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Israel Is a Democracy on the Brink



Y THE TIME this essay is published, it is entirely possible that the furious debate over Israel's judicial reform will have been resolved. Optimists take the view that there are good grounds for a compromise that maintains the independence of the judiciary but limits some of its current powers.

And those who take the long view of Israeli history know that there have been other moments when Israel was thought to be threatened, teetering, nearing collapse, impossibly divided. What is happening today, they argue, is not altogether different from the intense divisions that Israel experienced in the wake of the first Lebanon War in the 1980s or after the signing of the Oslo Accords in the 1990s. Israel came through, and reports of Israeli democracy's imminent death proved much exaggerated.

This time is different. The current effort represents a confluence of interests among three forces in Israeli politics that are indifferent to Israeli democracy, including one that is existentially hostile to it: corruption, fundamentalism, and settlement. Prime Minister Benjamin Netanyahu, Shas leader Aryeh Deri, and their associates need a weakened judiciary because of their own legal troubles. The Haredi parties need a weakened judiciary to maintain the social distortion of their long-term draft evasion, labor nonparticipation, and welfare dependence. As to the third force: The settler movement is assaulting Israeli democracy not because of a narrow or temporary self-interest, but rather because it itself constitutes a complete reformulation of Jewish statehood in fundamentally nondemocratic terms. It is now able to leverage the needs of a populist Right, an indicted prime minister, and a burgeoning but alienated Haredi minority for a much larger political project.



Historically, Israeli coalition governments, citing religious grounds, have exempted the Haredi minority from basic civic duties such as military service, core education, and paying their “fair share” of taxes. Haredi Jews’ way of life, driven by their understanding of the requirements placed upon them by the Torah, was supportable when the entire Haredi community was barely 5 percent of the Israeli public. But to ask everyone else to continue to shoulder the burden is not sustainable with a Haredi minority that long surpassed 10 percent of the population and may be closing in on 20 percent.

This problem, serious though it is, doesn’t compare with the one created by the powerful efforts of the settler movement to redefine Israeli public life—and Zionism itself—as a fundamentally undemocratic endeavor. For no democratic polity, even a “bare-boned” one,

is compatible with the lifestyle the settlers have constructed for themselves on lands Israel conquered in a just war 56 years ago.

Today, a minority population of Jewish settlers — roughly 15 percent of the total population of the West Bank, although the exact number depends on whom and how one counts — enjoys a first-world standard of living and all the privileges of Israeli citizenship amid a population that is overwhelmingly Arab, generally poorer, and almost universally hostile to its Jewish neighbors. The only way to maintain the status quo is to organize the public affairs of the territory in a manifestly nondemocratic way. The governance of the West Bank cannot be both Jewish and democratic.

The fundamentally undemocratic setting emerged from the “temporary” nature of an occupation at the end of a short war in a long conflict that has yet to be settled. Among the many ironies of five decades of Israeli settlement in the West Bank, one is that the formalization of separate regimes for the Israelis and Palestinians in the West Bank emerged from the Oslo Accords in the 1990s, the most serious effort that the belligerent parties and the international community ever made to end the conflict and settle the final status of the territory. The complicated, variable juridical geometry of Areas A, B, and C was part of an interim agreement reached in 1995 under Oslo II, which was supposed to be superseded within five years by a final-status agreement that was never reached. As a result, a temporary five-year arrangement — a temporariness located inside an even greater temporariness of Israel’s occupation-not-annexation of 1967 — remains the law of the land.

The idea that animated the settlement enterprise in its early days was that Israel could somehow be exported to the newly conquered territories. Placing civilians there would allow Israel to adjust the 1949 armistice lines in a later negotiation and make some additional land — to which it had a genuine claim and that it had conquered in

a war it hadn't sought — part of Israel itself. But this “export” fantasy stopped seeming realistic to Israeli policymakers by the 1980s. What replaced it is a more sinister “import” fantasy. The settlement enterprise, particularly since the interim accords of 1995, has its own rules, its own unwritten constitution. And its goal today is not to export Israel to the conquered territories: It is to import the Jewish Ascendancy regime of the West Bank into Israel generally.

For many of Israel's critics, Israel's self-definition as a Jewish and democratic state is a hopeless contradiction. But a Jewish state can be a democracy and have a Star of David on its flag, just as Britain's Union Jack invokes the crosses of St. George, St. Andrew, and St. Patrick, the Christian patron saints of England, Scotland, and Ireland, respectively. It can have Hebrew as its official language, Jewish festivals as national holidays, and a Law of Return, just as other nation-states established on the lands of collapsing empires have religious festivals incorporated into their national calendars and immigration laws for diaspora communities.

The settlements' present arrangements, however, cannot survive in a democratic polity. Nor, ultimately, can the present arrangements that govern the relationship between the Haredim, now that they are more than a small minority and growing quickly, and the State of Israel.



This is what weakening Israel's liberal-democratic institutions and practices is really about. I think everyone knows this, even if it's easier to rile up passions about the prime minister's corruption trial. You don't get tens of thousands of mostly comfortable middle-class people out on the street week after week protesting a change in the procedure for appointing judges. You don't get people out protesting any policy change at all if they believe they can reverse it in the next

election. What has brought out the thousands and the hundreds of thousands is the fear that they won't get this chance.

If the reforms go through as proposed at the time of this writing, the current government will be able to make it difficult for Arabs to vote and for left-wing parties to organize. They will be able to gut the public broadcaster and otherwise rig the system in their favor. The governing coalition has already made unsuccessful attempts to subvert previously independent bodies such as the Central Bureau of Statistics and the National Library. A cabinet minister tweeted against the independence of the Bank of Israel, and coalition lawmakers have made proposals to place the Central Election Commission under the control of the governing coalition and even to delay the next scheduled election by one year — as well as severely limiting the right of organized labor to strike.

With a politically dominated High Court, such initiatives will succeed, and the electoral path to defeating the right-wing coalition will be sealed off. Once that has happened, the situation of Israel's Arab citizens will surely get worse, together with that of every other vulnerable group. What will follow is what always follows in such a situation: growing terrorism, a counterinsurgency, a steady downgrade in Israeli standards of living as the middle-class backbone that has made Israel rich steadily departs — and, of course, the erosion of American support.

It's a vicious circle. Preventing it requires defeating the judicial reforms. The way to do that is to pass a Basic Law on Legislation that lays out a clear hierarchy of constitutional statutes in relation to ordinary law and creates a reasonable procedure for the amendment of existing Basic Laws and the creation of new ones.

What does reasonable mean? Referendums encourage populist enthusiasm. Supermajorities put veto power into the hands of powerful minorities. Better would be a rule that any Basic Law legislation must pass two consecutive parliaments. This is sometimes referred

to as a “fourth reading,” as we have three readings of legislation today. Something similar exists in Sweden. Allowing the general public to register its input in the general election by intervening between the third and fourth readings would ensure the defeat of any constitutional change that lacks broad support, because its presence on the legislative horizon would alter the result of the election.

That said, no one should think this is the end of the matter. Today, the alleged or actual crimes of Benjamin Netanyahu and Aryeh Deri and the desire of the growing Haredi population to gut the powers of the Court have created a marriage of convenience between these two parties and the settler movement.

Netanyahu’s trial will end in a verdict at some point, and he will, in one way or another, eventually depart from the political scene. The status quo between Haredim and the rest of society reflects a massive social-bargaining failure, but a new social bargain will eventually be struck: some kind of national service, with moderate steps to break the socially enforced poverty trap.

It’s the settler movement, which cannot survive over the long term in a Jewish democracy, but that surely will not survive at all without one next to it, that we need to worry about.

Israelis can see the kind of society that the reforms are really just the first step in trying to create. We can see it already, just a few miles from where we make our homes. And in Hawara a few weeks ago, we saw it even nearer, in all its horror. For all our justifiable fears about our enemies in the conflict, and for all our anger at the world’s dishonest descriptions of our country, it’s a vision the overwhelming majority of Israelis do not want to see become a reality. *

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