WHOSE REPUBLIC?: CITIZENSHIP AND MEMBERSHIP IN THE ISRAELI POLITY

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I. INTRODUCTION

Citizenship means drawing borders: between peoples, between states, between insiders and outsiders. Citizens assume their positions because of their legal status, their shared history, or their sense of identity. For a variety of historical reasons the constituency of such a group may be distinctly heterogeneous. In Israel, a land of immigrants, roughly 80% of the citizenry is Jewish and 20% is Palestinian Arab.¹ A significant number of the Jewish Israeli citizens are foreign-born. In 1996, for example, following the large influx of Jews born in the former Soviet Union, approximately 38% of the Jewish population in Israel (1.75 million) had been born outside the country.² In other words, one in every three Israelis was an immigrant. By way of comparison, according to the United States Census Bureau, “in 1997 nearly one in ten residents of the United States (25.8 million) was foreign-born,”³ and that is in the context of one of the largest immigration waves in United States history.

In the words of Rogers Brubaker, “citizenship is a powerful instrument of social closure.”⁴ In Israel, immigration also serves as an important strategy in the project of nation-building,⁵ and a means to affect the demographic balance between Jews and non-Jews occupying the land.⁶ Like any other

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1. As of May 1998, the Israel Central Bureau of Statistics announced that the current population of Israel is estimated at 5.94 million. Of the total population in 1998, approximately 4.76 million were Jews and 1.18 million were non-Jews. See Israel at 50: A Statistical Glimpse (visited Sept. 22, 1998) <http://www.israel-mfa.gov.il/facts/israel50.html>.

2. See 48 STAT. ABSTRACT OF ISR. 1997 at 49 (on file with author).


modern state, Israel formally defines its citizenry, identifying a set of persons as its members, or “the people” in whose name the state is understood to act. Any citizenship law and immigration policy must determine who is entitled to full membership in a given political community, and therefore, who profits by the rights and who must fulfill the subsequent obligations. The unique nature of Israeli immigration policy rests in its perception of expanded state membership to any person who is entitled to the “right of return” which is codified in the 1950 Law of Return.

“Every Jew,” proclaims section 1 of the Law of Return, “has the right to come to this country as an oleh [immigrant].” This open invitation to immigrate and settle in Israel (or “right of return”) “is considered one of the most fundamental rights in Israeli law.” It is often described as reflecting the raison d’être and ideological underpinning of the State of Israel with the State’s aim of the reuniting of the scattered Jewish people (the “exiles”) in their ancient homeland. The Law of Return views every Jew and his or her family members as in potencia citizens of the State of Israel, thus establishing a formal, legal link between the State of Israel and the community of world Jewry, and expressing a fundamental Zionist value upon which the State itself is founded: that Israel should provide a home to any Jew who so desires. However, the obligation to immigrate, settle and establish citizenship in Israel is not automatically imposed upon a person simply because of his or her Jewishness. Rather, any person who is considered a “Jew,” according to the legal definition encoded in section 4B of the Law of Return, has an open invitation from the State of Israel to establish his or her life in that country as a citizen. This invitation to settle in Israel (or “right of return”) is also conferred upon family members of that person, up to a third generation regardless of their own religious affiliation. Moreover, non-


8. The Law of Return, supra note 7, § 1. For the purposes of the Law of Return, “Jew” “means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.” The Law of Return (Amendment No. 2), 1970, 24 L.S.I. 28, § 4B, available in [http://www.mfa.gov.il/mfa/go.asp?fMFAHOOOkp0] [hereinafter The Law of Return (Amendment No. 2)]. For further analysis of the question “who is a Jew,” see discussion infra Part II A.


11. Upon presenting the proposed Law of Return to the Knesset (Israeli parliament) in 1950, David Ben Gurion, Israel’s first Prime Minister, observed that the right of return “existed before the state did, and it is that which built the state.” 2 Major Knesset Debates, 1948–1981 at 613 (Natanel Lorch ed., 1993).

12. Section 4A(a) of the Law of Return states that the right to return to Israel is also granted to “a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.” The Law of Return (Amendment No. 2), supra note 8, § 4A(a). In the initial wave of immigration to Israel in the late 1980s, about 15% of the immigrants from the former Soviet Union entered the country as non-Jews entitled to the right of return based on their family affinity to a Jewish person. Since 1993, more
Jewish family members have an inalienable right to return even if the person through whom the right is claimed has deceased or has never settled in Israel.\footnote{See The Law of Return (Amendment No. 2), supra note 8, § 4A(b).}

The centerpiece of Israeli immigration policy, the Law of Return, is effectively grounded in the romantic nationalist ideology of Zionism from the late-nineteenth century. This Law reflects a perception of membership in the state which is not territorially bound or defined,\footnote{In the Israeli example, the criteria for membership by return are derived from a religious definition of “who is a Jew,” which the state then adapts. See id. § 4B. On different variants of the ethnocultural citizenship model, see for example, Brubaker, supra note 4 (German context); Yoav Peled, Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State, 86 AM. POL. SCI. REV. 432 (1992) (Israeli context). Ironically, the criteria for acquiring membership, as laid out by the Israeli Law of Return (a form of expanded jus sanguinis), has family resemblance to the German ethnocultural perception of membership, as expressed by section 116 of the German Basic Law (Grundgesetz). See Klein, supra note 9, at 53–55.} but rather is based on a preexisting affiliation with the Jewish people, in its perception of that people as a “nation.”\footnote{I put the term “nation” in quotation marks because it reflects the Zionist view of the Jewish people, developed in the late nineteenth century and the early twentieth century, which conceptualized the “Jewish problem” not as a religious or social problem, but rather as a national problem. Jews were, as Theodor Herzl put it, a “nation without a land,” and like other nations, deserved a homeland. “Let sovereignty be granted us over a portion of the globe large enough to satisfy the rightful requirements of a nation,” he wrote in 1896 in Der Judenstaat (The Jewish State). THEODOR HERZL, DER JUDENSTAAT (J. De Haas trans., Scopus Publishers 1943). This national perception of the Jewish people is modernist and secularized. It has never been the only way to think about membership in the Jewish people, nor has it been accepted by all branches of Judaism.}

As it was written in 1950, in the aftermath of World War II and the Holocaust, the primary aim of the Law of Return was to help Jews and their family members “who continued to live in repressive societies or in places where the freedom to maintain their Jewish identity was restricted.”\footnote{Don Peretz & Gideon Doron, The Government and Politics of Israel 62 (3rd ed. 1997).} Today, while the Law of Return still formally maintains this original purpose, Jews in most countries are free to preserve their religious identity and have full membership rights in their respective political communities. Given the current political climate, the Law of Return, designed to be an inclusive law aimed at Jews, now also appears to be an exclusive law effectively excluding non-Jews.\footnote{With the above mentioned exception of non-Jewish family members who are entitled to the right of return. See The Law of Return (Amendment No. 2), supra note 8, at § 4A.}

Unlike Jews, who are entitled to automatic citizenship in Israel, non-Jews who wish to establish citizenship in Israel need to go through a relatively rigid naturalization process.\footnote{Citizenship Law, supra note 7, § 5. See also discussion infra Part II.D.} When evaluated from a comparative perspective, the prerequisites for naturalization in Israeli citizenship law are not more restrictive than immigration procedures in other developed coun-
tries in terms of residency or language proficiency requirements. Yet, unlike most other countries, while Israel regulates the flow of immigrants to its territory, it also permits an unrestricted entitlement to membership for a particular group of persons: anyone entitled to the right of return.

The act of Jewish immigration to Israel has a special ideological position within Zionism and that is reflected by the word “aliyah,” which has particular and strong connotations of self-fulfillment and ascent in the Hebrew language, and is a term that is not adequately translated by the standard English term “immigration.” In order to establish Israeli citizenship by way of return, an eligible person need only express a desire to immigrate to the country and physically settle in Israel, or “make aliyah.” The Israeli State actively attempts to solicit the immigration (aliyah) of Jews to Israel. Immigrants who are claiming the right of return are entitled to a host of benefits, such as language training programs underwritten by the state, tax breaks, employment training courses, and housing subsidies. Furthermore, new immigrants by return are automatically entitled to full membership, i.e., citizenship, as soon as they settle in Israel. No waiting period is imposed on newcomers before they are granted formal inclusion in the body politic. In other words, there is nothing equivalent to a naturalization process in the case of “returning” Jews because, as with other family-related perceptions of ethnicultural membership, Israeli citizenship law views persons eligible for return as already belonging to the constitutive community; that is, they are considered to have a status equal to Israeli-born citizens.

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19. As in the United States and Canada, for example, Israeli citizenship law provides that a person seeking to gain citizenship by naturalization must fulfill a set of qualifications specified in law. In all three countries, an applicant for naturalization must have been lawfully admitted to the country. A minimal period of three years of physical residence is also required in all three polities (three years out of the five years immediately preceding the date of application in Israel and the United States, and three years out of the four in Canada). Knowledge of the official language is another standard requirement; however, unlike the United States and Canada, Israel does not impose a mandatory language proficiency test. See Citizenship Law, supra note 7, § 5; Immigration and Nationality Act §§ 316, 312(a)(1), 8 U.S.C §§ 1427, 1423 (1998); Citizenship Act, R.S.C., ch. C-29, § 5 (1999) (Can.). For a more detailed account of the prerequisites for naturalization as they are set out in section 5 of the Israeli Citizenship Law, 1952, see discussion infra Part II.D.


21. Thus, a Jewish immigrant who “returns” to Israel is termed, in Hebrew, an olen (plural: olam), that is, “one who ascends.” See id.


23. See Citizenship Law, supra note 7, §§ 1, 2(a).

24. See id. § 2(b). “Israel nationality by return is acquired . . . by a person having come to Israel as an olen after the establishment of the State—with effect from the day of his aliyah.” Id.

25. This perception is apparent, for example, in the Passports Law, 1952, which permits the issue of an Israeli passport to a new immigrant regardless of the period of time he or she has actually resided in the country after making aliyah. See Passports Law, 1952, 6 L.S.I. 76, (1951–52) (on file with author). An attempt to change this law and impose a one-year residence requirement before the issuing of an Israeli passport to a new immigrant was defeated because it was argued that it would have created an unwanted legal distinction between the new immigrant and the settled citizen. See Amnon Rubinstein, Israel Nationality, 2 TEL AVIV U. STUD. L. 159, 177 (1976).
Israel is unique in its active recruitment of Jewish immigrants and overwhelmingly accommodating policy of granting them immediate full participatory citizenship by way of return. The problem with this otherwise embracing immigration policy is that it does not embrace all potential immigrants. Only Jews and non-Jewish relatives of Jews (as specified in the law) may benefit from the Law of Return. Non-Jews, most importantly, Palestinians,\(^{26}\) do not have the benefits and privileges bestowed on the *olim*. For the purposes of this discussion, I refer to three different statuses Palestinians occupy in relation the Israeli citizenship regime: 1) as citizens of the state; 2) as subjects of the occupied territories in the West Bank and Gaza, and since 1993, as permanent residents under the jurisdiction of the Palestinian Authority ("PA"); and 3) as refugees in neighboring Arab states—"all states which have, with the exception of Jordan, refused citizenship to Palestinians residing within their borders."\(^{27}\)

While *aliyah* is the prime means for immigration to Israel, citizenship status can also be created in three other important ways: by residence in the country, by birth to an Israeli parent, or by naturalization. *One in every five Israelis* is a Palestinian Arab citizen,\(^ {28}\) and must have acquired citizenship status by way of residence, birth, or naturalization.\(^ {29}\) I analyze these three ways of establishing Israeli citizenship and examine how the ethnocultural perception of membership in the state, as expressed in the Law of Return, has a potentially discriminatory effect on third parties, such as the alien spouses of Israeli citizens.\(^ {30}\)

My discussion proceeds in four sections. Section II analyzes the different ways of establishing Israeli citizenship, paying special attention to the right of return. Like many other countries, Israel adopted a combination of the *jus sanguinis* and the *jus soli* principles, placing greater emphasis on the *jus*

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26. My usage of the term Palestinians refers to persons who were entitled to Palestinian residency or citizenship under the British Mandate, prior to the establishment of the State of Israel in 1948.
28. As of 1996, the total population of Israel numbered approximately 5.7 million. Of the total population in 1996, approximately 4.6 million were Jews and 1.1 million were non-Jews. See 48 STAT. ABSTRACT OF ISR. 1997 at 49.
29. While formally entitled to full and equal citizenship rights, Palestinian Arab citizens, in general, have not achieved full social, economic or cultural equality in Israel. To provide just one illustration of this problem, the Israeli state’s official symbols are clearly associated with the Jewish majority: the Israeli flag reflects Jewish symbols (it is inspired by the Jewish prayer shawl, the *tallit*, and includes the Shield of David), and the national anthem, *Hatikva* ("the Hope"), expresses, in Hebrew, the yearning of the Jewish people to be "a free people in our own land." None of these official symbols of the state make Israel a comfortable home for all its citizens, regardless of their religious or national affiliation. See generally David Kretzmer, *The Legal Status of Arabs in Israel* (1989); Yoav Peled & Gershon Shafir, *The Roots of Peacemaking: The Dynamics of Citizenship in Israel*, 1948–93, 28 INT'L J. MIDDLE E. STUD. 391, 402–404 (1996).
30. Given the scope of this article, my discussion below of the legal implications of the Law of Return and the Citizenship Law upon non-Jews will focus on Palestinian *citizens* of Israel (the first category mentioned above), as opposed to the legal implications for Palestinian *non-citizens* who wish to enter the country (the second and third categories).
sanguinis principle. As a destination country for immigrants, Israel is exceptionally lenient in permitting its new “returning” citizens to maintain their previous formal affiliations (i.e., citizenship status) to the countries from which they emigrated. Hence, Jewish Israeli citizens can maintain a dual citizenship status, either because they immigrated to Israel or because their parents immigrated to Israel and they acquired foreign citizenship by way of descent.

Section III examines the rights and obligations of citizenship, illustrating how Israeli citizenship law emphasizes a republican perception of membership, as expressed in the emphasis on the obligations a citizen has toward the collective. According to this view, citizenship is not merely a bundle of rights (or a “passive” entitlement to membership in the body politic), rather it is an active practice epitomized in one’s military service and ultimate willingness to sacrifice one’s life for the nation. In analyzing the emphasis on military service as the virtue of full membership in the Israeli polity, I illustrate how selective recruitment policies tacitly preserve structural inequalities among citizens, particularly between Jews and Palestinian Arabs (members of the latter group are usually not called upon for the service). Military service also serves to preserve more nuanced, and less obvious, structural inequalities, such as sustaining a power differential between men and women (although all Jewish women are, like men, obliged to do their compulsory national service). I label such state practices and legal rules that sustain power disparities among formally equal citizens’ “degrees of citizenship.”

Covert yet systemic differentiation among formally equal citizens based on criteria such as religion, ethnicity, race, national origin, or sex, is anything but unique to the Israeli state. However, because these cleavages are so

31. The right to membership by descent, however, is not limited to the state’s citizens. Rather, it may be “activated” by any person who belongs to the Jewish people and wishes to settle in Israel. See discussion infra Part II.A.

32. This, again, reflects the centrality of the Zionist concept of “gathering in of the exiles” in the legal construction of Israeli citizens. A person who made aliyah to Israel automatically acquires Israeli citizenship unless a declaration of refusal is filed within three months of arrival to the country. See Citizenship Law, supra note 7, § 2. There is no requirement that the new Israeli citizen renounce his or her previous citizenship status. See id. § 14. Many countries (including the United States) require a voluntary performance of an expatriatory act for a citizen to lose his or her citizenship status; under these legal circumstances, the automatic conferral of citizenship status by the State of Israel upon an olleh would not cause loss of citizenship in the native home country. See Afroyim v. Rusk, 387 U.S. 253 (1967).

33. The only exception to this rule is if an Israeli citizen has left the country illegally and resides or acquires citizenship in a country which is at a formal state of war with Israel. A list of these countries is mentioned in the Prevention of Infiltration (Offenses and Jurisdiction) Law, 1954. See Prevention of Infiltration (Offenses and Jurisdiction) Law, 1954, 8 L.S.I. 133 (1953–54). In such a case, the individual may lose his or her Israeli citizenship. See id. This rule has a grave effect on Israel’s Arab citizens, who may be denationalized if they permanently reside in a neighboring country which is at a formal state of war with Israel.

34. See KRETZMER, supra note 29, at 98.

35. My analysis here builds on different critiques of the gap between the claim to universality of citizenship and its practical imposition of disproportionate burdens upon certain groups of citizens, such as minority group members or women. See generally Iris Marion Young, Polity and Group Difference: A Critique of the Ideal of Universal Citizenship, 99 ETHICS 250 (1989); WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS (1995).
visible in the Israeli context, they call attention to and are illustrative of a host of problems which may be "dormant" in other, less divided, societies and citizenship regimes, such as the United States.\(^{36}\)

Section IV further discusses the republican underpinnings of Israeli citizenship law which are also reflected in the legal requirements for relinquishing citizenship. In Israel, unlike the United States, expatriation is not viewed as an inherent right of a citizen. Rather, the Citizenship Law precludes a voluntary severance of national ties to Israel unless the consent of the government is obtained.\(^{37}\) Hence, while Israeli citizenship is rather easily conferred upon every person entitled to the right of return, it is equally hard to surrender if one belongs to the dominant Jewish majority. This duty-bound understanding of citizenship, and its conception as a lifelong bond between the individual and the state, has remained surprisingly stable despite the dramatic changes that Israel has undergone in the past decade.

Section V will briefly explore new trends in Israeli immigration policy since the late 1980s, in light of changes related to the gradual emergence of a neo-liberal order in Israel, the arrival of almost one million new immigrants from the former Soviet Union, the 1993 Oslo agreement signed between Israel and the Palestine Liberation Organization ("PLO"), and the growing numbers of foreign workers admitted to the country as non-immigrant "temporary workers." This article, then, aims to provide a clear picture of how Israeli citizenship law is legally conceived and practiced, its relationship with the republican ethos of membership in the Israeli polity, and its role in creating different types of statuses, or "degrees of citizenship," among formally equal citizens of the Israeli state. Finally, I reflect on how rapid socioeconomic, political, and demographic changes in Israel since the late 1980s have brought to the forefront of Israeli immigration policy fundamental questions associated with the tension embedded between the roll-back of the welfare state and the increasing movement of persons, goods and capital across frontiers (or "globalization"), on the one hand, and the republican, duty-bound, religious-based perceptions of membership with its more state-centrist understanding of identity, still encoded in Israeli citizenship law, on the other.

II. Establishing Citizenship Status in Israel

 Israeli immigration and citizenship law is composed of two major legislative acts: the Law of Return (enacted in 1950, amended in 1970)\(^{38}\) and the

\(^{36}\) Note, however, that there is also formidable historical evidence to race-based and gender-based restrictions on immigration and on full entitlement to citizenship in the United States. See generally Rogers M. Smith, Civic Ideals: Conflicting Visions of Citizenship in U.S. History (1997).

\(^{37}\) Citizenship Law, supra note 7, § 10.

\(^{38}\) See The Law of Return, supra note 7; The Law of Return (Amendment No. 2), supra note 8.
Citizenship Law (enacted in 1952, amended in 1980).\textsuperscript{39} Israeli citizenship can be established only in accordance with the provisions of the Citizenship Law and the Law of Return. While the Law of Return establishes the right of every Jew to immigrate to Israel (the “right of return”), the Citizenship Law provides three other ways in which to acquire Israeli citizenship: residence, birth, and naturalization.\textsuperscript{40} I examine each of these categories in turn.

A. Citizenship Acquisition by Return

The cornerstone of Israeli citizenship law is the right of every Jew (and certain specified family members) to establish automatic citizenship in Israel (or the “right of return”). The right of return is encoded in section 1 of the Law of Return and is grounded in the Zionist perception of the State of Israel as a safe haven for the Jewish people of the Diaspora,\textsuperscript{41} who historically endured centuries of persecution, and were considered less-than-full-members in almost every country in which they lived.\textsuperscript{42} It encompasses an “open door” policy toward Jewish immigrants and is viewed as one of the country’s founding principles. The Law of Return, then, is a statutory expression of the Zionist perception of independent statehood.\textsuperscript{43}

The combined provisions of the Law of Return and the Citizenship Law send an open invitation to every Jew in the world to immigrate, settle, and establish citizenship in Israel.\textsuperscript{44} This right to return is non-selective: the state is unable to restrict the number of Jewish immigrants who arrive in Israel under the Law of Return and is bound to provide automatic citizenship to every person who makes aliyah to Israel.\textsuperscript{45} The idea behind this carte blanche granting of citizenship reflects the Zionist view of Israel as the

\textsuperscript{39} See Citizenship Law, supra note 7; Citizenship Law (Amendment No. 4), 1980, 34 L.S.I. 254, (1979–80) [hereinafter Citizenship Law (Amendment No. 4)].

\textsuperscript{40} See Citizenship Law, supra note 7, § 1. In exceptional cases, Israeli citizenship can also be “granted” by the State, at the discretion of the Minister of the Interior. See id. § 9.

\textsuperscript{41} As Robin Cohen observes, the word “diapora” is derived from the Greek verb speiero (to sow) and the preposition dia (over). When applied to humans, the ancient Greeks thought of diaspora as a migration and colonization. For the Jews, as well as other communities that have been dispersed from an original “center” to several foreign regions, the experience of diaspora often signifies a collective trauma, a banishment, where one dreamed of home but lived in exile.” Robin Cohen, Global Diasporas ix (1997).


\textsuperscript{43} In Rubinstein’s words, as “a deliberate reply to centuries of Jewish dispersion and suffering.” Rubinstein, supra note 25, at 160 n.4.

\textsuperscript{44} Section 2(a) of the Citizenship Law is complementary to the right of return established in the Law of Return. It provides that “every ohol under the Law of Return shall become an Israeli national.” Citizenship Law, supra note 7, § 2(a).

\textsuperscript{45} The only qualifications to the right of return are found in section 2(b) of The Law of Return. The Minister of Interior may refuse to grant ohol (immigrant) status to an individual who either “engaged in an activity against the Jewish people”; is likely to “endanger the public health or the security of the state”; or has a criminal background and is likely to endanger the public welfare. The Law of Return, supra note 7, § 2(b). Note, however, that there is no instance known in which the Minister of Interior has used the power to restrict immigration due to a situation in which the security of the state was endangered, or due to an act against the Jewish people. Some individuals, however, were denied this status because of health, insanity, the cumulative conditions of a criminal past, and the likelihood of endangering the public welfare. See,
national home to the Jewish people. As David Kretzmer observes, the “right of return” (of foreign-born Jews to Israel) encoded in the Law of Return “is one of the only cases in Israeli legislation in which an overt distinction is made between the rights of Jews and non-Jews. . . . [T]his aspect of the Law of Return [aliyah] is generally regarded as a fundamental principle of the State of Israel, possibly even its very raison d’être as a Jewish state.”46 As well as its practical success, in terms of “chang[ing] the place of residence of the world’s Jews from the Diaspora to Zion,” aliyah expressed the ideological underpinning of the Israeli state with its aim of gathering in the exiles.47

From this perspective, the State of Israel is a “trustee” of the right to return which itself predates the inception of the state and is vested in a pre-existing affiliation, i.e., one’s membership in the Jewish people.48 It is this pre-existing membership in “a people” which is crucial for entitlement to citizenship in Israel by right of return, to the extent that section 4 of the Law of Return states that every Jew—even one that was born in Israel—is in the same position as one who immigrated under this Law.49 This reversal of priorities in the Israeli conception of membership in the polity, under which a person who was born in the territory to an Israeli parent is deemed to have the same legal status as an person who immigrated to the country, reflects the legislatures deliberate attempt “not to make any distinction whatsoever between an oled and a Jew born in Israel.”50

This creates a clearly unorthodox approach to immigration in that it reverses the common hierarchy of statuses between a native citizen and a new immigrant. The standard case of immigration requires that the newcomer gradually becomes more like a member of the host society in the country of her choice, a process which is epitomized by the acquiring of the rights and status of citizenship. In Israel, a reverse logic is applied. There,
“[i]n the eyes of the law, it is not the new immigrant who is considered as though he were a native-born Israeli; [rather] the Jew born in Israel . . . [is] deemed to be [an] immigrant.”51 In the early days of the Zionist movement, emphasis was placed on gaining control of the immigration policy from the British Mandate. Crucial control over the definition of immigration policy came with sovereignty in May 1948. Section 13(a) of the Law and Administration Ordinance of 1948, the first legislative act passed by the Provisional Council of the State after independence, retroactively revoked British legislative restrictions on Jewish immigration to the country.52 Since the establishment of Israel as an independent state in 1948, the number of people making aliyah has varied from year to year. In total, however, about 2.7 million Jews immigrated to Israel between 1948 and 1998.53 This is an extraordinarily high volume of immigration for a country whose total population in 1998 was approximately 5.94 million people.54 There are no pertinent statistics in the Israeli census about the color or racial origin of the population. However, the Statistical Abstract of Israel, published by the government’s Central Bureau of Statistics, does report citizens’ religion. Of the total population in 1998, approximately 80.5% were Jews, and 19.5% were non-Jews.55 Arab Palestinians comprised almost 20% of the Israeli citizenry at the inception of the state in 1948. By the mid 1950s, however, “[l]arge waves of Jewish Immigration . . . changed the population composition in favor of Jews so that . . . [Palestinian] Arabs comprised only [eleven] percent of Israel’s population.”56 The first massive wave of Jewish immigrants arrived in Israel from 1948 through 1951. In these formative years of nation building, almost 688,000 olim, an average of 172,000 immigrants per year, arrived in Israel, doubling the Jewish population of the State in these years.57 This wave of immigrants was composed largely of refugees from the Nazi concentration camps, Jews who were refused entry to Israel under the British Mandate rules and were deported as “illegal immigrants” prior to the establishment of

51. M.D. Gouldman, Israel Nationality Law 21 (1970) (on file with author). The 1980 amendment of the Citizenship Law, however, has for the first time recognized a more conventional jus sanguinis principle. Section 4(a) of the amended Citizenship Law holds that “[t]he following shall, from the date of their birth, be Israeli nationals by birth: (1) a person born in Israel while his father or mother was an Israel national; (2) a person born outside Israel while his father or mother was an Israel national—(a) by return; b) by residence in Israel; c) by naturalization; d) under paragraph (1).” Citizenship Law (Amendment No. 4), supra note 39, at § 4(a). For further discussion of the 1980 Amendment of the Citizenship Law, see infra notes 115–120 and accompanying text.
52. Law and Administration Ordinance, 1948, 1 L.S.I. 7, § 13(a) (in Hebrew, on file with author).
53. See Israel at 50, supra note 1.
54. See id.
55. See id. Arab Palestinian citizens of Israel are divided into three main groups: Muslim, Christian, and Druze. In 1996, approximately 78% of the Arab Palestinian population in Israel was Muslim, 14% was Christian, and 8% was Druze. See id.
57. See Peretz & Doron, supra note 16, at 47.
Israel, and Jews from Arab countries. 58 Between 1952 and 1989, about 1.2 million immigrants acquired Israeli citizenship by return. Of them, about 750,000 were Arab-speaking Jews who arrived in Israel during the 1960s and early 1970s from Iraq, Yemen, Syria, Lebanon, Egypt, Morocco, Tunisia, Algeria, and Libya. 59

By the mid 1980s, "[a]liyah ha[d] decreased and the number of Jewish emigrants ha[d] increased." 60 By 1986, for example, approximately 18% of Israeli citizens were Arab Palestinian, and 24% of Arab population was between the ages of zero and four. 61 As Lewin-Epstein and Semyonov observe, the proportional increase of the Israeli Arab population "represents an average annual growth of 4.1%, a rate very close to the average rate in the Jewish population which stands at 4.3%." 62 Yet "[a]lmost half of the Jewish population growth (45.7 percent) is due to immigration whereas 1.6 percent of the Arab population growth is accounted for by immigration." 63 The Jewish population, then, is structurally dependent on aliyah to keep its numerical dominance in the state. 64

In 1989, when it became possible for large numbers of Jews and their family members to leave the former Soviet Union, Israeli governmental and non-governmental agencies actively solicited them to come to Israel to settle. It appears that a combination of "pull" and "push" factors led significant numbers of people from the former Soviet Union to seek a new home country in Israel. 65 The State of Israel granted these newcomers (by return) full citizenship and a host of social and economic benefits intended to ease their kelitah (or "absorption") in Israel. 66 Moreover, these olim were automatically entitled to an Israeli passport, and with it, established a formal option to

58. See id. at 47–48.
59. See id. at 49.
60. Soffer, supra note 6, at 296.
61. See id. at 297.
63. Id.
64. See Soffer, supra note 6, at 297.
65. See generally Alejandro Portes & József Böröcz, Contemporary Immigration: Theoretical Perspectives on its Determinants and Modes of Incorporation, 23 INT’L MIGRATION REV. 606 (1989) (discussing international "pull-push" migration theories). Note, however, that unlike the standard understanding of "push" and "pull" factors (which are primarily economically based) in the case of Jewish immigration to Israel, these factors also have an ideological dimension, reflected, for example, in the growing "pull" factor Israel had after the Six Day War, which brought a relatively large number of immigrants from economically well-off countries (Europe and the United States), or a growing sense of anti-Semitism, as a "push" factor. See generally SHARKANSKY, supra note 42, at 71–84.
66. These benefits known as the zul-kelitah (or "return packet") included, for example, language training fully paid for by the state, universal health coverage, housing subsidies, employment training courses, and entitlement to financial support. The form and extent of financial assistance varied with the immigrant's country of origin, family size, age, and economic circumstances. It could take the form of a grant, stipend, loan, or standing loan (a loan which becomes a grant after a specified period of settlement in Israel). However, all immigrants who arrived from the former Soviet Union were entitled to direct monetary aid upon their settlement in Israel. See MINISTRY OF IMMIGRANT ABSORPTION, supra note 22, at 30–35, 42–55, 71–72, 85–89, 119–123.
TABLE 1: IMMIGRATION TO ISRAEL BY REGION OF ORIGIN 1989–1997

<table>
<thead>
<tr>
<th>Continent</th>
<th>Total Immigrants</th>
<th>Percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>847,900</td>
<td>100.0%</td>
</tr>
<tr>
<td>Asia</td>
<td>10,000</td>
<td>1.2%</td>
</tr>
<tr>
<td>Africa</td>
<td>40,100</td>
<td>4.7%</td>
</tr>
<tr>
<td>Europe</td>
<td>761,600</td>
<td>89.9%</td>
</tr>
<tr>
<td>(those from Former Soviet Union)</td>
<td>(722,400)</td>
<td>(85.25%)</td>
</tr>
<tr>
<td>North America &amp; Oceania</td>
<td>20,400</td>
<td>2.4%</td>
</tr>
<tr>
<td>Latin America</td>
<td>14,900</td>
<td>1.8%</td>
</tr>
<tr>
<td>Other</td>
<td>900</td>
<td>0.1%</td>
</tr>
</tbody>
</table>


In the past decade, automatic citizenship by return has been granted to approximately 722,400 immigrants from the former Soviet Union. This massive wave of immigration again raised the complex question of "who is a Jew," and therefore who is accorded the right of return as set forth in the Law of Return and the Citizenship Law. The question of "who is a Jew" for the purpose of entitlement to the right of return, has plagued the State of Israel since its inception, mainly because it exposes a deep gulf between the two main paradigms for defining Jews: religious and secular. Of the different religious (Halakhic) definitions of Jewishness, the most important one politically in Israel has been the Orthodox definition, namely, birth to a Jewish mother or an Orthodox conversion to Judaism. The secular Zionist understanding of Jewishness, on the other hand, is expressed through Israeli nationality and self-identification of an individual with the state, and has little to do with the obligations or beliefs of traditional Jewish faith. These two

67. For some of the olim who joined the massive exile from the former Soviet Union, “Israel was a transition station; for most, it became a permanent home.” Peretz & Doron, supra note 16, at 50.
69. The Law of Return grants automatic citizenship to non-Jewish immigrants by return, if, for example, their spouse has a Jewish grandfather or grandmother. See The Law of Return (Amendment No. 2), supra note 8, § 4A; Citizenship Law, supra note 7, § 2(a). Before their aliyah, some of the Russian immigrants had only minimal affiliation with Judaism or with the State of Israel and their entitlement to return was put into question. Also note that in 1984, approximately 7,000 Ethiopian Jews walked hundreds of miles to Sudan, where a secret effort known as “Operation Moses” brought them to Israel. In 1991, another 15,000 olim from Ethiopia arrived in a dramatic airlift from Addis Ababa known as “Operation Solomon.” The “authenticity” of these new returning immigrants’ Judaism was also put into question. However, in their case, the challenge was by the Orthodox Rabbinical establishment, referring to the Ethiopian Jewish community as a whole, not to specific individuals’ entitlement to the right of return as determined by the state’s bureaucratic agencies. See Shkansky, supra note 42, at 82.
70. See generally Arian, supra note 47, at 6–11.
paradigms have been in direct conflict, pitting religious positions against the secular Zionist understanding of Jewishness. This conflict has manifested itself in the legal arena, time and again, and has been the subject of several landmark Supreme Court decisions in the 1960s and 1970s, of which I will discuss the most prominent decision: the Shalit case of 1968.\textsuperscript{71}

In the 1960s and the 1970s the question of “who is a Jew” was aired in the debate about whether a person’s Jewish identity and nationality should be defined by “external,” religious (\textit{Halakhic}) rules, or by “internal” decisions, such as self-identification and choices expressed through the person’s actions, for example, by establishing a home in Israel and becoming rooted in its history and culture. In \textit{Shalit}, the Court held in favor of the latter definition by a narrow five to four majority.\textsuperscript{72} The Court ruled that for purposes of the population registry (and by analogy, for the purposes of the Law of Return), the government, through its administrative bodies, such as the Ministry of Interior, had no authority to determine a person’s national or religious affiliation. Rather, the only relevant criterion was a person’s \textit{bona fide} statement of such an affiliation.\textsuperscript{73} The Israeli Legislature thought differently, however. In an unusual move in Israeli politics, the \textit{Knesset} overruled the Supreme Court by amending section 4B of the Law of Return to read as follows: ”[f]or the purposes of this Law, ‘Jew’ means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.”\textsuperscript{74}

To balance out this relatively narrow, semi-\textit{Halakhic} definition of Jewishness, the \textit{Knesset} added another section to the Law of Return, which greatly expanded the right of return by granting this right to any family member of an entitled person (i.e., a “Jew” by the above-mentioned definition), up to a third generation and regardless of the family members’ religious affiliation. Section 4A of the 1970 Amendment vests in “a child and a grandchild of a Jew, the spouse of a Jew,” the spouse of a child and a grandchild of a Jew all the rights of an \textit{oleh} to Israel.\textsuperscript{75} Here, again, we see the unusual conception of Israeli immigration law which goes to great lengths to determine who is an “insider” to the collective. Once a person is considered eligible for the right of return, however, then all the gates are open and a conscious effort is made

\textsuperscript{71} H.C. 58/68, Shalit v. Minister of Interior, 23(2) P.D. 477 (in Hebrew, on file with author).

\textsuperscript{72} In \textit{Shalit}, the Court had to decide whether the Minister of the Interior could register children born to an Israeli Jewish father and a non-Jewish mother as “Jewish,” for purposes of the population registry, when under the \textit{Halakhic} definition of membership they were not considered Jewish. The specific issue was whether children of an Israeli-Jewish father and an Israeli non-Jewish mother could be registered as Jews for the administrative purpose of the population registry, which invoked the more general question of how to interpret the criteria for membership in the Jewish people in the context of the Law of Return. \textit{See id.}

\textsuperscript{73} In other words, the presumption is that a citizen’s statement is truthful. The only way to rebut the person’s statement is through a declaratory judgment of a district court to the effect that the information given to the registration officer was false. \textit{See id.} at 489.

\textsuperscript{74} The Law of Return (Amendment No. 2), supra note 8, § 4B.

\textsuperscript{75} \textit{Id.} § 4A.
to erase formal legal distinctions between the newcomer immigrant and the settled citizen.\textsuperscript{76}

In its construction of the legal category of membership by return, of “who is a Jew” for the purposes of the Law of Return and the Citizenship Law, the 1970 Amendment resolved the tension surrounding the question of who is by family genealogy or marriage entitled to Israeli citizenship. It established a middle ground between a religious definition of Jewishness (section 4B), and a secular Zionist understanding of Israeli national identity (section 4A), which generally welcomes non-Jewish family members who are willing to come to the country and establish their life as participants in its republic.\textsuperscript{77} In other words, living in Israel, taking part in its culture, and expressing willingness to serve or have their children serve in the military, is, according to the secular Zionist understanding of citizenship, as much a proof of those persons’ affiliation with the State as any religious criteria for membership of the Jewish people.

The 1970 amendment of the Law of Return, however, remained silent on another issue—conversion—which proved to be a major controversy in the late 1980s and early 1990s. The Law of Return states in section 4B that any person who has converted to Judaism is entitled to Israeli citizenship by return, but the Law does not specify the rules under which the conversion must take place, and thus has set the stage for current controversy over “who is a Jew.”\textsuperscript{78} In the 1980s and the 1990s, then, the debate shifted to an inquiry about the rites of passage that a person with no previous affinity to Judaism or the State of Israel has to go through in order to be recognized religiously as a “Jew,” and based on that definition, established entitlement to citizenship by way of return. Specifically, the point at issue was whether any denomination of Jewish rabbi or religious institution could officiate a conversion to Judaism, or whether this authority was solely vested in the representatives of Orthodox Jewry.\textsuperscript{79}

This debate brought to the surface the bitter division between the institutional power of Orthodox Jewry in Israel and the overwhelming opinion of (the mainly non-Orthodox) world Jewry. Many conversions to Judaism take place outside Israel and under the guidance and authority of non-Orthodox rabbis. In 1989, the Supreme Court held in Sephardi Torah Guardians, Shas Movement v. Director of Population Registry\textsuperscript{80} that for purposes of immigration, any person who converted to Judaism outside Israel, whether under an Orthodox, Conservative, or Reform religious institution, is automatically

\textsuperscript{76} It is estimated that since the mid 1990s significant numbers of immigrants from the Soviet Union were not seen as “Jews” by the Orthodox Halakhic definition. For example, in 1997, only 56.4% of the immigrants by return were “Jews” by the Orthodox Halakhic definition. See Somech, supra note 12.

\textsuperscript{77} See generally Pnina Lahav, Judgement in Jerusalem (1997).

\textsuperscript{78} See The Law of Return (Amendment No. 2), supra note 8, § 4B.

\textsuperscript{79} See Arian, supra note 47, at 316.

\textsuperscript{80} H.C. 264/87, Sephardi Torah Guardians, Shas Movement v. Director of Population Registry, 43(2) P.D. 723 (in Hebrew, on file with author).
entitled to all the rights of an oleh, as stated in the Law of Return and the Citizenship Law. In 1995, in Pesaro (Goldstein) v. Minister of Interior, the Supreme Court was again drawn into the muddy waters of identity politics. This time, the question brought before the Court was whether a non-Jewish person who underwent a non-Orthodox conversion in Israel was entitled to automatic citizenship based on the right to return. The ostensibly insignificant fact of the location of the conversion is highly politically charged due to the Orthodox institutional monopoly over Jewish religious services in Israel (such as solemnizing of marriage and divorce), and the growing power of religious parties in the Knesset. Had the Court ruled in favor of the petitioners in the Goldstein case, its actions would have been portrayed as “deregulating” the religious services arena, a step which could have caused a backlash by the Legislature, as was indeed the case in the aforementioned 1968 Shalit case. In 1995, however, the Justices were more cautious. The Court ruled that while in principle a non-Orthodox conversion may take place in Israel and have validity for the purposes of the Law of Return, they did not rule on the merits of the case brought before them. Even this carefully crafted judicial decision was viewed as inflammatory by religious parties in the Knesset who in return initiated a proposed new amendment to the Law of Return that would specify that only Orthodox conversion to Judaism could be valid for the purposes of the Law of Return and the Citizenship Law. This legislative proposal has been a source of great discontent to American Jewry in particular, whose leaders view such an amendment to the Law of Return as potentially undercutting the bond between Israel and the rest of the Jewish world, which, for the most part, is not Orthodox. By claiming the illegitimacy of the main religious institutions of world Jewry in the very law that defines the centrality of the Diaspora to the sovereign Jewish state, the Orthodox parties could seriously erode relations between the Israel and world Jewry. This legislative proposal has not materialized in law, but it has neither been fully removed from the political agenda.

B. Citizenship Acquisition by Residence

As explained above, all Jews born in Israel, or who immigrated to Israel, acquire automatic citizenship through the Law of Return. Non-Jews cannot generally acquire Israeli citizenship by way of return (unless they are family members of a person entitled to the right of return); rather, they must establish citizenship by way of residence, birth, or naturalization. These different methods of establishing citizenship were set in place in 1952, the

81. H.C. 1031/93, Pesaro (Goldstein) v. Minister of Interior, 49(4) P.D. 661 (in Hebrew, on file with author) [hereinafter Goldstein].
82. See ARIAN, supra note 47, at 127–33.
83. See id. at 316.
84. See SHARKANSKY, supra note 42, at 161.
formative years of nation building in Israel. At that time, the citizenship law had to establish the requirements for citizenship by way of residence, a definition which had significant political implication in light of the following facts: until 1947, “Arabs constituted two-thirds of Palestine as a whole and made up nearly one-half of their residents in the area designated the Jewish state by the [November 29, 1947] [U.N.] partition plan.” For complex reasons, the 1947 U.N. Partition plan never went into effect. Instead, British officials were to govern Palestine until, May 15, 1948, the last day of the League of Nations Mandate over Palestine. Between November 30, 1947 and May 15, 1948, the tensions between the Jewish and Arab communities escalated into violent incidents. Amidst these events, on May 14, 1948, Israel was established as an independent state by the Declaration of Independence by Jewish leaders of the Yishuv. The following day, on May 15, with the official termination of British mandate, the armies of Egypt, Syria, Lebanon, and Iraq joined forces in the battle to prevent the establishment of the a Jewish state. The 1948 war (which Israelis call the “War of Independence,” and which Palestinians call al-Nakaba, or “The Disaster”) officially ended in 1949 with a set of armistice agreements that solidified Israel’s frontiers with its Arab neighbors until 1967.

This war, like any other war in history, had tragic consequences. Moreover, because both Israelis and Palestinians hold territorial and national claims over the same land, “there can be no agreement on what actually happened in 1948.” In terms of our discussion of citizenship, it is important to note that there is a continuing debate over how and why hundreds of thousands of Palestinians left their homes and lands after the establishment of the State of Israel in May 1948. Many of those who left Israel later became refugees in neighboring Arab countries, and are collectively referred to as the “1948 refugees.” Some international estimates suggest that “the number of 1948

85. See Citizenship Law, supra note 7, § 3.
87. The Jewish community in Palestine (the Yishuv) generally viewed the United Nations partition resolution as a significant step toward the fulfillment of the Zionist dream of “establishing in Palestine a national home for the Jewish people.” This phrasing of the Zionist aspiration was incorporated in the Balfour Declaration given by Great Britain on November 2, 1917. This Declaration took the form of a public letter signed by Lord Alfred Balfour, the British Foreign Minister, which stated that “His Majesty’s Government view with favor the establishment in Palestine of a national home for the Jewish people... it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.” 2 THE MIDDLE EAST AND NORTH AFRICA IN WORLD POLITICS: A DOCUMENTARY RECORD 106 (J.C. Hurewitz ed. & trans., 2d ed. 1979).
88. See PERETZ & DORON, supra note 16, at 42.
90. See PERETZ & DORON, supra note 16, at 42.
92. See Weiner, supra note 27, at 7.
93. See generally id. at 5–10.
refugees was approximately 604,000, about half of the Palestinian population living in Israel at the time."\(^94\) Yet the exact number of refugees has never been established. Several Israeli scholars place the figures between 600,000 and 750,000,\(^95\) while certain Arab sources suggest that the numbers are even higher, ranging from 750,000 to 1,000,000.\(^96\) A related dispute refers to the causes of this mass displacement. Roughly speaking, "[m]ost pro-Palestinian narratives claim that the Palestinian evacuation resulted from a carefully designed Israeli campaign to drive the Arabs out of Palestine,"\(^97\) whereas the traditional view expressed by Israeli policymakers "is that most Palestinians left their homes during the 1948 war either because of a general sense of fear and confusion, or because they were prompted to evacuate by Arab leaders."\(^98\) The question of voluntary or involuntary exodus is significant not only in terms of "getting the history right"; rather, it may also have major political implication: any comprehensive peace agreement between Israel, the Palestinians, and its neighboring Arab states must eventually address the 1948 refugees' claim for repatriation or establish a scheme of financial compensation (as a possible alternative to resettlement).\(^99\)

In the eyes of the 1952 Israeli Citizenship Law,\(^100\) however, any Palestinian who discontinued his or her residency in Israel after the establishment of the state lost his or her entitlement to automatic Israeli citizenship by right of residence.\(^101\) In other words, the official policy adopted by the Israeli government in the 1950s was to prevent the 1948 refugees from establishing

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94. Id. at 7.
95. See, e.g., LEWIN-EPSTEIN & SEMYONOVA, supra note 56, at 16; IAN LISTICK, ARABS IN THE JEWISH STATE: ISRAEL'S CONTROL OF A NATIONAL MINORITY 28 (1980) (estimating the number of 1948 refugees to be 750,000); SOFFER, supra note 6, at 292 (estimating the number of 1948 refugees to be over 700,000). See generally BENNY MORRIS, THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM: 1947–1949 (1987).
96. See KIMMERLING & MIGDAL, supra note 89, at 147. The ArabNet, for example, a comprehensive online resource on the Arab world published by a Saudi Research and Marketing group, deals with this controversial issue in the following way: "[a] result of the war, 780,000 Palestinians became refugees. About half that number left in fear and panic while those remaining were compelled to make room for Jewish immigrants from both European and Arab countries." Palestine History (visited Jan. 19, 1999) <http://www.arab.net/palestine/history/pe_israelstate.html>.
97. Weiner, supra note 27, at 15.
98. Id. at 21–22. In recent years, a number of Israeli "revisionist" or "new historians" have challenged the traditional Israeli interpretation, arguing that while there was probably no overall Israeli plan to drive the Arab population from their homes and lands, certain local incidents of expulsion carried by individual commanders, effectively spurred the Palestinian departure. See generally BENNY MORRIS, 1948 AND AFTER: ISRAEL AND THE PALESTINIANS (1990).
99. See generally Weiner, supra note 27 (comprehensively analyzing the 1948 refugee problem and the Palestinians "right to return").
100. See Citizenship Law, supra note 7, § 3.
101. See Peled & Shafir, supra note 29, at 402–04. In many cases, persons who left the country or failed to register as inhabitants also lost their entitlement to property in Israeli territory. The Absentees' Property Law, 1950 regulated matters related to the administration of property "abandoned" by the Arab Palestinians refugees during the 1948 war. Interestingly, the definition of "absentee" in this law is similar to that of the requirements for entitlement to citizenship by way of residence encoded in the Citizenship Law of 1952. Both these laws were formulated to exclude as many Arabs as possible from the classification of citizenship, i.e., those persons entitled to full civil, political and social rights. See MENACHEM HOFNUNG, DEMOCRACY, LAW AND NATIONAL SECURITY IN ISRAEL 105 (1996).
Israeli citizenship status. The main idea behind the newly established state’s citizenship policy toward Palestinians was, as one Israeli scholar summarized it, “that nationality by residence should be conferred only upon those non-Jews who remained in Israel after the establishment of the State or who subsequently entered Israel lawfully, e.g., under a family re-unification scheme. Those who crossed to the enemy lines during the War of Independence only to infiltrate back again later were not to be rewarded with the grant of Israel nationality.”

In the early years of statehood, the borders of the new Israeli State were far from sealed. Individuals managed “to cross from one side [of the border] to the other without going through the official entry posts.” Indeed, “[m]any [Palestinian] Arabs who had fled their homes, or had been expelled, to neighboring countries during the war managed to cross the border back into Israel.” Regardless of the causes that had lead them to depart their homes and lands during the war, these persons were understandably anxious to formalize their status as residents and to register in the Population Registry, in order to establish their Israeli citizenship. Yet many Palestinian Arabs found it difficult to prove that they had met the stringent conditions laid down in section 3 of the 1952 Citizenship Law, and, as a result, were denied Israeli citizenship status.

The provisions for acquiring Israeli citizenship by way of residence, set forth in section 3 of the Citizenship Law, consisted of three cumulative conditions: 1) residency; 2) presence in Israel after the establishment of the state in 1948; and 3) registration in the 1951 Population Registry. Section 3 was clearly designed to grant automatic citizenship status to Arab residents who had stayed in Israel during the 1948 war, while denying this status to Arab residents who had left Israel during the war. During the 1950s, the Supreme Court rarely overruled administrative decisions that denied Arabs’ requests to be registered as residents or as citizens, even if these persons had been illegally deported from Israel and had later managed to return to their homes. This left a class of persons who lived in Israel but were stateless, since they had lost their previous Palestinian citizenship (which was terminated with the end of the British Mandate), but were unable to prove the cumulative conditions set in the Citizenship Law in order to acquire Israeli

102. This position was expressed, for example, by Israel’s first Foreign Minister, Moshe Sharett, in a 1949 debate in the Knesset: “[A]llowing the refugees to return without a peace settlement with the neighboring countries would be suicide for the State of Israel; it would be like stabbing ourselves in the chest, no other state in our situation would even consider such a step.” D.K. (1949) 721 (statement of Foreign Minister, Moshe Sharett) (in Hebrew, on file with author).
103. Gouldman, supra note 51, at 70–71.
104. Kretzmer, supra note 29, at 37.
105. Id.
106. See id.
107. See Hofnung, supra note 101, at 77–82.
108. See Citizenship Law, supra note 7, § 3.
109. See Kretzmer, supra note 29, at 37–38; Rubinstein, supra note 25, at 171.
110. See, e.g., H.C. 64/54, Bader v. Minister of Police, 8 P.D. 970 (in Hebrew, on file with author).
citizenship by residence.\textsuperscript{111} These persons \textit{de facto} resided in Israel but had no \textit{de jure} residence or citizenship status.

This problem was partly resolved with the 1960 \textit{Mussa} case,\textsuperscript{112} in which the Supreme Court changed its previous narrow reading of the Citizenship Law and held that because citizenship is one of the most precious entitlements an individual has, it cannot be denied because of procedural faults.\textsuperscript{113} This change in policy meant that people who had left Israel with permission for a period of time during the war or shortly thereafter were entitled to Israeli citizenship, even if their residence was "interrupted" by the war. "Any other reading of the Citizenship Law," held the Court, "would deny Israeli citizenship to thousands of non-Jewish residents . . . a result which the Knesset would never have intended."\textsuperscript{114} The 1980 amendment of the Citizenship Law finally resolved the problem of statelessness of Israeli Arab residents who were previously residents of the territory but could not prove their entitlement to citizenship by residence under the strict provisions of the original 1952 Citizenship Law. The 1980 amendment retroactively recognized these Israeli residents as citizens of the state since its inception in 1948.\textsuperscript{115} More important, the amendment also granted automatic citizenship to the children of these residents by virtue of a \textit{jus sanguinis} principle.\textsuperscript{116}

Note, however, that none of the above-mentioned changes in the Citizenship Law affected the legal status of the Palestinian Arab population in the West Bank and Gaza Strip. Between the Six Day War of 1967 and the signing of the 1993 Declaration of Principles ("the Oslo peace accord") between Israel and the Palestinian Liberation Organization ("PLO"), the Palestinian Arab population in the West Bank and Gaza Strip was subject to Israeli military occupation. Palestinians living in these territories enjoyed only

\begin{itemize}
\item \textsuperscript{111} \textit{See}, e.g., H.C. 125/51, Hassin v. Minister of Interior 5 P.D. 1386 (in Hebrew, on file with author); H.C. 157/51, Abad v. Minister of Interior 5 P.D. 1680 (in Hebrew, on file with author). For a more detailed discussion of the attempts by former Arab residents to obtain Israeli citizenship, see generally HORNUNG, supra note 101, at 76–86. The Citizenship Law did not resolve the status of thousands of Arab residents who returned to Israel illegally by crossing the border back into the state without the government's permission after the end of the 1948 war. Such denial of status had grave implications in terms of these persons' ability to claim ownership over "abandoned" homes, lands, and property that were left behind in Israeli territory. For further discussion of this troubling period in Israel's history, see \textit{id.} at 101–12 (discussing the Absentees' Property Law of 1950).
\item \textsuperscript{112} H.C. 328/60, Mussa v. Minister of Interior 16 P.D. 1793, \textit{aff'd} F.H. 3/63, Minister of Interior v. Mussa 17 P.D. 2467 (in Hebrew, on file with author).
\item \textsuperscript{113} Technically, this decision meant that section 3 of the Citizenship Law need not be interpreted as requiring \textit{uninterrupted} residence.
\item \textsuperscript{114} \textit{Mussa}, 16 P.D. at 1868.
\item \textsuperscript{115} \textit{See} Citizenship Law (Amendment No. 4), \textit{ supra} note 39, \textsection 3A(5)(b).
\item \textsuperscript{116} \textit{See} \textit{id.} \textsection 4. Note that none of the above-mentioned changes in the Citizenship Law affect the status of the Palestinian refugees who were never permitted to return to Israel after the 1948 war. Some of these refugees assumed citizenship status in Jordan or in other non-Arab countries where they resided, but many still claim their right of return to Israel. Politically, the problem of citizenship for refugees is likely to be resolved as part of a comprehensive peace settlement between Israel, the Palestinians, and the neighboring Arab countries. Several negotiation proposals refer to monetary compensation to the 1948 Palestinian refugees, assistance to help resettle the refugees in neighboring countries rather than a materialization of a Palestinian right of return to Israel or a future Palestinian entity. \textit{See} generally Weiner, \textit{ supra} note 27.
\end{itemize}
heavily circumscribed rights since they were considered neither citizens nor residents of Israel.\[^{117}\] Thus, though non-citizen Palestinian Arabs were in many respects effectively part of the Israeli society and its economy, they were not legally incorporated into the state.\[^{118}\] Their status was even less favorable than that of "denizens" in Europe and North America, since as occupied persons, they were not permitted to establish a secure permanent residence status in Israel.\[^{119}\] Instead, Palestinians in the West Bank and Gaza were granted "permanent residence" status in the occupied territories, by a registrar operated by the Israeli Civil Administration, under the Israeli Minister of Defense. As a result of the Oslo peace accord, the Palestinian Authority ("PA") now has the general power to determine "permanent residence" status of persons under its territorial, functional and personal jurisdiction over most of the West Bank and Gaza Strip.\[^{120}\]

C. Citizenship Acquisition by Birth

Returning to the discussion of the different ways of acquiring Israeli citizenship, it is important to note that any person born in Israel whose father or mother is an Israeli citizen, is automatically granted Israeli citizenship at birth. There is no requirement that the child’s parent be married or that both parents have Israeli citizenship. Similarly, the manner in which the parent acquired Israeli citizenship is irrelevant.\[^{121}\] Hence, children of Jews and Arab citizens have a similar entitlement to birthright citizenship.\[^{122}\] The 1980

\[^{117}\] Following the Six Day War, Israel established a military occupation in the West Bank and Gaza in 1967, but has never annexed these territories. East Jerusalem, however, was incorporated to Israel in 1967 and formally annexed to Israel in 1980. See Basic Law: Jerusalem, Capital of Israel (visited Jan. 3, 1999) <http://www.mfa.gov.il/mfa/go.asp?MPAH00h0>. For a concise overview of the complex legal and political problems of Jerusalem, see generally Sharkansky, supra note 42, at 115–47.


\[^{119}\] I use the old English word "denizens" as employed by Tomas Hammar to refer to a category of, "privileged noncitizens." They are, in his definition, “foreign citizens who have a secure permanent residence status [in the host country], and who are connected to the state by an extensive array of rights and duties.” Tomas Hammar, State Nation, and Dual Citizenship, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 81, 84 (William Rogers Brubaker ed., 1989).

\[^{120}\] In effect, the accord provided that (1) all persons who were illegally residing in the West Bank and Gaza for a period of at least three years, prior to January 1996, were permitted to apply for Palestinian permanent residence status; (2) the PA acquired authority to register as “Palestinian permanent residents” in the territories, all children who were sixteen years of age or younger if one of their parents had permanent residence status; and (3) the PA acquired authority to determine the legal status of non-resident spouses of Palestinian permanent residents (subject to Israeli approval of such an application). See ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL, ISRAEL HUMAN RIGHTS FOCUS 117–19 (1996) (in Hebrew, on file with author). See also Declaration of Principles on Interim Self-Government Arrangements (Sept. 13, 1993) <http://www.mfa.gov.il/mfa/go.asp?MPAH00q00>; Gaza-Jericho Agreement Annex II: Protocol Concerning Civil Affairs (visited Jan. 21, 1999) <http://www.mfa.gov.il/mfa/go.asp?MPAH00q40>.

\[^{121}\] See Citizenship Law (Amendment No. 4), supra note 39, § 4(a)(1).

\[^{122}\] The Law of Return states that all Jews born in Israel are regarded as if they were immigrants, hence Jewish children born in Israel are entitled to citizenship both by way of return and by way of birth. It would seem, then, as one commentator put it, that the “real "citizenship beneficiaries" of section 4(a)(1) of the Citizenship Law regarding citizenship by birth are Arabs born to parents one of whom is an Israeli citizen.” KRETZMER, supra note 29, at 39.
amendment to the Citizenship Law resolves the anomaly present in the 1950 Law of Return, that children born in Israel to at least one Israeli Jewish parent are regarded as if they themselves were immigrants, or citizens by way of return (rather than by way of birth to an Israeli parent). In other words, the Citizenship Law now gives precedence to the principle of citizenship by birthright over the legal fiction of granting citizenship to children born in Israel based on the right to return.\textsuperscript{123} This change is significant because it "normalizes" the pattern of acquiring Israeli citizenship (toward a standard \textit{jus sanguinis} principle), and because it provides a universal definition of birthright entitlement to Israeli citizenship which is devoid of any religious-based distinctions.

Children born outside Israel to an Israeli parent are also granted automatic citizenship at birth. In fact, until the 1980 amendment to the Citizenship Law, Israeli citizenship was transmitted as a birthright by descent in perpetuity, regardless of the place of birth or of the parents' place of residence.\textsuperscript{124} A person who attained citizenship \textit{jure sanguinis} outside Israel could, in turn, transmit Israeli citizenship to his or her children even if that person never stepped foot in Israel and had no effective links to the state.\textsuperscript{125} This imposition of Israeli citizenship in perpetuity imposed the duties of citizenship upon such children born outside the country. They were subject, for example, to recruitment to the military at the age of eighteen, and were considered deserters if they did not fulfill this mandatory citizenship obligation. Moreover, because Israeli citizenship is only lost in extreme circumstances,\textsuperscript{126} the Citizenship Law forced membership upon individuals solely because one of their progenitors was once an Israeli citizen.\textsuperscript{127} The 1980 amendment to the Citizenship Law changed this legal situation, and currently acquisition of citizenship \textit{jure sanguinis} outside the state is limited to one generation only.\textsuperscript{128} The only determining factor for acquiring citizenship in this fashion is that at the time the child is born outside Israel, one of the parents must be an Israeli citizen. If a child is born outside Israel after the death of the parent who was an Israeli citizen, the child is still granted automatic citizenship at birth.\textsuperscript{129}

\textsuperscript{123} See Citizenship Law (Amendment No. 4), \textit{supra} note 39, § 4(a)(1).
\textsuperscript{124} Section 4 of the Citizenship Law, in its old version, provided that: "A person born while his father or mother is an Israel national shall be an Israel national from birth." Citizenship Law, \textit{supra} note 7, § 4. The amended section 4 now provides that "(a) The following shall, from the date of their birth, be Israel nationals by birth: (1) a person born in Israel while his father or mother was an Israel national; (2) a person born outside Israel while his father or mother was an Israel national-(a) by return; (b) by residence in Israel; (c) by naturalization; (d) under paragraph 1." Citizenship Law (Amendment No. 4), \textit{supra} note 39, § 4(a)(1).
\textsuperscript{125} See Rubinstein, \textit{supra} note 25, at 172.
\textsuperscript{126} See discussion \textit{infra} Part IV.
\textsuperscript{127} See Citizenship Law, \textit{supra} note 7, § 4.
\textsuperscript{128} See Citizenship Law (Amendment No. 4), \textit{supra} note 39, § 4(a)(1).
\textsuperscript{129} See id. § 4(b).
D. Citizenship Acquisition by Naturalization

In contrast to the acquisition of Israeli citizenship by way of return, residence, or birth, which is automatic, naturalization is subject to the discretion of the Minister of the Interior. In order to qualify for citizenship by way of naturalization, the applicant must fulfill six prerequisites listed in section 5 of the Citizenship Law. That is, the applicant must 1) be in Israel; 2) have been in Israel three out of the five years preceding the day of submission of the application; 3) have been entitled to permanent residency; 4) have settled or expressed intent to settle in the Israel; 5) have basic knowledge of the Hebrew language (however, no mandatory language proficiency test is imposed); and 6) have renounced his or her prior citizenship or has proven willingness to terminate it upon becoming an Israeli citizen. Upon approval of the application for naturalization by the Minister of the Interior, the naturalized person is entitled to Israeli citizenship after taking the following simple oath: "I declare that I will be a loyal [citizen] of the State of Israel." These prerequisites for naturalization are in many respects no harsher than those of many other countries in the world, however, they are extremely restrictive in comparison with the automatic granting of citizenship by way of return to Jews and their non-Jewish family members who wish to make aliyah to Israel. For example, while olim do not have to renounce their citizenship to other countries upon becoming Israelis, non-Jews are required to renounce or express willingness to renounce their prior citizenship. This distinction is another reflection of the deeply entrenched ethnocultural conception of Israeli citizenship and immigration policy. It likely assumes that a "feeling of solidarity and loyalty to the political community can be presumed only of those persons who by way of common interests or shared historical experience" are already part of the nation, whereas those who are not by religion, ancestry, or family affinity related to the Jewish people, must assert their loyalty to the Israeli state by severing their citizenship ties to a former political community. To provide further illustration to this problem, the next section considers the effect of Israeli citizenship law and immigration policy upon third parties, such as non-Jewish alien spouses of Israeli citizens (who until 1996 were treated differently if they were married to a Jewish Israeli citizen or a non-Jewish Israeli citizen).

130. See Citizenship Law, supra note 7, § 5. Also, section 6(c) of the Citizenship Law exempts all people who were Palestinian citizens under the British Mandate (i.e., prior to the establishment of the State of Israel in May 1948) from the language proficiency requirement. See id. § 6(c).

131. See id. § 5(c).

132. See supra note 19 and accompanying text.

133. See Citizenship Law, supra note 7, § 5(a)(6).

134. Kay Hailbronner, Citizenship and Nationhood in Germany, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 75 (William Rogers Brubaker ed., 1989) (discussing the German "right of return").

135. See Citizenship Law, supra note 7, §§ 5(a)(6), 5(c).
E. Gender, Marriage and Citizenship

Until recently, Jewish citizens received preferential treatment over non-Jewish citizens in matters where citizenship and marriage converged. Specifically, the Minister of Interior implemented two different legal procedures for the acquisition of Israeli citizenship by an alien spouse, depending on the religion of the Israeli spouse. In principle, if an alien spouse married a Jewish Israeli citizen, the alien spouse was automatically entitled to Israeli citizenship upon marriage. This automatic granting of citizenship was based on a long-established interpretation of section 4A of the Law of Return which states that “[t]he rights of a Jew under this Law and the rights of an [oleh] under the [Citizenship] Law . . . are also vest in a child and a grandchild of a Jew [and] the spouse of a Jew[.].” It was taken for granted that the legislature intended to include the “alien” spouse of an Israeli Jewish citizens within those family members who are entitled to citizenship by way of return, thus permitting the alien spouse of a Jewish Israeli citizen to bypass the prerequisites of naturalization (as set forth in the aforementioned section 5 of the Citizenship Law). An alien spouse who married a non-Jewish Israeli citizen, however, could not utilize the Law of Return “bypass.” Instead, the alien spouse had to go through the more complex procedure of seeking Israeli citizenship by way of naturalization. In principle, an alien spouse of an Israeli citizen could obtain citizenship by way of naturalization, even if he or she had not met the prerequisites of naturalization. However, this is a privilege, not a right. The Minister of the Interior has discretion over whether to grant such an exemption and what the scope of such an exemption might be, specifically, which of the prerequisites specified in section 5 may be waived in any particular naturalization case due to marriage.

Since September 1996, the Minister of the Interior has adopted a new “hard line” against any person seeking citizenship by way of marriage to an

136. See Gouldman, supra note 51, at 84; Klein, supra note 9, at 61.
137. The Law of Return (Amendment No. 2), supra note 8, § 4A(a).
138. See supra notes 131–36 and accompanying text.
139. See Citizenship Law, supra note 7, § 5. See also discussion supra Part II.D.
140. See Citizenship Law, supra note 7, § 7.
141. See id. Note, however, that if the marriage took place outside Israel, and the Israeli citizen was not Jewish, then in order for the alien spouse to legally enter Israel, the spouse has to initially enter Israel on a tourist visa. As tourists, these spouses are not covered by the state’s otherwise universal health coverage, nor are they entitled to social security benefits (permanent residents, however, are entitled to these benefits). See Adalah The Legal Center for Arab Minority Rights in Israel, Legal Violations of Arab Minority Rights in Israel: A Report on Israel’s Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination 40 (Mar. 1998). The question of social entitlements is of special concern in Israel since many of the alien spouses who applied for naturalization were Palestinians from the West Bank and Gaza Strip or from one of Israel’s neighboring Arab countries. Given the economic disparities between Israel and the West Bank and Gaza Strip, establishing permanent residency or citizenship in Israel has great significance in terms of ensuring, on average, a higher standard of living both for the couple and their children. See Economist Intelligence Unit, Country Profile: Israel, The Occupied Territories 1993/1994 (describing the economic disparities).
Israeli citizen, even when the Israeli spouse is Jewish.142 The Minister of the Interior now requires that alien spouses married to Israeli citizens, whether Jewish or non-Jewish, "leave the country for six weeks to confirm the 'sincerity' of the marriage."143 Thereafter, the alien spouse can re-enter the country on a temporary visa,144 apply for permanent resident status from within Israel, and only then begin the citizenship process.145

This new immigration policy has a "race to the bottom" rationale. Instead of making it easier for the alien spouse of a non-Jewish citizen to establish Israeli citizenship, it "equalizes" the hardships by imposing greater difficulties upon alien spouses of Jewish Israeli citizens. Apparently, this policy was changed by the Minister of the Interior as a means of preventing "fictitious marriages" for the purposes of acquiring Israeli citizenship.146 It reflects the growing anxiety about the status of non-members in Israel, particularly foreign workers who began entering the country in substantial numbers in the late 1980s.147 In this respect, the motives behind the tightening regulation of immigration policy toward alien spouses in Israel were not too different from those that lead to the passing of stricter immigration requirements in other countries, such as the Immigration Marriage Fraud Amendments of 1986 adopted by the United States Congress.148 Yet, unlike the United States, this new policy was not publicly debated in Israel, nor was it approved by the Knesset, although it represents a departure from the long standing interpretation of the Law of Return as granting automatic citizenship status to alien spouses of Jewish Israeli citizens.149

In practice, for many alien spouses (whether they are married to Jewish or non-Jewish Israelis) the real issue pivots around establishing permanent residency, a status which grants most of the social and economic benefits that are attached to Israeli citizenship.150 Yet establishing permanent residency may prove to be more difficult for some alien spouses than others. In particular, the Minister of the Interior seems to place serious bureaucratic obstacles before male alien spouses who wish to establish permanent residency based on their marriage to Israeli wives. This has long been a problem in the context of "family reunification" requests put forth by


143. Id.

144. See ADALAH, supra note 141, at 39.

145. See Reinfeld, supra note 142. See also Kamella v. The Minister of Interior (unpublished decision of the Israeli Supreme Court), cited in ADALAH, supra note 141, at 40.

146. See Reinfeld, supra note 142. See also Petitioner's Brief, H.C. 3648/97 Stemka v. Minister of Interior (in Hebrew).

147. See discussion infra Part V.


149. The legality of this change in immigration policy is currently under review by the Supreme Court. See H.C. 3648/97 Stemka v. Minister of Interior (decision pending) (in Hebrew).

150. See ADALAH, supra note 141, at 39–40.
Palestinian Arab Israeli women. These administrative hardships create a de facto barrier from fulfilling the right of every Israeli citizen to establish his or her family in Israel and to grant immigration status to his or her spouse. The problem is most acute in the case of Arab Israeli women who marry Palestinian husbands from the West Bank or Gaza.

To be more specific, it seems that the Minister of the Interior is operating under archaic gender presumptions, which echo the infamous common-law principle of female coverture in marriage. That doctrine holds that "[b]y marriage, the husband and the wife are one person in law; that is, the very being or legal existence of the wife is suspended during the marriage, or at least is incorporated and consolidated into that of the husband." Historically, this principle of family unity (or "dependent citizenship") had a deleterious effect on the legal status of women who married aliens, leading, for example, in certain periods in United States history, to automatic expatriation of "those [American] women who dared marry a foreigner." Men, however, were not subject to the same sanction if they married an alien wife. This gender-based distinction was common in most countries' citizenship and nationality laws until World War I, and is still practiced in several countries today. Israeli law, however, never subscribed to this concept of dependent citizenship. Instead, it firmly adopted the principle of "independent citizenship," whereby an Israeli woman's nationality and citizenship are not lost "upon marriage to an alien even if, under the husband's national law, marriage has the effect of bestowing the husband's nationality upon her." In short, nothing in the provisions of the Citizenship Law permit discrimination in bestowing citizenship upon an alien spouse based on the gender of the Israeli citizen. However, from the scattered evidence available about the practice of the Minister of the Interior in the case of requests for permanent residency or naturalization based on marriage to non-Jewish Israeli wives, there seems to be a pattern of imposing greater administrative hardships upon male Arab husbands who wish to establish

151. See Association for Civil Rights in Israel, supra note 120 (discussing the Association for Civil Rights in Israel's representation of Palestinian Arab women seeking permanent resident status for their spouses).
152. See id.
156. See id.
158. See Gouldman, supra note 51, at 83.
159. Id.
160. In fact, the Citizenship Law clearly asserts the independence of each spouse in matters of nationality (i.e., Israeli citizenship is not automatically bestowed upon the alien spouse, whether wife or husband). See id.
status in Israel based on the principle of family unity than would be the case if a alien wife sought to join her non-Jewish citizen husband in Israel.\textsuperscript{161}

To sum up the question of acquisition of citizenship, Israeli citizenship can be established by way of return, residence, birth, or naturalization. Israeli citizenship is transmitted primarily through the \textit{jus sanguinis} principle. Birthright entitlement to membership in the policy is equally guaranteed to all Israeli citizens, Arabs and Jews alike, regardless of the way in which they themselves established citizenship. Children born outside Israel to an Israeli parent acquire automatic citizenship at birth; however, their children are not entitled to Israeli citizenship by birth if the family has no effective ties to the country.

III. RIGHTS AND OBLIGATIONS OF CITIZENSHIP

Most of the civil, economic, and social entitlements guaranteed by law to Israeli citizens are equally applicable to permanent residents.\textsuperscript{162} However, citizenship makes a difference in two arenas: on the "rights" side, i.e., the right to full political participation on the national level; and on the "obligations" side, i.e., the duty to serve in the military.

Only citizens are entitled to vote for the Knesset (the Israeli parliament) and for the Prime Minister (in direct elections).\textsuperscript{163} Citizenship is also a pre-condition for employment in the civil service.\textsuperscript{164} The right of Israeli citizens to enter the country, remain therein, and to depart therefrom, is constitutionally protected.\textsuperscript{165} In order to enter and depart Israel, a person must present a valid passport or a laissez-passer to an official at a frontier

\textsuperscript{161} See Association for Civil Rights in Israel, Petition to the Supreme Court: Gender Discrimination Against Residents of Jerusalem Who Marry Foreign Spouses, Press Release (May 25, 1993) (in Hebrew). As mentioned earlier, there are no official numbers regarding the number of requests for family unity based on marriage that were refused or on the impact that the gender of the spouse upon the refusal. The only occasion on which the issue of sex based discrimination was directly confronted in the context of immigration policy was in 1993 in \textit{Gabari'\textsc{th} v. Minister of Interior}, where the petitioner alleged discrimination by the Minister of Interior against women from East Jerusalem who seek to establish residency status for their foreign husbands. The Court never reached a decision, however, because the petition was dismissed as moot after the Minister of the Interior granted permanent residency to the individual who brought the case, and also declared that "there would be no significance to the sex of the person requesting family unity from here thereafter." Motion to Dismiss the Petition, H.C. 2797/93 Gabari'\textsc{th} v. Minister of Interior (in Hebrew, on file with author).

\textsuperscript{162} See Adalah, supra note 141, at 40. These benefits include, for example, entitlement to social security benefits, universal health care, and freedom of occupation. Individuals who enter Israel on a temporary non-immigrant visa (e.g., tourists, foreign students, foreign workers) are granted a more limited set of rights and protections as specified by statute or case law. See id. It is important to note that Basic Law: Human Dignity and Liberty (enacted in 1992) states that: "There shall be no violation of the life, body, or dignity of any person as such." Basic Law: Human Dignity and Liberty, 1992, S.H. 1391, § 2, available in <http://www.mfa.gov.il/mfa/go.asp?MFAH00h40> (emphasis added).

\textsuperscript{163} See Basic Law: The Knesset, 1958, S.H. 244, § 5, available in, <http://www.mfa.gov.il/mfa/go.asp?MFAH00h80>. In March 1992, the proposal for direct election of the prime minister was adopted, though implementation was delayed until the 1996 election. Prior to this change, the prime minister was the head of ruling coalition in the Knesset.

\textsuperscript{164} Civil Service Law (Appointments), 1959, § 16 (on file with author).

\textsuperscript{165} See Basic Law: Human Dignity and Liberty, supra note 162, §§ 6(a), 6(b).
station. 166 "All persons are free to leave Israel", however, Israeli citizens who have attained military age or are reserve soldiers can be prohibited from leaving Israel without a special travel permit from their military units. 168 Thus, in practice, all reserve soldiers must carry travel permits from their military units in order to leave the country lawfully.

By law, all Israeli citizens, male or female, are to be recruited at the age of eighteen for mandatory military service. The 1986 Defense Service Law (Consolidated Version) imposes a duty on every Israeli citizen, both men and women, to serve in the military. 169 Yet, as an administrative practice, the Minister of Defense has discretion to exempt certain persons from the obligation of mandatory military service. 170 This has been the case for many years for male ultra-Orthodox Jews who have attained the age of recruitment but are full time students at a religious institution (a yeshiva), 171 and for the majority of Palestinian Arab Israeli citizens. 172 However, most Jewish Israeli citizens do serve in the military. Male soldiers serve for a period of at least three years while women soldiers usually serve for a period of two years. 173 These young men and women serve in the same units, but women are still largely barred from positions bearing the "direct combat" label. 174

Unlike the United States and most other countries in the world, women in Israel have been admitted to the military service since the inception of the state in 1948. The hearing in the Knesset which preceded the enactment of the 1949 Defense Service Law, which established a mandatory duty for Israeli

166. See Rubinstein, supra note 25, at 184 (citing Entry Into Israel Law, 1952, 6 L.S.I. 159 (1951-52) § 7 and Emergency Regulations (Departure from the State), 1948, 15 L.S.I. 179).

167. See Basic Law: Human Dignity and Liberty, supra note 162, § 6(a).

168. See Rubinstein, supra note 25, at 184–85. Hence, any citizen must report to his or her military unit if called lawfully to service; failure to report is an offense for which a soldier may be tried in a military court.


172. Since the establishment of the state, recruiting officers, operating under the Minister of Defense, have refrained from recruiting the majority of Arab Israeli citizens for the draft. However, male members of the Bedoun and Druze communities have been recruited since the late 1950s. As Kretzmer notes, "[t]here would appear to be two reasons for exempting the Arabs from military service. The official version is the wish not to present the Israeli Arabs with the conflict of having to take up arms against members of their own people (and possibly, even their own families). It would, however, be naive to believe that the fear that some Arabs might be tempted to use their arms against the Jewish state, rather than in defending it, was not an equally weighty reasons." See KRETZMER, supra note 29, at 99 (citations omitted). These two reasons for not recruiting the majority of Palestinian Arab citizens to the Israeli military raise a host of questions (which go beyond the scope of this article) about how the Israeli government views Arab citizens, and how these view themselves in terms of identity and loyalty to the state.

173. See id. at 98.

174. The restriction on women holding direct combat positions is gradually being overturned. See generally ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL, supra note 120.
women (and men) to serve in the military, is full of references to women's contribution to statehood building (during the Yishuv period), and their right—as full and equal citizens of the newborn state—to serve in the military. As David Ben Gurion, Israel's first Prime Minister, said: "[O]ur soldier is first and foremost a citizen, in the fullest meaning of that term. A citizen belonging to his [or her] homeland, to the history of the nation, its culture and language. . . . The military] is the state institution where all cleavages: ethnic, political, class-based or of any other sort, vanish. Each soldier is equal to his companion in status." Thus, "[a]t the age of eighteen, immigrants and sons [and daughters] of the land, girls and boys, all are required . . . to know how to bear arms and use them."176

As previously mentioned, the emphasis on military service for the nation as the proof of inclusion in the body politic echoes a republican conception of citizenship, in which a connection is made between the commitment to make sacrifices for the nation and the right to fair share in governing.177 The word "citizen" itself, as Linda Kerber observes, still carries "overtones inherited from antiquity and the Renaissance, when the citizen made the continued existence of the city possible by taking up arms on its behalf."178 While much has changed since antiquity, political membership, especially in countries like Israel, still implies a profound connection between having full citizenship and the duty of military service.

This understanding of citizenship as a practice of active participation (not only as a mere bundle of rights) has had, however, an adverse effect of creating in Israel what I label different "degrees of citizenship." By this term I refer to state practices and legal rules, as well as social practices and cultural conventions, that create a complex matrix of membership statuses that, explicitly or implicitly, differently allocate rights, duties, and ultimately powers, among individuals who are all formally entitled to full and equal citizenship rights. For example, while Jews and Palestinian Arab citizens of the Israeli state formally enjoy equal citizenship rights, most Arab citizens are not recruited to the military (with the exception of male members of the

175. See, e.g., D.K. (1949) 1455 (statement of Knesset Member Y. Meridor) (in Hebrew, on file with author).
176. D.K. (1949) 1336 (statement of Prime Minister and Minister of Defense David Ben Gurion) (in Hebrew, on file with author). Ben Gurion's words were echoed by many of the other speakers. Some emphasized women's important contribution to the fight against the British Mandate authorities and the War of Independence, while others stressed the significance of military service in terms of full inclusion: "[I]n creating a pioneer army in Israel, let the place of women not be neglected; we are equal participants in the building of the nation and in its protection." D.K. (1949) 1561 (in Hebrew, on file with author). However, even within this framework, women were always seen as "different" from men, as bearing a special responsibility the family and the home. The biblical image of the eshet chayil (or "woman of valor") who stands at the core of her family, home, and community, has, as Pnina Lahav observes, heavily influenced the political discourse regarding women's status in the early days of nation building in Israel. See Pnina Lahav, When the Palliative Simply Impairs: The Debate in the Knesset on the Law for Women's Equality Rights, 12 ZMANIM—A HIST. Q. 149, 125–53 (1993) (in Hebrew, on file with author).
Druze and Bedouin communities), and hence cannot “exercise their citizenship as practice, by attending to the common good.”¹⁷⁹ In a country like Israel, where identity and group membership matter significantly and where wars and armed confrontations are still, for various exogenous and endogenous reasons, a real threat, military service has become an obvious demarcating tool for distinguishing between different members of the same polity, that is, between those who truly belong to the republic and those who are entitled to the rights of citizenship in the state but are conceived as less than full members of the political community because they do not partake in its most fundamental expressions of self-determination, i.e., military service.¹⁸⁰

In Israel, then, the clearest demarcation between different “degrees of citizenship” is the distinction between members of the Jewish majority and members of the Palestinian Arab citizen minority. Yet, every modern nation state has a potential tension between “citizenship in the state and membership of the nation. The former determines the criteria for formal participation in the political community . . . . The latter determines the criteria of substantive participation in the political community.”¹⁸¹ This potential tension between citizenship in the state and membership of the nation is aggravated in Israel, a state that is constitutionally defined as both Jewish and democratic.¹⁸² The relationship between the two terms of this definition is such that democracy usually takes priority and it is extremely rare to explicitly use “Jew” and “non-Jew” as distinguishing factors among those already considered members of the body politic, i.e., citizens. This is not the case, however, in determining who is eligible for membership in the state, as demonstrated by the Law of Return. The legislature sometimes uses the criterion of military service as a basis for providing supplemental social benefits to those who have participated in the highest obligation of citizenship, almost exclusively

¹⁷⁹ See Peled, supra note 14, at 432 (emphasis added).
¹⁸⁰ This distinction is viewed by academics and scholars as highly problematic. Some scholars draw the line of demarcation between the different shades of citizenship of Jews and Arabs in Israel along different lines. Peled, for example, suggests that Arab Israeli citizens cannot become full members because “Jewish ethnicity is a necessary condition for membership in the political community, while the contribution to the process of Jewish national redemption is a measure of one’s civic virtue. This conception necessarily excludes the Arabs.” Id. at 435. Smooha suggests that Israel is best categorized as a “democratic ethnic state” which combines an “extension of political and civil rights to individuals and certain collective rights to minorities with institutionalized dominance over the state by one of the ethnic groups.” Sammy Smooha, Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel, 13 ETHNIC & RACIAL STUD. 389, 391 (1990). Note, however, that the more accurate distinction between the different shades of citizenship is not between Jews and non-Jews, but rather between affiliates of the dominant Jewish majority and affiliates of the Muslim Arab minority.
¹⁸² Israel has a set of Basic Laws which together serve as the formal core of the state’s constitutional law. The definition of Israel as both a Jewish and democratic states appears, for example, in two Basic Laws enacted in 1992 (Basic Law: Freedom of Occupation and Basic Law: Human Dignity and Liberty). This definition was already expressed in 1948, in Israel’s Declaration of Independence and is commonly referred to by the Supreme Court. Various commentators have analyzed the legacy of this dual Jewish and democratic character of the State of Israel, and its political and legal consequences. See generally Baruch Kimmerling, Between the Primordial and the Civil Definitions of the Collective Identity: Eretz Israel or the State of Israel, in COMPARATIVE SOCIAL DYNAMICS 262 (Erik Cohen et al. eds., 1985).
referring to members of the Jewish majority, thus discriminating between nominally equal Jewish and non-Jewish citizens. These social benefits include supplementary children allowances, tax credits, or assistance in mortgage payments, and go beyond the basic support provided to all other citizens.\textsuperscript{183} While many countries provide discharged soldiers with benefits not available to others, the use of military service as criterion for entitlement in Israel serves as a disguise for discrimination because as a matter of administrative practice (not of law) most Israeli Arab citizens are not called up for military service, and thus cannot enjoy those benefits which are provided exclusively to discharged soldiers.\textsuperscript{184} In this respect, the republican ethos of active participation in the defense of the nation has the divisive effect of creating stratification between “first class” and “second class” Israeli citizens.\textsuperscript{185}

Gender is another dividing line, which creates an even more complex matrix of “degrees of citizenship.” By law, Israeli women are recruited to the military as an expression of their full membership in the state.\textsuperscript{186} However, even within this framework, women have always been seen as “different” from men, as bearing a special responsibility for the family and the home. Already in 1949, in presenting the Defense Service Law to the Knesset, David Ben Gurion noted, in analyzing the question of women’s participation in the defense forces, that “we must take into account two factors—and both of them together. The first factor—a woman has a special designation of motherhood . . . the second factor—a woman is not only a woman, she also has a legal personality [in her own right], in the same way as a man. As such, she must enjoy all the same rights and duties as a man.”\textsuperscript{187}

This understanding of motherhood as service to the nation, a duty that “women of the republic” bear toward the collective,\textsuperscript{188} has found statutory expression in section 39 of the 1986 Defense Service Law (Consolidated Version) which states that “a mother to a child or a pregnant woman is exempted from the duty to military service upon informing [the military authorities] of her motherhood or pregnancy.”\textsuperscript{189} Similarly, a married woman at the age of recruitment may chose to volunteer for the military, though she is not bound to participate in this otherwise universal citizenship duty.\textsuperscript{190}

These exemptions illustrate that women’s inclusion in the military, important

\textsuperscript{183} See generally KREITZER, supra note 29, at 98–107.

\textsuperscript{184} See id. at 99.

\textsuperscript{185} It is important to note that both the Jewish majority and the Palestinian Arab citizen minority are internally diverse communities. On certain issues, such as the peace process, for example, the ties that bind certain members across these two communities are deeper than the cleavages that divide among members within each community.

\textsuperscript{186} See Defense Service Law, supra note 169, §§ 13, 16.

\textsuperscript{187} D.K. (1949) 1568–69 (statement of Prime Minister and Minister of Defense David Ben Gurion) (in Hebrew, on file with author).

\textsuperscript{188} See generally LINDA K. KRUEGER, WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA (1980).

\textsuperscript{189} See Defense Service Law, supra note 169, § 39(a).

\textsuperscript{190} See id. § 39(b).
as it may be in symbolic terms of equality, is still considered secondary—in the eyes of the Defense Service Law—to their “primary” contribution to the nation as wives and mothers. The duty of motherhood, it seems, takes precedence over women’s other citizenship duties, namely military service, if these obligations are deemed to be in direct conflict with each other. Interestingly, the fact that male soldiers may also be husbands and fathers does not, in any way, affect their military status or duty as citizens.

Furthermore, while women in Israel have full citizenship rights, and are guaranteed equal treatment by law as wives and mothers, Israeli women are nevertheless subject to a system of gender-discriminatory religious codes which structurally relegate women to a “second class” citizenship status. For various historical reasons, Israel has preserved the ancient Ottoman Empire’s *millet* system in the context of marriage and divorce regulation. Thus, no uniform state law applies over all citizens. Instead, each religious community governs its own members’ marriage and divorce proceedings through a system of autonomous religious courts which have been vested with exclusive jurisdiction over these matters by the state. The communal autonomy granted to the various recognized religious communities in Israel is important in terms of permitting different citizens to preserve their cultural and religious group identity. However, it also gives Jewish and Muslim men certain privileges over their wives, instituted by religious authorities and sanctioned by state law, which would have never passed constitutional muster had they occurred outside the “protected” realm of religious family law.¹⁹¹

Put in a broader comparative context, the Israeli case study shows that while citizenship as a legal concept is a crucial factor in determining who is inside or outside a given political community, significant differences may still be maintained *within* the polity *among* formally equal citizens. As my brief discussion of the differences in entitlement of Jews and Palestinian Arab Israeli citizens (and to a lesser extent, between male and female Israeli citizens) demonstrates, a complex interplay of legal rules, administrative practices, social factors, and cultural conventions determine the *de facto* status of formally equal members within the same political unit. Different “degrees of citizenship” are created among formally equal citizens of the same polity, when access to certain obligations and goods is not equally distributed due to overt and covert discriminatory mechanisms. As mentioned above, the key obligation of citizenship (military service), under a republican conception of government, clearly imposes greater burdens upon Jewish Israeli citizens. At the same time (and perhaps not even for the same reasons), it also grants these individuals access to well-defined “extra” social

benefits,\textsuperscript{192} for which non-Jewish citizens cannot qualify because they are not generally recruited to the military.\textsuperscript{193} Furthermore, even within the participatory Jewish community, men and women are not similarly situated, at least not in terms of their rights and duties at the intersection of family and military service duties in the public sphere. To complicate the picture even more, it is clear that Arab Israeli women are even more vulnerable to threats to their citizenship status, as they may be discriminated against both as Arabs and as women.\textsuperscript{194} These different "degrees of citizenship," in short, stem not only from the bright-line laws of the government, but also from a multi-layered social framework in which the mosaic of ethnicity and religion, as well as gender and class, determine to varying degrees and depending on the particular legal arena the first, second, or third class membership statuses of formally equal citizens.

IV. LOSS OF CITIZENSHIP AND DUAL CITIZENSHIP

Israeli citizenship is hard to lose. An individual's voluntary renunciation of membership in the body-politic is not sufficient to break the formal linkage to the State. Israeli citizenship may be renounced only with the expressed consent of the Minister of the Interior to a person's request for expatriation.\textsuperscript{195} Clearly, this approach to relinquishing citizenship is another facet of the republican conception encoded in Israeli citizenship law, which emphasizes the duties of membership and the ultimate loyalty to the nation expected of each person. In this view, citizenship is not an allegiance that an individual may freely and unilaterally sever; rather, it is a personal allegiance between the individual and the political community, the state, in which rights and obligations for life arise for each party. The state must provide minimum living conditions to all its citizens, and assure their self-defense and protection. The individual, on the other hand, is required to show loyalty and readiness to risk his or her life for the continued existence of the nation, hence the centrality and valorization of the obligation to serve in the military.

Contrary to the American perception of expatriation as a voluntary relinquishment of citizenship, which involves a "natural" and "inherent" right of a person to depart from his or her country of origin, Israeli

\textsuperscript{192} See supra notes 187–88 and accompanying text.

\textsuperscript{193} Note, however, that because of Israel's self-definition as a Jewish state, religious Orthodox Jews, who are exempted from military service as long as they continue their yeshiva (Jewish religious) studies, generally suffer little disability for their lack of military service–unlike their Arab citizens counterparts. See KRETZMER, supra note 29, at 106–07. This is due, in part, to the special status (or "cultural autonomy") granted in Israel to Orthodox Jews, but not to the Israel's Arab citizens. See generally Peled & Shafir, supra note 29.

\textsuperscript{194} See generally, Kimberle Williams Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics, 1989 U. CHI. LEGAL F. 139 (discussing the intersection of race and gender in the lived experiences of women of color in the American context, and critically analyzing the "single axis" legal framework which fails to address the multiplicity of different sources of discrimination).

\textsuperscript{195} See Citizenship Law (Amendment No. 4), supra note 39, § 10A.
understanding of expatriation echoes the common law concept of perpetual allegiance to a person’s native political community. Under the common law approach, the right of expatriation is neither natural nor inherent in each citizen; rather, it is an expression of the state’s authority to determine who is and who is not a member. Thus, under section 10 of the Citizenship Law, an Israeli citizen of full age may make a declaration to the effect that he or she desires to renounce his or her Israeli citizenship. 196 Such renunciation, however, will only take effect once the Minister of the Interior has expressed consent. 197

Immigrants by return automatically establish Israeli citizenship upon settlement in Israel. 198 There is no legal requirement that an individual relinquish his or her previous citizenship affiliation prior to making aliyah to Israel. 199 Thus, Jewish Israeli citizens who are also citizens of other counties may continue to hold dual or multiple citizenship affiliations, regardless of why, when and how these citizenship affiliations were established (i.e., whether the foreign citizenship was acquired prior to immigration to Israel, by birth, or based on voluntary emigration from Israel). 200

In the eyes of Israeli law, the Israeli citizenship status is presumed to have a lexical priority over all other national affiliations held by the individual. Accordingly, section 14(b) of the Citizenship Law states that a person who has dual or multiple citizenship is nevertheless legally “considered an Israel national.” 201 This perception fits well with the overall understanding of Israeli citizenship as a special and almost inalienable bond between the individual and the political community. Yet this legal rule of membership may in practice have a negative effect on Israeli citizens who wish to sever their ties with the country. Even if Israeli citizens reside outside Israel for extended periods of time and are naturalized into their new political community, these individuals are still entitled to the rights and subject to the duties of

196. See id.
197. See id. Note that section 10A also states that only a citizen who is not a resident of Israel may seek to renounce her Israeli nationality. See id.
198. See discussion supra Part II.A.
199. See Citizenship Law, supra note 7, § 14(a).
200. The only case in which Israeli citizenship may be revoked because of a conflicting national loyalty is when an Israeli citizen has established residency or acquired citizenship in a country which is at a formal state of war with Israel. Such a person is presumed to have expatriated from Israel, and the Minister of the Interior has authority to denationalize the citizen. See Citizenship Law (Amendment No. 4), supra note 39, § 11(a). However, the Minister of the Interior usually consents to expatriation requests made by persons who made aliyah to Israel and were automatically granted Israeli citizenship, if they wish to maintain their previous citizenship in order to preserve certain rights in their native home country, such as the right to land ownership, inheritance, or pension payments. This is significant because a very high percentage of Israel’s citizenry is not Israeli-born (as of 1996, for example, approximately 38% of the Israeli Jewish population was born outside the country). See 48 Stat. ABSTRACT OF ISRAEL 1997. This type of expatriation of Israeli citizenship is relevant, then, only in those cases where in the eyes of the native home country, the establishment of Israeli citizenship status by the individual alongside her original citizenship status has detrimental effect on rights she would have been entitled to if she had maintained only her original citizenship status.
201. See Citizenship Law, supra note 7, § 14(b).
Israeli citizenship according to Israeli law. Thus, in order to enter and leave Israel, they must, like all other citizens, hold a valid Israeli passport. If they reside in Israel, they may be subject to Israeli taxation. Even if an Israeli national renounces his or her citizenship and the Minister of the Interior consents to the renunciation (as is often the case when the person emigrates from Israel), the loss of citizenship does not release a person from duties and responsibilities created before the loss of citizenship, hence a former Israeli citizen might still be obliged to serve in the Israeli military.

Israeli citizenship is transmitted by descent. Hence, the offspring of an Israeli parent automatically acquires Israeli citizenship at birth, regardless of the place of birth or the family’s effective ties to Israel. By the provisions of the Defense Service Law, this child, as an Israeli citizen, shall be called to military duty at the age of 18, even if he or she holds another citizenship or has resided for years outside Israel.

Under the republican perception of membership expressed in Israeli citizenship law, such mandatory drafting was intended to preserve a special link between the Israeli state and the offspring of Israeli citizens who emigrated from the country, by providing these “lost” children access to the “heartland of citizenship practice” (military service). The priorities of the polity can perhaps be seen by the way in which the obligations of citizenship are balanced against the right to vote—usually the most visible right of citizenship. Israelis who live abroad have no right to vote as “absentees” in national or municipal elections, but these Israelis and their children are formally subject to the obligation of military service. In reality, however, the result of this mandatory imposition of military duty upon children born

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202. See Rubinstein, supra note 25, at 177–78.
203. This duty can be activated only when the person sets foot in Israel.
204. See discussion supra Part II.C.
205. To provide one well-known example: Samuel Sheinbein, an American citizen accused of murder in the United States, fled to Israel after being named suspect in a brutal murder in a Washington suburb. A request for Sheinbein’s extradition was made by the United States Justice Department and was supported by Israel’s Attorney General, Elyakim Rubinstein. However, according to Israel’s Extradition Law, an Israeli citizen may not be extradited to another country to face trial for crimes he is alleged to have committed in that country. Judge Moshe Ravid of the Jerusalem District Court therefore had to determine whether Sheinbein, the son of an Israeli citizen, is an indeed an Israeli citizen by birth. On September 6, 1998, Judge Ravid determined that Sheinbein is an Israeli citizen but is nonetheless extraditable because he has no “affinity” to Israel. However, the Israel Supreme Court in split three to two decision overturned the ruling of the Jerusalem District Court. On February 25, 1999, the majority decision found that “every Israeli citizens has immunity from extradition, irrespective of his affinity to Israel.” The Supreme Court President, Aharon Barak, who was in the minority, “maintained that such immunity can be claimed only by a citizen for whom ‘Israel is the center of his life and who participates in its life and joins his destiny to that of the country.’ Thus it seems that Samuel Sheinbein will not be extradited to the United States. In stead his trial for murder will take place in Israel. If convicted, he will serve his prison term in an Israeli cell. See Moshe Reinfeld, Sheinbein Wins Appeal as Court Splits 3–2, HA’ARETZ, (Feb. 26, 1999) <http://www3.haaretz.co.il/eng/htmlsl6_4.htm>. See also Ze’ev Segal, Analysis: A New Definition of Citizenship, HA’ARETZ, (Sept. 7, 1998) <http://www3.haaretz.co.il/eng/scripts/s...=Sheinbein&mador=1&se=true&date=9/9/98>.
207. As an official publication of the Ministry of Immigrant Absorption puts this point, “[s]ervice is the ‘entry card’ to Israeli society and an important basis for social integration.” See MINISTRY OF IMMIGRANT ABSORPTION, supra note 68, at 29.
outside the country has had an adverse effect, because "the bond that might have been created naturally by visits to Israel and intermingling with Israeli society is diminished by a law that converts the first visit to Israel into a potential recruitment trap." 208

The perception of a birthright and of lifelong allegiance between the person born as an Israeli and the state is, as I have shown, clearly manifested in Israeli citizenship law and the various administrative practices governing the issue of loss of citizenship. The symbolic importance that the state attaches to this allegiance is best illustrated in the following particular case where the state stakes its right to a child's allegiance. The State reserves for itself the right not to renounce the citizenship status of a minor, if the parents' emigrated from Israel but have renounced their own Israeli citizenship status while still being residents of Israel. If one of the parents remains an Israeli citizen, the child does not lose her citizenship status. Furthermore, if the child remains a resident of Israel, her citizenship status will not be terminated, even if her parents renounced their own attachment to the State and the Minister of the Interior consented to their expatriation. 209

Note, however, that a citizen who has committed "an act consisting of a breach of allegiance to the State of Israel" may be unilaterally denationalized by the State. 210 This power has rarely, if ever, been used in Israel. 211 In recent years, however, citizenship has been revoked by way of denaturalization, that is, upon determination that citizenship status was wrongfully obtained based on false information. 212

V. NEW TRENDS IN ISRAELI IMMIGRATION LAW

Similar to many other Western countries, Israel has been undergoing a sustained drive to "roll back" the state in recent years "from the formerly state-controlled public service arena, as well as an increasing ‘recommodification’ of formerly ‘decommodified’ services." 213 Examples of this process include the privatization of media and telecommunication services, the rise of private higher education institutions and the liberalization of the foreign currency market. These changes, along with the steady rise in number since the late 1980s of foreign workers admitted to the country as temporary workers, are "indicators of Israel’s movement toward a variant of neo-liberal market economy." 214

208. Rubinstein, supra note 25, at 179.
209. See Citizenship Law (Amendment No. 4), supra note 39, § 10.
210. Id. § 11(b).
211. There are no official figures regarding this practice. However, of the known cases of Israelis who have been convicted of committing an act consisting a breach of allegiance to the State of Israel, none have been denationalized.
212. See Citizenship Law (Amendment No. 4), supra note 39, § 11(c).
214. Id.
It is estimated that approximately 200,000 foreign workers have entered Israel since the late 1980s. Of these foreign workers, less than 85,000 have entered the country lawfully. Foreign workers in Israel are, in most cases, employed in low-skill, low-pay jobs, particularly in the areas of agriculture and construction. Until the 1980s (before the Palestinian Intifada), many of the jobs currently held by foreign workers were previously held by Palestinians Arabs from the West Bank and Gaza. These Palestinian non-citizen workers were a cheap and flexible workforce. During the Intifada, rigid restrictions were imposed on Israeli employers who hired Palestinian non-citizen workers, and the frequent closures of the West Bank and Gaza for security reasons, prevented the previous influx of Palestinian workers into Israel. These factors, along with the gradual opening of the Israeli economy to global market forces, has worked to the detriment of Palestinian workers. Even when residents of the Palestinian Authority (established in Gaza and certain parts of the West Bank in 1993 based on the Oslo peace accords) now enter Israel for purposes of employment, they often find that many of the jobs they previously held have already been occupied by the new “army” of unprotected labor, the foreign workers.

Foreign workers who enter the country lawfully receive temporary non-immigrant work visas. They must leave the country upon termination of their status, but there is no effective mechanism for enforcing this regulation. Children born in Israel to non-Israeli parents do not acquire citizenship at birth, since Israeli law does not follow the jus soli principle. If their parents were illegal residents, these children are not entitled to social benefits, such as state underwritten health care coverage, to which all Israeli citizens and permanent residents are entitled. However, municipal administrators, school principals, social workers, and health care providers who work in areas where many foreign workers live, such as poor neighborhoods in Southern Tel Aviv, have in most cases decided to overlook the status issue in order to ensure that children of illegal foreign workers are treated fairly and with human dignity.


217. See id. at 308. See generally Lewin-Epstein & Semyonov, supra note 56 (analyzing the status of citizen and non-citizen Arabs in the Israeli labor market).

218. See The Israel Democracy Institute, supra note 215, at 1. Note that Israeli employment laws which regulate issues such as minimum payment, working hours and workers compensation should, in theory, also be applicable to foreign workers (the law applies to any worker, regardless of his or her citizenship status). In practice, however, these employment laws have rarely been enforced in the case of foreign workers who are either dependent on their employer for their visa so the abuse of the law is never reported, or are illegally residing in Israel and would do whatever they can to avoid contact with state authorities. See Association for Civil Rights in Israel, supra note 120, at 227–28.

219. See id. at 12.

Tel Aviv (which received the prestigious Educational Award from Israel's President in 1998 on Israel's fiftieth anniversary) puts it, although many of the children attending her school are illegally residing in Israel, "I [and the Tel Aviv school district] have no interest in the question of whether their parents have documentation of legal residence or not. I only have interest in that these are children and [that regardless of their citizenship status] they are entitled to education. Good education." Important and significant as this local effort is, it cannot resolve the need to establish a comprehensive governmental policy that will determine how to address the issue of long-term residence of foreign workers and of the legal status of their Israeli-born children.

Predictably, the large number of legal and illegal foreign workers who entered Israel since the late 1980s in a relatively short period of time now pose new regulatory challenges to Israel's citizenship law and immigration policy which crystallized during the 1950s nation-building era and has since remained in place. Such new challenges are not unique to Israel and neither are the initial governmental reactions that have emerged in the 1990s. More than ever before, the Israeli immigration policy of the last decade has been marked by a growing awareness of the problem of fraud. Indeed, the gradual deregulation or "opening" of the Israeli market to international forces since the early 1990s, make Israel a regional "magnet" for persons from poorer countries, as has been evidenced by the large numbers of foreign workers who have entered the country, and the influx of Jewish and non-Jewish persons who established citizenship by way of return in the massive wave of immigration from the former Soviet Union in the 1990s. Given these new trends, the Israeli media have sensationalized recent stories about people who entered into fictitious marriages in order to establish Israeli citizenship by way of return, people who falsified documents in order to claim their "Jewishness," people who entered Israel on a non-immigrant visitor visa with no intention to leave the country, and people who, while illegally residing and working in Israel, have been blackmailed or abused by persons who threatened to report their status to the police. Certain human rights organizations in Israel have begun to address these issues by using due process and human dignity arguments in protection of foreign illegal workers. However, on the whole, Israel has yet to establish a comprehensive policy toward these foreign workers who "temporarily" entered its borders

221. Id. at 30.
223. See, e.g., Reinfeld, supra note 142.
224. Foreign workers who entered the country lawfully (i.e., with work permits) were recruited primarily from Rumania, Thailand, and the Philippines. See Bartram, supra note 216, at 314.
225. See supra notes 64-69 and accompanying text.
226. These organizations include, among others, "Kav La'Oved," the Association for Civil Rights in Israel, and the Association of Doctors for Human Rights.
(either legally or illegally) and—if anything can be learned from the related experiences of other countries—are likely to stay for good.\textsuperscript{227}

Thus, the changing political relations with the Palestinian Authority and the emerging neo-liberal order in Israel will inevitably bring to the forefront of Israeli public policy fundamental questions associated with the tension embedded between the roll back of the welfare state and increasing trends of globalization, such as the movement of goods, capitals, and persons across frontiers, on the one hand; and the republican, duty-bound and religious-based perceptions of membership with its more state-centrist understanding of identity, still encoded in Israeli citizenship law, on the other.\textsuperscript{228}

\section{VI. Conclusion}

As it now stands, the Law of Return still echoes the national Zionist goals written into law five decades ago with Israel's establishment as the sovereign modern Jewish state. The Law of Return upholds the right of every Jew to immigrate to Israel and to acquire Israeli citizenship automatically and immediately upon arrival in the country. There is no waiting period for this granting of citizenship because of the Zionist philosophy which regards the return of Jews to their ancestral homeland as an expression of the fundamental values upon which the state itself is based, namely, that Israel is to serve as a safe haven and homeland for the Jewish people.

As we have also seen, Israeli citizenship can also be acquired by way of residence, birth, or naturalization. Since 1980, all children born to an Israeli parent, regardless of the parent's religious, national, ethnic, or gender affinity, acquire automatic citizenship status by way of birthright. This equal birthright entitlement is devoid of any "differentiating" markers, thus ensuring that \textit{all} Israelis have full formal and equal access to the basic rights associated with citizenship in a democratic state. Yet, as important and central as this formal entitlement to citizenship is to each individual, it cannot assure that the ethnocultural, republication conceptions of membership in the nation, which are still encoded in Israel's citizenship and immigration regime, will not systematically and adversely affect the distribution of power and social capital \textit{among} different groups of Israeli citizens.\textsuperscript{229}

Traditionally, Israel has been analyzed as representing an interesting and special case of a diverse society, where the tension between the Jewish and democratic principles upon which the state is founded creates what has been

\begin{thebibliography}{9}
\item \textsuperscript{227} Israel, like other countries that place greater emphasis on the \textit{jus sanguinis} principle, will eventually have to resolve the "second generation problem." Under current Israeli citizenship law, children born in Israel to non-citizens who reside in the country (whether legally or illegally) are not entitled to Israeli citizenship by birth, although they were born on its territory.
\item \textsuperscript{228} See generally Ran Hirschl, \textit{Israel's 'Constitutional Revolution': The Legal interpretation of entrenched Civil Liberties in an Emerging Neo-Liberal Economic Order}, 46 Am. J. Comp. L. 427 (1998); Peled & Shafir, supra note 29.
\item \textsuperscript{229} See generally Cohen, supra note 181.
\end{thebibliography}
termed as an "ethnic democracy," whereby Israel's Arab citizens are guaranteed full civic and political rights but have no access to the "common good" foundations of the Jewish state. In light of the ethnocultural republican perceptions expressed in Israeli citizenship law, membership in the polity requires active participation, reflected in the valorization of the duty of military service. In this context, however, it is important to note that two groups—Palestinian Arab Israeli citizens and certain Orthodox Jews—are generally excluded from the republican "active citizenship" conception, but with very different consequences. Palestinian Arab Israeli citizens are generally not called upon for national military service, and are subject to various overt and covert discriminatory governmental policies. This should serve as a constant reminder that while Palestinian Arab Israelis are full members in the state, they are not fully included in the nation. The second group, comprised of Orthodox Jews who are granted administrative exemption from military service due to their religious studies, has suffered far less injurious consequences from its systematic lack of participation in this key Zionist national expression of sovereignty. Since Orthodox Jews, unlike Israel's Palestinians citizens, are situated almost without question within the dominant Jewish community, their full membership in the nation is hardly ever challenged, even if they refrain from some of its crucial civic expressions. In discussing the role of gender, in terms of affecting the de facto citizenship status of Israeli Jewish women, this article alluded to a more complex matrix of "degrees of citizenship," whereby religious and ethnic affiliation, as well as gender must be taken into account in analyzing one's membership status and entitlement to the full benefits and duties of equal citizenship.

There is no starker example than the combined provisions of the Law of Return and the Citizenship Law, with their built-in inclusionary/exclusionary dimensions, to express the particularistic nature of contemporary Israeli citizenship and immigration regime. Only time will tell whether the new challenges posed to this regime by a growing number of "temporary" foreign workers (and their Israeli-born non-citizens children), the transition of jurisdictional power over Palestinian "permanent residents" in the West Bank and Gaza Strip to the PA, and the growing constituency of non-Jewish immigrants by return who have arrived from the former Soviet Union and have settled in the country, will force a transformation in Israeli citizenship law, gradually making it more inclusive (for example, by giving greater

\begin{footnotesize}
\footnotetext{230. See generally, Smooha, supra note 180.}
\footnotetext{231. See generally, Peled, supra note 14.}
\footnotetext{232. See generally KRETZMER, supra note 29; Peled, supra note 14; Smooha, supra note 180.}
\footnotetext{233. Indeed, certain scholars claim that the ethnocultural aspects of Israeli citizenship, as encoded in the Law of Return, "guarantees[s] the privileged position of the true keepers of the faith—religiously Orthodox Jews—in Israeli society." Gershon Shafir & Yoav Peled, Citizenship and Stratification in an Ethnic Democracy, 21 ETHNIC & RACIAL STUD. 408, 413.}
\end{footnotesize}
weight to a *jus soli* principle). Or, conversely, whether the challenges of the 1990s to the ethnocultural, republican narrative of the 1950s (still encoded in the Law of Return and the Citizenship Law) will only enhance the voices which are already calling for a more narrow, *Halakhic* definition of the "right of return," and only give strength to the new voices that are calling for an imposition of tougher regulatory measures against illegal residents of the state (for example, deportation orders), thus making Israel's immigration policy even more restrictive and exclusionary than even its current attitude toward non-Jews. With regard to such complex and troubling matters concerning the future of the Holy Land, one would do well to refrain from prophecy.

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