



Babeş-Bolyai University, Cluj-Napoca  
Faculty of European Studies  
Faculty of International Relations

TEZĂ DE DOCTORAT  
DOCTORAL THESIS  
**Long Abstract**

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# **Interrelations between the Executive and Legislative Authorities in a Democratic Country: A Case Study of the Israeli Knesset and the Judicial System in Israel**

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# Table of Contents

<b>INTRODUCTION.....</b>	<b>7</b>
Motivation for Conducting This Study .....	9
Background to the Study and Research Problem.....	10
Research Aims .....	10
Secondary Research Aims .....	11
Main Research Question .....	11
Secondary Research Questions .....	11
Thesis Structure .....	11
Significance of the Research.....	12
<b>CHAPTER I: LITERATURE REVIEW .....</b>	<b>12</b>
I.1 Culture .....	12
I.1.1 Multiculturalism .....	13
I.1.4 Multiculturalism in Israel .....	14
I.2 Theories of Democratic States.....	14
I.2.1 Modern Regime Methods .....	15
I.2.2 Judicial Systems in a Democratic State.....	15
I.2.3 The Global Village: International Law.....	16
<b>The Centralized Model: Countries in Which Judicial Criticism Allows Invalidating             Legislation .....</b>	<b>16</b>
I.3 A Comparison of Judge Selection Around the Globe.....	16
I.4 State of Israel: Jewish and Democratic.....	17
I.5 Judicial System in Israel.....	17
I.5.1 How Judges Are Selected in Israel .....	17
I.5.2 Criticism of the Judicial Selection Committee .....	17
I.6 The Current Reform Proposal (2023).....	18
I.6.1 But the Times, They Are Changing.....	18
I.6.3 Basic Law: Human Dignity and Liberty .....	19
I.7 Constitutional Revolution.....	19
I.7.1 Court's Authority to Criticize Government.....	19
I.8 Politics and Law .....	20
I.9 Populism.....	20
I.9.1 Source of the Term and Tracing its Roots .....	20
<b>CHAPTER II: METHODOLOGY .....</b>	<b>21</b>
II.1 Qualitative Research .....	21

II.2 Case Study.....	21
II.3 Research Design.....	22
II.4 Research Population.....	22
<b>CHAPTER III: RESEARCH FINDINGS .....</b>	<b>23</b>
III.1 Findings Emerging from Research Question 1 - What issues are involved in the struggles between legislation and rulings?.....	23
III.2 Findings Emerging from Research Question 2: <i>What issues are involved in the struggles between legislation and rulings?</i> .....	23
II.3 Findings Emerging from Research Question 3: What processes are involved in the judge selection process?.....	24
<b>CHAPTER V: CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>24</b>
V.1 Factual Conclusions .....	24
V.1.1 Conclusions Arising from Research Question 1: What is the history of the relationships between the two authorities – Legislative and Judiciary?.....	24
V.1.2 Conclusions Arising from Research Question 2: What issues are involved in the struggles between legislation and rulings?.....	25
V.1.3 Conclusions Arising from Research Question 3: What processes are involved in the judge selection process?.....	26
V.2 Conceptual Conclusions.....	27
V.3 Practical Implications and Recommendations .....	32
V.3.1 Recommendations to the State President .....	32
V.3.2 Recommendations for the Israeli Knesset.....	32
<b>V.3.3 Recommendations to President of Supreme Court.....</b>	<b>33</b>
V.4 Research Limitations.....	33
V.4.1 Limitations Linked to Qualitative Research.....	33
V.4.2 Limitations Linked with Researcher’s Involvement .....	33
V.4.3 Limitations Linked to Generalizability .....	34
V.5 Contribution to Knowledge.....	34
V.5.1 Contribution to Theoretical Knowledge.....	34
V.5.2 Contribution to Applied Knowledge.....	34
V.6 Further Studies .....	34
V.7 Universal Significance of the Research .....	35
<b>REFERENCES.....</b>	<b>36</b>

## ABSTRACT

This study focused on analysis and description of the interrelations between the legislative and judiciary authorities in a democratic country as a case study of the State of Israel. The study also focused on the struggles between these authorities and on describing the judge selection process in Israel. The main goal of the study was to develop a model that would explain and regulate the relationship between the Knesset of Israel and the judicial system as expressed in judge selection processes. The research addresses the rise of populism vis-a-vis the judiciary, as one of the regime's branches, populists' attitudes to the justice system with an emphasis on that of the State of Israel, and comparing it to what is happening in different countries in the world.

This qualitative study relied on semi-structured interviews with representatives of the three government branches in Israel, and analysis of original documents, to allow for a profound examination based on the research aims. Thus, the study reached insights regarding checks and balances required in multicultural societies where populist movements rise, especially those that have no constitution.

The findings show ongoing struggles between legislative and judiciary branches in the state of Israel as a multicultural democracy, revealing that it is hard to define democracy in a multicultural country with immigrants from different cultures, hence the multiplicity of perceptions pertaining to democracy. The study shows the struggles between the judiciary and the executive are also reflected in the judge selection process as in Israel, the principle of separation of powers is ambiguous. Furthermore, since the judge selection model in Israel is seen as a populist process, the attempt to change it met with widespread protests throughout the country.

These findings led to the conclusion that Israel requires a new regime structure, which will reflect the electorate's will, and at the same time guard the principle of protecting human rights and those of minorities in multicultural societies, which characterize modern society in a global world with migration of people from different cultures from place to place.

The findings allowed the emergence of the Integrative Model of Judges' Selection in a Multicultural Democratic State: the Israeli Case (JS-MDS). This model may help policy makers in government branches to design a balanced regime structure that would prevent tensions leading to public mistrust, and harming administrative stability, as has happened in the State of Israel over the years.

**Key words:** relations between legislative and judiciary authorities, democracy, democratic states, judicial system, separation of authorities, populism

## INTRODUCTION

Sometime a few years ago, when I began writing my research about how judges are appointed in democratic countries, I did not imagine what would take place in the state of Israel.

The state of Israel is currently undergoing the most profound government crisis in its history. Many leaders, such as previous prime ministers – Ehud Barak 1999, Ehud Olmert, Yair Lapid and Naphtali Bennett – have cautioned against changing the only democracy in the Middle East into a dictatorship. Previous security heads – Commander-in-Chief Dan Halutz, Heads of the General Security Services, Heads of Mossad – have signed petitions to prevent the change proposed by the 25<sup>th</sup> Knesset in the Judiciary Selection Committee (JSC) that is likely according to them, together with other proposed laws, to turn the state of Israel into a dictatorship. So too, previous Ministers of Defense, such as Moshe Yaalon. So too previous Supreme Court past President Aharon Barak and many of his colleagues. Media personnel and economy leaders from all sectors, hi-tech, banks, the Governor of the Bank of Israel, and even malls, surprisingly joined with their rivals, trade union leaders – together with hundreds of thousands of protestors, blocked roads, shut down the economy, and a moment before the law was passed to change how judges are appointed prevented its passing.

Representatives from the coalition and the opposition gathered at the President's residence and when no agreement was reached, the government decided to pass one of the reform laws. This law effectively cancels the Supreme Court's ability to intervene in Knesset and government decisions regarding the reasonability of decisions.

The Prime Minister even tried to dismiss the Minister of Defense because he warned of a rift in the army and refusal of entire units to present themselves for training – retreated and announced that he would postpone the legislation for two months, to talk to the opposition at the President's residence about an agreed outline for passing the law to change the structure of the Judicial Selection Committee, and other laws intended to change the balances and obstacles between the three authorities in the state of Israel.

The outcry did not stem for a security or economic crisis. The plan to change elements of the judiciary in the State of Israel: (a) structure of the Judicial Selection Committee; (b) override clause – whereby the Knesset could pass laws and the court could reject them with a majority of 15 of 15 judges, and instead the Knesset could legislate by a majority of sixty-one

members of the Knesset, the majority needed to establish a coalition; (c) split the role of the Attorney-General; (d) eliminate the reasonableness clause.

Experts identified that against a background of the regime structure in the state of Israel hence the proposed changes weaken the Supreme Court versus the government, and establishes one authority – executive – instead of three. As far as they are concerned, the government is striving for steps such as those that occurred and are happening in Hungary and Poland, and moreover, turning the state of Israel into a dictatorship. Fears are growing also because of senior government figures. The Prime Minister – Benjamin Netanyahu – currently facing three charges, Minister of the Interior, with criminal convictions, and extreme right personalities some of whom have been convicted or arrested in the past for incitement and supporting terror.

It all started with the victory of the Right wing in the elections of 1 November 2022. A key explanation for the Right's victory was State of Israel citizens' sense of an absence of state governance at a level of personal security. Crime within the state of Israel had increased in many areas. And mainly, every year about one hundred people were murdered in Arab society. The phenomenon of people with unregistered weapons spread. In the peripheries – in the South and North of the state – it appeared that the state was incapable of addressing the phenomenon of protection money, particularly by the Bedouin. "Guardians of the Wall" – an uprising of young Arabs – which brought with it a huge wave of disturbances a year and a half previously still echoed in the heads of Jewish citizens. Additionally, all this occurred during continued warfare with Hamas in Gaza. It appeared that the Rights' promises to change the regime in Israel, so that the government would have much greater authority over war, crime and terror, while weakening the obstacles if faced from the Supreme Court of Justice was the solution.

The Right won 64 mandates, that is, just over half the voters. However, this time it promised voters it would reach government. Radical factors such as the "Religious Zionist" party and "Jewish Power" together won 14 mandates. This unprecedented achievement led them to join the Likud party under the leadership of Benjamin Netanyahu, which together with ultra-Orthodox parties established a government at the beginning of January 2023. The other side of the political map watched what was happening with concern, but declared it was a legitimate government. And all this occurred whilst the prime minister, Benjamin Netanyahu was standing trial charged with three charges for bribery, fraud and breach of trust. The law



in the state of Israel allows this. And indeed the majority had chosen. And the fears of the central left were realized six days after the establishment of the new government when the new Minister of Justice, Yariv Levin, called a press conference where he announced a judicial overhaul, including changes to the structure of the JSC, overturning the override clause, splitting the role of the Attorney General of Israel and narrowing the cause of reasonableness.

But protestors had their own plans. A day after the judicial overhaul was announced, the President of the Supreme Court gave a speech. The honorable Justice Esther Hayut warned against a judiciary crisis likely to make Israel less democratic than it was today. Officers from various army units began to express their discomfort with what was happening, and later even threatened not to appear for reservist service when needed. Pilots of an entire squadron threatened not to turn up for training, squadron 69 – an elite unit performing the most complicated attacks. Pilots even threatened that if the reform was passed, they would not fly to carry out attack missions in Iran. Their fear was the state of Israel becoming a dictatorship. Moreover, if the reform was indeed passed, army and police officers wondered which authority to obey, the legislative or judiciary authority. An impossible situation that led to all legislation stopping in the current Knesset until after the Day of Independence celebrating 75 years since the establishment of the state of Israel.

### **Motivation for Conducting This Study**

The Israeli judicial system has been affected by structural changes, such as the transition on the way to a state, as well as by content-oriented changes, such as fundamentals, illustrated by the various clauses of the law. Moreover, structural changes are related to the impact of the Knesset on the judicial system; composition of the Judicial Selection Committee; composition of the courts' administration; the power of the Israeli Bar Association and so on. Judges themselves understand that they are able to interpret clauses of laws formally or purposefully, an interpretation that, in turn, can affect adopting or opposing legislation. The work of a past honorable President of the Supreme Court, Professor Aharon Barak, is well known. His opponents perceived this work as the court's ambition to take over legislation, by a purposeful interpretation of the law. The work of Professor Daniel Friedman sets down the opposition to this interpretation. In this study, the history of the relationship between the Legislative and Judiciary authorities is examined since the foundation of the state of Israel until the present day. The issue of the struggle between Legislative and Judiciary and its impact is addressed. This will be done by examining laws and rulings, acts, and behind the

scenes of rulings. Finally, a way to establish a stable relationship between the two authorities will be proposed.

## **Background to the Study and Research Problem**

The Judicial Selection Committee's name attests to its function – approval of candidates for judgeships. It seems this committee has always been present. However, it was "conceived" several years after the foundation of the state. The rationale underpinning its establishment was an attempt to reduce external influences on chosen judges. These are mainly political pressures, since neutralizing other influences is regulated by other laws and by court rulings (e.g. the sub-judice principle - A strict rule limiting comment and disclosure relating to judicial proceedings, in order not to prejudge the issue or influence a jury)<sup>1</sup>. The Committee's objective has dictated its composition and it is regulated by the Basic Law: the Judiciary. Two government ministers, headed by the Minister of Justice, two Knesset members (later, it became the custom to have one from the opposition), two members of the Israeli Bar Association, President of the Supreme Court of Justice and two judges nominated according to seniority.

Owing to the Committee's composition and reasons detailed below, power was attributed to the judges' on the committee. Once they formed a coalition with the politicians and once with members of the Israel Bar Association. Concentration of such power in the judges' hands resulted in demands, voiced by many politicians and others, to change the composition of the Committee and reduce the number of judges on it. In recent years, the situation has been reversed. A coalition of power, under the leadership of the former head of the Bar Association, Effi Naveh, and the former Minister of Justice, Ayelet Shaked, enabled the latter - to achieve hegemony as far as the Committee's decisions were concerned. Whether power is in the hands of one group or another, it is clear that the committee cannot avoid its purpose – neutralizing political effects.

This study attempts to examine varied aspects of the committee, effects on it over the years, and explore ways of changing it so that it can accomplish its goal.

## **Research Aims**

Main research aim: To develop a model to explain and regulate the interrelations between the Israeli Knesset and the Israeli judicial system.

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<sup>1</sup> Re'em Segev. (2001). Freedom of Expression in matter under Adjudication. Israel Democracy Institute. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1329087](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1329087)

## **Secondary Research Aims**

1. To investigate the history of the relationships the two authorities – Legislative and Judiciary.
2. To examine struggles between legislation and court rulings.
3. To explore processes of judge selection.

## **Main Research Question**

What components might comprise a model explaining and regulating the interrelations between the Israeli Knesset and the Israeli judicial system?

## **Secondary Research Questions**

1. What is the history of the relationships between the two authorities – Legislative and Judiciary?
2. What issues are involved in the struggles between legislation and rulings?
3. What processes are involved in the judge selection process?

## **Thesis Structure**

Chapter I of this thesis presents a broad discussion of the issues related to the focus of this study, including theories in international relations and a literature review. Chapter II discusses the methodological choices made to answer the research questions, including a discussion of qualitative research and case study as a framework to underpin this study. Chapter II illustrates the variety of tools for collecting and analyzing data, as well as a discussion of the research quality parameters, such as triangulation, validity, reliability and generalizability. The research position as well as the ethical considerations are presented at the end of Chapter II. Chapter III presents the findings that emerged from the content analysis that was employed on the data gathered from the various research tools. Chapter IV depicts offers a discussion of the findings emerging from the study according to the research questions. Chapter V finalizes the thesis by presenting the factual conclusions emerging from the discussion, the model the was compiled on the basis of the conceptual conclusions, recommendations and practical implications, contribution to knowledge, research limitations, future research and the universal significance of this study.

## **Significance of the Research**

This study sought to investigate the interrelations between the legislative and the judicial authorities and to offer a model that would improve those relations. The significance of this study lies in allowing an authentic representation of the people that would reflect their way of thinking, thereby creating more trust in the Supreme Court which has been severely damaged in recent years in Israel. The damage to the people's trust in the court is the real danger to democracy.

**Key words:** relations between legislative and judiciary authorities, democracy, democratic states, judicial system, separation between three authorities, populism

## **CHAPTER I: LITERATURE REVIEW**

This research addresses the current situation in Israel, with regard to the proposed judicial overhaul suggested by the coalition. As part of this work, the literature review discusses aspects comprising the Israeli system: culture, multiculturalism, the multicultural situation and its influence on the law and the legislative and judicial system and the conflict between the government's authorities compared with other democratic countries.

### **I.1 Culture**

Defining culture is far from simple.

The need to define culture derives from a wish to conform to **their** world so that they can feel certain and try to predict an individual's behavior. People's deeds and their interpretation of reality derive from a personal vantage point in a given culture.

Culture and cultural differences must be defined, at least to some extent, in the attempt to understand multiculturalism, meaning we need to understand that there are diverse traditions, norms, values and languages. Realizing that culture depends, *inter alia*, on language, symbols, customs affects an individual's worldview. One social situation, for example, will be understood differently by people of other cultures, and they may even be from the same nation, as depicted in the following story. When the state of Israel was established, a teacher, Eliezer Markus, was sent to teach at an immigrants' camp, and asked his **student** to come dressed for the Sukkot Holiday to celebrate in the Sukkah he had built<sup>2</sup>. Some children,

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<sup>2</sup> Sukkot is a 7 days' holiday celebrating the gathering of the harvest and commemorating the Israelites exodus from slavery in Egypt, a journey that lasted 40 years, according to the Bible. In the desert, Israelites dwelled in

immigrants from Romania, came of course then wearing khaki trousers and white shirts according to the ruling Zionist culture, whereas Yemenite immigrant children came with hands colored orange. In his words: “The children with colored hands left, and I remember that I taught a chapter from the book of Amos. I expected them to come back quickly. Ten minutes passed, quarter of an hour, half an hour – and the children were gone. When the bell sounded, I ran to look for them. I didn’t find the children at the drinking fountain. Instead there were two adults with beards and peyote (sideburns), and they said to me: ‘Hey teacher, you told the children to come dressed for a festival to school?’ I answered positively. ‘Do you know what we did? We went from house to house and told parents to make henna in honor of Sukkot the day before. So that the children would go to school as festive as possible. Here, all the children came decorated, festive like you said and like we always do.’”<sup>3</sup>

### **I.1.1 Multiculturalism**

This thesis attempts to explore the concept multiculturalism in the Israeli judiciary. Israel is a cultural, ethnic national democratic country. Jewish ethnicity defines its nationalism. Public space puts the Jewish identity of the majority and its value system first. Obviously, this has many expressions – symbols, language, culture, history, origin and religion. The ethnic group, as well as cultural ethnic belonging in Israel has a common desire to live in a country giving expression to personal and group security, and common progress towards political goals. **Common goals of promoting the ability of the ethnicity to promote itself and determine its own internal and foreign policies.** The state of Israel defined itself as a Jewish and democratic state in its Declaration of Independence.<sup>4</sup>

Definitions are one thing, reality another. The state of Israel has multiple cultures. **Some are based on ethnic origin, and some because it is a majority state to a large minority.** **The Arab minority** constitutes about a quarter of the state’s population.<sup>5</sup> In recent years, there has been much criticism of the Jewish majority’s attempt to anchor the state as Jewish in law. Most of the political and intellectual elite of the Arab population are speaking out about their issues. The opposition is pragmatic – because of inequality and resource allocation, and ideological –

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temporary structures, and in memory of that, a kind of booth covered in palm branches is built. <https://www.jewishvoice.org/read/blog/sukkot-feast-booths-known-some-feast-tabernacles> (Quote is translated from Hebrew)

<sup>3</sup> Lily Glasner (2015), What is the blessing for Ice cream, Encyclopedia for creating a common language to secular and religious among children <https://www.smkb.ac.il/media/0s2hdek0/lili.pdf> - p. 267, (Translated from Hebrew).

<sup>4</sup> Israel's Declaration of Independence

<sup>5</sup> According to the National Bureau of Statistics correct to 2020 – 1.956 million Arabs – about 21%, see: [info@cbs.gov.il](mailto:info@cbs.gov.il)

which sees the Arab public as the original population of the land, whereas Zionism is a colonial movement. However, it would be a mistake to see the Arab public as one piece. Four political streams representing the Arab minority represent different ideas regarding the state of Israel as the national Jewish state.

### **I.1.4 Multiculturalism in Israel**

Mautner, Sagi and Shamir (1998)<sup>6</sup> characterized multiculturalism in Israel as acting, among others, to dismiss other cultures existing in the same space, by contrasting one affiliation group with another, often by using negative descriptions. Years prior to and after the establishment of the state, Jewish society was united in the effort to create a Jewish state and society, a common identity was formulated for the Jewish settlers in Israel. This common identity marginalized particular identity components of diverse groups in Jewish society, and did not consider members of the Arab group. Powerful mechanisms were employed to 'melt' different groups' distinct identities and reconstruct them as on homogeneous group identity.

Early Israeli society was characterized by the need to cope with waves of immigration comprising Holocaust survivors and refugees from World War II in addition to immigrants from Arab countries, with all of whom the meager local population powerful had to cope. Locals saw the new immigrants as part of the old world and enemy 'Arab' cultures. Thus leaders of the new state sought to develop a cultural, educational and ideological 'melting pot'. This trend sought to create cultural unity through working the land, changing the world through work of agriculture and construction that would replace the "old" jew image<sup>7</sup>. This involved little tolerance for multiple cultures and complete rejection of Arab society, perhaps the roots of the current situation, where in general, the state of Israel is divided into two old-new cultures – the western secular culture and the traditional religious culture that is no longer "ashamed" of its Arab origin.

### **I.2 Theories of Democratic States**

Although democracy, at least in its foundations, is perceived as a popular government originating in ancient Athens, the political idea that took shape in the days of ancient Greece developed into philosophical ideas that often deviated from its origin. Many philosophers have seen the democratic nucleus as a lifestyle idea and not necessarily as a regime

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<sup>6</sup> Menachem Mautner, Avi Sagi, Ronen Shamir. (1998). Multiculturalism in a Democratic and Jewish State. Tel Aviv: Ramot-Tel Aviv University Press.

<sup>7</sup> Edna Harel-Fisher (2020). Nationality in Israel's cultural Policy. The Israel Democracy Institute. <https://www.idi.org.il/media/14942/mamlakhtiyut-in-israel-s-cultural-policy.pdf>

framework. Hence, for example, Mill, in his essay on liberty<sup>8</sup> or Locke in his monumental book on political government.<sup>9</sup> One way or another, reading and reviewing the fundamentals of a democratic state today (or more correctly – of democratic government) and close to their establishment,<sup>10</sup> leads to the conclusion that the term "democracy" as perceived in our times cannot be a relative to the ancient forms of government.<sup>11</sup>

### **I.2.1 Modern Regime Methods**

There are several types of regimes in representative democracy: Parliamentary regime, presidential regime and mixed regime<sup>12</sup>. Representatives sitting in parliament are chosen through citizens' elections, and the strong body is the parliament, which has the power to put together or take down a government. In a presidential regime, the nation elects not only a parliament, but also a president. In such a regime, such as the United States, where in terms of values is democratic and its structured institutions are represented by the president, senate and congress. the strong body that no one can remove is the president.

### **I.2.2 Judicial Systems in a Democratic State**

One of the supporting pillars of a democratic regime is expressed in the principle of separation of power, which already existed in ancient Greece, but attributed to Montesquieu, French judge and historian (1689 – 1755)<sup>13</sup>, who claimed that every government must be divided into three authorities: legislative, executive and judiciary, stating, "*When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner*"<sup>14</sup>. Hobbes (1588 – 1579) described as how power and authority are divided between a state's authoritative arms to prevent tyranny, to provide overriding power to the judiciary and guarantee general recruitment in times of emergency such as war<sup>15</sup>.

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<sup>8</sup> John S. Mill, "On Liberty" Magnum publication, 2016

<sup>9</sup> John Locke (1689), "Two Treatises on Government", Magnum publication, 2016

<sup>10</sup> See, for example, Aristotle's "Athenian State."

<sup>11</sup> Support for this argument can be found in Rhodes, P.J. (2006) "A History of the Classical World, 478-323BC", Oxford: Blackwell.

<sup>12</sup> Alfred Stepan and Cindy Skach, Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism, Vol. 46, No. 1 (Oct., 1993), pp. 1-22 (22 pages) Published By: The Johns Hopkins University Press

<sup>13</sup> Melvin Richter. (1977). The Political Theory of Montesquieu. Cambridge University Press

<sup>14</sup> Montesquieu (1748), The Spirit of Laws <https://media.bloomsbury.com/rep/files/primary-source-104-montesquieu.pdf>

<sup>15</sup> Mordechai Kremnitzer et al., "Decentralization of Powers and not Separation of Powers, On Prevention of Absolute Power from Government Authorities", Israeli Institute for Democracy, 2019

## **I.2.3 The Global Village: International Law**

### **The Centralized Model: Countries in Which Judicial Criticism Allows Invalidating Legislation**

The Federal Republic of **Germany** consists of 16 states each of which has an independent government dependent on one German constitution or “Basic Laws”. The German House of Representatives comprises of representatives of the 16 states and the Federal Constitutional Court presides over the judicial authority proudly as a check and balances’ instrument. The German Constitution<sup>16</sup> allows the Federal Constitutional Court to determine whether a legislated clause is congruent with the constitution or not. Paragraph 93 (1)(2) of the constitution authorizes the Federal Court to run the audit while paragraph 78 of the constitution allows the Federal Constitutional Court to declare a paragraph void.

## **I.3 A Comparison of Judge Selection Around the Globe**

Though unique to Israel, in principle, judge selection system resembles those in numerous democratic states: judges are selected by a combination of regime authorities. Following are a few examples.

In the **U.S** Judges are appointed by consideration of academic degrees, reflecting all the minorities of the state, Supreme Court judges are appointed by the president and approved by the senate after a hearing. A decisive consideration in choosing a judge for the American Supreme Court is a candidates’ personal identity, ideological and political view.<sup>17</sup> All judicial instances are authorized to criticize Congress laws. Final decisions depend on the Federal Supreme Court serving final instance with nine judges discussing together petitions and appeals. Supreme Court Justices are appointed for life, without any age limit. As for state Supreme Court judges, they are appointed by a committee of judges but in many cases the process is as described above.<sup>18</sup> Judge selection methods in the various states can be divided into categories: (1) direct elections by the public; (2) Selection by elected officials; (3)

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<sup>16</sup> Basic Law (Grundgesetz) of the Federal Republic of Germany, 1949 [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html)

<sup>17</sup> David Steven Rutkus, and Maureen Bearden. (2009). CRS Congressional Research Service. <sup>¶</sup>Supreme Court Nomination: Floor Procedure and Practice, 1789-2009 – Actions by the Senate, the Judiciary Committee and the President.

[https://www.everycrsreport.com/files/20090513\\_RL33225\\_e0ab87d79168ee339df64863ed7bb52874aea2b5.pdf](https://www.everycrsreport.com/files/20090513_RL33225_e0ab87d79168ee339df64863ed7bb52874aea2b5.pdf)

<sup>18</sup> Ibid



Selection by a committee appointed by officials; (4) appointment by a state's governor and an appointed commission and approved by public election.<sup>19</sup>

## **I.4 State of Israel: Jewish and Democratic**

As a democratic state, there are elections and people for parliament in Israel, but not for government. The government depends on election results, where the party that gets the most votes can form a government. The problem arises from the fact that the flexible regime model with blurred separation of authorities, whereby in most cases, the majority of government members are also Knesset members, resulting in a situation where the government is part of the legislative authority, and the Knesset and administrative courts have judicial authority. Thus, the regime is one where authorities overlap and it is possible to state that there is no genuine and rigorous separation of authorities, although there is decentralization of authorities, checks and balances.

## **I.5 Judicial System in Israel**

### **I.5.1 How Judges Are Selected in Israel**

Paragraph 4 of the Basic Law states: "(a) A judge shall be appointed by the President of the State, in accordance with the JSC decision. (b) The Committee shall be made up of nine members, who are the President of the Supreme Court, two other justices of the Supreme Court chosen by their fellow justices, the Minister of Justice and another Minister assigned by the Government, two Members of the Knesset selected by the Knesset, and two representatives of the Bar Association, selected by the National Council of the Association. The Minister of Justice shall be the Chairperson of the Committee."<sup>20</sup>

### **I.5.2 Criticism of the Judicial Selection Committee**

Since its inception, much criticism has been voiced with regard to the JSC, its role, work processes, and mainly its composition. On the face of it, the JSC's role is clear – to select judges based on professional criteria that had been broadly agreed upon decades ago, as briefly depicted above. However, critics have made diverse proposals regarding possible changes in the JSC's composition. One such proposal is increasing the rate of the political majority's representation. This proposal is based on the notion that judge selection predominantly based on professional criteria is not suitable for courts debating ethical and moral issues (in particular the Supreme Court, when it discusses issues touching upon judicial

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<sup>19</sup> Ibid

<sup>20</sup> <https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawTheJudiciary.pdf>

control over the legislative authority).<sup>21</sup> Critics have also maintained that the composition of Supreme Court Judges does not really represent Israeli society and all the sectors within it, and have suggested changing the committee's structure, so that the political majority's weight will increase.<sup>22</sup>

## **I.6 The Current Reform Proposal (2023)**

Even before his appointment as Minister of Justice, MK Yariv Levin proposed reforming the way Supreme Court judges are selected, which would lead to the coalition's absolute control of the procedure. According to his proposal, Supreme Court judges would be selected by the government and its president by the Knesset in a secret ballot.

There are those who believe this is an unreasonable proposal, but mainly brings to a peak the focus of those seeking to change the judge selection model, aspiring to politicize it. Today, judge selection procedures in Israel are carried out by the JSC, whose makeup includes elected officials and representatives from the judicial and law professions. Traditionally, judge selection in Israel has been viewed as guaranteeing judges' non-dependence and professional status, and reflection of state vision. The Israeli model belongs to accepted judicial tradition, whereby professional considerations are upmost in selecting judges. Moreover, it is influenced by a broader trend of professionalizing the judge's selection model in various democracies, which brought committees to the fore in the transition to appointment through judicial councils. An appointment giving greater weight to professional factors.<sup>23</sup>

### **I.6.1 But the Times, They Are Changing**

As time goes by, the world is changing, global politics change, and the Israeli politics is extremely dynamic, and the current situation with government changing too often. When governments change, so does the Knesset's composition. Theoretically, this should not affect the judiciary, perhaps except the appointment of the Attorney General of Israel. And thus, the tables have turned. The talk today no longer focuses on fundamental constitutional arrangements and contents of constitutional text that should be completed and anchored, but mostly on Supreme Court judge selection mechanisms and the alleged need to balance the existing model in favor of stronger political influence in the JSC. This may constitute a type of bias - a categorical and one-dimensional focus on the question of constitution judicial

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<sup>21</sup> Guy Lurie. (2022). Appointing Judges: Past Present and Future. <https://www.idi.org.il/articles/25948>

<sup>22</sup> Ibid

<sup>23</sup> Shai Nitzan Cohen, Shimon Nataf, & Aviad Bakshi. (2022). Selecting Judges to Constitutional Courts - A Comparative Study. Kohelet Policy Forum Paper No. 55. [https://en.kohelet.org.il/wp-content/uploads/2022/05/KPF0127\\_JusticeConstCourt\\_E\\_2022.pdf](https://en.kohelet.org.il/wp-content/uploads/2022/05/KPF0127_JusticeConstCourt_E_2022.pdf)

accountability, an undesired phenomenon where not enough attention is given to the constitutional structure's scope. This calls for a renewed discussion of the judge selection method in Israel.<sup>24</sup>

### **1.6.3 Basic Law: Human Dignity and Liberty**

Even though not entrenched, this law became central in terms of how relationships between the authorities changed. According to some jurists view, and many Supreme Court judges, headed by its president, Aharon Barak, the introduction of the Basic Law: Freedom of Occupation started a constitutional revolution, because the Knesset granted these two basic laws a super-legal status according to which courts had the authority to annul any law contradicting these basic laws. With the legislation of these basic laws, the status of human rights in Israel changed, and the judiciary could limit the Knesset. This approach is expressed in Supreme Court rulings, which over the years have abolished 22 legislative acts contradicting these basic laws. Other jurists, among them former president Moshe Landau, opposed this view. These laws and the possibility of invalidating laws has a chilling effect. The Knesset does not pass every law in which it is interested, because concerns about it being invalidated through the HCJ.<sup>25</sup>

## **I.7 Constitutional Revolution**

The above Basic Laws created a precedent in the state of Israel with regard to the constitutional status of laws intended to protect individuals. And the train had left the station. By chance, at that same time, one of the Supreme Court justices, who would become president of the Supreme Court, the Honorable Judge Aharon Barak, who left his mark on the Supreme Court? Also, there are those who would say the supremacy, for good and bad, of the judiciary over the other two authorities.

### **I.7.1 Court's Authority to Criticize Government**

The Court's authority to criticize government authority from the lowest administrative level to government decisions are determined in the Basic Law: The Judiciary.<sup>26</sup>

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<sup>24</sup> Guy Lurie (2022). Method of Judge selection in Israel: To Correct, Not Destroy.

<https://www.idi.org.il/media/18805/electing-judges-in-israel.pdf>

<sup>25</sup> Yehoshua Shofman, Y. (2019). The Legal Revolution.

[https://www.gov.il/he/Departments/publications/reports/roots\\_1992\\_1](https://www.gov.il/he/Departments/publications/reports/roots_1992_1)

<sup>26</sup> Basic Law: The Judiciary, see 15 (c) – (d)

<https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawTheJudiciary.pdf>

“(c) *The Supreme Court shall also sit as a High Court of Justice. When so sitting it shall deliberate matters, in which it deems it necessary to provide relief for the sake of justice, and are not under the jurisdiction of another court or tribunal.*

(d) *Without prejudice to the generalness of the provisions in clause (c), the Supreme Court sitting as High Court of Justice, is authorized...*”

It is important to note the law's status as a basic law which enjoys by virtue of its power being on a greater normative level than other laws.<sup>27</sup> After the constitutional revolution the status of basic laws became central to judicial discourse<sup>28</sup> and some argue that the Mizrahi judgement was not created in a void and its origins were in processes that penetrated a decade earlier in the 1980s<sup>29</sup>.

## **I.8 Politics and Law**

Since the Elon Moreh<sup>30</sup> ruling, political questions have been decided by the court. The trend that everything is capable of being handled judicially, while the public's sense in Israel is that it is impossible for political opinions not to play a role.

This ruling is considered a point of light in the Israeli Supreme Court rulings with regard to the occupied territories. The Acting President (as described then) Moshe Landau, who wrote the principal opinion on the case, saw, without doubt, that a decision in favor of the Palestinian residents is a daring decision, a dramatic and courageous step that for which the court was likely to pay a price.

## **I.9 Populism**

### **I.9.1 Source of the Term and Tracing its Roots**

The term 'populism' dates back to the Latin word *populous*, meaning **people**. The term – politically – was associated first when the American People's Party was established at the end of the 1890s<sup>31</sup>, when the term developed and became associated with other political

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<sup>27</sup> Amnon Rubinstein, “The Constitutional Law of the State of Israel”, 1990/1. Jerusalem, Shoken Publications

<sup>28</sup> Civil Appeal 6821/93, United Mizrahi Bank vs. Migdal Community Settlement; published in Nevo (hereinafter, Mizrahi judgement)

[https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/United%20Mizrahi%20Bank%20v.%20Migdal%20Cooperative%20Village\\_0.pdf](https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/United%20Mizrahi%20Bank%20v.%20Migdal%20Cooperative%20Village_0.pdf)

<sup>29</sup> Menachem Mautner. (1993). “Decline of formalism and rise of values in the Israeli Judiciary”, *Legal Studies* (Tel Aviv University Law Review) 17 <https://www.tau.ac.il/law/mautner/books/yeridat-hafur.pdf>

<sup>30</sup> David Kretzmer and Limor Yehuda, (22.01.2023). Once and for All – Why Did Begin Say "There are Judges in Israel." <https://www.makorrishon.co.il/opinion/568779/>

<sup>31</sup> The Populist Party, <http://projects.vassar.edu/1896/populists.html>

movements including the Narodnik movement in Russia, Peronists and Varguism in 1940's South America and European radical right populism in the 21<sup>st</sup> century.<sup>32</sup>

Populism itself was coined in the same period as the rise of peoples' parties to describe political ideology and political platform of the populist party. Then, in reference to the term, the party focused on promoting the rights and interests of simple citizens, or the people, against the perceived dominance of rich elites and very powerful corporations.<sup>33</sup>

## **CHAPTER II: METHODOLOGY**

### **II.1 Qualitative Research**

This study is based on the qualitative research approach, interpreting, reacting and helping to express experience or personal knowledge in the time and space of the human experience. Interpretation is based on data, which is drawn from the researcher's and participants' world, views etc. The main issue is the process. In fact, the key question is "how". Qualitative research does not require objectivity and lack of dependency, unlike quantitative research characterized mostly by separation between researchers and the object of their research.<sup>34</sup>

To look at qualitative research from the perspective of the methodological approaches, I will present a short definition of quantitative research. Quantitative research aims to explain phenomena, sometimes by seeking causal associations. Its main issue is the outcome of "how many", and the cornerstone of exploration is objectivity, in other words non-dependence between a researcher's identity and research findings. Obviously, this is an inclusive definition, but it unites this form of research under one purpose of setting up a mirror image for the qualitative paradigm<sup>35</sup>.

### **II.2 Case Study**

As stated, this research was conducted using a qualitative research method, more precisely, a case study. I used the example of the JSC to induce relationship between the various authorities in the State of Israel. By comparing it to the 'parent' of the Israeli judicial system – the British judicial system.

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<sup>32</sup> Danny Filc (2010). "We are the People, You Are Not, Inclusive and Exclusive Populism in Israel" in Studies in the Rebirth of Israel, vol. 20, Ben Gurion University publications.

<sup>33</sup> Avshalom Ben Zvi, Pipedreams or Possible Reality, Abstract for PhD, Socio-economic alternatives to Capitalism at the end of the 19<sup>th</sup> century: Edward Bellamy, the populist movement and Benjamin Ze'ev Herzl <https://observpost.files.wordpress.com/2016/09/d7a2d791d795d793d7aa-d7a1d79ed799d7a0d7a8d799d795d79f-d790d791d7a9d79cd795d79d-d791d79f-d7a6d791d7991.pdf>

<sup>34</sup> Patricia Leavy (2014). The Oxford Handbook of Qualitative Research. Oxford University Press.

<sup>35</sup> Asher Shkedi (2003). Words of Meaning: Qualitative Research Theory and Practice. Tel Aviv: Ramot

Case study is a research approach according to which a researcher explores in depth a program, an event, an activity, a process<sup>36</sup> Stake defined it as an observation of human activity at a particular time and place and referred to it as an investigation that does not necessarily focus on one specific case but on a phenomenon, a population, and general conditions of a research field, all of which may generate insights pertaining to a specific topic<sup>37</sup>. Shkedi defined case study as research of one case explaining a broad phenomenon which a researcher is interested in exploring. Case study is inductive, it does not seek to confirm or refute hypotheses.<sup>38</sup>

### II.3 Research Design

**Table 1: Research design: a multi-staged and multi methods qualitative research**

Stage	Aim	Research Tool	Research Population	Data Analysis Method
1	To investigate the history of the relationships between the Knesset and the two authorities - Legislative and Judiciary	Documentary analysis	-----	Content analysis
2	To examine struggles between legislation and court rulings	Semi-structured interviews	10 Decision makers 5 MKs and Judges	Content analysis
3	To explore processes of judges' selection processes	Semi-structured interviews	10 JSC members	Content analysis

### II.4 Research Population

Naturally, choosing interviews requires interviewees that are well acquainted with the research field. Interviews constitute a research tool employed to gather information about the research phenomenon. Hence, 15 interviews were conducted with participants including JSC members over the years, a former Minister of Justice, former Supreme Court President, (former) Knesset Members as well as representatives of the Bar Association in the ISC, including one from a minority sector, whose point of view was important to examine.

<sup>36</sup> John, W. Creswell (1998). *Qualitative inquiry and research design: Choosing among five traditions*. London: Sage Publications.

<sup>37</sup> Robert, E. Stake (1995). *The Art of Case Study Research*. Thousand Oaks, CA: Sage

<sup>38</sup> Asher Shkedi. (2003). *Words of Meaning. Qualitative Research Theory and Practice*. Tel Aviv: Ramot

## CHAPTER III: RESEARCH FINDINGS

### III.1 Findings Emerging from Research Question 1 - What issues are involved in the struggles between legislation and rulings?

Based on the literature review conducted for the purpose of this study, insights can be gained regarding the history of the relationship between the legislative authority and the judiciary.

- The State of Israel inherited the common law tradition from Britain
- Over the years, the ongoing struggle between the right-wing and left-wing political factions has also been expressed in struggles between the legislative authority and the judiciary, mainly with regard to issues of values of religion and state.
- The legislative authority attempts to maintain its stability and independence in passing laws, while the judiciary appropriates the ability to invalidate laws through the override clause
- The override clause represents a mechanism that allows the court to override a fundamental law if it is determined that the law is unconstitutional in that it constitutes a violation of human rights
- The override clause allows the judiciary to disqualify a political office holder if the person is facing an indictment or on suspicion of governmental corruption
- On the other hand, canceling the override clause will allow the Knesset to enact any law that violates human rights by virtue of the coalition's majority in the Knesset (Fuchs, 2022).

### III.2 Findings Emerging from Research Question 2: *What issues are involved in the struggles between legislation and rulings?*

Content analysis of the interviews yielded eight categories presented in Table 2.

**Table 2: Categories and sub-categories in the process of judge selection process in Israel**

Categories	Sub-categories	Sample evidence
1. Definitions of democracy		<i>The people's choice</i>
2. Judiciary roles		<i>Textual interpretation of the law, not legislating in place of parliament</i>
3. Legislator (Knesset) roles		<i>Legislating in accordance with human rights</i>
4. Israeli government as the executive	Roles of the executive	<i>Govern, by means of legislation (in parliament) and law enforcement</i>
	Restrictions on the executive	<i>Government must be restrained in one way or another</i>

5. Attitudes towards the enactment of a constitution		<i>Even with a constitution, in the absence of a strong judiciary democracy is unfeasible</i>
6. Israel's declaration of independence		<i>The judiciary derives its powers from the founding document of the state of Israel</i>
7. Human rights	Equality before the law	<i>Gender equality is undoubtedly a direction which ought to be promoted under the aegis of a democratic culture</i>
	Freedom of expression	<i>Already in the state's early days the court invalidated a decision made by the minister of interior to shut down the communist newspaper 'Kol Haam'</i>
	Freedom of occupation	<i>Already exists in the basic law: freedom of occupation</i>
8. Relations between the judiciary and the parliament		<i>The judiciary should execute its role not by coercion, but through a dialog with parliament</i>

### **II.3 Findings Emerging from Research Question 3: What processes are involved in the judge selection process?**

Content analysis conducted on data collected from the interviews revealed five categories shown in Table 3.

**Table 3: Categories in relation to the judge selection process**

<b>Categories</b>	<b>Sample evidence</b>
Attitudes towards the JSC	<i>I believe that the line we took in the JSC to open the judicial system to all cultures in Israeli society will continue</i>
Attitudes towards the Attorney General	<i>Attorney General with a strong standing is another restraining force.</i>
Attitudes towards the judicial overhaul	<i>We are demonstrating for democracy</i>
Attitudes towards the protests against the judicial overhaul	<i>We feel that our democracy is being stolen</i>
Attitudes towards the judge selection process	<i>We trust the judges and not the politicians</i>

## **CHAPTER V: CONCLUSIONS AND RECOMMENDATIONS**

### **V.1 Factual Conclusions**

#### **V.1.1 Conclusions Arising from Research Question 1: What is the history of the relationships between the two authorities – Legislative and Judiciary?**

At a factual level, insights revealed from the first research question point to ongoing struggles since the state's establishment until today between the legislative and judiciary authorities in the state of Israel as a multicultural democracy. Historically, the relationships between the



legislative authority and judiciary is characterized by power struggles between the two authorities, with the legislative authority fighting for its right to stability and independence in legislating laws and viewing the judiciary authority as a filtering laws, whereas the judiciary authority fights to preserve human rights in a multicultural democracy.

### **V.1.2 Conclusions Arising from Research Question 2: What issues are involved in the struggles between legislation and rulings?**

Factually, the conclusions arising from the discussion of the findings showed different views of democracy in Israeli society influencing judge selection processes in the state of Israel. The findings revealed a multicultural society containing migrants coming from different and diverse cultures, finding it difficult to define democracy, and thus the multitude of perceptions in Israeli society about democracy. Accordingly, this diversity in Israeli society regard judge selection processes differently, including a view that this process is characterized by basic principles of ideological pluralism, freedom, human rights irrespective of race, gender and ethnic belonging.

In relation to the court's role, the study revealed that struggles between the judiciary authority and executive authority in a democratic country are also expressed in new judges' selection processes in the state of Israel where there is ambiguity with regard to the principle of separation between authorities. Additionally, the definition of Israel as a Jewish state is also expressed in legislation carried out by the Knesset over the years, and hence, does not allow guaranteeing the human rights of all state citizens including the Arab minority, and necessarily includes judge selection in Israel. Furthermore, in the absence of an Israeli constitution, although the Knesset is responsible for preserving the values of the Declaration of Independence, the Declaration of Independence has remained solely an interpretive and not constitutional source. The question of the Declaration of Independence's status is also part of the judge selection process in the state of Israel today.

Another conclusion arising from this research referred to the role of the Knesset as controlling the government, which showed that in the absence of a clear separation of authorities, the Knesset cannot supervise the government's work, and hence judge selection process in Israel are characterized by controversies and struggles. Moreover, interpretation of the Knesset's roles is a key component in the process for appointing members of the Judges Selection Committee (JSC), and therefore, the judge selection process is contaminated by

populism as a result of the ambiguity in relation to the separation of authorities principle in Israel.

Given that separation of authorities in the state of Israel is unclear, arrangements for judge selection in Israel is characterized by the need for checks and balances for government authority to prevent political factors from gaining control over judicial procedures in Israel. Additionally, judge selection processes and the conflicts and split in the political system in relation to this is linked to the absence of a constitution in Israel.

The absence of a constitution in Israel and ambiguity with regard to the interpretive status of the Declaration of Independence in relation to the state of Israel being a democratic country, constitute a significant factor in judge selection process in Israel. As a result, and in light of rising populism in Israel, the question of human rights is a core component in the judge selection process. Finally, the research showed that relationships between the courts and the Knesset require constant dialogue as a key component in judge selection process in Israel.

### **V.1.3 Conclusions Arising from Research Question 3: What processes are involved in the judge selection process?**

This study revealed attitudes regarding the JSC showing that judge selection process in the hand of this committee are seen as preventing representation for the multicultural diversity characterizing Israeli society. Therefore, the conclusions arising from this study demand that process of appointing JSC members will ensure a balance between politicians and professionals and be characterized by a requirement for transparency and clear parameters to ensure public trust in the judicial system.

Conclusions also revealed dual attitudes towards the Attorney General. These dual attitudes are linked to judge selection process in the state of Israel, which is affected by the spirit of populism seeking to reduce the Attorney General's power to maintain the ruling party's power.

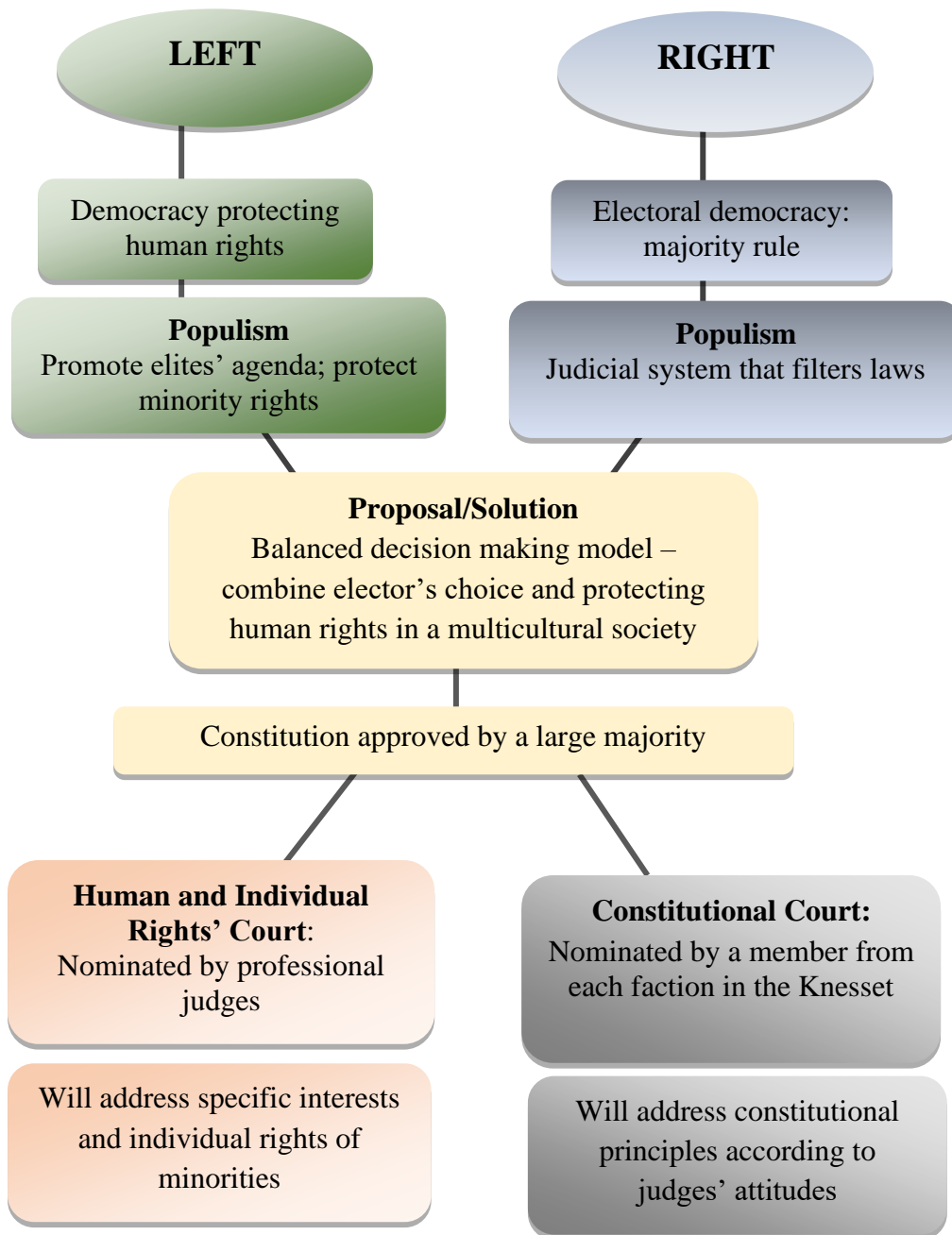
Additionally, attitudes toward judicial reform arising in this study show that the judge selection process is influenced by attempts to carry out a judicial reform, which is seen as a populist step intended to perpetuate government rule over the Israeli judiciary. Furthermore, since the judges' selection process is seen as populist, attempts to change the judge selection has encountered widespread protest throughout the country. As a result, the judge selection process in Israel is affected by attitudes toward demonstrations against the judicial reform

that arose as a result of the fear over weakening the power of the judicial system in Israel as a democratic country.

## **V.2 Conceptual Conclusions**

Findings arising from this study allow for presentation of a model for judge selection in a democratic multicultural country.

Figure 1 presents the Integrative Model of Judges' Selection in a Multicultural Democratic State: the Israeli Case



### **Figure 1: JS-MDS - Integrative Model of Judges' Selection in a Multicultural Democratic State: the Israeli Case**

The difficulties identified in this work will serve as grounds for the conclusions deduced with regard to the desired model so democracy is understood comprehensively both in electoral and preserving human rights terms. We saw the present societies are multicultural for reasons of migration, historic repression and different faiths. Within a country, different groups of people with different faiths, symbols and language origins can coexist. On one hand every culture strives for expression within the state framework and on the other hand, the state strives for unification of its laws and rules for all its diverse groups.

Populism does not exist peacefully in a multicultural country. Populist movements seek to return the power to decide policy to the “people” and the judicial system interferes with this. Therefore, for example, in Israel, people of the right wing argue that it does not matter whether they have been in government more or less since 1977. Policy decision making has remained in the hands of unelected minority groups such as the judiciary, elite officials, academics and media personnel.

Hence, any decisions taken by a majority right wing Knesset are filtered by the Attorney General, Supreme Court sitting as HCJ, media and academics' criticism to an extent that certain law proposals expressing the wish of the electorate give rise to an outcome that is not similar to their original proposals because of barriers, according to them, of which the Basic Law is based: Human Rights and Liberty is an example. As such, when passed, Knesset members chose to include within a basic human rights value in the image of the value of equality, but a HCJ petition in the Mizrahi case<sup>39</sup> ruled that this value was included in the concept of human dignity and hence a value not expressed in the electorate's wishes is in fact applied by an unelected group of judges contrary to the legislation.

Furthermore, this refers to a Basic Law, and since Basic Laws obligate all future Knesset members to legislate accordingly, a situation arises in which all Knesset members who propose laws would not be able to submit them to the Law and Justice Committee without the Attorney General's confirmation that they do not contradict HCJ resolution, thus according to them, the HCJ has robbed of the right to legislate laws according to their understanding.

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<sup>39</sup> Bank Mizrahi V Migdal

[https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/United%20Mizrachi%20Bank%20v.%20Migdal%20Cooperative%20Village\\_0.pdf](https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/United%20Mizrachi%20Bank%20v.%20Migdal%20Cooperative%20Village_0.pdf)

In this sense, both the media and academia who accepted this interpretation of HCJ molded in practice the electorate's awareness that is not consistent with their wishes but that of HCJ, and there are also opposite cases. For example, the disengagement from Gaza is presented by right-wing factors as a government step, which in fact was supported by the media, academia and HCJ based on a flexible interpretation that allows execution of what some of them see as a disaster in the state of Israel. They even added that the then Prime Minister, Ariel Sharon, wanted to evade legal proceedings in his case and made a step more characteristic of a left wing person who uprooted Jews from their place of residence, because of his need to win the support of academia, media elite and HCJ who in right-wing factors view, have a clear leftist approach. A famous statement by the well-known journalist, Amnon Abramowitz saying that because of the disengagement plan, it was necessary to handle Prime Minister Sharon with kid-gloves, is brought as an example of certain elites' great power to protect agendas and if the idea had been contrary to their leftist position, then of course judicial steps would not have progressed and the disengagement would not have taken place.

On the other hand, the leftist approach generally emphasizes its protecting human rights, but right wingers would call this populism because the left's appeal was not to the whole nation including various elites to allow processes such as the disengagement. Today, while writing these lines, the state of Israel suffered a murderous attack in which more than 1500 soldiers and citizens living and operating close to the border with the Gaza strip were murdered or kidnapped. People from the right mention the disengagement and the support of various elites leading to uprooting Jewish settlements in Gaza and deployment of many military forces leading to the terrible result today in which Hamas soldiers and residents of the Gaza Strip carried out slaughter of Jews.

Political life teaches us that there are no right or wrong or good or bad decisions. Decisions need a historic perspective to allow examination of their execution. Today the right is demanding explanations from left elites about their encouragement and support for the disengagement. It is not interested in determining whether a certain decision was right or wrong.

This research focused on how decisions are made in a democratic country. Hence, it appears that the model proposed here can neutralize future claims by the left or right about how decisions are made; a balanced model emphasizing electoral wishes at a concrete time perfecting constitutional principles determined at a certain time in the history of the nation as

well as a judicial system structure reflecting these benefits can heal some of the public discourse about how decision making steps are separated from their outcomes. This is essential for democracy. Decision making systems in the proposed model can consider arguments about populism on any side and nevertheless, emphasize a combination between electoral choices and a system protecting human rights. Obviously, understanding that we live in a multicultural country, power systems between the people and elite in electoral wishes, versus protecting human rights, which in principle were intended to protect different minorities. This does not guarantee reaching correct decisions. It is likely to reduce arguments from any side about how decisions are made and thus wisely legitimize accepting basic and fundamental things in every democratic society, both for government and the justice system. Government and democratic systems have nothing but the trust they get from the entire public.

Recent months in the state of Israel where different entities have risen and clashed with voters' choice, have proven that the wishes of the majority of voters and those of the nation's elite and minorities are necessary as a foundation for the state's existence and this clash with various entities has led to an almost complete system shutdown in many fields – medicine, judiciary, military and even blows between various media networks. This struggle has even affected how global economic systems have dealt with the Israeli economy, with warning to decrease Israel's credit rating and in practice weakening of the Israeli shekel against foreign currencies. The people must recognize and understand the needs of different elites in the global world in which global communications operate rapidly and they must recognize the value systems of different groups in the nation. Uniting interests can be expressed in judge selection process reflecting the nation's and elites' values as well as secured human rights in constitutional questions.

One side of providing a constitution accepted with a large majority will establish eternal values of the nation and on the other hand, when any faction in the legislature can appoint judges will give expression to its values and belief. This will end the argument that the judicial system takes constitutional decisions when it is not elected by the people and on the other hand, judges appointed by parliamentary factions will be limited in their interpretation of cases coming before them by a fixed, clear and stable constitution. The human rights' system will be protected specifically by a Human Rights Court whose appointments will be professional and will reflect individual protection of human rights, which no one from the right or left wings opposes. Every decision made will be in favor of a specific case in the

Human Rights Court. The Constitutional Court will make decisions on principles according to judges' initial positions and considering principles determined in the constitution. Here it should be said that any amendment to the constitution will require a two third's majority of Knesset members and the core principle is decision-making arrangements that will earn the broadest legitimization with regard to different meanings of democracy but particularly in multicultural societies where at any given point in time every minority group has its own interests.

### **V.3 Practical Implications and Recommendations**

In light of an analysis of the judicial situation, rise of populism and resultant relationships between the authorities, I seek to make to the State President, Israeli Knesset and judicial system a number of recommendations to apply in practice as presented in the proposed the model arising in the conclusions of this study.

#### **V.3.1 Recommendations to the State President**

- It is recommended that the State President act to establish a constitution for Israel.
- By virtue of his role to recommend personnel to form the government, it is recommended that the State President determine that whoever establishes the next government include opposition and coalition members, the head of the judiciary and experts in political science and law to reach understandings, within one year, about a constitution to be proposed a vote.

#### **V.3.2 Recommendations for the Israeli Knesset**

- The Israeli Knesset, sitting as the constituent authority, will reach agreements in a timely manner coming from the President and will vote on a proposed constitution with a two thirds majority.
- Composition of faction representatives making up the Knesset be relatively stable, and thus with enacting a constitution with a two third's majority, is relevant not just at the time of voting, but for the future as well.
- Additionally, it is recommended the Knesset determine a mechanism for constitutional amendments either with a two thirds majority of members, or a referendum with a similar majority. It appears to me that such a mechanism will provide the nation with active democratic participation and increase its trust.



### **V.3.3 Recommendations to President of Supreme Court**

- The President of Supreme Court, as well as various experts must be active participants in the State President's committee so that the proposed constitution has a theoretical validity acceptable to the judicial system as well.
- To establish a dialogue leading to broad agreements required by the judiciary to increase trust in it.
- Additionally, the President of the Supreme Court and experts will propose clear and fixed guidelines for judicial interpretation of the constitution, while interpretation for the Human Rights Court will be expansive. Hence there will be a balance between electoral and fundamental democracy.

### **V.4 Research Limitations**

Limitations of this research refer mainly to qualitative research and case study limitations.

#### **V.4.1 Limitations Linked to Qualitative Research**

Qualitative research was chosen as fitting to explore the issues that led the research, because this type of research allows in-depth examination of these issues through perceptions, behaviors and attitudes of people involved in explored issues<sup>40</sup>.

On the other hand, because the direct involvement of research participants was likely to distort the data. Therefore, this qualitative research served as a case study enabling in-depth examination of a small number of participants<sup>41</sup>, and by triangulating research tools and participants, which included a broad range of politicians from the left and right, lawyers, legal personnel and academic to increase confidence in the findings.

#### **V.4.2 Limitations Linked with Researcher's Involvement**

The researcher is a human rights' lawyer and therefore, his involvement in examined issues is high. According to Tzabar Ben-Yehoshua<sup>42</sup>, a high degree of researcher involvement in qualitative research is likely to produce subjectivity that is likely to distort the data and its analysis. In contrast, this researcher's subjective attitude enables him to access reliable information sources, which provide valid and genuine information about the examined issues and therefore, the degree of confidence in the findings is high.

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<sup>40</sup> Asher Shkedi (2003). *Words of Meaning. Qualitative Research Theory and Practice*. Tel Aviv: Ramot.

<sup>41</sup> Robert K. Yin. (2009). *Case Study Research: Design and Methods*. Thousand Oaks SAGE Publications.

<sup>42</sup> Naama Tzabar Ben-Yehoshua (2001). *Traditions and Trends in Qualitative Research* (pp. 9-12). Tel Aviv: Dvir)

### **V.4.3 Limitations Linked to Generalizability**

Qualitative research is inductive based on a small number of participants and therefore cannot claim generalization. However, since data was collected in participants' natural environment and taken from their own words, in spite of the low reliability, the degree of validity is high and readers will decide themselves whether it is possible to generalize these findings in a similar context<sup>43</sup>.

## **V.5 Contribution to Knowledge**

### **V.5.1 Contribution to Theoretical Knowledge**

The integrative JS-MDS model for judges' selection in a multicultural democratic state, JS-MDS model, is innovative, because no identical models were found. Additionally, because the model emerged from data collected and analyzed for purposes of this study, it is original.

Likewise, this innovative and original model adds to knowledge in the fields of political science and international relations and thus this study closed the gap in knowledge in the field. The JS-DMS integrative model combines theories in the field of multiculturalism, political science, international relations and law.

### **V.5.2 Contribution to Applied Knowledge**

The JS-MDS model is also a practical model because it can guide multicultural democratic countries. The factual and conceptual conclusions emerging from this study through the integrative model can change policy in Israel and many multicultural democratic countries in relation to judges' appointment, choosing the makeup of JSC, establish a constitution in countries that do not have one, and establish proper relations between the legislative and judicial authorities to preserve minorities' human rights and act appropriately in face of increasing populism throughout the world.

## **V.6 Further Studies**

1. The research I conducted is qualitative. Therefore, it is limited in its ability to empirically examine the relationships between authorities globally. Moreover, the rise of populism was examined, particularly in the past twenty years, and this populism research should be expanded in the context of international relations.

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<sup>43</sup>John W. Creswell (2009). *Research design: Qualitative, quantitative, and mix methods approaches* (3rd ed.). Thousand Oaks, CA: Sage

2. It is recommended conducting quantitative research to best explore the rate of increase of populism and different countries and gain insights about the scope of the phenomenon and how to address it.
3. Another recommendation relates to what is missing in my research. It is recommended conducting in-depth research into mechanisms for judge selection in different countries, the political party structure, as well as how laws are legislated and amended globally. More and comprehensive work remains.

## **V.7 Universal Significance of the Research**

The universal significance of this case study research refers to the analysis of the relationship between the legislative authority and the judicial authority. Based on this analysis and on data collected through interviews with decision makers and judiciary figures a model was built that can improve the selection process of judges in democratic and multicultural countries worldwide. Finally, damage to the people's trust in the judicial system is a real danger to democracy.

The factual and conceptual conclusions emerging from this study through the integrative model can change policy in Israel and many multicultural democratic countries in relation to judges' appointment, choosing the makeup of JSC, establish a constitution in countries that do not have one, and establish proper relations between the legislative and judicial authorities to preserve minorities' human rights and act appropriately in face of increasing populism throughout the world.

This study sought to investigate the interrelations between the legislative and the judicial authorities and to offer a model that would improve those relations. The significance of this study lies in allowing an authentic representation of the people that would reflect their way of thinking, thereby creating more trust in the Supreme Court which has been severely damaged in recent years in Israel.

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