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Research Article

Israel's Judicial Reform Package: The End of Legal Elitism and the Legitimacy Crisis

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Abstract

This article examines the conditions and consequences of the proposed judicial reform package on Israel's constitutional order using an analytical and library-based research method. Within Israel's separation of powers framework, two main currents — religious Zionism and secular Zionism — are institutionally represented in the Knesset (and the executive branch) and the judiciary, respectively. These two factions originally converged on the foundational goal of establishing a safe homeland for Jews. The judicial reform package, which authorizes the Knesset to override Supreme Court rulings by a simple majority, alters the composition of the Judicial Selection Committee, lowers the retirement age of Supreme Court justices, restricts the use of the “reasonableness doctrine,” and reduces the authority of legal

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advisors, effectively curtails the judiciary's capacity to check and balance periodic majorities. Given the country's demographic structure, the approval of this bill would allow the religious and fundamentalist bloc to gain absolute power. As a result of the erosion of constitutional safeguards based on the separation of powers, Israel would face major constitutional challenges, including a legitimacy crisis, the restriction of citizens' political agency, the violation of minority rights, and the weakening of legal security. These developments ultimately conflict with the founding vision of the State of Israel.

Keywords: Israel, judicial reform, religious dictatorship, separation of powers, Zionism

Introduction

Since the introduction of the Israeli judicial reform package in January 2023 by Justice Minister Yariv Levin, the country has faced widespread and unprecedented protests that have profoundly affected its political and social landscape. The package, aimed at strengthening the powers of the legislative and executive branches vis-à-vis the judiciary, was first announced on January 4, 2023, and its draft was published on January 11. On February 13 of the same year, the Knesset's Constitution Committee approved the draft for a first reading; however, massive protests and general strikes on March 27 forced Netanyahu to temporarily suspend the process for talks with the opposition. After the failure of negotiations in June 2023, the government pushed forward part of the bill, and on July 24, the Knesset passed a law limiting the Supreme Court's authority to declare government decisions "unreasonable." This law was struck down by the Supreme Court on January 1, 2024, by a vote of 8–7, with the Court also affirming its own authority to review Basic Laws (by a 12–3 vote). In March 2025, as tensions from the war in the Middle East subsided, the Knesset passed a law (March 27) changing the composition of the Judicial Selection Committee, thereby increasing political control over judicial appointments and reigniting controversy. The depth of the resulting divide is such that the opposition leader has described the passage of such bills as marking "the end of democracy in Israel," while Netanyahu has characterized the protests as an opposition attempt to create anarchy.

Examining the process of constitutional change in Israel—especially in relation to the radical and violent policies this country has adopted toward its neighbors (including the 12-day war with Iran)—can both clarify the causes and background of these policies and provide a framework for analyzing the trajectory of Israel's future policies, particularly in the realm of foreign affairs. Despite the significance of this topic and the 50-year history of disputes between Israel and Iran, to the best of the authors' knowledge, no Persian-language work has been devoted to the Israeli constitutional system and the interaction of its political forces within its legal framework.

The debates surrounding this reform package must be analyzed within the broader context of the real social conflicts and crises that

have emerged in Israeli society in recent years. Therefore, in the first section of this article, the foundations of the Israeli state, the balance of powers within it, and the unique model of separation of powers in Israel will be examined. In the second section, focusing on the provisions of the reform package, the potential consequences of its adoption and implementation will be illustrated.

1. The Constitutional System of Israel

Israel, as the nation-state¹ of the Jewish people, is a secular-democratic and at the same time a religious state; this dual and seemingly contradictory nature of the young state is the driving force that determines the power relations within its foundational structure. Therefore, in this chapter, beginning from this dual nature and explaining how the two elements of religion and secularism coexist, we will examine the “unconventional” implications of this situation for Israel’s constitutional system and its distribution of powers.

1-1. The Dual Nature of Israel’s Constitutional System

Israel is the only country in the world with a majority Jewish population. It was established in a region in Western Asia that Jews believe to be the traditional homeland of the Jewish people. The name of the country, which has its roots in the Old Testament, literally means “he who struggled with God,” and is the epithet of the prophet Jacob, who, according to the Bible, was blessed with this name after prevailing in a struggle with God (or His angel).² In other words, the *Land of Israel* can be understood as the land of a people who stood before God and entered into a covenant of obedience with Him in exchange for freedom and prosperity in the Promised Land.

1 The designation of Israel as a “state,” “nation-state,” or “country” is employed solely with reference to its de facto status under international law and shall not be construed as recognition of the legitimacy of this occupying regime’s sovereignty over Palestinian territories. For a discussion on this topic, see

Salehi, H., & Wintemute, R. (2024). From humanitarian law to anti-discrimination law: A human rights analysis of the Israeli-Palestinian conflict based on citizenship. *Journal of Legal Studies*, 16(1), 427-454. <https://doi.org/10.22099/jls.2024.49518.5115>

2 Genesis 32:23–27 (NIV)

The religious importance of this land to Jews is such that, according to certain passages in the *Talmud* (the Jewish legal text), living in the Land of Israel is a condition for belonging to the community of God's chosen people. (Ketubot 110b)¹ According to Jewish tradition, this land remained under Jewish rule until the exile of the Jews (Diaspora) as divine punishment for disobedience to God's commandments.

Nevertheless, the founding doctrine of the modern State of Israel emerged as a result of the secular movement of *political Zionism*² in the 19th century. This movement, associated with Theodor Herzl, began among Jewish intellectuals in Europe as a response to the "Jewish question"³ and sought to establish a Jewish state in the Land of Israel. Each of these elements will be examined separately below.

1-1-1. Judaism and the Absence of Political Sovereignty

The issue of political sovereignty in Jewish thought is confronted with a fundamental crisis—one that pertains to the concept of exile and the millennia-long absence of political sovereignty among the Jews. In other words, unlike Christians, who throughout the Middle Ages and even in the modern nation-states were practically engaged with questions of political authority, Jews were consistently excluded from the sphere of politics. The exile of the Jews from Israel marks the beginning of an era in the philosophy of Jewish history characterized by wandering and perpetual minority status. Although small Jewish communities likely emerged across Europe due to the comprehensive nature of Jewish law (*Halakha*) and the hierarchical structure of the rabbinic class⁴, their encounters with ruling powers were generally

1 In this book, it is stated that anyone who does not live in the Promised Land has no God; this statement, which holds legal significance regarding the right to determine one's place of residence in marriage, is derived from this verse in the Holy Scriptures: "To give to you the land of Canaan, to be your God" (Leviticus 25:38).

2 The national liberation movement for the establishment of a homeland for the Jewish people, which reached its peak with the creation of the State of Israel and subsequently continued to support this nation.

3 The "Jewish Question" refers to the crisis of the Jewish minority living without political sovereignty in European Christian countries; although this term emerged in the nineteenth century, engagement with this issue can be traced back to philosophers such as Spinoza and even Maimonides.

4 Examining the role of Halakha (Jewish law) and the rabbinate in shaping Jewish communities falls beyond the scope of this text; however, for an illustrative analysis

governed by a logic of separation and survival—a negative mode of engagement (Strauss, 2019 [1398]: 391–392).

However, the period of exile was not understood by many Jews as the end of Jewish political sovereignty over the Land of Israel, but rather as a temporary atonement that would eventually lead to the final establishment of a Jewish empire and the complete fulfillment of God's promise. In this sense, political thought among medieval Jewish believers, though seemingly disconnected from the concrete political realities of Europe, becomes possible only in relation to the ultimate gathering of the Jewish people in the divine utopia of the Promised Land.

Like other Abrahamic religions, political thought in Judaism faces a fundamental challenge: it must justify its legitimacy and necessity in the face of the comprehensiveness and sufficiency of religion itself. In other words, the Jewish political thinker must first explain why, and by what authority, one may speak of politics beyond the literal text of the Bible and legal-religious works. This fundamental challenge in articulating the political question within a religious society leads thinkers such as Maimonides to begin with the question of the conditions of possibility of the *Halakha*. That is, starting from the self-evident necessity of implementing divine commandments under the ancient covenant of the Jewish people, Maimonides conceives the political order as the *condition of possibility* for realizing this law in an actual political community¹ (see *Stanford Encyclopedia of Philosophy*, “Maimonides”). Although it is difficult to subsume all medieval Jewish thinkers under Maimonides' framework, the centrality of the law (*Halakha*) in their thought is undeniable (Strauss, 2019 [1398]: 393–394).

Therefore, for adherents of the Jewish faith, Jewish sovereignty is primarily understood as a rule under which the commandments and instructions of the *Torah* and *Talmud* are implemented. Moreover, the fundamental religious structures are those that are organized in order

of such communities in the modern era, one may refer to sections of *Eichmann in Jerusalem* by Hannah Arendt. In this work, Arendt regards the internal organization of Jewish communities as one of the factors that enabled the genocide of Jews during the Nazi era.

¹ For further information, refer to the book *Dalālat al-Ḥā'irīn*.

to enforce these laws. *Religious radical or fundamentalist Zionism* has emerged among this group of Jews.

1-1-2. Zionism and Political Secularism

Zionism is a nationalist and Jewish movement whose goal is the establishment and support of a Jewish national state in Palestine. Although Zionism emerged in Central and Eastern Europe in the late nineteenth century, it is in many ways a continuation of the historical connection of the Jewish people with the region of Palestine; *Zion* is the name of a hill in ancient Jerusalem.

There are three key principles that serve as the foundation for all versions of Zionism. The first is the belief that Jews, in addition to sharing a common religion, also constitute an ethno-cultural nation. The second principle is the ethno-cultural principle, which asserts that members of groups with a shared history and culture have fundamental, morally significant interests in preserving their culture and passing it on to future generations. These interests, in turn, justify political recognition and support, primarily through the right to national self-determination. The third principle of Zionism is the idea that Jews should exercise their right to ethno-national self-determination in Zion, that is, in their historical homeland, from which the Jewish people have been disconnected since ancient times. (Gans, 2013, p. 473)

In the sixteenth and seventeenth centuries, certain individuals appeared claiming to be the messiah of the end times and sought to persuade Jews to return to Palestine. However, the *Haskalah* (Jewish Enlightenment) movement in the late eighteenth century encouraged Jews to integrate into secular Western culture. In the early nineteenth century, the dream of Jewish return to Palestine was largely sustained by *Christian millenarians*. Despite the *Haskalah* movement, Jews in Eastern Europe did not assimilate into Western culture, and in response to Tsarist policies, they established the *Hovevei Ziyon* (Lovers of Zion) societies to strengthen Jewish agricultural and artisan settlements in Palestine.

Theodor Herzl, an Austrian journalist, brought about a political turn in the Zionist movement. He viewed Jewish assimilation as an ideal frustrated by the persistence of antisemitism. Hence, he argued that if Jews were compelled by external pressure to form a nation,

they could lead normal lives only through concentration in a single geographic area. In 1897, Herzl convened the First Zionist Congress in Basel, Switzerland—a congress that resulted in the *Basel Program*, which stated that “Zionism seeks to establish for the Jewish people a home in Palestine secured by public law.”¹

In this respect, the Haskalah movement and Herzl's political turn gave rise to a form of *political Zionism* that—although sharing with religious Zionism the aspiration for a return to the Promised Land—represented a meaningful rupture with Jewish tradition and a leap toward secularism. The modern State of Israel thus constitutes the arena in which all the tensions born of the divide between *secular Zionism* and *religious (fundamentalist) Zionism* are realized.

As noted earlier, throughout 3,500 years of Jewish history, there had been no tradition of political sovereignty or responsibility for governance. In this sense, the State of Israel represents the first experience of the Jewish people bearing the responsibility of political rule. Since its establishment—and especially in recent decades—Israeli society and its political culture have undergone rapid and fundamental transformations. These developments encompass extensive and dynamic changes, including shifts in the normative foundations of society. Moreover, they have brought about transformations in demographic composition and class divisions. Above all, Israel has experienced ongoing changes in its political culture and behavior, marked by *polarization* and *religious fundamentalism*. In addition, the capacities of its political and governance structures—if not altogether eroded—have at least suffered from significant weaknesses. These continuous transformations are unique compared to other nations. For example, Israel's population during the Yom Kippur War was approximately 3.3 million. At that time, about 53% of Israeli Jews were immigrants, and most of the rest were the children of these immigrants. By the middle of the second decade of the twenty-first century, the population had grown to 8.5 million. This significant demographic shift has had major impacts on other aspects of Israeli society,

1 Entry on “Zionism” in *Encyclopaedia Britannica*:
<https://www.britannica.com/topic/Zionism>

including the socio-economic and cultural spheres (Carmon, 2019: Chapter 1).

All these changes, along with the revolutionary nature of political Zionism in contrast to traditional Judaism, form the context within which the structure and future trajectory of Israel's political system must be understood. The next section of this chapter briefly addresses the structure of Israel's governing powers.

1-2. The Structure of Powers and Parliamentary Democracy

Israel has a system of government based on *parliamentary democracy*. The Prime Minister of Israel is the head of the executive branch and the leader of the majority party in the country's parliament. The Israeli parliament, known as the *Knesset*, is composed of representatives of political parties elected through a system of proportional representation. The judiciary is independent from the other two branches and presides over the country's legal system. Israel, which lacks a single written constitution, has built its constitutional framework upon a series of *Basic Laws*.

The *President of Israel* is the legal head of the State. This position is largely ceremonial and apolitical and is not considered part of the executive branch. The president's ceremonial powers include signing laws (except those within the president's own authority), ratifying international or bilateral treaties, formally appointing the Prime Minister, confirming the credentials of ambassadors, and receiving credentials from foreign diplomats. The president also performs several important governmental functions: he or she is the only official authorized to grant pardons or commute prison sentences, appoints the Governor of the Bank of Israel and certain other officials, and formally appoints judges after their selection.

The *Prime Minister* is the most powerful political figure in the country, appointed by the president following the Knesset elections, and is responsible for domestic and foreign policy decisions, subject to cabinet approval. Cabinet ministers are selected by the Prime Minister, but the composition of the cabinet must be approved by the Knesset. Although ministers are usually members of the Knesset, membership is not required for all of them except for the Prime Minister.

The *Knesset* is Israel's unicameral legislative body, which convenes in Jerusalem. It consists of 120 members elected for a four-year term through a proportional representation system using party lists (*Basic Law: The Knesset*, 1958). Political parties submit closed lists for the elections, and voters cast their ballots for the party of their choice. A party that receives at least 3.25% of the national vote secures one seat in the Knesset. This electoral system allows for the representation of small minority groups within the legislature.

The *judiciary* is an independent branch of government that includes both secular and religious courts for different faith communities. Judges of all courts are appointed by the *Judicial Selection Committee*, which is chaired by the Minister of Justice and consists of nine members: the Minister of Justice and another cabinet member, two members of the Knesset, two representatives of the Israeli Bar Association, the President of the Supreme Court, and two additional Supreme Court justices. Under the *Basic Laws*, the judiciary holds powers of oversight over the legislative branch.

In 1992, the Knesset enacted two Basic Laws concerning individual rights: *Freedom of Occupation* and *Human Dignity and Liberty*. Their passage immediately led Aharon Barak, then President of the Supreme Court, to declare that a "constitutional revolution" had occurred in Israel, transforming it into a "full-fledged constitutional democracy." Specialists and critics of the Israeli political system have strongly disputed this claim (Yonah, 2000: 128).

There are two primary reasons why the "constitutionalism" of Israel cannot be characterized as *liberal*. First, this claim fails to account for the pervasive influence of religion in Israel's public affairs. For example, the monopoly of religious courts over matters of marriage and divorce violates one of the fundamental conditions of liberal constitutionalism—the separation of religion and state. Second, the "Jewishness" of the State of Israel is defined in an ethno-cultural framework and is emphasized in several Basic Laws. This legitimizes policies that prioritize the exclusive national interests of the Jewish people while disregarding or even undermining the national interests of Israel's non-Jewish citizens (Yonah, 2000: 128).

Nevertheless, insofar as Jewish citizens are concerned¹, individual freedoms—thanks to the separation of powers² in Israel’s political system—are institutionally in a relatively secure position.

1-3. The Separation of Powers in Israel and the Conflict of Concrete Interests

Up to this point, we have briefly clarified the foundations of Israel’s constitutional system and the structure of its governing powers. In the final part of this section, we seek to examine—starting from a particular reading of Montesquieu’s theory of the separation of powers—the relationship among Israel’s governing branches, the conflicting interests of real social groups, and the role this relationship plays in constraining governmental institutions under the rule of law.

At the conclusion of his discussion of the English model of government, Montesquieu presents his vision of an ideal regime: a structure consisting of a *bicameral legislature* representing both the commons and the nobility, in which each chamber can exercise a mutual veto (the power to reject the acts of the other). Together, these two chambers hold power over the executive and judicial branches. The executive and judicial powers, in turn, each possess authority to limit and condition the actions of the legislature as well as of one another (see *Spirit of the Laws*, Book XI, Chapter 6, §164). The totality of these powers—known in constitutional theory as mechanisms of *checks and balances*—is designed to achieve two ends: on the one hand, to preserve the distinction and independence of the components of political sovereignty, and on the other, to prevent the arbitrary exercise of power by any single branch of government.

1 For a discussion on the legal status of religious minorities in Israel, see Sapir, G., & Statman, D. (2015). Minority religions in Israel. *Journal of Law & Religion*, 30(1), 65-79. <https://doi.org/10.1017/jlr.2014>.

2 The application of the term “separation of powers” to a parliamentary system is not without its issues; however, it should be noted that if, as Montesquieu envisaged (according to a less well-known interpretation), the separation of powers is understood as the presence of conflicting interests of the actual social classes in the fundamental structure of government, then a parliamentary system such as that of the United Kingdom represents the highest example of the separation of powers. Israel, in this respect, is similar to the United Kingdom. This matter will become clearer later.

Montesquieu's insistence on decentralization is so strong that he argues even members of the House of Commons should not be elected on a national basis and serve as representatives of the entirety of the nation; rather, they must be elected by local populations and act as representatives of those communities (SL 11.6 159). Furthermore, each branch of sovereignty possesses a distinct domain of competence from which it is not permitted to deviate. Thus, for instance, Montesquieu refers to judges as "the mouth of the law" (SL 11.6 163)—lifeless beings authorized only to apply the general will of the legislator to particular cases. This precise demarcation and the impenetrable boundaries between jurisdictions themselves reinforce the decentralization Montesquieu deemed essential to the establishment of a moderate government.

The rationale behind Montesquieu's emphasis on the *form* of governmental processes should be sought in Book XI, Chapter 4. As previously mentioned, after explaining that forms of government—be they republican, aristocratic, and so on—do not necessarily entail political liberty, Montesquieu states that political liberty depends on the constitutional order, or more precisely, the formal structure of sovereignty being organized in such a way that no one is compelled to do what the law does not require, nor prevented from doing what the law permits. In most traditional perspectives, especially ideal monarchy and philosopher-king theories, the thinker seeks to place the best or most virtuous individuals in positions of political power. In contrast, Montesquieu aims, through institutional design and the formal structuring of political power, to create a condition in which political liberty is preserved regardless of the *substance* of government and law—that is, the moral quality of officeholders or the virtue or vice of laws.¹ This view is perhaps the most significant

¹ Montesquieu's discussion at the beginning of Book Twelve regarding the distinction between a free constitution and a free country, and the lack of a necessary correlation between the two, might give the impression that he does not consider this formal division of governmental components sufficient for achieving liberty. However, the point is that his solution to this issue at the level of the philosophy of crime and punishment exhibits a similar degree of formalization in the realm of the rules governing criminal law. For further information, see Chapter Four of Book Twelve of *The Spirit of the Laws*, particularly the discussion on offenses related to religion.

legacy of a philosopher who considered even virtue itself to be in need of moderation (SL 11.4).

In this way, the relationship between Montesquieu's conception of law and the *horizontal* reading of the doctrine of separation of powers becomes clear. As noted, law in Montesquieu's thought is emancipated from all substantive conditions and is bound only by the formal requirements of moderated will. In other words, what renders a law truly *law* is the mutual moderation and institutionalized contestation of diverse individual and group interests. It is precisely for this reason that Montesquieu institutes the structural separation of powers—to ensure and institutionalize this contestation. Such a structure is designed not only to prevent citizens from *fearing* governmental power but also to eliminate the *possibility* of such fear altogether: The government should be so constituted that no citizen shall be afraid of another citizen. (SL 11.6)

Attention to this element is significant for another reason as well. Interpreted in this way, two elements within Montesquieu's system—the specific *competences* of each branch of government and the *social classes* historically associated with them in England—lose their intrinsic significance. Regarding the first, it should be noted that nothing in Montesquieu's reasoning implies a necessity that one branch be limited to legislation, another to execution, and another to adjudication. In other words, if the goal is to construct a formal framework that prevents the exercise of absolute power, it makes no difference whether powers are divided in this or any other particular manner. What matters is that the spheres of authority are so divided that each possesses sufficient power to resist the others.

Regarding the second element, although Montesquieu, for example, provides arguments linking the monarch and the aristocracy respectively with the executive power and the House of Lords (SL 11.6 160–161), a closer examination reveals no necessary correspondence between any given function and a specific individual, group, or class. Every society, according to its geographical, cultural, and historical context, contains minority or vulnerable groups that require institutional protections against the absolute will of the majority (that is, the sovereign will in general). For instance, in the current system of the United States, the danger of domination by populous states over less populous ones is mitigated by the structure

of the Senate. Here again, what is crucial is that these groups, in the social reality, hold genuinely conflicting interests.

Accordingly, Montesquieu's conception of the separation of powers (contrary to the conventional interpretation) is, first, conditional upon the *actual existence of conflicting interests* within a society, and second, upon the *representation of those conflicting interests* within the governing institutions themselves.

In Israeli society, as previously explained, two major currents—fundamentalist Zionism and secular Zionism—coexist in a fragile balance. These two currents, corresponding to their distinct and often opposing lifestyles, ideals, and values, support divergent policy agendas for governing the state. Traditionally, fundamentalist Zionism has sought the fullest possible implementation of Torah law, the expansion of settlements in disputed territories, support for religious seminaries, and the monopolization of family law within a Jewish framework.¹ Conversely, secular Zionism advocates for the expansion of civil liberties and religious tolerance among Israeli citizens.

Factors such as the Law of Return, the high population growth rate among observant Jews, civil inequality affecting non-Jewish citizens, and the distinct nature of recent waves of immigration compared to earlier ones have resulted, first, in Jews constituting the overwhelming majority of Israel's population, and second, in an increase in the proportion of religiously observant Jews. These trends, though somewhat moderated by the gradual secularization of later generations of immigrants, have led to the Knesset—and consequently the executive branch—being generally dominated by right-wing, religious, and nationalist parties.

In contrast, the judiciary—especially the Supreme Court—has largely acted as a representative of the democratic values of secular Zionism. This is due to the fact that, as noted, the majority of seats on the Judicial Selection Committee are currently held by former members of the Supreme Court and the Bar Association, while the seats assigned to the Knesset remain in the minority.

¹ For a philosophical-legal discussion on these disputes, see Chapter 2 of Sapir, G., & Statman, D. (2019). *State and religion in Israel: A philosophical-legal inquiry*. Cambridge University Press.

Accordingly, the judiciary in Israel, through the instruments at its disposal, moderates the cyclical majorities that are usually held by the more religious factions—a role analogous to that of the aristocracy in England’s constitutional system. This fragile balance, as mentioned earlier, is the main reason for the high level of democratic freedoms, at least among Jewish citizens.

Nevertheless, as demographic polarization deepens and radical minorities gain increasing representation in political institutions—especially the Knesset—the overall trajectory of Israel’s political dynamics points toward a departure from this equilibrium and the growing dominance of fundamentalist Zionism. Should the proposed package of judicial reforms be enacted, Israel will take a decisive step in this direction. The next section will examine the main features of this bill and its implications.

2. The Judicial Reform Package and the Dismantling of the Israeli Separation of Powers

The Judicial Reform Package comprises a set of proposals introduced by Israel’s right-wing government aimed at restructuring the country’s judiciary. These proposed changes primarily concern two Basic Laws: the *Basic Law: The Judiciary* and the *Basic Law: Human Dignity and Liberty*. This section first outlines the main features of the proposed reforms and then discusses their implications in light of the framework presented in Chapter 1.

2-1. The Judicial Reform Package¹

The proposed reforms introduce changes across several domains, all of which are directed toward weakening the position of the judiciary vis-à-vis the combined powers of the legislative and executive branches. These changes can be examined under five broad headings.

¹ Unfortunately, despite extensive searches, access to the original text in English was not possible. Therefore, for the purposes of this review, reputable news agencies and official websites have been used as the primary sources; nevertheless, efforts were made to cross-check the content of these sites with other sources representing both supporting and opposing perspectives.

2-1-1. Changing the Relationship Between the Judiciary and the Knesset

The Israeli Supreme Court currently oversees the conformity of Knesset legislation with the Basic Laws (which function as Israel's constitutional framework) through a three-judge panel, empowered to invalidate laws by majority vote. This power of judicial review extends even to legislation categorized as Basic Laws themselves.

Under the proposed reform, this authority would be fundamentally altered: such decisions would henceforth require the participation of all 15 justices of the Supreme Court and a supermajority of 12 votes. Moreover, the Court's jurisdiction to review Basic Laws would be explicitly revoked. Finally, the Knesset would be granted the power to override Supreme Court rulings by a *simple majority* (61 out of 120 members).¹

2-1-2. The Judicial Selection Committee

Since 1953, Israel's Judicial Selection Committee has been structured to ensure that legal professionals—judges and lawyers—hold the majority of seats, thereby preventing political actors from dominating judicial appointments. This design reflected an early understanding that judicial independence required insulating the courts from partisan influence. Over the years, the system was adjusted modestly, but its core balance between professional expertise and limited political involvement remained intact.

The reform proposals introduced in early 2023 by Justice Minister Yariv Levin and Knesset Constitution Committee Chair Simcha Rothman aimed to fundamentally transform this arrangement. Both plans sought to shift control of the Judicial Selection Committee to the governing coalition by replacing Bar Association representatives with political appointees and expanding the number of government and coalition members on the committee. Under these proposals, the coalition would effectively command a majority large enough to appoint all judges, including Supreme Court justices, and potentially even remove sitting judges with the required supermajority.²

1 Currently, the ruling faction in Israel's executive branch holds 64 seats.

2 <https://legal-reform.org.il/en/details/>

Supporters of the reforms claimed that judges wield too much influence and that judicial appointments should reflect electoral outcomes. Critics countered that granting the coalition full control over appointments would dismantle the only effective check on executive and legislative power in Israel's highly centralized political system. As scholars and civil society organizations emphasized, Israel lacks both a formal constitution and strong structural safeguards for judicial independence. Concentrating appointment power in the hands of the ruling coalition would therefore risk politicizing the judiciary and weakening democratic oversight mechanisms. (Cohen & Shany, 2023)

The fate of the proposals changed dramatically following the Supreme Court's 2024 rulings on the judicial overhaul. By reaffirming the Court's authority to review even basic laws in extreme cases, the justices signaled that reforms aimed at undermining judicial independence could face constitutional barriers. Although the political future of the proposed changes remains uncertain—particularly amid shifting national priorities—the Court's decisions have, at least temporarily, halted the momentum toward a coalition-controlled appointment system. (Cohen & Shany, 2023)

A comparative perspective is essential here. Populist regimes are not typically threatened by laws or constitutions because they have the ability to alter them. What they fear are independent institutions that can limit their authority, particularly the judiciary. As a result, one of the first actions populist governments often take when they seize power is to undermine the judiciary and, if possible, capture it. The political takeover of judicial systems in several European countries has demonstrated that the assumption that judicial councils can protect against undue politicization has been overly optimistic. Developments in countries like Hungary, Poland, Romania, and Slovakia have shown that courts can be easily taken over and restructured. Consequently, the proposal to alter the composition of the judicial selection committee posed a significant risk. Allowing the coalition to solely appoint judges would politicize the judiciary and severely undermine judicial independence. (Smith, 2023)

2.1.3. The Retirement Age of Supreme Court Justices

Lifetime tenure—or near-lifetime judicial security—is among the principal mechanisms safeguarding judicial independence and preventing political interference in judicial appointments and dismissals. In Israel, Supreme Court justices may currently serve until the age of 70. The proposed reform seeks to lower this retirement age to 67.

This seemingly technical adjustment would result in the immediate retirement of four of the fifteen sitting justices, thereby accelerating the replacement of the current Court's liberal-secular orientation with one more favorable to Netanyahu's right-wing bloc.

2-1-4. Restricting the “Reasonableness Doctrine”

The restriction of the Reasonableness Doctrine (*doctrine of reasonableness*) is among the most contentious elements of the reform package. This doctrine—employed by the highest courts in countries such as Australia, Canada, and the United Kingdom—allows the Israeli Supreme Court to review executive decisions and policies for *rationality*, even in the absence of specific statutory prohibitions.

For example, when Prime Minister Netanyahu appointed Aryeh Deri as Minister of Finance, the Supreme Court invoked the Reasonableness Doctrine to invalidate the appointment, reasoning that Deri's prior convictions for bribery, fraud, breach of trust, money laundering, and tax offenses rendered such an appointment irrational—even though no explicit statute forbade it.¹

The Knesset enacted a change to the Basic Law: Adjudication on July 24, 2023. This change removed the judiciary's ability to examine the reasonableness of decisions made by the government or its ministers. The reasonableness doctrine—also referred to as the “patent unreasonableness” test—has long been a cornerstone of Israeli administrative law. It enables courts to scrutinize how executive decisions are made, the considerations weighed during the process, and the legitimacy of the final outcome, effectively asking at every stage whether the government acted in a manner no reasonable authority would have. The doctrine was originally crafted to ensure

¹ <https://www.cfr.org/in-brief/israels-judicial-reforms-what-know>
<https://crsreports.congress.gov/product/pdf/IN/IN12214>

that public officials uphold their fiduciary responsibilities toward the public and use their powers to promote the public good.

This decision of the Knesset was challenged before the High Court of Justice. In its opinion, the Court examined two main questions. The first was whether the HCJ holds the legal authority, at a fundamental level, to overturn basic laws or amendments to them. The second was whether, assuming such authority exists, the amendment limiting reasonableness review should indeed be annulled. Because of the profound constitutional implications of the case, all 15 justices participated—an unprecedented move in Israel’s judicial history. The outcome was striking: Eight justices supported the petition, while seven opposed it. Yet an even broader majority—12 out of 15—agreed that the HCJ does, in principle, have the authority to review constitutional amendments (with one of the remaining three justices expressing partial agreement but rejecting the petition on procedural grounds). (Cohen & Shany, 2024)

2-1-5. The Role of Legal Advisers

In Israel, ministerial legal advisers occupy a distinctive institutional position. All executive decisions must undergo their review based on two criteria—legality and reasonableness. These advisers, who operate under the authority of the judiciary, issue binding opinions for executive agencies and hold an exclusive mandate to represent the government before the courts.

The proposed reform would downgrade the binding nature of their opinions to mere recommendations, and ministries or ministers would be permitted to appoint alternative private counsel to represent them in court.¹

2-2. The Religious Majority’s Dictatorship and the Collapse of the Rule of Law

At the time of writing, despite widespread protests and partial retreats by the Prime Minister, several provisions of the reform package have already been enacted, while others remain under legislative consideration. Regardless of their ultimate legislative fate, the very

1 <https://legal-reform.org.il/en/details/>

proposal of these reforms signals a radical confrontation between Israel's two principal social currents and points to an imminent transformation in the country's balance of powers.

Should these reforms proceed toward full implementation, the legal and institutional position of the judiciary—and the relatively long-standing liberal tradition it embodies—will be severely undermined. Israeli society would then find itself in a condition where the will of transient majorities operates unchecked by any institutionalized minority constraint. Given the demographic dynamics discussed earlier, such unrestrained power would lie primarily in the hands of religious forces.

Consequently, the crucial constitutional function historically performed by legal professionals—as traditional defenders of civil liberties—would be marginalized. The following section will analyze the principal constitutional and political implications of this transformation.

2-2-1. Representation of an Indeterminate Mass and the Crisis of Political Legitimacy

The judicial overhaul should be understood as a populist constitutional project. Unlike authoritarian rulers of the past, modern populists operate within legal and constitutional frameworks to pursue their goals. While previous authoritarian regimes used illegal and violent methods to undermine constitutional order, today's democratic erosion is driven by elected governments that exploit legal and constitutional tools to weaken democratic institutions and values. In other words, populism is accompanied by a constitutional project aimed at fulfilling its political agenda – populist constitutionalism. Paul Blokker identifies four key features of populist constitutionalism. First, populists argue for the sovereignty of the people as the central justification for their actions. They claim that a strong legal system undermines this sovereignty, making it an empty concept. Second, populists advocate for majority rule as the tool of governance, believing that political power is a direct expression of the people's will. Unlike parliamentary systems that fragment society, the majority is seen as a unified entity, which allows populists to radically change the rules of governance. Third, populism employs instrumentalism as a political strategy, using the law and legal systems as tools to benefit

their collective project. This often involves altering constitutional norms and rules to fit their political needs. Finally, populism exhibits resentment toward the judiciary, criticizing the idea that justice is neutral and apolitical. Populists oppose the notion that sovereignty is vested in the judicial system and constitution, arguing that the will of the people should always prevail over legal constraints. Ultimately, populists aim to replace the liberal notion of the rule of law, where law restrains government power, with a collective view that the law serves the will of the people. These characteristics align closely with the package of judicial reforms proposed in Israel. (Smith, 2023)

As previously noted, the essential foundation of the system of separation of powers lies in the *representation of genuinely conflicting social interests* within the structure of government, and in the exercise of their *mutual checking and balancing functions*. With the weakening of the secular tradition of the judiciary in Israel, a significant portion of civil society groups have effectively lost their representatives within the governing structure.

This situation will, at the first stage, lead to a crisis of political legitimacy and to a widening gap between the state and segments of society. In practical terms, on the one hand, the genuine interests of these groups are ignored in the interaction of political institutions; on the other hand, these same groups will gradually lose their motivation to participate in democratic processes.

Although at first glance this development may appear to serve the interests of religious factions, the complexities of state–society relations preclude such an optimistic assessment. The reason is that all political systems, regardless of type, claim to represent *the entirety of the people* or their *collective unity*—variously expressed as the *nation*, the *national interest*, or the *will of the people*. The distinction lies in the mechanism of mediation: in systems based on the separation of powers, representation is realized through *negotiated compromise among well-defined civil groups* (classes, associations, parties, etc.), whereas in centralized systems—due to the institutional absence of such civil forces—the state’s claim to representation becomes a *direct and unmediated representation of an amorphous mass of individuals*.

In other words, instead of being accountable to organized groups with specific and divergent interests and ideals, the political system claims to represent *individuals as such* and thereby gains the capacity

to impose anything it wishes *in the name of the people, the masses, or the nation*, without facing resistance from any strong network of political or civic organizations capable of questioning this claim.¹ Consequently, with the collapse of the separation of powers in Israel, the political system will represent no one and be accountable to no one. As a result, the ensuing legitimacy crisis and restriction of citizens' political agency will encompass not only secular citizens but also religious ones.

Moreover, as conflicts of interest within the governing structure diminish, the Basic Laws—and indeed all aspects of Israel's constitutional order—will lose their *conditioning function*. The reason is that the interpretation of constitutional frameworks is meaningful only when it arises from contestation among rival social and political forces, since such contestation is what limits the scope of institutional authority. In a system where competing groups have been expelled from the governing institutions, the ruling faction's arbitrary interpretation of foundational norms will face no effective opposition.

2-2-2. The Unrestrained Political Will and the Ruin of the Jewish Safe Home

With the destruction of the separation of powers, the political will of the state becomes liberated—from the constraints of the Basic Laws on the one hand and from accountability to civil society on the other. This unrestrained political will, in seeking to replace its lost legitimacy, will necessarily attempt to satisfy certain *superficial demands* of the majority,² even at the cost of violating the rights of minorities—minorities that, unlike before, will lack legal channels for civil resistance. Yet, as discussed earlier, the implications extend beyond secular citizens alone.

As explained in the first part of this study, the Israeli political system was established through the *de facto* (though not theoretical)

1 One of the most significant indicators of such a society is the emergence of populist rhetoric among politicians.

2 Examples of these superstructural demands in Israel include laws related to family, the religious freedoms of minorities, dress regulations, women's civic participation, the exemption of religious students from military service, and expansionist policies concerning the Palestinian territories.

alliance of two ideological currents: *secular Zionism* and *fundamentalist Zionism*. Neither of these ideologies is reducible to the other in its foundational premises; they united solely in the face of existential peril, under the shared aspiration of creating a safe homeland for the Jewish people. Among the most significant dimensions of this aspiration has been the establishment of legal security—which explains why, since the founding of the state, the secular tradition of the judiciary has played such a vital role in advancing this goal.

With the dismantling of the separation of powers and the erosion of the protections offered by the rule of law, this crucial dimension of Israel's political order will be fundamentally undermined. Consequently, Israel will cease to function as a truly safe home for Jews, not only for its secular citizens but also for its religious ones—at least with respect to their legal and political security.

Conclusion

The enactment of the judicial reform package in Israel—given the country's unique constitutional context and the way in which its political powers represent the two major currents of religious Zionism and secular Zionism—may mark the end of the fragile equilibrium that has long characterized Israeli society, at least in the realm of constitutional law.

By restricting the processes of judicial oversight and balance, and by attempting to alter the composition of the Supreme Court, the proposed legislation significantly enhances the power of transient majorities within the legislative and executive branches. Under these circumstances, religious, fundamentalist, and nationalist parties, owing to Israel's specific demographic structure, are most likely to dominate these two branches of government. Consequently, as the will of the political authority becomes freed from the constraints of fundamental norms and from accountability to the citizenry, the political system will, on the one hand, lose its legitimacy and diminish citizen participation, and on the other hand, inevitably violate the civil and political rights of minorities in an effort to compensate for its lost legitimacy.

In other words, the collapse of the separation of powers will place the legal and political security of Israeli citizens vis-à-vis their own state under serious threat.

Attention to these developments—and the widespread protests that have followed them—acquires particular importance when considered in relation to Israel's recent foreign policies. On the one hand, the country's unprecedented militaristic aggressions in recent years may be interpreted as an attempt by its rulers to alleviate domestic pressures; on the other hand, these internal legal transformations may also be viewed as a prerequisite for the continuation of such external policies. In this sense, the nationalist and religious blocs, relying on this judicial reform package and reinforced by Israel's demographic trends, may in the future succeed in excluding moderate and secular forces from the policymaking process altogether.

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