

# perspectives

OPINION **MARSHALL BREGER**

## A JEWISH STATE, BUT WHAT KIND?

It's more complicated than rabbis, courts or legal rulings.

In December, Arab Knesset member Mansour Abbas noted that Israel was born as a Jewish state and will remain one, so the pressing question of the status of Arab citizens there “is not about the state’s identity.” But if the past is any guide, agreeing that Israel is a Jewish state will do little to settle what kind of Jewishness the state should represent.

The question goes back to the state’s earliest days. In 1947, the ultra-Orthodox group Agudath Israel agreed in negotiations with David Ben-Gurion to accept the new state if it used the Orthodox definition of Judaism for public functions and personal status issues (such as marriage). Orthodox political power has kept this deal in effect. But while the Orthodox community views the matter as decided, sociological changes on the ground—such as Sephardic and Russian immigration and the growth of a hedonistic, diverse urban culture in Tel Aviv—have kept the question open.

The perennial debate over “Who is a Jew?” reflects that underlying struggle: Who gets a voice in defining Jewishness? In 1962, the Orthodox answer—you are considered a Jew if your mother is Jewish, even if you convert to another religion—came up against the notion of political citizenship in the modern state. Brother Daniel was a Polish Jew who converted to Christianity during World War II; he later became a priest and sought to move to Israel as a cleric to minister to the Christian community there. Instead of seeking a clerical visa, he tried to immigrate under the Israeli “law of return,” which states that all Jews, with very narrow exceptions, have the right to move to Israel and become citizens.

The Israeli Supreme Court ruled that when Brother Daniel became a priest, he perforce chose *not* to participate in the community of fate (in Hebrew, *brit goral*) that is the Jewish people, and therefore could not make use of the state’s law of return. The

court thus rejected the Orthodox definition of citizenship, finding, in Judge Zvi Berenson’s words, that the law should be given a “secular-national and not a religious connotation.”

The court took the secular-national approach further in the 1968 case in which an Israel Defense Forces officer, Benjamin Shalit, married a Scottish Christian woman, brought her to Israel and sought to register his children as Jewish by nationality, not religion. The court accepted this position, with Judge Yoel Sussman finding that affiliation “to a given religion or a given nation derives principally from the subjective feeling of the person concerned.”

The Knesset, however, in effect overruled the court’s decision. It immediately amended the Law of Return in 1970 to grant automatic citizenship rights to anyone with a Jewish parent or grandparent. At the same time, it explicitly defined a “Jew” as someone “who was born of a Jewish mother or has converted to Judaism and who is not a member of another religion.” This enshrined the Orthodox definition of “who is a Jew” in secular law.

The law further defined anyone who has converted to Judaism as a Jew, and therefore able to take advantage of the law of return, but it did not specify what type of conversion would count. Orthodox law as codified by the Israeli rabbinate does not recognize the validity of Conservative or Reform conversions. However, in March 2021, the Israeli Supreme Court recognized conversions performed in Israel by the Reform and Conservative movements, issuing a technical opinion that used the Population Registration Act to find that the state should acknowledge as Jews all those converted by “recognized Jewish communities.”

Astonished, perhaps, by its own courage, the court then promptly retreated to statutory hairsplitting by affirming the Interior Ministry’s rejection of the application of



Brother Daniel, born Oswald Rufeisen.

Yosef Kibitya, a Ugandan member of the Abayudaya tribe, to settle in Israel under the law of return. The Abayudaya have long believed themselves to be Jewish and for some years have been undergoing formal conversion by the Conservative movement, but at the time of Kibitya’s conversion they were not yet a “recognized Jewish community.” (He had been converted a year too early.) The rejection will likely again be appealed on other grounds.

All this tells us that the politics of religion in Israel are far from settled. Sometimes the court accepts a secular-political approach and sometimes it retreats to a traditional religious approach. The Knesset, sensitive to votes, has generally hewed to the religious approach, not only on conversion but on laws related to marriage, divorce, kashrut and transportation. But popular sentiment has supported workarounds, such as the use of cultural funds to subsidize non-Orthodox synagogues.

The failure of the Orthodox definition of Jewishness to “settle in the nation” opens space for other forms of self-definition, such as the 2018 Basic Law that declared Israel “the Nation State of the Jewish People,” upending efforts by liberals to define Israel as a “Jewish and democratic state.” But no one law will end the negotiation over the meaning of Jewishness in the Jewish state. Only time will tell.

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