The Racial Ambiguities of American Sephardic and Ashkenazi Jews

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Abstract— This paper analyzes the racial ambiguities of Sephardic and Ashkenazi Jews in American law by examining three Supreme Court cases: DeFunis v. Odegaard, Shaare Tefila Congregation v. Cobb, and Bennun v. Rutgers State University. Despite being classified as a religious group, Jews have also been subjected to racial categorization, with Sephardic and Ashkenazi Jews often occupying different racial spaces. Through a close reading of these cases, the paper explores how the Supreme Court has grappled with the complexity of Jewish identity in America, and how these cases have shaped the legal understanding of Jewishness as both a religious and a racial identity. Ultimately, the paper argues that these cases highlight the need for a more nuanced and inclusive approach to understanding race and ethnicity in American law, particularly in how it relates to the Jewish community.

The history of Jews in the United States is incomplete without a larger discussion of the community's complicated relationship with American conceptions of race. This relationship has been addressed through numerous affairs: immigration quotas, congressional debates, school admissions, and court cases. The pattern of the Jewish-American association with race has encountered various theories since the conclusion of the Civil War. Initially questions circulated as to whether Jews were eligible for naturalization, contingent on their status as "free white persons."

In 1909 the Department of Commerce and Labor, which controlled immigration affairs, decided to classify Syrians as "Mongolians," thus barring them from naturalization. This classification of Syrians as "non-white" alarmed many Jews concerned that due to popular association of the Jews with other Middle Eastern peoples, they too would be classified as "Other."[1] While the case eventually resolved itself into distinguishing

[1] Goldstein, 86.

between Syriac Christians and Muslims, the question of Middle Eastern and other Sephardic Jews was left unanswered. Yet the significance of the question had been established – "Jewish racialization [now] factored into the conversation and debate about Middle Eastern whiteness."[2]

This paper analyzes this debate through a legal lens: it specifically addresses *DeFunis v. Odegaard*, *Shaare Tefila Congregation v. Cobb*, and *Bennun v. Rutgers State University* as contrasting central points on the spectrum, while simultaneously incorporating an array of other significant moments occurring in the Jewish whiteness conversation.

Ashkenazi Jews face a tougher challenge in gaining recognition as racially distinct from whites than Sephardic Jews do, as shall be evident in *Shaare Tefila*. Yet the history of intra-Jewish relations in the United States will also indicate that Ashkenazi Jews themselves had an ambiguous relationship with their own whiteness, unsure of whether to embrace it or differentiate themselves.

Similarly, Sephardic Jews have undergone various racial transformations in public and legal discourse. Although in certain cases Sephardic Jews succeeded in gaining recognition as a Hispanic minority, at other points in time Sephardic Jews' whiteness went without question.[3] Additionally, despite early Levantine and Ottoman Jews facing barriers to widespread acceptance by whites and even Ashkenazic Jews, subsequent reclassifications to align more with their European Spanish forebears yet continued counteractions among Sephardic Jews seeking racial distinction have further complicated the question of Sephardic whiteness in American society, rendering the question inconclusive. This has been revisited time and again, factoring into court decisions and union battles alike, a topic still hotly discussed at this current point in time.

The idea of inherent racial distinctions between Asheknazic and Sephardic Jews is not novel, and even made strides among Ashkenazic American Jews in the early-20th century. In 1913 the National Conference of Jewish Charities held its annual convention; the topic of this particular convention was "The Oriental Problem." It focused on the new "problem" facing American Jews: the influx of new arrivals from the "Orient" and the complications they presented for Ashkenazic and "Spanish-American" Jews intent on securing their status in American society. Conversation went so far as to broach the topic, as voiced by one present commentator, of if "the Levantine Jew is human or as human as any other" due to their eastern origins.[4]

In 1920 the Bureau of Jewish Social Research asked economic historian and future Columbia dean, Louis Hacker, to study the city's "Oriental

[2] Daniel, 295.

[3] Ibid., 296.

[4] Pianko and Marhoefer, 17:45.

Jews." He concluded that they were "as alien to their [Ashkenazi] kinsmen as are the negroes [sic] to the average white Southerner."[5] Per Hacker, their racial inferiority was due to their "Mohammedan"[6] background and proposed interbreeding with Ashkenazic Jews to dilute the "racial stain of their Arabness and Negroeness."[7]

Hacker's contemporary, Houston Stewart Chamberlain, distinguished between "good" Sephardim and "bad" Ashkenazim, considering the Sephardic Jews of Spain as a genteel nobility but detesting the Ashkenazic Jews with whom he had everyday encounters.[8] *History of the Jews* author, Heinrich Graetz, qualified Chamberlain's views and thus spawned a new generation of Ashkenazic-supremacist authors, noting that whereas the original Spanish Jews were the "teachers of Europe," their descendants in the Ottoman Empire embodied all the debased and disgraced traits of the Empire they dwelled within. He imagined that contact with Orientalized Jews and Bedouins had deteriorated Ashkenazic racial stock, and lumped Jews from all the Muslim lands spanning Europe, Africa, and Asia into a racially degenerate category, animalistic and debased in their breeding habits.[9] The chief takeaway is clear: Sephardic Jews have long been viewed as a separate race, even inferior in some regards, whereas Ashkenazic Jews have had a more ambiguous status.

This long-standing view went without recognition in the first case, *DeFunis v. Odegaard*, which need only be addressed in passing due to the Court's ultimate ruling. The 1970 case involved a twenty-one-year-old Seattle native named Marco DeFunis Jr. who applied and was rejected from the University of Washington law school. He reapplied in 1971 and was denied a second time. He successfully sued and was ultimately admitted. DeFunis, relying on the Fourteenth Amendment's equal protection clause, claimed reverse discrimination, arguing that his white racial status and the use of affirmative action policies in admissions were the cause for his rejection. The case was ultimately rather dissatisfying, as the Supreme Court rendered a moot decision due to the fact that DeFunis was nearing graduation and thus the case was irrelevant to his prospects.[10]

The significance of the case was that DeFunis was considered "simply a white male."[11] There was no second-guessing of his racial identity. DeFunis himself identified as white, and the Court accepted his claim at face-value, despite his Sephardic background. Indeed, his attorney's uncertainty in answering questions about DeFunis' heritage raises doubts about whether

[5] Naar "Impostors," 125.

[6] Ibid., 126.

[7] Pianko and Marhoefer, 20:20.

[8] Naar "White Supremacy," 13.

[9] Ibid., 14.

[10] Daniel, 299-300.

[11] Ibid., 291.

his background was considered more than marginally important in this case.[12] Max Modiano Daniel sums it up sufficiently: "DeFunis's Sephardicness was publicly unremarkable, serving as an adjunct to his whiteness."[13]

The ambiguities surrounding Ashkenazic racial status were somewhat legally clarified in 1987's *Shaare Tefila Congregation v. Cobb*. Shaare Tefila Congregation, based in Silver Spring, Maryland, was painted over with anti-Semitic slogans and symbols. Following the defacement of the synagogue the congregation brought a suit charging the white defendants with racially discriminatory interference with property rights under 42 U.S.C. Section 1982. The Maryland District Court dismissed this suit, maintaining that white-on-white violence does not profile as discrimination, and thus were "precluded from protections under the sections of the United States Code . . . which prevented various types of discrimination on the basis of race."[14] The Supreme Court, in an unanimous decision penned by Justice Byron White, ruled that the Jews could make a claim of racial discrimination since they had been considered a race at the time of the passage of the Thirteenth Amendment and thus included in the distinct races category under Section 1982.[15]

This case made history as the Supreme Court extended federal civil rights towards Jews, but it is noteworthy and critical to remember that neither the Supreme Court nor prominent Jewish organizations involved with the case – JCRC, AJC, ADL – recognize Jews as a distinct racial category. The Supreme Court merely recognized that in the late ninettenth-century Jews *had been* considered racially distinct, and Jewish organizations acknowledged and argued that Jews should be recognized and protected by the same laws that protect African-Americans from discrimination, despite Jews "not constituting a 'race' in any scientific sense."[16]

However, as historian and professor Eric Goldstein notes, "despite the importance of *Shaare Tefila v. Cobb* as a turning point in the process by which federal law classified Jews, it did not totally settle the question of Jews' status under American civil rights legislation."[17] The Supreme Court left the discussion surrounding Jewish status as a racial and ethnic minority rather vague, and provided no clear test nor means of establishing a precedent by which a group might qualify for civil rights protections. Consequently, Jewish plaintiffs had to continue fighting for recognition in cases of racial discrimination in lower courts. This issue was dealt with in *United States v. Nelson* in 2002.

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[12] Ibid., 308.

[13] Ibid., 312.

[14] Goldstein, 98.

[15] *Shaare Tefila Congregation v. Cobb*, Supreme Court of the United States.

[16] Goldstein, 99.

[17] Ibid.

During the 1991 Crown Heights riots Lemrick Nelson, a black man, stabbed a yeshiva student, Yankel Rosenbaum. The Court of Appeals in New York's Second Circuit ruled that Rosenbaum had indeed been denied his federal civil rights as a Jew in the District Court, despite the fact that Rosenbaum was, for all intents and purposes, White and Nelson was black. After Nelson's trial in state court failed to produce a criminal conviction he was tried in District Court for federal civil rights violations in 1997. After being convicted of violating Rosenbaum's federal civil rights, Nelson's attorneys appealed on the grounds that Rosenbaum, as a white person, "could not have been the victim of a civil rights violation." In response to these assertions several major Jewish advocacy organizations argued that despite Jews' not constituting a race, they were "as entitled to civil rights protections as blacks," and that Jews "ought to have a special status under the terms of the Thirteenth Amendment," using a similar reasoning to the Supreme Court in *Shaare Tefila*.

Although Nelson's case was ultimately thrown out due to jury selection issues, the "court upheld the ability of civil rights laws to be applied to Jews," a tremendous watershed moment for Jews and federal civil rights.[18] The courts affirmed that Jews, despite not constituting a distinct racial class and thus somewhat conflicting with *Bennun*, still merited special protections under the law normally reserved for racial groups.

The idea of there being a racial distinction between Ashkenazic and Sephardic Jews was clearly prevalent and somewhat popular. Yet the legal reality did not necessarily reflect this notion. Despite Bennun's success in gaining a racially distinct label, this decision is not replicated elsewhere, as previously witnessed in *DeFunis* regarding Sephardic Jews and in *Shaare Tefila* regarding Ashkenazic Jews. In *Bennun v. Rutgers State University* there were two parties present: Dr. Alfred Bennun and Rutgers. Bennun, an associate professor at Rutgers, had applied for full professorship in 1981 after being rejected for a tenured professorship, only to be rejected once again. Bennun had two options: he could sue under either Section 1981 or Title VII. The distinction between the two: "Section 1981 applies only to intentional racial discrimination, while Title VII applies to intentional discrimination and disparate impact discrimination on race, color, national origin, sex, or religion."[19] Bennun sued under Title VII, claiming minority status as a Hispanic and that due to such he had been discriminated against.

Rutgers argued that Bennun's Hispanic claim was faulty: his forebears did not come from that ethnic group, as his father was a Ladino-speaking Israeli and his mother Romanian. Yet Title VII, unlike Section 1981, includes "national origin" as a means of protection against discrimination, and Bennun was from Argentina, thus entitling him to these protections. But the District Court was unwilling to make a decision based solely on

[18] Goldstein, 100.

[19] https://www.law.cornell.edu/wex/section_1981

"national origin"; they maintained that, "We are therefore unable to conclude that there would have been the same ultimate finding of unlawful discrimination if Bennun were Argentinian by birth, but not Hispanic in culture, language and appearance. Accordingly, we will not rely on his national origin as an Argentinian to show he is a member of a protected minority under Title VII." The Circuit Court, however, would not overturn his assertion that he was Hispanic unless it was "clearly erroneous"; due to his father's tracing the lineage back to the 1492 expulsion from Spain and Bennun's full immersion in Spanish home-life and culture the Circuit Court maintained that Rutgers had discriminated against him as a Sephardic and Argentinian Hispanic.

Indeed, at his deposition, Bennun, in response to the counsel's question, "Do you contend that your father is Hispanic?" replied, "No." While this could be misconstrued as Bennun denying his Hispanic heritage, "Bennun went on to explain that he did not *contend* that his father was Hispanic because it is a *fact* that he was by virtue of his Sephardic roots."[20] Bennun considered his Hispanic status obvious due to his Sephardic roots. He was thus able to, as a Sephardic Jew in the 1980s, legally gain recognition as a minority person.[21]

The ambiguities present in legal conceptions of Jews as a race and the distinctions between Sephardic and Ashkenazi Jews make for a complicated discussion and inconclusive picture. Due to the ambiguous nature of this topic it would be premature to reach a conclusion, as Daniel notes: "Sephardic ancestry could be [and has been] marshaled to argue for inclusion in a white or an Ashkenazi mainstream or in a racialized 'privileged' minority."[22] *Bennun* and *DeFunis* serve as clear endpoints on that spectrum, and the history of Sephardic Jews in the United States illustrates this point: at different points they made efforts to both "whiten," such as when early American Sephardic Jews erased references to their Ottoman ancestors and reinforced their Spanish heritage, and "unwhiten" themselves.[23] The latter was especially evident during the integration of Los Angeles' school system: in efforts to avoid being transferred to inner city schools during the integration of the system's teachers, many educators of Sephardic heritage attempted to reclassify themselves as Hispanic rather than white, to limited effect. These efforts were often denied by the school board.[24,25]

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[20] *Bennun v. Rutgers State University*, United States Court of Appeals, Third Circuit.

[21] It is worth noting here that Max Modiano Daniel introduces a contemporary debate about whether "Hispanic" should include Sephardic Jews at all, and he does cite the *Bennun* case as part of that conversation, yet he leaves it open-ended. cf p. 296.

[22] Daniel, 319.

[23] Ibid.

[24] Ibid., 293.

[25] Naar "Intermediate Types," 230.

In contemporary American Jewish society Sephardic and Ashkenazic Jews still bear varying racial and other categorical distinctions. As Sephardic scholar Devin Naar notes, "Sephardic identity and culture have largely been swallowed up by Ashkenaziness, by whiteness, by erasures so complete that many of my peers no longer possess a consciousness of what it could mean to be Sephardic today."[26] Ashkenazi Judaism has become the dominant strain of Judaism in the United States, and due to that imbalance Sephardic Jews are often positioned as the "Other" and considered distinct from the European identities of Ashkenazic Jews. Sephardic Jews in the United States have generally homogenized, with the exception of some distinct Persian, Turkish/Rhodes, Syrian, and Bukharian communities in Seattle, Los Angeles, Baltimore, Brooklyn, and Great Neck. Meanwhile, many Sephardic Jews have found themselves active participants in mainstream Ashkenazi communities, living in an Ashkenormative world in which Yiddish is offered at most universities whereas Ladino, Judaeo-Arabic, and Judaeo-Farsi are not.[27]

Despite this imbalance in representation and thus the characterization of one group as the dominant white majority and the other as an "Other" minority, Goldstein points out that "significant voices among American Jews, including many of the leading organizations of the Jewish 'establishment,' seem to be growing increasingly uncomfortable with the notion of Jews as simply undifferentiated 'whites.'"[28] This perception is also evident legally, as seen in the more recent cases of *United States v. Nelson* and *Bennun* in which Jews either merited protections normally reserved for racial groups or were found to actually represent an ethnic minority. Perhaps this discomfort will lead to more change in the relationship of Jews and race, continuously altering the manner in which both Sephardic and Ashkenazic Jews in the United States are considered racially.

[26] Naar "White Supremacy," 21.

[27] Myers, 21:00.

[28] Goldstein, 102.