By the 1980s, Jewish Americans had fought a hard battle not to be seen as a “race” in the United States. They had married “out” in increasing numbers. They had sought out businesses—such as travelling salespeople in the South—where there was not a Jew to be found. In the U.S., they strove to be a “religion.”

Yet Jews have been a “race” in Western societies since the Spanish limpieza de sangre (purity of blood) statutes in 1449. In Europe, “Aryan” and “Semitic” became central terms by the nineteenth century. But in the United States, Jewish Americans did not become critical to the discourse on racial theories, where these theories emphasized the histories of slavery, colonization, and westward expansion.

Today, we think we understand what “race” is in this country: we think it’s Black and White, or we think it’s Black, Asian, Latino, Native American…and White. But that’s not the complete story. What we think of as “race” has evolved substantially over the years, from “Hebrew,” “Slav,” and “Arabian” to the language that we use now. In the past, race has referred variously to nationality, geography, or culture. Today, race (and religion) form the basic assessments that we make when we meet another person. We observe, and we categorize. We attempt to identify the qualities that make another person Black, Asian, Latino…or Jewish.

In the American context, most Jews currently pass as white or are “mostly white.” But only in the U.S. have Jewish Americans been “white.” Furthermore, they have been “mostly white” only for the past approximately 60 years and during part of the 19th century. Other than that, Jewish Americans have not been considered white. In other words, most Jewish Americans have tried, in recent years, either to hide the fact, or are not aware of the fact, that they used to be viewed as a race.

My aim, in this paper, is to explore the racial dimension of identity for Jewish Americans within the framework of Critical Race Theory (CRT). Critical Race Theorists know that race is a multifaceted, multi-purpose structure that changes with time. It serves the needs of the majority, whether that is economic, political, social, or all three. Examining Jewish Americans from the perspective of CRT allows us to better think through the challenges that they encounter, the experiences that affect them, and the particular issues that they face. Here, I formulate how to think about the perception of Jews and the protection of Jews. I situate Jews within the American racial infrastructure, and in doing so, within the process of racial formation.

---

1 Although Keren McGinity makes it a point in her book that Jewish Americans remained Jewish even after they marry Protestants (or Catholics).
3 Nevertheless, immigrants fought to “become white” in the cities.
4 Given the particular qualities and connotations that being “white” has in this country.
5 This is Omi and Winant’s term, but whereas they employ it to discuss only the American context, I apply it with a wider geographic context and a longer historical period in mind. I adopt Irene Silverblatt’s conception of “race thinking,” in which she uses Hannah Arendt’s term to examine the development of the idea of race as developed by Spanish imperialists in the 15th-17th centuries. I agree with her argument that the concept of race begins in the time and place that she indicates, but nevertheless that it evolves and shifts depending on context.
is that Critical Race Theorists who focus on other communities will acknowledge the need for a Jewish Critical Race Theory. We, who study Jews, must be wary, of course, that we do not replicate what Lisa Tessman calls the “me too” phenomenon. She writes:

“Jews who are antiracist may-like many (other) whites who are at least troubled by racism—feel guilt about their privileges, or about their possible role in perpetuating racism. Such feelings may create a wish to be released from the guilty position of whiteness/white racism, and to achieve this release, one might simply cry “me too” when facing those who are the victims of racism. Most whites do not have the possibility of such a release: they cannot deny being white...Jews, however, may see a possible release: given their history of being racially Other, Jews may plausibly claim to still not be quite white or to not be white in the relevant respects. As targets of anti-Semitism, Jews may share many experiences with the targets of (other forms of) racism.”

Arguably, Americans should expect a legal system that protects Jewish Americans for the particular ways in which they are racialized. At the same time, because not all forms of racism look alike or act alike, Jewish Americans should not claim to experience effects of racism that do not pertain to how they have been racialized as Jews. In that regard, specifically, I hope that Jewish Studies scholars will take part in Critical Race Theory conferences. Sadly, when I go to these conferences, I am the only Jewish Studies person there. I hope that will change.

Shaare Tefila Congregation v. Cobb marks the first case asserting that Jews are not a race, yet are treated as one. The case was brought by a synagogue in Silver Spring, Maryland in response to Ku Klux Klan and Nazi related vandalism on the surface of their building. Luckily for the congregation, it ended up in the Supreme Court, after two lower court dismissals, due to the fact that Jewish Americans were citing race-based protection, and the judges viewed Jews as white people. The 1980s was a time when many Jewish Americans wanted to identify themselves as white, and it constructs the argument that Jews have been viewed as other than “white.” Unlike in the past, when Jewish Americans consistently construed religiously grounded arguments as the reason for their marginalizing experiences, this civil suit makes that case that Jewish Americans are white, and that they must deal with active discrimination.

Throughout this paper, I will note how and why Jewish Americans try to fit themselves into the term “religion” while negating the term “race.” I argue that situating Jewish American racialization side by side with “religionization” can provide us with the tools to more clearly identify how Jewish Americans regard themselves in relation to everyone else. Analyzing these two, mainly distinctively separate forms of socialization, will also bring these divergent categorizations together. With this in mind, I examine Shaare Tefila Congregation v. Cobb to more closely examine how Jewish Americans appeal to and, yet, resist the term “race” within a civil rights suit.

Many Americans and people worldwide use the word “antisemitism” rather than “racism” in discourses that marginalize Jews on the basis of perceived racial inferiority, even though these terms refer to the same processes. One might counter that the word “antisemitism” is more specific and therefore more precise, or that it also conveys the forms of hatred associated with Jews, in particular—not limited to race but including theological, political, and economic discourses related to hatred of Jews. Although I agree with this position, I also claim that examining antisemitism in isolation from the larger context of racism and racial formation denies

---

6 Lisa Tessman, “Jewish Racializations: Revealing the Contingency of Whiteness” in *Jewish Locations: Traversing Racialized Landscapes*, Eds. Lisa Tessman and Bat Ami Bar On (Lanham: Rowman and Littlefield, 2001), 139.

7 481 U.S. 615 (1987)
us one of the most powerful tools for making sense of it. This term isolates Jewish Americans from their surroundings, dislocating them from other racialized people. It also deprives us of learning from the correlations between how Jewish Americans and how other Americans are, and were, racialized—legislatively, judicially, and in regard to social privilege.8

Today many Americans (both Jewish and non-Jewish) think, for example, that Jews are members of a “religion” called Judaism; they also think that they know who Jews are because they think that they know what “religion” is in a permanently determined way. To this way of thinking, the “secular” or the “cultural” Jew is a wrench in the works of an otherwise coherent understanding of Jewish identity.

Critical Race Theory

Critical race theory aims to develop new ways of thinking about and of enacting the relationships between race and the law. These new modes are necessary because the language of the law and the usual forms of legal interpretation do not sufficiently protect peoples who are categorized and then alienated on the basis of race. The fundamental flaw in the legal system that critical race theorists address is its ongoing inability to protect people of color from the marginalization that they experience on the basis of being racialized in American society.

Marginalization is a broad term that can include experiences ranging from economic inequality to physical assault to defacement of property with racist graffiti. Critical race theorists seek protection against such crimes that account for and match the experiences of the victims, who are targeted due to their socially assigned racial category or to perceptions thereof. For example, after September 11th, 2001, hate crimes against Muslim and Middle Eastern Americans proliferated, but many such crimes also “mysteriously” targeted Sikh Americans and other people who “looked Muslim.”9

Critical race theorists articulate existing problems in the legal system with the objective of changing the ways that the law is written and interpreted. In order to make sense of the relationship between racialization and marginalization, they write about specific situations and legal cases that highlight the relatively unique experiences of particular groups of people, often focusing on the lack of fit between a legal decision and discourses or characteristics that define, or that are employed to define, the group. For instance, in her formative article “Mapping the Margins,” Kimberlé Crenshaw examines the inability of the legal system to respond to particular ways in which Black women experience inequality, due to experiences that degrade them both as Black and as women, but also by experiences that uniquely apply to Black women.10

Central to the formulation of most such arguments is the primary role that mainstream conversations play in informing the inequality that occurs. In other words, the problems in question do not pertain to qualities inherent to a particular group of people but rather to conceptions of that group that are also usually grounded in a long social and economic history of oppression. Because of these histories of oppression and because the conceptions at stake are often assumed to be inherent or factual, the discourses that undergird the discrimination are

---

8 Although a few texts compare Jewish immigrant experiences with those of Irish and Italian immigrants (See Matthew Frye Jacobson), Jews are usually only compared with other communities now considered “white.” Furthermore, my aim is not a comparison, per se, but an attempt to better understand how racial discourses informed all groups, but in different ways.


deeply rooted and difficult, if not impossible, to eradicate. For instance, Eduardo Bonilla-Silva writes:

Yet although the racialization of peoples was socially invented and did not override previous forms of social distinction based on class or gender, it did not lead to imaginary relations but generated new forms of human association with definite status differences.

After the process of attaching meaning to a ‘people’ is instituted, race becomes a real category of group association and identity. Thus, racialization effectively “creates” social realities: it constrains groups of people on the basis of social perceptions that are seemingly ingrained. The development of this process over time has functioned to make racial categories seem real and apparent.

Nevertheless, the prevailing contemporary “color-blind” approach to race pervades social discourse and predominates in legal rulings. As Neil Gotanda argues, “the U.S. Supreme Court’s use of color-blind constitutionalism—a collection of legal themes functioning as a racial ideology—fosters white racial domination.” He describes color-blind constitutionalism as beginning with the passage of the Thirteenth through Fifteenth Amendments and maturing with the passage of Brown v. Board of Education in 1955, the ruling that outlawed the “separate but equal” approach to racialized treatment that had characterized legal policy on race since the Plessy v. Ferguson decision in 1896. The underlying assumption of the color-blind approach is that we now live in a racially assimilated society in which race is irrelevant. Critical race theorists raise many issues in their writing that directly counter this assumption, such as racial profiling, federal immigration policies, and the expectation of professionals to “act white.” But American courts and legislative bodies consistently implement “color-blind” laws, such as the U.S. Supreme Court’s decision in Shelby v. Holder.

Michel Omi and Howard Winant articulate the fundamental components of “race” as a social category that is both structural and ideological, “racialization” as a process of instantiating race in social discourses, and “racism” as a “racial project” that “creates or reproduces structures of domination based on essentialist categories of race.” Racism, in other words, is formed by and exists within the structural system of society. They emphasize, as well, the “fluid” and “contested” history of these social structures and discourses. Their definition of race also highlights fluidity and contestation. It is “a concept which signifies and symbolizes social

---

11 Eduardo Bonilla-Silva, White Supremacy and Racism in the Post-Civil Rights Era (Boulder: Lynne Rienner, 2001), 40 (emphasis mine).
17 133 S.Ct. 2612 2013. This decision determined that Section IV of the Voting Rights Act was no longer constitutional. Section IV had established a formula to provide remedies for racist voter discrimination in areas where such discrimination was particularly prevalent. The court found that because “things have changed dramatically” in the South in the past fifty years, the remedies were no longer necessary.
conflicts and interests by referring to different types of human bodies.”

They further note: “Although the concept of race invokes biologically based human characteristics (so-called ‘phenotypes’), selection of these particular human features for purposes of racial signification is always and necessarily a social and historical process.” Their summary of race as a fundamental characteristic of American society attests to the impossibility of eradicating it, particularly with the “color-blind” approach. They write: “we should think of race as an element of social structure rather than as an irregularity within it; we should see race as a dimension of human representation rather than as an illusion. These perspectives inform the theoretical approach we call racial formation.”

Omi and Winant note that conceptions of race and racial categories change over time. They also imply that because race is “an element of the social structure,” Americans take it for granted—we often assume that race and racial distinctions are biological facts rather than socially constructed categories. They strongly suggest that this assumption means that we attribute a physical reality and factuality to race, such that we enable it to serve an explanatory role for social realities. Thus, it becomes “common sense” to us.

**Assimilation in the United States**

For many Jewish Americans prior to the Shoah (the Holocaust), “race” was something that many of them wanted to preserve. It enabled them to ensure that they had a minority presence. A majority of them intended to marry within the community. Whereas other “white ethnics” could marry among Christians, Protestant and/or Catholic, most Jews did not wish to marry Christians.

In public settings, Jewish Americans often had to remove what was explicitly “Jewish” about themselves to conform to the dominant majority of white people. Eric Goldstein writes: “the ultimate loss of race as a term for self-description rendered inarticulate some of their deepest feelings of group solidarity and difference.” Further, “acceptance often came at a heavy price, belying the notion that whiteness conferred only privilege.” Certainly, it was a hardship to Jews—who were so long the persecuted minority in other places—to claim to be “white” in the United States.

Most Jewish Americans had only one option available to them when they reached the United States, and that was to internalize religious norms. The northeastern segment of the Thirteen Colonies had fled from countries in Europe so that they could practice their religion, and they promulgated that viewpoint around the country. In Western Europe, Jews tried to conform to the religious norms in place as well. There, due in part to emancipation, Jews had begun to assimilate to the Christian concept of religion.

In an exceptional book that examines this topic, Leora Batnitzky asserts that the German Moses Mendelssohn “invented” the modern idea that Judaism is a religion. She further states,

---

20 Ibid., 55.
21 Ibid., 55.
23 Ibid., 6.
“one can understand this Protestant notion simply as the view that religion denotes a sphere of life separate and distinct from all others, and that this sphere is largely private and not public, voluntary and not compulsory.”

She notes that Mendelssohn “had to defend Judaism without refuting Christianity,” thus he separated state laws versus laws pertaining to halakhah, and he claimed Judaism was a “religion.”

In 1791, Napoleon Bonaparte “liberated” Jews, with the theory that “liberté, égalité, fraternité” was for everyone. But a few years later, he forced a “Sanhedrin” of rabbis to accede to French law by asking them a number of questions. He posed them with the “correct” answers in mind, in other words, the ones that acceded to French law. As he advanced into the various German regions east of France, he “liberated” them as well.

When the first wave of Jewish immigrants came to the U.S. in the 19th century, the vast majority of them joined the Reform Movement, begun in Germany. This movement was modeled on Mendelssohn’s conception of a separation between church and state, and it formed the most “Protestant-like” branch of Judaism. But when approximately two million Eastern Europeans came to this country from the latter decades of the 19th to the early 20th centuries, they struggled to make sense of Jewish American culture. For the most part, they had not experienced emancipation in their countries of origin. There, Yiddish theater, literature, and newspapers flourished. In Eastern Europe, Jews were Yiddishkeit, a people apart.

In her article “Other Moderns, Other Jews: Revisiting Secularism in America,” Laura Levitt focuses on the fact that, in the U.S., Jews are “supposed” to be a religious group. In the first part of her chapter, she writes about the Jewish students in her classroom who don’t feel Jewish “enough,” (because they are “culturally Jewish”), and then she references Joe Lieberman who is “too Jewish” to fit into the Protestant dominant paradigm. To explain this conundrum, she re-examines the story of Eastern European Jews coming to this country. She asserts: “Instead of seeing Jewish difference as necessarily a version of private faith, I resist this definition and look instead at many of the ways that Jewishness exceeds this definition.” Levitt asks: “At what cost have Jews been accepted into the dominant culture of the United States? What has it meant for Jews to conform to Protestant middle-class norms? What has it meant for Jews to refashion their Jewishness into a version of Protestant faith?”

Throughout the chapter, Levitt demonstrates the stripping away of Yiddish Eastern European identity and the effects of the argument that Judaism is a “religion.”

---

Partition of Judaeo-Christianity (Philadelphia: University of Pennsylvania, 2006). He asserts that early Jewish rabbis formulated their tradition in relation to and in opposition with Christian leaders, with the claim—although they did not say it in quite this way—that to be Jewish is not to be a religion. Further, he argues that both Christian and Jewish leaders formulated themselves in opposition to each other, with Christian leaders growing in strength and overpowering Jewish ones.


Ibid., 14.

I put “liberated” in quotes because Jews were forced to give up many features of their daily lives and were expected to be Jewish only at home.


Ibid., 111.

Most Jewish Americans have conformed to the idea that they are a religion, although there are some “secular” and “culturally” Jewish holdovers, which is a conundrum that many non-Jewish Americans cannot seem to fathom.
Conservative and Modern Orthodox Jewish Americans have taken separate stances in relation to the U.S.’s Protestant norms, but they have acceded to them as well, in part by not discussing their religious norms with many non-Jews. Leora Batnitzky notes: “Nevertheless, notwithstanding these and other important differences and developments, Reform, Conservative, and Orthodox Judaism in the United States conform to the conceptual and political framework introduced by their German predecessors in understanding Judaism as a religion.”

Will Herberg’s Protestant, Catholic, Jew makes the case that the three religions exhibit similar behavior in that they all prescribe religion, and that it does not matter which one. Adopting American norms has always been the social ideal. As Shaul Magid asserts: “‘Americanization’ was not one of a variety of options for Jews in America. It was the default position.”

Not all Americans have attempted to fit into a religious role that assimilates to Protestant norms: Hasidim reject American attempts to Protestantize them by constructing their own categories. For the most part, they object to common perceptions that Americans hold, for instance, about religion and race. They prefer not to associate with American ideals because they have their own ideals. Nevertheless, they are influenced by American precepts when they tell their story to outsiders. These norms are based on their own court’s lineage via the Baal Shem Tov’s examples.

For instance, Henry Goldschmidt examines what he calls the “Lubavitch Ideology of Jewishness” and writes: “Lubavitchers have come to emphasize a vision of Jewishness as an inherent and inherited property of the soul.” Furthermore, he notes that this understanding of Jewish identification “tends to level distinctions between secular and orthodox Jews, while accentuating distinctions between Jews and non-Jews.”

Goldschmidt comments, however:

“When he asked Lubavitchers how this Jewish soul was transmitted from the patriarchs to present-day Jews, many took pains to distinguish this theory of Jewish descent from racial biology (an understanding of Jewishness they tend to associate with Nazi anti-Semitism). One Lubavitch community activist defined the Jewish people as the “seed of Abraham,” and the “first family of monotheism,” and when why I asked this family is only recognized matrilineally, he replied, “We’re talking about a soul—the inheritance of a soul, or type of soul. It’s metaphysics, not genetics.”

The “soul” here is “metaphysical,” not “genetic,” but the two are of different forms: a Jewish soul is not the same as a non-Jewish soul.

Most Jewish Americans, however, highlight the extent to which Jews occupy common ground with other Americans. They aim to follow the dominant tradition in American society rather than to differentiate themselves. The members of Shaare Tefila congregation are no different.

Analysis of the Shaare Tefila Case

34 Leora Batnitzky, How Judaism Became a Religion, 169, emphasis mine.
37 Courts, or lineages, such as Lubavitch or Satmar, usually name the town in Eastern Europe where the community began.
38 The Baal Shem Tov or the “Master of the Good Name” was the originator of the Hasidim in the early 1800s. His given name was Israel ben Eliezer.
40 Ibid., 202.
I will return to the U.S. Supreme Court case that I introduced earlier, *Shaare Tefila Congregation v. Cobb*. As I proceed, I will focus on the content of the defacement, the disparate responses of the three courts that heard the civil suit, and the perspectives of congregation members. These points will help me to highlight the approach of critical race theorists, who engage the legal system from the perspectives of racialized victims.

The defacement of Shaare Tefila synagogue with Nazi and Ku Klux Klan related images and phrases exemplify the racist ideologies of these two organizations. On November 1, 1982, eight young men spray-painted the synagogue’s outside walls, a car, and playground equipment with swastikas, a six-foot tall Nazi eagle, the words “Toten Kamf Raband” [sic], a burning cross in red and black, the words “Dead Jew” and “Death to the Jude,” and a door, upon which they wrote “In, Take a Shower, Jew.” These are clear references to Nazi views of Jews as racially inferior and to Nazi attempts to eliminate Jews in extermination camps with “death head units” and gas chambers as well as to Ku Klux Klan efforts to terrorize Jewish Americans.

In the legal process of the civil suit, however, the two lower courts dismissed the congregation’s claim that the synagogue had been the victim of a racist attack on the basis that Jews are white. After the Federal District Court judge Norman Ramsey rejected the congregation’s argument and dismissed the case, the three judges on the Fourth Circuit Court of Appeals determined that “no racial discrimination was present,” in part because the congregation did not identify themselves as members of a separate race. In that court, however, the justices were divided, with a majority claiming that to gain civil rights protection, Jews had to actually assert that they were members of a separate race. Outlier Judge Wilkinson differentiated between the *embodiment* of race and the *discourses* that inform race thinking. In his dissent, he wrote: “Rather than allowing ignorance and misperception to provide their own defense, I would find the erroneous but all too sincere view of the defendants that Jews constitute a separate race worthy of humiliation and degradation sufficient to bring the claim.” Nevertheless, the synagogue lost its appeal and would have remained defeated had not the Supreme Court agreed to hear the case in conjunction with another case argued on the same legal basis in another appeals court that had resulted in a different ruling.

In the Supreme Court, the justices continued to grapple with the question: can Jews claim race-based protection? But instead of concluding immediately that Jews are white, they considered Jewish American *experiences* of discrimination in historical context, noting that institutional restrictions on Jews in the past had significantly limited Jewish access to the social privileges held by whites. They also discussed the virulent racism against Jews in Nazi Germany and how evocative the graffiti was of that reality.

In an exchange with the lawyer for the vandals, one Supreme Court justice stated: “‘Death to the Jews.’ That's what the swastika means.” Lawyer Deborah Garren responded: “I appreciate what Nazis believed and I also think that that is not a belief that is common to society.” The justice replied: “I didn't say Nazis. I said anybody that uses the swastika means, ‘Death to the Jews.’ German, American, or whoever he is, you don't use the swastika.” Garren then noted: “Well, I think even the petitioners in this case would agree that a claim would not be covered if the swastika wasn't used to indicate that Jews are racially inferior. That's what results

---

42 785 F.2d 523 (1986).
43 785 F.2d 523 (1986).
from their standard.” The justice replied: “It means that you should die.” “Pardon?” Garren asked. “It means that you should die.” In this dialogue, the justice focuses on the message of the graffiti, dramatizing its severity and recalling the grim consequences that it conveyed. In moments like this one, a few justices seemed to identify with the perspectives of Jews who had experienced the attack and with the effects of the related historical events.

As part of my research on the Shaare Tefila case for my current book project, I conducted thirty interviews in-depth interviews with people involved in the congregation or the civil suit, twenty-five of which were with congregation members. In studying the Shaare Tefila case, I wanted to understand how the congregation members used legal language to claim protection from the racist vandalism they had experienced, and I wanted to know how they thought in their own terms about the defacement as it related to their conceptions of themselves as Jews. My main question was how the legal language used to describe Jewish identity in the case diverged from the ways that the synagogue members chose to describe themselves as Jews. I wanted to determine the extent to which the legal options available could adequately serve the needs of the synagogue members who had experienced the defacement.

Several congregation members who were involved with the Board of Trustees at the time of civil suit recalled mixed responses to their lawyer’s proposal of seeking race-based civil rights protection. One former board member remembered: “There was a lot of concern. I remember a couple of meetings in a row…and we were concerned about the definition of Jews, as people, as a race, as a community, as a religion. And what the courts would do with those, how we would be defined by law. And we decided that that was a risk we were willing to take, but there was a lot of debate about that. Because you see we’re not a race. We are a religion, we are a culture. We are a people, and we are a community…Yeah, there was a lot of debate, pros and cons and about it, but in the end, I don’t know if you want to call them the hotheads, but the determined among us won out, and we did decide to pursue it. We pursued it all the way to the Supreme Court… I do remember people worried about us getting pigeonholed. That if a new law were made, that we shouldn’t be treated as a race because we’re not. And you know of course the lawyers among us, and there were several on the board, really started setting forth all of these possibilities about this could be good for us and this could be bad for us. What would be good for us as Jews as opposed to what’s good for us as a synagogue… I just remember that overwhelmingly we wanted to go after them, especially after we had had such a positive community response with the cleanup. So we went after them.”

These statements exemplify the disparity between the varied ways in which congregation members were conceptualizing Jewish identity and the legal necessity of associating Jews with the category of “race” to claim race-based protection against the vandalism.

What surprised me, however, was that most of the synagogue members did not involve themselves with the legal language of the case. Before I conducted my interviews, I had posited that a substantial “gap” would exist between the legal language pertaining to “race” used in the courtroom and the congregation members’ depictions of their Jewish identities. Most congregation members, however, knew very little about the legal process or the arguments constructed on their behalf, although a few of them did go to the Supreme Court hearing and followed the case in the news. This disengagement highlights the fact that the legal remedy did

---

45 Jack Teller, interview by author, Silver Spring, Md., 17 August 2009.
not completely fill the needs of the synagogue members. Many of them wanted to tell me about how meaningful they found the clean-up day that the synagogue youth had organized under the direction of the executive director at the time. On that day, hundreds of local community members of various racial and religious backgrounds arrived to join Shaare Tefila members as they scrubbed the graffiti from the synagogue walls. Retrospectively, the cleanup day seems to have augmented the satisfaction of winning the case but in a deeper, more emotional and personal way. One synagogue member recalled:

“They came, and they helped and supported us. They brought kids, you know, volunteers, teenagers, and they helped to clean up, and some people who had little businesses to do painting…you know, cleaning supplies, they came and supported it. And that was like very warming, you know…So it was really great, I mean the whole community was involved. It was terrific…I mean, that made me prouder of the community than anything. I mean, I really felt good about being a part of this community…Thinking back on that time, I get a little misty-eyed about us.”

The cleanup day seemed to restore the congregation members’ faith in the goodwill of their neighbors. Although it was not “restorative justice,” in that the vandals did not then come to apologize and join in cleaning, it seemed to serve another kind of restorative function.

A Jewish critical race theory, then, is one in which both legal and social remedies are significant and beneficial. Although the synagogue claimed a unanimous victory in the Supreme Court, the congregation only barely won the case, given the two lower court dismissals and the unlikely circumstances which resulted in the Supreme Court hearing the case. The legal process highlights how the law initially failed to protect Jews from racist crimes and then finally, in 1987, instantiated that protection.

The Conundrum of Jews and Race in the American Scene

So is this case the culminating victory that ends a long struggle for Jewish racial equality? Ironically, the case was won long after most of the institutionalized inequalities for Jewish Americans were overcome. But most non-Jewish Americans are not aware that Jews continue to face race-based problems. For that reason, and because many Jewish Americans experience inequality as a non-majority group, Jewish Studies scholars must construct a Jewish Critical Race Theory.

In what follows, Joe Feagin, a sociologist and race relations scholar, and Kenneth Marcus, a public affairs professor, previously the Staff Director at the U.S. Commission on Human Rights, comment on Jewish American identification.

In Feagin’s book, The White Racial Frame, a white student at a Midwestern college reported on a scene that he witnessed among other white male students:

“with the full group membership present, anti-Semitic statements abound, as do racial slurs and vastly derogatory statements...Various jokes concerning stereotypes were also swapped around the gaming table, everything from ‘How many Hebes fit in a VW Beetle?’ to ‘Why did Jews wander in the desert for forty years?’... The answers were ‘One million in the ashtray and four in the seats’ and “because somebody dropped a quarter,’ respectively.”

---

46 Jack Teller, interview by author, Silver Spring, Md., 17 August 2009.
47 Much later, the apparent ringleader of the vandals wrote an apology letter to the congregation and then met with a few congregation leaders to express his regrets in person.
Feagin is confused by this narrative. He argues the appearance of “jokes” signify populations that do not count as white. He states: “Even Jewish Americans are included,” he notes, “apparently as a people who are not authentically white.”49 He expresses surprise when he encounters this fact throughout his text.

Kenneth Marcus, on the other hand, asserts that the U.S. Department of Education’s Office for Civil Rights (OCR) must confront the topic of Jewish identification. He makes this claim so that Jewish Americans will be clearly defined at institutes of higher learning in order that the OCR can ascertain claims against Jewish Americans.50 In Jewish Identity and Civil Rights in America, he identifies a number of possibilities for how to grapple with the topic. In none of these analyses, however, does he adopt CRT examples for how Jewish Americans experience racialization. Rather, he treats CRT studies as antithetical to his purpose.

I argue that Jewish Critical Race Theory needs to take these events, and others like them, into account: a Jewish CRT would benefit from the example of other CRT theorists. Unlike in the examples above, in which, first, Jews are racialized in the white student’s account, and, second, CRT theorists are dismissed in the treatment of Jewish Americans, a more thorough coverage would acknowledge and address these incidents.

To fully accommodate Jewish Americans—however they choose to identify—a Jewish Critical Race Theory must include the following parameters:

For one thing, must account for Jewish history. Regardless of how Jewish Americans identify themselves, whether as secular, Reform, or Haredi, they must at least consider the Torah. Secular Jews, for instance, may acknowledge the Torah’s existence or may be outright hostile toward it.51 But all Jews look to the Torah for their origins. Whether or not they actually study the Torah, it forms the basis of Jewish existence. Many Jews think of themselves as a continuation of the lengthy history that Jews have experienced throughout this time. In the years since the Torah and the larger Tanakh, or Hebrew Bible, have existed, some Jews have addressed several features of it, including: G-d bringing the Israelites to the land of Israel, G-d exiling the Israelites (and later the Jews) among the “nations,” and G-d’s redemption, which apparently will occur sometime in the future. Every year at Pesach (Passover), many Jews state that they remember coming to the Land of Israel. To adequately address Jewish history, a Jewish Critical Race Theory must not only take these issues into account, but also must consider how they affect Jewish American experiences today.

The prevailing interpretation of Jewishness has been modified over the years from “religiously alien” to “racially marginalized.” The racially marginalized version, however, has the religiously alien version within it. So a Jewish Critical Race Theory must examine how religiosity is conditioned by, but not free from, the changing and current racial formulations that began in 1449, with the limpieza de sangre (blood purity) law.52 In 426, Augustine of Hippo argued in The City of God that Jews were both the “enemies” of and the “witnesses” to the Church’s superior Christianity.53 Augustine’s doctrine governed the Church’s model for dealing with Jews from the time that he wrote the text until the 1200-1300s. At that time, Franciscan and

49 Ibid., 12, emphasis mine.
50 Kenneth Marcus, Jewish Identity and Civil Rights in America (New York: Cambridge, 2010), 5.
53 Theodore L. Steinberg, Jews and Judaism in the Middle Ages (Santa Barbara: Praeger, 2008), 59.
Jesuit friars began reading the Talmud, which they determined was the “true” Jewish text, rather than the “Old Testament.” During this time, the Church decided that it no longer had to protect Jews. In *The Routledge Atlas of Jewish History*, a map of Europe cites the many times and places that Jews were forced to leave the place that they lived and called home. Today, what people call “antisemitism” is a mix of concepts that have targeted Jews in accordance with the dominant racial trends and religious beliefs of each particular time.

Like any community in countries where they are not the majority, most Jews talk with each other about Jewish-related issues. Many Jews tend to discuss how they think about themselves Jewishly with other Jews, but not necessarily with non-Jews, the dominant majority of whom are Christian. A Jewish Critical Race Theory must consider how this behavior affects the “whiteness” applicable to most Jewish Americans.

Unlike most other “races,” many Jews have hailed the wonders of being American. In fact, Beth Wenger asserts that Jewish Americans have even correlated Jewish biblical ideals with American democracy. While the white dominant culture was grappling with Black Americans’ slavery or former slavery, with Native Americans in regard to land rights, and with Latinos pursuant of immigration claims, Jewish Americans, for the most part, could go unnoticed, as long as they asserted that they were a “religious” group. A Jewish Critical Race Theory should examine this claim as well.

The majority of Americans expressed horror at Adolph Hitler’s demonization and the Nazis’ killing of six million Jews. In the U.S., a shift in the dominant thinking occurred. Jews could no longer be called a “race,” except for among the expressly racist. Around this time, judges could no longer identify Jewish Americans as a race. Eric Goldstein writes, however, that many Jewish Americans expressed an emotional attachment to race as a way that they were set apart. Even after World War II, “ethnicity” “was largely a linguistic strategy designed to recast their continued attachment to a racial self-understanding in terms more acceptable to the non-Jewish world.” In the 1950s, “at bottom it was still the basic commitment to Jewish social identity and peoplehood—once articulated in the language of “race”—that animated most Jews.” A Jewish Critical Race Theory must think about the linguistic shift from “race” to “ethnicity” during this period and up until today.

When Jewish Americans decided finally to deny their categorization as a race, a number of results occurred. At this point, the assumption is that Jewish Americans are “white.” An apparent result is that no Jewish Americans are of color. Due to the prevailing acceptance of Jewish Americans within the white and Christian American norm, Jewish Americans are likely to conform to this norm. This means that most Jewish Americans may struggle to go above and beyond the white status quo to maintain their whiteness. As a consequence, most scholars of racism and most people of color do not recognize that many Jewish Americans yearn to be a “race” despite their supposed whiteness. A Jewish Critical Race Theory must recognize what the acceptance of the white majority means for Jewish Americans, who are assumed to be white, and

---

58 Ibid., 206.
59 Ibid, 207.
how to handle the subtle desperation of many (white) Jewish Americans that people of color accept them.

Situating Jewish Americans squarely within whiteness means that some Christian whites may mock Jewish Americans behind their backs. It means that depending on where one is in the United States, Jewish Americans may choose to exemplify more or less of their Jewish identification. It means that however nice many Christian Americans may appear to Jewish Americans on the surface, quite a number of Christians still believe that Jews killed Jesus. In fact, some Christians think that they can identify Jews by their pointed noses, their hair, or even...their horns. Jewish Americans have often concealed their synagogues, not wanting to expose them to vandalism or other detrimental behavior. A Jewish Critical Race Theory must examine the fact that many Christians have passed down religious dogma to their children that paints a negative picture of Jews, how that dogma has been structurally reinforced, and how both of these have, to some degree, incorporated Jewish racialization along the way.

Some Jewish Americans think of their Jewishness as a “cultural” or “ethnic” identification. Most rabbis lament that these Jewish Americans do not come to their synagogues, except maybe on the High Holy Days. Yet these Jewish Americans identify strongly as Jews. Perhaps they grapple with some problem that they have with Judaism, some memory of Jewish day school or even Yiddish camp. Maybe their parents were secular Jews, imbuing them with socialist and labor union values. A Jewish Critical Race Theory must account for these Jewish Americans as well, who are not “religious.”

Jewish Americans have never been defined by U.S. law. Whereas Black Americans were 3/5 American due to slavery until 1865, and Native Americans were not citizens until 1924, Jewish Americans have not been codified into law. The latter have shied away from any legal designation as “race.” Court documents mentioned “Hebrews” in cases of people who were trying to become “white” in order to be American, but never did courts receive cases from Jews.60 A Jewish Critical Race Theory needs to account for Jewish Americans, who, until 1987, have hovered just below the surface of racially identified legal matters.

In the 1980s, the Jewish Advocacy Center aimed to replicate, in part, the Southern Poverty Law Center, one of whose main functions was to bankrupt the Ku Klux Klan. At that time, most Jewish Americans were still immediately covering anti-Jewish vandalism that occurred on their buildings or on synagogues, some of which probably occurred due to the prevalence of Ku Klux Klan members in their locales. In other words, Jewish Americans tended to hide whatever racialized disturbances that the Ku Klux Klan or other groups displayed. For the most part, Jewish Americans did not even begin to articulate a claim to a “racial designation” until 1982. And in this case, Irwin Shapell, one of the two members of the Jewish advocacy

---

60 During the period from 1790 to 1952, potential Americans had to show that they were “white,” or “black,” although the clear majority tried to demonstrate whiteness. In his article Performing Whiteness, John Tehranian argues that Ian Haney Lopez states that the Supreme Court’s rulings in Ozawa v. United States and United States v. Thind mark the end of the courts’ competing doctrines, between the “scientific model” and the “common-knowledge test,” with the “common-knowledge” test ultimately winning out. In this reversion to “common-knowledge,” the courts assert the processes of social construction at work in race. Tehranian claims that an additional factor is at work: racial performance. “Performance” is the ability to demonstrate “evidence of whiteness in their character, religious practices and beliefs, class orientation, language, ability to intermarry, and a host of other traits that had nothing to do with intrinsic racial grouping.” See Ian Haney Lopez, White by Law: The Legal Construction of Race. (New York: NYU Press, 2006 (second edition)). And John Tehranian, “Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America.” The Yale Law Journal, Vol. 119, No. 4 (Jan. 2000), pp. 817-848.
Center, had to convince Shaare Tefila Congregation to file a case against the vandals who had defaced their synagogue. In the context of the civil suit, Patricia Brannan followed the lead of the synagogue: she argued that the particular actions that targeted the synagogue were racist, not the Jews themselves. A Jewish Critical Race Theory must take this distancing, and yet identifying, with a racialized categorization to make sense of how Jewish Americans situate themselves in regard to race.

To conclude, I offer an account of how many Jews experience themselves in the United States. Several Fridays ago, my fiancé and I went to the synagogue in my current town of Lexington, Kentucky. My fiancé, who comes from Darjeeling, looked around and said, “I see a lot of white people here.” I scanned the scene. Most people in the synagogue from outward appearances “looked white,” but do they characterize themselves as “white?” When Christians ask them if they are Jewish, do they continue to identify as “white?” Perhaps, they have experienced some form of anti-Judaism. Are they, then, “still white?”

Investigating the concept of how Jewish Americans experience race allows Jewish Studies scholars to examine their complicated history outside the boundaries of the typical ways that Americans think about race. Certainly, Jews were a “race” in many contexts before they came to the U.S. But even in the U.S., Jews have experienced racial forms of discrimination. Many Jewish Americans experience, to varying extents, the injustices from a lengthy history of past harms. Whether or not they “look white,” many Jewish Americans remember oppression. They feel it inside them. This is the reason that we need a Jewish Critical Race Theory.

---

61 I asked him if it was fine for me to mention him here.