



JESSICA MARGLIN: THE CITIZEN WHO DIDN'T BELONG

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Joshua Holo: Welcome to the College Commons Podcast. Passionate perspectives from Judaism's leading thinkers. Brought to you by HUC Connect, the Hebrew Union College's online platform for continuing education. I'm Joshua Holo, your host.

JH: Welcome to this episode of the College Commons Podcast and a conversation with my friend and colleague, Professor Jessica Marglin. Jessica Marglin is professor of religion, law, and history, and holds the Ruth Ziegler Chair in Jewish Studies at the University of Southern California. Her research focuses on the history of Jews and Muslims in North Africa and the Mediterranean, with a particular emphasis on law. She is the author of *Across Legal Lines: Jews and Muslims in Modern Morocco*, and the co-editor, with Matthias Lehmann, of *Jews and the Mediterranean*. Her recent book, *The Shamama Case: Contesting Citizenship Across the Modern Mediterranean*, came out with Princeton University Press in 2022, and it was a finalist for the National Jewish Book Award. Jessica, thank you for joining us and welcome to the College Commons Podcast.

Jessica Marglin: It's such a pleasure to be here. Thank you so much for having me.

JH: Your entire book, which reads like a novel, *The Shamama Case*, relates the story of the last will and testament of an extremely wealthy Jew living in Italy, named Nassim Shamama, whose life and family crossed international boundaries and raised all kinds of issues of inheritance, jurisdiction, and even citizenship. Give us a brief setup for the story before we delve into its twists and turns.

JM: Yeah, so I got interested in this case, in large part because it seemed to bring together all of my interests. It was a case about a Jew, it involved Jewish law, it involved Islamic law, and it took place between Tunisia and Italy. And because of that, it sort of brought together the worlds of North Africa and Europe. And it all had to do with this one guy, Nassim Shamama, who had been a very high-level official in the Tunisian government, but then left under somewhat shady circumstances and ended up living in Italy in the town of Livorno, which is sort of the port of Tuscany. And then he died suddenly, and he didn't leave any children, but he left this huge estate. The Italian courts that were going to decide on how to divide his estate had to first figure out what his citizenship was in order to apply the correct law.

JH: You try to understand this seemingly impossible legal knot that you just described of Shamama's associations, jurisdictions, and family members by coining the term legal belonging. What does this idea of legal belonging get at, that the idea of citizenship doesn't?

JM: First of all, I realized that there were all of these questions about exactly how Nassim Shamama might have belonged to a place like Tunisia, which had a lot to do with the fact that he was Jewish. And there were questions about whether Jews could be full citizens of Tunisia or whether they were only subjects of the Bay. And if they were only subjects, then did they have Tunisian nationality or not, right? Was that a distinction that was relevant? And these questions all came up in the course of legal arguments. And at first I was trying to make them work with the labels of nationality and citizenship that we're used to.

JM: And then suddenly it was kind of like a light bulb that went on off in my head when I realized that the people who were arguing the case, the lawyers who were involved in the Nassim Shamama lawsuit, themselves were using these terms in ways that were unstable. Because in fact, the term citizenship wasn't new in the 19th century, but nationality actually was, at least to describe a relationship between a person and a state. And the distinction between nationality and citizenship wasn't stable. Sometimes nationality and citizenship were used as synonyms. Sometimes they were used precisely to distinguish between like a full citizen, right? Somebody with political and civil rights versus somebody who's only a national, meaning that he belongs to the state of Tunisia, but he can't vote.

JM: And again, these were all particularly relevant for Jewish history because Jews are always, at least in the 19th century, almost everywhere in the world were somewhat marginalized, either formally or informally. So I came up with this idea of legal belonging to try to describe the different ways that people could belong to a state. So instead of thinking of state membership as a binary, whether you're in, you're an American or you're out, you're a foreigner, I realized that in order to understand what was going on in the Shamama case, I actually had to think of it as a spectra, right? You could be fully a citizen with full political and civil rights.

JM: You could be partly in, right? You could belong to a state but not have political rights. You could be even slightly less in. You could maybe belong to a state under certain circumstances, but maybe also belong to another state, even though at the time dual nationality really wasn't a thing, right? That's something that actually became common much, much later. And so all of these different ways of belonging, I realized, needed a kind of neutral term. So that's why I suggested legal belonging. And it struck me that it was a much better way also of talking about different regimes of belonging across the Mediterranean, right? So instead of trying to fit what was going on in Tunisia into the Italian model or vice versa, I proposed that we use this sort of neutral term, which perhaps can better allow us to compare across these two different polities.

JH: As a person who's had to deal with American immigration systems, it sounds a lot like the visa system. There's citizenship and then there's 800 different flavors of being legal and recognized, but not fully citizenship. Since there's multiple overlapping components that define both the idea of legal belonging and Nassim's legal belonging in particular, share with us the

primary vectors that defined Nassim's identity and complicated any straightforward notion of "citizenship" for him.

JM: Nassim was born in Tunisia and lived most of his life there. One vector went that he was Tunisian, right? He was from Tunis and he was a high ranking official legit government. The only language that he spoke was Tunisian, Judeo-Arabic, which was spoken by the majority of Jews, Tunisia. So in many ways, the way we think about identity, he was very obviously Tunisia, but he left Tunisia. And so one of the other questions was, well, he left Tunisia, did he expatriate himself? And then when he left, he also applied for a new citizenship. He applied for Italian citizenship and he got it. He got a decree of naturalization from the King of Italy saying, okay, now you're an Italian citizen. And it seems like probably most people thought he was Italian after he got this decree of naturalization. Any official undertaking that he did after that point, either in France where he was living at the time, or in Italy, he did as an Italian citizen.

JM: And he even became a camp. He was Contenis in Shamama. So, Italian-ness was sort of a possibility. However, one of the legal questions in the case was, well, he got this degree of nationalization, but then he didn't register properly. So did he actually become an Italian citizen. And then the third major vector was this idea that he was Jewish and that Jewishness was itself a form of nationality. This is a kind of interesting aspect of the case that as a Jewish historian, I found particularly attractive. So we're used to thinking of Jewish nationalism as a thing. Especially since the late 19th century. Zionism has been the dominant form of Jewish nationalism. The idea that Jews are a nation, we deserve a nation state, and that nation state should be in historic Palestine. In the historic Jewish homeland. Of course, there were other forms of Jewish nationalism that are a little bit less well-known.

JM: But I imagine many of the listeners of this podcast have perhaps heard of them. Buddhism is the biggest one. It was a socialist Yiddish form of Jewish nationalism, and that really competed with Zionism. But in fact, neither Zionism nor Buddhism had really gotten going when Nassim Shamama died in 1873. Nonetheless, there was a general agreement by everybody that Jews were a nation, right? That was the logic that eventually led to Zionism and led to Bundism. At this point though, there was just this sense that Jews were a nation, even though they didn't have a nationalist movement. So if Jews were a nation, then Italian courts trying to apply the national law of Nassim Shamama. Some people thought, well, okay, maybe the national law of somebody like Nassim Shamama, a Jew is just Jewish law. His nationality is Jewishness. And that was a kooky argument in some ways because it didn't fit with the logic of nationality as having to do with the nation state. But again, it shows the elasticity of these terms, nationality, nationalism, and it shows also, I think the possibilities that there were in this time when nationalism was a very powerful moment, but also, still a pretty new type of ideology. And it sort of offered this possibility for what it might mean to be in Jew.

JH: So in this elastic moment of defining legal belonging, you note that the sheer size of Nassim's estate triggered the interest of state actors in teasing this out, all of a sudden, if you were an anonymous popper, we wouldn't have had these boundaries tested. And so, because it was so much money, these state actors had to compete with one another and argue their claim over his legal standing. And in fact, as you articulated, Nassim belonged as it were to the

Italians, the Jews, and the Tunisians in some kind of overlapping fashion. And granting that your job in this book is to tease out the very nature of these overlapping claims and the legal regimes that they betray, was there one sovereign power or non sovereign power who you feel had a particularly strong or particularly weak case?

JM: In some ways it's a tricky question because that's the story, and I'm not supposed to pick favorites. I'm supposed to lay it all out and say, okay, here are the multiple possibilities and here's how it might've gone differently. But nonetheless, I think I do have a kind of soft spot for the argument that ultimately ended up winning out, which was that these Nassim Shamama died a Tunisian. And part of that is because it seems so unlikely that an Italian court would basically defer to Tunisia nationality law. Tunisia was not a powerful state. By the time the final ruling was handed down in 1883, a decade after Nassim Shamama died, Tunisia had actually been colonized. It was now a colony of France. So this was not a sort of two equal heavyweights arguing for their version of the nationality law.

JM: This was Italy, which was, global, not quite as powerful as France or Britain. But nonetheless, clearly a full-fledged European power. And Tunisia, which had been bankrupt, which was a semi Ottoman province of the Ottoman Empire. But the Ottomans couldn't really defend Tunisia against French encroachments, right? And the fact that the Italian courts ultimately ruled that, no, no, you can't just expatriate yourself whenever you want. That Nassim Shamama was going to stay Tunisian until basically proved otherwise. And the fact that Tunisian law says that Jewish law applies to the state right back.

JM: That to me was I think really, really cool. It was sort of like the underdog, It was both the underdog in terms of the Asian state and the underdog in terms of getting Jewish law to kind of have this primacy, even in an Italian court. And I like the case in part because, there's a little bit of an element of absurdity because you have these Italian lawyers and these Italian judges who are trying to wrap their heads around all of these foreign legal systems that they don't know anything about. First of all, Tunisian law, which also has something to do with Islam law and then Jewish law, because once they decide that he was a Tunisian national when he died, and Tunisian law has to apply to the estate, then they're actually applying Jewish law because Jews in Tunisia are under Jewish law for matters of, personal status, marriage, divorce, and things like inheritance.

JH: He was under Tunisian jurisdiction. He therefore is also under Jewish jurist.

JM: Exactly. And that too, I've found sort of satisfying, one of the arguments against applying Jewish law is like, ah, Jewish law isn't even a legal system. Look, it's a bunch of guys disagreeing with each other, like real, the talk, you know what, they're just arguing all the time. There are no clear rules. How could you apply this in a proper modern court? It's a lawyer making an argument, but it's also tinged with a kind of traditional anti-Semitism, Judaism isn't a real religion, is not a real legal system. And so the fact that the court said, no, this is a legal system. They have laws like we're gonna do our best to apply them in the way that we understand them. I just found that really kind of cool. And I'm not a lawyer, but even legal

historians, I guess, kind of want the law to sometimes do the right thing as it were. So I would be, I think a little partial.

JH: It's not just partiality. It seems to me also a very gratifying victory for the rule of law that a judicial system should rule against itself.

JM: Yes, exactly.

JH: There's something bracing and encouraging about them.

JM: Right. Yeah. It doesn't mean that Italian courts always did the right thing or Italian law was great or anything like that. But again, yes, I think there is a kind of satisfaction when that sort of thing happens.

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JH: Okay. I'd like to take you up on your idea of legal belonging, and I wanna plumb another idea, the idea of civic belonging as an idea adjacent to your notion of legal belonging, particularly as relates to the immediate aftermath of Nassim's death, and by the term civic belonging I mean, in this case, one's claim on a society's identity, including both its benefits and obligations, meaning I'm referring to that untroubled kind of cultural and civic ownership that we attribute to enfranchised classes in every society, and which less enfranchised classes, including immigrants, women, minorities, poor, and many others, often can only really aspire to. And I can't help but think of the United States where Jews have sought civic belonging through many roots, including Jewish branded philanthropy for non-Jewish causes. And in this way, I was particularly struck by the story of Nassim's death and his heirs, immediate pursuit of that very same path in 1873 Livorno namely to commemorate Nassim's death with major gifts to both Jewish and Catholic causes. So, from your 19th century European perspective, or the scholarly perspective you adopt. Does this kind of philanthropy reflect the achievement of civic belonging or in opposite fashion? Does it betray the outside's need to grasp more desperately and more conspicuously for it?

JM: It's really one of those cases where I think it's both. And in the sense that philanthropy really, I think from at least the early modern period, if not before, has always been a means of both taking a claim to a kind of belonging that perhaps is a little bit fragile and proving that one does actually really belong, right? It's both a sign of that integration that civic belonging, I like that term a lot, and it's a way of saying, I deserve this civic belonging because I'm giving this philanthropy. And I don't know that you could ever say it's one or the other entirely. And I think in

the case of Nassim's heirs, it really is both, because on the one hand, there's no question that they were giving to the Catholic Charities in particular as a way of saying, we are Italian, right?

JM: And I don't know if they had already kind of anticipated the battle over his nationality. I think not, but I think they were planning on staying in Italy. They were planning on staying in Europe. They had no reason to go back to Tunisia. And I think their first reaction was to be strategic and say, okay, well if we're staying here, let's prove that we belong. Let's prove that we deserve to be here. On the other hand, it's not clear that they ever really did achieve anything like that kind of easy, full sense of civic belonging that you described of a kind of fully enfranchised person who had the cultural codes. They were immigrants, even the heirs, Nassim Shamama himself definitely never achieved that because he never even learned any of the languages of the places to which he moved, right?

JM: He remained only a speaker of Arabic his entire life, and in France, he never understood, people would never speak of French in Italy, he didn't understand being an Italian. On the other hand, I think that he was maybe a little bit less alienated than one might imagine, especially in a place like Livorno, because there was a lot of back and forth between Jews in Livorno and Jews in Tunisia. It was a hugely active commercial book in this larger Jewish, Mediterranean commercial world. And there were tons of families that lived between the two cities. He, himself wasn't one of those families, but the guys who carried his casket at the funeral were people that he had known in Tunis and that were now hanging out in Livorno. So he was not alone in the sense that he didn't laugh for people to speak to. But I imagine still that the feeling was one of an immigrant. As you say, somebody who didn't know the cultural codes, didn't know the language.

JH: I know it's not your scholarly specialization, but I do wanna ask if you think that the 19th century complexity of legal belonging that you have, so artfully and engagingly woven first, if that phenomenon has anything to teach us today about the accusations of dual loyalty in our world where we have refined the idea of citizenship precisely for the purpose of imposing a binary clear boundary on legal belonging.

JM: Yeah, I think it does. One of the things that comes up in the course of the Shamama Case is that there's a basically a kind of echo of this classic antisemitic trope that that Jews are dual nationals because they are the nationality of the state to which they happen to belong, but then really they're Jewish, right? So this is the kind of dark underbelly of that idea that being Jewish is a nationality into itself. And of course, you get that all the time today, especially with Jews in the United States. But I would say also in other countries, like in France, in the UK where there's this accusation that, especially if Jews are [...] the dunes, then they are supportive of Israel, and perhaps they love Israel more than the United States or more than France, right? Thus, they can't ever really be as fully patriotic - that the subtext is that they can't ever really be as fully American as a "real American", which of course reads Christian.

JM: I would say that it is definitely not only Jews, and this is just one of those ways in which antisemitism has to be understood in the context of other forms of racism and prejudice, right? It is never only Jews who are accused of this kind of thing, because of course, the subtext is

always also other others that can't be fully American, right? If you're Mexican, then you're also kind of Mexican, and thus you can't really be fully American because of course, part of you is loyal to Mexico and etcetera, etcetera, etcetera. And I think in that sense, one of the things that is, I guess a little depressing to be honest, is the staying power of these sorts of prejudices, right?

JM: That Jews in the middle of the 19th century when there were very few places where Jews had full political and civil rights, and where Jews really felt, very, not just marginalized, but unsafe in many, many parts of the world, and being accused of double nationality or dual loyalty essentially, and then 150 years later, where Jews don't necessarily feel unsafe in the same ways, but there's still that kind of subtext.

JM: I think though, that the maybe hopeful part of this is that the accusation of dual loyalty is always just one voice among many. And so within the Shamama Case, you have the voices that are saying, oh, well, Jews are always double nations. But then you have a lot of voices that are very insistent that Jews are just as Italian as Christians, right? And that is a very strong part of the argument for why those people on the side who were arguing that Nassim Shamama had died and Italian, one of their points was, if you say something like, Jews can't really be Italians, you're just a racist, you're an attitude. And even then there was this sense of that's stupid and wrong.

JM: Jews are just as Italian as everybody else. This may sound very, naive, but I guess I do feel like one of the lessons that Jews and Jewish historians have to teach the rest of the world is precisely about what that sense of difference and what that sense of diversity brings to the world, and the potential and the richness that you get when people aren't all alike, and when there's a kind of acknowledgement and discussion and even possibly celebration of difference.

JM: And so in that sense, the story in me talking about the 19th century talked about all of the different ways of talking about difference from, outwardly racist and anti Semitic to very inclusive and kind of militantly pro-diversity. And I think that has a lesson for us too, right? That, in some ways the kind of racism and prejudice stretches back 150 years, but so does the possibility to refute that, and so does the vision of a kind of inclusiveness where Jews can be full members. I don't know if that's convincing, but it, I hope in studying the past, we don't get too caught up on all of the depressive parts, I guess. [laughter]

JH: Right, right, right. There's a lot to be said for that I agree. I also tend to think that these examples of elastic ideas of legal belonging also remind us of the limits of the idea of contemporary citizenship. In fact, to impose a binary, I think that's its purpose, but when you have all of these categories and subcategories that are just really mitigating the idea that you're imposing citizenship with DACA, with being a green card holder, with being an American, carrying an American passport, but never having stepped foot in America, and in fact being French or whatever it is, all of these variations, the fact that we have to shoehorn them into the notion of citizenship is an exercise that I think takes on a different meaning when you learn from the history you've shared with us, and it creates a kind of flexibility of mind that I think can make us all ultimately better citizens anyway but it requires some thought.

JM: I think that's right. I think it, again, it's very intuitive in a sense, but nobody would ever say that they have just one identity, right? Everybody has multiple layers of identity. And I think one of the things that I kind of found so fascinating about this case is that even lawyers who I think tend to like to divide the world in much cleaner categories than sociologists who are comfortable with the idea of multiple identities and multiple layers, right?

JM: But even lawyers have to acknowledge that in some cases. People's citizenship is also layered, right? People aren't just one thing. Even before dual nationality, even before you could actually hold two passports, that sense of belonging and even those claims of belonging that you can make on a state or maybe on an official or maybe just on a town or whatever, right?

JM: Those weren't binary either. And I think that Jews aren't the only instance, but Jews were overrepresented among those who were living their lives in these kind of layered ways, right? Because Jews were moving about, because Jews had the transnational networks, because Jews often played this role in intermediaries, right?

JM: So the Jews are not the only way to get at this kind of layered sense of how the law worked, but they're a particularly good way. And I think the same is true about identity, right? Because Jews almost everywhere are a minority - are living amongst people who don't necessarily share every one of their layers of identity.

JH: Indeed I think it's why the Jews and Jewish emancipation became one of the salient test cases of the enlightenment itself.

JM: Absolutely.

JH: The legal civic components of the enlightenment. I mean, not the scientific part.

JM: Yeah, yeah.

JH: Okay. Well, I want you to take us out on this interview by sharing with us a surprise that you experienced while researching or writing this book, something that caught you off guard, that delighted you or troubled you and made this book for you a voyage of discovery as much as it is for us who get to read it.

JM: Something that I didn't expect in part, because I very deliberately chose not to be an historian of the Holocaust because I didn't think I could handle such a specific subject. I nonetheless found myself following the traces of some of Nassim Shamama's family's descendants. He didn't have any direct descendants, but his nephew's descendants. And through their experience during World War II, and in particular, this one branch of the family that stayed in Livorno and then intermarried. This is Nassim Shamama's nephew's son's kid.

JM: So the son of the nephew was born in Livorno after Nassim Shamama died. He lived his whole life in Livorno. Of course, to this Tunisian Jewish family, but he was kind of, again, one of these very cultured people. And one of the side of that is he marries a local Catholic girl, and

they married under the wrong star. I mean, they just cannot get a break. Their oldest daughter, I think, turns to prostitution, and their son ends up getting in all sorts of trouble, and they have one daughter who kind of manages to like have something of her life, but they're very poor.

JM: And then World War II hits, and suddenly, this guy who never bothered to get Italian citizenship, I mean, he just had lived in Italy all his life, he was even born in Italy, but to foreign parents, he never claimed Italian citizenship. Suddenly, he's a foreign Jew, which makes him a target, and he's sent off to this internment camp, not a concentration camp, but he's old by this time, I think he's in his late 60s or 70s, in ill health. He's cold in this camp, but somewhere in the mountains, he doesn't have enough clothes, and he writes these incredibly moving and heartbreaking letters to the government officials, begging them to send him food and clothing, to let him go back to his house or let him be near to his children.

JM: He does survive the war, he dies shortly thereafter, but that kind of consequence of uncertain nationality really stalked me, and obviously, I found very troubling that he lived his whole life in Italy, but just because he never actually sort of regularized the situation, right? He never got the proper paperwork to say he was an Italian citizen. He was considered a foreigner, and thus an enemy. But on the other hand, talking about this idea, the space between civic belonging and legal belonging, right?

JM: In the same archive, I was trying to learn more about when Nassim Shamama had applied for Italian nationality, and I came to this part of the archives that was in the heraldry division, and I really didn't know why I was there, but then I realized that I was in the heraldry division because when Nassim Shamama became a count, they let him get a coat of arms, and his coat of arms was gorgeous.

JM: It was painted in these incredibly bright blues, with these beautiful kind of feathers and this shield, and the shield had a Hebrew phrase on it, Ani Elokecha Adonai, I am God, your Lord, right? That to me, was this incredible and visually arresting sign of, okay, this Jewish guy from Tunisia, he became an Italian aristocrat, right? I mean, it wasn't so hard to be an Italian aristocrat, basically just made a donation to the Italian kingdom, but still, they were like, okay, Jews, Tunisian Jews, sure, great, come on in, right?

JM: They basically welcomed him with open arms, and he was known as Count Shamama, and he gave these orders for after his death to build this very grand mausoleum which is still there in Livorno, which has his coat of arms all over it. I mean, it's a very successful branding project. It's this kind of very aesthetically stunning testament to the possibility for Jews to integrate, and I guess those two poles, right?

JM: On the one hand, Nassim Shamama's kind of successful integration as an Italian count, and on the other hand, his descendant's internment during World War II, it's really the kind of full spectrum of the possibilities for Jews, right? The promise and the peril of what it means to be Jewish in the modern world, the promise of that kind of civic belonging and the peril of having the wrong legal belonging and basically paying either with your life or with your health.

JH: Well, let's hope for the benefits of this polarity, and thank you for taking the time and the pleasure of your conversation, and congratulations on your book, *The Shamama Case*, and it was really a pleasure to talk to you.

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JM: Thank you so much. It's been such a pleasure.

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