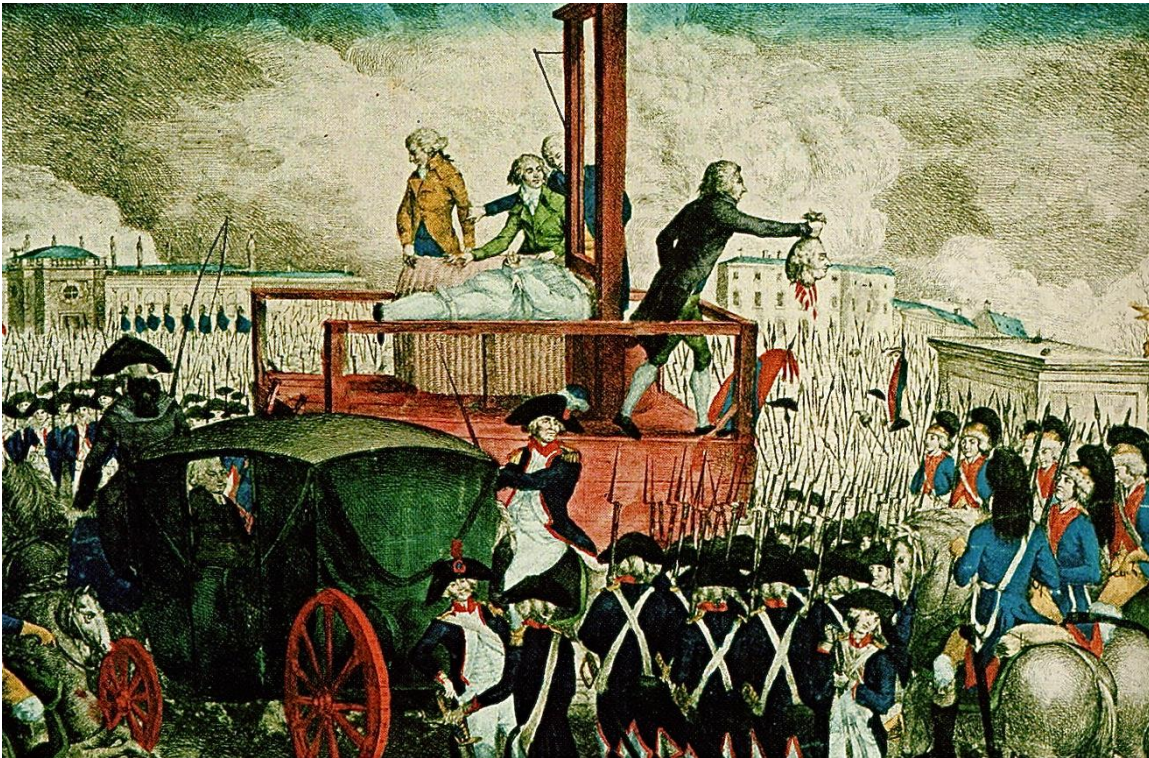


Spring Term 2014
M W (F) at 11:00
Office Hours: Tuesdays 2-4

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Ethical Reasoning 12* **Political Justice and Political Trials**



When do we punish political activity or political ideas? The terms political justice and political trials usually suggest that laws are passed or enforced for the sake of power but not really for the sake of justice. In political trials prosecutors often claim that the defendants' adherence to one or another set of political loyalties has produced criminal behavior. As citizens of a democracy, we tend to condemn "political trials," but we don't always agree on whether a trial or a punishment is political. (A recent example: the trial of Saddam Hussein.) What exactly constitutes political justice? What is its relation to "justice" without an adjective?

More questions emerge: Americans claim to abhor political justice, but are we always prepared to do without it? In peacetime, are there any political beliefs so outrageous that their propagation should be prosecuted? It is it ever legitimate to punish citizens for opposing those in power? When does political "necessity" justify using arbitrary power?

* This course, taken for a letter grade, counts for credit as a History Department course.

Do moments of national emergency and danger “justify” exceptional procedures? And when can those who have claimed this justification themselves be lawfully punished? And by whom? Just the authorities in the state they ruled, or others acting on behalf of international principles? Is it sometimes better to forswear punishing earlier abuses of power to assure peaceful politics in the future? Can societies live by rules for deciding these questions that are not dependent on which side wins or loses?

The term “trials” is used loosely here; we look in some cases at hearings and debates that are not formal trials. The essential element is that one man or woman (or sometimes a group of alleged conspirators) is selected and judged in order to establish what political activity is acceptable and what is not, and often by implication what ideas are or are not acceptable. The exercise is designed to teach a lesson. The lesson need not be designed only to punish or to instill fear. Sometimes, more hopefully, it is intended to move a community beyond conflict and atrocity, or to help in reconciliation. In this course we ask what the lessons are and how they are taught.

There is a dramaturgic element to the trial that extends beyond the case at hand. Principles are established on the basis of a single encounter. But trials are blunt instruments. For they seek not only to establish a general type of behavior, that is to demonstrate or establish what the law is; they must also determine the responsibility of the defendant for transgressing the rule and the punishment that is merited in an individual case. Establishing the degree of guilt and the appropriate level of punishment or amends is crucial.

Trials are political in part because they are embedded in historical struggles for power and legitimacy, and this course studies them in their historical context.. We reflect on the ways in which the judicial or courtroom narrative relates to the historical narrative. The course examines one of the two most famous political trials of Antiquity (the other being the brief trial of Jesus); revolutionary justice in the French Revolution; a court martial in the Third Republic that exposed underlying ideological divisions; an investigation and parliamentary debate that tested the premises of British imperialism; a Stalinist show trial; post-World War II trials that tested the rights of victors to pass judgment, the responsibilities of groups and individuals for aggression and genocide, and the claims of victims to pass judgment. We consider American difficulties in separating dissent from subversion during the Cold War. We also examine recent efforts, on the one hand, to render justice to victims without criminal prosecution, and, on the other hand, to prosecute human rights abuses by international tribunals.

The lectures will provide needed historical background, so that students who enroll can work through the moral, legal, and political stakes involved. Sections will be devoted to examination of the trials themselves. Readings include trial transcripts or related arguments of the time – most gathered into a source book or on-line -- as well as selected books and articles that explore historical background and theoretical problems.

Written work will comprise six “briefs” or arguments (two-to-three pages) of your choice from the twelve section assignments. We will set a question each week, so students need

to choose half of them, completing at least three by the spring vacation that follows section VII, or in the case of seniors writing a thesis, completing at least two. Students will also research and write one long paper (about 15 pages) on a subject of their choice worked out with the teaching assistant or with me and due in reading period. Finally, students will work in teams to participate in a mock trial at the end of classes. Course grades will be based on these four elements with the large paper contributing about 40-50 percent of the grade, the written briefs about 20-25 percent, and oral participation 25-40 percent. We reserve the right to vary the weighting so as to reward particularly strong components.

Sections will begin the second week of term., but there will be a discussion of the trial of Socrates in the lecture room Friday, January 31, for those students who believe they may enroll in the course.

CLASS SCHEDULE AND READINGS

Mon. Jan 27: *From Socrates to Snowden: When is a trial political? What purposes does it serve?*

Wed. Jan 29: *Sophocles' Antigone vs. Creon; Socrates vs. the Athenian democracy;*

Fri. Jan 31: Discussion in Class (pre-sectioning) : *The trial of Socrates*

Reading I: Plato: The Trial and Death of Socrates (Internet Link to 1888 edition via Hollis: read the "Apology" and the "Crito.")

Mon. Feb. 3: *Beheading Kings: Charles I, 1649, and Louis XVI, 1793*

Wed. Feb.5: *Premises of Revolutionary Terror*

Reading II:

Sourcebook (1) Selections from Michael Walzer, ed., Regicide and Revolution: Speeches at the Trial of Louis XVI (Cambridge UP, 1974).

Sourcebook (2) Speeches by Robespierre, from Richard Bienvenu, ed., The Ninth of Thermidor: The Fall of Robespierre (Oxford UP, 1966).

Jean Jacques Rousseau, The Social Contract., Book I, chapters , I, V-VIII and Book II, chapters III-VIII Available at <http://beta.nlx.com.ezp-prod1.hul.harvard.edu/xtf/view?docId=political/political.07.xml;chunk.id=political.1.34;toc.id=political.34;brand=default>.

Mon. Feb. 10: *Criminalizing Dissent: The laws of sedition and libel*

Wed. Feb. 12: *Justice or Reason of State: The Dreyfus Affair*



Reading III: Michael Burns, France and the Dreyfus Affair: a Documentary History (Boston: Bedford/St. Martins, 1999).

Mon. Feb. 17: President's Day Holiday

Wed. Feb. 19: *Defending Empire and the Acceptable Limits of Violence*

Reading IV: "The Hunter Report": Parliamentary Papers, 1920, (Commons).vol. 14 (Reports vol. 6), Cmd. 681, "Report of the Committee Appointed by the Government of India to Investigate the Disturbances in the Punjab, etc."
Available at durable URL

<http://parlipapers.chadwyck.com.ezp-prod1.hul.harvard.edu>

Sourcebook (3): "Hansard," 5th ser. (Commons), cxxxi, (Selections from the House of Commons debate of July 8, 1920.)

Mon. Feb.24: *Communist Russia and Stalin's Purges*

Wed. Feb. 26: *On the Wrong Side of History? Bukharin's 'Crime' and Trial*

Reading V:

Sourcebook (4): Selections from The Great Purge Trial, Robert Tucker and Stephen Cohen, eds. (New York, Grosset & Dunlap, 1965).

Sourcebook (5): Maurice Merleau-Ponty, Humanism and Terror: An Essay on the Communist Problem, John O'Neill, trans, (Boston: Beacon Press, 1969)



March 3: *Victors' Justice? Reclaiming International Law? Negotiating Nuremberg*

March 5: *Trying Wars of Aggression and the Issue of Retroactive Justice*

Reading VI:

Sourcebook (6): Trial of the Major War Criminals before the International Military Tribunal, Robert Murphy's opening and closing statements from vol II, pp. 29-155 and vol. XIX, 369-89, 395-432.

Sourcebook (7) A. N. Trainin, Hitlerite Responsibility under Criminal Law (London 1945), selections.

Gary Bass, Stay the Hand of Vengeance: The Politics of War Crimes Tribunals (Princeton: Princeton University Press, 2000), pp. 147-205. Coop and Library Reserve.

March 10: *Dilemmas of Retribution: Punishing Collaborators after World War II*

March 12: *Should Israel have Tried Adolf Eichmann?*

Reading VII:

Sourcebook (8): Israeli Ministry of Justice, ed., Selections from The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem (Jerusalem, 1992).

March 24: *Reporting on Trials; thinking about Injustice: Hannah Arendt's Confrontation with the Twentieth Century*

March 26: *Universal Jurisdiction versus International Tribunals*

Reading VIII:

Hannah Arendt, Eichmann in Jerusalem: A Report on the Banality of Evil (Viking, 1963, or Penguin PB 1977, 1994) chaps. I-VIII, XII-Epilogue.

Sourcebook (9): Gershom Sholem, "On Eichmann," with Letter to Hannah Arendt, in On Jews and Judaism in Crisis (New York: Schocken Books, 1976), pp. 298-306.

March 31: *Chambers, Hiss, and McCarthy: the Trauma of American Communism*

April 2: *American Trials, Security Hearings, and Loyalty Oaths*



Reading IX:

Kai Bird and Martin J. Sherwin, American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer (Random House, 2005, Vintage PB, 2006), pp. 195-204, 215-248, 350-560;

OR Ray Monk, Inside the Centre: The Life of J. Robert Oppenheimer (Jonathan Cape 2012).

Sourcebook (10): Stanley I. Kutler: The American Inquisition: Justice and Injustice in the Cold War (NY: Hill and Wang, 1982), chap. 7 = pp. 183-214.

April 7: *Trials after Communism: Border Guards and Stasi Collaboration:*

April 9: *Truth and Reconciliation Commissions and "Restorative Justice: South Africa, Rwanda, Latin America*

Reading X:

Robert Rotberg and Dennis Thompson, eds. Truth v. Justice: The Morality of Truth Commissions (Princeton: Princeton UP, 2000), chaps. I-II, X-XI, XIII-XIV = pp. 3-44, 122-40, 189-210, 261-94.

Martha Minow, Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence (Boston: Beacon Press, 1998), chaps. 3-4, 6 = pp. 25-90, 118-47.

Mark A. Drumbl, "Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda," New York University Law Review, vol. 75, nr. 5 (Nov. 2000), 1221-1326; but you need read only 1221-1292. Available at <http://www.law.nyu.edu/journals/lawreview/issues/vol75/no5/nyu503.pdf>

April 14: *Issues in the War on Terror.*

April 16: *Nuremberg Vindicated? The Hague Tribunal*



Reading XI:

Jack Goldsmith, The Terror Presidency: Law and Judgment inside the Bush Administration (New York: Norton, 2007).

“Boumediene v. Bush” decision, June 12, 2008. Cornell University Legal Information Institute Syllabus, Kennedy and Souter opinions, Roberts and Scalia dissents at <http://www.law.cornell.edu/supct/html/06-1195.ZS.html>.

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April 21: *Dilemmas: Should we punish Hate Speech and Holocaust Denial?*

April 23: *Dilemmas: Should we Forget or Remember? Trading Civil Peace for Justice*

Reading XII:

Gary Bass, Stay the Hand of Vengeance, pp. 206-330.

April 28 and 30: *Course Conclusions*.

BOOKS ORDERED FOR PURCHASE.

Except for the source book, no book is required to be purchased, but the Coop should have ordered copies of those listed below. They are all on library reserve as well.

Hannah Arendt, *Eichmann in Jerusalem* (Penguin PB).

Gary Bass, *Stay the Hand of Vengeance*. (Princeton PB).

Kai Bird and Martin J. Sherwin, *American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer* (Vintage PB).

Michael Burns, *France and the Dreyfus Affair: A Documentary History* (Boston: Bedford/St Martin's, 1999).

Jack Goldsmith, *The Terror Presidency: Law and Judgment inside the Bush Administration* (Norton).

Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998)

Robert Rotberg and Dennis Thompson, *Truth vs. Justice: The Morality of Truth Commissions* (Princeton PB).