

**EXPORTING THE MISSOURI PLAN TO ISRAEL:
HOW JUDICIAL SELECTION REFORMERS CAN WALK
THE LINE BETWEEN “BOSS” NETANYAHU
AND “BLACK-ROBED RULERS”**

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ABSTRACT

This Article compares the 2023 judicial reform crisis in Israel to a similar scenario that unfolded in Missouri during the 1930s and 1940s, in which local leaders developed a hybridized means of judicial selection that combined elements of both appointment and election systems. This Article argues that the use of this “assisted appointment” method—now known as the Missouri Plan—can resolve a central point of contention in the conflict surrounding the Israeli Supreme Court. This Article presents a brief history of the quasi-constitutional conflicts in Missouri and Israel. It then discusses some of the key attributes of a successful judicial selection method: independence, accountability, diversity, and legal expertise. Finally, it proposes a rebalanced judicial selection committee and the use of a Missouri-style system in Israel.

INTRODUCTION

This is a tale of two states—one located in the middle of the American heartland and the other in the heart of the Middle East. Their stories share several plot points. An allegedly corrupt politician, already in control of his state’s legislative and executive branches, seeks to dominate the judicial system by controlling the selection process for filling vacancies on the bench. An ugly, negative, and blatantly partisan struggle takes place in the media and on the streets. The people fight back and demand that the courts be free from political tampering. One state’s story ended with a constitution. The other’s story is still being written.

This Article discusses the similarities between the struggles for justice that took place in Missouri from 1938 to 1945 and in Israel in 2023. Yet, in the latter’s case, it is hard to tell the tale because it involves two different worlds.¹ For Israelis, there was the world before the terrorist invasion and mass murder that took place on October 7, 2023, and the world after it.² That

1. See, e.g., *Before and After Oct. 7: ToI Writers Share Their Stories That Mattered Most in 2023*, TIMES ISR. (Dec. 31, 2023), <https://www.timesofisrael.com/before-and-after-oct-7-toi-writers-share-their-stories-that-mattered-most-in-2023>; Amir Ben-David, *The Israel We Knew Died on October 7. The New Nation Will Be Scarred for Generations*, TIMES ISR. (Nov. 7, 2023), <https://www.timesofisrael.com/the-israel-we-knew-died-on-october-7-the-new-nation-will-be-scarred-for-generations>; David Brinn, *In Israel, It’s Not January 1st, It’s October 86th – Comment*, JERUSALEM POST (Feb. 14, 2024), <https://www.jpost.com/opinion/article-780227>.

2. See, e.g., *Before and After Oct. 7*, *supra* note 1; Ben-David, *supra* note 1; Brinn, *supra* note 1.

day changed the nation irrevocably, and its struggle for justice transformed³ into a fight for survival.⁴

October 7th was a Saturday, the Jewish Sabbath day on which people set aside their labors. It was also a Jewish holy day, marking the conclusion of the autumnal festive season. It was meant to be a day for spending time with family and friends in peace. The country rested. Its enemies did not. In the early hours of the morning, a battalion of Hamas terrorists invaded Israel from the Gaza Strip. Approximately 3,000 genocidal murderers⁵ came by land, sea, and air.⁶ Under the cover of thousands of rockets fired at Israeli towns and cities, they breached the country's border in several different places before dispersing to launch a wave of simultaneous attacks against dozens of communities.⁷ They tortured innocent civilians.⁸ They brutally raped and mutilated women.⁹ They slaughtered young¹⁰ and old.¹¹ They kidnapped hundreds of people, and killed hundreds and hundreds more.¹² While Israelis may one day be able to reach a final tally on the number of lives taken from them, the national trauma remains unquantifiable.

3. Andrew Silow-Carroll, *Israeli Opposition, Pro-Democracy Protesters Press Unity in Face of Attacks from Hamas*, JEWISH TELEGRAPHIC AGENCY (Oct. 7, 2023), <https://www.jta.org/2023/10/07/israel/israeli-opposition-pro-democracy-protesters-press-unity-in-face-of-attacks-from-hamas>.

4. Carrie Keller-Lynn, *Gantz: Israel's War Against Hamas Is Existential and Carries No Time Limit*, TIMES ISR. (Nov. 8, 2023), <https://www.timesofisrael.com/gantz-israels-war-against-hamas-is-existential-and-carries-no-time-limit>.

5. Emanuel Fabian & Gianluca Pacchiani, *IDF Estimates 3,000 Hamas Terrorists Invaded Israel in Oct. 7 Onslaught*, TIMES ISR. (Nov. 1, 2023), <https://www.timesofisrael.com/idf-estimates-3000-hamas-terrorists-invaded-israel-in-oct-7-onslaught>.

6. Emanuel Fabian, *IDF: 2,200 Rockets Fired from Gaza; Hamas Terrorists Infiltrated from Land, Sea and Air*, TIMES ISR. (Oct. 7, 2023), https://www.timesofisrael.com/liveblog_entry/idf-2200-rockets-fired-from-gaza-hamas-terrorists-infiltrated-from-land-sea-and-air.

7. *Id.*; *The October 7th Massacre*, MAPPING THE MASSACRE, <https://oct7map.com> (last visited Apr. 21, 2024); Anat Peled & Rory Jones, *Israel's 'Black Sabbath': Murder, Sexual Violence and Torture on Oct. 7*, WALL ST. J. (Dec. 31, 2023), <https://www.wsj.com/world/middle-east/israel-hamas-oct-7-murder-sexual-violence-torture-45aab439>.

8. Peled & Jones, *supra* note 7.

9. Jeffrey Gettleman et al., *'Screams Without Words': How Hamas Weaponized Sexual Violence on Oct. 7*, N.Y. TIMES (Jan. 25, 2024), <https://www.nytimes.com/2023/12/28/world/middle-east/oct-7-attacks-hamas-israel-sexual-violence.html>.

10. Sara Swann, *Israel-Hamas War: What We Know About 'Beheaded Babies'*, POLITIFACT (Nov. 21, 2023), <https://www.politifact.com/article/2023/nov/21/israel-hamas-war-what-we-know-about-beheaded-babies>; John Davison et al., *Israel Releases Images of Slain Children to Rally Support*, REUTERS (Oct. 12, 2023), <https://www.reuters.com/world/nato-ministers-shown-horrific-video-hamas-attack-2023-10-12>.

11. *Those We Have Lost*, TIMES ISR., <https://www.timesofisrael.com/spotlight-topic/those-we-have-lost> (last visited Apr. 21, 2024).

12. Fabian & Pacchiani, *supra* note 5.

Hamas is a terrorist organization hell-bent on the obliteration of Israel and the creation of a fundamentalist Islamic state in its place.¹³ But the nature of its genocidal ambition does not answer the question of timing presented by the massacre of October 7th. It is believed that, among other reasons, Hamas attacked when it did because it believed Israel to be weakened after the months of intense internal strife caused by Prime Minister Benjamin Netanyahu's government and its attempt to remake the judicial system in its favor.¹⁴ Although this judicial reform initiative was shelved following the events of October 7th,¹⁵ the underlying issues remain present in the country. Both the political doublespeak and the legitimate concerns expressed during this campaign warrant further conversation. And here is where the story of Israel syncs up with that of Missouri, in that the lessons learned from the latter may be applicable to the former.

Part I of this Article reviews American efforts to revamp state judicial selection processes in the first half of the 20th Century. Part II discusses in detail the makeup of the Israeli mechanism for judicial selection and points to a few historical reasons for the 2023 court crisis, including an overview of the government and its leaders. Part II also presents the government's proposal for judicial selection reform. In Part III, this Article presents another option for judicial reform that attempts to balance the concerns of the governing coalition, the opposition, and the judiciary. Finally, Part IV provides a final look at the stakes facing Israel during this fight for control of the courts. It then closes with a comparison to the political atmosphere in Missouri prior to its own judicial selection reforms in the late 1930s and early 1940s.

13. JIM ZANOTTI ET AL., CONG. RSCH. SERV., R47754, ISRAEL AND HAMAS OCTOBER 2023 CONFLICT: FREQUENTLY ASKED QUESTIONS (FAQS) 11 (2023).

14. See, e.g., *id.* at 14; Amos Yadlin & Udi Evental, *Why Israel Slept: The War in Gaza and the Search for Security*, FOREIGN AFFS., JAN./FEB. 2024, at 20, 21; Anne Applebaum, *Netanyahu's Attack on Democracy Left Israel Unprepared*, ATLANTIC (Oct. 21, 2023), <https://www.theatlantic.com/ideas/archive/2023/10/israel-democracy-judicial-reform-netanyahu-hamas-attacks/675713>; Tucker Reals & Charlie D'Agata, *Why Did Hamas Attack Israel, and Why Now?*, CBS NEWS, <https://www.cbsnews.com/news/why-did-hamas-attack-israel-and-why-now> (last updated Oct. 25, 2023).

15. Jeremy Sharon, *Gantz's Entry into Government Sidelines Far Right, with Judicial Overhaul's Future Dim*, TIMES ISR. (Oct. 12, 2023), <https://www.timesofisrael.com/gantzs-entry-into-government-sidelines-far-right-with-judicial-overhauls-future-dim>.

I. AN AMERICAN HISTORY OF JUDICIAL CORRUPTION

A. “*I Don’t Care Who Does the Electing, Just So I Do the Nominating*”

In the second half of the 19th Century and the first half of the 20th Century, corruption was an endemic problem across the United States.¹⁶ Political machines dominated local government in many major metropolitan areas.¹⁷ These complex syndicates featured hierarchical structures topped by “bosses,” i.e., the kingpins of their respective political machines, a term that hails from these organizations’ mechanical consistency in manipulating the levers of power and populism.¹⁸

Tammany Hall, perhaps the most famous political machine in American history, controlled New York City in the middle of the 19th Century under the leadership of “Boss” William Magear Tweed.¹⁹ This savvy, corrupt politician won a seat in the U.S. House of Representatives in 1852 but only served a single, two-year term before returning to New York City and state politics.²⁰ Tweed used his influence and connections to install his cronies in key positions across several political institutions, private entities, and judicial bodies.²¹ His keen understanding of appointment and voting processes fueled his rise to power.²²

“I don’t care who does the electing, just so I do the nominating.”²³ This quote, attributed to Tweed, encapsulates his view that corrupt influence-peddlers should control civic leadership, regardless of whether a candidate is appointed by the executive, elected to office through a popular vote, or chosen by a selection committee. In a judicial context, political power-players could exert control over the process through partisan campaign funding in direct elections or backroom deals ahead of an appointment proceeding.²⁴ Either way, it was the will of the powerful—not the will of the people—that determined who would become the next judge on the bench.

16. James Sample, *The Agnostic’s Guide to Judicial Selection*, 67 DEPAUL L. REV. 219, 224–25 (2018).

17. ALICIA BANNON, *RETHINKING JUDICIAL SELECTION IN STATE COURTS* 18 (2016).

18. See Taegan Goddard, *Machine Politics*, POL. DICTIONARY, <https://politicaldictionary.com/words/machine-politics> (last visited Apr. 21, 2024).

19. See *Boss Tweed*, BRITANNICA (Apr. 12, 2024), <https://www.britannica.com/biography/Boss-Tweed>.

20. *Id.*

21. *Id.*

22. L. SANDY MAISEL & MARK D. BREWER, *PARTIES AND ELECTIONS IN AMERICA* 172 (6th ed. 2012).

23. *Id.*

24. *Id.*

By the 1860s, Tweed had established himself as the unequivocal “boss” of Tammany Hall, which he ruled for years.²⁵ He was finally brought down when *The New York Times* ran a series of exposés uncovering the extreme corruption taking place in local politics.²⁶ A New York City governmental audit revealed that Tweed had embezzled millions of dollars from public funds.²⁷ A court found him guilty on 204 counts, and he was jailed for a year on criminal charges.²⁸ However, New York State filed a civil suit against Tweed.²⁹ Unable to pay back the millions of dollars he stole from the city, Tweed was jailed once again.³⁰ He died in prison in 1878, disgraced and penniless.³¹

But the political machines ground onward. Their corrosive influence continued to impact governmental entities for decades and extended beyond the bounds of the country’s coastal megacities.³² The State of Missouri, located in the heart of the American heartland, had its own version of Tammany Hall, and in the late 1930s, it was led by “Boss” Tom Pendergast.³³ Like all political bosses, Pendergast sought control over the levers of power, including the judiciary.³⁴ In 1937, a Missouri Supreme Court justice—whom Pendergast had initially supported—decided to challenge the political boss by voting against his interests in an insurance case.³⁵ Infuriated, Pendergast sought to punish the rebel judge and reestablish his reputation as a man who could force political and judicial leaders out of office if they did not decide matters in his favor.³⁶ He supported a rival candidate in the 1938 election, and by all accounts, the campaign was brutal, corrupt, and overwhelmingly negative on both sides.³⁷

25. See *Boss Tweed*, *supra* note 19.

26. Allen J. Share, *Tweed, William M(agear) “Boss”*, in *THE ENCYCLOPEDIA OF NEW YORK CITY* 1341 (Kenneth T. Jackson ed., 2d ed. 2010).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Laura Denvir Stith & Jeremy Root, *The Missouri Nonpartisan Court Plan: The Least Political Method of Selecting High Quality Judges*, 74 *MO. L. REV.* 711, 722 (2009).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

B. The Missouri Plan: A New Nonpartisan Way to Select Judges

This campaign was the straw that broke the backs of the Missouri citizens who were outraged and exhausted by corrupt politicians controlling their courts.³⁸ A group of local leaders, seeking to eschew politics and select their judges based on merit, proposed the Missouri Nonpartisan Court Plan, now simply known as the Missouri Plan.³⁹ This judicial selection method combines aspects of both appointment and election alternatives through a multi-step process.⁴⁰

First, a commission—comprised of political appointees, judges, and members of the local bar association—solicits and considers applications for a judicial position.⁴¹ After winnowing down the applicant pool, the commission nominates a small group of individuals and sends their names on to the chief executive.⁴² In Missouri’s case, the commission sends three names to the governor, who appoints one of those applicants to fill the judicial vacancy.⁴³ Then, after the newly appointed judge serves at least a year in office, the people vote on whether to continue the judge’s service.⁴⁴

This retention election is held at the same time as the next general election and includes the judge’s name on the ballot.⁴⁵ Crucially, however, no opponents run against the sitting judge.⁴⁶ Similarly, party affiliation is not included.⁴⁷ The only question is whether the judge keeps their seat on the bench.⁴⁸ If the judge fails to obtain the support of the majority, the judge is removed from office, and the process starts over again with the commission soliciting new applicants.⁴⁹

When the Missouri legislature, filled with its share of political cronies, failed to put this nonpartisan selection system up for a vote through the referendum process, the group of civic leaders decided to make an end-run around the lawmaking body.⁵⁰ They gathered enough signatures across the

38. *1940 ~ Voters Adopt Missouri Nonpartisan Court Plan*, MO. CTS., <https://www.courts.mo.gov/page.jsp?id=174544> (last visited Apr. 21, 2024).

39. *Id.*

40. *Id.*

41. See Stith & Root, *supra* note 32, at 725.

42. *Id.*

43. James M. Douglas, *The Missouri Plan*, 26 *DICTA* 55, 55 (1949).

44. *Id.*

45. See Stith & Root, *supra* note 32, at 725.

46. *Id.* at 743 n. 139.

47. *Id.* at 725.

48. *Id.* at 743 n. 139.

49. *Id.* at 714.

50. *Id.* at 723.

state to put the plan on the ballot via a public initiative process.⁵¹ The citizenry voted in favor of the plan in 1940, much to the legislature's chagrin.⁵² The lawmakers attempted to reverse this turn of events by placing a constitutional amendment on the ballot in the next election.⁵³ This amendment would force the state to revert back to the partisan election process for judicial selection.⁵⁴

In spite of the legislature's best efforts, those fighting for change remained undeterred, and the public voted even more strongly in favor of the nonpartisan selection plan two years after its initial implementation.⁵⁵ This judicial selection method became a cornerstone of the state's new constitution when it was adopted in 1945 and has remained a part of life both in Missouri and across the country.⁵⁶ As one St. Louis attorney wrote in 1945, "Since the Plan became effective[,] our litigants actually have been getting better justice and the people have increased confidence in our courts: or, putting it another way, the confidence of the people has been *restored* in our courts."⁵⁷ Half of all U.S. states have enacted their own versions of this assisted appointment-retention election method for judicial selection.⁵⁸ Its popularity and measured, nonpartisan approach to judicial selection has earned it the sobriquet "Missouri's 'gift to the art of government.'"⁵⁹

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *See id.* at 724.

57. William W. Crowdus, *The Operation of the Missouri Non-Partisan Court Plan*, 22 *DICTA* 75, 83–84 (1945).

58. *See Stith & Root, supra* note 32, at 712.

59. *Id.* (citation omitted).

II. THE BATTLE FOR THE JUDICIARY IN THE JEWISH STATE

A. A Brief Primer of Israel's Government Structure

The delicacy of this art form seems to have been lost on the Israeli government during the first nine months of 2023, when it took to a high-speed, brute force method for implementing a controversial judicial reform agenda.⁶⁰ This overhaul effort created a moment of crisis for Israel.⁶¹ Hundreds of thousands of people rallied across the country to protest the government's plan, which they viewed as a political power grab rather than an honest attempt at improving the system.⁶² While past flashes of civil unrest have generally related to the security situation in the country or its conflicts with its neighbors, the strife that Israel faced in the first part of 2023 was squarely rooted in the structure of the nation's political and judicial systems.⁶³

Israel's legislature is a 120-seat body known as the Knesset, and Israelis vote for their preferred party rather than a specific candidate.⁶⁴ If a party earns 3.25% of the total votes cast, then the number of seats in the legislature allocated to the party is based on the number of votes the party receives; parties that fail to pass this threshold amount earn nothing and are out of the Knesset.⁶⁵ To elect itself into power, a coalition must have a majority of seats in the Knesset, i.e., 61 seats, and typically, the party that earns the most votes is tasked by the president with forming a coalition.⁶⁶ This party-centered election process and a need for coalition-building has resulted in an intensely tribalist political landscape in which members of the Knesset are implicitly elected to represent not their geographic constituents or all of the citizens of Israel but rather the members of their "tribe."⁶⁷ These tribes are often—though certainly not exclusively—associated with religious (secular,

60. Jeremy Sharon, *Coalition to Speed Judicial Overhaul Bill Toward Final Knesset Votes Next Week*, TIMES ISR. (Mar. 7, 2023), <https://www.timesofisrael.com/coalition-to-speed-judicial-overhaul-bill-toward-final-knesset-votes-next-week>.

61. Carrie Keller-Lynn, *Masses Rally Against Prospect of Fresh Overhaul Push, as Knesset About to Reconvene*, TIMES ISR. (Apr. 29, 2023), <https://www.timesofisrael.com/protests-across-israel-as-knesset-to-reopen-amid-prospect-of-renewed-overhaul-push>.

62. *Id.*

63. *Id.*

64. *The Work of the Knesset*, THE KNESSET, <https://main.knesset.gov.il/EN/About/pages/knessetwork.aspx> (last visited Apr. 21, 2024).

65. *Electoral Threshold*, THE KNESSET, <https://main.knesset.gov.il/en/about/lexicon/pages/electoralthreshold.aspx> (last visited Apr. 21, 2024).

66. See *The Work of the Knesset*, *supra* note 64.

67. Haviv Rettig Gur, *The Israeli Left Has Lost More Than an Election*, TIMES ISR. (Nov. 7, 2022), <https://www.timesofisrael.com/the-israeli-left-has-lost-more-than-an-election>.

national-religious, Ultra-Orthodox, etc.), racial (Arab-Israeli parties, Jews of Eastern European ancestry that are typically associated with the left, and Jews of Middle Eastern and North African ancestry that are typically associated with the right), or political differences.⁶⁸

Each party will barter its support (and the number of Knesset seats associated with that support) to the party seeking to build and lead a coalition.⁶⁹ In exchange for their support, the lead party will sign a coalition agreement that furthers the interests of the party's core "tribal" constituency.⁷⁰ For example, on the right, these agreements could include measures supporting the settlement enterprise and granting more housing permits; on the left, they could include laws allowing for public transportation to operate on the Sabbath. For the Ultra-Orthodox, these agreements may represent the maintenance of control over: the State's rabbinic courts for marriage and conversion; an education system that exempts Ultra-Orthodox schools from teaching core subjects like math and English; or the mechanisms exempting the Ultra-Orthodox from mandatory military service.⁷¹ Politicians are also bartering for plum appointments in the incoming government, and so, personal pride and status are at play in these coalition negotiations as well.⁷²

The head of the party seeking to build a coalition usually becomes the prime minister and fills out his cabinet with the leaders of his own party as well as the allied parties that make up his coalition.⁷³ This collection of allied politicians becomes the government, which creates a system in which political power is highly concentrated.⁷⁴ Only a handful of people, typically

68. *Id.*; see also *Tribal Politics: Haviv Rettig Gur on Israel's 'Simple' Electoral System*, TIMES ISR. (Oct. 13, 2022), <https://www.timesofisrael.com/tribal-politics-haviv-rettig-gur-on-israels-simple-electoral-system>.

69. Patrick Kingsley, *Coalition Deal Puts Netanyahu on Brink of Power in Israel*, N.Y. TIMES (Dec. 21, 2022), <https://www.nytimes.com/2022/12/21/world/middleeast/coalition-deal-netanyahu-israel.html>.

70. See, e.g., Eliav Breuer, *Likud, Otzma Yehudit First to Sign Coalition Agreement*, JERUSALEM POST (Nov. 27, 2022), <https://www.jpost.com/breaking-news/article-723339>.

71. Eliav Breuer, *Netanyahu Should Quit if He Can't Fulfill Coalition Deals – Haredi Minister*, JERUSALEM POST (May 2, 2023), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-741883>.

72. See, e.g., Eliav Breuer & Shira Silkoff, *Israel's 37th Government Set to Take Power*, JERUSALEM POST (Dec. 28, 2022), <https://www.jpost.com/breaking-news/article-725985>.

73. *Id.*

74. Yuval Levin, *The Solution to Israel's Crisis Might Be in America's Constitution*, N.Y. TIMES (Mar. 31, 2023), <https://www.nytimes.com/2023/03/31/opinion/israel-protests-united-states-constitution.html>.

the heads of the parties in the coalition, have real political power.⁷⁵ The other members of these parties are often relegated to positions with limited decision-making or leadership authority.⁷⁶ While this was not always the case, in today's Israel, party leaders typically maintain iron grips on their caucuses, and members of Knesset usually follow their leaders out of fear of being forced out of the party.⁷⁷

Thus, the executive branch is an extension of the ruling majority in the legislative branch, and so the two are functionally merged in the Israeli political system.⁷⁸ The recent efforts toward judicial reform represent an attempt by a Netanyahu-led coalition—built entirely by the right-wing Likud Party, a collection of far-right factions, and the Ultra-Orthodox parties—to capture the judicial branch as well and transform it into an extension of the executive branch rather than an independent institution.⁷⁹ Huge swathes of the country pushed back against this perceived power grab, leading some to speculate that a constitutional crisis—and perhaps even a civil war—hung ominously over the Israeli horizon.⁸⁰

B. Looking to History for an Explanation of the 2023 Conflict

Faced with such a daunting potential future, many have asked how the country managed to get itself into this situation in the first place.⁸¹ One could look to several points in history for an answer, starting with the early days of the state.⁸² On May 14, 1948, David Ben-Gurion—soon to become the country's first prime minister—read out the nation's newly drafted

75. Michael Starr, *Will Judicial Reform Make Israel Weakest System of Checks and Balances?* – Interview, JERUSALEM POST (Jan. 26, 2023), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-729755>.

76. *Id.*

77. Haviv Rettig Gur, *The Implosion of Israel's Ruling Party*, TIMES ISR. (Mar. 22, 2023), <https://www.timesofisrael.com/the-implosion-of-israels-ruling-party>.

78. David Horovitz, *Israel Could Be En Route to a Tyranny of the Majority*, TIMES ISR. (Nov. 10, 2022), <https://www.timesofisrael.com/israel-could-be-en-route-to-a-tyranny-of-the-majority>; Raoul Wootliff, *Unbridled Government: How Netanyahu's Purported Plan Will Cripple the High Court*, TIMES ISR. (May 15, 2019), <https://www.timesofisrael.com/unbridled-government-how-netanyahus-purported-plan-will-cripple-the-high-court>.

79. See Horovitz, *supra* note 78; see also Wootliff, *supra* note 78.

80. David Horovitz, *Justice Minister Sounds Death Knell for Israel's Inadequately Protected Democracy*, TIMES ISR. (Jan. 4, 2023), <https://www.timesofisrael.com/justice-minister-sounds-death-knell-for-israels-inadequately-protected-democracy>.

81. Alex Traiman, *A Crisis of Judicial Proportions Explained, Part I: Reforming the Supreme Court*, JNS (Mar. 31, 2023), <https://www.jns.org/opinion/a-crisis-of-judicial-proportions-explained-part-i-reforming-the-supreme-court>.

82. *Id.*

Declaration of Independence at a ceremony in Tel Aviv.⁸³ A group of the country's founding fathers had drafted the document beforehand, and the main executive body of the Jewish community in then-British Mandatory Palestine had already voted to approve it.⁸⁴ Crucially for the conversation at hand, the Declaration states in Hebrew that a national constitution was to be adopted by an elected assembly by October 1, 1948.⁸⁵

Sadly, this would not be the case, and by 1950, a constitution had yet to materialize. The country, looking to avoid the problem and still move forward with the business of state-building, settled on what has become known as the Harari Decision.⁸⁶ This resolution—which was accepted by the Knesset shortly after its proposal—stated that the lawmaking body would assign to its Law, Constitution, and Justice Committee the task of preparing a national constitution, which would comprise chapters constituted by “Basic Laws” that the Knesset would enact individually in separate votes over time.⁸⁷ The Basic Law chapters, once stitched together, would become the country's constitution.⁸⁸ Although 13 Basic Laws have been enacted and gained a quasi-constitutional status, the country has yet to create a formal constitution.⁸⁹ Notably, these Basic Laws have the same force of law as any other legislation; they are passed the same way as any other law and can be amended or revoked in the same manner.⁹⁰ Thus, without any input from the opposition, a ruling coalition can pass a law that would nominally have constitutional power and legitimacy. The Netanyahu government pushed the limits of this monopolistic quasi-constitutional framework in 2023 when it passed a Basic Law designed to weaken the supreme court's ability to act as a check on the merged executive-legislative branches.

The lack of a superseding, written constitution set above all other laws or governmental entities lies at the heart of the problem that Israel faced in

83. *The Declaration of the Establishment of the State of Israel*, MINISTRY OF FOREIGN AFFS., <https://www.gov.il/en/Departments/General/declaration-of-establishment-state-of-israel> (last visited Apr. 21, 2024).

84. GIDEON SAPIR, *THE ISRAELI CONSTITUTION: FROM EVOLUTION TO REVOLUTION* 15–17 (2018).

85. *Declaration of Independence*, THE KNESSET, <https://main.knesset.gov.il/en/about/pages/declaration.aspx> (last visited Apr. 21, 2024).

86. SAPIR, *supra* note 84, at 15, 17.

87. *Id.*

88. *Id.*

89. *Basic Laws*, THE KNESSET, <https://main.knesset.gov.il/en/activity/pages/basiclaws.aspx> (last visited Apr. 21, 2024).

90. Amichai Cohen & Yuval Shany, *The New Israeli Government's 'Constitutional Law Reforms': Why Now? What Do They Mean? And What Will Happen Next?*, LAWFARE (Feb. 14, 2023), <https://www.lawfaremedia.org/article/the-new-israeli-government-s-constitutional-law-reforms-why-now-what-do-they-mean-and-what-will-happen-next>.

2023.⁹¹ But it was not the only issue at play, which takes the conversation to another vital point in Israeli judicial history: the constitutional revolution of the 1990s.⁹² The Knesset has passed several Basic Laws throughout its history, and the passage of these laws was not limited to the early years following the formation of the State.⁹³ For example, the Knesset passed the Basic Law: State Lands in 1960, the Basic Law: State Economy in 1975, and the Basic Law: Jerusalem in 1980.⁹⁴ In 1992, it passed similar pieces of legislation: the Basic Law: Human Dignity and Liberty and the Basic Law: Freedom of Occupation.⁹⁵ Three years later, the Israeli Supreme Court—led by then-Chief Justice Aharon Barak—held in a case called *United Mizrahi Bank v. Migdal Cooperative Village* that the Basic Laws were tantamount to a constitution and that the Court had the power to declare unconstitutional any laws that conflicted with the Basic Laws.⁹⁶ With this, the supreme court granted itself the power of judicial review, in a way reminiscent of the famous American case *Marbury v. Madison*.⁹⁷ In that case, the U.S. Supreme Court declared that the U.S. Constitution gave the judiciary the power to abrogate laws that conflict with the foundational document.⁹⁸ Setting aside the parallels between *Marbury* and *United Mizrahi Bank*, the end result was that, through the latter decision, the Israeli Supreme Court radically reshaped the contours of political power by transforming the judiciary into a countervailing force opposing the merged executive-legislative branch found in the Israeli system of government.⁹⁹

Although the Israeli Supreme Court has struck down numerous administrative decisions, it has modified or annulled only 22 pieces of legislation from 1997 to 2023.¹⁰⁰ A few examples of these decisions include:

91. *Id.*

92. *Id.*

93. *Id.*

94. *See Basic Laws, supra* note 89.

95. *Id.*

96. CivA 6821/93 *United Mizrahi Bank v. Migdal Coop. Vill.*, 49(4) P.D. 221 (1995) (Isr.), translated in *United Mizrahi Bank v. Migdal Cooperative Village*, VERSA, <https://versa.cardozo.yu.edu/opinions/united-mizrahi-bank-v-migdal-cooperative-village> (last visited Apr. 21, 2024).

97. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

98. *Id.*

99. *See Cohen & Shany, supra* note 90.

100. Jeremy Sharon, *From a Rogue MK to Haredi Subsidies, 8 Times High Court Struck Down Laws, Decisions*, TIMES ISR. (Jan. 30, 2023), <https://www.timesofisrael.com/from-a-rogue-mk-to-haredi-subsidies-8-times-high-court-struck-down-laws-decisions>; *see also* Amir Fuchs, *How Many Laws Were Struck Down by the Supreme Court in Israel?*, THE ISR. DEMOCRACY INST. (June 22, 2020), <https://en.idi.org.il/articles/31874>.

- Upholding the government’s power to evacuate settlers as part of the Israeli withdrawal (“Disengagement”) from Gaza in 2005, though the court broadened the eligibility requirements for compensation in that year and increased compensation payments in 2013;
- Upholding parliamentary immunity for an Arab-Israeli member of Knesset who spoke in favor of “resistance” against Israel and was later found to be a collaborator with the Lebanon-based terror group Hezbollah;
- Annuling a law that allowed the indefinite detention of asylum-seekers and illegal immigrants;
- Annuling a law that withheld income support benefits for those who owned or used vehicles;
- Annuling a law designed to legalize approximately 4,000 settlements that had been illegally built on private Palestinian land;
- Annuling a law designed to allow a specific radio broadcaster the ability to operate without a license or franchise as required under the law;
- Annuling a law that granted the State immunity from compensation claims filed by Palestinians harmed by security forces;
- Annuling a section of the 2010 Budget Law that guaranteed minimal income allowances to married Ultra-Orthodox men engaged in Torah studies; and
- Annuling laws in 2012 and 2017 designed to protect draft exemptions for Ultra-Orthodox men engaged in Torah studies (these exemptions remain in place in other fashions to this day, and Ultra-Orthodox people’s ability to avoid military service remains hotly contested).¹⁰¹

101. See Sharon, *supra* note 100; Fuchs, *supra* note 100.

C. A Critical Look at the Leaders of the Netanyahu Government in 2023

The ideologues that drove the 2023 judicial reform movement—Justice Minister and member of Knesset Yariv Levin of the Likud Party and Knesset Law, Constitution, and Justice Committee Chair Simcha Rothman of the Religious Zionist Party—had been waging their war against the supreme court for years.¹⁰² However, until relatively recently, Netanyahu was an ardent supporter of judicial independence in Israel.¹⁰³ In 2012, he bragged about this fact, telling an interviewer:

Listen, there have been proposals to limit or cut the power of the Supreme Court, which is one of the pillars of our democracy, and I prevented all of them. All of them! I have repeatedly protected the independence of the Supreme Court: The law to limit its authority—I buried it; the law for public hearings of judges in the Knesset committees—I buried it; the law to change the makeup of the Judicial Appointments Committee—I buried it.¹⁰⁴

Yet in 2023, Netanyahu led a government seemingly dead set on demolishing the independence of the judiciary, first and foremost by changing the makeup of the Judicial Appointments Committee.¹⁰⁵ So, what changed in the 11 years between 2012 and 2023? The obvious answer is Netanyahu's own legal jeopardies.¹⁰⁶ On January 28, 2020, then-Attorney General Avichai Mandelblit filed indictments against Netanyahu in three separate cases related to allegations of fraud, bribery, and breach of trust.¹⁰⁷ These legal proceedings are still ongoing. On November 2, 2020, Mandelblit's office issued a final ruling stating that Netanyahu could not be involved—including through his associates—in legislation that would

102. *Netanyahu Taps Yariv Levin as Justice Minister to Oversee Major Judicial Reforms*, TIMES ISR. (Dec. 28, 2022), <https://www.timesofisrael.com/netanyahu-taps-yariv-levin-as-justice-minister-to-oversee-judicial-reforms>; Gedalia Guttentag, *Courting Controversy*, MISHPACHA (Nov. 29, 2022), <https://mishpacha.com/courting-controversy>.

103. See Horovitz, *supra* note 78; see also Wootliff, *supra* note 78.

104. See Horovitz, *supra* note 78.

105. Carrie Keller-Lynn, *Knesset Panel Plows Ahead with Judicial Appointments Bill Despite 5,400 Reservations*, TIMES ISR. (Mar. 22, 2023), <https://www.timesofisrael.com/knesset-panel-plows-ahead-with-judicial-appointments-bill-despite-5400-reservations>.

106. Tia Goldenberg, *What's Driving the Players Behind Israel's Legal Overhaul?*, AP (Mar. 2, 2023), <https://apnews.com/article/israel-judiciary-overhaul-netanyahu-protests-9eb2a020806b5a90d2bb0a057924a3ba>.

107. Raoul Wootliff, *Netanyahu Indicted for Corruption in Three Cases, in First for a Sitting PM*, TIMES ISR. (Jan. 28, 2020), <https://www.timesofisrael.com/netanyahu-indicted-for-corruption-in-three-cases-in-first-for-a-sitting-pm>.

impact his cases or the appointment of law enforcement or legal officials because of the conflict of interest that would arise due to his corruption trials.¹⁰⁸ Although Netanyahu did not sign the agreement, he functionally acceded to it after negotiations with the Attorney General's Office resulted in a ruling that was softer than previously discussed versions of the legal opinion.¹⁰⁹

Shortly after the ruling's issuance, Mandelblit stated that it was binding on Netanyahu, whether he agreed to it or not.¹¹⁰ The then-attorney general also sent a letter to the supreme court asking it to intervene if Netanyahu refused to abide by the restrictions.¹¹¹ In March 2021, the supreme court held that the prime minister was bound by the conflict-of-interest ruling,¹¹² and in January 2023, current Attorney General Gali Baharav-Miara stated that it remained in effect.¹¹³ Two months later, the Knesset passed a law specifically designed to protect Netanyahu from court orders demanding his recusal or removal from office.¹¹⁴ He subsequently declared that he was thus free from the 2020 Order,¹¹⁵ but Baharav-Miara informed both him and the public that the conflict-of-interest ruling was still binding, the new legislation had not nullified it, and Netanyahu had violated its terms.¹¹⁶ The impact of Netanyahu's corruption cases on the right-wing legal reform movement is apparent; even his own Justice Minister, Yariv Levin, linked the prime

108. Michael Bachner, *AG Issues Final Ruling Barring Netanyahu from Making Judicial Appointments*, TIMES ISR. (Nov. 2, 2020), <https://www.timesofisrael.com/ag-issues-final-ruling-barring-netanyahu-from-making-judicial-appointments>.

109. *Id.*

110. *AG Asks High Court to Intervene if Netanyahu Breaks Conflict of Interest Rules*, TIMES ISR. (Nov. 10, 2020), <https://www.timesofisrael.com/ag-asks-high-court-to-intervene-if-netanyahu-breaks-conflict-of-interest-rules>.

111. *Id.*

112. *High Court Bars Netanyahu from Appointing Top Law Enforcement, Justice Officials*, TIMES ISR. (Mar. 25, 2021), <https://www.timesofisrael.com/high-court-bars-netanyahu-from-appointing-top-law-enforcement-justice-officials>.

113. *AG: Netanyahu Still Bound by Conflict of Interest Rules Set Up for His Graft Trial*, TIMES ISR. (Jan. 18, 2023), <https://www.timesofisrael.com/ag-says-netanyahu-still-bound-by-conflict-of-interest-rules-set-up-for-graft-trial>.

114. Carrie Keller-Lynn, *Knesset Passes Law Shielding Netanyahu from Court-Ordered Recusal 61-47*, TIMES ISR. (Mar. 23, 2023), <https://www.timesofisrael.com/knesset-passes-law-shielding-netanyahu-from-recusal-in-61-47-final-vote>.

115. Carrie Keller-Lynn, *PM: I'll Intervene to Make Overhaul 'Balanced'—but Judge Selection Bill Will Pass*, TIMES ISR. (Mar. 24, 2023), <https://www.timesofisrael.com/pm-ill-intervene-to-make-overhaul-balanced-but-judge-selection-bill-will-pass>.

116. Jeremy Sharon, *AG Says Netanyahu Is Breaking the Law and in Violation of Conflict of Interest Deal*, TIMES ISR. (Mar. 24, 2023), <https://www.timesofisrael.com/ag-says-netanyahu-is-breaking-the-law-and-in-violation-of-conflict-of-interest-deal>.

minister's indictments to the government's hardline judicial overhaul attempts.¹¹⁷

Netanyahu was not the only member of the government with legal problems.¹¹⁸ Four of the six parties in the ruling coalition were led by people who have been suspected, accused, or convicted of criminal activity.¹¹⁹ In 1999, Aryeh Deri—who headed Shas, a party that caters to Ultra-Orthodox Jews of Spanish, Middle Eastern, and North African descent and was the second-largest party in the coalition—was convicted of bribery, fraud, and breach of trust and sentenced to three years in prison, of which he only served 22 months.¹²⁰ In 2021, he signed a plea deal for tax crimes.¹²¹ Allegedly, as part of this deal, Deri agreed to retire from politics entirely, and in January 2022, he resigned from the Knesset.¹²² Yet, later that year, Deri ran as the head of his party and was initially appointed to a ministerial position.¹²³ However, in January 2023, the supreme court ruled that he was ineligible for a cabinet position because of his criminal convictions and the terms of his 2021 plea agreement.¹²⁴

At seven Knesset seats a piece, the United Torah Judaism Party and the Religious Zionist Party were tied for the third-largest parties in the coalition.¹²⁵ The former represented Ultra-Orthodox Jews of Eastern European origin,¹²⁶ while the settler movement and hardline nationalist religious Jews served as the principal base of support for the latter.¹²⁷ Finance Minister Bezalel Smotrich, who led the Religious Zionist Party, was reportedly held by Israel's Shin Bet security service for three weeks in 2005

117. *Netanyahu Trial Boosted Backing for Judicial Overhaul Push, Justice Minister Says*, TIMES ISR. (Jan. 16, 2023), <https://www.timesofisrael.com/netanyahu-trials-boosted-backing-for-judicial-overhaul-push-justice-minister-admits>.

118. *See infra* Part II.C.

119. *See infra* Part II.C.

120. *Court Sentences Deri in Plea Bargain Conviction on Tax Offenses*, TIMES ISR. (Feb. 1, 2022), <https://www.timesofisrael.com/court-sentences-deri-in-plea-bargain-conviction-on-tax-offenses>.

121. *Id.*

122. *Id.*

123. Jeremy Sharon, *In Bombshell Ruling, High Court Nixes Shas Head Deri from Serving as Minister*, TIMES ISR. (Jan. 18, 2023), <https://www.timesofisrael.com/in-bombshell-ruling-high-court-nixes-shas-head-deri-from-serving-as-minister>.

124. *Id.*

125. *Current Knesset Members*, THE KNESSET, https://knesset.gov.il/mk/eng/mkindex_current_eng.asp?view=1 (last visited Apr. 21, 2024).

126. David Isaac, *Israeli Elections 2022: A Rundown of Israeli Parties and Their Leaders*, JNS (Oct. 18, 2022), <https://www.jns.org/israeli-elections-2022-a-rundown-of-israeli-parties-and-their-leaders>.

127. Simcha Pasko, *Explainer: Israel's Political Parties Leading Up to 2022 Elections*, I24NEWS (Sept. 16, 2022), <https://www.i24news.tv/en/news/israel/politics/1662461032-explainer-israel-s-political-parties-leading-up-to-2022-elections>.

on suspicion of participating in a planned attack on a major highway in Tel Aviv.¹²⁸ At the time of his arrest, he was allegedly in possession of 700 liters of gasoline.¹²⁹ No charges were filed against him.¹³⁰

National Security Minister Itamar Ben-Gvir led the fifth-largest party in the government, the Otzma Yehudit (Jewish Power) Party.¹³¹ As per *The Washington Post*:

Ben-Gvir boast[ed] that he ha[d] been arrested hundreds of times, indicted 53 times[,] and convicted seven times, including on charges of incitement to racism against Arabs, interfering with a police officer from performing his duty, and support for a terrorist group (Kach).¹³²

Both Ben-Gvir and Smotrich—who were trained lawyers—were widely considered to be extremist, intolerant provocateurs whose “declared political agendas [did] not honor and respect Israeli democracy.”¹³³

Notably, the religious Zionist sector was not always so extremist.¹³⁴ Yamina, a more moderate right-wing party, represented much of this voting bloc until its collapse in 2022.¹³⁵ Naftali Bennett, the leader of the party, agreed to build a coalition with the center-left Yesh Atid Party in 2021.¹³⁶ Many of Bennett’s supporters rejected this alignment with the left and thought that Bennett was sacrificing his supporters for the sake of his own career ambitions.¹³⁷ As part of this agreement, Bennett and Yesh Atid leader Yair Lapid would take turns as premier.¹³⁸ Despite leading the smaller of the two parties, Bennett became prime minister first in 2021.¹³⁹ He was meant to

128. *Former Shin Bet Deputy Chief Said to Claim MK Smotrich Planned Terror Attack*, TIMES ISR. (Mar. 18, 2019), <https://www.timesofisrael.com/former-shin-bet-deputy-chief-said-to-call-hardline-mk-smotrich-a-terrorist>.

129. *Id.*

130. *Id.*

131. See Isaac, *supra* note 126.

132. Shira Rubin, *Itamar Ben Gvir: How an Extremist Settler Became a Powerful Israeli Minister*, WASH. POST (Feb. 22, 2023), <https://www.washingtonpost.com/world/2023/02/15/israel-ben-gvir-netanyahu-government>.

133. David Horovitz, *With Rise of Ben Gvir and Smotrich, Israel Risks a Catastrophic Lurch to Extremism*, TIMES ISR. (Oct. 27, 2022), <https://www.timesofisrael.com/with-rise-of-ben-gvir-and-smotrich-israel-risks-a-catastrophic-lurch-to-extremism>.

134. Herb Keinon, *The Rise and Fall of Naftali Bennett*, JERUSALEM POST (July 1, 2022), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-710884>.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

serve for two years, after which Lapid would have taken over.¹⁴⁰ However, the unity government collapsed in 2022, in large part due to Bennett's inability to rein in his own party.¹⁴¹ Several Yamina members of Knesset balked in the face of their communities' growing frustration with a unity government that included far-left and Arab parties.¹⁴² After the collapse of the government and Bennett's perceived betrayal, many religious nationalists veered toward the hard-right while moderates in this camp found themselves to be politically homeless.¹⁴³ The end result: Yamina's fall and the rise of Smotrich and Ben-Gvir.

The records of Netanyahu, Deri, Smotrich, and Ben-Gvir suggest a fundamental disregard—either explicitly or implicitly—for a justice system that refuses to place personal and partisan interests above the law.¹⁴⁴ As several pundits noted, members of the ruling government sought to pass a litany of laws designed to allow political leaders to profit.¹⁴⁵ One notable example would have given the ruling party control over the Central Elections Committee, which oversees and regulates the electoral process.¹⁴⁶ Another is the so-called “gifts law” that would have “open[ed] the door to corruption in the entire public service” by allowing politicians to receive practically unchecked and unlimited amounts of money.¹⁴⁷ The bill would have allowed Netanyahu to keep \$270,000 given to him by one of his now-deceased cousins.¹⁴⁸ It also would have granted him access to \$1.1 million in crowdfunding donations earmarked for his legal fees, money that had been frozen pending a court order.¹⁴⁹

The Netanyahu government's seemingly illiberal actions, along with its leaders' past and present legal troubles, represent an underlying cause of the

140. *Id.*

141. Amir Tibon, *Bennett's Government Is Imploding, and He Has Only Himself to Blame*, HAARETZ (June 16, 2022), <https://www.haaretz.com/israel-news/2022-06-16/ty-article/premium/bennetts-government-is-imploding-and-he-has-only-himself-to-blame/00000181-6d48-d336-abdd-7f78eb010000>.

142. Calev Ben-Dor, *'Politically Homeless': Yamina Voters Tell Their Story*, FATHOM (Nov. 22, 2022), <https://fathomjournal.org/politically-homeless-yamina-voters-tell-their-story>.

143. *Id.*

144. *See supra* Part II.C.

145. Haviv Rettig Gur, *Things Fall Apart*, TIMES ISR. (Mar. 27, 2023), <https://www.timesofisrael.com/things-fall-apart-2>.

146. *Likud MK Files, Quickly Withdraws Bill to Politicize Central Elections Committee*, TIMES ISR. (Mar. 19, 2023), <https://www.timesofisrael.com/likud-mk-files-quickly-withdraws-bill-to-politicize-central-elections-committee>.

147. Carrie Keller-Lynn, *Facing Strong Opposition, Coalition Puts Off Bill to Let PM Keep Gifted Money*, TIMES ISR. (Mar. 29, 2023), <https://www.timesofisrael.com/facing-strong-opposition-coalition-puts-off-bill-to-let-pm-keep-gifted-money>.

148. *Id.*

149. *Id.*

constitutional crisis that unfolded in 2023.¹⁵⁰ On top of this, an intensely divided electorate and a global pandemic caused Israel to undergo five separate national elections in less than four years between April 2019 and November 2022.¹⁵¹ Taken together, these factors would fit in well with any rhetorical recipe for creating a hard-right government poised to capture or conquer a recalcitrant supreme court.

D. A Brief Description of the Government's Judicial Selection Reform Plans, and the Intense Civil Strife That They Wrought

The Israeli justice system comprises three levels: 29 magistrate courts at the trial court level; 6 district courts that operate at the middle, appellate level of the system; and the supreme court, which also sits as the High Court of Justice and the court of first impression for cases regarding state authorities.¹⁵² Israel's current system uses a judicial selection committee comprising the supreme court president (a term comparable to the "chief justice" nomenclature used in the United States and other countries); two other sitting justices; two members of the Israeli Bar Association; the Justice Minister; a second cabinet minister; and two members of Knesset, one of which is traditionally a member of the opposition while the other is a member of the coalition.¹⁵³ Thus, the ruling coalition controls three out of nine seats, and thinking in terms of public representation, elected officials control four out of nine seats (two members of Knesset and two ministers), while unelected persons control the other five seats (two Israel Bar Association representatives and three sitting justices).¹⁵⁴ A total of seven out of nine votes is needed to appoint a supreme court justice, while only five votes are needed to appoint a judge at a lower level.¹⁵⁵ Because Israel lacks a constitution, a federated system, geographic representational elections, a bicameral legislative branch, or any other significant checks and balances, the supreme

150. Gur, *supra* note 145.

151. Tia Goldenberg, *Israelis Vote for the 5th Time Since 2019, Hoping to Break Political Deadlock*, PBS: NEWSHOUR (Nov. 1, 2022), <https://www.pbs.org/newshour/world/israelis-vote-for-the-5th-time-since-2019-hoping-to-break-political-deadlock>.

152. *The Israeli Judicial Authority*, GOV.IL, https://www.gov.il/en/departments/the_judicial_authority/govil-landing-page (last visited Apr. 21, 2024).

153. *The Judiciary: The Court System*, ISRAELI MISSIONS AROUND THE WORLD, <https://embassies.gov.il/MFA/AboutIsrael/state/Democracy/Pages/The%20Judiciary-%20The%20Court%20System.aspx> (last visited Apr. 21, 2024).

154. *Id.*

155. Jeremy Sharon, *Who Chooses Judges: The Evolution and Planned Radical Overhaul of Judicial Selection*, TIMES ISR. (Feb. 28, 2023), <https://www.timesofisrael.com/who-chooses-judges-the-evolution-and-planned-radical-overhaul-of-judicial-selection>.

court is considered to be the only political force keeping the government in line.¹⁵⁶

The Netanyahu government's reform agenda included plans to reshape the system in many respects—including with regard to judicial review, standing, and justiciability—and one of its most hotly contested elements would have remade the country's judicial appointment process.¹⁵⁷ Those behind the push for judicial reform argued that the system needed to be corrected because “judges appoint themselves.”¹⁵⁸ But this is inaccurate in that, as noted above, both the government and the supreme court control three out of nine seats on the judicial selection committee and, therefore, hold de facto vetoes with respect to candidates for supreme court vacancies.¹⁵⁹ This argument is similarly unavailing regarding lower court vacancies in that the three justices on the committee cannot, on their own, approve a candidate.¹⁶⁰ However, in theory, those same justices could do so with the help of the two Bar Association members of the committee—leading to a situation in which unelected officials could appoint a judge without any input from their elected counterparts.¹⁶¹ That being said, the implication that a Bar Association member would fail to follow his own conscience when voting—and instead side with the justices out of a sense of professional pressure and a need to satisfy the people before whom he may one day practice—lacks empirical evidence and generated an unmoored narrative of unfairness whereby the optics of a partisan system skewed toward members of the legal profession—widely seen on the right as elitist and left-wing—created animus for the current system.¹⁶²

Purportedly seeking to take control of the courts out of the hands of the elites and return it to the people, the Netanyahu government aimed to give

156. See Horovitz, *supra* note 80.

157. Michael Bachner, *Report: Full Judicial Overhaul Plan Includes Basic Law Shake-Up, Splitting AG's Role*, TIMES ISR. (Jan. 23, 2023), <https://www.timesofisrael.com/report-full-judicial-overhaul-plan-includes-basic-law-shake-up-splitting-ag-roles>.

158. Moran Azulay, *Likud Approves 'Softened' Judicial Reform Outline, Opposition Unimpressed*, YNETNEWS.COM (Mar. 20, 2023), <https://www.ynetnews.com/article/b10xsmign>.

159. See *supra* notes 153–56.

160. See Sharon, *supra* note 155.

161. See *The Judiciary*, *supra* note 153; See also Sharon, *supra* note 155.

162. Hadas Gold, *A Threat to Democracy or Much-Needed Reform? Israel's Judicial Overhaul Explained*, CNN, <https://www.cnn.com/2023/03/25/middleeast/israel-judiciary-netanyahu-explainer-intl/index.html> (last updated Mar. 27, 2023); see also Amichai Cohen & Yuval Shany, *The Fight Over Judicial Appointments in Israel*, LAWFARE (Feb. 16, 2023), <https://www.lawfareblog.com/fight-over-judicial-appointments-israel>; Yonah Jeremy Bob, *Are Claims That Israel's High Court Only Help Left-Wing Causes True?—Analysis*, JERUSALEM POST (Oct. 23, 2022), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-720382>.

the executive branch power over the judicial selection committee.¹⁶³ Its judicial appointments bill would have expanded the committee to 11 members: the High Court President; two sitting justices (to be replaced by a magistrate judge and the District Court President for lower court appointments); the Justice Minister; two cabinet ministers from separate parties; the chairperson of the Knesset Law, Constitution, and Justice Committee; two other coalition members of Knesset from separate factions; and two opposition members of the Knesset from separate factions.¹⁶⁴ This would have given the governing coalition control over six seats and the judiciary control over three seats.¹⁶⁵ Members of Knesset in the opposition would have controlled the remaining two seats on the committee.¹⁶⁶ Only a simple majority—i.e., 6 out of 11—would have been needed to appoint a candidate to the supreme court, while seven votes would have been needed to fill a lower court vacancy, and only a quorum of six seats would have been required to hold a meeting of the committee.¹⁶⁷

Thus, under the proposed system, a governing coalition could force its preferred candidate onto the bench over the dissenting voices of every other member of the committee.¹⁶⁸ However, under the terms of the bill, if the committee was filling the third supreme court vacancy in a term, then a vote from one opposition member would have been needed to pass the measure.¹⁶⁹ If it was filling a fourth vacancy, then votes from both a member of the opposition and a member of the judiciary would have been required.¹⁷⁰ The government stylized this last caveat regarding the third and fourth vacancies as a concession, but critics noted that it hardly qualified as such.¹⁷¹ This is because Israeli governments rarely make it to the end of their full four-year terms,¹⁷² and the average number of justices appointed during a Knesset term

163. Michael Starr, *Judicial Selection Committee Changes Approved for Last Two Readings*, JERUSALEM POST (Mar. 27, 2023), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-735540>.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. David Horovitz, *Minister Behind the Overhaul Admits It Would End Democracy, Falsely Claims He's Fixed It*, TIMES ISR. (Apr. 6, 2023), <https://www.timesofisrael.com/the-minister-behind-the-overhaul-admits-a-dire-blunder-falsely-claims-hes-fixed-it>.

172. *History*, THE KNESSET, <https://main.knesset.gov.il/en/about/history/pages/lobby.aspx> (last visited Apr. 21, 2024).

is 2.6.¹⁷³ But even if this number was higher, granting the ruling coalition unfettered control over the first two supreme court appointments in a term is *prima facie* partisanship.¹⁷⁴ Moreover, the bill would have granted the coalition the power to appoint the supreme court president, thus giving the executive branch even more control over the judiciary.¹⁷⁵

In essence, the judicial appointments bill would have eliminated the judicial branch's independence and remade the courts into an extension of the government.¹⁷⁶ As noted above, the executive branch already controls the legislative branch in Israel, thanks to the country's parliamentary republic system.¹⁷⁷ More accurately, he who controls the majority in the legislature becomes the prime minister and controls the executive, thus effectively merging the two.¹⁷⁸ The reform plan attempted to bring the third branch of government under the premier's dominion as well.¹⁷⁹ Even Justice Minister Yariv Levin, one of the principal architects of the government's judicial overhaul agenda, conceded that the original draft of the judicial appointments bill would have led "to a situation in which all three branches of government become one branch" and that such a situation "could ultimately lead to a constitutional crisis" and "cannot happen in a democratic country."¹⁸⁰ He argued that the modified version of the bill prevented this from occurring through its language regarding third and fourth vacancies in a term, but opponents of the government's plans found his claim to be specious and unconvincing.¹⁸¹

The proposed judicial overhaul ran the risk of creating a tyranny of the majority and allowed for a situation in which the public would have doubtlessly perceived the courts as corrupted by partisanship and special interests.¹⁸² This distrust in the Netanyahu government prompted 12 weeks of protests from early January, when the judicial reform plan was announced,

173. Jeremy Sharon, *Ostensibly Softened, Rothman Bill Gives Coalition Broad Control Over Choice of Judges*, TIMES ISR. (Mar. 21, 2023), <https://www.timesofisrael.com/ostensibly-softened-rothman-bill-gives-coalition-broad-control-over-choice-of-judges>.

174. Horovitz, *supra* note 171.

175. Jeremy Sharon & Carrie Keller-Lynn, *Coalition to Bring Judicial Appointments Bill for Final Votes Before Passover*, TIMES ISR. (Mar. 20, 2023), <https://www.timesofisrael.com/coalition-heads-to-bring-judicial-appointments-bill-for-final-votes-before-passover>.

176. Horovitz, *supra* note 171.

177. *See* Horovitz, *supra* note 78.

178. *Id.*

179. *See* Horovitz, *supra* note 171.

180. *Levin Admits Original Judicial Appointments Bill Was a Danger to Democracy*, TIMES ISR. (Apr. 3, 2023), <https://www.timesofisrael.com/levin-admits-original-judicial-appointments-bill-was-a-danger-to-democracy>.

181. *See* Horovitz, *supra* note 171.

182. *See* Horovitz *supra* note 78.

to late March, when it was paused ahead of the Knesset's recess for the Passover holiday.¹⁸³ The strength of these protests grew over time; in many cases, hundreds of thousands of people took to the streets.¹⁸⁴ According to a poll taken in late March, one in every five Israelis said that they had personally attended a protest against the government's judicial reform scheme.¹⁸⁵ The poll also indicated that "protests that regularly [drew] 200,000 people represent[ed] at least five times as many protesters in the broader population."¹⁸⁶ In a country of only 9.8 million people, this number of protestors represented a massive subset of the population.¹⁸⁷ Reservists in the military—most notably the air force and the cyber command—indicated that they would refuse to show up when called for duty.¹⁸⁸ Because Israel has a civilian military that relies in no small part on its reservists, this was a serious threat to the country, to the point that Defense Minister Yoav Gallant privately urged Netanyahu to halt the reform effort for a short time.¹⁸⁹ When Netanyahu refused, Gallant spoke out publicly on March 25, 2023, saying that the judicial reform effort needed to be suspended because it was tearing the country apart.¹⁹⁰ Gallant declared in a televised address:

183. Haviv Rettig Gur, *The Judiciary Fight Is Fueled by Deep Distrust; That Makes Compromise Elusive*, TIMES ISR. (Feb. 14, 2023), <https://www.timesofisrael.com/deep-distrust-fuels-the-judiciary-fight-and-will-shape-its-fallout>.

184. *Hundreds of Thousands Join Nationwide Protests, with Key Overhaul Law About to Pass*, TIMES ISR. (Mar. 25, 2023), <https://www.timesofisrael.com/over-200000-protest-across-israel-against-judicial-overhaul-as-gallant-urges-pause>; *'We Are Not Afraid': Mass Protests Erupt Nationwide After Netanyahu Fires Gallant*, TIMES ISR. (Mar. 27, 2023), <https://www.timesofisrael.com/we-are-not-afraid-mass-protests-erupt-nationwide-after-netanyahu-fires-gallant> [hereinafter *We Are Not Afraid*]; *Government Made 'Mistake of Their Lives': Hundreds of Thousands Protest Overhaul*, TIMES ISR. (Apr. 1, 2023), <https://www.timesofisrael.com/government-made-mistake-of-their-lives-hundreds-of-thousands-protest-overhaul>; *Hundreds of Thousands Rally Against Judicial Overhaul Plans for a 15th Straight Week*, TIMES ISR. (Apr. 15, 2023), <https://www.timesofisrael.com/hundreds-of-thousands-rally-against-judicial-overhaul-plans-for-a-15th-straight-week>.

185. *Over 1 in 5 Israelis Have Protested Against Overhaul and Numbers are Rising—Poll*, TIMES ISR. (Apr. 4, 2023), <https://www.timesofisrael.com/over-1-in-5-israelis-have-protested-against-overhaul-and-numbers-are-rising-poll>.

186. Gur, *supra* note 145.

187. *Israeli Population Nearing 10 Million Ahead of Jewish New Year*, JERUSALEM POST (Sept. 14, 2023), <https://www.jpost.com/israel-news/article-758857>.

188. Emanuel Fabian, *Protesting Reservists Threaten Mass Refusal to Serve Over Judiciary Shakeup*, TIMES ISR. (Mar. 21, 2023), <https://www.timesofisrael.com/protesting-reservists-threaten-mass-refusal-to-serve-over-judiciary-shakeup>.

189. *Gallant Reportedly Says Judicial Overhaul May Push Him Out as Defense Minister*, TIMES ISR. (Mar. 20, 2023), <https://www.timesofisrael.com/gallant-reportedly-says-judicial-overhaul-may-push-him-out-as-defense-minister>.

190. *Full Text of Gallant's Call to Pause Judicial Overhaul over Danger to State Security*, TIMES ISR. (Mar. 26, 2023), <https://www.timesofisrael.com/full-text-of-gallants-call-to-pause-judicial-overhaul-over-danger-to-state-security> [hereinafter *Gallant's Call to Pause*].

I see the source of our strength eroding. . . .

[T]he growing rift in our society is penetrating the IDF and security agencies. This poses a clear, immediate, and tangible threat to the security of the state.

I will not allow this.

* * * *

[F]or the sake of Israel's security, for the sake of our sons and daughters—the legislative process [regarding the judicial selection reform bill] should be stopped [now], [to] enable the nation . . . to celebrate Passover and Independence Day together, and to mourn together on Memorial Day and Holocaust Remembrance Day.¹⁹¹

Netanyahu fired Gallant from the defense minister position less than 24 hours later.¹⁹² This sparked a massive wave of spontaneous protests throughout the night of March 26, 2023.¹⁹³ Hundreds of thousands of people gathered across the country to oppose the judicial overhaul and decry Netanyahu's authoritarian act against a voice of reason from within his own ranks.¹⁹⁴ Moreover, the Histadrut Labor Federation, which enjoys huge amounts of power in the country, declared it would strike the next day.¹⁹⁵ The country's main international airport also shut down, as did universities, hospitals, local governmental authorities, and several sectors of the economy.¹⁹⁶ In a joint letter, several leading law firms in Israel indicated that they would oppose the government's efforts.¹⁹⁷ They urged public servants "to protect the rule of law and defend democracy" and declared that "[i]f any of you are fired, removed from your position, or suffer harassment, due to fulfilling your legal duty to respect court rulings and to protect the rule of

191. *Id.*

192. Emanuel Fabian, *Netanyahu Fires Defense Minister Gallant for Calling to Pause Judicial Overhaul*, TIMES ISR. (Mar. 26, 2023), <https://www.timesofisrael.com/netanyahu-fires-defense-minister-gallant-for-calling-to-pause-judicial-overhaul>.

193. *See We Are Not Afraid*, *supra* note 184.

194. *Id.*

195. *Ben Gurion Departures Halted as Histadrut Declares 'Historic' Strike Against Overhaul*, TIMES ISR. (Mar. 27, 2023), <https://www.timesofisrael.com/histadrut-labor-chief-to-make-special-announcement-amid-growing-calls-for-strike>.

196. *Id.*

197. Michael Starr, *Netanyahu Trial Lawyer to Stop Representing if Judicial Reform Continues – Report*, JERUSALEM POST (Mar. 27, 2023), <https://www.jpost.com/breaking-news/article-735537>.

law—we'll stand beside you and aid pro bono.”¹⁹⁸ Even one of Netanyahu's attorneys said he would stop representing the premier if the government did not suspend its plans to overhaul the justice system.¹⁹⁹

Responding to these thunderous condemnations, Netanyahu announced a day after terminating Gallant that he would temporarily suspend the reform plan until after the spring holiday season.²⁰⁰ A day after that, representatives of the coalition and the opposition met at the President's Residence to discuss the reform measures; but with the judicial appointments bill only one step away from becoming the law of the land, opponents of the overhaul believed that Netanyahu was negotiating with a gun on the table.²⁰¹ In spite of this erstwhile effort at dialogue, the public remained incensed at the government, and in the face of this immense outcry, Netanyahu reinstated Gallant on April 10, 2023, two weeks after firing him.²⁰²

The crisis remained relatively muted during the spring as negotiations between the opposition and coalition continued.²⁰³ But the civil conflict escalated over the summer after the talks collapsed, and the government shifted gears.²⁰⁴ Instead of focusing on capturing the Court through judicial selection reform, the Netanyahu government began a campaign to conquer it by weakening its powers of judicial review.²⁰⁵ Specifically, it passed a law designed to prohibit the Court from using the “reasonableness” standard when reviewing administrative decisions made by the government or any minister, including the premier.²⁰⁶ The law—which amended the Basic Law: The Judiciary and was passed on July 24, 2023, through a 64-0 vote after the

198. *Id.*

199. *Id.*

200. Jeremy Sharon, *Netanyahu Says He's Delaying Overhaul to Allow Dialogue, but Vows Reform Will Happen*, TIMES ISR. (Mar. 27, 2023), <https://www.timesofisrael.com/netanyahu-says-hes-delaying-overhaul-to-allow-dialogue-but-vows-reform-will-happen>.

201. Ash Obel, *Coalition, Opposition Hold First Talks on Judicial Overhaul with President Herzog*, TIMES ISR. (Mar. 28, 2023), <https://www.timesofisrael.com/coalition-opposition-hold-first-talks-on-judicial-overhaul-with-president-herzog>.

202. *Netanyahu Reinstates Gallant, Blames Last Coalition for Cross-Border Attacks, Terror*, TIMES ISR. (Apr. 10, 2023), <https://www.timesofisrael.com/netanyahu-reinstates-gallant-blames-previous-government-for-current-wave-of-attacks>.

203. Eliav Breuer, *Which Direction Is the Judicial Reform Wind Blowing in?*, JERUSALEM POST (June 2, 2023), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-744938>.

204. *Stepped-Up Anti-Overhaul Protests See Hundreds Block Haifa Port, Gather at Airport*, TIMES ISR. (July 3, 2023), <https://www.timesofisrael.com/day-of-stepped-up-anti-overhaul-protests-kicks-off-with-hundreds-blocking-haifa-port>.

205. Hadas Gold et al., *Israel Passed a Bill to Limit the Supreme Court's Power. Here's What Comes Next*, CNN, <https://www.cnn.com/2023/07/24/middleeast/israel-judicial-reforms-vote-explained-mime-intl/index.html> (last updated July 24, 2023).

206. Eliav Breuer, *Reasonableness Bill Passes 64-0 After Compromise Falls at Last Minute*, JERUSALEM POST (July 24, 2023), <https://www.jpost.com/breaking-news/article-752225>.

opposition refused to participate in the legislative measure—also barred the application of the reasonableness standard when reviewing ministerial decisions to withhold the use of their authority or to appoint government workers.²⁰⁷ An American analogue to the reasonableness standard is the “arbitrary and capricious” test, which requires federal agencies to demonstrate that they engaged in “reasoned decisionmaking.”²⁰⁸

Several groups filed petitions with the Court seeking the law’s invalidation, and the full bench heard arguments on the matter in September 2023, shortly before the start of the Jewish High Holiday season.²⁰⁹ Less than a month later, Hamas invaded Israel, slaughtered over 1,200 people, kidnapped approximately 253 hostages, and triggered a months-long war.²¹⁰ Analysts viewed the timing of the massacre as an attempt by Hamas to capitalize on the deep divisions and widespread civic unrest created by the judicial reform crisis.²¹¹ In July 2023, approximately 10,000 reservists declared that they would refuse to serve in the military if the government continued to push through its judicial reform agenda.²¹² Netanyahu’s own defense minister warned him that the government’s aggressive overhaul efforts were harming Israeli security,²¹³ as did the chief of staff of the Israel Defense Forces (IDF), other military leaders,²¹⁴ and over 180 former officials from the Mossad intelligence agency, the Shin Bet

207. *Id.*

208. TODD GARVEY, CONG. RSCH. SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW 14 (2017) (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983)).

209. Michael Starr, *What Do You Need to Know About Today’s Reasonableness Court Hearing?*, JERUSALEM POST (Sept. 12, 2023), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-758427>.

210. Emanuel Fabian, *As 2024 Begins, IDF Withdraws 5 Brigades from Gaza, but Says Fighting Likely All Year*, TIMES ISR. (Dec. 31, 2023), <https://www.timesofisrael.com/as-2024-begins-idf-releases-5-brigades-from-gaza-but-says-fighting-likely-all-year>; Nidal Al-Mughrabi & Fadi Shana, *Fighting Across Gaza as Israel Drops Leaflets Seeking Its Hostages*, REUTERS (Jan. 20, 2024), <https://www.reuters.com/world/middle-east/fighting-across-gaza-israel-drops-leaflets-seeking-its-hostages-2024-01-20>.

211. See, e.g., ZANOTTI ET AL., *supra* note 13, at 14; see also Yadlin & Evental, *supra* note 14, at 21; Applebaum, *supra* note 14; Reals & D’Agata, *supra* note 14.

212. Chantal Da Silva, *Deep Divisions Lurk Behind Israel’s United Wartime Front*, NBC NEWS (Nov. 2, 2023), <https://www.nbcnews.com/news/world/gaza-hamas-military-protest-judicial-reforms-divisions-rcna123109>.

213. See *Gallant’s Call to Pause*, *supra* note 190.

214. See Yadlin & Evental, *supra* note 14, at 21; Maayan Lubell, *Israeli Air Chief Warns of Security Threat from Judicial Reform Crisis*, REUTERS (July 28, 2023), <https://www.reuters.com/world/middle-east/israel-air-chief-warns-security-threat-after-judicial-reform-vote-2023-07-28>.

domestic security agency, the military, and the police.²¹⁵ Netanyahu ignored them, and the country paid the price for it.²¹⁶

Yet despite the severe schisms generated by the judicial overhaul, the nation banded together in the wake of October 7th.²¹⁷ Netanyahu and Benny Gantz, an important leader in the opposition who formerly served as both defense minister and head of the IDF,²¹⁸ agreed to form an emergency unity government.²¹⁹ Opponents of the government's court reform measures immediately transformed their activism groups into large-scale support networks that provided aid for both soldiers called for duty and thousands of citizens harmed by the war.²²⁰ Addressing the nation in December 2023, President Isaac Herzog called for continued public solidarity and decried the return of political infighting.²²¹ He urged leaders to refrain from the "toxic discourse" about the judicial overhaul and warned that a return to these divisive discussions would jeopardize the war effort and harm the security of the state.²²²

But the consequences of the judicial reform crisis rose to the fore again on January 1, 2024, when the Court struck down the only piece of the government's overhaul efforts that was enacted into law, namely the Basic Law amendment barring the Court from using the reasonableness standard

215. Tia Goldenberg, *Former Leaders of Israel's Security Services Are Speaking Out Against Netanyahu's Policies*, AP, <https://apnews.com/article/israel-netanyahu-mossad-military-protests-cb8742ba0b0f210953669824568eab1e>. (last updated Sept. 13, 2023).

216. See also Yadlin & Evental, *supra* note 14, at 21–22.

217. David Horovitz, *Day 7 of the War: Rage and Unity in Israel's Darkest Hour*, TIMES ISR. (Oct. 13, 2023), <https://www.timesofisrael.com/day-7-of-the-war-rage-and-unity-in-israels-darkest-hour>; see also Applebaum, *supra* note 14.

218. Carrie Keller-Lynn et al., *Gantz, Netanyahu Close In on Emergency Unity Government, 5 Days into War*, TIMES ISR. (Oct. 11, 2023), <https://www.timesofisrael.com/gantz-netanyahu-close-in-on-emergency-unity-government-5-days-into-war>.

219. Jeremy Sharon, *Netanyahu, Gantz Agree to Form Emergency Unity Government*, TIMES ISR. (Oct. 11, 2023), https://www.timesofisrael.com/liveblog_entry/netanyahu-gantz-agree-to-form-emergency-unity-government.

220. Sue Surkes, *In Stunning Response, 15,000 Volunteers Fill Leadership Vacuum to Help Victims of Hamas*, TIMES ISR. (Oct. 22, 2023), <https://www.timesofisrael.com/in-stunning-response-15000-volunteers-fill-leadership-vacuum-to-help-victims-of-hamas>; Amit Meyer, *In War, Israel Protest Movement Morphs High-Tech Expertise into Relief Effort*, TIMES ISR. (Oct. 16, 2023), <https://www.timesofisrael.com/in-war-israel-protest-movement-morphs-high-tech-expertise-into-relief-effort>.

221. *President Herzog Slams Political Infighting During Wartime, Says Enemy 'Celebrating'*, TIMES ISR. (Dec. 24, 2023), https://www.timesofisrael.com/liveblog_entry/president-herzog-slams-political-infighting-during-wartime-says-enemy-celebrating.

222. *Id.*

when reviewing government action.²²³ The 8-7 decision of the 15-seat Court is the first time in the country's history that the Court annulled any part of a Basic Law, i.e., a piece of legislation afforded a quasi-constitutional status.²²⁴ Writing for the Court, former Chief Justice Esther Hayut—who left the Court in October but, like all departing justices in Israel, was able to write opinions in the three months following her retirement—said that the law needed to be annulled because it did “the most severe harm possible to the principle of the separation of powers and the principle of the rule of law.”²²⁵ The law, therefore, dealt “a severe blow to two of the most explicit characteristics of Israel as a democratic state,” a founding principle enshrined in the country's Declaration of Independence.²²⁶ Justice Minister Yariv Levin, one of the principal architects of the court reform agenda, declared that the decision would not stop the government's efforts to remake the judiciary, though he added that it would “continue to act with restraint and responsibility” while the war was ongoing.²²⁷ Other coalition figures also condemned the ruling, while leaders of the opposition supported it, but both sides emphasized the need to focus on the war.²²⁸

Although the core issue was decided by a narrow margin, 13 justices agreed that the Court had the power to strike down Basic Laws.²²⁹ As one analyst wrote:

After the biggest showdown between the government and the judiciary in this country's history, the justices of the court declared emphatically that the Knesset is not all-powerful, that the legislature and government must be subject to external restraints, and that narrow political majorities cannot threaten the rights of the individual and minorities.²³⁰

223. Jeremy Sharon, *In Historic Ruling, High Court Strikes Down Key Judicial Overhaul Legislation*, TIMES ISR. (Jan. 1, 2024), <https://www.timesofisrael.com/in-historic-ruling-high-court-strikes-down-key-judicial-overhaul-legislation>.

224. *Id.*

225. *Id.*

226. *Id.*

227. Jeremy Sharon, *Levin Declares High Court 'Won't Stay Our Hand' After Justices Annul Overhaul Law*, TIMES ISR. (Jan. 2, 2024), <https://www.timesofisrael.com/levin-declares-high-court-wont-stay-our-hand-after-justices-annul-overhaul-law>.

228. *Id.*

229. Jeremy Sharon, *High Court Ruling Rebuffs Gov't Claim That the Will of the Majority Is All-Powerful*, TIMES ISR. (Jan. 2, 2024), <https://www.timesofisrael.com/high-court-ruling-rebuffs-govt-claim-that-the-will-of-the-majority-is-all-powerful>.

230. *Id.*

David Horovitz, founding editor of *The Times of Israel*, noted that “[t]he overwhelming support on the supreme court for the right in principle to strike down Basic Laws would appear to bode ill for Levin’s future hopes of winning the justices’ consent to the still more draconian elements of the coalition’s judicial overhaul, even with a post-Hayut bench.”²³¹ He arrived at a foreboding conclusion: the justices’ consensus position on this issue suggested that “if Levin, and, more importantly, Netanyahu do intend to resume their bid to subjugate the judiciary to the political echelon once the war is over, the constitutional crisis will be unavoidable.”²³²

III. THE ISRAELI-MISSOURI PLAN

A. Creating a Balanced Alternative for Judicial Selection Reform

An Israeli judiciary subservient to the whims of the ruling coalition represents a monumental shift toward autocracy.²³³ However, a system in which judges are appointed entirely by unelected officials presents the possibility of “black-robed rulers overriding citizens’ choices,” to quote U.S. Supreme Court Justice Elena Kagan.²³⁴ Thus, the goal of judicial reform should be to create a measure of public accountability for the judiciary without creating the taint of turpitude.²³⁵ In 2023, there existed the perception of bias within the Israeli court system, with a leftist minority “elite” group allegedly wielding the power of the judicial branch against the majority “non-elite” group.²³⁶ By the same token, creating a situation in which the majority group maintains control over the judiciary negates the core ideal of a fair and

231. David Horovitz, *If Only the ‘Reasonableness Law,’ Nixed by Israel’s Top Court, Had Never Been Initiated*, TIMES ISR. (Jan. 1, 2024), <https://www.timesofisrael.com/if-only-the-reasonableness-law-nixed-by-israels-top-court-had-never-been-initiated>.

232. *Id.*

233. David Horovitz, *Netanyahu Belatedly Reverses Course on Gallant. If Only He’d Do the Same on Autocracy*, TIMES ISR. (Apr. 11, 2023), <https://www.timesofisrael.com/netanyahu-belatedly-reverses-course-on-gallant-if-only-hed-do-the-same-on-autocracy>.

234. *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2502 (2018) (Kagan, J., dissenting).

235. Mary L. Volcansek, *Exporting the Missouri Plan: Judicial Appointment Commissions*, 74 MO. L. REV. 783, 785 (2009); David F. Levi, *Protecting Fair and Impartial Courts: Reflections on Judicial Independence*, 104 JUDICATURE 58, 60 (2020).

236. See, e.g., Gadi Taub, *The Struggle for Israel’s Democracy*, TABLET (Jan. 25, 2023), <https://www.tabletmag.com/sections/israel-middle-east/articles/struggle-israel-democracy-netanyahu-supreme-court>; Erielle Davidson & Eugene Kontorovich, *Israel’s Protesters Are Enemies, Not Heroes, of Democracy*, N.Y. POST (Mar. 28, 2023), <https://nypost.com/2023/03/28/israels-protesters-are-enemies-not-heroes-of-democracy>.

unprejudiced court system.²³⁷ And so, one of the primary issues at play is creating the perception of a court system that does not favor any group.²³⁸

One way of doing so would be the creation of a more balanced judicial selection method akin to the Missouri Plan or other similar systems broadly categorized as “merit selection” or “assisted appointment” processes.²³⁹ Like Israel’s current judicial appointment system, the Missouri Plan uses a selection committee composed of members representing multiple groups and stakeholders.²⁴⁰ But the Missouri Plan does not stop there. Unlike the current Israeli system, the Missouri Plan incorporates the use of retention elections into the judicial selection process.²⁴¹ A balanced selection committee implemented through an Israeli-Missouri Plan would allow for judicial independence, as opposed to the government-dominated selection committee proposal promoted by the Netanyahu camp.²⁴² This Israeli-Missouri system would also allow the people to make their opinions heard about their judges. Thus, it would create both public accountability and the perception of a judicial system maintained by the will of the people.

A more balanced alternative to the Netanyahu-backed bill would—like the government proposal—expand the selection committee to 11 seats, but would allocate them differently, guided by the current system and the Missouri Plan. Under this Israeli-Missouri Plan, the committee would comprise three sitting justices; two members of the Central Committee of the Israel Bar Association (one selected by the government and the other selected by the judiciary); two ministers; two members of Knesset from the coalition; and two members of Knesset from the opposition. Eight votes would be needed to appoint a judge or justice.

Under this proposal, the executive branch would control 3 out of the 11 seats (two ministers and one Israel Bar Association representative), the legislative branch would control 4 seats (two held by the coalition and two by the opposition), and the judiciary would control 4 seats (three justices and one Israel Bar Association representative). This plan would also give control of 5 out of 11 seats to legal experts (two Israel Bar representatives and three sitting justices).

Additionally, the ruling coalition would control 5 out of 11 seats (two ministers, one Israel Bar Association representative, and two members of

237. Levi, *supra* note 235, at 59–61.

238. *Id.*

239. See Stith & Root *supra* note 32, at 720–721.

240. *Id.* at 726.

241. *Id.* at 725.

242. See Michael Starr, *What Is in the Judicial Reform Bills Being Voted for on Monday?* – *Explainer*, JERUSALEM POST (Feb. 21, 2023), <https://www.jpost.com/israel-news/article-732146>.

Knesset) and the opposition would control 2 seats. Thus, 7 out of 11 seats would be held by representatives of the duly elected leadership (one Israel Bar representative selected by the government, two ministers, and four members of Knesset), while only 4 would be under the control of people who did not have to face the partisan process of a contested election (three justices and one Israel Bar representative selected by the judiciary).

By giving elected officials a majority of seats on the committee, this plan would facilitate public accountability and accommodate the “will-of-the-people” mentality that was heralded by the Netanyahu government.²⁴³ In 2023, the country struggled to define this term in such a close contest, with both pro-reform and anti-reform camps claiming the mantle of the people’s champion.²⁴⁴ Theoretically, the government represents the will of the majority, but even this can sometimes be an electoral fiction.²⁴⁵ For example, in the November 2022 election, although the Netanyahu-led right-wing bloc failed to capture over 50% of the total votes cast, it nevertheless secured a resounding victory thanks to the country’s party threshold and vote allotment rules.²⁴⁶ In any case, an Israeli-Missouri Plan would offer a chance for the public to express itself.

At the same time, this proposed judicial selection system would also allow the voices of the legal community to be heard; formally ensure that the opposition takes part in the discussion; and guard against the evils of a partisan, majoritarian regime. This rebalanced committee structure is not foreign to the intense debate that dominated Israel’s streets and media outlets during the first nine months of 2023. President Herzog proposed a similarly expanded and rebalanced judicial selection committee as part of his “People’s Framework” for judicial reform.²⁴⁷

As with its American progenitor, an Israeli-Missouri Plan would call for the judicial appointments committee to select three candidates for every one vacancy.²⁴⁸ The committee would present that list of three names to the prime minister, who would then have 60 days to appoint one of the names on the

243. See Yaakov Katz, *Israeli Judicial Reform Nuance: Both Sides Have Legitimate Concerns – Opinion*, JERUSALEM POST (Feb. 17, 2023), <https://www.jpost.com/opinion/article-731823>.

244. *Id.*

245. Ofer Kenig, *The 2022 Elections: Results Analysis*, ISR. DEMOCRACY INST. (Nov. 7, 2022), <https://en.idi.org.il/articles/46229>.

246. *Id.*; see also Ori Wertman & Meir Elran, *The Israeli Electorate from the Perspective of the 2022 Elections*, THE INST. FOR NAT’L SEC. STUD. (Dec. 1, 2022), <https://www.inss.org.il/publication/israel-elections-2022>.

247. *Warning of Civil War, Herzog Unveils Framework for Judicial Reform; PM Rejects It*, TIMES ISR. (Mar. 15, 2023), <https://www.timesofisrael.com/a-golden-path-after-weeks-long-effort-president-debuts-overhaul-compromise-offer>.

248. See *supra* notes 41–43 and accompanying text.

list. If the prime minister fails to do so, the committee would then be granted the power to fill the vacancy by selecting one of the three people already put forward. An assisted appointment system such as this would bulwark the judiciary against allegations that “judges appoint themselves” because the prime minister would have a direct hand in the final appointment by selecting from the three approved candidates put forth by the committee. Thus, this would present the public with a bilateral judicial selection process that pointedly involves both elected leadership and the disciplined consensus of a committee populated by multiple stakeholders.

Likewise, an Israeli-Missouri Plan would see retention elections at least one year after the appointed judge takes office.²⁴⁹ This would not be a partisan vote, and there would be no listed party designations or alternatives, merely the candidate’s name and a single box that, if checked, would indicate the voter’s desire to remove the judge from office. Leaving the box blank would not be considered a vote in favor of removal.

*B. Putting into Practice Societal Values for an Effective Judiciary:
Independence, Accountability, Representation, and Expertise*

As noted American jurist David F. Levi pointed out in a 2019 address, “it is not possible to have a successful democracy without a fair and impartial judiciary, and it is not possible to have a fair and impartial judiciary that lacks independence in both of its aspects.”²⁵⁰ These twin aspects of judicial independence, described by Levi as stemming from the nation’s founding fathers, are “the decisional independence of the judge from outside pressures or inducements when deciding a case, and the independence of the judicial branch as a whole, as a separate branch of three.”²⁵¹ Levi presents the following principles for judicial independence:

- First, fair and impartial courts are essential to a successful democracy;
- Second, judicial independence is not for the personal benefit of the judicial officer but so that the judiciary may be fair and impartial;

249. See *supra* notes 44–49 and accompanying text.

250. Levi, *supra* note 235, at 60.

251. *Id.*

- Third, there are two primary aspects to judicial independence: decisional and institutional;
- Fourth, the selection, compensation[,] and tenure of judicial officers is important to their independence;
- Fifth, the judicial culture, the independent spirit of the judiciary, is critical. Judges must be careful to guard the culture and be true to it;
- Sixth, the judiciary must not be in league with either of the other branches and must not supplant the role of those branches or be supplanted by them;
- Seventh, while there must be separation, there must also be collaboration. The judiciary depends heavily on the other branches for its support, the execution of its orders, and the substance and procedures of the law itself. We consider that judicial independence serves the rule of law, but this is only the case if the judiciaries' rulings command assent and respect and if the substance of the law and the prescribed procedures are consistent with our common sense of justice and fair play. In other words, the ecology of judging is important and depends mostly on the other branches;
- And finally, we acknowledge that the appearance of fairness and impartiality is almost as important as the reality, and the two are not easily separated.²⁵²

These principles are certainly on point when discussing both the Netanyahu government's plans for Israeli judicial reform and the Israeli-Missouri Plan proposed in this Article. The government's overhaul agenda clearly conflicted with Levi's principles of judicial independence. As Justice Minister Yariv Levin conceded, a prior version of the judicial overhaul plan would have allowed the ruling government to subsume the judiciary.²⁵³ The minor changes proposed by Levin and the government did not change this fact. Under the proposed reform scheme, the judicial selection

252. *Id.* at 60–61.

253. *Levin Admits Original Judicial Appointments Bill Was a Danger to Democracy*, TIMES ISR. (Apr. 3, 2023), <https://www.timesofisrael.com/levin-admits-original-judicial-appointments-bill-was-a-danger-to-democracy>.

committee—and by extension, the judiciary itself—would “be in league” with the other branches of government, running afoul of Levi’s sixth principle of judicial independence.²⁵⁴ In contrast, the proposed Israeli-Missouri Plan would not fall short in this regard. Furthermore, it would align with Levi’s seventh principle in that it would allow for cooperation and collaboration between the judiciary, the executive, and the legislature, including both the coalition and the opposition.²⁵⁵ Perhaps more importantly, an Israeli-Missouri Plan would foster “the appearance of fairness and impartiality” that is vital for public acceptance of judicial decisions.²⁵⁶ The 2023 mass protests and societal upheaval highlighted to an extreme degree just how much Israel is lacking in this regard, making the optics of an Israeli-Missouri Plan even more significant.

The inclusion of retention elections creates a similar effect: allowing the public to express its opinion on a judge directly.²⁵⁷ Public approval of a judge neuters complaints of back-room appointments by black-robed rulers and strengthens perceptions of accountability and fairness.²⁵⁸ The original developers of the Missouri Plan and its precursor merit-selection initiatives included the retention-election component to their judicial selection proposals for a similar reason, namely, to assuage the concerns of those campaigning for election-based systems.²⁵⁹ One early advocate of merit-selection systems like the Missouri Plan noted that “the public is rarely in a position to know in advance how good a judicial candidate is, but if his record as a judge is outstandingly poor, the voters can ascertain the facts, and in the merit retention election they have a means of removing him.”²⁶⁰ Retention elections can serve a similar purpose in an Israeli context as well. While retention elections can become politicized, they are nevertheless the lesser of two evils when compared to contested elections because “[m]erit-selection systems can be structured to provide voters with useful information or evaluations based on neutral criteria, and such systems make judges even less susceptible to political pressure.”²⁶¹

254. Levi, *supra* note 235, at 61.

255. *Id.*

256. *Id.*

257. G. Alan Tarr, *Do Retention Elections Work?*, 74 MO. L. REV. 605, 609 (2009).

258. *Id.*

259. *Id.*

260. *Id.*

261. BILLY CORRIHER, CTR. FOR AM. PROGRESS ACTION FUND, MERIT SELECTION AND RETENTION ELECTIONS KEEP JUDGES OUT OF POLITICS 4–5 (2012), <https://www.americanprogressaction.org/wp-content/uploads/sites/3/2012/11/JudicialElectionsPart3-C4-2.pdf>.

Coupled with the inclusion of retention elections into the judicial selection process, a merit-selection system like the proposed Israeli-Missouri Plan could include the publication of Judicial Performance Evaluation Commission (JPEC) reports that would serve two distinct purposes: “(1) informing voters in their decision of whether or not to retain a judge, and (2) providing relatively objective feedback to judges in areas they may need to improve.”²⁶² To create this Israeli JPEC, a randomized process akin to the American jury selection system could be instituted. The JPEC could hear testimony from lawyers and judges behind closed doors; this anonymity would allow for honest evaluations from those working with or before the judge subject to the retention election. The JPEC could release its opinion of the testimony alongside publicly available feedback submitted by identifiable members of the citizenry. A JPEC comprised by members of the public from across the political spectrum—and operating without members from the government or the judiciary—would function independently from the judicial selection committee and would provide one answer to the age-old question: *Sed quis custodiet ipsos custodes?*²⁶³

Critics of the Missouri Plan have argued that it skewed in favor of the legal community, in that three out of five seats were taken by legal professionals.²⁶⁴ This same argument could be made about the current Israeli selection committee and lies at the core of the government’s complaints regarding the status quo.²⁶⁵ In the eyes of the government and its supporters, the legal community is biased in favor of “elite” leftists and should not have a voice on the committee.²⁶⁶ It is for this reason that the government attempted to eliminate the selection committee seats currently earmarked for representatives of the Israel Bar Association.²⁶⁷

Disconnecting attorneys from the appointment process is ill-advised because using expert legal minds on the selection committee ensures that

262. B. Michael Dann & Randall M. Hansen, *Judicial Retention Elections*, 34 LOY. L.A. L. REV. 1429, 1438 (2001).

263. A Latin quotation from the Roman poet Juvenal’s work *Satires* that often translates to: “Yes, but who will watch the warders?”; “Tell me who’ll watch the watchers?”; or “But who is to guard the Guardians themselves . . . ?” Cf. JUVENAL, SATIRE VI, reprinted in JUVENAL AND PERSIUS II. 347–48, at 110–11 (T.E. Page et al. eds., G.G. Ramsay trans., 1928); JUVENAL, SATIRE VI, reprinted in JUVENAL II. 347–48, at 93 (Charles Badham trans., 1855); and JUVENAL, SATIRE VI, reprinted in JUVENAL THE SATIRES II. 347–48 (A.S. Kline trans., 2001), <https://www.poetryintranslation.com/PITBR/Latin/JuvenalSatires6.php>.

264. See Stith & Root, *supra* note 32, at 734.

265. See Dahlia Scheindlin, *The Assault on Israel’s Judiciary*, CENTURY FOUND. (July 7, 2021), <https://tcf.org/content/report/assault-israels-judiciary>.

266. *Id.*

267. *See id.*

each candidate is well-qualified to be a judge.²⁶⁸ As Missouri Supreme Court Judge James M. Douglas remarked in 1949, “[t]he lay members have always been faithful and conscientious in informing themselves about the candidates. They consult with lawyer friends and business acquaintances who know the candidates. They make personal investigations[] and reach their own independent appraisal of each candidate.”²⁶⁹

An Israeli-Missouri Plan would also facilitate a more diverse bench through the appointment of candidates hailing from demographic groups that are currently less well-represented in the judiciary. The emphasis on diversity is, of course, not limited to Israel. For one piece of prominent evidence to this effect, one need look no further than U.S. President Joseph R. Biden, Jr.’s campaign promise to appoint a Black woman to the U.S. Supreme Court.²⁷⁰ The Netanyahu government has likewise emphasized this point, arguing that Jews of Middle Eastern and North African origin have lacked the opportunity to become judges under the current system.²⁷¹ The government has also emphasized the inclusion of women in the judicial selection process; its reform bill would have mandated quotas requiring that each branch appoint a female representative to the committee.²⁷² In this respect, the reform bill aligned with the work of scholar Greg Goelzhauser, who argues “that there is clear value in allowing all interested parties, especially women and minorities, to apply for judicial vacancies and in constraining executive appointment power.”²⁷³ The Netanyahu government has emphasized the former while utterly disavowing the latter, thus creating serious concerns about a slide toward autocracy under the guise of public representation.²⁷⁴

268. See Stith & Root, *supra* note 32, at 734.

269. See Douglas, *supra* note 43, at 58.

270. Andrew Chung et al., *Biden Vows to Nominate Black Woman to U.S. Supreme Court by End of February*, REUTERS (Jan. 27, 2022), <https://www.reuters.com/world/us/retiring-us-justice-breyer-appear-with-biden-white-house-2022-01-27>.

271. See Cohen & Shany, *supra* note 162.

272. See Starr, *supra* note 242.

273. Gbemende E. Johnson, *Does Merit Selection Work?*, 103 JUDICATURE 76, 78 (2019) (reviewing Greg Goelzhauser’s book titled *Judicial Merit Selection: Institutional Design and Performance for State Courts*).

274. See Horovitz, *supra* note 233.

IV. CONCLUSION

Supporters of the Netanyahu government's judicial reform agenda emphasized the "will of the people" as the nation's sovereign.²⁷⁵ However, a sharp rebuttal to the idea of popularly elected judges—or judges whose appointments hinge entirely on the support of democratically elected officials—comes from former U.S. President William Howard Taft, who once argued that "the people at the polls no more than kings upon the throne are fit to pass upon questions involving the judicial interpretation of the law."²⁷⁶ Such an argument, when applied to the Israeli context, runs counter to governmental proposals of judicial reform in the name of popular sovereignty.

Many Israelis feared that the government's judicial reform plan, couched in its "people-as-sovereign" argument, would have resulted in a tyranny of the majority.²⁷⁷ However, a constitution as sovereign—as is the case in the American system—would negate the regime's advocacy on this point. It is worth noting, though, that even with constitutional protections, a well-positioned executive can seize power from an independent judiciary. As one example, proponents of judicial independence have decried Iowa Governor Kim Reynolds's 2019 effort to boot the state's supreme court chief justice from its judicial selection committee and allot their seat to the governor's handpicked appointee instead.²⁷⁸ This gave the executive majority control over the committee. The move was widely seen as a way to capture the state's judiciary after its 2018 ruling in favor of abortion rights.²⁷⁹

An Israeli-Missouri judicial selection system stands in opposition to such a scenario. A well-balanced committee, coupled with retention elections, would be able to present candidates that are both diverse and well-

275. Alexander Hudson, *The Risk of "Creating a Monster": An Interview with Constitutional Expert Yaniv Roznai on Judicial Reform in Israel*, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE (Feb. 1, 2023), <https://www.idea.int/es/blog/risk-%E2%80%9Ccreating-monster%E2%80%9D%C2%A0-interview-constitutional-expert-yaniv-roznai-judicial-reform-israel>.

276. GEORGE E. MOWRY, *THEODORE ROOSEVELT AND THE PROGRESSIVE MOVEMENT* 171 (The Univ. of Wisconsin Press 1st ed. 1946) (quoting U.S. President William Howard Taft).

277. See Horovitz, *supra* note 78; see also Wootliff, *supra* note 78; Breuer & Silkoff, *supra* note 72.

278. Robin Opsahl, *Reynolds Vetoes Judicial Nominating Commission Changes*, IOWA CAP. DISPATCH (June 17, 2022), <https://iowacapitaldispatch.com/2022/06/17/reynolds-vetoes-judicial-nominating-commission-changes>.

279. Tyler J. Davis, *Challenge to Iowa Judicial-Selection Revisions Goes Before a Judge*, DES MOINES REG. (June 24, 2019), <https://www.desmoinesregister.com/story/news/crime-and-courts/2019/06/24/iowa-house-democrats-governor-kim-reynolds-lawsuit-supreme-court-law-constitution-judges-selected/1545467001>.

qualified, which are key attributes for judicial selection.²⁸⁰ Moreover, an Israeli-Missouri Plan would put into practice the central values to be considered when developing a modern judicial selection system: independence and accountability.²⁸¹ These are “two sides of the same coin: accountability ensures that judges perform their constitutional role, and judicial independence protects judges from pressures that would pull them out of that role.”²⁸² An Israeli-Missouri Plan would not remove politicization entirely from the judicial selection process; no system can do such a thing.²⁸³ It would be neither apolitical nor bipartisan; rather, an Israeli-Missouri Plan would offer a nonpartisan avenue for consensus and a means to bridge the divides already present in Israeli society.²⁸⁴

The reform plan proposed by the Netanyahu regime, on the other hand, was immensely detrimental.²⁸⁵ It stymied Jerusalem’s international relations, as foreign supporters like U.S. President Biden expressed their concerns²⁸⁶ and caused the major credit ratings agency Moody’s to downgrade its outlook about Israel.²⁸⁷ Meanwhile, inside the country, the reform exacerbated deep-seated distrust in the government’s commitment to liberal values and catalyzed a monumental wave of large-scale protests—generated not by the political opposition in the Knesset but by grassroots movements and

280. See BANNON, *supra* note 17, at 22–24.

281. *Id.* at 20–22.

282. Sandra Day O’Connor & RonNell Andersen Jones, *Reflections on Arizona’s Judicial Selection Process*, 50 ARIZ. L. REV. 15, 23 (2008).

283. See Stith & Root, *supra* note 32, at 735.

284. See *id.* at 735–36.

285. Emanuel Fabian, *Israeli Conservative Think Tank Warns Overhaul Fight Causing ‘Enormous Damage’*, TIMES ISR. (Apr. 16, 2023), <https://www.timesofisrael.com/israeli-conservative-think-tank-warns-legal-overhaul-causing-enormous-damage>; Yonah Jeremy Bob, *Israel’s Judicial Reform Will Severely Damage the IDF, Top Defense Source Says*, JERUSALEM POST (Mar. 26, 2023), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-735471>; Steven Scheer & Ari Rabinovitch, *Israel FinMin Officials Warn of Economic Backlash over Judicial Overhaul*, REUTERS (Mar. 21, 2023), <https://www.reuters.com/world/middle-east/israel-finmin-officials-warn-economic-backlash-over-judicial-overhaul-2023-03-21>; *17 Top Law Firms Warn Judicial Overhaul Will Harm Israel’s Democracy, Image, Economy*, TIMES ISR. (Jan. 20, 2023), <https://www.timesofisrael.com/17-top-law-firms-warn-judicial-overhaul-will-harm-israeli-democracy-image-economy>.

286. Daniel Estrin & Asma Khalid, *Biden Expresses Concern for Israel Judicial Overhaul Plan*, NPR (Apr. 2, 2023), <https://www.npr.org/2023/04/02/1167665451/biden-expresses-concern-for-israel-judicial-overhaul-plan>; Paul Carrel & Miranda Murray, *German Foreign Minister Concerned About Judicial Independence in Israel*, REUTERS (Feb. 28, 2023), <https://www.reuters.com/world/german-foreign-minister-concerned-about-judicial-independence-israel-2023-02-28>; *In Israel, 30 Federation Leaders Share Concern over Judicial Reform*, JEWISH FED’NS N. AM. (Mar. 15, 2023), <https://www.jewishfederations.org/fedworld/in-israel-30-federation-leaders-share-concern-for-divisions-that-judicial-reform-debate-is-causing-433935>.

287. Jason Gewirtz, *Moody’s Cuts Israel’s Outlook from ‘Positive’ to ‘Stable’*, CNBC (Apr. 16, 2023), <https://www.cnbc.com/2023/04/14/moodys-cuts-israels-outlook.html>.

everyday Israelis, including those on the right.²⁸⁸ The fallout from the overhaul plan even politicized the functions of those already in the judicial system, with one judge refusing to free an arrested protestor not because of the circumstances of the protestor's individual case, but rather by citing the so-called "Islamo-Nazi ideologies" of the protest movement writ large.²⁸⁹

In short, the country found itself under extreme pressure, and the cracks began to show. Such was the case in Missouri in the 1930s, before the enactment of lay-led judicial reform measures.²⁹⁰ Local media at the time advocated for judicial freedom from political influence, with one cartoonist depicting the judicial selection reform plan as a means of lifting the courts out of the mud of the political swamp.²⁹¹ In the cartoon, a judge's bench remains hovering in mid-air over brackish waters labeled "Party Politics."²⁹² That same cartoon could have just as easily described the Jewish state in 2023, but while the Missouri courts were being pulled from the muck, many feared that the Israeli courts were being dropped into it. Only level-headed and consensus-driven approaches to reform can allay these fears and root the judiciary far from the mires of political corruption.

288. Gur, *supra* note 183.

289. *Citing 'Islamo-Nazi Ideologies,' Judge Refuses to Free Anti-Overhaul Demonstrator*, TIMES ISR. (Mar. 24, 2023), <https://www.timesofisrael.com/citing-islamo-nazi-ideologies-judge-refuses-to-free-anti-overhaul-demonstrator>.

290. See Stith & Root, *supra* note 32 at 723.

291. *A Job for All of Us*, THE STATE HIST. SOC'Y OF MO., <https://digital.shsmo.org/digital/collection/ec/id/1783/rec/37> (last visited Mar. 14, 2024) (showing a cartoon, from November 4, 1938, by cartoonist Daniel Robert Fitzpatrick depicting a crane lifting a "judge's bench" out of "Party Politics").

292. *Id.*