Balancing Halakha, Jewish Peoplehood, and Democracy in Israel

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During the last decade, the State of Israel has struggled to refine policies related to conversion to Judaism on multiple levels. There have been a number of conversion annulments, even more attempted annulments, some of which were rejected in Israel's rabbinical courts. Others were dealt with by Israel's Supreme Court. There have been hundreds of cases of converts who were unrecognized by local rabbinates, hundreds more who converted overseas and were denied entry into Israel under the Law of Return, and finally, thousands who sought conversion in Israel but were unable to convert through the national system, either because the process was too burdensome, or alternatively, because they were rejected out of hand by the Ministry of Interior.

Is the State of Israel, the Israeli rabbinate, or the Ministry of Israel anti-conversion? If one were to perform a cursory reading of media stories related to conversion in Israel, one might get that impression. As a friend wrote to me recently after reading an article about conversion, "Is Israel simply a banana republic? … Here you have a woman who has converted through two different Batei Din; she is Jewish by any definition (even for the most extreme Haredim); and Israel won't let her live in the country? … I don't know who is worse when it comes to converts, the Batei Din or the Israeli government?"

This article seeks to address these issues from the ideational perspective. It highlights the tension that is latent in the emended law of return from 1971,

which enables converts to make aliya and receive Israeli citizenship automatically. It also discusses the role of the rabbinate in overseeing conversion in Israel. Ultimately, it argues that even though there is significant unnecessary anguish inflicted upon converts and those seeking conversion, the issues that motivate the seemingly (and often deliberate) arbitrariness of the Israeli establishment need to be addressed on a more comprehensive level.

Conversions Performed Outside of Israel

One of the great debates of the last 30 years relates to the responsibility of the State of Israel to recognize conversions performed outside of Israel. This issue has a double aspect, since Israel's political establishment has divided the "recognition" into two areas. For purposes of aliya, it is the Ministry of Interior that recognizes conversions. For purposes of marriage, it is the rabbinical courts who are empowered to certify the conversions.

Regarding the Ministry of Interior, it should be noted from the outset that from the perspective of emigration, the Law of Return's relevance to conversion is even more problematic than the law's acceptance of those born Jewish. It is one thing to accept someone based on ethnicity for emigration purposes. It is another thing to accept a Jew by choice. This was made clear to me once by the State Attorney General who asked me, "Why should someone in New Square who has never visited Israel, and might not even believe in Israel's right to exist, be able to determine who can emigrate to Israel?"

In one sense, this is a compelling argument. On the other, if the thrust of Jewish tradition is to accept converts as full members of the people, and moreover, if Israel's law (as it currently does) anchors the rights of converts, then the Ministry has no choice but to accept converts.

Thus, the question becomes not "Should the State civil authorities accept converts?" but rather "Who is considered a convert?" This may be relevant to the question of "who is considered a rabbi," but given the fact that the halakha makes it clear that a Bet Din may be composed of non-rabbis (in addition to qualifying that there is no real semikha today), it seems to me that we need not identify our criteria for rabbis today. Instead, we need to speak of Jewish communities.

During the last decade, the Ministry of Justice has sought to limit the civil rights of those who completed conversions overseas, by denying them the status of a "convert." Rather than rely on the local Jewish community's definition of

conversion, the ministry has adopted an objective definition of convert: one who immerses in the mikvah; who, if male, undergoes circumcision; who studies a particular curriculum for a particular amount of time; and who lives in the community prior to and following the conversion for a particular amount of time.

These requirements were challenged in the Israeli Supreme Court and in a repercussive decision penned by then Chief Justice, Aaron Barak, they were summarily rejected. Justice Barak wrote:

Regarding the Law of Return, we should recognize conversions performed in recognized communities based on their self-determined principles. For this purpose it is immaterial whether the convert joins the same community following his conversion, if he transfers to another Jewish community outside Israel, and then goes to Israel, or if he comes to Israel soon after the conversion. Regarding this last point it is immaterial, whether before immigrating to Israel, he resided in Israel or came to Israel for the first time after the conversion. In all cases, conversions conducted abroad should be recognized by the Law of Return….

We are aware of the need the State to maintain control of recognized conversions in the context of the Law of Return. This prompted a state's natural need to monitor the process of becoming a citizen in person. Conversion is not just a private act with a religious dimension. Conversion also has a national-civil aspect. This second dimension demands governmental oversight. This should be manifest in our conception that conversions performed abroad be effected in the framework of a recognized Jewish community. These will meet the demands of the Law of Return. With this the State maintains its oversight, while maintaining the connection between people in Zion and the people in the Diaspora. [1]

Chief Justice Barak, who clearly was seeking to empower the autonomy of the local Jewish communities, demanded from the Ministry of Interior to retract their policy and establish new criteria for allowing converts to be eligible for aliya.

Although two attempts at new criteria have been proposed since 2005, this issue has yet to be resolved, and a number of lawsuits have challenged the ministry on this issue, most recently, in 2011. [2]

The issue of recognizing conversions for purposes of aliya has nothing, prima facie, to do with halakha or Jewish tradition. In fact, based on an Israeli Supreme Court decision in 1988, the State must recognize conversions from all of the denominations, Orthodox, Reform, and Conservative. And yet, even this decision is repercussive given the new landscape of the Diaspora Jewish community.

Consider for a moment whether Israel ought to accept as a candidate for aliya someone who converted to Judaism in a post-denominational community, or someone who has converted through the internet, or, perhaps, through a Jews-for-Jesus community. My sense is that in the first case, there would be some deliberation, in the second, less so, and there would be general consensus that in the latter case, the individual shouldn't be able to emigrate as a Jew under the Law of Return.

The confusing (or "banana-republic") approach of the Ministry of Interior regarding converts is partly due to inefficiency and naiveté on the part of clerks who are unaware of the nuances of the Diaspora communities. But it is connected to the diverse landscape of the Jewish community as well. I have participated in a number of meetings where I found myself as an Orthodox rabbi advocating on behalf of a convert and found the Conservative or Reform movements fighting against me.

Given these complexities, it is not surprising, even as it is disturbing, that the Ministry of Interior has significantly raised the bar on who it perceives as a legitimate convert, and its clerks resort to seemingly absurd tactics to certify a conversion. The most extreme measure of this began in late 2010, when the Ministry began consulting with the Chief Rabbi of Israel regarding the recognition of Orthodox conversions from abroad for purposes of aliya. As stated above, the Supreme Court had already ruled that non-Orthodox conversions were accepted, and because of this, there could be little hope that the Chief Rabbi would certify most conversions. And yet, in response to a query regarding who determines a "recognized Orthodox community abroad," the spokesman for the Israel population registry wrote that Israel's Sephardic Chief Rabbi is the leader of Orthodox communities around the world—a statement that I would imagine would cause alarm in the Diaspora.

In the end, the issue has been joined by the Ministry agreeing that the Israeli Chief Rabbi has no authority to determine the legitimacy of conversions. Instead, the ministry committed to consult with the Jewish Agency on matters of "recognized" Jewish communities.

Still, the attempt to introduce the Chief Rabbi into the picture stems from a bind that highlights the problematic nature of the Law of Return, on one hand, and the desire to be inclusive when it comes to converts on the other. Even after the agreement was reached in July 2011, the Ministry of Interior continued to consult with the rabbinate on foreign Orthodox conversions, and the new directives continue to be monitored.

The Role of the Rabbinate

If the responsibility over certifying conversions performed outside of Israel is problematic, the legal status of conversions performed in Israel is equally fraught with tension. In Israel, there are national conversion courts that operate under the auspices of the Prime Minister's office and employ some 30 rabbinical court judges. For our purposes, the conversions performed in the Israel Defense Forces (army conversions) also fall into this category. These conversions are all performed by Orthodox rabbis chosen by the Chief Rabbi. Then there are private conversion courts, which exist in the Orthodox, Conservative, and Reform communities in Israel.

The national conversion system is grounded in a pre-mandatory law which enables those completing the course of study and passing the rabbinical court's test (and mikvah) to receive a teudat hamara, or conversion certificate, which for non-citizens allows for aliya, and for citizens, allows for marriage through the rabbinate. [3]

The following chart illustrates the number of individuals who have converted in the national system in the past four years.

Year	FSU	Ethiopia	Other	Total
2007	1864	5538	606	8008
2008	1804	3614	803	6221
2009	1849	3710	672	6231
2010	2159	1813	673	4645
2011	1936	1647	710	4293

During the same period, the Reform and Conservative communities have effected together approximately 100 conversions in Israel each year, while private Orthodox rabbinical courts such as that of Rabbi Nissim Karelitz in Benei B'rak, have moved from converting 20 to 25 people a year to converting more than 400 a year.

The remarkable growth of the Orthodox private conversion "industry" raises two questions: first, why is there such growth, and second, what are the implications of the conversions in the legal sphere?

There are two essential factors that would lead someone to a private Orthodox conversion in Israel: Either the national system won't accept them as a candidate, or the national conversion won't meet their own standards of Jewishness. It is this first area that I would like to address in our context to demonstrate that there is a

real tension latent in conversion in Israel, even when it borders on the absurd.

The Israeli conversion system is built for citizens of Israel, and addressing non-citizens who seek conversion isn't exclusively a halakhic area. And still, Israeli halakhists and particularly the head of the conversion courts must address this issue frontally.

According to directives of the Prime Minister's office, if a student, foreign worker, or even non-Jewish spouse of a Jewish Israeli seeks conversion in Israel, he or she cannot open a file with the conversion courts. First they have to prove to a "committee on exceptions" that they are not trying to convert only to receive citizenship.The committee (or vaadat harigim) is made up of representatives of the Ministry of the Interior, the Legal Department of the Prime Minister's Office, and the Office of the Chief Rabbi.

The committee automatically rejects any application from foreign nationals in one of the following categories:

1. Illegal residents
2. Infiltrators
3. Local residents or a resident of neighboring countries
4. A foreign citizen holding a B-1 visa
5. A temporary resident holding an A-5 visa who has lived in Israel for less than one year

Now this may seem technical, but even if someone is completely committed to halakha, or is married to a Jewish Israeli, he or she cannot even approach the rabbinical court, since he/she is stopped by the committee. If someone does meet the basic threshold, he/she must still demonstrate to a non-rabbinic body that his/her intentions to convert are genuine. This can sometimes take months, and sometimes years, and ultimately is arbitrary. I should note that at present, the functioning of this committee as the arbiter of the future of people's lives has been broached in the Knesset and is now being investigated by the State Ombudsman's office. But in the meantime, this issue is still a challenge.
Just to provide an example to illustrate the challenges: I am presently trying to help a woman to convert. She is completely committed to halakhic observance. She was married civilly to an Israeli man more than four years ago. She began the process of converting, and was approved to convert by the State authorities. The rabbinical court demanded that both she and her husband begin a process of study. However, as she became more observant, her husband refused to adopt her full halakhic lifestyle, and recently she divorced him. As soon as the

conversion authority heard that she was divorced, the rabbi in charge of the committee said that she was ineligible to convert, and she is now in limbo, unable to convert, but equally unable to turn the clock back on her commitment to the Jewish people.

The director of the committee who has rejected this young woman is the representative of the Chief Rabbi of Israel. As the committee's regulations have become more draconian, more and more individuals seeking conversion have sought private conversions, in order to join the religious community, if not the national one.

There is an ironic twist to the legal aspect of private conversions. In 2002, the Reform and Conservative denominations convinced the high court in Israel that their local converts should be registered as Jews in the population registry, even if they didn't receive a teudat hamara. However, today, with the increase of private Orthodox conversions, no such arrangement exists and the Orthodox conversions are not recognized by anyone official in the State of Israel.

In short, the rabbinate—both by trying to play a role in the criteria of aliya of Orthodox converts, and by trying to raise the threshold of eligibility for those seeking to convert in Israel—is actually downgrading halakhic conversions. Because the Reform and Conservative denominations have stronger legal representation in Israel, their converts are actually being treated better than Orthodox ones.

Moreover, even though the issues of emigration of converts or eligibility for conversion are not purely halakhic issues, halakhic authorities are being asked to make decisions on these issues that are relevant to the policies of the State of Israel, something that in the end may undermine both the halakha and the policies of the State.

Future Directions

As I articulated at the outset, the policy issues facing the State are complex. I don't believe that Israel is a banana republic, but I do believe that a lot more critical thinking must be done to determine how conversion functions in Israel, and how the State of Israel can ensure—in the spirit of Jewish tradition—that those genuinely seeking conversion and those who have completed conversion can be full members of the Jewish people.

Israel is not a halakhic State, and given the needs of the Jewish people today, that is a good thing. However, to allow State institutions, and particularly the

rabbinate, to function counter to Jewish tradition when it comes to a vulnerable population such as the community of converts is
irresponsible. Much more advocacy needs to be done on behalf of Orthodox converts so that the rabbinate will not be able to maltreat this group in the name of “halakha.”
Over the coming years, hundreds of thousands of individuals will consider conversion to Judaism and tens of thousands will convert in an Orthodox manner in Israel. How the State relates to them both during the process and beyond will, to a large extent, determine the very fabric of Israeli Jewish society in the coming generation.

[1] Supreme Court decision 2597/99 Makarena vs. Interior Ministry.
[2] Supreme Court case 9411/11 Lidia Bicos vs. Interior Ministry.
[3] This seems to be the perspective of the court although the actual law simply states that someone with a teudat hamara can be judged in the religious court system rather than in the civil system.