Abstract

Title of Thesis	A Historical Institutionalist Perspective on Israel's Basic Law: Nation State of the Jewish People
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Israel brands itself as a beacon of stability in a hostile and autocratic Middle East, with flourishing democratic values and equality for all as enumerated in its Proclamation of Independence. Why, then, despite its claim to be a liberal-Western democracy, did its parliament pass the Nation State Bill in July 2018? This thesis argues the passing of the Nation State Bill is the result of a historical tension over Israel's identity as both a Jewish and democratic state. Rather than seek answers based on contingent circumstances of the Arab-Israeli conflict, I argue attention must be paid to transformations within the judicial and legislative branches in the last 30 years. Over that time, the Supreme Court of Israel capitalized on its growing power to assume the responsibility of judicial review, and thus, the power to overturn Knesset legislation which ran afoul with democratic values. Concurrently, right-wing political parties co-opted fears of national security to enter mainstream Israeli politics. The conservative Knesset has used its growing influence to counter the Supreme Court's encroachment by seeking ways to institutionalize its policy goals. The Nation State Bill is an attempt by right-wing politicians to shift Israel's identity towards Jewish values and away from democratic values as retribution against challenges led by an activist court, especially in the sphere of immigration and citizenship policies. Through an analysis of the historical trajectories of these two institutions, this thesis demonstrates how a multi-disciplined approach is required when assessing and predicting the impacts of legislative actions in Israel.

A Historical Institutionalist Perspective on Israel's Basic Law: Nation State of the Jewish People

By

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בְּטֵלָה כָּל אַהֲבָה שֶׁהִיא תְלוּיָה בְדָבָר, בָּטֵל דָּבָר, בְּטֵלָה אַהֲבָה. וְשֶׁאֵינָהּ תְּלוּיָה בְדָבָר, אֵינָהּ בְּטֵלָה לְעוֹלָם.

Any love that is dependent on something, when that thing perishes, the love perishes. But a love

that is not dependent on something, does not ever perish.

Pirkei Avot 5:19

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Chapter 1: Introduction

Background

In the morning hours of July 19th, 2018, in a 62-55 decision,[1] the Israeli national parliament passed Basic Law: Israel as the Nation State of the Jewish People, known informally and herein referred to as the "Nation State Bill." This highly controversial law proclaims Israel as the historic homeland of the Jewish people and grants Jews the unique right of national self-determination in the country. It establishes Jewish symbols as those of the state, affirms a united and complete Jerusalem as Israel's capital, declares Israel's responsibility to serve as an "ingathering of the exiles," and seeks to strengthen its ties to the Jewish diaspora. By elevating the symbols, language, and religion of Jewish people, the Nation State Bill explicitly outlines a state-sponsored affinity for the Jewish ethno-religious group. By introducing sweeping decisions on controversial topics such as the status of Jerusalem, the bill also solidifies certain nationalist policies valued by Israel's right-wing politicians, which have been contested by the Supreme Court in recent history. Most importantly, by institutionalizing these values and ethnic preferences in the context of competing identities, the Nation State Bill represents a remarkably intense and sudden shift away from Israel's democratic character towards a nation with more robust Jewish values.

Given Israel's decades-long campaign to portray itself as a beacon of stability in a so-called virulent Middle East as well as the criticism of its occupation of Palestinian territories, the introduction of Nation State Bill created reason for concern for amongst both Israel's supporters and critics. According to Israeli scholar Baruch Kimmerling, Israel's government was established

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[1] The Knesset. (2018, July 19). Knesset passes Jewish nation-state bill into law [Press release]. Retrieved January 24, 2019.

in 1948 as a result of free elections and universal suffrage. Israeli (primarily Jewish) citizens enjoy innumerable civil rights and liberties, resembling those of the most "perfect" liberal democracies in the Western world.[2] Israel has continuously emphasized its democratic values in terms of portraying itself as the only democracy in the Middle East. For example, the country's relatively free press and freedom of expression has allowed Israel to cooperate with foreign media by conducting press conferences and sending out press releases[3] about its technological innovations, considered symbols of free and creative thinking. But due to its competing identity as a Jewish state, as stipulated in its Proclamation of Independence, it has never been entirely clear which rights apply to Israeli non-Jewish minorities. Supporters of the bill dispute the idea that Jewish values and democratic values cannot co-exist in Israel, and point to a handful of democratic countries including Hungary, Germany, and Romania which have (or had) ethnically-selective immigration and citizenship policies.[4] Negative reactions from the bill generally express dismay at what detractors see as an erosion of Israel's democracy,[5] although criticism has also veered towards the extreme and claimed that the law amounts to "apartheid."[6]

  Why, then, despite its claim to be a Western democracy and branding itself as such, did Israel pass the Nation State Bill in the summer of 2018? The bill's passage and resulting institutionalization of right-wing, nationalist ideals cannot be explained by mere contingent

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[2] Kimmerling, B. (1999). Religion, Nationalism, and Democracy in Israel. Constellations, 6(3), 339-363. doi:10.1111/1467-8675.00150

[3] Avraham, E. (2009). Marketing and managing nation branding during prolonged crisis: The case of Israel. Place Branding and Public Diplomacy, 5(3), 202-212. doi:10.1057/pb.2009.15

[4] For examples see: Dumbrava, C. (2016). Reproducing the nation: Reproduction, citizenship and ethno-demographic survival in post-communist Romania. Journal of Ethnic and Migration Studies, 43(9), 1490-1507 and Joppke, C., & Rosenhek, Z. (2002). Contesting ethnic immigration: Germany and Israel compared. European Journal of Sociology, 43(3), 301-335.

[5] Israel's New Law Inflames the Core Tension in Its Identity. Retrieved March 1, 2019, from https://www.theatlantic.com/international/archive/2018/07/israel-nation-state-law/565712/, and Lis, J., & Landau, N. (2018, July 19).

[6] Beaumont, P. (2018, July 19). EU leads criticism after Israel passes Jewish 'nation state' law. Retrieved March 27, 2019, from https://www.theguardian.com/world/2018/jul/19/israel-adopts-controversial-jewish-nation-state-law

circumstance or by the intensification of the Israeli-Palestinian conflict. Although I demonstrate how historical security concerns have played a role in the Nation State Bill's development, these concerns do not wholly explain why this bill was passed at this particular moment in time. Given Israel's history of near-perpetual conflict with its neighbors, its security situation has remained volatile since its modern founding in 1948. 2018 was not characterized as a particularly intense year for the Arab-Israeli conflict. Nor was it in the midst of any periods of protracted violence, such as Israel's declared wars, or the First and Second Intifadas.

Rather, I explain the passing of the Nation State Bill as the culmination of the deep-seated, historical tension over Israel's identity as both a Jewish and democratic state. More specifically, I argue that careful attention must be paid to transformations within the judicial and legislative branches in the last 30 years, marked by both the rise of judicial activism in the Israeli Supreme Court and the rise of mainstream right-wing politics in the Knesset, Israel's national parliament. The Nation State Bill is an attempt by right-wing politicians to pull the needle towards Jewish values and away from democratic values as retribution against democratic challenges led by an activist court, especially in the spheres of immigration and citizenship.

I will first review three areas of relevant literature as they relate to the argument set forth by this thesis. I will then review the methodology for obtaining the evidence I use to support my argument. Finally, I will provide a roadmap by summarizing the succeeding chapters.

Literature Review

Characterizing Israel as Democratic versus Jewish

Among scholars who discuss the characterization of Israel in the context of its Jewish and democratic identities, there is general consensus on the existence of a dichotomy between these

two sets of values. According to some scholars, the result of this tension comes in the form of unequal treatment regarding the rights of non-Jews in Israel and the rights bestowed *de facto* on Jews. Smooha uses Israel to exemplify a diminished type of democracy, according to his model, best referred to as an "ethnic' democracy." Countries in this category take ethnic nationalism, as opposed to the citizenry, to be the cornerstone of the state, meaning that rights are not extended equally to all citizens.[7] For scholars like Smooha, Israel has a strong ethnic bias that forces a deviation from Western democratic values. Smooha's conclusion is grounded firmly in his belief of a fundamental contradiction between Israel's egalitarian universalistic-democratic character and its inegalitarian Jewish-Zionist character.[8]

The tension between these two characters extends particularly to Israel's immigration and citizenship policies. Scholars point to laws such as the Law of Return, which guarantees the right of every Jew to immigrate to Israel, and the 2003 citizenship law, which singles out Arab groups, as evidence of state-sanctioned separation of Arab families. Proponents of the Law of Return argue that it was designed to right a historical wrong of worldwide Jewish persecution, and the Supreme Court of Israel asserts that the citizenship amendment stripping Palestinians of the opportunity to live in Israel was passed due to national security concerns.[9] Opponents of these laws, however, see them as drawing discriminatory distinctions between Jews and Arabs, an unacceptable quality of a liberal democracy that supposedly treats all of its citizens equally and makes them members of a common civic nation.[10]

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[7] Smooha, S. (2002). The model of ethnic democracy: Israel as a Jewish and democratic state
[8] *Smooha*. 495
[9] See Barak-Erez, D. (2007). Israel: Citizenship and immigration law in the vise of security, nationality, and human rights. International Journal of Constitutional Law, 6(1), 184-192. doi:10.1093/icon/mom036
[10] *Smooha*. 475

Not all scholars who discuss the characterization of Israel's institutions agree with the ethnic vs. civic state distinction. Christian Joppke explicitly argues against this analysis, calling it "misleading," because all nations have both an ethnic element defined by descent and origin, and a civic element defined by associations of strangers that transcend immediate kinship.[11] Even if this distinction exists, according to Joppke, countries that would otherwise be classified as "ethnic" and "civic" have policies transcending their characterization. Those states generally considered "civic," like the United States and United Kingdom, heavily implemented policies at odds with pure liberalism throughout their respective histories, such as the 1921 national origin quota system in the US and the Aliens Act of 1905 in Britain.[12] Moreover, countries considered "ethnic," such as Germany, have phased out open door policies aimed at encouraging co-ethnic immigration. Specifically, the "return" of ethnic Germans to Germany was a constitutional right enshrined in Article 116 of the Basic Law until a 1993 law limited the status of ethnic Germans to persons born before 1993.[13] To Joppke, the religiously closed, non-territorial self-definition of the titular nation and the deep division of society demonstrates how Israel is a limited case of a liberal state.[14] Joppke's argument is distinct from Smooha's, which fundamentally believes Israel's Jewish and democratic characteristics cannot co-exist.

Kimmerling straddles both Smooha's and Joppke's assessments by arguing Judaism is built into Israeli nationality. As a result of what Kimmerling calls the "Zionist hegemony," Israel is not defined as state as belonging to its citizens, but to the entire Jewish people. His point is vital to the relationship between the right wing and Jewish diaspora, where the rise of an ultra-

[11] Joppke, C. (2005). Selecting by origin: Ethnic migration in the liberal state. Cambridge, MA: Harvard University Press. 17
[12] Girvan, A. (2018, June). The History of British Immigration Policy (1905-2016) (Rep.). Retrieved February 17, 2019, from University of East Anglia website.
[13] Joppke, C., & Rosenhek, Z. (2002). Contesting ethnic immigration: Germany and Israel compared. European Journal of Sociology, 43(3), 301-335. doi:10.1017/s0003975602001121
[14] *Joppke*. 30

Orthodox, nationalist strand of politicians have facilitated the prominence of right-wing politics and reconfigured Israel's relationship to the Jewish diaspora. He also suggests, however, Western values contained in Israel's universal and secular codes do not necessarily stand in contradiction to the state's Jewish identity.[15] Rather, any tension between the two sets of values are absorbed by the Zionist hegemony, the unchallengeable social order that exists because there are not even terms and concepts with which to characterize and question it. Kimmerling concludes from this phenomenon that the character of Israeli democracy is accepted by most measurements, but only within the framework of parameters fixed by the Zionist hegemony, a regime continuously fluctuating between democracy and nationalist-theocracy.[16]

The classification of Israel's identity has been subject to scrutiny by scholars across various disciplines and using a variety of lenses, which obscure the comprehensive analysis needed to create more informed assessments of Israel's actions. Joppke classifies Israel as part of the "diaspora constellation," characterized by nations with the belief that their co-ethnics are stranded and oppressed outside of the home state,[17] as opposed to the "settler state constellation" or "post colonial constellation." Kimmerling, on the other hand, considers Israel to be one of the "settler states," formed by a society of settler-immigrants and still an active settlement builder to this day.[18] Despite the distinct reasoning the two scholars offer, they arrive at a similar conclusion about Israel's limited identity as a liberal democracy. Kimmerling, however, offers a more nuanced and complex view in his consideration of the way Israel's democracy is viewed by different groups. He suggests that Israel's democracy is seen differently by various people due to

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[15] *Kimmerling*. 340
[16] *Kimmerling*. 340-341
[17] *Joppke*. 30
[18] *Kimmerling*. 341

the Zionist hegemony and differing manners of consciousness, which represents the line of thinking I seek to capture.

The Court System and its Relationship to the Legislature in Israel

The Nation State Bill, which passed as a Basic Law meaning that it is constitutionally superior to statute laws, was perceived as a move to rebuke the court's growing role and so-called "judicial activism" in reversing the Knesset's legislation. Studies use the court's role in legislation as an experiment of sorts on the relationship between judicial and legislative branches, especially in a country that enshrines both religious and democratic values within its institutions. Scholars debate the possibility of these two values co-existing, and their scholarship about tensions between the court and the Knesset often describe when religious and democratic values come into conflict. The core of the conflict between the Supreme Court of Israel and the Knesset are the values each branch purports to represent. Part of the divide between the legislature and judiciary stems from varying accounts about where the Supreme Court derives the power it holds today. During the "Constitutional Revolution" in the early to mid-1990s, the Supreme Court began to scrutinize Knesset legislation which putatively violates the constitutional-like Basic Laws, striking down laws deemed incompatible with them which essentially activated judicial review.

Scholars have shown how the Supreme Court of Israel expresses its concern for upholding the democratic values, demonstrating that the "Constitutional Revolution" was a watershed moment for the Israeli legal system and constitutional politics. There exists disagreement, however, about the conditions influencing the court's decision to take a more active role in the legal system. David Kretzmer argues, in the absence of a formal bill of rights, the Supreme Court

filled a void in the protection of human rights,[19] which is a responsibility a democratic nation

should undertake. According to Edelman, the court is seen as a guardian of fundamental values

embedded in an objective legal order.[20] Rabin and Gutfel contend that the court, as an

independent body with no constitutional text to rely upon, based its protection of human rights

on references to principles derived from the democratic nature of the State, from its "national

spirit" and from the "social consensus," all reflected in the State's Declaration of Independence

and in the history of Israel and the Jewish people.[21] The Supreme Court of Israel, in this sense,

differs from that in other Western democracies from where it derives the power of judicial

review, but it nonetheless remains a representation of democratic values to these scholars.

Hirschl, however, proposes a different view. Rather than as the result of the court's decision

to activate judicial review, he argues Israel's "constitutionalization" was the planned strategy of a

ruling political elite made up of a relatively coherent social class of secular neoliberals of

European origin with disproportionate access to the legal arena.[22] He uses evidence from the

Basic Laws, which include entrenchment clauses to protect them from being overturned, as

mechanisms for these elites to insulate their policy preferences from popular political pressure[23]

and maintain their authority against the growing power of "peripheral" groups.[24]

Like Kimmerling, Hirschl evokes the "Zionist hegemony" when speaking about the

respective tensions between democracy versus Judaism and legislature versus judiciary. The

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[19] Kretzmer, D. (1996). The New Basic Laws on Human Rights: A Mini-Revolution in Israeli Constitutional Law? Netherlands Quarterly of Human Rights, 14(2), 173-183. doi:10.1177/092405199601400204

[20] Edelman, M. (1992). The Judicial Elite of Israel. International Political Science Review, 13(3), 235-248. doi:10.1177/019251219201300302

[21] Rabin and Gutfel (2014). Marbury v. Madison and Its Impact On Israeli Constitutional Law, 15 *U. Miami Int'l & Comp. L*. Rev. 303

[22] Hirschl, R. (2000). The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions. Law & Social Inquiry, 25(01), 91-149. doi:10.1111/j.1747-4469.2000.tb00152.x

[23] *Hirschl*. 104

[24] *Hirschl*. Abstract

political power that a relatively small group of Ashkenazi Jews (who came from Europe)

purportedly had in the 1980s and 1990s suggests that an expansion of the Supreme Court that

was not as independent as Kretzmer claims, raising questions over the judicial branch's

independence in the context of a nation which claims itself to be a full-fledged democracy with

compatible Jewish values. Rather, the desire of Ashkenazi groups to defend their position against

the growing power of fringe groups such as ultra-Orthodox and Russian immigrants reflects the

fragmentation of Israeli politics seen during the election of 1996, which empowered the

aforementioned formerly marginalized groups to make large gains in their political

representation.

Through his interdisciplinary analysis, Diskin demonstrates an awareness for the complex

mechanisms influencing the dynamic Israeli electoral system. He emphasizes the 1996 election

in his historical survey of Israel's institutional development, reaching across multiple dimensions

of identity and politics to explain the underlying processes by which the electoral system

changed. He attributes the election of 1996 to the fragmentation of the Israeli political system,

which increased the number of parties gaining Knesset representation to a peak of 15.[25] He

highlights the national-ethnic-religious cleavages between Jewish and Arab voters as well as

those within the Jewish population,[26] distinguishing between Sephardi Jews (who came from

Arab countries) and Ashkenazi Jews. Diskin draws on changing social, ethnic, and economic

characteristics of Israeli society to demonstrate their effect on voter partisan affiliations. The

multi-party system in the 1996 election derived from one of the court's first moves of judicial

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[25] Diskin, A. (1999). The New Political System of Israel. Government and Opposition, 34(04), 498-515.
doi:10.1111/j.1477-7053.1999.tb00167.x
[26] *Diskin*. 504

activism, when it elevated Basic Law: The Government to constitutional status following dissatisfaction with the conventional parliamentary system.

The Role of the Court and Right-Wing Politics in Immigration and Citizenship Policy-Making

        Scholars have studied the roles that high courts and right-wing political groups have played in developing legislation, especially regarding citizenship and immigration. Studies contend that the real effects of radical right-wing politics occur largely as a result of the interaction between the radical right and established actors regardless of the radical right's assuming power in the parliamentary body. For example, Minkenberg characterizes the right-wing in terms of its use of what I call political "camouflage," which allows it to make ideological and strategic adjustments to new cleavage and opportunity structures in the absence of an open hostility to liberal democracies and the softening of racist and authoritarian messages in terms of "ethnopluralis" and "ethnocratic" concepts of politics and society.[27] Thus, in "stable democracies," the right-wing acts as a bridge between moderate conservatives and explicit anti-democratic, violent right-wing extremists.[28] Minkenberg largely speaks in terms of European powers and the countries in his case studies, namely Germany, France, Italy, and Austria, focusing on cultural policies. His analysis, however, can be extended to any countries with the conditions to allow for interactions between political actors, and the realm of immigration and citizenship policies.

        For the radical right-wing in this context, a rise into mainstream politics enables an appropriation of the dominant concept of nation and nationhood. Waterbury explores the role of

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[27] Minkenberg, M. (2001). The radical right in public office: Agenda-setting and policy effects. West European Politics, 24(4), 1-21. doi:10.1080/01402380108425462

[28] *Minkenberg*. 3

right-wing politics in the legislation of a bill which reinforces the relationship between a nation and its diaspora in her analysis of the legislation of the "Status Law" in Hungary in 2006. The Status Law conferred special privileges on ethnic Hungarians living outside the physical borders of the nation. Waterbury argues right-wing elites in Hungary utilized and co-opted transnational ties with the Hungarian diaspora to make a rise into mainstream politics and further their own political goals, which enabled the passage of the bill.[29] Dissatisfied with past silence from the Communist Party over the worsening situation of Hungarian ethnics in neighboring states, the right-wing FIDESZ party tapped into deeply held concerns about overcoming past injustices suffered by Hungary in an effort to re-construct its political ideology.[30] Thus, according to Minkenberg's idea of "political camouflage," the FIDESZ party would be expected to use the diaspora issue as a means of shaping conservative policies, given the support for liberal democracy after the collapse of communism and a platform for racist messages.[31]

In such cases where right-wing governments pass illiberal immigration and citizenship policies, are courts willing to override the legislative body on the ground that those policies violate the constitution? Scholarly works discussing supreme court interventions in legislation outline how the oft-contentious relationship between the judiciary and other political actors is central to courts' decisions. There are two schools of thought about this relationship. The first, to which Joppke subscribes in his 2001 analysis of European Court of Justice (ECJ) and German courts, emphasizes how justices make decisions relying exclusively on their individual ideological preferences and are unmoved by their fellow justices or other political actors.[32]

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[29] Waterbury, M. A. (2006). Internal Exclusion, External Inclusion: Diaspora Politics and Party-Building Strategies in Post-Communist Hungary. East European Politics and Societies: And Cultures, 20(3), 483-515. doi:10.1177/0888325405280897
[30] *Waterbury*. 493
[31] *Minkenberg*. 3
[32] Bergara, M., Richman, B. D., & Spiller, P. T. (2003). Modeling Supreme Court Strategic Decision Making: The Congressional Constraint. SSRN Electronic Journal. doi:10.2139/ssrn.421520

Joppke outlines how the German Supreme Court had aggressively expanded the rights of non-citizen labor migrants and their families during government indecision about terminating guest worker programs in the country.[33] The court worked actively against the government's desire for no-immigrant policies, and broadly interpreted a "freedom of personality" clause in the German Basic Law to give aliens access to rights reserved for German citizens.

The other school of thought contends that justices are strategic when formulating their actions and consider the potential reactions of their policy competitors (i.e. the other branches of government). Bergara et al. employs an established econometric model to analyze data on the impact of institutional constraints on the U.S. Supreme Court's decision making to conclude the U.S. Supreme Court justices do adjust their decisions to presidential and congressional preferences. An implication of this finding inhibits justices from passing down a decision that would be overturned by an act of Congress if Congress replaced the decision with a policy that, in the view of a majority of the court, led to an inferior outcome.[34] A limitation to this field of thought is that it does not incorporate the dynamics between judiciaries and legislatures in other countries, but the general relationship will be useful when exploring the nuances of the conflict between the Supreme Court and the Knesset.

Scholars also discuss the role that public opinion plays as a factor in the decisions of the Supreme Court of Israel. Barnum's study of the relationship between the policy preferences of the U.S. Supreme Court and those of public preference yielded the conclusion that the court's decisions in overturning legislation were often supported by the distribution or the trend of

[33] Joppke, C. (2001). The Legal-Domestic Sources of Immigrant Rights. Comparative Political Studies,34(4), 339-366. doi:10.1177/0010414001034004001
[34] *Bergara, et. al.* 249

nationwide public opinion.[35] When such support was lacking, the court seemed reluctant to act. His analysis offers deeper insights into the characterization of the U.S. Supreme Court, post-New Deal, as a "counter-majoritive activist" in which unelected judges use the power of judicial review to nullify the actions of elected executives or legislators, acting contrary to "majority will."

There are two ways, according to Barnum, to resolve this tension between judicial review and majoritarian principles. One is to assert majoritarian principles that do not exhaust the controlling tenants of democracy, which allows for some policy decisions to be made by an institution relatively insulated from political pressure. In his analysis of the EU, Joppke argues the ECJ used its "hermeneutic monopoly" on interpreting EU treaties to expand the concept of a worker and the rights attached to it in as broad terms as possible.[36] Although Joppke concedes there is legal space for the ECJ to apply the doctrine of implied powers to citizenship and nationality policies, he argues that the court contradicted the interests of EU members states by turning demand-induced migration into supply-induced migration.[37] Thus, although there might be legal space for an independent institution to legislate, the ECJ demonstrated how courts can also act against the interests of constituents.

The second way to resolve the tension of majoritarian principles is to establish that the supreme court does not often render counter-majoritarian policy decisions.[38] Dahl finds instead that policy outputs of the court were likely to conform to the policy preferences of the dominant coalition in national politics in the long run.[39] The research I put forth confirms that Supreme

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[35] Barnum, D. G. (1985). The Supreme Court and Public Opinion: Judicial Decision Making in the Post- New Deal Period. The Journal of Politics, 47(2), 652-666. doi:10.2307/2130901

[36] *Joppke*. 354

[37] *Joppke*. 355

[38] *Barnum*. 653

[39] Dahl, R. A. (1957). Decision-Making in a Democracy. Role of the Supreme Court Symposium, 1, 279-295. doi:10.4324/9781315095455-8

Court of Israel infrequently rules on counter-majoritarian principles, but the significance of those decisions, which did run contrary to the dominant right-wing coalition, have contributed to the combative relationship we observe today between the court and the Knesset. The lack of attention paid to the significance of these legal departures in the literature signal a need to analyze the dynamics of the events when discussing the role of the court and right-wing political groups in legislating policies.

Limitations of the Literature and My Contributions

The scholarship in these fields offer narrow and deep explanations of how Israel's key issues and institutions impact its national identity. No body of work, however, attempts to map and integrate their historical trajectories to explain the passage of legislation. The idea of explaining the passing of a law, especially one as consequential as the Nation State Bill, can help identify underlying mechanisms that shape a nation's identity. Due to the myriad of political, legal, and social forces at work in democratic legislatures when passing a law, accounting for these forces is vital when evaluating the Nation State Bill. The comprehensive analysis offered by this paper highlights the nuances of the Nation State Bill and the impact it has on a deeply divided Israeli society with an ambiguous Jewish identity.

Moreover, although scholars attest to the independence of the Supreme Court of Israel's actions during the "Constitutional Revolution," none have extended their analysis beyond the political implications of the revolution or the few years immediately following. Because of this lapse in the literature, there remains an opportunity for empirical analysis of the ramifications of the court's judicial review power. Despite the "soft legal principles" Kretzmer discusses, which he argued had minimal influence on the Knesset's actions, the Supreme Court has engaged itself

in a form of judicial activism that has intervened in several cases involving Knesset laws. These laws have dealt with controversial topics, including citizenship rights for Palestinians and the treatment of African asylum seekers in internment camps. The result has widened the divisions between the judicial branch and the legislative branch as they clash on who has the authority to decide the identity of Israel as a Jewish and democratic state. This paper seeks to break down, analyze, and shed light on the role of these tensions and in the passage of the Nation State Bill.

Methodology

I relied on political science, legal, and sociological scholarship from secondary sources to conduct a historical analysis of the key issues and institutions that shaped the development of the Nation State Bill. Given the recent passage of the bill, I use diverse sources of news coverage from publications across the political ideological spectrum to situate scholarly evidence on legal and political systems into the Israeli context. Scholarship highlights how public opinion plays an especially vital role in shaping legislation and the decisions of the Supreme Court of Israel, so I use newspaper articles from domestic Israeli sources as well as international publications to supplement my analysis with voices from the public. I chose articles which presented supportive, dissenting, and ambiguous opinions on the Nation State Bill by using keyword Google searches including "Nation State Bill racist" and "Nation State Bill support." The diverse array of news sources reflects the nuances I seeks to capture, including highlighting the tensions that exist between Israel's democratic and Jewish identities. News articles are written to assess opinions at a moment in time. I therefore use multiple news outlets at various points. Moreover, I will examine the result of surveys carried out to gauge public opinion about African asylum seekers

and relations with Palestinians, as these issues are closely connected to the conflict between the Supreme Court and right-wing government.

Chapter Organization

The following chapters lay out the key issues and tensions contained in the Nation State Bill, and analyze the trajectories of two institutions centered around these debates. Chapter 2 will situate my argument within the historical tension between Jewish and democratic values as well as the tension undercutting the relationship between Israel and the Jewish diaspora. What makes these debates important is the division between the Supreme Court of Israel and the right-wing political establishment, as they subscribe to opposing views with respect to citizenship and immigration. It will discuss how these issues have appeared before the court, analyze the impacts of the decisions reached, and demonstrate how the direction each institution swung deepened the intensification of the conflict between the legislature and the judiciary.

Chapter 3 will present the significance of the Supreme Court's influence on these main issues and tensions by surveying the trajectory of its development throughout Israeli history. I argue the Supreme Court could not have played such a large role in the conflict with the legislature and the development of the Nation State Bill without several critical events occurring in the 1990s which would allow the court to assume the power of judicial review. The court intervened in several significant cases involving decisions driven by democratic values, such as the treatment of African asylum-seekers, which opposed conservative politicians' more nationalistic views. Thus, the debate between the court and the Knesset has brought up a question about the balance of powers between the two branches in the context of legislating and ruling on substantial issues.

Chapter 4 analyzes the trajectory of right-wing politics in Israel from its first ascent to the premiership in 1977 through the present day. I argue the actions of right-wing politicians, particularly their passing of the Nation State Bill, have been responses to the growing influence of the Supreme Court of Israel. Conservative politicians have sought to institutionalize their policies more firmly to safeguard them from an "intruding" court. I will provide evidence that this type of intervention was possible due to a series of events leading to their inclusion into mainstream Israeli politics. Given the high-profile nature of the tensions and issues placed in front of the court and its respective decisions, the question of which branch has the power to control legislation then emerged, which had enormous implication for Israel's identity as a Jewish or democratic state.

The final chapter reiterates the argument that the Nation State Bill was forged by retribution from the Israeli right-wing political establishment to inhibit the Supreme Court's democratic challenge. The trajectories of both of these institutions allowed each to procure the power to shape key issues, and the Nation State Bill constituted the critical conjuncture at which these development paths collided. The chapter then highlights reactions over the bill following its passage and discusses the Nation State Bill's future effects by focusing on a movement by contemporary conservatives to overturn court's rulings on several key decisions. I conclude with a discussion about the importance of considering issues surrounding Israel with a more nuanced perspective for the forces shaping its most significant developments.

Chapter 2: Setting Up the Issues

Introduction

The culmination of nearly two decades of political debate over Israel's Jewish and democratic identities, the Nation State Bill received substantial criticism upon its passage from various political, religious, and ethnic groups both in Israel and throughout the world.[40] Some of the most divisive aspects of the bill include sweeping proclamations affirming Israel as the national home of Jewish people, and asserting the exclusive Jewish right to national self-determination in Israel. Furthermore, the bill reiterates Israel's mission to ensure the safety of all Jews worldwide; to strengthen its relationship with the diaspora; and to preserve the cultural, historical, and religious heritage among Jews in the diaspora.[41]

What are the underling tensions existing in Israel that drove the passage of the Nation State Bill? How did these tensions manifest in court, and what were the implications of the court's decisions for the conflict between the judiciary and legislature? This chapter places my argument within the context of the historical tension between Jewish and democratic values, as well as the tension over the proper relationship between Israel and the Jewish diaspora. I argue the manifestations of these tensions can be seen within the divisions between the Supreme Court and right wing politicians, who take opposing stances on whether to use Jewish or democratic values when ruling on legislation regarding immigration and citizenship. Debates on the correct degree

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[40] For examples of criticism, see: Liebermann, O. (2018, July 19). Israel passes controversial 'nation-state' bill into law. Retrieved March 1, 2019, from https://www.cnn.com/2018/07/19/middleeast/israel-nation-state-legislation-intl/index.html, Green, E. (2018, July 21). Israel's New Law Inflames the Core Tension in Its Identity. Retrieved March 1, 2019, from https://www.theatlantic.com/international/archive/2018/07/israel-nation-state-law/565712/, and Lis, J., & Landau, N. (2018, July 19). Israel passes controversial Jewish nation-state bill after stormy debate. Retrieved March 1, 2019, from https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048

[41] Israel, Knesset. (2018). Basic Law: Israel- The Nation State of the Jewish People. Jerusalem.

of Israel's relations with the Jewish diaspora have resurrected the question of who is included in the Jewish population, an issue the right wing has sought to safeguard from the activist court within the Nation State Bill.

The first section of the chapter will discuss the tension that exists between Jewish and democratic values in Israel. It recounts some steps the Israeli government has taken to promote Jewish ideas over democratic ones, and analyzes a supreme court case regarding non-citizen rights which highlights the differing views between the judicial and legislative branch. The chapter then moves to discuss tension over how Israel should treat the Jewish diaspora and preferential immigration policies contingent on identifying as a Jew. I conclude this chapter by examining two cases which demonstrate the contested Jewish identity and the starkly different outcomes which can occur depending on a variety of circumstances including political climate, economic needs, and race.

The Tensions Between Jewish and Democratic Values

Background

Following the end of the Six Day War in June 1967, the Israeli government sought ways to capitalize on support from the Jewish diaspora and imbue them to make *aliyah* in the vise of its unique security situation and perceived need for a "demographic boost." After the upheaval of the center-left government in 1977 by a right-wing coalition, over 250 Jewish settlements were constructed until it became clear that there were insufficient numbers of Jews to adequately populate all of these settlements .[42] The lack of Jews to live in these settlements stemmed from fears for personal security of Israel, as the 1980's were a time of increased Arab terror acts

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[42] Soffer, A. (1989). Demography and the shaping of Israel's borders. Contemporary Jewry, 10(2), 91-105. doi:10.1007/bf02965574

against Israel.[43] The sentiment among Jews worldwide was that there was no way of overcoming the Arab masses on the "other side," in Judea and Samaria (which constitute the West Bank), and the Gaza Strip.[44] Thus, the government pursued ways to reconcile its immigration policies with the security fears plaguing its efforts to achieve steady Jewish settlement in Israel.

Israel's complicated geopolitical history, doubts about the sovereignty over its borders, and its security situation, have given rise to the salience of its "illiberal" immigration policies which separate the nation from other Western democracies, and the government's emphasis on the physical aspect of *aliyah.* Fitzgerald explains how, throughout the early 20th century, the U.S. and Argentina ethnicized Eastern Europeans and restricted their entry due to fears of anarchists, Communists, and other radicals.[45] As nation-states developed, however, these security concerns faded until the two world wars when enemy aliens were typically excluded. Since Israel has consistently had to worry about its security given its volatile history, these concerns are still present and corroborate its motives of using immigration and emigration as policy tools. Policies including the Law of Return, which stipulates the right of any Jew to immigrate to Israel and gain citizenship, have been amended several times by the Supreme Court of Israel, against the wishes of right-wing political establishment.

Israel's ethnically-selective laws have undergone adjustments based on its changing security and ethnographic needs. The Law of Return was revised several times to reflect the growing need for Jewish immigration, but is unique among ethnically-selective policies in other countries because of its requirement for the physical movement of co-ethnics to the kin state. Although the Law of Return bestows recognition of ethno-cultural membership on Jews who do

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[43] Israel, Ministry of Foreign Affairs. (2013). 1967-1993: Major Terror Attacks
[44] *Soffer*. 96
[45] FitzGerald, D. S., & Cook-Martín, D. A. (2014). Culling the masses: The democratic origins of racist immigration policy in the Americas. Cambridge, MA: Harvard University Press.

not possess the formal status of citizenship, it does not grant symbolic recognition nor give the same series of "quasi-benefits" to co-ethnics,[46] regardless of citizenship status, conferred by co-ethnics of Central and Eastern European countries. Rather, the requirement of formal movement of the Jewish diaspora to Israel is a vehicle of the state to serve its goal of building up and maintaining a Jewish majority within its boundaries.

Scholars use these policies to characterize Israel as an "ethnic" or "illiberal" democracy, highlight the extent to which the state uses national security to implement such policies to encourage immigration amongst the Jewish diaspora. Although the Israeli government does not recognize them as such, a common justification for the illiberal policies comes from the fear that the immigration of non-Jews will lead to a demographic crisis of the loss of the Jewish majority in Israel. This phenomena, pertinent to Israel due to its conflict between religious and democratic values, demonstrates the inextricable link between Jewish immigration and ethnic nationhood -- the crux of the Nation State Bill. Like the "pioneering" sentiment felt by Jews following Israel's victory in the Six-Day War, the full significance of Jewish immigration derives from a geopolitical environment in which demography is destiny.[47]

Tzaim v. Prime Minister (2018)

The case of *Tzaim v. Prime Minister* exhibits how tensions between Israel's democratic and Jewish values have unfolded within the sphere of illiberal citizenship and immigration policies. The Supreme Court's decision ultimately rejected the right-wing government's stance, exemplifying the conflict over which values should prevail. In the case, five Palestinian women

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[46] Dumbrava, C. (2018). The ethno-demographic impact of co-ethnic citizenship in Central and Eastern Europe. Journal of Ethnic and Migration Studies, 1-17. doi:10.1080/1369183x.2018.1440490
[47] *Joppke & Rosenhek*. 306

living with cancer in the Gaza Strip were originally denied entry into Israel to pass through to reach East Jerusalem, part of the occupied West Bank, to receive treatment. The state denied the women on grounds that they were first degree relatives of Hamas members, part of a government-instituted policy preventing family members of Hamas over the age 16 from entering Israel for any reason.[48] The law was instituted as part of Israel's attempt to pressure Hamas into returning the bodies of two Israeli soldiers from Operation Defensive Shield in 2014, as well as two Israelis who entered the Gaza Strip after the operation, and are believed to be held by the group.[49]

The appeals from the Palestinian women versus the argument from Israel's government reflect the boundary between democratic and Jewish values. The five women, along with several Israeli, Arab, and Palestinian human rights groups petitioned the Supreme Court to overturn their decisions on the grounds that they were arbitrary, unreasonable, disproportionate, and deviated from international humanitarian norms. The state argued Israel has a lack of legal responsibility to Gaza residents since then-Prime Minister Ariel Sharon unilaterally retreated from Jewish settlements in the Gaza Strip in 2005 at the insistence of Gazans and the international community, and therefore has the right to refuse entry to Gaza residents unless in "exceptional humanitarian circumstances." More broadly, the state argued Israel has discretion over who enters the territory it governs, and no foreigner has a right to enter the country or pass through even for medical treatment.[50] As Hamas stands for threatening the elimination of Israel[51] and

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[48] Hostovsky Brandes, T., & Shafran Gittleman, I. (2018, September 24). The Israeli Supreme Court's Decision in Tziam v. the Prime Minister. Retrieved April 2, 2019, from https://www.lawfareblog.com/israeli-supreme-courts-decision-tziam-v-prime-minister
[49] Times of Israel Staff. (2018, August 27). Court rules state must allow Hamas relatives into Israel for cancer treatment. Retrieved April 2, 2019, from https://www.timesofisrael.com/court-rules-state-must-allow-hamas-relatives-into-israel-for-cancer-treatment/
[50] *Hostovsky and Shaffran*
[51] The Charter of Hamas art. 28, para. 2.

Jewish values, Israel's ban on its relatives from entering the country exhibits the state's focus on protecting and preserving these Jewish values.

The Supreme Court's decision to demand that the state give the women permission to pass through Israel reflects a stronger commitment to democratic values compared with the right-wing government establishment, whose commitment was more in line with Israel's Jewish values. According to the court, Israel is bound by criteria for accepting and rejecting requests based on legitimate considerations in line with the state's basic constitutional ethics. The recognition and preservation of life, even that of an enemy alien, are part of Israel's values "as a democratic and Jewish state." Further, the policy was incompatible with the value of individual responsibility, which prohibits punishing individuals for the actions of others, such as immediate family members, and the ban did not allow for what the court believed to be a system of case-by-case examination. Although the Supreme Court did not strike down the entire policy of restricted access for Gaza residents, its decision based on the state's respect for all life drew upon its democratic values. The roots of the court's interpretation of Israel's 'basic values' come from the "Constitutional Revolution" in the early and mid-1990s, a topic discussed at length in Chapter 3 which gave the court broad new powers to interpret Israel's constitutional laws.

The reaction from right-wing Knesset members highlights the disparity between the state's and Supreme Court's priorities for Israel's identity. Knesset member Betzalel Smotrich from the conservative Jewish Home Party tweeted soon after the court's decision that the ruling demonstrated a "lack of responsibility shown by judges for the state's security." He also drew on the commonly-held right-wing notion that the court was participating in "activism on steroids with no legal basis,"[52] alluding to previous criticism for overturning legislation passed by the

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[52] *Times of Israel Staff.* Aug 2018

Knesset on the basis of democratic values versus Jewish ones. Despite the court's order to consider each request for medical treatment on a case-by-case basis, the state continued to systematically uphold the ban on Gaza residents on virtually all grounds. According to Haaretz, Israel has denied requests from potential Palestinian patients because they had relatives who moved to areas of the West Bank controlled by the Palestinian Authority (PA) without Israeli permission.[53] Although the government has stated that it reserves the right to decide which and how many Gazans can move to the West Bank, this judgment violates the Oslo Accords- which recognize Gaza and the West Bank as one territory. As Chapter 4 explores the ascent of right-wing politics, Prime Minister Netanyahu rose to prominence on criticism of the Oslo Accords being "too soft" on the Palestinians. This tension between the court and the legislature serves as the basis for the creation of the Nation State Bill, and manifests in other cases and tensions as well.

The Tension Between Israel and Its Diaspora

Background

Within the trans-border Jewish community, including Israeli Jews and the greater Jewish population across the world, lies a deep-seated tension about Israel's national identity and its responsibility to the Jewish diaspora versus its obligations as a liberal democracy. The relationship between these two groups is enshrined in Israel's Proclamation of Independence, where the county's founders wrote an appeal "to the Jewish people throughout the Diaspora to

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[53] Hass, A. (2018, October 20). Israel bars Gazans from getting medical care in West Bank if they have relatives staying there without a permit. Retrieved April 2, 2019, from https://www.haaretz.com/israel-news/.premium-gazan-patients-face-new-limitation-on-travel-for-medical-treatment-1.6573119

rally round the Jews of *Eretz-Israel* in the tasks of immigration and up-building and to stand by

them in the great struggle for the realization of the age-old dream - the redemption of Israel."[54]

The relationship between Israel and the Jewish diaspora, however, is not predetermined.

The Proclamation of Independence states the existence of this relationship, but does not go any

further in explaining the specific contours of the interactions between the state and its co-ethnics.

Israel's stated purpose is to serve as the homeland for a specific ethnic group, and members of

that ethnic nation and diaspora are preferred to non-members, who are seen as outsiders and less

desirable persons who therefore cannot be full members of the society and state.[55] The disparity

in treatment of ethnic Jews and non-Jews is widely apparent in Israel[56] and has historical roots.

The difference in treatment has resulted in starkly depleted social outcomes and economic

opportunities, such as in housing and in the labor market, for non-Jewish groups.[57] Most recent

in the line of institutionalized preferences is the Nation State Bill, which confers and reaffirms

sole Jewish rights to national self-determination in Israel and promotes the establishment of

Jewish settlements. The bill devotes an entire section to Israel's connection with the Jewish

people, specifying that the state shall act within the diaspora to strengthen the affinity between

the state and members of the Jewish people.[58]

Although ambiguity exists regarding the exact relationship between Israel and the Jewish

diaspora, it is far from the only case where the relationship between the kin state and its diaspora

have been institutionalized and contested. Joppke and Rosenhek compare the Jewish affinity for

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[54] Israel, Knesset. (1948). Proclamation of Independence. Tel Aviv.
[55] *Smooha*. 477
[56] For examples, see Smooha (2002) and Joppke, C. (2005). Selecting by origin: Ethnic migration in the liberal state. Cambridge, MA: Harvard University Press.
[57] Okun, B. S., & Friedlander, D. (2005). Educational stratification among Arabs and Jews in Israel: Historical disadvantage, discrimination, and opportunity. Population Studies, 59(2), 163-180. doi:10.1080/00324720500099405
[58] Israel, Knesset. (2018). Basic Law: Israel- The Nation State of the Jewish People. Jerusalem

Israel as its homeland with the affinity that ethnic Germans have for Germany, as ethnic Germans are also believed to be identical with the state-bearing nation.[59] The right of return for ethnic Germans was a constitutional right, designed as a temporary remedy for ethnic Germans in the Soviet Union deemed by the government to be persecuted for their ethnicity from the consequences of war. Despite the law, a struggle in Germany occurred over whether an ethnic or civic definition of German nationhood should take precedence, with a strengthening of the civic definition over time[60] and the resulting demise of the German Law of Return in 1993. In contrast to Israel's migration-focused approach, Waterbury discusses Hungary's passage of the far-reaching "Status Law," which grants special benefits and subsidies to millions of ethnic Hungarians living in neighboring countries.[61] Similar to Israel, Hungary's relationship to its diaspora has been an important feature of both domestic politics and foreign policy, but has been contested (to various degrees) throughout the changing priorities of each Hungarian administration.[62] Diaspora relations play a significant role in the trajectory of the kin state's policies, which have consequences for both members and non-members of the ethnic state.

Jewish Membership Case Studies

The contested idea of who constitutes a Jew, a topic addressed by the Nation State Bill which draws a hard distinction between Jews and non-Jews, has also manifested in previous cases throughout Israeli history. Concurrent with the collapse of the Soviet Union in the late 1980s and early 1990s, large influxes of Russian immigrants made their way to Israel under the Law of Return despite their un-*halachic* recognition as Jews. This period also saw the emergence

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[59] *Joppke & Rosenhek*. 303
[60] *Joppke & Rosenhek*. 306
[61] *Waterbury*. 484
[62] *Waterbury*. 485

of a group of Ethiopian Jews who were left behind by an Israeli airlift operation. Their status as Jews was dubiously recognized by the government, which created conflict over the state's responsibility to them. These two cases encapsulate the tension over Jewish, further complicating Israel's relationship with the diaspora and the Nation State Bill.

Soviet 'Jewish' Immigration

The mass immigration of "Jews" from the former Soviet Union represented one of the first times in Israel's history where religious and right-wing political groups were willing to overlook the *halachic* definition of a Jew, determined by *Halacha* (Jewish law). The origins of Israel's acceptance of these Russian immigrants came from its geopolitical struggle during the First Intifada.[63] Increased violence during the Palestinian uprising resulted in heightened requests from Israeli businesses for foreign workers, at the same time that the government sought to decrease its reliance on Palestinian labor. Since the 1960s, Palestinian labor had been more frequently used for low-skilled jobs in Israel in sectors such as construction, agriculture, and services.[64] Then-Prime Minister Yitzhak Rabin believed the "separation" of Israeli and Palestinian people was the way to peace, meaning the importation of foreign labor became a temporary measure to give the country time to reconstruct the economy and free itself from dependence on cheap labor from the Palestinian territories.[65] The government's desire, along with the timely collapse of the Soviet Union and succeeding outflow of Russians from the country, laid the groundwork for an increasingly blurred definition of Jewish identity, and exposed underlying motivations for Israel's "illiberal" immigration policies.

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[63] Lustick, I. S. (1999). Israel as a Non-Arab State: The Political Implications of Mass Immigration of Non-Jews. Middle East Journal, 53(3), 417-433. Retrieved February 7, 2019.
[64] Bartram, D. V. (1998). Foreign Workers in Israel: History and Theory. International Migration Review, 32(2), 303-325. doi:10.1177/019791839803200201
[65] *Bartram*. 314

Russian immigrants' status as Jews, demonstrated Israel's willingness to rebuke the status quo of Jewish identity to build and maintain a "Jewish" majority against a perceived rising Arab influence in the country. Looking at Western Europe's history of importing foreign labor and the tendency of these "temporary" workers to settle permanently in the host country, government ministers wanted to avoid a similar situation in Israel. They believed adding large numbers of non-Jews would make the country suffer in terms of its ethnic dimension,[66] a complicated issue already heavily contested. Especially during a time of high levels of Jewish emigration, low levels of Jewish immigration, and diminishing Jewish rates of natural increase relative to Arab rates, an Arab majority within the administrative and political jurisdiction of Israel appeared imminent[67] to government actors.

The Law of Return allowed for preferential immigration of Russians to Israel due to the broader criteria established by the amendment. Primarily, traditional criteria stipulates one is a Jew only if his/her mother is Jewish.[68] According to updated Law of Return, however, the right to immigrate extended to include the children and grandchildren of a Jew, the spouse of a child of a Jew and the spouse of the grandchild of a Jew. The purpose was to ensure the unity of families where intermarriage had occurred,[69] which is against the Orthodox interpretation of Jewish identity. According to the law then, it became possible for dozens of people in any one family who have never considered themselves Jewish and who would not be considered Jewish upon arrival in Israel to qualify for Israeli residence and citizenship.[70]

The allowance of these Russian immigrants accomplished both Israel's short- and long-

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[66] *Bartram*. 304
[67] *Lustick*. 425
[68] Jerusalem Report, 6 July 1998, p. 6.
[69] *Lustick*. 422
[70] *Lustick*. 422

term goal of bolstering the domestic Jewish population despite the departure from a strict

Orthodox interpretation of a Jew. According to Dumbrava, ethno-nationally sensitive migration

and citizenship policies (such as the Law of Return) can reduce the need to rely on non-ethnic

immigrants to fill labor shortages, and they can also contribute to the re-adjustment of the ethnic

structure of the population.[71] This case of Russian immigration illustrates both of Dumbrava's

points, ultimately contributing to the formal reproduction of the preferred ethnic group's

population, on the basis that these immigrants could still contribute to the demographic

consolidation of the Jewish state.[72] In the short term, the Israeli government sought to create

employment for the new Russian immigrants, out of fear that they would leave for the United

States rather than seek employment in Israel. This would be seen as a failure of Zionism- thus the

government anxiously tried to prevent it by making it something of a national mission to replace

Palestinian workers with Russian Jews, who were mostly highly educated.[73] This case also

illustrates an implicit long-term goal of the Law of Return, which is to construct and maintain a

Jewish majority against non-ethnically Jewish influences. The law was not designed to ward off

unwanted immigrants, but encourage desired immigrants.[74] Israel demonstrated its commitment

to ensuring that its mission of serving as the Jewish homeland was preserved, even if it had to

adjust the definition of a Jew's identity to do so.

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[71] Dumbrava, C. (2016). Reproducing the nation: Reproduction, citizenship and ethno-demographic survival in post-communist Romania. Journal of Ethnic and Migration Studies, 43(9), 1490-1507. doi:10.1080/1369183x.2016.1221335
[72] Kim, J. (2019). Ethnic capital, migration, and citizenship: A Bourdieusian perspective. Ethnic and Racial Studies, 42(3), 357-385. doi:10.1080/01419870.2019.1535131
[73] *Bartram*. 310
[74] Joppke, C. (2005). Selecting by origin: Ethnic migration in the liberal state. Cambridge, MA: Harvard University Press. 192-193

The Falash Mura

       The case of the Falash Mura demonstrates the salience of a contested Jewish identity that cuts through a racial dimension and emphasizes preference for certain traits over others within the preferred ethnic group. These Ethiopian nationals constitute groups left behind following the 1991 airlift of over 14,000 *Falash* (Ethiopian) Jews to Israel because they were designated by the Israeli government as descendants of converts[75] and therefore not authentic Jews. The Falash Mura have long claimed to be part of the Beta Israel community of Ethiopian Jews, whose ancestors converted to Christianity but whose descendants today clamor for their right to "return to Judaism" in the context of a mass migration to Israel. Their case, however, is considered by the state in a different light than that of Russian immigrants, despite their comparable non-Jewish background. Whether the Law of Return should apply to a group of dark-skinned Ethiopians believed to have Jewish ancestry, yet descended from Christian converts, has provoked enduring dispute about the definition of a Jew, particularly because the Falash Mura allegedly had ample reasons to want to leave a war-torn Ethiopia other than desiring to "return to Judaism."[76]

       The dynamics of the Falash Mura case, categorized by a combination of bureaucratic, religious, ethnographic, and historical accounts of agency,[77] have resulted in a system of conflicting criteria for "Jewishness" by which these immigrants are judged. Seeman documents the "rituals of domination" that immigrating Falash Mura have been subject to during the conversion process. Such rituals include a symbolic circumcision in public to the shaming gaze of outsiders, as well as formal and informal scrutiny in daily life at the immigrant center vis-à-vis the authenticity of their religious practice. Comparing the Falash Mura's plight to the relative

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[75] Seeman, D. (2003). Agency, Bureaucracy, and Religious Conversion: Ethiopian 'Felashmura' Immigrants to Israel. In The Anthropology of Religious Conversion (pp. 29-41). Lanham, MD: Rowman & Littlefield.
[76] *Kim*. 369-370
[77] *Seeman*. 30

ease that white Russian immigrants had immigrating to Israel, this dynamic highlights the latent factor of racial preference over the tension of Jewish belonging.

By comparing the Falash Mura's predicament when attempting to emigrate to Israel to that of the Russian immigrants, we observe the value Israel places on certain traits, such as race, within the Jewish community when encouraging ethnic immigration. Although both Russian and Falash Mura immigrants are required to undergo state-regulated religious conversions before enjoying equal rights and civil recognition as "untainted" Jewish immigrants,[78] Russians were not questioned about the sincerity of their commitment to Judaism or on their desire to leave their home country. The Falash Mura, on the contrary, had to show their desire for immigrating to Israel was not be predicated on their desire to leave Ethiopia.[79] Further, they had to demonstrate a sincere "return" to the religion of their ancestors by going through these "rituals of domination" and subjecting themselves to profound distrust of their commitment to Judaism. Through these rituals, Falash Mura immigrants have learned that their submission might never be pronounced "enough"[80] in the eyes of political elites or parts of the general Israeli public.

Key Findings

In the context of Israel's immigration policies that are skewed in favor of Jews, there exists tension among the Jewish diaspora and the state about the definition of a Jew. But as exhibited by the empirical effects of these policies that pre-suppose the identity of a Jew, more co-ethnics are created rather the pre-existing ethnic community being built up. There also exists tension over the traits of Jews that are valued over others by the state. The case of the Russian

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[78] *Kim.* 369
[79] *Seeman.* 30
[80] *Seeman.* 37

immigrants illustrates a time where religious and right-wing parties were willing to forgo their strict definition of a Jew to continue Jewish immigration.

Certain political, economic, and racial contexts are also at play, however, when it comes to determining the ease to which diaspora Jews can enter. Originally left out of the Ethiopian-Jewish migration in 1991, the Falash Mura have been subject to extreme scrutiny and suspicion from Israelis over their commitment to Judaism, even subjecting themselves to harsh conditions once arriving to prove their "worthiness." Such immigration policies highlight and perpetuate ideas reflected in the Nation State Bill that characterize Israel's efforts to construct its national identity as a Jewish state, even at the expense of the diaspora it was created to serve.

Conclusion

A host of issues within Israel's boundaries perpetuated a series of tensions that have sown conflict between the judicial branch and legislative branch. Israel's complex geopolitical history with its neighbors, coupled with national security concerns and a preoccupation with maintaining a Jewish demographic majority, led to debates over whether Jewish or democratic values should be favored in the public sphere. The court, a bulwark for democratic values, has frequently clashed over a series of illiberal immigration and citizenship policies imposed by the nationalist, right-wing legislature. The case of the Palestinian women seeking medical treatment highlights the ramifications of policies aimed at protecting the Jewish identity of Israel, with the blanket ban on Gaza residents underscoring the suffering of democratic values to impose such a policy.

Although the idea of a strong bond between Israel and the Jewish diaspora lays within its Declaration of Independence, conflict between the Supreme Court of Israel and Knesset has implicated the question of Jewish identity itself. Analysis of two cases of recent Jewish

immigration to Israel *en masse* demonstrates the various dimensions along which Israel has adjusted the legal definition of a Jew to fit its present circumstances. This dynamic is complicated by the right-wing government's attempts to institutionalize its own nationalist and Jewish-centered policies against intervention from the court. Tension between Jewish and democratic values, as well as tension over Israel's relationship with the Jewish diaspora, became the public issues over which the legislature and judiciary would use their increasing power in their attempts to mold Israel's identity.

Chapter 3: The Supreme Court of Israel and Judicial Activism

Background

The increasing power of the Supreme Court over the past 20 years led to an intense power

struggle between the judiciary and legislature; a divide that later played an instrumental role in

the development of the Nation State Bill. Until 1992, the court operated without a working

constitution[81] until abruptly bestowing upon itself the power of judicial review. In addition to

fueling the debate around the application of Israel's Jewish and democratic values, this move to

judicial review unearthed the tension over the separation of powers between the legislative and

judicial branches. Progressives have viewed the court as an essential institution that defends

human rights and serves as check on the power of the executive. Conservatives, however, have

called the court and then-Chief Justice Aharon Barak (who declared this "Constitutional

Revolution") an "activist" in a pejorative sense. This resentment stems from his alleged

usurpation of political power and violations of the separation of powers.[82]

From where did the Supreme Court derive its power of judicial review? What are the

substantive issues which have exacerbated the divide between the judiciary and legislature? This

chapter examines how the court's repeated interpretation of Israel's Basic Laws at the expense of

Knesset laws motivated the conservative legislature to institutionalize their nationalist policies as

a safeguard from the court's encroachment. I argue the Supreme Court obtained its power

through a series of critical events and have wielded this power via judicial activism to oppose the

Knesset in several decisive court cases. I will first survey and analyze the historical trajectory of

the Supreme Court to understand the origins of its power and later use of judicial review and

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[81] Sapir, G. (2009). Constitutional revolutions: Israel as a case-study. *International Journal of Law in Context, 5*(04), 355. doi:10.1017/s1744552309990218
[82] Sultany, N. (2014). Activism and Legitimation in Israel's Jurisprudence of Occupation. Social & Legal Studies, 23(3), 315-339. doi:10.1177/0964663914521449

activism. I will then examine two court cases which demonstrate the tensions between the court and Knesset over the separation of powers and Israel's identity.

History of the Israeli Supreme Court and Lack of a Constitution, 1948 – 1992

On the eve of Israel's modern founding, the first government was founded not from the provisions of an official constitution, but rather was based solely on the principles explicitly outlined in the Declaration of Independence. The lack of constitution, however, caused heated debates among members of Knesset who disagreed about the form, content, or even need for a constitution. Shortly after, in 1950, the First Knesset issued what became known as the "Harari Decision." Named after its champion MK Yitzhak Harari, the Harari Decision called for the creation of a specific Knesset committee that was tasked with forming the constitution in "steps", chapter by chapter, until it was deemed "complete." Each chapter would be represented by a Basic Law, all of which together would be unified into a constitution. The lack of a constitution also distinguished the Supreme Court of Israel from its foreign counterparts in constitutional democracies, whose jobs usually involve interpreting their respective constitutions.

The first Basic Laws passed were more structural in content, originally excluding any ideological articles generally associated with a constitution. Between 1958 and 1991, the Knesset passed nine Basic Laws, which included outlining of the specific allocation of powers between the Knesset, Presidency, and Judiciary; granting the Bank of Israel the authority to mint currency; and assigning the Ministry of Defense the responsibility of upholding the operation of the military.[83] Within the same period, the Knesset also passed several laws of "constitutional character"; but without roots in the judicial system, these laws were passed as ordinary

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[83] Israel, The Knesset. (n.d.). main.knesset.gov.il. Retrieved April 11, 2019, from
https://main.knesset.gov.il/en/activity/pages/basiclaws.aspx

governmental legislation. Among these laws passed by the Knesset were the Equal Rights for Women law and the Law of Return;[84] the latter guarantees the right of every Jew to immigrate and gain Israeli citizenship and has been a point of controversy since its inception. Since these two laws address such fundamental issues, one might wonder why the Knesset would not enshrine equal rights for women or the Law of Return as Basic Laws. The fact that the Knesset passed constitutional-like laws in addition to the Basic Laws undermines its commitment to creating a constitution "chapter by chapter" in accordance with the original plans put forth by Israel's founding government. Notably absent as well among the flurry of legislation passed within this forty-four-year time period was legislation protecting human rights, an integral part of a constitutional democracy.

The Supreme Court's proactive actions to protect human rights, even prior to the creation of an explicit bill of rights, provided the impetus for the court's future call for a "constitutional revolution." Many attempts over the years were made by governing coalitions to anchor a bill of rights as a Basic Law, but all came without success. Even as a political minority in the Knesset for most of Israel's history, Orthodox Jewish groups long opposed a bill of rights because of their concern that it would enable the court to exercise judicial review, a democratic mechanism, over religious doctrines and apply secular proceedings to religious-oriented issues such as marriage and Sabbath observance.[85] To circumvent Knesset opposition to a tangible bill of rights, the court used a line of cases to integrate civil rights into the legal system through declarations. In one of the earliest of such cases, the court declared in their decision on *Kol Ha'am v. Minister of Interior* (1953):

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[84] *Sapir*. 380
[85] *Kretzmer*. 238

The high value of the principle of ensuring free discussion and the investigation of truth

constitutes a function of politico-social progress in every state which calls itself a

democracy...the system of laws under which the political institutions in Israel have been

established and function are witness to the first that this is indeed a state founded on

democracy. Moreover, the matters set forth in the Declaration of Independence...mean

that Israel is a freedom-loving State'.[86]

Thus, Gideon Sapir marks 1992 the year in which Israel gained a Bill of Rights due to the court's

elevation of human rights to constitutional status.

The "soft legal principles," which included the freedom of speech and discovery of truth,

became quasi-legal statutes that enjoyed freedom from restriction by government authorities. But

the purpose of emphasizing basic rights in the Israeli legal system did not require a bill of rights

since the court sought generally to define protected rights drawn from Israel's perceived status as

a democracy. In addition to defining these rights through case verdicts, the court also developed

an extensive system of jurisprudence that mimicked some of the U.S. Supreme Court's

constitutional "tests," which are performed to ensure the of balancing basic rights such as

freedom of speech and movement with other rights and interests such as national security.[87]

Although the Israeli Supreme Court built a system of jurisprudence through court

declarations and tests to balance rights and other interests, its only basis for judicial review until

the 1990s involved intervention for failure to respect an "entrenched" clause of any Basic Law.[88]

As exemplified in section 44 of Basic Law: The Knesset (and later Basic Law: Freedom of

Occupation), an "entrenchment" clause states that the relevant law cannot be varied, suspended,

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[86] HCJ 73/53, *Kol Ha'am Co., Ltd. v. Minister of the Interior* (October 16, 1953).
[87] *Kretzmer.* 240
[88] *Kretzmer.* 241

or made subject to emergency regulations and shall not be altered except by a majority of eighty

members of the Knesset.[89] As a result of this stipulation, the court stated that "when there is an

explicit legal instruction of the Knesset that leaves no room for doubt, it must be followed, even

if it is incompatible with the principles of the Declaration of Independence."[90] The court later

clarified that it would not even repeal primary legislation injurious to human rights.[91] Thus,

while the court had a vehicle for judicial review set in place for some time despite the lack of a

bill of rights or constitution, it was substantially limited in its ability to assess and modify

legislation even within the purview of the Basic Laws.

The Passage of the 1992 Basic Laws and the "Constitutional Revolution"

Until 1992, the court had considered Basic Laws to be of "constitutional status," even though

the absence of a formal constitution and the resulting institutional, political, and legal

frameworks lacked concrete safeguards for substantive values.[92] Thereafter, with the passage of

two new Basic Laws titled "Freedom of Occupation" and "Human Dignity and Liberty," the role

of the Supreme Court changed dramatically; scholars identified these two laws as the Israeli

equivalent to a bill of rights.[93] The former, "Freedom of Occupation," guaranteed the right of

every citizen or resident of the state to engage in any occupation, profession, or business. It was

the first Basic Law that dealt with civil rights which were not specifically mentioned in existing

human rights documents or other national documents.[94] The latter, "Basic Law: Human Dignity

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[89] Israel, Knesset. (1958). Basic Law: The Knesset. Jerusalem.
[90] CA 450/70, Rogozinsky v. The State of Israel, P.D. 26(1), 129, 135 (Justice Berenson) (1971)
[91] *Sapir.* 361
[92] *Rabin and Gutfel.* 303
[93] See *Sapir*
[94] *Kretzmer.* 245

and Liberty," was passed by the Knesset two weeks later[95] and outlines basic human rights

recognized by the state and upheld by the Declaration of Independence, including (but not

limited to) the right to life, body, property, liberty, privacy, and free movement in and out of the

country.[96] Both of these Basic Laws contain clauses allowing for the restriction or denial of their

respective rights by means of law, since such a law must correspond to the values of the state,

serve an appropriate purpose, and must only reach an extent that does not exceed what is

required.[97] This context provided a window for the Supreme Court to declare their ability for

judicial review of legislation and thus, three years later, the Supreme Court declared its ability to

hold Knesset legislation subject to scrutiny by the court based on the subjectivity and open

interpretation of these clauses.

Thus, the passage of these two new Basic Laws ushered in a "mini-revolution" for the

Israeli legal system. Three years after their initial passage, in his opinion on the case of *Bank

Mizrahi vs Minister of Finance*, Chief Justice of the Supreme Court Aharon Barack delivered

sweeping statements declaring the court had the power to declare legislation unconstitutional if it

was deemed incompatible with a Basic Law. In the case, Bank Mizrahi petitioned the court that

the law granting protection to debtors against standard court proceedings and the write off of

debt in certain circumstances, violated the bank's property rights based on section 3 of Basic

Law: Human Dignity and Liberty.[98] Drawing heavily upon the reasoning of then-U.S. Chief

Justice John Marshall in his opinion on *Marbury v Madison*, Justice Barack ruled that even

though the new Basic Laws do not contain provisions for annulling any norm that does not meet

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[95] Rolef, S. H. (n.d.). Basic Laws. Retrieved January 24, 2019, from
https://knesset.gov.il/description/eng/eng_mimshal_yesod.htm
[96] Israel, Knesset. (1992). Basic Law: Human Dignity and Liberty. Jerusalem.
[97] Basic Law: Freedom of Occupation (1994): The original law was passed concurrent with Basic Law: Human
Dignity and Liberty in March 1992, but was amended in 1994
[98] *Rabin and Gutfel*. 313

the requirements set forth therein, the court is nevertheless competent to declare such violating norms void.[99]

Divisions within the Knesset and controversy in Israel about the existence of a constitution boiled over during the declaration of the "Constitutional Revolution," reflecting the complex and unstable conditions surrounding the construction of an Israeli constitution.[100] Following the *Bank Mizrahi* decision, the Court extended its power of judicial review to include alleged infringement of rights not expressly outlined in the Basic Laws, justified by deriving judgment from the Human Dignity law. In addition, the court also applied its rulings retroactively to the nine Basic Laws passed prior to 1992, whose provisions did not include any form of protection or entrenchment clause.[101] These moves were met with strong opposition from the Knesset, which already refused to grant the Court judicial review due to the intentional omission of many of these "derived rights" during debates over the drafting of the Basic Laws.

The Supreme Court's constitutional revolution also deepened divisions between secular, Ashkenazi bourgeoisie ruling parties who were in favor of a stronger court and marginalized groups such as Israeli-Arabs, lower income religious groups, and recent Russian immigrants who believed the Ashkenazi political monopoly simply sought to enrich themselves. Having faced a continuous decline in power since the early 1980s, Ashkenazi groups saw the revolution as an opportunity to regain their threatened position and overcome growing popular backlash against their political hegemony.[102] As a result of the 1996 election, however, many marginalized groups saw large gains in their political representation, which reinforced the opposition to the ruling Ashkenazi Jewish groups. Rabin and Gutfel argue that these emotional and often tempestuous

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[99] *Rabin and Gutfel.* 319
[100] *Rabin and Gutfel.* 321
[101] *Rabin and Gutfel* 320-321
[102] *Hirschl.* 106

political struggles touched on urgent and substantial issues concerning the identity of Israel as liberal democracy and Jewish state[103]; a dynamic that is still a central discussion in Israeli politics and international forums today. The untimely nature of the "Constitutional Revolution," which enabled the Supreme Court to use its power of judicial review to take far more complex and problematic stances on this core dynamic,[104] exacerbated a debate over Israel's identity and the separation of powers and prompted the right-wing government to seek ways in which to institutionalize its own policies.

Tension over the Separation of Powers and Israel's Jewish Identity: Judicial Activism in the 21st Century

Introduction

Some critics attribute the Nation State Bill to backlash from judicial activism and the rise of "Post-Zionism." There is no strict or impartial definition, but Kelman characterizes Post-Zionism as a shift in the way Israel is viewed by its Jewish population from exclusivism to a focus on pluralism, equality, and partnership with the Palestinians.[105] Although the ideas of Post-Zionism may resonate with some Knesset members, like Israeli-Arab representatives, who advocate for secularizing Israel's Jewish identity, I argue that this view did not significantly contribute to the development of the Nation State Bill. Rather, deep social tensions and the aforementioned conflict between the judiciary and legislature exacerbated the divisions leading to the passage of the bill.

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[103] *Rabin and Gutfel* 322
[104] *Rabin and Gutfel* 326
[105] Kelman, H. C. (1998). Israel in Transition from Zionism to Post-Zionism. ANNALS, 555, 46-61. Retrieved January 24, 2019.

The passage of the 1992 Basic Laws and Justice Barak's decision in the *Bank Mizrahi*

case increased the powers of the court to check Knesset legislation has met resistance from many

representatives. This divide, in addition to debates over democratic and Jewish values, has been a

defining feature of the 21st century Israeli legal system and politics in terms of political and

social tension in Israel. The core of this tension is encapsulated in two court decisions concerning

the admittance and treatment of asylum seekers in Israel. The cases I will examine both concern

the treatment of African asylum-seekers entering Israel. The reactionary responses from

opponents to more liberal asylum policies, and to the court's role in general, have motivated right

wing politicians to solidify its conservative policies such as in the Nation State Bill.

The African Asylum-Seeker Cases (2013-2014)

Between 2002 and 2014, over 60,000 individuals primarily from unstable regions of

Sudan and Eritrea entered Israel via its land border with Egypt.[106] Politicians believed that those

who came from Sudan, a country considered an enemy of Israel, posed a danger to the Israeli

public.[107] According to d'Orsi and the *Eitan* opinion, the official position of Israeli authorities is

that most Eritrean "infiltrators" are immigrants entering Israel for economic reasons,[108] a

position meant to squash sympathy for those entering the country. Thus, in the beginning, the

government ordered these migrants be held in detained and held without trial. Although the

government soon offered work visas to many of those entering the country, they were barred

from claiming asylum status and therefore unable to gain the basic rights that come with being a

recognized refugee. Starting in 2008, successive governments from then-Prime Minister Ehud

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[106] Sabar, G., & Tsurkov, E. (2015). Israel's Policies toward Asylum Seekers: 2002-2014. *Istituto Afari Internazionali*. Retrieved January 24, 2019.
[107] *Sabar and Tsurkov* 6
[108] HCJ 7385/13 Eitan—Israeli Immigration Policy Center v. Oe Israeli Government, ¶ 110 (2014)

Olmert to current Prime Minister Benyamin Netanyahu had sought to amend the 1954 Law for

the Prevention of Infiltration with the aim of allowing the state to systematically hold asylum

seekers in administrative detention.[109] The original law was passed to prevent the entry of

Palestinian refugees following the 1948 Arab-Israeli War and defines offenses committed by

those crossing into Israeli territory. In January 2012, the Knesset—then under the leadership of

Prime Minister Netanyahu—passed an amendment to the law allowing the government to

imprison Eritrean asylum-seekers without trial for three years and Sudanese seekers

indefinitely.[110]

Despite previous successful efforts from the Knesset, Israeli non-profit groups turned to

the Supreme Court and filed a petition against the amendment. In September 2013, the court

decided unanimously in *Adam v. The Knesset* that the amended law disproportionately violated

"infiltrators" right to liberty, as defined in Basic Law: Human Dignity and Liberty, and

demanded the immediate release of all detainees within 90 days.[111] The court later invalidated

the entire amendment, ruling it not possible to detach the article in question from the entire body

of norms provided by the law.[112] According to Justice E. Hayut's opinion, the case was

monumental for the court due to its first decision that a Knesset law violated the constitutional

right to liberty of aliens, even if they were illegally in the country.[113] The ruling further

emboldened the court to take action on Knesset legislation it deemed incompatible with the Basic

Laws, a significant departure from the relative restraint it showed in the years immediately

following the constitutional revolution.

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[109] *Sabar and Tsurkov* 11
[110] *Sabar and Tsurkov* 11
[111] *Sabar and Tsurkov* 11
[112] 5 HCJ 7146/12 Adam v. The Knesset ¶ 150 (2013)
[113] D'Orsi, C. (2018). To Stay or to Leave? The Unsolved Dilemma of the Eritrean Asylum-Seekers in
Israel. Harvard International Law Journal, 29, 83-125. Retrieved January 24, 2019.

Rather than follow through with the court's orders, however, the Knesset sought another amendment to bypass the ruling and continue detaining asylum-seekers, demonstrating the contentious position each branch of government had in a conflict rife with social tension. The 2014 amendment ordered the detention of incoming migrants and migrants within Israel who renewed their visas for up to a year, where they would be transferred to a semi-open detention camp indefinitely or until they "agreed" to return to their country of origin.[114] NGOs, again, sounded the alarms with the Supreme Court, culminating in the case *Eitan—Israeli Immigration Policy Center v. The Israeli Government* in September 2014. In addition to violating the right to liberty, the court ruled that the new amendment also violated the right to autonomy and free movement,[115] specifically attacking the government's policy of offering asylum-seekers "voluntary" return, when the only alternative was detention.[116]

The significance of the *Adam* and *Eitan* decisions is two-fold: it marked the first time in history that the Supreme Court invalidated the same Knesset law twice[117] and it signaled the court's stance on migrants, which ran contrary to narratives within certain parties of Knesset that the migrants were merely seeking economic opportunities. Although the "Constitutional Revolution" was momentous for first activating the power of judicial review, the court used it sparingly to invalidate Knesset legislation, only doing so on five occasions prior to 2009.[118] For the court to rule the same law unconstitutional twice, despite Knesset attempts to circumvent the rulings by passing new amendments, signaled to the legislature a growing power of the judiciary that would encroach on their ability to pass and maintain legislation. The rulings also revealed a

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[114] *Sabar and Tsurkov* 12
[115] *Sabar and Tsurkov* 12
[116] *Eitan*. ¶ 110
[117] *Sabar and Tsurkov* 12
[118] *Sapir* 362

stance that runs contrary to the widely-held beliefs on the intentions of the asylum seekers, asserted by the Knesset and other government officials to justify the deportations. In the *Eitan* case, however, Justice I. Amit highlighted that entering Israel would not constitute a preeminent "flight from persecution" alternative for Eritreans because Israel does not border Eritrea.[119] After all, according to d'Orsi, many Eritreans fled their country of origin because they were subject to forced conscription into national service; a condition described by the UN Human Rights Council as analogous to slavery.[120] Therefore, Justice Amit reasoned, Eritreans who decided to move to Israel were pushed more from considerations of economic character than from an effective need to be protected from persecution.[121]

Conclusion

From its steadfast decisions in the African asylum seeker cases, the Supreme Court's ability to "legislate from the bench" exacerbated a growing divide over the distribution of Jewish and democratic values, as well as the balance of powers between branches. These tensions reflect lingering social divisions in Israel from its historical development without a physical constitution or defined framework for the Supreme Court to operate, resulting in Barak's "Constitutional Revolution." In the name of correcting the imbalance of these powers and values, a new movement among radical, right-wing politicians has emerged in recent years to combat what they see as a breach of the fundamental values of Israeli society. This movement, which I call the "Contemporary Constitutional Revolution" and explore in the concluding chapter, explains several solutions outlined by right-wing politicians to resurrect hardline beliefs of

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[119] *D'Orsi* 104.
[120] *D'Orsi*. 139
[121] *Eitan*, ¶ 8.

conservative Israeli society including the curtailment of asylum seeking, and molding a stronger

Jewish identity in Israel. The Supreme Court's trajectory significantly impacted the development

of these policies and beliefs, spurring the right-wing government to seek ways to thwart the

court's intrusion into legislative matters.

Chapter 4: The Rise of Right-Wing Politics in Israel

Introduction

A right-wing political ideology did not have a strong or consistent presence for most of Israel's political history. Conservative, nationalist politicians, however, capitalized on several essential events which allowed them to appropriate public concerns over national security, establishing themselves as the authoritative voice for representing Israel's Jewish identity. But if Israel did not have a robust conservative political culture from its founding, from where did the right wing derive its power? What was their purpose for passing the Nation State Bill? This chapter demonstrates how right-wing intervention was possible due to a series of critical events, leading to their rise into mainstream Israeli politics, by analyzing the trajectory of right-wing politics in Israel. I argue that the actions of right-wing politicians, including the passing of the Nation State Bill, have been responses to the growing influence of the Israeli Supreme Court. Conservative politicians have sought to institutionalize their policies more firmly to safeguard them from an "intruding" court.

The first section introduces the Israeli political arena and discusses the period of national unity governance, where a single, center-left coalition governed the country until its defeat by the first successful right-leaning coalition in 1977. The chapter then analyzes the collective rise of a steady, right-wing presence in Israeli politics beginning with the election of Benjamin Netanyahu in 1996. The 1996 election signaled a critical historical event because it was the first direct election of the Prime Minister, and the first time national security concerns played a definitive role in electoral politics. I then discuss the rapid rise and fall of the centrist Kadima party, the downfall of which allowed the right-wing to reorganize a governing coalition and solidified a conservative, nationalistic Jewish influence over domestic and foreign policy. Finally, I will

survey reactions from the Nation State Bill following its passage to demonstrate the tension between democratic and Jewish values which underlay both the support and criticism of the bill.

National Unity Governance in Israel, 1948 – 1996

Since Israel's founding in 1948 until the late 1990's, its parliamentary body, the Knesset, was elected by the general public and the leader of the majority party became the Prime Minister, the *de facto* head of state. Although the election of the Prime Minister changed to a direct election in 1996, the entire country has remained a single voting, proportional constituency[122] where Knesset members are elected by, and therefore represent, all citizens in Israel and in which the leader of the majority party almost always becomes Prime Minister.[123] According to Diskin, the new electoral system allowed voters to "split" their vote by supporting a major party candidate for Prime Minister while supporting smaller and more sectarian parties for the simultaneous Knesset election. The direct election was abandoned after the 1996 election,[124] but it nonetheless facilitated the emergence of a fragmented, multi-party system where numerous political parties created specialized platforms to advocate on behalf of certain interest groups, which has generally resulted in a governing body constituting coalitions of various parties.[125]

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[122] *Diskin*. 500

[123] Why Israel's centrist parties will probably lose to Binyamin Netanyahu. (2019, January 10). Retrieved January 10, 2019, from https://www.economist.com/the-economist-explains/2019/01/10/why-israels-centrist-parties-will-probably-lose-to-binyamin-netanyahu

[124] ALG. (2015, March 15). The evolution of Israeli politics. Retrieved January 10, 2019, from https://www.economist.com/the-economist-explains/2015/03/15/the-evolution-of-israeli-politics

[125] The Governments of Israel-Coalitions 1949 to the present (2013). Retrieved January 9, 2019, from https://webcache.googleusercontent.com/search?q=cache:TGlwfWdHjXMJ:https://mfa.gov.il/MFA/Government/Previous%2Bgovernments/The%2BGovernments%2Bof%2BIsrael.htm+&cd=3&hl=en&ct=clnk&gl=us
Although the Labor party took control of the government in 1974 for three years before Likud came to power, Labor is seen as a successor to the Mapai party with similar ideologies. Therefore, I will consider the uprooting of the original governing bloc at the time of Likud's win, rather than Labor.

From the period of independence until the switch to the new electoral system between 1948

and 1977, Israel was governed by successive coalitions from the center-left Mapai party founded

by the country's first and arguably most famous Prime Minister, David Ben-Gurion. The party's

rule was characterized by sweeping progressive reforms, including compulsory education, social

welfare, increased exports, and the establishment of cultural institutions, integral for a nascent

democracy. These reforms, however, also occurred during the period in which Israel fought

several wars against its Arab neighbors including Egypt, Jordan, Lebanon, and Syria.[126] In

particular, Israel was not prepared to respond to the simultaneous attacks launched by Egypt and

Syria in 1973, which sparked the Yom Kippur War, and thus Israelis felt a heightened sense of

insecurity about their geopolitical position in the region.[127] Despite Israel's successes in the Six-

Day War and ultimately in the Yom Kippur War as well, terror attacks carried out by the

Palestinian Liberation Organization (PLO) throughout the 1970s caused Israelis to grow

increasingly uneasy about national security and demand solutions to the violence. The center-left

Mapai governing bloc was uprooted for the first time in Israel's history in 1977 by the

conservative Likud party and a coalition of right-leaning groups campaigning on the promise of

peace with its Arab neighbors.

The original Likud bloc constituted right-wing and centrist parties, including two ultra-

Orthodox Jewish parties that still hold considerable influence in today's government. The

coalition's first Prime Minister from 1977 to 1983,[128] Menachem Begin, promised to follow the

legacy of past prime ministers who sought peaceful solutions to the conflict. Under his rule, he

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[126] History: The State of Israel. (n.d.). Retrieved December 17, 2018, from
https://mfa.gov.il/mfa/aboutisrael/history/pages/history-%20the%20state%20of%20israel.aspx
[127] Yom Kippur War. (2018, November 16). Retrieved January 10, 2019, from
https://www.britannica.com/event/Yom-Kippur-War
[128] Menachem Begin. (2018, August 12). Retrieved January 8, 2019, from
https://www.britannica.com/biography/Menachem-Begin

reached the first direct peace deal with Egypt, which was brokered by the U.S. and came to be known as the 1978 Camp David Accords, and his party successors ensured Israel's participation in the Madrid Peace Conference in 1991, which was a conference co-chaired by the U.S. and Soviet Union that aimed to revive the Israeli-Palestinian peace process. Between 1977 and 1996, the government switched political leanings several times as the Likud and center-left Labor party (the successor of the Mapai) each enjoyed a majority rule at certain points. The political make-up of the government during the passing of the Nation State Bill has its roots in these coalitions because of the Likud's historic partnership with hard-right, religious parties, which was necessary for the Likud party's leader to form governing coalitions. These groups, such as the National Religious Party and Agudat Israel, played active roles in past government coalitions. They became major influencers for their strict interpretation of Judaism and strong belief in Israel as the homeland for Jews.

The political system changed during the run up to the 1996 election for two reasons: the implementation of the new system to directly elect the Prime Minister and a change in the central issues for the candidates and constituents. While violence from the previous wars had characterized Israel's early history, more frequent attacks from extremists in the Palestinian territories brought security issues to the forefront of Israelis' concerns. According to the Israel Ministry of Foreign Affairs, 283 citizens were killed in terrorist attacks between 1990 and 1996,[129] over 100 more than the entire prior decade. Following the Madrid Peace Conference, which represented an end to the primary violence of the First Intifada of Palestinian uprising and a transition to a formal political process, strings of suicide bombings were committed by Islamic extremists throughout the country in the 1990s. Despite the signing of the Oslo Peace Accords in

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[129] Terrorism deaths in Israel 1920-1999. (2000, January 1). Retrieved December 17, 2018, from http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/terrorism deaths in Israel - 1920-1999.aspx

1993 and 1995, violence continued to spiral on both sides and both Palestinians and Jews took action to demonstrate their opposition to the peace process. For example, an extremist, right-wing Jew assassinated Prime Minister Yitzhak Rabin in November 1995 during a peace rally because he opposed the peace deal. These violent events dominated the political discourse surrounding the first direct election of the Prime Minister and changed how Israel saw its Jewish identity and responsibility for all its citizens along a Jew/non-Jew divide.

The Election of 1996

The issues debated by the candidates for Prime Minister during the election of 1996 resulted from a heightened concern for national security following the period of violence by extremists, creating a critical event in Israeli electoral history that facilitated the right-wing's rise into mainstream politics. It was a tense campaign season between acting Prime Minister Shimon Peres and Likud candidate Benyamin Netanyahu. The election focused virtually only on national security due to local and regional unrest. For example, a bus bombing in Jerusalem killed 45 Israeli civilians and a failed Israeli military operation in Lebanon displaced 500,000 Lebanese civilians. The question was: what was the best way forward? Attempting to negotiate peace plans or more hardline stances? As Rabin's successor, Peres campaigned on continuing the peace process and upholding the Oslo Peace Accords. Buoyed by sympathy for Rabin, assassinated six months prior to the election, Peres enjoyed high polling numbers leading up to the election until the bus bombing and other attacks led Israelis to re-evaluate the effectiveness of the current peace process.[130]

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[130] Netanyahu Wins. (1996, May 31). Retrieved December 17, 2018, from http://edition.cnn.com/WORLD/9605/31/netanyahu.wins/

Capitalizing on fears from the Israeli public, Netanyahu argued that Peres' peace plan would compromise Israel's security and that only an assertive stance would make lasting peace possible. He campaigned for policies significantly different from those in the past, including the blocking of a Palestinian state, the slowdown of the peace process, construction of new Jewish settlements in the West Bank, and maintaining a grip on the disputed Golan Heights.[131] The ability to "split" the vote, according to Diskin, led many voters to believe smaller political groups would become more empowered relative to the mainstream parties. He observed that the power of the two large parties indeed decreased considerably and the effective number of new parties increased. These parties and their media platforms which represented groups such as ultra-religious Jews and recent Russian immigrants, tended strongly towards right-wing nationalist politics, were overwhelmingly Zionist-nationalist in character,[132] and supported Netanyahu. Furthermore, the casualties suffered in Lebanon prompted many Israeli Arabs, who would have otherwise voted for Peres' substantial peace plan, to boycott the election.[133]

It was the first truly partisan race in Israeli history and the circumstances and appropriation of security fears led the right-wing to rise in mainstream Israeli politics. Netanyahu defeated Peres by a razor-thin margin of 50.49% to 49.51%, with 91.2% of Orthodox Jewish and West Bank settlers voting in his favor. Although Peres' Labor party won slightly more seats in the Knesset than Likud, Netanyahu secured a coalition of right-wing religious parties, many of

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[131] Elections for the 14th Knesset. (n.d.). Retrieved December 17, 2018, from https://en.idi.org.il/israeli-elections-and-parties/elections/1996/
The Golan Heights constitutes a region north of Israel and west of Syria. Two-thirds of the area was captured by Israel from Syria in 1967 during the Six-Day War. It has remained disputed territory since then and the UN maintains a buffer zone to regulate a ceasefire agreement reached between the two countries following the end of the war.
[132] Cohen, A., & Susser, B. (2009). Jews and Others: Non-Jewish Jews in Israel. Israel Affairs, 15(1), 52-65. doi:10.1080/13537120802574229
[133] Schafferman, K. T. (2009, April 21). Participation, Abstention and Boycott: Trends in Arab Voter Turnout in Israeli Elections. Retrieved January 29, 2019, from https://en.idi.org.il/articles/7116

which made large gains in parliamentary representation, to form a government. He sought an agenda with an emphasis on "security first" and reciprocity from the Palestinians when it came to implementing the Oslo Accords.

Netanyahu departed from this traditional conservative view, however, when he signed the Hebron Protocol with PLO chairman and then-Palestinian President Yasser Arafat in January 1997, conferring civil authority control over much of the West Bank to the Palestinian Authority. Despite his negotiations with Arafat and his policies on economic liberalization, Netanyahu was opposed by both the left and right-wing groups in his government and by the general public for his involvement in several scandals regarding charges of fraud and breach of trust.[134] He was forced to call early elections in 1999, where he was ousted by Ehud Barak from the centrist One Israel Party. Barak's tenure as Prime Minister, however, was marred by a convoluted coalition of right, left, and centrist parties as well as corruption scandals and the onset of violence from the Second Intifada. These forced him to call early elections in 2001, which he lost.
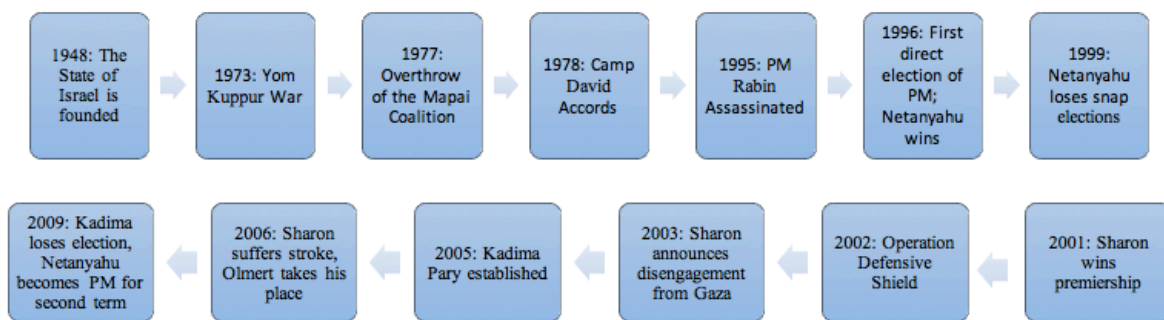

Figure 4.1: Timeline of the Emergence of Israeli Right-Wing Politics

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[134] Liebermann, O. (2017, January 08). 5 corruption scandals that rocked Israel. Retrieved February 21, 2019, from https://www.cnn.com/2017/01/08/middleeast/israeli-politics-corruption/index.html

The Collapse of the Kadima Party, 2009

The special election called by Prime Minister Barak in January 2001 saw the resurgence of the Likud party under the party's chairman Ariel Sharon, a conservative, nationalist minister who served in several cabinets and possessed an extensive military background. To provide a brief historical preview: although Sharon's first few coalitions continued Netanyahu's right-wing political agenda, his ultimate decision to withdraw the military and Jewish settlers from the Gaza Strip alienated him from the Likud party and his traditional right-wing base in the Knesset. As a result, Sharon founded his own, more centrist, party Kadima (Hebrew for *forward)*. However, Kadima's success was short-lived; several key events led to its ultimate collapse and solidified Likud's definitive place and right-wing influence in Israeli politics. I will now explore these critical historical junctures in greater depth.

Similar to Netanyahu's strategy of blaming Peres' government for jeopardizing Israel's security, Sharon criticized his opponent Ehud Barak for failing to stem the Second Intifada's violence or reach a peace agreement. Sharon decisively defeated Barak in the 2001 elections and promptly set up a "national unity" government comprised of the Likud and Labor parties, [135] which were on opposite sides of the center of the political spectrum. Shortly after taking office, Sharon approved Operation Defensive Shield in January 2002, a large-scale military operation carried out by the Israeli army to stop the stream of terrorist attacks emanating from the West Bank. The plan received widespread support in the new Knesset, and Sharon justified the move as retribution for a recent terror attack which killed 30 people in a hotel, saying "the Palestinians must be hit, and it must be very painful."[136] He continued his pursuit of a hardline agenda as part

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[135] Ariel Sharon. (2014, April 02). Retrieved December 17, 2018, from https://www.biography.com/people/ariel-sharon-9480655
[136] Rees, M. (2002, March 18). Streets Red with Blood. Retrieved December 17, 2018, from http://content.time.com/time/magazine/article/0,9171,1002012,00.html

of his campaign promise to focus on security through "combatting terrorism." At this point in time, in and around 2001, Sharon criticized the opposition's efforts to disengage from Gaza[137] and approved the construction of a "security wall" between the West Bank and Israel shortly after the end of Operation Defensive Shield.[138] Despite criticism that the wall violated Palestinian human rights by restricting movement, access to healthcare, and economic opportunities, 84% of Jewish Israelis approved of its construction[139] and terror attacks fell 80 percent almost instantly after the wall went up, according to Israel's Foreign Ministry.[140] The center-left Labor Party, which had originally joined the government, pulled out in October 2002 following the implementation of Sharon's conservative policies and departure from Israel's longstanding policy of restraint, dissolving the governing majority bloc and forcing elections in January 2003. Sharon's resulting hard-right Likud coalition then made large parliamentary gains over Labor in the subsequent election and Sharon quickly re-formed his majority coalition to include right-wing, religious, and nationalist parties.

Sharon found himself increasingly pressured to enact conservative policies; a point that seems paradoxical given Sharon's own right-wing leanings and campaigning on a conservative agenda. Sharon's gains in the new election ensured the right-wing bloc's alignment increased, which according to Edward Carmines, increased the constraints within which politicians act on policies. He argues that newly formed party alignments become more stable over time as parties'

[137] Wasserstein, B. (2018, October 05). Ariel Sharon. Retrieved December 17, 2018, from https://www.britannica.com/biography/Ariel-Sharon

[138] Behind The Barrier: Human Rights Violations as a Result of Israel's Separation Barrier. (2003, April). Retrieved December 17, 2018, from https://www.btselem.org/publications/summaries/200304_behind_the_barrier

[139] Yaar, E., & Hermann, T. (2004, March 10). Peace Index / Most Israelis support the fence, despite Palestinian suffering. Retrieved December 17, 2018, from https://www.haaretz.com/1.4751323

[140] Benaroya, R. (2019, March 14). What Israel's Border Wall Experience Tells Us. Retrieved April 12, 2019, from https://www.realclearpolitics.com/articles/2019/03/14/what_israels_border_wall_experience_tells_us_139735.html

sources of electoral support in the population become more established.[141] Despite his previously

conservative stance on the peace process, Sharon called in December 2003 for the withdrawal of

all Israeli forces and Jewish settlers from the Gaza Strip. Sharon hoped that this "disengagement"

would increase the security of Israeli residents, relieve pressure on the Israeli Defense Forces,

and reduce friction between Israelis and Palestinians.[142] However, his announcement faced fierce

criticism from the right-wing and religious groups in his governing coalition. Netanyahu,

appointed Foreign Minister in 2003, was the highest ranking Israeli official to resign in protest of

what he saw as a lack of "reciprocal concessions by the Palestinians."[143] The conservative

National Union and National Religious Party also withdrew from the government in response.

Feeling ostracized from the Likud party and his traditional support base in the Knesset, Sharon

founded his own more centrist party Kadima.

The logic behind the Kadima party's founding explains why it gained unprecedented support

from the public. According to Carmines, the emergence of Kadima was predictable: rational

politicians, in this case Sharon, will find other means to advance their political agendas if they

expect their proposals to fall on deaf, if not hostile, ears.[144] Instead of having his hands tied with

strong Labor opposition now within his own coalition, Sharon decided to dissolve the

government and create his own party, the centrist Kadima party, along with former Labor

member and 1996 prime minister candidate Shimon Peres. Dubbed as an alternative to the right

wing Likud and the social democratic Labor, Kadima enjoyed unprecedented popular support

that other centrist parties in Israel had never garnered. Pulling from moderate conservatives and

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[141] Carmines, E. G. (1991). The Logic of Party Alignments. Journal of Theoretical Politics, 3(1), 65-80.
doi:10.1177/0951692891003001005
[142] Morley, J. (2005, August 10). Israeli Withdrawal from Gaza Explained. Retrieved December 17, 2018, from
http://www.washingtonpost.com/wp-dyn/content/article/2005/08/10/AR2005081000713.html?noredirect=on
[143] Washington Post (Morley)
[144] *Carmines*. 68

like-minded liberals who supported disengagement from Gaza, the establishment of the Kadima party created a realignment of Israeli politics similar to the partisan election of 1996. After Sharon was incapacitated by a stroke in January 2006, Ehud Olmert replaced Sharon and officially became Prime Minster in the March 2006 elections, where Kadima won massive support and formed a center-left coalition with Labor and several other parties.

Despite the success of the centrist Kadima party, corruption on the part of Olmert created internal opposition and a new party leader, Tzipi Livni, was elected. Following the collapse of Olmert's government, Livni failed to negotiate a new coalition with other parties within the six-week deadline which triggered another round of early elections in February 2009. Although Livni's Kadima won more votes outright, her challenger for Prime Minister, Netanyahu, secured a coalition with Likud's traditional religious and right-wing allies. This marked the first time that the leader of the largest party (Kadima in this case) was not appointed to form the governing coalition, allowing Netanyahu to reclaim the role of Prime Minister since his first term ended in 2001.

A watershed moment, the collapse of the Kadima party presented another critical juncture for the ascension of right-wing politics in Israel. Although speculative, an interesting thought experiment to consider would be "what would have been" if Sharon did not suffer a stroke and instead continued to govern the country with widespread support. Instead, right-wing politics continued to reign and Benjamin Netanyahu has served 4 consecutive terms as prime minister of Israel. The values, core beliefs, and goals of the groups composing the conservative coalition are reflected in virtually all of the Nation State Bill's clauses, including the promotion of Jewish settlements in the West Bank, the imposition of Jewish symbols into the political sphere, and the

belief of sole Jewish autonomy in the land of Israel. Such ideas emphasize the vital role these groups and their history have played in the emergence of the bill.

Aftermath: Support and Criticism Following the Nation State Bill's Passage

Due to challenges from the Supreme Court regarding the constitutionality of the policies passed by the current and previous Knesset bodies, the Nation State Bill was a reaction from the right-wing to cement its policy preferences and concretize the role of Jewish values in all facets of Israel's identity. Discourse both in support and against the Nation State Bill has revolved around the tension between Jewish and democratic values, specifically as it relates to their respective precedence in Israeli government and society. The bill directs the state to support Jewish settlements in the West Bank as a national value and encourages the state to promote their establishment and expansion. It also establishes "Jerusalem, complete and united, as the capital of Israel."[145] These two issues have been at the core of the longstanding conflict between Israel and Palestine and have polarized the international community for decades.[146] For example, the UN passed repeated resolutions condemning Israel for its allegedly illegal development of Jewish settlements and Jewish settlements also created tension between Israel and some of its

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[145] Israel, Knesset. (2018). Basic Law: Israel- The Nation State of the Jewish People. Jerusalem.
[146] For examples, see: General Assembly Resolution 42/209 *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories*, A/RES/42/160A-G (8 December 1987) and General Assembly Resolution ES-10/L.22 (21 December 2017)

staunchest allies including the U.S.[147] As a city holy to Jews, Muslims, and Christians,[148] claims

over Jerusalem have also been hotly contested, polarizing and ostracizing the Jewish diaspora.[149]

The conflict between the Supreme Court and Knesset, which coincided with the rise of the

right-wing political groups, resulted in a dilemma for Israel over how to balance its Jewish and

democratic identities.[150] Israeli Minister of Justice Ayelet Shaked, a member of the right-wing

party New Right and proponent of the Nation State Bill, argues that there is no contradiction

between the fact that Israel has full personal equality of citizenship while also extending the right

to national self-determination only to the Jewish people.[151] Critics of the bill, however, such as

President of Israel Reuven Rivlin, see the bill as a definitive declaration in favor of Israel's

Jewish identity at the expense of its democratic one. Following the bill's passage, he stated his

belief that every citizen of the state of Israel, Jew and non-Jew, is an equal citizen. To Rivlin, the

individual must not only receive equality, but also feel that he or she is equal.[152] His statements, I

argue, refute the argument that the Nation State Bill is inconsequential because, as Rivlin

suggests, the stipulations of the Nation State Bill make Israeli citizens of minority groups feel

unequal.

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[147] Kershner, I. (2017, December 20). Israel Claims Nearly 1,000 Acres of West Bank Land Near Bethlehem. Retrieved January 29, 2019, from https://www.nytimes.com/2014/09/01/world/middleeast/israel-claims-nearly-1000-acres-of-west-bank-land-near-bethlehem.html

[148] Little, B. (2017, December 06). Why Jews and Muslims Both Have Religious Claims on Jerusalem. Retrieved January 30, 2019, from https://www.history.com/news/why-jews-and-muslims-both-have-religious-claims-on-jerusalem

[149] Weisman, J. (2019, January 04). American Jews and Israeli Jews Are Headed for a Messy Breakup. Retrieved January 9, 2019, from https://www.nytimes.com/2019/01/04/opinion/sunday/israeli-jews-american-jews-divide.html#click=https://t.co/bZEu9ggsaJ

[150] Green, E. (2018, July 21). Israel's New Law Inflames the Core Tension in Its Identity. Retrieved January 24, 2019, from https://www.theatlantic.com/international/archive/2018/07/israel-nation-state-law/565712/

[151] Levi, Y. (2018, October 09). The Woman Who Could Be Israel's Next Leader. Retrieved January 24, 2019, from https://www.theatlantic.com/international/archive/2018/10/netanyahu-challenger-ayelet-shaked/572320/?utm_campaign=the-atlantic&utm_content=edit-promo&utm_source=facebook&utm_term=2018-10-09T11:17:33&utm_medium=social

[152] *Levi*. Oct 2018

With their public support of the bill, conservative lawmakers have demonstrated their desire to unilaterally institutionalize their nationalistic policies and safeguard them from the court's intrusion. Prime Minister Netanyahu along with the bill's proponents aim to guarantee the foundations of Israel's existence as they see it: the nation-state of the Jewish people.[153] Avi Dichter, the MK who proposed the first draft of the bill in 2011, stated its purpose is to thwart any attempts to transform Israel to a country of all its citizens.[154] Similarly, Netanyahu affirmed shortly after the bill was passed that Israel is the Jewish state, despite the efforts of those who have tried to undermine the principles of its existence.

The conflict over Israel's identity also has its roots in various interpretations of the country's "founding spirit." Since its inception, Netanyahu has been an outspoken supporter of the Nation State Bill due to his belief that the bill represents the original ideas of Zionism. He expressed approval of how the bill enshrined Israel as the nation-state of the Jewish people and had engraved in the stone of law "the country, the language, the anthem and the flag"[155] of the Jewish people. He also referenced the "father of Zionism," Theodore Herzl, when speaking about the bill to evoke a sense of nostalgia. He claimed that 122 years after Herzl made his vision known, the Nation State Bill has determined the founding principle that Israel is the nation state of the Jewish people and respects the rights of all of its citizens.[156] Along a similar thread, David Hazgony, executive director of the Israel Innovation Fund, argued that the bill reaffirms key ideas representing the crux of the Zionist project, alluding to the bill's clauses about national self-determination for Jews and support for settlements in the West Bank.

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[153] Lis, J., & Landau, N. (2018, July 19). Israel passes controversial Jewish nation-state bill after stormy debate. Retrieved April 12, 2019, from https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048
[154] *Levi*. Oct 2018
[155] *Lis & Landau*. July 2018
[156] *Lis & Landau*. July 2018

Opponents of the Nation State Bill have emphasized its perceived encroachment of democratic values. Many American-Jewish and other diaspora groups argue it marginalizes Israel's minorities, who account for 21% of Israel's population.[157] Jeremy Ben-Ami, president of the liberal American advocacy group, J-Street, said the Nation State Bill's sole purpose is to send a message to the Arab community and other minorities in Israel that they are not and never will be equal citizens.[158] He claimed Netanyahu and his government are ignoring the words of the equality clause in Israel's Declaration of Independence, which grants complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex.[159] Ami's comments reflect the concerns many liberal American Jews have that Israel is becoming less tolerant of minorities and even non-Orthodox Jews, who are becoming less affiliated with Judaism.[160] Especially in a country like the US, where the establishment of a state religion might seem abhorrent to many individuals, the ethno-religious aspects of Israel can be jarring to American Jews. Rather, many diaspora Jews see Israel more as a spiritual expression than as the political state, which is how most Israelis view it.[161]

Conclusion

Since the Supreme Court of Israel granted itself the power of judicial review and began overturning legislation on the basis of democratic values, the right-wing Knesset has sought ways to preserve its Jewish-nationalist policies. Two critical events altered the trajectory of the right-wing polity's development, which translated into more political power and the ability to

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[157] Israel Population. (2018-09-24). Retrieved 2019-01-24, from http://worldpopulationreview.com/countries/israel/
[158] *Lis & Landau*. July 2018
[159] Israel, Knesset. (1948). Proclamation of Independence. Tel Aviv.
[160] *Green*. Jul 2018
[161] *Green*. Jul 2018

contest the court in a conflict over the supremacy of Jewish versus democratic values. Increased terror attacks and violence brought security concerns to the forefront of the Israeli electorate's mind, allowing conservative, nationalist politicians to co-opt these concerns and enter the mainstream political arena. Following a brief rule of centrist rule, several missteps by coalition politicians facilitated the solidification of the right wing.

The issues addressed in the Nation State Bill evoke strong Jewish-nationalist sentiments, which reflect the platforms and policies adopted by successive right-wing governments of the past two decades. Knesset members and political actors close to Netanyahu, in addition to bypassing the court through the Nation State Bill, have pushed for a revolution of their own to combat what they see as a breach in the separation of powers. The leaders of this "Contemporary Constitutional Revolution" have called for the creation of additional Basic Laws, which seek to bestow power on the Knesset to override court decisions and re-define the balance between Israel as a democracy and a Jewish state. Since the passing of the Bill, the right-wing has continued to pursue its vision of shaping Israel's identity as a Jewish homeland.

Chapter 5: Conclusion

Argument Summary

The previous chapters have laid out the tensions underlying the passage of the Nation State Bill, the issues in which these tensions have manifested, and the historical trajectories of the Supreme Court of Israel and the right-wing political establishment. Several key events during the development of these two institutions gave each branch increased power which escalated the conflict between Jewish and democratic values. The court has overturned key policies of the Knesset, which it viewed as incompatible with the democratic values of the state. The legislature, which prioritizes Jewish values, has thus sought ways to protect their policies from the activist judicial branch. The Nation State Bill is the result of such retribution by the legislative branch and contains nationalistic, Jewish-centered principles that the right-wing government believes Israel's identity should embody.

This chapter situates my argument within two present-day cases that reveal the salience of the tensions and themes discussed in this paper. First, I demonstrate how a new conservative movement I call the "Contemporary Constitutional Revolution" has become the latest iteration of the right-wing Knesset's actions to shift Israel towards stronger Jewish values and away from democratic ones. Then, I will discuss the results of the parliamentary election in April 2019 and the potential for new conflict to arise within the conservative establishment in Israeli politics. I conclude with remarks about the future implications for my research.

The "Contemporary Constitutional Revolution"

This movement generated by two key conservative politicians demonstrates another form of the Knesset seeking to institutionalize its policies, emphasizing the continued relevance of the

conflict between the Supreme Court and the legislature. In September 2017, the *Jerusalem Post*

reported that Education Minister Naftali Bennett and Justice Minister Ayelet Shaked had

announced a "counter-revolution" in response to several recent decisions by the Supreme

Court.[162] The decisions in question include ones with policy implications for the removal of

African asylum seekers, or "infiltrators" as Bennett called them, which contradict the right-wing

stance. Bennett's and Shaked's motivation stemmed from the belief the court had overstepped its

boundary, *vis-à-vis* the separation of powers between the judicial and legislative branches, and

showed its alleged emphasis for democratic values over Jewish ones. Bennett lamented that in

recent years the court has disqualified laws and government actions too easily,[163] while Shaked

has focused on the preservation of the Jewish majority as a value, something she believes the

court must incorporate into rulings.[164] As part of this new "Constitutional Revolution," the two

have sought to pass new legislation which would pull the needle towards Jewish values in Israeli

society and away from democratic ones.[165]

A significant element of Bennett and Shaked's new "revolution" centers around curtailing

the power of the Supreme Court of Israel via two new proposed Basic Laws. The main ideas in

this legislation include limiting the court to repealing laws only with the approval of a two-thirds

majority of a nine-judge panel, permitting the Knesset to override the court's veto with a simple

majority, and prohibiting the court from striking down a Basic Law or voiding a law on

"procedural grounds" rather than on substance.[166] These proposals reflect the steadfast ambition

of the right-wing to supersede the court's authority, as it did with the Nation State Bill, and pass

[162] Bob, Y. J., & Hoffman, G. (2017, September 15). Bennett, Shaked kick off constitutional revolution against High Court. Retrieved January 24, 2019, from https://www.jpost.com/Israel-News/Bennett-Shaked-kick-off-constitutional-revolution-against-High-Court-505135
[163] *Bob and Hoffman*. Sep 2017
[164] *Levi*. Oct 2018
[165] *Bob and Hoffman*. Sep 2017
[166] *Bob and Hoffman*. Sep 2017

laws with constitutional status that fit their idea of Israel. Through her cabinet position, Shaked has unveiled her plan to change the way judges on the Supreme Court are appointed in order to place more power in the hands of the legislature. In addition to the plan outlined by Bennett, Shaked's plan would mandate that candidates undergo public hearings in front of a Knesset committee and allow government ministers to represent themselves in court, even in opposition to legal counsel opinion.[167] These proposals purport to re-define the balance of power and pull the judicial branch towards the will of the Knesset.

As the presiding Knesset member over the judicial system, Shaked has frequently criticized the Supreme Court when it has disputed with the Knesset's legislation on democratic grounds. Specifically, she has cited several cases decided by the court about the treatment of African asylum-seekers, ruling in favor of freeing detained migrants and extending the basic human rights guaranteed in the Basic Laws to non-resident aliens. She believes the courts' rulings do not consider the preservation of the Jewish majority, a value she believes must be taken into deliberation.[168] As a solution, Shaked has supported legislation forcing the incorporation of stronger Jewish principles in the court on numerous occasions. Such a proposal would direct the court to take into account the state's Jewish character as a primary principle. In the case of the African asylum-seekers,[169] these new mandates would affect decisions such as the length of detainment and visa policies for asylum seeker in general.

A major point of contention between the right-wing coalition and the Supreme Court of Israel is over guidelines for drafting ultra-Orthodox Jews (*haredim*) into the Israeli army (IDF)

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[167] Breiner, J. (2019, March 18). Lawmakers Appointing Judges: Israeli Justice Minister Presents Plan to Overhaul Top Court. Retrieved April 10, 2019, from https://www.haaretz.com/israel-news/.premium-israeli-justice-minister-presents-plan-for-lawmakers-to-appoint-top-justices-1.7027967

[168] *Levi*. Oct 2018

[169] *Bob and Hoffman*. Sep 2017

has resulted in verbal attacks on judiciary from the right. In September of 2018, the Supreme Court struck down a 2015 version of Israel's conscription law which granted most yeshiva students, who come from *haredi* families and study in Orthodox seminaries, exemptions from service. The court imposed a year-long deadline for the Knesset to institute new guidelines allowing for ultra-Orthodox enlistment.[170] Political disorganization ensued, and Prime Minister Netanyahu asked for a four-month extension after losing half of his coalition in the Knesset in November of 2018 following the withdrawal of an allied party during negotiations.[171] The court, however, only granted another month to pass a new law. By December of 2018, Yair Lapid, the leader of the left-wing party Yesh Atid, announced he would not support the new guidelines in any form, prompting Prime Minister Netanyahu to dissolve the government and call for early elections that would likely warrant a further extension on passing a new conscription law. This tension provided impetus for the leaders of the new "Constitutional Revolution" to target the Supreme Court, blaming the judiciary for striking down the 2015 law and failing to provide adequate time to draft new legislation.

The Election of 2019

Motivated in part by a belief in the court's meddling role in the failure of the *haredi* draft bill and subsequent collapse of the government, Shaked and Bennett carried the ideas from their "revolution" into the election season to score political points among Netanyahu's fractured coalition. After splitting from their previous political party, the pair announced in late December

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[170] Times of Israel Staff. (2018, December 2). High Court gives state another 6 weeks to pass ultra-Orthodox conscription law. Retrieved March 13, 2019, from https://www.timesofisrael.com/high-court-gives-state-another-6-weeks-to-pass-ultra-orthodox-conscription-law/

[171] Kershner, I. (2018, November 14). Israel's Hawkish Defense Minister Resigns and Calls for Early Elections. Retrieved March 14, 2019, from https://www.nytimes.com/2018/11/14/world/middleeast/avigdor-lieberman-israel.html

2018 the formation of their own party called The New Right (HaYamin HeHadash). Rebuking

the robust Orthodox influence in Netanyahu's Likud party, Shaked said the party would represent

"full and equal partnership" between secular and the Orthodox Jews.[172] Despite their break from

Netanyahu's coalition and their belief that religious Zionists were "in his pocket," the new party

nonetheless holds the same nationalist, conservative values which have pervaded Israeli politics

for the last two decades. Bennett asserted "the New Right party is right-wing...in favor of the

Land of Israel without compromise, against a Palestinian state, period,"[173] and has vowed not to

give up "a centimeter of the Land of Israel."[174] Shaked has repeatedly expressed concern about

the weakening of the right-wing and the possibility of a Palestinian state, the latter of which her

party vehemently opposes.[175]

Despite the New Right's disappointing finish in the 2019, the tensions reflected in the party's

platforms will continue to manifest in the future. Though the New Right did not have enough

votes to pass the 3.25% threshold and gain at least one seat in the Knesset, issues with the

campaign stemmed from organizational issues rather than from ideological disagreements.

Haaretz called the campaign frenetic, unfocused, immature, and unable to hold its own against

Netanyahu's machine.[176] The emboldened Netanyahu, who won the election despite a strong

opponent in retired general Benny Gantz from the Blue and White Party, and several indictments

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[172] Times of Israel Staff & Wootliff, R. (2018, December 29). Bennett, Shaked quit Jewish Home, announce formation of 'The New Right'. Retrieved March 14, 2019, from https://www.timesofisrael.com/bennett-shaked-expected-to-announce-break-from-jewish-home-form-new-party/
[173] *Times of Israel Staff & Wootliff.* Dec 2018
[174] Bachner, M., & Wootliff, R. (2019, February 20). New Right unveils Knesset slate featuring equal representation for women. Retrieved March 14, 2019, from https://www.timesofisrael.com/new-right-unveils-knesset-slate-featuring-equal-representation-for-women/
[175] Arutz Sheva Staff. (2019, February 03). Justice Minister: Trump peace plan endangers settlements. Retrieved March 14, 2019, from http://www.israelnationalnews.com/News/News.aspx/259793
[176] Levinson, C. (2019, April 10). Lieberman in, Bennett out: Winners and losers in the 2019 Israeli election. Retrieved April 10, 2019, from https://www.haaretz.com/israel-news/elections/.premium-lieberman-in-bennett-out-winners-and-losers-in-the-2019-israeli-election-1.7107989

stemming from corruption charges, has already signaled his hardening stance on issues where

Jewish and democratic values conflict. Just three days before the election, he announced his

pledge to annex the Jewish settlements in the West Bank,[177] effectively thwarting any chance of

a two-state solution. Though the New Right failed, there remains a strong conservative mindset

among its rising leaders who are poised to succeed Netanyahu when he decides not to stand in

future elections. Shaked, the current Justice Minister within Netanyahu's government, is popular

in right-wing circles;[178] her inclusion in the new government would bolster the right-wing's push

to curtail the powers of the Supreme Court of Israel.

The "Contemporary Constitutional Revolution" and parliamentary election of 2019 also

demonstrate the potential emergence of another conflict: between the Jewish secular and

Orthodox right-wing. Shaked and Bennett's campaign demonstrated the emergence of a "hybrid

right" party. This "hybrid right" party serves as a challenge to the old-school religiosity of the

Likud, which has been characterized by a mix of traditional conservative policies and

progressive elements, including equal representation of women. Nationalistic and Jewish-

oriented values remain a core part of the New Right's founders' platform, but Shaked and Bennett

also shed their association with ultra-Orthodox rabbis and extreme pro-settlers[179] to support their

bids for higher leadership positions in the government.[180] Likely at the expense of The New

Right, however, at least four right-wing and ultra-Orthodox parties made gains in Knesset

representation and pledged their support to form a governing coalition with the Likud.[181] This

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[177] Isenstadt, A. (2019, April 07). Netanyahu vows to annex West Bank settlements if re-elected. Retrieved April 10, 2019, from https://www.politico.com/story/2019/04/07/benjamin-netanyahu-israel-west-bank-1260173

[178] *Levinson*. Apr 2019

[179] Halbfinger, D. M. (2019, April 10). Israel Elections Live Updates: Netanyahu Is on Track for Victory. Retrieved April 10, 2019, from https://www.nytimes.com/2019/04/10/world/middleeast/israel-election-netanyahu-gantz-winner.html

[180] *TOI Staff & Wootliff*. Dec 2018

[181] *Halbfinger, D. M.* Apr 2019

conflict will likely result in tension between the secular conservatives and the traditional, religious right-wing that has historically aligned with the right-wing coalition.

Implications for the Future

As I have explored in this thesis, the Nation State Bill originated from a deep-seated conflict between the Supreme Court of Israel and the right-wing, conservative Knesset majority coalition. The conflict is characterized by a dispute over the supremacy of Jewish values versus democratic values as well as Israel's relationship with its diaspora -- two high-profile issues in recent years due to several decisive court decisions which have shaped policy. As a result of the Supreme Court's "judicial activism" in favor of democratic values, the Knesset has attempted to institutionalized its rebuked policies via passing the Nation State Bill.

It is easy to point to the longstanding conflict between Israel and Palestine, and the alleged desire for Israel to assert complete sovereignty over its occupied territory, as the primary force behind the Nation State Bill. As I have demonstrated, however, there is no one conflict, event, politician, or figure to which we can attribute this consequential law. When assessing and predicting the impacts of legislative actions in Israel, we must consider factors such as the complex geopolitical situation in which Israel was founded, the manner in which its institutions have developed, and the current manifestations of Israeli tensions.

Today's political landscape lends credence to a new wave of Jewish nationalism, guided by the now-codified principles of the Nation State Bill. As a relatively brief yet tumultuous electoral season ends, Israel's future leaders will undoubtedly be forced to confront the tensions laying beneath the surface of Israel's nation-state building project. The Nation State Bill is a testament of the extent to which those in power have sought to institutionalize their idea of

Israel's. It will be a battleground over the separation of powers within Israel's democracy and an indicator of where the nation will move in relation to democratic or Jewish values. As the Supreme Court of Israel mulls a decision on the bill in the face of proposed restrictions on the judiciary's power, Israelis and government leaders must reflect on the future they envision as the country moves deeper into religious, ethnic, and moral dilemmas.

References

5 HCJ 7146/12 Adam v. The Knesset ¶ 150 (2013)

ALG. (2015, March 15). The evolution of Israeli politics. Retrieved January 10, 2019, from

https://www.economist.com/the-economist-explains/2015/03/15/the-evolution-of-israeli-politics

Ariel Sharon. (2014, April 02). Retrieved December 17, 2018, from

https://www.biography.com/people/ariel-sharon-9480655

Arutz Sheva Staff. (2019, February 03). Justice Minister: Trump peace plan endangers

settlements. Retrieved March 14, 2019, from

http://www.israelnationalnews.com/News/News.aspx/259793

Avraham, E. (2009). Marketing and managing nation branding during prolonged crisis: The case

of Israel. Place Branding and Public Diplomacy, 5(3), 202-212. doi:10.1057/pb.2009.15

Bachner, M., & Wootliff, R. (2019, February 20). New Right unveils Knesset slate featuring

equal representation for women. Retrieved March 14, 2019, from

https://www.timesofisrael.com/new-right-unveils-knesset-slate-featuring-equal-representation-

for-women/

Barnum, D. G. (1985). The Supreme Court and Public Opinion: Judicial Decision Making in the

Post- New Deal Period. The Journal of Politics, 47(2), 652-666. doi:10.2307/2130901

Bartram, D. V. (1998). Foreign Workers in Israel: History and Theory. International Migration

Review, 32(2), 303-325. doi:10.1177/019791839803200201

Basic Law: Freedom of Occupation (1994): The original law was passed concurrent with Basic

Law: Human Dignity and Liberty in March 1992, but was amended in 1994

Beaumont, P. (2018, July 19). EU leads criticism after Israel passes Jewish 'nation state' law. Retrieved March 27, 2019, from https://www.theguardian.com/world/2018/jul/19/israel-adopts-controversial-jewish-nation-state-law

Behind The Barrier: Human Rights Violations as a Result of Israel's Separation Barrier. (2003, April). Retrieved December 17, 2018, from

https://www.btselem.org/publications/summaries/200304_behind_the_barrier

Benaroya, R. (2019, March 14). What Israel's Border Wall Experience Tells Us. Retrieved April 12, 2019, from

https://www.realclearpolitics.com/articles/2019/03/14/what_israels_border_wall_experience_tells_us_139735.html

Bergara, M., Richman, B. D., & Spiller, P. T. (2003). Modeling Supreme Court Strategic Decision Making: The Congressional Constraint. SSRN Electronic Journal. doi:10.2139/ssrn.421520

Bob, Y. J., & Hoffman, G. (2017, September 15). Bennett, Shaked kick off constitutional revolution against High Court. Retrieved January 24, 2019, from https://www.jpost.com/Israel-News/Bennett-Shaked-kick-off-constitutional-revolution-against-High-Court-505135

Breiner, J. (2019, March 18). Lawmakers Appointing Judges: Israeli Justice Minister Presents Plan to Overhaul Top Court. Retrieved April 10, 2019, from https://www.haaretz.com/israel-news/.premium-israeli-justice-minister-presents-plan-for-lawmakers-to-appoint-top-justices-1.7027967

CA 450/70, Rogozinsky v. The State of Israel, P.D. 26(1), 129, 135 (Justice Berenson) (1971)

Carmines, E. G. (1991). The Logic of Party Alignments. Journal of Theoretical Politics, 3(1), 65-80. doi:10.1177/0951692891003001005

Cohen, A., & Susser, B. (2009). Jews and Others: Non-Jewish Jews in Israel. Israel

Affairs, 15(1), 52-65. doi:10.1080/13537120802574229

D'Orsi, C. (2018). To Stay or to Leave? The Unsolved Dilemma of the Eritrean Asylum-Seekers

in Israel. Harvard International Law Journal, 29, 83-125. Retrieved January 24, 2019.

Dahl, R. A. (1957). Decision-Making in a Democracy. Role of the Supreme Court

Symposium, 1, 279-295. doi:10.4324/9781315095455-8

Diskin, A. (1999). The New Political System of Israel. Government and Opposition, 34(04), 498-

515. doi:10.1111/j.1477-7053.1999.tb00167.x

doi:10.1177/0888325405280897

Dumbrava, C. (2016). Reproducing the nation: Reproduction, citizenship and ethno-demographic

survival in post-communist Romania. Journal of Ethnic and Migration Studies, 43(9), 1490-

1507. doi:10.1080/1369183x.2016.1221335

Dumbrava, C. (2018). The ethno-demographic impact of co-ethnic citizenship in Central and

Eastern Europe. Journal of Ethnic and Migration Studies, 1-17.

doi:10.1080/1369183x.2018.1440490

Edelman, M. (1992). The Judicial Elite of Israel. International Political Science Review, 13(3),

235-248. doi:10.1177/019251219201300302

Elections for the 14th Knesset. (n.d.). Retrieved December 17, 2018, from

https://en.idi.org.il/israeli-elections-and-parties/elections/1996/

FitzGerald, D. S., & Cook-Martín, D. A. (2014). Culling the masses: The democratic origins of

racist immigration policy in the Americas. Cambridge, MA: Harvard University Press.

Girvan, A. (2018, June). The History of British Immigration Policy (1905-2016) (Rep.).

Retrieved February 17, 2019, from University of East Anglia website.

Green, E. (2018, July 21). Israel's New Law Inflames the Core Tension in Its Identity. Retrieved

January 24, 2019, from https://www.theatlantic.com/international/archive/2018/07/israel-nation-

state-law/565712/

Halbfinger, D. M. (2019, April 10). Israel Elections Live Updates: Netanyahu Is on Track for

Victory. Retrieved April 10, 2019, from

https://www.nytimes.com/2019/04/10/world/middleeast/israel-election-netanyahu-gantz-

winner.html

Hass, A. (2018, October 20). Israel bars Gazans from getting medical care in West Bank if they

have relatives staying there without a permit. Retrieved April 2, 2019, from

https://www.haaretz.com/israel-news/.premium-gazan-patients-face-new-limitation-on-travel-

for-medical-treatment-1.6573119

HCJ 73/53, Kol Ha'am Co., Ltd. v. Minister of the Interior (October 16, 1953).

HCJ 7385/13 Eitan—Israeli Immigration Policy Center v. Oe Israeli Government, ¶ 110 (2014)

Hirschl, R. (2000). The Political Origins of Judicial Empowerment through

Constitutionalization: Lessons from Four Constitutional Revolutions. Law & Social

Inquiry, 25(01), 91-149. doi:10.1111/j.1747-4469.2000.tb00152.x

History: The State of Israel. (n.d.). Retrieved December 17, 2018, from

https://mfa.gov.il/mfa/aboutisrael/history/pages/history-%20the%20state%20of%20israel.aspx

Hostovsky Brandes, T., & Shafran Gittleman, I. (2018, September 24). The Israeli Supreme

Court's Decision in Tziam v. the Prime Minister. Retrieved April 2, 2019, from

https://www.lawfareblog.com/israeli-supreme-courts-decision-tziam-v-prime-minister

Isenstadt, A. (2019, April 07). Netanyahu vows to annex West Bank settlements if re-elected.

Retrieved April 10, 2019, from https://www.politico.com/story/2019/04/07/benjamin-netanyahu-

israel-west-bank-1260173

Israel Population. (2018-09-24). Retrieved 2019-01-24, from

http://worldpopulationreview.com/countries/israel/

Israel, Knesset. (1948). Proclamation of Independence. Tel Aviv.

Israel, Knesset. (1958). Basic Law: The Knesset. Jerusalem.

Israel, Knesset. (1992). Basic Law: Human Dignity and Liberty. Jerusalem.

Israel, Knesset. (2018). Basic Law: Israel- The Nation State of the Jewish People. Jerusalem.

Israel, Ministry of Foreign Affairs. (2013). 1967-1993: Major Terror Attacks

Israel, The Knesset. (n.d.). main.knesset.gov.il. Retrieved April 11, 2019, from

https://main.knesset.gov.il/en/activity/pages/basiclaws.aspx

Israel's New Law Inflames the Core Tension in Its Identity. Retrieved March 1, 2019, from

https://www.theatlantic.com/international/archive/2018/07/israel-nation-state-law/565712/, and

Lis, J., & Landau, N. (2018, July 19).

Jerusalem Report, 6 July 1998, p. 6.

Joppke, C. (2001). The Legal-Domestic Sources of Immigrant Rights. Comparative Political

Studies,34(4), 339-366. doi:10.1177/0010414001034004001

Joppke, C. (2005). Selecting by origin: Ethnic migration in the liberal state. Cambridge, MA:

Harvard University Press. 17

Joppke, C., & Rosenhek, Z. (2002). Contesting ethnic immigration: Germany and Israel

compared. European Journal of Sociology, 43(3), 301-335. doi:10.1017/s0003975602001121

Kelman, H. C. (1998). Israel in Transition from Zionism to Post-Zionism. ANNALS, 555, 46-61.

Retrieved January 24, 2019.

Kershner, I. (2017, December 20). Israel Claims Nearly 1,000 Acres of West Bank Land Near

Bethlehem. Retrieved January 29, 2019, from

https://www.nytimes.com/2014/09/01/world/middleeast/israel-claims-nearly-1000-acres-of-west-

bank-land-near-bethlehem.html

Kershner, I. (2018, November 14). Israel's Hawkish Defense Minister Resigns and Calls for

Early Elections. Retrieved March 14, 2019, from

https://www.nytimes.com/2018/11/14/world/middleeast/avigdor-lieberman-israel.html

Kim, J. (2019). Ethnic capital, migration, and citizenship: A Bourdieusian perspective. Ethnic

and Racial Studies, 42(3), 357-385. doi:10.1080/01419870.2019.1535131

Kimmerling, B. (1999). Religion, Nationalism, and Democracy in Israel. Constellations, 6(3),

339-363. doi:10.1111/1467-8675.00150

Kretzmer, D. (1996). The New Basic Laws on Human Rights: A Mini-Revolution in Israeli

Constitutional Law? Netherlands Quarterly of Human Rights, 14(2), 173-183.

doi:10.1177/092405199601400204

Levi, Y. (2018, October 09). The Woman Who Could Be Israel's Next Leader. Retrieved January

24, 2019, from https://www.theatlantic.com/international/archive/2018/10/netanyahu-challenger-

ayelet-shaked/572320/?utm_campaign=the-atlantic&utm_content=edit-

promo&utm_source=facebook&utm_term=2018-10-09T11:17:33&utm_medium=social

Levinson, C. (2019, April 10). Lieberman in, Bennett out: Winners and losers in the 2019 Israeli

election. Retrieved April 10, 2019, from https://www.haaretz.com/israel-

news/elections/.premium-lieberman-in-bennett-out-winners-and-losers-in-the-2019-israeli-election-1.7107989

Liebermann, O. (2017, January 08). 5 corruption scandals that rocked Israel. Retrieved February 21, 2019, from https://www.cnn.com/2017/01/08/middleeast/israeli-politics-corruption/index.html

Lis, J., & Landau, N. (2018, July 19). Israel passes controversial Jewish nation-state bill after stormy debate. Retrieved April 12, 2019, from https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048

Little, B. (2017, December 06). Why Jews and Muslims Both Have Religious Claims on Jerusalem. Retrieved January 30, 2019, from https://www.history.com/news/why-jews-and-muslims-both-have-religious-claims-on-jerusalem

Lustick, I. S. (1999). Israel as a Non-Arab State: The Political Implications of Mass Immigration of Non-Jews. Middle East Journal, 53(3), 417-433. Retrieved February 7, 2019.

Menachem Begin. (2018, August 12). Retrieved January 8, 2019, from https://www.britannica.com/biography/Menachem-Begin

Minkenberg, M. (2001). The radical right in public office: Agenda-setting and policy effects. West European Politics, 24(4), 1-21. doi:10.1080/01402380108425462

Morley, J. (2005, August 10). Israeli Withdrawal from Gaza Explained. Retrieved December 17, 2018, from http://www.washingtonpost.com/wp-dyn/content/article/2005/08/10/AR2005081000713.html?noredirect=on

Netanyahu Wins. (1996, May 31). Retrieved December 17, 2018, from http://edition.cnn.com/WORLD/9605/31/netanyahu.wins/

Okun, B. S., & Friedlander, D. (2005). Educational stratification among Arabs and Jews in

Israel: Historical disadvantage, discrimination, and opportunity. Population Studies, 59(2), 163-

180. doi:10.1080/00324720500099405

Rabin and Gutfel (2014). Marbury v. Madison and Its Impact On Israeli Constitutional Law, 15

U. Miami Int'l & Comp. L. Rev. 303

Rees, M. (2002, March 18). Streets Red with Blood. Retrieved December 17, 2018, from

http://content.time.com/time/magazine/article/0,9171,1002012,00.html

Rolef, S. H. (n.d.). Basic Laws. Retrieved January 24, 2019, from

https://knesset.gov.il/description/eng/eng_mimshal_yesod.htm

Sabar, G., & Tsurkov, E. (2015). Israel's Policies toward Asylum Seekers: 2002-2014. Istituto

Afari Internazionali. Retrieved January 24, 2019.

Sapir, G. (2009). Constitutional revolutions: Israel as a case-study. International Journal of Law

in Context, 5(04), 355. doi:10.1017/s1744552309990218

Schafferman, K. T. (2009, April 21). Participation, Abstention and Boycott: Trends in Arab

Voter Turnout in Israeli Elections. Retrieved January 29, 2019, from

https://en.idi.org.il/articles/7116

Seeman, D. (2003). Agency, Bureaucracy, and Religious Conversion: Ethiopian 'Felashmura'

Immigrants to Israel. In The Anthropology of Religious Conversion (pp. 29-41). Lanham, MD:

Rowman & Littlefield.

Smooha, S. (2002). The model of ethnic democracy: Israel as a Jewish and democratic

state. Nations and Nationalism, 8(4), 475-503. doi:10.1111/1469-8219.00062

Soffer, A. (1989). Demography and the shaping of Israel's borders. Contemporary Jewry, 10(2),

91-105. doi:10.1007/bf02965574

Sultany, N. (2014). Activism and Legitimation in Israel's Jurisprudence of Occupation. Social &

Legal Studies, 23(3), 315-339. doi:10.1177/0964663914521449

Terrorism deaths in Israel 1920-1999. (2000, January 1). Retrieved December 17, 2018, from

http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/terrorism deaths in Israel -

1920-1999.aspx

The Charter of Hamas art. 28, para. 2.

The Governments of Israel-Coalitions 1949 to the present (2013). Retrieved January 9, 2019,

from

https://webcache.googleusercontent.com/search?q=cache:TGlwfWdHjXMJ:https://mfa.gov.il/M

FA/Government/Previous%2Bgovernments/The%2BGovernments%2Bof%2BIsrael.htm+&cd=3

&hl=en&ct=clnk&gl=us

The Knesset. (2018, July 19). Knesset passes Jewish nation-state bill into law [Press release].

Retrieved January 24, 2019.

Times of Israel Staff. (2018, August 27). Court rules state must allow Hamas relatives into Israel

for cancer treatment. Retrieved April 2, 2019, from https://www.timesofisrael.com/court-rules-

state-must-allow-hamas-relatives-into-israel-for-cancer-treatment/

Times of Israel Staff. (2018, December 2). High Court gives state another 6 weeks to pass ultra-

Orthodox conscription law. Retrieved March 13, 2019, from

https://www.timesofisrael.com/high-court-gives-state-another-6-weeks-to-pass-ultra-orthodox-

conscription-law/

Times of Israel Staff & Wootliff, R. (2018, December 29). Bennett, Shaked quit Jewish Home,

announce formation of 'The New Right'. Retrieved March 14, 2019, from

https://www.timesofisrael.com/bennett-shaked-expected-to-announce-break-from-jewish-home-

form-new-party/

Wasserstein, B. (2018, October 05). Ariel Sharon. Retrieved December 17, 2018, from

https://www.britannica.com/biography/Ariel-Sharon

Waterbury, M. A. (2006). Internal Exclusion, External Inclusion: Diaspora Politics and Party-

Building Strategies in Post-Communist Hungary. East European Politics and Societies: And

Cultures, 20(3), 483-515.

Weisman, J. (2019, January 04). American Jews and Israeli Jews Are Headed for a Messy

Breakup. Retrieved January 9, 2019, from

https://www.nytimes.com/2019/01/04/opinion/sunday/israeli-jews-american-jews-

divide.html#click=https://t.co/bZEu9ggsaJ

Why Israel's centrist parties will probably lose to Binyamin Netanyahu. (2019, January 10).

Retrieved January 10, 2019, from https://www.economist.com/the-economist-

explains/2019/01/10/why-israels-centrist-parties-will-probably-lose-to-binyamin-netanyahu

Yaar, E., & Hermann, T. (2004, March 10). Peace Index / Most Israelis support the fence, despite

Palestinian suffering. Retrieved December 17, 2018, from https://www.haaretz.com/1.4751323

Yom Kippur War. (2018, November 16). Retrieved January 10, 2019, from

https://www.britannica.com/event/Yom-Kippur-War