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> life experiences of American Indian peoples (and other groups invoking their own cultural politics) requires that we not reduce the claims of distinctiveness as either *always* constitutive of sincere modes of native cultural identity or *always* complicit in the elite hegemonies that marginalize them. Instead we should view these contradictions of cultural politics together as forming a site of potentiality that can and does unfold in complex iterations of native culture that constitute the emergent edge of indigenous governance practices. (92)

My examination, here, of tribal signs and buildings is meant to move toward that understanding of tribes' complex interactions with a wider American culture and the practices they employ in surviving and thriving in such a society. Where Richland attends to language and discursive practices, though, I turn to visual self-representation in the form of tribal signs on various enterprises and demarcations. I turn to everyday experiences as they are lived in a built environment in an exploration of how law is constitutive of and constituted by these visual semiotics.

21.2 Materiality of Law

The everyday is an important concept for anthropologist Jessica Cattelino, in her examination of Seminole culture generated in lived experiences on contemporary reservations. Importantly, the everyday practices that Cattelino focuses on are intimately tied to questions of legitimacy, authenticity, authority, and indigeneity. They construct, as she puts it, "materiality of sovereignty" in Seminole life (Cattelino, 3). Cattelino nicely links efforts at maintaining authority and legitimacy to the problematic dichotomous discourse of tradition vs. modernity. She argues that Seminole efforts to retain cultural and political distinctiveness to maintain internal and external legitimacy, autonomy, and authority through indigenous approaches are everyday efforts which are "materialized in moments of public display and intercultural contact, in market economics, tribal fairs and festivals, charitable giving, and overt politico-legal struggle" (Cattelino, 10). These contemporary day-to-day practices constitute authentic indigenous practice.

While I agree with Cattelino on the significance of everyday practices for cultural production, I want to emphasize, here, the relationship of material law to exercises of material sovereignty. Yes, everyday practice constitutes the political economy and legal power at play in tribal life. Those practices, though, take place in an environment – and the environment is variously marked by law and history – just as it is marked and (re)marked by contemporary day-to-day practices.

As they are affected by so-called black letter law, tribal peoples are impacted by the material texts outlining legal relationship of Indians to land, government, and power that are often found in federal legislation and Supreme Court cases. It makes sense then that much work on tribal law has focused on either Supreme Court decisions affecting tribes, legislative histories of federal law and policy making affecting tribes, or (more recently) on tribal court decisions or talk.

The material experiences of the relationships of Indians to land, government, and power *are manifested, found, and constituted on the lands themselves*, *within the*

built and natural environments. Frank Pommersheim's newest excursion into federal Indian law makes this clear, in the reverse – he calls federal Indian law a "broken landscape" (Pommersheim 2009). As a broken landscape indeed, federal Indian law is made manifest in the landscape itself and in the built environment managing that landscape. Federal law in Indian country can be seen in the signs showing reservation boundaries, in historical markers, in the names assigned to spaces, and in commercial buildings and gaming establishments – as well as in tribal council offices and tribal court complexes. A tribal boundary is, perhaps, a visible acknowledgement of a treaty relationship and a reminder of forced relocation. A casino sign on the highway is a marker of federal legislation as well as tribal economic practices leading toward sovereignty. And tribal court offices are spaces of contested jurisdiction governed by a plethora of intersecting laws.

Few scholars have attended closely to the materiality of reservation environments in this way.[1] In doing so, I follow the significant insights developed by Keith Basso and Steven Feld in their collaborative work (Feld and Basso 1996), as well as Basso's independent and profoundly important work *Wisdom Sits in Places* (Basso 1996). An essay by Edward Casey lays the groundwork for the theoretical frame taken by authors to the edited volume. Casey notes, "perception [of place] remains as *constitutive* as it is constituted" (Casey 1996). Constitutive sociolegal theory posits that law constitutes lived experience and lived experience constitutes law, in a continuous dialectic; similarly, Casey argues that place constitutes day-to-day life, which in turn reconstitutes place, as well as perceptions and experiences of it. When those places are particularly marked by and established by law, the constitutive force of both law and place coincide in powerful ways. In these sites, a constitutive sociolegal theory can benefit from a similarly constitutive understanding of the implications of environment, space, and material life.

Like Basso and Feld, I am interested in the symbolic relationships of place, law, and people, and in understanding the "semiotic dimensions of human environments" (66). However, I am less interested in and equipped to analyze the cultural significance of tribal naming of the natural world. As Cattelino aptly notes, Basso's work on place doesn't deal with the built environment (243, note 28). The built environment – signs, casinos, tribal offices, housing developments, etc. – is an obvious marker of tribal life. This environment signifies not only to tribal members but also to nonmember visitors to reservation and Indian establishments. I cannot know how these buildings and signs affect daily life for tribal peoples, but a close reading of their semiotic messaging, with attention to the loaded and important ideas of authority legitimacy, tradition, indigeneity, and tribal distinctiveness, is possible. Such an endeavor is useful for understanding the complex mediating work of the built environment on tribal life. Such a study lays bare not only the materiality of law in tribal life and culture but the materiality of sovereignty as seen through self-representation of tribal governments.

[1] See, however, Richard Warren Perry's 2006 work on differential spatial criminalization and gaming.

21.3 Boundary Demarcation

Within Indian law and politics, territoriality is of key concern. N. Bruce Duthu's comprehensive treatment of American Indian law makes this point in several ways. Notably, his doctrinal analysis focuses on territoriality and homelands as key sites for locating sovereignty and tribal governance. Rather than placing sovereignty as the groundwork upon which tribal governments are built, Duthu places territory and territorial integrity as the groundwork upon which sovereignty (and, thus, tribal governance) rests. This is an extremely important reversal that serves to literally *ground* sovereignty within material practices carried out in the built and demarcated environment.

The overwhelming importance of territory to tribes does not make territorial issues easy. In fact, as Duthu notes, "Few areas of federal Indian law rival the controversy surrounding the nature and scope of tribal sovereignty and jurisdiction" (Duthu 2008, 5). Early case law in the form of the so-called Marshall Trilogy, or the *Cherokee Cases,* established tribal sovereignty as in fact, "grounded within and extending throughout the tribe's territory" (Duthu 2008, 11). In 1832s *Worcester v. Georgia* (31 U. S. [6 Pet.] 515), Chief Justice Marshall defined the tribes as domestic dependent nations with territorial integrity and sovereign authority over their territory (at least vis-à-vis the states and potential state interference). Duthu notes

> [T]he bright line ruling was unenforceable, but it constituted a strong statement as to the power of tribal governments over their own lands. In the opinion, Marshall wrote, "[federal laws] manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States." (ibid.)

Lack of enforcement, coupled with federal political will to remove the Southeastern tribes, negated much of the rhetorical impact of Marshall's statement. Subsequent case law, stemming from a variety of challenges, rendered the ruling even less powerful as a potentially protective precedent.

Beginning with *Lone Wolf v. Hitchcock* (187 U.S. 553) in 1903 and continuing to this day, the Supreme Court has allowed substantial state and federal intervention into tribal sovereign practices on tribal territory. *Oliphant v. Suquamish* (435 U. S. 191 [1978]) in Duthu's words, "gutted the notion of full territorial sovereignty as it applies to Indian tribes" (Duthu 21). And with the line of cases following it – *Montana v. United States* (450 U.S. 544 [1981]) and *Plains Commerce Bank v. Long Family Land and Cattle Co* (554 U.S. ___ [2008]) – the Supreme Court has, in the words of Indian law scholar Frank Pommersheim, "taken upon itself to unilaterally abrogate tribal authority, especially in regard to non-Indians" (Pommersheim 142). This line of cases has depended, variously, on *who* tribal authorities are attempting to have authority over (i.e., tribal members, nonmember Indians, outsider non-Indians) and *where* the tribe is attempting such control (i.e., tribally owned on-reservation enterprises, tribally owned non-reservation enterprises, non-tribally owned on-reservation enterprises or land).

Importantly, Supreme Court jurisprudence in this area has not been limited to state, federal, and tribal contestations over jurisdiction and control of land. The Court's land, water, and treaty rights decisions have often both rested on and served to reinforce notions of indigeneity that perpetuate an essentialized image of Indians as backward, impoverished, ecological, and naturalized. Pommersheim's treatment of the fishing rights claim in Montana makes this clear, "the Court's analysis in the fishing context was bolstered by its finding that fishing was not a central treaty activity of the Crow people and that the Crow Tribe had accommodated itself to pervasive state regulation and stocking of the river. Not surprisingly, the Court ultimately found that its own newly minted presumption in favor of state jurisdiction on fee lands within the reservation was not overcome…" (Pommersheim 221). Resting, in part, on the understanding that the Crow tribe didn't traditionally fish these waters, the Court rejected contemporary Crow attempts to exert tribal authority over them. In this and other cases, Supreme Court jurisprudence has clearly tied the contours of tribal territory and control over what is contained within them, to the contours of a reified and assigned identity. Image and land are thus clearly tied together in both the public imaginary and Supreme Court decision-making. Duthu writes, "Court opinions also 'construct' images of Indians that comport with popular conceptions or views of Indian people, whether those images reflect reality or not. The significant difference, of course, is that judicial opinions have the force of law with the potential to unleash both productive and destructive effects in the lives of individuals and communities" (Duthu 84).

Though the Court often focuses its gaze on falsely constructed and misunderstood notions of indigenous culture, reservation lands and tribal territories are, indeed, incredibly important aspects of tribal cultural and legal life. Tribal homelands, "the legally protected spaces within which [tribal governments] exercise their governmental authority" (ibid.), are absolutely the key to the survival and renewal of Indian culture and government. As Duthu notes

> Tribal ancestral homelands historically have served as the cultural and political spaces within which tribalism is sustained and nurtured. Threats to the integrity of Indian tribal homelands, like threats to tribal sovereign authority, date back to this nation's founding and reveal the same patterns of indigenous cultural tenacity and persistence in trying to secure the promises contained in ancient treaties and other legal agreements. The legal conflicts that emerged in the late nineteenth and early twentieth centuries involving Indian tribes were largely related to struggles over territory and the natural resources contained therein. Many of those struggles continue today, often in the form of conflicts over governmental control lf certain territories or resources. (Duthu 62)

One does not need to read doctrine to find symbols of these struggles for control over territory and government; one might only look at reservation boundary demarcations and signs of entrance into Indian Country for proof.

Quoting Alan Hunt's constitutive theory of law in his own work on maps, territoriality, and the materiality of law, John Brigham (2009) notes that boundary demarcations of territories are legally constitutive. Tribal boundary demarcations do the important work of letting people know they are entering, or are already in, Indian Country. The "official" signs provided by the state, by the departments of transportations and federal highway funds, by the bureau of Indian Affairs, are often placed

Fig. 21.1 Royal River Casino sign near Flandreau, South Dakota

side-by-side "tribal" and "Indian" signs. The official signs are often a subtle variation on the same theme. They are rectangular road signs and often contain direction and mileage information meant to get a car off the highway and onto the reservation. They are BIA-provided school signs and informational placards. A bit more distinctive are the historical markers commemorating a massacre or an agreement. In almost all cases they are recognizably formal in their composition and rely primarily on text for their information.

The "Indian" signs vary. On the highway, sometimes right next to the mileage markers, we see signs for casinos that can only be on reservation land (see Fig. 21.1). Once in Indian Country we see a built environment that distinguishes the landscape – perhaps "rez cars" in driveways or the presence of brick buildings on the reservation, in distinction to off-reservation, undeveloped lands. At Pine Ridge, in adjunct to the historical marker, we might see, perhaps, a rough painting of a single feather with the words "still strong," on the bricks surrounding the official demarcation of the site of the Massacre at Wounded Knee (see Fig. 21.2), and the presence of tobacco and sage smudge sticks and prayer strings, at the base of the monument (see Fig. 21.3) – a unique melding of indigenous signs with formal, western markers.

A particularly important part of tribal demarcation and boundary drawing is the presence (after long absence) of modern housing on reservation lands. The presence of these houses can be variously read as welcome modern amenities, extension of colonial governmental power, or a simple fact of change in rural life. As Cattelino points out, in a chapter aptly titled "Rebuilding Sovereignty," housing is incredibly

Fig. 21.2 "Still Strong" adjacent Wounded Knee Memorial

important as a signifier of modernity and tribal on reservation lands. She writes, "Driving past the strip malls and residential developments of Hollywood, Florida, visitors know they have entered the Seminole Reservation when they approach blocks of modest houses punctuated by the thatched roofs of backyard chickees" (127).

In a section of that chapter headed "From Chickees to Concrete Block Structures" (140–144), Cattelino details how Seminole people experienced these block houses as an aspect of governmental control, as part of a modernizing project. For many with whom she spoke, these block structures constituted visual evidence of federal programs "in the pursuit of a distinctly modern spatial and civil order" (Cattelino, 147).

In fieldwork I conducted from 1999 to 2001, I saw a similar modern landscape on the reservation lands of the state recognized Mowa Choctaw, located in rural Alabama. As I have noted on a previous occasion,

> In the 1980s, the Mowa began in earnest to develop their reservation, which consisted of tarpaper shacks, many without indoor plumbing. A grant from HUD, received shortly after their [1980] state recognition, helped the Mowa erect brick houses with modern conveniences, pave the driveways in the small housing development (the road off the highway to the reservation remains a narrow, red dirt lane), and build a tribal office complex. (Cramer, 121–122)

Fig. 21.3 Wounded Knee Memorial, Pine Ridge Reservation, South Dakota

A Mowa tribal leader, Chief Taylor, told me in 2000 that he had great pride in the brick buildings in which they had demarcated a different type of reservation space than had previously been visible. He continued to say that this new reservation space was proof of the modernity of the tribe, proof of the safety outsiders could enjoy when entering Indian Country, and proof of the state government's recognition of Mowa claims to indigeneity. A subtext of our conversation, though, was that the federal government continued to reject claims of Mowa tribal status and indigeneity, in part, the tribe perceived, because of its assimilation to modernity precisely as evidenced in those brick structures so "at odds" with western understandings of tribal life.

21.4 Bingo Halls, Casino Complexes, and Commercial Establishments

In a similar manner, sites of successful commercial establishments in Indian Country – in particular bingo halls, casinos, and the commercial establishments operated by tribes to take advantage of state tax exemptions on sale of cigarettes and gasoline – have

been controversial and read by outsiders as "at odds" with indigenous legitimacy and tribal cultural distinctiveness. In Supreme Court jurisprudence, as well, there is an obvious tension between tribal economic development and legal outsiders' perceptions of tribal legitimacy and authority to exercise sovereignty. In fact, a 1998 decision, *Kiowa Tribe v. Oklahoma Manufacturing Technologies, Inc*. (118 S. Ct. 1700 [1998]), though pro-sovereignty in its rendering, "singled out," according to Wilkins and Lomaiwama (2002), "indigenous economic enterprise as incompatible with sovereignty."[2] And Cattelino notes that "recent Supreme Court rulings suggest that indigenous commercial success threatens to undermine the basic tenets of tribal sovereign immunity in the eyes of the court" (Cattelino, 101).

Simply put, court opinions and public perceptions reify an essentialized image of American Indian identity as rooted in poverty and primitivism. As I have noted elsewhere, "much of the primitivism attributed to Indians simply assumes their poverty" (Cramer 2006, 333). As a former chairperson of the Mashantucket Pequot told a reporter in 1998, "Maybe if we were still getting water from an open well and going outside to two-hole outhouses and using human manure to fertilize our gardens, nobody would be paying attention to us" (Skip Hayward, quoted in Cramer at 332).

Successful business ventures run by American Indians and American Indian tribes confound common sense expectations of identity and have the potential to be read as delegitimizing tribal authority and practices. Most often, Indian businesses that do not reflect cultural specificity or embody what outsiders see as indigenous values are flashpoints of citizen and state activism. This has especially been the case for those enterprises that are operated specifically as a result of tribal sovereignty: smoke shops and gas stations where the sales tax revenue goes to the tribe and casinos, which operate under the Indian Gaming Regulatory Act.

21.5 Smoke Shops and Gas Stations

Tribal authority to tax sale of cigarettes and gasoline is rooted in tribal sovereignty as well as the "Indians not taxed" provision of Article 1, Section 2 of the United States Constitution. Such authority is not uncontroversial. At times, states have attempted to shut down tribal smoke shops; at others, the state has attempted to tax sales made to non-Indians and nonmember tribal peoples. In *Washington v. Confederated Tribes of the Colville Indian Reservation* (447 U.S. 134 [1980]), the Court held that such taxes were permissible, even if they constituted a double tax – where both the tribe and the state collected sales tax on the purchase.

Apart from doctrinal challenges, there is simply considerable public unease with the smoke shop as a model for economic development. Often, this outcry focuses on the "special rights" and "special interests" of tribes (see Pommersheim for a nice critique), and, as Cattelino argues, there is a merging of "criticism of indigenous

[2] Cattelino 234, note 12; citing Wilkins and Lomaiwaima.

instrumentality and alienability …. Non-Indian competitors complained about 'uneven playing fields' and 'special rights,' and public officials decried reductions in tax revenues" (Cattelino, 57). Such criticism turned violent in Rhode Island, when state agents shut down Narragansett tribal smoke shops by force in 2003. As Duthu writes, "In a scene reminiscent of the violent clashes over civil rights, state police equipped with full riot gear and German shepherds arrested several tribal members, including the tribal chairman, for acting in violation of state law" (Duthu, 125). The reservation scene became legible as a scene of civil rights struggle by virtue of both tribal enterprise and state action.

Seminole tribal enterprises have long been at the cutting edge of practices of sovereignty and economic development among tribes in the United States, and their operation of smoke shops is one example of such innovation. In the late 1960s the Seminole opened a number of tribal smoke shops – where they could collect taxes on nontribal members while selling tobacco – and achieved great profits: more than half a million in 1968, and as high as 4.5 million dollars in 1977 (Kersey 1996, 121; Cattelino, 54). Cattelino reports that these smoke shops remain an important part of the tribal economy, but that the shops themselves are not distinctively "tribal" in their outward appearance. She writes, "located near casinos and busy intersections, the small and rather drab smoke shops – mostly customized mobile homes with drive-up windows – attract customers day and night" (Cattelino, 54). The drabness and lack of distinctively tribal markings are in distinction to Seminole cultural tourism on the reservation, which features Billie Swamp Safari and the Okalee Indian Village. Cattelino continues, "the absence of cultural specificity in Seminoles' talk about, labor in, and adornment of smoke shops is further evidence of their instrumental status" (56). Certainly, it is not only that these shops lack cultural specificity or that tribal enterprises like smoke shops and gas stations may fail to conform to white western imaginaries of Indianness, but in non-Seminole contexts, this instrumentality is one of the rationales behind non-Indian interference in their operation. The same is true of tribal casinos, and depending in part upon their consolidation of regional power, tribes go to varying lengths to provide comforting, legibly Indian, gaming experiences for their primarily non-Indian patrons.

21.5.1 Gaming

Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988, partially in response to a Supreme Court case that rejected state attempts to limit tribal gaming in California.[3] The act provides that states that allow nonnative gaming (e.g., lotteries, church bingos, jai alai, and dog racing) cannot prohibit the same types of gaming on reservation lands and lands held in trust by the BIA for tribes. Currently, more than 200 tribes operate over 400 gaming establishments in 28 states. These establishments

[3] Indian Gaming Regulatory Act, Public Law 100-497 Sections 2701-2721; *California v. Cabazon Band of Mission Indians* 480 U.S. 202 (1987).

range in size and scope from roadside "travel stops" featuring a small number of video lottery games, to bingo halls, or "palaces" on reservation lands, to mega-casinos operated by tribes on both coasts and in the Gulf. Some are wildly successful; some are not – but Indian gaming comprises a billion dollar industry in the United States and a significant percentage of gaming revenue nationwide.[4]

Just as there are variable rates of success in the operation of gaming enterprises, there is also tremendous variation in the cultural representations made by tribes in these public spaces. Yet the significance of their modes of representation is undeniable and is part of the constitution of tribal sovereignty.

Sovereignty is constitutive of and constituted by economic enterprise. As Duthu notes, the foundation of economic practices and spaces is tribal sovereignty, as the practices within these spaces reinforce and enable sovereignty (Duthu 130). Gaming, more than any economic enterprise so far, has enabled a significant number of tribes to lift their members out of poverty and a smaller though still important number of tribes to achieve great wealth. Gaming both enables and is enabled by tribal sovereignty; gaming complexes – be they roadside or resort – are physical manifestations of both aspects of sovereign practice.

Gaming enterprises are primarily instrumental. They are meant to achieve financial strength necessary to enact tribal sovereignty, rather than to denote tribal culture in and of themselves. However, as Cattelino helpfully notes, "indigenous people … aim to pursue economic gain with money while also remaining distinctively indigenous" (Cattelino, 12). Casino landscapes must take into account this desire while also addressing commonly shared concerns. These landscapes must communicate rules and laws regarding gaming; they all, therefore, have clearly marked age limits and requirements of play. They must also reinforce the legitimacy of tribal bodies to establish and maintain gaming facilities, so emphasis is placed on the nationhood and tribal status of the governing authorities of these casinos. And, to some degree, tribal casinos must speak to and make statements about the authenticity of the tribes' claims to indigeneity. These concerns play out differently in different spaces and in particular in the semiotics of environmentalism and tribal tradition as markers of indigenous legitimacy, as they are found (and not found) in tribal gaming spaces. Some tribal casinos carry overtly indigenous representations; others do not. Examination of both types of spaces is useful to further deconstructing the dichotomous relationship of tradition and modernity.

21.6 Overtly Indigenous Representations

Cattelino notes, "some casinos incorporate indigenous themes and iconography, from the Mystic Lake (Shakopee Mdewakanton) casino illuminating the sky with beams in the shape of a giant teepee to the Rainmaker sculpture at the Mashantucket Pequot

[4] See the website for then National Indian Gaming Commission (www.nigc.gov) and the National Indian Gaming Association (www.niga.org); see also Light and Rand (2005), Mason (2000).

Fig. 21.4 Rainmaker Statue, Foxwoods Casino

Foxwoods casino" (30). Mashantucket Pequot representations are increasingly focused on the cachet of being a world-class resort and casino in close proximity to New York City, with internationally recognized attractions and accommodations and an increasing East Asian semiotic referencing their original Malaysian backers. However, Foxwoods, described variously as looking like a "small, space-aged country surrounded by trees" (Cramer, 75); "Hyatt on Steroids" (Fromson); and "Wampum Wonderland" (Kroft) retains several overt nods to the indigeneity of the tribe that runs it.

Covering almost 350,000 square feet of gaming space within 4.7 million square feet of total accommodation and resort space, the Foxwoods complex is set in the Connecticut woods and hosts a PGA golf course, a state of the art museum and cultural center, and bridle paths that snake around the properties. Many of these individual pieces of the Foxwoods complex reference Mashantucket Pequot heritage and identity, none more so than the Rainmaker Statue located in the heart of the casino (see Fig. 21.4). Bill Anthes describes the statue this way:

> The Rainmaker is a twelve-foot-tall, forty-five-hundred-pound, cast translucent-polyurethane sculpture of a well-muscled and formidable Native American hunter, bow drawn and aimed heavenward. The hunter crouches on one knee, shirtless and dressed in breechcloth and moccasins, on a rocky outcropping that rises from a shallow pool amid a grove of artificial trees in a sky-lit atrium at the center of Foxwoods. … the Rainmaker comes to life in an hourly fog and light show. A recorded narration relates the saga of the Pequots, on whose land the Rainmaker kneels. Over the din of slot machines and table games and the

> clatter of the nearby all-you-can-eat buffet, a solemn voice recounts the story of the glaciers that once covered the region, their gradual thaw, the coming of flora and fauna, and the arrival of the "Ancient Ones," the ancestors of the Pequots — nomadic hunters and gatherers who settled in what is now Long Island Sound and founded a civilization. At the end of the story a laser beam shoots from the tip of the Rainmaker's arrow, causing a momentary downpour that cascades through the branches of the surrounding trees and into the fountain below, full of coins and tokens. (Anthes 2008)

John Bodinger de Uriarte explains his reaction to the statue, "Obviously, my 'instant recognition' of the figure in the foundation as 'Indian' participates in the popular imagining of the American Indian male: highly stylized, bare-chested, and well-muscled, dressed in breechcloth and moccasins, and brandishing a bow and arrow" (de Uriarte 2003, 553). However, as he points out, "the figure's location at an intersection between gambling rooms, surrounded by a pool of money and a clockwork rainstorm, with the Connecticut landscape made clear through the glass walls of the atrium, is a central part of the vast endeavor of the Mashantucket Pequot." De Uriarte recognizes the cultural claims being made by the Pequot in this space as transcendent of the dichotomies drawn between modernity and tradition, between commerce and culture. The Rainmaker is a sculpted embodiment of the imperative to show both contemporary culture and historical representations.

A further way that this concern is manifested in casino spaces involves the use of environmental and conservationist themes. In many of these spaces, the semiotics of environmentalism and tradition come not only in the form of signs regarding stewardship initiatives; they are also apparent in the aural environment constructed with the use of birdsong, tribal drumming, and even the sound of waves, which compete with the clang of slot machines and the din of casino patrons.

The Mohegan Sun, a casino operated by the Mohegan tribe in Connecticut, is a good example of representations of indigeneity as ecological, in the built environment and soundscape of the casino. The entire complex is built around and named for the seasons and directions, featuring Casinos of the Wind, Sky, and Earth, and a property that includes several indoor waterfalls, aural environments bringing nature indoors, and a stated and evidenced commitment to recycling, solar energy, and wise use.

21.7 Less Overt Indigenous Representations

Not all tribal gaming complexes make specific reference to indigeneity, environmentalism, or cultural heritage. The multiple establishments run by the Seminole tribe in Florida are good examples of a less overt representational style.

The Florida Seminole, though stymied for years in their attempts to negotiate a class III casino compact with the state, has had a hugely successful network of bingo parlors since the late 1980s. In 2006, the Seminole signed a gaming compact with new governor Charlie Christ; it also acquired the entirety of the Hard Rock International chain – all of its casinos, hotels, and restaurants. The $965 million deal spans properties in 44 countries (Cattelino, 5). As Cattelino tells us,

> Except for patchwork vests worn by staff at the smaller casinos, the occasional chickee-evocative palm frond in casino interiors, and the recent addition of several "Seminole Pride" video bingo games at the Hollywood Hard Rock (with lucky sevens in the medicine colors – white, black, red, and yellow – and images of chickees, baskets, Osceola, and other Seminole icons), Seminole casinos do not look very distinctive. (30)

The author explains that Seminole gaming managers had a stated desire to avoid "tacky" or "cheesy" approaches to culture and that they were similarly aware of the impossibility of representing the diversity of visions of what it means to be Seminole. Instead, the semiotic representations of Seminole casinos focus on "hard rock." Hard Rock Cafes and Casinos are family-friendly, yet hard-edged; upscale, but middle class; and distant (we're not all rock stars), but accessible (You can pretend! You can run into Elvis Costello out front). (Indeed, I once ran into Elvis Costello in front of the Chicago Hard Rock.) The semiotics of United States Hard Rock properties focus on guitars, glitz, and glamour – not chickees, tribal ventures, or indigenous sovereignty.

Yet, even for the Seminole, environmentalism and conservationism are important themes. For example, an ancient oak tree important to the history of the tribe, "The Council Oak," was spared from being bulldozed in the construction of one of the tribe's gaming establishments and "still stands in the middle of the casino parking lot" (Cattelino 97). As Cattelino writes, further unpacking the significance of the Oak,

> Meanwhile, the new Hollywood Hard Rock casino across the street features a high-end steak house named the Council Oak, with menu text associating the Tribe's casino success with its history of political struggle and strength, as symbolized by the tree … a promotional video says, the tree "is a monument to the power of unwavering perseverance, and a symbol of the Tribe's innate ability to branch out into many profitable ventures" (Seminole Hard Rock Entertainment 2006a). The ceremonial signing of the Hard Rock deal was conducted beneath the Council Oak. (ibid)

She concludes her analysis this way, "the tree has 'historical and sentimental' value, as well as … considerable public relations potential" (97). Certainly, some of that public relations potential is the subconscious referencing of Indianness and indigeneity read as environmentalist and conservationist traits.

The Seminole are not alone in their use of trees as linguistic and visual proxies for connection to the natural world. Foxwoods has an "Inn at Two Trees," as well as a "Two Trees Grill," and a restaurant named "Cedars." In California, gaming tribes use the scrub oak and palm tree in their naming of dining areas. At Barona, you can eat in the Barona Oaks Steakhouse; Agua Caliente has the Grand Palms. In fact, Indian-run casinos across the nation feature steakhouses and restaurants named after trees, inns and hotel suites with arboreal monikers, and eco-opportunities based on tree experiences and tree imagery.

21.8 Cultural Confounding

Cattelino reminds her readers of the argument made by historian Paige Raibmon that "authenticity" is the terrain upon which indigenous difference is worked out and "white society continues to station authenticity as the gatekeeper of Aboriginal

people's rights to things like commercial fisheries, land, and casinos" (Raibmon 2005, 206) (cited at Cattelino, 60). Gaming establishments confound white constructions of indigenous authenticity. Indeed, Cattelino is certainly correct in noting that

> Gaming has newly disarticulated and challenged a neocolonial association of indigeneity with poverty that has long structured federal Indian law and policy, U.S. interracial politics, and the day-to-day rhythms of life on Indian reservations … casino success flies in the face of dominant American images of Indians as poor, antimaterialist, out of the space and time of modernity, and as a result "traditional." (Cattelino 10–11)

If so, then tribes may need ways to represent their legitimacy apart from references to traditional lifeways or romantic pasts, and the tribal ventures that don' overtly reference indigeneity are not as "odd" as they may seem. Some visual representations refer to ecological caretaking and conservation which can be read as references to indigeneity; others eschew representations of indigeneity in favor of focusing on luxury and glamour – the most impressive and successful of the ventures seem to do both, with small nods to tribal cultural distinctiveness.

It is equally important to note that the visual legal semiotics of tribal gaming, and their impact on political economy, as well as impressions of authenticity and legitimacy, don't end at the door of the casino hall. The presence of gaming tribes in national political life is seen not just via monetary donations but also, Cattelino reminds us, "in the landscape, from the National Museum of the American Indian on the Washington, D.C. mall [made possible by the generous financial assistance of gaming tribes] to a nearby hotel owned and operated by a partnership of four tribes" (Cattelino, 176). Visual representations of tribal sovereignty are political and politicized; they are felt, keenly, in tribal governance and court offices.

21.9 Tribal Governance and Court Offices

John Brigham notes that physical spaces construct expectations about legitimacy and authority in law. He writes, "through buildings, we learn what to expect, and how to act before the law" (Brigham, vii). This is particularly true of "legal" buildings and buildings that display or enact functions of governance. Tribal government and tribal court complexes are physical spaces where legality is particularly manifested, in that they "readily call to mind law in their genesis" (xiii).

Yet, the question is often asked, *whose* law is readily called to mind in these spaces? Is the law made manifest as an Anglo one or an Indian one? Visitors (Indian and not) to tribal council and tribal court buildings have expectations for what "law and governance" look like, which might not match their expectations for what "Indians" look like. In their daily interactions with physical spaces of tribal courts and tribal councils, people have expectations that might conflict. Such conflicts – unless skillfully managed – have the potential to undermine tribal legal authority and ability to govern.

Marusek has reminded us that the disciplinary power of physical spaces and built environments is made manifest in everyday interactions. Building from the literature,

she writes, "Nikolas Rose and Mariana Valverde (1998) tell us that the spatialisation of governable conduct directs the routines of everyday life and 'entails codes that embody specific conceptions of desirable and undesirable conduct' (1998, 549)" (Marusek 2005, 3). In a tribal governance and tribal court context, such "desirable" conduct is not only Anglo legalistic and governance conduct – such conduct must also be in keeping with tribal norms and cultural expectations.

Here is a double bind. Tribal governance and jurisprudence must be recognizable to and legible by non-tribal and non-Indian actors – such as Bureau of Indian Affairs representatives, state and local politicians, non-Indian reservation dwellers and visitors, and the like. Such legibility as "legal" and therefore legitimate often means taking forms of speech and custom that are similar to Anglo forms of government and law. Jennifer Hamilton explains, "the characterization of Indian law as being incommensurably different form mainstream US law has a long history" and that history has had the effect of rendering some tribal court judgments illegitimate in the eyes of Anglo courts of appeal (Hamilton 19). At the same time, however, tribal governance and jurisprudence must have legitimacy as both distinctly tribal, and specifically traditional to a particular tribe, in order for the people governed – the tribal members themselves – to feel that such governance is legitimate. As Richland explains, in the case of tribal courts,

> [A] concern emerges mostly (though not exclusively) among tribal legal actors and scholars who are also tribal members, regarding the extent to which tribal courts should rely on tribal notions of custom, tradition, and culture in the production of their contemporary jurisprudence (Tsosie 2002; Coffey and Tsosie 2001; Porter 1997b; Cruz 1997; Vincenti 1995). The concern is largely that to neglect the unique cultural and legal heritage of tribal communities today would be to accomplish the federal goal of assimilating tribes and hammer the final nail in the coffin of tribal sovereignty. (Richland, 15)

To some extent, tribal governance will have less authority the less tribal members feel adequately represented by it. It is not only within tribal contexts where such representation has, as an importance component, appeal to tradition and legitimacy to give it authority. However, in the tribal context, such appeals to tradition and legitimacy are appeals to tribal distinctiveness and cultural heritage.

Tribal governance and court buildings must communicate both imperatives at once: that the space is legal and governance-focused and that it is *tribal* at its core. Legitimacy, in this context, hinges on the dual message of legalistic/governance and tribal distinctiveness. These disciplining spaces are disciplined by expectations brought into the courtroom and tribal council chambers by those who enter them – visitors and workers alike.

21.10 Tribal Government

Most tribes in the United States are governed by a constitution and a Tribal Council established in the era of tribal reconstruction under the Indian Reorganization Act (IRA) of 1934. As such, most tribal governmental structures were conceived and put

into place in the period generally known as legal realism, and they evidence a realist interest in access to justice, specialization of court and governance functions, and bureaucratization. Many tribal governments were consolidated again and achieved new importance, in the 1970s, under a federal policy of self-determination, which empowered tribal governments to take on more responsibility and provide services previously administered through the federal Bureau of Indian Affairs.

Contemporary tribal governments are diverse, but a general trend has been to focus governance in a Tribal Council that is distinct from the economic enterprise arm of the tribe, with a tribal chairperson at its head, and often a Council of Elders acting as a check. On many reservations, the importance of tribal government is shown in the wide range of services such government provides as well as the sheer size of the government as an employer on the reservation. Richland notes that the Hopi tribal government is the largest employer on reservation (31). This is not unusual in Indian Country. Such governance extends into many aspects of tribal life, and tribal governments are increasingly keen to, and able to, provide services that are recognized by many as "vital" for any government.[5] Such services include policing, health care, education, fire departments, programs and services for the elderly and for children, and programs aimed at cultural reclamation. As tribes gain measures of economic success, pride in maintaining governance is evident. In my visits with Poarch Creek (Alabama) tribal leaders, I was proudly told of the Senior Assisted Living Center, the fire department that occasionally served even the non-reservation area, and the cultural center that was being renovated and expanded.

To a large degree, tribal pride in providing services to tribal populations rests in a history of Bureau of Indian Affairs control over tribal life – which was often culturally insensitive and inappropriate, and at times negligent and mismanaged. As lawsuits like the *Cobell* case evidence,[6] BIA often did an extremely poor job administering tribal lands, money, and services. As tribes have gained access to exercise of their sovereignty and self-determination, the BIA's relative power on the reservation has dwindled, and there is both a tension between BIA services and tribal services, and a palpable pride in tribal government. Cattelino notes that this shift in power relations from BIA to tribal government is made manifest in physical spaces of governance. She provides a stunning example from the Seminole nation when she writes

> Relations between the BIA and the Seminole tribe have been materialized in the changing fates of their respective governmental buildings. The BIA Seminole Agency long had occupied the nicest building on the Hollywood Reservation, but by 2001, the agency was housed in half of a somewhat run-down, moss-covered building hidden among trees near the Hard Rock construction site. By contrast, the tribal government offices, once physically contained within the BIA Seminole Agency, now occupied a four-story gleaming tower with a helipad, an emergency bunker, an auditorium, and an all-around corporate feel. (Cattelino, 134–135)

[5] See Duthu, page 52, quoting the Lummi Nation Tribal Court in *Alvarado v. Warner-Lambert Company*, 30 Indian L. Rep. 6174, 6177 (May 22, 2003), stating that the provision of health services is one such vital role.

[6] *Cobell v. Salazar* 573 F.3d 808 (D.C. Cir. 2009).

Fig. 21.5 Santee Sioux Tribal Office Sign, Flandreau, South Dakota

A photo taken by the author shows the gleaming building with a statue of Sam Jones (Abiaka), a nineteenth-century Seminole war hero, prominent in the front.

The Seminole example is a clear one. As the tribe gains powers of self-governance, in large measure due to its savvy economic development plans, it is able to build high-tech, gleaming buildings for its own governance. The nod to tradition – the statue of Warrior Sam Jones – is not to be read as a cynical move nor a visual manifestation of Seminole need to maintain legitimacy through reference to a timeless past. As Cattelino argues, Seminole have no such need. Rather, the presence of such a statute speaks to the dissonance an outsider might have when walking into the Seminole governance building. It offers outsiders a reassurance that they are entering a legitimate space – a competent and modern space, to be sure – but also one infused with tradition and history.

Though the physical space is much less dramatic and the signage nodding to tradition is much less flashy, the governance offices of the Flandreau Santee Sioux make similar reassurances. In a low-lying tan structure with a small parking lot, the tribal offices are compact, a bit rundown, and clearly marked as spaces of both governance and tradition. The sign in the parking lot is clear. This is a tribal space, as evident from the words "Flandreau Santee Sioux," written in red cursive (see Fig. 21.5). The "tribalness" of the space is also evident from the shape of the sign – it is in the form of a teepee, the traditional dwelling of Plains tribes – and from the prominent visual representation of a buffalo, which was incredibly important in the traditional economies and spiritual lives of tribal people. Buffalo have a contemporary meaning on the

Fig. 21.6 Royal River Casino sign near Flandreau, South Dakota

reservation, symbolizing tribal renaissance and tradition. So, from the words, to the shape, to the representation, this sign clearly marks "tribal space." It also clearly marks a space of governance – with the words "Tribal Office," printed below these other markers, in plan black block letters. As well, the brick sign stand is a marker of governance – though governance of a different era, when the Bureau of Indian Affairs first constructed governing buildings on reservation lands, using ubiquitous bricks and mortar, as opposed to the locally quarried quartzite, or a word frame. There is much going on in this sign – an establishment of a space of governance that takes over from Bureau of Indian Affairs governance while simultaneously establishing the tribally distinctive governance that takes place within its walls. This sign is quite distinct from the road sign advertising the tribal casino – which assures possible patrons that the casino is run by "friendly people" and interestingly does so in the native Lakota language (see Fig. 21.6).

Even more directly, though, than in governance offices, issues of legality and legitimacy are intimately tied to semiotic constructions of trial court offices.

21.11 Tribal Courts

Approximately 270 tribes have tribal courts (Richland, 12). As Richland notes, "… contemporary courts across Indian Country … exhibit a breathtaking diversity in their structure, process, scope of jurisdiction, and the kinds of norms they enact and

maintain. At one end of the spectrum is the large and well-known Navajo judicial system, in which seventeen Navajo trial judges appointed by the Tribal Council preside in trial courts scattered across the various districts of the vast Navajo reservation …" (Richland, 12). At the other end, there are small tribal courts on remote rural lands, where the docket is typical to that handled in any rural court: trespass, divorce, and petty crime.

However, the first tribal courts in Indian Country were emphatically *not* manifestations of tribal authority and power. Rather, these Courts of Indian Offenses, set up by the BIA in the late 1800s, were external and colonial impositions that "significantly diminished tribal sovereignty and suppressed tribal rights to self-determination, as well as the customs, traditions, and practices through which that self-determination was pursued" (Richland, 7).

Just as tribal self-governance had a renaissance in the 1960s and 1970s, tribal courts in the contemporary era have been "hailed as an effort to return control of tribal legal affairs to tribal nations themselves" (Richland, 7) and have been quite successful in that regard. Today, Richland notes that tribal courts are on the "edge of tribal sovereignty" (12) inhabiting an important line between tribal authority and Anglo legality.

A long line of United States Supreme Court cases have determined, amended, reinforced, and limited the power of tribal courts. From *Oliphant*, to *Montana*, to *Nevada v. Hicks* (450 U.S. 544 [1981]), the United States Supreme Court has written opinions that variously limit and constrain, enable and empower, tribal courts in a wide range of civil, regulatory, and criminal matters. The decisions all agree that tribal court proceedings and power are integral to tribal sovereignty. But there are clear tensions between tribal court authority, federal legal and administrative reach, and – most recently and increasingly important in contemporary case law – state jurisdiction and authority. As the Court stated in *Nevada v. Hicks*,

> Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as "sovereign" entitles, it was "long ago" that "the Court departed from Chief Justice Marshall's view" that "the laws of [a State] can have no force" within reservation boundaries. "Ordinarily," it is now clear, "an Indian reservation is considered part of their territory of the State." (quoted in Duthu at 44)

Richland notes that the line of cases stemming from *Oliphant v. Suquamish Indian Tribe to Strate v. A-1 Contractors* (520 U.S. 438 [1997]) and *Atkinson Trading Post v. Shirley* (532 U.S. 645 [2001]) culminating in *Nevada v. Hicks* all narrow tribal court jurisdiction "primarily over non-Indians engaged in activities within Indian country" (14). There is concern in these decisions that non-Indian actors in tribal court settings would be disadvantaged by lack of federal constitutional guarantees (though most tribal courts have internalized and made explicit the same guarantees to process as found in the US constitution and case law) as well as lack of cultural knowledge and legal processes that are not translate beyond particular tribal settings.

Tribes are certainly aware of these concerns. Much work remains to be done to add to the detailed and nuanced explorations into tribal court practices, discourses, and decisions undertaken by Richland, Pommersheim (1997, 2009), Hamilton (2009), and others. The tension between the need to employ Anglo rule and legal

tradition through "adversarial rules, procedures, and personnel" (Richland 50), while simultaneously preferencing tribal "customs, traditions, and culture," (ibid) can be fruitfully read through tribal transcripts and decisions. The tension is also made manifest in the physical spaces employed in court proceedings, where the adoption of western norms for legal signs, reference to legal codes, and spatial organization of these offices is variously enhanced and troubled by tribal art, customary spatial organization, and particular color schemes and linguistic markers.

Richland's book is one of very few ethnographic accounts of a particular tribal court and one of very few extant physical descriptions of tribal court spaces written by a scholar. Consider, for example, his first person account of Hopi tribal court's physical space which begins by establishing the distinctiveness of the court in that it sits "on a plot of land leased to the Hopi Tribe by a First Mesa clan." The description moves next to an elaboration of the clear importance of tribal government, given that the court shares geographical proximity with other legal and governance buildings marking the tribal commitment to service provision: "the separate buildings of the Hopi police headquarters, the Hopi jail, the Hopi prosecutor's office, and the new Hopi radio station."

The remainder of Richland's rich description allows the reader to see and understand the reliance of Hopi courts on Anglo traditions, from the buildings to what is in them and how what is in them is arranged. As Richland puts it,

> The court consists of two buildings: a permanent structure built in the late 1970s that houses the main courtroom, a holding cell, five court clerks, two bailiffs, and one of the two associate judges, and a doublewide trailer that houses a second, smaller courtroom, the offices of the chief judge, another associate judge, the administrators, probation officers, and a receptionist. There is also a small library containing hardbound copies of case reporter series of the U.S. Supreme court, federal, and Arizona state court opinions, federal and state statutes, and various legal research guides.
>
> Upon entering either of the Hopi courtrooms, one is immediately aware of the influence that Anglo-American notions of adversarial justice have had on the space where Hopi legal proceedings transpire.… Courtroom 1, where criminal and appellate proceedings are held is organized on a northeast to southwest axis with several rows of chairs provided for an audience, separated from the main hearing space by a low wall (much like a "bar" in Anglo American courts) and a step down. Inside the main hearing space, just after the wall, long desks are located on either side of a central aisle. The one on the east side is for prosecutors, plaintiffs, and appellants (and their counsel), and the one on the west side is for defendants or respondents and their counsel. Opposite them is a raised bench behind which Hopi trial and appellate justices sit. Just below the judges bench, to the judge's left, is a witness stand and a seta and desk for the bailiff. To the judge's right are a desk, a chair, and audio-recording equipment, all manned by the court clerk. A jury box with sixteen seats for jurors is also located along the wall to the judge's right. Even the smaller courtroom 2, where all civil hearings are heard, is arranged so that its moveable furniture mirrors that of a typical Anglo-style courtroom. In both courtrooms, desks for all parties and the judges as well as the witness stands are supplied with microphones, as all court proceedings are recorded by Lanier tape decks, monitored by various court clerks. (Richland, 50)

In other words, this distinctively tribal space – a set of governance buildings on a mesa in Indian country – is also distinctively legal in its space and that legality is constructed through Anglo geographies of legal discipline. Someone entering Hopi tribal court would be aware of two important things, simultaneously. They are entering a Hopi area, and they are entering a legitimate legal area.

As I have noted elsewhere, "as a key part of practices of sovereignty, tribal courts are in a double bind. They seek legitimacy from the outside by adopting Anglo customs and process. At the same time, in order to have legitimacy and cultural power within the tribe, tribal courts must rely upon notions of tradition and authenticity" (Cramer 2009). This is a jurisprudential concern, to be sure. It is also a semiotic concern. Richland reads in the Hopi court buildings much as Cattelino reads in the Seminole governance buildings and I read in the Flandreau Santee Sioux, Mashantucket Pequot, and Poarch Creek road signs and gaming spaces – a distinctively tribal comfort with the tensions – a willingness and ability to "do both," to create separate tribal spaces that bring traditional concerns into contemporary spaces in ways that call neither tradition, nor contemporary legitimacy, into question. What becomes distinctly "tribal," then, is the ability to live in both worlds – to, indeed, survive.

21.12 Edges of Sovereignty: Signs of Survival

In matters of governance and economic development, tribes try to be Anglo in order to gain legitimacy and avoid problems – but looking more Anglo causes them problems in other realms! Success in gaming and other economic ventures, as well as growing political power, has, as Cattelino points out, exposed tribes "to new scrutiny in American law, politics, and popular culture" (Cattelino, 1). Often, that new scrutiny suggests that the use of legibly "western" or seemingly nonindigenous signs is somehow at odds with tribal tradition and in fact a bastardization of tribal identity. For American Indians, the question of culture is pressing, in part because their political status in practice often relies on maintaining cultural difference that is observable to outsiders and, more importantly, because cultural distinctiveness "establishes a meaningful presents and ensures a collective future for indigenous peoples" (Cattelino, 63). Yet clearly, Duthu is correct when he points out, "Indians did not and do not live their lives in accordance with some unwritten statute of limitations that sets an end point to 'being Indian' … tribal leaders actively and persistently (if not always successfully) resisted threats to their political and territorial rights by regularly engaging with the American political and legal systems" (61). A signifier of that engagement can be found in the literal signs posted to establish the presence and power of tribal enterprise, government, and peoples.

Quinn G. Caldwell (2010), Associate Minister of Old South Church in Boston, MA, writes, "The landscape … can tell you a lot about [people's] priorities." Certainly, in surveying the landscape and built environment of Indian nations in the United States, one can see the priorities in competition and conversation. Tribes prioritize economic development and governance while simultaneously prioritizing markers of indigeneity, references to tradition and cultural distinctiveness, and environmental markers of conservationist ethics.

The examples I have provided in this chapter, from contemporary tribal signs and structures, show the complex negotiations tribal people go through to create spaces that signify legality, authenticity, and legitimacy to a diverse range of visitors to and

inhabitants of tribal land. They exist often on the literal edges of indigenous territories and are quite literally signs of survival in Indian Country today. These "signs at odds" in Indian Country – painted feathers on brick walls next to marble grave markers, Lakota language on signs for casino gaming establishments, a Council Oak in the midst of a Hard Rock Café, and Hopi landscape surrounding an Anglo court setting – are themselves markers of indigenous survival on, and constituting, the edges of material sovereignty. The ability to walk the line between both sets of expectations in visual representation is itself, then, to be read as a sign of contemporary indigenous survival.

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Chapter 22
Emblem of Folk Legality: Semiotic Prosecution and the American Bald Eagle

Sarah Marusek

Abstract In the United States, as in many other parts of the world, legality is in a constitutive relationship with culture. This chapter will examine the revered national emblem of the bald eagle through two court cases involving economic interest and religious freedom. As a symbol of law and cultural metaphor for American identity, portrayals of the bald eagle are infused with folk qualities of cultural knowledge and national identity. Interestingly, where the image of the bald eagle represents such qualities as democracy, justice, and freedom, the image of the actual bird itself can be characterized as a pest, despite its status as an endangered animal. The amalgamation of these two aspects of law, the first as virtuous and the second as practical, renders the bald eagle to be an emblematic site saturated by the intersection of legality and culture. Therefore, by seeing the bald eagle as a legal semiotic, we are able to witness how law and culture are contested in everyday American life. Through the corpses and feathers of dead bald eagles and resulting prosecutions under the Bald and Golden Eagle Protection Act of 1940 and similar laws, the visual crafting of law onto one particular wild animal generates a rich discussion concerning the interpretation of legal example and cultural response with the bald eagle as a contested emblem of folk legality.

22.1 A Big Brown Hawk

Despite their status as the United States' national emblem, bald eagles are large predatory raptors that like to eat. Prey can include insects, small rodents, and even fish. This latter selection was the dinner of choice for the lone unfortunate bald

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eagle shot down over the Mohawk Trout Hatchery in Sunderland, Massachusetts, by owner Michael Zak in *United States v. Zak* (2007). In March 2007, following an investigation by the US Fish and Wildlife Service with assistance from the Massachusetts Environmental Police, Zak and codefendant and son-in-law Timothy Lloyd were linked to the killing of 279 great blue herons, six ospreys, one red-tailed hawk, three unidentified raptors, and one bald eagle, dead by gunshot and found at the fish hatchery.

Notwithstanding the fact that there were just under 300 dead birds accounted for, Zak's trial hinged upon that one dead bald eagle. In US District Court, US District Judge Michael Ponsor found Zak guilty of one count of shooting and killing a bald eagle in violation of the Bald and Golden Eagle Protection Act and one count of violating the Migratory Bird Treaty Act (for the killing of the bald eagle). Prior to the beginning of the 6-day bench trial in which Zak had waived his right to a jury trial, Zak pled guilty to one count of conspiring to violate the Migratory Bird Treaty Act and two counts of violating the Migratory Bird Treaty Act (for the killing of blue herons and ospreys). Lloyd also pled guilty to one count of conspiring to violate the Migratory Bird Treaty Act and two counts of violating the Migratory Bird Treaty Act (for the killing of the blue herons and an osprey).

According to the Department of Justice's release of the case, "The individuals involved with the wanton killing of migratory birds at the hatchery showed no respect for wildlife, nor the federal and state laws protecting those birds. Our laws protect this nation's natural resources to ensure their survival for future generations to enjoy" declared US Fish and Wildlife Service Special Agent in Charge Thomas Healy in the Department of Justice's summary of the case. As emphasis for the wantonness of the killing, Federal Prosecutor Assistant US Attorney Kimberly P. West played a surveillance video during the trial that showed Zak driving around his property in a golf cart, patrolling with a rifle. "At one point, Zak stopped, aimed the rifle and a flash of light came from the muzzle" (Rivals and Flynn 2007). So, not only was the killing in violation of animal rights but it was also an affront to the public interest, or cultural intentions, provided by such legislation. When asked about the specialness of the dead bald eagle that was found on his property, Zak answered that he thought that the bird was a "big brown hawk'" (Department of Justice 2007). Zak's failure to recognize the big brown hawk as the national emblem did not excuse him. According to the case summary:

> As a "public welfare statute," the BGEPA does not require a specific intent; rather the language of the statute itself, the legislative history, and persuasive holdings establish that it is sufficient to show an actor knows he or she is engaging in unlawful conduct and not that he or she knows he or she is shooting an eagle. (Department of Justice)

Early on in his prosecution, Zak opined that a bald eagle doesn't warrant special protection or prosecution in his initial refusal to plead guilty to the killing of the bald eagle and to go to trial to see what the judge would say. This sentiment asserts

that all birds who were likely to feed on his livelihood, the trout, were equal in his eyes as trespasser to be hunted and shot. There was no special treatment by Zak in his killing of the bald eagle.

So, we are left with the particular focus of his prosecution that revolved around not the numerous endangered and federally protected birds that he and his son-in-law shot down but that one dead bald eagle. Therefore, Zak's prosecution is emblematic of folk legality and as the semiotic prosecution as political statement protecting national constructions of what the bald eagle represents in political imagination and the United States as community at large. As folk legality, the bald eagle is just another bird that eats trout and, according to Zak, needs to be stopped as Zak stops any and all aviary trespassers on his property. As an example of semiotic prosecution, Zak's killing of a national emblem must be stopped in order to ensure that the bald eagle as an emblem of folk legality remains a semiotic of truth, justice, and American freedom as the national bird. So what is happening here is that Zak, by shooting all the birds without respect for the politically sanctified status of the bald eagle, muddies the bald eagle as an emblem of folk legality that the folk honor and respect rather than shoot down. Politically, the bald eagle is more than just a bird according to the history of legislation that has constructed it so. Through his prosecution, Zak must not only stand trial for shooting an actual bald eagle but also must stand trial for shooting the source of cultural inspiration for Lisa Simpson and her essay on truth, justice, and the American way. In this comparison, Zak has slaughtered the folk emblem of the bald eagle as the aviary representation of what it means to be American as protected by law.

During Zak's trial, an osprey carcass was brought into the courtroom in order to illustrate Zak's ruthlessly cruel behavior in shooting down so many birds. The carcass of the dead bird was used here as a symbol of cold-hearted killing and blatant disregard for not only avian life but for what the birds represented as well. Hanna Pitkin reminds us "A symbol, though it represents by standing for something, does not resemble what it stands for" (Pitkin 1969, 12). She further states that "instead of a source of information, a symbol seems to be the recipient of actions or the object of feelings really not intended for it, but for what it symbolizes" (Pitkin 1969, 12). Here, the bald eagle represents a strong federal government and the frontier that the eagle patrols despite its real image of being a bird that likes to eat fish. Additionally, the dead eagle symbolizes the danger in shooting down the symbol of national unity. As Pitkin suggests, the bird itself, although it is protected, is not as important as what the bird stands for, which is American nationalism that flies with freedom in the skies. As Ponsor's ruling conveyed through the penalties and fines imposed upon Zak, it is argued there is a compelling governmental interest at stake in the protection of the bald eagle for purposes of federal power.

As the compelling governmental interest, the bald eagle shot in Zak's case was protected under the Endangered Species Act of 1973. The intent of the ESA was to federally protect those species and habitats that were threatened or endangered. The bald eagle was protected under this statue until its delisting by

the US Fish and Wildlife Service on August 8, 2007 (Martin 2008). As the prosecution of the killing of the bald eagle is a statement of power through the force of legislation and resultant penalty over the individual, the bald eagle's protected status during Zak's prosecution meant that Zak's actions in shooting the bald eagle were interpreted in kind with environmental regulation. The bald eagle's classification under the ESA meant that the national bird was not only protected as the national symbol having cultural relevance but environmental justifications as well.

However, the environmental justification for protecting endangered species is a mixed message. As demonstrated in Zak's case, the bald eagle takes precedence for prosecution with the dead endangered birds; not shooting bald eagles despite the reasoning of shooting the bird in both Zak and Friday's cases, the legislation written for the purposes of idealizing the bald eagle and ensuring its protected status as the national emblem remains firm and without exception. However, the legal recognition for the hundreds of other endangered birds that died is minimal. Consider these birds in congruence with the case of another endangered animal, the Eastern gray wolf, that was shot and killed after feasting on several sheep on a farm in Massachusetts (Daley 2008). Here, the wolf was shot on the grounds that, despite it being a protected endangered species, it was eating the farmer's sheep. The farmer was told by official representatives from the Massachusetts Division of Fisheries and Wildlife that he "had the legal right to kill any animal attacking his flock" (Daley 2008).

In this case as well as in Zak's case, endangered animals are more of a theoretical construct in environmental protections and less of a prosecutorial offense. Once again, Zak's prosecution was primarily focused around the death of that one bald eagle and not the hundreds of endangered birds that died. Zak was not afforded the same luxury in protecting his flock or fish and although was primarily penalized for the death of that one bald eagle. Nevertheless, there is a crucial difference one important similarity between the great number of endangered birds killed in the Zak case and the endangered gray wolf killed in Massachusetts – no animal is as important before the law as the bald eagle. Laws protecting the bald eagle are powerful, and those who violate it by shooting bald eagles are the powerless – the offenders. However, it is not just the law that is powerful. In Zak's case, it is the legal and cultural structure that protects the bald eagle to the point of ignoring the deaths of hundreds of other birds which are not protected as the United States' national emblem.

Clarissa Rile Hayward urges us to view power as not resting solely with the powerful or empowered but rather by viewing power itself according to the mechanisms of power and the boundaries of power (Hayward 2000). Hayward encourages us to "deface" power by seeing power as "a network of boundaries that delimit, for all, the field of what is socially possible" (2000, 3). She critiques those power relations that are "defined by practices and institutions that severely restrict participants' social capacities to participate in their making and re-making" (Hayward 2000, 4). In this case, boundaries of power that shut out cultural refute with the meaning and execution of the law are built into the

legislation itself, specifically in the public welfare dimension of the BGEPA which articulates the absolute protection of the bald eagle. Additionally, by holding up the carcass of the dead osprey as representative of Zak's deeds and as a symbol of the bald eagle's death as the eagle's carcass was not as intact for purposes of bringing it to display in the courtroom, the boundaries or power in which the bald eagle is involved are set up in such a way that other animals are forgotten in the face of the national emblem. Other boundaries of power are exercised in the specialized nature of Zak's prosecution, as a ruthless and cruel hunter rather than defender of his livelihood, as is the case in the justified gray wolf versus sheep shooting. As an emblem of folk legality, the dead bald eagle is the icon that demonstrates the boundaries of power that are not to be crossed when national emblems are at stake. The law wins, cultural appreciation of the bald eagle wins, and Zak, having violated those boundaries, loses.

Semiotically speaking, the dead bald eagle symbolizes an emblem of folk legality that develops the constitutive relationship between law and culture. Here, the constitutive notion of folk legality, or the ways in which law is viewed and responded to in everyday life by everyday people, will be examined through the body of the dead bald eagle as a statement about law and culture. Using a constitutive legal approach, this chapter examines the dead bald eagle as an emblem of folk legality in conjunction with the semiotic administration of justice through prosecution. Additionally, ideas about the construction of power, the political imagined community, symbolic representation, and the materiality of law will be drawn upon as theoretical frameworks that help us to think about the bald eagle as an emblem of folk legality (Hayward 2000; McBride 2005; Pitkin 1969; Brigham 2009a, b). Through a focus on the trout hatchery case of *United States v. Zak* (2007) and another dead bald eagle case, *United States v. Friday* (2006), which involved a member of the North Arapaho Native American tribe who shot and killed a bald eagle for religious purposes, this chapter will show the tension between law and culture according to the semiotic prosecution of the bald eagle as an emblem of folk legality.

22.2 Emblem of Folk Legality

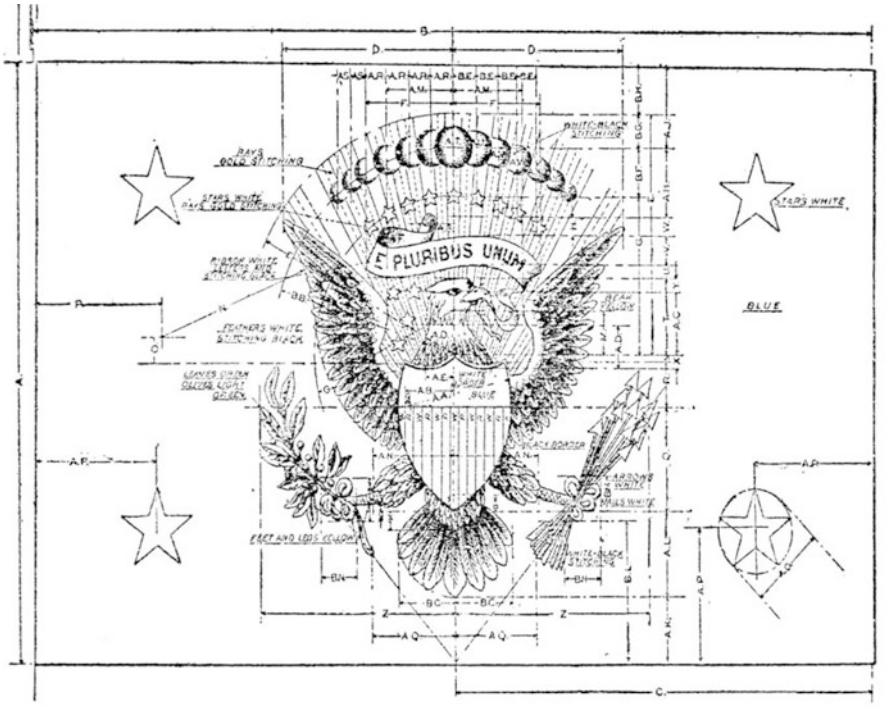
At the meeting of the Second Continental Congress in May of 1782, the white-headed bald eagle was chosen to appear on the official seal of the newly formed nation of the United States. According to its elevated position as the emblem of the young country, the bald eagle stood as a "symbol of a newly formed America in 1782 by represent[ing] honor and dignity in American society" (Iraola 2005, 273: Footnote 1). Since then, the bald eagle has officially represented the emerging young nation on legal symbols such as most visibly on the seal of the US Presidency (pictured below). This revered, yet seldom seen, wild bird is legally and culturally recognized as the semiotic of American exceptionalism and is depicted as such on the seal itself.

*Seal of the President of the United States of America***.** Resource document. Executive Office of the President of the United States used under allowance of Executive Order 11916, May 28, 1976, 41 FR 22031, 3 CFR, 1976 Comp., p. 119. http://en.wikisource.org/wiki/Executive_Order_11649. Accessed November 4, 2009

Symbolically, the seal represents American values, such as national unity, expressed by the Latin phrase *E pluribus unum*, meaning "out of many one," and the stars and stripes, also on the American flag. Umberto Eco reminds us "an iconic sign is indeed a text, for its verbal equivalent is not a word but a phrase or indeed a whole story" (Eco 1976, 215). In this way, the seal is the story of the American founding as well as its intended future. As the national bird, the bald eagle is in the center of the seal surrounded by a circle of 50 stars, with a star for each of the 50 states. On the breast of the opened bird is a protective red and white striped shield, with a stripe representing each of the original 13 colonies that formed the United States. On the surface, the intentional use of red, white, and blue is a visual approach to patriotism that serves to "color" the image of the eagle itself as patriotic and uniquely American. Additionally, the use of yellow or gold characterizes the President of the United States as a position of a royal leader in charge of the people.

However, upon closer examination, the selected colors have purpose and intention with roots in American Law. The evolution of such legal mandates enacted by several former US Presidents reveals particular attention to both color and imagery. For example, in 1912, President William H. Taft issued Executive Order 1637 (17 U.S.C. 105) stating "the color of the President's flag shall be blue." The President's flag depicts the Presidential seal. Four years later, President Woodrow Wilson issued Executive Order 2390 (17 U.S.C. 105), which further defined the proportions and

dimensions of a variety of national symbols, including the Presidential flag on which the Presidential seal is emblazoned. The job of enforcing this structural mapping according to Wilson's framework lay with the Navy Department.



SIZE	DIMENSIONS IN FEET																								
	A	B	C	D	E	F	G	H	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
No. 1	1020	1600	800	326	1425	1165	220	.3125	1125	.3125	270	.75	300	145	240	1.75	.75	1.25	1.3125	.25	.50	.3125	.2136	.2133	375
No. 6	360	513	.2565	108	.1297	.56	.1885	.10	.375	.10	.1895	.25	1.00	.145	.80	.56	.25	.640	.411	.08	.145	.10	.0625	.0625	1.25

SIZE	DIMENSIONS IN FEET																								
	A-A	A-B	A-C	A-D	A-E	A-F	A-G	A-H	A-J	A-K	A-L	A-M	A-N	A-O	A-P	A-Q	A-R	A-S	A-T	A-U	A-V	A-W	A-X	A-Y	A-Z
No. 1	2063	.55	1.0887	.7288	.56	.2208	.2810	1.15	1.45	1.50	1.45	1.30	1.563	1.375	2.30	1.60	1.422	2.69	1.760	.6250	.500	.500	1.375	.3750	.3250
No. 6	.8875	.32	.349	.239	.18	.0721	.0940	.359	.466	.369	.468	.43	.52	1.468	.77	.54	.145	.3895	.250	.2086	.170	.170	.1450	.1250	.1040

SIZE	DIMENSIONS IN FEET												
	B-B	B-C	B-D	B-E	B-F	B-G	B-H	B-J	B-K	B-L	B-M	B-N	B-O
No. 1	3558	1.07	.2812	.40	.625	.60	.85	.5625	.2813	2.43	.75	.70	1.97
No. 6	.1479	.36	.01	.13	.208	.197	.27	.1979	.09	.765	.25	.23	.1062

(Source: Executive Order 2390 (17 U.S.C. 105)).

The color schema of the seal was also mapped in this document by Wilson announcing the following (Source: Executive Order 2390 (17 U.S.C. 105)):

The colors prescribed for the President's flag are as follows:

Field of the flag, blue.
All stars, large and small, white.
The thirteen clouds, white with black stitching.
Motto ribbon, white with black letters and stitching.
Rays, gold stitching.
Eagles beak, yellow.

Feathers, white with black stitching.
Legs and feet, yellow.
Nails, white with black stitching.
Olive branch, leaves green, olives light green.
Arrows, white with black stitching.
Shield, chief blue, strips alternate white and red, beginning with white on the outside.

Attention to official colors is further emphasized in 1945 by President Harry S. Truman. In Executive Order 9646 (17 U.S.C. 105), Truman tweaked the shading present in the color scheme of the emblem to include grays rather than blacks as well as the inscription of the motto as legible on both sides of the flag. He also altered the following from the 1916 version of the seal of President Wilson:

> SHIELD: Paleways of thirteen pieces Argent and Gules, a chief Azure; upon the breast of an American eagle displayed holding in his dexter talon an olive branch and in his sinister a bundle of thirteen arrows all Proper, and in his beak a white scroll inscribed "*E PLURIBUS UNUM*" Sable.
>
> CREST: Behind and above the eagle a radiating glory Or, on which appears an arc of thirteen cloud puffs proper, and a constellation of thirteen mullets Argent.
>
> The whole surrounded by white stars arranged in the form of an annulet with one point of each star outward on the imaginary radiating center lines, the number of stars conforming to the number of stars in the union of the Flag of the United States as established by the act of Congress approved April 4, 1818, 3 Stat. 415. (Source: Executive Order 9646 (10 FR 13391, October 30, 1945))
>
> The Color and Flag of the President of the United States shall consist of a dark blue rectangular background of sizes and proportions to conform to military and naval custom, on which shall appear the Coat of Arms of the President in proper colors. The proportions of the elements of the Coat of Arms shall be in direct relation to the hoist, and the fly shall vary according to the customs of the military and naval services.

As explicitly stated in the last aspect, Truman's justification for amending the deal was to "conform to military and naval custom." As the President of the United States is also constitutionally named the Commander in Chief of the nation's military, such a connection reveals a statement about power, particularly at the close of World War II in which the United States claimed victory against the evils of fascism. This power is represented through symbols and colors present then and now in the Presidential Coat of Arms. The eagle, a predatory bird, is depicted as holding the keys to both defense (the arrows and the shield) and peace (the olive branch). The clouds represent the nation's history of revolution and independence from colonial England in the late 1700s. The 13 stripes on the shield signify the 13 original colonies that fought the war against Britain. The stars represent each of the states in the union, with the additional two stars added in 1959 to include the newly formed states of Hawaii and Alaska by President Dwight D. Eisenhower with Executive Order 10823 (24 FR 4293, May 28, 1959).

To reiterate, the key elements of the emblem include the outstretched wings of the bald eagle which symbolize the unabashed pursuit of justice, domestic unity, and national strength through the juxtaposed olive branch in one claw of the eagle and the 13 arrows in the other claw. Where the olive branch is a symbol of peace dating back to ancient Greece, the arrows evoke a sense of might and the ability to

defend. In this way, the eagle is the marker of justice through goodwill and defense/offense if necessary. A banner in the beak of the eagle, *E pluribus unum,* verbalizes a similar message of justice, but applies to the domestic unity found in the nation's borders, specifically emphasizing the stability of 50 states originating from 13 colonies. Taking all of this into account, the representation of the eagle on the seal is a legal hermeneutic in which the bird is a metaphor for what is organically determined by past United States Presidents to be "American." We can characterize the seal and its creation reflecting military power, peace, and national stability through the lens of Legal Semiotician Roberta Kevelson, where:

> all legal hermeneutics is teleological, the term *teleological* referring to the influence of future goals on the here and now, as a kind of precedential authority totally different from that notion of precedent so strongly criticized by the great legal realist Llewellyn. Thus, modality, especially all degrees of the possible, becomes in legal hermeneutics the life of the law. (1988: 217)

22.3 Current Cultural Response to the Emblem

As the national emblem of the United States, the bald eagle represents many things. Culturally, the eagle can be viewed as a sanctified icon promoting untamed American democratic virtue and national unity. Politically, the bald eagle is the chosen symbol for the nation at large and therefore embodies a national sense of justice through a romanticized historiographical perspective illuminating conquest and truth. Environmentally, the bald eagle is construed as an endangered species in need of protection as the numbers of bald eagles were decreasing. Culturally, politically, and environmentally, the bald eagle symbolically as well as physically fosters respect for America and Americana through the perpetuated and implemented respect for the bird itself. Furthermore, this respect is legally commanded through the creation of enforcement of laws that protect bald eagles.

In 1900, the Lacey Act made the taking, possession, transportation, sale, importation, or exportation of the nests, eggs, and parts of the bald eagle in violation of any state, tribal, or US law a federal offense (United States Fish and Wildlife Service 2008). In 1940, Congress enacted the Bald Eagle Protection Act which prohibits the "taking" of a bald eagle or its nests and eggs without a permit from the Department of Interior with "to take" being to "pursue, shoot, shoot at, poison, wound, kill, capture, or molest, or disturb" (Martin 2008, 44). In 1948, the Migratory Bird Treaty Act passed as a federal law that stemmed from a shared commitment with Canada, Japan, Mexico, and Russia to protect internationally migratory birds and granted the Secretary of the Interior as the enforcer of the law in the USA. the right to authorize and regulate hunting seasons for some of these protected birds, such as ducks and geese. It provided special protections for the bald eagle in its protections for migratory birds. In 1962, the Bald Eagle Protection Act was amended to include protection for the golden eagle and was retitled the Bald and Golden Eagle Protection Act (DeMeo 1995). In 1973, the bald eagle was protected as an endangered animal under the Endangered Species Act. This latter status was revoked in 2007 when it

was determined that the number of bald eagles had increased to the extent that the bird should no longer be considered to be of endangered status (Martin 2008).

Laws such as the Bald and Golden Eagle Protection Act, Lacey Act, Migratory Bird Treaty Act, and the Endangered Species Act protect the bald eagle and shape how the bird is viewed in everyday life. As previously mentioned, this protection legally perpetuates a variety of conceptual meanings and frameworks that position the bald eagle as the symbol of Americanized values articulated as freedom, truth, and a nationalist sense of morality. Culturally, such laws make us think that the bald eagle is a special animal, as a national emblem that deserves special treatment through special laws. Politically, the legal protection of the bald eagle embodies American values of democracy and fortitude. Environmentally, such laws convey respect for the protection of wildlife such as the bald eagle and other endangered species.

However, despite such multiple frameworks, laws that elevate the bald eagle to such recognized cultural, political, and environmental levels actually challenge the intended promotion of the bald eagle as a static emblem of folk legality. This phrase emblem of folk legality is used to describe the bald eagle as an icon of American life that is socially recognized for its importance, as through such recognition, is actually challenged. In this way, the bald eagles become an icon that is distanced to such an effect that its legally protected prestige is actually ignored. The notion of folk legality is intended to describe a view of law that is advanced by everyday folks in everyday situations. Importantly, this idea of folk legality with the bald eagle as its emblem conveys a distancing to law that law itself must step into enforce and seek to un-distance when laws protecting the bald eagle are violated or basically ignored. In other words, the bald eagle is an emblem of folk legality that is both lawfully constructed and reconfigured into everyday confrontation with the bald eagle that, despite such extensive legal protectionism, actually ignore the legal framework attached to this national symbol.

As mentioned, folk legality is what happens when laws are interpreted and used in everyday life. In the satirical animated American television show, *The Simpsons*, the little girl Lisa Simpson is excited to enter an essay contest about a tribute to American democracy (Meyer 1991). Having trouble coming up with a topic, Lisa rides her bike to Springfield National Forest seeking inspiration. Sitting down at the foot of a tree, Lisa exclaims "Ok, America, inspire me!" Suddenly, a bald eagle appears and lands on a branch directly in front of her. Trumpets sound, and Lisa gasps "wow, a bald eagle!" With further fanfare, the bald eagle assumes a regal pose with outstretched wings and Lisa starts vigorously writing her essay. Yet, that interpretation may be iconic and culturally absent of actual political meaning or environmental attentions. Two cases in particular develop this contested notion of the bald eagle as national symbol and instead reveal the bird to be an emblem of folk legality. In these cases, the prosecution of two individuals who violated laws protecting the bald eagle becomes an overzealous attempt to keep the bald eagle out of reality and in semiotic symbolic territory in which conceptual meaning is replaced with actual encounter and usage of the bald eagle itself. What do these laws protect? What do they promote? As these two cases will illustrate, bald eagle legislation represents a political statement of power, community, and political imagination.

Constitutive legal theory tells us that while law impacts culture, culture also impacts law. In other words, law and culture are in a constitutive relationship with one another

and legal constructions and, along with their implementation and enforcement, depend upon and reflect the cultural response and reaction to what the law does and says. Likewise, what we do in everyday life is a statement of culture that is mutually impacted, shaped, and challenged by the law that reflects this relationship. Constitutive legal theorists interpret the banalities of everyday life from a nuanced perspective that reveals the formative dependency between law and culture in such everyday arenas as music (Lorenz 2007), the Internet (Gaitenby 1996), grocery stores (Brigham 2009a, b), riding horses (Merry 2000), casinos (Cramer 2005), coffeehouses (Manderson and Turner 2006), beaches (Mooney 2005), the pub (Valverde 2003; Johnson 2005), roadways (Wagner 2006) or parking lots (Marusek 2005, 2006).

The cultural view of the bald eagle projects a legally protected national symbol. In turn, law reflects the need to shape national culture through the creation and protection of the bald eagle as a national symbol. This socio-legal statement of national symbolism is furthermore a statement about the constitutive relationship between culture and law as there are allowed exceptions to coming into contact with the bird. The presence or absence of such exceptions contributes to the cultural perception of how the bird fits into everyday life. As is the case in the following two cases, the bird may be culturally recognized as a symbol, but in everyday life, its preeminence is ignored despite its legislative protections. In these two cases, law reasserts itself into the cultural relationship with the bald eagle as national emblem that these two cases disregard; the prosecution in these two cases semiotically reminds us of the contested relationship between legal authority and cultural practice. So, culturally and legally, the bald eagle as a symbol is shaped by images and representations of law and culturally impacted legality that happen in our everyday lives. Likewise, how we view what happens to the bald eagle in everyday life is constructed and reinterpreted by both law and practice. Therefore, the laws and culture surrounding the bald eagle constitute one another.

22.4 National Eagle and Wildlife Repository

In 2005, Winslow Friday, a member of the Northern Arapaho Indian tribe on the Wind River Indian Reservation in Wyoming, shot a bald eagle from a tree for religious purposes. Friday shot the eagle for his cousin, who needed the tail fan for the upcoming Sun Dance (Correll 2009). In *United States v. Friday* (2007), Friday was convicted under the Bald and Golden Eagle Protection Act despite the exception that the law provides for American Indians who want eagles for religious purposes obtained through permit or from the National Eagle Repository. Friday argued that the BGEPA violated his ability to freely practice his religion and was therefore in violation of the free exercise clause of the First Amendment and conflicted with the Religious Freedom Restoration Act. Friday also stated that the system of applying and receiving a permit that would allow for the taking of a bald eagle feather was "improperly restrictive, burdensome, unresponsive, or slow" (Department of Justice). Nonetheless, Friday, who was turned in to the Bureau of Indian Affairs, was prosecuted for the shooting of that one bald eagle.

Criticism of Friday included the question of why he did not apply for bald eagle feathers through the National Eagle and Wildlife Repository in Denver, Colorado. Created in 1970, this storage facility provides a "central location for the collection and distribution of dead bald or golden eagles and their parts" (Iraola 2005, 980). In this large warehouse, the United States government "collects and freezes any potentially usable dead eagles or eagle parts it encounters. Some are confiscated contraband; some are victims of electrocution on power lines; some are roadkill" (*Friday*). Applications for use are approved by the US Fish and Wildlife Service Wildlife Permit Office in the state where the applicant lives. Orders, filled on a first-come, first-serve basis, can take roughly two and half years to fill (Iraola 2005). This duration arguably is burdensome to the practice of religion that more often than not cannot be planned out years ahead of time to account for the length the system makes those who would use it wait.

The reasoning for the regulations imposed upon Friday's access to and use of the bald eagles is considered a compelling governmental interest. As the case details notes:

The government has a compelling interest in protecting bald and golden eagles. That interest is compelling as regards small as well as large impacts on the eagle population. The bald eagle would remain our national symbol whether there were 100 eagles or 100,000 eagles. Even if unregulated religious taking would not be numerous enough to threaten the viability of eagle populations, the government would still have a compelling interest in ensuring that no more eagles are taken than necessary, and that takings occur in places and ways that minimize the impact (*Friday*).

So live bald eagles for religious purposes can be obtained through a permit-granting process, and dead bald eagles can be used upon the approval of a federal agency to release them. Friday argued that he did not seek such an avenue for obtaining a bald eagle as the process was cumbersome, took far too long, and not guaranteed. Additionally, his religious practice requires that the eagles be pure, which is not ensured by the repository. The government witness responsible for supervising the repository testified in this case that "[m[ost of the time [the eagles a]re very decomposed" and "sometimes 'they are full of maggots'" (*Friday*).

In everyday life, the semiotics of law can be interpreted as emblems of folk legality. Emblems of procedure, such as the permit to obtain either live or dead bald eagles, are often at odds conceptually with legal constructions of folk legality in which the legal system determines culture. In the case of Winslow Friday, the legal system was too much of a system and one that fostered a culture of playing by federal rules and regulations that hinder Friday's unfettered religious freedom and practice. In this case, the bald eagle is not only an emblem of national US identity but also a symbol of how the system creates an Americanized identity that distances the inclusion of Native Americans. Here, the bald eagle and its legal protections are images of power that foster a particular notion of American identity and a cultural metaphor that constructs political community through national imagination.

The legislation that creates the legal protection for a national emblem reflects a political imagination in which an animal, in this case a bird, stands in place for

national ideals. These ideals portray what the nation represents. Kealy McBride urges us to consider how communities are imagined in terms of "the effects of how we imagine community [rather] than how we define it" (McBride 2005, 6). McBride describes the constitutive relationship between imagination and politics in terms of two continuums with the first involving the individual and society and the second involving the ideal and materiality as possibility and actuality, theory, and practice. Friday's prosecution is similar in its construction of political imagination, as the community of the Native American who uses the bald eagle in religious ceremonies, is imagined to be under the control of those who hand out permits for the allowed shooting of the bald eagle under federal law. In this way, the Native American community is imagined to be under the jurisdiction of the federal government rather than as an independent and sovereign nation as is portrayed under the reservation governance system. Similarly, justification for the protection of the bald eagle, dead or alive, is considered in the case to be a compelling governmental interest. This consideration reveals a particular notion of political imagination in which the community being governed holds the bald eagle to be sacred in whatever form and free from religious exception. What this means is that there is a competing notion of folk legality operating in this case, one that represents America from a colonizing sense in which the community is guided by the bald eagle in its quest for truth and the American way and one that sees American community as indicative of regulation and restriction, if not simple discrimination on the basis of ethnicity and religion. In both cases, the bald eagle is emblematic of the relationship between law and culture at which the intersection of the two yields contestation over permits, patriotism, and freedom. Again, the dead carcass of the bald eagle is used as the emblem of folk legality.

22.5 Conclusion

Mariana Valverde describes the semiotics of representation and tells us about political myths insofar as "myths are often conveyed by representations" with "mythical meanings get communicated" (Valverde 2006, 25). Using Valverde's thinking about mythology, we can view the bald eagle in such a light. The mythology of the bald eagle concerns a supposed link between unfaltering democracy and the power vested in the image of a hungry bird or prey – the eagle gets what he wants within reason. Likewise, through protective legislation, regulation, and enforcement, the mythical meaning of the bald eagle is legally sustained through enforcement of laws violated as well as culturally sustained through its resistance. The prosecutions of Zak and Friday symbolize a cultural statement of everyday action meets legal guidelines. Political unity is imagined through the protected legal status and prosecution of the bald eagle, with this mythical image shattered when both Zak and Friday shoot down "American values" by shooting down the bald eagle. However, those values are themselves mythologized and interpreted differently in a cultural setting. For Zak, the bald eagle is a big brown hawk that gets in his way of the American dream

of entrepreneurship in his trout farm. For Friday, American values are represented by the protection of religious practice and not the bureaucratic systematic structure that requires permits. These two notions of what American values represent culturally rather than legally are also bound to the lesser-known existence of the Bald Eagle Repository as a place housing dead birds and parts of those dead birds. This image of a large warehouse of dead animals is at best contradictory to the image of a free-flying bald eagle over the vast forest frontier of the United States. Rather, the symbolic meaning that the repository carries is one of ownership by the federal government over the remains of a wild animal as well as one of bureaucratic restriction all in the name of law. The prosecution of each of these men communicates the preservation of American values represented by the bird that cannot be killed even when its dead, unless of course its status as the national emblem is downgraded with regard to the reasons Zak and Friday give for its usage, namely, the protection of economic interests (Zak) and for religious purposes (Friday).

Through its recently removed endangered species classification, the bald eagle is mythologized to represent an innocent, yet powerful bird of prey that soars to great heights of liberty both in actual flight and as metaphor for what these American values can accomplish. The delisting of the bald eagle may strengthen that cultural image of a majestic bird but also may lead to the questioning of its protection as a bird that is no longer so rarified. By interpreting the resistance of Zak and Friday to laws that protect the bald eagle, we can symbolically see that this resistance is representative of a culture that is not completely dictated by legislation that says the bald eagle is off limits to the public. That culture is a culture that considers laws and their enforcement to be of lower rank than what happens in everyday living.

In seeing the bald eagle as an image of law and culture, we can also see the bald eagle as just a bird. In his most recent book *Material Law: A Jurisprudence of What's Real*, John Brigham urges us to "see the material dimension of law" for "we should be able to see law altering our reality" (Brigham 2009a, b, xii). He further explains "seeing law in the nature of material things and the material in the nature of law is the challenge" (Brigham 2009a, b, xi). In this chapter, the material is the bird itself that is law or, more specifically, the dead body of the bald eagle either shot down by Zak or Friday or lying in the repository. The materiality of this creature significantly frames the bird as a revered national image protected by laws that emblematically govern its treatment. However, the material nature of the bald eagle as just a bird reinforces its delisting as an endangered species. Furthermore, materially, the bird, even though it is a legal emblem, is also a symbol of a pest, as in Zak's case, or an essential religious object out of reach through systematic structural procedures but obtainable through self-directed means.

These two cases demonstrate acts of resistance to the legislated emblematic governance by everyday actors who embody the notion of folk legality. Here, folk legality is the resistance to the rigidity of law through the materiality of dead bald eagles. The mythologized meaning of what the bald eagle represents in legal life is contested by the banality of its treatment and usage in the everyday life situations such as trout farming or religious practice presented by Zak and Friday. In this way, the material dimension of bald eagle legislation is the bird itself, alive or dead,

presented as both the resistance to the bird as a protected and revered national emblem and as here the national emblem as material law creates a culture that challenges legal presuppositions about emblems, their meaning, and the legislated protection of that meaning.

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Part V
Visualizing Law's Topography

Chapter 23
Constructing Courts: Architecture, the Ideology of Judging, and the Public Sphere

Judith Resnik, Dennis Curtis, and Allison Tait

Abstract In several countries, governments have embarked on major building expansion programs for their judiciaries. The new buildings posit the courtroom as their center and the judge as that room's pivot. These contemporary projects follow the didactic path laid out in Medieval and Renaissance town halls, which repeatedly deployed symbolism in efforts to shape norms. Dramatic depictions then reminded judges to be loyal subjects of the state. In contrast, modern buildings narrate not only the independence of judges but also the dominion of judges, insulated from the state. The significant allocation of public funds reflects the prestige accorded to courts by governments that dispatch world-renowned architects to design these icons of the state.

The investment in spectacular structures represents a tribute to the judiciary but should also serve as a reminder of courts' *dependency* on other branches of government, which authorize budgets and shape jurisdictional authority. A double narrative comes as well from the design choices. The frequent reliance on glass facades is explained as denoting the accessibility and transparency of the law. But courthouse interiors tell another story, in which segregated passageways ("les trois flux") have become the norm, devoting substantial space and cost to isolating participants from each other. Further, administrative offices consume the largest percentage of the

 We have benefitted from exchanges with and the provision of materials and images by participants in the building programs in many countries, including Marie Bels, Michael Black, Antoine Garapon, Susan Harrison, Robert Jacob, Andrea Leers, Jane Loeffler, Christine Mengin, Jean-Paul Miroglio, Christine Mengin, Linda Mulcahy, Simon Roberts, Douglas Woodlock, and Elizabeth Zoller.

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square footage, illuminating a shift away from public adjudication toward alternative dispute resolution and problematizing the emphasis on courtrooms.

The new monumentality reflects but does not frankly acknowledge the challenges to courts from democratic precepts that grant "everyone" entitlements to public hearings before independent jurists. The buildings are reminders of courts' contributions to the public sphere, while new rules reconfiguring adjudication privilege private conciliation.

23.1 Reconceptualizing Judges and Reconfiguring Courthouses

During the last decades of the twentieth century, many countries authorized new courthouse building to signify the centrality of adjudication to their identities. Like the burgomasters of Amsterdam who, in the seventeenth century, built a monumental town hall as a testament to their own prosperity and authority, contemporary governments offer law, embodied in courthouses, as "the new fulcrum around which the mechanism of self-representation in the various modern states" pivots (Muratore, 45).

Despite regional and local variation, the architecture and interiors display a good deal of commonality across borders. That homogenization is driven in part by architects, artists, judges, and expert consultants, who move from jurisdiction to jurisdiction in a globalizing market for "justice architecture."[1] They rely on transnational engineering standards and legislative mandates for energy efficiency an access for persons with disabilities. Transborder anxieties about safety and security are other powerful influences, as are the practices of courts. Attitudes about the roles of judges, litigants, lawyers, and the public audience—sometimes transmitted through cooperation and transnational conventions and other times by way of conquest and colonialism—organize courthouse space.

Many jurisdictions mandate that a small percentage of construction budgets be set aside for specially commissioned art. The resulting artistic motifs are often derived from iconographical emblems that cross borders as well. The "scales of Justice"—traceable to ancient Babylonia and Egypt and brought forward in time through the iconography of the Christian St. Michael—can be found in various locales, along with recycled Medieval and Renaissance allegories such as the personification of the Virtue Justice and the Tree of Justice (Curtis and Resnik 1987; Resnik and Curtis 2007, 2011). But modernist architecture is regularly complemented by diverse adornments, as artists employ metals, paint, clay, and fiber often shaped in abstract form.

[1] See, for example, American Institute of Architects (AIA), Academy of Architecture for Justices (AAJ), Goals, at http://network.aia.org/academyofarchitectureforjustice/home/. AAJ is one of several "knowledge communities" of the American Institute for Architects and "promotes and fosters the exchange of information and knowledge between members, professional organizations, and the public for high-quality planning, design, and delivery of justice architecture."

In short, a dazzling array of buildings and images present themselves. What then are the narratives inscribed therein? What representations are chosen, which norms revealed, and what practices lack reference? Following in the footsteps of Jeremy Bentham and Michel Foucault and therefore appreciating the centrality of architecture to power, this chapter relies on inter-jurisdictional comparisons to understand the relationship between the monumentality of recent court construction and the shifting norms of adjudication, reconfigured through democratic commitments that "all persons" have access to the public venues provided by courts.

Adjudication is an ancient form, yet it has changed significantly in the last three centuries. What were once "rites," in which spectators watched judges pronounce judgments and rulers impose punishments, are now "rights," requiring that all courts be "open and public."[2] While judges once served as loyal servants to the state, judges are now situated as independent and empowered to rule against the state and protected from executive and legislative wrath when doing so. Further, while once the individuals eligible to participate—as litigants, witnesses, staff, and judges (both professional and lay)—were limited by various markers of status (such as gender, race, and class), today "everyone" is entitled to be heard in democratic orders.

The buildings in which courts work have, therefore, changed in many ways. Courtrooms were once tucked into multipurpose town halls as various public officials shared quarters. For example, in the United States during the nineteenth century, state courthouses were commonplace, but the federal government owned very few buildings, and, until the 1850s, none were denominated "courthouses." By the end of the twentieth century, the federal government had provided its judges with "purpose-built" structures—more than 550 courthouses.

With new buildings came new instruction on the role of the judge. In multipurpose Renaissance town halls, texts and allegorical paintings warned judges to be dutiful servants of the state. Scenes of the Last Judgment invoked a higher authority, reiterated with admonitions such as "For that judgment you judge, shall redound on you" (Zapalac, 32–33). One of the oft-depicted *exemplum iustitiae* was *The Judgment of Cambyses,* referencing an account by Herodotus from around 440 BCE (Herodotus, 95,170,171). A king, Cambyses, learned that a judge, Sisamnes, was corrupt and ordered him flayed alive. Thereafter, Cambyses appointed Otanes, the judge's son, to serve as a jurist, required to sit on a seat made from his father's skin.

That narrative was prominently displayed in many venues, here exemplified by the 1498 installations in the Town Hall of Bruges. The remarkable diptych by the Flemish artist Gerard David (Figs. 23.1 and 23.2) consists of painted panels, each almost 6 ft high and 5 ft wide, one focused on the arrest of Sisamnes and the other offering excruciating details of the flaying. While classical authors identified Cambyses as a king

[2] Examples include the Convention for the Protection of Human Rights and Fundamental Freedoms art. 6(1), Nov. 4, 1950, 213 U.N.T.S. 221, 228; and the International Covenant on Civil and Political Rights G.A. Res. 2200A (XXI), art. 14, U.N. Doc. 1/6316 (Dec. 16, 1966).

Fig. 23.1 *Arrest of the Corrupt Judge*, left panel of the diptych *The Justice (Judgment) of Cambyses*, Gerard David, 1498, Musea Brugge, Belgium. Copyright: Musea Brugge, Groeningemuseum. Image reproduced with the permission of the copyright holder

Fig. 23.2 *Flaying of the Corrupt Judge*, right panel of the diptych *The Justice (Judgment) of Cambyses*, Gerard David, 1498, Musea Brugge, Belgium. Copyright: Musea Brugge, Groeningemuseum. Image reproduced with the permission of the copyright holder

Fig. 23.3 (Detail) *Les Juges aux mains coupées*, Cesar Giglio, circa 1604, Town Hall of Geneva, Switzerland. Photograph reproduced courtesy of the Centre d'iconographie genevoise. Painting of the chamber of the Conseil d'Etat in the Baudet Tower

gone mad (Seneca labeled him "bloodthirsty" (Seneca, 289–297)), Renaissance literature repositioned Cambyses as wise to sanction an unjust judge.

In 1604, the Town Hall of Geneva inscribed a parallel impression of Judicial vulnerability in a long panel covering the upper third of the wall in its room reserved for the Conseil d'Etat. Called *Les Juges aux mains coupées* (*Judges with their hands cut off*) (Fig. 23.3), the depiction includes a scroll whose text, taken from *Exodus 23:8,* warns: "Thou shall not accept gifts, for a present blinds the prudent and distorts the words of the just." While that injunction is today familiar, in the sixteenth century, "gifts were everywhere" as presents were regularly given to honor officeholders (Davis, 85). The line between a "good" gift and a "bad" one (today called a bribe) was not clear then (nor always, now). Public displays of *Cambyses* and *Les Juges aux mains coupées* aimed not only to instill norms about gifts but also about fear, teaching judges to avoid incurring a ruler's wrath.

The political iconography of the Renaissance serves as a reminder of the distance between courts then and now. Historically, autocratic and patriarchal messages insisted on state power over its judges. But by the 1800s, Jeremy Bentham offered a competing ideology—that while presiding on trial, the judge was also "on trial," subject to the judgment of the populace.[3] To borrow a distinction drawn by Jonathan

[3] Jeremy Bentham, Rationale of Judicial Evidence, in 6 *The Works of Jeremy Bentham* 351.

Crary, members of the audience ceased to be passive "spectators" and assumed a role as participatory "observers" (Crary, 5–6). Bentham termed them "auditors," as he advocated that individuals be permitted in court to take notes ("minutes") to be disseminated so as to inform the "Public Opinion Tribunal" (Rosen, 26–27). Bentham sought to reshape the architecture of courts (as well as of legislatures and, infamously, of prisons through his proposed Panopticon) to be vehicles for "publicity" (Bentham, 351). Bentham's commitment to public processes was fierce. "Without publicity all other checks are insufficient: in comparison with publicity, all other checks are of small account" (Bentham, 355).

Bentham's vision was materialized in the centuries thereafter in constitutions and international conventions enshrining "open and public courts" in which "everyone" was entitled to be heard. Courts became a site contributing to the public sphere, or as Nancy Fraser reminds us, sphere*s* (Fraser, 109)—as many venues are required for diverse and differently resourced "publics" to engage in the discursive exchanges envisioned by theorists of democracy like Jürgen Habermas. Because judges are obliged to function in public, to treat persons with dignity, and to enforce exchanges between radically disparate parties (private and public), they literally enact democratic precepts of equality and offer opportunities for dialogic exchanges in which popular responses affect norm creation and application (Zapalac, 32–33, 196).

Between the eighteenth and twentieth centuries, judges in many countries escaped servitude, obtaining independence guaranteed by mechanisms such as tenure in office and fixed salaries. By the late twentieth century, courts in turn had become a staple of development programs; transnational organizations (such as the UN and the World Bank) posited that independent judges were requisite to stable, successful market economies and to politically responsible states.

Courthouse design reflects these shifts. Aside from portraiture (often opaque to viewers who are unlikely to recognize individual judges amidst the thousands now occupying that role), the relationship between rulers and judges is rarely referenced directly. Courtrooms may be equipped with state emblems, fasces, coats of arms, and flags, but the state as overseer of the judge is no longer personified. Commonly, set-asides for public art have produced a variety of flora, fauna, text, and an occasional image of humans. The array takes representational or abstract shape in metal, ceramics, bronze, LCD displays, photographs, paintings, and weaving.

The absence of a didacticism explicating state authority *over* judges should be read as recognition of the new authority *of* judges, rendered impersonal. The judge is embodied by location in the place of honor, an elevated bench, in the space of honor—the courtroom. Although (as discussed below), courtrooms are a small part of the square footage in courthouses, now filled with offices and complex circulation patterns, the courtroom is (in the words of a leading US jurist) the "pearl" within (Woodlock, 158). What specifies a room as a courtroom is a layout that dedicates an isolated, esteemed space for the judge. And rather than art, the major emblematic gesture is the enclosing structure, providing visual evidence of what interactions among judges, lawyers, architects, politicians, and citizens seek to inscribe.

23.2 Parallel Projects of Political Iconography in the United States and France

Even as courthouses celebrate the independence of the judge, they also demonstrate the *dependence* of jurists, reliant on other branches of governments to support the elaboration of the "administration of justice." Below we sketch parallels between the United States and France, as both launched major building programs during the last decades of the twentieth century to renew the housing stock of their courts.

The two countries vary on several dimensions. The United States is a federation, while France operates under a centralized system. Further, the United States relies on a common law tradition and France on the civil law, producing different juridical institutions (the presence or absence of a jury) that result in somewhat different layouts for courtrooms.[4] Nevertheless, the planning, aspirations, and outcomes were similar. In both countries, court administrators, architects, and judges held conferences, drafted building guides, laid out ambitious construction plans, and garnered funds for new structures, designed by world-renowned architects and adorned with artwork specially designed for these new public spaces.

23.2.1 Monumental US Federal Courthouses: William Rehnquist Innovates to Renovate

Grand buildings suggest a history that may mislead. In the United States, the federal courthouse building program regained momentum in the late 1980s after William Rehnquist became the Chief Justice of the United States. Responsive to concerns of judges in many locales, his senior staff set out not only to expand the number of facilities but also to make statements about the centrality of the lower federal courts to the country.

A few words on the relevant government entities are in order. Because each state has an independent court system, two judiciaries operate side-by-side. Counting all the judges and cases across the 50 states, more than 30,000 judges respond to more than 40 million civil and criminal case filings a year (LaFountain, 21). Tens of thousands more proceedings occur in administrative agencies, functioning as tribunals. In contrast, the federal courts have a limited jurisdiction and deal with a tiny fraction of the filings. On average, about 360,000 criminal and civil cases are filed yearly, along with more than one million bankruptcy petitions. The number of federal judges located in courthouses runs around 2,000. And, as in the states, a great deal of adjudication takes place in administrative agencies; for example, the Social Security Administration

[4] For example, French guidelines detailed somewhat different seating arrangements for civil and criminal proceedings, while common law countries generally use the same room for both kinds of cases. See, for example, *Palais de Justice de Grenoble*, 24–26 (Ministère de la Justice, 2003).

takes evidence in some 500,000 cases a year.[5] Yet the federal courts are the dominant symbol of "courts"—better known and represented in the popular national media than are their state counterparts. That prominence comes in part from resources, as well as from the work of the United States Supreme Court, sitting in its iconic (if relatively new) temple-like building. When that building opened in 1935, the court issues many more judgments than its current average of about 80 opinions annually.

The growth of federal court administration has been key to court construction. In 1939, Congress moved support for the federal courts away from the Department of Justice and into the judiciary's own Administrative Office (AO). That office reports to the Judicial Conference of the United States, whose roots go back to the 1920s when William Howard Taft was the Chief Justice. The Judicial Conference, chaired by the Chief Justice, has become the corporate policy voice for the federal judiciary. A different government entity, the General Services Administration (GSA), was chartered by Congress in 1949 to run all the federal buildings—prompting one commentator to name the GSA the "largest landlord in the world" (Dean, 62). Yet a third federal agency, the National Endowment for the Arts (NEA), created in the 1960s to foster American artistry, has been an advocate for improving federal architecture. The leadership in Washington, DC is but one part of the fabric of political interactions among judges and members of Congress representing specific localities that have generated projects and funding.

Before the 1960s, the relatively few federal judges had modest needs. Federal judges often shared "court quarters" (their term[6]) with post offices, another of the national functions. But from the 1960s through the 1990s, Congress authorized hundreds of new causes of action—about consumer, environmental, labor, and civil rights—empowering an array of litigants to file cases in federal court. Congress also increased the number and kinds of judges working in federal courthouses. Housing became an issue.

By the late 1980s, the judiciary thought its facilities insufficient. To garner support, the AO proffered the term "Judicial Space Emergency" for its "housing crisis" in an effort to obtain attention from its landlord, the GSA (JCUS 1989, 82). The press responded with reports that courtrooms were inadequate, that staff had no place to work (Cannell, W18), and that old courthouses were "nightmares for the federal marshals in charge of security, mainly because existing circulation forced the public, judges, and defendants to traverse the same corridors and use the same restrooms" (Dean, 62).

Another prong of the building plan was to detail what needed to be built. In the late 1970s, the GSA, working with the judiciary, developed a "Design Guide" for courts. After Chief Justice Rehnquist took office in 1987, he chartered a standing subcommittee, devoted to "space and facilities" and charged with oversight of long-term planning, construction priorities, and design standards (JCUS 1987, 59). Within a few years, the federal courts had drafted its own design guide. First published

[5] *Plan to Eliminate the Hearing Backlog and Prevent its Recurrence*, 4.

[6] Annual Report of the Judicial Conference of the United States (hereinafter JCUS), Sept 24–25, 1953 at 28.

in 1991 and revised several times thereafter,[7] the *US Courts Design Guide* outlined "state-of-the-art design criteria for courthouses" (*US Courts Design Guide* 1997, Intro, 2). As the 2007 version explained:

> The architecture of federal courthouses must promote respect for the tradition and purpose of the American judicial process. To this end, a courthouse facility must express solemnity, integrity, rigor, and fairness. …
>
> Courthouses must be planned and designed to frame, facilitate, and mediate the encounter between the citizen and the justice system. All architectural elements must be proportional and arranged hierarchically to signify orderliness. The materials employed must be consistently applied, natural and regional in origin, be durable, and invoke a sense of permanence. (*US Courts Design Guide 2007, 3–11)*

The guide also detailed specified courtroom requirements and layouts. When Chief Justice Rehnquist's predecessor, Warren Burger, chaired the judiciary, the presumptions were that courtrooms were to be made "available on a case assignment basis to any judge"; no judge on multi-judge courts had "the exclusive use of any particular courtroom" (JCUS 1971, 64). In contrast, the *2007 US Court Design Guide* required that all "active judges" have a courtroom dedicated to their individual use. Constant availability was explained as

> Essential … to the fulfillment of the judge's responsibility to serve the public by disposing of criminal trials, sentencing, and civil cases in a fair and expeditious manner and presiding over the wide range of activities that take place in courtrooms requiring the presence of a judicial officer (*2007 US Courts Design Guide*, 2–8).

By 2008, when Congress reduced funding, the Judicial Conference opened up consideration of courtroom sharing for senior and magistrate judges.[8]

In the 1980s, working with the GSA, the Judicial Conference had settled on courtrooms ranging from 1,120 to 2,400 square feet (*GSA Courts Design Guide* 1979, 1984, 1–5), with ceilings generally set at 12 ft (*GSA Courts Design Guide* 1984, 1–10). In contrast, the judiciary's 2007 Guide made 2,400 square feet the standard size and raised the ceilings to 16 ft to "contribute to the order and decorum of the proceedings" (*US Courts Design Guide* 2007, 4–3). Most furnishings were to be fixed to the floor, and finishes were to "reflect the seriousness and promote the dignity of court proceedings" (*US Courts Design Guide* 2007, 12–5). As for the public space, observers were set far back in the room, with seating ranging from 40 to 80 depending on whether the room was for trial or appellate court. The cost of each courtroom and its adjacent offices spaces was estimated, on average, to be about $1.5 million.

[7] Administrative Office of the US Courts, Space and Facilities Committee, *US Courts Design Guide* (1991, 1997, 2007).

[8] Judicial Conference Adopts Courtroom Sharing Policy as Latest Cost-Saver, 40 *Third Branch* 1 (Sept., 2008).

Translating that figure (and many others for the rest of the space) into real buildings, 45 projects planned between 2002 and 2006 were budgeted to require $2.6 billion.[9]

By a variety of metrics, the judiciary's efforts were remarkably successful. By 1991, the judiciary had secured $868 million in new construction funds (History of the Administrative Office of the United States: Sixty Years of Service to the Federal Judiciary, 195). In the decade that followed, plans were made for 160 courthouse constructions or renovations, to be supported by $8 billion.[10] Federal courthouse projects represented the federal government's largest customer for buildings constructions from 1995 to 2005.[11] As a result, the federal judiciary tripled the amount of space it occupied. The photograph (Fig. 23.4) of nine courthouses built or renovated between 1998 and 2008 by world-renowned architects (such as Henry Cobb, Richard Meier, Thom Mayne, Michael Graves, and Robert Stern) captures some of the exuberance.

The judiciary's success stemmed in part from GSA efforts to improve the quality of federal buildings. Distress about federal architecture dated back to the 1960s, when President Kennedy chartered an "Ad Hoc Committee on Government Office Space." The lead staffer (and later Senator), Daniel Moynihan, is given credit for the 1962 report and its one-page set of "guiding principles."[12] The Ad Hoc Committee, like leaders of European city states and the early American republic, sought to have public architecture serve as exemplary of national identity. Drafted in the shadow of the Cold War, the 1962 goals called for federal buildings to "provide visual testimony to the dignity, enterprise, vigor, and stability of the American Government" (Id., 4).

The implicit comparison to the Soviet Union, coupled with distaste for "faceless modern style buildings" and for repetition (whether Beaux-Arts or modern), produced another premise: that no "official style" be adopted (I *Vision + Voice*, 5). Further, reflecting both a commitment to entrepreneurism and the well-orchestrated efforts of the Association of Architects (AIA), the Ad Hoc Committee embraced the private sector. "Design must flow from the architectural profession to the Government and not vice versa" (Id.).

Yet few government structures built before the 1990s met the Ad Hoc Committee's goals because (as GSA publications later described) the chief "concerns" remained

[9] General Accounting Office, GAO-02-341, *Courthouse Construction: Information on Courtroom Sharing* at 3 (2002).

[10] *Status of Courthouse Construction, Review of New Construction Request for the US Mission to the United Nations, and Comments on H.R. 2751, To Amend the Public Buildings Act of 1959 to Improve the Management and Operations of the US General Services Administration: Hearing Before the Subcomm. on Public Buildings and Economic Development of the H. Comm. on Transportation and Infrastructure*, 105th Cong. 22 (July 16, 1998) (testimony of Robert A. Peck, Commissioner, Public Buildings Service, GSA).

[11] *The Future of Federal Courthouse Construction Program: Results of a GAO Study on the Judiciary's Rental Obligations: Hearing Before the Subcomm. on Economic Development, Public Buildings, and Emergency Management of the H. Comm. on Transportation and Infrastructure*, 109th Cong. 269 (June 22, 2006) (statement of David L. Winstead, Commissioner, Public Buildings Service, GSA).

[12] "Guiding Principles for Federal Architecture" are reproduced in I *Vision + Voice* at 4–5.