

# Rhetoric and the Law



**Moritz Oppenheim (1800-1882), *Moses with the Tablets of Stone***

Is legal discourse just one of several normative disciplinary discourses? The law, if one can pinpoint its origins – and that will be one theme of the course – is as old as the story of the binding of Isaac. The law has something to do with binding discourse, discourse that is supposed to be obeyed, that one cannot escape, the prison-house of language revisited. It is arguably rhetoric in its most potent form.

>> Kathleen Eden makes a case that legal proof can be linked to Greek tragedy and Aristotle's *Rhetoric* and *Poet-*

*ics*. At almost every turn in law's history, the law is entangled with theater, religion, philosophy, politics, and rhetoric.

>> Robert Coover, one of our subjects for study, points out the ways in which the law justifies violence. A judge says something, and someone suffers, goes to jail, is forced to turn over possessions, is possibly executed. Think of Solomon splitting the baby. Why do people obey judges & judgments?

>> Legal language is often opaque, esoteric, though

justice, many will claim, is supposed to be exoteric. That is, we should be able to recognize justice when we see it, & be able to explain to others how justice came about (a story). Yet, one well-known image of justice is a blind(ed) woman.

>> The course will take up legal hermeneutics, which has a rich and troubled history from the Code of Hammurabi to Spartacus to Carl Schmitt. As part of our study, we will explore crime fiction and film in addition to more traditional non-fictional texts.

Do you know how to use Lexis-Nexis for legal research?

**Assignments for Grade**

- Brief Encounters
- Midterm exam
- Research paper
- Presentation
- Participation



**Sample Texts — Final list of texts TBA.**

**We will also have guest speakers from the legal profession.**

- Kathy Eden/"Legal Proof and Tragic Recognition: The Aristotelian Grounds of Discovery"
- Peter Goodrich/"Antirrhesis: Polemical Structures of Common Law Thought"
- James Boyd White/Selections from *The Legal Imagination*
- Arthur Conan Doyle/*Sherlock Holmes: The Complete Novels and Stories*, Vols. I & II
- Jeremy Bentham/*The Panopticon Writings*
- Linda Berger/"Studying and Teaching 'Law as Rhetoric'"
- Patricia Highsmith/*The Selected Stories*

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