

**2026-32996**  
**Collective Memory in Comparative Legal perspective**

**Language of Instruction:** English (Spanish or Catalan may also be used depending on student needs)

**Professor:** Alfons Aragoneses

**Course Prerequisites:** Basic knowledge of Law and History

**Language Requirements:** Reading proficiency in English (Spanish or Catalan may also be used)

### **Course Description**

In what has been described as a “post-historical era” (Fukuyama), the memory of the traumatic past plays an increasingly significant role in societies around the globe. From demands for reparation in the Americas to trials before international criminal tribunals in The Hague, from the memorialization of public spaces to educational policies, memory has become both a political and a legal issue.

Legal discourses actively participate in the construction of collective memory. In transitional and post-transitional societies, demands for justice have shaped legal frameworks governing how societies deal with their past. Courts of justice, both national and international, have increasingly recognized not only a **right to memory**, but also a **duty to remember**. The principles of **truth, justice, reparation and guarantees of non-recurrence** have inspired legislation in Spain and many other countries, often generating tensions with other legal principles.

Today, we can speak of an emerging **right to memory**, shaped through decisions of international courts and United Nations bodies. These principles are progressively becoming part of national legal systems across Europe and the Americas.

This course examines the **social and legal mechanisms of collective memory**, and explores how they influence political, social and legal discourses. It analyzes how states legally manage the remembrance of traumatic pasts and traces the historical development of current memory regimes, from the trials in Nuremberg and Jerusalem to contemporary international tribunals in Arusha and The Hague.

The course adopts a **multidisciplinary and comparative perspective**, presenting legal experiences from Spain, Europe and the Americas. Through the analysis of academic literature, landmark judicial decisions and memory legislation, students will critically explore the role of law in shaping collective memory and public policies of remembrance.

### **Learning Objectives**

**By the end of the course, students will:**

- Develop a critical and interdisciplinary understanding of transitional justice and memory studies.
- Identify and analyze references to history and collective memory in legal texts, including constitutions, criminal codes and judicial decisions.
- Acquire a comparative and global perspective on legal approaches to the management of historical injustice.
- Understand the relationship between law, collective memory and collective identity.
- Critically assess public policies and legal frameworks dealing with traumatic pasts.

## Professor

I am Serra Hunter Associate Professor of Legal History at Universitat Pompeu Fabra (Barcelona). I was a researcher at the Max Planck Institute for Legal History and Legal Theory between 2000 and 2003, and later an Associate Researcher at the same institution (2015–2019).

From November 2022 to September 2024, I served as **Director General for Democratic Memory** in the Government of Catalonia. Since 2010, I have collaborated with Catalan and Spanish public institutions in the design and implementation of public policies of remembrance.

In 2020, I co-authored the **Bill on Democratic Memory in Catalonia**, which has been discussed at both governmental and parliamentary levels. I have also worked as an **electoral observer in countries undergoing democratic transitions**.

My research focuses on the **history of private law, Francoist legal culture, democratic transitions and memory laws**. Several sessions of this course are based on my published research.

## Methods of Instruction:

The course includes lectures, presentations in class and field trips. We will analyze academic articles, judicial decisions, reports of international and national organizations and also videos and art-works. If possible, we will visit spaces of remembrance/heritage in Barcelona and Catalonia.

## Method of Assessment

- Active participation in class: 10%
- Assignments/Seminars: 20%
- Midterm Exam: 25%
- Final Exam: 45 %

## Workload / ECTS

- Class attendance: 30 hours
- Reading and preparation: 40 hours
- Assignments: 20 hours
- Exam preparation: 10 hours

## Office hours

Students may contact the instructor to arrange meetings.

## Course Contents and bibliography (provisional):

### Lesson 1. Presentation. What is memory?

Basic concepts: Individual memory, Social Memory, post-memory. Territorial dimension of memory. Globalization of memory. Is there a European memory?

- Alejandro Baer / Natan Sznaider (2017): Memory and Forgetting in the Post-Holocaust Era. The Ethics of Never Again.
- [Michael Specter, "Partial Recall", \*The New Yorker\*. May 2014.](#)

### Lesson 2. The memory of Law.

Law and founding myths. The re-construction of the past in legal discourses. The "songs of the law": the importance of preambles in legal texts.

- Christian Giordano (1996): The past in the present. Actualized history and the social construction of reality, *Focaal* 26/27, 97-107.

- Alfons Aragoneses (2019): "Uses of *Convivencia* and *Filosefardismo* in Spanish Legal Discourses", *Rechtsgeschichte* 26 (2018), 200-219.
- "The legal dimension of democratic heritage. On the application of the principles of truth, justice, reparation and guarantees of non-recurrence". Report elaborated by the General Direction of Democratic Memory of the Government of Catalonia (2024).

Activity in class: analysis of the report "The legal dimension of democratic heritage". Lesson

### Lesson 3. Law and memory from Westphalia to Nuremberg

Liberal revolutions and the burden of history. First World War and the awakening of international criminal Law. History and the invention of tradition.

- Uladzislau Belavusau, Aleksandra Gliszczyńska-Grabias (2017): "Law and Memory. Addressing historical injustice through Law". In Idem (Eds.): *Law and Memory. Towards Legal Governance of History*, Cambridge: Cambridge University Press.

### Lesson 4. From Nuremberg to The Hague: Legal response to mass atrocities after 1945

The trials of Nuremberg and Dachau. The process of denazification. From Nuremberg to Jerusalem: Eichmann in Jerusalem. Fritz Bauer and the Frankfurt Auschwitz trials.

- Film: "Fritz Bauer: Death by Installments". Germany, 2010.

Activity in class: debate.

### Lesson 5. Memory laws: proscribing or prescribing the reconstruction of the past

Legal treatment of the memory of the Holocaust. The criminalization of Holocaust denial. Memory laws in Europe today. "Holocaustization" of Memory?

- Robert. E. Kahn (2017): "Banning Genocide denial. Should Geography matter?" in: Uladzislau Belavusau, Aleksandra Gliszczyńska-Grabias, *Law and Memory. Towards Legal Governance of History*. Cambridge: CUP.

Activity in class: analysis of cases of the European Court of Human Rights. Lesson

### Lesson 6. Law, heritage and Human Rights. Memory as cultural right?

Right to memory, right to commemoration. Heritage and human rights.

- Patricia Naftali (2017): "The Right to Truth in International Law: The Last Utopia?", in U. Belavusau, *Law and Memory*, Cambridge: Cambridge University Press.
- Report of the Special Rapporteur in the field of Cultural Rights. Memorialization Processes. A/HRC/25/49, of 23 January 2014. UN: Report of the special Rapporteur on cultural rights.

Activity in class: debate on the report of the Special Rapporteur in the field of Cultural Rights.

### Lesson 7. European Colonialism and its memory.

Colonial Law as a dark side of Western modernity. Legal decolonization. The memory of colonialism. Legal conflicts from today: the decolonization of museums.

- MOED (2021): "The AfricaMuseum of Belgium: Toward a Radical Decolonial Approach to the Museum".

### Lesson 8: The memory of the Civil War and Francoism in Spanish Law.

Francoist memory (1936-1958): the narrative of victory and the naturalization of Francoism; The modernization of political discourses about the past (1958-1975); The Spanish transition and the consolidation of democracy: silence and "Francoist Aphasia" (1975-1999); The rebellion of the grandchildren (2000-2012); Legislation, policies of remembrance and judicial cases (2012-2024).

- Aragoneses, Alfons (2017). "Legal silences and the remembrance of Francoism in Spain", in: Uladzislau Belavusau, Aleksandra Gliszczyńska-Grabias, *Law and Memory. Towards Legal*

*Governance of History*. Cambridge: Cambridge University Press.

Lesson 9. Exploring new ways of reparation: reparative citizenship.

History of citizenship law after 1945. Reparative citizenship: the cases of Ghana, Portugal, Spain and Germany.

- Alfons Aragonese (2023): "Reparative Citizenship". *Confronting Injustices of the Past or Building Modern Nationalisms?*, in: Dalia Kandiyoti and Rina Benmayor (Eds), *Reparative Citizenship for Sephardi Descendants*, Hamburg: Berghahn.

Lesson 10. closing session: Thinking about memory in the long term: the (re)construction of the past in legal traditions

What is legal tradition? Legal tradition as actualized normative information. Legal traditions of the world. The Israeli case.

- Patrick Glenn (2010): *Legal Traditions of the World*, Oxford: Oxford University Press.
- Alfons Aragonese (2022): "The "cuestión foral": Legal Diversity and Nation-building in Spain", in: Peter Collin, Agustín Casagrande, *Law and Diversity: European and Latin American Experiences from a Legal Historical Perspective*, Frankfurt am Main: Max Planck Institute for Legal History and Legal Theory.

Activity off class: comparison between the "Invention of the Gothic Quarter" and the creation of "dret foral".

Prof. Alfons Aragonese

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