

LAW & RIGHTS IN AUTHORITARIAN STATES

Legal Studies 136

MWF 3-4pm

Wheeler 222

Contact Information

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Student Office Hours

Fridays 1pm-3pm (via Zoom or in person) or by appointment

Sign up at: <https://tinyurl.com/RSofficehrs>

Office hours are held at: 2240 Piedmont Avenue, #202¹

COURSE DESCRIPTION

This course investigates the logic and lived reality of authoritarian law, with the goal of complicating the popular notion that authoritarian law is simply an instrument of state repression. We will mix more theoretical readings on approaches to law and the logic of courts with empirical studies of how law works in two historical settings (Nazi Germany and East Germany) and two contemporary cases (China and Russia). Part of our focus will be on elite politics, particularly the reasons leaders devolve power to courts and the control strategies they deploy to keep judges, lawyers and plaintiffs in check. At the same time, we will pay close attention to everyday law and how ordinary people experience the legal system.

Our studies this semester take place against the backdrop of a recent wave of populism in Europe and the United States, and the growing geopolitical influence of China and Russia. Our four cases studies will also shed light on how authoritarian politics works, especially the dynamics surrounding law, legitimation and resistance. The end of the course turns explicitly to contemporary America, to use our newfound historical and comparative knowledge to evaluate whether the United States is backsliding toward authoritarianism.

COURSE READINGS

All course readings will be available on Bcourses.

¹ You can find my office by turning left at the top of the stairs and following the hallway to the end.

COURSE REQUIREMENTS

Grades and Assignments

- Bcourse posts: 30% (10% each/lowest grade is dropped)
- Question for Nataliya Sekretareva (2.5%) and for Jiarui Song/Nanqin Ying (2.5%)
- Mid-semester quiz: 20%
- Take home final: 30%
- Participation: 15% (5% lecture attendance; 10% section engagement)

Bcourses Posts: The Rationale

Each student is responsible for four short reading responses (200-250 words each) posted on Bcourses during the semester. The purpose of the assignment is two-fold. First, it is meant to help students stay on top of the reading and to give you an opportunity to reflect on it. Second, the posts are meant to serve as a starting point for discussion for both section and lecture. Everyone who writes a reading response for a given day of lecture is on-call for the day, which means that I might call on you to discuss what you wrote in your response.

The idea is that those who write reading responses will be extra-prepared, and well-positioned to get our class discussion going. It is also a way to make sure that our class discussion includes as many voices as possible, with the goal of creating a collaborative class environment in which contributing is not a stressful event. If you are nervous about talking in class, please come and talk to me early in the semester so we can strategize together about how you can best participate. **And if you do not want to be on call on a given day, please send me an email with the subject “not on call” before class to let me know.** There is no need to give a further reason.

Bcourses Posts: Nuts & Bolts

What is a good reading response? A good response will be clearly written with a distinct voice and point of view. It can draw out points of connection and controversy between authors. It can draw connections between readings and current events, or experiences in your own life. It can directly suggest questions for discussion. It can heartily critique, or enthusiastically endorse, articles, arguments or approaches. The content is up to you. The key point is to advance your own ideas rather than summarize. If you feel stuck, you can always fall back on the questions about the readings circulated before class. Reading responses will be graded check (92), check plus (97) and check minus (87).

Your lowest grade will be dropped. This policy is meant to give you room to get better at the assignment with practice, as many students typically do, or to drop a reading response if the semester gets intense.

The sign-up sheet is online at http://bit.ly/RR_SignUp and you can sign up for your four dates any time before September 5 on a first come, first served basis. Please try to

space your dates evenly throughout the semester, and at least one of your dates should be before October 4.

If you need to change the date of your reading response, please find someone to switch with you and notify me and your GSI at least 24 hours before the deadline. Please also make note of your dates, as there is ordinarily no chance to "make up" missing responses. Of course, there are exceptions for emergencies and illness. Please notify me and your GSI of emergencies and illness as soon as you can, so that we can reschedule your reading response.

These short, informal responses to the readings must be ordinarily² be posted to Bcourses **by 2pm the day before class**. The reason for this deadline is so that I have time to read the responses and integrate them into my lecture. Following a 30-minute grace period, posts posted between 2.30pm and 7pm will be marked down a half grade. Responses posted after 7pm will not be accepted.

The use of generative AI is permitted to correct grammar and improve the written flow of your reading responses. The ideas, however, should be your own. Assignments that include AI-generated hallucinations will receive a zero.

Discussion Questions

In preparation for our conversations with Russian human rights lawyer Nataliya Sekretareva (November 15) and Chinese public interest lawyers Jiarui Song and Nanqin Ying (November 22), each student will be responsible for posting at least one discussion question to Bcourses at least 24 hours before class. Questions posted less than 24 hours before class will receive half credit, and late questions will not be accepted.

Class Note-Taking

In your first section, you will have the opportunity to opt into a class notetaking system. Students who opt in to the class notetaking system will be responsible for uploading their lecture notes to a class Dropbox several times during the semester. In return, they will also get access to a repository of notes written by others in the Dropbox.

Anyone who is taking class notes for the day is allowed to use a laptop, though you can also upload a PDF of handwritten notes or type up your notes after class. And everyone with access to the notes Dropbox must take responsibility for not circulating these notes beyond our class.

² The exceptions are the two opportunities to write reading responses reflecting on our conversations with the lawyers who will be visiting our class. These should be written **after** class and posted by 2pm the day before the *next* class.

Exams

Midsemester quiz. A midsemester quiz will be held in class on Monday, October 14. It will consist of some combination of multiple-choice questions, IDs and short answer questions. A pool of all possible questions that might appear on the exam will be provided to students at least one week ahead of time.

Final exam. The final exam will be available on Bcourses from 9am to 9pm on Tuesday, December 17. You can pick any 3-hour block during that time to take it, and it will be open book, open notes. It will ask you to answer conceptual questions that draw together readings across weeks and speak to themes of the course.

Accommodations on exams. Many students have disability accommodations that allow for extra time on exams. If this applies to you, please make sure your GSI knows within the first two weeks of the semester, so that we can make sure you get the time you need.

General exam policies: Out of concern for fairness, make-up exams will not be available except in the case of a documented emergency or excused university absence. All grades determined by the GSI are final, and I will not re-grade the examinations.

Class Preparation & Attendance

Regular lecture attendance is important, as some of the material on exams will be covered in lecture and not in the reading. More importantly, the vitality of the course and the depth of your understanding depend on questions and comments raised during lecture. I will leave time for student participation, and look forward to hearing from you during the semester. My expectation is that students will thoughtfully participate in discussion, with the understanding that first-rate participation corresponds to quality of comments rather than quantity.

I will take attendance in lecture and your lecture attendance record will be 5% of your participation grade. Having said that, each student is entitled to three “freebie” absences from lecture over the course of the semester. If you are not in class, there is also no reason to tell me why. I will assume you are taking care of your physical or mental health, or doing something else important. Please take advantage of this policy: stay home and rest up if you are not feeling well!

I will circulate discussion questions to help you prepare for each class. My recommendation is that you dedicate a portion of your reading time to writing up notes in response to these questions. And please bring your notes on the readings to class, along with printed copies of the readings if you want to be able to reference them.

How much work do you need to put in outside of the class to be prepared? Students are expected to put in approximately 10-12 hours of work per week for a four-credit class, as per Berkeley policy. Since you will be spending about 4 hours in the classroom,

this means you should be working up to 6-8 hours per week for this course outside of the classroom. If you find that you are spending more than 10-12 hours per week on the class, including class time, please see me or your GSI to discuss strategies to read and prepare more efficiently. It is a skill that requires practice.

Academic Integrity

Any test or paper you submit is presumed to be your own original work. In all of your assignments, you may use words or ideas written by other individuals in publications, websites, or other sources, but only with proper attribution. If you are not clear about the expectations for completing an assignment or taking a test, ask beforehand. Generative AI, like ChatGPT, may not be used for any purpose in an exam situation.

Additional Course Policies

Laptops and cell phones. Most students find they are more focused and take better notes without a laptop. (For more why, see “The Case for Banning Laptops in the Classroom” on Bcourses). As a result, there is a soft ban on cell phones, tablets and laptops in the classroom. Please take notes by hand and bring paper copies of your notes on readings to class. Having said that, there are exceptions for students who need to use a laptop for a disability-related reason or because they believe it is integral to their learning and they can use it responsibly. If that applies to you, please go ahead and use a laptop. There is no need to ask for an accommodation or tell me the reason why.

Getting in touch with me. In addition to the office hours listed on the first page of the syllabus, I will also meet with students by appointment. Office hours can be used to discuss the class, address any questions or concerns about the content, or to generally chat about your education and career. I generally respond to email within 24 hours, except on the weekends.

Students with disabilities. If you need disability-related accommodations in this class, please arrange to meet with your GSI within the first two weeks of the semester to discuss your situation. It sometimes takes a while to get the official letters from the DSP office, and we would like to make sure that we have accommodations in place that will meet your needs as soon as possible. If your disability status or accommodations change during the semester, please let your GSI know immediately.

Video and audio recording. To create the freest possible environment for discussion, permission for audio and video recording is exclusively reserved for those with disability accommodations. Please note that any recordings that exist are for private use only and should be deleted once the class is over.

Please also adhere to this basic rule: what is said in the classroom stays in the classroom. We will cover a wide range of topics, many controversial and very current. I will take positions in class that I do not necessarily agree with, and I urge you to do the same. Please do not cite or quote our class discussions outside of class without the express permission of the speaker. Likewise, you should assume that any guest speakers are speaking off-the-record.

Scheduling conflicts. Please email me by the second week of the course about any known extracurricular conflicts (such as religious observances, medical school interviews, team activities, etc.). I will try my best to help you with making accommodations, but cannot promise them in all cases.

COURSE SCHEDULE

August 28: Introduction

August 30: A Global Wave of Authoritarianism?

- Yascha Mounk and Roberto Stefan Foa, “The End of the Democratic Century: Autocracy’s Global Ascendance,” *Foreign Affairs* (May/June 2018).
- Sergei Guriev, and Daniel Treisman. *Spin Dictators: The Changing Face of Tyranny in the 21st Century* (Princeton University Press 2022), pp. 1-22.

WEEK 1: INTRODUCING OUR THEMES

September 2: No class—Labor Day

September 4: Visions of Authoritarian Law

- Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (Transaction Books 2001), excerpts.
- Exchange with ChatGPT, August 15, 2024.
- *Optional:* Tamir Moustafa & Tom Ginsburg, “Introduction: The Function of Courts in Authoritarian Politics,” in Ginsburg & Moustafa, eds, *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press 2008), pp. 1-21.

September 6: Legitimation, Compliance and Resistance

- Vaclav Havel, “The Power of the Powerless,” in Jan Vladislav ed. *Vaclav Havel or Living in Truth* (Faber and Faber, 1986), pp. 36-57.
 - Ian Buruma, “The Indiscreet Charm of Tyranny,” *The New York Review of Books*, May 12, 2005.
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WEEK 2: HITLER'S GERMANY

September 9: Law in Hitler's Germany: Getting into Power

- Michael J. Bazylar, Michael Bryant, Kristen Nelson, and Sermid D. Al-Sarraf. *Comparative Law: Global Legal Traditions* (Carolina Academic Press 2021), pp. 129-131; pp. 144-146.
- Carl Schmitt, *The Concept of the Political* (University of Chicago Press 2007) [originally published 1932], pp. 27-45.

September 11: Law in Hitler's Germany: Implementing an Agenda

- Michael J. Bazylar, Michael Bryant, Kristen Nelson, and Sermid D. Al-Sarraf. *Comparative Law: Global Legal Traditions* (Carolina Academic Press 2021), pp. 150-151.
- Inga Muller, *Hitler's Justice: The Courts of the Third Reich* (Harvard University Press, 1991), pp. 59-67.
- Isabel Wilkerson, *Caste: The Origins of Our Discontents* (Random House 2020), pp. 78-88.
- *Optional podcast: "Hitler in History,"* In Our Time with Melvyn Bragg, BBC Radio Four, October 5, 2000. Available at <https://bbc.in/3phiInT>

September 13: The Original Dual State

- Jens Meierhenrich, *The Remnants of the Rechtsstaat: An Ethnography of Nazi Law* (Oxford University Press 2018), pp. 236-252.

WEEK 3: EAST GERMANY

September 16: Governing East Germany

- Timothy Garton Ash, "The Romeo File," *The New Yorker*, April 28 & May 5 1997, pp. 162-171

September 18: Everyday Law in East Germany

- Inga Markovits, *Justice in Lüritz* (Princeton University Press, 2010), Chapter 1 and Chapter 8.
- *Optional:* John Merryman, "The Civil Law Tradition," in Curtis J. Milhaupt, J. Mark Ramseyer and Mark D. West, eds. *The Japanese Legal System* (Foundation Press 2006), pp. 36-42.

September 20: Discussion of "The Lives of Others," directed by Florian Henckel von Donnersmarck (2006)

Section canceled for the week. Options for film screening to be announced*

WEEK 4: COMMUNISM AS A GLOBAL IDEOLOGY

September 23: A Tale of Two Revolutions: Russia

- Robert Service, *Comrades! A History of World Communism* (Harvard University Press 2007), pp. 24-69 (chapters 2-5).

September 25: A Tale of Two Revolutions: China

- Edgar Snow, *Red Star Over China* (Grove Press 2007), pp. 35-39, 90-96, 119-125, 219-226.
- Julia Lovell, *Maoism: A Global History* (Penguin 2019), pp. 76-87.

September 27: China and Russia Compared

WEEK 5: LAW AT THE HIGH TIDE OF COMMUNISM

September 30: Law under Stalin

- Sheila Fitzpatrick, *Everyday Stalinism* (Oxford University Press 1999), pp. 175-180 (“Writing to the Government”); pp. 190-217 (Chapter 8).
- *Optional: Everyday Stalinism*, Introduction and pp. 75-79 (“The Remaking of Man”).

October 2: Law under Mao

- Jennifer Altehenger, *Legal Lessons: Popularizing Law in the People’s Republic of China* (Harvard East Asian Monographs 2018), pp. 1-19.
- Kenneth Lieberthal, *Governing China* (WW Norton and Company 2004), pp. 62-70.

October 4: 1989 & 1991 [**recorded lecture—no class**]

- Jeffrey Wasserstrom, *China in the 21st Century: What Everyone Needs to Know* 2nd Edition (Oxford University Press 2013), pp. 81-85.
 - Deng Xiaoping, “Explanation of the Crackdown,” June 9, 1989.
 - John Merriman, *A History of Modern Europe: From the Renaissance to the Present* (1996), pp. 1379-1382 and pp. 1395-1398.
 - *Optional podcast: “How Gorbachev Changed the World,” The Daily*, September 1, 2022. Available at <https://www.nytimes.com/2022/09/01/podcasts/the-daily/gorbachev-dead-putin-soviet-union.html>
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WEEK 6: INTO THE TWENTY FIRST CENTURY

October 7: The Putin Years

- M. Steven Fish, "What is Putinism?" *Journal of Democracy* (October 2017), pp. 61-75.
- Joshua Yaffa, "Has Putin's Invasion of the Ukraine Improved His Standing in Russia?" *The New Yorker*, March 16, 2024.
- Excerpts of Vladimir Putin's Televised Speech to the Nation, February 24, 2022.
- *Optional*: Masha Gessen, "The Death of Alexei Navalny, Putin's Most Formidable Opponent," *The New Yorker*, February 16, 2024.

October 9: The Xi Years

- Taisu Zhang, "Xi's Law-And-Order Strategy: The CCP's Quest for a Fresh Source of Legitimacy," *Foreign Affairs*, February 2023.
- Shaoguang Wang, "Representative Democracy and Representational Democracy," in *Voices from the Chinese Century* (Columbia University Press 2020), pp. 236-253.

October 11: Coercion, Self-Censorship and Socialization

- Maria Repnikova, "Contesting the State Under Authoritarianism: Critical Journalists in China and Russia," *Comparative Politics* (2018), pp. 43-55.
- Elena Kostyuchenko, *I Love Russia: Reporting from a Lost Country* (2023), pp. 343-350.

WEEK 7: MIDSEMESTER WEEK

October 14: Mid-semester quiz

October 16: Mid-semester pause—class canceled

October 18: Everyday Resistance

- James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press 1985), pp. 28-41

WEEK 8: MANAGING PUBLIC OPINION

October 21: The Mechanisms and Logic of Censorship

- Margaret E. Roberts, *Censored: Distraction and Diversion Inside China's Great Firewall* (Princeton University Press 2018), pp. 25-54.

October 23: Censorship as an Interactive Process

- Jun Fang, "The Culture of Censorship: State Intervention and Complicit Creativity in Global Film Production," *The American Sociological Review* (2024).

October 25: The Censor's Perspective

- Steven Richmond and Vladimir Solodin "The Eye of the State: An Interview with Soviet Chief Censor Vladimir Solodin," *Russian Review* (1997), pp. 581-590.
- China Digital Times, "Timeline of Court Rulings Removed from the Internet," June 28, 2021.

WEEK 9: LEGAL DUALISM AND SHOW TRIALS—THEMES FROM RUSSIA

October 28: Telephone Justice and Legal Dualism

- Alena Ledeneva, "Telephone Justice in Russia," *Post-Soviet Affairs* (2008), p. 325-226 [the definition of telephone justice] and pp. 336-346.
- Kathryn Hendley, "Telephone Law and the Rule of Law: The Russian Case," *Hague Journal on the Rule of Law* (2009), pp. 241-262.

October 30: Managing Opposition

- Lauren A. McCarthy, Douglas Rice, and Aleks Lokhmutov, "Four Months of Discrediting the Military": Repressive Law in Wartime Russia." *Demokratizatsiya: The Journal of Post-Soviet Democratization* (2023) [skip pp. 140-145].
- "Dictatorship of Law and a Power Vertical," interview with Gilles Favarel-Garrigues, June 28, 2023.

November 1: Discussion of Pussy Riot

- Valerie Sperling, *Sex, Politics and Putin* (Oxford University Press 2015), pp. 222-239.
- Maria Alyokhina, Nadezha Tolokonnikova, Yekaterina Smutsseovich, "Pussy Riot Closing Statements," N+1, August 13, 2012.

WEEK 10: LEGAL CONSTRUCTION & GRASSROOTS JUSTICE—THEMES FROM CHINA

November 4: Legal Construction and Its Critics

- He Weifang, *In the Name of Justice: Striving for the Rule of Law in China* (Brookings Institution Press 2012), pp. 128-130. "The Constitution and the Party-State," in Sebastian Heilmann ed. *China's Political System* (Rowman and Littlefield 2017), pp. 56-62.
- Cao Yin, "Rule of Law Lifts Business Environment," *China Daily*, July 16, 2024.
- Zeming Liu and Benjamin Liebman, "Redefining Law in China," working paper (2024), excerpts to be announced.

November 6: Law at the Grassroots

- Ke Li, *Marriage Unbound: Divorce Litigation, Power and Inequality in Contemporary China* (Stanford University Press 2022), Introduction and Chapter 6 OR Chapter 7.
- *Optional: "Why China's New Divorce Law is So Controversial," The Economist*, August 6, 2020.

November 8: Law, Culture and Resistance

- Lü Pin, "How the Thwarted Feminist Movement Gave Birth to a New Generation of Blank Paper Revolutionaries," March 7, 2023, excerpts.
- Qian Liu, "Relational Legal Consciousness in the One-Child Nation," *Law & Society Review* (2023), pp. 214-218 and pp. 221-226 [please also skim the data and methods section].

WEEK 11: LAWYERS & POLITICAL ACTIVISM: RUSSIA

November 11 (Veteran's Day): No Class

November 13: Motivation and Strategy

- Dina Kaminskaya, *Final Judgment: My Life As A Soviet Defense Attorney* (Simon and Schuster 1982), pp. 37-40 and pp. 48-50.
- Renata Mustafina, "Turning on the Lights? Publicity and Defensive Legal Mobilization in Protest-Related Trials in Russia." *Law & Society Review* (2022), pp. 1-3; pp. 9-16. [Also skim the research strategy and methods section]

November 15: Conversation with Nataliya Sekretareva, head of the legal team at Memorial Human Rights Defense Centre [via Zoom].

- Dan Bilefsky and Anton Troianovski, "Memorial's Efforts to Bring Russia's Totalitarian Past to Light Have Also Illuminated Current Repressions," *The New York Times*, October 7, 2022.
- Much of Russia's Intellectual Elite Has Fled the Country," *The Economist*, August 9, 2022.

WEEK 12: LAWYERS & POLITICAL ACTIVISM: CHINA

November 18: Motivation and Strategy

- Xu Zhiyong, "For Freedom, Justice and Law: My Closing Statement to the Court" in David Shambaugh ed. *The China Reader* (Oxford University Press 2016), pp. 56-64.
- Xu Zhiyong, "A 2020 New Year's Message," January 1, 2020.
- Rachel E. Stern, "Legal Activism in Post-Tiananmen China," *Law & Social Inquiry* (2017), pp. 234-251.

November 20: Public Interest Lawyers Under Xi

- Nicole Hong and Zixu Wang, "With Rainbow Flags, Two Students Test China's Shrinking LGBTQ Space," *The New York Times*, June 3, 2023.
- "A Chinese Trans Woman Wins A Surprising Legal Victory," *The Economist*, August 1, 2020.
- Yueduan Wang and Ying Xia. "State-Sponsored Activism: How China's Law Reforms Impact NGOs' Legal Practice," *Law & Social Inquiry* (2023), excerpts to be announced.

November 22: Conversation with Jiarui Song and Nanqin Ying about LGBTQ public interest litigation in China

WEEK 13: DIASPORA POLITICS

November 25: Possibilities for Activism in Exile

- Laura Henry and Elizabeth Plantan, "Activism in Exile: How Russian Environmentalists Maintain Voice After Exit," *Post-Soviet Affairs* (2021), excerpts to be announced.
- [Podcast] Masha Gessen, "Target List," *This American Life*, May 24, 2024. Available at <https://www.thisamericanlife.org/831/lists>

November 27: No class—Thanksgiving Holiday

November 29: No class—Thanksgiving Holiday

WEEK 14: BRINGING IN AMERICA & REFLECTING BACK

December 2: Democratic Backsliding

- Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (Crown 2018), chapter 4 and chapter 5.
- *Optional podcast*: "How Democracies Die," *The Ezra Klein Show* [2019 conversation with Levitsky and Ziblatt], available at <https://apple.co/3g52gnG>

December 4: Possibilities for Democratic Renewal

- Danielle Allen, *Justice By Means of Democracy* (University of Chicago Press 2023), pp. 208-227.

December 6: Reflections and Review