# Solidarity based on Ethnic Origin:

# An Analysis in/of the Israeli Judiciary

Ben Moshe Yaakov

*“The moment a Jew immigrates from Iraq to Israel, he becomes an Iraqi Jew, and the emphasis is on Iraq; and when an Iraqi Jew and a Romanian Jew meet in an immigrant or transit camp, they first of all feel the difference, the distance, the divide between them. They cannot speak one to another, and all their customs are different. To the Romanian Jew his neighbor is Iraqi, and to the Iraqi Jew his neighbor is Romanian. And the same holds for the Yemeni and Persian and Moroccan. They do not form a community, because they do not mix together easily or quickly, rather, it is a meeting of distant and different tribes; or perhaps it is more apt to say - a collection of fragments that do not coalesce, and that only by gathering them together in this country do the differences and abysses between become apparent,”* David Ben-Gurion,[[1]](#footnote-1) November 29, 1951

**Abstract**

Some 67 years after Ben-Gurion’s address, most Jewish citizens of the State of Israel are natives of the same country, that is, they were all born in Israel.[[2]](#footnote-2) Does this fact indicate the disappearance of the “ethnic demon” and the emergence of a society united under one origin that is the State of Israel; or perhaps, the “collection of fragments” described by Ben-Gurion has yet to coalesce into a whole and do individuals in this country still identify with or have a sense of affiliation to the country they or their parents came from, ultimately leading to the undesirable phenomenon of discrimination?

This paper attempt to address this key question by examining judicial rulings in the Israeli court system. The results of the study reveal conclusively that discrimination based on country of origins (ethnicity) exists at a scale of about 18%. The discrimination is even greater when young judges or judges in the country’s center are involved. Most of the effect of ethnicity on judicial rulings is clearly ascribable to judges of Ashkenazi origin.

It should be noted that the discrimination found was measured based on actual cases, where the judges have legal, ethical and professional obligations by virtue of their judicial duties, thereby restricting the ability of personal considerations to affect their decisions. Therefore, discrimination may be underestimated. To examine the extent of discrimination while accounting for this problem, we conducted a controlled experiment with students and administrative staff. The level of discrimination revealed by the results increased to no less than 50%.

**Introduction**

Much research has been devoted to the key questions of social solidarity, its effect on individual behavior, its role in everyday life, and more. The literature dealing with individual considerations of utility with regards to social solidarity has produced a variety of contradictory theories about the principles guiding the individual in decision making. One, more traditional, theory argues that the individual seeks only to maximize the personal advantage derived from personal gains, with no regard for the overall improvement of society (Bernoulli, 1738). Another theory, developed later, argues that the individual is not necessarily motivated only by selfish considerations, but rather, also brings into account additional variables that do not necessarily directly increase his own personal benefit. For example, improving the status or profits of a group to which the individual belongs might indirectly and in the long run benfit that individual personally (Becker, 1993; Manceil, 1986).

A final theoretical perspective holds that an individual’s consideration include the desire to improve the status of the group to which he belongs, and that there is a constant tension between increasing the personal benefit of the individual and increasing the benefit of the entire group to which the individual feels an affiliation. The importance of social solidarity and its ensuing dominance in individual decision making, may also find expression in undesired realms, such as employers’ hiring decisions, government policies and even judicial verdicts. Consequently, the phenomenon of social solidarity can give rise to the phenomenon of discrimination, ultimately leading to inefficient allocation of resources and, in a certain sense, to market failures in various sectors of the economy and society (Schuessler & Becker, 1958).

Numerous studies have found that social solidarity plays an important role in individual decision making (Brown, 1969; Hall, Schneider & Nygren 1970; Rotondi, 1975; O’Reilly & Chatman, 1986). This perspective emphasizes that the majority of people tend to classify themselves by various categories such as social class, religious affiliation, age group, ethnicity, gender, and the like (Tajfel & Turner, 1986). This classification is natural, and it creates a kind of cognitive order that aides an individual in defining his status, place and role in the society to which he belongs. Furthermore, it enables the individual to define other people around him, thereby classifying them into distinct social groups. In cases where social identity is particularly strong, it can to some extent help the individual shape his self-identity (Styker & Serpe, 1982). In even more extreme cases, it can support the individual in his search for the meaning of life (Abrams & Hogg, 1988). In many cases, social identity is extremely powerful, to the extent that in certain situation it can cause great loss or suffering to the individual (Brown, 1986). In a certain sense, social identity functions as a kind of role model, similarly to the need or desire to identify with someone such as an authority figure or celebrity (Kelman, 1961).

The literature on social solidarity clearly distinguishes between the concept of social identity and the concept of internalization. While social identity creates a powerful, obligatory bond, which can link individual fate with the fate of the group, internalization describes a situation where an individual identifies with the values, position and opinions of the group, without being bound to the group very strongly (Hogg & Turner, 1987). This distinction, as shown in the above cited studies, reveals that social solidarity is extremely powerful: affiliation with a certain group is a kind of fundamental individual need, and it exists naturally, often without the individual’s awareness. The question then is, how powerful is this phenomenon in places where values such as equality, justice and truth are expected to play a central role? Can social solidarity lead to a situation where people preference members of their own group over other members of society, just because of that group affiliation?

This key question was tested by Tajfel, Bundy and Flament (1971) with an experiment in which they formed two groups (In-group and Out-group), with one additional participant who was similar in his characteristics to the In-group, whom they defined as a judge with the power to reward participants. They found that the judge, who had no prior acquaintance with any of the other participants, clearly favored members of the In-group, while members of the Out-group who were different in their characteristics from the judge received fewer rewards. This experiment demonstrated that social solidarity has significant implications in that individuals prefer members of their own group over other individuals who do not belong to the group. Another study addressing this issue, by Jetten, Spears and Manstead (1996), used students from the University of Amsterdam who were asked to distribute resources (cash) between two people. This experiment revealed that the stronger one’s identification with a certain group, the greater the inclination to reward members of this group with higher benefits.

Thus, social solidarity can ultimately lead to undesirable phenomena, such as discrimination. The literature dealing with discrimination distinguishes between three different kinds of discrimination: statistical discrimination, cognitive stereotyping and affective bias.

The theory of statistical discrimination, developed by Arrow (1973), argues that when lacking information about a certain fact, individuals tend to assign to this fact the average among the group to which they belong. The cognitive stereotyping approach, in contrast, argues that discrimination is the result of normal cognitive processes that shapes the individual’s perception of others based on memories, deductions and the like (Fiske, 1987). The theory of affective bias claims that emotions have a powerful effect on individual behavior, and may lead to discrimination as well (Hugenburg & Bodenhausen, 2004; Hinson et al., 2006). According to most theoretical approaches, individuals discriminate consciously, though others argue that there is a tendency to help certain individuals with whom one shares certain characteristics, although other theories posit that in many cases there is a tendency to benefit specific people with whom one shares certain characteristics in a way that the discriminating individual is not fully conscious of (Bertrand et al., 2005).

Empirical studies have shown that discrimination exists in many areas. For example, racial discrimination was identified in the American labor market (Becker, 1959; Reimers, 1983) as well as the Israeli one (Bar & Zussman, 2017a). There is age-based discrimination (Posner 1999; Roscigno et al., 2007) and discrimination of many other types, such as statistical discrimination found in medicine, where physicians tend to diagnose diseases based on the patient’s group affiliation (Balsa, McGuire & Meredith, 2005). A study of the used car market in Israel found ethnic discrimination in the prices quoted: Jewish sellers ask for a sum that is 10% higher when the buyer is Arab as compared with a Jewish buyer. Another study found corrective ethnic discrimination in driving tests: the chance of passing the test was 14% higher when the testee belonged to the same religious group as the tester (Bar & Zussman, 2017b).

Another area in which many studies of discrimination have been carried out is gender-based discrimination. Studies of gender-based discrimination in the labor market have shown that given the employee’s personal traits, the position’s requirements and the workplace, discrimination based on the employee’s gender clearly exists (Becker, 1985; Dolton & Makepeace, 1985; Miller, 1987; Siebert & Sloane, 1981; Bielby & Baron, 1986).

Other studies focusing on gender have found discrimination in academic institutions, for example among medical students in the US (Carr et al., 2003; Nora et al., 2002). Likewise discrimination of women in American academic institutions was also found with regards to promotions (Fidell, 1970). Many studies have found that sellers or sales agents in the US tend to quote women higher prices, for example, when selling them new cars (Ayres & Siegelman, 1995; Ayres, 1991) or real estate (Galster, 1991).

**Discrimination in the judiciary**

The first studies of discrimination in the judiciary were carried out in the 1930s and 1940s (Sellin 1935; Johnson, 1941) and focused on discrepancies in the severity of sentencing of black and white defendants. These studies, which found that black defendants received more severe punishment, were the first to distinguish between discrimination and differences that are the result of various traits of the defendants, for example, age, severity of the crime, percentage of women involved in crime, and more. Subsequent studies have confirmed these results and shown that black defendants are indeed discriminated against in many aspects of the judicial process: Blacks tend to be arrested more often (Smith & Visher, 1981; Visher, 1983; Miller, Rossi & Simpson, 1986), brought to trial more often (Hagan, 1974), and convicted more often than white defendants, based on less evidence (Perry ,1977; Hawkins, 1986).

Discrimination is hardly a relic of the past. More recent studies have revealed that racial discrimination between blacks and whites persists. For example, Bushway and Piehl (2001) examined ethic/racial bias in American courtrooms and found clear evidence that sentencing is harsher in criminal proceedings against African-Americans, as compared to proceedings involving white Americans (regardless of the presiding judge’s ethnicity or race). Another study examined discrimination using a Monte Carlo simulation in Illinois courts, and found discrimination expressed in a greater tendency of judges to imprison accused who do not belong to the same ethnic group as theirs (Abram, Bertrand & Mullainathan, 2012).

In Israel too, a study by Gazal-Ayal and Sulitzeanu-Kenan (2011) of judicial rulings in the arraignment hearings of Arab and Jewish suspects found that Arab judges treat Arab suspects more leniently by a scale of about 10%. Another study, by Shayo and Zussman (2011), revealed judicial bias that depended on the ethnic group of the judges: Jewish judges tended to rule more in favor of Jewish litigants, while Arab judges tended to rule more in favor or Arab litigants. A study that looked at the effects of including an Arab judge in a judicial panel, found that in cases where the defendant was Arab and one of the judges was Arab, the sentence was more lenient than in other cases, by a scale of 14%-20% (Grossman et al, 2016).

Some studies rely on a less popular theory, the theory of punishment, which holds that an individual benefits from harming members of his own social group. For example, a study of juvenile courts in the US by Depew, Eren and Mocan (2016), found that black judges tend to be harsher in sentencing black defendants. Bar and Zussman’s study (2017b), likewise supports the theory of punishment, and shows that chances of passing a driving tests are 11% lower when the gender of the tester and tested is the same.

Another study, which examined criminal proceedings in the state of Texas between 2004 and 2013, revealed that judicial rulings did not vary based on the ethnicity of the accused, and did not find ethnic or racial discrimination in judicial rulings (Lim, Silveira & Snyder, 2016). In other words, this study found that judges do not tend to rule in favor of litigants who belong to their own social group, and indeed, it may even support the theory of punishment mentioned above.

Studies of discrimination in the State of Israel have tended to focus on discrimination between two population groups - Jews and Arabs – for a variety of reasons. First, there is decades-long political tension, since the establishment of Israel as a state, between the two groups regarding State lands and their ownership. This contributes to shaping shared ideologies within each group and strengthens affiliation with it. Second, Israel has experienced frequent terrorist events, usually characterized by Arab terrorist attacks on Jewish civilians. This phenomenon has created distance between the two groups. Cultural divides are an additional contributor, and finally, group affiliation is very clear-cut when distinguishing Jews from Arabs. This makes discrimination easy to apply.

This paper focuses on a key question: does discrimination exist in other circumstances, or in other words, is there discrimination in cases where everyone involved is Jewish and the only difference between them is their ethnicity, usually determined by the father’s country of origin.

In sum, most research about discrimination in the judiciary appears to indicate that social solidarity has a significant effect on rulings and that judges tend to rule in favor of litigants who are similar to them. On the other hand, a few studies have found the opposite phenomenon to be true, thereby supporting the theory of punishment which holds that judges’ rulings tend to be harsher precisely with members of their own social group.

**Ethnicity-based divisions and discrimination in Israel**

The Hebrew term “*eda*” for ethnic group/community refers to the country of origin of a given individual or his ancestors. The term is the result of the particular circumstances in Israel, where the majority of its citizens, or their parents, immigrated to it from numerous countries and regions around the entire world. Ethnic discrimination based on *eda* is a phenomenon unique to Israel. Although citizens of Israel originated in many parts of the world, they are usually divided into two main groups: 1. *Sephardi,* or *Mizrahi* 2. *Ashkenazi*. This division is obviously somewhat crude, but it nonetheless is useful in studying phenomena related to ethnic discrimination, given that this division is widely accepted among Israelis and reflects the way they categorize one another. The *Mizrahi* category, or *Mizrahim*, includes citizens who emigrated (or whose parents emigrated) from various countries in Africa and Asia, such as Syria, Egypt, Iraq, Iran, Morocco, or Yemen. The *Ashkenazi* category includes citizens who emigrated (or whose parents emigrated) to Israel from Europe and North America, from countries including Poland, German, France, the USA, and the like. It is worth noting, when studying ethnic discrimination in Israel, that ethnic affiliation is usually based on an individual’s surname. This will be further discussed below.

There are gaps between Mizrahim and Ashkenazim in many areas, including in education, demographic characteristics, economic circumstances, social status, and more. In most of these areas, Ashkenazim are more successful than Mizrahim (Behar et al., 2006; Owens & King, 1999). Social and cultural differences between the two groups find expression in a multitude of fields, for example, age of marriage, which is lower among Mizrahim (Peres & Katz, 1981), and family size, which tends to be smaller among Ashkenazim (Yuchtman-Yaar, 2005). There are differences in education between the two groups as well, with Ashkenazim on average attaining higher levels educational than Mizrahim (Haberfeld & Cohen, 2007; Semyyonov & Lewin-Epstein, 1991). Dvir et al. (2002) and Gilboa (2009) found that many of the above gaps can be accounted for by parents’ level of education, based on empirical evidence that Ashkenazim arrived in Israel with higher levels of education on average than Mizrahim.

Political representation is another area where there are gaps between the two groups, Ashkenazim are more highly and dominantly represented in comparison to Mizrahim, yet studies have found that these gaps in representation have grown smaller over time (Brichta, 2011; Rahat and Itzkovitch, 2012).

In contrast to other areas mentioned here, where there is clear evidence that ethnic gaps have decreased over time, scholarly opinion is divided over the issue of economic disparities. One study of the economic gap found, rather surprisingly, that economic gaps between Ashkenazim and Mizrahim are even greater among the second generation (Mark, 2000). Another study (Dahan, 2013), however, found that income disparities between the two groups have shrunk since the 1990s.

Disparities between the two ethnic groups exist also in the realm of criminal justice. Research on discrimination in this area has found that individuals belonging to the Mizrahi ethnic group have a higher tendency to commit crime than Ashkenazim (Ajzenstadt & Borowski, 2005; Fishman, Rattner & Weimann, 1987). Biton (2012), who studied ethnic disparities in academic institutions, found clear evidence of discrimination, expressed in the underrepresentation of Mizrahim.

The above noted disparities between the two ethnic groups do not necessarily attest to discrimination. It is possible, and even likely, that these disparities originate in individual characteristics and opening positions (in terms of education, capital, culture and the like). These disparities may be reflections of the qualities and characteristics of the individuals within each of the groups. When studying discrimination, one should also take into account addition relevant factors affecting individual characteristics. One study examined ethnic discrimination in the labor market by comparing two groups of subjects where the ethnic affiliation of the father and mother were different: in one group the father was Mizrahi and the mother Ashkenazi, while the second group was the opposite, the father was Ashkenazi and the mother Mizrahi. This study revealed that the average salary for the group with Mizrahi fathers was 7% lower than for the group with Ashkenazi fathers (Brenner & Rubinstein, 2014). These findings may support to some extent the argument about the effects of surnames on discrimination, as will be detailed below.

**Ethnicity and surnames**

As noted earlier, ethnic affiliation in Israel is informally based on surnames, or family names. In some exceptional cases, certain surnames are found more or less equally in both ethnic groups, for example, Bar, Meir, or Peled, such that it is not possible to unequivocally determine which ethnic group an individual is affiliated to. All the same, it should be noted that surnames do not necessarily indicate an individual’s ethnic affiliation, since in many cases that individual might be the child of parents from different ethnicities. The issue of intermarriage, however, does not pose a problem for this study for two key reasons: First, discrimination is usually the result of the discriminating party’s perception, of how he or she views the other, rather than the actual ethnicity of that other or his parents. Thus, for example, most people would view a person with the surname Buzaglo as a Mizrahi, regardless of his actual ethnicity or that of his mother who might be Ashkenazi. The second reason that mixed marriages do not pose a problem for this study is the fact that most marriages in Israel are between members of the same ethnicity (Goldscheider, 2002). As of 2012, only 25% of Israeli citizens are of mixed ethnicity (Sagiv, 2012), and the majority (75%) of individuals have parents belonging to the same ethnic group.

For the purpose of this study, family, or surnames were divided into two categories: Mizrahi and Ashkenazi. The categorization is based on a dataset created by the Israel Central Bureau of Statistics specifically for this study[[3]](#footnote-3) (hereafter: CBS dataset), which details the number of citizens whose ethnic origin is European and American in comparison with those whose ethnic origin is Asian or African, for each surname. In cases where the individual was born in Israel, the ethnic origin registered was the father’s. Defining a specific ethnicity for each surname was carried out as follows: whenever 80% or more of the individuals with this name could be affiliated with either Ashkenazi or Mizrahi ethnicity, that particular surname was associated with that ethnicity. In cases where the affiliation was lower than 80%, that specific surname was defined as “unknown ethnicity.” For example, if 95% of individuals with the surname Buzaglo came to Israel from Africa or are of African descent and 5% are of Ashkenazi descent, then the surname Buzaglo can be identified with Mizrahi ethnicity. In cases where the relative proportion of the larger group among all individuals with a given surname is lower than 80%, that surname is defined as unknown. These include “Tal,” “Meir,” “Golan,” “Bar” and others. These cases were excluded from the statistical analyses for this paper, since they could not be associated with a specific ethnicity, the crucial variable for the question of discrimination.

The above described methodology generates an ethnicity for each surname. Names such as Abutbul, Avital, Mizrahi, Maimon, Naim, Peretz, and others were categorized as belonging to the Mizrahi ethnicity, while names such as Adler, Goldberg, Gross, Hoffman, Horowitz, Katz, Rubinstein, Stein, Shapira and others were categorized as Ashkenazi. These categories unquestionably reflect social reality in Israel today.

**Discrimination based on surnames only**

Before we turn to our analysis, it is important to unpack a key question: can surnames be representative of ethnicity, and can discrimination be based solely on surnames? Literature on this subject has demonstrated unequivocally that surnames are very significant and that people tend to discriminate on the sole basis of surnames (Bushman & Bonacci, 2004; Einav & Yariv, 2006).

For example, a number of studies have examined the effect of surnames on individual decisions to invite people for job interviews. These studies found that the percentage of people invited to job interviews was lower for people with surnames associated with minorities in comparison to those people whose surname was not (Bart et al., 1997; Jowell & Prescott-Clarke, 1970; Bertrand & Mullainathan, 2004). This discrimination is rooted in the tendency of individuals to classify other members of society into groups simply based on their surnames. This tendency supports the assumption that surnames can serve as variables that represent the ethnicity of individuals.

Another study of the effect of surnames entailed an experiment in which all other variables involved in individual decision making were controlled, in order to extract the unbiased effect of surnames (Fershtman & Gneezy, 2001. This particular study also found that surnames do indeed shape individual decisions, and specifically, that individuals whose names are associated with Mizrahim are discriminated against. Yet another important study of this issue, conducted in Sweden, found that immigrants who changed their surnames to Swedish names earned salaries that were 141% higher than the salaries of those who did not change their names (Arai & Thoursie, 2009).

**Judicial rulings based on ethnicity in the Israeli court system**

**The database**

The database used in our analysis contains 1,061 small claims cases between 2010 and 2017 (we explain below why small claims cases were selected), where the plaintiff and the defendant were of different ethnicity, based on their surname.

Furthermore, we selected only Jewish male plaintiffs and defendants, in order to avoid a gender-based bias.[[4]](#footnote-4) Furthermore, we excluded cases with individuals whose first names are associated with Russian immigrants (such as Boris, Sasha, and Edward), as well as surnames associated with Ethiopian immigrants.[[5]](#footnote-5)

As for judges, we included in our dataset Jewish justices, both men and women, and we investigated the ethnicity of each one separately.

**Small claims**

In order to test the effect of ethnicity on judicial rulings, we drew data from small claims cases over the past eight years. There were several reasons we chose this particular type of case:

1. In small claims cases the law does not permit legal representation.[[6]](#footnote-6) This neutralizes potential bias due to individual advocates’ status and abilities.
2. In small claims there is no right to appeal,[[7]](#footnote-7) which means that the judgment cannot be automatically appealed at the district court level, but rather, only after an appeal permission request is filed. This reduces the judges’ concern that their rulings will be appealed, thereby precluding situations in which the judge choose a ruling that is more popular and less informed by personal considerations or reasons.
3. As of the writing of this paper, the limit on consideration of small claims cases is no higher than NIS 33,500,[[8]](#footnote-8) which means that the cases are relatively simple, and the likelihood of the judge being at risk for an incorrect ruling is low. Moreover, the judges’ exposure to external forces, such as the media, is also very low.
4. The population engaged in small claims litigation is closest to a representative sample of the overall population of the State of Israel. Normative people from all sectors of society usually pursue such claims, unlike other types of cases in the justice system, such as criminal prosecutions or bankruptcies, where the litigant population is not necessarily representative the general population.
5. Judgements in such cases are usually delivered quickly, on average between 4 to 5 months from the moment proceedings are initiated. The advantage here is that justices are less exposed to external influences, such as changes over time.

**The purpose of this study**

The purpose of this study is to determine whether ethnicity holds any sway over judicial rulings. Or, to put it differently, to examine whether during the legal process, those judges display social solidarity with of one of the litigants due to sharing the same ethnic affiliation, and as a result tend to rule in their favor.

**Statistical theory**

**Table 1**

Table 1 shows that a considerable percentage of the small claims cases are argued in the Tel Aviv and the Central districts (about 60%), while the number of claims argued in the Northern district is the smallest (just 4.5%). The cases are distributed by year more or less evenly, with about 12% per year on average.

**Table 2**

A review of table 2 reveals that the majority of the justices were born in Israel (87.4%), and that about two thirds are younger than 54. The distribution by gender is equal (52% men and 48% women), however it is obvious that most of the judges are of Ashkenazi ethnicity (comprising 61% of all justices).

**Table 3**

Table 3 shows the number of claims accepted, by population group of both the judge and the plaintiff. It shows that, on average, there is a greater tendency to accept the claim when the plaintiff is Ashkenazi than when the plaintiff is Mizrahi, regardless of the judges’ ethnicity (71.5% vs. 64.3%). Furthermore, no statistical differences were found in the percentage of claims accepted when comparing Ashkenazi and Mizrahi judges when one does not distinguish the plaintiff’s ethnicity (66.9% vs. 70.1%, respectively).

Interestingly, for Mizrahi judges there is no statistical difference in the percentage of claims accepted when the plaintiffs are Mizrahi and the percentage of claims accepted when the plaintiffs are Ashkenazi. For Ashkenazi judges, on the other hand, there is a significant a clear statistical tendency to accept the claims of their ethnic brethren, as compared to cases where the plaintiffs are Mizrahi (71.6% vs. 61.5%).

The table presents averages only, and cannot reflect the effect of ethnicity on judicial rulings. In order to reveal this effect, we used the difference in Differences method, as described below.

**Methodology**

We calculated the effect of ethnicity using the difference in differences method, using linear regression, which enables control of relevant variables that can influence judicial decisions.

The model for examining bias based on ethnicity is as follows:

$$\left(1\right) Decision\_{ijt}=α\_{0}+α\_{1}MizrahiPlaintiff\_{i}+α\_{2}MizrahiJudge+α\_{3}MizrahiPlaintiff\_{i}×MizrahiJudge+∂\_{j}+X\_{i}^{'}β+η\_{t}+e\_{ijct}$$

Where:

|  |  |
| --- | --- |
| $$Decision\_{ijt}$$ | Semi variable – ruling for case *i*, judge *j* and time *t*. receives the value: 1 accepted or 0 rejected. |
| $$MizrahiPlaintiff$$ | Semi variable for a Mizrahi plaintiff  |
| $$MizrahiJudge$$ | Semi variable for a Mizrahi judge |
| $$MizrahiPlaintiff\_{i}×MizrahiJudge$$ | Interaction variable - Impact estimate |
| $$∂\_{j}$$ | Judge’s fixed features |
| $$X\_{i}^{'}$$ | Control of case features vector variables |
| $$η\_{t}$$ | Time variable at monthly level |
| $$e\_{ijt}$$ | Error variable |

$\hat{α\_{3}}$ is an iinteresting parameter, because it estimates the bias in the judges' decisions as shown below:

The verdict result for a Mizrahi judge and a Mizrahi plaintiff (Mizrahi-Mizrahi) is:

$$\left(1\right) y\_{ijt}=\hat{α\_{0}}+\hat{α\_{1}}+\hat{α\_{2}}+\hat{α\_{3}}+\hat{∂\_{j}}+\hat{β}+\hat{η\_{t}}$$

The verdict result for a Mizrahi judge and an Ashkenazi plaintiff (Mizrahi-Ashkenazi) is:

$$\left(2\right) y\_{ijt}=\hat{α\_{0}}+\hat{α\_{2}}+\hat{∂\_{j}}+\hat{β}+\hat{η\_{t}}$$

The difference in verdicts for a Mizrahi plaintiff and Ashkenazi plaintiff, when the judge is Mizrahi is (1) minus (2):

$$ \left(3\right) \hat{α\_{1}}+ \hat{α}\_{3}$$

The verdict result for an Ashkenazi judge and a Mizrahi plaintiff (Ashkenazi - Mizrahi) is:

$$ \left(4\right) y\_{ijt}=\hat{α\_{0}}+\hat{α\_{1}}+\hat{∂\_{j}}+\hat{β}+\hat{η\_{t}}$$

The verdict result for an Ashkenazi judge and an Ashkenazi plaintiff (Ashkenazi - Ashkenazi) is:

$$ \left(5\right) y\_{ijct}=\hat{α\_{0}}+\hat{∂\_{j}}+\hat{β}+\hat{η\_{t}}$$

The difference in verdicts for a Mizrahi plaintiff and Ashkenazi plaintiff, when the judge is Ashkenazi is (4) minus (5):

$$ \left(6\right) \hat{α}\_{1}$$

The balance of differences between the change between the two groups (Group of Mizrahi Judges and Group of Ashkenazi judges) is (6) minus (3)

$$ \left(3\right) \hat{α\_{1}}+ \hat{α}\_{3}- \hat{α\_{1}}= $$

In other words, $\hat{α}\_{3}$ expresses the effect of ethnicity on judicial verdicts.

**Results**

**Table 4**

Table 4 presents the estimate results of equation (1). These results indicate that ethnicity does indeed influence judicial decisions. They show that judges tend to discriminate based on ethnicity. Evidence of this discrimination, however, was found only among judges from the country’s central regions, as well as judges under the age of 54. The results show that judges in the peripheries and older judges do not discriminate. The extent of discrimination is 18% for the country as a whole, 23.1% for judges in the center, and 21.6% among younger judges.

The results of the difference in differences regression estimation/analysis, as shown in Table 4, provide us with the estimated discrimination, but they do not distinguish between the discriminatory factors and therefore it is not possible to learn from this table which is the discriminating factor, or which discriminating factor is more dominant - Ashkenazi judges or Mizrahi judges. However, the introduction of another variable from Table 3 - the percentage of claims accepted - may provide some indication, because the discrimination factor is more dominant among the Ashkenazi judges as compared to Mizrahi judges. This argument is supported by the fact that there is a marked and statistically significant tendency among Ashkenazi judges to accept the claims of their own community members in comparison to cases where the plaintiffs are not members of their community, ie, when they are Mizrahi (71.6% versus 61.5%) ‒ a difference of approximately 10%, over 99.9% statistically significant, in favor of plaintiffs who are members of their own community. For Mizrahi judges, in contrast, we did not find a statistically significant difference between Ashkenazi and Mizrahi plaintiffs in the percentage of claims accepted. Indeed, the difference for this index is the reverse, i.e., the percentage of claims filed by Ashkenazi plaintiffs that were accepted by Mizrahi judges is higher than the percentage of claims filed by Mizrahi plaintiffs accepted (68.7% and 71.5% in favor of Ashkenazi plaintiffs). It would appear that a combination of the regression estimation results shown in Table 4 with the data on percentage of claims accepted presented in Table 3 reveals a situation where a large share of the discrimination can be attributed to the rulings of Ashkenazi judges. It should be noted, though, that the difference could be the result of the fact that members of the Mizrahi ethnicity have certain traits which are naturally shared by both plaintiffs and judges. Furthermore, one should assume that details of claims are similar for the Mizrahi community and the Ashkenazi community, and in particular, assume that members of the Mizrahi community do not tend to submit more frivolous claims than Ashkenazim.

**The scale of discrimination**

The results presented in Table 4 above show that the effect of ethnicity on the judges' rulings is on the order of 17.8% to 26.3%. In this context, however, it is worth noting that we have measured discrimination in real cases, where the judge is morally, professionally and ethically constained by virtue of his role as judge, and, therefore, is less likely to rule in favor of a litigant of his own ethnicity in a case where it is clear that the litigant belonging to the other ethnicity is in the right. In other words, a judge is obligated or bound by legal rules, legal ethics and morality when making a decision regarding a dispute between two litigants, and therefore, it is unclear what degree of "flexibility" the judge has in making a ruling that supports the litigant he prefers regardless of the details of the dispute. If so, how is it that we still find evidence of discrimination? The assumption is that in cases where the decision is difficult and it is unclear with whom justice lies, then the judge has room to introduce less professional or legal considerations and more personal reasoning, and hence, we find that discrimination does exist, as the results of this study indicate.

It is clear from the above that in many cases a judge cannot rule in favor of a litigant belonging to his own ethnic community, even if he wanted to, because judicial rules, ethics and his professional commitment preclude him. Only in cases where the judge is able to include personal inclinations, as for example, in cases where it is not clear which side is in the dispute is in the right, do we then see a tendency for judges to adjudicate in favor of a litigant of their own ethnicity. Hence, discrimination might possibly be greater if we were to release a judge from his commitment to judicial rules and "allow" him full flexibility in his decision-making process. Of course, this is a purely hypothetical and impractical proposal, but it is possible to derive some indication of the magnitude of discrimination under such circumstances by conducting a controlled experiment in which participants are exempt from judicial rules.

To this end, we conducted such an experiment, in which participants were asked to rule in a dispute between neighbors. We selected a case that described a dispute between two neighbors regarding liability for fixing a problem with a joint sewage system. The case chosen was intentionally one where it was quite difficult to determine unequivocally with whom justice lies. It contains many considerations both in favor of the claim and against it, allowing for personal considerations and reasons to influence an individual's decision. Alternatively, if we were to use a case in which it was clear which side was in the right, this would diminish the ability of the experiment subject to introduce personal considerations of social solidarity, views on punishment, and the like – which would run counter to the purpose of this experiment.

**The experiment**

The experiment was conducted by contacting participants and presenting them with a brief synopsis of a dispute between neighbors regarding the cost of repairing sewage pipes, at the relatively small amount of NIS 300. The case was presented in the experiment in two versions that were completely identical, except that the plaintiff's and defendant's surnames were exchanged. In the first version, the plaintiff was Mr. Jacob Buzaglo and the defendant was Mr. Jacob Eisenstein.[[9]](#footnote-9) in the second version their surnames were switched and the plaintiff was Mr. Eisenstein while the defendant was Mr. Buzaglo. Half of the cases given to the participants were in the first version and half in the second version. These were given to participants randomly, so that, statistically, it is expected that half of the subjects who are Mizrahi would receive cases where the plaintiff is Mizrahi, and half would receive cases where the plaintiff is Ashkenazi. Likewise, it is also expected that in half the cases received by Ashkenazi subjects the plaintiff is Mizrahi, and in the other half the plaintiff is Ashkenazi.
The subjects were asked to rule for either the plaintiff or the defendant in a case where it was not clear which side of the dispute was right. They were released of any legal or professional obligations in making their decision.

The participants in this experiment thus had to act as de facto judges in the dispute, that is, to decide whether to accept or reject the claim (they were not given the option of partially accepting the claim or offering a compromise). 429 subjects participated in the experiment: they were primarily students at various universities in Israel, as well as a few administrative staff at the Hebrew University and the Ministry of Education, according to the following division:

**Table 5**

The experiment was conducted primarily in university libraries, by approaching subjects and asking them to participate in a decision-making experiment. The response rate was surprisingly high: out of 453 subjects approached, 429 responded positively, that is, about 95% agreed to participate.

Since the purpose of the experiment was to examine whether there is a tendency to judge in favor of one’s own ethnic group based on surname only, the relevant population of subjects is comprised of individuals belonging to either the Mizrahi or Ashkenazi community. Subjects of mixed ethnicity or those who are not Jewish are thus irrelevant to the analysis of the findings. We found that 96 of the subjects were of mixed ethnicity[[10]](#footnote-10) (22.4%), 8 were Muslim or Christian[[11]](#footnote-11) (about 1.9%) and 6 declined to provide information regarding their ethnicity (about 1.4%), meaning that the final sample included 319 relevant subjects ( About 74.3% of all respondents).

It is important to note that the information regarding the subject’s ethnicity was taken down only after that subject had completed the experiment, in order to avoid a situation in which the participant might understand the purpose of the experiment and that this might influence his or her decision.[[12]](#footnote-12)

Table 6 presents the distribution of the test subjects’ demographic attributes.

**Table 6**

The above table shows that most of the participants in the experiment are secular (52.3%), about 3/4 of them are younger than 30 and about 2/3 of them are Ashkenazi. In terms of gender, the majority of participants are women, about 58% compared to about 42% men.

The following table presents the distribution of subjects by their ethnicity and the ethnicity of the plaintiff in the test case:

**Table 7**

Table 7 above reflects the randomness of the distribution of the two versions among the participating subjects, and indeed, it can be seen that the versions of the case were distributed equally: For Ashkenazi judge-subjects, the plaintiff was Ashkenazi[[13]](#footnote-13) in 48.5% of cases and Mizrahi in 51.5% of cases; for Mizrahi judge-participants, the plaintiff in approximately 48% of cases was Mizrahi[[14]](#footnote-14) and Ashkenazi in 52% of the cases.

**Experiment results**

The data derived from the experiment shows that the percentage of subjects who accepted the plaintiff's claim was 48.5% (regardless of the version and the judge-subject’s ethnicity). In other words, close to half of the subjects accepted the claim and half rejected it, which indicates that this indeed is a case in which the party to the dispute in the right is not obvious or clear. This, in theory, allows the test subject greater flexibility in allowing personal inclination or considerations to influence his or her decision, whether consciously or not. Furthermore, this distribution of the percentage of claims accepted - around 50% - increases the variability of the explained variable, which reinforces the accuracy of the results. If the percentage of claims accepted had been particularly high (or particularly low), this would mean a high tendency to rule in favor of (or against) the plaintiff regardless of his ethnicity (which is undesirable) and this would have made it difficult to identify the measured effect. It would also be difficult to estimate the regression parameters because of too low a variance of the explained variable (Jensen, 2003; King & Zeng, 2001; Trapido, 2007).

Since the percentage of claims accepted in the experiment is about 50%, we would expect that in a world without discrimination, this rate would also be maintained once we distinguished between cases where the plaintiff is Mr. Buzaglo and claims where the plaintiff is Mr. Eisenstein. After all, as noted above, the only difference between the two versions of the case is in the litigants’ names. The following graph shows the percentage of claims accepted for each of the experiment’s four population groups:

1. Ashkenazi judge – Ashkenazi plaintiff
2. Ashkenazi judge – Mizrahi plaintiff
3. Mizrahi judge – Mizrahi plaintiff
4. Mizrahi judge – Ashkenazi plaintiff

The above chart presents a very clear and powerful indication that the extent of discrimination as evidenced by the experiment are particularly high. It certainly calls into question the assumption that categorization by ethnicity and subsequent ethnic discrimination are a relic of the past. These results are important and surprising, and they present distinct and powerful evidence of ethnic discrimination based solely on family names. For both types of participant-judges, Ashkenazi and Mizrahi, The percentage of claims accepted is clearly extremely biased in favor of their own ethnic group: Ashkenazi judges accepted 58.6% of claims by Ashkenazi plaintiffs and 41.5% of claims by Mizrahi plaintiffs; Mizrahi judges 40.3% of claims by Ashkenazi plaintiffs and 69.2% of claims by Mizrahi plaintiffs.

It should be reiterated that the experiment presented the subjects with a dispute that was in all aspects identical, except for the manipulation of the litigants’ ethnic affiliation, so that the plaintiff in some cases was Mr. Buzaglo and Mr. Eisenstein in others. Given these conditions, the gap seen in the graph above can only be explained by discrimination arising from individuals’ ethnic social solidarity rather than any other factors.
In order to calculate the impact of ethnicity on the subjects' decisions, we used differences in Ddifference regression, the results of which are shown in the following table.

**Table 8**

The results of the differences in difference regression analysis reveal that the effect obtained is particularly high; the magnitude of the discrimination measured is about 50%, or in other words, the probability that the subject will accept the claim is 50% higher if the plaintiff belongs to the same ethnicity as the judge-subject, in comparison to cases where the plaintiff is not of the same ethnicity. It should be reiterated that the only difference between the cases given to the participants is the ethnicity of the plaintiff and the defendant, meaning that the estimate of the interaction variable represents the effect of ethnicity on the subject’s decision without any other intervening factors.
Other noteworthy findings from the above analysis reveal that there is a tendency to rule against a Mizrahi plaintiff on the order of 17.9%, and there is also a greater tendency for Mizrahi subjects to reject the claim in comparison to Ashkenazi subject, on the order of 20.3%. Also, younger subjects have a greater tendency to reject the claim in comparison to older subjects, to the order of 21%. No statistical differences were found between male and female subjects.
As a matter of fact, when providing individuals with a high degree of flexibility in a decision-making process to which they have no commitment, and additionally, when there is no unequivocal answer to the question of who is right, the impact of ethnicity on the individual subject decisions increases from about 18% (in the judiciary system) to about 50%.

**Case randomness**

One of the important questions that arises in the context of case randomness, is the specific characteristics of cases involving Mizrahi plaintiffs as compared to those involving Ashkenazi plaintiffs. Although basic case characteristics such as judicial district, court, length of the case, the litigants’ place of residence and type of issue were taken into account, there may be other characteristics, deriving from certain features of a particular community or ethnicity, which were not reflected in the calculation of discrimination. The fact that the results show that there is a tendency (irrespective of the judge’s ethnicity) to reject claims submitted by members of the Mizrahi community may reinforce this concern. If there is indeed a substantive difference between claims filed by Mizrahi plaintiffs and Ashkenazi plaintiffs, we would expect that the distribution of cases by type of claim would be different in one sense or another.
The following table shows the distribution of cases by topic and by the plaintiff's ethnicity:

**Table 9**

Table 9 above reveals that the distribution of cases by subject is very similar to the distribution by the plaintiff's ethnicity, which may support the argument that there are no differences in the characteristics of the cases using this division.
Another method to obtain an indication of differences in case characteristics is to examine their level of complexity. If there is indeed a difference between the characteristics of the cases in which the plaintiff is Mizrahi and cases where the plaintiff is Ashkenazi, we would expect to see differences in the level of complexity of these cases. To examine the level of complexity of the cases, it is possible to employ a variable that measures the lifespan of a given case. However, a T-test performed in order to find the difference between the average lengths of cases revealed that there is no significant statistical difference between the average length of cases where the plaintiff is Mizrahi and the average length of cases where the plaintiff is Ashkenai (MeanMizarahi = 228.4; MeanAshkenazi = 218.6; T = -1.37). This finding demonstrates that the level of complexity of cases, as measured in a case’s lifespan, is not statistically different when by distinguished by the plaintiff’s ethnicity, thereby significantly weakening the arguments regarding a substantive difference in case characteristics.
These findings disprove arguments about differences in case characteristics, but they cannot explain the differences arising from the plaintiffs’ characteristics. For example, it may be that Ashkenazi plaintiffs are better able to present their claim relative to Mizrahi plaintiffs, which may be one of the reasons there is a greater tendency for their arguments to be accepted. In order to test this hypothesis, we use the results of the controlled experiment detailed above and its results in Table 8. These results show that, even when the subjects only read the details of the dispute, without seeing the actual parties in person, the order of discrimination against members of the Mizrahi community is approximately 18%. This finding is similar to the results of our study of actual court cases, where the order of discrimination ranges from 14.7% among the overall population of judges to 25.6% among young judges located in the country’s central regions. These results shows that the discrimination against Mizrahim, as measured in the small claims cases, does not necessarily derive from the differences in the plaintiffs’ personal characteristics.

**Conclusions**

Over the years since the establishment of the State of Israel, there has been constant controversy surrounding the question of Israeli ethnicity and the discrimination that arises from it. This phenomenon is so charged that it is sometimes referred to as the ‘ethnic rift’ or the ‘ethnic demon.’ It should be noted that in the public discourse surrounding this issue the concept of ethnic deprivation is raised often. This deprivation is not symmetrical and is attributed only to members of the Mizrahi community, with arguments of discrimination against them by Ashkenazim in multiple realms such as education, employment, politics and more. The results of this study clearly support this claim with regards to the phenomenon’s manifestation in the judicial system. The study found discrimination arising from the judge's ethic affiliation measuring about 18%. This tendency is even more pronounced among younger judges under the age of 54, as well as judges working in the center of the country: the measured discrimination rate for these two groups is 21% -23%. However, these findings do not answer the question of who is the more discriminating; members of the Ashkenazi community or of the Mizrahi community? In answer to this question, an analysis of the percentage of claims accepted by Ashkenazi judges reveals a large gap between those favoring plaintiffs belonging to their own ethnic group as compared to ruling in favor of Mizrahi plaintiffs (71% and 61.3%, respectively). In contrast, such a gap was not found for Mizrahi judges. On the contrary, Judges of Mizrahi ethnicity also tend to accept more of the claims by Ashkenazi plaintiffs in comparison to claims by Mizrahi plaintiffs, although this gap is not statistically significant. A review of the literature describing discrimination in Israel since its founding details discrimination against those of Mizrahi ethnicity, while not a single article was found to provide evidence of discrimination against those of Ashkenazi ethnicity (see, for example: Biton, 2012; Dahan, 2013; Brenner & Rubinstein, 2014). These findings are consistent with the results of the present study.
This study has found that judges discriminate in real cases, in which they are legally, ethically and professionally constrained by their position. Thus, the magnitude of the measured discrimination may be lower relative to cases where there is greater flexibility to involve personal considerations and/or inclinations. In such cases, the discrimination rate measured is no less than about 50%.

**Suggestions for continued research**

This study has demonstrated that there is a bias in judges' decisions caused by ethnic affiliation. In addition, the controlled experiment in which participants were freed of any constraints to their decisions provides us with an estimate of bias without these limitations. Indeed, it was evident that most participants in the experiment did not even notice that this was a dispute between members of different ethnicities,[[15]](#footnote-15) which indicates that the discrimination measured was often unconscious, as suggested by Bertrand et al. (2005). It would be instructive to examine the extent of discrimination according to whether the individual participant is aware of it or not. This can be done through a controlled experiment in which participants are ultimately asked if they were aware of the fact that the two parties to the dispute were of different ethnicities.

**Appendix: Neighbor dispute questionnaire**

**Version 1: Ashkenazi plaintiff and Mizrahi respondent**

Greetings,

Thank you for your willingness to participate in this study examining judicial decision making.

The following is a real case of a dispute between neighbors, which ultimately did not end up in court. Your assignment here is the rule on this dispute, as detailed below.

This case has to do with the relationship between neighbors, and since you do not have the relevant professional knowledge, you should use common sense, intuition, general knowledge and the like. There is no need at all for legal knowledge.

Case description

• Mr. Jacob Eisenstein and Mr. Jacob Buzaglo are neighbors living in the same building.
• One day, the common sewage pipe serving both apartments became blocked.
• Jacob Eisenstein handled the problem with a plumber and paid him NIS 600.
• Later, Jacob Eisenstein asked Jacob Buzaglo to contribute his share of the cost totaling NIS 300.
• Jacob Buzaglo in response argued that he did not understand why he did not consult with him before calling the plumber and that he could have found another plumber at half the price, i.e. only NIS 300, and so he was only willing to give him NIS 150.

• Jacob Eisenstein countered that it was necessary to deal with it immediately and he did not think there were significant differences in price.
**Mr. Jacob Eisenstein is suing Mr. Jacob Buzaglo for NIS 150.**

As the judge required to rule on the above dispute, what would your ruling be in this case:

o I accept Mr. Eisenstein's claim
o I reject Mr Eisenstein's claim

**General information about the participant:**

Gender: M / F

Age: \_\_\_\_\_\_\_\_\_\_\_\_

Degree: 1. BA 2. MA / PhD

Study majors: 1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place of residence (as a child): 1. Center 2. North 3. South 4. Jerusalem

1. David Ben-Gurion was Israel’s first Prime Minister, serving between 1948 and 1954. [↑](#footnote-ref-1)
2. As of December 31, 2017, about 80% of Israeli citizens are native born. Central Bureau of Statistics, <http://old.cbs.gov.il/shnaton69/st02_09.pdf>. [↑](#footnote-ref-2)
3. I am grateful to Mrs. Carole Feldman of the Central Bureau of Statistics for her hard work in creating the dataset and all her assistance. [↑](#footnote-ref-3)
4. There were few cases where the plaintiff and the defendant were both women, of different ethnicity. In any case, using surnames to deduce ethnicity for women is problematic, since married women’s surnames are usually their husbands. Therefore, we chose to include men only in the study. [↑](#footnote-ref-4)
5. The data was drawn from the CBS dataset. [↑](#footnote-ref-5)
6. Section 63(a) of the Courts Law [Consolidated Version], 1984. [↑](#footnote-ref-6)
7. Section 64 of the Courts Law [Consolidated Version], 1984. [↑](#footnote-ref-7)
8. Section 60 (a)(1) of the Courts Law [Consolidated Version], 1984. [↑](#footnote-ref-8)
9. Buzaglo was chosen as representative of the Mizrahi ethnicity, while Eisenstein was taken to represent Ashkenazim. Their first names are identical, to avoid bias. [↑](#footnote-ref-9)
10. Subjects whose parents are of different ethnicity. [↑](#footnote-ref-10)
11. Subjects who were thought to be Jewish were approached to participate, but some people were misidentified. [↑](#footnote-ref-11)
12. In an attempt to decipher the purpose of the experiment, or an attempt to do reverse discrimination, and the like. [↑](#footnote-ref-12)
13. 104 out of 210. [↑](#footnote-ref-13)
14. 52 out of 109. [↑](#footnote-ref-14)
15. We learned this from follow up conversations with some of the participants. [↑](#footnote-ref-15)