Judicial Politics in Non-Democracies
Legal Studies 190
Rachel E. Stern
Spring 2014
Monday/Wednesday 4pm-5.30pm

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Office hours
Wednesday 2.15pm-3.30pm
Afternoons by appointment

Course description
This course investigates the reasons why authoritarian leaders devolve power to courts and the control strategies they deploy to keep judges, lawyers and plaintiffs in check. The course will mix more theoretical readings on approaches to law and the logic of courts with empirical studies of how law works in four settings: Nazi Germany, East Germany, China, and Russia. Throughout the semester, we will ask ourselves how world historical time (e.g. the rise of rights talk, the global trend increased judicial power) and regime type (e.g. military dictatorship, competitive authoritarianism, one-party states) influence both the letter and the practice of law. In addition to scholarly books and articles, course materials will include original court documents as well as memoirs and films that illustrate how ordinary people experience the legal system.

Readings
The only required book for the course is Justice in Lüritz, by Inga Markovits. All other readings will be posted on Bspace. Optional readings are truly optional and will not appear on tests.

Course requirements

Grades and assignments.
• Three blog posts: 15% (5% each)
• In-class midterm: 25%
• Take home final: 40%
• Class participation: 20%

Blog posts. A class blog has been created at http://jpndberkeley.blogspot.com/
Each student is responsible for three blog posts (250-400 words each) over the course of the semester. The blog sign-up sheet is online at http://www.wejoinin.com/sheets/pdbmc, and you can sign up for your three posts anytime before January 29th on a first come, first served basis.

1 Sign up at www.wejoinin.com/rstern@law.berkeley.edu
These short, informal responses to the readings must be posted to the class blog **by 4pm the day before class.** Following a 30-minute grace period, blog posts posted between 4.30pm and 11pm will be marked down a half grade. Blog posts posted after 11pm will not be accepted.

The blog posts are meant to serve as a starting point for discussion for that day’s readings. A good blog post 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 each class.

*In-class mid-term examination.* A mid-term examination will be held in class in March 12th. The mid-term will consist of IDs and short answer questions.

*Final exam.* The course will culminate with an open book, open notes final take home exam. The final exam will ask students to answer at least three conceptual questions that draw together readings across weeks and speak to themes of the course.

*Attendance and participation.* 20% of the final course grade depends on participation. The basic starting point is regular class attendance and completion of the assigned readings before class. Beyond that, I expect students to thoughtfully participate in discussions, with the understanding that first-rate participation corresponds to quality of comments rather than quantity. You can also participate by coming to see me in office hours, posting comments on other students’ blog posts, or occasionally circulating relevant news articles to our class email list.

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.

*Attendance policy.* Each student is entitled to two absences over the course of the semester, no questions asked. After that, absences will start to affect the class participation portion of the grade. Coming to class late will also be counted as .5 of an absence.

*Additional course policies*

*Laptops and cell phones.* Please do not take out your cell phone during class. In addition, the use of laptops in class is discouraged in order to create the best possible
environment for discussion. If you want to bring a laptop, I recommend using a plug-in such as Leech Block (for Firefox) or Stay Focused (for Chrome) to turn off email and web access during class time.

Getting in touch with me. The best way to get substantive feedback on your work or discuss class material is in office hours, rather than through email. Emails on administrative matters (setting up an appointment, asking for a recommendation etc.) will be answered quickly. I have office hours on Wednesday afternoon and I am also happy to meet with students by appointment.

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 of the course.

Course schedule

Introduction: January 22

Class 2: Varieties of authoritarianism (January 27)


Class 3: Visions of authoritarian law (January 29)


Class 4: Visions of authoritarian law (February 3)


Class 5: Hitler’s Germany (February 5)—Lecture
Ernst Fraenkel, *The Dual State* (Oxford University Press, 1941), excerpts.

**Class 6: Cancelled—Instructor out of town (February 10)**

**Class 7: Special film screening and discussion.** Class will run until 6.45pm. (February 12)


[NO CLASS FOR PRESIDENT’S DAY ON FEBRUARY 17]

**Class 8: Courts in East Germany (February 19)**

Inga Markovits, *Justice in Lüritz* (Princeton University Press, 2010), Chapters 1, 2, 3, 4 and 6.

**Class 9: Courts in East Germany (February 24)**

Inga Markovits, *Justice in Lüritz* (Princeton University Press, 2010), Chapters 8, 9, 10.

**Class 10: Introduction to Contemporary China—lecture (February 26)**


**Class 11: Chinese courts (March 3)**


**Class 12: Chinese courts (March 5)**


*In class: Midterm evaluations*

**Class 13: Mediation (March 10)**


**Class 14: Midterm (March 12)**

**Class 15: Special film screening and discussion.  Class will run until 6.15pm (March 17)**

*In Class: Disturbing the Peace*, directed by Ai Weiwei (2009)


**Class 16: Debates inside China (March 19)**


Rebecca Liao, “China’s Constitutional Crisis,” *N+1*, November 18, 2013.


**Class 17: Judges, lawyers and state control (March 31)**


*In class: Lawyers’ Loyalty Oath*

**Class 18: Introduction to Contemporary Russia—lecture (April 2)**


**Class 19: Class canceled—instructor out of town (April 7)**

**Class 20: Russian courts (April 9)**


**Class 21: Russian courts (April 14)**


**Class 22: Political trials (April 16)**


**Class 23: Pathways to Rule of Law? (April 21)**


**Class 24: Authoritarian constitutions (April 23)**

Excerpts from the Russian and Chinese constitutions


**Class 25: Are democracies different? (April 28)**


*In class: The Response, dir. Adam Rodgers (2008)*

**Class 27: Taking stock (April 30)**