

**Advanced Master in Legal Sciences /
Master in European and Global Law
2016-2017**

Globalization and Law: a comparative approach to contemporary legal experiences

Term: 3

Number of Credits: 4

Language: English

Instructor: Alfons Aragoneses

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Course Description

Internationalization and globalization mean interaction between different legal systems and cultures influences. From civil law codification to harmonization of European Laws in the last two centuries legal experiences linked to globalization have taken place: legal reception, legal transplants, legal translations...

The aim of the course is to analyze these legal experiences from a multidisciplinary perspective.

Prerequisites

Ability to write, read and speak English.

Knowledge of Law or political sciences.

Basic Knowledge of history.

Methodology

This course aims at teaching phenomena of the globalization of the last 100 years from a comparative legal-historical perspective. Legal reception, legal transfer or legal transplant are “legal experiences” of “longue durée” and have been theorized and analyzed from historians and legal scholars. Different experiences from different legal fields – labor law, constitutional law, criminal Law among others – will be introduced in the course with the aim of learning to deal with these current phenomena.

1.- **Methodology.** The course will combine the reading of authors who have analyzed these experiences with the reading of legal sources of the 20th century showing the globalization of Law. The course will focus on the cultural and political dimension of legal experiences which is, I believe, very often disregarded although it plays a very important function. This means the utilization of a multidisciplinary approach combining anthropology, sociology and legal theory.

The documents used will be legal texts but also essays by historians, as well as films and images. Students are expected to read and prepare the documents before the class. There the students will discuss with the professor the different topics focusing in the methodology.

2.- The students are expected to acquire ability to analyze legal texts of different legal

cultures and to understand the cultural dimension of Law.

3.- I expect the lessons to be interactive. Participation in class is expected. Therefore a minimum attendance (70%) is required.

4.- Workload: 3 hours per week

Assignments and Evaluation

Active participation in class: 10%

First Assignment: 10%

Second Assignment: 10%

Midterm exam: 20%

Final Exam: 40%

Schedule and Work Plan

Lesson 1. Presentation. Legal-historical perspectives on the Globalization: legal transplant, legal transfer, legal reception.

Critical Analysis of the different conceptual tools used to study internationalization of legal experiences (mostly from the Western world).

Watson, Alan (2000): *Legal Transplants and European Private Law*, Electronic Journal of Comparative Law.

Duve, Thomas (2014): "Entanglements in Legal history. Introductory remarks". Frankfurt am Main: Max Planck Institute for European Legal History.

Andrés Santos, Francisco (2014): "Napoleon in America? Reflections on the Concept of 'Legal Reception' in the Light of the Civil Law Codification in Latin America". Frankfurt am Main: Max Planck Institute for European Legal History.

Lesson 2. Paris 1900: the creation of modern Comparative Law

Crisis of National codifications and Comparative Law. The struggle for a method. The transformation of comparative Law in the 1920s. Comparative Law in a globalized World.

Reimann, Mathias & Zimmermann, Reinhard (Eds.) (2006): *The Oxford Handbook of Comparative Law* (Selected pages). Oxford: OUP.

Lesson 3. The End of "Hundred years' peace" and the internationalization of Labour Law.

Crisis of private Law and rise of labour Law in Europe. Legal transfers between European countries and from Europe to Latinamerica.

Schjolden, Line (2009): "Sentencing the Social Question: Court-Made Labour Law in Cases of Occupational Accidents in Argentina, 1900–1915". *Journal of Latin American Studies* 41.91-120.

Stolleis, Michael (2014): *History of Social Law in Germany*. Berlin / Heidelberg:

Springer, Chapter on "Social Insurance".
Constitution of the International Labour Organization.

Lesson 4. A case of Legal Transfer between modernity and Pre-modernity: Law of Imperialism.

Emergence of a Common Law between national and international Law. Regulation of Land property and labour in African colonies. Mutual Influences between national legal systems.

Nuzzo, Luigi (2011): "A dark side of the Western legal Modernity. The colonial Law and its Subject", *Zeitschrift für Neuere Rechtsgeschichte* 33.

Campos, Alicia / Micó, Plácido (2006): *Labor Law and Trade Union Freedom in Equatorial Guinea*. Madrid: CCOO.

Lesson 5. Law and State in Europe between the two World Wars (I).

The end of classical liberalism and the emergence of new legal subjects and new social rights in Europe. The creation of Constitutional Justice. Austrian, German and Spanish constitutionalism.

Dreier, Horst (1999): "The essence of democracy. Hans Kelsen and Carl Schmitt juxtaposed" in: Stolleis, Michael/Diner, Dan (Ed.): *Hans Kelsen and Carl Schmitt. A Juxtaposition*, Gerlingen: Bleicher.

German Constitution (1919). Austrian Constitution (1920) Spanish Constitution (1931).

Lesson 6. Law and State in Europe between the two World Wars (II).

Totalitarianism. Construction of new legal systems and new legal doctrines in Germany, Italy, Portugal and Spain.

Stolleis, Michael (1998): *The Law Under the Swastika: Studies on Legal History in Nazi Germany*, Chicago: University of Chicago Press.

Monateri, P. Giuseppe & Somma, Alessandro (2009): *The fascist theory of contract: A comparative and historical inquiry into the darker side of contract Law*.

Riefenstahl, Leni (1935): *The Triumph of the Will*. Germany.

Lesson 7. Corporativism in Mediterranean and Latinamerican countries. A long term and global experience.

First theories and proposals of Corporatism: Germany, Italy, Spain. The Encyclical Rerum Novarum. Corporatism as a Southern European experience. Corporatism and modernization of Private Law. Corporativism in Latinamerica and after 1945.

Lesson 8. The concentration camp: the Nomos of the Modern?

The concentration camp and the state of exception as global phenomena. Concentration camps in Europe 1939-1945.

Arendt, Hannah (1943): "We Refugees". In Marc Robinson (Editor) *Altogether Elsewhere. Writers in Exile*. Boston, London: Faber and Faber.

Agamben, Giorgio (1998), *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press. (Selected pages).

Lesson 9. From Nuremberg to Frankfurt: the Universalization of Criminal Justice and the concept of Crimes against Humanity.

The Trials of Nuremberg and Dachau and the creation of an international conscience on Human Rights The Trial of Eichmann and the rise of a global conscience against impunity. The Trials of Frankfurt. The ICC. Transitional Justice and collective identity.

Horan, Don (1995): Nuremberg: Tyranny on Trial.

Arendt, Hannah (1963). Eichmann in Jerusalem. *A Report on the banality of Evil*. New York: Viking Press.

Ziok, Ilona (2010): *Fritz Bauer: Death by Installment*. Germany.

Lesson 10: "An ever closer union among the European peoples". The creation of the European Communities.

The creation of the European Communities. EC Law between National and International Law. The European Court of Justice

EC Law documents.

Lesson 11. The memory of the Law: between Nationalism and Cosmopolitanism

Law as social system and its references to the past. The past as tool of legitimating the Law. The memory of the Law after 1945

Giordano, Christian (1996): "The Past in the Present: actualized history in the social construction of reality", in: *Focaal. European Journal of Anthropology* 26/27, 97–107

Aragoneses, Alfons (2016). "Memory Laws in Spain: from oblivion and amnesty to the naturalization of Francoism (1977-2016)", in: *Memory Laws*. Cambridge: Cambridge University Press.

Lesson 12: Legal pluralism and globalization.

Legal pluralism. Conflicts between indigenous Law and State law in Latinamerica, China or Africa.

Sousa Santos, Boaventura (2006): "The Heterogeneous State and Legal Pluralism in Mozambique", *Law & Society Review* 40.

Yimou, Zhang (1995): *The story of Qiu Ju*. PR China.

- Agamben, Giorgio (1998), *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press. (Selected pages).
- Andrés Santos, Francisco (2014): “Napoleon in America? Reflections on the Concept of ‘Legal Reception’ in the Light of the Civil Law Codification in Latin America”. Frankfurt am Main: Max Planck Institute for European Legal History.
- Aragoneses, Alfons (2016). “Memory Laws in Spain: from oblivion and amnesty to the naturalization of Francoism (1977-2016)”, in: *Memory Laws*. Cambridge: Cambridge University Press.
- Arendt, Hannah (1943): “We Refugees”. In Robinson, Marc (Editor) *Altogether Elsewhere. Writers in Exile*. Boston, London: Faber and Faber, 110-119.
Arendt, Hannah (1963). *Eichmann in Jerusalem. A Report on the banality of Evil*. New York: Viking Press.
- Campos, Alicia / Micó, Plácido (2006): *Labor Law and Trade Union Freedom in Equatorial Guinea*. Madrid: CCOO.
Constitution of the International Labour Organization.
- Dreier, Horst (1999): “The essence of democracy. Hans Kelsen and Carl Schmitt juxtaposed” in: Stolleis, Michael/Diner, Dan (Ed.): *Hans Kelsen and Carl Schmitt. A Juxtaposition*, Gerlingen: Bleicher.
- Duve, Thomas (2014): “Entanglements in Legal history. Introductory remarks”. Frankfurt am Main: Max Planck Institute for European Legal History.
- Giordano, Christian (1996): “The Past in the Present: actualized history in the social construction of reality”, in: *Focaal. European Journal of Anthropology* 26/27, 97–107
- Horan, Don (1995): *Nuremberg: Tyranny on Trial*.
Monateri, P. & Somma, Alessandro (2009): *The fascist theory of contract: A comparative and historical inquiry into the darker side of contract Law*.
- Nuzzo, Luigi (2011): “A dark side of the Western legal Modernity. The colonial Law and its Subject”, *Zeitschrift für Neuere Rechtsgeschichte* 33.205-222.
- Reimann, Mathias & Zimmermann, Reinhard (Eds.) (2006): *The Oxford Handbook of Comparative Law* (Selected pages). Oxford: OUP.
- Riefenstahl, Leni (1935). *The Triumph of the Will*.
- Schjolden, Line (2009): “Sentencing the Social Question: Court-Made Labour Law in Cases of Occupational Accidents in Argentina, 1900–1915”. *Journal of Latin American Studies* 41.91-120.
- Sousa Santos, Boaventura (2006): “The Heterogeneous State and Legal Pluralism in Mozambique”, *Law & Society Review* 40.
- Stolleis, Michael (1998): *The Law Under the Swastika: Studies on Legal History in Nazi Germany*, Chicago: University of Chicago Press.
- Stolleis, Michael (2014): *History of Social Law in Germany*. Berlin / Heidelberg: Springer, Chapter on “Social Insurance”.
- Watson, Alan (2000): *Legal Transplants and European Private Law*, *Electronic Journal of Comparative Law*.
- Yimou, Zhang (1995): *The story of Qiu Ju*, PR China.
Ziok, Ilona (2010): *Fritz Bauer: Death by Installment*. Germany.