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THE LAW OF RETURN RECONSIDERED

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A Cardinal Tenet of Zionism / When is a Jew Not a Jew? / When is a Non-Jew a Jew? / Debate on Changing the Law of Return

A Cardinal Tenet of Zionism

Israel's Law of Return is a cardinal tenet of Zionism. Passed unanimously by the Knesset in 1950, it served as the enabling legislation for the Zionist vision of a Jewish homeland. It explicitly states that "every Jew has the right to come to [Israel] as an *oleh* (immigrant)."

The Law of Return may have been the unanimous decision of the Knesset back in 1950, but it has been a source of debate and controversy ever since. The need for this legislation and the rationale behind it seemed simple and obvious. In the wake of the horror of the Holocaust, this law was meant to ensure the right of every Jew to find refuge and to build a new life in the Jewish homeland. Indeed, the Law of Return was the infant state's conditioned response to the British White Paper of 1939, which slammed shut the gates of Palestine and doomed the Jews of Europe.

However, never did the framers of this law imagine how much controversy and debate it would generate. For the most part, the debate was not over the intent of the law. Indeed, up until recently, there was virtually unanimous agreement that this was the axiomatic definition of a Jewish state. Rather, the problems arose out of the need to define who is a Jew in order to determine who qualifies under the terms of the Law of Return. In fact, the controversy over the Law of Return is probably better known as the "Who is a Jew?" controversy.

In the late 1980s this legislation created a crisis in the relationship between American Jewry and Israel. The attempt by the ultra-Orthodox political parties to amend the Law of Return was seen as a ploy to delegitimize Conservative and Reform Judaism.

The acrimony and bitterness engendered by that controversy have left their mark. Ever

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since then, Israeli leaders have avoided even the slightest revision or amendment of the Law of Return so as not to open up the issue. However, recent events have once again created controversy in regard to the Law of Return.

When is a Jew Not a Jew?

Israeli newspapers reported at the end of December 1994 that churches in Nazareth were full to overflowing due to the large influx of olim from the former Soviet Union, many of whom are believing and practicing Christians. If this were not enough, it has been disclosed that hundreds of new olim have been coming in from Iraqi Kurdistan, a Moslem area under UN control. Reportedly, up to 80 percent of these olim are believing and practicing Moslems, and yet they qualify to enter Israel under the Law of Return. Little wonder that rabbis, political leaders, and Jewish Agency officials have reacted sharply to this incredible distortion of Israel's Zionist charter. The Law of Return, adopted by the Knesset on the anniversary of the death of Zionism's visionary Theodor Herzl, was meant to fulfill his dream of bringing a scattered people back to its homeland. It would be difficult to construe that vision as including professing Christians and faithful Moslems.

When David Ben-Gurion drafted this law in the shadow of the Holocaust, the definition of who is a Jew seemed self-evident. It meant that whomever the Nazis called a Jew and sent to the death camps was to be offered refuge in the newly established State of Israel. At that time, it seemed inconceivable that anyone but a Jew would claim to be a Jew.

However, over the years questions arose about exactly who is a Jew. Perhaps the most celebrated and notorious case was that of Brother Daniel. Brother Daniel, born a Polish Jew named Daniel Rufeisen, came to Israel as a Carmelite monk and requested citizenship under the Law of Return. A landmark decision by Israel's Supreme Court determined that a Jew who had of his own free will adopted another faith was not eligible to enter Israel under the Law of Return. By this ruling the law of the land contradicted Jewish law, since

according to rabbinic *halakhah*, a Jew remains a Jew even if he is converted to another faith.

When is a Non-Jew a Jew?

Yet, despite this exclusion of converts, the Law of Return has allowed thousands of non-Jews to enter and find homes in Israel. Of the five hundred thousand plus immigrants from the former Soviet Union since 1989, anywhere from 8 to 30 percent are estimated to be non-Jews. Now, the reports that hundreds of Moslems have been allowed to enter Israel under the Law of Return has renewed the debate over the law. This seeming gross distortion of a law meant to ensure a Jewish homeland for a Jewish people stems from the inability to adequately define who is a Jew.

The Law of Return as amended in 1970 vested the right of immigration not only in a Jew defined as a person born of a Jewish mother or who had converted to Judaism. The law also granted the right of aliya to the children and grandchildren of that Jew; to the non-Jewish spouses of Jews; to the non-Jewish spouses of children of Jews; and even the non-Jewish spouses of non-Jewish grandchildren of Jews. This in effect meant that if someone could demonstrate that one of four grandparents had been born a Jew, then he was entitled to come to Israel and receive all the benefits of a new oleh. The absurdity of this situation was seen in the latest immigration from the Moslem enclave. According to a newspaper account, one Jewish woman from that area was able to bring her entire extended family of 170 believing and practicing Moslems. The chairman of the Knesset Aliya Committee, Emanuel Zisman, related the case.

In 1950, a Jew from that Moslem country (Kurdistan) emigrated to Israel together with his three sons, but left behind his pregnant wife. The woman who was left behind subsequently married a Moslem neighbor and gave birth to a daughter. The daughter, being born of a Jewish mother, later did emigrate to Israel. However, the mother remained behind with her Moslem husband to whom she bore nine sons, all of whom were given Moslem names such

as Ahmed, Mahmoud, Ali and Otman, and were raised in the faith. All nine sons eventually married, with several wives each. Recently, the Jewish sons who had emigrated to Israel with their father sought out their mother and requested that she and her family be allowed to come to Israel. And indeed, under the Law of Return, because the mother was Jewish, she was able to bring with her 170 children, grandchildren and their spouses.

On the other hand, there are stories being circulated that among these immigrants are authentic Jews who, for more than a generation, have had to live outwardly as Moslems, hiding their Jewish faith. One of these stories is that of a young Jew who years ago was kidnapped from her family, married off to a Moslem and forced to convert. Even her sons did not know that she was originally Jewish. Only recently, with the possibility of escape, was she able to reveal her secret to her sons, and to come together with them and their families to seek haven and a return to Judaism in Israel.

Little wonder that this recent immigration has renewed the debate over the Law of Return. The debate also extends to the recent immigration from Ethiopia, as well as the former Soviet Union. In this debate, the political establishment is split, and not necessarily on secular-religious lines. There are political and religious officials who are saying that the law must be changed, while there are others who believe that amending the law will open up a Pandora's box and, therefore, should be avoided.

The Chief Rabbis of Israel are proposing to delete the line in the law which grants rights to anyone with a Jewish grandparent. Their amendment would allow immigration only to someone with a Jewish parent, spouse or child. An even more modest revision would at least require the grandparent to be alive and to come to Israel with the children and grandchildren. Under the present construction of the law, one only has to demonstrate that one had or has a Jewish grandparent somewhere in the world to qualify to enter Israel

under the Law of Return. The move to a more restrictive definition of the law has been joined by some of Israel's secular leaders. For example, Deputy Foreign Minister Yossi Beilin has suggested that only non-Jewish relatives and spouses of a Jew who are prepared to convert to Judaism be allowed to enter under the Law of Return.

It is interesting to note that despite the reports of church attendance, missionary activity and the like, a recent survey shows that fully 90 percent of immigrants from the former Soviet Union firmly believe that they are Jewish.

Debate on Changing the Law of Return

The former acting head of the Jewish Agency, Yehiel Leket, opposes these changes to the Law of Return, stemming from his concern that the Orthodox rabbinate would once again use the opportunity to delegitimize non-Orthodox brands of Judaism. To revise the Law of Return would mean to revive the ugly debate over who is a Jew, which so aroused the ire of the American Jewish establishment. As one government minister put it, "To amend the Law of Return is like making cholent. You put all the ingredients in but you don't know what will come out of it." Behind the move to block the non-Jewish relatives and spouses of Jews from coming to Israel is also the religious community's fear of strengthening the secularization of Israeli society.

Over the years there has always been resistance to changes in the Law of Return. Last year, Member of Knesset Eli Goldshmidt proposed, in the wake of the massacre in Hebron, to amend the law to allow the Minister of Interior discretionary power to refuse entry to Israel any Jew who espouses racism, as did Dr. Baruch Goldstein. His proposal was quickly squelched as infringing on a basic and fundamental Zionist principle. In similar fashion, Minister of Labor and Welfare Ora Namir aroused a storm of controversy when she complained that the Law of Return allows indigent, elderly, and handicapped Jews from the former Soviet Union to overburden Israel's social welfare system.

This debate on the Law of Return has been

further heated by public discussion on groups whose Jewish origin is difficult if not impossible to document. Virtually every month there is another group somewhere in the world that claims descent from one of the ten lost tribes.

Close to 100 people have arrived in Israel from the northern province of Manipur, India, claiming to be descended from the tribe of Menashe. Other would-be Jews have arrived from Peru. More recently, Israel's Supreme Court ruled that an African from Nigeria did not qualify for citizenship under the Law of Return despite his claim that his 10 million member Ibo tribe is descended from the Israelite tribe of Ephraim. The arrival of these newcomers, some of whom are undergoing conversion, has raised the specter of millions of people from poor Third World countries descending upon Israel, claiming descent from one of the ten lost tribes. When the Black Hebrews of Dimona came from the ghetto of Chicago, they represented little more than a curiosity. They claimed that they were the original Israelite people who were expelled from the Promised Land, which is actually located in northeastern Africa. After many years, Israel found an accommodation with the 1,200-1,500 Black Hebrews who continue to live in the country. Somehow the Law of Return, when it was framed, never took into consideration that Israel would look so good to so many people. It has even given second thoughts to those secularists who, in opposing a religious definition of who is a Jew, insisted that anyone who claimed to be a Jew should be recognized as such. This self-definition might have been appropriate in the wake of the Holocaust when Israel was a struggling, beleaguered state, but not as a prosperous, stable, and attractive society on the way to peace.

The debate on Israel's Law of Return and open door policy also reflects Israel's changing attitudes

to its responsibilities toward diaspora Jewry. Most Israelis remain proud of the policy which has afforded refuge to Jews escaping from Bosnia or Ethiopia or Chechnya. Nevertheless, there is a growing negative reaction to the perceived burden that these olim create. It is not only Ora Namir's concern for her social welfare budget, but also for various forms of asocial behavior attributed to the immigrant population — crime, prostitution, alcoholism, as well as their lack of Jewish identity, national allegiance, and shared sense of destiny. A recent poll shows that 51 percent of the Israeli public thinks that there is no longer a need for the State of Israel to accept additional immigrants.

Recently, even the voice of ecology was heard to question the Law of Return. An article in an Israeli nature magazine called upon the Israeli government to restrict immigration in order to protect Israel's ecology. Revision of the Law of Return is necessary to preserve this tiny land's natural resources and beauty.

If this were not enough, there are also voices coming from Israel's Arab minority calling upon the state to cancel the Law of Return because it is biased and discriminatory.

This assault on the Law of Return goes far beyond social welfare issues, nature trails, and minority rights. It raises some very profound questions about the character of Israel as a Zionist and Jewish state. Little wonder that there is such hesitation and resistance to opening up this controversy. There are too many fears involved.

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