

ANTISEMITISM AND THE LAW

14 weeks

This class will explore the intersection of antisemitism and the law – law as a vehicle for institutionalizing antisemitism, law as a vehicle for combating antisemitism, law as a political tool, and how and why, at times, recourse to law in an attempt to combat antisemitism backfires.

This model course is intended for law students, but also for motivated upper-level undergraduate students.

This is a survey course, abbreviating subjects that could easily justify a full semester examination: the history of religious law and antisemitism, for example, or a full semester on the Dreyfus case, or on contemporary uses of the law (such as the controversy over how Title VI of the Civil Rights Act might apply to anti-Israel political speech). But from time to time (and in particular with the Holocaust denial trial of Irving v. Lipstadt, and to a lesser extent the blood libel trial of Mendel Beilis), we will devote extensive time to the issues these cases raise, reading many of the trial documents. Unfortunately, there is not enough time to cover other areas of interest (the Damascus Blood Libel trial of 1840, contemporary concerns about the application of Title VI of the Higher Education Act, etc.), but students might want to explore these or other areas as part of a written assignment (midterm or final paper).

One of the challenges about antisemitism is that, while it is unique in many important ways, it should not be viewed in isolation. That is why, at the beginning of the course, there are readings (including some provocative ones from the 1970s), examining the intersection of the law and racism, and the law and sexism.

By the end of the class, students should have a better understanding of the hatred known as antisemitism, how law has both been a vehicle for its implementation, and for its eradication, and perhaps more importantly, how law is sometimes a too-attractive, but inherently counterproductive, remedy (and how sometimes it is the exactly right tool).

Students will be graded as follows: 40 percent on final paper, 40 percent on class participation (all students will also be expected, on multiple occasions, to lead class discussions about the material assigned), and 20 percent on a shorter mid-term paper.

(Note – at Session 14, the class will have a discussion with a lawyer from a Jewish defense agency about the legal work of that agency [past and present] regarding antisemitism. This session might actually occur at a different time, depending on the availability of the person.)

- 1 FIRST SESSION – Overview of class topic, discussion of expectations, students should be prepared to introduce themselves to their classmates, and say a few words about why they are taking this class, and what they hope to get out of it.

- 2 Introduction – law and other types of law and discrimination
 - a. Excerpts from “Business Law Basics”
 - <http://www.businesslawbasics.com/chapter-2-what-law>
 - <http://www.businesslawbasics.com/chapter-3-purposes-and-functions-law-1>
 - <http://www.businesslawbasics.com/chapter-4-classifications-law-0>
 - <http://www.businesslawbasics.com/chapter-5-sources-law>
 - b. Law – A Very Short Introduction, through first paragraph on page 28 https://www.goodreads.com/ebooks/download/100020.Philosophy_of_Law
 - c. Anatol France quote on law <http://www.goodreads.com/quotes/361132-the-law-in-its-majestic-equality-forbids-rich-and-poor>
 - d. Ten Ridiculously Sexist Laws. http://www.huffingtonpost.com/soraya-chemaly/10-ridiculously-sexist-laws-around-the-world_b_6679970.html?utm_hp_ref=politics&ir=Politics
 - e. Brief History of American Racism <http://www.thenation.com/article/can-we-brief-history-american-racism/>
 - f. WOMENS SERVITUDE UDER THE LAW <http://www.umass.edu/legal/Hilbink/lpsc/Garfinkle.pdf> (if link doesn't open in word, cut and paste in browser)
 - g. Panther 21: Letter to Judge Murtagh, in Robert Lefcourt, Law Against the People, 1971, New York: Vintage, pps. 185-204

- 3 What is antisemitism?
 - a. <http://www.ushmm.org/confront-antisemitism/european-antisemitism-from-its-origins-to-the-holocaust>
 - b. Kenneth Stern, Antisemitism Today (New York: American Jewish Committee, 2006) Foreword – page 22 http://www.ajc.org/atf/cf/%7B42D75369-D582-4380-8395-D25925B85EAF%7D/ANTISEMITISMTODAY_122006.PDF

- c. The Eternal Jew <https://www.youtube.com/watch?v=RLHVin56U2w>
 - d. <http://www.antisem.eu/projects/eumc-working-definition-of-antisemitism/>
- 4 ANTISEMITISM IN EUROPEAN HISTORY CHRISTIAN ANTISEMITISM – BACKGROUND – Part 1 (readings in Part 1 and Part 2 overlap – discussion in Part 1 focused more on role of antisemitism in Christianity through First Crusade)
- a. Robert S. Wistrich, *Antisemitism: The Longest Hatred*, Pantheon (1991), Page 3 through page 42.
 - b. John Pawlikowski, “Religion as Hatred: Antisemitism as a Case Study,” *Journal of Hate Studies*, Vol ?3 #1 2004, pps 36 et seq
<http://journals.gonzaga.edu/index.php/joXZfghjkl”hs/article/view/51>
 - c. CRUSADES – Leon Paliakov, *THE HISTORY OF ANTISEMITISM*, volume 1, pps 41-56, 64-72
- 5 ANTISEMITISM IN EUROPEAN HISTORY CHRISTIAN ANTISEMITISM – BACKGROUND – Part 2 – (Expulsions, other acts and of discrimination and marginalization, brief overview up to and including Vatican II)
- a. Jacob Blaustein Institute: *Antisemitism: An Assault on Human Rights* - <http://www.ajc.org/site/apps/nlnet/content3.aspx?c=7oJILSPwFfJSG&b=8485347&ct=12480625>
 - b. Anthony Julius, *Trials of the Diaspora*, 139-144, Expulsion.
 - c. David I Kertzer, *The Pope And Mussolini: The Secret History of Pius XI and the Rise of Fascism in Europe*, (New York: Random House, 2014), “The Racial Laws,” pps. 316-331.
 - d. Thomas Stransky, “The Genesis of *Nostrae Aetate*,” *America*, October 24, 2005.
<http://guweb2.gonzaga.edu/againsthate/journal3/GHS103.pdf>http://www.americamagazine.org/content/article.cfm?article_id=4431
 - e. David Danzig, AJC Program Director, Letter to Father Schmidt confirming details of the upcoming meeting between Cardinal Bea and Jewish scholars, (March 8, 1963); “Questions to be submitted to Cardinal Bea at the meeting with Jewish Scholars,” Sunday, March 31, 1963 – 5:00 p.m., The American Jewish Committee, Institute of Human Relations, 165 E. 56 St., New York City (March 6, 1963),
http://www.ajcarchives.org/AJC_DATA/Files/6A8.PDF
 - f. “Conversation of Cardinal Bea with Jewish Scholars and Theologians” (New York, 31st of March 1963) (summary of the main ideas),
http://www.ajcarchives.org/AJC_DATA/Files/6A10.PDF
 - g. John Slawson, AJC Executive Vice President to Judge Joseph M. Proskauer, former AJC President, regarding an “Audience with

- Cardinal Spellman," (February 3, 1964),
http://www.ajcarchives.org/AJC_DATA/Files/693.PDF
- h. Press Release, The American Jewish Committee Institute of Human Relations, "Address by Francis Cardinal Spellman, American Jewish Committee Dinner, Hilton Hotel, New York City, April 30, 1964,"
http://www.ajcarchives.org/AJC_DATA/Files/694.PDF
 - i. Press Release, The American Jewish Committee Institute on Human Relations, New York, June 1, 1964, on Pope VI's endorsement of the sentiments expressed by Cardinal Spellman at AJC's annual dinner,
http://www.ajcarchives.org/AJC_DATA/Files/695.PDF
- 6 BLOOD LIBEL
- a. Anthony Julius, Trials of the Diaspora, Chapter 2 (Defamations), available at ENGAGE --
http://www.engageonline.org.uk/journal/index.php?article_id=42&journal_id=12
 - b. CRUSADES – Leon Paliakov, THE HISTORY OF ANTISEMITISM, volume 1, pps 56-64
 - c. Stormfront on Jewish Ritual murder
<https://www.stormfront.org/forum/t234045/> and
<https://www.stormfront.org/forum/t876292/>
 - d. Messina NY blood libel incident, NPR --
<http://www.northcountrypublicradio.org/news/story/19305/20120214/massena-s-history-still-tied-to-1928-blood-libel-incident>
 - e. MEMRI -- Blood Libel: Jews Murder A Christian Child to Get The Blood
https://www.youtube.com/watch?v=KHqXt_JNSt8
- 7 Dreyfus
- a. Emancipation of Jews
https://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0006_0_05916.html
 - b. Albert S. Lindemann, The Jew Accused: Three Anti-Semitic Affairs – Dreyfus, Beilis, Frank 1894-1915 (Cambridge: Cambridge University Press, 1991), pp. 79-128.
 - c. Poliakov, Volume 4, pp. 46-57, available at
http://www.amazon.com/History-Anti-Semitism-Suicidal-Europe-1870-1933/dp/0812218663/ref=sr_1_7?ie=UTF8&qid=1314641087&sr=8-7
 - d. Emile Zola, "J'Accuse: Letter to the President of the Republic,"
<https://en.wikisource.org/?curid=6792>

- 8 STUDENTS SUBMIT 1-2 page proposal for midterm paper – a 5 to 10 page analysis of some aspect of intersection between antisemitism and the law, contrasting and comparing it to the operation of law and another form of hate, prejudice, bigotry, discrimination, etc.. Professor’s approval (before session 10) needed.

BEILIS TRIAL:

- a. Robert Weinberg, “Blood Libel in Late Imperial Russia: The Ritual Murder Trial of Mendel Beilis,” Indiana University Press, 2014 (entire book)

- 9 Leo Frank –

- a. People vs. Leo Frank <https://vimeo.com/ondemand/16620>
b. Frank vs. Magnum, 237 U.S. 309 (1915)
<http://law2.umkc.edu/faculty/projects/ftrials/frank/frankvmagnum.html>
c. Clemency decision of Governor Slaton
<http://law2.umkc.edu/faculty/projects/ftrials/frank/frankclemency.html>
d. Chronology
<http://law2.umkc.edu/faculty/projects/ftrials/frank/frankchronology.html>
e. American Mercury, 100 reasons Leo Frank is guilty (2013)
<http://theamericanmercury.org/2013/04/100-reasons-proving-leo-frank-is-guilty/>

- 10 Nazism

- a. Nuremberg <https://www.facinghistory.org/for-educators/educator-resources/featured-projects/watchers-of-the-sky/benjamin-ferencz>
b. Eichmann Trial – District Court Foreword, Session 1, Judgment
<http://www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/and>
http://web.archive.org/web/20160405173415/http://www.trial-ch.org/fileadmin/user_upload/documents/trialwatch/eichmann_appeal.pdf.

- 11 HOLOCAUST DENIAL: Irving v. Lipstadt PART 1 of 5

- a. Kenneth Stern, “Antisemitism Today,” American Jewish Committee, 2006, pps 78-93 <http://kenneths Stern.com/wp-content/uploads/2018/09/ANTISEMITISMTODAY.pdf>
b. Evans Report, Sections 1-3
<http://hdot.org/en/trial/defense/evans/view/printall.html>
c. Judgement,
<http://hdot.org/en/trial/judgement/02/view/printall.html> through page 90.

- 12 HOLOCAUST DENIAL: Irving v. Lipstadt PART 2 of 5 ALSO MIDTERM PAPERS DUE
 - a. Evans Report Sections 4-6
<http://hdot.org/en/trial/defense/evans/view/printall.html>

- 13 HOLOCAUST DENIAL: Irving v. Lipstadt PART 3 of 5
 - a. Van Pelt Report on AUSCHWITZ – Preface through Part 2
<http://hdot.org/en/trial/defense/van.html>

- 14 SKYPE or VIDEO discussion with counsel from a Jewish defense agency (AJC, ADL, JCPA, etc.)

- 15 HOLOCAUST DENIAL: Irving v. Lipstadt, Part 4 of 5
 - a. Van Pelt part 3-End

- 16 HOLOCAUST DENIAL: Irving v. Lipstadt, Part 5 – Irving political self portrait
 - a. <http://hdot.org/en/trial/defense/selfportrait/view/printall.html>
 - b. <http://hdot.org/en/trial/judgement/02/view/printall.html>, 90 to end.

- 17 TENSIONS BETWEEN CENSORING ANTISEMITIC EXPRESSIONS AND FREE SPEECH IN THREE PARTS: SKOKIE, TITLE VI, HOLOCAUST DENIAL LAWS
 - a. Thomas Emerson, “Toward a General Theory of the First Amendment,” The Yale Law Journal vol 72:877, pps. 877-895, 908-914, 916-921, 928-937.
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3769&context=fss_papers
 - b. SKOKIE Edward L Rubin, Nazis, Skokie, and the First Amendment at Virtue, California Law Review, Volume 74, Issue 1, 1986
 - c. Village of Skokie v. NSP, 51 Ill. App. 279 (Appellate Court Decision)
<http://people.brandeis.edu/~teuber/skokie.html>
 - d. Illinois Supreme Court Decision, 69 Ill. 2nd, 605 (1978)
http://www.leagle.com/decision/197867469Ill2d605_1614.xml/VIL_LAGE%20OF%20SKOKIE%20v.%20NAT'L%20SOCIALIST%20PARTY%20OF%20AMERICA
 - e. US Supreme Court decision
<http://law.justia.com/cases/illinois/supreme-court/1978/49769-6.html>

- 18 DISCUSSION OF MIDTERM PAPERS – STUDENTS CHOOSE TOPIC FOR SESSION 25 (some aspect of law and antisemitism not already covered in depth)

- 19 HOLOCAUST DENIAL LAWS.
- a. Kantor Center, "Legislating Against Antisemitism and Holocaust Denial," 2013
<http://kantorcenter.tau.ac.il/sites/default/files/Laws%20against%20Antisemitism%20and%20Holocaust%20Denial.pdf>
 - b. Belinda Cooper: Denying Genocide, Cardozo Journal of Conflict Resolution (Spring 2008) <http://cardozojcr.com/vol9no2/447-450.pdf>
 - c. Michael Whine, "Expanding Holocaust Denial and Legislation Against It," pps. 540 et seq in Extreme Speech and Democracy," Hare and Weinstein, editors, Oxford University Press, 2009.
 - d. Karen Eltis, "A Constitutional 'Right' to Deny and Promote Genocide? Preempting the Usurpation of Human Rights Discourse Toward Incitement From a Canadian Perspective," Cardozo Journal of Conflict Resolution (Spring 2008)<http://cardozojcr.com/vol9no2/463-478.pdf>.
 - e. Sevane Garbian, "Taking Denial Seriously: Genocide Denial and Freedom of Speech in the French Law," Cardozo Journal of Conflict Resolution (Spring 2008) <http://cardozojcr.com/vol9no2/479-488.pdf>
 - f. Lyrissa Lidsky, "FIRST AMENDMENT DISCUSSION GROUP: Where's the Harm? Free Speech and the Regulation of Lies," Washington & Lee Law Review, Summer 2008.
 - g. Rabbi Andrew Baker, Personal Representative of the OSCE Chair-in-Office on Combating Anti-Semitism, Presentation to Tel Aviv University Diplomatic Gathering, January 19, 2010.
- 20 The American College Campus , TITLE VI of the Civil Rights Act, and defining antisemitism–
- a. Kenneth L Marcus, "Jurisprudence of the New Anti-Semitism," Wake Forest Law Review, Vol 44, p. 101 et seq, 2009
<http://www.brandeiscenter.com/images/uploads/articleuploads/jurisprudence.pdf>
 - b. Tammi Rosman Benjamin complaint to Department of Education http://brandeiscenter.com/images/uploads/cases/complaint_ucsc.pdf
 - c. DOE's Office of Civil Rights August 2013 Letters to Berkeley, 2013
[http://news.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR .pdf](http://news.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR.pdf), to Santa Cruz,
http://news.ucsc.edu/2013/08/images/OCR_letter-of-findings.pdf
and to Irvine
[http://ccrjustice.org/sites/default/files/assets/files/OCR-UCIrvine Letter of Findings to Recipient.pdf](http://ccrjustice.org/sites/default/files/assets/files/OCR-UCIrvine_Letter_of_Findings_to_Recipient.pdf)
 - d. <http://www.aaup.org/news/cary-nelson-and-kenneth-stern-pen-open-letter-campus-antisemitism>

- e. <http://spme.org/spme-research/analysis/tammi-rossman-benjamin-responds-to-kenneth-stern-of-the-american-jewish-committee/9763/>
 - f. http://www.jewishjournal.com/opinion/article/should_a_major_university_system_have_a_particular_definition_of_anti_semit
 - g. Fraser vs. UCU <https://www.judiciary.gov.uk/judgments/fraser-uni-college-union/>
- 21 Hate crimes
- a. RAV vs St Paul <http://caselaw.findlaw.com/us-supreme-court/505/377.html>
 - b. Wisconsin v. Mitchell <https://www.law.cornell.edu/supct/html/92-515.ZO.html>
 - c. AJC brief in Wisconsin v. Mitchell
 - d. Social Construction of a Hate Crime Epidemic <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6864&context=jclc>
 - e. OSCE LEOP <http://www.osce.org/odihr/20699?download=true> AND http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf#page=62
 - f. DOJ Hate Crime Statistics <https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2013> with special attention to https://www.fbi.gov/about-us/cjis/ucr/hate-crime/2013/topic-pages/victims/victims_final
- 22 OFFICE OF SPECIAL INVESTIGATIONS
- a. <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007105>
 - b. <http://kennethsstern.com/wp-content/uploads/2018/12/Demjanjuk.CV01.pdf>
- 23 Discrimination:
- a. [https://www.jewishvirtuallibrary.org/jsource/anti-semitism/Jews_in_Arab_lands_\(gen\).html](https://www.jewishvirtuallibrary.org/jsource/anti-semitism/Jews_in_Arab_lands_(gen).html)
 - b. Numerous Clausus http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0015_0_14969.html
 - c. MAY CHANGE Heitzman v. Monmouth County <http://caselaw.findlaw.com/nj-superior-court-appellate-division/1348828.html>
 - d. MAY CHANGE Cutler v Dorn, <http://caselaw.findlaw.com/nj-supreme-court/1094280.html>
 - e. Turner v. Barr, http://dc.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19921125_0000296.DDC.htm/qx

- 24 Religious Freedom, laws re Jewish practice, etc.
- a. Marc Stern, "Antisemitism and the Law: Constitutional Issues and Antisemitism, in Jerome Chanes (Ed.)," Antisemitism in America Today: Outspoken Experts Explode the Myths, (New York: Birch Lane Press, 1995), pps. 385-407.
 - b. Religious Freedom Restoration Act – Marci Hamilton, "God vs. the Gavel: The Perils of Extreme Religious Liberty (Second Edition), (New York: Cambridge University Press, 2014) Introduction and Chapter 1; Burwell vs. Hobby Lobby:
<https://www.law.cornell.edu/supremecourt/text/13-354>
 - c. Circumcision, Boldt v. Boldt,
<http://www.publications.ojd.state.or.us/docs/S054714.htm> and San Francisco Ballot Initiative controversy --
<http://web.archive.org/web/20141119064257/http://www.sfcityattorney.org/index.aspx?page=374> --and all PDFs listed on page.
 - d. Kosher – Rich vs. Secretary – Florida Department of Corrections
<http://www.becketfund.org/wp-content/uploads/2013/05/Rich-op.pdf> and Commack Self-Service Kosher Meats vs. Rabbi Weiss et al,
<http://caselaw.findlaw.com/us-2nd-circuit/1355808.html> and "The Secret Kosher Tax" <https://www.radioislam.org/judaism/kosher.htm>
 - e. Religious Freedom Restoration Act – Marci Hamilton, "God vs. the Gavel: The Perils of Extreme Religious Liberty (Second Edition), (New York: Cambridge University Press, 2014) Introduction and Chapter 1; Burwell vs. Hobby Lobby:
<https://www.law.cornell.edu/supremecourt/text/13-354>
- 25 STUDENT CHOSEN TOPIC – Readings to be assigned
- 26 DISCUSSION OF FINAL PAPERS
- 27 DISCUSSION OF FINAL PAPERS
- 28 CONCLUDING SESSION – wrap up, food