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Event Invitations 2020

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3-1-2020

### Israeli Supreme Court Project Conference on "Courts and Constitutions Under Stress"

Benjamin N. Cardozo School of Law

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#### Recommended Citation

Benjamin N. Cardozo School of Law, "Israeli Supreme Court Project Conference on "Courts and Constitutions Under Stress"" (2020). *Event Invitations 2020*. 21.

<https://larc.cardozo.yu.edu/event-invitations-2020/21>

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ISRAELI SUPREME COURT PROJECT  
CONFERENCE: COURTS AND CONSTITUTIONS UNDER STRESS  
CARDOZO SCHOOL OF LAW  
March 1–2, 2020

Recent events in Israel, the US, and many other democracies--such as the rise of populism, increases in political divisiveness, growing intolerance, as well as manipulation and distrust of courts and other key political institutions—have posed daunting challenges to the stability and seemingly increasingly the very viability of liberal constitutional rule which had become predominant worldwide since the 1990's. The causes giving rise to these recent challenges as well as the illiberal reactions to the latter that have sprung during the last decade are notoriously varied and complex. On the one hand, liberal constitutional democracies have been accused of favoring elites against the “people”; of preaching pluralism and multiculturalism and global values to the detriment of traditional religious, ethical and cultural mainstays of the polity's longstanding majority of the citizenry; and of favoring globalization and mass migration in ways that undermine and destabilize the political viability and social cohesion of nation-states. On the other hand, high courts that engage in constitutional adjudication have come under special attack for vastly broadening the “juridification” of the political arena in ways that seemingly benefit elites and special interests while frustrating large segments of the citizenry. In Israel, for example, recent attacks on the Supreme Court have intensified and proposals have been made to deprive the latter of jurisdiction in matters involving constitutional issues. At the same time, in the US, the refusal of the US Senate to act on President Obama's nomination of Merrick Garland to the Supreme Court in 2016, followed by the Senate majority's elimination of the filibuster rule to confirm two Trump Supreme Court nominees considered by many to be too far from the mainstream, has led several Democrats to call for “packing” the Court to swing its direction, thus exacerbating the perception of the Court as a purely political institution.

The purpose of the conference is to examine what accounts for, and what may be done to counter, the current conditions of stress that afflict both constitutions and courts, with primary emphasis on Israel and the US, but also with focus on other constitutional democracies currently experiencing similar kinds of stress. Drawing upon an international group of leading scholars, the conference will consist of the four following panels: 1) Constitutional Crises in Historical Perspective; 2) Are Courts Necessarily Political?; 3) Threats to Democracy from Within the Democratic Process; and 4) The Virtues and Vices of Activist Courts: The US Warren Court Compared to Israel's Barak Court.