

ATLANTA'S JOHN MARSHALL LAW SCHOOL

LAW, LAWYERS AND LITERATURE

A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.

Sir Walter Scott, *Guy Mannering*
p. 259 (1906)

Professor Anthony V. Baker
Spring Semester, 2015; Three (3) Credit Hours
Meeting: Tuesdays 6:15pm – 9:30pm (Room)
Office: 8th Floor Faculty Suite, Room 818
Office Hours: Tuesday, 10:00am – 12:30pm (or by appointment)
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I. PROLOGUE: Law, Lawyers, Literature

"The first thing we do, let's kill all the lawyers."

Wm. Shakespeare, *King Henry VI, Part II.*
Act IV., Sc. 2. (1592)

Class #1: Law, Lawyers, Literature

"May your life be filled with lawyers."

Mexican curse

Benjamin Cardozo, "Law and Literature" in *Law and Literature and Other Essays and Addresses* (1925)

Holy Bible (excerpts)

Nadine Gordimer, "Crimes of Conscience" in *Crimes of Conscience* (1991)

Frank O'Connor, "Legal Aid" in *Traveller's Samples* (1946; 1951)

Sherman Alexie, "Class" in *The Toughest Indian in the World* (2000)

William Faulkner, "Tomorrow" in *Knight's Gambit* (1939)

Walter Raleigh, *The Tryal of Sir Walter Raleigh...* (1719)

Jonathan Swift, *Gulliver's Travels*, Chapter 32. (1726)

Carl Sandburg, "The Lawyers Know Too Much" in *Smoke and Steel* (1920)

Our opening class/discussion will focus on the above readings, and will be very straightforward: what do they teach us about our semester's study, *law, lawyers* and the place of each in *literature*? See you then.

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COURSE FOCUS

Referencing 'literature' in its broadest forms – fiction, poetry, legal essay and other non-fiction, cinema, music, *etc.* – this course seeks to shed light on the profession of law, its practice, and the persons who practice it, through this unique, creative medium. From classical through contemporary pieces, both popular and lesser-known, the course will explore legal norms and professional performance, raising and addressing critical issues involving law, legal process and their effects on individuals and society. It will also seek to sketch out major themes of law and lawyers in literature, and explore those themes: lawyer as hero/icon/anti-hero, ethical dilemmas confronting or created by lawyers, law and authority, law and justice in literature, law and violence, the 'what' and 'why' of lawyer jokes, lawyer depictions in television/cinema, *etc.* As conceived and organized, the course seeks to both develop and explore the concepts of 'law' and 'lawyers' as reflected in classical and popular culture, though not as a discrete end in itself. Ultimately, in looking at law and lawyers across the cultural landscape, it is both hoped and expected that we will learn something of value about ourselves as lawyers and as persons in the profession of law, which is the *raison d'être* of a course of this kind. Thus, I envision this as a true *perspectives* course, inviting the students to discover and explore their own concepts of the practice and themselves in it through this unique course of study.

MATERIALS

Our texts will span various forms of literary expression (novels, poems, short stories, essays, *etc.*) and multiple media (film, music, print literature, *etc.*) and will be presented to the student in two forms: individual shorter works (short stories, poems, novel fragments, *etc.*) and a selection of longer pieces (novels, novellas, long essays, *etc.*). The shorter works will be provided for the students in the form of a series of **FOR EDUCATIONAL PURPOSES ONLY** photocopy/handouts, organized as an **APPENDIX** for our study. The students will be asked to purchase the following longer works for reading/review/discussion:

Alan Dershowitz, *Letters to a Young Lawyer*
Franz Kafka, *The Trial*
Harper Lee, *To Kill a Mockingbird*
Herman Melville, *Billy Budd: Sailor*
Arthur Miller, *The Crucible*
Helen Prejean C.S.J., *Dead Man Walking*
William Shakespeare, *The Merchant of Venice*
Sophocles, *Antigone*
Leo Tolstoy, *The Death of Ivan Ilyich*
Scott Turow, *One L.*

Since these books are all older, they are available both new and used at a fraction of new bookstore costs, in used book venues around the area and via the internet. Therefore, I have not ordered them through the usual bookstore channels. Students should use the various internet outlets available to purchase these books (*e.g.*, Amazon; Alibris; ABE Books; Bookfinder; Thrift Books, *etc.*), or can purchase them at retail outlets in the area (*e.g.*, BARNES & NOBLE) if so desired. If students are inclined to purchase the texts via the internet or other 'off source' outlets, they should **order the books early, allowing for sufficient shipping/handling times in the process**. Indeed, the above catalogue of books should be relatively inexpensive to purchase as used books; one internet used book cite (ALIBRIS) listed the complete catalogue of titles for a total of \$10.00 (used, good condition) to \$38.00 (new), plus S/H, which is negligible compared to typical legal textbook costs. I will be pleased to assist any student in obtaining these texts through the various outlets, as needed.

FORMAT/PREPARATION/ATTENDANCE

The class is structured on a reading/discussion format, where the student is invited to *enter into* each text, reading it and asking what it teaches about law, lawyers, the legal process, societal response to lawyers, *etc.* Several things naturally flowing from this:

- 1.) ***The course is reading intensive.*** Students will be exposed to whole texts and will need to set aside time to read thoroughly the texts assigned. The reading will be much more easily accessible than the typical law school text, and, as such, should be both easier to manage and naturally more entertaining and interesting. However, since the course is based entirely on insights gained from the reading, reading is not optional and should not be viewed as such. **If the student does not have the time in their schedule or is not prepared to complete assigned reading, they should strongly consider fulfilling their course requirements in another way.**
- 2.) ***This is a discussion-based class.*** This course is 'discussion based' in which we are all students and the texts are our 'teachers'; therefore, **preparation is key and attendance is not optional.** Beyond reading, each student will be asked to think about the readings in the context of our study topic, to formally reflect on the readings, and to be prepared to share those thoughts/reflections in our class discussion.
- 3.) ***A word about internet resources.*** Like you, I am aware that there are a plethora of internet sources connected to many of the readings assigned. As well, I am aware that each student has multiple responsibilities in their week, both school related and otherwise. However, both personally and professionally, students must not 'short cut' their learning or professionalism; relying on these sources in lieu of reading the assigned texts would do both of these things. Feel free to use any of these resources to augment your careful reading of the assigned texts. However, if you are inclined to use any of these resources in place of careful reading, you should save time and fulfil your course requirements in some other way. **This is a matter of professional honor, and my expectation is that every student who continues in the class will accept this pledge.**

GRADING

Grading in this reading/discussion format class shall consist of three parts, the final weight of which will be determined during the course of the semester:

- 1.) ***Reflection Papers*** – Each week the student will produce a one-page single spaced paper reflecting on the readings of that week. The topic for each paper is open: the student may reflect generally on the readings of that week, may respond to a theme running through the readings, may focus on a particular aspect of one reading, may draft their own original literary response related to the themes of the week's reading, *etc.* The purpose of the exercise is to allow the student to show some substantial, original thought about the text(s) they have read. **The paper will be due no later than 9:00am on the class day (Tuesday) and will focus on the readings to be addressed on that day.** As I intend to devote the time before class to reading those papers in anticipation of that day's discussion, the time period above should be seen as final, absent truly extraordinary circumstances.

- 2.) ***Class Attendance/Discussion Participation*** – Self-explanatory.
- 3.) ***Take-Home Final Examination*** – A ‘take home’ examination consisting of a short series of open-ended questions will be handed out at the last class and will be due at a set time during the examination period. The test will be ‘page limited’ and will allow the student to show the breadth of what they have learned in the course, in a creative format. This exercise will form the bulk of the final grade in the class.

READING ASSIGNMENTS

The following is a schedule of topic assignments/preparatory readings for the semester:

II. PROLOGUE: Law, Lawyers, Literature

“The first thing we do, let’s kill all the lawyers.”

Wm. Shakespeare, *King Henry VI, Part II*.
Act IV., Sc. 2. (1592)

Class #1: Law, Lawyers, Literature

“May your life be filled with lawyers.”

Mexican curse

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Holy Bible (excerpts)

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Sherman Alexie, “Class” in *The Toughest Indian in the World* (2000)

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Jonathan Swift, *Gulliver’s Travels*, Chapter 32. (1726)

Carl Sandburg, “The Lawyers Know Too Much” in *Smoke and Steel* (1920)

A. LAW

"If the law supposes that," said Mr. Bumble... "the law is a ass – a idiot."

Charles Dickens, *Oliver Twist*
Chapter 51. (1838)

Class #2: Law and Justice

"This is a court of law, young man, not a court of justice."

Oliver Wendell Holmes, Jr.

Sir Arthur Conan Doyle, "The Crooked Man" in *The Memoirs of Sherlock Holmes* (1894)
Plato, *Apologia*, "Socrates' Address to the Jurors After Being Found Guilty..." (392?BC)
Mohandas K. 'Mahatma' Ghandi, "A Plea for the Severest Penalty..." (1922)
O. Henry, "A Departmental Case" in *Roads of Destiny* (1909)
Diane McWhorter, *Carry Me Home: Birmingham, Alabama* (excerpts) (2001)
Dr. Martin Luther King, Jr., "A Letter from the Birmingham Jail" (1963)

Class #3: Law and Authority

"If you wish to know what a man is, place him in authority."

Yugoslavian Proverb

Jeanne d'Arc, (Joan of Arc), "Testimony...at Her Trial for Heresy and Witchcraft" (1431)
Arthur Miller, *The Crucible* (1953)
Lewis Carroll, "The Trial of the Knave of Hearts" from *Alice in Wonderland* (1865)
Susan Glaspell, "A Jury of Her Peers" in *A Jury of Her Peers* (1917)
Frank O'Connor, "The Majesty of Law" in *Bones of Contention* (1935; 1936)
Anton Chekov, "The Malefactor" (1914)
Robinson v. California, 370 U.S 660 (1962)
George Orwell, "Shooting an Elephant" (1936)

Class #4: Law and Freedom

"You can only be free if I am free."

Clarence Darrow

Patrick Henry to Robert Pleasants (January 18, 1773)
Somerset v. Stewart, 20 Howell's State Trials 1 (K.B., 1772)
State v. Mann, 13 NC (2 Devereux & Clark) 263 (1829)
State v. Hoover, 20 NC (4 Devereux & Battle) 500 (1840)
Frederick Douglass, *Narrative of the Life of Frederick Douglass...* (excerpts) (1845)
Elizabeth Packard (Mrs.), *Marital Power Exemplified...* (1866)
Bonnie Mitelman, "Rose Schneiderman and the Triangle Fire" (1981)

Class #4: Law and Freedom (cont'd)

"Many Operatives", *Philadelphia Mechanics' Free Press*, (August 21, 1830)
Clarence Darrow, "Address to the Prisoners in the Cook County Jail" (1902)
Langston Hughes, "Freedom's Plow" in *Freedom's Plow* (1943)

Class #5: Law and Violence: The Dark World of Franz Kafka

"Evil is whatever distracts."

Franz Kafka

Franz Kafka, "Before the Law" (1915)
Franz Kafka, "An Imperial Message" (1919)
Franz Kafka, "Advocates" (1936)
Franz Kafka, "The New Advocate" (1919)
Franz Kafka, "The Problem of Our Laws" (1931)
Franz Kafka, "In the Penal Colony", in *The Penal Colony: Stories and Short Pieces* (Willa and Edwin Muir, trans.) (1919, 1948)
Franz Kafka, *The Trial* (1925)

B. LAWYERS

Lawyer, n. One skilled in circumvention of the law.

Ambrose Bierce, *The Devil's Dictionary*
p. 118 (1906)

Class #6: 'Making' Lawyers

*"Between grand theft and a legal fee,
there only stands a law degree."*

Anonymous

Unattributed, "Lawyer's Creed"
Karl Llewellyn, "What Law is About" in *The Bramble Bush* (1929; 1930)
Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy" in *The Politics of Law: A Progressive Critique* (David Kairys, ed.) (1982)
Scott Turow, *One L*. (1977)
Robert Louis Stevenson, *Weir of Hermiston* (excerpts) (1894)
Felix Frankfurter, "Advice to a Young Man Interested in Going Into Law" (1954)
Lewis Carroll, "You Are Old, Father William", from *Alice in Wonderland* (1865)

Class #7: Lawyers: *Utopic; Atopic; Dystopic*

*"Bolus was a natural liar, just as some horses
are natural pacers..."*

Joseph G. Baldwin

Carl Sandberg, *Abraham Lincoln, The Prairie Years* (excerpts) (1926)
John Baldwin, "Ovid Bolus, Esq." in *The Flush Times of Alabama and Mississippi* (1853)
Harper Lee, *To Kill a Mockingbird* (1960)
Robert Frost, "The Self-Seeker" in *North of Boston* (1915)
John Barth, *The Floating Opera* (excerpt) (1956)
Charles Reich, *The Sorcerer of Bolinas Reef* (excerpt) (1976)
Abraham Lincoln, "The Gettysburg Address"
Walt Whitman, "Oh Captain! My Captain!" in *Leaves of Grass* (1865; 1900)

Class #8: Lawyers and 'Punishment'; Lawyers and 'Death'

*"Do not be too eager to deal out death in judgment...
even the very wise cannot see all ends.*

J. R. R. Tolkein

Helen PreJean, C.S.J., *Dead Man Walking* (1993)
The Trials of Darryl Hunt, DVD, (Ricki Stern, Anne Sundberg, directors) (2006)
Hugo Bedau, *The Death Penalty in America* (excerpts) (1964)
6,149 days: the true story of Greg Taylor (2014)
(at: <http://www.wral.com/news/local/documentaries/page/10942135/>)
Holy Bible (excerpts)

Class #9: Lawyers and 'Change': What We Breath; How We Move

*"Pollution! Pollution!
You can use the latest toothpaste,
And then rinse your mouth... with industrial waste!"*

Tom Leherer

Rachel Carson, *Silent Spring* (excerpts) (1962)
Information of the creation of the *Environmental Protection Agency* (to be provided)
Philip Egan, *Design and Destiny: The Making of the Tucker Automobile* (excerpts) (2003)
Ralph Nader, *Unsafe at Any Speed* (excerpts) (1965)

Class #10: Lawyer in “Popular Culture”

*Q: What do you need when you have three lawyers
up to their necks in cement?*

A: More cement.

a. Lawyer as ‘Star’

Alan Dershowitz, *Letters to a Young Lawyer* (2001)

b. The ‘lawyer joke’

Marc Galanter, *Lowering the Bar: Lawyer Jokes & Legal Culture* (excerpts) (2005)

c. ‘Lawyer’ on the ‘Small Screen’: Television

Elayne Rapping, *Law and Justice As Seen on TV* (excerpts) (2003)

C. LITERATURE

“In law also the emphasis makes the song.”

Frankfurter J., *Bethlehem Co. v. State Board*
330 U.S. 767, 780 (1947)

Class #11: The ‘Rule of Law’ in Literature

*“Laws are rules, made by people who govern by means of
organized violence...”*

Leo Tolstoy

Herman Melville, *Billy Budd: Sailor* (1888; 1924)

Dorothy M. Johnson, “The Man Who Shot Liberty Valance” (1942)

St. Thomas More, *Utopia* (excerpts) (1516)

Robert Bolt, *A Man For All Seasons* (screenplay) (1966)

Class #12: Law and Lawyers in Classical Literature

*“Good people do not need laws to tell them to
act responsibly... bad people will find a way
around the laws.”*

Plato

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

William Shakespeare, *The Merchant of Venice* (1600)

Mark Twain, *The Tragedy of Pudd’nhead Wilson* (excerpts) (1894)

Class #13: Law as Literature: Fiction; ‘Lawyer’ Words; ‘Judge’ Words

“Three generations of imbeciles are enough.”

Holmes J.

a. Generally

Pierre N. Leval, “Judicial Opinions as Literature” in *Law’s Stories...* (1996)

Clara Shortridge Foltz, *Closing Arguments: Calif. v. Unknown Defendant* (1890)
in, ‘Harry’ Caldwell *et al.*, *Ladies and Gentlemen of the Jury* (1998)

Buck v. Bell, 274 U.S. 200 (1927), Holmes J. (majority)

b. ‘Lawyer’ Words: Fact; Fiction

Executive Order #9066, February 19, 1942

Charles Fahy, *et al.*, “Brief for United States”, *Korematsu v. U.S.* (1944)

Wayne Collins, “Brief for Appellant”, *Korematsu v. U.S.* (1944)

c. ‘Judge’ Words

Korematsu v. U.S., 323 U.S. 214 (1944)

III. EPILOGUE: The ‘Meaning’ of it All

Class #14: Law, Lawyers and Literature

“Gentlemen! ... Ivan Ilyich is dead. “

Leo Tolstoy

Leo Tolstoy, *The Death of Ivan Ilyich* (1886)