

# LAW & LITERATURE

Spring 2007 • George Washington University Law School

Professor Daniel Solove

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## Course Description

This course will explore the intersection between law and literature. Literature is important for understanding law because it teaches a certain way of thinking -- one that is synthetic, creative, and comfortable with ambiguity and ambivalence. Each class will explore one or more interrelated topics through a variety of literary and philosophical works of short to moderate length. Readings will include works by Melville, Shakespeare, Kafka, Glaspell, Morrison, Capote, Garcia Marquez, and others. Topics will include: formalism; the paradoxes of equity; narrative, storytelling, and framing; custom, law and the political order; law, society, and power; interpretation, authority, and legitimacy; punishment, retribution, and redemption; and others. This course will provide an opportunity to think about the law in a new way, to read engaging works of fiction and non-fiction, and to examine the law from a humanistic and philosophical perspective.

### I. INTRODUCTION

- A. What Can Literature Teach Us About Law? (Class 1)

### II: THE RULE OF LAW vs. EQUITY

- A. *Billy Budd* and the Tragedy of Formalism (Classes 2 and 3)
- B. Judging and Responsibility: Fuller's *Speluncean Explorers* and Glaspell's *A Jury of Her Peers* (Classes 4 and 5)
- C. Shakespeare's *The Merchant of Venice* and the Paradoxes of Equity (Classes 6 and 7)
- D. Generality and Particularity (Class 8)

### III: INTERPRETATION

- A. Legal Interpretation: Objectivity and Authority (Class 9)
- B. Interpretation and Authority in Kafka's *The Trial* (Classes 10 and 11)
- C. The Power and Limits of Words and Rules (Classes 12 and 13)
- D. Rhetoric and Candor in Legal Analysis: An Examination of Benjamin Cardozo (Class 14)

### IV: NORMS

- A. Norms and Narrative in Garcia Marquez's *Chronicle of a Death Foretold* (Class 15)
- B. Customs, Norms, and Law: Jackson's *Lottery* and LeGuin's *Omelas* (Class 16)
- C. Morrison's *The Bluest Eye* and the Limits of Law (Class 17)

### V: NARRATIVE

- A. The Power of Narrative: Durrenmatt's *Traps*, Dr. Death, and Dershowitz (Classes 18 and 19)
- B. The Art of the Trial: *Anatomy of a Murder* (Classes 20, 21, and 22)
- C. Capote's True Crime Narrative: *In Cold Blood* (Class 23)

### VI. MORALITY

- A. Law and Morality in Sophocles' *Antigone* (Class 24)

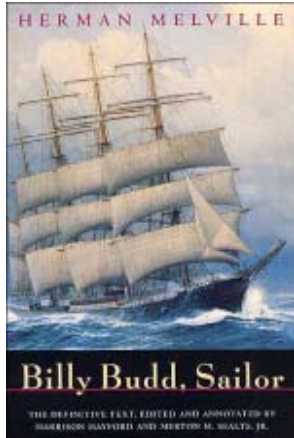
### VII: CONCLUSION

- A. What Can Literature Teach Us About Law? The Question Revisited (Class 25)

<b>CLASS #</b>	<b>DATE</b>
1	M Jan 8
2	W Jan 10
MLK DAY	M Jan 15
3	W Jan 17
4	M Jan 22
5	W Jan 24
6	M Jan 29
7	W Jan 31
8	M Feb 5
9	W Feb 7
10	M Feb 12
11	W Feb 14
PRESIDENT'S DAY	M Feb 19
12	W Feb 21
13	M Feb 26
14	W Feb 28
SPRING BREAK	M Mar 5
SPRING BREAK	W Mar 7
15	M Mar 12
16	W Mar 14
17	M Mar 19
18	W Mar 21
19	M Mar 26
20	W Mar 28
21	M Apr 2
22	W Apr 4
23	M Apr 9
24	W Apr 11
25	M Apr 16
<b>Long Essays Due</b>	W Apr 18 before 4 PM

## Readings

**Readings:** I have tried to keep the amount of reading manageable. There will be some weeks with long reading assignments, and I have tried to avoid putting these weeks back-to-back. If you plan ahead, your weekly reading load will be balanced. Many of the readings are contained in the reading packet. The others, to be purchased separately, are:



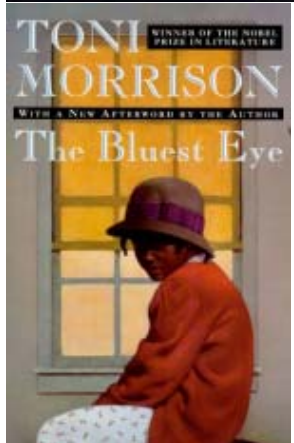
**Herman Melville  
BILLY BUDD**

Harrison Hayford &  
Merton Sealts, eds.

U. Chicago Press

ISBN 0226321320

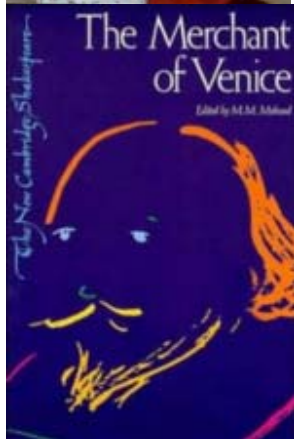
*Be sure to get the Hayford  
& Sealts edition.*



**Toni Morrison  
THE BLUEST EYE**

Penguin Books edition

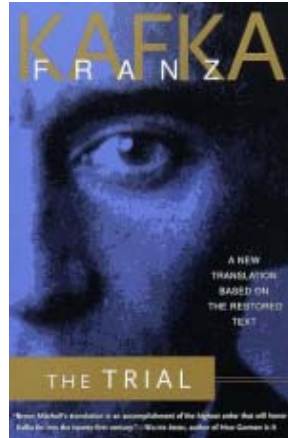
ISBN 0452282195



**William Shakespeare  
THE MERCHANT OF  
VENICE**

Cambridge Univ. Press  
edition

ISBN 0521532515

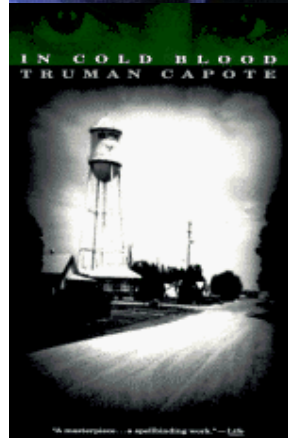


**Franz Kafka  
THE TRIAL**

Breon Mitchell trans.  
Schocken Books edition

ISBN 0805209999

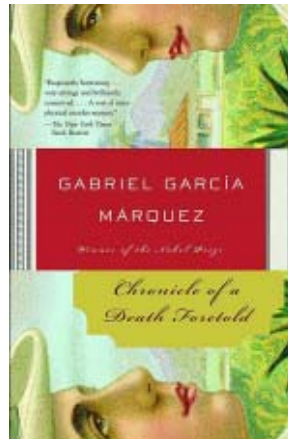
*Be sure to get the Breon  
Mitchell translation.*



**Truman Capote  
IN COLD BLOOD**

Vintage Books edition

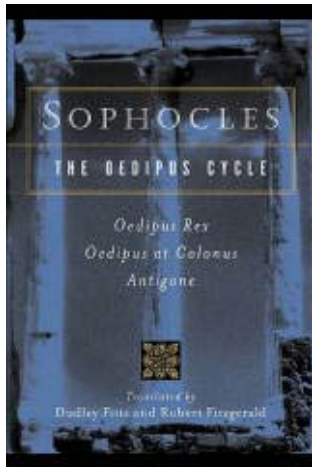
ISBN 0679745580



**Gabriel Garcia  
Marquez  
CHRONICLE OF A  
DEATH FORETOLD**

Vintage edition

ISBN 140003471X



**Sophocles**  
***Antigone***  
**(in THE OEDIPUS**  
**CYCLE)**

Dudley Fitts & Robert  
Fitzgerald trans.  
(Harvest Book edition)

ISBN 015602764X

**Recommended Readings:** I have listed extensive recommended further readings for each theme. I certainly do not expect you to read them during the semester. Rather, I include them with the hope that this course is merely a beginning of a life-long encounter with great works of literature and philosophy.

### **Workload and Grading**

***Class Participation:*** This seminar depends upon your careful reading of the texts and your willingness to participate. You will be expected to participate in class discussion. 20% of your grade will be based on class participation.

***Short Essays:*** During the course of the semester, you will turn in 2 short essays, each not to exceed 1000 words (the word count excludes citations, which should be in footnotes). This translates to roughly 3 double-spaced pages in Times Roman font (there are about 300 words per page in this format). These will be based on class readings for a particular class, and must be turned in two days prior to that class. Please note that these essays will be circulated to the class. Each of these essays will be worth 10% of your grade.

***Long Essays:*** At the end of the semester, you will turn in 2 longer essays, each to be between 1500 and 1800 words in length (the word count excludes citations, which should be in footnotes). This translates to roughly 5-6 double-spaced pages in Times Roman font (there are about 300 words per page in this format). Each essay should explore your thoughts, reactions, and ideas from the readings and the class discussions. Essays should focus on the class readings. Essays should have a thesis and should develop that thesis by delving into the assigned texts and discussing them in detail. These essays will not be circulated to the class. Each of the essays will be worth 30% of your grade.

All together, the amount of writing you will do for the class is approximately 6500 to 7400 words, translating to about 20 to 25 pages.

# I. INTRODUCTION

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## A. WHAT CAN LITERATURE TEACH US ABOUT LAW?

### **Class 1: Introduction**

The field of law and literature has often been divided into two areas – “law-in-literature” and “law-as-literature.” Law-in-literature focuses on the depiction of law and jurisprudential questions in works of literature. What insights can works of literature contribute to the study of law? In what ways does literature enhance our understanding of the law? How does literature contribute to how we grapple with the larger jurisprudential issues in the law?

Law-as-literature examines legal opinions and arguments from a literary lens – as works of literature. What similarities does law share with literature? How does focusing on the construction of narratives by lawyers and judges contribute to our understanding of the law? What role do rhetoric and style play in the crafting of judicial opinions?

### **Class 1: Readings**

**Adam Liptak, *Next on the Syllabus, Romeo v. Juliet*, N.Y. TIMES (Oct. 30, 2002)**

**Daniel J. Kornstein, *The Law and Literature*, 66 N.Y. State Bar Journal 34 (May/June 1994)**

**BENJAMIN CARDOZO, LAW AND LITERATURE (1925) (excerpt)**

**Ronald Dworkin, *How Law Is Like Literature*, in A MATTER OF PRINCIPLE (1985)**

## II. THE RULE OF LAW vs. EQUITY

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### A. MELVILLE'S *BILLY BUDD* AND THE TRAGEDY OF FORMALISM

#### Class 2: Melville's *Billy Budd*

It is often said that we live in a society governed by the rule of law rather than the passions and whims of particular individuals. What does the rule of law mean? What should be done when the application of a law to a particular case leads to injustice?

Formalism is a highly deductive approach to legal reasoning that understands the legitimacy of law to reside in the fixed immutable meaning of legal rules. Formalists attempt to adhere strictly to the letter of the law, even if the outcome in a particular case seems unwise or unjust. In contrast to a strict adherence to the letter of the law, equity involves making special exceptions in the law for unique cases and molding the law to reach just outcomes.

The excerpts from Daniel Solove and Paul Kahn provide a brief historical and theoretical background about formalism and the rule of law.

Herman Melville's *Billy Budd*, published posthumously in 1924, explores the relationship between the letter of the law and equity. As you read the book, think about how Captain Vere describes the dichotomy between the rule of law and "moral scruple." Does this dichotomy necessarily have to exist in the case of Billy Budd? Does Vere really adhere to the rule of law or do his passions infect his judgment?

Read Chapter 21 twice. It is very important and will be one of the focal points of our discussion. Also consider why Melville discusses the surgeon's thoughts about how Vere should have proceeded in the matter of Billy Budd (Chapter 20)? Why does the narrator go into the digression about hidden madness in Chapter 11?

#### Class 2: Readings

**Daniel J. Solove, *The Darkest Domain: Deference, Judicial Review, and the Bill of Rights*, 84 Iowa L. Rev. 941 (1999) (excerpt)**

**PAUL W. KAHN, *THE REIGN OF LAW* (1997) (excerpt)**

**HERMAN MELVILLE, *BILLY BUDD, SAILOR* (Harrison Hayford & Merton M. Sealts, Jr. eds. 1962) (originally published in 1924)**

**Class 3: Melville's *Billy Budd***

For this class, I have provided excerpts of secondary works interpreting *Billy Budd*. Robert Cover argues that *Billy Budd* is an allegory for how Melville's father-in-law, Chief Justice Lemuel Shaw of the Massachusetts Supreme Court, interpreted the Fugitive Slave Act. Steven Winter provides more historical background. Finally, Daniel Solove examines how *Billy Budd* addresses similar issues of security in times of crisis that we are facing today.

**Class 3: Readings**

ROBERT COVER, *Of Creon and Captain Vere, in JUSTICE ACCUSED* (1975) (excerpt)

Steven L. Winter, *Melville, Slavery, and the Failure of the Judicial Process*,  
26 *Cardozo L. Rev.* 2471 (2005) (excerpt)

Daniel J. Solove, *Melville's Billy Budd and Security in Times of Crisis*,  
26 *Cardozo L. Rev.* 2443 (2005) (excerpt)

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**B. JUDGING AND RESPONSIBILITY IN FULLER'S *SPELUNCEAN EXPLORERS* AND GLASPELL'S *A JURY OF HER PEERS***

**Class 4: Fuller's *Speluncean Explorers***

Judging involves making hard choices and taking responsibility for them. Part of judging requires one to recognize the range of available choices, a skill that involves imagination and creativity.

Fuller's *The Case of the Speluncean Explorers* presents an interesting fictional case, based loosely on the actual case of *The Queen v. Dudley & Stephens*, 14 Q.B.D. 273 (1884). The opinions in *Speluncean Explorers* illustrate various jurisprudential approaches to grappling with applying a strict rule of law to a unique and compelling situation. Think about the ways in which the situation in the *Speluncean Explorers* is related to that in *Billy Budd*. Are there creative ways available to reconcile the rule of law with doing justice in this particular case? Think about how the justices in the *Speluncean Explorers* approach the issue. Which judge's opinion strikes you as most compelling? How would you decide the case?

Do you think that Judge Tatting did the right thing by withdrawing and not reaching a decision? Note that his choice not to decide resulted in the court's affirming the convictions of the defendants. In other words, his choice has effects. In light of the consequences of his choice not to decide, is his choice a responsible one?

Next, consider Paul Butler's fictional opinion resolving the issue from a radically different perspective. What is the opinion's view of the rule of law? What role does the opinion argue the jury should have played in this case?

**Class 4: Readings**

**Lon L. Fuller, *The Case of the Speluncean Explorers*, 62 Harv. L. Rev. 616 (1949)**

**Paul Butler, *The Case of the Speluncean Explorers Revisited*, 112 Harv. L. Rev. 1917 (1999)**

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**Class 5: Glaspell's *A Jury of Her Peers***

Turning to juries, consider Susan Glaspell's story, *A Jury of Her Peers*. What if the legal system cannot reach a just outcome? Is it appropriate to circumvent the legal system? Compare the women's approach toward judging in *A Jury of Her Peers* to that in the opinions in the *Speluncean Explorers* and Butler's essay. How is the women's approach different/similar? Is Minnie viewed by the women in *A Jury of Her Peers* as a Billy Budd figure? In other words, do Mrs. Hale and Mrs. Peters protect Minnie because they think she is innocent? If not, why?

The excerpted secondary commentary on *A Jury of Her Peers* provides useful background and insights. Finally, the Mundy article explores the benefits and costs of attempting to solve a difficult problem (domestic violence) with a rigid rule-bound solution.

**Class 5: Readings**

**Susan Glaspell, *A Jury of Her Peers* (1917)**

**Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 Vand. L. Rev. 1665 (1990) (excerpt)**

**Toni M. Massaro, *Peremptories or Peers?—Rethinking Sixth Amendment Doctrine, Images and Procedures*, 64 N.C. L. Rev. 501 (1986) (excerpt)**

**Marina Angel, *Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context*, 45 Buff. L. Rev. 779 (1997) (excerpt)**

**Liza Mundy, *Fault Line*, Washington Post Magazine (Oct. 26, 1997)**

## C. SHAKESPEARE'S *THE MERCHANT OF VENICE* AND THE PARADOXES OF EQUITY

### Class 6: Shakespeare's *The Merchant of Venice*

In Shakespeare's *The Merchant of Venice*, Shylock attempts to use the letter of the law (a strict literal interpretation of a contract) for sinister aims. But is the equity in the play really fair? *The Merchant of Venice* poses very deep questions about the double nature of both the rule of law and of equity as well. Everything seems to have a dual side in this play.

Consider the following issues. First, consider Shylock. Is Shylock a disadvantaged minority or a ruthless villain? If Shylock is the villain, why is he so eloquent? Why does the play seem to invite us to sympathize with him? Given the way Antonio has treated Shylock in the past and Antonio's pledge that he will treat him the same way in the future, why does Shylock loan the money to Antonio? What is Shylock's tone of voice? Are his lines to be read seriously? Sarcastically? Bitterly?

Second, consider the interwoven stories in the play: (1) the pound of flesh; (2) the rings; (3) Jessica and Lorenzo's elopement; and (4) the caskets. How are they related? Why does the play not end with the culmination of the Shylock-Antonio trial? Why have it end with a simple quibble between husband and wife? Why include the ring episode at all?

Third, consider the many "bonds" or contracts in the play: (1) Antonio and Shylock's contract; (2) Bassanio's oath to Portia never to part with the ring; (3) Portia's father's will; and (4) Antonio's contract with Portia at the end. Contrast all of the contracts in the play and how the characters respond to their being breached or carried out. With regard to the Antonio/Shylock contract and the Bassanio/Portia contract, both are breached.

Why does Portia, who so extols the virtues of mercy in the context of the Antonio/Shylock contract, take such a rigid stance in the Bassanio/Portia contract? With regard to Portia's carrying out her father's will, pay attention to the casket scenes. Does she carry out her obligations to her father in good faith? If not, in what ways does Portia cheat?

Finally, contrast the two central locations in the play – Venice and Belmont. What type of world is Venice? What type of world is Belmont? How do the reactions of the characters – and even the way they reason and interpret and make contracts – differ in these two locations?

### Class 6: Readings

WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* (1597)

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### Class 7: Shakespeare's *The Merchant of Venice*

In this class, we will continue to discuss *The Merchant of Venice*. We will focus considerable attention on Portia. The Kenji Yoshino excerpt sets forth some ideas worth thinking about.

### Class 7: Readings

Kenji Yoshino, *The Lawyer of Belmont*, 9 *Yale J. L. & Humanities* 183 (1997) (excerpt)

## D. GENERALITY AND PARTICULARITY

### Class 8: Generality and Particularity

We have been focusing on the relationship between law and equity for the past few classes. The tension between the rule of law and equity is a manifestation of a larger tension in the law – between generality and particularity. The rule of law, by its nature, must exist at some generality, or else there would have to be a law for every unique situation. But how general should the law be?

Karel Capek's story is an interesting twist on more traditional tales of judgment in the afterlife. Capek was a Czech author who lived from 1890 to 1938. *The Last Judgment* was written in 1929. How does Capek portray divine judgment? Is divine judgment even possible?

The excerpts from Justice Scalia and Frederick Schauer explore the virtues of generality. When the law seeks to adopt or adhere to broad general rules, it will often sacrifice justice in particular cases. Justice Scalia and Schauer argue that sometimes generality—even at a cost of injustice or inaccuracy in specific cases—is preferable to a more particularized decisionmaking that focuses on context. Finally, the excerpt from Daniel Solove examines how judges are inescapably caught in tension between generality and particularity.

As you read these excerpts, think back on the readings over the past few weeks. In particular, consider *Billy Budd* and *The Case of the Speluncean Explorers*. Also consider the case of *People v. Donovan*. How would you decide the case? Why does the majority have such a brief opinion, without any facts? If you were in the majority in *Donovan*, how would you justify the decision in response to the dissent? What are the virtues of the dissent's holding? The problems?

### Class 8: Readings

**Karel Capek, *The Last Judgment* (1929)**

**Justice Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989) (excerpt)**

**FREDERICK SCHAUER, PROFILES, PROBABILITIES, AND STEREOTYPES (2003)**

**Daniel J. Solove, *Postures of Judging: An Exploration of Judicial Decisionmaking*, 9 Cardozo Studies in L. & Literature 173 (1997)**

***People v. Donovan*, 454 N.Y.S.2d 118 (N.Y. Ct. App. 1982)**

## III. INTERPRETATION

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### A. LEGAL INTERPRETATION: OBJECTIVITY AND AUTHORITY

#### Class 9: Legal Interpretation

How should we interpret legal texts? Do they have a definitive meaning? If not, by what authority shall we determine which interpretations are “correct” and which are not?

First, read the *Webb v. McGowin* case followed by Fish’s essay, *The Law Wishes to Have a Formal Existence*. Is Fish correct in his views about the law? If Fish is correct, so what?

Next, consider the excerpts from Owen Fiss, Stanley Fish, and Sanford Levinson. What gives law its authority for Fiss and for Fish?

Finally, consider *State v. Yanez*, a case which captures many key issues involving statutory interpretation. What is the correct interpretation? Is there a correct interpretation? How might Fiss or Fish guide a judge in adjudicating this case?

#### Class 9: Readings

*Webb v. McGowin*, 168 So. 196 (Ala. Ct. App. 1935)

Stanley Fish, *The Law Wishes to Have a Formal Existence*, in **THERE IS NO SUCH THING AS FREE SPEECH (1994)** (excerpt)

Owen M. Fiss, *Objectivity and Interpretation*, 34 **Stan. L. Rev.** 739 (1982) (excerpt)

Stanley Fish, *Fish v. Fiss*, 36 **Stan. L. Rev.** 1325 (1984) (excerpt)

*State v. Yanez*, 716 A.2d 759 (R.I. 1998)

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## B. INTERPRETATION AND AUTHORITY IN KAFKA'S *THE TRIAL*

### Class 10: Kafka's *The Trial*

In this class we explore a novel that many say captures the modern condition of life – Franz Kafka's *The Trial*. Kafka's works are surreal, have a dreamlike quality, and often have many bizarre twists and events. They are allegorical; they are puzzling, enigmatic, and can be endlessly pondered over. They resist one easy interpretation; in fact, they invite multiple interpretations.

The excerpt from Samuel Wolff and Kenneth Rivkin provides a brief background into Kafka's legal education. The short excerpt from Parker Potter demonstrates how frequently courts have made reference to Kafka's *The Trial*.

How do you characterize this novel? Is it a comedy? A satire? An allegory? Although it is frequently characterized as a dark and brooding novel, *The Trial* is often quite funny. When Kafka read portions of the novel to his friends, it was reported that he read them in a way that had everyone laughing. Reread some of the scenes looking for the humor in them.

*The Trial* works on many levels. What is the "Law"? What is the Court System? What is the "trial" that is being conducted against K.? The title in German for *The Trial* probably more accurately translates to "The Process." Is the novel about the law and legal procedure? Is it about totalitarianism? Bureaucracy? Is the novel an allegory about death and dying? Is the trial a psychological one and the events of the novel are symbolic of what is going on inside K.'s head (or take place inside K.'s mind)? Is the novel about one's becoming paranoid or insane? Is the novel meant to represent life itself, the modern condition? Is the novel about our ability to find truth? Is it about faith and religion and the inability to ever know divine Law or God? Perhaps it is about all these things simultaneously and we are to see the connections and parallels among them.

Focus on the theme of the law and its interpretation. *The Trial* illustrates the difficulty in arriving at the truth – in particular, the truth about the Law. What is the Law? Does anybody have access to the Law? Do the Court officials know what the Law is? Does the Law even exist? What does the novel demonstrate about the way the law works -- its authority, legitimacy, psychology, bureaucracy, procedure? On pp. 215-217, the priest tells K. a parable. The priest and K. then discuss various interpretations of the parable. Read the parable again and think about how it relates to the novel. What does this scene illustrate about interpretation?

Think about the Court that applies and enforces the law. Why do the workings of the Court seem so makeshift and unprofessional? Why are Court offices in attics? The courtroom where K. initially appeared is really a "fully furnished living room." (p. 55). A portrait of an examining magistrate appears to have him sitting on a throne but he's actually sitting on a kitchen stool with an old horse blanket folded over it. (p. 106). What do these details and others tell you about the Court? About the nature of authority? About the legitimacy of the Court?

Focus as well on the background and personality of Josef K. What type of a person is K.? How much about K.'s life and personality do we learn? How does the trial affect K.? Although the novel begins with K. being arrested "one morning" (p.3), we later find out that this is K.'s 30th birthday. His trial ends on his 31st birthday. Why do you think this is? After his arrest and his initial court proceeding, the Court seems to forget about K. K. seems to seek out the Court rather than vice versa. Perhaps he is not trying to escape from authority but is seeking it out. What does this say about K. and about human nature in general? What could K. be guilty of? Is he guilty of a crime or is he just experiencing guilt? Guilt about Fraulein Burstner? Guilt

over the way he lived his life? Or generalized guilt without being tied to anything in particular? Or is K. inexplicably subjected to suffering (perhaps K. is a modern version of Job)?

### **Class 10: Readings**

**FRANZ KAFKA, *THE TRIAL* (1925) (Breon Mitchell trans. 1998)**

**Samuel Wolff & Kenneth Rivkin, *The Legal Education of Franz Kafka*, 22 Columbia-VLA J. Law & the Arts 407 (1998) (excerpt)**

**Parker B. Potter, Jr., *Ordeal by Trial: Judicial References to the Nightmare World of Franz Kafka*, 3 Pierce L. Rev. 195, 195-96 (2005) (excerpt)**

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### **Class 11: Kafka's *The Trial***

In this class, we will continue to discuss *The Trial*. First, read the three short excerpts from Blaise Pascal's *Pensées* ("Thoughts"). Pascal was a 17th century mathematician and philosopher, and the *Pensées* were published posthumously seven years after his death in 1669. Think about these musings by Pascal on the nature of law and authority in light of Kafka's *The Trial*.

The commentary about Kafka's *The Trial* will provide you with some thoughts and ideas about the novel. For your amusement, I have included a humorous fake judicial opinion based on *The Trial* written by Judge Kozinski, a federal appellate court judge on the 9th Circuit. The Kozinski excerpt is optional reading.

Recall the final scene of *The Trial*. What do you make of this scene? When the window flings open in the building before K. dies (p.230), what do you make of all the questions asked about the human figure leaning out of the window? And why when the knife is being passed over him does K. know that "it was his duty to seize the knife as it floated from hand to hand above him and plunge it into himself"? Finally, what do you make of the final paragraph (p. 231)?

One final note. In an instance of life imitating art, in the case of *Joe Kafka v. United States*, 121 S. Ct. 1365 (2001), the U.S. Supreme Court issued its typical one-sentence order, denying certiorari without explanation: "The petition for writ of certiorari is denied." Recall the parable in *The Trial* on pp. 215-17: "Before the Law stands a doorkeeper. . . . The doorkeeper sees that the man is nearing his end, and in order to reach his failing hearing, he roars to him: 'No one else could gain admittance here, because this entrance was meant solely for you. I'm going to go and shut it now.'"

### **Class 11: Readings**

**Blaise Pascal, *Pensées*, Nos. 44, 60, 130, in PASCAL: SELECTIONS (Richard H. Popkin, ed. 1989)**

**Robin West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 Harv. L. Rev. 384 (1985) (excerpt)**

Martha Robinson, *The Law of the State in Kafka's The Trial*, 6 ALSA Forum, 127 (1982) (excerpt)

Heidi E. Faletti, *The Workings of Law in Kafka's Der Prozess and Boll's Die Verlorene Der Katharina Blum*, 6 ALSA Forum 148 (1982) (excerpt)

Judge Alex Kozinski & Alexander Volokh, *The Appeal*, 103 Mich. L. Rev. 1391 (2005)

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## C. THE POWER AND LIMITS OF WORDS AND RULES

### Class 12: Freedom and Precision with Words

Rules are constructed of words, and the application of law thus involves the reading and interpretation of words. In Cover's essay, we see that legal interpretation is profoundly powerful, perhaps more so than the interpretation of literature. Do you agree that knowledge of the violent consequences of legal interpretation constrains interpretation? Does (and should) interpreting legal texts differ from interpreting literature?

I assigned the Amy Hempel story, which is not expressly about law, to illustrate further the theme of the limitations of words in general. Focus on the theme of communication and speech in the story. How does the narrator fail her friend? Why is there so much trivia in the dialogue? What does the ending about the chimpanzee mean?

The Paul Gewirtz essay explores Justice Potter Stewart's famous phrase "I Know It When I See It." Justice Stewart uttered the phrase in a concurring opinion in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), an obscenity case. Although Stewart has been strongly criticized and mocked for this line, Gewirtz mounts a valiant defense.

The Twain excerpt is from James Boyd White's *The Legal Imagination*, which was one of the pioneering textbooks in law and literature. Think about what you lose when you learn to speak in the language of the law. Even if you wouldn't go so far as to say that learning the law has sapped the romance and beauty from your life (hopefully it hasn't), what are the limitations in legal language in describing and grappling with life's issues?

### Class 12: Readings

Robert Cover, *The Violence of the Word*, 95 Yale L.J. 1601 (1986) (excerpt)

Amy Hempel, *In the Cemetery Where Al Jolson Is Buried*

Paul Gewirtz, *On "I Know It When I See It,"* 105 Yale L.J. 1023 (1996)

*Jacobellis v. Ohio*, 378 U.S. 184 (1964)

MARK TWAIN, *LIFE ON THE MISSISSIPPI* (excerpt)

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### **Class 13: The Limits of Rules**

The next class continues to explore the power and limits of words and rules. In the *Princz* case, compare and contrast the three opinions in the case: Judge Stanley Sporkin's district court opinion, Judge Douglas Ginsburg's majority opinion, and Judge Patricia Wald's dissent. How does each judge narrate the facts?

Step out of your lawyer shoes and think about each judge's opinion more as a lay person might. How do you feel about the court's analysis? In terms of language and tone, which opinion do you prefer? What are the virtues and vices of each?

This case presents another example of how a rule must be applied to a very unusual situation. Does this case have similarities to the *Speluncean Explorers* case? How would you decide this case?

Finally, consider Charles Black's essay about how law is an art. Rather than lament the imperfections and limitations of language to capture reality, Black celebrates this as central to the ability of the law to achieve justice. More specifically, what is Black's argument?

#### **Class 13: Readings**

*Princz v. Federal Republic of Germany*, 813 F. Supp. 22 (D.D.C. 1992)

*Princz v. Federal Republic of Germany*, 26 F.3d 1166 (D.C. Cir. 1994)

Charles Black, *Law as an Art*, in **THE HUMANE IMAGINATION** (1986)

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## D. RHETORIC AND CANDOR IN LEGAL ANALYSIS: AN EXAMINATION OF JUDGE BENJAMIN CARDOZO

### Class 14: Cardozo

This class, like the one before, will explore law-as-literature. In this class, we will examine issues of style, rhetoric, and candor.

One of the main focal points of our discussion will be Judge (later Justice) Benjamin Cardozo. Cardozo is considered one of the most influential judges of all time, and his opinions had a significant impact on the law (especially torts and contracts). We will examine the role that style and rhetoric play in judicial opinions as well as the way that judges frame the facts of the case. To what extent does the use of rhetoric make a judge less candid? How much candor is desirable?

The first reading is Richard Posner's *Cardozo: A Study in Reputation*, which provides an informative and interesting background about Cardozo's life, work, and influence.

Next, examine two of Cardozo's most well-known judicial opinions, *Palsgraf v. Long Island R. Co.*, 162 N.E. 99 (N.Y. 1928) and *Hynes v. New York Central R. Co.*, 131 N.E. 898 (N.Y. 1921). You're probably familiar with *Palsgraf* from your Torts class, and you might have read *Hynes* as well in Torts. As you read the opinions, pay particular attention to Cardozo's articulation of the facts and his style.

In *Poethics*, Richard Weisberg extols Justice Cardozo as an exemplar of the union of style and substance. Weisberg's central claims are:

1. The "holding" in a case cannot without some alteration be abstracted from the words used to express it.
2. No opinion with a misguided outcome has ever in fact been "well crafted."
3. Even opinions that have had salutary effects and are widely applauded will lose power as time goes on if they fail to harmonize sound and sense 'in working their outcome.

Consider these claims with Cardozo's opinions in mind. Do you agree or disagree with Weisberg?

Judge John Noonan's *The Passengers of Palsgraf*, presents a very different take on the opinion than Weisberg. Noonan points out a number of facts that are not contained in Cardozo's opinion. Are these facts relevant? Why does Cardozo not include them? Whose view of *Palsgraf* is more convincing, Weisberg's or Noonan's? If you agree more with Noonan's view, how does this impact Weisberg's theses about the relationship between style and substance in judicial opinions?

Is Cardozo's writing of the opinion so strongly and powerfully in support of his conclusion a distortion? If a case is hard and a judge has a tough time coming to a conclusion, shouldn't the opinion reflect this? Is Cardozo being candid?

Recall Paul Gewirtz's essay on Justice Stewart's famous "I know it when I see it" line. Justice Stewart could have pretended to apply some legal doctrine or test, but he chose instead to be candid and admit that he really didn't have an answer. Should he be extolled for his candor? What would Justice Cardozo have done?

Finally, consider Judge Leval's critique of rhetoric in judicial opinions. Is his argument convincing?

**Class 14: Readings**

**RICHARD A. POSNER, *CARDOZO: A STUDY IN REPUTATION* (1990) (excerpt)**

*Hynes v. New York Central R. Co.*, 131 N.E. 898 (N.Y. 1921)

*Palsgraf v. Long Island R. Co.*, 162 N.E. 99 (N.Y. 1928)

**ANDREW L. KAUFMAN, *CARDOZO* (1998) (excerpt)**

**RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992)  
(excerpt)**

**JOHN NOONAN, JR., *The Passengers of Palsgraf*, in *PERSONS AND MASKS OF THE LAW* (1977)  
(excerpt)**

**Pierre N. Leval, *Judicial Opinions as Literature*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* (Peter Brooks & Paul Gewirtz eds. 1996)**

## IV. NORMS

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### A. NORMS AND NARRATIVE IN GARCIA MARQUEZ'S *CHRONICLE OF A DEATH FORETOLD*

#### Class 15: Garcia Marquez's *Chronicle of a Death Foretold*

In the next few classes, we will explore the relationship between law and social norms. Begin by reading the two short excerpts – one from Michael Hetcher and Karl-Dieter Opp, and other by Lawrence Mitchell. What is a norm? How is it different from the law?

The excerpt from C.K. Allen describes how norms and customs often form the foundation for law.

With this background of law and norms in mind, turn to Garcia Marquez's *Chronicle of a Death Foretold*. Garcia Marquez was born in Columbia in 1928. He is perhaps best known for his masterpiece, *A Hundred Years of Solitude*. In 1982, he won the Nobel Prize in literature. His novella, *Chronicle of a Death Foretold*, is based on a real murder that took place in Sucre, Columbia, in 1951.

The novella begins with the end – the murder of Santiago Nasar. The novella reconstructs the events leading up to the murder by piecing together fragments from witnesses and documents. Legal narratives are often constructed of multiple voices. Witnesses relay their perspective of a particular event, often shaded by biases, prejudices, and cloudy and selective memory. Focus on what this reconstructed account tells us about the murder and about how and why it happened. What role do social norms and customs play in the murder? Who is responsible for Nasar's death? To what extent is the town complicit in the murder?

#### Class 15: Readings

MICHAEL HECHTER & KARL-DIETER OPP, *SOCIAL NORMS* (2001) (excerpt)

Lawrence E. Mitchell, *Understanding Norms*, 49 *U. Toronto L.J.* 177 (1999) (excerpt)

C. K. ALLEN, *LAW IN THE MAKING* (7th ed. 1964) (excerpt)

GABRIEL GARCIA MARQUEZ, *CHRONICLE OF A DEATH FORETOLD* (1983)

RUBEN PELAYO, *GABRIEL GARCIA MARQUEZ: A CRITICAL COMPANION* (2001) (excerpt)

Rosanna Cavallaro, *Solution to Dissolution: Detective Fiction from Wilkie Collins to Gabriel Garcia Marquez*, 15 *Tex. J. Women & L.* 1 (2005) (excerpt)

## **B. CUSTOMS, NORMS, AND LAW: JACKSON'S *LOTTERY* AND LEGUIN'S *OMELAS***

### **Class 16: Customs and Change**

The first set of readings for this class involves the relationship between law, norms, and customs. Much of the law emerges from norms and customs. Often, customs remain widely practiced even after the reasons for their existence have become forgotten. Why do we continue to cling to customs? When we start to challenge customs, norms, and laws that we have previously accepted unthinkingly, what are the consequences?

Consider Shirley Jackson's *The Lottery*. Does anyone in the society have a clear idea of why the lottery exists? What purpose(s) does the lottery serve? Why do the villagers cling to the lottery? Mrs. Hutchinson contends that the lottery is unfair. What is the nature of her critique? What aspect of the lottery doesn't she criticize? What does this story tell us about the law?

The excerpts from Michel de Montaigne and John Dewey offer differing perspectives on the extent we can (and should) we change our customs. How do they differ on this point? What are your views on the issue?

The second set of readings explores the consequences of the critical awareness we acquire when we view norms, customs, and the law skeptically. When we see things critically and reflectively, how does this change our behavior and policy choices? In Le Guin's *The Ones Who Walk Away from Omelas*, where do the ones who walk away from Omelas go? Do you agree with the ones who walk away? Is Omelas a better world than its alternative, the real world where many more live in terrible suffering?

Calabresi's *The Gift of the Evil Deity*, explores the consequences of understanding the law with greater clarity. In particular, Calabresi asks how our knowledge of the costs of society's rules should effect our policy decisions. Focus on Calabresi's discussion of the rescue of the fool in the rowboat. Why do we spend lots of money to rescue victims of disasters or accidents rather than spend the money on general safety measures that could save more lives?

### **Class 16: Readings**

**Shirley Jackson, *The Lottery* (1948)**

**Michel de Montaigne, *Of Custom* (1575) (Charles Cotton, trans.)**

**JOHN DEWEY, HUMAN NATURE AND CONDUCT (1922) (excerpt)**

**Ursula K. Le Guin, *The Ones Who Walk Away from Omelas***

**GUIDO CALABRESI, *The Gift of the Evil Deity*, in IDEALS, BELIEFS, AND ATTITUDES IN THE LAW (1985)**

## C. MORRISON'S *THE BLUEST EYE* AND THE LIMITS OF LAW

### Class 17: Morrison's *The Bluest Eye*

Law is not the only force regulating social conduct. Social norms often play an even more profound role than the law in governing society. The Robert Ellickson excerpt examines how a community of cattle ranchers and farmers in a small community do not rely much on the law but on their own set of social norms for resolving disputes with neighbors. The Lawrence Lessig excerpt discusses ways in which the law can attempt to change norms.

Toni Morrison's *The Bluest Eye* illustrates some of the sinister and troubling aspects of norms. I assigned this work even though it is not expressly about the law because it has important ramifications for our understanding of the law's relationship to society. Focus on the absence of law in the book. Notice all the instances that would ordinarily invoke a legal response or the protection of law: the delivery of the torn sofa to the Breedlove's home, the molestation of Pecola by Cholly, the fact that Soaphead Church was a known child molester. What impact would you expect the law to have in these situations? Why is the law so noticeably absent in this story? If the law could permeate into this society, would it have saved Pecola?

After being so ensconced in law, we are accustomed to seeing law as a dominant force shaping social structure. In the society depicted in *The Bluest Eye*, however, we see the profound power of social norms in shaping social structure. What are the central social norms at play in the novel? What role could the law play to combat such norms? Can the law do anything? If so, what? If not, what impediments would prevent the law from working?

The novel also explores the internalization of norms of oppression. Why do the characters in the novel blame each other and fellow victims of oppression? Why does the community ostracize Pecola? Why does the community participate in Pecola's destruction? Morrison writes: "One problem was centering: the weight of the novel's inquiry on so delicate and vulnerable a character could smash her and lead readers into the comfort of pitying her rather than into an interrogation of themselves." (p. 211). What is Morrison trying to accomplish? Why provoke sympathy for Cholly by describing his life and trauma? Are we to feel sorry for him? Forgive him? If we blame Cholly, do we commit the flaw that Morrison sees the community as doing?

### Class 17: Readings

ROBERT ELLICKSON, *ORDER WITHOUT LAW* (1991) (excerpt)

Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. Chi. L. Rev. 943 (1995) (excerpt)

TONI MORRISON, *THE BLUEST EYE* (1970)

## V. NARRATIVE

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### A. THE POWER OF NARRATIVE: DURRENMATT'S *TRAPS*, DR. DEATH, AND DERSHOWITZ

#### Class 18: Durrenmatt's *Traps*

We construct stories of selfhood as well as stories about law and justice. How are these two types of stories related? What are the consequences of constructing narratives? How do we evaluate narratives? Are there any "true" narratives?

The novella, *Traps*, by Friedrich Durrenmatt, a German playwright, is a remarkable work of literature (which, sadly, is out of print). How does the preface relate to the themes in the novella? There is a lot of talk of accidents in the preface and in the story. How does this relate to the other themes of the story? Who is Alfredo Traps? Which narrative best describes him? Why does Traps do what he does at the end?

Also consider the philosophy of the retired legal figures toward storytelling and the truth. Do they understand the consequences of their storytelling? Do the retired legal figures understand Alfredo Traps? Does Traps understand himself? Do we understand Traps and who he is at the end of the novella?

#### Class 18: Readings

FRIEDRICH DURRENMATT, *TRAPS* (1960)

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#### Class 19: Narrative

We will continue discussing *Traps* in the next class, but will also weave into the discussion Ron Rosenbaum's *Dr. Death* essay. How does Rosenbaum's essay relate to *Traps*? Is Dr. Death telling fictions? Is Ron Rosenbaum engaging in a similar activity as Dr. Death?

Finally, consider how the Dershowitz essay relates to the other two works. What does this essay add to the themes and ideas in *Traps* and *Dr. Death*?

#### Class 19: Readings

Ron Rosenbaum, *Travels With Dr. Death* (1990)

Alan Dershowitz, *Life Is Not a Dramatic Narrative*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* (Peter Brooks & Paul Gewirtz eds. 1996)

## **B. THE ART OF THE TRIAL: *ANATOMY OF A MURDER***

### **Classes 20, 21, and 22: Trials and Narrative**

It's movie time! We will watch the great classic film, *Anatomy of a Murder*. Because of its length (160 minutes), we will watch it over the span of two classes and then will discuss it in the third class. As you watch the film, pay particular attention to the trial techniques of defense attorney Paul Biegler. Is he a good lawyer or a sleazy manipulator – or something of both? Does his famous “lecture” to his client cross the ethical line?

### **Classes 20 and 21: Readings**

*Anatomy of a Murder* (1959) (directed by Otto Preminger; starring James Stewart and Lee Remick)

We will watch the film in classes 20 and 21 and discuss it in class 22.

### **Classes 22: Readings**

Michael Asimow, *Anatomy of a Murder—The "Lecture"* (February 1998)

Timothy Hoff, *Anatomy of a Murder*, 24 *Legal Studies Forum* 660 (2000)

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## **C. CAPOTE'S TRUE CRIME NARRATIVE: *IN COLD BLOOD***

### **Class 23: Capote's *In Cold Blood***

Truman Capote's *In Cold Blood* provides an extensive account of the mindset of murderers. Unlike Billy Budd or the cave-explorers in the *Speluncean Explorers*, the murderers in Capote's book are not innocent or justified in their actions. However, Capote aims to provide us with a more complete understanding of the murderers. To what extent does this affect the way we punish them?

Truman Capote's *In Cold Blood* is based on true events. It was not written to be a work of fiction, but to be a true crime narrative. Capote became interested in the events in the novel by noticing a small newspaper article about the murders in 1959. He spent five years meticulously researching the crime. Capote interviewed Dick and Perry extensively, and grew especially fond of Perry. The book was published in 1966, a year after Dick and Perry were executed.

Focus on how the law handles the way criminals like Dick and Perry are judged and punished. Do you think Dick and Perry were appropriately punished? Why does Capote include what Dr. Jones would have testified to but did not? (p. 294). What is Capote's attitude toward Perry? Does Capote's depiction of Perry alter the way you judge his actions? What does this novel tell you about the crime that would not have been included

in a typical newspaper article account of it? Is it a worthwhile endeavor to have such a detailed account of this crime? In other words, what does this novel contribute to your understanding of the crime and to the way you judge the perpetrators?

Capote played a significant role in the events in the novel, yet he doesn't appear in it. Should he have included himself?

**Class 23: Readings**

TRUMAN CAPOTE, *IN COLD BLOOD* (1965)

Daniel Mendelsohn, *The Truman Show*, N.Y. Review of Books (Nov. 17, 2005)

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## VI. MORALITY

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### A. LAW AND MORALITY IN SOPHOCLES'S *ANTIGONE*

**Class 24: Sophocles's *Antigone***

Sophocles' great play, *Antigone*, explores the tension between law and morality. Is it acceptable to disobey an unjust law? Is Creon in the wrong? Antigone? Both? Neither? How is Creon like Antigone? Does Antigone's gender influence Creon's reaction to her?

**Class 24: Readings**

Sophocles, *Antigone* (441 B.C.)

Susan W. Tiefenbrun, *On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigones of Sophocles and Anouilh*, 11 *Cardozo Stud. L. & Literature* 35 (1999) (excerpt)

THEODORE ZIOLKOWSKI, *THE MIRROR OF JUSTICE: LITERARY REFLECTIONS OF LEGAL CRISIS* (1997) (excerpt)

## VII. CONCLUSION

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### A. WHAT CAN LITERATURE TEACH US ABOUT LAW? THE QUESTION REVISITED

#### Class 25: Conclusion

This class revisits a question posed in the first class: What can literature teach us about law? Posner expresses skepticism about the extent to which literature can help us understand the law. Do you agree with Posner's arguments? Contrast Posner to Weisberg, who explains how literature enables us to understand law in ways that other disciplines cannot. Finally, consider Jane Baron, who offers a very critical, yet also hopeful, assessment of law and literature.

#### Class 25: Readings

**RICHARD POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION (1st ed. 1988)**  
(excerpt)

**Richard H. Weisberg, *Literature's Twenty-Year Crossing Into the Domain of Law: Continuing Trespass or Right by Adverse Possession?*, in LAW AND LITERATURE: CURRENT LEGAL ISSUES (Michael Freeman & Andrew Lewis, eds. 1999)**

# RECOMMENDED FURTHER READINGS

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## I. INTRODUCTION

### CLASS 1: INTRODUCTION

#### General Works on Law & Literature

MARIA ARISTODEMOU, *LAW AND LITERATURE: JOURNEYS FROM HERE TO ETERNITY* (2001)

GUYORA BINDER & ROBERT WEISBERG, *LITERARY CRITICISMS OF LAW* (2000)

IRVING BROWNE, *LAW AND LAWYERS IN LITERATURE* (1883)

GREGG D. CRANE, *RACE, CITIZENSHIP, AND LAW IN AMERICAN LITERATURE* (2002)

KIERAN DOLIN, *FICTION AND THE LAW: LEGAL DISCOURSES IN VICTORIAN AND MODERNIST LITERATURE* (1999)

ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* (1984)

RICHARD FIRTH GREEN, *CRISIS OF TRUTH: LITERATURE AND LAW IN RICARDIAN ENGLAND* (2002)

THOMAS C. GREY, *THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY* (1991)

JEFFREY C. KINKLEY, *CHINESE JUSTICE, THE FICTION: LAW AND LITERATURE IN MODERN CHINA* (2000)

BARRY R. SCHALLER, *A VISION OF AMERICAN LAW : JUDGING LAW, LITERATURE, AND THE STORIES WE TELL* (1997)

ERICA SHEEN & LORNA HUTSON (editors), *LITERATURE, POLITICS, AND LAW IN RENAISSANCE ENGLAND* (2005)

BROOK THOMAS, *CROSS-EXAMINATIONS OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOWE & MELVILLE* (1987)

RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992)

RICHARD WEISBERG, *THE FAILURE OF THE WORD* (1984)

JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1973)

JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING* (1984)

JAMES BOYD WHITE, *JUSTICE AS TRANSLATION* (1990)

JAMES BOYD WHITE, *HERACLES' BOW* (1985)

MELANIE WILLIAMS, *EMPTY JUSTICE: ONE HUNDRED YEARS OF LAW, LITERATURE AND PHILOSOPHY* (2002)

THEODORE ZIOLKOWSKI, *THE MIRROR OF JUSTICE: LITERARY REFLECTIONS OF LEGAL CRISIS* (1997)

### **Law and Popular Culture**

Maxwell H. Bloomfield, *The Supreme Court in American Popular Culture*, 4 *J. of Am. Culture* 71 (1981)

Maxwell H. Bloomfield, *The Warren Court in American Fiction*, *J. of S. Ct. Hist.* 86 (1991)

Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 *Wisc. L. Rev.* 527 (1986)

Christine Alice Corcos, *Prosecutors, Prejudices, and Justice: Observations on Presuming Innocence in Popular Culture and Law*, 34 *U. Toledo L. Rev.* 793 (2003)

Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 *Yale L.J.* 1579 (1989)

Lawrence M. Friedman & Issachar Rosen-Zvi, *Illegal Fictions: Mystery Novels and the Popular Image of Crime*, 48 *UCLA L. Rev.* 1411 (2001)

Jennifer Jaff, *Law and Lawyer in Pop Music: A Reason for Self-Reflection*, 40 *U. Miami L. Rev.* 659 (1986)

ROBERT M. JARVIS & PAUL R. JOSEPH, *PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE* (1998)

Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 *UCLA L. Rev.* 1305 (2001)

STEVE REDMAN, *UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE* (1995)

RICHARD K. SHERWIN, *WHEN LAW GOES POP* (2000)

Jessica Silbey, *Patterns of Courtroom Justice*, 28 *J. L. & Soc'y* 97 (2001)

### Commentary on the Law and Literature Movement

Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 Yale L.J. 1059 (1999)

Milner Ball, *The Future of Law and Literature: Convocations and Conversations*, 10 Cardozo Stud. L. & Literature 107 (1998)

Richard Epstein, *Does Literature Work as Social Science: The Case of George Orwell*, 73 U Colo. L. Rev. 987 (2002)

Daniel J. Kornstein, *A Practicing Lawyer Looks Back on Law and Literature*, 10 Cardozo Stud. L. & Literature 117 (1998)

Sanford Levinson, *Some (Brief) Reflections About Law and Literature*, 10 Cardozo Stud. L. & Literature 121 (1998)

Gary Minda, *Law and Literature at Century's End*, 9 Cardozo Stud. L. & Literature 245 (1997)

Sanford Levinson, *Law as Literature*, 60 Tex. L. Rev. 373 (1982)

Symposium, *Law and Literature*, 60 Tex. L. Rev. (1982)

Kenji Yoshio, *The City and the Poet*, 114 Yale L.J. 1835 (2005)

Robin L. West, *Adjudication is Not Interpretation: Some Reservations about the Law-as-Literature Movement*, 54 Tenn. L. Rev. 203 (1986)

Robin L. West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 Yale J.L. & Human. 129 (1988)

### Bibliographies and Works About the Law and Literature Canon

LAW IN LITERATURE: AN ANNOTATED BIBLIOGRAPHY OF LAW-RELATED WORKS  
(Elizabeth Villiers Gemmette ed.1995)

Davenport, *A Bibliography: Readings in Legal Literature*, 41 ABA. J. 939 (1955)

Davenport, *Readings in Legal Literature: A Bibliographical Supplement*, 43 ABA. J. 813 (1957)

Judith Resnik, *Constructing the Canon*, 2 Yale J.L. & Human. 221 (1990)

Richard Weisberg & Kretschman, *Wigmore's "Legal Novels" Expanded: A Collaborative Effort*, 7 Maryland Legal Forum 94 (1977)

Richard H. Weisberg, *Wigmore's "Legal Novels" Revisited: New Resources for the Expansive Lawyer*, 71 Nw. U. L. Rev. 17 (1976)

John H. Wigmore, *A List of One Hundred Legal Novels*, 17 Ill. L. Rev. 26 (1922)

**Anthologies & Collections: Fiction**

- THE WORLD OF LAW: THE LAW IN LITERATURE (Ephraim London ed. 1960 )
- THE WORLD OF LAW: THE LAW AS LITERATURE (Ephraim London ed. 1960 )
- LAW IN LITERATURE: LEGAL THEMES IN DRAMA (Elizabeth Villiers Gemmette ed. 1995)
- LAW IN LITERATURE: LEGAL THEMES IN NOVELLAS (Elizabeth Villiers Gemmette ed. 1996)
- LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES (Elizabeth Villiers Gemmette ed.2000)
- TRIAL AND ERROR: AN OXFORD ANTHOLOGY OF LEGAL STORIES  
(Fred R. Shapiro & Jane Garry eds. 1998)
- LEGAL FICTIONS: LAWYERS AND THE LAW (Jay Wishingrad ed. 1992)

**Anthologies & Collections: Non-Fiction**

- INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER (Sanford Levinson and  
Seven Mailloux, eds., 1988)
- LAW AND LITERATURE (Michael Freeman & Andrew Lewis eds. 1999)
- LAW AND LITERATURE (Patrick Hanafin, Adam Gearey, & Joseph Brooker eds. 2004)
- LAW AND LITERATURE: TEXT AND THEORY (Lenora Ledwon ed. 1996)
- LAW AND LITERATURE PERSPECTIVES (Bruce L. Rockwood ed. 1996)
- LAW'S STORIES (Peter Brooks & Paul Gewirtz eds. 1996)
- WILLIAM R. BISHIN & CHRISTOPHER D. STONE, LAW, LANGUAGE AND ETHICS (1972)
- LAW AND AMERICAN LITERATURE: A COLLECTION OF ESSAYS (Carl S. Smith et al. ed., 1983)

## II. THE RULE OF LAW vs. EQUITY

### CLASSES 2 & 3: MELVILLE

#### Commentary on *Billy Budd*

ROBERT COVER, *Of Creon and Captain Vere*, in JUSTICE ACCUSED (1975)

Jami K. Elison, *The Prosecution of Billy Budd (Ultra Vires of Positive Law)*, 35 Willamette L. Rev. 57 (1999)

C.B. Ives, *Billy Budd and the Articles of War*, 34 American Literature 31 (1962)

Alfred S. Konefsky, *The Accidental Legal Historian: Herman Melville and the History of American Law*, 52 Buff. L. Rev. 1179 (2005)

Judith Schenck Koffler, *The Feminine Presence in Billy Budd*, 1 Cardozo Studies in L. & Literature 1 (1989)

Robert P. Lawry, *Justice in Billy Budd*, in LAW AND LITERATURE PERSPECTIVES (Bruce L. Rockwood ed. 1996)

LAURA MARVEL (EDITOR), READINGS ON BILLY BUDD (2003)

James McBride, *Revisiting a Seminal Text of the Law and Literature Movement: A Girardian Reading of Herman Melville's Billy Budd*, Sailor, 3 Margins 285 (2003)

RICHARD A. POSNER, LAW AND LITERATURE 165-173 (2d ed. 1998)

The Honorable Juan Ramirez, Jr., Amy D. Ronner, *Voiceless Billy Budd: Melville's Tribute to the Sixth Amendment*, 41 Cal. W. L. Rev. 103 (2004)

Charles A. Reich, *The Tragedy of Justice in Billy Budd*, 56 Yale Rev. 368 (1967).

Thane Rosenbaum, *Body and Soul Under the Law, and the Response from Law and Literature in Bartleby, the Scrivener and Billy Budd*, Sailor, 26 Cardozo L. Rev. 2425 (2005)

Kevin W. Saunders, *Billy Budd and the Federal Sentencing Mandates*, 22 Oklahoma City U. L. Rev. 211 (1997)

Daniel J. Solove, *Melville's Billy Budd and Security in Times of Crisis*, 26 Cardozo L. Rev. 2443 (2005)

Symposium, *Billy Budd*, 1 Cardozo Studies in L. & Literature 1 (1989)

Brook Thomas, *Billy Budd and the Untold Story of the Law*, 1 Cardozo Studies in L. & Literature 49 (1989)

Richard Weisberg, *How Judges Speak: Some Lessons on Adjudication in Billy Budd, Sailor With an Application to Justice Rehnquist*, 57 N.Y.U. L. Rev. 1 (1982)

RICHARD WEISBERG, THE FAILURE OF THE WORD (1984)

RICHARD WEISBERG, POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE 104-16 (1992)

Robin West, *The Feminine Silence: A Response to Professor Koffler*, 1 Cardozo Studies in L. & Literature 15 (1989)

Steven L. Winter, *Melville, Slavery, and the Failure of the Judicial Process*, 26 Cardozo L. Rev. 2471 (2005)

DONALD YANNELLA (EDITOR) NEW ESSAYS ON *BILLY BUDD* (2002)

Edwin M. Yoder, Jr., *Fated Boy: Billy Budd and the Laws of War*, 31 J. Maritime L. & Commerce 615 (2000)

Edwin M. Yoder, Jr., *Melville's Billy Budd and the Trials of Captain Vere*, 45 St. Louis U. L.J. 1109 (2001)

### **General Commentary on Melville and the Law**

Robert Batey, *Literature in a Criminal Law Course: Aeschylus, Burgess, Oates, Camus, Poe, and Melville*, 22 Legal Studies Forum 45 (1998)

ANDREW DELBANCO, MELVILLE: HIS WORLD AND WORK (2005)

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