ESSAY TOPICS
ON THE RELATIONSHIP OF LAW AND CULTURE

Choose Only One Topic (1, 2, or 3)

1) In the **Case of the Speluncean Explorers**, Justice Keen makes it clear that in his view the Court should not be dealing with issues of morality and common sense, but should restrict itself to the narrow issues of law raised by the killing of Roger Whetmore. Unlike Justice Foster, Justice Keen does not think that the role of judges and courts should include interpreting the meaning of statutes, either by reference to what the Legislature intended in passing the statute or by reference to public opinion about how an individual case should be decided. For Keen, a judge should stick strictly to the plain meaning of the words in a statute regardless of the uniqueness of the facts of a case or the “justness” of the result. Justice Keen votes to affirm the convictions.

Justice Handy, on the other hand, seems to think that the public’s opinion in the case—which is overwhelmingly in favor of overturning the convictions—should influence the Court’s decision. Handy points out a significant case that he had handled as a trial judge, concerning a defrocked minister, in which he had followed this path to arrive at his decision. Handy’s view is that the “curtain of legalisms” created by the other Justices in the **Case of the Speluncean Explorers** should be drawn aside, lest the rule of law become primarily a set of abstract, cumbersome rationalizations unrelated to reality and devoid of the practical wisdom of ordinary people. For Handy, the proper role of the courts in a democracy requires that judges follow the will of the people as found in such places as newspaper editorials and opinion polls. Handy accordingly votes to overturn the convictions.

[75%] **Carefully explain and compare in detail** the position of each of these two Justices concerning **A) how judges should decide cases**, and **B) what the proper relationship is between the judiciary and the power of the majority in a democracy**.

[25%] **Also analyze** one(1) strength and one(1) weakness in the position of each of the two Justices, and **discuss** what the results might be for law and society in general if all judges were to adopt exclusively either Keen’s or Handy’s views on these two matters.

2) Despite the fact that during World War II an overwhelming majority of the American public seems to have supported state government requirements that public school pupils salute and pledge allegiance to the U.S. flag each day, the Supreme Court ruled against the constitutionality of the salute and pledge in 1943. In **West Virginia v. Barnette**, the High Court ruled that under the federal Constitution and the First Amendment no state or local government has the **power** to require such a “confession of belief.” The court’s analysis even suggested that a compulsory public school ritual like this might do more harm than good to students and to the cause of national unity in war-time.

In **Korematsu v. U.S.**, the Supreme Court found constitutional, over vigorous dissents from a minority of the Supreme Court Justices, the exclusion orders issued by the U.S. military against Japanese-American citizens and all persons of Japanese extraction living on the West Coast of the U.S. immediately after the Japanese attack on Pearl Harbor in 1941. By implication, this court decision found the entire internment program (curfew, exclusion, and relocation) constitutionally valid, even though the internment orders used the criterion of race to deprive Japanese-Americans of their property and liberty without granting them due process hearings about their individual loyalty. It was not until 1983 that the U.S. Congress declared that the Internment had not been a military necessity and voted to apologize and pay reparations to the survivors.
Pick ONE of these two cases dealing with the proper power of government in protecting national security and with the importance of individual freedoms in time of crisis. For the case you choose,

1) [75%] Explain carefully the Court’s strongest reasons (the main elements of the Court’s majority opinion) for reaching its decision. If you choose Barnette, also analyze one(1) strength and one(1) weakness in the majority opinion. If you choose Korematsu, also analyze one(1) strength and one(1) weakness in one of the dissenting opinions.

2) [25%] Using course materials concerning the case which you have chosen to write about, briefly discuss one general lesson about law and society that could be drawn from the case that you are discussing. Explain how that lesson might be applied to the conflict between national security and individual rights in the U. S. today as found in either A) the required readings about the debate over the pledge of allegiance in public schools after 9/11 (found on the course web page), OR B) the claims made by Schwarz and Huq in excerpts from their book (also required reading found on the course web page). Please do not spend time discussing anything else about how the war on terrorism should be conducted or about your opinion of that war or of loyalty and patriotism in general.

3) During our study of the Salem Witch Trials of 1692, as presented in Miller’s The Crucible, we started to understand how it was that fear of things both real and imagined can be exploited by people who have personal, political, economic or other agendas that they wish to pursue without public or legal scrutiny. We saw that this fear can become a kind of hysteria that erodes the rationality, balance and judgment of ordinary persons and of political and legal leaders. We saw also that the legal process, if not properly constructed, can fail to keep the passions of the public in check and sometimes even exaggerate those passions. It was suggested that this same socio-legal dynamic (exploiting fear and thereby unleashing an uncontrollable irrationality in law and public life) might be, or might have been, a risk at other times in U. S. history.

Generalizing the lessons of the Witch Trials, we might conclude that the dynamics of unbridled fear can be especially threatening to a society in which individuals are confronted by not having access to law or by the overwhelming resources and power of government in distorted legal proceedings in which their liberty, property or lives are at stake. To some extent, the rule of law in general, and due process requirements in particular, function as protections against this dynamic.

Using your general understanding of the nature and importance of due process developed during the semester and of the impact of its absence upon society, AND referring to only two or three(2-3) of the specific elements of due process mentioned in class,

1) [75%] Analyze the conflict presented in The Crucible, using references to specific incidents, characters, and ideas in the play to show how distortions in the due process of law were not only unfair to the accused, but may have made the Puritans’ problems worse, undermined their society and hastened the collapse of shared cultural beliefs among them.

2) [25%] Compare and contrast the distortion of due process in The Crucible with the handling of due process issues in the court decision in either the Barnette case or the Korematsu case. Also consider whether, if we were without these elements of due process, we might find ourselves beset today by a self-destructive fear and deterioration of the social fabric in some ways similar to that which plagued the Puritans in 1692? You may find it helpful to use Judge Ryan’s article (found on the course web page) in formulating your answer.

[The elements of due process will be posted on the course web page]