LAW & DISORDER IN POST-COMMUNIST SOCIETIES

We often think of law as a sword and a shield. We can use law as a sword to defend ourselves and as a shield to protect ourselves from others, especially the government. But what happens when law loses these qualities? What happens when governmental officials manipulate the law to serve their interest in maintaining power? Does law matter under these sorts of circumstances? What sorts of reforms are needed to reinvigorate law – to move towards the “rule of law”?

We will be exploring these questions by studying the role of law in the former Soviet Union and countries of Eastern Europe, the countries that were ruled by Communist Parties for most of the 20th century. Though they are often referred to as “law less” countries, we will learn that they all had constitutions, laws, and courts. But the extent to which people could rely on these documents and institutions is unclear. We will look at a variety of different situations in an effort to understand how law worked (or didn’t). Over the course of the semester, we will explore the role of law under three different political systems: the Tsars (19th c.), Communism, and post-Communism. Our primary focus is on Russia, though we will also explore the East European experience. We will examine the so-called “show trials,” in which political enemies of the Communist Party were prosecuted in highly scripted trials where the outcome was never in doubt. We will also read about how courts handled routine cases, like divorces or wage disputes. We will see that, while law was largely irrelevant for the politicized justice rendered in the “show trials,” it mattered tremendously in more mundane cases. We will examine whether this sort of dualistic approach to law has continued after the collapse of Communist power.

Course Requirements: Students are expected to attend class regularly, to read the assigned material carefully, and to take part in class discussion. There are two types of writing assignments. First, students are expected to complete 6 short assignments (50-300 words) in which they synthesize the readings. Second, students will write a short essay (5-6 pages) focusing on a prominent dissident of the 1960s in which they explore the legal strategy employed. This essay is due in class on Tuesday, December 9th. More information about all of the assignments is available on the course website. Beginning in week 3 (Sept. 16) of the course, classes with no writing assignment will begin with a short (5 minute) quiz on the readings.

Grades: Final grades will be calculated on the following basis: short papers (30%), in-class quizzes (10%), dissident paper (20%), class participation (20%), and final exam (20%).

Readings: A reading packet is available for purchase at the Law School Duplication Center (located on the ground floor of the Law Building) under the course number. Students should purchase all of the following books at the University Bookstore:

Arthur Koestler, *Darkness at Noon*  
Dina Kaminskaya, *Final Justice*  
George Feifer, *Justice in Moscow*  
Masha Gessen, *Words Will Break Cement*
PART I: What is law? How is law understood and used (or misused)?

Tues., Sept. 2  Introduction

Thurs., Sept. 4  What is law? Sources of law: *Pravo vs zakon*

Assignment 1: In no more than 50 words, define *pravo* and *zakon*.
More details on assignment available on course website.

Tues., Sept. 9  Overview of Russian Legal History
Solomon, “Courts and Their Reform in Russian History,” in *Reforming Justice in Russia*, pp. 6-12
Hendley, “The Role of Law,” in *Return to Putin’s Russia*, pp. 83-87

Thurs., Sept. 11  Legal Culture (Part 1): 1864–1953
Burbank, *Russian Peasants Go to Court*, pp. 4-10
Chekhov, “A Malefactor”


Kaminskaya, *Final Judgment*, pp. 11-24
Figes, *The Whisperers*, pp. 122-31
Alexopoulos, “Exposing Illegality and Oneself: Complaint and Risk in Stalin’s Russia,” in *Reforming Justice in Russia*, pp. 168-83

Assignment 2: In no more than 100 words, describe the legal culture of Russia or the USSR based on the “group” reading. Your summaries will be posted anonymously on the course webpage for the benefit of those not in your “group.”
Tues., Sept. 16  Legal Culture (Part 2): The Role of the Communist Party  
Shelley, “Party Members and the Courts,” in *Ruling Communist Parties and Their Status Under Law*, pp. 75-90  
Ulč, *The Judge in a Communist State*, pp. 61-69

Thurs., Sept. 18  Legal Culture (Part 3): 1953–present  
Feifer, *Justice in Moscow*, pp. 246-54, 341-46  

Group 1:  
Young, *Growing Up in Moscow*, pp. 43-50  
Ledeneva, *Russia’s Economy of Favors*, pp. 105-13  
Trifinov, “The Exchange”

Group 2:  
Politkovskaya, *Putin’s Russia*, pp. 116-21, 140-58  

Part II: Legal Institutions & Their Purpose and Function (or Dysfunction)

Tues., Sept. 23  An Overview of Courts: Structure and Purpose  
Czap, “Peasant-Class Courts and Peasant Customary Justice in Russia, 1861-1912,” *Journal of Social History*, vol. 1, pp. 149-78, 1967  
Terebilov, *The Soviet Court*, pp. 9-12  
Hendley, “The Role of Law,” in *Return to Putin’s Russia*, pp. 88-96

Assignments of “dissidents” for the Dissident Papers will be made in class. Students should come to class with their first and second choices.

Thurs., Sept. 25  Constitutions  
Russian Imperial Manifesto of October 17, 1905  
Russian Imperial Fundamental State Laws of 1906  
Constitution of 1918  
1936 Constitution of the USSR  
http://www.departments.bucknell.edu/russian/const/1936toc.html [review Chapters X, XIII]  
Seigelbaum & Sokolov, *Stalinism as a Way of Life*, pp. 158-77  
1977 Constitution of the USSR  
http://www.departments.bucknell.edu/russian/const/1977toc.html [review Art. 6, Chapter 7, Part IX]
Gorbachev, *Memoirs*, pp. 314-18
Constitution of the Russian Federation, 1993
http://archive.kremlin.ru/eng/articles/ConstMain.shtml [review Chapters 2 & 9]

**Assignment 3:** Students will be randomly assigned a constitutional right. They will trace the evolution of this through the 1936, 1977, and 1993 constitutions in a paragraph of no more than 100 words.

**Tues., Sept. 30**
**Judicial Review: The Evolution of Constitutional Courts**
BBC, Q&A: Hungary’s Controversial Constitutional Changes, March 11, 2013

**Thurs., Oct. 2**
**Case Study: The Russian Constitutional Court**
Guest Speaker: Professor Ekaterina A. Mishina, Higher School of Economics & University of Michigan

Hazard, Butler & Maggs, *The Soviet Legal System*, pp. 94-96
Sitalova case, Constitutional Court, 1995
Mishina, “Let’s Say ‘No’ to the Erosion of the Constitution”
Mishina, Interview with Tamara Morshchakova
Tues., Oct. 7  The Role of Courts under the Tsars (19th c.)
Burbank, Russian Peasants Go to Court, pp. 32-48
Frank, Crime, Cultural Conflict, and Justice in Rural Russia, pp. 243-69, 297-306

Assignment 4: Write a paragraph in which you argue in favor of either the Burbank or Frank position as to the role of courts in 19th c. rural Russia.

Thurs., Oct. 9  The Role of Courts in the USSR
Guest Speaker: Professor Tracy McDonald, Department of History
McMaster University
McDonald, Face to the Village, 34-35, 43-50, 82-98

Tues., Oct. 14  The Role of Judges under Communism
Merryman, The Civil Law Tradition, pp. 34-8
Terebilov, The Soviet Court, pp. 40-46
Ulč, The Judge in a Communist State, pp. 5-18, 49-53
Feifer, Justice in Moscow, pp. 80-84, 326-31

Thurs., Oct. 16  Judges in Transition
Guest Speaker: Professor Inga Markovits, University of Texas Law School

Markovits, Justice in Luritz, pp. 1-8, 16-25

Tues., Oct. 21  The Role of Courts & Judges in the Post-Soviet Era
Solomon & Foglesong, Courts and Transition in Russia, pp. 29-42
Ledeneva, Can Russia Modernize? pp. 150-66
Part III: Politicized Justice

Thurs., Oct. 23

Conceptualizing Politicized Justice & Political Trials under the Tsars

Tues., Oct. 28

Politicized Justice in the USSR: 1917-1953
Koestler, *Darkness at Noon*
Excerpt from Stalinist criminal code (Article 58)
Appelbaum, *GULAG*, pp. 121-2

Thurs., Oct. 30

Politicized Justice in the USSR: The Dissidents
Alexeyeva, *Soviet Dissent*, pp. 9-16, 274-82
Hayward, *On Trial*, pp. 199-207, 212-220, 37-63
Arzak (Daniel), “This is Moscow Speaking”

Tues., Nov. 4 – Politicized Justice in Post-Soviet Russia
Thurs., Nov. 6

Gessen, *Words Will Break Cement*
*Pussy Riot: A Punk Prayer*, documentary (in class)
Khodorkovsky, “The Fate of Every Citizen is Being Decided,” November 2, 2010
“Mr. Putin’s Czarist Courts,” *Washington Post*, October 20, 2013
Part IV: Criminal Justice

Tues., Nov. 11  
**Criminal Justice in the USSR: Making it Work**
Kaminskaya, *Final Judgment*, pp. 65-96, 141-58

Group 1:  
Kaminskaya, *Final Judgment*, pp. 97-121

Group 2:  
Kaminskaya, *Final Judgment*, pp. 122-40

**Assignment 5:** Prepare a one-page time-line that would allow someone unfamiliar with the case to understand what happened during “your” portion of the process.

Thurs., Nov. 13  
**Criminal Justice in the USSR: Explaining Outcomes**
Guest Speaker: Professor Peter Solomon, Department of Political Science, University of Toronto
Kaminskaya, *Final Judgment*, pp. 33-36
Rand, *Comrade Lawyer*, pp. 41-44
Ulč, *The Judge in a Communist State*, pp. 89-92

Tues., Nov. 18  
**Criminal Justice in Post-Soviet Russia**
Abdullaev, “A Jury Is Better Than a Judge,” *Moscow Times*, June 1, 2006

Due in class: Outline of the Dissident Paper (must include a clear plan for the paper, a draft of the first paragraph of the paper with a clear thesis statement, and a bibliography)

Thurs., Nov. 20  
**NO CLASS**

Meet with Hendley to discuss the Dissident Paper. Extra office hours will be available on Nov. 24, Nov. 25, & Nov. 26.
Part V: Everyday Law

Tues., Nov. 25

The Role of Law in the Economy
Berliner, “Blat is Higher than Stalin,” in Russia Under Khrushchev, pp. 155-75
Pomorski, “Crimes Against the Central Planner,” in Soviet Law After Stalin, pp. 294-306

Thurs., Nov. 27

NO CLASS – Thanksgiving

Mon, Dec 1
Special Evening Screening of Documentary:
“They Chose Freedom: The Story of Soviet Dissidents”

Tues, Dec. 2
Discussion of “They Chose Freedom”
Guest Speaker, Vladimir Kara-Murza, Director

Thurs., Dec. 4

Everyday Law: The View from Soviet Courts
Feifer, Justice in Moscow, pp. 29-79

Group 1:
Feifer, Justice in Moscow, pp. 144-62

Group 2:
Feifer, Justice in Moscow, pp. 163-77

Group 3:
Feifer, Justice in Moscow, pp. 178-99

Assignment 6:
Write a paragraph (no more than 250 words) assessing the “fairness” afforded the litigants in “your” chapter.

Tues, Dec. 9

Everyday Law: How Do Russians Think About Law?

Dissident Papers are Due in Class on Dec. 9th

Part VI: Summing Up

Thurs., Dec. 11

Russia and the Rule of Law
Fuller, The Morality of Law, pp. 33-41

FINAL EXAM:
FRIDAY, DECEMBER 19, 2014 – 12:25-2:25PM