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“Becoming Jewish” and the Law of Return

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“Becoming Jewish” and the Law of Return

Abstract

Who can be considered a Jew in Israel? This question of definition and conferral of Jewish identity will be investigated in this paper, especially at the confluence of religion and State. Halakhic (Jewish religious) definitions of Jewishness — relying on matrilineal descent or Orthodox conversion — are compared with civil legal definitions of Jewishness, which are rooted in the Law of Return. However, complications arise through assisted reproductive technologies (ARTs), as well as conversion practices, twisting traditionally robust criteria. Central to the argument is the tension between stringent religious law and more liberal civil law in determining who can be deemed Jewish, and therefore, eligible for Israeli citizenship. Drawing from scholarly resources, including Susan Martha Kahn’s *Reproducing Jews*, alongside the more contemporary anthropological paper “Rethinking the Jewish Womb in Israel” authored by Teman & Chorowicz Bar-Am, policy and legal sources, the paper seeks to understand the wider debates over religious authority, legal authority, and citizenship in Israel.

Keywords: Jewish identity, halakha, reproduction and citizenship, Israel, Law of Return, matrilineal descent, assisted reproductive technologies, migration

Introduction

In the homeland of (and for) the Jews, the question “Who is a Jew?” is not bound by theological boundaries alone. It is far more loaded — defining religious belonging, rights enjoyed as a community, and importantly, the eligibility to immigrate under the Law of Return. Contemporary technological advancements, through the means of assisted reproductive technologies (ARTs), address the challenge of infertility by way of fertility treatments involving the handling of eggs, sperm, or embryos to help achieve pregnancy. The most common type of ART is in vitro fertilisation (IVF), wherein eggs are removed from the woman’s ovaries, fertilised with sperm in a laboratory, and then transferred back into the uterus. — have shaken previously held notions of Jewish identity, in particular, the role of childbirth, descent through matriliney, and conversion. Drawing upon Susan Martha Kahn’s work in her book *Reproducing Jews* (2000) and specifically, her chapter “Eggs and Wombs:

The Origins of Jewishness”, this paper attempts to trace how the Jewish identity is constructed through reproduction in Israel, and its subsequent interspersal with citizenship, migration, and State policy.

The paper is structured as follows. First, the religious and legal definitions of Jewishness in Israel are studied. Second, the role of assisted reproductive technologies (ARTs) in disrupting and/or refining these definitions is expounded upon, keeping in mind the splitting of genetic, gestational, or maternal roles. Third, the topic of citizenship evokes implications for migration and immigration: what the eligibility criteria for granting citizenship are, how immigrants are impacted by conversion practices and reproductive technologies, and what the Israeli State’s policies suggest about exclusion and inclusion. Fourth, the paper discusses the implications that advancements in emerging reproductive technologies create, with respect to religious definitions of Jewishness as well as civil-legal definitions that are connected to migration and Statehood. This tension is inherent in Israeli law: the civil route of obtaining citizenship (through the Law of Return) is at odds with Orthodox halakhic standards. Israel simultaneously exercises control over religious recognition that reflects orthodoxy, while also encouraging Jewish immigration through aliyah and inclusive laws for obtaining citizenship.

Religiously and Legally Defining Jewish Identity in Israel

Matriliny in the Halakha

The mother confers Jewishness, as per traditional Jewish (halakhic) law. This means that so long as one’s birth mother is Jewish, they too are Jewish. Within Orthodox Rabbinic law, matrilineal descent has consistently been considered the legal standard (Teman & Chorowicz Bar-Am, 2025). Consequently, even if the father is Jewish and the mother is not, the child would not be considered a Jew, halakhically, till he/she undergoes a conversion.

Conversion (*giyur*) is the other means to become Jewish, as prescribed by the halakha. Formal conversion would include immersion in a mikveh (a Jewish ritual bath for spiritual purification), acceptance of religious duties and obligations, and circumcision (for males). Although halakhic law treats Jewish converts at par with “full” Jews, the reality can be significantly different, with Jewish communities and even authorities not giving them the same level of treatment that they would fellow-Jews.

Law of Return and Citizenship in Civil Law

In 1950, Israel passed the Law of Return, thereby opening doors to Jews from all over the world; they were invited to immigrate, settle down, and become Israeli citizens. The act was amended in 1970; section 4B laid down the definition of a “Jew” as “a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion” (Knesset, 1970). By doing so, Israeli civil law legally defines a Jew and integrates both matrilineal descent as well as conversion — a significant step for immigrants eager to embrace Israel as their new host-land. (Law Office of Israel; see “Aliyah based on the Law of Return”, n.d.)

Yet, religious recognition and civil law do not always align. An immigrant who may not necessarily be regarded as Jewish by Orthodox rabbis (perhaps as a result of unclear maternal lineage, or non-Orthodox conversion practices) may be granted citizenship by the Israeli State. There have been cases that have contributed significantly towards shaping the Law of Return. Take, for instance, the 1962 Brother Daniel case. Oswald Rufeisen, a Polish-born Jew, later took the name Brother Daniel, converted to Catholicism, and became a monk. Brother Daniel requested Israeli citizenship under the Law of Return. His stance was clear: despite having changed religion, he had not changed his nationality. This brought into the frame the notion of Jewish nationality and Judaism as a religion. Yet, he was denied by the Ministry of Interior, having undergone conversion to another religion. This line of reasoning became a guiding principle in the amendment of the Israeli immigration law, and it was also established that, for the Law of Return, the religious and national duality of Jewish identity is inseparable. (Kushner, 2023)

Moreover, religious authorities, the Chief Rabbinate in particular, have the last say on life-cycle events (birth, coming of age, marriage, burial), and generally only tolerate Orthodox standards for these significant milestones (Board of Jewish Education (NSW), 2025).

Motherhood in the Age of Assisted Reproductive Technologies (ARTs)

Eggs versus Wombs?

In *Reproducing Jews*, Kahn’s chapter “Eggs and Wombs: The Origins of Jewishness” dives into the halakhic laws of motherhood and conferral of Jewishness, and how ARTs,

including surrogacy, egg donation, and in vitro fertilisation (IVF), derails these once firmly held assumptions (Kahn, 2000). Given the weightage Judaism accords to matrilineal descent, these technologies seem to dismantle the very (commonly-held) notion of what it means to be a mother. Thus, the distinction between the birth mother, the gestation carrier (or surrogate), and the genetic donor (or egg provider) becomes critical when the process of motherhood is so meticulously dissected by ARTs. Kahn's writings reveal that the woman who finally gives birth to the child is considered to be the child's mother, as per traditional halakhic law. This would then suggest that Jewishness is conferred upon a child through the womb, thereby giving greater precedence to the womb, rather than the egg. This is illustrated below, in Table 1.

Traditional (halakhic) understanding of Jewish status conferral			
Egg Status	Sperm Status	Womb Status	Birth Status
Jewish	Jewish	Jewish	Jewish
Jewish	Non-Jewish	Jewish	Jewish
Non-Jewish	Jewish	Jewish	Jewish
Non-Jewish	Non-Jewish	Jewish	Jewish
Jewish	Jewish	Non-Jewish	Not Jewish

Table 1: Traditional (halakhic) understanding of Jewish status conferral;

Source: Compiled by the author viz. Teman and Chorowicz Bar-Am (2025)

However, over three decades since Israel legalised surrogacy, “the womb has gradually lost its status as the primary determinant of Jewish descent” (Teman & Chorowicz Bar-Am, 2025). Orthodox authorities are adapting to these changing times, and their contemporary rulings seem to scrutinise the genetic donors as well. Accordingly, if the egg donor is non-Jewish, yet surrogacy happens within a “Jewish womb” and the child is born by a Jewish woman, the child may still have to undergo the ritualistic conversion practices “to eliminate any doubt” (Teman & Chorowicz Bar-Am, 2025). Table 2 below expounds upon the ambiguities.

Shift in rabbinic thinking regarding Jewish status conferral							
Until 2010				After 2010			
Egg Status	Sperm Status	Womb Status	Birth Status	Egg Status	Sperm Status	Womb Status	Birth Status
Jewish	Jewish	Jewish	Jewish	Jewish	Jewish	Jewish	Jewish
Jewish	Non-Jewish	Jewish	Jewish	Jewish	Non-Jewish	Jewish	Jewish
Non-Jewish	Jewish	Jewish	Jewish	Non-Jewish	Jewish	Jewish	Not Jewish?
Non-Jewish	Non-Jewish	Jewish	Jewish	Non-Jewish	Non-Jewish	Jewish	Not Jewish?
Jewish	Jewish	Non-Jewish	Not Jewish	Jewish	Jewish	Non-Jewish	Jewish?

Table 2: Shift in rabbinic thinking regarding Jewish status conferral;

Source: Compiled by the author after referring to Teman and Chorowicz Bar-Am (2025)

These ambiguities, as illustrated in Table 2, have resulted in the “motherhood paradigm shift” — Avishalom Westreich’s coinage — wherein Jewish legal thought that was once fixated upon motherhood being based on gestation is now adapting to a more “flexible” approach that considers the genetics (egg) as well as the gestation (womb), depending on the religious or legal context (Teman & Chorowicz Bar-Am, 2025). It can be argued that the author's claim that such a shift brings flexibility is contested. The rationale behind this is that assessing the religious status of the donors of the egg would inevitably make the conferral of Jewishness stricter. However, the rabbis adopt a flexible interpretation of halakhic laws by considering both the egg and the womb. By the mere recognition that Jewish lineage can be passed down from either genetic or gestational motherhood, and by permitting multiple (occasionally conflicting) interpretations of the halakha, rabbinic authorities have shifted from a monolithic conception of Jewish status to a plural, negotiable framework. This marks a considerable softening in the conceptual boundaries of Jewishness through the expansion of interpretations — Jewish status is being determined on a case-by-case basis, as opposed to previously held biological certainties — despite the eventual outcomes becoming more stringent in practice.

Surrogacy and the “Jewish Womb”

Teman and Chorowicz Bar-Am (2025) interviewed Orthodox Jewish surrogates in Israel, as the phenomenon of Orthodox women taking up surrogacy is still quite new. While the State and some legal actors may consider a Jewish surrogate to be the “Jewish womb”, thereby passing on the religious status to the child, many surrogates did not consider themselves to be mothers in the halakhic sense. They compared their role to hosting, holding, or even babysitting the child rather than “mothering”, in an attempt to navigate the halakhic and moral dilemma of the weight of Jewish conferral to the newborn. Therefore, the surrogates “did not consider their wombs to be a determining factor in the baby’s Jewish status” (Teman & Chorowicz Bar-Am, 2025). These dissonances throw light on the tension between personal, halakhic, and legal identities in matters of reproduction.

Policy, Regulation, and Practice

Given Israel’s pronatalist orientation and demographic concerns owing to the encouragement provided in the Torah “be fruitful and multiply”, and a history of persecution, forced conversions, and the Holocaust — reproduction is socially and politically valued. Israel’s health policies are favourably disposed to ARTs. There is widespread access to IVF, it is heavily subsidised, and there are no conditions attached to availing these services, regardless of marital status or religion (Kahn, 2000). However, Orthodox rabbinic authorities and court rulings influence regulation, including questions of which egg donors are appropriate, who are deemed worthy of being surrogates, and whether children born from donor eggs are considered Jewish without the need for ritualistic conversion. Legal reforms, including the likes of the Surrogacy Law (1996) and the Egg Donation Law (2010), show the negotiation between religious norms and secular State policy.

Implications for Israeli Citizenship, Migration, and Mobility

Conversion, Immigration, and a Quest for Recognition

Conversion is twofold: it serves as a religious ritual, but also acts as a mechanism of migration. People who convert (Orthodox, and sometimes non-Orthodox) become eligible for aliyah under Israel’s Law of Return (Law Office of Israel; see “Aliyah based on the Law of Return”, n.d.). The Ministry of Interior has been compelled, by Supreme Court rulings, to

recognise non-Orthodox conversions performed within Israel or abroad for citizenship, regardless of where the Rabbinat accepts them for religious ceremonies (Reuters, 2021).

The Israeli High Court, when overseeing a case in 2024, ruled that children born before their parent's official conversion to Judaism would still be eligible for naturalisation under the Law of Return (Lidor, 2024). This shows that the timing of a parent's conversion (after the child's birth) does not disqualify the child from obtaining migration rights to Israel.

The Inclusion versus Exclusion Tension

Arjun Appadurai (2006), in his chapter "Fear of Small Numbers" within *Fear of Small Numbers: An Essay on the Geography of Anger*, argues that modern nation-States are terrified of "small numbers". This anxiety, Appadurai (2006) argues, stems from the State's perceived incompleteness, brought forth by the lack of "ethnonational purity". Threatening the imagined coherence of the national body, minorities lay bare the gap between the reality of pluralism and the ideal of cultural homogeneity (Appadurai, 2006). Where, then, does the case of Israel fit into this theory? Here, the logic is reversed: instead of fearing minorities within the boundaries of Israel, the State fears being the small number itself — in terms of geography, demography, and symbolism — being surrounded by Arab countries. The anxiety, as a result of demographics, colours much of Israel's policies in citizenship and migration, as also its unwillingness to revoke citizenship once granted. The unwillingness to revoke citizenship is not so much a liberal policy choice, but more an attempt to protect the coherence of the Jewish national body, both in symbolic and numerical terms. This need is institutionalised by the Israeli State's Law of Return (1950) and the Citizenship Law (1952), which enable automatic inclusion and incentivise Jewish immigration, thereby building upon and enlarging the imagined Jewish community at large.

The Israeli State thus faces an inevitable tug: navigating stringent religious boundaries while trying to maximise population growth and Jewish immigration. More pronounced is the tension when ARTs create vagueness in the Jewish status of children. Aliyah (or mobility) then becomes a challenge for those parents worried about the status of their children's Jewishness; likewise, the Jewish diaspora in other countries may have qualms about whether the reproductive choices they make will affect the child's recognition by the State of Israel.

Technology, Demography, and Migration

ARTs proliferating in Israel are indicative of personal aspirations to have and raise biological children as well as the population's motivation to further State-specified demographic objectives. Daphna Birenbaum-Carmeli (2016), in the essay "Thirty-five years of assisted reproductive technologies in Israel", states that the swiftly advancing sphere of in vitro fertilisation (IVF), surrogacy, and gamete (egg/sperm) donation including the diverse, global pool of donors has changed the reproductive landscape of Israel in remarkable ways (Birenbaum-Carmeli, 2016). This implies that conception and reproduction are no longer personal or local, but are part of a cross-border system influenced by biological material, cultural norms, and legal frameworks at play.

Jewish (Israeli) Citizenship versus Liberal-Democratic Conceptions of Citizenship

Within liberal democracies, citizenship is devised as a secular, universal status, wherein all citizens enjoy equal rights regardless of their ethnicity or religion. Governments usually use neutral criteria, including place of birth or residency (*jus soli*) or naturalisation, to grant citizenship, without favouring certain groups. Israel, by contrast, makes it very explicit that it is a nation-State for (and of the) Jewish people, and does so by weaving citizenship and immigration rights to Jewish identity (Barak-Erez, 2008). While there is a naturalisation law that grants Israeli citizenship, the existence of the Law of Return which grants all Jews the right to immigrate and receive automatic citizenship exhibits the preference for Jews (Barak-Erez, 2008). Critics of the Law of Return argue that this dual system of granting citizenship can clash with liberal notions of equality, given its overt privileging of one ethnoreligious group over others in particular, of Jews over Arabs (Barak-Erez, 2008). Israel thus strives to balance its identity as a "Jewish *and* democratic" State; however, tensions arise between stringent notions of belonging as a collective and the universal concepts of citizenship.

Discussion

The focus of this section of the paper is on the way the State of Israel consolidates both civil and religious interpretations whenever the issue of mobility emerges.

Halakhic definitions are overlooked in favour of a more liberal civil-legal framework, echoed by the Law of Return. This law allows immigration by individuals without clear matrilineal linkages, non-Orthodox converts from abroad, as well as converts from recognised authorities. In comparison, religious authorities enjoy greater say over life-cycle

practices, including birth, coming of age, marriage, and burial ceremonies, and abide by stringent interpretations of halakhic law.

For instance, Israel's Basic Laws connect civil rights to the State's core identity of being "Jewish and democratic" (Tirosh, 2023). Yet, in reality, rabbinic control over life-cycle practices (including marriage or burial ceremonies) implies that personal status remains beyond the reach of pure civil jurisdiction (Tirosh, 2023). Several of the clashes between civil Israeli law and halakhic law occur over gender equality: in a landmark Supreme Court ruling, the High Court of Justice (HCJ) ruled in favour of Leah Shakdiel, who "had been selected to serve on the municipal council for religious services" (Tirosh, 2023). The Chief Rabbinate — responsible for religious services at the national level — had objected to her appointment, stating that women were not to serve in this role (Tirosh, 2023). This example, among others, exhibits the persisting negotiation between religious authority and liberal-democratic values in Israel.

Besides, as mentioned above, Israel is explicit with its pronatalist policies, by subsidising ARTs, as well as providing monetary incentives (NIS 57 provided on a monthly basis) to every child below 18 (National Insurance Institute of Israel, n.d.). Analysing this through a feminist lens, it appears that the State's imperative for women to bear children can override women's personal choices and autonomy. The pronatalist emphasis aligns with Israel's demographic goals (inspired by the Torah's commandment "be fruitful and multiply"), thereby placing women as the drivers of the nation-State's population growth. These pronatalist policies have spurred debate regarding the interests of the collective (by serving State interests) over the individual (and their reproductive autonomy).

Assisted reproduction technologies bring in ambiguities and complications by splitting the commonly held notions of motherhood into genetic, gestational, and maternal roles. Not only does this beg the question of who is labelled Jewish, but also risks completely dehumanising women (regardless of their religious and national identity) through the systematic fragmentation of what it means to be a mother, as "an attitude that views their bodies as detachable parts" that can be assembled and reassembled according to "rabbinic specifications" seems to be promoted (Kahn, 2000).

The interspersal of migration and reproduction is further emphasised by the multifaceted nature of Jewish identity, which operates at both a communal and familial level. Laws concerning citizenship and personal status determine who may immigrate, who may be

included or excluded under Israeli law, and who can officially claim to be Jewish. All these factors are now challenged by the dynamic emerging technologies that assist with reproduction.

Jewishness is being used as a gatekeeping mechanism: while the State itself may grant citizenship to more people (for instance, the children of converts), halakhic law may not recognise them to be Jews, posing a predicament. The State, therefore, cannot completely divorce itself from religion. This significantly deviates from liberal-democratic norms, since the meaning of being an Israeli citizen is diluted by Orthodox authorities that are determined to stick by the book.

Conclusion

Israel is seeing changes in its Jewish demography that are determined by birth, conversion, matrilineal descent, and increasingly through assisted reproductive technologies (ARTs). On the one hand, halakhic law focuses on the matrilineal conferral of Jewish status and Orthodox standards of conversion, while the State policy through the Law of Return offers a more liberal and inclusive civil definition of Jewishness — this inclusivity significantly widens the scope for immigration. ARTs, in their complications of traditional conceptions of motherhood, give rise to circumstances where a child's Jewishness is treated differently depending on the religious or civil context.

From a migration perspective, these factors are highly significant. The question “Who is a Jew?” will determine who chooses to migrate, obtain Israeli citizenship, and become an active member in Jewish society. The push-and-pull between secular Israeli State law and religious halakhic law exposes the duality of inclusion and exclusion in Israel's approach to Jewish identity. This duality symbolises Israel's identity as a “Jewish and democratic” State: Jewish people may benefit from the Law of Return by being granted full Israeli citizenship; however, non-Jewish residents, while formally granted Israeli citizenship, may face structural and legal disadvantages in the realisation of their rights and in feeling included within Israeli Jewish society. It can be argued that favouring Jews over other non-Jewish groups would be at odds with the values that democracy stands for: equal rights for all. A greater understanding would emerge from conducting more empirical work on families affected by these grey areas, and how they navigate their identities through time.

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