

# **The Impact of Intercultural Legal Discourse upon Anglo-American versus Navajo Criminal Legal Theory**

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## **Abstract**

Despite the desire for clarity, legal discourse is often unclear, leading to controversial interpretation. Moreover, the cultural dimension of legal discourse is rarely addressed, despite its importance in the interpretation of laws. This study examines the impact of legal culture on how legal principles are perceived and executed. Disparities emerge from long-standing cultural norms that influence the meaning of fundamental legal terminology. These legal phrases and concepts defy straightforward English understanding. Examples include the Latin word *mens rea*, which underpins both criminal and penal theory in Anglo-American law. Another example is the Navajo term *hózhó* from which all conceptualizations of social order emanate. Through an examination of conflict of laws as to U.S. federal courts and tribal law, this study aims to highlight the impact that legal culture has on the way legal concepts are understood and implemented. This case reveals an overlooked intimate relationship between law and culture.

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## **Keywords**

legal discourse, legal anthropology, punishment theory, *mens rea*, Navajo tribal law, *hózhó*

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## Background

Legal discourse refers to communicative acts utilized in the practice of law. Communication is critical in law because it bridges the gaps among society, the judiciary and lawyers. As a result, certain terminologies are frequently employed. There are two kinds of legal discourse: written, which has proven more enduring and accessible, and spoken, oral legal discourse which is recorded in the memory of persons and can be more transient in nature. The correctness, ambiguity, specialist language, complexity, and other qualities of legal discourse make it difficult to translate, interpret, and apply to legal documents. This level of complexity and unpredictability is greatly influenced by the beliefs, moral standards, philosophical systems, and cultural practices of a country (Northcott & Brown, 2006; Swales, 2000).

Despite its linguistic appearance, legal discourse is not limited to language approaches, as its primary foundation is legal theory. Definitions and the proper understanding of what words imply are essential to the efficient and successful practice of law, as any jurist will confirm. Numerous pieces of evidence suggest that an understanding of background history and culture is essential when it comes to interpreting legal verbiage (Bhatia & Bhatia, 2011; Cheng, Gong & Li, 2017). To fully comprehend what the law intends, however, it is important to look beyond linguistic techniques; meanings are not just found in words themselves but also in values, beliefs, social ties, and various systems (Duranti, 1997; Cheng, 2012).

In this paper we will examine how pure linguistic interpretation embedded in cultural mores fuels conflict of laws in comparative legal discourse. Conflict of laws most often centers on jurisdictional controversies. Legal conflicts also arise from jurisprudential differences. Still, others revolve around linguistic interpretation. In this paper, we will examine how word usage and meaning underpin the legal philosophy that differing cultures seek to further within their respective rules of social order. Specifically, we will look at a conflict of laws seemingly based on a jurisdictional controversy—U.S. and Navajo tribal jurisdictions—but actually stemming from culturally-based jurisprudential differences as to punishment theory. This case study involves the recent application by the federal government of the death penalty to a Navajo man convicted of double homicide within tribal territory.

### 1. Intercultural Legal Discourse in Criminal Law

Jurists agree that legal documents are laden with ancient heritage, and that it is impossible to overestimate the importance of cultural context in the interpretation of legal discourse. In legal practice, many disregard the idea that the law is influenced by culture. Scholars, however, emphasize that there is a strong connection between law and culture and that legal writings are replete with cultural allusions (Cheng, 2012).

This is most visible within mixed legal systems when a Western legal system co-occurs in parallel with some type of indigenous law. The translation of specific phrases or legal concepts can be particularly problematic in this context. Words or concepts such as the Navajo *hózhó* is an example of an indigenous system of social order. These customary legal concepts, as this paper will illustrate, have no English equivalents under the Western common law legal system (Wilson, 1997).

Nonetheless, the key aim of cross-cultural translation is to generate a set of similar interpretations of the law that are legally equivalent to the source language. Still, even though they have been used for centuries, many Western legal phrases defy ready English translation, particularly Latin terms and phrases. In current common law, one instance is the Latin term *mens rea*, which literally means “guilty mind” but is more broadly construed as “requisite intent.” Despite the fact that the term has survived centuries of legal precedent, most jurists and legal scholars will openly acknowledge that *mens rea* is nearly impossible to translate into contemporary English (Dressler, 2012; Ginther, 2014). Finally, in juxtaposition to the origin, the phrase may take on a somewhat specific connotation and/or fulfill a wholly new function within a current cultural context. Legal systems are cultural expressions, and disparities in legal systems are more noticeable in varied civilizations or nations with diverse cultural histories.

## **2. Intercultural Legal Discourse: Terms That Resist English Interpretation**

### **2.1 Latin Origins of Anglo-American Legal Discourse**

The very foundation of Anglo-American law is the idea of free will, or the capacity of a person to choose their own behavior and follow the rules of the law. In order to conform one’s activities to the requirements of the law, a person must possess the necessary rationality, restraint, and self-regulation. Those who do not adhere to this requirement will suffer punitive consequences. In essence, our grasp of the human mind, including its limitations in terms of its faculties, capability for making deliberate decisions, and potential for malevolent resolution, is crucial to comprehending Anglo-American punishment philosophy (Dressler, 2012; von Hirsch and Ashworth, 2005). Because of this, the idea of *mens rea* has persisted for almost a thousand years. Many Latin expressions such as these that defy modern English meaning have persisted in American common law, creating ambiguity since they are susceptible to questionable translation.

Indeed, the goal of translating this Latin word into English has not been fully achieved despite repeated attempts by jurists to define *mens rea*, including attempts made within the common law, through the Model Penal Code, and finally by statute. The Model Penal Code is unquestionably evidence that the Latin phrase *mens rea* is not self-explanatory. It establishes a logical framework for defining offenses and a uniform set of general rules on subjects like criminal intent. The lengthy code represents an effort to clarify criminal law in light of contemporary culture. *Mens rea*, the legal phrase for criminal intent, is divided into four categories: deliberate, aware, reckless, and negligent (American Law Institute, 1985). In other words, there must be some level of guilt-related intent, a reason for the act, or at least awareness that the act’s consequences were likely to be negative (Robinson, 2002).

In Anglo-American criminal law, the degree of intent establishes the appropriate level of punishment (Dressler, 2012; von Hirsch and Ashworth, 2005). The fundamental premise of crime and punishment holds that for a crime to qualify as possessing *mens rea*, it must be possible for the unlawful conduct to be planned out and carried out mentally. The fundamental ideas of crime and punishment, as well as the concept of law itself, include the mental and emotional characteristics that distinguish a person as a citizen subject to the rule of law (Noyes, 1945; Smith, 2009). Guilt depends on mental state, which depends on free will. The idea that the severity of criminal punishments should be proportionate to the seriousness of the offense being punished is one of the most widely accepted theories of punishment. The significance of

this legal principle is emphasized by the Eighth Amendment to the United States Constitution (Sabine & Thorson, 1973; Smith, 2009; Weinreb, 1987). When assessing proportionality, one must take into account legal or normative principles, which necessitates a benchmark. Retributivists believe that punishment ought to be proportionate to the degree of the offender's guilt in the crime. The proportionality of a punitive policy in relation to the anticipated advantages of its enforcement is also examined using a number of consequentialist (utilitarian) criteria (Russell, 1967). The concept of suitable punishment, based on free will and supported by the ancient concept of “*mens rea*,” has been in effect for centuries, according to Anglo-American law (Dressler, 2012; Smith, 2009). Those who violate the law are penalized, and normally, those who commit crimes against the person are put to prison. But, those considered to have acted recklessly are exempt from the harsher punitive measures. And one cannot uphold the law's requirements if one's mental capacity is insufficient, as indicated by the Latin phrase *non compos mentis*, which means “no thinking capability,” if one's brain is damaged, or if one is legally insane.

Although this idea of punishment has broad acceptance, there are situations in which merely threatening to punish someone else has the same deterrent effect on the perpetrator as actually punishing him. Essentially, this does not apply to people who are unable to grasp or predict the consequences of their actions. As a result, the threat of punishment has little effect on these individuals. Thus, because of these factors, it is impossible to utilize punishment as a deterrence. Punishment has little influence on the willingness of this societal subgroup to commit crimes, hence it is futile. Persons who commit offenses in this group are not obliged to be penalized since they don't have the mental capacity to appreciate the consequences of their conduct (Waelder, 1952). When it comes to criminal culpability, some psychiatrists believe that free will should be ignored. Some argue that this tenet should not be applied to some persons (Katz, 1955; Focquaert, Glenn, & Raine, 2013). How this group should be classified and by what criteria has been and continues to be a source of contention throughout history (Platt & Diamond, 1966; Focquaert, Glenn, & Raine, 2013).

On the other hand, it is also maintained that the punishment doled out to this specific mentally incapacitated group is ethically wrong, because the offenders in this group are not regarded “guilty” in the ordinary meaning of the word. However, throughout Anglo-American legal history and today's culture, it is widely acknowledged that the great majority of individuals should be treated as if their actions were the result of their own free will (Katz, 1955). Thus, the term *mens rea*, which maps not only to the presence or absence of requisite intent to commit a given crime, but also to the degree of intentionality, has endured. And *mens rea*, in turn, determines the proportionality of punishment.

## **2.2. Navajo Social Custom in Legal Discourse: Concepts of Order and Conscience**

The Navajo concept of *hózhó* plays an essential role in the Navajo system of social order and justice. The Navajo philosophical principle of *hózhó* is not only one of the most difficult to explain in English, but it is also one of the most important to understand. Due to the breadth of its applicability, the philosophy of *hózhó* is difficult to articulate in English. The Navajo Nation Courts believe that there is no need to explain the logic behind their judgements in writing form since doing so would be an exercise in futility (Kluckhohn, 1949; Kahn-John, Badger, McEwen, Koithan, Arnault, & Chico-Jarillo, 2021; Witherspoon, 1975; Zion, 2002). The term “beautiful environment” is what linguists working in the field of anthropology have interpreted the phrase to mean (Farella, 1984). The end result is a condition that may be roughly defined as one of peace, harmony, and balance on a higher level. This occurs when everything is in its

appropriate location and is functioning together in a harmonic manner. According to the *Diné* philosophy of *hózhó*, the “perfect condition” is an ideal scenario that is impossible to comprehend, or, to put it in the language of Navajo philosophy, a reality that transcends human experience (Farella, 1984; Kahn-John, Badger, McEwen, Koithan, Arnault, & Chico-Jarillo, 2021; Witherspoon, 1977; Zion, 2002). The expression “everything in the universe” is a metaphor that conveys the idea that everything is connected, interconnected, and dependent on one another in a manner that is similar to the way a web looks (i.e. air, water, animals, birds, heavenly bodies, and so on). In the larger scheme of things, legality is not the primary goal of *hózhó* as much as the Navajo spiritual philosophy and ceremonial practice that it codifies. When it comes to matters of the law, Navajos are primarily concerned with how *hózhó* plays a role in the day-to-day decisions of Navajos, particularly those decisions that include justness (Kahn-John, Badger, McEwen, Koithan, Arnault, & Chico-Jarillo, 2021; Reichard, 1977).

The *hózhó* notion is built on the concepts of balance, harmony, and beauty. In order to grasp the foundation of the concept of *hózhó* as a guiding principle for the Navajo way of life, it is important to investigate the creation myth as well as other Navajo oral traditions. According to the tradition, the rituals of cultivation and healing both impart a linked, interrelated, and refined set of principles that are represented by order, stability, and harmony (Wyman, 1970). It is also claimed that they symbolize the link and connectivity between all of the objects that exist in their immediate environment (Kahn-John, Badger, McEwen, Koithan, Arnault, & Chico-Jarillo, 2021; Witherspoon, 1977; Zolbrod, 1984). The Navajo concept of *hózhó*, which serves as the ultimate guiding principle for Navajo religious practice, philosophy, aesthetics, and social structure, among other things, encapsulates everything that is linked with these goals and describes how they should be accomplished. *Hózhó* is symbolic of a wide variety of ideas and feelings, such as rationality and order, joy and happiness, the ideals of good and fairness, the physiological state of wellness and well-being, and the aesthetic traits of harmony, balance, and beauty. *Hózhó* is also symbolic of the aesthetic qualities of harmony, balance, and beauty. Every facet of Navajo life, from the most ordinary to the most spiritual, is endowed with significance and coherence as a result of the Navajo people's application of this intricate idea (Witherspoon, 1977).

The Four Corners area of the Southwest United States is the location of the traditional Navajo homeland. The Navajo people believe that they entered their country somewhere between the Four Sacred Peaks (Jett, 2001). The origin story builds *hózhó* by placing itself inside this region and therefore establishing its context. The sacredness of the landscape helps to establish a spiritual connection, which is essential for maintaining harmony in all aspects of life (Evers, 1982; McPherson, 1992). In addition, as a result of living in this region for such a long time, the Navajo people have evolved a unique awareness of their environment, which enables them to thrive in spite of the harsh climate of the Southwest. Knowing one's location is essential to developing a greater sense of who one is as a person, as well as one's place in the grand scheme of things, which includes one's own community, and getting a better understanding of one's role in the world. These holy landscapes are necessary for the growth of self-awareness and, as a consequence, for the formation of Navajo identity. Since the beginning, they have been of assistance to the Navajo people in terms of the economy, culture, and spirituality, and they are very necessary for the continuation of *hózhó* (Basso, 1996; Jett, 2001).

It is also thought that all forms of life and movement originate from a single global element, which in Navajo mythology is referred to as “wind.” At the most fundamental level, this belief is held to be true (Bruchac 1991; Witherspoon 1977). The Navajo believe that before they were freed from the underworld, the occupants there were given their breath of life by the wind. This

belief dates back to before their emancipation. The terrain generates wind that blows in one of four directions, each of which corresponds to one of the four sacred mountains. These four directions serve as a channel for life, movement, cognition, and communication—all of which are critical components of the human experience—and they do so in equal measure. The Navajo believe that everyone is born with a moral compass that they refer to as “wind inside one.” This is the most fundamental of their beliefs. Each person is responsible for maintaining a harmonious relationship with the Holy People and the Navajo by listening to and acting upon their own unique inner direction (Witherspoon 1977). Logically speaking, the only individual who might challenge the social rules and order structure of the tribe would be someone who was guided by a “dark wind.” This would suggest that the survival of the tribe, and by extension, the life of the individual, was dependent on preserving social order among the members of the tribe. People who had committed crimes against society were required to participate in a ritual of healing in an effort to reestablish balance, or *hózhó*, in their lives by recalibrating their guiding “wind within,” also known as their social conscience. Someone who was reckless in some way, such as accidentally wounding a member of the tribe, would be expected to restore order by providing a source of nutrition for the family of the wounded man, but only to the degree that their fundamental requirements were satisfied (Bruchac 1991; Henderson 1956). It is only possible to preserve a peaceful relationship with the Navajo and the Holy People if each person pays attention to their own inner voice and acts in accordance with the guidance it provides (Witherspoon 1977). According to logical deduction, the only individual who might challenge the established social mores and hierarchical structure of the tribe would be one who was inspired by a “dark, or evil wind.”

### **3. Case Examples: *Ex parte Crow Dog* and *U.S. v. Mitchell***

In order to effectively administer and apply law, having clear definitions of terms and an understanding of what words signify are essential. But if we want to understand what the law means, beyond what it says on the page, we need to look beyond linguistic approaches. Broader meanings can be discovered not only in language, but also in social values, beliefs, social relationships, and bigger support systems, such as the structure of the family and the social organization of the community. This broader, deeper, inferred meaning of the law is sometimes referred to as the “spirit” of the law. This larger connotation is especially important when considering comparative legal discourse and situations in which different legal systems are at odds with one another. Within the scope of this article, we will investigate a constitutional dispute that arises between the federal government of the United States and several tribal nations. In this part, the primary focus is on a discussion of the many social, ideological, and cross-cultural elements that play a role in legal interpretation. The case relies on a number of historical occurrences as well as previous judicial decisions.

On August 5, 1881, Chief Spotted Tail of the Lakota Sioux was gunned down by Crow Dog, another member of the Lakota Sioux tribe. As a direct result of the murder, the tribe elders gathered and determined how much money and cattle should be given by Crow Dog’s family to Spotted Tail’s people as a kind of compensation for their loss. Conversely, legislative representatives from the United States were opposed to this method because they thought that adequate punishment was being withheld. As a result, Crow Dog’s conviction from his tribal court was overturned, and he was arrested by state police, charged with murder in federal court, and sentenced to die by hanging in a federal court of appeals. Crow Dog was eventually freed after successfully appealing his conviction to the Supreme Court on the grounds that the lower court lacked the authority to hear the case. The Supreme Court of the United States decided that, in these kinds of cases, the federal government does not have the right to establish jurisdiction unless an act of Congress has been approved beforehand (*Ex Parte Crow Dog*,

1883). The interpretation provided by the Supreme Court was particularly stringent in the sense that the court adhered to both existing law and legal tradition; as a result, the court was swiftly challenged by the legislative authorities. The Major Crimes Act was enacted in 1885 as a direct response to the *Ex Parte Crow Dog* case. It gave the federal government the ability to investigate, prosecute, and punish major criminal crimes that occurred on Native American reservations located all throughout the country (Major Crimes Act, 1885). In spite of this, the federal government acknowledged the sovereignty of Indian tribes with regard to the application of the death penalty and made it explicitly illegal for federal prosecutors to seek the death penalty for major crimes committed in Indian territories unless they first obtained the consent of the tribes involved. This was accomplished through the implementation of the Indian Child Welfare Act (Federal Death Penalty Act, 1994).

Regarding the 1885 Major Crimes Act, the Mitchell case recalls the legal issues raised by *Ex Parte Crow Dog*. On the basis of case circumstances that served as indicators that the killings were conducted with malice aforethought (*mens rea*) and that they were exceptionally cruel, federal prosecutors in the United States ruled that the death sentence was commensurate to the crime committed. For instance, one of the victims was an old Navajo woman who had driven Mitchell and one of his teenage accomplices. After Mitchell and the teen accomplice had stabbed the deceased dozens of times, they forced the victim's 9-year-old granddaughter to sit next to her grandmother's corpse before stabbing and pummeling the girl to death. After dismembering and burying the remains, they stole the truck in order to attempt armed robbery later (*United States v. Mitchell*, 2020).

The tribal government should have been allowed to preserve jurisdiction over Mitchell for the double murders in the context of *Ex Parte Crow* and the subsequent federal laws. However, the United States government used a complex legal technicality by prosecuting Mitchell with carjacking resulting in death as opposed to murder (*United States v. Mitchell*, 2020). The Federal Death Sentence Act of 1994 prohibits the use of the death penalty for certain offenses committed on a reservation, such as murder, unless the tribe approves this punishment (Federal Death Penalty Act, 1994). Under this clause, federal prosecutors could not seek the capital sentence for Mitchell's murder convictions due to the Navajo Nation's lack of consent. The Federal Death Penalty Act does not cover the offense of fatal carjacking.

Consequently, in a superseding indictment filed on July 2, 2002, Mitchell and his teenage accomplice were charged with murder, felony murder, robbery, carjacking resulting in death, numerous robbery-related charges, kidnapping, and felony murder. Mitchell was charged with carjacking resulting in death pursuant to 18 U.S.C. 2119 rather than murder, and on September 12, 2002, the U.S. government filed an intent to pursue the death penalty against him. On May 8, 2003, a jury adjudged Mitchell guilty on all charges after separating his trial from that of the teen accomplice (*United States v. Mitchell*, 2020). Since the teen accomplice was a juvenile at the time of the murder, he was not eligible for the death sentence (Budryk, 2020).

The punishment phase swiftly commenced. Prominent in jury instructions was the language mapping to the *mens rea* concept, and degree of knowing and intentionality, and, thus, the degree of culpability. The degree of culpability hinging directly on the mental state of the defendant guided the sentence of death. The Navajo Nation did not condone capital punishment, in general, or for Mitchell's acts in particular, as evidenced by the defense. Capital punishment would not result in order or harmony, or, in other words *hózhó*. Furthermore, Mitchell and his accomplice required rehabilitative measures, as both clearly possessed a maladaptive social conscience. Nonetheless, the jury swiftly considered both the aggravating

and mitigating factors, such as an exemplary high school record, and ultimately recommended the death penalty, which the court then enacted (*United States v. Mitchell*, 2020).

#### **4. Cultural Foundations of Legal Discourse in the Application and Interpretation of Legal Philosophies**

Mitchell filed a number of appeals, all of which were denied. On appeal, he first contended that the Federal Death Penalty Act of 1994 does not apply to carjackings committed by an Indian against other Indians in Indian country since such crimes are specifically excluded from the Act. Second, Mitchell argued that the Major Crimes Act is the only basis on which the federal government can exercise criminal jurisdiction over intra-Indian offenses, and that Mitchell cannot be punished in federal court for a carjacking that resulted in death because such a crime is not specifically mentioned in the Act. Mitchell argued that the federal statute on carjacking does not specifically allow for jurisdiction over offenses that occur within India (*United States v. Mitchell*, 2020).

The court did not agree with these arguments and stated that a federal statute with nationwide application that is otherwise silent on the question of jurisdiction as to Indian tribes will only be ruled unconstitutional if any one of three conditions is met: 1) the law trespasses upon exclusive rights of self-governance in internal matters; 2) the usage of the law upon the tribe would nullify rights assured by Indian treaties; or 3) there is proof by legislative enactment. Mitchell, the court reasoned, does not explain how the court views the federal carjacking act as being inside one of these exemptions. As a consequence of this, Mitchell is deemed to fall under the jurisdiction of the federal legislation (*United States v. Mitchell*, 2020).

Furthermore, Mitchell contended that the Federal Death Penalty Act's applicability in this case was a violation of the First Amendment and the American Indian Religious Freedom Act of 1978 (AIRFA), which is codified at 42 U.S.C. 1996; Section 2119 should not be applied in this case because doing so would violate tribal sovereignty in light of the Navajo Nation's longstanding aversion to the death sentence for both religious and cultural grounds. He based his argument on some of the words from *United States v. Blue* (a case in which a Chippewa Indian challenged federal jurisdiction on a charge of drug possession) but not on the decision made in that case. After hearing *United States v. Blue*, the Eighth Circuit Court of Appeals ruled that “where a broad federal criminal statute infringes on a particular Indian right or policy, such law would be found not to apply to Indians on reservations unless explicitly so specified.” That case's verbiage was used in his argument, but not the conclusion (*United States v. Blue*, 1983). After reviewing *Blue* and *Mitchell*, the court concluded that a federal act (drug legislation in this case) does not violate tribal sovereignty or undermine tribal self-government. In ruling on the case, the judge found that the carjacking law did not conflict with any Indian policies or rights. Therefore, the death sentence conviction was upheld (*United States v. Mitchell*, 2020). Consequently, the United States Supreme Court denied a petition to postpone the execution (*Mitchell v. United States*, 2020). In the end, Mitchell was executed at a federal prison (Hymes, 2020).

The differences in how Anglo-American and Navajo criminal jurisprudence differ as illustrated in the case of Lezmond Mitchell are particularly illuminating. The primary consideration is whether it is possible for a Native American to get a just verdict from an Anglo-American court system that adheres to a fundamentally different legal culture. Federal laws requiring tribal permission for the federal government to impose the death penalty presumably extend from the Constitutional concepts of Equal Protection. Furthermore, the First Amendment in the U.S.



Constitution guarantees free exercise of religion, and while there is no Navajo word for “religion” or manner of conceptualizing belief as separate from its legal theory, the Mitchell case raises questions. When the same crime is punishable in different ways depending on the culture in question, which consequences should be applied if the laws of these independent states do not harmonize?

The federal government of the United States overturned a tribal court's verdict in *Ex Parte Crow* by attempting to reframe the crime using the terminology and concept of *mens rea* and proportionality. However, the growing sociopolitical backdrop and a basic misunderstanding of the Navajo idea of *hózhó* led to this decision being overturned. It highlights once again the need of taking into account not merely the literal meanings of words, but also social norms, religious practices, and cultural norms, in order to understand the motivations of others. The “dark wind” concept is crucial because it indicates that, unlike in Anglo-American culture, the mental condition for committing an infraction against society in Navajo custom is dichotomous rather than a question of degree.

Numerous legal scenarios, such as the influence of differing legal cultures with regard to criminal law in the United States, and, here, the death penalty, attest to the prevalence of legal interpretation based on cultural contexts. One major difference between the restitution model of justice in Anglo-American law and a more restorative system of Navajo jurisprudence is the idea of “proportionality in punishment” from the retributionist's perspective. There have been attempts to protect tribal sovereignty and religious beliefs, but there is still overlap between federal and tribal authority, especially in criminal law. Legal disputes have persisted for centuries because of the repercussions of divergent assumptions resulting from different sources of law and its interpretation. Few studies have compared the common law with the Navajo social system to see if there are any significant cultural differences in criminal legal reasoning. But the two legal systems reflect cultural variations in the fundamental meaning of terms and concepts. Both systems of law rely on conceptions that predate the English language by several hundred years and defy modern interpretation. Furthermore, tribal law language is more rational since traditions are articulated and implemented in a straightforward manner, whereas common law discourse emphasizes precedent and relies on direct previous case reasoning to give a more all-encompassing overview of the law.

## **Discussion and Conclusion**

In Anglo-American law, the concept of intent as measured by the undefinable “*mens rea*” maps directly to proportionality in punishment which is primarily retributionist in nature. Legislators have attempted to infuse contemporary meaning to the age-old concept of “guilty mind” via statutory definition—requisite intent. Most criminal sanctions do not have a clear purpose of retribution, yet it is still present in varied degrees as an unintended side effect. Generally, the harsher the punishment, the more it is justified by retributive principles. The death sentence is deeply anchored in retributive ideology.

Anglo-American courts take seriously their role in ensuring that the punishment fits the crime, and this duty hearkens back to early Roman and English law. The requirement of a guilty mental state for all crimes is the means by which this objective is achieved. The necessity of specific intent in many crimes encourages the proportionality of punishment to the culpability of the activity that led to the offense. In these instances, *mens rea* determines whether the level of blameworthiness associated with the offense is commensurate with the level of severity of

the punishment that has been allowed by the legislative body. This helps to reduce the likelihood that a punishment that is disproportionate to the wrongdoing in question—that is, a punishment that is either too harsh or excessively lenient—will be applied for the behavior in question.

Homicides provide as a critical example. Whether or not the homicide was committed deliberately with “malice aforethought, i.e. the mental state,” is needed by the traditional definition of murder. The explicit intent of “malice aforethought” is how the law distinguishes murder from the less serious crime of manslaughter. The presence or absence of malice has significant punitive consequences: in the federal system, murder is theoretically punishable by death or life imprisonment, whereas the maximum penalty for manslaughter, a killing without malice aforethought, is ten years in jail. Murder, as a specific-intent crime, requires defining the crime in terms of a certain mental state, not to free blameless action from punishment, but rather to accomplish commensurate punishment for blameworthy acts. In summary, Anglo-American law embraces the punishment theory of retribution, and no other theory of punishment accords the same level of significance to the concept of *mens rea*, or guilty state of mind.

In contrast, the concepts of social order and social conscience are absent from Navajo stated aims, written statutes, and Navajo Nation common law. Rather, they are implied via Navajo custom of declining to impose or consent to the death penalty in capital cases. It is crucial to understand the history of tribal criminal jurisdiction and the tribe’s connection with the U.S. government in order to comprehend why Mitchell was condemned to death despite being a tribal member. The majority of tribal law is founded on traditional legal procedures, which are typically buttressed by values and duties that are strongly intertwined with spiritual beliefs. These spiritual ideas served as a framework for dealing with tribal members’ negative behaviors. Criminal behavior was founded on societal evils. If a tribal member was murdered, for example, the victim’s family would be given peace presents first, and if those gifts were insufficient to compensate the family, the murderer would be expelled from the tribe, which was the greatest punishment available. The “shame that the crime of murder inflicted upon the killer and his family as well as the entire tribe” was seen by many Native Americans as a destiny worse than death. Crime was rare in Native cultures because life revolved around family and social order and wrongdoing was, therefore, counter to the individuals’ interests. Tribes were more concerned with restoring peace and harmony to the group than with punishing individuals (Gunther, 2010).

Even though Western culture has impacted the Navajo people and they have adopted the Anglo system of justice, they are still very connected to their spiritual roots and sense of who they are. Navajo creation stories teach that everything is connected and that people must live in harmony with each other and the universe. The Navajo people keep in touch with their past and religion through prayer songs, stories, and ceremonies. For the Navajo, law is the most important thing in life, and the spiritual plane and common law are one and the same.

The Navajo court system is similar to the American court system in that both civil and criminal cases are heard there. However, the Navajo utilize a more community-oriented system of restitution in righting wrongs, especially criminal wrong-doing. Inclusive decision-making is giving the victim, offender, and community members the opportunity to express what happened and explain the consequences of a specific action or incident. In Anglo-American penal systems, criminals are separated from their crime and simply stand by as a judge or jury renders their verdicts. Active accountability, on the other hand, invites offenders to accept

responsibility for their acts and places the onus on the offender to explore ways to remedy the harm he or she created.

The concept of *hózhó* readily encompasses all of this jurisprudential thinking. However, the concept is not written into the statutory or common law. Rather, the idea is perpetuated through custom, including restitution practices. Importantly, the concept defies exact English translation. Similarly, the Latin term *mens rea* underpins Anglo-American criminal and penal theory. In conclusion, legal discourse is often ambiguous, leading to contentious interpretation. Despite its relevance in law interpretation, the cultural dimension of legal discourse is rarely discussed. This study analyzed how legal culture affects perception and application of legal ideas. Cultural norms affect the interpretation of legal terms, causing disparities. These legal terms challenge English comprehension. This conflict of laws between U.S. federal courts and tribal law show how legal culture affects understanding and application of key legal principles, underscoring the link between law and culture.

The purpose of this article was to examine the impact of legal culture on the translation, interpretation, and application of legal norms. Despite lawmakers' best efforts to provide clear and proper texts, their confusion is compounded when legal cultures and systems drastically differ (for example, when a country's political structure, legal system, historical and cultural values change over time). While the richness and variety of the world's languages is something to celebrate, when it comes to the law it can be a barrier to communication.

Though all forms of legal discourse—spoken and written—are contextual, many studies have focused on its formation, interpretation, and usage with an emphasis on language or legal substance. However, context—both sociopolitical and cross-cultural—has received relatively little attention. This essay argues that the interpretation of legal discourse is heavily influenced by socio-political and cross-cultural factors since it is dependent on the context of socio-pragmatic realities to which a specific instance of legal discourse corresponds.

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