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# Teachable Trials in the Social Studies Classroom

Mark S. Weiner

**A**t the heart of the Western intellectual tradition, particularly the value it places on the critical analysis of civic life, or social studies, lies the story of a trial. In this story, appropriately enough, the defendant was a renowned teacher. He was 70 years of age and, though not much to look at (he was widely regarded as exceedingly unattractive, with a pug nose and distended eyes), much admired by his students for challenging them to think deeply about the nature of society, politics, and virtue. To his supporters, he was a man who had given up worldly things to dedicate himself to the pursuit of knowledge and wisdom, and to helping others do the same.

Many local leaders, however, held a much less favorable view. After all, only five years before, the once-powerful democratic city in which the teacher practiced his craft had been defeated in a war it had been fighting for over a quarter of a century—against enemies with which the teacher had expressed some sympathy. A few years before that, the city itself had been briefly seized in a coup led by 400 oligarchs. Many influential men believed the unsightly teacher and his radical questioning of the status quo posed a serious threat to civic order, and a group of them, including a politician named Anytus and a poet named Meletus, joined together to prosecute him for impiety. In a city in which civic and religious affairs were intertwined, the charge was the equivalent of sedition.

After receiving a summons, the teacher appeared before a magistrate in a colonnaded hall known as the *Basileios Stoa*, in front of which stood a statue of the goddess of divine justice, Themis. The magistrate determined that the charges were sufficient for the case to move forward, and he drew up a formal document advancing the proceeding to its next stage. What followed was a

trial—but no ordinary one, at least not by today’s standards. For one, it had been initiated by a private prosecution, as was typical of criminal procedure of the age, with the accusers confronting the teacher directly, face to face (public prosecutions are a modern invention, born in the nineteenth century). And the jury was vast, a kind of popular assembly, with over 500 members selected by lot from among the free male population. These citizen-jurors met in the “people’s court,” the civic and commercial heart of the city, in a gathering place known as the agora.

But the trial was unusual most of all for what the teacher said in his own defense. He offered his fellow citizens a self-vindication so spirited and intelligent that it has gone down in history as one of the great courtroom speeches ever made. Not only did the modest man make his powerful opponents look ridiculous, but he also demonstrated the civic value of the very educational methods for which he was being prosecuted. The teacher asserted rather persuasively that the jury should render a verdict of acquittal not for *his* sake, but rather for their own. “I am far from making

a defense now on my own behalf,” he declared, “but on yours, to prevent you from wrongdoing by mistreating the god’s gift to you by condemning me” (The teacher may have been modest, but he was not especially humble).

Despite the teacher’s powerful self-defense, he was convicted, though by the hearteningly narrow margin of 280 to 221. The prosecution then asked the jury to impose the ultimate punishment, the death penalty. The jurors condemned the teacher to death. He soon discharged the penalty himself by drinking a cup of poison brewed from hemlock, a neurotoxin, which eventually stopped his heart. In his parting words, he asked a devoted follower to sacrifice a rooster to Asclepius, the god of medicine, to thank him for the comforting release his death was about to provide. He left behind a wife, three sons, and a great many admirers.

One of those admirers later wrote about the teacher in ways that would profoundly influence the history of human thought. The events I have described are known to us from some of the great philosophical texts of ancient Greece—Plato’s *Euthyphro*, *Apology*, *Crito*, and *Phaedo*—which together offer a stirring narrative, as readers may have recognized by now, of the trial and death of Socrates. This ancient “courtroom drama” is filled with compelling characters and moving action. In its challenging discussion of the relation between education and civic life, it formed the intellectual foundation for the distinctively self-critical course taken by the West over



Socrates standing before seated group of men; figure of Justice stands behind him. Engraving by L.P. Boitard, 1750

(Courtesy of the Library of Congress, LC-USZ61-1501)

the past 2,500 years—a tradition of civic analysis and engagement that lies at the root of a truly free society, and which the social studies curriculum seeks to nurture and develop.

### **Trials as Powerful Teaching Tools**

If the story of a trial lies at the root of social studies, then it comes perhaps as no surprise that many teachers find that trials can serve as excellent teaching tools, especially for courses in history and government. But why should that be so? Thinking carefully about what makes trials so amenable to teaching can help teachers clarify instructional goals and hone the techniques they use to achieve them. It also can help teachers choose the best trials for their own classroom needs.

The first pedagogical virtue of trials is that they are dramatic and exciting, a quality whose value can hardly be underestimated for the classroom. Trials capture our attention through the narrative tension created when two opposing parties clash and we anticipate a final decision on the merits of their arguments. That's why trials often form the narrative climax or

center of movies, from *M* (1931) to *A Man for All Seasons* (1966) to *Amistad* (1997). The inherent drama of trials is pedagogically useful because it draws students into a story and, in doing so, helps focus student attention on ideas they might otherwise find too abstract. In the story of great trials, there is an almost complete overlap between that which is thrilling and that which is meaningful, that which is interesting and that which is instructive. Watching Socrates make mincemeat of Meletus is great entertainment. It also provides a rigorous study in the principles of individual and civic excellence.

In addition to their dramatic quality, trials offer an unusually effective means to advance substantive principles at the core of citizenship in a democratic society, such as the importance of individual choice in human affairs and the necessity of taking personal responsibility in civic life. They do so by providing avenues for empathetic identification with historical protagonists themselves exercising personal agency. The presence of two sides in any legal case, each advancing the most powerful arguments on their own behalf, underscores the contingency of historical experience. Trials thereby show that at

any given moment, there are decisions to be made and that it is individuals who make them. These choices go beyond immediate questions of law, such as whether or not to condemn Socrates to die for undermining the Athenian religious and civic order. Trials highlight choices. They reveal real people making individual decisions, small and large, which have consequences in the world.

Third, trials forcefully reveal historical particularities. The outcome of a trial rests ultimately on an assertion about its underlying facts. Trials tend to draw a wide array of historical details and mores into the machinery of the judicial process. This makes trials windows onto the singular character of their times. The trial of Socrates, for instance, puts the religious life of ancient Athens firmly on display, including the existence of animal sacrifice and the close connection between religion and the state. It is set against a vivid urban architectural setting, the agora, and the political and military backdrop of the Peloponnesian War. It also, of course, reveals the fascinating peculiarities of Athenian legal procedure. Even small facts in trials can be powerfully illuminating. Knowing that Socrates was widely regarded as ugly, for instance,

does a lot to expand one's understanding of the ancient Greek worldview, including its perceived connection between beauty and virtue. In this respect, trials not only make history come alive through particulars, but also highlight the radical difference between the present and the past.

Fourth, trials have a special value when teaching about U.S. history and government. Greece had its trial of Socrates. France had its Dreyfus Affair. The Soviet Union had its Moscow Trials. But there is something about American culture that has tended to channel the great conflicts of any given day into the judicial process. As Alexis de Tocqueville wrote in *Democracy in America* (1835), "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." We direct our greatest conflicts into the courtroom. Indeed, the history of the United States could be told almost entirely through the stories of great trials: from the witches of Salem (1692) to John Peter Zenger (1735), the slaves of the "Great Negro Plot" (1741), the soldiers of the Boston Massacre (1770), and Aaron Burr (1807) ... right up through Khalid Sheikh Mohammed today. If a teacher of an American history survey were required to make reference only to legal cases in their lectures and lesson plans, they could teach an excellent course. Trials are an inextricable part of the American historical experience.

Finally, trials provide powerful teaching tools for a reason that grows from the very core of the relation between the trial as a legal form and the historical context in which a trial takes place. Trials can be understood as cultural engines that transform discrete, particular facts into civic symbols. Through the clash of the adversarial process, trials use the facts underlying a dispute to generate two competing narratives, one for the plaintiff and one for the defendant. These rival narratives seek to orient each litigant differently in relation to the law governing the case, for instance by asserting their guilt or innocence. In trials that capture widespread public attention,

moreover, the competing narratives created through the adversarial process also position litigants in relation to the fundamental social or civic value that lies behind the particular legal controversy before the court, values such as the freedom of political dissent or the civic responsibilities of liberty. They characterize the litigants as upholding or subverting values central to the symbolic coherence of the society. Great trials in this respect can be understood in anthropological terms as rituals, as public performances that represent the values of a community and establish the status of litigants in relation to its basic principles. In performing this ritual function, trials transform the particular facts on which they are based into grand symbols—small facts become markers of large ideas (consider Socrates' pug nose).

### **Trials and Our Commitment to Law**

The manner in which trials transform facts into symbols suggests that when social studies teachers use trials in their classrooms, they should approach them from a perspective often associated with the humanities, namely with sensitivity to narrative structure and social meaning. Moreover, teachers ought to be sensitive to the fact that in the United States, great, teachable trials—trials as public rituals—seek above all to position litigants in relation to the concept of law itself. American identity is implicitly based on the classical concept of a "people of law," a principle associated with the Hebrews of the ancient Near East, who entered into a covenant with their one God and pledged to obey his strict, complex system of rules. By accepting the Law as their measure or moral aspiration, the Hebrews were transformed from a collection of semi-nomadic tribes into a people and, ultimately, a nation. This notion of group identity based on common legal commitment is an unspoken but prevailing requirement today for civic membership in multi-ethnic, constitutional democracies, especially the United States. In such

societies, full civic membership is based not on descent, but on a commitment to law and to the constitution defining the nation. This is a major reason that trials have assumed such a central role in American history, and why many of the most important trials in America ultimately concern the question of what law should be.

### **What Makes Trials Teachable**

What makes a trial suitable for the social studies classroom—and not simply for a single class but as a centerpiece of an extended lesson? For the teacher, the first task in deciding which trial to teach is to choose a case in which there is the proper balance between the concrete and the abstract, between human drama, colorful facts, and historical particulars on the one hand and broad legal and philosophical issues on the other. For instance, some trials may capture students' attention through their underlying facts but present few important civic questions, or they may raise those questions so indirectly as to be ineffective in the classroom (take the infamous case of Lizzie Borden [1893] or the prosecution of Al Capone [1931]). In contrast, other trials, especially those brought on appeal, may raise important questions about law, politics, and society in a manner too technical to be fully understood or too abstract to capture students' imagination or to anchor larger principles in symbolic details. [*Martin v. Hunter's Lessee* (1816) and *McCulloch v. Maryland* (1819)].

The trials most suitable for teaching contain three different types of human drama. The first type arises from the underlying facts. To be teachable over a series of days, a trial ought to concern characters with whom students can actively (or negatively) identify or empathize, such as Socrates. The underlying record thus ought to be a rich one. For example, the Massachusetts manumission case of Quock Walker (1783) would make an excellent teachable trial about slavery if we knew much about its underlying facts, but we don't. We know a great deal more about the

stirring drama at the center of *Amistad* (1839), and thus it is a better choice.

The second type of drama in teachable trials takes place within the courtroom itself. This drama can occur in two ways. Most important, the trial can involve a colorful confrontation between litigants and their attorneys, for instance the trial of the Chicago Seven (1969). When the narrative is exciting, not only because of the chronicle of events but because of the drama in court, it can focus students' attention on the nature of the legal process itself and the social conflict underlying the trial as embodied in the stark contrasts of its warring personalities. The drama of the courtroom also need not arise solely from colorful personalities. There can be drama in the clash of legal argument per se, especially in great constitutional cases before the Supreme Court. There is extraordinary tension generated by the doctrinal question of how to interpret the Fourteenth Amendment in *Plessy v. Ferguson* (1896) or how to interpret the First Amendment in *New York Times v. Sullivan* (1964).

Finally, the most teachable trials involve drama not only inside the courtroom but also outside it. They captured the public imagination and generated significant public discussion, thereby causing everyday people to take sides in the ritual process of the trial. It is important in this respect not to choose trials that were famous simply because they were lurid. Such cases are frequently described, when they occur, as "trials of the century," or with some other hyperbolic phrase, but in fact they are quickly forgotten (e.g., the trial of the Lindbergh kidnapper [1935]). Instead, a trial should be chosen because the litigants were associated with social groups or political principles with which people can identify. Teachable trials are those in which there was a public struggle to come to terms with an issue or idea—i.e., widespread engagement in the ritual process great trials engender in relation to basic civic values.

## Framing the Trial's Central Issues for Students

Once a teacher has chosen a trial with a proper dash of drama and detail, the next challenge is to clarify its civic significance. In this task, the teacher needs to decide precisely what role the trial will serve in their particular course, and then frame the central issues accordingly. Trials that never move to the appeals stage may require a special effort in this regard, because they typically are based on a contention about the underlying facts of the controversy rather than pure questions of law. At the same time, major cases that come before the Supreme Court also may require artful framing because they often turn on legal matters that are rather technical (it's for this reason that one ought to choose constitutional cases carefully: teaching *Plessy*, for instance, rather than *Yick Wo v. Hopkins* [1886]).

When teaching trials in a multi-class unit, I believe, it is best to assign a secondary source on which students can rely for a straightforward description. Alternatively, teachers might themselves draw up and distribute a summary of the trial. A "trial unit" in a class might then begin with the teacher framing the issues at stake, without reference to the specific trial. Next, these themes might be considered in reference to the trial, once students have become familiar with it. The class might then examine primary documents, whether courtroom speeches, court opinions, or newspaper articles, to deepen students' understanding of the central themes.

Assignments can help students clarify and develop their views. In light of the issues discussed above, I offer the following suggestions for possible assignments. First, focus students' attention on the characters of the trial by asking them to describe the motivation of the actors, either in discussion or as a creative assignment in the form of a letter from the litigants. This will help draw students into the drama and emphasize the theme of agency and choice. Second, students can be asked to tell the story

of the trial from two contrasting points of view, each treated with sympathy, characterizing the facts and the issues at stake in fundamentally contrasting ways. Third, students can be asked to find or review documents illuminating the social context of the trial, to bring out its social significance, either by putting documents in conversation with each other or by focusing on a single, telling symbolic detail and discussing how it illuminates themes in the trial as a whole (as one might be asked to do in a literature course). Finally, as a more ambitious exercise students might be given documents, both from inside and outside the courtroom, and asked to write a narrative description of the trial using only those documents (in law school this is called a "closed universe memo").

These are just a few of many observations and assignments that could be used when teaching powerful trials. Remember, as a social studies teacher you are continuing a tradition whose intellectual foundations extend back to the years when Plato wrote his dialogues and recalled his teacher defending himself before a trial of 500 Athenians on that fateful day in the agora. 📖

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