L22

ÉPREUVE DE LEÇON

Première partie :

Vous procéderez à la présentation, à l'étude et à la mise en relation des trois documents proposés (A, B et C, non hiérarchisés).

Seconde partie :

Cette partie de l'épreuve porte sur les documents A et C.
À partir de ces supports, vous définirez des objectifs communicationnels, culturels et linguistiques pouvant être retenus dans une séquence pédagogique en cycle terminal du lycée, en vous référant aux programmes. En vous appuyant sur la spécificité de ces supports, vous dégagerez des stratégies pour développer les compétences de communication des élèves.

DOCUMENT A

Los Angeles Times

July 15, 1994 | JOHN BALZAR | TIMES STAFF WRITER

Two Alaska Indian Youths Banished to Islands for Robbery

EVERETT, Wash. — The crime: Another violent, small-change urban robbery. The criminals: Two rural teen-age Alaska Indians. The punishment: Banishment for one year on uninhabited islands with only hand tools and a little food. And for the victim: A new house.

This experiment in cross-cultural jurisprudence was set in motion in a Washington state courtroom this week when a judge agreed to give old-fashioned tribal justice a chance to make right for all those involved.

According to Washington law, Alaskans Adrian J. Guthrie and Simon P. Roberts, both 17 and Tlingit natives of southeast Alaska, faced from three to 5 1/2 years in prison after pleading guilty to the robbery of a pizza delivery man in Everett last summer. The victim was severely beaten with a baseball bat and remains partially deaf.

In such violent crimes, Washington law specifically calls for punishment, not rehabilitation. And the chance of restitution in such cases is remote. But on Wednesday, Superior Court Judge James Allendoerfer listened sympathetically and gave the go-ahead to a different approach, the Tlingit way. He agreed to release the two teenagers to custody of a tribal court for imposition of the sentence of one year's banishment plus restitution to the victim.

In 18 months, the confessed robbers will again be brought before Allendoerfer to decide whether their case should be closed or additional punishment is deserved.

The Tlingit approach, as explained in court here, calls for rehabilitation of the criminal and assistance for the victim. "A balancing of the books," public defender Al Kitching explained. "Without that, these young men will never be accepted back in the tribe." In this case, the Tlingit pledged to build the victim a new duplex or triplex and pay for his sizable medical bills.

As for the two robbers, a tribal court official and defense attorneys said they would be banished to separate uninhabited islands on native lands in the Gulf of Alaska for 12 months. They will be given some basic hand tools and enough food for two weeks. A spokesman said the punishment was in keeping with the traditions of the Tlingit, a coastal native people with a current population of about 2,000 and declining.

Although this case focused on Native American law and culture, banishment "has ancient precursors" in other cultures as well. Among others, ancient Greeks employed banishment for severe crimes, and England previously banished criminals to the United States and Australia.

Legal experts said the primary test for a sentence of banishment is whether it could be considered cruel or unusual. "Is it particularly cruel or degrading?" Pillsbury asked. "I wouldn't think so, particularly when you consider the typical alternatives for armed robbery"--that is, incarcerating teenagers in high-security prisons for years. In this case, Tlingit leaders said they would monitor the banished youths from time to time but offer them no assistance.

"A yearlong banishment, under the community supervision . . . would require these young men to improve themselves and to ruminate upon their crime. In addition, (the sentence) would make frugal use of the state's resources," defense attorneys argued.

Prosecutor Magee argued against the banishment sentence, although he conceded mixed feelings in the end. On one hand, he said, the promises of restitution and rehabilitation were more than the Washington judicial system could offer or hope for. "On the other hand," Magee said, "I have a good deal of difficulty in accepting the idea that we treat people differently under the law because they come from different cultural backgrounds. I can see now I'll be facing all kinds of motions and arguments based on someone's cultural background."

DOCUMENT B

A generation ago sociologists, criminologists, and penologists became disenchanted with the rehabilitative effects (as measured by reductions in offender recidivism) of programs conducted in prisons aimed at this end. This disenchantment led to skepticism about the feasibility of the very aim of rehabilitation within the framework of existing penal philosophy. To these were added skepticism over the deterrent effects of punishment (whether special, aimed at the offender, or general, aimed at the public) and as an effective goal to pursue in punishment.

That left, apparently, only two possible rational aims to pursue in the practice of punishment under law: social defense through incarceration, and retributivism. Public policy advocates insisted that the best thing to do with convicted offenders was to imprison them, in the belief that the most economical way to reduce crime was to incapacitate known recidivists via incarceration, or even death. Whatever else may be true, this aim at least has been achieved on a breathtaking scale, as the enormous growth in the number of state and federal prisoners in the United States (some 2.1 million in year 2005, including over 3,700 on "death row") attests.

First, philosophers urged that reformation of convicted offenders is not the aim, or even a subsidiary aim among several, of the practice of punishment. Aside from being an impractical goal, it is morally defective for two reasons: it fails to respect the convicted offenders' autonomy, and it flouts the offenders' right to be punished for the wrongdoing he intentionally caused. Second, justice or fairness in punishment is the essential task of sentencing, and a just sentence takes its character from the culpability of the offender and the harm the crime caused the victim and society. In short, just punishment is retributive punishment. [...]

The practice of punishment must be justified by reference either to forward-looking or to backward-looking considerations. If the former prevail, then the theory is consequentialist and probably some version of utilitarianism, according to which the point of the practice of punishment is to increase overall net social welfare by reducing (ideally, preventing) crime. If the latter prevail, the theory is deontological; on this approach, punishment is seen either as a good in itself or as a practice required by justice. A deontological justification of punishment is likely to be a retributive justification. [...]

There are, however, constraints in the use of penal threats and coercion even to preserve a just social system.

1. Punishments must not be so severe as to be inhumane or (in the familiar language of the Bill of Rights) "cruel and unusual."
2. Punishments may not be imposed in ways that violate the rights of accused and convicted offenders ("due process of law" and "equal protection of the laws").
3. Punitive severity must accord with the relative severity of the crime: the graver the crime, the more severe the deserved punishment. The severity of the crime is a function of the relative importance of the reasons we have to dissuade people from committing it, reasons that will make reference to harms done to victims, to social relationships, and to the security of our rights.

Hugo Adam Bedau, ***Stanford Encyclopedia of Philosophy***
First published June 2003; revised February 2010.

DOCUMENT C

Punishment: Tina Griekspoor, 35, stood outside a Pennsylvania courthouse for four-and-a-half hours on brandishing this sign

Picture and caption retrieved from www.dailymail.co.uk