

WHO IS AN ISRAELI?: *HALAKHAH* AND CITIZENSHIP IN THE JEWISH STATE

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Citizenship is the concept through which we discuss the nature of an individual's membership in an organized society. Two different elements are involved in the concept. One is primarily legal, the other stems from political theory. The concern here is with the political theory conception of a more active citizenship. The legal dimension of Israeli citizenship is explored because it not only provides the prerequisites for actual membership in the nation-state, but also because it points to the problematic areas for the development of a viable political concept of Israeli citizenship.

The laws governing the acquisition of Israeli citizenship point to a clear divide between Arab and Jewish citizens. And the controversy surrounding the Law of Return, which governs how Jews obtain Israeli citizenship, point to the divide between Orthodox and non-Orthodox Jewish citizens of Israel. The political theory conception of citizenship emphasizes the importance of a shared, common, citizenship status. Without some overarching, inclusive conception of citizenship to undergird a sense of solidarity, it is highly problematic that Israel can develop a shared, common, political community.

Citizenship involves the most fundamental political relationships in any society. It embraces the connection between an individual's allegiance, loyalty, and obligations to a nation, and that entity's re-

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sponsibilities towards its members. It goes to the issue of which individuals are entitled to participate fully in shaping a nation. Citizenship is the concept through which we discuss the nature of an individual's membership in an organized society.

Since its inception in 1948, Israel has called itself the Jewish state, but what that means for membership in the nation is far from clear. The government has deliberately avoided any definitive resolution. Instead, a series of political arrangements deal with various aspects of citizenship. During the past 50 years, fundamental controversies over this issue have not disappeared; rather, they have intensified.

A major contributing factor to this dilemma is the bedeviling question of "who is a Jew" and thereby presumptively entitled to citizenship in the Jewish state. Israel has never resolved the relationship between Judaism (the religion of the Jews) to Jewish national identity. Israel does not enforce all the norms of Judaism embedded in *halakhah* (Jewish religious law) as part of its operating legal system. So the issue cannot be resolved by automatically applying the *halakhic* definitions of who is a Jew. Until the Enlightenment, however, membership in the Jewish people was entirely defined by *halakhah*. Severing issues of Jewish identity from *halakhah* therefore makes little sense. Yet the overwhelming majority of Israeli Jews are non-Orthodox, so it may be equally unsound to have Israeli-Jewish identity completely defined by *halakhic* norms.

A further factor is that a significant minority of Israeli citizens, the Arabs, are not Jews. For the Arabs the issue is whether they can ever be fully equal citizens of an Israel defined as the Jewish state. A definition of Israeli citizenship rooted in *halakhah* would surely compound the problems surrounding non-Jewish citizenship in Israel.

I

Defining the status of citizen — a person's rights, privileges, and obligations as a member of a political community — has never been an easy task. Two different elements are involved in the concept of citizenship. One is primarily a legal notion, the other stems from political theory. As one would expect of a concept that has survived the transitions from ancient and medieval municipalities to the contemporary territorial nation-state, each element in the concept of citizenship contains an extensive network of varying components.

The legal element stresses the connection between a citizen's allegiance to a particular nation and the obligation of that nation's government to protect its citizens.¹ The central distinction is between *citizen* and *alien*. The citizen is subjected to the nation's rule in exchange for the protection of person, property and, perhaps, liberty. This is a passive conception of citizenship; there is no emphasis on active participation in the formation of the nation's laws and policies. Identification with, or attachment to, a particular people or state is assumed rather than emphasized.

In the contemporary world, citizenship is utilized as a legal category to allocate the more than five billion people on our planet among the various nation-states. There are three basic modes of acquiring citizenship: descent, birth within a country, and naturalization. The first two modes are inherently passive, since people cannot select their parents or control their own place of birth. Naturalization theoretically enables people consciously to select membership in a society. In actuality, however, any particular choice might be foreclosed, limited, or compelled by international politics. Currently, the starting point for the international legal standard is citizenship by birth within a country. With certain recognized exceptions — e.g., children of diplomatic personnel — every person born within the territorial boundaries of a nation is almost invariably considered a citizen of that state.²

In the political theory element, the allegiance-protection relationship is only a minimum condition of citizenship. Beginning with Aristotle, theorists have made a sharp distinction between *citizen* and *subject*. Citizens are seen as active participants in the political community; subjects — a category which at various times has included such groups as slaves, serfs, and women — are essentially passive objects of the political community. In political theory, the active participation by citizens in shaping their political community is seen as transforming the nature of their membership and the quality of their lives. The pursuit of joint, common objectives provides solidarity among citizens, and that sense of shared membership becomes an integral part of each citizen's personal identity.³

In the modern world, the two political theory categories — subject and citizen — for thinking about an individual's relationship to the political community have become merged. The rise of the nation-state legally united the manifold allegiances of medieval man into a single but comprehensive loyalty. This integration was accomplished not only through the multiplication of the claims which the state makes upon its citizens, but also through the opposite process of recognizing the rights of the individual to

participation — primarily as a voter — in ostensibly democratic forms of government.⁴

The nature of the modern state also requires the extension of the franchise to ever larger groups. Voting, even in one-party states and military dictatorships, is a critical form of mass mobilization and legitimation. As a result, there has been an ever-accelerating increase of citizens (defined as eligible voters) and a corresponding decrease of subjects. That is why most political scientists identify “the citizenship issue” with the entry into politics — the way in which different societies handle the decision as to when groups obtain access to the political process.⁵

The American experience illustrates the historical process which merged the two elements. According to English common law, subjects owed allegiance to the Crown and were reciprocally entitled to the Crown’s protection. Early American authorities transformed subjects into citizens. “‘Subject’ and ‘citizen’ are, in a degree, convertible terms as applied to natives,” said Chancellor James Kent in his *Commentaries*, “and though the term ‘citizen’ seems to be appropriate for republican freeman, yet we are, equally with the inhabitants of all other countries, ‘subjects’ for we are equally bound by allegiance and subjection to the government and the law of the land.”⁶ With the abolition of slavery no one was merely a *subject*; American political processes gradually extended the formal rights of citizenship to previously excluded groups. By 1971, when non-English literate citizens were given access to the polls, the democratization of the electorate, which had begun in the early nineteenth century, was completed.⁷

Note that the identification of citizenship with having the right to vote corresponds well with the legal notion of citizenship. Both treat citizenship as an essentially passive right. In a world where there are by legal definition very few *subjects*, *citizens*, unlike *aliens*, have the right to vote. But access to the franchise by itself is not sufficient to turn otherwise passive individuals into active participants in the civic processes through which Aristotle thought they and society might achieve virtue. That is why the concerns embedded in normative political theory are not exhausted by the empirical political science measure of access to the franchise. Like legal citizenship, the right to vote in modern society is a necessary, but not sufficient, component of the political theory conception of citizenship.

The concern here is with the more active political theory conception of citizenship. The legal dimensions of Israeli citizenship are explored because legal membership in a state is usually a prerequisite to active participation in the polity.⁸ As such, the legal

parameters for citizenship in Israel affect the nature and quality of an individual's membership. Moreover, the distinction between the legal and political elements in the modern conception of citizenship is, in reality, only a useful analytic tool; in contemporary usage, each element borrows from the other. An examination of the legal dimensions, therefore, also points to problematic areas for the development of a viable political conception of Israeli citizenship.

II

In 1950, Israel enacted the Law of Return: "Every Jew," it proclaims, "has the right to come to this country as an immigrant."⁹ In 1952, the Nationality Law was enacted. Under this law, Israeli citizenship is acquired by residence, by birth within the country, by return, or by naturalization.¹⁰ It made citizenship by return the *primary* means for Jews to obtain Israeli nationality. This is a conscious departure from contemporary practice in which citizenship *by birth* within a country is usually recognized as the primary means for obtaining citizenship.

The establishment of Israel in 1948 was the culmination of the Zionist movement, the national liberation movement of the Jewish people. The Law of Return reflects Zionist ideology. As then Prime Minister David Ben-Gurion explained to the Knesset (parliament):

This law does not provide for the State to bestow the right to settle upon the Jew living abroad; it affirms that this right is inherent in him from the very fact of being a Jew; the State does not grant the right of return to the Jews of the diaspora. This right preceded the State; this right built the State; its source is to be found in the historic and never broken connection between the Jewish people and the homeland.¹¹

Under the Law of Return, an immigrant's visa is given to every Jew (and a non-Jewish close relative)¹² who expresses a desire to settle in Israel (unless the Minister of Justice finds him/her engaged in anti-Jewish activity, poses a health menace, or is a criminal fleeing justice).¹³ Moreover, a Jew who arrives in Israel under another visa (e.g., tourist, student) may subsequently request an immigrant's certificate under the Law of Return.¹⁴ Most importantly, *every Jew born in the country is considered by the Nationality Law to have acquired citizenship by return.*¹⁵

Thus the interlocking provisions of the Law of Return and the Nationality Law provide for virtually automatic citizenship for any

Jew. With regard to actual immigrants under the Law of Return, the Nationality Law does not stipulate any residency requirement. It applies alike to stateless persons and holders of other citizenship. Nor does the acquisition of citizenship by return require the taking of any oath or other formal declaration of allegiance. Since the Israeli government cannot withhold citizenship by return from Jewish immigrants and their close relatives (other than for the three exceptions noted above), it operates automatically. For native-born Israeli Jews, the automatic citizenship-by-return functions like citizenship-by-birth.

The interlocking provisions of the Law of Return and the Nationality Law also point to three basic values held by the Zionist founders of the state. First, the Israeli laws provide a symbolic identification for native-born Jews with returning Jews because world-wide Jewry was seen as one people. All Jews, everywhere, were entitled to become Israeli citizens. Citizenship in the Jewish state was seen as yet another way of promoting unity among Jews. Second, the Zionist founders plainly believed in an activist Israeli citizenship. A person is most usually Jewish by birth, a passive acquisition of membership in the Jewish people. Sometimes a person becomes Jewish by conversion; a Jew by choice takes an active role in acquiring membership in the Jewish people. Similarly, return emphasizes the (theoretically) free choice of a Jew to immigrate to Israel and to throw in his/her lot with other Jews who are creating the third Jewish commonwealth. By having native-born Israeli Jews acquire citizenship by return rather than by his birth in the country, the Zionist founders were emphasizing the high value they placed on active participation in rebuilding the Jewish state. Third, the citizenship laws make a clear differentiation between Israeli Jews and non-Jews. This distinction is a deliberate result of Zionist ideology which sees Israel as the state for the Jewish people.

Citizenship based upon the Law of Return poses some very real and particularistic problems. From contemporary legal and political theory conceptions, it is at once too broad and too exclusionary. It is too broad in that every Jew, and even his/her non-Jewish close relatives, whatever the strength or substance of his/her identification, and whatever his/her geographic location, is eligible for citizenship in a nation-state that is legally defined by geographic borders. It is too narrow in that a portion of those born within Israel who are not Jews are granted citizenship on a differential basis; their acquisition of citizenship serves to emphasize what distinguishes them from a majority of their fellow Israelis, not what

they all have in common. But the political theory concept of citizenship is based on shared, common status.

The values embedded in the citizenship laws set the agenda for some of the most bedeviling issues confronting Israeli society today. *Halakhah* is an integral component of each issue.

III

Since 81 percent of Israel's population acquires citizenship in the state via the Law of Return, a form of citizenship by descent, the first issue is "Who is a Jew"? Israel calls itself the "Jewish state" but what that means is far from clear. The nation has never adopted an official overall policy about the position of Judaism in the state. It does not enforce all the norms of Judaism as part of its operating legal system. Israel is not a theocracy. The laws enacted by the democratically elected Knesset, not *halakhah*, are the supreme law of the land.

Neither is Israel a completely secular state. The government maintains formal links with the institutional organs of religious denominations and subjects individuals to religious rules by vesting religious courts with the authority to resolve matters of personal status. For those matters, Jews, Muslims, Druze, and the members of ten recognized Christian communities¹⁶ are mandatorily subject to the jurisdiction of religious courts. Legally, Judaism is not the state religion of Israel; it is only one of Israel's fourteen established religions.¹⁷

There is no denying, however, that at times Orthodox Judaism functions in the Israeli polity as if it were the official state religion.¹⁸ Thus, for example, any Jew in Israel, regardless of his/her beliefs, must utilize the state's rabbinical courts, which are Orthodox, for marriage and divorce. There is no secular marriage or divorce in Israel, and within the state marriages and divorces by other streams of Judaism — Reform, Conservative, Reconstructionist — are not legally recognized.¹⁹ For the *dayanim* (rabbinical court judges) to solemnize a marriage, they must first be satisfied that both individuals are Jews. *Halakhah* defines a Jew as a person born of a Jewish mother or converted to Judaism by a recognized *beit din* (rabbinical court). For the Israeli *dayanim*, this *halakhic* requirement means that the conversion must have been supervised by an Orthodox rabbi and approved by an Orthodox *beit din*. To decide whether an individual was born a Jew, the *dayanim* must determine whether that person's mother was a Jew. In order to determine the mother's status, the *dayanim* must know whether her

mother (the individual's maternal grandmother) was Jewish, and so on, theoretically *ad infinitum*. Rabbinical courts applying this test end the trace-back process only when they reach a woman whose Jewishness they do not question.

These *halakhic* norms (among others) have created innumerable controversies. Most Jewish Israelis are not Orthodox. Approximately 20 percent of Israeli Jews define themselves as *dati* (religiously observant) or Orthodox. Another 35 to 40 percent define themselves as "traditional" (i.e., observe most *halakhic* practices but do not feel bound, from an internal perspective,²⁰ by Orthodox *halakhic* norms). The balance (40-45 percent) define themselves as "secular."²¹ Many non-Orthodox Jews are not sympathetic to the rabbinate's refusal to perform marriages for individuals who consider themselves Jewish.

The *halakhic* definition of "who is a Jew" has not been utilized under the Law of Return. The 1950 law simply stated that "every Jew" who immigrates is entitled to Israeli citizenship. So early on the courts had to decide who was a Jew under this law. In *Rufeisen v. Minister of the Interior* (1962),²² the Supreme Court decided, 4-1, that the Law of Return was a secular law of the State and need not be interpreted in conformity with *halakhah*. Rufeisen was born in Poland of Jewish parents. During World War II he converted to Catholicism, and in 1945 he joined the Carmelite Order. He subsequently settled in Israel as a Carmelite Monk. In 1958, as "Brother Daniel," he applied for citizenship under the Law of Return. Paradoxically, if the court had applied the *halakhic* definition, Brother Daniel would have been considered Jewish: he was born of a Jewish mother.²³ If the court had applied the sociologists' subjective definition (anyone is a Jew who identifies himself as such), Brother Daniel would also have been eligible under the Law of Return: he perceived himself as "ethnically Jewish" (a member of the Jewish people) although religiously a Catholic. This latter position was that of the lone dissenter on the Supreme Court, Justice Cohn.²⁴

Instead, the Supreme Court majority created its own judicial definition of who is a Jew under the Law of Return. "[B]ecause the Law of Return is an Israeli statute, originally enacted in Hebrew and not translated, the term 'Jew' must be interpreted in the sense that it is understood by Jews, for they are nearest to the subject matter of the Law and who better than they know the essential content of the term 'Jew'?"²⁵ On that basis, an individual who had voluntarily converted to Christianity, and who remained a practicing monk was held not to be a Jew for purposes of the Law of Return.

[T]here is one thing that is shared by *all* Jews who live in Israel (save a mere handful) and that is that we do not cut ourselves off from our historic past nor deny our ancestral heritage....[A] people which is almost as old as the human race cannot start *ab novo*, and our culture in this land — at the highest — is merely a *new version* of the culture of the past....Whether he is religious, non-religious or anti-religious, the Jew living in Israel is bound, willingly or unwillingly, by an umbilical cord to historical Judaism from which he draws his language and its idiom, whose festivals are his own to celebrate, and whose great thinkers and spiritual heroes nourish his national pride....²⁶

The people themselves, however, because of a well developed sense of self-preservation, have decided [contrary to *halakhah*], have behaved differently throughout the centuries. For them a Jew who has embraced another religion has withdrawn himself not only from the Jewish faith but also from the Jewish nation and has no place in the Jewish community.²⁷

Rufeisen is important because the Supreme Court explicitly rejected the idea that citizenship in Israel via the Law of Return is to be defined *halakhically*. But even as they did this, the judicial majority recognized “the umbilical cord” tying Jewish national identity to Jewish religious identity, at least to the extent that voluntary conversion to another religion was deemed incompatible with retaining Jewishness. Note also that, even as the justices wrestled with the *legal* definition of Israeli citizenship under the Law of Return, they all had recourse to ideas about what it means to *belong to and to participate in* a community. That is, they utilized the *political theory* conception of citizenship to formulate and define their *legal* definitions of citizenship.

Substantively, however, the majority opinion in *Rufeisen* could not definitively resolve the issue of who was a Jewish citizen of Israel. By utilizing the same metaphor as Ben-Gurion, “the umbilical cord to historical Judaism,” the court majority equated Jewish (religious) faith as identical to loyalty to the Jewish nation. The court majority thereby invoked as part of the common understanding the very problematic that had created the need for a more refined legal answer in the first place. The legal issue of “who is a Jew” could not be resolved by turning to the evolution of the meaning of Jewish identity in the modern world, because it was the very ambiguity of the ordinary usage of the term “Jew” that produced the problem. Common usage could resolve the issue posed by Brother Daniel; on the one narrow point that he raised a common

understanding had indeed evolved among the Jewish people. But because there was no common understanding and usage on many other points, it could not provide a consensual basis for resolving other aspects associated with the issue of “who is a Jew.”

In 1969, the Supreme Court had to again confront the issue of “who is a Jew” in *Shalit v. Minister of Interior*.²⁸ The case arose under a provision of the Population Registry Law, 1965,²⁹ which required that data about all permanent residents be recorded under three categories: citizenship, nationality (ethnic identification), and religion. A majority of the population registered as: citizenship, Israeli; nationality, Jew; religion, Jewish. Benjamin Shalit was an officer in the Israel Defense Forces. He had registered as: citizenship, Israeli; nationality, Jew; religion, blank. He had two children, born in Israel, by his non-Jewish wife. Shalit sought to have the children registered as Jews under the nationality item. The Haifa Registration Office — in accordance with the directives of the Minister of Interior — refused.

All nine justices who participated in *Shalit* agreed that the children were Israeli citizens by birth in the country. They were also in agreement that the Population Registry Law, as a secular law, need not be interpreted in accordance with *halakhah*. In addition, the justices agreed that the “nationality” provision, insofar as it applied to Jews, ought to have the same meaning as the term “Jew” in the Law of Return. There the agreement ended.

The five justice majority held that the Minister of Interior should be required to register the Shalit children as Jews, in accordance with the wishes of their parents. They held that, in a technical sense, the question of “who is a Jew” was not relevant to the case. The law required the registrar to enter an individual’s declaration, unless the official had obvious grounds for assuming that the declaration was not correct, e.g., recording the age of a child as that of an adult. In their considered opinion, the Ministry simply lacked the legal authority to question Shalit’s declaration that his children were Jewish.

Three of these justices, nonetheless, supplied their own substantive answers to the question of “who is a Jew.” Justice Cohn continued to adhere to his position that a secular law had to be interpreted in accordance with secular reality: that national identification is dependent upon the inherently subjective feelings and beliefs of an individual.³⁰ Justice Sussman maintained that “a group of people attain the rank of a nation by virtue of a complex of subjective and objective factors taken all together.”³¹ Justice Berinson maintained, as he had in *Rufeisen*, “that the *halakhic* conception does not tally with the real situation today in the State of Is-

rael,"³² and indicated that his views were similar to those of Justice Sussman.

Two of the dissenters (Justices Agranat and Landau) agreed that the question of national affiliation was an ideological problem subject to deep public controversy. Any position adopted by the court would rest solely on the private views and personal predilections of the judges, since no acceptable judicial answer could be drawn from any recognized legal source. In those circumstances, they argued that the court should refrain from intervening as long as the minister's position was not unreasonable. The minister had exercised valid administrative discretion in specifying *one* of the accepted criteria for the purpose of implementing the Registry Law: that children born of a non-Jewish mother were not, absent conversion, Jews.³³

Two of the dissenters thought the minister was substantively correct. Justice Silberg held to the position he had articulated in *Rufeisen* about the importance of the historical connection between Judaism and Jewish national identity. The survival of the Jewish people could not be understood apart from this intrinsic connection, and that heritage is the foundation stone for the Jewish claim to inherit and inhabit the land: "Whoever divorces Jewish nationality from its religious foundations assaults at the very same moment the core of our political claim to the Land of Israel; and to do so is like committing an act of real treason."³⁴ Moreover, Justice Silberg recognized that the court's decision might have ramifications beyond Israel: "For the nation whose characteristics we seek is not the small group, *which as a nation does not exist at all*, but the large Jewish nation of some 13 million, whose members are scattered all over the world, including the State of Israel."³⁵ Therefore, he insisted, connecting Jewish nationality with religiously derived criteria is essential. This belief was reinforced by the fact that "even free Reform communities acknowledge that one cannot join the *people* of Israel without accepting the *religion* of Israel."³⁶

Justice Kister maintained that "[t]here can be no doubt that the Jewish people are singular....Nor can there be any doubt that what has united and unites the whole people is its Torah....[Therefore what] emerges from the definition itself of the Jewish nation, [is that] the term "Jew" is according to modern notions both a national and religious concept, the two being indivisible. Belonging to the Jewish people cannot be separated from belonging to the Jewish religion."³⁷ The minister was plainly correct, he maintained, in issuing his directives.

So while all nine justices explicitly recognized that an individual's nationality registration was technically independent from that

person's claim to Israeli citizenship, the Supreme Court was drawn into a discussion of the nature of membership in the Jewish people. Moreover, since all the justices were agreed that the term "Jew" had the same meaning in both the Population Registry Law and the Law of Return, five of them discussed who was entitled to be a Jewish citizen of the Jewish state of Israel. Those justices, in attempting to define "who is a Jew," once again had recourse to ideas about what it means to belong to and to participate in a community.

The close division on the Supreme Court plus the fundamental issues raised by the question "who is a Jew" propelled a most reluctant Knesset into this political maelstrom. In 1970, after extended and heated debate, the Knesset decided that for purposes of the Law of Return and the Population Registry Law, a Jew is to be defined as a person who is either "born of a Jewish mother or converted to Judaism and who is not a member of another religion."³⁸ The Knesset thereby reversed the *Shalit* decision and accepted a definition which reflected the majority decision in *Rufeisen*. The secular law of the Jewish state of Israel which determines "who is a Jew" for purposes of the Law of Return and the Population Registry Law is partly based upon *halakhah* — a Jew is a person born of a Jewish mother — and partly departs from the *halakhic* definition of Jewishness — who is not a member of another religion. The authoritative law of the state regarding Jewish citizenship in Israel is based upon a mixture of *halakhah* and a particular understanding of Jewish tradition.

The 1970 amendment enhanced the potential for rupturing this critical aspect of the "umbilical cord" of Jewish religious tradition. As long as the issue of "who is a Jew" for purposes of Israeli citizenship was primarily based upon court decisions, the issue was still in play. Because Israel lacks a formal written constitution as the supreme law of the land, the Knesset possesses the ultimate lawmaking authority. By the 1970 amendment, civil authorities — administrators and judges — were definitively authorized to determine the legal conditions of Jewish citizenship without any *required* deference to religious doctrine (in this case, Orthodox interpretation of *halakhah*). This situation posed the possibility that the civil authorities of the Jewish state could determine the requirements for Jewish citizenship in Israel on the basis of their own political/jurisprudential interpretation of the developmental sociology of the Jewish tradition. Little wonder then that Orthodox elements were concerned.

The Orthodox leadership has not made the explicit departure for traditional *halakhah* in the 1970 amendment a matter of contention.

They appear quite willing to abide by the long-standing "sense" of the Jewish people on this point, the very factor the justices in the *Rufeisen* majority had relied upon. Perhaps this is another example of *minhag* (custom) shaping *halakhah*.³⁹

Orthodox groups in Israel and abroad, however, have always objected to the amendment's clause about conversion. Plainly that notion is derived from *halakhah*, but the law, as written, does not specify that the conversion must be according to *halakhah* which also entails, to the Orthodox, that the conversion must be supervised by an Orthodox *beit din*. When the 1970 amendment was adopted, the Knesset consciously and deliberately rejected an effort to have the conversion clause read: "conversion to Judaism *in accordance with halakhah*." The law as adopted was intended to cover every convert to Judaism, including those recognized by Reform, Conservative, and Reconstructionist rabbis.⁴⁰ Periodically, Orthodox movements abroad and Orthodox political parties in Israel have launched major efforts to amend both laws to conform to *halakhah*. Each time the amendment has been considered, the Knesset has rejected it. Each time the issue has provoked a major crisis in Israeli politics. The Orthodox continue to resent this departure from *halakhah* embedded in the law of the state. For many of them, a Jewish state, by definition, can only be based upon *halakhah*.

Because of this history, the Supreme Court had no difficulty in holding that an individual who converts to Judaism in the diaspora is a Jew under the Law of Return and the Population Registry Law. Thus in 1988, Judith Miller, a convert to Judaism by a Reform rabbi in the United States, was refused registry as a Jew by the Minister of Interior, a member of the Orthodox Shas political party. The Supreme Court unanimously ruled that the law does not permit the minister to question conversion procedures in the diaspora.⁴¹

Much more difficult was the issue of whether non-Orthodox conversions *within* Israel should be similarly recognized. Since its establishment, the state has recognized only *halakhic* Judaism as interpreted solely by Orthodox authorities as the religion of the Jewish community. Only rabbis approved by the Orthodox Chief Rabbinate could supervise legally registered conversions to Judaism. In February 1995, three Masorti (Conservative) rabbis converted 14 children on Kibbutz Hannaton in accordance with their interpretation of *halakhah*. A major controversy arose over whether such individuals could then be registered as Jews under the Population Registry Law,⁴² and the Supreme Court scheduled a

hearing on the matter. As of this writing, the issue has still not been decided.

In the meantime, the Supreme Court decided a case brought by Hava Goldstein, a Brazilian immigrant who had undergone a Reform conversion in Israel after marrying a Jewish citizen. In a 6-1 decision, the court decided, consistent with its prior decisions, that under the existing law the Minister of Interior lacked the authority to refuse to register as Jews people who had been converted to Judaism by Reform and Masorti rabbis in Israel. The court refrained, for the time being, from ordering Mrs. Goldstein's registration; instead, the justices gave the government time to work on the mechanism for implementing its ruling.⁴³ The decision provoked a major uproar in the Orthodox community, not least because it threatened the Orthodox rabbinate's monopoly as *the* officially recognized religious interpreters for Israeli Jews. At this writing, it is not clear whether the Orthodox political parties in the Knesset will be able to reverse the *Goldstein* decision by legislation.

The highly divisive conflict between Orthodox Jews and other Israelis revolve around the issue of "who is a Jew." This socio-political division is well indicated by the automatic Israeli citizenship for any member of the Jewish people, a person who by the Law of Return, the Nationality Law, and the Population Registry Law is considered to be Jewish, but who may not be Jewish according to the Orthodox interpretation of *halakhah*. Each individual considered Jewish by the more inclusive definition in the civil law feels entitled to participate fully in Israeli society. Yet under other laws, most notably the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law,⁴⁴ some citizens are significantly burdened in the exercise of their rights because under the Orthodox interpretation of *halakhah* they are not considered Jews.

For example, those Jewish citizens who are not recognized as Jews by the Orthodox interpretation of *halakhah* are unable to be married in Israel through the only procedures authorized by the state. The basic method for a Jew in Israel to marry without the rabbinate's approval is to go abroad. Marriages solemnized abroad, in most cases, are registered in Israel. But that is hardly an adequate solution. A marriage abroad is inconvenient and expensive. Moreover, at the very time when individuals seek communal support, acceptance, and validation, their own country apparently wants no part of them. The trip abroad will not end the matter; the couple's children are likely to face comparable problems when they seek to marry other Jewish Israelis. As understood by political theory, the citizenship status of individuals who are not recognized as Jews by the Orthodox establishment is significantly burdened. Lit-

tle wonder, then, that the current arrangements engender resentment among many non-Orthodox.

The divide between Orthodox and non-Orthodox Jewish citizens of Israel is more fully explored below. Before that, however, it is necessary to examine the second central problem of Israeli citizenship: the status of non-Jewish, particularly Arab, citizens.

IV

Approximately 19 percent of the 5.9 million Israelis are non-Jews and most are Arabs.⁴⁵ Some acquired citizenship by their *continual* residence in the country from immediately prior to the establishment of the state to the date that the Nationality Law was promulgated in 1952, and others by legally entering Israel during that period.⁴⁶ By now, most Arab Israelis have acquired citizenship by birth in the country.⁴⁷

An individual can also obtain Israeli citizenship through naturalization. The person must be in Israel, have resided there for at least three of the prior five years, indicate an intention to settle in Israel, have some knowledge of Hebrew, and be willing to renounce prior nationality. The Minister of Interior, however, has the discretionary authority to grant or withhold Israeli citizenship sought through the naturalization process.⁴⁸ Only Jews (and non-Jewish members of their families) can acquire Israeli citizenship by return. The other methods of acquiring Israeli citizenship are open to Jew and non-Jew alike. It is therefore easier for a person living abroad who is Jewish, or who as a non-Jewish relative comes within the Knesset definition of a close relative, to acquire Israeli citizenship than for a native-born Arab who fled Israel during the 1948 War of Independence. Similarly, Israeli Jews who reside abroad for extended periods (*yordim*) do not lose their Israeli citizenship, while Israeli Arabs who do the identical thing are frequently refused readmittance into Israel as citizens. As Justice Kister said in *Shalit*: "One who is not a Jew or an Israeli citizen has no vested right to immigrate into this country, though the state may admit non-Jewish persons."⁴⁹

In that sense, the citizenship laws, despite judicial statements to the contrary,⁵⁰ point to institutionalized discrimination against non-Jews in Israel. Today, Arab citizens enjoy the same civil and political rights as Jewish Israelis. This is not unimportant. It means that unlike most of the world's population, they enjoy a wide range of human rights which are actively protected by an independent judiciary. Moreover, the Arab citizens of Israel exercise the fran-

chise at only a slightly lower rate than their Jewish fellow citizens.⁵¹ This gives them the opportunity to express their interests and needs. But Arabs are isolated from the mainstream of Israeli life; their political effectiveness is limited by the Jewish nature of Israel and by the state's omnipresent security concerns. For security reasons, they are excluded from many positions in Israel's large defense industry, and anti-Arab prejudice limits their opportunities in other sectors.

As a result, Israeli Arabs have both benefited and suffered. On the one hand, they have benefited from membership in a modern, Western-oriented society. The average Israeli Arab has a higher living standard than comparable individuals in the surrounding Arab states. On the other hand, ethnic stratification in Israel has placed mobility limits on them. The Arab population remains at the bottom of the overall status structure of Israeli society.⁵²

The subordinate position of Israeli Arabs is exacerbated, rather than alleviated, by government policies. The child allowance that the government provides Jewish families is 20 percent higher than that given to Arab families. Allocations to Arab local governments are similarly disproportional: 12 percent of the population receive only 2.3 percent of that budget item. And the development budget provides 35 percent less for every Arab citizen than for each Jewish citizen. While Israel's compulsory education laws have eliminated illiteracy in the Arab sector, the allocation, in 1990, for Arab schools was 45 percent less than for Jewish state schools. In sum, government policy, regardless of which Zionist political parties comprised the governing coalition, has discriminated against Arab citizens, leaving them at the fringes of Israeli society. Arab citizens of Israel are — and will remain for the foreseeable future — an insular minority within the larger Jewish society.⁵³

The socio-economic status of the Arab minority has significant implications for the nature of their Israeli citizenship. As Carol Pateman has noted:

From ancient times political theorists have argued that to be a *citizen* rather than a mere *subject* requires resources of both material goods and individual [legally recognized] capacities....When women and men live in abject destitution, or even well below the standard prevailing in their country, it is all too easy for them to be denied the respect and freedom due to citizens. Their citizenship is shrunk and devalued or rendered worthless, and so democracy, too, is diminished.⁵⁴

Indeed, the very notion of Israel as the Jewish state — the idea reflected in the Law of Return — appears to preclude full equal status for its Arab citizens. As David Kretzmer has noted, “on the decidedly fundamental level of identification and belonging, there cannot be total equality between Arab and Jew in Israel. The state is the state of the Jews, both those presently resident in the country as well as those resident abroad. Even if the Arabs have equal rights on all other levels the implication is abundantly clear: Israel is not *their* state.”⁵⁵ Since Arabs do not enjoy equal benefits, the problem of conceptualizing their status as Israeli citizens is only compounded.

V

Thus a viable political conception of Israeli citizenship must confront several difficulties if it is to point the way towards an active, rather than passive, identification with the state. Before that issue — an issue present in every contemporary democracy — can be addressed, a conception of citizenship in Israel must first confront the seemingly institutionalized segmentation of its population. The laws governing the acquisition of Israeli citizenship indicate a clear divide between Arab and Jewish citizens. And the controversy over who may legitimately claim membership in the Jewish people is an indication of the divide between Orthodox and non-Orthodox citizens of Israel. Without some overarching, inclusive conception of citizenship to undergird a sense of solidarity, it is highly problematic that any attempt can provide the theoretical foundation for active participation in shaping a shared, common, political community.

It has never been sensible to conceive of Israeli democracy in terms of a liberal theory of citizenship, as a polity in which ethnicity and religion would have no relevance to a person's status as a citizen. Israel explicitly calls itself the “Jewish state.” That identification is reinforced by the connection between the Law of Return (for Jews) and the Nationality Law, and is symbolized by Israel's flag (the Jewish star) and its national anthem (Hatikvah; the Zionist national anthem). The State of Israel was intended to be, and is, the political expression of the Jewish nation, not the people residing in a particular geographic territory. In this situation, it is simply impossible for a non-Jewish citizen to have a sense of membership, a sense of belonging, in the larger society that is integral to the political theory conception of citizenship. Arab citizens of the Jewish state cannot be expected to identify with the state in a way

that will undergird their full participation in the development of a common Israeli-*Jewish* political community.

For this reason, some scholars have recently been discussing Israel as an "ethnic democracy"⁵⁶ in which "Jews and Arabs formally enjoy equal citizenship rights, [but] only Jews can exercise their citizenship in practice by attending to the common good."⁵⁷ Conceptually, in an "ethnic democracy," members of the minority group "can avail themselves of democratic means to negotiate better terms of existence. The crucial test is whether reform can be effectuated through the use of democratic procedures."⁵⁸ Given the firm commitment of its Jewish majority to maintaining Israel's identification as the "Jewish state," the ethnic democracy concept provides the most appropriate basis for discussing citizenship in Israel. The appropriateness of the ethnic democracy concept is also illustrated by the response to Menachim Begin's 1976 suggestion that an Arab Israeli be considered for appointment to the Supreme Court. The suggestion was roundly criticized. In addition to the standard criticism based on the need to keep the judicial appointment process free of any considerations other than legal expertise, there were general objections directed against the mere possibility of an Arab justice. How could an Arab justice interpret the law according to the Jewish tradition? Moreover, because the President of the Court is invariably nominated and appointed according to seniority, there would be the possibility of an Arab filling that position; how could an Arab be President of the Supreme Court of the Jewish state? To date, no Arab has served as a Supreme Court justice.⁵⁹ Given these factors, many scholars have concluded that implementing the concept of ethnic democracy is the most feasible way of approximating the ideal of an active, jointly shared citizenship.

If Israel is an ethnic democracy in which Jews are accorded superior status, and Arabs, by definition, are regarded as second-class citizens, then it becomes even more important that Arabs have equal access to governmental services. Israeli Arabs already enjoy equal rights, including the right to vote. But the equalization of governmental services provides another essential means through which Arabs can link their fate (if not their basic identity) with the Jewish state.

As in any democracy, access to government benefits and services is related to political power. Historically, Arab voters have been marginal to the Israeli policy-making process. Israel's omnipresent security interests made Arab political parties non-coalitionable. Because those parties were not even considered as potential partners of a cabinet coalition, Arabs lacked the political

leverage to obtain governmental benefits; the services they actually did receive were entirely dependent upon the beneficence of Jewish parties. That situation changed in 1994 when the Labor-led coalition became dependent upon the support of the Arab parties in the Knesset. This provided considerable impetus to the efforts for equalizing government support for all citizens, Arabs as well as Jews.⁶⁰

The enhanced ability of Israeli Arabs to negotiate for material benefits in the post-1994 Knesset came at a high price. When the Oslo peace arrangements with the Palestine Liberation Organization needed Knesset approval, the Arab parties supplied the critical votes sustaining the government's position. This provoked widespread criticism from the opposition parties. Similarly, when it initially appeared that Prime Minister Shimon Peres might be re-elected in the extraordinarily close 1996 elections, opposition leaders were quick to condemn that outcome precisely on the grounds that it would be achieved with significant support from Arab Israelis. Only when Likud's Binyamin Netanyahu emerged victorious, did these comments recede. These comments openly called into question the legitimacy of government policies sustained by Arab votes. According to parties representing slightly more than half of Israel's Jews, it is not legitimate for Arab citizens to participate in the democratic process, at least as far as their country's security policies are concerned. Moreover, some opposition leaders seemed to call into question the legitimacy of *any* Arab participation in the political processes of the Jewish state.

The latter viewpoint handicaps any effort to equalize the status of Israeli Arabs, even the circumscribed citizenship status within the concept of "ethnic democracy." Orthodox interpretations of *halakhah* reinforce that position because they tend to delegitimize the citizen status of non-Jews in the Jewish state. Within *halakhah*, as understood by many Orthodox authorities, non-Jews are seen as distinct from, and religiously inferior to, Jews. Gentiles are understood to be outside the bounds of the Sinai covenant. This result is the establishment of a differing status in God's world for Israel and the other nations, with Israel becoming the nation nearest to God.⁶¹ While it is certainly possible to develop a different approach based upon the common humanity of Jew and non-Jew,⁶² that is not the conventional Orthodox understanding. Most Orthodox continue to insist upon the religious superiority of Jews, at least those Jews whose beliefs and actions are guided by the Orthodox interpretation of *halakhah*. To the extent that the state approximates the professed goal of the country's Orthodox Jewish community — that Israel become a state squarely based on its view of *halakhah* —

Israel's Arab citizens will inevitably be further alienated from the national society. *Any* sense of identity, of commonality, with the majority Jewish population will be more difficult to sustain. Such a *halakhic* state could justify the continued discrimination against Arab citizens in the provision of material benefits. Moreover, because such a state would be based upon Judaic norms totally foreign to its Arab minority, they could not find *any* psychological-emotive basis therein with which they could identify. Rather than identifying with the national society — the predicate for the political theory conception of citizenship — Arab Israelis would strengthen their identification with their own particularistic communities. In an Israel where an Orthodox view of *halakhah* was the law of the state, Arab Israelis would feel more like subjects than citizens.

Within the concept of ethnic democracy, the primary focus is on the nature and quality of the citizenship of members of the dominant community. But even in terms of the Jewish majority, the Orthodox interpretation of *halakhah* is proving to be an obstacle to the development of a common political culture and citizenship. This problem is connected to an unresolved tension within the Zionist movement that established Israel. The Zionist founding fathers differed in their assessments of the role that Orthodox Judaism should play in defining the nature of the Jewish state which emerged from the shared heritage of the Jewish people. An example of that tension is reflected in the debate about "who is a Jew."

There is no doubt that the *halakhic* definition of who is a Jew contributed mightily to the survival of the Jewish people over the millennia. The Jewish people emerged in a world where religion defined a people's ethnicity. Later, the development of the *halakhic* definition of Jewishness helped preserve a Jewish sense of identity in the diaspora. At least until the Enlightenment, *halakhah* contributed to a feeling of unity by fostering a common descent and a common culture based upon shared religious beliefs and practices. In the ancient world (after the destruction of the Second Temple) and in the medieval period, the *halakhic* definition was extraordinarily functional because of its combination of descent and belief. In practice, new members of the Jewish people by conversion were rare. But the rabbinic definition of "who is a Jew" indicated that they were a people defined, at least formally, by the observance of *halakhah*. Birth by a Jewish mother provided for an easy biological identification of Jews in a world where Jewish communities were always potentially, and sometimes actually, subject to attack by their militarily stronger Christian and Muslim hosts.

In the ancient and medieval world, the definition of who is a Jew was an important element in the way *halakhah* helped sustain the Jewish people. In the words of the historian Jacob Katz:

It was the achievement of the *halakhah* that it prevented the community and the individual from being engulfed by the social and religious life of the [gentile] environment, by setting a limit to what might be conceded to the force of circumstances. The *halakhah* was not responsible for creating the wish for social and religious disengagement. This arose spontaneously from the community's adherence to its own image of its past as pictured by tradition. The barrier which served as a means of separation was but the logical consequence of the religious or mystical thinking of the Jewish community which accepted this position. The *halakhah* was called upon to elaborate the details of the socio-political separation.⁶³

The individualism spawned by the Enlightenment, however, severed the ancient attachments between religion and national identity for some Jews. Religious differences were to be superseded by common citizenship in a territorial national state, and thus common religious principles were of no consequence. One could be a religious Jew *and* a Frenchman, or a Jew culturally (ethnically) but not religiously. Of course, it was possible for an individual to retain the historic identity of being Jewish both religiously and ethnically. In the post-Enlightenment world, the *halakhic* definition increasingly ceased to be meaningful to a great number of Jews. Indeed, for the majority of Israeli Jews, *halakhah* itself has been replaced by a perception of common ethnic identification that provides a sense of unity.

The various opinions in *Rufeisen* and *Shalit* indicate that the justices of the Israeli Supreme Court all recognized this. In his *Shalit* opinion, the President of the Court, Justice Agranat, provided an extensive summary of the scholarly literature to emphasize the lack of agreement on the factors which create a sense of national identity in the modern world. The most commonly cited definition in the court opinions was by a notable Zionist thinker, Arthur Ruppin: "A man belongs to that nation, that is, that national group, to which he feels the greatest affinity through history, language, culture and common customs. A nation means a community of people who share the same fate and culture."⁶⁴

It is a sense of unity, of commonality, that undergirds the political theory conception of citizenship. That is why the long-standing Zionist and Israeli government objective has always been to create

a common Jewish political culture. They have sought to mitigate differences, encourage toleration, and nurture a sense of unity.⁶⁵ Unity among Jews was seen as the necessary precursor for their active participation in developing their shared destiny, the Jewish State of Israel.

The Law of Return and the Nationality Law were designed to promote solidarity among Jews. Those who came to Israel and even those who were born there were equally citizens by return. In part, the Law of Return has worked as intended. It has facilitated the identification of worldwide Jewry with Israel; in some sense they see it as their state. Jews worldwide have rallied in support of Israel during times of trouble, as during the 1967 and 1973 wars. They have identified with pride at Israel's achievements such as its spectacular victory in the Six-Day War, the raid on Entebbe, and the continued absorption of Jews from troubled lands like Ethiopia, Syria, and the former Soviet Union. Worldwide Jewry suffered and mourned with their Israeli brethren at the assassination of Prime Minister Rabin. These feelings of identification are what make any attempt to change the Law of Return so difficult. Most non-Orthodox Israeli leaders do not wish to sacrifice the solidarity felt by Jews in the diaspora to satisfy the demands of the Orthodox political parties.

The Orthodox also strongly believe in the need and desirability of unity among Jews. They insist that this unity must be based upon adherence to Torah and in conformity to their interpretation of *halakhah*. Unity, for the Orthodox, is not based upon a union of choosing individuals. Theirs is an "objective" collectivity based upon an Orthodox interpretation of *halakhah*. After all, *halakhic* norms themselves are products of the rabbinical effort to insure Jewish unity. Unity is why the Orthodox police the norms governing marriage, divorce, and descent so diligently. Should Israel — in Zionist ideology, the modern outgrowth of that painfully nurtured sense of Jewish national identification — sanction a break with the God-ordained tradition from which it developed? Could all other efforts to root Israeli culture in the Jewish tradition survive so radical (from the Orthodox perspective) a departure? If not for *halakhah*, how would Israel maintain its distinctive identity, its biblical mandate to be a "light unto the nations?"

There are considerable divisions on many issues among Israel's various Orthodox communities. But it is noteworthy that they are united on the issue of "Who is a Jew." There are occasional disagreements as to when it is politically prudent to press for amending the Law of Return and the Population Registry Law so that they conform to an Orthodox interpretation of *halakhah*; there is no

disagreement, however, about the substance of such proposals. For all Orthodox groups are united on the theological proposition that their view of *halakhah*, as the embodiment of God's will, is the very basis of the Jewish people.

The Orthodox definition of "who is a Jew," however, does not accord with the demographic and sociological reality of the Jewish people today. Most Jews, in Israel and the diaspora, are not Orthodox. Yet a majority of the world's Jews appear to identify with the Jewish people. The strong self-identification of the secular Jews of Israel actually resembles the nationalism found in most contemporary nation-states. It has little Judaic content. Secular Jews in Israel have no concern for the norms of *halakhah* as the embodiment of God's will. That is why the Israel Defense Force is the most important institution for building social solidarity in Israel — the IDF fosters mutuality because its success depends upon reciprocal responsibilities and obligations.⁶⁶ For the "traditional" and non-Orthodox but religious, Jews of Israel, there is an attachment to an ambiguously defined sense of the history and traditions of the Jewish people. The ideas and attitudes of the Israeli majority are, therefore, most in accord with the sociological definition of "who is a Jew," i.e., a person who identifies himself/herself with the Jewish people is a Jew.

It should also be noted that the non-Orthodox majority's views toward conversion are more in accord with the political theory conception of citizenship. In the contemporary world, converts, by definition, have actively thrown in their lot with the Jewish people. Therefore non-Orthodox Jews see little reason for making conversion an onerous process. Individuals who clearly indicate their desire to join the Jewish people (and a concomitant rejection of other religious affiliations) should be welcomed. "Jews by choice" demonstrate the very commitment required for an active participation in the nation's concerns.

It is likely that most Jews, in Israel and abroad, would accept the definition of "who is a Jew" utilized in *Rufeisen* and, subsequently, embedded in the 1970 amendments to the Law of Return and Population Registry Law: a Jew is a person born of a Jewish mother or who has been converted to Judaism and who is not a member of another religion. To be sure, Reform Jewry has accepted patrilineal as well as matrilineal descent as indicative of membership in the Jewish people. But this has not been accepted by the other non-Orthodox streams in Judaism (Conservative, Reconstructionist), and even the Reform rabbinate appears to be having second thoughts.⁶⁷ In any event, this American issue has not, as yet, been the focus of the heated discussions in Israel about the

Law of Return and the law governing conversions to Judaism in Israel. The existing legal definition of "who is a Jew" *might* provide the foundation on which to build a common Israeli sense of citizenship, at least for Jews.

But this will not happen unless the Orthodox community is willing to surrender its control over who may legitimately be considered a Jew, at least for membership in the *political* community. Failure of the Orthodox leadership to make their peace with contemporary reality will only continue the sense of disunity within the Israeli (and world) Jewish community. For it is now painfully obvious that a Jewish national identity cannot be built upon the traditional *halakhic* definition of who is a Jew; most of Israeli (and world) Jewry are not *halakhic* Jews in the sense that they feel an internal obligation to obey that normative system. Perhaps the Orthodox community should recognize that the issue of who is a member of the political community resides in the realm of *Mishpat Hameluchah*, that it is an issue which *halakhah* itself recognizes as within the discretionary authority of the state.⁶⁸ In any event, if the Orthodox continue to insist upon the relevance of the *halakhic* definition of who is a Jew for membership in the Jewish people, no sense of solidarity can emerge among the Jewish majority of Israel.

A sense of solidarity is only a *necessary*, not a *sufficient*, condition for a viable citizenry in the political theory conception of citizenship. More is required. Political theorists insist upon the importance of citizenship because they believe it should entail a shared commitment to substantive values and to a shared vision of the past and future of a nation. A shared sense of national identity is necessary to facilitate joint participation in nation-building, but as any American can attest, it is not enough. Israel as an ethnic democracy, has marginalized the participation of its Arab citizens. If it cannot find a way to develop solidarity among all segments of its Jewish majority, Israel will never be in a position to develop more than a weak conception of citizenship based upon a shared commitment to rule-making procedures and toleration. Given the rich heritage of the Jewish people, surely the citizens of Israel, at least its Jewish majority, should be striving together to develop a more ennobling civilization.

Notes

1. Jean Bodin, *The Six Books of a Commonweale* (1576). Edited by K.D. McRae (Cambridge: Harvard University Press, 1962).
2. I. Brownlie, "The Relations of Nationality in Public International Law," *British Yearbook of International Law*, 39(1963):284.
3. Michael Walzer, *Obligations* (Cambridge: Harvard University Press, 1970), ch. 10: "The Problem of Citizenship."
4. Carl Brinkman, "Citizenship," *Encyclopedia of the Social Sciences*, vol. 3 (New York: Macmillan, 1930), p. 472.
5. Seymour Martin Lipset, *Political Man* (Garden City: Doubleday, 1960), p. 79.
6. James Kent, *Commentaries on American Law*, vol. 2, 6th ed. (Boston: Little, Brown, 1848), p. 258.
7. See Martin Edelman, "Citizenship and Comparative Legal Studies," *Crossroads*, 31(1991):86-87, for a brief survey of this process. Obviously the elimination of American slavery and its consequences were (and are) the central issues.
8. Israel is an exception to the norm in this regard. Some Jews in the diaspora perceive the need and their right to participate in the policy-making process in the Jewish State. Official Zionist ideology of Israel makes it difficult for the Israeli government to control that participation. This aspect of membership in the Jewish people is *not* discussed here. See Daniel J. Elazar, *People and Polity: The Organizational Dynamics of World Jewry* (Detroit: Wayne State University Press, 1989).
9. 4 Laws of the State of Israel (L.S.I.) 114, sec. 1.
10. 6 L.S.I. 50, sec. 2.
11. As quoted in M.D. Gouldman, *Israel Nationality Law* (Jerusalem: Institute for Legislative Research and Comparative Law, 1970), pp. 19-20.
12. 4 L.S.I. 114, sec 4A. This 1970 amendment specified the close relatives "as 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/her religion." The situation of non-Jewish relatives admitted under the Law of Return (now estimated at approximately 200,000 Israeli citizens) is *not* discussed here.
13. 4 L.S.I. 114, sec. 2.
14. *Ibid.*, sec. 3.
15. 6 L.S.I. 50, sec. 2. Actually this section of the Nationality Law refers to "a person" (not only a Jew) born in Israel, but it has always been interpreted to apply only to Jews since the Law of Return applies only to Jews.
16. Eastern (Greek Orthodox), Latin (Catholic), Gregorian Armenian, Armenian (Catholic), Syrian (Catholic), Greek Catholic (Melkite), Maronite, Syrian Orthodox, Chaldean (Uniate), and Evangelical Christian.

17. Amnon Rubinstein, "Law and Religion in Israel," *Israel Law Review* 2(1967):380-414.
18. Martin Edelman, *Courts, Politics, and Culture in Israel* (Charlottesville: University Press of Virginia, 1994).
19. Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 1953, 7 L.S.I. 139.
20. See H.L.A. Hart, *The Concept of Law* (London: Oxford University Press, 1961), ch. 5, for the importance of an internal perspective for the concept of obligation.
21. Charles Liebman, "Religion and Democracy in Israel," in Ehud Sprinzak and Larry Diamond, eds., *Israeli Democracy Under Stress* (Boulder, CO: Lynne Rienner, 1993), pp. 284-85. Some demographers no longer use the tripartite Orthodox-Traditional-Secular categorization. Instead, they use a four item scale: strictly observant, observant to a great extent, somewhat observant, totally non-observant. Using that measure, 14 percent of Israeli Jews define themselves as "strictly observant," 24 percent say they are "observant to a great extent," approximately 40 percent report themselves "somewhat observant," and about 20 percent describe themselves as totally non-observant. Charles Liebman and Elihu Katz, eds., *The Jewishness of Israelis* (Albany, N.Y.: SUNY Press, 1997), pp. 2-3.
22. 16 P.D. 2428; S.J. (special volume) 1 (1971). All citations herein are to S.J.
23. S.J. (special volume) 3-10 (per Silberg, D.P.); 13 (per Cohn, J.). But see 23, where Landau, J. indicates that Talmudic and *halakhic* authorities might disagree about the "Jewishness" of an apostate who voluntarily embraced another religion.
24. *Ibid.*, 13-18.
25. *Ibid.*, 10 (per Silberg, D.P.).
26. *Ibid.*, 11 (per Silberg, D.P.). See also 22 (per Landau, J.): "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. It makes no difference whether the change was effected for reasons of expediency or out of sincere inner conviction as with [Brother Daniel]. He has denied his national past and can now no longer be fully integrated into the organized body of the Jewish community as such. By changing his religion he has erected a barrier between himself and his brother Jews, especially as this change has assumed so extreme a form as entering the gates of the monastery."
27. *Ibid.*, 32 (per Berinson, J.).
28. (1969) 23 (II) P.D. 477; S.J. (special volume, 1973) 35.
29. 19 L.S.I. 288.
30. S.J. (special volume, 1973) 47.
31. *Ibid.*, 74.
32. *Ibid.*, 186.
33. *Ibid.*, 77-96 (per Landau, J.); 148-184 (per Agranat, P.).

34. *Ibid.*, 56.
35. *Ibid.*, 53 (italics in the original).
36. *Ibid.*, 58 (italics in the original).
37. *Ibid.*, 115.
38. Section 4B of the amended Law of Return; section 3A(b) of the Population Registry Law, 1965.
39. For other examples see, Menacham Elon, *Jewish Law: History, Sources, Principles* (Philadelphia: Jewish Publication Society, 1994).
40. On the second reading of the 1970 amendment, the language favored by the Orthodox was rejected. *Divrei HaKnesset* 56: 1137-1170 (in Hebrew).
41. *Miller v. Minister of the Interior* (1988) 40 (IV) P.D. 436.
42. *Jerusalem Post International Edition*, 4 March 1995, p. 5. An Orthodox MK, during the heated Knesset discussion of this incident, said that both Reform and Masorti rabbis "are terrorists, not rabbis."
43. (H.C. 1031/93) *Elian (Chava) – Pashu (Goldstein) et. al v. Minister of the Interior et. al* (November 12, 1995).
44. 7 L.S.I. 139.
45. Central Bureau of Statistics, September 22, 1995. Jerusalem: Israel. There are an estimated 4.51 million Jews (81 percent); 805,000 Muslims (14.4 percent); 160,000 Christians (2.9 percent); and 95,000 Druze (1.7 percent).
46. 6 L.S.I. 50, sec. 3. The law is written this way in order to deal with the problem of refugees who left Israel during the Israel War of Independence.
47. *Ibid.*, sec. 4.
48. *Ibid.*, sec. 10 and 11.
49. *Shalit v. Minister of Interior*, S.J. (special volume, 1973) 141.
50. *Ibid.*
51. In the 1996 elections, 79.7 percent of all eligible voters participated. The Jewish turnout was approximately 80 percent, the Arab turnout 77.4 percent (Jerusalem: Central Bureau of Statistics). In the 1992 elections, the overall national turnout was 73.7 percent; the Arab turnout was 69.7 percent. Keith Kyle and Joel Peters, *Whither Israel?* (London: I.B. Tauris, 1993), pp. 144, 261.
52. Majid Al-Haj, "Mobilization Among the Arabs in Israel," in Efraim Ben-Zadok, ed., *Local Communities and the Israeli Polity* (Albany: SUNY Press, 1993), p. 68. Some differences in benefits result from other categorizations in Israeli law such as military service. But since Arabs are excluded from military service by law, the state's discrimination remains. That discrimination is made even more obvious by state subsidies to ultra-Orthodox families with large numbers of children, since the ultra-Orthodox do not serve in the IDF.
53. Edelman. *Courts, Politics, and Culture in Israel*, pp. 74-76.

54. Carole Pateman, "Democracy and Democratization," *International Political Science Review* 17(1996):9.
55. David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder: Westview, 1990), p. 31 (emphasis in the original).
56. Sammy Smootha, "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," *Ethnic and Racial Studies*, 13(1990):389-418.
57. Yoav Peled, "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State," *American Political Science Review*, 86(1992):32.
58. Smootha, "Minority Status in an Ethnic Democracy," p. 410.
59. Edelman, *Courts, Politics, and Culture in Israel*, p. 40. By way of contrast, India since it became an independent democracy in 1949 (one year after Israel) has had 3 non-Hindu Presidents (2 Muslims, 1 Sikh) and many non-Hindu Supreme Court justices (the current Chief Justice is a Muslim) despite India's predominant Hindu population.
 In 1999, Judge Abdel Rahman Zuabi will begin serving as a temporary Israeli Supreme Court justice. Temporary justices help alleviate the court's workload, and are sometimes later appointed as Supreme Court justices. Since Judge Zuabi is 65, and judges must retire at age 70, there is no possibility that even if he receives that appointment, that his seniority will permit him to become Deputy President or President of the Israeli Supreme Court.
60. David Rudge, *The Jerusalem Post*, December 28, 1995, p. 12: "A recent nationwide survey shows that almost 85 percent of Arab and Druse citizens feel the Labor-led government has done more than any other to improve the lot of Israeli Arabs....The findings also reveal that the vast majority of Israeli Arabs are more concerned about their own interests, as citizens of the state, rather than external nationalist Palestinian considerations....The poll showed that the aspiration to achieve social and economic equality with their Jewish counterparts will be the fundamental consideration of Arab voters in the next election."
61. Jacob Katz, *Exclusiveness and Tolerance* (New York: Schocken Books, 1962), p. 15. The *Aleinu* prayer, because of its authorship and its placement at the conclusion of every service is seen as having profound significance. Its first paragraph proclaims the difference between the Jewish concept of God and that of other nations: "It is our duty to praise the Master of all, to ascribe greatness to the Molder of primeval creation, for He has not made us like the nations of the lands....For they bow to vanity and emptiness and pray to a god which helps not...." The last sentence was dropped from Ashkenazic prayers in 1400 CE to avoid potential Christian persecution. While many Ashkenzai congregations have not returned it to their prayers, some Orthodox congregations have, and it remains a standard part of Sephardic prayers.
62. *Ibid.*, pp. 157-196.