

U.C. Berkeley
Legal Studies 153
Law & Society in Asia
Spring 2016
MWF 2-3:00 p.m.
Wurster 102

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appointment
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Law & Society in Asia

Course Description

This course offers a comparative perspective on law and legal institutions. Looking comparatively helps shed light on our own system and question what is “normal” or “natural.” From what it means to be a lawyer to notions of what is “just” or “fair,” courts and dispute resolution outside the U.S. can be both very different and, at times, surprisingly familiar. After an overview of concepts and classic approaches to the study of law and society, the course will explore these differences and similarities in three Asian settings: China, Japan, and India. Topics include courts and the legal profession, crime, inequality, and environmental protection, to see how each country’s history, political structure, values, and interests shape how legal issues are defined and play out

Course Learning Objectives

By studying the legal order in China, India, Japan, and comparison countries in this course, students will be able to

1. describe the systemic features of common law, civil law, and state socialist legal systems and explain how these Asian states have applied them;
2. describe how the concepts of liberty, equality, and rights are encoded in law and explain how those concepts operate in practice;
3. explain the role of law in punishing crime and exerting social control;
4. explain how law has contributed, or failed to contribute, to social, political, and economic change.

Texts

Texts for the course have been ordered through the bookstore, but there will be a lot of course reading in electronic format on bCourses. If you cannot find a reading for a particular date, just ask. Readings may be updated throughout the semester, and I will indicate that on bCourses. The following texts have been ordered through the bookstore and have been placed on reserve at Moffitt Library (films for “movie nights” are on reserve at the Law Library).

Shapiro, Martin. 1986. *Courts*. Chicago: University of Chicago Press. [ISBN: 0-226-75043-4]

Boo, Katherine. 2014. *Behind the Beautiful Forevers: Life, Death, and Hope in a Mumbai Undercity*. New York: Random House Trade Paperbacks. [ISBN-13: 978-0812979329]
(fall 2015 “On the Same Page” selection)

Note that the readings for each class session are from multiple texts, both paper and electronic (on bCourses), and that we may read partial chapters; check the page numbers in the assigned readings. Be sure to keep up with the readings and ask if anything is unclear.

Requirements and Grading

The course requires you to read the assignments (note: in-class writing will be collected without advance notice), participate in discussion, take some tests, and do a small amount of writing. There will be a handout on final exam format and expectations as we approach the exam. The relative weights of the assignments are as follows.

“Movie Night” and in-class response writes	10%
Midterm exams (three)	45%
Blog post and comments	20%
Section participation	10%
Final exam (take-home)	15%

Please feel free to come to office hours (or use the bCourses discussion or email) with ideas and questions. It has never been easier to talk to your professor and GSI, so take advantage.

Please be on time. Each student is expected to prepare for each class. Take notes as you read (and in class) and refer to the study questions posted on bCourses. Research shows that you learn more when you take notes on paper and leave your networked devices off, so if you want to make the most of class, take notes on paper. If you want to use social media, send text messages, or communicate with friends, do it outside of class. Drinking coffee, water, etc., in class is fine, but eating is a distraction to your fellow students, so do not eat in class. Basically, we are all adults here, so the expectation is that we will treat one another with respect.

Finally, please refer to Berkeley’s Academic Integrity policy (<http://sa.berkeley.edu/conduct/integrity>). *I take academic integrity and honesty seriously. If you plagiarize, cheat, or are otherwise dishonest, you will at fail at least the assignment in question, and I will file an academic dishonesty report.* If you have any questions about this, please ask. Students requiring [accommodation](#) for disability should also make sure that I know about the accommodation. Make sure to check bCourses, since that will be our medium of communication.

Course Readings and Schedule¹

1) Legal Systems (1/20–2/12)

- a) systemic principles and differences, with examples

Date	Class topic	Assignments for class
1/20	course syllabus, overview	Boo, Prologue-ch. 4, pp. ix-68
1/22	courts: dispute resolution, rule-	Shapiro, ch. 1, pp. 1-64

¹ Readings subject to change at instructor’s discretion. See bCourses for updates. Note that the links to readings in the UC Library will only work from a UC Berkeley IP address.

	making, norm-setting	
1/25	common law: accretion	Shapiro, ch. 2, pp. 65-93
1/27	civil law: statute	Shapiro, ch. 3, pp. 126-156
1/29	socialist law: rule by law	Markovitz 2007 "The Death of Socialist Law" <i>Ann. Rev. Social Science</i> 233-253 [bCourses]

b) common law and civil law institutions: courts, procuracy, bar

2/1	courts, bench, and judicial process in civil law systems	Shapiro, ch. 2, pp. 93-111 Merryman & Perdomo, <i>The Civil Law Tradition</i> (chs. 6-9) pp. 34-60 [bCourses]
2/3	presentations on Japanese Law (Prof. Tsuji's undergrad seminar & Prof. Miyazawa)	Johnson 2006 "Where the state kills in secret" <i>Punishment & Society</i> 8(3) 251-285 [bCourses]
2/5	procuracy and legal profession	Kritzer 1996, "Courts, Justice, and Politics in England" (ch. 3) in Jacob et al., eds., <i>Courts, Law, & Politics in Comparative Perspective</i> (New Haven: Yale U.P.), pp. 81-93 [bCourses] Merryman & Perdomo, <i>The Civil Law Tradition</i> (ch. 15) pp. 102-111 [bCourses] Marshall 2011, "Democratizing the Law" (ch. 9) in Gaunder, ed., <i>Routledge Handbook of Japanese Politics</i> , pp. 92-102 [bCourses]

c) alternative legal systems, legality, and systemic problems

2/8	traditional & religious legal systems	Shapiro, chs. 4-5, pp. 157-222 Henderson [1965] 2001, "Nuinosuke v. Chūbē: Conciliation in Tokugawa Civil Trials" in Milhaupt et al, <i>Japanese Law in Context</i> , pp. 14-27 [bCourses]
2/10	systemic problems in law: bias, barriers, injustice, inefficiency	Galanter 1974, "Why the Haves Come Out Ahead" excerpted in Diascro & Ivers pp. 316-321 [bCourses] Abel et al. 1980, "Naming, Blaming, Claiming" excerpted in Sarat pp. 99-104 [bCourses]

		Kagan 2001, “The Political Construction of Adversarial Legalism” <i>Adversarial Legalism</i> (Cambridge: Harvard Univ. Press) pp. 34-58 [bCourses]
2/12	MIDTERM 1: LEGAL SYSTEMS	

2) Constitutions, Liberty, Equality, and Rights (2/17–3/11)

a) Japan: Meiji, 1947, and role of rights

2/17	Meiji and 1947 Constitutions	Haley 1991, “Constitutions and Codes” (ch. 4), <i>Authority Without Power</i> (Oxford U.P.), pp. 67-80 [bCourses] Tanaka [1976] 2001, “History of Japanese Constitution of 1946” and “Selected SCAP Documents” in Milhaupt et al., eds., <i>Japanese Law in Context</i> , pp. 143-152 [bCourses] Constitution of Japan (Constitute Project)
2/19	Article 9 and political divide	Umeda 2015, “Japan: Interpretations of Article 9 of the Constitution” Law Library of Congress (link) [bCourses] Ackerman and Matsudaira 2015, “Cry ‘Havoc’ and Let Slip the Constitution of War” <i>Foreign Policy</i> 28 Sept. (link) [bCourses]
2/22	civil liberties protections	Marshall 2011, “Notions of Rights in the United States and Japan.” <i>Education About Asia</i> (Ann Arbor, MI: Association for Asian Studies), pp. 55-57 [bCourses] Kakunaga v. Sekiguchi and Japan v. Nakaya case excerpts in Milhaupt et al. eds., <i>Japanese Law in Context</i> , pp. 171-177 [bCourses]
2/24	equality for outcastes & women	Upham 1987, “Instrumental Violence and Buraku Liberation” (ch. 3) <i>Law and Social Change in Japan</i> (Harvard U.P.), pp. 78-123 [bCourses] NY <i>Times</i> , “Japan upholds rule...” (16 Dec. 2015) [bCourses]

b) China: basic law in Leninist party-state

2/25 **QIU JU** (THURSDAY NIGHT AT THE MOVIES)

2/26	China and law	Chow 2003, <i>The Legal System of the PRC</i> (St. Paul, MN: West) pp. 70-87, 105-113 [bCourses] Diamant et al. 2005, “Law and Society in the PRC” in <i>Engaging the Law in China</i> (Stanford: Stanford U.P.) pp. 3-21 [bCourses]
2/29	struggling with equal protection	PRC Constitution (via National People’s Congress or Constitute Project) Elliott 2015, “The Case of the Missing Indigene” <i>China Journal</i> 73, pp. 186-213 [bCourses]
3/2	Reform Era and rule-by-law	Xin 2015, “Selective Enforcement of Land Regulations” <i>China Journal</i> 74, pp. 66-90 [bCourses]

c) India: colonialism, judicial review, not-quite rights revolution

3/4	post-colonial constitutionalism	Dirks 2001, “The Reformation of Caste” (ch. 12) and “Conclusion” (ch. 14), <i>Castes of Mind</i> (Princeton U.P.), pp. 255-274 [bCourses], 297-303 [bCourses] Ambedkar 1936, <i>Annihilation of Caste</i> (New York: Columbia University), Prologue-§14, pp. 1-24 [bCourses] or at Columbia’s Ambedkar site Galanter [1989] 2005, “Pursuing Equality in the Land of Hierarchy” (ch. 13) in Deva, ed., <i>Sociology of Law</i> (New Dehli: Oxford U.P.), pp. 232-249 [bCourses]
3/7	constitutionalism and rights	Boo, part II, pp. 70-132 Constitution of India (Constitute Project) Mate 2013, “Public Interest Litigation and the Transformation of the Supreme Court of India” (ch. 10) in Kapiszewski et al. <i>Consequential Courts</i> (Cambridge U.P.), pp. 262-288 [bCourses]

3/9	equal protection	Nussbaum 2007, “A Democracy of Pluralism, Respect, Equality” (ch. 4), <i>Clash Within</i> (Harvard U.P.), pp. 122-151 [bCourses]
3/11	MIDTERM 2: LIBERTY, EQUALITY, RIGHTS	

3) Criminal Justice and Social Control (3/14–4/8)

a) The Japanese way of justice

3/14	prosecutor’s paradise	Johnson 1998 “The Organization of Prosecution and the Possibility of Order” <i>Law & Society Review</i> 32, 247-308 [bCourses]
3/16	criminal process rights	Ramseyer & Nakazato 1999, “Criminal Law and Procedure” (ch. 7) in <i>Japanese Law</i> (Univ. of Chicago), pp. 151-190 [bCourses] Foote [1992] 2011 “The Benevolent Paternalism of Japanese Criminal Justice” (ch. 7) in Friedman et al., eds., <i>Law in Many Societies</i> (Stanford Law Books), pp. 84-101 [bCourses] Miyazawa [1992] 2001, “Policing in Japan: A Study on Making Crime,” excerpted in Milhaupt et al., eds., <i>Japanese Law in Context</i> , pp. 331-340 [bCourses]

3/17 **STRAY DOG** (THURSDAY NIGHT AT THE MOVIES)

3/18	reform and lay participation	Miyazawa 2013, “Successes, Failures, and Remaining Issues of the Justice System Reform in Japan” 36 <i>Hastings Int’l & Comp. L. Rev.</i> 313 (pdf pp. 1-16) [bCourses] Fukurai 2013, “A Step in the Right Direction for Japan’s Judicial Reform” 36 <i>Hastings Int’l & Comp. L. Rev.</i> 517 (pdf pp. 1-18) [bCourses]
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b) China: socialist legal construction

3/28	building the state, building the law	Kinkel and Hurst 2011, “Review Essay— Access to Justice in Post-Mao China” <i>Journal of East Asian Studies</i> 11, 467-499 [bCourses]
3/30	law enforcement and the Leninist Party-State	Wang 2014, “Empowering the Police”” <i>China Quarterly</i> 219, pp. 625-648 [bCourses]

c) India: diversity and control

4/1	state and really diverse society	Guha 2007, “Rights” (ch. 26) in <i>India after Gandhi</i> (Harper Perennial), pp. 597-623 [bCourses]
4/4	individual rights	Boo, part III, pp. 135-174 Singhvi 2009, “India’s Constitution and Individual Rights” 42 <i>George Washington Law Review</i> 327-360 [bCourses]

4/5 **KANOON** (TUESDAY NIGHT AT THE MOVIES)

4/6	police and deploying state violence	Jauregui 2013, “Beatings, Beacons, and Big Men” <i>Law & Social Inquiry</i> 38:3, pp. 643-669 [bCourses] <i>optional:</i> Epp 2012, “The Legal Complex in the Struggle to Control Police Brutality in India” (ch. 2) in Halliday et al., eds., <i>Fates of Political Liberalism in the British Post-Colony</i> (Cambridge U.P.), pp. 91-111 [bCourses]
4/8	MIDTERM 3: CRIME & SOCIAL CONTROL	

4) Law and Social Change (4/11—4/29)

a) Japan

4/11	Minamata and environmental justice	Upham 1987, “Environmental Tragedy and Response” (ch. 2) in <i>Law and Social Change in Postwar Japan</i> (Harvard U.P.), pp. 28-77 [bCourses]
4/13	Workplace & women’s rights	Upham 1987, “Civil Rights Litigation and the Search for Equal Employment Opportunity” (ch. 4) in <i>Law and</i>

		<p><i>Social Change in Postwar Japan</i> (Harvard U.P.), pp. 124-165 [bCourses]</p> <p><i>optional</i>: Nakakubo 2007, “ ‘Phase III’ of the Japanese Equal Employment Opportunity Act” <i>Japan Labor Review</i> 4:3, pp. 9-27 [online] [bCourses]</p>
4/15	limits of law: taxpayer suits, Fukushima fallout	<p>Osaka 2012, “Corporate Liability, Government Liability, and the Fukushima Nuclear Disaster” <i>Pacific Rim Law & Policy Journal</i> 21:3, pp. 433-459 [link] [bCourses]</p> <p>Marshall 2007 “Who Decides the Role of Courts, State or Society?” (22 pp.) [bCourses]</p>

b) China

4/18	Revolution and “liberation”	<p>Diamant 2000, “Re-examining the Impact of the 1950 Marriage Law” <i>China Quarterly</i> 161, pp. 171-198 [bCourses]</p>
4/20	marginalization and rights perceptions	<p>Boittin 2013 “New Perspectives from the Oldest Profession” <i>Law & Society Review</i> 47:2, pp. 245-278 [bCourses]</p>
4/22	environmental protection	<p>Stern 2011 “From Dispute to Decision: Suing Polluters in China” <i>China Quarterly</i> 206, pp. 294-312 [link] [bCourses]</p> <p><i>optional</i>: Stern 2014, “The Political Logic of China’s New Environmental Courts” <i>China Journal</i> 72, pp. 53-74 [link] [bCourses]</p>

c) India

4/25	women as objects of law	<p>Boo, part IV and Afterword, pp. 177-254</p> <p>Cossmann and Kapur 1993, “Women and Poverty in India: Law and Social Change” <i>Canadian Journal of Women and the Law</i> 6, pp. 278-304 [link] [bCourses]</p>
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4/27	rape, categories, law	<p>Guardian article, NY <i>Times</i> editorial and coverage 1, 2, 3 [also bCourses]</p> <p>Baxi 2014 “Doctrinal Pictures of Rape Trials” (ch. 1) <i>Public Secrets of Law: Rape Trials in India</i> (New Dehli: Oxford U.P.) pp. 1-33 electronic [link] [bCourses]</p>
4/29	pollution, liability, redress	<p>Abraham 1991, “The Bhopal Case and the Development of Environmental Law in India” <i>International and Comparative Law Quarterly</i> 40:2, pp. 334-365 [link] [bCourses]</p> <p><i>optional</i>: Galanter 1990, “Bhopals, Past and Present: The Changing Legal Response to Mass Disaster” <i>Windsor Yearbook of Access to Justice</i> 10, pp. 151-170 [link] [bCourses]</p>

ONLINE FINAL EXAMINATION DUE BY WEDNESDAY 11 MAY 2015 3:00 P.M.

Blog Posting Assignment

Law & Society in Asia covers a wide range of places and subject matter. To allow you to gain some in-depth knowledge of a question that interests you, there will be a short writing assignment for which you will write (across multiple drafts) a blog post for the whole world to see. The assignment will have three graded components.

sub-assignment	value	due date
a) question for exploration	20%	19 February
b) comments on question	5%	26 February
c) draft posting (maximum 1500 words)	30%	4 April
d) comments on draft post	5%	29 April
e) blog post (maximum 1200 words)	40%	6 May

a) Question for exploration

Develop a question, in consultation with the professor and GSI, that you want to explore. For this assignment, there need not be a “right” answer to the question, or even a definitive answer at all. The question should be of broad enough interest that folks out there in the virtual world will read the answer in your blog post but narrow enough to answer adequately in a post of no more than 1200 words (which is the equivalent of a four page paper). You will post the question on the class bCourses discussion page so that you can get feedback from peers as well as from the instructors.

b & d) Comments

You will be responsible for making substantive comments on three other students’ research questions and three other students’ blog posts. Your comments should help them sharpen their question, improve their draft, etc.

c) Draft posting

Using the resources we are fortunate to enjoy at UC Berkeley, try to arrive at an answer to your research question. Cite your sources, at least three of which have to be refereed scholarly sources, and give the reader references so that she can find your sources. You will post the draft version of your blog entry on the bCourses discussion page, too.

e) Blog post

Using the comments you have received from peers, your GSI, and the professor, you will revise the draft post into a publishable, concise essay that the whole world will see on a standard blogging platform (which the professor and GSI will set up—probably WordPress). Your post will be published under your byline, so you will want it to be accurate, to read well, and to be free of mechanical errors.