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# THE LEGAL SYSTEM OF THE STATE OF ISRAEL

LOUIS A. WARSOFF

ISRAEL is a young, new state. Its system of courts and law, although rooted to a considerable extent in the past to Ottoman, Mandate, British, and traditional Jewish and Moslem sources, is likewise young and developing.

Unlike Mandated Palestine's experience, Israel's judges come from many countries and have been educated in a variety of law schools. The reliance on British jurisprudence is, therefore, losing its strength; and, in its stead, a new jurisprudence, native to Israel but influenced by American concepts of the rule of law and civil liberties is evolving.

## I. SOURCES OF ISRAEL'S LAW

IN the absence of a written constitution, Israel's legal system is a composite of five principal sources of law.<sup>1</sup> These are: Ottoman law, which prevailed in the Holy Land until the British defeated Turkey in World War I; regulations and ordinances of the authorities in Palestine under the League of Nations' Mandate; English common law and equity; legislation enacted by Israel's Knesset (parliament); and religious law, a special body of law with a separate court system, dominant in matters of marriage, divorce, alimony, burial, and in certain instances, inheritance.

After Great Britain received the Mandate for Palestine, an Order in Council was issued in 1922 defining Palestinian law. It provided for Turkish law prior to November 1, 1914 (the day on which Turkey joined the Central Powers) to remain in effect. Any gaps were to be filled by the common law and the rules of equity prevailing in England.<sup>2</sup>

The Law and Administration Ordinance, enacted by Israel's Provisional State Council on May 19, 1948, five days after the creation of the state, continued the laws and courts in force under the Mandate, except as they should be changed by the new state.<sup>3</sup> As

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<sup>1</sup> Yadin, *Sources and Tendencies of Israel Law*, 99 U. PA. L. REV. 561 (1951).

<sup>2</sup> Bentwich, *The Legal System of Palestine under the Mandate*, 2 MIDDLE EAST J., 33-46 (1948).

<sup>3</sup> Bentwich, *The Law and the Courts of Israel*, 2 ZION 22 (1951).

yet, the young republic has not changed the laws and courts very greatly. English law has furnished the major portion of the foundation on which Israel has built its system of justice. In court procedure, criminal law, torts, bills of exchange, rent restrictions, and bankruptcy, almost the entire jurisprudence has been English.<sup>4</sup> As during the Mandate period there is no trial by jury,<sup>5</sup> and Judges are not popularly elected.<sup>6</sup>

## II. THE COURTS

*The Regular Courts.*—The regular courts of Israel are a separate, independent entity within the Ministry of Justice. They comprise three levels: the lowest level consists of four municipal courts and seventeen magistrates' courts, including two juvenile courts; the middle level consists of three district courts; and at the highest level is a supreme court.<sup>7</sup>

Equivalent to the magistrates' courts, the municipal courts function in Israel's four largest cities—Haifa, Jerusalem, Rehovoth, and Tel Aviv. They relieve the magistrates' courts of much of their local burdens.

The magistrates' courts have limited jurisdiction in both civil and criminal cases. So as to be accessible to the people, they are situated in nearly every important town and village. They are established in Acre, Afule, Beersheba, Chadera, Haifa, Jerusalem, Migdel Ashkelon, Natanya, Nazareth, Petach Tikva, Ramle, Rehovoth, Safad, Tel Aviv, and Tiberias. The two juvenile courts are located at Haifa and Tel Aviv.<sup>8</sup>

Appeals from the municipal and magistrates' courts go to the district courts. These are situated in Haifa, Jerusalem, and Tel Aviv. The Haifa District Court goes on circuit to Nazareth and Safad; and the Jerusalem court goes to Beersheba. In addition, the district courts have jurisdiction as courts of first instance in all major criminal cases

<sup>4</sup> LOWENBERG, *ISRAEL'S LEGAL SYSTEM* (New York: Israel Office of Information, IM 75, December, 1949).

<sup>5</sup> Shiloh, *Three-Part Court System Functions Without Juries*, 6 *ISRAEL SPEAKS* 15 (1952).

<sup>6</sup> WEBBER, *The Law and the Courts*, in *THE REBIRTH OF ISRAEL* 198 (Israel Cohen ed., London: 1952).

<sup>7</sup> STATE OF ISRAEL, *GOVERNMENT YEAR-BOOK 5716-1955*, 252 (Jerusalem 1955).

<sup>8</sup> The competence of the magistrates' courts was broadened in 1954 by the Magistrates' Courts of Jurisdiction Ordinance Law 5714-1954 (Amendment No. 2). Maximum fines a magistrate may impose for a misdemeanor or contravention were increased from 100 to 3,000 Israeli pounds, and the maximum value of a civil claim was increased from 250 to 1,500 pounds.

and in all civil matters not within the sphere of authority of municipal and magistrates' courts. As courts of first instance, the district courts consist of a single judge; as courts of appeal, they consist of three judges.

Administratively, the judges of the municipal, magistrates' and district courts were, until August, 1953, under the jurisdiction of the Ministry of Justice, and the Minister of Justice who appointed and promoted them. Under an amendment to the legal code passed by the Knesset,<sup>9</sup> appointments are now made by the President of the State of Israel on the recommendation of a nine-member Appointments Committee. This Committee consists of: three judges of the Supreme Court, including its President; the Minister of Justice; one other member of the Cabinet as chosen by the Cabinet; two members of the Knesset elected by majority vote of the full membership; and two members of the Israeli bar selected by the Council of the Israel Bar Association. The President of the State of Israel *must* honor the Committee's recommendations. Chairman of the Committee is the Minister of Justice.

The judges are appointed for life, serving until the mandatory pensionable retirement age of seventy. They can be removed from office only for misbehavior after a hearing by a special committee similar to the Appointments Committee. This method of appointment and removal of judges, from the lowest to the highest bench, was devised in order to remove the pressures of politics and to assure the most qualified choices by the highest competent opinion. Once appointed, the judges are completely independent from the executive or legislative sections of the government, except as they are administratively responsible directly and only to the Minister of Justice.

On June 24, 1948, the Provisional State Council (Israel's parliament during the provisional period) enacted the Courts Ordinance which provided for the functioning of the Supreme Court of Israel, with its judges to be appointed by the provisional government on the recommendation of the Minister of Justice and subject to approval by the Provisional State Council. Five justices were confirmed on July 22, and the Court was inaugurated in Jerusalem on September 14.

Israel's Supreme Court, now consisting of nine justices who sit in groups of at least three, has jurisdiction both as a court of first instance and as appellate court for the district courts in criminal and

<sup>9</sup> *The Judges' Law*, 5713-1953. See 4 ISRAEL DIGEST 4 (1953).

civil cases. It sits as a high court of justice in matters affecting the personal rights and liberties of the people. These cases can be brought before the Court under four prerogative writs: habeas corpus, mandamus, certiorari, and quo warranto.<sup>10</sup> In addition, the Supreme Court sits as a special tribunal and as a maritime court.

From the very beginning, arrears existed in the Supreme Court's calendar. A practice was introduced, at first, which involved the nomination of district court judges to serve as acting justices of the Supreme Court. This resulted in dislocating the work of the lower courts. The only alternative was to enlarge the Court. This was accomplished by increasing the court from five justices to nine, adding seven associate justices, a permanent Deputy to the President of the Supreme Court, and a President of the Supreme Court.

Like all the other judges in Israel, the justices of the Supreme Court are formally appointed by the President of the State of Israel, but are selected and recommended by the special nine-member Appointments Committee. The names of the appointees to the Supreme Court are submitted by the Appointments Committee to the Knesset for approval. After confirmation by the Knesset and formal appointment by the President of the State of Israel, Supreme Court justices remain in office for life, being removable by a majority vote of the Knesset only for reasons of misconduct.<sup>11</sup>

*The Religious Courts.*—In addition to the regular courts, there are special Jewish, Moslem, and Christian religious courts whose existence extends back to the period of Turkish rule. Under the Mandate, these courts were continued with complete jurisdiction and authority over marriage, divorce, alimony, burial, and confirmation of wills. Civil marriage or divorce was then not permissible and, likewise, is not legal for Jew, Moslem, or Christian today. The full and final authority of the religious courts, even in the matter of mixed marriages effected in foreign countries, has been conceded by Israel's Supreme Court.<sup>12</sup>

Popularly known as the rabbinical courts, the Jewish religious courts function under the Ministry of Religious Affairs.<sup>13</sup> They have

<sup>10</sup> Cheshin, *Justice in a New State*, 10 THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 3 (1955). Mr. Cheshin, a native of Israel who received his law degree in the United States of America, is Deputy President of the Supreme Court of Israel.

<sup>11</sup> KRAINES, ISRAEL: THE EMERGENCE OF A NEW NATION 26 (Washington, D. C. 1954).

<sup>12</sup> RACKMAN, ISRAEL'S EMERGING CONSTITUTION 1948-1951, 120 (New York 1955).

<sup>13</sup> Hoffman, *Rabbinical Courts in Israel*, 12 JEWISH HORIZON 8 (1950).

exclusive jurisdiction over members of the Jewish community, other than foreigners, in matters of marriage, divorce, alimony, burial, confirmation of wills, and in cases involving inheritance and succession when both parties agree to their jurisdiction. They exercise concurrent jurisdiction with the civil courts in the above matters, if the cases involve foreigners who consent to the jurisdiction. In all other matters concerning the personal status of all members of the Jewish community, whether or not foreigners are parties to the cases, the religious courts have concurrent jurisdiction with the civil courts, if the consent of all parties to the action is obtained, except that such courts may not grant a decree of divorce or marriage annulment to a foreign subject.<sup>14</sup>

The Jewish religious courts consist of seven district courts and an appeals court. These district courts are located in the major cities of Israel—Haifa, Jerusalem, Petach Tikvah, Rehovoth, Safad, Tel Aviv, and Tiberias. Appeals from the rabbinical district courts may be taken to the Rabbinical Court of Appeals. An appeal may not be taken from the Rabbinical Court of Appeals to any civil authority.

The Department of the Rabbinate and the Rabbinical Courts, in the Ministry for Religious Affairs, administer for the religious courts. It registers marriages and fixes marriage fees. The salaries and expenses of the religious courts are paid by the state. In addition, the Religious Services Budget Law of 1949 provided for partial state subsidization of the activities of the various religious communities in Israel.

*Status of Moslems, Christians, and Others.*—With regard to the Moslems in Israel, the Moslem religious courts have exclusive jurisdiction in all matters of personal status over Moslems who are not foreigners and over those who are foreigners if, under the law of their national state, they are subject in such matters to the jurisdiction of Moslem religious courts. Likewise, the Christian religious courts have similar jurisdiction over members of their community.

In any case relating to personal status and involving persons of different religious communities, the President of the Supreme Court

<sup>14</sup> HOROWITZ, *THE SPIRIT OF JEWISH LAW* 719 (New York 1953). See also, Zuckerman, *Church and State in Israel*, 201 *HARPER'S MAGAZINE* 76 (1950), and Herberg, *Religion and the State of Israel*, 57 *COMMONWEAL* 135 (1952). For a critical evaluation of religious freedom in Israel, see Barth and Ginzberg, *State and Religion in Israel*, 16 *JEWISH FRONTIER* 18 (1949) and Konvitz, *A Plea for Religious Freedom in Israel*, 8 *COMMENTARY* 220 (1949).

of Israel decides which court has jurisdiction.<sup>15</sup> If question arises as to whether or not a case involves personal status within the exclusive jurisdiction of a religious court, the matter must be referred to a special tribunal composed of two justices of the Supreme Court and the president of the highest religious court of the community concerned.

*Special Military Courts.*—Three summary military courts were established in the border areas. Composed of one judge and one prosecutor, these courts are concerned with minor offenses and possess the authority to mete out sentences of up to two years in prison. A military court of three judges, having power to issue death sentences, will convene to hear the more serious cases involving armed infiltrators charged with violence, sabotage, robbery, or drug smuggling.

The special tribal courts for the Bedouins, which were established by the British during the Mandate period, were officially taken over, with some changes, by Israel. These courts, each consisting of three Bedouin judges, settle internal tribal disputes according to tribal law, which is a combination of the Koran, custom, and judicial common sense. Presiding over each of the courts is a representative of the local military government. Not authorized to pronounce judgment, he sits only as supervisor to see that orderly procedure is followed and that cases which are not within the jurisdiction of the tribal courts are directed to their proper jurisdiction.<sup>16</sup>

*The Ministry of Justice.*—In the Ministry of Justice, there is a State Prosecution Department which provides prosecutors for the government who appear before the regular courts in criminal and civil cases. These prosecutors represent also the municipalities and local councils in cases involving the enforcement of those laws over which the local governments have jurisdiction. The Department maintains a central office in Jerusalem, three district offices in Haifa, Jerusalem, and Tel Aviv, and two sub-offices in Rehovoth and Tel Aviv.

In charge of the Department is the Attorney General. He is responsible for the legal activities in the Ministry of Justice. He not only gives advice to the government and directs the preparation and drafting of its legislation, but also offers legal opinions to the various committees of the Knesset.

<sup>15</sup> Gottschalk, *Personal Status and Religious Law in Israel*, 4 THE INT'L L. Q. 454 (1951).

<sup>16</sup> Ben Adi, *Court Day in the Negev*, 6 ISRAEL SPEAKS 12 (1952).

### III. THE RULE OF LAW

WHILE it is the government's function, administratively, to enforce the laws, it is the courts' responsibility, legally, to see that enforcement is properly effected without governmental abuse of authority. If the enforcement agencies should interpret any law incorrectly, the courts have the duty of invalidating such regulation or action.

In a new state, the temptation to abuse authority often causes public officials and civil servants to become petty tyrants. Fortunately, however, Israel inherited from the British authorities in Palestine the right of both the individual and the government to appeal to the higher courts. In its brief history, the Supreme Court of Israel has already emerged as a primary protector of the individual against arbitrary action and improper interpretation of the laws, and also as guardian of the state in the lawful exercise of its authority.

Not only does the Supreme Court have the power to order a cabinet minister to show cause why a certain action should have been taken or not taken, but if the Court is not satisfied that the ruling or decision made by a public official or the action taken by a civil servant is lawful, or that administrative discretion is reasonable, it can nullify such judgment or action.

In addition to this redress in the courts, any serious overstepping by the police or other enforcement agencies beyond the normal, regular limits of restraint or authority is taken up by the press and becomes the subject of sharp complaint also in the Knesset.

After a recent visit to Israel, United States Supreme Court Justice William O. Douglas observed: "The legislative and executive branches of government do not have free rein. The Supreme Court of Israel sits in review of their actions."<sup>17</sup> Justice Douglas was not entirely accurate in stating that action of the legislative branch is subject to Supreme Court review. In Israel, the Knesset is supreme. The Supreme Court cannot invalidate its legislation, although it does have the power to make determinations as to the validity of legislation enacted by the municipal councils and of the administrative interpretations of Knesset statutes.<sup>18</sup>

<sup>17</sup> DOUGLAS, *STRANGE LANDS AND FRIENDLY PEOPLE* 273 (New York, 1951).

<sup>18</sup> In the absence of a written constitution, Israel's Supreme Court has not assumed the authority to invalidate Knesset legislation. The legislation that created the Supreme Court does not specify any such grant or deny it. Israel's Supreme Court has followed the Palestinian Supreme Court of the Mandate period and also the English practice. See CHEESHIN, *op. cit. supra* note 10.



The Supreme Court has the authority to subpoena public officials to testify concerning their conduct.<sup>19</sup> The Court has seen fit to reverse the ruling of a Minister.<sup>20</sup> One of the first decisions of the Supreme Court was to enjoin a cabinet officer who exceeded his authority, as set by law. An Arab had been arrested and held, incommunicado, for several weeks. Holding the arrest illegal, the Court declared: "The Government is subject to the law in the same manner as any citizen of the state."<sup>21</sup>

Absence of a permanent, written constitution has not impeded the Supreme Court in cases involving individual rights. The Court has followed the personal democratic rights of Anglo-American jurisprudence. As a result, an unwritten "Bill of Rights" is developing in Israel patterned after English and American legal theory and application. In general, the Anglo-American concept of the rule of law governs the relations between state and the private individual, and between private individuals themselves; the courts operate in complete independence of government control.

In deciding cases involving individual rights, the Supreme Court of Israel has often cited American and British cases in point.<sup>22</sup> Recently, two newspapers were suspended from publication by the Minister of the Interior acting under a statute authorizing him to suppress newspapers which undermine the security of the state. Referring to the opinions of Justices Brandeis and Holmes in *Schenck v. United States*,<sup>23</sup> the Court ruled that the publications, which had criticized the government's foreign policy, had been properly designated as subversive but that their content did not incite rebellion or sedition and was not a clear and actual danger to the state.<sup>24</sup>

#### IV. CIVIL RIGHTS AND LIBERTIES

IN civil rights and liberties, it is submitted that Israel is one of the most advanced democratic countries in the world. Anyone may

<sup>19</sup> Law and Administration, Ordinance 1, 5708-1948 (May 19, 1948). Judges Law, 5713-1953 (August 20, 1953).

<sup>20</sup> Abu Luban v. Minister of the Interior, 2 Piskei Din 70 (1949).

<sup>21</sup> *Ibid.*

<sup>22</sup> Gorney, "American Precedent in the Supreme Court of Israel," 68 HARV. L. REV. 1194 (1955). Mr. Gorney, District Attorney of Tel Aviv, describes the influence of American constitutional law on the Israeli jurists and points out that the influence has been especially sharp in connection with the separation of powers and civil liberties. Mr. Gorney spent the fall of 1954 at Harvard University working on the Harvard-Israel Cooperative Project for Israel's Legal Development, a project designated to assist in formulating a comprehensive system of laws for Israel.

<sup>23</sup> 249 U. S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1918).

<sup>24</sup> Kol Ha'am, Ltd. v. Minister of Interior, 7 Piskei Din 871 (1953).

adversely criticize any person, group, and policy in private or in public without the slightest fear of official action. The liberty to meet political associates freely, without police interference or control, exists in Israel. Any group of people wishing to form an association is free to do so, but their organizers are required to register the society with the district authorities. This is not a new requirement; it existed under the old Ottoman law on societies, and was carried over by the British during the Mandate period.<sup>25</sup> Government control in Israel, however, is not severe and aims at securing orderly introduction and administration of associations rather than at limiting their formation. There are, nevertheless, certain special precautions which the government takes in scrutinizing organizations believed or known to be subversive or terroristic.

Every religious sect may have its own places of worship and religious schools.<sup>26</sup> There is no censorship of books published in Israel, and there is little control of imported books and magazines except the normal prohibitions on lewd and obscene literature. Censorship of the press, however, exists as carried over from the British administration during World War II. All political articles must be submitted to the governmental press censors in galley proof, but the only significant restriction is against information of military value to the Arab states. In this regard, the editors of the press in Israel have exercised a substantial degree of self-censorship in what they accept as the national interest. Foreign correspondents are fully free to write or telegraph abroad what they wish. While there still is a postal censorship as had existed in the Mandate period, it is largely concerned with preventing evasions of the governmental controls imposed on foreign currency transactions.<sup>27</sup>

Searches of private homes may not be conducted without court-issued warrants. Any person who is arrested must be presented with formal charges and may not be kept in jail for more than forty-eight hours without being brought before a court and formally remanded. In all serious cases, the accused are afforded legal aid. Trials are held in public and are widely reported by the press.

In general, the restrictions on the detention of individuals by the police are similar to those in England. Habeas corpus, introduced during the Mandate period, is still in force. The emergency regulation

<sup>25</sup> Yadin, *Sources and Tendencies of Israel Law*, 99 U. PA. L. REV. 561 (1951).

<sup>26</sup> I Laws of Israel 4 (Eng. ed. 1948).

<sup>27</sup> See note 25, *supra*.

promulgated by the British authorities in Palestine permitting the detention of suspected terrorists or subversives without trial was carried over and is occasionally used, though with uneasiness, where adequate proof to secure a court conviction is not available.<sup>28</sup>

#### V. CAPITAL PUNISHMENT

EXCEPT for high treason and crimes committed by the Nazis, capital punishment does not exist in Israel. A bill abolishing the death penalty for murder was passed by Knesset on February 16, 1954,<sup>29</sup> by a vote of 61 to 33. This replaced Mandatory law which provided for the death penalty.

#### VI. PUBLIC ESTEEM FOR THE COURTS

THE judiciary occupies a very esteemed, popular role in Israel. Even the Knesset has been showing a greater reliance on the judicial rather than the administrative process to determine what constitutes fair prices in the country's economy. On June 2, 1952, for example, the Knesset removed price controls on fruits, fish, and most vegetables. This was done not because of any improvement in the supply situation, and not only to secure better enforcement of controls, but to alter the price position so that the courts, and not the Ministry of Commerce, would judge what are fair prices. The legislators and the public know that the courts would apply the anti-profiteering legislation vigorously and impartially.

#### CONCLUSION

THE above survey of Israel's legal system cannot do justice to such a vital subject, not only because it is too brief an examination but also because events in the young, new republic are moving very rapidly. Israel's way of life is in swift, constant flux; and no book or article on any aspect of the country's existence and development can hope to be current.

<sup>28</sup> *Courts Ordinance*, 1940, § 7, *PALESTINE GAZETTE* 144 (Supp. I, 1940).

<sup>29</sup> Penal Law Revision 5714-1954, 146 *Sefer Ha-Chukkim* 74 (1954).