

## **The Tel Aviv High Court of Justice: A Real Alternative Reality**

**Shani Schnitzer & Yoram Shachar**

In 1948, for approximately ten weeks, the power of the Israeli High Court of Justice (HCJ) was vested in the District Court of Tel Aviv, and it is there that the first petition to the Israeli HCJ was submitted. The present article offers the first comprehensive analysis of the activity of the Tel Aviv HCJ, both for its inherent interest and for its potential contribution to the study of the HCJ in general. It is suggested, inter alia, that the Court's approach be characterized as "educating activism." The proposed characterization refers to judicial intervention in executive actions from early stages of the HCJ process, which acknowledges the limits of judicial review within the formal rule of law and is met accordingly by recognition and conformity of the authorities. The contribution of educating activism to the guidance of government organs will be linked to existing literature that attributes an educating effect to the HCJ in the formative era of the state. Furthermore, it will be shown that in the short period of the Tel Aviv HCJ, the Court succeeded in sowing the seeds of liberalism, value-based discourse and substantive rights discourse. Special mention will be made of a minority opinion that advocated the application of judicial review of primary legislation as early as summer 1948. If heeded, this opinion would have changed the history of Israeli constitutional law. These observations will be integrated to put forward a critique of one of the central and stable elements of the Israeli legal system, namely the positioning of the HCJ in the Supreme Court of the state.