

Module 1: Study Guide: Law Before Government

What Law Is, Where It Comes From, and Why It Binds Power

Module 1 establishes the first and most important principle of the course: law exists before government and binds it.

This lesson dismantles the modern assumption that law is whatever legislatures pass or courts enforce. Instead, students are introduced to law in its original and controlling sense, as a rule of right that precedes politics, restrains power, and makes legitimate government possible in the first place.

“Law is a rule of right; and whatever is contrary to the rule of right is an injury.” 3 Buist. 313.

Students learn the critical distinction between law and power, authority and force, and why a system that allows government to define law cannot meaningfully limit itself. The module explains why rulers must be bound by the same law as the ruled, and why a rule that exempts government ceases to be law at all.

Rather than debating policies or outcomes, this module focuses on structure. It answers foundational questions:

What is law?

Why must it exist before the state?

And what happens when power is mistaken for law?

By the end of Module 1, students will understand that government does not create law, improve law, or adapt law to circumstance. Government exists because law already exists and remains legitimate only so long as it is subject to it.

This module lays the ground beneath every lesson that follows. Without it, rights collapse into permissions and liberty into force.

Short-Answer Quiz

Instructions: Answer the following questions in 2-3 complete sentences.

1. What is the single, central question upon which the entire course is based, and what are the two possible answers?
2. What is the fundamental difference between "law" and "fiat"?
3. How is the concept of "right" defined, and what are its three core components?
4. In the "Toy Truck" analogy, what makes Scenario B ("force dressed up as law") jurisdictionally identical to Scenario A (simple theft)?
5. What are the two and only two sources of power as identified by Thomas Paine, and which one is considered legitimate?

6. Explain the principle of *potestas delegata non potest delegari* (delegated power cannot be re-delegated) and its significance for government agencies.
 7. What is the critical distinction between "consent" and "compliance," particularly in the context of government authority?
 8. What is the jurisdictional meaning of "void ab initio," and when does it apply to a governmental act?
 9. How is "jurisdiction" defined, and why is it essential for an act to be considered lawful?
 10. Under what specific conditions does the use of force constitute "enforcement of law" rather than "violence"?
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Answer Key

1. The central question is: "Does government create law, or is government bound by law?" The two possible answers determine the entire structure of civilization. Option one is that government creates law, making it the master; option two is that government is bound by law, making law a pre-existing and higher authority.
2. The fundamental difference is their source and purpose. Law is defined as a "rule of right" that exists only to secure and protect pre-existing rights (life, liberty, property). Fiat is a command based on will, answering the question "What do we want you to do?" and demanding obedience without reference to protecting a right.
3. The concept of "right" refers to the specific properties that are inherent to a human being by nature, not granted by any authority. The three core components are life (your existence), liberty (your free will and agency), and property (the fruit of your life and liberty combined, such as earnings or creations).
4. In the "Toy Truck" analogy, Scenario B is jurisdictionally identical to Scenario A because the outcome is the same: a right to property was violated. The democratic process of voting did not secure Kid A's pre-existing right to his truck; it obliterated it. Therefore, despite the procedure, it was an act of force, not law.
5. The only two sources of power are delegated and assumed. Delegated authority is the only legitimate source; it is given by the People for a specific, limited purpose. Assumed power is taken without right and is considered usurpation.
6. The principle *potestas delegata non potest delegari* means that authority given for a specific purpose must be exercised by the body to whom it was entrusted. This is significant because it means a legislature, for example, cannot lawfully transfer its lawmaking duty to unelected administrative agencies or commissions, as doing so is an abandonment of the trust.
7. Consent creates a voluntary obligation and, in a political context, is limited by the purposes of the governmental trust. Compliance is merely behavior performed under pressure to avoid punishment (such as a fine or arrest). Crucially, compliance and silence do not create consent or grant authority.
8. "Void ab initio" means invalid from the beginning. It applies to any act performed by an agent of government that is outside their delegated authority or jurisdiction. Such acts are considered nullity, as if they never occurred, because the actor had no lawful power to perform them in the first place.

9. Jurisdiction is the lawful scope of authority, defined as the speaking of law or right (*juris* + *diction*). It is essential because it provides the basis for lawful action; without jurisdiction, an actor has no authority, and their actions are considered raw power, not law.
 10. The use of force constitutes "enforcement of law" only when it is used to protect a pre-existing right, the authority for the action was lawfully delegated, the act is within the scope of that delegation, and the actor possesses jurisdiction. If these conditions are not met, the use of force is defined as "violence."
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Essay Questions

Instructions: The following questions are designed to encourage deeper analysis of the course concepts. Formulate a comprehensive essay response for each prompt, using evidence and principles from module 1. (Answers are not provided).

1. Explore the full implications of the two potential answers to the course's central question: "Does government create law, or is government bound by law?" Describe the kind of society that logically results from each answer, focusing on the relationship between the individual, the law, and the state.
 2. Analyze the "Toy Truck" story as a microcosm of governance. Explain how Scenarios A, B, and C illustrate the concepts of raw force, mob rule (raw democracy), and a republican form of government, respectively. How does this analogy challenge common assumptions about the legitimacy of majority rule?
 3. Describe the process by which "assumed power" grows and solidifies its control over a population. Detail the roles of habit, silence, and fear in this process and explain how these public reactions allow usurpation to masquerade as legitimate authority.
 4. Using the principles of agency, trust, and delegation, explain why a citizen cannot lawfully "consent" to a government act that violates the fundamental purpose of government (the protection of rights). How does this concept redefine the relationship between the People (the principal) and government (the agent)?
 5. The course concludes that "Force exercised against right is violence, regardless of uniforms, titles, seals, or votes." Defend this statement using the distinctions developed throughout the lesson, including law vs. fiat, delegated vs. assumed power, and jurisdiction vs. raw power.
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Glossary of Key Terms

Term	Definition
Assumed Power	Power that is taken, not given. It is seized "without right" and relies on public habit, silence, and fear to be maintained. It is considered usurpation.

Compliance	Behavior performed under pressure to avoid pain or punishment (e.g., a fine, arrest, or social intimidation). Compliance is not consent and does not create obligation or authority.
Consent	A voluntary, informed, and intentional agreement that creates a real obligation. In the context of government, consent is bound by the principles of delegation and trust and cannot validate an act that exceeds jurisdiction or violates rights.
Delegated Authority	Power that is granted by a principal (the People) to an agent (government) for a specific, limited purpose. It is governed by strict rules, including that it is limited by its source, cannot be re-delegated, and cannot exceed its scope.
Democracy	Described as a method of making decisions, specifically by majority vote. The module argues it is not, in and of itself, a source of law, as a majority can vote to violate rights, which is an act of force ("mob rule").
Enforcement	The use of force in service of right. It is considered lawful only when it protects a pre-existing right, is executed under lawfully delegated authority, and is within the actor's jurisdiction.
Fiat	A command issued by will rather than derived from right. It answers the question, " <i>What is ordered?</i> " rather than " <i>What is owed?</i> " Fiat demands obedience without reference to a pre-existing right and operates by assertion of authority rather than conformity to law. When enforced under the appearance of legality without grounding in right, fiat is command masquerading as law under color of law.
Jurisdiction	The lawful scope of authority, derived from "juris" (law/right) and "diction" (to speak). It is the boundary within which an agent is allowed to act and must be expressed in words of right. Acts without jurisdiction are void from the beginning.
Law	A rule of right. Its sole legitimate function is to secure or protect pre-existing, inherent rights. It answers the question, "What is rightfully mine, and how is it protected?"
Property	An extension of a person; the fruit of combining one's life (time) and liberty (energy, talent) to create something. It includes but is not limited to real estate, encompassing anything from a carved spoon to a paycheck.
Republican Form of Government	A system where power is exercised only through fixed, known, and superior law, and never through the will, discretion, or convenience of those who govern. Its purpose is to referee and enforce rules that protect rights.
Right	The inherent properties that define a human being: life, liberty, and property. These rights predate any government and are not granted by it; they belong to an individual by nature.
Usurpation	The act of assuming undelegated power. It is described as force pretending to be authority.
Violence	Force without authority. It is any use of force that is exercised without jurisdiction, against a right, or outside the bounds of delegated authority, regardless of official titles or procedures.

Void Ab Initio	A Latin term meaning "void from the beginning." An act performed without jurisdiction is considered nullity, having no legal force or effect from the moment it was committed.
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The Binary Foundation

- **The Source of Power:** "All power exercised over a nation must have some beginning. It must either be delegated or assumed. There are no other sources." — *Thomas Paine*.
- **The Origin of Government:** "The government is to be subject to the law, for the law makes the government."
- **The Standard of Governance:** "We are a nation of laws, not of men." — *John Adams*.

Maxims of Delegation and Agency

These rules govern the "closed system" of delegated authority. Violation of any of these renders an act **void ab initio** (invalid from the beginning).

- **Potestas delegata non potest delegari:** Authority given for a specific purpose must be exercised by the body to whom it was entrusted; it cannot be re-delegated (e.g., a legislature cannot transfer lawmaking duties to an administrative agency).
- **Delegata potestas non potest excedere fines delegationis:** Delegated power cannot exceed its scope; an agent cannot lawfully exercise more authority than the principal (the People) granted.
- **Inclusio unius est exclusio alterius:** The express grant of one power excludes all others not listed. Powers not expressly granted do not exist at all.
- **Casus omissus:** The silence of the constitution is a denial of power. Jurisdiction cannot be inferred; it must be shown.
- **The Limitation of Source:** "A man cannot grant a thing which he hath not." The People cannot delegate a power they do not possess, such as the right to steal or plunder .

Maxims of Law and Right

- **Definition of Law:** Law is a "rule of right," nothing more and nothing less.
- **The Purpose of Law:** Law exists only to secure or protect pre-existing, inherent rights (Life, Liberty, Property).
- **Law vs. Force:** "Force exercised against right is violence, regardless of uniforms, titles, seals, or votes."

- **Republican Form of Government:** A system where power is exercised only through fixed, known, and superior law, and never through the will, discretion, or convenience of those who govern.

Exercise: “Law or Fiat?”

(Applied Jurisdiction Analysis)

The purpose of this exercise is to train your eye to **diagnose authority in everyday life**. We are not looking for dramatic cases, political battles, or confrontations. In fact, the more ordinary the example, the more revealing it tends to be.

Step 1: Identify One Everyday Rule or Charge

Choose **one small, routine requirement** you encountered this week. Nothing intimidating or emotionally charged. Examples include:

- a bank late fee
- a parking ticket
- a library fine
- a cable or phone “service” charge
- an HOA notice
- a utility surcharge
- an administrative processing fee

The goal is not to “win” anything. The goal is to **practice classification**.

Write down exactly what the rule or charge claims you must do, pay, or refrain from doing.

Step 2: Ask the Two Diagnostic Questions

Answer these in writing, briefly and honestly.

Question 1:

Does this rule protect someone’s life, liberty, or property?

Answer **yes or no** and explain in **one sentence why**.

- Whose life is being protected?
- Whose liberty is being secured?
- Whose property is being defended against violation?

If you cannot clearly identify a right being protected, say so plainly.

Question 2:

Or does this rule merely take something from me (money, time, use of property) without protecting any identifiable right?

Again, answer **yes or no**, with one sentence of explanation.

Step 3: Label the Rule

Based on your answers, apply one of the following labels:

- **“This is law (a rule of right)”**
because it exists to secure a pre-existing right.

OR

- **“This is fiat / force (not law)”**
because it commands compliance or extracts value without protecting any right.

This label is not about whether the rule is popular, common, or enforceable.
It is about **jurisdiction**.

Step 4: Authority Inquiry (Optional but Powerful)

If you are comfortable doing so, send a **calm, written inquiry** to the party imposing the charge.
Do not argue. Do not accuse. Do not threaten. Simply ask:

“By what authority are you charging me this fee?
Please identify the statute or delegated authority that permits it.”

That is it. One question.

What you are doing here is not resisting. You are asking the agent to **identify jurisdiction**, to show the source of authority in words of right.

Step 5: Observe the Response (or Lack of One)

In many cases, you will receive:

- no response, or
- a policy document,
- a terms-of-service reference,
- a procedural explanation,
- or a restatement of “this is our rule.”

Pay close attention to what is **not** provided.

If no statute, delegation, or lawful authority is identified, note that fact.

And here is the key principle to understand in this context:

Silence from an agent, when the principal lawfully inquires, is not authority.

It is an inability, or refusal, to show jurisdiction.

“One lawfully commanding must be obeyed.” Jenk. Cent. 120.

Within the law of agency, silence does not create new power. It merely exposes the absence of it.