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INTRODUCTION

The Question

IN 2016, I became preoccupied with the question of belonging. Donald Trump had just been elected president. The more I witnessed his America First creed—a nationalist and isolationist ideology that sought to strip protections from undocumented people, ban the entry of Muslims, overturn birthright citizenship, and tolerate if not encourage xenophobia, nativism, and misogyny—the more I wondered what it meant to belong in the United States. For much of my life I had considered belonging a feeling. But now I was curious about the material conditions that enabled one group to gain belonging in the United States and another to experience the diminishment or loss of it.¹

Citizenship, the modern world's most powerful tool to authorize national belonging and rights, rested at the heart of my question. Before too long, my attempts to understand how the current government imagined and enforced American belonging led me backward in time, to reflect on a history I thought I knew well.²

I am a historian of American Jews. The central axiom of my field is that Jewish citizenship in the United States has been an uncomplicated affair. With just a few extraordinary exceptions (as if to prove the proverbial rule), Jews could become US citizens. Their access to official American belonging, in turn, served as proof of American freedom. In contrast to the subjugation of Jews in Europe and in distinction to the horrors and legacy of servitude that Black Americans experienced, the United States afforded Jews true emancipation.

This was the story I knew well, with its roots in the early development of my field. In 1954, Harvard historian Oscar Handlin wrote one of the first synthetic histories of American Jews, titling it *Adventures in Freedom*. Faithful to its name, the book concluded, “The Atlantic crossing was liberating. In every area of life the confining regulations fell away and man was left free . . . to act as man and citizen without interference from the state.”³

More than a half century later, a similar story of American Jewish citizenship and freedom endures. In 2017, one of the field’s most prominent historians, Hasia Diner, asserted, “Jews arrived at a point in their history where they could claim utter privilege, chained down by no fetters as they enjoyed access to every aspect of American citizenship.” In 2018, Jonathan Sarna, equal in prominence, similarly pronounced, “Never having received their emancipation as an ‘award’ . . . [American] Jews have had no fears of losing it. Instead, from the beginning, they made full use of their freedom.” From Handlin to Diner and Sarna, a rich body of scholarship and communal lore about American Jews developed with citizenship as an answer and an endpoint, not a question.⁴

By treating Jews’ journey to the United States as a passage into freedom, secured by the attainment of citizenship, the field of American Jewish history diverged from the rest of Jewish history. As a scholarly enterprise, Jewish history arose in the late eighteenth and nineteenth centuries in response to Jewish emancipation struggles or what some political leaders termed the Jewish Question. Early scholars hoped that an empirical record of the Jewish past could help answer the question of Jewish belonging by proving Jews’ fitness for national inclusion. With the development of modern Jewish history, questions about Jewish citizenship—its strength and varieties, its relationship to other groups’ political and civic membership, and its mutability—guided the field and its exploration of how Jews encountered the growth of new nations. Yet those questions appeared to halt at American shores, where scholars have insisted citizenship provided a decisive and triumphant answer to the Jewish Question.⁵

Historians of US citizenship have just as clearly accepted that citizenship solved the question of belonging for America’s Jews. Although

insistent on the unsettled and complex terrain of citizenship, especially for indigenous people, formerly enslaved people, and newcomers, these scholars are almost entirely silent about Jews. Their neglect echoes the axiom of the field of American Jewish history. If “Jews could secure legal and political emancipation merely by entering,” as one historian has concluded, and “were included as full citizens from the first days of American independence,” in the words of another, then surely there is little reason to include them in serious examinations of American citizenship. It is enough to say it worked for them.⁶

Now, a decade into Trump’s America First era, my country has made me doubt my field’s certainty. Equipped with insights from scholars of modern Jewish history, US political and immigration history, and citizenship and legal studies, I begin this book by turning my field’s answer into a question. Rather than insisting that citizenship worked for Jews in the United States, I am curious to know *how* it worked. How did Jews interact with the laws and policies of US citizenship, and what does this reveal about the challenges of national belonging and human belonging?

Are you a citizen?

The question is a staple of modern state bureaucracy. It dictates the passport we carry, the taxes we owe, the proof we show to hold a job or to get married. The question forces a clear response: Yes, or no? On its most formal level, citizenship’s question appears to promise a neat answer of either belonging or nonbelonging to a political unit.⁷

Yet as much as citizenship may answer a question, it also poses many—or is “in question,” according to the title of a recent volume. Citizenship is the modern state’s most powerful and complicated instrument of interrogation. It asks: Which people can make claims on the state? And what claims can the state make on individuals and groups? Citizenship, as one historian explains, is “a framework in which people ponder the structure of society.” It situates and resituates people, states, rights, and resources. Even in its most basic form, citizenship turns out to be not a clear answer but rather a tangle of questions.⁸

“The practical site of a theoretical existence,” the late cultural theorist Lauren Berlant wrote, citizenship links abstract concepts like belonging or rights to material things like territories and property or passport books and forms. The divisions of citizenship are possible only through the conversion of its theoretical logic into what another scholar calls its “actual facts.” In modern state-based citizenship systems, the law performs this alchemy, acting as an agent that “operationalizes” citizenship or makes it work. Amendments, statutes, and orders transform it into a real status and something that can act. At the same time, laws often magnify the “disruptions, paradoxes, and chaotic confusions” produced by using an abstract idea to arrive at material answers.⁹

At its core, modern American citizenship law designates categories, assigns groups of people to them, and then judges rights claims based on its own classificatory scheme. It produces citizens and aliens, legally acceptable and impermissible kinds of people, but it also generates statuses in between, described by various scholars as “almost citizens,” “second-class citizens,” “borderline citizens,” and “alien citizens.” The government officials who operate the machinery of the law and the groups of people who make their way through it often perceive the shortcomings in the process, the places where the categories falter. Legislators, bureaucrats, and judicial officials constantly tweak the laws, hoping to keep the machinery of citizenship in good (enough) working order.¹⁰

When properly situated within the legal framework of American citizenship, Jews emerge less as a proof-text for its success—emblematic of American freedom—than as a stress test on its designs. Jews persistently challenged the legal categories upon which citizenship rested. In their claims to citizenship and its rights, they exposed the limitations and lacunae of the law, pressing government agents to reinvent the terms of “legal belonging”—a useful formulation introduced by historian Jessica Marglin to describe the “wide range of formal bonds between individuals and states.”¹¹

Built in the wake of the Civil War, modern American citizenship became inseparable from its periodic stress tests, including the moments when Jewish people—or the law’s imagination of the Jew (sometimes called the Hebrew)—poked and prodded the categories of legal belonging. Across the twentieth century, government authorities from legislators to judges to bureaucrats weighed whether Jews were a “race,” a “nationality,” or a “religion.” The laws that governed citizenship and its rights required an answer. Sometimes Jews were the explicit objects of the questions: Were Jews a “race” as defined in a particular civil rights statute? In other cases, Jews served as a vehicle for testing how these legal categories applied to someone else’s status or rights: if the law classified Jews as a “race,” “nationality,” or “religion,” a different group in question could be likened to Jews and then slotted into a category accordingly. (For the ease of reading beyond this point, I drop quotation marks around these categories and others like them such as “white.” But bear in mind I am using the terms as invoked in juridical texts and not as indicative of any intrinsic meaning.)¹²

Regardless of whether inquiries into Jews’ citizenship status came directly or indirectly, Jewish leaders learned to pay close attention to them. They saw that a determination about the application of citizenship law could affect Jews even if it addressed them only obliquely. Decisions that reasoned from Jews—arriving at a ruling by comparing petitioners to Jews or drawing on precedent about Jews—might as well have been decisions about Jews. Convinced by the logic of citizenship laws that defined categories through analogy and precedent, twentieth-century Jewish lawyers expanded the sphere of Jewish interest in legal struggles about citizenship and rights. They filed briefs, lobbied Congress, and argued cases with the insistence and sometimes deep fear that their citizenship was entangled with other groups’ citizenship.¹³

To solve the legal puzzle about whether Jews were best understood as a race, nationality, or religion, jurists constructed arguments. Strikingly, interpreters of the legal categories regularly admitted to the difficulty of fitting Jews into law and even acknowledged that other demarcations, such as gender, sexuality, class, and political affiliations, could impact how legal categories operated. Jurists understood that the

categories could not simply be applied but required a case to be made. They recognized that the laws of citizenship and its rights could not be enacted until officials rendered categorical judgments—and that those judgments, even when quickly or imperfectly made, carried consequences.

The designation of Jews as a separate race could determine if an Arab petitioner gained citizenship in the early 1900s just as it could determine whether a synagogue in the 1980s had standing to file a civil rights claim. But if Jews instead represented a nationality, as some administrative officials believed, especially with the rise of Zionism and eventual creation of a Jewish state, then this in turn might prevent a Jew from holding US citizenship. After all, dual citizenship remained invalid under US law until 1967, when a Jewish man convinced the US Supreme Court to refashion citizenship law to permit multiple national memberships. Or perhaps Jews were best described as a religion, in which case they were due certain constitutional protections, though what those were and how they applied to non-Christians remained open for debate in statutory and courtroom deliberations. And so the questions came, circling back to categories that retained their utility only because they never quite settled the answers.

In the annals of American citizenship law, the categories of race, nationality, and religion persistently redefined the legal terms of Jewishness, and Jewishness persistently redefined the legal categories. Far from a resolution to an Old World question, American citizenship called Jews and their experiences into question. And Jews called American citizenship into question.¹⁴

This book traces the shifting strategies that political leaders, jurists, and American Jews employed to keep such a mercurial and litigious system intact. It is a tale of the compromises, contradictions, and injustices that all American citizens accept when they mistake citizenship for a final answer to the question of who is American.

The book's structure mirrors the designs of American citizenship law, allowing readers to see Jews as the law saw them from the twentieth century to the early decades of the twenty-first century. The prelude

provides the setting for the story of Jewish citizenship in the United States. Although anticipated by the US Constitution and federal naturalization law, a national citizenship law, with the enforcement power to apply evenly to every state, emerged only after the Civil War. Each chapter, then, chronologically charts the legal terms of Jewishness, illustrating how the terms appeared to double back on themselves: from race to nationality to religion and then back to nationality and race. Governmental bodies, Jewish organizations, and a diversity of petitioners drew on these improvised legal categories to determine the exterior boundaries and interior divisions of Jewish citizenship claims. As they did, the legal status of Jews and Jewishness changed alongside the legally drawn comparisons between Jews and other groups of citizens, quasi-citizens, and noncitizens. A final chapter examines the most recent developments in the jurisprudence of Jewish citizenship rights, where legal battles over antisemitism and anti-Zionism have appeared at the intersection of race, nationality, and religion.

Four crucial properties of citizenship underlie the story I tell here. First, it is historically contingent. From the post-Civil War era through the next century's revolutions in technology, knowledge, and global politics, citizenship's legal logic and Jews' position within it changed many times over. Second, it is segmented. American law did not merely demarcate between belonging and unbelonging, citizen and alien, but it also introduced internal gradations within citizenship to work out the categorical uncertainties of people, like Jews, who challenged citizenship's classificatory designs. Third, because of its changing and fragmented nature, citizenship generated political disputes on multiple axes, including between government agents and Jews, between Jews and non-Jews, and among Jews themselves. Finally, and connected to the other three attributes, citizenship law tethers groups to one another. Over the last century, this relational property of citizenship drew Jews into coalitions with multiple groups, while also fracturing alliances as the laws and categories of citizenship changed over time.¹⁵

The legal terms of Jewishness emerged from the direct and indirect ways that American citizenship law classified Jews across the twentieth century. Government officials and jurists sometimes employed

Jewishness as a calibration instrument, using their knowledge of Jews' place within the categories to mark where other less legally legible groups might fit. The demographic predominance of Ashkenazi Jews, who tended to be European-descended and regarded as white in many circumstances, often played a determinative role in early twentieth-century legal decisions. Jews and other groups to whom they were likened gained access to citizenship and its rights under the presumption of similarity. But in other cases, Jewishness acted as a bridge to non-Europeans (sometimes referred to as Semites, Asiatics, Arabs, or Middle Easterners), allowing jurists to interpret these groups as sharing legally significant attributes, especially when tied to the birth of Christianity. In turn, those groups and others (such as Seventh-day Adventists, Mexican Americans, and Black Americans) could link Jews to still other legal categories, ranging from religion to nationality to race. In sum, the legal terms of Jewishness comprised this complex circuitry, where the categories moved as quickly as the next petitioner and the next argument.

But Jews were more than abstract instruments to make citizenship law work; they also played a crucial role in assembling and reassembling the circuitry of citizenship law. Over the twentieth century, Jewish "lawyer-leaders," a coining introduced by legal scholar William Forbath, combined communal authority with legal expertise to influence how the courts and governmental bodies interpreted Jewishness. These lawyer-leaders helmed the three twentieth-century Jewish organizations—the American Jewish Committee (AJC), the Anti-Defamation League (ADL), and the American Jewish Congress (AJCong)—most involved in litigating twentieth-century Jewish citizenship. Some also participated in other liberal law-oriented groups, such as the American Civil Liberties Union (ACLU). In addition to representing Jewish clients who fought for citizenship rights, many Jewish lawyer-leaders steered Jewish organizations toward legal activism on behalf of non-Jews whose rights and legal status appeared linked to their own. Their work forged political coalitions, but it also sowed divisions among Jews and between Jews and others.¹⁶

Rarely uniform in their expectations for citizenship and its rights, American Jews brought diverse desires and experiences to citizenship.

If they were affiliated with politically radical movements, or members of the working class, or descendants of Jews from the Ottoman Empire or the Levant, or atheists, or in same-sex partnerships or single or female: these dimensions of personhood and many others made a difference to how a Jewish person approached citizenship and how agents of the government judged that person's citizenship claims. In other words, just as the arbiters of American citizenship law used Jewishness, so too did Jews use citizenship law to meet their needs.

Citizenship law provides a structure for making an argument. This is almost a truism in the modern world, when political campaigns, deadly wars, and cultural battles turn on who can gain citizenship and maintain its rights. Nations fixate on distinguishing between citizens and noncitizens and among kinds of citizens because these lines are both consequential and imprecise; grave and improvised.

The categories of citizenship are not truths but tools. Today, political actors routinely accuse one another of weaponizing laws to win rights for some and repress rights for others. Witness, for example, the fierce debates about when it is appropriate to use antidiscrimination law to combat antisemitism, especially if an alleged incident of antisemitism involves anti-Zionism. Wherever one falls on the question, a legal claim requires mining the categories of citizenship as written in civil rights law. To gain protections on the basis of race, nationality, or (depending on the statute) religion, one must make a bid for fitting into legal categories that are neither self-executing nor self-evident. In some hands and according to certain fact patterns, the categories may feel intrinsic to identity, but they are ultimately instruments of the law, as plastic as an analogy or a precedent invoked or overturned.

If one is searching for a durable system to guarantee belonging—a system that is not always posing itself as a question, does not require an argument, and is not prone to the vagaries of power—then US citizenship, or for that matter individual citizenship tied to any sovereign political unit, is not the answer. A government empowered to determine

who the individual is for the purposes of membership and rights is a government that treats citizenship as a question. As this book chronicles, American citizenship law has occasioned some spectacularly compassionate arguments about rights. The same law, however, has played host to the most devastating counterarguments, denying rights and humanity.

For the reader who, like this author, was taught to understand American citizenship as an answer, this book may shatter some hope. The unreliability of citizenship as a solution to the question of modern belonging is disquieting for anyone trained to believe that their rights are absolutely protected by citizenship. It may be less surprising to the millions of people who have been dispossessed of the rights of citizenship (or never possessed them in the first place), but even they—or their children or grandchildren—may have learned to have faith that American citizenship is different, more enduring, or more certain. The evidence I have found does not point toward that conclusion.

Here, I offer one record of how American policymakers, jurists, and legal minds tried to answer the question of who is American, and in turn, how Jews posed their own questions about the fickle categories of American citizenship. If any of these historical actors had wished to solve the dilemmas of national or human belonging, I am doubtful they would have succeeded. The sharpest and most humane among them seemed to understand it was best to keep asking, always imagining a better and bolder answer to come.

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