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Court-Led Educational Reforms in Political Third Rails: Lessons from the Litigation Over ultra-Religious Jewish Schools in Israel

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Court-led educational reforms in political third rails: Lessons from the litigation over ultra-religious Jewish schools in Israel

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Abstract

This paper offers a model for evaluating the strengths and weaknesses of judicial involvement in educational reforms. It uses the model to analyze two case studies of court-led educational reforms in the third rail of Israeli politics—the curricula and the admission policies of ultra-Orthodox (Haredi) schools. These case studies are located at the knotty junction of human rights, religion, and politics in education policy, generating concern in many countries. The conclusions demonstrate that that even when the courts are cautious, judicial involvement in third rail educational reforms may produce impacts that drive the cogwheels of policy-making in directions that are apt to undermine the interests of the petitioners. Therefore, the choice of courts as a forum for shaping education policy in political third rails should be prudently considered. The paper also demonstrates the need to evaluate litigation by means of a contextual, evidence-based analysis. It highlights that in certain cases, what may appear to be unjustified judicial activism or restraint is, in fact, a reasonable response, whose harmful ramifications may be attributed to the context of political third rails. Even the best judges are not immune to the well-known assertion that 'hard cases make bad law.'
Keywords: education policy; courts; education law; religion; Israel; educational change.

Introduction

On June 17, 2010, Israel’s Supreme Court ordered the imprisonment of Haredi (ultra-Orthodox)\(^1\) Jewish parents who refused to send their daughters to a school that integrated Haredi Ashkenazic girls (of European ethnic origin), and Haredi Sephardic girls (of North African or Arabic-speaking countries ethnic origin). Tens of thousands of Haredi Jews took to the streets of Jerusalem to protest the imprisonment. A protester exclaimed into a megaphone: 'Even if they prepare gas chambers for us, we will say "yes" to Torah and "no" to the Supreme Court' (Yoaz and Niv 2010). This powerful scene was the culmination of a long, multilayered, judicial involvement in the shaping of the education policy regulating Haredi schools in Israel. The story of this litigation is located at the knotty junction of human rights, religion, and politics in education policy, generating concern in many countries.

This paper examines two case studies of court-led educational reforms in the curricula and admission policies of Israeli Haredi schools. It offers a model for evaluating the strengths and weaknesses of judicial involvement in educational reforms and uses this model to analyze these cases. While the scope of the suggested model encompasses various legal conflicts regarding education policy, it is particularly useful for exploring court-led educational reforms situated in third rails - policy issues that, by touching them, risk political electrocution (Welner 2001, 8; see also Mankiw and Swagel 2005, 107; Lynch and Myrskylä 2009, 1069).

This paper will be of interest to at least three audiences. First, the suggested two-stage model for analyzing judicial involvement in educational reforms may have interest for scholars, lawyers, policy-makers, and educational activists who seek more effective tools for evaluating the role of courts in educational reforms. As the courts’ role and position
regarding education policy-making are not universal, this paper would carry more relevance in a context of relatively frequent judicial involvement in educational reforms. The literature review relies, therefore, largely on American studies that have focused on educational litigation. In specific relevant issues, the paper incorporates a discussion of studies carried out in other countries. Second, the analysis of the Israeli regulation of Haredi education may interest scholars of education and religion, as well as policy-makers regulating the education of ultra-religious minorities. The paper also provides a comparative socio-legal perspective on Haredi education in the United States, England, and Belgium. Third, the analysis of the Israeli education policy may interest those who wish to learn more regarding the Israeli national context. The case studies analyzed in this paper have been dominant in the Israeli education policy discourse. As the Haredi community represents approximately 9% of the Israeli population (Central Bureau of Statistics 2013, 51), its educational system carries significant implications on Israel’s democracy and economy. The detailed analysis of the case studies situates them in their socio-political background, and the conclusions incorporate comparative references to additional Israeli cases.

The first section of the paper places the study within the literature exploring the role of courts in education policy-making, and offers a two-stage model for analyzing the scope and impact of judicial involvement in educational reforms. The paper’s second section describes the contextual background and the research design. The following two sections develop the two case studies in detail. An additional section casts their analysis in the context of the proposed model. It reveals different patterns of judicial behavior, indicating that the courts may have been mindful of the strengths and weaknesses of their involvement in the policy process. It also describes how the norms shaped subsequent to the judicial intervention reflect flawed interrelationships of the courts, the legislature, and the Ministry of Education. Consequently, the rulings were not only ineffective, but paradoxically, were also used as a
vehicle to anchor or solidify the reality that the petitioners sought to change. The next section places the Israeli case studies in a broader scope by providing a comparative socio-legal perspective on Haredi education in the United States, England, and Belgium. The concluding remarks concern the limitations of court-led educational reforms in political third rails, suggesting that the choice of courts as a forum for shaping education policy in such third rails should be prudently considered. The conclusions also demonstrate the need to evaluate litigation by a contextual evidence-based analysis.

Court-led educational reforms: legitimacy, competency, and effectiveness

Various agents function within the fragmented arenas of education policy. Some have a role in the judicial arena of lawyers and courts. Others function in the federal, national and municipal arenas of politics and administration; in the global arenas of international organizations, in the local arenas of communities, teachers, parents and pupils, or in social movements, corporations, and the numerous channels of public discourse. Several studies have examined the role of the courts as agents who lead reforms within the fragmented arenas of education policy. This section reviews these studies and structures them along three axes that incorporate their conclusions - legitimacy, competency, and effectiveness. Each of these three axes relates to both strengths and weaknesses of courts in educational reforms.

Legitimacy

One of the main critiques of court-led educational reforms is based on the argument of legitimacy, which concerns the separation of powers among the three branches of government (Sathe 2001; Hanushek 2006; Lindseth 2006; Christiansen 2006-2007; Mayrowetz and Lapham 2008; Superfine 2010). Education policy is often intertwined with political ideology (see Apple 1990; Giroux 2001; Harris 2007; Ball 2008; Rambla, Valiente
and Frías 2011; Clarke 2012). It was argued, therefore, that the authority to set the rules for schools, raise funds that are needed for their operation, and monitor their implementation lies with the legislative and executive branches of the government, while the judiciary is charged with interpreting the rules and assessing whether they meet constitutional standards (Hanushek 2006). One of the elements limiting the legitimacy of court-led educational reforms is that the legal proceedings are less participatory than the legislative process.3 While interested persons and groups may lobby legislators, testify before legislative bodies, and threaten political consequences if their views are ignored, strict procedural rules limit the parties allowed to have standing in the court and formalize the modes of their participation (Mayrowetz and Lapham 2008).

However, in certain cases, legislative or administrative bodies violate the rights of marginalized individuals or groups who lack the political power and tools to influence policy. In such cases, courts may offer the only possible option to influence education policy (Welner 2001; Liebman and Sabel 2003; Rebell 2007; Superfine 2008; Mayrowetz and Lapham 2008). As Rebell (2007) pointed out, most legislatures in the United States tend to be strongly dominated by suburban majorities, and therefore the legislative process, left to its natural political propensities, tend to create education finance systems that strongly disfavor poor urban and rural school systems. When courts offer the only possible course to promote a change, the legitimacy of the ruling is stronger. Therefore, scholars have suggested that education lawyers who frame their claims as violations of civil rights of disempowered groups may be more successful in courts. For example, Forman (2007) examined how voucher advocates replaced the values claim with a racial-justice claim. He argued that the emphasis on vouchers as part of a civil rights struggle to obtain academically rigorous private education for low-income and minority parents had legal advantages. Similarly, Mayrowetz
and Lapham (2008) described how advocates of the rights of pupils with disabilities reframed their struggle as a question of segregation rather than as instructional appropriateness.

**Competency**

Another criticism of court-led educational reforms concerns the question of competency. The Court is not the appropriate forum for shaping education policy, it has been argued, being that judges lack the ability to adequately obtain, understand, and process the data that constitute the basis for this policy, as well as to consider the long-term implications of their rulings (Heise 2002; Heise 2004; Welner and Kuppermintz 2004; Hanushek 2006; Compare Christiansen 2006-2007; Dixon 2007). Heise, who explored the competency of American courts to regulate education finance, noted in this regard that '[c]ourts are structurally ill-equipped to make the sometimes delicate policy tradeoffs incident to the school finance enterprise' (2002, 654-655).

The competency of the judiciary erodes when the laws are not clear enough to guide the courts in solving education policy issues. The states’ legal obligations to fulfill the economic and social aspects of the right to education are often ‘ambivalent’ (Steiner, Alston and Goodman 2008, 280-282) and ‘imprecise’ (Harris 2007, 42). Superfine (2009) noted, in this regard, that many education cases analyze large-scale social policies under legal theories based on vague and ambiguous statutory or constitutional provisions. Accordingly, he argued, courts hearing education cases often attempt to understand complex technical information, find violations of the law, and craft remedies without concrete guidance.

Yet, as Rebell (2007) noted, American courts have always delved into complex social and economic facts. His studies have shown that judicial remedial involvement in certain cases was more competent than is generally assumed, largely because school districts and a variety of experts generally participated in the formulation of reform decrees, with the courts
serving as catalysts and mediators. Another way to strengthen judicial competency is to establish courts or tribunals specializing in education policy. In England, there are tribunals that rule in cases of special education needs and disability, whose members have knowledge and experience in this field (Harris, 2002; Harris and Smith 2009, 2011).

**Effectiveness**

Court-led educational reforms are also criticized for their lack of effectiveness. Courts intervene in education policy randomly, only when a petition is filed (Gibton 2010). They cannot regulate more than they are asked to or adapt the normative framework to the new ruling. Additionally, their ability to devise forward-looking remedies is limited (Mayrowetz and Lapham 2008; Gibton 2010). However, creating changes in schools is not a linear, top-down process (see e.g. Goodson 2001, 2010; Fink 2003; Guhn 2009; Harris 2009; Braun, Maguire and Ball 2010; Levin 2010; Clarke 2012; Maguire, Ball and Braun 2013). It requires multi-faceted efforts, which have technical, cultural, and political dimensions (Mehan, Hubbard and Stein 2005). It demands leadership at all levels of the education system (Fullan 2009) and new professional practices that cannot be delivered solely by external mandate and inspection (Goodson 2001). Therefore, educational reforms require full cooperation of many institutional agents (McUsic 1999; Welner 2001; Rebell 2007; Rosenberg 2008; Superfine 2008; Youngs and Bell 2009). When the rulings lack political support, such cooperation is difficult to achieve (Howard and Roch 2001; Rosenberg 2008; Mayrowetz and Lapham 2008). The most famous education litigation criticized as ineffective is the case of *Brown v. Board of Education* ([Brown case] 1954, 1955), which failed to create racial integration in American schools (see Thompson-Ford 2004; Rosenberg 2008). In his seminal book, *The Hollow Hope: Can Courts Bring About Social Change?* Rosenberg (2008) contended that courts can almost never be effective producers of meaningful social reform. One of his case
studies examined school integration following the Brown case. Rosenberg argued that the Court was not an effective tool in reforming segregation practices and that school integration was significantly furthered only after receiving support from the political forces. The Brown case became the symbol of the limitations of court-led social reform (Minow 2004).

Judicial rulings that regulate sporadic policy may not only be ineffective but also engender phenomena of unintended consequences (see Heise 2002; Spillane, Reiser and Reimer 2002; Fink 2003; Levinson, Sutton and Winstead 2009). These consequences may be the result of litigation that focuses on a single issue. For example, Superfine (2008) contended that school finance litigation relying heavily on extant accountability systems for reform could exacerbate existing educational inequalities due to a range of problems that have plagued the development and implementation of standards-based accountability systems (e.g. problems regarding the validity of testing practices and the impact of strong accountability sanctions on struggling schools with limited capacities to improve). When the plaintiffs are parents demanding resources for their own children, the rulings may challenge equitable resource allocation (Harris 2002). Unintended consequences may also relate to the lack of mechanisms for implementation. Ryan, who explored preschool teachers’ responses to a court-ordered mandate for curriculum reform, found that the training of the teachers was insufficient. Therefore, she argued, paradoxically, ‘although empirically validated curriculum frameworks make sense given the underqualified nature of the preschool teaching workforce, it is also likely that teachers will not only adapt the curriculum to suit their needs but may possibly implement less appropriate practices’ (2004, 681).

In light of these difficulties, there were cases in which American courts facilitated the implementation of judicial rulings by supervising a process of negotiation among the parties and stakeholders, resulting in periodic revisions of the rules in light of ongoing monitoring (Liebman and Sabel 2003; Sable and Simon 2004; Rebell 2007; Superfine 2008, 2010).
Superfine argued that when courts function as facilitators and incorporate other governmental branches and local political mobilization, judicial involvement tends to be more effective. The facilitator role, he noted, 'appears to be a well-reasoned response to problems that courts have historically faced when involved with efforts aimed at effecting equal educational opportunity' (2010, 130).

An additional tool for utilizing the courts in order to recruit politicians is the public spotlight. Several studies indicated that even when Court rulings do not produce effective social change, the resultant public spotlight may encourage politicians to change their priorities and promote certain education policies (Chia and Seo 2007; Rebell 2007; Superfine 2008; compare Rodriguez-Garavito 2010-2011). These studies demonstrate the indirect role of the courts in influencing the public and political discourse. Chia and Seo, who studied lawsuits that challenged methods for allocating funds for public schools, indicated in this regard that litigation 'offers an opportunity to present a narrative of system failure' (2007, 146). This role may be significant even where plaintiffs have not prevailed (Rebell 2007).

Judicial decisions may also develop and strengthen rights consciousness of marginalized individuals and activists in social movements (compare McCann 1994; Silverstein 1996). When the petitioners are minority groups who have to overcome social barriers in order to turn to the court, this impact is all the more significant (see Jackson 2008). The linkages between the Brown case and the development of rights consciousness among disempowered groups within the United States and beyond were described by Minow:

I suggest that Brown enshrined equal opportunity as the aspiration, if not the given, for students whose primary language is not English, for students who are immigrants, for girls, for students with disabilities, for gay or lesbian or transgendered students, and for religious students. The racial-justice initiative expanded to include all these students so that today, American public schools are preoccupied with the aspiration of equality and the language of inclusion (2004, 18).
Indeed, as Minow contended, litigation may create, develop and empower frameworks for legal, political, and social arguments.

A two-stage model for analyzing court-led educational reforms

In light of the above, the weaknesses of court-led educational reforms should be balanced in each and every case with other rationales that emphasize the strengths of such reforms. Chart 1 offers a two-stage model for analyzing this balance along the axes of legitimacy, competency, and effectiveness. Each of these three axes concerns both strengths and weaknesses of court-led educational reforms.
Table 1: A two-stage model for analyzing court-led educational reforms

<table>
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<tr>
<th>Weaknesses of court-led educational reforms</th>
<th>Axes of analysis</th>
<th>Strengths of court-led educational reforms</th>
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<td>An <em>ex-ante</em> analysis of the judicial route as a strategy to lead an educational reform or An <em>ex-post</em> analysis of the scope of judicial involvement in an educational reform</td>
<td>Courts cross the line into the domains of the legislative and administrative branches of the government.</td>
<td>Legitimacy</td>
</tr>
<tr>
<td></td>
<td>Judges lack the ability to obtain, understand, and process the data that constitute the basis for complex policy decisions.</td>
<td>Competency</td>
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This model suggests a two-stage analysis, which may provide a tool for the evaluation of the court’s role in educational reform. Each stage of the analysis concerns different considerations that have been introduced in the literature. The first stage of the analysis can be useful for different objectives. As an *ex-ante analysis* it may assist social movements to determine whether or not the judicial route is the appropriate strategy for promoting a particular educational reform. As an *ex-post analysis* of the scope of judicial involvement in an educational reform it may facilitate examining the court’s behavior and assessing the court’s cognizance of the strengths and weaknesses of its role. The second stage of the analysis is an *ex-post analysis* of the impact of a court-led educational reform. In each stage of the analysis, the evaluation of the court’s role requires socio-legal contextual understanding of the interrelationships between the court and other agents who function within the fragmented arenas of education policy (see DeBray-Pelot 2007; Chia and Seo 2007; Superfine 2009).

**Contextual background and research design**

This paper analyzes two case studies that examine the role of the courts in reforming the curricula and the admission policies of Israeli Haredi schools. The educational system of the Haredi community has operated in a legal and social enclave since the establishment of the State of Israel in 1948. The Compulsory Schooling Act (1949) classifies Israeli schools into three broad categories: *official schools*, *recognized unofficial schools*, and *exempt schools*. Official schools, both religious and secular, are operated by the State and the local authorities, while unofficial schools and exempt schools are operated by private entities. The legal status of most Haredi schools is that of unofficial schools or exempt schools (Perry-Hazan 2013b). Most Haredi unofficial schools belong to one of two nation-wide school
associations operated by political parties - the Independent Education school association of the Yahadut Hatorah party, which represents Haredi Ashkenazic Jews, and the Wellspring of Torah Education school association of the Shas party, which represents Haredi Sephardic Jews (Schiffman 2005; Perry-Hazan 2013b). The exempt Haredi schools are operated by various religious associations, many of which have a specific patron in one of the Haredi parties (Spiegel 2011).

Thirty-six years ago, the Haredi parties became a balance pivot in Israeli politics. From then, the political influence of these parties was much greater than the proportion of the Haredi community in the Israeli population (see Lehmann 2012). Almost every coalition had to enlist Haredi support. Haredi politicians placed education at the forefront of their activity. Therefore, Haredi education became, over the years, a third rail, an untouchable issue for non-Haredi politicians. The strong influence of the Haredi parties on the regulation of Haredi schools led to continual petitions to the Supreme Court and the Administrative Courts. Following these courts’ decisions, the multilayered norms regulating Haredi schools were amended time and again by the Knesset - the legislative branch of the Israeli government - and by the Ministry of Education.

As Haredi education constitutes a third rail in Israeli politics (see Lehmann 2012; Perry-Hazan 2013b), it provides an opportunity to explore court-led educational reforms that are situated in complex socio-political circumstances. Such circumstances may burden the difficulties of court-led educational reforms, but they may also strengthen the justification for judicial involvement. Since these case studies involve many agents who function within the fragmented arenas of education policy, they shed light on the long route of judicial decisions, stretching from the courtrooms to the classrooms.

The following sections present the case studies in detail and situate them within their cultural and political context. The sources used in order to analyze the case studies include
legal decisions and protocols, pleadings, discussions of the Knesset plenum and the Knesset Education Committee, reports of the Knesset Research and Information Center, and data published by the Ministry of Education. The final section applies the described two-stage analysis, which examines the scope and impact of judicial involvement in the policy process. Since the case studies are based on a detailed socio-legal contextual analysis, a systematic test of the suggested model is beyond the scope of this research. Further studies are needed in order to apply the model to other contexts of education policy. This research offers preliminary insights, which invite scholars to develop them and urge policy-makers, lawyers, and educational activists to think more thoroughly about the strengths and weaknesses of courts as a forum for shaping education policy.

‘You shall meditate on it day and night’: Religious studies v. the State’s core curriculum

The Haredi community in Israel has unique characteristics, which are reflected in various aspects of its members’ worldview and daily lives (Caplan 2003; Brown 2007; Hakak and Rapoport 2012). One of its basic principles is the belief that studying religious texts is the main guarantee of the continued existence of the Jewish people (Brown 2007). In light of this principle, the Haredi community invests most of its social and economic resources in strengthening the world of the yeshivas – the educational institutions in which men study Torah (Brown 2007). The Haredi world of Torah aims to raise and foster religious scholars who will lead the Haredi community in the future (Hakak and Rapoport 2012). Therefore, the primary Haredi male model is a man who devotes his life to religious studies and does not hold any paying job, whereas the female model is that of a wife who works to support the family, takes care of the children, and manages the household (Almog and Perry-Hazan 2011).
The Haredi school system is the primary tool for maintaining the structure of the Haredi 'scholars' society' (see Friedman 1991; Spiegel 2011). Although there is no unequivocal religious prohibition on studying secular subjects in Haredi schools for boys, the extreme approaches that stand for intellectual religious collectivism prevail (Breuer 2003; Lupu 2007; Spiegel 2011). The limited knowledge of core subjects, such as English and math, creates substantial barriers to higher education and employment among Haredi men (Lupu 2004a; King and Gazith 2005; Malhi, Cohen and Kaufman 2008).

When the State of Israel was established it limited the pedagogic autonomy of the Haredi schools by the National Education Act (1953), which authorizes the Minister of Education to determine a core curriculum for unofficial schools (§ 11, 34(3)). The National Education Regulations, Recognized Institutions ([Unofficial Schools Regulations] Ministry of Education 1953), which were enacted in accordance with the National Education Act (1953), require unofficial schools to implement a core curriculum that constitutes seventy-five percent of the hours taught in official schools. However, this requirement remained meaningless for decades because the Ministry of Education refrained from confronting the Haredi Jews (Zameret 1997).

In 1999, forty-six years after the enactment of the National Education Act (1953) and the Unofficial Schools Regulations (Ministry of Education 1953), a new political party, called 'Shinui, The Secular Movement,' petitioned the Supreme Court, arguing that the government’s failure to determine a core curriculum violated the right to education of Haredi pupils (Paritzky v. The Minister of Education [Paritzky case] 2000). This case was dismissed in light of the State’s obligation to publish a core curriculum within thirty days. Shortly thereafter, the Ministry of Education published a memo that outlined several ambiguous principles that were to provide the basis of the curricula in all elementary schools (Ministry of Education 2000).
In 2002, another petition was filed with the Supreme Court, arguing that the Ministry of Education had not fulfilled its obligation to determine a core curriculum (Teachers’ Association v. The Minister of Education [Teachers' Association case] 2004). During the proceedings, the Ministry of Education published a new memo, entitled 'Basic Curriculum (Core) for Elementary Education in Israel' ([Elementary Education Core Curriculum Memo] Ministry of Education 2003). This memo was formulated as a list of required subjects, with no reference to the content of these subjects. It further mandated that the achievements of pupils who studied in unofficial schools should be similar to the achievements of pupils who studied in official schools, and that these achievements would be evaluated by the standardized Meitzav exams. As to the implementation of the core curriculum in exempt schools, the memo did not provide any mechanisms for evaluation.

Despite these deficiencies, the ruling in the Teachers' Association case (2004) focused only on the core curriculum for secondary schools. The Supreme Court emphasized that funding for schools that did not follow the standards determined by the education laws violated the obligation of the public authority as a trustee of the public and the equality principle. The Court also stated that the Ministry of Education did not meet its obligations in the Paritzky case (2000). However, it accepted the Ministry’s request to be granted three additional years in order to complete the process of shaping and implementing a core curriculum for secondary schools. The Court indicated that schools that did not implement the new core curriculum would not receive public funds.

In 2005, soon after the ruling of the Teachers’ Association case (2004), the Israeli Government adopted the Dovrat Report, which offered a comprehensive reform of Israeli education policy (National Mission for the Promotion of Education in Israel 2005). The report recommended establishing a new stream of Haredi public schools that would be adapted to the unique needs of the Haredi population but would also follow certain
educational standards. Following the publication of the Dovrat Report, however, a political agreement ensured the 'independence and unique status' of Haredi education. A subsequent petition filed with the Supreme Court argued that this political agreement was illegal and inequitable, as well as in contradiction of the Teachers' Association case and the Dovrat Report (Mafdal Party in the Knesset v. The Israeli Government [Mafdal case] 2005). The Supreme Court denied the petition, stating that the agreement was just a declaration of intent. The Court also noted that the petitioners 'went too far' with their argument regarding the alleged violation of the Teachers' Association case ruling. We should hope, the Court added, that the petitioners' 'dark forecast' does not materialize (para. 24). The ruling in the Mafdal case (2005), like the ruling in the Teachers' Association case (2004), indicated a cautious approach that reflected trust in the Ministry of Education.

In summer 2007, close to the end of the three-year extension given in the Teachers' Association case (2004), two petitions were filed with the Supreme Court charging that the Ministry of Education had not completed the core curriculum for secondary schools. The petitioners also argued that the Ministry was not supervising the implementation of the core curriculum in Haredi elementary schools (Jewish Pluralism Center v. The Ministry of Education [Jewish Pluralism Center case] 2007; Teachers' Association v. The Ministry of Education 2007). Following these petitions, the Ministry of Education published another memo, which set down a core curriculum for secondary schools ([Secondary Education Core Curriculum Memo] Ministry of Education 2007a). The memo did not specify any obligatory subjects for exempt schools. It also contained an escape clause for unofficial Haredi schools, enabling these schools to become exempt.

The ruling in the Jewish Pluralism Center case was published in 2008. The Court noted that a 'gloomy' picture was portrayed regarding the Ministry’s commitment to honor its obligations in accordance with the Teachers' Association case (Jewish Pluralism Center case
2008, para. 78). 'Nothing happened' over the past three years, the Court observed (para. 78). The Court went on to describe the 'escape clause' for Haredi unofficial schools as a 'creative,' 'original' attempt to circumvent the ruling in the Teachers Association case (para. 43). The Supreme Court’s rhetoric emphasized the restraint that had characterized former decisions. Eight years after the Ministry of Education was supposed to have fulfilled its obligation in the Paritzky case to complete a core curriculum for all Israeli schools, the Court seemed finally to have lost patience.

There were no operative decrees in the Jewish Pluralism Center case (2008), because the ruling was published very close to the completion of a legislative process that was initiated in order to bypass the Supreme Court’s decision. This process resulted in the Unique Cultural Educational Institutions Act (2008) which exempted Haredi secondary schools for boys in grades nine to twelve from the State’s core curriculum. Very few Knesset members had attended the Knesset Education Committee meetings in which the act was shaped and discussed (Knesset Education Committee 2007, 2008a, 2008b, 2008c, 2008d). The Knesset plenum, furthermore, approved the act under special circumstances, which are usually dedicated to pre-legislative stages (Ilan 2008). Of the 120-member Knesset, thirty-nine voted for the act, and six against it (Knesset 2008). Most members deliberately absented themselves from the session (Ilan 2008). One of the bill’s proponents was the Minister of Education, who argued that it was the 'least bad' option (Sella and Meranda 2008). Her support of the bill was a turnaround from her initial objections that the Unique Cultural Educational Institutions Act had 'severe' pedagogical and social implications, that it destabilized public education, and that it opened the gate for additional public funds for private schools (Knesset 2007; Knesset Education Committee 2008a).

During the discussions, there was a proposal for an amendment that would guarantee the right of pupils who attend Unique Cultural Educational Institutions to complete their final
matriculation exams at State expense (Knesset 2008). A large majority rejected the proposal. The Knesset Member who proposed the amendment said the following:

I know that most of the Haredi Knesset members agree with me, but the fear between the various groups and the struggles between them do not allow them to speak the truth. At least don't vote against the bill; be honest with yourselves. Why can’t a man who studied in a yeshiva openly receive a basic education from the State that will allow him to learn, work, and acquire tools for life?

Additional chapters in the long tale of the core curriculum will soon be written in light of a case currently being heard in the Supreme Court, which deals with the violation of the right to education engendered by the Unique Cultural Educational Institutions Act (Rubinstein v. The Ministry of Education 2010).

The continuing discourse described above had certain legal results that reflect the interests of the petitioners. While Haredi secondary schools for boys were officially exempted from the State’s core curriculum, other Haredi schools are now required to teach certain secular subjects according to their legal status as unofficial or exempt. Nevertheless, there is no indication that this requirement has had any impact on their curricula. A report published by the Knesset Research and Information Center (Vaysblay 2012) indicated that curriculum supervision in Haredi schools is deficient. This report also indicated that there had been a gradual increase in the number of supervisors but that the supervision is still based on a sample of schools and on the reports of each school’s management. Standardized exams do not play a role in the supervision process. Although the Elementary Education Core Curriculum Memo obligates Haredi schools to participate in the Meitzav exams (Ministry of Education 2003), very few such schools fulfill this obligation (RAMA 2009; RAMA 2010; Jewish Pluralism Center v. The Ministry of Education 2012). A petition that required the Ministry of Education to enforce the participation of Haredi schools in the Meitzav exams was retracted in light of the Ministry’s decision not to use external Meitzav exams in 2014, in
order to promote a new national reform of 'meaningful learning' (Jewish Pluralism Center v. The Ministry of Education 2013). Several months later, the Ministry announced that it will reinstate the use of external Meitzav exams in 2015 (Ministry of Education 2014).  

'Kosher' discrimination: Regulating ethnic segregation in Haredi schools

The Haredi community consists of diverse groups and sub-groups (Friedman 1991; Caplan 2003). The interrelationships of these groups are characterized by an essentialist perception that takes for granted certain fundamental differences among people (Brown 2007). This perception applies, inter alia, to differences between Ashkenazic Jews (of European ethnic origin) and Sephardic Jews (of North African or Arabic-speaking countries ethnic origin) (Zohar 1996-1997; Lupu 2004b; Hacohen 2010).

One of the factors that constituted the Haredi Sephardic group was the low social status of Israeli Sephardic Jews, who were marginalized by Israeli society (Dahan-Kaleb 1999; Herzog 2000; Schiffman 2005). However, Haredi Sephardic Jews were not accepted as equals within the Haredi community (Leon 2010, 2013). In the 1980s they established a school association – The Wellspring of Torah Education – in reaction to discrimination against Sephardic pupils in Haredi Ashkenazic schools, but many Haredi Sephardic families still prefer to send their children to the Haredi Ashkenazic schools (Lehmann and Siebzehner 2006; Leon 2013).

The first time the Supreme Court discussed the admission policies of Haredi Ashkenazic educational institutions was in the early 1990s (Bochnik v. The Minister of Education 1991). During the discussion, the Court declared that discrimination and ethnic quotas were unlawful and unacceptable. Following these declarations, the Haredi Ashkenazic Independent Education school association voluntarily agreed to stop basing admissions on ethnic considerations, and the case was closed. A few years later, the Supreme Court
discussed a similar case, and it was closed in light of another voluntary agreement by the Independent Education school association to admit every pupil whose parents were willing to sign the school’s spiritual code, and not to differentiate between Ashkenazic and Sephardic pupils (Marshal v. The Minister of Education 1997).

In 2000, the Knesset enacted two statues that forbid ethnic discrimination in schools – the Pupil's Rights Act (2000), which applies to official and unofficial schools, and the Prohibition on Discrimination in Products, Services, and Entrance to Entertainment and Public Places Act ([Prohibition on Discrimination Act] 2000), which applies to all schools, including exempt ones. The two statutes impose criminal sanctions on school officials who discriminate against pupils.

Three years later, the Prohibition on Discrimination Act (2000) was discussed in a case that concerned separate educational tracks for different Haredi groups in an exempt school (Alkaslasy v. The Beytar Illit Municipality [Alkaslasy case] 2004). Parents of three boys who were not accepted into the Ashkenazic Hassidic track petitioned the Administrative District Court. The Court rejected the petition, holding that there was no evidence of ethnic discrimination. However, the Court wrote a far-reaching decision regarding the responsibility of the State and the local municipalities to supervise the admission policies of exempt schools.

In 2006, the Association for Civil Rights in Israel petitioned the Administrative District Court, arguing that the Ministry of Education was not performing its duty to supervise the admission policies in Jerusalem’s Haredi Beis Ya’akov schools for girls, which belong to the Ashkenazic Independent Education school association (Association for Civil Rights in Israel v. The Ministry of Education [ACRI case] 2006). The Court’s decision presented a detailed picture of ethnic quotas in Beis Ya’akov schools, leading to repeated complaints to the Ministry of Education. The committees appointed by the Ministry to
investigate the complaints were criticized by the Court for doing inadequate work. 'It is unacceptable,' the Court noted, that the Ministry of Education does not have full and updated data on the admission policies of Beis Ya’akov schools, especially in light of the fact that the data are easily attainable (para. 53). The decree ordered the Ministry of Education to develop an inspection plan that would be ‘active, efficient, and transparent’ (para. 47-48).

Following this case, the Ministry of Education published regulations entitled, ‘Guidelines for Admission and Registration of Pupils to Schools Supervised by the Department of Recognized Unofficial Education’ ([First Admission Regulations] Ministry of Education 2006). The scope of these regulations was not clear. According to the title, the regulations applied to all unofficial and exempt schools. Such a broad application was in line with the decree in the ACRI case (2006). However, the regulations were written in feminine language\textsuperscript{8} and required a written exam, thereby reducing the scope of their application to the unofficial secondary schools for girls that were the focus of the discussion in the ACRI case.

A few months later, the Knesset Education Committee (2006) discussed the limited scope of the First Admission Regulations. The Committee chair, a national-religious Knesset Member, criticized the Ministry of Education for failing to shape regulations for admission to Haredi elementary schools as was required in the ACRI case. ‘Why do you need a court in order to do such a simple thing?’ he asked. Later on, he said the following:

I think that what you have done so far is important, but it is a pity that you did it following the [ruling of the] court. You could have done what you should have done years ago, and it is a pity that you have not done it regarding elementary schools. Why not? Do it today. What is the problem? I find it hard to understand the problem in doing it.

Throughout the discussion, the director of the Independent Education school association blamed the chair of the Knesset Education Committee for raising the issue for public discussion, and the Haredi Sephardic parents for turning to the court and to the Civil Rights
As to the Haredi Sephardic parents, he warned: 'Your path and glory will not flourish' if the Civil Rights Association defends you.

Regulations for admission to Haredi elementary schools were formulated only after another ruling. This time, the case concerned claims of ethnic discrimination in admission policies for the first grade of an elementary Beis Ya’akov school in the Haredi city of El’ad (M.Y. v. The Ministry of Education [M.Y. case] 2006). The Administrative District Court rejected the petition, ruling that there was no evidence of ethnic discrimination. The parents of one of the girls whose application had been denied appealed to the Supreme Court, which ordered the Ministry of Education to establish mechanisms for supervising the admission policies of the Independent Education schools within thirty days (Plonit v. The Ministry of Education [Plonit case] 2007a). The appeal was set aside in light of an agreement for an appeals committee to be appointed by the Ministry of Education to examine the claims and to try to admit the girl to another Beis Ya’akov school in a nearby city. The appeals committee rejected the ethnic discrimination claims. Efforts to admit the girl to another Beis Ya’akov school were unsuccessful, too. In August 2007, a few days before the new school year, the Supreme Court rejected a request for contempt proceedings, noting that 'we should hope that even now the parties will wisely exhaust their negotiations and will consider the best interest of the girl, who has suffered not inconsequential harm' (Plonit case 2007b, 3).

Following these cases, the Ministry of Education formulated regulations entitled, 'Guidelines for Admitting Pupils to First Grades in Elementary Schools' ([Second Admission Regulations] Ministry of Education 2007b). These regulations were not published. Instead, they were sent as a letter to the director of the Independent Education school association. Their requirements included, inter alia, pre-approval of the school’s admission code by the Ministry of Education, providing a hearing for parents whose children were denied admission, and establishing an appeals committee in the Ministry of Education.
In 2008, in accordance with the Second Admission Regulations, the Ministry of Education established an appeals committee and ordered a Haredi elementary school to admit a girl whose application had been denied. When the school refused to obey the decision, the Administrative District Court ordered it to do so (Plonit v. Beis Ya’akov El’ad [Beis Ya’akov El’ad case] 2008). Following the ruling, the Israeli press reported that many parents decided to keep their children at home rather than sending them to the school (Sella 2008). The same report indicated that signs appeared around the school area condemning the court as well as the parents who had turned to the court.

During the same period, the Supreme Court also discussed a case of ethnic segregation at the Beis Ya’akov school in the Haredi city of Immanuel (No’ar Kahalacha Association v. The Ministry of Education [Immanuel case] 2009). The school was divided into two tracks, a Hassidic track and a general track, which effectively constituted two segregated schools. A wall between the two tracks was erected in the building, the playground was split by a fabric-covered fence, the Hassidic track had a different dress code, and the timing of classes and breaks were changed in order to avoid contact between the girls in each track (para 2). Following several complaints made by Haredi Sephardic parents, the Ministry of Education threatened to revoke the school's license, but the threat was not implemented (para. 3-7).

In 2008, a non-governmental organization of Haredi Sephardic Jews petitioned the Supreme Court. After failing attempts to achieve a compromise, the Court ruled in August 2009 that unofficial schools were entitled to formulate the cultural standards that would guide the behavior of the pupils, but were not allowed to prevent the admission of specific ethnic populations (Immanuel case 2009). The Court also criticized the Ministry of Education for failing to use its authority to revoke the school's license or to refuse to fund the school. The judgment ordered the Independent Education school association to cease from engaging in
practices of segregation, and called on the Ministry of Education to enforce the ruling. Thus, even after the Court had offered the Independent Education school association several opportunities to impede the discrimination, the judges threw the ball back to the school association and expressed their trust in the Ministry of Education to supervise the schools and sanction them as needed.

The segregation remained in place several months after this ruling. In December 2009, contempt proceedings were instituted, following which the school was declared integrated; however, the parents whose daughters attended the Hassidic track refused to send them to the school, preferring to establish an unauthorized school operating in different parts of the city (Immanuel case 2010a). On May 2010 the Court imposed a daily fine on the school and the parents. Since the ruling had been handed down before the school year started and now the year was about to end, the Court declared, 'We have to go back to the law' (para. 12).

On June 17, 2010, the Court ordered the imprisonment of Haredi parents who refused to send their daughters to the integrated schools (Immanuel case 2010b). Tens of thousands of Haredi Jews took to the streets of Jerusalem to accompany the fathers on their way to prison. The mothers did not appear (Kershner 2010). The next day, the Court postponed the mothers' imprisonment (Immanuel case 2010c). Ten days later, the Court decided to release the fathers in light of an agreement to integrate studies during the last three days of the school year (Immanuel case 2010d). The case was then closed until the end of the summer holiday.

On August 25, 2010, the Ministry of Education announced that it had accepted the request of a group of parents whose daughters attended the Hassidic track to establish a new school that would not receive public funds. A couple of weeks later, the Court reluctantly closed the case. The Court expressed the hope that the aim of the Ministry of Education’s
decision was not to achieve the unacceptable goal that motivated the segregation (Immanuel case 2010e).

The Beis Ya’veakov El’ad case (2008) and the Immanuel case (2009, 2010a-2010e) emphasize how cultural norms bypassed the admission regulations. In both cases, the parents refused to send their children to an integrated school. In other cases, the admission regulations allowed school officials to declare the discrimination 'kosher.' During a discussion in the Knesset Education Committee (2006), a lawyer who worked for the Israeli Civil Rights Association made the following observation about the First Admission Regulations:

[The criteria] enable, in one way or another, the hiding of the existing discrimination. It may be that the criteria make the former situation even worse because everything is allegedly organized; there are interviews, there are files, everything is written, it seems like everything is fine, but in fact we see that the discrimination continues de facto.

A study conducted by the Knesset Research and Information Center (Vorgan 2010) raised similar complaints about using the admission criteria as an excuse for ethnic discrimination. The complaints also referred to lack of supervision and deficient implementation of the admission regulations, including provisions that guarantee the right to appeal and obligate the schools to perform a lottery when there were too many girls who met the admission criteria. The criminal sanctions outlined in the Pupil's Rights Act (2000), which forbids ethnic discrimination, were not implemented as well. The chair of the Knesset Education Committee noted in this regard that 'the Ministry of Education is not brave. It has a law… Did the Ministry of Education ever use its authority? ... Did it ever file a complaint? ... Everyone wants to throw the problem into the neighbor’s yard' (Knesset Education Committee 2009).

In 2013, the Supreme Court discussed a case in which it was argued that the ethnic discrimination in Haredi schools for girls maintains itself by various practices that include segregation of classes and discriminatory admission policies (No’ar Kahalacha Association v.
The Minister of Education [Seminars case] 2013). The Court ordered the petitioners - a non-governmental organization of Sephardic Haredi Jews - to find a concrete case of discrimination in order to avoid theoretical arguments. When the petitioners could not find Haredi parents that were willing to pay the cultural price of the litigation, they had to withdraw their petition and the case was closed.

Discussion

The two case studies of court-led education reforms in the curricula and the admission policies of Israeli Haredi schools tell two different stories, which correspond in several ways. A two-stage analysis will be applied in order to examine the role of the courts in these case studies. The first analysis stage, which examines the axes of legitimacy and competency, accounts to the scope of judicial involvement in the policy process. The second analysis stage, which examines the axe of effectiveness, accounts to the impact of the rulings.

The scope of judicial involvement in the policy process

The cases that discussed the implementation of the core curriculum should be read in light of the fact that the obligation to teach it in unofficial schools had been set down by the legislature in the National Education Act (1953). The petitioners asked the Supreme Court to enforce it. Over the years, the Supreme Court granted the Ministry of Education several opportunities to meet its obligation and give meaning to the National Education Act. In the Paritzky case (2000), the Court ordered the Ministry to formulate a core curriculum within thirty days. In the Teachers' Association case (2004), the Court granted the Ministry of Education an extension of three years to complete the core curriculum and implement it. In the Mafdal case (2005), the Court expressed its trust that the Ministry of Education would comply with the ruling in the Teachers' Association case. Only in the Jewish Pluralism
Court-led educational reforms in political third rails,” *Journal of Education Policy* (forthcoming)

Center case (2008), did judicial patience wear thin, and the Court declared that it intended to stop the funding of schools that did not include a core curriculum in their instruction. However, there were no operative decrees in this case, because the Knesset had enacted a law designed to bypass the Supreme Court – the Cultural Unique Educational Institutions Act (2008). The critical language and judicial activism of the Jewish Pluralism Center case (2008) deviated from the Court's cautious tendencies that had characterized past judgments on the issue. However, the Court's behavior should be interpreted in light of these other cases. In fact, the Jewish Pluralism Center case (2008) was similar to contempt proceedings, since the Ministry of Education had not carried out judicial rulings for years.

The cases that discussed ethnic discrimination in Haredi schools were characterized by strong criticism of the discriminatory practices and a greater willingness to intervene in the policy process. The Alkaslasy (2004) and ACRI (2006) rulings were comprehensive and included an unequivocal message against ethnic discrimination. In both these cases, the court ordered the Ministry of Education to formulate admission regulations and elaborated on their required content. The Plonit Supreme Court ruling (2007) was short—in light of the agreement to have an administrative appeals committee examine the claims—but it ordered the Ministry of Education to devise mechanisms for the supervision of Haredi schools’ admission policies within thirty days. The analysis of the Immanuel case (2009, 2010a-2010e), however, is more complicated. The 2009 ruling expressed the faith that the Independent Education school association would discontinue the policy of segregation, even though continued attempts to reach a compromise that would integrate the school had failed. During the contempt proceedings, the Supreme Court applied extreme sanctions, ordering the imprisonment of Haredi parents who refused to send their daughters to the integrated school (2010b). Yet, in the final decision in this case, the Supreme Court seemed to surrender, by reluctantly approving a new arrangement: a segregated school that would not receive public
funds (2010e). The Seminars case (2013) was closed due to the lack of Haredi parents willing to join the petitioners and present a concrete case of discrimination. Closing the case may be inferred as a reflection of a judicial reluctance to open the discriminatory practices for another discussion. It can also be read, however, in light of the strict approach of the Supreme Court towards public petitioners over the last few years (Levy and Mordechay 2013).

It seems, then, that the two case studies of the role of the courts in reforming the curricula and admission policies of Israeli Haredi schools reveal different patterns of judicial behavior. While the cases that discussed the curricula in Haredi schools reflected judicial restraint and a reluctance to formulate education policy, the cases that dealt with ethnic discrimination in Haredi schools were characterized by a greater inclination to intervene in the policy process. I will argue that these different patterns of judicial behavior have different implications on the analysis of the legitimacy and the competency of the rulings.

The axe of legitimacy concerns the separation of powers among the three branches of government (Hanushek 2006; Lindseth 2006) and the scope of participation in the formulation of the decision (Mayrowetz and Lapham 2008). Judicial intervention in the cases that discussed the core curriculum of Haredi schools implied alteration of the policy decisions of the legislative and executive branches of government. The ethnic discrimination cases, on the other hand, targeted specific practices and decisions of the schools themselves. The claims against the Ministry of Education in these cases concerned its authority to supervise the schools. The analysis shows, then, that the Israeli judges tried to avoid crossing the line into the domain of the legislature and the Ministry of Education. However, when the cases concerned specific discriminatory decisions, the courts unequivocally expressed critical messages and set in motion the creation of a new policy. Moreover, while Haredi interests were not represented in the cases that discussed the core curriculum, the ethnic discrimination cases provided a voice for a variety of interests that had an opportunity to impact the
proceedings – school officials, parents, children, non-governmental organizations, and local authorities.

As noted, the legitimacy of the ruling is stronger when the petitioners are associated with disadvantaged groups (Welner 2001; Rebell 2007; Superfine 2008). In most cases discussing the core curriculum the petitioners were secular non-governmental organizations and not Haredi men whose right to education was violated. Generally, the different Haredi groups are united in their opposition to the State’s core curriculum. Rulings that regulate this issue reinforce the negative image of the judiciary in the Haredi community (see Ratner 2009). This negative image is inherent in the Haredi perspective of the supremacy of Halacha—Jewish religious law—over State law (Horowitz 2001; Brown 2004). However, the depth of the negativity is related to the growing involvement of the Supreme Court in Israeli public life and to its tendency to reflect liberal values (Horowitz 2001). In contrast, the petitioners in most of the cases discussing ethnic discrimination in Haredi schools were the children who were denied admission, their parents, or a non-governmental organization of Haredi Sephardic Jews. These petitioners had to overcome substantial cultural hurdles in order to turn to a secular court (Hacohen 2010). It seems, therefore, that the courts considered the legitimacy of their decisions and tended to intervene in the policy process when disadvantaged groups used it as an accessible forum for claiming their rights.

The axe of competency concerns the ability of the courts to obtain, understand, and process the data that constitute the basis for this policy, as well as to consider the long-term implications of their rulings (Heise 2002; Heise 2004; Welner and Kuppermintz 2004; Hanushek 2006). The formulation and implementation of a core curriculum in Haredi schools is a multi-dimensional issue, which has legal, political, social, and pedagogical aspects. There is an extensive scholarly discourse regarding the adequate scope of State intervention in the education of ultra-religious groups (see e.g. Stolzenberg 1993; Rawls 1993; Kymlicka 1995;
Callan 1997; Guttmann 1999; Reich 2002a; MackMullen 2007; Mautner 2008). In contrast, ethnic discrimination in schools is a question that has legal answers. Indeed, in certain cases the boundaries between permissible differentiations that are based on religious orientation and discriminatory differentiations that are based on ethnic origin are vague. However, such tasks lay within the core of the judicial role.

Another relevant factor that influences the analysis of judicial competency is the structure of the normative framework. Whereas the norms that regulate the core curriculum of unofficial and exempt schools are vague and outdated, the norms that prohibit ethnic discrimination in schools were enacted in 2000, and their language is clear. As mentioned, the competency of the judiciary erodes when the laws are not sufficiently clear to guide the courts in solving education policy issues (Superfine 2009).

An Intermediate Summary

The analysis in this section indicates that the courts were apparently mindful of the possible difficulties of their involvement in the policy process. In the cases that discussed the curricula taught in Haredi schools, the policy laid within the realms of the legislators or the Ministry of Education, the petitioners were secular non-governmental organizations; the questions had dominant political, social, and pedagogical aspects; and the normative framework was vague. Therefore, the courts tended not to intervene in the policy process. However, in the cases that discussed the admission policies of Haredi schools, the petitions targeted specific practices and decisions of the schools; the petitioners were disadvantaged groups within the Haredi community; the questions laid within the core of the judicial role; and the statutes that forbid ethnic discrimination in schools were dated and clear. Therefore, the judicial approach reflected a stronger tendency to intervene in the policy process.
These conclusions are consistent with those of American studies, showing how courts that discuss educational policy avoid their institutional weaknesses (Superfine 2009), consider the political and cultural context (Welner 2012), and tend be more active in cases of civil rights and racial desegregation than in cases of effective instruction and scholastic achievements (Mayrowetz and Lapham 2008). They are also congruent with British studies, indicating that the courts' approach in educational cases is careful and sensitive to the resolution of difficult questions (Harris 2002, 2005). Harris noted that the courts tended to confirm the jurisprudence of the European Court of Human Rights in regard to the latitude that should be given to the State over the management of public resources and the pursuance of collective goals (Harris 2005), and to defer to the professional tribunals in special education needs cases that discussed 'educational' provisions (Harris 2002, 141, 145). On the Israeli scene, the conclusions correspond to the courts’ cautious approach in cases regarding the funding of unofficial schools (Perry-Hazan 2013b, 87-103) and its more activist approach in cases discussing school choice controversies between the Ministry of Education and parents who chose a school not in their catchment area (Gibton 2004). More detailed contextual socio-legal studies are needed in order to evaluate the behavior of Israeli courts in other issues that have been extensively litigated, including the funding of Arab education (Supreme Follow-Up Committee for Arab Education v. The Ministry of Education 2000; Abu Ganam v. The Ministry of Education 2005; Supreme Follow-Up Committee for Arab Education v. Prime Minister of Israel 2006), the mainstreaming of special education children (Yated v. The Ministry of Education 2002, 2004; Martsiano v. The Ministry of Finance 2003; ALOT v. The Ministry of Education 2007, 2011) and the right of Bedouin children who live in unauthorized villages to have a reasonable access to school (Abu Guda v. The Ministry of Education 2004; Elamor v. The Ministry of Education 2006; Gaboa v. The Ministry of Education 2011).
The impact of judicial involvement on the policy process

The axe of effectiveness examines the impact of rulings; it searches for impacts that served the interests of the petitioners, as well as for unintended consequences. In the two case studies of the courts' role in reforming the curricula and the admission policies of Israeli Haredi schools, the legislative and executive actions that followed the rulings were often slow and reluctant. The Elementary Education Core Curriculum Memo (Ministry of Education 2003) was completed three years after the time set in the Partizky case (2000). Four additional years were needed in order to complete the Secondary Education Core Curriculum Memo (Ministry of Education 2007a). As mentioned, both memos were published following petitions filed with the Supreme Court, in which the petitioners argued that the Ministry of Education had violated prior judicial decisions. A similar process characterized the formulation of the admission regulations. The Alkaslasy case (2004), in which the Court wrote a far-reaching decision regarding the responsibility of the State and the local municipalities to supervise the admission policies of Haredi schools, did not induce the Ministry of Education to regulate the admission policies. The ACRI case (2006) resulted in the First Admission Regulations, which applied only to secondary schools or possibly only to secondary schools for girls (Ministry of Education 2006). The Second Admission Regulations, which applied to elementary schools (Ministry of Education 2007b), were published only after the Supreme Court’s decision in the Plonit case (2007). The reluctance of the Ministry of Education to implement a judicial decree was also discernible in the contempt proceedings of the Immanuel case (2010a-2010e).

The norms that were shaped following the judicial involvement reflect the flawed interrelationships of the courts, the legislature, and the Ministry of Education. These norms were intended to provide 'quick fixes' for specific problems. Their formulation process lacked
sufficient public deliberation and systematic thought with regard to their interpretation, consequences, and correspondence with the normative environment. Consequently, the core curriculum memos (Ministry of Education 2003, 2007a) and the admission regulations (Ministry of Education 2006, 2007b) seem to have been an attempt to exercise the minimum in order not to be declared in contempt of court. The core curriculum memos (Ministry of Education 2003, 2007a) were shaped as a list of required subjects of instruction, with no reference to the substance of these subjects. The First Admission Regulations (Ministry of Education 2006), which were enacted following the ACRI case (2006), applied only to the schools that were the focal point of the case—Haredi high schools for girls—though the judicial decree was broader. The Second Admission Regulations (Ministry of Education 2007b), which were enacted following the Plonit case (2007a), were sent as a letter to the CEO of the Independent Education school association and were not published.

Another conclusion concerns the implementation of the norms that were formulated in the wake of the courts' decrees. It seems that the new norms did not affect either the reality in Haredi schools or the relationship between these schools and the Ministry of Education. It is doubtful whether the new core curriculum produced any change in the content and scope of secular subjects studied in elementary Haredi schools. Without adequate pedagogical supervision and external exams, the Ministry of Education has no mechanism with which to evaluate the impact of the new regulatory framework. Furthermore, some sections of the admission regulations provisions remained unimplemented. The petitioners' arguments in the recent Seminars case (2013) contended that ethnic discrimination in Haredi schools for girls is maintained by various practices that include segregation of classes and discriminatory admission policies. These circumstances reveal most of the rulings in both case studies as 'hit and miss' cases (Harris 2007, 42).
In order to facilitate the implementation of judicial rulings, several American courts that hear education policy cases supervise a process of negotiation among the parties and stakeholders, resulting in periodic revisions of the rules in light of ongoing monitoring (Liebman and Sabel 2003; Sable and Simon 2004; Rebell 2007; Superfine 2008). The case studies highlight the lack of such negotiations, which commit all government branches to the task and assign each of them a significant, complementary role (see Rebell 2007). In Israel, judicial oversight of the implementation of education policy is extremely rare. It was used only in a single case, in which the Government failed to construct new classrooms in East Jerusalem's Arab schools (Hamdan v. The Jerusalem Municipality 2011). Therefore, rulings ordering the Government to reform education policy remain unimplemented for years. Prominent examples include changing the differential funding policy that discriminated against Arab schools (Jabareen 2013) and the allocation of funds to the mainstreaming of special education children (Perry-Hazan 2013a, 219-221).

The case studies also indicate that political and cultural resistance may not only impede court-led educational reforms but also use them as a vehicle to anchor or solidify the reality that the petitioners sought to change. The Jewish Pluralism Center case (2008), in which the petitioners asked the court to order the Ministry of Education to create and apply a core curriculum in Haredi secondary schools, resulted in the Cultural Unique Educational Institutions Act (2008). This act, whose legislative process was characterized by expedited proceedings, poor attendance in the Knesset plenum, and insufficient discussion of its implications, exempted Haredi secondary schools for boys from secular studies. Similarly, the policy discourse regarding the implementation of the admission regulations indicates that in many cases they enabled school officials to declare the discrimination 'kosher.' Since the Ministry of Education does not supervise the implementation of the admission regulations, they can be used, or misused, as the schools deem fit. In light of the above, the case studies of
the courts’ role in reforming the curricula and the admission policies of Israeli Haredi schools demonstrate that political and cultural resistance may lead the legal or social cogwheels of the education policy-making in a direction that may even distance the petitioners from their goals. In other words, court-led educational reforms in third rails of education policy may exacerbate the courts’ weaknesses in the axe of effectiveness.

Yet, these conclusions do not span the entire spectrum of the axe of effectiveness. It could be that the long-term impact of judicial involvement in regulating Haredi schools has yet to be revealed. Certain rulings, mainly those in the *Jewish Pluralism Center* case (2008) and the *Immanuel* case (2009, 2010a-2010e), encouraged continuing public debates. The public spotlight may persuade politicians to dedicate more time and energy to promoting education policy issues (see Chia and Seo 2007; Rebell 2007; Superfine 2008). Additionally, the continuing proceedings regarding the discriminatory practices in Haredi schools, some of which were led by an association of Haredi activists, suggest that the courts’ intervention may have empowered these activists to pursue educational justice within their own community. This legal discourse may develop rights consciousness among Haredi parents and children (see Minow 2004). It is too early to evaluate the scope and significance of these implications, and they deserve further research. If the courts’ role in regulating Israeli Haredi schools contributes eventually to changing the political indifference to education policy, or develops strong rights consciousness among Haredi parents and children, then the hopes of the petitioners, though perhaps naïve, will not have been entirely hollow.

**A Comparative Perspective on Haredi Education**

Haredi communities throughout the world maintain a close relationship with the Israeli Haredi community and their ways of life tend to be similar (Don-Yehiya 2005). However, the educational practices in each Haredi community correspond to local socio-legal
circumstances. In the United States, most of the religious schools are privately funded, in light of the constitutional separation of religion and state (see Bolick 2008; Green 2008). In New York and New Jersey, where the largest American Haredi communities reside (Schick 2009), there are no voucher programs that enable parents to apply their taxes to pay the tuition in private schools (National Conference of State Legislatures, n.d). A study conducted in New York, where Haredi schools are required to adopt a curriculum that is 'substantially equivalent' to the public schools' curriculum (New York Education Law § 3204.2), shows that the State supervision on the Haredi schools is loose (see Zehavi 2009). However, social and economic processes are undermining the American Haredi scholars' society and promoting secular studies that enable the graduates of the Haredi schools to enter the job market (Gonen 2000; Don-Yehiya 2005; Heilman 2006; Krakowski 2008; Finkelman 2009). The admission policies of American private schools are regulated by a federal provision that prohibits discrimination in making contracts (United States House of Representatives 42 U.S.C §1981; see Runyon v. McCRary 1976; Brown v. Dade Christian Schools Inc. 1977) and there is no information regarding discriminatory practices in Haredi schools.

In England, religious schools can be publicly-funded maintained schools or academies, on non-funded independent schools (see Department for Children, Schools and Families 2007). Despite the financial incentives offered to independent religious schools to become maintained (Flint 2007; Jackson and O'Grady 2007), most of the Haredi schools, except for a few girls’ schools, chose to remain independent (Vulkan and Graha 2008). As independent schools, Haredi schools do not have to teach the National Curriculum but they must meet minimum standards set out in the Education (Independent School Standards) (England) Regulations (2010),12 which revoked similar regulations from 2003. The ideal of a man who studies and does not work for a living is still prominent in the British Haredi society (Gonen 2005), and there is a variety in the scope and levels of secular studies in Haredi
schools (Gonen 2005; Ofsted 2009a, 17). Recent reports of Ofsted – The Office for Standards in Education - show that many elementary Haredi boys’ schools have adopted the regulations (Ofsted 2010a, 2010b, 2011a, 2011b, 2011c, 2012, 2013), and that some of them were required to prepare corrective action plans following negative Ofsted reports (Ofsted 2009b, 2010c, 2014). Most of the secondary Haredi boys’ schools remain unsupervised (Ofsted 2009a, 18).

The curriculum in a British Haredi school was discussed in a 1985 Court ruling that determined as follows:

[E]ducation would still be suitable if it primarily equips a child for life within the community of which he is a member... as a whole, as long as it does not foreclose the child's option in later years to adopt some other form of life if he wishes to do so (R [Talmud Torah Machzikei Hadass School Trust] v. Secretary of State for Education and Science 1985; see Bradney 2009; Monk 2009).

As mentioned, thirty years after this ruling there are still British Haredi schools that do not teach adequate secular studies, or are unsupervised. However, since Ofsted prefers to require Haredi schools to amend practices rather than to close their doors (see Bradney 2009) it is not surprising that the courts did not have a substantial role in regulating Haredi education.

The admission policies for British Haredi schools are regulated by the Equality Act 2010, which prohibits racial discrimination in school admission policies (§ 4, § 84-89; Schedule 11). A well-known 2009 ruling of the United Kingdom Supreme Court discussed the decision of the Jewish Free School - a maintained non-Haredi Jewish school – to deny the admission of a pupil who was not recognized as a Jew by the Chief Rabbi (R [on the application of E] v. Governing Body of JFS 2009). While the Court determined that the applicant was discriminated against on racial grounds, the facts in this case are not comparable to the discriminatory practices discussed in the Israeli context, which concern
differentiations between Haredi groups. As in the United States, there is no information regarding such practices in England.

In Belgium, there is a large Haredi community, which resides in Antwerp. The Flemish education laws, which regulate the education in the Belgian Flemish community, enable the Haredi schools in Antwerp to choose between a fully-funded free subsidized status and a non-funded independent status (Perry-Hazan 2014). Free subsidized Haredi schools use Flemish text books and participate in external exams in order to pass the comprehensive inspections of the Flemish inspectorate (id.). Their admission policies are bound by the Decree on Elementary Education (1997, Art. 37bis.) and the Codification on Secondary Education (2010, Art. 110/1), which prohibit classifying pupils according to their religious affiliation. These decrees incorporated provisions that were previously included in the Decree on Equal Opportunities in Education (2002). In 2003, a Haredi father submitted an application to the Constitutional Court of Belgium, arguing that the school that he had chosen for his children risked losing its identity as a result of the legal right to freely enroll children in any school. The Court declared that the Decree on Equal Opportunities in Education does not disproportionately restrict the freedom of education (Arbitragehof 2003). An empirical study has shown that the inclusive admission policies are enforced and broaden the available alternatives for Haredi parents in Antwerp, though these policies have less social impact on Hassidic schools that serve specific Haredi groups (Perry-Hazan 2014).

Flemish Independent Haredi schools were unregulated until recently. A new decree of the Flemish community, which regulated home schooling, limited the autonomy of the independent Haredi schools by requiring them to participate in centralized exams and authorizing the review of the inspectorate (Decree on Education XXIII 2013). The Constitutional Court of Belgium recently denied a request of Haredi parents to suspend and annul certain provisions in the decree (Constitutional Court of Belgium 2014).
A comprehensive comparative research is needed in order to characterize the interrelationships between the different agents who create, interpret, and implement the legal rules that regulate the schools in which Haredi children study, as well as to analyze the socio-legal factors that affect these interrelationships. This paper illuminates a scholarly angle on the role of secular courts in promoting social changes in an ultra-religious community, but its conclusions are relevant to the Israeli context, in which the Haredi education is a political third rail. In each country, the role of law and courts in regulating the Haredi education is grounded in the structure of the legal system, the prevalent political powers, and the unique social fabric of the citizens. Yet, this comparative perspective may be of interest to scholars of law and religion, or to policy-makers who regulate Haredi education in other countries, who would benefit from placing the Israeli case studies in a broader comparative framework. Further research may use these case studies to reach comparative conclusions and offer guidelines for shaping policies and practices that take into account the transformations of the legal rules on their trajectory to the Haredi schools. It may also examine other contexts of extensive education policy litigation that focused on the religious freedom of minority groups in the United States (see e.g. Stolzenberg 1993; Carter 1996-1997; Reich 2002b; Peters 2003; Wexler 2003; Greenawalt 2005; Forman 2007), England (see e.g. Lundy 2005; Harris 2007), and in other countries (see e.g. Smith 2007; Jawoniyi 2012; Berger 2014; Russo 2014). Such conflicts represent one of the most important, difficult, and sensitive issues facing the education systems of modern Western states (Harris 2007, 361-362) and their impact is especially significant in countries that face fierce social tension.

Concluding remarks
The case studies of the court-led educational reforms in the curricula and the admission policies of Israeli Haredi schools indicate that the courts considered their institutional
weaknesses and avoided difficulties of legitimacy and competency. These case studies further show that even when the courts exhibit caution, judicial involvement in third rail educational reforms may produce impacts that lead the cogwheels of policy-making in directions that could undermine the interests of the petitioners. The possible ramifications along the cogwheels of policy-making are not only the limited ability of the courts to produce social change but also the deleterious influence of superficial, reluctant reforms that are shaped in order to follow the decrees as narrowly as possible, to bypass their rationales, and to strengthen, in effect, the reality that the petitioners sought to change. Superfine (2009) argued that where the courts act with an eye toward their institutional weaknesses, their involvement with educational policy may bring a desirable evenhandedness and political push to the difficult process of effecting large-scale changes in educational governance through policy. His argument, though, may not be applicable to third rails of education policy, where political and cultural resistance impedes institutional cooperation.

As mentioned, since the case studies are based on a detailed socio-legal contextual analysis, further systematic research is needed in order to test the suggested model in other contexts. In the litigious American society, the role of courts as significant agents in education policy has historical roots (Tyack and Benavot 1985; Pullin 1999). In England, a cultural shift towards provider accountability, parental involvement and choice, and governmental commitment to raise standards, is proliferating education litigation (Harris 2005; see also Lundy 2005, 366; Hadley 2008, 240-241). This cultural shift and its implications on education litigation are discernible in Israel as well (Gibton 2004, 2010; Perry-Hazan 2013a). The insights revealed in this research emphasize that the choice of courts as a forum for shaping education policy in political third rails should be prudently considered. 'Deciding who decides' constitutes one of the most important decisions in the educational policy process (Superfine 2009, 481). Courts are not the right cure for each and
every malady in education policy. Social movements seeking to modify policy decisions should consider devoting their resources to other alternatives such as a political lobbying, issuing fact-finding reports, organizing community protest and grassroots activities, recruiting public support, and education.

Kostiner (2003) explored the ways in which activists for educational justice understand and negotiate the role of legal tactics in social change. She found three different schemas that activists invoke in justifying the role of law in social change. Under the *instrumental schema* change involves the legal relocation of concrete resources. Under the *political schema*, change involves the empowerment of communities. Under the *cultural schema*, change involves the transformation of taken-for-granted assumptions. Her data indicated that individuals and social movements seem to evolve from the instrumental schema to the political schema to the cultural schema. Although Kostiner's study did not focus on courts it revealed the intricate perceptions of educational activists regarding the role of law in educational change. It emphasized how these perceptions develop from relying on the power of law in general and on the courts in particular, to resisting the law by promoting community protest, and finally to marginalizing the law and turning to education in order to transform cultural biases. It seems that in Israel, the instrumental schema still prevails among educational activists. Even when there are hollow hopes for social change the linkages between litigation, media coverage, and fund raising result in too often forcing the courts onto the third rails.

While courts cannot sidestep difficult issues, lawyers do choose their cases. An *ex-ante* analysis may reveal difficulties of legitimacy and competency that may assist in choosing the judicial strategy as a tool for reforming education policy. An *ex-post* analysis of judicial effectiveness in similar cases should be carried out in order to evaluate the various impacts of this strategy. In each axe of legitimacy, competency, and effectiveness, the
inherent weaknesses of court-led educational reforms should be weighed alongside other rationales that could justify the choice of the judicial route. Lawyers, like judges, might lack the competency to properly understand and consider the long-term implications of their choices on education policy. A broader discourse within social movements regarding the proper strategy to promote change in education policy may contribute to the formulation of better quality decisions.

The court-led reforms of the curricula and the admission policies of Israeli Haredi schools produced extensive public debates, in which many commentators accused the courts of being too active. This paper sheds evidence-based light on the behavior of the courts and on its impact. Scholars of education policy indicate that it is too common for policy-makers and public commentators to make broad-sweeping characterizations about education litigation without empirical research (Lupini and Zirkel 2003; Rebell 2007). This paper demonstrates the need to evaluate litigation by a contextual, historical analysis that accounts to the institutional strengths and weaknesses of the judicial branch as an agent of educational reforms. It highlights that in certain cases, what may appear to be unjustified judicial activism or restraint is, in fact, a reasonable response, whose harmful ramifications may be attributed to the context of political third rails. It reminds us that even the best judges are not immune to the well-known assertion that 'hard cases make bad law.'

Epilogue
On September 17, 2014, after this paper was completed, Israel’s Supreme Court published a ruling in regard to the constitutionality of the Unique Cultural Educational Institutions Act (2008), which exempts Haredi secondary schools for boys in grades nine to twelve from teaching a core curriculum (Rubinstein v. The Ministry of Education 2014). Seven of the nine judges refused to nullify the act, although most of them determined that the right to education
is constitutional. Considerations of legitimacy, competency, and effectiveness are interwoven in the 180-page ruling, which reflects on the lessons learned from the fifteen years of unsuccessful court-led battles over the curriculum of Haredi schools. A comprehensive analysis of the ruling, composed of nine different decisions, is beyond the scope of this paper. To conclude, I will cite conflicting assertions posed by two judges, which demonstrate the knotty junction of human rights, religion, and politics that surrounded them. One was written by Justice Amit, who joined the majority opinion, and argued that the Court should not "pull the chestnuts out of the fire" in the "sensitive and explosive issue of education in the Haredi sector" (132). The other was written in the dissenting opinion of Justice Arbel, who lamented that one "cannot see the forest for the trees" in the majority opinions (63). The Court should protect Haredi children from this "clear and simple" derogation of their right to education, Justice Arbel noted, since it is the "just" result that reflects the Court's faithfulness to basic human rights (64). These powerful assertions in regard to the role of courts in political third rails exemplify how policy narratives might clash with constitutional narratives. Hopefully, the right to education of Haredi children will find alternative channels of mobilization.

Notes

1 While in other studies I used the term ultra-Orthodox Jews, I have decided to employ here the Hebrew terms 'Haredi' and 'Haredim' (the plural form of 'Haredi') as I learned that it is the preferred term among members of the Haredi communities overseas. See also Hakak and Rapoport 2012. The word Haredi in Hebrew means 'fearful.'

2 There are several meanings to the concept of judicial legitimacy (see Fallon 2005). My discussion here concerns the legal legitimacy (1813-1827) of judicial intervention in
education policy-making rather than the courts' *sociological legitimacy* (1827-1833) or *moral legitimacy* (1834-1839).

3 See Strike (2003) for a comprehensive discussion regarding legitimacy principles for educational governance in liberal democratic societies. One of these principles highlights democratic governance of elected bodies that conform to norms of fair participation (40).

4 Haredi parties participated in the Israeli government from 1977 to 1995, from 1996 to 2003, and from 2005 to 2013. The current government, elected in 2013, does not include Haredi parties (Knesset 2014).

5 Joshua 1:8.

6 This term was suggested by Friedman (1991).

7 The external Meitzav exams were administered every other year until 2013. From 2015 they will be administered every three years (Ministry of Education 2014).

8 Hebrew grammar distinguishes between male and female.

9 In several cases the parents and children were represented by a non-governmental organization, which has the advantages of a repeat player in court (See Galanter 1973; Dotan and Hofnun 2001; Gilad 2010).

10 In 2002, when Harris's study was published, the High Court heard appeals against the Special Education Needs Tribunal. Today, parents whose children have special educational needs can appeal to the First-tier Tribunal against decisions made by Local Education Authorities. Appeals against the First-tier Tribunal decisions go to the Upper Tribunal (Harris and Smith 2009, 2011; Ministry of Justice 2013).

11 In contrast to Israeli education policy, English education policy is dominated by extensive legislation (Harris 2007; Gibton 2013). Harris's 2002 study concerned the 'relatively open-
textured nature' of the legislative framework that regulates the field of special education needs (137).


13 Numerous education policy cases have discussed the religious freedom of minority groups and attempted to shape the delicate balance between parental rights, children's rights, collective rights, and social interests. Therefore, I have chosen to refer to comprehensive studies that have explored these cases rather than to illustrative examples of influential cases.

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