

THE MUNICIPALITIES BILL:  
FROM EXTERNAL SUPERVISION TO INTERNAL CHECKS  
AND BALANCES

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The Municipalities Bill, recently submitted to the Knesset Internal Affairs and Environment Committee, proposes to free local governments from the supervisory intervention of the central government by creating local sets of checks and balances.

Currently, the law assigns most of the local powers to the local government head, or mayor, leaving the elected local council and the professional echelons almost devoid of authority. Furthermore, under the prevailing law, the Ministry of the Interior is the chief supervisor of those mayoral powers. Accumulated evidence, however, suggest that the ministry is both ineffective in preventing troubled local governments from collapsing, while imposing onerous and superfluous bureaucratic burdens on local governments that are capable of successful self-management.

Offering the local governments autonomy without depriving the ministry of its supervisory powers, the bill speaks of restructuring the former so as to distribute local powers among the local government echelons: the mayor, the council, and the professional level. It further proposes to redefine the functions, authorities, and limits of each local government tier so that mayors assume responsibility for political and executive powers; the elected councils assume legislative, budgetary, audit powers, and set the order of local priorities; and the professional staff is in charge of executing those policies. The bill additionally outlines working procedures within the local governments and between them and the Ministry of the Interior.

HUKIM 1, 2009

The authors served as heads of the reform committee that conceived, instructed, and suggested ways to implement the bill, drafted it, and outlined its philosophical foundations.

## THE MUNICIPALITIES BILL: PRESENT WITHOUT A PAST, REFORM WITH NO FUTURE

YISHAI BLANK & ISSACHAR ROSEN-ZVI

Placed on the Knesset agenda in 2007, the long awaited for Municipalities Bill is a disappointment for those who expected it to introduce a profound reform in Israel's local governance. Instead of taking the inherent complexity of local governments into account, the Bill reflects a conservative standpoint that perceives local governments as mere administrative entities that supply local services to residents in an inefficient, wasteful, and even corrupt manner. The reform proposed in the Bill wallows in the present, leaving both the past and the future completely unattended.

The Bill reflects no understanding of the reasons that created the deepest crisis in the local governments' history. It ignores the map of local government and the economic, social and political significance of that map. It overlooks the ad hoc, arbitrary, and discriminating scheme by which local governments are financed, and the serious hardship that scheme imposes on them. It takes for granted the internal political structure of local governments and chooses to strengthen the bureaucratic echelons at the expense of the democratic ones. The socio-economic disparity between Israel's center and periphery, Jews and Arabs, veterans and new immigrants, and the segregations of various social groups in Israel are not even mentioned in the Bill, which either ignores them or takes them as a presupposed objective fact. Important challenges facing local governments in Israel – such as the globalization, the environmental crisis, and the failings of representative democracy – are also absent from the Bill. To paraphrase the famous maxim: Since the Bill has no past and the reasons for the present state of affairs have not been analyzed, it has no future (and is incapable of breeding any meaningful reform).

HUKIM 1, 2009

Though we do not propose a comprehensive alternative to the Bill, we do point out to the directions that, in our opinion, the Bill should follow. Such directions include: changing the conceptual view of local governments, rectifying their distorted map and manner of financing, thoroughly revising their authorization mechanisms, radically changing their internal political structure and bolstering the democratic echelons, encouraging public participation in their decision-making processes, forcing them to provide affordable housing, and encouraging them to cooperate among themselves.

## THE MUNICIPALITIES BILL: A CODIFICATION OF A BARREN DOCTRINE

NAHUM BEN-ELIA

Seventy years after the legislation of the Municipal Corporations Ordinance (1933), a new Municipalities Bill is presently under final Knesset reading. A government-initiated bill, this proposed legislation is presented as a reformatory effort to promote local government autonomy, greater accountability, and transparency. This article presents a critical analysis of the Bill from a public policy perspective. Underlying its legal construction, the Bill expresses a consistent set of ideological and normative premises that guided the central government's municipal policy for the past two decades. In this context, the Bill can be seen as a path-dependent outcome of a neo-liberal doctrine that permeates central government policies and its concomitant efforts to redefine the rules of public governance.

At first glimpse, the proposed Act seems to echo a general trend in advanced democracies to upgrade the role and competences of local governments, a critical component of national policy initiatives to embrace new modes of governance and public management, and greater democratization. Despite its rhetoric, this is not a reformist effort that follows this general international trend. The Bill is not a legal extension of a positive local government policy. It consolidates a dominant atomistic view of local government, in which local autonomy is not a fundamental right but a granted administrative privilege based on budgetary discipline. Through economic reductionism, the local authority is conceived as a "business" entity, whose paramount and solely criterion of success is its ability to sustain a balanced budget. Legitimizing the gradual withdrawal of the state and its commitment to quality public services, the Bill is silent on the issue of local government funding and proper service standards. In this legal script, central government plays a *deus ex machina* role. Free of any positive responsibility towards local government and

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binding duties, its main role is the supervision of local authorities and punitive intervention in case of “failure.”

## COMMENTS ON LOCAL GOVERNMENTS' REHABILITATION IN THE PROPOSED BILL

OMER KIMHI

In recent years, local governments in Israel experienced a severe financial crisis. The paper discusses the legal remedies for a local crisis, with special emphasis on the solution proposed in the bill. The paper begins by generally categorizing the possible legal remedies: the first remedy – mandamus to raise taxes – forces the city to levy extra taxes and to pay its creditors in full; the second remedy – bankruptcy law – allows the city to undergo a debt readjustment process and to discharge some of its debts; and the third remedy – state intervention – allows the state to intervene in the internal affairs of the local government to help it recover. The paper claims that state intervention, the remedy prescribed in the bill, is the most efficient one for handling local fiscal crises, but also points at various problems in the way this remedy is implemented in it.

The problem with the remedy of state intervention is mainly political. The interests of state politicians do not always correspond with the interests of a locality in financial trouble, and state officials might neglect the state's supervision and allow a local crisis to develop. The paper suggests various ways to render the state's supervision more effective, and particularly proposes to establish a professional and independent authority that will monitor localities' financial stability. To demonstrate the advantages of the suggested model, the paper describes North Carolina's Local Government Commission that achieved remarkable results using this method.

FAMILY AND PROPERTY RELATIONS: CHALLENGES AND  
MISSIONS IN THE WAKE OF AMENDMENT 4 OF THE  
SPOUSES PROPERTY RELATIONS ACT

SHAHAR LIFSHITZ

The Spouses Property Relations Act (1973) determined the division of the couple's property during the course of a marriage. According to the Act, courts may operate an economic mechanism to express the economic partnership between the spouses only when the marriage of the spouses expires due to divorce or death.

The linkage between economic divorce and religious divorce, which makes it extremely difficult to obtain a unilateral divorce, provides an incentive to the stronger party (usually the husband) to oppose the divorce or, alternately, makes the divorce conditional on a property settlement favorable to him. As a result, the arrangement of spousal economic partnerships as determined in the Spouses Property Relations Act has become irrelevant and a dead letter. In view of this sorry state of affairs, the central and most important achievement of the recently introduced Amendment No. 4 to the Spouses Property Relations Act consists of offering a possibility to effect an economic divorce prior to the expiration of the marriage due to divorce or death. The legislator thereby severed the linkage between a religious divorce and the civil division of property, allowing the introduction of an "economic divorce" mechanism separately from the religious divorce.

The Amendment confirms the deep commitment of Israeli law to spousal partnership, and for the first time presents the Law as a central instrument for regulating economic relations between spouses in Israel. Written in the wake of the Amendment, this article seeks to examine and renew the basic concepts of spousal partnership in Israel, in view of which it analyzes four central issues that the Amendment introduced. In certain instances, the discussion of these issues will



produce recommendations and further legislative amendments. In other instances, it will introduce proper tools for interpreting the existing legislation.

The article comprises four parts:

The *first part* examines the main innovation of the Amendment; that is, the regulation of circumstances under which the Amendment enables an “economic divorce” even when the parties have not undergone a religious divorce. The *second part* deals with the scope of shared property as determined by the Spouses Property Relations Act, and mainly with the distinction between property types: joint-effort property and external property. The *third part* deals with the *equitable authority* accorded to the courts by the power of the Amendment to deviate from the equal division of the property, considering the spouses’ *different earning abilities* on the eve of their divorce. The *fourth part* examines the impact of *child-related considerations* on the regulation of monetary relations between parents.

## PRIVATIZING ISRAEL'S WATER-SUPPLY SERVICES: ON THE ROUTE OF TOTAL PRIVATIZATION

ELRAN SHAPIRA BAR-OR

In recent decades, we witnessed a global trend of transferring the water market, mainly the water supply segment, from public to private hands. This is meant to make the water market operate according to business standards and therefore, more efficiently. Water supply, however, is not a regular business enterprise, the same as water is not a commercial commodity. Water has unique qualities, and so does water supply. These qualities make the private sector unsuitable for handling them. While public water supply does have its flaws, privatized supply introduces new (but not less troubling) flaws.

The global privatization trend has not skipped over Israel. Quite the contrary: the *Water and Sewage Corporations Act* allows the inclusion of private bodies in the chain of water supply, and its third amendment obligates municipal authorities to transfer water supply to companies specifically established for that purpose.

The article examines the expected malfunctions of a private water market and their impact on the weaker strata. It argues that the weaker strata are particularly vulnerable to these malfunctions, and that the more the market is privatized, the more they will suffer. It also explains how the law's normative framework is unsuitable for dealing with the malfunctions described, and how this framework directly leads to unjust distributive outcomes. The conclusion drawn from this analysis is that by regulating water supply, the law sustains the current allocation of social resources and might even expand the gaps between social strata.