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The Transformation of the Israeli Bankruptcy System as a Reflection of Societal Changes

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The Transformation of the Israeli Bankruptcy System as a Reflection of Societal Changes

Cover Page Footnote

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THE TRANSFORMATION OF THE ISRAELI BANKRUPTCY SYSTEM AS A REFLECTION OF SOCIETAL CHANGES

RAFAEL EFRAT*

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I. INTRODUCTION

A fresh-start policy in bankruptcy provides the honest but financially troubled individual some form of financial relief by furnishing the individual with an opportunity to productively re-integrate into the economy and the society. While traditionally most countries have had a largely limited as well as punitive fresh-start policy, a growing number of countries today seem to deliver a broader financial relief to individuals who resort to bankruptcy protection.

The Israeli financial fresh-start policy in bankruptcy is an example of one country's dramatic transformation from a bankruptcy regime unsympathetic to the plight of deeply financially troubled individuals

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to a regime that is comparatively more concerned and somewhat more responsive to the needs of bankrupt individuals.

This evolution in the Israeli bankruptcy law over a period of almost fifty years did not take place in a vacuum. Similar to any other legal system in the world, the bankruptcy regime in Israel was continuously shaped by powerful outside social, political and economic pressures. The traditional socialist orientation of the political structure as well as society's traditional emphasis on personal responsibility and de-emphasis on individual choice have led in the past to the preservation of a relatively conservative fresh-start policy in bankruptcy. Moreover, one can attribute the creditor-oriented bankruptcy system to the powerful and active pro-creditor interest groups and to the lack of grassroots consumer organizations that could have served the interests of the politically underrepresented bankrupts. As the majority of Israeli bankrupts were primarily unsophisticated, unskilled, blue collar, Sephardic Jews belonging to the lower socio-economic class, their plight of financial hardship did not get the attention or support of the largely middle-class Ashkenazik members of the legislative body.

Lastly, the historically conservative and punitive nature of the Israeli fresh-start policy can be attributed to the perceived phenomenon of illegalism in Israeli society. This perceived phenomenon could be described as the tendency of Israelis to avoid conformance to laws and to continuously search for ways to bypass the legal system and its authority. Indeed, throughout the several reforms of the bankruptcy system there was an underlying perception by Israeli legislators that a more liberal approach to the fresh-start policy would be disastrous. Legislators were concerned that such an approach would be abused by the average citizen and perceived as a way to avoid the legal obligation of repaying one's debts.

While its most recent liberalization was prompted by an internal factor (the massive increase in the numbers of financially troubled individuals being redirected from the bankruptcy system to prison), external social forces were the dominant contributors to the liberalization of the fresh-start policy in Israel. First, one can attribute the liberalization of the fresh-start policy to society's shift from collectivism to individualism. The recognition and acknowledgment of the dignity, privacy and autonomy of the individual helped generate an environment more hospitable to the idea of a second chance for a financially troubled individual.

Second, the changing orientation of Israel's economy from being socialist-based to more capitalistic can also be linked to the liberalization of the fresh-start policy. As entrepreneurship became a more widely-accepted activity in Israel, society began to acknowledge the incentives a more liberal fresh-start policy could provide to a private market economy.

Lastly, the recent growth and social acceptance of consumerism and debt undertaking in Israel have brought about a more tolerant attitude towards the over-extended consumer who falls into financial trouble. This tolerance may have contributed to wider support for the recent liberalizing of the fresh-start policy.

This Article will first briefly identify and discuss the transformations that have taken place in the Israeli fresh-start policy in bankruptcy law during the last fifty years. The Article will then attempt to explore and address critical societal changes that may have had a discernable impact on the evolution of the bankruptcy regime in Israel during the last fifty years.

II. THE EVOLUTION OF THE FRESH-START POLICY IN ISRAELI BANKRUPTCY LAW

Long before the establishment of the State of Israel in 1948, Jewish communities around the world struggled with how to treat financially troubled individuals. Initially, the Jewish communities were strong advocates for the freedom and dignity of financially troubled debtors. Although non-Jewish legal institutions regularly imprisoned defaulting debtors, the Jewish communities initially prohibited such practices.¹ However, beginning in the seventh century, social and economic changes brought about more tolerance towards punitive debt-collection practices in many Jewish communities.² The continuing growth of commerce and the persisting custom of debtor's prison outside the Jewish communities culminated, by the sixteenth century, in widespread acceptance in most of the Jewish communities of imprisoning financially able debtors for failing to pay their debts.³

The emerging practice in Jewish communities of imprisoning defaulting debtors, deemed to have financial ability to satisfy debts,

1. See MENACHEM ELON, *HERUT HAPRAT BEDARCHE GVEYAT HOV BAMISHPAT HA'IVRI* [FREEDOM OF THE DEBTOR'S PERSON IN JEWISH LAW] 16 & 255-56 (1964). See also Menachem Elon, *The Sources and Nature of Jewish Law and its Application in the State of Israel — Part II*, 3 *ISR. L. REV.* 88, 108 (1968).

2. See ELON, *supra* note 1, at 257.

3. See Elon, *supra* note 1, at 114 n.301.

was formally adopted in the newly established Jewish state in 1948.⁴ Under the new law, a debtor who had the ability to pay her debts but failed to do so, was subject to imprisonment up to ninety-one days. Moreover, the debtor had the burden to prove that she was unable to repay the debt.⁵

Similar to this creditor-oriented debt collection mechanism, the leaders of the young Jewish State adopted a largely pro-creditor bankruptcy regime modeled after the British Bankruptcy Act of 1914.⁶ While this early bankruptcy law recognized the right of the bankrupts to obtain debt-forgiveness, it reserved this valuable benefit to financially troubled individuals who were able to repay substantial sums of their outstanding debts.⁷

During the first thirty years of the State of Israel, the legislature and the courts were largely unsympathetic, and at times even hostile, to the plights of financially troubled individuals. The legislature's hostility towards bankrupts initially manifested in the adoption of laws aimed at penalizing the bankrupts and impairing their ability to resume a new chapter in their lives. Beginning in the 1950s, the government banned all individuals declared bankrupt from serving as a member of any city council or municipality.⁸ In the early 1960s, financially troubled attorneys who declared bankruptcy were prohibited from ever practicing again.⁹ In the middle of the 1960s, the government declared that any contractual agency relationship automatically terminates when either the agent or the principal is declared bankrupt.¹⁰ A few years later, the government announced that a bankrupt individual could no longer enter into any binding contractual relationship.¹¹

This belligerent attitude towards bankrupts culminated in 1976, when the Israeli legislature severely restricted financially troubled

4. See Ron Harris, *Nefilato Ve'aliyato Shel Ma'asar Ha'chayavim* [The Fall and Rise of Debtors' Prison], 20 TEL-AVIV U.L. REV. 439, 460-62 (1996).

5. See *id.* at 461.

6. See SHLOMO LEVIN, PSHITAT-REGEL [BANKRUPTCY] 13 (1984); see also Celia W. Fassberg, *Cross-Border Insolvency in Israeli Law*, in ISRAELI REPORTS TO THE XIII INTERNATIONAL CONGRESS OF COMPARATIVE LAW 113-15 (Celia W. Fassberg ed., 1990).

7. Pursuant to the bankruptcy law, a court was precluded from granting the debtor an unconditional discharge if the bankrupt's assets were "not of a value equal to five hundred mils in the pound on the amount of his unsecured liabilities. . . ." Bankruptcy Ordinance, 1936, Official Gazette, Supp. 1, § 26(3) [hereinafter the 1936 Bankruptcy Ordinance].

8. See Rafael Efrat, *The Evolution of the Fresh-Start Policy in Israeli Bankruptcy Law*, 32 VAND. J. TRANSNAT'L L. 49, 66 (1999).

9. See *id.*

10. See *id.*

11. See *id.*

individuals' access to bankruptcy protection.¹² The legislature curtailed debtors' access to the bankruptcy process because it believed that the recent increase in debtor-initiated bankruptcy petitions, as opposed to creditor-initiated petitions, was inconsistent with the original bankruptcy mandate which was intended to serve creditors' interests.¹³ The legislature was also persuaded that it was critical to curtail debtors' access to bankruptcy protection because the recent increasing number of voluntary petitions was violating fundamental moral norms of the society, was too expensive for the government to administer, and was harmful to the debtors themselves.¹⁴

The unsympathetic attitude towards bankrupts in Israel can also be illustrated by the acts of the judiciary. While the Supreme Court recognized the legitimate interest of a financially troubled individual to pursue a financial fresh-start in bankruptcy, the Court construed that policy very narrowly. Similar to the limitations the legislature placed on a debtor's access to bankruptcy in 1976, the Supreme Court mandated that a debtor's financial relief in bankruptcy be directly conditioned on the creditor's receipt of adequate distributions. In doing so, the Court admittedly hoped to preserve some fundamental moral values of debt-repayment in the market place.¹⁵

Lastly, the government's negative predisposition during Israel's first thirty years towards the plight of financially troubled individuals was demonstrated in its strengthening of debtor-prison law. During Israel's early years, several attempts were made to liberalize debtor prison law inherited from the Ottoman Empire; every attempt failed as there was strong resistance coming from the powerful community of judges and the bar association. These well-established groups, judges and the bar, believed that liberalization of debtor prison law

12. Specifically, the government added three provisions to the bankruptcy law with the goal of reducing the frequency of bankruptcy filings initiated by the debtors. The first provision stated that a debtor may not voluntarily commence a bankruptcy petition unless the following conditions were satisfied: (a) he has liabilities in excess of ten thousand Israeli Liri (approximately \$1,250 American dollars or almost seven monthly salaries of the average bankrupt); (b) the debtor has at least two creditors; and (c) he enclosed with his bankruptcy application a report about his financial condition. See the 1936 Bankruptcy Ordinance, amended by 797 S.H. 106, § 7(1) (1976) [hereinafter the 1976 Bankruptcy Amendment]. Second, a court was granted the authority to deny an application for bankruptcy protection unless it was satisfied that, considering the judgment execution proceedings, which may or may not have yet been taken against the debtor, bankruptcy proceedings are the appropriate course of action. See the 1976 Bankruptcy Amendment § 7. Lastly, a court was granted the power to annul the bankruptcy adjudication of an individual if the court determined the bankruptcy process would not benefit the creditors. See the 1976 Bankruptcy Amendment § 29(1)a.

13. See Efrat, *supra* note 8, at 77 n.167.

14. See *id.* at 76-81.

15. See *id.* at 67-69.

would impair the only effective tool for dealing with the perceived chronic problem of debt-repayment avoidance by certain segments of the newly formed society in Israel.¹⁶ During parliamentary debate on the reform of debtor prison law, several legislators echoed this sentiment, arguing that existing social conditions in Israel simply made the country ill-prepared to deal with unethical and opportunistic tendencies in some segments of Israeli society.¹⁷ Some legislators were even more explicit and specifically referred to the Sephardic Jews as the problematic segment of Israeli society.¹⁸

Faced with the strong opposition to any liberalization attempts to debtor prison law, the advocates for liberalization reform eventually settled for a reform of the law that in many ways was even more punitive than before. Specifically, in 1968, one newly adopted regulation shifted the burden of proof to a defaulting debtor, desiring to avoid the issuance of an imprisonment order, to establish that there was another way for the creditor to collect his debt.¹⁹ Further in 1968, the legislature made it procedurally much easier for a creditor to obtain an imprisonment order against a defaulting debtor. From then on, creditors no longer needed to obtain a judgment from a court to proceed with a request for the debtor's imprisonment on account of a defaulting promissory note, a returned check, or a bill of exchange.²⁰

Following the 1976 legislative bankruptcy reform, bankruptcy relief was no longer available for debtors who had few assets or limited potential for post-petition earnings. For the next twenty years, the bankruptcy process was not a refuge for the financially troubled individuals. Instead, the bankruptcy regime became a mechanism that served almost entirely the interests of the creditors.²¹ Courts began interpreting the 1976 legislative reform in a way that foreclosed the door of bankruptcy to numerous overly-encumbered and financially distressed individuals unable to repay a meaningful portion of their debts within a reasonable period of time.²² Applying the newly-adopted rigid eligibility standard when commencing bankruptcy protection, the courts exercised their discretionary powers and implemented the legislative mandate restricting individuals' access to the bankruptcy process. In routinely turning

16. *See id.* at 69-72.

17. *See id.* at 72-73.

18. *See id.* at 73.

19. *See id.* at 71.

20. *See id.*

21. *See id.* at 88.

22. *See id.* at 89.

down bankruptcy relief applications of financially troubled debtors, the courts re-directed the debtors back to the judgment execution process.²³

Unfortunately for those financially troubled individuals who were disqualified from the bankruptcy process, the judgment execution process was not much more hospitable to their needs because that process imposed the constant threat of imprisonment for failure to pay.²⁴ To avoid imprisonment and other collection procedures, the debtors were required to strictly fulfill the terms of a repayment order issued by an overly-burdened judgment execution officer. However, as the rigid repayment demands made by those orders became increasingly more difficult to satisfy, more debtors found themselves subject to the impending threat of an imprisonment order.²⁵

However, as described earlier, the bankruptcy system was largely foreclosed to the financially troubled by the 1976 bankruptcy reform and its subsequent interpretations. Hence, as a result of the various changes in the law beginning in 1976, by the late 1980s, insolvent individuals with few assets and limited future income potential were, in practice, precluded from the bankruptcy process and the repayment options traditionally available under the judgment execution process.²⁶ As a result, an increasing number of insolvent individuals faced an impending fate of imprisonment. Indeed, by the early 1990s the number of imprisoned debtors had grown from thirty individuals per year in 1963 to over twenty-four thousand insolvent individuals.²⁷

The massive and almost indiscriminate use of debtor's prison in Israel as a tool for collection of unpaid debts ceased almost entirely in 1993. Acting in response to an appeal brought by a recently-established grassroots debtors organization, the Supreme Court held that imprisonment orders would be issued only when the creditors can clearly show that the debtor has the means to repay the outstanding debt.²⁸ This movement by the grassroots organization served as a catalyst for the relatively revolutionary reform of personal bankruptcy law in 1996.²⁹ The bankruptcy reform of 1996

23. See *id.* at 94.

24. See *id.*

25. See *id.* at 94-95.

26. See *id.* at 98.

27. See *id.* at 99 n.256.

28. See *id.* at 101-02.

29. See *id.* at 102.

was aimed to promote two seemingly contradictory goals; while the reform was designed to expand the fresh-start opportunities for certain insolvent individuals, it also had the objective of penalizing certain insolvents who pursued the bankruptcy option.

The reform broadened the opportunities for a financial fresh-start by lifting the restrictive access limitations to bankruptcy relief placed on the financially troubled twenty years earlier. Furthermore, the reform dismissed the requirement that certain debtors formally apply for a discharge of debts and significantly liberalized the standard by which a court evaluates whether to grant a bankrupt an unconditional discharge of debts.³⁰

However, to deter the individual from pursuing the bankruptcy option, the reform adopted several provisions aimed at restricting the bankrupt's ability to engage in business transactions upon the filing of his bankruptcy petition. Among other penalties, the bankrupt was prohibited from holding any credit card, retaining an interest in any corporate entity, or maintaining any checking account.³¹ These seemingly inconsistent objectives of the bankruptcy reform demonstrated the legislature's recognition of the legitimate interest of the financially troubled to a financial fresh-start, while at the same time the reform reflected the legislature's persisting preoccupation to neutralize any attempt made by individuals to take unfair advantage of the more liberalized bankruptcy system.³²

The 1996 bankruptcy reform evidenced a significant departure from the rather restrictive and conservative approach to fresh-start policy in Israel. For the first time, it formally proclaimed the importance of the basic dignity and freedom of the insolvent debtor. While the reform retained and even intensified the penalties associated with filing for personal bankruptcy, the overall departure signaled a new vision for financially troubled individuals in Israel. The next section of this Article will attempt to identify the reasons for the evolution of this new vision in Israel.

III. THE TRADITIONAL BIAS AGAINST PRIVATE ENTERPRISE AND ITS IMPACT ON THE FRESH-START POLICY IN ISRAEL

To some extent, the evolution of the fresh-start policy in the Israeli bankruptcy law has been a function of society's evolving view toward entrepreneurship. A broad fresh-start policy provides

30. *See id.* at 108-10.

31. *See id.* at 112-13.

32. *See id.* at 113.

incentives for individuals to start new business enterprises and undertake risks because such a policy provides the entrepreneurial individuals an important cushion and a safeguard in the event of a business failure.³³ Conversely, a conservative and punitive fresh-start policy discourages individuals from taking entrepreneurial risks. As discussed earlier, the Israeli fresh-start policy has traditionally exhibited conservative and punitive features. One of the reasons for this policy in bankruptcy is Israeli society's traditional ambivalence towards individual entrepreneurship.

Leaders of the early Zionist movement had conflicting views about the shape of the market economy of the anticipated Jewish State. American Jewish leaders advocated for a free market economy as a way to encourage private investors to invest capital in the Jewish State.³⁴ Further, this pro-capitalist American camp supported a decentralized and hands-off approach by the Zionist organization for the economic development of the new country.³⁵ In sharp contrast, European leaders argued against private enterprise and in favor of a government-centered economy.

This socialist-oriented approach to the market prevailed in the early days of the Jewish settlement, then called Palestine.³⁶ However, while the Jewish leadership retained its strong orientation toward a socialist-based economy, realities in the land eventually forced the leaders to abandon their absolutist views against private enterprise.³⁷ As a result, a consensus emerged in the leadership,

33. See Michelle J. White, *Economics Versus Sociological Approaches to Legal Research: The Case of Bankruptcy*, 25 L. & SOC'Y REV. 685, 694 (1991) ("The availability of bankruptcy is a valuable cushion for the self-employed, for if the business fails, bankruptcy can be used to discharge the firm's debts. The availability of bankruptcy as a downside cushion thus increases the attractiveness of starting a new business."). For example, the relatively liberal fresh-start policy in the U.S. reflects the American's orientation toward private market enterprise.

34. See YAIR AHARONI, *THE ISRAELI ECONOMY: DREAMS & REALITIES* 62 (1991) ("Judge Louis Brandeis of the United States advocated a free enterprise system as a basic means to colonize Eretz Israel. He proposed that the Zionist Organization encourage large-scale private investments and the immigration of potential investors into the country to achieve a rapid colonization.").

35. See *id.*

36. See YAKIR PLESSNER, *THE POLITICAL ECONOMY OF ISRAEL: FROM IDEOLOGY TO STAGNATION* 115-16 (1994) (describing the dominance of the labor movement in the 1920s through the 1940s over the Jewish settlement economy where profit did not play a role in operating and managing business enterprises); *id.* at 96 ("[The Israeli] Founding Fathers did not believe in economic laws, nor were they willing to rely on unfettered market forces to bring about economic growth or socially desirable income distribution.").

37. In the mid 1920s, the wave of middle-class immigrants from central Europe "signaled an end to the vision of a society-wide socialist economy and signified the loss of agriculture's exclusive standing. Not that the leadership abandoned its regard for the supremacy of agriculture or disdain for private enterprise, . . . but it could no longer pretend that agriculture was the only way to absorb mass immigration". *Id.* at 153.

whereby private enterprise became tolerated but not encouraged or fostered.³⁸ Hence, the emerging economic policies during the early years of the State of Israel combined strong emphasis on central government control with an almost coerced and suspicious acceptance of private entrepreneurship.³⁹

Several reasons backed the leadership's strong preference for government-run economy. First, many believed that the paramount and immediate national goals of nation building and immigrant absorption would not be safeguarded by sterile efficiency considerations.⁴⁰ Encouragement and absorption of new immigrants to the new state was one of the most important national goals at that time. Some believed that agriculture rather than industry would be most capable of absorbing the anticipated mass immigration.⁴¹ Since private enterprise was more closely associated with industry rather than agriculture, most leaders did not view private enterprise favorably.⁴² Moreover, some asserted that enterprise motivated by profit would actually be detrimental to the paramount national goal

38.

Reluctant acceptance [of private enterprise] meant that private enterprise was going to be tolerated but, unlike cooperative and communal enterprise, it would not be eligible for financial support. Public funds would be channeled almost exclusively to agriculture, where only very few new settlements had been the result of private initiative. . . . [I]n other words, private enterprise was going to be tolerated provided that it did not behave as private enterprise. There was no recognition of the profit motive as a useful guide to economic activity. *Id.*

See also Moshe Sanbar, *The Political Economy of Israel 1948-1982*, in *ECONOMIC AND SOCIAL POLICY IN ISRAEL: THE FIRST GENERATION* 6 (Moshe Sanbar ed., 1990).

39. See PLESSNER, *supra* note 36, at 77 ("[During the first twenty years of the Jewish state, the labor idealists] viewed private capital as relatively useless to the national effort. Yet, owing to the lack of national capital, it was necessary to invite private capital to participate, albeit reluctantly."); see also Eran Razin, *Social Networks, Local Opportunities and Entrepreneurship among Immigrants - The Israeli Experience in an International Perspective*, in *IMMIGRATION & ABSORPTION: ISSUES IN A MULTICULTURAL PERSPECTIVE* 156 (Richard E. Isralowitz, et al., eds., 1991) ("Because of a socialist bias, which has been characterized by deep antagonism, and even hostility, toward the self-employed sector, the Israeli political system has not been very receptive to small entrepreneurs.").

40. See Razin, *supra* note 39, at 4 ("[T]here was the relegation of economic considerations to a position of secondary importance because of what was perceived as national imperatives that ran contrary to economic efficiency. In essence, it held that the state would have never been born if its founders had allowed efficiency considerations to bother them. . . ."). See also AHARONI, *supra* note 34, at 62 ("[European leaders] argued that the American experience was not applicable to conditions in Eretz Israel, that the emphasis on private enterprise and profits was premature and that affluent Jews were not ready to come to Eretz, Israel. Therefore, the Zionist Organization should subsidize those that were willing to immigrate. . . .").

41. See PLESSNER, *supra* note 36, at 150.

42. See *id.*

of absorption of new immigrants since absorption of new immigrants does not necessarily enhance profits.⁴³

The second reason for the pre-disposition toward a socialist-based economy is the political and religious background of many Israeli leaders. Since most leaders of the pre-statehood Zionist movement, as well as the early statehood years, were of Eastern European origin and predominantly accustomed to socialist ideology, socialist orientation flourished in Israeli economy.⁴⁴ Lastly, some trace the origin of the Israeli government-run economy to the Jewish tradition of social equality.⁴⁵

This socialist orientation of the pre- & early- statehood leadership was also predominant during the first few decades in Israel.⁴⁶ The

43. See *id.* at 152 ("The reasoning was simple: private enterprise is motivated by private profits. . . . This implied that private enterprise was detrimental to the economic absorption of new immigrants and thus inimical to the main purpose of the Zionist Organization."). The belief that the goals of private enterprise are inconsistent with the national goals manifests itself in the heavy government involvement in the Israeli capital market. "As we have seen, the virtual nationalization of the capital market was underpinned by the perceived need to allocate investment in a manner that would enhance national objectives." *Id.* at 61.

44.

The first political nucleus that was organized enough to advance its ideological agenda [in the Zionist movement] in a systematic manner consisted of immigrants from Eastern Europe, who held both Zionist and socialist views. These views were forged by the terrible plight of the Jews, especially in Czarist Russia, and it was quite natural for the immigrants to associate the longings for a socialist revolution with a liberation of the Jews from their bondage, so much so that they came to view national and social liberation as inextricably intertwined. This is how socialist Zionism came into existence. *Id.*

See also AHARONI, *supra* note 34, at 16 ("The high degree of government intervention stems partially from the Socialist tradition of many pioneers of the first generation."); Milton Friedman, *Capitalism and the Jews*, in MORALITY OF THE MARKET: RELIGIOUS AND ECONOMIC PERSPECTIVES 401, 416 (Walter Block et al. eds., 1985) ("I conclude then, that the chief explanations for the anti-capitalist mentality of the Jews are the special circumstances of nineteenth century Europe which linked pro-market parties with established religions and so drove Jews to the Left. . . ."); Eran Razin, *Location of Entrepreneurship Assistance Centers in Israel*, 89 J. ECON. & SOC'Y GEOGRAPHY 431, 433 (1998) ("The Israeli political-economic system was not very receptive towards small entrepreneurs, due to socialist bias associated with deep antagonism or even hostility towards small business owners.").

45. See AHARONI, *supra* note 34, at 16-17 ("To some extent, the [high degree of government] intervention has also been a result of the prophetic message of Judaism inspired to achieve social justice, human equality, brotherhood and mutual responsibility and a high level of education."). But see NATHAN GLAZER, *AMERICAN JUDAISM* 138 (2d ed. 1973) ("[I]t is an enormous oversimplification to say Jews in eastern Europe became socialists and anarchists because the Hebrew prophets had denounced injustice twenty-five hundred years before.").

46. See AHARONI, *supra* note 34, at 194 ("At the beginning of the 1950s, the formal ideology of the labor movement leaders continued to oppose private property and called for *Hagshama* (fulfillment), pioneering, and sacrifice and the disciplining of the individual to achieve collective goals and socialist vision."); PLESSNER, *supra* note 36, at 5 ("This book tries to describe the Israeli economy and understand it in light of the systematic exclusion and distrust of, and the squeezing of operating space for, private enterprise."); MEIR TAMARI, *CORPORATE FINANCE UNDER CONDITIONS OF GOVERNMENT INTERVENTION: THE ISRAELI CASE, 1950-1972* 23 (1979)

policies adopted by the government during that time significantly restrained private enterprise and reflected society's uneasiness with private enterprise.⁴⁷ Although private enterprise was no longer degraded in the 1960s as it was initially, entrepreneurship remained highly regulated and disliked by the government.⁴⁸

However, a liberalization trend in the economy, which began approximately twenty years ago, has brought about a more conducive environment for private entrepreneurship. Starting with the displacement of the socialist-minded Labor party by the more private market-oriented Likud party, the liberalization of the socialist-based economy has ensued.⁴⁹ Indeed, studies indicate that by the beginning of the 1980s, the Israeli society had become much more receptive to the role of private enterprise in the Israeli economy.⁵⁰ Reinforced by approving public opinion, the process of market liberalization has significantly accelerated since 1985, resulting in a decrease in government domination of credit allocation, a decrease in the private sector's reliance on government

("Although private enterprise was recognized [following the establishment of the State of Israel] . . . it was and is felt that reliance on private entrepreneurship would not lead to the achievement of the social and political goals. . .").

47. See AHARONI, *supra* note 34, at 240 ("The need to receive a license for almost any activity may have been a major curb, restraining private initiative. . .").

48. "In the first decade of statehood, . . . private ownership was not assumed to be an acceptable form of pioneering activity. Since the 1960s, the government has veered sharply away from direct control, but this has not meant a free market. The Israeli economy is still highly politicized, and it is almost impossible to be successful in a business without a favorable government attitude." *Id.* at 161-62; PLESSNER, *supra* note 36, at 11 ("[T]he dominating role played by the government during the first two decades created an environment hostile to private enterprise. . .").

49. See MENACHEM MAUTNER, YERIDAT HA'FORMALIZM VE'ALYAT HA'ARAKHIM BA'MISHPHAT HA'YISRAELI [THE DECLINE OF FORMALISM AND THE RISE OF VALUES IN ISRAELI LAW] 131 (1993) (stating that the political change of 1977 brought about full legitimization of private enterprise); PLESSNER, *supra* note 36, at 41 ("[T]he domination of the capital market by the government has been slowly declining recently. . ."); *id.* at 220 (stating that the political victory in 1977 by the economically neo-conservative political party, Likud, brought about the abolishment of "a regulatory system that had been in place since Israel's early days."); Razin, *supra* note 39, at 157 ("[The gradual change in attitude in favor of the small business sector in Israel] was provoked in part by a political-ideological shift. The right-wing Likud party which assumed power in 1977, was at least officially more committed to free enterprise than the Labor Party, which had let Zionist and Israeli politics until then."). However, while some trace the fundamental changes in the orientation of the market to much earlier in the Israeli history, some contend that the changes did not begin until the mid 1980s. Compare Sanbar, *supra* note 38, at 19 (asserting that the Labor governments of the 1960s actually initiated the trend towards a free market orientation), with AHARONI, *supra* note 34, at 192 (questioning whether the political change in 1977 actually brought about any change in economic orientation in Israel).

50. See Avi Gottlieb & Ephraim Yuchtam-Yaar, *Materialism, Postmaterialism, and Public Views on Socioeconomics Policy: The Case of Israel*, in 3 POLITICS & SOCIETY IN ISRAEL: STUDIES OF ISRAELI SOCIETY 385, 396 (Ernest Krausz ed., 1985) ("[The Israeli public believes that] the preferred source of economic intervention and change is the private sector, bolstered indirectly by concessions from the government.").

consent for operation, and a decrease in overall public participation in the economy.⁵¹

The evolution of fresh-start policy from being a much conservative and punitive to a more liberal one, reflects the changing economic ideology in the Israeli society. While Israeli society traditionally championed a socialist market-oriented ideology, it recently transformed its approach to a more private enterprise-oriented market.⁵² The principles of a liberalized fresh-start policy are more compatible with a private market economy; thus, the emerging market orientation created a more receptive environment for the reformed fresh-start policy.⁵³ Specifically, since the market oriented philosophy is more tolerant of individuals taking business risks as a way of initiating private business enterprise, the recent liberalization of the fresh-start policy provides the necessary incentives for such behavior by generating an important cushion and safeguard in the event of financial failure. Indeed, the private enterprise market orientation philosophy now prevailing in Israeli society clearly influenced the debates and the formulation of the recently enacted and broader fresh-start policy.⁵⁴

IV. THE RISE OF INDIVIDUALISM AND ITS IMPACT ON THE FRESH-START POLICY IN ISRAEL

The transition from the traditional and conservative fresh-start policy to a more liberal policy was due, in part, to a shift in the

51. See ASSAF RAZIN & EFRAIM SADKA, *THE ECONOMY OF MODERN ISRAEL: MALAISE AND PROMISE* 191-205 (1993); see also PLESSNER, *supra* note 36, at 278-81. Governmental receptiveness to the role of private enterprise in Israel's economy has intensified in the late 1980s as a way of absorbing the influx of mass immigrants from the former Soviet Union. See Razin, *supra* note 39, at 155-56.

52. Recent governmental support for private enterprise is reflected in the Ministry of Education's newly adopted high school curriculum that strongly advocates entrepreneurship. See Shimron & Dani Klos, *Entrepreneurial Education Makes its Debut in Israel: New Curriculum in an Ideological Shift*, 26 CURRICULUM INQUIRY 25 (1996).

53. A similar observation was made relating to the transformation of the U.S. fresh-start policy during the nineteenth century. See Charles G. Hallinan, *The "Fresh Start" Policy in Consumer Bankruptcy: A Historical Inventory and an Interpretive Theory*, 21 U. RICH. L. REV. 49, 56 (1986) ("[The growth of entrepreneurs during the nineteenth century in the U.S.] created a fundamental change in public attitudes toward borrowing and eventually toward economic failure and insolvency as well. Indebtedness, once regarded as a sign of extravagance and poor financial management, came to be seen as an appropriate and indeed essential aspect of successful commercial activity.").

54. In persuading the chairman of the sub-committee on bankruptcy reform to adopt liberalization of the fresh-start policy in Israel, the Deputy Attorney General emphasized that the "idea is to permit an economic unit [of a person] to have a limited liability since that is a pre-requisite to private enterprise." *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judicial Comm.*, 13th Knesset 9 (May 23, 1995) (statement of Davida Lachman-Messer, Deputy Attorney General).

orientation of Israeli society from collectivism toward individualism. Individuals in an individualist-oriented society are more concerned with their own personal goals as opposed to the goals of the collective.⁵⁵ In such a society, the belief in the dignity and sacredness of the individual has a high value.⁵⁶ This orientation tends to safeguard the individual's rights, interests, property, and privacy.⁵⁷ In contrast, individuals in a collectivist-oriented society tend to give priority to collective goals over the goals of personal ambitions of the individual.⁵⁸

A society's orientation toward collectivism or individualism influences its fresh-start policy. A broader fresh-start policy is consistent with individualism, since an expansive debt-forgiveness policy acknowledges and safeguards the dignity of the individual debtor. This policy provides the debtor with a meaningful opportunity to earn a living, have control over his life, choose among various options, and retain a certain degree of personal autonomy.⁵⁹

During the first twenty years of its existence, Israeli society by and large had a collectivist orientation.⁶⁰ That orientation placed significant obstacles in the path of any liberalization attempt towards the fresh-start policy since the financial interests of the community trumped those of the financially troubled individual. For example, in the 1970s the Israeli legislature significantly restricted individual

55. See LAWRENCE FRIEDMAN, *THE REPUBLIC OF CHOICE* 61 (1993) ("The concept [of individualism] stresses the right of each person to develop himself or herself as an individual; to choose as freely as possible a suitable and satisfying style of life."); see also Harry C. Triandis, *The Self and Social Behavior in Differing Cultural Contexts*, 96 *PSYCHOLOGY REV.* 506, 509 (1989).

56. See ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 142 (1985).

57. See Batya B. Weinreb, *Cultural Reflections in Multinational Corporations: A Comparison Between Israeli and U.S. Subsidiaries* 46 (1986) (unpublished Ph.D. dissertation, Stanford University) (on file with the Stanford University Library).

58. See Triandis, *supra* note 55, at 509.

59. See Richard E. Flint, *Bankruptcy Policy: Toward a Moral Justification for Financial Rehabilitation of the Consumer Debtor*, 48 *WASH. & LEE L. REV.* 515, 536 & 543 (1991).

60. See AHARONI, *supra* note 34, at 194 ("At the beginning of the 1950s, the formal ideology of the labor movement leaders continued to . . . [preach] for *Hagshama* (fulfillment), pioneering, and sacrifice and the disciplining of the individual to achieve collective goals and the socialist vision."); MAUTNER, *supra* note 49, at 122 ("The fundamental cultural value in the 1950s [in Israel] was the value of personal sacrifice: the sacrifice of the individual's life for the collective . . . in areas such as settlement, security & immigrants absorption, etc."); YOSSEI MELMAN, *THE NEW ISRAELIS: AN INTIMATE VIEW OF A CHANGING PEOPLE* 208 (1992) ("Israeli society in those early years [of the mid 1960s] loyally reflected Labor's socialist ethos. The individual's wishes were wholly subject to the needs of the community."); Yael Har-Even, *Emigration as a Social Problem: Emigration from Israel as Reflected in "Letters to the Editor" of Ha'Aretz, 1949-1987* 52 (unpublished M.A. thesis, Tel-Aviv University) (on file with the Tel-Aviv University Library) ("The cultural tenants of that period (1949-1965) were derived from collectivist values which held that the person fulfills his purpose only if he serves the society.").

access to bankruptcy protection.⁶¹ Many legislators believed that limited sympathy towards the plight of the financially disadvantaged was necessary to prevent uncontrolled deterioration of commercial morals and norms in society at large.⁶²

The collectivist orientation of Israeli society was a product of the nationalist ideals of that time of creating and securing a homeland for the Jewish people.⁶³ Furthermore, past experiences, national origin, and religious background of the leaders of the young country contributed to the fostering of the collectivist orientation.⁶⁴

While the Israeli society still retains many traits of its collectivist identity,⁶⁵ the social force of collectivism began to decline and

61. See the 1976 Bankruptcy Amendment, *supra* note 12.

62. See *Proposed Amendment of the Judgment Execution Law, 1974: Hearings Before the Judiciary Comm.*, 8th Knesset 4 (June 10, 1974) (statement of the chairman, Mr. Verheptig) ("Bankruptcy ruins a person economically. It also ruins the morals in the economy."). D.K. (1975) 312 ("This growing phenomenon [of increased bankruptcy filings] damages the commercial practices, the public order and the economic life. . . . I am looking forward to a comprehensive reform of the bankruptcy system which will improve the commercial practices and the morality of debt-repayment in Israel.").

63. See YARON EZRAHI, RUBBER BULLETS: POWER AND CONSCIENCE IN MODERN ISRAEL 163-64 (1997) ("Since 1948, many Israelis have regarded the State of Israel primarily as a collective expression of the Jewish people. . . . In this view, Israel was founded to secure the survival . . . of the Jewish people, and only secondarily . . . can it address the issues of individual freedom and welfare."); see also AMNON RUBENSTEIN, LE'HIYOT AM HOFSHI [TO BE A FREE NATION] 36 (1977) (describing how during the pre-statehood and early statehood years of Israel, the main objective of members of society was to build a new Jewish nation through settlements and hence the personal fulfillment of the individual was limited to serve the collective national goal by settling the land in the new country).

64. See EZRAHI, *supra* note 63, at 163 ("In Israeli society, the history of Jewish persecution has reinforced the communitarian-collectivist orientations already inherent in the religious, nationalist, and ideological sources of the polity, deepening already ingrained Jewish commitments to the primacy of the group."); *id.* at 286 ("[T]he Jewish religion] stresses the distribution of duties or obligations. . . . [T]he rhetoric of mitzvot (commandments) assumes the primacy of collective corporate experience, of the community."); MELMAN, *supra* note 60, at 45 ("The centralist system in which the state intervenes in the life of the individual was founded on the Soviet model. . . . [T]he founders of Israeli socialism [many of whom came from Russia] grafted this collectivist approach onto Israel."). For more discussion on the links between the collective nature of the Israeli society and the Jewish tradition, see Shlomo Swirski, *Community and the Meaning of the Modern State: The Case of Israel*, 18 JEWISH J. SOC. 123 (1976).

65. See AHARONI, *supra* note 34, at 16 ("To date, Israeli society is characterized by a prevalence of a collectivist orientation, not by an individualistic orientation as in the United States or Western Europe."); EZRAHI, *supra* note 63, at 73 ("These developments in Western culture and politics have, of course, penetrated modern Israeli society. . . . Their impact in Israel has nevertheless been severely restricted by the powerful collectivist counter-liberal orientations toward language, space, and, time."). To illustrate his point, Professor Ezrahi provides two examples of the persisting collectivist nature of the Israeli society:

By welding into the annual ceremonial schedule of memorial days, holidays, and festivals events of a few thousand years ago (the destruction of the Temple, the Exodus from Egypt) and events of more recent epic Jewish history (the Holocaust, the creation of the State of Israel), the Israeli calendar fuses historical and religious time. . . . This radical appropriation of time for the narratives of collective history dwarfs and marginalizes autobiographical time. . . . In modern Israel, adult birthdays have

individualism began to rise following the Six Days War in 1967.⁶⁶ Since the 1970s, for example, more and more Israelis have begun to use leisure and non-leisure time to pursue personal rather than communal activities.⁶⁷ Moreover, an empirical study in the late 1980s concluded that the major shift in the Israeli attitudes towards emigration is a reflection of a shift in the ideological orientation in the society from collectivism to individualism. Through the mid 1960s, the public negatively viewed an individual who emigrated from Israel; the act was regarded as a betrayal of the national goals of the country. In contrast, the study found that beginning in the late 1960s the public gradually began to tolerate and regard the practice

characteristically been downplayed as brining too much attention to the individual, who is expected to be self-effacing and indifferent to private needs and delights. For decades birthdays were generally for children, and then celebrated in school with a party for several children at once, rather than as a separate one for each. While this is no doubt more economical, the notion that a separate birthday party celebrates individuality and uniqueness has been too weak to induce a sense of deprivation among teachers and parents alike.

Id. at 60-62. See also DAN HOROWITZ & MOSHE LISSAK, *TROUBLE IN UTOPIA: THE OVERBURDENED POLITY OF ISRAEL* 112 (1989) ("[C]ompulsory military service and reserve duty, in addition to [heavy] income tax and other levies, are basic tools at the disposal of the Israeli government for mobilizing the resources and energies of its citizens toward its collective goals."); Weinreb, *supra* note 57, at 47-48 ("In Israeli culture the collective is perceived to be the constitutive component of society, while the individual derives his/her importance from being an element in the collective or 'a link in the chain.' . . . [In comparison to the U.S., in Israel] there is considerably less respect for individual will, individual interests, individual property and privacy. . . .").

66. See GADI WOLFSFELD, *THE POLITICS OF PROVOCATION: PARTICIPATION AND PROTEST IN ISRAEL* 11 (1988) ("The sixties in Israel were a time of transition, as Israel became a "normal" Western society. The ideology of collectivism, although still prevalent, was being subsumed to a more individualistic life style and commitment."); Har-Even, *supra* note 60, at 54-55 ("While [during the earlier years of the State of Israel], the collectivism was the dominant value structure, it is possible to say that [in the later years] the value structure became more and more individualistic. . . . The research literature dealing with the Israeli society generally divides the trends in the Israeli society up until 1967 and after 1967."). See generally Luis Roniger & Michael Feige, *From Pioneer to Frier: The Changing Models of Generalized Exchange in Israel*, 33 *ARCH. EUROP. SOCIO.* 280 (1992) (detailing the cultural transformation in Israel from a collective vision to strong emphasis on individualistic independence).

67. See ELIHU KATZ & HADASSA HAAS, *THE CULTURE OF LEISURE TIME IN ISRAEL: CHANGES IN PATTERNS OF CULTURAL ACTIVITY, 1970-1990* (1992). Other collective oriented activities have been in decline since the late 1960s:

Once it was shameful to avoid army service. Today, young rock stars, sports heroes and fashion models regularly skip their stint in the army. Increasing numbers of young men — particularly from the sectors that once held the sabra fighter image dear — are choosing not to volunteer for combat units. . . . More and more kibbutzim — once the country's model of collective responsibility and idealism — are relaxing their communal rules, and some are evolving into mere suburban bedroom communities of business havens.

Allison K. Sommer, *Who Are We Now?*, *JERUSALEM POST INT'L ED.*, May 10, 1997, (publication no longer in circulation) (on file with author). See Har-Even, *supra* note 60, at 60.

of emigration as an important personal decision of an individual, who is entitled to make the choices he or she deems appropriate.⁶⁸ Also, the rhetoric of leading public figures demonstrates the changing social orientation toward individualism.⁶⁹ The rise of individualism in the Israeli culture resulted from the partial fulfillment of the collectivist-nationalistic agenda of the earlier days,⁷⁰ the gradual but significant rise in the standard of living of the average Israeli citizen,⁷¹ and the pervasive influence of the American individualistic culture on the Israeli society.⁷²

The rise of individualism in Israel influenced the liberalization of its civil law, in general, and bankruptcy law in particular. The emphasis on the rights and dignity of individuals contributed to the adoption of revolutionary and fundamental liberty rights in the Israeli legislation. For example, in 1988 Israel finally adopted laws that prohibit employment discrimination based on gender, sexual orientation, marital status, parental status, age, race, religion, ethnic background, national origin, or party affiliation.⁷³ Furthermore, in 1992 the Knesset enacted the Human Freedom & Dignity Act, referred to by some as the constitutional revolution of the Israeli legal system.⁷⁴ Reform in the criminal law system also reflects growth in respect to individual autonomy. According to a recent penal reform, the prohibition against attempted suicide was

68. See *id.* at 54.

69. During his swearing-in speech as the then new prime minister of the State of Israel, Yitzhak Rabin said, "[w]e are determined to place the citizen at the top of our concerns." EZRAHI, *supra* note 63, at 71.

70. See MAUTNER, *supra* note 49, at 127 (asserting that collectivism began to decline partly because the goal of nationhood has already been achieved); see also RUBENSTEIN, *supra* note 59, at 38 (contending that one of the reasons for the decline of the collective nature of the Israeli society was the lack of new collective missions for the young members of the society, except for the mission of service in the army, which created a sentiment among many that upon the service in the army there was no further need to serve the collective).

71. See AHARONI, *supra* note 34, at 195 ("[T]he constant rise in the standard of living and the receipts of personal reparations of money from Germany materially reduced the dependence of citizens on the political apparatus or the government system."); MELMAN, *supra* note 60, at 207-08 ("Israel in the 1960s was a modest society with limited financial means and resources. . . . The Six-Day War and its aftermath, however, changed [that] . . . The newly occupied territories provided Israelis with economic opportunities to boost their standard of living.").

72. MAUTNER, *supra* note 49, at 125 ("[I]n the 1970s and 1980s, as a result of the rapid influence of the American culture on the Israeli culture, a new culture evolved in Israel, one which was based on personal fulfillment and individualism. . . .").

73. See David Kretzmer, *Constitutional Law*, in INTRODUCTION TO THE LAW OF ISRAEL 39, 56 (1995).

74. See *id.* at 52.

abolished, as were the prohibitions against private acts of sodomy between consenting adults.⁷⁵

Similarly, the rise of individualism contributed, in part, to the adoption for the first time of a more liberal fresh-start policy in bankruptcy. This liberalization was motivated primarily by concerns for the welfare, privacy, and dignity of the financially troubled individual.⁷⁶

V. THE GROWTH OF CONSUMERISM AND ITS IMPACT ON THE FRESH-START POLICY IN ISRAEL

The increased legitimization in the Israeli society of personal debt undertaking and personal consumption is another contributor to the recent liberalization of the fresh-start policy in Israel. There is a link between society's perception of debt undertaking and consumption, on the one hand, and the fresh-start policy on the other hand, because as society begins to favorably regard debt and consumption, it also becomes more tolerant of bankruptcy, the sometimes natural consequence of debt. As society adopts a more receptive attitude towards bankruptcy, the environment becomes more conducive to a liberalization of the fresh-start policy in bankruptcy.

Studies have found that consumers' excessive undertaking of credit is closely correlated with financial trouble and bankruptcy.⁷⁷ Since overextension of credit is related to bankruptcy, it is important to understand society's perception of consumer credit undertaking to

75. See *id.* at 256.

76. Statements made by the chairman of the recent bankruptcy reform subcommittee reflect those sentiments. See *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 13th Knesset 45 (July 18, 1995) (statement of Yitzhak Levi, the chairman of the bankruptcy reform subcommittee) (referring to the proposed amendments in discharge in bankruptcy as important humanitarian changes); D.K. 73 (1996) (statement of Yitzhak Levi, chair of the bankruptcy reform) ("The logical, the economic and the humanistic approach under cases [where the honest but financially troubled individual has no assets or income to repay his debts] is to give him a discharge."); *id.* at 83 ("Gentlemen, [this proposed reform] is a balance with the Basic Law: dignity and freedom of the individual with protection of his privacy rights."); *id.* at 96 ("In summary, I am calling upon you to give final approval for the this proposal that balances between the dignity and the rights of the financially troubled individual who desires to open a new chapter in his life, and the property rights of the creditors.").

77. See *The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 105th Cong. 21 (1997) (prepared statement of Ian Domowitz, educator and researcher from the Department of Economics and Institute for Policy Research at Northwestern University) ("[C]redit card use [in the U.S.] is very highly correlated with, if not causal determinant of, consumer bankruptcy."); *id.* at 36 (statement of Kim Kowalewski, Chief, Financial and General Macroeconomics Analysis Unit of the Congressional Budget Office) ("The increase in non-business bankruptcy filings [in the U.S.] since 1994, like past increases during economic expansions, mirrors an increase in the indebtedness of the household sector.").

have a fuller appreciation of its attitude towards bankrupt individuals. To the extent that society negatively views the practice of undertaking consumer credit, society is likely to have a negative perception of individuals who file for bankruptcy because of their association with the practice. Further, since the undertaking of credit by individuals is used in many cases to support certain consumption patterns, an examination of society's attitude toward consumption will also provide an understanding of society's attitude toward credit undertaking, and ultimately toward bankruptcy.

To the extent that society negatively views the practice of acquiring credit for consumption purposes, it is less likely to forgive individuals who fall into financial trouble after undertaking excessive credit to support consumption patterns. Such an adverse perception toward consumption and credit undertaking is likely to be translated into a conservative fresh-start policy. Conversely, to the extent that society views the practice of credit undertaking or consumption as an acceptable or a cherished behavior, the society is likely to exhibit more understanding where an individual financially fails and is unable to repay his consumer credit undertaking. Such a positive or tolerant attitude toward consumption and credit undertaking may eventually be translated into a more liberal fresh-start policy.

While society's negative perception of consumption and the undertaking of debt can explain the traditionally conservative fresh-start policy in Israel, society's gradual acceptance and embracing of consumption and the undertaking of consumer credit can explain the recent liberalization of the policy. In its early years, Israeli society had a negative perception of private consumption and undertaking of debt. Indeed, private consumption and personal debt undertaking were limited. Consumption was limited primarily due to limited resources both at the individual⁷⁸ and national levels.⁷⁹ Also, consistent with the egalitarian ideology, held by the early leaders of the country, it was believed that limited private consumption would help assure the socialist agenda of the young country. Partly to that

78. Since much of the population of Israel during its earlier years was composed largely of new immigrants, most of whom were refugee, they could not afford a high level of consumption. MELMAN, *supra* note 60, at 207 ("Israel in the 1960s was a modest society with limited financial resources.").

79. See Mohe Sanbar, *The Political Economy of Israel, 1948-1982*, in *ECONOMIC & SOCIAL POLICY IN ISRAEL: THE FIRST GENERATION*, *supra* note 38, at 9-10 ("After the cease-fire agreements had been signed in 1949, the supply of basic needs such as food, clothing and shelter, and the reorganization of the economic system, including the civil service, became the major tasks.").

end, almost immediately upon the creation of the Jewish State, the government actively implemented a private consumption austerity program,⁸⁰ placed heavy taxes on consumption,⁸¹ and conducted a guilt campaign against private consumption.⁸² In addition to the lack of resources and the government's campaign against consumption, the Jews in Israel were influenced by the Jewish tradition, which strongly advocated modest individual consumption.⁸³

In addition to the anti-consumption sentiments existing in the earlier days of the country, the undertaking of personal credit was almost a rare phenomenon. People did not rely on personal credit primarily due to its limited availability in the anti-capitalist credit environment,⁸⁴ as well as the cultural and religious influences of the traditional Jewish community.⁸⁵

The pervasive negative perception of consumption and the undertaking of debt resulted in an almost hostile environment for individuals who engaged in unacceptable levels of consumption, acquired credit to support the consumption activity, and then failed to repay the debt. This negative perception and hostile environment

80. See *id.* at 10 ("[In 1949, t]he government instituted a very strict austerity program consisting of controls on prices and foreign exchange and the rationing of food and other basic human necessities. This was meant to maintain at least minimum standards of consumption, especially for unemployed new immigrants and demobilized soldiers.").

81. See MELMAN, *supra* note 60, at 208 ("To implement this ideology [of anti-consumerism] the government took steps that prevented Israelis from obtaining basic Western consumer goods. It added huge taxes and levies of up to three hundred percent to the basic price of appliances like fridges, washing machines, irons.").

82. "[S]tarting with the Yishuv period and continuing uninterruptedly in the years of the state — political leaders, leading economists and influential newspaper persons joined in giving the average citizen a guilt complex. Citizens were told they should be ashamed for wanting to consume more, that only such an irresponsibility causes the country to be in a bad economic state. . . . The citizen must refrain from even dreaming of owning such luxury items as a washing machine or a refrigerator." AHARONI, *supra* note 34, at 333. The government campaign seems to have worked. MELMAN, *supra* note 60, at 207 ("The prevailing mood [in the 1960s] caused the wealthy to take an apologetic stance, as if they were ashamed of their own affluence."); *id.* at 208 ("Thus the phrase "consumer goods" was considered obscene in the national vocabulary. Instead of consumerism, what was preached were the ideals of moderation and austerity.").

83. See MEIR TAMARI, THE CHALLENGE OF WEALTH: A JEWISH PERSPECTIVE ON EARNING AND SPENDING MONEY 132 (1995) ("'Thou shall walk modestly before thy God' is a spiritual demand by prophet Amos. This is reflected in the simplicity in furniture, clothing, and lifestyle of Jews throughout the centuries, a simplicity that has always been an integral part of Jewish living.").

84. Since the government owned the credit industry, its aversion of personal consumption led to the restrictions on the availability of personal credit. See PLESSNER, *supra* note 36, at 162; see also YISRAEL BAR-YOSEPH, BANK YISRAEL-LE 'HALACHA VE'LEMAESE [BANK OF ISRAEL-POLICY & PRACTICE] 144 (1985) (author describing Bank of Israel's policy of discouraging banks from extending consumer credit during the 1950s).

85. See generally TAMARI, *supra* note 84, at 132.

may have manifested itself in the traditionally conservative fresh-start policy in Israel.

However, following the 1967 war, Israeli society gradually began tolerating and, to some degree, even cherishing private consumption and personal credit undertaking.⁸⁶ Whereas previously affluent individuals were ashamed of displaying their wealth in public, it has now become almost a routine feature in Israeli society.⁸⁷ Indeed, consumerism⁸⁸ became pervasive in the society beginning in the 1980s⁸⁹ and has become more so during the 1990s.⁹⁰ Corresponding to the growth in private consumption, private savings have dramatically declined since the 1970s.⁹¹

Both economic and cultural reasons are responsible for the increase in private consumption in Israel since the late 1960s. First, an overall increase in real income and a significant reduction of consumption taxes have made personal consumption substantially more economically feasible.⁹² Second, Israeli society's exposure to

86. See MELMAN, *supra* note 60, at 208 ("The Six-Day War [of 1967] and its aftermath, however, changed the perception [in Israeli society about consumption]."); MICHAEL WOLFFSOHN, ISRAEL: POLITY, SOCIETY, ECONOMY 1882-1986 231 (1987) ("The extent to which material living conditions in Israel have improved is illustrated by the fact that in 1982, 99% of all households possessed a refrigerator, as opposed to only 34% in 1958. The improvement is further documented by the rise in car ownership from 4% in 1962 to 44% in 1982.").

87. See MELMAN, *supra* note 60, at 210 ("Israelis of today do not regard freezers, dryers, and color televisions as appliances that make life better and more comfortable. Rather, they are seen as status symbols. . . . Israelis have a love for these items that borders on obsession: electric appliances make Israelis today feel prosperous and proud.").

88. As used in this Article, consumerism refers to the increased tendency of individuals in society to consume, generally on credit, consumer goods that are not necessity items.

89. See RAZIN & SADKA, *supra* note 51, at 18-19 (demonstrating the rapid private consumption growth per capita beginning in the 1980s).

90. See Melman, *supra* note 60, at 213 ("Having adopted almost every American habit and style, Israel has become a consumer society, a quintessential leisure-time nation. . . . Recent years have seen the opening of numerous American-style shopping malls – more than Israeli population really needs. Plastic cards are already in wide use throughout the country. . . ."). See also INTERNATIONAL MONETARY FUND, ISRAEL: SELECTED ISSUES AND STATISTICAL APPENDIX 21 . . . sixty-three percent in 1998); RUTH LOVENTHAL, ET AL., KALKALAT YISRAEL BE'DAGESH KAL [ISRAELI ECONOMY] 101 (2nd. ed. 1998) ("Private consumption per capita [in Israel] in 1995 is 5.2 higher in real terms as compared to 1950. . . .").

91. According to a Bank of Israel's annual report, the savings ratio out of total net disposal income of the average Israeli declined from a high of 20.9 percent in 1975 to a low of 9.8 percent in 1990. See PLESSNER, *supra* note 36, at 82.

92. See Shmuel N. Eisenstadt, *Tahalichim Ve'Magamot Be'Eizuv Shel Ha'Chevra Ha'Yisraelit*, [Evolution and Trends in the Shaping of the Israeli Society], in ANASHIM VE'MEDINA: HA'CHEVRA HA'YISRAELIT [PEOPLE AND STATE: ISRAELI SOCIETY] 41, 52 (Shmuel Stempler ed. 1989) (asserting that the Six Days war of 1967 brought about prospering economy and an increase in the standard of living); see also Yoram Ben-Porath, *Introduction*, in THE ISRAELI ECONOMY: MATURING THROUGH CRISES 11-13 (Yoram Ben-Porath ed., 1986) (noting that the standard of living has increased in Israel since the late 1960s due to maintenance of full employment, increase in real wages, decline in net taxation and maintenance of too low an exchange rate);

the consumption culture from Western countries,⁹³ as well as the Israeli politicians' public abandonment of the pioneers' egalitarian vision, have contributed to the growth in consumerism in Israel.⁹⁴

In addition to becoming a consumerist-oriented society, the Israeli people began to accept and grow accustomed to personal credit. Since the 1980s, the Israeli society has witnessed a steady rise in the use of credit cards for private consumption, as credit card companies have aggressively marketed them to the consumer-public.⁹⁵

This significant growth in consumption and use of personal credit must have resulted in greater societal tolerance of private consumption and debt undertaking. As consumption and personal debt acquisition were no longer viewed by society as deviant conduct, the social environment became more tolerant and understanding of indebted consumers in financial trouble and in need of bankruptcy protection. This emerging attitude towards private consumption, debt undertaking, and financial trouble may

ISRAEL YEARBOOK AND ALMANAC 153 (Naftali Greenwood ed., 1996) (stating that consumption increased in Israel due to rising real wages and lowering of tariffs, among other things).

93. See EZRAHI, *supra* note 63, at 66 ("Moreover, in Israel as elsewhere, the marked increase in mass travel abroad (even by less affluent Israelis) and the spread of television have exposed more and more Israelis to present-oriented consumerist culture."); ISRAEL YEARBOOK AND ALMANAC *supra* note 92, at 153 ("Magnifying [the economic factors that contributed to the rise in consumption in Israel] . . . were several new developments in the past few years that encouraged consumption per se . . . (1) a profusion of modern *shopping malls* . . . (2) commercial advertising on *television* . . . (3) a massive incursion of big *foreign brands* . . ."); see also MELMAN, *supra* note 60, at 213 (describing how Israel has become a consumer society as a result of American influence).

94. See Shmuel N. Eisenstadt, *The Israeli Political System and The Transformation of Israeli Society*, in 3 POLITICS AND SOCIETY IN ISRAEL: STUDIES OF ISRAELI SOCIETY 415, 423-24 (Ernest Krausz ed., 1985) ("The various elites, including large parts of the political one, came to overlap with the upper economic strata, developing a lifestyle stressing a continuous rise in the standard of living and a relatively high emphasis on conspicuous consumption. In this sense the elites became distanced from other strata and abandoned the pioneering vision. . .").

95.

By year's end, *credit cards* were carried by an estimated 60% of adults and used for about 30% of personal non-housing consumption, up from roughly 25% in 1994, and were approaching cash as the preferred method of payment. There are several reasons for this: . . . (3) The two major credit-card companies courted businesses aggressively and allowed them to sign on without the restrictive terms previously imposed. (4) Willingness to obtain and use credit cards has permeated all age, education-level, and income groups. . . .

ISRAEL YEARBOOK AND ALMANAC, *supra* note 92, at 154 ("Credit cards are now widespread; as of December, 1993, some one million cards were being used for 10 million transactions per month.").

have contributed to the new vision regarding personal bankruptcy, which was manifested in the 1996 bankruptcy liberalization reform.⁹⁶

VI. THE POLITICAL POWER OF BANKRUPTS IN ISRAEL AND ITS IMPACT ON ITS FRESH-START POLICY

The conservative shape of the fresh-start policy that has traditionally prevailed in Israel was also partly due to the lack of political power among the bankrupts to bring about a liberalization of the law.⁹⁷ There are two main reasons for the lack of historical political power among Israeli bankrupts.

First, bankrupts in Israel traditionally did not have the backing of a politically connected consumer movement. While there have always been two consumer interest groups in Israel, these groups were and continue to be funded and controlled by the government. Since these consumer interest groups are not autonomous, they only serve the consumers' interests as perceived by the government. Hence, these groups could not have effectively functioned to represent the interests of the consumers (including bankrupts).⁹⁸

While the existing consumer interest groups did not function as effective advocates for bankrupts, other organizations with generally conflicting interests with bankrupts (i.e., the bar association, banks, etc.) have maintained long-established and well-organized interest groups.⁹⁹ Indeed, the interest groups representing the banks and the

96. A similar trend was recently observed in Europe where a general increased consumer over-indebtedness contributed in part to a more favorable legislative predisposition towards the fresh-start policy in bankruptcy. See generally Johanna Niemi-Kiesilainen, *Changing Directions in Consumer Bankruptcy Law and Practice in Europe and USA*, 20 J. CONSUMER POL'Y 133 (1997).

97. One scholar has attributed the lack of active litigation in socio-economic legal rights matters in Israel to the weak political power of the affected groups. "[The] deficiency [in the number of cases involving socio-economic rights in Israel] flows from a number of reasons. Firstly, the lack of resources and organizations to fund such litigation. Secondly, usually, potential petitioners who could raise socio-economic rights cases belong to the lower socio-economic classes and thus lack the financial resources necessary to conduct court cases. Moreover, such members of this social stratum are often not even aware of their rights." SHIMON SHETREET, *JUSTICE IN ISRAEL: A STUDY OF THE ISRAELI JUDICIARY* 468 (1994).

98. See Yael Yishai, *Kvutsot Interes Be'Yisrael [Interest Groups in Israel]*, in ANASHIM VE'MEDINA: HA'CHEVRA HA'YISRAELIT [PEOPLE AND STATE: ISRAELI SOCIETY] 235, 240 (Shmuel Stempler ed., 1989) (arguing that the two consumer groups in Israel do not function as two autonomous organizations since they are funded and controlled by the government or other public agencies).

99. The significant influence held by the bar association in the context of bankruptcy legislation was alluded to during the recent bankruptcy reform hearings. See *Proposed Amendment of the Bankruptcy Ordinance: Hearings Before the Subcomm. on Bankruptcy Reform of the Judiciary Comm.*, 13th Knesset 4 (May 30, 1995) (statement of Davida Lachman-Messer, Deputy Attorney General). See also Yael Yishai, *Kvutsot Interes Be'Yisrael [Interest Groups in Israel: The Test of Democracy]* 138 & 174 (1986) (stating that the bar association plays a

Israeli bar have not only consistently attended the bankruptcy reform committee hearings,¹⁰⁰ but they were actively sought after for guidance by the legislature.¹⁰¹ In contrast, not a single representative of the interests of individual bankrupts was present during any of the legislative hearings on bankruptcy reform.

The historical absence of a truly representative consumer interest group was partly because most bankrupts were particularly politically inactive. While Israelis, in general, were politically inactive up until the early 1970s,¹⁰² the individuals constituting the majority of bankrupts came from particularly politically inactive segments of Israeli society. Up until the 1970s, the bankrupts in Israel were predominantly low income and uneducated individuals.¹⁰³ Since many of the low income and the less educated population in Israel during those times were Sephardic Jews,¹⁰⁴ many of the bankrupts were Sephardic as well.¹⁰⁵ Corresponding to

significant role in the design of legislation in Israel as the legislative body routinely requests that the bar association comment on proposed bills and participate in legislative committee hearings).

100. Interest groups in Israel do not formally engage in lobbying of politicians as a way of influencing legislation. Rather, they primarily rely on providing testimony in committees' hearings as a form of political persuasion. See Yishai, *supra* note 99, at 241 ("[L]obbying, as known in the U.S., has not developed in Israel. Only one or two groups . . . have employed a special person for the purpose of lobbying in the Knesset. The more acceptable route is to appear before one of the Knesset's committees. . .").

101. See, e.g., *Proposed Amendment of the Bankruptcy Ordinance, 1981: Hearing Before the Sub-comm. on Bankruptcy Reform of the Judiciary Comm.* 10th Knesset 14 (Dec. 2, 1981) (statement of Mr. Weirshovski (requesting that the sub-committee obtain the advice of a representative of the bar association in relation to the proposed bankruptcy reform). In addition, the government appointed chairperson of the several commissions for bankruptcy reform were always members of the bar.

102. See EVA ETZICNI-HALEVY & RINA SHAPIRA, *POLITICAL CULTURE IN ISRAEL: CLEAVAGE AND INTEGRATION AMONG ISRAELI JEWS* 86 (1977) (based on data from the early seventies, the authors described the Israelis as merely interested spectators in the political process largely because of a sense of being blocked from institutional participation); ITZHAK GALNOOR, *STEERING THE POLITY: POLITICAL COMMUNICATION IN ISRAEL* (1982) (based on data from the 1960s, the author concluded that while the Israelis tend to have high responsive participation (i.e. voting), they tend to be less inclined to initiate political action (i.e. grassroots organizations)).

103. See Philip Shuchman, *Field Observations and Archival Data on Execution Process and Bankruptcy in Jerusalem*, 52 AM. BANKR. L.J. 341, 354-55 (1978).

104. See SAMMY SMOOHA, *ISRAEL: PLURALISM AND CONFLICT* 154 (1978) ("The index of relative inequality [for the period 1956-1975] indicates that an Oriental family income ranged between 57 and 82 per cent of an Ashkenazi family income, but the mean was around 70 per cent."); *id.* at 159 ("[As of 1975] [t]here is a considerable gap in the educational level of the two ethnic groups. The Ashkenazim have on the average about three more years of schooling than the Orientals.").

105. See Shuchman, *supra* note 102, at 355.

106. See SAM LEHMAN-WILZIG, *MECHA'A ZIBURIT BE'YISRAEL 1949-1992* [PUBLIC PROTEST IN ISRAEL 1949-1992] 88, 90 (1992); WOLFSFELD, *supra* note 66, at 41 ("[S]ocio-economic status (usually measured through education and income) has been found to affect the level of political involvement in every country in which it has been studied. . . . Israel is no exception to

the demographics of bankrupts in Israel during that era, studies have shown that the most politically inactive segments of the Israeli society were individuals from the low income sectors, being largely uneducated and ethnically Sephardic.¹⁰⁶ Since individuals who filed for bankruptcy protection were predominantly from the less politically active groups in society, it is easy to understand why the people most affected by the bankruptcy laws did not form a grassroots movement during the 1970s with the aim of exerting political pressure for a more pro-debtor reform.¹⁰⁷

In addition to the lack of an established interest group that would lobby in favor of their interests, the segments of the Israeli society that composed the majority of bankrupts lacked meaningful political representation in the Israeli parliament. Throughout the 1970s, members of the Israeli parliament were mostly Ashkenazik Jews.¹⁰⁸ In contrast, as stated previously, most bankrupts through the 1970s were Sephardic Jews.¹⁰⁹ The lack of adequate political representation in the Israeli parliament of those who were most in need of

that rule and the two strongest correlates of psychological involvement in politics are education . . . and income. . . ."); *id.* at 62 ("Jews who were born in either Africa or Asia [i.e., Sephardic], and especially those with lower levels of education and income, were less likely to think about politics or develop political opinions.").

107. See WOLFSFELD, *supra* note 66, at 41 ("If certain ethnic groups take less of an interest in politics, they are less likely to make political demands and less likely to have an impact on policy.").

108. See SMOOHA, *supra* note 104, at 142 ("Despite the Oriental penetration of many power positions [during the 1970s], the distribution of power is still grossly unbalanced. Despite the extent of the Orientals' participation in power, the Ashkenazim are at present [1978] in full control."); Dan Caspi, *How Representative is the Knesset?*, 14 JERUSALEM Q. 68, 72 (1980) ("[T]hose from Europe and America are over-represented in the *Knesset* in comparison to their statistical weight in the population, at the expense of those from Muslim countries. In fact, only ten per cent of the 428 members ever elected to the *Knesset* were born in Islamic countries.").

109. See Shuchman, *supra* note 103, at 355.

110. The mistreatment of the Sephardic Israelis by the largely Ashkenazic led Labor governments gave rise to the growth of the Wadi-Salib riots of the late 1950s and the Black Panther demonstrations of the early 1970s. See SMOOHA, *supra* note 104, at 209-16.

The post-state mass influx of Oriental immigrants was received with mixed feelings. The Zionist dream of the ingathering of the exiles was coming true, but it was feared that the 'backward' Orientals would dilute the Western culture and upset the political democracy of the newly founded state. To forestall these dangers, the dominant Ashkenazi group has taken the countermeasures of providing minimal services for the Oriental arrivals in order to prevent destitution, admitting them into the lower and middle rungs of society and neutralizing them as an independent force.

Id. at 260-61; *id.* at 192 ("In spite of official denials, the Israeli public are well aware of widespread discriminatory practices against the Orientals."). In addition to discrimination, private as well as public stereotyping of the Orientals was widespread. See *id.* at 189-191. Indeed, some of the legislative debates on the debtor's prison law in the late 1960s suggest that one of the reasons for maintaining the debtor's prison system was some legislators' perception that the Sephardic Israelis are routinely concealing their assets from their creditors. See Harris, *supra* note 4, at 480.

liberalization of the fresh-start policy may have contributed to the persisting punitive and conservative nature of bankruptcy laws.¹¹⁰

While the absence of a liberalization of the fresh-start policy through the early 1980s can be partly explained by the lack of political clout on the part of the bankrupts, the liberalization reform of 1996 can partly be attributed to the growth of a grassroots debtor organization. In the 1980s, Israel began to experience a general and gradual increase in grassroots political activism.¹¹¹ This emerging, and relatively successful, political activist environment generated the necessary conditions for the creation of the first grassroots organization for financially troubled individuals.¹¹²

Apparently the grassroots organization was created in response to the massive increase in the number of financially troubled individuals who were imprisoned under the judgment execution system in the early 1990s, after the bankruptcy system denied them appropriate relief.¹¹³ The grassroot movement was active on two fronts: It sought relief from the judicial system and facilitated an ad-hoc letter-writing public awareness campaign regarding the plight of its members.¹¹⁴ This grassroots campaign was a success on both fronts. In 1993, the Israeli Supreme Court issued a landmark

111. MARCIA DREZON-TEPLER, *INTEREST GROUPS AND POLITICAL CHANGE IN ISRAEL* 251 (1990) ("In Israel by the 1980s, interest groups had emerged from the shadows."); LEHMAN-WILZIG, *supra* note 106, at 116 ("It is clear that in the eighties the public justification of public protests in Israel has become a national consensus."); WOLFSFELD, *supra* note 66, at 27 ("[As of 1988], Israelis are no longer willing to play the part of interested spectators: a good deal of political involvement is now taking place in the streets."); *see also* YISHAI, *supra* note 99, at 46 (noting that the number of registered groups [in Israel] has increased from 3,186 in 1984 to more than 9,000 in 1986); *id.* at 247 ("Not only the number of [interest groups] has increased significantly, but there has also been an increase in their legitimization."). The interest groups in Israel, including the Ad-Hoc interest groups, have recently experienced relative success in their missions. *See* WOLFSFELD, *supra* note 66, at 155, 158 ("The majority of [interest] groups reported general success, success in persuading the public, and success at meeting with public officials. . . . Even unorganized protest groups in Israel have a good chance of success, but their probability of victory is consistently lower.").

112. In addition to a general increase in political activism by the Israeli public, there was a particular growth in the economic-based political protests beginning in the early 1980s. *See* LEHMAN-WILZIG, *supra* note 106, at 48, 51, 57 (pointing out that the numbers of socio-economic public protests have progressively increased between 1955 and 1986).

113. The grassroots movement was called *Perach*, a foundation providing assistance to individual debtors and bankrupts in Israel. *See* Dorit Gabayi, *La'Kcha Et Ha'Chov Le'Liba [Took the Debt to her Heart]*, MA'ARIV, June 23, 1993, at 6.

114. The ad-hoc campaign encouraged members to write to top government officials urging them to enact legislative reforms of the judgment execution laws and of the bankruptcy laws. *See* Efrat, *supra* note 8, at 100-01. In addition to the letters, several newspaper articles were written on the topic describing in detail the unfortunate conditions and the extreme steps taken by some debtors. *See, e.g.,* Gabayi, *supra* note 113, at 6 (describing the conditions leading to the suicide committed by a financially troubled individual).

decision severely restricting the use of debtors' prisons.¹¹⁵ The Supreme Court decision, together with the letter writing campaign (referred to by government officials as the "suicide letters"), clearly prompted a legislative liberalization reform of both the judgment execution laws in 1994 and the bankruptcy laws in 1996.¹¹⁶

VII. THE PERCEIVED CULTURE OF ILLEGALISM IN ISRAEL AND ITS IMPACT ON THE FRESH-START POLICY

Lastly, the relatively conservative and punitive approach to fresh-start in Israel reflects the legislative and societal belief that a punitive mechanism is needed to neutralize perceived tendencies to routinely disobey and ignore the law whenever possible. A persisting argument in opposition to a liberalization of the fresh-start policy and debtors' prison law in Israel has been that a relaxation of the laws would adversely affect the commercial morality in the market place. Opponents of liberalization presume that debtors would take unfair advantage of the liberalized law and escape their legal obligations to repay. Specifically, some legislators have suggested that a liberalization of the fresh-start policy in bankruptcy would not be well utilized by the average Israeli man or woman since he or she inherently lacks the fundamental respect for the law and will find every available loophole to avoid compliance with it, thereby dishonoring their obligation to repay their debts.¹¹⁷

115. See Efrat, *supra* note 8, at 101-02.

116. See *id.* at 102.

117. Minutes of the Levin Commission 5 (Nov. 5, 1991) (on file with author) (statement of Judge Bar-Ofir) ("One must distinguish between debtors that have nothing (and they are the minority) and those [debtors] that have [money] who explore all avenues to avoid [re-payment]"). During a legislative hearing on bankruptcy reform in 1976, one legislator asked an expert witness testifying before the sub-committee: "Why should we be concerned about ending [the bankruptcy] process quickly. Don't you think that the fact that the vast majority of bankruptcy petitions [in Israel] are initiated by the debtors indicates that most of the bankrupts are attempting to defraud the creditors?" *Proposed Amendments to the Bankruptcy Ordinance (no. 6): Hearings Before the Judiciary Comm.*, 8th Knesset 7 (Jan. 5, 1976) (statement of S.J. Abramov, a committee member). Others share the legislators' concern. An editorial comment in a major daily newspaper also voiced its concern that the public may interpret a liberalization of the debt-collection laws as a signal that debts need not be repaid. See Yoseph Lapid, *Hot'za La'poal [Judgment Execution Laws]*, MA'ARIV, June 23, 1993, at 3. Similar fears of abuse or opportunism are also prevalent in the U.S. See, e.g., AMERICAN BANKRUPTCY INSTITUTE, PERCEPTION AND REALITY: AMERICAN BANKRUPTCY INSTITUTE SURVEY ON SELECTED PROVISIONS OF THE 1984 AMENDMENTS TO THE BANKRUPTCY CODE 31-32 (1987) (finding that fifty percent of surveyed U.S. trustees believed there was significant abuse in the bankruptcy system); F. H. Buckley & Margaret F. Brinig, *The Bankruptcy Puzzle*, 27 J. LEGAL STUD. 187, 189-91 (1998) (noting that the 1984 bankruptcy reforms were aimed at curbing debtor's abuse); Thomas H. Jackson, *The Fresh Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1402 (1985).

To combat the potential abuse of the bankruptcy system, legislators have either made access to bankruptcy more difficult¹¹⁸ or added penalties and other significant restrictions to the lives of bankrupts as a way of deterring individuals from unfairly pursuing the bankruptcy option.¹¹⁹ For example, even while the legislature attempted to finally liberalize the fresh-start policy in 1996, it made sure to add several new penalties and restrictions applicable to bankrupts as a way to counteract the perceived potential abuse of the liberalization efforts.¹²⁰

Compliance with the law is partly a function of the degree to which individuals perceive the relevant legal authority as having a legitimate right to direct them on how to act.¹²¹ The legal authority's legitimacy is a product of two factors. First, it is a product of the extent to which authorities enjoy the public's support and confidence. Second, it is a product of the extent to which individuals internally perceive an obligation to obey the law.¹²²

Studies have shown that the legitimacy of legal authority in the United States is relatively high. Overall, Americans have a strong orientation toward obeying the law.¹²³ This is partly because the relevant legal authorities generally enjoy the overall public support¹²⁴ and because the average American seems to internally perceive that it is important to obey the law.¹²⁵ This orientation may

118. An example of that is the 1976 reform law which limited access to bankruptcy to only individuals who could demonstrate that they were able to make meaningful payments to their creditors. See *supra* note 12 and accompanying text.

119. Examples of that policy are manifested in the several restrictions on occupations, business and trades of the bankrupt that were added in the 1950s through the 1970s. See Efrat, *supra* note 8, at 82.

120. See *id.* at 112-13.

121. See LAWRENCE FRIEDMAN, *LAW AND SOCIETY: AN INTRODUCTION* 143 (1977) ("People are more likely to obey a system or order, if, . . . [they feel] the system is legitimate. . . ."); CHARLES R. TITTLE, *SANCTIONS AND SOCIAL DEVIANCE: THE QUESTION OF DETERRENCE* 176 (1980) ("Some social scientists maintain that conformity is largely a function of the legitimacy that an individual attributes to a norm."); TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 33 (1990) ("[T]he results of these studies support the hypothesis that behavior is strongly influenced by legitimacy. . . .").

122. See FRIEDMAN, *supra* note 121, at 77 ("Legitimacy is an attitude of respect or approval for law and legal process. . . ."); see also TYLER, *supra* note 122, at 28, 45.

123. See TYLER, *supra* note 122, at 65 ("People clearly have a strong predisposition toward following the law.")

124. For example, in one study the author found that "[only a] narrow majority [of the people] agreed with positive statements about the police and the courts." *Id.* at 47.

125. For example, in one study it was found that eighty-five percent of the people believed that people should obey the law even if it goes against what they think is right. See TYLER, *supra* note 122, at 46.

partly explain why abuse of the system by individuals is not prevalent despite the liberal fresh-start policy in the U.S.¹²⁶

In contrast to the relatively high legitimacy enjoyed by the legal system in the U.S., there is at least a prevailing perception in Israel of illegitimacy and legal non-conformity towards the law. While there is no definite empirical work on the subject, there is some support of that perception. Not only does the general public have a negative perception about the legislative body,¹²⁷ but the people also do not seem to internally perceive that it is important to obey the law.

The phenomenon of non-compliance with Israeli law, referred to by some as illegalism, has been defined by Israeli scholars as "the orientation [in Israeli society] that does not view respect to the law and respect to the legal system as a basic value, rather the prevailing view is that law should or should not be obeyed depending on calculations of benefits."¹²⁸ Some believe that the non-conformity with the law has become so embedded in Israeli culture that they refer to it as an Israeli sport.¹²⁹

The most prevalent non-conformity phenomenon in Israeli society is favoritism, or *Proteksia* as referred to by Israelis. Favoritism generally takes the form of using relatives, friends, or people in one's social network, who are in a position of power to obtain certain sought-after benefits by bypassing the closed bureaucratic doors.¹³⁰ Such favoritism has been found to be pervasive in Israeli society.¹³¹

126. See Teresa A. Sullivan et al., *Consumer Bankruptcy in the United States: A Study of Alleged Abuse and of Local Legal Culture*, 20 J. CONSUMER POL'Y 223, 256 (1997) ("By and large, there is little evidence that . . . [debtors in the U.S.] are the crafty manipulators that some fear and others suspect.").

127. See WOLFSFELD, *supra* note 66, at 15 (referring to an opinion poll finding that almost sixty percent of the adult Jewish population in Israel negatively views the Knesset).

128. See EHUD SPRINZAK, EISH HA'YASHAR BE'ENAV: ILLEGALISM BA'CHEVRA HA'YISRAELIT [EVERY MAN WHATSOEVER IS RIGHT IN HIS OWN EYES: ILLEGALISM IN ISRAELI SOCIETY] 22 (1986).

129. LEHMAN-WILZIG, *supra* note 106, at 115 ("In conclusion, in whatever angle one examines the behavior of the public in Israel, one will find that non-conformity with the law is an Israeli sport acceptable in all aspects of life: politics, social and economics."); Marjorie Miller, *It's a Sin to Be a Sucker in Israel*, L.A. TIMES, July 25, 1997, at A-1 ("If Israelis could agree on anything . . . it just might be that the cardinal sin is to be a *freier*. . . . [A] *freier* is anyone who cedes ground, plays completely by the rules or allows someone to get the better of him.").

130. See SAM LEHMAN-WILZIG, WILDFIRE: GRASSROOTS REVOLTS IN ISRAEL IN THE POST-SOCIALIST ERA 5 (1992).

131. See *id.* ("The use of friends, relatives, and social acquaintances in positions of power or authority to pry open closed bureaucratic doors has been the classic Israeli way of doing public business."); WOLFSFELD, *supra* note 66, at 18 ("Finding ways to bypass bureaucratic obstacles is a well-known tradition in Israel. . . ."). In one study almost seventy percent of the people reported that they used *Proteksia* within the last year. See Brenda Danet & Harriet Hartman, *On "Proteksia": Orientations Toward the Use of Personal Influence in Israeli Bureaucracy*, 3 J. COMP. ADMIN. 405, 432 (1972); Ariel Rosen-Zvi, *Culture of Law*, 17 TEL-AVIV U. L. REV. 689,

Furthermore, some believe that the use of favoritism in bypassing a law or a procedure has been widely accepted by the public to the extent that people find it normal, natural, and even legitimate.¹³²

Another reflection of Israeli society's perceived culturally embedded illegalism is its well-developed and significant underground economy and tax avoidance practices. One study found that Israel's underground economy constitutes fifteen percent of its gross national product, as compared to less than four percent in England and Sweden and between four and ten percent in the U.S.¹³³ Here, too, the public seems to have accepted this form of illegalism as normal and legitimate.¹³⁴ Other common areas of non-compliance with the law include bending the formal rules to accomplish one's business ends,¹³⁵ utilizing pirate cable television,¹³⁶ and more recently, avoiding mandatory army reserve service.¹³⁷

The scholars who believe in the illegalism tendencies of Israeli society attribute it to several factors. First, some contend that the historical distrust by Jewish people of foreign governments, while Jews were living in the Diaspora, has left its mark on the Israeli attitude towards their own law and government.¹³⁸ Second, some

711 (1993) (stating that the notion of *Proteksia* continues to be the leading culture in some segments of the Israeli society). See generally BRENDA DANET, PULLING STRINGS: BICULTURALISM IN ISRAELI BUREAUCRACY (1988).

132. See Danet & Hartman, *supra* note 131, at 408.

133. See Ben-Zion Zilberfarb, *Omdanay Ha'Kalkalah Ha'shekhora Be'Yisrael Ve'bekhul [Estimates of the Black Market Economy in Israel and Overseas]*, 122 RIV'ON LE'KALKALAH 319, 320-322 (1984). Another study reached a similar result. See Vito Tanzi, *Ha'sibot Ve'hatotzaot Shel Ha'tofa'ah Ba'olam [The Reasons and the Results of the Phenomenon in the World]*, 122 RIV'ON LE'KALKALAH 323, 328 (1984). See also LEHMAN-WILZIG, *supra* note 130, at 75.

134. See LEHMAN-WILZIG, *supra* note 106, at 114 ("The underground black market is a moderate form of illegalism in Israel - having attained a certain public support - even the newspapers report the exchange rate of the dollar in the underground market, and the authorities almost never take action to prevent this phenomenon.").

135. See IRA SHARKANSKY, THE POLITICAL ECONOMY OF ISRAEL 109 (1987) (noting that the prevailing culture among Israeli managers is to accept the bending of formal rules to accomplish one's goals).

136. See LEHMAN-WILZIG, *supra* note 130, at 175 ("As we have witnessed in a number of different Israeli areas of life — pirate cable television, black medicine, the underground economy — there seems to be no avoiding a certain increase in quasi-illegal . . . behavior. . .").

137. See Miller, *supra* note 129, at A-10 ("While the vast majority of Israelis still fulfill obligatory army service, increasing numbers say the follow-up reserve duty is for freiers.").

138. See LEHMAN-WILZIG, *supra* note 106, at 113 ("After hundreds of years in the Diaspora, during which [the Jews] gained lots of experience in non-conforming to the foreign rules, this mentality . . . continues continuously to operate even when the Jew is in autonomous and independent structure. . .").

Unfortunately, in the past, the interests the local non-Jewish government in the Diaspora did not at all times necessarily coincide with those of its minority Jewish population. The Jewish minority was then subjected to harsh anti-Semitic and arbitrary decisions by the local judiciary. . . Naturally, this situation led to the development of a suspicious attitude on

scholars point to the large scale political illegality that has existed throughout the life of the Jewish state and suggest that those governmental actions which display disrespect to the law have contributed to the developed illegality among the Israeli public.¹³⁹ Government officials manifest their disrespect for the law by contributing to a high level of corruption and greed,¹⁴⁰ formally excusing themselves from complying with the laws,¹⁴¹ failing to evenhandedly apply the laws,¹⁴² or ignoring the law altogether.¹⁴³ Some believe that the illegality practiced by political officials displays to the people a conviction that the country can work fine without strict compliance with the law.¹⁴⁴ This attitude by public leaders may have translated into similar attitudes among individual citizens.¹⁴⁵ Lastly, the level of illegality in the Israeli society may be a form of protest by the public of the all-encompassing, intrusive, and bureaucratic governmental actions, all of which are difficult to change politically.¹⁴⁶

Whether the phenomenon of illegality in Israeli society is in fact real or merely a widely held perception, it clearly had a profound impact on the evolution of the fresh-start policy in Israeli bankruptcy law.

the part of Diaspora Jews towards local law. . . . [I]t was this attitude which underlay the approach adopted by the Zionist settlers to all three branches of the local government.

SHETREET, *supra* note 97, at 409-10. See also Miller, *supra* note 129, at A-10 ("[The Israeli people are] still battling the 2,000 year-old Jewish tendency to distrust government. . .").

139. See Ehud Sprinzak, *Elite Illegality in Israel and the Question of Democracy*, in ISRAELI DEMOCRACY UNDER STRESS 173, 175 (Ehud Sprinzak & Larry Diamond eds., 1993) ("[T]here exists a deep cultural layer of illegality in Israel's political society.")

140. See WOLFSFELD, *supra* note 66, at 15 ("The inevitable [table] performance [of the creation of a coalition government] whereby small parties pressure larger parties into giving them an unrepresentative proportion of cabinet seats and funds lays bare the greedier side of politics."); see also Rosen-Zvi, *supra* note 131, at 712.

141. See RUBENSTEIN, *supra* note 63, at 52 (arguing that the legislators immunity laws legislated by the legislators themselves were extremely broad).

142. For example, a law that prohibits legislators from obtaining compensation for non-parliamentary work has no enforcement mechanism and has no related threat of punishment. See *id.* at 52. Other examples of the lack evenhandedness are the political-motivated exemptions from compliance with the law granted to certain small groups of the coalition government, such as the exemption from mandatory draft granted to religious Jews. See Rosen-Zvi, *supra* note 131, at 712.

143. One example is legislature members openly violating the law that prohibits them from obtaining compensation for non-parliamentary work. See RUBENSTEIN, *supra* note 63, at 52.

144. See Sprinzak, *Elite Illegality in Israel and the Question of Democracy*, in ISRAELI DEMOCRACY UNDER STRESS, *supra* note 139, at 173, 175.

145. Rosen-Zvi, *supra* note 131, at 713 ("The political illegality . . . finds its way to illegality of the citizen.")

146. See LEHMAN-WILZIG, *supra* note 130, at 6-7.

VIII. CONCLUSION

Legal systems are not autonomous; they reflect social norms and are a product of society. This Article has attempted to explore some of the more recent and fundamental social, political, and economic transformations in Israeli society that may have contributed to the evolution of the laws affecting an individual's opportunity for a fresh-start. While the perceived phenomenon of illegalism has contributed to the retention of the traditionally punitive and anti-debtor features of the bankruptcy law, the emerging growth of entrepreneurship, consumerism, individualism, as well as, the empowerment of pro-debtor interest groups, have contributed to the recent liberalization trend of the fresh-start policy in Israel.