

Charles Beitz' Human Rights Model and the Trial of Amanda Knox

Introduction: When in Perugia (Rome)

To cry “unfair” in response to Amanda Knox’s conviction through the lens of an ethnocentrically limited view of law and procedure fails to acknowledge the global reality in which we find ourselves today.¹

-- Maureen Howard

On November 2, 2007, British exchange student Meredith Kercher was found semi-naked with her throat slashed in Perugia, Italy. Kercher shared her apartment with Amanda Knox, an American exchange student from Seattle, as well as two other women, who left Italy that weekend for a vacation. Knox and her then-boyfriend Raffaele Sollecito, an Italian student, were held as suspects by the Italian police. On December 9, 2009, after spending two full years in prison, Knox and Sollecito were convicted of murdering Kercher in a drug-fueled sex game that turned violent on the night of November 1, 2007. According to the judge’s version of the event, the murder, carried out “with no planning, no animosity or rancor against the victim,” was a combination of “purely random” circumstances, which involved not only the young couple but also Rudy Guede, an Ivory Coast-born drifter and Knox’s acquaintance in Perugia.² Guede was convicted for murder separately under a fast-track procedure. Knox and Sollecito were sentenced to twenty-six and twenty-five years in prison respectively.

¹ Maureen A. Howard, *A Lesson From Amanda Knox, U.S. Student Jailed in Italy*, THE HUFFINGTON POST, Apr. 8, 2010, http://www.huffingtonpost.com/maureen-a-howard/a-lesson-from-amanda-knox_b_529646.html.

² FOX NEWS, *Judge Rules Amanda Knox Killed “Without Animosity,”* Mar. 4, 2010, <http://www.foxnews.com/world/2010/03/04/judge-rules-amanda-knox-killed-animosity/>.

The case attracted much attention because of its unresolved mysteries as well as its sensationalism, especially the paradoxical images portrayed of Knox. While the prosecutor called Knox a “she-devil,” her defense lawyer described her as a hardworking and cheerful young woman.³ Contradictory testimonies by both Knox and Sollecito made them look suspicious, yet what Knox’ defense attorneys considered to be flawed forensic evidence offered by the prosecutors also made Knox’s conviction seem unfair.⁴ Knox’s attorneys also claimed that reports about her alleged sexual promiscuity in tabloid media made the defense an uphill battle in front of an unsequestered jury.⁵ A diplomatic furor arose after the verdict prompted Senator Maria Cantwell from Washington State to accuse Italy of its flawed judicial system. The United States Secretary of State Hillary Clinton initially said she would meet with Cantwell over Knox’s conviction. Nevertheless, her spokesman later announced that the United States government had found no “indications ... that Italian law was not followed.”⁶

The conviction of Knox by no means signaled the end of the story. Giuliano Mignini, the head prosecutor who convicted Knox of murder was later convicted for his mishandling of a separate murder case. Thus, there is reason to believe that the court may take a second look at Mignini’s methods in Knox’s case, including the possibility of his leaking false information about Knox to the press.⁷ In April 2010, the Knox family received

³ E.g., John Hooper, *She-devil of Family’s Nightmares or Amelie of Seattle: The Two Faces of Amanda Knox*, THE GUARDIAN, Dec. 4, 2009, <http://www.guardian.co.uk/world/2009/dec/04/two-faces-of-amanda-knox>.

⁴ See, e.g., CNN.COM, *Prosecution Closing in Amanda Knox Trial*, Nov. 20, 2009, <http://www.cnn.com/2009/WORLD/europe/11/20/italy.kercher.trial/index.html>.

⁵ E.g., Tiffany Sharples, *How Strong Is the Evidence Against Amanda Knox?* TIME, Jun. 14, 2009, <http://www.cnn.com/2009/WORLD/europe/11/20/italy.kercher.trial/index.html>.

⁶ E.g., FOX NEWS, *supra* note 2.

⁷ Steve Shay, *Amanda Knox Head Prosecutor Charged with “Abuse of Power,”* WEST SEATTLE HERALD, Jan. 31, 2010, <http://www.westseattleherald.com/forum/amanda-knox-head-prosecutor-charged-%E2%80%9C%E2%80%9D>. Mignini was found guilty in the Florence Court of illegal phone

some good news. Italian authorities acquired a videotaped confession of Guede's prison-mate, which says that Knox was not present during the crime. Besides, the Italian court awarded Knox's family USD \$55,000 for violation of privacy and illegal publication of court documents. Italian and American legal experts also met in Rome to discuss her case.⁸ Nevertheless, Knox's predicament is not entirely bright. While her family has been struggling to set her free through the appeals process, her prosecutors filed a formal notice in mid-April 2010, citing her apparent "lack of remorse" and thereby seeking to extend her sentence to a life term in prison.⁹ Meanwhile, Knox's supporters continue to hold that Knox's human rights have been violated by the Italian government. Knox's family and friends tried to garner support on the Internet to petition to the Amnesty International and even the United States President.¹⁰

This paper studies the case of Knox with respect to Charles Beitz' human rights model. Part I describes Beitz' idea of human rights as well as the mechanism of his two-level model. Part II employs Beitz' model to illuminate why Clinton made the correct decision not to intervene in the Italian Court's decision and why international organizations, such as the United Nations and Amnesty International, should do the same. Part II contrasts the criminal justice system of Italy with that of the United States and shows how Italy's reformed criminal code produced a traditional inquisitorial system with adversarial elements. Because the Italian government abided by its law throughout Knox's trial, it

tapping, abuse of high office, and dereliction of duty in connection with the highly publicized "The Monster of Florence" serial killer case in Italy. *Id.*

⁸ Howard, *supra* note 1.

⁹ *E.g.*, CBSNEWS, *Knox Lawyer: Lack of Evidence Will Free Amanda*, Apr. 19, 2010, <http://www.cbsnews.com/stories/2010/04/19/earlyshow/main6410647.shtml>.

¹⁰ *See, e.g.*, FRIENDS OF AMANDA KNOX, FRIENDS OF AMANDA KNOX: A SITE DEVOTED TO THE TRUTH ABOUT AMANDA AND THE CHARGES AGAINST HER, http://www.friendsofamanda.org/home_eng.html [last accessed Apr. 30, 2010]; Jeffrey Dearman, *Help Amnesty International, Free Amanda Knox*, FACEBOOK, http://apps.facebook.com/petitions/view?pid=140949189&fb_noscript=1 [last accessed Apr. 30, 2010].

satisfied its responsibilities delineated in the first level of Beitz's model and intervention by other nations or international organizations would be unnecessary and improper. Part III shows how Knox's trial and its controversy invite readers to revisit the theories of toleration in Beitz' human rights model, to dismantle their implicit self-other dichotomy, and to push more room for introspection. While the United States and Italy are both "liberal societies" according to John Rawls' definition, Knox's trial urges readers, especially Americans, not only to study the Italian justice system but also to take an introspective look at the American justice system and to reform it so that it could perform a better role to safeguard human rights.

I. Charles Beitz' Human Rights Model

Beitz builds upon John Rawls' idea of "liberal" and "decent" peoples to formulate his model of human rights. Citing to Rawls, he defines human rights as "a special class of urgent rights," including rights to life, personal liberty, and personal property, whose violation is "equally condemned by both reasonable liberal people and decent hierarchical peoples." Moreover, these rights are universal in that they are binding on all peoples and societies, including "outlaw states" that are neither liberal nor decent.¹¹ A society must adhere to human rights to be a member "in good standing in a reasonably just Society of Peoples"; conversely, a society whose institutions fail to honor these rights makes it self vulnerable to forceful intervention to protect human rights.¹² Beitz emphasizes that liberal and decent societies can have different conceptualizations of human rights. To hold that

¹¹ CHARLES BEITZ, *THE IDEA OF HUMAN RIGHTS* 97 (Oxford U. P. 2009). These "human rights proper" nonetheless do not include the full complement of rights found in the international law of human rights, such as freedom of thought and the rights of democratic political participation, which Rawls calls "liberal aspirations" that "presuppose specific kinds of institutions." *Id.*

¹² *Id.* at 98.

these rights should be explicable in terms of a single value would be too abstract or would constrain their substantive scope.¹³ Beitz appropriates Rawls' idea of justice as an analogy for his concept of human rights. Rawls contends that people may disagree about the content of justice, but may still agree about the role that these principles of justice play in moral and political thought. Hence, while people disagree about the content of human rights, they may nevertheless agree about the role of human rights in global political life and thereby adhere to them.¹⁴

According to Beitz, a practical conception of human rights relies on a two-level model that divides labor between the states as bearers of the primary responsibilities to respect and protect human rights and the international community as the guarantors of these responsibilities.¹⁵ Human rights thus apply in the first instance to state political institutions, including their constitutions, laws, and public policies. Governments have limited discretion to choose the means by which they carry out responsibilities, such as respecting the underlying interests in the conduct of the state's official business and protecting non-voluntary victims of deprivation.¹⁶ A government's failure to carry out its first-level responsibilities may be a reason for "second-level" agents to take action. Through its political institutions, the international community may hold states accountable for carrying out their first-level responsibilities. Moreover, states and non-state agents may assist or interfere in an individual state to satisfy human rights standards if the state itself lacks the capacity or the will to do so.¹⁷ Beitz distinguishes "pro tanto reasons," which form the bases for state actions, from "conclusory reasons." While conclusory reasons would require states

¹³ *See id.* at 99, 138.

¹⁴ *See id.* at 99-100.

¹⁵ *Id.* at 108.

¹⁶ *Id.* at 109.

¹⁷ *Id.*

to act regardless of other considerations in play, pro tanto reasons are genuine reasons for action that do not necessarily override other competing reasons.¹⁸ Beitz' heavy reliance on states falls in line with human rights treaties, which tend to place the primary responsibility for compliance on states, while providing international monitoring procedures and even allowing coercive intervention to protect against the worst abuses.¹⁹

II. The Trial of Amanda Knox

The right to a fair trial is explicitly proclaimed in Article Ten of the Universal Declaration of Human Rights and Article Six of the European Convention of Human Rights. By privileging Beitz' view that societies are entitled to different conceptualizations of human rights, this section contrasts the continental European with the Anglo-American criminal justice systems to explain different ideas of a fair trial in Italy and the United States. An understanding of the Italian tradition and system, which are at least as legitimate as the American ones, will illuminate why the cry for intervention by Knox's supporters is both unnecessary and improper. Because the Italian Court abided by its law in the trial of Knox, it fully satisfied its first-level responsibilities in Beitz' model. Hence, neither the United States nor international organizations have conclusory or pro tanto reasons for intervening in its action.

A. Two Different Philosophies, Two Justice Systems

While Italy and the United States both agreed that the individual is entitled to a fair trial, they do not conceptualize it in the same way. Their conceptualizations of a fair trial,

¹⁸ *Id.* at 116-17.

¹⁹ *See id.* at 122, 124-25.

informed by different philosophical traditions, have led to different criminal justice systems.²⁰ Generally speaking, the European inquisitorial system aims to find out the “absolute Truth” and this all-important goal tends to justify means necessary to attain it. Deferring to the state in conducting activities for the benefit of its constituent individuals, this tradition can be attributed to a number of philosophers of the continental tradition.²¹ Conversely, the Anglo-American adversarial system seeks the “pragmatic truth” and subordinates the search for ultimate truth in favor of other social values and practical concerns, including respect for individual rights and the reliability of evidence. This system, which relies on individuals to engage in processes that yield an aggregated, societal good, not only finds its roots in its philosophical tradition, but is also illuminated by the United States Constitution and other founding texts.²² While the U.S. Constitution proscribes no specific system of justice, the refusal to defer absolute trust and definitive power to any branch of the government is evident in the Constitution’s separation of powers doctrine.²³

Under the inquisitorial system, the public prosecutor is an impartial fact-finder responsible for the main investigatory responsibilities by compiling a comprehensive case file (the dossier) for the court to decide whether to proceed to trial.²⁴ In preparing the dossier, the prosecutor may communicate directly with the defendant.²⁵ Because the foremost objective of an inquisitorial system is to seek the truth, the system erects very few evidentiary barriers would lead to the exclusion of important probative evidence.²⁶

²⁰ Matthew T. King, *Security, Scale, Form, and Function: The Search for Truth and the Exclusion of Evidence in Adversarial and Inquisitorial Justice Systems*, 12 INT’L LEGAL PERSP. 185, 188-90 (2002).

²¹ Examples include Plato and Rousseau. *Id.* at 195-96, 199-201.

²² Examples include John Locke and Adam Smith. *Id.* at 201-03.

²³ *Id.* at 205-06.

²⁴ Raneta Lawson Mack, *It’s Broke so Let’s Fix It: Using a Quasi-Inquisitorial Approach to Limit the Impact of Bias in the American Criminal Justice System*, 7 IND. INT’L & COMP. L. REV. 63, 72-73 (1996).

²⁵ *Id.* at 83-84.

²⁶ *Id.* at 70.

Although every defendant has a right to counsel, the defense attorney, whose role is conjoined with a search for the truth, aids the investigation by advising the accused to answer truthfully.²⁷ Once the formal trial process begins, the roles of the prosecutor and the defense attorney become limited, as the judge takes the lead in questioning the accused and the witnesses.²⁸ The prosecutor is relegated to asking occasional follow-up questions or suggesting other lines of inquiry, while the defense attorney is required to participate only if he believes that the tribunal has somehow overlooked or misrepresented crucial evidence.²⁹ The defendant is called upon to speak first, and the accused and the court then engage in a direct and continuing dialogue without the intermediation of counsel.³⁰ After both parties have presented evidence, the presiding judge will join a mixed panel of professional judges and lay assessors who will apply the law, decide the defendant's guilt, and determine the appropriate sentence by a two-thirds majority.³¹ Once a decision has been rendered, broad rights of appeal are extended to both plaintiff and defendant to ensure that the punishment fits the crime and that a reliable and just result has been reached.³²

Under the adversarial system, the police perform the primary investigative function and determine whether any given encounter with the suspect will culminate in an arrest.³³ The exclusionary rule, under the Fourth Amendment of the Constitution, protects individual freedom from illegal searches and seizure by the state without a warrant and, therefore, could lead to a loss of important probative evidence at this point.³⁴ Once arresting the accused, the police turn the investigation over to the prosecutor, who is responsible for

²⁷ *Id.* at 77.

²⁸ *Id.* at 81.

²⁹ *Id.* at 75, 77.

³⁰ *Id.* at 84.

³¹ *Id.* at 81.

³² *Id.* at 84.

³³ *Id.* at 71-72.

³⁴ *See* U.S. CONST. amend. IV.

evaluating the evidence and determining whether the facts merit charging the accused with a crime.³⁵ The judge, while guaranteeing that all participants play by the rules, remains impartial throughout the court proceedings and intercedes only to decide various evidentiary matters as they are submitted by both parties. In instances in which the judge must also act as the trier of fact, he or she weighs the evidence as presented by the parties, applies the relevant law, and renders a decision as to guilt or innocence.³⁶ The defendant is offered numerous constitutional rights pre-trial and at trial. The defense attorney zealously represents the defendant and serves as the medium through which the defendant exercises these rights.³⁷ For instance, without an express waiver of certain protections, neither the judge nor the prosecutor may question the defendant about any aspect of the crime charged at the pre-trial stage. If defendant chooses to remain silent at trial, they may not draw any inference from defendant's decision. Thus, even though the accused may be the sole party with access to the truth, the system demands that the government seek alternative avenues to that truth.³⁸ When the defendant exercises the constitutional right to trial by jury, lay citizens are selected to weigh the evidence, apply the law, and return a verdict.³⁹ The government is constitutionally prohibited from appealing the final decision.⁴⁰

In 1988, Italy reformed its criminal code by conjoining its inquisitorial model with elements of the adversarial model. The 1930 criminal code was formulated during a fascist regime and manifested many of the negative characteristics associated with inquisitorial

³⁵ Mack, *supra* note 24, at 73-74.

³⁶ *Id.* at 79-80.

³⁷ *Id.* at 76.

³⁸ *Id.* at 82-83.

³⁹ *Id.* at 79-80.

⁴⁰ *Id.* at 83.

systems.⁴¹ The Italian Code of Criminal Procedure (*Codice di procedura penale*) in 1988, which adopted from the Article 6 of the European Convention of Human rights, provides fair trial guarantees and distinctly adversarial features so as to offer both parties more control over the process.⁴² Under the revised code, the public prosecutor is still responsible for pretrial investigation of a crime: while the prosecutor now advocates on behalf of the government at trial, he or she also assesses the facts and circumstances favoring the defendant.⁴³ The judiciary retains its active role: besides serving on the jury, the judge now serves as a significant check on the prosecutorial discretion by supervising the preliminary investigation and ensuring impartiality at all stages of the investigation.⁴⁴ The defense attorney, instead of simply advising defendant to tell the truth, now assures that defendant's rights are respected at all stages and, therefore, attempts to place defendant on a more equal footing with the state.⁴⁵ Regarding evidence, the Italian Court nevertheless still has a fair amount of flexibility in applying the exclusionary rule. At trial, both plaintiff and defendant are responsible for developing evidence by presenting witnesses and cross-examining the other party's witnesses. Defendant may now elect to remain silent, although he or she may speak at any point during the trial to challenge witness testimony and has the opportunity to make the final presentation at the conclusion of the trial.⁴⁶

⁴¹ For example, the former code provided for a pretrial examination phase during which a judge would investigate evidence against the accused, followed by a trial that developed the acquired evidence. Despite this requirement, the trial became a mere formality that was used to validate the conclusions drawn during the examination phase. Furthermore, the examination was conducted in secret, so that defendant was precluded from knowledgeable participation, and considerable pressure tactics were used by prosecutors to elicit witness testimonies. *Id.* at 85-86.

⁴² Andrea Vogt, *Computer and Crucifix: Amanda Knox's Guilt Will Be Judged in a System That Is Mix of Old and New*, SEATTLEPI.COM, Nov. 30, 2009, http://www.seattlepi.com/local/412696_knox30.html.

⁴³ Mack, *supra* note 24, at 87.

⁴⁴ *Id.*

⁴⁵ *Id.* at 87-88.

⁴⁶ *Id.* at 88-89.

Events subsequent to Italy's adoption of the new criminal code have shown just how difficult it was to change its legal culture radically, and the Constitutional Court in the decade after its adoption issued a series of decisions that undercut some of its basic principles, leading to a system that is more inquisitorial and less adversarial.⁴⁷ The battle over the direction was not over. In 1999, the Italian Parliament changed the Constitution to mandate the adversarial elements by strengthening the rights of the defendants, especially their right to cross-examine witnesses against them. In 2001, the Parliament went further to change the Code of Criminal Procedure to reflect the new constitution rights of defendants.⁴⁸ Moreover, the requirement that there is a "proof beyond a reasonable doubt," which has long been a part of Italian justice system, was formalized and passed into law in 2006.⁴⁹

B. Knox's Fair Trial, Clinton's Fair Decision

Scholars and critics are correct in saying that the public outcry against the trial and conviction of Amanda Knox was often not based on intelligent discussions of substantive Italian law or the procedural rules governing the trial. Hence, to cry "unfair" in response to her conviction bespeaks ethnocentrism.⁵⁰ A careful application of Italian criminal code to the case shows that Italian government lawfully prosecuted a murder suspect in order to fulfill its basic responsibility. As such, it did not, as Knox's supporters suspected, vindicate

⁴⁷ E.g., William T. Pizzi, *The Battle to Establish an Adversarial Trial System in Italy*, 25 MICH. J. INT'L L. 429 (2004).

⁴⁸ *Id.* at 431, 457-65.

⁴⁹ Vogt, *supra* note 42.

⁵⁰ See, e.g., Howard, *supra* note 1.

the murder of a British victim given that there was nothing to motivate an Italian prosecutor to go after an American student in order to make the British feel good.⁵¹

American criticisms of Knox's trial have mainly targeted what seemed to be an overly active role of the Italian judge and the corruption of the head prosecutor. Because there was apparently no indication that the Italian Court violated its criminal code, these criticisms all turned out to be unjustified. Judge Massei, the presiding judge, by actively questioning the suspect and witnesses, only did what he was supposed to do and by no means exceeded the scope of his power as a judge. It is true that Mignini, the head prosecutor, was later convicted for his mishandling of a separate murder case, which might lead the court to review his methods in the Knox case. Nevertheless, given the active supervisory role played by the judge, unless the judge also failed in his duty, it would be rash to conclude that there was prosecutorial overreaching and that the trial of Knox was unfair and biased. As per Italian law, a jury of two professional judges and six "lay" judges gave the verdict.⁵² Given that the Italian code requires only a majority verdict in convicting a murder suspect, the critics would have had more reason to cry "unfair" if the verdict had been based on a majority verdict. Yet, because the jury gave a unanimous verdict, the outrage of Knox's supporters seems even more unwarranted.⁵³ All in all, the criticisms that the trial was "unfair" therefore have stemmed more from an unfamiliarity with the Italian justice system as well as a strong presumption that a foreign trial is inherently unfair, than from any inherent problem in the system per se.

⁵¹ See Wendy Murphy, *Is "Foxy Knoxy" an Innocent Coed or Manipulative Murderer?* PATRIOT LEDGER, Dec. 7, 2009, <http://www.patriotledger.com/opinions/x1682953943/WENDY-J-MURPHY-Is-Foxy-Knoxy-an-innocent-coed-or-manipulative-murderer>.

⁵² E.g., Robert Fox, *Nothing "Third World" About Italian Justice*, THE FIRST POST, Dec. 9, 2009, <http://www.thefirstpost.co.uk/57166,news,nothing-third-world-about-italian-justice-amanda-knox-meredith-kercher>.

⁵³ See, e.g., Nikki Battiste & Jon Meyersohn, *Juror in Amanda Knox Case Says Verdict Was "Agonizing Decision"*, ABCNEWS, <http://abcnews.go.com/GMA/AmandaKnox/mother-amanda-knox-tells-courage/story?id=9267454>.

While targeting their criticisms against a foreign justice system, American critics have largely overlooked the substantive evidence that pointed to Knox's involvement in Kercher's murder. The most significant pieces of evidence were mixtures of Kercher's blood samples with Knox's DNA that were collected in many locations of the apartment.⁵⁴ There was also a lack of any innocent explanation for such mixtures, which could not have been caused by the fortuity of Knox sharing the same apartment with Kercher. Moreover, there was no evidence that the blood samples were all contaminated by the laboratory that did the forensic work.⁵⁵

The above evidence was further bolstered by other facts, which alone would have led a reasonable jury to believe that both Knox and Sollecito were at least involved in the murder. They include a faked break-in by a thief, the alleged murder weapon – a knife – in Sollecito's apartment with Knox's DNA on the handle and of Kercher's at the tip, and Sollecito's DNA on Kercher's bra strap.⁵⁶ Even assuming that the traces of DNA on the knife were too minute to be reliable, and that the shape and size of its blade did not match the wounds on Kercher's neck, the failure to locate the murder weapon could not prove that Knox and Sollecito did not murder Kercher.⁵⁷ The defense also claimed that the bra strap, which was bagged by police forty-five days after the crime was discovered, was

⁵⁴ See, e.g., Ann Wise, *Amanda Knox Trial Told Her DNA Mixed With Murder Victim's Blood*, ABCNEWS, May 22, 2009, <http://abcnews.go.com/International/story?id=7656872&page=2>.

⁵⁵ Murphy, *supra* note 51.

⁵⁶ John Hooper, *Amanda Knox and Raffaele Sollecito: The Night Off That Led to Meredith Kercher's Murder*, THE GUARDIAN, Dec. 4, 2009, <http://www.guardian.co.uk/world/2009/dec/04/meredith-kercher-amanda-knox-guilty>. There was evidence pointing to the fact that someone ransacked the bedroom of one of the two Italian flatmates before going outside and hurling a stone through the window. The tell-tale sign that revealed that this break-in was faked was the glass on top of Kercher's clothes, which undermined the defense attorney's assertion that Kercher was murdered by Guede after he broke into the house. Because only Knox, not Guede, had the key to the house, Guede must have entered the house with Knox's permission. *Id.*

⁵⁷ See, e.g., *id.*

contaminated by the police. Nevertheless, they could not provide evidence of the alleged contamination.⁵⁸

Knox's defense attorneys as well as her supporters fervently criticized the character assassination that the media had directed at Knox since the beginning of the trial. Their criticism was unjustified because the media by no means determined the jury's verdict, as well as deeply ironic, because Knox's attorneys and supporters themselves also manipulated Knox's innocent reputation in Seattle. Knox's attorneys and supporters maintained that Knox was a hardworking student who maintained three jobs while studying so that she could afford to study abroad. They also claimed that tabloid reports about Knox doing splits and cartwheels as she awaited questioning by the police were a distortion of the behavior of young woman exhibiting restlessness.⁵⁹ While such negative reports might have led the jury to form a prejudiced impression of Knox, tabloid reports about stories of such a sensational nature would have flourished almost in any countries. Moreover, Wendy Murphy, an attorney and law professor in Boston, wisely pointed out the irony that Knox's supporters had no trouble complaining that jurors and the public judged Knox unfairly based on her behavior in the days after the murder, but did not hesitate exploiting her good reputation to maintain that she was not the type of person who could kill her roommate.⁶⁰ Murphy's intelligent remark about the fallacy of relying upon appearances should urge her readers, including Knox's supporters, to take a skeptical look again at the inconsistencies in Knox's

⁵⁸ *See, e.g., id.*

⁵⁹ *E.g.,* Murphy, *supra* note 51.

⁶⁰ *See id.*

testimonies and her false implication of a bar owner in the murder, which unfairly led to his arrest and temporary incarceration.⁶¹

By applying Italian law to the Knox case and by studying the substantive evidence, there is apparently no indication that Knox's conviction was unlawful and unjust. Judge Massei described the conviction as "a necessary and strictly consequential outcome"⁶² and the evidence at trial as offering a "comprehensive and solid picture, without gaps or inconsistencies"⁶³ Murphy went so far as to suggest that if "justice" means getting at the truth, then the Italian court arrived at a just verdict more readily than if the case was tried in America, an opinion that no doubt has offended Knox's supporters.⁶⁴ Even assuming that Knox had not received a verdict that is more just than one she would have received in the United States, Knox at least has the right to a retrial under the Italian justice system: defendants can ask to technically retry the entire case in a first round of appeals, in which not only the legal issues, but the factual issues concerning evidence can be revisited.⁶⁵

III.Hypo: Trying Knox in the United States

Knox's supporters have argued that if Knox were tried in the United States, she would have been acquitted in no time. Any answer to this hypothetical question can only be

⁶¹ Knox initially told the police that she was present at the scene of the murder and that Patrick Lumumba, the owner of the bar where she worked several nights a week, assaulted and murdered Kercher. She later claimed that she spent the entire night at Sollecito's home. Her defense attorneys defended her by saying that exhaustion and duress after being questioned for hours at the police station led her to make the comments.

⁶² Nick Pisa, "It Was a Purely Casual Murder": Judge in Meredith Kercher Killing Releases Reasons for Jailing Amanda Knox, MAIL ONLINE, Mar. 4, 2010, <http://www.dailymail.co.uk/news/worldnews/article-1255472/Amanda-Knox-Judge-Meredith-Kercher-killing-releases-reasons-jailing.html>.

⁶³ FOX NEWS, *supra* note 2.

⁶⁴ See Murphy, *supra* note 51.

⁶⁵ E.g., Katharine Hibbert, *There are Good Reasons Why Amanda Knox Was Found Guilty*, THE INDEPENDENT, Dec. 17, 2009, <http://www.independent.co.uk/opinion/commentators/katharine-hibbert-there-are-good-reasons-why-amanda-knox-was-found-guilty-1842978.html>; Rachel Donadio, *Verdict in Italy, but American's Case Isn't Over*, N.Y. TIMES, Dec. 5, 2009, <http://www.nytimes.com/2009/12/06/world/europe/06perugia.html>. Indeed, her appeal has been scheduled to take place in October 2010.

indeterminate. Nevertheless, this section shows that Knox's trial and its controversy should invite readers to revisit the theories of "toleration" in Beitz' book. In the end, it should also urge Americans to take an introspective look at their own criminal justice system and to reform it so as to better safeguard the human rights of suspects.

A. Theorizing Toleration, Dichotomizing Societies

Beitz cites to several critics while offering his own view of toleration. Emmerich de Vattel's domestic analogy, being the majority view in modern international thought, offers what Beitz calls a "societal conception" of toleration. Vattel compares a state to a "free and independent" individual and a "moral person having an understanding and a will peculiar to itself." Hence, each state should "be left to the peaceable enjoyment of that liberty which belongs to it by nature" and should have "the right to govern itself as it thinks proper."⁶⁶ Mervyn Frost, by thinking of the international principle as derivative and an extension of the principle of domestic toleration rather than as its analog, offers an "individualistic conception" of toleration. He sees political states as institutions that harmonize individual interactions and that supply shared loci of identification enabling people to recognize one another as members of a self-determining whole. Tolerating a state is therefore the most effective way of ensuring the protection of the liberty interests of its individual members.⁶⁷

Beitz gives particular credit to Rawls' theory of international toleration, contending that liberal people should tolerate nonliberal decent societies that satisfy certain conditions of "decency." First, interfering in the lives of decent peoples is likely to produce resentment, bitterness, and perhaps conflict. On the other hand, decent societies might be

⁶⁶ BEITZ, *supra* note 11, at 144.

⁶⁷ *Id.* at 145-47.

more likely to develop liberal political cultures if they are accepted and tolerated by liberal societies than if they are subjected to coercive pressure.⁶⁸ Second, while decent societies do not have fully liberal and just institutions, they are not simply mechanisms of oppression either. Given that the international resources available for humanitarian or reform-oriented political actions are likely to be limited, they are better used to eliminate the worst forms of injustice, which decent societies are not.⁶⁹

B. Rethinking Toleration, Reforming U.S. Law

The Knox case and its controversy urge readers to rethink the above theories of toleration. While credit should be given to Vattel's and Frost's views, they presuppose that systems among different states largely remain static and the boundaries between states are impenetrable. Rawls' view of toleration moreover presupposes a superior tolerating party and an inferior tolerated party and provides little room for the superior party for introspection. A blind adherence to Rawls' view on toleration would risk not merely dichotomizing the liberal and the decent society, but also justifying a sense of condescension toward the latter.⁷⁰ According to Rawls' *The Law of Peoples*, both the United States and Italy qualify as "liberal societies."⁷¹ Supporters of Knox may nevertheless think that Italy is relatively "nonliberal" and their demonization of the Italian would tend to pitch the "liberal" America against the "nonliberal" Italy. This paper has already illuminated how the Italian justice system has evolved throughout the years and has geared toward producing better trials. To avoid dichotomizing the liberal and the nonliberal, Americans should take an

⁶⁸ *Id.* at 154.

⁶⁹ *Id.*

⁷⁰ See JOHN RAWLS, *THE LAW OF PEOPLES* 59-62 (Harvard U. P. 1999).

⁷¹ See *id.* at 11-22.

introspective look at their own criminal justice system. By using Knox's case, the rest of this paper shows that the American system likewise should be improved.

One must not overlook the disadvantages caused by the Anglo-American adversarial system. First, it allows more discretionary decision-making by police and prosecutors, which accordingly permits the interpolation of biases into the process. The aggressive roles performed by both prosecution and defense attorneys and the passive roles played by suspects might also put the latter in a disadvantaged position regardless of whether they are guilty or innocent. While the police-suspect interaction is constitutionally circumscribed by the Fourth Amendment, police officers admitted that race is often used as a factor in deciding whether to follow, detain, search or arrest someone in the first place.⁷² The system leaves the control of information placed before the trial court in the hands of the prosecutor and defense counsel.⁷³ In particular, prosecutor has broad discretionary authority and would find it hard to treat every offender and offence alike.⁷⁴ To avoid the stigma of losing a case, prosecutors are generally discouraged from filing charges against a defendant unless the chances of convicting the defendant are very good.⁷⁵ Moreover, under the liberal interpretations of the Bill of Rights by the Supreme Court, suspects can avail themselves of various substantive and procedural protections merely by staying passive.⁷⁶ Even in instances when they are caught "red-handed," they might take full advantage of the presumption of innocence and leave the entire burden to the government to gather evidence against them, while assisted by the defense counsels who challenge the government's

⁷² Mack, *supra* note 24, at 72.

⁷³ H. RICHARD UVILLER, *VIRTUAL JUSTICE: THE FLAWED PROSECUTION OF CRIME IN AMERICA* (New Haven: Yale U. P. 1996).

⁷⁴ Mack, *supra* note 24, at 73-74.

⁷⁵ William T. Pizzi, *Understanding Prosecutorial Discretion in the United States: Comparative Criminal Procedure as an Instrument of Reform*, 54 OHIO STATE L.J. 1325, 1349 (1993).

⁷⁶ UVILLER, *supra* note 73.

collection and presentation of evidence.⁷⁷ Nevertheless, the fact that a suspect would be released if the prosecutor could not prove his or her guilt beyond a reasonable doubt should not delude us into thinking that the adversarial system is always desirable from the defendant's perspective and safeguards their rights better than an inquisitorial system does. Because factually guilty defendants are precluded from accepting responsibility for his actions during the initial stages of the process, they are likely to be subject to the various levels of discretion that could ultimately produce harsher verdicts. In addition, the failure to actively participate in a search for the truth may ironically produce results for factually innocent defendants similar to those of factually guilty defendants.⁷⁸

One would reasonably expect that Knox would similarly have been arrested and prosecuted if the murder had taken place in the United States, although it remains uncertain whether she would have been convicted. Given that Knox took the initiative to approach the police, and that she was the only other person who stayed in the apartment when the murder occurred, the police would have found her suspicious enough to detain and arrest her. Given the substantive evidence, the prosecutor would unlikely have found it a weak case and therefore would likely have charged her with murder. Should Knox had chosen to remain silent and shifted the burden to the prosecution, that substantive evidence would have been able to defeat, at least in part, her attorney's effort to defend her. Unlike in Italy, a majority verdict is required in the United States for criminal conviction, and a hung jury would lead to the release of the suspect. Hence, if only one member of the twelve-member jury panel was unconvinced that Knox committed murder, Knox would have found her freedom. If, on the other hand, the jury unanimously decided that she was guilty, then her consistent denial

⁷⁷ Mack, *supra* note 24, at 82.

⁷⁸ *Id.* at 82-83.

or, if she chose to remain silent – then her refusal to participate throughout the whole process – might very well lead the jury to read her action negatively, taking it as a sign that she did not feel remorseful for what she did. Accordingly, they would give her a harsher verdict than they would if she had cooperated.

On the other hand, one could easily imagine how events could have taken a different turn under the adversarial system in the United States. Given the substantive evidence against Knox, the police would have been hard pressed not to arrest her. Yet, because of the discretionary power given to prosecutors, there was a possibility, however slight, that the prosecutor in charge might, for multiple reasons, have let Knox off the hook. This would not likely have happened if Knox was a foreigner in the United States and lacked connection to the authorities, but more likely to happen if she was a citizen and furthermore, had certain connection to the powerful.⁷⁹ Assuming that the prosecutor decided not to press charges against Knox, then Knox would not have had to go through the court proceedings and the trial would not have taken place.

Scholars have disagreed on how the American criminal justice system should be reformed. Law Professor Raneta Lawson Mack contends that the United States should learn a lesson from Italy's reform and should retain the core values of due process and individual liberty of its criminal code, while incorporating some inquisitorial components to address the negative impacts of unbounded discretion under the adversarial system.⁸⁰ The new system, for instance, should mandate compulsory prosecution so as to expose the

⁷⁹ A recent controversy surrounded the killing of Seth Bishop in 1986, which the authorities revisited after the suspect and Seth's sister, Amy Bishop who, being denied tenure at her university where she worked, allegedly shot three of her colleagues to death in February 2010. Some critics speculated that the police did not press charges against Bishop in 1986 because her mother was on the town Board of Personnel, hence connected to powerful people. See, e.g., Gina Cobb, *More Bizarre Background for (Alleged) Multiple Murderer Amy Bishop*, THE CUTTING EDGE, Feb. 16, 2010, http://ginacobb.typepad.com/gina_cobb/crime/.

⁸⁰ Mack, *supra* note 24, at 90-94.

prosecutor's decisions to judicial scrutiny and thereby increase objectivity in the charging process.⁸¹ In addition, the judge should adopt a more active stance during the investigatory stage so as to oversee prosecutorial and police authorities. A mixed panel system composed of professional and lay jurors should be introduced so as to give the jury concrete guidance in the applicable law to yield more rational and uniform decisions.⁸² Professor H. Richard Uviller agrees with Mack by expressing skepticism of the qualification of juries in assessing testimonies.⁸³ While Uviller contemplates on remedying the inadequacies of the American system by importing features of the inquisitorial model, he warns against selectively incorporating features of an integrated, alien system that has been driven by an altogether foreign theory.⁸⁴ Professor William Pizzi also believes that the principle of separation of powers presented an obstacle to judicial review of prosecutorial discretion.⁸⁵ To ask that an American judge play an overly aggressive role raises serious separation of powers problems and changes the entire concept of what it means to be a judge in the American tradition.⁸⁶

One would imagine that the revised system proposed by Mack could potentially lead to a sounder verdict for Knox if she were tried in the United States. Given a stricter level of judicial scrutiny, the prosecutor would have been given less discretion in deciding whether to charge Knox for murder and whether Knox is well-connected would become less of an issue. The judge could, if indeed necessary, guide the prosecutors and defense attorney in reaching an equitable outcome. The obstacle to judicial review in America's long-standing tradition nevertheless might render part of the revised system unworkable. However, Mack's

⁸¹ *Id.* at 91.

⁸² *Id.* at 92-93.

⁸³ See UVILLER, *supra* note 73.

⁸⁴ *Id.* at 308-09.

⁸⁵ Pizzi, *supra* note 75, at 1351-52.

⁸⁶ *Id.* at 1353-54.

proposed of a mixed panel system of professional and lay jurors would be very helpful in this case, where the evidence against Knox, especially including the DNA and blood samples, was outcome determinative but was one major cause of controversy. When the use of DNA as evidence was first introduced in the early 1990s, arguments were already made that scientific proof would in some instances assume a posture of mystic infallibility in the eyes of a jury of laymen who are unlikely to second guess opinions of experts testifying about DNA test results.⁸⁷ A recent study confirmed such a suspicion, showing that the less people understand complex DNA technology, the more they are likely to over-rely on such evidence and ignore the possibility of laboratory errors, which accordingly lead to false convictions.⁸⁸ Hence, a mixed panel system, with its share of professional jurors, would give the lay jurors more concrete guidance in applying the law and decide whether or not the evidence could prove that defendant is guilty beyond a reasonable doubt. Regardless of whether they reach a unanimous verdict in the end, and whether Knox got convicted, the outcome would likely be more equitable.

Conclusion: Don't Do as the Perugians (Romans) Did

This paper has studied the trial of Knox with the help of Beitz's human rights model to illuminate why, given the legitimacy of the Italian Court's actions, the United States and international organizations should not intervene in its decision regarding Knox. Knox's trial and its controversy might have incited fear in Americans and foreigners who still

⁸⁷ See, e.g., *United States v. Jakobetz*, 955 F.2d 786, 796 (2d Cir. 1992); *United States v. Baller*, 519 F.2d 463, 466 (4th Cir.), cert. denied, 423 U.S. 1019 (1975); *United States v. Addison*, 498 F.2d 741, 744 (D.C. Cir. 1974).

⁸⁸ Ananya Mandal, *DNA Evidence Often Overwhelms Jurors to Convict Wrongly Says Research*, THE MEDICAL NEWS, Mar. 29 2010, <http://www.news-medical.net/news/20100329/DNA-evidence-often-overwhelms-jurors-to-convict-wrongly-says-research.aspx>. This is known as "the white coat syndrome," meaning that laymen are often overwhelmed by the presence of an expert and that jurors may place more importance to these DNA evidence than necessary.

believe that this young woman received a more ready punishment than she probably would have if she were tried in the United States. Hence, Law Professor Maureen Howard gave the sound and age-old advice that students who are going to study abroad should acquaint themselves with the laws and customs of the new countries and schools should also educate them for this purpose. As the saying goes, “When in Rome, do as the Romans do.”

Yet, the laws of Rome do not stay unchanged and unchallenged, and as this paper has made use of Knox’s case to invite a more critical look at the toleration theories cited in Beitz’ model. Howard’s opening statement risks tempting the reader to take a somewhat regressive stance that is reminiscent of the dichotomizing tendencies in the toleration theories presuming that states remain static and pitching superior, tolerating “liberal” against inferior, tolerated “nonliberal” states. This paper has shown that Knox’s case and its controversy urge readers to review not only the changes to the Italian criminal code in the past years, but also the current American criminal justice system. While it is ethnocentric to blindly criticize foreign laws without appreciating their cultures and ideologies, what Maureen calls the “global reality” should inspire countries to introspectively review their own legal systems and reform them. To shield themselves from prosecution, people must follow the laws of foreign countries when they are abroad. Nevertheless, one only hopes that old, insufficient laws will continue to be replaced and better legal systems will evolve. Hence, when in Rome or Perugia, one needs not and cannot follow what the Romans or Perugians once did and did wrongly.