

BOUNDARIES OF BELONGING: CONVERSION IN ISRAEL'S LAW OF RETURN

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Submitted to
Central European University
Nationalism Studies Program

In partial fulfillment of the requirements for the degree of

Master of Arts

Advisor: Professor Michael L. Miller

Budapest, Hungary
2012

Abstract

Israel's Law of Return has been at the center of debate both inside and outside of Israel. The law states that every Jew has the right to immigrate to Israel. However, there have been many contested cases in which individuals self-identified as Jews, but their applications for immigration under the Law of Return was denied. This research seeks to explain why the state has not accepted their applications or their claims to be Jewish by looking at three Supreme Court cases and their coverage in English-language Jewish press outside of Israel. This paper will show that while individuals feel they have a connection to the Jewish people and Israel, this feeling is not always reciprocal. There are many factors involved. The most important factors are the implementation of the Law of Return by the Interior Ministry and the interpretation of the Law of Return by justices of the Supreme Court (sitting as the High Court of Justice) adjudicating contested claims. The most important marker of being Jewish seems to be attaining or retaining a connection to the Jewish people through conversion, and the underlying rationale for rejection or acceptance of an applicant's claims is based upon a historical and ethno-cultural religious perspective.

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Introduction

Father Romauld Jakub Weksler-Waszkinel, the main subject of the feature-length documentary *Torn*, is a man with an unusual story. The film follows Father Weksler-Waszkinel (often referred to as Yaakov in the film) as he leaves behind his life in Poland to immigrate to Israel. What makes his personal story unique is that he claims to be both Catholic and Jewish. He did not know that he was Jewish, however, until he was in his thirties. He was born to two Jewish parents, but at the beginning of World War II, his parents gave him up to be adopted by a Polish couple. Without knowledge of his adoption or his Jewish heritage, he later became a Catholic priest. It was only at the age of thirty-five that Yaakov learned about his Jewish parents who had tragically perished in the Holocaust.

The film begins over fifty years after that dark time in history as Yaakov, now in his sixties, leads his last mass service at an Ursuline convent in Lublin, Poland, and heads to a kibbutz in Israel. However, his “right of return” – the right to immigrate to Israel and obtain citizenship as a Jew, given to Jews who express a “desire to settle there” – was denied. Simply stated, the Law of Return gives Jews the right to immigrate to Israel and almost automatic citizenship. In a scene with the Immigration Authority Chief, Yaakov shows disappointment as he hears that he will not be granted Israeli citizenship under the Law of Return. Rather, he is given a temporary visa with the Immigration Authority Chief stating, “If he wants to change status [to a Jew], he knows what he has to do.” To be considered a Jew in order to immigrate to the state of Israel under the Law of Return, he will have to convert to Judaism. Yaakov, believing he is Jewish and has a right to citizenship as a Jew, takes this as rejection. This story illustrates the significance of Israel’s Law of Return on both a practical and emotional level to individuals wishing to immigrate to Israel.

Though the exact situation of Romauld Jakub Weksler-Waszkinel is certainly atypical, such a strange story is not without precedent. There was another man named Oswald Rufeisen who was born to two Jewish parents in Poland before World War II, later converted to Catholicism, and attempted to immigrate to Israel (make *aliyah*). Oswald Rufeisen, much like Weksler, went by another name. Famously, he became known as Brother Daniel.

Brother Daniel applied to immigrate to Israel under the Law of Return in 1958. After being denied, he appealed to the Supreme Court. Despite the fact that he was born to a Jewish mother, had been a Zionist in his youth, and saved the lives of hundreds of Jews during the Holocaust, the Israeli Supreme Court ruled against him. He would not be recognized as a Jew by the State of Israel because he had converted to a religion other than Judaism, and therefore, he was not granted automatic citizenship.

Research Aim and Methodology

In this thesis, I will be closely analyzing three Supreme Court cases in which Diaspora Jews tested the limits of the application of Israel's Law of Return. These cases contested the boundaries of belonging to the Jewish people and were implicated in the controversial "Who is a Jew" debate. Gad Barzilai argues that the question "Who is a Jew?" is not a static one, and answers given by various groups in Israel reflect their attempts to mark boundaries.¹ What do these cases tell us about the perceptions of the boundaries of belonging to the Jewish people and consequently, the Jewish state?

Certain individuals who self-identify as Jews have been told that despite their self-identification, they are not considered Jews. Thus they are excluded from the right entitled to all

¹ Gad Barzilai, "Who Is a Jew? Categories, Boundaries, Communities, and Citizenship Law in Israel," in *Boundaries of Jewish Identity*, ed. Susan A. Glenn and Naomi B. Sokoloff (Seattle: University of Washington Press, 2010), 27-42.

Jews – the right of return. I will argue that the answer to why have these individuals been denied the right of return lies in their differing conceptions of belonging to the Jewish people. This will become clear when analyzing the cases.

This thesis will analyze three court case rulings and will survey the responses to the cases in several English-language Jewish newspapers published outside of Israel (with the exception of the *Jerusalem Post*, which is an Israeli-based English-language paper). These articles contributed to reconstructing the cases and reactions to the case in the Jewish Diaspora, but more importantly, I looked at Diaspora Jewish press to see their interpretation and framing of the cases.

For the American perspective, I reviewed articles from the *Jewish Telegraphic Agency* (JTA), a cable service providing stories to many local Jewish newspapers, the weekly *Pittsburgh Jewish Chronicle*, the *Ohio Jewish Chronicle* (a Columbus area Jewish newspaper), *The Jewish Press* (a New York-based weekly), and the monthly *Commentary* magazine. In addition, I analyzed *The Jewish Chronicle*, the oldest continuously published Jewish newspaper, which is published in London. Since I will also be referring to two other *Jewish Chronicles*, I will indicate (UK) after the London-based newspaper. While papers often report very similar stories (sometimes due to their replicating *JTA* editorials) and cover the same events, editorial perspectives vary at times. This is most clear in the case of the *Jewish Press*, which produces a publication geared towards the Orthodox community in New York. I will highlight some of these different perspectives in my analysis of the press coverage of the Israeli Supreme Court cases. By analyzing the rulings and press coverage of the three Supreme Court decision revolving around the Law of Return and the contentious “Who is a Jew” debate, this thesis remains within

the scope of Israel-Diaspora relations and inter-Jewish disputes over who belongs to the Jewish people.

In the first chapter, I will describe the Law of Return and legislation which deals with immigration and citizenship before contextualizing the cases. I will then look at the court cases in more detail in the following chapters to show how the justices either affirmed or rejected the Interior Minister's view that the petitioners (applicants for immigration) were ineligible for the right of return. Descriptions of the justice opinions from their judgments will reveal what the legal case was about, and then coverage of the Supreme Court cases in the press will show what the Jewish Diaspora press understood the case outcome to mean. Chapter two will describe the already mentioned *Oswald Rufeisen* case. The following two chapters cover cases which occurred after the 1970 amendment to the Law of Return. Chapter three will analyze the Shoshana Miller case which will be contrasted with the Beresford case in the fourth chapter. The final chapter will close with conclusions and observations about the three main cases.

Chapter 1: Background

On May 14, 1948, David Ben-Gurion read aloud the Declaration of the Establishment of the State of Israel. When addressing the Knesset (Israel's parliament) two years later on the proposed piece of legislation known as the Law of Return, David Ben-Gurion, then Israel's Prime Minister, quoted the section of the Declaration that states, "Israel will be open for Jewish immigration and for the Ingathering of the Exiles."² He emphasized that Israel is a "state for all the Jews wherever they may be" and reaffirmed that Israel's "gates are open to every Jew."³

In his address, Ben-Gurion also stated that the Law of Return embodies the main mission or *raison d'être* of the state.⁴ This reflects the major objective of Zionism. Therefore, it would be difficult to overestimate the centrality of this piece of legislation to the Zionist ideology. "Zionism," states Sammy Smoocha, "as an ideology and movement accepted the idea and historical reality that Jews constitute one people and aimed to turn them into a modern nation-state in Eretz Israel."⁵

On July 5, two days after Ben-Gurion's address, the Knesset passed the Law of Return by a unanimous vote. The law, as it was formulated in 1950, begins with the statement, "Every Jew has the right to come to this country as an *oleh* (immigrant)," and according to Section 2 of the 1952 Citizenship Law, "every *oleh* under the Law of Return shall become an Israeli national." In other words, the Law of Return states that every Jew has the inherent right to immigrate to Israel,

² "Proclamation of the State of Israel (May 14, 1948)," in: Flohr and Reinhartz, eds., *The Jew in the Modern World*, 629-630.

³ "David Ben-Gurion: Address to the Knesset on the Law of Return (July 3, 1950)," in: Flohr and Reinhartz, eds., *The Jew in the Modern World*, 631.

⁴ "David Ben-Gurion: Address to the Knesset on the Law of Return (July 3, 1950)," in: Flohr and Reinhartz, eds., *The Jew in the Modern World*, 632.

⁵ Smoocha, "Jewish Ethnicity in Israel: Symbolic or Real?," in *Jewish in Israel: Contemporary Social and Cultural Patterns*, eds. Uzi Rebhun and Chaim Waxman, (Brandeis University Press), 50.

and the Citizenship Law grants them automatic citizenship upon immigrating. Consequently, together the Law of Return and the Citizenship Law “constitute the legal groundwork for migration and naturalization” in Israel.⁶ These laws work in concert to express the fact that Israel was created to be the Jewish state, and established a formal, legal connection between the State of Israel and the Jewish Diaspora.⁷

Strangely enough, the legislation created in 1950 to facilitate Jewish immigration and citizenship in the “Jewish state” did not define who it considered a Jew. While some have questioned if the term was not defined because the legislators felt there was a need for it,⁸ others have claimed that the omission was no accident; the Israeli legislature avoided defining a Jew, which is a matter that divides Israeli society as well as the rest of world Jewry.⁹

The matter became an open dispute in the government at the end of the 1950s when leadership disagreed over the criteria for deciding who is a Jew. In an attempt to find a resolution, a committee, led by Prime Minister Ben-Gurion, asked over forty Jewish scholars from Israel and abroad, the “Sages of Israel,” for their opinions on how one should define a Jew for the purpose of Israel’s secular, national laws.¹⁰ The overwhelming majority concluded that a Jew is one who is born to a Jewish mother or one who converts to Judaism.¹¹ Consequently, the

⁶ Yfaat Weiss, “The Golem and Its Creator, or How the Jewish Nation-State Became Multiethnic,” in *Challenging Ethnic Citizenship: German and Israeli Perspectives*, ed. Daniel Levy and Yfaat Weiss (New York and Oxford: Berghahn Books, 2002), 82.

⁷ Ben-Porat and Turner, *The Contradictions of Israeli Citizenship*, 11.

⁸ Warhaftig, “Who Is a Jew?,” 24.

⁹ Sapir, *How Should a Court Deal with a Primary Question That the Legislature Seeks to Avoid?*, Vol. 39:1233:1240.

¹⁰ Joppke, *Selecting by Origin*, 176-178. See also, Sinclair, *Jewish Law Association Studies XI*, 4. Also, Kraines, *The Impossible Dilemma*, 6-8.

¹¹ *Ibid.*, p. 179.

government notified the new Interior Ministry that these were the standards it should use in registration. At that time, however, it was not written into law.

Debates over the Israeli government's definition of a Jew reached new heights in the 1960s with the advent of two Supreme Court cases revolving around the question of "Who is a Jew." The first case was the aforementioned Brother Daniel case, or *Oswald Rufeisen v. Minister of Interior* (1962), and the second case was *Benjamin Shalit v. Minister of Interior* (1969). The latter case involved an Israeli naval officer who had married a non-Jewish woman abroad, returned to Israel, and started a family. He attempted to register his children in the population registry, but the registration clerk would not register the children in the way the father wished. Benjamin Shalit applied to the Supreme Court to order the Interior Ministry to register his children in the registry as Jewish by nationality but without religion.¹² By a five to four vote, the Supreme Court ruled in the petitioner's favor, but based on a technicality.

The Supreme Court did not want to appear to be deciding upon a "socially divisive and ideologically explosive issue,"¹³ so they tried to hide their decision behind "technical-legal reasons," suggests Pinhas Shifman.¹⁴ The Court insinuated that it had no intention of adjudicating an answer to the "Who is a Jew?" question that the legislature left unanswered. Yet, glancing at newspaper headlines covering the case, one might have supposed that was exactly what they were deciding upon. "Israel's Supreme Court to Hand Down Milestone Decision on Who is a Jew" read one *Jewish Telegraphic Agency* article. "World Jewish Leaders Debate Israel Supreme Court Ruling on Who is a Jew" read another. Thus, the Shalit case became implicated in the largely politicized "Who is a Jew" debate.

¹² Kraines, *The Impossible Dilemma*, 46.

¹³ Sinclair, *Jewish Law Association Studies XI*, 2.

¹⁴ Shifman, "On Conversions Not in Accordance with Halakhah," 65.

In the wake of the highly publicized Supreme Court case, the National Religious Party announced it would resign from the government coalition unless new legislation was passed reversing the Court's decision.¹⁵ As a compromise, the Cabinet proposed a piece of legislation that would define a Jew more-or-less using the criteria of Orthodox religious law, with an additional provision for the family of a Jew to immigrate under the Law of Return. The proposal was hastily enacted into law.¹⁶ The resulting compromise amendment has been described as “offering a bit for everyone,” yet satisfying no one.¹⁷

Nevertheless, on March 10, 1970, the Law of Return was amended. Section 4B of the amendment clarified, “For the purpose of this Law, ‘Jew’ means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.” Thus, a *halachic* definition of a Jew became codified into secular Israeli law (the Hebrew word “*halachah*” literally means “the way” and describes traditional Orthodox religious law),¹⁸ with the added clarification that a Jew cannot belong to or be a member of another religion.

On the other hand, section 4A(a) of the Law of Return also extended the right of return to family members of Jews (whether or not they are *halachically* Jewish). Yfaat Weiss argues that this expansion of the right of return was enacted to facilitate Jewish immigration from the Soviet Union which was known to have a high proportion of mixed families.¹⁹ Amnon Rubinstein notes

¹⁵ Kraines, *The Impossible Dilemma*, 54.

¹⁶ See Maoz, “Who Is a Jew? Much Ado About Nothing.”

¹⁷ Joppke, *Selecting by Origin*, 180.

¹⁸ Kraines, *The Impossible Dilemma*, 121.

¹⁹ Weiss, “The Golem and Its Creator, or How the Jewish Nation-State Became Multiethnic.”

that this extension of the right of return did not lead to a public debate when the law was changed,²⁰ whereas the matter of the definition of a Jew certainly did.²¹

The Law of Return has not been amended since 1970, but there have continually been proposals in the Knesset to change the Law of Return, quite often by members of Orthodox political parties (like the National Religious Party and Agudat Yisrael) who have tried to add the phrase “according to *halacha*” to the legislation which would restrict the definition of a Jew to an Orthodox one. Such an addition would exclude non-Orthodox Jewish converts from the automatic right to citizenship in the Jewish state.²² These attempts have not been successful. Nonetheless, the question of which conversions to Judaism are recognized for Jewish immigration under the Law of Return has been a contested matter. It has been dubbed “the conversion crisis,” which continues in different forms to this day.

The root of the problem lies in the fact that the Law of Return defines a Jew as someone who is either born to a Jewish mother or a person who converts to Judaism, but the legislation did not delineate which conversions would be recognized. In the words of Gideon Sapir, this changed the question from “who is a Jew” to “who is a convert.”²³ One Supreme Court case which dealt with the recognition of non-Orthodox conversions to Judaism was the case of Shoshana Miller, a woman from Colorado who converted to Judaism in the United States within the Reform Movement. She immigrated to Israel in 1985, but the administrative clerks refused to

²⁰ Much debates regarding the expansion of the Law of Return came two decades later as a result of an increasingly large number of “non-Jews” - those neither born to a Jewish mother nor converts to Judaism, as defined in the law- being permitted to immigrate to Israel in the 1990s under Section 4A(a) of the Law of Return.

²¹ Quoted in Weiss, “The Golem and Its Creator, or How the Jewish Nation-State Became Multiethnic,” 94.

²² Oscar Kraines, *The Impossible Dilemma*, 77.

²³ Sapir, *How Should a Court Deal with a Primary Question That the Legislature Seeks to Avoid?*, Vol. 39:1233:1239.

register her as Jewish. She petitioned the Supreme Court and won her case, again, on technical grounds.

Another contestation over the Law of Return relates to a different type of conversion – conversion from Judaism – or, as the law states it, membership in another religion. According to the precedent of the Brother Daniel case and the subsequent amendment of the Law of Return, such membership disqualifies a Jew from receiving automatic citizenship in Israel. In the past few decades, there have been a growing number of individuals of Jewish descent who claim that despite their belief in Jesus, they are not “members of another religion.”²⁴ They refer to themselves as Messianic Jews or Jewish believers in Jesus.²⁵

The Messianic Jewish movement comprises those Jews who have come to faith in Jesus, but hold on to Jewish traditions and “refuse assimilation into Gentile Christianity.”²⁶ Messianic Jews challenge both the Christian and Jewish notions that when a Jew believes in Jesus, he/she ceases to be Jewish while becoming Christian instead. A number of these individuals have attempted to immigrate to Israel – some successfully, but others, not. One such unsuccessful attempt was made by Gary and Shirley Beresford, a Messianic Jewish couple from South Africa.

In the 1980’s, the Beresfords attempted to make *aliyah* (immigrate to Israel). In Israel, however, the Interior Ministry rejected their applications. Consequently, the couple took their case to Israel’s Supreme Court. The court’s judgment was handed down on December 25, 1989. The Beresfords lost their case since the judges determined that Messianic Jews are “members of

²⁴ The English translation of *Beresford v. Minister of the Interior* (translated from *Piske Din*) can be found in Daniel B. Sinclair, ed., *Jewish Law Association Studies XI*, (Global Scholarly Publications, 2000).

²⁵ Referring to the group as “Jews for Jesus” is possibly the most problematic since the title actually refers to a specific organization that many Messianic Jews are not affiliated with.

²⁶ Juster and Hocken, “The Messianic Jewish Movement: An Introduction,” 6.

another religion.” Afterwards, the Beresfords applied for permanent residence, but the Interior Ministry rejected these applications, as well.²⁷ In addition to the Rufeisen case, these two cases will be analyzed in the following chapters.

Though there are ways to immigrate to Israel and acquire citizenship, as described in the Citizenship Law, besides by the “right of return,” Nahshon Perez contends that the Law of Return *is* Israel’s immigration policy because other immigration laws are “rarely used due to substantial ministerial discretion that almost always blocks the granting of Israeli citizenship.”²⁸ Consequently, the Law of Return is continually being scrutinized, criticized, and opposed.²⁹ And indeed, the Law of Return has often been at the center of public debate.

Israel’s Citizenship Law (also translated as Nationality Law), on the other hand, is what Daphne Barak-Erez called a “neutral” citizenship law with “provisions of a universal nature regarding the acquisition of citizenship.”³⁰ The law outlines that a person may obtain Israeli nationality by naturalization if certain conditions are met, including legal residence in the country for three out of the preceding five years, entitlement to permanent residence, having some knowledge of Hebrew, having a desire to settle in Israel, waiving any previous citizenship,

²⁷ David H. Stern, *Messianic Judaism: A Modern Movement with an Ancient Past* (Messianic Jewish Publishers, 2007), 266.

²⁸ Perez, “Israel’s Law of Return,” 19.

²⁹ Ilan Pappé, for example, is one scholar that recommends revoking the law completely. For articles on both critiques and justifications of the Law of Return, see Nahshon Perez article cited above and Chaim Gans, “Nationalism and Immigration,” *Ethical Theory and Moral Practice*, Vol. 1, No. 2 (1998), 159-180.

³⁰ Barak-Erez, “Israel: Citizenship and Immigration Law in the Vise of Security, Nationality, and Human Rights,” 184.

and declaring an oath of loyalty to the State of Israel.³¹ While the requirements in the law are not unlike those found in other countries, Daphne Barak-Erez contends that they are not easily met.

For a start, the Interior Ministry determines whether or not an individual is entitled to reside in Israel permanently,³² and on the other hand, Section 5(b) of the Citizenship Law adds:

Where a person has applied for naturalization, and he meets the requirements of subsection (a), the Minister of the Interior, if he thinks fit to do so, shall grant him Israel nationality by the issue of a certificate of naturalization.

As this section outlines, the granting of citizenship under the Citizenship Law is by the discretion of the Interior Ministry, which was granted the power to implement the laws. The same is true for the Law of Return. In the Law of Return, however, as Yfaat Weiss stated, the role of the Interior Minister was one of the main topics of discussion in the Knesset when deciding upon the formulation of the Law of Return.³³

While acceding to citizenship under the Citizenship Law may be an anomaly unless it is through the right of return, the Law of Return exempts Jews from needing to fulfill the requirements laid out under the Citizenship Law. Thus, the affirmation of a person's claim to being Jewish is not inconsequential. It also suggests that someone has the task of checking claims and identifying the target of the Law of Return - Jews. "Ethnicity-based screenings," however, "drags the state into the murky terrain of examining individual 'identity' claims," writes Christian Joppke. State agencies, such as the Jewish Agency and the Ministry of Interior, must look at claims on a case-by-case basis to sort out between those who qualify and those who

³¹ For a good discussion of the more or less restrictive naturalization conditions, see Brubaker, *Citizenship and Nationhood in France and Germany*, 33–34.

³² Law of Entry (1952) delineates the types of visas and permits the Interior Minister grants

³³ Weiss, "The Golem and Its Creator, or How the Jewish Nation-State Became Multiethnic."

do not.³⁴ Unlike most other immigration laws, however, in Israel, religious views and affiliation may be taken into consideration.³⁵

The Interior Ministry, comprised of individual clerks acting as the vanguard of Israel's citizenship regime, stands at the gates "which are open to Jew," in order to check identity claims of applicants for the "right of return." Since the Interior Ministry is responsible for the enforcement of the laws related to acquisition of citizenship and immigration and is empowered to enact regulations concerning its implementation, it essentially controls access to citizenship and regulates immigration. Consequently, though there has been no change in the wording of the Law of Return since the 1970 amendment, we can see that new conflicts arise depending upon the changing policies of the Interior Ministry.

In effect, the Ministry of Interior acts as a gate-keeper to membership in the Jewish nation, but the regulations of the Interior Ministry change with time, depending upon who controls the Interior Ministry. Thus, we find that the Interior Minister, and particularly the Interior Minister, plays an important role in the cases that I will be analyzing. However, as Christian Joppke stated, the "implementation of selection rules stands in the crossfire of differently minded state agencies." Legislators formulate the laws, the Interior Minister implements the laws, and jurists adjudicate contested claims.³⁶ Thus, the Interior Ministry does not have full control over checking claims – the courts get involved, as well.

³⁴ Joppke, *Selecting by Origin*, 174–175.

³⁵ Christian Joppke explains that possible markers of ethnicity include race, language, religion, nationality, or having common customs, but none of these markers constitute "ethnicity." However, today, as the "who is a Jew" debates suggests, ethnicity is often understood as cultural belonging and according to self-identification. See Joppke, *Selecting by Origin*, 4-5.

³⁶ Joppke, *Selecting by Origin*, 174–175.

Now that some of the background on the legislation and cases has been addressed, in the next chapters, I will turn to an analysis of the afore-mentioned court cases dealing with conversions – beginning with the Brother Daniel case, then looking at a case about Reform conversion to Judaism, and ending with the case of Messianic Jews.

Chapter 2: *Oswald Rufeisen v. Minister of the Interior (1962)*

For good reason, the life-story of Oswald Rufeisen, later to become Father Daniel, often precedes an explanation of the Supreme Court case in which he was involved. As *The Jewish Chronicle* (UK) wrote in 1957, five years prior to his court case, his biography reveals that sometimes truth really is “stranger than fiction.”³⁷ Oswald Rufeisen was born in 1922 to two Orthodox Jewish parents in Poland, was involved in a Zionist organization as a youth, and later planned to immigrate to Palestine but was not able to before the outbreak of the Second World War. Finding himself in German-occupied territory, he managed to obtain a job as a translator for the German military police, during which time he was able to notify the Jews of the town Mir that the ghetto was about to be liquidated. His involvement in the Jews’ escape was discovered, and he was sentenced to death; but he escaped to a convent, where he remained for over a year. While hiding there, he converted to Christianity, and in 1945, he joined the Carmelite Order, knowing it had a chapter in Palestine which he hoped to join one day.³⁸ After years of waiting for permission from the Polish government and the Catholic church, Oswald Rufeisen, now Father Daniel, was granted permission to immigrate to Israel.

Father Daniel was to lead a Carmelite Monastery in Haifa upon immigrating to Israel, but things did not go according to plan. Upon arrival in Israel, he applied for an immigrant certificate under the Law of Return and to be registered as a Jew by nationality but Christian by religion in the population register. He was refused both. According to *The Jewish Chronicle* (UK), Mr. Israel Bar-Yehuda, the Minister of the Interior, was “inclined to grant this unusual application,

³⁷ Leo Heiman, “The Amazing Brother Daniel,” *The Jewish Chronicle*, 4 October 1957, 33.

³⁸ The case in English is contained in *Selected Judgments of the Supreme Court of Israel*, Special Volume, edited by Asher Felix Landau and Peter Elman (Jerusalem: The Ministry of Justice), 1971, 1-35. [Hereinafter: *Selected Judgments*]

but with the government crisis over the ‘Who is a Jew?’ question, Father Daniel’s case became a political issue liable to aggravate the crisis, and the application was, therefore, rejected.”³⁹

The “Who is a Jew” controversy to which Bar-Yehuda referred began over the regulation for recording “nationality” in the population registry and on the identity cards. (“Nationality” is translated as “le’um” in Hebrew, which Oscar Kraines explains is more akin to the idea of an ethnic group, people, or community than formal citizenship).⁴⁰ The Interior Minister (of the Ahdut HaAvoda party) and the Population Registry department head (National Religious Party) had conflicting views on the matter.⁴¹ Until 1958, officials had registered Jews in the population registry according to their declaration that they are Jews. The head of the population registry department within the interior ministry, however, “attempted to move the registration practice toward a religious definition.”⁴² In response, the Interior Minister ordered, “Any person declaring in good faith that he is a Jew shall be registered as a Jew,” in March, 1958.⁴³ Likewise, if parents desired to register their child as a Jew, even if one of the parents was not Jewish, the registration clerk should do so. In opposition, the National Religious Party resigned from the government,⁴⁴ and the situation created hot debates within the Knesset. As previously mentioned, in order to resolve the June 1958 coalition crisis, Prime Minister Ben-Gurion wrote a letter asking for the opinion of the “Sages of Israel,” forty-five Jewish scholars and religious leaders

³⁹ “Should Israel Accept Apostates?” *The Jewish Chronicle*, 23 September 1960, 22.

⁴⁰ Kraines, *The Impossible Dilemma*, 2.

⁴¹ Joppke, *Selecting by Origin*, 178.

⁴² *Ibid.*

⁴³ *Ibid.*, 287.

⁴⁴ Joppke, *Selecting by Origin*, 178. Also, Kraines, *The Impossible Dilemma*, 2.

across the world.⁴⁵ This was the government crisis to which Interior Minister Bar-Yehuda was referring.

Father Daniel planned to reapply, but as *The Jewish Chronicle* stated, the new Interior Minister appointed after the 1959 elections, Moshe Shapiro of the National Religious Party, “will certainly reject it,” and in fact, he did.⁴⁶ While Father Daniel could attempt to obtain Israeli citizenship through naturalization, Father Daniel insisted he should be entitled to the right of return and refused to abandon his fight to be recognized as a Jew “as a matter of principle.”⁴⁷ Thus, he became locked in battle, but by this point, his opponent was much less sympathetic to the cause of a converted Jew. Father Daniel’s recourse was to turn to the courts. He filed suit, asking the court to reverse the Interior Minister’s decision and compel the ministry to grant him an immigrant certificate and identity card as a Jew. Thus began the case of *Oswald Rufeisen v. The Minister of the Interior*.

The Question of the Case

The main question that came before the court was “whether a Jew who had converted to Catholicism could still be considered a Jew entitled to the right of return.”⁴⁸ Justice Silberg, representing the majority-opinion, definitively answered in the negative.⁴⁹ Throughout the

⁴⁵ Incorporating the general response, Ben-Gurion gave out new directives to the population registry in 1960 declaring that only a person born of a Jewish mother or converted to Judaism could be registered as a Jew. See Joppke, *Selecting by Origin*, 178-179.

⁴⁶ Unbeknownst to Father Daniel, not long after Moshe Shapiro became Interior Minister in December 1959, he ordered new directives, making “nationality” and “religion” indivisible in the population registry. Likewise, registration clerks were restricted from registering a person who converted to another religion. Kraines, *Impossible Dilemma*, 20-21.

⁴⁷ “Should Israel Accept Apostates?” *The Jewish Chronicle*, 23 September 1960, 22.

⁴⁸ Joppke, *Selecting by Origin*, 177.

⁴⁹ English translation of *H.C. 72/62 Oswald Rufeisen v. Minister of the Interior* in Landau, *Selected Judgments of the Supreme Court of Israel*, 2, 10. [hereinafter: *Selected Judgments*]

judgment, the question of the case, however, was re-formulated several different ways by the five judges presiding over the case.

Justice Silberg eloquently posed the question in more personal terms, asking whether the petitioner, whom he called Brother Daniel (instead of Father Daniel), can “be denied the burning desire of his life to be completely identified with the people which he loves and to become a citizen of the land of his dreams, not as a stranger...but as a Jew returning home?”⁵⁰ Though he did not answer it immediately, Justice Silberg’s answer to this question was a clear and resounding yes. Yes, he could be denied. Justice Berinson asked a similar question – whether the state will refuse to recognize the petitioner as a Jew. Like Justice Silberg, Justice Berinson and two other judges eventually answered yes. This was the majority-opinion. Justice Cohn, on the other hand, asked whether it is permissible to interpret the Law of Return to “deprive the petitioner” of his “right as a Jew.” Additionally, Justice Cohen asked, “Shall we close the gates” that the state of Israel declared was open to all Jews? As the sole voice of the minority opinion, Justice Cohn answered no.

There were four main recurring questions guiding the judges in reaching their judgment. The first asked what was the intent of the legislators who drafted the Law of Return. Since there is a glaring omission of the definition of the word “Jew,” how are they supposed to interpret it? The second question centered upon whether a “convert” or “apostate” belongs to and can identify with the Jewish people, and therefore, the Jewish nation. The third evolved from the former question, but instead of asking who belongs, it questioned if a “convert” had severed ties with the Jewish people and their historic past. The question of whether one can separate the Jewish religion and nationality was addressed, as well.

⁵⁰ *Selected Judgments*, 2.

Legislative Intent

In one way or another, each of the justices asked what the term “Jew” means, taking into account the legislative purpose behind the special provision for Jews. Justice Cohen assumed that in the absence of a definition or criterion to decide who is a Jew, the legislature had intended to keep the determination of “Jew” according to a “subjective test.” If an individual self-identifies as a Jew and wishes to settle in Israel, supported by the act of immigrating there, he should be permitted under law to do so.⁵¹ While Justice Cohn was open to “the wide variety of interpretations” of Jewishness, the other justices desired “to establish and certify some objective boundaries to the concept of Jewishness.”⁵²

Contradicting Cohn’s “subjective test” theory, Justice Landau asserted that the legislators had not intended for the Interior Ministry to rely upon the “subjective feelings” of an individual, which could change, depending upon the mood of the individual.⁵³ Justice Landau declared that the spiritual, religious, and political identity of the Jewish people was shaped “in that spirit of praying and hoping to return to it and restoration of political freedom.” It was in this “spirit” that the Law of Return was enacted and should be interpreted. The law “cannot be severed from the sources of the past from which its content is derived, and in these sources, nationalism and religion are inseparably interwoven.”⁵⁴ Justice Berinson felt the Jewish religion was an “essential” element in deciding who is a Jew, but in looking at the intent of the legislators, he noted that the Knesset left the question of “Who is a Jew” to the discretion of the Interior Minister.

⁵¹ *Selected Judgments*, 17.

⁵² Marc Galanter, “A Dissent on Brother Daniel,” *Commentary*, July 1963, p. 16.

⁵³ *Selected Judgments*, 23.

⁵⁴ *Ibid.*, 22.

Justice Silberg contended the legislators had intended the term “Jew” to be interpreted according to “common parlance” or its “ordinary meaning” as it is understood by a “simple Jew.”⁵⁵ It should be interpreted in a sense understood by Jews because “who better than they can know the essential content of the term?” As *Commentary* writer, Marc Galanter later stated, this line of reasoning gave the most weight to group acceptance,⁵⁶ but Galanter questioned whether the judges accurately reflected the common usage of the term.⁵⁷

Belonging or Severed Ties

Justice Silberg concluded that the one thing all Jews across the “spiritual rainbow” in Israel share is that they “don’t cut themselves off from the historic past nor deny their ancestral heritage,”⁵⁸ which Brother Daniel had done by converting to Christianity. He maintained that everyone from “simple people” to intellectuals hold the “deeply rooted belief” that “Jew and Christian are contradictory terms.”⁵⁹ Justice Silberg cited scholars, ranging from Talmudic sages to contemporary academics, stating that an “apostate” continues to be treated as a Jew,⁶⁰ but he concluded that the one common denominator is that they are “unable to regard a convert as belonging to the Jewish people.”⁶¹ Thus, the question became whether Jews can regard a convert as belonging to the Jewish people, just as the State Attorney argued, “The State of Israel could not tell Jews of the world that Jews who converted to Christianity remained a Jew from the point

⁵⁵ *Selected Judgments*, 10.

⁵⁶ Marc Galanter, “A Dissent on Brother Daniel,” *Commentary*, July 1963, 16.

⁵⁷ *Ibid.*, 12.

⁵⁸ *Selected Judgments*, 10.

⁵⁹ *Ibid.*, 12.

⁶⁰ *Ibid.*, 3.

⁶¹ *Ibid.*, 13.

of view of belonging to the Jewish people.”⁶² Relying upon rabbinical literature, Jewish historians, and sociologists,⁶³ the State Attorney argued that an apostate or convert “abandons” his people and “joins” another. By the act of conversion, Brother Daniel left the Jewish people.⁶⁴

Citing the founding fathers of Zionism (secular Jewish nationalism) such as Herzl and Ahad Ha’Am,⁶⁵ Justice Landau also concluded that a Jew who changes his religion “cuts himself off from the national past of his people and ceases thereby to be a Jew in the national sense to which the Law of Return gives expression.” Thus, he disagreed with Brother Daniel’s claim that his religious views did not affect his national belonging. Justice Landau further added, a convert “can now no longer be fully integrated into the organized body of the Jewish community.” By changing his religion, “he has erected a barrier between himself and his brother Jews.”⁶⁶ Quoting Arthur Ruppin’s definition of a nation, “a community of people who share the same fate and culture,” Justice Landau maintained that the petitioner excluded himself from the common fate of the Jewish people, and thus the nation, as well.⁶⁷ This, he claimed, is the “feeling of the overwhelming majority of the Jews of today.”⁶⁸ Accordingly, he agreed with Silberg that the opinion of the “common” or “ordinary Jew” is that Brother Daniel, through his act of conversion, does not belong to the community. Justice Berinson added that it is no coincidence that in Hebrew, a Jew who has changed his religion is called “meshumad” (meaning “destroyed”) “because from a national point of view, he is regarded as having destroyed himself” and is “lost

⁶² “Israel’s Supreme Court Hears Case of Convert Who Claims He is a Jew,” *Jewish Telegraphic Agency*, 20 November 1962. Also reported in the *Pittsburgh Jewish Chronicle* three days later.

⁶³ “Israel’s Supreme Court Hears case of Convert Who Claims He is a Jew,” *JTA*, 20 Nov 1962.

⁶⁴ Summarized by Silberg in *Selected Judgments*, 9.

⁶⁵ He quotes them because, as he explains, modern Zionism is a “synthesis” of Ahad Ha’Am’s thoughts and Herzl’s vision.

⁶⁶ *Selected Judgments*, 22.

⁶⁷ Quoted from *The Jewish Struggle for Survival*.

⁶⁸ *Selected Judgments*, 23.

to the nation.”⁶⁹ In these statements we can see that the justices’ conceptions of the nation are influenced by the history of the Jewish people, its language, religion, and Zionism – the modern Jewish nationalist movement. Additionally, they strive to reinforce a barrier between “us” and “them” – between Christians and the Jewish community.

The question of belonging and whether Brother Daniel separated himself from the Jewish people by virtue of his conversion to Catholicism is an interesting one, especially because in the case, Brother Daniel’s explicit self-declaration of belonging to the Jewish people is reiterated again and again. Brother Daniel had asserted that his Christian faith did not prejudice his national belonging, and Justice Berinson recounted “proofs” that Brother Daniel “never ceased by inner conviction “or “external manifestation to regard himself as a national Jew bound heart and soul to the Jewish people.” “Even after embracing Christianity,” he states, Brother Daniel, did not “spurn his people.”⁷⁰ To the contrary - after becoming a Christian, he proudly identified himself as a Jew in the national sense, the judgment emphasized. Brother Daniel unequivocally stated to Polish authorities that he belonged to the Jewish people and “severed links” with Poland by renouncing his citizenship.⁷¹

Decision Handed Down

In a four to one ruling, the Supreme Court rejected Brother Daniel’s application for citizenship.⁷² It ruled that Brother Daniel, a Jew who voluntarily converted to Christianity cannot be considered a Jew under the Law of Return, and “thereby rejected the claim of Brother Daniel

⁶⁹ *Selected Judgments*, 32.

⁷⁰ *Ibid.*, 25.

⁷¹ *Ibid.*, 1-2, 27.

⁷² “Israel Supreme Court Rejects Convert’s Application for Citizenship,” *JTA*, 7 Dec 1962.

that he remained a Jew by nationality.”⁷³ While the ruling is filled with copious references to religious sources and religious terminology, all of the justices agreed that they were not deciding the case according to religious law but secular Israeli law.⁷⁴ The paradoxical outcome after declaring this was that for the purpose of Jewish immigration under the secular Law of Return, the Court ruled that conversion to another religion made one ineligible. The judgment followed in line with the plea of the State Attorney during the hearing. “We do not know who is a Jew,” he stated, “but we know who is not – an apostate.”⁷⁵ The majority of the justices decided that for the purposes of the Law of Return, they agreed. In doing so, it defined ‘Who is Not A Jew’ rather than who is one.

In the words of Oscar Kraines, “It had been hoped by both religious and secular Jews in Israel that the Supreme Court would provide a legally binding definition in this case of ‘Who is A Jew?’” The Court, however, confined itself to the narrow issue of whether a Jew who converts to Christianity is still considered a Jew in Israeli secular law. As a result, the “Who is a Jew” dilemma “continued to vex Israeli society.”⁷⁶

Media Coverage

After the judgment was handed down, several Jewish (and a number of non-Jewish) newspapers and magazines provided a summary of the case as they had “no doubt” the case would continue to be a subject of much discussion both inside and outside of Israel.⁷⁷ The papers recapped the main arguments, picked out choice quotes from each justice, drew connections between the different opinions, and pointed to something distinct or interesting about them, such

⁷³ Kraines, *Impossible Dilemma*, 24.

⁷⁴ See, for example, “Catholic Monk is Not a Jew,” *The Jewish Chronicle*, 14 December 1962.

⁷⁵ Ibid.

⁷⁶ Kraines, *The Impossible Dilemma*, 28.

⁷⁷ “Case of Father Daniel Helps Define a ‘Jew,’” *Pittsburgh Jewish Chronicle*, 28 Dec 1962.

as statements which could sound unnecessarily severe when airlifted out of the judgment. *The Jewish Chronicle* (UK), for example, quoted Silberg's statement that he does not wish this to "become an occasion to defile the name and meaning of the concept of a Jew." In contrast, they also quoted Justice Berinson's more sensitive-sounding statement – that in his own personal view, Brother Daniel is Jewish by "every criteria," but he feels "reluctantly bound" to reject the petition. Likewise, *The Jewish Chronicle* paraphrased a poignant, sympathetic statement by Justice Cohen:

The State had proclaimed its doors were open to every Jew. The petitioner had knocked on the door but the Minister of the Interior had not responded because the petitioner had come clothed in the robes of a priest, with a cross on his chest and professing belief in a Gentile religion. If he would take off his robes, hide his cross, conceal his faith, the gates would be opened before him and no one would say a word. But he came openly and sincerely and therefore found the gates locked.⁷⁸

One *Pittsburgh Jewish Chronicle-JTA* feature, stated the ruling showed that being Jewish had more to do with having shared traditions and a common heritage, as well as being a member of the Jewish people.⁷⁹ It also drew attention to an underlying theme in Silberg's comments – one of looking back into a dark past of Jewish-Christian relations, which included pogroms and Crusades - to confirm his view that a Jew cannot be a Christian and remain a Jew.

Another *Pittsburgh Jewish Chronicle* article introduced the court's judgment with the "Who is a Jew" theme before going into the facts of the case. "By this time in Jewish history, one would have thought the answer to the 'Who is a Jew' question would be easy," it began. The editorial closed with two unresolved issues after the case – first, legally defining the word "Jew" in the Law of Return. This was done in 1970 with the amendment to the Law of Return.

⁷⁸ "Catholic Monk is Not a Jew," *The Jewish Chronicle*, 14 December 1962.

⁷⁹ "Case of Father Daniel Helps Define a 'Jew,'" *Pittsburgh Jewish Chronicle*, 28 Dec 1962.

The second matter yet to be accomplished was granting Brother Daniel citizenship. There was “no question,” the article suggested, Brother Daniel would and could become an Israeli citizen. He can, “easily,” just “not under that unique law...the Law of Return.”⁸⁰

Even though the Interior Minister refused to grant Brother Daniel an immigrant visa, and Brother Daniel had no possibility of appeal,⁸¹ after the Supreme Court decision, the Interior Minister publicly declared he was willing to grant Brother Daniel citizenship through the ordinary process of naturalization. When Brother Daniel was granted Israeli citizenship through the naturalization procedures in August of the following year, the Interior Minister took the opportunity to announce it to the press.⁸² This public announcement may have been used to keep up the image of Israel’s Interior Ministry in the wake of the judgment.⁸³ Brother Daniel’s case had attracted international attention, some of it very sympathetic towards the petitioner.

One article in the *Jewish Press*, however, was anything but sympathetic towards Brother Daniel. The article “Who is a Jew?” announced that Israel’s Supreme Court handed down the “long-awaited” decision that a convert to Christianity is certainly not a Jew. While other articles mentioned that Brother Daniel insisted he receive citizenship under the Law of Return,⁸⁴ the author of this *Jewish Press* article went beyond this to advance the claim that Brother Daniel had ulterior motives behind wanting to be recognized as a Jew. The ordinary citizen is unaware of the

⁸⁰ “Brother Daniel,” *Pittsburgh Jewish Chronicle*, 14 December 1962.

⁸¹ “Catholic Monk is Not a ‘Jew’: Supreme Court Rejects Apostate’s Application,” *The Jewish Chronicle*, 14 Dec 1962.

⁸² “Brother Daniel Given Israeli Citizenship, but Not Under ‘Law of Return,’” *JTA*, 19 August 1963. Also in *Ohio Jewish Chronicle* “The Word’s Week,” 23 August 1963.

⁸³ Interior Minister Moshe Shapira’s real solution for avoiding such an “embarrassing situation” in the future, however, was to have the Knesset change the Law of Return. See, “Israel Considering Change in Citizenship Law to Avoid Abuses,” *JTA*, 21 March 1963.

⁸⁴ “Part of a Story Without an End: Is a Convert from Judaism Still Jewish – Court to Decide,” *Pittsburgh Jewish Chronicle*, 23 Nov 1962. See also, “Definition of a Jew,” *Time*, 7 Dec 1962.

real threat posed by Brother Daniel and the real reason for his persistency, he asserted. Brother Daniel's real motives were to strengthen missionary activities in "our Holy Land." Christians hoped to "utilize the judgment to entice Jews to convert." If the court ruled in their favor, they could point out to their "victims" that even a Catholic priest is recognized as a Jew. But now that the proselytizers have been defeated in court, concluded the author, "it is the solemn duty of the Israeli government to halt all of the missionary activities in the Holy Land."⁸⁵

While the author of the *Jewish Press* article was critical of Brother Daniel's motives, Marc Galanter, writing in the summer 1963 edition of *Commentary* magazine, saved his criticism for the justices. In his article, "A Dissent on Brother Daniel," Mr. Galanter provided an in-depth critical analysis of the judgment with a laundry-list of what he considered mistakes in the justices' line of reasoning. He had a qualm with the fact that the decision amounted to "religious disqualification," though the court rejected "even a modicum of adherence to Judaism as a requirement of Jewishness." Or, as in the words of Justice Silberg, a Jew may be "religious, irreligious, or even anti-religious," but in the end, it became clear that religion mattered.⁸⁶

Additionally, generalizations made about converts, Galanter stated, emphasized Jewish suffering that works as a "kind of estoppels against the convert's claim."⁸⁷ Mr. Galanter also found the courts "talk of severance" disconcerting and distorted. He questioned if the justices really wanted to promote Jewish survival, would it not be "better served by an interpretation that would encourage converts to express and expand their remaining ties to Jews?"⁸⁸ He then asked how a single standard – religious, ethnic or political – can encompass everyone who belongs to

⁸⁵ "Who is a Jew?" *Jewish Press*, 14 December 1962.

⁸⁶ Marc Galanter, "A Dissent on Brother Daniel," *Commentary*, July 1963, 14.

⁸⁷ *Ibid.*, 15.

⁸⁸ *Ibid.*, 14.

the Jewish people.⁸⁹ Some would be excluded if one standard is used, but the Law of Return was created for all Jews and “should be kept open to the complexities of the changing experience of Jews,” he argues.⁹⁰ The important question for Mr. Galanter, then, is who should decide which standard to use.⁹¹

What becomes clear in the case is that the justices could not build their argument upon any statute or precedent. Consequently, some decided based on abstract notions, such as the weight of history (looking to the past) and on what they believed to be current public opinion. The justices rejected Brother Daniel’s claim because they decided that the common, ordinary Jew should be determining who is Jewish, not *halacha*. In the next section, we will turn to a case which arose after the Law of Return was amended.

⁸⁹ Ibid., 16.

⁹⁰ Ibid., 16.

⁹¹ Ibid., 11.

Chapter 3: *Miller v. Minister of the Interior* (1986)

The Case

In 1985, Shoshana Miller immigrated to Israel under the Law of Return. Three years prior to her immigration, Shoshana had converted to Judaism in Colorado Springs in a Reform synagogue.⁹² After Miller emigrated from the United States to settle in Israel, however, she ran into some complications. The Interior Ministry refused to register her as a Jew and grant her citizenship under the Law of Return even though she presented her conversion certificate to the officer. She was told she would need to have the Rabbinat validate her conversion. Instead of complying, Ms. Miller filed suit. Trying to avoid a hearing and possibly fearing the implications of a court ruling in Ms. Miller's favor, Interior Minister Itzhak Peretz decided to grant her citizenship, only with one qualification - marking her identity card with the extra word "convert."⁹³ Thus, the ministry's tactical move in response to the suit transformed her case from one about the right to citizenship to one about identity card registration.⁹⁴

On April 10, 1986, the Court ordered the Interior Minister to explain why they should not register her as a Jew in the population register and on her identity card.⁹⁵ *The Jewish Chronicle* (UK) stated that the decision not to register non-Orthodox converts dates back to the

⁹² *H.C. 239/86 Shoshana Miller v. Minister of the Interior*. In Sinclair, *Jewish Law Association Studies XI*, 121. [hereinafter: *Jewish Law Association*]. See also, "Israeli High Court Nixes 'Convert' On I.D. Cards," *Ohio Jewish Chronicle*, 11 Dec. 1986, 1.

⁹³ Richard N. Ostling, "Israel's New Conversion Crisis: Questions about Jewish identity are raised by a U.S. emigrant's case," *Time*, 19 January 1987.

⁹⁴ See, for example, "Clash over a Reform Conversion: Interior Minister Peretz Resigns," *JTA*, 2 Jan 1987. And "Shamir Accepts Peretz's Resignation," *Ohio Jewish Chronicle*, 15 January 1987. Also, "Orthodox rabbi hints at change on conversions," *Pittsburgh Jewish Chronicle*, 5 February 1987. One 1986 article also referred to her difficulties obtaining citizenship: "Israeli High Court Nixes 'Convert' on I.D. Cards," *Ohio Jewish Chronicle*, 11 December 1986, 1.

⁹⁵ *Jewish Law Association*, 129-130.

appointment of Shas⁹⁶ Party leader Rabbi Itzhak Peretz as the Minister of Interior in December 1984.⁹⁷ “In the past, officials have registered all newcomers, including Reform converts, as Jews under the Law of Return...but since Shas took over the Ministry, many officials there have been obstructive.”⁹⁸ Prior to this, “such immigrants had been registered as Jews, although their files included the information that they had not been converted by an Orthodox rabbi.”⁹⁹

Responding to Miller’s appeal to the Supreme Court, the Interior Minister proposed that any person like Miss Miller who “wishes to be registered as a Jew following a conversion would be registered in the population register as Jewish, but the register would indicate that the applicant is Jewish by conversion.”¹⁰⁰ Instead of dealing with the substantive issue of what types of conversions are recognized in Israel, “the court restricted itself to one issue: whether the Ministry could add the word ‘convert’ after the word ‘Jew’ on the identity card.”¹⁰¹ The proposed new policy, which was to apply to all converts - Reform, Conservative, or Orthodox - was disclosed at the Supreme Court hearing on June 23, 1986.¹⁰² One justification the Interior Minister put forward for this proposed practice was that information, such as a person’s religion, is not used solely for statistical purposes.¹⁰³ Sometimes the information is used by other government agencies, and even relied upon by the Registrar of Marriages.¹⁰⁴ The Interior

⁹⁶ Shas is an Orthodox religious political party in Israel

⁹⁷ “Reform Converts ‘are Jewish’,” *The Jewish Chronicle*, 5 December 1986.

⁹⁸ Yoram Kessel, “Ministry is taken to Court by US Convert,” *The Jewish Chronicle*, 25 April 1986.

⁹⁹ “Reform Converts ‘are Jewish’” *The Jewish Chronicle*, 5 December 1986. Also in “Still Pending,” *The Jewish Chronicle*, 5 Dec 1986.

¹⁰⁰ *Jewish Law Association*, 121.

¹⁰¹ “Reform Converts ‘Are Jewish’,” *The Jewish Chronicle*, 5 December 1986.

¹⁰² David Landau, “‘Who is Jew’ Issue Flares at Supreme Court Hearing,” *JTA*, 25 June 1986.

¹⁰³ *Jewish Law Association*, 122.

¹⁰⁴ *Ibid.*, 123.

Minister claimed it did not want to mislead marriage registrars into performing marriages of converts without adequate inquiry.¹⁰⁵

When news of the inclusion of the word “convert” on identity cards got out, it “drew an avalanche of protests” across denominational lines in Israel and abroad.¹⁰⁶ Leaders of the Reform and Conservative movements in the United States and Canada spoke out against the “unacceptable order.”¹⁰⁷ Requiring the addition of the word “convert” would do “serious harm to the unity of the Jewish people and thus threatens the support that Israel enjoys from every quarter of the Jewish world,” some stated.¹⁰⁸

Only one UK *Jewish Chronicle* article suggests that the “convert” stamp was proposed as a response to the Miller case, but had not been instituted.¹⁰⁹ Also, *The Jewish Chronicle* mentioned that prior to this, conversions which could not be verified to have been performed “according to halacha” were already noted in the registrar and those individuals were identifiable via a code of numbers in their identity cards for “those whose business it might be to ask.”¹¹⁰ This, surprisingly, did not make big waves.

¹⁰⁵ Yoram Kessel, “Row over convert,” *The Jewish Chronicle*, 27 June 1986, 2. See also “Peretz Denies Discrimination,” *The Jewish Chronicle*, 11 July 1986.

¹⁰⁶ Gil Sedan, “Protests Mount Against Interior Ministry’s Stamp on Id Cards of Jewish Converts,” *JTA*, 27 June 1986.

¹⁰⁷ “Reform, Conservative Leaders in U.S. Denounce ‘Convert’ Stamp on I.D. Cards,” *Ohio Jewish Chronicle*, 3 July 1986, 1.

¹⁰⁸ Gil Sedan, “Protests Mount Against Interior Ministry’s Stamp on Id Cards of Jewish Converts,” *JTA*, 27 June 1986. Also, “Protest Order to Stamp ‘Convert’ on ID Cards,” *Jewish Press*, 4 July 1986.

¹⁰⁹ “Peretz Denies Discrimination,” *The Jewish Chronicle*, 11 July 1986.

¹¹⁰ “Still Pending” and “Reform Converts ‘are Jewish,’” *The Jewish Chronicle*, 5 Dec 1986.

In July, articles about the “convert” stamp on identity cards graced the front page of several Jewish newspapers.¹¹¹ Ohio and Pittsburgh *Jewish Chronicles* articles referred to statements made on behalf of the Reform movement by Rabbi Alexander Schindler, president of the Union American Hebrew Congregations (UAHC) speaking out against the policy.¹¹² (It is interesting to note that it was during the years that Alexander Schindler was president of the UAHC that the Reform movement adopted the patrilineal descent policy - they recognized the children of Jewish fathers (with non-Jewish mothers) as Jews.¹¹³ This went against the prevailing view amongst most other Jewish groups that only children with Jewish mothers are Jews.) The *Ohio Jewish Chronicle* quoted Schindler, “This....requirement flies in the face of 3,000 years of Jewish tradition. From the earliest days of our history as a people, those who converted to our faith were regarded as fully equal...never was there a stigma attached to the status of a convert.” Additionally, two papers quoted Schindler’s strongly-worded statement, “Now the Orthodox establishment in Israel wants to stamp the equivalent of the yellow star on the identity cards of immigrants to Israel who have been converted to Judaism.” Franklin Kreutzer, international president of the United Synagogue of America, stated that it would have “dire” consequences on

¹¹¹ “Protest Order to Stamp ‘Convert’ On ID Cards, *Jewish Press*, 4 July 1986, 3. Also, “‘Convert on ID Cards Sparks New Protests,” *Pittsburgh Jewish Chronicle*, 3 July 1986. Also, “Reform, Conservative Leaders in U.S. Denounce ‘Convert’ Stamp on O.D. Cards,” *Ohio Jewish Chronicle*, 3 July 1986.

¹¹² “Reform, Conservative Leaders in U.S. Denounce ‘Convert’ Stamp on I.D. Cards,” *Ohio Jewish Chronicle*, 3 July 1986, 1. Also, “‘Convert’ on ID Cards sparks new protests,” *Pittsburgh Jewish Chronicle*, 3 July, 1986, 1.

¹¹³ “Reform Judaism,” Jewish Virtual Library. Accessed 13 May 2012.

<http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0017_0_16561.html>.

the movement's attempts to increase Conservative *aliyah* and declared, "Conservative Jewry will reject this second-class and worse type branded citizenship."¹¹⁴

Despite the fact that the Ministry of Interior was "Orthodox-controlled" and suggestions that the new policy was being used by the Orthodox establishment in Israel to keep from legitimizing other streams of Judaism,¹¹⁵ many leaders within the Orthodox movement condemned the idea just as Reform and Conservative leaders, but for very different reasons. Paralleling Reform and Conservative reactions, the *Jewish Press* wrote about the negative reaction of Orthodox leaders in Israel and abroad and the growing number of rabbis protesting the policy.

The *Jewish Press* referred to the American and Canadian Union of Orthodox Rabbis, Agudas Harabonim, demanding a rescinding of the order "which violates 'the historical tradition of the Torah.'"¹¹⁶ Former Ashkenazic Chief Rabbi of Israel, Shlomo Goren, was quoted in *The Jewish Chronicle* (UK), the *Jewish Press*, and in a front page article in the *Pittsburgh Jewish Chronicle* denouncing the regulation to add "convert" to identity cards, stating it is in "violation of *halacha*" (This is the same reason Justice Elon, an Orthodox judge, later ruled against the Interior Minister).¹¹⁷ In other words, Orthodox leadership in both Israel and in the Diaspora were vociferous in arguing against the proposed policy because differentiating between a convert and

¹¹⁴ Gil Sedan, "Protests Mount Against Interior Ministry's Stamp on Id Cards of Jewish Converts," *JTA*, 27 June 1986

¹¹⁵ David Landau, "'Who is a Jew' issue Flares at Supreme Court Hearing," *JTA*, 25 June 1986.

¹¹⁶ "Seek to Stop Order Requiring 'Convert' On Israeli Identity Cards," *Jewish Press*, 11 July 1986.

¹¹⁷ Yoram Kessel, "Row over Convert," *The Jewish Chronicle*, 27 June 1986, 2. Also, "'Convert' on ID Cards sparks new protests," *Pittsburgh Jewish Chronicle*, 3 July 1986, 1. Also, "Protest Order to Stamp 'Convert' on ID Cards," *Jewish Press*, 4 July 1986; and "Convert Returns Home," *The Jewish Chronicle*, 26 Dec. 1986, 3.

a Jew by birth or “reminding a convert of his non-Jewish origin” was forbidden by *halacha*,¹¹⁸ and this was why they denounced the Interior Ministry’s policy.¹¹⁹ By no means did this mean they were attesting to the legitimacy of Reform or Conservative conversions.

The *Jewish Press* quoted Israel’s Chief Rabbi Avraham Shapiro stating that he was against the idea of adding the word “convert” to the identity card from the very beginning, but he went on to state that Reform conversions are a “mockery” and an “act of immorality.”¹²⁰ The Chief Rabbinate stated that in “our” (the Orthodox) view, “a Reform conversion is just a joke because it does not require acceptance of mitzvot.”¹²¹ Likewise, in November 1986, *The Jewish Chronicle* (UK) quoted a statement made by Israel’s Sephardi Chief Rabbi, Rabbi Mordecai Eliahu that “a gentile who has undergone a ceremony called ‘conversion,’ conducted by desecrators of the Covenant, the Reform and the Conservative, is not a Jew, or a convert, and it is forbidden to register him as a Jew, or as a converted Jew.”¹²² Thus, in contrast to the Reform and Conservative perspective, articles depicting the Orthodox angle re-emphasized that non-Orthodox converts are not actually Jewish at all. And their solution to the whole dilemma posed by the Shoshana Miller case? Amending the Law of Return to ensure that conversions are “giyur kehalacha” (*halachic* conversion to Judaism). In other words, they wished to see the Knesset amend the Law of Return so only Orthodox conversions to Judaism would be recognized under the Law of Return because, in their view, only individuals who undergo Orthodox conversions are Jews.

¹¹⁸ “Reform Converts ‘are Jewish’,” *The Jewish Chronicle*, 5 Dec 1986.

¹¹⁹ Aryeh Julius, “Court Upholds Reform Giyur; Anger Mounts in Religious Communities,” *Jewish Press*, 5 Dec 1986.

¹²⁰ *Ibid.*

¹²¹ “Israeli Supreme Court Nixes ‘Convert’ on I.D. Cards” *Ohio Jewish Chronicle*, 11 December 1986, 1.

¹²² “Move on Converts by Shas Thwarted,” *The Jewish Chronicle*, 6 November 1986.

The Ruling

On December 2, 1986, in a unanimous decision, the Court ruled that the addition of the word “convert” to the official government population registrar was not permitted. The conclusion, as stated by the President of the Supreme Court, Justice Meir Shamgar, was that the Minister of the Interior does not have the authority “to add any additional detail beyond that specified in the Law” when documenting an individual’s nationality, religion, or personal status (such as adding the word “converted” to a person’s registration).¹²³ It is “not a matter for the discretion of the person administering the register: the scope is set in advance by the legislature.”¹²⁴ Justice Elon explained how he arrived at the same conclusion, but via a different path. His stance was that no distinction should be made between converts (“a person who adopts the laws of the Almighty”) and someone born as a Jew. Additionally, converts should not be treated differently than other Jews or be reminded of their past actions or status as non-Jews.¹²⁵

Ironically, Miller was reminded of being a convert again and again. Most of the newspaper headlines referring to the court case or debates about amending the Law of Return referred to Shoshana Miller, the “Reform convert” from the US. Unfortunately, her court case revived the “Who is a Jew” question and placed her in the center of a controversy over the recognition of non-Orthodox conversions.¹²⁶ Thus, she found herself in the midst of a very public debate in both Israel and the Diaspora.¹²⁷

¹²³ *Jewish Law Association Studies*, 128.

¹²⁴ *Ibid.*, 123.

¹²⁵ *Ibid.*, 130-131.

¹²⁶ “Israeli High Court Nixes ‘Convert’ on I.D. Cards,” *Ohio Jewish Chronicle*, 11 December 1986, 1.

¹²⁷ “Shamir Accepts Peretz’s Resignation,” *Ohio Jewish Chronicle*, 15 January 1987. Also, “Still Pending,” *The Jewish Chronicle*, 5 Dec 1986.

After the decision was handed down on December 2nd, *The Jewish Chronicle* reported, “Miss Miller, weeping with joy...said she was ‘very happy’ about the decision. ‘Now,’ she said, ‘I will settle down and arrange my life.’”¹²⁸ But her personal battle and the battle for Reform and Conservative converts’ right of return was far from over. The Reform (Progressive) movement decided it “would follow up its court victory by introducing six more test cases of converts denied registration as Jews.”¹²⁹ Meanwhile, Interior Minister Peretz, unwilling to comply with court orders, resigned in protest to the ruling.¹³⁰ Peretz’s party, Shas, on the other hand, was hoping to push through legislation which would achieve the same goal that they hoped for with the Miller case (by having Israel’s rabbinic courts review and approve all overseas conversions to Judaism).¹³¹

Shoshana Miller left Israel after the court decision in order to be with her sick father back in the United States. Her departure for the U.S. “diffused” the controversy over the ruling,¹³² giving the new Interior Ministry extra leeway and time to comply with the court ruling. Since Ms. Miller left the country, the Interior Ministry was “relieved of its immediate obligation to issue a new ID card to Miller”¹³³ and did not register her as a Jew in the population registry.¹³⁴ In 1988, over one year after she won her case, however, Miller’s lawyer obtained an order from the Supreme Court requiring the Interior Ministry to report back whether it had registered her as a

¹²⁸ “Reform Converts ‘are Jewish’,” *The Jewish Chronicle*, 5 December 1986.

¹²⁹ Israeli High Court Nixes ‘Convert’ on I.D. Cards,” *Ohio Jewish Press*, 11 December 1986, 1.

¹³⁰ “Shamir Accepts Peretz’s Resignation,” *Ohio Jewish Chronicle*, 15 January 1987. Also, “Reform Convert Win Spurs Peretz to Quit,” *The Jewish Chronicle*, 8 January 1987.

¹³¹ Aryeh Julius, “Court Upholds Reform Giyur; Anger Mounts in Religious Communities,” *Jewish Press*, 5 Dec 1986.

¹³² “Convert May Leave Israel,” *Pittsburgh Jewish Chronicle*, 22 January 1987.

¹³³ David Landau, “Court Orders That Non-orthodox Convert Miller Be Listed As Jewish,” *JTA*, 3 February 1988.

¹³⁴ “Dutch Court to Rule on ‘Who is a Jew’ case,” *Pittsburgh Jewish Chronicle*, 12 Nov 1987.

Jewess.¹³⁵ Though it had not yet complied with the court orders from the case, now, the head of the population registry Yehoshua Cahana told the Supreme Court he would register her and other converts as Jews in early February of that year.¹³⁶

Media Coverage

Newspapers present stories of conflict and tension. The coverage of the court case and its outcome was no exception. As previously mentioned, the newspapers quoted from an assortment of sources, including everyone from Israel's Chief Rabbis to individuals affiliated with the Reform movement in the United States on the "convert stamp" issue. Even at this point, the articles presented such antagonistic outlooks, even quoting officials who spoke of the "danger" of Reform converts being buried in Jewish cemeteries, for example.¹³⁷ Dozens of articles describe the Miller case as a clash between Orthodox and non-Orthodox movements in Israel and the Diaspora¹³⁸ and a "showdown" between the Israeli Supreme Court and the Chief Rabbinate over the "Who is a Jew" controversy.¹³⁹ Furthermore, they depicted the court case as a battle, using words such as a "skirmish," "fight," "struggle," "clash," and "conflict." Thus, after the court case decision, one article declared, "the Orthodox say they lost the battle, not the fight."¹⁴⁰

The newspaper articles present a wide-range of opposing positions, contrasting the extreme views on the court's decision in the Miller case. For example, though the Reform

¹³⁵ Haim Shapiro, "Court Intervenes on Converts Behalf," *The Jewish Chronicle*, Foreign News Section, 5 Feb 1988, 4.

¹³⁶ These were the first applications since the Miller case about the registration of non-Orthodox converts Miss Moscovitch, living on Kibbutz Gonen, and Julia and Murilo Varela of Brazil, of Kibbutz Mishmar Hanegiv. A *Pittsburgh Jewish Chronicle* article on the 22nd of January 1987 suggested that there were fifteen converted *olim* (immigrants) waiting to apply for identity cards after the Miller ruling.

¹³⁷ "Reform Converts 'are Jewish,'" *The Jewish Chronicle*, 5 December 1986.

¹³⁸ Haim Shapiro, "Conversion Deal Angers US Jews," *The Jewish Chronicle*, 12 June 1987.

¹³⁹ Haim Shapiro, "Convert Impasse," *The Jewish Chronicle*, 27 March 1987.

¹⁴⁰ "Conservative, Reform Hail High Court Ruling," *Ohio Jewish Chronicle*, 11 Dec 1986, 1.

movement saw the Miller ruling as “progress,” carrying out the court orders “enraged” the Orthodox establishment.¹⁴¹ While Peretz believed the Miller ruling “threatens the survival of the Jewish people,”¹⁴² the American Conservative and Reform Judaism movements applauded the victory for pluralism.¹⁴³ Likewise, the decision was “hailed in liberal and secular circles” but “angrily condemned by the Orthodox establishment.”¹⁴⁴ Though the Ohio paper refers to the landmark ruling being a “small step towards resolving a bitter and emotional conflict between Jewish religious factions over the question of ‘Who is a Jew’” the article continued to emphasize the differences between Orthodox and non-Orthodox viewpoints which did not suggest they had found common ground.¹⁴⁵ Additionally, the *Jewish Press* ran an article which describes the anger of “Chabad people” with the Supreme Court decision. The article ends with a quote from a spokesman for the Reform movement in Israel stating, “This is another phase in the process of officially recognizing the rights of our movement.”¹⁴⁶ Likewise, Rabbi Moshe Zemer of the Progressive movement hailed the court decision as “a stage in our struggle for recognition and full rights.”¹⁴⁷ Thus, for many, this case represented a larger battle between the Orthodox establishment in Israel and the Reform and Conservative movement worldwide seeking recognition of their movement.¹⁴⁸

¹⁴¹ “Convert May Leave Israel,” *Pittsburgh Jewish Chronicle*, 22 January 1987.

¹⁴² Hugh Orgel, “Clash Over a Reform Conversion: Interior Minister Peretz Resigns,” *JTA*, 2 Jan 1987.

¹⁴³ “Conservative, Reform Hail High Court Ruling,” *Ohio Jewish Chronicle*, 11 Dec 1986.

¹⁴⁴ “Israeli Supreme Court Nixes ‘Convert’ on I.D. Cards” *Ohio Jewish Chronicle*, 11 Dec 1986.

¹⁴⁵ “Conservative, Reform Hail High Court Ruling,” *Ohio Jewish Chronicle*, 11 Dec 1986.

¹⁴⁶ Aryeh Julius, “Court Upholds Reform Giyur; Anger Mounts in Religious Communities,” *Jewish Press*, 5 Dec 1986.

¹⁴⁷ “Israeli Supreme Court Nixes ‘Convert’ on I.D. Cards” *Ohio Jewish Chronicle*, 11 Dec 1986.

¹⁴⁸ On delegitimation or disenfranchisement that would result in defining a Jew “according to halacha,” see “Seven Diaspora Jewish Leaders Urge Shamir and Likud to Refrain from

Identity and Recognition

The issue of recognition became a sore spot for Diaspora Jewry who felt questioning Reform and Conservative conversions was one way the Orthodox establishment sought to delegitimizing their movement. As previously mentioned, some threatened that this would affect their support of Israel, whether it was in ending promotion of *aliyah* or financial support.¹⁴⁹ Thus, they implied that the decision, if it did not go in their favor, would negatively affect their relationship with the State of Israel. Likewise, some suggested that altering or further narrowing the definition of a Jew to the Orthodox one would cause division or “imperil Jewish unity.”¹⁵⁰ It would “irreparably damage the support of Israel and its institutions by Diaspora Jews who feel shut out and delegitimized.”¹⁵¹

In addition to connecting the Miller case to “battles” between different streams within Judaism and making it about legitimacy and recognition, the newspaper coverage also presents the case in the larger framework about the question of Jewish identity. The *Jewish Telegraphic Agency*, for example, stated that Peretz resigned “rather than confirm the Jewish identity of a Reform convert.”¹⁵² Dissimilarly, the *Ohio Jewish Chronicle* quoted Israel’s Chief Rabbi stating, “It is impossible, indeed immoral, to accept such a convert whom a large part of the Jewish people does not accept as a Jew.”¹⁵³

Amending the Law of Return,” *JTA*, 22 July 1987. Also, Hugh Orgel, “Shas Continues to Push for Rabbinical Court Law Amendment,” *JTA*, 24 July 1987.

¹⁴⁹ David Young, “Converts to Judaism,” *The Jewish Chronicle*, Op-Ed, 25 April 1986, 18.

¹⁵⁰ “Shamir Wants Coalition Intact: Likud Woos with “Who’s a Jew,”” *Pittsburgh Jewish Chronicle*, 28 May 1987.

¹⁵¹ “Seven Diaspora Jewish leaders urge Shamir and Likud to Refrain from Amending the Law of Return,” *JTA*, 7 July 1987. Also, Gil Sedan, “Protests Mount Against Interior Ministry’s Stamp on Id Cards of Jewish Converts,” *JTA*, 27 June 1986.

¹⁵² “Reform Convert win spurs Peretz to Quit,” *The Jewish Chronicle*, 8 January 1987.

¹⁵³ “Israeli Supreme Court Nixes ‘Convert’ on I.D. Cards” *Ohio Jewish Chronicle*, 11 December 1986.

The article “Question of Jewish Identity” in *The Jewish Chronicle* (UK) suggested that the Miller case was a “skirmish in a continuing struggle over the question of what determines Jewish identity in the new reality of a largely secular Jewish state and Jewish people in a modern world,” and that the lesson learned from the case is that it “pays to fight in the struggle for the determination of Jewish identity.”¹⁵⁴ Thus, for them, the court battle was really over Jewish identity. The article added, “There will certainly be more battles.” As we can see, the *The Jewish Chronicle* (UK) continued to depict the case as an identitarian issue much larger than the issue the Supreme Court decided upon.

An article which began, “Israel is embroiled in the issue of ‘Who is a Jew?’” suggested that the ruling will “inevitably lead to renewed agitation in Orthodox circles for an absolute definition of a Jew as someone either born of a Jewish mother or converted under Orthodox auspices.” This, it states, would be “catastrophic.”¹⁵⁵ It is worth quoting from the article in more detail because of the very strong opinion the (unknown) author holds,

Not only would it for the first time establish a new category of “non-Jewish Jews,” but it would split off from the Jewish people those millions of Reform Jews who are Jewish even by the halachic definition. It would create a schism which would never be bridged, with the dire consequences for almost every aspect of non-religious Jewish life, from fund-raising for Israel to joint activities on behalf of Soviet Jewry, or even self-defense. It is not even necessary. In Israel, all matters of personal status, including marriage and divorce, are – by law- in the hands of the rabbinate.

It continues,

One day, the issue will have to be resolved, prayerfully by a coalescence of Orthodox and non-orthodox on basic procedures for marriage, divorce, and conversion which will not fragment this shrinking, divided people even further. Until then, all except those committed to zealotry for zealotry’s sake must speak

¹⁵⁴ Yosef Goell, “Question of Jewish Identity,” *The Jewish Chronicle*, 2 January 1987.

¹⁵⁵ “Still Pending,” *The Jewish Chronicle*, 5 Dec 1986.

up for that road whose destination is Jewish survival, as against those who would hurl us over the cliff into self-destruction.¹⁵⁶

Though several articles summarized the results of the Supreme Court decision without making it about recognition or identitarian matters, many stressed these issues in addition to presenting the conflicting viewpoints of the various streams of Judaism on non-Orthodox conversions and Jewish identity.¹⁵⁷ While the Supreme Court limited the case to the issue of adding additional information to identity cards and the population registry, it is clear that it was not difficult to tie the case to the larger “Who is a Jew” question, making the case fertile grounds for discussing everything from proposed changes to the Law of Return and other Israeli legislation to questions about Jewish identity and the recognition of non-Orthodox streams in Judaism.

While the case was framed as a battle between Diaspora Judaism and the Orthodox establishment in Israel, it also became about recognition of the Jewishness of an entire movement within Judaism. It was not the last case to deal with the recognition of Reform conversions in Israel, however. The “conversion crisis,” as it was dubbed, continued on into the next two decades with several more court cases.¹⁵⁸ The 2004-2005 Tushbeim cases brought the issue to an extremely contrived situation. The case dealt with the recognition of “stop-over conversions,” or non-Orthodox conversions conducted outside of Israel by Israeli residents. These examples reflect some of the continuing contemporary debates over the Law of Return and the recognition of the non-Orthodox movements in Israel.

¹⁵⁶ “Still Pending,” *The Jewish Chronicle*, 5 Dec 1986.

¹⁵⁷ “Israeli Supreme Court Nixes ‘Convert’ on I.D. Cards” *Ohio Jewish Chronicle*, 11 December 1986, 1.

¹⁵⁸ For example, *Shas v. Director of the Population Registry* (1987), *Pessaro-Goldstein v. Minister of the Interior* (1995), *Na’amat v. Minister of the Interior* (2002).

Chapter 4: *Beresford v. Minister of the Interior* (1989)

In 1989, *The Jerusalem Post* reported that border police at Ben-Gurion airport detained Mrs. Marlow, a Messianic Jew, traveling to Israel with her Christian husband. Months prior to this, Mrs. Marlow, whom one reporter dubbed a “would-be settler,” received an immigrant visa, which was later cancelled.¹⁵⁹ Nevertheless, she and her husband decided to come to Israel as tourists. It seemed that the Interior Ministry did not want another legal case to deal with, as the High Court of Justice was already considering another case on the right of entry and right of return of Messianic Jews. This was the case of Gary and Shirley Beresford, a couple from South Africa who had applied to make *aliyah* in their home country, but after being denied, applied for new immigrant status while in Israel on tourist visas.

The Case

The legal proceedings of the Beresfords began in March 1987.¹⁶⁰ Despite the fact that Gary and Shirley were both Jewish by descent, the Interior Minister argued that the Beresfords were not eligible to immigrate under the Law of Return since they were no longer Jews¹⁶¹ because of their religious beliefs. The Interior Ministry claimed they were “members of another religion” – Christianity, to be exact. As Torah-observant Messianic Jews, the Beresfords disagreed. Consequently, the case revolved around whether or not Messianic Jews were to be considered “members of another religion,” which disqualifies one from receiving citizenship

¹⁵⁹ Haim Shapiro, “Messianic Jew Allowed to Remain in Country,” *Jerusalem Post*, 14 March 1989. Also, Haim Shapiro, “Would be Settlers Rejected,” *The Jewish Chronicle*, 31 March 1989, 4.

¹⁶⁰ Alexander, *The Unpromised Land: The Struggle of Messianic Jews Gary & Shirley Beresford*, 110.

¹⁶¹ H.C. 265/87 *Gary Lee Beresford & Shirley Beresford v. Minister of the Interior*. English translation in Sinclair, *Jewish Law Association Studies XI*, 27- 63. [hereinafter: *Jewish Law Association*]

under the Law of Return.¹⁶² Once more, the legal ramifications of personal identification mismatching the nationally authorized immigration standards would prove to be significant, to say the least.

The Judgment

On Christmas Day, 1989, the three-judge panel ruled unanimously that Messianic Jews are not entitled to the right of return because they are “members of another religion.” Thus, the Beresfords’ petition was dismissed. In the ruling, two justices outlined what they saw as the main beliefs and practices of the Beresfords. The Beresfords, both born to two Jewish parents, observed the Sabbath and dietary laws, felt a strong connection to the Jewish people, and supported Israel. However, since they were to be considered “members of another religion,” these practices and feelings amounted to nothing in terms of their entitlement to immigrate to Israel as Jews. In fact, the Beresfords were doubly ineligible to immigrate under the Law of Return – neither as a Jew as defined in Section 4B, nor as the family member of a Jew under Section 4A (a), which disqualifies anyone “born a Jew” (born to a Jewish mother) who converts to another religion.

In his judgment, Justice Elon interpreted the expression, “member of another religion” in the Law of Return according to Judaism, Jewish history, and the intention of the legislators when adding this phrase.¹⁶³ Justice Barak rejected Elon’s interpretation of the term “Jew” according to religion. He argued that despite the pseudo-*halachic* definition of “Jew” in the Law of Return, the law is a secular-national law and should rightfully be interpreted according to secular-liberal-dynamic criteria instead of religious law.

¹⁶² Ibid, 59.

¹⁶³ Ibid, 33.

Justice Barak's secular interpretation of "member of another religion" would then be in line with the views of the average person on the street.¹⁶⁴ And he concluded that at this point, an "every day Jew" would see the Beresfords as a "member of another religion." Justice Elon criticized him for this flexible, ever-changing criterion for deciding who is a Jew which is "forever open to interpretation."¹⁶⁵ In his view, the legislators' intent when amending the Law of Return in 1970 was to change the subjective definition of a Jew to a normative-objective one based upon *halacha*.¹⁶⁶

Justice Elon compared what he called the Beresfords' "subjective feelings" about remaining Jews to the "facts of history" or "historic reality." Quoting Professor Werblowski and other academics in the field of religious studies, Elon reiterated, "History has already made its judgment." "Belief in Jesus...involves a departure from the historical entity of the Jewish People."¹⁶⁷ "Subjective feelings" cannot change two thousand years of history, he said, "whereby these sects were expelled from the world of the Jewish people."¹⁶⁸ "After two thousand years of opposition and total separation between members of this sect and the members of the Jewish nation," he continued, "Messianic Jews are asking to turn back the wheels of history."¹⁶⁹ Barak also quoted Werblowski, stating that belief in Jesus "means a severance from the historical entity of the Jewish people."¹⁷⁰ This is reminiscent of opinions expressed in the Brother Daniel case.

In this way, both justices indicated any belief in Jesus equals a severance from the Jewish people and that Messianic Jews, or Jews who change their religion, have "departed from the

¹⁶⁴ Ibid., 58.

¹⁶⁵ Ibid., 45.

¹⁶⁶ Ibid., 55.

¹⁶⁷ Ibid., 37.

¹⁶⁸ Ibid., 38.

¹⁶⁹ Ibid., 36.

¹⁷⁰ Ibid., 37, 60.

ways of the ways of the Jewish community.”¹⁷¹ Converts from Judaism, they concluded, do not wish to be part of the Jewish community and “actively cut himself off from them.”¹⁷² Justice Elon once again affords immense power and authority to the forces of “history,” stating that Jewish religion and history “determine who, from the viewpoint of Judaism, continue to be counted amongst its members, and who have removed themselves from the Jewish corpus.”¹⁷³ This also means separation from the “fate” of Jews in Israel. Conversely, conversion to Judaism indicates a person throws in their lot with the fate of the Jewish people.¹⁷⁴ This continued theme of separation and othering, the idea that Messianic Jews have separated from the Jewish people, was weaved throughout the judgment.

Justice Elon also quoted the Bible and rabbinic sources to speak about apostates. Apostates, though they are born a Jew, are no longer called Jews and are not entitled to legal-social rights granted to Jews, “such as those constituting the substance of the Law of Return.”¹⁷⁵ Barak mentioned the Landau judgment in the *Rufeisen* case, stating that it was “not the intention of legislators that everyone who declares himself to be a Jew” actually is. Such claims have “far-reaching and indirect implications.”¹⁷⁶ It determines whether one has the automatic right to citizenship in Israel, for example, but the Law of Return was designed to identify the person whom it “wishes to grant the greatest of rights – the right of immigration to Israel.”¹⁷⁷ And when interpreting the Law of Return, one must understand the intended target group of the Law of Return along with the state’s secular-national aspirations for the ingathering of Jews, which is

¹⁷¹ Ibid., 34-35.

¹⁷² Ibid., 42.

¹⁷³ Ibid., 43.

¹⁷⁴ Ibid., 56.

¹⁷⁵ Ibid., 34-35.

¹⁷⁶ Ibid., 59.

¹⁷⁷ Ibid., 51.

“not for those not included.”¹⁷⁸ Justice Elon also declared, “It is not right for the Petitioners to...distort what it says, in order to be counted – against the will of the initiators of the Law of Return and its legislators – amongst those who are entitled to benefit from its provisions.”¹⁷⁹

Elon added that the right of return was extended to family members of Jews to help mixed-marriage families wishing to immigrate to Israel with the hopes that in time, non-Jews would convert to Judaism.¹⁸⁰ It was not intended to facilitate the immigration of individuals like the Beresfords who were once Jews but had distanced themselves from the Jewish people through their faith. In reaching his decision, Barak also considered the intentions of the legislators and founders of the State of Israel. The piece of legislation, he wrote, was formulated to “secure national aspirations” via Jewish immigration to Israel,¹⁸¹ or quoting Justice Agranat in the Shalit case, to “achieve the central destiny of the state.”¹⁸² He drove home this point several times.

Media Coverage

The Jerusalem Post and the *Jewish Telegraphic Agency* delivered the most comprehensive overviews of the judgment, including a break-down of the reasoning behind the judgment of each justice, comparing Justice Barak’s secular and Elon’s religious interpretations. The *Jewish Telegraphic Agency* began by invoking the “Who is a Jew” theme-question. It stated that the “decades-long” controversy over “Who is a Jew” has not yet been resolved, but once again, the court has definitely decided who is *not* a Jew. It also extracted quotes directly from the judgment, emphasizing the conclusion that the Beresfords were “members of a different faith” and that this constituted a withdrawal from the Jewish community. It highlighted other quotes

¹⁷⁸ Ibid., 56.

¹⁷⁹ Ibid., 43.

¹⁸⁰ Ibid., 41.

¹⁸¹ Ibid., 51, 54.

¹⁸² Ibid., 55.

from Justice Elon’s judgment, such as, “The petitioners attempt to reverse the wheels of history by 2,000 years. But the Jewish people has decided....that (Messianic Jews) do not belong to the Jewish nation...and have no right to force themselves on it.”¹⁸³ Additionally, the *Jewish Telegraphic Agency* highlighted the fact that the Beresfords “insist they are Jews,” and the *Jerusalem Post*, that the Messianic Jews consider themselves to be part of the Jewish people. Thus, they drew attention to the conflict between the subjective feelings of the petitioners and the conclusions of the justices. The justices argued that the Beresfords’ “subjective feelings” and self-identification as Jews was not the way to determine whether or not they were. Nevertheless, these claims were evaluated and seen to be somewhere between sincere but wrong to disingenuous and deceitful.

Some strongly-worded opinion pieces in the *Jerusalem Post* lean toward the latter perspective, though others are more nuanced. Lloyd James of Poole, England, for example, contends that the Beresfords are Protestant Christians. He “knows” because he monitors the literature produced by the societies. Another stated that if the Israeli government makes the Beresfords leave the country, it is not because of their beliefs but because they are not who they claim to be. “They pretend to be Jews in order to derive certain material benefits and/or to proselytize,” a Jerusalem resident stated.¹⁸⁴ This writer insinuates that the Beresford’s self-representation as Jews is a sham to receive “benefits” from the state by immigrating under the Law of Return and a ploy to convert Jews. This is reminiscent of the piece in the *Jewish Press* that suggested Brother Daniel had ulterior motives behind wanting to be recognized as a Jew.¹⁸⁵

¹⁸³ “High Court Rules ‘Messianic Jews’ are not Eligible to Immigrate under Law of Return,” *Jerusalem Post*, 26 December 1989.

¹⁸⁴ Michael Kauffman, “Messianic Jews are Christians,” *Jerusalem Post*, Opinion, 5 April 1993.

¹⁸⁵ “Who is a Jew?” *The Jewish Press*, 14 Dec 1962.

Similarly, an opinion piece written by Israel Silverberg of the Anti-missionary Task Force suggested the Beresfords “came to Israel specifically to spread the word of their belief in Jesus.” Such apostates, “through their beliefs seek to destroy the Jewish nation.”¹⁸⁶

Such opinion pieces provide another interesting perspective on the Beresford case. The authors of the opinion pieces show more bias and make more value-judgments than the average article covering the case and its aftermath. While no article can truly be free of bias - someone must decide what they think is important or interesting to include from the case, which suggests some sort of assessment and value-judgment was made – the opinion pieces skip most facts of the case and give their interpretation. In their evaluation of the outcomes of the case, the authors of the opinion pieces tend to be more critical, either of the Beresfords or the government. They often present the case as right-versus-wrong, good-versus-bad.

Later Developments

Though the Beresfords did not qualify as Jews for the right of return, Justice Elon suggested the petitioners could apply for citizenship under the 1952 Citizenship Law which enables non-Jews to naturalize. “The Minister of the Interior will consider the application and respond to it in accordance with the law,” he stated.¹⁸⁷ As previously mentioned, some of the conditions one must meet in order to naturalize under the Citizenship Law include: one must be entitled to reside in Israel permanently,¹⁸⁸ one must be in Israel for three out of five years preceding the day of the submission of the application for naturalization, and if the person meets

¹⁸⁶ Israel Silverberg, “Messianic Jews,” *Jerusalem Post*, Opinion, 30 April 1993.

¹⁸⁷ *Jewish Law Association*, 40.

¹⁸⁸ As explained by an Israeli lawyer, no one really knows what policy is used by the Interior Minister to determine who may get permanent residence visas, but the Interior Ministry may bestow this right upon the person it wishes to and withhold it from those whom it does not wish to grant it.

these (and other) requirements,¹⁸⁹ the Minister of the Interior *may* choose to grant the person Israeli nationality (citizenship) by issuing a certificate of naturalization, “if he thinks fit to do so.” Thus again we see, the prospect of being able to immigrate to Israel depends upon the decisions of the Interior Minister. Therefore, it is not surprising that in the next chapter in the Beresford saga, the Beresfords ran into another obstacle. The Interior Ministry did not extend the visas of the Beresfords, making it impossible to fulfill the residence requirement, and rejected their appeal to stay.¹⁹⁰ It is not clear upon what grounds they rejected their applications. However, it may be one example to support Nashon Perez’s claim that the Interior Ministry makes it difficult to acquire citizenship by means other than the Law of Return.

The Role of the Interior Ministry

One article on the Beresford case mentioned the Interior Ministry, stating, “It is nonsensical to refuse permanent residency to the Beresfords, who have first-degree relatives Israel, including children who served in the IDF, while it continues to permit the immigration of thousands of ‘non-Jewish relatives of Israeli citizen.’” This, it declares, is the result of the Interior Ministry being run by the “haredi Shas party” which rejected the Beresfords’ application because of a “traditional abhorrence of converts and deep resentment of all proselytizing.”¹⁹¹ Besides this critique, however, hardly any mention was made of the Interior Ministry.

Several articles covering the Miller case, on the other hand, focused on the impact of Shas control over the ministry. At the same time as the Miller case, the Shas party had been campaigning to amend the definition of a Jew in the Law of Return by adding the phrase

¹⁸⁹ Unlike immigration under the Law of Return, one major caveat to attaining citizenship under this law is that the individual must renounce their prior nationality or prove that “he will cease to be a foreign national upon becoming an Israeli national.”

¹⁹⁰ Haim Shapiro, “Son Informed on his Messianic Mother,” *Jerusalem Post*, 4 February 1993.

¹⁹¹ “Israel’s non-Jewish Dilemma,” *Jerusalem Post*, Opinion, 19 January 1993.

“according to halacha.” Orthodox political parties in Israel had wished to add this phrase to the Law of Return since the 1970 amendment.¹⁹² It was clear that the addition of the three words would end the recognition of conversions conducted by Reform and Conservative rabbis overseas and the right of those converts to “return” to Israel. Thus, many articles connected stories about the Miller case with information about the proposed legislation and vice-versa.

Certain reports in newspapers about the Miller case, however, suggested that the Interior Ministry’s attempt to add the word “convert” to identity cards was a way to “push through the ‘Who is a Jew’ law by the back door.”¹⁹³ By adding the word “convert,” Interior Minister Peretz and his political party hoped to overcome the recognition of non-Orthodox conversions until the ‘Mi-hu Yehudi’ (Who is a Jew) amendment to the Law of Return would someday be passed by the Knesset.¹⁹⁴ The proposed legislation was supported by most Orthodox rabbis but was later defeated in the Knesset.

Further Comparison of Beresford and Miller

Media coverage of the Beresford case is modest in comparison to the highly-publicized Miller case. The smaller-scale of coverage may indicate different things. Perhaps, overall, the Beresford case was viewed as less-controversial. Certainly, the Reform community in the Diaspora, those who would be interested in the Miller case, is much larger than the Messianic Jewish community. An estimate number of Messianic Jews in the world at that time was around

¹⁹² “Conservative, Reform Hail High Court Ruling,” *Ohio Jewish Chronicle*, 5 Dec 1986, 1.

¹⁹³ Gil Sedan, “Protests Mount Against Interior Ministry’s Stamp on Id Cards of Jewish Converts,” *JTA*, 27 June 1986. Also, “Move on Converts by Shas thwarted,” *The Jewish Chronicle*, 6 Nov 1986.

¹⁹⁴ Aryeh Julius, “Court Upholds Reform Giyur; Anger Mounts in Religious Communities,” *Jewish Press*, 5 Dec 1986.

400,000 people.¹⁹⁵ However, it would be difficult to determine which case impacts more people in practical terms.

An alternate but related theory is that the difference in coverage may reflect the assumed impact it would have on Israeli society or the Diaspora at-large. One article on the Beresford case, for example, stated that the High Court decision had “no bearing on Orthodox demands to amend the Law of Return.” It is likely that a less politicized, less controversial court case would naturally be less well-covered.

The importance or weight a story is also reflected in the length of the article, font-size of the title, and placement of the article in the paper – whether it is on the front page, for example, or buried on page twelve. Whereas the Miller case often made front-page news of the *Pittsburgh Jewish Chronicle* and *The Jewish Chronicle* (UK), for example, it did not make the front-page of the *Orthodox Jewish Press*. In general, I found fewer articles about the Beresford case than the Miller case, and it was absent from the *Jewish Press* and *Ohio Jewish Chronicle* altogether. It would be difficult to miss the plethora of anti-missionary and anti-Jews for Jesus articles from the same time period as the court case, however.

On January 25, 1990 (just one month after the Beresford ruling), for example, the *Ohio Jewish Chronicle* included an article entitled, “Beth Shalom to Host: ‘The Target is You.’” It begins, “Guess who is not a Jew? Whether they call themselves Jews for Jesus, Hebrew Christians, Messianic Jews, or B’nai Jeshua, there are pretenders out there who claim that they are Jewish and that they speak for Jews or Judaism, but they are not and do not.” To bring awareness about the groups and counter missionary efforts, the UAHC was hosting a movie night with a discussion at the end of the evening. In a very different context, over in New York,

¹⁹⁵ Haim Shapiro, “Son Informed on his Messianic Mother,” *Jerusalem Post*, 4 February 1993.

the *Jewish Press* ran a front-page article on February 3, 1989, entitled “JCRC Wins Case Against Missionaries.” This article was about a suit filed by the organization Jews for Jesus against the Jewish Community Relations Council (JCRC) of New York about free speech and anti-discrimination laws. The article ends with contact information in case “you or anybody you know needs counseling as a result of being victimized by a cult or missionary groups.” From such articles, the clear message is that Messianic Jews or Jews for Jesus are not actually Jews and are people to be in opposition to. The articles portray them as though they present a threat to the Jewish community. The examples of this go on and on. Thus, even when stories about the court cases can not found, articles about Messianic Jews are present.

Chapter 5: Conclusions

The notion of "ingathering of exiles" has been an integral part of Zionist ideology, but not all Jews who believed it was their right to return to Israel, as reflected in Israel's Law of Return, have been granted the right. These issues invoked the highly debated and controversial "Who is a Jew" question which has played an important role in Israeli politics, but the answers to the question directly affects Jews in the Diaspora wishing to immigrate to Israel. There have been cases where individuals were rejected, though born to Jewish parents, for their religious beliefs, and consequently, were no longer considered Jews. This is interesting because it diverges from the predominant Orthodox view that someone born to a Jewish mother remains a Jew. However, the idea of having professing Christians in Israel or anything close to it did not please them either. As the article, "Who is a Jew" in the New York *Jewish Press* expressed, Christians have ulterior motives in living in "our Holy Land."¹⁹⁶

Press coverage of the case on Reform conversions revealed the Orthodox perspective (in Israel and abroad) is that Reform conversions are a threat to the Jewish people and Reform converts are not Jewish. According to the Orthodox viewpoint, conversions must be performed in accordance with *halacha*, which Reform conversions are not. As a later Supreme Court case ruling confirmed,¹⁹⁷ however, Reform converts would be recognized as Jews under the Law of Return. This was based, in part, on a technical reason – the legislators had not defined which conversions would be recognized under the Law of Return – but lack of definition had not stopped the court from ruling against a petitioner before (the Brother Daniel case). In the Miller case, however, conversions performed in any Jewish community were acceptable for the Law of Return.

¹⁹⁶ "Who is a Jew?" *Jewish Press*, 14 December 1962.

¹⁹⁷ *Shas v. Minister of the Interior*

Ironically, the two cases that deal with individuals who were of Jewish descent, i.e. born to Jewish parents, religious views made them ineligible for the right of return. This cases dealt with the “marginal question of exiting Jewry,” Christian Joppke remarked.¹⁹⁸ While this may be marginal, indeed, it also shows that today, the boundaries of the group are not all too different from previous centuries when religious conversion constituted cutting oneself off from the Jewish people. Today, however, this has other implications – it can block access to citizenship, but of course, this is at the discretion of the Interior Ministry.

What these cases boil down to is how religion or belief effects differing conceptions of belonging to the Jewish people. The judgments were not based on Jewish religious law, but on the notions of Jewish history and the understanding of a “common Jew” or the religious concept of a “convert.” Nevertheless, the judgments reinforced a religious definition of a Jew and declared people with the wrong religious affiliations had “cut themselves off.”

One other interesting feature of the cases is that it becomes clear that an applicant’s self-identification is irrelevant. Writing in *Commentary* magazine, Marc Galanter noted that the court avoid dealing with Brother Daniel’s self-identification by deciding that a convert is incapable of Jewish identification.¹⁹⁹ Though Justice Cohen had suggested that the Law of Return was intended for all self-identified Jews who tied their fate with the rest of the Jewish people, after his minority opinion was expressed and rejected, it became clear that neither self-identification nor being a Zionist (which the petitioners were in all cases) mattered. When things were not explicit in the law, the justices used their conception of who belongs to the Jewish people, and

¹⁹⁸ Joppke, *Selecting by Origin*, 178.

¹⁹⁹ *Ibid.*, 13.

ultimately, connection to the Jewish people by birth or by conversion in one of the recognized Jewish communities is what mattered.

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