

Democratic Backsliding in Netanyahu's Israel

Written by Neta Oren

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NETA OREN, MAY 19 2023

During the mass protests against the Netanyahu government's judicial overhaul, demonstrators in Tel Aviv carried a huge sign showing Netanyahu alongside the Russian, Hungarian, and Turkish leaders, suggesting a similarity between Netanyahu and these other leaders. Indeed, the current judicial "reforms" in Israel should be studied as a part of a global "wave" of democratic backsliding by elected leaders who have used the power of their positions to challenge and undermine democratic institutions and norms (Norris and Inglehart 2019; Haggard 2021). From this perspective, Israel's judicial overhaul is one step in the backsliding process, which started during Netanyahu's previous terms and intensified in his current term following the November 2022 election. As in other cases of democratic backsliding, the changes probably will not be limited to the Judiciary.

Democratic backsliding refers to a gradual yet significant degradation in the quality of democracy, as democratic norms are slowly eroded, democratic institutions are steadily weakened, and democratic 'gatekeepers' are undermined or silenced altogether. What is usually undermined in democratic backsliding are mostly the liberal aspects of democracy (civil rights, the rule of law, and checks and balances) without breaking democratic institutions completely. The primary and most common methods that underlie the process of democratic backsliding are: (1) undermining the independence of the judiciary and regulators, (2) challenging minority rights, (3) harassing civil society groups and nongovernmental organizations, (4) challenging academic and artistic freedom (5) undermining the independence of the media, and (6) enhancing electoral advantages (Bermeo 2016; Levitsky and Ziblatt 2018; Haggard 2021).

Hungarian Prime Minister Viktor Orbán and Turkish President Recep Tayyip Erdoğan are prominent examples of agents of democratic backsliding. Netanyahu and some of these leaders echo one another's rhetoric and openly refer to each other as role models. For instance, despite the role of antisemites in Orbán's ruling coalition, Netanyahu established a close relationship with his Hungarian counterpart based on their shared vision of a "conservative model" of democracy (Hauser 2023; Filc and Pardo 2021; Pfeffer Anshel 2019).

Like in the cases of Orbán and Erdoğan, one of the Netanyahu coalition's main goals is to control the judiciary, law enforcement, intelligence, and regulatory agencies by nominating loyalists and limiting these institutions' scope of authority. Immediately after coming to power, the new coalition introduced a series of bills. The first bill changes the Judicial Selection Committee composition to grant the government absolute control over appointing judges. It also strips the Court of any authority to strike down or limit Basic Laws, regardless of their content (Basic laws can be passed by a simple majority of Knesset members (MKs) present. Unlike ordinary laws, however, basic laws can only be amended by enacting another Basic Law or by an absolute majority of MKs). Another bill only permits the Supreme Court to strike down regular laws unanimously (or, according to another version, by a supermajority of 12 of the 15). A third bill prohibits the Court from reviewing and striking down decisions and actions of government, ministers, and other executive agencies for being "unreasonable," as the Court is currently authorized to do. Finally, a bill empowers the Knesset to reinstate laws and actions that the Supreme Court invalidated with a majority of 61 of the 120 MKs (Tibon 2023). If they were to pass, these bills "will strip the Court almost entirely of the ability to protect human rights and the foundational principles of democracy" (Stopler 2023).

One should remember in this context that Israel lacks checks and balances, such as a written constitution, a second legislative chamber, or a federal system. In addition, in the Israeli parliamentary system, the government effectively

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controls the Knesset (the legislative body) through its coalition control. The Supreme Court is the only check that protects constitutional rights against undue violation by the Knesset and the government.

“Even in a comparative view of other democracies, it seems that it is difficult to find a combination of such significant restrictions on the ability of the judiciary to review the legislative and executive authorities,” warned Government legal advisor Gur Bligh (Starr 2023). Similar laws were passed in Hungary and Turkey (Oren and Waxman 2022). For example, in Hungary, Orban changed the Constitutional Court's size and the nomination rules to enable the nomination of his loyalists as justices. In addition, “legal limits [had] been placed on the power of courts to exercise judicial review over certain legislative instruments . . . and decisions of the Constitutional Court to strike down legislation [had] been routinely overturned through constitutional amendments (Kremnitzer and Shany 2020, 130).”

As in other cases of democratic backsliding, regulatory and law enforcement institutions were also targeted by Netanyahu's coalition. According to another proposed bill, Ministers will choose legal advisors in government ministries (currently, legal advisors are professional appointments) (Revivo 2023a). Another proposed bill is strengthening the control of politicians over many regulatory positions. It cancels the Senior Nominations Committee that approves the nomination by the government of senior positions like the IDF chief of staff, police commissioner, governor of the Bank of Israel, and head of the General Security Services. Instead, the Knesset would approve the nominations (Karhi 2022b). The committee comprises a retired Supreme Court justice, the Civil Service Commissioner, and two public representatives. Another bill reassigns some of the authorities currently held by the police commissioner to the Minister of National Security, strengthening the minister's control over the police's actions (Israel has a single, nationally controlled police force), including the handling of anti-government demonstrations (the current minister is the Far-right politician Itamar Ben-Gvir)(*Bill: Amendment to the Police Ordinance (No. 39) (Authorization), 5783-2022 2023*).

Minority rights in Israel are challenged under Netanyahu's rule not just because of the attacks on the Supreme Court – the only institution that protects these rights – but also through laws and bills. This aspect of democratic backsliding can also be found in Hungary and Turkey. For example, Hungary's Roma population faces structural discrimination and segregation. In Israel, indigenous Palestinian-Arab citizens — comprising roughly 21 percent of the citizenry — are the largest and most prominent minority group targeted by Netanyahu's government. Israel has never been a genuinely liberal democracy but a semi-liberal democracy or an ‘ethnic democracy’ serving Jews first and foremost (Waxman and Peleg 2020). The “Israel — the Nation-State of the Jewish People basic law,” passed in 2018, explicitly affirms that only Jews have the right to self-determination in Israel. It also downgraded Arabic from an official language alongside Hebrew to having a “special status,” and it declares “the development of Jewish settlement” as a national value. In practical terms, the nation-state law's most important effect is to constitutionally enshrine Israel's Jewish character above its democratic status, thereby compelling judges to consider the principle of protecting the state's Jewishness in their future rulings before the rights of all citizens. Consequently, the law might prevent the Supreme Court from invalidating laws and practices that discriminate against Arab citizens (Waxman and Peleg 2020). Recently, Israel's Negev and Galilee Development Minister Yitzhak Wasserlauf proposed to adopt “values defined in the Nation-State Law” as the basis for public administrative policy, internal and foreign policy, and legislation (Lis 2023).

Netanyahu follows the “textbook” of leaders like Orban in his attempts to harass Civil Society. In his previous terms, laws passed in 2012 and 2016 targeted Israeli nongovernmental organizations (NGOs) receiving foreign government funding. These tend to be liberal and left-wing NGOs since their right-wing counterparts (such as the NGO *Kohelet* that initiated and lobbied for the judicial overhaul) tend to rely on private foreign donations, which these laws do not cover. The current coalition continues this effort to harass civil society groups. For example, a new bill imposes a tax on donations from foreign governments to Israeli organizations (Kallner 2023). Hungary also imposed a tax on contributions made to some Hungarian NGOs with agendas opposed by the government.

Netanyahu's coalition challenges academic and artistic freedom like in other cases of democratic backsliding. One bill proposed cutting the budget of Israeli academic institutions cooperating with organizations whose purpose, among other things, is to “call for the boycott or to support the boycotting, withdrawing investments or imposing sanctions against the State of Israel or its citizens (Revivo 2023b).” In April 2021, Education Minister Yoav Galant

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from the Likud withheld the government's prestigious Israel Prize from mathematician Oded Goldreich due to his political opinions (a decision that the Supreme Court subsequently overturned). A new bill denies governmental awards to individuals who criticized Israel and have ties to organizations that called to boycott Israel (Katz 2022).

As for undermining the independence of the media, Orbán and Erdoğan used many tools to deter media outlets from publishing content opposed by their governments. For example, in Hungary, laws passed in 2010 empowered a government-controlled Media Council to fine, sanction and even shut down outlets for failing to provide "balanced" coverage. During Netanyahu's previous terms, he interfered in the licensing regulations of commercial TV stations in a manner designed to encourage some of his wealthy supporters to invest in the networks and provide him with better coverage. As for public broadcasting, in 2015, Netanyahu's government replaced the Israeli Public Broadcasting Authority (IPB) with a new public authority of public broadcast – Kan. However, Netanyahu eventually rejected Kan because he could not appoint his people to the management of the new authority. As Miri Regev, the minister of culture at that time from the Likud, said, "What's the value of the (new) authority if we don't control it? The minister has to rule" (Talshir 2018, 340). After they failed to regain control of Kan, Netanyahu and his loyalists moved to close it down. A proposed bill by the new communications minister calls for closing and privatizing Kan (Karhi 2022a). This move could damage the pluralism of ideas in Israel and democracy. As Neff and Pickard show in their study of 33 countries (including Israel), "high levels of secure funding for public media systems and strong structural protections for the political and economic independence of those systems are consistently and positively correlated with healthy democracies" (Neff and Pickard 2021).

Eventually, to weaken the political opposition and minimize the risks of electoral defeat, populist leaders like Orbán and Erdoğan revised voting laws and procedures. In Hungary, the country's electoral districts were gerrymandered in a way that allowed Orbán's party Fidesz to maintain its two-thirds supermajority in the parliament with only 45 percent of the vote in 2014, 49 percent of the vote in 2018, and 53 percent in 2022. Netanyahu was less successful than Orbán in changing voting laws and procedures. His focus was primarily on Arab parties and voters. Under Netanyahu, the electoral threshold was raised in 2014 from 2 to 3.25 percent (which is still low compared to 5 percent in Hungary). This move was intended to keep small Arab/Arab-led parties out of the Knesset. Indeed, in the 2022 election, the pro-Netanyahu bloc benefited from the raised threshold. An Arab party (Balad) and a left-wing Jewish party (Meretz) failed to clear it, wasting more than 275,000 votes combined. As a result, even though just 48 percent of the popular vote went to parties in the pro-Netanyahu bloc, it controls 64 of the 120 seats in the Knesset (Breuer 2023).

The Likud also tried to intimidate Arab voters. In 2019, Likud sent 1,200 party activists with hidden cameras exclusively to Palestinian polling stations based on fabricated claims of widespread voter fraud. A week before the subsequent September election, Likud tried unsuccessfully to pass a bill that would have allowed surveillance in polling stations, purportedly to prevent voter fraud. Finally, the Likud also tried to ban Arab parties. For example, the Central Elections Committee banned two Arab parties from participating in the 2019 April election following petitions submitted by three right-wing Jewish parties, including Likud. At the same time, the committee allowed far-right Jewish politician Michael Ben-Ari to run in the election, despite a recommendation from the attorney general to ban him. It is worth noting that the committee members are representatives of the parliamentary groups in the outgoing Knesset, hence the coalition has a majority in this committee. The Supreme Court subsequently overturned the ban on the Arab parties. A new bill by MK Eliyahu Revivo from the Likud proposed to change how the Central Elections Committee chairman is elected. Instead of the sitting Supreme Court justice being chosen by the chief justice, the committee would choose one candidate out of at least three proposed by the Knesset speaker. Revivo withdrew the bill for now. But passing the bills that eliminate the power of the Supreme Court would increase the likelihood of the Likud successfully banning Arab parties. This move would enhance Likud's electoral advantages, as it will discourage turnout among Arab voters who do not tend to support Likud and the pro-Netanyahu bloc.

So far, I have shown that Israel experienced democratic backsliding during Netanyahu's terms. Indeed, V-Dem downgraded Israel from a "liberal democracy" to an "electoral democracy" in its 2018 report. But while Netanyahu employed illiberal tactics like Orbán, he was less successful than Orbán in achieving his goals. Nonetheless, Netanyahu's illiberal efforts intensified in his current term. Why? Unlike Fidesz under Orbán in 2010, Netanyahu's Likud was never likely to win close to 50 percent of the seats in the Knesset. This forced him during 2009-2021 to

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form coalition governments that did not support the legislation he wanted. But after his right-wing and religious bloc won a decisive 64-seat Knesset majority in the 2022 election, ending four years of political deadlock and repeated elections, Netanyahu's coalition no longer includes any moderating or constraining elements. For the first time, all parties in his bloc (Likud; the far-right Religious Zionist Party; and the ultra-Orthodox parties, Shas and United Torah Judaism) are committed to advancing illiberal laws.

So, will Israel finally follow Hungary's path? A strong democratic sentiment among the public is challenging Netanyahu's efforts to undermine democratic institutions. The judicial overhaul triggered mass rallies throughout the country that lasted for months – the kind that had never been seen before in Israel. Still, one should remember that mass demonstrations and strikes are a common reaction to democratic backsliding and do not always succeed in derailing the backsliding. For example, mass demonstrations initially stalled the backsliding in Poland, but it ultimately continued (a Polish minister even claimed that Polish officials shared their experiences with Netanyahu's current government) (Walker 2023).

There are, however, several unique aspects of Israel that may constrain backsliding. First, unlike Hungary (but like Modi's India and Erdogan's Turkey), Israel is involved in a protracted conflict with other countries and groups. Furthermore, and more critically, Israeli backsliding is unique because it occurs in a country with a universal draft system – mandatory military service of three years for men, two for women, and many additional years of reserve service. As part of the protests triggered by the judicial overhaul, many military reservists and active-duty soldiers have vowed to halt their service if the judicial overhaul bills were to pass. As a result, Defense Minister Gallant warned that the rift in Israeli society is penetrating the IDF and security agencies, and “this poses a clear, immediate, and tangible threat to the security of the state” (Fabian and Staff 2023). It is worth noting that security is a major topic in right-wing politicians' rhetoric. Levi and Agmon show that Israeli politicians like Netanyahu exemplify a special kind of populism – ‘security-driven populism’ – based on national security issues (Levi and Agmon 2021). Not only right-wing politicians are concerned with security. In fact, it is a central tenet of Israeli national identity and ethos (Oren 2019). Indeed, shortly after Gallant's speech and his dismissal by Netanyahu, tens of thousands of Israelis took to the streets. A general strike was launched by Israel's largest trade union group, representing more than 700,000 workers in many fields (like health, transit, and banking), joined by major private companies and Israeli universities. This reaction forced Netanyahu to pause the legislation on March 27 (Press 2023; Foster and Moloney 2023).

Another factor that pushed Netanyahu to freeze the legislation was the American reaction. In their 2006 seminal article, Levitsky and Way claimed that high linkage (ties to Western agents like the United States), especially if combined with high leverage (dependence on the Western agent), might prevent anti-democratic tendencies in a target country. The reason is that high linkage increases the cost of anti-democratic actions in a target country (Levitsky and Way 2005). Biden and members of Congress, publicly and in private talks with Netanyahu, emphasized the significance of safeguarding democracy for the future of U.S.-Israeli relations and urged him to reverse the legislation (Kelly 2023) (Rogers and Crowley 2023). It remains to be seen whether and how the United States will use its significant leverage over Israel to prevent democratic backsliding. Levitsky and Way lately acknowledge the “ascent of illiberal forces within the West itself” during the Trump era (Levitsky and Way 2020). Indeed, Netanyahu's strong ties with illiberal forces in the United States, including in the Republican party, may limit policy actions available to Biden's administration to increase the cost of backsliding. However, American condemning of Netanyahu's actions can probably play some role in slowing down and reducing backsliding in Israel. Thus, time will tell if backsliding continues or is halted in Israel and what form it will take.

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