

## THE ORIGINS OF LAW Winter 2019

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**Lecture:** Wednesdays 11:30am -  
2:20pm  
**Room:** TSH B129

**Office:** KTH 510  
**Office Hours:** Thursdays 2:30pm -  
4:30pm

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### **Course Description**

Is the birth of law inevitable? Why? This course considers topics such as divinity, rationality, performativity and “the people” in the development and reform of legal order.

### **Course Objectives**

By the end of the course students should be able to:

- Identify conditions associated with the rise of law or its renewal;
- Discuss the relationship between law and language;
- Distinguish between Western and non-Western concepts of law;
- Identify the role that law plays in organized societies;
- Discuss how law relates to forms of behavior;
- Analyze contemporary events in light of the theories covered in the course.

### **Required Materials and Texts**

- The majority of course readings are available in the Avenue to Learn site for this course. Please remember that Avenue is sometimes down, so access the readings well in advance.

### **Class Format**

Seminar.

### **Course Evaluation – Overview**

1. Peer Advocacy & Critique (20%), due on date to be assigned

2. Critical Analysis Paper (10%), due February 6, 2019
3. Participation (30%) due, ongoing
4. Major paper (40%) due April 3, 2019

### **Course Evaluation – Details**

#### **Peer Advocacy & Critique (20%), due on date to be assigned**

This exercise pairs two students in an exchange on the topic of that week's assigned readings. One student is assigned the role of advocate for the views articulated in the readings, and the other has the role of critiquing those views. The exchange should be productive and mutually supportive. Every student will appear twice – once as Advocate and once as Critic. Each appearance is worth 10%.

#### **Critical Analysis Paper (20%), due February 6, 2019**

Write a 500 word analysis of one of the readings from the first three weeks of class. This should indicate the central claims of the reading, some evaluation of how well those claims work, and show originality of insight or interpretation that takes the discussion beyond ideas already explored in the classroom.

#### **Participation (30%), due ongoing**

Includes attendance and meaningful participation in discussion. As evidence of preparedness students are required to bring to class a one-page summary of that week's readings, due at the opening of the class. This summary will not be graded but will be used to evaluate your preparedness for the class discussion. Late submission of this material will not be accepted unless there are documented grounds for accommodation. The paper should address the following questions:

1. What is this topic this reading or set of readings is addressing?
2. What is the main claim of the readings? If there's more than one, how do they inter-relate?
3. What kinds of evidence are used to make these claims?
4. Does it work or fail and why?

#### **Major research paper (30%) due March 27, 2019**

Prepare a 2,000 word research essay on a topic related to the themes of the course. Special attention should be paid to adequate citations, and it should provide a well-formed and well-defended thesis, using appropriate evidence and theoretical argument.

## **Weekly Course Schedule and Required Readings**

### **Week 1 (Jan 9)**

#### **Introduction**

### **Week 2 (Jan 16)**

#### **Lawgiving**

- Plato. (1980). Book III. In T. Pangle (Trans.), *The Laws of Plato* (pp. 58–88). Chicago, IL: University of Chicago Press.
- Crusher, B. E. (2011). From Natural Catastrophe to the Human Catastrophe: Plato on the Origins of Written Law. *Law, Culture and the Humanities*, 9(2), 275–294.

### **Week 3 (Jan 23)**

#### **The Force of Law**

- Derrida, J. (1992). Force of Law: the Mystical Foundation of Authority. In D. Attridge (Ed.), *Acts of Literature* (pp. 3–67). New York, NY: Routledge.
- Glendinning, S. (2016). Derrida and the Philosophy of Law and Justice. *Law Critique*, 27, 187–203.

### **Week 4 (Jan 30)**

#### **The Management of Violence**

- Whitman, J. Q. (1996). At the origins of law and the state: Supervision of violence, mutilation of bodies, or setting of prices? *Chicago-Kent Law Review*, 71, 41–84.
- Gewirtz, P. (1988). Aeschylus' Law. *Harvard Law Review*, 101, 1043–1055.
- Aeschylus, Orestia: *Eumenides*.  
<https://www.youtube.com/watch?v=c99mNO3TLFY>

### **Week 5 (Feb 6)**

#### **Pure Law**

- Kelsen, H. (1967). Law and Nature. In *Pure Theory of Law* (pp. 1–58). Berkeley, CA: University of California Press.
- Dyzenhouse, D. (2007) The Politics of the Question of Constituent Power (pp. 129-146). In Martin Loughlin and Neil Walker (eds) *The Paradox of Constitutionalism*. Oxford: Oxford University Press.
- Notes: Critical Analysis Paper due

### **Week 6 (Feb 13)**

#### **Narrative**

- Cover, R. M. (1983). The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative. *Harvard Law Review*, 97(4), 4–68.
- Post, R. C. (2005). Who's Afraid of Jurispathic Courts?: Violence and Reason in Nomos and Narrative. *Yale Journal of Law & the Humanities*, 17, 9–16.

### **Week 7 (Feb 20)**

**Winter mid recess, NO CLASS -term**

### **Week 8 (Feb 27)**

#### **Persuasion**

- Tait, A. A., & Norris, L. P. (2011). Narrative and the Origins of Law. *Law and Humanities*, 5(1), 11–22.
- Boyd-White, J. (1985). Law as Rhetoric, Rhetoric as Law: the Arts of Cultural and Communal Life. *University of Chicago Law Review*, 52, 684–702.
- Venzke, I. (2013). Between Power and Persuasion: On International Institutions' Authority in Making Law. *Tansnational Legal Theory*, 4(3), 354–373.

### **Week 9 (Mar 6)**

#### **Constituent Power**

- Ackerman, B. (1991). Dualist Democracy. In *We the People* (Vol. 1: Foundations, pp. 3–33). Cambridge, MA: The Belknap Press.
- Colon-Rios, J. I. (2010). De-Constitutionalizing Democracy. *California Western Law Review*, 47(1), 41–90.

### **Week 10 (Mar 13)**

#### **Indigeneity**

- Ball, M. S. (1989). Stories of origin and constitutional possibilities. *Michigan Law Review*, 87(8), 2280–2319.
- Hogeveen, B. (2010). After sovereignty: Spectres of colonialism (pp. 115-29). In C. Barbour & G. Pavlich (Eds.), *After Sovereignty: On the Question of Political Beginnings*. New York, NY: Routledge.

## Week 11 (Mar 20)

### Paper workshop

## Week 12 (Mar 27)

### Foreignness

- Honig, B. (2001). The Foreigner as Founder (pp. 115-140). In *Democracy and the Foreigner*. Princeton, NJ: Princeton University Press.
- Hahm, C., & Kim, S. H. (2010). To make “We the People”: Constitutional founding in postwar Japan and South Korea. *International Journal of Constitutional Law*, 8, 800–848.
  
- Week Notes: Major Paper due

## Week 13 (Apr 3)

### Interpretation

- Minnow, M. (1987). Interpreting Rights: An Essay for Robert Cover. *Yale Law Journal*, 96(8), 1860–1915.
- Carpenter, K. A., & Riley, A. R. (2014). Indigenous Peoples and the Jurisgenerative Moment in Human Rights. *California Law Review*, 102, 173–234.

## Course Policies

### Submission of Assignments

- Students are expected to complete the assignments on schedule, except in cases of illness or immediate personal emergency covered by an MSAF.
- Submission by e-mail will not be accepted unless specifically requested by the instructor.

### Grades

Grades will be based on the McMaster University grading scale:

<b>MARK</b>	<b>GRADE</b>
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+

<b>MARK</b>	<b>GRADE</b>
53-56	D
50-52	D-
0-49	F

### **Late Assignments**

- Late penalties of 10% per day (including weekends) will be assigned to work that arrives after the assignment deadline.
- Grade appeals should be made no sooner than 24 hours after the work is returned. If sufficient grounds exist, an assignment will be re-evaluated. Please note that re-evaluation may also result in a grade being lowered.

### **Absences, Missed Work, Illness**

- Unexplained absences not covered by an MSAF will affect participation grades. MSAFs should also be submitted in the case of illnesses that impact on a student's ability to complete an assignment.

### **Avenue to Learn**

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

### **University Policies**

#### **Academic Integrity Statement**

You are expected to exhibit honesty and use ethical behavior in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity.

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behavior can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#).

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one's own or for which credit has been obtained.
2. Improper collaboration in group work.
3. Copying or using unauthorized aids in tests and examinations.

### **Academic Accommodation of Students with Disabilities**

Students who require academic accommodation must contact Student Accessibility Services (SAS) to make arrangements with a Program Coordinator. Academic accommodations must be arranged for each term of study. Student Accessibility Services can be contacted by phone 905-525-9140 ext. 28652 or e-mail [sas@mcmaster.ca](mailto:sas@mcmaster.ca). For further information, consult McMaster University's Policy for [Academic Accommodation of Students with Disabilities](#).

### **Faculty of Social Sciences E-mail Communication Policy**

Effective September 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student's own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student's responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

### **Course Modification**

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.