Guidelines to examiners RSOS2952 and RSOS4952

22. May 2025

Exam assignment RSOS2952

Read these two articles by Anne Applebaum and Hans Petter Graver:
There's a Term for What Trump and Musk Are Doing
The Legal Battle Over Liberal Democracy

Pick at least two of the theories on law, ideology and/or the rule of law presented in texts from the course reading list and discuss them in relation to the two articles.

- To what degree can the theories you choose help explain the attacks on the rule of law described in the two articles?
- Why and in what ways are these theories relevant, and in what ways do they oppose or support each other?

You do not have to cover the two articles by Applebaum and Graver in their entirety, but can choose to focus on specific problems and issues highlighted in the articles. Use further contributions from the reading list to deepen the analysis.
In other words, the two articles provide you with a case - attacks on the rule of law in the USA - and your reading list provide you with theories and literature that you use to analyse that case.

Tip #1: The course literature present and discuss many different theories on the role and use of law in more or less authoritarian settings. Some of the texts on the reading list discuss several theories and some advance one specific theory. You are free to choose from these.

Tip #2: Use the reading list broadly. You do not need to incorporate every item on the reading list in your analysis, but try to demonstrate a broad knowledge of the reading list texts as well as the ability to discuss them critically against each other.

Exam assignment RSOS4952

Read these two articles by Anne Applebaum and Hans Petter Graver:
There's a Term for What Trump and Musk Are Doing
The Legal Battle Over Liberal Democracy

Pick at least three of the theories on law, ideology and/or the rule of law presented in the course reading list and discuss them in relation to the two articles.

- To what degree can the theories you choose help explain the attacks on the rule of law described in the two articles?
- Why and in what ways are these theories relevant, and in what ways do they oppose or support each other?

You do not have to cover the two articles by Applebaum and Graver in their entirety, but can choose to focus on specific problems and issues highlighted in the articles. Use further contributions from the reading list to deepen the analysis.

In other words, the two articles provide you with a case - attacks on the rule of law in the USA - and your reading list provide you with theories and literature that you use to analyse that case.

Tip #1: The course literature present and discuss many different theories on the role and use of law in more or less authoritarian settings. Some of the texts on the reading list discuss several theories and some advance one specific theory. You are free to choose from these.

Tip #2: Use the reading list broadly. You do not need to incorporate every item on the reading list in your analysis, but try to demonstrate a broad knowledge of the reading list texts as well as the ability to discuss them critically against each other.

Overall criteria for the evaluation

The students are tasked with analysing attacks on the rule of law in the USA by using theories from the course reading list. The two articles provide the case – attacks on the rule of law in the USA – and the reading list provide theories about the role of law, ideology and the rule of law in authortarian states and/or in democratic states experiencing rule of law backsliding.

The students are expected to examine in what ways the theories they have chosen are relevant in terms of explaining attacks on the rule of law in the USA. Importantly, the students are also expected to be able to discuss in what ways their chosen theories oppose or support each other.

As explained in the assigment, they do not have to cover the two articles in their entirity but can focus on specific elements highlighted in the articles – for example the role of DOGE, the attacks on the bureaucracy, or the current US administrations fight against the judiciary etc.

Importantly, as always, and as explained in the assignment, the students have to use the course reading list and should try to demonstrate a broad knowledge of the reading list texts as well as ability to discuss these texts critically against each other.

Not using the reading list at all should result in an F. Normally, we will expect students to use and reference at least 5-7 texts from the reading list. Using fewer than five texts from the reading list will normally lower the grade, and using the reading list very broadly (8+) can help raise the grade. All this depends on the quality of the content of course – i.e. the degree to which the students have produced a quality socio-legal analysis of attacks on the rule of law in the USA based on the course reading list.

On a general note, RSOS4950 students have to use a minmum of three theories, while RSOS2952 students only have to use two theories. The former are of course also expected to demonstrate more depth in their analysis and a generally higher level.

Otherwise marking criteria are specified here on the below web pages.
Marking criteria for RSOS2952:
https://www.uio.no/studier/emner/jus/ikrs/RSOS2952/RSOS2952_sensorveiledning.html

Marking criteria for RSOS4952:
https://www.uio.no/studier/emner/jus/ikrs/RSOS4952/RSOS4952_sensorveiledning.html

Which theories can the students choose and how are they relevant?
The course reading list provide students with numerous theories about the role of law, ideology and the rule of law, which they can choose for the assignment. Below I will briefly go through some of the most important theories that can be used to answer the assignment (the list is not exhaustive).

- Bauman, Zygmunt (1988) : "Sociology after the Holocaust", *British Journal of Sociology*, Vol. 39, No. 4 (Dec., 1988), pp. 469-497.

Bauman's article explains his theory about the social production of immorality in modern bureaucracies and can be used in connection with Applebaums text as a tool in a critical analysis of her discussion on bureaucracy and the rule of law.

- Smith, Peter Scharff (2016): "Dehumanization, social contact and techniques of Othering - combining the lessons from Holocaust studies and prison research", in Anna Eriksson (ed.) *Punishing the Other: The social production of immorality revisited*, Routledge.

Smith's text can be used in the same way and both to support and criticize Bauman's theory. Smith's text also provides a theoretical approach to discussing the role of ideology in attacks on human rights and the rule of law.

- Wildt, Michael (2005) "The Spirit of the Reich Security Main Office (RSHA)." Totalitarian Movements and Political Religions Vol. 6 , Iss. 3.

Wildt's article can similarly be used to discuss the role of ideology in attacks on human rights and the rule of law.

Several texts can be used to discuss Fraenkel's dual state theory (which is explicitly referred to in Graver's blog article), as well as the role of the judiciary in states where the rule of law is under attack. This includes these curriculum texts:

- Graver, Hans Petter (2018): "Judicial Independence Under Authoritarian Rule: An Institutional Approach to the Legal Tradition of the West", Hague Journal on the Rule of Law, First Online: 27 February
- Rachlin, Robert D. (2013): Roland Freisler and the Volksgerichtshof. The Court as an Instrument of Terror. I: Alan E. Steinweis and Robrt D. Rachlin (eds) *The Law in Nazi Germany.* Berghahn.
- Fraenkel, Ernst, (1941) The Dual State A Contribution to the Theory of Dictatorship Chapter II, The Prerogative State pp. 3-64,

Smith, Christensen and Poulsens article can be used to introduce the theory of legal-charismatic law, as a potential way of understanding ideological and authoritarian law making:

- Peter S. Smith, Claus B. Christensen and Niels Bo Poulsen (2024), Ideology and the Application of Law in SS Courts: A Case Study of Legal Practice in the Third Reich, Contemporary European History, 03/01

- For theories on the rule of law in general and the phenomenon of rule of law backsliding, these texts can be used:

- Waldron, Jeremy (2016) The Rule of Law, Stanford Encyclopedia of Philosophy, 2016,
- Graver, Hans Petter & Gyöngyi, Petra (2024) Hidden rule of law discontinuities: A theoretical framework for studying rule of law backsliding, International journal of law in context, 20(2)

For a comparison with law in communist states, use:
- Graver, Hans Petter (2019), Law and the Russian Revolution – A Comparison to the Nazi Approach to Law (Canvas)

For a comparison with law making in the war on terror, use:
- Aradau, Claudia (2007): "Law transformed: Guantánamo and the 'other' exception." Third World Quarterly 28.3
- Johns, Fleur (2013: Non-legality in International Law: Unruly Law. Vol. 96. Cambridge University Press. Chapter 2: "Illegality and the torture memos" and Chapter 3: "Black holes and the outside within: extra-legality in international law"

Finally, much of the human rights literature can be used for descriptions and analysis about current populist and authoritarian attacks on human rights. This includes, for example:

- David P. Forsythe (2017) "Hard times for human rights", Journal of Human Rights, 16:2
- Alexandra Valeria Huneeus and Mikael Madsen (2018): "Between Universalism and Regional Law and Politics: A Comparative History of the American, European and African Human Rights Systems", International Journal of Constitutional Law
- Griffiths, D. Human rights diplomacy Navigating an era of polarization (2023) https://www.chathamhouse.org/sites/default/files/2023-04/2023-04-19-human-rights-diplomacy-era-polarization-griffiths.pdf (chapter 1-7).