

The Social Rifts That Led to Israel's Judicial Crisis

Israeli society is locked in a deep dispute over the future of its judiciary and democracy. The conflict is rooted in shifts of the last three decades.



By Patrick Kingsley

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6 MIN READ

When Israeli lawmakers passed a law in 1992 that would give judges the power to block future legislation, an argument broke out on the floor of Parliament that foreshadowed the fight over the judiciary that is engulfing Israel today.

“You are subjecting Parliament to the Supreme Court,” declared Michael Eitan, a lawmaker and a critic of the measure, which more broadly enshrined basic human rights in Israeli law. “This is not democracy, this is usurpation.”

But the justice minister at the time, Dan Meridor, said that Parliament’s influence needed to be balanced by judicial checks. “Only those who see democracy as the rule of the majority, and nothing else, think that it is not democracy,” he said, referring to judicial checks on lawmakers.

The 1992 legislation provided the legal basis for the Supreme Court to strike down laws in Parliament that its judges felt undermined fundamental personal liberties, like the rights to privacy and property. It has used the power more than 20 times since.

That included restricting some Israeli settlement construction in the occupied West Bank and removing certain privileges awarded by Parliament to ultra-Orthodox Jews — moves that drew the ire of both communities.

Now, three decades later, a new ultraright governing coalition is trying to sharply reduce the Supreme Court’s powers. The effort is at the heart of a deep ideological and cultural divide in Israel between those who want a more secular and pluralist state and those with a more religious and nationalist vision. The dispute has brought about waves of protests, turmoil in the military, criticism from influential American Jews and the Israeli tech sector, and fears of civil unrest.

The court’s critics, who tend to be more religious and right-wing, envisage Israel as a majoritarian democracy that gives elected lawmakers primacy over the judiciary. They associate the court’s judges with Israel’s secular elite, personified in a former chief justice, Aharon Barak, who helped shape the court as it is today.

The court’s supporters want Israel to be a liberal democracy, with strong judicial checks and balances on Parliament, and see the court as a last defense against a rising far right.

It is the first group that took office late last year when Prime Minister Benjamin Netanyahu, who faces corruption charges, turned to the ultraright to build a governing coalition. And it is his administration that is now attempting the sweeping judicial overhaul as a way to eliminate roadblocks to its agenda.

The changes the government plans to enact would restrict the Supreme Court’s ability to reject laws passed by Parliament — circumventing the bill passed in 1992 — and allow Parliament to override Supreme Court decisions. It would also give the government greater control over the selection of justices.

Mr. Netanyahu's administration is pressing for a sweeping overhaul that would circumvent legislation passed in the 1990s and diminish the role of the Supreme Court. Amit Elkayam for The New York Times

By curbing the Supreme Court, the overhaul would weaken one of the few checks on the government. The court is considered a key protector of minorities and a rare, if limited, source of legal recourse for Palestinians living under Israeli occupation in the West Bank.

Over the years, the court has made it harder to jail asylum seekers and opposed certain demands from settlers, like barring them from building on private Palestinian land in the West Bank. It has not obstructed settlement in most other contexts and sometimes permitted the eviction of Palestinians from their homes.

Mr. Barak, 86, has become a particular target of right-wing critics because, as chief justice between 1995 and 2006, he oversaw several of the court's first restrictions on Parliament.

Throughout his judicial career, he was a vocal supporter of judicial intervention in public life.

"In my eyes, the world is filled with law," Mr. Barak wrote in 1992. "Wherever there are living human beings, law is there. There are no areas in life which are outside of law."

That attitude infuriates the court's opponents.

"He has brought disaster on Israel," the justice minister, Yariv Levin, said in January. "His path stands in contrast to democracy. To him, judges are preferable to the people's elected officials."

The government's effort to overhaul the judiciary reflects how Israel has changed over the last three decades and highlights the rising influence of two groups that have long locked horns with the court: ultra-Orthodox Jews and West Bank settlers.

Ultra-Orthodox Jews resent the court for opposing handouts and conscription exemptions for their community, while settlers see the court as an unwanted brake on their aims of exerting even more control over the West Bank.

“What you’re now witnessing is a backlash,” said Itamar Rabinovich, a former Israeli ambassador to Washington. “They have long memories. They want to settle the score. And they are settling it now — big time.”

The crisis reflects Mr. Netanyahu’s shifting priorities and his resolve in pushing the changes forward. A former party colleague of Mr. Meridor, the former justice minister, Mr. Netanyahu once supported judicial independence.

“A strong and independent judicial system is what enables the existence of all the other institutions in a democracy,” he said in 2012.

But Mr. Netanyahu has changed his views since being investigated and then tried for corruption in an ongoing trial.

His decision to remain in politics despite that prosecution alienated many allies, forcing him to rely on settler-led and ultra-Orthodox parties to establish a coalition last December. Critics fear that a weakened court would allow Mr. Netanyahu to enact legislation that would stop his prosecution — a claim he has repeatedly denied.

Israel’s rightward drift began long before Mr. Netanyahu’s trial.

The failure of peace negotiations with the Palestinians in the 1990s led some Israelis to lose faith in the centrist and leftist leaders who had championed the process.

Israel’s withdrawal in 2005 from the Gaza Strip after 38 years of occupation, dismantling 21 Israeli settlements there, also played a major role in galvanizing the Israeli right against establishment institutions like the Supreme Court.

The settlers in Gaza and their supporters saw their expulsion as a traumatic loss of their homes, driven by an Israeli establishment that seemed callous and hypocritical.

While the Supreme Court has not obstructed most settlement construction, it backed the government’s decision to withdraw from Gaza, angering the settlement movement.

Most of the lawmakers leading the judicial overhaul came of age during the Gaza withdrawal, either as activists or lawyers, and the evacuation played a formative role in their political outlook.

A Hamas memorial topped by a missile in Gaza City. The fallout from Israel's withdrawal from Gaza galvanized the Israeli right. Samar Abu Elouf for The New York Times

Mr. Levin, the justice minister, was a strong critic of the withdrawal. Simcha Rothman, a senior government lawmaker who is shepherding the overhaul through a parliamentary committee, was involved in protests against it.

“Without understanding the role of the disengagement and its effect, you can’t really understand what’s going on,” said Netanel Elyashiv, a right-wing commentator.

For much of the Israeli right, “the collective emotion was of being run over, being trampled,” Mr. Elyashiv said.

“This feeling caused deep frustration — and it caused a yearning for power,” he added.

The court drew parallel anger from another growing constituency: ultra-Orthodox Jews, known in Hebrew as Haredim.

Since Israel’s founding in 1948, the secular leaders of the state have granted the Haredim autonomy over certain parts of their lives, letting them manage their own education system and exempting them from mandatory military service.

The Supreme Court has sometimes struck down those privileges or undercut the primacy of Orthodox Jewish practice in Israeli public life. In a particularly contentious example, the court ruled in 2012 that it was unconstitutional for the Haredim to avoid military service.

Though the ruling has never been enforced, it entrenched the ultra-Orthodox’s perception that the court sought to impose on their way of life.

“They don’t trust that the court really respects their values,” said Eli Paley, chairman of the Haredi Institute for Public Affairs, a Jerusalem-based research group.

“Again and again, the court is making decisions that are intervening into our own lifestyle,” Mr. Paley added.

Boys helping out with construction work at the unauthorized settler outpost of Evyatar in the Israeli-occupied West Bank in 2021. Amit Elkayam for The New York Times

While ultra-Orthodox Jews and settlers have grown in numbers and influence, they lacked the ability to radically change the judiciary until this year.

Polling shows that a majority of Israelis do not support such a drastic overhaul. Even when Haredi and far-right leaders joined previous governments led by Mr. Netanyahu, their influence was balanced by others, including Mr. Netanyahu himself.

What changed was Mr. Netanyahu's personal predicament. His decision to remain in office during his corruption trial led more moderate allies to abandon him. To increase his chance of re-election in recent years, he repeatedly encouraged several far-right, settler-led parties, including Mr. Rothman's, to join forces.

That strategy paid off in 2021, when a far-right alliance won six seats in Parliament, giving that faction greater national prominence. When Israelis voted again last November, the alliance won 14 seats, the third most in Parliament.

Rejected by every other potential ally, Mr. Netanyahu's party, Likud, united with the far right and the ultra-Orthodox, without any moderate counterweight.

Back in the 1990s, it was a Likud justice minister, Mr. Meridor, who promoted the law that would empower the Supreme Court.

Back then, there was broad support, both in the party and beyond, for "the importance of an independent judiciary and abiding by their decisions whether we like it or we don't," Mr. Meridor said in an interview.

"What changed?" he added. "Likud changed."

Hiba Yazbek contributed reporting.