

Antisemitism and U.S. Law

Professor: Britt Tevis, J.D./Ph.D.
Wednesday, 4:20-6:10 p.m.

Email: bt2618@columbia.edu
Jerome Greene Hall (JGH) 304

Course Description

What is antisemitism and how has it appeared in United States law? This course addresses these questions through analysis of anti-Jewish discrimination in the United States between the colonial period and the present, exploring different legal dimensions of anti-Jewish bigotry, discrimination, and violence. Probing anti-Jewish practices and discourses, you will learn to identify representations of Jews as “others;” determine the origins and sources of anti-Jewish sentiments and policies; analyze similarities and differences between anti-Jewish bigotry and racism and xenophobia; and consider how expressions of antisemitism have appeared in the American legal system.

Attendance

Please attend and arrive on time to all scheduled classes. Accruing more than one unexcused absence will negatively affect your grade.

Participation

You are expected to participate in our classes by engaging in discussions with your classmates about the assigned readings. To be prepared to do this, you should be able to explain the main arguments in our assigned readings; identify the evidence used to show those arguments; and prepare relevant questions and comments in advance of our meetings. If you are quiet by nature, please speak with me during office hours so that we can discuss strategies to enable your participation.

Accommodations

I will happily make all reasonable accommodations requested of me. Please speak with me about your particular needs or requests, and/or refer to the university's [Disability Services](#) to arrange for specific accommodations.

Electronics Usage

To ensure that you participate and to avoid distracting your classmates, please do not use your cell phone to check your email or text messages during class. Likewise, please limit your computer use to note taking and referencing assigned readings during class. I recommend printing assigned readings to avoid the temptations of Internet browsing (and because they will be easier to read).

Grade Distribution

Participation and Attendance: 20 percent

Discussion Moderation: 20 percent

Final Paper: 60 percent

Assignments

- (1) **Discussion Moderation:** On a day of your choosing, you will lead our conversation of the assigned readings. You should come prepared to ask questions of the reading and of your classmates. You will need to select **at least one** additional reading listed under the heading

“Optional” from that week to explain to your classmates and/or incorporate into your discussion.

- (2) **Final Paper:** You must write a final paper between 4,000-5,000 words in length on some dimension of antisemitism and the law. **Please note:** you must meet with me during office hours at least once within the first five weeks of class to discuss your paper topic; within two weeks of that meeting, you must submit a bibliography of the sources that you will use to write your paper.

Academic Integrity

Please give proper credit whenever you use phrases, words, ideas, arguments, etc., that belong to others. Failure to do so amounts to plagiarism, a breach for which you will automatically receive an “F” grade among other possible disciplinary measures. If you are unfamiliar with or have questions about what constitutes plagiarism, please review [Columbia Law School’s policy regarding academic integrity](#) and/or speak with me during office hours.

Late Assignments and Extensions

If something unexpected happens that prevents you from submitting your work on the designated date, please email me so that we can determine how to proceed. Whatever happens, don’t panic.

Required Readings

The required readings are listed below by date. You are expected to have read and/or viewed the assigned materials **before** class. If you encounter problems (financial or otherwise) accessing the materials, please email or speak with me so that I can help.

Course Schedule

Week 1 | Jan 16-19 | Defining Antisemitism

Required:

1. David Sorkin, *Jewish Emancipation*, introduction.
2. Steven Beller, “When Does It Make Sense to Call Hostility Towards Jews Antisemitism and When Does it Not? A Historical Perspective on Contemporary Debates,” *Antisemitism Studies* 6, no. 1 (Spring 2022), 115-132.
3. David Engel, “Away from a Definition of Antisemitism: An Essay in the Semantics of Historical Description,” in *Rethinking European Jewish History*, ed. Jeremy Cohen and Moshe Rosman (London: Liverpool University Press, 2009), 30-53.
4. Jonathan Judaken, “Introduction [to AHR Roundtable “Rethinking Anti-Semitism],” *American Historical Review* 123 (2018), 1122–1138.

Optional:

5. David Sorkin, “Is American Jewry Exceptional?: Comparing Jewish Emancipation in Europe and America,” *American Jewish History* 96 (2010), 175-200.
6. Tony Michels, “Is America ‘Different’?: A Critique of American Jewish Exceptionalism,” *American Jewish History* 96 (2010), 201-224.
7. David Feldman, “Toward a History of the Term ‘Anti-Semitism,’” *American Historical Review* 123 (2018), 1139-1150.

8. Britt P. Tevis, "State of the Field: Antisemitism in American History," *American Jewish History* 105, no. 2/3 (2021), 255-284.
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Week 2 | Jan 22-26 | Church and State: State Constitutions

Required:

1. Morton Borden, *Jews, Turks, and Infidels*, introduction, chap. 1 + 2, pp. 1-52.
2. U.S. Constitution, First Amendment and Article VI.

Optional:

3. Morton Borden, "The Christian Amendment," *Civil War History* 25, no. 2 (1979), 156-167.
 4. Morton Borden, *Jews, Turks, and Infidels* (Chapel Hill: University of North Carolina Press, 1984).
 5. Edward Eitches, "Maryland's 'Jew Bill,'" *American Jewish Historical Quarterly* 60, no. 3 (1971), 258-279.
 6. William Pencak, *Jews & Gentiles in Early America, 1654-1800* (Ann Arbor: University of Michigan Press, 2005).
 7. Naomi Cohen, *Jews in Christian America: The Pursuit of Religious Equality* (New York: Oxford University Press, 1994).
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Week 3 | Jan 29-Feb 2 | Church and State: Sunday Closing Laws

Required:

1. Jeremy Zeitlin, "What's Sunday All About? The Rise and Fall of California's Sunday Closing Law," *California Legal History* 7 (2012), 355-380.
2. Batya Miller, "Enforcement of the Sunday Closing Laws on the Lower East Side, 1882-1903," *American Jewish History* 91 (2003), 269-286.

Optional:

3. Albert M. Friedenberg, "Sunday Closing Laws of the United States and Leading Judicial Decisions Having Special Reference to the Jews," *American Jewish Year Book* (1908), 152-189.
 4. Alan Raucher, "Sunday Business and the Decline of Sunday Closing Laws: A Historical Overview," *Journal of Church and State* 13, no. 1 (1994), 13-33.
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Week 4 | Feb 5-9 | Jews, Race, and Intersectionality

Required:

1. Eric Goldstein, "The Unstable Other: Locating the Jew in Progressive-Era Racial Discourse," *American Jewish History* 89 (2001), 383-409.
2. David Schraub, "White Jews: An Intersectional Approach," *AJS Review* 43, no. 2 (2019), 379-407.

Optional:

3. Kenneth Marcus, *Jewish Identity and Civil Rights in America* (Cambridge: Cambridge University Press, 2010).
4. Eugene Levy, "'Is the Jew a White Man?' Press Reactions to the Leo Frank Case, 1913-1915," *Phylon* 35, no. 2 (1974), 212-222.

5. Robert Singerman, "The Jew as Racial Alien: The Genetic Component of American Antisemitism," in *Anti-Semitism in American History*, ed. David A. Gerber, ed., 103-128.
 6. Eric Goldstein, *The Price of Whiteness: Jews, Race, and American Identity* (Princeton: Princeton University Press, 2006).
 7. Leonard Rogoff, "Is the Jew White?: The Racial Place of the Southern Jew," *American Jewish History* 85, no. 3 (1997), 195-230.
 8. Sander Gilman, "Are Jews White? Or, the History of the Nose Job," in *Theories of Race and Racism: A Reader*, ed., Les Black and John Solomos (London: Routledge, 2000), 169-193, 188-189.
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Week 5 | Feb 12-16 | Public Accommodations Discrimination

Required:

1. Britt Tevis, "Jews Not Admitted: Antisemitism, Civil Rights, and Public Accommodation Laws," *Journal of American History* (2021), 847-870.
2. Evan Friss, "Blacks, Jews, and Civil Rights Law in New York, 1895-1913," *Journal of American Ethnic History* 24 (2005), 70-99.
3. Jeffrey Gurrock, "The 1913 New York State Civil Rights Act," *AJS Review* 1 (1976), 93-120.

Optional:

4. Peter Hopsicker, "'No Hebrews Allowed': How the 1932 Lake Placid Winter Olympic Games Survived the 'Restricted' Adirondack Culture, 1877-1932," *Journal of Sport History* 36, no. 2 (2009).
 5. Wayne A. Wiegand, "'Jew Attack': The Story behind Melvil Dewey's Resignation as New York State Librarian in 1905," *American Jewish History* 83, no. 3 (1995), 359-379.
 6. Stuart Svonkin, *Jews Against Prejudice: American Jews and the Fight for Civil Liberties* (New York: Columbia University Press, 1999).
 7. Clive J. Webb, *Fight against Fear: Southern Jews and Black Civil Rights* (Athens: University of Georgia Press, 2001).
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Week 6 | Feb 19-23 | Immigration and Citizenship

Required:

1. Britt Tevis, "'The Hebrews Are Appearing in Court in Great Numbers': Toward a Reassessment of Early Twentieth-Century American Jewish Immigration History," *American Jewish History* 100, no. 3 (2016), 319-347.
2. U.S. House Report Re: Restriction of Immigration (1921) (Excerpts)
3. Alan Kraut, Richard Breitman, and Thomas Imhoof, "The State Department, the Labor Department, and German Jewish Immigration, 1930-1940," *Journal of American Ethnic History* 3, no. 2 (1984), 5-38.

Optional:

4. Libby Garland, "Fighting to be Insiders: American Jewish Leaders and the Michigan Alien Registration Law of 1931," *American Jewish History* 96, no. 2 (2010), 109-140.
5. Lila Corwin Berman, "How a Citizen Becomes an Alien: Three Cases of American Jews and Citizenship Lost, Regained, and Lost Again," *Modern American History* 5, no. 3 (2022), 289-311.

6. Naomi Cohen, "Commission Williams and the Jews," *American Jewish Archives Journal* 61, no. 2 (2009), 99-126.
 7. Barbara L. Bailin, "The Influence of Anti-Semitism on United States Immigration Policy with Respect to German Jews during 1933-1939." Master's Thesis, City College of the City University of New York, 2011.
 8. Leonard Dinnerstein, "The U.S. Army and the Jews: Policies Toward the Displaced Persons After World War II," *American Jewish History* 68, no. 3 (1979), 353-66.
 9. Howard Markel, *Quarantine! East European Jewish Immigrants and the New York City Epidemics of 1892* (Baltimore: John Hopkins University Press, 1997).
 10. Shelley Z. Reuter, "The Genuine Jewish Type: Racial Ideology and Anti-Immigrationism in Early Medical Writing about Tay-Sachs Disease," *Canadian Journal of Sociology* 31, No. 3 (Summer 2006), 291-323.
 11. David Wyman, *Paper Walls: America and the Refugee Crisis 1938-1941* (Amherst: UM Press, 1968)
 12. Zosa Szajkowski, "The Attitude of American Jews to Refugees from Germany in the 1930s," *American Jewish Historical Quarterly* 61, no. 2 (1971): 101-43, 101-102.
 13. Katherine Benton-Cohen, *Inventing the Immigration Problem: The Dillingham Commission* (Cambridge: Harvard UP, 2018).
 14. Maddelena Marinari, *Unwanted: Italian and Jewish Mobilization against Restrictive Immigration Laws, 1882-1965* (Chapel Hill: University of North Carolina Press, 2020).
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Week 7 | Feb 26-March 1 | Criminal Law

Required:

1. William F. Holmes, "Whitecapping: Antisemitism in the Populist Era," *American Jewish Historical Quarterly* 63, no. 3 (1974), 244-261.
2. Paul B. Franklin, "Jew Boys, Queer Boys: Rhetorics of Antisemitism and Homophobia in the Trial of Nathan 'Babe' Leopold Jr. and Richard 'Dickie' Loeb," in Daniel Boyarin, Daniel Itzkovitz, and Ann Pellegrini, *Queer Theory and the Jewish Question* (NY: Columbia University Press, 2013), 121-148.
3. Samuel J. Levine, "Lost in Translation: The Strange Journey of an anti-Semitic Fabrication, from a Late Nineteenth Century Russian Newspaper to an Irish Legal Journal to a Leading Twentieth Century American Criminal Law Textbook," *Dublin University Law Journal* 29 (2007): 260-278.

Optional:

4. Leonard Dinnerstein, *The Leo Frank Case* (NY: Columbia University Press, 1968).
5. Steve Oney, *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank* (New York: Knopf, 2003).
6. Eugene Levy, "'Is the Jew a White Man?' Press Reactions to the Leo Frank Case, 1913-1915," *Phylon* 35, no. 2 (1974), 212-222.
7. Kristoff Kerl, "The Pure and the Sodomite: Masculinity, Sexuality, and Antisemitism in the Leo Frank Case," *Gender Forum* 32 (2011).
8. Gil Ribak, "'The Jew Usually Left Those Crimes to Esau': The Jewish Response to Accusations about Jewish Criminality in New York, 1906-1913," *AJS Review* 38, no. 1 (2014), 1-28.

9. Nancy MacLean, "The Leo Frank Case Reconsidered: Gender and Sexual Politics in the Making of Reactionary Populism," *Journal of American History* 78, no. 3 (1991), 917-948.
 10. Patrick Q. Mason, "Anti-Jewish Violence in the New South," *Southern Jewish History* 8, no. 1 (2005), 77-119.
 11. Vann Newkirk, "That Spirit Must be Stamped Out: The Mutilation of Joseph Needleman and North Carolina's Effort to Prosecute Lynch Mob Participants During the 1920s," *Southern Jewish History* 13, no. 1 (2010), 45-80.
 12. Melissa Fay Greene, *The Temple Bombing* (Boston: Addison-Wesley, 1996).
 13. Sally Avery Berm Banzohn, *Through Survivors' Eyes: From the Sixties to the Greensboro Massacre* (Vanderbilt University Press, 2003).
 14. Edward Berenson, *The Accusation: Blood Libel in American Town* (NY: Norton & Co.: 2019).
 15. Clive J. Webb, *Fight against Fear: Southern Jews and Black Civil Rights* (Athens: University of Georgia Press, 2001).
 16. Mark Oppenheimer, *Squirrel Hill: The Tree of Life Synagogue Shooting and the Soul of a Neighborhood* (New York: Penguin Random House, 2021).
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Week 8 | March 4-8 | Libel and Defamation (Hate Speech)

Required:

1. Victoria Woeste, "Insecure Equality: Louis Marshall, Henry Ford, and the Problem of Defamatory Antisemitism, 1920-1929," *Journal of American History* 91 (2004), 877-905.
2. R. George Wright, "Free Speech and Antisemitism: Collin v. Smith Today," *First Amendment Law Review* 20, no. 1 (2022), 30-52.

Optional:

3. Victoria Woeste, *Henry Ford's War on Jews and the Legal Battle against Hate Speech* (Stanford: Stanford University Press, 2012).
 4. Joseph Bendersky, "The Absent Presence: Enduring Images of Jews in United States Military History," *American Jewish History* 89, no. 4 (2001), 411-436.
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Week 9 | March 11-15 | Spring Break (No Class)

Week 10 | March 18-22 | Housing Discrimination

Required:

1. Mary Ellen Stratthaus, "Flaw in the Jewel: Housing Discrimination Against Jews in La Jolla, California," *American Jewish History* 84 (1996), 189-219.
2. Stuart Meck, "Zoning and Anti-Semitism in the 1920s: The Case of Cleveland Jewish Orphan Home v. Village of University Heights and Its Aftermath," *Journal of Planning History* 4, no. 2 (2005): 91-128.
3. *Underwriting Manual of the Federal Housing Administration* (1938) (Excerpts)

Optional:

4. Bruce A. Phillips, "Not Quite White: The Emergence of Jewish 'Ethnoburbs' in Los Angeles," *American Jewish History* 100, no. 1 (2016), 73-104.

5. Paige Glotzer, *How the Suburbs Were Segregated: Developers and the Business of Exclusionary Housing, 1890-1960* (NY: Columbia University Press, 2020).
 6. Garrett Power, "Apartheid Baltimore Style: The Residential Ordinance of 1910-1913," *Maryland Law Review* 42 (1983), 289-328.
 7. Virginia P. Dawson, "Protection from Undesirable Neighbors: The Use of Deed Restrictions in Shaker Heights, Ohio," *Journal of Planning History* 18, no. 2 (2018), 116-136.
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Week 11 | March 25-29 | Employment Discrimination

Required:

1. Kelly King-O'Brien, "'Names and Appearance are Often Indeterminate,' Quandaries Over Identifying Jews in Chicago, 1953-1961," *Journal of the Illinois State Historical Society* 110, no. 1 (2017), 9-58.
2. Eli Wald, "The Rise and Fall of the WASP and Jewish Law Firms," *Stanford Law Review* 60, no. 6 (2008), 1803-1866.

Optional:

3. Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976).
 4. Stephen L. Slavin and Mary A. Pradt, *The Einstein Syndrome: Corporate Anti-Semitism in America Today* (University Press of America, 1982).
 5. Jerold S. Auerbach, "From Rags to Robes: The Legal Profession, Social Mobility and the American Jewish Experience," *American Jewish Historical Quarterly* 66, no. 2 (1976), 249-284.
 6. Abraham K. Korman, "Anti-Semitism in Organizations and the Behavior Sciences: Towards a Theory of Discrimination in Work Settings," *Contemporary Jewry* 9, no. 2 (1988), 63-85.
 7. Ronen Shamir, *Managing Legal Uncertainty: Elite Lawyers in the New Deal* (Durham: Duke University Press, 1995).
 8. Lois Waldman, "Employment Discrimination Against Jews in the United States, 1955," *Jewish Social Studies* 18, no. 3 (July 1956), 208-216.
 9. Melvin Fagen. "The Status of Jewish lawyers in New York City," *Jewish Social Studies* 1, no. 1 (January 1939), 73-104.
 10. John Young, "The Jewish Law Student and New York Jobs: Discriminatory Effects in Law Firm Hiring Practices," *Yale Law Journal* 73 (March 1964), 625-660.
 11. Joseph Zelan, "Social Origins and the Recruitment of American Lawyers," *British Journal of Sociology* xviii (1967), 45-54.
 12. Albert Goldberg, "Jews in the Legal Profession: A Case of Adjustment to Discrimination," *Jewish Social Studies* 32, no. 2 (April 1970), 148-161.
 13. Julie Chi-Hye Suk, "Equal by Comparison: Unsettling Assumptions of Antidiscrimination Law," *American Journal of Comparative Law* 55, no. 2 (Spring 2007): 295-346.
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Week 12 | April 1-5 | Corporate and Labor Law

Required:

1. Lawrence E. Mitchell, "Gentleman's Agreement: The Antisemitic Origins of Restrictions on Stockholder Litigation," *Queen's Law Journal* 36, no. 1 (Fall 2010): 71-112.
 2. John W. Teeter Jr.; Christopher Burnett, "Representation Elections, Anti-Semitism and the National Labor Relations Board," *Virginia Journal of Social Policy & the Law* 5, no. 2 (Winter 1998), 341-372.
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Week 13 | April 8-12 | Family Law

Required:

1. Leonard J. Kowalski, "Religion and Adoption - Constitutionality of Religious Matching Practices," *Wayne Law Review* 17, no. 5 (1971), 1509-1542
2. Marla Brettschneider, *The Family Flamboyant: Race, Politics, Queer Families, Jewish Lives* (NY: SUNY Press, 2006), chapter 2 ("Jew Dykes Adopting Children").

Optional:

3. Elizabeth D. Katz, "Racial and Religious Democracy: Identity and Equality in Midcentury Courts," *Stanford Law Review* 72, no. 6 (2020), 1467-1579.
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Week 14 | April 15-19 | Holocaust Denial (Speech)

Required:

1. Peter R. Teachout, "Making Holocaust Denial a Crime: Reflections on European Anti-Negationist Laws from the Perspective of U.S. Constitutional Experience," *Vermont Law Review* 30, no. 3 (Spring 2006), 655-692.

Optional:

2. Deborah Lipstadt, "Holocaust Denial: An Antisemitic Fantasy," *Modern Judaism* 40, no. 1 (February 2020), 71-86.
 3. John P. Jackson Jr., "The Pre-History of American Holocaust Denial," *American Jewish History* 105, no. 1/2 (2021), 25-48.
 4. Deborah Lipstadt, *Denying the Holocaust: The Growing Assault on Truth and Memory* (Free Press, 1993).
 5. Robert Wistrich, *Holocaust Denial: The Politics of Perfidy* (Jerusalem, 2017).
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Week 15 | April 22-26 | Zionism, Antizionism, and Antisemitism (Speech)

Required:

1. Derek Penslar, "Who's Afraid of Defining Antisemitism?" *Antisemitism Studies* 6, no. 1 (2022), 133-145.
2. Geoffrey P. Levin, "Before the New Antisemitism: Arab Critics of Zionism and American Jewish Politics, 1917-1974," *American Jewish History* 105, no. 1/2 (2021), 103-126.
3. David Schraub, "White Jews: An Intersectional Approach," *AJS Review* 43, no. 2 (2019), 379-407. [Reread sections pertaining to Zionism]

Optional:

4. Kenneth L. Marcus, "Anti-Zionism as Racism: Campus Anti-Semitism and the Civil Rights Act of 1964," *William and Mary Bill of Rights Journal* 15, no. 3 (February 2007), 837-892.