

INDEX

- access doctrines
 - dilemmas regarding, 128
 - justiciability, 36, 39, 83
 - procedural defences, 120, 124, 128–129
 - standing, 39, 83, 125, 128
- adversarial model
 - dilemmas regarding, 123, 135
 - judicial review, and, 134–136
 - lawyering, and, 123
- Attorney General, 54–64
 - accumulation of powers, 60
 - after 1980, 63
 - appointments after tenure, 60
 - attacking government, 60
 - before 1980, 62
 - clashes, 61
 - client, 57
 - constitutional role, 63
 - courts, relationship with, 62
 - criminal law enforcement, and, 56
 - crisis cases, 58
 - curtailing influence, 64
 - defending government, 60
 - differences to British practice, 54
 - duality of functions, 58
 - exclusivity, and, 56
 - functions, 55–60
 - general image, 60
 - government agencies, 59
 - head of litigation, 57
 - ideology, developing, 60
 - importance, 64
 - independence, 55, 61
 - interference with any legal proceedings, 60
 - legal advisors, and, 55
 - office of, *see* Office of the Attorney General
 - opinions, 55
 - position, 54
 - powers, 55
 - proper representation, 59
 - prosecutorial powers, and, 61
 - status, 80
 - supervision on prosecutorial decisions, 63
 - tensions with government, 63
 - ultimate representative, as, 56
 - canon, 21
- Bedouin case study, 158–164
- civil adjudication model, 148
- conditional orders, 111–114
- constitution, 14–18
 - change, 15
 - court, and, 32
 - insecure judicial status, 17
 - judiciary, position of, 17
 - meaning, 14
 - omission to form, 14
 - parliamentary supremacy, 15
 - political debate, 16
 - state of, 16
- constitutional law
 - public policy, and, 123
- court system
 - British legal system, and, 18
 - High Court of Justice, and, 18–21
 - levels, 18
 - origins, 18
 - structure of judiciary, 20
- courts

INDEX

209

- adjudication, 10
- autonomy, 21
- policy-making, *see* policy-making
- democracy
 - bill of rights, 16
 - legality, and, 133
 - politics, 21
 - representation in judicial review, 134, 135
- duty of fidelity, 5
- establishment of Israel, 32
- general public, as concept, 5
- government lawyering
 - collaborators, as, 156
 - commitment, 123
 - conflicting commitments, 58
 - court's expectations, 127
 - facilitating judicial review over client, 126
 - hired guns, as, 124
 - institutional factors, 190
 - models, 123
 - modern processes of, 188
 - overview, 51
 - structure, 52
- government lawyers
 - conflicting commitments, 8, 119, 122
 - difficulties in identifying client, 122
 - enforcement of policy reforms, 126
 - formation of public policy, 136
 - frivolous positions, 120, 124, 129–132
 - government officials, as, 8
 - lawyering, and, 4–8
 - litigation and social change, 8–11
 - policy analysis, 126
 - private sector, and, 120
 - public interest model, *see* lawyering for rule of law
 - role in litigation, 9
 - role in process after litigation, 9
- High Court of Justice, 23–31
 - access, 29–31
- burden, 25
- caseload, 23–25
- character of procedures, 26
- conditional orders, 111
- costs of litigation, 29
- discretion, 29
- enforcement of decisions, 150, 151, 169, 189
- expediency, 27
- flexibility, 28
- function, 23
- interference in public
 - controversy, 44
- interpretations, 28
- judicial activism, 31–49
- minimal political involvement, 35
- order for costs, 30
- organized litigants, 39
- other supreme judicial institutions, and, 24
- outcomes of litigation, 89, 90–103
- petitions, 30
- policy-making, 150
- pre-petitions, 184, 188
- procedures and (in)
 - formalities, 26–29
- representation, 12, 104, 124, 130
- settlements, 97, 182
- stages, 26
- trial court, as, 23
- High Court of Justice
 - Department, 71–78
 - autonomy, 77
 - beginning of, 78–79
 - bureaucratic framework, 51–54
 - career, 75
 - case studies of functions, 158–168
 - caseload, 76
 - centralized model of
 - representation, 104
 - client agency, 77
 - conclusion, 85
 - decentralized nature, 84
 - developing concept, 82
 - dilemmas, 124–132, *see* dilemmas
 - early case numbers, 78
 - efficiency, 76
 - established status, 78

- High Court of Justice
 Department (*cont.*)
 evolution of lawyering for rule
 of law during the 1980s and
 1990s, 81–85
 evolution of the New Court and the
 Office of Attorney General, 79–81
 evolution of the rule of law
 lawyer, 78–85
 formation of state, and, 78
 functions, 71–74
 high degree of expertise, 76
 hired gun model, and, 84
 history, 78–85
 ideology, 83, 119
 informal functions, 74
 information transfer, 77
 internal divisions, 78
 involvement, 73
 judicial inclination, 76
 managerial functions, 170
 monopoly, 189
 municipalities, 104
 official function, 73
 policy-making and other missions,
 157–168
 pre-petitions, and, *see* pre-petitions
 professionalism, 76
 representations, 71
 reputation, 189
 role, 83
 size, 71
 social cohesiveness, 77
 staff, 75
 structure, 71–74
 transformation, 87
 working practices, 76–78
 human rights, 34
- information disclosure, 120, 124,
 127–128
- intervention, grounds for, 38
- judicial activism
 1999 petition, 42–43
 break, 46
 dilemmas, 125
- docket issues, 50
 duties, imposed, 37
 evolvement of the model of
 hyper-, 41–44
 framework, 10
 High Court of Justice, 31–49
 High Court of Justice Department,
 and, 79
 impact on politics, 45
 judgment on merits, 43
 justiciability, 35, 36
 law and policy, 39
 legitimacy, and, 50
 litigation, and, 87
 manipulation, 46
 meaning, 31
 mechanisms, 42
 New Court, since 1980, 36–41
 Old Court, from establishment to
 1980, 32–36
 opposition, 46
 orthodox establishments, and, 47
 participation, 46
 political implications of hyper-, the
 2000s, 45–49
 process of rise, 32
 public trust, 49
 quantitative impact, 89
 reactions, 45
 religious principles, and, 47
 responding, 132
 rise of, 188, 189
 settlements, 131, 146, 151
 suitability, 35, 36
 timing, and, 43
 view, 8
- judicial appointments, 21, 22
 judicial decision-making
 social impact, 9
 judicial independence, 21–23
 judicial power, 189
 judicial review
 access doctrines, and, 128
 adversarial model, and, 134
 before 1980s, 130
 democracy, 135
 facilitating, 126

- government immunity, 128
- grounds for intervention, 38
- High Court of Justice
 - Department, 76
 - pressures, 201
 - process, not merely, 125
 - questions, 128
 - role of government lawyers, 147
 - widening scope, 125
- judiciary
 - change in style, 39
- justiciability
 - legal norm, 36
 - narrow concept, 35
 - procedural barriers, 125
 - wide concept, 37
- lawyering
 - dilemmas, 122
 - for the rule of law model, 126
 - implications of lawyering
 - model, 123
 - individual lawyers, 131
 - institutional causes, 146
 - model of, 8, 63, 85, 87, 119, 126, 133, 136, 137, 138, 139, 190
 - models of, 84, 123
 - private law model, 123
 - public interest model, 123, 125, 133, 134, 138
- lawyering for rule of law
 - causes, 145
 - decentralization, 136
 - democracy, 133
 - dilemmas, and, 119
 - evolvment, 188
 - High Court of Justice Department, and, 126
 - incoherence in formation of
 - policy, 136
 - institutional factors, 190
 - legality, 133
 - rise of, 138, 145, 187, 190
 - separation of powers, and, 137
 - sustainability, 190
 - zealous adversarial advocacy, 134–136
- legal doctrines
 - reform, 39
- legal profession
 - dilemmas, 4
 - population, 1
 - public sector, 2
- legal system, general elements of, 14–23
- legislative process, 54
- literature, 7
- litigation
 - adversarial model, and, 134
 - background to changes, 103
 - characteristics of sample, 90
 - codification, 89
 - comparing state litigation to local
 - municipalities, 103–114
 - composition of petitions, 93, 94
 - conclusion, 114
 - conditional orders, 101–103
 - content of settlement, 90
 - court decisions and out-of-court
 - settlements, 97–101
 - database, 89
 - dependent variables, 115–116
 - differences, 114
 - disposed, how, 89
 - enforcement of decisions, 189
 - excluding samples, 89
 - final court decision, 89
 - High Court of Justice Department, and, 104
 - hypothesis, 114
 - ideology, and, 104
 - impact of process, 88
 - independent variables, 116–117
 - institutional constraints, 149–151
 - institutional reform, 151
 - likelihood for settlements, 98
 - longitudinal analysis, 1990s vs. 1970s, 88–103
 - municipalities, *see* municipalities
 - nature of, 148
 - number of petitions, 92
 - number of settlements, 88
 - organised interest, 40
 - outcomes, 90–103
 - overall rate of success, 88

- litigation (*cont.*)
 - patterns of, 119
 - policy change, 147
 - prison reform case, 154–156
 - procedural structure, 101
 - questions, 115
 - rate of issuing conditional orders, 102
 - rate of settlements, 97
 - relative number of conditional orders, 88
 - rules of standing, 35, 37
 - self-representation, 94
 - shift in patterns, 87
 - shifting factors, 93
 - stages of procedure, 101
 - subject matter of petitions, 90
 - success in, 93–97
 - time, and, 168
 - transformative, 148–157
 - variables in the longitude analysis, 115–117
- methodology, 12–13
- Ministry of Justice, 52–54
 - functions, 52
 - legislation and litigation, 52
- municipalities
 - conditional orders, 105, 111–114
 - data, 105
 - dependent variables, 117
 - findings, 106
 - form, 104
 - hypotheses, 104
 - independent variables, 117
 - judicial decisions and settlements, 108–111
 - lower success, 111
 - methodology, 104
 - outcomes, 108
 - settling, 112
 - subject matter of petitions, 105
 - success in litigation, 106
 - success rate of petitions, 104
 - tendency to settle, 105
 - variables, 109
 - variables in study of local municipalities, 117
- Occupied Territories case study, 164–168
- Office of the Attorney General, 65–71
 - autonomy, 67
 - bureaucratic agency, 65
 - career of staff, 67
 - career structure, 74
 - characteristics, 67
 - conclusion, 85
 - departments, 65
 - description, 67
 - district branches, 66
 - elite, as, 68
 - functions, 65–66, 81
 - High Court of Justice Department, and, 75
 - history, 61
 - ideological factors, 67–71
 - influence, 80
 - law enforcement, 68
 - legal specialisations, 66
 - overview, 65–66
 - politics, and, 70
 - public attacks, 69
 - relationship with Bar, 70
 - rule of law, 68
 - social factors, 67–71
 - structure, 65–66
 - tensions, 81
 - vision for role, 81
- policy-making
 - analysis, 168–170
 - ancillary institutions, need for, 156
 - collaboration, 151
 - conclusion, 171
 - cooperation, 154
 - coordination problems, 150
 - courts and transformative litigation, 148–157
 - dilemmas, 137
 - formality, 149
 - governmental collaboration, need for, 153–156
 - High Court of Justice Department, 157–168
 - importance of settlements, 151–153

- institutional constraints of
 - litigation, 149–151
- judicial remedies, 150
- jurisprudence, 150
- piecemeal nature, 150
- policy-makers, as, 169
- prison reform litigation, 154–156
- public law model of adjudication,
 - and, 148
- rise of transformative litigation, 149
- rules of evidence, 150
- time, and, 169
- pre-petitions
 - aftermath during 2000s, 186
 - analysis, 178–184
 - changes, 186
 - conclusions, 187
 - database, 175
 - declining, 174
 - direct reference to lawyer, and, 173
 - evolvment during 1990s, 174
 - factual investigation, 174
 - immediacy, 180
 - increased trial caseload, and, 179
 - informality, 172, 175, 187
 - intention, 172
 - issuing, 172
 - justification, 178
 - legitimacy, 178
 - methods, 175
 - no legal case, 183
 - original reason for, 182
 - outcome, 176
 - overview, 172–174
 - practical aspects, 173–174
 - pre-trial warning, and, 173
 - procedural aspects, 173–174
 - research, 174–178
 - rise of organized litigation in High
 - Court of Justice, and, 184
 - role of High Court of Justice
 - Department, 173
 - serious violations of human
 - rights, 179
 - settlement, 174
 - threat of litigation, 172
 - urgent cases, 172
 - use by organized petitioners, 184
 - what are, 172–173
 - wider use, 182
- principle of rule of law, 33
- private law model, 57
- procedural defences, *see* access
 - doctrines
- professional ideology
 - analysis, 144
 - attitudes, 145
 - conditional orders, 142
 - high-stature and pragmatists in the
 - HCJD, 138–140
 - institutional conditions, 145
 - litigation outcomes, relationship
 - between, 138–145
 - marginality, 145
 - methodology, 140–142
 - outcomes, 142–145
 - personal preferences, 145
 - rate of settlement, 142
 - rates of success, 142
 - rhetoric, 144
- proportionality, 130
- public interest
 - client agency, and, 5
- public law litigation
 - literature, 2
- reasonableness, 37, 39, 126, 130,
 - 131, 137
- representation
 - hypothetical cases, 119–121
- representation
 - Attorney General, 63, 129
 - changes, 93
 - exercise of powers, 134
 - identifying the client or
 - identifying the commitment,
 - 121–124
 - lawyers' role, 145
 - model of, 134
 - municipalities, 142
 - NGOs, by, 7, 12, 30, 116, 150, 158,
 - 185, 186, 189
 - organized, 107
 - personal morals, 125
 - policy-making, and, 189
 - powers, 134

- representation (*cont.*)
 - pressure to achieve settlement, 131
 - professional ideology,
 - see* professional ideology
 - refusal, 129
 - religion, 48
 - requirements, 26
 - screening cases, 126
 - self, 117
 - serving the court, 132
 - strategy, 129
 - successful, 94
 - tactics during trial, 130
 - without, 58, 111
 - zealous adversarial advocacy, 134–136
- separation of powers, doctrine of, 5, 6, 133
 - public interest, and, 137
- settlements
 - attitudes, 145
 - conditional orders, 27, 88, 89, 93, 97, 101, 102, 103, 104, 105, 111, 112, 115, 116, 117, 140, 141, 142, 143, 144
 - content, 90
 - court decisions, and, 97–101
 - importance of, 152–153
 - judicial decisions, 108–111
 - policy-making, 147, 151–153
 - pre-petitions, *see* pre-petitions
 - pressure to achieve, 131
 - rate of, 88, 97, 145
 - reform by, 153
 - relative number, 147
 - representation, 131
- standing, doctrine of, 35, 125
 - litigation, and, 35
 - new, 128
 - overview, 35
 - petitioner, 37
 - raising the argument, 128, 132
 - reform, 37
- statutory interpretation
 - creative techniques, 33
- Supreme Court
 - functions, 19
 - High Court of Justice (HCJ), and, 19
 - judicial review cases, 21