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Israel's Law of Return: Analysis of Its Evolution and Present Application

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COMMENTS

Israel's Law of Return: Analysis of Its Evolution and Present Application

I. Introduction

To Zion, looks, the Jew,
So long our hopes are not yet lost—
Two thousand years we cherished them—
To live in freedom in the Land
Of Zion and Jerusalem.

Excerpt from *Hatikvah*, the National Anthem of
the State of Israel¹

The lyrics of *Hatikvah* reflect the yearnings that Jews have felt throughout centuries of persecution, yearnings to return to their homeland, the ancient land of Israel. While these yearnings appeared quashed after the Holocaust, in the wake of this disaster, "Zionism alone emerged as a viable Jewish response" to the horrors of anti-Semitism.² This movement resulted in the establishment of the state of Israel on May 14, 1948, in accordance with the United Nations' adoption of the resolution for the formation of an independent Jewish state in Palestine.³ In reparation for the devastation the Holocaust

1. HATIKVAH (The National Anthem of the State of Israel).

2. ISRAEL: A COUNTRY STUDY 49 (Helen Chapin Metz ed., 3d ed. 1990).

3. THE DECLARATION OF ISRAEL'S INDEPENDENCE paras. 9-11 (Isr. 1948). This document states in part:

On November 29, 1947, the General Assembly of the United Nations adopted a Resolution for the establishment of an independent Jewish State in Palestine, and called upon the inhabitants of the country to take such steps as may be necessary on their part to put the plan into effect.

caused, the United Nations ended British rule over Palestine and created the first Jewish state of the modern world.⁴

After years of dispersion and persecution, the Jewish people longed for a "right of return," the messianic hope to repatriate their ancestral homeland.⁵ The Zionist movement of the late 19th Century inspired this return to the land of Palestine.⁶ The achievement of this right occurred only after the establishment of the state of Israel. Prior to that time, the Balfour Declaration of November 2, 1917,⁷ and the Mandate of the League of Nations of July 22, 1924,⁸ provided explicit international recognition of the Jews' right of return.⁹ However, these declarations did nothing to secure and implement this principle.¹⁰

The newly established Israeli government implemented the right of return by passing the *Hok Hashrut* or the Law of Return.¹¹ This law

It is, moreover, the self-evident right of the Jewish people to be a nation, as all other nations, in its own sovereign state.

ACCORDINGLY, WE, the members of the National Council, representing the Jewish people in Palestine and the Zionist movement of the world, met together in solemn assembly today, the day of termination of the British Mandate for Palestine, by virtue of the natural and historic right of the Jewish people and of the Resolution of the General Assembly of the United Nations.

HEREBY PROCLAIM the establishment of the Jewish State in Palestine, to be called ISRAEL.

Id.

4. ISRAEL IN THE MIDDLE EAST 12 (Itamar Rabinovich & Yehuda Reinharz eds., 1984).

5. *The Proclamation of the State of Israel*, PALESTINE POST, May 16, 1948, at 1-2, in ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 12-14.

6. *Id.* at 14.

7. Balfour Declaration, Nov. 2, 1917, reprinted in W.T. MALLISON, THE PALESTINE PROBLEM IN INTERNATIONAL LAW AND WORLD ORDER 427 (1986). Before World War II, the British controlled Palestine. See THE ARAB-ISRAELI CONFLICT: PERSPECTIVES 18 (Alvin Z. Rubinstein et al. eds., 1984). In responding to Zionist pressure, the British enacted the Balfour Declaration of 1917, which publicly recognized the world Jewry's right of return to their ancestral homeland. *Id.* The League of Nations, the predecessor to the U.N., recognized the Declaration. *Id.* The British, however, never acted on the rights provided under the Declaration because of the negative responses of the Arab population in the region. *Id.*

8. LEAGUE OF NATIONS COVENANT, art. 22. The League of Nations included the Balfour Declaration in the text of the Mandate for Palestine, which the League issued to Great Britain on July 24, 1922. See ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 12. The Mandate was the basis for British rule in this area until November 29, 1947. *Id.* After this date, the U.N. General Assembly voted to partition Palestine into an independent Arab state with Jerusalem having a unique, separate international status as a *corpus separatum*. *Id.* The partition was to be implemented upon the termination of British rule over Palestine on May 14, 1948. *Id.*

9. See ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 12.

10. *Id.*

11. See The Law of Return, 4 Laws of the State of Israel 114 (1950), reprinted in FUNDAMENTAL LAWS OF THE STATE OF ISRAEL 156, 156-157 (Joseph Badi ed., 1961). The Law provides:

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essentially granted all Jews the right to immigrate to and settle in Israel.¹² The only exception to this privilege existed in cases where the state viewed an individual as a danger to the health and security of the state or as a threat to the public peace.¹³

The Law of Return (the Law) does not exist as a symbolic policy representing only Jewish idealism.¹⁴ During years of brutal persecution from the Third Reich, Jews attempting to escape Nazi control found the "doors of all countries of refuge closed to them,"¹⁵ including the gates

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1. Every Jew has the right to come to this country as an *oleh* (the Hebrew word for a Jew immigrating into Israel).
 2. (a) Aliyah (the Hebrew word for immigration of Jews) shall be by a *oleh's* visa.
(b) An *oleh's* visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of Immigration is satisfied that the applicant—
 - (1) is engaged in an activity directed against the Jewish people; or
 - (2) is likely to endanger public health or the security of the State.
 3. (a) A Jew who has come to Israel and subsequent to his arrival has expressed his desire to settle in Israel, may, while still in Israel, receive an *oleh's* certificate.
(b) The restrictions specified in section 2 (b) shall apply also to the grant of an *oleh's* certificate, but a person shall not be regarded as endangering public health on account of an illness contracted after his arrival in Israel.
 4. Every Jew who has immigrated into this country before the coming into force of this Law, and every Jew who was born in this country, whether before or after the coming into force of this Law, shall be deemed to be a person who has come to this country as an *oleh* under this Law.
 5. The Minister of Immigration is charged with the implementation of this Law and may make regulations as to any matter relating to such implementation and also as to the grant of *oleh's* visas and *oleh's* certificates to minors up to the age of 18 years.

Id. at 156-157. Since its enactment, the Law of Return has been amended twice. The first amendment was in 1954. See The Law of Return (Amendment No. 1), 8 Laws of the State of Israel 144, reprinted in FUNDAMENTAL LAWS OF THE STATE OF ISRAEL 332 (Joseph Badi ed., 1961) at 332. The amendment provides as follows:

1. In section 2 (b) of the Law of Return, 5710-1950
 - (1) the full stop at the end of the paragraph (2) shall be replaced by a semicolon, and the word "or" shall be inserted thereafter;
 - (2) the following paragraph shall be inserted after paragraph (2)—

"(3) is a person with a criminal past, likely to endanger public welfare."
2. In section 2 and 5 of the Law, the words "the Minister of Immigration" shall be replaced by the words "the Minister of the Interior."

Id. The second amendment occurred in 1970. See The Law of Return (Amendment No. 2 of Mar. 19, 1970) sec. 4(B), *Sefer HaHukim*, at 586, reprinted in Shalev Ginossar, *Who Is a Jew: A Better Law?*, 5 ISR. L. REV. 264, 265 (1970).

12. See The Law of Return, 4 Laws of the State of Israel 114.
13. *Id.* art. 2(b)(1)-(2).
14. *The Law of Return*, 51 RESHUMOT 159, 159 (1951), reprinted in ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 40.
15. *Id.*

to Palestine, which the British closed.¹⁶ The Law assured world Jewry that at least one country's "gates would be perpetually open,"¹⁷ embodying the Zionist ideology upon which the state was formed by offering "a home to any Jew who [felt] impelled by external pressures or . . . spiritual urge to make his home in Israel."¹⁸

The Law of Return, in its basic form, is still in effect.¹⁹ It presently serves as the legal basis for Israel's policy of encouraging immigration from Western nations, the republics of the former Soviet Union, Ethiopia, and any other country Jews feel compelled to leave because of political or economic hardship.²⁰ Application of the Law, however, has changed significantly over the past forty years, causing much controversy.

This broadly worded, liberal statute forced the state to define precisely who is a Jew in the context of immigration and citizenship.²¹

The "who is a Jew" issue is crucial because only those who are considered Jewish may take advantage of the Law of Return and the rights inherent in Israeli citizenship, whereas non-Jewish immigrants can only obtain citizenship through the slower process of naturalization.²²

16. *Id.*

17. *Id.*

18. See FUNDAMENTAL LAWS OF THE STATE OF ISRAEL, *supra* note 11, at 4.

19. *See id.*

20. *The Law of Return*, *supra* note 14, at 40.

21. *Id.* This definition is included in the 1970 Amendment to the Law of Return. See The Law of Return (Amendment No. 2 of Mar. 19, 1970) sec. 4(B).

22. See ISRAEL, A COUNTRY STUDY, *supra* note 2, at 106. Under this naturalization process, the Ministry of the Interior may grant a non-Jew a visa and a permit of permanent residence. Entry Into Israel Law art. 2, 6 Laws of the State of Israel 159 (1952), *reprinted in* FUNDAMENTAL LAWS OF THE STATE OF ISRAEL, *supra* note 11, at 281. An individual may then receive Israeli nationality by meeting the criteria set forth in Article 5 of the Nationality Law. See Nationality Law art. 5, 6 Laws of the State of Israel 50 (1952), *reprinted in* FUNDAMENTAL LAWS OF ISRAEL, *supra* note 11, at 254. Article 5 reads as follows:

5. (a) A person of full age, not being an Israel national, may obtain Israel nationality by naturalization if—
 - (1) he is in Israel; and
 - (2) he has been in Israel for three years out of five years preceding the day of the submission of his application; and
 - (3) he is entitled to reside in Israel permanently; and
 - (4) he has settled, or intends to settle, in Israel; and
 - (5) he has some knowledge of the Hebrew language; and
 - (6) he has renounced his prior nationality or has proved that he will cease to be a foreign national upon becoming an Israel national.
- (b) Where a person has applied for naturalization, and he meets the requirements of subsection (a), the Minister of the Interior, if he thinks fit to do so, shall grant him Israel nationality by the issue of a certificate of naturalization.

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Debate over the who is a Jew issue emerged only in a few isolated incidents prior to 1988.²³ Since then, however, the controversy has exploded within the Israeli government.²⁴

This Comment addresses the evolution of the Law of Return from its inception to its present status. The subsequent sections will discuss (1) the construction of the statute itself; (2) the problems involved with defining who is a Jew under the Law; (3) the application of the Law to the recent influx of Soviet and Ethiopian Jews; (4) the effect of the Law's open door policy on the Israeli economy; (5) the effect of the Law's policies on the Arab population within Israel's boundaries; and (6) the future status of the Law.

II. The Law of Return and Israeli Nationality

Israel, through its Law of Return, is the only country in the world that grants automatic citizenship to an immigrant literally just off the boat.²⁵ Any Jew who comes to Israel has the right to apply for an *oleh's*²⁶ certificate as long as the criteria of the Law are met.²⁷ A person who obtains an *oleh's* certificate may then become a citizen under the Nationality Law of 1952.²⁸

(c) Prior to the grant of nationality the applicant shall make the following declaration:

"I declare that I will be a loyal national of the State of Israel."

(d) Nationality is acquired on the day of the declaration.

Id. at 254-55.

23. See ASHER ARIAN, *POLITICS IN ISRAEL: THE SECOND GENERATION* 239-41 (1989).

24. *Id.* at 240-41.

25. WALTER EYTAN, *THE FIRST TEN YEARS: A DIPLOMATIC HISTORY OF ISRAEL* 192 (1958), reprinted in *ISRAEL IN THE MIDDLE EAST*, *supra* note 4, at 111; YEHOASHUA FREUDENHEIM, *GOVERNMENT IN ISRAEL* 254 (1967).

26. *Oleh* is the Hebrew term for a Jewish immigrant. See *FUNDAMENTAL LAWS OF THE STATE OF ISRAEL*, *supra* note 11, at 156 n. 150.

27. See The Law of Return art. 3(a), 4 Laws of the State of Israel 114.

28. See The Nationality Law arts. 1-2, 6 Laws of the State of Israel 50. Israel's Nationality Law provides in part:

1. Israeli nationality is acquired—

by return (section 2)

by residence in Israel (section 3),

by birth (section 4) or

by naturalization (section 5 to 9).

2. (a) Every *oleh* under the Law of Return, 5710-1950, shall become an Israel national.

(b) Israel nationality by return is acquired—

(2) by a person having come to Israel as an *oleh* after the establishment of the State with effect from the day of his *aliyah* [Immigration of Jew to Israel];

It is unclear where the Law of Return and the Nationality Law fit within the framework of Israel's legal structure. From its inception, Israel has never had a formal constitution, but only the Basic Laws.²⁹ In its first years of existence, the government felt that it would be premature to set down in a definitive and binding way the nature and goals of the state.³⁰ The government did not wish to do so while a state of war continued with the Arab nations and the societal structure remained indefinite because of the mass immigration taking place.³¹

The Law of Return does not fall under the seven Basic Laws of Israel.³² Nevertheless, most believe that the Law would be given a distinguished place in a future constitution because the Law captures the ideology upon which the state of Israel was founded.³³ Although occupying a distinguished place, the Law as originally written had a fundamental shortcoming: it failed to define who specifically was a Jew.³⁴

(4) by a person who has received an *oleh's* certificate under section 3 of the Law of Return, 5710-1950—with effect from the day of the issue of the certificate

Id.

29. See ARIAN, *supra* note 23, at 195-96; *Debate on a Constitution*, 4 DIVREI HAKNESSET 714 (1950), reprinted in ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 41.

The Basic Laws were formed in the early years of Israel's existence as a result of difficulties in the creation of a Constitution. See *Debate on a Constitution*, 4 DIVREI HAKNESSET 714 (1950), reprinted in ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 41-46. The religious and non-religious (secular) parties had difficulty drafting a constitution because they had fundamentally different views towards the basic issues of life and politics in Israel. *Id.* at 41. Consequently, the parties compromised, deciding to draft documents in stages until a completed constitution formed. *Id.* at 41, 44-45. Over time, the Knesset passed seven pieces of legislation in an effort to create a constitution. *Id.* at 41. These seven pieces of legislation became known as the Basic Laws. *Id.*

The Basic Laws were intended to be treated with more deference than laws formed by ordinary legislative acts. See *Debate on a Constitution*, 4 DIVREI HAKNESSET 714 (1950), reprinted in ISRAEL IN THE MIDDLE EAST, *supra* note 4, at 41. The Basic Laws as they have been enacted deal with the Knesset, Israeli lands, the President, the government, the state economy, the army, and the Jerusalem Law (officially establishing Jerusalem as the capital of Israel). *Id.*

30. ARIEL BIN-NUN, THE LAW OF THE STATE OF ISRAEL 36 (1990).

31. *Id.*

32. See *Debate on a Constitution*, *supra* note 29, at 41.

33. See *id.* See also FREUDENHEIM, *supra* note 25, at 253.

34. See The Law of Return, 4 Laws of the State of Israel 114; The Nationality Law, 6 Laws of the State of Israel 50.

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III. Historical Development of the Law of Return

A. History

Prior to 1970, the Knesset failed to specifically define the word Jew, a term that not only permeates the Law of Return, but many other pieces of Israeli legislation.³⁵ The definition of a Jew is of primary importance to Jewish immigrants because only Jews are eligible for entrance under the Law of Return and citizenship under the Nationality Law.³⁶ Accordingly, those struggling to immigrate to Israel and attain full Israeli citizenship must confront the troubling prospect of their "Jewishness" being insufficient to meet the standard of one truly worthy enough to settle in Israel.

Israeli born Jews, on the other hand, do not face the same dilemma. As S. Zalman Abramov, a noted Israeli scholar, appropriately observes:

Jews in the Diaspora ever since the Emancipation have been increasingly concerned with the problem of Jewish identity in relation to the modern world and to an open secular society In the sovereign Jewish state the problem of what a Jew is arouses little public debate. The Jews in Israel with their differing attitudes toward religion proceed on the assumption that they know what being a Jew means.³⁷

The definition of a Jew under the Law has caused considerable dissention within the Israeli political infrastructure and the judiciary.³⁸ Much of the debate has arisen because of conflicts between religious and civil authorities in the Israeli government.³⁹ The Israeli

35. See Yehuda Savir, *The Definition of a Jew Under Israel's Law of Return*, in *COMPARATIVE LAW OF ISRAEL AND THE MIDDLE EAST* 277, 277 (Nicholas N. Kittrie et al. eds., 1971). Given the absence of an official definition prior to 1970, the term "Jew" was commonly understood to have four different interpretations. *Id.* A person could be a Jew by birth, by religious observance, by inclination, or by naturalization. *Id.* at 277-78.

36. See *The Law of Return*, 4 Laws of the State of Israel 114; *The Nationality Law*, 6 Laws of the State of Israel 50.

37. S. ZALMON ABRAMOV, *PERPETUAL DILEMMA* 270 (1976). The term Diaspora refers to the Jews who live outside of Israel. See *id.* Diaspora literally means the "exile" in which these Jews live. *Id.*

38. *Id.*

39. Israel is a parliamentary democracy with three branches: a legislature (the Knesset), an executive body, and a judiciary. Like the United States, it utilizes a system of separation of powers with checks and balances. See *FACTS ABOUT ISRAEL, THE STATE* 5 (1991). The President (a ceremonial post) calls on a Knesset member to initiate the process of forming a new government following elections that occur every four years. *Id.* at 6. The President also appoints judges. *Id.* at 11.

government has continually struggled to determine the degree to which the Jewish religion should affect Israeli politics, legislation, and society in general.⁴⁰ Religion is a central issue in Israeli politics because the sole purpose in forming the state was to provide a Jewish homeland.⁴¹ Given this purpose, many consider Judaism to encompass more than simply religion, but also nationality and culture. For instance, the National Religious Party (NRP) and the Orthodox Jewish community consider religion and nationality to be one and the same.⁴²

The Knesset consists of a wide range of political parties in addition to two major blocks: the Labor block (social democratic elements that tend to be more liberal) and the Likud (centrist nationalist parties that tend to be more conservative). *See id.* at 7. The Knesset, a unicameral house, is the parliament of Israel. *Id.* at 8. It operates in plenary sessions and through committees that deal with specific aspects of the state's affairs. FACTS ABOUT ISRAEL, THE STATE 9 (1991). In these sessions, general debates are held on government policy and activity and legislation the government or individual Knesset members submit. *Id.* at 9. A bill must pass three special committee readings in the parliament before the President can sign it into a law. *Id.*

The government is responsible to the Knesset. *Id.* at 10. The Prime Minister is the head of the government, and he or she must have been a Knesset member before becoming Prime Minister. *Id.* After each election, the President calls on a Knesset member, usually the leader of the party with the largest Knesset representation, to form and lead the government. FACTS ABOUT ISRAEL, THE STATE 10 (1991). Only twenty-one days is allocated for this task. *Id.* If a government is not formed during this time, the President must repeat this procedure until one is established. *Id.*

A party must have the vote of at least 61 of the 120 members in order to form a government. *Id.* To this date (including the recent 1992 elections), no party has received enough Knesset seats to form a government on its own. *Id.* Hence, all present and past Israeli governments have been based on coalitions of several parties. FACTS ABOUT ISRAEL, THE STATE 10 (1991). Parties not included in a coalition make up the opposition. *Id.*

The judiciary is an independent body. *Id.* at 11. The President and a special committee appoint the judges. *Id.* The Magistrates' Court has jurisdiction over civil and minor criminal offenses. *Id.* The District Court has appellate jurisdiction over magistrates' courts, as well as original jurisdiction in more important civil and criminal cases. FACTS ABOUT ISRAEL, THE STATE 11 (1991). The Supreme Court sitting as the High Court of Justice has the authority to determine whether a law properly conforms with the Basic Laws of the state. *Id.* It has ultimate appellate jurisdiction over any issue when necessary to intervene for the sake of justice. *Id.* It has original jurisdiction in petitions for orders against the government, its ministers, and all public officers or agencies. *Id.* Such orders are referred to as orders *nisi*. *Id.* Finally, the religious courts have sole jurisdiction over matters of marriage and divorce. FACTS ABOUT ISRAEL, THE STATE 11 (1991). These courts consist of rabbinical courts (which the Chief Rabbinate leads), sharia courts for Moslems and Druze, and ecclesiastical courts for Christians. *Id.*

The Ministry of the Interior has jurisdiction over immigration and, thus, is in charge of an individual's personal status in reference to citizenship rights. *See* ARIAN, *supra* note 23, at 239. Different parties in a coalition government lead different departments. FACTS ABOUT ISRAEL, THE STATE 10 (1991). In recent coalition governments, two Orthodox religious parties, the National Religious Party and the Shas, have led the Ministry. *See* ARIAN, *supra* note 23, at 239-40.

40. ARIAN, *supra* note 23, at 236.

41. *Id.*

42. *Id.* at 237.

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Israel is not a theocracy, but a modern parliamentary government where only matters of marriage and divorce are under the sole jurisdiction of the religious courts.⁴³ This concept becomes blurred, however, because the NRP and other Orthodox parties in the Knesset follow religiously grounded ideologies and, thus, bring religion into political or legislative decisions.⁴⁴

Because of the inability of one party to obtain the required majority votes in the Knesset, ruling parties are forced to form coalition governments,⁴⁵ where members from different parties occupy different posts in the government.⁴⁶ The ideology of the party occupying a post, therefore, guides the decisions of the specific government position. If a party is religiously oriented, its religious beliefs will control or influence the decisions made. For instance, prior to 1970 the NRP headed the Ministry of the Interior, which controls all immigration matters under the Law of Return.⁴⁷ Accordingly, the NRP held considerable control over immigration into Israel.

As a result of its control over matters of immigration and the Knesset's inability to define Jew under the Law of Return, the NRP was able to define the term in accordance with its religious beliefs.⁴⁸ It asserted that the determination of who is a Jew involved a religious problem governed by strict Jewish law, or *Halachah*.⁴⁹ According to *Halachah*, the term Jew means one "born of a Jewish mother."⁵⁰ Thus, the NRP defined a Jew as one born of a Jewish mother.⁵¹

The NRP's decision resulted in tumultuous disputes among the religious and secular parties in the Knesset.⁵² The secular parties

43. See FACTS ABOUT ISRAEL, THE STATE, *supra* note 39, at 11.

44. See ARIAN, *supra* note 23, at 239.

45. See FACTS ABOUT ISRAEL, THE STATE, *supra* note 39, at 10.

46. *Id.*

47. *Id.* The National Religious Party (NRP) emerged out of the Religious Zionist movement, which arose over seventy-five years ago with the objective of establishing a homeland for the Jewish people. See Yehuda Ben-Meir, *The Ideology of the NRP, in ISRAEL IN THE MIDDLE EAST*, *supra* note 4, at 270, 270. The NRP championed the idea that Zionism had to be a truly Jewish movement for national liberation, stating that the Zionist movement must be rooted in Jewish religion for it to succeed. *Id.* Specifically, it advocated that Zionism must reflect Jewish religious values, norms, practices, and institutions. *Id.*

48. See ARIAN, *supra* note 23, at 240.

49. ABRAMOV, *supra* note 37, at 274. *Halachah* is the Hebrew word for Jewish law. See PRINCIPLES OF JEWISH LAW 5 (Menachem Elon ed., 1975). Jewish law pursuant to the term *Halachah* comprises all the normative rules of Judaism, including the laws applicable among men and the precepts concerning man and God. *Id.*

50. See ARIAN, *supra* note 23, at 240.

51. See ABRAMOV, *supra* note 37, at 274.

52. See ARIAN, *supra* note 23, at 240.

believed that the term Jew should only stand for one's nationality, while the religious parties asserted that the categories of religion and nationality were interchangeable.⁵³ These diametrically opposed interests resulted in "a standoff with an inclination to little or no modification of past practice."⁵⁴ The Israeli Supreme Court attempted to resolve the standoff in the most notable of the who is a Jew cases: the "Brother Daniel" case.

B. The "Brother Daniel" Case

In the "Brother Daniel" case, officially known as *Rufheisen v. Minister of the Interior*,⁵⁵ the petitioner, Oswald Rufheisen, was a Carmelite monk born and raised a Jew in Poland.⁵⁶ Rufheisen, an active member of the Zionist movement, planned to emigrate to Palestine to help in its development as the first Jewish homeland.⁵⁷ During the German-Russian war in 1941, the Nazis imprisoned him, but he managed to escape.⁵⁸ Rufheisen then obtained a false certificate that identified him as a German Christian and took a job at a German police station.⁵⁹

Because of his position, Rufheisen was able to inform Polish Jewish groups about the Nazis' plans and was able to smuggle arms to them.⁶⁰ When the Germans eventually discovered his true identity, he went into hiding in a convent.⁶¹ In 1942, Rufheisen embraced the Catholic faith and entered the Carmelite Order under the title Brother Daniel.⁶² He deliberately chose the Carmelite Order because it had a chapter in Palestine.⁶³

In 1958, Rufheisen obtained permission to emigrate to Israel and waived his Polish citizenship.⁶⁴ Upon arrival in Israel, he applied for immigrant status under the Law of Return so that he could be registered as a "Jew" on his identity card.⁶⁵ The Ministry of the Interior refused

53. *Id.* at 239.

54. *Id.*

55. *Rufheisen v. Minister of the Interior*, 16 Piskei Din [P.D.] 2428 (1962), reprinted in *SELECTED JUDGMENTS OF THE SUPREME COURT OF ISRAEL 1* (Asher F. Landau ed., 1971).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. See *Rufheisen*, *supra* note 55, at 1.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *ABRAMOV supra* note 37, at 286. Every resident in Israel is required by law to register

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to register him as a Jew based on a July 20, 1958 government decision.⁶⁶ The decision required registered Jews to declare themselves in good faith to be Jewish and precluded them from professing any other religion.⁶⁷

Not willing to give up his Catholic religion, Rufheisen protested on four bases. First, he asserted that the concept of religion and nationality were separate, and a Jew by nationality did not necessarily need to be a Jew by religion.⁶⁸ Second, he argued that he was a Jew according to *Halachah* because his parents were Jewish.⁶⁹ Third, he contended that the July 20th decision had no legal basis and was not binding.⁷⁰ Fourth and finally, he argued that the Minister of the Interior's refusal to grant him *oleh's* rights was discriminatory.⁷¹

The decision of the High Court upset many different facets of world Jewry.⁷² In a four to one majority decision, the court held that Father Daniel, a Roman Catholic, could not be a Jew according to the standards of the Law of Return.⁷³ The court recognized that, while Rufheisen might be considered a Jew under *Halachah*, a Jew who converted of his own volition was no longer a Jew.⁷⁴ In the words of Justice Landau:

A Jew who, by changing his religion, cuts himself off from the national past of his people ceases thereby to be a Jew in the national sense to which the Law of Return gives expression. . . . He has denied his national past and can now no longer be fully integrated into the organized body of the Jewish community as such.⁷⁵

with the civil authorities and to provide them with personal data, including proof of citizenship, religion, and "nationality." See Population Registry Law sec. 2, 19 Laws of the State of Israel 288 (1965), reprinted in YAACOV S. ZEMACH, POLITICAL QUESTIONS IN THE COURTS 129 (1976). The civil authorities then register the relevant data in the register and on an individual identity card. *Id.* A Jew who enters Israel under the Law acquires Israeli nationality and is, thereafter, registered as a Jew on his identity card. *Id.* Once one is registered as a Jew, he or she is eligible to enjoy all rights and privileges of being an Israeli-Jewish citizen. *See id.*

66. Rufheisen, *supra* note 55, at 1.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Rufheisen, *supra* note 55, at 1.

72. See Savir, *supra* note 35, at 280.

73. See Rufheisen, *supra* note 55, at 11.

74. *Id.*

75. *Id.* at 22.

The majority reasoned that the Law of Return was a secular law and its terms were to be interpreted according to the plain and popular meaning that any ethnic Jew would understand.⁷⁶ According to the Supreme Court, this meaning dictated that an apostate⁷⁷ was not a Jew because the terms Jew and Christian were mutually exclusive.⁷⁸ The Supreme Court gave the term Jew a distinctively nationalistic inference under the Law, articulating that, although one did not have to practice Judaism to be a Jew, one could not forsake it either.⁷⁹ It decided that by converting, Rufheisen abandoned the Jewish religion and separated himself from his "national past."⁸⁰ Consequently, the Ministry of the Interior's decision was upheld and Rufheisen was denied immigration and citizenship rights under the Law of Return and the Nationality Law.⁸¹

Unfortunately, neither the Knesset nor the Israeli Supreme Court formally defined the term Jew.⁸² Consequently, the debate over who is a Jew continued because difficulty existed in distinguishing between one's religion and one's nationality in the context of immigration. Many religious factions in the Knesset, as a prerequisite to their participation in subsequent coalition governments, demanded the passage of a law that would allow the religious courts sole jurisdiction over defining a Jew.⁸³ The passage of such an amendment, however, threatened to alienate many Jews who did not conform to the strict Orthodox practice adhered to by the religious courts.

C. *Shalit v. Minister of the Interior*

The who is a Jew issue resurfaced in the 1969 Israeli Supreme Court case of *Shalit v. Minister of the Interior*.⁸⁴ *Shalit* involved the definition of a Jew under the Population Registry Law.⁸⁵ While not specifically involving the Law of Return, *Shalit* represented one of the

76. See Rufheisen, *supra* note 55, at 10.

77. An apostate is a Jew who denies Jewish law and converts to another faith. See PRINCIPLES OF JEWISH LAW, *supra* note 49, at 377. In matters of personal status, one's apostasy will have a decisive bearing in all cases where a person's legal status is dependent upon his conduct. *Id.*

78. See Rufheisen, *supra* note 55, at 12.

79. See ABRAMOV, *supra* note 37, at 289.

80. See Rufheisen, *supra* note 55, at 22.

81. See *id.* at 1.

82. See ARIAN, *supra* note 23, at 240.

83. See ABRAMOV, *supra* note 37, at 288-90.

84. *Shalit v. Minister of Interior*, 23 P.D. 477 (1969), reprinted in SELECTED JUDGEMENTS OF THE SUPREME COURT OF ISRAEL, *supra* note 55, at 35.

85. See Population Registry Law sec. 2, 19 Laws of the State of Israel 288.

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most momentous decisions in Israeli history. The court's holding ultimately affected the future ethnic/religious status of immigrants in Israel. The definition given to the term Jew under the Population Registry Law was used as a basis for defining the term under the Law of Return and other laws.

As previously mentioned, in 1960 the Minister of the Interior declared that only a person born of a Jewish mother could be registered as a Jew on one's identity card under the categories of religion and nationality.⁸⁶ The Registration of Inhabitants Law (Registration Law) implemented this requirement.⁸⁷ This law required all Israeli residents to apply for an identity card that contained specific details about ethnicity and religion for the individual and any of his or her children.⁸⁸

Benjamin Shalit, an Israeli Jew, married a Scottish woman with no religious affiliation.⁸⁹ In 1960, the two moved from Scotland to Haifa, Israel.⁹⁰ They subsequently had two children who were raised as all Israelis are raised.⁹¹ Shalit attempted to register his children as having Jewish nationality, but no formal religion.⁹² However, pursuant to its 1960 proclamation, the Ministry did not allow Shalit's children to have Israeli nationality on their identity cards.⁹³

The Ministry's refusal had the potential to severely restrict the rights of Shalit's children. Without Jewish nationality, they would have to deal with future religious restrictions.⁹⁴ For instance, the rabbinical authorities, who have sole jurisdiction over marriages, would not have allowed them to marry Jewish partners.⁹⁵ Such a restriction would have been problematic because the children were surrounded by other Jews and, therefore, would most likely have desired to marry a Jewish individual.⁹⁶

86. See ABRAMOV, *supra* note 37, at 298.

87. Registration of Inhabitants Ordinance, 2 Laws of the State of Israel 103 (1949), *reprinted* in FUNDAMENTAL LAWS OF THE STATE OF ISRAEL, *supra* note 11, at 58-61. The Population Registry Law replaced this ordinance. See Population Registry Law, 19 Laws of the State of Israel 288.

88. See Shalit, *supra* note 84, at 63.

89. *Id.* at 62-63.

90. *Id.* at 63.

91. *Id.*

92. *Id.* at 35.

93. See Shalit, *supra* note 84, at 63.

94. See ABRAMOV, *supra* note 37, at 399.

95. See *id.* The rabbinical courts in Israel have sole jurisdiction over matters of divorce and marriage. See FACTS ABOUT ISRAEL, THE STATE, *supra* note 39, at 11.

96. See ABRAMOV, *supra* note 37, at 399.

Shalit petitioned the Supreme Court for an order directing the Minister of the Interior and the Registry Officer to show cause why the children could not be registered as Jews in regard to nationality.⁹⁷ The government argued that the children should have to undergo formal religious conversion in order to obtain Jewish nationality.⁹⁸ It reasoned that

a person belongs to the Jewish people if born of a Jewish mother or converted to Judaism. Once he acquires the Jewish religion, whether by birth or by conversion, he becomes automatically a member of the Jewish nation. This rule has been considered vital over the centuries in preserving the Jewish people and as a shield against assimilation into other nations and the consequent disappearance of Jewish identity.⁹⁹

As atheists, the Shalits refused to have their children participate in any conversion ceremony.¹⁰⁰ Benjamin Shalit maintained that "a person should be allowed to register himself as one belonging to the Jewish people . . . if he subjectively regard[s] himself as a Jew."¹⁰¹

In a majority decision, the court granted Shalit's request to have "Jew" put on his children's identity cards,¹⁰² thereby distinguishing Jewish nationality from Jewish religion on the documents.¹⁰³ Referring to *Rufheisen*, Justice Berenson in his concurring opinion determined that the term Jew under the Law of Return had a secular, not "halachic" connotation.¹⁰⁴ He declared it unjust to leave these children "nationless" in the state of Israel when they had clearly expressed a sense of commitment and devotion to the Jewish people in the national sense.¹⁰⁵

In allowing the children to be registered as Jews on their identity cards, the court did not stray from its holding in *Rufheisen*. Although the children did not practice the Jewish religion, they did not take actions to disassociate themselves from the Jewish people as Father Daniel had done by converting to Catholicism.¹⁰⁶ In *Rufheisen*, the

97. See Shalit, *supra* note 84, at 63.

98. *Id.* at 63-64.

99. See ZEMACH, *supra* note 65, at 129.

100. See Shalit, *supra* note 84, at 63-65.

101. *Id.*

102. *Id.* at 190-91.

103. *Id.*

104. *Id.* at 186.

105. See Shalit, *supra* note 84, at 188.

106. *Id.*

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court viewed the act of conversion as a blatant abandonment of the Jewish people.¹⁰⁷ In *Shalit*, no such action took place.

D. The 1970 Amendments

Although the Supreme Court in *Shalit* did not supply a formal definition of a Jew, the Orthodox parties in the Knesset pressured the coalition government led by Golda Meir of the Labor Party into formulating a concrete definition of a Jew under the Law of Return and the Law of Population Registry.¹⁰⁸ The NRP, part of the Orthodox contingency who controlled the Ministry of the Interior, argued that a definition was necessary because the "the link between Jewish nationality and religion [would] become more tenuous in the course of time."¹⁰⁹ In order to ensure coalition support, Meir agreed to appease the Orthodox contingency by allowing the Law to be amended in 1970.¹¹⁰ The 1970 Amendment defined Jew under the Law as "a person born of a Jewish mother or having converted to Judaism, not being a person affiliated to some other religion."¹¹¹ The Knesset also amended the Population Registry Law to include the new definition.¹¹²

While incorporating the same definition, the amended Population Registry Law had the complete opposite effect of the amended Law of Return. The amended Population Registry Law extended the rights and privileges of *aliyah* to non-Jewish immigrants entering Israel.¹¹³ Previously, the Law of Return did not address the immigration rights of non-Jewish spouses, children, and other progeny.¹¹⁴ For example, a Jewish father immigrating to Israel would be granted citizenship under the Law of Return. His accompanying non-Jewish spouse and children, however, could only obtain citizenship through the slower process of naturalization.¹¹⁵

With the amendment to the Population Registry Law, the non-Jewish spouse and children could now obtain the same rights and

107. *Id.*

108. See ABRAMOV, *supra* note 37, at 303; ARIAN, *supra* note 23, at 240; Ginossar, *supra* note 11, at 264.

109. ARIAN, *supra* note 23, at 240. See also Benjamin Akzin, *Who Is a Jew? A Hard Case*, 5 ISR. L. REV. 259, 263 (1970).

110. The Law of Return (Amendment No. 2 of Mar. 19, 1970) sec. 4(B).

111. *Id.*

112. Law of Population Registry (Amendment No. 1) sec. 4(a), 19 Laws of the State of Israel 288 (1970), reprinted in ABRAMOV, *supra* note 37, at 304.

113. *Id.*

114. See ABRAMOV, *supra* note 37, at 304.

115. See *id.*; Ginossar, *supra* note 11, at 266.

privileges extended to Jewish immigrants under the Law of Return.¹¹⁶ Moreover, the rights and privileges that extended to non-Jewish relatives were not contingent on the Jewish relative actually being alive or even settling in Israel.¹¹⁷ Thus, a non-Jewish father and his non-Jewish spouse and children could enter Israel if he had an absent or dead Jewish parent or grandparent.¹¹⁸ In other words, in many instances a non-Jew could enter Israel and attain Israeli citizenship, even when not accompanied by a Jew.¹¹⁹

In contrast, the amended Law of Return significantly restricted those who could be classified as Jews. Brother Daniel, for instance, would not have been able to obtain automatic citizenship under the amended Law, even though he was born of a Jewish mother, because he was a person "affiliated to some other religion."¹²⁰ In addition, Shalit's children would not have qualified as Jews under the amended Law because they were not born of a Jewish mother and did not convert to Judaism.¹²¹

Furthermore, the amended Law of Return did not end all confusion over the definition of a Jew because the meaning of some of its terms was ambiguous. Specifically, the meaning of the term "converted" was not clear. In drafting the amendment, the Orthodox contingency in the Knesset wanted to add the words "in accordance with *Halachah*" after the phrase "converted to Judaism" to preclude conversions performed by Conservative or Reform rabbis.¹²² The Orthodox believed these conversions to be invalid because they did not conform to *halachah*.¹²³ Prime Minister Meir, however, rejected the Orthodox proposal because she felt that it would interfere with relations between Israeli Jews and Jews in other countries.¹²⁴ Conservative and Reform

116. See Law of Population Registry (Amendment No. 1) sec. 4(a), 19 Laws of the State of Israel 288.

117. Ginossar, *supra* note 11, at 266.

118. *Id.*

119. See *id.*

120. The Law of Return (Amendment No. 2 of Mar. 19, 1970) sec. 4(B). However, this provision also operated under the presumption that a Jew who converted because of coercion could "reenter" Judaism upon immigration to Israel. See Ginossar, *supra* note 11, at 265.

121. See Shalit, *supra* note 84, at 240. The Supreme Court of Israel also heard a second *Shalit* case in 1972 after the Law was amended. See *Shalit v. Minister of Interior*, 26 P.D. 334 (1972), noted in ARIAN, *supra* note 23, at 240. As in the 1968 case, the Shalits again sued the Ministry when controversy arose after the birth of their third child. *Id.* Pursuant to the amended Law of Return, the child could not be registered as a Jew on his identity card because he was not born of a Jewish mother and had not converted Judaism. *Id.*

122. ABRAMOV, *supra* note 37, at 304.

123. *Id.*

124. *Id.*

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rabbis perform most of the conversions taking place in the Diaspora.¹²⁵ Accordingly, the term "converted" was left ambiguous.¹²⁶

In a controversial declaration, the Minister of Justice attempted to clarify the ambiguity.¹²⁷ He declared to the Knesset that the term conversion would be subject to a wide interpretation, stating that a conversion to another faith would not irrevocably alter the status of a Jew.¹²⁸ Moreover, he declared that equal recognition would be extended to every form of conversion whether through the Orthodox, Conservative, or Reform movements of Judaism.¹²⁹ As predicted, Orthodox contingencies in the Knesset vehemently opposed this declaration on religious grounds.¹³⁰ Despite the Minister's declaration, the term converted remained ambiguous because the official interpretation was never incorporated into the text of the amended Law of Return.¹³¹

E. Conclusion

Rufheisen, *Shalit*, and the 1970 Amendments clarified to a certain degree the issue of who is a Jew. In *Rufheisen*, the court defined a Jew under the Law of Return in non-religious terms, holding that a convert to another religion was no longer a Jew, even though he qualified as a Jew under religious law.¹³² In *Shalit*, the court followed these secular notions in determining that one could be considered a Jewish national under the Population Registry Law without being affiliated to the Jewish religion.¹³³ There, *Shalit's* children were registered as Israeli nationals on their identity cards, even though they did not practice the Jewish religion.¹³⁴ Finally, in 1970 the Knesset incorporated religion into the definition of a Jew by defining a Jew under the Law of Return and the Population Registry Law as one born of a Jewish mother, one who converts, or one who does not embrace another religion.¹³⁵ However, the government made it clear that conversions pursuant to any

125. *Id.*

126. See Ginossar, *supra* note 11, at 265.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Ginossar, *supra* note 11, at 265.

132. *Rufheisen*, *supra* note 55, at 22.

133. See *Shalit*, *supra* note 84, at 190-91.

134. *Id.*

135. See Law of Return (Amendment No. 2 of Mar. 19, 1970) sec. 4(B); Law of Population Registry (Amendment No. 1) sec. 4(a), 19 Laws of the State of Israel 288.

form of Judaism would be recognized,¹³⁶ insuring that Jews who converted under non-Orthodox means would not be alienated.¹³⁷

Although *Rufheisen*, *Shalit*, and the 1970 Amendments resolved the who is a Jew issue to a certain extent, controversy surrounding the issue did not end. The new criteria for defining a Jew threatened to dramatically affect future immigration into Israel as well as the relationship between Jews in Israel and Jews in the Diaspora.¹³⁸ Given these effects, the Israeli government was again forced to confront this complex and controversial issue.

IV. The Law of Return's Present Interpretation

After the passage of the 1970 Amendments, the who is a Jew issue resurfaced in numerous instances. Conflict involved the definition of a convert under the amended Law.¹³⁹ Given the lack of explicit guidelines as to what constituted a proper conversion, many Jews who had converted by non-Orthodox means attempted to enter Israel.¹⁴⁰ In several instances, the Orthodox religious parties attempted to restrict the types of conversions that would be valid for purposes of immigration under the Law.¹⁴¹ They again argued that only conversions performed by Orthodox rabbis should be valid.¹⁴² However, each attempt ultimately ended in failure.¹⁴³

In 1986, the Ministry of the Interior, under the direction of Yitzhak Peretz and his ultra-Orthodox Shas party, blatantly attempted to override the provisions of the Law.¹⁴⁴ The Ministry refused to register Suzy Miller, an American Reform convert, as Jewish.¹⁴⁵ Instead, the Ministry registered her as a "convert to Judaism," arguing that her conversion was suspicious and not authentic.¹⁴⁶ Miller appealed to

136. See Ginossar, *supra* note 11, at 265.

137. *Id.* American Jewry, who provide significant financial support to Israel, would be alienated because many of their relatives have undergone Conservative or Reform conversions. *Id.* The liberal interpretation of conversion was meant to appease this sector of Jews. *Id.* at 265-66.

138. See Dan Izenberg, "Who Is a Jew?" *Over the Years*, JERUSALEM POST, July 25, 1989, available in LEXIS, Int'l Library, MDEAST File.

139. ARIAN, *supra* note 23, at 240.

140. *Id.* Conservative and Reform rabbis perform the majority of conversions to Judaism (especially in the United States). See Izenberg, *supra* note 138.

141. ARIAN, *supra* note 23, at 240.

142. *Id.*

143. *Id.* The Shas occupied the Ministry of the Interior during this particular coalition government. *Id.*

144. See Izenberg, *supra* note 138.

145. *Id.*; ARIAN, *supra* note 23, at 240.

146. ARIAN, *supra* note 23, at 240.

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the Israeli Supreme Court, which ordered the Ministry to register her as a Jew.¹⁴⁷ The court's order, however, did not end the dispute over conversions because the religious parties continued to demand that the Law be changed.¹⁴⁸

During the 1988 elections, controversy over conversions again erupted. The Likud and Labor blocks formed another coalition government and agreed that the Likud's Yitzhak Shamir would remain as the Prime Minister.¹⁴⁹ The religious parties formed the opposition behind the Labor parties.¹⁵⁰ The establishment of the coalition guaranteed that the ultra-Orthodox parties would not gain power over the primary roles within the Israeli government.¹⁵¹

The Likud and Labor parties, however, attempted to gain the support of the religious parties by considering Orthodox demands for specific changes in the Law of Return.¹⁵² These changes involved narrowing the criteria for conversion by accepting only rituals performed under traditional Jewish law by Orthodox rabbis.¹⁵³ Non-Orthodox converts would be barred from becoming Israeli citizens.¹⁵⁴

Public outrage over the prospects of such a revision erupted in Israel and the American Jewish community.¹⁵⁵ Many American Jews have familial or social ties to Reform or Conservative converts and perceived these changes as "a threat to their Jewishness and to their ties with Israel."¹⁵⁶ The change would only have affected a small number of potential immigrants each year.¹⁵⁷ Nevertheless, angering the

147. *Id.* The Israeli Supreme Court recently held that the religious authorities must officially recognize non-Orthodox conversions of Israelis performed abroad. See Haim Shapiro, *Reform Conversion Again Before the Courts*, JERUSALEM POST, Feb. 19, 1993, available in LEXIS, Int'l Library, MDEAST File.

148. ARIAN, *supra* note 23, at 240-41.

149. Stephen Franklin, *Israel Reaches Coalition Deal Likud, Labor to Form New Government*, CHI. TRIB., Dec. 20, 1988, at 1; *Israel's Likud, Labor Parties Agree to Coalition*, WORLD NEWS DIGEST, Dec. 3, 1988, at 945.

150. Franklin, *supra* note 149. See also *Israel's Likud, Labor Parties Agree to Coalition*, *supra* note 149.

151. Franklin, *supra* note 149. See also *Israel's Likud, Labor Parties Agree to Coalition*, *supra* note 149.

152. Franklin, *supra* note 149.

153. *Need to Amend Law on Who Is Jewish*, CHI. TRIB., Dec. 15, 1988, at 34; ARIAN, *supra* note 23, at 241.

154. Gail Fitzer, *Labour Approves Cabinet Accord on Coalition Government*, Reuters Lib. Rep., Dec. 20, 1988, available in LEXIS, Nexis Library, MDEAST File.

155. ARIAN, *supra* note 23, at 115. See also Charles Hoffman, *Who's A Jew? Revisited: Scenario for a Dual Disaster*, JERUSALEM POST, Dec. 5, 1989, available in LEXIS, Int'l Library, MDEAST File.

156. Hoffman, *supra* note 155.

157. *Id.*

American Jewish community would have been problematic¹⁵⁸ because much of Israel's financial support resulted from American Jewish lobbying in Washington and private contributions.¹⁵⁹ The change in the Law could well have ended or decreased this support. Taking these factors into account, the Knesset ultimately rejected the proposed amendment by a vote of sixty to fifty-three.¹⁶⁰

In the late 1980's, the who is a Jew issue presented itself to the Israeli Supreme Court.¹⁶¹ The Ministry of the Interior denied numerous Reform and Conservative converts their Jewish registration under the Law,¹⁶² doubting the validity of their conversions.¹⁶³ Pursuant to the amended Law, the court ruled that the Ministry's actions were illegal.¹⁶⁴

Despite these rulings, controversy concerning a Jew's personal status will likely persist because the decisions of the civil courts do not bind the religious courts in Israel.¹⁶⁵ It is highly probable that religious courts will refuse to recognize non-Orthodox converts as Jews in reference to marriage and the religious status of offspring.¹⁶⁶ Such a refusal would hinder relations with more Orthodox Israeli Jews who tend to alienate non-Orthodox converts, considering them to be outsiders. Lack of unity and trust within the Israeli Jewish community would prove to be extremely detrimental because this cohesiveness serves as the driving force behind Israel's survival as a state. Accordingly, the Israeli government must eliminate dispute between civil and religious authorities over who is a Jew.

A denial of the right of return supposedly inherent in birth and conversion to Judaism is unthinkable. Such a restriction would only destroy relations between Jews in Israel and Jews in the rest of the world. The 1970 Amendment to the Law promotes Jewish unity by adopting a "self-defining approach acceptable to all segments of the community."¹⁶⁷ It achieves cohesion "by seeking ground that is

158. *Israel's Likud, Labor Parties Agree to Coalition*, *supra* note 149, at 945.

159. See Hoffman, *supra* note 155, at 7, 8. See also Sidney Berg, "Who's a Jew" Is But a Symptom of the Israel-Diaspora Division, JERUSALEM POST, Jan. 29, 1989, available in LEXIS, Int'l Library, MDEAST File.

160. Izenberg, *supra* note 138.

161. See CHARLES HOFFMAN, THE AMERICAN JEWISH COMMITTEE, THE "WHO IS A JEW CRISIS": RETROSPECT & PERSPECTIVE 3 (1990).

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. See HOFFMAN, *supra* note 161.

167. See *Debate on "Who Is a Jew?"*, N.Y. TIMES, Dec. 12, 1988, at A18, col. 1.

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common to all, not by staking out controversial positions that reflect the views only of some."¹⁶⁸

V. Law of Return and Resulting Mass Immigration

In the forty-years since its birth, Israel has developed into a strong nation largely because of the steady flow of immigrants into the State.¹⁶⁹ In recent years, however, a substantial amount of Russian and Ethiopian Jews have immigrated to Israel under the Law of Return exposing many problems in Israel's liberal immigration policy.¹⁷⁰

A. *The Soviet Wave*

In the 1970's, only 160,000 Jews from the former Soviet Union emigrated to Israel.¹⁷¹ In 1971, the Knesset passed an amendment to the Nationality Law that enabled any Jew in the Diaspora immediately expressing a desire to emigrate to the state to become a citizen before physically entering Israel.¹⁷² Many Jews wanting to leave the Soviet Union took advantage of this amendment.¹⁷³

In the wake of *Glasnost*, Mikhail Gorbachev further loosened restrictions on Jewish emigration to Israel.¹⁷⁴ It was estimated that, by 1991, over 350,000 Soviet Jews had left for Israel.¹⁷⁵ Prior to September 1988, most Soviet Jews preferred to emigrate to the United States because the United States had more liberal immigration laws.¹⁷⁶

168. *Id.*

169. See ARIAN, *supra* note 23, at 19. This flow of immigration includes individuals who came to Israel during the beginning of the Zionist movement before Israel's statehood. *Id.* These immigrants were not only refugees of the Holocaust, but were also Jews from other areas such as the Middle East, Asia, and North America. *Id.* at 19-20.

170. See Yosef Goell, JERUSALEM POST, Nov. 22, 1988, available in LEXIS, Nexis Library, MDEAST File.

171. ARIAN, *supra* note 23, at 19. These Jews were able to leave the Soviet Union and emigrate to Israel after finally receiving exit visas from the government. *Id.* Obtaining an exit visa was far from easy. See *id.* For many years, restrictions on Jews' movements in and out of the Soviet Union were exceptionally harsh. See *id.*

172. Nationality Law (Amendment No. 3), 25 Laws of the State of Israel 117 (1971), noted in John Quigley, *Soviet Immigration to the West Bank: Is It Legal?*, 21 GA. J. INT'L & COMP. L. 387, 388 (1991).

173. See *id.*

174. Dick Kirschten, *Knock, Knock*, 21 NAT'L J. 2369, 2369 (1989). As a result of *Glasnost*, the Soviet government permitted thousands of Jews to leave the Soviet Union. *Id.* However, it was not clear whether these Jews would qualify for special refugee treatment in the United States. *Id.* As it turned out, many did not qualify because the United States began to place quotas on the number of Soviet-Jewish immigrants admitted into the country. *Id.* Consequently, many of these Jews went to Israel. *Id.*

175. See *Zionism Now; Land for People*, ECONOMIST, July 11, 1992, at 21.

176. See Quigley, *supra* note 172, at 389. See also Ramond G. McLeod, *Legal Immigration*

This situation changed in October 1989.¹⁷⁷ After much Israeli and American Jewish pressure to encourage Soviet Jewish immigration to Israel, the United States government set quotas at 50,000 immigrants per year.¹⁷⁸ The mass exodus to Israel that resulted has continued even after the dissolution of the Soviet Union in 1991 because of the faltering Russian economy and continuing acts of anti-Semitism.¹⁷⁹

The liberal nature of the Law of Return allows Russian immigrants to enter Israel, even though they are not necessarily Jews.¹⁸⁰ Again, under the modern Law of Return and Population Registry Law, one may enter Israel if he or she has only one Jewish parent or grandparent.¹⁸¹ Such individuals include half-Jews and those whose mothers were Jewish according to Jewish law,¹⁸² along with many non-Jewish partners in mixed marriages and their children.¹⁸³ Most of these individuals know very little about Jewish religion and culture because of forced alienation under an atheistic society.¹⁸⁴

As a result, many of these families have no Zionist motive to make their homes in Israel and cannot truly be called Jewish. They merely found a means to escape the hardships of a failing economy and political unrest.¹⁸⁵ These people are "Jews only because there is some faint memory among them that . . . this once was the religion of their ancestors."¹⁸⁶ As one Russian-Jewish woman admitted, "[I do not] want to go back to Russia . . . [and] never really wanted Israel. My husband isn't Jewish. I'm not sure Israel is my country but I am sure it will never be home to him."¹⁸⁷

at 67-Year High, *Former Soviets Are Largest Group*, S.F. CHRON., July 3, 1992, at A2.

177. See Quigley, *supra* note 172, at 389-90.

178. *Id.* At this time, the United States closed immigration offices in Italy and Austria. See Robert Pear, *Israel Asking U.S. for Aid on Housing for Soviet Emigres*, N.Y. TIMES, Oct. 2, 1989, at A1. Soviet Jews with Israeli visas had used these offices in order to apply for subsequent immigration to the United States. *Id.* Prior to these changes, the percentage of Soviet Jews departing for Israel was only about 10%. Quigley, *supra* note 172, at 389-90.

179. McLeod, *supra* note 176.

180. Donna Rosenthal, *The New Exodus; Immigrants to Israel*, ATLANTIC, May 1992, at 34.

181. See *supra* text accompanying notes 112-19.

182. See Rosenthal, *supra* note 180; Mikhail Agursky, *Mixed Marriages—A Telling Factor in Soviet Aliyah*, JERUSALEM POST, May 20, 1990, available in LEXIS, Int'l Library, MDEAST File.

183. See Rosenthal, *supra* note 180; Agursky, *supra* note 182.

184. See Agursky, *supra* note 182; Asher Wallfish, *Knesset Told of Olim's Worries*, JERUSALEM POST, Jan. 10, 1991, available in LEXIS, Int'l Library, MDEAST File.

185. See Agursky, *supra* note 182; see Wallfish, *supra* note 184.

186. William F. Buckley, Jr., *Israel's Problem; Russian Settlements on the West Bank*, NAT'L REV., May 14, 1990, at 63.

187. Jacob Wirtschafter, *Soviet Returnees Still Unsure of Who and Where They Are*, JERUSALEM POST, Dec. 18, 1991, available in LEXIS, Int'l Library, MDEAST File.

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The liberal nature of the Law of Return and Population Registry Law also allows many to enter Israeli through deceit and manipulation. For instance, some Russians do not even qualify as Jews under the broad provisions of the laws. Instead, they are other religions, such as Christian. They come to Israel using false documents because they cannot obtain permission to emigrate to other countries.¹⁸⁸ To obtain these documents, they simply go to the Israeli Embassy and say they are Jews in need of help.¹⁸⁹ Again, these individuals do so to escape the economic hardship of their own country. While presently only three percent of Russian immigrants abuse the system in this manner, their actions serve as a warning to the Knesset of the potential abuse that can take place and the need for reform of immigration law.¹⁹⁰ The Knesset should take precautionary measures. Otherwise, the situation could become uncontrollable.

B. The Ethiopians

Ethiopian Jewish immigration constitutes the other major wave of immigration to Israel. In 1984 and 1991, the Israeli government conducted two major airlifts in which approximately 21,000 Ethiopians were brought into Israel. These airlifts increased the number of the Ethiopian Jews in Israel to 45,000.¹⁹¹

The community of Ethiopian Jews has existed for thousands of years.¹⁹² Some believe that they descended from the Jews who left

188. *Id.*

189. *Id.*

190. See M. Dennis Gouldman, *Extradition from Israel*, 1983 MICH. Y.B. INT'L LEGAL STUDIES ON TRANSNAT'L ASPECTS CRIM. PROC. 173, 195. Falsifying documents is not the only example of manipulation of this open door immigration policy. *Id.* Many Jews who have broken the laws of other nations try to enter Israel under the Law in order to escape conviction in their countries of origin. *Id.* The Israeli government precludes some of these criminals from Israeli citizenship because they violate section 2(b) of the Law of Return by engaging in activity that is likely to endanger the security of the state. See The Law of Return sec. 2(b), 4 Laws of the State of Israel 114. Many, however, are successful in their escape because they emigrate to Israel before being charged with a crime. See M. Dennis Gouldman, *Extradition from Israel*, 1983 MICH. Y.B. INT'L LEGAL STUDIES ON TRANSNAT'L ASPECTS CRIM. PROC. 173, 195.

Recently, the government denied other immigrants who were HIV positive entry under the Law, reasoning that they posed a threat to the health and welfare of the Israeli population. See *Israel Bars Immigrants Who Carry the AIDS Virus*, N.Y. TIMES, Nov. 18, 1993, at A3. Although the government presently bans such immigrants, the issue is still a subject of debate. *Id.* Critics argue that the ban is discriminatory and contradicts the principle upon which the state was founded (that all Jews have the right to settle in Israel). *Id.*

191. Clyde Haberman, *Cry of the Ancient Kin: Don't Doubt Our Judaism!*, N.Y. TIMES, Sept. 29, 1992, at A4. The 1984 airlift was called Operation Moses. *Id.* The 1991 airlift was called Operation Solomon. *Id.*

192. See Rosenthal, *supra* note 180, at 34.

ancient Israel after the destruction of the First Temple.¹⁹³ Others believe that they are the descendants of King Solomon and the Queen of Sheba.¹⁹⁴ Legend dictates that the son of this royal union, Menelik, eventually settled in Ethiopia.¹⁹⁵ Still another theory holds that they descended from the Lost Tribe of Dan.¹⁹⁶

The Ethiopian community, believing that they were the last Jews on earth, remained in isolation for over 2,000 years¹⁹⁷ until missionaries from England discovered them.¹⁹⁸ While in isolation, these Jews nearly became extinct because of famine, civil war, and persecution.¹⁹⁹ For hundreds of years, these Jews were not allowed to own land, were sold into slavery, massacred, and derided as *felashas* (strangers) by their Muslim and Christian countrymen.²⁰⁰ The Christians and Muslims accused the Ethiopian Jews (hereinafter "Felashas") of being Satanic worshipers.²⁰¹ Small numbers of Felashas began to emigrate to Israel in the 1950s, 60s, and 70s.²⁰² In 1975, under Prime Minister Menachem Begin, the Israeli government recognized the Felashas as Jews and applied the Law of Return and Population Registry Law to them.²⁰³

Recently, the Israeli government took measures to reunite several thousand Felashas who converted to Christianity while their Jewish families were in Israel.²⁰⁴ The government sent a special team to

193. In 722 B.C.E., the Assyrians invaded the Kingdom of Israel and defeated the Jewish monarchy. See LOUIS RAPOPORT, *THE LOST JEWS* 88 (1982). The destruction of the Second Temple in Jerusalem (the site of the modern day Western Wall) marked this event. See *id.* The Assyrians exiled or sold into slavery the Jews who lived in the country. *Id.* at 89. The Jewish people did not return to the land until Herzl's Zionist movement and the birth of the state of Israel in 1948. See *Proclamation of the State of Israel*, *supra* note 5, at 14.

194. See RAPOPORT, *supra* note 193, at 81.

195. *Id.*

196. See *id.* at 85. The tribe of Dan was one of the twelve ancient tribes of Israel. *Id.* at 86-87. The tribes of Dan, Naphtali, Gad, and Asher left Assyria in 681 B.C.E. and journeyed to the "land of gold," which is now called Ethiopia. *Id.* at 153. Presently, the Ibo people of Nigeria also claim that they descended from the lost tribes of Israel. See *Nigerian Urges Israel to Recognize Ibo as One of Lost Tribes*, JERUSALEM POST, Apr. 4, 1993, available in LEXIS, Int'l Library, MDEAST File.

197. Rosenthal, *supra* note 180.

198. RAPOPORT, *supra* note 193, at 161.

199. See Rosenthal, *supra* note 180.

200. See *id.*

201. See *id.*; RAPOPORT, *supra* note 193, at 71. These Jews came to be known as the Felashas within their own community as well. Rosenthal, *supra* note 180.

202. Herb Kleinon, *Savior of the Ethiopian Community*, JERUSALEM POST, Mar. 10, 1992, available in LEXIS, Int'l Library, OMNI File.

203. *Id.*

204. See *Israeli Team to Fly to Ethiopia*, UPI, Apr. 28, 1993, available in LEXIS, Nexis Library, OMNI File.

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Ethiopia to rescue "emergency cases" of families who were previously separated from their relatives during the airlift of 1991.²⁰⁵ The Israeli government felt that efforts to reunite the Felasha families were necessary because prior restrictions placed on Ethiopian Jewish immigrants were much more severe than those placed on their Russian counterparts.²⁰⁶ Because the Ethiopians are African immigrants, the government was concerned about appearing racist.²⁰⁷ Moreover, it felt that a refusal of entry would contravene the country's policy of being a haven for Jews escaping persecution based on religion.²⁰⁸

Much controversy has arisen over whether the Felashas are Jews under the Law of Return and Population Registry Law.²⁰⁹ Ethiopian Judaism is based solely on the Bible and does not include Talmudic studies, which form the basis of modern Judaic studies.²¹⁰ Consequently, the religious authorities in Israel have advised the Kessim, the Ethiopian spiritual leaders, to modernize their practice of Judaism.²¹¹ They have also urged the Felashas to undergo certain symbolic acts of conversion for purposes of satisfying the modern Jewish criteria for marriage and divorce.²¹²

The Chief Rabbinate claims a desire to bring the Ethiopians "into the Jewish mainstream as it has developed over the centuries instead of leaving them at the fringe, in danger of becoming a separate sect."²¹³ The hope is understandable because it is necessary to promote unity and an expedient integration into Israeli society. Nevertheless, the Chief Rabbinate must realize that the distinctive nature of Ethiopian Jewry does not detract from their overall Jewish identity. Accordingly, the presumption that the Felashas must prove their Jewishness is extreme.

The case of the Felash Mura adequately illustrates the problems relating to Ethiopian Jewish immigration.²¹⁴ These Ethiopians

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. See Haberman, *supra* note 191; RAPOPORT, *supra* note 193, at 201.

210. Haberman, *supra* note 191; RAPOPORT, *supra* note 193, at 201. Much of modern Judaism is based on the teachings of the Talmud. See RAPOPORT, *supra* note 193, at 155-56. This form of religious study developed from oral teachings the Jews utilized when they were exiled after the destruction of the Second Temple. *Id.* at 16, 155-56.

211. Haberman, *supra* note 191.

212. *Id.* For instance, the religious authorities urged the drawing of blood from every male's penis to represent the Jewish rite of circumcision, which is performed on every Jewish male at birth. See *id.*

213. Haberman, *supra* note 191. The Chief Rabbinate leads the religious authorities in Israel, including the religious courts. See FACTS ABOUT ISRAEL, *supra* note 39, at 11.

214. Haberman, *supra* note 191.

descended from Jews who converted to Christianity in the late 19th Century because of either coercion or convenience.²¹⁵ Many Ethiopian Jews living in Israel feel that the Felash Mura should be able to immigrate to the state.²¹⁶ They claim that the Felash Mura converted to avoid persecution in an anti-Semitic environment.²¹⁷ The Felash Mura themselves assert that their conversions were merely symbolic because they devoutly practice Judaism in private.²¹⁸ As proof of the cohesiveness of their community, they point to their low rate of intermarriage.²¹⁹ However, other Israeli experts on Ethiopian Jewry claim that the Felash Mura converted to Christianity not to avoid persecution, but for ease, position, or influence in a non-Jewish society.²²⁰ They argue that the Felash Mura are attempting to use their Jewish ancestry to escape the despair and famine that currently exists in Ethiopia, not to escape religious persecution.²²¹

It is possible that many Felash Mura will not be able to enter Israel under the Law of Return and Population Registry Law. Many have been Christian for generations and, consequently, lost their Jewish matrilineal line decades ago.²²² Pursuant to the *Rufheisen* decision, these Felash Mura cannot obtain *oleh* status because they, as many assert, willingly converted out of the Jewish faith.²²³ However, other Felash Mura may be able to emigrate to Israel. Under the modern interpretation of the Law, a Jew converted by force who desires to return to Judaism upon immigration to Israel is allowed to enter the state.²²⁴ Consequently, Felash Mura who can prove that they were

215. *Id.*

216. *Id.*

217. See Haim Shapiro, *Jewish Agency Had Fears About Assisting Falash Mura*, JERUSALEM POST, June 7, 1991, available in LEXIS, Int'l Library, OMNI File. Many in Israel argue that the situation of the Felash Mura is similar to the situation of the Marranos during the Spanish Inquisition of the 1400s. *Id.* The Marranos were Jews who converted to Catholicism because of coercion by the Church. *Id.* These individuals secretly practiced Judaism in their homes. *Id.*

218. *Id.*

219. Michael A. Hiltzik, *Some Ethiopian Jews Still Praying to Leave*, L.A. TIMES, May 5, 1992, at A2.

220. Haim Shapiro, *Never Forced to Convert*, JERUSALEM POST, Aug. 2, 1991, available in LEXIS, Int'l Library, MDEAST File. Rabbi Menachem Waldman, an Israeli expert on Ethiopian Jewry, supports the view that the Felash Mura were never forced to convert from Judaism. *Id.*

221. See *id.*

222. See Shapiro, *supra* note 220.

223. See Yehuda Weinraub, *The Fares Mura*, JERUSALEM POST, Jan. 27, 1992, available in LEXIS, Int'l Library, MDEAST File.

224. The Law of Return, 4 Laws of the State of Israel 114 (1950), as amended by Amendment No. 2 of Mar. 19, 1970, sec. 4(B).

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forced to convert will qualify as Jews and be allowed to enter Israel.²²⁵

Many Ethiopian Christians have entered Israel in the airlifts by posing as Jews in order to escape economic and political problems in their country. As a result, the High Court of Justice ruled that such Gentiles do not have the right under the Law to emigrate to Israel.²²⁶ Such action is necessary because otherwise the floodgates would be nondiscriminately open to all immigrants.²²⁷ While perhaps the government should weigh the humanitarian interests of those who have suffered severe economic and political hardship,²²⁸ it has no obligation to absorb immigrants who are not Jewish.²²⁹

C. The Effect of the Law of Return's Open Door Policy on the Israeli Economy

The Israeli government must utilize considerable resources to provide for the massive influx of Ethiopian and Russian Jewish immigrants. The Israeli government provides each immigrant family with an absorption basket consisting of approximately \$10,000 in rent subsidies and other benefits for the first year.²³⁰ The government also

225. See Evelyn Gordon, *Court Awards Immigrant Status to Ethiopian Convert*, JERUSALEM POST, June 10, 1993, available in LEXIS, Int'l Library, MDEAST File. Recently, the Ministry of the Interior registered under the Law of Return an Ethiopian Jew who formally converted to Judaism in a local rabbinical court. *Id.* The Ethiopian lived in Israel as an illegal immigrant and had no documents to prove his Jewishness. *Id.* This decision may have constituted a precedential event, possibly signifying that the Ministry of the Interior would now give some Ethiopians with questionable status as Jews citizenship under the Law of Return. *Id.*

226. *Ministry to Court: Ethiopian Families are Falash-mura*, JERUSALEM POST, Sept. 9, 1992, available in LEXIS, Int'l Library, MDEAST File.

227. Haberman, *supra* note 191.

228. See Tom Hundley, *Immigrants Push Israel to Limit Soviet Jews' Numbers*, *Culture Challenge Society*, CHI. TRIB., May 12, 1991, at 1.

229. Controversy has recently erupted over whether Messianic Jews should be permitted to enter Israel under the Law of Return. See Clyde Haberman, *Jews Who Call Jesus Messiah: Get Out, Says Israel*, JERUSALEM POST, Feb. 11, 1993, available in LEXIS, Nexis Library, OMNI File; Michael Parks, *Messianic Jews at Center of Political Debate*, N.Y. TIMES, Mar. 27, 1993, at A3. Messianic Jews follow all Jewish traditions except one: they believe that Jesus of Nazareth was the Messiah, the long-awaited redeemer. Michael Parks, *Messianic Jews at Center of Political Debate*, N.Y. TIMES, Mar. 27, 1993, at A3. In doing so, Messianic Jews basically adopt the tenets surrounding Christianity. *Id.* In contrast, mainstream Jews believe that the Messiah has not yet come. *Id.* Consequently, despite the fact that these individuals were born Jews, have Jewish mothers, and practice most Jewish traditions, many argue that they should not be allowed to immigrate into Israel because they violate the Law of Return by being members of another religion. See Law of Return, 4 Laws of the State of Israel 114, as amended by Amendment No. 2 of Mar. 19, 1970, sec. 4(B).

230. Rosenthal, *supra* note 180.

faces the burden of finding jobs for the *olim*,²³¹ educating them so that they may successfully integrate into Israeli society, and providing them with long-term subsidized housing.²³² Presently, the new immigrants are placed into temporary housing and employed in low-grade jobs.²³³

Despite the government's considerable efforts, over 40 percent of the new immigrants are unemployed.²³⁴ Moreover, many highly educated individuals are forced to accept menial jobs because of the overloaded pool of professionals in the Israeli work force.²³⁵ For instance, many Russian immigrants who are highly educated professionals, such as doctors, engineers, or scientists, are forced to accept jobs as laborers, street cleaners, and maids.²³⁶ Most of these individuals live from month to month not knowing if they will be able to pay their bills or feed their families.²³⁷ Other Russian professionals refuse to accept such jobs because they feel that these low level jobs are not worthy of their sophisticated skills.²³⁸ These unemployed immigrants place a heavy burden on the state.²³⁹

The sudden increase in the population from the influx of Russian and Ethiopian Jews has had a profound impact on the Israeli economy as a whole. Statistics show that unemployment is at 11 percent.²⁴⁰ Israeli citizens are experiencing a 25 percent tax increase and a 25 percent decrease in government services.²⁴¹ The current rate of inflation is at 18 percent, and the government has been forced to cut down aid packages to the *olim*.²⁴²

231. *Olim* is the plural form of *oleh*, the Hebrew term for a Jewish immigrant. See FUNDAMENTAL LAWS OF THE STATE OF ISRAEL, *supra* note 11, at 156 n. 150.

232. Rosenthal, *supra* note 180. This integration process involves government programs that provide each immigrant with Hebrew language training for six months. *Id.*

233. See Rosenthal, *supra* note 180; David Hoffman, *Zionism Dims in a Trailer Home*, WASH. POST, Sept. 10, 1992, at A1, A26.

234. Rosenthal, *supra* note 180.

235. Hundley, *supra* note 228.

236. *Id.*

237. *Id.*

238. *Id.*

239. Hundley, *supra* note 228.

240. Miriam Jordan, *Immigration Into Israel at Lowest Since Late 1989*, Reuters Lib. Rep., Apr. 29, 1992, available in LEXIS, Nexis Library, OMNI File.

241. Hundley, *supra* note 228. Israeli experts predict that the economy will only grow if, in the next five years, \$25 billion is invested for the creation of jobs and industry, \$8 billion for the building of homes, and \$7 billion for the improvement of infra-structure. David Krivine, *A New Economy for Olim*, JERUSALEM POST, Apr. 4, 1991, available in LEXIS, Int'l Library, MDEAST File.

242. Rosenthal, *supra* note 180.

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The economic dilemma will become more problematic in the future because over one million additional immigrants are expected to arrive in Israel by the late 1990's.²⁴³ Uri Gordon, head of the Department of Immigration and Absorption, predicts that if immigrants continue to arrive:

[o]ur housing and unemployment crises will reach new peaks Already the number of job seekers has risen dramatically as thousands have finished their six-month long Hebrew courses. On Friday afternoons the economic pinch is evident when markets close for the Sabbath and scores of Soviet immigrants rummage through trash bins and pick up leftover fruit and vegetables off the ground People are no longer surprised to discover that the attendant pumping gas is an award-winning chemist or that a formerly prominent surgeon is sweeping the streets.²⁴⁴

The United States recently approved a \$10 billion loan guarantee to the newly elected Prime Minister of Israel, Yitzhak Rabin of the Labor Party, to help subsidize the needs of future immigrants.²⁴⁵ The majority of Israelis, however, believe that Israel does not need money, but instead needs foreign investment in order to expand the job market and increase production of goods for export and domestic consumption.²⁴⁶ As Giora Inbar, a Colonel in the Israeli Defense Forces, asserts:

[W]e have plenty of money, that is why our inflation rate is so high. Instead, we need to establish more industry in Israel, so that we could put our *olim* to work. If we could produce more goods, we

243. See Hoffman, *supra* note 233, at A1. Presently, 1.2 million Russian Jews and their families hold papers to begin the emigration process to Israel, and 60,000 hold Israeli visas. *Id.* It is predicted that these immigrants will expand the population by one-fifth, the labor force by one-third, and the number of university graduates by one-half. *Id.* Unless industries are developed to accommodate the arrival of the *olim*, it is predicted that 80% of the new immigrants will not find work in their fields. *Id.* It is further estimated that the gross national product will have to expand at 10% a year in order to accommodate immigrants and young Israelis who are entering the job market. *Id.*

244. Rosenthal, *supra* note 180. Russian organized crime operating through prostitution and counterfeit rings is also emerging. *Id.*

245. See Frank J. Murray, *Bush Cites Strategic Role in Urging Loans to Israel*, WASH. TIMES, Aug. 12, 1992, at A3 (United States guarantees \$10 billion in loans to Israel to resettle immigrants). In the June 23, 1992 Israeli elections, the Labor party, led by Yitzhak Rabin, defeated the Likud party, led by former Prime Minister Yitzhak Shamir. See Clyde Haberman, *Rabin Tries to Win Help on the Right*, N.Y. TIMES, Oct. 20, 1992, at A7.

246. See Yosef Goell, *Who Needs a Jewish Hong Kong*, JERUSALEM POST, Oct. 15, 1991, available in LEXIS, Int'l Library, MDEAST File.

could encourage not only more buying power in Israel, but abroad. Then the economy will eventually fix itself.²⁴⁷

One way to alleviate the unemployment problem is to limit the number of immigrants allowed into Israel under the Law of Return and the Population Registry Law. Many immigrants do not even consider themselves to be Jewish, and their only tie to Judaism may come from having a Jewish woman in their family several generations ago. These individuals use Israel's liberal immigration policy solely as a means for escaping economic hardship in their own countries. Israel cannot continue to support such a large number of people who, in theory, are not part of the Jewish state and do not even desire to be a part of the Jewish people.

The current Israeli government under Prime Minister Rabin must consider changing Israel's immigration laws. The change need not involve the issue of who qualifies as a worthy convert. Again, pursuant to the present Law of Return and Population Registry Law, a non-Jewish family can enter Israel if the mother or father has an absent or dead Jewish parent or grandparent.²⁴⁸ Moreover, a non-Jewish family does not have to conclusively prove the existence of a Jewish parent or grandparent before emigrating to Israel.²⁴⁹ No concrete standard exists for proving that one has such a relative.²⁵⁰ Instead, one's Jewishness is determined on a case by case basis.²⁵¹

In most cases, an immigrant establishes his Jewishness by providing some sort of documentary evidence such as a his or her Jewish marriage certificate or one belonging to a parent or grandparent, a birth certificate, or a conversion certificate.²⁵² However, in many instances providing documentary evidence is problematic for Jewish immigrants from the former Soviet Union and Ethiopia because often

247. Interview with Giora Inbar, Colonel in the Israeli Defense Forces, in Carlisle, PA (Oct. 21, 1992).

248. See *supra* text accompanying notes 112-19. Absorption Minister Yitzhak Peretz claims that approximately 30% of the immigrants entering Israel from the former Soviet Union under the Law of Return are not Jewish. See Herb Kleinson, *Peretz: Limit Non-Jewish Immigration*, JERUSALEM POST, Nov. 28, 1990, available in LEXIS, Int'l Library, MDEAST File. Government officials have also estimated that as many as 40% of the Ethiopian Jews entering Israel are not Jewish. Herb Kleinson, *40% of New Ethiopian Olim Said to Be Non-Jews*, JERUSALEM POST, Nov. 6, 1991, available in LEXIS, Int'l Library, MDEAST File.

249. Telephone Interview with Shereen Mendelowitz, Program Coordinator, Israel Desk of the United Jewish Appeal Federation (February 9, 1994).

250. *Id.*

251. *Id.*

252. *Id.*

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they do not have such proof.²⁵³ In such cases, the individual must use other means to satisfy the requirements of the Law of Return and Population Registry Law. For instance, he or she may be able to establish his or her Jewishness upon arrival in Israel if a rabbi attests to the individual's Jewishness after asking him or her a series of questions.²⁵⁴ Consequently, the lack of a definite standard may allow many non-Jews to enter Israel with little or no hard proof of their Jewishness.

The government should require a family to have a Jewish parent or, at the very least, a grandparent present in order to acquire Israeli citizenship under the Law of Return and Population Registry Law. In cases where the Jewish parent or grandparent is dead or not present, the government should require conclusive documentary proof of the existence of such a relative. Where the immigrant has difficulty providing conclusive documentary proof, he or she could perhaps be required to demonstrate an actual tie to the state through relatives who have previously settled in Israel.²⁵⁵ Finally, regardless of which standard is satisfied, these immigrants should always be required to show a desire to be part of the Jewish state. In this manner, the Ministry would only give a "haven to those who identify themselves as Jews and who . . . want to cast their lot with the Jewish people."²⁵⁶

Although requiring an immigrant to prove his or her Jewishness or Zionist motives may seem unduly harsh and contrary to Israel's liberal immigration policy, such measures are necessary if Israel hopes to overcome the economic crisis caused by the flow of immigrants into the state. Israel simply cannot support another large surge of immigrants while it struggles with the economic burden of accommodating the most recently admitted immigrants. Moreover, the Law of Return was enacted to open unconditionally Israeli gates to Jews, especially those who are persecuted. The right of return is meant to be a birthright, a means of fulfilling the goals of the Zionist dream, not an opportunity for non-Jews to escape the economic hardships of their native countries.²⁵⁷

253. *Id.*

254. See Telephone Interview with Shereen Mendelowitz, Program Coordinator, Israel Desk of the United Jewish Appeal Federation (February 9, 1994).

255. See Hiltzik, *supra* note 219.

256. *Who Is an Oleh?*, JERUSALEM POST, July, 24, 1990, available in LEXIS, Int'l Library, MDEAST File.

257. See Yosef Goell, *Just What Does Labor Stand For?*, JERUSALEM POST, Nov. 29, 1991, available in LEXIS, Int'l Library, MDEAST File.

Israel cannot solve this problem alone and needs the help of the United States. The United States must raise its quotas governing the number of Russian Jews that are allowed into the country. In doing so, the United States must extend leniency and absorb immigrants who otherwise might not be classified as refugees.²⁵⁸ Furthermore, instead of giving Israel loan guarantees, the United States must encourage U.S. industries to expand into the Jewish state. These industries would provide needed employment for both immigrants and native Israelis. Only with such measures can Israel hope to deal with the problems caused by mass immigration from Ethiopia and the former Soviet Union.

VI. The Law of Return's Effect on Palestinians in Israel

The Law of Return embodies the desire to renew the Zionist movement initiated by Herzl.²⁵⁹ Many Israelis feel that "Zionism in Israel is like breathing [I]t is so natural that you don't notice it It shapes the way all Israelis act, the way they think about land, about Arabs, and about their religion and about the Jewish place in history."²⁶⁰ In fulfilling this Zionist destiny, the Law of Return has affected the Palestinian²⁶¹ population in Israel and the Occupied Territories of the West Bank and the Gaza Strip.²⁶² These Arabs are

258. Senator Frank Lautenberg of New Jersey sponsored a 1989 law to ease the standard for Soviet Jews entering the United States under refugee status. S. 893, 101st Cong., 1st Sess. (1989) (enacted). However, this law has not alleviated the problem of Soviet-Jewish Immigration because large numbers of Jewish immigrants do not qualify as refugees as a result of the dissolution of the former Soviet Union. See Elizabeth Ross, *Soviet Jewish Families Emigrate to the U.S. in Increasing Numbers*, CHRISTIAN SCI. MONITOR, Sept. 24, 1992, at 7.

259. See THE ARAB-ISRAELI CONFLICT, *supra* note 7, at 15.

260. See ABRAMOV, *supra* note 37, at 300.

261. This Comment uses the terms Arab and Palestinian interchangeably.

262. See THE ARAB-ISRAELI CONFLICT: PERSPECTIVES, *supra* note 7, at 36-37. Palestine became the State of Israel in 1947 under the partition of the United Nations. *Id.* After obtaining statehood, Israel fought several wars with the Arabs in Israel, as well as with the neighboring countries of Lebanon, Jordan, Syria, and Egypt. *Id.* Israel defeated its Arab opposition in the First Arab-Israeli War of 1948. *Id.* After this Israeli victory, hundreds of Palestinian Arabs refused to recognize the existence of Israel. *Id.* at 46. Consequently, these Arabs left Israel and settled in refugee camps in the West Bank and the Gaza Strip. See THE ARAB-ISRAELI CONFLICT: PERSPECTIVES, *supra* note 7, at 148. At the time, Jordan and Egypt controlled the Gaza Strip. See *id.* at 46-47. In the Six Day War of 1967, Jordan, Egypt, and Syria attacked Israel. *Id.* at 49-53. Israel defeated these countries and captured the West Bank from Jordan, the Gaza Strip from Egypt, and the Golan Heights from Syria. *Id.* Israel presently occupies these areas. *Id.* at 52-53.

During these wars, Yasser Arafat formed the Palestine Liberation Organization (PLO), which has served as the Palestinian "government in exile." See THE ARAB-ISRAELI CONFLICT: PERSPECTIVES, *supra* note 7, at 95-96. Over the past twenty-five years, the PLO has been responsible for numerous terrorist actions against Jews in Israel and abroad. *Id.* As a result of the terrorist activities of the PLO, the Israeli government has dealt harshly with Palestinians living

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concerned about the settlement of Jewish immigrants in the occupied lands and assert that the Law of Return's automatic right to return for Jews only is discriminatory and violates international law.²⁶³

A. Settlement of Immigrants in the Occupied Territories

Palestinians fear that the influx of immigrants is disturbing the demographic balance in Israel in favor of the majority Jewish population.²⁶⁴ Again, Israeli officials have predicted that one million Jewish immigrants will emigrate from Eastern Europe in the next several years.²⁶⁵ To accommodate these immigrants, former Prime Minister Yitzhak Shamir of the Likud party publicly announced during his administration that a "big Israel" would be necessary.²⁶⁶ Most believed such pronouncements to mean that new immigrants would settle in the occupied lands if necessary.²⁶⁷

In fact, statistics show that between 1989 and 1991 approximately 8,000 Jewish immigrants (mostly Russians) settled in the West Bank and East Jerusalem.²⁶⁸ Moreover, in 1991 Israel allegedly confiscated

in the Occupied Territories. See THOMAS L. FRIEDMAN, FROM BEIRUT TO JERUSALEM 374-77 (1989). In 1987, Palestinian uprisings in opposition to Israeli rule (the *Intifada*) exploded in the West Bank and Gaza Strip. *Id.*

263. See Kirschten, *supra* note 174. United Nations General Assembly Resolution 194 of December 11, 1948, calls upon Israel either to permit these refugees to return to their homes if they are willing to live in peace or to compensate the refugees for their losses if they do not choose to return. G.A. Res. 194, U.N. Doc. A/810, at 21 (1948). For further information on Palestinian rights in the Israeli Occupied Territories, see Carol Bisharat, *Palestine and Humanitarian Law: Israeli Practice in the West Bank and Gaza*, 12 HASTINGS INT'L & COMP. L. REV. 325 (1989).

264. See *Most Jews to Live in Israel by 2010*, JERUSALEM POST, Feb. 5, 1992, available in LEXIS, Int'l Library, MDEAST File. Professor Sergio Della Pergola, a leading Israeli demographer, predicts that every 100,000 immigrants pushes the "parity date" back by a year. *Id.* The parity date is the time when an equal number of Jews and Arabs will exist in Israel Proper and the territories as a result of the low Jewish and high Arab birth rates. *Id.* Because of past influxes of Jewish immigrants, the parity date is currently the year 2019. *Id.*

265. See Rosenthal, *supra* note 180.

266. See Hundley, *supra* note 228.

267. *Id.* The settling of native Israelis and immigrants in the Occupied Territories is a potential violation of the law of belligerent occupation as mandated by the Geneva Convention. See Convention Relative to the Treatment of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Convention]. This treaty prohibits an occupying power from deporting or transporting parts of its own civilian population into the territories it occupies. *Id.* The Israelis argue that they have not violated the treaty because the previous occupier of the West Bank, Jordan, had no title to this territory. See Quigley, *supra* note 172, at 396-97. As a basis for this argument, they point to Article 2 of the Convention, which provides that the territory must belong to a "High Contracting Party." Convention art. 2. Because Jordan had no title to the West Bank, the Israelis argue that it is not such a party. Quigley *supra* note 172, at 396-97 n. 62.

268. Daniel Williams, *Israel Steps Up Land Takeovers in West Bank*, L.A. TIMES, Apr. 7, 1991, at A1. The Palestinians consider East Jerusalem to be a part of the West Bank. *Id.*

large tracts of Palestinian-Arab owned land for the construction of housing units for Jewish settlers in the West Bank.²⁶⁹ Additionally, despite pressure from the U.S. government, Shamir refused to declare a freeze on settlement construction.²⁷⁰

This expansionist attitude has been a major obstacle in peace negotiations over the past several years between Israelis and Palestinians.²⁷¹ The Arabs viewed "Jewish expansionism" as a threat to any possible autonomy in the occupied lands: the goal they hoped to obtain as a result of the peace talks.²⁷² They feared that another sudden rise in the Jewish population would lessen incentives to make territorial concessions, thus eliminating the possibility of land for peace and the formation of a separate Palestinian state.²⁷³

Some of the apprehension decreased, however, with the Labor party's victory in the June 1992 elections.²⁷⁴ The new Prime Minister, Yitzhak Rabin, has proved to be more willing than his predecessor to compromise in the Occupied Territories, having halted the building of "political settlements" in the West Bank.²⁷⁵ Rabin's more flexible attitude prompted the United States to grant Israel \$10 billion in loan guarantees for the purpose of settling new immigrants.²⁷⁶

Furthermore, on September 13, 1993, the ongoing peace talks between the Israelis and the Palestinians in the Occupied Territories reached a dramatic climax. Prime Minister Yitzhak Rabin signed a provisional peace accord with Chairman Yasser Arafat of the Palestine Liberation Organization (PLO).²⁷⁷ Under the pact, Israel and the PLO

269. See Quigley, *supra* note 172, at 393 n. 41; see David Makovsky, *All Sides Agree to Idea of Parley*, JERUSALEM POST, Apr. 20, 1991, available in LEXIS, Int'l Library, MDEAST File. Housing Minister Ariel Sharon estimated that 13,000 units would be needed by 1993 to accommodate the potential arrival of one million more immigrants. See David Makovsky, *All Sides Agree to Idea of Parley*, JERUSALEM POST, Apr. 20, 1991, available in LEXIS, Int'l Library, MDEAST File.

270. Michael Sheridan, *Israel Settlements Anger U.S.*, INDEPENDENT (London), Apr. 8, 1991, at 9.

271. See Williams, *supra* note 268. Rabin's aides claim that the new Prime Minister will strive for an agreement with the Arabs that would establish Palestinian self-rule in the territories in nine to twelve months. *Id.*

272. *Id.*; Quigley, *supra* note 172, at 393-94.

273. See Williams, *supra* note 268; Quigley, *supra* note 172, at 393-94.

274. See Jordan, *supra* note 240.

275. *Id.*

276. *Id.*

277. Clyde Haberman, *Signatures Exchanged, Israel and Palestinians Seek to Build Peace*, N.Y. TIMES, Sept. 11, 1993, at A1.

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agreed to the introduction of Palestinian self-rule in the Occupied Territories of the Gaza Strip and the West Bank city of Jericho.²⁷⁸ The peace accord mandates that, over a five year transitional period, the Palestinians will form their own elective bodies dealing with administrative matters such as culture, health, taxes, social welfare, and tourism.²⁷⁹ These governing bodies will also create their own police force.²⁸⁰ At the same time, the Israeli government will deploy troops on the outskirts of these territories in a supervisory capacity.²⁸¹ Further negotiations on the permanent status of the remainder of the territories will also begin no later than the beginning of the third year of the interim period.²⁸²

Despite the changes in the Israeli government and the new peace accord, the Arabs continue to worry that additional influxes of Jewish immigrants will put at risk their hopes of forming a separate Palestinian state in the occupied lands. As more and more immigrants enter Israel under the Law of Return and Population Registry Law, less land will be available for Jewish settlements.²⁸³ Consequently, the Arabs still fear that the only viable place to settle new immigrants will be in the Occupied Territories.²⁸⁴

B. Discrimination under the Law of Return

One severe obstacle to past and present Arab-Israeli relations is the assertion that the right to return for Jews under the Law of Return is racist and discriminatory.²⁸⁵ Arabs argue that they too should have

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. Haberman, *supra* note 277. In addition, this interim period will begin in Gaza and Jericho on December 13, 1993, and will lead to a permanent accord based on U.N. Security Council Resolutions 242 and 338, which demand Israeli withdrawal from land occupied during the 1967 war. *Id.*; U.N. SCOR, 22nd Sess., 1382d mtg. at 1, U.N. DOC. S/PV.1382 (1967); U.N. SCOR, 28th Sess., 1747th mtg. at 1, U.N. DOC. S/PV.1747 (1973). See also THE ARAB-ISRAELI CONFLICT: PERSPECTIVES, *supra* note 7, at 84.

The new peace accords have not changed the status of Arabs from the Occupied Territories who travel into Israel to perform manual labor. See Rosenthal, *supra* note 179. These Arabs fear that Jewish employers will give their jobs to newly arriving Jewish immigrants. *Id.* Indeed, there is a substantial possibility of this happening because many of the highly educated immigrants from the former Soviet Union are now willing to take jobs entailing manual labor. *Id.* The loss of Arab jobs would only cause further resentment between the Palestinians and the Jews of Israel.

283. Goell, *supra* note 257.

284. *Id.*

285. Ian Black, *Israel Decision on Zionism Cheers President Herzog*, Reuter Exline Guardian, Dec. 18, 1991, available in LEXIS, Nexis Library, OMNI File. See also Bisharat, *supra* note 264. Presently, Palestinians in the Occupied Territories are not able to enter Israel whenever they please.

the inherent right to return to lands they inhabited before Israel became a state.²⁸⁶ This right of return would not only involve the Occupied Territories, but also land in Israel proper, such as land around the cities of Haifa and Jaffa.²⁸⁷ As a basis for their assertions, the Arabs argue that United Nations General Assembly Resolution 194 of 1949²⁸⁸ recognized a right of return for Palestinians who fled or were evicted from their land after the Israel War of Independence in 1948.²⁸⁹

Not surprisingly, Israeli leaders have rejected Arab claims of a right of return. Before the June 1992 elections, Prime Minister Shamir announced to a gathering of Likud Party members that the "only right of return would be the Jewish right."²⁹⁰ Rabin concurred with Shamir arguing that the Arab claims could "blow up the peace process."²⁹¹ The Israeli government fears that recognizing a Palestinian right of return will upset the demographic Jewish majority in Israel.²⁹² It is afraid that the millions of Palestinians who now live in the Occupied Territories and abroad would return to Israel proper and outnumber its Jewish inhabitants.²⁹³

In May 1993, the Arab right to return issue erupted during Arab-Israeli peace talks in Ottawa and Brussels.²⁹⁴ The Israelis boycotted the meetings because they feared that by simply sitting at the table with the Palestinians they would appear to be recognizing this right of return.²⁹⁵ The peace accord signed by Rabin and Arafat in September has essentially put the issue on the back burner.²⁹⁶ Under the accord, an Arab right of return cannot even be discussed for at least another two years.²⁹⁷ The discussion of the refugees (or descendants) return to the land they occupied before Israeli independence in 1948 and the Six-Day War in 1967 will only take place in the last stages of future

See Bisharat, *supra* note 264.

286. John Bierman, *Two Faces of Israel*, MCCLEAN'S, July 9, 1990, at 24.

287. See Andrew Meisels, "Right of Return" Issue Puts Israel on the Defensive, WASH. TIMES, May 15, 1992, at A1.

288. G.A. Res. 194, U.N. Doc. A/810, at 21 (1948).

289. See Meisels, *supra* note 287.

290. *Israel Upset With US Regarding Right of Return* (NPR radio broadcast, May 14, 1992), available in LEXIS, Nexis Library, OMNI File.

291. See *id.*; Meisels, *supra* note 287.

292. See Black, *supra* note 285.

293. *Id.*

294. See *id.*

295. See *id.*

296. Ian Black, *Accord Blurs Exiles' Vision of a Romantic Return*, GUARDIAN, Sept. 14, 1993, available in LEXIS, Nexis Library, MDEAST File.

297. See Jack Redden, *1948 Refugees—the Forgotten in Israel-PLO*, Reuters Lib. Rep., Dec. 5, 1993, available in LEXIS, Nexis Library, OMNI File.

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settlement negotiations.²⁹⁸ Because the right of return has always been one of the most fundamental PLO demands, many of the estimated 5.8 million Palestinians now feel that Arafat has brutally ignored their interests.²⁹⁹

The issue of a Palestinian right of return must be dealt with if any form of lasting peace is to take effect. This issue cannot be swept under the rug as Shamir, Rabin, and now Arafat have tried to do. It will remain a source of contention in future peace talks and a barrier to true peace between Israelis and Palestinians. It is unfair that Palestinians with real familial and ancestral ties to the land cannot return, while immigrants not technically Jewish and possessing no desire to become a part of the Jewish state are able to enter and become automatic citizens.

The Labor government has recently proposed a bill that would eliminate all distinctions between Jewish and Arab citizens.³⁰⁰ Under the bill, Arabs in Israeli territory would be entitled to purchase land anywhere in Israel; build mosques and houses in Jewish neighborhoods; send their children to Jewish schools; receive the absorption baskets; and have Arabic, already an official language of the state, placed on equal footing with Hebrew.³⁰¹ The current status of this bill in light of the recent peace accords is unknown. If the bill is passed, however, the Law of Return and the principles upon which the Jewish state was founded would be nullified.³⁰² Jewish outrage in both Israel and abroad would also likely erupt into violence. Given these effects, it seems unlikely that the bill will pass at any time in the near future.

Nevertheless, Israel could take other steps to remedy this situation. First, it could take all necessary measures to implement the recently signed peace accord concerning Palestinian self rule over the Gaza Strip and Jericho. Second, as the Palestinians achieve more responsibility in governing the territories, the Israeli government could give the Palestinian governing body the authority to award a certain percentage of Palestinians living abroad a right of return to the Gaza Strip and Jericho. This authority could expand to cover new territories over which the Palestinians are given self rule. At the same time, Palestinians who live abroad and in the Occupied Territories could be

298. *See id.*

299. *Id.*

300. Paul Eidelberg, *A Bill of National Suicide*, JERUSALEM POST, Jan. 11, 1993, available in LEXIS, Int'l Library, MDEAST File.

301. *Id.*

302. *Id.*

awarded a "right to visit," a right to travel freely in the areas of Israel proper where their ancestry lies.³⁰³ Third and finally, a certain percentage of Palestinians could be awarded a right of return to certain areas of Israel proper. However, Palestinian immigration into Israel must be based on the number of Jewish immigrants entering the state. Israel simply cannot economically handle a new, massive surge of immigrants, whether they are Jews or Palestinians. This gradual, realistic process could serve as the foundation for achieving a somewhat equitable right of return for Palestinians, while preserving the Jewish foundations of the state of Israel.

VII. Conclusion

The Law of Return has been instrumental in Israel's development into the established nation that exists today. It has provided Israel with a strong foundation in constructing a Jewish society based on Herzl's Zionist objectives and provided the Jewish community at large with a cohesive device to aid in its recovery from the devastation of the Holocaust. Despite its successes, the Law has continuously aroused conflict between civil and religious authorities in Israel. The *Rufheisen* and *Shalit* decisions ignited the who is a Jew issue between these groups. The debate was only fueled by the passage of the 1970 Amendments and the subsequent controversy concerning the definition of a true convert.

Presently, the who is a Jew issue and the Law of Return remain as fundamental roadblocks to Israel achieving true peace and security in the Middle East and remaining as a refuge for Jews around the world suffering religious and ethnic persecution. The Israeli government has the immense burden of handling the recent influx of Jewish immigrants from the former Soviet Union, Ethiopia, and increasingly, other countries of the world, such as the former Yugoslavia.³⁰⁴ Israel must also struggle with the issue of a Palestinian right of return, an issue that will continue to plague those attempting to establish peace between Jews and Palestinians.

In light of its struggling economy and the limited resources it can allocate to newly arriving immigrants, Israel must amend the Law of Return to accommodate only those immigrants with legitimate Jewish backgrounds, or at most, those who truly desire to become a part of the

303. See Bisharat, *supra* note 263.

304. *Not Just a Shelter*, JERUSALEM POST, Sept. 3, 1991, available in LEXIS, Int'l Library, MDEAST File. Israel conducted an emergency airlift of 5,000 Yugoslavian Jews attempting to escape the former Yugoslavia. *Id.*

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Jewish nation. While such measures may bar immigrants who are "technically Jewish," Israel simply does not have the financial means to serve as a haven for those facing economic hardship around the globe. At the same time, Israel must take measured, gradual steps to accommodate Arab demands for a Palestinian right of return. Only by realistically addressing this issue can Israel hope to build on the cooperation and understanding established with the recent signing of the Israeli-Palestinian peace accord. This step may well be a necessary concession in order for Israel to fulfill the crucial long-term goal of achieving peace in the region.

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