

LAW AND MEMORY: Global Legal History of the 20th Century

Language of Instruction: English

Professor: Alfons Aragoneses

Professor's Contact and Office Hours: Office 40.126

Course Contact Hours: To be scheduled via mail/in person.

Recommended Credit: 4 ECTS credits

Weeks: 2

Course Prerequisites: Knowledge of English. Basic knowledge of history

Language Requirements: Knowledge of English.

Course Description:

Law has also memory: it refers, through statutes, legal decisions or doctrine, to the recent past. It actualizes the past in the present. This is especially important in the case of laws regulating grave violations of human rights in 20th Century.

Legal references to the past are today more present than ever: memory laws, public policies of memory are today part of the State's political discourses.

This course is aimed at analyzing the influences between Law, society and memory. It studies the legal construction of dictatorships and states of exception. It also explains how our contemporary legal systems have dealt with the past.

Learning Objectives:

At the end of the course, the student:

- Will have a survey knowledge of global legal history
- Will have knowledge of the history of the 20th century.
- Will have a critical and interdisciplinary approach to transitional justice.
- Will be versed in the links between Law, memory and collective identity.

Course Workload

The course is divided into lectures, discussions, and field studies. Students should be prepared to read between 50 to 100 pages per week.

Methods of Instruction:

The course includes both lectures and field studies. During field studies, students are expected to take notes and treat field studies as a normal lecture class.

Method of Assessment

Class Participation: 10%.

Assignments/Seminars: 20%.

Midterm Exam: 25%.

Final Exam: 45 percent.

Absence Policy

Attending class is mandatory and will be monitored daily by professors. The impact of absences on the final grade is as follows:

Absences	Penalization
Up to two (2) absences	No penalization.
Three (3) absences	1 point subtracted from final grade (on a 10 point scale)
Four (4) absences	2 points subtracted from final grade (on a 10 point scale)
Five (5) absences or more	The student receives an INCOMPLETE for the course

The BISS attendance policy does not distinguish between justified or unjustified absences. The student is deemed responsible to manage his/her absences.

Emergency situations (hospitalization, family emergency, etc.) will be analyzed on a case by case basis by the Academic Director of the UPF Summer School.

Classroom Norms:

Students are expected to be punctual.

Course Contents and bibliography:

INTRODUCTION

Lesson 1. Presentation. Law and memory.

Introduction to the course and to the Syllabus.

What is memory? Collective memory. The actualization of the past in legal discourses.

Reading:

[Partial Recall. The New Yorker. 12. May 2014](#)

Christian Giordano (1996): The past in the present. Actualized history and the social construction of reality. Focaal 26/27, 97-107.¹

Alfons Aragonés (2019): "La memoria del derecho. La actualización del pasado en los discursos jurídicos", in Alessandro Somma, Diritto, Storia e comparazione, Frankfurt am Main: MPIER².

Activity in class:

Actualization of the past: analysis of cases.

FIRST PART: GLOBAL LEGAL HISTORY OF THE 20TH CENTURY

Lesson 2. A dark side of European Law: Imperialism

Roman Law in Equatorial Africa. Racism revisited: the origins of racisms. Racism and Law. Colonial Law: the conference of Berlin.

¹ **Compulsory Reading.**

² Secondary Reading (non-compulsory).

Reading:

[Belgium forced to reckon with Léopold's legacy and its colonial past. The Guardian. 12. June 2020](#)

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

Koskenniemi, Martti (2001): *The Gentle Civilizer of Nations. Rise and Fall of International Law (1870-1960)*. Cambridge: Cambridge University Press.

Activity in class:

Case study: labor law in the Spanish Guinea.

Lesson 3. Law and Dictatorship

The end of the world of yesterday: the transformations of Law after 1918. Introduction to Legal history of Nazi Germany

Readings:

[Women and the first World War: a taste of freedom. The Guardian. 11. November 2018.](#)

Aragoneses, Alfons (2020): Del romanticismo al realismo jurídico. Transformaciones del derecho privado en la Francia de entreguerras.

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

Activity in class:

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

Lesson 4. Spanish Civil War. Law and State under Franco (I)

The Civil War as founding moment of Francoism. Spain: from fascism to development dictatorship.

Reading:

Casanova, Julián (2014): *Twentieth-Century Spain. A history*. Cambridge: Cambridge University Press.

Lesson 5. The concentration camp: The Nomos of the Modern?

Law and bureaucracy of the genocide. Concentration camp and state of exception as the "Nomos" of the Modern?

Reading:

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

Lesson 6. Spanish Civil War. Law and State under Franco (II)

From fascist to developmental dictatorship: the transformations of Francoism. The Spanish transition to democracy (1975-1982)

SECOND PART: JUSTICE AND MEMORY

Lesson 6. Nuremberg, Jerusalem and Frankfurt: dealing with the crimes of Nazism

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.

Readings:

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

Activity in class:

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

Lesson 7: memory laws: a history. Memory and heritage

Memory law before 1945. Memory laws after 1945. The regulation of the denial of Holocaust. Holocaustization of memory? Right to memory, right to commemorate. Memory and heritage.

Reading:

- [Peru: Truth and Reconciliation Commission. Final Report](#).
- [UN: Report of the special Rapporteur on cultural rights \(2014\)](#).

Lesson 8. An international justice system.

The ICC: background and main features. Ad hoc tribunals and hybrid tribunals. An international criminal justice system: domestic courts and universal jurisdiction.
[Lesson by Professor Rosa Ana Alija (University of Barcelona)].

Transitional Justice and collective identity.

Reading:

[What next for the troubled international criminal court?](#), The Conversation, 20th December 2019.

Lesson 9. Spain: remembrance of Francoism in Spanish Law and Society

From Francoist Aphasia to the revolt of the grandchildren. Spanish Memory Laws

Reading:

Aragoneses, Alfons (2020): From Francoist memory to Democratic Aphasia? Politics of Memory in Spain (1936-2017).

Aragoneses, Alfons (2017). "Legal silences and the remembrance of Francoism in Spain", in: *Law and Memory. Towards Legal Governance of History*. Cambridge: Cambridge University Press.

THIRD PART: LEGAL MEMORY AND LEGAL TRADITION

Lesson 10. Legal tradition: the normativity of the past

What is legal tradition? Legal traditions of the world. The Israeli case. Indigenous Law today: palimpsests of legal cultures. America: from refusal to constitutional recognition. Indigenous law in Africa. Chinese Law and Confucianism

Reading:

Glenn, Patrick (2010): *Legal Traditions of the World*, Oxford: Oxford University Press.

Rwanda: reconciliation, a must-. Spain 2012.

Lesson 11: The jurist and the "Barri Gòtic": history of Catalan Private Law in the 20th century

Final lesson. Tradition and history in Catalan Law. The Catalan traditionalist way to modernity.

Reading:

Aragoneses, Alfons (2020): "El jurista en el Barri Gòtic".