Article history: Received 30 Aug. 2015; accepted 12 Oct. 2015

Quasi-ethnic capital vs. quasi-citizenship capital: Access to Israeli citizenship

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Abstract
Israel defines itself as a Jewish state by way of ideology, policy, and constitutionality. Jewish immigration is encouraged, and rewarded with direct access to Israeli citizenship for olim (Jewish immigrants) and their immediate family. The legal situation for foreign, non-Jewish partners, and spouses of Israeli Jewish citizens is different: these non-Jewish immigrants can potentially access Israeli citizenship through the Nationality Law. These different inroads into Israeli citizenship for both groups must be seen in connection to diasporic Jewish history, Israeli history, the country's geopolitical situation, as well as attitudes toward intermarriage. In practice this means that the incorporation of non-Jewish spouses of olim is a compromise to bolster Jewish immigration, while the problems of incorporating the partners/spouses of Israeli Jewish citizens stem from (historic and current) negative attitudes toward intermarriage, the Israeli/Palestinian conflict, and labour migration, all of which ramify into the issue of family reunion for all Israeli citizens.

Keywords: Citizenship; migration; policy; family reunion; Israel.

Introduction

While Jewish migration to Palestine under the British Mandate existed as the zionist project of the *yishuv* (pre-state Jewish settlements) with the aim to build a Jewish state in the historic area from which Jews originated the vast majority of all Jews entered the British governed area of Palestine, and later the State of Israel, due to displacement from their countries of origin. Their forced displacement was subsumed into the zionistically defined discourse of *aliyah* (literally: ascension, meaning the immigration of a Jew to Palestine/later Israel) of the *yishuv*. The massive influx of European Jews from the 1930s onwards impacted on the demographic balance of the volatile and multi-ethnic population under the British mandate. Due to this mass migration, and as a result of the Holocaust, the UN voted in favour of resolution UNGA181 in November 1947, and the State of Israel was declared in May 1948. The surrounding countries opposed the creation of Israel, while the local Arabs had objected the partition. Yet, an attack on the new country followed the declaration of state in 1948, which, in some respects, constituted an

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intensification of the armed conflict that had already taken place since November 1947. Israel won this first war, which is referred to as the 'war of independence' in Israel. It led to an expansion of Israeli territory, flight as well as displacement of Arab non-Jews/Palestinians to the surrounding countries. It also led to the flight and displacement of Jews from these countries as well as North African countries to Israel. Within Israel the direct effect was a further increase of the Jewish population within the – disputed- territory that had become the State of Israel, a country defined as Jewish and democratic. The combination of these events, and subsequent interethnic tension and on-going conflict underpin the mosaic of different pieces of the social and legal aspects in Israel such as how to integrate citizen and non-citizen minorities (Gershon & Peled, 2002; Yiftachel, 2006), how to handle non-Jewish immigrants, which include temporary labour migrants (Harper & Zubida, 2013; Rajman, 2012), the Israel born, Hebrew speaking, yet non-Jewish children of labour migrants (Kemp 2007), non-Jewish spouses of olim (Prazhinsky & Remennick, 2012 for Russians), non-married partners, or married spouses from the global north of Israeli Jews (Kranz, 2015), or olim who are not Jewish according to the decisive, orthodox definition of the rabbinate (Cohen & Susser, 2009). To depict one piece of the mosaic in detail and allow understanding connections with other pieces, this paper centres on the access to Israeli citizenship for non-Jewish, foreign, spouses of olim compared to foreign, non-Jewish partners, and spouses of Israelis Jewish citizens. It will outline why and how these two groups of non-Jewish immigrants are subject to two different legal frameworks.

To put the Israeli case study into context, the paper will briefly summarise the basic legal and ideological concepts that support ethnically defined nation states and citizenship regimes, and then move to Israel and its particularities. After this I will move to the ideological definition of Israel as a Jewish state and how this affects the legal framework, although, as the next part will show, who is a Jew remains an area of contestation. Following these complexities I will show their effect on the access of Israeli citizenship for spouses[1] of *olim* compared to spouses and partners of Israeli Jewish citizens. In the final section I will show that while non-Jewish spouses of Israeli citizens might socially integrate into Israeli Jewish society similar to the spouses of *olim* their legal integration is more difficult as it lies in the area of gaining access to Israeliness via the secular, civil law regulated process of becoming an citizen, compared to spouses of *olim* who are immediately incorporated into the wider Jewish bracket. The limitation to partners, and spouses of *olim* and Israeli Jews, respectively, is necessary as only Jews are eligible for immigration to Israel under the Law of Return (1970), which guarantees immediate access to Israeli citizenship to Jews, and their immediate family. Family reunions where one partner/spouse is an Israeli Jew are possible, which might lead to the Israeli citizenship of a foreign, non-Jewish partner/spouse, while the legal situation is

[1] The couple must be married, and the relationship must be intact. Separated and divorcing spouses are not eligible to make aliyah with their still-spouse (HCJ 8030/03).

different for Palestinian citizens of Israel (expert interview, January 28, 2012; Masri, 2013).

Concepts of citizenship: Jus sanguinis vs. jus soli and the issue of practical application

Legal approaches to citizenship vary between countries. Two extremes exist: citizenship that is bound – nearly exclusively – to jus sanguinis, the law of blood that is descent to a citizen parent, and jus soli, the law of the land, where an individual who was born on the soil of a country is – under specific circumstances – a citizens of this country via birth on its territory.[2] Most countries are biased towards one or the other, depending on their raison d'être although in praxis mixes of both extremes are common. To match the underlying ideology and make it practicable citizenship, or nationality law defines who is eligible for nationality and/or citizenship, and under which circumstance. These regulations in turn must be understood in the context of the socio-historic background of the respective countries, as Schwarz (2016) outlines in the introduction to this issue, and as each of the case studies depicts for countries of the global south. However, the list is not exhausted by these examples, and a vast range of literature exists also for countries of the global north. For example, Brubaker (1998) analysed citizenship and national identity in Germany and France (with the former being strongly biased towards jus sanguinis), von Koppenfels (2014) for the US (which is biased towards jus solis), and Schmidtke for Germany and Canada, with a focus on Canada restricting its access to citizenship for incoming migrants, and tightening its grip on access to citizenship for foreign born children of Canadian citizens (2015).

Israel bases access to its citizenship in most cases on Jewish ethnicity.[3] Individuals who are defined as Jews by the state, not necessarily the orthodox rabbinate, have privileged access to citizenship as long as they can proof descent to one, or more Jewish grandparents. If such Jews immigrate from abroad ('make aliyah'), they become Israeli citizens by way of the Law of Return (1950, amended 1970). The immediate family of olim are included in this ethnically underpinned immigration privilege and become Israeli citizens upon

[2] Legal residence of the parents underpins access to citizenship via jus solis in Germany, for example, while in Israel one of the parent must be an Israeli citizen at the time of birth of the child.

[3] The children of non-Jewish citizens of Israel are as well Israeli citizens by way of jus sanguinis enshrined in the nationality law. Like the children of Israeli Jews they are also Israeli citizens if they are born abroad, and their Israeli citizen parent was born in Israel themselves. The generation of these Israeli citizens who are born abroad cannot pass on Israeli citizenship if their children are also born abroad. The key difference between Jewish and non-Jewish Israeli citizens emerges once the generation born abroad become parents themselves: diasporic members of the non-Jewish national minorities who reside abroad are not covered under the Law of Return, while Jews are, meaning they are not born with Israeli citizenship, but they can obtain it via the Law of Return that covers those defined as eligible Jews only.

immigration too regardless of them being non-Jews. Jews who are born in Israel are Israeli citizens by way of jus sanguinis and jus soli.

Domestically, Israel structures its citizens into subgroups. One is a citizen (ezrah), but one also has an ethnicity/nationality[4] (leom), and a religion (dat). Leom follows from dat, which means in practice that an individual who is defined as a Jew by the decisive orthodox rabbinate is also an ethnic Jew, but someone who is included under the amended Law of Return of 1970 as falling into the legal bracket 'eligible Jew' by the definition of the state is not necessarily recognized as religiously Jewish domestically. This bureaucratic Jewish status is independent of an individual self-identifying as a Jew, or if they undergo social conversion into the Israeli Jewish majority in case of non-Jews (Cohen & Susser, 2009; Prazhinsky & Remennick, 2012). The Israeli concept of ethnicity that underpins citizenship for Jews is constructed by the logic of ethnic descent to an eligible Jew, and the categorical Jewishness derived from it culminates into citizenship for those defined as Jews by the state. For non-Jews who are included in the Law of Return the access to Israeli citizenship based on their kinship to Jews, granting them, in Bourdieu's sense, 'quasi-ethnic' capital. This is to say that that the categorical concept of Jewish ethnicity that underpins Israeli citizenship for Jews is neither symbolic (Gans, 1979), nor cognitive (Brubaker 2004), nor created by interweaving narratives (Kranz, 2009). These levels of constructing Israeli Jewish ethnicity become relevant only in the aftermaths of citizenship, and reflect in boundaries between the different groups of Israeli citizens (Kimmerling, 2003; Shafir & Peled, 2002), or Jews who come from different subgroups (Deshen, 1974; Kranz, forthcoming; Weingrod, 1985), who are of mixed (Jewish) parentage (Sagiv 2014), or, in regard to non-Jewish, Russian, wives of olim (Prazhinsky & Remennick, 2012), for example.

The core disagreement within the legal realm that concerns access to Israeli citizenship directly relates to the gap between state (civil) and religious (halachic) law, which creates a constant matrix of conflicts, and lawsuits (Triger, 2012).[5] The areas of disagreement can cover the registration of a child born to an Israeli Jewish and a non-Jewish foreign parent as an Israeli citizen (FC 15349-01-13), or the recognition of paternity of a foreign non-Jewish father of such a child (field notes, August 6, 2015; field notes August 16, 2015; field notes November 8, 2015). It can furthermore concern the right to abode of a foreign, non-Jewish parent of an Israeli minor citizen (HCJ 775/12, field notes July 12, 2012). In other words, Jewishness, and more so halachic Jewishness is the

[4] Leom translates into nationality and ethnicity in English. I will use the translations ethnicity throughout. The term derives from *am* (people). Leom literally means 'of the people', which underlines the intimate link of ethnicity/nationality to kinship.

[5] The situation of Christian or Muslim Arabs or Druze is not any less complex, but as this paper focuses on spouses of Israeli Jews these issues cannot be covered here.

decisive factor for privileged access to Israeli citizenship, and to remain in the country.

Parenthood to an Israeli citizen minor does neither lead to an automatic right of abode, nor does it lead to automatic access to Israeli citizenship for a foreign, non-Jewish parent, which means that the legal scenario for these parents (and partners/spouses of Israeli Jews) is completely different to that of non-Jewish *olim* spouses. That 'Israeli' is a rather hollow concept and inferior to categorical Jewishness was underlined by the Supreme Court. The Supreme Court ruled against the establishment of the ethnic category 'Israeli' in October 2013 (HCJ 08/8573) The verdict outlines in detail that who is Israeli is not only a legal but as well a philosophical and historical problem, but the verdict confirms the tripartite structure of Israeli citizenship that rests on the pillars citizenship, ethnicity, and religion, culminating in the conclusion that Israeli is not a valid ethnicity, but just an overarching citizenship.

The problem does not end there, as Jewish religion[6] is interwoven in the texture of the everyday, and seeps into the personal affairs of Israeli citizens because of the lack of separation of state and religion. Even if one has none of the recognised religions, one has a religion in terms of not having one: lelo sivug dat, meaning "no recognisable religion." This status is problematic because Israel has no provision for civil marriage (HCJ 143/62; HCJ 2232/03). All issues of personal status, such as marriage, divorce, or burial, fall under the auspices of the respective religious authorities, which do not allow for any kind of intermarriage. All of this is independent of Israeli citizenship, which means in consequence that some Israeli citizens cannot marry in their own country, while some non-citizens who fall into the right bracket can marry in Israel.[7] The neighbouring country, Lebanon, knows a similar legal framework, in both countries this dual legal framework of religious and civil law exist – uneasily and in conflict – side by side as a left over from the Ottoman Empire. In the case of Israel it was carried on in the modern nation state as a form of compromise between religious and secular Jews. It is exactly these disjunctures of the consolidation process of the country as a Jewish country, the aftermaths of the diaporic history of Jews, and with it the aversion against intermarriage/interpartnership[8], migration and geopolitics that reflect in the immediate access to Israel citizenship of spouses of olim and the lack of (immediate) access to Israeli citizenship for non-Jewish, foreign spouses of Israeli citizens.

[6] The same goes for all other recognized religions.

[7] One the one end of this spectrum are weddings of diaspora Jews in Israel, and on the other end are complaints of Israeli citizens who cannot marry in Israel (cf. Weiss, 2013).

[8] Not all of my research participants were married. The reason for the lack of marital ties did not lie in the lack of civil marriage in Israel, as none stated they could not afford to travel abroad to marry. The lack of marital ties lay in the rejection of the institution of marriage for those who were not married.

Ideological and legal underpinnings of Israel as a Jewish state

The Declaration of the Establishment of the State of Israel (1948) outlines that the new state will be the national home of the Jewish people, while at the same time "it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions." Yet, against the backdrop of the Holocaust it was felt that Jews needed a country of their own as a safeguard: "The catastrophe which recently befell the Jewish people - the massacre of millions of Jews in Europe - was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Eretz-Israel [land of Israel] the Jewish State, which would open the gates of the homeland wide to every Jew and confer upon the Jewish people the status of a fully privileged member of the comity of nations" (ibid) and its closes with the paragraph that "We appeal to the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream - the redemption of Israel." (ibid), which meant in practice that aliyah was encouraged, even at the price of granting non-Jewish, immediate kin access to residence in Israel, and potentially Israeli citizenship. The Declaration of Independence of May 1948 is the first document of the young state that outlines the privilege of Jews in the new entity, its religiously underpinned reasoning, and the underlying history as well as ideology that was to pass into a set of laws.

With the young country in upheaval, mass migration in full swing, and a developing physical, administrative, and legal infrastructure, it took about two more years for the Law of Return to come through. The original Law of Return (1950) regulated that any Jew could immigrate to Israel, obtaining citizenship immediately. He or she could, in the sense of the Declaration of Independence, become a fully-fledged member of the country. The zionist discourse of the *yishuv* was carried on into Israeli law and policy conveying the idea that Jews in a Jewish majority state are a self-determining people, while in the diaspora (*galut*) they are a vulnerable minority. Being an Israeli became ideologically defined as a higher form of Jewish being compared to the diasporic existence of *galutiyim* (diasporic Jews). The gathering of the exiles (*kibbutz ha'galuyot*) constitutes the ideological guideline of this law.

Following the Law of Return 1950, the Israeli Nationality Law (1952) came into place, which substantiates the immediate claim of Jews to Israeli citizenship based on their Jewish descent. It is indicative that the official English translations of this law is Nationality Law and not citizenship law, despite it being called *hok ha'ezrahut* (citizenship law) in Hebrew.[9] The law stipulates the ethnic nature of Israeli citizenship (i. e. citizenship through 'return') for any

[9] Israeli passports follow the same logic. The Hebrew language side states Citizenship: Israeli, the English translation states Nationality: Israeli.

person who is included under the Law of Return, as well as for any Jew who lived on the territory before state creation. Jewishness itself is defined as a nationality in this law, which is the same term as ethnicity in Hebrew. In this logic, one is 'of the people' and citizenship derives from Jewish peoplehood for any Israeli Jewish citizen, while for any non-Jew this concept does not hold, they might become citizens by way of the civil law but not by divine intervention, which is bestowed on the Jewish people only (Magat, 1999: 127). For a Jew, a rabbi[10] confirms their Jewish status and thus eligibility to citizenship. For a 'non-religiously-recognised-Jew' who falls into the bracket of 'eligible Jews' the state authorities confirm the eligibility to 'return' by way of a birth certificate, or similar documents that confirms formalised kinship to an eligible Jew.

Israeli Nationality Law is unambiguous that access to Israeli citizenship is an option for any Jew, while non-Jews can obtain citizenship only under specific, restrictive conditions even if they lived there for generations. This law distinguishes between Palestinians who live on Israeli territory, and who can naturalise as Israeli citizens under a specific set of conditions (section 3); other, non-native foreigners can also naturalise if they meet specific, and very restrictive conditions (sections 5, 6, 8, and 9). Permanent resident status is key for naturalisation, yet, how long it takes to become a permanent resident differs between individuals. Non-Jewish, foreign spouses of Israeli citizens stand out as an oddity (section 7). Their way into Israeli citizenship appears to be smoothest, as their kinship to an Israeli citizen offers them what I conceptualise as 'quasi-citizenship capital' if the spouse is an Israeli Jew. The situation is notably different for Palestinians who reside in the Occupied Territories or Gaza, and who cannot obtain residence permits by way of marriage to a Palestinian citizen of Israel (Masri, 2013; Peled, 2007).

Following the Nationality Law, in August 1952 the Entry into Israel Law 1952 came into force with the aim to regulate the entry of Jews and of non-Jews to Israel, define who can settle in Israel, and under what conditions. Like with the Law of Return and the Nationality Law, Jews are the preferred group, and the access of non-Jews is carefully regulated (Sabar & Tsurkov, 2015) so that Jewish presence, and the Jewish majority in Israel are safeguarded. This law as well as the Nationality Law has been changed by a temporary order in 2003, which excluded Palestinian residents from the Occupied Palestinian territories[11], as well as residents and citizens of Syria, Lebanon, Iraq, and Iran (Masri, 2013: 310) from entry into Israel, as well as Israeli citizenship. The constitutionality of this temporary order has been challenged, but two Supreme Court verdicts (HCJ 7052/03; HJC 466/07) upheld it so far.

[10] The rabbi needs to be recognized by Israeli authorities, the Jewish Agency (Sochnut) that organises aliyah has a list of eligible rabbis, for example.

[11] Palestinians citizens can apply, and potentially obtain entry permits to Israel on discretion of Israeli authorities.

Yet, the base of this temporary order and the verdicts goes back to another law that substantiates the privileges of Jews, and which stems from 1954: the Prevention of Infiltration Law. It completes the series of the four original laws of 1950s, which form the base of the organisation of Israel as a Jewish state, and of Jewishness as a legal, categorical vehicle within a Jewish nation state. Like the three previous laws (now in conjunction with the temporary order of 2003, as well as verdicts of 2006, and 2012) this law cannot be seen without historic backdrop either: the Law of Return has a direct relation to the Holocaust, as to grant all Jews a safe haven in 'their' country. The Nationality Law guarantees their citizenship rights in the safe haven, and the Entry into Israel Law their right to live in the country, the temporary order and the following verdicts aim at substantiating the Jewish majority – and thus Jewish nature – of the country. The Prevention of Infiltration Law stems from the fear of foreign attacks, and came into force after Palestinian guerilla fighters had entered Israel via its "eastern and southern borders in order to carry out violent attacks against Israeli targets." (Sabar & Tsurkov, 2015: 3). The law is specific in outlining that nationals or citizen of "the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, or the Yemen" and residents, visitors, and citizens of Palestine who enter Israel unlawfully, and with the intention to cause harm will be persecuted. At the same time, it was an attempt to hinder displaced Palestinians to return to Israel (Morris, 1997; Robinson, 2013).

The ongoing, and unresolved Israeli/Palestinian conflict relates directly to labour migration to Israel (Rajman & Kemp, 2008; Willen, 2008), and to the legal situation of non-Jewish spouses of Israeli Jews. Many Palestinians from the Occupied Territories lost their work permits to Israel as a result of the first intifada that began in 1987, and which only ended in 1993 with the Oslo Accords. Based on the structure of the Israeli economy particular the time-sensitive industries required replacements for the Palestinians workers, leading to work permits for foreign workers were being in high numbers by way of pressure of the industry on the government (Rajman & Kemp, 2008). These workers, like any other non-kin related non-Jew, had no right to settle in Israel, or to become citizens. Yet, Israeli Jews formed relationships with them, and married abroad due to the lack of civil marriage in Israel. While not enshrined in law, in practice non-Jewish spouses of Israel Jews were given Israeli citizenship upon application to the Ministry of Interior in a very wide interpretation of the amended Law of Return (1970) by the Ministry. This indicates that their numbers were not seen as threatening the demography of the country. With the increasing influx of labour migrants, and with it an increasing number of intermarriages the Ministry of the Interior became suspicious that some of these marriages might be fictitious, and that foreign workers took advantage of the wide interpretation of the Law of Return. When eventually citizenship was not granted to a non-Jewish spouse of an Israeli Jew and the couple decided to litigate a landmark lawsuit resulted in the current status quo: only non-Jewish spouses of *olim* were to receive Israeli citizenship upon *aliyah* with their spouses, but not spouses of Israeli Jewish citizens. These,

the court decided, can naturalise under Nationality Law. Their spouse is Israeli already and not 'returning' to Israel, and thus they are not included under the provisions of the Law of Return (HCJ 3648/97). At the same time the Ministry of the Interior was asked to put down clear directives of the naturalization procedures of these non-Jewish spouses which resulted in the directives that have been in place, and amended, ever since.

These four laws, the temporary order of 2003, and the three verdicts of 1999, 2006, and 2012, are part of the legal framework that define Israel as a Jewish state by ideology, by law, and in praxis (Olesker, 2014), and which directly affect the immigration of non-Jewish spouses of *olim* compared to Israeli Jewish citizens. Thus, the non-Jewish, foreign spouses of Israeli Jewish citizens might be seen as a form of legal collateral damage on the Israeli Jewish side within the matrix of unresolved complexities and conflicts that stem from the geopolitical situation of Israel, which aims at security but which result in suspicion (Ochs, 2012), and anxiety (Yair, 2015).

Who is a Jew or the issue of religious vs. social Jewishness

Although the ideology, legal framework, and praxis clarify that Israel is a Jewish state, the definition of who is a Jew is curiously missing from the initial laws (Feldestein, 2012). The orthodox religious, and to date in Israel binding interpretation of the halacha defines a Jew as the child of a Jewish mother, or as an individual who converted to Judaism in an orthodox conversion (giur). Children of Jewish fathers and non-Jewish mothers do not count as Jews in this definition. Yet, these children existed as the results of increasing rates of intermarriage across pre-Shoah Europe. The German historian Beate Meyer found that a significant number of Jews in Hamburg were married to non-Jews before the Shoah (Meyer, 2002). Jürgen Zieher found evidence of the high rates of intermarriage for Dortmund, Dusseldorf, and Cologne (Zieher, 2005). Other German cities had similar high rates of intermarriage between – local – Jews and non-Jews, indicating the high level of integration of German Jews into the German mainstream, despite prevailing anti-Semitism (Barkai, 2002; Hecht, 2003). Intermarriage rates in other countries varied, depending on the stratification, and segregation along religious lines, but they were significant (Feldestein, 2012). However high or low the intermarriage rates might have been, Jews who lived in the diaspora created formalized kinship relations by way of marriage to non-Jews, the off-spring might be categorized as Jewish according to the orthodox halacha or not, and intermarried Jews might have become marginal in their communities as a result (Judd 2007). Regardless of the latter, with the Nazi rise to power, the onslaught of German troops across Eastern, and South Eastern Europe and to a lesser extend North Africa, individuals who were defined as Jews by the Nazis were persecuted, and potentially murdered. This discrepancy between Nazi definition that did not distinguish between matrilineal or patrilineal descent, and the prevailing self-definition of most Jews was to create a major problem in the nascent state of Israel. In the first years after the creation of the state a person stating that they

are a Jew upon registration with the Ministry of the Interior did not have to provide proof of their Jewishness (Ben-Rafael 2002). Many Jews potentially lacked evidence due to flight, and displacement, many records had been destroyed, and asking who was Jewish based on what definition was potentially not only offensive, but could increase the trauma of already traumatised survivors.

Who is a Jew, who could be registered as a Jews by Israeli state – not rabbinic – authorities, and who should benefit from the Law of Return, the Nationality Law, and the Entry into Israel Law became a major issue in the summer of 1958. The initial Law of Return that passed in 1950 lacked a definition of 'Jew' upon request of David Ben-Gurion, the prime minister at the time (Feldestein, 2012). The 1958 events were to become the first public harbinger of the increasing, and on-going power struggle between religious, and secular Jews concerning the hegemonic power to define who is a Jew. This conflict over the hegemonic definition became legally palpable when the Minister of the Interior, Moshe-Haim Shapiro, of the HaPoal HaMizrahi party passed directives that individuals were to give proof of their Jewish status to the Ministry of the Interior upon their registration. A declaration alone did not suffice anymore (Ben-Rafael 2002). These directives were revoked by his successor Yisrael Bar-Yehuda of the Ahdut HaAvoda party in 1958 after consultation with the attorney general, Haim Hermann Cohen (Feldestein, 2012). The result of the revocation was that the ministers of the National Religious Party (NPR), which had meanwhile merged with HaPoal HaMizrahi, resigned from the government. In an attempt to find a solution and bridge the gap between the two extremes that had the religious NPR on the one side, and the secular Ahdut HaAvoda (later HaAvoda) on the other one, Ben-Gurion sought the input from Jewish scholars, judges, and rabbis who he defined as sages on how to register children of intermarriage in Israel (Ben Rafael, 2002; Feldestein, 2012) that is to say individuals whose parents declared that they wished for the child to be registered as Jewish. Ben-Gurion himself applied the ethnic concept of descent, and his precise question, outlined in his letter of October 27, 1958 (Ben-Rafael, 2002: 144-147; Hebrew original on file) was if the child of a non-Jewish mother, or non-Jewish father should be registered as an ethnic Jew with Israeli state authorities. The document contains no word on the status of the respective non-Jewish parent of such child.

The opinions of the sages Ben-Gurion had called upon ran from the orthodox halachic definition to a social definition of Jewishness, with 80% agreeing with the halachic definition (Feldestein, 2012). Matrilineal descent, and orthodox *giur* should be the decisive factors to define a categorical Jew religiously, and these should be carried on into the bureaucratic registration that remains the status quo to date: *leom* (ethnicity) derives from *dat* (religion). The minority opinion held on to the social definition. Isaiha Berlin argued in great detail to Ben-Gurion that 'non-Jews' as in non-halachic Jews or Jews of ambiguous status would be absorbed into the Jewish majority society (Ben-

Rafael, 2002: 168-176), and by that token *leom* can be treated separately from *dat*, if one wishes to adhere to a mere matrilineal logic to define a Jew religiously. Yet, a solution to bridge the definition was not found. To enable the NPR minister to return to the government, and for the government to resume work the proof of Jewishness for adults was reinstated, but it remained ambiguous what that proof needed to be. At the same time, the issues smoldered: reproaches that the sample of sages was biased were made (Feldestein, 2012), and Gershom Sholem, a kabbalah scholar, wrote in the national newspaper *Ha'Boker* (The Morning) in August 1959 that the tenants of halachic law might run contrary to widely held beliefs of the Israeli Jewish population, which saw 'social conversion' as possible- in this era of Israeli state societal dynamics the previous diasporic experiences as Jews, and as citizens of a previous home country was still extremely present in the identities of Israelis: they themselves had – to a bigger or smaller degree - been absorbed in the majority society (Kranz, forthcoming).

Yet, who is a Jew for bureaucratic purposes was not laid to rest with the 1958 compromise. In 1969 Major Binyamin Shalit litigated against the Minister of the Interior for his two sons to be registered as ethnic Jews as he believed that his children were ethnic Jews. The Population Authority, part of MOI, had refused to register them as ethnic Jews, as the mother of the children was not Jewish, and as they insisted that Jewish ethnicity derives from the orthodox definition of matrilineal descent. The case escalated until it reached the Supreme Court, which agreed with Shalit's argument: the children should duly be registered as ethnic Jews (HC 68/58). Similar to the 1958 incident, the religious parties took issue with the verdict, and in an unprecedented move the Knesset overruled the Supreme Court, thus following the orthodox halachic definition of matrilineal descent, or orthodox conversion as binding for registration as an ethnic Jew with Israeli authorities. The way was paved in Israel that leom must derive from dat, and that the orthodox definition was - in Israel - decisive for who is defined as a Jew in any domestic records. The coining of this binding definition has far reaching implications: the Law of Return of 1950 was changed significantly.

The secular State created its own definition that based on the persecution of Jews during the Shoah, the issue of the social, not religious, transmission of Jewish identity, the ubiquity of intermarriage in the diaspora, and the wish to maintain the influx of *olim*: the Law of Return was revamped to include any individual with at least one Jewish grandparent, non-Jewish spouses, and non-halachically Jewish children as eligible for immigration to Israel, Israeli citizenship, and a support basket that includes maintenance money as well as an intensive Hebrew language course, and subsidies to employers who hire *olim* (amended Law of Return, 1970) although religiously, and pursuant ethnically, these individuals are not registered as Jews in their Israeli records, despite being welcome as *olim*.

Non-Jewish spouses of olim vs. foreign, non-Jewish spouses of Israeli citizens

With the question of who is a Jew exemplifying the frictions within Israeli law, policy, as well as within Israeli Jewish society, and different citizen statuses on top of stratified citizenship (Smiths, 2013) de facto existing, immigrating partners and spouses of (both Jewish and non-Jewish) Israeli citizens add another facet to the mix. Unlike co-migrating non-Jewish family of *olim* they are not mentioned as eligible under the Law of Return (1970), although in praxis they were included until the mid-1990s, but they are definitely excluded since 1999 (HCJ 3648/97). They might immigrate permanently to Israel, but only as partners/spouses of Israeli citizens, which means that their immigration status hinges on their relationship, and that they are not equipped with citizenship upon arrival.[12] In the present situation in a similar vain to non-Jewish family of *olim*, they gain by way of kinship association to an Israeli citizen, although their capital gain is weaker because it lies within in the area of Israeli civil law, but not in the sphere of Jewishness that bestows Israeli, but Jewish defined, citizenship even to non-Jewish *olim* family as part of the Law of Return.[13] Thus, the gain of ethnic capital of immigrating partners/spouses of Israeli Jewish citizens' concerns 'quasi-citizenship capital.' This form of capital needs to be distinguished from the quasi-ethnic capital of non-Jewish *olim* spouses.

A citizen child, even if born in Israel, does not affect the resident status of the non-Jewish, foreign parent, nor does it pave their way into Israeli citizenship. In a landmark ruling of the Supreme Court of 2012 (HCJ 775/12) the application for residence of a Polish, non-Jewish mother to an Israeli minor child for whom she held single, full custody was declined, and she, as well as the Israeli citizen minor were deported to Poland. The Israeli father had no contact, and no wish to be part of the mother's, or child's life, hence her claim for residence was seen as too weak to allow for her remaining in Israel. Such a case would not have been possible in the case of aliyah as the non-Jewish spouse/parent would have obtained citizenship, and with it the right to reside in Israel. In other cases the non-Jewish foreign parent gained permission to remain in Israel, even though no guideline exists on the timeframe, or what visa the parent should be given. An expert human rights lawyer outlined that "The visa statuses vary between individuals. It is even possible to obtain citizenship." (interview, January 28, 2012). Yet, legal certainty and an automatic right of abode by way of parenthood to an Israeli citizen child does not exist, as the

[12] This scenario is not unique to Israel, and neither the issues of dependence, lack of control, and vulnerability. Spousal migration, and hence the dependence of an immigrating spouse to the local citizen spouse is a global phenomenon.

[13] Theoretically Israeli citizenship is decisive in this scenario, not Jewish status. However, human rights lawyers stressed in interviews that the immigration of foreign spouses and partners of non-Jewish Israeli citizens is even more difficult than when the Israeli spouse is a Jew (Kranz, 2015).

case of the Polish mother showed, and as my research participants mentioned throughout.

To date, the immigration of these non-Jewish partners, or spouses is not regulated by a specific law, but by the aforementioned directives that followed in the wake of the Stamka case, and each visa is at the full discretion of Ministry of the Interior. The directives for married spouses have been in place since 2008 (amended 2014), and since 2009 for non-married partners (amended 2010). The latter allow for non-married same sex partners, as well as opposite sex partners to apply for visas, and potentially citizenship via the Nationality Law once they obtain permanent residence. Liberal as this policy sounds in parts the applied immigration policy has some significant catches, as the case of non-Jewish Polish mother, and my research participants underlined.[14] Some reported no problems in obtaining their visa, and outlined that while the procedure was laborious and took a significant amount of time "that is just how bureaucracy is." (interview, July 20, 2012) The majority of all immigrating spouses and partners who were not married complained about "intransparence, randomness, and unfairness" (field notes, July 10, 2012), married spouses complained to a lesser extend although several opined that the visa procedure was "a game without rules", (field notes, March 15, 2015) or that they perceived of the way they were treatment of "discriminatory" (interview, March 13, 2013). [15] The unanimous opinion of all research participants was that the

[14] Data has been collected since November 2009. It consists of more than 40 interviews, long term ethnographic fieldwork observations on location in Israel, emails, chats, phone conversations, and texts. The fieldwork with this group of immigrants began when two German non-Jewish immigrants contacted me in September 2009, asking if I was interested their immigration experiences too after I had posted a call for participants for German olim in Israel. After the initial two interviews I enquired if they knew more non-Jewish immigrants, and via their networks reached more women, and men, who had come to Israel as a non-Jewish, foreign partner or spouses. Upon establishing the viability of the research project, I posted calls for research participants across any media suitable and to reach beyond organic social networks (Noy 2007), I posted calls for participants in the social media, on email lists, and asked colleagues, officials, NGOs, friends and family to forward my calls for participants. Since the first presentation and publication of this on-going research project non-Jewish immigrants – partners, spouses, and highly qualified labour migrants – contacted me to take part in the project. The vast majority of all research participants is married/partnered to Israeli Jews, and they come from countries of the global north (Kranz, 2015). The latter is owed to the fact that these couples typically meet via student exchange programs, the Israel partner travelling abroad after the army ('tiul'), or on location in Israel where many of the non-Jewish partners/spouses volunteered or travelled for prolonged periods, encounters in professional situations are less common and limited to very high qualification and career levels. The education of the non-Jewish spouses/partners and their Israeli counterparts falls most often into the highly qualified bracket by OECD standards (undergraduate degree and above); the level of education was more decisive as a starting base than the inner-Jewish subgroup in Israel (Mizrahim vs. Ashkenazim), replicating the finds of Lomsky-Feder and Leibovitz (2009) concerning the composition of inner-Jewish-Israeli intermarriages.

[15] The biography of the interview partners played a significant role in their perceptions of the procedure, and how they defined themselves vis-à-vis Israelis (Kranz 2015). Western Europeans who had belonged to the ethnic majority in their natives countries, and white North Americans as well as Australians and New Zealanders found the procedures least tolerable. Individuals who

rational was clear: Israel is a Jewish country, and their presence was, bureaucratically, possible, but not appreciated as the social expectations had been for their Israeli Jewish spouse to marry/partner up with an Israeli Jew, and not, as one put it "import some non-Jewish girl from abroad" (field notes, February 8, 2015). The 'bureaucratised' attitude might replicate into the private sphere of the partners/spouses, or it might not. One non-married female partner stated that the mother of her boyfriend and his aunt were not pleased that the son (of the aunt) was to marry a Sephardic Jewess.[16] She asked if it bothered them that she herself is a non-Jew. Their answer was no: "They were puzzled and asked me why it should bother them." (interview, March 13, 2013). Another female immigrant reported that her husband's family repeatedly asked her when she will convert, and did not understand when she replied "I don't want to be a Jew. I don't want to exchange my lapsed Catholic faith for another religion that I don't believe in." (interview, July 2, 2012). The issue of conversion was mentioned by several female partners/spouses, but only by one male spouse, replicating the finds of Dafna Hacker (2009) on gender on conversion: "His (her boyfriend's) parents don't care that I am his non-Jewish girlfriend. But they do care that I might be the non-Jewish mother of their grandchildren, because they want (halachically recognised) Jewish grandchildren." (interview, June 14, 2014). Both she, and her boyfriend told his parents that she would not convert, leading to a fallout within the family. This is to say that similar to the legally problematic situation the social situation within the Israeli Jewish family can be fraught. At the same time other non-Jewish partners/spouses of Israeli Jewish citizens outlined their attachment to Israel. One married, female research participant who has been in Israel for nearly twenty years explicated "I am an Israeli! (…) It is very hard to get me out of here, even for holidays. I love it." (interview, January 13, 2013) While another one opined in a chat communication:

> John[17]: For good or bad, it is home. Been here 8 years now. Unbelievable
>
> Dani: Given that Israeli politics drive you mad, you are really local :)
>
> John: true.
>
> (chat, March 16, 2015)

had grown up in East Germany or Eastern Europe outlined that "things are as arbitrary here as in East Germany" (field notes July 12, 2015) but found the procedure not particularly bothersome. Individuals who has occupied a minority situation in their previous native country and suffered of discrimination had no expectations in "democracy, fairness, or the legal process" (field notes April 4, 2013), and coped with the procedure as a given. Thus, while the visa procedure might be defined by a general resistance towards any non-Jewish immigrant, how individuals coped is individually different.

[16] The research participant used the term Sephardi (Jews expelled from Spain –Sepharad - who settled around the southern shores of the Mediterranean) in contrast to Ashkenazim (European Jews).

[17] The name is an alias.

John, like the female immigrant naturalised, and like her he explained that the key to his integration lies with his Israeli spouses family (Kranz, 2015).

Yet, the matter of access to citizenship is problematic: Nationality Law underlines that non-Jews can obtain citizenship under specific condition, and it emphasises the married ones in section 7 like John and the female immigrant who self-identify as Israelis. On the one hand this reflects their officiated ties to an Israeli citizen, which gives them stronger quasi-citizenship capital, while at the same time it increases their personal sense of belonging to Israel because they need to seek Israeli citizenship actively, it is not conveyed automatically in due course.

Technically, a non-married partner of an Israeli citizen can obtain Israeli citizenship too, but the way is more complicated, and it is not specified in any law, underlining the different statuses of married and non-married immigrants once more. Furthermore, given the full discretion of the Ministry of the Interior over any visa, this ministry is able to define the speed of the naturalisation process for those who are eligible within the realm of 'gradual procedure', and in the worst case the refusal of a visa (Interview July 23, 2013); they are able to cancel a visa, or issue a non-immigrant visa. This power of the legal provisions in combinations with their application by way of an administrative office over the lives of partner/marriage migrants is common in the migration process of the former (Kranz, 2015). Should a relationship break down before independent permanent residence has been obtained the visa of non-Jewish partner or spouse becomes void, creating extremely problematic scenarios if children are involved. This is practice known in many countries, and an issue that comes up in research on bi-national couples in different shapes and guises across academic disciplines, ranging from law, to anthropology (De Hart, 2006; Kranz, 2015).

The Israeli situation is particular because of two factors: the link between the Jewish ethno-religion and Israeli citizenship, and its extension to non-Jewish spouses upon aliyah, and the highly problematic, and ambiguous area of what to do with non-Jewish immigrants. In Bourdieu's sense all of these immigrants lack capital in form of 'ethnic capital', and can only gain some 'quasi-citizenship capital' by way of kinship ties to a citizen in a country that defines access to citizenship nearly exclusively by jus sanguinis, and thus – kinship and descent.

Conclusion: Quasi-ethnic vs. quasi-citizenship capital and the issue of integration despite the odds

This paper outlined the different access to Israeli citizenship for non-Jewish spouses of olim, and of Israeli citizens. These different inroads cannot be understood without the backdrop of diaporic Jewish and Israeli history, and the geopolitical situation of the country that ramify into the legal and policy spheres. These two spheres are palpable as they are explicated by documents from the late 1940s to current legalese. The underlying attitudes concerning intermarriage of Jews are less explicit although the different immigration

regulations, and with it access to citizenship must be seen in direct connection to attitudes concerning these 'inter-relationships.'[18] They allow analysing issues concerning Jewish, diasporic history, Israeli history and politics, as well as the issue of upholding a Jewish majority in Israel that culminates in the consensus of the Jewish majority of Israel that Jews should be the first priority of the country.[19] Intermarriage/interpartnership challenges this aim, and therefore remains perceived negatively according to a poll of Tel Aviv University that was conducted on behalf of the national newspaper Ha'Aretz (2014). The poll found that 75% of a representative sample of Israeli citizens regardless of ethno-religion show negative attitudes towards intermarriage. The attitudes that my research participants reported for their bureaucratic encounters and within the family were thus not extraordinary, nor indicative of a biased sample.[20] The aversion against intermarriage/interpartnership remains strongly influenced by the diaporic minority situation of Jews until state foundation, and that prevails for Jews living in the diaspora. The fear that underpins the aversion against intermarriage/interpartnership is that of a complete assimilation into the surrounding majority society (Feldestein, 2012; Kranz, 2015). Yet, while some Jews who intermarry or who are interpartnered might completely remove themselves from any Jewish community, or assimilate into a different lifestyle that is deemed non-Jewish (whatever that means), the key problem lies with them not fitting with the categorical, halachic-orthodox, categories of Jew vs. non-Jew.

This thinking replicates in the different frameworks that guide the immigration, and with it access to citizenship, of non-Jewish spouses of olim vs. partner/spouses of Israeli Jewish citizens. It shows that while intermarriage has been seen as the ill of the diaspora (Kravel-Tovi, 2012), and until the mid-1990s a legally tolerated evil of Israeli Jews, the need to bolster Jewish immigration to Israel led to the compromise that non-Jewish spouses (and children) needed to be considered as part of an olim family (Feldestein, 2012; HCJ 8030/3) while all other non-Jewish immigrants have a much weaker status. To ease the integration of these non-Jews into Israeli Jewish society they are equipped with a full aliyah package including citizenship, thus immediately increasing their formal ties to the new country, and upping the chances for them to undergo social conversion (Cohen & Susser, 2009; Remennick & Prashinzky, 2012). If and how non-Jewish partners/spouses of Israeli Jewish citizens become socially Israeli had so far been a lacuna.

[18] This is not to say that intermarriage is not problematic in other ethnic, or cultural configurations, or welcome (Byron & Waldis, 2006; Kranz, 2015; Trafinow & Gannon, 1999).

[19] The attitudes of Israelis are not exceptional, as Rajman, Semyonov, and Schmidt (2003) showed with their comparative study on the perceptions of non-co-ethnic foreigners in Germany and Israel.

[20] Vered Amit (1990) made the point that only individuals who had a vested interested in ethnographic research would participate in it. While this holds through, my ethnographic data fits with quantitative data sets.

According to my data the non-Jewish partners/spouses of Israeli Jews might do so too. Their more problematic legal integration goes back to the events that came up in 1958, which resulted in legal action since 1969 and led to the 2013 Supreme Court verdict all of which directly relate to the Jewish nature of the Jewish State. The uneasy question is not only who is supposed to be categorised as a Jew, but who can be integrated into the State of Israel without being a Jew that is who can become absorbed into the texture of Israel and under which conditions that do not lead to an increase of non-Jewish immigrants. The existing legislation indicates an on-going legal consolidation that goes hand in hand with a social maturation process of the normative Jewishness of the state that needs Jews to immigrate, and takes non-Jewish family as a compromise. Yet, the aversion toward intermarriage, the lack of civil marriage in Israel and the higher hurdles for non-Jewish, foreign, partners and spouses of Israeli Jews to Israeli citizenship, indicate the attempt to decrease intermarriage of local Israeli Jews, strictly regulate the influx of non-Jewish, foreigners and create a fit between *leom* and *dat* for the desired, normative citizens wherever possible, thus indicating that the opinion of the majority of the sages of 1958 foreshadowed the status quo opinion of today. At the same time, the integration of both groups of non-Jews into the texture of Israeli Jewish society indicates the on-going mismatch between the religious Jewish concept, and the contested secular state concept of Israeliness. The latter is evidenced by an Israeli Jew who recounted "I was asked if I really want to marry this non-Jewish woman, and why I would deprive my children of their Jewishness." (field notes, May 15, 2015). While he argued that his children will decide if and how far they are Jewish for him it is key that his children are Israelis, although individuals such as his wife will find themselves on a long way to Israeli citizenship.

Acknowledgement

I would like to thank Mazen Masri, City University London, for his substantial feedback, and Adv. Moshik Shlezinger, HFN, for his ongoing support of my work as an legal expert and as my interlocutor. This paper is for him, in friendship.

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