

David M. Weinberg



## Curb the Imperious Israeli Supreme Court

Israel's Supreme Court has gone beyond the limits of "reasonable" intervention in Israeli political and public life with its ever-expanding scope of super-subjective decision-making.

Going back 25 years to the term of then-Court President (Chief Justice) Aharon Barak, the Court effectively stripped Israeli law of any inherent meaning and created complete legal mayhem. Barak and his colleagues developed a series of mumbo-jumbo, infinitely pliant concepts that allow High Court justices to apply their own sensibilities to issues before the Court; to socially re-engineer Israeli society – in their enlightened image, of course.

"Reasonableness" is a term that runs like a computer virus through the High Court's decisions over the past two decades. It is authoritarian jargon which means the Court elastically can go any way it pleases; as are the Court's "broad interpretations" of law to fit its own perceptions of "values," "balance," and "equality."

Given the longstanding makeup of the Court, decisions that employ such supple and flexible principles invariably are skewed in favor of the liberal side of the political spectrum.

And thus, the Court has ruled in recent years with a liberal fist on the allocation of JNF land, Palestinian residency rights in Israel, rights of foreign converts to citizenship, Haredi draft deferments and stipends to yeshiva students, commerce and road closings on Shabbat, and more.

The Court has found it "unreasonable" that religious Jews be allowed to pray on the Temple Mount because this would disturb the Arabs and require a massive police presence. On the other hand, the Court has found it "reasonable" to allow the Women of the Wall to pray in a manner offensive to most worshippers at the Western Wall despite the disturbance involved and the massive police presence required to make it feasible.

It was found "unreasonable" that Religious Zionist Jews operate "acceptance committees" to maintain distinctly homogenous small communities even though is this basic libertarianism, not discrimination. But it is "reasonable" for Bedouins and Arabs to operate "acceptance committees," because they are considered "distinct" and apparently more kosher communities by the Court.

It was "reasonable" for the Central Elections Committee to ban the right-wing and anti-Arab "Otzma Le-Yisrael" party from running in the three last election campaigns, said the High Court. But it was "unreasonable" to disallow the anti-Israel Joint Arab List from running, including some of its openly pro-terrorist candidates like Heba Yazbak and Hanin Zoabi.

So it was again this year when the High Court of Justice struck down the 2017 Settlements Regularization Law as "unconstitutional," because it impinges on the land rights of absentee Palestinians and mere cash compensation isn't sufficient. But it was okay to crush the rights of Israeli Jews and expel them from their homes in Gush Katif with a few pennies of compensation. (The

Court refused to intervene in that matter.)

So it may be when the Court rules on the historic Jewish Nation-State law of 2018, which was passed as a "Basic Law" – meaning that it was meant as supra-Court constitutional legislation. The Court has no right to touch this. Nevertheless, current Chief Justice Esther Hayut has convened an 11-justice panel to judge the law's "reasonableness."

So it may be when the Court rules soon on a petition from a group of extremist professors to terminate all government funding for gender-separate Haredi college programs. Accepting the petition would be a disaster for the slow but measurable movement of Haredi men and women into the workforce – which is crucial for the Israeli economy and the future of our society.

What is next? Well, would a decision by the government to extend Israeli law to security zones and all settlements in Judea and Samaria be a "reasonable" decision? How about the opposite decision – to dismantle all settlements? Which of these decisions would be "reasonable" and which not? The imperious High Court justices will decide, not the electorate – unless the Knesset legislates limits on the High Court's reach, or at least enacts an override provision.

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