**Jewish Questions: Antisemitism, Jewish Identity and the Law (Version for Early Assignment Board)**

**Spring 2024 (Syllabus Version 2)**

**NOTE: Students (whether they are registered for the course or not) must attend the first class in order to take this course. Speak to me if you think your extraordinary circumstances warrant an exception.**

**Class Meetings:**

Time: Tuesday 11-1

Room: Van 201

Cancelled Class: Tuesday April 23 (Passover)

Makeup Class **FRI FEBRUARY 23, 8:00-10:00AM, VAN 201**

**Faculty Contact Information and Office Hours:**

Prof. Deborah Malamud (AnBryce Professor of Law Emerita)

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Office Hours: Wednesday 9-11 or by appointment (in person, phone, or Zoom)

**Course Description**

Jewish history presents a compelling case study in the survival-through-metamorphosis of a diasporic people in the face of centuries of hatred. (Caveat: just about every word in the previous sentence will get a close and critical look in the course of this seminar. This course description will use its terms loosely, but the course itself will not.)

For non-Jews, Jews and Judaism have been (to borrow from Claude Levi-Strauss) “good to think with”: the act of distinguishing the Jewish Other (usually, but not always, to negate it) has been central to working out their own religious, cultural, and political problems (e.g. Christian theology, European modernity, globalization). These sociocultural and ideological processes have had often-tragic results for the lives of Jews, who have shaped their own sense of identity in the face of others’ efforts to define (and negate) them. These interlocking histories (Jewish and non-Jewish) are rich in legal content and context. They have a place in the comparative study of identity and of racism and other forms of group-hatred.

The first part of this seminar will focus on some of the persistent questions in the academic study of antisemitism and Jewish identity (drawing on literature in the humanities, much of it historical). In the second part of the seminar, we will shift to a set of (more) contemporary problems and applications.

Topics to be considered in the first part of the seminar include:

Who are Jews, and what is Judaism (or “Jewishness” or “Jewish peoplehood” or “ethnicity” or any of the other terms in current use)? What is it about Jews and Judaism (either as they really are or as they are imagined to be) that their opponents reject? (Heads up: “law” is on the list.) What is antisemitism? Is it simply the holding of particular (erroneous) “factual” beliefs, or is it something more systemic and insidious? Is it really “about” Jews and Judaism at all, or is it better understood as a process through which non-Jews wrestle with the central challenges of their own lives (be they theological, political, economic, or psychological)? Is antisemitism a unitary phenomenon (across time and space), culminating (both historically and conceptually) in the Holocaust, or are there important distinctions that this perspective obscures? Has the conduct of Jews (albeit itself often constrained by antisemitism) played a role in fueling antisemitic responses? Is there a way to walk the delicate line between blaming the Jews and denying their agency? How have Jews responded to antisemitism (both in constructing their identity and in political response?)

In the second part of the seminar, we will explore the antisemitisms of the contemporary political right and left; we will consider the efficacy of law in responding to antisemitism (including approaches to Holocaust denial), the impact of “philosemitism” in its various manifestations, and the usefulness of various non-legal strategies of “befriending” the cause of Jews; and we will close with a discussion of the place of law in the American Jewish experience (and of Jews in the American legal profession).

**Course Requirements**

1. **Attendance:** Attendance is critical in seminars, which are built on community and participation. Therefore, except in cases of illness or religious or disability accommodation, I will excuse only one class absence (and the reaction paper associated with that class).

2. **Reaction papers:** Most weeks, I will require you to write a reaction paper, of 2-3 double spaced, typed pages in length, **due to me via Brightspace by MONDAY at 9AM**. Reaction papers will not be graded, but they will count in my assessment of your class participation. Their purpose is to focus your mind for class discussion, and to help me facilitate effective student participation. **The Class Memo for each week (see below) will guide you on how to approach that week’s reaction paper**. **Please read it carefully.**

3. **Reaction paper feedback:** I will undertake to provide written feedback on your reaction papers (via Brightspace) before each class. Please do take the time to read my comments on your papers before class. If for some reason I am delayed, I will provide feedback after class.

4. **Participation:** This is a seminar, so no passivity, please! Over the years of requiring weekly reaction papers in seminars, I have found that some of the most profound thoughts on offer come from students who are stronger in writing than in extemporaneous speaking. So: for those of you who are usually on the quieter side in class, I will use your reaction papers to help draw you into the discussion. And, in the event that the class discussion goes in a direction that makes it harder to incorporate your contributions, I will have your written work to rely on in my grading (see below).

5. **Final paper:**

a. **Option A (with additional writing credit):**

Per the Law School’s writing requirements:

<https://www.law.nyu.edu/academicservices/academic-policies/substantial-writing-requirements>.

I require a paper of at least 10,000 words of writing, which corresponds to roughly 30 double-spaced pages in print, exclusive of footnotes. The paper must be of a traditional scholarly nature, showing original thought and analysis.

If you are pursuing Option A, please arrange to meet with me in the first two weeks of the semester, so that we can discuss your topic and set a schedule for the outline, first draft, comments, and second draft that are required by our Option A rules.

b. **Option B:**

I require that you submit at least 5,000 words of writing, which corresponds to roughly 15 double-spaced pages in print, exclusive of footnotes. I am offering you two alternative approaches to the final paper.

i. **Entirely new writing.** Your writing can be a single undertaking on an entirely independent topic. I am open to traditional academic projects, legal-practice oriented projects, creative projects, etc. You don’t need my approval of your project in advance, but I am happy to consult with you should you so choose. If you are choosing a project that does not measure itself well by conventional word limits, please discuss this with me in advance of submission.

ii. **Revised/elaborated reaction paper(s).** As an alternative, you may submit as your final paper an elaboration/revision of one or more of your reaction papers. If you elect this option, I will expect you to be responsive to my feedback on the paper(s) you initially submitted, and I will expect you to offer new insights drawing either on your own outside reading or on course readings you did not initially discuss.

6. **Due dates and incompletes.** All papers are due on Friday May 10 (the last day of exam period), and are to be submitted via Brightspace. If you choose to take an incomplete in this course, all work must be completed by the end of exams of the Fall 2024 semester. That said, I am hoping – for your sake and mine -- that the range of possibilities I am affording those of you doing Option B papers will allow you to finish your work by the paper deadline.

For those taking incompletes, please be advised that I am off campus in the summer and fall (though available by email).

7. **Grading:** Final grades will be based 60% on all elements of participation and 40% on final papers. **By “tilting” grading towards heavier weighting of participation, and by allowing you to further work with your reaction papers as your Option B final paper, I am making as clear as I can that the life of this seminar is the quality of thought you bring to each week’s session.**

**Book on Order at the NYU Bookstore: none**

We will be making extensive use of the digital book resources available through the NYU Library and of PDFs that I will post on Brightspace.

**Class Memos and Readings (on Brightspace):**

On Brightspace, each class session will have its own “folder” in which you will find a Class Memo and a set of readings (or hyperlinks to readings).

**Class Memos and readings will be posted at least two weeks in advance of each class. If you need materials further in advance (e.g., for purposes of final-paper-writing or to help better manage your semester workload), please do not hesitate to ask me for them.**

The Class Memo is the place to start your work for the week. It will contain commentary from me that will (I hope) help you navigate your way through the readings.

The readings for each class (except for typed excerpts that appear in the body of the Class Memo) will be made available to you on Brightspace, either as pdfs or as NYU Library e-book hyperlinks (with books available either for borrowing and/or full book or chapter downloading). To borrow e-books, you will need to download Acrobat Digital Editions; for reading on a tablet, you may find it convenient to also download Bluefire Reader.

It will take you a little time each week to organize the readings, but I hope this will not prove too burdensome.

I will undertake to limit each week’s reading assignment to no more than 100 pages (including the class memo itself) (down 20 pages from last year!). In weeks in which I have put more than that number of pages on offer (or where otherwise appropriate), the reading assignment will take on what I call an “I choose, you choose” format: there will be certain readings I ask the entire class to read, and you are free to choose from among the others. **The weekly Class Memo will make all of this clear.** **Please read it carefully.** This is of course self-policing. If engaging more deeply with some of the reading means that you don’t get to all of it, and if you take that approach sometimes but not always, I will be satisfied. On the other hand, there is enough material here to “go deep” on occasion and read more than required (and perhaps return to those topics for your final paper). If you do that one week and as a result need to lighten your load the next, I will understand. As to all of this, if you are having issues, let me know; and if I am having issues (as to any one of you or as to the group as a whole), we will reassess and regroup.

**Submission of Writing Assignments (Brightspace):**

The Brightspace class site has an Assignments tab, with a folder for the submission of each week’s reaction paper and the final paper. Please be careful to post your paper in the right folder.

**Classroom Environment; Class Recording; Class Memo Circulation**

Any course dealing with group identity and group hatred is likely to be highly sensitive. I recognize the special sensitivity of this seminar’s subject matter in the current environment -- within higher education and in the world. I also recognize how wide the range of your sensitivities is likely to be, in relation to your personal backgrounds and commitments.

I must insist that we maintain the highest standards of non-harassment and respect in our discussions. Let us all operate in an environment in which we act in good faith and foster mutual trust.

In order to support the building of trust and mutual support, I will not allow auditors (including prospective students or faculty colleagues) to attend our sessions. For the same reason, I will not record, or allow you to record, any of our classes unless I am required to do so by Law School policy.

In the Class Memos, I write in a voice that is tailored to the seminar setting only, and I need the freedom to share tentative thoughts and conclusions (much as I invite you to do in your reaction papers). Accordingly, each memo will bear the notation “not for publication or public circulation.” Please take that seriously. It is my sincere hope that I will not be confronted with out-of-context quotations of my writing from my Class Memos by students not enrolled in this course. (This does not apply, of course, to the outside readings I assign or to quotations from sources embedded in the memos, which you may freely share with others.)

Violations of these policies will be reported to the appropriate Law School authorities.

If you have issues arising out of the classroom environment, I encourage you to raise them with me directly. This is the second time I am teaching this seminar, and have taught seminars on sensitive topics (e.g., race, class, affirmative action) for many years. I have learned to encourage and be open to your direct feedback. But if that proves difficult, I encourage you to work with the appropriate members of the Law School staff so that your voice will be heard and your concerns dealt with.

**COVID Protocols**

You will find the Law School’s policies regarding COVID here: <https://www.nyu.edu/life/safety-health-wellness/coronavirus-information.html>

If I test positive for COVID and our class falls on a day that I am healthy enough to teach but am required to isolate, I will teach by Zoom.

**Topical Outline and Core Sources[[1]](#footnote-1)**

**This outline and list of core sources is somewhat tentative.** I am leaving myself some flexibility in assignments, so that I can learn from our shared experience, and, at times, so that I can make revisions to reflect your interests.

I am \*very\* aware that many of the topics in this outline could be entire seminars – indeed, that some of the authors we will be encountering (e.g., Hannah Arendt) deserve whole seminars of their own. We are acquainting ourselves with a landscape. These readings will offer endless possibilities for deeper encounters, now and in the future.

Below, I am listing just a few core sources for each class – but the actual bibliography for the seminar (divided among assigned outside readings, “you-choose” outside readings, optional outside readings, and excerpts embedded in the weekly Class Memos) is far more extensive. Sources cited once are not re-listed when they are used in later classes.

**Note: the order of topics is subject to change once we determine the date of our makeup class.**

**Class 1: Introduction**

*Fortune Magazine (Archibald MacLeish), Jews in America (February 1935) and responses; Weiser, Introduction, in Sol Goldberg, et al., eds., Key Concepts in the Study of Antisemitism;* *Letty Cottin Pogrebin, Anti-Semitism in the Women’s Movement (June 1982) and responses; Yuri Slezkine, The Jewish Century (2d ed 2019)*

**Class 2: Defining/theorizing “Jews,” “Judaism,” and other terms of “Jewish identity”**

*Kwame Anthony Appiah, The Lies that Bind: Rethinking Identity, Creed, Country, Color, Class, Culture (2018); Israel Bartal, The Jews of Eastern Europe (2005); Leora Batnitzky, How Judaism Became a Religion: An Introduction to Modern Jewish Thought (2011); Jacob Neusner (various); Noam Pianko, Jewish Peoplehood: An American Innovation (2015); Jonathan D. Sarna, The Cult of Synthesis in American Jewish Culture (1998); Haym Soloveitchik, Rupture and Reconstruction: The Transformation of Modern Orthodoxy (1994); Yael Zerubavel, Recovered Roots: Collective Memory and the Making of Israeli National Tradition (1995); notes on two Supreme Court cases (Sha’are Tefila and Kiryas Joel)*

**Class 3: Anti-what? A not-yet-theorized overview of “anti”-content**

*Anti-Defamation League, Antisemitic Attitudes, Topline Findings*; *IHRA Working Definition of Antisemitism (to be revisited later in the semester); David Biale, Power and Powerlessness in Jewish History (1986); John G. Gager, The Origins of Anti-Semitism: Attitudes Toward Judaism in Pagan and Christian Antiquity (1983); Sander L. Gilman, SmartJews: The Construction of Jewish Superior Intelligence (1997); Paul Hanebrink, A Specter Haunting Europe (2018); Naomi Seidman, Carnal Knowledge: Sex and the Body in Jewish Studies (1994); Barry Scott Wimpfheimer, The Talmud: A Biography (2018)*

**Classes 4-6: Theorizing Antisemitism Part 1: continuity/discontinuity; Holocaust-centricity**

*Hannah Arendt, The Origins of Totalitarianism (1948); Steven Beller, “Pride and Prejudice” or “Sense and Sensibility”? How Reasonable was Anti-Semitism in Vienna, 1889-1939 (1997);* *Elissa Bemporad, Empowerment, Defiance, and Demise: Jews and the Blood Libel Specter Under Stalinism (2012); David Engel, Away from a Definition of Antisemitism: An Essay in the Semantics of Historical Description (2009)***;** *David Engel, What’s in a Pogrom? (2011); Gavin Langmuir, Toward a Definition of Antisemitism (1996); Benjamin Nathans, Beyond the Pale: The Jewish Encounter with Law in Imperial Russia (2002); David Nirenberg, Communities of Violence: Persecution of Minorities in the Middle Ages (1996); David Nirenberg, Anti-Judaism: The Western Tradition (2013); Jean-Paul Sartre, Anti-Semite and Jew (1948); Adam Teller, Revisiting Baron’s “Lachrymose Conception”: The Meanings of Violence in Jewish History (2014); Scott Ury & G. Miron, eds., Antisemitism and the Politics of History (2023); Shulamit Volkov (various); excerpts on the work of the Frankfurt School*

**Theorizing Antisemitism Part 2: Jewish agency, Jewish response**

*Hannah Arendt, Eichmann in Jerusalem (1963) (and her exchange with Gershom Scholem); Jay Geller, The Other Jewish Question: Identifying the Jew and Making Sense of Modernity (2011); David A. Hollinger, Jewish Intellectuals and the De-Christianization of American Public Culture in the Twentieth Century, in his Science, Jews and Secular Culture* *(1996)*

**Theorizing Antisemitism Part 3: Jews, Modernity, and Antisemitism**

*Readings from list above*

**Class 7: A view from the Islamic lands (including an introduction to Mizrahi Studies)**

*Exchange between Mark Cohen and Norman Stillman, Tikkun (1991); Lieberman & Stillman, Encyclopedia of Jews in the Islamic World, Anti-Judaism/Antisemitism/Anti-Zionism (2014); Jonathan Judaken, Introduction to AHR Roundtable, Rethinking Anti-Semitism (2018); Aziza Khazzoom, The Great Chain of Orientalism: Jewish Identity, Stigma Management, and Ethnic Exclusion in Israel (2003); Abdelwahab Meddeb & Benjamin Stora, eds., A History of Jewish-Muslim Relations From the Origins to the Present Day (2013); Daniel J. Schroeter, Islamic Anti-Semitism (2018); Ella Shohat, Taboo Memories, Diasporic Voices (2006)*

**Class 8: Jewish Questions and the Contemporary Right**

*Thomas Milan Konda, Conspiracies of Conspiracies: How Delusions Have Overrun America (2019); Deborah E. Lipstadt, Expert Report in Sines v. Kessler (WD Va 2020); Lars Rensmann & Julius H. Schoeps, Politics and Resentment: Examining Antisemitism and Counter-Cosmopolitanism in the European Union and Beyond (2010)*; *Joshua Shanes, Netanyahu, Orbán, and the Resurgence of Antisemitism: Lessons of the Last Century (2019); Dov Waxman, et al., Arguing about antisemitism: why we disagree about antisemitism, and what we can do about it (2022); Robert S. Wistrich, Introduction: Lying About the Holocaust (2012); Ruth Wodak, The Radical Right and Antisemitism (2018)*

**Classes 9-10: Jewish Questions and the Contemporary Left**

**(note: our dual emphasis will be on black-Jewish relations and the question of anti-Zionism-as-antisemitism)**

*Sina Arnold, From Occupation to Occupy: Antisemitism and the Contemporary American Left (2017, 2022); David Baddiel, Jews Don’t Count (2021); James Baldwin, Negroes are Anti-Semitic Because They’re Anti-White (1967); Bryan Cheyette, Postcolonialism and the Study of Anti-Semitism (2018); Jack Greenberg, Crusader in the Courts (1994); Anne Herzberg, NGOs and the New Antisemitism (2013); Jeremy Krikler, Moral-Historical Questions of the Anti-Israel Boycott (2019); Deborah C. Malamud, The Jew Taboo: Jewish Difference and the Affirmative Action Debate (1998); Yoav Peled, Delegitimation of Israel or Social-Historical Analysis? The Debate Over Zionism as a Colonial-Settler Movement (2017); Jonathan Rieder, Reflections on Crown Heights (1995); Esther Romeyn, (Anti)‘New Antisemitism’ as a Transnational Field of Racial Governance (2020); Moishe Postone, History and Helplessness: Mass Mobilization and Contemporary Forms of Anticapitalism (2006); Shulamit Volkov, Readjusting Cultural Codes: Reflections on Anti-Zionism and Anti-Semitism (2006); Michael Walzer, The Strangeness of Jewish Leftism (2017); Michael Walzer, Anti-Zionism and Anti-Semitism (2019); Elhanan Yakira, Post-Zionism, Post-Holocaust: Three Essays on Denial, Forgetting, and the Delegitimization of Israel (2009)*

*Readings on October 7/Israel/Gaza TBA*

**Classes 11-12: Befriending Jews (via law or other means)**

**A Brief Look at “Philosemitism(s)”**

*Yaakov Ariel, A Source of Legitimacy: Evangelical Christians and Jews (2017); Dana Horn, People Love Dead Jews: Reports From a Haunted Present (2021) (and review by Sara Lipton (2022); Ruth Ellen Gruber, “Non-Jewish, Non Kosher, Yet Also Recommended”: Beyond “Virtually Jewish” (2011); Jonathan Karp, Ethnic Role Models and Chosen Peoples: Philosemitism in African American Culture (2011); Simon Rabinovitch, A Jewish “Golden Age” Ends in Spain and Portugal (2022)*

**Legal Strategies (and competing definitions of antisemitism for possible use in litigation)**

*Antisemitism Awareness Act (plus Nadell/Judaken exchange on the Antisemitism Awareness Act (2021); Arkansas Times v. Waldrip, (CA8 en banc 2022)***;** *Beauharnais v. Illinois, U.S. 1952)***;** *Executive Order 13899, Combating Anti-Semitism (2019); Fraser v. University and College Union (UK Employment Tribunal 3/22/2013);* *Groff. V. Dejoy (US 2023); Robert A. Kahn, Holocaust Denial and the Law: A Comparative Study (2004); U.S. Department of Education, Office of Civil Rights, Combating Discrimination Against Jewish Students; White House, US National Strategy for Combatting Antisemitism; materials on pending lawsuits TBA*

*Materials on IHRA definition (including European Union adoption materials); Jerusalem Declaration, and Nexus definitions, and AJS Campus Task Force report; Kenneth L. Marcus, The Definition of Antisemitism (2013)*

**Jewish Lawyers in America (and a return to questions of Jewish agency and the making of Jewish identity)**

*Jerold S. Auerbach, Rabbis and Lawyers: The Journey from Torah to Constitution (1990); Ruth Bader Ginsburg, From Benjamin to Brandeis to Breyer: Is There a Jewish Seat? (2002); David A. Hollinger, The “Tough-Minded” Justice Holmes, Jewish Intellectuals, and the Making of an American Icon (1996); Eli Wald, Jewish Lawyers and the U.S. Legal Profession: The End of the Affair? (2020)*

**Class 13 Thinking About Law and the Israel/Palestine Conflict**

*ICJ Genocide Case; other issues TBA*

1. I offer deepest thanks to my colleague Moshe Halbertal, to student-researchers Judah Bernstein (whose writing I will incorporate and credit in several Class Memos), Hannah Umansky-Castro and Gina Eum, and splendid librarians Alisa Lazear, Christine Park and the late Gretchen Feltes, for guidance and support. [↑](#footnote-ref-1)