

## Is The Law of Return Unjust?

By Alex Stein

May 10th 2013 2:30 PM

Occasionally, one sees a picture of an anti-Zionist Jewish and Palestinian protester side by side. With a smug look on their faces, as if they've discovered the secret that will solve the Arab-Israeli conflict, they hold two signs. In the picture accompanying Sam Bahour's piece on the Law of Return, the Jew's sign reads, "I'm from Austin TX. Israel would pay me to move to his land because I'm Jewish." Next to her is a Palestinian whose sign reads, "I'm from Palestine. I cannot return to my land because I'm not Jewish."

Without context, this may seem convincing. Once one understands the logic behind the Law of Return, though, the picture becomes much more blurred. The Law of Return was promulgated in 1951 to grant automatic Israeli citizenship to every Jew. There were two main reasons for this piece of legislation. First, it was an attempt to rectify the injustice whereby, since the Roman conquest of Jerusalem in 70 CE, Jews have never been guaranteed the right to visit (let alone live in) their ancestral homeland. Second, it was designed to provide a safe haven for Jews, based on the reality that majority non-Jewish states have consistently failed to guarantee the safety of their Jews.

For Palestinians, Bahour argues, the Law of Return "is a disgrace, and a stain on the quilt of humanity," because it applies solely to Jews and not to Palestinians ethnically cleansed in 1948. He then suggests that Diaspora Jews show solidarity with the Palestinians by 'renouncing' their right to citizenship. "To understand this seemingly intractable conflict, one cannot detach themselves from a historical understanding of the Middle East, in general, and of the tragedy that befell the Jews (and all of mankind) in Europe ever since WWI [sic?]. However, no tragedy, no matter how severe, should be used as a pretext to discriminate...Likewise, no democracy, in today's world, should have the 'right' to speak for persons who are not its citizens, live thousands of miles away, and have not given their direct consent to be spoken for or 'represented.'"

Bahour's criticisms are amplified by Jerry Haber, who calls the Law of Return "unparalleled in its *illiberality* because it views members of a *religious* group as potential returning citizens to a state that never existed, by virtue of their, or their grandparents,' *religious* affiliation. Add to this the 1952 Nationality Law, and it turns out that a seventh-generation Palestinian Arab honeymooning in Paris at the time of Israel's independence is legally barred from citizenship unless she performs a *religious* conversion to Judaism."

Both Bahour and Haber are correct to point out that the Law of Return is substantively different from citizenship laws in countries like Ireland or Germany. This alone, though, does not render it beyond the pale. Diaspora literally means 'scattering' or 'dispersion.' It necessitates a single point of origin. In other words, the existence of a Jewish Diaspora is predicated on a time when Jews lived in a single place. Zionism and the Law of Return came to remedy the historical injustice whereby Jews were disconnected from the Land of Israel; this is the same historical injustice which renders the Law of Return *sui generis* and thus beyond the pale for liberals. By this logic, Jews are racist for trying to do something about it.

There is also the problem of presumption. Haber can refer to his "seventh-generation Palestinian Arab" in the confidence that his readers agree that if your family has lived in the same place for generations then you should automatically have more rights than someone who comes from elsewhere (it is always amusing how frequently anti-Zionist arguments reflect the sort of nativism common in far-right European texts). On what grounds? In the context of Jewish history, in which we were denied the rights available to other nations for almost two thousand years, this seems rather unfair. Or, as Jabotinsky argued, "It is an act of simple justice to alienate part of their land from those nations who are numbered among the great landowners on the world, in order to provide a place of refuge for a homeless, wandering people."

Bahour and Haber are correct that the current situation, whereby Jews have more rights than Palestinians in the Land of Israel/Palestine, is immoral and unjustifiable. But the only way to solve this problem will be through creating a sovereign, secure and viable Palestinian-Arab state alongside the State of Israel, or by coming to some sort of bi-national/federal arrangement. By calling for Diaspora Jews to renounce the Law of Return, though, Bahour seems to be arguing for a solution whereby Israel will be replaced with a Palestinian-Arab state.

It is also simply not true to suggest that the Law of Return creates a situation whereby Jews living outside of Israel have more rights in the country than non-Jews living in it. A Jew only has the rights of an Israeli citizen if s/he chooses to take up that citizenship; otherwise the 'rights' s/he enjoys are purely theoretical. Without the Law of Return, the State of Israel loses its *raison d'être*, which is the defense and advancement of the Jewish people. While this of course creates complications vis-à-vis its Palestinian minority, this does not justify throwing out the baby with the bathwater. Just as there can be no peace while Israel rejects Palestinian national aspirations, there can be no peace as long as Palestinians and their supporters attempt to sever the Jewish people's ties with the State of Israel.