


Amish and Hasidic Litigation: A Survival Strategy

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Introduction

The religious freedoms afforded by the First Amendment are rarely explored as potential threats to the survival of strict sects in the United States. Strict sects—ultra-insular, literalist religious groups—have historically suffered from state persecution; their survival depended on their ability to maintain a buffer zone, a strict separation, from society and its threat to both their physical well-being and their salvation. Intuitively, the state-sanctioned protection and mandate of non-involvement with religious groups should benefit strict sects. However, these protections actually come at a price to strict sects; a threat to the very separation that ensures their survival.

While religious freedom and separation of church and state are meant as safeguards from state persecution, they are also meant as safeguards against any preferential treatment by the state of religious groups. Additionally, while the primary purpose of the First Amendment is to protect the individuals practicing religion, its purpose is also to protect individuals from religion. For centuries, many strict sects, such as early Mormons, Ultra-Orthodox Jews, and Seventh Day Adventists, survived by operating in the shadows of the state. However, as state capacity grew in the twentieth and twenty-first centuries and the reach of the law expanded, religious practices deemed preferential or harmful to individuals became the source of conflict between strict sects and the state. As the crux of these conflicts is the adherence of strict

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sects to religious over state law, these conflicts nearly always play out within the legal system. Ironically, in order to preserve the separation from society that is integral to their strictness, strict sects must engage *with* the state. I argue, however, that despite the modern, secular, legal context of these conflicts with the state, the strategies deployed by strict sects retain significant aspects of the survival strategies employed during periods of historical persecution by the state.

A comparison of how the Amish and Hasidim have navigated conflicts with the state in the late twentieth and early twenty-first centuries in America provides an ideal test for the argument that historical survival strategies still have influence on strategies for survival in modernity. Both the Amish and Hasids are strict sects that maximize separation from society in order to protect themselves from persecution, from the erosion of their religious practices, and from threats to their salvation from an immortal secular society. Additionally, the Amish and Hasids have similar formation stories of religious persecution and discrimination in early modern Europe prior to their arrival in the United States in the eighteenth, nineteenth, and twentieth centuries, respectively. However, they differ in historical survival strategies; the Amish sought separation through complete disengagement from society through geographical distance and a strict self-sufficiency, which meant avoiding the use of state or societal resources, while Hasids survived through negotiating with the state for separate accommodation within society and its structures—the state apparatus. Through an exploration of Amish and Hasidic litigation, I argue that while the Amish use litigation as a survival strategy to further institutionalize their separation from society by minimizing interactions with government and state apparatuses such as education and healthcare, Hasids use litigation to further institutionalize their separation from society through separate accommodation within these state apparatuses.

I first present an overview of the development of Amish and Hasidic historical survival strategies before placing them in their contemporary contexts. I then provide an overview of twentieth and twenty-first century legal conflicts between the Amish and Hasids and the state using a unique dataset of Amish and Hasidic First Amendment litigation. I demonstrate that differing Amish and Hasidic litigation strategies can be explained by their differing historic survival strategies. I conclude with a comparison and analysis of an Amish and a Hasidic lawsuit—*Wisconsin v. Yoder* and *Kiryas Joel Alliance v. Village of Kiryas Joel*—which demonstrate that even in comparable legal conflicts, contemporary

strategies of engagement can be explained by historical survival strategies.

Challenges to the Survival of Strict Sects

Strict sects, as the name suggests, are religious splinter groups of larger religions differentiated by the intensity of their religiosity. This religious intensity, more commonly known as “strictness,” is expressed not only theologically, through a high degree of religiosity and religious literalism, but also socially, through high internal cohesion and a purposeful separation from mainstream societal practices. Grzymala-Busse characterizes the relationship between religious strictness and the retention of members as one where “[h]igher participation and commitment are the result of the greater demands of stricter religions and their ability to offer close alternatives for secular goods they forbid their members.”¹ Religion and politics scholars Stark and Finke attribute the level of religious strictness and social cohesion of a strict sect to the “reciprocal relationship between the degree of lay commitment and the degree of exclusivity” mediated by the extent to which the group maintains separation from the outside world, which they refer to as “high tension.”² They ascribe a nearly life-cycle pattern to the relationship between sects and churches, arguing that as congregations grow and their clergies become more professionalized, this “shift[s] religious organizations from higher to lower tension—from sects to churches,” ultimately weakening the commitment of the members to the expensive practices. I disagree, however, that this is inevitable.³ Rather, as the survival of contemporary strict sects, such as the Amish and Hasids, demonstrate some sects employ survival strategies that allow them to maintain their religious literalism and separation from society.

Although significant literature provides ethnographies of the political practices of strict sects and addresses threats to internal cohesion and political identity, there is a lack of literature that comparatively addresses the strategic interactions of strict sects with the state to ensure the survival of their strictness.⁴ This is a

1. Anna Grzymala-Busse, “Good Clubs and Community Support: Explaining the Growth of Strict Religions,” *Journal of Church and State* 56, no. 2 (2012): 274.

2. Rodney Stark and Roger Finke, *Acts of Faith: Explaining the Human Side of Religion* (Oakland: University of California Press, 2000), 142.

3. Stark and Finke, *Acts of Faith*, 166.

4. See for example Eli Berman, “Sect, Subsidy, and Sacrifice: An Economist’s View of Ultra-Orthodox Jews,” *The Quarterly Journal of Economics* 115, no. 3 (2000): 905–53; David E. Campbell, John C. Green, and J. Quin Monson, *Seeking the Promised Land: Mormons and American Politics* (New York: Cambridge University Press, 2014); Jan Feldman, *Lubavitchers As Citizens: A Paradox of Liberal*

glaring omission as the recurring challenge for strict sects is how to retain members and survive as the contexts in which they were created change. Instead, arguments based on the internal composition of the sects themselves provide better explanations. Grzymala-Busse argues that strict sects, through “offering networks of community support that not only increase growth from within. . . also increase the costs of exit over time, encouraging reproduction, retention, and resoluteness. Such community support allows these groups to grow while retaining their doctrinal commitments.”⁵ In other words, members remain in strict sets because the communal benefits outweigh the freedom gained through independence from the sect. Similarly, Iannaccone argues that sects or “strict churches” survive because their stringency reduces free-riding and makes them more attractive than their more mainstream variants.⁶ Illuminating as these arguments are, however, they fail to directly address the role that the state-church dynamic plays in the survival of sects. One compelling exception, however, is the role that Norris and Inglehart’s theory of existential insecurity as an explanatory factor for degree of religiosity.⁷

Norris and Inglehart argue that existential insecurity leads to high religiosity because “[i]ndividuals experiencing stress have a need for rigid, predictable rules.”⁸ Strict sects, like the Amish and Hasids, are nearly always formed during times of existential insecurity, often due to a combination of external coercion, such as state persecution, and internal fears of doctrinal or spiritual threat—the danger posed by mainstream society’s moral laxness. Separation from society, therefore, is integral to the survival of strict sects on both physical and moral grounds. Historically, strict sects’ strategically chose to operate within the shadows of society in order to survive. In countries such as the United States, where separation of church and state and religious tolerance nearly completely remove the threat of state and significant societal persecution, external coercion as a contributor to existential insecurity diminishes. At the same time, however, as state

Democracy (London: Cornell University Press, 2003); Grzymala-Busse, *Good Clubs and Community Support*; Pippa Norris and Ronald Inglehart, *Sacred and Secular: Religion and Politics Worldwide*, 2nd ed. (New York: Cambridge University Press, 2004); Kyle C. Kopko, “Religious Identity and Political Participation in the Mennonite Church USA,” *Journal of Politics and Religion* 5, no. 2 (2012): 367–93.

5. Grzymala-Busse, *Good Clubs and Community Support*, 269.

6. Laurence R. Iannaccone, “Why Strict Churches Are Strong,” *American Journal of Sociology* 99, no. 5 (1994): 1180–211.

7. Norris and Inglehart, *Sacred and Secular*, 4.

8. Norris and Inglehart, *Sacred and Secular*, 19.

capacity increases, the state is far more likely to interfere on behalf of individuals it believes are being threatened by religion. As operating on the margins of society becomes increasingly difficult and existential insecurity as a motivator for separation from society decreases, the primacy of enforcing this separation becomes even more integral to the strict sects' survival. I argue that, to survive, strict sects such as the Amish and Hasids must develop contemporary strategies of engagement with the state that allow them to maintain their separation from society. These strategies, however, do not represent a complete break from the past; rather, they reflect the unique survival strategies that allowed the sects to survive historically.

Amish and Hasidic Narratives, Core Beliefs, and American Iterations

The Amish originated as a seventeenth century offshoot of Anabaptism following the Protestant Reformation. Anabaptists argued that Protestants had not taken the Reformation far enough and lost credibility through their increasing institutionalization. The *Schleitheim Confession*, the formative text of the movement, promoted separation from mainstream society by forbidding the swearing of oaths or bearing of arms and by banning those members who had fallen by the moral wayside: "We have been united concerning the separation that shall take place from the evil and wickedness which the devil has planted in the world. . . that we have no fellowships with them, and do not run with them in the confusion of their abominations."⁹ From their inception, the Amish were seen as a threat to nearly every state they occupied; for centuries, their religious beliefs had no legal status and they faced imprisonment, torture, banishment, and property confiscation.¹⁰ Amish teachings emphasized "a theological distinction between two kingdoms: the kingdom of Jesus anchored on peace and nonresistance to evil and the political kingdom of this world based on the use of force, or at least the threat of it, to maintain order."¹¹ This meant that the Amish adhered to civil law and authorities so long as it did not interfere with their teachings. However, bearing arms and swearing oaths to temporal authority were non-negotiable violations of the Amish faith. As this was

9. Sattler cited in John A. Hostetler, *Amish Society*, 4th ed. (Baltimore, MD: Johns Hopkins University Press, 1993), 28-29.

10. Hostetler, *Amish Society*, 50-51.

11. Donald B. Kraybill, *Renegade Amish: Beard Cutting, Hate Crimes, and the Trial of the Bergholz Barbers* (Baltimore, MD: John Hopkins University Press, 2014): 16-17.

interpreted as impermissibly subversive by many states and authorities, it frequently served as grounds for imprisonment and execution. To bypass conflicts like these as well as to avoid the corrupting influences of urban centers, the Amish moved to remote rural areas where the threat of state harassment was decreased. In this context, community self-reliance and self-sufficiency became highly prized.

Like the Amish, the Hasidic sect was formed during turbulent times: the eighteenth-century political unrest and persecution of Jews in Eastern Europe. Hasids originated as a mystical, ultra-Orthodox Jewish sect based on the teachings of Rabbi Israel ben Eliezer, a charismatic healer and miracle worker.¹² Similar to the Amish preference for deinstitutionalized religious practices, Hasids included the common man, non-clergy, in services and practices more than their mainstream Orthodox Jewish peers. Like the Amish, the survival story of the Hasids is one of violent persecution and discrimination over centuries at the hands of the Russians, Polish, and Nazis, culminating in their immigration to America following the Holocaust when nearly 90 percent were murdered.¹³ However, in contrast, Hasids found that survival was best guaranteed by securing separate accommodation for their way of life within the state through negotiation.¹⁴ Yeshivas and kosher butchers became openly tolerated, separate spaces for Hasidic Jews in cities. Even during times of extreme persecution such as the Holocaust, negotiation and engagement were resorted to, rather than disengagement. The Hasidic Lubavitch dynasty for instance, “cut their political teeth in a courageous game of cat-and-mouse with the Russian and then the Soviet government.”¹⁵ In other words, Hasidic survival was often a result of proactive engagement with the state.

For both the Amish and the Hasids, stories of ancestors who died for the faith play central roles in keeping the image of a threatening mainstream society and state alive. In a sense, through the continuous repetition of these stories they are able to keep an element of existential insecurity and even trauma alive. The *Schleitham Confession*, with its emphasis on the evil of the secular world, are still seen as the guiding principles of the Amish

12. Jerome R. Mintz, *Hasidic People: A Place in the New World* (Cambridge, MA: Harvard University Press, 1992).

13. Feldman, *Lubavitchers As Citizens*.

14. It is important to note that a retreat to rural locations was not the same option for Hasidic communities as many places had forbidden Jewish ownership of land for centuries, effectively segregating Jews in urban centers and in urban professions, such as merchants.

15. Feldman, *Lubavitchers As Citizens*, 43.

today. In addition, the Amish place enormous significance on living off the land, self-reliance, and the redemptive nature of participating in their society—the *Gemeinde*.¹⁶ The *Martyr's Mirror*, a collection of tales of Anabaptists who died for their faith, is still widely read by contemporary Amish and constitutes one of the central texts in the religion. In an interview, a member of an Amish community explained the significance of their sixteenth-century ancestors to their everyday lives: “We plain people often refer to our ancestors, the Anabaptists. . . . Willingly, they offered up their lives and accepted death. Hardly a sermon is preached in our churches today without some mention being made of our forebears and what they suffered.”¹⁷ The significance of this focus on martyrs is that it promotes a sense of contemporary existential insecurity and promotes a perception of high tension by reminding contemporary Amish of persecution by the secular and religious mainstream. For the Hasids, in the wake of the Holocaust, “[t]o transplant the sacred geography of Hasidic Eastern Europe to Israel or America was therefore the best way to concretize memory. The culture of Holocaust memory in the Hasidic world focused not only on remembering the victims but perhaps even more on intensifying the revival of the world that was destroyed—or at least their version of that world.”¹⁸ Memories of institutionalized persecution and discrimination before and during the Holocaust are central to the Hasidic way of life and to the Hasidic narrative, as are tales of the successful intervention of Rebbes, who, on behalf of the Hasidic people, were “capable of miraculously turning aside such decrees [of annihilation].”¹⁹ In other words, maintaining high tension and existential insecurity by keeping century-old practices alive and focusing on past martyrdom are characteristics of both contemporary Amish and Hasidic communities.

Of comparable size, between 200,000 and 300,000 in the United States, neither Hasids nor the Amish proselytize nor actively seek to enlarge their congregations in any way other than reproduction.²⁰ Neither the Amish nor Hasids has a centralized religious

16. Hostetler, *Amish Society*, 74.

17. S. F. Peters, *The Yoder Case: Religious Freedom, Education, and Parental Rights* (Lawrence, KS: University Press of Kansas, 2003), 8:11.

18. David Biale, David, David Assaf, Benjamin Brown, Uriel Gellman, Samuel Heilman, Moshe Rosman, Gadi Sagiv, and Marcin Wodziński, *Hasidism: A New History* (Princeton, NJ: Princeton University Press, 2017), 666.

19. Jerome R. Mintz, *Legends of the Hasidim* (Lanham: Jason Aronson Inc., 1968), 10–11.

20. The one notable exception is the outreach done by the Lubavitch Hasidic dynasty, who actively proselytizes to less observant Jews.

hierarchy. Instead, they are characterized by dynasties made up of small congregations led by a bishop or a rabbi and governed by a judiciary that rules according to religious texts, the Amish *Ordnung* in accordance with the Bible, and the *beit din* in accordance with the *Torah*, the *Mishnah* and the *Talmud*. Additionally, the preservation of their European linguistic heritage—Pennsylvania Dutch for the Amish, and Yiddish and Hebrew for the Hasids—are central to the sects' identities and to the preservation of high tension, as are the strict dress codes, which have a double function as a commitment to modesty and a visible remnant of their collective history. Finally, in both sects there is the possibility of being excised from the community for deviating too far from the rules, an internal mechanism for maintaining high tension.

It is important to note that within the Amish and the Hasids, there is enormous diversity of interpretations of doctrine, succession, and practice. In fact, this has caused significant splintering and defections within both sects as dynasties split into new dynasties or members of one dynasty join another. For instance, the Beachy Amish split from the Old Order Amish in 1927 over the use of technology such as cars, tractors, and electricity.²¹ The Hasidic Satmars split after the death of Moeshe Teitelbaum in 2006 over a dispute as to which of his two sons should lead in his place.²² There is also significant variation in the extent to which Amish and Hasids will engage with non-members; some Amish and Hasids hold secular jobs outside of the community, some Hasids even hold secular office such as New York criminal court judge Rachel Freier.²³ However, for the purpose of this study, when I refer to the Amish and Hasids, I am referring to the prototypical, strictest iterations of these sects.

Amish and Hasidic settlement and engagement patterns in the United States are a continuation of the strategies employed in Europe during their early years. Once more, the Amish in the eighteenth and nineteenth centuries settled in rural areas, mostly in Pennsylvania and Ohio, rather than in cities. Similarly, they refuse to engage with the state apparatus through accepting state aid. Contemporary Amish refuse Social Security, welfare, and Medicaid both out of a commitment to self-reliance and as a safeguard to their strictness: “[t]apping into federal programs, would, in the long run, erode the base of mutual aid and drain away precious

21. Hostetler, *Amish Society*, 283.

22. Biale et al., *Hasidism*.

23. Sharon Otterman, “Judge Ruchie, the Hasidic Superwoman of Night Court,” *The New York Times*, November 17, 2017.

social capital.”²⁴ In other words, self-reliance offers both material and moral gains. Further, holding office, with the occasional exception of local school boards, is prohibited as serving in office “means participating in the state, the most worldly of organizations—an embarrassing violation of the principles of separation from the world.”²⁵ Nonetheless, the Amish organizational structure has had to evolve with shifting times. For example, in 1967 the National Amish Steering Committee was founded in response to the draft. The Committee successfully negotiated exemption and has continued to work largely behind the scenes and out of the courts to resolve conflicts over issues such as education and zoning directly with government entities.²⁶ As in Europe, Hasids settled primarily in urban areas like New York City, in neighborhoods like Crown Heights, and Williamsburg, as well as in New York and New Jersey suburbs. Once more, centralization in urban communities inevitably led to greater engagement with the state. Unlike the Amish focus on complete self-reliance, contemporary Hasids not only accept state aid, but on many occasions have actively pursued it when they saw it in the best interests of their community.²⁷ Hasidic communities have continued their strategy of survival by proactively securing special dispensations and protections within urban centers from state officials such as welfare and small business incentives.

Contemporary conflicts between the state and the Amish and Hasidim are nearly always due to issues of legal sovereignty; the threatening state now comes armed with lawyers rather than soldiers. With the growth of state capacity in the late twentieth and early twenty-first centuries, Amish and Hasidic adherence to religious law over state law creates conflicts in unprecedented ways in realms that were previously allowed to function without state intervention, such as technology and construction projects. Yet the Amish and Hasidic historical stories of survival are still significant in that we can look to them to explain contemporary strategies of engagement with the state. More specifically, in the context of litigation with the state, while the Amish seek to ensure separation from society through pursuing a legal strategy to further institutionalize separation *outside* state apparatuses, Hasids

24. Donald B. Kraybill, *The Riddle of Amish Culture*, (Baltimore, MD: Johns Hopkins University Press, 2001).

25. Kraybill, *The Riddle of Amish Culture*, 275.

26. Marc A. Olshan, “The National Amish Steering Committee,” in *The Amish and the State*, ed. Donald B. Kraybill, (Baltimore, MD: Johns Hopkins University Press, 2003), 68.

27. Feldman, *Lubavitchers As Citizens*.

choose a legal strategy that promotes erecting their fortresses *within* state apparatuses.

Engagement to Maintain Separation

The challenge in establishing a comprehensive list of litigation involving Amish and Hasids with the government is compounded, first, by the lack of a central digital database of all filed cases; and, second, by the fact that cases may not explicitly reference the religious denomination where it either seems self-evident or unnecessary. To overcome these challenges, I compiled a unique dataset of the complete universe of published opinions from the digital collection of LexisNexis (NexisUni) that concern the First Amendment, the natural intersection of religious and state law. These opinions are those that judges and justices believe have enough merit to put into writing, and, in some cases, to recommend to be officially reported and given precedential effect.²⁸ I further coded these cases as to whether the Amish or Hasids were plaintiffs and defendants, and then as to whether the case constituted a strategy to institutionalize separation *outside* the state and society or to institutionalize separation *within* the state and society, or neither. Finally, I sorted relevant cases into the most frequent categories: prisoner rights, education, construction/zoning, and public displays.

If, as I argue, historical survival strategies still play a role in contemporary survival strategies, despite the shared goal of separation from society, we should expect Amish and Hasidic litigation styles to differ. First, one should expect far more Hasidic litigation than Amish litigation as the Amish historically avoid engagement with the state as much as possible, especially “going to law.”²⁹ Contingently, one would expect Amish defendants to far outnumber Amish plaintiffs, in contrast to cases involving Hasids, where we should expect the reverse: Hasidic plaintiffs to far

28. As a starting point, I collected all cases where “appellee,” “appellant,” “defendant,” and “plaintiff” were in the same sentence as “Amish,” “Pennsylvania Dutch,” “Chasid/Chassid/Hasid/Hassid,” “and “Chabad” in a case that referenced Free Exercise, the Establishment Clause, and the First Amendment. From there, I eliminated those cases where, upon reviewing the reference, it proved to be purely a citation and neither the plaintiff nor defendant was Amish or Hasidic, or the case had nothing to do with either Hasidic Jews or the Amish, for instance, a case where a woman sued her drycleaners for destroying an Amish quilt (*Himmelsbach-Preston v. Royal Custom Cleaners*). While many of these cases represent unreported opinions, there is no reason to think that these opinions are not representative of the general distribution of Amish and Hasidic litigation with the state.

29. Peters, *The Yoder Case*, 2.

outnumber defendants. This pattern of Amish and Hasidic litigation would demonstrate that the Amish strategy of disengagement from the state as much as possible and the Hasidic strategy of negotiation and engagement with the state for separate accommodation still hold. Finally, the distribution of the cases should differ. Amish litigation, when it occurs, should be more heavily concentrated in cases where issues of separation from any sort of involvement with the state apparatus, such as zoning or licensing, are at stake. In contrast, Hasidic litigation should more frequently concern instances where separate Hasidic functioning within the state apparatus is impeded some way (table 1).

My first claim, that historical strategies of Amish disengagement and Hasidic engagement with the state still influence contemporary patterns of engagement with the state are borne out by the distribution of the cases between plaintiffs and defendants. Of the 121 cases, 29 percent of which involve Amish and 71 percent of which involve Hasids. Further, the Amish are two and a half times more likely to be defendants than plaintiffs in contrast to the Hasids, who are three times as likely to be plaintiffs as defendants. In fact, as Hasidic scholar Jerome Mintz explains, American Hasids have “welcomed the opportunity to litigate as free citizens in secular courts.”³⁰

My second claim that Amish will more likely engage in litigation when it bolsters institutionalizing separation outside of the state apparatus, while Hasids will more likely engage in litigation where it promotes institutionalizing their separation within the state apparatus, is partially borne out by the distribution of the cases. Supporting the importance that the Amish historically placed on maintaining physical distance from society, nearly eighty percent of the cases involving Amish constitute attempts at maintaining separation through minimizing interaction with the state and bolstering their separation outside of the state apparatus, such as not paying into Social Security, not putting slow-moving vehicle stickers on buggies, and mandatory school attendance.³¹ In contrast, only one Amish case, *Stoltzfus v. Ulrich*, involved an Amish plaintiff asking for state intervention. In this case, the request came because of alleged workplace discrimination by non-Amish coworkers.³² Conversely, none of the Hasidic litigation had minimizing interaction

30. Mintz, *Hasidic People*, 189.

31. *People v. Swartzentruber*, 170 Mich. App. 682, 429 N.W.2d 225 (1988); *United States v. Lee*, 455 U.S. 252 (1982); *Commonwealth v. Beiler*, 168 Pa. Super. 462, 79 A.2d 134 (1951).

32. See for example, *Lubavitch Chabad House, Inc. v. Pub. Bldg. Com.*, No. 88 C 8708, 1989 U.S. Dist. LEXIS 15622 (N.D. Ill. Dec. 12, 1989); *Bloomingsburg Jewish Educ. Ctr. v. Vill. of Bloomingsburg*, N.Y., 111 F. Supp. 3d 459 (S.D.N.Y. 2015).

Table 1 Litigation overview

	Amish	Hasidic	Total
Plaintiff	10 (29%)	52 (60%)	62 (51%)
Defendant	25 (71%)	18 (21%)	43 (49%)
Both	0	16 (100%)	16 (13%)
Total	35 (29%)	86 (71%)	121 (100%)
Outside state	27 (77%)	0	27 (21%)
Inside state	1 (3%)	53 (62%)	54 (45%)
Neither	7 (20%)	33 (38%)	40 (33%)
Total	35 (100%)	86 (100%)	121 (100%)

with the state as a goal; rather, 62 percent of the Hasidic lawsuits sought to further entrench Hasidic practices of separation within the state apparatus; 30 percent of the cases alone addressed legalizing the public display of menorahs. An additional 38 percent of Hasidic cases had nothing to do with maintaining separation within the state; however, only seven Amish cases (20 percent) were unrelated to separation such as disputes over prisoner rights.³³ This underlines how unwilling the Amish are to engage in litigation in contrast to the Hasids; the threat to their separation from society has to meet a higher threshold for it to be worth the risk of engagement with the state (table 2).

The distribution of cases concerning construction and zoning and public displays illustrate my claim: the Amish use litigation strategically to institutionalize their separation from society outside of the state apparatus while Hasids use litigation to institutionalize their isolated position within the state apparatus. Across both Amish and Hasidic cases, cases involving construction and zoning processes are the most numerous, at 26 percent and 28 percent, respectively. However, the goals of the litigation differ significantly. Of the nine Amish cases, the Amish are defendants in seven, and plaintiffs only twice. In contrast, of the twenty-four Hasidic cases, Hasids are plaintiffs in nineteen of them, defendants in three, and both defendants and plaintiffs in two cases. The Amish cases all involve instances of essentially passive non-compliance with zoning and building ordinances, such as refusing to install a septic tank of a certain size.³⁴ The Amish in this case included plaintiff Beechy who claimed:

33. See for example, *Blue v. Skolnik*, No. 3:11-cv-00010-LRH-VPC, 2013 U.S. Dist. LEXIS 140920 (D. Nev. Aug. 21, 2013); *Clumm v. Rhodes*, 698 F.2d 1218 (6th Cir. 1982).

34. *Beechy v. Cent. Mich. Dist. Health Dep't*, 475 F. Supp. 2d 671, 677 (E.D. Mich. 2007).

Table 2 Case types

	Amish plaintiffs	Amish defendants	Amish total	Hasidic plaintiffs	Hasidic defendants	Both	Hasidic total
Education	0	6	6	0	4	1	5
Construction /Zoning	2	7	9	19	3	2	24
Public displays	1	5	6	16	0	16	16
Prisoner rights	3	2	5	15	1	16	16
Total			26 (74% of total cases)				61 (71% of total cases)

I requested this variance because of my religious beliefs of minimalism and frugality . . . The core of this religious principle or ordnung [sic] is that having appliances or devices would constitute a temptation to worldly things.³⁵

In this case, which is representative of many others, the Amish plaintiff Beechy sought to maintain separation from the state through a disengagement that extended to state infrastructure and bureaucracy; in his case a sewer line.

In contrast, Hasidic communities frequently come into conflict over competition for state resources in the context of their attempted expansion into non-Hasidic communities. Often this opposition in the form of newly passed or newly enforced zoning ordinances is rightly perceived as an attempt to curtail Hasidic expansion and settlement. In the case of *LeBlanc-Sternberg v. Fletcher*, the plaintiffs in 1998 alleged that the Village of Airmont, incorporated through the work of a civic association, ACA, led by the defendant Fletcher, had incorporated in order to enforce zoning that made synagogues in homes impossible, thereby impeding Hasidic worship at a rabbi's home.³⁶ In his opinion, Judge Kearsé quoted at length the anti-Hasidic agenda of the ACA:

ACA leaders polled Airmont residents as to their views, and one response, read aloud by ACA leaders at an August 1986 ACA meeting, stated as follows . . . I am not prejudice [sic] in any way, shape or form but i [sic] will not have a Hasidic community in my backyard.

As Kearsé emphasized, the Village of Airmont attempted to use the state to block Hasidic expansion; in response, the Hasidic community sought to coopt the state apparatus themselves, a strategy that they use time and again. Nearly twenty years later, in the 2015 *Bloomington Jewish Educ. Ctr. v. Vill. of Bloomington* lawsuit, a Hasidic community convincingly proved that the Village of Bloomington attempted to block their settlement and expansion through erecting a torturous series of bureaucratic hurdles to the construction of a mikvah, a ritual bath used by women for monthly purification.

A similar pattern emerges with cases concerning public displays and state laws. The six Amish cases concern public displays in accordance with state law, such as submitting to a photo on a gun license, wearing orange while hunting, and putting slow-moving vehicle stickers on a buggy, all constitute a desire on the part of the Amish to have as little to do with state bureaucracy as

35. *Beechy*, 475 F. Supp. 2d 671, 677 (E.D. Mich. 2007).

36. *LeBlanc-Sternberg v. Fletcher*, 9 F. Supp. 2d 397 (S.D.N.Y. 1998).

possible.³⁷ Levi Zook, one of the Amish, testified “that the sect refuses to display the SMV emblem for two reasons, its gaudy color and the symbolic nature of the emblem.”³⁸ In contrast, all sixteen Hasidic cases related to public displays concern a desire on the part of the Hasidic community to have their religious practices in the form of Menorahs displayed in public places.³⁹ In fact, this was part of a concerted nationwide campaign that the Hasidic dynasty Chabad Lubavitch launched in the 1980s to make Menorahs more generally visible in public, including on state and county property, which precipitated federal involvement and resulted in the menorah gaining constitutional protection.⁴⁰

The exceptions to the patterns that I anticipated across the Amish and Hasidic litigation concern prisoners’ rights and education. While construction and zoning, public displays, and education can neatly be divided between separation from society within societal structures versus outside of state structures, prisoner rights defy such easy constructs. Both the Amish and Hasidic prisoners regularly ask for dispensation concerning attire, the practice of beliefs, grooming, and food.⁴¹ However, as prisoners, they have no ability to live apart from the state. In some ways, prison removes the option for separation, and strict sects are essentialized into how their practices and beliefs differentiate them from other prisoners. In this way, the Amish and the Hasids have more rather than less in common, and historical survival strategies are similarly reduced to attempts at continuing those practices integral to their faith as separation from the state apparatus or society—other prisoners—is impossible.

Education is an especially fraught battleground between religious groups and the state; to strict sects, especially, mandatory attendance or a lack of special accommodations for religious practices are interpreted as a threat to the salvation of not only their most vulnerable members, but their very future: children. While the Amish recognize the need for literacy and basic mathematics, they draw the line at school beyond the eighth grade,

37. In re Miller, *State v. Bontrager*, *Gingerich v. Commonwealth*, 382 S.W.3d 835 (Ky. 2012).

38. *Gingerich v. Commonwealth*, 382 S.W.3d 835 (Ky. 2012).

39. See for example, *Lubavitch Chabad House, Inc. v. Pub. Bldg. Com.*, No. 88 C 8708, 1989 U.S. Dist. LEXIS 15622 (N.D. Ill. Dec. 12, 1989); *Flamer v. City of White Plains*, 841 F. Supp. 1365 (S.D.N.Y. 1993); *ACLU v. Schundler*, 168 F.3d 92 (3d Cir. 1999).

40. Mintz, *Hasidic People*, 193–95.

41. See for example, *Buckley v. Scribner*, No. 1:04-cv-05622-LJO-MJS, 2013 U.S. Dist. LEXIS 27833 (E.D. Cal. Feb. 28, 2013); *Desper v. Lee*, No. 7:10CV00473, 2011 U.S. Dist. LEXIS 121330 (W.D. Va. Oct. 20, 2011); *Blue v. Skolnik*, No. 3:11-cv-00010-LRH-VPC, 2013 U.S. Dist. LEXIS 140920 (D. Nev. Aug. 21, 2013).

which they view as corrupting and useless. In contrast, Hasids prize education; religious scholarship is seen as the highest professional calling for men. However, without state support and accommodation, Hasidic religious education, due to high birthrates, is beyond the capacity of the Hasidic community. Yet despite significantly different perspectives on education, both the Amish and the Hasidic communities have spent decades in court arguing against various perceived infringements by the state in this realm.

In the realm of education litigation, Amish and Hasidic patterns are consistent with other types, in the distribution of plaintiff versus defendant and in motivation; every Amish case constitutes an attempt at institutionalizing separation from the society through objections to mandatory attendance or school uniforms.⁴² In contrast, of the six Hasidic cases, five involve Hasidic defendants being sued for receiving preferential treatment for disabled Hasidic children, and the sixth involves Hasidic defendants being sued by female bus drivers who alleged that they were replaced by male bus drivers because the male Hasidic yeshiva students refused to board a bus driven by a female driver.⁴³ However, in marked contrast to the other categories discussed earlier, Amish litigation eclipses Hasidic when it comes to education, 17 percent to 6 percent. Although the Amish are consistently defendants in these cases, the frequency with which they are willing to engage in litigation is significant. An extended comparison of two landmark cases, *Wisconsin v. Yoder* and *Board of Education of Kiryas Joel Village School District v. Grumet*, simultaneously highlights the quintessential differences in Amish and Hasidic litigation while explaining what motivates even a sect as disengaged from the Amish to suffer through years and years of litigation with the state.

Wisconsin v. Yoder and *Board of Education of Kiryas Joel Village School District v. Grumet*

In 1968 in New Glarus, Wisconsin, three Amish families, the Yoders, Millers, and Yutzys, were fined when they took their children out of school in order to protect them from the secular world. This was not the first incident of this sort; in at least three previous cases, Amish defendants had lost the right to remove their children from public school systems before the national age

42. For example, *Gingerich v. State*, 226 Ind. 678, 83 N.E.2d 47 (1948); *Commonwealth v. Petersheim*, 70 Pa. D. & C. 432 (C.P. 1949).

43. *Bollenbach v. Bd. of Educ.*, 659 F. Supp. 1450 (S.D.N.Y. 1987).

of sixteen.⁴⁴ Yoder explained that the public high school “just doesn’t fit for us” because “eighth grades in our own school is all we need. . . We don’t want our children involved in worldly things. In the public schools they have physical education, science, television, things like that—temptations for a different world.”⁴⁵ The New Glarus Amish decided to educate their children in their own school; however, upon conducting spot checks, school officials found that Amish students were not in fact attending school after eighth grade. In response, the district sued Yoder, Miller, and Yutzy.

Initially, Yoder, Miller, and Yutzy were not inclined to retain counsel and fight the charges as they believed that “‘going to law’ violate[d] their faith’s tradition of nonresistance.”⁴⁶ However, eventually they agreed to be represented by acclaimed attorney William Ball and accepted financial support from a committee formed on their behalf, the NCARF (the National Committee for Amish Religious Freedom). In the first trial, the judge found the Amish defendants guilty and they were fined a symbolic \$5, which was reversed on appeal by the Wisconsin Supreme Court. The state of Wisconsin appealed this ruling to the US Supreme Court, as Attorney General Robert Warren “feared that accommodating them might open the floodgates to a torrent of similar claims from members of other religious or secular groups.”⁴⁷ Before the Supreme Court, Ball argued that the Amish very way of life was threatened and that they would leave New Glarus if their children were forced to attend public schools. The majority of the justices found this convincing and found in favor of the Yoder, Miller, and Yutzy. In the majority opinion, Chief Justice Warren Burger explained:

To the Amish, secondary schools not only teach an unacceptable value system but they also seek to integrate ethnic groups into a homogenized society, resulting in a psychological alienation of Amish children from their parents and great harm to the child. The law also places a choice upon each of these fathers to either obey its commands and risk the loss of his salvation or to disobey the law and invite criminal sanctions.⁴⁸

In other words, Justice Burger believed that enforcing mandatory education until sixteen unfairly penalized both Amish

44. *State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990); *Commonwealth v. Beiler*, 168 Pa. Super. 462, 79 A.2d 134 (1951); *State v. Garber*, 197 Kan. 567, 419 P.2d 896 (1966).

45. Peters, *The Yoder Case*, 31.

46. Peters, *The Yoder Case*, 2.

47. Peters, *The Yoder Case*, 3.

48. *State v. Yoder*, 49 Wis. 2d 430, 182 N.W.2d 539 (1971).

children and their parents for their faith, and the Supreme Court ruled in favor of the Amish.

Similar to the Amish exodus to New Glarus, the Satmar Hasids' exodus to upstate New York was also driven by a desire to maintain separation. In 1975, Grand Rebbe Joel Teitelbaum, increasingly doubtful of his ability to keep American culture at bay in New York City, suggested the sect expand into an isolated community in upstate New York, where their children would not be "distracted by such cultural pollutants as sports and blue jeans."⁴⁹ Perhaps due in part to the significantly closer quarters in suburban versus rural areas, the Satmar Hasids were frequently perceived as a parasitic community, intent on conquering the region through buying up property and reproducing at a far higher rate than the non-Satmar population. In 1977, Satmar Hasids took advantage of a New York State law that allowed the formation of a municipality if there were more than 500 contiguous residents and founded the Village of Kiryas Joel with 525 people, thereby gaining the legal and institutional authority to live their lives in accordance with and promotion of their religious beliefs.

However, the very success of this isolation led to the eventual dispute between the Kiryas Joel Board of Education and the N. Y. Dept. of Education. Because the village was "governed largely as a theocracy," among other rules including the banning of birth control and baseball, and mandatory education in yeshivas, marriage "was arranged and always within the sect."⁵⁰ This led to a high incidence of disabled children requiring incredibly expensive special education beyond the means of the community. While the provision of special education by the local school district was a federal requirement, in practice, Satmar members found it incompatible with the practice of their faith. In an interview with the *San Francisco Chronicle*, Malka Silberstein, who had moved with her family to Kiryas Joel in the hopes of getting a better education for their daughter Sheindle, who had Down's Syndrome, recounted how she was horrified to see Sheindle dressed as Rudolph the Red-Nosed Reindeer during a rehearsal for a Christmas pageant: "My child was learning about pagan and Christian holidays," Malka complained. "My child could not be part of our family, she could not be part of our community, she was not here and not there."⁵¹ In response to pleas from the Hasidic community, which constituted an important political base due to their

49. Louis Grumet, John Caher, and Judith Kaye, *The Curious Case of Kiryas Joel: The Rise of a Village Theocracy and the Battle to Defend the Separation of Church and State* (Chicago: Chicago Review Press, 2016), 11.

50. Grumet, *The Curious Case of Kiryas Joel*, 11–12.

51. Grumet, *The Curious Case of Kiryas Joel*, 27.

tradition of bloc voting, Governor Cuomo signed Kiryas Joel School District into existence in 1989, thereby guaranteeing that the Village of Kiryas Joel would have a school entirely devoted to its disabled Hasidic children. New York Public Schools Superintendent Louis Grumet promptly sued the school district on the grounds that it was privileging a religious group.

In sharp contrast to the Amish passive cooperation with the NCARF, the Village of Kiryas Joel was an active, dogged, and persistent plaintiff. Nonetheless, the Supreme Court upheld the earlier rulings and once more found in favor of the New York School Boards Association. In the majority opinion, Justice Souter wrote:

in commanding neutrality the Religion Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on religious belief and practice. Rather, there is “ample room under the Establishment Clause for benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference...”⁵²

As Justice Souter underlined, Hasidic Jews, through pursuing state funding for a school exclusively for their own children, were creating a precedent for the state privileging some religions over others. As the prosecution argued, “unlike the Amish, Kiryas Joel was demanding special government services rather than an accommodation to free them from following a government mandate that interfered with their religious beliefs.”⁵³

As the two cases demonstrate, historical survival strategies are very strongly pronounced in how the Amish and Hasids approach litigation with the state over education. Despite the Amish legal victory, theirs was a largely passive role in the entire legal ordeal. As religious liberty scholar Peters highlights, the case was largely driven by members outside of the Amish community, “*Yoder* made its way through the courts only because the Amish warily permitted a group of advocates from outside their faith... to pursue the case on their behalf.”⁵⁴ In other words, even in one of the most successful pieces of Amish litigation, the Amish demonstrated very little initiative. Nonetheless, given the enormous disinclination of the Amish defendants to be involved, that they stuck through so many legal iterations speaks to the existential significance they attached to the case. Without state support, or at the least tolerance, for educating their children separately and for fewer years, the requisite separation, they believed, was

52. *Grumet v. Bd. of Educ.*, 618 N.E.2d 94 (1993).

53. Grumet, *The Curious Case of Kiryas Joel*, 83.

54. Peters, *The Yoder Case*, 5.

impossible to maintain. The Hasids, on the other hand, showed initiative from the beginning when they sought out state funds for a separate public school district, even before becoming the driving force in the litigation.

The aftermaths of both cases underscore not only why the Amish engage in litigation less than the Hasids, but also why the internal negotiations within the community make education an exception to their typical litigation style. In the years following the ruling in their favor, the Amish slowly left New Glarus over disagreements with the state over sanitation issues, internal divisions over the use of technology, and, most significantly, fallout from the trial.⁵⁵ The Amish community was divided over Yoder and his codefendants' collaboration with non-Amish advocates and their participation in the trial at all. In an interview after the trial, Jonas Yoder stated, "I wish it had been anybody else."⁵⁶ While only a threat to the very future of the Amish could motivate such heavy engagement with the state, ironically, this engagement itself threatened the sect's future. In contrast, despite their Supreme Court loss, a separate school district that caters exclusively to disabled Hasidic children has yet to be abolished; the village managed to get special legislation passed that exempted them from the court's ruling.

Discussion and Conclusion

The influence of historical survival strategies on contemporary survival strategies for strict sects like the Amish and Hasids makes intuitive sense; what has worked in the past often works in the future, especially when the stakes remain the same. So long as separation from society is the end-goal, albeit envisioned differently, Amish and Hasids are likely to pursue institutionalized separation from society when engaging with the state. However, at the heart of the survival of strict sects in a modern secular democracy like the United States lie issues of citizenship. Renowned Amish scholar Donald Kraybill writes that the Amish see themselves as subjects of the state "who lie under the authority and patronage of a ruler" rather than as citizens who "actually comprise the state itself."⁵⁷ Hasids, on the other hand, clearly see American citizenship as the best safeguard of their security. Yet as state capacity grows and the shadows in which strict sects have

55. Peters, *The Yoder Case*.

56. Peters, *The Yoder Case*, 158.

57. Donald B. Kraybill, Karen M. Johnson-Weiner, and Steven M. Nolt, *The Amish* (Baltimore: Johns Hopkins University Press, 2013), 354.

peacefully functioned shrink, citizenship can come with restrictions as well as benefits.

The failure of the secularization theory to predict patterns of religiosity in the twenty-first century is perhaps most apparent in the context of strict sects. Birth rates and retention among strict sects are higher than for the general population as well as for mainstream religious groups. Neither shows signs of decreasing. Although many interpret the strictness of sects' practices as an indicator of their rigidity and inability to adapt, the survival of sects like the Amish, Jehovah's Witnesses, Hasids, and the Fundamentalist Church of Latter Day Saints suggests otherwise. While history absolutely matters to these strict sects who explicitly reject modernity that does not mean that their strategies of engagement with the state remain frozen in time. Rather, they are likely to continue to adapt, albeit stamped with the imprint of their history.

Supplementary Material

[Supplementary material](#) is available at *Journal of Church and State* online.