

DAILY COMMENT

# HAS BENJAMIN NETANYAHU'S ASSAULT ON ISRAELI DEMOCRACY BEEN STOPPED?

*In the face of mass protests, the Prime Minister has backed down from his plan to overhaul the judiciary—for now.*

By **Bernard Avishai**

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Photograph by Oren Alon / Reuters

On Sunday night, the Israeli Prime Minister, Benjamin Netanyahu, fired his defense minister, Yoav Gallant, a reserve major general whose mother had been a Polish refugee on the S.S. Exodus. His offense was patriotism. The night before, Gallant had appeared on prime-time national television, calling for a “dialogue” on the fate of the Israeli judiciary and a temporary “halt to the legislative process” that is, in effect, assaulting it. “The growing rift in our society is penetrating the I.D.F. and security agencies. This poses a clear, immediate, and tangible threat to the security of the state. I will not lend my hand to it,” he said. A source close to Netanyahu, changing the subject, said that Gallant was fired for his “feeble and weak response” to the rapidly growing number of reserve officers who, in protest, are refusing to appear for service.

The response from the street was anything but feeble. Overnight, mass demonstrations—of tens of thousands of mostly young people—erupted across the country, building on what have become regular Saturday-night events in the major cities. (During the rest of the week, some show up for improvised, digital teach-ins and spontaneous strategy sessions in towns and neighborhoods.) Protesters were especially focussed on Tel Aviv, where police used water cannons to clear the vital Ayalon expressway. People lit bonfires and chanted, “Democracy or revolt!” and, “You’ve taken on the wrong generation”—and, increasingly, “Bibi, go home.”

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On Monday morning, all universities suspended classes to protest the legislation, which they described “as undermining Israel’s democratic foundations”; key hospitals curtailed medical services; and the Histadrut labor

federation, which represents most public-sector employees and in which Netanyahu's Likud is assumed to be very influential, joined with business leaders to call for a general strike. Ben Gurion Airport partially shut down. Banks closed after 1 P.M. One of Netanyahu's criminal lawyers reportedly said that, if the judicial package went ahead, he would cease representing him. Ehud Barak, the former Prime Minister and chief of staff of the Israel Defense Forces, who had been both Netanyahu's commander and a champion of Gallant's rise, told a TV interviewer, "Pausing the [judicial] overhaul won't stop the protests. We've passed the point of no return."

By midday, Netanyahu, who had previously dismissed the demonstrators as "anarchists," was reportedly planning to capitulate. And key members of his cabinet—including his justice minister, Yariv Levin, who has spearheaded the assault—were walking back their threat to resign if he *did* capitulate; they were considering, instead, how to hold on to power and buy time, with the religious zealots Itamar Ben-Gvir and Bezalel Smotrich insisting on eventual passage. Then, during the evening, without mentioning Gallant, or restoring him to his post, Netanyahu finally did precisely what his defense minister had asked for: he "suspended" the effort to bring more elements of the judicial package to a vote in this session of the Knesset and agreed to a period of dialogue with members of the opposition, though he stressed that he reserved the right to reintroduce the package in subsequent sessions. "One way or another, we will enact a reform that will restore the balance between the authorities," he said.

Even before Netanyahu acted, the Israeli President, Isaac Herzog, and the opposition leaders Benny Gantz and Yair Lapid had welcomed an opportunity for a real dialogue; in fact, Herzog had presented his own formula for judicial reform earlier in the month. Yet both Herzog and Lapid committed to enshrine protections for equality and individual liberty in law—which, arguably, some of Netanyahu's theocratic allies could never accept. Dialogue, in that case, only delays the inevitable collision. Indeed, it is no longer clear that reappointing Gallant, or even merely suspending the judicial assault, will calm down the streets. (Dialogue with a threat of the package's reintroduction hanging over the

talks would be, Barak had said, “between the wolf and the lamb, about what to eat for dinner.”)

Shikma Bressler, a forty-two-year-old physicist at the Weizmann Institute, has emerged as a leader of the protests. On Monday, she addressed a crowd of some hundred thousand protesters that surrounded the Knesset. She said that the government “must abandon the package altogether” and agree only to changes that are arrived at by “broad agreement.” Meanwhile, the far-right La Familia group, which is centered in Jerusalem and has a history of violence, announced that it was also planning to go to the area around the Knesset on Monday night, to protest in favor of the judicial overhaul. The hard right’s demonstrations proved small by comparison, but nobody who has witnessed its yearly marches on Jerusalem Day would doubt that they could grow. Israelis, like Californians, live on a geological fault line and try not to think about “the big one.” But they have also lived on a political fault line, and many now fear that this may, indeed, be the big one.

*It is hard now to see how demonstrators will trust Benjamin Netanyahu's government remaining in power, irrespective of the suspension of his party's judicial package.* Photograph by Gili Yaari / NurPhoto /

AP

The eruption began last Thursday morning. Netanyahu's coalition passed an amendment to what is known as the Basic Law: Government—basic laws are pieces of Israel's jigsaw constitution—restricting the terms by which a Prime Minister can be required to take a leave of absence owing to medical incapacity, and so, in effect, prohibiting the High Court of Justice from ruling, as it might have before the new law, on whether Netanyahu could be forced to take a leave if the exercise of executive authority entailed a manifest conflict of interest.

This, all knew, was a preëemptive strike: Netanyahu is on trial for fraud, bribery, and breach of trust—all of which he has denied—and yet he heads a government that is famously aiming to “reform,” as he puts it, the very judiciary that is trying him. (A complementary bill, not yet enacted, would allow politicians to pocket money donated for their own medical and legal expenses; it might let Netanyahu keep more than quarter of a million dollars that he had received from a relative to use to cover *his* legal expenses, while potentially inviting all politicians to engage in, well, fraud, bribery, and breach of trust.)

The amendment was also Netanyahu's opening gambit, the first law in a legislative package that menaces the judiciary more seriously—a package that Yariv Levin and the chairman of the Knesset Justice Committee, Simcha Rothman, were rushing through serial Knesset votes. The package would, among other things, empower a simple Knesset majority to pass or reverse Basic Laws, forbid the High Court to rule on them, and override the High Court's abrogation of any subsequent law. It would also turn ministerial legal advisers—now legal watchdogs of the (still) independent attorney general—into the political appointees of ministers.

Most immediately menacing, as it was scheduled for a vote this week, was an amendment to the Basic Law: Judiciary, which would give the coalition control

over the method for appointing High Court justices and other judges. (Currently, the nine-person appointments committee includes two ministers, two Knesset members—one or more of whom is from the coalition—three High Court justices, and two representatives of the Israel Bar Association; seven votes are needed, which accords the government's members a veto.) "Pass the law on appointments and you don't need the rest of the package," Suzie Navot, the vice-president for research of the Israel Democracy Institute, told me, because the High Court is the "only institution that can limit the power of the majority."

Netanyahu, for his part, claims that it is the High Court that has been roiling the country, promiscuously overturning Knesset legislation that expresses the right of the majority to have its way. On Thursday night, he called for unity but then proceeded to advance six common smears of the Court. (The next night, Danny Kushmaro, a news anchor on Channel 12, Israel's main television station, took the unprecedented step of debunking those smears, one by one.) Over the weekend, in London, where he met Prime Minister Rishi Sunak, Netanyahu described himself to Piers Morgan as a "classical liberal" aiming to achieve "balance."

The problem, however, has never been an activist Court that doesn't know its limits but, rather, a quasi-theocratic state apparatus that, from the start, has only partially observed liberal-democratic boundaries—allowing rabbinic control over marriage and divorce, or separate state-supported school systems, for example—and left other civil rights unprotected. Netanyahu's theocratic allies, to whom he's made himself hostage, see themselves as custodians of the general will, which is, they believe, divine. "Democracy is the decision of the majority, the decision of the people," Simcha Rothman said, in 2021, noting that, for himself, the term means "doing what the Holy One, blessed be He, says." The High Court has cautiously used the 1992 Basic Law: Human Dignity and Liberty to push back against some theocratic features, such as military exemptions for ultra-Orthodox youth—threatening something like Quebec's Quiet Revolution of the nineteen-sixties, which slowly loosened the

stranglehold of the Catholic Church over education and social services. It has abrogated a mere twenty-two laws, or subsections of laws, all having to do with the protection of basic human rights. It has ruled that Jewish communities living on public land cannot deny the purchase of a home there by an Arab Israeli citizen, and mandated the release of asylum seekers from incarceration. But the Knesset legal adviser Gur Bligh believes that even such fundamental rights as voting and freedom of expression would be left unprotected if the High Court were compromised.

Hanan Melcer, a former High Court justice who is now the head of the Israel Press Council, told a *Haaretz* conference in late February that Israel has no constitutional guarantee for freedom of the press, either, since that right is “only the fruit of interpretive verdicts” of the Basic Law: Human Dignity and Liberty, and can be rendered moot if the Court is hamstrung. He could have added that various coalition leaders have threatened to close down the public broadcaster, Kan; to ban strikes in critical services or in opposition to the government’s judicial proposals; and, especially chilling, to ban most Arab political parties—which could make Netanyahu’s majority unassailable.

It was in this context that Gallant acted: Netanyahu’s government, claiming a democratic mandate, was poised to subordinate the High Court, which, claiming democratic norms, was rejecting subordination—a perfect constitutional crisis. Gallant has previously tangled with the attorney general, over a minor legal breach that precluded his appointment as chief of staff, in 2011. But, whatever Gallant’s own feelings about the judiciary, he could not ignore how the schisms are undermining military readiness. The current chief of staff, Herzl Halevi, has made no secret of how the government’s actions are severely demoralizing the technologically advanced military, which depends increasingly on young men and women coming from the same educated and cosmopolitan families that the judicial coup is alienating.

Just last week, more than a hundred Air Force reservists announced that they will not report for routine and nonemergency service, joining hundreds more in the Military Intelligence Directorate, in special-operations units, and in



offensive cyber units. “In one battalion of the elite 551st Paratroopers Brigade,” *Haaretz*'s Amos Harel reported, “only 57 percent of the reservists who were called up this week reported for duty on the first day—a steep drop from the typical turnout of 90 percent.”

Tamir Pardo, the former head of the Mossad intelligence agency (who also served under Netanyahu's brother, Yoni, in the Entebbe raid, in 1976), told Kan that “every Israeli citizen, with no exceptions,” should join the protest, that “Jews and non-Jews need to understand the danger,” and that Netanyahu should resign. Barak was even blunter, telling a conference in Tel Aviv organized by *Haaretz*, “We teach soldiers in officer-training programs that there can be orders given under a black flag”—meaning illegal orders. In such a case, he added, “It is not the officer's privilege to refuse; it is his or her duty to refuse.”

This is a moral issue for officers, but it also entails personal jeopardy. Over the years, the occupation and the siege of Gaza have occasioned harsh military actions, some of which could be considered gross violations of international law. For the most part, Israeli officers have been shielded from international sanctions, because the Israeli judiciary has been generally recognized as independent and at least capable of investigating and prosecuting serious violations on its own, though it has generally refrained from doing so. But, if the judiciary were to be considered as nothing but an instrument of the cabinet, this could change. A pilot named Meidan Barr, the chairman of an association of a thousand commercial pilots, told DemocratTV on March 20th that, considering the myriad N.G.O.s monitoring the conflict, hundreds of Israeli officers, and not just pilots, could be detained and questioned after landing in other countries—and might possibly even be arrested. “Everything now happening here would require the International Criminal Court in the Hague or elsewhere to investigate,” Barr said.

Among the chief beneficiaries of democracy's preservation would be Arab Israelis, who make up twenty-one per cent of the population, who do not have to serve in the military, and whose vote Likud has sought to suppress in various



ways. But the protests have been a sea of Israeli flags, and—according to one of the leaders—the showing of the Palestinian flag has been discouraged, so as not to alienate some more centrist Israelis who support democratic reform but see that flag as a historic shield for terror. Settler forces on the West Bank, meanwhile, are acquiring firearms more easily and have announced new settlement plans. Tit-for-tat violence is escalating. Settlers living in Har Bracha avenged the deaths of two brothers, who were reportedly killed by a Palestinian gunman as they drove through the nearby town of Huwara, by rampaging through that town, killing one Palestinian, and setting fire to scores of cars and homes, in what Major General Yehuda Fuchs, who oversees forces in the West Bank, called a “pogrom.” “I look at the flags or hear speakers talk of ‘Zionism’ when they mean to say ‘patriotism,’ and I feel uncomfortable,” Reem Younis, a co-founder of Alpha Omega, a medical-engineering company in the predominantly Arab-Israeli city of Nazareth, told me. “There is tweaking to do.”

West Bank violence has always been Netanyahu’s ace in the hole, commanding a broad coalition of support, even among opposition parties. But now the social cleavages with which he is identified make him seem like anything but a wartime leader. Nor is the economy a winning card. The Israeli stock market jumped about two points and the shekel rallied at the news that Gallant was going to oppose him. Two days earlier, the Finance Ministry’s chief economist, Shira Greenberg, had warned that the undermining of the judiciary could lead to a credit-rating downgrade and to as much as a twenty-seven-billion-dollar loss in G.D.P. annually.

The coalition has almost two hundred billion dollars in foreign-exchange reserves to cover deficits if the economy deteriorates and revenues plunge. But that means spending the golden egg after killing the goose. “We are in a tragic moment,” the veteran investor Yossi Vardi told me. “We were somehow able to create a mind-boggling entrepreneurial ecosystem—the sum of culture, heritage, innovation, taxation, mutual trust—but, like every ecosystem, this one is delicate.” Indeed, leading members of the venture-capitalist community are consulting with one another on social media, conspicuously transferring funds

from Israeli to foreign accounts, and holding up investments from abroad, and entrepreneurs are registering businesses in Delaware rather than Israel. Erel Margalit, the founder of Jerusalem Venture Partners and a prominent investor resisting the package, told me that Israel's innovations depend on connection with foreign universities and corporations. "You can't lose your status with the U.S. and with your European partners," he said. "You can't lose your allies."

Which brings us back to Monday. It is hard now to see how demonstrators will trust Netanyahu's government remaining in power, irrespective of the suspension of the package. The key question, perhaps, is whether senior Likud leaders will abandon Netanyahu and the coalition's theocrats. At first, Gallant's call to suspend the judicial package was reportedly seconded by three other Likud leaders and sometime Netanyahu rivals, including Avi Dichter, the former head of Israel's internal security agency. That list of leaders has grown, though none have called for abandoning the package entirely, and Dichter is rumored to have been suborned with an appointment to Gallant's post.

In any case, Likud has reason to worry about its future and the Bibi cult it has engendered. A poll released by Channel 12 on Monday night found that sixty-eight per cent of Israelis disapprove of Netanyahu's performance; only nineteen per cent favor him. Sixty-three per cent (and fifty-nine per cent of Likud voters) opposed Gallant's firing; sixty-three per cent (and fifty-eight per cent of Likud voters) believed that the legislation should be stopped. Finally, if new elections were held today, Netanyahu's bloc would drop ten seats, to about fifty-four, and the center parties of Gantz and Lapid would, together, gain forty-five seats to Likud's twenty-five.

But Likud's leaders are also trapped by past demagoguery. Its base of less-well-educated voters has been assured that the High Court's "activism" reflects a kind of privileged ethnic despotism—that the package is a belated revolution of have-nots against haves. "This struggle isn't about laws," the Likud member David Amsalem, a self-styled spokesman for the base, told the Knesset. "It's about whether an élite and the nobility continue to run the country, and we remain the vassals." It seems in vain to point out that it is an odd feudal system

in which the “nobility” is taxed to support the “vassals”: according to a government report, ninety per cent of all tax payments are made by non-Orthodox Israeli Jews and twenty-five per cent by the mainly secular high-tech sector concentrated in Tel Aviv.

And it is these forbearing citizens who are most inflamed. For decades, “traditionalists” such as Herzog, who account for perhaps a third of the country—people who may be vaguely secular but are accustomed to indulging rabbinic orthodoxy (out of political opportunism, or a desire for unity, or a bow to its claim of authenticity)—are being forced to choose: an Israeli democracy with a Hebrew national character or a religious Jewish state with democratic trappings. Netanyahu’s Knesset “gang” is “corrupt, violent, messianic, and dark,” the political satirist Lior Schleien told a mass rally in Tel Aviv in February. “Compromise, Mr. President?” he asked. “On democracy, it’s impossible to compromise.” Schleien was born into a comparatively serene and urbane world in Israel, unlike the state’s founders and others who had fought in various wars for its survival. He said, “This is our [generation’s] war, our guard, our responsibility.” ♦

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