Israel’s Supreme Court and the Upcoming Judicial Reform

As a general rule, I tend to steer clear of political issues, but today I’m making an exception. The reason is simple: what’s happening in Israel right now has historical significance that could positively impact the strengthening of the Jewish and democratic character of the State of Israel. And, as a Jew, I feel compelled to weigh in.

The new government of Israel recently announced plans to undertake a comprehensive reform of the country’s judicial system in the coming months, with a particular focus on the Supreme Court of Justice, known as BAGATZ (□□□□ □□□ □□□ □□□□). Led by Minister of Justice Yariv Levin, the reform aims to address a number of conflicting points in the current system. Today I want to focus on one in particular.

Currently, Israel is the only democratic country in the world where judges are not confirmed by the people or their representatives in Congress. In the United States, for example, judges are confirmed by the Senate, and in most European countries, they are either confirmed by political representatives or elected directly by the people. Only in Israel do Supreme Court judges participate in the election of other Supreme Court judges and have the power to veto candidates.

The system works like this: there’s a special commission to elect judges (□□□□□□ □□□□□□ □□□□□□) that includes three judges from the Supreme Court, two representatives from the Keneset (Israel’s parliament), two representatives from the Ministry of Justice, and two representatives from the country’s Lawyers Association. For a new judge to be confirmed, he or she must receive the votes of seven out of

the nine commission members. The problem is that the three representatives of the Supreme Court, all appointed by the President of the Court, always vote as a bloc. This has led to a Supreme Court that perpetuates itself in power by “cloning” itself every time a new judge is elected.

This system has caused a number of problems, one of the most severe being nepotism. Nepotism in the Israeli judicial system is endemic and unlike anything seen in any other country in the world. Why? Because the Supreme Court doesn’t even try to hide it, it’s an open and verifiable operation. The former President of the Israeli Supreme Court of Justice, Aharon Barak, who was responsible for establishing this disturbing system in 1992, has explicitly declared: “The Supreme Court of Justice of Israel is a family, someone who does not belong to that family cannot be allowed to enter it” (see minute 1.10 of the video below). And to make clear that Barak was not “metaphorically” speaking about a family, one can verify the jobs held in the judiciary by Barak’s friends, children, and especially his wife, as you can see in the video below. To identify and begin to understand the endemic nepotism of the judicial system with names and last names, please watch this video made by “The Movement For Governability And Democracy” (https://meshilut.org/en/) a non-profit organization that believes that nepotism and democracy should not go hand in hand.

The State of Israel is a melting pot of Jewish ethnic diversity, religious observance, and ideologies, making it one of the most diverse countries in the world. Sephardic, Ashkenazi; left, right, center; secular, religious, traditionalists, etc. However, this diversity is not reflected in the composition of the country’s highest court, the Supreme Court of Justice. With 15 judges, the court maintains diversity in only one aspect, gender. In every other aspect, especially in terms of ethnicity and religion, the court is anything but diverse. There is a lack of representation from

religious or right-wing or Sephardic population segments, despite these groups being the ethnic, religious, and ideological profile of most Israeli citizens, as was demonstrated in the last election this past November. The court is mainly composed of secular and progressive individuals, mostly Ashkenazi Jews, making it a virtual extension of the left-wing political party MERETZ, which has recently lost its representation in the Keneset and represents a tiny percentage of Israel's population.

The proposed judicial reform aims to change this elitist system by removing the power of the Supreme Court judges to veto the appointment of new judges and giving the power to the people's representatives in the Keneset. This reform is not an attack on democracy, as some media outlets may suggest, but rather an effort to restore democracy in Israel by making the court more diverse and representative of all sectors of society. This can only happen if judges are democratically elected, as is the case in every civilized democracy in the world.

Another crucial aspect of the proposed judicial reform in Israel is the need to address the overreach and ideological activism of the Supreme Court of Justice. One particularly concerning issue is the concept of "ilat hasbirut" or "the monopoly of commonsense" in my free translation. This non-precedent clause allows the court to make decisions based on their own interpretation of common sense rather than following established legal precedents. This undermines the separation of powers and can lead to the Court making decisions based on their own personal beliefs and ideologies rather than on the letter of the law. This is a crucial and complex issue that needs to be addressed, and I will delve deeper into it in a future article.

The Supreme Court's nepotism has led to a lack of diversity in the court. The judges are mostly from the same socio-economic

background, with similar ideological leanings, and often have personal connections to one another. This lack of diversity has led to a lack of checks and balances, allowing the court to become a tool for advancing a specific agenda rather than serving as an impartial arbiter of justice.

https://www.msn.com/en-us/news/world/israels-judicial-reform-will-strengthen-its-democracy-opinion/ar-AA167Wch

It is disheartening to see the lack of serious and in-depth coverage of the proposed judicial reform in Israel, particularly in English. To truly understand the significance of this reform and why it is necessary for a democratic Israel to avoid a judicial dictatorship, I highly recommend that Hebrew speakers take the time to watch this video: https://youtu.be/aMStvnDwbKc. It provides a comprehensive overview of the problem and solution. For those who may not have the time or patience to watch the full video, I recommend this shorter presentation by Professor Talia Einhorn, an expert in comparative international law, which illustrates the excess power attributed to the Supreme Court: https://youtu.be/IkhdmZOdmcQ. Additionally, for those who read Hebrew, I recommend these articles for a more detailed understanding of the issue. One explains how the judicial veto works: https://www.globes.co.il/news/article.aspx?did=1001435502, and the other describes the problem of lack of diversity in the Supreme Court: https://www.inn.co.il/news/435824. It is crucial that we educate ourselves on the proposed reform and its implications for the democratic and representative nature of Israel's judiciary.