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

Sarah Marusek

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Sarah Marusek, University of Hawai‘i at Hilo

Introduction

In the United States, as in many other parts of the world, legality is in a constitutive relationship with culture. This paper 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.

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 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 U.S. Fish and Wildlife Service with assistance from the Massachusetts Environmental Police, Zak and co-defendant 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 three hundred dead birds accounted for, Zak’s trial hinged upon that one dead bald eagle. In U.S. District Court, U.S. 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 six-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 U.S. 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 U.S. 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, 2007). So, not only was the killing in violation of animal rights, but its 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). 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 remain 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 have 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. Hannah 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 statute until its delisting by the U.S. 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 is a 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 grey 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 the 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 grey wolf killed in Massachusetts – no animal is
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 ‘de-face’ power by seeing power as “a network of boundaries that delimit, for all, the field of what is socially possible” (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” (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 BGEP A 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 grey 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, and Brigham 2009). 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.

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 U.S. Presidency (pictured below). This revered, yet seldom seen wildbird is legally and culturally recognized as the semiotic of American exceptionalism and is depicted as such on the seal itself.


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 fifty stars, with a star for each of the fifty states. On the breast of the opened bird is a protective red and white striped shield, with a stripe representing each of the original thirteen 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 U.S. 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.

(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 thirteen stripes on the shield signify the thirteen 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 thirteen 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 fifty states originating from thirteen 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 hear 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).

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 or the bald eagle in violation of any state, tribal, or U.S. law a federal offense. 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 U.S., 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 becomes 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. 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, 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 2009), riding horses (Merry 2000), casinos (Cramer 2005), coffeehouses (Manderson 2006), beaches (Mooney 2005), the pub (Valverde 2003) or parking lots (Marusek 2005, Marusek 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.

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 Freedoms 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 U.S. 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 U.S. 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 live, 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 from 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.

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 unaltering 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 preserve 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 de-listing 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 2009: xii). He further explains “seeing law in the nature of material things and the material in the nature of law is the challenge” (Brigham 2009: xi). In this paper, 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 the national emblem as material law creates a culture that challenges legal presuppositions about emblems, their meaning, and the legislated protection of that meaning.
References


