

DAY ZERO: THE BIRTH OF PLURAL HUMANITY

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ABSTRACT

Contemporary international space law is built upon an implicit constitutional assumption: that humanity remains a single law-producing civilization whose ultimate source of legal authority resides on Earth. Although the Outer Space Treaty establishes the legal framework governing the exploration and use of outer space by terrestrial actors, it does not contemplate the possibility that a permanent, self-sustaining extraterrestrial human civilization may eventually emerge as an independent source of constituent authority capable of generating its own legal order.

This article argues that the emergence of such a civilization would constitute a fundamental jurisprudential rupture rather than merely a political or technological development. Through the concept of Day Zero—the instantaneous constitutional moment at which a Martian community ceases to derive the legitimacy of its laws from terrestrial institutions and instead claims constituent authority in the name of the People of Mars—the article examines the transition from a single human legal civilization to constitutionally plural humanity.

The article does not ask how terrestrial law should govern Mars. Instead, it asks whether the emergence of an independent constituent community transforms the very foundations upon which contemporary space law has been constructed. Mars serves not as the subject of the inquiry but as the factual setting through which a more fundamental jurisprudential problem is revealed: can legal authority itself migrate beyond Earth?

Rather than proposing institutional solutions, this article identifies a previously unexplored jurisprudential problem concerning the origin of legal legitimacy once humanity ceases to exist as a single constituent civilization. Its implications extend beyond space law into constitutional theory, jurisprudence, legal philosophy, and the future evolution of human civilization.

INTRODUCTION

Assume the year is 2090.

Assume that, after decades of uninterrupted settlement, humanity has established a permanent, self-sustaining civilization on Mars. What began as a scientific expedition and later evolved into a remote settlement has, over successive generations, become a mature human society. The community possesses its own schools, universities, hospitals, industries, courts, public administration, representative institutions, and a functioning economy capable of sustaining life largely independent of terrestrial support. Many of its inhabitants have never set foot on Earth. Mars is no longer merely a place where humans live; it has become a place where a distinct human community exists.

This transformation did not occur through revolution or conflict. It emerged gradually from necessity. The immense distance separating Mars from Earth, the practical impossibility of governing everyday affairs from another planet, and the steady growth of local institutions made self-government an ordinary reality long before it became a constitutional one. Over time, the settlement ceased to function as an outpost administered from Earth and evolved into a society increasingly capable of determining its own political, economic, and legal future.

Eventually, a question arose that humanity had never before been required to answer.

If a community governs itself, administers justice, educates its children, produces its own necessities, and determines its own future, by what authority does another world continue to provide the ultimate source of its legal legitimacy?

Suppose that, on a day later remembered simply as *Day Zero*¹, the representatives of that Martian community declared that the legitimacy of their legal order no longer derived from terrestrial institutions but from the *People of Mars* themselves. Nothing physical changed at that moment. The settlements remained where they had stood the day before. The courts continued to hear disputes. The schools opened as usual. Daily life proceeded uninterrupted. Yet one fundamental question received an entirely different answer: from where does law derive its legitimacy?²

This Article does not attempt to predict when such a constitutional moment will occur. The year serves only as a jurisprudential hypothesis. Whether humanity reaches that moment in 2090 or centuries later is immaterial. Whenever humanity establishes a permanent extraterrestrial civilization capable of constituting itself as an independent political community, the same jurisprudential question arises.

¹ The term "Day Zero" is introduced in this Article as a jurisprudential concept identifying the constitutional moment at which an extraterrestrial human civilization ceases to derive the legitimacy of its legal order from terrestrial institutions and instead locates constituent authority in itself. It does not denote a historical prediction or a specific future date.

² Ronald Dworkin, *Law's Empire* 190–216 (Harvard Univ. Press 1986) (arguing that the legitimacy of law depends upon its justification within the political community whose legal practices it interprets. This Article extends that jurisprudential inquiry by asking whether the source of legal legitimacy can migrate to a newly constituted extraterrestrial political community).

The purpose of this Article is not to determine whether such a declaration would be lawful under existing international space law.³ Rather, it asks a prior question: what becomes of the source of legal legitimacy⁴ once humanity ceases to derive that legitimacy from a single constituent civilization? The emergence of a permanent extraterrestrial civilization does not merely challenge existing legal rules; it challenges the constitutional assumption that Earth must forever remain the exclusive source of human legal authority.

The central concept developed in this Article is *Day Zero*. *Day Zero* is not the first human landing on Mars, the establishment of the first settlement, the birth of the first child, or even the achievement of economic self-sufficiency. It is the instantaneous constitutional moment at which the source of legal legitimacy ceases to derive from Earth and instead originates in the constituent authority⁵ of the *People of Mars*. Before *Day Zero*, humanity remains constitutionally singular. After *Day Zero*, humanity becomes constitutionally plural.

This Article therefore does not examine the birth of a Martian state. It examines the birth of plural humanity.

I. FROM EXPLORATION TO CIVILIZATION

Humanity's presence on Mars did not emerge as the result of a single mission, a single technological breakthrough, or a single political decision. It was the culmination of a gradual process that began decades earlier, when advances in launch capability, reusable spacecraft, autonomous construction, and life-support systems transformed Mars from a destination of exploration into a destination of permanent human settlement.⁶

The first crews arrived as explorers. Their objective was scientific discovery, technological experimentation, and the gradual development of the infrastructure necessary to sustain human life beyond Earth. Initial habitats depended almost entirely upon terrestrial support. Food, equipment, replacement parts, medical supplies, and advanced technologies were transported from Earth during successive launch windows. The settlement existed because Earth made it possible.

As the settlement expanded, however, necessity accelerated innovation. Water was extracted from Martian ice, oxygen was produced locally, fuel was manufactured from indigenous resources, agriculture gradually reduced dependence upon imported food, and local industry increasingly

³ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies arts. I, II, VI & VIII, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205.

⁴ H.L.A. Hart, *The Concept of Law* 100–123 (Penelope A. Bulloch & Joseph Raz eds., 3d ed. Oxford Univ. Press 2012) (explaining that the validity of a legal system depends upon the social acceptance of its rule of recognition. This Article examines the constitutional implications of an extraterrestrial community developing its own rule of recognition as the foundation of an independent legal order).

⁵ Emmanuel Joseph Sieyès, *What Is the Third Estate?* 124–36 (Michael Sonenscher ed., Pall Mall Press 1963) (1789) (distinguishing constituent power from constituted governmental authority. This Article applies that distinction to the emergence of an extraterrestrial constituent people as the source of an independent constitutional order).

⁶ Stephen Gorove, *Developments in Space Law* 26–28 (Martinus Nijhoff 1991) (observing that the prospect of permanent human presence in outer space would generate legal questions extending beyond those associated with exploration and scientific activity. This Article addresses one such question at the level of jurisprudence).

replaced materials once transported across millions of kilometers of space. Importing essential goods from Earth became not only technically difficult but economically irrational whenever local production proved feasible.

Population growth transformed the character of the settlement. Temporary crews gave way to permanent residents. Engineers were joined by physicians, educators, entrepreneurs, artisans, public administrators, and families. Children were born on Mars. Schools, universities, hospitals, courts, research institutions, and representative civic bodies emerged not because political theory demanded them, but because every mature human community requires institutions capable of organizing ordinary social life.

Over successive generations, Mars ceased to function merely as a distant settlement administered from Earth. It evolved into a stable human civilization possessing its own economic life, social institutions, and political organization. Decisions affecting the daily lives of its inhabitants were increasingly made on Mars, by those who lived there, understood its unique conditions, and bore the consequences of those decisions.

This transformation occurred gradually. No single event marked the transition from exploration to civilization. Yet, by the time the settlement had become permanently self-sustaining, one fact had become increasingly difficult to ignore: humanity had established not merely a presence on another world, but a functioning civilization beyond Earth.⁷

That historical evolution prepared the ground for an entirely different question. Once a civilization exists beyond Earth, the issue is no longer whether humans can survive there. The question becomes whether the ultimate source of its legal and constitutional authority must forever remain on Earth.

II. THE EMERGENCE OF A MARTIAN POLITICAL COMMUNITY

The establishment of a permanent settlement did not, by itself, create a political community. A settlement may survive, expand, and even become economically self-sustaining while remaining little more than an extension of the civilization from which it originated. A political community emerges only when a society develops its own institutions, common interests, civic identity, and collective understanding of itself.

That transformation occurred gradually on Mars. As the settlement expanded across successive generations, temporary residence gave way to permanent habitation. Local institutions assumed responsibilities once exercised or supervised from Earth. Schools educated Martian children. Courts resolved Martian disputes. Public administration addressed Martian needs. Commerce, industry, and civic life evolved according to conditions unique to the new world.

⁷ Arnold J. Toynbee, *A Study of History* 15–27 (Oxford Univ. Press 2d ed. 1987) (treating civilizations, rather than sovereign states, as the principal units of historical development. This Article employs the concept of civilization in that broader historical sense).

More importantly, a distinct political identity began to emerge. The first settlers regarded themselves as representatives of Earth living on Mars. Their descendants regarded themselves as Martians. They shared a common history, common institutions, common challenges, and increasingly, common interests that did not always coincide with those of the terrestrial societies from which their ancestors had come.

The emergence of that political community did not imply hostility toward Earth, nor did it immediately alter the constitutional foundations of Martian society. It simply reflected a political reality that had become increasingly difficult to deny: Mars was no longer merely inhabited by humans. It had become home to a people.

That realization prepared the ground for the constitutional question that followed. Once Mars had become not merely a settlement but a political community, the issue was no longer whether it could govern itself. The question became whether the ultimate source of its legal legitimacy had to remain on Earth.

III. THE DAY TERRESTRIAL CONSTITUTIONAL AUTHORITY BECAME IRRELEVANT

The emergence of a self-sustaining Martian political community did not automatically alter the source of its legal authority. For decades, Martian institutions continued to derive their constitutional legitimacy from terrestrial legal systems. Local government existed, but its ultimate authority remained Earth-based. The question was not who governed Mars on a daily basis, but from where the legitimacy of that government ultimately originated.

As Martian society matured, however, that constitutional relationship became increasingly difficult to justify. A civilization capable of sustaining itself, governing itself, administering justice, educating successive generations, and determining its own future inevitably confronted a fundamental jurisprudential question: by what authority should another world continue to constitute the ultimate source of its legal legitimacy?

The issue was not one of political dissatisfaction, revolution, or secession. It was one of constitutional relevance. Terrestrial authority had gradually ceased to perform the function from which its legitimacy had originally arisen. As the practical dependence of Mars diminished, so too did the constitutional necessity for Earth to remain the exclusive source of legal authority.

The question was therefore no longer whether Earth possessed constitutional authority over Mars. The more fundamental question had become whether that authority remained constitutionally relevant at all.

It was at that moment that humanity approached what defines as *Day Zero*.

IV. DAY ZERO: WE THE PEOPLE OF MARS

The constitutional transformation described throughout this Article culminates in a single, instantaneous event: *Day Zero*. It is neither the beginning of Martian settlement nor the achievement of self-sufficiency. It is not marked by the construction of the first city, the birth of

the first Martian child, or the establishment of the first local government. Those developments belong to history. Day Zero belongs to jurisprudence.

On that day, the source of legal legitimacy changes. Until that moment, Martian institutions ultimately derive their authority from Earth. Immediately thereafter, they derive their authority from the constituent will of the People of Mars. Nothing material need change overnight. The institutions remain. The laws may remain substantially unchanged. Daily life continues uninterrupted. Yet the constitutional foundation upon which those institutions rest has fundamentally shifted.

The phrase "*We the People of Mars*"⁸ represents far more than the opening words of a hypothetical constitution. It expresses the emergence of a new constituent people capable of originating legal authority in its own name. For the first time in human history, constitutional legitimacy no longer emanates exclusively from Earth.

Day Zero therefore marks the precise constitutional boundary between two different eras of human civilization. Before *Day Zero*, humanity remains legally singular. After *Day Zero*, humanity possesses two independent sources of legal legitimacy. It is not merely the birth of a new constitutional order. It is the birth of constitutional plurality within the human species.

V. THE BIRTH OF PLURAL HUMANITY

Day Zero did not simply transform the constitutional status of Mars. It transformed the constitutional condition of humanity itself. For the first time in its history, humanity no longer existed as a single law-producing civilization deriving legal authority from one constituent community. A second, independently constituted human civilization had emerged beyond Earth.

This transformation extended far beyond questions of sovereignty or political independence. It altered the identity of the human constitutional community. Earth no longer represented humanity as a whole but became one human civilization among at least two, each possessing its own constituent authority and its own source of legal legitimacy.

The emergence of constitutional plurality marked a new stage in the evolution of human civilization. Throughout history, humanity had developed diverse states, constitutions, and legal systems, yet they all originated within a single terrestrial civilization. After *Day Zero*, that assumption no longer held. Humanity remained one species, but no longer one constitutional civilization.

The significance of this transformation lies not in the separation of Mars from Earth, but in the emergence of multiple constituent communities capable of generating independent legal orders.

⁸ John Locke, *Second Treatise of Government* chs. VIII–IX (C.B. Macpherson ed., Hackett Publ'g Co. 1980) (1690); *The Declaration of Independence* para. 2 (U.S. 1776) (Locke explains that legitimate political society originates in the consent of the community rather than external authority. The Declaration of Independence provides the classical constitutional example of a community relocating the source of political legitimacy from an external sovereign to "one People." This Article employs that principle in a hypothetical extraterrestrial context without suggesting that Martian constitutional development would necessarily follow the American historical experience.)

The birth of plural humanity therefore represents not merely a political event, but a jurisprudential turning point in the constitutional evolution of the human species.

VI. CONCLUSION

The emergence of a permanent extraterrestrial civilization presents not merely a new problem of space law, but a new problem of jurisprudence. The significance of *Day Zero* lies not in predicting Martian independence, but in identifying the constitutional moment at which humanity ceases to derive legal legitimacy from a single constituent civilization. At that moment, humanity remains one species, but no longer one constitutionally singular civilization.

The jurisprudential consequences of that transformation do not end with *Day Zero*. They begin there.

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