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Role	Name	Academic Rank	Department	Institute
PI.1	Ariel Bendor	Full Professor	Law	Bar-Ilan University
PI.2	Michal Alberstein	Full Professor	Law	Bar-Ilan University

Research Title

Doctrinal Realism in Israeli Public Law

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Application No. 2130/24
PI1: Ariel Bendor

Scientific abstract – **DOCTRINAL REALISM IN ISRAELI PUBLIC LAW**

The proposed study unveils, empirically examines, and contextualizes Israeli constitutional and administrative law in terms of "pragmatic realism." According to this idea, generated within the American Legal Realist Movement, judicial decisions are formed in light of prevailing political ideologies, along with the institutional interests of the Judiciary.

The study raises two main hypotheses: *First*, pragmatic realism, as developed in Israeli constitutional and administrative law, transformed from a mainly critical stance to a central doctrinal regime, and is used as a basis for judicial decisions and court reasoning. *Second*, the political, public, and, to a certain extent, the academic mindset prevalent in Israel, reflects a perception that slightly recognizes the formal essence of law and assumes that judicial decisions are based to a large extent on the political ideology and the personal identity of the judges. A prominent test case that will be used to examine the second hypothesis will be the constitutional reforms promoted in 2023 by the Israeli rightwing coalition.

The study has three main objectives: *First*, from a doctrinal-descriptive approach, to provide an empirical and analytical account of the pragmatist realist doctrine in contemporary Israeli Supreme Court public law decisions. *Second,* to reframe the Israeli legal reforms debate in light of the pragmatic realism and its infiltration into Israeli society and academia. *Third*, from a theoretical angle, to develop a novel analytical-normative perception on Israeli public law in light of pragmatic realism.

The study will utilize empirical, ethnographic, and jurisprudential tools in order to test the research hypotheses. It will entail mapping and framing the public law subjects related to pragmatic realism; data mining of the entire population of constitutional and administrative law Supreme Court decisions during the years 1978-2024; circulating a pragmatic realism survey in order to understand the perceptions of the tenets of pragmatic realism in Israeli society and among jurists; conducting in-depth qualitative interviews of main stake holders of public law and the reforms debate; desk analyzing of the legal reforms materials; and suggesting theoretical and normative accounts of the research finding.

The research will offer, for the first time, a critical comprehensive perspective on contemporary Israeli public law as a pragmatic realist arena; will provide a genuine panoramic empirical data-driven account of the interaction of law in books and law in action; will unveil embedded perceptions of the Israeli Supreme Court; and will have comparative implications for other legal cultures experiencing democratic crisis.

DOCTRINAL REALISM IN ISRAELI PUBLIC LAW

The essence and function of law and adjudication have been intensely debated in the past century by legal scholars and policymakers in Western legal cultures and worldwide. Critical perspectives on law have transformed the legal terrain, destabilizing core beliefs to a different extent in various legal systems. The American Legal Realist Movement has challenged the basic premises of legal theory and has significantly impacted contemporary global and local perspectives. A core realist idea, as Oliver Wendell Holmes Jr. expressed, is that legal rules cannot be understood only by reference to legislation and court decisions. Instead, "[T]he prophecies of what the courts will do in fact, and nothing more pretentious," (Holmes, 1881) are considered the law. Following this descriptive assumption, a basic realist claim is that to determine how to use a legal rule, one should assess how the rule will be implemented by a court in reality. A related realist assumption is that judicial decisions are formed in light of the prevailing current political ideologies, along with considering the institutional interests of the Judiciary (Fisher et al., 1993).

The focus of the proposed study will be this core idea of the Legal Realist Movement, which will be named here: pragmatic realism (Alberstein, 2002), that will be examined in the context of Israeli public law. The study will raise and examine two main hypotheses: First, pragmatic realism developed in Israeli constitutional and administrative law, transformed from a mainly critical stance to a central doctrinal regime, and is used as a basis for judicial decisions and court reasoning. Second, the political, public, and to a certain extent also the academic perception prevalent in Israel, expresses a perception that slightly recognizes the formal essence of law, and assumes that judicial decisions are based largely on the political ideology and the personal identity of the judges.

In order to examine both hypotheses, the study will utilize empirical, ethnographic, comparative, and jurisprudential tools. The main test case that will be used to examine the second hypothesis will be the constitutional reforms promoted in 2023 by the Israeli right-wing coalition. The dominant place of a pragmatic realist perception of public law and its manifestation both in court-created legal doctrine and in the political and public debate raises normative questions and has novel theoretical implications which the study will further discuss.

Scientific Background

The Legal Realist Movement

The Legal Realist Movement in American law has been prevalent in criticizing the various claims of law for formality (Tamanaha, 2008). The aspiration of law to formality has been accompanied by a constant critique of "formalism," emerging with philosophical pragmatism at the end of the 19th century as an American critique against European social thought (White, 1949; Dickstein, 1998; Alberstein, 2002).

Among the tenets of the Legal Realist Movement, the political challenge and the institutional-personal claim are foundations for the development of pragmatic legal realism.

The political challenge: According to legal realists, the law is political; norms formulation and judicial decision-making involve reference to politics, policy, or power. Weber (1954) regards juridical formality, the separation of legal institutions and legal rules from other rules in the social order, as the main distinctive feature of modern Western law. There is further belief in the primacy of individual rights and the strict division between private and public, including the legal positivist emphasis on an autonomous system of norms (Kelsen, 1967). Against this claim, Legal Realism (Llewellyn, 1930; Fisher et al., 1993) and the Critical Legal Studies School have pointed to the social, political, and ideological considerations that determine judicial decisions (Kennedy, 1976, 1997, 2004; Unger, 1983). Accordingly, judges and courts are embedded within a political culture that determines their choices when applying the law.

The institutional-personal claim: The separation between "law in books" and "law in action" (Pound, 1910; Garth & Sarat, 1998) is challenged by Legal Realism, beginning with the antecedent of the movement of Oliver Wendell Holmes Jr., defining the law as "the prophecies of what the courts will do in fact." (Holmes, 1881: 460). Karl Lewellyn further elaborated that "the most significant… aspects of the relations of law and society lie in the field of behavior." (Lewellyn, 1930: 443). Following that, a Realist stance emphasizes the institutional and personal foundations for judicial decision-making, as well as any other official legal implementation.

These claims, along with other Realist challenges, have significantly affected the development of American legal culture and the public perception of judges (Fisher et al., 1993). According to this perception, legal decisions should be evaluated not according to their reasoning but rather based on their outcomes. This is a descriptive and not normative assessment of the judicial work. According to these claims, personal and institutional considerations become the main explanatory elements for understanding judicial motivations. The Israeli implementation of these claims has taken them a step forward, as this study will explore in relation to public law.

The Israeli Take on the Formalism-Realism Debate

Israel has a mixed legal system, strongly influenced both by common law and Anglo-American reconstructions, along with a strong emphasis on European codification methods (Rivlin, 2012). The debate about formalism in Israeli legal culture emerged and developed following a monograph by Menahem Mautner, describing the "decline of formalism and the rise of values in Israeli law" (Mautner, 1993). This essay captured a broad shift in legal writing by the Israeli Supreme Court during the 1980s, which included a greater emphasis on values and judicial activism. The emergence of a Realist perspective on the judicial process is an essential pillar of this transformation (Mautner, 1993: 595)

Despite some criticism of Mautner's argument (Kedar, 2006; Bendor, 2003), his narrative became dominant in legal academia. Realist legal concepts in the Israeli context are the basis for the academic writing of both scholars identified with the political right (Sapir, 2006; Segev, 2004) and scholars identified with the left (Peleg, 2013: 420-425), including Mautner himself. In light of the

emphasis on the Israeli Supreme Court as a lighthouse of social values, the Court became the focus of a deep public controversy since the mid-1990s (Meydani, 2011: 191). Some have emphasized the constructive role of the Supreme Court, in light of the lack of a rigid constitution, in promoting human rights, and protecting disempowered minorities (Navot, 2014: 221-226). Others have criticized judicial activism as creating a democratic deficit by assigning extra power to unelected judges (Dotan, 2002; Steiner, 2020: 292). Since the 1990s, the Supreme Court has been asked to intervene in almost any significant political or public debate within Israeli society (Navot, 2014: 206-211). Besides developing a broad standing (Segal, 1993) and justiciability (Dotan, 2022: 241-275) standards to alleviate the entrance to the court, the court has generated flexible normative measures which enable broad judicial discretion (Bendor, 2020).

Public debates on the role of the Israeli Supreme Court and the ideological identities of judges continued to emerge during the past decades following the changes in Israeli society and politics (Friedmann, 2016). These debates have culminated into a national social and constitutional crisis, which was halted abruptly on October 7, 2023, following the Hamas massacre in Israeli southwestern Negev.

The 2022-2023 proposed legal reforms by the right-wing coalition were defined by their opponents as a legal overhaul that aims to erode democracy and to transform the entire legal regime. The debate (hereinafter: the reforms debate) created an upheaval in Israeli society accompanied by massive demonstrations.

Realist Israeli Public Law

Israeli public law, both constitutional and administrative, has a strong open-ended common law foundation. With the establishment of the State of Israel, a heated debate raged regarding the need for a constitution (Gavison, 2003). This controversy ended with a compromise that held that there would be a gradual accumulation of Basic Laws, which will be combined into a constitution at a later stage. This constitutive stage has not yet materialized, and therefore, Israeli public law has been developed by the Judiciary following common law traditions.

In 1995, the Supreme Court established that Basic Laws hold constitutional status, even prior to their incorporation into the Constitution (CivA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village*). This status is attributed to the enactment of Basic Laws by the Knesset under its authority as the constituent assembly, derived from the Declaration of Independence (Bendor & Shaham-Assia, 2021). The Court held that the primacy of Basic Laws over ordinary legislation forbids the Knesset from enacting statutes conflicting with Basic Laws. In such conflict, the court is empowered to invalidate an ordinary law or provide an alternative constitutional remedy (CivA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village*). This decision was rendered in light of two Basic Laws on human rights – Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation – enacted in 1992. While the wording of these two Basic Laws indicates clear constitutional supremacy (CivA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village*), the

Court's ruling applies to all Basic Laws (Medina & Watzman, 2017). Notably, several of the Basic Laws, including the two addressing human rights, not only regulate and constrain Knesset legislation, but also apply to the powers and decisions of the Executive and other governmental branches (Basic Law: The Government; Basic Law: The Army, Basic Law: The State Comptroller). Supplementing the common law open-ended nature of Israeli public law, constitutional and administrative cases regularly deal with the separation of powers and institutional boundaries. Hence, they offer a fertile ground to examine the intersection between the self-reflection on the judicial role *vis a vis* other governmental branches on the one hand and the legal doctrine created by the court on the other hand. Despite the enactment of Basic Laws and their constitutional recognition, coupled with the passage of numerous ordinary laws addressing public law matters over the years (The Knesset Act, 1994; The Government Act, 2001), developments of pragmatic realism in public law jurisprudence stand out. Instead of relying on formalistic adjudication based on legislation, the court developed an elaborate jurisprudence that translates critical theoretical claims into legal doctrine.

In a variety of issues, the Israeli Supreme Court decisions have constantly generated rules which focus on judicial review – the policy and considerations of the court, rather than on the legality of the relevant governmental action (whether it is the decisions of the Knesset, the Government or any other branch). Justices prefer not to address the substantial law and its meaning (despite some counterclaims (Gliksberg, 2021: 29-34) and continuously reflect upon their own role, the position of the court, and the impact of their decision. Their ruling reflects pragmatic legal realism: transplanting insights regarding "law in action" from an academic external descriptive perspective into "law in books" – declared norms formulated by the court in its case law (Cohen & Roznai, 2021: 161-166).

A distinction must be drawn between pragmatic realism, which involves the court's self-reflection, and the comprehensive set of rules governing the court's powers. The reference to values in Supreme Court rulings is also distinct from the self-reflection addressed here (Hailbronner, 2014). In various cases, the court's policy revolves around assessing the legality of the actions of other branches and do not necessarily embody pragmatic realism. An example drawn from U.S. constitutional law is the three levels of judicial review: rational basis, intermediate scrutiny, and strict scrutiny (Kelso, 2002). While it might seem that the significance of different levels of judicial scrutiny on acts violating constitutional rights is the Judiciary's departure from substantial constitutional law, the distinction between these levels is essentially based on the degree of strength attributed to different rights. Different judicial review declared levels are absent in legal systems, including Israel, based on the proportionality doctrine for protecting constitutional rights. However, even in Israel, without a stated construction of defined levels of judicial review, the degree of rigor in the application of the sub-tests of proportionality depends, among other things, on the degree of relative importance attributed to the infringed right (Dorner, 2000: 288). Consequently, levels of judicial scrutiny should not be construed as manifestations of pragmatic judicial realism.

The following examples illustrate pragmatic realism in public law:

Constitutional Ripeness: According to the doctrine of constitutional ripeness, which has developed in Israel in recent years, the Supreme Court may deny a petition that challenges the constitutionality of a legislative act in the case in which the act has not yet been implemented (Chachko, 2012; Poliak, 2014). There are two rationales for this doctrine. One is an institutional justiciability consideration: to preserve the public trust resources of the court by avoiding unnecessary decisions on controversial issues. The second rationale is that only after the implementation of a legal act, its constitutionality can be properly determined by the court. The significance of this Israeli-style ripeness doctrine approach is twofold: First, the court explicitly considers its institutional interests when deciding whether to deal with the petition. Second, the timing of the judicial review may determine the constitutionality of a given law (Bendor, 2016).

Relative Voidance, Invalidation Notices, and Prospective Application of Precedents: In contrast to a binary formalist approach of law, which declares the validity or voidance of governmental acts, the relative voidance doctrine, developed by the Israeli Supreme Court, provides the court with a flexible framework to determine the remedies for the illegality of governmental acts. The doctrine allows judicial discretion in choosing the remedy for illegality of all sorts, by considering the severity and degree of the flaw, third party's interests, rule of law, and other circumstances of the case (Barak-Erez, 1995). In the framework of the doctrine of relative voidance, the Supreme Court has developed a new remedy – an invalidation notice: the Court rejects the petition, yet the rejection is accompanied by a warning that if a similar petition is submitted in the future without the governmental authority's policy being amended, the petition shall be granted (Melcer, 2020). According to another doctrine, which is close to the relative voidance doctrine, the court has the discretion to apply new precedents prospectively while not affecting the concrete case it decides upon (Bendor, 2020: 739-740). The relative avoidance doctrine and related doctrines enable the Court to consider inter-institutional deference considerations by allowing the other branches an opportunity to correct constitutional flaws without invalidating their decisions.

Proportionality and Interpretation of Human Rights: The proportionality doctrine in Israel was originally intended to stipulate the criteria for deciding whether a restriction of a constitutional right by a statute or a governmental action is constitutional (Barak, 2012: 11-12). Nonetheless, it has become a broad indeterminate standard, which has been left, to a great extent, to the discretion of the judges (Sapir, 2006: 386). In the past, the Supreme Court viewed the second subtest of proportionality – the subtest of the least harmful measure – which is relatively determinable, as the most important subtest (CivA 6821/93 *United Mizrahi Bank Ltd v. Migdal Cooperative Village*: President Barak, para. 95). Over the years, the subtest of proportionality *stricto sensu*, which resembles the more general reasonableness standard, became the dominant subtest and the focus of the constitutional review (Kremnitzer, 2016: 12-16; Bendor, 2020: 733). At the same time, the court tends to interpret the constitutional rights established in the Basic Laws, and in particular the right to human dignity, broadly (Medina, 2016: 136-141), on the grounds that "[o]ur role as judges, at this stage of our national life, is to recognize in full the scope of human rights, while giving full

strength to the power of the limitations clause to allow a violation of those rights, when necessary, without restricting their scope" (HCJ 7052/*03 Adalah Legal Centre for Arab Minority Rights in Israel and others v. Attorney General*: President Barak, para. 106).

Babysitter Procedures: Instead of deciding petitions substantially, during the past decade, constitutional and administrative matters have constantly been managed in a format called "babysitting" (Bendor & Segev, 2018: 393–397). The Supreme Court does not examine the legality of the relevant governmental decision and, instead, handles the case through a dialogue developed with the parties. The court acknowledges the flaws the petition exposes, provides directions to the parties, and may supervise for many years the completion of the governmental repair. In cases where the governmental authority expects, following the justices' comments, that if a decision is reached, the petition will be accepted, the judicial babysitting stems from repeated requests by the state for postponements during which it will allegedly rethink the matter. Some proceedings end in a determination by the Court. Others are terminated by denying the petition because it has "run its course" (Bendor & Segev, 2018: 394) in light of the changes that took place while the proceeding was underway. Babysitter proceedings may be institutionally favorable for the Israeli Supreme Court in cases which involve special national security or political sensitivity. The babysitter proceedings may produce a consensus among the political branches and the petitioners, thereby exempting the justices from expressing a firm stand in a fully reasoned decision. For example, it was noted that the Israeli Supreme Court "sometimes views its role as a 'babysitter' whose job is to follow up on the respect for human rights and humanitarian law by the other branches" during times of combat (Scharia, 2014: 190). Another example is sensitive petitions relating to the relationship between religion and state, such as the definition of "Jew" entitled to immigrate to Israel under the Law of Return. Such petitions require a ruling – which the Court is not enthusiastic to make – on questions in dispute between different religious streams of Judaism (HCJ 11013/05 *Dahan v. Minister of Interior*: President Hayut, para. 1-9). The transformation of babysitter proceedings into a common phenomenon reflects the expansion of pragmatic realist adjudication and the extent to which it is preferred, in certain cases, over a judicial determination according to substantive law.

Context-Based Judicial Review: The Israeli Supreme Court ruled that the scope of judicial review in various subjects is particularly restrained (Dotan, 2022: 277-314). Examples from the last year include invalidation of laws (HCJ 7650/23 *The Association for Civil Rights in Israel v. The Minister of National Security*), regulatory issues involving special non-legal professional expertise (HCJ 8338/21 *The Lesser Group Limited v. Securities Authority*), national security and policy issues (HCJ 8349/23 *Almagor Organization v. State of Israel*), military placement considerations (HCJ 8939/22 *Klein v. Meitav Commander*), and decisions of the Attorney General regarding the opening of an investigation and prosecution (HCJ 3823/22 *Netanyahu v. Attorney General*). In a number of subjects, such as judicial review of administrative decisions limiting human rights (HCJ 5419/23 *ALOT – National Association for Children and Adults with Autism v. Director General of the Ministry of Education*; Dotan, 2022: 202-204) and personal legislation which was not decided behind the veil

of ignorance (HCJ 5119/23 *Movement for Purity of Morals v. The Knesset*), the Court indicated that the judicial review would be broad.

Justiciability: Typically, limitations that a court imposes on itself on the adjudication of distinct political issues, such as those pertaining to national security and foreign policy, are similar to constraints on the court's authority, in the sense that nonjusticiable petitions are rejected outright without a substantive decision on their merits (Dotan, 2022: 241-242). This practice is observed in Israel and other countries, exemplified by the Political Question Doctrine in the United States (Bendor, 1997). In the Israeli context, the justiciability doctrine is especially narrow, and petitions dismissed as nonjusticiable are rare (Mordechay & Roznai, 2017: 248; Bendor, 1997). However, the Israeli Supreme Court tends not to intervene in significant policy decisions, and in practice, the key policy decisions of the Israeli Government enjoyed complete immunity from interference (Barak-Erez, 2008: 10).

Fitness of the Subject for Judicial Review: An additional phenomenon that expresses pragmatic realism in Israeli judicial review is a declared examination of considerations that pertain to the suitability of the subject for judicial handling, such as the expected effectiveness of judicial review. Thus, for example, former Supreme Court President Grunis held that the very doubt with respect to the effectiveness of a judicial decision and the fear that an ineffective decision would detract from the public status of the Court justify refraining from deciding on the merits in a petition against the constitutionality of the statute (HCJ 6427/02 *Movement for Quality of Government in Israel v. The Knesset*). Taking similar considerations into account was also characteristic of decisions handed down by former Justice Rivlin. Thus, for example, Justice Rivlin stated: “[t]he resources available to the court are limited. … Because the Judiciary has neither a purse, sword, nor a will of its own – its principal resource is a public trust. Descending into the public battlefield, when unnecessary, is liable to dissipate this precious resource.” (HCJ 466/07 *Gal-On v. Attorney General*: Deputy President Rivlin, para. 3). An additional stream of decisions in which the Supreme Court exercised its discretion to deny petitions because they do not fit judicial handling applies to petitions in which it was ruled that it would be better for the subject to be handled by way of a statute (FHHCJ 10007/09 *Gluten v. National Labor Court*).

The existing literature offers various important empirical studies on the activity patterns and decisions of the Israeli Supreme Court in the areas of public law (Meydani, 2011: 6-18; Hofnung & Weinshall Margel, 2010) and the correlation between the religious beliefs of judges, their ethnicity, and their decisions (Weinshall-Margel, 2011; Weinshall-Margel, 2016; Gazal-Ayal & Sulitzeanu-Kenan, 2010). This study will supplement these studies by examining a critical claim of pragmatic realism in action and the general context of public law and the reforms debate.

The Reforms Debate as a Reflection of Pragmatic Realism

The revolutionary legal reforms promoted by the coalition in 2023 all dealt with issues concerning the powers of the Judiciary (including the authority of the Knesset to override constitutional decisions

of the Supreme Court) and the appointment of judges and legal advisors in government ministries (Levush, 2023).

Thus, in the speech of Minister of Justice Yariv Levin on January 4, 2023, shortly after the formation of the new Government, in which he presented the "first phase" of the reforms, he listed four reforms: changing the composition of the committee for the selection of judges; prohibition of the courts to examine the reasonableness of governmental decisions; legislation of an "override clause" that would allow the Knesset, with a majority of 61 Knesset members (MKs) out of 120, to annul decisions of the Supreme Court to invalidate laws as unconstitutional; and the appointment of the legal advisor of a government ministry by the ministry's director general (the minister elects the director general based on personal trust) instead of the existing procedure of professional appointment in a tender procedure.

Out of these reforms, on July 24, 2023, the Knesset amended Basic Law: Adjudication, and added to it a clause stating:

> Notwithstanding what is stated in this Basic Law, whoever has adjudication authority according to law, including the Supreme Court in its session as a high court of justice, shall not examine the reasonableness of decisions of the Government, of the Prime Minister or of another minister, and shall not issue orders in the aforementioned matter; In this section, 'decision' – any decision, including appointments or decisions to refrain from exercising any authority.

The Amendment does not cancel the obligation of the Government, the Prime Minister, and the ministers to make reasonable decisions, but denies the authority of the court to examine the reasonableness of their decisions. When these lines were written, the Supreme Court's decision on the question of the constitutionality of this Amendment had not yet been delivered.

On March 27, 2023, the Constitution, Law, and Justice Committee of the Knesset approved for the second and third reading bills to amend Basic Law: Adjudication and the Courts Act, 1984, which change the composition of the Committee for the Selection of Judges. The Knesset meeting for votes in the second and third reading was delayed according to Prime Minister Benjamin Netanyahu's decision, but the votes were held at short notice. According to the existing Basic Law, the Committee includes nine members: three Supreme Court justices including, the President; two ministers including, the Minister of Justice (who serves as chairperson); two MKs (according to non-binding practice, one of them is from the coalition and the other from the opposition; and two representatives of the Bar Association. The selection of Supreme Court justices requires a majority of seven members, which means that there is a right of veto for both the Supreme Court's and the coalition's representatives. According to the Amendment approved for the second and third reading, the Committee will include eleven members. The membership of the Bar representatives, whose vote is usually coordinated with the vote of the justices (Barzilai, 2022: 57) was canceled. Two more ministers, two more MKs from the coalition, and an additional MK from the opposition were added to the Committee. It was determined that for selecting judges to courts below the Supreme Court, the

Judiciary would be represented in the Committee, apart from the Supreme Court President, by presidents of other courts and not by Supreme Court justices. The consequence of the proposed amendment is that the majority of members will be representatives of the coalition, and that the professional jurists who are members of the Committee will no longer be a majority, but a distinct minority (three out of eleven). It is also suggested that the selection of judges for all courts will be by a simple majority so that the coalition alone can choose all the judges.

In addition to these proposals, the Chairperson of the Constitution, Law, and Justice Committee, MK Simcha Rothman, in a series of discussions of committee under the title "Zion shall be redeemed with law – returning justice to the judicial system," advanced proposals for constitutional changes in other areas, all of which relate to the composition of the Supreme Court and its authority. Thus, it was proposed that the authority to invalidate a law would be exclusive to the Supreme Court; that as a rule, the Supreme Court will only be able to invalidate a law in the full composition of the Court (fifteen justices); that a decision by the Court to invalidate a law will require the majority of four-fifths of the justices; and that the Court will be authorized to invalidate a law only where the law clearly contradicts a provision in a Basic Law that a special majority is required for its amendment, or if the law clearly contradicts a provision in a Basic Law that determines the conditions for its infringement.

Indeed, the criticism of the initiators of the reforms was formulated primarily in terms of authority – a reduction of powers which, according to the initiators, the Supreme Court unlawfully took for itself (Rothman, 2019). However, these reasons express substantial value reforms that the initiators of the program sought to promote through the institutional amendments, the paramount among them was the revision in the composition of the committee for the selection of judges. As Minister of Justice Levin noted in one of his speeches (Baruch, 9/19/2023):

> The battle we are engaging in here extends beyond a mere legal dispute and the process of selecting judges. It is a struggle over the fundamental question of whether the people of Israel will be allowed to determine what they have chosen – a Jewish state with true democratic values. We are contending against forces that seek to obscure our Jewish identity, prioritize infiltrators over our citizens, and, paradoxically, espouse democracy while acting in direct opposition to its principles.

Following the same line, the compromise directive proposed on March 16, 2023, by President Issac Herzog, which he called the “People's Directive," mostly dealt with issues related to the selection of judges and the powers of the Judiciary: the composition of the committee for the selection of judges; the number of judges on the panel of the Supreme Court; and the majority that will be required for annulling a law as unconstitutional; denying judicial review of basic laws and continuing judicial review of laws that violate all rights that the Supreme Court has determined are derived from the constitutional right to human dignity; restrictions on judicial review according to the "reasonableness ground;" and various compromise arrangements regarding the election of legal advisors to the government and its ministries and regarding the legal representation of the Government and ministers in court. In the title of the proposal, it is stated that the People’s Directive is intended to

regulate the "constitutional relations between the authorities in Israel" by broad agreement. However, the Directive also deals with certain issues beyond the selection and powers of the legal authorities: the enactment of Basic Laws, and the addition of several basic constitutional rights that are currently not explicitly stipulated in the Basic Laws. The Directive thus balances institutional amendments, which reduce the powers of the legal authorities, with the inclusion of substantive liberal amendments. The content of the Directive proposed by the President of Israel indicates the dominance of a pragmatic realist legal notion in the public and political discourse in Israel.

The existing literature offers various important empirical studies on the activity patterns and decisions of the Israeli Supreme Court in the areas of public law (Meydani, 2011: 6-18; Hofnung & Weinshall Margel, 2010) and the correlation between the religious beliefs of judges and their ethnicity and their decisions (Weinshall-Margel, 2011; Weinshall-Margel, 2016; Gazal-Ayal & Sulitzeanu-Kenan, 2010). The proposed research will offer, for the first time, a critical, comprehensive perspective on contemporary Israeli public law as a pragmatic realist arena, and will examine the reforms debate as a culmination of this phenomenon.

Research Objectives and Significance

The project has three main objectives:

First, from a doctrinal-descriptive approach, the study will provide an empirical and analytical account of the pragmatist realist doctrine in contemporary Israeli Supreme Court decisions in public law. We assume that pragmatic realism is used as a basis for judicial decisions and court reasoning in Israeli constitutional and administrative law. From a mainly academic critical stance, it became a central doctrinal regime.

Second, the study will contextualize and reframe the legal reforms debate in light of the Legal Realist movement and its infiltration into Israeli society and academia. We claim that the political, public, and to a certain extent also the academic perception prevalent in Israel, expresses a perception that slightly recognizes the formal essence of law, and assumes that judicial decisions are based to a large extent on the political ideology and the personal identity of the judges. Based on empirical and ethnographic inquiries, we will further demonstrate that the debate regarding the legal reforms is a culmination of the pragmatic realist public perception of law. Both the initiators of the reforms, the opponents of the overhaul, and the settlement seekers share a focus on the role of judges and the courts rather than the authorities and legal powers of the elected branches – the Knesset and the Government.

Third, from a theoretical angle, this study aims to develop a novel analytical-normative perception of Israeli public law in light of the legal realist movement. The study will provide a data-driven framework for understanding contemporary jurisprudential and constitutional debates.

Expected Significance:

By accumulating Supreme Court writing, together with diverse perspectives, including laypersons, politicians, and various jurists, the study will provide a genuine panoramic account of the interaction of law in books and action.

Additionally, if the hypothesis guiding this study is confirmed, striking similarities among diverse groups related to judicial reforms will be exposed. More than that, embedded perceptions of Supreme Court case law will be unveiled as sharing the same jurisprudential perception – pragmatic realism.

The findings of this study can be examined comparatively and may have implications for other legal cultures that experience challenges to democracy and face heated public debates as to the Rule of Law and the role of the Judiciary.

Detailed Description of the Proposed Research

(a) Working Hypothesis

H1. Pragmatic legal Realism is reflected in the Israeli Supreme Court's constitutional and administrative law decisions.

H2. Pragmatic legal realism is common among legal stakeholders and laypersons and particularly, underlies the perceptions of all sides to the reforms debate.

H3. The materialization of pragmatic legal realism in Israeli law and society raises foundational dilemmas and generates groundbreaking theoretical and normative implications.

(b) Research Design and Methods

Work Package (WP) 1 (following H1): *Unveiling and Measuring the Realist Doctrine in Israeli Public Law*

This phase entails doctrinal and analytical exploration (Task 1) as well as data mining of legal texts (Task 2) in order to unveil and measure expressions of pragmatic realism in Israeli public law.

Task 1: *Mapping and framing the public law subjects related to pragmatic realism.* This stage will entail doctrinal analytical analysis of main issues related to public law based on prevailing case law, including the following subjects: babysitting cases; standing, justiciability, and other threshold grounds; reasonableness and proportionality and its sub-tests; remedies; judicial review of parliament (Knesset) decisions; judicial review of Basic Laws; and context-based judicial review. Other issues related to pragmatic realism will be collected and framed during the first year of the project, *inter alia* following the findings of Task 2. The doctrinal analysis will result in academic papers describing the doctrinal development in these areas.

Task 2: *Empirical analysis of the entire population of constitutional and administrative law Supreme Court decisions in the years 1978-2024* (based on the fact that 1978 is the year of

appointment of Justice Barak). This stage will include data mining using machine learning (ML) tools in search of self-reflection expressions of the Supreme Court. Expressions such as: “this court will restrain itself,” “this court does not use…”; "the scope of judicial review in this area is limited” will be searched by using Text mining, also referred to as knowledge discovery from textual databases (KDT), comprises a set of methods and techniques employed for the study and analysis of extensive databases. Central to this approach is establishing relationships among extracted pieces of information, aiming to uncover patterns or connections within the examined texts. Information extraction involves searching for specific details in documents, considering the order and proximity of words to discern between statements with identical keywords but different meanings. The information extraction process commences with a natural language database, utilizing it to construct a structured database. This structured database facilitates the scanning of text to identify words or phrases corresponding to each field in the database. Consequently, KDT serves as a bridge between quantitative statistical analysis and qualitative examination. KDT is applied in studies across diverse fields, including law, particularly within the realm of public law (Hall & Wright, 2008).

Since some constitutional cases are included in criminal and civil cases of the Supreme Court, the ML operation of the data mining will be conducted on civil and criminal cases as well. This inquiry will enable to unveil the scope, appearances, and characteristics of judicial self-reflection in Israeli public law, and to identify further manifestations of pragmatic realism while supplementing the issues mentioned in Task 1.

WP2 (following H2): ***Empirical unveiling of the pragmatic realist perception among various legal and political stakeholders***

This phase aims to capture the perception of law in light of pragmatic legal realism by conducting an empirical inquiry using a few methodologies: Legal Realism Survey (Task 3); in-depth qualitative interviews (Task 4); and desk analysis of the legal reforms’ materials (Task 5).

Task 3 – Legal Realism Survey: A “legal realism survey” will be prepared in order to understand the perceptions of the tenets of realism in Israeli society and among jurists. The survey will be constructed, conducted, and circulated with the help of a survey research institute and will include short claims (~50) related to the tenets of legal realism followed by binary responses. It will enable to empirically test contemporary perceptions and to validate and refine the outcomes of the theoretical inquiry. Tenets of realism will be examined by translating the theoretical questions into more measurable indicators, such as: Are judicial decisions considered based on rules? Are policies, principles, or proportionality acceptable in legal thinking? Are judges considered delegates of the legislator? Are judges considered to have significant discretion when interpreting the law? What are the common concepts used to define judicial reasoning? Is there an interest in the personality of the judge? Are personal or emotional expressions considered part of the judicial work? What is the fact-finding perception of law? What is the role of science in determining facts? Are gaps between laws in books addressed and recognized? Two survey versions for laypersons and jurists will be

developed, and a comparison will be conducted among the various stakeholders related to the reforms and the debate on legal formalism. The findings of this survey will provide a quantitative map of prevalent core perspectives on Israeli law in general and will enable further studies in other legal fields.

Task 4 – In-depth Qualitative Interviews: In-depth interviews with public law stakeholders, including judges (retired), lawyers, politicians, political activists, and legal academics. The qualitative study will include between 30 and 40 semi-structured interviews with stakeholders related to public law and the legal reforms debate. Using interviews as a qualitative tool enables the extraction of a thick description that provides insights into the meaning that the interviewee attaches to objective reality (Kvale, 1994). The interviews will unveil jurisprudential perceptions and will seek to capture relevant tensions: First, between the personalities and worldviews of the judges against legal compliance. Second, between concrete and general justice. Third, between the institutional interest of the Judiciary and law enforcement on other branches. The research team will interview retired justices and judges (~5); legal attorneys from the public and private sectors (~8); public law academics (~10); politicians related to the legal reforms debate (~6); activists from all sides of the legal reforms debate – promoters, opponents, settlement seekers (~8). The interviewees' various positions, roles, and professional orientations will provide a multi-perspective triangulation of pragmatic realism in Israeli law and society, creating a rich set of diverse narratives, considerations, and notions. The interviews will be conducted by the PIs, together with students in the Conflict Resolution Clinic and the Advancement of Equality Clinic, both headed by the PIs. The interviews will be co-constructed, supervised, and processed by the research coordinator who will be an expert in qualitative research. The transcriptions of the interviews which will be recorded will be analyzed and coded by using the *Atlast.ti* software. The findings will generate new insights on the legal reforms and public law in general.

Task 5 – Desk Analysis of the Legal Reforms Materials: This stage will entail analysis of the Knesset legislation bills and their explanations, alternative bill proposals, public speeches, and prominent media articles related to the reforms' debate. Research assistants will code the materials for pragmatic realist and formalist elements.

WP3 (following H3): *Theoretical and Normative Implications*

The first, second, and third tasks will generate a comprehensive picture of Israeli public law in relation to pragmatic realism. By investigating the influence of the Legal Realist Movement and assessing its impact on Israeli legal culture, the research will generate new theoretical and normative perspectives about law, politics, and the Judiciary. The fourth and fifth tasks will further enrich this general analysis by referring to the 2023 reforms debate. Constant reflection and deliberation on the research development and findings will be conducted along the research stages together with students from the Conflict Resolution and Advancement of Equality Clinic. An academic colloquium debating the empirical, theoretical, and normative findings will take place during the last year of this

project. Deliberation and dialogue among various stakeholders related to public law and the reforms will assist in further elaborating and integrating research findings, including discussing the comparative implications of it in general and for other democracies in crisis.

Preliminary results

The above-mentioned overview of issues in public law, which reflect deviation from formalism, were articulated by the first PI in various scholarly papers (Bendor 1997, 2011, 2013, 2020) and academic presentations and teaching. This study will further elaborate and examine these claims within the framework of pragmatic realism and by using empirical methodologies. An empirical coding study of legal opinions of the Supreme Court through reference to legal formalism was conducted by the second PI (Alberstein, 2012, 2019, 2021) and will be modified for the study of pragmatic realism and expanded through the use of advanced technologies, among them KDT, along this study.

Research Conditions: Personnel, Infrastructure, and Accessibility

Personnel

Ariel L. Bendor is a full professor (tenured 1998) at the Faculty of Law, Bar-Ilan University (BIU). Among his previous positions: Dean of School of Graduate Studies at BIU, Dean of Law and Dean of Students at the University of Haifa, and Chairperson of the Association for Public Law in Israel. He specializes in constitutional and administrative law and has published intensively on the links between substantive public law and adjudication in constitutional and administrative law matters in Israeli and comparative law. He was part of the Deans' Forum headed by Professor Yedidia Stern to form solutions of compromise to the reforms debate in 2023.

Michal Alberstein is a full professor (tenured 2005) and Dean of Law at BIU, specializing in jurisprudence, conflict resolution, legal formalism, and pragmatism. She was the PI of a European Research Council (ERC) consolidator grant to comparatively study the changing roles of judges in an age of vanishing trials. She has managed various research teams conducting empirical and theoretical studies.

The research team will include a project coordinator qualified in empirical methodologies, both qualitative and quantitative. Conflict Resolution and Advancement of Equality clinic students supervised by their clinic coordinators will assist in conducting and processing the interviews. A data scientist will be hired to process the machine learning phase, and research assistants will help conduct the desk work and the analytical and comparative inquiry.

Accessibility and Ethics

The proposed research will be conducted at the Faculty of Law at Bar-Ilan University, which is characterized as having diverse population of students and faculty. Initiators of the legal reforms,

strong opponents of the overhaul and settlement seekers were all headed by the Bar-Ilan law faculty, and efforts to promote democratic dialogue on the controversial issues which included students and faculty were encouraged along the 2023 crisis. A few of the research tasks, as described above, will be conducted and processed together with clinic law students and faculty and will enrich legal education by contributing to an integrated theoretical and normative perspective on deep dividing controversies in the Israeli society.

During Task 3, interviews with some retired justices and senior politicians may prove challenging, yet the research team will persist in accumulating the data until saturation. Any other material is publicly accessible.

Ethical approval for the empirical work, including interviews of stakeholders, will be requested from Bar-Ilan IRB. The privacy of the interviewees will be protected by using a pseudonym or username with no tracking of information to the user. Identifiable information will be stored in an encrypted folder according to personal data protection best practices.

Expected Pitfalls and Mitigation:

Conceptual challenge #1: The concept of pragmatic realism, including the reference to the specific tenets described within this proposed research may not be controversial. In response, we will validate our claims through empirical inquiry and will fine-tune our theoretical claims alongside the development of this study.

Comparative challenge #2: The reference to American Legal Realism and its infiltration into Israeli public law may be challenging considering the differences between the two legal cultures. In response, we will focus on the research goals as delineated above and will constantly reflect on the differences between the legal systems and their implications.

Methodological challenge #3: Developing a machine-learning study of Supreme Court decisions may be challenging due to the complex theoretical questions involved. In response, a legal-tech expert will be part of the research team and will adapt the ML to train the data.

Empirical challenge #4: Integrating the data while diagnosing connections and relationships may be complicated and given to inverse interpretation, considering the mixed methods approach taken in this study. In response, each small empirical achievement in collecting data, raising consciousness, and generating knowledge during the research will be significant in itself, and a novel broad picture of contemporary Israeli public law will emerge regardless of possible diverse perspectives on its meaning. Furthermore, an empirical methodologist expert will be part of the research team and will assist in integrating the findings, including the various datasets.

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Time schedule and work-plan

Research Objective Title	Beginning	End
Task 1: Mapping and framing the public law subjects related to pragmatic realism.	11/2024	10/2025
Task 2: Empirical analysis of the entire population of constitutional and administrative law Supreme Court decisions in the years 1978-2024	04/2025	09/2026
Task 3: Legal Realism Survey	10/2025	09/2026
Task 4: In-depth qualitative interviews	10/2024	09/2028
Task 5: Desk analysis of the legal reforms materials	10/2024	09/2028
WP3 Theoretical and Normative implications	10/2026	09/2028

Explanatory Notes:

The research plan's progression follows the tasks and work packages outlined in the research proposal. The project initiates with the analytical work involving mapping and framing relevant public law subjects. In the first year, preparation for data mining will commence, and after six months, the data scientist will begin this task, encompassing data processing and output framing, expected to span a year and a half.

A research institute such as Geo-Cartography will conduct the legal realism survey, inclusive of processing outcomes and discussing their significance, estimated to take about one year. Tasks 4 and 5, focusing on the legal reforms debate, will be carried out by the research coordinator and clinic students throughout the project's duration.

Theoretical integration of research findings, along with writing papers or a book, will be undertaken by the project team during the final two years of the project.

Budget details

Personnel

Name (last, first)	Role in project	% time devoted	Salaries (in NIS)			
			1st year	2nd year	3rd year	4th year
Bendor Ariel	PI	25	0	0	0	0
Alberstein Michal	PI	25	0	0	0	0
To be named	Project Coordinator	50	60,000	60,000	60,000	60,000
To be named	Research assistants	40	30,000	30,000	30,000	30,000
Sari Luz-Kanner	Clinic coordinator	15	33,000	33,000	33,000	33,000
Shavit Rissin	Clinic coordinator	15	33,000	33,000	33,000	33,000
Total Personnel			**156,000**	**156,000**	**156,000**	**156,000**

Justification for requested Personnel:

The two PIs will supervise both the empirical and theoretical work and will write the papers resulting from the proposed research. The research coordinator, a postdoctoral researcher, will oversee both the administrative aspects and the substantive phases of the project's development. They will actively participate in writing the papers or books generated during the research and its progression. Additionally, they will collaborate in the interview phase alongside the clinic students.

The research assistants will comprise excellent LLB students tasked with reviewing relevant literature and assisting in conducting theoretical and analytical work. The clinic coordinators will support the empirical work, particularly regarding the study of the reforms debate, by coordinating interviews and focus groups.

Materials

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Total Materials	**0**	**0**	**0**	**0**

Justification for requested Materials:

Research Tools

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Total Research Tools	**0**	**0**	**0**	**0**

Justification for requested Research Tools:

Services

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Data scientist consultant	30,000	30,000	30,000	5,000
Survey research institute	10,000	30,000	5,000	0
Total Services	**40,000**	**60,000**	**35,000**	**5,000**

Justification for requested Services:

The data scientist will be an expert in legal tech and will assist in conducting the data mining of the Israeli Supreme Court cases outlined in Task 2. The survey research institute will aid in constructing, distributing, and processing the legal realism survey outlined in Task 3.

Other Expenses

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Travel to interviews	3,000	3,000	3,000	0
Total Other Expenses	**3,000**	**3,000**	**3,000**	**0**

Travels of graduate students and postdoctoral fellows, towards their participation in conferences

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Conferences travel for students	0	3,000	6,000	6,000
Total Travels of graduate students and postdoctoral fellows, towards their participation in conferences	**0**	**3,000**	**6,000**	**6,000**

Justification for requested Other Expenses:

Students will participate in conferences related to the research project.

Computers

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Personal computer for the researcher	12,000	0	0	0
Personal computer for students/research assistants	6,000	0	0	0
Software	3,000	0	0	0
Peripherals	3,000	1,000	1,000	1,000
Cloud computing	600	600	600	600
Total Computers	**24,600**	**1,600**	**1,600**	**1,600**

Justification for requested Computers:

Laptops and tablets will be necessary for the research team, including the coordinator. A license for the Atlas.ti software will be required to process the qualitative data. Printers, scanners, and other relevant peripherals will be utilized for the project. Additionally, a Dropbox storage fee will be necessary for both the PIs and the research team.

Miscellaneous

Item	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Publication charges in scientific journals (including editing and translation)	0	3,000	11,000	11,000
Memberships in scientific associations	500	500	500	500
Internet Connection (office/lab only)	0	0	0	0
Professional literature	0	0	0	0
Photocopies and office supplies	1,000	1,000	1,000	1,000
Total Miscellaneous	**1,500**	**4,500**	**12,500**	**12,500**

Justification for requested Miscellaneous:

Submitting publications to law reviews through Scholastica requires a submission fee. Additionally, membership in academic associations such as Law and Society and ICON-S necessitates annual fees.

Budget Summary

	Requested sums (in NIS)			
	1st year	2nd year	3rd year	4th year
Personnel	156,000	156,000	156,000	156,000
Research Tools & Materials	0	0	0	0
Services	40,000	60,000	35,000	5,000
Other Expenses	3,000	6,000	9,000	6,000
Computers	24,600	1,600	1,600	1,600
Miscellaneous	1,500	4,500	12,500	12,500
Overhead	38,267	38,777	36,397	30,787
Equipment (no overhead on this item)	0			
Total budget	**263,367**	**266,877**	**250,497**	**211,887**
Annual average	**248,157**			
Infrastructure In Universities	0			

Curriculum Vitae

Name: Bendor Ariel

A. Academic Background

Date (from-to)	Institute	Degree	Area of specialization
1990-1994	Hebrew University of Jerusalem	L.LD	Law, Supervisor: Yitzchak Zamir
1984-1988	Hebrew University of Jerusalem	LL.B., cum laude	Law

B. Previous Employment

Date (from-to)	Institute	Title	Research area
2008-present	Faculty of Law, Bar-Ilan University	Full Professor	Law
2001-2008	Faculty of Law, University of Haifa	Associate Professor	Law
1995-2001	Faculty of Law, University of Haifa	Senior Lecturer	Law
1992-1995	Faculty of Law, University of Haifa	Tutor	Law

C. Grants and Awards Received Within The Past Five Years

Date (from-to)	Research Topics	Funding Organization	Total (in NIS)
2019	Award: Gorny Prize for Significant Contribution to Public Law in Israel	Gorny Prize for Significant Contribution to Public Law in Israel	0
Comments	Gorny Prize for Significant Contribution to Public Law in Israel		
2019	Legislative Research and Comarative Law	Harry and Michael Sacker Institute	4000
Comments			
2018	Jewish and Democratic Law	Manomadim Center for Jewish and Democratic Law	0
Comments			

ARIEL L. BENDOR – LIST OF PUBLICATIONS

Publications marked with an asterisk **(*) were cited in decisions of the Supreme Court of Israel**

Books

In Hebrew

Author

1. THE HATMAKER: TALKS WITH JUSTICE AHARON BARAK (2009) – coauthored with Zeev Segal
2. BASIC LAW: THE ARMY (2000) – coauthored with Mordechai Kremnitzer *

Editor

1. ISRAELI CONVENTION: 75 REFLECTIONS ON THE FUTURE OF ISRAEL (2023) – coedited with Yaron Kanner & Shahar Lifshitz
2. JUSTICE EDNA ARBEL JUBILEE VOLUME (2022) – coedited with Shelly Aviv Yeini, Dorit Beinisch, Hadar Dancig-Rosenberg & Keren Miller *
3. MORDECHAI KREMNITZER JUBILEE VOLUME ON PUBLIC AND CRIMINAL LAW (2017) – coedited with Khalid Ghanayim & Ilan Saban *
4. JUSTICE ITZHAK ZAMIR JUBILEE VOLUME ON LAW, GOVERNMENT AND SOCIETY (2006) – coedited with Yoav Dotan *

Book Chapters

In English

1. *The Constitutional Status of the Israeli Basic Laws: The* Mizrahi Bank *Decision and its Aftermath*, OXFORD HANDBOOK ON THE ISRAELI CONSTITUTION (Aharon Barak, Barak Medina & Yaniv Roznai, eds., forthcoming, 2024)
2. *Animal Law in Israel*, in OXFORD HANDBOOK ON GLOBAL ANIMAL LAW (Anne Peters, Kristen Stilt & Saskia Stucki eds., forthcoming, 2024)
3. *The Constitutional Significance of the Jewishness of Israel*, in THE ISRAELI NATION-STATE: POLITICAL, CONSTITUTIONAL, AND CULTURAL CHALLENGES 118 (Fania Oz-Salzberger & Yedidia Stern eds., 2014) [German translation: *Die Verfassungsrechtlich Bedeutung Des Jüdischen Charakters Israels*, DER ISRAELISCHE NATIONALSTAAT: POLITISCHE, VERFASSUNGSRECHTLICHE UND KULTURELLE HERAUSFORDERUNGEN 159 (Fania Oz-Salzberger und Yedidia Stern eds., translated from English by Clemens Heni, 2017)
4. *Are Immigration Rights Constitutional Rights in Israel*, in CONTEMPORARY CHALLENGES TO THE NATION STATE: GLOBAL AND ISRAELI PERSPECTIVES 175 (Anita Shapira & Yedidia Stern eds., 2014)
5. *The Purpose of the Israeli Constitution*, in ISRAELI CONSTITUTIONAL LAW IN THE MAKING – COMPARATIVE AND GLOBAL PERSPECTIVES 41 (Gideon Sapir, Aharon Barak & Daphne Barak-Erez eds., 2013)

In Hebrew

6. *Ingathering of the Exiles*, in COMMENTARY ON THE BASIC LAW: ISRAEL – THE NATION STATE OF THE JEWISH PEOPLE 389 (Yuval Shany & Yedidia Z. Stern eds., 2023)
7. *Judicial Review of the Legislative Process*, in JUSTICE SALIM JOUBRAN JUBILEE VOLUME 43 (Aharon Barak, Gad Barzilai, Dorit Rubinstein and Mohammed S. Wattad eds., 2023)
8. *Towards an Israeli Convention: The Tree, the Trunk, and the Branches*, in ISRAELI CONVENTION: 75 REFLECTIONS ON THE FUTURE OF ISRAEL 257 (Yaron Kanner, Shahar Lifshitz & Ariel L. Bendor eds., 2023) – coauthored with Yaron Kanner & Shahar Lifshitz
9. *The Boundaries of Constitutional Equality*, in GUARDIANS OF THE WALLS: THE HIGH COURT OF JUSTICE AND THE ULTRA-ORTHODOX SOCIETY 165 (Gideon Sapir & Haim Zicherman eds., 2023)

10. *The Uniqueness of Justice Edna Arbel*, in JUSTICE EDNA ARBEL JUBILEE VOLUME 45 (Shelly Aviv Yeini, Dorit Beinisch, Ariel L. Bendor, Hadar Dancig-Rosenberg & Keren Miller eds., 2022)
11. *The Substantive Applicability of Basic Laws*, in JUSTICE ELYAKIM RUBINSTEIN JUBILEE VOLUME 945 (Aharon Barak, Miriam Marcowitz-Bitton, Rinat Sopher & Ayala Procaccia eds., 2022) – coauthored with Nadav Dagan
12. *Views on Prostitution: Law and Painting*, in JUSTICE JACOB TURKEL JUBILEE VOLUME 605 (Aharon Barak, Karin Carmit Yefet & Elyakim Rubinstein eds., 2020) – coauthored with Shulamit Almog
13. *Emergency Situations*, in CHIEF JUSTICE DORIT BEINISCH JUBILEE VOLUME 419 (Keren Azulai, Ittai Bar-Siman-Tov, Aharon Barak & Shahar Lifshitz eds., 2018)
14. *Israel as a Jewish State: The Constitutional Significance*, in JUSTICE STRASBERG-COHEN JUBILEE VOLUME 149 (Aharon Barak, Yitzhak Zamir, Avner Cohen & Moran Savorai eds., 2017) *****
15. *The Constitutional Status of the Criminal Law as the Last Resort Principle*, in JUSTICE ELIYAHOO MAZZA JUBILEE VOLUME 373 (Aharon Barak, Ayala Procaccia, Sharon Hannes & Raanan Giladi eds., 2015) – coauthored with Hadar Dancig-Rosenberg
16. *Human Rights of Children*, in ITZHAK ZAMIR JUBILEE VOLUME ON LAW, GOVERNMENT AND SOCIETY 93 (Ariel L. Bendor & Yoav Dotan eds. 2006) – coauthored with Shulamit Almog
17. *Equality and Governmental Discretion: On Constitutional and Administrative Equality*, CHIEF JUSTICE SHAMGAR JUBILEE VOLUME 287 (Articles – part A, Aharon Barak chief ed., 2003) *****
18. *The Legal Status of Basic Laws*, in JUSTICE BERENSON JUBILEE VOLUME 119 (vol. II, Aharon Barak & Chaim Berenson eds., 2000) *****
19. *Political Parties: A Matter of Law*, THE DEMISE OF PARTIES IN ISRAEL 274 (Dany Korn ed., 1998)
20. *Freedom of Fertility as a Basic Human Right*, in UNUSUAL PREGNANCY 115 (Shulamit Almog & Avinoam Ben-Ze'ev eds., 1996) – coauthored with Shulamit Almog *****
21. *Case-Law of Political Parties in Israel*, THE PARTIES ACT IN ISRAEL: BETWEEN A LEGAL FRAMEWORK AND DEMOCRATIC NORMS 63 (Dan Avnon ed., 1993)

Articles

In English

22. *Standing of Public Interest Organizations in Israel*, 31 TRANSNAT'L L. & CONTEMP. PROBS. 195 (2022)
23. *Human Dignity as a Chameleon*, 5 CARDOZO INT'L & COMP. L. REV. 739 (2022) – coauthored with Michal Tamir
24. *The Roberts Court, State Courts, and State Constitutions: Judicial Role Shopping*, 30 J.L. & POL'Y 1 (2021) – coauthored with Joshua Segev
25. *Is There a Countermajoritarian Difficulty in Israel? An Empirical Study*, 53 GEO. WASH. INT'L L. REV. 1 (2021) – coauthored with Chen Shaham-Assia
26. *Charming Betsy and the Constitution*, 53 CORNELL INT'L L.J. 529 (2020) – coauthored with Shelly Aviv Yeini
27. *The Israeli Judiciary-Centered Constitutionalism*, 18 INT'L J. CONST. L. 730 (2020)
28. *Prior Restraint in the Digital Age*, 27 WM. & MARY BILL RTS. J. 1155 (2019) – coauthored with Michal Tamir
29. *Regulation and the Separation of Powers*, 28 S. CAL. INTERDISC. L.J. 357 (2019) – coauthored with Sharon Yadin
30. *Views on Prostitution*, 30 HASTINGS WOMEN'S L.J. 3 (2019) – coauthored with Shulamit Almog
31. *The Supreme Court as a Babysitter: Modeling* Zubik v. Burwell *and* Trump v. International Refugee Assistance Project Rights, 2018 MICH. ST. L. REV. 373 – coauthored with Joshua Segev
32. *Animal Rights in the Shadow of the Constitution*, 24 ANIMAL L. REV. 99 (2018) – coauthored with Hadar Dancig-Rosenberg

33. *Unconstitutional Criminalization*, 19 NEW CRIM. L. REV. 171 (2016) – coauthored with Hadar Dancig-Rosenberg
34. *How Proportional is Proportionality?*, 13 INT'L J. CONST. L. 530 (2015) – coauthored with Tal Sela
35. *The Reciprocal Engulfment of Law and Ethics in Israel: The Case of Appointments to Senior Positions*, 23 TRANSNAT'L L. & CONTEMP. PROBS. 229 (2014) – coauthored with Michal Tamir
36. *The Constitutional Status of Human Dignity in Germany and Israel*, 44 ISR. L. REV. 25 (2012) – coauthored with Michael Sacks
37. SYMPOSIUM: JUSTICE AHARON BARAK, *The Judicial Discretion of Justice Aharon Barak,* 47 TULSA L. REV. 465 (2011) – coauthored with Zeev Segal
38. SYMPOSIUM: JUSTICE AHARON BARAK, *The Relevance of the Discourse of Judicial Activism v. Judicial Restraint*, 47 TULSA L. REV. 331 (2011)
39. *Justiciability of the Israeli Fight against Terrorism*, 39 GEO. WASH. INT'L L. REV. 149 (2007)
40. *Is It a Duck? On the Israeli Written Constitution*, 6 YALE ISR. J. 53 (Spring 2005)
41. *The Israeli Constitution and the Fight against Terror*, 11 CONST. FORUM 37 (2003)
42. *Conceptualizing* Yahoo! v. L.C.R.A*.: Private Law, Constitutional Review and International Conflict-of-Laws*, 25 CARDOZO L. REV. 2089 (2004) – coauthored with Ayelet Ben-Ezer
43. *On Aristotelian Equality, the Fundamental Right to Equality, and Governmental Discretion*, 8 REV. CONST. STUD. 1 (2003)
44. *The UN Convention of the Rights of the Child Meets the American Constitution: Toward a Supreme Law of the World*, 11 INT'L J. CHILDREN'S RTS. 273 (2003) – coauthored with Shulamit Almog
45. *The Constitution and Conflict-of-Laws Treaties: Upgrading the International Comity*, 29 N.C. J. INT'L L. & COM. REG. 1 (2003) – coauthored with Ayelet Ben-Ezer
46. *Constitutionalism and Trust in Britain: An Ancient Constitutional Culture, A New Judicial Review Model*, 17 AM. U. INT'L L. REV. 683 (2002) – coauthored with Zeev Segal
47. *Investigating the Executive Branch in Israel and in the United States: Politics as Law, The Politics of Law*, 54 U. MIAMI L. REV. 193 (2000)
48. *Parties in Israel: Between Law and Politics*, 1 SAN DIEGO INT'L L.J. 101 (2000)
49. *Prior Restraint, Incommensurability, and the Constitutionalism of means*, 86 FORDHAM L. REV. 289 (1999)
50. *Are there Any Limits to Justiciability?*, 7 IND. INT'L & COMP. L. REV. 311 (1997)

In Hebrew

51. *The Israeli Attorney General: Between Opinions and Representation*, BAR-ILAN L. STUD. (forthcoming, 2024)
52. *Freedom of Expression in Online Media: Reexamining the Prior Restraint Doctrine*, IDC (REICHMAN U.) L. REV. (forthcoming, 2024) – coauthored with Michal Tamir
53. *Utopia, Law, and Justice Mishael Cheshin*, IDC. (REICHMAN U.) L. REV. (forthcoming, 2024) – coauthored with Shulamit Almog
54. *Jubilee to the Hebrew University Law Journal: Changes in the Habits of Legal Scholarship*, 50 HEBREW U. L.J. 503 (2021) – coauthored with Hadar Dancig-Rosenberg
55. *Judicial Discretion: The Third Age*, 46 HEBREW U. L.J. 605 (2017) – coauthored with Tal Sela *****
56. *Constitutional Rights and Criminal Law*, 17 U. HAIFA L. & GOVERNMENT J. 325 (2016) – coauthored with Hadar Dancig-Rosenberg *****
57. *Ripeness and More*, 8 HEBREW U. L.J. ONLINE 33 (2016)
58. *The Constitutional Status of Victim Rights*, 36 TEL AVIV U. L. REV. 605 (2015)
59. *Appointments to Senior Positions in Israel: On the Reciprocal Engulfment of Law and Ethics*, 17 IDC (REICHMAN U.) L. REV. 409 (2014) – coauthored with Michal Tamir
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75. *The Attorney-General: The Law and the Government*, 44 ISR. BAR J. 423 (1999) – coauthored with Zeev Segal *****
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86. *Criminal Offences and Prior Restraint*, 3 ISR. J. CRIM. JUSTICE 240 (1992)
87. *Review of Recent Supreme Court Decisions*, 1 U. HAIFA L. & GOVERNMENT J. 213-221, 509-531 (1992-93)
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96. *International Legitimacy and the Politics of Security: The Strategic Deployment of Lawyers in the Israeli Military*, by Alan Craig, 29 ISR. STUDS. REV. 155 (2014)

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98. *On Law, Government and Society: A Discussion with Itzhak Zamir*, in ITZHAK ZAMIR JUBILEE VOLUME ON LAW, GOVERNMENT AND SOCIETY 15 (Ariel L. Bendor & Yoav Dotan eds., 2006) – comoderator, with Yoav Dotan
99. *A Judge and a Writer – A Conversation with Itzhak Englard and Abraham B. Yehoshua*, 18 BAR-ILAN L. STUD. 17 (2002) – comoderator, with Shulamit Almog

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100. *Dalia Dorner – Memories*, in JUSTICE DALIA DORNER JUBILEE VOLUME 15 (Shulamit Almog, Dorit Beinisch & Yaad Rotem eds. 2009) – editing based on transcripts of conversations with Shulamit Almog, Yedidia Stern and Ariel L. Bandor

Curriculum Vitae

Name: Alberstein Michal

A. Academic Background

Date (from-to)	Institute	Degree	Area of specialization
1997-2000	Harvard University	SJD	Law: Dispute Resolution and Jurisprudence Supervisor: Prof Duncan Kennedy
1996-1997	Harvard University	LLM	Law
1990-1993	Tel Aviv University	BA	Philosophy ((Magna cum Laude)
1989-1993	Tel Aviv University	LLB	Law (Magna cum Laude)

B. Previous Employment

Date (from-to)	Institute	Title	Research area
10.2000-Current	Bar Ilan University	Full Professor (since 2015)	Law, jurisprudence, dispute resolution, mediation
2018	Loyola Law School, Los-Angeles Summer Program	Adjunct Professor	Theory and Practice of Comparative Judicial Conflict Resolution
2015	Whittier Law School Summer Program	Adjunct Professor	ADR in Israel
2015	Monash University Prato, Italy	Adjunct Professor	Law and Alternatives to Law in Israel
2013	Fordham Law School	Visiting International Professor	Non-Adversarial Justice
2012, 2015	Monash University	Adjunct Professor	Mediation and Law: from Problem Solving to Narrative Building
2011	Heidelberg University	Adjunct Associate Professor	Law and Alternatives to Law in Israel
2009	Tel-Aviv University, International program dispute resolution and mediation	Adjunct Professor	Alternative Dispute Resolution
2008	University of Puerto Rico School of Law	Adjunct Professor	Mediation and its Multi- Cultural Aspects
2007- present	Whittier Law School	Adjunct Professor	Alternative Dispute Resolution
2006	Cardozo Law School	Adjunct Professor	Multicultural Dispute Resolution
2005-2006	Fordham Law School	Visiting Associate Professor	Alternative Dispute Resolution; Multicultural Dispute Resolution
2000-2006	Law School, academic studies at the College of Management	Adjunct Lecturer	Dispute resolution
1999-2000	Harvard Law School	Byes Fellow	Law
1999	Harvard Law School	Teaching assistant	Law
1997-1998	Law School, academic studies at the College of Management	Lecturer	Jurisprudence and Administrative Law; Dispute Resolution
1994-95	Supreme Court of Israel	Clerkship in the chamber of Justice Dalia Dorner	Law
1993-94	Attorney General's Office - Tel-Aviv District	Clerkship	Law
1993-96	Tel-Aviv University, Faculty of Law	Teaching assistant	Jurisprudence; Administrative law

1994-1996	Law School, academic studies at the College of Management	Teaching assistant, Research Assistant	Jurisprudence; Administrative law; Criminal law

C. Grants and Awards Received Within The Past Five Years

Date (from-to)	Research Topics	Funding Organization	Total (in NIS)
2022	MULTIDOOR: Diagnostic Screening Platform to Facilitate Conflict Resolution	ERC	607155
Comments			
2021	Data-driven MultiDoor Conflict Resolution-based Recommendation System	BIU Data Science Institute	70000
Comments			
2021	Embracing a conflict Resolution Approach for The Jewish-Democratic linkage	Israel National Academy of Sciences	65098
Comments			
2020	Theories of law and conflict resolution	Fernard Braudel Senior Fellowship, European University Institute (EUI) Fiesole, Florence	17900
Comments			
2020	Mediation Education in a multicultural school Bialik-Rogozin	Weil Award for Social Initiatives	4000
Comments			
2016-2020	Judicial Conflict Resolution (JCR): Examining Hybrids of non-adversarial Justice	ERC Consolidator Grant	5447369
Comments			

Publications

Michal Alberstein

BOOKS (AUTHOR)

1. ALTERNATIVE JUSTICE: MEDIATION, RESTORATION AND THERAPY THROUGH LEGAL MECHANISMS (University Meshuderet, forthcoming Modan Publishing, 2015) (in Hebrew)
2. JURISPRUDENCE OF MEDIATION (University of Haifa Press and Magnes) 2007. (in Hebrew)
3. PRAGMATISM AND LAW: FROM PHILOSOPHY TO DISPUTE RESOLUTION (Ashgate, 2002).

BOOKS (EDITOR)

1. TRAUMA'S OMEN: ISRAELI STUDIES IN IDENTITY, MEMORY AND REPRESENTATION (Michal Alberstein, Nadav Davidovitch, Rakefet Zalashik, eds.) Bar Ilan Law University Press and Hakibutz Hameuchad (Forthcoming 2016)
2. TRAUMA AND MEMORY: READING, HEALING AND MAKING LAW (Michal Alberstein, Nadav Davidovitch & Austin Sarat eds.) (Stanford University Press, 2007).

BOOK CHAPTERS

1. (with Limor-Gabay Egozi) "The Decline of Formalism and The Rise of Formalisms: Am Empirical Study of Fluctuations in Israeli Legal Rehtoric" forthcoming in: CONTEMPORARY LIBERALISM IN ISRAEL: BETWEEN MULTICULTURALISM CRISIS AND HOPE FOR THRIVING, IN HONOR OF MENY MAUNTER, (Tel –Aviv University Press, 2021) (in Hebrew).
2. (with Nourit Zimerman) "Judicial Conflict Resolution (JCR) in Italy, Israel and England and Wales: A Comparative Look on the Regulation of Judges' Settlement Activities" Forthcoming in COMPARATIVE DISPUTE RESOLUTION (Moscati, Roberts, and Palmer, eds.) (Edward Elgar Publishing (2020).
3. "Complexity and Reconstruction as Contemporary Legal Thought: Law–Conflict Interactions and Judicial Work" in: SEARCHING FOR CONTEMPORARY LEGAL THOUGHT, 465 (Justin Desautels-Stein & Christopher Tomlins eds., 2017) (Cambridge University Press, 2017).
4. *The Measure of Formalism in Traumatic Cases: The Court as a Therapeutic Agent* in: TRAUMA'S OMEN: ISRAELI STUDIES IN IDENTITY, MEMORY AND REPRESENTATION 279 (Michal Alberstein, Nadav Davidovitch, Rakefet Zalashik, eds.) Bar Ilan Law University Press and Hakibutz Hameuchad, 2016) (in Hebrew)

5. (with Avital Margalit) *Reconciliation in the Courtroom: On the Power and Limitations of Apology* forthcoming in IN SEARCH OF SOLIDARITY: AN ISRAELI JOURNEY 402. (Yedidia Z. Stern AND Benjamin Porat, eds.) (The Israel Democracy Institute (2014) (in Hebrew).
6. *The Measure of Formalism: Justice Dorner's Writing as a Case Study* in Dorner's Book (Shulamit Almog, Yaad Rotem and Dorit Beinish, eds., Nevo Publishing, 2009) 57. (in Hebrew)
7. *Israeli-Jewish Cultural aspects of an Event of Violence: Between Biblical Codes and Zionist Ideology*, in RESTORING JUSTICE AFTER LARGE SCALE VIOLENT CONFLICTS 252 (Ivo Aersten, Jana Arsovska, Holger-C.Rohne, Marta Valinas eds., (Willen Punlishing, 2008).
8. *Forgiveness across Cultures: Genocide in the West and elsewhere* in MEMORIA Y RECONSTRUCCION DE LA PAZ: ENFOQUES MULTIDISCIPLINARES EN CONTEXTOS MUNDIALES 59 (Rosa M Medina Domenech et al, 2008) (with Nadav Davidovitch) *Trauma and Memory: between collective and subjective experiences" (Trauma y Memoria: entre la experencia individual y colectivia)*, MEMORIA Y RECONSTRUCCION DE LA PAZ: ENFOQUES MULTIDISCIPLINARES EN CONTEXTOS MUNDIALE 41 (Rosa M Medina Domenech, Beatriz Molina Rueda, Maria Gracia-Miguel, eds., Universidad de Granada, Catarara, 2008) (in Spanish)
9. *The Secrets of Mediation and Trauma in Contemporary film: A Search from the Perspective of Restorative Justice*, TRAUMA AND MEMORY: READING, HEALING AND MAKING LAW 263 (Austin Sarat, Nadav Davidovitch, Michal Alberstein, eds., Stanford University Press, 2007)
10. *Trauma and Memory: Between Individual and Collective Experiences*, TRAUMA AND MEMORY: READING, HEALING AND MAKING LAW 3 (Austin Sarat, Nadav Davidovitch, Michal Alberstein, eds., Stanford University Press, 2007) (with Austin Sarat and Nadav Davidovitch)
11. *Mediating Paradoxically: Complementing the Paradox of 'Relational Autonomy' with the 'Paradox of Rights' in* THINKING MEDIATION, IN PARADOXES AND INCONSISTENCIES IN LAW 225 (Hart Publishing, Oren Perez & Gunther Teubner eds., 2006)
12. *On Biases, Bounded Rationality and Other Voices: Cultures of Mediation and Law,* in TRIALS OF LOVE 657 (Orna Ben Naftali, Hannah Naveh, eds., Ramot, 2005) (in Hebrew)

ARTICLES

1. (with Limor Gabay-Egozi and Bryna Bogoch) “What’s with Formalism? An Empirical Study of Various Predictors and Profiles of Supreme Court Rhetoric” forthcoming in SOUTHERN CALIFORNIA INTERDISCIPLINARY LAW JOURNAL 2021.
2. (with Paola Lucarelli, Nofit Amir, Dana Rosen, Hadas Cohen) “Fitting the Forum to The Fuss while Seeking the Truth: Lessons from judicial Reforms in Italy.” Forth coming In OHIO STATE JOURNAL ON CONFLICT RESOLUTION 2020.

3. (with Béatrice Coscas-Williams) “Un palais de justice aux multiples portes “: La diversité des réponses pénales (Israël, Italie, France) Les cahiers de la justice # 2020/1, 87.
4. (with Hadas Cohen) “Multilevel Access to Justice in a World of Vanishing Trials” forthcoming in FORDHAM URBAN LAW JOURNAL 2020.
5. (With Sari Luz Kanner, Dana Rosen and Yosef Zohar) “Managerial Judicial Conflict Resolution (JCR) of Plea Bargaining: Shadows of Law and Conflict Resolution” 22 NEW CRIMINAL LAW REVIEW. 492 (2019).
6. (With Béatrice Coscas-Wiliams) “A Patchwork of doors: Accelerated Proceedings in Continental Criminal Justice systems” 22 NEW CRIMINAL LAW REVIEW. 585 (2019).
7. (with Limor Gabay-Egozi and Bryna Bogoch) “Between Formalism and Discretion: Measuring Trends in Supreme Court Rhetoric” 47 HOFSTRA LAW REVIEW. 1103 (2019).
8. (with Amos Gabrieli) “Conflict Resolution Practices in The Courtroom: Between The Adversarial and The Inquisitorial” forthcoming in BAR ILAN LAW STUDIES 2019 (in Hebrew).
9. (with Shira Rosenberg) “The Sexual Harassment Commissioner role as Therapy in the Shadow of Authority: between Victims and Offenders” forthcoming in BAR-ILAN LAW STUDIES 2019 (in Hebrew).
10. (with Amos Gabrieli and Nourit Zimerman) “Authority-based Mediation” 20 CARDOZO J. CONFLICT RESOL. 1 (2018).
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12. (with Ayelet Sela and Nourit Zimerman) “Judges as Gatekeepers and The Dismaying Shadow of The Law: Courtroom Observation of Judicial Settlement Practices,” 24 HARVARD NEG LAW REV. 83 (2018).
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20. “Judicial Conflict Resolution (JCR): A New Jurisprudence for Emerging Judicial Practice” 16 CARDOZO LAW JOURNAL OF CONFLICT RESOLUTION (2015) 1.
21. “The Success–Failure Anxiety in Conflict Resolution: Between Law, Narrative and Field Building” forthcoming in International JOURNAL OF CONFLICT ENGAGEMENT AND RESOLUTION 2014.
22. “The Law of Alternatives: Conflict Resolution as The Art of Reconstruction” 70 STUDIES IN LAW POLITICS AND SOCIETY (2016) 149-180.
23. “Experimenting with Conflicts Constructively: In Search of Identity for the Field of Conflict Resolution” in 1 INTERNATIONAL JOURNAL OF CONFLICT ENGAGEMENT AND RESOLUTION (2013) 135.
24. "The Mediation Revolution in Israel: Current Mapping of Intersections of Conflict Resolution and Law", forthcoming in THE ISRAEL JOURNAL ON CONFLICT RESOLUTION 2013 (in Hebrew)
25. (with Jay Rothman) "Individuals, Groups, Intergroups: Theorizing about The Role of Identity in Conflicts", 28 OHIO ST. J. ON DISP. RESOL. 631 2013
26. “Measuring Legal Formalism: Reading Hard Cases with Soft Frames” 57 STUDIES IN LAW, POLITICS AND SOCIETY **(** 2012) 2003.
27. (with Amy Cohen) *Progressive Constitutionalism and Alternative Movements in Law*, 72 OHIO ST. LAW JOURNAL 1083 (2011)
28. *The Measure of Legal Formalism: Cultures and Frames of Israeli Legal Writing* 27 BAR ILAN LAW STUDIES (2012) 349 (in Hebrew)
29. *Fast Justice v. Sublime Justice: Anatomy of Practice Theory Relationship in Conflict Resolution* ALEI MISHPAT (forthcoming, 2011) (in Hebrew)
30. (with Nadav Davidovitch) *Apologies in the Health Care System: From Clinical Medicine to Public Health* 74 LAW & CONTEMP. PROBS. 151 (2011)
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32. (with Nadav Davidovitch) *Therapeutic Jurisprudence and Public Health: Israeli Perspectives,* 26 BAR ILAN LAW STUDIES (2010) 549. (in Hebrew)
33. "On Hastiness and Procedural Justice at Tel Aviv Labor Court: Observations of Mediations and Litigations" 7 MAAZANEI MISHPAT (2010) 119. (in Hebrew)

34. *The Jurisprudence of Mediation: Between Formalism, Feminism and Identity Conversations* 11 CARDOZO JOURNAL OF DISPUTE RESOLUTION 1 (2009).
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36. (with Nadav Davidovitch) *The Traumatic Memories of Nazi Medical Atrocities: Moving Toward a More Focused Analysis*, 19 KOROT: THE ISRAEL JOURNAL OF THE HISTORY OF MEDICINE AND SCIENCE (2008) 105.
37. *ADR and Collective Trauma: Constructing Healing Forums*, 10 CARDOZO JOURNAL OF CONFLICT RESOLUTION 11 (2008**)**
38. (with Nadav Davidovitch) *Therapeutic Jurisprudence and Public Health: A Broad Perspective on Dialogue*, THOMAS JEFFERSON LAW REVIEW, 2008; 30: 507-533
39. *Resistance to mediation: Rights, Legal Consciousness and Multiculturalism*, 24 BAR-ILAN L. STUDIES 1 (2008). (in Hebrew)
40. *Restorative Justice as Internalization of the Role of Law: Combining Restoration with Retribution in the Film Festen* 8 CARDOZO JOURNAL OF CONFLICT RESOLUTION (2007) 405.
41. *Forms of Mediation and Law: Cultures of Dispute Resolution*, 22 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 321 (2007)
42. (with Shulamit Almog) *Law and the Humanities and Legal Education: Poetics of Interpretation,* 3 HAIFA UNIVERSITY LAW REVIEW - DIN UDVARIM 21 (2007). (in Hebrew)
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45. *Victim-Offender Mediation in the Film 'Festen': Anatomy of a Community Making Law: Strengths and Limitations,* 22 BAR-ILAN LAW STUDIES 81 (2005) (in Hebrew)
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