

# Law and Memory in Established Democracies



Bologna, 24 March 2017

Aula Giorgio Prodi  
Piazza San Giovanni in Monte n. 2

Con il patrocinio di



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# Law and Memory in Established Democracies

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## Inaugural Conference of the Memory Laws in European and Comparative Perspectives Research Consortium (MELA)

Join us on Facebook (@melaproject) and Twitter (@MELAProject2016) for updates on our ongoing research and activities.

**Memory Laws in European and Comparative Perspective (MELA)** is a four-nation, EU-sponsored university consortium, which examines memory laws throughout Europe and the world. It has been established through a major grant from Humanities in the European Research Area (HERA), totalling over € 1.2 million, awarded in March 2016. Joining 24 Humanities Research Councils in partnership across Europe and the European Commission, HERA actively promotes the humanities in the European Research Area and the European Commission Framework Programmes (<http://heranet.info>).

**This conference on Law and Memory in Established Democracies** aims to untangle the multifaceted and contradictory relationships between law and historical memory. In recent years, collective historical memory has increasingly occupied a crucial role in contemporary societies, with procedural and substantive law becoming key factors in regulating memory. Historical memory has thus influenced legislation by redefining its traditional functions. Meanwhile, legislators and judges are gaining greater authority to arbitrate official narratives of traumatic historical events. And law is being summoned to determine the guilt of past crimes in decisive measures aimed at preventing and even punishing denialism. MELA's inaugural conference examines these topical issues through comparative and multi-disciplinary approaches, while it also provides a new context for engaging innovative perspectives and original debates.

# MELA Consortium Researchers

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MELA is led by Eric Heinze at Queen Mary, University of London in partnership with three EU-area Principal Investigators: Emanuela Fronza (University of Bologna), Uladzislau Belavusau (ASSER Instituut, The Hague) and Aleksandra Gliszczynska-Grabias (Polish Academy of Sciences, Warsaw).

## THE UK RESEARCH UNIT

### Eric Heinze, Project Leader



Having earned degrees from the Universities of Paris, Harvard and Leiden, Eric Heinze has also won grants from the Deutscher Akademischer Austauschdienst, the US Fulbright Foundation, the French Ministère de l'Éducation nationale, and Harvard University. He has worked for the International Commission of Jurists, has advised several NGOs, and serves on the Editorial Boards of the *International Journal of Human Rights* and the *British Journal of Interdisciplinary Studies*. Heinze's books include *Hate Speech and Democratic Citizenship* (OUP 2016), *The Concept of Injustice* (Routledge, 2013), *The Logic of Constitutional Rights* (Ashgate, 2005), *The Logic of Liberal Rights* (Routledge, 2003), *The Logic of Equality* (Ashgate, 2003), and *Of Innocence and Autonomy: Children, Sex and Human Rights* (Ashgate 2000). His writing appears in *Oxford Journal of Legal Studies*, *Harvard Human Rights Journal*, *Modern Law Review*, *Ratio Juris*, *Legal Studies*, *Michigan Journal of International Law*, *Social and Legal Studies* and many other journals and edited collections

### Nanor Kebranian, Post Doctoral Research Assistant



Nanor Kebranian is Postdoctoral Research Assistant in Theory, History, and Human Rights. She completed her doctorate at the University of Oxford with fellowships from the Jack Kent Cooke Foundation and Oxford's Clarendon Fund. She joins Queen Mary after serving as Assistant Professor in Columbia University's Department of Middle Eastern, South Asian, and African Studies, where she researched, published, and taught on Ottoman history, literary studies, and human rights. Her project for MELA considers the discursive effects of anti-denialist legislation in Turkey and Europe, focusing specifically on minority rights, cultural destruction, and post-conflict reconciliation.

## THE ITALIAN RESEARCH UNIT

### Emanuela Fronza, Principal Investigator



Emanuela Fronza is currently Senior Lecturer in Criminal Law at the University of Bologna, and Chercheur Associé at the University of Paris 1. She has served for ten years as Senior Lecturer in Criminal Law at the Faculty of Law, University of Trento (September 2005 – April 2016). She is also a member of the Board of Professors of the Doctoral School at the School of International Studies of the University of Trento. Between 2008 and 2012, Fronza served as fellow of the Alexander Von Humboldt Foundation at the Humboldt University Berlin. She currently forms part of the Grupo Latinoamericano de Estudios sobre el Derecho Penal Internacional (2004- present). She is the author of a monograph on the criminalization of denialism (*Il negazionismo come reato*, 2012, published in Italian and German) and co-author of two books on grave violations of human rights in Latin America: *Percorsi giurisprudenziali in tema di gravi violazioni dei diritti umani. Materiali dal laboratorio dell' America Latina*, (University of Trento, 2011) and *Il superamento del passato e il superamento del presente: la punizione delle violazioni sistematiche dei diritti umani nelle esperienze argentina e colombiana*, (University of Trento, 2009).

### Michele Caianiello, Senior Researcher



Michele Caianiello is Professor of national, European and international criminal procedure at the University of Bologna. Since November 2015, he is Deputy Head of the Department of Juridical Sciences. He is a lawyer since 1998, and practiced until 2006 in the field of criminal law. In 2015, he was admitted to the list of Assistants to Counsel of the International Criminal Court. He has taken part in several national and international research projects; among them: *Suspects in Europe. Procedural Rights at the Investigative Stage of the Criminal Process in the European Union*, coordinated by Ties Prakken e Taru Spronken, University of Maastricht (2005) and *Rethinking European Criminal Justice*, coordinated by Ulrich Sieberg, Max-Planck Institut fur Auslandsische-und-Internationale Strafrecht, Freiburg (2006). Since December 2012 he is editor of the *European Journal of Crime, Criminal Law and Criminal Justice*. Together with the University of North Carolina, the University of Warwick and the University of Basel he created a research network on criminal justice – *The Future of Adversarial and Inquisitorial Systems*. The network organizes an annual conference on relevant issues on criminal justice in a comparative perspective.

### **Piergiuseppe Parisi, Research Assistant**



Piergiuseppe Parisi is a PhD student at the School of International Studies, University of Trento, specialising on the potential synergies between non-judicial human rights fact-finding and international criminal justice. Piergiuseppe is the Project Manager for the MELA Italian Research Unit. He is also serving as a member of the Advocacy Group of the Colombian Caravana UK Lawyers Group and has been a delegate in two independent civil society fact-finding missions to Colombia co-organised by the same organisation. Piergiuseppe has been working as a Teaching Assistant in international criminal law and international law at the Faculty of Law and the School of International Studies (University of Trento). He has also served as Academic Tutor for the Master in International Security Studies at the School. Prior to pursuing a PhD, Piergiuseppe interned at the International Criminal Court, assisting the Investigation Division. He is legally trained in Italy, where he has worked for different law firms. He holds a combined CPE/PgDip/LLM in Legal Studies from the London South Bank University and a combined BA/MA in Law (Transnational Law Programme) from the University of Trento.

### **Claudio Preziuso, Research Assistant**



Claudio Preziuso works as an attorney in Bologna. He holds a PhD in criminal law from the University of Bologna, with a thesis on international terrorism. He serves as an Academic Tutor at the “Scuola di specializzazione per le professioni legali” of Bologna. He is author of publications on international terrorism. He supports the MELA Italian research unit in the development of an archive and database on legal developments relevant to historical memory.

## THE DUTCH RESEARCH UNIT

### Uladzislau Belavusau, Principal Investigator



Uladzislau Belavusau is Senior Researcher in European Law at the T.M.C. Asser Institute - University of Amsterdam (the Netherlands). Previously he was Assistant Professor of EU law and human rights at the Vrije Universiteit Amsterdam (2011-2015). He holds a PhD from the European University Institute (Florence, Italy) and an LLM from the Collège d'Europe (Bruges, Belgium). Dr Belavusau has held visiting fellowships at the University of California at Berkeley (USA), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Heidelberg, Germany), York University (Toronto, Canada), and Tel Aviv University (Israel). He has guest-lectured at the Amsterdam University College, Tilburg University, Rijksuniversiteit Groningen (the Netherlands), Katholieke Universiteit Leuven (Belgium), Polish Academy of Sciences (Poland), Masaryk University (Czech Republic), York University (Canada), European University Institute and LUISS Guido Carli University in Rome (Italy). He is author of a monograph *Freedom of Speech* (Routledge, 2013). Currently he is co-editing two books *Law and Memory* (Cambridge University Press, 2017) and *EU Anti-Discrimination Law* (Hart: Oxford, 2017).

### Marina Bán, Research Assistant



Marina Bán is a PhD researcher for the MELA team based in the Netherlands. She is working on her doctoral thesis under the supervision of Dr Uladzislau Belavusau and Professor Dr Janne Nijman at the T.M.C. Asser Institute in the Hague, under secondment with the University of Amsterdam. She holds a BA in History from Eötvös Loránd University and an MA in Human Rights from Central European University (both in Budapest, Hungary). In her thesis, she compares legal governance of memory in France and Hungary, and studies its compatibility with European and international law. She has previously worked for different human rights NGOs in Budapest (Hatter Society for LGBT People and Amnesty International Hungary) mostly dealing with preparing and translating research materials, fundraising and human rights education. Her other research interests include European history (especially of Hungary during and after the communist era), LGBT rights and freedom of expression.

## THE POLISH RESEARCH UNIT

### Aleksandra Gliszczyńska-Grabias, Principal Investigator



Gliszczyńska-Grabias is a Senior Researcher at the Institute of Law Studies of the Polish Academy of Sciences. She is an author of a monograph *Combating Antisemitism: International Law Instruments* (in Polish, Wolters Kluwer 2014). Currently she is co-editing a book *Law and Historical Memory* (forthcoming, Cambridge University Press 2016). A recipient of the 2015-2018 Fellowship of the Polish Ministry of Science and Higher Education for outstanding achievements in science and research, Gliszczyńska-Grabias was also 2014 Bohdan Winiarski Fellow at the Lauterpacht Centre, University of Cambridge, and Graduate Fellow of the Yale Initiative for the Interdisciplinary Study of Antisemitism, Yale University (2010/2011). In 2015 she joined the Board of Young Researchers of the Ministry of Science and Higher Education in Poland and the Academic Advisory Board of the Community of Democracies. She is an expert in Help in the 28 Council of Europe's Project ("Fight against racism, xenophobia and homophobia").

### Grażyna Baranowska, Post Doctoral Research Assistant

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Grażyna Baranowska joins the project as a Post-Doctorate Researcher as part of the Polish team. She defended her PhD thesis on "Enforced disappearances in Europe. Developing international standards of prevention and reaction" in the Institute of Law Studies of the Polish Academy of Sciences in May 2016. In her work in the MELA project, she will concentrate on conflicts between memory laws and freedom of speech, integrating ECtHR jurisprudence and UN-level relevant norms and policies. She completed her studies at the Adam Mickiewicz University in Poznan, Humboldt University Berlin and Kafkas University in Kars, Turkey. Previously she has been a researcher in the project *Fostering Human Rights Among European (Internal and External) Policies*, funded through the EU's Seventh Framework Program and worked in the German Bundestag. Additionally she has organized a number of human rights courses and workshops.

## **Anna Wójcik, Research Assistant**



Anna Wójcik is MELA research assistant on PhD track at the Institute of Law Studies, Polish Academy of Sciences. She holds Master of Arts degrees in Law from University of Warsaw and in Sociology and Social Anthropology from Central European University in Budapest. Moreover, Anna obtained BAs in philosophy and cultural anthropology from University of Warsaw in a framework of Individual Studies in Humanities and Social Sciences and completed semester abroad at Faculty of Philosophy, Sorbonne Paris-IV. Her up-to-date research interests include, but are not limited to, freedom of expression and comparative hate speech policies, as well as political theory, and law and society. In her PhD project Anna will focus on developments of memory laws in Central and Eastern Europe in the context of transitional justice and memory politics.

# MELA Conference Participants

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## Valeria Barbuto



Valeria Barbuto is Anthropologist (University of Buenos Aires), with postgraduate studies in Cultural Management (Universidad Nacional de San Martín– UNSAM Argentina) and in Democratization and Human Rights (Universidad Nacional de Chile). She is a researcher of the Political and Legal Anthropology Team of the School of Philosophy and Letters, Universidad de Buenos Aires. She's Director of Memoria Abierta, an alliance of eight Argentine human rights organizations working together to promote social memory about the human rights violations in the past, the actions of resistance and the struggle for truth and justice, to reflect on

the present and strengthen democracy. Memoria Abierta catalogued and provides access to various institutional and personal archives; produces an oral archive; contributes to the visibility of the places used in the repression; prepares thematic resources for outreach and educational purposes; and contributes with the legal cases. She's a member of the Board of Human Rights Organizations of the Espacio para la Memoria ex ESMA (memory site in Buenos Aires), as representative of the organization Center for Legal and Social Studies.

## Maria Chiara Campisi



Maria Chiara Campisi is Research Fellow to the Case Matrix Network (CMN), where she provides research and editorial assistance for various publications of the CMN ICJ Toolkits Project, and is fellow at the Law Department of the University of Roma Tre. She received a Ph.D. in International Law from the European University Institute (2015), for her thesis "Remembering past atrocities: the duty of memory in international law", examined and approved by Professor Paolo Benvenuti, Judge Antonio A. Cançado Trindade, Prof. Francesco Francioni and Prof. Ruth Rubio Marin. She holds an LL.M. (EUI; 2010) as well as a BA

and MA (University of Roma Tre; 2008, 2005). Maria Chiara is a qualified lawyer before the Italian Bar Association. She was a visiting professional at the Inter-American Court of Human Rights (2010) and is a member of the Historical Dialogues, Justice, and Memory Network; she has published and participated in international conferences on transitional justice, human rights and memory, with a particular focus on the Latin-American region. She fluently speaks Italian, English and Spanish, as well as French (working knowledge).

### Paolo Caroli



Paolo Caroli is currently in the last year of his PhD in criminal law at the University of Trento; in April 2017 he is going to defend his dissertation about the Italian experience of transitional justice after World War II. He also practices as attorney and works as journalist. In 2012 he worked as intern in the *International Crimes and Accountability* team of the *European Center for Constitutional and Human Rights* (ECCHR) in Berlin and he still collaborates with the center as ECCHR alumnus.

### José Luis de la Cuesta



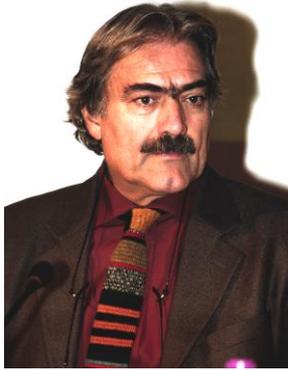
José Luis de la Cuesta is Professor of criminal law and director of the Basque Institute of Criminology at the University of the Basque Country (UPV/EHU), San Sebastián. Moreover, he is Honorary President of *the Association Internationale de Droit Pénal* (AIDP-IAPL).

### Christian Delage



Christian Delage is a historian, filmmaker, and curator of exhibitions. Since the mid-1990s he has worked on the history of the Holocaust, the filmed record of the liberation of the Nazi camps, and the Nuremberg trials. In 2006, his book *La Vérité par l'image: De Nuremberg au procès Milosevic* was published in France, and in 2014 in the US. His documentary *Nuremberg: The Nazis Facing Their Crimes* was broadcast on the French and German channel ARTE (Best audience of the year 2016). He also served as a policy advisor on the filming of the Khmer Rouge trials, and produced *Cameras in the Courtroom*, a documentary discussing the issues of filming trials. Christian Delage has shaped the permanent exhibition of the Compiègne's Internment and Deportation Memorial. He also curated an exhibition on the liberation of the Nazi camps by the U.S. Army, at the Paris Mémorial de la Shoah (2010), and at the New York Museum of Jewish Heritage (2012). His last film, *From Hollywood to Nuremberg: John Ford, Samuel Fuller, George Stevens*, has won an award from SCAM (an association gathering all the French Documentary filmmakers). In 2014, Christian Delage has taken over as Director of the Institut d'histoire du temps présent, a research laboratory of the Centre national de la recherche scientifique.

## Marcello Flores



Marcello Flores has taught Comparative History, History of Human Rights, and Contemporary History at the Universities of Siena and Trieste. He has been Director of the European Master in Human Rights and Genocide Studies (Kingston University, University of Siena, Viadrina University Frankfurt Oder, Collegium Civitas Warsaw). He is currently serving as Scientific Director of the *Istituto Nazionale Ferruccio Parri, Rete degli Istituti Storici della Resistenza e dell'Età Contemporanea*. His last publications include: *Il secolo del tradimento. Da Mata Hari a Snowden 1914-2014*, Il Mulino, Bologna, 2015; *Il genocidio degli armeni*, Il Mulino, Bologna, 2015; *La fine del comunismo*, Bruno Mondadori, Milano, 2011; *Storia dei diritti umani*, Il Mulino, 2008.

## Raluca Grosescu



Raluca Grosescu is Associate Research Fellow at the University of Exeter (Department of History). She is currently working on post-dictatorial justice in Eastern Europe and Latin America, with a special focus on the use of international criminal law in national courts. She is the author of various articles on the relationship between transitional justice, memory and international criminal law, and the editor of *Transitional Criminal Justice in Post-dictatorial and Post-conflict Societies* (Intersentia, 2015).

## Stefania Parisi



Having earned a PhD in *Constitutional justice and fundamental rights* in the University of Pisa and 4 postdoctoral fellowships in Constitutional Law in the Universities of Naples and Sassari, Stefania Parisi is currently Senior Lecturer in Constitutional Law in the University of Naples Federico II and she also gained the title of Associate Professor. She is Lecturer in *Regional Law* in the University of Naples Federico II and Lecturer in *Constitutional justice* at the post graduation school of law. In 2016, Parisi served as research fellow in the University of Jaén (Spain). She took part in many national research projects; currently, she forms part of the Permanent Research Group *Derechos fundamentales, Andalucía y la Unión Europea*. She is member of the Editorial Board of the Review *Quaderni Costituzionali* (il Mulino, Bologna). She is author of the monograph *La gerarchia delle fonti. Ascesa, declino, mutazioni* (*The hierarchy of norms. Rise, fall, mutations*); she also wrote several articles related to freedom of expression and Holocaust denial, i.e. *Il negazionismo dell'Olocausto e la sconfitta del diritto penale* (*Holocaust denial and the defeat of criminal law*), 2013.

### **Valentina Pisanty**



Shoah" (Bruno Mondadori 2012).

Valentina Pisanty teaches Semiotics at the University of Bergamo. She has published articles and essays on Holocaust denial, racism, political discourse analysis, narratology, interpretive semiotics, the rhetoric of memory-making and the semiotics of testimony. Among her monographs, "L'irritante questione delle camere a gas: logica del negazionismo" (Bompiani 1998, new edition 2014), "Semiotica e interpretazione" (co-author Roberto Pellerey, Bompiani 2004), "La Difesa della Razza: antologia 1938-1942" (Bompiani 2006), "Semiotica" (co-author Alessandro Zijno, McGraw-Hill 2009) and "Abusi di memoria: negare, banalizzare, sacralizzare la

### **Nena Tromp**



Nevenka Tromp studied Political Science at the University of Zagreb and Russian Studies at the University of Groningen, The Netherlands. She has been working in the Department of European Studies at the University of Amsterdam since 1992. Between 1998 and 2002, she participated in the investigation into events in Srebrenica that was conducted by the Dutch Institute for War Documentation (NIOD) and commissioned by the Dutch Government. From 2000 to 2012, she worked as a Researcher on the Leadership Research Team in the Office of Prosecutor (OTP) at the International Criminal Tribunal for the Former Yugoslavia (ICTY), where she was principle researcher on history and politics in the trial of Slobodan Milošević. Her primary focus was to uncover and clarify the plan undertaken by Serbian leadership and criminality related to its implementation, as charged by the OTP. She also worked on other key cases, most notably that of Radovan Karadžić. Tromp received her PhD from the University of Amsterdam's Centre for War, Holocaust and Genocide Studies in spring 2015. She is the co-founder and Executive Director of the Geoffrey Nice Foundation on Law, History, Politics, and Society in the Context of Mass Atrocities, which supports and provides cross-national educational opportunities for students, researchers, and academics in the field of International Criminal Justice.

# CONFERENCE PROGRAMME

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## 9.30 – 10.00 - INTRODUCTORY REMARKS

### **Francesco Ubertini**

Rettore Magnificus of the Alma Mater Studiorum - University of Bologna

### **Antonio Rotolo**

Prorettore per la ricerca of the Alma Mater Studiorum - University of Bologna

### **Giovanni Lucchetti**

Director of the Department of Legal Studies, University of Bologna

### **Nicoletta Sarti**

President of the School of Law, University of Bologna

### **Alessandra Zanobetti**

Director of Second Cycle Degree in Law, School of Law, University of Bologna

### **Luca Mezzetti**

Director of the “Scuola Superiore degli Studi Giuridici”, University of Bologna

### **Nicola Mazzacuva**

Member of the Council of the “Unione delle Camere Penali Italiane”

### **Gaetano Insolera**

Director of the “Scuola di Specializzazione per le Professioni Legali Enrico Redenti”

### **Bruna Gambarelli**

Municipal Councillor for Culture

### **Eric Heinze**

MELA Project Leader

Queen Mary, University of London

## **I PANEL**

### **LAW AND MEMORY BETWEEN INTERNATIONAL AND CONSTITUTIONAL LAW**

**10:00 – 11.15**

Michele Caianiello (MELA, University of Bologna)

Chair

#### ***TENSION BETWEEN LAW, TRUTH AND HISTORY AT THE MASS-ATROCITIES TRIALS***

Nena Tromp (University of Amsterdam)

*The Milošević trial illustrates that it is desirable for the courtroom to be a place where there is an understanding of history, for at least two reasons. First, historical context is necessary in establishing and proving the guilty mind of an accused person and of fellow high-level officials involved in the commission of crimes. Second, it allows judges to comprehend the political dynamics that led to the occurrence of mass atrocities. However, a criminal investigation into and prosecution of mass-atrocities that focuses on an individual's criminal responsibility has a number of potential pitfalls, as the risk of 'over-prosecution', 'over-simplification' and the creation of an 'individual scapegoat' for what was in truth the criminality of state institutions. The importance of the individual criminal responsibility principle could underline the question of whether only individuals should shoulder the burden of responsibility for what may be state violence committed through the agency of institutional structures. In addition, mass atrocity trials are of huge significance as a unique historical source. As Michael Marrus underscores, historians must evaluate every source with an eye to its provenance, since all sources are in some sense "tainted" and war crimes trial records are certainly no exception. The trial archive of the trial of Slobodan Milošević, although unfinished, represents a unique and valuable historical source for at least two reasons. First, Milošević represented himself in the court and through his comments, protestation, denials, and even his body language, he gave away more than he would have revealed had he not represented himself. Secondly, materials selected as evidence by the Prosecution and Defence incorporate documents from Yugoslav and Serbian state archives that would have otherwise been unavailable to the public and to researchers for many decades.*

#### ***CITIZENSHIP LAWS AS INSTRUMENTS OF MEMORY POLITICS***

Uladzislau Belavusau (MELA, ASSER Instituut, The Hague)

*From the 18<sup>th</sup> century, legal governance of memory has been central in shaping active citizenship. Both invitation to remember and duty to remember have been the keys to active citizenship. After World War II, citizenship in itself has become a major building brick of prescribed historical memory. This presentation will focus on the various assignments of the Jewish past in constructing citizenship regimes. The first part will look into the way secondary EU law has been appropriating Holocaust and other episodes of Jewish history in shaping the narrative of EU citizenship, fundamental rights, anti-discrimination and the rule of law. The second part will scrutinize granting of citizenship to the descendants of Sephardic Jews, in particular in Portugal and Spain. It will unpack this new regime for the acquisition of citizenship in light of memory politics that has been setting paradigms of ethnic origin and past atrocities as a (re-)source of citizenship. The third part will focus on the Israeli aliyah עֲלִיָּה, namely various aspects of the immigration politics in Israel. The aliyah practices will be placed into the context of citizenship in Europe.*

*All three case studies reveal the mechanics of mnemonic narratives embedded in citizenship and demonstrate how citizenship has been an investment into memory politics, while misfortunes of the past have – ironically – become an investment into citizenship. Jewish history, therefore, has been a vivid clue for the edifice of citizenship in Europe and the mobile transnational pan-European ‘Jew’ in many ways remains the idyllic prototype of EU citizen.*

**ARE MEMORY LAWS UNCONSTITUTIONAL?**

Stefania Parisi (University of Naples Federico II)

*Are memory laws unconstitutional? My short paper tries to answer this question. The problem is investigated from the point of view of Italian constitutional law: probably there are no universally valid solutions for all legal systems. After doing a survey of the sources of law establishing days of memory in Italian law, the paper tries to understand the very reason of their existence (ratio legis). Usually, it is said that memory laws protect shared and “national” values: these values are specifically embodied in the historical events that laws compel to remember. This reason, however, could be contradicted by the fact that some memory days have been introduced by orders in council or even regional legislation: so the establishment of memory days could be a sort of manipulation made by political majority just to achieve social consensus. Should the Constitutional Court declare these laws unconstitutional as they imply a political use of historical events? What would be the parameter of judicial review? Could memorial laws be repealed by referendum? How is it possible to avoid that history gets confused with memory?*

**11:15 – 11.45 - Coffee Break**

**II PANEL**

**MEMORIES AND TRANSITIONAL JUSTICE**

**11:45 – 13.00**

Eric Heinze (MELA, Queen Mary - University of London)  
Chair

**SPANISH LEGISLATION ON HISTORICAL MEMORY**

José Luis de la Cuesta (Director of the Basque Institute of Criminology)

*Spanish legislation and experience concerning “historical memory” constitutes certainly a very exceptional one: the peaceful transition from a dictatorial regime to a democratic one (1975-78) was not accompanied by the recognition of the rights and adoption of measures in favour of the victims of persecution and violence during the Civil War and the Dictatorship. The approval of Act 52/2007, devoted to the recognition of the rights and the adoption of measures in favour of the victims of persecution and violence during the Civil War and the Dictatorship, took nearly 30 years. Act 52/2007 was adopted after a difficult political debate and, even if it sat the basis for a positive action in favour of the victims of persecution and violence during the Civil War and the Francoist regime, ten years after the adoption of this important Act implementation still generates troubles and difficulties.*

## **THE ITALIAN AMNESIC TRANSITION**

Paolo Caroli (University of Trento)

*At the end of World War II, Germany and Japan were the defeated powers of the Axis and were put on trial in Nuremberg and Tokyo respectively. Italy, by contrast, had vague and multiple identities and underwent a complex and heterogeneous transitional process. The criminal prosecution of war crimes was based on a double path, depending on the nationality of the perpetrators: Italian or German. For Italian perpetrators, the outcome was a complex amnesty, which resulted from de iure (Togliatti amnesty) and de facto (mainly the activism of the judiciary in favour of Fascist perpetrators) elements. The term amnesic amnesty can be used to capture the impact of such type of amnesty on collective memory. Italy did not witness an explicit choice for oblivion, but hetero-determined amnesias can be found, mainly related to state responsibilities. While the "nation-victim moral alibi" is not a prerogative of post-war Italy, one should acknowledge that in other European countries this alibi covered just episodes of collaboration with the German occupier. In Italy, on the contrary, amnesia covered twenty years of dictatorship and two years of civil war. This lack of recognition and elaboration of the Italian responsibilities continued in the following decades. After 1989, when in each European country the memorial paradigm of Second World War changed and nations faced an interregnum in terms of identity, the gap between Italy and the other European countries has become wider. Everywhere, old myths have been replaced by new ones, but in other countries, the interregnum has been used to question the previous mnemonic myths and to reconsider national responsibilities. Whereas in Italy we have experienced a change of the memorial paradigm, which has led to a posthumous rehabilitation of the regime (mainly, but not only, through the new centrality of the Holocaust), a wider self-absolution and, in the end, a wider oblivion.*

## **TWO TYPES OF DEMOCRATIC TRANSITION THROUGH MILITANT DEMOCRACY: THE STRASBOURG COURT IN SEARCH OF A PRINCIPLE**

Aleksandra Gliszczyńska-Grabias (MELA, Polish Academy of Sciences, Warsaw)

*One important manner in which the European Court of Human Rights supervises and facilitates transition to democracy is by policing the limits to "militant democracy": a set of state laws and policies meant to restrict inter alia freedom of speech and association exercised by former politicians and ideologues of non-democratic regimes, and their contemporary followers and advocates. The issue of the limits upon democratic restrictions introduced to protect democracy is particularly urgent in those states which can be dubbed "transitional democracies", namely those that are on the trajectory leading from the fall of a discredited, inhuman regime to a fully-fledged democracy. But in Europe, and so in the ECtHR's jurisprudence, there are transitions and transitions. In some cases a greater emphasis is placed on "giving leeway to the transitional states" while in other, "highlighting problems in the reception of democratic norms" takes the centre stage (Sweeney, 2012). This is the main theme in my presentation. In this presentation, limited in its scope due to the time restrictions, I will demonstrate the contrast, and reflect upon the reasons of these double standards. In Part I, I will briefly sketch some of the leading militant democracy cases having their origins in the Nazi past. In Part II, I will describe their analogues in the post-Communist sphere. In Part III, I will offer and reflect three hypotheses to explain this contrast. But to "explain" is not to "justify": while each of the*

*explanations have in my view some rational core, none of which is fully satisfactory, and as one knows, three bad arguments do not make a good one.*

## **13:00 – 15.00 – Lunch**

### **III PANEL**

#### **HISTORY ON TRIAL**

#### **15:00 – 16:15**

Valentina Pisanty (University of Bergamo)  
Chair

#### ***NUREMBERG: FILMING THE TRIAL/SHOWING FILMS AS EVIDENCE***

Christian Delage (Director of the Institut d'histoire du temps present, Paris)

*What took place on November 29, 1945, in the courtroom where the twenty-one major Nazi war criminals were on trial, was an experiment which remains without parallel, even today. On that day, for the first time in legal history, the American prosecutors showed a film as incriminating evidence. The accused were confronted with images of their deeds and the screen served as a link between the protagonists: the accused, the judges and the public. Simultaneously, it had been decided that the trial would be filmed, a premiere. Thanks to these two initiatives, we can have today the most comprehensive report of the hearings. I will discuss the way the shooting of the trial, and the screening of films as evidence, create a new kind of justice, adapted to the taking into account of mass crimes and genocides.*

#### ***IMAGES AND HISTORY: BETWEEN TRUTH AND MANIPULATION***

Marcello Flores (University of Siena)

*From the Congo Reform at the turn of nineteenth and twentieth century the images reproduced in photos, movies, novels, stories, etc were often considered historical truths even when they were manipulated. Through a series of examples the paper will seek to focus the difficulty of identifying the historical truth when there are involved memories and narratives that use images and literary texts or narratives produced by power or legitimate and authoritative agencies and public institutions*

#### ***THE LEGAL REGULATION OF HISTORICAL KNOWLEDGE AND ITS SIGNIFICANCE FOR HUMAN RIGHTS***

Eric Heinze (MELA, Queen Mary - University of London)

*There is a striking, and far from coincidental, resemblance between a state's attitude towards history and its attitudes towards human rights. Both postures, after all, centrally concern a state's statements or silences about important events, be they of a recent or a more remote past. Any state position towards its human rights past inherently entails a two-fold denial, both of views omitted by and of views contradicting its own. There are many senses in which allegations of human rights abuse can be denied, 'bad-faith denialism' by states being decisive for human rights. Bad-faith denialism is not a problem like torture or lack of food. It is a 'meta-problem' for human rights—the problem inherently attaching to all human rights problems. By the very nature of human rights,*

*there is no way their implementation can even in principle be expected absent adequate expressive possibilities within society to challenge official records and histories. Free expression, then, while certainly no more important than other rights as a matter of sheer human existence—protections from torture or rights to food and water are arguably more important—must not be viewed as just another right on the human rights ‘checklist’. As the only ultimate safeguard against bad-faith denialism by states, it sets a condition for the very possibility of any regime of human rights, and the only meaningful measure against which human rights ‘universality’ can be assessed.*

***DENIAL OF THE ARMENIAN GENOCIDE IN FRANCE IN HISTORIANS AND CONSTITUTIONALISTS’ PERSPECTIVES***

Marina Ban and Anna Wójcik (MELA, ASSER Instituut, The Hague, and Polish Academy of Sciences, Warsaw)

*France is an outlier in introducing legal bans on genocide denial. Already in the 1990 it has implemented provisions, which criminalize denying all WW2 war crimes and crimes against humanity as defined in the Charter of the International Military Tribunal. In 2001 the French parliament officially recognized the 1915 massacre of Armenians as genocide and fifteen years later passed a legislation criminalizing its denial, which was recently upheld as constitutional by Conseil Constitutionnel. The paper discusses 1) How this decision of the French top court puts forward an idea of introducing a new European standard – a general/ universalistic ban on denial of all officially recognized genocides and crimes against humanity, 2) How the very idea remains not without controversy also in France, and is challenged by expert communities of historians and constitutionalists. Criminalizing genocide denial has brought several issues to the forefront. These include the frees speech of deniers, the possible restriction or chilling effect on academic historical research, and the openness of public debate about the nation’s past.*

**16:15 – 16.45 - Coffee Break**

**IV PANEL**

**LAW, MEMORY, AND TRUTH: LATIN AMERICA AS A PARADIGM**

**16:45 – 18.00**

Emanuela Fronza (MELA, University of Bologna)  
Chair

***PUBLIC POLICIES OF MEMORY IN ARGENTINA: TOPICS, ACTORS AND MECHANISMS OF A COMPLEX PROCESS***

Valeria Barbuto (Director of *Memoria Abierta*, Universidad de Buenos Aires)

*Argentina has gone through three decades of democracy since the end of the last civic-military dictatorship. There have been advances and setbacks in matter of memory, truth, justice and reparation regarding crimes against humanity during this period. The human rights organizations, the victims and their relatives have participated in debates with the government to implement the main measures taken.*

*The last 15 years have been of enormous progress in terms of promoting the institutionalization of the mechanisms for strengthening the rule of law. Public policies*

*that involved all the branches of the state were promoted during the last decade. The normative that gives place to these sets of policies of memory includes laws, resolutions of the executive branch, jurisprudence, among others.*

*In this framework, the presentation will intent to describe the main topics that these policies of memory deal with, particularly sites of memory, archives and public recognition, as well as the institutional mechanisms that they created. Finally, it will intend to promote debate about the complex set of rules that participate in these developments.*

**CRIMINAL TRIALS AND MEMORY REGIMES IN POST-1989 BULGARIA AND PARAGUAY IN A GLOBAL PERSPECTIVE**

Raluca Grosescu (University of Exeter)

*In the last fifteen years, scholars and legal practitioners have acknowledged the emergence of a “justice cascade” and a “cosmopolitan memory” concerning crimes committed under dictatorships or violent conflicts. According to these accounts, the shift of the dominant normative international framework and the increasing transnational mobilization of justice activists have generated a global anti-impunity ethos. This optimistic narrative is however challenged by numerous national contexts where cultures of impunity continue to exist. This paper discusses two such cases, namely post-communist Bulgaria and post-dictatorial Paraguay. It focuses on the legal and historical narratives that have unfolded within trials concerning mistreatment of political opponents (the Lovech case in Bulgaria and the Torturers’ case in Paraguay) and discrimination against ethnic minorities (the Revival Process trial in Bulgaria and the Aché case in Paraguay). It argues that in the absence of an official memory regime that critically considered the previous dictatorships at a national level, the Bulgarian and the Paraguayan judiciary have been reluctant to engage with such cases. They either postponed the investigations or provided selective readings of the past that tallied the official politics of oblivion promoted by the dominant political elites. Up until the present day, the effects of the global “justice cascade” have been thus minor in Bulgaria and Paraguay. The paper maintains however that the pressure exerted by the regional human rights courts or the membership of judges and prosecutors in transnational professional associations and advocacy networks have been instrumental in altering the dominant impunity regime in the few cases that resulted in convictions.*

**A RIGHT OF MEMORY FOR GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS? THE IACTHR CASE LAW**

Maria Chiara Campisi (University of Roma Tre)

*In the recent literature – mostly in the transitional justice field, but also in the human rights discourse – memory has been framed as a legal device. Even more so, especially among Latin-American and Caribbean human rights scholars and activists, it has been instrumentally constructed as a well-established, immanent entitlement of victims of gross and systematic violations of human rights [GVHR]. Such an entitlement has been framed as either an individual right of victims, or a collective right/interest of the affected society. Yet, the claim for a right of memory is often lacking of an adequate theoretical framework, while its legal bases are not always clear. From a normative stance, moreover, framing memory in terms of individual and collective legal entitlement may be problematic and the consequences of such a claim should be carefully assessed against both competing rights and other goals of transitional justice. Against this backdrop, this paper will analyse the Inter-American Court of Human Rights’ case law in order to understand the contribution of*

*the Court in framing a right of memory in the aftermath of gross and systematic violations of human rights [GVHR] within the Inter-American system for the protection of human rights. The analysis will discuss three different legal constructions in which the Court has addressed memory in its jurisprudence: i) the right of memory as a secondary right to reparations for victims of GVHR; ii) the right of memory as a collective right of the affected society; iii) the right of memory as a primary right to identity. For each level, the analysis will trace the theoretical reasoning of the Court and will discuss examples from the case law.*

#### **MEMORY LAWS AND THE RIGHT TO TRUTH**

Grażyna Baranowska (Polish Academy of Sciences, Warsaw)

*Memory laws have been explained in various ways. Some have argued they are necessary to protect constitutional order or the dignity and memory of victims. Others have emphasized existing differences between opinions and factual utterances and raised that dissemination of factual statements that the speaker knows to be false does not fall under the protection of free speech doctrine. While not every approach clearly reflects the idea of the 'right to truth', memory laws aim at protecting what is considered to be 'objective historical knowledge'. Similarly the 'right to truth' implies knowing the full and complete truth. The 'right to truth' emerged in the second half of the XX century, and found its roots in international humanitarian law, in the context of the right of families to know the fate of their relatives. Originally intended as a right that could be raised by individuals, the 'right to truth' is currently considered to be both an individual and collective right. The collective dimension covers the right of the society in general to know the truth about past events concerning heinous crimes. Memory laws most often realize this aspect of the 'right to truth'. Nevertheless, sometimes memory laws also implement the 'right to truth' in its individual dimension, for example in the Spanish Historical Memory Law. This paper analyses the intersection between memory laws and the 'right to truth'. While their origins are different, they are currently used to complement and justify each other. Special attention will be paid to the place of historical truth within the 'right to truth'. Historical truth is central in memory laws, whereas it is not critical in the context of the 'right to truth'. As the concept of 'right to the truth' raises questions concerning its scope and implementation, I will also explore the benefits and disadvantages of using it in the context of memory laws.*