

# LAW & RIGHTS IN AUTHORITARIAN STATES

---

Legal Studies 136

MWF 2-3pm

Anthro/Art Practice Building 155

## Contact Information

Professor Rachel Stern: [rstern@law.berkeley.edu](mailto:rstern@law.berkeley.edu) | 510-642-2008

GSI Lawrence Liu: [ljiu@berkeley.edu](mailto:ljiu@berkeley.edu)

## Student Office Hours

Wednesdays and Thursdays, 3.30-4.30pm

Sign up at: [http://bit.ly/RS\\_Fall21\\_Officehrs](http://bit.ly/RS_Fall21_Officehrs)

2240 Piedmont Avenue, #202<sup>1</sup>

## 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.

---

<sup>1</sup> Through October 1, my default will be to hold office hours by Zoom or phone. If you would prefer to meet in person, please send me an email. If we schedule an in-person appointment, 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: 27% (9% each/lowest grade is dropped)
- Question for Ke Li (3%)
- Midterm: 25%
- Take home final: 35%
- Section engagement: 10%

### Bcourse 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](http://bit.ly/RR_SignUp) and you can sign up for your four dates any time before September 1 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 September 22.

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. We will all be as flexible as we can be this semester, as we continue to learn and teach through challenging times.

These short, informal responses to the readings must 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..

### **Author Meets Reader: Discussion Question**

In preparation for our conversation with Ke Li on October 29, 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.

### **Exams**

*Midterm exam* The midterm exam will be available between 9am and 9pm on Bcourses on October 18. You can pick any 90 minute block that day to take it. It will be an open book, open note exam, and will consist of a combination of IDs and short answer questions.

*Final exam.* The final exam will be available on Bcourses from 9am to 9pm on Thursday December 16. You can pick any 3 hour block during that time to take it. Like the midterm, 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—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.

Having said that, please do not come to class if you are not feeling well. Protecting everyone's health is my top priority this semester and, due to the ongoing pandemic, I am not tracking attendance this semester and will not factor it into your grade. 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.

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.

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 and respectful.

## **Grading**

If you put in time, effort, and a sense of curiosity, you will get a lot out of this class. As Berkeley students, I know that you are all smart, and your grade will generally reflect the work you put into the class. The class is not curved, and nothing would make me happier than to have all students earn As.

## **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, 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. (For more why this policy exists, see “The Case for Banning Laptops in the Classroom” on Bcourses). If you need to use a laptop, for whatever reason, please go ahead and do so. There is no need to ask for an accommodation, or tell me the reason why.

*Getting in touch with me.* In addition to the student 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.* Video and audio recording of lectures and sections without my permission is prohibited. In order to create the freest possible environment for discussion, permission will be reserved for those with disability accommodations.

*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.

*Mask policy.* All students are expected to comply with UC Berkeley’s policy on mask-wearing.

## **COURSE SCHEDULE**

### **SETTING THE STAKES**

August 25: Introduction

August 27: 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).

- Trevon Logan, “Will American Democracy Reach Retirement Age?” *Broadstreet Blog*, July 5, 2021.
- 

## WEEK 1: VARIETIES OF AUTHORITARIANISM

August 30: Types of Authoritarianism

- Steven Levitsky and Lucan Way, “The Rise of Competitive Authoritarianism,” *Journal of Democracy* (2002), pp. 51-63 [skim the section on Hungary].
- Hannah Arendt, *The Origins of Totalitarianism* (1951), pp. 341-351.

September 1: 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.

September 3: Contrasts to Authoritarianism

- Tom Bingham, *The Rule of Law* (Penguin 2010), pp. 3-9, pp. 37-65.
  - Podcast: Serial (Season 3, Episode 2), “You’ve Got Some Gauls.” Available at <http://bit.ly/2R9ZkvC>
- 

## WEEK 2: VISIONS OF AUTHORITARIAN LAW

September 6: [No class—Labor Day]

September 8: 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.

September 10: Discussion of 1984

- George Orwell, letter to Noel Willmet, May 18, 1944.
  - *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

September 13: 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.
- Isabel Wilkerson, *Caste: The Origins of Our Discontents* (Random House 2020), pp. 78-88.

September 15: Law in Hitler's Germany

- Jens Meierhenrich, *The Remnants of the Rechtsstaat: An Ethnography of Nazi Law* (Oxford University Press 2018), pp. 236-252.
- Inga Muller, *Hitler's Justice: The Courts of the Third Reich* (Harvard University Press, 1991), pp. 59-67.
- *Optional podcast: "Hitler in History,"* In Our Time with Melvyn Bragg, BBC Radio Four, October 5, 2000. Available at <https://bbc.in/3philnT>

September 17: 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.
- Mala Htun and S. Laurel Weldon, *Logics of Gender Justice* (Cambridge University Press 2018), pp. 297-301.

---

## WEEK 4: EAST GERMANY

September 20: Governing East Germany

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

September 22: Everyday Law in East Germany

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

September 24: 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

September 27: 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 29: 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.

October 1: 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).

---

## WEEK 6: LAW AT THE HIGH TIDE OF COMMUNISM

October 4: 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 6: Perestroika and Putin

- M. Steven Fish, “What is Putinism?” *Journal of Democracy* (October 2017), pp. 61-75.
- Masha Gessen, “Lyubov Sobol’s Hope for Russia,” *The New Yorker*, July 19, 2021.

October 8: Tiananmen and Xi

- 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.
- Yuen Yuen Ang, “The Robber Barons of Beijing,” *Foreign Affairs*, July-August 2021.

---

## WEEK 7: DYNAMICS OF CONTROL AND COMPLIANCE

October 11: 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.
- Maria Repnikova, “Contesting the State Under Authoritarianism: Critical Journalists in China and Russia,” *Comparative Politics* (2018), pp. 43-55.

October 13: Everyday Practices of Non-Compliance

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



- Lily L. Tsai, “Constructive Noncompliance.” *Comparative Politics* (April 2015), pp. 253-258, 260-265 (the qualitative findings), and 269.

October 15: Resistance in Everyday Life

- Elsie Chen, “These Chinese Millennials are ‘Chilling,’ and Beijing Isn’t Happy,” *The New York Times*, July 3, 2021.

## **WEEK 8: LEGAL DUALISM AND SHOW TRIALS—THEMES FROM RUSSIA**

October 18: Midterm Exam [Class Cancelled]

October 20: Legal Dualism

- Kathryn Hendley, “Telephone Law and the Rule of Law: The Russian Case,” *Hague Journal on the Rule of Law* (2009), pp. 241-262.
- Robyn Dixon, “In a Russian court, Alexei Navalny Loses Again But Still Has the Last Word,” *Washington Post*, February 20, 2021.

October 22: 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 9: LEGAL CONSTRUCTION & GRASSROOTS JUSTICE—THEMES FROM CHINA**

October 25: Is it Law?

- Taisu Zhang and Tom Ginsburg, “China’s Turn Toward Law,” *Virginia Journal of International Law* (2019), excerpts.
- Donald Clarke, “China’s Legal Non-Construction Project” (2020), excerpts.
- Yueduan Wang, “Detaching Courts from Local Politics? Assessing the Judicial Centralization Reforms in China,” *The China Quarterly* (2021), pp. 552-562.

October 27: Law at the Grassroots

- Ke Li, *Marriage Unbound: Divorce Litigation, Power and Inequality in Contemporary China* (Stanford University Press, forthcoming), chapter 4 and chapter 6.

October 29: Author Meets Readers, Discussion with Ke Li (John Jay CUNY), via Zoom

## WEEK 10: LAWYERS & POLITICAL ACTIVISM

### November 1: Russia

- Dina Kaminskaya, *Final Judgment: My Life As a Soviet Defense Attorney* (Simon and Schuster 1982), pp. 37-50.
- Freek van der Vet, "Spies, Lies, Trials and Trolls: Political Lawyering Against Disinformation and State Surveillance in Russia," *Law & Social Inquiry* (May 2021), excerpts to be announced.

### November 3: China

- 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.
- Di Wang and Sida Liu, "Performing Artivism: Feminists, Lawyers and Online Legal Mobilization in China," *Law and Social Inquiry* (August 2020), excerpts to be announced.

### November 5: Working Within The System

- Lawrence Liu and Rachel E. Stern, "State-Adjacent Professionals: How Chinese Lawyers Participate in Political Life," *The China Quarterly* (2020).
- Liangbiao Lu, "Three Typical Models of Chinese Lawyers Promoting Social Progress," June 25, 2021.

---

## WEEK 11: LAW, CENSORSHIP & HISTORY

### November 8: 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.

### November 10: Historical Remembrance

- Glenn Tiffert, "Peering Down the Memory Hole: History, Censorship and the Digital Turn," *The American Historical Review* (April 2019), pp. 550-565.
- Masha Gessen, *The Future is History* (Riverhead Books 2017), pp. 424-426.

### November 12: 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 12: 21<sup>st</sup> CENTURY AUTHORITARIAN LEGALITY IN THE WORLD

November 15: Legal formalism

- Elizabeth Plantan, “A Tale of Two Laws: Managing Foreign Agents and Overseas NGOs in Russia and China,” in *Citizens & the State in Authoritarian Regimes* (Oxford University Press 2020), pp. 167-190.
- Excerpts from the National Security Law.
- Elaine Yu, “Hong Kong Protester, First to Be Sentenced Under China’s National Security Law, Gets Nine Years,” *The Wall Street Journal*, July 30, 2021.

November 17: The Digital Future

- Andrea Kendall-Taylor, Erica Frantz, and Joseph Wright, “The Digital Dictators: How Technology Strengthens Autocracy,” *Foreign Affairs* (March/April 2020), excerpts.
- Rachel E. Stern, Benjamin L. Liebman, Margaret Roberts and Alice Wang, “Automating Fairness? Artificial Intelligence in the Chinese Courts,” *The Columbia Journal of Transnational Law* (2021), excerpts.

November 19: An Exportable Model?

- Jessica Chen Weiss, “A World Safe for Autocracy: China’s Rise and the Future of Global Politics,” *Foreign Affairs* (January/February 2019).
- Eva Pils, “China’s Response to the Coronavirus Pandemic: Fighting Two Enemies,” *Verfassungsblog*, May 25, 2020.

---

## WEEK 13: REFLECTIONS

November 22: Reflections

November 24: [No class—Non-Instructional Day]

November 26: [No class—Thanksgiving Holiday]

---

## WEEK 14: CONTEMPORARY AMERICA

November 29: Democratic Backsliding

- Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (Crown 2018), chapter 4 and chapter 5.
- Arlie Russell Hochschild, *Strangers in Their Own Land* (The New Press 2016), pp. 135-151.

- *Optional podcast: “How Democracies Die,” The Ezra Klein Show* [2019 conversation with Levitsky and Ziblatt], available at <https://apple.co/3g52gnG>.

#### December 1: Possibilities for Renewal

- Yascha Mounk, *The People vs. Democracy* (Harvard University Press 2018), pp. 205-215, pp. 245-252.
- Danielle Allen and Rohini Somantathan, “Introduction,” in *Difference Without Domination: Pursuing Justice in Diverse Democracies* (University of Chicago Press 2020), pp. 1-11.
- Isabel Wilkerson, *Caste: The Origins of Our Discontents* (Random House 2020), pp. 378-385.

#### December 3: Wrapping Up