

SYMPOSIUM ON RABIAT AKANDE, “AN IMPERIAL HISTORY OF RACE-RELIGION IN INTERNATIONAL LAW”

FROM ONE PARADIGM TO ANOTHER: THE JEWISH HISTORY OF RACE AND RELIGION IN INTERNATIONAL LAW

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Rabiat Akande’s article, “An Imperial History of Race-Religion in International Law,” draws attention to the gap in frameworks of protection from religious discrimination, on the compelling rationale that much contemporary discrimination continues to work through racialization. And she provides a genealogy to show that this gap is not there by accident—it presupposes a specific set of histories that excluded the racialization of religion from protection, because such protection was devised to respond to some kinds of wrongs (especially those of concern to white Christians) rather than others. In this essay, I would like to draw out much more explicitly than she does Akande’s momentous point that Jews—racialized by white Christian Europeans—once experienced and fought this very same protection gap. This story is of great historical interest in its own right, but it also redoubles the familiar lesson that colonialism never just ends. Instead, it endures in complex ways and facilitates ongoing cycles of suffering and unfreedom.

*A Scholarly Agenda*

Akande draws on claims that basic protected categories such as race and religion are not just invariant features of human existence (however worthy the goal of prohibiting discrimination on the basis of either or both is). For example, though she does not mention him, Gil Anidjar has mounted an impressive argument that Christianity is at the origin of both secularism and the distinction between race and religion that played havoc with both colonial and post-colonial societies.<sup>1</sup> The same argument applies to the context of former colonial metropolises that have become sites of conflict over the arrival of “others” over decades—most especially racialized Muslims, both before and after the fateful date of September 11, 2001.

Akande specializes in bringing into legal argument—and especially argument regarding twentieth-century international legal history—perspectives that post-colonial scholars of religion have developed in the last few decades. At the same time, she transforms those perspectives: she gives them new content, even as she translates them. A case in point is her magisterial recent book, *Entangled Domains*, which shows how the critique of colonial secularism pioneered by scholars such as Talal Asad and Saba Mahmood helps illuminate legal developments in northern Nigeria both before and after formal independence.<sup>2</sup>

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<sup>1</sup> GIL ANIDJAR, *SEMITES: RACE, RELIGION, AND LITERATURE* (2007).

<sup>2</sup> RABIAT AKANDE, *ENTANGLED DOMAINS: EMPIRE, LAW, AND RELIGION IN NORTHERN NIGERIA* (2022).

The primary interest of Akande's article is that it mines similar colonial and international studies in order to illuminate the long making of our current predicament in international law. Among the host of other themes in her piece, the place of Jewish history is a fascinating and thought-provoking one. Jews were positioned to register the racialization of religion because of their history as victims of what Daniel Boyarin and many other scholars have referred to as their own experience of colonization.<sup>3</sup> As Akande says, the paradigm victim of the racialized form of religious discrimination her article addresses today is Muslim (and female). It is therefore an interesting fact that Jews once saw themselves and were seen as the paradigm case of the racialization of religious identity—and fought for its relevance to international law.

### *Jewish Colonial Racialization and the Trajectory of International Protection*

Akande's starting point is that religious minorities such as Muslims tend to be racialized in the contemporary world, but existing prohibitions of religious discrimination in international law do not adequately protect them. Her question is why, and her answer is a genealogical exploration revealing that the outcome is anything but accidental.

The first part of Akande's article is an illuminating survey of how colonial rule initiated the racialization of religion—even playing an enormous role in the globalization of the notion of religion as such. The same racialization of religion, obviously, occurred to Jews in European history; if “religion” itself is of Christian derivation, Jews had to learn how to have one, and were then racially subordinated on its basis.<sup>4</sup>

As Akande herself notes, anti-Semitism “was an undeniable manifestation of the mutual constitution of racial and religious othering.”<sup>5</sup> Some scholars trace race, racialism, and race-thinking to the ancient world.<sup>6</sup> But after the Middle Ages and into the apex period for scientific racism (toward the end of the nineteenth and early decades of the twentieth centuries), there is no doubt that those of African and Jewish descent alike, along with Indigenous peoples the world over, were at the center of racialization. Indeed, the very strength of racist assumptions led many Jews not merely to “defend the race” from slanders and slurs, but also to reclaim racial distinction in honorific terms.<sup>7</sup>

The second part of Akande's article examines how the early versions of international governance ranked religious freedom highly but tended to ignore racialization, let alone the racialization of religious difference. In a fascinating passage in her article, Akande shows how a Japanese diplomat, Baron Makino Nobuaki, perceived this dynamic in the course of his nation's advocacy for the prohibition of racism in the League of Nations Covenant (Japan's advocacy failed).<sup>8</sup> Obviously, this configuration of priorities—which lasted long into the era after World War II before decolonization became widespread—reflected, more or less straightforwardly, the global interests of Christian missionary activity.

In international Jewish history, as Akande notes, the situation of Jews in Eastern Europe could register as racialized oppression in early versions of minority protection, in bilateral treaties before World War I and in peace

<sup>3</sup> Daniel Boyarin, *Review: Épater l'Embourgeoisement: Freud, Gender, and the (De)colonized Psyche*, 24 *DIACRITICS* 16, 34 (1994) (“If the Jews of premodern Europe are a colonized people, then the Emancipation is a decolonization and like any other produces that cultural condition referred to as postcoloniality.”).

<sup>4</sup> LEORA BATNITZKY, *HOW JUDAISM BECAME A RELIGION: AN INTRODUCTION TO MODERN JEWISH THOUGHT* (2011).

<sup>5</sup> RABIAT AKANDE, *An Imperial History of Race-Religion in International Law*, 118 *AJIL* 1, 18 (2024).

<sup>6</sup> BENJAMIN ISAAC, *THE INVENTION OF RACISM IN CLASSICAL ANTIQUITY* (2004).

<sup>7</sup> JOHN M. EFRON, *DEFENDERS OF THE RACE: JEWISH DOCTORS AND RACE SCIENCE IN FIN-DE-SIÈCLE EUROPE* (2011).

<sup>8</sup> NAKO SHIMAZU, *JAPAN, RACE, AND EQUALITY: THE RACIAL EQUALITY PROPOSAL OF 1919* (1998).

arrangements afterward.<sup>9</sup> The paradigmatic case of the Jews forced the acknowledgment, more or less implicitly, of the racialization of religion, which garnered an international response through Jewish advocacy in great power politics.

That reality was more undeniable after the Holocaust, which established the new concept of “genocide” (extermination including on racial or religious grounds) and made the Jewish experience paradigmatic of such persecution for decades.<sup>10</sup> The partial acknowledgment in interwar minorities treaties of the entanglement of minority race and religion had initiated a new possibility in international law. But the protections afforded by those treaties were limited to “semi-civilized” newly independent states of Eastern Europe rather than either colonial metropolises or colonized spaces. Even after the Holocaust, as Akande writes, there was no easy or uncomplicated breakthrough for the protection of religious minorities who had been racialized and put to death by the millions. Article 18 of the Universal Declaration of Human Rights, internationalizing religious liberty, was closely associated with the propagation of Christian liberty in the world. Its drafters in a still colonial environment intended to privilege the Protestant *forum internum* of religious belief, and to protect global Christian missionary activity.<sup>11</sup>

On Akande’s account, it was anti-Semitic incidents in 1959 that altered prior dynamics more powerfully, which even the Holocaust had not done. The 1960 Declaration against Religious and Racial Discrimination identified the twinning of forms of hate. Here Akande joins a growing body of literature registering that in the age of decolonization, it was not so much the Holocaust, as it was the memory of what had befallen the Jews in European history, that required a new form of ethical consciousness and international law.<sup>12</sup> One reason was solidarity of Jews with the victims of colonial rule, as Michael Rothberg has emphasized.<sup>13</sup> But the converse reason applied even more forcefully: those done with formal rule overseas could elevate depredations under Adolf Hitler’s empire because doing so could both launder the past global crimes of other transatlantic states while stigmatizing disorder and misrule in new post-colonial settings.<sup>14</sup> Even so, as Ofra Friesel has shown, in the making of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), not just burgeoning post-colonial states but also Israel advocated for connecting the project to religious discrimination without success.<sup>15</sup>

### *The Decolonization of Africa and Asia and the Substitution of Paradigms*

Akande can be read, then, as suggesting a certain move from one paradigm to another, even as the years of decolonization transformed Jewish politics. It is not just that Jews had a prehistory analogous to colonized subjects across the world in the racialization of their religious identity. It is that they had a common path of decolonization—something early observers of Israel were often willing to celebrate in identifying it as a kind of post-colonial state. The Oxford don and political theorist Isaiah Berlin, for one, could remark that interpreting Zionism as “the decolonization of Jews everywhere” involved “a brilliant simile.”<sup>16</sup> But at the same time, decolonization

<sup>9</sup> CAROLE FINK, [DEFENDING THE RIGHTS OF OTHERS: THE GREAT POWERS, THE JEWS, AND INTERNATIONAL MINORITY PROTECTION 1878–1938](#) (2008).

<sup>10</sup> A. DIRK MOSES, [THE PROBLEMS OF GENOCIDE: PERMANENT SECURITY AND THE LANGUAGE OF TRANSGRESSION](#) (2021).

<sup>11</sup> Akande emphasizes this in prior work, in the tracks of other critical scholars. See AKANDE, *supra* note 2, Ch. 5; see, e.g., LINDE LINDKVIST, [RELIGIOUS FREEDOM AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS](#), Ch. 2 (2017).

<sup>12</sup> MICHAEL ROTHBERG, [MULTIDIRECTIONAL MEMORY: REMEMBERING THE HOLOCAUST IN THE AGE OF DECOLONIZATION](#) (2009).

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., Samuel Moyn, [Silence and the Shoah](#), *TIMES LIT. SUPP.* (Aug. 7, 2013).

<sup>15</sup> Ofra Friesel, [Race versus Religion in the Making of the International Convention Against Racial Discrimination, 1965](#), 32 *L. & HIST. REV.* 351 (2014).

<sup>16</sup> Isaiah Berlin, [A Nation Among Nations](#), *JEWISH CHRONICLE* (May 4, 1973). I discuss this citation in [LIBERALISM AGAINST ITSELF: COLD WAR INTELLECTUALS AND THE MAKING OF OUR TIMES](#), Ch. 5 (2023). For more, see Derek J. Penslar, [Zionism, Colonialism, and Postcolonialism](#), 20

also changed everything in beginning the long process of spotlighting Israeli transgression on the grounds that Jewish victims of a racial-religious subjugation (and worse) in the past were not above visiting the same treatment on others.

As Akande notes, Israel's very advocacy for standards that acknowledged the linkage between racial and religious hatred doomed those standards: "Israel's support for an interlinked provision might have provoked concerns among other Middle East representatives that criticism of Israel would be conflated with the forms of race-religious othering that the proposed convention sought to address."<sup>17</sup> In the Cold War drama Akande reconstructs there were, of course, many other factors explaining the failure to close the protection gap then. Yet it matters that, at a pivotal moment, the antecedent and in some ways exemplary victimhood of Jews on racial and religious grounds gave way to another exemplary set of victims.

Nonetheless, it is striking that, before Akande reaches the climactic severing of race and religion in the Cold War and its consequences for our time, she suggests how profoundly the co-constitution of race and religion in general and in international law in particular is as much a Jewish history as a colonial history.

### *Conclusion*

Though the historical record suggests similarities in their experience of victimhood, contemporary Jews do not regularly see themselves as allies of Muslims facing racial and religious persecution. But perhaps they should.

In *When Victims Becomes Killers*, Africanist Mahmood Mamdani famously showed that imperial histories could set up extreme violence even decades after their interruption.<sup>18</sup> Akande is writing in this tradition, by showing how the limitations of international law reflect the imperial history that produced it. Though formal empires may disappear, their afterlives play out in complicated and depressing ways. International law, a product of empire, is not up to the challenge of transcending these durable legacies.

In Mamdani's reconstruction, it was colonial knowledge, not immemorial difference, that accounted for the distinction between Hutu and Tutsi peoples.<sup>19</sup> And the racialized privileging of the one group set them up for being treated by the other as a proxy for alien settlers in a version of native violence, climatically and horribly in the 1994 genocide that took the lives of around 800,000 men, women, and children.<sup>20</sup>

The entanglement of Jewish and Muslim histories on which Akande forces contemporary meditation is surely different in a thousand ways. That afterlives continue does not mean they are all equivalent. The colonial racialization of Hutus and Jews before they enjoyed enough subsequent power to hurt others does not make them the same, or cycles of pain and suffering that play out after formal empire ends comparable in many respects. But they are close enough to force reflection. Akande's lesson that international law has not allowed for setting aside the legacies of the imperial past, let alone provided compensation for its injuries, is hardly uplifting. Yet her article also suggests one alternative for humanity: to begin by facing up to the histories that can lead colonial victims to inflict violence themselves.

J. ISRAELI HIST. 84 (2008) or Rephael G. Stern, *Uncertain Comparisons: Zionist and Israeli Links to India and Pakistan in the Age of Partition and Decolonization*, 39 L. & HIST. REV. 451 (2021).

<sup>17</sup> Akande, *supra* note 5, at 26.

<sup>18</sup> MAHMOOD MAMDANI, *WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM, AND THE GENOCIDE IN RWANDA* (2001).

<sup>19</sup> *Id.*, Ch. 3.

<sup>20</sup> *Id.*, Chs. 4–7.