

THE TRIAL OF NAPOLEON: A CASE STUDY FOR USING MOCK TRIALS

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During a recent semester, in an effort to promote active learning in the classroom and get students involved in history, I structured a class around a fictitious trial of Napoleon I, Emperor of France. I wanted the students to share my enthusiasm for the French Revolutionary period and I hoped the structure of the course would encourage students to engage in meaningful research and critical analysis and to foster a sense of student camaraderie. I also hoped that the competitive aspects of the mock trial would motivate students to work harder than they might in a more traditional classroom setting. It was my first experience with such a format and I had some concerns with how I would handle course organization, format, grading, performance, and anticipated outcome. The course that resulted, "HIS 399: The Trial of Napoleon Bonaparte," was the most rewarding teaching experience of my academic career and, based on student responses, one of their best courses as well. I offer this essay as a case study of the course: The paper will outline some of the constraints and difficulties in implementing the course, explain some of the rationale for the choices I made, offer some observations on the strengths and weaknesses of the course, and make some suggestions for how I might change the same course in the future.

The use of mock trials is not new, especially for pre-law or paralegal programs and there is an extensive body of research for using trials at all levels of education. College courses in the disciplines of English, sociology, communications, business, and even mathematics have utilized mock trials. However, comparatively little has been done using mock trials in college-level history courses.¹

¹The literature cited here is not intended to be all inclusive. For secondary teachers, see: Amy Vittert Deutsch, *A Mock Trial Resource Guide for Secondary Educators* (Masters Thesis, Maryville University of Saint Louis, 1997); Charles Hou, "The Death's Head-Pin: Using a Mock Trial to Introduce the Caribou Gold Rush," *History and Social Science Teacher*, 18 (March 1983), 172-78; John G. Popenfus and Mark Kimbrell, "The Mock Trial as an Activity in High School," *History and Social Science Teacher*, 25 (Fall 1989), 35-39; Norma Thiele, "Mock Libel Trial Provides Unique Educational Experience," *Quill and Scroll*, 63 (Oct.-Nov. 1988), 4-6. For college level see: Martin V. Bonsangue, "Is It True that 'Blonds Have More Fun'?" *Mathematics Teacher*, 85 (Oct. 1992), 597-81; Victoria Boynton and Jane Carducci, "Benefits of the Mock Trial in the College Classroom," *The English Record*, 43 (1993), 11; Augustine Brannigan, et. al., "Pornography and Behavior: Alternative Explanations," *Journal of Communication*, 37 (Summer 1987), 185-92; Frank M. Bryan, "Learning Through Conflict: The Mock Trial Experience," *Teaching Political Science*, 10 (Spring 1983), 127-35; Joan Palasz Alverzo, "Mock Trial: An Educational Tool," *Nursing Management*, 28 (1997), 46; Loriless R. Sandmann and Anne Gillespie, "Land Grant Universities on Trial," *Adult Learning*, 3 (Oct. 1991), 23-25; Norma J. Shepelak, "Employing a Mock Trial in a Criminology Course: An Applied Learning Experience," *Teaching Sociology*, 24 (Oct. 1996), 395-400; Eugene Howard Wade, "Development of a Mock Trial," *Journal of Business Education*, 45 (May 1970), 339-40.

I wanted to use the course for our junior seminar, a course in which all the students conduct research on the same topic. I knew I could expect anywhere from 15 to 20 history, pre-law and/or social science majors/minors who had taken the required introductory level courses. About half of the students had taken my Revolutionary Europe (1650-1815) course, some had already had quite a few upper-level courses, but a third of the class had only had the required introductory American and world history courses. All of them had taken our historical methods course which we offer at the sophomore level. Consequently, they all knew how to conduct historical research, critically analyze primary sources, and account for differences in historical approach.

Since my area of expertise is the French Revolution and Napoleon, I wanted to find a way that the students could undertake meaningful research in European history at a regional university with adequate but limited library resources. When considering the topic for my trial, my initial inclination was to use the trial of Louis XVI and have the students play appropriate roles. However, after some research on the trial, I decided to use a fictitious trial rather than a real one for several reasons. An historical trial already had a verdict and I did not want to saddle the class with a preordained outcome. In addition, I found that Louis's trial did not allow me to dig at some of the deeper questions of the era. I thought it might be interesting to put Napoleon Bonaparte on trial and began to think of some issues to consider. Eventually the purpose of the course centered around a traditional question within the historiography of the field: "Did Napoleon pervert or preserve the gains of the French Revolution?"

The class split into halves and each student assumed a role. One student played Napoleon and one student played the lead counsel (advocat) for each side. The remaining students had to assume the roles of witnesses and prepare their lead counsel to question witnesses from the other side. I assumed the role of judge and I persuaded three colleagues familiar with the Revolutionary era to act as the jury (tribunal). Deciding on the composition of the tribunal did not come easily. I wanted to use someone other than myself to make the judgment on the verdict to remove any hint of bias on my part and to add some real mystery to the process. However, I did not believe that I could use students because there were not enough of them in the class and I thought they lacked enough historical background to render a verdict. Moreover, since I initially decided to make the verdict a portion of the final grade, I felt awkward having students control a portion of the grades of their fellow classmates.

The central question of the trial—"Did Napoleon I pervert or preserve the gains of the French Revolution?"—was broad enough so that the students had to consider several issues. First, they had to arrive at some understanding of the gains of the French Revolution as defined by the Revolutionaries and several schools of historical thought. Next, they had to trace those gains through the Revolutionary and Napoleonic

regimes. Finally, they had to arrive at some consensus appropriate for their side about which gains were perverted and which were preserved.²

The trial took place over two successive Tuesday afternoons, each session lasting for three hours, the normal day and time of the course. I wanted to make the atmosphere of the trial as authentic as possible, so I arranged with the local civic officials to use the district courtroom. I persuaded my colleagues to wear their academic regalia during the trial, convinced the lead counsels to wear black robes borrowed from a local church choir's closet, and forbid the use of watches in the courtroom.

While organizing the details of the trial, how to manage our limited three-hour block became the most pressing concern. On the first day, I allocated fifteen minutes for each side's opening statements. The "perverters" would go first and would have two hours to present their case and produce all their witnesses. The "preservers" would have thirty minutes to cross examine as many witnesses as they liked. On the final day, the order was reversed; the "preservers" had two hours for their case, the "perverters" thirty minutes to cross examine, and each side had fifteen minutes of closing arguments. I kept track of time with a half-hour glass and gave each side some general indication of how much time they had left, e.g. "Half your time has elapsed," "You have one quarter of your time left," etc. Each side had one five minute "recess" that they could call at anytime to collect their thoughts, take a break from the trial, stretch, and/or get refreshments.

For the trial itself, I allowed objections for questions that were not germane, if a counsel badgered a witness, or hearsay. I also had to consider how to handle witnesses who gave factually inaccurate testimony, either because they lied or because they simply made a mistake. I decided to make the opposing side use cross-examination time to confront the witness, as one would in a regular trial.

Finally, I had to consider how to assess grades. The students playing witnesses wrote four to five-page "briefs" about their respective witnesses, while the lead counsels wrote a twenty-page essay detailing their strategy and how they planned to cope with the strengths and weaknesses of their respective issues. The student who played Napoleon wrote a twenty-page essay on Napoleon's background and his ideas regarding many of the prominent issues likely to be discussed, including the *Code Napoléon*, slavery, Napoleon's attitude toward women, the creation of the Legion of Honor, the creation of a new nobility, careers open to men of talent, and others.

²Textbooks for the class included Roger Dufraisse, *Napoleon* (New York: McGraw Hill, 1992); Lynn Hunt, ed., *The French Revolution and Human Rights* (Boston: St. Martin's Press, 1996); Martin Lyons, *Napoleon Bonaparte and the French Revolution* (Boston: St. Martin's Press, 1994); Jeremy Popkin, *A Short History of the French Revolution* (Englewood Cliffs, NJ: Prentice-Hall, 1995); and selected articles from Frank Kafker and James Laux, eds., *Napoleon and His Time: Selected Interpretations* (Malabar, FL: Robert E. Krieger Publishing Company, 1989).

Students also would be graded on class participation, their preparedness to discuss readings, their performance as witnesses, the depth of understanding of the witness, ability to answer questions as witnesses might (to the best of their ability), and demonstrated appreciation for the issues at hand. In an effort to motivate the students, I set aside ten percent of the grade for the verdict. The winners received an "A" for the verdict while the losers received an "F." This meant that members of the losing side would have to score very well in all other aspects of the course to earn an "A" in the class. Finally, students were asked to write a five-page "summation" of how they thought the trial went, what they did well and what they thought they could do better and, finally, to give suggestions for course improvement. I also had them complete anonymous peer reviews, rating fellow group members from 1-5 in categories, including (though not limited to) responsibility, cooperation, research, and overall performance.

After six weeks of background reading to introduce the content and context of the trial, the class divided into two groups: "the perverters" and "the preservers," based on their own perceptions of Napoleon's influence on the French Revolution. Conveniently, the class divided exactly in half. A student volunteered to play the role of Napoleon and each side elected their own lead counsel and an assistant counsel based on suggestions I made. The students chose the two witnesses they would role play and the two they would prepare for cross examination from a list I had created based on available library and language sources. Since none of the students read any foreign language, I was limited in what they could use.³ I also had the students provide both counsels with "disclosure" lists of what sources they used in their research and required that each side share resources fairly. For the rest of the course, the students researched their roles and met periodically with their sides to coordinate and plan strategy. I attended many of these sessions to make sure the students stayed on task.

When it came time for the trial, I worried about procedural problems, frequent objections, and poorly prepared students. Opening statements by both sides confirmed my fears. I inadvertently failed to give them any guidance regarding the purpose of

³The single most helpful resource is Jean Tulard, *Bibliographie critique des mémoires sur le Consulat et l'Empire* (Geneva: Droz, 1971). Although written in French, Tulard's work is an annotated bibliography with a useful index. For some widely held memoirs printed in English see: Laure Abrantès, *At the Court of Napoleon: Memoirs of the Duchesse d'Abrantès* (New York: Doubleday, 1989); *Memoirs of Madame Junot*, 6 vols. (Paris and Boston: The Napoleonic Society, 1895); Louis Bourrienne, *Memoirs of Napoleon Bonaparte*, 4 vols. (Paris and Boston: The Napoleonic Society, 1895); Emmanuel Auguste Las Cases, *Le Mémoiral de Sainte Hélène: Journal of the private life and conversations of the Emperor Napoleon at Saint Helena*, 6 parts in 3 vols. (Boston: Wells and Lilly, 1823); Napoleon I, Emperor of the French, *New letters of Napoleon I, omitted from the edition published under the auspices of Napoleon III*, from the French by Lady Mary Lyod (London: Heinemann, 1898); and *Unpublished Correspondence of Napoleon I preserved in the War Archives*, 3 vols., edited by Ernest Picard and Louis Tuety (New York: Duffield, 1913).

opening statements and it showed. However, once the perverters began their case, the trial moved with surprising ease. The perverters' case was well conceived, planned, and articulated. There were no unexpected snags, few objections, and, apart from some sharp verbal altercations between the two lead counsels, no major problems. The preservers were clearly unprepared for the thoroughness and clarity of the perverters' case in part because no one knew what to expect and in part because of student procrastination. When the first day ended, the general consensus among the students was that the preservers would have a difficult time defending their client.

The preservers rose to the challenge the following week. They attacked weaknesses in the perverters' case while highlighting the accomplishments of Napoleon. As part of a conscious policy, the preservers lured the perverters into spending most of their time questioning Napoleon, which left little time for other witnesses. When the preservers recalled Napoleon, the perverters had no time remaining for cross-examination. Consequently, Napoleon spoke eloquently and at length about his accomplishments, while his opponents watched helplessly from their tables. When I retired to the jury room with the tribunal, the outcome of the trial was very much in doubt.

Deliberations were enlightening. After much discussion, but without exception, the tribunal concluded that the preservers had presented the most convincing case. As the judge, I did not participate in the deliberations, but as the instructor I listened to the tribunal's comments, offered historical clarifications when asked, and solicited opinions about student performances. When I returned to the courtroom to read the verdict, the excitement and tension in the air was evident. Never have I been in such an emotionally charged room as part of an academic exercise.

Weaknesses

There were several evident weaknesses of the course. Without exception the most common complaint from students was the lack of time they had to research their respective parts. I assigned witnesses in the sixth week of classes and my rationale for this was simple; I wanted them to have some appreciation for where they stood on the central question before they chose sides. Consequently, students only had eight weeks to collect, process, and analyze their information. The relative unavailability of sources, especially those printed in English, was problematic. Some interlibrary loan requests could not be met in a timely fashion and several students resorted to traveling to research libraries in the region. Next time I will assign students their witnesses during the first or second week of class to eliminate some student frustration.

Other suggestions involved improving the process of the trial. Both sides complained about a lack of cross-examination time and, in retrospect, their observations were correct. Neither side used their allotted two hours to present their

cases, while both sides completely exhausted their cross-examination time. Next time, I will designate 45 minutes for cross-examination. My plan to have opposing counsel confront inaccurately presented information during cross-examination placed too much of a burden on the crossing side and cut into limited time. Therefore, in the future I will allow objections based on "inaccurate information."

Two serious issues arose over the roles that faculty played. Several students complained about the composition and behavior of the tribunal. One student noted, "I feel, for the most part, that the tribunal was unbiased, knowledgeable, and fair."⁴ However, the perceptions of most of the students were quite different. One of the students wrote in her summation: "The jury, I felt, was terrible. I believe they were biased from the beginning, especially since two of them were French professors ... After the jury was there for just a few minutes one slept while another graded papers. Again on the second day, both French professors slept while the other graded papers. It made us feel like we were not getting through to any of them." Another wrote, "It is hard to believe that we had a fair and impartial jury when no one paid attention ... I thought that it was very disrespectful to us for them to sleep. The trial may not have been important to them, but it was to us." I observed similar patterns of behavior from the tribunal and instead of worrying about time constraints, I should have called more frequent breaks so we could all stretch, catch a breath of fresh air, or get refreshments.

Another serious problem involved around my own role in the trial. As an outspoken Bonapartist, I had made clear in previous classes my views that Napoleon preserved the basic gains of the French Revolution. While I assured the class that my views would not affect the course of the trial, this clearly was not enough. The assistant attorney for the perverter side wrote in her summation, "I also believed that the judge helped the preservers more and kind of left us in the dark." The student who played Napoleon wrote, "There were numerous complaints that you could or would sway the opinion of the tribunal, or rather that your decisions during the trial were made with natural biases in favor of Napoleon and the preserver side." While this was not the case, the perception that it might have been a problem bothered me. Several students offered some insightful suggestions and many wanted more influence in the composition of the tribunal. A member of the perverter side recommended having both sides choose one juror and the judge choose the third. One of my fellow colleagues suggested that jurors get educated during the trial and I should reconsider using students. In fact, it would be easy to use Phi Alpha Theta (history honor society) members, several of our pre-law club members, or even students from another class.

⁴Quotes were taken from summations all students submitted at the end of the course. To protect the anonymity of students, names have been omitted and, where necessary, I have edited the quote to compensate for the lack of proper names.

Not only would the students in the trial class have to prove their point, they would have to do it in a way that others not involved in the course could understand.

The most controversial aspect of the class became the "verdict" part of the grade. I knew the decision would be an unpopular one, but I wanted to motivate students to work hard throughout the course. However, I found that the students were motivated enough by peer competition without the mechanism of the verdict grade. Indeed, in many ways the verdict grade was counter-productive. Students were so concerned for their grade that fear of losing eclipsed their natural enthusiasm for the course and both winners and losers objected to this aspect of the grade, especially in light of how hard every student worked and performed. It was the most serious blunder I made in planning the course and, ultimately, I eliminated the verdict element of assessment before assigning final grades.

Strengths

Despite the weaknesses, the trial was a success for student and professor alike. The mix of student majors made for an interesting class. The trial appealed to history, pre-law, and social science teaching majors for different reasons. The pre-law students obviously enjoyed the mock trial format and the competitive spirit of the course. The future teachers appreciated the novel pedagogical approach to the subject, while the history majors enjoyed the historiographical debate and the research.

Many praised holding the trial in the district courthouse, the atmosphere created by the lack of precise time, and costumes worn by the lead attorneys, tribunal members, and myself. One student confessed, "From the first moment of questioning I had the strangest feeling inside of me, it was like a rush of adrenaline just from the atmosphere of the trial." In a more detailed account, another student wrote, "I feel the use of this venue [district courtroom] was an excellent choice. It gave an aura of professionalism. The use of an hourglass to keep time gave the courtroom a sense of timelessness. The use of black robes by the judge, lawyers, and jury helped to set the ambiance of the time period we were portraying." The ambiance could be further enhanced in the future by the use of music, flags, and period art.

The ease with which the actual trial progressed surprised everyone involved. The dreaded ceaseless objections, pointless arguments, and numerous sidebars never materialized. In fact, the trial seemed to take on a life of its own, ebbing and flowing with each witness and cross-examination. One student noted, "The overall trial seemed to go very smoothly, with each side having their better days. The first day of the trial seemed to be won by the prosecution, who took the defense by surprise by being very prepared and organized. However, the next session, and the trial itself, was won by the defense, who were spurred on by their defeat on the first day. The lead advocat for the preserver side believed that, "The rules of the Court were fair, they took a little bit of

getting used to, but that is what makes it so interesting. Initially, I thought that the students should have some kind of moot court experience or something to watch or go by, but not knowing only adds to the realism." The lead perverter commented, "The fact that the trial went as smoothly as it did was a pleasant surprise."

The strategy aspect of the trial appealed to several students, mainly on the preserver side. They made better use of time by calling Napoleon to the stand to question him on several of his accomplishments. Our student Napoleon wrote, "Our side devised and implemented the strategy of calling Napoleon in the middle and asking him the toughest questions so as to incite the prosecution into using up a large amount of their [cross-examination] time. As a result, we were able to call Napoleon to the stand again and have him glorify himself without any opposition to his testimony." It was an effective strategy and a member of the perverter side lamented, "I totally forgot about recalling witnesses. I think our side was hurt by Napoleon being recalled, but it could have been worse."

Virtually all the students commented positively about the active learning aspects of the course. One wrote, "Never have I worked so hard, and had so much fun during the process of learning—this is what history is all about." Another noted, "The type of group research assigned in this class was new and refreshing ... I feel that this type class is the absolute best way to analyze history when a student gets to this level in their undergraduate career." Perhaps the most dramatic comment came from the lead attorney on the preserver side. He wrote:

The prosecution hammered the hell out of us/me on day one. I felt alone up there fumbling for a question or two to ask on a page that had twenty. I felt shame for I felt that I let my team down, and when I was fumbling for words, I would look over and see their eyes, and then the guilt and shame would just come over me. That was the worst feeling in the world, and at the same time it was the best. It was real!

I have always struggled with how to make group learning meaningful, while ensuring that those who did the work get rewarded accordingly. Many of the students expressed satisfaction in the group aspect of the class. One wrote, "Most of the time the classes students have focus on reading and listening ONLY [student's caps] to the professor. Being able to interact with your fellow students made this class more interesting. In most classes the student does not feel like a part of the class. Yet in this class, everyone is involved and everyone is important in the class." Concerning the group work another student wrote, "It was demanding because each individual was responsible for themselves and their group members. If anyone slacked off their duties, it did not go unnoticed. The added encouragement and incentive to fellow members was enough to make sure that everyone pulled their own weight." Group

strategy meetings were held in local restaurants, dorm rooms, and apartment buildings, some lasting well into the morning hours. Without exception, students claimed their side was well prepared and devoted a great deal of time to trial preparation.

The personal attachments the students made were also rewarding, for myself and for them. One student observed, "Besides the obvious fact that everyone walked away thoroughly sick of Napoleon ... the students in the class became friends. Working so close and having individual and group meetings preparing for the trial has allowed for the personal side of everyone to come through and we have come away knowing more about each other in the process." Another commented, "Although we had a lot of hard work to do we were able to have a good time and get to know each of our fellow group members on a personal level which I enjoyed. This I believe helped us function better as a team." That same student closed his summation, "I not only enjoyed this class because ... I made some friends that I know I will not soon forget."

The effort the students put into the course impressed me as well. On a scale of 1-5, the average score to the question "Did you work hard?" on our computerized performance forms was a 4.8, higher than similar upper-level history courses. Virtually all the students mentioned the amount of work they put into the class, most of it outside formal class time. Peer competition clearly motivated them better than any other inducement I implemented, including the verdict aspect of student assessment.

Finally, as a historian, I was pleased to see the students actively engage in historiographical debate. It was clear to me that some of the arguments presented in the trial mirrored traditional lines of debate in French Revolutionary and Napoleonic scholarship. In some ways, the preservers glorified Napoleon's political achievements, praised his vision, and deified him as the champion of the *political* gains of the French Revolution. The perverter side attacked Napoleon on social grounds, for his complete unwillingness to preserve women's rights, his reinstatement of slavery, his reestablishment of hereditary nobility, and his conscious and consistent steps to erode popular participation in the judicial and political system.

In some ways this trial evolved into a debate about the "Great Man" theory of history. Undeniably Napoleon's actions influenced the course of the Revolution, and the question I asked the students to answer necessarily meant that both sides had to question Napoleon's personal role in France's Revolutionary period. In other words, Napoleon's conduct and policies formed the focus of the trial instead of more organic changes beyond Bonaparte's control. While the debate about the "Great Man" theory of history is *passé* for many professional historians, the structure of a trial around one influential person was a good way to get students to start thinking analytically and led to a more sophisticated interpretation of the period. Napoleon was a complex personality, full of inconsistencies, and often initiated contradictory policies. Students

*For a discussion of the Roger poll see Deborah Lyndell, *Designing the Holocaust: The Growing Assault on Truth and Memory* (New York: Free Press, 1993)

discovered that changes occurred in French society that the Emperor did not anticipate or could not control.

Furthermore, the structure of a mock trial is such that it allows for changes in approach and purpose. Depending on the phrasing of the charge, one could ascertain to what extent Napoleon was a military innovator, or one could argue whether he had any direct effect on the era or whether stronger cultural influences transcended his personal reign. One could even take the question "Did Napoleon pervert or preserve the gains of the revolution?" and conduct the trial as a "class action" suit with those opposed to Napoleon (women, free slaves, republicans, devout Catholics) on one side and Bonapartists on the other. This allows students to analyze the same issues but shifts the focus away from Napoleon and redirects it to more fundamental issues.

Conclusion

In this essay I have confronted the issues surrounding a fictitious trial of Napoleon Bonaparte. This kind of pedagogical device allows historians to introduce historiographical debate and promotes meaningful critical analysis of historical sources and issues. Mock trials enhance active learning, foster a cooperative spirit, inspire hard work, and allow students to share their knowledge in a unique setting. The weaknesses I identified in this activity can be remedied and the strengths further developed to create a memorable and effective course. The trial format requires a great deal of planning, flexibility, patience, and perseverance, but the rewards are well worth it—for student and professor.