

UNIVERSITY OF COLORADO
BOULDER

FALL SEMESTER 2013

LAWS 6420-001

LAW AND THE HOLOCAUST

August 19-22, 2013

9:00 am – 12 noon

Classroom: Wolf Law 301

HARRY REICHER

University of Pennsylvania Law School

Course Outline

This course draws together the fields of comparative law, constitutional law, criminal law and procedure, jurisprudence, conflicts of laws, international law, human rights and legal history, and then superimposes them on the history of the Holocaust, to examine the Nazi philosophy of law, emanating from the egregious racial ideology, and how it was used to pervert Germany's legal system in order to discriminate against, ostracize, dehumanize, and ultimately eliminate, certain classes of people; and then, to study the role of international law in rectifying the damage by bringing perpetrators to justice and constructing a legal system designed to prevent a repetition.

The course considers the following topics:

- 1.) **The Holocaust: "Lawful Barbarism"**. Overview of the Holocaust, by way of background, and the ways in which it was "anchored" in law.
- 2.) **The Ideology That Made It Possible**. Nazi theories of race and the nature and role of the State, and the legal system as an instrument of both.
- 3.) **The Nazi Legal System In Action**. Laws passed to give effect to the theories of race, and the role of the judges in interpreting and applying those laws.
- 4.) **Jurisprudential Issues**. Parts 2 and 3 above will form the foundation for an exploration of the role of morality in a system of law, through a consideration of academic writings and judicial reflection. An example of the former is the celebrated Hart-Fuller debate, in the pages of the *Harvard Law Review*; and an example of the latter is the controversial *Bernstein* litigation, in which the Courts grappled with the effect to be accorded in the US to expropriations of property by the Nazi regime.
- 5.) **Measure For Measure: The Response Of The International Legal System**. Consideration of the whole system of international human rights of the post-World War II era, revolving around five major pillars, each of which is a measure-for-measure reaction to the Holocaust: the *Universal Declaration of Human Rights*; the Genocide Convention; the United Nations system; articulation of the two most egregious crimes in the international legal lexicon, Crimes against Humanity and Genocide; and the creation of an international forum for bringing perpetrators to justice, namely the Nuremberg Trials.

6.) **Lessons For The 21st Century.** At each point, the perversion of Germany's legal system will be the launching pad for extraction and consideration of critical lessons for contemporary democracies, as well as for the system of international law as a whole.

Teaching in the course revolves around special materials prepared and edited by Professor Reicher. These consist of both primary documents as well as secondary writings.

All this is supplemented by video excerpts of original archival footage, documentaries and movies, illustrating a range of themes dealt with in the course. These include: film of the actual Nuremberg Laws being read out; footage of a Nazi criminal court in action: scenes of the Nuremberg and Eichmann Trials; a re-enactment of the Wannsee Conference; excerpts from Leni Riefenstahl's classic propaganda film, "Triumph of the Will," and cross-examination scenes from Stanley Kramer's classic movie, *Judgment at Nuremberg*.

Students who are interested in enrolling are welcome to discuss the course with Professor Reicher, Telephone (c) (718) 316-7333 (e-mail: hreicher@law.upenn.edu). For details of enrollment procedures and administrative particulars, please call the Registrar's Office.