"Who Is A Jew?"

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Published by Purdue University Press

Greenspoon, Leonard.  
Purdue University Press, 2014.  
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Who Is a Jew in Israel?

Netanel Fisher

INTRODUCTION
The aim of this article is to examine if and how the State of Israel has influenced the shaping of the Jewish identity. The main claim I will present here is that the leaders of the state attempted, at the time of its establishment, to shape a specific Jewish status that would be valid in a variety of contexts in order to ensure the existence of a broad Jewish common denominator. This identity was based on defining Jewishness according to formal religious criteria of Jewish status and not on subjective feelings that remained under debate.

The Israeli attempt to establish a broad common Jewish status proved to be successful for the early decades; however, in recent years we have witnessed its decline. This is due to the changes in social reality and law. My claim is that as long as the legal platform of the Jewish status suited the social and demographic state of the Jewish People in Israel and in the Diaspora, it held out. However, once the social picture had changed, even the high-level institutionalization of the Jewish identity was not able to stop the social processes, forcing the legal definitions of Jewish identity to change accordingly. The article concludes with the assumption that this trend will increase in the coming years.

“MINIMAL JEWISH COMMON DENOMINATOR”—JEWISH IDENTITY AS A FORMAL STATUS
According to halachah and the Jewish tradition, a Jew is whoever was born to a Jewish mother or has converted. This halachah actually formed the idea that Judaism is not a matter of subjective self-identification but rather conditional on objective criteria. In this context, following Peter Berger, David Ellenson and David Gordis justly distinguish between two important concepts: identity and status.\(^1\) As opposed to identity, which is based on psychological-emotional feelings of affiliation with a certain group, status is the definition of a person’s state by law. Status, being a formal factor, may possibly change depending on statements of solidarity or a sense of belonging to a certain community, but once statutorial status has been decided, it stands on its own, detached from subjective feelings and emotions, sincere and powerful as they may be.
Traditionally, Judaism has been determined by a statutorial definition. The religious criteria determining Judaism are indifferent to anyone’s subjective Jewish identity, Jew and non-Jew alike. Jewish status is granted to whoever has a Jewish mother or has converted, and it is an absolute and unchangeable status. In this sense Jewish identity is minimalistic, since it relies on a number of basic tenets that depend neither on developed personal consciousness or on an agreement regarding any ideological or educational principles. Thus, for example, it has been determined that “A Jew, even if he has sinned, is a Jew.” In other words, personal identification with the principles of the Jewish religion and practical observance of its laws are irrelevant to Jewish status. So much so that even a Jew who has actively converted to a different religion, who totally identifies with another religion, and has even taken the active step of proselytization for that religion, cannot change his Jewish status as far as halachah is concerned; he remains a member of the Jewish community. At the same time, a person who was not born to a Jewish mother or did not convert in accordance with the formal procedures will not be considered a Jew even if he feels Jewish, believes in God, and observes Judaism’s religious commandments.

For most of history, there was an overlap between Jewish identity and subjective halachic status. The main role of religion in the general society as in Jewish society in the premodern era was to promise that Jews who had a Jewish identity were indeed Jewish also according to their formal status. Jews lived within closed and homogeneous communities, and religious norms dictated their lifestyle and created a safety net of sorts, promising Jewish continuity. The prohibition on the marriage of a Jew to a non-Jew ensured that both parents would always be Jewish; as a result, their offspring were spared the dilemma of choosing the identity of one of the parents. In order to avoid the possibility of marriage to a non-Jew, many halachic rules were designed so as to minimize social contact between Jews and non-Jews. In the positive sense, the family system that was established *kedat Mosheh ve’yisrael* [according to the law of Moses and of Israel] was considered to be sacred, and all other sorts of coupledom were rejected. Anyone who deviated from these norms was harshly punished, and in certain cases the offspring were even considered bastards.

This set of rules created what I call “the minimal Jewish common denominator.” This minimum, based on objective status definitions and on the safety net that ensured the persistence of this status, created a basic common denominator for all Jews anywhere on the globe. Different Jews
from all over the world could establish communities, create social ties, and marry among themselves, regardless of their personal and subjective views about the definition of Jewish identity. They were all Jewish since they were born of Jewish mothers or converted. This definition of Judaism based on “minimal Jewishness” was extremely important. The fact that formal Jewish status allowed for belonging to the Jewish religion and to the Jewish community, at one and the same time, promised Judaism’s continuity over hundreds and thousands of years. The Jewish community and Jewish religion were two sides of the same coin, and both were based on an objective Jewish status.

Modernity unraveled this unique Jewish linkage. For the first time in history the enlightened countries opened new possibilities before the Jews, including civil and social affiliation with the non-Jewish community. At the same time, the rise of enlightenment, Bundism, Zionism, and reform movements, side by side with the loosening ties within the Jewish religious and communal settings, allowed the Jews new definitions of identity. However, as long as Jews met the criteria of Jewish status in terms of the minimal Jewish common denominator, not much importance was attached to their subjective choices. Bundist Jews, enlightened Jews, Reform and ultra-Orthodox Jews could continue living together and marrying each other, despite the gulf that opened up between them. It was not in vain that preserving that Jewish common denominator was considered to be a supreme interest of all Jewish denominations, since it ensured Jewish solidarity. And indeed only after many years did various Jewish groups, headed by the Reform movement, dare to suggest new criteria for determining Jewish status.

NATIONALISM AND THE ZIONIST IDEA AS AN ALTERNATIVE TO THE DEFINITION OF RELIGIOUS IDENTITY

Right from the start, the Zionist leadership pondered the possibility of changing the rules of Jewish status and redrawing the boundaries of the national collectivity. Seemingly there was no place for debate. According to the common national definition, religion no longer had a role in determining the rules of national affiliation. Nationality, classically interpreted as the “new modern religion,” defined itself on principle by using civil definitions based on ethnic origin and shared culture. In most Western nation-states, religious affiliation became separated from national affiliation despite religion’s important role in the cultural heritage. As far as determining civil
status for emigration purposes, naturalization, registration, and personal status, religion became a private issue.

In the Zionist national movement, though, it was difficult to adopt the separation between religion and state. The deep historic connection between the Jewish religion and Jewish ethnicity, and the overlap between belonging to the Jewish religion and membership in the Jewish community, made it difficult for the founders of the state to accept the national model that was common in other nations. The religious narrative, also needed in order to drum up the masses, had to receive a respectable place in the public arena. As a result, even prior to the establishment of the state, some legal arrangements were made with the explicit purpose of anchoring religion's unique status in its Orthodox sense as a means of preserving the minimal Jewish common denominator.3

THE STATE OF ISRAEL: THE FEAR OF THE JEWISH NATION'S POSSIBLE DIVISION INTO TWO PARTS

This trend was apparent in the famous letter from the Jewish agency’s directorate to Agudath Israel, the ultra-Orthodox party, just before the establishment of the state in 1947. Known as the “status quo” letter, David Ben Gurion, Israel’s first prime minister, wrote in it concerning the question of marriage: “All the members of the directorate comprehend the seriousness of the problem and the great hardships it entails, and on the part of all the entities represented by the Jewish agency, everything possible will be done to prevent the division of the House of Israel in two.”4 The fear of the Jewish nation splitting in two and branching off into separate communities was one of the guiding principles in the emerging agreement. The idea that a minimal Jewish common denominator must be preserved in order to ensure Jewish cohesion and solidarity was the basis for the agreement of the secular majority to subordinate part of the state’s laws to those of halachah. And indeed until the end of the 1950s a formal legal framework was established, aimed at ensuring that the status of Israel’s Jewish citizens be determined by Orthodox norms. In addition, the legal framework also included halachic rules to serve as safety nets to strengthen this Jewish orthodox minimum.

First, the State of Israel decided to register its citizens’ religious status according to halachic rules. In other words, anyone born to a Jewish mother or converted was registered as Jewish in religion and nationality, regardless of his or her religious observance. This registration, done at the time of
birth, was extremely important beyond statistical issues or the state’s wish to fulfill the religious needs of its citizens. This religious registration dictated in advance the religious format with which the personal status of its holder would be dealt. National registration, defined by the religious criterion as well, also entailed obligations (army service) and rights (land leasing, for example) endowed to Jews in Israel.

Second, immigration and naturalization in the state of Israel according to the Law of Return were limited to Jews only. The entrance of non-Jews and their options of naturalization were limited. Contrary to other states, no emigration law was enacted in Israel to ensure the possibility for entrance of mixed families and other people, even if they were interested in joining the Jewish people and could have strengthened the Jewish majority in the State of Israel. Indeed, at the time the Law of Return avoided defining the term “Jew,” it is known that also quite a few interreligious families also entered Israel under its auspices. However, since interreligious marriages were not common in the Diaspora and the law stated explicitly that only Jews could immigrate to Israel, the great majority of immigrants were Jewish also according to their religious status.

Third, personal status issues were subordinated to the religious rules and all Israel’s citizens (Jews and non-Jews alike) were required to marry and divorce within the religious framework to which they were automatically assigned. This situation preserved Jewish endogamy by preventing the performance of mixed marriages. In addition, the possibility of civil marriage, the halachic status of which was in question, was blocked out. In this context the religious Jewish framework was Orthodox, and non-Orthodox religious marriages were not recognized.

These rules opposed the accepted national model prevailing in other states and severely impaired basic civil rights, first and foremost the freedom from religion. In order to justify this, the government heads claimed it was essential for the sake of preserving the minimal Jewish common denominator. For example, Ben Gurion explained why the government determined that the rules of marriage be subordinated to the religious establishment:

Why did we accept the law of marriage and divorce? Do we believe that a divorce may be given only in Aramaic? We accepted this law so as not to cause a schism in the nation of Israel, so a religious Jew will be able to marry the daughter of a non-religious Jew. We accepted this with love. We did not do it as a favor to the religious, but rather, we did what the leaders of the Jewish nation must do.
One may doubt the sincerity of Ben Gurion’s words. He himself married civilly outside of Israel (in the United States), but the fact that Ben Gurion the politician used these arguments publicly reflects his understanding that they lean on broad public consensus.

To summarize, we might say that during the first decades of Israel’s statehood, a framework preserving a Jewish common denominator was formed based on religious boundaries. This system not only preserved the minimal Jewish common denominator but also worked to protect it. As a rule, only Jews entered Israel and were naturalized in it. Jews married only Jews in religious marriage. The procedure of civil registration was done according to the rules of halachah. Whoever was registered as a Jew in his or her identity card was indeed Jewish also according to the rules of the religious establishment. Needless to reiterate, this Jewish minimum existed side by side with ongoing fierce ideological debates that went on splitting Jewish society, but this was its charm. Despite the ideological and social schisms, in Israel of the 1950s and on, it was possible to assume that “all are Jewish”—besides of course the Arab citizens, who were kept out by clear-cut boundaries.

Despite various cracks in this policy (such as, for instance, the practical permit for mixed families’ entrance), the secret of this move’s success leaned not only on legislative acts but also on a clear social and demographic reality. In those years the ratio of mixed marriages in the entire Jewish world was quite low, and many Jews, including those who did not observe the religious way of life, considered it important to marry within a religious framework. As a result, the ratio of mixed families requesting permission to enter Israel was quite low. In this sense, the unique set of laws formed in Israel actually reflected the face of Israeli Jewish society, as well as that of the Diaspora.

The question arises: could the state have continued to base its collective identity on religious-Orthodox definitions after they lost their social legitimacy? This paper’s main claim is that the answer to this question is negative. In the absence of a social foothold and with no anchorage in the Jewish demography, the legal framework began to crumble and the rules of affiliation with the Jewish collectivity began to change gradually. The high religious institutionalization that the State of Israel established with regard to the preservation of the minimal common Jewish denominator did not withstand the social, religious, and secular trends that evolved over the years.
THE 1980S: THE TURNING POINT
Cracks in the system became apparent from the 1960s on, although the breaking point came only at the end of the 1980s, when Jewish status definitions began diverging to the extent that the continuity of the common Jewish minimum was put into question. What brought about this change?

First, in the late twentieth century the ratio of mixed marriages between Jews and non-Jews increased significantly, rising above 50 percent in the majority of communities in the Diaspora. As a state absorbing Jewish immigration, Israel was of course affected by these demographic changes. And indeed when the Iron Curtain was raised and immigrants from the former Soviet Union entered Israel en masse, it was only natural for mixed families to immigrate to Israel as well. This group, consisting of hundreds of thousands of people, brought about a decisive change in Israeli Jewish society. These immigrants and their children who were born in Israel actually formed a new Jewish status: “non-Jewish Jews.” This group, which immigrated to Israel on the basis of immediate familial relations to a Jew (usually a father or grandfather), integrated into the general Jewish society, the IDF, the work force, and all other realms of life, creating for the first time in modern Jewish history a large non-Jewish group within the Jewish collectivity.

It must be stressed that the definition of this group as “non-Jewish” is based on the religious status adopted in the context of the Law of Return, which determined that “A Jew is one whose mother is Jewish or who has converted.” However, from the viewpoint of many non-Jewish immigrants, their Jewish ethnic origin and identification with the Jewish people and the State of Israel, and not the religious definition, are the criteria that should determine their national Jewish status. The expansion of this group, which is also typified by high levels of secularization, has deepened the rift between religious status and national Jewish status.

Another factor contributing to this change was the secular and non-Orthodox majority’s opposition to the religious definitions. After decades of acceptance on the part of the secular majority, the 1990s brought about a broad resistance to the Orthodox monopoly. This resistance originated in secular activist circles that wished to come up with liberal alternatives to collective Jewish identity definitions, as well as in non-Orthodox circles, especially from the Reform movement, which attempted to promote religious pluralism in Israel similar to that prevailing in American Jewish communities. These groups began promoting alternatives to the
Orthodox monopoly by broadening possibilities in the realms of marriage and coupledom as well as recognition of non-Orthodox conversion. In addition to these ideological trends, the intensification of the “practical” and a “day-to-day” secularization, which was based on the growth of the consumerist and capitalist society in Israel, contributed to the acceleration of these trends.8

Changes within religious society also influenced this trend significantly. For many years the religious-Zionist community enjoyed hegemonic status within the religious camp. The ultra-Orthodox camp, which traditionally held more strict positions, was relatively small and lacking in significant political power. With time, the ultra-Orthodox camp grew demographically as well as in its self-confidence, gaining considerable political power. As a result, ultra-Orthodox rabbis serving within the Israeli religious establishment began applying stricter religious approaches, which would have been unthinkable during the state’s earlier years.9 For our purposes, we note that these rabbis gradually began doubting the conversion certificates issued by the ministry of the interior, although they were based on the religious definition of the term “Jew.” Since the 1990s, a procedure had been formed by which the rabbinate itself examined the validity of the Jewishness of any person who arrived from abroad, even if he or she has immigrated under the Law of Return as a Jew—for fear of forgeries and in face of claims that the state issued certificates that were not duly substantiated. In this process, termed “clarification of Jewishness,” the rabbinate began invalidating the Jewishness of many people who were registered as Jews in the citizens’ census, although this registration was done, as we have mentioned, according to the rules of halachah.

This process did not stop with concerns about certificates issued by the state’s secular entities; it seeped into the rabbinical system itself. During the 2000s, many rabbis began refusing to recognize conversions performed by their rabbi colleagues, some even invalidating them entirely.10 In addition, the Israeli rabbinate began to doubt certificates issued by Orthodox rabbis in the United States, claiming that these rabbis were too liberal and could not be trusted. The overall meaning of this process was that the religious establishment began designing an alternative definition to the term “Jew.” The common Jewish minimum, it appeared, was too low for these rabbis, and they wished to create higher religious standards. These standards were higher not only than those of the secular state entities but also than those of part of the religious establishment itself.
THE JUDICIAL-LEGAL CHANGES

These social changes could not have occurred without parallel changes taking place in the legal and judicial systems.

As for marriage, back in the early 1960s the court had already ruled that even couples civilly married outside of Israel were to be registered as married. This trend accelerated from the 1980s on, with the high court of justice beginning to adopt a clearly activist secular liberal stance. In a series of rulings the court deepened its recognition of civil marriage and gave its civil registration a status close to that of recognition as actual marriage. At the same time, the court employed a radical interpretation for the term “common law marriage,” endowing this form of coupledom a far-reaching status, practically equating it with full recognition as a married couple. Of course, these rulings weakened the need for religious marriage and enabled the existence of interreligious cohabitation and marriage.11

A similar step was taken by the court with regard to civil registration. Already in the late 1960s the court ruled that even people who had only a Jewish father be registered as Jewish. Responding to this verdict, the Knesset amended the law and obliged registration according to the rules of halachah. However, the court continued exercising its influence over the registration policy in additional ways. In a series of rulings from the late 1980s, the court ruled that those who underwent non-Orthodox conversions be registered as Jews. From this point on, whoever converted abroad or in Israel through Reform, Conservative, or other denominations was registered as Jewish. The registration of Jewishness based on a common denominator was gradually being eroded.12

The essential change pertaining to immigration and naturalization was made through primary legislation in the Knesset in 1970. As noted above, the original Law of Return (1950) stated that only Jews could immigrate to Israel. However, the law abstained from defining the term “Jew.” This situation changed dramatically in 1970 when the Laws of Return and Naturalization were altered as a reaction to the high court’s ruling. The new law stated that Jewish status is to be determined only according to religious parameters (“one whose mother is Jewish or who has converted”). However, in order not to hinder the unification of families (many families from behind the former Iron Curtain were expected to come), the Knesset determined that relatives of Jews, including their children and grandchildren, may also immigrate under the Law of Return. This amendment put Israel in line with other nation-states who had set their emigration laws based on
“blood law,” that is, repatriation on national–ethnic basis. Interestingly, at the time, the amendment to the Law of Return, which coupled the definition of Jewish identity with that of halachic status, was actually considered to be an achievement for the religious parties, which initiated it as a reply to the court ruling. But this apparent pinnacle for the religious establishment later turned out to have been the start of its fall.

First, since the introduction of the conversion issue into the law, a powerful struggle ensued regarding the question of the validity of non-Orthodox conversions. The Reform and Conservative movements, originating in the United States, demanded that the State of Israel recognize their conversions. Their demand was finally accepted by means of the high court ruling, which, as stated above, ruled that those converted through non-Orthodox conversion were also authorized to immigrate to Israel, where they would be registered as Jews according to the Law of Return. From here on, the status of “Jew” in the context of the Law of Return, which is not defined according to the rules of Orthodoxy, was separated from Jewish status in the context of personal status issues, entrusted to the rabbinate.

Second, and this is the crucial point: the amended Law of Return opened the way for the mass immigration of people of Jewish origin who are not considered Jewish according to the rules of the state that, as mentioned above, followed the halachic criterion. Indeed, in order to cope with this situation Israel launched a state conversion project aimed at helping and encouraging these immigrants to convert, thus preserving uniformity between the religious definition and the national-secular definition, but up until the present this project has failed and the vast majority of these immigrants and their descendents have not converted.

SUMMARY: WHO IS A JEW IN TWENTY-FIRST CENTURY ISRAEL?

The State of Israel has failed in its attempt to establish a uniform Jewish status, on the statutorial level as well as in the social sense. Anyone attempting to find an answer to the question “Who is a Jew” in the laws of the State of Israel and in its authorities’ conduct is bound to be disappointed.

As far as personal status matters, the law did indeed recognize religious marriage as the sole option for marriage, but the high court opened up a variety of options for recognition of civil marriages and other forms of coupledom, and these are indeed proliferating, as is the rate of interreligious marriages. In matters pertaining to immigration and naturalization, the
state adopted a national-ethnic definition and opened its gates to hundreds of thousands of (halachically) non-Jewish immigrants and their children. On the other hand, the state has refused to register them as Jews, since registration was determined according to the halachic rules. At the same time, the rabbinical establishment has stopped recognizing the validity of this registration and carries out a “Jewishness examination” and a parallel registration, according to stricter religious parameters.

Demographically, among most of Israel’s Jewish citizens the overlap between national status and religious-Orthodox status still remains intact, but the minimal Jewish common denominator is gradually dissolving. In the 1940s Ben Gurion warned of the “division into two of the House of Israel,” and today this fear is becoming a reality as the common denominator sought by the founders of the state is slowly dissipating.

These are gradual processes that are often hidden from view, but they will undoubtedly have a dramatic impact on Israel’s Jewish character. Will there be bold rabbis who will step forth and suggest halachic solutions to enable the continued overlap between the religious definition and the national one? Will the State of Israel stop being a “Jewish state” in the religious-Orthodox sense and adopt a secular definition? Will the national solidarity hoped for by the founders of the state dissolve, so that in Israel, as in the Diaspora, there will exist a multitude of Jewish communities, each defining its Jewishness differently?

It is difficult to answer these questions conclusively, but the question “Who Is a Jew” will surely continue to accompany the State of Israel for many years to come.

ACKNOWLEDGMENT
This article is the product of broader research aimed at exploring the changes in the shaping of Jewish identity and status in the State of Israel. I would like to thank Leonard Greenspoon, Creighton University Klutznick Chair in Jewish Civilization, for bringing up the conference’s topic, which stimulated my thoughts on the subject.

NOTES
3 Shlomo Avineri, The Making of Modern Zionism: Intellectual Origins of the Jewish
Who Is a Jew? Reflections on History, Religion, and Culture


12 Rubinstein and Medina, Constitutional Law, 1081–85.
