Application No. 3159/25 PI1: Ariel Bendor

Scientific abstract – **Doctrinal Realism and Hyper-Realism in Israeli Public Law**

This study explores and empirically examines two primary hypotheses. First, institutional pragmatic realism—an approach rooted in the American Legal Realist Movement, which posits that judicial decisions are shaped by prevailing ideologies and institutional interests—has evolved within Israeli constitutional and administrative law from a descriptive and critical stance into a doctrinal framework. Israeli courts now rely on this framework as a foundation for substantive legal doctrines and judicial reasoning. Second, the study argues that the prevailing political, public, and, to some extent, academic mindset in Israel reflects a hyper-realist perspective, which downplays the formal essence of law and assumes that judicial decisions are largely influenced by judges' political convictions and personal identities.

The study has three main objectives. First, it aims to provide an empirical analysis of how institutional pragmatic realism has become doctrinal in contemporary Israeli Supreme Court public law. Doctrines to be examined include constitutional ripeness; relative nullification, invalidation notices, and prospective application of precedents; interpretation of constitutional human rights and proportionality; “babysitter” procedures; and considerations regarding the court's public status and its resources of public trust, such as context-sensitive judicial review and case suitability for judicial review. Second, the study seeks to reframe ongoing public and academic legal debates as expressions of legal hyper-realism and a unique form of populism, with a primary case study focused on the constitutional reforms proposed by the Israeli coalition in 2023. Third, from a theoretical perspective, the study aims to develop a novel analytical-normative understanding of Israeli public law.

This study employs empirical, ethnographic, and jurisprudential methodologies. These include mapping and analyzing public law subjects related to institutional pragmatic realism; data-mining Israeli Supreme Court constitutional and administrative decisions from 1948 to 2024; administering a pragmatic realism survey to assess perceptions of institutional pragmatic realism among the Israeli public, political and legal community; conducting in-depth interviews with key public law stakeholders and participants in the reform debate; and proposing theoretical and normative interpretations of the findings.

This research provides, for the first time, a comprehensive critical perspective on contemporary Israeli public law as an institutional pragmatic realist framework. It will reveal underlying perceptions within the Israeli Supreme Court, offer an empirical, panoramic view of the interaction between law as written and law as practiced, and underscore the prevalence of doctrinal realism and hyper-realism in Israeli public law.