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Public Trust and Political Legitimacy:
Conflict of Interests and the Role of the Parliament’s Speaker in Israel and Europe

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I. INTRODUCTION

Ethically and politically disputable normative rules are embedded in and constantly affect the development of the constitutional legitimacy of many political institutions. One of these rules is the rule prohibiting conflicts of interest, which is considered a cornerstone of the constitutional and administrative laws of Western legal democracies. The Israeli Supreme Court is constantly changing the boundaries of this rule in order to prevent the slow dissolution of certain principles that comprise our constitutional code of values. In the words of Supreme Court Chief Justice Professor Aharon Barak:
Things change as people manage the public's business rather than their own. In this framework I am not at liberty to do anything on my mind. Not only am I prohibited from inflicting damage on those whose business I manage, I am also instructed by the organizing society to act in confidence and trust... furthermore, I am prohibited from being in a situation where I might be in a conflict of interests between the interest of those for whom I act and any other interest.¹

The Court has broadened the boundaries of the rule by holding that "it is imperative to prevent the faintest shred of doubt as to the existence of a conflict of interests, including the appearance of a conflict of interests."² The rule was extended so as to prevent even a potential conflict of interest. This Article examines the essence and characteristics of the rule that prohibits an elected official from entertaining a conflict of interests. The Article uses the Speaker of the Knesset—the Israeli Parliament—as a test case for three reasons: first, in many jurisdictions the Speaker enjoys disproportionate freedom in controlling and managing the political order of the Parliament; second, the institution of the Speaker receives no academic attention despite its centrality, its impact on and control of the evolution of certain concepts such as political freedom and the role of political parties and their members; and third, the ease with which the Speaker's parliamentary activities in various jurisdictions can be found to be tainted by conflicts of interest. The analysis is legal at its core. Nonetheless, its natural environment is laced with political elements that will be explored as well.

As a way to achieve these aims, the Article will examine the parameters of the Speaker's duties and authority and the resulting potential for conflicts of interest. It will compare Israeli Speakers with their European counterparts to examine how European jurisdictions confront the problem. The authors assume that members of parliament differ from other political public figures, and are thus bound by a stricter standard of ethical conduct to avoid even potential conflicts of interest. Since the Israeli Speaker is first and foremost a member of the Knesset, she is primarily bound by the same duties as any other member of the Knesset. However, as with other governmental hierarchies, some political offices (e.g., ministers and deputy-ministers) are burdened with additional duties and must be more cautious when assuming a role while encumbered by a

². Id.
conflict of interest. The special rules and regulations adopted by the Knesset, which prohibit ministers and deputy-ministers from entertaining conflicts of interest, reflect this idea. The authors believe that Speakers belongs to the same group of public officials to whom special rules regarding conflicts of interest apply. In other words, Speakers are not only Members of Parliament, but hold an elevated position due to their special duties and powers. They must be attentive to their ability to influence the work of the Parliament, its achievements, and the ways in which its members fulfill the hopes entrusted in them by the public. Yet, current and past Speakers have ignored the rule prohibiting conflicts of interest, and a public discussion is yet to be conducted on this topic.

In its six sections, this Article examines the role of Speakers, the nexus between their many duties and powers, possible points of conflict among their different duties, as well as the connection between their official duties and personal interests. This Article takes the role of the Speaker of the Israeli Parliament as its organizing principle. Sections Two and Three discuss the constitutional underpinnings of conflicts of interest and the way in which these apply to Members of the Knesset. Section Four takes the Israeli Speaker as a test case and explores in greater details the many flaws and conflicts inherent in the present definition of the Speaker’s role. Finally, Chapter Five comparatively examines the interplay between the Speaker of the Parliament, the principle of conflict of interests, and other official duties of the Speaker in the context of European jurisdictions.

II. CONFLICT OF INTERESTS: NORMATIVE PARAMETERS

A sweeping, general test for identifying conflicts of interest is difficult if not impossible to create. Every case should be judged on its own merit. The common denominators and distinctions among cases are the point of conflict. The level of damage that may result from the conflict of interest and the extent to which it is possible to neutralize the situation without undermining the public official’s ability to function in both positions will differ depending on the circumstances. If neutralizing the situation proves impossible, the public official must refrain from engaging in the activity that created the conflict of interests and possibly undo the effect of actions already taken.

The prohibition against conflicts of interest stems from the rule prohibiting favouritism—a corollary of natural justice. The rule prescribes a prohibition against a public official placing himself in a situation in which a probable concern or an actual possibility of a conflict of
interests exists. In the *Halikud* case,\(^3\) the Supreme Court of Israel established the sources for the rule and identified the fiduciary duties of a public servant: fairness, good faith and natural justice, and due process. In the *Azriel* case, President Barak further emphasized the importance of the rule prohibiting conflicts of interest:

> [T]he prohibition is not only against the discretion that is part of the Action or the public role. The prohibition is against being in a situation where there is a chance that a conflict of interests may occur. The purpose of the rule is to prevent the error before it happens. This rule anticipates the future... it intends to prevent an honest individual from being tempted. Thus there is no need to prove that there is in fact a conflict of interests. It is sufficient to prove that there is a probable danger of a conflict of interests. The test used by the court is an objective test, rather than the subjective apprehension of this party or another.\(^4\)

To identify a conflict of interests, a map of the public official’s duties and functions is needed. First, one needs to define the function that is the object of the inquiry, the different duties encompassed within that function, and the position holder’s other roles and duties and private businesses. One must then compare the definition of the function with the mapping of the duties and businesses of the position holder and identify possible areas of friction between the two. Finally, one has to identify areas of friction where there is an apprehension that a conflict of interests exists. The areas of friction should be tested using an objective test: would an outsider, a reasonable person, examining all the details in a given set of circumstances, conclude that a conflict of interests might occur?\(^5\)

It is critical to decide whether the evaluative criteria used to find a conflict of interests should consist of a “reasonable apprehension” or a “patent possibility.” Proponents of the patent possibility approach argue that this more lenient standard is necessary in order to avoid deterring citizens from pursuing public office. Proponents of the stricter approach believe that even a reasonable apprehension of a conflict of interests should suffice to disqualify a public official from office, or at least

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3. HCJ 531/79 The Halikud Party in the Petach Tikva Municipality v. Petach Tikva City Council [1979] IsrSC 34(2) 566, 569 [hereinafter *Halikud*]. *Halikud* was a turning point, since up until this point the case law referred only to the rule against favouritism, according to which no one should adjudicate his own matters. See, e.g., HCJ 279/60 Ulamy Gil v. Yeari and the Tel-Aviv Municipality [1960] IsrSC 15, 643.


warrant restrictions on that official’s power. This reasonable apprehension test is utilized in the Knesset, and the counter-argument that this deters citizens from seeking office appears to carry little weight: the benefits of membership in the Knesset far outweigh the inconvenience of adhering to the stricter test. The applications of the rule prohibiting conflicts of interests differ from one area of law to the next, existing on five different levels: criminal, administrative, civil, disciplinary, and public. The results depend on two questions: whether the conflict involves two public interests held in trust by one official, and whether the conflicted interest is public or private. Since our discussion involves predominantly administrative issues, our discussion will focus on conflicts of competing public interests. Israeli remedies to public conflicts of interest are tailored to specific situations, and each case is examined on its own merit. When a conflict is found, officials may be removed from duty, reassigned, their power to make decisions may be limited, and their past decisions repealed. When a conflict of interests complaint is filed against a member with the Knesset’s Ethics Committee, the Committee has the power to warn the member, remove the member from the Knesset assembly, and even deny the member's salary and other pecuniary benefits and privileges.

A question remains, though, as to whether these sanctions are applicable when the Speaker’s affairs are at question. It seems that the sanctions within the jurisdiction of the Ethics Committee are difficult to apply to the Speaker. There are substantive differences between the Speaker and “regular” Knesset members that are based on the nature of their roles. The current regulatory scheme give rise to some concerns

6. See HCJ 214/79 Abdelachi v. The Mayor of Tira [1979] IsrSC 34(1) 431, 433; see also HCJ 4225/91 Gudovich v. The State of Israel [1991] IsrSC 45(5) 781, 786. The court adopted a substantive approach to the issue of disqualification of judges. See HCJ 48/75 Yedi v. The State of Israel [1975] IsrSC 29(2) 375, 382. However, the court held that when the issue is a conflict of interests between public interests and a private business, the test to apply is a reasonable apprehension test. See HCJ 3132/92 Mushlav v. The North District Zoning Committee [1992] IsrSC 47(3) 741, 747.

7. In private law matters an action originating from a situation of conflict of interests may substantiate an argument pertaining to bad faith. See Halikud, supra note 3, at 573. In the area of criminal law, such action may constitute an investigation of possible bribery. See Penal Act § 290, 5737-1977, (Isr.). At the disciplinary level, such an action may be regarded as unbecoming a civil servant. See Public Service Act (Discipline) § 17(3), 5723-1963, (Isr.). It should be mentioned that the Knesset’s Ethics Committee is not a disciplinary tribunal and its hearings should not be mistaken for “disciplinary hearings.” However, the Committee does have the jurisdiction to set disciplinary sanctions such as a reprimand, a warning, and even removal from the Knesset assembly. Nonetheless, the Committee’s sanctioning powers are fairly limited.

with regard to the rule prohibiting a conflict of interests, mainly because the current legislation does not distinguish between the Speaker and other Knesset Members. The absence of such a distinction is even more pronounced in light of the special rules regarding the prevention of conflicts of interest of ministers and deputy-ministers.

III. CONFLICT OF INTERESTS INVOLVING KNESSET MEMBERS

A. Principles

"All public servants," Justice Barak has remarked, "owe a duty to avoid a conflict of interests . . . and this rule is even more justified when applied to elected officials, whose lives are constantly exposed to the public's scrutiny, and who are expected to be the public's role models." When dealing with elected officials, one must be aware of an inherent distinction between different role holders based on their hierarchy in public service. This Section addresses the case of Knesset members, ministers and deputy-ministers. The principles of the debate in this Section will later become the basis for the discussion of the Speaker. We attempt to prove the following thesis: the existing system for scrutinizing the actions of political players does not cover all possible conflicts of interest. The absence of prevention leaves the political system exposed to corruption and ill management. Consequently, public trust in the political system is detrimentally affected. Since the Speaker is first and foremost a member of the Knesset, the discussion will start from the rule prohibiting conflicts of interest applicable to Knesset members. Then we will argue that the rules set for ministers and deputy-ministers should also apply to the Speaker, pending, of course, relevant changes.

B. Knesset Members

1. The Knesset Members' 1951 Immunity, Duties and Rights Act

The Knesset Members' Immunity Act places a number of restrictions on the ability of members to hold public positions as well as to engage in

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10. Note that no specific legislative source strictly forbids the Speaker from engaging in a conflict of interests. One can assume, though, that the legislator regards the Speaker as a Knesset Member. However, unlike ordinary Knesset Members, the Speaker always wears at least two hats: for example, the Speaker plays the role of the State President, Knesset Member, and member of certain Knesset Committees.
certain private activities. Section 13A of the Act prohibits members from acting as a city mayor, as CEO of a private corporation, or as the head of a public office. Section 13A(b) prohibits Knesset Members from engaging in conduct that may dishonour the Knesset, undermine the status and duties of another member of the Knesset, or implicate a conflict of interests. This section also distinguishes between conflicts that implicate two public interests and those that implicate public and private interests. Section 13A(b) is sweepingly broad, and allows for creative interpretation.

2. The Ethics Regulations

For a long while, the Israeli Knesset was reluctant to regulate the ethical behaviour of its members. It assumed that its members were honest and trustworthy. However, the political reality suggested otherwise, and regulations of the ethical conduct of Knesset members were created as a precautionary measure. As part of the same trend, the ethical conduct of ministers and deputy-ministers was regulated, as well as that of individuals elected to official municipality positions. Quite similarly to section 13A(3) of the Immunity Act, Section 2 of the Ethics Regulations also discusses the Knesset’s honour and the qualified immunity of Knesset members. Section 4 prohibits members from gaining material advantage, directly or indirectly, from acts conducted within their official capacity. Finally, Section 5 prohibits members from engaging in actions that may result in a conflict of interests between their official duties and personal matters.

The language of the Regulations is narrow, but it would be a mistake to presume that they do not apply to situations that are not explicitly mentioned. A general rule protecting the honour of the Knesset may provide a solid basis to some very creative interpretations. Additionally, Section 24 of the Regulations includes another inclusive rule providing that the “Ethics Committee will rule on matters that are not specifically mentioned in these Regulations.” Similarly, Section 25 provides that “the Ethics Committee will have exclusive jurisdiction to interpret the

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14. See Nitzan, supra note 11, at 475-88.
Regulations.” Thus, Sections 24 and 25 both provide a very broad basis for interpreting the Regulations and permit the Committee to impose its views when the text of the Regulations is unable to provide a satisfactory answer to an ethical question.\footnote{5}

Section 13D of the Immunity Act explains the possible sanctions the Committee may utilize. These include: warnings, citations, reprimands, severe citations, and public censure.\footnote{6} The Speaker is also technically bound by the Ethics Regulations. However, because the Speaker appoints the four members of the Ethics Committee and its Chair,\footnote{7} the Regulations have little impact on the Speaker’s conduct.

\textit{C. Ministers and Deputy-Ministers}

The restrictions placed on ministers and deputy-ministers are far stricter than those placed on Knesset Members, expressing a widespread apprehension that Ministers have greater difficulty avoiding conflicts of interest. Section 3 of the Regulations prohibits favouritism. Sections 4-6 prohibit conflicts of interest. Section 11 gives the state comptroller the jurisdiction to enforce these rules. However, Chapter D of the Regulations provides an interesting escape clause,\footnote{8} by creating a mechanism through which ministers and deputy-ministers may appeal to a special committee and request special authorization to abstain from following a particular rule of the Regulations.\footnote{9}

\begin{itemize}
\item \footnote{15} The Immunity Act’s 5th amendment (passed as part of the implementation of the Tunik Commission Report, and no longer applies) provides for more restrictions on additional activities, but also allows Knesset Members to appeal to a special Committee for special authorization to take part in these activities. Section 23 of the Knesset Regulations now provides a similar possible path of action for a Member seeking approval of a questionable ethical conduct. Knesset Regulation § 23.
\item \footnote{16} Immunity Act, \textit{supra} note 15, § 13D.
\item \footnote{17} Ethics Regulations, \textit{supra} note 12, § 18.
\item \footnote{18} Nitzan, \textit{supra} note 11.
\item \footnote{19} A natural state of a conflict of interests is also referred to as an inherent conflict of interests. This type of a conflict of interests is considered exceptional and subject to special rules. In these cases a role holder’s conflict of interests is not prohibited but rather inherent to the role and thus acceptable. For example, HCJ 508/83 \textit{Maof Air Lines v. The Minister of Transportation} [1983] IsrSC 38(3), 533, concerned a challenge to the policy of the Minister of Transportation regarding charter flights. The Minister favored El-Al, the national airline, over other private airlines. The court held that in a situation where the Minister of transportation is required to make policy decisions that regard the national airline (which is inherently under his supervision), a conflict of interests is unavoidable. The Court instructed the Minister to exercise caution when making these decisions but not necessarily to avoid them.
\end{itemize}
IV. THE SPEAKER: DRAWING THE BOUNDARIES OF AUTHORITY

A. Conduct Unbecoming of Status

Although the election of the Speaker is ultimately a political process, Speakers and their deputies must conform to due process and avoid favouritism and conflicts of interest. Section 2 of the Knesset Regulations emphasizes these restrictions by prohibiting ministers from serving as the Knesset Speaker. Based on the assumption that Speakers do not favour their party over the others, Section 3 of the Regulations provides that Speakers and their deputies may remain in office for the duration of the Knesset’s four year term regardless of any changes in the party to which they belong. Nonetheless, the legislation also provides for mechanisms to suspend or remove Speakers and their deputies.20 This legislation distinguishes between suspension, or removal resulting from criminal acts, and that which results from other infractions.21

B. Authority

The authority of Speakers is derived from legislation, the Knesset Regulations, and by their role when standing in for the state’s president. In addition, when Speakers are candidates in the elections for leadership of their party, they are required to adhere to additional duties. Inevitably, this wide array of duties regularly places the Speaker in a position of conflicting interests.

1. Legislation

It would be useful to review a few examples of the many duties vested in the Speaker. Israel’s Basic Law provides that: (1) Speakers, after consulting with their deputies, may move the assembly to another location;22 and (2) resigning Knesset Members will submit their resignation to the Speaker.23 The Immunity Act provides that: (1) the Speaker is responsible for the enforcement of the Act;24 (2) the Speaker has to give a Member of the Knesset authorization to testify in court hearings;25 (3) the Speaker can decide whether to lift a Member’s legislative immunity.26 Additionally, the Speaker governs the implementation of

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20. Basic Law: Knesset § 20(c)-(d), 5754-1994 (Isr.).
23. Id. § 40.
25. Id. § 8.
26. Id. § 13(g).
the Knesset Member Salary Act, 5709-1949. The Speaker also has managerial duties under the Knesset Building and Yard Act, 5728–1968, and serves as the executor of the Act. The Speaker holds further authority according to the Civil Service (Appointments) Act, 5719–1959, the Knesset Elections Act, 5729–1969, and the Party Sponsorship Act, 5733–1973. Finally, under Section 19 of the Basic Law dealing with the President of the State, resigning presidents must submit their letter of resignation to the Speaker.

2. Knesset Regulations

The scope of the Speaker’s power under the Knesset Regulations is very broad. The Regulations impose on the Speaker more operational duties than does other legislation. The Speaker is charged with managing the Knesset’s agenda and presenting it to the public, arranging the order of its hearings, and the execution of its Regulations, and protecting its honour.

3. Standing for the President

The Speaker’s role is integral to the orderly transfer of executive power in a time of emergency. Section 23 of Basic Law provides that, if the state president is no longer acting in an official capacity either permanently or temporarily, the Speaker serves as the acting president until the president can reclaim his or her duties or a new president fills the position. While replacing a president, the Speaker carries all the duties and authority of the president’s office.

C. On Duties and Authority

The point at which the authority of Speakers meets their official role and political aspirations creates a potential for conflicts of interest. The primary reason for this is that the Israeli Knesset is a small house of representatives, and on a partitocratic level is an excellent example of a divided parliament where the true political power of many parties...
exceeds their relative legislative representation. In this context, the Speaker’s many roles may lead to overlapping authority, which may in time create situations where Speakers and their deputies face conflicts of interests.

1. Membership in the Interpretation Committee

The Knesset Regulations allow the Speaker to serve as a member of the Interpretation Committee. This is the only Committee in which the Speaker can act as a full member and is not restricted to simply participating in hearings and deliberations. According to the Regulations, interpretation of the Regulations during an assembly is within the authority of the Speaker. The Interpretation Committee’s jurisdiction is limited to resolving interpretational question cases involving the Knesset Regulations which surface during the Knesset assembly. The Speaker interprets the regulation, and Knesset Members may choose to appeal the decision after the assembly. The Interpretation Committee is comprised of eight members and the Speaker. The Committee’s decision is final. The decisions that are discussed in the Committee are thus the Speaker’s, which ironically results in “letting the fox guard the henhouse.”

2. Participating in Knesset Committees

The Regulations allow the Speaker to participate in general committee hearings, but do not explain the nature of the participation. Questions arise concerning whether this participation should be active or passive and whether the Speaker should be able to address the committee. The ability to address and criticize a committee’s decisions may influence committee members and the orientation of the committee’s decisions. On one hand, the fact that the Speaker is prohibited from being a full member of all Knesset committees save the interpretation committee indicates that the Speaker’s participation is intended to be passive. According to this approach, Speakers may not participate in committee hearings and must stay objective in their relationship with all Knesset members. On the other hand, prohibiting Speakers—democratically elected Knesset members—from actively participating in committee hearings denies them their constitutional right to influence policy and legislation. As a principle, we favour allowing Speakers to participate in committee hearings in the broadest sense. Otherwise, their role as the Speaker prevents them from accomplishing their duties to their constituents—to influence policy-making and the legislative process.

32. Knesset Regulations, supra note 15, § 149.
Such a practice denies the Speaker the use of the power the public has entrusted in him.

D. Where Political Activism, Authority and Duties Collide

1. The Argument

The Speaker is a political figure. Naturally, politicians want to move up in their party's political hierarchy. The intersection of Speakers' political aspirations with their authorities and duties place them in almost inevitable conflicts of interest. The Speakers' political aspirations are a direct product of their election to the Knesset. When Speakers supports a specific candidate to act as chair of their party or are running for that position, the Speakers' conflicting interests become even more difficult to manage. For example, it is not uncommon for the president to travel abroad for an official visit and to have the Speaker stand in, while still acting as Speaker of a very active Knesset just a few months before elections. The Speaker in this scenario is working zealously towards the election of a candidate and attending the Interpretation Committee hearings, which are influenced by the high volume of activity in the Knesset.

What happens when, to add to all this, the Speaker runs for the prime minister position—a candidacy that requires constant interaction with party activists? In these situations the potential for wrongdoing becomes clear, particularly as the Speaker's Interpretation Committee often must decide whether to approve bills submitted at the last minute, which party activists want to see enacted so as to add support to their election campaigns. Furthermore, when justified by the circumstances, the Speaker may authorize a continuance for members of the Knesset who are required to submit an affidavit listing their property. Will Speakers who need the support of a certain Knesset member for their candidacy abstain from prolonging the submission period of that member's affidavit? Under the present system, Speakers are at liberty to act as they please to ensure their political future.

33. Knesset Regulations, supra note 15, § 134(b).
2. The Harm to Public Confidence

An obvious result of conflicts of interest is harm to public confidence in the Knesset. The Supreme Court addressed this issue in a number of cases. In the Eisenberg\textsuperscript{34} Case the court held:

Public confidence in government organs is one of the most precious assets of the executive authority and the State. When the public loses its confidence in the organs of Government, it loses its belief in the social contract forming the basis of communal life. Significant importance should be given to considerations that are designed to maintain, preserve and promote a feeling among the public that its servants are not its masters and that they do their work for the public, honestly and without corruption.\textsuperscript{35}

Do all elected officials have an equal duty to protect the public’s confidence? Israel’s Supreme Court has made a primary distinction between civil servants and elected officials:\textsuperscript{36} “An elected official is elected by the people and is subject to their scrutiny; a civil servant is appointed by elected officials and subjected to the people’s scrutiny.”\textsuperscript{37} Thus, an elected official must follow “a stricter standard of conduct.”\textsuperscript{38} The question is: Should a distinction exist among elected officials? Let us explain: a Knesset member is an elected position, while the Speaker is not. The Speaker is elected by the Knesset. Arguably then, an already elected official, re-elected by the Knesset for an additional specific role, owes a stricter duty of trust to the public than an ordinary Knesset member.

E. Interim Conclusions

We saw that the Speaker wears many hats simultaneously and is accordingly vested with great powers. We additionally saw that, within all these different duties lies a serious concern about the potential for conflicts of interest. One cannot avoid asking, how many hats can the Speaker wear at one time? And if she can wear all these hats, how can we ensure she does so in a way that does not violate constitutional norms and legal rules? These problems demand review and scrutiny. It is the authors’ argument that this scrutiny should not only take the form of judicial review. Rather, the system must internalize and re-evaluate the problematic elements inherent in the Speaker’s roles and their manifestation in the everyday reality of the parliament.

\textsuperscript{34} HCJ 6163/92, Eisenberg v. Minister of Construction and Housing [1992] IsrSC 47(2) 229.
\textsuperscript{35} Id. at 265.
\textsuperscript{36} HCJ 4267/93 AMITAI v. The Prime Minister [1993] IsrSC 47(5) 441, 470.
\textsuperscript{37} Id. at 476.
\textsuperscript{38} Id.
V. A COMPARATIVE EURO-BAROMETER

A. Background

The Speaker is a common institution in parliamentary traditions. This Section will introduce, on a comparative level, the characteristics of the role of the Speaker in selected European parliaments, and the ways in which states prevent speakers from engaging in conflicts of interest. The Section is divided into four parts: the first part will discuss the importance of a comparative constitutional legal analysis, the second part will address election and voting procedures, the third part will discuss authority, and finally, the fourth part will address restrictions.

Constitutions often regulate the role of the Speaker in the parliamentary order. In most cases, the issue of procedural and substantive authority is scattered among the constitution, regulations, and Sections. The differences in the manner Speakers are elected and voted for are by-products of the political structure and the parliamentary history of a given state. (For example, consider the differences between federal and confederate regimes). Jurisdictional differences dictate that the issue of conflicts of interest have different impacts in different states. For example, both the Finnish and Belgian Constitutions specifically prohibit officials from engaging in a conflict of interests while in office. Similarly, in other states this prohibition may be inferred from constitutional provisions, or is referenced to it in specific legislation. In all the states we examine, the rules prohibiting parliament members from engaging in conflicts of interest apply to the Speaker as a member of the parliament. That being said, one should not conclude that the issue of the Speaker’s conflicts of interest should not be regulated separately—an approach we strongly advocate and support. Such regulation is even more crucial when the Parliamentary make-up is problematic and extremely fragmented, such as in the cases of the Israeli Knesset and the Belgian parliament.

Our starting point for this Section is identical to the main argument of the Article: no specific reference to the Speaker exists in special

39. While generally in this Article we refer to the “Speaker”, in this Chapter we shall mention in brackets the name of the office that is equivalent to the Knesset Speaker in the specific jurisdictions we shall discuss. For example: Speaker, Chairman, Chairperson, and President of Parliament.

legislation or regulations, despite the fact that the Speaker oversees a number of areas in which interests overlap, and is therefore constantly confronted with conflicts of interests.

B. A Note on Comparative Constitutional Analysis

The choice of a comparative methodology is an important one. Scholars grapple with the importance of comparative law in general, and of comparative constitutional law specifically. There are at least four main reasons why comparative constitutional research is vital. First, such research allows one to look for possible solutions to constitutional problems. Second, a comparative analysis motivated by general curiosity, rather than as a method of solving a specific problem, enables researchers to articulate and expand their understanding not only of foreign countries, but also of their own constitution. Such analysis provides researchers with a more detached perspective, as they would not invest the same kind of personal emotional energy into the problems they research in the foreign jurisdiction. Third, one should not forget that the two approaches—a problem solving and an objective approach—are complementary. On the one hand, one needs prior knowledge of other Constitutional orders to conduct a comparative problem analysis. On the other hand, exploring the meaning of a specific problem in another jurisdiction in order to draw conclusions applicable to the researcher’s home jurisdiction deepens the pool of knowledge of the foreign jurisdiction.41

Finally, the differences among the jurisdictions help us to reassess our own constitutional order from a more general perspective, rather than a specific, problem oriented glance. In this Article our objective is of the first and last kinds: our gaze is both introspective and outward looking. While we wish to examine solutions to the potential conflict of interest situations in which the Israeli Speaker may find himself, we also wish to gain perspective on this problem by examining the dilemmas other jurisdictions are faced with in this context.

C. Election and Voting Procedures

1. Election Procedures

The Israeli custom is to elect a new Speaker at the first Knesset assembly. Section 3(3) of the Knesset Regulations provides that Speakers

41. See Vicki C. Jackson & Mark Tushnet, Introduction to DEFINING THE FIELD OF COMPARATIVE CONSTITUTIONAL LAW, xii-xiii (Vicki C. Jackson & Mark Tushnet eds., 2002); Kazuyuki Takahashi, Why Do We Study Constitutional Laws of Foreign Countries, and How?, id. at 35, 47-48; Donald P. Kommers, Comparative Constitutional Law: Its Increasing Relevance, id. at 61-63.
and their deputies are elected for the duration of the Knesset seat (four years or less). This is not an international parliamentary rule. Some regimes elect the Speaker every time the parliament returns from recess. For example, the Finnish Speaker is elected for each parliamentary session.\textsuperscript{42} In Belgium, the Speaker of the lower house is elected on the second Tuesday of every October, and in Denmark on the third day of the first week of October. An annual re-election of the Speaker is a very effective method for preventing conflicts of interest. A short residency does not leave room, at least theoretically, for misconduct. Common only among parliaments, up until the election of a new Speaker, the most senior member of the Parliament manages the assembly.\textsuperscript{43}

A Speaker is not always elected by the Parliament itself. In Austria, the Bundestrat Presidency presides in six month rotations starting on January 1 and ending July 1. The Presidency rotates to the leader of the predominant party of each province (\textit{Länder}), who in turn is elected to federal parliament by each province’s parliament.\textsuperscript{44} Although the federal parliament does not directly elect the Speaker, the rotation provides for a sense of equality among the different provinces that are represented in the Bundestrat. The most notable advantage of this method is that, in effect, the people elect the Speaker, as the Bundestrat Presidency is held by the leader of the most popular party of each province.

\section*{2. Voting Procedures}

According to Section 1 of the Knesset Regulations, the Knesset elects the Speaker and deputies in open elections. However, most parliaments do not follow this rule.\textsuperscript{45} Although the language of Section 15(9)(1) of the Irish Constitution is similar to that of Israeli legislation—"\textit{Each House of the Oirechats [The Irish Parliament] shall elect from its Members its own Chairman. . . .}"—the voting is not open.\textsuperscript{46} The Finnish and Estonian Constitutions likewise allow their parliaments to pick the
Speaker, but their vote is secret. This begs the question: if the Israeli Speaker is obligated to sustain equality among Knesset members—to be a neutral figure despite any political affiliation—why not hold secret elections in Israel? Why should the Speaker have the opportunity to examine the voting behaviour of Knesset members during election?

3. Authority

A comparison of the authority and duties of the Speakers in the examined parliaments reveals many similarities. Constitutions rarely define the role of Speakers and their place in the constitutional hierarchy. It is usually the parliament regulations and other regulations that set the specific boundaries of the Speaker’s authority regarding procedure and discipline. The Constitution of Finland is a notable exception. In addition to mentioning the rule prohibiting conflict of interests, the Finnish Constitution specifies all the powers and duties of the Speaker. Section 34 of the Constitution provides:

The Speaker, the Deputy Speakers and the Chairpersons of Parliamentary Committees form the Speaker’s Council. The Speaker’s Council issues instructions on the organisation of parliamentary work and decides, as specifically provided in this Constitution or in the Parliament’s Rules of Procedure, on the procedures to be followed in the consideration of matters in the Parliament. The Speaker’s Council may put forward initiatives for the enactment or amendment of Acts governing parliamentary officials or the Parliament’s Rules of Procedure, as well as proposals for other provisions governing the work of the Parliament.

Section 42 provides:

The Speaker convenes the plenary sessions, presents the matters on the agenda, oversees the debate and ensures that the Constitution is complied with in the consideration of matters in plenary session.

The Speaker shall not refuse to include a matter on the agenda or a motion in a vote, unless he or she considers it to be contrary to the Constitution, another Act or a prior decision of the Parliament. In this event, the Speaker shall explain the reasons for the refusal. If the Parliament does not accept the decision of the Speaker, the matter is referred to the Constitutional Law Committee, which shall without delay rule whether the action of the Speaker has been correct.

The Speaker does not participate in debates or vote in plenary sessions.

European and Israeli Speakers often possess similar powers, although exceptions are not uncommon. Unlike the Israeli Speaker, who is

47. "The election of the Speaker and the Deputy Speakers is conducted by secret ballot," Const. § 34 (Fin.), supra note 40.
49. Const. § 34 (Fin.), supra note 40.
50. Id. § 42.
restricted from actively participating in any parliamentary committee (other than the Interpretation Committee), the Speaker of the Irish lower house is a member of the Ethics Committee as a result of the 1995 Ethics in Public Office Act. The Irish Speaker also holds inspection powers during general elections. She also enjoys substantial powers in organizing the daily agenda of the parliament.

One of the main duties of the Speaker is to oversee the appropriateness of debating bills. Section 134(c) of the Knesset Regulations provides that a bill will be brought before the Knesset if the Speaker or deputies do not find it to be “of racist content or of content negating the existence of the state of Israel as the State of the Jewish people.” Similar words are found in other regimes. Section 89 of the Italian Parliament Regulations authorizes the Speaker (President) to not bring to vote bills that are contrary to the spirit of the Constitution. Granted, it seems that the powers vested in Speakers are broad and may expose them to many conflicts. Finland is a good example of a parliamentary system that limits the powers of the Speaker with respect to the presentation of bills. Section 42 of the Finnish Constitution limits the Speaker’s powers and permits the parliament to disagree with the Speaker and to request that the bill be sent to the Constitution, Legislation and Justice Committee.

The absence of a similar system of checks and balances in Israel and in other jurisdictions puts the Speaker in further jeopardy of facing a conflict of interests.

D. Restrictions on Election to Other Public Offices and on Private Businesses

1. Elections

Many parliamentary regimes customarily allow all members of the Parliament to act as Speaker. In Israel, Finland, and Estonia, the situation is different. Section 2 of the Knesset Regulations provides that “a Member of the Government will not be the Speaker...” Similarly,

55. Italian Parliament Regulations § 89.
56. See, e.g., Const. § 42 (Fin.), supra note 40.
Section 64 of the Finnish Constitution says: “If a Minister is elected President of the Republic or the Speaker of Parliament, he or she shall be considered to have resigned the office of Minister as from the day of election.”

Specific legislation addressing the election of Speakers is rare. Elections for Speaker are typically governed by parliamentary custom. In Denmark, the sole candidate typically comes from the largest party, and that the candidate is obligated to accept the candidacy. The parliamentary regulation of Denmark prohibits the Speaker from actively participating in hearings. However, when the Speaker asks to participate in hearings, one of the deputies takes over and chairs the assembly. This arrangement was created in order to avoid a situation where the Speaker “wears more than one hat” at once. Obviously, the idea of the Speakers acting as both parliament members and Speakers at the same time is problematic. However, this arrangement has the benefit of allowing Speakers to practice their elementary right as members of parliament to participate in hearings.

One possible solution to the above paradox is to accept the Danish or Belgian models that elect the Speaker annually on the beginning of the fall term. An annual election may prove effective as a means to prevent conflicts of interest. However it may not be the right solution for every scenario. We must consider that in a politically divided parliament, in which small parties enjoy power that is disproportionate with their size, one must be attentive to the potential for political clash that surrounds the election of the Speaker.

In addition, unlike Denmark or Germany, the Finnish Speaker typically does not belong to the same party as the prime minister belongs. This custom assumes that when the prime minister and Speaker belong to the same party there may be more opportunities for a conflict of interests, and it is designed to balance these interests. Consider, for example circumstances where the Speaker and prime minister belong to the same party and a confidence vote is at stake: the Speaker has the power to suspend the confidence hearing.

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57. Id. § 64.
58. The Parliament Regulations of Denmark prescribe that the Speaker will be elected from the largest party and her four deputies will be elected proportionally from the next largest parties. Standing Orders of the Folketing § 3(1) (1953).
59. It is virtually impossible to impeach the German Speaker (President) except for extreme circumstances. Conversely, in Denmark it takes a majority of 60 Parliament Members to pass a vote of no confidence. Id. § 2(2).
60. Id. § 4(3).
2. Additional Vocations

The Israeli Immunity of Knesset Members' Act does not prohibit its members from engaging in additional vocations, although many argue that such a prohibition is necessary. In other systems, such restriction exists as a constitutional principle. However, similar to Israel, the absence of sweeping restrictions in most European jurisdictions allows conflicts of interest to flourish.

Statistics collected by the Belgian Senate show that typical Belgian parliament members spend more than 50% of their time in their electoral region. According to statistics gathered in 2000, extra-parliamentary occupations are profitable, and occupy 70% of the time of both houses of the Belgian federal parliament. Many parliament members have also served as mayors or members of other regional institutions. Finally, Belgian members of parliament are often active party members and serve as chairs of regional district branches or as members of party committees. While Israeli law allows Knesset members to engage in party activity, it does not allow them to receive monetary compensation for such activity.

The Belgian federal parliament has attempted to limit what has become a custom: *cumul desmandats*—assuming official duty in multiple roles simultaneously. In 1999 the Belgian parliament adopted a 1985 French law which allows Parliament Members to assume only one additional official position from a closed list of permitted roles.

62. For example, section 99 of the Estonian Constitution provides: “Members of the Government of the Republic may not hold any other public office or belong to the leadership or council of a commercial enterprise.” Const. § 99 (Est.).
63. See Lieven De Winter, Intra- and Extra-Parliamentary Role Attitudes and Behavior of Belgian MPs, 3/1 J. LEGIS. STUD. 128-54 (1997); F. Drion, L’absentéisme parlementaire, Diagnostic et remèdes, RES PUBLICA 22, 79-100 (1980).
64. De Winter, supra note 63.
65. Id.
66. Immunity Act, supra note 15, § 13A.
Through this legislation, the Belgian law prevents members of parliament from placing too much emphasis on the interests of the provinces, thus preventing conflicts of interest. Additionally, the Act places a cap on members' earnings from private businesses, and aims to prevent members of parliament from considering private interests while in office. 69

The constraints imposed on Belgian parliament members are essential to the existence of a stable democratic order; the public may interpret a lack of restraint as a breach of trust. Prior to 1999, Belgian citizens were rated the least likely to trust their politicians out of all member states of the European Union. 70 In explaining the reasons for Belgium's recent restraints, De Winter identifies corruption as one of the immediate results of allowing members of parliament to hold multiple public positions:

Apart from their inclination towards clientelist service responsiveness towards the individual constituents, Belgian politicians also engage massively in collective responsiveness activities. They perceive this as an important extraparliamentary role.

Given the strong impact of Belgian parties on executive decision-making (see below), MPs can through contact with ministers, their cabinets, party nominated civil servants, etc. play a very manipulative role in the executive decision-making process. They thus satisfy demands of individual constituents as well as of the collective constituency.

Due to this prominence of pork barrel politics in the role definition of politicians and of voters, and the large opportunities politicians have for satisfying the collective needs of their constituency, Belgian political elites are more vulnerable to corruption offers. 71

A constitutional democracy that overlooks the need to prevent its elected officials from holding multiple positions undermines stability. In a small parliament governed by partitocracy—in which the power of the smaller parties greatly exceeds their actual size, and in which every member holds a number of extra parliamentary positions that require protection of other interests—a loyal parliament member is more a dream than a reality. The Belgian example is very similar to the Israeli one. Much like the case of the Israeli Speaker, the Belgian legislature has not adopted special rules for its Speaker, despite the fact that the


69. See supra note 68.


Speaker possesses much more power, authority, and duties than ordinary members of parliament. It is not surprising, then, that the multitude of roles and powers make the role of the Belgian federal Speaker attractive to provincial institutions and the private sector.

3. The Constitutional Status of the Rule on Prohibiting Conflict of Interests

Some constitutions have specific prohibitions against conflicts of interest. What then is the normative hierarchy of a rule prohibiting conflicts of interest that is not embedded in the constitution? Section 32 of Finland’s constitution specifically refers to the constitutional status of the rule prohibiting conflicts of interest. Similarly, Article 143 of the Belgian constitution, with regards to De la prévention et du règlement des conflits d’intérêts, provides:

(1) In the exercise of their respective responsibilities, the Federal Government, the communities, the regions, and the common Community Commission act in the interests of federal loyalty, in order to prevent conflicts of interest.

(2) The senate makes decisions, by means of well-founded judgments, on conflicts of interest which may exist between the various bodies through laws, decrees, or rulings as described in Article 134, within the conditions and according to the procedures determined by a law adopted by majority vote as described in Article 4, last paragraph.

(3) A law adopted by majority vote as described in 4, last paragraph, organizes the procedures designed to prevent and to settle conflicts of interest between Federal, Community, and Regional Governments, and between the common Community Commission assembly.

(4) Concerning the prevention and the settling of conflicts of interest, the ordinary law of August 9th, 1980 regarding

72. Section 32 provides:
A Representative is disqualified from consideration of and decision-making in any matter that concerns him or her personally. However, he or she may participate in the debate on such matters in a plenary session of the Parliament. In addition, a Representative shall be disqualified from the consideration in a Committee of a matter pertaining to the inspection of his or her official duties.

Const. § 32 (Fin.), supra note 40.
institutional reform remains valid; it nonetheless can be rescinded, completed, modified, or replaced only by those laws described in sections (2) and (3).\textsuperscript{73}

The absence of a rule prohibiting conflicts of interest in a constitutional order does not undermine its importance. For example, the Irish constitution upholds a few "values"—such as the rules of natural justice—from which one can infer a prohibition of conflicts of interest.\textsuperscript{74} The Israeli Supreme Court has likewise ruled that the lack of legislation does not undermine the importance of the rule prohibiting conflicts of interest.\textsuperscript{75}

VI. ALTERNATIVES

A. Mapping Alternatives

Throughout this Article we have suggested that the rules prohibiting ministers and deputy ministers from engaging in conflicts of interest apply to the Speaker. In this Section, however, we shall explore four alternative solutions: (i) the establishment of a Knesset presidency for special matters; (ii) an election of a Speaker who does not come from the ranks of Knesset Members; (iii) a broadening of the restrictions on the conduct of the Speaker; and (iv) the creation of an ethics committee tailored specifically to matters relating to the Speaker.

As discussed above, we suggest that Speakers and their deputies should be restricted from participating in parliamentary committee hearings as prescribed in Section 8 of the Knesset Regulations. We also mentioned the constitutional problem such restrictions create: the Speakers' inability to fulfill their parliamentary duties to the public that elected them as Knesset members. In order to overcome the difficulties inherent in the institution of the Speaker, we argue Knesset members should no longer serve as speakers. Rather, an apolitical figure—perhaps a retired justice—should serve in that role. Additionally, we argue that the Speaker should be restricted from managing any public institutions, voluntarily or otherwise, particularly during times of heavily partisan political activity (i.e. before elections). We recommend the creation of a separate

\textsuperscript{73} Const. art. 143 (Belg.), \textit{supra} note 40. It is definitely fair to say that the very problematic political tension between the 3 Belgian Regions creates an atmosphere that requires a constitutional entrenchment of the rule prohibiting conflicts of interest. The three Regions (save only the capital, Brussels) each have two Parliaments (one for the \textit{Community} and one for the \textit{Region}). The multitude of Parliaments, in and of itself, creates conflicts of interest between positions in the Regional Parliament and the Federal Parliament.

\textsuperscript{74} See, e.g., Const. art. 43 (Ir.); see also the Irish Supreme Court ruling in \textit{The State (Ryan) v. Lennon} [1935] 69 I.L.T.R. 125.

\textsuperscript{75} Halikud, \textit{supra} note 3, at 573.
parliamentary mechanism entrusted with supervising the Speaker’s activities. In addition, we recommend abolishing the Speaker’s role as a stand-in for the president. One option would be to appoint the most senior Knesset member to stand in for the president when necessary. Shifting this responsibility from the Speaker to the most experienced Knesset member would be a vote of confidence in that member’s many years of parliamentary contribution.

B. A Special Parliament Presidency

A new Knesset presidency composed of the Speaker and deputies, the members of the Ethics and Constitutional Committees, and the Knesset’s legal advisor could be a viable alternative to the present structure. Presidents will have the right to consult with the attorney general and provide their opinions on a case-by-case basis. We suggest that, as a matter of mandatory policy, the Knesset legal advisor or the Israeli attorney general should be consulted in specific circumstances, such as a vote for new general elections. Additionally, we recommend expanding the scope of the consultations Speakers must undertake with their deputies. Doing so will render some of the concerns concerning the Speaker’s biases irrelevant.

The creation of a new Knesset presidency will reduce the scope of the Speaker’s authority and power. A more expansive consultation procedure would likewise reduce the Speaker’s power and impose on him a duty of consultation with other officials. A consultation mechanism is not entirely foreign to Israeli Speakers. A number of rules and regulations require Speakers to consult with their deputies or with a parliamentary committee.76 Additionally, we recommend that Knesset members have the opportunity to raise specific issues for discussion in the hearings of the presidency committee. However, it is important to stress that the Speaker’s current roles should not be neutralized beyond what is absolutely necessary.

C. A New Special Ethics Sub-Committee

Alternatively, we recommend the establishment of a new Ethics Sub-Committee that is solely tasked with supervising the activities of the Speaker. Even if the Knesset will not specifically regulate the ethical

conduct of the Speaker, as is the case with ministers, the Ethics Sub-Committee will have jurisdiction to evaluate the ethical conduct of the Speaker. This again shall be a balancing mechanism: this balance may be achieved either by creating a Knesset presidency and limiting the scope of the Speaker’s powers, or by creating an Ethics Sub-Committee for the Speaker.

One of the best features of these intra-parliamentary balance mechanisms is that they reduce the need to petition the Supreme Court of Israel when disputes over internal Knesset decisions arise. The Supreme Court will be able to “stay away from forming opinions on purely political matters that have the potential of dividing the public, and thus the Supreme Court will have a better chance of sustaining its image as a non-political institution.” In short, the Supreme Court will avoid involvement in the “political realm.”

D. A Politically Neutral Speaker

A somewhat far-fetched solution is electing a non-politician who is not affiliated with any political party for the post of the Speaker. This extreme mechanism would require drafting and amending the existing legislation and Regulations. For example, the minimum standard of qualification for the position of Speaker would require modifications. For the purpose of comparison, Section 19 of the Knesset Act provides:

To qualify as a legal advisor to the Knesset, a citizen and resident of Israel must be qualified to be appointed a Supreme Court Justice, and he/she should not have been politically active, or member of a party for five years prior to candidacy. For the purpose of this section, a person who did not pay party membership dues and did not participate in any other party activities will not be regarded as a party member.

Perhaps the most effective option is to borrow from the custom of statutory inquiry commissions and appoint a former Supreme Court justice to act as Speaker. Ironically, perhaps the best way to prevent the politicization of the judiciary will be to “judiciarize” the political system.

78. CA 6095/00 Ministry of Interior Affairs v. Slach Hibawi et al. [2000] IsrSC 55(2) 1, 10.
79. We recommend applying the same vocational and public position restrictions on the Speaker as is the case with the President of the state or the state’s Comptroller. See State Comptroller Law [Consolidated Version] § 7, 1958 (Isr.), available at http://www.mevaker.gov.il/serve/site/English/emevaker.asp (last visited Mar. 4, 2006).
80. Knesset Act, supra note 21.
VII. CONCLUSIONS

The public's trust in its parliament is a prerequisite for the stability of every democratic order. The many roles, duties and powers of Speakers make their main role of upholding the public's trust virtually impossible. The fear is that the Speaker's many duties and powers may collide. In Israel, Speakers of parliament also serve as active party members; they are allowed to declare candidacy for the chair of that party (including the largest party in the Knesset), and may continue serving as Speakers even if they are candidates for such a position. Speakers may also offer their candidacy to serve as the elected chairs of several national union organizations.81 We are of the opinion that this combination of duties and powers present opportunities for activities that are "not becoming" of a public official.82 "activities that may undermine the Knesset's dignity, the [Speaker's] status as member of the Knesset, or his duties as member of the Knesset,"83 as well as activities that may give rise to an "apprehension of bad faith" or "personal advantage."84

The Israeli legislature has already recognized the importance of preventing conflicts of interest and has accordingly enacted special rules to prevent ministers and deputy-ministers from engaging in conflicts of interest. However, the legislation has not recognized the difference between an ordinary Knesset member and the Speaker. This begs the question: why is it that no similar rules exist to supervise the activities of the Speaker? Does the reason lie within the hierarchy of Israel's constitutional regime? The legislation's stricter treatment of ministers than members of the Knesset indicates that the scope of power that accompanies a specific role is an important factor in determining how strictly a certain office should be regulated. The more powerful the role, the more exacting the duty should be to comply with a stricter set of ethical rules and norms. We argue that the Speakers' duties and power exceed that of an "ordinary" member of the Knesset tenfold. Thus, we must ask why are the ethical rules that apply to the Speaker not stricter than those that apply to ordinary Members of the Knesset? We recommend applying to the Speaker rules preventing conflicts of interest at least similar in scope to those that apply to ministers. Alternatively,

81. Immunity Act, supra note 15, § 13A(1).
82. Knesset Act, supra note 21, § 8(a).
84. Id. § 13A(b)(2).
we recommend adopting more far-reaching mechanisms, including the establishment of a special Ethics Sub-Committee or appointing an apolitical figure—perhaps a former Supreme Court justice—as the Speaker.

Montesquieu wrote in Mes pensées: ‘Un chariot qui a quatre roues peut aller avec trois, même avec deux; mais il faut disposer autrement.’ A four-wheel chariot may ride with three or even two wheels; however, it needs reorganization to be able to do that. It seems that, as in the case of the two-wheel chariot, the Knesset should be prepared to employ sincere efforts and a creative imagination to perform the much needed reorganization that will facilitate the continuum of the Speaker chariot’s motion.