

# LEGAL TRADITIONS AND SYSTEMS,

## AN INTERNATIONAL HANDBOOK

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## MIDDLE EAST

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In this chapter we examine two legal systems of the Middle East—Egypt and Israel. To some extent, the judicial processes of these nations are representative of those found throughout the region. That is, two basic legal models exist in the Middle East. The first, typified by Israel, contains two sets of courts and law—religious and secular. Such systems, currently existing in Lebanon, Iraq, Iran, Jordan, and Kuwait, among other Middle Eastern states, are prominent throughout the region because they retain religious traditions while succumbing to the needs of a modernizing society.<sup>1</sup> The second model, typified by Egypt (but also operative in Turkey), is that of a secular legal system. In this type of legal structure, there is no separate religious court apparatus nor does religious law play a dominant role.<sup>2</sup> Egypt and Israel were selected for detailed analysis here, then, in part because they represent the basic legal models currently operative within the Middle East.

On the other hand, Israel and Egypt were also chosen because they differ from other Mideast nations. Both now possess modern, streamlined systems, reflecting religious and cultural traditions and emerging needs of modernizing societies. In fact, the legal institutions developed by these countries have become model systems for the region: other states throughout the Middle East have emulated the Egyptian system, in particular, and are now developing legal apparatuses along similar lines. Thus, because of their similarities and differences, Egyptian and Israeli legal structures provide excellent cases for study.

### THE DEVELOPMENT OF THE LEGAL SYSTEMS

As many scholars have noted, judicial development is inextricably tied to state growth and transformation. That is, legal systems are heavily influenced by the specifics of their unique pasts. The systems of Egypt and Israel are no exception. Specifically, we have identified four principle historical factors that have influ-

enced the legal traditions of both countries: Ottoman law and legal structures, European authority, indigenous contributions, and religious doctrine.

## Egypt

### *Ottoman Law and Legal Structures*

Prior to the Ottoman conquest in 1517, Egypt was ruled by the Mamluks, a Turkish military autocracy. A two-tiered legal system existed within this dynasty. The bottom, or "trial" court level, was run primarily by four chief justices, representing the four rites of *shariah* or religious sacred law. During this period, these justices attempted to apply shariah to all criminal and civil disputes. According to one source, this system was "fairly stable," with each justice working within "well-defined jurisdictions."<sup>3</sup>

Although the shariah judges had some control over judicial administration, they were not completely independent because their decisions could be appealed to the superior court (*mazalim*). This court, which was presided over by members of the military dynasty, did not rely on shariah to decide cases. Rather, the *mazalim* ruled on the basis of sultanic legislation. And, as one authority noted, through the *mazalim* "executive officials gradually encroached upon the domain" of the shariah judges.<sup>4</sup>

When the Ottomans gained control of the region, however, the sultan attempted to reorganize judicial administration within the province. One of the first steps taken by the Ottomans was to replace the four chief justices with one, the judge of judges (*qadi askar*). Appointed by the sultan for one-year terms, many chief justices belonged to the *ulema*, a body or family of shariah scholars.

Once the Ottomans reorganized the top of the judicial ladder, they sought to centralize the entire system. They accomplished this by dividing Egypt into twenty-four provinces and then dividing each province into one or more judicial districts (*quadas*), with one court in each. These courts were headed by provincial qadis, who were appointed for two-year terms on the recommendation of the chief justice. Each district was further subdivided into subdistricts (*nahiyahs*), with a court in each. *Naihs*, who were appointed by qadis, presided over these courts.

Although the "reforms" made by the Ottomans may have led to a more centralized judicial apparatus, there is a great deal of scholarly debate over the actual efficacy and equity of the institutions and law during this period. Some suggest that the shariah judges, described above, and shariah itself, had little influence over Egypt during this period. The following facts tend to substantiate this viewpoint. First, shariah judges eventually "lost whatever jurisdiction they had over criminal and commercial matters" to various members of the executive authority. This decline in power occurred because the Ottoman governors of Egypt sat every Saturday to decide cases of criminal law, without regard to shariah. Thus, in essence, the shariah courts were not the only ones functioning

in Egypt. Second, many scholars have questioned the practicality of shariah, even for Ottoman Egypt. According to Islamic doctrine, "the Shariah claims to regulate all actions of men, public and private, social and individual."<sup>5</sup> But because, as some suggest, the law is normative, it has never worked in practice. In fact, even before the advent of the Ottomans, shariah judges were dependent upon the executive to fill gaps in the shariah. "Such a situation," as Ziadeh notes, "could hardly be favorable for the emergence of an independent body capable of maintaining a rule of law."<sup>6</sup>

Others, however, maintain that "given the stereotypes of Islamic despotism, the courts were remarkably free of executive intervention, remarkably evenhanded in the administration of justice."<sup>7</sup> In his argument for this viewpoint, Galal El-Nahal makes a number of compelling claims. First, contrary to Ziadeh and others, shariah courts did, in fact, hear criminal cases. In his book on the Ottoman courts in Egypt, El-Nahal devotes an entire chapter to describing the ways in which the shariah courts disposed of criminal cases.<sup>8</sup> He maintains that other scholars may have overlooked court jurisdiction in this area because there were so few criminal, as compared with civil, cases. Second, he refutes the argument that the courts were totally dependent on the executive, claiming that the qadis were charged with safeguarding the state from military oppression. Finally, contrary to others' views of the shariah, El-Nahal believes that it was an "ideal doctrine." He argues that "the shariah provided a solid theoretical foundation for the practical application of law to legal problems. And because the shariah regulated so many areas of men's relations with each other, the courts of Ottoman Egypt were deeply involved in the day-to-day life of everyday Egyptians."<sup>9</sup>

Although some of the criticisms of the Ottoman courts are well grounded, El-Nahal's views seem to be more accurate. Histories of the Ottoman Empire tell us, for example, that any executive decision could be vetoed by the mufti if it was inconsistent with shariah. This seems to imply that shariah and those who administered it, the qadis, were paramount in Islamic society.

### *European Authority*

The judicial system and tradition established by the Ottomans remained intact until July 1798, when Napoleon and his forces occupied Egypt. Although the French kept the shariah courts, they replaced the Ottoman qadi with local judges. They also established a court to adjudicate commercial claims.

Although these changes were few in number, the imprint of the French on the Egyptian legal system was immeasurable. When the French (and British) evacuated Egypt in 1807 and eventually allied with the sultan, the new leader of the province, Muhammad 'Ali, tried to modernize Egypt along French lines. In doing so, 'Ali, who is often called the "Father of Modern Egypt," created a "resurgence of activity in the legal and judicial field."<sup>10</sup>

From the period of 'Ali's reign (1803–1840) through the latter half of the nineteenth century, this "resurgence of activity," in fact, led to several major

changes in the Egyptian legal system. First, in 1828, 'Ali sent students to Paris to study law. Upon their return in 1831, they began to translate French textbooks and eventually French codes of civil procedure into Arabic.<sup>11</sup> 'Ali also attempted to revamp the Ottoman judicial system by creating supplementary legal councils and commissions. The first of these, the Judicial Council, was charged with investigating cases, while others dealt with commercial matters. A final reform of this era—the mixed courts of Egypt—well illustrates the strength of foreign influence in the area. One of the major problems faced by 'Ali's councils was their jurisdiction over foreign and Egyptian commercial interests. In short, the situation under the 'Ali regime was chaotic. Foreigners often tried to bring suits to their own consuls rather than to the Egyptian councils and, "If defendants were of different nationalities, suit had to be brought in as many forums as there were defendants."<sup>12</sup>

The demands of foreigners to alleviate this situation led to treaties of capitulation between the Ottomans and the Europeans, which eventually resulted in the creation of the mixed court system in Egypt in 1876. J. Y. Brinton describes the mixed court systems as

the dominating judicial institution of the country. They correspond broadly to the federal judicial system in the United States. All litigation which involves a foreign party or foreign interest . . . comes before them. As the activities of the 150,000 foreigners in Egypt largely control the commercial life . . . there is practically no litigation of any large or general importance which is not attracted to their jurisdiction.<sup>13</sup>

Composed of a court of appeals and three district courts, the mixed court system at one time contained seventy judges, who decided "some 40,000 written opinions" annually. Although the mixed courts were established to represent the complement of European interests, the supremacy of the French should not be overlooked. French was the language used in the courts, and the civil codes of the courts were based mostly on French models.<sup>14</sup> The primary purpose of these was to assuage the demands of foreigners in Egypt. Yet, they also had a major effect on the legal system of Egypt. As Ziadeh notes, "If any one factor were to be singled out as contributing the most to the modernization of Egypt, it would be the establishment of the mixed courts."<sup>15</sup>

Ziadeh's claim is well supported by the historical events following the establishment of the mixed courts. In 1881, the vice-president of the mixed court of appeal argued that "the jurisdiction of the mixed courts be extended to cases between native Egyptians."<sup>16</sup> Although this proposal failed to gain support, the British, who had occupied the country in 1882, sought to establish a system of national courts paralleling the mixed courts. In 1883, this plan was put into effect. A national or native judicial system, with jurisdiction over civil, commercial, and criminal cases, was established. The shariah courts, however, were not abolished—their jurisdiction was simply limited to cases involving "personal status."<sup>17</sup>

### *Egyptian Contributions*

By the time Egypt's independence was established in 1936, its legal system was perhaps "the most highly developed in the Mideast." But further refinements from subsequent Egyptian governments were forthcoming. In 1937, at the Montreux conference, the mixed court system was terminated. Later, in 1948, the noted legal scholar, Abdal-Razzaq al-Sanhouri, drafted an updated civil code. The code, which "was drawn from both Western and Islamic sources, became the model or at least the inspiration for new civil codes throughout most of the Arab world."<sup>18</sup> The Council of State, modelled after a similar institution in France, was also created. Its powers included assessing the legality of governmental activities.

### *Religious Law*

As the above discussion reveals, shariah courts were the basic legal structures of Ottoman Egypt. When the native court system was inaugurated in 1883, however, shariah courts lost much of their jurisdiction, a change from which they would never fully recover.

As the state began the process of modernization, in fact, the situation only worsened. In 1897, for example, the shariah courts were no longer allowed to apply shariah law. Rather, judges were to base their decisions on statute. Years later, after the army revolt of 1952, the courts were finally abolished. As of January 1, 1956, the national courts were and continue to be the "single judicial structure to which all persons and cases were subject."<sup>19</sup>

Although the religious courts were abolished, shariah itself is still applicable to cases involving personal status, such as divorce, marriage, and inheritance. In fact, a constitutional amendment passed in 1980 changed the "identification of shariah" from "a principal source of law" to "the" source.<sup>20</sup> But, as one observer has noted, "the shariah . . . is embraced in the national constitution, but in much of the legal system, its visibility and influence are not substantial."<sup>21</sup>

### Israel

#### *Ottoman Law and Legal Institutions*

Palestine, like Egypt, was a province of Turkey and thus heavily influenced by the Ottoman and French occupations. While under Ottoman rule, substantial reforms were effectuated, including the "fair and public trial[s] of all accused regardless of religion," the creation of a system of "separate competences, religious and civil," and the validation of testimony on non-Muslims.<sup>22</sup> Specific land codes (1858), civil codes (1869–1876), and a code of civil procedure also were enacted.

The Ottoman reforms that occurred during this period were based heavily on French models. Indicative of the French influence was the adoption of a three-tiered court system. Referred to as Nizamiye, this system was extended to the

local magistrate level with the “final promulgation of the Mercelle, a civil code.”<sup>23</sup> Specifically, this code was concerned with “law relating to marriage, divorce, alimony, will, and other matters of personal status of Moslems; and the land law adapted to suit the peculiar needs of the Ottoman Empire.”<sup>24</sup> The courts used this code as a statutory compilation upon which decisions could be based.

When the religious versus nonreligious controversy arose during this reform period, it was dealt with by formally distinguishing between civil and religious proceedings. One author summarized the change as follows: “In an attempt to unscramble the confused situation with regard to judicial competences, [an administrative council] laid down that religious matters were to be handled by Religious Courts, and statute matters were to be handled by the Nizamiye Courts without specifying exactly what comprised which.”<sup>25</sup> This point concerning the division of case subjects to be heard by either religious or statute courts reveals among other things the rapid growth, change, and reform the Ottoman legal system underwent late in the nineteenth century.

During the transition period between the fall of Turkish Jerusalem on December 7, 1917, and July 1, 1920, Palestine was under British military administration. On June 24, 1918, Proclamation No. 42 was issued by the British reestablishing the “administration of justice” in Palestine. This proclamation reinstated Ottoman laws and judicial organization as the laws in force in the country except for some alterations made by the British officials. A distinction was retained in the jurisdictions of civil and religious courts, and the civil courts were empowered to decide all cases involving foreigners. Therefore, in this interim period, the Mercelle remained in force as the civil code. In regard to other legal matters, “Ottoman law in force on the date of occupation would henceforth be in force in the Courts of Palestine ‘with such modifications as may be proper’ in the light of private international law and good administration.”<sup>26</sup>

#### *European Authority*

It was not until the Mandate period that a second major source of the contemporary legal system developed. In the arena of international politics, British legal authority in Palestine rested on the Mandate approved by the United Nations on July 24, 1922. Domestically, though, the Palestine Order-in-Council of 1922 was the ruling authority and base of administration and control. The highest authority was the high commissioner, who could legislate freely so long as the laws were consistent with the provisions of the Mandate. His power was extensive, ranging from legislative to judicial authority. Because Ottoman law was declared as binding, gaps and changes were made by the Mandate administration and its officials, in conformity with the British principles of common law.

These changes, modelled as they were on British jurisprudence, slowly altered the nature of the legal system. Eventually regulations and ordinances “displaced a considerable portion of Ottoman influence” and diluted the Turkish influence in the judiciary. It is not surprising, therefore, that by 1948 Palestine’s legal

system was based primarily on British law.<sup>27</sup> The logic of these British initiatives is especially understandable when one grasps the ambition, motivation, and goals that drove the British. As expressed by Marver Berstein, the British saw one of their major roles in Palestine as “overhauling . . . the legal system,” and “the establishment of an honest and efficient judiciary and magistracy.”<sup>28</sup>

In addition to the two major elements in the Israeli judicial fabric discussed above, the effects of British common law and equity on the modern system is one largely of principle and theory. That is, the incorporation of *stare decisis* (precedent) added a particular flexibility and integrity to the system that is still apparent.<sup>29</sup> The British contribution of these principles influenced the philosophical attitudes of jurisprudence, which stressed justice and fairness. Concepts of common law and equity were not rigidly enforced in Palestine, but rather were modified from the English context to suit local situations. Therefore, judges had discretionary power to determine whether a particular British precedent was suitable for Palestine, and if not, in which form it would be suitable.<sup>30</sup> The influence of the British was seen, finally, in the fact that the judicial committee of the Privy Council in London (and not the Palestinian Supreme Court) was the ultimate judicial authority for the area.

#### *Israeli Contributions*

On May 14, 1948, the British Mandate over Palestine terminated and the State of Israel was declared independent by the Provisional State Council. At this point, the People’s Council was to play the role of legislature temporarily (acting as the Provisional State Council) and the People’s Administration would fulfill executive functions (acting as the Provisional Government). After declaring their independence, the new leaders of Israel had to organize a working government rapidly, including as much state apparatus and administration as possible. Among these were the judicial department and all legal functions. Subsequently, the Council made a pragmatic decision, incorporating the existing legal apparatus as the legal system of the states until such changes considered desirable could be made. That is, through a proclamation, the state accepted the original Ottoman structure, with its British revisions, as its own legal system until such time as they were able to rework it. Yet, this ordinance contained some provisions to reduce the dependence on British and Ottoman law. For example, it provided that law could incorporate “modifications resulting from the establishment of the State and its authorities.”<sup>31</sup> Because neither the Declaration of Independence nor the Proclamation could technically be considered law, the Provisional State Council reinforced its decision through specific legislation.

With the passage of laws by the Provincial Government and with the passage of time, Israel gradually transformed the existing legal structure into one which was more uniquely Israeli, reflecting the country’s values and ideals. This evolving system was composed of various legal traditions and conformed “more closely to the national spirit and needs.”<sup>32</sup>

Nonetheless, this gradual evolution of a unique Israeli jurisprudence has not

affected a substantial change in the laws and courts. The Israeli judicial system retained a great deal of its initial structure, incorporating the infusion of British influence. But in specific areas, such as civil rights and liberties and appeals to the Supreme Court, Israel has followed the practices of the United States. Subsequently, Israel's legal system is not only a compilation of earlier legal systems, but, through modern legislation, the state has created a judiciary that also parallels contemporary models of justice.

### *Religious Doctrine*

The final element comprising the Israeli legal system is religious law. During British dominance, in the Mandate period, each of the recognized religious communities (Muslims, Jews, and Christians) had a "quasi-autonomous organization with its own judicial system." These religious courts were empowered to decide cases of "personal status," which include such matters as marriage, divorce, and inheritance.<sup>33</sup> For cases involving personal status, these courts had exclusive jurisdiction for members of that community who were not foreigners. But with regard to all other matters, jurisdiction relied on the consent of all parties. If this consent was not obtained, the civil courts exercised jurisdiction. Finally, the authority of these religious courts was significant as seen through the enforcement of their decisions. "Decisions were implemented by officers and processes of the civil courts."<sup>34</sup>

The impact of religious courts in Israel has been extensive. Different courts of jurisdiction applying the particular religious doctrines of their parties is a unique aspect of the Israeli legal structure, which finds its roots in the Ottoman system of justice. And, although the role and authority of the religious courts has fluctuated since the beginning of statehood, the tremendous influence of these courts on the system is unquestionable.

## THE ORGANIZATION OF THE COURT SYSTEMS

### Egypt

The Egyptian legal system, unlike those of many other nations, is hierarchical and relatively straightforward in design. It is composed essentially of three tiers, beginning with the entry points into the judicial process, the summary tribunals and tribunals of the first instance, and ending with the apex of the system, the Supreme Court.

As of 1978, 209 summary tribunals existed in Egypt. These tribunals are dispersed throughout the country by districts and have jurisdiction over most minor cases. Specifically, the summary tribunals hear cases involving misdemeanors and other minor offenses, minor labor disputes, and commercial or civil cases involving less than 250 Egyptian pounds.

There are twenty-two tribunals of first instance located throughout the major towns of each province. These tribunals have extensive jurisdiction, functioning

as courts of first resort and as appellate courts. In the former capacity, the tribunals of first instance have exclusive jurisdiction over all cases involving more than 250 pounds as well as in all major personal status cases that have a statutory right of appeal to the high courts of appeal. In these situations only one justice presides.

The tribunals also act as appellate courts in two situations: (1) they hear appeals from civil or commercial cases involving more than 50 pounds and minor personal status cases—in these cases only one justice presides; and (2) a three-judge chamber of appeals (*Chambres des Appels Correctionnels*) hears misdemeanor appeals from the summary tribunals.

There are seven high courts of appeal. Each sits in three-judge panels and presides in civil or criminal divisions. The *Chambre Civiles* hears appeals "in civil, commercial and personal status" cases decided by tribunals of the first instance while the criminal division (the *Cours d'Assises*), hears cases involving situations in which either the death penalty or "imprisonment with hard labor of 3 to 25 years has been imposed."<sup>35</sup> The high courts of appeals have authority to hear and decide issues of fact and law. A decision of one of these courts is considered final and only issues of law may be appealed to the Supreme Court.

The Supreme Court of Egypt is composed of thirty justices (though five constitute a quorum) selected by the General Assembly. Like the high courts of appeal, the Supreme Court sits in criminal and civil divisions and exercises only appellate jurisdiction with but one exception—it reviews petitions of lower court judges who believe they have been wrongly denied promotion by the Supreme Judicial Council. Appeals on issues of law may be taken by the Supreme Court from: (1) any high court of appeal's judgment, (2) any penal sentence rendered by a Court of Assizes or by a *Chambres des Appels Correctionnels*, (3) "any contradictory judgments of last resort on the same litigation," and (4) any violations of jurisdictional rules.<sup>36</sup>

If the Supreme Court accepts an appeal, the Court can follow one of two avenues. First, it may settle the legal issues and thereby settle the case. If more information is required, however, the case may be sent to a differently constituted high court of appeals for complete retrial. Decisions of the court are not legally binding on the lower courts, a tradition stemming from the Ottoman court system. Unlike the United States's system of *stare decisis*, which binds other judges to apply case law as precedent, Egypt utilizes a system of written law. Nevertheless, these decisions generally have strong influence on lower court jurists.

### Israel

Israel's judiciary is also hierarchical but more intricate than that of Egypt. Civil, religious, and special jurisdiction courts compose the body of its legal structure. The court system begins with the magistrate courts, proceeds to the district courts, and concludes with the Supreme Court, the highest court in the country.

The magistrate courts were established by order of the minister of justice. These courts exist in most major cities and villages, each with a specific geographic area of jurisdiction that is exclusive, eliminating the possibility of overlapping jurisdiction at this level. Jurisdiction for these courts is restricted to "minor criminal offenses carrying a maximum sentence of three years' imprisonment, and smaller money claims of up to IL 100,000 [Israeli Lira]." <sup>37</sup>

Although the number of judges presiding on a magistrate court may vary (as decided by the Department of Justice), most have three judges. The common practice is for one magistrate to hear a case. <sup>38</sup> Yet, ultimate determination of how many judges will sit for a particular case is decided either by the assigned judge, who may request a larger panel, or by the chief magistrate. In 1983, the total number of magistrates was 135, a large increase over the sixty-two presiding in 1955. <sup>39</sup>

"All judgments of magistrates' are appealable to the district courts," which constitute the next court level in the judicial hierarchy of Israel. These courts are also created, staffed, and located by the authority of the minister of justice. There are five district courts, each corresponding to specific territorial jurisdictions. And, while the distribution of judges is not equally balanced in each district, the total number of district judges in 1982 was eighty-six. <sup>40</sup>

The jurisdiction of these district courts is extensive because they serve a dual function, both as courts of first instance and as appellate courts. In the former capacity, the court hears serious criminal and civil disputes and those cases beyond the jurisdiction of magistrate courts. <sup>41</sup> Further, their jurisdiction also extends to "matters not within the exclusive jurisdiction of any other court or tribunal, [and] over matters within concurrent jurisdiction of any other court or tribunal so long as such court or tribunal does not hear the matter." <sup>42</sup> This broad range of potential jurisdiction emphasizes the significance of this court within the legal system as a whole.

District courts may also hear appeals from magistrate courts and minor courts such as municipal courts or administrative tribunals. When acting as a court of appeal, a three-judge panel presides. This is also the case when "dealing with serious crime as a court of first instance or in hearing other special cases at the request of the President of the Court." <sup>43</sup> Commonly, though, when trying a case as a court of first instance only one judge sits on the bench.

A ruling by the district court trying a case in the first instance is appealable to the Supreme Court. However, this automatic right to appeal does not exist for cases originating at a lower level in the court hierarchy. In fact, these sorts of cases can be appealed to the Supreme Court only if the district court or the president of the Supreme Court (or a member of the Court selected by the president of the Court) or "the Supreme Court itself decides to hear the appeal." <sup>44</sup> The central role of the district courts in the Israeli judicial system is further reflected by their workload. In 1982, the caseload for these courts came to 63,412 cases decided and 56,302 pending. <sup>45</sup> These cases were all of a serious nature, carrying the possibility of nontrivial punishment or sentence. In addition, this

level of judicial hierarchy is essential because it has authority both to decide controversies, as well as screen, by means of a hearing, those cases that will eventually arrive at the highest court of arbitration and appeals, the Supreme Court.

The Israeli Supreme Court sits at the pinnacle of the court structure. Creation of this court was authorized through the Courts (Transitional Provisions) Ordinance passed by the Provisional State Council on June 24, 1948. Specifics of the law established a Supreme Court of last resort, whose members would be "appointed by the Provisional Government on the recommendation of the Minister of Justice and subject to approval by the Provisional Government on the recommendation of the Minister of Justice and subject to approval by the Provisional State Council." <sup>46</sup> Although the number has slowly increased, five justices were confirmed soon after the ordinance's passage.

The highest Israeli court serves three functions: (1) as the appellate court for district courts in civil and criminal cases; (2) as a court of last resort in cases involving civil rights and liberties, and (3) as the "regulator" of issues involving "federalism." <sup>47</sup> In addition, when the Supreme Court acts as an appeals court against its own decisions, it decides if a further hearing is necessary and a minimum of five justices rehear the case. The Supreme Court, due to its stature and position, has the authority to intervene into the affairs of another court in the interests of justice. That is, the president or the permanent deputy of the Supreme Court may direct that either the Supreme Court itself or a particular district court retry a case under very specific conditions. For example, a retrial may be held "in a criminal case if it appears to him that any of the incriminating evidence produced in court was based on falsehood or forgery." <sup>48</sup> A retrial may be requested by either the attorney general or the convicted defendant, at which time the court may rule to either acquit or convict. If, in fact, conviction is the outcome of the retrial, the punishment may not exceed the original sentence.

The original practice of staffing the Supreme Court was to nominate district court judges as acting justices, but as this resulted in disrupting the activities of the lower courts, the Supreme Court was consistently enlarged. Presently, the Supreme Court is composed of twelve justices, two of whom hold the titles of president of the Supreme Court and permanent deputy to the president of the Supreme Court. Control over the number of justices that sit on the Supreme Court is retained by the Knesset, as authorized by the Courts Law of 1957. The number of judges required to hold court is normally three, although certain technical decisions can be made by only one justice.

#### *Dual Aspect of the Legal System: Religious Courts*

The existence of religious courts is a unique aspect of the Israeli system. Functioning individually, the courts of the various recognized religious communities decide cases by relying on the religious principles and doctrines of their respective faiths. In general, they claim jurisdiction over personal status cases—those involving marriage, divorce, alimony, burial, and wills. <sup>49</sup> Because of the

exclusive jurisdiction retained by religious courts on these matters, civil marriage and divorce is illegal for followers of these faiths.

The Rabbinical Courts, for example, have exclusive jurisdiction over the Jewish community (other than foreigners) in the matters mentioned above with the inclusion of cases involving "inheritance and succession when both parties agree to their jurisdiction." In all other matters of personal status of "all members of the Jewish community," even foreigners, the religious courts have concurrent jurisdiction with civil courts if all parties agree.<sup>50</sup> The exception to this authority is that such courts cannot grant a foreigner a divorce or an annulment. There are Rabbinical Courts which serve as courts of first instance, as well as a Rabbinical Court of Appeal. While an appeal may be taken from the Rabbinical Courts to the Rabbinical Court of Appeal, this decision may not be appealed to any civil authority.

The Muslim courts (or shariah courts) are organized along very similar lines. In contrast with the Jewish courts, though, Muslim foreigners, who are "subject by their national law to the jurisdiction of Muslim Religious Courts," also fall under the exclusive jurisdiction of the shariah courts.<sup>51</sup>

Other recognized religious communities in Israel also enjoy distinct religious courts. These include those of the Catholic, Protestant, Greek Orthodox, Melkite, and Maronite communities. These courts function along guidelines similar to those of the previously discussed religious courts. Furthermore, they share several of the other characteristics of religious courts, which add to the effectiveness and cohesion of this branch of the judiciary. First, whenever an action of personal status involves members of different religious communities, the president of the Supreme Court decides which court shall have jurisdiction. If a question arises as to whether or not a matter falls under the category of personal status, the case is preemptorily reviewed by a special tribunal composed of two Supreme Court justices and the president of the highest court of the religious community. Second, the authority of these courts is emphasized by their avenues of enforcement. "The judgments of the Religious Courts are executed by the process and offices of the civil courts."<sup>52</sup> Moreover, the "budgets for these courts are maintained by the state, rather than by each religious community."<sup>53</sup> These aspects, which are common to all the religious courts, reflect the influence of this part of the judiciary within the Israeli system.

## THE PERSONNEL OF THE LAW

### Egypt

#### *The Legal Practitioners*

The profession of law has a long-standing tradition in Egyptian society. Prior to the late 1800s, Egyptians were generally represented by *wukala*, unsavory and untrained lawyers, who "loitered the doorways of the [shariah] courts."<sup>54</sup>

Many rulers of the province tried to abolish or at least discourage *wukala*; for example, 'Ali ordered qadi to collect fees from *wukala* who brought frivolous suits. But these and other efforts were unsuccessful—*wukala* remained on the Egyptian legal scene well into the late nineteenth century.

As is the case with many aspects of the current Egyptian legal system, the example set by the mixed courts led to a professionalization in legal care. European lawyers practicing before the mixed courts were highly trained advocates and not "influence peddlers" as the *wukala* were often called. These attorneys, in fact, organized their own mixed bar association. Emulating the French system, it eventually established strict standards for membership.<sup>55</sup>

After the establishment of the native court system, the Egyptian government realized that it had to upgrade the quality of its legal care if its practitioners were to be comparable to those of the mixed bar. This was accomplished through several important statutes passed between 1888 and 1912. Perhaps the most effective reform occurred in 1912 with the establishment of the Egyptian National Bar Association. The Bar Association, to which every advocate must belong, maintained high standards, encouraging excellence in practice and in research. It, in fact, became such an important force in Egypt that it later absorbed both the mixed and shariah bar associations.

These reforms helped lay the foundation for the generally high quality legal education and profession found in Egypt today. This is particularly true given the profession's relatively unsavory origins and the short period of time that has elapsed since the reforms were instituted.

Today, Egyptians earn legal degrees (*licencie en droit*) through a four-year course of study similar to a liberal arts education in the United States. Although the quality of education is thought to be high for the region, several problems have plagued the six governmental universities. First, enrollments are high; in Cairo, for example, over 14,000 students are registered, sometimes resulting in classes of over 2,000.<sup>56</sup> These unmanageable numbers have led to a second problem—overcrowding has forced "the law faculty . . . to reduce the process of legal education to rote memorization of rules and principles stated in course outlines prepared by the professor."<sup>57</sup>

Whatever Egyptian attorneys may be losing in the way of legal education, they seem to be gaining in the strict criteria developed by the bar association. Only members of the bar can represent litigants in Egypt, but to become a member of the association, law school graduates must serve a two-year apprenticeship with a practicing attorney. After she/he has finished this training period and has argued at least twenty-five cases, she/he may be admitted to practice before tribunals of the first instance and summary courts. As of December 1976, 4,272 attorneys were admitted to these courts. After three years, advocates can apply for admission to the high courts of appeal, with the ultimate decision made by a special committee. Thus far, 5,755 attorneys have been admitted to these courts. Admission to practice before the Supreme Court can be obtained after seven years of practice before the high courts of appeal. But as Rhyne has noted,



“usually no lawyer is admitted to plead before the Supreme Court unless he has a background of at least 20 years inscription to the bar.” There are 1,739 attorneys now practicing before the Supreme Court.<sup>58</sup>

#### *Judges*

The requirements for appointment to the bench in the Egyptian legal system vary by court level. That is, each type of court maintains its own criteria for ascendency to a judgeship.

Supreme Court judges are chosen by the General Assembly from three eligible populations: (1) distinguished members of a high court of appeal with at least two years seniority, (2) “university professors with at least eight years of teaching and twenty years of legal experience,” and (3) attorneys with at least twenty years of legal experience, eight of which they were permitted to practice before the Supreme Court.<sup>59</sup> As is the case for all Egyptian jurists, Supreme Court justices must retire at age sixty.

High courts of appeal judges are selected from another subset of the legal population, which includes presidents of tribunals of the first instance (who are at least thirty-eight years of age), university professors with five years of teaching experience, and attorneys who have been members of the bar for fifteen years. Judges staffing the tribunals of first instance and the summary tribunals are drawn from a similar pool, except that prospective jurists for these courts can be twenty-eight years old and members of the bar for only seven years.

Given the pools from which Egyptian judges are drawn, the quality of those who serve is seemingly quite high for the region. Although the legal profession in Egypt is not quite as prestigious as it is in the United States, Egyptian legal scholars, as Salacuse notes, “dominate legal research of the Arab world.”<sup>60</sup> In addition, many of the scholars whose works helped to modernize several of the legal systems of the region went on to serve as Egyptian jurists.

This was not always the case. According to one scholar, during the days of 'Ali, judges were often “lackeys of the executive power.”<sup>61</sup> The example set by the first-rate judges brought in by the Europeans to sit on the mixed courts, however, changed this situation. Egypt, with the help of foreign influences, recognized the importance of maintaining a high quality bench.<sup>62</sup> Since that time, it has emulated the European example by creating strict criteria for appointment to the judiciary.

#### Israel

##### *Legal Practitioners*

The process by which lawyers (often called advocates in Israel) are permitted to practice law is fairly straightforward. Uniform rules apply to all lawyers in determining rights to begin practicing, continue practicing, and, in general, in maintaining the standards of legal performance. Before 1961, advocates were

under the control and supervision of a law council. Membership in the Israeli Bar Association was optional and did not necessarily reflect on the competence of the advocates. On June 13, 1961, however, the Chamber of Advocates Law was passed by the Knesset, reorganizing the requirements and functions of Israeli advocates. The most obvious and significant result of this law was to make membership in the Chamber of Advocates, a controlling body over the legal profession, a requirement. Technically, its function is to

take care of the standards and integrity of the profession, and, for that purpose it is charged with the registration, control, and examination of law apprentices, the authorization of persons to practice as advocates by accepting them as members of the Chamber of Advocates, and the maintenance of disciplinary tribunals for advocates and law apprentices.<sup>63</sup>

There are three requirements for becoming an advocate: completing a legal education, serving a necessary apprenticeship, and passing the examination given by the Chamber of Advocates. To fulfill the educational conditions, an individual must be one of the following: a graduate of one of three Israeli institutions of law (located at Hebrew, Tel Aviv, and Bar-Ilan universities), “a graduate in law of an institution abroad recognized for this purpose by the Hebrew University, Jerusalem, as an institution of higher learning,” and an advocate qualified abroad and having practiced abroad for two years or having served a judicial function abroad for two years that requires a legal education.<sup>64</sup> Further, all prospective advocates must complete a two-year apprenticeship, one year of which may be fulfilled simultaneously with the fourth and final year of legal education. Finally, after serving the required apprenticeship with a practicing attorney, examinations must be successfully completed to gain membership in the Chamber. These examinations are conducted by a committee composed of one judge and two advocates.<sup>65</sup>

Along with all the above requirements, restrictions, and qualifications applied to prospective lawyers, there are also some general prerequisites for acceptance into the Chamber of Advocates. Basically, a candidate must be twenty-three years of age, a resident of Israel, and qualified to be an advocate. In addition, foreign advocates especially must prove a “sufficient knowledge” of the Hebrew language before membership into the Chamber can be extended.<sup>66</sup>

#### *Judges*

Unlike countries in which various methods are used to select judges, Israeli judges are appointed through a uniform process. The formal appointments are made so that most, if not all, interested parties are involved in the selection procedure. Specifically, all appointments to the civil judiciary are processed as follows. The president of the State appoints a candidate who has been recommended by a nominations committee, chaired by the minister of justice and composed of three justices of the Supreme Court, two Knesset members elected

by secret ballot by the sitting members, and two practicing lawyers elected by the Israeli Bar Association.

There are specific qualifications that must be met before consideration for appointment to a bench. As is the case in Egypt, these requirements vary by rank of judicial office. The most stringent requirements pertain to justices of the Supreme Court. To be considered for this position, a candidate must (1) have held office as a judge of a district court for five years, or (2) be "inscribed, or entitled to be inscribed, in the Roll of Advocates in Israel and who, continuously or intermittently, for not less than ten years, including at least five years in [Israel], has been engaged in one or several" of the following: (a) the practice of law, (b) a judicial or legal function approved by the minister of justice, (c) teaching law at a university or law school approved by the minister of justice, or (d) be an "eminent jurist."<sup>67</sup> This last qualification allows for outstanding individuals who have not previously practiced law or held a judicial appointment to become justices. As proof of the emphasis on legal expertise, fifteen of the last twenty-one appointments made to the Supreme Court were individuals who had served as district court judges. More importantly, since 1954, "no private lawyer has been appointed to this bench."<sup>68</sup>

Although not as rigid, the requirements for consideration to a district court judgeship are very similar to the above. These include: (1) holding office as a magistrate judge for four years, or (2) a person inscribed or entitled to be inscribed in the Roll of Advocates for not less than six years, at least three years of which were in Israel, engaged in one of the above occupations.<sup>69</sup>

Finally, for a position as a magistrate court judge, one of the listed professions must have been pursued for three years, at least one in Israel, while being entitled to inscription in the Roll of Advocates, if not so inscribed. Due both to the process of appointment and the above specified qualifications for consideration, "political appointments are rare."<sup>70</sup>

There are other restrictions placed upon judges both before and after gaining a judgeship. One is that judges must be Israeli citizens at the time of appointment. If a candidate for appointment retains dual citizenship with another country, she/he must relinquish this dual nationality. In fact, the nominee "may not be appointed until after he has done all that is necessary on his part in order to free himself" from this additional nationality.<sup>71</sup> Further, once appointed, judges hold office for life, with a retiring age of seventy. A judge's tenure can only be terminated "upon his death, resignation, retirement on pension (upon attaining seventy years), or [removal] from office" by virtue of the Judges Law.<sup>72</sup> This law, which establishes all of the earlier provisions for judges, also created a disciplinary court to monitor the actions of judges, but "so far no judge has been thus disciplined."<sup>73</sup>

## PUBLIC PERCEPTIONS AND THE ROLE OF THE COURTS

### Egypt

During the Mamluk, Ottoman, French, and British occupations of Egypt, scholars have suggested that the judiciary was anything but independent. Many, in fact, have argued that the qadi were extremely dependent on the executive, as the military imposed its rule at will. Currently, Egypt has taken great care to insure the independence of the judiciary through several mechanisms. First, Chapter 5 of the Egyptian Constitution, which prescribes judicial authority, contains several articles dealing with judicial independence. Article 165, for example, states that "Judges shall be independent, subject to no other authority but the law. No authority may intervene in the cases or in justice affairs." Second, although judges must retire at age sixty, they are "irremovable." Third, Egypt has established an apparatus "to guarantee the independence of the judiciary," the Supreme Judicial Council.<sup>74</sup> Headed by the chief justice and comprised of key jurists and members of the Ministry of Justice, the Council decides "all matters concerning the appointment, promotion, and transfer of judges."<sup>75</sup>

A final way in which Egypt has attempted to insure the independence of its legal system is through judicial review. While the Supreme Court sits at the apex of the Egyptian legal system, Chapter 5 of the 1969 Constitution called for the creation of a Supreme Constitutional Court. According to Article 175, this Court "alone shall undertake the judicial control in respect of the constitutionality of the laws and regulations, and shall undertake the explanation of the legislative texts." Thus, this article gives to the Supreme Constitutional Court the power of judicial review, a power not enjoyed by the Supreme Court. The Constitutional Court alone can nullify laws and regulations passed by the general assembly. Even this court, however, cannot "impede, repeal or nullify an administrative decree."<sup>76</sup> Under the Egyptian Constitution, only the Council of State, composed of university-trained jurists, has the "competence of decisions in administrative disputes." It alone, then, has the power to revoke or declare invalid decrees issued by government officials or ministers.

### Israel

The judicial proceedings in Israeli courts are unique in certain respects. Courtroom procedure is generally modelled on British common law. Yet, in Israel there are no juries. Consequently, a judge has complete control over a case, with few competing complications. Thus, although a judge is always accountable to a higher court, all decisions are decided by experienced legal minds rather than by a jury of peers.

In addition, it is within the judge's authority to hold closed trials if it is deemed necessary to "protect national security, protection of morality, or the best interest

of a minor." When closed hearings are in effect, strict prohibitions exist on publication of proceedings without permission, to safeguard a witness, valuable information, or other concerns that must be kept secret. In addition, it is forbidden to publish anything concerning a pending matter in court that could tarnish the trial.<sup>77</sup> It is due to these powers that judges can retain such great procedural control over cases in their courts.

In sum, authors who have researched the Israeli legal system agree and emphasize the integrity of the courts. The desire to ensure that a judge is "subject to no authority but the law" is fulfilled through the provisions of the Judge's Law and the parameters it has effected. By virtue of the judiciary's disentanglement from politics, especially in the process of the selection of judges, "Israel's Judges in all grades have stoutly maintained their independence."<sup>78</sup> As succinctly stated by Yaacov Zemach:

The Judge's Law secures the judiciary's independence, both in the exercise of judicial power and in matters of appointment and tenure. The law proclaims that "a judge, in judicial matters, is subject to no authority other than that of the law." The statute guarantees judges' independence by minimizing political influence upon appointments and removal, and by prescribing a uniform tenure and retirement system.<sup>79</sup>

To understand the power of the Supreme Court to review governmental acts, it is important that we first describe the jurisdiction of the Supreme Court, which is extensive, encompassing the entire country. The Court may hear cases in which the "grant of relief is deemed necessary in the interest of justice" and those cases not within the jurisdiction of any other court. The specific actions the Court can take in this capacity are numerous. First, the Court can order the release of an unlawfully detained or imprisoned person. It is able to require governmental officials to perform acts required of them by legislative provisions or restrict public officers from exceeding their authority. Furthermore, it is within its authority to curtail actions by public officials unlawfully elected or appointed. Also, the Court can order tribunals or any judicial or quasi-judicial body or official (other than the magistrates' and district courts) to hear or refrain from hearing or continuing to hear a particular case. And, finally, the Court can order religious courts either to hear a case, refrain from hearing, or continuing to hear a case, depending on the courts' jurisdiction over the matter.<sup>80</sup>

Cases can be brought before the Court under four prerogative writs: habeas corpus, mandamus, certiorari, and quo warranto. These writs constitute the authority under which the Supreme Court may hear and decide a case and are defined as follows: a writ of habeas corpus entails the release of a prisoner so that the Court can then decide what legal action is appropriate; a writ of mandamus allows the court to order an individual, corporation, or inferior court to pursue some action required by virtue of the subject's office or duty; a writ of certiorari orders the review of an act taken by an individual, public officer, lower court, or agencies exercising judicial authority; and a writ of quo warranto is the holding

of legal proceedings to determine the possession of title to public office or the right to exercise a franchise.<sup>81</sup>

If a case was heard in one of the religious courts, then the Supreme Court only will hear the case if the participants early on raised the question of competence or jurisdiction of this authority.<sup>82</sup> That is, litigants in a case being heard by a religious court cannot appeal to the Supreme Court on the grounds of jurisdictional conflicts after the proceedings are partly complete. This rule curbs attempts to claim conflicting jurisdictions if the decision of the religious court appears to be unfavorable.

The ability of the Supreme Court to review legislative acts and decisions is complex. While the Court does not have the right to review the constitutionality of legislation passed by the Knesset, it is empowered to review the legality of the implementation of laws. Also, the lack of a written constitution creates a situation of nebulous spheres of control for the various governmental bodies. The "delimitation of borderlines" between these agencies, is, therefore, left to the judiciary, specifically the Supreme Court, which decides these cases, using the statutes that have "prescribed the structure of the government, but have not specified their respective substantive functions."<sup>83</sup>

The Supreme Court concerns itself with maintaining the proper division of jurisdiction between national and local legislatures and administrations and also with protecting the rights of the people against illegal behavior or the unlawful usurpation of power by public officials. Thus, the specific types of laws it can review and, if necessary, repeal are those that deal with the particulars of legal applications. The Court can nullify local ordinances, if they infringe on areas of national jurisdiction; administrative regulations promulgated to impose Knesset-approved legislation that violates the property or other fundamental rights of the people; and arbitrary or illegal action or decisions by public officials.<sup>84</sup>

Therefore, many traditions exist regarding what cases the Supreme Court can hear and where its authority is restricted. In general, however, the High Court's judicial power is "couched in discretionary rather than jurisdictional terms." The result of the vague statutes that authorized the creation of the Court is that a decision whether or not to hear and decide a case "remains fundamentally subjective" and depends on "the disposition of the Court to extend or limit the scope of its control."<sup>85</sup> When cases are not heard by Court, it is not due to lack of jurisdiction, but because the Court controls its own jurisdiction through the concept of justiciability. As stated in a major Israeli decision, *Jabotinsky v. Weizman* (1951), "operative limits" on the range of justiciable issues are basically the same in the United States and Israel.<sup>86</sup> Accordingly, Israel accepted the American practice of deciding justiciability on "reasoned and policy grounds."<sup>87</sup> Therefore, the Israeli Supreme Court has refused to "adopt any 'semantic definition' of nonjusticiable questions" so as not to limit and confine the Court's influence.<sup>88</sup> This policy also reinforces the Court's stature as a whole. And while every court will be "guided by a rule laid down by a higher Court," a "rule laid down by the Supreme Court will bind every court except itself."<sup>89</sup>

## CONCLUSIONS

At the onset of this chapter, we stated that the legal systems of Egypt and Israel typify the two basic legal models found in Middle East. As our analysis has revealed, it is not surprising that there should be similarities among the legal systems of the region; the Middle East has been under the rule of common regimes who left their imprints on the judicial structures throughout the region.

Although foreign forces played a prominent role in the development of Egypt's and Israel's legal institutions, as they have elsewhere in the region, the two nations have now moved beyond their historical roots. Both now possess modern, streamlined systems, reflecting religious traditions and indigenous needs. As we have also demonstrated, Egypt's and Israel's systems may represent the kinds of modern legal structures that will emerge in other less-developed Middle Eastern states.

## NOTES

1. Although these states fit into the religious-secular model, as a result of indigenous legislation, each deviates to some extent from the Israeli system. At least through 1978, the judicial process in Iran, for example, clearly fit the religious-secular model. Two types of courts existed. The Iranian civil code, however, is based upon Roman and Islamic law. The Iraqi legal system also contains both religious and secular courts. The laws enforced by these courts, however, are relatively unstable, as they are based on "working papers" and are constantly reviewed for their compatibility with the ideology of the regime in power. Lebanon, through the 1970s, possessed a relatively straightforward three-tiered religious-secular legal apparatus. Yet, law there is based on French and Islamic teachings. The Jordanian system is similar to the Lebanese, but there are two kinds of religious courts: Muslim and ecclesiastical. The law in Jordan is also comprised of a blend of English, Islamic, and French law. And, although the legal system in Kuwait does not contain religious courts per se, judges are supposed to use religious doctrine to decide civil disputes.

2. Although the Turkish legal system is secular, it deviates from the Egyptian model in at least two ways. First, it is much more complicated in design than the three-tiered Egyptian system. Turkey created specialized lower courts to adjudicate claims involving civil, commercial, and criminal law. Also, its highest appeals court contains fourteen divisions to deal with specific areas of the law. Second, the Turkish civil code was derived primarily from the Swiss system.

3. F. Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* (Stanford, Calif.: Hoover Institute on War, Revolution and Peace, 1968), p. 4.

4. G. H. El-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Minneapolis: Bibliotheca Islamica, 1979), pp. 6-7.

5. R. Nolte, *The Modern Middle East* (New York: Atherton Press, 1963), p. 157.

6. Ziadeh, *Lawyers*, p. 4.

7. El-Nahal, *The Judicial Administration*, p. 73.

8. *Ibid.*, pp. 25-35.

9. *Ibid.*, p. 72.

10. Ziadeh, *Lawyers*, p. 10; see J. W. Salacuse, "Back to Contract: Implications of Peace and Openness for Egypt's Legal System," *American Journal of Comparative Law* 28 (1980), pp. 315-33, for further discussion on this.

11. *Ibid.*, pp. 19-21.

12. *Ibid.*, p. 26.

13. J. Y. Brinton, *The Mixed Courts of Egypt* (New Haven, Conn.: Yale University Press, 1968), p. ix.

14. *Ibid.*, p. x.

15. Ziadeh, *Lawyers*, p. 24.

16. *Ibid.*, p. 31.

17. The law applied by the native courts was based on the French codes used in the mixed courts.

18. Salacuse, "Back to Contract," p. 318.

19. *Ibid.*

20. A. S. Banks and W. Overstreet, eds., *Political Handbook of the World* (New York: McGraw Hill, 1982/1983), p. 139.

21. N. J. Ackerson, "Journal of a Hoosier Lawyer in Cairo," *Res Getae* (June 1983), p. 610.

22. R. H. Eisenman, *Islamic Law in Palestine and Israel* (Leiden, The Netherlands: E. J. Brill, 1978), pp. 12-13.

23. *Ibid.*, p. 14.

24. H. E. Baker, *The Legal System of Israel* (Jerusalem: Israel Universities Press, 1968), p. 61.

25. Eisenman, *Islamic Law*, p. 15.

26. *Ibid.*, p. 18.

27. O. Kraines, *Government and Politics in Israel* (Boston: Houghton Mifflin Co., 1961), p. 138.

28. M. H. Bernstein, *The Politics of Israel* (Princeton, N.J.: Princeton University Press, 1957), p. 16.

29. Kraines, *Government and Politics in Israel*, p. 139.

30. *Ibid.*

31. *Ibid.*, p. 140.

32. Y. S. Zemach, *Political Questions in the Courts: A Judicial Function in Democracies—Israel and the United States* (Detroit: Wayne State University Press, 1976), p. 22.

33. Kraines, *Government and Politics in Israel*, p. 141.

34. *Ibid.*, p. 142.

35. C. S. Rhyne, ed., *Law and Judicial Systems of Nations*, 3d ed. (Washington, D.C.: The World Peace Through Law Center, 1978), p. 206.

36. *Ibid.*, pp. 204-5.

37. W. Frankel, *Israel Observed: An Anatomy of the State* (published by the author, 1980), p. 121.

38. Kraines, *Government and Politics in Israel*, p. 143.

39. *Statistical Abstract of Israel, 1983-1984* (Jerusalem: Central Bureau of Statistics, 1984), p. 595.

40. *Ibid.*, p. 613.

41. Kraines, *Government and Politics in Israel*, p. 144.

42. Rhyne, *Law and Judicial Systems*, p. 364.

43. Frankel, *Israel Observed*, p. 121.
44. Kraines, *Government and Politics in Israel*, p. 144.
45. *Statistical Abstract of Israel*, p. 616.
46. Kraines, *Government and Politics in Israel*, pp. 145–146.
47. *Ibid.*, p. 146.
48. *Ibid.*, pp. 146–47.
49. See Rhyne, *Law and Judicial Systems*, p. 366; and *ibid.*, pp. 148–49.
50. Kraines, *Government and Politics in Israel*, p. 149.
51. *The Middle East and North Africa, 1983–84* (London: European Publications Limited, 1984), p. 393.
52. Baker, *The Legal System of Israel*, p. 209.
53. Kraines, *Government and Politics in Israel*, p. 150.
54. Ziadeh, *Lawyers*, p. 21.
55. *Ibid.*, pp. 28–30.
56. Ackerson, “Journal of a Hoosier Lawyer,” p. 610.
57. Salacuse, “Back to Contract,” p. 322.
58. Rhyne, *Law and Judicial Systems*, p. 202.
59. *Ibid.*, p. 205.
60. Salacuse, “Back to Contract,” p. 322.
61. Ziadeh, *Lawyers*, p. 27.
62. When the native courts were first established, several foreign judges were assigned to each court level. As Egypt acclimated to the new system, the number was “reduced gradually.” See *ibid.*, p. 34.
63. Baker, *The Legal System of Israel*, p. 232.
64. *Ibid.*, p. 236.
65. An immigrant lawyer who has already practiced for two years abroad must only apprentice for six months to one year (see Frankel, *Israel Observed*, p. 134). If a foreign advocate has practiced for less than two years, then the period of apprenticeship is set by the chamber (see Baker, *The Legal System of Israel*, p. 238).
66. Rhyne, *Law and Judicial Systems*, p. 362.
67. Baker, *The Legal System of Israel*, p. 205.
68. M. Edelman, “The Judicial Elite of Israel: Societal Context” (Paper delivered at the Interim Conference, Research Committee for Comparative Judicial Studies, IPSA, University of Southern California, 1984), p. 10.
69. Baker, *The Legal System of Israel*, p. 205.
70. Frankel, *Israel Observed*, p. 126.
71. Baker, *The Legal System of Israel*, p. 205.
72. Zemach, *Political Questions in the Courts*, p. 26.
73. Frankel, *Israel Observed*, p. 126.
74. Banks and Overstreet, *Political Handbook*, p. 139.
75. Rhyne, *Law and Judicial Systems*, p. 207.
76. *Ibid.*
77. Kraines, *Government and Politics in Israel*, p. 155.
78. Frankel, *Israel Observed*, p. 126.
79. Zemach, *Political Questions in the Courts*, p. 26.
80. Kraines, *Government and Politics in Israel*, p. 147.
81. *Ibid.*
82. *Ibid.*, p. 148.

83. Zemach, *Political Questions in the Courts*, p. 32.
84. Kraines, *Government and Politics in Israel*, p. 148.
85. Zemach, *Political Questions in the Courts*, p. 28.
86. 1 S.J. at 86–87, cited in *ibid.*, p. 29.
87. *Ibid.*, p. 176.
88. *Ibid.*, p. 175.
89. Baker, *The Legal System of Israel*, p. 202.

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