POINTS OF THE COMPASS

Letter from Tel Aviv

Who's a Jew, and Other Woes

By Amnon Rubinstein

THE TIMING could not have been worse —Israel still fighting a frontier war—but the contenders could not have been better picked. On the one side, the Shalit family: he, a clean-cut Sabra, a psychologist serving as a lieutenant-commander in the Israeli Navy; she, Anne, non-Jewish grand-daughter to Sir Patrick Geddes, Scotsman and Zionist, who collaborated with Chaim Weizmann in establishing the Hebrew University on Mount Scopus; their children, a son Oren and a daughter Galia, indistinguishable from other Israeli toddlers and blissfully unaware of the campaign being waged in their name. On the other side stood Israel's religious establishment, anxious to prevent any erosion of the traditional concept of Judaism, and armed with the threat of political crisis which had been so effectively used in the past. The issue was seemingly inconsequential: could the Shalit children, though not Jewish from a religious point of view, be registered as Jews? Battle was joined in the Supreme Court of Israel, and its aftermath produced a political storm which, for a time, muffled the sounds of the war being fought along the borders.

As legal battles go, the Shalit case was ostensibly marginal. Israeli Law requires all permanent residents to be registered with the Ministry of Interior. Under the Population Registration Law, registration includes two controversial items—*leom* and religion. *Leom* is an untranslatable term which was probably derived from Central and Eastern Europe. It means something akin to "peoplehood"[1] and designates a common ethnic, cultural, and linguistic origin. The Shalit family wanted to have the children registered as having no religion—as they are entitled to do—but insisted on their being registered as Jews under *leom*. The Ministry of Interior refused to register them as Jews and suggested that the item *leom* be left blank. Registration, as such, does not confer any benefit upon the persons registered, nor does it alter their legal status in any way. It means nothing beyond the fact of registration.

The Supreme Court reiterated its view that registration was introduced merely for the sake of administrative efficiency and in order to collect statistical data. Under Israeli Constitutional Law discrimination on grounds of race, religion, or ethnic origin is forbidden. As a matter of principle, the definition of an Israeli as a Jew or non-Jew has no bearing on his rights and duties. To this rule there are two exceptions. First, under the Law of Return, Jews are entitled to immigrate to Israel and acquire, automatically, Israeli citizenship.[2] Secondly, as a general rule, only members of religious communities can marry and divorce inside Israel; Israeli law has inherited from the Mandatory régime a modified form of the

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[1] The German *Nationalität* signifies both nationality in the English sense and an equivalent of *leom*. The term was evolved in the 19th century and applied in the multi-ethnical countries of Central Europe as defining a distinct group with a cultural, linguistic, and ethnic links. Towards the end of the 19th century (and especially after the end of World War I), some Jewish organisations attempted to apply this term to the Jewish minorities in Europe. The term is still used nowadays in East European countries, such as the Soviet Union and Yugoslavia, where it is usually translated into English as "nationality." In the Constitution of Cyprus, the equivalent term is "community." See Article 2 of the Constitution of Cyprus: "For the purposes of this Constitution: (*1*) the Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek-Orthodox Church; (*2*) the Turkish Community comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems."

[2] Contrary to common allegations, Israel has not broken international concepts of equality. Nor is the Israeli law unique. The Federal Republic of Germany has a similar law—section 116 of the Constitution—in which only refugees of "German origin" are given automatic citizenship. The Israeli and German laws are consonant with Article 1 (*3*) of the *International Convention for the Prevention of All Forms of Racial Discrimination*, which excludes immigration and naturalisation from the treaty, provided there is no discrimination "*against* any particular nationality."

Ottoman *millet* system. Under this system, each religious community has jurisdiction in matters of marriage and divorce.[3]

In the Shalit case, both these issues were irrelevant. The Law of Return was not invoked as all the Shalits were Israeli citizens—Anne Shalit by naturalisation, the father and children by birth. Neither was the personal status of the children in issue. Even if registered as Jews under *leom*, the children would not come under the jurisdiction of the Rabbinical courts. The definition of Jew (or Moslem) for the purposes of jurisdiction in matters of marriage and divorce must be supplied by the religious law applicable in the specific case. It would be an absurdity to force upon religious tribunals a secular concept of "who's a Jew." The Shalit children are thus excluded from religious jurisdiction no matter how registered, and, because of the *millet* system, would have no right of marriage inside Israel. Unless the law is altered by the time they grow up, they will have to go abroad—usually Cyprus—or find other solutions resorted to by Israelis who do not come, or do not wish to come, under religious jurisdiction.[4]

THUS THE ISSUE BEFORE THE COURT did not raise questions of legal rights but merely matters of form. Yet politically and ideologically, the very issue was of the highest importance. Can there be any other definition but the religious for the term Jew? Is there such a person as a Jew by *leom* who is not a Jew in the traditional sense? And if so, who comes under this new category?

THE QUESTIONS were not only complex and laden with emotions but touched upon the pivotal issue of Israel's character. Zionism sought to solve the Jewish problem by "normalising" the Jews. The Jewish people, or nation, has a unique status among nations. Jews are tied together by common experience and history with Judaism as a religion; but the very essence of political Zionism was that the religious aspect *could* be separated from the personality of the Jews as a nation. Without this separation, the whole concept of a secular Jewish state, which implies the existence of secular Judaism, would have been defeated. Zionism, by accepting the prevalent 19th-century ideas of liberal nationalism, gave secular Judaism a theoretical foundation. In a sense, political Zionism attempted to do on a national basis what Jews sought in vain to do individually, *i.e.* to be like all the other *Goyim*. (Significantly enough, *Goyim* in Hebrew denotes both non-Jews and other nations.)

Yet, "normalisation" was easier preached than practised. The uniqueness of Jewish existence is that secular, ethnic, religious and cultural elements are so inextricably intertwined that cutting them apart seems to be an almost impossible task. One of these complex issues relates to the very question of Jewish identity. The religious test, established in Talmudic times, is clear cut: one is a Jew only if born to a Jewish mother or converted to Judaism. For centuries this was the foundation stone of the very concept of the Jewish people. Judaism does not conform to the ordinary rules of nations and religions, and regards Jews as a group of people *sui generis*.[5]

The whole concept of Jewish identity, in its traditional sense, is founded upon the Covenant (*Brit*) between God and the Jewish people. This eternal Covenant (*Brit Olam*) explains the continuous identity which links the Jewish people of today with the Israelites of the Covenant, a continuity upon which the whole idea of the return to Zion is based.

It is this Covenant which unites belief with ethnic origin and which, because of its continuity, defines a Jew independently of his own personal belief. It is often alleged that, because of this unique attitude, Judaism has racial undertones: origin counts more than actual belief. Moreover, under Jewish law, a Jew cannot opt out and be rid of his Judaism by con-

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[3] This system does not give Judaism or the Jewish community any priority over other religious groups. On the contrary, because of its Ottoman origin, Israeli law, to this day, gives Moslem courts more authority and wider jurisdiction than to Jewish and Christian courts.

[4] Such solutions include: marriage abroad or marriage by proxy in Mexico (later registered by the Ministry of Interior); an ordinary contract under which the parties undertake matrimonial obligations; and, finally, dispensing with marriage altogether. Israeli law is extremely favourable to the unmarried spouse. The Israeli version of the Common Law wife—the woman who is "publicly reputed to be known as the wife"—is entitled to all the benefits, including inheritance, accruing to a legally married wife. Under Israeli law there is no such thing as an illegitimate child, and all children are equally entitled to family rights. Thus the religious battles have proved to be self-defeating—by limiting the right to civil marriage they have weakened the legal institution of marriage.

[5] Although the Jewish predicament is unique, the Greek tradition also unites nationality with religion. Under the Ottoman Empire, "Greek race and Greek Orthodox religion were absolutely inseparable in face of the Moslem Turk. No Greek would be considered a Greek after his conversion to Islam." See: J. L. Talmon, "Who is a Jew?" ENCOUNTER, May 1965, p. 30. This aspect is also apparent in Article 2 of the Constitution of Cyprus quoted in note 1.

verting to another religion. In the view of orthodox Judaism a converted Jew, hated and despised as he may be, is nevertheless a Jew. Judaism, like some nationalities, is a club which one can join but from which none can escape.

Religious Jews hotly deny any allegation of racialism and point to the rules of conversion: Judaism does not encourage proselytes, but once accepted, any person, regardless of race and colour, becomes a Jew. Some of the great Jewish sages and Rabbis were converts or sons of converts. Nevertheless, to many secular Israelis, the rule itself is repugnant: it seems illogical, discriminatory, and impractical. It leads, as we shall see later, to absurd results when applied to a secular society such as Israel.

On the other hand, even some staunchly secular Israelis, who would fight religious coercion on other issues, accept the religious definition. For them the basic definition of "Who is a Jew" stands outside and above the line which divides the secular from the religious sector. It is the foundation upon which the House of Israel was built in the past; it has been venerated by the practice of generations and observed by Jewish communities throughout the world. Any departure from this basic definition would, according to this school, dilute the bond which unites Jews and would introduce an element of confusion where coherence is needed. Hannah Zemer, editor of the *Histadrut* daily *Davar*, gives expression to this view:

> I want full and equal rights for all persons in Israel, regardless of race or religion, but I cannot understand how one can be a Jew if one is not recognised as such by Judaism. If one wants to become a Jew, he must do this in accordance with the rules of the community he wants to join.

The issue therefore looms over the periodical skirmishes between the secular and religious sectors.

ALTHOUGH THE QUESTION OF Jewish identity has occasionally disturbed Jewish communities in the Diaspora, it has acquired its magnitude in Israel. The ambivalent attitude of the early secular Zionists to their Jewish ancestry was apparent in two seemingly conflicting ideas. One was the return to the historical cradle of the nation; the other was that the Jews should acquire political independence in order to become a modern nation. Theodore Herzl himself symbolised this duality. He had only tenuous links with Judaism as a religion, which consisted mainly of dim recollections of the Synagogue in Budapest. In his book *Judenstaat* (1896) he writes of "our Fathers' belief" and then goes on to advocate complete separation of State and Religion. In the *Yishuv*—the pre-State Jewish community in Palestine—anti-Jewish tendencies were not uncommon.

These tendencies reached their peak in the Canaanite Movement which, in the 1940s and early '50s, sought to divorce the native-born from the Jewish people overseas. For them, the local Jew had become *a Hebrew*, and distinct from the Diaspora Jew. They argued for total severance of ties between Hebrews and Jews and proclaimed war on the Zionist doctrine. The movement was miniscule—and its impact is insignificant nowadays—but in the forties it did express certain latent attitudes. The Canaanite creed did not grow *in vacuo*. In the *Yishuv*, the term Hebrew—denoting a native born—was widely used and "Jew" or "Jewish" became distinctly unpopular. The *Histadrut*, when formed, was called the *General Federation of Hebrew Workers*. Hebrew was the common adjective used to describe the *Yishuv*'s Jew. The *Yishuv* itself was called *HaYishuv Ha'ivri*—the Hebrew *Yishuv*—and its younger generation was educated to regard itself as distinct and separate from the traditional Jew. Even in the Declaration of Independence, the distinction between Hebrew and Jew can be found. The Declaration calls upon the Arab people to cooperate with the "Hebrew people in its land," invokes the assistance of "Jewish people in the Diaspora" but finally proclaims the establishment of a "Jewish State."

INDEPENDENCE HAS ACCENTUATED the problem of Jewish identity. First, anti-Jewish attitudes prevalent before the Nazi holocaust were reversed. The War of Independence and the plight of the Jewish refugees clamouring to find refuge in Israel put the spotlight on the historical dimension of the Jewish predicament. Arab enmity has made Israel's dependence on the support of the Diaspora apparent to all. The ostensible gap between Israeli and Jew has gradually narrowed and the term "Hebrew", as denoting an Israeli Jew, has practically disappeared. Secondly, the term "Jew" was incorporated by the Knesset into the Law of Return, but the legislature intentionally failed to define the term; consequently a legal definition was bound to be debated and eventually litigated. At first, there was some hope that unpleasant disputes would be avoided. Without such disputes, Israel would have avoided not only

internal dissent but also the type of world-wide publicity it can do without. West Germany, with its similar law applicable to Germans, has avoided any discussion on "who's a German," so that only a few legal experts know of the existence of this law. Yet, given the Israeli temperament, and the endemic friction between secular and religious parties, any hope of avoiding a full-scale confrontation was bound to be frustrated.

FROM THE VERY START, the question has plagued successive Israeli governments. Mass immigration brought with it many mixed couples and children of non-Jewish mothers, and an official government policy had to be formulated. Ben Gurion has always been adamant in his refusal to accept the religious criteria. A showdown had to come. On 10 March 1958 the Minister of Interior, Israel Bar Yehuda, of the socialist *Ahdut Avodah* party (now incorporated into Labour) issued a directive under which any person who declares *bona fide* that he is a Jew and does not belong to another religion, is to be registered as a Jew. The cabinet, at Ben Gurion's instigation, approved the directive. Predictably, the religious parties left the Coalition and created a government crisis. Undaunted, Ben Gurion asked the Sephardi Rabbi of Tel-Aviv, Moshe Toledano, to become Minister of Religious Affairs—thus attempting to break the monopoly of the religious parties over religious matters. But the crisis went on. The Knesset debated the issue and finally—after a long and heated session, decided to appoint a Ministerial committee which would collect opinions of learned Jews in Israel and abroad, and then draft new directives.

On 27 October 1958 Ben Gurion sent a letter to 50 Jewish scholars, asking them for their opinion on the crucial question. Most of the scholars addressed were religious, but were not confined to the orthodox stream. Throughout 1959, the replies came in and when the answers were read, it was clear that the religious parties had won. Thirty-seven answers, out of 45 received, advocated the religious criteria: for any person not born of a Jewish mother, conversion was essential. There was disagreement as to the meaning of conversion—the non-Orthodox insisting that their ceremony was sufficient—but on the principle involved all agreed. Only three answers came out unequivocally for separation between the religious and national sense of the term Jew. Ben Gurion, swallowing this bitter pill, had to yield and on 1 January 1960 a new directive was issued:

> A person shall be registered as a Jew by *leom* if (*a*) he is born to a Jewish mother and has no other religion or (*b*) he has been converted in accordance with *Halacha* [the Jewish canon law].

With these new directives, the religious parties celebrated their victory.

But to many Israelis the issue was not closed. They felt that the term "Jew" cannot have one single uniform definition. Sir Isaiah Berlin, one of the scholars who participated in that odd poll, echoed this feeling:

> The word "Jew" has so far as I can tell, this narrower or tighter meaning as defined by *Halacha*—the son of a Jewess or a convert to Judaism; but equally it has a looser connotation in common speech. A Jew in this looser sense is anyone whom a normal person, acquainted with the customary use of the term, would, without too much reflection, describe as a Jew (just as a table is what most people agree to be a table, even though, for certain commercial or legal purposes the meaning of the word table may have to be artificially tightened up). In this normal sense we can speak of "atheistic Jews" without any sense of contradiction; for we should make a man to be a Jew, if he were in most respects identified with a Jewish community, despite the fact that his mother may be an unconverted non-Jewess, and that the rabbis may therefore quite correctly reject his claims to be a Jew in the religious-narrower-sense of the word. . . .

Strangely enough, this duality of the term Jew was eventually enunciated in a case involving a Carmelite monk—the famous Ruffeisen case.

OSWALD RUFFEISEN was born a Jew and suffered as a Jew in Nazi-occupied Poland. Later he converted to Catholicism and, under the name of Brother Daniel, joined the Carmelite order. He came to Israel, and entered a monastery on Mount Carmel. Brother Daniel, despite his conversion, regarded himself as a member of the Jewish people who had merely acquired another religion. He was, in his words, a Catholic Jew and as such sought to be registered as a Jew by *leom* and to receive automatic citizenship as a Jew under the Law of Return. The Minister of Interior, acting upon the 1960 directives, which excluded converts, refused Brother Daniel's application. The case was heard in the Supreme Court, with five judges—instead of the usual three—sitting as a High Court of Justice. One can hardly think of a more bizarre case. The applicant, a Carmelite monk, invoked the *Halachic* rule which maintains that "*a Jew, even if he sins, is a Jew.*" The respondent, the Minister of Interior, a member of the National Religious Party, argued that this rule notwithstanding, the applicant was not a Jew for the purpose of

registration and automatic citizenship. In other words, if religious law, the *Halacha,* applied, the applicant would have succeeded. The court decided by a majority of four to one that the term "Jew" has two distinct meanings: the one defined in accordance with religious law, the second depending upon popular recognition of a person as Jewish. The court regarded the Law of Return as a secular law and, therefore, accorded the loose popular meaning to its use of the term "Jew." It was the secular view, the view of the man in the street, which, in the eyes of the court, excluded the applicant. It was the secular view which treated conversion as decisive and excluded the convert from the Jewish community.[6]

The Minister of Interior and the religious parties won a pyrrhic victory. The result was in their favour, but the principle established was a double-edged sword. If the term Jew had two distinct meanings, could it not be utilised in order to enlarge the concept of a Jew in the popular sense to include those who are not Jews in the religious sense? In Brother Daniel's case, the court used the popular meaning in order to exclude those recognised by the *Halacha.* Why could it not be used to *include* those not recognised as Jews by the *Halacha*? Some religious writers expressed grave doubts whether their cause would not have been better served by granting Brother Daniel's request, thus avoiding a dangerous precedent. Indeed, it was the ruling in the Brother Daniel case which constituted the gravamen of Shalit's argument.

AS SOON AS SHALIT APPLIED to the court, the judges sensed that they were dealing with an explosive issue. By that time the court had already established its liberal tradition by annulling administrative measures and by-laws enacted out of religious motives. The Supreme Court has abrogated by-laws and regulations which sought to prohibit the raising of pigs and the sale of pork. It has forced local authorities to let their halls for Jewish Reformed services. Due to the court's intervention, petrol stations are permitted to open on the Sabbath—all local by-laws ordering their closure have been declared *ultra vires.* In a dramatic showdown, the court recently frustrated Mrs Golda Meir's intention to stop television broadcasts on the Sabbath—a price demanded by the religious parties for their participation in a Coalition government. The highest court of the land has gone further and subordinated the Chief Rabbinate to its jurisdiction, even in cases involving matters of *Kashrut* (*i.e.* observance of dietary laws) and has forced the Minister of Trade and Industry to issue import permits for non-*kosher* food. Three of the Justices indicated on various occasions that they regarded the absence of civil marriage as an infringement of freedom of conscience. In short, the Court has antagonised and even infuriated the religious establishment. But Shalit's application went further than that and touched upon the central nervous system of the body politic.

SHALIT LODGED HIS APPLICATION in February 1968. After the first sitting it was decided to call a special five judges' court, but later the President, Justice Agranat, decided to take the hitherto unprecedented step and convene the whole court, nine judges in all, to hear the case. The hearing began on 17 October 1968, in a courtroom packed with journalists.

Shalit appeared in person and in uniform. Opposite him stood Meir Shamgar, the articulate and impressive Attorney-General. Both parties were armed mainly with non-legal authorities, invoking the writings of Jewish philosophers, statesmen, and scholars. It was the least legal case ever argued. The Attorney-General's case lay on the historical equation of nation and religion which was the essence of both Judaism and the Jewish existence. Shalit's case rested legally on the *Brother Daniel* ruling; but his main argument was based on a new concept of "Jewishness" evolved in the new Israeli experience. His contention was simple and appealed to many Israelis: the religious test could not be applicable to Israeli conditions. He cited the case of Kamal Nimri, a terrorist caught and tried in Israel, who was born to a Jewish mother and an Arab father. Shalit summed up his argument with a sentence which later became the war-cry of the secular front:

> Would Kamal Nimri, the terrorist, be regarded as a Jew while my children, who get a Hebrew and Israeli education and who would fight for Israel, be considered as non-Jews?

The court adjourned and took time for consideration. In November 1968, it took an extraordinary step. All nine Justices appealed to the Government to relieve them of the

[6] The applicant was, of course, allowed to settle in Israel and to acquire Israel citizenship. It was only his right to *automatic* citizenship which was in question. The minority judge, Justice Cohen, thought that any person who *bona fide* regards himself as Jewish should be so regarded for the purpose of the Law of Return.

burden of decision. The court suggested that the problem be solved by deleting *leom* from the registration papers. The judges were aware that this step would create certain difficulties, but it was their considered view that these were not insurmountable. The court's plea was brought to the cabinet and rejected in what was later described by one of the judges as "a summary procedure." The Minister of Justice, Mr Yaakov Shimshon Shapiro, spoke against the court's initiative and suggestion, and the unpleasant buck was passed back to the court. It was reported at the time that the Cabinet's rejection was based upon security grounds: the item *leom* is included in identity cards and is the only way of distinguishing between Arab, Druze, and Jew. The item religion does not appear in the identity card or in any other document carried by Israelis.

THE COURT, faced with the government's rejection of its proposal, was by now inclined to postpone the decision. The next general elections to the Knesset were due on 28 October 1969. Any decision, one way or the other, was bound to ignite a political powder keg and draw the reluctant court into the rough-and-tumble of party politics. However, the long delay gave the religious bloc time to close its ranks and consolidate its front. Emergency assemblies of rabbis railed against any possible deviation from the *Halacha*. One of the Chief Rabbis sent official letters to the judges warning them against the consequences of any such deviation—thus committing a contempt of court, later denounced by Justice Sussman in his decision. After the elections, the National Religious Party made it clear that if the court accepted a non-*Halachic* definition of a Jew, it would demand that it be reversed by legislation. It was quite explicit on this issue: the National Religious Party would not remain in any government which allowed this to happen. The court had sought to douse the powder keg; instead the spark continued to splutter.

THE EXPLOSION came on Friday 23 January 1970. By a majority of 5 to 4, the court accepted Shalit's application and ordered the religious Minister of Interior to register his children as Jews under their *leom*. Even before anyone had time to read the lengthy judgment—130 pages in all—the religious parties lashed out against the majority with a ferocity unparalleled in Israel's history of respect for the judiciary. Two religious ministers spoke out against the decision as soon as the news reached them. They were not going to surrender to it. Cables of protest from Orthodox Rabbis abroad began to come in and pile up on the Prime Minister's table.

The Rabbinate issued a proclamation stating that any enforcement of the Court's ruling would be contrary to the Holy Writ and ordered the Minister of Interior not to obey the Court's decision. The Minister of Interior, Mr Haim Shapiro, indicated that he would not comply with the decision—at least not immediately. His refusal added to the political tension mounting up throughout Israel. A loud and heated debate swept the whole country.

Actually, the Supreme Court's decision was of much less significance than that attributed to it. Of the five majority justices, only one, Justice Berinson, stated clearly that the Shalit children were Jewish in the secular sense evolved in the *Brother Daniel* case. Justice Cohen indicated that he would, if need be, reach the same conclusion. However, the majority opinions did not revolve round the "who's a Jew" dilemma, but on technical legal grounds relating to the interpretation of the Registration Law. All five Justices thought that the Registration Officer had no authority to pry into a *bona fide* declaration of the applicant. On the contrary, the court held that unless the declaration is palpably false, the Ministry is under an obligation to accept the applicant's statement. The object of the law was not to establish "objective" truth through fact-finding officers, but rather to collect statistical data for administrative purposes. For these purposes, a *bona fide* declaration was sufficient and the registration officer had neither the authority nor the means to go into the accuracy of the application. The minority opinions refused to accept this construction of the law and thought that the officer was not obliged to receive any declaration at its face value when it was clear (both to the officer as well as to the court) that the declaration was not true. But the minority judges were divided on the reasons for rejecting Shalit's application. Two religious judges, Silberg and Kister, refused to be swayed from what they regarded as the crucial point. The idea that there is a Jewish nation, which one could enter otherwise than through the gates of *Halacha*, clashed with what they saw as the very essence of the Jewish phenomenon. Two other judges, the President and Justice Landau, thought that the question of "who is a Jew" was an ideological issue which was not fit for judicial

determination. If, in the case of the Shalit children, *leom* remained blank this would not constitute an infringement of rights and the court could refrain from intervening in the matter without relinquishing its duty as protector of civil liberties.

In short, only three out of the nine judges actually delivered any opinion on the controversial question. But the religious parties were in no mood to be appeased or distracted by legal quibbling. Any breach of the *Halachic* wall was a catastrophe which had to be averted. Accusations were thrown against the Supreme Court Justices with growing ferocity. The Minister of Justice joined in with a criticism of the court's earlier suggestion to delete the item *leom*. Many in the secular sector thought that a showdown with the religious sector had to be avoided at all costs. Mrs Meir, prompted by the Minister of Justice, and eager to keep her national coalition government, decided on an attempt to reach a compromise solution. A week later, the two Shapiros—the Minister of Justice and the Minister of Interior—came out with a proposed package deal which comprised the following items:

1. The court's ruling would be carried out by the Minister of Interior.
2. The Knesset would change the law so as to exclude from the definition "Jew" anyone who is not recognised as such by *Halacha*.
3. The Law of Return would be extended to incorporate—both with regard to immigration and citizenship—spouses and children of Jews.

Later, and because of growing criticism inside their party, the Labour Ministers agreed on a further concession: conversion to Judaism will be recognised even if the ceremony is performed by non-orthodox rabbis outside Israel. The Law of Return was further extended to cover grandchildren of Jews.[7] When the news of Labour's surrender broke out, attacks against the Government reached a new pitch. The high-handed fashion in which the Government acted was typical of the Israeli centralised political system. Disregarding the strong secular feeling, the Labour Ministers were ready not only to upset the court's ruling, but also to push the bill through the Knesset with unbecoming speed. Labour's swift action was motivated by its desire to put a quick end to an impending governmental crisis and to avoid the growing public storm. But inside Labour, a strong and vociferous minority spoke out against what it regarded as a shameful capitulation to "religious blackmail." On Tel Aviv walls anti-government and anti-religious slogans appeared. *Ha'aretz*, the Tel Aviv independent daily, and the *Jerusalem Post* came out strongly against the Government's initiative. Ben Gurion condemned the Bill and by way of protest refused to pay the customary respect to religious sensitivities by not wearing a hat at the televised funeral of a well-known Israeli author.

ONE COALITION PARTY—the leftist *Mapam*—said it would vote against the Government's bill and two other coalition parties—the Liberals and Independent Liberals decided to abstain. While the Knesset debated the bill, 4,000 outraged Israelis demonstrated outside and broke into the Knesset grounds. The following day, 4,000 religious Israelis staged a counter-demonstration. Inside the Knesset, the debate was punctuated by a number of incidents. Shalom Cohen, member of *Ha'olam Hazeh* (a small radical party), tore up his identity card as a gesture of protest, while an outraged House answered him with an angry chorus of shouts. Uri Avneri, the other representative of *Ha'olam Hazeh*, refused to obey the Speaker's order and was carried out by the Knesset guard. In the final stages of the Bill, Rabbi Porush, member of the ultra-orthodox Agudah Party, interrupted his speech, and in order to express his objection to non-orthodox conversions, produced a Reformed prayer book and threw it on the floor. The usually quiet and timid Knesset erupted into pandemonium.

Mrs Meir, by now absolutely convinced in her righteousness, refused to take off the party whip, even though there could not have been a stronger case for allowing members to vote according to their conscience. She insisted on imposing party discipline in order to obtain a clear majority. She thought that this would give the new law a moral authority—surely a strange piece of logic. There were also some rumours that the Prime Minister threatened to resign if the party did not stand behind her.

[7] The amended law recognises any conversion, as distinct from conversion in accordance with the *Halacha*—the phrase used in the 1960 directives. Whether the true interpretation of the law excludes non-Orthodox conversions performed in Israel, remains to be seen. The religious parties have already served notice that any recognition of such conversions will be seen by them as a *casus belli*. Here, again, they demonstrate that preservation of the Orthodox monopoly inside Israel is of primary importance. From a purely religious point of view there is no distinction between conversions performed in Israel or outside it.

Speaking in favour of the bill, she made an emotional case for holding on to Jewish tradition and against mixed marriages. A few critics pointed out that these two issues were irrelevant: nobody had suggested forsaking the Jewish heritage and the law had no effect on mixed marriages. Such marriages are not prohibited under Israeli law[8] and the new law, far from discouraging such marriages among Jews abroad, at least theoretically encourages them by inviting them to immigrate to Israel under the new amendment to the Law of Return. Even less satisfactory was the government's attempt to explain its refusal to delete the item *leom* altogether. The alleged security grounds were hardly mentioned in the debate —instead the government's spokesmen talked of the impact of the registration on Jewish awareness at home and on Jews in the Soviet Union, who would, according to this view, be greatly disturbed by such a deletion.[9] Needless to say, the law was passed: 51 out of the 120 members voted for it; 14 against and 9 abstained.

BY NOW THE STORM has subsided and public attention is focused on the continuing war. But the issue is still alive: Israel is a secular society with a strong orthodox minority. There is some proof that a great many Israelis refuse to accept the *Halachic* definition of who is a Jew. In an opinion poll taken in Israel in November 1968 for the *Jewish Chronicle*, 59% of the representative sample of Israelis questioned gave varying answers, such as "those who consider themselves to be Jews" and other replies clearly indicating non-religious criteria. Only 19% gave answers in accordance with *Halacha*. Public opinion may have swayed since then, but the strong secular feeling has certainly not disappeared.

WHEN ONE REVIEWS THE WHOLE affair, the impression is a mixed one. In the opinion of the present writer the new laws are objectionable as a matter of principle. Questions of identity, such as who is a Jew, cannot be defined by legislative measures. The Knesset, by adopting the government's bill, intervened in an ideological dispute and purported to force upon secular Israelis a concept which many reject.

> It is absurd, [wrote Dr. Jack Cohen, a conservative Rabbi, in the *Jerusalem Post* (6 February 1970)], that a parliamentary body in a pluralistic, democratic state should decide the identity of a section of the population.

Such legislation is even more unpalatable when rushed through parliament under the threats of party whips and an impending political crisis.

On the other hand, from a practical point of view, the new laws can be considered as a step towards liberalisation. The religious parties got what they wanted on the insignificant issue of registration, but had to yield on the material issue of the Law of Return. This law now applies to many who are not regarded as Jews by religious laws.[10] For the first time in Israel's history, the orthodox monopoly has been broken and non-orthodox conversions, at least abroad, are officially recognised. This recognition may accentuate the paradox. Miss Elizabeth Taylor, converted by a reformed Hollywood rabbi, would be recognised as Jewish while the Shalit children are rejected. But the precedent is of great importance. It is the first step towards introducing a pluralistic concept of Judaism into a country which is sharply divided between secular and orthodox camps. Already some religious leaders are beginning to realise that the government's solution may do them more harm than good.[11]

At the beginning of June, the National Religious Party was about to leave the cabinet on the relatively unimportant issue—the Helen Seidman affair. Mrs Seidman, a new immigrant

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[8] There is no law in Israel which prohibits mixed marriage. Rabbinical jurisdiction applies only when both parties are Jewish. There are in Israel hundreds of mixed couples—usually an Arab husband and a Jewish wife—who were married and registered as married in Israel. Under Moslem law such marriages are valid and, consequently, such marriages are possible.

[9] Under Soviet law, the Jews are registered as having a separate "peoplehood." It was argued that any deletion of the item "Jewish" from the Israeli identity cards would shock Soviet Jewry, whose registration as Jewish is one of the safeguards against total assimilation and oblivion.

[10] Automatic citizenship, under the new amendment, is extended to any person, who has, or has had, one Jewish grandparent. Needless to say, this extension has not affected the rights to naturalisation. Under Israeli Citizenship Law, naturalisation is a relatively easy process: the requirements laid down by law—mainly, continuous residence of 3 out of 5 preceding years and some knowledge of Hebrew—are relatively lax.

[11] The Law does not make the new definition of a Jew obligatory for Israelis who refuse to be registered as having any *leom*. It only states that no person shall be registered as Jewish by *leom* unless born to a Jewish mother or converted. Thus Israelis do not have to declare themselves as belonging to any religion or *leom*. A similar situation exists in Yugoslavia. Article 41 of the Yugoslavia Constitution states that "no one shall have to declare himself as to nationality or determine himself for one of the nationalities."

from America and a member of a kibbutz, had been converted to Judaism by a reformed rabbi in Tel Aviv three years ago, before the ruling in the Shalit case. As a member of a secular kibbutz, she would have been disqualified by the Orthodox Rabbinate; she could not promise to observe the laws or eat *kosher* simply because there is no *kosher* food in her kibbutz. When the Interior Ministry refused to register her as Jewish, she went to court. Her case had to be decided in accordance with the Shalit ruling, as the new amendments did not have a retroactive effect. The Attorney General made it clear to the government that under the Shalit ruling, the petition was justified and that he could not defend the Interior Ministry's stand. A new outcry arose and the Chief Rabbinate issued another injunction ordering the Minister not to register Mrs Seidman as Jewish, even if ordered to do so by the courts. The hand of the Religious Ministers was thus forced and they threatened to leave the cabinet, unless the government yielded and initiated a law which would abrogate the court's expected decision.

This time Mrs Meir and her party refused to yield. One day before the court was due to deliver its judgment, the breaking up of the national coalition government seemed inevitable. But the Government and National Unity were saved, like the heroine in an old-fashioned farce, at the very last second, by a miraculous happy end.

A farce indeed it was. Poor Mrs Seidman, prompted by an unbeatable combination of Labour dignitaries and righteous Rabbis and warned of the grave responsibility placed upon her, was talked into undergoing a quick Orthodox conversion, to be performed by the Chief Army Rabbi and two other Army rabbis. The court's ruling was to be delivered on Monday, 15 June. On Sunday, Mrs Seidman was rushed through a supersonic ceremony purporting to be a conversion. On Monday, she was registered as Jewish by jubilant Ministry Officials. On the same day, she cancelled her application to the court, thus eliminating the immediate cause for governmental crisis. On Tuesday, however, the Supreme Rabbinical Court ruled that Mrs Seidman's conversion was not valid, because it had been conducted by an unauthorised tribunal; but before a new crisis arose, the conversion was validated by a lower Rabbinical Court.

The whole episode has lowered the reputation of established religion in Israel. Furthermore, the whole issue of reformed conversions remains unsolved and will probably plague the government in the not-too-distant future.[12]

PERHAPS THE GOVERNMENT'S GREATEST FAULT was that it closed its eyes to the new reality of Israel. The very existence of a secular Jewish state, where the great majority of Jews are in the process of establishing their national identity without relying primarily on religious links, is part of this new reality. The evolution of a new type of Israeli Jew, dependent more on common national and cultural ties than on common religious observance, cannot be disputed. No legislative measure is going to stop this process.

By ignoring these facts of Israeli life, Mrs Meir found herself in an absurd situation. She, like most Labour leaders, does not observe religious law. Mrs Meir admits that her kitchen is not *kosher*, and she breaks many rules which according to *Halacha* are grave offences. Moreover, as a woman she is disqualified by the *Halacha* from any public office. Yet, when it comes to the Shalit family, she refers them to a religious solution: conversion. Under Jewish law conversion must be undertaken willingly and without any ulterior motive. Under these rules, persons like Anne Shalit and other atheistic Israelis, would be disqualified from conversion. Moreover, by referring the Shalits to the religious formula, Mrs Meir demands of Anne Shalit and her children a standard of behaviour she and her colleagues fail to maintain. To religious Jews the case is simple and the definition of a Jew is clear and coherent. To secular Jews, the case is difficult and the religious solution of conversion unsatisfactory.

It has been said that the new amendments seek to diminish the cleavage between Israeli and Diaspora Jews. A national, as distinct from a universal-religious definition of a Jew, is open only to Israeli Jews. An Englishman, or an American, unless he is a Jew in the traditional sense, cannot be said to be a Jew by nationality or *leom*. In other words secularisation of the concept of Jewishness in Israel may weaken the links by which Diaspora and Israeli Jews are tied together. Yet this argument is hardly applicable to the strong secular elements in the Jewish communities of Western Europe, America, and the Soviet Union. The debate on Jewish identity, when couched in legal terms and

[12] The Seidman episode was ridiculed in the press and prompted Ephraim Kishon to comment: "Now we know why God loves us. We make him laugh. . . ."

translated into legislation, embarrasses Jews who were brought up on liberal traditions and the idea of separation of State and Religion. As Professor J. L. Talmon has already pointed out in ENCOUNTER, by such measures the religious bloc in Israel may be achieving the very opposite of what they are so anxious to secure: "Instead of erecting a dam to the forces of assimilation, they may be estranging and discouraging those whom they wish to save. . . ."

The Government was not asked to solve the problem of Jewish identity. The Court, in its suggestion to strike off *leom*, as well as the majority judgment, sought to refrain from deciding the issue. It has shown greater wisdom and better judgment than the Government.

THE ISRAELI EXPERIENCE is governed by two contradictory forces—tradition and renewal. True, Israel's roots go down into Jewish history, but out of these roots a new tree has grown. It is not always easy to distinguish where the roots end and the trunk begins, but one can tell the trunk from the roots. The type of Jewishness emerging in Israel is similarly distinguishable from the Jewish heritage which nourishes it. Future historians may regard the Shalit affair, and its subsequent tumult and shouting, merely as another in the series of growing pains of this unique tree.

LETTERS

Fletcher's Tories

RAYMOND FLETCHER ["Where Do We Go From Here?" ENCOUNTER, December] has chosen to speak with authority about the 1945-51 history of the Conservative Party. I'm afraid he is wrong in fact and interpretation. Let me first declare my "interest." I have been engaged in research in this period for a dissertation. Thanks to the late Iain Macleod, Sir Michael Fraser and Lord Butler, I have been given access to a great deal of information (not at all pre-selected) about these years.

Mr Fletcher writes that the "bright young men who served their apprenticeships in Central Office under the guidance of Lord Butler were mainly training themselves for office (which they eventually got.)" Mr Fletcher is confusing matters, and not merely technically. The "bright young men" under Lord Butler served under him as chairman of the Conservative Research Department. And that is not a distinction without a difference. Others ran the Central Office at the time (Ralph Assheton, Lord Woolton), but the Research Department, Neville Chamberlain's creation in 1929, was a private preserve.

As for the "bright young men", they couldn't have been very bright if they entered the Research Department or Central Office after 1945 in the hope of achieving public office. After the thunderous repudiation of the Conservative Party in the 1945 elections, who but a deluded optimist could have believed in their early return to power? There were virtually no safe seats then and no one could say if there ever again would be safe Tory seats except perhaps for Waldron Smithers'.

I don't think there's anything wrong in entering politics to obtain office. (As Dr Johnson once said, "Politics are now nothing more than a means of rising in the world.") However, a young man who joined the Labour Party in mid-summer 1945 might more easily be described as training *himself* for office than Iain Macleod, Enoch Powell, Reginald Maudling when they decided to work for R. A. Butler in the Research Department. And there were other young men (Fraser, David Clarke) uninterested in public office, who entered the Department because they wanted to see a restoration of Tory principles. Isn't it possible that someone like Macleod, who later risked his political career by defying powerful Tories on the colonial question, might have joined the Party because he disagreed on principle with Labour's socialist philosophy? Had he wanted to rise above principle, the Labour Party would have been the intelligent place to go.

Mr Fletcher says that "all those Charters and Manifestos that were unread by anyone, except political correspondents short of a story or Transport House researchers after political ammunition, were products of a fringe activity." We will put down to hyperbole that the "Charters and Manifestos were unread by anyone." They did have a wide audience as a bit of investigation would easily prove. That, however, isn't important. What is important to disprove is Fletcher's statement that "the Conservative Party did not *debate* itself into an acceptance of the Welfare State between 1945 and 1951." On the contrary, it did "debate itself" but not only at party conferences. It was, like any serious party political debate, behind-the-scenes, at private Conservative committee hearings held all over Britain. In actual fact, the hearings were intended to prepare the party's supporters for what was coming, *viz.* the "Industrial Charter." Under men like Butler, Macmillan, Heathcoat Amory, and Research Department staff like Fraser and Clarke, an enormous amount of work was accomplished, not least of which was persuading—with surprisingly little difficulty—Winston Churchill that a new day was at hand.

Mr Fletcher says that the "Tories did not embrace the Welfare State and then proceed to reform it. They were stuck with it and behaved accordingly." Quite so for some Tories but there were others who were prepared to go far in changing the party, *e.g.* Butler, Macmillan and,