



ISRAEL NEWS

*A collection of the week's news from Israel
From the Bet El Twinning / Israel Action Committee of
Beth Avraham Yoseph of Toronto Congregation*

Netanyahu's defeated political foes, he labeled the new government as "fascist."

This is familiar stuff to many Americans who, like Biden, claim to love Israel but only on their own terms. They only think

Commentary...

Is a Biden-Netanyahu Brawl Inevitable? By Jonathan S. Tobin

If you listen to the statements from both the Israeli and American governments, all's well between Jerusalem and Washington these days. But despite the bromides being uttered by high-ranking officials, the pretense that there are no disputes between them that can't be dealt with privately is wearing thin.

The pressure from the Israeli left and its many American supporters for the United States to signal its opposition to the new Benjamin Netanyahu-led government is growing. The question is: Will prudence and the desire on the part of President Joe Biden and his foreign-policy team to avoid a messy confrontation with Israel survive the coming weeks and months, as the anti-Bibi resistance intensifies?

Israel was not at the top of Biden's agenda during his first two years in office. He was distracted by the coronavirus pandemic, a tottering economy and the disastrous withdrawal from Afghanistan.

He was eager to resume a policy of appeasement toward Iran, via an even more dangerous nuclear deal, though that effort stalled. And since last February, Washington has treated aiding Ukraine fend off a Russian invasion as its top priority, a position that didn't always dovetail with its push with Iran.

To his credit, Biden wasn't under the delusion that the Palestinians wanted peace or that a resumption of negotiations with them would bring forth the dream of a two-state solution to the conflict with Israel. So, although he is an ardent believer in that failed concept, he was the first president in a generation to come into office who did not treat the quest for a Palestinian state as a priority.

Moreover, relations with the multi-party coalition led first by Naftali Bennett and then Yair Lapid were also generally good, as the two sought to avoid open disagreements with Washington, even when the Americans' desire to appease Iran presented a genuine threat to Israeli security. But with Netanyahu back in power, the pressure on Biden to start acting like his old boss Barack Obama and go to war with Netanyahu is getting harder to ignore. New York Times columnist Thomas Friedman spoke for many liberals when he wrote this week begging Biden to "save Israel."

Friedman's incoherent description of the new coalition's plans for judicial reform was predictably ignorant and distorted. For example, his horror at the idea of scrapping the committee system for choosing new Supreme Court justices that gives the existing judges the right to choose and/or veto potential successors in favor of one that gives the representatives of the voters more say, was laughable.

Would any American stand for a system that allowed the U.S. Supreme Court to do the same? Would anyone, on the American left or right, put up with a court that considered itself to have the right to intervene in any dispute or governmental action, or to rule the Constitution as Israel's supremes have given themselves the right to do, on the basis of nothing more than what they think is or isn't "reasonable?"

But Friedman's critique went further than the attack on a necessary attempt to rein in an out-of-control court. He hyperbolically faulted the voters who gave Netanyahu's coalition a clear majority in the Knesset for being "hostile to American values" and, even worse, have more in common with Republicans than Democrats like Rep. Alexandria Ocasio-Cortez (D-N.Y.)

Citing some of the partisan incitement against the government in the Times of Israel and Haaretz, he falsely accused Netanyahu of trying to emulate Turkish President Recep Tayyip Erdoğan. Quoting

Israel deserves support as long as it obeys orders from Washington and acts as if it is a deep blue colony of liberal Jews living abroad, rather than a Jewish state filled with people with their own ideas, and who understand that they live in the Middle East and not the Upper West Side of Manhattan.

Much like the president, Friedman's been wrong about every major issue of the last four decades, but has never been held accountable for it. As easy as it would be to dismiss him as a caricature of foreign-policy-establishment cluelessness and dogmatic adherence to failed ideas, however, his call for the United States to intervene in Israeli politics to aid the opposition's attempt to topple a democratically elected government resonates among many Democrats.

Still, that isn't the public message Biden has been trying to convey. U.S. Ambassador to Israel Tom Nides has sought to interfere in his host's domestic affairs when it comes to issues like settlements and preserving the mythical possibility of a two-state solution. But he's also been careful to state that he won't be conducting any boycotts of controversial members of Netanyahu's new government, such as Finance Minister Bezalel Smotrich and National Security Minister Itamar Ben-Gvir.

Other figures, like Secretary of State Antony Blinken and National Security Advisor Jake Sullivan, have similarly avoided making overt statements opposing Netanyahu, even though they are uncomfortable with the new government's desire to step up efforts to hold the Palestinian Authority accountable for its incitement to and support for the current uptick in terrorism.

In return, Netanyahu has similarly tried to send signals that he wants to avoid trouble with Biden. He reportedly told a private gathering sponsored by AIPAC that he thinks the U.S. and Israel are closer than before with respect to the Iranian nuclear threat. And if Biden truly believes, as he said last month, that his foolish efforts to revive the nuclear deal with the regime in Tehran is "dead," due to its brutal suppression of mass demonstrations against its despotic rule and support for Russia in Ukraine, perhaps that's true.

But if there's anything that we've learned about Biden's presidency, it's that he has steadily drifted to the left for fear of offending the activist and intersectional base of his party. That's been evident on a host of issues, ranging from illegal immigration to his bending of the knee to the Black Lives Matter movement and the imposition of the hard-left's DEI—diversity, equity and inclusion—catechism throughout the government.

For now, Biden is too committed to doubling down on an endless and unwinnable war in Ukraine to want to get drawn into a battle over who should govern Israel. But as the Israeli left turns up the volume on its anti-Bibi resistance effort, the idea that America has a "duty" to save Israel from itself will be gaining more and more support in the liberal corporate media. The fact that distorted coverage of Israeli judicial reform is already getting more attention in the American press than Iranian executions of dissidents is a sign of what is to come.

And as the 2024 presidential race begins in earnest later this year, Biden's need to curry favor with his party's left wing will make him less, not more, likely to avoid fights with the Jewish state. Whether the excuse concerns the Palestinians or Israeli efforts to stop Iran, it won't be easy for Netanyahu to avoid such battles.

Yet those who are eager for Biden to start ratcheting up the pressure on Netanyahu have short memories. Obama spent his eight years in the White House constantly plotting to undermine and defeat

Netanyahu. But each time he did so, he only strengthened the prime minister.

Netanyahu has many political enemies at home, but those who want to save Israel from itself always forget that its citizens have little interest in accepting diktats from American presidents or liberal Jews who want a fantasy Israel rather than the real one. The more Biden leans on Netanyahu or tries to influence the debate in the Jewish state, the less likely it is that the prime minister will be beaten. (JNS Jan 18)

The Unhinged Reaction to the New Israeli Government

By Melanie Phillips

The unhinged reaction to Israeli Prime Minister Benjamin Netanyahu's new government represents a crisis for the Jewish people both in Israel and in the Diaspora. This crisis is not principally over the divisions that have obviously opened up within the Jewish world. It is over the fact that so many Israelis and Diaspora Jews have now shown that they have only the shallowest understanding of what being the Jewish people actually means.

The histrionics of this reaction defy belief. Words and phrases like "criminal," "authoritarian," "morally corrupt" and "fascist" are being bandied about to describe the new government, even though it has done nothing criminal, authoritarian, corrupt or fascist. Indeed, it has hardly done anything at all yet, since it only came into existence three weeks ago.

One of the most imbecilic poses being struck, by no less than former Prime Minister Yair Lapid, among others, is telling the public to overturn the government to save Israeli democracy. But the only people threatening democracy are those inciting civil war to overturn a government that has been democratically elected by the people.

The claim that the government's proposals for judicial reform will destroy democracy is ludicrous. One might think Netanyahu was proposing to abolish the judiciary. All he is actually doing is addressing a situation long identified by people across the political spectrum as in need of reform.

This is the problem of judicial overreach, due to the Supreme Court's arrogation to itself of oppressive powers. These powers permit it to strike down legislation and even place itself above the nation's Basic Laws.

The courts control the appointment of not only their justices but also the attorneys who must appear before them—who therefore lack the independence essential in a democratic system—and even place a legal adviser in every ministerial office, with the power to veto any government policies to which the adviser objects.

These powers, which are unprecedented in any other modern democracy, are anti-democratic because they give unelected judges the power to strike down laws and policies enacted by those elected by the public to govern them. The judges can then impose their preferred policies.

The best example of the system the new government is proposing is not some authoritarian dystopia but the United Kingdom—the mother of Western democracy—where Parliament is sovereign and the courts cannot overturn the laws that it passes. They instead ensure that government ministers behave in accordance with the laws that Parliament has passed or have developed through the common law.

Of course, there needs to be discussion and perhaps compromise about the details of the Israeli reform. But for the objectors, the details are too irrelevant even to mention. They are playing the men, not the ball.

Certainly, some of these men have troubling histories of extremism or noxious views. The government, however, should be judged by its actions.

Yet just as with former U.S. President Donald Trump, the government's members have been written off as irreparably beyond the pale. And shockingly, that's because they intend to promote the particular interests of the Jewish people rather than the agenda of liberal universalism.

Since the objectors are liberal universalists who believe they alone can save the world, they assume that everything they do is moral. Anybody who dissents is not just wrong but evil.

But these objectors are not just claiming to be the moral guardians of progress and the betterment of mankind. They are also laying claim to what it means to be a Jew. They are claiming that the new government's agenda is nothing less than a betrayal of Judaism.

In America, more than 300 rabbis signed a letter saying that the proposed reforms "will cause irreparable harm to the Israel-Jewish Diaspora relationship, as they are an affront to the vast majority of American Jews and our values."

In *The Atlantic*, Yossi Klein Halevi wrote that the new government may speak in the name of the Torah, but in fact "desecrates the name of Judaism."

In *The Jewish Review of Books*, Hillel Halkin wrote that the reason the new government is dragging Israel down "into the abyss" is Judaism itself, "of whose fantasies and delusions Zionism sought to cure us, only to become infected with them itself. Zionism wanted to make us a normal people. It failed and grew warped in the process."

But these objectors are identifying Judaism and democracy with current liberal universalist values, which in fact undermine both Judaism and democracy by attacking the nation-state and the moral foundations of the West, which are rooted in the Hebrew Bible.

In *Tablet*, Yoav Fromer, who teaches politics and history at Tel Aviv University, wrote that the religious Zionism promoted by members of the new government has effectively transformed Judaism into a geographical project that cannot separate Torah from territory and views the realization of the former through the conquest and settlement of and physical attachment to the latter.

But Judaism is in fact an inseparable fusion of the people, the religion and the land.

In a similar vein, Fromer claimed that the ultra-Orthodox are "knowingly also trying to redefine what it means to be Jewish" by dismissing "tikkun olam, the ancient Jewish dictum promoting universal redemption (which is often associated in the U.S. with left-wing advocacy for progressive causes)."

But this liberal interpretation of tikkun olam, which in Jewish religious thinking is reserved for the Almighty to deliver, is deeply anti-Jewish. Indeed, it is the liberals' own breathtaking example of cultural appropriation.

In a coruscating riposte, Ze'ev Maghen, a professor of Arabic and Islamic history at Bar-Ilan University, noted that Halkin had attacked the religious Zionists in the new government as "hyper-nationalist and Jewish supremacist."

"If by these epithets Halkin means that their members and supporters care more for Jews—their national family—than they do for the enemies of the Jews; that they are hell-bent on putting a stop to the weekly slaughter of innocent Jewish civilians by Arab terrorists; and that they believe that the Land of Israel belongs to the Jewish People, and oppose the erection of a jihadist Palestinian polity controlled by Hamas, then this is just classical Zionism," he asserted.

Progressive American rabbis and a number of Jewish philanthropists and organizations are now threatening to withdraw funding and support from Israel.

Their arrogance is astounding. From their safe distance thousands of miles away, they have no understanding of the realities of life in Israel. What has brought this government to power is the deep desire by Israelis for a more robust defense of Jewish identity and security.

Moreover, given the rapid disappearance of progressive Diaspora Jewish communities through massive intermarriage and assimilation, it ill behooves liberal Jews to blame the Netanyahu government for breaking the link between Israel and the Diaspora. It is these liberal Jews who are breaking the link with Judaism.

Both in Israel and the Diaspora, liberal Jews want Israel to be like any other country. They have a horror of Judaism's core principles because they have a horror of being different.

But difference defines Judaism. And the Western values for which they are screaming are currently destroying the West through the intolerant, illiberal and nihilistic agenda of identity politics.

As Maghen wrote, "We know that unless we keep present in our minds our polity's Jewish nationalist *raison d'être*, and keep at bay those universalist, Western-based notions that are geared by definition to undermine nationalism in all its forms, this country is done for."

It is not the Netanyahu government that is causing a crisis for the Jewish world, but those Jews who are undermining both Israel and Judaism itself. (JNS Jan 19)

He Who Grabs Too Much Loses Everything

By Jonathan Rosenblum

In 2017, I was invited to participate in a panel in Palo Alto on the topic "The Majority Votes, a Minority Rules." The minority thus fingered was the Israeli chareidi community, which is why I was invited at the last minute. I began, however, by stating that the only minority that rules in Israel is the country's High Court. That has been a regular theme since my first piece in the Jerusalem Report in 1997, entitled, if memory serves, "The Man Who Would Be King," on Court President Aharon Barak and his judicially declared "constitutional revolution." Nearly one hundred columns and long essays followed on related topics.

The thrust of many of those pieces was to demonstrate how anomalous the Israeli legal system is when compared to other stable democracies, and how anti-democratic those anomalies are. In a critical 2007 review of *A Judge in a Democracy* by Aharon Barak, who as Court president single-handedly established Israel's High Court as the most powerful in the world, Judge Richard Posner, one of America's leading legal thinkers as a professor and judge, concurred with the earlier judgment of Judge Robert Bork that Barak had established "a world record for judicial hubris." (Barak's tenure as Court president ended in 2006, but his successors were all his acolytes, and the "constitutional revolution" continues to rest on his arguments.)

Traditionally, Posner wrote, democracy has been defined in procedural terms: "a system of government in which the key officials stand for election at relatively short intervals, and are thus accountable to the citizenry." That, however, is merely "formal democracy," according to Barak. His interest is in "substantive democracy," which encompasses all sorts of "human rights" and requires an independent judiciary to discover those rights and enforce them. Those "human rights" go far beyond the political rights — freedom of speech, freedom of the press, freedom of association, and freedom of petition — essential to a functioning democracy.

In Barak's view, the world is filled with law — i.e., there is no human action that is not subject to a legal norm, and judges are empowered to determine those norms. In furtherance of that vision, Barak did away with traditional legal doctrines of standing (who may bring a suit) and justiciability (what subjects are appropriate for judicial determination). He boldly declared that even call-up orders in wartime are not beyond the scope of judicial review.

As a consequence, no government action or failure to act was beyond the purview of the Barak Court. The late Professor Ruth Gavison charged that no high court in the world set out to determine every societal norm to the extent that the Barak Court did. But by setting itself up as the supreme moral authority, Gavison told Ha'aretz's Ari Shavit in 1999, the Court undermined its stature as the chief judicial authority. Rather than competing with Rav Ovadia Yosef, she said, the Court should make clear that it operates in a completely different sphere. (Gavison was, in her lifetime, the only Israeli legal figure who could match Barak's international prestige, and, as a consequence, he fought tooth and nail, successfully, to keep her off the Court in 2005, when Justice Minister Tzipi Livni pushed for her appointment.)

Barak, however, does not view morality and legality as separate realms. It is the judge's duty, he argues, to give expression to the

values of the "enlightened" and "progressive" members of the public. The standard of "reasonability" wielded by the ideal Barakian judge (i.e., Barak himself) is precisely what accords with the views of the enlightened public. Government actions that are unreasonable by those lights would be, according to Barak, illegal.

Not surprisingly, what the High Court deems "reasonable" trends heavily left. Thus the Court developed out of whole cloth a doctrine that the government cannot make major decisions with elections pending, and thereby prevented a previous Netanyahu government from closing Orient House and from making certain appointments. Yet when the Lapid government signed away Israeli territorial waters in the Mediterranean five days before elections, without even consulting the Knesset, the Court found no infirmity because of its "caretaker" status.

Not surprisingly, Barak ardently defended Israel's unique method of picking new judges for the High Court, according to which the three sitting judges on the nine-member selection committee, exercise a *de facto* veto over potential new colleagues. The result of that system, charged Gavison, is that the Court becomes a "self-perpetuating sect" of like-minded individuals drawn from the same narrow societal stratum. But what was a bug in Israeli democracy, for her, was a feature for Barak, a means of ensuring that progressive values prevail and the lower orders are kept in place.

While Barak writes of the need for appropriate checks and balances on the executive and legislative branches, i.e., the elected branches, his strictures never apply to the judicial branch, which sits as the umpire above.

Throughout his 27 years on the High Court, Barak consistently found new ways to expand its power, in order to fulfill his vision of a world filled with legal norms determined by judges. But what Barak and his chorus of supporters in the legal profession and the media termed the "rule of law" was rather, in the words of Moshe Landau, one of Barak's predecessors as Court president, the "rule of the judge."

But the role of 15 Platonic Guardians, Landau told Ari Shavit, is not one for which the judges of the High Court were trained or for which they have any special competence. Landau was echoing the late Justice Scalia's obiter dictum: "A system of government that makes the people subservient to a committee of unelected lawyers does not deserve to be called a democracy."

One of Barak's most daring power grabs was declaring two Basic Laws passed in 1992, in the middle of the night, with 37 MKs (out of 120) voting for one and 23 for the other, to be of constitutional status, and thus giving the Court the right to strike down Knesset legislation. And even that was not enough. The judges of the Court, he argues, are free to introduce other "unenumerated rights" into the Basic Laws, even those drawn from other legal systems. That claim is fully consistent with his method of statutory interpretation, which was guided not by the legislative intent of the people's elected representatives, but by the proper "substantive ends" of government, which necessarily shift over time.

In the Court's most audacious usurpation, Barak's successors claimed for the Court the power to adjudicate the constitutionality of its own declared constitution, i.e., the Basic Laws, and to strike them down as "too political" or "insufficiently deliberated." That later characterization certainly applied to the 1992 Basic Laws, passed with scant debate, and with few MKs even knowing what was in them, which formed the basis of Barak's constitutional revolution.

Barak's tactical acumen reached its peak in his transformation of the position of attorney general from one of acting as the government's chief legal advisor and representative to one of acting as the *de facto* emissary of the Court to keep an eye on the legislative and executive branches — all without a stitch of statutory warrant. Barak ruled that the attorney general — a position in which he served from 1975 through 1978 — can nix any government action he determines to be unreasonable, and thus illegal. And that decision is not subject to judicial review.

The irony is thus that any citizen or activist group can challenge a government action, under Barak's loosened rules of standing and justiciability, and obtain a hearing before the High Court sitting as the Beit Din Gavoha l'Tzedek ("Bagatz"). The only party that cannot gain judicial review of its legal claims, or even legal representation, is the government itself, if the attorney general rejects the government's position and refuses to represent it. Today, the attorney general's power has been expanded further, as she appoints legal advisors for each government ministry, with the same powers over that ministry that the attorney general exercises over the government itself.

The position of attorney general is a traditional stepping stone to the Court, as it was for Barak. And an ambitious attorney general is thus well advised to rule in accord with the positions of the president of the Court. Thus the judicially created powers of the attorney general make that position an effective agent of the Court for keeping an eye on the elected branches, and without the mess and bother of the Court itself having to reverse government actions and attract criticism. (Barak's writings are liberally laced with expressions of contempt for the elected branches.)

Not surprisingly, the unreviewable veto of the attorney general over government actions and his power to appoint legal advisors to the various ministries are prime targets of the upcoming judicial reforms. In addition, the reforms replace the "reasonability" standard for overturning government actions with a standard closer to the "arbitrary and capricious" standard used in American administrative law, and require a supermajority of the Court to strike down Knesset legislation. Statutory standards for standing and justiciability will likely be legislated as well.

Whether or not provisions for a legislative override of the Court's striking down of a statute are enacted, the above reforms will significantly tether the Court's power. (Incidentally, the "notwithstanding clause" of the Canadian constitution allows even provincial legislatures to override High Court decisions for a period of five years.)

At a Motzaei Shabbos demonstration against the reforms, an emotional Aharon Barak told a crowd of demonstrators that he would rather face a firing squad than watch his life work destroyed. But he has only himself to blame for grabbing too much power for the judicial branch, with no sense of restraint and with consistent disdain for any criticism.

Barak's judicial revolution lasted in power more than a quarter century. Now, it is up to those taking down the edifice that Barak built to move with determination, but not haste, and with care to explain the policy reasons for each step, whether the opposition wants to hear them or not. (Mishpacha Jan 17)

The Radical Anti-Semitism of the JVP By Hannah Margolis

On Nov. 3, the official Twitter account of Jewish Voice for Peace Action (JVPA), the lobbying wing of the far-left organization Jewish Voice for Peace, claimed that the shared values of the United States and Israel are "super racist."

Five days later, the JVPA retweeted a statement that "Zionists"—a thinly veiled dog whistle for "Jews"—"will happily burn down democracy everywhere."

On Dec. 13, JVP tweeted, "Being pro-Israel in America also means being complicit in conservative efforts to sustain white supremacy, roll back reproductive and LGBTQ+ rights, and weaken democracy."

These statements are part of a long history of anti-Semitic tropes that claim Jews are the source of the world's misfortune and epitomize what a given society perceives to be ultimate evil.

Do not be fooled by its moniker. Jewish Voice for Peace does not advocate peace of any kind. Its goals are simple: Delegitimize the State of Israel and promote antisemitism.

Worse still, the organization has a significant following on social media and maintains chapters on college campuses around the country.

In Pittsburgh, where I am a student at the University of Pittsburgh, JVP in Oct. 2022 promoted a blatantly slanderous petition calling for "honest coverage of Israeli attacks on Palestinians from the NY Times."

The petition in question demanded that The New York Times demonize Israel's defensive actions in response to Palestinian terrorism committed by the "Lion's Den" terror group

In 2021, JVP promoted the discredited "Deadly Exchange" conspiracy theory, which falsely claims that Israel trains American police officers to use violence against people of color.

The petition claimed, without evidence, that "U.S. police are using the tactics of occupying armies [Israel] on the people of this country." In effect, the petition blamed Israel for the problem of police brutality and American racism. This is a classic example of JVP exploiting antisemitism by holding Jews responsible for America's social problems.

This not only harms Israel and Jews, but also the United States. The ADL proposed bringing Israeli and American law enforcement together because Israel has been dealing with the constant threat of terrorism since it was created. After 9/11, it became clear that the U.S. could benefit from Israel's decades of counter-terrorism experience.

The JVP's opposition to exchanges between American and Israeli police that involve "no tactical or military training whatsoever" is deaf to legitimate concerns about American domestic terrorism. This is all the more true following the deadly Tree of Life synagogue shooting in Oct. 2018.

Spewing lies about and fomenting hatred against both Jews and Israel is not without consequences. A 2022 report published by the AMCHA Initiative documented 254 attacks on Jewish identity in the 2021-2022 school year alone, double the previous year. The report notes that "attempts to disconnect Zionism from Judaism and from progressive causes nearly tripled."

JVP also attempts to negate the legitimacy of Israel and the Jewish connection to the land by defining Zionism as "a settler-colonial movement" To JVP, indigenous rights and self-determination apply to everyone except Jews.

Israel is and has always been the homeland of the Jews and the Jews have maintained their connection to it for centuries. They prayed toward Jerusalem. The Amidah prayer contains an entire verse dedicated to the return to Israel: "May our eyes behold Your return to Zion in mercy. Blessed are you, Lord, who restores His Divine Presence to Zion." On Rosh Hashana, Yom Kippur and Passover it is customary to say, "Next year in Jerusalem."

This is why, when given the opportunity, the Jews returned to the land in a series of modern aliyot. Despite Arab violence against the Jews, the olim built a proto-state against all odds, and ultimately accepted the 1947 Partition Plan that would create a Jewish state alongside an Arab state. Arab leaders rejected the plan and launched a war on reborn Israel, preventing the establishment of the Arab state.

This rejectionism has not changed. Since 1947, all two-state solutions that have been proposed have been rejected by Palestinian and Arab leaders.

None of this matters to JVP. To them, Israel and Israel alone is to blame for the continuing Arab-Israeli conflict. And this is not enough for them. Israel must be at fault for all the problems of the United States as well.

The lies promoted by JVP to college-age audiences around the U.S. damage perception of Israel and directly conflate the evils of the world, such as racism, colonialism and other forms of violence, with Israel and the Israeli-Palestinian conflict.

Beyond its blatant antisemitism, however, perhaps the most egregious aspect of JVP is that it engages in such behavior while hiding behind the excuse that they are a Jewish organization aiming for a "Judaism beyond Zionism." (JNS Jan 18)

The writer is a CAMERA fellow and a sophomore at the University of Pittsburgh.