

Introduction

In 2003, Toronto police officers suspected that two Jamaican-Canadian brothers were involved in a series of murders that plagued the city. They hatched a plan whereby an officer of Jamaican descent would pose as a spiritual advisor or “Obeah practitioner” to the suspects’ mother and exert spiritual pressure on the family to convince them to confess. Over the course of several months, the police deployed an elaborate ruse to impress the family with the officer’s purported spiritual power, including staging a car accident between the officer and the mother, placing dead animals on her doorstep, and even arresting the mother on manufactured charges. The brothers finally confessed to the murder during a ritual purportedly designed to end these spiritual attacks on their family, and the prosecution’s entire case rested on the statements made during the ceremony. The brothers were convicted of murder, and they appealed on the grounds that confessions made to a purported spiritual advisor should not be admissible evidence against them in court. However, in 2013, a Canadian appellate court upheld the police tactics, finding that these Afro-Jamaican rituals are not “religious.”¹ This case is just one brief example of the restrictions on the freedom to practice African diaspora religions in the twenty-first century.

This book is the first broad examination of the global legal challenges faced by adherents of the most widely practiced religions or belief systems of the African diaspora in the late twentieth and twenty-first centuries, including Obeah, Yoruba religions (i.e., Santeria/Lucumi and Candomblé), Umbanda,

Palo Mayombe, Rastafari, Islam, Vodou, and Voodoo. Unlike the rich anthropological and religious studies of African diaspora faiths that often discuss their relationship to politics, law, and other facets of society, this study focuses solely on a legal perspective—considering court cases, laws, human rights reports, and related materials. Using a series of case studies of specific issues, it explores how the restrictions on the right and freedom to practice African diaspora faiths demonstrate a growing social problem known as “religious racism.”

“Religious racism” is a term that originates from Brazil, where devotees of African diaspora religions have been experiencing increasingly pervasive intolerance over the past several years. This terminology underscores that discrimination against African-based religions is more than mere prejudice against a faith or group of faiths; it is the intersection of religious intolerance and racism. There are at least two distinct yet overlapping ways in which intolerance against African-derived religions represents the juncture of racial and religious discrimination.

First, the case studies discussed in this book demonstrate that the recent attempts to limit the practice of African diaspora religions have all the classic hallmarks of how racial prejudice has and continues to permeate legal and justice systems across the globe. For example, Afro-diasporic religious communities struggle with overpolicing in a manner that resembles similar problems experienced by racial minorities more generally. Police officers and other criminal investigators have depicted devotees of these religions as more susceptible to unlawful behavior than those of other faiths, leading to excessive searches of places of worship, unwarranted detentions of devotees, and disproportionate use of force during those detentions (chapters 2 and 3). Furthermore, state officials and private citizens have barred devotees from courtrooms, schools, and other public spaces as well as argued that they are unfit for certain professions (chapters 5 and 6). These attempts to exclude adepts of African religions from public accommodations continue a long history of race-based segregation. Perhaps most significantly, vigilantes and extremists have carried out horrendous acts of violence against devotees of African-derived religions with minimal investigation and virtually no penalties for the perpetrators (chapter 1). One could cite countless other historical and present-day examples of unprosecuted acts of violence against racial minorities. In these and other ways, intolerance against African-derived religions often mirrors and works in conjunction with broader patterns of racism in legal, social, and justice systems of the Western world. However, it is a type

of racism that has been almost completely ignored amid the study of other varieties of racial discrimination.

Not only does the term “religious racism” reflect that intolerance against African religions follows traditional patterns of racial discrimination, but it also signifies that prejudice against these faiths is typically motivated by anti-Black racism. Devotees of Afro-Brazilian religions often stress that persecution of their faiths is not new; rather, it is rooted in the era of slavery and scientific racism. This is not limited to Brazil—virtually all African-derived religions have a long and complicated relationship with legal systems in the Western world. The use of the term “religious racism” to describe these twenty-first-century cases and controversies emphasizes that they are not a recent phenomenon but rather are a reemergence of the previous ideologies and patterns of racially motivated persecution that began during slavery and continued until the middle of the twentieth century.

THE HISTORICAL PROHIBITION OF AFRICAN DIASPORA RELIGIONS

The persecution and prosecution of African diaspora religions began soon after their arrival and development in the Americas. In the eighteenth and nineteenth centuries, colonial authorities feared that enslaved persons would use religious gatherings to plan insurrections and that priests and healers would offer guidance and protection to the insurgents. Therefore, many colonies implemented laws restricting meeting without a Catholic priest, drumming, dancing, and other practices central to African-derived religions.² Furthermore, because Europeans thought it was their duty to “civilize” enslaved persons, colonial laws often required slaves to be baptized and instructed in Catholicism.³ Although bans on African-derived religious practices and forced conversion to Christianity were common during slavery, perhaps the most widespread prohibitions on African diaspora faiths occurred shortly after emancipation, when legislators throughout the Americas passed statutes proscribing African religions as “primitive,” “superstitious” practices and carried out campaigns of suppression against these faiths. The first nation to implement new post-emancipation bans on African-derived practices was Haiti.

In 1791, enslaved persons in Haiti (then St. Domingue) revolted against the colonists and fought a brutal and lengthy war, through which they ultimately won their independence and established a free Black nation. Following independence, other nations in the Americas and in Europe refused to recognize and trade with the fledgling country. In 1835, in the midst of and partially in

response to these concerns about being recognized as a “civilized” and legitimate nation, the Haitian government passed an ambiguous penal code that prohibited fortune-telling as well as making “voudoux,” “ouangas,” “macandals,” or other charms. The penalty for such could be up to six months’ imprisonment and a fine.⁴ This was just the first step in post-emancipation suppression of African-derived religions.

The Vatican initially refused to recognize Haiti as an independent nation, and the Catholic Church had no official presence in Haiti in the first half of the nineteenth century. However, in 1860, Haiti signed an agreement with the Vatican and the Catholic Church reestablished a foothold in the country. From this point forward, the Church collaborated with various Haitian presidents to try to eradicate Vodou through “anti-superstition” campaigns. Some of the known campaigns took place in 1864, 1896, and 1912, “during which temples were destroyed and hundreds of people who admitted to being practitioners of Vodou were massacred.”⁵

During this period of intermittent suppression campaigns—the late nineteenth and early twentieth centuries—rumors constantly circulated across the globe that devotees of Haitian Vodou were engaged in barbaric ritual practices including cannibalism, snake worship, and child sacrifice. For instance, in 1900, British explorer Hesketh Prichard published a book about his travels in Haiti titled *Where Black Rules White*. He devoted an entire chapter to “Voodoo” and the supposed prevalence of human sacrifice among devotees.⁶ Prichard averred that the reason that Haiti had descended into such barbarism while “living in the midst of other civilized communities” was the government was too unstable to suppress it, and thus the Voodoo practitioners “carry on their rites and their orgies with practical impunity.”⁷ After several other chapters recounting the supposed horrors occurring in the independent nation of Haiti, Prichard concluded with a chapter explaining why “the negro” “certainly cannot rule himself.”⁸

As numerous scholars have noted, these allegations of barbaric “Voodoo” practices helped lay the groundwork for the US occupation of Haiti (1915–34). Then, when the US marines arrived in Haiti in 1915, they quickly tried to suppress Vodou.⁹ Only one year after the invasion began, Haiti’s minister of justice and religions published a circular banning “fetishism” and “superstitions.”¹⁰ Furthermore, the marines used previously defunct legislation prohibiting “sorcery,” fortune-telling, and charms to break up rituals and confiscate the drums.¹¹ One marine, Faustin Wirkus, who later published an account of his exploits in Haiti, describes the marines’ interruption of a ceremony in 1922 wherein

fifty-four people were arrested and imprisoned, and their ritual objects were confiscated. Wirkus refers to these raids as “constant.”¹² This claim is supported by a report from the district of Jérémie recording the arrest of 123 people in a one-year period, from January of 1924 to January of 1925, in that region alone for violating the laws against “sorcery.”¹³

Immediately following the US occupation, in 1935, President Sténio Vincent implemented broad legislation against “superstitious practices” that included explicit bans on ceremonies, dance, rites, medico-religious healing, and other spiritual practices.¹⁴ A few years later, in 1941, President Elie Lescot once again joined forces with the Catholic Church and tried to eradicate Vodou.¹⁵ Together, they imprisoned adherents and destroyed temples. They seized sacred drums, talismans, and other ritual objects, created a huge bonfire, and set them ablaze.

Haiti was not the only nation to implement laws restricting African-derived religions following the abolition of slavery. In 1890, just two short years after emancipation, Brazil enacted a modified Penal Code that prohibited the unlicensed practice of medicine, “popular forms of curing, or curandeirismo,” as well as the “practice of spiritism, magic and its sorceries, the use of talismans and cartomancy to arouse sentiments of hate and love, the promise to cure illnesses, curable and not curable; in sum, to fascinate and subjugate public belief.”¹⁶ Paul Christopher Johnson explains that “Afro-Brazilian religions were considered a dangerous detriment to national progress,” and therefore, this law prohibited them “under an alternative category to religion—namely, as a civil threat to public health.”¹⁷ The premise was that Afro-Brazilian religions were “primitive” but “contagious” and could entice even upper-class white Brazilians to participate in what was seen as degenerate spiritual and cultural practices.¹⁸ Thus, the prohibition of African cultural and religious practices, accompanied by official policies encouraging immigration from Europe, were attempts to turn Brazil into a “modern” nation by “whitening” its population and culture.¹⁹

Similar to Brazil, around the turn of the twentieth century, the government of Cuba restricted the practice of African diaspora religions under the notion that they promoted criminal behavior and threatened public morality.²⁰ The suppression reached its height in the early twentieth century, when white Cubans claimed that Black “witches” or “brujos” were abducting white children, killing them, and using their body parts for their rituals.²¹ The government censured Afro-Cuban communities and seized their religious tools. Additionally, private citizens sometimes formed lynch mobs and killed some of the purported perpetrators.²²

Reinaldo Roman, who has written extensively about these allegations, explains that they began shortly after Cuba's independence from Spain and the end of the first US occupation of the island.²³ During this period, there were numerous internal and external debates about Cuba's ability to self-govern and the role of Afro-Cubans in the independent state. Denunciations of Afro-Cuban "superstitions" served as a justification to deny them political participation and to distance the elites from beliefs and practices that might jeopardize independence and their ability to depict Cuba as a "civilized" nation. Not only did Cuban elites worry about US or other external intervention; they also had "a general fear of African ascendancy in Cuba,"²⁴ and this suppression of Afro-Cuban religions coincided with "the formation of the Cuban Independence Party of Color and its agitation for social and political change."²⁵

Using somewhat analogous rhetoric, US authorities also sought to suppress African American Muslims as a criminal threat in the first half of the twentieth century. This suppression campaign began in Detroit, Michigan, in 1932, after a man named Robert Harris killed his tenant on a makeshift altar in the back room of his home.²⁶ Harris, an African American Muslim, claimed that this sacrifice was an offering to Allah that would save the world.²⁷ Although authorities and the media knew that Harris had been suffering from delusions and had previously threatened the lives of his wife, his children, and his family's social worker, they depicted his actions as representative of Black Muslims in Detroit.²⁸ Nationwide, newspapers published stories about the leader of the "Voodoo cult" of Detroit who had hundreds of African American followers who supported his human sacrifice to Allah. Meanwhile, authorities detained actual Black Muslim leaders, questioning them about their teachings.

Ultimately, although Harris was declared insane and members of his community, then known as the Allah Temple of Islam, denied that Harris had any standing in the organization, the acts of this mentally unstable individual created severe limitations on the rights of all Black Muslims in Detroit. The authorities banished their leader, Wallace Fard, from Detroit.²⁹ Remaining members regrouped under the leadership of Elijah Muhammad and were forced to change their name to the Nation of Islam and move their headquarters to Chicago, all in an effort to escape this reputation.³⁰ However, the police and scholars continued to portray human sacrifice as part of the larger Black Muslim community and use these rumors as a basis for surveillance and harassment.

Despite the widespread persecution and prosecution of African diaspora religions in the nineteenth and early twentieth centuries, the freedom to practice these faiths expanded greatly in subsequent decades. By the mid-to-late

twentieth century, most governments had repealed the discriminatory laws used to target these faiths and generally moved toward greater acceptance, or even legal recognition, of African diaspora religions. In some cases, particularly in Haiti, Cuba, and Brazil, Africana faiths became part of the public face of the nation, including statues of African-derived deities in public spaces, staged “folkloric” performances of the once-proscribed sacred music and dances, recognition of African diaspora festivals and holidays, and state support for religious tourism for ritual consultations and initiations.³¹ However, this brief window of religious freedom was not to last long.

The twenty-first century has brought a renewed age of repression of African diaspora religions. As this book explores, in some ways, the limitations on African-derived faiths are connected to new phenomena such as the rise of evangelical Christianity in the Caribbean and South America. However, more than a novel occurrence, discrimination against these faiths seems to be a resurfacing of post-emancipation rationales for and methods of suppression. As the case studies herein show, each aspect of the legal restrictions on Africana religious freedom carries some rhetoric about contamination, morality, criminality, and the purported threat that Black spirituality poses to public health that resembles those popular in the nineteenth and twentieth centuries.

ORGANIZATION OF THE BOOK

This book is divided into three parts, each of which discusses one set of broader patterns of “religious racism.” Each part provides a very cursory introduction to the religions discussed in that section to allow readers who have no familiarity with African diaspora religions to utilize this book without needing to acquire other introductory materials on these faiths. Each chapter focuses on a particular challenge to religious freedom for adherents of African diaspora faiths, framing these issues in transnational and transregional perspectives, wherever possible, to understand the larger human rights disputes that country-specific studies can overlook. While the manuscript is not intended to be comprehensive of every case or every issue, it is meant to provide a broad, international perspective about the right to practice each of the examined belief systems and to discuss the general freedom to practice religions of the African diaspora over the past twenty to thirty years.

Chapter 1 begins with the most egregious affronts to religious freedom in the African diaspora—physical assaults on devotees, their homes, and their places of worship. The first part of this chapter focuses on Brazil, where recent

years have seen a drastic increase in physical violence against Candomblé and Umbanda adherents. Terrorists have burned, bombed, and shot at their homes and temples, as well as physically attacked the devotees themselves. This chapter provides specific examples of these assaults as well as statistics to analyze and attempt to understand this growing issue. The second part addresses Haiti, where violence against Vodou priests and devotees became a serious issue following the devastating 2010 earthquake and subsequent cholera outbreak. It discusses the violent murders of Vodou priests by vigilantes and the Haitian government's lackluster response.

Chapter 2 explores the most significant litigation over the practice of orisha/orixá religions—the ritual slaughter of animals. It begins with the dispute that led to the US Supreme Court's ruling in the *City of Hialeah* case in 1993. It surveys some of the dozens of cases that US courts have heard since then, where local officials have attempted to restrict the ritual slaughter of animals in other ways. It also compares these cases to growing controversies over animal sacrifices in Brazil and Venezuela.

Chapter 3 examines a body of cases that has rarely, if ever, been discussed in the context of religious freedom. It focuses on Palo Mayombe, an Afro-Cuban religion that is one of the most controversial belief systems of the African diaspora. Palo Mayombe adherents develop reciprocal relationships with the spirits of departed persons; they create shrines where they communicate with and make offerings (food, drink, etc.) to these spirits, and the spirits provide supernatural protection and guidance to the adherents. To create a more powerful connection, devotees (“Paleros”) often use the remains of the departed person (skulls and other bones) in the shrines. This chapter explores a series of cases where Paleros and devotees of other African diaspora faiths were charged with unlawful possession of human remains and grave robbing.

The fourth chapter, the last in the first part of the book, discusses cases that have called into question the rights of devotees of African diaspora religions to gain or retain custody of minor children. These cases intersect with the others discussed in the first three chapters, stemming from the rampant discrimination against devotees that is leading to physical assaults in Brazil, concerns about animal sacrifice, as well as disputes over whether Palo Mayombe rituals are protected by religious freedom. The proceedings covered in this chapter range from criminal charges for taking children to religious ceremonies to civil disputes over custody between practitioner and nonpractitioner parents.

The second section of the book, chapters 5 and 6, introduces an interrelated set of problems about adherents' access to public facilities and spaces

such as courthouses, schools, and even places of employment. Mostly centering on controversies over hair and headscarves, chapter 5 explores cases where devotees have been barred from schools because of their religious beliefs or practices. Chapter 6 examines a range of situations where litigants, lawyers, police officers, and corrections officers have been expelled from legal facilities because of disputes over their religious practices.

The third and final section centers on the modern boundaries of the concept of “religion.” It begins with chapter 7, which discusses the continued proscription of Obeah and highlights the contrast to the decriminalization of “witchcraft” in other parts of the former British Empire, particularly to protect the religious freedom of Spiritualists and white “witches.” Chapter 8 moves from proscription to prosecution, analyzing a range of recent cases where courts in the Americas have opined that African diaspora faiths are not religions. Finally, chapter 9 concludes with the discussion of a centuries-old issue—myths and misconceptions that taint public views of African diaspora religions.

Together, these nine chapters attempt to provide a clear picture of the major challenges to religious freedom for adherents of African diaspora faiths in the twenty-first century. They cover the most significant controversies involving the most well known and widely practiced African diaspora religions, providing the background of the controversies and the outcome of the disputes. This book introduces new issues that have never been considered as a question of religious freedom before, such as the right of Palo Mayombe devotees to possess remains of the dead. It places controversies in conversation that have not been previously regarded as analogous, such as the right to wear headscarves and the right to wear dreadlocks in schools.

The hope is that this book will be specific enough in its legal content that instruction on African diaspora religious freedom can finally reach law and legal studies courses while including enough history and background that laypeople and practitioners can appreciate the text. I have incorporated as much detail about the practitioners and their proceedings as possible to give voice to the devotees, not just the courts’ interpretations of the proceedings. For too long, the only acknowledgment of these charges has been the loud voice of the media and government officials, skewing and sensationalizing these cases. The first step toward religious freedom in the African diaspora is ending the silence surrounding these abuses of rights and ensuring that the problem of religious racism can be acknowledged and discussed in scholarly and policy contexts.