

RE AU PRESIDENT DE LA REPUBLIQUE
Par ÉMILE ZOLA

LAW HAS THE POWER BOTH TO OPPRESS AND TO LIBERATE. This book examines how legal systems have wielded that power over Jews, drawing lessons that extend beyond them. We learn these lessons by reading legal and related texts that document Jewish oppression and liberation. In this way, we see how law has codified antisemitism, often with severity and exactitude, but also how Jews and their allies can mobilize law to oppose antisemitism, sometimes with lasting impact. Moreover, by examining how antisemitism is refracted through multiple legal systems across millennia, we gain unique insight into how law operates. This inquiry promises to make us better readers, thinkers, and advocates—and potentially, more just and empathetic citizens.

Professor Katz has written a magnificent, superb, and unique book on antisemitism and the law. It will be a great teaching vehicle in both law school and undergraduate classes. But it also is an invaluable collection of material, looking at the history of antisemitism and also at contemporary issues. It will be a wonderful resource in countless ways.

ERWIN CHERMERINSKY

Dean and Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law

At last—a superb interdisciplinary casebook focusing on all aspects of antisemitism. And the timing could not be better. Required reading for lawyers and laymen alike focusing on causes, and importantly, solutions.

KENNETH FEINBERG

Former Administrator of the September 11th
Victim Compensation Fund

A book that every student of race and the law will want to read closely.

RICHARD DELGADO

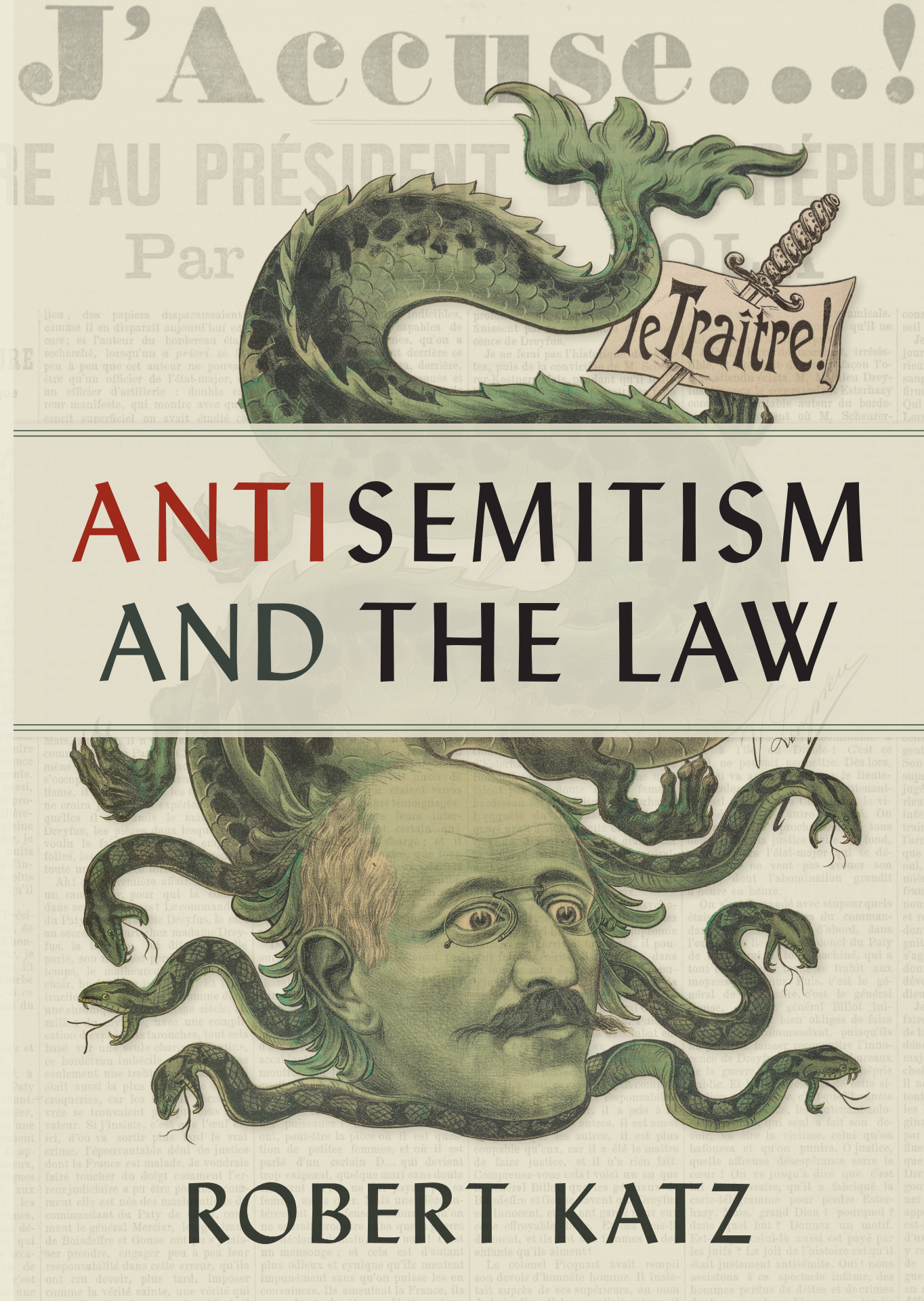
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On the cover: background; J'accuse..., the open letter about the Dreyfus affair written to president Félix Faure by Émile Zola on the front page of French newspaper *L'Aurore*, January 13, 1898. *Front foreground*; a caricature of Alfred Dreyfus (1859–1935) as a six-headed serpent pierced by a dagger which bears the sign, “the traitor,” V. Lenepveu, 1899.

KATZ

ANTISEMITISM AND THE LAW



Antisemitism and the Law

Robert Katz

PROFESSOR OF LAW AND JOHN S. GRIMES FELLOW
INDIANA UNIVERSITY ROBERT H. MCKINNEY SCHOOL OF LAW
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THE CENTER FOR THE STUDY OF LAW AND ANTISEMITISM



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Foreword

*Jonathan Greenblatt**

In your hands is a groundbreaking casebook—one that spans three thousand years of legal history yet arrives at a critical moment. In the aftermath of Hamas’s October 7th terror attack on Israel, the pronounced global resurgence of antisemitism makes clear that hatred against Jews is not a relic of the past but a living, breathing threat. Worse yet, it is a symptom of a deeper virus: hatred and bigotry directed at “the other.” By collecting and synthesizing the cases and commentary within, Professor Robert Katz compels us to confront prejudice with every tool at our disposal, including—and especially—the law.

Central to Professor Katz’s thesis is the legal system’s paradoxical role as both a historic enforcer of Jews’ subordination and an instrument for achieving full citizenship. From the Spanish Inquisition to the Dreyfus Affair to the Nazi racial state, the casebook dissects the codification of Jewish oppression. More hopefully, it analyzes landmark victories in Jews’ struggle for safety and equality under law, including the Nuremberg trials, civil rights statutes, and hate crimes legislation. Throughout, it chronicles how Jewish defense organizations have leveraged the law to advance Jews’ legal interests.

A consistent thread emerges across these diverse cases: a fuller understanding of the relationship between law and antisemitism enhances our capacity to combat it effectively and create a safer, more just world. This insight has guided the Anti-Defamation League (ADL) since its founding in 1913 with the mission “to stop the defamation of the Jewish people and to secure justice and fair treatment to all.” ADL takes great pride in supporting Professor Katz’s pioneering work. *Antisemitism and the Law* can empower the next generation of lawyers to combat antisemitism and all forms of hate through the law. Thankfully, this casebook fills a long-overlooked gap in legal education—and not a moment too soon.

* National Director and CEO, The Anti-Defamation League

Foreword

*Stephen Macedo**

I am delighted to introduce a pioneering work, *Antisemitism and the Law*, which stands as the first comprehensive examination of this critical and timely subject within legal scholarship.

My association with Professor Katz dates back to my early years at Harvard, when his professor and my illustrious colleague, Judith N. Shklar, recommended that I advise Rob's senior thesis. Rob proved himself as dedicated a student and insightful a scholar as I have ever encountered. His senior thesis—an incisive critique of communitarianism using Israel as a case study—was so original and penetrating that Michael Sandel, a founder of communitarian theory, remarked it was better than most of the published work on the subject. The Harvard Government Department agreed, awarding it the prize for the best undergraduate thesis in political philosophy. Even then, Rob demonstrated a profound capacity to dissect the interplay between identity, justice, and political philosophy, a set of concerns that have shaped his career ever since.

This casebook is a natural outgrowth of that early work. In his thesis, Rob explored the tensions between group identity and universal justice, particularly how dominant communities define themselves in relation to outsiders. That inquiry has matured into a rigorous examination of how the law classifies and marginalizes Jews—whether as a race, a religion, an ethnicity, or a nationality. He meticulously analyzes seminal cases and legal texts, unraveling the complexities in legal approaches to anti-Jewish discrimination and defamation.

Yet, *Antisemitism and the Law* is more than a thoughtful and comprehensive casebook. With it, Professor Katz is building the foundation for a new field of study, identifying canonical texts and organizing questions. It is a call for sustained scholarly engagement with the legal dimensions of antisemitism.

At a time when antisemitism is re-emerging as a force in public and legal discourse, this casebook is essential reading. I am honored to introduce it, just as I was honored to advise the initial iteration of this inquiry decades ago.

* Laurance S. Rockefeller Professor of Politics and Human Values, Princeton University

Preface

Law has the power both to oppress and to liberate. This book examines how legal systems have wielded that power over Jews, drawing lessons that extend beyond them. We learn these lessons by reading legal and related texts that document Jewish oppression and liberation. In this way, we see how law has codified antisemitism, often with severity and exactitude, but also how Jews and their allies can mobilize law to oppose antisemitism, sometimes with lasting impact. Moreover, by examining how antisemitism is refracted through multiple legal systems across millennia, we gain unique insight into how law operates. This inquiry promises to make us better readers, thinkers, and advocates—and potentially, more just and empathetic citizens.

This comprehensive volume can help the reader navigate some of law and antisemitism's complexities through discussions of anti-discrimination law, Jewish identity, hate speech, hate crimes, education, the rule of law, and the Catholic Church, among other areas of law. Its remedial purpose is to equip Jewish rights advocates with a shared vocabulary, key precedents, and a toolkit of strategies, surveying the legal landscape they must navigate and examining how it has been shaped by broader societal, political, and ideological forces.

The narrative unfolds in a logical order. First, it examines Judaism, Jews, and Zionism; then, antisemitism, anti-Semites, and anti-Zionism. First, it acknowledges that Jews are not a race and that Judaism is open to all comers; then, it exposes the lies that Jews are a race and that Judaism is racist. First, it relates the Catholic Church's troubled history with Jews; then, the Church's embrace of a positive attitude.

The Holocaust is the book's connecting theme. The perceptive reader will sense its presence on every page. In law and antisemitism, the Holocaust is the brooding omnipresence in the sky.

My aim is to make the subject of antisemitism and the law widely known, accessible within the legal community and beyond it. Selected chapters can augment courses on race and the law, the First Amendment, cyberlaw, trusts and estates, torts, criminal law, international human rights law, comparative law, education law, law and religion, and Catholic law. The book can also be useful as a cross-disciplinary reference and can support graduate and undergraduate courses in other fields. General readers may think of it as a historical narrative developed through primary sources, annotations, and commentary. Non-Jews can use it to improve their "antisemitism radar."

The book has five parts: **Part One**, "Anti-Discrimination Law," examines laws that prohibit racial discrimination but do not explicitly prohibit religious discrimination.

Jews were initially excluded from these laws' coverage, which were enacted primarily to protect African Americans and members of other marginalized groups generally regarded as biologically non-white. This part traces how U.S. and U.K. courts came to interpret these laws as applying to Jews and other groups not defined by race, and these doctrinal developments reveal how Jews' racial identity in U.S. and U.K. law and society has changed over time. It raises the question, pursued throughout the book, of how advocates can best negotiate for Jewish rights in the shadow of antisemitism.

Part Two, "Jewish Identity," considers "Who is a Jew?"—that is, the legal meaning of "Jew"—in various laws and legal systems. It first examines this term as defined by Jews—Jewish law (Halakha), the State of Israel's Law of Return, and the U.S. Reform Movement—and by Jews' adversaries: the Spanish Inquisition and Nazi race laws. Examining the latter through legal lenses reveals the madness of antisemitism with chilling precision. Contemporary anti-Semites connect Jews and Judaism to racism. A single definition of "Jew" does not emerge from this analysis.

Part Three, "Antisemitic Speech," examines the regulation of hate speech law in general and antisemitic speech in particular. It traces the evolution of such regulation through group defamation laws; the First Amendment; cyberlaw; the International Military Tribunal's trial of Julius Streicher, Hitler's preeminent anti-Jewish propagandist; and hate speech laws in Canada and contemporary Germany.

Part Four, "Anti-Jewish Activities," examines hate crimes legislation in the U.S. and Germany, and Title VI of the Civil Rights Act of 1964, which addresses antisemitism on campus. It revisits definitional issues from Part One by examining how federal authorities have extended these race-based civil rights statutes to cover Jews. Additionally, this part considers the legal treatment of hateful conduct and speech that combine classical antisemitism with anti-Zionist expression.

Part Five, "Allies Against Antisemitism," considers two essential claims that must be true for Jews to obtain equal justice under law. The first claim is that antisemitism is antithetical to Christianity. The Catholic Church proclaimed the truth of this statement on October 28, 1965, when Pope Paul VI promulgated *Nostra aetate* ("In Our Times"), which repudiated the charge that Jews are collectively guilty for the death of Jesus.

The second essential claim is that antisemitism is antithetical to the rule of law. Émile Zola, a French novelist born into a Catholic family, asserted the truth of this claim on January 13, 1898, in *J'Accuse . . . !* ("I Accuse . . . !"), an open letter accusing the French military of wrongfully convicting Alfred Dreyfus, a Jewish army officer, of treason. In the short term, *J'Accuse . . . !* triggered anti-Jewish riots throughout France, including attacks on Jews, synagogues, and Jewish shops, amidst cries of "Death to the Jews!" In the long term, Zola's intervention forced French society to confront antisemitism and was instrumental in Dreyfus's eventual exoneration. Zola's courageous act, performed at great cost to himself, demonstrates the power of citizens to oppose antisemitism by appealing to liberal democratic principles.

Zola's headline appears on the cover of this book, which also features a caricature of Dreyfus as a six-headed serpent, pierced by a dagger labeled *Le Traître* ("the traitor"). The caricaturist dehumanized Dreyfus by portraying him as the embodiment of Jews' supposed perfidy and disloyalty. He used the words "Jew" and "traitor" interchangeably. Stereotypes in general are dehumanizing, but the world dehumanizes Jews in specific and predictable ways. This grotesque image provides a window into the minds of anti-Semites, for whom every Jew is, on some level, a monster. By symbolically stabbing a Jew, it condones violence against all Jews.

To provide a comprehensive picture of antisemitism as a legal phenomenon, this book includes collaborations and contributions by a dozen recognized scholars and experts from diverse countries, disciplines, and religious traditions. Each embraced this project as their own and pursued it with passion and rigor. Their work enabled me to realize my vision for this book. (I say more about each in the "Contributors" section below.)

I am especially grateful to contributor Steven M. Freeman, Senior Counsel and Director of Legacy for the Anti-Defamation League (ADL). Steve was sold on my elevator pitch halfway through the ride up. His insights, experience, and erudition—combined with level-headedness and sound judgment—have made him an indispensable partner in this project.

Until recently, few perceived the need for courses on law and antisemitism and the pivotal role that a casebook could play in their adoption. Four visionary organizations saw this need and took action: ADL, which provided the major funding for this project; the Leon Levy Foundation; the Rieders Foundation; and the Academic Engagement Network (AEN). Beyond financial assistance, they provided invaluable encouragement, guidance, and social capital. (I say more about each in the "Acknowledgements" section below.) With their help, I was able to summon extraordinary talent and resources for this project, and to accomplish in an hourglass what might have taken many years.

Robert Katz

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The Academic Engagement Network (AEN) mobilizes faculty and university leaders to action to oppose antisemitism and to support an inclusive, welcoming campus learning community where Jewish and all students can feel like they belong, which it accomplishes through education about antisemitism, Israel, Jewish identity, and the diversity of the Jewish experience. Led by Director Miriam Elman, AEN was the first organization to recognize the casebook’s potential and has supported it generously and enthusiastically to its completion.

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Contributors

Steven Freeman (Online Hate Speech) has had a distinguished career at the Anti-Defamation League (ADL) spanning more than four decades. Joining ADL in 1985 as an assistant director in the Legal Affairs Department, Freeman has since held several key positions, including Director of Legal Affairs, leader of a national team of area counsels, and Vice President of Civil Rights. He currently serves as ADL's Senior Counsel and Director of Legacy, overseeing the staff responsible for the organization's Library and Archives, which contain over a century of historical materials. Freeman's legal expertise has been instrumental in shaping ADL's advocacy efforts and coordinating the organization's amicus activity, including ADL's Supreme Court brief in the important *Moody v. NetChoice* case. His work on hate crime laws led to a keynote address at the 2nd Annual Law vs. Antisemitism Conference, which was later published in the *Lewis & Clark Law Review*. He is a graduate of Yale University and Stanford Law School.

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