

[Another chapter in Israel's constitutional wars](#)

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It has been a while since we reported here about Israel's ongoing constitutional (and culture) wars. The right wing government, and in particular members of the governing coalition who represent religious parties, Jewish settlers and nationalist parts of the Russian immigrant community, have long viewed the Supreme Court as a bastion of liberal secularism and leftism. (In relative terms this may be true, although in absolute terms, to describe the Israeli Supreme Court as a leftist institution is quite a stretch). One of the perennial bones of contention is the Court's composition, which critics argue is not representative of popular will, the spectrum of political opinions, or of the country's changing demographics.

To advance their agenda of taming the Court, the right wing parties initiated several new bills, two of which passed initial readings in the Knesset. The first bill, dubbed the "Grunis bill", removes a rule that a Supreme Court justice cannot be appointed Supreme Court president unless he or she has at least three years of service remaining before the mandatory retirement age of 70. This may seem like a technical correction, but it would pave the way to the presidency of the generally conservative and deferential Justice Asher Grunis, who will be a few weeks short of the three-year rule when the current president, Dorit Beinisch retires in February 2012.

The second bill, dubbed the "Sohlberg bill", would change the way the Israel Bar Association's two representatives on the Judicial Appointments Committee are selected. Currently there are 3 vacancies on the Court, two due to retirements and one due to an ongoing police investigation of Justice Yoram Danziger's alleged ties to a corruption case which led to his recusal. Among the names mentioned for the vacant seats is that of Noam Sohlberg, a District Court judge who lives in a Jewish settlement in the Occupied Territories and whose appointment to the Court would be the first hard core right wing appointment in recent memory. Supreme Court judges are selected by a 9-member committee, which is comprised of three Supreme Court justices, the Minister of Justice, another minister, two Knesset members, and two representatives of the Israel Bar Association. The two bar association representatives have traditionally been nominated by whomever wins the bar council elections, currently a supporter of Dorit Beinisch and an opponent of Minister of Justice Ya'akov Ne'eman and of Sohlberg's appointment. The "Sohlberg bill" would require a split between the two bar representatives, so that one is the bar chairman and the other is a member of the bar's internal opposition (translation: a supporter of Minister of Justice Ya'akov Ne'eman, and by extension of the Sohlberg appointment).

A third proposal that has been promoted by right-wing critics of the Court's is to hold a public hearing and approval in the Knesset for any new suggested appointees, a proposal that would essentially override the current appointment procedure. To hold his public face as a proponent of judicial independence, prime-minister Netanyahu appears to oppose this proposal.

A few weeks ago, I reported here on the two new Conservative appointments to the Supreme Court of

Canada. Richard Albert reported [here](#) about the effective Conservative consolidation of core decision-making junctures in Canada. A similar process has been taking place in Israel and perhaps in South Africa. Taken together, these examples may suggest that differences between constitutional politics in parliamentary democracies and in "soft" authoritarian settings are largely differences of style, not of a kind.

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