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Agencification and the administration of courts in Israel

Guy Lurie

The Israel Democracy Institute, Jerusalem, Israel

Amnon Reichman and Yair Sagy

Faculty of Law, University of Haifa, Haifa, Israel

Abstract

To shed a realist light on court administration and the regulation of judges in liberal-democratic countries, we conduct an empirical study of an organ that has attracted little attention: the Director of Courts in Israel – an administrative entity that "manages" the judiciary. In important respects, the Director may be regarded as a regulator of judges, thus assessment of judicial independence in Israel is incomplete without recognizing its presence. The institution of the Director has undergone agencification, which entailed augmentation of its capacities and an evolution in mindset regarding the implementation of these capacities. As a result, its powers, mode of operation, and organization have fundamentally transformed over time, as has the regulatory terrain within which judges conduct their business. By introducing novel indicators for assessment and applying them in an unfamiliar context, this paper offers important theoretical contributions to studies of the regulation and administration of courts and judges, and agencification.

Keywords: administration of courts, agencification, regulatory capacities, history of Israeli judiciary, judicial independence, regulation of judges.

1. Introduction

How is the daily working environment of judges "administered?" This question is not only important to promote the efficient allocation of resources toward dispensation of the judicial workload, but also bears on the independence of the individual judge. The institution that has direct control over the daily working conditions of a judge (or of a court) has power over that judge (or over the court). It is not surprising, therefore, that we witness the flourishing of schemes directed at placing judges and judicial councils at the center of court administration, inter alia with a view to tackling persistent challenges to judicial independence and accountability (Garoupa & Ginsburg 2009, 2015; Piana 2010; Pozas-Loyo & Ríos-Figueroa 2011; Ingram 2012). According to the literature, such schemes coincide with the overall increase of judicial power, as courts purportedly wade through turf traditionally dominated by elected powers (e.g. Hirschl 2004). The implied relationship is clear: greater judicial oversight over court administration is necessary in order to prevent pushbacks (or outright retaliations) via controlling judicial resources by the Executive (or the legislatures), unhappy with the manner in which judicial review is exercised. Conversely, critics worry about the overconcentration of power in the judiciary in a manner that may raise accountability concerns (Shetreet 2009).

The literature – especially the already robust literature on the constitutional principle of judicial independence (e.g. Burbank & Friedman 2002; McNollgast 2006; Shetreet 2009; Melton & Ginsburg 2014; Rios-Figueroa & Staton 2014) – naturally keeps a close watch on these developments. Commentators have pointed out that through court administration chief justices, presidents of courts, and councils for the judiciary may at times pose a threat to, rather than protect, the independence of individual judges (Popova 2012, p. 135; Kosař 2016, p. 420, 2017).

Correspondence: Yair Sagy, Faculty of Law, University of Haifa, 199 Abba Khoushy Ave. Mount Carmel, Haifa, 3498838, Israel. Email: ysagy@law.haifa.ac.il

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But a closer look reveals that something is still amiss. Firstly, in tandem with traditional discussions on the Judiciary's "external" inter-branch independence, this latter intra-judiciary perspective is also in the habit of focusing on the "usual suspects," notably, councils for the judiciary (when they are dominated by judges), chief justices, and presidents of courts. Thus, generally, the literature is not sufficiently cognizant of the role that the bureaucratic apparatus in charge of courts' administration plays *in its own right* in this context. Secondly, the focus is often on clear-cut transformations – a constitutional decision (e.g. the *Remuneration reference* in Canada), the establishment of a new institution, or the transfer (often via legislation) of administrative powers to a certain agency (e.g. section 25 of the Judges Act in Canada). Less has been written on the gradual processes on the ground (often without much constitutional, statutory, or judicial fanfare) by which agencies assume (or release) such powers, with the consequence of altering the regulatory map and with it the overall structure of checks and balances. To date, the literature does not sufficiently consider the potential independent role that might be played by court administrations *directly* controlling judges' environment, and the potential impact gradual transformation of the administrations' organizational capacities may have on judges' "internal" independence. It is this segment that stands at the focus of our research here.

Granular attention to the players and processes that systemically affect the daily lives of judges is important. Neo-institutionalism has long taught us that the concrete institutional design enveloping judges might affect their behavior in performing their judicial roles (e.g. Gillman & Clayton 1999; Sommer 2010; Weinshall-Margel 2011; Sagy 2015).[1] An inquiry into the independence of courts and judges must therefore map the players that shape the judicial environment, their modus operandi, and their relative power over the production of justice. It must also identify the variables affecting such relative power over time.

Considering these insights, this paper examines the Administration of Courts in Israel, and its head, the Director of Courts, both significantly understudied to date.[2] Our attention was drawn to the role of the Director in the aftermath of the tragic suicide of an Israeli magistrate court judge following discussions regarding his failure to hand down timely decisions. The Director played a central, albeit informal, role in these discussions (Goldberg 2011). Other anecdotal data suggested that the Administration has begun to play a significant role in regulating the production of justice in Israel (Agmon-Gonen 2005).

The Israeli case illustrates the dynamic nature of agencies, and in particular the process of *agencification*, whereby agencies organically evolve. In contrast to other jurisdictions, such as reforms in the Netherlands or Britain in which the state decided to create or reform the agency in charge of the regulation of justice (Langbroek 2008; Woodhouse 2007), the Government of Israel has made no such discernable decision. As detailed here for the first time, without any explicit act on the Government's part, the Director has significantly evolved from a single bureaucrat to a nearly fully-fledged regulatory agency – not only in size, but also in the scope of matters it addresses and the functions it performs. As the current output of the Director illustrates, today it is concerned with issues ranging from judicial conflicts of interest to the size of retired Chief Justices' photo frames (Director's Directive 1-09, 1–10).

Three preliminary points should be made. First, agencification is a process, and we do not claim that it has been "completed." Rather it has moved along the agencification-continuum. Second, conceptually, given its powers and the unique space it occupies in the administrative fabric, we propose viewing the Director as performing a *regulatory* function vis-à-vis judges. While the term "regulation" most commonly denotes the application of state powers to an industry or private organizations, a more nuanced approach locates such functions also *within* the public sector. In the context of the production of justice, we will argue, the Director (and perhaps its equivalent in other jurisdictions) acts as a regulator, and thus important issues pertaining to regulation may be raised in this context. Third, in this paper we do not endeavor to offer an all-encompassing explanation of the causes of the agencification. As will be further noted, processes related to global trends or Israeli legal culture may very well have played a role. It may also be safe to assume that the agencification was at least partially aligned with the interests of the Chief Justice of the Israeli Supreme Court and, to an extent, with the Justice Minister's, as a way of managing the built-in tension between these entities over managerial control. At the very least, the process was made possible by such fragmentation of power, coupled with the interests of the Finance Ministry to establish a fiscally-responsible body governing the judiciary, whose powers are correlated to its performance.

Our focus here is to detail the intricacies of the process of the Administration's agencification, rather than to validate its possible roots. However one chooses to rationalize shifts in the division of power over the Judiciary among relevant constitutional players, the role of the agency that has the *actual* and *direct* impact on the various aspects of the production of justice cannot be ignored. Specifically, as our test case will illustrate, even assuming that the Israeli Chief Justice and court presidents have become more dominant in the management of courts over the years, at the expense of the Executive, the manner in which this shift has been translated in reality – and its potential influence on judicial independence – depends in important respects on the agencification that the Administration underwent. We further demonstrate through indicators developed herein that while the Director often acts as the long arm of the Israeli Chief Justice, there are areas where he acts independently, especially in the day-to-day management of the courts. We show this, for instance, through his lack of accountability to the Chief Justice or to anyone else in significant spheres of court administration. Furthermore, bringing the presence of the agencified Administration to light offers a window to the unique goods the Executive (i.e. the Justice Ministry and the Finance Ministry) are able to receive – goods that were otherwise more difficult to obtain without such agencification. The data and analysis the Administration produces for the Executive (upon the latter's request), as well as its monitoring and enforcement capacities, are politically valuable, to allow the relevant Executive units to maintain a degree of control.

On a more general level, in this paper we develop a methodology for evaluating the relative capacities of regulatory agencies, and the diachronic transformation of these capacities. Such tools, we hope, will advance inter-agency analysis, and may be relevant to public law more generally, as such capacities could inform doctrines governing the exercise of legal powers.

The paper proceeds as follows. In the Section II, we provide an overview of the institution of the Director of Courts in Israel. Section III will revisit the concept of "agencification" and will offer an innovative synthesis of indicators to be used in the assessment of general agencification processes and, more specifically, of court administration's bureaucratic "autonomy." In Section IV we apply the indicators presented in Section III and analyze the changes in the bureaucratic control of the Administration of Courts in Israel since its inception. In section V we discuss the implications of the findings, and propose some tentative normative implications that these changes may have in terms of internal and external independence. In section VI we conclude.

2. Overview of the administration of courts in Israel

Democracies use various institutional means to protect their judiciaries from "external" threats. Recent years have seen the emergence of councils for judiciaries, often cast as independent agencies, buffering the judiciary from its surrounding branches. They are said to safeguard the judiciary's independence while holding it accountable to the public (Bunjevac 2011; Ng 2011; Pozas-Loyo & Ríos-Figueroa 2011; Zimmer 2011; Ingram 2012; Garoupa & Ginsburg 2015).

However, such councils, as other mechanisms (e.g. the United States [US] Judicial Conference), form threats to the independence of the individual judge (*Chandler v. Judicial Council of the Tenth Circuit* 1970). Greater managerial efficacy and central institutional capacity normally create tighter reins on individual judges' conduct. A tension hence forms between the judges' independence and the mechanisms through which they are regulated by other judges or by other agencies (Agmon-Gonnen 2005; Ng 2007; Langbroek 2008, 2010; Lefever 2009; Paynter & Kearney 2010; van Dijk & Dumbrava 2013).

Lacking a formal judicial council (Gur-Arie & Wheeler 2002), and classified as a hybrid model with both common law and continental features (Millar & Baar 1981, pp. 64–65) it is difficult to say who is ultimately responsible for the management of the Judiciary in Israel. Formally, the Minister of Justice is responsible for implementing the Courts Act 1984, and holds power over key decisions, such as the establishment of new courts and the promulgation of civil procedure rules. She is also the government member responsible for addressing parliamentary questions regarding court administration or representing the judicial system in Knesset budgetary debates. On the other hand, the Chief Justice is recognized as the head of the Judiciary (Zamir 2007, pp. 108–109). With few statutory responsibilities (Courts Law, 1984 sec. 17, 27, 77A) but many non-legislated powers, the latter conceivably carries a burden as heavy, if not heavier, than that of the Justice Minister *(Haim Netanel Ltd. v. The Justice Minister* 2007). Notably, today the Chief Justice oversees matters of court administration also through special directives she occasionally issues.[3]

In a manner similar to the developments in European jurisdictions such as France and Italy, the two most senior court administration positions that "manage" the courts within the Ministry are held by judges (Israeli Judiciary 2012). They are the Director of Courts (who heads the Administration of Courts) and his deputy, who have always been judges – notwithstanding a legal amendment made in the 1990s that made this non-obligatory (Courts Law, 1984 sec. 82). Unlike the European model, the Israeli system, following the common-law approach, allows for a greater degree of decentralization, as the various courts have traditionally enjoyed some autonomy in managing their internal affairs. Furthermore, judges in Israel are usually appointed following a career as practicing lawyers and there is no central bureaucratic apparatus, as is the case in much of continental Europe, for the education, appointment, relocation, and promotion of judges. Therefore, Israeli judges who serve in administrative capacities bring with them an approach that may differ from that of their European colleagues or the professional bureaucracy of the Ministry.

As of 1975, the Director of Courts holds the relatively high rank of District Court president. The Director neither controls the size of the courts' budget (as this matter is decided by the Budget Law enacted by the Knesset) nor has control over civil procedure rules (which are at the hands of the Justice Minister). Nevertheless, the Director today controls (exclusively or together with the presidents of courts) almost every other aspect of court administration. While it is difficult to delineate in precise detail which powers reside solely with the Director and which are shared, it is clear that the Director has a de facto strong say on a wide array of matters regularly associated with court administration (Canadian Judicial Council 2006, pp. 75–82). He also sits as a non-voting observer in the meetings of the judicial appointments and promotions committee, where he is asked about the overall assessment of candidates.

In practice, the Director serves as a liaison between the Chief Justice and the Minister of Justice. The appointment of the Director requires the consent of both (Courts Law, 1984, sec. 82A) and he is in regular contact with both, as well as with executive and legislative officials and presidents and administrators of all courts.[4]

The Administration of Courts and its head were established in 1952 after a first attempt to devise a bureaucratic structure to manage the system failed (Lurie *et al.* 2018). The roles of the Administration and the Director were originally designed with some, albeit a very modest, degree of institutional autonomy in mind, akin to the modest autonomy some other professional units within the nascent Israeli executive branches enjoy. While under the Ministry of Justice, measures of separation were put in place, as suggested by the title "Director of the Courts of Israel" and the installment of a senior and well-respected District Court judge, directly under the Minister of Justice (and not under his Chief of Staff or any other member of the civil service).

This model was ratified in several pieces of legislation as of the 1950s,[5] and left de jure unchanged, save for a 1992 amendment, which stipulated that the Director's appointment (by the Justice Minister) would henceforth need to meet with the approval of the Chief Justice (thereby solidifying the existing practice). It was also decided that the Director would no longer have to be a judge (Courts Law, 1984 sec. 82), yet to date all Directors have been (male) judges.

This is not to suggest that the 1950s model remained unquestioned. Reform initiatives attempting to give the Judiciary sole control over court administration percolated within the Judiciary throughout the decades (Shetreet 2004, pp. 235–238; Lurie *et al.*, 2018 unpublished data). These reform initiatives failed, in part because of the unwavering position of Justice Ministers that ultimately the responsibility for court administration must lie with the Justice Minister, who is accountable to the Government and the Knesset (Shetreet 1984). It appears that the overall calculus led Justice Ministers (from all parties) to the conclusion that it would be beneficial not to relinquish control to the Chief Justices. Although it placed Ministers responsible for potential failures (or underperformance), it nonetheless provided them with leverage vis-à-vis the judiciary (and with an opportunity to exercise power and receive political exposure). It also assured the Finance Ministry that fiscal over-insulation is averted, and with it the spectacle of haggling with the (respected and constitutionally protected) Chief Justice over the allocation of resources (or about reliable information regarding the needs of the system).

While Israel still operates under the 1950s model, the actual role of the Administration and the Director, as played out in practice and as backed by institutional arrangements, has changed significantly. As will be detailed in Section IV, the Administration has evolved from a rather small and limited subunit to an entirely different unit in the late 1990s – it has become an agency. It is to this process of agencification we now turn.

3. Methodological overview – Agencification

3.1. On agencification and qualified regulatory autonomy

In November 1952, the Israel State Attorney wrote a letter to the Director of Courts, in which he confided that, as revealed by state attorneys, judges in the District Court of Haifa had intentionally disregarded the Director's instructions. Not only did they ignore the Director's rules on case allocation among judges, but also took "steps to the detriment of these rules."[6] This correspondence is unthinkable today, regardless of whether judges are now above such conduct. The Director and the Administration do not need state attorneys to disclose judicial practices. The Administration's personnel provide the Director with a plethora of information on every detail of court proceedings. Thus, case allocation today is fully transparent to the Director. He would almost instantaneously know, and therefore be able to confront, instances in which his rules of conduct, guidelines, or other instruments are disregarded. Moreover, the Director of today enjoys the gravitas (institutional capital) and has at his disposal regulatory tools (such as the power to approve extra-judicial activities including teaching [Director's Directive 2-07] or paid leave for continuing education [Director's Directive 3-09]), which imply that actual public reprimand of judges for disregarding directives would be an unusual occurrence. Alienating the Director of today is a risky move.

This process of ascendance may be further illustrated by the following example: In 2005, Judge Hilla Cohen was removed from office for producing inaccurate court minutes (*The Justice Minister v. Judge Hila Cohen* 2005). Her impeachment followed rarely – perhaps singularly – used constitutional proceedings of the Judges Appointment Committee, a constitutional nine-member standing committee composed of the Chief Justice and two other justices, the Minister of Justice and another minister, two Knesset members, and two Bar representatives (Basic Law: The Judiciary, sec. 4B). This case received extraordinary media coverage (Yoaz 2005). In stark contrast, in the period 2012–2014, the Director has coordinated 13 instances of informal consensual retirement of judges. These cases – as well as their causes – remain opaque to the public and the media. The Director is able to "convince" judges to retire (with the help of the presidents of the respective courts), sometimes by reminding judges that formal proceedings are damaging to all, and sometimes by highlighting the persisting backlog in their chambers (Goldberg 2011). The formal proceedings used for the removal of judges have undisputed constitutional importance (Levinson 2006; Malleson & Russell 2006), but the informal power of the Director, although it has equal (if not greater) constitutional import, bearing directly on individual judges' tenure and promotion, remains largely under the radar.

In all likelihood, Judge Eisenberg, the first Director, would be rather astounded to learn the extent of the Director's reach into the daily lives of judges in Israel today. This Section will demonstrate that the evolution of the Director and Administration of Courts in Israel can best be understood as "agencification" – a process of "formalizing roles and missions in organizations with spatial boundaries and formal identities" (Levi-Faur 2010b) which entails augmentation of the institutional capacities of the organization, not necessarily via statutory or constitutional reforms. We argue that attention to the processes of agencification is crucial to the understanding of the actual operation of governmental units in general, and of the Director in particular.

The burgeoning literature on agencification has taken notice of the emergence of autonomous or almost autonomous regulatory bodies in many jurisdictions over the past few decades (Maggetti 2012; Verhoest 2013; Maggetti & Verhoest 2014; Trondal 2014). Particularly significant is the observation that agencification is a movement to increase agency autonomy. A change in the degree of bureaucratic autonomy of a given institution is a critical indicator that such a process has occurred.

Bureaucratic autonomy essentially refers to agencies' ability to "take sustained patterns of action consistent with their own wishes" (White 2000, pp. 94–127; Carpenter 2001; Maggetti & Verhoest 2014, p. 239), usually relying on the institutional capital at their disposal. Levi-Faur convincingly argues that an agency is autonomous when "it can shape its own preferences … independently, and … enforce its rules" (2010a, p.15).

Four preliminary points are worth noting. First, autonomy is a continuum (Gilardi & Maggetti 2010) that agencies may traverse (in each direction) upon. Second, there may be a difference between an agency's formal autonomy on paper and its autonomy in fact (Maggetti 2012). Third, institutional agency, as we see it, is comprised of capacities (the ability to be autonomous) and a certain sense of role, or mission, as manifested in exercising these capacities. This is therefore a unique type of autonomy. Finally, in the case of agencification, the

autonomy of an agency is measured both vis-à-vis relevant political actors and vis-à-vis proximate other bureaucratic bodies, including the bodies the agency regulates. These four points will prove important as we analyze the Administration of Courts' ascendance toward autonomy.

We now turn to the list of indicators with which we propose to evaluate an agency's – in our case, the Administration of Court's – degree of agencification. The variables are the product of our own analysis of the extensive literature, reflexively informed by abstract considerations (what would it take for a bureaucratic unit to agencify?) and data (how units actually agencify, as revealed by the literature). As our formulation focuses on institutional capabilities and their intentional, policy-driven exercise, it allows for evidence-based analysis (and potential application beyond the test case).

3.2. Indicators of agencification and regulatory autonomy

3.2.1. Organizational capacity

Under this heading, the relevant factor is "the development of unique organizational capacities—capacities to analyze, to create new programs, to solve problems, to plan, to administer programs with efficiency. Autonomous agencies must have the ability to act upon their unique preferences with efficacy and to innovate" (Carpenter 2001, p. 14).

In order to evaluate the emerging capacities of the Director, we will look into the following factors:

1. The size of the Administration of Courts: The larger the number of Administration employees and the more self-sufficient the unit, in terms of auxiliary functions (such as secretaries, IT staff, and a self-contained physical location, namely a separate building or wing where the unit resides), the more it possesses the capacities necessary for regulatory autonomy (Hood & Scott 1996).
2. Informational self-sustainability – independent tools for information gathering and analysis (Hayek 1945): To the extent that the Administration has the ability to generate its own information and the wherewithal with which to analyze it, a greater degree of autonomy is ascribed to that agency (Sagy 2011). If, on the other hand, the Administration is dependent on information provided by other agencies, such as presidents of courts, we classify the agency as less autonomous.
3. Self-management of the Administration (Levi-Faur & Gilad 2004, p. 112–113; Gilardi & Maggetti 2010): Who sets the Administration's budget? Who determines how it is to be spent? Who is responsible for hiring Administration personnel? The unit's ability to organize itself and manage its own budget and other internal affairs as it sees fit is an indication of agencification.

3.2.2. Political capacity – Networks and coalitions

Another indicator of autonomy is the Director's ability to harness support for his endeavors by generating "multiple networks through which agency entrepreneurs can build program coalitions around the policies they favor" (Carpenter 2001, p. 14). The competence of the organization to establish relationships with other associated institutions and stakeholders to help it successfully implement its will indicates a degree of effective control over its agenda, and, hence, of agencification. We will examine the extent to which the Director can enlist the Judiciary's – or the Ministry of Justice's – organizational networks, such as presidents of courts, and the extent to which he builds new networks to perform the tasks he seeks to advance. We will also examine the Director's ability to communicate with the public and the media through his own public relations resources (e.g. a website) or a spokesperson.

3.2.3. Legal capacity

Under this heading, we look for the following variables:

1. Rulemaking powers and self-sufficiency in forming policy (Gilardi & Maggetti 2010; Levi-Faur 2010a): Is the Director authorized by law to and/or does he in practice develop directives on his own? Is he authorized to issue binding rules to further instantiate these policies? Alternatively, are policies developed elsewhere and the Administration of Courts merely "executes" them? The more control the Director as an agency has over his business, the less is he a mere "bureaucrat" (Shapiro 1977; Rubin 1997; Bhagwat 1999; Seidenfeld 1999).

2 Ability to monitor and enforce the rules (Gilardi & Maggetti 2010; Levi-Faur 2010a, p. 15): Is the Director entitled to monitor compliance with his guidelines and regulations, as well as with other pertinent legal rules (e.g. civil procedure rules) (Nordlinger 1987, pp. 353–390)?
3 Relative interpretative independence: A full-fledged regulatory agency thrives by relying on a sufficient set of statutory provisions and, more importantly, on its interpretation of the scope of its powers, respected by the neighboring agencies (and by the courts, to the extent that the legal competence of the agency is challenged) (Carpenter 2001, p. 33–35).

To the extent we find that the legal basis for the Director's power has expanded; or if the Director proceeds to interpret that power in an expansive manner through the years; or the more he is able to effectively enforce his directives unchallenged by surrounding agencies or by judges under his "command," the clearer is the Director's agencification.

3.2.4. Structural defensive capacity

Does the Director or key personnel in the Administration of Courts enjoy (at least a degree of) security of tenure and salary by law or in practice (Berger & Edles 2000)? We will examine formal and informal mechanisms that may limit the power to discharge the Director (or otherwise affect his terms of employment) or remove key Administration personnel from office. Similarly, we will examine formal and informal tools at the disposal of those subject to the Director's regulation – notably, judges and auxiliary personnel – to affect staff changes in the Administration (including the Director himself), as a form of resistance to the Administration.

3.2.5. Purview of reach – Diachronic functional capacity

Under this heading we examine the Director's ability to increase his capacity over time by looking at the scope, comprehensiveness, and level of detail of issues with which he deals: Has the purview of the Director's business broadened in the course of time? Has the Director expanded the list of matters under his regulation (Levi-Faur & Jordana 2010)? The farther the Director reaches in terms of the issues he deals with, the clearer his dominance over the field is vis-à-vis other agencies (Huntington 1952; Rabin 1986). We would also expect a bureaucratic unit undergoing the process of agencification to develop a comprehensive approach with regard to its directives and regulatory practices. If we find that the Director has developed elaborate, detailed, and comprehensive policies and guidelines, as opposed to less formal and rather scattered case-by-case decisions, it will be an indicator of agencification.

We now assess the Administration of Courts' level of agencification based on these indicators.

4. Findings

This Section will diachronically compare the "early" Director and Administration (in the 1950s and 1960s) to the institution of the last generation (i.e. of the 1990s and 2000s) along the variables listed above to determine to what extent the institution has undergone a processes of agencification.

Our research on the early period has been extensive. It included comprehensive examination of all archival files related to the Director and the Administrator at the Israel State Archives, as well as a survey of pertinent legislation, other official reports and documents (e.g. annual budgets), and extant literature. Research on the current period relied mainly on publicly available data, such as the Administration's annual reports, decisions, and directives. Finally, in the course of our research, we have also conducted a few unstructured interviews with current and former officials of the Administration (including retired Directors), in order to gain access to unpublished information relating to the Administration's praxes.

In a nutshell, the bureaucratic autonomy of the Director has unmistakably increased. Consequently, there is sufficient evidence to support the conclusion that the Director has indeed undergone a process of agencification, even if the process is incomplete and is limited by other actors.

4.1. Organizational capacities

4.1.1. Relative size of the director's unit

The size of the Administration of Courts has grown immensly since the 1950s. While in 1953 the Administration was small, comprising only 284 workers, in 2013 it consisted of over 3,000 personnel (Israel Budget of

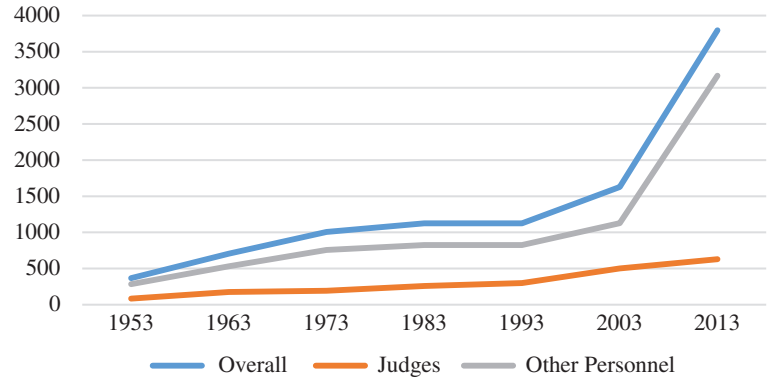

Figure 1 Personnel in the Israel judiciary. Sources: Budget Laws of 1953/54, 1963/4, 1973, 1983, 1991, 1993, 1994, 2003, and 2013–4.

2013–2014). In the 1950s, the manpower in the central offices of the Administration (i.e. not including the administrative personnel in the courts themselves) reached a total of seven. By the 1990s, central office personnel numbered well over 10 times that, let alone the number employed today (Budget Law, 1993, 1994; Israeli Judiciary 2012). The number of judges also greatly increased: from 84 to 630. The growth rate of administrative personnel has accelerated, particularly in the past 15 years, almost tripling from 1,127 in 2003 to 3,167 in 2013. A milder acceleration of growth also occurred in the 1990s, as seen when comparing the 1,127 administrative personnel in 2003 to the 826 in 1993 (a growth rate of 36 percent), with the same number of personnel in 1983, 824 (almost zero growth rate) (Fig. 1).

The growth in the Administration's size was surely related to wider (demographic and other) processes affecting all of Israel's public sector, including the judiciary. But what is particularly noteworthy in this case is the change in the ratio of judicial to administrative personnel in the past 15 years. Whereas historically this ratio has been anywhere between 2.5:1 (i.e. an average of 2.5 administrative personnel for every judge) to 4:1, it currently stands at 5:1, indicating that today Israel has the largest Administration of Courts of its history in relation to its judicial personnel. The jump in the ratio between 2003 and 2013 from 2:1 to 5:1 is especially striking, and is partly explained by a substantial rise in the number of non-tenured personnel within the Administration (Fig. 2). The sheer size of the Administration of Courts, especially relative to the number of judges, allows it to do more today than it did in the past.

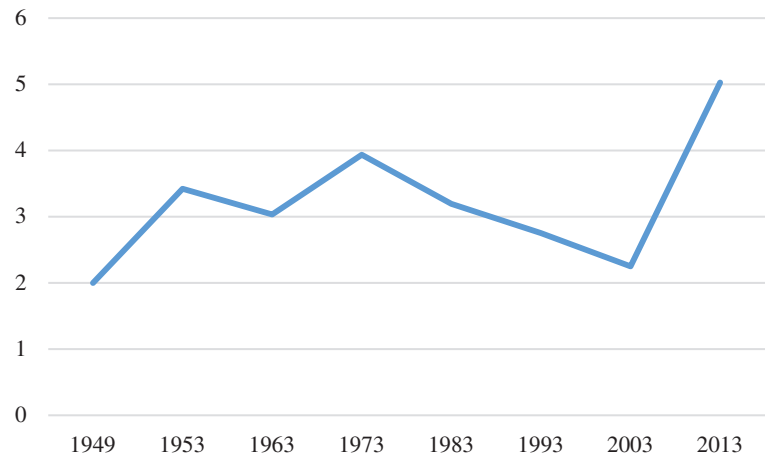

Figure 2 Ratio of administrative to judicial personnel in the judiciary. Sources: Budget Laws of 1953/54, 1963/4, 1973, 1983, 1991, 1993, 1994, 2003, and 2013–4.

4.1.2. Informational self-sustainability – Independent information gathering and analysis

The Administration's self-sustainability is best attested by the the sharp contrast between its capabilities today compared to those of the 1950s and 1960s in gathering and analyzing information. The power of data and, more concretely, the fact that it is foundational to any form of regulation has lead to the realization that information is a regulatory tool on its own right (Rechtschaffen 1999; Sunstein 1999; Sagy 2011).[7] Therefore, informational capacity is directly related to the clout the Administration may have over an individual judge, and the goods it can deliver to other legislative and executive stakeholders.

Currently, information on the business of courts – for example, the number of proceedings and the case-load – is centrally gathered through a computerized network specifically designed according to the Administration's requirements (Balaban *et al*., 2018 unpublished data). The significance of the system, administered and further developed for the Administration on an ongoing basis, cannot be overstated. Basic data (regarding, e.g. how many and what type of cases are assigned to each judge) is only a click away. Likewise, local rules and practices of case allocation are centrally available for the Director's review.

The contrast with the nascent Administrations' information-gathering abilities is stark. The "old" Director had little information of his own on court proceedings, and had limited resources through which to collect this information. As the courts lacked a central information-gathering system and had limited personnel to rely upon, the Director was dependent on the cooperation of the court presidents and relied on the information they assembled and were willing to furnish.[8] So precarious was the Director's position that he was even dependent on presidents and the Minister's cooperation with regard to case allocation (Courts Law 1984, sec. 27, 38, 48). Lacking such cooperation, the Director stayed out of the loop. For instance, in 1968, regulatory discussions on case allocation schemes were conducted over his head among the Minister of Justice and the presidents of courts, as he had no added value to either.[9]

The rise in the Administration's capacity is further revealed in its ability to analyze the data it gathers; data on the basis of which it generates semi-annual public reports on courts' caseloads (Israeli Judiciary). The Administration now has its own research unit, which has recently suggested various means to monitor courts' and judges' proportional caseloads with a view to allowing the more efficient allocation of court resources (Weinshall-Margel *et al*. 2015). Furthermore, the Administration has recently developed a methodology to evaluate courts' personnel and resource needs (Weinshall-Margel *et al*. 2015). The capacity to generate evidence-based tools allowed the Administration to generate criteria that are seen as objective, and thus removed from narrow institutional biases (beyond the overall pursuit of efficient and just dispensation of the caseload – goals shared by all players). Tellingly, the Administration made a similar attempt in 1968. That attempt was part of budgetary negotiations between the Judiciary, the Ministry of Justice, and the Ministry of Finance. The Ministers of Justice and Finance appointed a commission, consisting of a representative of the Court Administration, the Finance Ministry, and the Civil Service Commission, to examine the personnel requirements of the Judiciary. Even this joint effort failed to create an objective measure of the Judiciary's needs, in no small part for lack of institutional capacity. The Commission declared in its report that it "could not reach an objective model that would prove the basis for determining the personnel necessary for court operation."[10]

The similarity of intents and the disparity of results prove the noteworthy strides that the Administration has made in building its institutional capacities and turning it into the major player it is today.

4.1.3. Self-management

From its early 1952 beginnings and during the first few decades of operation, the Administration relied on the Ministry of Justice for many of its administrative functions. Accounting and control over the courts' budget rested with a unit in the Ministry. While the courts' budget was separately registered under the overall Ministry's budget (as it is today), the Administration lacked an accounting division and relied on the Ministry's.[11] Whenever a need arose to seek the approval of the accounting division of the Finance Ministry, and such approval was required on a regular basis for even the most minor of changes in the budget of the courts, the accounting officer of the Ministry of Justice was resposible for contacting the Finance Ministry for that purpose.[12] The Ministry of Justice also supplied the stationary and other provisions to the Administration, and even supplied it with some construction and maintanance services.[13]

Today, the Administration is vastly more self-reliant, having its own personnel, operations, accounting, purchasing, computers, construction, and logistics departments (Israeli Judiciary 2012). Furthermore, while in the

1950s and 1960s the central offices of the Administration were located in the same building as the Supreme Court,[14] today they are located separately, thus divorced both from the Court and the Ministry of Justice.

In tandem, the past several years has seen the establishment of new, unofficial cross-agency and intra-agency forums, serving inter alia as platforms for reaching policy decisions relating to court administration. Not all of these forums are under the direct purview of the Director, but he or his representatives are almost always present therein. Of particular importance in this context is "Forum 14," comprising the head secretaries of all of the courts, all of whom are Administration officials (Israeli Judiciary 2012). The head secretary of a particular court performs an important function as the official in charge of the actual administration of that court. Therefore, this forum, established by the Director and headed by him or his representative, significantly augments the managerial capacity of the Administration, as decisions that are local by their nature (or according to the traditional structure of the judicial system in Israel) are now coordinated and supervised by the Director. This process of centralization allows the Director and the central Administration greater control over managerial decisions, implementation, and practices.

Greater bureaucratic autonomy should not be confused with boundless control. The Judiciary's budget is a case in point. From its inception and to this day, the Finance Ministry controls the budget of the Administration of Courts in terms of scope and expenditure. Budget control of government ministries in Israel is relatively centralized. The budget of any agency has many subsections and transferring funds from one budgetary section to another requires the approval of the Finance Ministry (Ben-Bassat & Dahan 2006, pp. 26–42).

It is therefore noteworthy that the relationship between the Administration and the Finance Ministry has become closer through the decades. Previously, the Administration lacked an accountant and the Ministry of Justice conducted many of the Administration's affairs. Today, the Administration's accountants contact the Finance Ministry directly in matters of budget expenditure.[15] While the Director had direct contact with the Finance Ministry in the 1950s and 1960s in regard to determining the budget, he lacked the capacity to promote or implement policy reforms, as evidenced by the aforementioned 1968/1969 joint commission on the personnel requirements of the Judiciary.[16] Furthermore, in the 1950s the Director was careful not to deal with the Finance Ministry without the explicit approval of the Minister of Justice. Contrarily, today the Administration has direct and continuous conversations with the relevant referents from the Finance Ministry (and the Civil Service Commission) regarding the needs and performance of the various segments of the system. This transformation is related to the dramatic increase in the volume of cases per capita and the burden on judges (Klement & Shapira 2007; Sulitzeanu-Keinan *et al.* 2007), prompting the Finance Ministry and the Civil Service Commissioner to grant more power to the Director with the understanding that the Director and Administration will be committed to adopting a measurable evidence-based approach. Consequently, the Director now enjoys a preferred status (semi-autonomy) for allocating funds within the system and negotiating longer-term plans for budgetary needs, pursuant to the Administration Budget and Planning unit's analysis.[17] Such analyses are also reflected in the Justice Minister's annual reports (see e.g. Justice Minister, Annual Report 2015, 2016) and the legislative budget analysis (see e.g. Bar, Analysis of Justice Ministry's Budget for 2011–2012). Presidents of Courts, in contrast, are not allowed to make any spending decisions, including the small Presidents' Fund each court has, without the approval of the accountant of the courts' system (which is administered via the Administration) (Directive on Presidents/Judges Funds for 2013, noted in Letter of the Accountant to the Courts System to presidents of courts, 2013).

The relative growth in institutional autonomy is also revealed in the field of personnel. Final say in hiring personnel in the Israeli civil service lies with the Civil Service Commission, which also applies to personnel of the Administration of Courts (Lurie 2011, pp. 88–90). Still, the past decade or so has witnessed a new modus operandi between the Civil Service Commission and the Administration that allowed the latter to exercise greater autonomy in terms of the internal management of personnel issues, such as in labor disputes (Lurie 2011) and controlling the hiring process (Director's Directives 2-09, 8-09).

4.2. Political capacities – Networks and coalitions

As any governmental unit, the Director and the Administration engage with other governmental bodies and organizational networks to perform tasks that they seek to advance. To what extent are the Director and Administration merely acting as the long-arm of the Chief Justice, the Justice Minister, or of other agencies?

The evidence regarding this variable is mixed. Consider the Judiciary's aforementioned extra-legal decision-making forums. Alongside Forum 14, other forums have been established, and today the most important decisionmaking forum is the unofficial "Presidents Committee." Headed by the Chief Justice, it is comprised of all court presidents and the Director. The Director may have incalculable influence on the Committee's agenda not only because he is its executive agent, but also because the Committee reviews Administration officials' reports in its monthly meetings.[18] The Magistrate Courts Presidents Forum sits regularly, too. These forums also have sub-committees for various matters, such as criminal and family proceedings.[19] The Director or his representatives also sit in these meetings and participate in the decisionmaking processes.

Two or even three interpretations of the Director's role within this emergent administrative complex are possible. First, one could regard the Director as the long-arm of the Chief Justice in these meetings. Such a view is certainly supported by some evidence. For instance, the Director reports to the Chief Justice on all of the meetings in which the latter does not participate. Second, one could argue that the Director advances the independent views and policies of the Administration in these meetings, or allows others (notably, presidents of courts) to do so, a dynamic that might lead the Chief Justice to modify her position in order to ensure compliance of the various discrete components of the branch. Third, the Director can also be seen as the facilitator of these meetings, an actor that allows the Judiciary to act as a collegiately ruled whole. All three hypotheses have merit, and perhaps they do not even negate one another.

What is evidently clear, however, is: (i) that the Director often takes a leading role in facilitating and advancing coalitions in these forums and in so doing demonstrates his indispensable role, as it appears that without his leadership it would be more difficult to run such forums; and (ii) that the Director is no longer the long-arm of the Minister of Justice, although the former still reports to the latter on a regular basis (and is required to present his assessment of the system needs, and implementation of previous policy decisions). The Director may thus enlist the Minister's help as a shield protecting the Judiciary from unwanted external, "political" initiatives coming from other ministries or the Knesset. Thus viewed, the Minister is regarded as one among several organizational networks relied upon by the Director and the Judiciary in maintaining their self-governance.

The Director's partial detachment from the Justice Minister is best illustrated when the Director acts without the Minister's and the Government's sanction or even out of sync with their professed policies. This may happen, for example, when the Minister as chair of the Governmental Legal Committee decides to pursue a legal policy with which the Director disagrees. The Director has been known to try to convince the Knesset's Constitution, Law and Justice Committee to adopt his rather than the government's views.[20] The Director (or his representatives) may also voice his views in decisionmaking bodies of the Israeli Bar.[21] Ministry officials at times frown upon such actions. It seems that the Director acts in this manner, even to the government's chagrin, because his policies have the backing of the Judiciary's decisionmaking bodies as well as that of the Chief Justice. It stands to reason that without such backing, or without the presidents' coalition, the Director would not act in such blatant opposition to the government's stance.

When one compares these latter "oppositional" actions with earlier practices, the rise in bureaucratic capacity of the Administration becomes evident. When the first Director, Eizenberg, took up the position in late 1952, he at first corresponded directly and independently with Knesset members and committees. In response, the Justice Minister himself admonished the Director, insisting that all correspondence with the Knesset must be made through him, as the Director was a Ministry official. The Director learnt his lesson, became more careful, and sought prior approval for such correspondence. Speaking in the Knesset against government policies would have been unthinkable.[22]

Another case in point is the establishment of the Director's independent spokesperson's unit. Up to the 1990s, the Director relied on the spokesperson of the Ministry of Justice for his and the Judiciary's public and media relations. In 1996, Chief Justice Aharon Barak managed to secure the approval of the Justice Minister for the appointment of the first separate spokesperson for the Director and the Administration. Within just a few years, in the mid-2000s, the size of this unit within the Administration of the Courts reached seven employees.[23] Additionally, the Administration today maintains the website of the Judiciary, which also contains a separate section dedicated to the Director and the Administration.

Yet such partial detachment from the Justice Minister should not by overplayed. As of 2010, the Justice Minister requires that the Administration, as all other units associated with the Ministry, meet "measurables" (goals)

set out jointly with the Ministry (Justice Ministry, Yearly Work Plan 2010, 2009; Yearly Work Plan 2012, 2012). Failing to meet such goals may reflect poorly on the Director's ability to carry out policy and may undermine the standing of the Director with the Finance Ministry, potentially resulting in the revocation of the special standing of the Director. Moreover, as noted, the Minister has a decisive say on development plans (buildings) and civil procedure rules, as well as de facto veto on judicial structure, size of staff, and judicial appointments and promotions – all of interest to the Director.

4.3. Legal capacity

At issue here is not only the Director's formal statutory authority, but also his actual exercise of rulemaking power (even if formally such rules are considered "guidelines"), self-sufficiency in forming regulation, and ability to monitor and enforce the rules he makes.

4.3.1. Rulemaking powers (formal and informal)

On paper, the rulemaking powers of the Director are rather limited with only a slight increase over the years. Whereas formerly the Director had limited, if any, power to issue administrative rules, in the past decade the Civil Procedure Rules promulgated by the Justice Minister have entrusted the Director with the authority to officially issue administrative directives in certain matters (e.g. directives providing for technical details pertaining to the filing of lawsuits, Civil Procedure Rules 1984 sec. 7A[c]). In contrast, when the Director drafted a proposed regulation on court hiatuses in 1954 and sent the draft directly to the Minister, Ministry of Justice officials censured him: "Such draft regulations must first go to the Ministry's Legislative Division."[24]

As discussed under the Director's purview of reach, the informal powers of the Director and the latitude of his activities have de facto expanded significantly over the decades. Whereas the letter of the Courts Law states that the Minister has sole power to set directives, the Director had always been central in exercising these powers, and has issued guidelines, circulars, or letters to various segments of the system.[25] Generally, as of 1952 these were seen as governing, unless challenged in court (*Hashavim H.P.S. v Administration of Courts*, 2015).

4.3.2. Evolving interpretation of regulatory powers and reconfiguring lines of reporting

Subtle but important growth in the Director's legal capacity relates to the evolution of his interpretative powers. Whereas in the 1950s the Director relied on the interpretation of the Ministry of Justice regarding the scope of issues that falls within the ken of the Minister and the Chief Justice, today the Director has developed a more independent position on the matter. Because the issue has not yet been litigated, the Director proceeds according to his own interpretation. Specifically, according to Section 82 of the Courts Law (1984), the "Minister of Justice shall prescribe administrative arrangements for the courts . . . [and] the Director of Courts shall be responsible to the Minister for implementation of the administrative arrangements" (Greenfield 2003; Courts Order (Transitory Provisions) 1984 sec. 10; Courts Law 1957 sec. 107[A]). This phraseology has essentially remained unchanged since the establishment of the State. The Ministry had interpreted the term "administrative arrangements" broadly, to include "all actions connected with the administrative management of the courts that are not judicial legal actions."[26] Accordingly, all matters that were not directly related to the exercise of judicial discretion fell under the authority of the Minister, who could either enact secondary legislation on such matters or otherwise instruct the Director to act as the Minister's subordinate. Echoing this approach, the Director described himself in an official 1954 report as "directly subject to the Minister of Justice."[27]

While Section 82 remained unchanged, Directors interpret the law today differently. As one recent Director put it, the term "administrative arrangements for the courts" should be construed to include only matters in which the Minister has already enacted specific secondary legislation, whereas on other matters the Director retains regulatory powers. According to this approach, the Director's administrative powers are somehow inherent, or at the very least should be derived pragmatically from section 82 in order to provide a residual solution for lacunae in the management of courts.[28]

Beyond asserting the legal capacity to issue independent interpretation regarding his own powers, the Director's construction has another effect. It generates some leeway regarding his reporting and accountability lines. To whom is the Director responsible when exercising powers in administrative matters that do not fall squarely

within the powers of the Chief Justice (for when the Director exercises powers in those matters, he reports and is accountable to the Chief Justice) or in matters pursuant to formal regulation promulgated by the Minister (for in these matters the Director reports to the Minister)? As most of the day-to-day administration of the courts is not set in formal regulations, the Director's approach places him in a rather independent position in the application of a large portion of the daily operation of courts, for example, the operation of the IT department and human resource matters. As in practice the Director is unchecked by the Justice Minister or by the Chief Justice (save for via judicial review) in such matters, his legal capacity has markedly increased.

4.3.3. Capacity to monitor and enforce the rules

As noted, the Administration today has greater abilities to gather and analyze information than ever before. Still, as a matter of law, the Director and the Administration have limited formal power to monitor and enforce compliance with their rules within the various courts. Because the administrative staff of the Judiciary is an integral part of the Civil Service in Israel, they are appointed according to Civil Service procedures and enjoy tenure as members of the Civil Service. Their removal is arduous, following Civil Service procedures over which the Director has limited powers. Formally, the Director may file a disciplinary complaint pursuant to the Civil Service Regulations and await resolution. The Director's enforcement powers are even more limited with regard to the judicial staff. Judges enjoy security of tenure, and the Director has no formal standing to reprimand, let alone remove judges from office. Disciplinary procedures are initiated by the Justice Minister, and judges are subject to a tribunal whose members are judges appointed by the Chief Justice (Basic Law: The Judiciary, sec. 13; Courts Law 1984, sec. 17). Removal procedures may be initiated by the Chief Justice or the Justice Minister, and require the supermajority approval of the Judges Appointing Committee (Basic Law: The Judiciary, sec. 7[4]).

Nevertheless, the Director and the Administration have de facto monitoring capacity that cannot be underestimated. While the Director and the Administration do not consider themselves as proactively policing the actions of judges,[29] information regarding judges "misconduct" is bound to reach them. Evidence of compliance with rules and regulations surfaces in the meetings of the decisionmaking forums, such as the abovementioned Forum 14. Information regarding judges' (lack of) compliance may also surface through complaints against judges lodged with the Ombudsman of the Israeli Judiciary (Strasberg-Cohen & Savorai 2007) (usually with a copy to the Director) or are informally brought to the attention of the Director by attorneys or the public (who may copy the Director on letters to Presidents).[30] Moreover, in approving a request for paid leave (sabbatical) or for extrajudicial activities (teaching), the Administration looks into the judge's record, including issues of delays in giving decisions (or overall good standing). All of this is of particular importance when judicial promotion is at stake. The Director, while not a voting member in the Judges Appointment Committee, is nonetheless present and provides the Committee with the Administration's evaluation of the judge's performance in terms of efficiency, including compliance with pertinent directives and ethical standards.

Above all, if a judge does not abide by Directors' rules, the judge may be introduced to informal disciplinary proceedings conducted by the Director. Within this framework, the Director, sometimes using the threat of formal proceedings and normally in cooperation with the Chief Justice and presidents of the relevant courts, may "suggest" that a judge whose performance is questionable retire, or be transferred to a "less active" department in the court.[31] Alternatively, the Director may write a letter to the judge reminding her of the rules, thereby affecting her reputation.

While the informal enforcement abilities of the Director have increased, their use relies on the cooperation of the Chief Justice and presidents of courts. Because this capability depends on the credible threat of formal action (disciplinary or transfer), in practice the Director cannot (and does not want to) proceed without the approval of the Chief Justice. Thus, while the Director's independence has increased vis-à-vis his regulatees (the judges) and his formal superior (the Minister), he is perhaps even more dependent in this issue on the Chief Justice and Presidents. However, it is unlikely the Chief Justice will initiate such informal proceedings on his own without input from the Director, given the latter's overall access to data.

4.4. Structural defensive capacity

Because in practice all of the directors except one have been judges, and even the Director who had not been originally a judge was appointed a judge upon taking office in 1968, Directors enjoy security of tenure. Directors enjoy other privileges available to judges, particularly with respect to their salaries (Basic Law: The Judiciary, sec. 10).

The Director is formally appointed by the Minister with the approval of the Chief Justice (Courts Law 1984, sec. 82) and although his removal from office is not explicitly set by law, it seems that the same procedure employed for appointment should apply to his removal (Interpretation Law 1981, sec. 14). A Director does not have a formal term of office. In practice, the first two Directors served lengthy terms: the first died in office after 15 years of service (in 1967), the second went into retirement after 17 years of service (in 1985). Today terms are shorter and generally correspond to the terms of office of the Chief Justices rather than those of the Ministers. At the very least, it is expected that the Director will seek the approval of a new Chief Justice, should the Director wish to continue. This state of affairs also suggests that the Director is dependent more on the good will of the Chief Justice, and merely has to maintain decent working relations with the Minister.

4.5. Purview of reach – Diachronic functional capacity

As early as the 1950s, the Director already dealt in with a wide range of issues. For example, he concerned himself with judges' medical insurance,[32] administered judges' vacations, and dealt with attempts to cut the Judiciary's operational costs.[33] The first Director issued directives in his first months in office, in late 1952, in which he sought to regulate various housekeeping matters, such as the hours of court hearings; the hierarchies between administration officials and the presidents of the courts, as well as between various administrators; and the working hours of the administrators.[34]

If the scope of issues with which the Director dealt with in the 1950s was considerable, it has significantly increased in the past few decades. For example, since 2012 the Director has been empowered to transfer (with the approval of the Chief Justice and the Justice Minister) bulks of cases from one court to another to relieve caseload pressures in a particular court (Courts Law, sec. 79A), and since 2016 he has appointed (again, with the approval of the Chief Justice and the Minister) the head of the Courts' Guard (Courts Law, sec. 106C), which had formerly been under the purview of the police. Furthermore, the Director today informally responds to Knesset bills dealing with the courts and is involved with most matters relating to the courts' operation, such as labor disputes of court personnel.[35] At the same time, he also deals with smaller-scale issues, such as record keeping. The Director's degree of involvement with the daily management of courts is attested by the scope of directives issued, on various matters, to a level of detail unimagined in the 1950s. These relate to issues ranging from farewell parties to retiring judges, through financial support for managerial education for judges, to the presence of the media in the courts (Director's Directives 3-08, 2-10, 5-11).

An illustration of latter-day Directors' broad purview is to be found in their current practice of appointing commissions to advise them on reforms in various aspects of the Judiciary's operation. Thus, in May 2012 the Director appointed a public "steering committee for the improvement and advancement of the Judiciary," which includes judges, administrators, a representative of the Finance Ministry, and a professor specializing in management.[36] The Director regularly appoints other such commissions.

5. Putting it all together: Agencification of courts' regulation in context

The data discussed in the previous section, by and large, supports the conclusion that the position of the Director has undergone a process of agencification. It changed from a bureaucratic unit within the Ministry of Justice, subject to the Minister and relying on a decentralized administrative structure governed by relatively-dominant presidents of local courts, to a quasi-autonomous centralized agency with enhanced capacity, working as the de facto regulator of courts and the production of justice in Israel. How should we understand and constitutionally contextualize this process? What are the limits of the Director's and the Administration's expansion? And what should we make of it in terms of judicial independence? In order to address these questions we have to place the process of agencification in a larger context.

5.1. The director's agencification in context

As indicated earlier, a comprehensive analysis of the reasons that led to the Administration's agencification is beyond the ambit of this paper. We would like, nonetheless, to briefly outline our tentative understanding of the contextual processes in which the agencification is situated.

Shetreet (2009), a leading scholar on judicial independence, suggested that recent years have seen the Chief Justice taking control over the administration of the courts in Israel from the hands of the Justice Minister, as part of a larger transfer of power from politicians and Executive officials to judges. The rise of guidelines and directives issued by the Chief Justice on matters pertaining to procedure and judicial conduct exemplifies this point (see e.g. Chief Justice's Directive on Postponing Hearings, 2014). He views the processes as ancillary to the development and implementation of doctrines that provide the Supreme Court of Israel with greater powers of judicial review (see also Hirschl 2004; Friedmann 2016).

Our findings shed some supportive light on this argument. The agencification of the Administration and the affiliation of the Director with the Chief Justice reveal the evolution of the tools the Chief Justice has developed in order to assert control. But this holds only in part, as our findings also reveal that the rise of the Administration provides the Executive, both the Justice Minister and the Finance Ministry, unique goods. The data and analysis generated by the Administration is useful for the Executive in formulating and asserting their vision vis-à-vis the vision of the Chief Justice, without having to directly contact local presidents or otherwise conduct their own research regarding what goes on in the judiciary – an exercise carrying political costs in a democracy. The robust presence of the Administration allows the Ministers to expect the judiciary to promote more efficient administration of justice, while retaining the option to actively monitor, take part in the agenda setting, critically evaluate progress, and even intervene by resorting to statutory powers (primarily via rules of civil procedure but also by prioritizing long-term development plans). Our findings thus highlight the importance of the fragmentation of power, as it appears that both the Chief Justice and the Minister gain from the agencification of the Director, or at least are willing to accept it. The Finance Ministry, in particular, now views the Director as a potential ally, provided the Director shares the goods (information, analysis, enforcement) and the Administration is subject to cost–benefit analysis.

Whether a component of the expansion of judicial power, a consequence of strategic maneuvering by the Ministers, or an outcome of the fragmentation of power, the emergence of a third player, entailed by the process of agencification, changes the picture. The Director may have his own view, and may enlist others to promote this agenda (even when the others have veto power). Our findings reveal that the Administration took hold of great swathes of judges' regulation and courts' management and parts of what has become the Administration's turf is today normally run, in effect exclusively, by the Director and the Administration's elaborate machinery.

More generally, juxtaposing our analysis with that of Shetreet best indicates the contribution of a detailed examination of the agencification of the Director and Administration. Accepted conception tends to focus on the parallelogram of forces atop the Israeli three-branch constitutional matrix, usually by taking scores in what seems to many as a constitutional tug-of-war instigated by the Israeli "constitutional revolution" of 1995 (e.g. Hirschl 2004; Jackson & Tushnet 2006, pp. 600–611). In that context, the rise of the Administration might be regarded as another item on the scoreboard, and the Director reduced to a pawn at the hands of the Chief Justice or the Minister of Justice, each vying for control, or designing shields against attempts by the other to take control. However, ours is a different approach. We argue that even if the Director is in some respects the long-arm of the Chief Justice, in many other respects he is autonomous, certainly when it comes to the day-to-day operation of the Judiciary. This perspective allows us to appreciate the role the Administration and the Director play not only vis-à-vis the political branches (or for that matter, the bureaucrats in the Finance Ministry and Civil Service Commission) but also regarding the presidents of the lower courts and the individual judges. The focus on the Agencification of the Administration unearths the centralization of judicial management and of the regulation of the performance of judges and presidents of lower courts. This dimension goes beyond the aforementioned tug-of-wars, and is worthy of separate analysis for its impact on the concept of judicial "internal" independence.

Aided by vastly larger administrative personnel in areas ranging from IT to accounting, and relying on the Administration's independent information gathering and analyzing capabilities to minutely monitor judges' performance – as public reports are compiled and judges' personal requests processed – the Director has come to claim for himself a sizeable regulatory jurisdiction within the land of "administrative arrangements for the courts," in the nebulous words of Section 82 of the Courts Law. Within that territory, his reporting and accountability lines reach neither the Chief Justice, nor the Ministry of Justice, nor anyone else.

The agencification could be explained also, if not chiefly, as related to the mounting administrative challenges resulting from the dramatic increase in caseload and the acute pressure to bring the ecosystem within which justice is produced to meet the needs of a society living in the 21st century (quite apart from the Judiciary-Executive-Legislature wrestling). The administrative unit entrusted with the quotidian management of courts – its modus operandi, technological wherewithal, and mindset – can be understood as a response to such pressures, which in part provide a regulatory justification for the augmentation of the agency's influence over the manners in which courts are run and judges adjudicate.

Lastly, our findings demonstrate that the processes of agencification have been informal, extra-legal, and incremental. Most of the change has manifested itself with the emergence and entrenchment of various routines and practices. Conceivably, the significance of this change has received thus far less attention in no small degree because of its slow incremental character. Similarly, the slow incrementalism has likely made this dramatic transformation possible in the first place, for to the extent direct amendment of the basic laws or key statutes was required, it is unclear whether the legislature would have supported the change.

5.2. What, if anything, limits the process of agencification?

Turning our attention to the glass half-empty, notwithstanding the increase in the Director's capacity, his emerging Administration has *not* become a *fully* independent agency. The process of agencification is incomplete. How can we explain this?

At least three other concurrent processes should be noted. First, the past few decades have seen the overall dominance of the Ministry of Finance maintained, if not increased. The Director's dependency in this context thus fits the more general storyline (and therefore offers fewer insights regarding the limits of agencification). Nevertheless, some independent agencies have managed to escape the Finance Ministry's all-encompassing control (e.g. the Comptroller and the Bank of Israel) (Lurie 2011, pp. 59–64). Not so the Director (in part because of the lack of necessary statutory basis). One may speculate that Director's privileged status is the Finance Ministry's way to ensure its reach (and control). Thus, part of the Director's increased autonomy vis-à-vis the Ministry of *Justice* followed the Director's greater ability to negotiate with the Ministry of *Finance* in order to gain resources for the Administration (and the courts). Yet this process has dialectically resulted in the Director's less autonomous (or not as autonomous) stance vis-à-vis the Ministry of Finance, as the latter appears to condition the special status upon implementation of cost–benefit analysis and adherence to its budgetary guidelines.

Second, the single greatest check limiting the process of agencification of the Director and the Administration is the gravitation of the Director towards the Chief Justice, which accompanied the agencification process. The Director still sees himself – and is indeed in practice – dependent to a large extent on his chief regulatee, the Chief Justice. Nevertheless, it would appear that the Chief Justice, in turn, also relies on the Director, because without the full cooperation of the latter, the former lacks the capacity to actually carry out her administrative policies (as the Chief Justice has little staff at her immediate disposal). Moreover, while the Director is no longer equally subject to the Minister and the Chief Justice, underestimating the presence of the latter would be equally misguided. To the extent that forming a fully independent agency would undermine the quality or accessibility of the output currently generated by the Administration for the Justice Minister, (and in particular the data and research which allow the Minister to vet policy changes or implementations), it is unlikely the Minister would readily acquiesce.

Third, while agencification entails the centralization of power, we also identify a shift in the structure of influence of the various court presidents. Centralization might have entailed a decrease in the stature of presidents of lower courts, but the Director was careful in offsetting the surge of his regulatory powers over the presidents by giving them a greater say in the way the system as a whole is managed. Their participation in the decisionmaking bodies of the Judiciary, introduced by the Director, as well as their increasing control over the administrative staff of their courts (also, with the blessing of the Director),[37] allows the presidents to have greater actual clout over, and responsibility for, the daily operation of the Judiciary, which goes beyond the court over which they preside. We see, therefore, a tradeoff of sorts: the presidents become more powerful in determining the overall policy of the Judiciary through a de facto quasi-judicial conference, but the Director is able to consolidate his powers as the coordinator and regulator of these policymaking bodies.

5.3. Agencification and judicial independence – In Israel and beyond

Finally, what constitutional implications flow from this process of agencification? And is this process uniquely Israeli? While these questions were not the focus of this paper, our findings provide a basis for further (comparative) research into the relationship between internal and external independence, for without taking into account the capacities and practices of court administrators, such research into the counter-independence pressures individual judges face is likely to fall short.

Evidence suggests that the increase in the capacity of the Director may be regarded as part of a global phenomenon. If agencification is a trend (Jordana *et al.* 2011), the administration of courts in various jurisdictions appears part of it. Court administrations have increased in size and power globally (Ng 2007, pp. 13–25; Canadian Judicial Council 2006: 24–28) as they move from court administration to "court governance" (Kirat 2010; Bunjevac 2011; Durham & Becker 2011; Ng 2011; Vapnek 2013). Reformers in the US and the United Kingdom cited this global process in support of transferring the control over the administration of courts from the Executive to the Judiciary by expanding the role of judicial councils (Bermant & Wheeler 1995, pp. 854–855). Supporters often view these councils as a means to balance the administrative efficiency and accountability of the Judiciary with the need to protect the independence of judges (Garoupa & Ginsburg 2009, 2015; Piana 2010; Pozas-Loyo & Ríos-Figueroa 2011; Ingram 2012). Detractors caution against the proliferation of these institutions, arguing that they are incompatible with the structure and ethos of various new democracies' judiciaries, and that overexpansion of judicial power may undermine democratic principles and judicial accountability (Zimmer 2011; Bobek & Kosař 2013; Guarnieri 2013; Parau 2015; Kosař 2016; Solomon 2018).

Thus, the threat to internal judicial independence of individual judges posed by measures taken by court administrators to increase the efficiency of court administration has been duly recognized (Lefever 2009; Langbroek 2010; Paynter & Kearney 2010; van Dijk & Dumbrava 2013). Similarly, the potential danger to internal judicial independence from court presidents, supreme court justices, and chief justices, for instance, in the new democracies of Central and Eastern Europe, has also been noted in recent years, including in the particular context of their control over councils for the judiciary, court administrations, and bureaucracies such as the Qualification Commissions in Russia and Ukraine (Popova 2012:135; Kosař 2016: 420; 2017). However, as the Israeli test case reveals, the transfer of powers to court administrations may have other, formerly unnoticed, ramifications. The shift of responsibility over court management, accompanied with the increase in organizational capacities (such as direct and instantaneous monitoring of judicial production of the individual judge or a particular judicial section), may place court administrations not (merely) as tools in the hands of the Executive, the Judiciary, court presidents – or, for that matter, a council for the judiciary. It raises the specter of Court Administrators as having the agency to act *of their own accord.* Directors (and their equivalents) may have their own policies and interests, and may pursue those when they have the capacity to do so.

The normative implications of such agencification processes are of importance, and should be closely examined in further research. As we have demonstrated, the Israeli Director of Courts has emerged as a regulator, in the sense that it has power over judges (working in the "production line") and their immediate managerial superiors, namely presidents of courts. In that sense, the Director can be seen as a constitutional agent having complex relationships with both the Executive and the Judiciary. The agency he heads carries constitutional implications as judges' ability to maintain their independent position may be threatened by this organ, for the Director has direct and indirect influence over judges' daily routines; he also has a say in their promotion process. Conversely, the Director may protect the Judiciary or a segment thereof (including a particular judge) from external (legislative, Executive) or internal (e.g. the president of the local court) pressures. Thus, the increased capacity of the Director could serve as a shield. The manners in which these potential threats and benefits may be actually played out should therefore be carefully evaluated in future research.

If our analysis is sound, then comprehending organizational praxes in the administration of courts contributes to a fuller understanding of judges' de facto independence. This paper therefore invites similar micro-analysis of institutional design (Rubin, 1996) research in other jurisdictions. It will be interesting to examine comparable transnational patterns, as well as the relationship of such patterns to tensions between the Executive, the Judiciary, and the Legislature regarding judicial management and the regulation of the production of justice.

Such further research could also identify additional variables that influence the rate and direction of agencification/de-agencification processes. More broadly, agencification is relevant in other areas. If indeed institutional capacities of agencies and the accompanying mindset to further develop and exercise those capacities matter, than their relation to other fields of public law – constitutional and administrative – is worthy of examination. Such examination stands to enrich our realist understanding of public law, and may even influence the development of doctrine.

6. Conclusion

In this paper, we argue that if we wish to understand the relationship between law and institutions, we cannot assume that all agencies are alike. Rather we must also inquire into the design through which norms are interpreted and operationalized (Rubin, 1996). The contribution of this paper lies therefore in adding important, and heretofore missing, layers regarding the operation of public institutions, namely, their institutional capacity (including awareness and realization thereof). More concretely, we show that capacity matters, and that capacity changes over time, even if the formal normative structure remains almost the same. Specifically, we show that the Director and the Administration of Courts in Israel have gone through a process of agencification, which entailed augmentation of their capacities and an evolution in their mindset regarding the implementation of such capacities. As a result, their powers, mode of operation, and organization have fundamentally changed over time toward greater – even if incomplete – autonomy.

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Notes

1 The importance of courts' actual institutional configuration and the potential for strategic use thereof has been explored also by other – albeit related – approaches, focusing on judges' strategic or rational-choice behaviors. See for example, Epstein and Knight (1998), Mialon *et al.* (2007), and Kim (2011).

2 Notable exceptions exist. See for example, Lurie (2011, pp. 36–39).

3 On their legal basis, see *Sharon v. The Chief Justice*, 2014.

4 Interview with Administration officials, 17 June 2014 (on file with authors).

5 The 1948 Courts Order (Transitory Provisions) was replaced by Courts Law of 1957 and Judges Law of 1953, both in turn replaced by Courts Law, 1984.

6 Letter of the State Attorney to the Director of Courts (27 Nov 1952), Israel State Archives C-5728/10.

7 Elsewhere we further relate and critically examine the exponential rise in the availability of information concerning the business of courts, mainly following the last generation's sweeping digitization of the Israeli judiciary, and the penetrating avenues of regulation of judges that opened up on its heel. See Balaban *et al.*, 2018 unpublished data.

8 See for example, reports from various courts to the Director in April 1954 in Israel State Archives C-5728/11.

9 See March 1968 correspondence in Israel State Archives C-5729/8.

10 Israel State Archives C-5729/10.

11 Israel State Archives C-5728/11.

12 See the correspondence from the end of the 1960s between the accounting division of the Ministry of Justice and the Ministry of Finance, in Israel State Archives C-4669/8, C-4669/9, C-4669/10, C-4669/11, and C-4669/12.

13 Letter of the CEO of the Ministry of Justice to its Minister (10 Nov 1961), Israel State Archives C-5708/13.

14 Letter of the Director of Courts to the Assistant Registrar of the Supreme Court (17 Sep 1952), Israel State Archives C-5728/10.

15 Interview with Administration officials, 3 March 2010 (on file with authors).

16 For reports on direct contact between the Director and the Ministry of Finance, see for instance the Director's letter to the Minister of Justice (7 Feb 1954), Israel State Archives C-5728/11; the Director's letter to the Director of the Budget in the Ministry of Finance (16 Sep 1955).

17 Interview 3 March 2010.

18 Interview 17 June 2014.

19 Interview 17 June 2014.

20 Interview 17 June 2014.

21 Interview 17 June 2014.

22 See the Minister's letter to the Director (28 Nov 1952), Israel State Archives C-5728/10.

23 Interview with Mr. Moshe Gorali, 22 September 2016 (on file with authors); Letter of the Freedom of Information Official at the Judiciary to the authors (28 Sept 2016) (on file with authors).

24 See the Justice Ministry CEO's letter to the Director (27 Apr 1954), Israel State Archives C-5728/11.

25 See for instance, Circular no. 1 to the District Courts (10 Oct 1952), Israel State Archives C-5728/10.

26 Letter of the Minister of Justice to the Chief Justice (16 Dec 1948), Israel State Archives GL-3291/1.

27 See Letter of 12 March 1954, Israel State Archives C-5728/11.

28 Interview with Director Moshe Gal (20 December 2010) (on file with authors); interview 17 June 2014.

29 Interview 17 June 2014.

30 Interview 17 June 2014.

31 Interview 17 June 2014.

32 Israel State Archives GL-3292/37.

33 Letter to Justice Olshen in 1953: Israel State Archives GL-3292/47; Israel State Archives GL-3292/51.

34 See the first circulars from October 1952 in Israel State Archives C-5728/10.

35 Interview 17 June 2014.

36 See Letter of the Director of the Courts Appointing a Steering Committee for the Improvement and Advancement of the Judiciary (May 28, 2012) (on file with the authors).

37 Interview 17 June 2014.

References

Agmon-Gonnen M (2005) Judicial Independence: The Threat from Within. *Israel Law Review* 38, 120–153.

Bar Ilanit (2010) [Description and Analysis of Justice Ministry Budget Proposal for 2011–2012 Submitted to the Finance Committee, 28 Nov 2010, Knesset Information and Research Center.] (In Hebrew.) [Last accessed 19 Dec 2018.] Available from URL: http://fs.knesset.gov.il/globaldocs/MMM/8b556b58-e9f7-e411-80c8-00155d010977/2_8b556b58-e9-f7-e411-80c8-00155d010977_11_8648.pdf

Ben-Bassat A, Dahan M (2006) [*The Balance of Power in the Budgeting Process*]. Israel Democracy Institute, Jerusalem (In Hebrew.)

Berger MJ, Edles GJ (2000) Established by Practice: The Theory and Operation of Independent Federal Agencies. *Administrative Law Review* 52, 1111–1294.

Bermant G, Wheeler RR (1995) Federal Judges and the Judicial Branch: Their Independence and Accountability. *Mercer Law Review* 46, 835–862.

Bhagwat A (1999) Modes of Regulatory Enforcement and the Problem of Administrative Discretion. *Hastings Law Journal* 50, 1275–1332.

Bobek M, Kosař D (2013) *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe*. College of Europe, Brugge.

Bunjevac T (2011) Court Governance: The Challenge of Change. *Journal of Judicial Administration* 20, 201–240.

Burbank SB, Friedman B (eds) (2002) *Judicial Independence at the Crossroads: An Interdisciplinary Approach*. SAGE, Thousand Oaks, CA.

Canadian Judicial Council (2006) *Alternative Models of Court Administration*. Her Majesty the Queen in Right of Canada, Ottawa, CJC.

Carpenter DP (2001) *The Forging of Bureaucratic Autonomy: Networks, Reputations and Policy Innovation in Executive Agencies, 1862–1928*. Princeton University Press, Princeton, NJ.

Circular no. 1 to the District Courts (10 Oct 1952), Israel State Archives C-5728/10 (In Hebrew.)

Director's letter to the Director of the Budget in the Ministry of Finance (16 Sep 1955), Israel State Archives C-5728/11 (In Hebrew.)

Director's letter to the Minister of Justice (7 Feb 1954), Israel State Archives C-5728/11 (In Hebrew.)
Durham CM, Becker DJ (2011) *A Case for Court Governance Principles*. Publication of the Executive Session for State Court Leaders in the 21st Century at Harvard University, Cambridge, MA.
Epstein L, Knight J (1998) *The Choices Justices Make*. QC Press, Washington, DC.
First circulars from October 1952, Israel State Archives C-5728/10 (In Hebrew.)
Friedmann D (2016) *The Purse and the Sword: The Trials of Israel's Legal Revolution*. OUP, New York.
Garoupa N, Ginsburg T (2009) Guarding the Guardians: Judicial Councils and Judicial Independence. *American Journal of Comparative Law* 57, 103–134.
Garoupa N, Ginsburg T (2015) *Judicial Reputation: A Comparative Theory*. University of Chicago Press, Chicago.
Gilardi F, Maggetti M (2010) The Independence of Regulatory Authorities. In: Levi-Faur D (ed) *Handbook of Regulation*, pp. 201–214. Edward Elgar, Cheltenham, UK.
Gillman H, Clayton C (1999) *Supreme Court Decision-Making: New Institutionalist Approach*. University of Chicago Press, Chicago.
Goldberg E (2011) [*The Chief Justice's Inquiry Request (of March 2nd, 2011) Following the Tragic Death of Judge Morris Ben-Atar*]. Ombudsman of the Israeli Judiciary, Jerusalem (In Hebrew.)
Greenfield A (2003) *Israel's Courts of Law and Tribunals*, 2nd edn. A.G. Publications, Israel.
Guarnieri C (2013) Judicial Independence in Europe: Threat or Resource for Democracy? *Representations* 49, 347–359.
Gur-Arie M, Wheeler R (2002) Judicial Independence in the United States: Current Issues and Relevant Background Information. *USAID Guidance for Promoting Judicial Independence and Impartiality, Office of Democracy and Governance*, pp. 133–147. US Agency for International Development, Washington, DC.
Hayek FA (1945) The Use of Knowledge in Society. *American Economic Review* 35, 519–530.
Hirschl R (2004) *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press., Cambridge, MA.
Hood C, Scott C (1996) Bureaucratic Regulation and New Public Management in the United Kingdom: Mirror-Image Developments? *Journal of Law and Society* 23, 321–345.
Huntington SP (1952) The Marasmus of the ICC: The Commission, the Railroads, and the Public Interest. *Yale Law Journal* 61, 467–509.
Ingram MC (2012) Crafting Courts in New Democracies: Ideology and Judicial Council Reforms in Three Mexican States. *Comparative Politics* 44, 439–458.
Israeli Judiciary. The 2012 Annual Report of the Israeli Judiciary (In Hebrew.)
Israeli Judiciary. The 2013 First Semi-Annual Report of the Judiciary (In Hebrew.)
Israel State Archives C-5729/8 (In Hebrew.)
Israel State Archives C-5729/10 (In Hebrew.)
Israel State Archives GL-3292/37 (In Hebrew.)
Jackson VC, Tushnet M (2006) *Comparative Constitutional Law*, 2nd edn. Foundation, New York.
Jordana J, Levi-Faur D, i Marín XF (2011) The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion. *Comparative Political Studies* 44, 1343–1369.
Justice Minister. Annual Report for 2015 (31 Jan 2016) [Last accessed 19 Dec 2018.] Available from URL: https://www.gov.il/he/Departments/publications/reports/minister_of_justice_overview_2015.
Justice Ministry. 2009 [Work Plan for 2010 (Highlights)] 16–17 Nov 2009. (In Hebrew.) [Last accessed 19 Dec 2018.] Available from URL: https://www.gov.il/he/Departments/publications/reports/annual_work_plan_2010
Justice Ministry. 2012 [Yearly Work Plan for 2012]. (In Hebrew.) [Last accessed 19 Dec 2018.] Available from URL: http://www.justice.gov.il/About/Mankal/YearlyProg/Documents/2012.pdf
Justice Ministry CEO's letter to the Director (27 Apr 1954), Israel State Archives C-5728/11 (In Hebrew.)
Kim PT (2011) Beyond Principal–Agent Theories: Law and the Judicial Hierarchy. *Northwestern University Law Review* 105, 535–576.
Kirat T (2010) Performance-based Budgeting and Management of Judicial Courts in France: An Assessment. *International Journal for Court Administration* 2, 12–20.
Klement A, Shapira R (2007) [Justice and Efficiency in Civil Procedure: A New Perspective]. *Law & Business Review* 7, 137–175. (In Hebrew.)
Kosař D (2016) *Perils of Judicial Self-government in Transitional Societies*. CUP, Cambridge.
Kosař D (2017) Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of the Law between Court Presidents and the Ministry of Justice. *European Constitutional Law Review* 13, 96–123.
Langbroek P (2008) Entre responsabilisation et indépendance des magistrats: la reorganization du système judiciare des Pays-Bas. *Revue Française D'administration Publique* 125, 67–79 (In French).
Langbroek P (2010) Organization Development of the Dutch Judiciary, Between Accountability and Judicial Independence. *International Journal for Court Administration* 2, 21–30.
Lefever RD (2009) The Integration of Judicial Independence and Judicial Administration: The Role of Collegiality in Court Governance. *Court Manager* 24, 5–12.
Levi-Faur D, Gilad S (2004) Review: The Rise of the British Regulatory State: Transcending the Privatization Debate. *Comparative Politics* 37, 105–124.
Levi-Faur, D, Jordana J (2010) Exploring Trends and Variations in Agency Scope. Jerusalem Papers in Regulation and Governance Working Paper 27. Hebrew University, Jerusalem.
Levi-Faur, D (2010a) Regulation and Regulatory Governance. Jerusalem Papers in Regulation and Governance Working Paper 1. Hebrew University, Jerusalem.

Levi-Faur, D (2010b) Regulatory Networks & Regulatory Agencification: Toward a Single European Space. Jerusalem Papers in Regulation and Governance Working Paper 30. Hebrew University, Jerusalem.
Levinson S (2006) Identifying "Independence". *Boston University Law Review* 86, 1297–1308.
Letter of 12 March 1954, Israel State Archives C-5728/11 (In Hebrew.)
Letter of the CEO of the Ministry of Justice to its Minister (10 Nov 1961), Israel State Archives C-5708/13 (In Hebrew.)
Letter of the Director of Courts to the Assistant Registrar of the Supreme Court (17 Sep 1952), Israel State Archives C-5728/10 (In Hebrew.)
Letter of the Minister of Justice to the Chief Justice (16 Dec 1948), Israel State Archives GL-3291/1 (In Hebrew.)
Letter of the State Attorney to the Director of Courts (27 Nov 1952), Israel State Archives C-5728/10 (In Hebrew.)
Letter to Justice Olshen in 1953a, Israel State Archives GL-3292/47 (In Hebrew.)
Letter to Justice Olshen in 1953b, Israel State Archives GL-3292/51 (In Hebrew.)
Letters between the accounting division, Ministry of Justice, and the Ministry of Finance, Israel State Archives C-4669/8; Israel State Archives C-4669/9; Israel State Archives C-4669/10; Israel State Archives C-4669/11; Israel State Archives C-4669/12 (In Hebrew.)
Lurie G (2011) [*Safeguarding Justice: Reforms in the Judiciary and the Prosecution*] (Supervised by Mordechai Kremnitzer). Israel Democracy Institute, Jerusalem (In Hebrew.)
Lurie G, Reichman A, Sagy Y (2018) [The Fall and Rise of Judicial Administration: The Establishment of the Administration of the Courts in 1952]. *Cathedra* 169, 143–166 (In Hebrew.)
Maggetti M (2012) *Regulation in Practice: The de Facto Independence of Regulatory Agencies*. ECPR Press, Colchester, UK.
Maggetti M, Verhoest K (2014) Unexplored Aspects of Bureaucratic Autonomy: A State of the Field and Ways Forward. *International Review of Administrative Sciences* 80, 239–256.
Malleson K, Russell PH (eds) (2006) *Appointing Judges in an Age of Judicial Power: Critical Perspectives from Around the World*. University of Toronto Press, Toronto.
McNollgast (2006) Conditions for Judicial Independence. *Journal of Contemporary Legal Issues* 15, 105–128.
Melton J, Ginsburg T (2014) Does de Jure Judicial Independence Really Matter? A Reevaluation of Explanations for Judicial Independence. *Journal of Law and Courts* 2, 187–217.
Mialon HM, Rubin PH, Schrag JL (2007) Judicial Hierarchies and the Rule-Individual Tradeoff. *Supreme Court Economic Review* 15, 3–20.
Millar PS, Baar C (1981) *Judicial Administration in Canada*. McGill-Queens University Press, Montreal.
Minister's letter to the Director (28 Nov 1952), Israel State Archives C-5728/10 (In Hebrew.)
Ng GY (2007) *Quality of Judicial Organisation and Checks and Balances*. Intersentia, Antwerp.
Ng GY (2011) A Discipline of Judicial Governance? *Utrecht Law Review* 7, 102–116.
Nordlinger EA (1987) Taking the State Seriously. In: Weiner M, Huntington SP (eds) *Understanding Political Development*, pp. 353–390. Little, Brown, Boston.
Parau CE (2015) Explaining Governance of the Judiciary in Central and Eastern Europe: External Incentives, Transnational Elites and Parliamentary Inaction. *Europe-Asia Studies* 67, 409–422.
Paynter S, Kearney RC (2010) Who Watches the Watchmen? Evaluating Judicial Performance in the American States. *Administration & Society* 41, 923–953.
Piana D (2010) *Judicial Accountabilities in New Europe: From Rule of Law to Quality of Justice*. Routledge, London.
Popova M (2012) *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*. CUP, Cambridge, UK.
Pozas-Loyo A, Ríos-Figueroa J (2011) The Politics of Amendment Processes: Supreme Court Influence in the Design of Judicial Councils. *Texas Law Review* 89, 1807–1833.
Rabin RL (1986) Federal Regulation in Historical Perspective. *Stanford Law Review* 38, 1189–1196.
Rechtschaffen C (1999) How to Reduce Lead Exposure with One Simple Statute: The Experience of Proposition 65. *The Environmental Law Reporter* 29, 10581.
Reports from various courts to the Director in April 1954, Israel State Archives C-5728/11 (In Hebrew.)
Ríos-Figueroa J, Staton JK (2014) An Evaluation of Cross-National Measures of Judicial Independence. *Journal of Law, Economics and Organization* 30, 104.
Rubin EL (1996) The New Legal Process, the Synthesis of Discourse, and the Microanalysis of Institutions. *Harvard Law Review* 109, 1393–1438.
Rubin EL (1997) Discretion and its Discontents. *Chicago-Kent Law Review* 72, 1299–1336.
Sagy Y (2011) A Triptych of Regulators: A New Perspective on the Administrative State. *Akron Law Review* 44, 425–477.
Sagy Y (2015) A New Look at Public Law Adjudication: A Critical Organizational Analysis and an Israeli Test Case. *Journal of Transnational Law & Policy* 24, 65–115.
Seidenfeld M (1999) Bending the Rules: Flexible Regulation and Constraints on Agency Discretion. *Administrative Law Review* 51, 429–495.
Shapiro M (1977) Judicial Independence: The English Experience. *North Carolina Law Review* 55, 55, 577–652.
Shetreet S (1984) [The Responsibility over Court Administration]. *Mishpatim* 13, 516–532. (In Hebrew.)
Shetreet S (2004) [*On Adjudication: Justice on Trial.*]. Hemmed Books – Yedioth Aharonoth Publishing, Tel Aviv (In Hebrew.)
Shetreet S (2009) [The Culture of Judicial Independence in Israel: Institutional and Material Aspects of the Judicial System in Historical Perspective]. *Law & Business* 10, 525–583. (In Hebrew.)
Solomon PH (2018) Transparency in the Work of Judicial Councils: The Experience of (East) European Countries. *Review of Central and Eastern European Law* 43, 43–62.
Sommer U (2010) A Strategic Court and National Security: Comparative Lessons from the Israeli Case. *Israel Studies Forum* 25, 54–80.

Strasberg-Cohen T, Savorai M (2007) [The Review Mechanisms of the Judiciary: The Case of the Ombudsman of the Judges – Comparative Overview]. *HaMishpat* 13, 427–448 (In Hebrew.)
Sulitzeanu-Keinan R, Reichman A, Vigoda-Gadot E (2007) [*Judicial Burden – A Comparative Study of 17 States*]. Haifa Center for Public Management & Policy, (In Hebrew.) [Last accessed 19 Dec 2018.] Available from URL: https://pmpc.hevra.haifa.ac.il/images/nappa_and_more/Courts_burden_Final_report_5.07.pdf.
Sunstein C (1999) Informational Regulation and Informational Standing: *Akins* and Beyond. *University of Pennsylvania Law Review* 147, 613–675.
Trondal J (2014) Agencification. *Public Administration Review* 74, 545–549.
van Dijk F, Dumbrava H (2013) Judiciary in Times of Scarcity: Retrenchment and Reform. *International Journal for Court Administration* 5, 15–25.
Vapnek J (2013) 21 Cost-Saving Measures for the Judiciary. *International Journal for Court Administration* 5, 55–63.
Verhoest K (2013) Agencification Processes and Agency Governance: Organizational Innovation at a Global Scale? In: Valkama P, Bailey SJ, Anttiroiko A-V (eds) *Organizational Innovation in Public Services: Forms and Governance*, pp. 49–71. Palgrave Macmillan, London.
Weinshall-Margel K (2011) Attitudinal and Neo-institutional Models of Supreme Court Decision Making: An Empirical and Comparative Perspective from Israel. *Journal of Empirical Legal Studies* 8, 556–586.
Weinshall-Margel K, Galon I, Taraboulos I (2015) [Creating a Case Weight Index for Measuring Judicial Workload]. *Mishpatim* 44, 769–834 (In Hebrew.)
White GE (2000) *The Constitution and the New Deal*. Harvard University Press, Cambridge, MA.
Woodhouse D (2007) The Constitutional Reform Act 2005 – Defending Judicial Independence the English Way. *International Journal of Constitutional Law* 5, 153–165.
Yoaz Y (2005) [Panel Rules to Fire Judge Hila Cohen]. *Haaretz Online Edition*, 2 Dec (In Hebrew.)
Zamir I (2007) [The Judiciary: What is it? Is it Independent? Who Heads it?]. *Moznei Mishpat* 6, 105–123 (In Hebrew.)
Zimmer MB (2011) Judicial System Institutional Frameworks: An Overview of the Interplay between Self-Governance and Independence. *Utah Law Review* 1, 121–139.

Cases Cited

BDM 2461/05 *The Justice Minister v. Judge Hila Cohen*, P.D. 60(1) 457 (2005) (In Hebrew.)
Chandler v. Judicial Council of the Tenth Circuit, 398 U.S. 74, 84–85 (1970).
HCJ 4703/14 *Michael Sharon v. The Chief Justice of the Supreme Court* (30 November 2014) (In Hebrew.)
HCJ 7067/07 *Haim Netanel Ltd. v. The Justice Minister* (30 August 2007) (In Hebrew.)
HCJ 5870/14 *Hashavim H.P.S vs. Administration of Courts* (25 July 2015) (In Hebrew.)
Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3.

Laws and Directives Cited

Basic Law: The Judiciary (In Hebrew.)
Budget Law, 1953/1954 (In Hebrew.)
Budget Law, 1963/1964 (In Hebrew.)
Budget Law, 1973 (In Hebrew.)
Budget Law, 1983 (In Hebrew.)
Budget Law, 1991 (In Hebrew.)
Budget Law, 1993 (In Hebrew.)
Budget Law, 1994 (In Hebrew.)
Budget Law, 2003 (In Hebrew.)
Budget Law, 2013–2014 (In Hebrew.)
Chief Justice's Directive 01–14 on Handling Requests for Postponing Court Hearings (22 April 2014) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://supreme.court.gov.il/Documents/1-14.pdf
Civil Procedure Rules, 1984 (In Hebrew.)
Courts Law [Consolidated Version], 1984 (In Hebrew.)
Courts Order (Transitory Provisions), 1949 (In Hebrew.)
Courts Law, 1957 (In Hebrew.)
Director's Directive Application for Legal Assistants – Adaption of Entry Exams (5 June 2011) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_legal_assistant_test_adaptations
Director's Directive 01-09 Employment of Relatives in the Courts System (1 March 2009) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_employment_of_relatives
Director's Directive 1-10 Hanging of Portraits of Presidents of Courts (13 September 2010) (on file with authors) (In Hebrew.)
Director's Directive 2-07 Submitting Requests for Additional Activities – Judges (20 May 2007) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_directives_request_for_approval_of_additional_employment

Director's Directive 2-09 Searching and Nominating Court Registrars (1 March 2009) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_directives_court_registrars_nomination

Director's Directive 2-10 Participation in Costs for Managerial Education for Judges (15 November 2010) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/BlobFolder/policy/manager_of_courts_judges_management_training/he/%D7%A0%D7%95%D7%94%D7%9C%20%D7%94%D7%A9%D7%AA%D7%AA%D7%A4%D7%95%D7%AA%20%D7%91%D7%A2%D7%9C%D7%95%D7%AA%20%D7%94%D7%9B%D7%A9%D7%A8%D7%94%20%D7%A0%D7%99%D7%94%D7%95%D7%9C%D7%99%D7%AA%20%D7%9C%D7%A9%D7%95%D7%A4%D7%98%D7%99%D7%9D.pdf

Director's Directive 3-08 Funding Retirement Parties of Judges and Registrars (1 March 2009) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_judges_retirement_parties

Director's Directive 3-09 Approval of Leave for Continuing Education (sabbatical) (2 January 2006) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_directives_sabbatical_holiday_approval

Director's Directive 5/11 Directive on Photographing and Recording in Courts (1 May 2011) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_directives_photography_and_recording_regulation

Director's Directive 8-09 Recruitment and selection of Legal Assistants (12 December 2009) (In Hebrew.) [Last Accessed 23 Aug 2018.] Available from URL: https://www.gov.il/he/Departments/policies/manager_of_courts_recruitment_of_legal_assistant

Directive on Presidents/Judges Funds for 2013. Letter to Courts Presidents from Ronen David, Accountant for the Court System and Anti-Trust, 9 January 2012 (On file with authors) (In Hebrew.)

Interpretation Law, 1981 (In Hebrew.)

Judges Act (R.S.C., 1985, c. J-1.).

Judges Law, 1953 (In Hebrew.)

