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On the Israeli Doctrine of Reasonableness as a Tool for Establishing Judicial Supremacy

This Article offers a critical analysis of the “reasonableness doctrine” in Israeli law. It defines the doctrine not as a truly legal tool but rather as a mechanism aimed at achieving judicial supremacy in power struggles with other governmental branches. The Article describes the doctrine’s expansive application as uniquely broad in a comparative context and presents counterarguments to its proponents. It questions whether the doctrine is genuinely necessary for the unique protection of human rights.

At its core, the Article argues that the reasonableness doctrine is fundamentally nonlegal because it lacks falsifiable standards. Without the element of falsifiability, a legal doctrine is incompatible with critical characteristics of law, such as certainty and consistency, and therefore must be considered to be nonlegal.

Beyond its nonlegal nature and the weak arguments in favor of the reasonableness doctrine, the main thesis of this Article is reinforced by the claim that the doctrine emerged alongside other legal tools developed since the 1980s, such as the third tier of the constitutional proportionality test and Israel’s purposive interpretation method. These tools have similar characteristics to the reasonableness doctrine: they are abstract, lack clear standards, and facilitate the transfer of power from elected officials to unprecedented judicial dominance.

Reliance on abstract legal doctrines erodes public trust, especially when they are used to justify contentious, value-based rulings. The problem worsens in systems where judicial appointments lack decisive input from the elected branches of government, potentially undermining public trust in the courts’ decisions and, more broadly, in the institution as a whole.