

ISRAEL & THE MIDDLE EAST

Israel's Elites Revolt Against Democracy

The architects of the anti-Bibi protests
are clear about their motives:
defending elites from the masses

BY GADI TAUB

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In his *New York Times* opinion piece titled “The U.S. Reassessment of Netanyahu’s Government Has Begun,” Thomas Friedman wrote that he likes to say of his job that he is “a translator from English to English”: He takes complex things and renders them understandable. Israel, he explained, is turning its back on the shared values which have underpinned the friendship between the American superpower and the Jewish state. As Friedman explains it, the judicial reform proposed by

Benjamin Netanyahu's right-wing coalition poses a grave threat to democracy because it would "change the long-established balance of power between the government and the Supreme Court, the only independent check on political power."

It turns out that translating from English to English may not be the most useful skill when you need to understand something that is happening in Hebrew. Friedman is right that Israel's democracy is in danger, but Netanyahu's government is not the source of peril. The real danger comes from the court itself, which is

now asserting a made-up “right” to remove a sitting prime minister—that is, to nullify the results of a legal election and eclipse Israel’s democratic politics and institutions through its own self-perpetuating fiat. The protest movement that arose to defend the court’s power (and its backers among the country’s economic and military elite) are together attempting to block the redemocratization of Israeli politics, as the reforms intended to do. This is not some innovative hypothesis. If you read Hebrew, you can hear some protesters and their backers in the country’s establishments announcing

their intentions more or less explicitly: Democracy is the very thing they are out to prevent. The movement's ideologues are longtime staunch opponents of the democratic form of government who have devoted whole academic careers to opposing it; their political leaders in parliament and outside it use the term "democracy" in a deliberately deceptive way, as they sometimes admit; and their street-level ringleaders more or less openly confess disdain for the mass of enfranchised citizens. Most poignantly, when it comes to the rebelling IDF reservists—virtually all of them from elite units,

mostly in the air force—they don't even bother with lip service to the idea of majoritarian decision-making. Rather, they express open contempt for the majority of Israel's citizens, peppered with thinly veiled references to ethnicity, religiosity, and class.

At least some of this unabashed condescension must be fairly obvious, even to foreigners—especially those like Friedman who claim to be in touch with Israeli opinion. At around the time that Friedman wrote his piece, it seemed like a military coup against Israel's democracy was in the making. News stories accumulated about more

and more reservists declaring they wouldn't report to duty unless the reform was shelved. Speculation about Israel's battle readiness, or lack thereof, filled the news cycle. For the most part the media framed the issue as a story about heroic reservist martyrs determined to fight "the battle for democracy" rather than calling it what it was: a bunch of officers threatening to jeopardize Israel's security if the parliamentary majority did not yield to their demands. As the title of one *Haaretz* piece read: "A Military Coup Is Underway in Israel—and It's Completely Justified."

Some writers were not content with cheering on the rebelling reservists. Sima Kadmon, a senior political pundit for the popular daily *Yedioth Ahronoth*, wrote a full-page piece on the paper's prestigious page 3, calling on the brass to take command of the situation. The title said "Only They Can Make Him Stop" (July 19, 2023). The piece called on the IDF chief of staff, the head of Mossad, the chief of the National Police and the head of Shabak (Israel's General Security Service) to walk into the prime minister's office and tell him "Enough!" thereby forcing him to overturn his cabinet's policy. In normal

language, we don't call that "democracy." We call it a military coup. Threats of a coup continued all the way up to the day of the Knesset vote on the first bill of the reform, a bill already diluted in the negotiations with the opposition, which nevertheless kept demanding more concessions. This was the by-now famous bill to limit the court's use of the highly subjective "reasonableness" test. The vote was set for Monday, and on Friday a new petition of air force reservists was trumpeted in the press—1,142 signatories, or so we were told, all using only their initials, declared they would

no longer report to duty if the bill was voted into law. Among them, we were told, were hundreds of active army pilots and navigators, along with air control officers and special air force personnel.

Shabbat was about to set in and there was no way to verify the initialed names in time for the vote, so nobody could tell how much of this was true and how much a publicity stunt. But that didn't stop the mainstream press, along with the leadership of the protest movement and the opposition MKs, from rushing to deliver threats—thinly veiled as “warnings”—that Israel's

security would soon be dangerously impaired. Straight-faced pundits placed the blame on the government's shoulders, attempting to justify the threatened mutiny based on a look-what-you-made-us-do argument. It seemed not to have occurred to most of these journalists that forcing a parliamentary majority to surrender before a group of army officers is the way democracies are generally destroyed, not saved.

The coalition, this time around, saw the coup for what it was and closed ranks, leaving aside the few disagreements that still remained about

“reasonableness.” It kept negotiating with the opposition in an effort to reach wider agreement till the very last moment. Yet it still made it clear that with or without agreement the bill would pass because the Knesset would not bow down to threats from army officers. The opposition, for its part, led by Yair Lapid, refused to take part in a vote, and in yet another show of its anti-democratic spirit marched out of the chamber to leave the coalition to vote by itself.

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Lapid, a former caretaker prime minister, had signed an agreement on his way out of office to change Israel's maritime border with Lebanon—essentially giving Hezbollah whatever it demanded in return for nothing—without even presenting it to the Knesset let alone putting it up for a

vote, as the law demands. In fact, when it comes to changing Israel's international borders, a Basic Law requires a two-thirds majority. But Lapid decided to bypass the Knesset because the opposition, he said, was "reckless." Astonishingly the Supreme Court, which has no authority to do so, granted Lapid permission to sign the agreement without a vote. He did so, four days before Israel's general election. But now, apparently, the same Lapid would have us believe that limiting the "reasonableness" test, which obviously does not apply to the court's own decisions, is a dangerous

first step on the way to a Netanyahu “dictatorship.” In fact, the opposite is true.

The “reasonableness” controversy is not about saving Israel from a future theocratic right-wing dictatorship. It is about releasing Israel’s democracy from the already existing juristocratic rule. This strange oligarchic arrangement, which has placed judges and legal advisers above the executive and the legislator in a way unheard of in any

other Western democracy, was established by old leftist elites, after they lost their power in 1977 and realized they were unlikely to win it back at the ballot box. It's not just that there is no court as powerful as Israel's in any proper democracy. There is no branch of government in any Western state that holds such unlimited sway over the other branches, with no check on its power, and nothing to counterbalance it.

Israel's Supreme Court, which has usurped the authority to annul any action by the other branches of government, has already asserted its

power of judicial review over Israel's Basic Laws, which are what Israel has for a constitution. "Reasonableness" is just one of many tools it has invented for itself, so that it can strike down actions and appointments which it doesn't like even when there are no legal grounds to do so, save a judge's subjective tastes and prejudices. He need only crown his whim with the term "unreasonable" and it magically becomes the law of the land. This procedure radically differs from the idea of "extreme unreasonableness" (or in some systems "capriciousness") that other democracies recognize, which

enables a court to strike down things so crazy that “no reasonable person” can think they are sensible. Israel’s court has stretched the idea of “reasonableness” in an open-ended way to cancel government decisions and appointments at its own whim, as can be seen from the fact that the court uses the doctrine as grounds for decisions from which other judges dissent. So either some judges are unreasonable, or else the test is just a disguise for subjective views.

But the whole controversy is not really important, except symbolically. The reader may get the impression that

forbidding the court to use reasonableness would be an important step on the way to curbing its arbitrary power, helping restore it to its proper role in a democracy. But that would be a naïve assumption. The court has invented for itself a host of other such instruments which have helped it subdue the other branches of government, and it can easily replace the lost tool. It can, for example use its infamous postmodern conception of legal interpretation, which has entirely freed it from the letter of the law, or else it can just start ruling that some decisions and appointments are

reasonable but do not conform to some power that it would grant to itself, like, say, a “common sense” test. And who better to decide what common sense is than the distinguished and learned judges?

The road to freeing Israeli democracy from the tyranny of the country’s Supreme Court and its auxiliaries is going to be long and difficult. This is not only because the court is not going to give up any of its powers voluntarily.

It is also because Israel's progressive elite rules through the court, and it is now thrashing wildly, threatening to burn the house down, tear the army apart, weaponize the law, and bring economic ruin in the country, if the plebs dare to challenge the patricians' juristocracy. What Thomas Friedman mistakes for a popular uprising of "the people" to defend democracy is actually the well-organized and well-financed struggle of the country's established elites to defend their existing privileges.

This is clear if you listen to their ideologues. Take Hebrew University

professor Mordechai Kremnitzer, a leading thinker of the anti-reform movement, for example. Kremnitzer is a senior fellow at the Israel Democracy Institute, which thinks about democracy in about the same way that the Cancer Institute at the Shiba Medical Center thinks about cancer: It is busy dreaming up ways to get rid of it. Kremnitzer is also the senior legal commentator for *Haaretz*, where he weighed in on the “reasonableness” debate. The Supreme Court, he argued, must strike down the limitations that the Knesset is trying to impose on the reasonableness test despite the fact that

they are being legislated as a semiconstitutional Basic Law, a category of law the court should clearly not tamper with.

“The Knesset has no authority,” Kremnitzer wrote, “in any format and with any majority, to undermine the stability of the basic, sublime moral foundations on which the state was built, and in this case—the democratic system.” In other words, in his view, and in the name of democracy, the Knesset cannot amend our quasi-constitutional laws (which it alone can enact), without the permission of judges, while judges can change our

constitutional arrangements over the objection of the Knesset. This means that, on this view, our Supreme Court is also our de facto constitutional convention, a theory that political scientists, unaccustomed to Israel's psychedelic theory of government, would probably find hard to make sense of.

But these are not the only reasons why the Knesset cannot lay down the rules that govern our institutions. "All the more so," Kremnitzer adds, "the current coalition lacks this authority, headed as it is by a criminally indicted person, and made up of a shamefully

questionable human composition, which deprives it of all moral authority. A court worth its salt, cannot stand idly by.” It seems that in Kremnitzer’s world, “moral authority” is not derived from elections, nor do all citizens have equal power to bestow it. It has to come from the right kind of citizens, and the right kind of “human composition.” The idea that governments derive their just powers from the consent of the governed is not, it seems, part of what Kremnitzer, a scholar of constitutional law, considers “the democratic system.” Or take another leading light of the anti-reform movement, professor Yaniv

Roznai of the Reichman University School of Law. Roznai is by far the most prolific in supplying the protesters with talking points which have the ring of academic arguments, even if they make little sense upon any closer examination. Roznai is the foremost promoter of a strange anti-democratic theory, which he articulated in his 2017 book *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. According to Roznai courts should have the power to strike down amendments to constitutions if they think the amendments contradict some

fundamental value even when that value is not specified by the constitution. It doesn't take a Ph.D. in law to understand that Roznai believes courts have powers which they do not derive from constitutions or the will of the people. This is the theory that Israel's Supreme Court is currently toying with to support its outrageous move to exercise judicial review over Basic Laws—the very laws that gave it, according to its own theory, the power to strike down regular laws. Imagine the American Supreme Court striking down parts of the Constitution, based on some unspecified list of values, and

you'll get a picture of just how far things have gone in Israel, and how urgent reform is.

But in the field of judicial hubris none can compete with professor Aharon Barak, former president of Israel's Supreme Court. This is the man who augmented the powers of the court, step by step, until it achieved a stranglehold on Israel's democracy. Barak has dedicated his entire professional career to transferring decision-making powers from the legislature and executive to "his" court. There seem to be few things Judge Barak loathes so much as democracy,

which is why he reoriented the court based on the idea that fundamental conflicts of values should be decided by judges, not parliaments, and judges should reach their verdicts based only on the opinions of the “enlightened” part of the public. No wonder the “enlightened” part of the Israeli public is so fiercely against any democratizing reform.

It’s not only ideologues who think democracy is disposable. A recently

surfaced video of former Prime Minister Ehud Barak speaking on Zoom to some 90 air force reservists and veterans back in 2020, has him laying out the plan that he is currently attempting, once again, to put into action—this time with no little success. The excuse back then was Netanyahu's COVID policy, which was, Barak explained, the onset of dictatorship. The new pretext for the onset of dictatorship, according to Barak, is the judicial reform, as he keeps saying on every TV program that gives him a stage. From the aim (toppling Netanyahu) to the means (fomenting

chaos in the streets and clashes with police) to the rhetoric (a combination of political science, dramatic prophecies, and an idea of himself as savior), the script now is the same one that Barak proposed in 2020. He recommends avoiding the term “left” and using “democracy” instead, since few, even on the right, would define themselves as anti-democratic. But Barak’s actual plan is more Bolshevik than liberal or democratic, and seems to aim at creating a state of emergency through which he would rise to power without bothering with the need to get elected.

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BY GADI TAUB

The video became viral not only for its carefully worded insinuations—Barak says the forum is too large to go into details about the forms the civil disobedience he has in mind should take—but also because of a truly bizarre vision he laid out. In response

to a question about whether he thinks he can reproduce his electoral victory over Netanyahu in 1999, Barak says that if the country faces a serious crisis he is the most qualified person to deal with it. Then, in what sounds like a megalomaniacal self-parody, he mentions a historian friend of his who told him that when the river Yarkon (which passes through the north of Tel Aviv) will be filled with floating corpses of Jews—Jews killed by other Jews, he stresses—then, his friend told him, “you would be called upon.” He did add, as a disclaimer, that he hopes that this will not happen, but his urge

to verbalize these thoughts in public is still eerie.

Barak, who is now so diligently shielded from criticism by the media, is usually considered unelectable. Not only because of his abject failure as prime minister, but also because of his continuing friendship with Jeffery Epstein, long after Epstein was convicted for procuring a child for prostitution. Barak was photographed covering his face with a scarf when entering Epstein's mansion, and Israelis mostly don't buy his explanation that it was a uniquely cold day. It also doesn't help that Barak received a \$2.3 million

grant from the Esptein-connected Wexner Foundation for “research” on the Israeli-Palestinian conflict and “leadership,” the latter of which Barak failed to complete.

Many of the ringleaders of the current protest against the reform were among Barak’s cadre of activists in 2020. You can see them discussing the plans for their protest on a panel at the end of that same Zoom meeting. Prominent among them is the handsome Joan of Arc of the Israeli protest movement, physics professor Shikma Bressler, who has made a spectacular comeback as an anti-reform warrior. She can be seen at

the front of all important demonstrations, always carrying the flag, leading chants, and delivering fiery speeches. She has repeatedly declared that the reform was going to turn Israel into a “theocratic dictatorship.” It later turned out, as she admitted in *Haaretz*, that she did not read the proposed legislation that constituted the reform. One ringleader who was not there in 2020 is Moshe Radman, a young, athletic high-tech entrepreneur who rose to prominence in the protest movement thanks to his short social media videos which contained clear succinct messages, delivered in a sharp

accessible style, radiating revolutionary optimism. His cropped hair and rectangular glasses notwithstanding, his energy and athletic build give him a Che Guevara vibe. He was right there in front when the anti-reform movement did a “January 6” on the Knesset, the day that the vote on limiting the use of “reasonableness” was held. Since the media was of course on the protesters’ side, the event was never framed as an attack on democracy, but rather as a heroic effort to save it from dictatorship.

It was Radman’s idea to stage the impressive march on Jerusalem in the

days preceding the vote. The march ended in a park adjacent to the Knesset in preparation for the big day. Radman later gave an interview explaining how he came up with the concept. The idea came from a documentary he saw about Armenian Prime Minister Nikol Pashinyan, who led a march to challenge his predecessor. “Here the story is different” from that in Armenia, Radman explained to his interviewer. “There the lower classes fought against the rich. Here elites are fighting the government,” Radman says, with admirable honesty, “and our aim is to convince the lower classes who are

still hostages to a false Bibist conception.” In other words, the privileged are fighting to topple the government which the deplorables elected democratically.

This is not, then, about democracy at all. It is about elites using their power to undo the will of the unenlightened majority. From now on, Radman explained, “it no longer has anything to do with the reform.” He brushes off a question about the “reasonableness” debate. “The Supreme Court will simply find ways to bypass reasonableness,” he says. The point

now, for him, is to topple the government.

“So how does one topple a government?” the interviewer asks.

“We are a democratic regime and there are no elections on the horizon?”

“You begin to make the economic situation much more difficult,” Radman explains. “We already see money being withdrawn out of Israel, and soon we’ll see a move to withdraw money from the stock exchange. Much to my regret,” he says, “this will bring crazy inflation and a rise in interest rates, and this will be a heavy burden on the

public. People will begin to suffocate under their mortgage, they'll have no money to go to the grocer's with."

Billionaire Kobi Richter, one of the most prominent backers of the anti-reform movement, and a close associate of Ehud Barak, explained it this way, adding an insinuation about the role of reservists:

The difference between Israel and other democracies that have turned into autocratic regimes ... is that in our case, that has no parallel in other countries, the security forces are us the protestors, and the economic

power is us, we are the economy, and we are the country's solution. (...)

Towards the end of the year when it turns out that, with the lowering of our rating by the credit rating agencies, interest rates will go up by one and a half to two percent, that there are no resources for the state to draw on, and between this failing economy and a progressively eroding security [situation], there is no way for this government to continue [drawing on the support of] its current voters [who are poor and] who will be the first to suffer.

This seems to be a very different plan than the one Radman ascribes to Nikol Pashinyan of Armenia. There the poor rose to fight the rich. Here the rich plan to strangle the poor. And when the poor can take it no more, the coalition will crack and lose its majority.

People like Radman, Richter, Barak, and some opposition MKs are recklessly trying to plunge Israel into chaos, which they hope will lead—with or without floating corpses of Jews

killed by Jews—to the downfall of Netanyahu’s government. The court might have helped prevent this chaos if it had maneuvered toward compromise. But the court is at the forefront of the attack on democracy. Instead of seeking compromise, it seeks to turn the controversy over the reform into a full-fledged constitutional crisis, which it intends to use to augment its already wildly excessive powers.

Thus the court’s latest, boldest move: It has accepted appeals for consideration against two amendments to Israel’s Basic Laws, which it has no legal authority to do—the clause to limit the

use of “reasonableness,” and a clarification amendment to the Basic Law: the Executive, which makes clear that removing a prime minister based on “incapacitation” refers only to health problems. This is like an American Supreme Court exercising judicial review over ratified amendments. But that is not all. The court is now asserting its authority to dismiss an elected prime minister since the amendment to the incapacitation clause —Israel’s equivalent to the American 25th Amendment—is, in the court’s opinion, a piece of “personal legislation” intended to personally

protect Netanyahu, and must therefore take effect only in the next Knesset.

The issue is, of course, straightforwardly political. Here's what's behind it: When Netanyahu took office, the attorney general ruled that he is barred from dealing with the reform due to a personal conflict of interest. As long as Netanyahu's trial is going on, he can't intervene in any policy which has to do with the legal system. This is absurd on its face, not only because the reform has nothing to do with a criminal trial that is already underway, but also because a prime minister, who is the head of the

executive, can't be barred from dealing with the gravest crisis Israel suffered in years. But the AG and the court want a sword above Netanyahu's head, so they have hinted that disobeying the conflict of interest dictum can trigger the incapacitation clause—if the court so decides. The court does not want the legislature to take away its leverage on Netanyahu by clarifying that this would not be a legitimate use of the clause.

All this should have been laughed away. It's obviously ridiculous. Except it may amount to the gravest threat to the democratic form of government in the

only democracy in the Middle East: a court which asserts its power to nullify elections and remove prime ministers at its whim. Thomas Friedman notwithstanding, this is not a “check on political power”—this is raw political power, unchecked. Anyone who shares the belief in liberty, limited government, and democracy must be horrified by these developments.

But I suspect that none of this is what actually interests Friedman, who appears to be acting according to the dictates of the current Democratic administration. In this sense he may indeed be translating from English to

English: He is translating White House policy into simple threats calculated to put fear into the natives.

Biden has his own reasons to want to get rid of Netanyahu. In the run-up to the 2024 elections, no man can embarrass the Biden administration about its Iran policy more than Netanyahu can. Pretending that judicial reform is actually on the minds of the president or his team is a bit of a stretch. But there's one thing Biden's team does share with Radman, Ehud Barak, Richter, and many others in the protest movement: They all think the reform could be leveraged to topple

Netanyahu. For in the end this is what all this is really about—finding a way to bypass democracy in order to remove a leader that can't be beaten at the ballot box.

Gadi Taub is an author, historian, and op-ed columnist. His Hebrew bestseller *The Rise of Antidemocratic Liberalism: Israel, the United States, and the West* is being translated into English.

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