

What Israel's Protests Are Really About



Josh Hammer writes in the [*Epoch Times*](#):

Many Israelis have once again taken to mass protests in the streets, both in the lead-up to and in the aftermath of the Benjamin Netanyahu-led government's successful passing on Monday of one tiny sliver of the broader judicial reforms that it had previously floated earlier this year. But any sober analysis of the perhaps-unprecedented civil strife now afflicting the Jewish state leads to one conclusion: The vitriolic pushback has nothing to do with substantive separation-of-powers concerns or the particulars of constitutional theory, and everything to do with the Left's insatiable personal loathing of Prime Minister Netanyahu and its deep-set cultural anxiety over the more nationalist and religious direction Israel is now heading.

For the first four and a half decades after modern Israel's founding in 1948, the Jewish state operated according to the British model of governance: no written constitution, parliamentary supremacy, and a subordinate, common law-based judiciary. Israel lacks a written constitution to this day, but things began to change in the early 1990s, when former Supreme Court of Israel President Aharon Barak self-pronounced a so-called "constitutional revolution."

By snapping his fingers, Barak—absent any statutory basis for doing so—arrogated to the Supreme Court of Israel powers that no other judicial tribunal in the world possesses. Those powers include, among other things, the power to hear any issue—no matter how transparently political, and regardless of a plaintiff's legal "standing" to bring the suit—at any time, for any reason; the ability to overturn any law, policy, or even cabinet/ministerial appointment for effectively any reason, from judicial review grounded in Israel's 13 quasi-constitutional "Basic Laws" to judicial nullification based on an ultra-subjective finding of "unreasonableness"; and the nepotistic power to veto the justices' own successors, due to the idiosyncratic makeup of Israel's Judicial Selection Committee.

Anyone vaguely familiar with comparative constitutionalism, to say nothing of American constitutionalism as propounded in The Federalist Papers and ratified in the U.S. Constitution, can spot the glaring problems here. Judge Robert H. Bork, who was nominated by President Ronald Reagan to the U.S. Supreme Court in 1987 before having his nomination derailed by a loathsome Sen. Ted Kennedy (D-Mass.)-led character assassination, wrote in his 2003 book "Coercing Virtue": "Pride of place in the international judicial deformation of democratic government goes not to the United States, nor to Canada, but to the State of Israel. The Israeli Supreme Court is making itself the dominant institution in the nation, an authority no other court in the world has achieved." And the situation has

actually gotten markedly worse in the two decades since Bork made that observation.

Netanyahu's Likud party and other allied right-wing parties made reform of the imperious, leftist-dominated Israeli Supreme Court a key campaign plank ahead of the Jewish state's election last November, which resulted in a 64-seat (out of 120) majority conservative coalition in the Knesset, Israel's parliament. The coalition advanced a wide-ranging suite of reform measures, from amending the Judicial Selection Committee's composition to adding the hotly contested Knesset "override clause" provision to paring down the binding powers of Israel's overweening "attorney general," earlier this year; this column wrote in favor of those broader reforms, at the time. However, amidst a secularist-leftist national meltdown that saw myriad highways shut down by protestors, army reservists threaten not to report for duty, billions of investment dollars flow out of the country, and the country's lone international airport briefly close due to a strike, Netanyahu backed down in late March.

More recently, in an attempt to save face and demonstrate that a conservative parliamentary coalition representing an increasingly conservative nation could pass *something* to denude Barak's judicial Frankenstein, the government passed a very narrow bill codifying that the Supreme Court of Israel cannot nullify a law, policy, or cabinet/ministerial appointment on the extraordinarily subjective grounds that the law/policy/appointment is somehow "unreasonable." Appalling media misinformation aside, that is the *only* thing the Knesset passed on this front, earlier this week.

The "reasonableness" law is a tiny sliver of the broader reform package put forth earlier this year. Furthermore, the notion that a court—let alone one in a constitution-less society putatively predicated upon British-style parliamentary supremacy—can nullify *any* government law or action because that law or action is "unreasonable" is simply unfathomable.

Judicial review in the American constitutional context, for example, necessitates proper jurisdiction, legitimate plaintiff “standing” and (most relevant here) judicial recourse to *written* law, be it the Constitution, a federal or state statute, or a regulation. Amazingly, the Israeli Supreme Court has already said it will consider legal petitions against the “reasonableness” law, which would bring us to a farcical situation in which a judicial tribunal adjudicates its own jurisdiction-stripping legislation in a constitution-less society. That is patently insane.

Tragically, the Israeli Supreme Court is not the only actor melting down over the government’s slimmed down, commonsense “reasonableness” law. The Israeli Left has not batted an eyelash, paying no heed whatsoever to the massive differences between the broader reforms advanced earlier this year and the slender item passed this week. Reservists are still threatening not to serve, capital is still fleeing the Jewish state’s thriving high-tech sector, anarchists are still shutting down highways, and protestors are still trying to obstruct legislators from entering the Knesset. It is as if nothing has changed.

The obvious explanation is that the Israeli Left’s national freakout and the global Left’s international freakout have nothing whatsoever to do with the actual legal reforms. Indeed, in prior years, leading liberal members of the Knesset, such as Yair Lapid, had expressed their own interest in reclaiming legitimate legislative powers that had been unjustly stolen by the Israeli Supreme Court. Instead, there are two reasons for the continuation of the vehement protests.

The first, and most straightforward, reason is that the Israeli and global Left truly despise Benjamin Netanyahu. They view the longest-serving prime minister in Israeli history as a self-serving, Machiavellian, venal, power-hungry pseudo-dictator in the same vein as Russian kingpin Vladimir Putin or—egad!—former President Donald Trump. Indeed, considering

the parallels in legal persecutions from their own Deep States (or “Deep Shtetl,” as some sometimes jokingly refer to Israel’s analogue) and the sheer intensity of their respective Lefts’ loathing, the similarities between Netanyahu and Trump are somewhat eerie.

The second, and more profound, reason is that those protesting (properly) understand the reforms as a proxy for a broader culture war now being waged between two dueling visions of Israel: the more secular, more socialist, disproportionately Ashkenazi, often Tel Aviv-dwelling Israeli ruling class that is embodied by the liberal Israeli Supreme Court; and the more religious, more nationalist, disproportionately Sephardic/Mizrahi, often Jerusalem-dwelling lot of “deplorables” that is embodied by Netanyahu’s conservative governing coalition in the Knesset. From this perspective, the nature of those crying out so repeatedly and vociferously against the reforms, such as veteran New York Times columnist Tom Friedman, makes sense: These are men and women who grew up with Israel as a Labor Party-dominated, socialist state where the aspirations of Jewish nationalism were subordinated to the demands of universalist liberalism. These men and women are terrified of losing that specific conception of the Jewish state to the annals of history.

But what the Tom Friedmans and Alan Dershowitzes of the world don’t realize is that they are grasping in vain for something that is simply no longer there. The new, modern Israel is more nationalist, more religious, and more traditionalist. That is a wonderful thing. And that reality is not changing anytime soon.

After all, “demographics is destiny,” right?