

## **Law and Dictatorship: a comparative approach from the Spanish case**

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### **Syllabus**

The “short twentieth century” (Hobsbawm) was not, as many expected it to be, the century of democracy and political liberalism. Far from that, many parts of Europe experienced totalitarianism and authoritarianism. Nowadays we can find many books and documentaries about this phenomenon made by historians, political scientists and sociologists. If we want to know about the role played by law during dictatorships, we will realize that legal scholars, specially in Spain, did not pay much attention to the law of these dark periods.

Liberal law worked as a barrier against totalitarianism. But law was also a key factor for social and economic control under dictatorships. Law was a tool of repression and social control but also for legitimizing political power.

This course will examine the evolution of law under dictatorships from a comparative point of view. Of course the Spanish dictatorship (“Franquismo”) will be at the center of the lessons without ignoring other totalitarian experiences in Europe and in Latin America.

This is a course on comparative legal and political history. However it will take a look at present and future developments. The time of dictatorship is (almost) over. But authoritarianism is still alive even if it does not present itself in the form of old dictatorships but dressed as “Showroom democracies”. This course will also show the relationship between law and non-democratic forms of power nowadays.

### **Methodology**

Not only books and statutes build legal culture. Other kind of written and non-written documents can also help to explain social and legal phenomena. During class sessions

we will discuss on legal texts but also on images and films. We will read legal and political texts but we will also compare them with historical or literary texts. This course will help students to analyze the legal and political transcendence of non-legal materials.

## **Evaluation**

- 1) Student's homework assignment (20%). There are two homework assignments (see Sessions).
- 2) Active participation in classes (10%).
- 3) Final Assignment. (30%) Students will write a final assignment work on one of the issues treated in the lessons.
- 4) Midterm exam (20%), about the issues treated in the lessons. Students are allowed to bring and consult written documents.
- 5) Final exam (20%), about the issues treated in the lessons. Students are allowed to bring and consult written documents.

## **Sessions**

### Session 1: Law and dictatorship

Introduction. Presentation of the course. Discussion about the remains of dictatorships in today's Spain.

Document: "Between the dictator and me", Film (2005).

### Session 2: Study of dictatorship. "User's guide"

Sources of knowledge: text, film. The importance of oral sources. The risk of ideology.

Document: Alfons Aragoneses, "Oral History and the Strategy of Revisionism", in *Die andere Seite des Wirtschaftsrechts*, Frankfurt am Main, Vittorio Klostermann, 2006.

### Session 3: What is dictatorship? Dictatorship and Law.

Liberalism, democracy and dictatorship in Europe (1920-1989). Totalitarianism and Authoritarianism Nazism. Fascism. Stalinism. "Franquismo". Contemporary dictatorships.

### Session 4: The difficult beginning of the 20th Century in Spain

The struggles for democracy and social justice in Spain (1900-1936). Modernization against "retraso" (backwardness). The "Restauración". The first Spanish Dictatorship: Primo de Rivera. The Spanish second Republic.

Document: Selected texts from *Spanish History since 1808*, Edited by José Alvarez Junco and Adrian Shubert, New York, Oxford University Press, 2000.

### Session 5: The foundation of Franquismo: The Spanish civil war

From the "coup d'état" to the 3 year long civil war. Was the Spanish Civil War what we understand as a civil war? International intervention. The evolution of the republican side. The evolution of the nationalist side.

Document: Selected texts from *Spanish History since 1808*, Edited by José Alvarez Junco and Adrian Shubert, New York, Oxford University Press, 2000.

### Session 6: Law as a tool of constructing and legitimating Power

Max Weber's Models of Power exercise. The charismatic model of legitimization of Power. Some examples: "Führer", "Duce" and "Caudillo". National Crusade and other Legal Myths of "Franquismo".

Documents: fragments of the Film: "Sin novedad en el Alcázar" (1942)

### Session 7: Corporativism: the fascist alternative to Capitalism?

Corporativism in Southern European Dictatorships. Corporativism in Spain: “looking for a black cat in a dark room”.

### Session 8: The economic and labour models

The “Autarquía”. The labour regulation. “Carta del trabajo” and “Fuero del Trabajo” (Chart of labour). The economic results: famine and high financial benefits.

Documents: “Fuero del Trabajo” (Chart of Labour) and “Programa de Falange” (English version)

1st Assignment: Essay: Comparison of the 2 above mentioned documents.

### Session 9: Criminal Law and social control

Law against the law: the first criminal regulations of Franquismo. “Ley de responsabilidades políticas” (Regulation of political responsibilities); “Ley de represión de la masonería y el comunismo” (Regulations against Free Masonry and Communism”). The role played by religion.

### Session 10: Private Law under Franco

The Republican revolution and the fascist counterrevolution in Civil Law. Saint Thomas of Aquin is back: the new conceptions of individual, woman and family. The unchangeable contract law.

### Session 11: Has Genocide something to do with Law?

Political background of the Holocaust. The racial question in Germany, Italy and Spain. National homogeneity and genocide. The Spanish republicans in German concentration Camps. The Concentration camp as a paradigm of the “Biopolitics”.

Document: Giorgio Agambem, *Homo Sacer. Sovereign Power and Bare Life*, Stanford, Stanford University Press, 1998 (selected pages).

### Session 12: Midterm exam

Written essay about one of the issues treated in the lessons.

### Session 13: The 60s. From charismatic power to technocracy

The “Stabilization Plan”. Opus Dei Ethic and the Rise of Spanish capitalism”. Economic GPD as a tool of legitimisation. Economic liberalism without political liberalism. The celebration of “25 Years of Peace”. What is technocracy?

### Session 14: Social and political changes in Spain

Society in transformation : tourism, migrations and social behaviours’ changes. The role of political opposition to Franquismus.

### Session 15: The changes of the 60s seen by a film-maker

Document: *El Verdugo* (The Executioner), Luis García Berlanga (1963)

2<sup>nd</sup> Assignment: written essay about the political and legal issues of the film.

### Session 16: In the way to democracy. Transition from dictatorship to democracy

Political transition’ concepts. The German case. Portugal: so close but so different. The Southern European way. Latin America. Transitional democracies.

### Session 17. Political and legal transition in Spain

From November 20<sup>th</sup> 1975 to December 6<sup>th</sup> 1978. The legal and political reforms prior to the Spanish Constitution. The Spirit of the Transition and the Law.

Document: Paloma Aguilar Fernández, *Collective memory of the Spanish civil war: the case of the political amnesty in the Spanish transition to democracy*, Madrid, Centro de Estudios Avanzados en Ciencias Sociales, 1996. (Introduction).

### Session 18: The struggle for memory. The right to remembering

Human rights and recovery of the past. International Law and rights to recovery. Democracy and Truth Commissions. The Spanish case: revision of trials of Franquismo. Exhumating the past: the graves of Franco.

Document: Paloma Aguilar Fernández, The Politics of memory transitional justice in democratizing societies edited by Alexandra Barahona de Brito, Carmen González-Enríquez and Paloma Aguilar, New Cork, Oxford University Press. (selected pages)

### Session 19: Right to remembering in Spain from the point of view of International Law

Conference by Professor Margalida Capellà, International Law Professor at the Universitat de les Illes Balears.

### Session 20: Dictatorship in our post-modern times

Democracy and economical growth. The case of Chile Universal Justice and Human Rights. The international Criminal Court of Justice and the processes of consolidation of democracy.

### Session 21: Dictatorship is not beautiful: the rise of illiberal democracies and neo-authoritarianism

Democracy and human rights in current times. Election observation and illiberal democracies.

Document: Fareed Zakaria "The Rise of Illiberal Democracy", Foreign Affairs, nº 76, (1997).

### Session 22: Some current "hard cases"

Democracy and human rights in transitional or illiberal democracies. Some recent cases: Nigeria, Congo, Kenya, Palestine.

Document: Preliminary Report, Election observation Mission to Nigeria 2007.

## Session 23: Final Exam

Written essay about one of the issues treated in the lessons.

### **Bibliography**

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Linz, Juan J., *Fascism, breakdown of democracy, authoritarian and totalitarian regimes coincidences and distinction*, Madrid Centro de Estudios Avanzados en Ciencias Sociales.

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Ottaway, Marina, *Democracy challenged. The rise of neo-authoritarianism*, New York, 2006.

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