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WHY CITIZENSHIP?

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## Managing Migration, Reprioritizing National Citizenship: Undocumented Migrant Workers' Children and Policy Reforms in Israel

Adriana Kemp\*

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# Managing Migration, Reprioritizing National Citizenship: Undocumented Migrant Workers' Children and Policy Reforms in Israel

*Adriana Kemp*\*

*The Article traces recent trends in the management and distribution of citizenship within the Israeli context of the 1990s, as they have evolved in the wake of new modes of migration that are neither Jewish nor Palestinian and that stem from liberalized market policies. The Article focuses on administrative and policy initiatives taken since September 2003 that deal with the naturalization of the children of undocumented labor migrants. The vulnerable situation of these migrants in lacking resident status and being eligible for deportation, as well as the predominant Jewish ethno-national character of the Israeli state, make these initiatives and policy measures particularly surprising. However, these measures also reveal the boundaries of liberalizing reforms, as they become part of general trends in the nation-state towards deeming membership manageable without upsetting its national politics of identity. Indeed, it will be argued that, though this liberalizing legal reform is part of a larger context of demystification of national citizenship taking place in Israel following the adoption of socio-economic liberal policies, it is also indicative of the adaptability of the nation-state as it seeks to reprioritize ethno-national definitions of citizenship in the face of new challenges.*

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\* Department of Sociology and Anthropology, Tel Aviv University, akemp@post.tau.ac.il.

## INTRODUCTION

In April 2006, four months after being granted Israeli citizenship, nineteen-year-old Bondi Faibon was the first child of migrant workers to join the Israeli Army. Portrayed in the daily media as an "historic moment," newly inducted Private Faibon preferred to define his enlistment in the terms of republican discourse, corroborating the prevailing view among Israeli youngsters of military service as the quintessential rite of passage into substantive membership in Israeli society. "I am an Israeli in every sense of the word," he said, "and I view my enlistment as the most natural thing in the world."<sup>1</sup>

Faibon is one of many labor migrants' children who were born or have grown up in Israel over the last two decades. Hailing from over seventy-two countries, labor migrants and their offspring have fairly recently become new actors in the quest for citizenship within the Israeli polity. Faibon's enlistment in the IDF followed a government decision from June 26th, 2005, by which all children of labor migrants aged ten and over who were born in Israel, speak Hebrew, and are attending or have completed the Israeli education system are to be granted permanent residency and, thereafter, citizenship. Their parents and younger siblings are to be granted temporary resident status, to be renewed annually, thereby entitling them to full social rights, and once the younger siblings are enlisted in the army, they too will receive Israeli citizenship and the parents permanent residency.

This decision gave rise to certain expectations, as it was not only the first time that migrant workers emanating from developing countries were to be given official legal status in Israel but it also occurred at a time when the Israeli government had begun formulating a restrictive immigration regime for non-Jews. How, then, should the government's decision regarding migrant workers' children be understood? Did it constitute a precedent in the state's restrictive immigration policy towards non-ethnic migrants, as suggested by media observers, or at least might it serve as a catalyst for its future revision?<sup>2</sup> Did it point to the incorporation of post-national policy trends in citizenship and rights distribution in Israel, in the face of transnational developments and new demographic realities? Did it attest to the beginning of a "deferred" public discourse on immigration and citizenship, similar to that

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1 Yossi Yehoshua, *Thai Makes IDF History*, YNETNEWS, May 4, 2006.

2 Relly Sa'ar, *New Legal Status for Foreign Workers' Kids Splits Students*, HA'ARETZ, June 28, 2005.

conducted in most Western European nation-states since the 1970s? Or was it merely the Israeli government paying lip service to liberalizing pressures rather than dealing with major challenges regarding the boundaries of the Israeli polity?

In this Article, I attempt to deal with this question through an analysis of the legal and regulatory micro-dynamics generated by migration flows that have resulted from Israel's liberalized market policies. The Article traces recent trends in the management and distribution of citizenship in Israel that began in the 1990s, as these have evolved following new modes of migration that are neither Jewish nor Palestinian in ethnic origin. More specifically, I focus on migration and citizenship debates regarding undocumented labor migrants who, against all odds, have settled in Israel, established families, and formed active communities in the metropolitan area of Tel Aviv, where their proportions reached a high of nearly 20% of the population within the city's municipal boundaries in the mid-1990s.<sup>3</sup>

The significance of the Article's analysis should be understood on the background of the predominant Jewish character of the Israeli state, as well as of the status of labor migrants' children as unrecognized residents vulnerable to deportation. The presence of a sizable population of non-Jewish, migrant workers, who are also non-Palestinian, further intensifies the ambiguities and contradictions of the Israeli citizenship and migration regime. Grounded on the 1950 Law of Return,<sup>4</sup> this regime extrapolates *jus sanguinis* as the dominant feature of immigrants' access to citizenship and rights, constituting a powerful means of exclusion towards non-Jews in general and non-Jewish immigrants in particular. Indeed, the array of rules, arrangements, and procedures regulating the recruitment and the employment of migrant workers in Israel has been geared, from the outset, at preventing their settlement and precluding the possibility of their presence becoming a legitimate basis for claiming membership rights.<sup>5</sup>

From this perspective, the Israeli case should have been, in principle, resistant to reforms that allow for the incorporation of non-Jewish migrant

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3 Adriana Kemp & Rebeca Raijman, "Tel Aviv Is Not Foreign to You": Urban Incorporation Policy on Labor Migrants in Israel, 38 INT'L MIGRATION REV. 1 (2004).

4 Law of Return, 5710-1950, 4 LSI 114 (1949-50) (Isr.).

5 For a discussion on the labor migration system in Israel, see Zeev Rosenhek, *Migration Regimes, Intra-State Conflicts and the Politics of Exclusion and Inclusion: Migrant Workers in the Israeli Welfare State*, 47 SOC. PROBS. 49 (2000); Adriana Kemp, *Labor Migration and Racialisation: Labor Market Mechanisms and Labor Migration Control Policies in Israel*, 10 SOC. IDENTITIES 267 (2004).

workers, establishing access to state membership on the base of residence. However, such a view rests on a reifying assumption that citizenship regimes do not change and that migration policies remain impermeable to the challenges posed by the transnational flow of people. As the government decision on the naturalization of migrant workers' children seems to evidence, Israeli immigration policies have not remained indifferent to the regulatory challenges engendered by the opening of the labor market to migrant workers. However, a detailed analysis of the dynamics that led to the legal reform reveals the boundaries of liberalizing immigration reforms, as they become part of the national state's general tendency towards deeming membership manageable without upsetting its national politics of identity. Indeed, I will argue that, although this liberalizing legal reform is part of a larger context of demystification of national citizenship occurring in the wake of socio-economic liberal policies that "hollow out" social citizenship, it is also indicative of the predominance and adaptability of the state as it seeks to reprioritize ethnically defined citizenship through migration. In this sense, I would suggest that, while Israel is certainly a paradigmatic case of resilient ethno-national citizenship regimes, it is also indicative of more general trends emerging elsewhere, of "undesirable" migration being used as a means to reinforce cultural definitions of the polity.<sup>6</sup>

### I. THE CHALLENGE OF THE "NEW" MIGRATION

During the 1990s, a rich body of scholarship evolved in an attempt to grasp the challenges that the phenomenon of migration poses to the nation-state in relation to one of its main foundations: citizenship.<sup>7</sup> While the nature and scope of the challenges have been the subject of serious debate, there is a common understanding that the globalization of human and capital

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6 For a similar argument in the context of the U.S. and the post-9/11 policies in Canada and Britain, see Alexandra Dobrowolsky, *(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes*, 8 THEORETICAL INQUIRIES L. 629 (2007).

7 William R. Brubaker, *Introduction to IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 1* (William R. Brubaker ed., 1989); *FROM ALIENS TO CITIZENS: REDEFINING THE STATUS OF IMMIGRANTS IN EUROPE* (Rainer Bauböck ed., 1994); SASKIA SASSEN, *LOSING CONTROL: SOVEREIGNTY IN AN AGE OF GLOBALIZATION* (1996); CHRISTIAN JOPPKE, *IMMIGRATION AND THE NATION STATE: THE UNITED STATES, GERMANY AND GREAT BRITAIN* (1999).

flows has yielded new definitions of membership and participation that do not necessarily correspond with the limits of the nation-state.

Broadly speaking, two main interpretations have accompanied the discussion on the ways in which migration challenges the nation-state, transforming the meaning and regulation of citizenship as state membership. The first, conservative, interpretation stresses the resilience of territorial and national definitions of citizenship and the predominance of the national state as a locus of migration policies. It rests on the assumption that, in the absence of a viable alternative political framework to the nation-state, a political theory of "partial and limited state-membership" is yet to emerge that can transcend the holistic and universal nature of citizenship in the national era.<sup>8</sup> The corollary of this perception is that, despite the emergence of transnational phenomena and multiple levels of governance that rescale the locus of policy beyond the national level, citizenship as membership still has little meaning outside the context of the national state.<sup>9</sup> The second interpretation examines the ways in which migration is transforming, rather than reaffirming, the national model of membership and the very politics it pursues. Accordingly, citizenship has become increasingly denationalized,<sup>10</sup> yielding to the emergence of new "transnational," "post-national," or "global" forms of membership that replace or encroach upon the old.<sup>11</sup> According to Soysal, one of the most salient proponents of this line of argumentation, post-national membership is characterized by the loosening of the Gordian knot — "decoupling" — that linked rights and national identity since the French Revolution and that became entrenched after World War I.<sup>12</sup> In contrast to those who regard the partial incorporation of non-European migrants into European states as an intolerable deviation from the "normal" model of citizenship, the

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8 Brubaker, *supra* note 7, at 5.

9 CHALLENGE TO THE NATION STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES (Christian Joppke ed., 1998); Virginie Guiraudon, *European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion*, 34 INT'L MIGRATION REV. 1088 (2000).

10 Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447 (2000).

11 TOMAS HAMMAR, *DEMOCRACY IN THE NATION-STATE: ALIENS, DENIZENS AND CITIZENS IN A WORLD OF INTERNATIONAL MIGRATION* (1990); YASEMIN SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* (1994); *FROM ALIENS TO CITIZENS: REDEFINING THE STATUS OF IMMIGRANTS IN EUROPE*, *supra* note 7; DAVID JACOBSON, *RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP* (1996); STEPHEN CASTLES, *ETHNICITY AND GLOBALIZATION* (2000); DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER* (1995).

12 SOYSAL, *supra* note 11, at 3.

post-nationalist research agenda seeks to show how escalating international migration functions as a major catalyst for a re-scaling of critical concepts such as citizenship, so that, as Soysal observes, it is "no longer unequivocally anchored in national political collectivities."<sup>13</sup>

Both the conservative and post-national interpretations have not gone unchallenged.<sup>14</sup> Rather than leaning on a dichotomous distinction between prophetic post-national and static national models of membership, a third line of research proposes a more subtle understanding of membership and citizenship, as embedded in particular social and political contexts and yet, at the same time, as part of broader trends that blur the line between domestic and international spheres, between the legal jurisdiction of individual states and globalized migration systems.<sup>15</sup> Thus, analyzing the cases of Western European states, Feldblum<sup>16</sup> argues that the penetration of post-national norms, epitomized by the proliferation of partial and dual modes of membership, and their implementation with regard to foreigners constituted a catalyst for the rise of neo-national trends that call for a "fortressed Europe" against foreigners. Martiniello<sup>17</sup> and Koslowski<sup>18</sup> point to the formation of two opposite yet parallel regimes of incorporation within the geo-political space of Europe: the national level, governing rules of access to citizenship rights, and the supranational level, governing access to rights of entry. Whereas at the national level, European states' regimes of incorporation became more inclusive in regard to the rules governing access to formal citizenship and various rights, at the supranational level of the apparently borderless European Union, freedom of movement, as it appears in clause 8 of the Maastricht Agreement, became a privilege for the extremely small number of those

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13 *Id.*

14 For a summary of the critique, see CHALLENGE TO THE NATION STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES, *supra* note 9; Bosniak, *supra* note 10; Miriam Feldblum, *Reconfiguring Citizenship in Western Europe*, in CHALLENGE TO THE NATION STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES, *supra* note 9, at 231.

15 FROM MIGRANTS TO CITIZENS: MEMBERSHIP IN A CHANGING WORLD (Thomas Alexander Aleinikoff & Douglas Klusmeyer eds., 2000) [hereinafter FROM MIGRANTS TO CITIZENS].

16 Feldblum, *supra* note 14.

17 Marco Martiniello, *Citizenship of the European Union. A Critical View*, in FROM ALIENS TO CITIZENS: REDEFINING THE STATUS OF IMMIGRANTS IN EUROPE, *supra* note 7, at 29.

18 Rey Koslowski, *European Union Migration Regimes, Established and Emergent*, in CHALLENGE TO THE NATION STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES, *supra* note 9, at 153.

considered "European" whilst more clearly than ever excluding migrants from non-member countries (third countries).

Taking a more generalized comparative perspective, Joppke and Morawska have contended that, by and large, Western liberal states have responded to migratory challenges either by liberalizing their citizenship regimes or by upgrading the rights attaching to citizenship. They conclude that these coexisting developments, though taking opposing restrictive and liberalizing thrusts, have resulted in a reevaluation of citizenship as a dominant membership principle.<sup>19</sup> Based on a closer examination of sending and receiving liberal states, Joppke recently further argued that, within the contemporary context of human rights and transnationalism, migration impinges on state membership in two, opposing directions. On the side of receiving states, immigration forces the state to de-ethnicize citizenship and ground access to state membership more on residence and birth in the state's territory than on filiation;<sup>20</sup> On the side of sending states, emigration creates incentives to re-ethnicize citizenship in order to retain links with co-ethnics across borders and, particularly, across generations.<sup>21</sup> In making this claim, Joppke takes issue not only with the linear scenario drawn by the post-national formula, but also with the inert cultural analysis of citizenship of the type suggested by Brubaker.<sup>22</sup> According to Joppke, de- and re-ethnicization of citizenship are not only taking place at one and the same time, but are also traversing the classic distinction between civic and ethnic nation-states.

A possible corollary of this line of argument is that, while new liberal, post-national norms may increasingly be playing a role in setting the parameters and rationale of citizenship reforms, these norms are still not replacing "ethnic" national definitions of membership. Rather both liberal and ethnic norms exist side by side as part of policymakers' tool-kit, allowing states to manage the structural contradictions that they must contend with (and often create themselves) in their simultaneous, albeit somewhat incongruent, pursuit of liberalized markets and cultural homogeneity. In fact, as Joppke

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19 TOWARD ASSIMILATION AND CITIZENSHIP: IMMIGRANTS IN LIBERAL NATION-STATES 1 (Christian Joppke & Ewa Morawska eds., 2003).

20 Joppke defines "de-ethnicization" as "the process of facilitating the access to citizenship, either through opening it at the margins in terms of liberalized naturalization procedures, or through adding jus soli elements to the modern main road of birth attributed citizenship jus sanguinis." Christian Joppke, *Citizenship Between De-and Re-Ethnicization*, in MIGRATION, CITIZENSHIP, ETHNOS 63, 69 (Y. Michal Bodeman & Gökçe Yurdakul eds., 2006).

21 *Id.* at 64.

22 Brubaker, *supra* note 7.



acknowledges, the tension between de- and re-ethnicization of citizenship policies is inherent to the modern state as both a territorial bureaucratic unit and a communitarian membership unit.<sup>23</sup> Building on Joppke, it can be further concluded that, rather than reflecting particular visions of nationhood, the main mechanisms for ascribing state membership — *jus soli* and *jus sanguinis* — are flexible legal tools that allow multiple interpretations and combinations that states (whether liberal or ethnic) do not hesitate to employ when they see fit to do so.

## II. THE NEW DEBATE ON MIGRATION AND CITIZENSHIP IN ISRAEL

Much of the theoretical debate on migration and citizenship has been typically situated within the geopolitical space of Western European states and the U.S. However, the dynamic that brought about the reconfiguration of national forms of membership — a dynamic of mass migration of immigrants perceived as non-assimilable in terms of the political and cultural tapestry of the nation-state — has crossed over from the northern transatlantic axis, with the geopolitical and cultural space of Israel one case in point.

Debates on citizenship and migration became relevant in Israel during the 1990s when new kinds of immigration patterns emerged in addition to the returning ethnic migration of Jews, transforming Israel into a de facto immigration state and society for non-Jews as well.<sup>24</sup> Most prominent among these new patterns of non-Jewish migration have been non-Jews

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<sup>23</sup> Joppke, *supra* note 20, at 65.

<sup>24</sup> "Returning ethnic migration" is distinguished by two complementary features. First, the immigrants feel an a-priori affinity with the destination society; as such, they are not new or strangers but, rather, an intrinsic part of the *etnie*. Second, the receiving society also perceives the immigration as a "homecoming," and receiving institutions thus accord the newly-arrived immediate and unconditional acceptance. See DIASPORAS AND ETHNIC MIGRANTS: GERMANY, ISRAEL, AND POST-SOVIET SUCCESSOR STATES IN COMPARATIVE PERSPECTIVE 7 (Rainer Munz & Rainer Ohliger eds., 2003). As mentioned, the 1950 Law of Return is the cornerstone of the Israeli returning ethnic migration regime. Based on a *jus sanguinis* principle, the Law grants every Jew the automatic right to immigrate to Israel and become a citizen of the state. Although according to *halakha* (Jewish Law), the status of Jew is acquired only through the maternal line or by religious conversion, the 1970 amendment to the Law grants the right of return also to "a child and a grandchild of a Jew, the spouse of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion." Law of Return (Amendment No. 2), 5730-1970, 24 LSI 28, § 4B (1969-70).

immigrating to Israel from the Former Soviet Union ("FSU") in the framework of family reunifications, who constitute nearly 25% of the FSU immigrants,<sup>25</sup> between 18,000 to 26,000 Falash Mura from Ethiopia, whose immigration rights are still pending in the absence of a government decision,<sup>26</sup> and the official and non-official recruiting of overseas migrant workers. Originally brought to replace Palestinian daily-commuters in the Israeli secondary labor market in the early 1990s, by 2002, non-Jewish and non-Palestinian migrant workers comprised 240,000 people, 60% of them without work permits, which constituted 8.7% of the total Israeli labor force.<sup>27</sup>

The different patterns of non-Jewish migration that emerged in the 1990s diverge in several crucial respects.<sup>28</sup> However, these differences aside, patterns of non-Jewish migration in Israel are of far-reaching sociological and political significance in that they disrupt the two central rubrics under which discussions on citizenship and nationality have been carried out in Israel up until now: Jews and Palestinians.<sup>29</sup> Indeed, the increasing number of non-Jews who are also non-Palestinian in Israel is leading to an interesting situation in which it is no longer a simple matter to classify the Israeli population according to national and ethnic categories. As Israeli sociologist. Yinon Cohen has noted: "What was possible twenty years ago when all immigrants were Jews, all non-Jews were Arabs, and all labor migrants were Palestinian daily commuters, is no longer the case in contemporary Israel."<sup>30</sup> Indeed the

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25 According to MAJID AL-HAJ & ELAZAR LESHEM, *IMMIGRANTS FROM THE FORMER SOVIET UNION: TEN YEARS LATER. A RESEARCH REPORT* (2000) (Hebrew), during the first half of the 1990s, non-Jewish immigrants constituted about 20% of all immigrants from the FSU, while between 1995-1999, the proportion of non-Jews rose to 41.3%.

26 Though they define themselves as "Beta Israel," like other Ethiopian Jews, the Falash Mura are descendents of Jews converted by force to Christianity about one hundred years ago. Without documentation to establish their "Jewishness" and since they are several generations away from Jewish tradition, their immigration to Israel has become the focus of political strife within the religious and political establishments.

27 ADRIANA KEMP & REBECA RAJMAN, *LABOR MIGRANTS IN ISRAEL* (2003) (Hebrew).

28 Most non-Jewish immigrants from the Foreign Soviet Union enter Israel within the framework of the 1970 amendment to the Law of Return and are thereby accorded citizenship. *See supra* note 24. Conversely, labor migrants, documented or undocumented, are not perceived as prospective immigrants, and the channels to naturalization are de facto hermetically closed to them.

29 GERSHON SHAFIR & YOAV PELED, *BEING ISRAELI: THE DYNAMICS OF MULTIPLE CITIZENSHIP* (2002).

30 Yinon Cohen, *From Haven to Heaven: Changing Patterns of Immigration in Israel*, in *CHALLENGING ETHNIC CITIZENSHIP: GERMAN AND ISRAELI PERSPECTIVES ON IMMIGRATION* 36 (Daniel Levy & Yifaat Weiss eds., 2001).

presence of a sizable population of non-Jews and non-Palestinians has raised questions about the fundamentals of the incorporation regime, not from within, as was the case in Israel until recently, but rather from without, meaning from beyond the formal framework of the status of citizenship.

Less than a decade ago, the argument that immigration is a challenge to the Israeli nation-state was far from self-evident. Committed to the immigration of Jews and to their successful accommodation, "absorption" in the Israeli vernacular, the underlying assumption of policy-makers and researchers alike was that migration should be treated as an endogenous phenomenon that ratifies, rather than transforms, the fundamental principles of the Jewish nation-state.<sup>31</sup> Though institutionally and ideologically this assumption still holds true, it stands at odds with socio-demographic developments that have transformed Israel into a de facto non-Jewish immigration state and society. The question that is yet to be considered is to what extent the new socio-demographic reality has been translated into the political realm. How have successive Israeli governments responded to the ideological and institutional challenges posed by the emergence of this new category of migrants, who are neither Jewish nor Palestinian? To what extent have the post-national norms and de-ethnicizing practices that informed European and North American debates on citizenship and migration permeated also the public discourse and policy realm in Israel?

The rest of this Article focuses on administrative and policy initiatives adopted in Israel since September 2003 that deal with the naturalization of children of labor migrants. After a brief presentation of the background to the new labor migration in Israel during the 1990s (Part III), I analyze the public debate on the new reform initiatives and trace the political struggles that such initiatives have engendered, identifying the main social and political actors involved in the battle over access to citizenship for children of migrant workers. Then, drawing on the Israeli case, my argument proceeds as follows: First, the liberalizing policy initiatives vis-à-vis the children of labor migrants have been guided by pragmatic considerations rather than ideological transformations and have been activated by policy-makers and state bureaucracies rather than by pressure groups or the judiciary.<sup>32</sup> Second, the administrative and legislative reforms concerning the status of unwanted immigrants could be achieved insofar as they were premised

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31 Judith T. Shuval & Elazar Leshem, *The Sociology of Migration in Israel: A Critical View*, in IMMIGRATION TO ISRAEL 3 (Elazar Leshem & Judith Shuval eds., 1998).

32 For a succinct summary of the origins of the expansion of alien rights to citizenship, see Christian Joppke, *The Legal-Domestic Sources of Immigrants Rights: The United States, Germany and the European Union*, 34 COMP. POL. STUD. 339 (2001).

on individual criteria and humanitarian considerations and not on criteria relating to generalized groups or categories of people. Third, personalized and humanitarian channels for naturalization do not entail major transformations of the citizenship regime; they rather attest to a broader trend of reinvigorating state citizenship in the face of new challenges to the ethno-national character of Israel in the guise of non-Jewish immigration. Thus, following Joppke's and Feldblum's lines of argument,<sup>33</sup> my main claim is that, while new liberalizing migration policies that draw on de-ethnicized definitions of membership may be increasingly playing a role in shaping the parameters and rationale of citizenship reforms, they are nonetheless not replacing "ethnic" national definitions of membership. Rather, they constitute a political tool for managing the contradictions of neo-liberal policies and, at the same time, a means of reprioritizing ethno-national notions of membership and belonging.

### III. THE "NEW" LABOR MIGRATION TO ISRAEL

The introduction of migrant workers into the Israeli labor market in the 1990s is one of the most notable expressions of the entry of the Israeli economy and society into the neo-liberal global system. Labor migration from foreign countries is a relatively new phenomenon in Israel. It started in the early 1990s, when the government authorized the recruitment of a large number of labor migrants to replace Palestinian workers from the Occupied Territories.<sup>34</sup> The political and security deterioration in Israel triggered by the 1987 *Intifada* led to a severe labor shortage in the construction and agriculture sectors, in which Palestinian workers had been concentrated since the early 1970s.<sup>35</sup> However, it was not until the Israeli government decided to seal the borders with the Occupied Territories at the beginning of 1993 that large-scale recruitment of migrant workers began, primarily from Romania (in the construction sector), Thailand (in agriculture), and the Philippines (in geriatric care, nursing, and domestic services).

Employing migrant workers was consistent with the interests of both the state and the employers in Israel at the time, as it was considered a temporary, low-cost solution to what was seen as a temporary problem. But the result in fact was that this prepared the ground for the transformation

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33 Joppke, *supra* note 20; Feldblum, *supra* note 14.

34 David Bartram, *Foreign Workers in Israel: History and Theory*, 32 INT'L MIGRATION REV. 303 (1998).

35 MOSHE SEMYONOV & NOAH LEWIN-EPSTEIN, *HEWERS OF WOOD AND DRAWERS OF WATER: NONCITIZEN ARABS IN THE ISRAELI LABOR MARKET* (1987).

of incoming labor migration from a negligible phenomenon in Israel into an institutionalized process. As in other countries, the official recruitment of migrant workers brought about a corresponding influx of undocumented migrants into Israel.<sup>36</sup> Nowadays, undocumented migrant workers arrive in Israel from almost every corner of the globe, though mainly from Eastern Europe, South Asia, Sub-Saharan Africa, and South America, and are employed primarily in the services sector.<sup>37</sup>

Israel has adopted a labor migration policy that, since the 1970s, has by and large been forsaken by most Western European states.<sup>38</sup> The Israeli laws and regulations governing labor migration are much more akin to the patterns of labor migration regulation and control in the Persian Gulf region and in the newly industrialized countries ("NICs") in Southeast Asia and are much stricter than those prevailing in states with longer histories of foreign labor recruitment. Similar to the case in the Gulf states and Taiwan, in Israel, work permits are granted to employers, to whom the migrant worker is indentured, thereby maximizing employers' and state control over the foreign population in the country. The state does not allow residence without a work permit; it does not recognize any right of asylum or of family reunification for migrant workers, nor does it guarantee access to housing, social benefits, or public medical care. Finally, the state implements a blatant deportation policy that allows the arrest and expulsion of undocumented migrants at any time by simple administrative decree. In these aspects, the Janus-like face of Israel's labor migration policy is typical of such systems: labor migrants are regarded

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36 There are four main routes to becoming undocumented: 1. migrants who enter the country legally on a tourist visa, which forbids them to work, and become undocumented when it is no longer valid or by working without a work permit; 2. migrants who enter the country via illegal paths — with false documents or by illegally crossing the state's borders; 3. migrant workers who enter the country with a work permit but stay beyond its period of validity; and 4. migrant workers who leave their original employers to whom they are indentured through the "bondage" system and become "runaways" in the authorities' lexicon.

37 According to the Israeli Central Bureau of Statistics ("ICBS"), 75% of the undocumented labor migrants in Israel in 2004 came from the following countries: 25% from the FSU; 11% from Jordan; 8% from Romania; 5% from the Philippines; 5% from Poland; 5% from Brazil; 4% from Colombia; 4% from Turkey; and 2% from Thailand. Press Release, ICBS, 165/2005 (July 28, 2005). It is worth noting that the distribution of undocumented labor migrants per continent of origin had remained largely identical since 1995. Press Release, ICBS (Oct. 30, 2001).

38 See CASTLES, *supra* note 11, at 63-78.

by the state as both an indispensable response to economic concerns and a threat to the national community.<sup>39</sup>

As the official recruitment of labor migrants in Israel has resulted in the influx of an increasing number of undocumented migrants — some of whom have, in the meantime, settled and created families and communities — state policies have had to address ever more complex situations.<sup>40</sup> The response to the new sociological realities generated by the labor migration system has mainly taken the shape of a deportation policy. Indeed, since 1995, except for a six-month respite between January 2000 and June 2000, this deportation policy has been implemented as the main if not only means of contending with undocumented labor migration. There is nothing very remarkable or unique in governments' resorting to deportation to deal with unwanted migrants. According to Castles and Miller, this has been the case in most labor-importing countries, where responses have almost invariably been piecemeal and ad hoc, devoid of any long-term objectives and strategies. However, shortsighted policies are resorted to particularly when governments are unwilling to admit the reality of long-term settlement and continued immigration.<sup>41</sup>

In August 2002, a new Immigration Police was established in Israel, with the ambitious objective of deporting fifty thousand undocumented migrants within a year's time. To that end, several additional steps were taken such as the opening of new detention facilities for both men and women, which increased threefold the room for holding detainees, and the allocation of 480 positions to the new police force. These steps were geared at making deportation a more efficient and thorough policy. According to official reports, from September 2002 to February 2005, some 130,000 illegal labor migrants were reported as having been "removed" from Israel.<sup>42</sup> Police spokespeople did admit that it is difficult to assess whether these numbers are directly related to the reinforcement of activities or are a product of the natural turnover of temporary migrants and economic recession. More crucially, the arrest operations at worksites, in public places, and at the domiciles of labor

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39 For a discussion of the labor migration system in Israel, see Rosenhek, *supra* note 5, and Kemp, *supra* note 5.

40 Kemp & Rajjman, *supra* note 3.

41 STEPHEN CASTLES & MARK J. MILLER, *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOVEMENTS IN THE MODERN WORLD* 24 (1993).

42 Israel Immigration Administration, <http://www.hagira.gov.il/ImmigrationCMS> (last visited May 1, 2006). The most recent figures provided by the Immigration Administration website indicate that since September 2002, 153,000 migrant workers have either been "removed" or have "left voluntarily."

migrants have entailed violations of basic human rights and have been the target of harsh criticism.<sup>43</sup>

The uncertainty and violence notwithstanding, the government regards the new Immigration Police and the reinvigorated deportation policy as a success story. The establishment of the Immigration Police and the massive deportation campaigns geared at "doing away" with the surplus of unwanted cheap labor were intrinsically linked with the implementation of a new economic policy that encroached considerably on the state welfare system and on local workers' rights in general. Indeed, the creation of the new police body was presented by the Ministry of Finance as an integral part of the new economic reform, aimed at transforming the Israeli welfare state into a workfare socio-economic regime that would move the unemployed into the world of employment by substituting them for migrant workers.<sup>44</sup> Thus, the Immigration Police blueprint applied the political economic theory upon which labor migration systems are premised: migrant workers should be ready to go to work when needed and should be ready to leave when not needed.<sup>45</sup> The simplicity of the formula whereby labor migrants serve as a low-cost solution to both labor shortages and to rising unemployment did not go unnoticed by either policy-makers or their critics. However, thus far, this fact has not prevented the massive deportations and the manufacturing of public consent around these measures.

At the beginning of the summer of 2003, the deportation of undocumented migrants took a more systematic and dramatic face, as the campaign began to target entire communities. Under "Operation Voluntary Repatriation," the Immigration Police launched a two-stage plan designed to encourage undocumented migrant workers to leave the country voluntarily. In the first stage of the Operation, the Immigration Police called on families to register at the Police stations. This registration guaranteed the families two months of protection from arrest, until the second phase of the Operation, during which

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43 On the violations since the creation of the Immigration Police, see Ruth Sinai, *NGOs Accuse Immigration Police of Brutality, Human Rights Violations*, HA'ARETZ, May 20, 2003; Sara Leibovich-Dar, *I Came with Nothing, I Leave with Nothing*, HA'ARETZ, May 9, 2003; Joseph Algazy, *Fourteen Days Without Seeing a Judge, Sometimes More*, HA'ARETZ, Aug. 7, 2003; Nurit Wurgaft, *Life in the Shadow of Deportation*, HA'ARETZ, Sept. 29, 2003.

44 Economic Policy for 2003: Budget Composition and Structural Changes (Government Decision July 30, 2002); Ministry of Finance — Spokesperson Department, <http://www.mof.gov.il/dover> (last visited Jan. 1, 2007).

45 KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION AND THE INS 21* (1992).

period they were supposed to settle all their affairs in Israel and purchase airline tickets. At the second stage of the Operation in September, the police would resume arresting families, except for those who had registered and had a departure date. Information about the Operation was presented at a press conference and meetings with representatives of organizations working with undocumented migrant workers and circulated in leaflets and the like.

The situation of undocumented migrant workers who have settled, formed families, and established entire communities (such as African, Latin American, and Filipino migrant workers) in Israel is the starkest reminder of the inadvertent consequences of labor migration systems and of the racialization processes set into motion by neo-liberal labor market policies that encourage the influx of cheap labor migrants while simultaneously preventing their settlement in host countries. On February 23, 2003, the Israeli High Court of Justice deliberated a petition filed by various NGOs against the massive deportation operation, but refrained from reversing the government decision to implement the massive deportation policy. In the government's view, the Operation Voluntary Repatriation had yielded satisfactory results, for by October 2003, 1,300 migrant workers and their families had left the country in organized flights.<sup>46</sup>

Conspicuously absent from the implementation of Operation Voluntary Repatriation was the third stage set by the authorities in the original plan, in which whole families, including children, would be arrested and detained until their deportation. This phase, described as the "last and final stage of the Operation," was supposed to have commenced towards the end of October 2003, but was shelved by Minister of the Interior Avraham Poraz.<sup>47</sup>

#### IV. THE "CIVIC REVOLUTION"

In February 2003, Avraham Poraz from the secular liberal party *Shinui* assumed office as Minister of the Interior, stating as his declared purpose a "civic revolution" that would undo years of the monopoly held by orthodox religious parties over state-religion relation matters, achieved through, among other things, control of the Ministry of the Interior. The orthodox religious policies impacted especially immigrants who are not

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<sup>46</sup> Ruth Sinai, *Immigration Police Has Started to Arrest Migrant Workers Who Are Not Leaving Voluntarily*, HA'ARETZ, Oct. 15, 2003, at A10.

<sup>47</sup> Nurit Wurgaft, *Here There Is No Mercy*, HA'ARETZ, Aug. 6, 2003, at B3; Michele Chabin, *Who'll Clean the House? New Crackdown on Foreign Workers Is Talk — and Worry — of Israel's Privileged Class*, JEWISH WEEK, Oct. 10, 2003.



Jewish according to orthodox Jewish law and therefore face serious obstacles in civic matters.<sup>48</sup> Poraz pledged to change Israel's immigration policy and establish new criteria that would ease the granting of permanent legal status to those not included in the scope of citizenship eligibility under the Law of Return. His proposal addressed, first and foremost, non-Jewish (and non-Arab) soldiers in the Israeli Defense Forces, the non-Jewish partners of Israeli citizens, parents of new immigrants from the FSU, and the children of migrant workers.<sup>49</sup> Poraz's proposals were rather unprecedented in their liberal thrust. For the first time, serious consideration was given to the idea of transforming what until then had been piecemeal decisions regarding the status of non-Jewish foreigners residing in the state, within the discretion of the Minister of the Interior, into a more generalized immigration policy that targets entire categories within the new immigrant population, including the undocumented.

Aware of the challenges entailed in opening the labor market to migrant workers, politicians had time and again presented the existence of — mainly undocumented — migrant worker communities as a demographic time bomb

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48 From the mid-1990s, the Ministry of the Interior's naturalization policy for non-Jewish immigrants became particularly stringent. As a result, and pursuant to decisions made by the Minister of the Interior, strict limitations were imposed on non-Jewish immigrants who apply for legal status, relegating them to undefined status for unlimited periods of time and subjecting them to the threat of deportation. Members of this group include: the non-Jewish partners of Israeli citizens whose marriages were conducted via consular authorities; immigrants who have been converted to Judaism in Israel by other than the state-sanctioned, orthodox institutions; the great-grandchildren of recognized immigrants, who are not entitled to citizenship under the 1970 reform to the Law of Return; and the non-Jewish parents of recognized immigrants. These constitute a new social category of immigrants, most from the FSU, who have increased in numbers in the last decade, with scant attention paid by either the public or the academia to the implications of the phenomenon. For a thorough description of the phenomenon, see Oded Feller, ACRI, *The Ministry: Violations of Human Rights by the Ministry of the Interior's Population Registry* (2004), <http://www.acri.org.il> (Hebrew).

49 Other proposed reforms include: according legal residence status to the parents of IDF soldiers who are not entitled to citizenship under the Law of Return; according work and residence permits for two years to foreign citizens who were wounded in terror attacks and to their families; and according permanent residence to non-citizen partners of Israeli citizens, including same-sex partners. Only the reforms regarding the status of IDF soldiers and of their parents have been implemented; the other reforms have been blocked chiefly by the bureaucracy in the Ministry of the Interior, especially the Division of Population Registry. According to figures from the IDF, more than 51% of the immigrants recently recruited into the Army are "non-Jews" according to Jewish law (*halakha*), with the total number of non-Jewish soldiers in 2003 amounting to eight thousand. *YEDIOT AHARONOT*, May 27, 2003, at 21.

that could undermine Israel's Jewish character as a nation-state. "They have to be deported before they become pregnant," warned repeatedly Eli Yishai, former Minister of Labor and Welfare from the ultra-orthodox *Shas* party, who had initiated the deportation policy in 1995 and had become its most enthusiastic proponent.<sup>50</sup> But not only politicians like Yishai, appealing to their constituencies, were concerned with the demographic matter. In an interview, the Head of the Population Registry, Herzl Gedejz, declared that his main mission was to put a halt to the chaos reigning in the Ministry of the Interior that had allegedly enabled one-million non-Jews to enter the country throughout the 1990s.<sup>51</sup> In September 2002, Shlomo Benizri, then Minister of Labor from the ultra-orthodox *Shas* Party, resumed the work of the Public Council on Demography comprised of academic, political, and public figures. Presented as a practical answer to the demographic anxiety over the Jewish majority in Israel, the Council set among its main objectives addressing the "problem" of the settlement of migrant workers in Israel.

This is the background against which Poraz, in taking office as Minister of the Interior, introduced the "civic revolution" that abandoned the traditional question of who is a Jew and instead opened the debate to the different, albeit until-then closely related, matter of who is (or can be) an Israeli. For the first time since the establishment of the state, a public debate on citizenship and belonging in Israel was to be conducted outside of the paradigm of Jews and Arabs.

While some of the immigration and citizenship reforms promised by Poraz were gradually approved and applied, the proposal to naturalize migrant workers' children who grow up in Israel, attend the Israeli education system, and are between eight and eighteen years old was seriously contested by both political adversaries and public servants within the Ministry of the Interior and the Ministry of Justice. The political process that led to the reform of the legal status of children of migrant workers initiated a four-part saga that would last for three years, until the government decision of June 26, 2005. Part V presents a detailed analysis of the main episodes in the "battle over naturalization," the social and political actors who participated in this struggle, and the stakes around which the battle was defined and eventually determined.

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50 Meeting of the Knesset Committee on Foreign Workers, Knesset Protocols (May 16, 2000) (Minister of Labor and Welfare Eli Yishai).

51 Michal Graibski & Meli Kempner-Kritz, *Herzl Gedejz, "One Million Non-Jews Entered the Country in Last Decade,"* YEDIOT AHARONOT, Aug. 9, 2002, Weekend Supp., at 14-15, 29.

## V. THE BATTLE OVER NATURALIZATION

### A. Whose Jurisdiction?

The significance of Minister of the Interior Poraz's proposed reforms was not lost on his political adversaries, who regarded them as potentially conducive to the demise of the Jewish character of the state of Israel. However, the battle against Poraz's "revolutionary" reforms was initially led not by a politician but by then Attorney General Elyakim Rubinstein. In May 2003, the Attorney General thwarted Poraz's initiative for the first time, maintaining that, since the proposed policy entailed a drastic immigration reform that could alter not only the country's demographic composition but also the Jewish character of Israeli society, it was a matter that the entire Cabinet had to decide on. To this end, a ministerial panel on population registration was set up by the government under the auspices of the Prime Minister's Office to deliberate the proposal and submit recommendations.<sup>52</sup>

The immediate ramification of the establishment of this panel was that the authority to decide on the registration policy of non-Jewish migrants, which had been, until then, under the sole domain and discretion of the Minister of the Interior, was transferred to a ministerial panel and the Interior Minister was precluded from implementing measures and policies in question. A more surprising and less intended corollary of the government decision to set up the panel was that a governmental body was established with a mandate to deal with immigration matters. Until then, immigration policies and issues had been under the sole jurisdiction of the (Jewish) Immigration and Absorption Ministry (*Alyia ve Klita*), which tied immigration matters to the endogenous realm of the imagined diasporic community. Thus, a decade after Israel had become a reluctant de facto non-Jewish immigrant state, the government was about to embark on the first steps in formulating an immigration regime for non-Jews and anchoring it in governmental decisions and laws.

### B. How Many Children? Or, Size Matters

The second and most decisive episode in the battle over naturalization revolved around the size of the population of children who would be eligible

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<sup>52</sup> Government Decision No. 1289. See also Relly Sa'ar, *Panel to Discuss Naturalization of Foreign Workers' Children*, HA'ARETZ, Feb. 29, 2004.

for naturalization under the reform. This phase started at the beginning of February 2004, when the ministerial panel held its first debate on the status of children of labor migrants in Israel.<sup>53</sup> At this meeting, members of the panel objected to Poraz's proposed reform, arguing that since the estimated number of such children amounted to about ten thousand, regulating their status would entail naturalizing at least thirty thousand migrant workers. Basing objections on the size of the children population paved the way for a "politics of numbers" that was thought, by all parties involved, to be crucial to winning the battle. The estimates regarding undocumented migrants in general and their children in particular had varied enormously according to circumstances and interests all through the 1990s.<sup>54</sup> Poraz rejected the figures presented by his adversaries and preferred instead the data compiled by the Knesset's research center, which indicated that only 1,987 children of foreign workers were living in Israel, almost all in Tel Aviv. These data were based on a December 2003 report commissioned by the Knesset Committee on Foreign Workers, whose purpose was to provide information on the volume and socio-demographic composition of children of migrant workers. According to this report, although there were no official data on these children, both academic research bodies and official, mostly municipal bodies estimated that, since the massive crackdown by the Immigration Police on undocumented migrants, the number of children had dropped to 1,987, with 80% under the age of five and most (86%) living in metropolitan Tel Aviv.<sup>55</sup>

Most of these children had been born in and grew up in Israel, but lacked any legal status and were not eligible for naturalization under the prevailing law. Citizenship in their parents' native countries could also be denied since the children could not claim residency, thus leaving them virtually "stateless." Once they reached the age of eighteen, they became undocumented residents and were doomed to deportation. Though authorities had refrained from deporting parents living with their children in Israel until the establishment of the Immigration Police, the new deportation policy would be thorough and would target entire families.<sup>56</sup> The report did

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53 Relly Sa'ar, *Poraz Will Ask the Government to "Legalize" Hundreds of Migrant Workers' Children*, HA'ARETZ, Feb. 2, 2004.

54 Adriana Kemp & Rebeca Raijman, *Non-State Actors and the New Politics of Labor Migration in Israel*, 3 SOZIOLOGIA ISRAELIT 79 (2001) (Hebrew).

55 ANNABEL FRIEDLANDER-LIPSIK ET AL., KNESSET SPECIAL REPORT ON THE SITUATION OF MIGRANT WORKERS' CHILDREN (2003) (Hebrew).

56 There are reports of many cases in which one parent has been deported in the hope that the other parent and children will follow voluntarily. The situation is further complicated for children born to parents of different nationalities, wherein deportation results in the break-up of the family. See Nurit Wurgaft, *Once Again the*

not provide clear statistics on distribution according to parental country of origin, but most children were found to be born to parents from Africa (mainly Ghana), South America (mainly Colombia), and the Philippines.

In light of these figures and in response to reservations raised by a member of the panel, Labor and Welfare Minister Zvulon Orlev from the national religious *Mafdal* party, Poraz's original proposal had to be significantly watered down.<sup>57</sup> Eventually, Poraz recommended that migrant workers' children between ages ten and eighteen (as opposed to the eight-to-eighteen age range set in the original proposal) whose parents had originally entered Israel legally be offered the status of permanent residents. He also recommended that their parents be allowed to remain with them and receive work permits valid until their children reach the age of twenty-one. The proposal established two categories of children: The first category was high-school-aged children (sixteen to eighteen years old) or those who had graduated and have been living in Israel for at least a total of five years: children falling into this category would be eligible for permanent resident status provided they did not have a criminal record. The second category was children age ten or older who have been living in Israel for at least a total of five years; they would be granted temporary resident status for two years and then would become eligible for permanent residence and, eventually, naturalization.<sup>58</sup> Under these new criteria, it was anticipated that about 650 children in school, from fifth-grade, would initially be eligible for citizenship along with their parents.<sup>59</sup> "Today these children are in fact non-existent," said Poraz. "Although Israel is the only country they know, they have no identity card number and, therefore, cannot be given medical insurance, get a

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*Deportation Police Causes the Abandonment of a Baby*, HA'ARETZ, Feb. 24, 2003; Wurgaft, *supra* note 47; Ina Friedman, *Israel: Mean Streets*, JERUSALEM REP., May 21, 2003.

57 The politics over the numbers was far from over and done with. At a meeting held on December 7, 2004, by the Knesset Committee on Foreign Workers, the Head of the Population Registry at the Ministry of the Interior, Sassi Katzir, pointed to new numbers. Drawing on Education Ministry and Social Security records, he concluded that there were at least some three thousand children of foreign citizens aged six to eighteen. These figures would not include children below the age of six, most of whom are not in the state schooling system, and have been strongly rejected by representatives of the Tel Aviv Municipality. Knesset Protocols 13-15 (Dec. 7, 2004). *See also* Ruth Sinai, *Children of the Shadows*, HA'ARETZ, Mar. 27, 2005.

58 Relly Sa'ar, *650 Foreign Workers' Children Expected to Get Civic Status This Week*, HA'ARETZ, Nov. 28, 2004, at A1.

59 Relly Sa'ar, *Poraz's Proposal: 800 Foreign Workers' Children To Be Deported, 600 Will Stay*, HA'ARETZ, Oct. 17, 2004, at A1.

passport, or visit their land of origin. They become prisoners here, and when they graduate from high school, they cannot find regular work or continue to higher education."<sup>60</sup> In the meanwhile, pending a decision by the panel, the Minister banned completely deportation of undocumented children and their parents until December 2004.

Indeed, the politics over numbers proved to be crucial in abating anxieties in the context of identity politics — usually designated the "demographic specter" in Israeli public discourse — but not enough for the panel to approve Poraz's proposal. In redrafting his proposal, Poraz had to address yet another reservation put forth by the ministerial panel regarding the alleged threat to the country's Jewish character. Poraz's opponents in the government claimed that legalizing undocumented migrants would not only amount to opening the door to further unwanted migrants but also would reward those who have broken the law. Therefore, Poraz's proposal carefully emphasized that regulating the status of migrant workers' children would be a "one-time arrangement" based on "individual" and "humanitarian principles" and not on criteria ascribed to generalized groups or categories of people. Since the juxtaposition of "individual" and "humanitarian" sparked contradictory interpretations,<sup>61</sup> an amended version of the proposal stated unequivocally that the arrangement does not apply to migrant workers' children who were born in the country or entered the country after the approval of the proposed arrangement, thereby limiting considerably the scope of the reform as a long-term channel for naturalization. The proposed reform was thus supposed to send a clear signal: it was not meant to set a precedent in Israeli immigration policy that would entail an "invitation" to potential migrant workers to settle in Israel and establish families there in the future. Rather, the proposal's legitimacy rested on the past, as it was presented as a means of remedying the policy vacuum created by previous governments throughout the 1990s in opting not to deal with the issue and, in so doing, creating the difficult situation which now required an immediate solution.<sup>62</sup> Therefore, it was critical for the ministerial panel to set clear-cut temporal boundaries to the scope of the reform.

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60 Relly Sa'ar, *Panel to Discuss Naturalization of Foreign Workers' Children*, HA'ARETZ, Feb. 29, 2004.

61 See the debate within the Knesset Committee on Foreign Workers on what qualifies as "humanitarian." Knesset Protocols 4-5 (Dec. 7, 2004).

62 Sa'ar, *supra* note 58.

### C. The Domino Theory of Liberal Reforms: Migrant Workers' Children in, Palestinian Children Out

While drafting the proposal, Poraz and the ministerial committee had to deal not only with the temporal limits of the reform but also with its geopolitical contours. As already mentioned, the contentious dynamics surrounding Poraz's proposal opened the way for a public debate that had never previously been conducted: whether the state should recognize the membership rights of non-Jewish immigrants and allow them the possibility of becoming part of the increasing non-Jewish and non-Palestinian minority in Israel's population. However, setting the stage for new questions to be asked about whether children born to Ghanaian, Philippine, or Colombian non-Jewish parents could become legitimate members of future Israeli generations also paved the way for identical questions regarding non-citizen Palestinian children living within the boundaries of the State of Israel. Reservations over the limits of Poraz's reviewed proposal were the platform for the third chapter in the ongoing naturalization saga and certainly the most threatening to the implementation of the proposal.

In October 2004, the Ministry of Justice raised its own objections to the redrafted proposal, arguing that, from a legal perspective, no distinction can be made between undocumented labor migrants' children and undocumented Palestinian children. The Director of the Supreme Court Appeals Division in the Ministry argued that the humanitarian principle according to which children should not be removed from the country and culture in which they grew up applies also to Palestinian children who have been residing in Israel without legal status. "It has to be taken into account," she explained, "that the difference in living conditions between Israel and Judea, Samaria and the Gaza Strip involves also humanitarian aspects that are directly applicable to the lives of Arab children."<sup>63</sup> But Poraz rejected the comparison outright. Indeed, he was a strong advocate of an ad-hoc measure introduced by the government during the second *Intifada*, in the form of the Citizenship and Entry into Israel Law. This Law was geared at preventing Palestinians from the Palestinian Authority ("P.A.") from acquiring citizenship or permanent residence status in Israel through the process of family reunification.<sup>64</sup> Legislated in mid-2003 as a Temporary

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<sup>63</sup> Sa'ar, *supra* note 59, at A1, A7.

<sup>64</sup> Citizenship and Entry into Israel (Temporary Order) Law, 2003, S.H. 544. For a detailed critical analysis of the political significance of the Citizenship and Entry into Israel (Temporary Order) Law, see Yoav Peled, *Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime*, 8 THEORETICAL INQUIRIES L. 603

Order, the "Citizenship Law," as it is known in Israel, ratified the government's decision to freeze all family reunification proceedings between residents and citizens of Israel and residents of the P.A. The decision was grounded on two "sacred" and strongly interconnected principles in the Israeli public discourse: security and demography. The proponents of the Law argued that there had been an "increasing involvement by Palestinians from the region with Israeli identification cards as a result of family reunification, who exploited their status in Israel to engage in terror activities."<sup>65</sup> Moreover, supporters of the Law claimed that, during the period of 1993-2003, some 130,000 Palestinians had received Israeli citizenship by marrying Palestinian Israeli citizens, thereby realizing a Palestinian "quiet right of return" via family reunification.<sup>66</sup>

Determined to prevent the blurring of the line between the "humanitarian plight" of migrant workers' children and the "security and demographic threat" posed by undocumented Palestinian children living in Israel, Poraz heeded the ministerial panel's demand that this matter be carefully examined, and his final proposal was drafted in consultation with the new Attorney General Menachem Mazuz. The latter concluded that, from a legal perspective, the proposed reform on undocumented migrant workers' children does not discriminate against undocumented Palestinian children, thereby reaffirming the hermetic line between the non-Jewish new populations in Israel and Palestinians that has existed since the beginning of the 1990s.<sup>67</sup>

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(2007); for the views of proponents of the Law, see Amnon Rubinstein & Liav Orgad, *Security of the State, Jewish Majority and Human Rights: The Case of Marriage Migration*, 48 HA-PRAKLIT 315 (2006) (Hebrew). For views opposing the Law, see Guy Davidov et al., *State or Family? The Nationality and Entry into Israel Law (Temporary Order) 2003*, 8 MISHPAT U-MIMSHAL 643 (2005) (Hebrew).

<sup>65</sup> Shahar Ilan, *Government: Extend Citizenship Law by Two Years and Expand It to Cover "Risk States"*, HA'ARETZ, Nov. 30, 2006.

<sup>66</sup> See Yuval Yoad, *Supreme Court to Government: The Reform that Prevents Citizenship from Palestinians Through Family Reunification Is Problematic and Needs Thorough Revision*, HA'ARETZ, Dec. 17, 2004, at A7. Since 2003, the temporary order has been extended three times and brought to the High Court of Justice, which, on May 14th, 2006, upheld it by a vote of six to five. The current temporary order is valid until January 16, 2007, and must either be extended or replaced by that date. A permanent bill is currently being drafted.

<sup>67</sup> ADRIANA KEMP & REBECA RAIJMAN, *FOREIGNERS AND WORKERS: THE POLITICAL ECONOMY OF LABOR MIGRATION IN ISRAEL* (forthcoming 2007) (Hebrew).



#### D. Party Politics or Government Policy?

Towards the end of November 2004, the final draft of the reform proposal was ready to be submitted for approval to the ministerial panel and put into motion. But on December 5, following a government coalition crisis, all the ministers from the *Shinui* Party, including Interior Minister Poraz, resigned and left Ariel Sharon's government. Needless to say, the ministerial panel on population registration did not approve Poraz's proposal on the eve of his resignation. Indeed, it in fact dispersed and suspended its meetings pending the creation of a new coalition and appointment of a new Minister of the Interior. Just before leaving office, Poraz took a drastic step that demonstrated his commitment to the reform: he instructed the Head of the Population Registry within the Ministry, Sassi Katzir, to grant undocumented families with children immediate residency rights in accordance with his proposal.<sup>68</sup> However, Attorney General Mazuz overturned this directive, stating that, in the circumstances of the coalition changes, only the ministerial panel had the authority to instruct on the implementation of the recommendations in Poraz's proposed reform. Poraz's last-minute directive was not merely the result of frustration and hastiness but rather a premeditated and strategic step, for it paved the way for future legal action to be taken by NGOs against the Ministry of the Interior.<sup>69</sup>

Poraz's final decision as Minister of the Interior had clear dramatic overtones, as he chose to announce the directive in a letter addressed to Association for Civil Rights in Israel ("ACRI"), a prominent Israeli NGO that advocates on civil rights issues. In the letter, he spelled out the moral principles that led to his proposed reform. "The Jewish people, who suffered in exile for two thousand years, cannot harden its heart to the plight of others and is not morally permitted, in its sovereign state, to act with callousness and cruelty," he wrote.<sup>70</sup> Poraz's words were directed at several audiences: the bureaucracy at the Ministry of the Interior, which had set unrelenting obstacles to the implementation of his decisions; the orthodox religious parties that had been *Shinui's* long-time political foes; and his predecessors at the Ministry.

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68 Poraz also ordered the formalization of the legal status of four children of foreign workers who had reached adulthood and whose petition had been filed eighteen months earlier by the Association for Civil Rights in Israel and was still being deliberated by the Tel Aviv District Court.

69 Relly Sa'ar, *Mazooz Vetoed Poraz Decision to Grant Civic Status to Labor Migrants' Children*, HA'ARETZ, Dec. 6, 2004, at A10.

70 Relly Sa'ar, *Poraz's Grand Exit: Residency for Foreigners' Kids*, HA'ARETZ, Dec. 5, 2004.

But first and foremost, he voiced his grievances against his partners, the members of the ministerial panel on population registration, mainly those from the *Likkud* party, who thwarted the vote on the reform at the last minute. According to Poraz, the *Likkud* Party was closer in spirit to the religious parties in its affinity for anti-liberal and non-secular values than to its own self-image as a center-of-the-road, secular party.<sup>71</sup>

The process Poraz set in motion did not however come to a halt with his resignation. Six months later, in June 2005, led by the new Minister of the Interior Ophir Pines-Paz, from the Labor party, the government voted practically unanimously in favor of the proposal granting legal status to migrant workers' children.<sup>72</sup> In presenting his cabinet to the Knesset in May 2006, newly-elected Prime Minister Ehud Olmert announced that Israel would lose its moral standing if it were to avoid its responsibility towards the weaker segments of society, including "the children of the foreign workers who live in our midst, love our country and want to be part of it."<sup>73</sup>

While the procedures for establishing the precise criteria as to which children successfully fall within the definition of those whose "distancing from Israel would involve cultural exile" remain unclear and disputed, the legalization of undocumented children is on its way.<sup>74</sup> According to the Population Registry data, 460 families, totaling 1400 people, have requested legal status since the implementation of the government decision, with approval granted to the applications of thirty-five of these families. Once

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71 The main objections within the ministerial panel to Poraz's proposal were raised by ministers from the *Likkud* Party, the largest party in the government coalition, from which Poraz had just resigned. However, in raising their objections, these ministers already were bearing in mind their future coalition partners from ultra-orthodox religious parties.

72 Government Decision No. 3807.

73 Relly Sa'ar, *Prime Minister Vowed to Help Foreign Workers' Kids, but the State Wants to Deport Them*, HA'ARETZ, May 7, 2006, at A1.

74 Since one of the preconditions for migrant workers and their children to receive permanent residence and citizenship is that the parents originally entered Israel legally, it is not clear yet how many foreign workers and their children will be eligible for legal status and what will be the fate of those children born in Israel who do not meet the criteria. Following a December 2005 petition brought by various NGOs, the High Court issued an interim injunction banning the deportation of children of foreign workers and permitting foreign workers who entered the country illegally to be covered by the interim injunction if they file applications for citizenship by the end of March 2006. In the meantime, the new Minister of the Interior, Ronnie Bar-On, has lowered the minimum age for naturalization eligibility to six years of age for children who are currently studying in the Israeli education system.

a special committee established for examining the requests finishes processing the applications, those children who do not meet the criteria are expected to be deported along with their families.<sup>75</sup>

Not surprisingly perhaps, the government's approval of the proposed legislation came at the same time that the Pines-Paz Advisory Committee submitted its recommendations for the formulation of an Israeli immigration policy much akin to the recommendations made by the National Security Council.<sup>76</sup> Motivated by ethno-demographic and security concerns, the Committee's recommendations include, in part, imposing strict restrictions regarding which economic status, age, and type of link to Israel are applied in the naturalization process in general and via marriage and family reunification in particular.<sup>77</sup> Thus, the reform regarding the status of children of migrant workers has opened up a small window for unwanted immigrants at a time when the gates of immigration are being shut tight and institutionalized by law.<sup>78</sup>

Moreover, the so-called need to regularize the legal status of undocumented children of migrant workers emerged at a time when the government had begun implementing a sweeping workfare program that drew on, among other things, reducing the number of migrant workers and substituting them with local workers. The establishment of a new Immigration Authority in August 2002, of which, thus far, the Immigration Police has been the only active organ, was part of an ambitious economic reform plan envisaged by the Sharon government and geared at restructuring the Israeli welfare system and labor market.<sup>79</sup> "Closing

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75 The Head of the Population Registry, Sassi Katzir, has already presented a deportation plan for foreign workers and their children who do not meet the Decision 3807 criteria. Under this plan, immigration police will be responsible for arresting those who refuse to leave the country willingly; the State Treasury will pay for the airline tickets of those who refuse to leave voluntarily, and the Ministry of the Interior will be responsible for issuing deportation orders. *See* Sa'ar, *supra* note 73, at A1, A6.

76 Advisory Committee for the Examination of an Immigration Policy for the State of Israel, Interim Report (Feb. 2, 2006) (unpublished report, on file with author) (Hebrew).

77 On February 7th, 2006, the Committee submitted provisory policy recommendations regarding mainly labor migrants, refugees, and asylum seekers and citizenship acquisition via family reunification and marriage, in general, and regarding citizens from "enemy countries" relating to Palestinians in particular. *See supra* note 75.

78 The two primary examples are the proposals to extend the Citizenship Temporary Order and turn it into a permanent bill. *See supra* note 66; *see also* Illegal Residents (Entry into Israel Law — Amendment No. 19) Bill (July 12, 2006), available at <http://www.knesset.gov.il/Laws/Data/BillGovernment/254/254.pdf>.

79 *See* Report of the Inter-ministerial Committee on Foreign Workers and the

the skies" to further recruitment of labor migrants and waging a fierce battle against undocumented migrants and their families via massive deportation campaigns were an inextricable part of the plan that would "pull" Israeli workers back into secondary labor market jobs, which had been performed by Palestinian non-citizens since 1967 and then by migrant workers since the early 1990s. Reminiscent of other historical precedents, this closing of the skies also forced the Israeli authorities to open up their eyes to the host of unwanted immigrants already inside.

The supposedly liberalized policy towards migrant workers' children should thus be understood within the double context of the ethno-demographic politics and the political economy of labor migration in Israel. It is within this context that the Israeli reform has been constituted as both a political tool for managing the contradictions set off by labor migration policies as well as a means for reprioritizing ethno-national definitions of membership and belonging.

### CONCLUSION

Traditionally depicted as a paradigmatic case of a deeply divided society, in which one out of every three Israeli Jews is an immigrant and one out of every five citizens is part of the Israeli-Palestinian minority, Israel was recently singled out as an "odd case" in relation to all typological exercises conducted by comparative research on citizenship.<sup>80</sup> That is to say, the Israeli case is one in which a single element — ethno-religious — retains dominance, over-determining all other constitutive parts of citizenship policy. Departing from this characterization and following the nationhood model of immigration proposed by Brubaker,<sup>81</sup> it is only to be expected that Israeli immigration and citizenship policies would be reflective of the self-definition of the ethno-national community.

However, the neo-liberal trends of the 1990s, associated with, among other things, the intensive recruitment of labor migrants and their unintended albeit quite expected settlement in Israel, have forced Israeli society and the state to face dilemmas that have engaged Western European and Northern

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Establishment of the Immigration Authority, submitted to the Minister of Labor and Welfare, the Deputy Prime Minister and the Minister of Finance (July 2002) (known as the "Rachlewsky Report").

80 Aristide A. Zolberg, *Ethnic Republics? Citizenship in Israel and Japan: Introduction*, in FROM MIGRANTS TO CITIZENS, *supra* note 15, at 383.

81 Brubaker, *supra* note 7.

American countries in the post-WWII period. First and foremost is the dilemma of a non-immigrant nation-state becoming a de facto immigration society, without being ready — ideologically or structurally — to deal with the substantive questions that the phenomenon raises. In fact, the new non-Jewish immigration has, to a certain extent, "normalized" the Israeli debate on citizenship and migration. It has transformed the citizenship debate from one that deals exclusively with endogenous questions that pertain to the realm of a more or less well-defined "community of descent," or, conversely, with the various "degrees of citizenship"<sup>82</sup> to which various minorities within the citizenry are subjected, into a debate over who is entitled to become a citizen and on what grounds.

Recent policies regarding the naturalization of children of labor migrants are evidence that the debate over citizenship has been set in motion, even though its resolution is still far-off. On an analytical level, the naturalization of non-ethnic immigrants points to the circular and reified assumptions of the nationhood model of immigration proposed by Brubaker. It also highlights the necessity to develop more subtle understandings of membership and citizenship as embedded in particular social and political contexts and, yet, at the same time, as part of broader trends that blur the line between the legal jurisdiction of individual states and globalized migration systems.<sup>83</sup> However, is this naturalization trend indicative of Israel's move in a "post-ethnonational" direction? Does it point to the incorporation of post-national norms and de-ethnicizing policy trends within the public discourse and policy realm in Israel?

A detailed analysis of the dynamics that led to the legal reform of the status of migrant workers' children reveals that the Israeli policies have not remained indifferent to the regulatory challenges engendered by the opening up of the labor market to migrant workers. However, it also reveals the boundaries of liberalizing reforms, as they become part of general trends in the national state towards deeming membership manageable without upsetting its national politics of identity. Grounded on humanitarian and/or personal criteria, defined as a one-time arrangement that will apply to a rather limited fragment of the relevant population, and skillfully set apart from other "messy phenomena" (Palestinian children), the reform exemplifies the predominance and adaptability of the state as it seeks to reprioritize ethnically-defined citizenship through migration. As translated into the

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82 I borrow this concept from Ayelet Shachar, *Citizenship and Membership in the Israeli Polity*, in *FROM MIGRANTS TO CITIZENS*, *supra* note 15, at 386.

83 *FROM MIGRANTS TO CITIZENS*, *supra* note 15.

Israeli context, the "post-national," "denationalized," and "de-ethnicized" amount less to new forms of membership or to a general policy trend than to a political instrument by which the state manages non-ethnic immigrants, without having to substantively reconstruct its regime of citizenship and the economy of cultural identities embedded in it.

