

Department of Government  
Dartmouth College  
Winter 2011  
M, W, F: 1:45 to 2:50.  
Th. (X-Hour): 1:00 to 1:50.

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Office Hours: Friday 9 to 11.

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### **Government 86.26: Great Trials in History and in Literature**

**Description:** We shall be studying the most famous courtroom dramas in world history: the trials of Socrates, Jesus, Joan of Arc, Thomas More, Galileo, Oscar Wilde and John Scopes. We shall be comparing the historical account and a literary account of each trial: do we find truth best in history or in literature? Each of these trials raises profound questions about the relationship between law and justice. Why are these most famous trials also the most infamous? In every case, someone widely regarded as innocent was convicted. Do law and legal procedures promote justice? Or is law just another tool used by the powerful to suppress the weak?

**Aims:** 1) To gain a deeper understanding of law and justice by examining the most famous trials in history; 2) To explore the relationship between history and literature; 3) To develop effective writing skills by learning to analyze and to interpret complex historical and literary texts; 4) To learn how to make effective oral presentations in class.

**Requirements:** 1) Students are required to attend all seminar meetings. 2) Students are required to read all of the assigned texts in advance of the date listed on the syllabus. 3) Students are required to write one 20-25 page essay which will be based on two shorter 8-10 page essays, each of which will be revised. The first essay will compare the historical and the literary account of one trial; the second essay will compare the historical and literary account of a second trial; the final essay will compare the relation of law to justice in both of these trials. All the writing in the course, therefore, builds toward the final term paper. 4) Students are required to make three oral presentations: one on a historical account of a trial; one on a literary account of a trial; and a final power-point presentation on your term paper. 5) Students are required to participate in our in-class mock-trial debates. The shorter papers are each worth 15% of the grade, each oral presentation is worth 10%, the longer final paper is worth 30%, and class participation is worth 10%.

**Required Texts:** All course readings are posted on Blackboard under Course Documents.

## Great Trials in History and in Literature: What Does Law Have to do With Justice?

### *Course Rationale*

One of the most enduring, and most paradoxical, of questions, is whether law promotes justice. Do legal rules reliably conform to the principles of justice? Or are laws often blatantly immoral and unjust? Do legal procedures reliably ensure that each of us gets what we deserve? Or are legal procedures simply a game to be manipulated by the powerful? Does the rule of law keep politics out of the courtroom? Or is a court of law just another venue for political and religious controversy? These are the central questions of philosophical jurisprudence from Plato to the Legal Realists. I propose to dramatize these questions and make them come alive in the minds of my students by studying some of the great trials in Western history, from the trial of Socrates to the Moscow Show Trials. Anyone familiar with these world-famous legal proceedings cannot help but to be haunted by the fact that time and again, dramatic displays of legal machinery often produced equally dramatic displays of profound injustice. Just think of the docket of defendants whom we now believe to have been unjustly condemned by these famous tribunals: Socrates, Jesus, Joan of Arc, Galileo, Thomas More, Oscar Wilde, Salem Witches, Dreyfus, Scopes, Sacco and Vanzetti, and Bukharin. A fundamental moral principle in Western jurisprudence is that it is worse for one innocent person to be punished than for one hundred guilty people to go unpunished. Thus, by its own highest moral standard, these trials reveal a truly fundamental moral failure in our legal tradition.

Why are the most famous trials in history also the most infamous? Why are these celebrated legal proceedings so notorious for their injustice? True, in some cases these defendants are famous because they were unjustly condemned, but in most cases they were famous before being tried. Moreover, these trials were conducted in nations famous for the excellence of their legal systems and for their genuine commitment to the rule of law. Many of these proceedings have inspired major works of literary fiction, giving these historical dramas even more power in the form of dramatic fiction. Every one of these fictional versions is focused on the paradox that amidst all the trappings of law we find appalling injustice. Since we have independent records of the proceedings in these trials, it becomes irresistible to compare those proceedings with the fictional account. How historically accurate are these fictional accounts? Do these literary “trials” capture the underlying truth and justice of these cases better than the actual trials? Can fiction vindicate those who are unjustly condemned?

What is the relation of law to justice? On the one hand, law and justice seem as inseparable as two sides of one coin: after all, we call our courts of law “courts of justice.” All officers of our courts must swear an oath to “uphold the law” and to “do justice.” And yet, as long as there has been law, there has been doubt about whether law reliably brings about justice. Plato argued in the dialogue *Statesman* that written law is rigid and usually out of date; he said that written law almost never actually captures the complexity of particular conflicts and problems. Thus, we use drug possession laws to prosecute those who use marijuana for medicinal purposes. Justice in particular cases, he says, is much more likely to come from the rule of unfettered intelligence than from the rule of law. Plato compares justice to medicine and

asks us: would you prefer your doctor to treat you according to a rule-book of medical laws or to treat you according to his professional expertise? Plato's ideal of the wise judge, customizing justice to fit perfectly each individual case, unfettered by law, is very attractive: if we could find such wise and impartial judges! Indeed, the most famous example in history of a just decision, the Judgment of Solomon, was an exercise of wisdom completely unfettered by law. The ancient Roman lawyers neatly formulated these Platonic doubts about the justice of law in their maxim summum ius, summa injuria: when matters are most legal, justice is least likely. Louis Brandeis reportedly said to Justice Oliver Wendell Holmes, Jr.: "Do Justice!" But Holmes replied "That's not my job. I am here to uphold the law!"

Nowhere is the clash between the rule of law and the ideal of individual justice more dramatic than in the transcripts and records of the great trials of history. In virtually all of these trials, unlike the Judgment of Solomon, we find an elaborate parade of legal argument, a complex machinery of legal procedure, and a cast of characters sincerely devoted to upholding the law – all working to produce, usually, a profound injustice. Of course, what these famous trials tell us about the relation of law to justice in general is not obvious and will be a central part of our discussion. Just because law failed to produce justice in these cases, does not prove that law fails to produce justice in general. Perhaps the very notoriety of these defendants inevitably turned these proceedings into a bitter political contest. Perhaps those who prosecuted these controversial defendants were determined to punish them no matter what. Perhaps every famous trial is a show trial? But another way to look at these trials is less comforting: perhaps only in these famous trials do ordinary legal proceedings become subject to scrutiny. Perhaps these abuses are common but usually well hidden? Or perhaps the legal officials were on especially good behavior because of the fame of the defendants; perhaps in trials subject to much less scrutiny the conduct of legal officials is actually much worse? These questions will always haunt the discussion of these famous trials and this course.

In designing this course, I seek to explore the question of law and justice by having students wrestle with the relation between two narratives: the narrative of the trial in history and the literary narrative about the trial. We will soon discover that the trial transcript or record and the literary text are both interpretations of the underlying historical reality. Every lawyer knows that the rules of legal procedure and evidence mean that courts do not and cannot attempt to capture the full reality of the dispute before them: they filter that messy reality through the mesh of legal rules and adversarial stratagem. The writers of literary interpretations of these trials are freer to capture the underlying historical truth than are the recorders of the trials. So the question of whether truth is found in literature or trial transcript will be at the center of both student writing and research. Every week, students will read (selections) from the trial transcripts and the corresponding literary trial. We will discuss the issues of law and justice in relation to both texts and students will compare the relationship of history to literature in two trials and present what they find to the whole class.

Because of the nature of these world-historical defendants and prosecutors, each of these trials raises a wealth of important ethical, ideological, political, and often religious questions. I have selected a range of trials, not in the attempt to cover all the terrain, but to include an array of

perspectives on our fundamental questions about the relation of law to justice. In every one of these trials we find a mix of political, religious, ideological, and legal motives – but the mix varies widely. In I believe that students will engage these fundamental questions more passionately in the context of these gripping historical dramas than in my usual political theory courses. But teaching these trials to undergraduates has been very difficult until recently because the original trial records have not been widely available in English to our students. But now Doug Linder has posted almost all the crucial primary materials:

<http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm>

Here students will find the transcripts and records for more than 50 famous trials in history.

## SCHEDULE

- January 5:**           **Law and Justice: How are They Related?**
- 7:                   **Law and Justice (cont.)**
- 10:                  **Trial of Socrates (1): Background and Plato’s Euthyphro and Apology.**
- 12:                  **Trial of Socrates (2): Plato’s Crito and Phaedo.**
- 14:                  **Trial of Socrates (3): Aristophanes: The Clouds.**
- 17:                  **Class Canceled: Martin Luther King Holiday.**
- 19:                  **Trial of Socrates (4): Mock Trial.**
- 20: (Th. X-Hour, 1 PM) **Trial of Jesus (1): Background and Gospel Accounts.**
- 21:                  **Trial of Jesus (2): Endo’s “Life of Jesus”.**
- 24:                  **Trial of Jesus (3): Mock Trial.**
- Draft First Essay Due in Class.*
- 26:                  **Trial of Joan of Arc (1): Background and Court Transcript.**
- 28:                  **Trial of Joan of Arc (2): Anouilh “The Lark”**
- 31:                  **Trial of Joan of Arc (3): Shaw “St. Joan”.**
- February 2:**       **Trial of Joan of Arc (4): Mock Trial.**
- 4:                   **Trial of Thomas More (1): Background and Transcripts.**
- 7:                   **Trial of Thomas More (2): “A Man for All Seasons”.**
- 9:                   **Trial of Thomas More (3): Mock Trial.**
- 10 (X-Hour): **Trial of Galileo (1) Background and Transcript.**
- 11:                  **Class Cancelled: Winter Carnival.**

- 14: Trial of Galileo (2): Brecht “Life of Galileo”.**
- 16: Trial of Galileo (3): Mock Trial.**
- Draft Second Essay Due in Class.*
- 18: Trial of Oscar Wilde (1): Background and Transcripts.**
- 21: Trial of Oscar Wilde (2): “Gross Indecency”.**
- 23: Trial of Oscar Wilde (3): Mock Trial.**
- 24 (X-Hour): Trial of John Scopes (1) Background and Transcripts.**
- 25: Trial of John Scopes (2): Inherit the Wind.**
- 28: Trial of John Scopes (3): Mock Trial.**
- March 2, 3, 4, 7, 9: Student Powerpoint Presentations.**
- 11: *Final Term Papers Due in 211 Silsby at noon.***