



Defense of the unaccountable: The left's attack on Israel's Judicial reforms

By Edward Weinhaus

Israel's judicial reforms are on the world stage. The question is — why? If our Supreme Court gave itself the powers Israel has claimed for itself, it would make the current weekend demonstrations in Israel over judicial reforms look like a child's birthday party.

Protesters and critics alike nonetheless vociferously attack the reforms. In so doing, they are defending the unaccountable.

Given the outsize influence our Supreme Court has on our daily lives — about which we will all complain at one point or another — let's first pay it a compliment. Our Court shows restraint. That's a pretty shocking statement. But in the context of Israel's Supreme Court's runaway authority, it will make us all a little more grateful.

First, our Supreme Court gives us the benefit of having a political — that is representative — process for selecting justices. You didn't like Robert Bork or Harriet Miers? They didn't become justices. Whether you did or didn't love Justice Brett Kavanaugh's appointment, the process by which he was appointed empowers the people. In the end, that led to a new President and Justice Ketanji Brown Jackson.

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In Israel, the Supreme Court controls its own membership. Those of us who want to preserve an insider's system have a very good reason to keep it. However, that doesn't make it good or right. The reforms will alter the elite's control of court appointments making them accountable to the people. Imagine if Justices Amy Coney Barrett, Kavanaugh, Neil Gorsuch, Samuel Alito and John Roberts could have dinged Brown Jackson. Israel is solving that problem, now.

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Next, our Supreme Court has a little-discussed doctrine called the Political Question Doctrine. A better description would come from an academic, however, it's safe to say that it is a method of restraint. The Congressional Research Service describes the Political Question Doctrine:

← “[It] instructs that federal courts should forbear from resolving questions when doing so would require the judiciary to make policy decisions, exercise discretion beyond its competency, or encroach on powers the Constitution vests in the legislative or executive branches...”

(?return) Israel's Supreme Court operates like it's run by an anti-Political Question Doctrine. It shows no restraint.

 That explains the size and makeup of the weekend protests. Defending an elite institution of a generally secular nature, the protesters absolutely love the Israeli Supreme Court expanding its own powers. Then it gets to opine and rule on the precise political questions from which responsible, independent courts restrain. Again, that's a nod to being forced to cal

