**DePaul University College of Law**

***Law & Critical Social Justice***

**Study Abroad Program in Berlin**

(July 18-July 30, 2016)

***Intersectionality & Human Rights Syllabus***

Profs. Sumi Cho & Gil Gott (3/12/16 draft)

1. ***Course Description:***  This 2-credit course will examine how non-governmental organizations (“NGO’s”) work to alleviate structural disadvantage and social injustices faced by vulnerable populations of migrants and refugees in Berlin. Students will learn about critical theories and concepts such as “intersectionality,” “femonationalism” and “performative identity” to see how they might be useful to human rights lawyering. Students will gain valuable experience by applying critical theory and legal training/skills to address some of the most vexing on-the ground problems in contemporary Europe. A major focal point involves comparative analysis of U.S. and European/German approaches to antidiscrimination and human rights laws given differing histories, legal systems, and demographics. Through partnerships facilitated by DePaul’s Steans Center for Community-based Service Learning, students will assist leading NGO’s on contemporary problems and challenges faced by their constituents confronting multiple forms of discrimination—migrant women and children as well as migrants with minority religions, cultures, or gender/sexual identities.
2. ***Learning Outcomes:***
3. **Critical Theory Definition and Application**: Students will be able to define and apply intersectionality theory and related concepts, identify how such critical theories and concepts travel outside the U.S. and examine how such theories and concepts may be useful to the study of human rights issues and international law to address the problems confronting groups facing multiple sources of subordination.
4. **EU Asylum & Human Rights Law**: Students will be able to describe the origins of refugee law and EU Asylum law and to identify the EU’s regulatory scheme and judicial system for asylees. Students will further be able to assess the interaction between EU asylum law and human rights norms.
5. **Community-based Service Learning**: Students will be able to apply legal knowledge developed in the course to analyze and address the contemporary problems confronting intersectional subjects in Berlin. Students will be able to communicate effectively with Berlin NGO’s working with migrant and refugees to deliver an end product containing evidence-based research on a question developed by the NGO and course instructors. Students will be able to communicate effectively with one another in a collaborative team to define the project, division of labor and requisite timetables to produce an effective end product by the deadline provided.
6. ***NGO CbSL Partners:***
7. **KuB,** orContact and Consultation Center for Refugees and Migrants in Berlin-Kreuzberg (Kontakt- und Beratungsstelle für Flüchtlinge und Migrant\_innen e.V. – KuB), is a registered non-profit association whose purpose is to provide support and consultation services for refugees and migrants from all over the world in matters concerning not only social and residence law, but also psychosocial and other existential questions. The organization is committed to the notion that all men and women are entitled to a secure residence status as well as equal political, social, and economic opportunities. Students working with KuB will be conducting a “best practices” analysis of service delivery by NGO’s and volunteer lawyers.
8. **ReachOut Berlin** is known for counseling and educational work against right-wing extremism and racism in Berlin. ReachOut is aimed victims of by extremist right-wing, anti-Semitic, and racist attacks. The organization aims to strengthen victims in their autonomy and to raise public awareness of the extent and consequences of discrimination and racism. There are two types of clients that ReachOut serves—those victimized by individual perpetrators, and those who subjected to state-based or police violence. Students will work with ReachOut Berlin on a state-based/police violence project to curate the best research on Freedom of Information Act (FOIA) strategies that might be borrowed from the U.S. to compel racial profiling data compiled by state officials in Germany.
9. ***Format:*** The course will be team taught, emphasizing comparative U.S. and German/European perspectives throughout the course. 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 incorporates praxis-oriented learning by encouraging students to apply classroom legal and theoretical learning to actual problems confronted by segments of Berlin’s population suffering from multiple sources of discrimination. Through these community partnerships, students have the opportunity to assess the extent to which critical theories, human rights norms, laws, and institutions prove helpful to solving such everyday problems.
10. **Course Requirements & Evaluation:**
11. ***Attendance and Participation*** (20 pts.): Half your grade for this requirement will be based on classroom and site visit attendance which is mandated by ABA regulations for summer study abroad programs. The other half of your grade will be based on your in-class and site visit participation, as demonstrated by your thoughtful, prepared, and consistent discussion of the required readings, study questions, and assignments.
12. ***Final Exam*** (40 pts.): There will be a take-home essay and the prompt is included at the outset of class. You final exam must be e-mailed to Lawrence Arendt at larendt@depaul.edu no later than Saturday, July 30th at 1pm Berlin time. Students are responsible for checking successful transmission of their final exam by checking your sent mail for confirmation. Anticipate and plan for internet service issues if you plan to be traveling after the conclusion of the course. Please select a 4-digit number you can remember for the exam name sheet and use this number for your final exam not your name. Place exam number in the upper right-hand corner of your document, along with your word count, excluding any footnotes. You may cite up to three sources outside of the course materials but all other citations must be to the materials engaged in the course. Please place outside sources in **Bold** to differentiate them.

An “A” paper will answer the various questions in the prompt by organizing a *clear thesis* (see description below), *amply footnoted by evidence* (antithesis-thesis-evidence) that details sources studied in the course with a *coherent organizational scheme and logic*. U.S. students should use Bluebook citation form for law reviews, citing to author, title, source, date, page numbers and “pinpoint” cites where appropriate.

Thesis Statements: A proper thesis should be able to be stated in one sentence (two at most) and should contain the following components: 1) Oppositional Clause: The “Although” clause that states upfront, the competing argument the author is arguing against; 2) Thesis Argument: The Thesis Argument is the author’s main argument or “intervention” that s/he is making into the scholarly/policy debate; 3) Because Clause: The Because Clause contains the evidentiary support for the thesis statement, and should ideally signal the structure of the evidence laid out in the article.

1. ***NGO-based CbSL Project*** (40 pts. total):
2. **Final CbSL Group Paper** (30 pts.): In small groups, students will work on a research project with a leading Berlin NGO to address a problem or issue identified. Each group will submit a defined end product as part of the final grade, e-mailed to larendt@depaul.edu no later than 11:59pm September 1st, Chicago (Central Standard Time). Refer to your specific CbSL project description under D2L for more details. Please use names on your final submission, since the projects are pre-assigned. Include a paragraph or chart in an Appendix detailing the division of labor for your final report.
3. **CbSL Individual Reflection Paper** (10 pts.): Each student will write a brief reflection paper of up to 800 words, excluding footnotes, based on the following prompt:

Community-based Service Learning works best as a “two-way street,” where both students and the community organization benefit from the collaboration. How would you evaluate your experience engaging Berlin NGOs in a study abroad course? Do you see your work contributing to the organization’s goals? If so, how? And if not, why not? In order to answer this question, consider how the CbSL project on which you worked might contribute to a more effective transnational HR regime to benefit vulnerable populations confronting multiple discriminations. In addition, discuss what you have gained personally from this CbSL/study abroad experience that might be helpful or applicable to your legal education and professional career.

1. ***Course Materials:*** A carefully curated set of readings will be distributed for U.S. students based in Chicago at the mandatory pre-departure orientation in late-April or early May 2016. If you are not based in Chicago, individual arrangement will be made to provide your reading packets. Any supplemental materials will either be distributed in class, via html link, or posted under the “Content” tab of our course’s D2L website. A one-page reading assignment chart will be included in your reading packet. The packet will be Xeroxed onto 3-hole punch paper, so you may want to purchase a 1.5”-2” binder for the reading packet.

***VI. Tentative Class Schedule & (draft only)***

**Unit 1**. Monday, 7/18/16 5-8pm: Intersectionality & Human Rights from the U.S. to Europe, Hosted at European Center for Constitutional and Human Rights (ECCHR) **[READER pp. 1-24; D2L Content Tab]**.

Kimberle Crenshaw, *Mapping the Margins* (D. Kelly Weisberg, ed. 1993).

Gail Lewis, *Unsafe Travel: Experiencing Intersectionality &Feminist Displacements*, 38: 4 Signs 869-92, *Intersectionality: Theorizing Power, Empowering Theory* (Summer 2013).

**Questions:** How does Crenshaw reshape domestic violence work theoretically and practically through her *Demarginalizing* article? What larger applications does Crenshaw’s intersectional approach have for antidiscrimination/international law? According to Gail Lewis, how does the concept of intersectionality “travel” or translate across the Atlantic?What are the specific challenges of “doing Critical Race Theory” and intersectionality theory in Europe? Is the U.S. critique of post-racialism applicable to the German law and society? Why is intersectionality relevant to the law? Human rights?

**Unit 2.** Tuesday, 7/19/16 4-7:40pm: NGO Site Visits to KuB and ReachOut Berlin, Oranienstrasse 159

Meet at Starbucks Friedrichstrasse 96 (south side in shaded area) no later than 3:20pm to travel together to the sites. Otherwise, you may meet at the site. We will start at the KuB office, but be sure to leave adequate travel and “getting lost” time. Both offices are located in Kreuzberg (Oranienstraße 159) near the Moritzplatz U8 Ubahn station (when exiting Moritzplatz station, be sure to head east on Oranienstraße toward Prinzessinnenstraße. Note that the street numbers are not always sequential, so numbers may be decreasing then increasing, mixing odd and even street numbers. If you see a sign for “Max und Moritz” restaurant, you are headed in the right direction, as the offices are just before the restaurant on the same side of the street.)

 **Unit 3.** Wednesday, 7/20/16 4-6pm: Refugee Solidarity Tour

Meet at Oranienplatz for start of tour no later than 3:50pm. Oranienplatz is only one block further east from the KuB/ReachOut Berlin offices on Oranienstrasse.

**Unit 4**. Monday, 7/25/16 9:00-10:50am: Introduction to Critical Theory & International Law

Maxwell Chibundu, *Sources of International Law: What Systems Allow International Law to Come Into Being?*, Think Africa Press (November 2, 2014).

Harold H. Koh, *Transnational Legal Process*, 75 Neb. L. Rev. 181 (1994).

**Questions**: What are the four sources of international law according to Chibundu? How is the history of colonialism relevant to the development of international law? How does formal equality among nation-states pose problems for the system of international law? How does transnational legal process theory explain relative compliance with, and the expansion of, the international or “transnational” law?

**Unit 5.** Monday, 7/25/16 11:10am-1pm: Overview of German National Law

Dieter Grimm, The Basic Law at 60 – Identity & Change, 11 German L. J. 33 (2010).

Susanne Baer, *The Basic Law at 60 – Equality and Difference: A Proposal for the Guest List to the Birthday Party*, 11 German L. J. 67 (2010).

REVIEW ONLINE (Not in Reader or D2L): <https://www.law.georgetown.edu/library/research/guides/germanlegalresearch.cfm>

**Questions**: Based on Dieter Grimm’s description of Germany’s Basic Law, how does it compare with the U.S. Constitution, particularly with regards to the conceptualization of “fundamental rights”? Federalism? How were enumerated fundamental rights restricted under the Weimar Republic by “legal science” of the day? How is the significance of the *Luth* case decided by Germany’s Federal Constitution Court? How did establishment of the European Community and European Union impact upon the hierarchy of laws/institutions within Germany? According to Dr. Susanna Baer, how does Germany’s “damaged masculinity” in the post-war era debates about gender equality provisions to the Basic Law? Did the 1994 revisions to Article 3 Section 2 protect against discrimination on the basis of sexual orientation? How do debates within the U.S. about antidiscrimination and constitutional law compare to those in Germany in 1948 and 1994? On affirmative action? On “equality of opportunity” vs. “equality of results” discourse? On whether “because of sex” includes sexual orientation? On whether acknowledging protection for minority groups constitutes “special rights” beyond “equal rights”? On colorblindness? What types of “blindness” to different inequalities does Article 3 Section 2 perpetuate? Do such blindnesses create a “hierarchy of inequalities,” where some inequalities are more important than others? What specific revisions to Article 3 does Dr. Baer suggest going forward to ensure minorities are not at the mercy of majorities? How does one do research on German national law? What is juris or beckonline and how do they work?

**Unit 6**. Tuesday, 7/26/16 9-10:50am: Introduction to EU Asylum Law

Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967. **[D2L Content Tab: Reference]**

# Harald Dorig, *German Courts and their Understanding of the Common European Asylum System*, 25:4 Int’l J. of Refugee L. 768 (2013).

Lillian M. Langford, *The Other Euro crisis: Rights violations under the Common European Asylum System and the unraveling of EU solidarity*, 26 Harv. H. Rts. J. 217 (2013).

REVIEW ONLINE: European Commission’s Common European Asylum System links available at<http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm>(Click on and read the following links under Common European Asylum System panel on the left: [Identification of applicants (EURODAC)](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index_en.htm); [Country responsible for asylum application (Dublin)](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/index_en.htm); [Reception conditions](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm); [Asylum procedures](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index_en.htm); and [Who qualifies for international protection](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/refugee-status/index_en.htm)).

**Questions**: How does the qualification directive set forth new standards for admitting LGBT applicants under the “particular social group” exception to an otherwise strict EU asylum law? How has migration and asylum policy in Germany developed since the end of World War II in Germany and Europe? How did re-unification impact Germany’s migration and asylum policy? The Balkan and Gulf Wars? What are the three sources of tension that Langford identifies to a unified EU asylum policy? What is the Dublin II Regulation and how has it contributed to a crisis within the EU in terms of asylum law and policy? How does intersectional approach help us to understand the limitations inherent in the Qualification Directive as critiqued in the various readings? The Concealment requirement? How does this logic compare to that of Clinton-Bush era “Don’t Ask, Don’t Tell” policy in the military that allowed LGBT people to serve, but only if they did not “tell” that they were gay?

**Unit 7.** Tuesday, 7/26/16 11:10am-1pm: EU Asylum Law & Human Rights

Julian M. Lehmann, *Persecution, Concealment and the Limits of a Human Rights Approach in (European) Asylum Law—The Case of Germany v. Y and Z in the Court of Justice of the European Union*, 26:1 Intl. J. of Refugee L. 65 (2014).

Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40:4 Theatre Journal 519 (Dec. 1988).

Qualification Direction, or Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) (“Qualification Directive”). Council Directive 2011/95/EU of 13 December 2011 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (recast) (OJ 2011 L 337, pp. 9-36). **[D2L Content Tab: Reference]**

*X, Y, Z v. Minister voor Immigratie en Asiel* (CJEU, November 7, 2013). **[D2L Content Tab: Reference]**

**Questions**: What is Lehmann’s critique of how the CJEU adopted a narrow human rights approach to defining persecution in *Germany v. Y & Z*? How have administrative and judicial interpretations of the Qualification Directive promoted a concealment requirement that operates a “status-conduct” distinction in asylum law? How would Judith Butler’s performativity theory critique such a concealment or discretionary requirement? How does EU asylum law and accompanying qualification and procedural directives structure performative expectations for LGBT applicants?

**Unit 8**. Wednesday, 7/27/16 9-10:50am: NSU Case: Right-Wing & State Violence against Migrants of Color

ACLU Bust Card

NSU Articles (available on D2L site)

Charles H. Martin, *Internationalizing "The American Dilemma": The Civil Rights Congress and the 1951 Genocide Petition to the United Nations*, 16:4 Journal of American Ethnic History 35 (1997).

We Charge Genocide, *A report prepared for the United Nations Committee Against Torture on the occasion of its review of The United States of America’s Third Periodic Report to the Committee Against Torture* (2014).

**Questions**: What would a ReachOut Know Your Rights “Bust Card” look like based on the ACLU model? What does the NSU case say about the state of colorblindness in modern German society? Should the state continue to pursue such a policy in light of the NSU cases and resurgence of far right violence and organizing? How does the racialization process compare between the U.S. and Germany? Who is considered “Black” or a “person of color” in each country? What are the terms used to refer to difference in both languages? What is official state policy on the role of race in policing? What are the promises and pitfalls of a grassroots organizing campaign against legal and extra-legal violence as deployed in the 20th and 21st century “We Charge Genocide” strategies to the various U.N. petitions and actions?

**Unit 9.** Wednesday, 7/27/16 11:10am-1pm: Post-racial State Violence: *ID Without Colors*

Sumi Cho, *Post-racialism*, 94 Iowa L. Rev. 1589 (2009).

German Racial Profiling Cases (available on D2L)

**Questions**: How does Cho’s definition of post-racialism in the U.S. map onto European engagements with race and law? What are the specific challenges of “doing Critical Race Theory” in Europe and Germany in particular? How might the German legal system move toward substantive equality under its antidiscrimination/human rights models while it has an identity-blind approach to injuries and remedies for many of its minority groups? How do the “disco cases” discussed in Unit 5 overlap with the issues of Unit 9? What are the comparative challenges of combatting racial profiling in Germany versus the U.S.?

**Class 10.** Thursday, 7/28/16 9-10:50am: CbSL Group Project Research Plan Presentations & Feedback Sessions

**Come prepared to present your group’s research plan for feedback from the class. You will have time for group conversations about your project.**

**Class 11**. Thursday, 7/28/16 11:10am-1pm: Conclusion: Toward Intersectional Human rights **[READER pp. 340-51]**.

Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 38:4 Signs 1019 (2013)(Special Issue: Intersectionality: Theorizing Power, Empowering Theory).

## Keina [Yoshida,](http://search.proquest.com.ezproxy.depaul.edu/indexinglinkhandler/sng/au/Yoshida%2C%2BKeina/%24N?accountid=10477) *Towards Intersectionality in the European Court of Human Rights: The Case of B.S. v Spain*, 21:2 [**Feminist Legal Studies**](http://search.proquest.com.ezproxy.depaul.edu/pubidlinkhandler/sng/pubtitle/Feminist%2BLegal%2BStudies/%24N/326333/DocView/1446225215/abstract/8FE06E7558BD4A0APQ/1?accountid=10477)[195](http://search.proquest.com.ezproxy.depaul.edu/indexingvolumeissuelinkhandler/326333/Feminist%2BLegal%2BStudies/02013Y07Y01%2423Jul%2B2013%243b%2B%2BVol.%2B21%2B%24282%2429/21/2?accountid=10477) (Jul 2013).

Vasuki Nesiah, *A Flat Earth for Lawyers Without Borders? Rethinking Current Approaches to the Globalization of Legal* *Education*, 5 Drex.L. Rev. 371 (2013).

**Questions:** Based on the articles for this course, what are the problems and possibilities of using human rights frameworks to address the concerns of intersectional subjects? How might transnational legal process advance an international intersectional approach? To what extent do substantive human rights laws assist with the NGO’s we’ve studied? To what extent do transnational legal strategies or processes further their work? Do Crenshaw’s analytic distinctions between structural intersectionality vs. political intersectionality help explain the types of challenges faced by ReachOut Berlin and Les MigraS better than antidiscrimination or human rights frameworks? Reflect on your work on your NGO CbSL project. To what extent might you describe intersectionality as a “method” for this work? If you consider it a method, then describe the components of that method. If it is not a method, then describe the substantive commitments or features of an intersectional analysis. How does Yoshida analyze the human rights claim of a Nigerian migrant woman for Spanish state violence using an intersectionality framework? To what extent did the European Court of Human Rights (ECtHR) recognize her intersectional claim? How did the Spanish government seek to dismiss her claim? What other types of intersectional claims might be made using the *B.S.* case as precedent? What are the pitfalls of and possibilities for global legal education according to Nesiah? In your own legal education experience, has the “plane left the hangar” in terms of legal global education—shifting the terms of debate from a whether question, to a how one?

**Closing Lunch**: 7/28/16 1-3pm, Location TBD.

***VI. Miscellaneous:***

***A. 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. There are two office locations: 1) Loop Campus – Lewis Center #1420 – (312) 362-8002; 2) Lincoln Park Campus – Student Center #370 – (773) 325-1677. 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. 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.

***B. Plagiarism*:** DePaul University promotes 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 are 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.