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I. INTRODUCTION

On November 4, 1995, Israeli Prime Minister Yitzhak Rabin was assassinated after attending a pro-government rally in Tel Aviv.1 His death marked the first assassination of an Israeli political leader in Israel's short history. In addition to this tragedy, Israelis struggled to digest the fact that a Jew had killed the Jewish state's leader. Despite the national trauma, the immediate transfer of power proceeded smoothly. Foreign Minister Shimon Peres became Interim Prime Minister, and after the seven-day mourning period, President Ezer Weizman selected Peres to form a new government.2 The opposition Likud Party did not oppose Peres, and most of the smaller parties passively supported the President's decision.3 Likud leader Binyamin Netanyahu stated his party's position, proclaiming that "in a democracy, governments are re-
Thus, Peres quickly and easily formed the new government, making few personnel changes. The new government appeared virtually the same as its predecessor, except for Yitzhak Rabin’s conspicuous absence.⁵

In retrospect, Israel was fortunate after the assassination. Despite confusion and the absence of a contingency plan for handling the death of a Prime Minister,⁶ the government quickly assembled and appointed the acknowledged “number two” man in the government, Shimon Peres, as the official successor to slain Prime Minister Rabin. Peres’ status prevented political fighting within the Labor Party; thus, the party unanimously selected him as its candidate to form the next government.⁷ A unique combination of factors produced a straightforward succession: unprecedented international support, opposition acquiescence, internal party unity, and the availability of a natural successor. It is improbable that a similar combination of accommodating factors would accompany a future fatality in the Prime Minister’s office.

Israelis widely accepted Binyamin Netanyahu’s declaration of the Likud Party’s position because it expressed their instinctive reaction to the Prime Minister’s assassination; however, the declaration neither did nor does reflect the law. Under Israeli law, the government is deemed to resign upon the Prime Minister’s death and remains in office only in a caretaker capacity until a new government forms.⁸ Although murder should not change governments, under Israel’s consti-

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⁵ See infra note 41.
⁶ See Reuven Shapira et al., Rosh Hamemshalah, Yitzhak Rabin, Nirizach Biydai Mitnakash [The Prime Minister, Yitzhak Rabin, Is Slain by an Assassin], HA’ARETS, Nov. 5, 1995, at Al (reporting that there was no plan for such a contingency and that Minister of Religious Affairs Shimon Shetreet, who contacted the Government Secretary while Rabin was still in the operating room, was the first person to recommend assembling the government for a special meeting).
⁷ See Wulf, supra note 2, at 5.
tution, murder does change governments.

A vacancy in the premiership necessitates continuity and unity, but the Israeli political system does just the opposite: it promotes uncertainty and internal political fighting. When a Prime Minister dies in office, Israel can ill afford a power vacuum. It is unacceptable to improvise in a time of great national need. Succession should be automatic and immediate. The successor should assume the position of the deceased Prime Minister and complete his term in office. The time for mourning is not the time for politicking.

This Article describes Israel's constitutional response to the Prime Minister's death. Parts II and III explain the operation of the Israeli legal system after Prime Minister Rabin's assassination and the impact of the new system of direct election of the Prime Minister. Part IV compares and contrasts the approaches of Great Britain, Canada, Australia, and the United States to the death of a head of government. Part V then discusses succession in more general terms against the background of both the old and new Israeli systems and other democracies' systems. Finally, Part VI proposes reforms for the Israeli system that may help to maintain fidelity to the notion that "governments are replaced through elections, not by murder."

II. THE OLD BASIC LAW: THE GOVERNMENT (1968)

When Prime Minister Rabin was pronounced dead at 11:15 p.m. on November 4, 1995, the government unofficially resigned. Under the Basic Law: The Government (1968) (1968 Basic Law), the death of the Prime Minister effects the resignation of the government. Consequently, the government was effectively frozen in its current composition. No ministers could resign, and none could be added to the government.

The 1968 Basic Law made no provision for automatic succession upon the Prime Minister's death. Although the law provided for both a Vice Premier and up to two Deputy Prime Ministers, neither of these positions had a constitutional role in the event of the Prime Minister's death. The President also had no role in the event of the Prime

12. See id. § 34, at 263.
Minister's death. Thus, no one was automatically in charge of the government upon Rabin's death. The government did not have a leader until it appointed an Interim Prime Minister.

The Vice Premier is a patronage appointment rather than a functionally significant office. The position was created during the negotiations preceding the First National Unity Government of 1984. The National Unity Agreement called for rotating premierships between the leaders of the Labor Party and the Likud Party. The parties created the vice premiership for the party leader who was not occupying the premiership, in order to provide a position of honor and to enhance the status of the party leader in the National Unity Government. Nevertheless, the Vice Premier does not automatically succeed the Prime Minister upon the Prime Minister's death. The 1968 Basic Law provides that the Vice Premier shall act in place of the Prime Minister if the Prime Minister is "temporarily unable to carry out his functions." Although it would make political and logistical sense for the Vice Premier to succeed the Prime Minister, section 25(b) of the Basic Law would still require the government's consent to do so.

The office of Deputy Prime Minister is even more vague because its functions are not defined. The 1968 Basic Law simply states that the Prime Minister may appoint one or two ministers as Deputy Prime Ministers. Deputy Prime Minister is merely an additional title of status bestowed upon a minister as a sign of political power.

13. See RUBINSTEIN, supra note 10, at 527.
14. See id.
15. See id. at 528 (discussing the creation of the office for "political needs").
16. Compare Basic Law: The Government, § 19, 1968, 22 L.S.I. 257, 260, with id. § 25(b), at 261, which explicitly provides for the replacement of the Prime Minister upon the Prime Minister's death.
17. Furthermore, in the context of the National Unity Government, which is based on a power-sharing agreement between the Labor Party and the Likud Party, it is inconceivable that either party would have permitted the other party's leader to succeed its leader. Until the Labour Party chose a new leader to replace the deceased Prime Minister, only a temporary succession would have been tolerated.
19. In the negotiations preceding the establishment of Shimon Peres' government, the appointments of Moshe Shahal and Haim Ramon as Deputy Prime Ministers were discussed. In such an event, however, the Meretz Party also would have demanded a Deputy Prime Minister under the terms of the coalition agreement. See Yareach Tal, Composition of the Coalition Will Not Change: Efforts to Complete External Support Agreements with the Ultra-Orthodox Parties, HA'ARETS, Nov. 19, 1995, at All (source in Hebrew). The political necessity of appointing three Deputy Prime Ministers would have required an amendment to the 1968 Basic
popular misconception about the Deputy Prime Minister’s role is that a nexus exists between the appellation and its function. No such link exists; the Deputy Premier has no legally functional role in the event of the Prime Minister’s death.

Moreover, the President has no role in the event of the Prime Minister’s death. The President is the head of state. His role is largely ceremonial, and he only has two powers that permit the exercise of discretion: appointing a Member of the Knesset (MK) to form a new government and pardoning offenders.

The President is a creature of statute and his powers are defined by law. Like everyone else in this country, he enjoys no rights or privileges that are not accorded to him by the laws of the State and every official act of his that exceeds the limits of the law is null and void.

Israeli constitutional law does provide, however, for an Interim Prime Minister. This position is filled only in the event of the Prime Minister’s death, a situation that has occurred only once before in Israel’s history. The government as a whole appoints an Interim Prime Minister. Additionally, the appointments would have exposed the deputy premiership’s stark political nature and utter functional uselessness.

20. See Wulf, supra note 2, at 5.
22. See id. § 11(a)(2), at 112.
23. See id. § 11(b), at 112; see also RUBINSTEIN, supra note 10, at 654.
25. The Hebrew term for Interim Prime Minister is rosh ha'memshalah be'poal, which appears only in section 25(b) of the 1968 Basic Law. See Basic Law: The Government, § 25(b), 1968, 22 L.S.I. 257, 261 (1967-1968). This term must be distinguished from the Hebrew term for the person who acts in place of an absent Prime Minister, memaleh makom. Officially, this term is translated as “Acting Prime Minister.” See id. § 19, at 260. Elsewhere it is referred to as the “locum tenens of the Prime Minister.” See Peter Elman, Legislation: Basic Law: The Government (1968), 4 ISR. L. REV. 242, 256 (1969). Unfortunately, in popular usage, the term “Acting Prime Minister” is used for both rosh ha'memshalah be'poal and memaleh makom. The English-language press referred to Shimon Peres as “Acting Prime Minister.” See, e.g., Raine Marcus et al., Rabin Assassinated: Pronounced Dead at 11:15 p.m After Being Shot, JERUSALEM POST, Nov. 5, 1995, at 1; Serge Schmemann, Assassination in Israel: The Overview; Rabin Slain After Peace Rally in Tel Aviv, Israeli Gunman Held, Says He Acted Alone, N.Y. TIMES, Nov. 5, 1995, at Al. To avoid any confusion, this Article uses the official translation of rosh ha'memshalah be'poal, “Interim Prime Minister,” which better captures the function of the position and distinguishes it from memaleh makom, a person who acts for the Prime Minister in his temporary absence from the country.
26. When Prime Minister Levi Eshkol died in office in February 1969, the government appointed Deputy Prime Minister Yigal Allon as Interim Prime Minister until Golda Meir established a new government. See Yalkut HaPirsumun [Official Government Notices] [Y.H.]
Prime Minister.\textsuperscript{27} Thus, pursuant to Israeli constitutional law, the government met shortly after the official announcement of Rabin’s death. Further, in the early hours of November 5, 1995, the government officially appointed Peres as Interim-Prime Minister and Interim Defense Minister.\textsuperscript{28}

For two decades, Yitzhak Rabin and Shimon Peres were the two leading figures in the Labor Party. They were intense rivals and the main patrons in the Labor Party, dividing the party into factions and forcing ministers and MKs into “the Rabin camp” or “the Peres camp” of the party. Thus, when Yitzhak Rabin died, Shimon Peres was Rabin’s natural successor; no other member of the Labor Party equaled Peres in status. Not surprisingly, no public debate ensued regarding the lack of Interim Prime Minister candidates other than Peres, and the Labor Party immediately designated Peres to lead the party in forming the new government.\textsuperscript{29}

Shimon Peres also met the formal qualifications for the position of Interim Prime Minister. In particular, the law requires that the Interim Prime Minister be chosen from among the ministers who are members of the Knesset.\textsuperscript{30}

As Interim Prime Minister, Peres had the duty to head a caretaker

\textsuperscript{28} See Y.H. No. 4344 (Nov. 5, 1995): Marcus et al., supra note 25; Aluf Ben & Lili Galili, \textit{Shimon Peres Munach L’Rosh Hamemshalah B’Pual [Shimon Peres Appointed Interim Prime Minister]}, HA’ARETS, Nov. 5, 1995, at A2. In the period between Prime Minister Rabin’s shooting and the government’s designation of Shimon Peres as the Interim Prime Minister, there was no Acting Prime Minister. For this short time, the country was essentially without a Prime Minister.\textsuperscript{29} See Wulf, supra note 2, at 5.
\textsuperscript{30} See Basic Law: The Government, § 25(b), 1968, 22 L.S.I. 257, 261. Under the Israeli system, only the Prime Minister must be a member of the Knesset. See id. § 5(b), at 257. In practice, however, the vast majority of ministers are Knesset members. Following Rabin’s death, this requirement for the Interim Prime Minister would have barred only two ministers from consideration for the position: Interior Minister Ehud Barak and Minister of Agriculture Ya’akov Tsur. Compare List of Ministers in Peres’ Government, \textit{in Y.H. No. 4366}, at 1052 (Dec. 28, 1995), \textit{with Names of People Elected as Members of the Thirteenth Knesset, in Y.H. No. 4021}, at 3776 (July 1, 1992).
government until a new government was formed. Unlike the position of Interim Prime Minister, the Israeli political system is familiar with the concept of a caretaker government. A caretaker government arises in several different situations: when a new Knesset has been elected and a new government has not yet taken office; when the government resigns; when the Prime Minister resigns; when the Knesset votes its non-confidence in the government; and when the Prime Minister dies in office. The 1968 Basic Law states that a caretaker government "shall continue to carry out its functions." There has been much discussion about the extent of the caretaker government’s power and the basis for its legitimacy. The frequency and duration of caretaker governments have prompted these concerns. In fact, caretaker governments have served Israel for ten percent of its history. Peres’ caretaker government, however, survived for only eighteen days.

Under the 1968 Basic Law, the President must consult with the parties’ representatives in the Knesset and assign the task of forming the new government to one of the MKs. After the seven-day mourning period following Rabin’s death, President Weizman began consultations with all parties regarding the appointment of a party leader in an attempt to form the new government. The consultations were largely a formality because it was generally acknowledged that

31. The Hebrew term for the government that “carries out its functions” until a new government takes office has numerous appellations. Literally translated, the term memshelet ma‘avar means “transitional government.” See THE COMPLETE HEBREW-ENGLISH DICTIONARY 1366 (1990). It is also commonly referred to as a “caretaker government.” See Claude Klein, The Powers of the Caretaker Government: Are They Really Unlimited?, 12 ISR. L. REV. 271, 272-73 (1977); see also Liat Collins, Likud and NRP Will Support Labor Caretaker, JERUSALEM POST, Nov. 6, 1995, at 2. This Article uses the term “caretaker government,” which seems to have a more restrictive connotation, than the present usage of “transitional government,” which has come to refer to long-term governments that are making the transition to democracy, such as the current government in South Africa.


34. See infra pp. 77-78; Klein, supra note 31.


38. See Wulf, supra note 2, at 5.
Shimon Peres would be given the task of forming the new government. During the President’s consultations with the parties over the course of two days, most of the parties recommended that the President designate Peres to form the new government. Accordingly, on November 15, 1995, President Weizman appointed Peres to attempt that task.

Peres accepted the President’s appointment and established a new government that strongly resembled its predecessor. The Knesset announced its confidence in the new government on November 22, 1995, well within the twenty-one day period accorded by law for the establishment of a new government. Thus, on November 22, eighteen days after Rabin’s assassination, the succession became complete, and Interim Prime Minister Peres became Prime Minister Peres.


39. See id.
41. All ministers from the Rabin government remained in their previous posts, except for the following changes: Ehud Barak moved from the Ministry of the Interior to the Ministry of Foreign Affairs; Haim Ramon rejoined the government as Minister of the Interior; Yossi Beilin became a minister in the Prime Minister’s Office; and Rabbi Yehuda Amir joined a Minister without Portfolio. Compare List of Ministers in Peres’ Government, in Y.H. No. 4366, at 1052 (Dec. 28, 1995), with List of Ministers in Rabin’s Government (on file with author) (source in Hebrew). Although he was not listed as a minister, Director General of the Foreign Ministry Uri Savir was assigned the additional role of Special Peace Envoy. Compare List of Ministers in Peres’ Government, in Y.H. No. 4366, at 1052 (Dec. 28, 1995), with List of Ministers in Rabin’s Government (on file with author) (source in Hebrew). Finally, Peres assumed Rabin’s vacant portfolios: the defense ministry and the premiership. Compare List of Ministers in Peres’ Government, in Y.H. No. 4366, at 1052 (Dec. 28, 1995), with List of Ministers in Rabin’s Government (on file with author) (source in Hebrew).
44. The impetus for the reforms may be traced to hatargil hamasriach, literally the “stinky trick” of 1990, which exposed the worst evils of the Israeli electoral and political system. See GIDEON ALLON, DIRECT ELECTION 62-86 (1995) (source in Hebrew). In the subse-
of the Prime Minister concurrent with general elections for the Knesset. Proponents of the 1992 Basic Law hope that concurrent elections will produce similar results for the premiership and the Knesset. The reformers intended to produce a stronger Prime Minister at the center of a more stable government. To this end, a no-confidence vote requires an absolute majority of Knesset members, or sixty one MKs, and means the dissolution of the Knesset and the fall of the current government.

Under the 1968 Basic Law, no-confidence motions brought down the government but did not automatically dissolve the Knesset, though they sometimes led to dissolution. Under the 1992 Basic Law, the resignation, removal, permanent incapacitation, or death of the Prime Minister leads to the resignation of the government as a whole. To replace the government, the 1992 Basic Law provides for "special elections" of the Prime Minister within sixty days. Thus, the 1992 Basic Law eliminates any role for the President in the selection of the Prime Minister. It also deletes the positions of Vice Premier and Deputy Prime Minister, though the continued existence of these positions is likely.

If the 1992 Basic Law had been operative when Prime Minister Rabin was assassinated, Rabin's death would have triggered "special elections" of the Prime Minister. Until the newly-elected Prime

quint Knesset, MKs from four different parties submitted bills to reform the electoral system. In a rare display of multi-partisan cooperation, the MKs worked together to produce a reformed political structure that is outlined in the 1992 Basic Law. For a history of the push for direct election of the Prime Minister, see id.


50. See id. § 28, translated in Israel Supplement, Constitutions of the Countries of the World 9, 20 (Albert P. Blaustein & Gisbert H. Flanz eds., Susan Hattis Rolef trans., Release 94-7, 1994). The 1992 Basic Law requires that this special election be held on the last Tuesday before the end of 60 days after the precipitating event. See id. § 10(a), translated in
Minister took office, the government would have appointed an Interim Prime Minister to head a caretaker government, a procedure that also existed under the 1968 Basic Law. In addition, under the 1992 Basic Law, if less than one year had remained before the next scheduled Knesset elections, these elections would have been advanced, and the "special election" of the Prime Minister would have become a general election for both the Prime Minister and the Knesset. Therefore, if the 1992 Basic Law had applied at the time of Rabin's assassination, election day would have been January 2, 1996, and Israelis would have gone to the polls to elect both a new Prime Minister and a new Knesset.

IV. THE EXPERIENCE OF OTHER DEMOCRACIES

Because Israel's government is patterned after the Westminster parliamentary system, it is pertinent to examine the workings of the British system. As Israel struggles to reform its adaptation of the parliamentary system, it is also useful to discuss the Canadian and Australian government systems, which are variations of the British parliamentary system. An examination of the U.S. presidential system is also relevant as Israeli reformers look to it as an alternate model.

Different categories or types of succession may be identified in both the parliamentary and presidential systems. First, succession may


53. For a comparison of the British and Israeli governmental systems, see CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, supra note 8; STANLEY DE SMITH & RODNEY BRAZIER, CONSTITUTIONAL AND ADMINISTRATIVE LAW 175 (7th ed. 1994). See also RODNEY BRAZIER, CONSTITUTIONAL PRACTICE 6-24 (2d ed. 1994).

54. See generally Susser, supra note 45.
be either automatic or delayed. Automatic succession is predetermined, by operation of law, before the leader's death. Delayed succession requires a decision-making procedure prior to the successor's emergence or appointment. Second, succession may be either temporary or permanent. A temporary successor is a limited successor who assumes a caretaker role until the ascension of the permanent successor. A permanent successor assumes the position of the deceased leader and completes the existing mandate.

In utilizing a comparative analysis, this Article examines several issues. First, this Article looks at the status of a government after the death of its head of government. Second, this Article analyzes a country's procedure for succession of its head of government. If a country's constitution provides for automatic succession, this Article discusses the nature of this procedure, in particular, whether the succession is temporary or permanent. If a country's constitution does not provide for automatic succession, however, this Article analyzes the procedure for selecting a new head of government. It examines the constitutional powers and role of the head of state. In examining a country's procedure for succession, this Article also looks at the status and function of a deputy who is appointed to lead the government.

A. Great Britain

No British Prime Minister has died in office in this century. Nevertheless, this contingency is a source of speculation, uncertainty, and disagreement among British constitutional experts. At the center of this uncertainty is the role of the sovereign.

In Great Britain, the Queen is the head of state. It is her constitutional duty to appoint the Prime Minister. Over time, however, the process of democratization has whittled away most of the Queen's discretion. Ordinarily, her choice is restricted to the leader of the party

55. A.V. Dicey described English constitutional law as "appearing to include all rules which directly or indirectly affect the distribution or the exercise of the Sovereign power in the State." A.V. Dicey, Law of the Constitution 23 (9th ed. 1956). As succession goes to the heart of "the exercise of the Sovereign power in the State," this definition of constitutional law provides a helpful framework for our analysis.


57. See id. at 74-75. In other parliamentary democracies, either a Governor General, such as in Australia and Canada, or a President, such as in Israel's old system, plays this role. See id. at 75.
that commands a majority in the House of Commons. When a Prime Minister intends to resign, the departing leader usually remains in office until the party chooses a successor. Once the choice is made, the Prime Minister officially resigns, and the Queen appoints the new leader as Prime Minister. Thus, in the British parliamentary system, a vacancy in the premiership through death, resignation, or removal does not alter the government's status. As long as the government continues to command a majority in the legislature, it remains in power.

The Queen's royal prerogative to designate the Prime Minister prohibits automatic succession. The sovereign always acts as an intermediary between Prime Ministers. Although this prerogative prohibits automatic succession de jure, de facto succession nonetheless may exist. For example, the Prime Minister may resign upon the selection of a replacement in the party or after a general election. In this situation, the sovereign exercises no discretion in choosing the new Prime Minister because the replacement is automatic.

Additionally, executive power does not devolve to the Queen upon the Prime Minister's death; the sovereign's power is restricted. Over a century ago, Sir Walter Bagehot stated that the Queen has no executive or sovereign power. By appointing the Prime Minister, the sovereign ensures that there is an executive, but does not exercise executive power under the British constitution.

The office of Deputy Prime Minister is a relatively new part of the British constitution. Unlike Israeli practice, the deputy premiership in Britain has been used to set out the Prime Minister's preferred line of succession to the premiership. There are at least three different reasons for having a Deputy Prime Minister: to mark a successor, to promote efficient discharge of government business, and to recog-

58. See id.
60. See id. at 86.
61. See DE SMITH & BRAZIER, supra note 53, at 175; see also BRAZIER, supra note 53, at 6-24.
62. See BRAZIER, supra note 53, at 72-73.
64. See id. at 99; see also DICEY, supra note 55, at 462 (quoting Thiers's maxim that "the King reigns but does not govern").
65. Given the parties' formal procedures for electing a leader, however, this reason is now considered illegitimate. See BRAZIER, supra note 53, at 74.
nize the status of the party’s deputy leader. Administrative concerns raised by the second reason are most pressing in the event of the Prime Minister’s death. In that situation, the Deputy Prime Minister may ensure government continuity by taking temporary but immediate charge of affairs. The current Prime Minister, John Major, has stated, however, that there are no standing arrangements for such a contingency.

Although a Deputy Prime Minister may play an important role in ensuring continuity in the event of the Prime Minister’s death, there is no certainty that the Deputy Prime Minister will emerge as the permanent successor. History demonstrates that most attempts to use the deputy premiership to secure succession have been unsuccessful. Of all the Deputy Prime Ministers since 1940, only one has become Prime Minister. Moreover, a trend against the Deputy Prime Minister developed under the reign of former Prime Minister Margaret Thatcher and continued under current Prime Minister Major. Major’s decision to appoint a Deputy Prime Minister in 1995 broke this trend.

The potential “successor” role of the Deputy Prime Minister has also generated much controversy about the office itself. In fact, some people perceive the designation of a Deputy Prime Minister as an infringement on the royal prerogative to choose the Prime Minister, and thus, view the office as unconstitutional. Prior to 1965, the designation of a Deputy Prime Minister might have been viewed as an attempt to establish beyond a doubt the eventual succession to the premiership. Because of the governing party’s power to choose a successor and to indicate this choice to the sovereign, however, the office of Deputy Prime Minister may no longer be viewed as unconstitutional.

67. See id. at 179.
68. See Brazier, supra note 53, at 76 (citing 221 H.C. Deb. 709-10 (written answer Mar. 1993)).
69. See Brazier, supra note 66, at 178. Only Anthony Eden succeeded to the premiership from the deputy premiership. See id.
70. See id. at 181 (discussing Margaret Thatcher’s decision not to appoint a Deputy Prime Minister); Brazier, supra note 53, at 76 (discussing John Major’s similar decision). In the cabinet shuffle of 1995, however, Major appointed Michael Hesseltine as the first Secretary of State and the Deputy Prime Minister. See Cabinet List (on file with author).
71. See Brazier, supra note 53, at 74.
72. See Brazier, supra note 66, at 176.
73. See id. at 178.
Because no British Prime Minister has died in this century, the specific mechanics of the procedure for replacing a deceased Prime Minister are a source of speculation. Some commentators believe that the sovereign retains discretion in the event of the Prime Minister’s death. Others assert that the sovereign has no discretion even to select a caretaker Prime Minister while the party chooses a new leader.

Although Great Britain presently has no contingency plans for dealing with a Prime Minister’s death, such plans have existed. For example, during Prime Minister Harold Wilson’s illness in the 1960s, the Labour Party planned for succession. Labour Ministers of Parliament (MPs) would have convened within forty-eight hours of Wilson’s death to elect a new leader, and the Queen, who apparently had approved the plan, would have appointed the new Prime Minister.

Other contingency plans are also possible: the Queen may select a caretaker Prime Minister while the party selects a new leader; the government may designate an Interim Prime Minister, similar to the practice in Israel; or the Deputy Prime Minister or a senior minister may automatically assume a caretaker role until the party selects a new leader.

In conclusion, uncertainty continues to plague the British practice of succession due to the uncertain scope of the Queen’s discretion, the ambiguous role of the Deputy Prime Minister, and the lack of a definitive contingency plan.

74. The government has not even planned for the contingency of the Prime Minister’s death in office. See supra note 68 and accompanying text.

75. See IVOR JENNINGS, THE QUEEN’S GOVERNMENT 42 (1964). This belief certainly appeared to be true before the Conservative Party elected their leader. See IVOR JENNINGS, THE BRITISH CONSTITUTION 114 (5th ed. 1966); see also SYDNEY D. BAILEY, BRITISH PARLIAMENTARY DEMOCRACY 17 (3d ed. 1971). Currently, both the Conservative Party and the Labour Party elect their leaders.

76. See ANTHONY H. BIRCH, THE BRITISH SYSTEM OF GOVERNMENT 69 (rev. ed. 1973) (stating that the monarch must wait until the governing party elects a new leader and then invite the new leader to become the Prime Minister); BRAZIER, supra note 53, at 12 (stating that the Deputy Prime Minister or a senior minister leads the government while the party selects a new leader, who is then appointed Prime Minister).

77. See supra note 68 and accompanying text.

78. See BRAZIER, supra note 53, at 12-13 n.23 (citing TONY BENN, OUT OF THE WILDERNESS: DIARIES 1963-1967, at 263 (1987)).

79. See id.

80. See id. at 12. Brazier places interesting restrictions on the actions of the caretaker government. He states that the caretaker leader is not appointed Prime Minister, but rather merely oversees the government, deciding only urgent matters and only with the Cabinet’s consent. See id.
B. Canada

Canadian constitutional practice in the area of succession reflects its British origin. Although the Queen of England is Canada’s official constitutional head, the Governor General, who is the Queen’s representative in Canada, is effectively the formal head of state.\textsuperscript{81} As in Great Britain, when a Canadian Prime Minister dies, there is no change of government, only a leadership vacuum.\textsuperscript{82} Upon the Prime Minister’s death, the Governor General selects a new Prime Minister, but numerous conventions restrict the Governor General’s choice.\textsuperscript{83} Normally, the Governor General chooses the leader of the party that commands a majority in the House of Commons.\textsuperscript{84} When the Prime Minister dies, there is a majority but no leader. All the parties, however, have procedures to quickly choose an acting leader.\textsuperscript{85} The acting leader is either confirmed or replaced at a convention. Under the Canadian procedure, months may pass before a successor becomes Prime Minister.

Similar to their British counterparts, Canadian commentators are divided on whether the Governor General maintains personal discretion to appoint a caretaker Prime Minister upon the Prime Minister’s death.\textsuperscript{86} The Governor General has had to appoint a new Prime Minister only once in Canada’s history: upon the death of Prime Minister


\textsuperscript{82} See id. at 9-22 ("The country does not lack a government, but merely a Prime Minister.").


\textsuperscript{84} See Mallory, supra note 83, at 78.

\textsuperscript{85} See Liberal Party of Can. Const. art. 17(3) (amended 1994); New Const. of the Progressive Conservative Party of Can. art. 11.5; Const. of the Reform Party of Can. art. 6(e) (amended 1994); Const. of the New Democratic Party art. 7, § 6 (amended 1995).

\textsuperscript{86} See Andrew Heard, Canadian Constitutional Conventions 21, 25 (1991).

J.R. Mallory, an expert on Canadian government, has stated that, in the event of the Prime Minister’s death, the next senior minister automatically becomes the Prime Minister and leads a caretaker government until the party chooses a replacement leader, who becomes the permanent Prime Minister. See Mallory, supra note 83, at 51. Mallory strongly criticizes this process because it delays the selection of a new leader for several months. See id. Mallory emphasizes that continuity of government is essential and that there is little time for any process to find a party leader. See id. at 78. Thus, Mallory favors a system where the Governor General selects a member of Parliament to form a new government, calling it a “necessary and useful device for ensuring the succession to government.” See id. at 51. Canada’s history evidences the problem with this system: when Prime Minister John A. MacDonald died in 1891, the Governor General negotiated for ten days before he could find a successor. See id. at 78-79.
Canadian constitutional practice includes the appointment of an Acting Prime Minister; which is similar to the Israeli Vice Premier or locum tenens. The Acting Prime Minister fills in during the Prime Minister’s absence and may only act in accordance with the circumstances mentioned in the appointment. Although some experts assert that the death or resignation of the Prime Minister terminates the appointment of the Acting Prime Minister, the Privy Council Office has other interpretations. The Privy Council Office, which oversees the government machinery and ensures government continuity, has a contingency plan that automatically replaces the Prime Minister with the Acting Prime Minister when the Prime Minister can no longer serve in office. The Acting Prime Minister assumes a caretaker role until the Governor General appoints the new Prime Minister.

The office of Deputy Prime Minister is a recent development in Canadian government. Some consider the individual holding this position as the second-in-command of the government; however, this notion is uncertain. On the one hand, Canadian parties do not choose
deputy leaders.® Therefore, unlike Great Britain, the Deputy Prime Minister in Canada is not the deputy leader of the party. On the other hand, the Deputy Prime Minister is not necessarily the second person in order of precedence on the cabinet list.® Thus, the position does not necessarily reflect a “number two” status in the party or in the government. Ironically, one of the responsibilities of the Deputy Prime Minister is to act in the Prime Minister’s absence.

C. Australia

Unlike Canada and Britain, Australia has a contingency plan for succession following the Prime Minister’s death, which has arisen several times in this century. In Australia, the Deputy Prime Minister becomes the Prime Minister in a caretaker role upon the Prime Minister’s death while the party selects a new leader.® When the new leader is chosen, the caretaker Prime Minister resigns, and the Governor General appoints the new leader as the Prime Minister.

Although this non-statutory process has been implemented three times in this century, it is unclear whether a “convention” or even a reliable precedent has been established. A Labour Party majority government and a coalition government would follow different procedures for succession. In a Labour government, the elected deputy leader is the Deputy Prime Minister and becomes the Interim Prime Minister upon the Prime Minister’s death. The Interim Prime Minister must resign if the party caucus does not elect the Interim Prime Minister as the new leader, and the Governor General appoints the new leader as the Prime Minister. This situation occurred when Prime Minister John Curtin died in 1945 and Deputy Premier Francis

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95. See Letter from Nicole Jauvin, supra note 92, at 2.
96. In the first cabinet of Prime Minister Jean Chretien from 1993 to January 1996, Deputy Prime Minister Sheila Copps, who was also the Minister of the Environment, was twelfth in order of precedence in the cabinet list. See Derek Ferguson, Top Liberals Leaving Cabinet in Big Shuttle-Copps Winner as 3 Liberals Leaving Cabinet, TORONTO STAR, Jan. 14, 1996, at 4. In the cabinet shuffle of January 1996, Copps retained the deputy premiership and was tenth in order of precedence on the cabinet list. See id.; Douglas Fisher, Press Gallery Plays the Ratings Game, TORONTO SUN, July 9, 1995, at C3.
97. See Letter from Nicole Jauvin, supra note 92, at 2 (stating that the Deputy Prime Minister is first on the list of ministers to act for the Prime Minister in his absence).
100. See WINTERTON, supra note 98, at 38.
101. See id. at 37-38.
102. See id. at 38.
Forde was appointed Interim Prime Minister. When the Labour Party caucus elected Joseph Chifley as their new leader, Forde resigned, and Chifley became Prime Minister.103

By contrast, in a coalition government, the leader of the junior partner in the coalition is the Deputy Prime Minister.104 On both occasions where the Prime Minister of a coalition government died in office—J.A. Lyons in 1939 and Harold Holt in 1967—the Deputy Prime Minister became the Interim Prime Minister, pending election of a new leader of the senior coalition partner.105 Critics argue, however, that the deputy leader of the senior coalition partner should be made Interim Prime Minister because he is the true heir apparent to the deceased Prime Minister.106

D. United States

The United States provides a rich source of comparison in the institutional structure, theory, and experience of presidential succession. The original U.S. Constitution, as well as subsequent amendments, squarely address the issue of succession. In total, eight U.S. Presidents have died in office, four of whom have died in this century.107 The U.S. succession procedure presents a sharp contrast to the parliamentary succession procedure. Under the U.S. presidential system, the executive is separate from the legislature and does not owe its position or continuation to the legislature’s confidence. Rather, the executive’s legitimacy derives from the electorate’s direct election of the President. The status of the government does not change upon the President’s death.

The U.S. Constitution provides for automatic succession upon the President’s death. The Vice President succeeds the President auto-

103. See id.
104. See id.
105. See id.
106. See id. at 40.
107. In the nineteenth century, the following Presidents died in office: William H. Harrison (1841), Zachary Taylor (1850), Abraham Lincoln (1865), and James A. Garfield (1881). See, e.g., Joseph Nathan Kane, Facts About the Presidents (1959). In the twentieth century, the following Presidents died in office: William McKinley (1901), Warren G. Harding (1923), Franklin D. Roosevelt (1945), and John F. Kennedy (1963). See, e.g., id.; 2 Encyclopedia of the American Presidency 647 (Leonard W. Levy & Louis Fisher eds., 1994). Of these eight Presidents, four were assassinated: Lincoln, Garfield, McKinley, and Kennedy. See id. at 645-47. In addition, one President resigned: Nixon (1974). See id. at 1087.
matically and immediately upon the death, resignation, or removal of the President. Indeed, the Vice President's primary function appears to be waiting for a presidential vacancy. The only other constitutional function of the Vice President is serving as the President of the Senate, which is a largely ceremonial post.

In the United States, government stability and continuity underlie the issue of presidential succession. These concerns were reflected in the development of the office of the Vice President, which calls for automatic succession. Later amendments and experience also dealt with these concerns. The Twentieth Amendment provides for the succession of the Vice President-elect if the President-elect dies before inauguration. Furthermore, the Twenty-Fifth Amendment explicitly provides for the automatic succession of the Vice President upon the President's death, removal, or resignation, thereby officially ruling out the possibility of a special presidential election. If the vice presidency is also vacant, the U.S. system provides for a hierarchical list of officers to succeed to the presidency.

108. See U.S. Const. art. II, § 1, amended by U.S. Const. amend. XXV, § 1.
109. See U.S. Const. art. I, § 3, cl. 4 (stating that, as the President of the Senate, the Vice President does not vote unless there is a tie).
110. See U.S. Const. art. II, § 1, amended by U.S. Const. amend. XXV, § 1.
111. See U.S. Const. amend. XX, § 3.
112. See U.S. Const. amend. XXV, § 1.
113. See ALLAN P. SINDLER, UNCHOSEN PRESIDENTS 17 (1976) (explaining that Article II of the Constitution originally required that the President "be elected," thus creating the possibility that a special presidential election might be required in the event of a vacancy).
114. See 3 U.S.C. § 19 (1994), which provides:
   (a) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as president.
   
   (b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.
   
   (d) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is the highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human
Democratic legitimacy is not an overriding concern in U.S. presidential succession. As the designated successor of the President, the Vice President is elected with the President on the same ticket. Thus, the potential presidential successor seemingly has the electorate's stamp of approval. The "election" of the Vice President is more illusory than real, however, because it occurs as a by-product of the election of the President.115 Thus, a successor President may have been officially elected, but in practice, the electorate casts its votes for presidential candidates, not vice presidential ones.

Additionally, an unelected Vice President may succeed the President. Gerald Ford was only a mid-term replacement for Spiro Agnew, Richard Nixon's previous Vice President, who was forced to resign.116 Nevertheless, Ford became President after Nixon resigned and appointed him and Congress confirmed him under the procedure specified in the Twenty-Fifth Amendment.117 Furthermore, the line of succession in the case of a simultaneous vacancy of the presidency and the vice presidency runs through the Congress, whose members are not nationally elected, and through the cabinet, whose members are appointed, not elected.118 The necessity of ensuring government stability and continuity thus overrides concerns about the democratic legitimacy of the successor.

Although literally only a heartbeat away from the President, the Vice President does not have to fulfill presidential qualifications. For example, President George Bush's Vice President, Dan Quayle, was seen as a lightweight in U.S. politics.119 Presidential candidates are usually not concerned with the succession qualifications of their running mates. More commonly, the President selects a Vice President

115. See SINDLER, supra note 113, at 115-16.
116. See 2 ENCYCLOPEDIA OF THE AMERICAN PRESIDENCY, supra note 107, at 922.
117. See id. at 930.
119. In this century, however, the vice presidency has been used as a stepping stone to the presidency. Richard Nixon was Dwight Eisenhower's Vice President from 1952 to 1960 before being elected President in 1968. See JULES WITCOVER, CRAPSHOOT: ROLLING THE DICE ON THE VICE PRESIDENCY 9 (1992). George Bush was Ronald Reagan's Vice President from 1980 to 1988 before serving as President from 1988 to 1992. See id. Lyndon Johnson's Vice President, Hubert Humphrey, was an unsuccessful presidential candidate in 1968. See id. Jimmy Carter's Vice President, Walter Mondale, was an unsuccessful presidential candidate in 1984. See id. For a general critique of the vice presidency and an argument for its abolition, see Arthur M. Schlesinger, Jr., On the Presidential Succession, 89 POL. SCI. Q. 475 (1974).
“to balance the ticket,” that is, to appeal to a constituency or a region where he has a perceived weakness and hopes to attract votes. In other cases, the vice presidency may be used to neutralize a political rival as the office has no independent power and relies wholly on presidential largesse. Continuity, not quality, is the emphasis in U.S. presidential succession.

E. Comparative Lessons

In Israel, the government dies with the Prime Minister. This is not true in other parliamentary democracies or in the U.S. presidential system. In the parliamentary systems of Great Britain, Canada, and Australia, the process of succession is uncertain due to several factors: the cloudy role of the head of state (all countries), the lack of an explicit contingency plan (Great Britain and Canada), and the fact that the issue has not arisen in recent history (Great Britain and Canada). In the U.S. presidential system, there is no issue of succession: it is automatic and permanent.

Israel can ill afford the uncertainty in succession that exists in other parliamentary democracies. Israel’s crisis politics demand leadership. A vacuum at the higher echelon of power may cause panic among the populace in a time of crisis. Therefore, the U.S. model of automatic succession is preferable to others: Great Britain has an uncertain process, Australia merely has a plan, and most new democracies have only taken steps to ensure that a power vacuum does not exist upon the death of the head of government.

121. See id.
122. Uncertainty regarding the role of the head of state is not inherent in the parliamentary system. In Israel, statutes explicitly delineate the powers of the head of state.
123. Ukraine, Poland, Hungary, and the Czech Republic all provide for automatic but temporary succession of the President until a new President is sworn into office. See Uk. Const. ch. 12, art. 114-10 (amended 1995), translated in Ukraine, Constitutions of the Countries of the World 57, 104 (Gisbert H. Flanz ed. & Council of Advisors to the Parliament of Ukraine trans., Release 96-3, 1996) (providing that the Chairman of the Supreme Rada succeeds the President upon the President’s death); Dziennik Ustaw (Constitutional Act, 1992) art. 49(2) (Pol.), translated in Poland Supplement, Constitutions of the Countries of the World 1, 24 (Albert P. Blaustein & Gisbert H. Flanz eds., Release 93-6, 1993) (providing that, if the presidency is vacant, the Marshall of the Sejm acts as President, and if he is not able, the Marshall of the Senate); Hung. Const. (Act XX, 1949) art. 29/E(1) (amended 1990), translated in Hungary, Constitutions of the Countries of the World 1, 7 (Gisbert H. Flanz ed. & Sándor Gallai trans., Release 95-4, 1995) (providing that the Speaker of the Parliament assumes the presidency in the event of the President’s temporary incapacity); Czech Rep. Const. art. 66, translated in The Czech Republic, Constitutions
is the norm in Europe\textsuperscript{124} and in other democracies.\textsuperscript{125} New countries seem to realize that they cannot afford to create the uncertainty in succession that exists in Great Britain and its former colonies. Automatic succession is the trend.

V. THE PROBLEM OF SUCCESSION

The transition in Israel to the new system of direct election of the Prime Minister does not permit Israel to simply abandon its previous system. Because the new system merely grafts new features onto the previous system, Israel must continue to draw lessons from the old system. Furthermore, the continuation of the new system is far from certain. Given the ease of change in the Basic Laws\textsuperscript{126} and citizen

\textsuperscript{124} The constitutions of Portugal and France provide for automatic but temporary succession until a new President is selected. See CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [Constitution] ch. I, art. 135, translated in Portugal, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 19, 83 (Albert P. Blaustein & Gisbert H. Flanz eds., Cândido Cunha, Directorate General for Mass Communication trans., 1991) (providing that the President of the Assembly acts as President if the presidency is vacant); FR. CONST. art. 7, translated in France, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 22, 24 (Albert P. Blaustein & Gisbert H. Flanz eds., 1988) (providing that the President of the Senate temporarily exercises the presidential powers, or if he is unable, the government). In Ireland, a commission—composed of the chair of the upper house, the chair of the lower house, and the Chief Justice—assumes the powers of the presidency upon the President’s death. See BUNDERECHT NA HEIREANN [Constitution] art. 14, §§ 1-2 (Ir.) (amended 1990), reprinted in Ireland, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1, 32-33 (Albert P. Blaustein & Gisbert H. Flanz eds., Release 94-2, 1994). The Deputy Prime Minister assumes the powers of the Prime Minister until the President appoints a new Prime Minister. See id. art. 28, § 6(2), reprinted in Ireland, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1, 94 (Albert P. Blaustein & Gisbert H. Flanz eds., 1994).

\textsuperscript{125} In India, the Vice President automatically but temporarily succeeds the President until a new President is elected. See INDIA CONST. art. 65(1), reprinted in India, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1, 86 (Albert P. Blaustein & Gisbert H. Flanz eds., Release 94-7, 1994); see also 2 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 2023 (4th ed. 1993). Even the Palestinian Authority has provided for automatic succession in case of a vacancy in the presidency. See Jon Immanuel, Palestinian Elections Do Not Guarantee Democracy, JERUSALEM POST, Jan. 19, 1996, at 7 (reporting that the head of the Legislative Council is the legally designated successor to the President of the Palestinian Authority).

\textsuperscript{126} Basic Laws may be amended by a simple majority vote, unless a specific section has an “entrenched clause” requiring a special majority to alter that section. See generally RUBINSTEIN, supra note 10, at 455-59; Amnon Rubinstein, Israel’s Piecemeal Constitution, in 26 STUDIES IN ISRAEL LEGISLATIVE PROBLEMS 201 (G. Tedeschi & U. Yadin, Institute for Legislative Research & Comparative Law ed., 1966).
calls to delay implementation of the 1992 Basic Law.\textsuperscript{127} Israel must continue to examine critically both systems.

Upon the Prime Minister’s death, the caretaker government and Interim Prime Minister lie at the center of both systems. A caretaker government is charged with carrying on the duties of the government. This transfer of duties arises in five contexts: the resignation, permanent incapacitation, removal, and death of the Prime Minister, as well as a no-confidence motion in the Prime Minister.\textsuperscript{128} There has been much discussion about the scope of a caretaker government’s powers and its relationship to the Knesset.\textsuperscript{129} The applicability of a caretaker government, however, in the event of the Prime Minister’s death has not been thoroughly analyzed.

Commentators have said that “[l]egally, there is no difference between a government which ‘carries on’ after resignation, or after having been defeated or even after the Premier’s death.”\textsuperscript{130} The difference between a caretaker government and a regular government, however, is the source of the caretaker government’s power. A regular government derives its power from the Knesset’s confidence.\textsuperscript{131} In contrast, a caretaker government derives its authority from the law, not from the Knesset,\textsuperscript{132} because it no longer serves with the Knesset’s confidence, unless it arises upon a Prime Minister’s death. This problem of democratic legitimacy attracts scholars to examine the legitimacy of the caretaker government’s actions.

Both a successful no-confidence motion and a government’s res-


\textsuperscript{128} See supra notes 46-48 and accompanying text.


\textsuperscript{130} Klein, supra note 31, at 273 n.6.


\textsuperscript{132} See Klein, supra note 31, at 276.
ignation illustrate the problem of democratic legitimacy. In a no-confidence vote, the Knesset withdraws its approval from the government. The Knesset acts affirmatively to halt the present government from continuing its policies, indeed from continuing in office. This situation presents a legitimacy crisis for the current government, which is not resolved until a new government that has the Knesset's confidence is selected.

With resignation, the government acts affirmatively, stating that it no longer has the ability or the desire to govern. There may be several motivations for the government's action. It may seek to dissolve the Knesset, in order to facilitate early elections in which it hopes to secure a continued or an improved mandate. Most often, the government resigns to preempt a no-confidence vote.\(^{133}\)

Thus, when the government resigns, it withdraws its acceptance of Knesset confidence. Conversely, when the government is defeated, the Knesset withdraws its confidence in the government. In both instances, the government lacks a basis for its continuation.

The death of the Prime Minister presents a different situation. In this situation, there has been no withdrawal of the basis of the government's existence. Neither the Knesset nor the government has taken any action. When this situation arose with Rabin's assassination, opposition leader Binyamin Netanyahu was correct in stating that murder should not replace governments. Rhetoric aside, his statement expresses the belief that the death of the Prime Minister should not be a basis for governmental change: because the existing government maintains legitimacy, it should continue to exist.

Under the present system, the Prime Minister was the leader of the party that could form a government. He owed his position not to the electorate or the Knesset, but to the party or the party electorate. The position of Prime Minister was not a personal one. A constituency did not give a seal of approval to any particular personality. The premiership differed from the presidency because the Knesset personally elected the President. The Prime Minister achieved his position by virtue of his personal strength within the party and the party's strength with the electorate.

When the Prime Minister dies in office, the resulting caretaker government does not have the same problems of legitimacy as a gov-

\(^{133}\) See LIKHOVSKI, supra note 129, at 132.
government that is defeated or resigns. Because the source of the Prime Minister’s power is the Knesset, his death does not alter the government’s legitimacy. The government continues to serve as long as the Knesset’s confidence remains. Under a system of direct election of the Prime Minister, the government is composed of appointees of the popularly-elected Prime Minister. They derive their legitimacy from the Prime Minister. In the event of succession to the Prime Minister, the new Prime Minister inherits the deceased Prime Minister’s administration.

The new system of direct election of the Prime Minister mandates a special election solely to fill the vacant premiership within sixty days of the Prime Minister’s death. The prospect of such an election two months after an assassination is alarming. The possibility of simultaneous Knesset and prime ministerial elections, if less than a year remains in the Knesset’s term, compounds problems. Logistically, it would be difficult, and perhaps unconstitutional, to hold an election within such a short time. Additionally, an election immediately after a Prime Minister’s death may be divisive. Ministers would focus on campaigning instead of governing. After the Prime Minister’s death, especially by assassination, the pressing need is to continue the government and to consolidate and unite the factions and the country, rather than to further divide parties and the country through the electoral process. A quick election would deepen wounds that have had no time to even begin healing.

Two simple options are available to remedy the problem: the

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135. See supra pp. 64-65.

136. Under existing law, it takes 92 days for new parties to register. See Sarah Honig, Peres to Call Early Election on Sunday, JERUSALEM POST, Feb. 9, 1996, at 1. Justice Minister David Liba’i stated that any election date that does not allow sufficient time for new parties to register will result in a High Court ruling against the date. See id.

137. Other more radical options also exist. The law for direct election of the Prime Minister could be scrapped in its entirety, permitting return to the old system under the 1968 Basic Law. Given the growing criticism of the 1992 Basic Law, this option is definitely a possibility. See supra note 127. More radically, the election system could be changed to produce majority governments, which are the norm in the “first past the post” constituency systems of Canada and Great Britain. See Gideon Allon & Tzvi Zechariah, Peres V’Netanyahu Tomchim B’Bciriot Aizoriot L’machatzit Maichevrail Haknesset [Peres and Netanyahu Support Regional Elections for Half of the Members of the Knesset], HA’ARETS, Jan. 23, 1996, at A6 (suggesting that Israel at least partially adopt a constituency system).
elections could be held within 120 days, rather than 60 days, of the Prime Minister's death, or the existing government could serve out its term under a successor Prime Minister. The second option is preferable to the first because the first option creates more problems than it solves. First, although a long interval between the Prime Minister's death and the new Prime Minister's succession may be necessary and preferable for special elections, it compounds the problem of legitimacy for the caretaker government. Second, if the Interim Prime Minister is not a candidate in the special elections, the government may be viewed as a "lame duck" government simply biding its time until the "real" government replaces it. Finally, lengthening the period for the elections creates a long period of time where nothing gets done in government. For these reasons, it is preferable for a successor to serve out the deceased Prime Minister's term. This option would promote unity, continuity, and certainty. This type of succession is most appropriate when the deceased Prime Minister's term is almost complete. For example, because Prime Minister Rabin's assassination occurred within one year of the scheduled elections, completion of the deceased Prime Minister's term would have been preferable to elections within 60, or even 120, days. The strongest argument for special elections arises when the Prime Minister dies at the beginning of his term. Even in this situation, however, government continuity and certainty outweigh the drawbacks of an unelected Prime Minister completing the term.

One of the largest problems to date in Israeli politics has been uncertainty; no party has received a majority of seats in the Knesset. Every government has had to seek coalition partners and barter over government policies. Thus, no government has been secure against its fall. Many governments have fallen before the expiration of their term because members of the coalition have left the government. The constant threat of the fall of the government has contributed to the well-known ills of Israeli politics: majorities are subject to minority demands for the sake of keeping the coalition intact; the public purse is

used to purchase the fidelity of small parties; and individual Knesset members may sell their votes for political benefits.\(^{141}\) The 1992 Basic Law arose in the wake of one exceptionally egregious episode known as *hatargil hasasriach* in 1990.\(^{142}\)

Direct election of the Prime Minister was intended to alleviate some of these base characteristics of Israeli politics. The more often elections are held, however, the greater the opportunity for the persistence and revival of these political maladies. It is doubtful that any law will be able to root them out of Israeli politics entirely, but in deciding on the best response to the death of a Prime Minister, these political realities must be considered, and everything possible must be done to prevent their occurrence. Special elections are not the solution.

When the Prime Minister dies in office, the prior government should continue in office without the interruption of a transition government or Interim Prime Minister. In practice, a deceased Prime Minister’s government does continue in office after the Prime Minister’s death. For example, when Prime Minister Levi Eshkol died in 1969, Golda Meir formed a new government that mirrored Eshkol’s with Meir replacing Eshkol as Prime Minister.\(^{143}\) Similarly, after Prime Minister Rabin’s death, the government appointed Shimon Peres as Interim Prime Minister until the party confirmed him as its leader and Prime Minister. In forming his new government, Prime Minister Peres retained virtually the same cabinet as Rabin, with only a few minor changes that Peres’ ascension to the vacant premiership primarily dictated.\(^{144}\) Thus, Peres inherited Rabin’s government. In most parliamentary democracies, especially in Great Britain, Canada, and Australia, and in some presidential systems, such as in the United States, no change in the status of the government results from its leader’s death. Constitutional law should reflect this accepted international and Israeli practice.

Although there were calls for early elections in Israel after Prime Minister Rabin’s death, Prime Minister Peres’ continuation in office

\(^{141}\) See id.

\(^{142}\) See ALLON, supra note 44, at 62-86.


\(^{144}\) In addition to the premiership, Peres assumed the portfolio of Defense Minister, leaving vacant his previous position as Minister of Foreign Affairs. See supra note 41.
without direct electoral approval was not viewed as illegitimate. Rather, Israelis realized that calling early elections would have been an opportunistic attempt to capitalize on the voters emotions after the tragic assassination.\textsuperscript{145}

With direct election of the Prime Minister, the argument for establishing a caretaker government with limited powers upon the Prime Minister’s death becomes stronger. The Prime Minister owes his position to direct election by the electorate, which is clearly personal, though party affiliation obviously also plays a strong role. Similar to the government’s resignation or a no-confidence vote, the Prime Minister’s death withdraws the basis for the legitimacy of the existing government. The ministers appointed by the Prime Minister are indirect delegates of the electorate that selected the Prime Minister to lead the government.

It is unsettling for a government to hold a mid-term election to replace a deceased leader. Even countries with direct election of the head of government provide mechanisms to avoid such a scenario. The most obvious example is the United States, where the office of the Vice President is designed primarily for the sole purpose of succession. Elected together with the President, the Vice President has the stamp of approval of the President and of the electorate. He may serve out a deceased President’s term without problems of legitimacy.

VI. PRESCRIPTION FOR REFORM: \textsuperscript{146} AUTOMATIC AND PERMANENT SUCCESSION

Automatic and permanent succession promotes the values of government continuity, national unity, and quality and legitimate leadership. Upon the Prime Minister’s death, the nation needs a speedy and certain succession to ensure government continuity. The present situation in Israel is untenable because it requires the government to undertake numerous procedures in order to replace the Prime Minister, creating the real possibility that the country may be leaderless for a short time. Any leadership vacuum, even one lasting only a very short time, is not acceptable in a country like Israel, which faces life and death issues of war and terrorism on a daily basis. Other parliamentary democracies like Canada and Great Britain may have the lux-

\textsuperscript{145} Several months later, however, Prime Minister Peres did call for early elections. See Schmemann, \textit{supra} note 127.
The Assassination of Prime Minister Rabin

ury of taking a few days or even weeks to replace a deceased leader, but Israel does not yet enjoy this position. Succession in Israel must therefore be automatic. It must also be permanent to permit government continuity. The reality of Israeli practice has been that the newly-formed government is the deceased Prime Minister’s government.

Automatic and permanent succession also furthers national unity, which is imperative in times of crisis, such as the Prime Minister’s death. It prevents divisive and detrimental political struggles within the governing party as the party selects a replacement leader, as well as between parties in a full-fledged election campaign.

While succession should be automatic and permanent, it should also produce a qualified leader. To accomplish this goal, one of the ministers should be designated as the potential replacement for a deceased Prime Minister. The history of the offices associated with the nomenclature of both the Vice Premier (memaleh mekom) and the Deputy Prime Minister (s’gan rosh ha’memshalah) is unfortunate because of their blatant political rather than functional nature. Retention of the title of Vice Premier, however, is preferable because of its association with the National Unity Government, where the Vice Premier was the true stand-in for the Prime Minister and was the Premier-in-waiting, as well as being the Foreign Minister. As form does affect content, Israel should avoid all nexus to the tarnished deputy premiership.

If Israel adopted the model of the British Labour Party, the deputy leader of the party would be the Vice Premier. Although Israeli parties do not have official deputy leaders, a declaration that the “number two” person on the Knesset list of the Prime Minister’s party would automatically become the Vice Premier would accomplish the functional equivalent. This declaration would be an additional privilege to the senior ministry that the “number two” person would receive in the Prime Minister’s government. Recent pre-election deals among parties have demonstrated that party lists may be manipulated. Thus, the Vice Premier must be a member of the Prime Minister’s party.

This option would be preferable to other possibilities. Two of the four 1990 bills for direct election of the Prime Minister would have created a Deputy Prime Minister to run on the same ticket as the Prime
There is no need to further "Americanize" the Israeli political system by transplanting the weakest executive office across the Atlantic. The Vice Premier should not be a separate office doing nothing but awaiting a prime ministerial vacancy.

Furthermore, the Prime Minister should not directly appoint the Vice Premier. This option is tempting due to direct election of the Prime Minister and the Prime Minister’s power to appoint the other ministers. If the Prime Minister has the power of appointment, however, it could become a bargaining chip in coalition politics. The portfolio could be given to a minor coalition partner or could become an empty ministry like the Ministry of Economics. If a minor coalition partner holds the vice premiership upon the Prime Minister’s death, an intolerable situation would exist: the Prime Minister would not be directly elected, would lack connection to the party of the popularly-elected Prime Minister, and would lack popular legislative support. The greater the discretion in appointing the Vice Premier, the greater the opportunity for political trickery and the danger of an unqualified candidate accidentally becoming Prime Minister. The realities of Israeli politics demonstrate that automatic selection is superior to discretionary appointment.

Automatic appointment of the “number two” man on the party list as the Vice Premier has virtues and vices. On the one hand, the second person on the party list may be the acknowledged “number two” man after the Prime Minister, but the Prime Minister’s death may change the equation. In voting for party candidates, the party electorate does not vote for the Vice Premier. This is the outcome of the vote under the proposed reform. On the other hand, the Vice Premier would be linked to the party and the Prime Minister. Succession would be predictable. The nation would know that the “number two” man was qualified to succeed the Prime Minister upon the Prime Min-

146. See Amendment No. 5 to Basic Law: The Government, § 3(b), 1985, H.H. 154 (proposed by David Libai); Basic Law: The Government, § 10, 1985, H.H. 164 (proposed by Yoash Tsiddon). In the third bill, the Prime Minister elect would submit his candidate for Deputy Prime Minister to the Knesset for approval prior to the establishment of a new government. See Amendment No. 6 to Basic Law: The Government, 1985, H.H. 157 (proposed by Uriel Lin). In the fourth bill, the Prime Minister would choose one of the Ministers to be the Vice Premier or memaleh makom. See Basic Law: The Executive Authority, § 3, 1985, H.H. 159 (proposed by Amnon Rubinstein). None of these options made it into the final version of the 1992 Basic Law.

147. See WINTERTON, supra note 98, at 89-90 (discussing the problems of succession in coalition governments).
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ister’s death. The position at the top of the party list reflects party strength and guarantees a senior ministry in the government. The Vice Premier would certainly be a quality leader capable of leading the nation.

VII. CONCLUSION

Prime Minister Rabin’s death revealed the problem of succession in Israeli politics. Israelis would have been in the throngs of stark political strife at a time when national unity and leadership were imperative had there not been a unique combination of factors unlikely to be repeated. Neither the old 1968 Basic Law nor the new 1992 Basic Law adequately ensure orderly succession. In proposing reforms, attempts to solve problems invariably create new ones. No system is perfect. The suggested reforms for automatic and permanent succession would ensure that there is no power vacuum and that the successor is a qualified leader with electoral support. Above all else, automatic and permanent succession of the Vice Premier would prevent divisive political battles that could tear the government and the country apart when it most needs unity. When death comes to the nation, the country should be prepared and stand together.