**DePaul University College of Law**

**Berlin Study Abroad Program**

***History, Memory & Law***

Prof. Terry Smith

3 law semester credits/4 LAS quarter credits

(Summer 2016: August 1-11, 2016)

1. ***Course Description:*** Students will consider how lessons from historical traumas can inform contemporary strategies of inclusion and anti-subordination of racialized and gendered minorities in Europe, the United States, or other parts of the world today. As part of DePaul law school’s summer study abroad program, this course will showcase Berlin as part of the “living classroom” through which we will examine major 20th century world events to see how history and the social construction of remembering map onto a region’s laws, legal culture, and understanding of human rights. Students will analyze discrete topics, such as genocide, forced labor, colonialism and immigration, from both German/European and U.S. perspectives and then visit relevant sites in Berlin related to these topics. Class members will contemplate the role that history and the process of remembering and forgetting historical traumas play in influencing a country’s legal regime and system.
2. ***Learning Objectives:*** The course has four distinct but interrelated learning objectives:
3. To understand the law’s “hybridity” or “legal pluralism,” from which one can understand how the law is mutually constituted through historical events and traumas as well as through development of legislative and judicial processes;
4. To engage multiple perspectives on historic events and the public memorialization of those historic events;
5. To explore comparatively how the configuration of public space and monuments in Germany and the U.S. contributes to the project of reshaping national identities, historical memory, and law-making.
6. To reason and write effectively, about how historic and contemporary injustices in Germany and the U.S. map onto the domestic law and international law/norms of reparations, genocide, and migration.
7. ***Format:*** The course will be team taught. Class sessions will usually open with lecture and/or discussant presentation, case-oriented inquiry, theoretical extrapolation, and class discussion of the topic/theme for the session. The course is organized around the critical examination of a country or region’s past, how it remembers historic traumas and the interplay between culture and law. As such, field trips to visit relevant sites reflecting this objective are incorporated into the course.
8. ***Course Materials:*** A carefully selected set of readings will be distributed to Chicago-based students at the mandatory pre-departure orientation in late April or early May. Non-Chicago students need to provide the program director with their mailing address for a late-May/early June shipment of their course materials. Additional materials will be available on the D2L website for the course under the Content tab, Readings topic.
9. ***Course Requirements & Student Evaluation:***
10. Class Attendance and Participation (20 pts.): Students are expected to assume active roles in the teaching and learning process. Thus, the quality of each discussion is critical to the educational process. Accordingly, you will be evaluated on your contributions to the joint learning venture. On non-field trip days, you are expected to be a prepared, active, and respectful participant in shaping the class discussion and will be graded accordingly. In addition to general class attendance, you will be graded on the quantity and quality of your discussion in class. On field trip days, you must be on time at the identified meeting place for the group to make its scheduled appointments. We are unable to wait for laggards. There will be a significant deduction for missing any field trip or course excursion.
11. Public History Analysis (30 pts. total):

Students will submit a public history analysis of one of the afternoon field trips during Week 1 of up to 1500 words (excluding footnotes) is due to be posted at D2L by 1pm on Saturday, August 6th under the relevant Discussion Folder. A well-written analysis will incorporate at least three of the required readings (with proper footnotes) that are relevant to your discussion of the questions below:

What does the field trip convey about the role that public history plays in the creation of human rights norms and laws? What contemporary linkages to the past, if any, are suggested by the site(s) you visited? How does the cultivation or non-cultivation of memory by the state reflected in the visited site(s) relate back to domestic or international law-making or interpretation? What is the relationship between civic culture, history and law?

1. Take-home Final Exam (50 pts.): There will be a take-home final exam. Use the exam number you signed onto the final exam name sheet, not your name. Please e-mail your exam to Lawrence Arendt at larendt@depaul.edu no later than 1pm on Friday, August 12th, Berlin time. Be sure to check your sent mail to ensure proper transmission. Your word count is required in the upper-right hand corner under our exam number and should fall between 2500-3000 words, excluding footnotes. You may use any material from your Public History Analysis you deem relevant, assuming that the material included has been revised per instructor’s comments on the Public History Analysis. (You may not cite up to three sources outside of the required course materials, provided that you highlight outside sources in bold in your footnotes.) An “A” paper will answer the main prompt with a *clear thesis or argument*, *amply footnoted by evidence* that details *historical, legal, and interdisciplinary sources* studied in the course with a *coherent organizational scheme and logic*.

PROMPT: Consider our modules of colonialism & migration, comparative genocide, and forced labor. Comparatively analyze how the state’s role in fomenting public remembrance (or forgetting) of the issues at hand influences legal culture and substantive law. To answer this question, you might consider the following subquestions: How has state memorialization (or lack thereof) impacted upon the definition and/or availability of legal remedies for the historical injustice studied? Compare the discourse and legal arguments on reparations or restitution for historical atrocities in Germany and the U.S. What role do cultures of remembering historical traumas play in shaping the public discourse and law of reparations? To what extent are national projects of redemption/reconciliation studied inherently raced, gendered, and classed? Are the “politics of memory” more salient as a matter of national, or international law? In other words, are human rights norms and international law immune from the politics of memory? **Be sure to identify in bold a thesis argument** in your final paper, one that includes recognition of a counterargument (antithesis), your main argument (thesis) and a summary of your reasons (evidence) supporting that main argument.

1. ***Tentative Course Schedule & Reading Assignments*** *(draft only, subject to change)*
2. Welcome: 7/31/16 6-7pm Course Intro and Social Mixer
3. Class 1: 8/1/16 9-10:50am Colonialism & Migration: German History

Aimé Césaire, *Discourse on Colonialism*, Monthly Review Press, (Translated by Joan Pinkham, 1972) (Originally published as Discours sur le colonialisme by Editions Presence Africaine, 1950).

Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8(4) Journal of Genocide Research 387 (2006).

Wildenthal, Lora. ""SHE IS THE VICTOR": Bourgeois Women, Nationalist Identities and the Ideal of the Independent Woman Farmer in German Southwest Africa." Social Analysis, 33, (1993) 68-88.[**http://hdl.handle.net/1911/81024**](http://hdl.handle.net/1911/81024)**.**

R. Chin, *Guest Worker Migration and the Unexpected Return of Race in* After the Nazi Racial State Difference and Democracy in Germany and Europe 80 (R. Chin, H. Fehrenbach, G. Eley G, et al. eds., 2009).

# Namibia: Genocide and the Second Reich, (BBC Documentary Film, 2005).

What is Cesaire’s “boomerang thesis”? In what ways might German colonialism be linked to other historical processes? ? Although German Parliament has recently refused to recognize the Nama-Herero massacre as a genocide, in what ways did Second Reich transgressions in what is now Namibia lay the foundation for later Third Reich transgressions during the Holocaust? According to Patrick Wolfe, what is the “logic of elimination” that often attends settler colonialism, and how is it racialized? Using Cesaire’s thesis and Chin’s analysis, how might one account for the high percentage of Turkish immigrants to Germany? How does Wildenthal conceptualize the intersection between feminism and colonialism in German Southwest Africa? What are the mechanisms or logics by which a modern state may choose to recognize some state genocides, but not others?

1. Class 2: 8/1/16 11:10am-1pm Colonialism & Migration: U.S. History

Gilbert G. González and Raúl Fernandez, *Empire and the Origins of Twentieth-Century Migration from Mexico to the United States* 71:1 Pacific Historical Review 19 (2002).

Opinion Editorial, Notes from Aztlan blog, “We Didn’t cross the Border, the Border Crossed Us,” posted Jan. 10, 2014.

Efren Rivera Ramos, *Deconstructing Colonialism: The “Unincorporated Territory” as a Category of Domination, in* Foreign in a Domestic Sense (Burnett and Marshall, eds., 2001).

Catherine Lee, *Where the Danger Lies: Race, Gender, and Chinese and Japanese Exclusion in the United States, 1870-1924*, 25:2 Sociological Forum 248-71 (2010).

What are the popular understandings in the U.S. about the Mexican-American War? If dominant public myths captured by the cry, “Remember the Alamo” have “no basis in historical fact,” then what accounts for the popularity of such myths and their continued transmission through public monuments and museums? How does the imperial context of the Mexican-American War shape legal responses to Mexican landowner claims in the mid-19th century? How does it shape American responses to immigration from Mexico and Latin America today? What are the *Insular Cases*, and why do so few constitutional law casebooks discuss them in any detail? What is a commonwealth? How should the international community respond if colonized subjects reject “independence”? Why have scholars primarily understood Asian immigration to the U.S. and their subsequent exclusion as a racial, but not gendered, phenomenon? How do conceptions of racial contagion and sexual threat define national immigration discourse and policy?

1. Class 3: 8/1/16 3-5:30pm Field Trip #1: Berlin Postkolonial Walking Tour:

Meet at U-bahn station Afrikanisches Strasse in Wedding (U6 line towards Alt-Tegel, 9 stops from Friedrichstrasse station) at the NW exit no later than 3pm sharp.

1. Class 4: 8/2/16 9-10:50am Colonialism & Migration: Discussion & Law

Motion (tabled) of the German Bundestag on February 29, 2012 Acknowledging the German colonial crimes in former German South-West Africa as genocide and working towards restorative justice.

Rachel J. Anderson, *Redressing Colonial Genocide: The Hereros’ Cause of Action Against Germany*, 93 Cal. L. Rev. 1155 (2005).

Louis Kushnick, *“We are here because you were there: Britain’s Black Population”* 7:2 Trotter Review 17 (1993).

Mackenzie Nelson, *On Cologne, #Einearmlaenge and the Instrumentalization of the Feminist Movement*, January 7, 2016, Heinrich Boll Stiftung Blog, *available at* https://us.boell.org/2016/01/07/cologne-einarmlaenge-and-instrumentalization-feminist-movement.

What have been the rationales offered by the German government’s to Nama-Herero activists seeking recognition for colonial-era genocide? What is the legal basis for redress or reparations for Nama-Herero claimants in Germany, and what role does the U.S. legal community play in such efforts? Does the U.S. have a colonial history? What are the options between colonization and independence? Why don’t Americans need a passport to visit Puerto Rico? What does Louis Kushnick mean when he references the saying, *“We are here because you were there”* to link colonialism and migration? How does the problem that German Chancellor Angela Merkel referred to as “failed multiculturalism” manifest itself in German immigration law and policy? What legal or non-legal responses should social justice lawyers have to address contemporary immigration law and policy? How should progressives analyze the recent sexual attacks in Cologne, Germany on New Year’s Eve 2015?

1. Class 5: 8/2/16 11:10am-1pm Comparative Genocide: *Paragraph 175*

Robert G. Moeller, *The Homosexual Man is a “Man,” the Homosexual Woman is a “Woman”: Sex, Society, and the Law in Postwar West Germany* 4:3 Journal of the History of Sexuality 395 (Special Issue, Part 2: Lesbian and Gay Histories) (1994).

Eric N. Jensen, Excerpt from *The Pink Triangle and Political Consciousness: Gays, Lesbians, and the Memory of Nazi Persecution* 11:1/2: Journal of the History of Sexuality 319 (Special Issue: Sexuality and German Fascism) (2002).

What was “Paragraph 175,” when was it first promulgated, and how was it amended during the Third Reich? How was being gay “racialized” under the Nazis? How was anti-gay persecution gendered during this era? Were lesbians seen as more or less threatening than gay men to the Third Reich? Why? What were the experiences of gay and lesbian prisoners in concentration camps? Were they free from persecution after WWII and the defeat of the Nazi regime? What does the German Federal Constitutional Court decisions in the *Gunther R.* and *Oskar K.* case say about the definition of equality in post-war Germany? What is the public/private distinction in German law? How did the Court’s decision reflect historically specific post-war anxieties in West Germany about gender, family, and nation? Explain some of the reasons the author offers for “forgetting” the history and trauma behind the “pink triangle” in Germany? What is the relationship between the development of political consciousness and a “collective memory” about an unspeakable past? How has this process of collective memory-making and consciousness-raising about LGBT persecution developed in the U.S. and Germany in the decades following WWII?

1. Class 6: 8/3/16 9-10:50am Comparative Genocide: *A People Uncounted*

Romani Rose, *The Sinti and Roma During the Holocaust and Today*, 42 UN Chronicle 66 (2006).

Ian Hancock, *Responses to the Porrajmos: The Romani Holocaust,* *in* Is the Holocaust Unique?: Perspectives on Comparative Genocide 75-102 (Alan S. Rosenbaum, ed., 3rd ed. 1996).

What constitutes genocide, and how should international actors respond? Can genocides be productively compared without competitive victimization or relativizing a particular group’s suffering? What does the decades-long struggle to have central memorial sites and monuments for the various victims of National Socialism say about the “politics of memory”? What does it say about the difficulty of Germany signaling an enlightened, post-war, post-unification national identity that takes responsibility for its oppressive past?

1. Class 7: 8/3/16 11:10a-1pm CG: Debility & Dehumanization

Patricia Heberer, *The Nazi “Euthanasia” Program,* in The Routledge History of the Holocaust 385-96 (Jonathan C. Friedman, ed., 2011).

D. Marie Ralstin-Lewis, *The Continuing Struggle against Genocide: Indigenous Women's Reproductive Rights*, 20:1 Wicazo Sa Review 71 (Colonization/Decolonization, II, 2005).

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

To what extent does the concept and implementation of “informed consent” operate as a legal “alibi” of sorts for sterilization abuse? What might informed consent really entail? Compare the role that gender plays in genocide of a people. What genocidal policies, practices, and laws were enacted against native women in the U.S. according to Ralstin-Lewis? In what way is this “logic of elimination” gendered according to D. Marie Ralstin-Lewis? How is the contemporary treatment of indigenous women linked to earlier historical patterns of genocide towards the U.S. native population? Consider also the role of gender, sexuality, race and identity throughout the comparative genocide segment. How do they interact in the deployment of genocidal national laws and policies under the Third Reich? How are idealized notions of the nation/fatherland/family interconnected and race-d, gendered, sex-ed classe-d and “abili-fied”? How have these repudiated definitions of the nation, family, and citizen reemerged in contemporary debates, discourse, and politics in Europe, the U.S. and elsewhere?

1. Class 8: 8/3/16 3-5:30pm Comparative Genocide: Field Trip #2:

 Walking Tour of Holocaust Memorials

## Meet at the T4 - Memorial and Information Centre for the Victims of the Nazi Euthanasia Program at Tiergarten Straße 4 (10 mins. walk from Potsdamer Platz station, which is 2 stops from Friedrichstrasse S1 S-Bahn station towards Wannsee), no later than 3pm sharp.

1. Class 9: 8/4/16 9-10:50am Comparative Genocide: Discussion & Law

Wollheim Memorial, German Federal Compensation Law (January 1956).

German Federal Court on Roma Sinti reparations (January 1956).

Appeal of Gunter R. and Oscar K., West German Federal Constitutional Court *Entscheidungen des Bundesverfassungsgerichts*, vol. 6 (Tiibingen, 1957), pp. 398-99.

Press Release, Editors of Justice, New & Politics, Workup of discriminatory judgments of the Federal Court for NS Genocide . . ., March 12, 2015.

Francisco Valdes, *The Status-Conduct Distinction and Sexual Orientation: Exploring a Constitutional Conundrum*, 50 Guild Prac. 65 (1993).

Stacy Patton and David J. Leonard, *Why Eric Garner was blamed for dying*, BBC News Magazine (Op-Ed, Dec. 8, 2014).

International Center for Prison Studies, Prison Policy Initiative, Infographic on Incarceration Rate by Country and for African Americans (2010).

Compare the legal rationale by German courts to deny Roma/Sinti survivor compensation in 1956 and to uphold the convictions of gay men convicted under infamous Nazi-era Paragraph 175 (prohibiting sex between men) a year later in 1957 with the legal reasoning in *Romer v. Evans*, as opposed to that in *Bowers v. Hardwick*. How would you describe in terms of constitutional argument, the basis for denying Roma/Sinti compensation or *Gunter R.* or *Oscar K*.’s appeal? To what extent does the “status/conduct” distinction continue to shape the legal response to Roma/Sinti discrimination in Europe? To what extent does the status/conduct distinction shape legal and public response towards disproportionate police violence against African Americans? . . . towards mass incarceration of African Americans? Consider the legal definition of genocide, advocated by Rafael Lemkin. Under this definition, would the mass killing of Roma and Sinti or LGBT victims during WWII constitute genocide? What are the key elements to the legal definition of genocide? Does the legal definition of genocide suggest that no genocides occurred before WWII? What are the benefits/pitfalls to a restrictive definition of genocide according to David Stannard?

1. Class 10: 8/4/16 11:10a-1pm Forced Labor: U.S. Slavery

Cheryl I. Harris, *Finding Sojourner’s Truth: Race, Gender, and the Institution of Property, in* Kevin R. Johnson, Mixed-Race America and the Law 237 (2003).

Edward Baptist, *What* The Economist *Doesn’t Get about Slavery—and my Book*, posted on politico.com, September 7, 2014, *available at* <http://www.politico.com/magazine/story/2014/09/economist-review-slavery-110687?o=1>

Editorial Board of The Economist, *Our Withdrawn Review: Blood Cotton*, The Economist, September 4, 2014 *available at* <http://www.economist.com/news/books/21615864-how-slaves-built-american-capitalism-blood-cotton>

Douglas Blackmon, *Hard Time: From Alabama’s Past, Capitalism and Racism in a Cruel Partnership*, The Wall Street Journal, July 16, 2001.

Most historians can trace the ways in which the laws of slavery racialized forced labor, differentiating indentured European servants from enslaved Africans. However, recent feminist accounts of history have begun to focus on the ways in which the “peculiar institution” created a “sexual economy of slavery.” How does Prof. Harris analyze the ways in which nineteenth century property laws treated white and enslaved African women comparatively? What was the “pushing system” according to Edward Baptist, and what does it reflect about the level of violence required for enslavement? Consider the recent controversy over The Economist’s review of Baptist’s book. What does this controversy say about the U.S.’s public history on slavery? To what extent did abolition and the 13th Amendment end slavery? How does the world that Douglas Blackmon capture compare to slavery during the Jim Crow era?

1. Class 11: 8/8/16 9-10:10am Forced Labor: U.S. Slavery

Adrienne Davis, *“Don’t Let Nobody Bother Yo’ Principle”: The Sexual Economy of American Slavery, in* Sister Circle: Black Women and Work (S. Harley, ed., 2002).

Stephen Small, *Still Back of the Big House: Slave Cabins and Slavery in Southern Heritage*, Tourism, Tourism Geographies: An international Journal of Tourism Space, Place and Environment, DOI: 10.1080/14616688.2012.723042

Baptist challenges mainstream slavery historiography by asserting that contrary to dominant abolitionist narratives in the north describing the “peculiar institution” as inefficient and irrational relative to “free labor,” slavery was highly efficient and profitable. What is the legal significance of such a conclusion? How does such an understanding of the centrality of slavery to U.S. economic development challenge theories about the free market and free labor? How does Adrienne Davis’ conceptualization of the “sexual economy of slavery” challenge dominant understandings of slavery as an economic system of exploitation? According to Blackmon, when and why did slave-like forced labor end in the U.S.?

1. Class 12: 8/8/16 10:30am-1pm Forced Labor: WWII Concentration Camp Labor

Wolfgang Sofsky, The Order of Terror: The Concentration Camp (1999).

Robert Sommer, *Camp Brothels. Forced Sex Labour in Nazi Concentration Camps, in* Brutality and Desire: War and Sexuality in Europe’s Twentieth Century 169 (Dagmar Herzog ed., 2009).

# Jane Caplan, *Gender and the Concentration Camps, in* Concentration Camps in Nazi Germany: The New Histories (Jane Caplan and Nikolaus Wachsmann, eds., 2010).

Sofsky describes how arbitrary terror and routine violence were deployed in Nazi concentration camps to produce “terror labor.” According to Sofsky, does the Third Reich’s descent into barbarism represent a temporary lapse, or is it of a piece with modernity? How should one morally and legally account for slave labor during World War II among some of the most profitable German companies? Sommer details a little-known chapter in WWII history—the use of forced sexual labor by women in concentration camps to provide work incentives to male forced laborers. Why do you think such a history is so difficult to excavate? How does Nazi policy toward prostitutes and the regulation of forced sexual labor at Ravensbruck reveal about the Third Reich’s race and gender-based ideologies? According to Jane Caplan, does “gender matter” when it comes to the study of concentration camps? If so, why or how?

1. Class 13: 8/9/16 9am-5pm Field Trip #3: Ravensbruck Concentration Camp

Meet in front of "Exit South" of the new main Hauptbahnhof train station - Washingtonplatz, no later than 9am sharp.

1. Class 14: 8/10/16 9:00-10:50am Forced Labor: Discussion & Law

*Princz v. Federal Republic of Germany*, 26 F.3d 1166 (D.C. Cir. 1994), *cert. denied.,* 513 U.S. 1121 (1995).

Ta-Nehisi Coates, *The Case for Reparations*, The Atlantic (June 2014).

How do international law and norms impact upon the claim for reparations and restitution by victims of the Third Reich? for the U.S. movement for reparations and reparations for slavery? How has the modern German state responded to claims by survivors for restitution or reparations? What are the legal barriers to reparations for slavery in the U.S.? Compare the discourse on reparations for forced labor in civil society in Germany and the U.S. What role do cultures of remembering historical traumas play in shaping the public discourse and law of reparations?

1. Class 15: 8/10/16 11:10a-1pm Course Conclusion: The Politics of

 Remembering & Forgetting

Paul A. Shackel, *Heyward Shepherd: The Faithful Slave Memorial* 37:3 Historical Archaeology*:* Remembering Landscapes of Conflict 138 (2003).

Alf Lüdtke, *“Coming to Terms with the Past”: Illusions of Remembering, Ways of Forgetting Nazism in West Germany*, 65:3 The Journal of Modern History 542 (1993).

Compare and contrast the development of post-bellum U.S. and post-unification Germany. How does each remake itself into a post-war “new nation” in the face of historical traumas? What role do public monuments and civic remembering play in the creation and redefinition of the post-trauma nation-state? What role do laws play in the public act of remembering and in the consolidation of the redefined modern nation-state? How do you compare the emphasis on remembering historical trauma in Germany vs. the U.S.? What connection is there, if any, to the culture of remembering and the environment for reparations in each country?

**VII. *Field Trips***

1. August 1, 2016: Field Trip #1 (Colonialism and Migration): Walking Tour: Germany and Its Colonial Past, Tour of Afrikanisches Viertel (African Quarter) in Wedding
2. August 3, 2016: Field Trip #2 (Comparative Genocide): Forgotten Holocaust Memorial Victims: Memorial to Victims of the Nazi Euthanasia Program; Memorial to the Sinti and Roma of Europe Murdered under the National Socialist Regime; Memorial to Homosexuals Persecuted under Nazism; ending at Memorial to the Murdered Jews of Europe.
3. August 9, 2016: Field Trip #3 (Forced Labor): Ravensbruck Concentration Camp

***VIII. Miscellaneous***

***A. Office Hours:*** There will be 30 minutes of office hours immediately after class each regular 9am-1pm day except on Field Trip days.

***B. Learning Accommodations*:** Students seeking disability-related accommodations are required to register with DePaul’s Center for Students with Disabilities (CSD) enabling you to access accommodations and support services to assist your success. The law school’s contact location and phone are in the loop campus.

* Loop Campus – Lewis Center #1420 – (312) 362-8002

Students are also invited to contact course instructors privately to discuss your challenges and how faculty may assist in facilitating the accommodations you will use in this course. Such conversations are best undertaken early in the term and our conversation will remain confidential.

***C. Plagiarism*:** DePaul University is a learning community that fosters the pursuit of knowledge and the transmission of ideas within a context that emphasizes a sense of responsibility for oneself, for others and for society at large. Violations of academic integrity, in any of their forms, are, therefore, detrimental to the values of DePaul, to the students’ own development as responsible members of society, and to the pursuit of knowledge and the transmission of ideas. Violations include but are not limited to the following categories: cheating; plagiarism; fabrication; falsification or sabotage of research data; destruction or misuse of the university’s academic resources; alteration or falsification of academic records; and academic misconduct. Conduct that is punishable under the Academic Integrity Policy could result in additional disciplinary actions by other university officials and possible civil or criminal prosecution. Please refer to your Student Handbook or visit Academic Integrity at DePaul University (http://academicintegrity.depaul.edu) for further details.