

"WHO IS A JEW?"

The Supreme Court & The Supreme Judge

a sermon by
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I

One of the grand old men of Hebrew letters in Israel, Eliezer Steinman, wrote *"מי דא איז אַ ייד? מי דא פארגיסט צו אַשק?"* "Who is a Jew? One who doesn't ask, 'Who is a Jew?'"

The very raising of the question in our days is a troubling phenomenon. It means that our very identity, our Jewishness, has become problematical. It indicates that all of Jewish continuity has been brought under a question mark.

This issue has plagued the State almost since its very inception, and now has returned once again to monopolize public attention and stir public controversy, both in Israel and in the Diaspora.

II

The problem does not concern Israeli citizenship. A political state comprises many different ethnic, racial, and religious groups. Even in ancient Israel, a non-Jew (ger toshav) was accepted as a citizen. What is at issue is Jewish nationality. Here the Hala-khah is quite clear: a Jew is one born to a Jewish mother (regardless of his commitments or conduct) or properly converted to Judaism (in which case the conversion must be performed in a certain manner, and the convert must be genuinely committed to Torah). The Jewish tradition recognizes no other yardstick for entering Jewish peoplehood. Hence, any decision by the State concerning nationality (as opposed to citizen-ship) is of immediate importance to Jews the world over - as significant to the ten million Jews in the Diaspora as to the two million in the State.

III

In the most recent incident, the Supreme Court decided in

the Shalit case to jettison the traditional criterion of Jewishness. A minority of four judges reaffirmed the halakhic standard, and in effect declared that there is no separation between nationality and religion; a Jew must fit into both categories or none. A majority of judges, five of them, decided to distinguish between nationality and religion, and permit a man to adopt Jewish nationality by simple declaration of intent, even if the Jewish religion does not regard him as Jewish. They preferred the subjective criterion (do I love Israel? Have I sacrificed for the Jewish people?) to the objective halakhic rule (birth to a Jewish mother or conversion).

The majority pointed to certain absurdities if the halakhic standard were to be accepted, as the minority wished. For instance, a son of a Jewish mother who joins the El Fatah and is an enemy of the State of Israel is considered Jewish, whereas the children of a non-Jewish mother and a Jewish naval officer who has participated in the life of the State and sacrificed for it, are considered non-Jewish. Justice Silberg, who wrote a profound opinion as one of the minority judges, responded that the El Fatah Jew is simply a contemptible, wicked Jew, whereas the children of the petitioner in the present case are wonderful and noble Gentiles. But Jewishness, as he put it, is not an honorary doctorate that is awarded for specific achievements or accomplishments.

It should be added that every law, by its very nature, is productive of anomalies. Any law, no matter how fair and just,

can be made to look ridiculous by pointing to certain exceptional cases. But we must realize that these rare cases are the price we pay for the greater good of the entire community. The only alternative is to abandon law altogether.

Furthermore, the halakhic standard, because it is objective, is much fairer than a subjective standard, in which judges may conceivably be called upon to check whether a man really has his heart and soul with the Jewish State. The objective standard is clear and identifiable, whereas the subjective one -- the adoption of Jewishness by nationality on the basis of intent and willingness to share in the State -- is something that could pave the way to a kind of modern Inquisition.

But the majority prevailed, and the halakhic definition was abandoned. As I mentioned to the reporter of the New York Times who quoted me in that paper, the Court was asked, "Who is a Jew?" and answered, as if with a Jewish shrug of the shoulders, "Who isn't a Jew!" Or, as the headline in an Anglo-Jewish weekly put it more humorously and perhaps even more sharply, "You don't have to be Jewish to be a Jew."

However, more recently, the Knesset has voided the Supreme Court decision and has, thereby, confirmed the halakhic view of Jewishness.

It has been charged by many in Israel that the Knesset vote was a matter of the majority bowing to political pressure exer-

ted by the religious parties in order to maintain the coalition that gives the Government its stability. I do not believe that that is the whole truth, or even most of the truth. A number of non-Orthodox people in Government have told me quite honestly that they find it more convenient to blame the religious parties for exerting political pressure on them, but if there were no religious parties, they would have to vote their own consciences, according to which, despite their secularism, they feel that the State must have some historic and spiritual continuity, which can only be provided by Jewish tradition and by Halakhah as regards this most basic of all questions. My own experience, in a limited way, has convinced me of the same. At a recent five-day Ideological Seminar of the World Union of Jewish Students near Helsinki, Finland, Mr. Uri Avneri, who is one of the most vocal opponents of the halakhic standard (and who might be described as the unofficial state pornographer of Israel), declared before the assembled students that there is a definite break between Israelism and Jewishness, that the relation between Diaspora Jews and Israeli citizens is no more close or meaningful than that between the Australian and the Englishman, or the Swiss-German and the German-German. When he made these statements, he was heckled from the floor and the reaction against him was extremely powerful -- specifically by the non-Orthodox students, who thereby revealed that in certain "gut" issues they will not depart from the tradition.

IV

Why do I speak of this now that the Knesset has affirmed the halakhic criterion and the problem is solved?

Because the problem is not solved, it is only delayed. First, a Court decision of this kind is a symptom of a profound, national malaise that cannot be overlooked; it has a moral force that must be reckoned with. Second, coalitions change, political realignments occur, new ideas take hold, and a new Knesset may decide to uphold the Supreme Court. Third, the problem will unquestionably be reopened in the very near future. The original text suggested for the Knesset vote was that one be recognized as a Jew who is אדם יהודי או מי שנתמ"ר לו פ' צין תורה that is, one who is the son of a Jewish mother or one who has been converted according to the law of the Torah. In the final reading, approved by the Knesset, the last several words were omitted, and we are left only with a statement that one is recognized as a Jew if he is born to a Jewish mother or if he is converted -- with no mention of its legitimacy according to the law of the Torah. This means that the State will now face the problem of recognizing Reform conversions as legitimate. Needless to say, we do not do so. Halakhah regards a Reform conversion as utterly meaningless. Perhaps the typical American, in his ecumenical euphoria, would want to see Orthodox Jews to be more "sportsmanlike" about accepting Reform conversions. We shall then have to declare our unsportsmanship, and

say that our principles, which are not subject to change by whim or caprice, do not permit us to accept a Reform conversion as Jewishly legitimate. Orthodox rabbis in the United States now check, as a matter of course, into the third generation of both bride and groom who come to them for marriage. If we discover that a conversion occurred presided over by a Reform rabbi, we know that we cannot marry this couple unless a re-conversion takes place. As an aside, for those who may consider such a policy as overly restrictive, may I offer the following information to explain, additionally, why we cannot accept the genuineness of a Reform conversion: I am reliably informed by a leading Reform rabbi that over a third of Reform rabbis will preside at the intermarriage of a Jew and a non-Jew without conversion by the non-Jew, and that the great majority of the other Reform rabbis will "refer" such couples to their colleagues who do preside at such marriages. In fact, there is a list of 35 rabbis in the Metropolitan area who will gladly officiate at a Jewish-non-Jewish wedding. Hence, the problem still is unsolved and no doubt will return to vex us in the near future.

V

Why does this issue agitate us so? Why is it so important to us? Obviously, it bothers us because it touches the very core of our being, the very essence of our deepest commitments. Orthodox Jews regard the Supreme Court decision as calamitous religiously, historically, and Zionistically.

Religiously, it strikes at what Judaism considers the essence of the history of the people of Israel: the berit or Covenant between Israel and God. The distinctiveness of our people, what has safeguarded its perilous journey through the ages, is its special relationship to God confirmed at Sinai, a Covenant of which the record is the Torah and of which the mitzvot are the conditions. That Covenant legitimates the inseparability of God and Israel or, in other words, Jewish nationality and Jewish religion. Now, one can violate one or another of the conditions of the Covenant without being guilty of reneging on the basic relationship. But when Israel declares that it divorces nationality from religion, it denies the essence of the Covenant -- the principle that this people is the people of God. The Supreme Court decision, therefore, represents an act of betrayal by Israel. It strikes at the heart of the Covenant -- and thereby breaks the hearts of those who are loyal to it.

Historically too it is a misfortune. The State of Israel was not created ab ovo, from an egg, completely new, as it were. It is the product of centuries of hoping and praying and living and dying. For the Jewish nation today to reject the Jewish religion which gave birth to it after a 3500-year pregnancy, is a kind of matricide. (This seems to be a peculiarly contemporary Jewish obsession. One might almost see in it a projection onto a historic scale of that psychological aberration enshrined in contemporary

literature in that obscene best-seller by a Jewish author who reviles and rejects his Jewish mother.)

The logic of the Supreme Court decision does not stop with according the status of "Jew" to an atheist who is not Jewish by halakhic standards. It must include even those who have religious commitments other than the Jewish. Thus, we will now have "Christian Jews," "Moslem Jews," "Hindu Jews," etc. But is this the mutation that generations of Jews labored to bring forth? Six million Jews died in the Holocaust, probably a majority of them were Orthodox. At least retroactively they may have had some infinitesimal consolation, that out of their agony would rise a state that would perpetuate the memory of the Jewish people. They died with an ani maamin, a song of faith -- if not on their lips then deep in their hearts -- that their anguish would not be meaningless, that something enduring would come of all this. But for what? For a State which will officially consider meshumadim as Jews? It is not merely that the Supreme Court decision will encourage and accelerate the rate of assimilation of many Jews. It is more than that -- it is an effort to assimilate the whole people in one stroke.

If this decision were implemented, or ever will be, it will contribute to the cutting of the roots connecting Israel's past and Israel's present, and will reduce the State of Israel into little more than a technologically muscle-bound, spiritually unimportant little democracy on the shores of the Mediterranean, and

one which, in addition, will appear to aid and abet our enemies' charges that Israel is an outpost of Western cultural imperialism in the Arab world. So that historically too, the rupture between nationality and religion is an act of betrayal or at least of ingratitude.

Zionistically, such a decision is totally self-defeating. Our rights to Eretz Israel are grounded in the Abrahamitic Covenant. In 1947 and 1948, Zionist leaders who presented our case to the United Nations maintained that the origin and sanction of our claims are contained in the Bible and in the subsequent history in which Jewish religion impelled us to return to the Jewish homeland. Only recently (New York Times, February 14, 1970) we read that the World Jewish Congress officials have been meeting with representatives of the World Council of Churches because the former are troubled by the Christian contention that the Bible is being misused to support Jewish views. "It was feared that this could be interpreted as challenging the Jewish view that the Bible justifies the claim to Israel as a homeland." Without Jewish religion, there is no Jewish nationality, and there is no Jewish "national homeland."

Let us be realistic. Not all critics of the State of Israel are malevolent and anti-Semitic. Some of them, although assuredly not all of them or even most of them, genuinely try to see the conflict in which we are embroiled in an objective manner. And, from an impersonal and objective point of view, it is possible

to conclude that Israel's case is not as air-tight as we have imagined, and the Arabs may have some merit in their contentions. It is only in the context of the Divine promise, of the Covenant, that we have inalienable and unalterable rights to the Holy Land. Once we have cut ourselves off from that Covenant, the whole foundation of our case collapses, and we are in danger of appearing as hyper-efficient outsiders who have unjustly exploited what we ourselves consider as nothing more than an ancient myth, to usurp the land of others. It is the Covenant which says, above all else, that ^{this} _^ people and God are intertwined with each other. And it is only that Covenant which assigns the land of Canaan to the people of Israel.

As Rashi put it in his opening comment to Genesis: Why does the Torah begin with record of the divine creation of the world? "So that if the nations of the world will say to Israel, 'You are thieves, for you conquered the lands of the seven nations (who occupied Palestine from antiquity),' you will be able to answer, 'All the world belongs to the Holy One. He created it, and He gave it to whom He pleased. He willed to give it to them, and He willed to take it from them and give it to us.'"

We cannot be eclectic and accept the Covenant only for political purposes and reject it for all other reasons. Let us remember that were the relationship between nationality and religion severed at any point in the past, there would be today no State of

Israel, and no Israeli naval officers -- and no Israeli Supreme Court.

VI

That is why, as religious Jews, we feel impelled to react as vigorously as we do. The State of Israel is too dear to us to accept without protest the grievous decision which can only exacerbate (as it has already begun to do) the deep divisions within Israel's citizenry. It threatens to alienate from Israel many of the Jews of the Diaspora, who are probably five times as numerous as those within the borders of the State.

We who are committed religious Jews, inside of Israel and outside, will continue using the halakhic criterion exclusively, no matter what any Supreme Court says. Religious principle is not subject to majority veto.

A great contemporary Hasidic leader has pointed to the Talmudic maxim that " אין רובין הלכה כרובין ": when, in a dispute of law, we have the scholarly opinions of the one against the many, the Halakhah or law is decided in favor of the many. Why, he asks, should not this legal maxim be expressed more economically as simply " הלכה כרובין ," "the law remains with the majority?" Why is it necessary to have the additional two words, " אין רובין ," "the one and the many?" He answers that the word " אין ," the one, refers to God, the One who created the universe. When do we say that " הלכה כרובין ," that the law remains with the many or majority? -- only when " אין רובין ,"

when the majority has with it the One, when it is expressive of the truth of God. Otherwise, truth prevails despite any majority.

That is a principled and correct sentiment, and it does not detract from its essential truth that the author of this statement is the Satmarer Rebbe.

So even if the Knesset had not overruled the Supreme Court, that ruling would have no effect on us in our daily lives. Religiously committed Jews shall continue to look upon Jewishness as legitimated only by the Halakhah.

What shall determine our conduct is not the decision of those whom the world regards as the Supreme Court of Israel, but the One whom Israel regards as the Supreme Judge of the world.

VII

It is because these issues are so very important to us that a good deal of re-thinking has already been initiated, and more will certainly take place.

I cannot accept the idea that no matter what the Government of Israel decides, we must not react because "we love Israel." This is a myopic view. Love accepts, but it is also critical. To love does not mean to suspend one's critical faculties. A parent who spoils a child by overindulging his every whim, does not really love him; he is only kind to him but is not really interested in him. True love accepts faults, but always strives to make the object of that love better, improved, more lovable. That is our attitude to Israel: we love it, and so we are terribly unhappy about its most recent fault.

There is another reaction that emerged instinctively in the hearts of some of us when the Supreme Court decision was announced: "Stop supporting Israel, let us ignore the State, let us begin to withdraw and retreat into our own community and make sure that we survive as the proper kind of Jews." That may be a psychologically understandable, but it is Jewishly an inexcusable sentiment. It is an unthinkable thought. We dare not even entertain such a notion. For if love accepts and is critical, then let us be critical, but let us also accept. Israel is the land of our brothers, the children of the survivors of Hitler. They are our Jews. Even without crises, even if its existence were not constantly called into question, we would not cease to identify with it.

What seems to be emerging -- and I mention this descriptively, without evaluation -- is an emotional reorientation in which a distinction is made or felt between Eretz Israel and Medinat Israel, between the historic Israel of the generations, and the little State that exists today. There is continued appreciation of the State as the home for Jewish refugees, and admiration for its many achievements, but the spiritual affinity is considerably weakened. In the wake of the Government's self-desacralization has come a disenchantment. And with this disenchantment there may come a reassessment of our emotional priorities, granting relatively more importance to the spiritual welfare of our own American Jewry and of

East European Jewry, both of which are bigger in population than the Jewish community of the State of Israel.

I do not recommend that feeling. I am deeply saddened and disturbed by it. But it is the kind of emotion and attitude that we must expect if the State will ever enforce a non-halakhic standard on so basic an issue or even continue to proclaim that it is refraining from doing so only because of nefarious political pressure by religious parties.

VII

I believe that no matter what the legal and political situation is, we must begin now to rethink our entire position -- not in a surge of initial resentment, but in a calm and collected manner. And we must begin to reassess some of our practical policies.

Intellectually, we shall have to undertake what contemporary theologians call a procedure of "demythologizing." Religious Zionists and the Rabbinate have heretofore ascribed a certain Messianic quality to the State of Israel. They have seen it, whether explicitly or implicitly, as the initial stages of the Messianic kingdom-to-come. They have referred to it as the *תחילת המשיח*, the beginning of the Redemption, and have referred to it in our prayers for the State as *הצמחת צמח דוד*, the first blossoming of our Redemption. But clearly, a State of Jews in which nationality is divorced from religion will find it difficult to lay claim to such honorific Messianic pretenses.

It will be much healthier for us and much less confusing, even if more painful, to begin to see the State of Israel in a more realistic light -- as not necessarily the Jewish State foreseen by our Prophets and dreamed of by our forebears. Of course, as religious Jews, we accept it as part of a divine plan. I personally feel quite strongly that the State does mark a significant turning point in Jewish history, and that it figures most prominently in the calculus of Israel's relationship with God. I have made known my convictions, both orally and in writing,* that the emergence of the State of Israel indicates the first break in the hester panim ("hiding of the face" or eclipse) of God that has lasted for centuries. However, this is much different from assigning Messianic significance and status to the State.

Of course I do not mean to deny the possible, even probable, role of the State of Israel in the Messianic redemptive process. To do so would be absurd. Rather, I prefer to suspend any judgment on this issue, and to avoid all such speculations. It is now time for us to disabuse ourselves of the spiritual presumptuousness which leads us to identify the stages of the Redemption, to indicate which step the Messiah is taking. We must learn to live without such illusions. We must not be distracted by all this talk about Israel as either the end or the beginning of the Redemption. We have a long and disturbing history of premature anticipation of the Messiah. More than once in the past, when people began to attribute Messianic qualities

*See "The Religious Meaning of the Six-Day War," Tradition (Summer 1968), pp. 5 ff.

to individuals, they were later disappointed, and the disappointment left permanent scars in the body of the Jewish people. What happened with individuals can happen with a State.

Second, such Messianic pretenses attributed to the State have a double effect upon us, and paradoxically both effects are opposite to each other. On the one hand, it leads us to expect too much from the State. That is unfair to the government and the population, and leaves us resentful when the State does not live up to our high expectations. On the other hand, it causes us to suspend any criticism, because who will dare to judge adversely a Messianic State?

Third, such Messianic attributions, such a reading of the State of Israel as part of a heilsgeschichte, has a tendency to relieve us individually of too much responsibility. We begin to think that God will take care of things, and that we can relax; so, for instance, the great act of national teshuvah or repentance will be brought about by God, and we need not bother talking to those people who as yet have not been brought to Torah. But this is a mistake. We forget that if we are ethically faulty or morally flabby or spiritually stale, we will repel the non-observant from Torah, and that no magic conversion will take place. It is our job. The Talmud (Sanh. 97a) tells us that the Messiah will come in נחמיה, at a time of distraction, when people are not thinking about him. It is only when people will be too busy to speculate

about him because they are preoccupied in creating the right kind of environment, the proper kind of society, a genuine Jewish environment, that the world and especially Israel will be ready to receive the Messiah.

VIII

So we must learn to see Israel as it is, and not only as we would like it to be. We must look on it without illusions, but with ideals and visions. And this must lead us to a new course of action.

Primarily, we must recognize that although the majority of Israelis are non-observant, they remain our brothers. We must continue to support them, their security and their economy, not one iota less than we did before. We may have certain differing commitments -- but one destiny.

Second, because we are brothers, we must increase our spiritual help and exert ourselves to do much more than before in order to save and enhance the Jewish character of the State. We can no longer rely upon Messiah or some mysterious redemptive process to do that automatically. We must plan for the day that, possibly, Religion and State will be officially separated in Israel. That will no doubt be bad, and will create havoc insofar as the unity of the State is concerned, because two different marriage systems will prevail, and intermarriage between the two may ultimately become very difficult. But with all these dangers, there will be some bles-

sings in disguise. The air will be cleared. We will have an opportunity to talk to non-observant Jews unencumbered with the onus of our political affiliations. When we speak as Orthodox Jews to the non-observant, we will not be automatically suspected of looking for partisan advantage. We will not be greeted by a silent but deep anti-clericalism. We will be able -- and we should begin right now -- to have genuine dialogue with non-observant Jews, "selling" ourselves and our way of life, not negotiating for political bargains. Israeli Jews must begin to build bridges between the Orthodox and the non-Orthodox communities -- and if Israeli Orthodox Jews are unwilling or incapable of doing it by themselves, then we from America must encourage and help them. We must tell them not that we want their votes, but that we want to share with them our mutual Covenant and our Torah, out of love and not out of superiority -- because we are not necessarily superior at all. We must come armed not only with answers, but also with a shared quest, inviting them to join us in the search for the meaning that we can derive out of Torah.

Finally, American Jewish philanthropy must begin to follow through on these ideas by offering increased support to organizations such as "Gesher" which are attempting to do just that -- to go out to high schools and the universities, to the cities and towns, to kibbutzim and moshavot, and talk as brothers to those who are outside the camp of Torah. We must begin to pay much more attention to those religious institutions, from kindergarten up, which prepare young

Orthodox Israelis for a productive life within the State, teaching them not to retreat into ghettos within Israel, but to relate and communicate the messages and the ideas of Torah. We must increase our support for those schools -- whether yeshiva, high school, university, or trade school -- which create the type of student who is both in and of the State, who is totally committed to Torah, but who is part and parcel of the social fabric of Israel, one with whom non-observant Israelis can identify and, from whom they can therefore also learn.

A demythologizing of Israel will thus lead us not to withdraw, but to renew our efforts towards the great need of the hour: reconciliation, unity, peace.

IX

In the Mechilta, R. Yohanan b. Zakkai refers to the commandment which forbids us to use metal tools, such as the axe or the hammer, in building the altar. The altar, he says, was used as the means for reconciling God with Israel (the word korban comes from the word karov, close; and the word shelemot, "whole" stones, from the word shalom, peace). Hence, he said, we have before us a logical deduction (kal va-chomer). If the altar, which can neither see nor hear nor speak, is spared the pain of a sharp metal tool because it enhances peace between Israel and its Father in Heaven, then certainly a human being who brings peace between man and his wife, between man and his fellow man, between city and city, between family and

family, most certainly will be protected from any punishment and shielded against any weapons forged by the enemy.

Let all of us -- religious and secularist, Orthodox and non-Orthodox, Diaspora and Israeli Jews -- strive for the blessing of shalom, of peace both without and within, of reconciliation of one camp with the other, of community with community -- but above all else, of nationality and religion, of the State of Israel with the Torah of Israel, of the people with God.

Having done that, having secured our inner integrity, we shall be safe from all dangers from without.

"May He who creates peace in His high place, create peace for us and for all of Israel, and let us say, Amen."