Legal Globalization and Comparative Law: Germany and the Development of International Courts

Southern Illinois University School of Law
Dean Cynthia Fountaine
Spring 2014
3 credits--Satisfactory/Unsatisfactory
Class: Tuesdays at 8:00-9:30 a.m.
Travel: March 6-16, 2014

COURSE DESCRIPTION:

This course will introduce students to the phenomenon of globalization and its impact on cultures and legal systems. This course will focus on current and historical topics of legal significance in Europe with particular emphasis on Germany. Students will spend the first portion of the semester learning about German history, culture, and legal systems, as well as about global governance with particular emphasis on international judicial tribunals. Several class sessions will be devoted to learning about Germany’s role in European and global legal and political
systems. The overall theme of the course will be to consider the phenomenon of globalization and, in particular, its impact on legal systems, as well as the use of international tribunals to address legal issues that have a global impact.

We will discuss the breakdown of the Rule of Law in Germany during WWII and how that has impacted the development of international courts in the post-war era. As part of our discussion, we will consider the role of lawyers during and after WWII, including Nazi lawyers and judges as well as lawyers and judges involved in the prosecution and defense of Nazi atrocities. We will also consider the role of Germany in the post-war global legal environment, and how international human and economic rights are protected in the post-WWII globalized world.

During Spring Break 2014, the class will travel to Germany and other European countries (Departure: Thursday, March 6; Return: Sunday, March 16, 2014). Though the schedule of activities will not be finalized until shortly before the departure, it is envisioned that the study trip will include visits to sites of historical and legal significance in Germany and to international courts. During the trip, we will visit Munich and Nuremberg in Germany, as well as Luxembourg, and The Hague and Amsterdam, The Netherlands. Our trip will include a visit to a Nazi concentration camp, and you will have an opportunity to visit other historical and cultural sites, such as Anne Frank’s home in Amsterdam and museums in various cities.

As part of this course, students will have reading assignments and will also watch relevant films. All students will make class presentations as assigned, post to the course blog, and participate in a group presentation to the first year class about their experiences in this course.

This course is offered for 3 credits, and will be graded on a Satisfactory/Unsatisfactory basis.

**Course Fee: $3,000**

The course fee includes all air travel, hotel accommodations (students will stay in multiple-occupancy rooms with other SIU Law students), most transportation (including transportation to and from all airports and rail transportation within Germany and Europe), some meals, and all group tours. This fee does not include the cost of books and course materials, most meals, all personal expenses, the cost of obtaining a passport and visa, and other expenses associated with preparing for the travel component of the course. The fee also does not cover any incidental costs associated with the trip, including but not limited to the cost of souvenirs and optional excursions and side trips. Students are responsible for all expenses that are not covered by the course fee. Your financial aid award might cover the costs associated with this course, including the course fee (your financial aid award is dependent on your particular circumstances). Please see Assistant Dean Judi Ray for further details.

**REQUIRED READING:**

The required texts for this course are:


(4) There are additional reading assignments that will be posted to the course TWEN page. There will also be assignments to watch films outside of class. These films will be available by check-out from me, or from Netflix, or on iTunes. You need not purchase them.

COMMUNICATION:

**Email**: The best way to reach me is by email. You should feel free to email me anytime at cfountaine@law.siu.edu. I will do my best to respond to your email within 24 hours (except on the weekend). If I don’t answer your email within a couple of days, please send me another email (because it is likely your email got lost either before or after it entered my inbox). Your email is very important to me, so please be sure to identify yourself in your email—preferably in the subject line—as being in this class so that I can distinguish your email from the many emails I get every day. Also, please be sure to include your full name somewhere in the email.

**Office**: I am usually in my office from 9:00 a.m. until 5:00 p.m. However, I frequently have meetings both inside and outside of the office during these times, and I am often out of town on law school business. This notwithstanding, I am delighted to talk with you in my office. The best thing to do is to see my assistant, Patty Lynn (plynn@law.siu.edu), or call my office (618-453-8761) to schedule an appointment.

**Class Facebook Page**: Please join the SIU Legal Globalization Germany 2014 Facebook page at https://www.facebook.com/groups/503655419729697/?bookmark_t=group. I hope this will give us a convenient forum to communicate, exchange ideas, share links to articles of interests, and—importantly—share pictures from our trip!

**Course TWEN Page**: Please register for the course TWEN page. I will post reading materials, handouts, and information to this page, and you will turn in your blog posts there.

**YOUR GRADE:**

This class will be graded on a Satisfactory/Unsatisfactory basis. In order to receive a Satisfactory grade, you must satisfactorily complete all of the course requirements, including leading class discussion on a chapter of *Guilt About The Past* (assigned reading), a presentation about one of the international courts, making a presentation in class on your assigned special topic, writing entries on the course blog as instructed, complying with the course attendance policy, participating in all of the non-optional components of the course trip, and participating in a presentation for the 1L class.
ATTENDANCE POLICY:

The School of Law’s attendance policy applies to this class. Since this course meets only once each week before spring break, it is very important that you attend each class. You are not permitted any unexcused absences. In extraordinary circumstances, with permission from me in advance, you may miss class. If you have an emergency that prevents you from obtaining permission in advance, you should send me an email as soon as possible thereafter explaining the extraordinary circumstances that prevented you from attending class as well as the emergency nature of the circumstances that prevented you from obtaining prior approval.

If you miss one or more classes without permission, you will receive a grade of Unsatisfactory in this course and you will not be permitted to travel with the group. (Please note: under these circumstances, your course fee will not be refundable because travel arrangements will already have been made).

During the study travel component of the course, you are required to attend all sessions that are not optional unless you are ill or some extraordinary circumstance prevents your attendance. You must obtain permission from me in advance in order to be excused from any of the required events during the study trip.

CLASS PRESENTATIONS:

You will be required to present and lead class discussion as follows:

(1) February 4: Lead a 15-minute discussion on your assigned chapter of the book Guilt About the Past.

(2) February 11: Make a 20-25 minute group presentation about one of the international courts. The courts to be considered are: (1) The International Criminal Court (ICC) (see http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx); (2) The International Court of Justice (ICJ) (see http://www.icj-cij.org/homepage/index.php); (3) The Court of Justice of the European Union (see http://curia.europa.eu/jcms/jcms/Jo2_7004/). Your presentation should provide an overview of (1) the history and development of the court; (2) the court's jurisdiction and operations; (3) any issues or controversies about the court; and (4) cases currently pending before the court. You will be able to find information about your assigned court on the court's website (see links provided) as well as from the assigned reading.

(3) February 18 or 25: Make a 20-minute presentation on an assigned topic relating to globalization. The topics are: Economics and Trade; Health; Terrorism and International Criminal Law; Speech and Media; Global Sports; Environment; Art and Intellectual Property; Privacy and Personal Rights. Topics will be assigned at the first class meeting. For your specific topic, you will give a brief overview of how the topic impacts or is impacted by legal globalization and, specifically, Germany's role, approach, or involvement in the topic. Note: you will make your presentation on either February 18 or 25, depending on your assigned topic.
(4) April 4: After we return from traveling, you will attend a session of the 1L Professionalism and the Law class on Friday, April 4 at 10:00 a.m. and give a presentation to the 1Ls about your experience in the class. The whole class will collaborate in preparing and delivering the presentation.

**WRITING ACROSS THE CURRICULUM REQUIREMENT:**

In order to comply with the School of Law’s Writing Across the Curriculum Requirement and to satisfy the requirements for this course, you are required to write at least 4 entries for the course blog during the travel component of the course. We will discuss this requirement in more detail in class.

The posts are due by 11:00 p.m. CST (Carbondale time) on the due dates. You should upload your posts to the course TWEN page and also email them to me at cfountaine@law.siu.edu. The posts must comply with the following requirements:

1. Three posts of 350 or more words are due as follows:
   a. Post #1 is due on Monday, March 10;
   b. Post #2 is due on Thursday, March 13;
   c. Post #3 is due on Sunday, March 16.

2. One reflective post of 500-1500 words about your travel experience is due on Sunday, March 23.

I encourage you to submit photos with your posts. Also, please note that you may turn in the posts earlier than the due date if you like.

**STUDY TRAVEL COMPONENT:**

The unique feature of this course is that it includes a 10-day study trip to Europe. The course is focused on Germany, but we will also visit Luxembourg, The Hague, and Amsterdam. The itinerary will be finalized shortly before we leave, but I will keep you posted as things come together for the trip.

The dates of travel will be as follows: You will depart as a group from the law school on March 6 and be transported by van to St. Louis, where you will board your flight to Munich, Germany. You will fly back to St. Louis from Amsterdam as a group on March 16, and be transported by van back to the law school. Although you are welcome to leave your car at the law school for the duration of the trip, I encourage you to arrange for someone to drop you off and pick you up if possible.

A few specifics:

1. Make sure your passport is valid for at least 90 days following our return date (March 16). You will not be permitted to enter Germany unless your passport is valid for at least 90 days after March 16.
2. If you have not already done so, please be sure to see Judi Ray and provide your passport information and fill out some emergency forms related to the travel portion of the trip. You will not be permitted to travel without having done this.

3. Although this trip will be fun and you will have ample free time while abroad, please remember that this is a study trip and not a vacation. A large portion of our time will be devoted to educational activities and you will have academic requirements to complete while we are traveling (in particular, you are required to post to the course blog at specific dates during the trip).

4. As we get closer to the trip, we will talk more about the specifics of packing. For now, you should be sure you plan to pack some professional attire; we will visit working courts, and you will need to dress appropriately for those visits. Also, plan to pack some very comfortable clothes and shoes; we will walk a lot and you will want to be comfortable. Beyond this, plan to pack light! We will be traveling by plane, train, and automobile, and you will have to carry your luggage with you. The last thing you want to do is be burdened by a gigantic suitcase in which you carry all your worldly possessions. I recommend a reasonable sized suitcase or backpack, preferably with strong wheels (that won't break when being lugged up and down steps and on cobblestone sidewalks), and one other bag or backpack for day trips. Note that your luggage, including your carry-on luggage, must comply with airline restrictions, including weight restrictions.

5. If you have any medical or other conditions that I need to know about, please let me know about them!

6. You will be staying in multi-occupancy rooms with other students of the same gender. These accommodations are included in the course fee. If you want to stay in a private room, you must notify me immediately (and in no event later than January 15). You will have to pay the extra cost of the room and you will not be eligible for any discount or refund from the course fee. Requests will be considered on a case-by-case basis and dependent on the availability of accommodations.

**CONDUCT EXPECTATIONS FOR THIS COURSE:**

You are expected to conduct yourself in a professional manner at all times in connection with all activities associated with this course, including in-class and outside-of-class activities that are conducted as part of this course. This means you should be respectful of others at all times. It is permissible for you to disagree and I encourage you to express your opinions, but you are expected to always do so in a respectful and courteous manner. During the travel component of the course, in particular, you will be an ambassador for SIU School of Law. Please conduct yourself accordingly.

**SIU EMERGENCY PROCEDURES NOTIFICATION:**

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our
control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, the Department of Safety’s website at www.dps.siu.edu (disaster drop down), and in the Emergency Response Guideline pamphlet. Know how to respond to each type of emergency. Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

TOPICAL SCHEDULE:

What follows is a general topical schedule for the semester with assignments. Please note: this schedule is tentative and is subject to change.

Class 1—January 14: Introduction to the Course; Introduction to Globalization; Introduction to German Language & Culture

Assignment:
(1) Read this Syllabus.

Class 2—January 21: Lawyers, Judges, and The Breakdown of the Rule of Law in Germany during WWII

Assignment:
(1) Watch the film Judgment at Nuremberg (1961 movie with Spencer Tracy, Burt Lancaster, and others). This movie depicts the trial of four German judges accused of war atrocities based on their judicial rulings. The movie is a fictionalized account of the actual “Judges’ Trial”—the trial of Nazi judges and lawyers—that took place in Nuremberg in 1947.
(2) Read Robert Aitken, Hans Frank: Hitler’s Lawyer, 29 No. 1 Litig. 53 (2002) (electronic copy will be posted on TWEN).
(3) Read Harold Baer, Jr., The People’s Court in Nazi Germany (chapter from Judges Under Fire: Human Rights, Independent Judges, and the Rule of Law (2011); electronic copy will be posted on TWEN).
(4) Watch the film Sophie Scholl: The Final Days (2005 film available on Netflix or you can borrow the DVD from me). This film is about the prosecution of Sophie Scholl and other members of The White Rose Movement, which is referenced in the Baer reading. Sophie Scholl, her brother, and their friend were tried, convicted, and executed by the Nazis for alleged treason. Their crime was distributing leaflets opposing the Third Reich. This film is a very accurate record of what happened in the case against Sophie, her brother, and their friend, and it also accurately depicts how Nazi investigations and trials were conducted.
**Class 3—January 28:** International Justice in the Aftermath of WWII: Prosecuting the Holocaust

*Assignment:*
(2) Watch the film *The Reader* (2008 film available on Netflix or you can borrow the DVD from me). This film is based on an excellent book written by Bernhardt Schlink, the German lawyer who wrote *Guilt About the Past* (which is one of the course texts). It addresses the issue of prosecution of lower level Nazi guards who committed atrocities while following the orders of their superiors. The story is told through the eyes of a German man who had been involved with the defendant at a very young age, and was observing her trial while he was a law student.

*In class:* We will watch the film *The Nuremberg Trials* (American Experience, PBS Home Video Documentary).

**Class 4—February 4:** The Legacy of WWII: Germany's Role in the Post-WWII World

*Assignment:*
(1) Read Bernhard Schlink, *Guilt About the Past.*
(2) Watch *The Presence of the Past,* a 2009 speech by Bernhardt Schlink hosted by the Institute for Human Sciences at Boston University. The video of this speech is available at [http://www.youtube.com/watch?v=YVUEhUN8pls](http://www.youtube.com/watch?v=YVUEhUN8pls).
(3) Lead a 15-minute discussion on your assigned chapter of this book (5-8 minutes of introduction/summary of chapter and 7-10 minutes of discussion).

**Class 5—February 11:** Nuremberg to the ICC: The Development of International Courts and the International Protection of Human and Economic Rights

*Assignment:*
(2) Read Alex Warleigh-Lack, *The Evolution of European Integration* (chapter from *European Union: The Basics* (2d ed. 2009); electronic copy will be posted on TWEN).
(3) Make a 20-25 minute group presentation about one of the international courts. The courts to be considered are: (1) The International Criminal Court; (2) The International Court of Justice; (3) The Court of Justice of the European Union.

**Class 6—February 18:** Germany’s Role in a Modern, Globalized World: Special Topics (Student Presentations)

*Assignment:*
For your specific topic, you should plan to give an overview of how the topic impacts or is impacted by legal globalization and, specifically, Germany's role, approach, or involvement in
the topic. Your presentation should be 20 minutes long. Note: you will make your presentation on either February 18 or 25, depending on your assigned topic.

Topics:
(1) Economics and Trade
(2) Health
(3) Terrorism and International Criminal Law
(4) Speech and Media

Class 7—February 25: Germany's Role in a Modern, Globalized World: Special Topics (Student Presentations)

Assignment:
For your specific topic, you should plan to give an overview of how the topic impacts or is impacted by legal globalization and, specifically, Germany's role, approach, or involvement in the topic. Your presentation should be 20 minutes long. Note: you will make your presentation on either February 18 or 25, depending on your assigned topic.

Topics:
(1) Global Sports
(2) Environment
(3) Art and Intellectual Property
(4) Privacy and Personal Rights

Class 8—March 4: Final Travel Preparation

Travel: March 6-16

Last Class—March 25: Plan presentation for 1Ls

Presentation for 1Ls: Friday, April 4 at 10:00 a.m.

SUGGESTED RELATED BOOKS AND FILMS:

These books and films are not required, but are related to the course and will enhance your experience as well as your understanding of the legal and cultural context of the material we will study in this class.

Books:

Diary of a Young Girl: The Definitive Edition by Anne Frank. Undoubtedly you have read Anne Frank's famous diary. However, this recent edition contains some previously omitted material, making it worth another read. Also, we will visit Anne Frank's house in Amsterdam, so reading the book again now will refresh your memory and make the visit more meaningful.
In the Garden of Beasts by Erik Larson. This is an outstanding work of non-fiction that tells the compelling story of the US Ambassador to Germany and his family as they moved to Berlin to take over this post in a time when relationships with Germany's government under the leadership of chancellor Adolf Hitler was becoming more and more challenging. I highly recommend it for the history of what was happening in the US and in Germany in 1933, and because it is a well-written story.

Night by Elie Wiesel. This is the story of the author's experiences as a prisoner in a Nazi concentration camp.

The Reader by Bernhard Schlink. Written by a German lawyer (and the author of Guilt About the Past), this book deals with many of the legal complexities of prosecuting lower level officers for war crimes. The story is told from the perspective of a German law student and lawyer. We will watch the film version for class, but the book is excellent if you have time to read it.

The Monuments Men by Robert M. Edsel. Story about a group of Allied soldiers who were responsible for protecting Europe's great art treasures at the end of WWII. The movie version of this book should be coming out in early 2014.

Films (all are available on Netflix or you can borrow the DVD from me):

The Lives of Others (2006). This film depicts East Berlin in the period before the fall of the Berlin Wall. In particular, the story focuses on a Stasi agent, the GDR's secret police, and his surveillance of a writer.

Rise and Fall of the Berlin Wall (History Channel Documentary). A documentary about the post-WWII separation of East and West Germany and the fall of the Berlin Wall.

The Rape of Europa (2006). This is an outstanding documentary about the systematic theft and destruction of European art treasures by the Third Reich, and the recovery and return of the art works following WWII.

Conspiracy (2001 movie with Kenneth Branagh, Colin Firth, and others). This film is based on the actual transcript of the Wannsee Conference, referenced in the Aitken article about Hans Frank, where a group of high-ranking Nazi officials—many of whom were lawyers—met to discuss Hitler's "Final Solution."