

Relative Ripeness: As-Applied or Abstract Constitutional Judicial Review

Ronen Polliack

This article discusses the ripeness doctrine in Israeli constitutional law. This doctrine takes Israeli constitutional law closer to the American as-applied challenge pillar, and dramatically changes the Israeli abstract challenge track that has dominated Israeli constitutional law. The Israeli version of the ripeness doctrine establishes three main elements of constitutional judicial review: as-applied challenge, indirect challenge in the domestic courts, and a decentralized judiciary. The main implication of this triangle model is the demise of the Israeli Supreme Court as a Court of Constitutional Appeals. However, descriptively and normatively, the requirement of ripeness is not absolute and has, indeed, a relative character. In this view, the Supreme Court may deviate from the triangle model and recognize – in exceptional cases – a facial challenge when it is sitting as a High Court of Justice. The proposed relative ripeness paradigm may enrich the understanding of the first stage of constitutional scrutiny in Israel, which focuses on the proving of an infringement of a constitutional right. Furthermore, it may eventually lead to a more accurate delineation of boundaries between the Supreme Court's roles as a Court of Appeals and as a High Court of Justice.