



Trumpet Illustration: Gili Cohen-Magen/AFP/Getty Images

Israel's Rogue Supreme Court

The story of the high court's slide into lawlessness

- Brent Nagtegaal
- [10-07-2020](#)

The nation of Israel had a difficult birth. In the womb, it sustained more than one attempted abortion. It suffered malnourishment and phases in which it was attacked even by itself. It was finally born—then faced an attempted murder when it was one day old. But it has endured.

More than people, territory or even rulers, *laws* are what make a nation. They are what endure. Largely because of its tumultuous history, Israel's laws are not formed into a written constitution like many other nations. It has developed its foundational law one piece at a time. Its first Basic Law was created in February 1958 and established the Knesset as its national legislature. The nation currently has 14 Basic Laws. Eventually, these basic laws will be combined to form the constitution of Israel. How these Basic Laws are interpreted forms the basis of an ongoing and dangerous legal war in Israel. On one firing line are elected representatives. On the other: appointed judges.

Earlier this year, Prime Minister Benjamin Netanyahu accused Israel's judicial system of having been taken over by leftist activists. "There is no democracy here, but a government of bureaucrats and jurists," he said in private comments reported by *Haaretz* on April 5.

What was he talking about? Is he right?

Here is the story of Israel's highest court—and a glimpse into its future.

A Grab for Power

Historically, Israel's judiciary was weaker than its legislative and executive branches. It gave litigants the standing to bring a case before the Supreme Court only if those litigants were directly involved in the matter at hand. It also limited the types of legal and political conflicts that it considered justiciable (appropriate for the court to hear in the first place). When someone with direct involvement brought a case before the Supreme Court of Israel that was appropriate for it to hear, the court rendered its judgment based on the written laws passed by the people of Israel through their elected representatives in the Knesset. When the court rendered judgments that the people and their representatives opposed, the Knesset was able to pass new, clearer, sounder laws that the court could not overturn.

In the 1980s, all this began to change.

The Supreme Court's president, Meir Shamgar, and Honorable Justice Aharon Barak set out to change and expand the court's authority to rule on whatever matters it considered important.

Shamgar and Barak expanded the court's definition of justiciability. The government had a long-standing policy of exempting Jewish religious students from mandatory military service. Challenges against the policy had been rejected as unjusticiable in the early '80s: The court did not have the authority to intervene. But in 1986, the court decided to hear the challenge.

What had changed? It was not the facts of the case; it was the judges' willingness to expand their power and set a new precedent for what the Supreme Court would decide. Barak later told *Haaretz* newspaper, "I think all is justiciable."

The following year, the court expanded its power further by granting almost anyone the standing to petition the court to hear a case. A justice minister had refused to extradite an Israeli murder suspect to France, and two members of the Knesset petitioned the high court to judge the case. Traditionally, the court would have determined that the members were not directly affected and had no standing. Shamgar granted them standing. Why? On the rationale that the case was a matter of "public interest."

Meanwhile, the court also began judging cases based on something beside the written laws that had been passed by the elected representatives of the people. Now it said it would overturn one of those laws or a government policy if it deemed it to be "extremely unreasonable." Whether the court's definition of "extremely unreasonable" differed from that of the elected members of the Knesset was beside the point. Or rather, that *was* the point.

By the late 1980s, the Supreme Court's limits were coming off, its floodgates were opening, and it could now involve itself in virtually any legal matter it wanted. Then came 1992.

A Turning Point

At routine legislative sessions, the Knesset easily passed Israel's 10th and 11th Basic Laws: Human Dignity and Liberty, and Freedom of Occupation. These laws were considered important but uncontroversial.

"We are not shifting weight onto the Supreme Court," Member of the Knesset Uriel Lynn said. "We have not established a constitutional court ... with special power to annul laws." Like other lawmakers, he emphasized, "The power remains in this house."

But that wasn't how Israel's Supreme Court interpreted the new laws. "Not everyone knows this, but recently a revolution has occurred in Israel," Barak said of these new laws at the time, characterizing them as "a constitutional revolution." He said, "From now on, they bind not only the citizens and residents, and not only the administrative authorities, such as the government and local authorities. From now on, they bind the Knesset itself."

m.k. Michael Eitan was present at the vote. "[N]o one spoke of there being a revolution, and no one said that we're carrying out any constitutional change. They voted. Months later, the people of Israel are informed: A revolution has taken place. [This is] the first revolution to take place without the people knowing about it."

Based on these 1992 laws, the court now said that no laws the Knesset passed in the future could overturn the powers it had amassed for itself. It was as if it were "unconstitutional." Treating the 1992 Basic Laws as Israel's constitution removed the people's option to curtail the power of the court or even oppose a ruling of the court by creating further legislation.

The 1992 Basic Laws are not detailed. They are general principles open to interpretation. Basic Law: Human Dignity and Liberty, for example, includes protections such as, "There shall be no violation of the life, body or dignity of any person," and all people are "entitled to protection of their life, body and dignity." Israelis agree that the *principle* of human dignity is a right, there is no precise definition of human dignity.

The justices on the Supreme Court have assumed the power to define "human dignity" and many other terms in the Basic Law, over the protests of the people and their representatives in the Knesset, if necessary.

For example, the court decided that human dignity includes the right for a Palestinian who marries an Israeli to move to Israel to be with him or her, even if that person is a danger to Israelis. In a May 2006 e-mail published in *Haaretz*, Barak wrote, "I determined that the right to family life is a constitutional right of the Israeli spouse and his children. ... Since we do not have specific articles in our Bill of Rights that deal with equality and the right to family life, I decided that these rights are part of the right to human dignity."

Note that: *Aharon Barak* decided!

In a May 19, 1992, speech, Barak stated, "As with all constitutional legislation, the two Basic Laws are sometimes phrased in generalities. They employ 'majestic generalities.' ... The principle organ of the state that must pour content into the majestic generalities, and must resolve the inherent conflicts, is the judiciary—primarily the Supreme Court."

This man considered it his job to make major, fundamental laws! He also said that by passing the 1992 laws, "Israeli society has imposed upon us, the justices of the Supreme Court, the task of giving content to the molds for human rights that will befit our values as a Jewish democratic state" (ibid). The justices would determine what those values are *and* judge Knesset and governmental decisions according to those same values that they themselves had determined!

Like Netanyahu said, Israelis have gone from a democracy governed by elected representatives to being ultimately governed by an unelected and now unrestrained activist high court!

Judicial activism of this nature ought to alarm Israel's public. The high court has the power to strike down Knesset law based almost completely on what the justices think Israel's values should be.

A Dissenting Opinion

Esteemed United States federal judge Robert Bork thought differently. He reviewed Barak's book *The Judge in a Democracy* in the Winter 2007 issue of *Azure* magazine.

"Barak asserts that, even without any change in the Basic Laws and statutes, judges may insert a 'new fundamental principle,'" Bork wrote. In normal democracies, these new principles would have to be codified through the process of legislation, which would be passed by parliament, which is comprised of politicians elected by the people. The high court would then judge cases based on those new laws.

In Barak's view, this process is unnecessary. New legislation is not required to create new principles; instead, the justices can determine those new fundamental principles of society themselves. Of course, the justices don't just make up these new principles, but rather, as Barak himself wrote, "a process of 'common conviction' must first take place among the ENLIGHTENED MEMBERS OF SOCIETY regarding the truth and justice of those norms and standards before we can say that *ageneral will* has been reached that these should become binding with the approval and sanction of the positive law" (emphasis added throughout).

Judges like Barak actually argue that one of their few constraints is not the rights of the entire population, but merely the opinions of "enlightened members of society" like professors, journalists, politicians and, of course, Supreme Court justices! Notably, the definition of "enlightened" leans heavily toward the leftist elements of society, most of whom live around Tel Aviv, where values are far different from the rest of the country.

Bork wrote, "Since voiding a statute requires overriding the will of the people as expressed through their elected representatives, what a judge thinks 'society needs' IS ALMOST CERTAINLY WHAT A MAJORITY OF THE PEOPLE IN THAT SOCIETY DO NOT WANT." This is why Israel's Supreme Court is trusted by less than half of Israel's population.

An even greater legal thinker once wrote this: "Cursed be the man that trusteth in man ..." (Jeremiah 17:5). Why? Because the "heart is deceitful above all things, and desperately wicked: who can know it?" (verse 9). Whether it is you or me or Robert Bork or Aharon Barak or Benjamin Netanyahu, or "the enlightened," this is the natural state of our hearts.

In his free booklet *America Under Attack*, *Trumpet* editor in chief Gerald Flurry explains from the Bible the origins of our selfish nature: It traces all the way back to the rebellion of the great archangel who became Satan.

The Prophet Ezekiel records this angel as "the sum, full of wisdom, and perfect in beauty" (Ezekiel 28:12). Yet this beautiful and intelligent spirit being worshiped his own beauty and intelligence. This corrupted him into the epitome of corruption and lawlessness (verses 15-17). And who is it who is "the god of this world"? That same being! (see 2 Corinthians 4:4 and Revelation 12:9). He broadcasts this same spirit of vanity and lawlessness into all human minds and hearts (Ephesians 2:2). That is why the heart truly is "deceitful above all things." King Solomon, the wisest man to live besides Jesus Christ, referred to human nature as a *plague* (1 Kings 8:38). "Human nature" is actually Satan's nature!

Few recognize it, but *this* is the source of the high court's descent into the tyranny of lawlessness!

An Attack on Israel?

In *America Under Attack*, Mr. Flurry not only exposes Satan as the original source of the lawless spirit that has taken hold of America (and the State of Israel), he also explores the specific timing of this alarming trend. He traces the trend back to the late 1980s and shows how events at this time marked a "major turning point in history."

He explores the U.S. Senate's refusal in 1987 to confirm Judge Robert Bork to the Supreme Court and explains how this was a watershed moment in American jurisprudence. "The tide turned in a big way in 1987," he writes. "LAW STARTED TO GET A LOT WEAKER. AND LAWLESSNESS STARTED TO GET MUCH, MUCH STRONGER."

It is not a coincidence that the nation of Israel began to descend into lawlessness at exactly the same time.

"Such a massive lurch toward lawlessness has a *cause*," Mr. Flurry continues. "I want to show you exactly what that cause is. Most people will scoff at what I am about to say—but it is absolutely true, and you can prove it from your Bible. The most lawless being in the universe is a spirit being, Satan the devil."

Mr. Flurry explains how that around that time, Satan was cast down to this Earth (Revelation 12:9). Confined to this Earth, Satan has "turned his full attention on physical Israel—the modern descendants of which are the nations of Israel—concentrating on three of these nations in particular: the birthright nations and the scepter nation, or America, Britain AND THE JEWISH NATION IN THE MIDDLE EAST," he wrote in the March 2013 *Trumpet*. (To prove the identity of these nations, request *The United States in Britain in Prophecy*, by Herbert W. Armstrong.)

Ultimately, this wicked, lawless being is behind the radical behavior of Israel's Supreme Court! History proves that Satan is always trying to blot out the name of Israel, whether during biblical times or in years since (2 Kings 14:26-27). The recurring anti-Semitic pogroms against Jews are a constant reminder of Satan's desire.

Satan is the one behind this attack on the rule of law. "Is he going to get people at the top of the nations of Israel to cast the truth to the ground?" Mr. Flurry asked. "I believe so. That's the most efficient way to do it. Then he can use them to wage an ASSAULT FROM WITHIN ON THE TRUTH AND THE LAW" (ibid).

That statement summarizes what we have seen in Israel over the past 30 years: Israel's Supreme Court, the institution that is duty bound to uphold the law, has assaulted truth and law!

History shows that every time the Jewish nation has faced its demise, the problem can be traced back to lawlessness and bitter division starting among the people. It's hard to witness the bitterness within the State of Israel and not think of the historic parallels. Israel is now firmly within another one of these historic cycles of nation-destroying lawlessness.

However, the same prophecies that foretold these attacks against Israel also promise a time when Israel will finally fulfill its God-ordained purpose of being a light to the nations.

The prophets Micah and Isaiah both wrote that in the near future "out of Zion shall go forth the law, and the word of the Lord from Jerusalem" (Isaiah 2:3; Micah 4:2). That certainly is not taking place right now. An honest look reveals only division and lawlessness coming out of Jerusalem, just as division and lawlessness emanate from capitals of the other modern Israelite nations.

But not for much longer. As Micah continued, the Messiah will soon come, and "he shall judge among many people, and rebuke strong nations afar off; and they shall beat their swords into plowshares, and their spears into pruninghooks: nation shall not lift up a sword against nation, neither shall they learn war any more" (verse 3).

God speed that day!

If you want more coverage of Israel, visit our sister website watchJerusalem.co.il.