

# Parties in Israel: Between Law and Politics

ARIEL L. BENDOR\*

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## I. INTRODUCTION

The decline in the prestige and influence of Israeli political parties, particularly the larger parties, has become a source of distress for many in Israel. Similarly, in the United States, where the significance of parties is also recognized,<sup>1</sup> many have shown concern for weakening of the dominant political parties.<sup>2</sup> In the U.S. system where politics are ruled by two strong national parties, many fear possible damage to

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\* Senior Lecturer, Faculty of Law, Haifa University, Israel. LL.B., LL.D., Hebrew University of Jerusalem. This essay was written during my stay at the Yale Law School in 1998-99. I am grateful to the Yale Law School for its hospitality, and to Michal Lebenthal-Andreson and Yael Talmon for their help.

1. See LEON D. EPSTEIN, *POLITICAL PARTIES IN THE AMERICAN MOLD* 9-39 (1986).

2. See Brian L. Porto, *The Constitution and Political Parties: Supreme Court Jurisprudence and Its Implications for Partybuilding*, 8 CONST. COMM. 433 (1991).

smaller parties and independent candidates.<sup>3</sup> But, in Israel, the nature of politics is becoming increasingly sectoral, personal, superficial and populist.<sup>4</sup> As is often characteristic of public discourse in Israel, many hold the legal system responsible for this phenomenon.<sup>5</sup>

This Essay examines this contention by comparing Israeli and U.S. law. On a more general level, this Essay considers the complex relationships between the law of a given country and the style and quality of its politics.

## II. ISRAELI POLITICAL PARTIES AND THE LAW

The relationship between the Israeli legal system and Israeli political parties can be characterized by two central phenomena.

First, the scope of the law pertaining to political parties is quite broad. In Basic Law: The Knesset<sup>6</sup> and Basic Law: The Government,<sup>7</sup> both of which form parts of the Israeli Constitution,<sup>8</sup> significant provisions have been made with respect to political parties.<sup>9</sup>

In comparison, the U.S. Constitution lacks reference to political parties, which is a result of the Framers' hostility towards the very notion of partisanship.<sup>10</sup> Their reasoning was based on the view that strong parties would necessarily harm the separation-of-powers structure.<sup>11</sup> This reasoning is not applicable to the situation in Israel. The separation between the Israeli executive branch and its legislative branch is far more limited than its United States counterpart.<sup>12</sup> In fact,

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3. See William R. Kirschnr, Note, *Fusion, and the Associational Rights of Minor Political Parties*, 95 COLUM. L. REV. 683 (1995); Note, *Fusion Candidacies, Disaggregation, and Freedom of Association*, 109 HARV. L. REV. 1302 (1996).

4. See ISRAEL AT THE POLLS 1996 (Daniel J. Elazar & Shmuel Sandler eds., 1998); THE DEMISE OF PARTIES IN ISRAEL (Dani Korn. ed., 1998) (Hebrew).

5. For a comparison in the United States, see David Adamany, *Political Finance and the American Political Parties*, 10 HAST. CONST. L.Q. 497, 513-515 (1983).

6. 12 L.S.I. 85 (1958) (available also at <<http://www.mfa.gov.il>>).

7. 1992 S.H. 214 (available in English translation at <<http://www.mfa.gov.il>>).

8. See C.A. (Civil Appeal) 6821/93, United Hamizrahi Bank Ltd. v. Migdal, 49(4) P.D. (Supreme Court Judgments) 221. The Israeli Constitution, which is still incomplete, is composed of 11 separate Basic Laws, enacted between 1958 and 1994. For the constitutional status of the Basic Laws see Daphne Barak-Erez, *From an Unwritten to a Written Constitution: The Israeli Challenge in American Perspective*, 26 COLUM. HUM. RTS. L. REV. 309 (1995); Dalia Dorner, *Does Israel Have a Constitution?*, 43 ST. LOUIS U. L.J. 1325 (1999).

9. For example, the right to submit list of candidates to the Israeli parliament has been granted only to parties. See Basic Law: The Knesset, 12 L.S.I. 85 § 5A. The same applies to the nomination of candidates for Prime Minister. See Basic Law: The Government, 1992 S.H. 214 § 9; *infra* notes 30-32 and the relevant text.

10. See Steven G. Calabresi, *Political Parties as Mediating Institutions*, 61 U. CHI. L. REV. 1479, 1484-521 (1994).

11. See *id.*

12. Thus, for example, the Israeli Prime Minister and the majority of the Ministers

Israeli judges and justices are chosen by a committee where only a minority of its members are from the political arena.<sup>13</sup>

In addition, two statutes specifically refer to Israeli political parties. These are the Parties Law, 1992,<sup>14</sup> a statute similar to that which is found in few democratic states,<sup>15</sup> and the Political Parties (Financing) Law, 1973.<sup>16</sup> Furthermore, a rich body of case law exists, including decisions of the Israeli Supreme Court, which focus on issues related to political parties.<sup>17</sup> A significant portion of this statutory and case law is recent. Indeed, the increasing involvement of the law in matters of party politics parallels another broader phenomenon, which reached prominence in Israel during the early 1980's—the "legalization of government" and even the "legalization of politics."<sup>18</sup> The trend in Israel is to view politics as law and to consider political questions as legal questions.<sup>19</sup> Political questions should be framed in terms of "What will work,"

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have to be Parliament Members; and the Israeli Parliament (the Knesset) may, by a majority of its members, remove the Prime Minister from office, and call for new elections for this position.

13. The committee that appoints judges is composed of the Chief Justice, two Justices elected by the Supreme Court Justices, two members of the Bar elected by the Bar Central Council, the Minister of Justice, another Minister elected by the Government, and two Knesset Members elected by the Knesset. See Basic Law: Judicature, 1984 S.H. 78, § 4(b) (also available in English translation at <<http://www.mfa.gov.il>>). Five of the nine members of the committee (the Justices and the representatives of the Bar) are not affiliated with political parties.

14. 1992 S.H. 190.

15. See CANDIDATE SELECTION IN COMPARATIVE PERSPECTIVE—THE SECRET GARDEN OF POLITICS (Michael Gallagher & Michael Marsh eds., 1988); PARTY ORGANIZATIONS—A DATA HANDBOOK (Richard S. Katz & Peter Mair eds., 1992); WORLD ENCYCLOPEDIA OF POLITICAL SYSTEMS AND POLITICAL PARTIES (George E. Delury ed., 2d ed. 1987); Aliza Bar, *Legislation on Parties in Democratic States, in THE PARTIES LAW IN ISRAEL: BETWEEN LEGAL FRAMEWORK AND DEMOCRATIC NORMS* 17 (Dan Avnon ed., 1993) (Hebrew).

16. 27 L.S.I. 48 (1972-1973) (also available in English translation at <<http://www.mfa.gov.il>>).

17. For a review of the Israeli decisional law in this area, see Ariel Bendor, *Case Law of Parties in Israel*, in *THE PARTIES LAW IN ISRAEL: BETWEEN A LEGAL FRAMEWORK AND DEMOCRATIC NORMS* 63 (Dan Avnon ed., 1993) (Hebrew). For the comparable situation in the United States, see Virginia E. Sloan, Comment, *Judicial Intervention in Political Party Disputes: The Political Thicket Reconsidered*, 22 U.C.L.A. L. REV. 622 (1975).

18. See AMNON RUBINSTEIN & BARAK MEDINA, *THE CONSTITUTIONAL LAW OF THE STATE OF ISRAEL* 28-35 (5th ed. 1996) (Hebrew); Ariel L. Bendor, *Are There Any Limits to Justiciability?—The Jurisprudential and Constitutional Controversy in the Light of the Israeli and American Experience*, 7 IND. INT'L & COMP. L. REV. 311 (1997).

19. See Ariel L. Bendor, *Investigating the Executive Branch in Israel and in the United States: Politics as Law, the Politics of Law*, 54 U. MIAMI L. REV. 193 (2000).

“What is right,” or “Who possesses the political clout?” However, these questions have unfortunately become transformed into “What is legal,” and sometimes even in narrower institutional terms, such as, “What will withstand judicial scrutiny?”

Second, the point of departure regarding the legal arrangements of Israeli political parties is that a party is considered to constitute a “legal unit.” Whereas, in the past, the tendency was to view parties first and foremost as voluntary associations, similar to the various bodies operating within private law.<sup>20</sup> Today, the trend is to emphasize the parties’ public-political status.<sup>21</sup> Parties have come close to being considered state authorities and treated as such.<sup>22</sup> This change may be attributed to the fact that parties are no longer considered, as they were until recent years, as voluntary non-profit associations, governed by the laws of such associations.<sup>23</sup> Instead, they are organized in conformance with a special statute—the Parties Law<sup>24</sup>—whose provisions are geared to their public character and their constitutional function.<sup>25</sup>

Similarly, in the United States, a central issue of party law debates whether political parties are public or private bodies.<sup>26</sup> While private bodies are entitled to constitutional rights, public bodies are primarily obliged to respect the constitutional rights of others.<sup>27</sup> Thus, the response of U.S. law to this dilemma is ambiguous. It seems, that the U.S. major parties simultaneously hold some of the rights usually accorded to individuals, including the rights addressed in the First Amendment, alongside some of the duties of governmental authorities.<sup>28</sup> In particular, these are duties that stem from the role of the U.S. major parties in nominating the candidates in both state and federal elections.<sup>29</sup>

What are the consequences of the two phenomena upon the status of parties in Israel? The answer to this question is somewhat complex.

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20. For example, political parties were incorporated under the private associations laws, and were governed by contract laws. See I.H. Klinghoffer, *The Legal Framework of Political Parties in Israel*, in URY YADIN BOOK 199 (Aharon Barak & Tana Spanitz eds., vol. II 1990) (Hebrew).

21. See *id.*

22. See C.A.P. (Civil Appeal Permission) 7504/95, Yassin v. The Parties Registrar, 50(2) P.D. 45, 61.

23. See Parties Law, 1992, S.H. 190 § 29.

24. See *id.*

25. See Rhanan Har-Zahav, *The Parties Act—A New Reality*, 2 HAMISHPAT 33 (1994) (Hebrew).

26. See LAWRENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1118 (2d ed. 1988).

27. See *id.* at 1688.

28. See Daniel Hayes Lowenstein, *Associational Rights of Major Political Parties: A Skeptical Inquiry*, 71 TEX. L. REV. 1741 (1993).

29. See *id.*

### III. ISRAELI LAW STRENGTHENS THE STATUS OF THE POLITICAL PARTIES

From a certain standpoint, the new legal arrangements and the investing of political parties with constitutional functions has strengthened the position of the parties in Israel. First, as of the last parliamentary elections, the right to submit lists of candidates to the Israeli parliament (the Knesset) has been granted only to parties.<sup>30</sup> The same applies to the nomination of candidates for Prime Minister,<sup>31</sup> who under normal circumstances is usually required to be listed as first on his party's list for election to the Knesset. Thus, the candidate for Prime Minister must usually be the head of a political party.<sup>32</sup>

In contrast, in the United States, there is no formal legal requirement that candidates at either the state or the federal level belong to a political party.<sup>33</sup> And, despite Israel's multi-party system, the party-alignment requirement does not hinder the right to run for office. Ironically, in the United States, where there is no apparent formal prevention of independent candidates competition, the odds of such candidates being elected are highly unlikely, due to the majoritarian non-proportional method of elections.<sup>34</sup>

Furthermore, in Israel only parties possess the right to receive public funds to finance their political activities.<sup>35</sup> This right does not exist in the United States.<sup>36</sup> These arrangements encourage the concentration of significant political activities in the hands of the political parties in Israel. As long as such arrangements exist—and only the Knesset,

30. See Basic Law: The Knesset, 12 L.S.I. 85 § 5A.

31. See Basic Law: The Government, 1992 S.H. 214 § 9.

32. See *id.* § 8(a)(2). Any change in the procedures regarding the nomination for Prime Minister requires an absolute majority of 61 or more of the Knesset's 120 members. See *id.* § 56.

33. See JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 886-94 (5th ed. 1995).

34. It is interesting to note here, that in Israel, candidates and lists that are not affiliated with any party *per se* are permitted to participate in local elections. In many cases, the larger political parties do not partake in local elections with candidates of their own. Instead, they support local "independent" candidates. For a similar phenomenon in the States see Nancy Northrup, Note, *Local Nonpartisan Elections, Political Parties and the First Amendment*, 87 COLUM. L. REV. 1677 (1987).

35. See Political Parties (Financing) Law, 1973, 27 L.S.I. 48 (1972-1973) §§ 1-2.

36. For example, in the States all the politicians are independent, and are supported by people who may identify with their parties. Furthermore, candidates have to raise the majority of their campaign funds by themselves. See Political Parties (Financing) Law, 1973, 27 L.S.I. 48 § 1.

whose members are all delegates of political parties, is authorized to repeal them<sup>37</sup>—the continued existence of parties is guaranteed. For this reason, great significance has been ascribed to the aforementioned phenomenon of the weakening of the power and status of the parties, and especially the weakening of the larger parties in Israeli politics and governance. Israel's laws ensure the position of the parties as a cornerstone of government.<sup>38</sup> Even under the new system of direct personal election of the Prime Minister, success depends on attaining political power within a political party, and thus requires the existence of the party.<sup>39</sup>

Secondly, the Parties Law does not involve itself in the internal governance of parties or in the way they manage themselves. It is sufficient that the party possesses a charter which establishes its basic structural arrangements, such as who may join the party and the manner in which Knesset candidates are selected.<sup>40</sup> The Law does not demand that the internal structure of the party be democratic in nature.

The method of internal governance of parties differs markedly in the U.S. system, where regulation of primaries for candidate selection exists.<sup>41</sup> This discrepancy between the United States and Israeli systems can be attributed to the different methods of election in each country. In the Israeli multi-party system there are, among others, parties comprised of immigrants from certain countries,<sup>42</sup> minority parties,<sup>43</sup> and ultra-orthodox religious parties (whose leaders are chosen by spiritual religious leaders).<sup>44</sup> Hence, in Israel it is impossible to force a system of regulated primaries with the general right of participation regardless of race, religion, and so on.<sup>45</sup> The representative aspect of the elected authorities in Israel, which at times lends itself to sectoral, and even over-sectoral,<sup>46</sup> representation is a byproduct of the election method

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37. Only the Knesset, that enacted the Parties Financing Act, may amend it.

38. See H.C.J. (High Court of Justice) 1601/90, Shalit v. Peres, 44(3) P.D. 353, 363; RUBINSTEIN & MEDINA, *supra* note 18, at 565.

39. See Basic Law: The Government, 1992 S.H. 214 § 8(a), together with Basic Law: The Knesset, 12 L.S.I. 85 (1958) § 5A.

40. See *id.* §§ 4 and 14.

41. See TRIBE, *supra* note 26, at 1118-29.

42. Among them are "Israel Ba'aliya" and "Israel Beitenu", which mainly represent immigrants from Russia.

43. Among them are the United Arab List and B.L.D., which represent mainly Arab citizens.

44. Among them are "Shas" and the United Thora Judaism Party.

45. For example, there are two ultra-orthodox central parties: one ("Shas") represents ultra-orthodox Jews of Asian and African origin ("Sfaradim"); and the other party (the United Thora Judaism Party) represents ultra-orthodox Jews of European origin ("Ashkenazim").

46. See Leon D. Epstein, *Will American Political Parties Be Privatized?*, 5 J. L. & POL. 239 (1989); Games S. Fay, *The Legal Regulation of Political Parties*, 9 J. LEGIS.

itself. In contrast, the two-party system in the United States requires regulation of candidate selection, to ensure that the composition of elected state and national authorities will not be directed by discrimination or unjust partisan election methods. Still, as a result of claims that over-regulation harms constitutional party rights,<sup>47</sup> some commentators discuss a “privatization” trend in parties,<sup>48</sup> especially through judicial invalidation of laws which harm these rights.

The Israeli Parties Law does not establish procedures whereby the party charter may be enforced.<sup>49</sup> However, members of the party can seek recourse in the courts for enforcement of their rights under party charters—just as they were able to prior to the enactment of the Parties Law.<sup>50</sup>

Third, despite the traditional image of the Israeli courts, and the Israeli High Court of Justice in particular, as judicially active in political matters, the courts grant political parties a considerable degree of autonomy and freedom to handle their affairs.<sup>51</sup> The reasons underlying this attitude were expressed by Justice Barak:

A political party and a parliamentary faction are “legal units.” . . . They possess a statutory status. . . . Every statutory structure must grant them a wide field of maneuverability. Government authorities need not interfere in their activities. This is a two-pronged proposition. First, from the viewpoint of the law applying to the validity of the actions of the party or faction, it is necessary to accord the parties a broad scope of maneuverability. “Non-interference” on the part of the government—including the courts—is not based here on a restraint in applying an authority to review, but on the legality of the actions, which is itself based on the freedom of action of the parties and factions who represent the will of the people in our democratic state . . . . Second, from the viewpoint of the extent of judicial review, such review must be limited, in recognition that it is possible that there can be actions that will be illegal (under public law) which are nevertheless not subject to judicial review.<sup>52</sup>

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263 (1982).

47. These rights include freedom of association and the party’s right to protect privacy of its membership, where members’ affiliation with organization might subject them to public hostility or discrimination. See *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986); *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989).

48. See Epstein, *supra* note 46; Fay, *supra* note 46.

49. See Bendor, *Case Law of Parties in Israel*, *supra* note 17, at 71.

50. See RUBINSTEIN & MEDINA, *supra* note 18, at 587, n.4.

51. See C.A. 642/86, *Veinberg v. The National Religious Party*, 43(2) P.D. 43; C.A. 2219/92, *Shapira-Libai v. The Israeli Labor Party*, 46(4) P.D. 221.

52. H.C. 5364/94, *Valner v. Chairman of the Israeli Labor Party*, 49(1) P.D. 758, 802-03.

It should be clarified, that the second meaning noted by Justice Barak signifies that even in circumstances where the action of a political party may be illegal, the courts may refrain from interfering due to the special constitutional status of the parties' political activities.

On the basis of this approach, the Supreme Court refused to interfere with a decision by the Labor Party's internal adjudicatory body,<sup>53</sup> which permitted the participation in the Knesset primaries by a party activist convicted of theft and of taking bribes.<sup>54</sup> This occurred despite the fact that the Party's charter prohibited the candidacy in the primaries of anyone convicted of a "shameful crime," and that the Supreme Court had already found that the crimes committed by the party activist had been such crimes.<sup>55</sup> In another case, the Supreme Court declined to invalidate a coalition agreement between the Labor and Shas parties, although the agreement constituted "a pre-determined decision to run roughshod over proper legal procedures . . . a decision that was wholly unworthy."<sup>56</sup>

Furthermore, in a line of decisions, the Supreme Court has chosen to construe in a "precise, narrow and circumscribed"<sup>57</sup> manner those provisions of Basic Law: The Knesset<sup>58</sup> and the Parties Law<sup>59</sup> that permit the invalidation of those parties and lists of candidates for the Knesset which oppose the existence of Israel as a Jewish and a democratic state or which engage in racial incitement.<sup>60</sup> Thus, the Court has established that a party will be disqualified only if: (1) the improper aims of the party, *i.e.* deprivation of Israel's existence as a Jewish and democratic state or incitement to racism, constitute a central and overriding goal of the party; (2) the party is acting to achieve that goal; and (3) there is clear and convincing evidence of this.<sup>61</sup>

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53. A couple of Israeli parties, including the greater parties, have internal tribunals. These tribunals, which derive their authority from the party's internal regulations, decide legal disputes between party members and institutions. The legal status of such tribunals is that of arbitration.

54. See C.A. 2211/96, Cohen v. Cohen, 50(1) P.D. 629.

55. See Cr.A. (Criminal Appeal) 419/92, State of Israel v. Cohen, 47(3) P.D. 821.

56. *Valner*, 49(3) P.D. at 778 (Opinion of Chief Justice Shamgar) (emphasis in the original).

57. E.A. (Elections Appeal) 1/88, Neiman v. Chairman of the Elections to the Twelve Knesset Central Board, 42(4) P.D. 177, 187.

58. See Basic Law: The Knesset, 12 L.S.I. 85 § 7(a).

59. See Parties Law, 1992, S.H. 190 § 5.

60. Two parties were disqualified of participating in Knesset elections. One of them—the Socialists List—was disqualified due to its objection to Israel's existence. See E.A. 1/65 Yardor v. Chairman of Elections to the Sixth Knesset Central Board, 19(3) P.D. 369. The other—"Kach" list—was disqualified due to its objection to democracy and its sedition for racism against Arab citizens. See *Neiman*, 42(4) P.D. 177.

61. See *Neiman*, 42(4) P.D. 177; E.A. 2/88, Ben Shalom v. Chairman of Elections to the Twelve Knesset Central Board, 43(4) P.D. 221; C.A.P. (Civil Appeal Permission)



## IV. ISRAELI LAW DIMINISHES THE STATUS OF THE POLITICAL PARTIES

It seems that alongside the above-noted contributions of Israeli law to enhancing party status, there are arrangements under the law that have the opposite effect. There is a diminishment of the parties and an encouragement of political activities outside the framework of the parties.<sup>62</sup> Thus, even in circumstances where the court declines to interfere in party decisions or actions, the very existence of the legal proceedings, or even the possibility of such proceedings, operates as a certain infringement upon the organizational freedom of the party.<sup>63</sup> This infringement becomes particularly blatant in those cases where the public character and constitutional status of parties causes them to be treated in a stricter manner than would be the case with ordinary voluntary associations. The following exemplifies this.

First, political parties' special constitutional status is not expressed solely in the privilege of a more restrained governmental or judicial involvement in their affairs, but also in obligations and restrictions that derive the fundamental principles of public law.<sup>64</sup> Thus, political parties may be required to operate in accordance with the principles of equality, good faith, and reasonability, which do not apply to private bodies, despite the fact that, as previously noted, Israeli parties are not required to structure their internal governance on a democratic basis.<sup>65</sup>

Second, the legislature and the courts in Israel have imposed extensive restrictions on the financial activities of parties.<sup>66</sup> The purpose of these restrictions is the prevention of an intermingling of financial considerations with the political activities,<sup>67</sup> a combination that has been seen as liable to lead to a deterioration in ethical standards.<sup>68</sup> In the words of Chief Justice Shamgar, in such a combination "there is . . . an interposition of the granting of financial favors into the area of political relationships, the corruptive nature of which is clearly apparent."<sup>69</sup> Therefore, the prohibition against party engagement in financial business

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7504/95, Yassin v. The Parties Registrar, 50(2) P.D. 45.

62. See Gad Barzilai, *The Decline of Parties and the Legal System*, in *THE DEMISE OF PARTIES IN ISRAEL* 116 (Dani Korn ed., 1998) (Hebrew).

63. See Bendor, *Investigating the Executive Branch*, *supra* note 19.

64. See RUBINSTEIN & MEDINA, *supra* note 18, at 570-71.

65. See *supra* text accompanying note 40 and 41.

66. See Political Parties (Financing) Law, 1973, 27 L.S.I. 48 (1972-1973).

67. See H.C.H. 1523/90, Levi v. Prime Minister, 44(2) P.D. 213, 215.

68. See *id.*

69. *Id.*

transactions accompanies the funding of the parties.<sup>70</sup> The Israeli courts and legislature also restrict their sources of income—including, *inter alia*, a prohibition on accepting corporate contributions<sup>71</sup>—and restrictions on the nature of their campaign expenditures.<sup>72</sup> Parties are permitted to accept loans only from banks.<sup>73</sup> Subject to the oversight of the State Comptroller,<sup>74</sup> parties are required to issue an annual report on the extent of their assets and liabilities.<sup>75</sup> Even the financing of the campaign expenditures in the primaries are regulated and restricted by an extensive series of statutory provisions.<sup>76</sup> The violation of these regulations constitutes a criminal offense.<sup>77</sup> The Israeli courts have invalidated financial provisions contained in political agreements between parties.<sup>78</sup>

Similarly, in the United States, there is widespread regulation of the financial aspects and funding of parties' activities<sup>79</sup> to such an extent that some claim that the regulation conflicts with the parties' First Amendment rights.<sup>80</sup> Still it appears as though the limitations in Israel are stricter.<sup>81</sup> Perhaps this stems not only from the greater U.S. economic capability, but also from the fact that the ethos of economic equality still plays a role in Israeli culture, coupled with the fear that the possibility to be elected will not be available to those with lesser resources.<sup>82</sup>

Third, the very registration of a political party in Israel, and its resulting activities, require the fulfillment of extensive procedural

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70. See Parties Law, 1992, S.H. 190 § 21.

71. See *id.* § 25; Political Parties (Financing) Law, 1973, 27 L.S.I. 48 § 8.

72. See *id.* § 7.

73. See Parties Law, 1992, S.H. 190 § 7(a).

74. See *id.* § 13(b); see also Political Parties (Financing) Law, 1973, 27 L.S.I. 48 §10.

75. See *id.* § 25(a).

76. See Parties Law, 1992, S.H. 190 Chapter II.

77. See *id.* § 28; Political Parties (Financing) Law, 1973, 27 L.S.I. 48, § 9(t).

78. See, e.g., H.C.H. 1523/90, Levi v. Prime Minister, 44(2) P.D. 213; H.C.H. 1635/90, Jerjevski v. Prime Minister, 45(1) P.D. 749.

79. See Adamany, *supra* note 5.

80. See Rick J. Nahra, *Political Parties and the Campaign Finance Laws: Dilemmas, Concerns and Opportunities*, 56 FORDHAM L. REV. 53 (1987); Clarisa Long, Note, *Shouting Down the Voice of the People: Political Parties, Powerful PACs, and Concerns about Corruption*, 46 STAN. L. REV. 1161 (1994).

81. Thus, for example, it is forbidden for an Israeli party to receive any contribution from an individual that exceeds \$400 *per year*. See Political Parties (Financing) Law, 1973, 27 L.S.I. 48 (1972-73) § 8. However, in the United States, a lawful contribution to a party cannot exceed \$25,000. See Federal Election Campaign Act, 2 U.S.C. § 411a(a)(3) (1994). In the case of a contribution to a candidate with respect to any election for Federal Office, the amount cannot exceed \$1,000. See 2 U.S.C. § 441a(1)(A) (1994).

82. See RUBINSTEIN & MEDINA, *supra* note 18, at 594.

requirements. The party has to be established by at least one hundred founders.<sup>83</sup> The party must submit a detailed charter and maintain a number of institutions.<sup>84</sup> Non-compliance with these conditions may prevent registration or subject the party to litigation in the courts. This significantly complicates the organizing of a party and its operations.

## V. THE OVERALL PICTURE

The resulting picture of the status of Israeli and U.S. parties is a complicated one. The impact of the law upon Israeli and U.S. party status is neither one-sided nor one-dimensional. On the one hand, the Israeli law assures the existence of parties—in that the law grants parties basic constitutional functions in determining legislative membership and the Chief Executive and in that the law funds parties through the public treasury. Israeli law further grants parties significant, if not total freedom, in establishing the content of their substantive political actions.

United States law—in all that regards the two major parties—reaches similar results by different methods. The law ensures the strife and survival of the major parties by granting them a status similar to the status of governmental authorities.

On the other hand, the laws in both Israel and the United States place more than minimal administrative burdens on the parties. They impose financial restrictions upon them and submit them to judicial review, which obligates them to fulfill a meaningful measure of openness and disclosure of their activity to public scrutiny.

Yet, while the picture may be complex, it is not internally inconsistent. It is a result of the basic constitutional functions fulfilled by the parties. Both Israel and the United States subsidize and grant substantial freedom to political parties which requires—at least from Israel's political and sociocultural standpoint—significant administrative obligations and specified judicial and administrative organs of oversight. Despite the fact that political parties are voluntary associations, they are subject to similar rules applicable to government bodies, namely the possession of powers, which are subject to assurances of fair proceedings and to appropriate review of their actions.

Indeed, it is possible that criticism over this phenomenon in Israel is only part of the broader phenomenon of the legalization of Israeli

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83. See Parties Law, 1992, S.H. 190 § 2.

84. See *id.* §§ 4-14.

politics. Thus, it is not simply that over-extensive legal regulation may unnecessarily hamper the democratic political process. In the view of Israeli public officials in particular, and the public as a whole, such regulation may further create a commonality between fulfillment of the minimal requirements of the law and public and political propriety—very different standards altogether. By meeting its legal duties, a party in Israel is considered by the public to have fulfilled its social duties and obligations.

Nonetheless, it seems as though there is no way to avoid the ever-present involvement of the law in Israeli party politics. The Israeli experience demonstrates that in the absence of enforceable legal boundaries, political parties will not freely take upon themselves even the most elementary limitations imposed by the law today.

This phenomenon, which exists in Israeli political and social culture, is not thus expressed in the United States. Perhaps this is an explanation for the fact, that internal politics of parties is not on the agenda of U.S. courts to the extent that it is on the agenda of their Israeli counterparts.

## VI. CONCLUSION

It is difficult to blame the law for the current decline in the prestige of the political parties in Israel. The law assures the position of parties in the political structure<sup>85</sup> and endows them with essential constitutional functions. The modest and insufficient oversight of the law and the courts over party operations is designed to assure that at least some propriety be demanded from bodies that hold central public functions and are funded from out of the public treasury. There is no avoiding such oversight in Israel. The impression that the judicial and legal bounds placed on the parties may substantively narrow their political activities and operations is baseless. It is possible that this mistaken notion has contributed to the weakening of Israel's larger political parties. For those who appreciate the importance of political parties and for those who entertain fears that political parties will diminish in influence, it is especially important that the above misperception be corrected.

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85. In spite of this fact, some Israeli commentators fear a decline of parties due to the fact that parties lost gradually their traditional functions and influence for the sake of the interest groups and the media. As a result, structural conflicts and split of the public policy are likely to grow. This may cause instability in the political system. See Moshe Lissak, *Decline of Parties and Sectoral Rise*, in *THE DEMISE OF PARTIES IN ISRAEL* 129 (Dany Korn ed., 1998) (Hebrew).