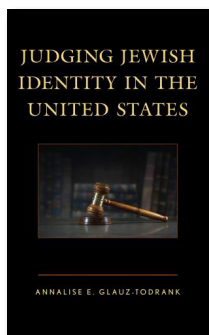


BOOK REVIEW

Judging Jewish Identity in the United States. By Annalise E. Glauz-Todrank. Lanham, MD: Lexington Books, 2023. vii-xii+247 pages. \$121.00 (hardcover); \$39.99 (paperback); \$37.50 (eBook). ISBN 9781666923032.



Are Jewish Americans members of a racial class? Are they members of a religious tradition? Are they both? How should their racial and religious identities be understood in American law? These are among the many important questions about Jewish identity in the United States that Annalise Glauz-Todrank explores in her study of the U.S. Supreme Court’s 1987 decision in *Shaare Tefila Congregation v. Cobb*. After a group of young men vandalized a synagogue in Maryland with antisemitic imagery, including several swastikas, Glauz-Todrank explains how the Shaare Tefila Congregation first grappled with the vandals’ display of hatred and why they later sought legal relief in federal court. As an “ethnographic and legal study” of *Shaare Tefila*—the first Supreme Court case to consider whether Jewish Americans are members of a “race” or “religion” under landmark federal civil rights statutes enacted after the Civil War—*Judging Jewish Identity in the United States* makes a timely contribution to ongoing scholarly debates about the treatment of both race and religion in American law (10).

Trained in religious studies at the University of California—Santa Barbara, Glauz-Todrank invokes the work of critical theorists to problematize the racial and religious identities of Jewish Americans. Employing Khaled Beydoun’s theory of “formal whiteness” in particular, Glauz-Todrank argues that perceptions of Jewish American identity have not always aligned with the more complex racial and religious experiences of this community. According to the author, this has been true in the everyday lives of Jewish Americans, and likewise in the law. Glauz-Todrank’s narrative of *Shaare Tefila* therefore attempts to illustrate why Jewish Americans should be protected from antisemitism under statutes that bar racial discrimination. To support this argument, however, she places outsized attention on critical

theorists' analytical deconstruction of race, thereby overlooking scholarship in religious history that may have otherwise made her normative claim more compelling.

In Chapter One, Glauz-Todrank introduces her readers to the Shaare Tefila Congregation and its members' recollections of the vandalism, drawing on twenty-six interviews with current and former members of the Congregation (25). At first, Glauz-Todrank reveals that the Congregation was inclined to conceal evidence of the vandals' conduct and avoid drawing attention to this instance of antisemitism. Later, however, the Congregation rebuffed this common wisdom and invited others in the community to observe the vandalism and participate in the restoration of the Congregation's property. Following the restoration, the author in Chapter Two explains why the Congregation initiated a federal civil rights lawsuit against the vandals. Here, Glauz-Todrank reveals that the Congregation pursued civil penalties against the vandals because it sought to "set a moral example" and "send a clear and emphatic message that the Jewish community [would] not tolerate this type of conduct" (74, 68). Given the Congregation's limited resources, the federal lawsuit was brought in collaboration with the Jewish Advocacy Center, a national organization purporting to represent the interests of Jewish Americans (66). To scholars of twentieth-century American legal history, Glauz-Todrank's discussion of why Shaare Tefila's civil lawsuit was brought marks an important contribution to the literature on legal mobilization, not least because it illustrates that national religious organizations often seek to "aggressively litigate" various forms of discrimination to "construct...new civil rights law that [can] then be used as...precedent" (66). In this sense, Mark Tushnet's study of the legal campaign against segregated education and Mary Ziegler's studies of the legal campaigns for and against abortion stand out as interesting historiographical parallels. Relatively little attention has been paid to the twentieth-century litigation campaigns of religious communities themselves, so Glauz-Todrank's inquiry into the processes by which *Shaare Tefila* arrived at the Supreme Court is especially valuable.

In Chapter Three, Glauz-Todrank explores why the district court that first considered the Congregation's federal lawsuit concluded that civil rights statutes barring racial discrimination were inapplicable to the vandalism committed on the Congregation's property. As Glauz-Todrank explains, the district court found that "Jewish Americans were a 'religion' and 'white,' but that the vandals were also White," meaning that there was no evidence of interracial bias (80). Therefore, the Congregation's ability to prevail on appeal "depended on the ability of the [Congregation's] lawyer...

to convince the judges that the [Congregation] was entitled to race-based protection due to the perspective of the antisemitic vandals” (92). “[T]he legal definition of Jewish identification *itself*,” Glauz-Todrank continues, “was on trial” (92).

The Congregation’s efforts to secure protections under anti-racial-discrimination statutes were unsuccessful at both the district and intermediate appellate courts. Thus, the author invokes critical theorists’ understanding of racial identity to demonstrate why the judges who decided these cases should have contrastingly concluded that Jewish Americans are entitled to protection from antisemitism under federal civil rights statutes that bar racial discrimination. Oftentimes, however, critical theory scholarship is emphasized at the expense of relevant scholarship in religious history that may have otherwise made this normative claim more persuasive. In critiquing the district court’s initial ruling against the Congregation, for instance, the author notes that the Ku Klux Klan “expressed and perform[ed] acts of hatred against Jews due to their supposed physical, immutable characteristics: characteristics associated with race rather than religion” (101). In so doing, Glauz-Todrank attempts to reveal that hatred directed towards Jewish Americans is, at least at times, racial in nature and therefore actionable under anti-racial-discrimination statutes. Although it may be true that the impetus for hatred against Jewish Americans is sometimes racial, the author’s appealing to American religious history without considering how the Klan and other similar organizations treated non-Jewish religious minorities limits the persuasiveness of her normative claim. For example, it is not clear how the author would reconcile the Klan’s actions vis-à-vis Jewish Americans with those that the Klan directed towards Catholics in the twentieth century. If the Klan acted in discriminatory ways against both Catholic and Jewish Americans, it would seem to follow that the impetus for its discrimination in both instances was religious, not racial, bias. As the author acknowledges throughout *Judging Jewish Identity in the United States*, such religious discrimination would not have given rise to a legal cause of action under the relevant Reconstruction-era civil rights statutes.

To explain the distinctiveness of discrimination against Jewish Americans, the author suggests that, unlike Catholics and other Christians, Jewish Americans do not always “choose” their religion (76). At the same time though, she suggests elsewhere that the vandals were in part motivated to paint hateful images on the Congregation’s synagogue because they were “troubled by the fluidity of racial shifting,” an assertion itself informed by the fact that Jewish Americans can choose to be Jewish through conversion and marriage (47). Considering that Glauz-Todrank does not engage with

any comparative studies of Jewish and Catholic racialization, nor with the history of nativism (which includes anti-Catholicism), her normative argument about the legal distinctiveness of anti-Jewish discrimination is not altogether persuasive. If, as Kevin Schultz, among others, has demonstrated, Protestant nativists viewed Catholic and Jewish Americans as similarly un-American outsiders until the mid-twentieth century, then it would seem as though Reconstruction-era civil rights statutes would not have been understood at the time of their enactment to remedy discriminatory conduct initiated by erstwhile perceptions of Jewish Americans' "physical, immutable characteristics." As the author concedes, Jewish Americans can sometimes "choose" their religion, just as American Catholics can sometimes "choose" their religion. Glauz-Todrank is therefore likely to leave her readers with as many questions as answers about why members of one religious tradition should be treated in a legally distinctive way.

In Chapter Four, Glauz-Todrank explores the Supreme Court's ultimate disposition of *Shaare Tefila*. In short, "the outcome depended on [the Congregation's] ability to argue that the synagogue was targeted because the vandals perceived Jews as an inferior race and that the deeds could be understood as racial bias because of the vandals' actions, versus [the vandals'] argument that Jews were a religious group and may not claim protection based on race" (130). Throughout the chapter, Glauz-Todrank provides helpful analysis of the oral argument in the case and the Court's unanimous decision thereafter, but again fails to historically situate the non-Jewish figures that shaped the disposition of *Shaare Tefila*. For instance, the author proposes that Justices Antonin Scalia and Thurgood Marshall were most receptive to the Congregation's claims at the Supreme Court because they were "the first 'type' of their justice" (138). Justice Scalia, according to Glauz-Todrank, was "the first Catholic Italian American justice" (138). At the same time, however, she notes that "[w]hen Italian Americans 'became' White, Justice Scalia's family was among them," and that Justice Scalia, "as an Italian American... understood what it was like to *feel* different from the dominant, assimilated majority" (138, 141).

On the one hand, Glauz-Todrank's analysis of Justice Scalia's religious and racial positionality seeks to emphasize that his membership in minority religious and racial communities may have made him more receptive to the Congregation's legal arguments. On the other hand, though, she argues that Justice Scalia's Italian Catholic family "became" White. This assertion would seem to contradict the author's claim that his experience of racial or religious difference made him more receptive to the Congregation's legal arguments. Because she does not engage with the scholarship in American

religious history that interrogates how Catholic emigrant families from Europe understood their changing religious and racial identities during the twentieth century, the author's discussion of Justice Scalia is somewhat perplexing. As just one illustration, the author's engagement with Robert Orsi's *The Madonna of 115th Street* would have made her portrait of Catholics in general and Italian Catholics in particular far more compelling.

Ultimately, Annalise Glauz-Todrank's *Judging Jewish Identity in the United States* is a timely attempt to analyze American law's treatment of religion and race. In this study, Glauz-Todrank raises many important questions for scholars of twentieth-century American religious and legal history who should continue, for example, to interrogate the relationship between local religious communities and national religious advocacy organizations (37, 135), the prominent role of interreligious solidarity in responses to acts of religious discrimination (38), and how lawyers for a religious community may leverage common assumptions about that community to advance its long-term interests (60). The methodological oversights of *Judging Jewish Identity in the United States* are, however, also a reminder of the challenges associated with efforts to think about legal history in light of religious history, and religious history in light of legal history.

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