O'Connell, *The Legal System of the Ancient Maya*, (in:) D. Friedman, *Legal Systems Very Different from Ours*, 2013, http://davidfriedman.com/Academic/Course_Pages/Legal_Systems_Very_Different_13/LegalSysPapers2Discuss13/O'Connell_Maya.htm (accessed 10.02.2023).

²⁰ A. Lüdke, *Chapter 1: Introduction: What Is the History of Everyday Life and Who Are Its Practitioners?* (in:) A. Lüdke (ed.), *The History of Everyday Life: Reconstructing Historical Experiences and Ways of Life*, Princeton, New Jersey: Princeton University Press, 1995, pp. 5–7, 16.

²¹ P. Vyšný, *Crime and Punishment in pre-Hispanic Nahua City-States Tenochtitlan and Texcoco*, 'Ethnologia Actualis' 2017, Vol. 17(1), p. 41.

²² P. Vyšný, *Štát a právo Aztékov*, Trnava: Typi Universitatis Tyrnaviensis, 2012, p. 177.

was treason. Being such a serious crime, the traitor's death was not sufficient to compensate for the acts he had committed. In this case, the descendants of the traitor and his distant relatives were also punished by bearing the stigma of the crime of their ancestor for the next four generations. Moreover, it was believed that such a man's house should be destroyed in a literal and symbolic sense. In order to achieve this, the building was publicly demolished and in the place where the foundations were laid, the process of land selection was started until it reached the groundwater. It was then buried. This action was linked to the symbolic 'drying out' of a treacherous family from the community of a given city-state. Here, however, the activities were not yet finished, as the final stage was the sprinkling of salt on the ground of the traitor's property. This prevented people from settling there in the future.²³

Crimes committed by government officials were most often associated with corruption. Most examples of Aztec bribery involved a judge. In the local culture, the very act of unethical acceptance of a small number of bribes resulted in the judge losing his right to practise, being permanently dismissed from office. In addition, he was wrapped in a shroud, which emphasized the shameful nature of the punishment. If, on the other hand, the value of the bribe was high, the criminal had to die. A similar fate was shared by those who served as soldiers in *altepeme*, as no violation of discipline was tolerated among the caste of warriors.²⁴

The next category of crimes involved violation of the values and morals of Mesoamerican peoples and included, inter alia, sexual crimes such as incest, homosexuality, rape, adultery or prostitution. The perpetrators of these crimes were usually punished by death. The exception was prostitution of women who belonged to the elite.²⁵ In the Maya consciousness, adultery was also a serious crime for the guilty couple and for those who, being aware of it, did not report the forbidden act. Men were only punished when a married woman was involved in their intimate relationship. Married women were always considered guilty, regardless of the circumstances of the marital status of their lovers, which clearly shows the diminished and unequal role of women in the society.²⁶ It might be illustrated with an example of inequality and disproportionality in administering the punishment. *Historia de los Mexicanos por sus pinturas*²⁷ describes such

²³ P. Vyšný, 2017, *op. cit.*, p. 45.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 179.

²⁶ Ch. O'Connell, 2013, *op. cit.*

²⁷ See *Historia de los Mexicanos por sus pinturas*, edited by J. García Icazbalceta, México 1891, in particular pp. 258–262. The history of the Mexicans through their paintings is one of the most important Spanish works by the Franciscan friar Fray Andrés de Olmos, written in Spanish and based on documents prepared in the Nahuatl graphic communication system. It was an achievement of ethnographic interface and consisted of the reports from various books and images presented and explained to him by *viejos* (old people) who had held indigenous religious and political positions and who had therefore been present when texts and images had been used.

incident during the reign of Huitzilihuitl (ca. 1397–ca. 1417). It concerned a man from Texcoco who found his wife with a priest in the temple only three days after she had given birth. The three rulers condemned the woman to death, but no punishment for the priest was mentioned. Generally, the punishment for adultery was to have the woman publicly embarrassed and her companion executed. However, before it happened, the lover had been tied to a piece of wood and then being thus immobilized and helpless he was brought before the betrayed husband. At the time, the fate of the caught lovers depended on him. One of the possibilities was to forgive his wife and her lover, so that the latter could be released and save his life. The second option was meant for the betrayed man who could leave the marriage and even get involved with another woman. The third solution was that none of the perpetrators would be forgiven. Then, as pictured multiple times in *Historia de los Mexicanos por sus pinturas*, guilty couples were executed by dropping stones on their heads.²⁸

Aztec family matters were regulated by custom and tradition. Families were very close and children were considered gifts of the gods. The most important duty of the offspring was to obey their parents and the elders. To maintain the proper order within each family, parents could use corporal punishment, hit their children with agave leaves or force them to inhale chili smoke. However, even with such a strict discipline, crimes against the family occurred frequently. Exemplary acts included cases when a son verbally or physically attacked his parents, seriously disobeyed them or his behaviour would have been described as unworthy. Children could even be executed or disinherited for such misdemeanours.²⁹

Crimes against human life and health included murder, for which the offenders stood the prospect of execution, and abortion, for which a woman who terminated her pregnancy or requested its performance faced execution.³⁰ However, in this category of criminal offences the Maya law developed another approach that, from a contemporary point of the view and taking into consideration the aspect of chronology, seems to present itself in a quite modern way. The Yucatán natives saw the distinction between accidental and deliberate, conscious murder. In the case of unintentional murder, the offender was punished by death at the hands of the victim's relatives, but he had the opportunity to pay restitution in order to receive a pardon. In addition, it was possible for the perpetrator to offer one of his slaves to the victim's family to avoid the death penalty.³¹ In the case of a deceitful or wilful murder, or in the case of more serious crimes which constituted an insult to the gods, such as rape, incest, treason and arson, immediate death was the pen-

²⁸ Ch. O'Connell, 2013, *op. cit.*

²⁹ P. Vyšný, 2012, *op. cit.*, p. 179.

³⁰ *Ibid.*

³¹ Friar D. de Landa, *Yucatan before and after the Conquest*, translated by W. Gates (*Relación de las cosas de Yucatán*, 1566), Baltimore 1937, Sec. XXX, <https://www.sacred-texts.com> (accessed 06.06.2022).

alty.³² In the case of unintentional offences, the custom required traditional restitution, and if the accused was insolvent or a minor, they instantly became slaves.

Another type of crime included those against private property, such as theft. Depending on the value of a thing stolen, thieves had to pay a fine of twice the value of the thing (a certain amount of the fine was paid to the robbed as compensation and the remainder to the state), or they became slaves who served the robbed person. Even if in a profane context thieves were uncompromisingly prosecuted and punished, in a ritualistic context they were in some cases tolerated, i.e. they participated in certain religious rituals. For example, an important part of the religious ceremony of *panquetzaliztli* was a fight between students attending a school for ordinary people (*telpochcalli*) and those from a school for young people from the social elite (*calmecac*). When the match was won by the *calmecac* students, they were allowed to haunt the *telpochcal* students and trap them in the palace buildings in order to take certain things from it (e.g. mats, seats, drums). However, if the *telpochcal* students won, the *calmecac* students were trapped in their school building and the winners were able to take anything they wanted out of it.³³ *Historia de los Mexicanos por sus pinturas* mentions crime involving maize, which was an important and sacred food crop for the Nahuatl.³⁴ In this particular case, two boys stole already planted maize seeds. As a result, they were sold as slaves. Another example is set in a more convoluted circumstances. A man caught a lady stealing maize from a granary and demanded an intercourse in return for him remaining silent. She complied with his request, yet he still exposed her larceny. The man was subsequently taken as slave by the owner of the stolen corn after she reported the entire incident, and she was set free. A final illustration of the punishment for theft crimes would be a case when a man put another to sleep with a spell and stole all the grain in his granary, being helped by the perpetrator's wife. Consequently, the couple was executed for their act.

On the other hand, the Maya treated theft in a more serious way. Regardless of its severity, it was a sufficient reason for punishing the offender with an order to pay restitution to the aggrieved, in addition to being subjected to temporary slavery. Moreover, those punishments were also passed on to family members. Breaking into private property was also treated with full rigour. Since they usually had no doors, the Maya homes were well protected and thieves who entered a building to injure its occupant or damage the property lost their lives. Noblemen or officials were punished in a particularly severe manner. If an aristocrat was found guilty of theft, his face was tattooed or parts of his face were cut off on both sides in a public square as a permanent sign of his crime and a symbol of great shame.

³² *Ibid.*

³³ P. Vyšný, 2012, *op. cit.*, p. 179.

³⁴ H. B. Nicholson, *Religion in Pre-Hispanic Central Mexico*, (in:) G. F. Ekholm, I. Bernal (eds), *Handbook of Middle American Indians*, Vol. 10, Austin: University of Texas Press 1971, pp. 401, 416–19.

In Mesoamerica, criminal law was undoubtedly characterised by the severity typical of archaic legal systems. While the death penalty was universal, other punishments included restitution, loss of office, demolition of the offender's home, prison sentences, slavery and shaving of the offender's head. The death penalty could be carried out by hanging, drowning, stoning, strangulation, beheading, beating, disembowelling, burning, quartering and opening of the chest to remove the perpetrator's heart. However, if victims or their families chose to intervene in the process, that could change the final decision dramatically. If they decided to forgive the perpetrator, his death sentence was revoked and he became a slave of the victim's family.³⁵ Furthermore, the Aztecs had a prison system that included: *cuauhcalli* ('death row'), *teipiloyan* ('prison for debtors'), *petlacalli* ('prison for those found guilty of petty crime') and a fourth type of prison where a judge drew lines or put wooden sticks on the ground and the prisoner was ordered to stay within the lines.³⁶ Although it could hardly be described as an example wholly fulfilling the idea of the Foucauldian Carceral Archipelago (very primary one if any resemblance was to be proved), one may argue that theoretical functions of this particular punishment somehow overlap with the later constructed utilitarian concept of the legitimacy of punishment. Especially, the example of the 'stick prison' seems to be the most fascinating here. It required enormous loyalty for the authority that made an individual follow the rules of this punishment, despite its simple and hardly noticeable form. It might be treated as an ironic opposition to Jeremy Bentham's panopticon – in fact both of them seem to achieve the same purpose – seizing the prisoner's soul, as Michel Foucault believes, in order to give him a chance for rehabilitation.³⁷ It might lead to the thesis that custom laws highly influence and successfully execute the Foucauldian discipline without using too many instruments, whose aim is to influence the body and deliberately manipulate its parts, actions, and other basic spheres of daily life. Hence, the character of this particular type of prison was strictly symbolic. It did not require building a heavily guarded area or providing prisoners with an instruction to act in a certain manner. These sticks or lines were meant not to literally imprison an offender, but on the contrary, to give him a sign of hope. The time spent there forced an individual to try to understand the wrongfulness of his actions and feel deeply affected by them in order to experience an inner metamorphosis. It resembled a self-directed ritual. According to Émile Durkheim's conception of punishment, the offender had to experience it in order to once again become part of a society. This way he was reborn overwhelmed with shame for his actions,

³⁵ <https://tarlton.law.utexas.edu/aztec-and-maya-law> (accessed 06.06.2022).

³⁶ M. Widener, E. Glass, *Law in Mexico before the Conquest*, University of Texas: Tartlon Law Library, <https://tarlton.law.utexas.edu/aztec-and-maya-law/aztec-criminal-law> (accessed 02.04.2021).

³⁷ M. Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd edn, New York: Vintage Books 1995, pp. 104–134.

this time without an intent to act as he did before.³⁸ Furthermore, because of an enormous role of an isolation, the philosophy of prison management, which could be nowadays described as the ‘silent system’ or the ‘Auburn system’,³⁹ may be as well traced back to the Aztecs. The impact of carceral environment on prisoners supports the Foucauldian theory of a prison as ‘an exhaustive disciplinary apparatus’, which at the same time upholds utilitarian values. The purpose of criminal penalty was not to stigmatize and indefinitely isolate an offender but to cure and rehabilitate him.

Similar features were characteristic of the Maya legal culture, where penalties for various crimes were very strict. The Maya distinguished between intentional and accidental acts. For instance, individuals found guilty of murder were sentenced to death. However, if it was considered an accidental act, the perpetrator was ordered to pay restitution or give one of his domestic slaves to the victim’s family. If perpetrators were minors, they would become slaves. Restitution or temporary enslavement awaited thieves. Moreover, those sentences were not imposed on perpetrators alone but were also extended to their family members.⁴⁰

4. THE PROBLEM OF GUILT IN THE MESOAMERICAN SOCIETY

The inhabitants of Mesoamerica, apart from the concept of crime, developed their own idea of an individual who commits an unlawful act. He or she can simply be defined as a subject without a human face, which makes the figure look incomplete and at the same time despicable, incapable of any improvement, and thus should be ostracised by others and cannot avoid the punishment he/she fully deserves.⁴¹ In the worldview of the inhabitants of Mesoamerica, the human body was not only material, but also deserved recognition for its symbolic meaning.⁴² The Nahua peoples had a special figurative term for a person suspected of committing a crime; they called their face ‘dirty with ashes’. This was especially true for those who were aware of the crime and believed that they would be able to conceal it.⁴³ The symbolism of a dirty face seems to be similar to that present in

³⁸ J. Warylewski, *Teoria kary Fiodora Dostojewskiego. Próba określenia*, Sopot 1987.

³⁹ A. Coyle, *Understanding Prisons: Key Issues in Policy and Practice*, Open University Press 2005, p. 29.

⁴⁰ M. Widener, E. Glass, *Law in Mexico before the Conquest*, *op. cit.*

⁴¹ M. León-Potrilla, L. Silva Galeana, *Huehuehlahtolli. Testimonios de la antigua palabra*, México: Fondo de Cultura Económica 1991, pp. 55–59, 83–86.

⁴² S. Houston, D. Stuart, K. Taube, *The Memory of Bones: Body, Being, and Experience among the Classic Maya* (Joe R. and Teresa Lozano Long Series in Latin American and Latino Art and Culture), Austin: University of Texas Press 2006, pp. 2–17.

⁴³ B. de Sahagún, *Historia general de las cosas de la Nueva España*, Madrid 2001, p. 588.

the European culture, although in Europe there is a mention of a blood rather than ash stain. In Shakespeare's works,⁴⁴ like in Mesoamerica, dirt is a metaphor for the crime. The fact that the outer world seriously suspected some people of having committed a crime and was convinced that they could not escape punishment opened up the possibility of starting a criminal trial based only on rumours that were made public.⁴⁵ The attention paid to the psychological profiles of offenders, their motives and beliefs, and how a certain social attitude towards a committed act was formed has led to the division of different cultures in terms of their belonging to a guilt culture or a shame culture.

Guilt is considered a kind of internal mental state and involves a criminal's conscience. For this reason, it is 'visible' or 'perceptible' only to the perpetrator. In the guilt culture, the consequence of a crime is individual responsibility, i.e. personal fault of the perpetrator. Shame, on the other hand, may be noticed by other members of the community, who are outwardly aware of the fact that they are subjecting the perpetrator of a forbidden act to a kind of ostracism. In the shame culture, the criminal is seen as an integral part of a community whose members show certain solidarity, and therefore the wicked person experiences the consequences of his act, that is, the shame he shares with other members of his tribe or group. The next issue that differentiates the two concepts is the possibility of blurring an unpleasant memory. Using the colloquial phrase, 'guilt can be repaired' but not shame. Shame, which accompanies people almost throughout their entire life, can only be fully 'washed away' after the death of a person who, through his behaviour, feels it.⁴⁶ In principle, it can also be said that, while in the shame culture a criminal violates the custom and moral values and norms of a given community, in the guilt culture a criminal violates rules of conduct (mainly legal norms) which are the same for the whole society.⁴⁷

The peoples of Mesoamerica are traditionally associated with groups cultivating the tradition of the shame culture. The reason is primarily the general understanding of crime by the Maya or the Aztecs. These societies did not perceive a tort as a sin in the Western or Christian sense, although it was precisely this sense that was given to it by the Spanish authors of written records. In the case of the Nahua, crime was not a violation of moral norms; it was not understood as the opposite of good, but it was not evil, either, because a well-established dichotomy of good and evil did not exist for that population. The offender behaved contrary to social norms, which was an undesirable and 'tangible' violation of the social order and disturbed normal functioning. It manifested itself in a noticeable consequence: harm or injury. However, since for the Nahua the social order was part of

⁴⁴ For instance, *Macbeth*, 1623.

⁴⁵ P. Vyšný, 2012, *op. cit.*, p. 122.

⁴⁶ P. Vyšný, 2017, *op. cit.*, p. 42.

⁴⁷ W. Fikentscher, *Law and Anthropology. Outlines, Issues, and Suggestions*, München: Verlag der Bayerischen Akademie der Wissenschaften 2009, p. 425.

the order of the supernatural world, created and ruled by the gods, they attributed not only natural but also supernatural effects to the wrongs caused by such violation. Therefore, restoring the normal world order often required a remedy consisting in not only real penalties (e.g. compensation) but also supernatural ones in the form of religious and symbolic rituals.⁴⁸

5. CONCLUSION

Throughout their history, the Aztecs and the Maya managed to develop very well-functioning and interesting civilizations. Despite fundamental and deep differences in terms of achievements and discoveries, known in Europe or Asia, they came up with innovative solutions. Certainly, the European perspective can be deceptive, therefore, priority should be given to discovering the relationships inherent in the Aztec or Maya data, rather than interpreting them according to external evolutionary theories. Nonetheless, no social organization is able to function properly without some order, which in turn cannot exist without law clearly defining social realities in each society. The basis of such approach is the assumption that one can only learn about and understand the society's organization through regular experience. Furthermore, although the analysis of legal rules, cases or legal decisions and jurisprudential principles is a useful first step along the way to comprehend Aztec legal systems, they should be interpreted in their cultural and societal context. For the societies of Mesoamerica, the maintenance of social order was tantamount to observing divine principles, and therefore potential commission of a crime had to be made good not only on the earth but also symbolically, as manifested in ritual and religious rites.

In addition to its religious affiliation, criminal law was one of the more effective tools to control society. It was based on sound ideological foundations, which placed greater importance on prosecuting and punishing criminals. Strict repression of the perpetrators was a means to maintain the right 'course' of the world, both temporal and supernatural. This was understood in Mesoamerica as the most important responsibility of the state, so the prosecution and punishment of criminals was considered a special privilege of the authorities, and often ordinary people could also contribute to the restoration of the desired order, thus benefiting personally.

Taking into account also harmful effects of a criminal act, attention should be paid to the psychological condition of offenders and their personal attitude towards it, which is related to the parallel development of the notions of guilt

⁴⁸ P. K. Johansson, *Miquiztlatzontequiliztli. La muerte como punición o redención de una falta*, 'Estudios de Cultura Náhuatl' 2010, Vol. 41, pp. 91–95.

and shame cultures. An important aspect of the Mesoamerican legal order was the distinction between randomness and intentionality of forbidden acts, which affected final judgments in particular cases. The data we have, especially that relating to the Aztec law, shows that the concept of guilt was well developed in that system. However, determining whether the concept was framed much earlier than on the European continent is problematic. This is due to the fact that such knowledge comes from the later Spanish period in the Mesoamerican history, which affects the European thought on this issue.

REFERENCES

- Anawalt P., *Costume and Control: Aztec Sumptuary Laws*, 'Archaeology' 1980, Vol. 33(1)
- Avalos F., *An Overview of the Legal System of the Aztec Empire*, Arizona, 'Law Library Journal' 1994, Vol. 86(2)
- Bartlett R., *The Making of Europe: Conquest, Colonization, and Cultural Change, 950–1350*, Princeton: Princeton University Press 1993
- Boone E. H., *The Aztec Pictorial History of the Codex Mendoza*, (in:) F. F. Berdan, P. R. Anawalt (eds), *The Codex Mendoza*, Berkeley 1992
- Burkhardt B. C., Connor B. T., *Durkheim, Punishment, and Prison Privatization*, 'Social Currents' 2016, Vol. 3(1)
- Calnek E. E., *The Sahagún Texts as a Source of Sociological Information*, (in:) M. Edmonson (ed.), *Sixteenth-Century Mexico: The Work of Sahagún*, Albuquerque 1974
- Codex Mendoza. Códice mendocino, o, Colección de Mendoza: Manuscrito mexicano del siglo XVI que se conserva en la Biblioteca Bodleiana de Oxford*, 1979
- Coyle A., *Understanding Prisons: Key Issues in Policy and Practice*, Open University Press 2005
- Creighton M. R., *Revisiting Shame and Guilt Cultures: A Forty-Year Pilgrimage*, 'Ethos' 1990, Vol. 18(3)
- Díaz del Castillo B., *Historia verdadera de la conquista de la Nueva España*, 1632
- Díaz del Castillo B., *Pamiętnik żołnierza Korteza, czyli prawdziwa historia podboju Nowej Hiszpanii*, selected and translated by A. L. Czerny, Warszawa 1962
- Fikentscher W., *Law and Anthropology. Outlines, Issues, and Suggestions*, München 2009
- Flores García F., *La administracion de justicia en los pueblos aborígenes de Anáhuac*, UNAM: 'Revista de la Facultad de Derecho de México' 1965, Vol. 15(57)
- Foucault M., *Discipline and Punish: The Birth of the Prison*, 2nd edn, New York 1995
- García Icazbalceta J. (ed.), *Historia de los Mexicanos por sus pinturas*, México 1891
- García Icazbalceta J. (ed.), *Nueva colección de documentos para la historia de México*, 5 vols, 1886–1892, México: Editorial Salvador Chávez Hayhoe 1941
- Habermas J., *Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism*, 'The Journal of Philosophy' 1995, Vol. 92(3)
- Hamann B., *The Social Life of Pre-Sunrise Things. Indigenous Mesoamerican Archaeology*, 'Current Anthropology' 2002, Vol. 43(3), the Wenner-Gren Foundation for Anthropological Research

- Houston S., Stuart D., Taube K., *The Memory of Bones: Body, Being, and Experience among the Classic Maya* (Joe R. and Teresa Lozano Long Series in Latin American and Latino Art and Culture), Austin: University of Texas Press 2006
- Johansson P. K., *Miquiztlatzontequiliztli. La muerte como punición o redención de una falta*, 'Estudios de Cultura Náhuatl' 2010, Vol. 41
- Landa Friar D. de, *Yucatan before and after the Conquest*, translated by W. Gates (*Relación de las cosas de Yucatán*, 1566), Baltimore 1937, <https://www.sacred-texts.com> (accessed 06.06.2022)
- Lee J., Brokaw G., *Texcoco: Prehispanic and Colonial Perspectives*, University Press of Colorado 2014
- León-Potrilla M., Silva Galeana L., *Huehuetlahtolli. Testimonios de la antigua palabra*, México: Fondo de Cultura Económica 1991
- Lockhart J., *The Nahuas after the Conquest: A Social and Cultural History of the Indians of Central Mexico, Sixteenth through Eighteenth Centuries*, Stanford: Stanford University Press 1992
- Lüdke A., *Chapter 1: Introduction: What Is the History of Everyday Life and Who Are Its Practitioners?* (in:) A. Lüdtko (ed.), *The History of Everyday Life: Reconstructing Historical Experiences and Ways of Life*, Princeton: Princeton University Press 1995
- McQuown N. A., *The General History of the Things of New Spain, by Bernardino de Sahagún*, 'The Hispanic American Historical Review' 1958, Vol. 38(2)
- Megged A., *Between History, Memory, and Law: Courtroom Methods in Mexico*, 'The Journal of Interdisciplinary History' 2014, Vol. 45(2)
- Nicholson H. B., *Religion in Pre-Hispanic Central Mexico*, (in:) G. F. Ekholm, I. Bernal (eds), *Handbook of Middle American Indians*, Austin: University of Texas Press 1971
- O'Connell Ch., *The Legal System of the Ancient Maya*, (in:) D. Friedman, *Legal Systems Very Different from Ours*, 2013, http://davidfriedman.com/Academic/Course_Pages/Legal_Systems_Very_Different_13/LegalSysPapers2Discuss13/O'Connell_Maya.htm (accessed 10.02.2023)
- Offner J. A., *Aztec Legal Process: The Case of Texcoco*, (in:) E. H. Boone (ed.), *Proceedings of the Conference on Late Post-Classic Central Mexican Iconography*, Washington, D.C. 1982
- Offner J. A., *The Future of Aztec Law*, 'The Medieval Globe' 2016, Vol. 2(2)
- Saxoferrato B. de, *In secundam partem digesti veteris. Commentaria*, Venetiis 1575
- Schwarz A. B., *Figura hominis diligentis in re culpae iudicariae*, Romae 1952
- Smith M. E., *The Aztecs*, 3rd edn, New York 2012
- Toscano S., *Derecho y organizacion social de los Aztecas*, México 1937
- University of Texas, Tarlton Law Library, <https://tarlton.law.utexas.edu/aztec-and-maya-law> (accessed 06.06.2022)
- Vyšný P., *Crime and Punishment in Pre-Hispanic Nahua City-States Tenochtitlan and Texcoco*, 'Ethnologia Actualis' 2017, Vol. 17(1)
- Vyšný P., *Grundprobleme der Erforschung des aztekischen Rechts*, 'Societas et Iurisprudentia' 2015, Year III, No. 3
- Vyšný P., *Štát a právo Aztékov*, Trnava: Typi Universitatis Tyrnaviensis 2012
- Vyšný P., *The Aztec Concept of Law*, 6th SWS International Scientific Conference on Social Sciences ISCSS, 2019

-
- Warylewski J., *Teoria kary Fiodora Dostojewskiego. Próba określenia*, Sopot 1987
- Widener M., Glass E., *Law in Mexico before the Conquest*, University of Texas: Tartlon Law Library, <https://tarlton.law.utexas.edu/aztec-and-maya-law/aztec-criminal-law> (accessed 02.04.2021)
- Woleński J., *O teorii i filozofii prawa Leona Petrażyckiego*, 'Studia Historiae Scientiarum' 2018, Vol. 17