Opinion
NCR Voices



Demonstrators protest against plans by Prime Minister Benjamin Netanyahu's government to overhaul the judicial system, in Tel Aviv July 24. Israeli lawmakers on July 24 approved a key portion of Netanyahu's divisive plan to reshape the country's justice system despite massive protests that have exposed unprecedented fissures in Israeli society. (AP/Ariel Schalit)



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The Israeli Knesset on July 24 approved the first part of an overhaul of that nation's judiciary. The commentary stateside has been notable mostly for its failure to engage the actual issue of whether or not the judiciary is too powerful in Israel, forcing the analysis through the lens of American politics. Just so, it has been predictable in the extreme.

So, for example, in the U.S., conservatives spent much of the past 60 years complaining about "activist justices," and now liberals complain that the court is wrecking the country. Tom Nichols, at The Atlantic, convincingly showed that *Roe* v. *Wade* really was the result of an activist court. He goes on to point out that *Dobbs* v. *Jackson Women's Health* is also the result of an activist court. Nichols drew an important distinction: *Dobbs* held that there is no constitutional right to an abortion, which falls squarely within everyone's traditional understanding of the court's role. The court also held that abortion shouldn't be a right, and that is activism. "Shoulds" and "shouldn'ts" belong to the legislature to determine, Nichols argued.

It is funny to see progressive commentators like Mehdi Hasan on MSNBC denounce the Israeli government's decision to alter the power of the court even while praising proposals to expand the number of Supreme Court justices here in the U.S., which would have a similar effect. Here in the states, I side with Chief Justice Roberts when he said, "If the court doesn't retain its legitimate function of interpreting the constitution, I'm not sure who would take up that mantle. You don't want the political branches telling you what the law is, and you don't want public opinion to be the guide about what the appropriate decision is."

I am no expert in Israeli law, and examining the legal structures of countries without a written constitution is notoriously difficult. Parliamentary systems tend to self-regulate and, in the case of Great Britain, a mountain of traditions, as well as public opinion, guards against any particular government encroaching on the rights of its citizenry. Israel, however, is a young country, one that has witnessed enormous demographic changes since its birth in 1948.

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For the first 50 years of its existence, Israeli democracy was united by external threats. The central issue that confronts Israeli democracy today is internal, its failure to resolve the place of the ultra-Orthodox in Israeli society. That is the key thing to understand in the current controversy over the courts. Issues like the exemption from military service extended to Haredi, or ultra-Orthodox, Jews have never been codified by parliament, and any attempt to do so might be invalidated by the courts. Until now.

In order to give his ultra-Orthodox coalition partners a greater say in both the nomination of justices and in restricting the power of the Israeli courts to invalidate laws passed by parliament, Prime Minister Benjamin Netanyahu is willing to divide the country's most essential organization, the military. Hundreds of reservists have suspended duty since the judicial overhaul legislation was passed, and without reservists, the Israeli military doesn't function. As Shira Rubin and Steve Hendrix reported in The Washington Post, "it is the standoff with reserve military officers, senior security officials, and the army's rank and file that poses perhaps the most serious threat to the legislation — with some warning that the divisions could weaken Israel’s preparedness in a region beset by conflict." Reservists are especially crucial in the air force.

In Israel, the military does not function only as a defense against foreign threats. It serves as a means of building societal cohesion among citizens. Most Israeli men serve for 32 months in the military and most Israeli women serve for 24 months. When the exemption for the Haredi was granted in 1948, it only applied to a few hundred people. Now, Haredi Jews are 13% of the population and they send few men and no women into the military. Given their explosive birthrates, they are also the most keen on expelling Palestinians from the West Bank and annexing the territory into Israel for settlements.

The Haredi, however, are critical coalition partners in the Netanyahu government. Democracies are always at risk of being led by someone who caves to his or her most extreme coalition partners and undermines the unity of the country in the process. All to hold on to power. In Spain's inconclusive elections July 23, the real balance of power is held by the small Junts party that supports independence for Catalonia. Prime Minister Pedro Sanchez could bring them into his coalition if he is

willing to offer a referendum on dismembering the country. Political leadership is needed to avoid such quandaries.

President Joe Biden called the Knesset's vote "unfortunate," which seems about right. The White House statement noted that "the vote today took place with the slimmest possible majority." Major changes to a country's constitution, whether that constitution is written or not, should be approved by super majorities. Our Constitution requires a two-thirds vote in both houses of Congress and ratification by three-fourths of the state legislatures before an amendment is added.

Netanyahu's willingness to placate his base by risking the unity of his country is a reckless move. The time is coming when the rest of Israeli society will refuse the bifurcated responsibilities the Haredi are able to shun and the benefits they receive from a society they refuse to join or defend. That is the underlying issue here, and there is no easy way to resolve it, not in parliament, and not in the now-weakened courts.