SVSU Law Review

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Saginaw Valley State University

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The Law Review

A COLLECTION OF SVSU STUDENT WRITING ABOUT THE LAW

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Books

Sophocles. The Three Theben Plays: Antigone, Oedipus the King, Oedipus at Colonus. Trans. Robert Fagles. New York: Penguin Group, 2000. (59-128). Print.

Grisby, Ellen. Analyzing Politics: An Introduction to Political Science. 5th ed. Belmont, CA: Wadsworth. 2012. 53. Print.

Other Authorities

Hobbes, Thomas. "Leviathan". Oregon State University. Web. 5 July. 2011.

King Jr., Martin Luther. "Just and UnJust Laws" history.hanover.ed. Web. 11 June. 2011.

Locke, John. "The Second Treatise on Civil Government". constitution.org. Web. 11 June. 2011.

penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for the law" (King). It is only just for Antigone to dissent from King Creon's law as it violates the laws of nature and is therefore illegitimate. By openly burying her beloved brother, Antigone demonstrated her utmost respect for the law, and, therefore, it is not Antigone but Creon who is guilty of violating the law and abusing his power for his own will.

CONCLUSION

Amicus respectfully urge this Court to affirm Creon's guilt, as it is Creon, not Antigone, who has violated the law.

Larissa Skalecki wrote this brief while she was a student in Professor Erik Trump's class.

Editors' Note

This first edition of *The Law Review* begins what we hope will be an inspiring publication for students hoping to enter the legal profession. Included in this year's *Review* are a range of interesting and thoughtful legal reviews, amicus curiae, and essays about the law that students have written for upper division courses at SVSU. Subjects covered in the articles include the legal rights of whales, state anti-cruelty case law, the political symbolism of courtrooms, and the rights of Native Americans to select one form of dress over another. We hope these articles will inspire future students to submit their work to Dr. Donahue (jdonahue@svsu.edu) and encourage faculty to assign papers on the law.

Scales of Justice:
How Courtroom Architecture in the United States and Japan Influences and Reflects the Politics of their Legal Systems

Ashley Hanson

Introduction

"So far as the judicial system is concerned, the [American] trial court is the appointed site of spectacle" (Edelman 92). While most American citizens understand and appreciate the basic ideas of the criminal justice system, including jury trials, defendants' rights, and the power of the judge, it is difficult to fully understand every aspect of this complicated system without close examination or personal experience. However, the American criminal justice system is of great importance because it affects the lives of every American citizen either directly or indirectly. Each day, many significant and sometimes life-altering decisions are made within the confines of the courtroom, a valuable and influential architectural space that is often under examined and taken for granted.

Courtrooms and courthouses are familiar architectural spaces to American citizens, whether their knowledge stems from personal experience in a courtroom or whether it is derived from seeing trials on television and in movies. Either way, American citizens have come to recognize American courtrooms and courthouses as symbols of justice in which legal proceedings take the form of theatrical conflicts that reveal the truth. However, few Americans have stopped to assess where these basic ideas of courtrooms and courthouses originated from. According to author Murray Edelman, architecture and spaces "contribute to social order and to social and political support for established hierarchies of status and power" (90), and the American court is no exception. The extravagant design, formal setting, layout, and symbols of the American court represent the "drama" that is expected to take place as well as the hierarchy of power that exists between the judge, jury, prosecutor, defense attorney, defendants, and the public.

Although the Japanese legal system was originally based on the American system of justice (Yokoyama 244), the architecture and setting of Japanese courtrooms and courthouses appear much different than typical American courts. The plain setting and exterior of the buildings reject the drama of justice that is common in American courts, and the layout of the courtrooms emphasizes the administrative role of the courtroom workgroup rather than the hierarchy of power and the constitutional rights of the defendants (Benjamin 134). To the Japanese citizen, courts are little more than buildings designed to punish defendants for their wrongdoings and integrate them quickly back into society (Yokoyama 244). In this sense, Japanese courtrooms and courthouses are not built to reflect symbols of justice, nor are they designed to mirror a theatrical performance that bolsters public support for the system through dramatic proceedings and symbolic architecture. Rather, Japanese courts reflect a much simpler design that emphasizes the oversight and maintenance of defendants, and thus do not emphasize dramatic

of Polynices unburied on the grounds of treason. In a persuasive speech given afterward, the defendant proceeded to give the plaintiffs the impression that he will rule with a just hand and be a fair king, by pledging absolute loyalty to the state. However, when the defendant began violating the very standards he himself pledged to uphold, it became clear the decree was made to set a precedent. It was to be a means not to protect the people but rather to surreptitiously advance his personal objectives through law.

Similarly to Locke, King outlines what just and unjust use of law rests on. He writes, "A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a mode that is out of harmony with the moral law" (King). He follows by arguing that the individual has a moral obligation to dissent from unjust laws. It can be argued then that Antigone did exactly that. Out of moral duty she buried her brother in accordance with the rules of the gods. She was arrested and brought to Creon who sentenced her to death for having broken his order. She echoes the nature of unjust laws laid out by King when she states, "It wasn't Zeus, not in the least who made this proclamation-not me. Nor did that Justice, dwelling with the gods beneath the earth, ordain such laws for men. Nor do I think your edict had such force that you, a mere mortal, could override the gods" (Antigone, 499-504). King Creon clearly violates not only King's definition of just law but also natural law. According to Locke, all men are equal and therefore when King Creon calls Antigone a slave and issues her to death, the reasons for that power are illegitimate.

II. Just Sovereigns Bind Themselves Within the Limits of Their Own System

Since the source of rights comes from external rather than internal sources, it also holds true that the sovereign of the state no longer has legitimate claim to be outside the law. His own laws must bind the sovereign himself. A ruler exercises legitimate power only when that power is consistent with the sovereigns own laws; for if all men are created equal, then the standards used to judge them must apply to all, save none. This principle, which follows from natural law, is the fundamental component that keeps rulers from making law according to their own will. According to natural law, the ends do not justify the means. Both Antigone and Tiresias accuse Creon of breaking this principle of equality. As an example, Antigone states, "Lucky Tyrants-the perquisites of power! Ruthless power to do and say whatever pleases *them*."(566-567). King calls this reasoning "difference made Legal" (King). This inequality made legal violates the intrinsic equality that is given to every man by either his nature or by a divinity and is thus an illegitimate means to power. Creon expresses this illegitimate means to power when he rhetorically asks, "Am I to rule this land for others-or myself?"(823).

King argues that when one dissents from an unjust law of this kind it must be done out of love not hate. Antigone dissents from Creon, not by attacking Creon himself, but by openly burying the body of her loved brother. It is with love that she rejects Creon's edict. She merely continues to follow the natural laws that were given to all men and therefore, when the guards come to arrest her, Antigone does not resist and she willing and openly accepts the consequences. According to King, Antigone is not in disrespect of law but rather showing ultimate respect for it. He writes, "I submit that an individual who breaks a law that by conscience tells him is unjust, and willingly accepts the

ne, not Creon who has violated established law.

ARGUMENT

I. The Existence of Natural Law Necessarily limits the Sovereignty's Means to Power

According to English philosopher John Locke in his book entitled *The Second Treatise of Civil Government*, humans by their nature are endowed with certain rights. Locke's set of ideas, which fall under the naturalist school of law, claims the origins of rights are external to human society and therefore can never be legitimately revoked. He writes, "The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions…" (Locke). Similarly, Martin Luther King Jr., in his essay entitled *Just and Unjust Laws*, also assumes external origins of rights. King's set of ideas however, falls under the theological school of law because the rights are endowed from an external divinity. Although both men derive their rights from different external sources, the important assumption that rights have external origins and therefore can never be revoked, is necessary to limit a sovereign's means to power.

By assuming the source of rights comes from external rather than internal sources, the right of absolute power shifts away from the state and is placed instead with the people. By its definition, popular sovereignty places conditions on a ruler's right to power. The sovereignty only has legitimacy in so long as it adheres to natural law. If the ruler violates natural law, then the people reserve the right to withdraw their consent, thereby stripping the sovereignty of its power. Locke outlines the conditions in which a legitimate sovereign becomes tyrannical. He writes, "When the governor, however intitled, makes not law but his own will, the rule; and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion" (Locke). The defendant King Creon demonstrates this tyranny and disregard for sound policies when the sentry brings him news that someone attempted to bury Polynices. The defendant makes a groundless claim against the sentry of being corrupt. The defendant follows the unjust claim with a threat of punishment for the falsely accused behavior. He states, "If you don't find the man who buried that corpse, the very man, and produce him before my eyes, simple death won't be enough for you, not till we string you up alive and wring the immorality out of you" (346-350). This order is not done out of the concern for the people of Thebes but rather for execution of Creon's own revenge and desire. Creon himself later admits he sought to bring his own desires to fruition. He states, "Oh it's hard, giving up the heart's desire…"(1228-1229).

Creon also manipulated the people of Thebes in order to claim his right to power. According to Ellen Grigsby, author of the book entitled "*Analyzing Politics: An Introduction to Political Science*", manipulation is used to hide the reasons prompting the use of power. She writes, " Manipulation is a nonphysical use of power in which the agent exercising power over a second agent conceals the aims and intentions motivating the exercise of power" (53). The defendant enacted the emergency decree to leave the corpse

proceedings that focus on the hierarchy and status of the courtroom participants.

Author Allan Greenburg argues that "In other countries, where social organization and judicial procedures are very different from ours, these differences are often directly reflected in their courtroom designs" (210). While some people may argue that the differences in the architecture of Japanese and American courtrooms stems solely from the idea that Japanese courts are newer and thus more modern and American courts are older and therefore more extravagant, it is important to recognize that even recently built American courthouses still exemplify these architectural differences. Contrasting the legal systems and architecture of the American courts with that of the Japanese courts will not only help to create more awareness and understanding of this topic, but will also awaken attentiveness to the subconscious political influence of architecture. By examining the architecture of the court as a symbol of power, the layout of the court as a dramatic conflict to find truth and justice, and the manipulation of symbols in the court to support the idea of justice, one will develop a greater appreciation for the differing American and Japanese justice systems, as well as how the architecture of the courts reflects these justice systems and influences public perception of the politics of the court.

Literature Review

Opposing Systems of Justice

To understand the differences in the layout and architecture of American and Japanese courts, it is first important to examine the differences in the legal systems of these two countries. According to scholar David Neubauer, the American system of justice is known as the adversarial system, and it emphasizes due process, defendants' constitutional rights, and finding the truth through jury trials (32). As scholarly literature reveals, the adversary system was established to initiate a "battle" between prosecutors and defense attorneys in order to uncover the truth about the guilt or innocence of a particular defendant (Neubauer 32). In this system, prosecutors and defense attorneys are considered "enemies" who are overseen by a neutral arbitrator, the judge, in order to "win" the battle through a favorable decision by the jury (Neubauer 32). Neubauer argues that the reason for this type of system is to create a safeguard against constitutional violations by distributing power among several different courtroom actors (32). Additionally, scholars claim that these constitutional safeguards are important to ensure that each defendant remains "innocent until proven guilty" and to provide each accused person with the option of exercising their constitutional right to a trial by jury to determine their guilt or innocence in a fair and impartial manner (Neubauer 36).

In contrast to the American legal system, several scholars have recently examined the current problems faced by the Japanese legal system. According to scholar Melissa Clack, although the Japanese system of justice was originally based on the American legal system, Japan does not afford many of the same rights to its criminal defendants that America does, such as the right to bail, the right against self incrimination, and the right to a jury trial (526). Additionally, she also argues that Japan is noted for gaining coerced confessions from defendants in order to quickly dispose of the cases and to ensure that punishment is administered swiftly (Clack 542). While many people automati-

cally assume that this is a violation of human rights, Clack argues that many of the differences in the legal systems stem from the differing customs and cultures of these two countries. Specifically, scholarly literature reveals that while America's system is focused on the individual, Japanese people are more likely to have close community ties, and therefore, their system of justice emphasizes humiliation of the defendant in order to foster a sense of repentance for their crime as the first step towards achieving rehabilitation (Clack 537-538). As a result of these different cultures and customs, in his study of Japanese and American conflict resolution, Roger Benjamin argues that the Japanese legal system rejects a due process emphasis and instead focuses on an "administrative and maintenance" role of the criminally accused (133). He defines an "administrative and maintenance role" as the attorney's responsibility to counsel the defendant to meet the behavioral standards accepted by society, and the passive role of the defendant in criminal proceedings (Benjamin 131). In other words, Benjamin argues that the administrative model emphasizes social order, deterrence, efficiency, finality, and a presumption of guilt (129). Moreover, this scholarly research indicates that justice in the Japanese system is not seen as a result of the battle between prosecution and defense in order to find the truth, but instead, defendants who enter the legal system in Japan are assumed to be guilty and are punished quickly by the courtroom members without a guarantee of constitutional rights (Benjamin 129). According to this scholarly source, the rights of the defendant, including due process and innocence, are often overlooked by the Japanese legal system. Rather, scholars claim that the legal system in Japan rejects the adversary system and the American standard of justice and instead emphasizes informal control of criminals through coerced confessions, community standards, and an oversight role of the courtroom workgroup.

Function of Civic Spaces

While knowledge of the differing legal systems is extremely important, it is also vital to understand the influence that architecture and civic spaces can have on their audience. Scholar Murray Edelman argues that architecture is politically powerful, although much of its influence is often subconscious (77). Specifically, Edelman believes that architecture can draw attention to the idea of the hierarchy of status, especially the powerful status of employees in comparison with their clients, as in the case of a welfare office (78). Additionally, in his study of architecture, he draws the conclusion that architecture and its setting can create multiple realities for different people, all of which draw attention to beliefs and perceptions that already exist (Edelman 86). Scholar Charles Goodsell narrows this analysis of architecture to a study of city halls, in which he gives extensive attention to the symbols that are used on and throughout architectural spaces. In his analysis, he argues that the manipulation of symbols in civic spaces is an extremely powerful tool of influence on the thoughts and ideas of the public (Goodsell 12). In other words, several scholarly sources agree that architecture, and by extension its symbols, are extremely powerful and often create subconscious realities for people that mirror already existing beliefs and ideas.

nature of the social contract. Creon enacts an emergency decree declaring the body of Polynices will not receive burial. He issues the decree as punishment for the treachery Polynices perpetrated against the state while alive. Creon also states that anyone who dare defy the decree will be seen as an accessory to treachery and will be faced with certain death. Creon reiterates the nature of the social contract by reminding the public, "… the man the city places in authority, his orders must be obeyed, large or small, right or wrong" (748-751). The leader echoes the agreement by stating, "If it is your pleasure, Creon, treating our city's enemy and our friend this way…The power is yours…" (236-238).

The right the monarch has over the means of achieving peace also substantiates the defendant's edict. Polynices was a traitor to the state and a threat to the security of the people. Hobbes specifically states a monarch can, "…do whatsoever he shall think necessary to be done...for the preserving of peace and security …" (Hobbes). Creon used the body of Polynices to set an example to the public. He acted preemptively, employing the use of soft power as a means to deter future discord of the same nature from occurring within the state.

II. Political Dissent From the Sovereign is Logically Fallacious and Punishable by Law Given the Irrevocable Bond of the Will of the Sovereign to the Will of the People.

Since the social contract is irrevocable once entered into, any attempt to break from the contract is punishable by law. The contract requires all men to surrender their individual power and will to the monarch of their choosing in order to achieve peace. This inexorably ties the will of the monarch to the will of the people. In other words, the people agree to the absolute submission of a monarch in exchange for the absolute protection from each other. Any break in submission is therefore a contradiction in terms, a breach of contract, and consequently a return to the state of nature. Creon demonstrates his understanding of the consequences of a breach of contract when he states, "Anarchy- show me a greater crime in all the earth! She, she destroys cities, rips up houses, breaks the ranks of spearmen in headlong route" (752-755).

According to Hobbes, the binding nature of the contract is such that only the people are capable of breaches in contract, not the monarchs. Therefore, it is not the defendant Creon who is guilty but Antigone. Creon was justified in sentencing Antigone to death for defying the monarch and burying her brother Polynices. Political dissent by the people is illegitimate according to Hobbes, and dissenters should be thrown back into the state of nature. Creon illustrates this when he states, "This young girl- dead or alive, she will be stripped of her rights, her stranger's rights, here in the world above" (975-977). In accordance with the Hobbesian model of social contract theory, it is Antigone, not Creon, who is the violator. She sought out power that was not hers to legitimately exercise. She dissented from Creon and it was Creon's right to sentence her to death. Since the will of the monarch is the will of the people, Antigone actually condemned herself to parish. Evidence of this is quite clear as she in fact hung herself.

CONCLUSION

Amicus respectfully urge this Court to affirm Creon's innocence, as it is Antigo-

In the Greek tragedy *Antigone*, the protagonist Antigone defies her uncle, King Creon, by burying her brother, Polynices, against his orders. Polynices, a traitor of the state in the eyes of Creon, was ordered undeserving of a royal burial. Furious that Antigone would dare defy his rule, Creon sentenced her to death by means of entombment even though she was soon to be married to Creon's son, Haemon. Creon did not relinquish despite pleas from his son and warnings from the prophet until it was too late; Antigone had hung herself. The question before the court remains whether King Creon, in sentencing Antigone to death, is guilty of violating his rule as king.

ARGUMENT

I. The Binding Nature of the Social Contract Between the People and their Representative Categorically Sanctions the Sovereign's Right to Absolute Power.

In Thomas Hobbes' book entitled, *Leviathan*, Hobbes establishes the necessary conditions for legitimate government. He begins by asserting humans are by nature rational egotists. From this egotism, explains Hobbes, arise various universal desires, which enviably lead to conflict. Without the existence of an external authority to issue order and mediate this inherent conflict, Hobbes depicts a reality plagued with incessant war and chaos, where every man is subject to the unbridled will of any other man at any moment. He describes this state of nature as, "…solitary, poor, nasty, brutish, and short… every man against every man" (Hobbes, ch. 13). It is only for the guarantee of protection from one another that free men agree to come together; for the chief source of power that moves men is the fear of death, and only with a common fear of death can there be peace.

The only way to elicit such a common fear of death among men, according to Hobbes, is to enter into a social contract where all men equally surrender their individual power and strength to one supreme external authority. The sovereign, whom Hobbes believes should be a monarch, can in turn arbitrate the will and desires of all men, so that no man should feel himself under threat by any other. Only in so long as men agree to be bound by the contract, that is, to surrender their individual power to the monarch, can there be peace for men. It is for this purpose, once men choose a representative by their own reason and agree to submit to the will of the sovereign, the contract can never be broken. It is this binding nature of the social contract that sanctions a sovereign's right to absolute power.

By the nature of the social contract, the will of the monarch irrevocably becomes the will of the people. It becomes necessary then, for the sovereignty to possess prescriptive powers. Hobbes issues a set of explicit privileges the sovereignty has claim in exercising. He writes, " …it is annexed to the sovereignty to be judge of what opinions and doctrines are averse, and what conducing to peace; and consequently, on what occasions, how far, and what men are to be trusted with in speaking to multitudes of people; and who shall examine the doctrines of all books before they be published" (Hobbes, ch. 18). Other rights include the means of achieving peace, the right of judicature, and the right to regulate a man's actions and property.

The defendant King Creon follows diligently in this Hobbesian tradition. As king, Creon applies the powers and privileges rightly given to him through the binding

American and Japanese Courts

Symbols of Status and Power

As mentioned earlier, the American court is a common image to many citizens. No matter where their experience stems from, almost every American recognizes the importance of the typical American court. However, what many American citizens often do not readily recognize is the underlying message of hierarchy and power that is attached to the layout and architecture of American courts. Edelman argues that "It is the monumentality of great public buildings…that most conspicuously distinguishes them from the rest of the environment…The grand scale of the setting in which [the employees] make decisions emphasizes their power and their distinction as a class from those who are subject to their decisions" (76). Although many American citizens may not realize that the exterior of a building can directly impact the way they feel about the people who work inside it, the truth is that most Americans feel some degree of inferiority towards judges because of the magnificence of the buildings they work in. Likewise, many American judges also feel more powerful or more influential than the defendants they sentence in part because of their majestic setting and surroundings.

The Supreme Court of the United States epitomizes the themes of hierarchy and social power, although most people do not necessarily make this connection by simply looking at the Supreme Court building. However, after thoroughly studying the architectural style of the Supreme Court building, a closer examination reveals the messages of power and status that are directly attached to the architecture of this building. For example, the front of the building is lined with large pillars and several sets of stairs that lead up to the entrance of the Supreme Court, giving the building a larger-than-life feel (see Fig.1).

Fig. 1: U.S. Supreme Court
Source: "About the Supreme Court"

In other words, the average American citizen who approaches the Supreme Court feels as though they must walk "upwards" to get close to the people who work in this building. As a result, the Justices who work here are held in almost "godlike" esteem and are considered very powerful because they are seen as being "above" the normal American citizen, including those defendants who argue their cases at the Supreme Court level. In this sense, the exterior of the Supreme Court building exemplifies the idea of hierarchy of

power by literally and figuratively placing the average citizen "beneath" the Justices and the clerks who work in the Supreme Court building. Additionally, the building is ceremoniously lined with great statutes and magnificent sculptures and is made out of stone and marble, which are both naturally strong materials. According to author Charles Goodsell, a ceremonial building such as the Supreme Court "possesses also the sacred aura of a great public activity [that is] being conducted in behalf of the entire society" (12). In other words, through the use of breathtaking sculptures and extravagant architecture and layout, the Supreme Court building creates a powerful political image of the important status of its employees in comparison with the average American citizen.

On the other hand, the Japanese Supreme Court has a much plainer architectural style and lacks the extravagance and mystique of the United States Supreme Court (see Fig. 2).

Fig. 2: Japan Supreme Court
Source: "Supreme Court of Japan"

The front of the Japanese Supreme Court building resembles a typical American business or government office that lacks flair or ornamentation. Additionally, unlike the U.S. Supreme Court building that has two large sets of stairs leading up to it, there are no stairs leading up to the Japanese Supreme Court, giving the average citizen a greater feeling of connectedness with the Justices and clerks who work in the Supreme Court of Japan. As a result, the Japanese Supreme Court lacks the emphasis on status and power that is typified by the U.S. Supreme Court building due to its ordinary appearance and plain exterior. Consequently, the political implications of the architecture of this building somewhat equalizes the roles of the Justices and the typical Japanese citizen by physically placing them on a similar level and by removing the awe and spectacle from the exterior of the Supreme Court building.

The interior of American courtrooms also emphasizes the status and power of the courtroom workgroup, while the interior of Japanese courtrooms rejects this same emphasis. Edelman notes that "In the [American] courtroom the trial judge enjoys virtually absolute authority and an exalted status that traditional rituals underline" (93). For instance, the placement of the judge's bench in an American courtroom reflects the power

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IN THE

THEBAN NATIONAL COURT

NO. 03-607

PEOPLE OF THEBES,

Plaintiffs

v.

KING CREON,

Defendant

BRIEF OF AMICUS CURIAE

Larissa Skalecki

Larissa Skalecki, as amicus curiae, respectfully submit this Brief, with the consent of all the parties, in support of Defendant, King Creon. [for the second brief, change this to read "in support of the Plaintiff, People of Thebes."]

of the American judge in comparison with the public. In a typical courtroom, the judge's bench is placed at the head of the room and is raised up on a pedestal to symbolize the authority of the judge to determine the fate of the defendants who stand before him (see Fig. 3).

Fig. 3: Freehold County Courthouse, NJ
Source: Christian Brothers Academy

In contrast, the public is located outside of the proceedings behind a barrier, and sometimes even in a balcony, to show their relatively miniscule power in affecting the outcome of the cases while still emphasizing their moral authority in acting as an outside force to ensure that justice is being done. In this sense, the layout of the American courtroom emphasizes the hierarchy of status by accentuating the power of the judge and the powerlessness of the public.

On the other hand, the Japanese courtroom does not emphasize power and hierarchy of status, but rather, rejects the emphasis of the authority and superiority of the judge. For instance, the typical Japanese courtroom places the judge on a slightly raised platform (modeled after the American judge's bench), but closer inspection shows that the judge is somewhat divorced from the actual proceedings, giving the illusion that the judge has relatively little influence over the outcome of the case (see Fig. 4).

Fig. 4: Tokyo Courthouse, Japan
Source: "Will Japanese Citizens"

Instead, the attorneys are positioned so they face each other rather than the judge to show that they are primarily responsible for reaching a decision about the defendant's fate. In reality, recent studies of the Japanese justice system concluded that there is a "small degree of control exercised by the judges" (Clack 541), proving that the layout of the Japanese courtroom strongly reflects the reality of the diminished power of the Japanese judges in affecting the ultimate outcome of the cases.

Dramatic Conflict of Truth and Justice

In addition to the architectural emphasis on status and power, the interior of American courtrooms is also designed to facilitate a political drama where one party always "loses" and one party always "wins." In other words, the layout of an American courtroom follows the adversary system of justice whose "guiding premise is that a battle between two opposing parties will uncover more of the truth than will a single official" and where "the judge serves as a neutral arbitrator who stands above the fight as a disinterested party" (Neubauer 32). As a result, the American courtroom is designed to facilitate this "battle" between the prosecution and defense in order to find the truth and ensure that justice is achieved. In this sense, the American public expects the trial to mirror a dramatic play or theatrical conflict, which is only furthered by the layout of the American courtroom. For example, the typical layout of an American courtroom places the judge (the impartial arbitrator) in the center of the room with the prosecution and defense attorneys (adversaries) at equally positioned tables facing the judge (see Fig. 5).

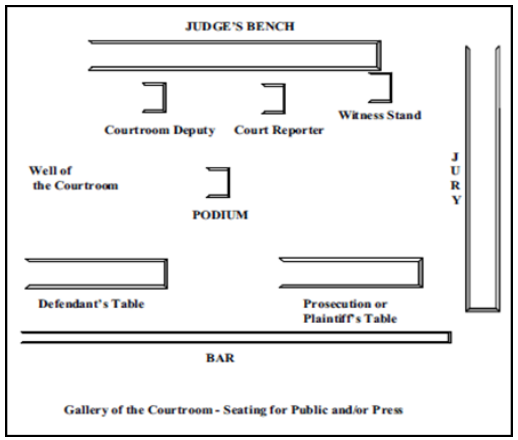

Fig. 5: Courtroom Layout
Source: "Courtroom Layout"

The jury is located to the side of the judge facing the prosecution and defense as they present their evidence. The jury is somewhat disconnected from the other courtroom actors, but they are still situated on a raised platform symbolizing their important role in the criminal justice process. Spectators and the public sit behind the prosecution and

policies to try to save the whales, whales are still hunted and found in Japanese fish markets. The species is severely depleted. Japanese whaling on American shores is perpetuated by giving the Secretary of Commerce the ability to negotiate deals with nations instead of automatically certifying them. A moratorium was placed on whaling by the IWC in 1986, and the Obama administration has continued the long pattern of reaching compromises and deals that fail to protect whales.

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[1]Anthony D'Amato and Sudhir K. Chopra, "Whales: Their Emerging Right to Life," in *The American Journal of International Law*, Vol. 85, No. 1 (January. 1991) pp. 21-62, 61.

[2]Anthony D'Amato and Sudhir K. Chopra ,28-29.

[3]Anthony D'Amato and Sudhir K. Chopra. 29.

[4]Anthony D'Amato and Sudhir K. Chopra. 32.

[5](*Japanese Whaling Association v. American Cetacean Society* (1986).

[6]Stephen Clark, *Obama Under Fire for Backing Deal to Lift Global Ban on Commercial Whaling*. www.romanticpoetwordpress.com

Kersten Zielinski wrote this article while she was a student in Dr. Jesse Donahue's class.

effectiveness" of the ICWR. The president then has the discretion to impose sanctions on the certified nation. In the first fifteen years after the enactment of the amendment, only five nations had been certified to the president by the Secretary of Commerce. The effectiveness of this amendment was put to the test in the Reagan Administration. Although the amendment was supposed to have an automatic mechanism that led to sanctions, the discretionary nature of the amendment allowed the Secretary of Commerce to avoid holding the Japanese to the quotas.

Meanwhile, pro-whaling nations started to make their presence felt at the IWC. At the UN Conference on the Law of the Sea in 1977, the 200-mile fisheries zone was finalized. Individual nations could regulate whaling in their zones, but the IWC argued that if states were allowed to use these zones, the international management of whale stocks might collapse. Australia pointed out that states have that right under Article 54 of the Revised Single Negotiating Text of the Law of the Sea Convention. The 1977 IWC meeting resulted in the banning on whaling of the Arctic bowhead (which was the most endangered species), but this ban only lasted until the next meeting at the request of the United States because indigenous groups threatened legal action. In 1979, Australia and the United States proposed a worldwide ban on whaling, but the only ban implemented was on pelagic whaling. CITES emerged during this stage, and at first it protected more whales than the IWC. CITES, in a way, has become the IWC's enforcement mechanism because it has teeth. However, CITES is enforced by individual governments, leaving some whaling sanctuaries outside the boundary of nation states. Given this history, has President Obama championed the whales?

Unfortunately the answer is that he has not. During the 62nd annual IWC meeting in 2010, the major topic of discussion was whether or not to end the moratorium on whale hunting. In place pro-whaling nations proposed a ten-year deal that would allow whaling nations (mainly Japan, Norway and Iceland) to hunt whale legally for profit. This deal was lead by the Obama administration that argued that those nations are exploiting loopholes, so by making whaling legal they can agree upon quotas and eventually reach a consensus to phase out whaling altogether. The plan does not call for the phasing out of whaling anywhere in it, however. And the idea that all of the nations will reach a consensus is hard to believe given how different their positions are. Once the whaling nations get what they want legally, they are not going to give it up. If those nations were willing to exploit loopholes, then they will probably ignore their quotas. The moratorium has been effective—only about 1,240 whales are being killed each year (as opposed to 38,000 a year before the moratorium). However, the IWC is further justifying the proposal by claiming that it is a compromise to try to give all the different views of the IWC something that they want.

In summary whaling laws and regulations remain ineffective at stopping the slaughter of whales. The International Whaling Commission was created in order to conserve whales, originally to protect commercial whaling. It can set quotas each year, but has no power to enforce them because nations can file objections to the quotas and be exempt from following them. After years of trying, the IWC was able to enact a whaling moratorium, with a small number of exceptions for scientific research. While institutions have implemented

defense tables, separated by a bar so they are disconnected from the actual proceedings. In this sense, the layout and design of the American courtroom bolsters the image of a political "drama" by pitting the defense and prosecution against each other with equal roles of trying to "win" their case by gaining support from the jury and the judge who sit before them (Greenburg 209). Additionally, the public is divorced from the actual proceedings, and instead acts as silent onlookers watching the drama unfold and waiting for the climax and the eventual conflict resolution through the rendering of the verdict (Greenburg 210). This depiction directly mirrors a group of movie-goers who sit detached from the screen watching the plot develop in thrill and excitement. However, interestingly, the barrier that separates the public from the attorneys typically has a small opening which is used dramatically in film versions of trials to allow someone from the audience to enter the proceedings with the pivotal piece of evidence that saves the defendant's case at a moment's notice. In this sense, the opening in the barrier, which allows the public to become part of the proceedings if necessary, also contributes to the idea of justice being served through a theatrical conflict in the courtroom. This dramatic sequence and its political affects on how the public perceives court proceedings would be impossible if not for the layout and architectural construction of the interior of the American courtroom.

In contrast, as mentioned earlier, the Japanese system of justice is much different than the American adversary system. Although the Japanese justice system is based on the American legal system, "the Japanese appear to have rejected the extreme or full implications of the adversary system, particularly in the terms of the notion of due process" (Benjamin 135). Rather, the Japanese system of justice focuses on an "administrative and maintenance" role, and as a result, their courtrooms reflect this political difference. This means that the courtrooms in Japan are not designed to facilitate a dramatic sequence of events, but instead they promote the quick processing of cases in order to punish and rehabilitate the defendants as the state sees fit. When examining the typical Japanese courtroom, the first noticeable difference is the lack of a jury (see Fig. 6).

Fig. 6: Japanese Criminal Courtroom
Source: "Supreme Court of Japan"

Because the Japanese system believes in a presumption of guilt rather than due process and innocence, the layout of their courtrooms focuses no attention on the drama of a jury trial to determine the guilt or innocence of the defendant. Instead, the Japanese legal system and courtroom architecture allows the prosecuting and defense attorneys to act as

administrators of punishment by humiliating the defendant instead of battling with each other to discover truth and facilitate justice. Additionally, although the public is allowed to watch the proceedings take place, they are physically distanced from the attorneys and defendant, promoting the idea that the public is not there to witness a theatrical conflict between the prosecution and defense that is supported by the jury through a climatic verdict. As a result, the politics of the Japanese justice system reject the idea of a courtroom drama to bolster the truth-finding process. Instead, the Japanese criminal courtroom supports the political role of the attorneys as administrators of punishment through the oversight and maintenance of the defendants, while the public acts as passive witnesses who observe the administrative decisions but provide little insight or moral authority.

Manipulation of Courtroom Symbols

While the power and the theatrical conflict that is brought about by the architecture of the courtroom is extremely influential on public perception of the courts, the symbols in courtrooms, or lack thereof, can also have a direct affect on public perception of the political power and justice of the courtroom. In other words, "Ceremonial ritual achieves its power over the human mind and heart through the manipulation of symbols" (Goodsell 12). For instance, many American courthouses display the scales of justice either on the outside of the building or somewhere inside the courtroom (see Fig. 7).

Fig. 7: Dallas County Courthouse, Adel, Iowa
Source: Hegstrom, M.

The scales of justice feature a blindfolded lady holding a scale in one hand and a sword in the other symbolizing that justice is blind and that justice will be served in the court through the weighing of facts. As a result, American courthouses often display this symbol in order to give people the impression of political power and justice in the court. Additionally, many American courthouses also display the American flag and a state flag either on the exterior of the building or inside the courtroom not only to show pride for the country and state, but also to instill a sense of democratic values which helps the public to recognize that American courts are providing defendants with their constitutional rights such as the right to a jury trial (see Fig. 8).

oped as well.

The conservation period lasted from roughly 1945 to 1977. President Truman helped usher in this period by issuing several proclamations for conservation. His most important proclamation was establishing the right of the United States to create conservation zones beyond the territorial seas for fisheries. Most whaling nations had recognized the need for a new international convention by the end of World War II, so the United States called for a conference in late 1946. Coming into effect on November 10, 1948, the International Convention for the Regulation of Whaling (ICRW) superseded previous agreements. The ICRW established the International Whaling Commission (IWC). The purpose of the IWC is to meet annually to adopt and revise annual whaling quotas, as well as identify protected whale species. The IWC's methods of regulation include: fixing protected and unprotected species, fixing open and closed seasons, fixing open and closed areas (including sanctuaries), imposing limits on the size of species taken, fixing the methods and intensity of whaling (establishing maximum catch), regulating the types of gear and equipment that can be used, regulating the methods taken to measure whales, requiring that returns be made of catch, and collecting statistical and other biological information. These gave the IWC some flexibility that previous treaties lacked.

Regional initiatives also attempted to strengthen the IWC's policies. In 1954, the Permanent Commission of the Conference on the Use and Conservation of the Maritime Resources of the South Pacific (PCSP) adopted measures to regulate Chile, Ecuador, and Peru's whaling and fishing activities. The South Pacific Commission was established to manage all the marine mammals of the waters. The 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas adopted two resolutions that would strengthen the effectiveness and further the support of the international conservation conventions (one was the establishment of the definition of conservation as maximum sustainable yield, and the other was the resolution entitled "Humane Killing of Marine Life"). The Antarctic Treaty of 1959 was supposed to ensure that the Antarctic would be used exclusively for peaceful purposes. The Convention for the Conservation of Antarctic Seals was adopted in 1972 on the recommendation of the Antarctic Treaty Consultative Party group (ATCPs), which acknowledged the importance of the Antarctic ecosystem.

The United States enacted the Packwood-Magnuson Amendment in 1970 to the Pelly Amendment to the Fisherman's Protective Act in 1971. Congress enacted the Packwood-Magnuson amendment because of the International Whaling Committee's inability to enforce quotas it put in place. The idea behind this amendment is that it would force the Secretary of Commerce to enforce the whaling quotas and not allow Japanese and Russians to overfish whales in American waters. The United States enacted the Pelly Amendment to the Fishermen's Protective Act of 1967 because the IWC is unable to enforce its own quotas. The amendment was aimed at Danish fisherman who violated the ban on North American Atlantic salmon fishing that was imposed by the International Convention for the Northwest Atlantic Fisheries, but the protection of whales fell under its scope. The Pelly Amendment directs the Secretary of Commerce to certify to the president if foreign nationals are conducting fishing operations in a manner that would "diminish the

The regulation stage lasted from roughly 1918 to 1931. Whaling industries realized that since the whale stocks were depleted, it would cost them more to spend time searching for the whales to capture than they would get in return. Starting in 1918, there was some limited international whaling industry regulation in the form of a licensing system set up so that the whales could breed and add more to their stocks. In 1927, the Whaling Committee of the International Council for the Exploration of the Sea was held. A Norwegian delegate proposed the licensing system. The Whaling Committee recommended the establishment of the International Bureau of Whaling Statistics in 1930, as well as the Convention for the Regulation of Whaling in 1931 (which would come into force in 1936 under the League of Nations). For the first time during the 1931 Convention, whaling regulations that covered all waters, including territorial waters, were set forth. The Convention prohibited the taking of right whales (as well as a couple other species), and the taking and/or killing of calves, immature whales, and female whales that were accompanied by calves.

The conservation stage lasted from 1931 through 1945. Like the regulation stage, the conservation stage was aimed at the health of the whaling industry rather than saving the whales themselves. Conservation was rooted in economic interests. In 1931, an oversupply of whale oil led to a decline in the market for it, in effect decreasing prices. In order to stop the declining prices, the companies agreed to restrict and reduce their catch. Most companies followed the agreements, nations such as Japan, Germany and the Soviet Union continued to hunt the whales, feeling that the agreement was unacceptable. While the agreements did help conserve some of the whale stocks, they were only temporary.

The International Agreement for the Regulation of Whaling was established at the 1937 convention, and was an improvement over the 1931 Convention. This Agreement prohibited the taking of gray whales and right whales, and limited hunting areas and the length of the whale hunting season. Minimum seasons were established for each different species of whales. In 1938, a protocol that amended the 1937 Agreement was entered. The Protocol placed a two-year ban on the humpback whale, except in areas south of the 40 degrees south latitude, which was a one-year ban.

On paper, the conservation of the whaling industry was starting to look promising, but in practice whaling continued almost as if nothing was implemented. In 1938, it was suggested that the whaling industry be allowed to continue sans regulations in order to reduce the stocks, in effect hopefully stopping whaling since it would no longer be profitable. However, whaling would still continue since money was being put into the industry. In fact, decreasing the number of whales would actually increase the prices of whale products due to the higher demand, in effect encouraging whalers to keep hunting until whales are extinct. The 1930s agreements ultimately failed at meeting their objectives. Professor Birnie explains that their failure is due to the "inadequacy of the scope of regulations, inadequate scientific data, non-cooperation by some major whaling nations, poor enforcement of agreements and no international supervision or control, and lack of global interest." Another protocol was adopted in 1945 (effective in 1947). The 1945 Protocol introduced maximum catch quotes (i.e. no more than sixteen thousand units of blue whales) for a season for Antarctic whaling. A formula for other whale species was devel-

Fig. 8: Manhattan Criminal Court
Source: "Manhattan Criminal Courts Visit"

Finally, many American courtrooms also display a gavel on the judge's bench, which provides a powerful image of the judge's authority to oversee the trial process and ensure that justice is being carried out, although many judges rarely ever use the gavel (see Fig. 8). In other words, through the use of powerful symbols, the American courthouse manipulates citizens' pre-existing notions that justice is being served and constitutional rights are being guaranteed, although this may not necessarily always reflect the truth.

However, in contrast to the American use of symbols throughout the courtroom, Japanese courts reject the use of symbols. In fact, many Japanese courtrooms and courthouses are almost completely void of any symbols whatsoever. Most Japanese courthouses do not display symbols of justice anywhere on the outside, nor do they display any similar type of symbols such as a national flag. In fact, most Japanese courthouses look very plain from the outside and would be hard to even distinguish as a courthouse by simply looking at them (see Fig. 9).

Fig. 9: Japanese District Court in Tokyo
Source: "Prison in Japan"

Additionally, the interior of Japanese courtrooms is also very plain and the walls are void of any decorative elements or lavish symbols that display the power and justice of the court (see Fig. 10).

Fig. 10: Japanese Courtroom
Source: Japanese Courtroom

As a result, by looking at the Japanese court, one can conclude that little emphasis is placed on justice and rights guaranteed to defendants, but rather, more focus is placed on overseeing defendants and punishing their wrongdoings. Author Melissa Clack notes that "the Japanese system is criticized for both 'the insufficient guarantee of due process and the risk of violations of the rights and freedoms of suspects'" (541). In other words, the Japanese courts' lack of symbolic ornamentation creates a subconscious political ideal that mirrors the reality that the Japanese legal system is not primarily focused on providing justice or guaranteeing democratic rights to its defendants.

Conclusion

When American citizens enter an American courtroom, they expect a certain architectural construct – a layout that supports a powerful jury backed by an even more powerful judge, a dramatic adversarial battle between prosecution and defense, an extravagant building with symbols of justice, and most importantly, American citizens expect justice to be served through a theatrical conflict. However, if American citizens took a trip to Japan and spent some time in a Japanese courthouse, they would be shocked by what they saw. Rather than extravagance and majesty, they would witness a lack of ornamentation and spectacle. Instead of an adversarial battle between prosecution and defense that is overseen by a powerful judge, they would observe an almost forgotten judge who gives way to the decision that is reached by the prosecuting and defense attorney. And in place of powerful political symbols of justice and power such as the scales of justice, a national flag, and a gavel, they would notice no decorations symbolizing that justice is being done. In the end, just a simple look at the American and Japanese courts can leave lasting impressions on the way people perceive the political power and authority of the system, as well as the role of justice in the court proceedings. Charles Goodsell argues that architecture "is clearly capable of telling us much about the nature of the rules and the rulers of a given political order…In fact, it can give us occasional insights that are even more penetrating than what we can glean from the written and spoken record" (9). And this is certainly true of the American and Japanese courts.

Ashley Hanson wrote this article while she was a student in Professor Erik Trump's class.

Commercial Whaling Law: Will the Obama Administration Change the American Approach?

Kersten Zielinski

The United States has a long opposed commercial whaling at the rhetorical level and sometimes legislatively. The question that this paper poses is whether the Obama administration is more likely than prior administrations to enforce anti-whaling regulatory decisions given its pro-environmentalist ideology. To analyze this question the paper reviews this problem of whaling and the history of American anti-whaling legislation and regulation. It then examines the extent to which the current administration has taken a different path ultimately arguing that it has fallen into some of the same behavioral patterns of previous administrations.

According to Anthony D'Amato and Sudhir K. Chopra, the "opinion juris of nations [regarding whaling] has encompassed…five…qualitative stages: free resource, regulation, conservation, protection, [and] preservation." The free resource stage lasted from the eleventh century to roughly the beginning of World War I. The Basques began hunting whales in the Bay of Biscay in the eleventh century, harvesting the whales to provide whalebones and lamp oil to their people. The Basques extended their whaling into Newfoundland by 1578. Shortly after the expansion into the North Atlantic, the British and Dutch started whaling, expanding their activity so much that the Basques almost stopped whaling themselves. The increased whaling due to the addition of the British and the Dutch nearly led to the extinction of the right whale population. The Dutch industry would decline, but the British continued whaling throughout the nineteenth century around Greenland and Biscaya, where they were eventually joined by the French and Germans. The addition of the French and German whaling nearly led to the extinction of the Biscayan right whales and Greenland bowhead whales.

In the eighteenth and nineteenth centuries, the United States finally joined in on the whale hunt. Activity took place off of both coasts: Connecticut, Massachusetts, and New York on the East Coast, and California on the West Coast. The American whalers started whaling in Australia, New Zealand, and South America after they depleted the whale stocks off the coasts. At its height in the mid-nineteenth century, America had more than seven hundred vessels and employed more than seventy thousand people in the whale industry. The United States slowed its whaling down after the introduction of petroleum and during the Civil War. American whaling gradually came to an end at the beginning of the twentieth century. However, while the American whaling was declining, advances in technology, (i.e. better harpoons, steam engines, and land stations), led to the launch of the biggest Antarctic and Arctic whaling periods. As a result, during the twentieth century, nations were able to hunt the larger whales such as the blue, bowheads, finbacks, gray, humpbacks, right, sei, and sperm whales. During the twenty years from 1910 to 1930 alone roughly 89,000 whales were killed. It was at this time that whaling nations figured out that it would be in their own self-interest to implement some sort of regulations before all of the whales were extinct.

Sources

New York's Agriculture and Market Law

People v. Alvarado, 23 Cal.Rptr.3d 391, Court of Appeal, Fourth District, Division 1, California, 2005. www.animallaw.com, accessed 11/18/10.

Pantelopoulos V. Pantelopoulos. 49 Conn.Supp. 209, Superior Court, Connecticut, 2005. www.animallaw.com, accessed 11/18/10

People v. Soliday, 729 N.E.2d 527, Appellate Court , Fourth District, Illinois, 2000. www.animallaw.com, accessed 11/18/10

Hall v. State of Indiana, 791 N.E.2d 257, Court of Appeals, Indiana, 2003. www.animallaw.com, accessed 11/18/10

State v. Witham, 876 A.2d 40, Supreme Judicial Court, Maine, 2005. www.animallaw.com, accessed 11/18/10

State of Missouri v. Roberts, 8 S.W.3d 124, Court Appeals, Missouri, 1999. www.animallaw.com, accessed 11/18/10

State v. Hill, 996 S.W.2d 544, Court of Appeals, Western District, Missouri, 1999. www.animalaw.com, accessed 11/18/10

People v. Garcia, 29 A.D.3d 255, Supreme Court, Appellate Division, First Department, New York, 2006. www.animallaw.com, accessed 11/18/10

People v. Bunt, 382,526 N.Y.S.2d 66, 520 N.E.2d 1355, New York, 1983. http://www.nyshumane.org/manual/manualHTML/X1CsLaw/PeoplevBunt.htm, accessed 11/28/10

People v. Voelker, Criminal Court, New York, 1997. http://caselaw.findlaw.com/nyc-criminal-court/1394898.html, accessed 11/26/10

Works Cited

"About the Supreme Court." Supreme Court of the United States. 27 Nov. 2010. Web. 27 Nov. 2010. <http://www.supremecourt.gov/>.

Benjamin, Roger W. "Images of Conflict Resolution and Social Control: American and Japanese Attitudes toward the Adversary System." Journal of Conflict Resolution 19.1 (1975): 123-37. Saginaw Valley State University JSTOR. Sage Publications. Web. 17 Nov. 2010. <http://www.jstor.org/stable/173453>

Christian Brothers Academy. "Mock Trial." CBA Home. 2010. Web. 27 Nov. 2010. <http://www.cbalincroftnj.org/index.php?department=18366>.

Clack, Melissa. "Caught between hope and despair: an analysis of the Japanese criminal justice system." Denver Journal of International Law and Policy 31.4 (2003): 525-51. Academic OneFile. Web. 21 Nov. 2010.

"Courtroom Layout." U.S. District Court. United States District Court for the District of Utah. Web. 17 Nov. 2010. <http://www.utd.uscourts.gov/documents/Outreach/Courtroom_Layout.pdf>.

Edelman, Murray. From Art to Politics: How Artistic Creations Shape Political Conceptions. Chicago: University of Chicago, 1995. Print.

Goodsell, Charles T. The Social Meaning of Civic Space: Studying Political Authority through Architecture. Lawrence, Kan.: University of Kansas, 1988. Print.

Greenberg, Allan. "Symbolism in Architecture: Courtrooms." The Public Face of Architecture: Civic Culture and Spaces. Ed. Nathan Glazer and Mark Lilla. New York: Free, 1987. 209-17. Print.

Hegstrom, M. "Scales of Justice." Iowa Courthouses. 3 June 2009. Web. 28 Nov. 2010. <http://iowacourthouses.blogspot.com/>.

Japanese Courtroom. 2010. Photograph. Photobucket. Web. 28 Nov. 2010.

"Manhattan Criminal Courts Visit." Web log post. Race and Justice: Writing II, Spring 2010. WordPress, 28 Apr. 2010. Web. 28 Nov. 2010. <http://blsciblogs.baruch.cuny.edu/kmoriah/page/2/>.

Neuberger, David W., and Henry F. Fra Della. America's Courts and the Criminal Justice System. 10th ed. Belmont: Wadsworth Cengage Learning, 2011. Print.

"Prison in Japan: Part 9 "Light at the End of the Tunnel"" Web log post. Japan: Stippy. 2010. Web. 28 Nov. 2010. <http://www.stippy.com/japan-life/gaijin-in-a-japanese-prison-9/>.

"Supreme Court of Japan." Courts in Japan. Supreme Court of Japan, 2005. Web. 21 Nov. 2010. <http://www.courts.go.jp/>.

"Will Japanese Citizens Take the Law Into Their Own Hands?" Ampontan: Japan from the Inside Out. Word Press, 10 Feb. 2007. Web. 17 Nov. 2010. http://

ampontan.wordpress.com/2007/02/10/will-japanese-citizens-take-the-law-into-their-own-hands/

Yokoyama, Minoru. "Change in Functions of Japanese Corrections with Criminalization." Adult Corrections: International Systems and Perspectives. Ed. John Winterdyk. Monsey, NY: Criminal Justice, 2004. 231-67. Print.

that owners are only exempt when they kill their animals and it was the argument of the prosecution that she purposely and intentionally caused injury and suffering, in line with the state of Missouri's anti-cruelty statute. Furthermore, the judge ruled that there was sufficient evidence to find intent.

An unusual, but interesting defense argument occurred in *People v. Voelker* (1997) in which the defendant decapitated of three live iguanas that he filmed. The defense argued that the state was violating their client's First Amendment rights by bringing this case to trial. Because the defendant filmed the abuse they argued that he was making an argument that should be protected as freedom of speech. However, as in the case of *People v. Bunt* (1983), the judge ruled in favor of the prosecution. The judge concluded that Voelker's actions constituted cruelty, noting that no one can shield themselves from prosecution on the sole basis of filming abuse.

Ultimately, these case studies of animal abuse and the arguments of those accused of violating state anti-cruelty statutes, shed light on the way animal law is practiced in the United States today. They illustrate the various ways defendants seek to attack anti-cruelty statues most commonly by either questioning their constitutionality directly or seeking to dismiss cases on the grounds of procedural errors. In the case of *Pantelopoulos v. Pantelopoulos*, we see that laws that are not directly about animal cruelty are also used to try and prosecute animal abusers. Animal law has become a significant area of legal study and has become ingrained within the public consciousness as we move forward into the next phase of combating issues of cruelty and pursuing animal rights.

Guillermo Garza wrote this article while he was a student in Doctor Jesse Donahue's class.

Questioning the constitutionality of existing pieces of legislation appears throughout animal law. *State v. Witham* (2005) is a prime example of this type of defense. The prosecution charged Mr. Witham with aggravated animal cruelty under the state of Maine's anti-animal cruelty statutes and won conviction for Mr. Witham on these charges. However, John Witham appealed arguing that the aggravated cruelty to animals statute in the state of Maine was unconstitutional due to the vagueness of its definition of animal cruelty as "manifesting a depraved indifference to animal life or suffering." His defense argued that this definition was not sufficient or clear enough to judge one's conduct in these matters. The judge, however, maintained that the statute was not unconstitutionally void for its vagueness and that the defendant's actions could have been found by the jury to maintain disregard for animal life. Similar arguments of unconstitutional vagueness were attempted in the case *People v. Garcia* (2006) in which the defendant was charged with aggravated cruelty to animals in a case that also included charges of second and third degree domestic violence and assault. In this case the defense argued that the statute, which protects companion animals from owner cruelty, was too vague in its definition of the phrase "companion animal." Garcia had, in the process of his abuse to his family, stepped on the family goldfish and was now questioning whether goldfish were covered under the definition of companion animal. This recalls the charges made by the defense in *People v. Bunt* (1983) that questioned the definition of animal in regards to section 353 of New York's Agriculture and Market Law. Similar to Bunt and Witham, the judge ruled that the statute was not unconstitutionally vague and that pet goldfish are "companion animals," establishing precedent for future cases of animal cruelty in the state of New York and elsewhere involving the intended death of any companion animal. In each of these cases, we see that in an effort to combat charges of animal cruelty, the defense made arguments questioning the constitutionality of definitions of cruelty and or acts that constitute cruelty.

Three cases: *Hall v. State of Indiana* (2003), *People v. Alvarado* (2005) and *State v. Hill* (1999) exemplify this attempt by defenses to enact procedural errors made by the prosecution in an effort to avoid punishment for acts of animal cruelty. In *Hall v. State of Indiana* (2003), the defendants Mark and Chris Hall were accused and convicted of animal cruelty for shooting a cat multiple times without any apparent justification. However, the Halls appealed by arguing that there were variances within the argument of the prosecution between charging and trial that were too blatant to properly find guilt on the part of the defendants and therefore, their convictions required reversal. The variances in question lie within the accusation of the prosecution in charging that the defendants used shotguns to kill the cat where as in trial they noted the use of a rifle. Furthermore, they noted that in indicting the defendants the prosecution did not specify how many times the cat was shot, which they argued was important to determine whether the animals were mutilated thus impacting the severity of punishment. However, the judge ruled in favor of the prosecution noting procedural errors by the defense in not making the use of weaponry at indictment an issue and noting that how many times the cats were shot did not harm the outcome of the verdict in any way. Similarly, in *People v. Alvarado* (2005) the defense attempted to dismiss the prosecution's indictment of violation of state anti-cruelty laws on the grounds that the court did not tell the jury to find specific intent to maim, torture or kill an animal after Alvarado had been intoxicated when he killed two family dogs belonging to his sister and her husband. However, the judge ruled that the court didn't make a mistake in not instructing the jury to find specific intent as anti-cruelty statute is only a general intent statute, and, therefore specific intent was not needed to bring the case to trial. *State v. Hill* (1999) involved the defendant Vicki Hill stabbing a litter of kittens to death. However, she attempted to get the case thrown out on the grounds that the owner of an animal is exempt from prosecution by virtue that she, as owner of the cats, has the ability to kill the cats as she sees fit. She also argued similar to Alvarado that there was insufficient evidence to prove intent. However, the judge ruled

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 09-20091

A.A., by and through his parents and legal guardians,
MICHELLE BETENBAUGH and KENNY AROCHA;
MICHELLE BETENBAUGH, individually; and KENNY AROCHA, individually,
Plaintiffs-Appellees

v.

NEEDVILLE INDEPENDENT SCHOOL DISTRICT,
Defendant-Appellant

On Appeal from the United States District Court
For the Southern District of Texas

BRIEF OF AMICUS CURIAE
AMERICAN INDIAN STUDIES STUDENT
Brandon Rushton

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death due to starvation and dehydration. The prosecution sought emotional distress compensation from the defense. This fact illustrates one of the central tenants of animal case law which is that animals are property and thus it is the suffering of the human that the courts can address. In this case the prosecution sought compensation for the abuse by citing precedent about general emotional distress found in the state law that, they argued, "[permitted] recovery for the intentional infliction of emotional distress." The defense, not required to combat issues of anti-cruelty legislation, was left with the simple task of proving that no such law existed within New Jersey State. In this case the court agreed with the defendant. The judge found that there was no precedent either in New Jersey or Connecticut for awarding emotional distress compensation resulting from the loss of a pet. Ultimately, this case is important in that it explores the different ways in which prosecutors seek to creatively combat animal abuse. It is arguable that anti-cruelty statutes are undermined in this case due to the lack of formal accusations of animal abuse.

In cases involving traditional conviction of animal abuse, the arguments of the prosecution are much less complex as the duty of enacting obscure flaws or precedent is trumped by the existence of state anti-cruelty statutes. Prosecutors have to show evidence that the defendant committed acts covered under these statutes. In these cases the defense of the alleged abuser typically involves several stock claims. First they often claim procedural errors of the prosecution and lower courts. Another strategy is to question the evidence of intent or the definition of abuse, mutilation and torture. And finally, they question the constitutionality of such definitions. Along with a host of similar cases which involve parallel defense arguments, two cases that best exemplify these arguments are *People v. Bunt* (1983) and *People v. Volker* (1997), both of which nicely illustrate the defense of animal abuse allegations.

People v. Bunt (1983) represented an attempt by the defense to call into question the constitutionality of specific pieces of anti-cruelty statutes and the definition of not only "cruelty" and "torture" but of what constituted the term "animal." Bunt was accused of beating a dog to death with a baseball bat after witnesses saw the defendant hitting the animal. The prosecution in this case tried to convict the defendant of misdemeanor cruelty to animals under section 353 of the Agriculture and Market Law of the state of New York which seeks to prevent any "person who overdrives, overloads, tortures, or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal…or in any way furthers any act of cruelty to any animal or any act tending to produce such cruelty…" To prevent the case from reaching trial, the defense argued that section 353 of the Agriculture and Market Law was too unconstitutionally vague for the average citizen to grasp the proper conduct toward animals prescribed by the statute. Essentially, Bunt argued that one is unable to discern what actions are prohibited in regards to human conduct towards animals and as such this would make the law a violation of a citizens to due process under the 14th amendment as they are unable to comprehend the violations inherent in their actions. Furthermore, they argued that use of the term "unjustifiable" does not apply to all parts of the statute as it only appears once in regards to torture and mutilation and they also questioned what they called the unconstitutional vagueness of the term "animal" noting that from the sole use of the term animal one is unable to discern what animals are included in its definition. However, in the case of *People v. Bunt* (1983), the judge ruled in favor of the prosecution noting that although the wording within section 353 was not perfect, it was sufficient enough to bring the defendant to trial. The judge ruled that due process was not violated as it establishes several acts that are prohibited toward animals and concluded that these acts are easily understood by the average citizen without the need for more specificity. In addressing the issue of the unconstitutional vagueness of the term "animal," the judge ruled that section 350 of the Agriculture and Market Law defined animal as "any living creature except a human being."

Animal Abuse Cases and Anti-Cruelty Statutes

Guillermo Garza

Animal abuse and cases dealing with animal cruelty have become a growing issue within the courts and within the public consciousness. Beginning with the passage of animal rights and animal protection legislation in the 1960s, animal law has become a more respected and more complex field of law encompassing a host of issues involving animal abuse, humane slaughter, animal rights, endangered species and animal habitats. Although federal anti-cruelty legislation has been passed, state law and state anti-cruelty statutes more often maintain an added significance in issues of animal abuse today and frequently take precedent over federal legislation. While this is seemingly a positive development, it often this works to make prosecution of animal cruelty violations increasingly more complex. As animal protection and anti-cruelty legislation has evolved, so have the arguments of defendants and defense attorneys who have sought to combat anti-cruelty legislation in a variety of ways which include the questioning of the existence of precedent, attacking procedural errors by the prosecution, questioning the language and meaning of anti-cruelty legislations and definitions of abuse and questioning the constitutionality of even federal anti-cruelty legislation. These issues are exemplified in the cases *People v. Bunt* (1983), *People v. Voelker* (1997), and *Pantelopoulos v. Pantelopoulos* (2005). Each of these cases explores what constitutes abuse and the way the courts have responded to issues of animal abuse. These cases offer a glimpse into the world of animal abuse and anti-cruelty legislation and the issues that affect the state of animals within the United States today.

To address issues of anti-cruelty legislation, it is first important to recognize the types of abuse that companion animals undergo in contemporary America. Cases involving animal abuse entail a host of different kinds of violence which range from simple neglect to physical abuse. Issues of domestic abuse involving companion animals range from beating, stabbing, shooting, mutilation, starvation, dehydration, and suffocation. In some cases, abuse can also constitute sexual abuse. One case involving physical abuse occurred in *State of Missouri v. Roberts* (1999) in which the defendant allegedly beat his dog to death. Roberts claimed that his dog failed to obey his commands just moments after stepping on the animal. The animal had sustained a host of internal injuries, the most damaging involved the crushing of the dogs' ribs which pierced vital organs; however, there was also evidence of possible sodomy after the veterinarian found internal bruising under the dog's abdomen and under the right hip. This case reveals the horrific nature of animal abuse.

Similar cases of disregard for animal life abound in animal abuse trials. In *People v. Soliday* (2000), Soliday allegedly shot his dog multiple times until he killed it. Ironically this was a dog that he had rescued from the local Champaign County Rottweiler Rescue. He was apparently angry at the dog because it had urinated and defecated in his house. This case, similar to *State of Missouri V. Roberts,* exemplifies just how little some view the life of animals and serves as an illustration of the state of animal abuse. But how have prosecutors and defense attorneys argued these cases? This is the question to which we turn next.

One case that exemplifies the various ways that both prosecutors and defense attorneys seek to attack issues of animal cruelty is the case *Pantelopoulos v. Pantelopoulos* (2005) in the state of New Jersey. This case involved a divorce in which the plaintiff, and former husband, brought the case against his ex-wife who maintained custody of the dog after the divorce, but allegedly abandoned the couple's dog in the garage resulting in its

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Argument

I. The History of previous decades suggests that Native Americans engaged in a constant struggle against the 'norms' of American society.

On August 28th 2008, A. A. wore his hair in two long braids to his first day of kindergarten in the Needville School District. No discipline was taken against A.A., but his parents reportedly knew he had to comply by September 2nd or he would be placed in In School Suspension. On September 3rd, the Needville school district removed A.A. from his regular classes and placed him in In School Suspension. A.A. had reportedly never disobeyed in class and never caused any class disruptions. With all this being said the Needville School District still subjugated A.A. to In School Suspension regarding his hairstyle only. This action caused A.A. to be taken from the regular class setting and placed him in one on one instruction where he had no chance to socialize with other classmates. This scenario seems to reflect and echo a period of American history that occurred roughly 110 years prior to this incident.

Assimilation planted its roots in history as the nineteenth century was coming to its end. Government programs were formed to destroy the culture and lifestyle of the Indian. The US government considered education a strong point on which to base their reasons for assimilation. Many Native American children were adopted by non-Indian parents who provided them with an education in a boarding school that based its curriculum on military rigor. Charles Wilkinson, a scholar in the field of Native American Politics, and author of *Blood Struggle* explains in great detail the environment to where these young Native Americans were sent. By including a testimonial excerpt in his text, Wilkinson is able to paint a vivid picture of this forced assimilation. He includes a statement by Allen Slickpoo, a Nez Perce Indian. Slickpoo states "Many of our students came from homes speaking the Nez Perce Language and had to learn English in the boarding schools. This was very difficult since the general feeling was that English had to be beaten into the students." (Wilkinson, 54). Comparing the Needville case to the times of assimilation may see absurd to some, but in reality, this case holds distinct similarities to the reasons the United States gave for assimilation. The US government was adamant on destroying the Indian heritage and culture; this new system of education would allow this to be done.

During the days of assimilation, boarding schools were directed to destroy all the bonds of Native American heritage, including language and religion. The Needville School District's actions portray the ideals of late nineteenth and early twentieth century Native American policies. A.A., along with his parents, has claimed that they practice Native American religion and A.A.'s hairstyle is a product of this practice. By not allowing A.A. to wear his hair in a style that represents his religious background, it is hard to argue that the Needville School District is not impeding A.A. in his quest for religious expression. Wilkinson gives a clear example of how the Needville school district expresses similar actions of the boarding schools designed for assimilation. Wilkinson states in regard to the assimilation era that "Education became a crucible for assimilation. A military as well as religious mind-set set the tone."(Wilkinson, 53). Here, Wilkinson is explaining how institutions of education were tools of destruction toward Native Americans

future, while saying their ancestors did wrong. This will supposedly proficiently teach them. Needville also seems to suggest that for A.A. to get an education he must cut the bonds of his culture and admit that his ancestors were wrong for wearing their hair long. Morgan also believes that Indian schools should celebrate the day the Dawes Act was signed into law. He believes that by celebrating the day the Indian land was allotted, Indian children will believe this was a good thing. By forcing A.A. to cut his braids, Needville inadvertently treats A.A. like his ancestors were treated; forget where you came from, ignore your heritage and culture, and most importantly fit yourself into society, or a school district where everyone should look the same.

Looking into more recent documents and legislation, we are able to clearly see how Needville has drifted from the goals of the federal government. By investigating the *Indian Self- Determination and Educational Assistance Act* signed into law on January 4, 1975, we are able to see how Needville hampers the religious freedom of A.A.. In section three of this Act, under the heading "Declaration of Policy", Congress states:

> Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self determination by assuring maximum Indian participation in the direction of educational as well as federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.(Prucha, 275).

Here is a clear example of how Needville strips A.A. of his self-expression and lowers the aura of self-determination. It is the federal government's obligation to help Native Americans. Why is Needville so adamant on regressively subjugating A.A. with ideals over a century old, when in today's society, as we can see from these documents, the Federal government should protect the Native Americans, allowing them to express their religious positions freely? We see this same sense of protective language in the *American Indian Religious Freedom* policy from 1978; Congress states:

> That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites. (Prucha, 289).

It is strange to think that the Needville School District policies relate closer to the Indian policies of a century ago, rather than to the ones of today. A.A. clearly spawns from Native American descent; it is clear that his father practices this religion and because of this, we can assume A.A.'s religious beliefs are genuine. What else is clear is that the Needville School District is doing everything in their power to ensure A.A. separates himself from his heritage and conform himself so he fits into the neat, clean box of the Needville School District where self expression is nonexistent.

Conclusion

Amicus Curiae, with examples and evidence, for reasons enclosed, strongly urge this court to affirm the lower court's grant of permanent injunction.

(Prucha, 357)

This is a clear example of the Federal government going out of its way to provide for the Native Americans and their religion. When we compare this executive order to the Needville case, everyone is asking himself or herself, how the school district can forbid a child to practice his religion in his school, not only forbid practice but also cut all bonds with his religion. This seems strange when the federal government is doing everything in its power to help the Native Americans nurture their religions; while in Needville, there is a school board who insists that a young boy cut his braids without any concern for what his religious affiliation might be.

VI. Purpose of Needville School District dress code inadvertently hampers plaintiff's religion.

The issue of Native American education goes back many years. It seems as if education has always been a focal point in the fight for Native American sovereignty. Why this is important in this case is because Needville is acting more like a boarding school rather than a modern day educational institution. It is sad that we must consider some of the documents in order to prove this point; Needville's actions have caused us to revert to past acts and legislations in order to explain how bizarre the Needville case has become. By forcing A.A. to cut his braids, the Needville School District comes across as agreeing with the views of the December 1, 1889 report called *Supplemental Report on Indian Education*. In this report, Commissioner Thomas J. Morgan states the belief that "It is certainly true, however, that as a mass the Indians are far below the whites of this country in their general intelligence and mode of living. They enjoy very few of the comforts and almost none of the luxuries, which are the pride and boast of their more fortunate neighbors."(Prucha, 177). Now the Needville School District surely cannot feel the same way as this report; but their actions tend to suggest they do. The report believes that the Indian wants to be like his neighbors and needs the benefits of white society; when surely the Indian wants to be himself. A.A. does not want to be like the rest of his classmates; he wants his own identity. The report goes on to say that, "Whatever steps are necessary should be taken to place these children under proper educational influences. If, under any circumstances, compulsory education is justifiable, it certainly is in this case." (Prucha, 177). Does the Needville School District believe that A.A. will only be placed under proper educational influences if he cuts his braids? Toward the end of the report Morgan states, "This system has in it the promise and the potency of their (the Indians) complete emancipation."(Prucha, 179). By subjecting A.A. to their dress code, does the Needville School District come across as believing A.A. will be more like his peers and possibly happier?

There are many documents that assist us in explaining the oppressive attributes found in Needville's dress code. In another report issued by Morgan called the *Inculcation of Patriotism in Indian Schools*, we find him again suggesting that Native Americans must bend to the rules of American Society if they want to become truly civilized. Morgan states, "While in such study the wrongs of their ancestors cannot be ignored, the injustice which their race has suffered can be contrasted with the larger future open to them."(Prucha, 179). Here, Morgan is suggesting Indians have to focus more on their

cans. Wilkinson goes on to say, "Authorities assigned children proper Christian names and forbade them from wearing traditional clothing and hairstyles and speaking their native languages." (Wilkinson, 53). Like Wilkinson, J.D.C. Atkins helps to locate the parallels between the nineteenth century and the Needville case. In his annual report of 1887, he contributes an entire document of ill-conceived policy and ideals toward Native Americans. After labeling the Native Americans as "embryo" citizens and calling them barbarous in their methods, Atkins ignorantly, without any thought towards the riches of different cultures, states "This language, which is good enough for a white man and a black man, ought to be good enough for the red man."(Prucha, 174). Also, with likewise ideals as the boarding school curriculum, Atkins believes "No unity or community of feeling can be established among different peoples unless they are brought to speak the same language, and thus become imbued with like ideas of duty."(Prucha, 173-174). If this court is to rule in favor of the Needville School District, they will unarguably be agreeing with the actions of assimilation that took place in the early twentieth century. If this court rules that A.A. must cut his hair in order to attend school in Needville, then this court must be held responsible for explaining to the Native American population that they must bend their beliefs, must break their tradition, and must erase their heritage, if they ever want to be a part of the "true American" society.

II. The Needville case does not stray from the ideals and implementations of termination.

Through assimilation and allotment, the US government attempted to terminate the tribes and assimilate them entirely into American society. Again, Wilkinson explains the federal view of termination by expressing "House Concurrent Resolution 108, which formally announced the policy of termination, directed that the end of reservations and federal services and protections be completed as 'rapidly as possible'." (Wilkinson, 57). It was as if the federal government wanted to erase the existence of Native Americans. Can we not draw congruencies between the federal government of the 1930's to the present day Needville school board? Needville may not want to impede directly on the religious rights of A.A.; but by ordering him to cut his hair also orders him to sever his ties to his ancestors and beliefs. Wilkinson goes on to describe a critical document issued by the Senate Committee on Indian Affairs, saying the Indian Reorganization Act "denied Indian property rights, subjected tribes to primitive communalism, and increased the authority of federal bureaucrats." (Wilkinson, 63). Now, we must ask ourselves, who benefits from denying A.A. his religious right to wear his hair long, if that is what he truly believes? If this court rules in favor of the Needville School District, are they not too taking the assimilationist views of the 1930 political sphere that led to a fiasco that will eternally rest like a sore on the front pages of American history?

III. Prior court cases and legislation help to aid judicial review by establishing precedent that this current case can be modeled after.

The groundbreaking fishing right cases of the twentieth century play a quintessential role in establishing precedent upon which this court can refer to when making its decision. Alvin Zionts, a leading lawyer in the field of Native American policy, has demonstrated through his memoir, the lasting effects of fishing right cases. Ziontz is able

to give us a deep analytical standpoint of the court case *US v. Washington*. Through his explanation of this trial, he greatly assists the opinion of this document. The fisheries of Washington outnumbered the Indian tribes and had better technology, such as boats and fishing equipment. When the Tribes could no longer compete with these fisheries, they resorted to fishing without licenses on off reservation locations. The state department would use force when preventing the tribes from doing so. An audacious speaking Lummi Tribe member, Forest Kinley, put his thoughts into words while testifying during the case, he explains:

> The United States government has tried to build a glove to put us into, that they've tried to make farmers out of us, they've tried to make executives out of us, and various other things, and they have tried to fit us into them, and we haven't been able to fit into any of these programs because there is a cultural value difference between what you value and what I value as an Indian.(Ziontz, 112-113)

Here, we must consider if the Needville School District is imposing its views upon A.A.. Are they trying to fit A.A. comfortably into the glove that Kinley describes? We must also ask if the Needville School District is just refusing to understand that the values of different cultures may differ from their own.

It has been proven that the United States has recognized that these Native Americans had fished in those areas long before the US government had been established. Ziontz states the court's ruling "He (Judge Boldt) adopted the position urged by the government that Indians were entitled to up to one half of each run of fish that passed through their usual and accustomed fishing grounds."(Ziontz, 123). This court case was not just about fishing rights; this case represents a turning point in Native American policy; Indians finally fighting for what was taken from them. This ruling was handed down in 1974; today, in 2011, the court must ask itself if ruling against A.A. would take away his heritage, his livelihood, but most importantly something that is rightfully his.

IV. Federal support for Native American religion is evident through the reestablishment of cultural practices.

In 1997, the Makah Tribe was determined to reinstitute its right to hunt whales. The Makah tribe, utilizing the media and other resources, was able to convince the United States government to negotiate on the international level directly on their behalf. The US was able to come to an agreement with Russia, which allowed the Makah tribe to take whales from the Chukchi tribe of Russia, in exchange that the Chukchi take whales from the Alaskan Inupiat. The Makah Tribe, by putting pressure on the government, was able to reinforce their right to hunt whales because they had done so for centuries prior to the formation of the United States. The Makah Tribe gained a lot of support in their quest to reestablish this cultural practice; it was a part of their culture and identity, it made them who they were; the same way A.A.'s hair is to him, his cultural value and identity is in jeopardy if this court decides to make him bend to the social norms of the twenty first century.

V. The legislation from the desk of President Clinton exemplifies the need for respect of Native American religions, and outlines how the government can assist tribes in harvesting the cultural treasures that come with said religions.

This court can refer to the memorandum and executive order issued in 1994 and 1996 from the desk of President Clinton. If this court wants to rightfully decide on the present case, they must consider these two documents and how they established respect for Native American religions. At a glance, the memorandum signed on April 29th 1994, by President Clinton, immediately suggests that Native American religions should be valued; and if need be they should be nurtured in order to remain a cultural gem. The name of this document *Distribution of Eagle Feathers for Indian Religious Purposes* suggests that the federal government would go out of its way to provide for the Native Americans religion. This memorandum required federal land agencies to help aid Native Americans by providing them with eagle feathers that the agencies came across in their field of work. President Clinton explains the goals of his administration when he states, "This administration has undertaken policy and procedural changes to facilitate the collection and distribution of scarce eagle bodies and parts for this purpose."(Prucha, 347). President Clinton makes it clear that the federal government will do everything in its power to accommodate the Indian religions. President Clinton continues his persuasion with "I am directing executive departments and agencies to work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law."(Prucha, 347). Here, President Clinton reinforces the idea that the federal government may have outlawed the collecting of eagle carcasses, but he is sure to explain why the federal government should allow and accommodate Native Americans to do so in order to practice their religion. President Clinton finishes his argument by explaining the route that shall lead to success; he states, "The success of this initiative requires the participation, and is therefore the responsibility, of all federal land managing agencies, not just those within the Department of the Interior."(Prucha, 347). As we examine this, we realize that the government would hamper the Indian religion if they were to outlaw the use of eagle feathers, in just the same way a school board would hamper the religion of a student if he refused to cut his braids for religious purposes.

The second piece of important legislation crafted by President Clinton is *Executive Order 13007,* which was issued on May 24th 1996. Executive Order 13007 was composed with the intent to protect sacred sites of Native Americans. This executive order is a clear example of government respecting the religion of Indians; they do everything in their power not to disrupt sacred sites, the same way a school board should do everything not to hamper the religion of an individual who is subject to school board policy. In section one of the executive order, President Clinton makes sure to outline the policies that the federal government must follow, he clarifies:

> In managing Federal Lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with the essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.