

Post True Politics and Military Deferment in Israel

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Abstract

The most important issue in debate in Israeli politics has become the status quo agreement that young members of the Ultra-Orthodox community do not serve in the army and learn Torah with their salary paid by the government. This issue has provoked a major political crisis, since secular groups claim that there is a correlation between the low rate of employment of Ultra-Orthodox men and the low rate of army service. The main argument presented by Haredi leaders in support draft exemptions relates to the value of Torah study to protect the Jewish people. This issue has been a subject of concern for the Israeli public for many years, but no agreement can be reached to address this highly sensitive conflict. This stalemate is defined by the research as post true policy – the understanding that drafting young Ultra-Orthodox could not be forced, despite continues political and legal attempts, leaving many Israelis frustrated at the fact that there is no equal share of military service. The research examines the compromised policy of the legal system in dealing with the political debate, showing that despite numerous decisions by Israel's Supreme Court, post true policy of a status quo compromise has dominated the legal system position on the issue, with the decision not to decide and as a result maintain the long standing status quo compromise.

Key words: *post true; status quo; compromise; religious; Ultra-Orthodox*

Introduction

The research examines the characteristics of Israeli politics of maintaining a post true policy regarding the ethnic divide of the Jewish state. As an outset to examine this issue, the research found that scholarly writings about the Israeli case differ about the nature of the state. Disagreements prevail on the right terminology to describe the Israeli regime and the direction of political relations between the secular majority and the religious minority. Analysts have described Israel in different terms as 'liberal democracy' (Rubinstein and Yakobson 2009), 'ethnic democracy' (Smooha, 2002), 'ethnocracy' (Yiftachel 2001) and 'hegemonic regime/ethnic constitutional order' (Peleg 2014).

The research is based on the argument that manipulation of information always existed and post true has always dominated politics (Waisbord, 2018). It uses the definition of Higgins (2016), that post true is a style of 'doing politics' by politicians in which 'blatant lies' become 'routine across the society'. While trying to define post true in politics, the research acknowledges the idea described by Giddens (1990) that information is always partial. It also adopts the definition of George Orwell (1946), that political language is often designed to make lies sound truthful, such as the words democracy, socialism, freedom, patriotic, realistic and justice – which have different meanings that cannot be reconciled with one another. This definition of post true politics is also emphasized by Hannah Arendt (1967). She explained that lies have always been regarded as justifiable tools of politicians and consequently politics and truth don't mix. Another way to analyze post true politics is in OECD definition, which looks at the uncomfortable reality that truth and facts are losing currency in decision making and democratic choices (OECD Forum, 2017). This definition considers post true as partial information that is aimed at achieving a political goal while using the truth - but not the whole truth.

In examining post true politics, the research also acknowledges that most political decisions have a status quo alternative, which is maintained through political compromise of doing nothing or maintaining current or previous decisions (Samuelson & Zeckhauser, 1988). The reasons for compromise are inherent in the democratic ideal, since compromise can give greater legitimacy to public policy beyond what is achieved by a mere majority decision. Cooley, Nexon and Ward (2016) further argue that status quo political actors are satisfied with the political order and the distribution of

power. Bellamy (2013) sees the obligation to compromise as an important forms of democracy, whereby citizens must agree despite their disagreements.

Based on these arguments, the research is aimed to examine the most conclusive phenomena of post true in Israeli politics – the integration of the Ultra-Orthodox (Haredi) sector into the general Israeli society, particularly the debate whether Ultra-Orthodox men should be exempt from mandatory military service. The research examines the way that the legal system is dealing with the main political argument in Israeli politics – the demand that young members of the community would not serve in the army and learn Torah with their salary paid by the government. This political agreement of "his Torah his belief", established with the independence of Israel in 1948, has since provoked a big public debate, which is on-going with no foreseeable solution. The post true characterization of this political compromise is since the agreement exempted young Haredi men from military duty that is compulsory for other young Israelis, as a way for the Haredi community to study Torah, a practice central to their way of life. But the growing political influence of the Ultra-Orthodox parties and the position held by their political and religious leaders in Israel's politics and society have created wide opposition in the general population as well as isolation of the community from the Israeli society as a whole (Lipka, 2015).

Different Sets of Laws

The post true consequence of political argument of the draft issue is since compulsory military service is based on the Security Service Law, which obligates Israeli citizens to military service at age 18 unless granted an exemption. The military draft deferment enjoyed by members of the Ultra-Orthodox Haredi community has been a controversial issue throughout the history of the State of Israel, and has been heated in last decades. When Israel was established the Ultra-Orthodox argued that if they will join the military their religious culture of studying Torah would be in danger. The first Israeli Prime Minister, David Ben-Gurion, gave 400 yeshiva students who studied Torah all day long an exemption from military service in return for the political support of the Ultra-Orthodox parties in the Israeli parliament (Knesset). But since then the Ultra-Orthodox community grew swiftly and it is estimated that there are about 50,000 Ultra-Orthodox that are exempt from military service. However, as argued by the research, the political chaos is only going to intensify, since the growing political influence of the Ultra-Orthodox parties and the position held by their political and religious leaders have created wide opposition in the general population and isolation of the community from the Israeli society as a whole. Many Israelis are frustrated at the fact that there is no equal share of military service and have called to include Haredi in the draft. Their argument made by the secular majority is that the rest of the country serves in the army, works and pay taxes, so why should Haredi be an exception? Still, in practice, traditionally Haredi vote as a bloc according to directives of their chief rabbis, and their voting in alliance gives Haredi politicians enormous influence in determining who will form Israel's collation government (Malchi, 2018).

The post true consequence of this religious, political, cultural and ethnic conflict is that drafting young Ultra-Orthodox could never be forced, despite political and legal attempts, leaving many Israelis frustrated at the fact that there is no equal share of military service. Thus, the political post true characterization of Israeli politics and society is that the Haredi section is segmented from the general population – yet has a lot of political influence (Kalv, 2019). As a result of their political impact, the Ultra-Orthodox parties have consistently insisted their young men serve the nation through prayer and study, thus preserving Jewish learning and heritage and maintaining the way of life that has kept the Jewish faith alive through centuries of persecution (Heler, 2019).

Based on these consequences, the research examines the compromised policy of the legal system in dealing with the political debate of the draft of Haredi men. The research shows that despite numerous decisions by Israel's Supreme Court, post true policy of a status quo compromise has identified the legal system position on the issue, with the decision not to decide and as a result maintain the long standing status quo compromise, or – as defined by this research – the post true policy that is using the truth, but not the whole truth. As the research shows, the courts have adopted a post true policy that considers the two sets of laws that identify Israel as ethnically deeply divided society, where various collective religious and national identities have developed. These issues are reflected in the

constitutional regulations and the two legal systems of the country that exist parallel to each other (Levinson, 2008).

The central constitutional expression of Israel's Jewish identity is based in the Law of Return (1950) and the Citizenship Law (1952). These foundational laws link Jewish identity and Israeli citizenship, recognizing that any Jew has the right to immigrate to Israel, having superior legal status, as the Supreme Court determined that the principle of equality has not been materially compromised by these laws since it is commonly accepted that the State constitutionally entitled to regulate the composition and character of its own population, and thus there is no contradiction between the Law of Return and the principle of equality in Israeli democracy. Harel-Shalev and Peleg (2014) explain that a review of Israeli history reveals that the country has been committed to two sets of values that exist in constant tension with each other. On the one hand there is a commitment to democratic order, including such values as equality before the law and even the recognition of minority rights. On the other hand, there is a strong commitment on the part of most Israeli Jews to view the State as belonging, above all, not merely to Israeli Jews but to all Jews.

While Ultra-Orthodox parties have always used religious issues as a catalyst to gain political power, in the last two decades' secular politicians have moved to capitalize on anti-religious sentiment among secular Israeli Jews. The growing role of the courts in representing secular ideology came into play as the numbers of Yeshiva students exempted from service were increased during the years, using the power of the Minister of Defense to exempt individuals from service. When the Supreme Court finally decided against this form of exemption, it was after decades of gradual changes that had been introduced in the form of administrative decision-making. In a similar manner, the Supreme Court reviewed the allocation of government money to religious institutions without criteria, when the scope of this phenomenon has broken new records. According to former Supreme Court Judge Daphne Barak-Erez (2008), the law and religion clash between past compromises and constant changes. She explains that among the different approaches to the regulation of the legal status of religion, it is worthwhile to study the Israeli experience, traditionally depicted as based on a decision not to decide. This deadlock is based on preserving an existing status quo that acknowledging the priority of religious demands in a way that reflects a social-political compromise rather than a principled decision-making. This approach has been labeled the "status quo model". The practical meaning of accepting the status quo model was supposed to be refraining from changing the compromises that had been crystallized in the early days of Israel. This abstention was planned to apply to all forms of law-making -either by legislation, administrative decisions or judicial decisions. Representing the position of the Supreme Court, she argues that contrary to its reputation, the status quo is ever-changing, and in this respect does not represent a workable compromise anymore. However, despite the position of the Supreme Court, the legal system has adopted a post true stance on the subject – the continues decision to discuss the issue but not to rule as a result and maintain the political debate unresolved.

The Legal Post-True

The status quo model is in debate in the court system too, since Israel was originally a nationalist state for the Jewish people but also a modern democracy with rules of equality governed by legislation. As can see from Supreme Court rulings, the two sets of laws that Identifies Israel is not clear even to the Supreme Court. Conflicting arguments of Judges have been recognized by the Supreme Court as constituting a conflict between two competing constitutional rights that are guaranteed by the Basic Law: Human Dignity and Liberty - the right to freedom of religion and the right to human dignity, including equality

Aharon Barak, Supreme Court Chief Justice (1995-2006) and the person most closely identified with the Court's liberal jurisprudence, defined the 'Jewish state' as 'national concept' of the State of Israel and a 'national home to the Jewish people' (Levontin, 2000). In his 1998 leading decision in Rubinstein v. Minister of Defense on deferment of military service for yeshiva students, Barak explained the reason for the deferment and its historical context as follows: *"The original reason for the arrangement was the destruction of the yeshivas in Europe during the Holocaust and the wish to prevent the closing of yeshivas in Israel due to their students being drafted to the army. Today this objective no longer exists. The yeshivas are flourishing in Israel, and there is no serious worry that the*

draft of yeshiva students, according to any arrangement, would bring about the disappearance of this [yeshiva] institution”.

As explained by Barak, the controversy over the deferment increased as the number of those eligible for it has mushroomed. Whereas a minority of proponents of the deferment has continuously argued that a mandatory draft of yeshiva students would impact their freedom to pursue religious studies, many argued that the deferment impacted the right to equality by creating an uneven public sharing of the burden of military service. However, in opposition to Barak’s approach, Deputy Court’s Chief Justice Menahem Elon (1983-1995) included Jewish religion in the term ‘Jewish’ and argued that following the enactment of the Basic Laws, applying Jewish law became a legal duty incumbent on every judge in the country. Elon also claimed that, since the term ‘Jewish state’ is mentioned first in the phrase, this is superior to that of developing the country’s law as democratic law (Elon, 2011).

The legal debate escalated into a social debate, as explained in the 2012 decision in Resler v. Knesset, by Supreme Court Justice Elyakim Rubinstein: *“We need to admit the truth, unlike in the Jewish-Haredi society in other countries, which has understood that only a few brilliant individuals can live under the tent of Torah all their lives, in Israel a whole complicated sociological system has been built that even its leaders know, deep in their hearts, is not good and not appropriate, that because of military duty thousands of people sit in the yeshivas, where it is not their place. These people, if they served in IDF, and if they worked like any other person while also making time for Torah would be efficient both to the State, to their community, and to themselves”.*

The legal and political debate accelerated after the Supreme Court determined that the minister of defense had no authority to determine the extent of the exemption from army service given to Ultra-Orthodox yeshiva students. The ruling elaborated on the need for a legislative solution, dealing with all aspects of the issue. The case came before the Court after the Knesset amended the Tal Law - named after Supreme Court Justice Tzvi Tal. He headed the governmental committee, with the intent of lawmakers to overcome the legal complexities (Tal, 2002). However, the government admitted, in a response to a Supreme Court petition, that the Tal Law failed to change enlistment arrangements for Ultra-Orthodox Jews. The political turmoil continued as when the Supreme Court ruled that the Tal Law was unconstitutional since it violated the principle of equality. The Court decided that the arrangement “violates the right to equality as part of the basic right of human dignity” and obliged the government and the IDF to prepare for the draft of thousands of Yeshiva students. This did not happen, and since then all legal and political attempts to find an alternative solution have failed.

The disagreement in the Supreme Court was evident in the splitting votes of the justices. former Supreme Court President Dorit Beinisch was among those who supported the ruling while her predecessor President Asher Grunis opposed to it. In her majority opinion, Beinisch, who replaced Aaron Barak and served between 2006 and 2012, concluded: *“No evidence that Tal Law’s objectives have been achieved. Time has shown that the Law has not realized the goals on which it was based, and that in reality, the Law has anchored, almost fully, the draft deferment arrangement that existed prior to its enactment. The law, which has already been found in violation of the right to equality as part of the right to dignity, does not meet the proportionality standard and is therefore unconstitutional. Nine years after legislation one would have expected a more substantial number of recruits. The low rate of enlistees, coupled with the relative ease with which enlistment procedures are changed, illustrate a fundamental difficulty in the law itself.”*

The legal post true characteristic nature of the draft law was evident in that although eight of the nine justices agreed with Beinisch that the Tal Law violated the right to equality, five joined her in concluding that the experience gained since the Law’s enactment was enough for determining that it violated the Basic Law. Two justices were of the view that due to the complexity of absorbing the Haredi into Israel’s military and civilian life the executive branch should be given more time to continue gradually implementing the Law. They held that the petitions should remain pending to allow the Court to continue to receive updates on its future implementation.

Justice Asher Grunis, who replaced Beinisch and served between 2012 and 2015, was in the minority, expressing his opinion that the Court should have completely refrained from reviewing the constitutionality of the Tal Law because it was passed in the Knesset by a majority vote. Grunis further held that the limited impact of the Court’s contribution to a change in the social conduct of a whole sector in the Israeli society by influencing yeshiva students’ draft decisions and entry into the labor force was extremely limited and did not justify the Court’s intervention. Grunis explained that *“The*

court's constant dealing with Haredi enlistment without any real progress being achieved through judicial involvement does not contribute to the court's standing. It would be an illusion to expect that judicial rulings bring about the enlistment of Haredi to the IDF and their joining the work force."

Policy of Doing Nothing

The research maintains that the failure of the Supreme Court to rule on the issue, thus maintaining the post true policy of doing nothing, has become the practice of Israeli politics. Accordingly, the research adopts the definition of George Orwell (1946), that political language is often designed to make lies sound truthful, and argues that the policy of providing partial information has become the norm for all parties involved.

The Supreme Court struck down the government's policy on recruiting Haredi young people, ruling that it failed to meet that goal and discriminates against most Israelis who are drafted. The court held that a blanket exemption for Haredi was invalid, instructing the Knesset to develop a plan to include them in the military. The Court ordered the government to pass a new law – warning that otherwise the default emergency regulations kick in, which will require drafting men of all age, with no exemptions for Haredi. However, the Court did not issue a ruling and waited to see whether the government would modify aspects of the law to please the Haredi parties in the coalition, but which the court and the petitioners had criticized. On the other hand, the government waited to see if the Court would refrain from ruling to avoid being attacked for judicial activism and to prevent a political conflict with the Ultra-Orthodox parties.

The Supreme Court attempted to overcome the post true characteristic of the political debate. In a ruling from 2017, the then Supreme Court president Miriam Naor said that although law failed to achieve its purposes of significantly raising the number of Haredi joining the IDF, the Court never required full equality and full drafting of Haredi, and asked the government to show cause as close as possible to fuller equality. She explained that if the data the court was given had showed substantial increased enlistment despite the weak legislative framework, the court might have held back. Instead, she said the numbers the court received, which she implied were far too low, reinforced the finding that no major increase was occurring.

The post true approach of the Court was similarly evident in that it gave substantial weight to concerns such as national security and religious sensitivity (Corf, 2017). A religious judge, Eliakim Rubinstein, wrote a stirring defense of Torah study and the Haredi cultural way of life, but still came out saying that these values could and needed to be balanced with service in the IDF, just as for other Israelis. Justice Yitzhak Amit said that he respected Haredi culture and was ready to agree to a temporary emergency transitional period in which enlistment increased only gradually. But he found that the law failed to even achieve modest necessary progress and came out against any law that pushed off the decision for Haredi from age 18 to a later age. Justice Neal Handel, who also sometimes sides with the conservatives of the court, said the very idea of having to choose between Torah study and IDF service was disproved by the Religious-Zionist community which combines Torah study with extensive IDF service. Judge Noam Sohlberg agreed with the majority that the law had not yet met its goals. However, he said it was too soon to toss it out the window and that the law was an improvement on the 2012 Tal Law.

But with no political solution to the debate, the Court issued a ruling forcing the government to enact legislation regulating the enlistment of Ultra-Orthodox men into the IDF. This has not been done, as it appears that all sides prefer not to reach a regulatory or legal decision on the complicated matter. The government cannot finalize a new arrangement or risk a political cause. Leaders of the Haredi community have long warned that they would not allow their young men to join the army if their draft would be mandatory. And above all, the IDF said that it lacks the capacity to absorb large numbers of unwilling recruits.

The post true complexity escalated with the State Comptroller's Report (2018), which officially recognized the government's lack of effective and meaningful enforcement mechanisms to facilitate the proper monitoring of service-deferred Haredi yeshiva students and the drafting of those who are not eligible for the deferral. The Kan public broadcaster revealed that the IDF had for years presented false statistics to the government and the public on Haredi enlistment. An internal IDF investigation found

that the manpower unit that calculated the figures had been grossly negligent, that the databases the IDF relied upon were incorrect and that the commanders responsible for the matter ignored it.

A scandal erupted after the military was found to have repeatedly published false enlistment tallies, explaining it does not have the ability to present an accurate report. By law, the military was required to report these statistics to the Knesset each year, as part of legislation meant to increase the number of Haredi soldiers. But this outcome revealed additional aspect of the political-religious-legal post true - a conflict on the definition Ultra-Orthodox exempt from drafting to the army. There was confusion over who qualifies as Ultra-Orthodox in terms of military enlistment. While the government determined that anyone who studied in a recognized Haredi institution for two years would be considered Ultra-Orthodox, the military said that the inability to verify accurate numbers comes from the fact that the underlying data is drawn from the education system, which lies outside its purview. The military said; *"the inability to ensure the accuracy of the numbers comes mainly from the fact that most of the data needed is related to studies prior to enlistment, and this is not in the IDF's possession but is instead given to it by government officials, meaning the IDF cannot check its veracity"*.

The Israel Defense Forces released its full investigation into the false reporting of Ultra-Orthodox recruits, finding major inconsistencies between the numbers it published and the true totals. It admitted the gaps were the result of "gross negligence" on the part of the officers responsible for tallying the figures, the apathy of their commanders, and general disorder in the relevant databases. The investigation found that not only had the military never reached the targets for ultra-Orthodox enlistment set for it by the government, but also that the number of recruits from that community did not increase at all during the period in question. The team wrote in its report: *"the investigative committee identified a severe systemic, professional and command failure"*. The investigation also found that there were no direct orders from senior officers to falsify numbers, as junior officers may have felt "pressure to reach the targets".

The report did not find evidence that the military as an organization had intentionally tried to deceive the Knesset or the public with the false numbers or that the officers involved were motivated by political pressure or financial incentives, and claimed that the inaccuracies were caused mostly by disagreement over who is considered ultra-Orthodox under the law, along with gross negligence. Since then however the IDF consistently asked the High Court of Justice to postpone its deadline for the passage of legislation regulating military service for Israel's Ultra-Orthodox population – and the Supreme Court complies with the motions.

Conclusion

The Ultra-Orthodox are a minority in Israeli society, which maintains a delicate and tense relationship with the majority. The integration of the Haredi sector into the general Israeli society has been at the center of public debate for decades and this issue has now moved to the top of the political agenda. While the Ultra-Orthodox parties wield significant political influence, their cloistered communities are being left behind by modern society, with long-lasting negative consequences for the future of the country. Due to religious and community norms, many Haredi millennials were shielded from digital technology, and particularly the Internet and the various technologies associated with it, such as text messaging and social media (Kay and Levine, 2019).

Researchers found a correlation between the rate of employment of ultra-Orthodox men and the rate of army service. This sector is made of various streams and groups with differences in ideologies and life styles. They have leveraged their clout over the decades to maintain a segregated lifestyle, run a separate network of schools, support large families on taxpayer-funded handouts and enforce a public status quo — such as preventing most commerce and public transportation on the Sabbath — that has enraged the secular majority. The Ultra-Orthodox wield a monopoly over matters of marriage, burials and conversions, but the most notable difference from the general society is the deferment of young Haredi men from army. According to the agreement with the government, exemption was the subject of debates between yeshiva heads and the political leadership in the early days of the state and upon the establishment of the state of Israel as a temporary army service deferment for yeshiva students whose occupation was Torah study was approved. But although the argument of secular majority is that

Haredi should not have exception and any Ultra-Orthodox men who refuse to serve should be imprisoned – it is commonly agreed that it is not possible to put tens of thousands of Haredi in prison.

This is the post true nature of Israeli politics examined here – the cultural struggle in society, which cannot be resolved. The issue started as a political debate, which the government could not solve. It then became an issue debated in the Supreme Court – which also failed to reach a practice decision. Finally, the issue came back to the political table, although the Ultra-Orthodox parties maintain the balance of political power and secular leaders have no practical way to force them to join the army. Even in the current government, established in 2021 without their parties, cannot ignore Haredi political influence, with the result that post true politics and political instability are going to continue for the foreseeable future.

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