

LAW & RIGHTS IN AUTHORITARIAN STATES

Legal Studies 110

Fall 2017 | Monday/Wednesday/Friday, 2-3pm

Kroeber 155

Professor Rachel E. Stern

Contact Information

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Office Hours

Tuesdays 3:00-5:00pm

Sign up at: www.wejoinin.com/rstern@law.berkeley.edu

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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

Students will need to purchase 1984, by George Orwell. All other course readings will be available on Bcourses

¹ Drop-ins are welcome, but those who sign up will have priority. To find my office, turn left at the top of the stairs and follow the hallway to the end.

COURSE REQUIREMENTS

Grades and Assignments

- Bcourse posts: 15% (5% each)
- Midterm 1: 20%
- Midterm 2: 20%
- Take home final: 30%
- Participation and attendance in lecture and section: 15%

Bcourse posts

Each student is responsible for three short reading responses (200-250 words each) posted on Bcourses during the semester. The sign-up sheet is online at <https://www.wejoinin.com/sheets/hjgdk> and you can sign up for your three dates anytime before January 22nd on a first come, first served basis. At least one of your dates should be before February 28.

These short, informal responses to the readings must be posted to Bcourses **by 2pm the day before class**. 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 posts are meant to serve as a starting point for discussion for that day's readings. 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. 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 (A-), check plus (A) and check minus (B+). Please expect that most responses will receive a check.

Exams

In-class Midterm Examination: There will be two mid-term examinations held in class on **February 26 and March 23**. Both will consist of 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 course will culminate with an open book, open notes take home exam. The final exam will ask students to answer conceptual questions that draw together readings across weeks and speak to themes of the course.

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—I will not re-grade the examinations. If you have a disability that requires accommodation, please let either me or your GSI know within the first two weeks of the semester.

Attendance and Participation

Regular lecture attendance is important, as some of the material on exams will be covered in lecture and not in the reading. More important, 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.

For the participation portion of the grade, the basic starting point is regular attendance in lecture and section and completion of any assigned readings beforehand. Each student is entitled to one absence from section and two absences from lecture over the course of the semester, no questions asked. After that, absences will start to affect the participation portion of the grade. The overall expectation is that students will thoughtfully participate in discussion, with the understanding that first-rate participation corresponds to quality of comments rather than quantity.

Please also keep in mind that the course may touch on sensitive, controversial or personal topics over the course of the semester. It is critical that we respect one another's thoughts, and address comments to the ideas and arguments, not to the person. Discussions should be productive, respectful and appropriate.

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.

Additional Course Policies

Laptops and cell phones. In order to create the best possible environment for listening, learning, and discussion, neither cell phones nor laptops are allowed in the classroom. Please take notes by hand and rest easy with the knowledge that all exam questions will be provided ahead of both the midterm and the final. (For more why this policy exists, see "Laptops are Great, But Not During a Lecture or Meeting" on Bcourses).

Getting in touch with me. The best way to talk substantively is in office hours, rather than through email. I have office hours on Tuesday afternoon and will also meet with students in the afternoons by appointment. Emails on administrative matters (setting up an appointment, asking for a recommendation etc.) will be answered quickly.

Students with disabilities. If you anticipate issues related to the format or requirements of the course, please let me know as soon as possible so we can work together to find a way for you to fully participate.

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.

CO1URSE SCHEDULE

INTRODUCTION

January 17: Introduction

January 19: A Global Wave of Authoritarianism?

- Roberto Stefan Foa and Yascha Mounk, "The Danger of Deconsolidation," *Journal of Democracy* (July 2016), pp. 5-17.
- Pippa Norris, "Is Western Democracy Backsliding? Diagnosing the Risks," *Journal of Democracy* [online], pp. 2-24.

WEEK 1: VARIETIES OF AUTHORITARIANISM

January 22: A Taxonomy of Authoritarianism

- Steven Levitsky and Lucan Way, "Elections Without Democracy: The Rise of Competitive Authoritarianism," *Journal of Democracy* (2002), pp. 51-65.
- Steve Tsang, "Consultative Leninism: China's New Political Framework," *Journal of Contemporary China* (November 2009), pp. 865-880.

January 24: Legitimation, Compliance and Resistance

- Ian Buruma, "The Indiscrete Charm of Tyranny," *The New York Review of Books*, May 12, 2005.
- Vaclav Havel, "The Power of the Powerless," in Jan Vladislav ed. *Vaclav Havel or Living in Truth* (Faber and Faber, 1986), pp. 36-57.

January 26: Orwell Introduced

- Michiko Kakutani, "Why '1984' is a 2017 Must-Read," *The New York Times*, January 26, 2107.
 - George Orwell, letter to Noel Willmet, May 18, 1944.
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WEEK 2: VISIONS OF AUTHORITARIAN LAW

January 29: What is the Rule of Law?

- Tom Bingham, *The Rule of Law* (Penguin 2010), pp. 3-9, pp. 37-65.
- William Glaberson, "In Tiny Courts of N.Y., Abuses of Law and Power," *The New York Times*, September 25, 2006.
- *Optional podcast*: "American Pendulum I," *More Perfect* from WNYC, September 30, 2017. <https://www.wnyc.org/story/american-pendulum-fred>

January 31: Visions of Authoritarian Law

- Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (Transaction Books, 2001), excerpts.
- 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.

February 2: Discussion of 1984

- *Optional podcast*: Slate Culture Gabfest discussion of 1984 from their March 8, 2017 episode. Available at <http://slate.me/2ADg4Te>

WEEK 3: HITLER'S GERMANY

February 5: Law in Hitler's Germany: Friends, Enemies and a State of Emergency

- Carl Schmitt, *The Concept of the Political* (University of Chicago Press 2007) [originally published 1932], pp. 27-45.
- Kim Lane Scheppele, "The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work," *Governance* (October 2013), pp. 559-562.
- Timothy Snyder, *The Black Earth: The Holocaust As History and Warning* (Tim Duggan Books 2015), pp. 1-10.

February 7: **Class cancelled**

February 9: Law in Hitler's Germany:

- Ernst Fraenkel, *The Dual State* (Oxford University Press, 1941), excerpts.
 - Detlev J.K. Peukert, *Inside Nazi Germany* (Yale University Press 1982), pp. 208-235 [skim 224-233].
 - Milton Meyer, *They Thought They Were Free: The Germans, 1933-1945* (University of Chicago Press 1955), pp. 71-94.
 - Timothy Snyder, *The Black Earth: The Holocaust As History and Warning* (Tim Duggan Books 2015), pp. 314-318.
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WEEK 4: EAST GERMANY & SOCIALIST LAW

February 12: Civil Law and Socialist Law

- 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.

February 14: Everyday Law in East Germany

- Inga Markovits, *Justice in Lüritz* (Princeton University Press, 2010), Chapter 1 and Chapter 8.

February 16: Surveillance and the Stasi

- “Timothy Garden Ash, “The Romeo File,” *The New Yorker*, April 28 & May 5 1997, pp. 162-171.
- Discussion of “The Lives of Others,” directed by Florian Henckel von Donnersmarck (2006)

Section canceled for the week. Film screening to be announced*

WEEK 5: COMMUNISM AS A GLOBAL IDEOLOGY

February 19: [No class—President’s Day]

February 21: A Tale of Two Revolutions: Russia

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

February 23: A Tale of Two Revolutions: China

- Edgar Snow, *Red Star Over China* (Grove Press 2007), pp. 35-29. 90-96, 119-125, 219- 226.

WEEK 6: LAW AT THE HIGH TIDE OF COMMUNISM

February 26: In-Class Midterm

February 28: Law under Stalin

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

March 2: Law under Mao

- Jennifer Altehenger, "Simplified Legal Knowledge in the Early PRC: Explaining and Publishing the Marriage Law," in Li Chen and Madeleine Zelin eds. *Chinese Law: Knowledge, Practice and Transformation: 1530s to 1950s* (Brill 2015), pp. 342-366.
- Kenneth Lieberthal, *Governing China* (WW Norton and Company 2004), pp. 62-70.

WEEK 7: 1989 AND THE AFTERMATH

March 5: Perestroika and Putin

- M. Steven Fish, "What is Putinism?" *Journal of Democracy* (October 2017), pp. 61-75.
- Valerie Sperling, *Sex, Politics and Putin* (Oxford University Press 2015), pp. 29-47.

March 7: Tiananmen and Xi

- Jeffrey Wasserstrom, *China in the 21st Century: What Everyone Needs to Know 2nd Edition* (Oxford University Press 2013), pp. 81-5.
- Evan Osnos, "Born Red," *The New Yorker*, April 5, 2015.

March 9: 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 8: DYNAMICS OF CONTROL AND COMPLIANCE

March 12: Coercion, Self-Censorship and Socialization

- Rachel E. Stern and Jonathan Hassid, "Amplifying Silence: Uncertainty and Control Parables in Contemporary China," *Comparative Political Studies* (October 2012), pp. 1230-1254.

March 14: Everyday Practice of Non-Compliance

- James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press, 1985), pp. 28-47 (Chapter 2).

March 16: Non-Compliance as Political Participation

- Lily L. Tsai, "Constructive Noncompliance." *Comparative Politics* (April 2015), pp. 253-79.

WEEK 9: THE DUAL STATE: RUSSIA

March 19: Everyday Law: Legal Consciousness

- Kathryn Hendley, *Everyday Law in Russia* (Cornell University Press 2017), pp. 1-17 (Introduction), pp. 18-57 (Chapter 1).

March 21: Everyday Law:

- Kathryn Hendley, *Everyday Law in Russia* (Cornell University Press 2017), pp. 134-178 (Chapter 4).

March 23: In-class midterm

****NO CLASS FROM MARCH 26-30, SPRING BREAK****

WEEK 10: POSSIBILITIES FOR LEGAL ACTIVISM: CHINA

April 2: Legal Activism

- Eva Pils, *Human Rights in China* (Polity Press 2018), pp. 9-31 (Chapter 1).
- Rachel E. Stern, "Activist Lawyers in Post-Tiananmen China," *Law & Social Inquiry* (Winter 2017), pp. 234-251.

April 4: Legal Activism

- "Charter 08," trans. Perry Link, *New York Review of Books*, December 18, 2008.
- 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.

April 6: In-class discussion of "Hooligan's Sparrow" (dir. Nanfu Wang, 2016).

WEEK 11: LAW, CENSORSHIP AND HISTORY

April 9: The Mechanisms and Logic of Censorship

- "The Eye of the State: An Interview with Soviet Chief Censor Vladimir Solodin," *Russian Review* (1997), pp. 581-590.
- Margaret E. Roberts, *Censored: Distraction and Diversion Inside China's Great Firewall* (Princeton University Press 2018), pp. 25-54.

April 11: Historical Remembrance

- Glenn Tiffert, “Peering Down the Memory Hole: History, Censorship and the Digital Turn” (2018).
- Masha Gessen, *The Future is History* (Riverhead Books 2017), pp. 424-426.

April 13: Special Guest: Glenn Tiffert (Visiting Fellow, Hoover Institution)

WEEK 12: GUARDING AGAINST AUTHORITARIANISM

April 16: Limiting Free Speech: Germany’s Experience

- Heidi Tworek, “How Germany is Tackling Hate Speech,” *Foreign Affairs*, May 16, 2017.
- Jeremy Waldron, *The Harm in Hate Speech* (Harvard University Press 2012), Chapters 3 and 4.
- *Optional*: Timothy Garton Ash, “It’s the Kultur, Stupid,” *The New York Review of Books*, December 7, 2017.

April 18: Free Speech versus Hate Speech

- Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus* (Yale University Press 2017), Chapters 2 and 4.

April 20: What Should We Do?

- *Optional podcast*: “The Hate Debate,” *More Perfect* from WNYC, November 5, 2017. <https://www.wnyc.org/story/hate-debate>

WEEK 13: DEMOCRATIC DECONSOLIDATION?

April 23: Is American Increasingly Authoritarian?

- Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (Crown 2018), excerpts to be announced.

April 25: Can We Guard Against Authoritarianism?

- Timothy Snyder, *On Tyranny: Twenty Lessons from the Twentieth Century* (Tim Duggan Books, 2017).

April 27: Wrapping Up