

Antisemitism and the Law

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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.

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