

ISRAEL'S LAW OF RETURN AND THE DEBATE OF ALTERING, REPEALING, OR MAINTAINING ITS PRESENT LANGUAGE

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This note examines the factors that lead to the implementation of the Law of Return in Israel. The Law of Return plays an important role by permitting members of the Jewish faith to receive Israeli citizenship.

The author begins by providing a history of the development of Israel as a nation and exploring the origins of its Law of Return. Next, he traces the historical impact of the Law of Return on the country and on those immigrating to this nation, with a special emphasis on those emigrating from Russia. Next, the author analyzes the recent movement toward amendment of the Law of Return. Religious leaders propose that the Law of Return should be amended to recognize immigrants as Jews (under religious law) only if the immigrants undergo an Orthodox conversion. The author notes that this proposal, however, could alienate Jewish Americans as well as Jewish immigrants from the former Soviet Union. On the other hand, some politicians and intellectuals recommend a more radical reform of the Law of Return. Arguing that the Law of Return demonstrates an "intolerance for its minority population," they recommend that the Law of Return be drastically changed or abolished.

The author proposes that the two sides reach a compromise that requires Israel to establish the Orthodox-Conservative-Reform Conversion Institute. This institute would encourage the continued immigration of Jews to Israel because it would permit entire families to immigrate to Israel and eventually enable the non-Jewish members of the family to convert to Judaism. Such an institute will help alleviate the concern that while some immigrants are considered to be Jewish in their home country, these same individuals may not be considered Jewish under Israel's Law of Return. An issue of this magnitude affects immigrant identity within the community as well as immigrant prospects for marriage (since interfaith marriage is looked down upon).

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The author argues that compromise remains the best solution since the complete abolishment of the Law of Return would be too radical considering the fact that Israel has yet to achieve peace with several of its neighboring nations. Until peace is established, Israel needs to maintain the current law.

I. INTRODUCTION

This note suggests that several proposed changes to Israel's Law of Return would substantially alter the identity under which Israel was conceived and grew in the twentieth century.¹ An author writing in the venerable *Foreign Affairs* summarized the widely held belief that "if Israel ceased to be a Jewish state, it would cease to exist."² A growing number of Israelis, however, disagree with the more traditional perception of the country and view the law as "the most tangible demonstration of the fact that Israel is a racist and unjust regime."³ Although debate of this issue among some Israelis has slowed since the recent wave of violence began in September 2000,⁴ at some point in the near future the country will once again confront the necessity and applicability of the current Law of Return.

In one of the proposed changes, leading Israeli intellectuals are calling for a repeal to the Law of Return due, in part, to the fact that worldwide Jewry is no longer subject to the anti-Semitic attacks that plagued them during the previous centuries.⁵ In the Israeli legislature, "a series of bills submitted . . . call[ing] for the state to be[come] multinational"⁶ have the potential to alter the Law of Return and establish in law the "seemingly factual assertion that Israel is a democratic and multicultural state."⁷ Legislating Israel as a democratic and multicultural state could lead to the demise of the Law of Return.⁸ Alternatively, other Israeli legislators have proposed a change to the law that "would require all

1. Israel's first Prime Minister, David Ben-Gurion, stated the following during a speech introducing the Law of Return to the Knesset: "[T]his is not a Jewish state merely because Jews are the majority of its population. It is a state for Jews everywhere The Law of Return . . . embodies the central purpose of our state." YORAM HAZONY, *THE JEWISH STATE: THE STRUGGLE FOR ISRAEL'S SOUL* 56 (2000) (citing Prime Minister Ben-Gurion's July 3, 1950, speech, reprinted in JERUSALEM POST, July 19, 1957).

2. Eliot A. Cohen, *Israel After Heroism*, FOREIGN AFF., Nov. 1998, at 112.

3. HAZONY, *supra* note 1, at 56.

4. Doron Rosenblum, *The New Zionism*, HA'ARETZ, July 6, 2001, available at http://www.haaretz.co.il/eng/htmls/kat11_3.htm; see Tom Segev, *A Retreat to the Familiar Ground of Zionism*, N.Y. TIMES, Aug. 12, 2001, at 13.

5. HAZONY, *supra* note 1, at 57 (citing to the editor of the leading Israeli newspaper, *Ha'aretz*, who wrote in November 1994 that the Law of Return currently serves no purpose other than to open the country's doors to the "sick and aged" Jews of the world). *Id.*

6. Nina Gilbert, *Law of Return on the Way to Becoming a Basic Law*, JERUSALEM POST, June 1, 2000, at 4.

7. Deborah Sontag, *Debate in Israel: Jewish State or Now a Multicultural State?*, N.Y. TIMES, Dec. 6, 1999, at A1.

8. See HAZONY, *supra* note 1, at 60-61.

converts who immigrate as Jews under the Law of Return to have Orthodox conversions.”⁹

These two different approaches to revising the Law of Return would each have important consequences for Israel. Individuals seeking to expand or abolish the law find the current law to be “discriminatory” and “undemocratic.”¹⁰ For example, some left-leaning Knesset members believe that since the Holocaust is now more than fifty years old, Israel no longer “need[s] to run . . . [a] country based on such undemocratic laws,” such as the Law of Return.¹¹ Others desire a more strict interpretation of who should be considered Jewish, because the current language of the Law of Return permits those who are not halachically (Jewish religious law) Jewish to immigrate to Israel.¹² This threatens to change the Jewish demographic characteristics of Israel, as large numbers of individuals and their families from the former Soviet Union, who may or may not be considered Jewish under religious law, are immigrating to Israel.¹³

Though the assertions by Israeli legislators that Israel must become a multicultural state signify the potential problem of a democratic state favoring an automatic granting of Israeli citizenship to one specific religion, a central justification for the birth of Israel, a Jewish homeland, continues to ring true throughout the world.¹⁴ Although the American Jewish community has become increasingly intertwined with the American mass culture in general,¹⁵ recent events both in Europe and North America demonstrate the continuing need for a Jewish state. For example, in France, more than eighty anti-Semitic incidents were reported during the first two weeks of October, 2000.¹⁶ In Germany, Jewish graveyards and synagogues were desecrated during 2000.¹⁷ Finally, in Canada, an “unprecedented” forty-five anti-Jewish attacks were reported during the fall

9. Nina Gilbert, *Shas, Meretz Clash in Knesset*, JERUSALEM POST, July 13, 2000, at 3.

10. Sontag, *supra* note 7.

11. *Id.*

12. See Elli Wholgelernter, *A Check on Immigration*, JERUSALEM POST, Dec. 24, 1999, at 3B [hereinafter Wholgelernter, *Immigration*].

13. *Id.*

14. The Israeli Declaration of Independence states: “[The State of Israel] will ensure complete equality of social and political rights to all inhabitants irrespective of religion, race, or sex. It will guarantee freedom of religion, conscience, language, education, and culture.” HAZONY, *supra* note 1, at 342. The declaration of independence refers to “the Jewish state” or the “sovereign Jewish people” at least nine times. *Id.* at 268.

15. See SAMUEL G. FREEDMAN, *JEW VS. JEW* 338–39 (2000). The author discusses that “once intermarriage is rampant, once bagels outsell doughnuts, once ‘Seinfeld’ is a hit even in Boise, then Jewishness as ethnicity, as folk culture, as something separate and divisible from religion, is ceasing to exist in any meaningful way.” *Id.*

16. See Suzanne Daley, *A Note of Defiance in France Amid Tide of Anti-Semitic Attacks*, INT’L HERALD TRIB., Oct. 16, 2000, at 11. France reported four anti-Semitic incidents the weekend of October 13–15, including two firebomb attacks on Parisian synagogues and a Jewish owned Strasbourg bakery set on fire. *See id.*

17. See Peter Finn, *In Germany, A Politician’s ‘Pride’ Elicits Cold Shivers*, INT’L HERALD TRIB., Nov. 3, 2000, at 1.

of 2000, including five arson attacks at Canadian synagogues during a one month period.¹⁸

Similarly, if Israel is to maintain its status as a country open to world Jewry, then the doors of immigration must remain open to the tens of thousands of Russian immigrants that continue to seek a new life in Israel.¹⁹ The problem, however, is that estimates place the number of Jews from the former Soviet Union that are not halachically Jewish near 300,000.²⁰ This dilemma is of particular concern because only individuals considered Jewish by religious law are able to be married in Israel, and no civil marriages exist within Israel.²¹ Although much of the world's attention focuses on the international tensions surrounding Israel, the debate surrounding the non-Jewish Russian immigrants arriving under the Law of Return threatens to further polarize internal Israeli society. Deciding the religious status of arriving Russian immigrants may determine the future status of what role religion plays in shaping the country's laws and the country's role within the global community.

This note will first examine the factors that led to Israel's creation in the aftermath of World War II and the origins of the Law of Return. Israeli lawmakers amended the Law of Return's language less than twenty years after the law was first established,²² enabling more individuals who are not Jewish, as defined by religious law, to immigrate to the country under the Law of Return. One of the changes currently proposed is to require all previously non-Jewish immigrants entering under the Law of Return to have Orthodox conversions. This legislation would primarily impact Jews of questionable religious status from the former Soviet Union,²³ and if enacted, would be contrary to Israel's mission to be a home for world Jewry.²⁴ Finally, the debate as to the Law of Return's justification has intensified in recent years, as leading intellectuals argue that the law is no longer necessary or justified.²⁵ Supporters of this argument no longer view the law as necessary as Israel becomes interconnected with the global community.²⁶ This reasoning is flawed, however, because a modern, democratic country may persist in seeking "preferential condi-

18. See James Brooke, *Attacks on Jews Are Surging in Canada*, N.Y. TIMES, Nov. 15, 2000, at A11. Among the forty-five reported incidents were acts of arson, assault, and death threats against members of the world's fourth largest Jewish community. See *id.*

19. See Elli Wohlgelernter, *Better There than Here*, JERUSALEM POST, Dec. 22, 2000, at 5B.

20. See Yossi Klein Halevi, *Will These Israelis Be Allowed to Become Jews?*, JERUSALEM REP., June 21, 1999, at 14.

21. See ARI BIN-NUN, THE LAW OF THE STATE OF ISRAEL 144 (Menachem Eichelberg tran., Daniel C. Furman ed., 1990) (1983).

22. See Law of Return, 1950, S.H. 51 5710-1950 (copyright 1999), available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00kp0>.

23. Tal Muscal, *Population Reaches 6.3m.*, JERUSALEM POST, Sept. 29, 2000, at 1A.

24. HOWARD M. SACHAR, A HISTORY OF ISRAEL: FROM THE RISE OF ZIONISM TO OUR TIME 395 (1996). The author notes that the "very *raison d'etre* of statehood . . . was to provide a homeland for all who wished to forsake the Diaspora and 'come home.'" *Id.*

25. Charles Krauthammer, *The Collapse of Zionism*, WKLY. STANDARD, May 29, 2000, at 31.

26. See *id.*

tions” for its dominant ethnic group, such as the Law of Return, without contradicting its democratic principles.²⁷ The necessity for the state of Israel continues to remain as strong in the twenty-first century as it did in 1948.

II. BACKGROUND

Israel was established in 1948, three years after the conclusion of World War II, and the country was viewed as a “national home” for “Jewish victims of Nazi persecution who wished to rebuild their lives afresh.”²⁸ One cannot assume that the international swell of support from Zionists and other defenders of the establishment of a Jewish state would have been as fierce if not for the troubling events occurring to Jews around the world in the nineteenth and twentieth centuries. Prior to the Holocaust, for example, the 1905 pogroms in Russia caused Jews to experience their “grimmiest” situation of “political and economic oppression,” and Poland in the 1920s “nationalized those branches of industry and commerce in which Jews were most heavily represented, then dismissed Jewish employees in favor of Poles.”²⁹ As a result, one third of Poland’s Jewish merchants were left bankrupt during the decade.³⁰ The context of Israel’s formation as an international entity, therefore, is of the utmost importance to understanding Israel’s initial Law of Return legislation in the Israeli Parliament, the Knesset. The founders of the country sought to ensure that world Jewry would finally have a place to be free from persecution or the potential of anti-Semitism.³¹

A. *The Country’s Governing Framework*

As Israel began to establish its government after World War II, it sought to “combine the best of the continental [European] system with the noblest of the British [parliament].”³² Specifically, the Israeli Knesset is a unicameral legislature consisting of 120 members and is elected every four years.³³ The country also has an “executive branch, headed by . . .

27. Amnon Rubinstein, *The Hungarian ‘Law of Return,’* HA’ARETZ, July 10, 2001, available at www.haaretz.co.il/eng/htmls/kat11_4.htm (last visited July 10, 2001). The author compares Hungary’s Status Law to Israel’s Law of Return and argues that many European countries have passed preferential immigration laws favoring their dominant ethnic group. *Id.*

28. M.D. GOULDMAN, ISRAEL NATIONALITY LAW 10 (1970). Israel’s Declaration of the Establishment of the State of Israel states that “[t]he catastrophe which recently befell the Jewish people . . . was another clear demonstration of the urgency of solving the problem of its homelessness.” *Id.* (quoting from 1 L.S.I. 3).

29. SACHAR, *supra* note 24, at 72, 154.

30. *Id.*

31. See Nancy Caren Richmond, *Israel’s Law of Return: Analysis of Its Evolution and Present Application*, 12 DICK. J. INT’L L. 95, 97–98 (1993).

32. SACHAR, *supra* note 24, at 359.

33. See RUTH LEVUSH, INTRODUCTIONS TO RESEARCH IN FOREIGN LAW: ISRAEL 1 (1992).

the Prime Minister” and an independent judiciary branch.³⁴ Israel’s supreme court “has jurisdiction to hear criminal and civil appeals from judgements of District Courts.”³⁵ The supreme court also sits as the country’s “High Court of Justice,” or the “court of first and last instance.”³⁶ Finally, religious courts, with roots dating back to the Palestine Order in Council of 1922, “provide[] that ‘jurisdiction in matters of personal status shall be exercised . . . by the courts of the religious communities.’”³⁷ For example, marriage is “governed exclusively by religious law . . . [and] [r]eligious law applies autonomously, not as a complex of norms absorbed and assimilated by State law, but as an independent system having its own character and methods of interpretation.”³⁸ Christianity, Islam, and Judaism “all follow their own law under the jurisdiction of their own courts.”³⁹

Although Israel has a defined judicial structure, the country lacks a formal written constitution.⁴⁰ The Knesset decided that “a constitution must be the expression of the life of a people, but that the Jewish people had not lived long enough together of late to formulate such an expression wisely.”⁴¹ Instead, “the Knesset agreed that the Israeli constitution would be constructed by separate chapters, each one called ‘basic law.’”⁴² The “Basic Laws” have “no greater permanence than any other law,” and can be amended or repealed by a majority of the legislature.⁴³ Generally, however, “[t]he Basic Laws reflect the effort to give Israel as much of a formal constitutional base as possible under the circumstances.”⁴⁴ The Law of Return is not one of the Basic Laws,⁴⁵ but it has “constitutional implications” due to the fact that the legislature has been resistant to alter the law “even when pressed hard to do so.”⁴⁶ Additionally, “most believe that the Law [of Return] would be given a distin-

34. *Id.*

35. THE ISRAELI MINISTRY OF FOREIGN AFFAIRS, JUDICIAL SYSTEM (1999), available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00gz0> (last visited Jan. 17, 2001).

36. *Id.* (stating that the High Court of Justice also “exercises judicial review over the other branches of government”).

37. *Id.* (quoting Palestine Order in Council (1922)).

38. BIN-NUN, *supra* note 21, at 144.

39. *Id.*

40. *See id.* at 36. At its inception, many Israeli lawmakers “felt that it would be premature to set down in a definitive and binding way the nature and goals of the State.”

41. George M. Gross, *The Constitutional Question in Israel*, in CONSTITUTIONALISM: THE ISRAELI AND AMERICAN EXPERIENCES 59 (Daniel J. Elazar ed., 1990) [hereinafter CONSTITUTIONALISM].

42. LEVUSH, *supra* note 33, at 1.

43. *See* BIN-NUN, *supra* note 21, at 38. Examples of Basic Laws legislation include “constitutionalizing [Israeli] legislative, executive, and judicial organs, the state lands, civil-military relations, and the status of Jerusalem.” Daniel J. Elazar, *Constitution-Making: The Pre-Eminently Political Act*, in CONSTITUTIONALISM, *supra* note 41, at 9.

44. Elazar, *supra* note 43, at 21.

45. *See* Richmond, *supra* note 31, at 100.

46. Elazar, *supra* note 43, at 21.

guished place in a future constitution because the Law captures the ideology upon which the state of Israel was founded.”⁴⁷

Perhaps the most striking feature of the Law of Return is that the law is “non-selective” among Jews, and “it is an open invitation to every Jew to come and settle in Israel.”⁴⁸ One must remember, however, that: nationality by return, though bestowed immediately (and in some cases retroactively) is granted only to Jews who have immigrated to Israel or been born in the country. It has no direct effect upon the

47. Richmond, *supra* note 31, at 100.

48. GOULDMAN, *supra* note 28, at 19. The Law of Return, passed by the Knesset in 1950, provides:

1. Every Jew has the right to come to this country as an oleh [a Jew immigrating into Israel].
2. (a) Aliyah [immigration of Jews] shall be by 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.

Law of Return, 1950, S.t. S1, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00kp0>. The law was amended four years later:

1. In section 2 (b) of the Law of Return, 5710-1950-
(1) the full stop at the end of paragraph (2) shall be replaced by a semi-colon, 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.”
In sections 2 and 5 of the Law, the words “the Minister of Immigration” shall be replaced by the words “the Minister of the Interior.”

Law of Return (Amendment 5714-1954), 1954, S.H. 163, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00kp0>. Sixteen years later, the law was amended for the final time:

1. In the Law of Return, 5710-1950, the following sections shall be inserted after section 4:

Rights of members of family

- 4A. (a) The rights of a Jew under this Law and the rights of an oleh under the Nationality Law, 5712-1952, as well as the rights of an oleh under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.
(b) It shall be immaterial whether or not a Jew by whose right a right under subsection (a) is claimed is still alive and whether or not he has immigrated to Israel.
(c) The restrictions and conditions prescribed in respect of a Jew or an oleh by or under this Law or by the enactments referred to in subsection (a) shall also apply to a person who claims a right under subsection (a).

Definition

- 4B. For the purposes of this Law, “Jew” means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.

2. In section 5 of the Law of Return, 5710-1950, the following shall be added at the end: “Regulations for the purposes of sections 4A and 4B require the approval of the Constitution, Legislation, and Juridical Committee of the Knesset.”

Law of Return (Amendment No. 2) 5730-1970, 1970, S.H. 586, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH00cp0>.

national status of Jews living abroad and does not therefore go beyond the limitations imposed by international law.⁴⁹

It is important, then, to understand how one is defined as a Jew under Jewish religious law. The fact that Israel does not bestow Israeli citizenship on worldwide Jewry is extremely important because granting citizenship to all Jews would complicate matters of international nationality laws.⁵⁰

A further aspect crucial to understanding Israeli nationality law is that “citizenship (Israeli) is distinguished from nationality (Jewish, Arab, Druze, Samaritan, etc.). Therefore, . . . the term ‘nationality’ is not used in the meaning of ‘citizenship’ it usually has in English speaking countries.”⁵¹ To state the concept differently, nationality can be viewed as “ethnic identification.”⁵² In Israel, nationality takes on added significance because it can determine how one acquires citizenship.⁵³ A non-Jew may obtain Israeli citizenship but not through the Law of Return.⁵⁴

B. *The Important Question of Defining “Who Is a Jew”*

The fact that Israel bestows citizenship on any Jew wishing to immigrate to Israel makes it necessary to define who is considered a Jew for Israeli nationality standards.⁵⁵ Defining who is Jewish by Israeli standards is perhaps the most difficult question that has faced Israel since its inception,⁵⁶ and the fact that this question has yet to be answered is evidenced by the constant dialogue in the country’s media surrounding this issue.⁵⁷ Throughout the country’s history, one critical reason to define what constituted a Jew under Israeli law is that the Israeli rabbinate, which controlled “religious rights and privileges—including marriage, divorce, and burial—permitted to members of the national (ethnic) Jewish community,” would deny suspected non-Jews these privileges.⁵⁸

Israel’s Minister of Interior attempted in 1958 to “systematize the hitherto inconsistent practices of officials registering the country’s Jewish

49. GOULDMAN, *supra* note 28, at 126.

50. *See id.* (“The [g]overnment of the United States would refuse to recognize and would, in fact, object to any attempt on the part of a foreign [s]tate to impose its citizenship, . . . upon American citizens without their consent.” (quoting from a reply letter to Senator Vanderberg from the United States Department of State. 8 DEPARTMENT OF STATE PUBLICATION 8290 (1967))).

51. BIN-NUN, *supra* note 21, at 40 n.15.

52. SACHAR, *supra* note 24, at 603.

53. *Id.*

54. GOULDMAN, *supra* note 28, at 67.

55. *See* SACHAR, *supra* note 24, at 604.

56. *See* GOULDMAN, *supra* note 28, at 22. The author’s text, published in 1970, states that the question of “‘Who is a Jew?’ has plagued the State of Israel since its establishment and to which no really satisfactory solution has been (or perhaps, can be) propounded.” *Id.*

57. *See, e.g.*, Gil Hoffman, *Letting His Deeds Do the Talking*, JERUSALEM POST, Oct. 6, 2000, at 4B (describing an interview with the head of the Jewish Agency discussing the potential ramifications of changing the Law of Return).

58. SACHAR, *supra* note 24, at 604.

inhabitants.”⁵⁹ In 1960, the Minister of Interior mandated that Israeli identity cards would record both the nationality and religion of individuals, but:

a person could be registered as a Jew by nationality or religion only if he fulfilled the criteria of the Halachah [Jewish religious law]: namely, if he were born of a Jewish mother and did not belong to another religion; or if he had been converted to Judaism according to Orthodox procedure.⁶⁰

Furthermore, the Knesset passed the Population Registry Law in 1965, which stated that “an Israeli national or *oleh* (an immigrant to Israel by virtue of the Law of Return),” defined as a resident under this legislation, had to enter their “ethnic group” and “religion” with the Population Registry.⁶¹

C. *The Shalit Case*

Shortly after Israel passed the Population Registry Law and after Israel's triumphant victory in 1967, Israel's Supreme Court addressed the question of how to define “Jew” in the *Shalit* case. In 1961, much of the world observed Israel's trial and subsequent conviction of Nazi war criminal Adolph Eichmann,⁶² and in 1967 Israel emerged from a “stunning victory” in the Six Day War.⁶³ To some religious Israelis, “the Six Day War reawakened the sleeping giant of religious nationalism . . . [T]he liberated Western Wall . . . and the miraculous nature of the victory itself were perceived as clear signs of . . . impending redemption.”⁶⁴ Though these events rallied Israeli citizens' collective sentiments, the *Shalit* case “brought to a head the struggle for Israeli national identity that had reverberated throughout the decade.”⁶⁵

In *Shalit*, the Jewish, Israeli born Benjamin Shalit married a non-Jewish Scottish woman, Ann Geddes, in 1958.⁶⁶ Though the woman's father was Jewish, her mother was not identified with any religion, and both Geddes and Shalit professed to be “without any religious affiliation.”⁶⁷ The dispute in question occurred when the couple registered

59. *Id.*

60. *Id.* at 606.

61. Population Registry Law, 1965, 19 L.S.I. 288–89 (1964–65).

62. SACHAR, *supra* note 24, at 558.

63. PNINA LAHAV, JUDGMENT IN JERUSALEM: CHIEF JUSTICE SIMON AGRANAT AND THE ZIONIST CENTURY 197 (1997).

64. *Id.*

65. *Id.* at 196.

66. H.C. 58/68, *Shalit v. Minister of Interior* (1969) 23 P.D. (II) 477, reprinted in SELECTED JUDGMENTS OF THE SUPREME COURT OF ISRAEL 62 (Asher Felix Landau ed.) [hereinafter SELECTED JUDGMENTS].

67. *Id.*

with the Population Registry⁶⁸ in compliance with Israeli law, both when their son was born in 1964 and when their daughter was born in 1967.⁶⁹ Born in Israel of an Israeli father, the two children automatically acquired Israeli citizenship.⁷⁰ The Shalits attempted to register both children “[o]f Jewish nationality and without religion,”⁷¹ but the “application was refused” by the Ministry of the Interior.⁷² The Ministry of the Interior refused to register the children of Jewish nationality because the mother was not Jewish nor was she “lawfully converted” to Judaism.⁷³ The long term effect of the ministry’s refusal to register the Shalit children as Jewish nationals potentially limited their ability to get married in Israel, since “rabbinical authorities, who have sole jurisdiction over marriages [in Israel], would not have allowed them to marry Jewish partners.”⁷⁴

The Israeli Supreme Court ruled in favor of the petitioner Shalit, in a five-to-four decision where each of the nine justices issued their own opinion.⁷⁵ Normally, the Supreme Court “sat in panels of three,” but the chief justice of the Supreme Court included nine justices to decide this important case.⁷⁶ Interestingly, the majority of the justices stressed that the issue in the case was not “who is a Jew” but rather if “the respondents [Minister of the Interior] are bound to register the children as being of Jewish nationality.”⁷⁷ In other words, the majority was addressing whether or not the government registration official acted properly in denying “the registration of children born to a non-Jewish mother as belonging to the Jewish ethnic group.”⁷⁸

For example, Justice Sussman observed that Israeli law presumes that citizens “delivering notification as required by law” are “presumed to be stating the truth and it is not proper for the officer to treat such person[s] with suspicion.”⁷⁹ The registration officer taking the Shalits’ children’s information was allowed, under law, to “require proof,” but the “registration officer [was] not vested with judicial powers, nor does the purpose of the legislation . . . require him to decide any question.”⁸⁰

68. *Id.* The Shalits’ first child was born in 1964, and the family registered their son “in accordance with the Registration of Inhabitants Ordinance, 1949.” *Id.* This law was replaced by the Population Registry Law. *See supra* note 61 and accompanying text.

69. *See* SELECTED JUDGMENTS, *supra* note 66, at 63.

70. *See* SACHAR, *supra* note 24, at 606.

71. *See* SELECTED JUDGMENTS, *supra* note 66, at 63.

72. *Id.*

73. *Id.* at 64.

74. Richmond, *supra* note 31, at 107.

75. *See* SACHAR, *supra* note 24, at 606.

76. *See* LAHAV, *supra* note 63, at 199–200. Supreme Court Justice Simon Agranat attended Von Humboldt High School in Chicago and attended law school at the University of Chicago. When Agranat chose the court to sit as a panel of nine in deciding the Shalit case, it demonstrated a “striking reminder of his attachment to his native culture.” *See id.* at 10, 31, 200.

77. SELECTED JUDGMENTS, *supra* note 66, at 65.

78. GOULDMAN, *supra* note 28, at 28.

79. SELECTED JUDGMENTS, *supra* note 66, at 66.

80. *Id.* at 65–66.

It was incorrect for the registration officer to refuse the Shalits' attempt to register their children as being of Jewish nationality if the Jewish religion did not recognize the children as Jewish, because previous Israeli cases had determined that the term Jewish "had no single definite and continuing meaning."⁸¹ Therefore, the Shalits' statement of their children's nationality, given in good faith, should be sufficient to register them as Jewish nationals, and a religious law governing the definition of a Jew was an insufficient ground for denying the Shalits' desire to register their children with Jewish nationality.⁸²

Though many Israelis felt vindicated by the court's ruling that "the term Jew under the Law of Return had a secular,"⁸³ not religious definition, "the Orthodox press shrieked in black headlines, 'Court Ruling Murderous to the Survival of People.'"⁸⁴ In his dissent of the Shalit ruling, Chief Justice Agranat observed some of the concerns of the Israel's religious community stemming from the majority's opinion. The Chief Justice wrote that if one's mother is not Jewish but attempts to register the child as of Jewish nationality, the problem "does not admit of a judicial solution but lies entirely in the ideological sphere," and that due to "profound differences of view exist[ing] among . . . Israeli[s]," the court should not intervene with the registration official's refusal to register the Shalits' children as having Jewish nationality.⁸⁵

Agranat discussed the essential question of whether "Jewish society in Israel is, fundamentally, a secular-dynamic community, in which religion does not play a general or decisive role."⁸⁶ Interestingly, he continued by observing that "during the twenty-one years since the establishment of the State no clear-cut and unequivocal decision has been forthcoming as to the place of the Jewish religion" and that "the tendency that has revealed itself in governing circles . . . has been not to decide this question but to deal with it pragmatically . . . seek[ing] . . . a compromise between the contending camps."⁸⁷ In concluding his opinion, the Chief Justice observed that if the public is "uncompromisingly divided" as to the "conception of justice" the court should apply, "the judge would do better . . . to restrain himself from expressing his private view on the problem, provided some legal warrant exists for doing do [sic]."⁸⁸ Therefore, Agranat reasoned, "the controversial ideological nature of the dispute that has come before us justifies our not intervening in the matter."⁸⁹

81. *Id.* at 71–72.

82. GOULDMAN, *supra* note 28, at 29–30.

83. Richmond, *supra* note 31, at 108.

84. SACHAR, *supra* note 24, at 607.

85. SELECTED JUDGMENTS, *supra* note 66, at 149.

86. LAHAV, *supra* note 63, at 209.

87. SELECTED JUDGMENTS, *supra* note 66, at 168–69.

88. *Id.* at 181.

89. *Id.* at 185.

D. Amending the Law of Return

Ironically, the *Shalit* case, in which the court majority declined to answer specifically the question of “who is a Jew,” caused the country to feel “like a society on the brink of civil war.”⁹⁰ Secular Israelis championed the *Shalit* decision as a victory, while religious politicians were disturbed that the court refused to consider the determination of one’s religion as defined by Jewish law.⁹¹ In the aftermath of the January 1970 ruling, the Knesset amended the Law of Return to “grant automatic citizenship rights”⁹² to the:

child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion. . . . ‘Jew’ means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.⁹³

The amendment of the Law of Return was seen as a compromise to Israeli secularists because it enabled individuals, who might otherwise not be considered Jewish under Orthodox Jewish religious law, the privileges inherent in Israeli citizenship.⁹⁴

The amended law, however, did not define under which rules or religious authority a converted Jew would be accepted. For example, in some countries, “it is not uncommon for a non-Jew to be converted to Judaism by a non-Orthodox . . . religious institution. . . . Does . . . such a non-orthodox conversion afford the convert the right to recognition as a Jew under the secular Law of Return?”⁹⁵ The answer to this question was provided in a 1989 case, which held “that for purposes of immigration, any person who converted to Judaism outside Israel . . . is automatically entitled to all the rights of an *oleh*, as stated in the Law of Return.”⁹⁶ In 1995, the Supreme Court, sitting as the High Court of Justice, declined to resolve on the merits as to whether “a non-Jewish person who underwent a non-Orthodox conversion” within Israel would be permitted for the purposes of the Law of Return.⁹⁷ Most recently, the

90. LAHAV, *supra* note 63, at 217.

91. *Id.* at 217–18.

92. SACHAR, *supra* note 24, at 607.

93. The Law of Return, *supra* note 48, §§ 4A(a), 4B.

94. See SACHAR, *supra* note 24, at 607.

95. GOULDMAN, *supra* note 28, at 31–32.

96. Ayelet Shachar, *Whose Republic?: Citizenship and Membership in the Israeli Polity*, 13 GEO. IMMIGR. L.J. 233, 246–47 (1999) (citing H.C. 264/87, Sephardi Torah Guardians, Shas Movement v. Director of Population Registry, 43(2) P.D. 723). In 1983, the Supreme Court, sitting as the High Court of Justice, similarly ordered an American woman, Suzie Miller, to be registered as a Jew although she was converted in the United States by a Reform rabbi. See ASHER ARIAN, *THE SECOND REPUBLIC: POLITICS IN ISRAEL* 316 (1998).

97. Shachar, *supra* note 96, at 247 (citing H.C. 1031/93, Pesarro (Goldstein) v. Minister of Interior, 49(4) P.D. 661). The significance of the court potentially authorizing a non-Orthodox conversion within Israel is that the Orthodox have an “institutional monopoly over Jewish religious services in Israel.” *Id.*

Attorney General, at the request of a former Interior Minister, ruled that only an individual born after their mother converted to Judaism would be able to immigrate to Israel under the Law of Return.⁹⁸

In sum, the amended law “overruled” the *Shalit* case by adopting the religious law test of defining who is considered Jewish, but the law saved the spirit of the *Shalit* decision by “afford[ing] to the non-Jewish members of [one’s] family” the option of immigrating to Israel under the Law of Return.⁹⁹ The 1970 amendment serves as the current state of the law, with at least several challenges to the amendment having failed in the 1980s and 1990s.¹⁰⁰ Former Israeli Prime Minister Benjamin Netanyahu appointed a commission to “seek a compromise” in determining what religious standards should be accepted for defining a Jew, but the Chief Rabbi of Israel failed to endorse the plan in 1998.¹⁰¹

E. *History of Russian Immigration to Israel*

A discussion of Israeli society of the past twenty years would be incomplete without addressing the changes, transformations, and potential future problems within Israel as a result of a massive wave of immigrants from the former Soviet Union to Israel beginning in the late 1980s. The opportunity to leave Russia was “related intimately to . . . Gorbachev’s ascent to leadership in the Soviet Union in 1985.”¹⁰² Prior to Gorbachev’s climb to power, the vast majority of Soviet Jews did not have the freedom to leave the Soviet Union for Israel.

Soviet Jews were treated especially harsh under Stalin’s regime in the Soviet Union, as they were the “one Soviet nationality a majority of whose population lived outside the Soviet Union—and in Western, non-Socialist nations at that.”¹⁰³ In 1949, Stalin’s government banned the teaching of Yiddish throughout the country and burned Yiddish books at the city library.¹⁰⁴ Ultimately, the oppressive regime stripped Soviet Jews of many of their cultural and religious freedoms, as they were unable to

98. Mazal Mualem, *Law of Return Dries Up for Families of Converts*, HA’ARETZ, Mar. 21, 2001, available at http://www.haaretz.co.il/eng/htmls/kat9_3.htm. This ruling will not be enforced as to those immigrants arriving before publication of this ruling who might otherwise have been affected. *Id.*

99. GOULDMAN, *supra* note 28, at 32.

100. See FREEDMAN, *supra* note 15, at 76–78. For example, the Knesset defeated proposed legislation in both 1987 and 1988 that would have recognized only Orthodox conversions. See *id.* at 77. A similar legislative attempt to authorize Orthodox conversions as the sole legal Judaic conversion failed in 1997. See Shelese Emmons, *Immigration Project: Russian Jewish Immigration and Its Effect on the State of Israel*, 5 IND. J. GLOBAL LEGAL STUD. 341, 354 (1997).

101. See FREEDMAN, *supra* note 15, at 78–79. The plan “called for rabbis from all three major branches to jointly educate the conversion candidates . . . [and the] task of officiating . . . the actual conversion ceremonies . . . would rest with the Chief Rabbinate.” *Id.* at 78.

102. SACHAR, *supra* note 24, at 968.

103. *Id.* at 733.

104. Emmons, *supra* note 100, at 345.

express themselves in the arts or in their houses of religious worship.¹⁰⁵ Though pockets of Jewish “ethnocentrism” existed, such as in Soviet Georgia, most Jewish expression and pro-Israeli feelings were centered around Jewish holidays.¹⁰⁶ Throughout the 1950s and 1960s, the Soviet Union allowed nearly two thousand Jews to emigrate to Israel annually, and most of these individuals were older and no longer fit for dutiful employment within the Soviet Union.¹⁰⁷

One of the consequences of Israel’s swift and decisive victory in the Six Day War was that it was a “disaster of almost unparalleled magnitude for Soviet foreign policy.”¹⁰⁸ This lack of success and apparent Soviet “helplessness” to shape policy in the Middle East caused an outbreak of strong anti-Zionist sentiments and increased government sponsored anti-Semitism.¹⁰⁹ The increased anti-Semitism, coupled with increased pride in Israel as a result of the country’s military victory over its Arab neighbors, caused a swell in applications for emigration permits.¹¹⁰ Though only several thousand Jews emigrated from the Soviet Union to Israel between 1967 through 1970, the Soviet Union’s interest in “seeking a certain limited détente with the United States” and in “minimiz[ing] Jewish unrest and liberal criticism abroad” enabled nearly 80,000 Jews to depart for Israel through the middle 1970s.¹¹¹ The Soviet Union eventually retreated on their policy of permitting a Jewish exodus by the middle 1970s, and the country did not enable large scale Jewish emigration to Israel until Gorbachev became the leader of the Soviet Union in 1985.¹¹²

III. ANALYSIS

Two distinct forces have proposed to transform the Law of Return. On one side, religious legislators in the Knesset have introduced a bill that would require all converted Jews immigrating to Israel to undergo an Orthodox conversion in order to be recognized as a Jew under the religious law. This legislation could alienate both the Jews of the former Soviet Union and the American Jewish community. On the other political side, a second force has emerged calling for a significant change, if not a repeal of the Law of Return.¹¹³ Some intellectuals view the law as a

105. See SACHAR, *supra* note 24, at 733. Though the Soviet Jewish population was estimated at over two million in 1969, the entire country housed only seventy synagogues, and many of these were in disrepair with no opportunity for refurbishment. See *id.* at 732–33.

106. *Id.* at 734. For example, Elie Wiesel attended the 1964 Jewish holiday of Simchat Torah in Moscow, where 30,000 of Moscow’s Jews participated in the religious ceremonies. *Id.*

107. See *id.*

108. *Id.* at 735.

109. *Id.*

110. See *id.*

111. See *id.* at 736, 738. Nearly 4700 Soviet Jews departed the Soviet Union from 1967–1970, but in 1971, the number sharply rose. *Id.* at 736. In 1971, 13,000 Soviet Jews left for Israel; in 1972, 31,000; and in 1973, 32,000. *Id.* at 738.

112. See *id.* at 738, 968.

113. See HAZONY, *supra* note 1, at 56–62.

concrete demonstration of Israel's intolerance for its minority population¹¹⁴ while others feel that Israel must define itself as a "democratic and multicultural" state in which the Law of Return has no place.¹¹⁵

The international conflicts that have presented Israel with an overarching desire for military security since the country's inception have deflected much of the debate as to the country's domestic affairs.¹¹⁶ Regarding the Law of Return, Israel must resolve the answer to the following two issues: (1) the country must steer the debate of requiring Orthodox conversions for the Law of Return toward its impact on the immigration patterns of Jews of the former Soviet Union; and (2) Israel must also determine whether it will ultimately fashion itself as the homeland for world Jewry, as Zionist leaders envisioned, in the twenty-first century. A compromise must be made with respect to the requirement of Orthodox conversions, and Israel must retain its Jewish identity if it will retain its identity at all.

A. An Examination of the Proposed Change Requiring Orthodox Conversions for All Jews Immigrating to Israel Under the Law of Return

1. The Impact on Jewish Immigrants from the Former Soviet Union

As discussed above, Israeli legislators have attempted to revise the 1970 Law of Return amendment several times in the past three decades. As recently as July 2000, a new bill was introduced requiring all "converts who immigrate as Jews under the Law of Return to have Orthodox conversions."¹¹⁷ Any revision requiring an Orthodox conversion would not only impact the American Jewish community, but it would also profoundly impact the potential future immigration of Russian Jews to Israel, a figure currently estimated between 1 and 1.5 million.¹¹⁸ For example, more than half of the former Soviet Union Jews entering Israel under the Law of Return in 1999 were not Jewish according to Jewish religious law,¹¹⁹ and this statistic prompted a Likud politician to call for amending the "grandparent clause" from the Law of Return.¹²⁰

Before discussing the utility of amending the "grandparent clause" or any other feature of the Law of Return, one must understand the impact of immigrants from the former Soviet Union on Israel's demographics. From 1989, when the Soviet Union relaxed its policy of Jewish emi-

114. *Id.* at 56.

115. *Id.* at 61.

116. Gidon Sapir, *Religion and State in Israel: The Case for Reevaluation and Constitutional Entrenchment*, 22 HASTINGS INT'L & COMP. L. REV. 617, 628 (1999).

117. Nina Gilbert, *Shas, Meretz Clash in Knesset*, JERUSALEM POST, July 13, 2000, at 3.

118. See Wohlgelernter, *supra* note 19, at 5B (quoting the immigration number provided by Jewish Agency chairman Sallai Meridor).

119. See Yossi Klein Halevi, *The Maverick Who Mellowed*, JERUSALEM REP., Jan. 3, 2000, at 30.

120. See *id.* The Likud party is a leading right-of-center Israeli political party. See SACHAR, *supra* note 24, at 741.

gration,¹²¹ through May 1996, Israel's total population swelled sixteen percent as 800,000 people immigrated to Israel.¹²² Of this number, eighty-five percent were from the former Soviet Union.¹²³ Between the 2000 Jewish New Year and the 2001 Jewish New Year, eighty percent of immigrants entering Israel hailed from the former Soviet Union.¹²⁴ In comparison, the second largest immigration wave in Israel's history, which occurred during the first three years after Israel's formation, brought 688,000 immigrants.¹²⁵

Not only has the large number of former Soviet Union Jews impacted Israel's demographics, but statistics reveal that members of this immigrant group have different feelings of "Jewishness" and "solidarity with the Jewish people, as compared with the overall Jewish population in Israel."¹²⁶ Israel's Ministry of Immigrant Absorption commissioned a study, beginning in 1990, to survey the ideologies, difficulties, and motivations of Jews of the former Soviet Union entering and acclimating to Israel.¹²⁷ The study revealed that roughly fifty percent of the immigrants "were found to have a high index of commitment to their Jewishness," and roughly fifty-seven percent of the immigrants "were characterized by a strong positive feeling of solidarity with the Jewish people."¹²⁸ Among "veteran Israelis," sixty-seven percent demonstrated a "high index of commitment to their Jewishness," and seventy-three percent had a "strong positive feeling of solidarity with the Jewish people."¹²⁹ Though the difference between the immigrant and veteran Israeli is not "dramatic,"¹³⁰ the findings "indicate that there are indeed differences" in the feelings of Jewish identity and solidarity between the new immigrant population and the overall Jewish Israeli population.¹³¹

121. See SACHAR, *supra* note 24, at 969. In part, Gorbachev began to allow increased Jewish emigration from the Soviet Union to achieve "American trade and technology on a most-favored nation basis." *Id.* at 968.

122. See Shmuel Adler, *The Wave of Immigration to Israel in the 1990's*, in STILL MOVING: RECENT JEWISH MIGRATION IN COMPARATIVE PERSPECTIVE 133, 133 (Daniel J. Elazar & Morton Weinfeld eds., 2000).

123. *Id.*

124. Tal Muscal, *On Eve of 5762, Population Reaches 6,458,000*, JERUSALEM POST, Sept. 17, 2001, at 2.

125. See Adler, *supra* note 122, at 133.

126. Natalia Damian & Yehudit Rosenbaum-Tamari, *The Current Wave of Former Soviet Union Immigrants: Their Absorption Process in Israel—An On-Going Survey (1990–1995)*, in STILL MOVING: RECENT JEWISH MIGRATION IN COMPARATIVE PERSPECTIVE, *supra* note 122, at 145.

127. See *id.* at 142.

128. *Id.* at 146. The actual study statistics cite a forty-four to fifty-two percent range of commitment to Jewishness and a fifty-six to fifty-nine percent feeling of solidarity. *Id.*

129. *Id.*

130. *Id.* at 145.

131. *Id.*

2. *Maintaining the Current Law of Return Language*

Regardless of the statistics that expose a portrait of former Soviet Jewish immigrants in Israel as being less identified with Judaism than the overall Israeli population, some leaders favor a maintenance of the status quo of the Law of Return.¹³² Further, these same leaders regard the present language of the Law of Return as a “secular Zionist alternative for non-Jews” to emigrate to Israel.¹³³ The former Israeli Absorption Minister, under Prime Minister Ehud Barak, views any meddling with the law’s existing language as a force that could potentially alter or “destroy” the law “completely,” and states that the number of former Soviet Union Jews immigrating to Israel under the grandparent clause of the Law of Return is only ten percent.¹³⁴

Additionally, the chairman of the Jewish Agency (which, among other things, aids new immigrants to Israel), Sallai Meridor, believes that “disinformation” serves to distort the priorities of the “vast majority” of former Soviet Israelis.¹³⁵ Meridor finds that the new immigrants “study. . . [and] talk Hebrew. . . and serve in the Army.”¹³⁶ He is opposed to any changes in the Law of Return because the influx of former Soviet Jews has shielded Israel’s population from losing its Jewish majority (as the Arab birthrate is higher than the Israeli birthrate).¹³⁷ Statistics, indeed, show that the immigrants “display a high motivation for acquiring the Hebrew language and for using it as an efficacious instrument in their absorption process,” and socially and culturally, the immigrants “appear to be quite similar to any other migrant population anywhere in the world.”¹³⁸

3. *The Argument for Requiring Orthodox Conversions*

Leaders such as Meridor may view the large number of immigrants as a key to Israel’s growth and maintenance of a Jewish identity, but examining some of the issues created by the recent wave of immigration lends credence to supporters of the Knesset legislation that would recognize only Orthodox conversions for purposes of the Law of Return. At the core of this argument appears to be the notion that a continued increase in the number of non-Jews living in Israel will cause a “dilution of the Jewish character of the state.”¹³⁹ Overall, about twenty percent of

132. See Halevi, *supra* note 119.

133. *Id.*

134. *Id.*

135. Sontag, *supra* note 7.

136. *Id.*

137. Hoffman, *supra* note 57.

138. Damian & Rosenbaum-Tamari, *supra* note 126, at 166–67.

139. Sontag, *supra* note 7.

former Soviet immigrants since 1989 are not considered Jewish according to the Israeli government.¹⁴⁰

Although the above mentioned statistics of immigrant affiliation to Judaism show that media and academic portrayals of unaffiliated immigrants may be too “dramatic,”¹⁴¹ supporters of the Orthodox conversion legislation seek to demonstrate that their purpose in urging the legislation is more than an attack against the “thie[f] and prostitute[.]” stereotypes that adorn the new immigrants.¹⁴² The leader of the conservative political party, Shas, believes that the growing non-Jewish population will create problems of intermarriage,¹⁴³ and the Minister responsible for Diaspora Affairs believes that many of the non-Jews (according to Judaic law) that intend to leave the Ukraine for Israel have no intention of “connect[ing] their fate with the fate . . . of Israel.”¹⁴⁴ Furthermore, others predict that “the always precarious economic situation in the former Soviet Union” has the potential to create a large surge in the number former Soviet Union immigrants, Jewish and non-Jewish, seeking entrance to Israel.¹⁴⁵ That prediction may be fairly accurate, since the Jewish Agency found that the number of former Soviet Union immigrants moving to Israel dropped in 2000, due to Russia’s “new president, monetary, [and] political stability.”¹⁴⁶

Because the Israeli rabbinate controls “matters connected with marriage and divorce of Jews resident in Israel . . . in accordance with the precepts of the Torah,”¹⁴⁷ the potential for intermarriage in a country with no civil marriage presents at least several problems and questions.¹⁴⁸ In terms of the proposed Orthodox conversion legislation, only those Jews receiving an Orthodox conversion, either in Israel or elsewhere, will be regarded as Jewish for purposes of marriage ceremonies.¹⁴⁹ It is unclear whether individuals leaving Israel to undergo a civil marriage will continue to return to live in Israel, a country traditionally immune to interfaith marriage. If the potential of intermarriage is as great of a threat to the traditional Jewish characteristic of Israel as proponents of the Orthodox conversion legislation believe, then perhaps Israel’s current seventy-eight and a half percent Jewish population majority will dwindle in

140. *See id.* (noting that about “208,000 of the one million immigrants from the former Soviet Union have not been Jewish, according to official data”).

141. Damian & Rosenbaum-Tamari, *supra* note 126, at 145. These authors concluded that most of the former Soviet Union immigrants responding to their study indicated a desire to remain in Israel and “were not interested in migrating elsewhere in the West.” *Id.* at 146.

142. Emmons, *supra* note 100, at 352.

143. *See* Sontag, *supra* note 7.

144. Wholgernter, *Immigration*, *supra* note 12.

145. *Id.*

146. Wholgernter, *supra* note 19.

147. BIN-NUN, *supra* note 21, at 24.

148. *See* Emmons, *supra* note 100, at 353.

149. *See id.*

the coming decades.¹⁵⁰ This type of scenario may be one reason that Israel's former Minister of Diaspora Affairs, under Prime Minister Barak, also advocates "amending the grandchild clause [in the Law of Return] to bar immigrants if they come without their Jewish grandparents."¹⁵¹

4. *The Impact on the American Jewish Community*

Although a full-blown analysis of the impact of the Orthodox conversion bill on the American Jewish community is beyond the scope of this note, an introduction to the bill's impact is helpful. The United States currently has the world's largest Jewish population,¹⁵² but eighty-four percent of America's Jewish population identify with the non-Orthodox Conservative or Reform movements.¹⁵³ Therefore, the proposed Orthodox conversion could have a substantial impact on Jewish American-Israeli relations if a proposed Orthodox conversion bill is ratified by the Knesset.

In 1997, when a similar Orthodox conversion bill was introduced in the Knesset, the issue proved to be so volatile that it prompted then Prime Minister Netanyahu to name the Neeman Commission to seek a compromise to the conversion question.¹⁵⁴ The contempt that the "rigorously Orthodox" had for the Conservative and Reform movements was also demonstrated during 1997 when "hundreds" of the "rigorously Orthodox" Jews "pelted . . . with garbage and feces" Conservative Jews who were praying at the Western Wall during the Shavuot holiday.¹⁵⁵ The Conservative Jews were also called names such as "whores" and "Nazis."¹⁵⁶

Although this one incident may be viewed as an attack by extreme members of the ultra-Orthodox movement in Israel, disunity among the Orthodox, Conservative, and Reform communities is evident in the United States.¹⁵⁷ Conservative and Reform Jews believe that as Jews, they should have the opportunity to immigrate to Israel under the Law of Return, even if the individual converted to Judaism under the auspices of

150. ISRAELI MINISTRY OF FOREIGN AFFAIRS, ISRAEL AT 53: A STATISTICAL GLIMPSE, Dec. 2000, available at <http://www.mfa.gov.il/mfa/go.asp?MFAH0h9w0>. The figures for other religions in Israel are as follows: Muslim, 15%; Christian, 2.1%; Druze, 1.6%; and not classified by religion, 2.7%. *Id.*

151. Wohlgelernter, *Immigration*, *supra* note 12.

152. Gayle Horwitz, *Israel Will Be Home to Most Jews in 2080*, JERUSALEM POST, Sept. 14, 2000, at 5. The United States currently has 5.7 of the world's 13.1 million Jews, according to a study authored by three demographers at Jerusalem's Hebrew University, and published in the *American Jewish Yearbook 2000*. *Id.*

153. Serge Schmemmann, *Orthodox Israelis Assault Jews Praying at Western Wall*, N.Y. TIMES, June 13, 1997, at A3.

154. See FREEDMAN, *supra* note 15, at 78.

155. Schmemmann, *supra* note 153, at A3.

156. *Id.*

157. *E.g.*, Jerome M. Epstein, *Authentic Judaism*, MOMENT, Apr. 2001 (discussing the debate between Conservative and Orthodox Judaism).

a Reform or Conservative rabbi.¹⁵⁸ A unified American Jewish community supporting Israel is essential to Israel, as it views the American Jewish community as a “strategic ally.”¹⁵⁹ If the American Jewish population supports Israeli causes, congressional leaders feel the need to support their constituents.¹⁶⁰ Therefore, a growing disunity among the three sects of American Jewry could directly affect American political support of Israel and drive a wedge between the Orthodox, Conservative, and Reform sects in Israel and the United States.

B. Repealing or Otherwise Altering the Law of Return Would Significantly Alter the Fundamentals upon Which Israel Was Founded

1. The Future of Israel's National Identity

The foremost issue that must be settled, if truly in dispute, is whether Israel will continue to regard itself as a Jewish country. Some Israeli intellectuals who currently constitute the country's cultural establishment reject the notion of a Jewish Israel and its Law of Return.¹⁶¹ These leaders view the Law of Return, and other legislation organizing Israel as a Jewish nation, as unnecessary in a modern world that is becoming more interdependent and view “ethnic particularism [as] hopelessly retrograde.”¹⁶² At least some post-Zionists,¹⁶³ as these leaders are sometimes called, seek to challenge the traditional Israeli historical narrative.¹⁶⁴ Concrete results produced by the Oslo peace accords during the 1990s enabled post-Zionists to move from the margins of Israeli society towards the mainstream.¹⁶⁵

Even if one were to agree that a state founded as a Jewish homeland is out-of-date, many worldwide would probably argue that its existence with a Jewish identity remains necessary, as evidenced by the slew of attacks on Jewish individuals and institutions in the latter half of 2000.¹⁶⁶ Furthermore, though Israelis may wish to believe that they are part of the world's new interdependence, the country has difficulty achieving this aim due to the animosity toward Israel expressed by sev-

158. See Schmemmann, *supra* note 153, at A3.

159. Avi Beker, *The Belated Discovery of American Community*, JERUSALEM POST, Jan. 10, 2001, at 9.

160. See *id.* The author, the director of International Affairs of the World Jewish Congress, finds that “[c]ongressional support depends to a great deal on the status and influence of American Jews.” *Id.*

161. See HAZONY, *supra* note 1, at 338–39.

162. See Krauthammer, *supra* note 25, at 31.

163. At least one author defines post-Zionism as a term that challenges traditional notions and values of Zionism. The term, however, is used by some as an approach to scholarly inquiry, while others view the term as a political ideology. LAURENCE J. SILBERSTEIN, *THE POSTZIONISM DEBATES: KNOWLEDGE AND POWER IN ISRAELI CULTURE* 2, 123 (1999).

164. *Id.* at 90.

165. *Id.* at 209; Segev, *supra* note 4, at 13.

166. See *supra* notes 16–18 and accompanying text.

eral countries and organizations in the Middle East.¹⁶⁷ The country should retain its Jewish identity, the Law of Return, and attempt to educate its own citizens about the potential pitfalls of losing its Jewish characteristics upon which the nation was founded. The post-September 2000 violence demonstrates that even those who champion some form of post-Zionism are beginning to question whether their impressions of a multicultural Israel will ever be realized.¹⁶⁸

2. *The Need to Alter the Law of Return for Political or Ideological Reasons*

Two schools of thought appear to constitute the belief that Israel should repeal or severely alter the present Law of Return. Intellectuals, whose champions exert significant influence on mainstream Israeli culture,¹⁶⁹ view “the idea of a Jewish state [as] . . . atavistic . . . [i]n the modern world of the Internet, the global economy. . . and growing transnational interdependence.”¹⁷⁰ The second school of thought regards the Law of Return as a vehicle that contributes to Israel’s increasing problem of overpopulation.¹⁷¹ The country cannot maintain its current level of population growth without creating an adverse impact on its environment and diminishing water supply.¹⁷² Regardless if one accepts either, both, or neither of these two schools of thought, those individuals urging change to the Law of Return could ultimately impact a law that “captures the ideology upon which the state of Israel was founded.”¹⁷³

C. *The Law of Return Is No Longer Necessary in the Twenty-First Century*

Israeli advocates of changing or repealing the Law of Return began to express their opinions more passionately beginning in 1994, when the editor of the country’s most influential newspaper, *Ha’aretz*, wrote that much of the world’s Jewish population was “no longer in danger of persecution,”¹⁷⁴ and that the Law of Return was serving “no function other than to permit the sick and aged of the Jewish world to be dumped upon the country.” The editor called for the repeal of the law in 2023, seventy-

167. See, e.g., Herb Keinin, *US and Israel Quit Durban*, JERUSALEM POST, Sept. 4, 2001, at 1 (quoting the Israeli Foreign Minister that the 2001 United Nations conference on racism was a “source of hatred” after Israel was “insulting[ly]” portrayed by some as a “colonial nation”); Krauthammer, *supra* note 25, at 31 (stating that the Lebanese backed Hezbollah asserts that it will fight Israel until Jerusalem is liberated and that Iran and Iraq are stockpiling weapons and missiles aimed at Israel).

168. Segev, *supra* note 4.

169. See HAZONY, *supra* note 1, at 56–57.

170. Krauthammer, *supra* note 25, at 31.

171. Peter Hirschberg, *Population Overload*, JERUSALEM REP., Jan. 3, 2000, at 16.

172. *Id.*

173. Caren Richmond, *supra* note 31, at 100.

174. HAZONY, *supra* note 1, at 57.

five years after Israel's birth.¹⁷⁵ At that point in time, "the Zionist mission of the state would come to an end, and it would finally be the case that 'a Jew asking for permission to immigrate would not be a preferred candidate for citizenship.'"¹⁷⁶ Other Israeli intellectuals had previously found the application of the Law of Return a type of "overt discrimination" similar to that which formed the basis for the apartheid regime in South Africa or believed that Israel should attempt to mold its immigration laws in terms of defining the country's needs.¹⁷⁷

Many of those calling into question the necessity of the Law of Return are part of a larger ideological body known as post-Zionism. Post-Zionists "openly state that their goal is to transform Israel into 'a state of all its citizens,'" and they hope to realize this goal by shedding Israel's current national anthem, abrogating the Law of Return, and changing the face of the country's flag, among other ideas.¹⁷⁸ Interestingly, the leaders of the post-Zionist movement are not large in numbers but are large in the influence they exert on Israeli society.¹⁷⁹ Many of the post-Zionists are individuals who shape Israel's "intellectual and cultural establishment," and are referred to by Israelis as "the experts" due to their presence among the country's literary establishment, on the country's television news programming, and at the country's universities.¹⁸⁰ Given the influence of many of these intellectuals, authors, and architects on the Israeli cultural landscape, it is apparent that the post-Zionists desire an Israel as a part of a larger "universal world in which there is nothing unique about the Jewish people and their history."¹⁸¹

1. *Traditional Notions of Israel*

The idea that Israel and the Jewish people do not have a unique history alters the traditional notion of Israel's image as viewed through the eyes of most Israelis and most of world Jewry. For example, Israel's founders, after World War II, sought to "once again enter history as actors," rather than be "acted upon."¹⁸² This goal was achieved by "acquiring sovereignty and power, and exercising both on behalf of the Jewish

175. *Id.*

176. *Id.*

177. *Id.* (citing published op-ed pieces in *Haaretz* by authors Danny Rubinstein and Urit Shohat, respectively).

178. ISI LIEBLER, IS THE DREAM ENDING? POST ZIONISM AND ITS DISCONTENTS—A THREAT TO THE JEWISH FUTURE 19 (2d rev. ed. 2000), at <http://www.wjc.org.il/liebler.pdf>. Israel's national anthem is "Hatikva" and the national flag "displays a Magen David," or the star of David. Ruth Gavison, *Can Israel Be Both Jewish and Democratic?*, MOMENT, Dec. 2000, at 72. Hatikva, or "The Hope," . . . speaks of the Jewish longing to return to the homeland." Krauthammer, *supra* note 25, at 31.

179. HAZONY, *supra* note 1, at 4.

180. *Id.* In general, it can be said that the post-Zionists' influence is "quite out of proportion to their numbers." LIEBLER, *supra* note 178, at 20.

181. *Id.* at 21.

182. Krauthammer, *supra* note 25.

people.”¹⁸³ Some Israelis now believe, however, that post-Zionists “have pursued an ideological vendetta against the traditional accounts [of Israeli history] and have replaced them with a demoralizing set of counter-narratives which fit their political objectives.”¹⁸⁴ One result of this so-called ideological vendetta is illustrated by the country’s temporary use of revised school textbooks, which depict Jews and Israel as part of a “universal history” rather than part of a “unique history.”¹⁸⁵

Perhaps the greatest impact of these influential intellectuals on the country will be the formation of a national consensus to change the Law of Return in a manner that would affect Israel in a completely opposite fashion than legislation requiring an Orthodox conversion to be considered Jewish under the Law of Return. If the post-Zionists succeed in their attempt to regard Israel as part of a universal world history rather than the traditionally accepted idea in which Israelis consider the values of “power” and “army” important to their existence and identity,¹⁸⁶ then Israel may be transformed into a country lacking its current Jewish identity.¹⁸⁷ In other words, if Israel loses its traditionally Jewish characteristics, it is easy to conceive that political leaders will be pressured to alter the text of the Law of Return as it presently exists.¹⁸⁸

2. *The Need to Alter the Law of Return for Demographic Reasons*

Several Israeli environmentalists and intellectuals are also arguing for the Law of Return to be repealed for another reason: overpopulation.¹⁸⁹ The country’s population is purported to increase by almost one third in the next twenty years, adding to Israel’s already high rate of population density.¹⁹⁰ If Israel were to adopt a proposal embraced by

183. *Id.*

184. LIEBLER, *supra* note 178, at 26.

185. *Id.* at 20 (quoting the chairman of the committee to revamp Israeli middle-school education, grades 6–9, Moshe Zimmermann). At least one of the “revised” textbooks at the center of controversy, the ninth-grade history book *A World of Changes*, was removed from the curriculum by Prime Minister Sharon’s Education Minister. *14 Days*, JERUSALEM REP., Apr. 6, 2001, at 6. See generally HAZONY, *supra* note 1, at 40–46 (describing the work of revamping Israeli school curriculum); LIEBLER, *supra* note 178, at 17–26 (outlining Israel’s educational structure and critiquing the impact of the new curriculum); Krauthammer, *supra* note 25 (commenting on the misguided nature of the new curriculum).

186. Krauthammer, *supra* note 25, at 31.

187. See LIEBLER, *supra* note 178, at 37.

188. See HAZONY, *supra* note 1, at 338. Hazony writes that a number of Zionist notions, or “myths,” are “now haunt[ing] the public mind of Israeli Jewry,” and the “uprooting” of these myths “progressively reshape the culture of the state . . . [to conclude that] no theoretical justification for the claim that a state can be ‘Jewish.’” *Id.* at 338.

189. See HAZONY, *supra* note 1, at 58–59; Peter Hirschberg, *Population Overload*, JERUSALEM REP., Jan. 3, 2000, at 16.

190. See Hirschberg, *supra* note 171, at 16. The Palestinian population is expanding at “a world-record pace of 3.5–4.5 percent,” creating the need to use more water, electricity, and land to erect new buildings in Israel. *Id.* By 2020, both Israeli and Palestinian authorities estimate the combined West Bank-Gaza population to total between 5.7 and 6.7 million. See Isabel Kershner, *People Power*, JERUSALEM REP., Jan. 3, 2000, at 22.

some of its environmentalists, namely to stop encouraging immigration, the policy would be a “flat contradiction of [one] of traditional Zionism’s sacred tenets.”¹⁹¹ Nonetheless, many intellectuals argue that large pools of immigrants from Third World countries may eventually immigrate to Israel under the Law of Return, and the country must stop these potential immigrants from using the Law of Return as their means to enter Israel.¹⁹²

Proponents of amending the Law of Return argue that Israel will ultimately “be swamped by immigrants that other countries do not want.”¹⁹³ Immigrants desiring to live in Israel for economic reasons should continue to be encouraged to move to Israel, but the need to encourage Jews to immigrate to Israel under the Law of Return is no longer necessary.¹⁹⁴ In fact, Israel risks exposure to future overpopulation “to every would-be immigrant in the world”¹⁹⁵ because a non-Jew could claim that he or she has converted to a “previously unknown stream[] of Judaism.”¹⁹⁶ Although some might consider the possibility of a massive wave of Israeli immigration from a country that previously lacked an identifiable Jewish community (such as a “lost tribe” or a “recently discovered” branch of Judaism) remote, a Tel Aviv University law journal recently reported the discovery of such a “lost tribe” of Judaism in India.¹⁹⁷ Finally, the fact that the Middle East is running out of water¹⁹⁸ may be the most powerful reason to curb immigration under the Law of Return.

Water, as former Israeli Prime Minister Yitzhak Rabin once observed, was the one problem in the Middle East that needed to be successfully resolved for the region not to “explode.”¹⁹⁹ Currently, Jordan, the Palestinians, and Israel use more water than is replenished by rainfall, and in 1999, Israel’s main water supply was at its lowest levels since the 1930s.²⁰⁰ Continued immigration, if occurring in large numbers, could exacerbate the region’s already limited resources, though recent ad-

191. Hirschberg, *supra* note 171, at 16.

192. See HAZONY, *supra* note 1, at 58–59.

193. *Id.* at 58.

194. See Hirschberg, *supra* note 171, at 16.

195. HAZONY, *supra* note 1, at 58 (quoting Aryen Caspi’s article, *A National Home for a Billion Chinese*, in the April 1997 *Ha’aretz*).

196. *Id.*

197. *Id.* at 59, 359 n.58. The Hebrew language Tel Aviv University law journal article, Haim Ganz, *The Law of Return and Ameliorative Discrimination*, *STUD. IN L.*, July 1995, at 696, details that one of the “‘ten lost tribes’ deported from ancient Israel after an Assyrian conquest of the biblical northern kingdom” may have been found in eastern India. HAZONY, *supra* note 1, at 359 n.58. The estimates of the population of this particular ethnic group vary in size, and it is uncertain that “substantial numbers of people in India really wish to return to or join the Jewish people or to immigrate to Israel.” *Id.*

198. Hanan Sher, *Source of Peace?*, *JERUSALEM REP.*, Mar. 13, 2000, at 34.

199. *Id.*

200. *Id.*

vances in desalination could help alleviate any potential water shortage.²⁰¹

Although the threat of a massive wave of immigration from a previously undiscovered sect of Judaism may concern some Israelis, a dearth of evidence exists detailing such a scenario.²⁰² Indeed, other Israeli leaders continue to encourage immigration.²⁰³ Former Prime Minister Barak's Minister of Housing, for example, promotes the day "when several million Jews [immigrate to Israel],"²⁰⁴ and a research unit at the Labor Ministry advocates the country to continue to increase its Jewish population.²⁰⁵ Perhaps those who do not want to amend the Law of Return due to the fear of overpopulation understand the probable impact that the Palestinian birthrate will have on Israel's overall population, regardless of any change to the country's immigration law.²⁰⁶ If the population of Arab Israelis (those living within the pre-1967 borders) continues to expand, as expected, in a much greater number than Jewish Israelis, then the state of Israel as envisioned by its founders will be greatly altered.²⁰⁷

IV. RESOLUTION

A. *Israel Has a Continued Necessity of Attracting Immigrants from the Former Soviet Union*

If Israel is to maintain its goal of perpetuating a Jewish majority in its country, it is necessary for Jews of the former Soviet Union to continue to immigrate to Israel.²⁰⁸ If Orthodox conversions were required for an individual to immigrate under the Law of Return, Israel would have had to deny at least twenty percent of the former Soviet immigrants in the 1990s.²⁰⁹ This fact, in turn, would have placed a significant dent in Israel's attempt to preserve its Jewish population level with the non-Jewish population level.²¹⁰ Therefore, Israel needs to continue to attract those Jews from the former Soviet Union under the Law of Return.

201. *Id.* Desalination uses a reverse osmosis process to "force[] seawater through special membranes to remove the minerals." Opponents of desalination argue that the current cost to produce water from a desalination plant is too high in Israel. *Id.*

202. See HAZONY, *supra* note 1, at 58-59.

203. See Hirschberg, *supra* note 171, at 16.

204. *Id.*

205. *Id.*

206. See *supra* note 190 and accompanying text. Likud Knesset Member Uzi Landau in fact stated that "the question is how to increase the Jewish growth rate in the face of its rapid Arab counterpart." Hirschberg, *supra* note 171, at 16.

207. See Kershner, *supra* note 190, at 22. Israel's Central Bureau of Statistics projects that by 2020, the Arab population will swell to 25% of Israel's pre-1967 borders. By 2050, Jews will constitute only 61% of Israel's pre-1967 borders. *Id.*

208. If Israel were to relinquish control of the West Bank and Gaza in their entirety, Israel would have greater certainty in retaining a Jewish majority.

209. See *supra* note 140 and accompanying text.

210. Justus R. Weiner, *Freedom of Migration: Legal Standards and State Practice*, in STILL MOVING: RECENT JEWISH MIGRATION IN COMPARATIVE PERSPECTIVE, *supra* note 122, at 451.

In order to preserve the Jewish characteristics of Israel while also encouraging Jews to immigrate to Israel under the Law of Return, the country should attempt to support the Orthodox-Conservative-Reform Conversion Institute that was born out of the Neeman Commission.²¹¹ The institute's goal is to provide "a conversion solution" for the country's non-Jewish immigrants.²¹² Israel's Chief Rabbinate has rejected this institute and its program of teaching conversion classes with instructors from the Orthodox, Conservative, and Reform sects of Judaism, while "leaving the actual conversion in Orthodox hands."²¹³

Thus far, the Rabbinical Court has accepted the first three graduates of the institute,²¹⁴ and hopefully this is the start of an encouraging trend. If Israel continues to adhere to a traditional tenet of Zionism that Israel should be open to world Jewry,²¹⁵ then it must be willing to accept those citizens of the former Soviet Union whose relatives may be considered Jewish but are not themselves considered Jewish by religious law. The continued funding and growth of an institution such as the Neeman compromise conversion institute will permit entire families to immigrate to Israel and eventually enable the non-Jewish members of the family to convert to Judaism. If the Orthodox-Conservative-Reform conversion institute (or a similar establishment) is recognized, then the threat of interfaith marriages will dissipate as the country's population of former Soviet Union citizens that immigrated as non-Jews under the Law of Return wanes.²¹⁶ Therefore, Israeli legislators would not need to implement an Orthodox only conversion law and the concern of Israel losing its Jewish identity would be diffused.

B. Israel Should Not Currently Seek to Repeal the Law of Return

Under the present circumstances, Israel and all of its neighbors have yet to establish a final, comprehensive peace that will seek to ensure greater regional cooperation. If and when a comprehensive peace is attained, Israel should potentially accede to the aforementioned intellectuals who argue that Israel's increasing role in the world's growing interdependence makes the Law of Return anachronistic.²¹⁷ Rather than causing any change in the current law, however, perhaps Israeli legisla-

211. See generally *supra* note 101. Peter Hirschberg, *Rabbis Differ over Significance of First 'Mixed' Conversions*, JERUSALEM REP., Aug. 14, 2000, at 6.

212. *Id.*

213. Yossi Klein Halevi, *Will These Israelis Be Allowed to Become Jews?*, JERUSALEM REP., June 21, 1999, at 14. Israel's religious courts, using an Orthodox interpretation of Judaic law, ultimately determine the fate of conversions in Israel. *Id.*

214. Hirschberg, *supra* note 211.

215. Weiner, *supra* note 210, at 451.

216. See, e.g., Gershom Gorenberg, *RX: Excise the Rabbinate*, JERUSALEM REP., Jan. 18, 1999, at 51.

217. See Krauthammer, *supra* note 25, at 31.

tors could draft a type of "blueprint," where if certain conditions were fulfilled, the Law of Return could be altered or repealed.

For example, the Knesset could appoint intellectuals advocating change in the Law of Return together with Israeli legislators of different political persuasions to a long-term panel that would consider the current arguments. Concerns to be addressed could include overpopulation, the need for Israel to become a truly multicultural country, and whether the Zionist mission has succeeded²¹⁸ (therefore diminishing the Law of Return necessity). Establishing a panel to discuss these considerations over a set period of time, such as three years, would enable its members to react to the country's constantly changing political and psychological fabric in terms of altering the Law of Return. During this three year period, certain notions could become more lucid, including whether any comprehensive peace agreement is sustainable or if any new developments or fears are addressed regarding the environment and country's use of its resources. At the conclusion of the three year interval, the conference would publicly report its findings to the Knesset.

V. CONCLUSION

Israel should not seek to modify the current language of the Law of Return, whether to accept only Orthodox conversions of immigrants or whether to repeal the law outright. A compromise solution to the Orthodox conversion issue, as contemplated by the Israel's Neeman Commission several years ago, should be implemented and financially supported to ensure those individuals of the former Soviet Union, not considered Jewish under religious law, are accepted as part of Israeli society. Additionally, Israel should resist revoking the Law of Return in an attempt to become a multicultural state until it is certain that world Jewry and Israel itself are assured of an existence absent attacks and violence.

218. See HAZONY, *supra* note 1, at 57.

