



The Regulation of Lawyers in Israel – Analysis and Reform Proposal

By: Yonatan (Johnny) Green

This paper seeks to describe the anomaly of Israel's regulatory regime of law, whereby one entity, namely, the Israel Bar Association, concentrates a plethora of conflicting powers and functions, among them - professional representation of lawyers, determination of the ethics rules, disciplinary adjudication, the grant of licenses and admission of new lawyers, and two seats on the judicial selection committee. This paper analyzes the structural, administrative and constitutional flaws stemming from this situation, counters the arguments that justify the current structure and proposes a comprehensive reform.

The first chapter provides the background, and the second chapter describes the authorities granted to the Israeli Bar Association, including all the issues arising therein.

The third chapter reviews and rebuts the common arguments in favor of the current regime – including arguments for preserving the quality of lawyers, protecting the profession and its practitioners, market failures demanding oversight of the profession and the historical argument.

The fourth chapter is a comparative study of the regulation of law in other states.

The fifth chapter outlines the proposal for a thorough reform in regulating the law profession in Israel.

Summary:

The Israel Bar Association fulfills three major functions: unionizing practitioners of law, accrediting and licensing new lawyers, and determining the rules of ethics and managing disciplinary adjudication. The Israel Bar Association has also succeeded in appropriating to itself improper 'public' roles in contradiction to its other functions, most importantly holding two seats on the judicial selection committee. Membership

in the Bar (including the payment of annual fees) is mandatory for all lawyers wishing to practice their profession in Israel.

Under the current legal arrangement, the Israel Bar Association and its functionaries hold enormous economic and political power that also enables it to exert a decisive influence on the scope of its own powers. This disproportionate range of powers creates many conflicts of interest, serves as fertile ground for corruption and politicization and unjustifiably and unnecessarily infringes on the freedom of association and freedom of occupation of both lawyers and the general public.

The 2016 Amendment 38 broadened the Bar's functions even further, granting the Bar the abstract goal of acting for "the rule of law, human rights and Israel's foundational principles". Aside from such goals being completely malleable to personal and political ends by their vagueness, granting such a goal is acutely undemocratic, since such functions are normally given to elected bodies or to professional bodies with clear procedures and oversight.

Although various justifications are invoked for Israel's singular arrangement, close examination reveals that there is no practical or theoretical justification for the special status conferred on the professional union of lawyers, and the extraordinary autonomy inscribed into law granted to a professional guild. The comparative study demonstrates the abnormality of Israel's regulation of the profession in almost all relevant parameters.

In line with other developed states, and similar to all other professions in Israel, the Bar Association should be split into two separate bodies, one regulatory and supervisory and under government authority, and one representative, the membership of which is dependent solely on the will of the represented.

Recommendations:

1. Separate the licensing and accreditation apparatus from the body representing lawyers. Accreditation and licensing authorities should be granted to an independent agency operating under the auspices of the Ministry of Justice.
2. Separate the discipline and ethics apparatus from the body representing lawyers. The enforcement of discipline and the establishment of ethical standards should be handled by an independent agency operating under the auspices of the Ministry of Justice.
3. Membership in the representative body should no longer be mandatory or a prerequisite for practicing law. Lawyers should be free to unionize in any representative body they choose.

4. Cancel the Israeli Bar Associations' position on the judicial selection committee for Supreme Court justices.

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