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English 101

Research Paper

### Sophocles and the Supreme Court: Honoring the Fallen and Free Speech

In his *Antigone*, the renowned Greek playwright Sophocles told a story that revolved around the burial of a dead soldier. Antigone, the deceased's sister, completed the funeral rites against the express government decree forbidding such an act. Today, a similar situation is taking place: The Westboro Baptist Church, which routinely conducts protests at military funerals, has recently appeared before the Supreme Court in a lawsuit over this disrespect for the dead.

Although the Court largely considers the case today as it applies to Free Speech rights, the ruling, as this paper will show through a comparison of *Antigone* and correlative historical and modern sources, will almost definitely redefine the sanctity of funerals and the rights and roles of the family and government therein, virtually guarantying the development of conflict over the issue.

In *Antigone*, the story begins just after a war between two brothers, Polyneices and Eteocles. The two had killed each other and the new king, Creon, issued a proclamation forbidding the burial of Polyneices, who had led the attacking army against Thebes. Antigone, sister to Polyneices, buried him anyway, and Creon subsequently sentenced her to death. In the end, he died as well as a result of the conflict his actions caused. To Sophocles's contemporary Athenians, an honorable burial appears to have been an individual's human right, deniable only as an "extreme penalty" based on the "public condemnation of public criminals." It was not "a political privilege or reward to be granted or withheld on political authority, but a human and

divine requirement” (Patterson 25, 35-36). Creon, as such a political authority, did not have the right to deny Polyneices’ right to an honorable, traditional burial. Antigone, on the other hand, most definitely had the right and the divinely appointed “responsibility...to ensure his proper or decent burial” (Patterson 37).

Like the ancient Athenians, many of America’s people grant great respect and significance to funerals. Christian burials, as stated by Paul Gadie, former member of the Archdiocese of Liverpool, should be executed with “sensitivity and care” and should also possess “unity amongst the assembly...offering comfort to the members of the immediate family” (Gadie 155, 159). Muslims set an even higher standard for their burials, as A. R. Gatrad in his analysis explaining Muslim respect for the body. He says, “Muslims are always buried, never cremated.” In addition to this, the “actual filling in with earth is carried out by the relatives” and “attendants at funerals cover their heads as a mark of respect” (Gatrad 521-522). Both inside these religious ceremonies and in burials outside of the context of religion, funerals “are traditionally peaceful, dignified, and solemn occasions” (Rutledge 311).

Yet there is one church that stands out from the others for their disrespect of the funeral, especially the military funeral. The Westboro Baptist Church, led by Reverend Fred Phelps, has, in their own words, “conducted 44,394 such demonstrations since June, 1991, at homosexual parades and other events, including funerals of impenitent sodomites (like Matthew Shepard) and over 400 military funerals of troops whom God has killed in Iraq/Afghanistan in righteous judgment against an evil nation.” They justify this disrespect for the funeral by saying that the “WBC's gospel message is your last hope” (godhatesfags.com).

Following one of these pickets in 2006, Albert Snyder, father of a deceased Marine, sued the WBC via Phelps for “defamation, intrusion upon seclusion, publicity given to private life,

[intentional infliction of emotional distress], and civil conspiracy” (qtd in Merkle). The first court ruled against Phelps and awarded Snyder “\$2.9 million in compensatory damages and a total of \$8 million in punitive damages” (qtd in Merkle). From there, the case went through the Fourth Circuit court and, on 7 October 2010, legal representation for both sides appeared before the Supreme Court to argue whether or not the Constitution would protect Phelps and the WBC’s actions under Free Speech (Totenburg).

The case places the Supreme Court in a difficult position. On the one hand, one must consider that “radical expression and the cause of the minority are mainstays of the Free Speech Clause” (Merkle 667). On the other hand, as established above, funerals are traditionally sacred events. Justice Breyer, during the actual Supreme Court debate, admitted the difficulty when he said, “I am thinking and having trouble” relative to what kind of situation would justify certain kinds of damages (*Snyder v. Phelps*). What then, would be a good ruling?

While the Court, as the body responsible for interpreting and applying the Constitution, is correct to focus on the Free Speech aspect of the case, their opinion here has the potential of redefining the funeral. Though the Court has previously approved government interests in areas like “noise reduction, esthetics and protecting citizens from unnecessary and unwanted emotional distress,” all areas where Free Speech might apply, it “has not specifically recognized the right to mourn.” In this case, the potential exists either to confirm this right as “an extension of the greater privacy right” or deny it altogether (Rutledge, 305).

Should the Court rule in favor of the WBC’s Free Speech, the definition of the government’s role will be the most immediate and evident change. First to go will be legislation like the Respect for American Heroes Act, which “prohibits demonstrations at funerals controlled by the National Cemetery Administration and Arlington National Cemetery.” Similar

legislation enacted on state and federal levels will also become invalid (Rutledge 315, 316).

Finally, the government will now be obliged, through precedent, to rule in favor of such protests at funerals as long as there is a political message involved and regardless of the personal attacks made. On the other hand, if the Court's decision runs against the WBC in favor of the right to privacy associated with a funeral, all of that legislation will be enforced and endorsed constitutionally. The government will become the protector of funeral rights, even though it may "ultimately restrict speech to expression that no listener would find offensive" (Merkle, 667). The Court, it seems, must tread a very fine line between two injustices.

What of the family's role in these two cases? As demonstrated above, the first ruling would result in a rejection of the family's unstated right to mourn exactly as Creon rejected Antigone's right and responsibility to uphold the "great unwritten, unshakeable traditions" (Sophocles, 505). Since "funeral practices help the bereaved to find comfort and accept the reality of death" and "picketing of funerals confronts mourners during a vulnerable period", the only way a bereaved family can take advantage of that right is to "be left alone" to "satisfy essential psychological, religious and social needs." (Rutledge, 306-307). Denial of such rights by the Supreme Court would change the family's role from what it has been since the time of Sophocles.

Regardless of its actual content, the Supreme Court's opinion will almost definitely cause high levels of conflict. Such conflict exists already, most heavily in groups aimed against the WBC. In their analysis of 'milbloggers' (bloggers who frequently or exclusively document or comment on military related news and debates), Daniel Brouwer and Aaron Hess have observed that many of these bloggers explicitly and perhaps hopefully support "vigilante justice committed against Phelps." They and others feel "exasperated by laws that protect Phelps' free

speech and by the expense of taxpayer money that funds police and fire officer protection for Phelps” (Brouwer and Hess, 639, 640).

Any ruling will only intensify the growing conflict. To rule for the WBC based on Free Speech will only intensify the feelings of injustice and anger shown above and most likely redirect them to include the government while sparking resentment from the families concerned. Should the Court rule against the WBC’s claim of Free Speech, however, they risk restricting “radical expression and the cause of the minority... [-] the mainstays of Free Speech” (Merkle 667). Should that occur, it is not too unreasonable for one to suppose that the restrictions could potentially expand beyond just distasteful comments at military funerals. Such an expansion might well result in a violent backlash by citizens trying to regain their rights.

Consider Sophocles’s model. Here, Creon not only violated Antigone’s familial right to mourn, but also her right of Free Speech. His edict forced her to bury her brother in secrecy, condemning her for both the rite of burial and the statement she made in disagreement with Creon’s definition of her brother as a traitor (Sophocles, 285-286). Restriction of both led to the conflict and deaths in the story. Restriction of either will lead to high levels of conflict today. The Supreme Court is caught in a crux: On the one side, they may be forced to violate the tenet of Free Speech, one of the United States’ most valuable and important civil and human rights. On the other hand, they risk disenfranchising families of their time-honored right to mourn in peace for the sake of a small, obscure church from Kansas. Middle ground must be found to avoid a potentially dangerous conflict.

## Works Cited

- Gadie, Paul. "The Christian Funeral." *The Furrow*. Vol. 57 Issue 3 (2006) pp. 151-159.
- Gatrad, A. R. "Muslim Customs Surrounding Death, Bereavement, Postmortem Examinations, and Organ Transplants." *British Medical Journal*. Vol 309 Issue 6953 (1994) pp. 521-523.
- "GodHatesFags". <http://www.godhatesfags.com>. Homepage of the Westboro Baptist Church. Web. Accessed 25 October 2010.
- Merkle, Sarah E. "Snyder v. Phelps" *South Carolina Law Review*. Vol. 61 Issue 3 (2010) p. 657-667. Print.
- Patterson, Cynthia B. "The Place and Practice of Burial in Sophocles' Athens." *Helios*. 33 (Supplement) (2006) p. 9-48. Print.
- Rutledge, Njeri Mathis. "A Time To Mourn: Balancing the Right of Free Speech Against the Right of Privacy in Funeral Picketing." *Maryland Law Review*. Vol. 67 Issue 2 (2008) p. 295-357) Print.
- Sophocles. *Antigone*. Trans. Robert Fagles. New York: Penguin 1984.
- "Snyder v. Phelps." (2010) Supreme Court of the United States Database. Web. 25 October 2010.
- Totenburg, Nina. "High Court Struggles With Military Funerals Case." *National Public Radio*. 25 October 2010. <http://www.npr.org/templates/story/story.php?storyId=130379867>.