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

RACING RELIGION IN THE PALESTINE-ISRAEL DISCOURSE

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Race is a Western political project. Religious freedom is a Christian political project. The linkages between the two enabled European nations and their settlers across the globe to condemn natives, slaves, and non-European immigrants to inferior status, and in turn legalize control of their lands and bodies.[1] The consequent race-religion systems of power and privilege, which inform Rabiat Akande's thesis, offer valuable insights into the racialized boundaries of contemporary Palestine-Israel discourse in the United States.[2] Specifically, the racialization of Muslims and Arabs as terrorism supporters and presumptively anti-Semitic subjects them to censorship, harassment, and discrimination when they advocate for the human rights of Palestinians in Gaza and the West Bank. This essay argues that infringements on Muslims and Arabs' dissenting speech and political activism is another way in which the racialization of religion produces a mutually constitutive form of discrimination.

Importing the concept of race from Europe, Americans' social constructions have been historically grounded in three phenomena: enslavement of Africans, settler colonialism of Indigenous peoples, and phenotype of immigrants associated with their geographic origins. Defining the criteria for each racial category is integral to the work performed by racism. For instance, what constitutes Blackness, such as one drop of African blood, determines who could legally be enslaved; just as what constitutes whiteness, such as exclusively European origin, historically determined who was eligible for citizenship, property ownership, and political rights.[3] Akande's work echoes critical race theory scholarship in determining how Eurocentric colonialist agendas, not biology, socially and politically constructed race and attendant hierarchies of (dis)empowerment.[4]

Western social constructions of race, however, are also defined by religious identity. Akande aptly describes how Europe's religious freedom projects, often disguised under "civilizing mission(aries)," operated to justify colonization. Likewise, the hierarchies *within* the social constructions of whiteness were shaped by religious identity. Protestant Northern and Western Europeans, for example, were historically raced as superior to Eastern and Southern Europeans, who are predominantly Jewish and Catholic. These racio-religious hierarchies were brought to North America, contributing to anti-Semitism and anti-Catholic discrimination in the twentieth century and heightened anti-Muslim discrimination today.[5]

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[1] Natsu Taylor Saito, Settler Colonialism, Race, and the Law: Why Structural Racism Persists (2020).

[2] Rabiat Akande, *An Imperial History of Race-Religion in International Law*, 118 AJIL 1 (2024).

[3] Ian Haney Lopez, White by Law: The Legal Construction of Race (2016).

[4] Akande, *supra* note 2.

[5] Matthew Frye Jacobson, Whiteness of a Different Color: European Immigrants and the Alchemy of Race (1999).

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The Social Construction of the Racial Muslim

In the Middle East, Europeans' race-religion political projects arose from a purported "clash of civilizations" between Christian and Islamic societies.[6] In contrast to Africans, Indigenous Americans, and Far East Asians where physical distinctiveness from the European phenotype is dispositive in the racialization process, religious identity is determinative in the racialization of Muslims. Thus, for Middle Easterners such as Turks, Syrians, or Palestinians, who may appear phenotypically European, their real or presumed Muslim identity imputes upon them inferiority, which in turn justifies myriad forms of violence and material harms. I describe this process as the social construction of "the racial Muslim."[7]

The transnational reach of Western racialization projects ties the experiences of non-European immigrants in the United States to foreign policy with their nations of origin. From the 1970s to 1990s, for example, Arab Americans were collectively blamed by the public and U.S. government for the Gulf countries' oil embargo.[8] Additionally, the American media frequently portrayed terrorists as Arab, and more specifically Palestinian, while, in sharp contrast, the domestic terrorism of white males such as Timothy McVeigh, Ted Kaczynski, and members of the Weather Underground has been treated as individual criminality.[9]

The 9/11 terrorist attacks expanded racialized collective punishment to all Muslims, most acutely in the case of Middle Easterners and South Asians.[10] Anti-Muslim racism and Islamophobia became normalized in political discourse, media, legislation, national security practices, and executive actions.[11] At the same time that anti-Semitic or anti-Black racial slurs are no longer acceptable in mainstream forums, Muslims continue to be frequently called "terrorists" in workplaces, schools, political campaigns, and public spaces without negative repercussions.[12] Worse yet, conservative politicians compete for votes based on who can be more Islamophobic in opposing the construction of mosques, supporting mass deportation of Muslim immigrants, shutting down Muslim American charities, and outright banning Muslims from entering the United States.[13]

Adopting the "civilizing mission" that legitimized British and French colonization, the founders of a European Jewish settler colonial project—taking the land of the native Palestinians for purposes of creating an exclusively Jewish homeland—intentionally framed it as a civilizational conflict to obtain European nations' support.[14] What made this racial project particularly salient to Americans after World War II is its Judeo-Christian political framing. Anti-Semitism and anti-Catholic bias in the first half of the twentieth century sparked interfaith civil rights efforts, which coupled with American sympathy for Jews after the Holocaust, expanded American identity from Protestant to Judeo-Christian. This in turn expanded the top rung of the racio-religious hierarchy to include Jewish and Catholic Americans of European origin as socially white. It also conspicuously excluded numerous religions indigenous to Asia, Africa, the Americas, and the

[6] Akande, *supra* note 2, at 12–14.

[7] *Id.*

[8] Sahar Aziz, The Racial Muslim: When Racism Quashes Religious Freedom 121–22 (2021).

[9] Jack G. Shaheen, The TV Arab (1984).

[10] Sherene Razack, Nothing Has to Make Sense: Upholding White Supremacy Through Anti-Muslim Racism (2022).

[11] Erik Bleich et al., Report on Media Portrayals: 2018 Newspaper Coverage of African Americans, Asian Americans, Latinos, Jews, and Muslims (2019).

[12] CAIR, *Progress in the Shadow of Prejudice 2023 Civil Rights Report* (2023).

[13] David D. Belt, *Anti-Islam Discourse in the United States in the Decade after 9/11: The Role of Social Conservatives and Cultural Politics*, 51 J. Ecumenical Stud. 210 (2016); *see also* Lisa Mascaro, *House Responds to Rep. Boebert's Anti-Muslim Remarks with Islamophobia Bill*, PBS (Dec. 15, 2021).

[14] Tariq Dana & Ali Jarbawi, *A Century of Settler Colonialism in Palestine, Zionism's Entangled Project*, Brown J. World Aff. (2017).

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Middle East—despite growing numbers of immigrants from those regions after immigration national origin quotas were removed in 1965.[15]

Racing Palestinians as Terrorists and Presumptively Anti-Semitic

Adopting the clash of civilizations cultural script, U.S. media portrayed Palestinians as irrational savages and terrorists when they defended lands on which they had lived for centuries. The European founders of Israel, in stark contrast, were depicted as industrious and brave. Americans compared them to the Puritans who founded "God's American Israel" fleeing religious persecution, further justifying Israel's disproportionately violent response to Palestinian resistance. That Americans were already socialized to accept forceful quashing of rebellions by Indigenous people made them amenable to the Israeli claims of moral superiority.[16]

Religious political projects, established in the form of Manifest Destiny, not only expanded colonialist missionary work, as shown by Akande, but also animated Christian Evangelicals' support for Zionism. Racism mixed with Christian theology underpinned Americans' support for Israel; specifically, the requirement that Jews must return to Palestine as the precursor for the second coming of Jesus.[17] Just as Muslims were the antagonists to Europe's Crusaders, so too were the Palestinian natives to contemporary Christian Zionists' desire to establish Israel. Tellingly, Muslim identity has been erroneously ascribed to the sizeable Christian Palestinian community until the present day, demonstrating the predominance of Islam as a foil in Western nations' (and by extension Israel) race-religion projects in the Middle East.

A telltale sign of racism is collective punishment of a group for the wrongful acts of individuals who share the same racial identity. In the case of the 2.3 million Palestinian civilians completely blockaded by Israel in Gaza since 2005, Israeli President Isaac Herzog expressed this racial logic five days after the October 7, 2023 Hamas attack: "It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not being aware, not involved. It's absolutely not true. They could have risen up. They could have fought against that evil regime which took over Gaza in a coup d'état."[18] If Herzog's reasoning was invoked to justify collectively punishing all Americans for the U.S. government's killing of hundreds of thousands of civilians in Iraq and Afghanistan, Western nations would categorically reject it.[19] Yet, these same nations supported Israel's violent collective punishment of Palestinians in Gaza.

After the assault on Gaza, news headlines in U.S. mainstream media were replete with euphemisms and the passive voice when referencing Palestinians, downplaying their immense suffering at the hands of the Israeli military.[20] When reporting on Jewish Israelis, however, journalists were careful to describe with specificity the atrocities committed by Hamas both in the use of words and active verb tense.[21] Two contrasting racialized narratives simultaneously dehumanized Palestinians and humanized Israelis: by February 2024, (1) thirty-three thousand Palestinians had *died* in Gaza with no connection made to the political context of a brutal, decades long Israeli occupation compared to (2) Islamic Hamas and the collectively responsible 2.3 million Gazans brutal *murder* of 1,200 Jewish Israelis in an unprecedently violent terrorist attack.[22]

[15] Aviva Halamish, *Immigration Is Israel's History, So Far*, 23 Israel Stud. 106 (2018).

[16] Aziz, *supra* note 8, at 117–18; M. Shahid Alam, Israeli Exceptionalism: The Destabilizing Logic of Zionism 16–45 (2009).

[17] Alam, *supra* note 16.

[18] Paul Blumenthal, *Israeli President Suggests That Civilians In Gaza Are Legitimate Targets*, Huffington Post (Oct. 13, 2023).

[19] Brown University Watson Institiute of International and Public Affairs, *Costs of War Project*.

[20] Nada Osman, *War on Gaza: How Language Used by Media Outlets Downplays Palestinian Suffering*, Middle East Eye (Dec. 25, 2023).

[21] Laura Wagner & Will Sommer, *Hundreds of Journalists Sign Letter Protesting Coverage of Israel*, Wash. Post (Nov. 9, 2023).

[22] Elena Dudum, *Palestine and the Power of Language*, Time (Feb. 16, 2024).

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Intersection of Islamophobia and Anti-Palestinian Racism

For Palestinians (incorrectly presumed to all be Muslim), their racialization as terrorists and anti-Semites in Western society has lethal consequences.[23] Specifically, Israel responded with unprecedented violence to Hamas's attack on October 7, 2023, that killed approximately 700 Israeli civilians and 450 soldiers, and took 220 civilians and military personnel hostage.[24] In the first six months, Israel had killed and injured over 100,000 Palestinians (nearly half of whom were children), destroyed every university, and bombed two thirds of all the medical facilities in Gaza.[25]

At the outset of its assault, Israel prohibited entry of any food, water, or fuel into Gaza for over two weeks, when the Palestinian population needed at least five hundred trucks of aid per day to enter just to meet their basic needs. When Israel begrudgingly lifted its total ban on humanitarian aid, only a fraction of the population's needs was allowed in each day.[26] The predictable result was mass scale malnutrition, famine, disease, and preventable deaths.[27]

Due in large part to social media, the ubiquity of smartphones, and citizen journalism in Gaza, the world watched in real time the horrors inflicted on Palestinians. Live streams, pictures, videos, and testimonials by Gazans experiencing Israel's military assault offered indisputable evidence of mass destruction and death. Simultaneously, Israeli officials explicitly stated their intent to kill, starve, and ethnically cleanse Palestinians in Gaza.[28] "We are imposing a complete siege on Gaza. There will be no electricity, no food, no water, no gas. Everything will be closed. We are fighting against human animals, and we are acting accordingly," announced Israeli Defense Minister Yoav Gallant on October 10, 2023.[29] Such statements, among countless others made by Israeli government officials, politicians, and journalists further evince the racialization of Palestinians as inferior to Jews—the political, legal, and social norms on which Israeli state violence can occur without accountability.[30]

Israel's relentless military assault on the Palestinian civilian population prompted South Africa to take the unprecedented step of filing an application with the International Court of Justice alleging Israel was in violation of the 1948 Genocide Convention.[31] South Africa's application came on the heels of sustained mass protests for three months across world capitals, including in Europe and the United States.[32] By then, nearly every international humanitarian relief organization and the United Nations had beseeched the Israeli government to accept a permanent ceasefire in exchange for a return of the Israeli hostages.[33] Prime Minister Benjamin Netanyahu

[23] Noura Erakat, Darryl Li & John Reynolds, *Race, Palestine, and International Law*, 117 AJIL Unbound 77 (2023).

[24] Jeremy Scahill, *Netanyahu's War on Truth*, Intercept (Feb. 7, 2024).

[25] Daniele Palumbo, Abdelrahman Abutaleb, Paul Cusiac & Erwan Rivault, *At Least Half of Gaza's Buildings Damaged or Destroyed, New Analysis Shows*, BBC News (Jan. 30, 2024).

[26] D. Parvas & Anas Baba, *How Much Humanitarian Aid Is Getting into Gaza? The Exact Answer Can Be Hard to Know*, NPR (Feb. 21, 2024).

[27] *UN Says Famine Imminent in Gaza, Hunger at "Catastrophic" Levels*, Le Monde (Mar. 18, 2024).

[28] *Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide*.

[29] *Israel Defence Minister Yoav Gallant Calls Palestinians in Gaza "Human Animals," Orders Total Siege*, New Arab (Oct. 10, 2023).

[30] South Africa v. Israel, Application Instituting Proceedings (ICJ Dec. 28, 2023).

[31] *Id.*; GA Res. 260 A (III), Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948).

[32] *South Africa v. Israel*, *supra* note 30.

[33] *Gaza: Security Council Passes Resolution Demanding "an Immediate Ceasefire" During Ramadan*, UN News (Mar. 25, 2024); *Humanitarian Disaster in Gaza: Aid Organizations Demand an Immediate Ceasefire*, ReliefWeb (Feb. 1, 2024); SC Res. 2728 (Mar. 24, 2024).

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intransigently refused.[34] Despite international condemnation,[35] the U.S. government continued to provide Israel with political and military support.[36]

This manufactured, and thus preventable, humanitarian crisis begs the question: why did the Biden administration, Congress, and most American elites support policies that resulted in the killing of nearly three hundred Palestinians per day for over six months? Why did the majority of the American public accept their government's nearly unconditional support of a nation that engaged in war crimes in plain sight every day?[37]

To be sure, the answers are a complicated interplay between domestic special interest politics, regional politics, and U.S. geopolitical interests. But an analysis that does not incorporate the racialization of Muslims in the United States legitimizes a foreign policy grounded in the dehumanization of non-European native populations. The racialization of Muslims has been essential for the success of a Zionist-led strategy of censorship in the United States grounded in two stereotypes: Palestinians, Arabs, and Muslims are presumptively anti-Semitic and terrorism supporters.[38] No amount of explaining, contrary behavior, or evidence showing otherwise is relevant because long before October 7, 2023, American society had been primed to believe Arabs (incorrectly assumed to all be Muslim) and Muslims (incorrectly assumed to all be Arab) were inferior and dangerous. The only rational response, therefore, is repression.[39]

Palestinians and Muslim Americans are smeared and censored when they criticize Israel's war crimes while Jewish Americans who defend Israel are viewed as reasonably exercising their free speech rights.[40] Congress, universities, and mainstream media have made notable efforts to condemn and combat rising anti-Semitism, all the while paying lip service at best or denying at worst the parallel rise in Islamophobia and anti-Palestinian racism.[41] Palestinian, Muslim, and Arab students engaged in collective action calling for a ceasefire have been doxxed, harassed, and subject to frivolous administrative complaints by pro-Israeli students, faculty, and special interest groups.[42] Palestinian and Arab professors are subject to McCarthyistic witch-hunts by Congress and blacklisted by pro-Israeli organizations such as the Zionist Organization of America, the Brandeis Center, and the Anti-Defamation League, among others, that are intent on silencing criticism of Israel at universities.[43] Even the first and only Palestinian American member of Congress, Rashida Tlaib, was formally censured by the House

[34] Bethan McKernan & Peter Beaumont, *Netanyahu Rejects Gaza Ceasefire Deal and Says Victory Is "Within Reach,"* Guardian (Feb. 7, 2024).

[35] Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Order, 192 (ICJ Jan. 26, 2024).

[36] Jonathan Masters & Will Merrow, *U.S. Aid to Israel in Four Charts*, Council For. Rel. (Jan. 23, 2024).

[37] Nick Schifrin, *Experts Give 2 Perspectives on Accusations Israel Is Committing Genocide in Gaza*, PBS Newshour (Jan. 11, 2024).

[38] Mitchell Plitnick & Sahar Aziz, *Presumptively Antisemitic: Islamophobic Tropes in the Palestine Israel Discourse*, Ctr. Security, Race & Rts. (Nov. 2023).

[39] Palestine Legal & Center for Constitutional Rights, *The Origins and Growing Dangers of U.S. Antiterrorism Law* (Mar. 2024).

[40] Palestine Legal, *Media Roundup: Palestine Legal on Unprecedented Surge in Anti-Palestinian Repression Since October 7th* (Feb. 13, 2024).

[41] *Id. See also* Aamer Madhani, Seung Min Kim & Zeke Miller, *The White House Is Working on a Strategy to Combat Islamophobia. Many Muslim Americans Are Skeptical*, Associated Press (Nov. 1, 2023).

[42] James Bamford, *Who Is Funding Canary Mission? Inside the Doxxing Operation Targeting Anti-Zionist Students and Professors*, Nation (Dec. 22, 2023); AMCHA, *AMCHA Publishes List of Over 200 Anti-Israel Middle East Studies Professors*; Ramishah Maruf, *For Palestinian Americans and Activists, Doxxing is Nothing New*, CBB (Oct. 15, 2023).

[43] James Bamford, *Israel's War on American Student Activists*, Nation (Nov. 17, 2023); Palestine Legal, *Distorted Definition: Redefining Antisemitism to Silence Advocacy for Palestinian Rights*; Aron Rosenfeld, *ADL Counts 3,000 Antisemitic Incidents Since Oct. 7, Two-Thirds Tied to Israel*, Forward (Jan. 10, 2024).

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of Representatives for speaking to over three hundred thousand people gathered to protest U.S. financial and military support for Israel's violent siege on Palestinian civilians.[44]

Conclusion

The stark disparity in treatment by the U.S. government, universities, and media in the Palestine-Israel discourse demonstrates how religious identity racializes Muslims as the dangerous "Other" while racializing Jews as in-group members of American Judeo-Christian identity, corroborating Akande's claim that race-religion is hierarchical not binary.[45] The precarity of racial minority status arises from the prospect of moving up or down the racio-religious hierarchy, as whiteness secures permanent privilege.

While the increased vigilance against anti-Semitism is a welcome change after centuries of discrimination in the West, Muslims (and by extension Palestinians) remain outsiders to white Judeo-Christian systems of power and privilege in the United States. U.S. imperialistic objectives in the Middle East are perversely pitting anti-Semitism against Islamophobia through America's unconditional support for Israeli colonial practices grounded in the same racial logic that justified centuries of European anti-Jewish violence. Thus, Akande's call to incorporate into law mutually constitutive discrimination on the basis of race-religion applies beyond "imperial histories" to the present day realities of Muslims in the United States.

[44] Farnoosh Amiri, *House Votes to Censure Rep. Rashida Tlaib Over Her Israel-Hamas Rhetoric in a Stunning Rebuke*, Associated Press (Nov. 8, 2023).

[45] Akande, *supra* note 2, at 21.

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