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THE "WHO IS A JEW?" CONTROVERSY:
POLITICAL AND ANTHROPOLOGICAL PERSPECTIVES *

The question "who is a Jew?" is not new. The Jewish status of particular individuals or groups has been of concern at least since Jews first returned from Babylonia 2,500 years ago. However, from the time of the enlightenment and emancipation (in the late eighteenth century) the question has become increasingly difficult to answer. Heretofore, the theoretical boundaries of Jewish society were clear. The problem had been to determine the characteristics of a given group (for example, the Ethiopians) or individual (for example, a Marrano), to see if they or he belonged within the boundaries. Only in the past two hundred years have the boundaries themselves been the subject of dispute. The contemporary controversy over "who is a Jew?" goes to the very heart of Jewish self-perception and identity in the modern era. It concerns Jews all over the world and it is not surprising that it should trouble the social and political life of Israel as well. But there are differences between the question as it arises in Israel and the Diaspora which help account for the sharper or broader form which the controversy assumes in Israel.

In the Diaspora questions about the nature of Judaism are posed in a literary, philosophical, speculative context. Answers, therefore, can be vague, ambiguous, or contextual, thereby satisfying a variety of parties. Furthermore, the answers do not have a compelling effect on an individual. In Israel the questions are posed in a legal-juridical context, and the answers must be clearer in formulation and less amenable to a variety of interpretations because they are legally binding. Even when the pronouncement is by a rabbinical court, that court speaks with the authority of the state. In addition, the resolution of the question "who is a Jew?" in Israel is a societal resolution. The government, the Knesset, the Supreme Court, or even rabbinical courts, speak in the name of the state and hence of its citizens. A citizen of Israel is not only bound by what the organs of the state declare, he is in some way also personally

* The first part of this article is a revised version of an essay "Who is Jewish in Israel" from the December 1970 issue of the *American Zionist*.

responsible for what they say. If a Reform rabbi should declare someone converted through criteria which he alone has established, the traditional Jew need not feel responsible. A quite different situation would arise if the Knesset decided to permit the registration as Jews of those who underwent Reform conversion.

The answer to the question "who is a Jew?" defines the boundaries of Judaism. To the extent that this question is determined in individual cases, to the extent that one must answer whether "x" is or is not a Jew, we are dealing with individuals who are marginal to the Jewish community and who want to be identified as Jews. It is a commentary on Jewish status in the Diaspora that this question most often turns on those of low social or economic status. High status groups and even high status individuals don't often claim Jewish membership, especially where such claims are open to challenge. Claims of low status groups and individuals tend to be muted and don't stimulate the interest which might arise from claims of high status groups or individuals. In Israel, where Judaism is the dominant culture, one is more likely to find high status individuals claiming Jewish membership. Indeed, there is one set of claims which was especially likely to come from high status or, at least, well-educated individuals before the government of Israel resolved the question in 1970; the claim to be accepted or registered as Jewish by *leom*, even though the claimant is not Jewish by religion. This was certainly true in the 1969-70 Shalit case, where the claimant, making demands on behalf of his children, was an officer in the Israeli Navy and a graduate student at the Hebrew University. (The term *leom* is sometimes translated as "nationality" and sometimes as "ethnic group." For purposes of Israeli law, however, the term "people" or "folk" is as adequate a translation.)

All residents of Israel, whether they are or are not citizens, must be registered with the Ministry of the Interior. Among the personal information which is recorded for each resident is his/her religion and his/her *leom*. Religion and *leom* then, are quite unrelated to one's status as a citizen. The problem of "who is a Jew?" until 1970 was a problem of defining the criteria by which one is registered as Jewish according to *leom* and/or religion. From 1970 the issue became, how does one become a Jew according to religious criteria?

Another difference between the "who is a Jew?" controversy in Israel and the Diaspora refers to the implications which the controversy may have for those who are indifferent to the question itself. Since Israel, unlike the Diaspora, can resolve the question authoritatively in terms of public policy, the controversy becomes a political issue. Individuals and parties adopt positions, make claims and promises, and invoke threats. The politicization of the conflict introduces secondary issues; new disputants are attracted, and virtually

everyone in political life may eventually be involved. The National Religious Party, for example, threatened to leave the government in 1970 if the Knesset did not pass a law whose effect would have been to deny Jewish status to converts whose conversions were performed by a Reform rabbi. The potential consequences of the NRP's resignation from the coalition were believed to be enormous for the political life of the country and for national unity. Hence, the number of participants multiplied and public interest increased. NRP leaders and Moshe Dayan were on especially friendly terms and the young NRP element were among his enthusiastic supporters. Consequently, Dayan's other allies in the government were far more agreeable than his opponents to a compromise with the NRP on an issue which they considered secondary to questions of national security and leadership. On the other hand, within the NRP itself, or so it was believed, some individuals and groups adopted a hard or soft line toward "Reform Conversions" depending on whether they saw their own interests being advanced or impeded by the NRP's resignation. After all, not everybody in the party has an equal stake in its remaining in the government. For example, the resignation of the NRP would have meant loss of ministerial status, funds, and patronage by one group, thereby diminishing their influence within the party and enhancing the influence of others.

These examples suggest two things. First, as we noted, the "who is a Jew?" controversy in Israel is diffused into all sections of the population. It merits newspaper headlines and becomes a subject of intense interest among segments of the population who might otherwise not especially care about the main issue itself. It also creates side payoffs, even for the main disputants, which may also serve to moderate the controversy. "Who is a Jew?" cuts to the very heart of one's Jewish identity and self-perception. It is an ultimate issue and, to those who really care, it may easily become non-negotiable. But because the controversy is politicized it involves less interested participants and generates side payoffs which evoke other motivations even among the major participants. As politicians they have a variety of stakes in addition to the main issue itself. So far, this has served as an element of conciliation. Of course, there is no assurance that this will always be true.

The question "who is a Jew?" has led to governmental crises on a number of occasions. Following the 1958 governmental crises, after lengthy delays, indecision, threats, counter-threats and new elections, it was decided to let the Minister of the Interior decide who was or was not to be registered as a Jew. Since the Minister of the Interior was from the NRP, the resolution represented a *de facto* victory for the religious position. But the government never reached any decision on the merits of the issue itself, in this case, whether those not Jewish according to religious law could be registered as Jews.

In 1970 the question "who is a Jew?" was first raised with respect to *leom*. Could someone who was incontrovertably non-Jewish by religious standards, and did not wish to be registered as Jewish by religious standards, nevertheless be registered as Jewish according to *leom*? Can one be part of the Jewish folk or people without being part of the Jewish religion? The question ultimately rests on whether there is such a thing as a Jewish *leom* independent of the Jewish religion. This question formed part of the early constitutional debates in Israel. The unwillingness and/or inability of the government to resolve this question, their fear of bitterly dividing the country should they reach a decision one way or the other, was a prime factor in the decision not to formulate a constitution.

But the government was forced to decide the issue in 1970, at least in part, by an opinion of the Israeli Supreme Court in the Shalit case. Benjamin Shalit's wife, a naturalized Israeli citizen of non-Jewish parents rejected the idea of conversion and listed her religion as "none." The Shalits also registered their children as having no religion, but they did wish to register them as being Jewish under the category *leom*. The court upheld Shalit in a five to four decision on the technical grounds that, in the absence of legislation to the contrary, the Minister of the Interior had no authority to inquire into the veracity of a resident's statement; that the registration clerk's role was merely to record what the registrant claimed in good faith.

The court's decision forced the government's hand. By indecision it would confirm the court's opinion, thereby permitting separation of religion and *leom* as a matter of public policy.

The issue itself was a purely symbolic one. There are no consequences to a person's registration by *leom* nor did any group have an economic stake in Shalit's registration. The stakes, like the issue, were symbolic, which meant they were less amenable to compromise, more evocative of emotion. Herein was the great advantage of those who opposed the Shalit decision — the symbolic consequences for separation of religion and *leom* meant so much more to them.

Let us look at the matter from the point of view of the separationists — those who would separate religion and *leom*. The vast majority of them were not anti-religious. But they found it inconceivable to deny the symbolic status of Jew to one who was raised in Israel, would serve in its army, speak its language, form part and parcel of Israeli culture, but who, on grounds of conscience, would refuse to identify himself with, or undergo conversion to the Jewish religion. Many in this group also harbored certain feelings about the separation of religion and state and fears of government regulation in the field of religion. (This element of the population has internalized a number

of Western, especially Protestant, notions about the relationship of religion, culture and nationality.) Only a minority of the separationists constituted a truly anti-religious element so hostile to the tradition that it refused to acknowledge the link between religion and nationality. Only a minority saw its identity as purely national, thereby severing it from the religious tradition of the past.¹ The great majority of the separationists, who may have constituted a majority of the country as well, did not see the issue of separating religion and *leom* in personal terms. In this respect, conditions have changed very radically since the debates of 1948 and 1949, when a much larger element would have asserted the independence of religion from *leom* because they themselves experienced their own sense of Jewishness as divorced from a religious consciousness. In 1970, by contrast, the majority of separationists were not personally threatened, their Jewish identity was not jeopardized if religion and *leom* were deemed inseparable. In this instance, then, they were really fighting the battle of others.

On the other hand, to those who opposed the separation of religion and *leom*, especially among the religious element who comprised the vanguard, the most vocal and probably the most numerous group, the issue was indeed a very personal one.

Most religious Jews in Israel care very deeply for the state. In fact, as a study by Simon Herman demonstrates, religious youth report greater readiness to place the state ahead of personal self-interest than do non-religious youth.² But the tie which religious Jews feel toward Israel is very much connected to their sense that Israel is part of the Jewish tradition, a tradition which is pre-eminently religious. In other words, many Jews in Israel (how many is difficult to estimate) are attached to the state because the state is Jewish and Jewish is religious. Should the state in some way choose to deny this relationship (and it is only symbolically that this relationship can either exist or be severed), then the whole set of ties that bind such Jews to the state will be altered. A decision to separate *leom* from religion, however symbolic and void of material consequences it may have seemed, vitally affected the emotions and national commitments of thousands of Jews. The Shalit decision, whose effect would have been to separate religion and *leom*, did not pose a religious threat to such Jews, it posed a threat to their national identity. The separationists may very well have constituted a majority of the population, but their stake in victory

1 For survey data in this regard see Charles Liebman and Eliezer Don-Yehiya, *Civil Religion in Israel* (Berkeley: University of California Press, 1983), p. 19.

2 Simon Herman, *Israelis and Jews: Continuity of an Identity* (New York City: Random House, 1970).

was so much less than that of their opponents that the outcome was no surprise. The Knesset finally passed a law which defined a Jew as someone born of a Jewish mother or a convert to Judaism who is not an adherent of another religion.

The law, therefore, apparently defined a Jew by *halakhic* (religious law) criteria and then specified that registration by religion and *leom* must be in accordance with these criteria. Jewish *leom* was tied to Jewish religion. The law, however, left open an important question with respect to the religious criteria — how does one become a convert to Judaism? “Who is a Jew?” now became “who is a convert?” More specifically, are non-Orthodox conversions valid for purposes of registration? The law had tied *leom* to religion, the question now became the *religious* criteria by which one’s Jewishness was defined.

The law itself was deliberately ambiguous on this point, referring only to “conversions.” The issue of non-Orthodox conversions in Israel almost came to a head a few months later. Helen Seidman, born of non-Jewish parents, had been converted by a Reform rabbi in Israel. She asked to be registered as a Jew. The Ministry of the Interior refused and she took her case to court. It finally reached the Supreme Court. A decision in Mrs. Seidman’s favor was anticipated and the NRP threatened to resign from the government unless new legislation to prevent Reform converts from being registered as Jews was adopted. A government crisis appeared unavoidable when Mrs. Seidman made application for an Orthodox conversion. A special rabbinical court was convoked by the then Chief Rabbi of the Army, Shlomo Goren. Mrs. Seidman was converted a day before the Supreme Court decision was to be announced.

In summary, as far as the government was concerned, the Minister of Justice announced that the government understood “conversion” to include non-Orthodox conversions as long as they were performed outside Israel. But the Minister of Justice also made clear that such recognition and consequent registration of a non-Orthodox convert as a Jew would not bind rabbis and rabbinical courts in Israel who would, presumably, continue to refuse to recognize the validity of their conversion.

In the years following its passage (the law in fact was an amendment to the Law of Return), the religious parties intermittently called for an amendment of some sort which would stipulate that conversions, even when performed outside Israel, must be in accordance with *halakhah* or performed by an Orthodox rabbi in order for the state to recognize their validity.

The Orthodox parties have threatened, but never actually precipitated, a government crisis. This is not purely symbolic, since recognition of non-Orthodox conversions involves recognition of non-Orthodox rabbis. There are,

therefore, organized bodies within Israel, the Conservative and Reform movements, however small they may be, with a direct stake in championing the cause of converts such as Helen Seidman, or opposing changes in the law denying validity of non-Orthodox conversions outside Israel. There is also a group with a material stake in opposing them.

The controversy does not involve the kinds of basic national identity questions which were involved in the previous controversy, except perhaps for the non-Orthodox converts in Israel who are generally aware of the problems they face before they convert. The essential question, whether a non-Orthodox convert is a Jew, is in the last analysis a religious-political question. Obviously, having defined the state as *Jewish*, and having defined Jewish by *religious* criteria, one must now be more specific about the religious criteria themselves. Labelling the question religious rather than political in one sense begs the question. As long as religion is intricately tied to the Jewish state many religious questions are also political questions. Yet, in another sense, there is a difference between a political resolution to the question of whether *leom* is separable from religion (which involves, after all, a definition of *leom*) and resolving politically the meaning of religion.

The debate over the separation of religion and *leom* was heated, emotional, often puerile. It threatened a governmental crisis and disunity at a time when national unity was imperative. But it was a potentially ennobling battle as well. The combatants were materially disinterested, the stakes were symbolic, the ultimate decision-makers were the democratically-elected representatives of the people of Israel and the issue was one that touched on the central ideological questions of modern Judaism. The decision was a dramatic example of the renewed authority of the Jewish people, or a substantial portion of that people, to confront its existential questions in an organized manner through established procedures, and arrive at an authoritative decision. The issue of "who is a Jew?" in religious terms seems to me to have generated a different sort of dispute. Perhaps because Diaspora Jewry and the majority of Israeli political leaders are opposed to the change, its Orthodox proponents have resorted to political bargaining rather than public debate in order to obtain their ends. I, at least, am left with the feeling that the issue is no longer being considered on its merits and, as a consequence, religion is being in some way debased.

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Viewed from a political perspective, the issue of separating religion and *leom* pits two segments of the population against one another and suggests that the religious segment is able to impose its values because it cares much more intensely about its values. An anthropological perspective may help us

to understand why many non-religious Jews are not deeply committed to an anti-religious position on the "who is a Jew?" issue despite their opposition to clericalism, their reluctance to concede another symbolic victory to the religious parties, and their indifference to religious norms in the conduct of their own lives.

Let us begin by asking how Israeli Jews perceive their interrelationship. What, if anything, binds them to one another beyond their citizenship in Israel which they share with Israeli Arabs? The obvious albeit impressionistic answer is that Jews believe they ought to behave toward one another as they would to members of an extended family. The family symbol is very marked in Jewish interrelationships and Jewish conceptions of appropriate interrelationships. The phrase "our brothers, the sons of Israel" or "our brothers, the house of Israel" is a particularly meaningful metaphor in view of the reference (sometimes used sarcastically) to "our cousins" as a euphemism for Arabs. Religion, I would argue, provides the legitimating or charter myth for the sense of shared family.³

The central myths of the Jewish tradition, the stories of the Jewish past which are retold in order to convey group values and invest group membership with meaning, socialize Jews to a belief in their common origin and its importance. They commonly emphasize purity of descent. Conversions by groups of non-Jews in different periods of Jewish history are not incorporated into the mythology. The exception that proves the rule are the Kuzars. Although Jewish mythology acknowledges their conversion, it also tells of their destruction. Hence, no Jews today are descended from the Kuzars. The Jewish religion, because it is a religion (i.e. a system of beliefs and rituals related to conceptions of ultimate reality, to the metaphysical), also provides the mechanism whereby outsiders can be incorporated into the extended family (i.e. a common kinship group). Through the process of religious conversion the outsider transcends the biological distinction and is incorporated into the kinship group. By virtue of conversion, the rabbis insist, the convert may legitimately refer, in his prayers to "our fathers, Abraham, Isaac and Jacob." This explains why individual conversions, Ruth the Moabite is the most prominent example, are important mythic components of the tradition. The metaphysical transformation of an individual is found credible whereas transformation of a whole group of converts is dubious.

If we view religion as providing the charter myth for what is essentially an

3 Judith Nagata, "In Defense of Ethnic Boundaries: The Changing Myths and Charters of Malay Identity," Charles Keyes (ed.), *Ethnic Change* (Seattle: University of Washington Press, 1981), pp. 87-116, is most stimulating in this regard.

ethnic sentiment we understand the seemingly paradoxical attitude of "religiously" non-observant Jews in Israel toward conversion. Such Jews are indifferent to the religious behavior of other Jews since this has no consequences for their descent — a matter that is ostensibly crucial in defining Jewish identity. But if national affiliation or loyalty to Israel rather than descent were to become criteria for incorporation into the Jewish group, Jews would lose the sense of family tie that binds them to one another. Religious ritual becomes the necessary step in incorporating the outsider because it provides the instrument to symbolically overcome the boundaries imposed by descent from outside the group. Therefore, even many non-religious Jews have reservations about non-Orthodox conversions. The reservations stem in part from the fear that such conversions are "too easy." If converting is too easy it implies insufficient regard for the obligations which the convert assumes (treating other Jews as brothers) and the obligations other Jews assume toward the convert. Secondly, since incorporation into Judaism involves a metaphysical transformation of the convert's kinship group through religious ritual, the ritual must obviously be performed correctly. Such an interpretation of ritual implies that in the eyes of the non-religious Jews to whom we have referred, the ritual is really more properly defined as "magic" than as "religion." To the extent that one distinguishes magic from religion, I think this implication is quite appropriate.

The question is whether, over the long run, a sense of family buttressed by kinship myths will continue to bind Israeli Jews, and if this is the kind of tie which contributes to a nation-state's well-being? It may be the ideal. Ethnic sentiments evoke powerful resonances useful in mobilizing a group to activity. On the other hand, their very power may frighten some elements and provoke hostility among others. Ethnic sentiments projected at a national political level convey images of reality with consequences for treatment of other ethnic groups and relations with other states. I don't foresee the diminution of ethnic ties given the present constellation of forces within Israel and the nature of the challenges to Israel's security from abroad. On the other hand, one cannot dismiss the possibility that, in the long run, increasing numbers of Israeli Jews may view ethnic affiliation as a matter of secondary importance or, alternately, ethnic boundaries will be redefined. In that case, the tie between religion and nationalism will decline or new religious myths will be projected. But what I would stress is that the variable which maintains the importance of religion in Israeli public life in general and in the definition of "who is a Jew?" in particular, is the sense of Jewish ethnicity rather than religion itself.