

ORIGINS OF LAW
POLSCI 4OL3
Fall 2021, Term 1

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Lecture: Tuesdays 8:30-11:20am
Room: Virtual (zoom links in Avenue)

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Course Description

Is the birth of law inevitable? Why? This course considers topics such as divinity, narrative, rationality, force, custom and “the people” in the development and reform of legal order in its many forms.

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;
- 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

Virtual seminar.

Course Evaluation – Overview

1. Peer Advocacy & Critique (30%), due on date to be assigned
2. Critical analysis paper (10%) due Oct 5
3. Participation (30%) due, ongoing
4. Major paper (30%) due Dec 7

Course Evaluation – Details

Peer Advocacy & Critique (30%), due on date to be assigned

This exercise pairs two or more 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 15%.

Critical Analysis Paper (10%), due Oct 5

Write a 500-word analysis of one of the readings from the first four 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, well-prepared participation in discussion, weekly summary papers, weekly peer feedback on presentations, and workshop participation.

- Students are required to provide one-page of notes/comments/summary of that week's readings, due at the opening of class. This summary will not be graded but will be used to indicate your preparedness for discussion. In the event that a student misses class the summary will be accepted up to noon on the following Wednesday on no more than three occasions. Beyond that the summary will not be accepted unless there are documented grounds for accommodation. Note that while compiling a list of selected quotes is a helpful way of keeping notes, a summary that goes beyond this to give the student's own impression of the key ideas in the readings will reflect a thoughtful and well-prepared student.

- PAC feedback should be submitted through Avenue no later than noon on Wednesday. Comments need not be lengthy but should be constructive and provide examples of what worked and/or suggestions for improvement.
- Paper workshop participation involves circulating a short outline or summary of a paper topic at least 24 hours in advance for peer discussion, as well as reviewing and offering comments on the work of peers in a small group setting.

Major research paper (30%) due Dec 7

Prepare a 6-8 page 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. Late penalties will begin December 14 at 10% and double every three days as follows:

Dec 14	10%
Dec 17	20%
Dec 20	40%
Dec 23	80%

Weekly Course Schedule and Required Readings

Week 1 (Sept 7)

- Introduction

Week 2: Lawgiving (Sept 14)

- 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: The Management of Violence (Sept 21)

- 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.](#)

Week 4: The Force of Law (Sept 28)

- 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 5: Pure Law (Oct 5)

- Kelsen, H. (1967) “Law and Nature” in *Pure Theory of Law* (pp. 1-58) Berkeley, CA: University of California Press.
- Zachos A. Paliouras (2014) “The non-appropriation principle: The *grundnorm* of international space law” *Leiden Journal of International Law* 27: 37-54.

Note: Critical analysis paper due

Week 6: Midterm recess (Oct 12) NO CLASS

Week 7: Jurisgenesis (Oct 19)

- 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 8: Narrative (Oct 26)

- 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.

Week 9: Constituent Power (Nov 2)

- 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: Contact (Nov 9)

- Borrows, John. (1994). Constitutional law from a First Nation perspective: Self-government and the Royal Proclamation. *UBC Law Review* 28(1): 1-47.
- Webber, Jeremy. (1995). Relations of force and relations of justice: The emergence of normative community between colonists and Aboriginal peoples. *Osgoode Hall Law Journal* 33(4): 623-660.

Week 11: Paper Workshop (Nov 16)

Note: Circulate short outline/draft of paper by Nov 15

Week 12: Custom (Nov 23)

- Dáibhí Ó Cróinín (2017) Law, Family and Community. In *Early Medieval Ireland, 400-1200*. New York: Routledge, pp.131-65.
- Leon Sheleff (2000) Custom-made Law. In *The Future of Tradition: Customary Law and Legal Pluralism*. New York: Routledge, pp. 3-7.

Week 13: International Law (Nov 30)

- de la Rasilla del Moral, Ignacio. (2015). The Shifting origins of International Law. *Lieden Journal of International Law* 28: 419-440.
- Koskenniemi, Martti (2020) Enchanted by the tools? An Enlightenment perspective. *American University International Law Review* 35(3): 397-426.

Week 14: Course conclusion (Dec 7)

Note: Major paper due

Course Policies

Submission of Assignments

- With the exception of peer feedback, assignments should be submitted through Avenue to Learn.
- Students are expected to complete the assignments as scheduled, except in cases of illness or immediate personal emergency covered by an MSAF.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
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+

Course Policies

Submission of Assignments

[Insert policy on format of assignments and how to be submitted]

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
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+
53-56	D
50-52	D-
0-49	F

Late Assignments

[Insert policy on late assignments]

Absences, Missed Work, Illness

McMaster Student Absence Form (MSAF): In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”.

Courses With An On-Line Element

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, 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 a course that uses on-line elements will be deemed consent to this

disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Online Proctoring

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

Authenticity / Plagiarism Detection

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software.

All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, other software, etc.). For more details about McMaster's use of Turnitin.com please go to www.mcmaster.ca/academicintegrity.

Copyright and Recording

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the [RISO](#) policy. Students should submit their request to their Faculty Office **normally within 10 working days** of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their

instructors as soon as possible to make alternative arrangements for classes, assignments, and tests.

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

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 behaviour 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. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g. the submission of work that is not one’s own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

Conduct Expectations

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the “Code”). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online.**

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students’ access to these platforms

Academic Accommodation of Students with Disabilities

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make

arrangements with a Program Coordinator. For further information, consult McMaster University's [Academic Accommodation of Students with Disabilities](#) policy.

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.

Extreme Circumstances

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.