

Imagined Citizenship

By Marwan Dalal¹

In 1999, I had the opportunity to give a lecture before an American Jewish group in New York about the reality from where I came. Then, as today, reality did not flatter the State of Israel. At the end of the lecture, which was received attentively and yet with surprise, a member of the audience, a successful businessman in his late forties, approached me. He asked me about an issue which I had not raised in the lecture but that seemed relevant to him personally. He asked my opinion about the State of Israel's non-recognition of the Reform Movement within Judaism. My answer revealed my wonder at the ease with which he conceded to a public official in a foreign country the right to determine his identity. The man seemed bemused and smiled at me politely. It was clear to me that the reasonableness of my answer was not convincing to this individual, who probably grew up listening to the sentiment expressed by the former United States Supreme Court Justice Louis Brandeis, who served on the Court between 1916 and 1939. Justice Brandeis stated that, "Practical experience and observing life convinced me that in order to be good Americans, we have to be better Jews. And in order to be better Jews, it is necessary to be Zionists."²

It is highly doubtful whether the reality here - before, during and immediately after 1948 - was perceived from the United States, or if there has been any will to observe it. In any event, in 1963-1964, Professor George Friedman, an internationally-renowned Jewish French sociologist and strong supporter of Israel, visited the country. A year after this visit, he wrote a book in which he analyzed the society which he had encountered. He apparently failed to notice the military regime that was imposed on the native community, the Palestinian Arab minority. However, he concluded his book by arguing that, with each passing day, a new people is being created in Israel, which is not the Jewish people, but rather the Israeli nation. This conclusion was drawn before the publication of Benedict Anderson and Eric Hobsbawm's books regarding the creation of nations.

Friedman's book was a principal evidentiary tool employed by Mr. Tamarin in his appeal to the Supreme Court to compel the Israeli Interior Ministry to register his nationality on his identity card as "Israeli" and not "Jewish." Then Chief Justice of the Supreme Court Shimon Agranat, who was born and raised in Chicago, emphatically rejected Tamarin's request, emphasizing the existence of a Jewish people and the absence of an Israeli nation. Israel's Declaration of Independence provided Agranat with a substantial evidentiary mechanism with which to determine the purpose and essence of the state of the Jewish people. Comparing between those who pursue "Israelism" and the separatists in the south of the United States during the Civil War, Agranat contended that:

Therefore, if there is in the country today – just 23 years after the establishment of the state – a bunch of people or even more – who ask to separate themselves from the Jewish people and to achieve for themselves the status of a distinct Israeli nation, then such a separatist approach should not be seen as a legitimate approach. It is prohibited to acknowledge this approach, since the principle of the right for national self-determination could not provide any justification for it.³

Agranat's judgment in *Tamarin* undermines enlightened positions which are critical of Zionism. According to Agranat, there is only a Jewish people in Israel and the world, and thus there is no such thing as "Israeliness." The main characteristic of this people is the solidarity which members of the group feel with each other. Before us, therefore, is not the negation of the

¹ Attorney, Adalah – The Legal Center for Arab Minority Rights in Israel.

² As quoted in Civ. App. 630/70, *Tamarin v. The State of Israel*, Piskei Din 26 (1) 197, 205.

³ *Tamarin* at 221.

Diaspora, but rather the negation of "Israeliness." Agranat repudiates the locating of the *sabra* (a Jewish individual born in Israel) at the center of the national Jewish experience, in contrast to the observations of the French sociologist Friedman, made in the context of his visits to the country.

However, Agranat's position situates him in a different place than that assigned to him by mainstream legal educators in Israel, as the protector of civil rights in the Supreme Court and author of the mythological decision of *Kol Ha'am* from 1953.⁴ Agranat denies the individual's own understanding of his identity, feelings, and creation. There was an opportunity for Agranat to write a decision that refuses Tamarin's request based on the provisions of the law, as did Justice Cohen. Agranat, however, preferred to establish his principled positions on his understanding of the national question on the pages of a Supreme Court judgment, thereby becoming an active participant in the process of creating a nation through the official institutions of a state.

The Jewish Diaspora received a further acknowledgement in a 7-4 judgment delivered by the Supreme Court on 31 March 2005, on the issue of "leaping conversions" to Judaism, whereby the process of studying for conversion was conducted in Israel but concluded outside of Israel.⁵ The question discussed in this decision was whether or not a person who is legally present in Israel, and who converted to Judaism abroad through a recognized non-Orthodox Jewish community (namely the Reform or Conservative Movements), will be considered a Jew for the purposes of the Law of Return. Chief Justice Aharon Barak, together with the majority of the Supreme Court, responded positively. Four dissenting justices had diverging approaches and wrote minority decisions. Justice Procaccia expressed the opinion that judicial review of this matter is premature, since more time should be granted to the Interior Ministry to allow it to promulgate regulations on the acknowledgement of conversions recognized by Jewish communities abroad. Justice Gronis held that acknowledging such conversions would provide an easy route to citizenship for questionable individuals. The two religious Justices, Turkel and Levy, emphasized the religious importance of the subject and the need for the Court not to intervene in the question of conversions.

This judgment exposes once again the existence of two systems of citizenship and obtaining citizenship in Israel. The Law of Return contradicts the statement made by former Supreme Court Chief Justice Meir Shamgar that, "The existence of the State of Israel as the state of the Jewish people does not negate its democratic character, just as the Frenchness of France does not negate its democratic character."⁶ The difference between the regimes of the two states is obvious: Frenchness is not connected, structurally or inherently, to any religion, whereas the State of Israel links itself with the Jewish religion. In addition, France has repeatedly expressed the will to secularize its official institutions, and does not imagine a ubiquitous people whose principal desire is to return to the borders of an ahistoric homeland. In other words, the concept of citizenship in France differs completely from that which prevails in Israel: in France citizenship is grounded in geography, whereas in Israel the main factor determining citizenship and the quality thereof is religion.

⁴ In this case, the Supreme Court overturned the Interior Ministry's decision to suspend the publication of *Kol Ha'am* (the daily newspaper of the Communist Party), emphasizing the right for freedom of expression. See H.C. 73/53, *Kol Ha'am Ltd. v. Minister of Interior*, Piskei Din 7, 871. However, compare this decision with *Yardor* in which Agranat confirmed the Central Elections Committee's decision to ban the El-Ard group, an Arab nationalist movement, from participating in the Knesset elections, relying mostly on his interpretation of Israel's Declaration of Independence. See Elections Appeal 1/65, *Yardor v. The Chairman of the Central Elections Committee for the Sixteenth Knesset*, Piskei Din 19 (3) 365.

⁵ H.C. 2597/99, *Tushbeis v. Minister of Interior*, (judgment delivered 31 March 2005), unpublished.

⁶ Elections Appeal 1/88, *Moshe Nieman v. The Chairperson of the Central Elections Committee*, Piskei Din 42 (4) 177, 189.

The Law of Return grants automatic citizenship to a Jewish person, regardless of where he resides, the moment he desires this citizenship. The state also devotes huge resources in the nurturing of such desire among Jewish communities world-wide, whose members are the citizens of foreign countries. The Citizenship Law sets forth a gradual process, and frequently a very strict one, for obtaining Israeli citizenship. The state invests material and symbolic resources to minimizing the opportunities for non-Jews to gain Israeli citizenship. The most obvious effort in recent years in this regard was the 2003 amendment to the Citizenship Law, which prevents family unification between Palestinian citizens of Israel and Palestinians from the 1967 occupied West Bank and Gaza Strip. The Supreme Court continues to delay its decision on the question of the constitutionality of this amendment, and thus practically legitimizes the continuation of a serious human rights violation – the violation of the right to a family life.

The subject of the Court's judgment regarding conversions was not the family unification of a citizen with his or her non-citizen foreign spouse. Rather, it was the desire of individuals to be recognized as Jews in accordance with the Law of Return, and their desire to gain citizenship via the main road towards the state of the Jewish people, while bypassing the monopoly of the Orthodox stream of Judaism, which controls all matters relating to the Jewish religion in Israel, including the process of determining who is a Jew in Israel. It was not argued before the Court that the petitioners are in serious distress, as are those who face a situation where the authorities are seeking to prevent a married couple from being together in the country. Consequently, the Court ruling did not relate to this issue. Thus, before the Court, there was no serious breach of human rights, but rather a general question with significant public and religious ramifications. Furthermore, it was not argued before the Court that the petitioners had only one option for gaining Israeli citizenship - via the direct path of the Law of Return - since the petitioners could have, had they so desired, taken the long and arduous route to gaining citizenship under the Citizenship Law. Therefore, one cannot avoid the conclusion that this petition challenged the dominancy of the Orthodox.⁷

Compared with Agranat in *Tamarin*, who tried to establish the existence of Jewish nationalism on the basis of scientific theories and even on liberal foundations, by quoting Professor Benjamin Aktsin,⁸ Aharon Barak pursues a nationalistic discourse faithful to the Ben-Gurionist "messiah-ism" regarding the Law of Return that founded the state of the Jewish people, and not the reverse. Barak wonders why the state prohibits someone who converted to Judaism from joining the Jewish people in the land of Israel, from joining the Jewish people who are sitting in Zion:

And why should we not allow recognition of a conversion that was conducted in a recognized Jewish community, if the convert is asking to join the Jewish people who are sitting in the land of Israel? Further, why should there not be an acknowledgment by someone who already lives in the land of Israel, when his desire is to secure the recognition of his joining the Jewish people who are sitting in Zion?⁹

In a short opinion, Justice Heshin completes the Ben-Gurionist ideology upon which Barak's decision is based. Although Heshin manages to make a minor revision to official Israeli

⁷ Of benefit here is a comparison of Supreme Court Justice Heshin's principled position regarding the need for the Court not to intervene in the issue of compelling mixed-city municipalities to also use Arabic on their municipal signs, with his position regarding the need for Court intervention on the issue of conversion. If there is a common factor between the two cases, it would be interesting to investigate the reason for the difference in Justice Heshin's positions. See H.C. 4112/99, *Adalah, et. al. v. Tel Aviv-Jaffa Municipality, et. al.*, Piskei Din 56(5) 393, 418-473.

⁸ *Tamarin* at 219.

⁹ *Tushbeis*, judgment of Chief Justice Barak, paragraph 17.

historiography by briefly noting the suffering endured by the refugees of the Second World War, and the reality of the Mizrahim in the *ma'abarot* (transit camps) in the early 1950s, he quickly returns to the official path, negating the cultural wealth, the difference, and the history of Jewish communities around the world. He subordinates them to a single historical rule, which distinguishes them from other communities, that is, their longing to come to the land of milk and honey, the land of Israel:

The question is not simple and easy because the convert is not only joining the Jewish religion, like a Protestant who converts to Catholicism. The convert joins himself to a people, to a nation, to a history, to a culture - thousands of years old - of a people, who in the past were on their land; a people, the vast majority of whom for thousands of years lived not on their land, but rather in the "Diaspora." Now, some of them are coming together and returning to their historical land. Joining the Jewish people is not something to be taken for granted. And even if the convert becomes a religious person, he will not easily assimilate into the conscious and subconscious culture of the Jewish people, into the language, into the holidays, and into the way of thinking.¹⁰

Indeed, the centrality of the Land of Israel is not to be questioned. This land tolerates only one bond to it; a bond that is created by joining the Jewish people, the same people who are sitting in Zion. It is not citizenship that creates the bond to the place, nor even physical presence there, since then it would not be the Land of Israel or Zion, but a totally different space, lacking the religious and ideological burdens of "desert bloomers." The weight of this other space is as light as a feather, but it is carried in the hearts of many people, whose memories of their place of birth, of growing up, of falling in love and of expulsion have yet to fade away.

¹⁰ *Tushbeis*, judgment of Justice Heshin, paragraph 3.