

Europe and its Legal Traditions

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Time Slot:	Tuesdays, 1:30 p.m.
Language of Instruction:	English
Contact Hours:	45
ECTS Credits:	6

Course Description

What is Europe? Who gets to decide that? For what purposes?

This course is designed for all those who are interested in gaining a closer understanding of how history and law intermingle with European political thought and cultural practices.

The course seeks to provide a broad and theoretical overview of European legal traditions from social, political, economic and comparative perspectives. Starting with Roman Law, its coverage ranges from discussing the authority of law in history, literature, economics and religion, through the creation of the European legal frameworks up to the establishment of a human rights tradition. Focus is given to the wider scope of legal developments in history that have shaped the conceptualization of law in present-day Europe and beyond.

The course is roughly divided into two parts. The first part encompasses a brief overview of European legal thought from Roman law to the development of the common and civil legal traditions.

In the second half of the course, after the Midterm Exam, we will examine the more recent developments of European politics and law. The first session will be dedicated to how social aspects (i.e. geography and religion) influence European legal developments. During the second session we will deal with the fascist tendencies leading to World War Two. This links up with one option for the Independent Project, which entails a closer look into the fascist laws passed in Germany as portrayed in "Places of Remembrance in the Bavarian Quarter: Exclusion and deprivation, expulsion, deportation and murder of Berlin Jews in the years 1933 to 1945" in Berlin-Schöneberg. The last two sessions will be dedicated to European integration and the formation of the European Union mainly as an answer to the two World Wars. The focus here will be on the legal coverage of the Union's economy and respect for human rights through supranational cooperation.

Learning Objectives

The overarching objective of this course is to enable students to:

- Identify the different European legal traditions;
- Contextualize these traditions in their respective historical contexts;
- Think of the different European legal traditions critically.

Student Profile

Should be in their fourth semester of college/university education or beyond.

Assignments and Grading

Active participation: 100 Points
Regular class reading summaries: 200 Points
Independent project: 100 Points
Midterm exam: 300 Points
Term Paper: 300 Points

Completion of the Midterm Exam as well as the Term Paper is needed for a grade.

FUB Grade	Points of 1,000
1.0	980-1,000
1.3	950-979
1.7	900-949
2.0	850-899
2.3	800-849
2.7	750-799
3.0	700-749
3.3	650-699
3.7	600-649
4.0	500-599
5.0	< 500

Attendance

Attendance in class is mandatory. We also expect you to be punctual out of respect to both your instructor and your fellow students. If you cannot attend class because you are ill, please report sick to the FU-BEST office (info@fubest.fu-berlin.de) and to your instructor by e-mail before class.

Absences are **excused** in case of **illness**; however, for the fifth sick day and every other sick day after that (consecutive or cumulative, counted not per individual course but for the program overall), you will need to turn in a doctor's notice ("Attest" in German) to the FU-BEST office in order for them to count as excused, too.

If you miss an exam due to an excused absence, your instructor and the FU-BEST team will arrange a make-up exam for you; you may also be entitled to a term paper deadline extension. If you, however, do not fulfill all course requirements needed for a grade by the (later) date determined by the program, passing the course is no longer possible.

Please also note that if you miss more than half of a course's sessions (even if due to excused absence), passing the course is no longer possible.

Personal travel and visits by relatives or friends are **not** accepted as reasons for absence (i.e., absences for these reasons always count as unexcused).

Regarding **unexcused** absences, please note the following:

- Any unexcused absence has consequences for at least the participation portion of the grade.
- Two unexcused absences lead to a formal warning and a lowering of the course grade by a fraction.
- Three unexcused absences will result in an "F" (5.0) on the transcript.

An absence for more than half of a particular day's session will be considered an absence for that day.

Literature

Digitalized readings posted on the online learning platform Blackboard.

Course Schedule

Calendar	Topics, Readings, etc.
Session 1	<p>Topic: Introduction: Picturing European traditions in literature</p> <p>Readings</p> <ul style="list-style-type: none"> Franz Kafka, "Before the Law", tr. Ian Johnson, http://www.kafka-online.info/before-the-law.html.
Session 2	<p>Topic: General history of European legal thought</p> <p>Readings</p> <ul style="list-style-type: none"> Franz Wieacker and Edgar Bodenheimer, "Foundations of European Legal Culture", The American Journal of Comparative Law, Vol. 38, No. 1 (Winter, 1990) pp. 1-29 (https://doi.org/10.2307/840253). Alan Watson, "The Importance of 'Nutshells'", The American Journal of Comparative Law, Vol. 42, No. 1 (Winter, 1994) pp. 1-24 (https://doi.org/10.2307/840726).
Session 3	<p>Topic: Roman Law</p> <p>Readings</p> <ul style="list-style-type: none"> Peter Stein, Roman Law in European History, Cambridge University Press 1999, pp. 1-32 (https://doi.org/10.1017/CBO9780511814723). Titus Livius, "The History of Rome", tr. George Baker, (https://chaucer.fas.harvard.edu/pages/livy).
Session 4	<p>Topic: The Common Law Tradition</p> <p>Readings</p> <ul style="list-style-type: none"> Mary Ann Glendon et al. (eds.), Comparative Legal Traditions, 2nd ed., West Publishing 1994, pp. 439-454. H. L. A. Hart, "Bentham and the Demystification of the Law", The Modern Law Review, Vol. 36, No. 1 (Jan., 1973) pp. 2-17 (https://www.jstor.org/stable/1094754).
Session 5	<p>Topic: The Civil Law Tradition</p> <p>Readings</p> <ul style="list-style-type: none"> Mary Ann et al. (eds.), Comparative Legal Traditions, 2nd ed., West Publishing 1994, pp. 44-64. Luis Kutner, "Legal Philosophers: Savigny: German Lawgiver", Marquette Law Review, Vol. 55, Issue 2 (Spring, 1972) pp. 280-295 (https://scholarship.law.marquette.edu/mulr/vol55/iss2/5/).
Session 6	MIDTERM EXAM
Session 7	<p>Topic: European law and its Context</p> <p>Readings</p> <ul style="list-style-type: none"> Reut Yael Paz, "Religion, Secularism and International Law", in Oxford Handbook of International Legal Theory, eds. Anne Orford and Florian Hofmann, Oxford University Press 2016, pp. 923-938 (https://doi.org/10.1093/law/9780198701958.003.0045). Bernard Grossfeld, "Geography and Law", Michigan Law Review, Vol. 82, No. 5/6 [Festschrift in Honor of Eric Stein] (Apr. - May, 1984) pp. 1510-1519 (https://doi.org/10.2307/1288492).

Session 8	<p>Topic: The Fascist Legal tradition in Europe</p> <p>Readings</p> <ul style="list-style-type: none"> • Michael Stolleis, "Prologue: Reluctance to Glance in the Mirror. The Changing face of German Jurisprudence after 1933 and post-1945", in <i>Darker Legacies of Law in Europe: The Shadow of National Socialism and its Legal Traditions</i>, eds. Christian Joerges and Navraj Singh Ghaleigh, Hart Publishing 2003, pp. 1-19. • J. H. H. Weiler, "Epilogue", <i>ibid.</i> pp. 389-402.
Session 9	<p>Topic: The Rebuilding of Europe, the Marshall Plan and European Integration through law</p> <p>Readings</p> <ul style="list-style-type: none"> • Alfred de Zayas, "Marshall Plan (European Recovery Program)", in <i>Max Planck Encyclopaedia of Public International Law [MPEPIL]</i> March 2009 (https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e654). • J. H. H. Weiler, "European Integration", in <i>Max Planck Encyclopaedia of Public International Law [MPEPIL]</i> March 2009 (https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e634).
Session 10	<p>Term Paper Colloquium</p> <p>Here you will be asked to give a short presentation on the current state of the main argument of your paper. You will then be able to discuss your thesis with your peers for feedback.</p>
Session 11	<p>Topic: General Principles of law in European Union</p> <p>Readings</p> <ul style="list-style-type: none"> • Robert Schütze, <i>An Introduction to European Law</i>, 2nd ed., Cambridge University Press 2015, pp. 90-112. • Netherlands Scientific Council for Government Policy, <i>The European Union, Turkey and Islam</i>, Amsterdam University Press 2004, pp. 25-43 (https://www.jstor.org/stable/j.ctt46n05v.6).
Session 12	<p>Topic: European Legal Attempts to Regulate Climate Change</p> <p>Readings</p> <ul style="list-style-type: none"> • Jarrod Hayes and Janelle Knox-Hayes, "Security in Climate Change Discourse: Analyzing the Divergence between US and EU Approaches to Politics", <i>Global Environmental Politics</i>, Vol. 14, Issue 2 (May, 2014) pp. 82-101 (https://doi.org/10.1162/GLEP_a_00230).
Session 13	<p>Topic: The European Union Law and the Single Market</p> <p>Readings</p> <ul style="list-style-type: none"> • Armin Cuyvers, "The EU Common Market", in <i>East African Community Law</i>, eds. Emmanuel Ugirashebuja, John Eudes Ruhangisa, et al., Brill 2017, pp. 293-304 (https://www.jstor.org/stable/10.1163/j.ctt1w76vj2.22). • Andrea Sangiovanni, "Solidarity in the European Union", <i>Oxford Journal of Legal Studies</i>, Vol. 33, No. 2 (Summer 2013) pp. 213-241 (https://www.jstor.org/stable/24562774).

Independent Project

Here are three suggestions for an independent project. Individual ideas are welcome!

I) Visit and describe a legal proceeding at the *Kriminalgericht* in Berlin Moabit

https://www.berlinkriminell.de/2/gericht_term.htm; <https://www.berlin.de/staatsanwaltschaft/service/standorte-gebaeude/kriminalgericht-moabit/artikel.428004.php>.

3G-rule! All that is needed of you is to go to the criminal court (with a valid passport, proof of vaccination + mask) walk around the building, get into any of the court proceedings you wish (at least one) and describe the experience in a couple of pages. Whereas you may compare it to a similar experience you may have had elsewhere, the architecture as context or else, this is not a must. Mainly, the idea is to get a closer look into the German legal procedure in action.

II) Visit and describe the legal context of the “Places of Remembrance in the Bavarian Quarter: Exclusion and deprivation, expulsion, deportation and murder of Berlin Jews in the years 1933 to 1945” in *Schöneberg* https://de.wikipedia.org/wiki/Bayerisches_Viertel (U4 and U7 U-Bahnhof Bayerischer Platz)

Here too you are expected to walk around the area of this grass-root memorial and contemplate in writing how German fascist laws started to slowly albeit ever so thoroughly strip specific citizens of their rights and liberties. The focus here is to understand how fascist law – also a European legal tradition – dismantled all that Europe is traditionally perceived to stand for.

III) *Topographie des Terrors* – Topography of Terror

<https://www.topographie.de/en/exhibitions/site-tour/#c1071>

Visit and describe the (dis-)continuities of law and legality through history: Prinz-Albrecht-Palais, GESTAPO-Headquarters and Berlin Wall. At this place three layers of German and European legal history fall together: what does that mean to you? What other historical places can you compare this to?

Term Paper

During this course, several important jurists and/or scholars who influenced a specific European legal tradition are mentioned (i.e. Gaius, Vitoria, Bentham, Savigny, Westlake, Kafka, Kelsen, Schmitt, Ipsen, Hart etc.). Pick one scholar and discuss their legal contributions. Discuss why they represent a European legal tradition with reference to their social and personal context. Begin with a short biographical note, move to the specific legal tradition they contributed and conclude with the reasons for his or her contributions.

After the student chooses a protagonist persona (the scholar chosen is to be discussed privately with Mr. König before the semester break), each student is expected to interact with the material given during the class but then delve deeper into their scholarly work with at least 2 primary resources and 4 secondary ones (to be detailed in an alphabetically drafted bibliography and footnotes where appropriate!)

Session 10 will be a Term Paper Colloquium where the student presents the current state of their argument and gets a chance to discuss their thesis with their peers.

To be submitted in printed form by **Session 12**.