

# THE FUTURE OF COMBINING SYNAGOGUE AND STATE IN ISRAEL: What Have We Learned in the First 50 Years?\*

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### I. INTRODUCTION

*“The government will act to bring the religious and secular closer through mutual understanding and respect.”<sup>1</sup>*

There is no doubt that religion is woven into various aspects of the State of Israel.<sup>2</sup> Religious influence is evident in the symbols representing the government of Israel, institutions supported by the state, and legislation passed in the Knesset, Israel’s parliament.<sup>3</sup> There is virtually no protest to religious symbolism or even much protest to the government supporting religious institutions.<sup>4</sup> What draws the most criticism is the legislation that compels the Jewish citizens to adhere to certain religious practices, such as the Sabbath rest laws.<sup>5</sup> This kind of protest should be expected within a country that still has not clearly defined the role of religion, in its government.<sup>6</sup>

Israel, a self proclaimed Jewish Democratic State, has three choices in defining its goals for the relationship of Judaism to the Knesset.<sup>7</sup> Israel can be a state where the majority of its citizens are Jewish, a nation-state that realizes the Jewish nation’s right to self governance or a religious

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\* This comment is dedicated in the loving memory of Moshe Endelstein.

<sup>1</sup> MINISTRY OF FOREIGN AFFAIRS, *Guidelines of the Government of Israel, June 1996* (visited Feb. 12, 2000) <<http://www.mfa.gov.il/mfa/go.asp?MFAH00hm0>>.

<sup>2</sup> See generally CHARLES S. LIEBMAN & ELIEZER DON-YEHIYA, RELIGION AND POLITICS IN ISRAEL 15-18 (1984).

<sup>3</sup> See *id.* At 15-18, 24.

<sup>4</sup> See generally *id.* (discussing the fact that there has been opposition in secular circles to symbolic verbal expressions of a decidedly religious nature upon which it was difficult to impose national or social meaning.)

<sup>5</sup> See *id.* at 24.

<sup>6</sup> See *id.* at 15, 28-29.

<sup>7</sup> See Ruth Gabizon, *Medina Yehudit ve Democratit: Zehut Politit, Ideologia, ve Mishpat [A Jewish Democratic State: Political Identification, Ideology and Law]*, in MEDINA YEHUDIT VE DEMOCRATIT [A JEWISH AND DEMOCRATIC STATE] 169, 180-182 (Daphne Barak Erez ed., 1996) (defining the three roles that Jewishness can play in the State of Israel).

state guided purely by the laws of Judaism.<sup>8</sup> Perhaps it is a combination of these three definitions that has emerged over the past fifty years. This comment takes a historical look at the role that religion has played in Israeli politics, society and government, and allows the reader to decide where the 21<sup>st</sup> Century will take Israel.

## II. HISTORICAL BACKGROUND

### A. Zionist Movement

*“The world needs the Jewish State; therefore it will arise.”<sup>9</sup>*

Faced with the rise of anti-Semitism throughout Europe, Zionism, or Jewish nationalism, was revived by Theodor Herzl, an educated Western European Jewish journalist and author.<sup>10</sup> Herzl brought the concept of creating a Jewish homeland to the attention of international leaders and politicians.<sup>11</sup> However, Herzl realized that simply writing about the needs of Jews was not enough and that to help the movement organization and action were necessary.<sup>12</sup> Thus, the World Zionist Congress was convened on August 29, 1897<sup>13</sup>, where the Congress created a permanent Zionist Organization through which it could work to achieve its goals.<sup>14</sup> Though the Zionist movement initiated by Herzl was political by nature, there were essentially three varieties of Zionism: Religious, Socialist and Zionism as refuge.<sup>15</sup> The religious idea is the oldest of the three.<sup>16</sup> One

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<sup>8</sup> See *id.* at 180-82.

<sup>9</sup> An excerpt from Theodor Herzl's *Der Judenstat (The Jewish State)*, an essay that he wrote after he witnessed the Dreyfuss affair (the arrest and degradation of a French Jewish army captain.) HOWARD M. SACHAR, *A HISTORY OF ISRAEL: FROM THE RISE OF ZIONISM TO OUR TIME* 38-40 (2d ed. Rev. 1996).

<sup>10</sup> See generally *id.* at 17, 36-38.

<sup>11</sup> See *id.* at 41.

<sup>12</sup> See *id.* at 43-44. Herzl in a letter to Jacob de Haas, written on July 21, 1896, wrote, “There is only one reply to this situation: Let us organize out masses immediately.” See *id.* at 44.

<sup>13</sup> See generally *id.* at 44 (discussing the fact that the notion of calling “a general Zionist day”, which ultimately evolved into a Zionist congress, was first suggested to Herzl in January 1897 and that following a series of events including both international support and criticism, the first Zionist Congress convened in Basle, Switzerland on August 29, 1897).

<sup>14</sup> See *id.* at 46.

<sup>15</sup> See RAELE JEAN ISAAC, *PARTY AND POLITICS IN ISRAEL: THREE VISIONS OF A JEWISH STATE* 2-5 (1981).

of the central themes of the Jewish religion is the tie between the people and the Land of Israel, as described in the Torah (the Old Testament).<sup>17</sup> This theme has been traced back to the covenant between God and Abraham.<sup>18</sup> The Socialist idea, the dominant view among those Jews that arrived as early pioneers into Palestine, envisioned a perfect socialist society intertwined with Jewish beliefs.<sup>19</sup> Most of the supporters of this idea were either indifferent, or perhaps even hostile to religion.<sup>20</sup> Their goal was the rebuilding of the Jewish culture.<sup>21</sup> Finally, the concept of Zionism as refuge saw the creation of the Jewish State as a solution to the European problem of the Jews.<sup>22</sup> Jews that found themselves dealing with anti-Semitism would have a place to run away to and be welcomed in.<sup>23</sup> This idea was well received but it lacked detailed planning of the state-building process, unlike the other two views.<sup>24</sup> This view was then divided further by the Revisionists and the General Zionists B.<sup>25</sup> The Revisionists were concerned with boundaries and the territory that would be in Israel's control, while the General Zionists B were concerned with countering the Socialist ideology and promoting free enterprise and capitalism.<sup>26</sup>

From the beginning of Zionism there were varying opinions among the Religious Jews.<sup>27</sup> Notwithstanding the religious calling for a Jewish state, many Religious Jews did not support the establishment of Israel and actually

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<sup>16</sup> *See id.* at 2.

<sup>17</sup> *See id.* at 2-3.

<sup>18</sup> *See id.* at 2 (stating that according to Judaism, the land of Israel was given to the Jewish people through God's covenant with Abraham).

<sup>19</sup> *See id.* at 3.

<sup>20</sup> *See id.*

<sup>21</sup> *See id.* (describing the idea that supporters of the Socialist idea aimed at creating "a new man and a new society").

<sup>22</sup> *See id.* at 4.

<sup>23</sup> *See id.*

<sup>24</sup> *See id.* (noting that those who viewed Zionism as refuge did not lack views of what the future state would look like, but that specific blueprints could await the time when the state was won, but those moved by the religious or socialist vision and believed the state must be more than a refuge saw the process of nation-building extricably bound up with the final target, that of establishing the reign of the Torah or of molding the just society built upon Jewish labor).

<sup>25</sup> *See id.* at 4-5.

<sup>26</sup> *See generally id.*

<sup>27</sup> *See discussion infra, notes, 27-33 and accompanying text.*

condemned it.<sup>28</sup> They believed that the state should be created by the Messiah and not by men.<sup>29</sup> Others saw Zionism as another fake messianic movement.<sup>30</sup> Religious Jews were badly scarred by several false messiahs in the sixteenth and seventeenth centuries.<sup>31</sup> So, many opined that this was another one of those false messianic movements disguised by the secularists.<sup>32</sup> Moreover, some religious Jews feared that by becoming just another country, like the hundreds of others in the world, Jews would assimilate and no longer be a religious nation.<sup>33</sup>

From all of these various theories of Zionism, political Zionism, branded by Theodor Herzl, emerged as the leading ideology.<sup>34</sup> Political Zionism was the Jewry's response to continued oppression and persecution in Eastern Europe and inadequate integration in Western Europe.<sup>35</sup> The Zionist movement's program contained both ideological and practical elements aimed at facilitating and promoting the return of the Jews to Israel where they would be free to develop their own culture, society, economy and politics.<sup>36</sup>

#### *The Balfour Declaration and the Mandate Period*

*"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people..."*<sup>37</sup>

On November 2, 1917 Arthur James Balfour, England's Foreign Secretary issued a declaration, in the form of a letter to Lord Rothschild, President of the British Zionist Federation, calling for the establishment of a national Jewish homeland.<sup>38</sup> The wording of the Declaration was very

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<sup>28</sup> See *id.* at 2.

<sup>29</sup> See *id.* at 2-3.

<sup>30</sup> See *id.* at 17-18, See also Daniel Doran, *Exile Was Another World*, THE JERUSALEM POST, January 27, 2000 at Opinion (noting that such a view continues today with the anti-Zionist ultra Orthodox Neturei Karta).

<sup>31</sup> See *id.* at 18 (discussing the messianic movements of Solomon Molcho, David Hareuveni and Shabtai Zevi and their effects on religious Jews).

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See ISRAEL INFORMATION CENTER, FACTS ABOUT ISRAEL 25 (1995) [hereinafter Facts].

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> Balfour Declaration, excerpt reprinted in SACHAR, *supra* note 9, at 109.

<sup>38</sup> See *id.*

specific to avoid any controversy or conflict.<sup>39</sup> Thus the term “national home” was picked over “Jewish state” to avoid upsetting the Turks.<sup>40</sup> Also the word “in,” placed right before Palestine, was a conscious choice of Balfour’s to not set any specific boundaries for the future “national home.”<sup>41</sup> The Declaration, though a great step forward for the Zionists, was not purely for the benefit of the Zionist movement.<sup>42</sup> It was designed to gain Jewish support for the British war effort and ensure British control over Palestine if the Ottoman Empire was to collapse.<sup>43</sup>

As predicted by Great Britain, the Ottoman Empire did collapse after WWI and England gained the control it had wanted over Palestine.<sup>44</sup> In 1920 the League of Nations legitimized the British mandate over Palestine.<sup>45</sup> This mandate, as described by the White Paper, would still enforce the need for a “national home” for Jews, but at the same time, it made clear that there would be no independent political foundation in Palestine.<sup>46</sup> The political system would be in the control of the British.<sup>47</sup> Though a minor setback, the Zionists were not discouraged and Jewish immigration into Palestine flourished throughout the 1930s.<sup>48</sup>

In 1939 England issued another White Paper.<sup>49</sup> It stated that the building of the Jewish homeland was now completed, that only 75,000 Jews were to be allowed to enter Palestine in the next five years, and that after that period no more Jews would be allowed in without Arab consent.<sup>50</sup> It also made it increasingly difficult for Jews to purchase land in Palestine.<sup>51</sup> The cruelest part of this White Paper was that it restricted Jewish immigration into Palestine at the very

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<sup>39</sup> See *id.* (explaining the reasons for choosing such careful wording).

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See CONGRESSIONAL QUARTERLY, THE MIDDLE EAST 246 (Daniel C. Diller et al., 8th ed. 1994).

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.* at 247.

<sup>46</sup> See SOLOMON GRAYZEL, A HISTORY OF THE JEWS 722, 763 (2d ed. 1968).

<sup>47</sup> See *id.*

<sup>48</sup> See SACHAR, *supra* note 9, at 189.

<sup>49</sup> See GRAYZEL, *supra* note 46, at 766.

<sup>50</sup> See *id.*

<sup>51</sup> See *id.*

time when millions of European Jews were facing merciless destruction at the hands of the Nazis.<sup>52</sup>

Throughout WWII, the Palestinian Jews provided England with soldiers in its fight against Nazi Germany, but at the same time challenged England's control over Jewish immigration.<sup>53</sup> The *Haganah*, first created as a self-defense force was now being used to smuggle in Jews.<sup>54</sup> At the same time though, a small extremist faction began terrorist activities against the British military stationed in Palestine, believing this was the only effective way to deal with the British.<sup>55</sup> The mandate lasted until 1947, when Great Britain, tired of playing mediator between the Jews and Arabs, and fed up with terrorist activity against its own soldiers declared that it was going to end its mandate and withdraw from Palestine on May 15, 1948.<sup>56</sup>

#### *The Declaration of Independence – 1948*

*“Eretz Israel [The Land of Israel] was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped.”<sup>57</sup>*

After several failed attempts by the United Nations to partition Palestine into two separate areas (one Arab and one Jewish), the day that the British forces moved out, war broke out between the Arabs and the Jews.<sup>58</sup> As the Jews proclaimed the creation of the State of Israel on May 14, 1948, all of the neighboring Arab countries (Lebanon, Syria, Jordan, Iraq, Saudi Arabia and Egypt) joined forces to stop expansion of Jewish settlement and the capturing of territories.<sup>59</sup> After a bitter fight for almost a year, an armistice was finally signed on February 24, 1949.<sup>60</sup> Through this agreement, by 1950, Israel managed to gain over 8000 square miles of territory in Palestine.<sup>61</sup> After over

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<sup>52</sup> See *id.*

<sup>53</sup> See *id.* at 799.

<sup>54</sup> See generally Yoav Tadmor, *The Palestinian Refugees of 1948: The Right To Compensation and Return*, 8 TEMP. INT'L & COMP. L. J. 403 (1994).

<sup>55</sup> See *id.*

<sup>56</sup> See CONGRESSIONAL QUARTERLY, *supra* note 42 at 247.

<sup>57</sup> Declaration of Establishment of the State of Israel, 1 L.S.I. 3 & n. 1 (1949) . [hereinafter Declaration]

<sup>58</sup> See generally SACHAR, *supra* note 9, at 315-353 (relaying a detailed account of the war of independence), See also *infra* notes 60-63 and accompanying text.

<sup>59</sup> See *id.* at 315.

<sup>60</sup> See *id.* at 348.

2000 years of being virtually homeless, the Jews finally had the “national home” that they long desired.<sup>62</sup>

#### INITIAL ROLE OF RELIGION IN ISRAEL

##### *Attitudes Towards the Establishment of the State of Israel*

“When we say ‘Jewish independence’ or a ‘Jewish state’ we mean Jewish country, Jewish soil; we mean Jewish labour, we mean Jewish economy, Jewish agriculture, Jewish industry, Jewish sea. We mean Jewish language, schools, culture. We mean Jewish safety, security, independence, complete independence, as for any other free people.”<sup>63</sup>

Obviously, the Zionists that fought, both politically and physically, to create Israel had achieved their goal when Israel was declared to be an independent state.<sup>64</sup> As any look through Israel’s history (and the Zionist movement) will show, it was the secular Jews that pushed for the creation of Israel and brought it to the attention of the world.<sup>65</sup> The political and social movements within the general Zionist movement were the greatest promoters of immigration to Palestine for the purpose of increasing the Jewish population.<sup>66</sup>

There was also wide support among the religious Jews, but there were those that opposed Israel’s existence.<sup>67</sup> The term “religious Jew” is very broad and requires some explanation. The degree of “Jewishness,” or rather, the extent to which Jews follow the rules set out in the Torah, has been

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<sup>61</sup> See *id.* at 350 (noting that Israel gained twenty-one percent more land than had been allotted under the partition plan).

<sup>62</sup> See *id.* at 11-35 (explaining in general terms the history of the Jewish people from the biblical Israelites to the modern Israelis), See also *Facts, supra* notes 34 at 35.

<sup>63</sup> THE JEWISH AGENCY FOR PALESTINE, THE JEWISH CASE 66 (1947).

<sup>64</sup> See *Facts, supra* note 34 at 25 (stating that one of the goals of Zionism was to attain an internationally recognized, legally secured home for the Jewish people in its historic homeland, where the Jews would be free from persecution and be able to develop their own lives and identity).

<sup>65</sup> See Saul Lubetski, *Religion and State: Does the State of Israel Provide the Forum for the Revival of the Jewish Legal System?* 26 N.Y.U.J. INT’L L. & POL. 331, 332 (1994) (noting that the founders of Israel who considered themselves Jewish had for the most part become secularized).

<sup>66</sup> See ISAAC, *supra* note 15, at 48-49.

<sup>67</sup> See *id.* at 2-3 (explaining that religious Jews believed statehood would be established by messianic intervention, not by the efforts of secular Zionists).

classified into several groups: Reform, Conservative and Orthodox (or traditional Jews).<sup>68</sup> The former is the most lenient and the latter is the strictest adherence to the Torah.<sup>69</sup> Though the term “religious Jew” refers to the Orthodox as a whole, there is also a relatively new classification within Judaism known as ultra-Orthodox.<sup>70</sup> The ultra-Orthodox Jews believe that Israel will rightfully come into existence only after the Messiah has come.<sup>71</sup> Thus, originally, they did not believe in the establishment of an independent Jewish state and did not participate in the national holidays.<sup>72</sup> However, Orthodox Jews now participate vigorously in Israeli society and politics.<sup>73</sup>

Immediately before the Declaration of Independence in 1948, there were 3 distinct political elements.<sup>74</sup> Firstly, there was nationalism, acting as the political stronghold of Zionism with a civilian army.<sup>75</sup> Secondly, there was the Orthodox religious community, headed by a body called the Rabbinate, which desired the same ultimate goal as the nationalists while keeping Jewish tradition as one of the prerequisites to

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<sup>68</sup> This distinction is a product of the assimilation of Jewish immigrants in America throughout approximately the last 100 years or so. As immigrants came from various Eastern European backgrounds, the different cultures and practices began to naturally form separate groups within Judaism. WEBSTER'S NEW UNIVERSAL ENCYCLOPEDIA 619 (1997). In Israel, there are not this many classifications. A Jew is either Orthodox or secular. However, within Orthodoxy, as mentioned, the ultra-Orthodox have grown into their own sect on certain political issues. See *First- and Second-class Jews*, THE ECONOMIST, June 21, 1997, at 47.

<sup>69</sup> See WEBSTER'S NEW UNIVERSAL ENCYCLOPEDIA 618 (1997).

<sup>70</sup> Orthodox Jews are commonly called traditional Jews, who follow the Torah strictly and adhere to the binding authority of Jewish law. The ultra-Orthodox are not “new” in the ordinary meaning of the word. This denomination or faction of Judaism has been around as long as Judaism, but has only recently been labeled as “ultra-Orthodox” in order to show that there is a sect within the Orthodox that is considered to be fundamentalist, especially in terms of political views. See KERRY M. OLITZKY & RONALD H. ISAACS, A GLOSSARY OF JEWISH LIFE 212 (1992).

<sup>71</sup> See ISAAC, *supra* note 15, at 2-3.

<sup>72</sup> See generally S. CLEMENT LESLIE, THE RIFT IN ISRAEL 58-60 (1971).

<sup>73</sup> For the purpose of this article, ultra-Orthodox Jews will be treated separately from Orthodox Jews as a way of establishing them as the Orthodox sect that initially opposed a secular state. The term “religious Jews” can be used interchangeably with “Orthodox Jews,” as it will cover all observant Jews. Orthodox, as a term, covers a very broad spectrum of religious practice and adherence to the Torah. The reader should keep in mind that the ultra-Orthodox are a minority within the Orthodoxy as a whole.

<sup>74</sup> See LESLIE, *supra* note 72, at 28.

<sup>75</sup> See *id.* at 28-29.

creating a Jewish state.<sup>76</sup> Finally, there was what is now labeled as the ultra-Orthodox wing who opposed Zionism, but was willing to allow an independent state in order to protect Judaism.<sup>77</sup> These elements created a broad spectrum of ideologies which needed to somehow be united in order to have a successful, or at least functioning, government system.<sup>78</sup>

*Ben Gurion Decides on Combining Religion and the State*

*“Any government leader must prescribe for himself priorities, must decide on first things first...”<sup>79</sup>*

Ben Gurion, as the first Prime Minister of Israel, was faced with the difficult decision of deciding what role religion was to play in Israel’s government.<sup>80</sup> The politicians agreed that the Orthodox Zionist Rabbinate should participate in the government.<sup>81</sup> It was decided that the government would subsidize the Rabbinical institutions and remain within the jurisdiction of the Supreme Court.<sup>82</sup> For Ben Gurion it was a way for the country to hold religion within its hands.<sup>83</sup> For the Orthodox Zionists it was a way to protect Judaism.<sup>84</sup> There were, however, those sects within the Orthodox, like some of the ultra-Orthodox, that did not want to be under the control of the government at all and created their own private institutions without government support.<sup>85</sup> However,

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<sup>76</sup> See *id.*

<sup>77</sup> See *id.*

<sup>78</sup> See LESLIE, *supra* note 72, at 28-29 (describing the various ideologies that were influencing the political growth of Israel).

<sup>79</sup> Ben Gurion justifies his position in accommodating the Orthodox members of his coalition. See SACHAR, *supra* note 9, at 378.

<sup>80</sup> See *id.*, See also World Book Encyclopedia Online- David Ben Gurion, <<http://www.worldbook.com/fun/wbla/israel50/html/ldrbgur.htm>> (visited March 12, 2000) (noting that David Ben-Gurion became the first Prime Minister of Israel in 1948).

<sup>81</sup> See *generally* CHARLES S. LIEBMAN AND ELIEZER DON-YEHIYA, RELIGION AND POLITICS IN ISRAEL at 83-84 (1988) (explaining the state institutionalization of religious authority).

<sup>82</sup> See *id.*

<sup>83</sup> See *id.* at 96 (declaring that the state would determine the scope of religious law and its implementation)..

<sup>84</sup> See *generally* SACHAR, *supra* note 9, at 378-9.

<sup>85</sup> See Yitzhak Angelard, *Yahase Dat ve Medina be Yisrael: Harecka Hahistori Haraayoni [ The Connection of Religion to State in Israel: The Ideological Historical Background]*, in MEDINA YEHUDITE VE DEMOCRATIT [ A JEWISH AND DEMOCRATIC STATE] 306 (Daphne Barak Erez ed., 1996).

this decision on Ben Gurion's part was not purely ideological.<sup>86</sup> There was a political motive as well.<sup>87</sup>

Ben Gurion quickly learned that a coalition government would be necessary to establish a majority.<sup>88</sup> The combined power of the religious parties was enough to give Ben Gurion's party, Mapai, the support that it needed.<sup>89</sup> It became evident that to gain their support the Prime Minister would have to make certain concessions to his religious partners.<sup>90</sup> The policies instituted by this first Knesset in 1949 maintained the status quo, especially in the formation of the judicial system.<sup>91</sup> Under the Mandate period, the religious Jews had control over personal status issues such as marriage, divorce, and burial.<sup>92</sup> The power that the Orthodox now had as part of a coalition government only strengthened their hold over these areas of the law.<sup>93</sup> Thus, from the day Israel was founded, it was obvious that there was no separation of religion and state; actually, there was a clear combination of the two and a constant need for compromise.<sup>94</sup>

#### *Constitutional Question*

*"...[W]hile the state was still in the making, one had to be very careful in fixing a legislative framework, for fear that it might hamper free development."*<sup>95</sup>

As with most newly established countries formed after World War II, one of the first orders of business was to write

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<sup>86</sup> See SACHAR, *supra* note 9, at 361,378.

<sup>87</sup> See *generally id.* at 377-79 (discussing Ben Gurion's willingness to grant concessions to religious parties in exchange for political support).

<sup>88</sup> See *id.* at 361, 377-79 (discussing the coalition building that took place by Ben Gurion especially between the Mapai and the orthodox and the Mizrachi).

<sup>89</sup> See *id.* at 356, 377-79.

<sup>90</sup> See *id.* at 378-79.

<sup>91</sup> See *id.* at 361, 363.

<sup>92</sup> See *id.* at 361. Detailed discussion of Rabbinical courts' jurisdiction is addressed in section III. D. of this comment. See *infra* Part III.D.

<sup>93</sup> See *generally* Sachar, *supra* note 9, at 361. Detailed discussion of Orthodoxy in the legislature and the resulting laws is found in section III. B. See *infra* notes, 81-84, 91-93 and accompanying text.

<sup>94</sup> See James Kurfeld, *The Closest of Enemies: Israel's Religious Battles*, NEWSDAY, November 14, 1999 at Currents & Books, See also *generally* DAPHNA SHARFMAN, LIVING WITHOUT A CONSTITUTION 38-40 (1993).

<sup>95</sup> See *id.* at 44 (quoting an interview by Daphna Sharfman with Y. S. Shapira, member of Mapai party in February 12, 1985).

a constitution.<sup>96</sup> Even at such an early stage in Israel's history, there was already a visible dichotomy between the religious Jews and the secular Jews.<sup>97</sup> The Orthodox members of the Knesset, who were part of a coalition government with Ben Gurion as Prime Minister, claimed that the constitution of the State of Israel must be based on the Torah and Talmud,<sup>98</sup> namely, the Halakah.<sup>99</sup> In order to avoid deepening the rift that already exists between secularists and the religious, a constitution was never drafted.<sup>100</sup> Instead it was decided that a constitution would gradually be formed by combining the various Fundamental (Basic) Laws as they were passed throughout the years.<sup>101</sup> Scholars have pointed out that, the political considerations and alliances that came into play during the constitutional debate were to remain into force in the future.<sup>102</sup>

### *Religion Gets its Own Court System*

“...actually everything was within our authority, except that the law excludes a number of things.”<sup>103</sup>

As mentioned previously, upon the establishment of the State of Israel, there was a status quo on certain matters.<sup>104</sup> To some extent, especially effecting the role of Orthodoxy, things were not changed.<sup>105</sup> The Law and Administration Ordinance of 1948 allowed the Rabbinical courts to maintain their control over personal status issues.<sup>106</sup> This power of the Rabbinical courts can be traced

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<sup>96</sup> See SACHAR, *supra* note 9, at 356 (explaining that the UN anticipated that Israel will have a constitution).

<sup>97</sup> See Lisa Beyer, *The Religious Wars*, TIME, May 11, 1998, at 32.

<sup>98</sup> See SACHAR, *supra* note 9, at 357.. The Torah is the embodiment of all of Judaism's religious and ethical literature. See PHILIP BIRNBAUM, THE ENCYCLOPEDIA OF JEWISH CONCEPTS 630 (1979). The Talmud is a collection of scholars' teachings of the oral Torah and transmission of ideas found within the Torah. See *id.* at 637.

<sup>99</sup> The Halakhah refers to the sections of Jewish literature that deal with legal tradition. See *id.* at 163. “[T]he Halakhah controls the attitude and behavior of an observant Jew in practically every area of his life.” *Id.* at 164.

<sup>100</sup> See SACHAR, *supra* note 9, at 357.

<sup>101</sup> See *id.*

<sup>102</sup> SHARFMAN, *supra* note 94, at 38.

<sup>103</sup> Zerah Warhaftig, Leader of National Religious Party, Speech on Rabbinical Jurisdiction in Israel (Hebrew)(1955).

<sup>104</sup> See *supra* Part III.B.

<sup>105</sup> See *id.*

<sup>106</sup> See Law and Administration Ordinance, 1948, 1 L.S.I. 7, 9 (1948); See also

back to the Ottoman Empire, where religious minorities were allowed to have control over matters relating to personal status.<sup>107</sup> The Chief Rabbinate is the body of Orthodox rabbis that oversees the religious activities of all of Jews in Israel.<sup>108</sup>

Just as the Orthodox Jews remained in control of personal status issues under the doctrine maintaining the status quo, so too did the other religions in Israel.<sup>109</sup> There are four officially recognized religions in Israel: Judaism, Islam, Christianity and Druze.<sup>110</sup> Each of the religions has its own department within the Ministry of Religions and oversees its own set of court systems.<sup>111</sup> As a result of such organization, everyone must be affiliated with one of these religions in order to change their personal status, as there is no secular route for such changes. The Declaration of Independence guarantees freedom of religion to all Israeli citizens,<sup>112</sup> but this freedom is limited in some respects for the Jews.<sup>113</sup>

Since Rabbinical courts exercise exclusive jurisdiction over all Jewish personal matters and they apply Halachic law, all Jews in Israel are subject to the practices of Orthodox Judaism.<sup>114</sup> This sort of forced religion, in a Democratic state, has been the source of tension among the Israeli society for the past fifty years.<sup>115</sup>

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Amnon Rubinstein, *Law and Religion in Israel*, 3 ISR. L. REV. 380, 392-394 (1967).

<sup>107</sup> See *id.* at 384-85.

<sup>108</sup> See Stephen Huba, *Reform Judaism in Battle Israel Orthodoxy Threatens Rights*, THE CINCINNATI POST, January 22, 1999 at 15A.

<sup>109</sup> See SACHAR, *supra* note 9, at 361.

<sup>110</sup> S.I. Strong, *Law And Religion In Israel And Iran: How The Integration Of Secular And Spiritual Laws Affects Human Rights And The Potential For Violence*, 19 MICH J. INT'L L 109, 139 (1997)

<sup>111</sup> See *id.*

<sup>112</sup> See Declaration, *supra* note 57, at 4.

<sup>113</sup> See Rubinstein, *supra* note 106, at 387-388 (explaining that it is a secular law that vests jurisdiction in the Rabbinical Court for marriage and divorce for all Jews of Israel, regardless of their personal beliefs).

<sup>114</sup> See RUBINSTEIN, *supra* note 106, at 387; S.I. Strong, *Law and Religion in Israel and Iran: How the Integration of Secular and Spiritual Laws Affects Human Rights and the Potential for Violence*, 19 MICH. L. REV. 109, 139 (1997) (noting that Rabbinical courts exercise exclusive jurisdiction over all Jews and apply Halachic law, regardless of whether the persons before them practice or believe the tenets of Judaism).

<sup>115</sup> See *infra* Part VI (discussing the problems that have stemmed from religious legislation).

## DIFFERENCES IN RELIGIOUS AWARENESS GROW AMONG ISRAELIS

Today, in Israel, approximately 20% of the Jews are ultra-Orthodox, living strictly by the Halakah and observing all practices proscribed by the Torah and Talmud.<sup>116</sup> Another 20% are essentially completely non-observant.<sup>117</sup> The remaining 60%, the majority, follow some combination of religious observances and ethnic traditions.<sup>118</sup> “The reality is that Israel can’t be divided into two well-defined groups falling neatly on either side of the religion and state barricades. The ultra-Orthodox and the avowed secularists represent the poles, and often set the tone of the debate, but most Israelis fall somewhere in between.”<sup>119</sup>

*Orthodox Living Among the Secular*

*“They are more and more isolated socially and geographically.”<sup>120</sup>*

As the Jewish population in Israel grew, it became apparent that the ultra-Orthodox minority would have to somehow separate themselves from the secular communities in order to maintain their strict observances.<sup>121</sup> Some scholars have said that these people live in a different world altogether.<sup>122</sup> They have a distinctive style of dress that dates back centuries in Eastern Europe: the men wear all black suits and black overcoats, wide brimmed, sometimes fur, hats and sidelocks (long pieces of uncut hair that grow into curls just above their ears).<sup>123</sup> They have their own schools and neighborhoods and most do not watch television or engage in other popular modern activities.<sup>124</sup> Being separate would ease the problems associated with

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<sup>116</sup> See MINISTRY OF FOREIGN AFFAIRS, FACTS ABOUT ISRAEL: SOCIETY (visited Feb. 10, 2000) <<http://www.mfa.gov.il/mfa/go.asp?MFAH00mb0>>.

<sup>117</sup> See *id.*

<sup>118</sup> See generally *id.* (stating that, “Basically, the majority can be described as secular Jews who manifest modern lifestyles, with varied degrees of respect for and practice of religious precepts”.)

<sup>119</sup> Peter Hirschberg, *Religious Disputes: A Troubleshooter’s Guide*, THE JERUSALEM REPORT, March 15, 1999 at p.16

<sup>120</sup> Menachem Friedman, sociologist at Bar Ilan University *quoted in* Barbara Demick, *Religious, Secular Israelis in Battle Over Army Service*, KNIGHT-RIDDER/TRIBUNE NEWS SERVICE, Jan. 19, 1998 at 119K1398.

<sup>121</sup> See generally SACHAR, *supra* note 9, at 598-602 (chronicling the division between Orthodox and non-Orthodox Jews in the 1950’s and 1960’s).

<sup>122</sup> DEMICK, *supra* note 120.

<sup>123</sup> See *id.*

<sup>124</sup> See *id.*

the requirement for women's modesty.<sup>125</sup> For example, men and women would not be unnecessarily together and there would not arise such situations where a woman might be seen by accident in what is considered to be improper or revealing attire.<sup>126</sup> Also, the observance of Shabbat would be easier if there was not the constant noise from neighbors' televisions and radios because Shabbat is about worship and study.<sup>127</sup> Without such interferences, the religious could better concentrate on prayers and worship.<sup>128</sup> To achieve this result, these intensely religious communities started to buy homes in common areas and build their own schools and small synagogues.<sup>129</sup> In addition they advocated passing laws which would enforce their conservative, religious views such as closing stores for Shabbat and preventing the selling or eating of any food that was not Kosher.<sup>130</sup> Though the communities were growing into separate

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<sup>125</sup> In Judaism, women must maintain a modest appearance at all times in public. Married women must cover their hair and all women must cover their arms and legs. See, e.g., YITZHAK BUXMAN, *JEWISH SPIRITUAL PRACTICES* 497 (1990) (quoting Reb Arele Roth: "Especially in our time, when the wicked have broken all bounds of decency ... you need great mercy from heaven to be saved from [looking at members of the opposite sex], so that ... your sight not bring you, God forbid, to lust."). The reason for modesty and separation of men and women is to prevent lewd thoughts by the men when they should be focused on devotion to God. See *id.* at 590; see also SOLOMON GANZFRIED, *4 CODE OF JEWISH LAW*, ch. 152, at 19-20 (1991) (detailing prohibited contact between men and women).

<sup>126</sup> See, e.g., Beyer, *supra* note 98 at 34 (describing skirmishes between Orthodox haredi or "modesty patrols" and secular women).

<sup>127</sup> Shabbat is the Hebrew word for Sabbath. The Jewish day of rest is on Saturdays, beginning at sundown on Friday evening through sundown on Saturday night. Because it is a day of rest Jews are not allowed to perform any kind of work. See OLITZKY & ISAACS, *supra* note 70, at 21. The various observance levels of Judaism have different meanings of the definition of "work" and ways to get around it if needed. The strictest observers do not do anything on Shabbat except read the bible and attend services at synagogue. Electricity cannot be used, because according to the Torah, fire cannot be burned on Shabbat. So, the strictly Orthodox do not drive, cook or perform any other activity that results in something being created or produced. See generally GANZFRIED, *supra* note 125, ch. 72, at 63 (describing the sanctity of the Sabbath).

<sup>128</sup> See, e.g., GANZFRIED, *supra* note 125, ch. 72, at 63 (discussing how a Jew on Shabbat should worship without any disturbances, such as conversations).

<sup>129</sup> See, Alan Mairson, *The Three Faces of Jerusalem*, NATIONAL GEOGRAPHIC, Apr. 1996, at 22 (discussing the situation in the city of Ramot and the changes that the ultra-Orthodox residents would like to impose on that previously secular community).

<sup>130</sup> Yair Sheleg, *Old-New Battles In An Old City; In the Three Years Since Modi'in Was Established, Relations Between Secular and Religious Jews Have Soured. But Unlike In Other Place, this Time It Is The Religious Who Feel Under Attack*, HA'ARETZ, December 17, 1999 at Week's End (discussing a community where

areas, the local municipal government was still unified.<sup>131</sup> Many of the conflicts between Orthodox and secular ideas have sprung out of unified local governments.<sup>132</sup>

*Confrontation with Orthodoxy in the Past – Some Examples*

There were several instances of inter-Jewish conflicts in the first decade of Israel's existence that foreshadowed the problems that the country would face for the next half century.<sup>133</sup> In May of 1956, a famous archeologist and President of the Hebrew Union College,<sup>134</sup> Dr. Nelson Glueck, applied to the municipality of Jerusalem for a building permit.<sup>135</sup> He wanted to build an archeology school on a tract of land that had been granted to the school by the Israeli government.<sup>136</sup> The plan was approved by the building licenses committee, but was subject to the ratification by the whole municipal council within a few months.<sup>137</sup> It was learned that there was a small part or room within the planned building that was to be used for Reform religious services.<sup>138</sup> This news spread like wild fire among the religious communities in Jerusalem and there were instant attacks on Dr. Glueck and the board for its approving such a sacrilegious plan.<sup>139</sup> The Orthodox unsuccessfully put pressure on the Mayor of Jerusalem to remove the building plan from the agenda of the next meeting.<sup>140</sup> Enraged over the fact that such a building plan could be approved, the Orthodox resigned from the municipal council.<sup>141</sup> This was the beginning of decades of confrontation between the ultra-

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there has been an influx of ultra-Orthodox but they are still governed by one municipal council).

<sup>131</sup> See *generally id.* (detailing problems which have occurred in a unified municipal council in the city of Modi'in).

<sup>132</sup> See *id.*

<sup>133</sup> See *generally* SACHAR, *supra* note 9, at 598-602 (describing the confrontation with Orthodoxy in Israel).

<sup>134</sup> Hebrew Union College is a seminary for Reform Rabbis in the United States. See *id.* at 599.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*

<sup>137</sup> See *id.*

<sup>138</sup> See *id.* (hinting that it is unclear how this information leaked out).

<sup>139</sup> See *id.*

<sup>140</sup> See *id.*

<sup>141</sup> See *id.* at 600.

Orthodox Jews and the secular population.<sup>142</sup> In this situation, the Orthodox were disturbed over possible Reform Judaism worship in Jerusalem.<sup>143</sup>

Just a year later another issue presented a problem.<sup>144</sup> The owner of a local hotel in Jerusalem wanted to open the city's first public swimming pool.<sup>145</sup> He had raised the money for his pool and submitted his plan to the city council for approval.<sup>146</sup> Seeing that a public pool would allow men and women to swim together, an improper activity because people are not dressed modestly while swimming, the religious community set two conditions on approving the pool.<sup>147</sup> The religious members of council would approve the pool if, (1) the pool would be closed to everyone on Shabbat,<sup>148</sup> and (2) there would be no mixed bathing where men and women could swim at the same time.<sup>149</sup> The building licenses committee overruled the conditions and approved the pool and submitted the plan to the city council.<sup>150</sup> The various religious communities rallied together and protested the city's plan to allow such a pool to open.<sup>151</sup> They formed demonstrations throughout Israel.<sup>152</sup> Even in the United States, the Orthodox communities asked the US not to support such an "oppressive" country.<sup>153</sup> The demonstrations did not stop the council from approving the pool and it opened on schedule.<sup>154</sup>

Conflicts of this nature had become common in Israeli cities, but one incident stands out.<sup>155</sup> The "Yossele" affair created a deep rift between the religious and secularists that

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<sup>142</sup> *See id.*

<sup>143</sup> *See id.* at 599. (indicating that there was even an uproar in the Orthodox press on this issue).

<sup>144</sup> *See id.* at 600 (contending that the Orthodox were awaiting the next provocation).

<sup>145</sup> *See id.*

<sup>146</sup> *See id.*

<sup>147</sup> *See id.*

<sup>148</sup> *See id.* This request is in accordance with keeping Shabbat as the day of rest.

<sup>149</sup> *See id.* This request was made to maintain women's modesty.

<sup>150</sup> *See id.*

<sup>151</sup> *See id.*

<sup>152</sup> *See id.*

<sup>153</sup> *See id.* (relating that some Orthodox New Yorkers picketed the White House).

<sup>154</sup> *See id.*

<sup>155</sup> *See id.* at 600-601.

tugged at the emotional strings of the country.<sup>156</sup> In the late 1950's an elderly Russian Jewish immigrant couple was joined by their family in Israel.<sup>157</sup> Most of the family was religious, except for one of the daughters.<sup>158</sup> She and her husband let her parents take care of their two children, so that the mother could continue to work.<sup>159</sup> After some time, the oldest of the grandchildren, a girl, went back to the young parents, while the younger boy, seven year-old Yossele, stayed in the care of his grandparents, the Shtarkeses.<sup>160</sup> When the daughter asked for her son back, her own parents refused to let the boy go.<sup>161</sup> Upon the advice of several ultra-Orthodox rabbis, Mr. Shtarkse declared that he would not allow the boy to be raised in a secular home and the boy was then hidden at undisclosed places.<sup>162</sup> The daughter and her husband sued the grandparents, and Mr. Shtarkese was sent to jail for contempt of court in 1960.<sup>163</sup> A fury of anti-religious sentiment swept Israel in the media and even in front of the Knesset.<sup>164</sup> The religious segment of the population were constantly shouted at, being called kidnapers and demonstrations were held near their communities asking where is Yossele.<sup>165</sup> In 1962 the Israeli secret service found Yossele in New York and returned him to his parents.<sup>166</sup> All charges were dropped and Mr. Shtarkese was released from prison.<sup>167</sup> This story still haunts the ultra-Orthodox with a stereotype of fanaticism that they can't seem to escape.<sup>168</sup>

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<sup>156</sup> *See id.* at 602. (explaining that the conflict arising from the Yossele affair was more heated than ever before).

<sup>157</sup> *See id.* at 601-602.

<sup>158</sup> *See id.* at 602.

<sup>159</sup> *See id.*

<sup>160</sup> *See id.* (indicating that the grandparents were raising the boy according to strict religious practices).

<sup>161</sup> *See id.*

<sup>162</sup> *See id.*

<sup>163</sup> *See id.* (explaining that many of the religious hailed him as a martyr, while the non-religious were enraged).

<sup>164</sup> *See id.*

<sup>165</sup> *See id.* (indicating that it became common for the Orthodox to hear shouts like "Where's Yossele?" and "Kidnapers" whenever they raised any issues in the Knesset).

<sup>166</sup> *See id.*

<sup>167</sup> *See id.*

<sup>168</sup> *See id.*

### *Recent Confrontation Issues*

*[T]he early 1990s have witnessed an increased tension between the secular majority and the religious minority.... [M]ore and more secular Israelis are ready to fight for their views and their way of life.”<sup>169</sup>*

Though the religious and secular camps have been at opposite ends on many issues, recently the two sides find themselves engaging in one-on-one confrontations.<sup>170</sup> Besides the fighting that goes on in the Knesset along party and ideological lines, the youth of Israel have taken the battle into the streets, protesting each others’ lifestyles.<sup>171</sup> The ultra-Orthodox have been known to destroy billboards with scantily dressed models and throw stones at secular Jews driving on Shabbat.<sup>172</sup> The secular Jews have protested the growing ultra-Orthodox control through means of unconventional publicity stunts and physically attacking ultra-Orthodox Jews on the streets.<sup>173</sup> Just a few months ago, on Israel’s 50<sup>th</sup> Anniversary, a dance company that performed in Tel Aviv after canceling a show in Jerusalem, offended the ultra-Orthodox by having a dancer in traditional Orthodox dress strip down to her underwear.<sup>174</sup> The *Kulterkampf* is under way!<sup>175</sup>

### *Military Service – It is Not for Everyone*

*“Why go to the army? Yeshiva is fun.”<sup>176</sup>*

Certain issues especially spark the anger that has grown among Israeli society in the past half century.<sup>177</sup> For example, military service is probably the biggest sore spot between the secular and observant Jews, and the ultra-

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<sup>169</sup> YOSSI MELMAN, *THE NEW ISRAELIS* 127-28 (1992).

<sup>170</sup> *See id.* at 127-29.

<sup>171</sup> *See id.* at 128.

<sup>172</sup> *See id.*

<sup>173</sup> *See id.*

<sup>174</sup> *See* Serge Schmemmann, *In Israel’s Bitter Culture War, Civility is a Casualty*, *N.Y. TIMES*, July, 21, 1998, at A1.

<sup>175</sup> *Kulterkampf* is a term that has been used in reference to Israel’s Jewish inner-religious struggles for decades. It refers to the cultural war that has been growing in Israel between the secular Tel Aviv and the religious Jerusalem. *See id.*

<sup>176</sup> Demick, *supra* note 120 (quoting students of secular universities protesting outside of the Knesset as Prime Minister Benjamin Netanyahu decides to add millions of dollars in extra subsidies to religious institutions).

<sup>177</sup> *See* Schmemmann, *supra* note 174. (illustrating the various issues at the center of the controversy).

Orthodox Jews.<sup>178</sup> Israel has a mandatory three-year service required of all men after high school and two years for all women.<sup>179</sup> The ultra-Orthodox Jews in Israel are not required to serve in the military.<sup>180</sup> They are excused from service so that they can spend their days in Yeshiva<sup>181</sup> studying Torah.<sup>182</sup> When the draft exemption was first created by Ben Gurion in 1948, there were 400 yeshiva students.<sup>183</sup> By 1998 that number had grown to 28,550 students receiving an exemption from army service, representing approximately one out of every 13 draft-age students in Israel.<sup>184</sup>

Perhaps what is most aggravating to the secular Jews is not that the ultra-Orthodox do not participate in the military, but that in addition, they receive stipends and subsidies from the government, which are not available to students in secular universities.<sup>185</sup> The emotions run high on this topic because the ultra-Orthodox generally have large families and therefore do not pay much taxes, and some choose not participate in secular patriotic events.<sup>186</sup> Despite the government assistance, 58% of the adult males in the ultra-Orthodox community are not in the workforce, and just over half of the community lives in poverty.<sup>187</sup>

Recently there has been an attempt in the Knesset to draft the ultra-Orthodox youth into the military.<sup>188</sup> The bill was defeated, but public support for the movement was evident.<sup>189</sup> Some of the public buses around Israel began to carry signs reading "One Nation, One Draft."<sup>190</sup> In response

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<sup>178</sup> See *id.*

<sup>179</sup> See *id.*; See also Facts, *supra* note 34, at 73.

<sup>180</sup> See Schmemmann, *supra* note 174.

<sup>181</sup> A *Yeshiva* is an institution where Jewish students devote their time to the study of the Talmud and rabbinical literature. The Talmud is the oral recitation of Jewish subjects that were not available in writing at the time when they developed. The word *Yeshiva* is actually used in the Talmud to describe the oldest institution of Jewish learning. See BIRNBAUM, *supra* note 98, at 276-77, 636-39.

<sup>182</sup> See Schmemmann, *supra* note 174.

<sup>183</sup> See Demick, *supra* note 122.

<sup>184</sup> See *id.*

<sup>185</sup> See *id.*

<sup>186</sup> See Schmemmann, *supra* note 174.

<sup>187</sup> See Demick, *supra* note 120.

<sup>188</sup> See *Israeli Lawmakers Reject Drafting Seminary Students*, BOSTON GLOBE, Jul. 9, 1998, at A6.

<sup>189</sup> See Schmemmann, *supra* note 174.

<sup>190</sup> See *id.*

the ultra-Orthodox threatened to boycott the buses.<sup>191</sup> Notwithstanding the Orthodox threats, the public support of such a bill was perhaps heard by the Supreme Court. In a landmark decision on December 9, 1998, the Court held that a blanket exemption from military service for all Yeshiva students is illegal.<sup>192</sup> The Court ruled that the Knesset should pass legislation on the issue.<sup>193</sup> It will be interesting to see how the Knesset will respond to such a decision that can effect up to 80,000 students.<sup>194</sup>

There is yet another distinct group within the ultra-Orthodox Jews that does not serve in the army and draws a different sort of resentment.<sup>195</sup> There are those Orthodox Jews who do not wear the traditional black clothing of the ultra-Orthodox, but still strictly adhere to the Torah and wear the woven yarmulke.<sup>196</sup> What separates them from the majority of Orthodox Jews who also dress in modern clothes is that they have chosen to live in the Occupied Territories.<sup>197</sup> These Jews differ from the vast majority of the ultra-Orthodox because they have never questioned the legitimacy of the state of Israel.<sup>198</sup> It is their Zionist belief that keeps them living in the territories that are known for anti-Jewish violence by the Palestinians.<sup>199</sup> They believe that by putting their lives on the line, they are the stronghold that will one

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<sup>191</sup> See *id.*

<sup>192</sup> See *Israeli Court Orders Stop to Widespread Military Exemptions for Religious Students*, MINNEAPOLIS-ST. PAUL STAR-TRIBUNE, Dec. 10, 1998, at 25A.

<sup>193</sup> See *id.*

<sup>194</sup> See *id.*

<sup>195</sup> See *infra* notes 203, 205, 207 and accompanying text.

<sup>196</sup> Author's personal knowledge. *Kippa sruga* has become a common phrase in Israel by which to refer to these Orthodox Jews. Meaning woven yarmulke or knit skullcap, this slang places these Jews somewhere between the ultra-Orthodox and those who only go to synagogue on high holidays. Also called the modern Orthodox, *kippa sruga* adhere to the Torah and the teachings of the Talmud as strictly as possible while enjoying some modern conveniences like television and radio. They participate in Israeli cultural events, celebrate all of the national holidays, and serve in the military. See *id.*

<sup>197</sup> See Russell Watson et al., *The West Bank*, NEWSWEEK, June 4, 1984, at 40. Prime Minister Begin started the settlements in the 1970s as a strategy to raise the Jewish population in the Occupied Territories of West Bank and Gaza Strip, which Israel acquired after the 1967 Six-Day War. See MELMAN, *supra* note 169, at 93.

<sup>198</sup> See MELMAN, *supra* note 169, at 120–21 (describing the relationship between Zionist settlers, Gush Eminent, and Begin's Likud government, as well as Gush Eminent's rise as successor to the older pioneering Zionists).

<sup>199</sup> See David Makovsky et al., *Facing Up to the Truth*, U. S. NEWS & WORLD REP., Mar. 14, 1994, at 35–36.

day allow Israel to gain the territories that rightfully belong to the people of Israel as proscribed in the Torah.<sup>200</sup> The secular population resents this group not only because they are not required to serve in the military and they receive government assistance, but also because of the military support that these settlers receive due to their dangerous locations.<sup>201</sup> They are living among Palestinians who feel Israel has unlawfully occupied their land.<sup>202</sup> Special military units, in addition to the ones strategically placed by the Israeli government for security purposes, are stationed in these territories solely to protect these Israeli settlers.<sup>203</sup> There are approximately 170,000 Jews living in these settlements throughout the West Bank and Gaza Strip.<sup>204</sup> Tied in with their exemption from military service, these ultra-Orthodox Jews are resented for the fact that those who serve in the military are often stationed around these settlements for the sole purpose of protecting a very small fraction of the Israeli society.<sup>205</sup>

### *Jerusalem – A Special City*

“*Harediphobia!*”<sup>206</sup>

“The conflict between Haredim<sup>207</sup> and secular Jews is at its sharpest in Jerusalem.”<sup>208</sup> Tensions are growing in

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<sup>200</sup> See Joseph Contreras et al., *Whose Israel is It?*, NEWSWEEK, Apr. 20, 1998, at 30; Yehuda Ben Meir, *Why Jewish Settlers Should Relocate*, JEWISH WK., Sept. 11, 1998, at 43.

<sup>201</sup> See *id.* at 43.

<sup>202</sup> See *Security Council Considers Settlements in Occupied Territories*, U. N. CHRON., June 1990, at 24.

<sup>203</sup> See Ben Meir, *supra* note 202, at 43.

<sup>204</sup> See Central Bureau of Statistics, *Statistical Abstract of Israel 1999, Population: Localities and Population, by Population Group, District, Sub-District, Area and Natural Region* (visited Feb. 8, 2000) <[http://www.cbs.gov.il/shnaton50/st02-08ab\\_e.shtml](http://www.cbs.gov.il/shnaton50/st02-08ab_e.shtml)>. 1998 estimates show that approximately 163,000 Jews live in the West Bank and about 6,000 in the Gaza Strip. See *id.* See also POLITICAL HANDBOOK OF THE WORLD: 1981 255 (Arthur S. Banks et al. eds., 1981) (noting that “West Bank” refers to Judea and Samaria). Note that not only religious Jews live in the Occupied Territories. Many recent immigrants have chosen to live there for the abundance of cheap housing. See David Makovsky & Warren Bass, *On the New Frontier of Peace*, U. S. NEWS & WORLD REP., Sept. 20, 1993, at 64.

<sup>205</sup> See Ben Meir, *supra* note 202, at 43.

<sup>206</sup> Meir Porush, *Harediphobia* [in Hebrew], MA’ARIV, Nov. 15, 1998 (quoting the Minister of Housing saying that fear of the Haredim is unfounded).

<sup>207</sup> *Haredim* translates to Orthodox. BEN-YEHUDA’S POCKET HEBREW-ENGLISH DICTIONARY, Hebrew 108 (1979). In Israel *Haredim* is used to describe the ultra-Orthodox. Note that there is an overlap: the Jews living on the settlements are

Jerusalem because the population within that city is rapidly changing.<sup>209</sup> Both the city's Haredi and Arab populations are growing twice as fast as that of secular Jews.<sup>210</sup>

Approximately 30% of the 420,000 Jews in Jerusalem are ultra-Orthodox and 50% of the schoolchildren are ultra-Orthodox.<sup>211</sup> However, these figures must constantly be updated because of the vast difference in birth rates between the ultra-Orthodox and the secular Jews.<sup>212</sup> The average ultra-Orthodox woman is expected to have seven children, an increase of one child from the prediction made in 1980.<sup>213</sup> Meanwhile the birthrate of the non-ultra-Orthodox (including some of the modern Orthodox, or woven yarmulke Jews) are falling.<sup>214</sup>

As the ultra-Orthodox population in Jerusalem increases, the demands will probably become stronger to adhere to their strict practices because they are well organized and play a decisive role in municipal affairs.<sup>215</sup> This became evident in 1993 when Teddy Kollek, mayor of Jerusalem for the past 28 years, was not reelected.<sup>216</sup> The votes of the ultra-Orthodox went to his opponent.<sup>217</sup> The ultra-Orthodox want to have power to close the streets on Shabbat and enforce Kashrut (eating and selling foods in accordance with Kosher laws) throughout the city.<sup>218</sup> "There is a constant battle between the Haredim and other Jews over the city's limited residential space."<sup>219</sup> Motti Winters,

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ultra-Orthodox, but do not wear the traditional black clothing. They wear the woven yarmulkes and are not grouped in the term "Haredim."

<sup>208</sup> Peter David, *Israel at 50—A Nation of Tribes: Rough Guide to a Fractious Society*, *ECONOMIST*, Apr. 25, 1998, after 56.

<sup>209</sup> See Courtney W. Howland, *The Challenge of Religious Fundamentalism to the Liberty and Equality Rights of Women: An Analysis under the United Nations Charter*, 35 *COLUM. J. TRANSNAT'L L.* 271, 316-17 (1997).

<sup>210</sup> See *id.*

<sup>211</sup> See Shirly Golan-Meiri, *Ha'ir Omed La'afoch Leb'nai Brak [The City is About to Turn into B'nai Brak]*, *YEDIOT AHRONOT*, Nov. 9, 1998, at 9; see also Mairson, *supra* note 129, at 20.

<sup>212</sup> See Shahr Ilan, *Seven Children for Every Woman*, *HA'ARETZ*, Mar. 4, 1998 <<http://www3.haaretz.co.il/eng/scri...+jews&mador=5&se=true&datee=1/4/99>>.

<sup>213</sup> See *id.*

<sup>214</sup> See *id.*

<sup>215</sup> See David, *supra* note 210, after 56.

<sup>216</sup> See Mairson, *supra* note 129, at 20.

<sup>217</sup> See *id.*

<sup>218</sup> See *id.*

<sup>219</sup> David, *supra* note 210, after 56.

chairman of the Ramot neighborhood community organization, perhaps said it best, “The Orthodox move to a secular area. They settle down, step by step, 10 families, 20 families. The young couples have a lot of children, and they always need more apartments, more religious schools, more synagogues, more and more and more.”<sup>220</sup> “A survey by the Jerusalem Institute of Israel Studies show [sic] that 10% of the secular Jews who moved out of Jerusalem last year – some of them to the West Bank – gave relations with the Haredim as their reason.”<sup>221</sup> This strive for more control over secular Jews is not just confined to Jerusalem.<sup>222</sup>

*Pardes Hanna – Exercise in Freedom of Personal Choices*

“We are talking here of the basic rights of people to choose their own way if life.”<sup>223</sup>

Neve Rotem is a small, new neighborhood growing within an old town, Pardes Hanna, approximately 20 minutes from Tel Aviv, along the coastline.<sup>224</sup> Just a couple of years ago it was a quiet new suburb that was rapidly filling up with people getting away from the nearby cities.<sup>225</sup> The homes were still in the process of being built and the streets are still not all paved.<sup>226</sup> Before people even had a chance to move into their new homes, the new neighborhood was in international news.<sup>227</sup>

As large groups of ultra-Orthodox families started to move into homes leased by a rabbi, the secular residents

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<sup>220</sup> Mairson, *supra* note 129, at 22.

<sup>221</sup> David, *supra* note 210, after 56.

<sup>222</sup> See *infra* Part IV.C.3.

<sup>223</sup> Ronni Milo, Mayor of Tel Aviv, on the conflicts between Orthodox and secular Jews, *quoted in* Lisa Beyer, *The Religious Wars*, TIME, May 11, 1998, at 32–33.

<sup>224</sup> See Interview with Shai Bassli, son of homeowner in Neve Rotem, in Pardes Hanna, Israel (July 12, 1997) [hereinafter Interview]. The Bezalel family purchased a home in Neve Rotem in 1996. They are a part of the large group characterized by their *Kippa Sruga*, and find themselves caught in the middle of those modern Orthodox that believe in the freedom of personal choice and the ultra-Orthodox that believe in the unyielding observance of Shabbat. See for example Beyer, *supra* note 226, at 33 and Joseph Contreras et al., *Who’s Israel is it Anyway?*, NEWSWEEK, Apr. 20, 1998, at 28, for additional information about the rift between the modern Orthodox and the ultra-Orthodox.

<sup>225</sup> See Interview, *supra* note 227.

<sup>226</sup> See *id.*

<sup>227</sup> See generally Beyer, *supra* note 226; see also generally Contreras, *supra*, note 227 (mentioning Neve Rotem in TIME and NEWSWEEK).

began to feel that a takeover was underway.<sup>228</sup> The ultra-Orthodox turned one of the houses into a synagogue and put up signs requesting modest clothing from visitors and observance of the Shabbat (meaning a day of rest and worship).<sup>229</sup> They put up loudspeakers from the new synagogue and began to broadcast sermons throughout the neighborhood.<sup>230</sup> The secular residents quickly responded by blaring loud music on Shabbat<sup>231</sup> and organizing a weekly disco.<sup>232</sup> This little neighborhood has become the representative of friction that is evident throughout all of Israel.<sup>233</sup>

## RELIGION IN POLITICS

### *Introduction to Israel's Political System*

*“Government in Israel is by coalition, hence by mutual concession and compromise among the participating parties. Political parties play a vital role in Israel politics. They determine the composition and functioning of the government.”*<sup>234</sup>

Until recently<sup>235</sup>, Israel had proportionate representation with a single national constituency.<sup>236</sup> This system allowed the citizens of Israel to vote purely along party lines.<sup>237</sup> “It is left in the hands of the party machine to decide on the slate of individuals who would be the party’s representatives in the Knes[s]et, if the party is successful in the elections.”<sup>238</sup> This system made every vote count, because the party with the most votes was declared a winner, and then would put together a coalition with other parties to

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<sup>228</sup> See Interview, *supra* note 227.

<sup>229</sup> See Beyer, *supra* note 226.

<sup>230</sup> See *id.* at 32.

<sup>231</sup> See Contreras, *supra* note 227.

<sup>232</sup> See Beyer, *supra* note 226.

<sup>233</sup> See *id.* at 33.

<sup>234</sup> ERVIN BIRNBAUM, *THE POLITICS OF COMPROMISE: STATE AND RELIGION IN ISRAEL* 23 (1970).

<sup>235</sup> See Avraham Brichta, *Israel in Transition: The New Premier-Parliamentary System in Israel*, 555 *Annals Am. Acad. Pol. & Soc. Sci.* 180 (1998).

<sup>236</sup> See Constituent Assembly Elections Ordinance, 1948, 2 L.S.I 24, (1948-49). See also BIRNBAUM, *supra* note 237, at 39).

<sup>237</sup> See BIRNBAUM, *supra* note 237, at 39-40.

<sup>238</sup> *Id.* at 39.

create a majority.<sup>239</sup> The efforts of creating the necessary coalition have been a source of debate since the first Knesset was convened.<sup>240</sup> The Prime Minister's party (traditionally, the one with the most seats in the Knesset) was always having to appease several small parties to get the required majority, because Israel has a fragmented party system.<sup>241</sup>

In 1992 the Knesset passed a new law, Basic Law: The Government, which provided a direct vote for the prime minister and a separate vote for the Knesset members.<sup>242</sup> Now the prime minister is elected by obtaining an absolute majority of the votes during the election, while the Knesset members are elected on a proportional system, based on the percentage of votes that the party receives in the elections.<sup>243</sup> So, now Israelis are not forced to choose which party will control in the Knesset based on which individual is running for prime minister. This law has had a direct effect on the numbers in the Knesset because Israelis are now allowed to chose a prime minister that represents one party and then vote for a list from another party for the Knesset members.<sup>244</sup> "Consequently, the power of the parties representing sectarian interests has increased significantly."<sup>245</sup>

#### *Religious Parties in Israel*

*"The parliamentary strength of the Haredim is a thorn in the side of secular Israel."*<sup>246</sup>

The new premier-parliamentary system has increased the power of smaller parties by allowing people to vote for narrower interests when supporting a party list than those interests sought when choosing the prime minister.<sup>247</sup> As mentioned previously, the leading party in the Knesset needs to form a coalition government: that is where the religious

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<sup>239</sup> See *id.* at 39-41.

<sup>240</sup> See HOWARD M. SACHAR, A HISTORY OF ISRAEL: FROM THE RISE OF ZIONISM TO OUR TIME 366-67 (2d ed. 1996).

<sup>241</sup> . See *The Chaos of Israeli Politics: Divide and Multiply*, THE ECONOMIST, Apr. 25, 1998, at 8 [hereinafter *Chaos*].

<sup>242</sup> See Basic Law: The Government, (visited Jan. 9, 1999) <<http://www.mfa.gov.il/mfa/go.asp?MFAH00hd0>>.

<sup>243</sup> See Brichta, *supra* note 238, at 189.

<sup>244</sup> See *id.*

<sup>245</sup> *Id.*

<sup>246</sup> David, *supra* note 210.

<sup>247</sup> See *Chaos*, *supra* note 244.

parties have always played a key role.<sup>248</sup> “Conventional political wisdom has held that the party that comes out on top in the elections will automatically receive the support of the ultra-Orthodox, giving it the votes to form a coalition.”<sup>249</sup> Traditionally, they have never felt strongly about the issues which separate the Likud<sup>250</sup> and Labor Party,<sup>251</sup> namely Israel’s territorial boundaries and the position on the Arab-Israeli conflict.<sup>252</sup> Because the ultra-Orthodox originally did not believe in the existence of the state of Israel, they are not so concerned with the politics.<sup>253</sup>

They are merely trying to have the best opportunity for getting government funding for their schools and communities; and generally just remain in a position where they could influence law in their favor.<sup>254</sup> They are not concerned with Palestinian issues or the peace process.<sup>255</sup> Rather they have “long specialized in pushing through legislation enshrining their monopoly over religious affairs and obtaining state subsidies for their communities and yeshivas.”<sup>256</sup> However, the 1996 elections, with the first direct election of the prime minister, witnessed a dramatic shift.<sup>257</sup> The ultra-Orthodox, having been consistently in the center

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<sup>248</sup> See *id.*

<sup>249</sup> Ehud Sprinzak, *The Politics of Paralysis I: Netanyahu’s Safety Belt*, FOREIGN AFFAIRS, July 1, 1998, at 18.

<sup>250</sup> Likud, known as the national party, is the right wing party that does not want to give up land for peace, encourages settlement in the occupied territories and plans on annexing the territories. Within the Israeli right there is the secular nationalist wing, embodied in the Likud, and the radical right, spearheaded by the settlers of the occupied territories. See *id.*; *Chaos*, *supra* note 247.

<sup>251</sup> Labor, known as the peace party, is willing to make land concessions to the Palestinians and advocates moderation. The Labor Party was in power from 1948 until 1977. See Sprinzak, *supra* note 252; Israel Background Notes (last modified Jan. 24, 2000) <<http://www.tradeport.org/ts/countries/israel/bnotes.html>>; *Chaos*, *supra* note 247.

<sup>252</sup> See Sprinzak, *supra* note 252.

<sup>253</sup> See *id.*

<sup>254</sup> See *id.*

<sup>255</sup> See *id.*

<sup>256</sup> See *Id.*

<sup>257</sup> See *id.*, See also William Schneider, *Why Bibi Struck Out Netanyahu Lost because Israeli Voters Rejected His American-Inspired Politics Of Division*, NATIONAL JOURNAL, May 22, 1999 at Politics (noting that the 1996 Israeli election was the first election where there was a direct popular election for Prime Minister).

and falling to whichever party was in power, chose to align themselves with the right.<sup>258</sup>

There are several religious parties which have survived over the years and there are those that have recently emerged in a strong showing in the Knesset.<sup>259</sup> Initially there were four religious parties in the early 1950s: Mizrachi, HaPoel Mizrachi, Agudat Israel and Poalei Agudat Israel.<sup>260</sup> The first two grew within the Zionist movement and later combined to form the National Religious Party in 1956.<sup>261</sup> The latter two were opposed to Zionism and later merged to form the Torah Religious Front, subsequently renamed to Agudat.<sup>262</sup> In the 1996 elections there were a total of 21 parties registered to run for Knesset seats, of which at least 4 were religious parties.<sup>263</sup>

One relatively new party, Shas, has become a powerhouse in the Knesset since its creation in 1984.<sup>264</sup> Shas, consisting of Sephardim<sup>265</sup> Jews, was an offshoot from the Ashkenazik<sup>266</sup> Agudists.<sup>267</sup> They surprised everyone by winning 5 seats in the 1988 election.<sup>268</sup> By 1996 they had doubled their number of seats and proved to be a necessity for forming a coalition.<sup>269</sup> This party, though ultra-Orthodox in its religious views, has a very strong Zionist platform.<sup>270</sup> Its

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<sup>258</sup> See *id.* (noting that this new camp may be accurately labeled a “soft right” because the ultra-Orthodox hold a special kind of right-wing attitude that is much more yielding than that of the traditional Likud right)

<sup>259</sup> The names of the many religious parties have changed and members have shifted among them several times. Some parties have dissolved and new ones have been created. This comment does not address all of the religious parties that have influenced Israeli politics. Rather, the concentration will be on Shas, a new party that has gained significant power in the 1996 election.

<sup>260</sup> See SACHAR, *supra* note 9, at 377.

<sup>261</sup> See *id.*

<sup>262</sup> See *id.* at 377-78.

<sup>263</sup> See Ministry of Foreign Affairs, *Parties Registered for the 1996 Knesset Elections* (visited on Jan. 9, 1999) <<http://www.mfa.gov.il>>(listing NRP, Shas, United Torah Judaism, Telem Emunah, and Settlement Party), See also Library of Congress / Federal Research Division / Country Studies / Area Handbook Series / Israel <<http://lcweb2.loc.gov/frd/cs/iltoc.html>> (visited March 12, 2000) (listing National Religious Party, Agudat Israel, Shas and Central Religious Camp as the four religious parties found in the Israeli government).

<sup>264</sup> See SACHAR, *supra* note 9, at 923.

<sup>265</sup> See Facts, *supra* note 34, at 110.

<sup>266</sup> See *id.*

<sup>267</sup> See SACHAR, *supra* note 9, at 923.

<sup>268</sup> See *id.* at 958-59.

<sup>269</sup> See Chaos, *supra* note 244 at S14

Sephardic leaders draw on ethnicity for their large support among Israelis.<sup>271</sup> Many Sephardim felt that they have been left out of the political system and have found a way to voice their concerns through Shas.<sup>272</sup> Like many of the other religious parties, Shas recently aligned itself with the right.<sup>273</sup>

Ehud Sprinzak, has labeled the ultra-Orthodox religious parties as the “soft right” and has written that there are five elements that are behind the rise of the soft right in politics.<sup>274</sup>

#### INTERACTION BETWEEN GUSH EMUNIM AND ULTRA-ORTHODOX YESHIVAS.

Gush Emunim are a group of Jews who believe that the future of Israel includes an expansion into the occupied territories.<sup>275</sup> They live in the West Bank and support all efforts to build up Jewish settlements.<sup>276</sup> They have become more closely associated with the ultra-Orthodox who have been hired as teachers for the Gush Emunim yeshivas.<sup>277</sup> Through their working relationship, the two groups discovered that they shared the view that Arabs and leftist Jews were their enemies.<sup>278</sup> As a result, many ultra-Orthodox were drawn into the political activity of the religious Zionists.<sup>279</sup>

#### KHANIZATION OF ULTRA-ORTHODOX STUDENTS.

As more religious young men were being exempt from military service, the numbers of students in the yeshivas grew.<sup>280</sup> It reached a point where young men were not qualified for such intense study, but they still wanted to devote their lives to the study of Jewish law.<sup>281</sup> These men were astutely targeted by the Kach movement.<sup>282</sup> This

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<sup>270</sup> See *id.*

<sup>271</sup> See *id.*

<sup>272</sup> See *id.* (explaining the long history of tense relations between the Sephardim and Ashkenazim). See generally SACHAR, *supra* note 9, at 395-428.

<sup>273</sup> See Sachar, *supra* note 9 at 924.

<sup>274</sup> See Sprinzak, *supra* note 252.

<sup>275</sup> See *id.*

<sup>276</sup> Moshe Ma oz, *From Conflict To Peace? Israel's Relations With Syria and The Palestinians*, MIDDLE EAST JOURNAL, Vol. 53, Issue 3, July 1, 1999.

<sup>277</sup> See *id.*

<sup>278</sup> See *id.*

<sup>279</sup> See *id.*

<sup>280</sup> See Sprinzak, *supra* note 252.

<sup>281</sup> See *id.*

<sup>282</sup> See *id.*

movement, controlled by the late Rabbi Meir Kahane, was a far right political movement which called for violence against the Arabs and the unstoppable growth of Israel.<sup>283</sup> The violence that was encouraged by the Kach movement was performed in the name of God, an appealing theory for the religious youth.<sup>284</sup>

#### POLITICIZATION OF CHABAD.

Chabad is a Hassidic religious group that believes in the holiness of the entire land of Israel.<sup>285</sup> The followers have traditionally been nonpartisan.<sup>286</sup> However, as ideological debates continued in Israel over land issues with the Palestinians, and especially in negotiating peace, Chabad found itself leaning further right.<sup>287</sup> During the 1996 elections, Chabad donated money to Netanyahu's campaign and made their position clear: they are on the right.<sup>288</sup>

#### RISE OF SHAS.

Shas is a relatively new political party, which debuted in 1984, that is aimed at giving a voice to the religious Shephardim.<sup>289</sup> Traditionally, the Sephardim have voted with Likud, but as Shas grew in popularity many Shephardim, particularly the religious, have left Likud to vote for Shas.<sup>290</sup> Having deep-rooted resentment for mistreatment and oppression by the Ashkenazim, they are weary of the Left (known for its Ashkenazi support).<sup>291</sup> However, their support for the Peace Process keeps them from being considered ultra-Orthodox, rather they are considered to be a unique combination of ultra-orthodox piety and earthy pragmatism.<sup>292</sup> Their position gives them a strong support from the Sephardim (traditionally right wingers) and many of the leaders have participated in right wing activities.<sup>293</sup>

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<sup>283</sup> See *id.*, See also Mark Juergensmeyer, *The Terrorists Who Long For Peace*, 20-SPG FLETCHER F. WORLD AFF. 1, 6 (1996).

<sup>284</sup> See *id.*

<sup>285</sup> See *id.*

<sup>286</sup> See *id.*

<sup>287</sup> See *id.*

<sup>288</sup> See *id.*

<sup>289</sup> See *id.*

<sup>290</sup> See *id.*

<sup>291</sup> See *id.*

<sup>292</sup> See *id.*

<sup>293</sup> See Jon Immanuel, *One Israel's Many Coalition Alternatives*, THE JERUSALEM POST, June 1, 1999 at 3 (stating that Shas represents nearly 40% of Sephardi voters).

GROWTH OF SEPHARDIC “BORN-AGAIN” MOVEMENT.

Since the mid 80’s there has been a wave of youth that are becoming Orthodox. It is commonly referred to as *hazara b’chuva*, return to your roots.<sup>294</sup> Though there has not yet been a concrete political affiliation, there have been signs of aggression towards the liberal Supreme Court and towards the Arab citizens.<sup>295</sup> Their move to the right seems to be just a matter of time.

For all of these reasons, the soft right has grown and added power to the traditional right wing parties normally aligned with Likud. In the last election, the three largest religious parties won a total of 23 seats, or 19.5% of the vote.<sup>296</sup> Compared to the 26.8% and 25.1% received by Labor and Likud respectively, it is clear why an alliance between the religious parties is fervently sought.<sup>297</sup> With a 79.3% voter turnout, the votes for the religious parties show that a substantial part of Israeli society is interested in having religion play a significant role in the Knesset.<sup>298</sup> The question for the future is whether the religious parties will once again align with Labor, like they had so many times in the past, if Labor were to get the plurality in the upcoming election.<sup>299</sup>

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<sup>294</sup> See *id.*; See also BEN YEHUDA’S POCKET ENGLISH-HEBREW DICTIONARY 15, 229 (1964) (defining “return” and “answer” in Hebrew).

<sup>295</sup> See *id.*

<sup>296</sup> See *Ministry of Foreign Affairs, Elections in Israel May 1996* (visited on Feb. 10, 2000 <<http://www.mfa.gov.il>>).

<sup>297</sup> See *id.* (showing the election totals from the 1996 Israeli election).

<sup>298</sup> See *id.*

<sup>299</sup> See SPRINZAK, *supra* note 252 (explaining that historically, the religious parties have aligned themselves with the party that prevailed in the election). Since this article was written, Israel has held another election in May of 1999. The new Prime Minister is Ehud Barak, of the One Israel Party (formerly Labor Party). The religious parties, in this election won 27 seats and once again aligned themselves with the leading party to form a coalition. See *Israeli Elections*, WORLD OF INFORMATION COUNTRY REPORT, *Sept. 8*, 1999, at 13. A crucial change was made in the Ministry of Interior, when Barak appointed Natan Sharansky as Minister of Interior. Sharansky, a Russian immigrant, will now be in control of registration of immigrants and the hotly debated issue of their nationality. See Natan Sharansky, MK Minister of the Interior, <<http://www.israel.org/gov/sharansk.html>> (visited March 12, 2000), See also *The Knesset-Government Ministries: Ministry of the Interior* <<http://www.knesset.gov.il/knesset/engframe.htm>> (visited on March 16, 2000). (stating that the Ministry of the Interior is in charge of regulation of personal and legal status of Israeli residents

## RELIGION IN THE LEGISLATURE

*Law of Return & “Who is a Jew?” Controversy*

“Any attempt to differentiate between Jews recognized as such by the Halakah and those who are eligible for immigrants rights under the terms of the Law of Return would only lead to certain disaster and help destroy the unity of the Jewish people.”<sup>300</sup>

The Law of Return<sup>301</sup> has been a source of international debate among Jews for almost 50 years. This law, together with the Nationality Law,<sup>302</sup> grants the right for every Jew to become a citizen of Israel.<sup>303</sup> It has been regarded as one of the pillars of the unwritten Israel constitution, in the sense that it gives effect to one of the basic purposes of the very establishment of the State.<sup>304</sup> The conflict of this law arises between the secular definition of Jewish identity for nationality purposes and the Jewish Halakic definition for personal status purposes.<sup>305</sup> According to the Halaka, a Jew is anyone born to a Jewish mother.<sup>306</sup> This specific definition, or lack thereof, in the Law of Return, is the source of great debate.<sup>307</sup>

When the Law of Return was first written in 1950, Ben Gurion left out the definition of “Jew.”<sup>308</sup> This omission was the subject of two landmark cases in Israel, the first of which came up just eight years after the enactment of the law.<sup>309</sup> In

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in matters of citizenship and registration, immigration, entrance to and exit from the country, censuses, and the dissemination of census information).

<sup>300</sup> Amnon Rubenstein, *Don't Touch the Law of Return*, HA'ARETZ, June 18, 1998, at Op-ed [hereinafter *Don't Touch*].

<sup>301</sup> Law of Return, 4 L.S.I. 114 (1950).

<sup>302</sup> Nationality Law, 6 L.S.I. 50-53 (1952) (stating that citizenship in Israel may be acquired by birth, Law of Return, residence, and naturalization).

<sup>303</sup> *See id.*

<sup>304</sup> Bernard S. Jackson, *Brother Daniel: The Construction of Jewish Identity in the Israel Supreme Court*, VI/17 INT'L J. FOR SEMIOTICS OF L. 115, 123-124 (1993).

<sup>305</sup> *See* ANGLERD, *supra* note 85, at 307.

<sup>306</sup> *See id.*

<sup>307</sup> *See id.*

<sup>308</sup> *See* Law of Return, *supra* note 304.

<sup>309</sup> *See* H.C. 72/62 Rufeisen v. Minister of the Interior, 16 P.D. 2428 (1962). For a discussion of the *Rufeisen* case, *see generally* Saul Lubetski, Religion And State: Does The State Of Israel Provide The Forum For The Revival Of The Jewish Legal System ?, 26 N.Y.U. J. INT'L L. & POL. 331, 360 (1994).

1958 a Jewish born Polish man who had converted to Christianity and became a Priest, acquiring the name Brother Daniel, applied for Israeli citizenship under the Law of Return.<sup>310</sup> When his request that his nationality be considered “Jewish” was denied, Brother Daniel appealed to the Supreme Court.<sup>311</sup>

The Supreme Court decided that the term “Jew” had two meanings: one secular, for citizenship purposes and one religious, for Halakic personal status purposes.<sup>312</sup> Because the citizenship law is a secular law, the Court applied ordinary usage of the word “Jew.”<sup>313</sup> Applying Halakic law the court found that, Brother Daniel was entitled to automatic citizenship as a Jew because he was born to a Jewish mother and “once a Jew, always a Jew.”<sup>314</sup>

To prevent this sort of situation from recurring, the Minister of the Interior issued regulations that all people who claim to be Jews and do not belong to another faith, are to be registered as Jewish on the “nationality” space on their identification cards.<sup>315</sup> Also, children are to be registered under the nationality that the parents claim the child belongs to, without any additional proof.<sup>316</sup> The religious members of Knesset, in protest to such a directive, resigned and supported a vote of no confidence introduced in the Knesset.<sup>317</sup> Once again, Prime Minister Ben Gurion found himself in a position of needing to compromise to save his government. In 1960, at the urging of Ben Gurion, the new

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<sup>310</sup> *See id.*

<sup>311</sup> *See id.*, *See also* SACHAR, *supra* note 9, at 602-608. Jewish identity in Israel has three definitions or classifications with overlapping roles within the society: citizenship, nationality (or ethnicity) and religious affiliation. Being Jewish means something different within each classification. Citizenship is not based on religion because there are Moslem, Druze and Christian citizens in Israel. Ethnicity is kept distinct from citizenship for security reasons. Initially Ben Gurion felt that Arabs with Israeli citizenship may not be loyal to Israel, so he exempted them from military service. Religious affiliation simply identifies the religion. *See id.*

<sup>312</sup> *See* SACHAR, *supra* note 9, at 604.

<sup>313</sup> *See* LESLIE, *supra* note 72, at 39.

<sup>314</sup> *See id.* at 38. Although one may convert to another faith, Halakic law regards the convert as a Jew as long that person was born to a Jewish mother; basically there is just one requirement to being Jewish under the Halakah. *See id.*

<sup>315</sup> *See* SACHAR, *supra* note 9, at 604-05. There are two related categories on Israeli I.D. cards: religion and nationality. *See id* at 604.

<sup>316</sup> *See id* at 605.

<sup>317</sup> *See id* at 606.

Minister of Interior passed a regulation that allowed registering as Jews only to those people that fulfilled the Halakic definition.<sup>318</sup>

Only a decade later the “Who is a Jew?” controversy was in full swing again.<sup>319</sup> Officer Shalit, an Israeli navy officer, married a gentile woman in Europe and settled with her in Haifa.<sup>320</sup> They had two children in Israel and wished to register them as Jews, for identity purposes.<sup>321</sup> The local registrar, following the 1960 regulation, refused to register the children as Jews.<sup>322</sup> The Shalits went all the way to the Supreme Court and received a five to four decision in their favor.<sup>323</sup> The Supreme Court again distinguished between civil and religious definitions and held that since the nationality classification is civil, Halakic law does not need to be applied.<sup>324</sup> The religious members, namely those who were members of the NRP, were in an uproar and they threatened to leave the Knesset and demanded that the Knesset pass a law overturning the Supreme Court decision.<sup>325</sup>

This time the threats by the religious members produced remarkable results.<sup>326</sup> The Registration of Inhabitants Law was amended to include the Halakic definition of Jew for nationality purposes.<sup>327</sup> The amendment provided that anyone born to a Jewish mother or one who has converted to Judaism shall be registered as having Jewish nationality.<sup>328</sup> However, in return for this change, the

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<sup>318</sup> *See id.*

<sup>319</sup> *See id.* (describing the Shalit case).

<sup>320</sup> *See id.*

<sup>321</sup> *See id.* In this situation, the children have automatic citizenship by being born in Israel. *id.*

<sup>322</sup> *See id.*

<sup>323</sup> H.C. 56/68 Shalit v. Minister of Interior, 23 P.D. 277 (1970); *see also* SACHAR, *supra* note 9, at 606.

<sup>324</sup> *See id.* at 607.

<sup>325</sup> *See id.*

<sup>326</sup> *See id.* (illustrating that the threats led to a rush decision by Golda Meir’s government).

<sup>327</sup> *See id.*

<sup>328</sup> *See id.* at 606. After the 1999 election, a new solution was proposed to resolve the problems caused by the requirement to identify one’s nationality on Israeli ID cards. Moderate Rabbi, Michael Melchoir, of the Meimad Religious Zionist Party, suggests that the nationality line be removed from ID cards, leaving that question to be decided by Rabbis, and not the issuing State. *See* Leslie Susser, *Triumph of the Moderates*, JERUSALEM REP., July 19, 1999 at 20. He suggests that non-Halakically converted Jews should be able to become citizens, but as an Orthodox Rabbi he does not have to accept them as Jews.

religious members compromised and the secularists received a small victory as well.<sup>329</sup> The Law of Return was also amended in 1970 to give automatic citizenship for the gentile spouses of Jews, their children and their grandchildren.<sup>330</sup> The logic behind this compromise was that the Jewish identity would be investigated by the Rabbinate anyway, when these citizens were seeking a change in their personal status, as discussed previously in this comment.<sup>331</sup>

These two changes, the issue of converting to Judaism and influx of Halakicly non-Jewish immigrants, have created their own string of problems.<sup>332</sup> As a result of this change to the Law of Return, approximately 100,000 non-Jews came to Israel from the former Soviet Union.<sup>333</sup> They gained citizenship through their, however distant, family ties to a Jew and now enjoy all of the civil benefits of citizenship.<sup>334</sup> These immigrants are in difficult position in terms of identification: their religion is not Jewish and their nationality is not Jewish, but their citizenship is Israeli.<sup>335</sup> Essentially, they do not fall into any of the religious categories established by Israel because they are not Jewish, Christian, Moslem or Druze.<sup>336</sup> When these immigrants attempt to change their personal status they face many obstacles, like getting married, because they do not have a religious affiliation to turn to.<sup>337</sup>

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*See id.* The conversion of immigrants to Judaism is discussed in Section VII, *infra*.

<sup>329</sup> *See* SACHAR, *supra* note 9, at 607.

<sup>330</sup> *See* LESLIE, *supra* 72, at 43.

<sup>331</sup> *See* SACHAR, *supra* note 9, at 607.

<sup>332</sup> *See* discussion, *infra* Part VII.

<sup>333</sup> *See* Gabizon, *supra* note 7, at 181. *See generally* Shelese Emmons, Note, *Russian Jewish Immigration and its Effect on the State of Israel*, 5 IND. J. GLOBAL LEG. STUD. 341 (1997)(discussing the mass immigration from the former Soviet Union into Israel this decade and its effects on Israeli society). Reports show that the number of Russian immigrants that are not Jewish within the Halakhic definition, has risen to more than a quarter of a million by the end of 1999. *See* Rebecca Trounson, *Israel's Welcome Mat for Immigrants Under Scrutiny*, L.A. TIMES, Dec. 4, 1999 at A1.

<sup>334</sup> *See* Gabizon, *supra* note 7, at 181.

<sup>335</sup> *See id.*

<sup>336</sup> *See id.*

<sup>337</sup> *See id.*

*Marriage and Divorce Law*

*“Denial of the rights and nullification of the liabilities involved in civil marriage are incompatible with the destiny and function of this state as a country of immigration...”*<sup>338</sup>

One piece of legislation has become a frequent target of attack by secular Israelis as infringing on their guaranteed freedom of religion.<sup>339</sup>

The Marriage and Divorce Law,<sup>340</sup> passed just a few years after Israel declared its independence, actually enlarged the powers that the Orthodox enjoyed in the pre-state period.<sup>341</sup> Now the Rabbinate had authority over all Jewish residents and citizens.<sup>342</sup> Prior to the enactment of this law, Jews could choose to marry in accordance to the laws of the Rabbinate or not.<sup>343</sup> This law changed that by providing that those citizens not married with approval of the Rabbinate are not legally married.<sup>344</sup> Because the Rabbinate follows Orthodox Jewish law, Israeli Jews have no choice but to abide by those laws if they want to marry in Israel.<sup>345</sup> Thus, civil marriage is not recognized in Israel.<sup>346</sup>

This law is, however, easy to circumvent by travelling outside of Israel to get married.<sup>347</sup> In 1963 the Supreme Court forced the Ministry of the Interior to recognize civil marriages performed abroad.<sup>348</sup> This decision provided non-

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<sup>338</sup> H.C. 301/68 Miriam Straight v. Chief Rabbi, 18(1) P.D. 598, at 613.

<sup>339</sup> See Linda Gradstein, *Jewish Women’s cases trpped in rabbiic court Coalition fightin to solve thousands of pleadings in which husbands refuse to grant divorce*, DALLAS MORNING NEWS, July 2, 1993 at 15A.

<sup>340</sup> See Rabbinical Courts Jurisdiction (Marriage and Divorce Law), 7 L.S.I. 139 (1952-53) (Isr.).

<sup>341</sup> See LESLIE, *supra* note 72, at 27-29; see also SACHAR, *supra* note 9, at 37-38.

<sup>342</sup> See LESLIE, *supra* note 72, at 27-29.

<sup>343</sup> See *id.* at 30 (describing the Jewish community in the Mandate period as sort of a club, to which one could choose to belong to or not).

<sup>344</sup> See *id.* at 37 (explaining that those not married according to Orthodox traditions are not legally married in Israeli law).

<sup>345</sup> See Marriage and Divorce Law, *supra* note 342 at 139 (stating that marriages are to be performed only under Orthodox Jewish law). Note that the other recognized religions in Israel have several denominations within them, unlike Judaism which only recognizes Orthodoxy.

<sup>346</sup> See *id.*, See also LESLIE, *supra* note 72, at 37

<sup>347</sup> See *id.*.

<sup>348</sup> See H.C. 143/62 Funk-Schlesinger v. Minister of the Interior, 17 P.D. 225 (1963).

Orthodox Jews with an avenue to get married under the civil laws of other countries or the laws of Conservative or Reform Judaism.<sup>349</sup> Many Israelis go to Cyprus, given the geographic proximity, to get married and have started their own brand of marriages, known as “Cypress weddings.”<sup>350</sup> Though such a “loophole” is commonly used, it is not a solution for Israelis who cannot afford the financial burden associated with travelling abroad.<sup>351</sup> Furthermore, it is not a solution for the many secular Israelis who believe that this law as an encroachment of their religious freedoms.<sup>352</sup>

Since divorce is also covered by the Marriage and Divorce Law, women seeking to dissolve their marriage face their own share of problems which pose even greater difficulties than the marriage requirements.<sup>353</sup> Divorcing within Orthodox Judaism is a unilateral process whereby the husband must deliver to the wife a *get*.<sup>354</sup> If the wife wants a divorce, there is no guarantee that the husband will grant her a *get*, without which she is not permitted by Halakic law to remarry.<sup>355</sup> Because the consent of the husband is needed for a Halakic divorce to be finalized, thousands of women have been left in a limbo.<sup>356</sup> They are awaiting judicial action to force the husband to grant the divorce.<sup>357</sup> Unfortunately, there are many men who would prefer to sit in jail rather than grant the divorce or even compromise on the terms of the divorce.<sup>358</sup>

There is not much recourse for individuals, namely women, scarred by the Orthodox strict requirements for divorcing. Since the Supreme Court has no actual appellate

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<sup>349</sup> In 1966 an Israeli Supreme Court Justice enjoyed the benefits of such a decision when he got married in New York by a Conservative rabbi. See LESLIE, *supra* note 72, at 37.

<sup>350</sup> See generally Menashe Shava, Civil Marriages Abroad: Validity in Israel, 9 TEL AVIV U. STUD. L. 311, 312, n.2 (1989) .

<sup>351</sup> See *id.*

<sup>352</sup> See *id.*

<sup>353</sup> See generally Gradstien, *infra* note 359 (discussing the obstacles that women face when seeking an Orthodox divorce).

<sup>354</sup> A *get* is a bill of divorce mentioned in the Torah. See PHILIP BIRNBAUM, *supra* note 98, at 120.

<sup>355</sup> See *id.* Until she receives her *get*, a Jewish woman is *agunah*, a term meaning shut off or restrained. See *id.*, at 457.

<sup>356</sup> See Linda Gradstein, *Jewish Women’s Cases Trapped in Rabbinical Court: Coalition Fighting to Solve Thousands of Pleadings in Which Husbands Refuse to Grant a Divorce*, DALLAS MORNING NEWS, July 2, 1993, at 15A.

<sup>357</sup> See *id.*

<sup>358</sup> See *id.*

jurisdiction over the Rabbinical Courts,<sup>359</sup> in personal status matters, its only power comes from its capacity as the High Court of Justice.<sup>360</sup> As High Court of Justice, the Court can review administrative action and acts as an arbiter between the individual and the state.<sup>361</sup> Also, the Supreme Court has held that once proceedings have been started in the Rabbinical courts, the civil courts have no jurisdiction.<sup>362</sup> However, once a judgment is rendered, the civil courts must enforce the judgments of the religious courts (whether Rabbinical, Moslem, Christian or Druze), unless the courts exceeded their jurisdiction.<sup>363</sup>

#### SUPREME COURT TO ADDRESS RELIGION – THE CONVERSION ISSUE

*“This court isn’t the enemy. The Court is the final bastion of democratic values.”*<sup>364</sup>

The power of the Supreme Court over the Rabbinical Courts is currently being tested over the issue of non-Orthodox conversions in Israel.<sup>365</sup> As the latest issue sparking divisive opinions among the secular and religious, it has been in and out of the Knesset and courts for several years now.<sup>366</sup> In 1995, the Israeli Supreme Court held that there was no legal basis for refusing to register Reform or Conservative conversions.<sup>367</sup> In response, the religious parties, tabled a bill that would codify the Orthodox

<sup>359</sup> See Marriage and Divorce Law, *supra* note 342, (stating that the Rabbinical courts have “exclusive” jurisdiction over marriage and divorce).

<sup>360</sup> See MINISTRY OF FOREIGN AFFAIRS, DEVELOPMENT OF LAW IN ISRAEL: THE FIRST 50 YEARS (visited Jan. 9, 1999) <<http://www.mfa.gov.il>>

<sup>361</sup> See *id.*

<sup>362</sup> Women often want to go to civil courts for property disputes, custody battles and various other issues. See Zvi Harel, *Battle of Courts Leaves Rabbinical Court in the Cold*, HA’ARETZ, June 23, 1998 <<http://www3.haaretz.co.il>> (reporting that a recent case in the Tel Aviv District Court allowed for an alimony dispute to be settled in favor of the wife, although the husband had previously filed a divorce suit with the Rabbinical Courts).

<sup>363</sup> See MINISTRY OF FOREIGN AFFAIRS, THE JUDICIARY (visited Jan. 9, 1999) <<http://www.mfa.gov.il>>.

<sup>364</sup> Rabbi Ammiel Hirsch, Association of Reform Zionists of America *quoted in* Elissa Gootman, *Conversion Battle Flaring in Knesset as Lawsuits Loom*, FORWARD, V. 102, No. 31, 188, June 12, 1998.

<sup>365</sup> See *id.*

<sup>366</sup> See *id.*; See also *Conversion Test*, THE JERUSALEM POST, Jan. 1, 1999, at 8; See also *Court Recognizes Non-Orthodox Conversions*, MIDDLE EAST NEWS ITEMS, Jan. 6, 1999 [hereinafter *Court Recognizes*].

<sup>367</sup> See *id.*

Rabbinate's control over conversions in Israel.<sup>368</sup> Soon after, several lawsuits were filed, seeking official registration, by Jews that were converted by non-Orthodox rabbis.<sup>369</sup> The legislation and lawsuits were frozen for over a year as the Ne'eman Committee was convening to decide on a compromise.<sup>370</sup>

The Ne'eman Committee was formed to resolve the issue of conversions in Israel.<sup>371</sup> In recent years the Reform and Conservative movements have been pressuring the Israeli government to accept Jews converted by Reform or Conservative Rabbis as "Jews" for nationality purposes.<sup>372</sup> The Orthodox leaders have adamantly opposed this view.<sup>373</sup> They firmly believe that only conversions by Orthodox Rabbis should be acknowledged by the State.<sup>374</sup> The Ne'eman Commission, composed of representatives from Reform, Conservative and Orthodox sectors of Judaism, suggested creating a conversion school led by teachers from all three denominations within Judaism, while leaving the actual conversion to Orthodox Rabbis. The Orthodox opposed the Commission's findings, but heavy support from the Knesset has led to the creation of the Institute for Jewish Studies.<sup>375</sup> As the Institute is struggling for recognition from the Orthodox Rabbis, teachers are being trained and students, mostly Russian immigrants, are enrolling.<sup>376</sup>

The stalemate in the courts was broken in the last week of December, 1998 by a Jerusalem District Court judge, when he held that 23 individuals converted by non-Orthodox rabbis will be registered as Jews.<sup>377</sup> The Orthodox members of Knesset immediately responded by reintroducing their bill to the Knesset.<sup>378</sup> It is difficult to tell which way the Supreme Court would lean on an appeal of this decision.

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<sup>368</sup> See Jonathan Border, *Netanyahu and American Jews*, World Policy Journal, Apr. 1, 1998, at 89.

<sup>369</sup> See Gootman, *supra* note 367.

<sup>370</sup> See *id.*

<sup>371</sup> See *id.*

<sup>372</sup> See generally Mark Lavie, *Israeli Rules Non-Orthodox Jewish Conversions Valid in Israel*, THE SALT LAKE TRIBUNE, January 2, 1999 at C2.

<sup>373</sup> See *id.*

<sup>374</sup> See *id.*

<sup>375</sup> See YOSSEI KLEIN HALEVI, *Will These Israeli's Be Allowed to Become Jews?*, THE JERUSALEM REPORT, June 21, 1999 at 14.

<sup>376</sup> See *id.*

<sup>377</sup> See *Court Recognizes supra* note 369.

<sup>378</sup> See *id.*

## CONCLUSION

Just as the millennium is approaching, Israel is caught in a whirlwind of change. Fifty-two years ago, Israel was created as the product of an international movement striving for a national Jewish homeland.<sup>379</sup> It was an agricultural society built on communal living and a vision of statehood.<sup>380</sup> As this young country continues to shape its politics without a constitution, the ideology of its citizens is rapidly changing.

Since 1948, as Israel has been fighting for its survival against its hostile neighbors, a culture war has been festering within its own borders.<sup>381</sup> The confrontations between the secular and the religious are growing in quantity and intensity.<sup>382</sup> Violent acts are becoming more common as tolerance is becoming a rarity.<sup>383</sup> There is a saying that if the Israelis will not have the Arabs to fight with, then they will fight among themselves. Unfortunately it seems that as peace with the Arab countries is becoming a reality in the 21<sup>st</sup> Century, the Israelis are noticing the differences within their own society.<sup>384</sup> The rift between the religious and secular Jews is growing.<sup>385</sup> Resentment among the Sepharadim for past discrimination is as prevalent as in the 1950's.<sup>386</sup>

A relatively new conflict is also emerging between the immigrants from the former Soviet Union and the native Israelis.<sup>387</sup> This conflict has been brewing since the early 1990s. Though Jewish immigrations has always been welcomed and encouraged in Israel, the vast number of

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<sup>379</sup> See generally discussion, *supra* Parts I-II.

<sup>380</sup> See generally SACHAR, *supra* note 9, at 149-151 (explaining the role of the *kibbutzim*, the communal style of living that the early Jewish settlers of Israel began).

<sup>381</sup> See *supra* Part IV.C.

<sup>382</sup> See *id.*

<sup>383</sup> See *id.*

<sup>384</sup> See generally *supra* Part IV.C (examining the existing differences between secular Jews in Israel and orthodox Jews in Israel).

<sup>385</sup> See MELMAN, *supra* note 169, at 127.

<sup>386</sup> See SACHAR, *supra* note 9, at 403-407, 835 (describing the ostracized Sephardim in Israeli politics); See also MELMAN, *supra* note 169, at 228-29 (discussing current resentments of past discrimination and the fear of its return).

<sup>387</sup> See Emmons, *supra* note 336 at n. 18, 20. For the purposes of this comment, the term Soviet will be used because it best describes immigration from the various republics and oblasts, now many of which are independent countries.

Soviet immigrants, as a result of the collapse of the Soviet Union coupled with stricter U.S. immigration laws, and the liberal immigration policy of the Law of Return, has become almost overwhelming.<sup>388</sup> Such a small country is having trouble accommodating everyone in its economy.<sup>389</sup> The unemployment rate is very high among the recent immigrants.<sup>390</sup> Though this immigration wave has brought an extraordinarily high number of educated professionals, only a small percentage actually work in their profession.<sup>391</sup> Additionally, these Soviet immigrants quickly became involved in politics and almost instantly began affecting legislation.<sup>392</sup>

It is difficult to predict where Israeli society will be in the next fifty years.<sup>393</sup> Given the current system of government and elections, it appears narrow interests will continue to be served and coalitions will be unavoidable. Until Israel changes the multi party system, small political parties will have great influence on the government.<sup>394</sup> As evidenced in the last election, the religious parties have gained substantial power and there is no sign that their power will not continue to increase in the future.<sup>395</sup> If those parties continue to grow in the Knesset, it is clear that the interests of mainstream Israelis are at risk of under-representation.<sup>396</sup> It is also difficult to analyze what mainstream Israelis want. Or even to define who is a "mainstream Israelis." Are they native born? Are they recent immigrants? Are they Jewish? Are they secular? Are they Ashkenazic? More than ever, Israel is growing to be a diversified state. The one uniting characteristic that most Israelis share is their religion, Judaism. This one characteristic, that was a guiding principle in the many years

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<sup>388</sup> See *id.* at 344-45. See also discussion, *supra* Part VI.A (analyzing the amendment to the Law of Return in 1970).

<sup>389</sup> See MELMAN, *supra* note 169, at 226-28.

<sup>390</sup> See *id.*

<sup>391</sup> See *id.*

<sup>392</sup> See *id.* at 350 (discussing the recent gains of the Russian-Jewish political party, Yisrael Ba-Aliya, which captured seven seats in the 1996 Israeli elections).

<sup>393</sup> See *supra* Part IV.B-C (discussing several issues that have divided Israeli society in the past).

<sup>394</sup> See *id.*

<sup>395</sup> See *id.* (describing the power that small religious parties have gained in Israel's political system).

<sup>396</sup> See *id.*

of the Zionist movement, is now at the center of controversy. Religion, namely Judaism, tips the balance in the electoral process, creates and destroys legislation, controls civil rights and dominates over every citizen's personal freedoms.<sup>397</sup>

As citizens question the current legislation, the Supreme Court of Israel serves as a battleground. It is forced to assess the role that religion plays in Israel. Like with any democracy, as it grows older, many of its founding principles will be questioned and reevaluated. This is a crucial time for the court to set some boundaries and guidelines for religion. Once the conversion issue reaches the Supreme Court on an appeal, a milestone may be set. If the Supreme Court upholds the ruling, there will be the first major step in recent years that severely limits the Orthodox control over Judaism in Israel.<sup>398</sup> For almost three decades not only has there been no significant limitation, but rather the opposite. The Orthodox religious parties have gained enough power recently to maintain their monopoly over Judaism. As the Knesset and Supreme Court bounce controversial issues between one another, avoiding any earth-shattering moves, the citizens of Israel are fighting among themselves to protect certain guaranteed freedoms.

This comment is intended to shed light on the role that religion has played in Israel in the past and to guide the readers in drawing their own conclusions as to Israel's future. When Israeli leaders were recently asked where Israel would be in the year 2100, the responses varied greatly:<sup>399</sup>

"... by the year 2100, the Orthodox religious parties had declined into insignificance, and full-time yeshiva students, deprived of army exemptions, were again a very small, exclusive elite."<sup>400</sup>

"In Israel there will be 'open synagogues' for the holidays. The haredim will continue to operate their own synagogues in the haredi areas, but all other Orthodox, Conservative, and Reform synagogues will belong to one movement of 'open Judaism,' with a traditional manner of prayer but with an

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<sup>397</sup> See generally discussion, *supra* Parts V.B-VI.B (examining the diverse religious groups growing in Israel and the effect of these forms of Jewish religious groups on all aspects of Israeli life).

<sup>398</sup> See generally discussion, *supra* Part VI.A (citing the last two successful challenges and cutbacks to Orthodox control over Judaism in the 1960's and 1970 in Israel).

<sup>399</sup> See generally, *Israel in the Year 2100*, MOMENT, Apr. 23, 1998, at 38 (quoting several Israeli leaders).

<sup>400</sup> See *id.* (quoting Eric Yoffie, American Reform Leader).

open environment – pleasant, colorful, and family oriented.”<sup>401</sup>

“... in the year 2097, 96% of the world’s Jews were now living harmoniously in Israel, speaking 62 different languages, including Hebrew, and practicing 194 varieties of prehistorical, historical, and posthistorical Judaism....Indeed, it is hoped that a separation of religion and politics will be effected by the year 2150.”<sup>402</sup>

“...the next century is going to witness peace rendering the national religious and ultra-Orthodox parties much weaker than they used to be. As a result, the normal nature of the Jewish democratic state will emerge.”<sup>403</sup>

It remains to be seen which one, if any, of these prophecies is accurate. This author foresees that the Jewish citizens of Israel will eventually adapt to the changing face of the tiny country in the hopes of furthering the dreams of the pioneers of building a truly democratic Jewish state. As Avraham Berg put it, “This is my vision for Israel in the year 2100. And to my great sorrow, I will not be around at that time, so I would ask that nobody rain on my parade while I am still around.”<sup>404</sup>

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<sup>401</sup> See *id.* (quoting Avraham Berg, Head of the Jewish Agency).

<sup>402</sup> See *id.* (quoting Stuart Schoffman, Columnist and screenwriter).

<sup>403</sup> See *id.* (quoting Asa Kasher, Philosopher).

<sup>404</sup> See *id.* (quoting Avraham Berg, Head of the Jewish Agency).