

# Law and Politics in Authoritarian and Developing Countries

**Michealmas 2022**

How does law operate outside of industrialized liberal democracies? What assumptions do most scholars bring to the table when analyzing legal systems beyond the field's traditional rich Western democratic core that should be addressed or jettisoned? In particular, is a Rule of Law framework most appropriate for making sense of law and politics in most of the world? If not, what might be a better replacement? This paper begins by addressing the competing perspectives of what we might call a "classical" rule of law and the political exigency of sovereignty. We will then move to examine perspectives for analyzing legal politics and institutions comparatively, before delving into a variety of topics and debates rooted in scholarship on actual legal systems around the world. By the end of the term, all students should have a thorough grounding in the literature on comparative legal politics as it relates to authoritarian and developing countries, though there are, of course, numerous books and literally thousands of articles one could (and should) read beyond what we are able to cover here. Still, the intended specialist will have a solid basis to begin exploring the field in more depth, while others will leave with enough to at least be familiar with some of the most important themes and issues. Assessment will be via one 3000-word essay due at the end of term.

## **Readings and Weekly Schedule:**

I've deliberately constrained the total amount of reading, with the expectation that students will actually complete all of what is assigned each week and be ready to discuss and debate them. Each week's session will begin with roughly one hour of lecture, followed by a brief break and then as much time for questions and discussion as possible (at least 45 minutes, and hopefully closer to an hour most weeks).

**Week 1 Thinking about Rule of Law, Sovereignty, and the Politics of Law:**

H.L.A. Hart *The Concept of Law* (Second Edition) Oxford: Oxford University Press, 1994.

Duncan Kennedy 'Toward a Critical Phenomenology of Judging' in Hutchinson & Monahan eds. *Rule of Law: Ideal of Ideology?* Toronto: Casswell, 1987 – pp.141-67.

Heinz Klug & Sally Engle Merry eds *The New Legal Realism, Volume II: Studying Law Globally* Cambridge: Cambridge University Press, 2016.

Michael Oakeshott, "The Rule of Law" in *On History and Other Essays* Indianapolis: Liberty Fund, 1999 – pp.129-178.

Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* Chicago: University of Chicago Press, 1985.

**Week 2 Comparative Approaches to Study of Law and Legal Politics:**

Mirjan R. Damaska, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* New Haven: Yale University Press, 1986.

Martin Shapiro, *Courts: A Comparative and Political Analysis* Chicago: University of Chicago Press, 1986.

**Week 3 Perversion of Rule of Law in Authoritarian & Other Contexts:**

Jothie Rajah, *Authoritarian Rule of Law: Legislation, Discourse, and Legitimacy in Singapore* Cambridge: Cambridge University Press, 2012.

Ugo Mattei & Laura Nader, *Plunder: When the Rule of Law is Illegal* Oxford: Blackwell, 2008.

**Week 4 Partial Rule of Law & 'Rule by Law':**

Tom Ginsburg & Tamir Moustafa (eds), *Rule by Law: The Politics of Courts in Authoritarian Regimes* Cambridge: Cambridge University Press, 2008.

Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence* Cambridge: Cambridge University Press, 2013.

Yuhua Wang, *Tying the Autocrat's Hands: The Rise of the Rule of Law in China* Cambridge: Cambridge University Press, 2014.

**Week 5 Transitional Justice and Varieties of Constitutionalism:**

Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* Cambridge: Cambridge University Press, 2003.

Mark Fathi Massoud, *Law's fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan* Cambridge: Cambridge University Press, 2013.

Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics, and Development in Egypt* Cambridge: Cambridge University Press, 2007.

Ruti G. Teitel, *Transitional Justice* Oxford: Oxford University Press, 2000.

**Week 6 Authoritarian Politics and its Effects on Law under Reform or Democratization:**

Daniel M. Brinks, *The Judicial Response to Police Killings in Latin America: Inequality and the Rule of Law* Cambridge: Cambridge University Press, 2007.

Lisa Hilbink, *Judges Beyond Politics in Democracy and Dictatorship: Lessons from Chile* Cambridge: Cambridge University Press, 2007.

Jens Meierhenrich, *Legacies of Law: Long-Run Consequences of Legal Development in South Africa, 1665-2002* Cambridge: Cambridge University Press, 2008.

Kristina Simion *Rule of Law Intermediaries: Brokering Influence in Myanmar* Cambridge: Cambridge University Press, 2021.

**Week 7 Law, Authoritarianism, and Institutional Politics: Beyond Rule of Law:**

Nick Cheesman, *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* Cambridge: Cambridge University Press, 2015.

William Hurst, *Ruling Before the Law: The Politics of Legal Regimes in China and Indonesia* Cambridge: Cambridge University Press, 2018.