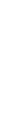


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## OPINION

# Why Israel was never so democratic in the first place

By [Dahlia Scheindlin](#)

July 29, 2023 3:00pm Updated



Some of the many thousands of protestors in J part of a series of laws aimed at weakening the the maneuvers are illiberal and anti-democratic

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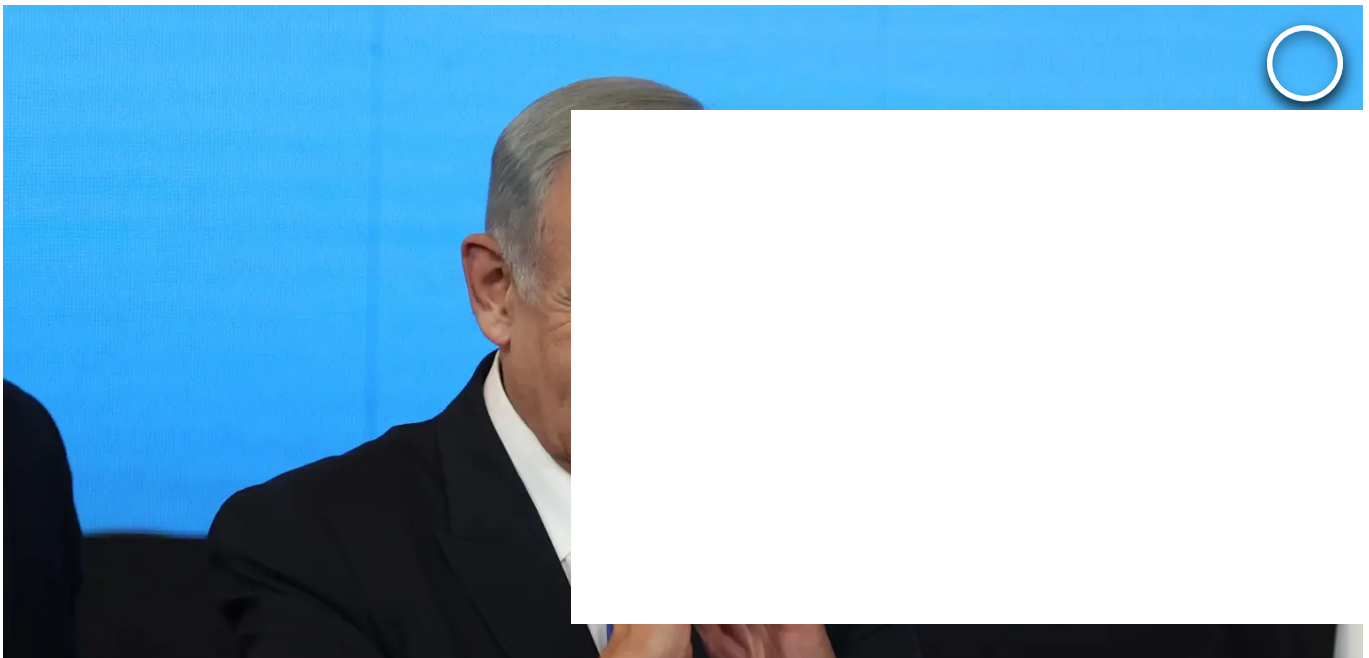
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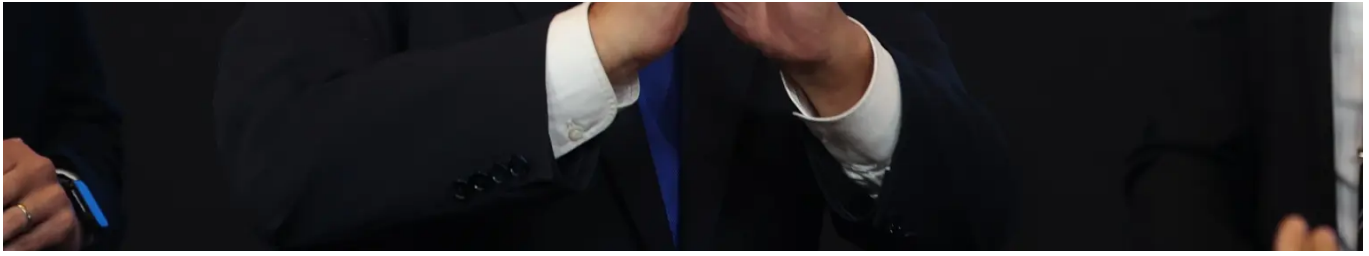
This year has made a mess out of Israel. In January, Prime Minister Benjamin Netanyahu's right-wing government announced plans to reduce the independence of Israel's Supreme Court. For seven months, massive demonstrations have swept the country, blocking both the legislation and the streets, at points bringing Israel to a standstill.

Over 10,000 army reservists have announced their refusal to serve and **high-tech companies have spirited tens of millions of dollars** abroad in protest. Yet this past week, the government passed its landmark bill to weaken the Supreme Court, nearly spinning the country out of control.

It would be easy to pin Israel's current chaos on Netanyahu and his cabinet, composed of an unprecedented combination of ultra-nationalists and religious extremists — and led by a hamstrung prime minister standing trial for corruption. But Israel's democracy crisis didn't begin with the judicial overhaul of 2023. Its roots are as old as the nation itself.

To understand Israel's past, start with the present: the Netanyahu government insists on constraining a judiciary it believes has overstepped its bounds. The right wing argues that Israel's unelected Supreme Court slaps down legislation and government decisions with impunity. The court, they say, tramples the will of voters while imposing a left-wing agenda on Israel's right-wing majority.





Facing corruption charges and massive nation-wide protests, Israeli Prime Minister Benjamin Netanyahu is enduring the most challenging period of his near two decades-long rule.

Defenders of democracy, meanwhile, view Israel's judiciary as the sole institution defending civil rights and basic freedoms. As they see it, Netanyahu's populist governments have advanced illiberal, anti-democratic policies that force citizens to seek protection through the Court. And without a formal constitution to fall back on, that court provides the only checks on executive power between elections (of which Israel has many).

What the current protest movement gets wrong is that Israel never truly committed to being a liberal democracy in the first place. And both left and right-wing governments share the blame.

The "who started it" accusations over the role of the Court are merely a symptom of Israel's real procedural problems. Chief among them is that lack of a formal written constitution, which has left both sides unable to agree on the division of governmental powers. Those on the right believe the Supreme Court usurped power from Israel's parliament in the 1990s, when it ruled that it had the authority to overturn laws (23 of which have since been affected).

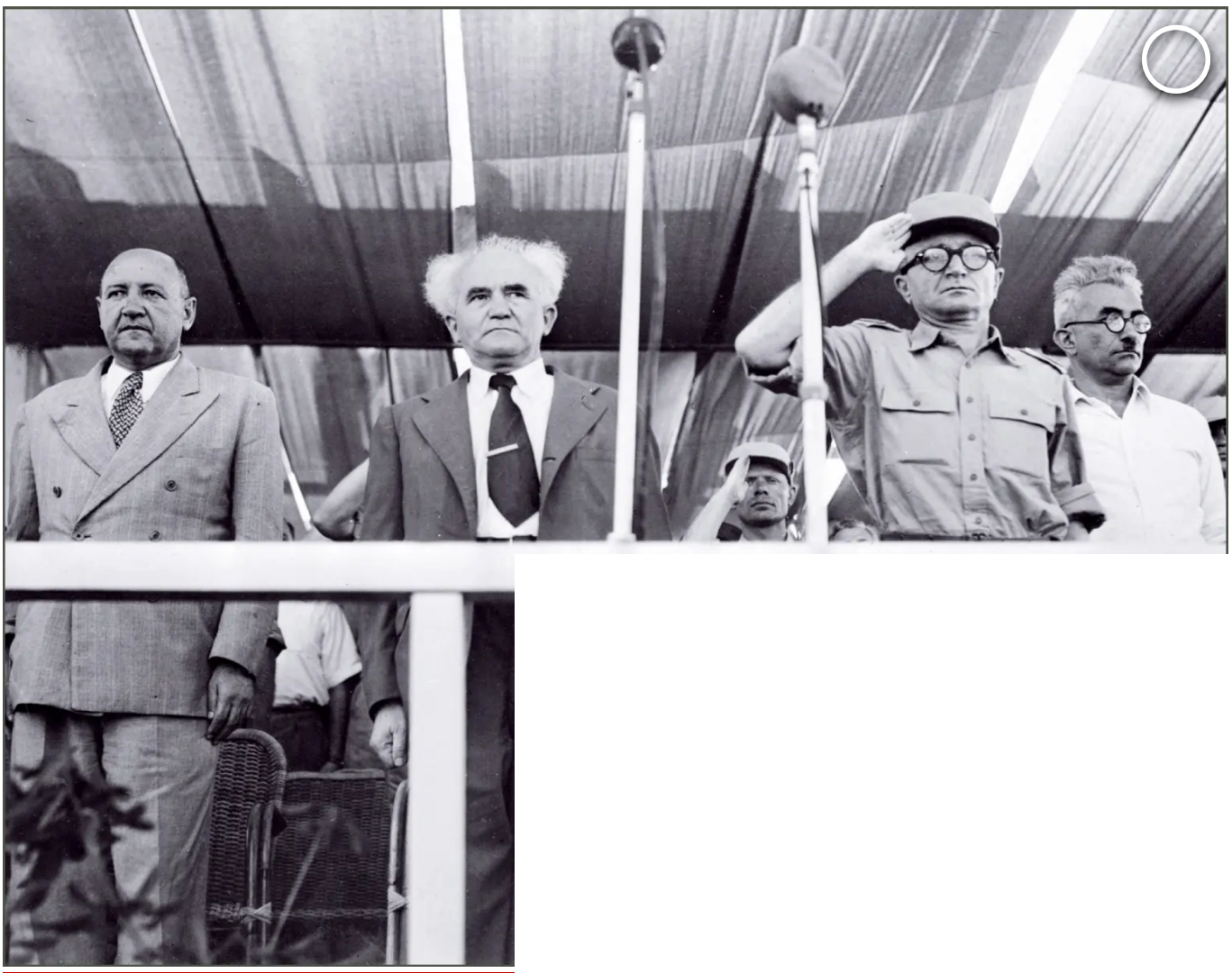
In truth, the Court was interpreting two of what Israel calls its Basic Laws — passed by legislators



...and, the Court has interpreted the original intent of the Basic Laws — passed by legislation in 1992 under a Likud-led right-wing government much like Netanyahu's today. Those laws define fundamental — a.k.a. “American-style” — rights such as life, liberty, property and freedom of vocation. Essential, democratic liberal stuff.

The problem is that no authority ever made clear the powers these “Basic Laws” possess — only that they were supposed to form the basis of a future constitution that Israel has never actually written. Of course this piecemeal stand-in for a formal bill of rights is better than nothing. Better still would have been an actual constitution establishing equality for all citizens, while fully defining the separation of government powers.

So why has Israel, one of America's closest allies and, many argue, the most robust democracy in the Middle East, failed to develop a constitution that could have likely prevented its current existential conflict? Because Israel's vaunted first prime minister, David Ben-Gurion, didn't want one. Most Israelis see Ben-Gurion as the mythical father of the nation, and the gold standard for assessing leadership today.



Israel's first Prime Minister David Ben-Gurion in an image from 1948. Ben-Gurion, long considered the gold standard for Israeli leadership, may have ruled from the left, but was responsible for key anti-democratic policies



Protestors in Tel Aviv demonstrate against Netanyahu's judicial reform efforts by shutting down a main highway out of the city.

But to realize his greatest achievement, Israeli independence, Ben-Gurion paid a heavy price, namely caving into demands by his religious Jewish political allies, who wanted the least possible separations between synagogue and state. Despite being lionized by the left, it was Ben-Gurion who allowed Judaism to assume outsized control in public and private spheres, and insisted that the state rule over its Palestinian minority, who are Israeli citizens, through a military regime for two decades.

Yet somehow many view this as the coun

Things have changed, but democracy in I  
Party took power in the late 1970s, it clair  
constitution.







The civil unrest extended to Israel's capital, Jerusalem, where anti-government crowds railed against the government.

But the Likud was also passionate about territorial expansion, Jewish settlements, and Jewish nationalism — all of which corroded democracy. Israeli settlers in the West Bank live under civilian law, while their Palestinian neighbors are ruled by Israel's military.

For a party that professed to support democracy, could there be anything less democratic? But again, who really started it? After all, Israel's "left-wing" governments began the occupation following the Six-Day War in 1967 and governed during the first decade of the settlement project.

By the time Israel took baby steps towards liberalism in the late 1980s and 1990s, the country had tolerated undemocratic practices for so long that they appeared almost normal. And both left and right-wing leaders are guilty. Yes, Israel's current government may seek to roll back a slew of civil rights. But what Israelis view as the left has its own paper trail of curbing basic freedoms.





Israel's Supreme Court in Jerusalem. Because Israel lacks a formal constitution, the Court is the sole government institution tasked with containing the nation's executive powers.



Inside the Knesset, or Israel's parliament, where this week.

**38** What do

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Long before Netanyahu's Supreme Court crusade, Israel's "golden years" of democracy were actually far less democratic than many have long believed.

Which is why if the nation's current democracy movement is to truly succeed, Israelis — left, right and center — should start with a serious lesson in history.

*Dahlia Scheindlin is the author of the forthcoming book "[The Crooked Timber of Democracy in Israel: Promise Unfulfilled](#)."*

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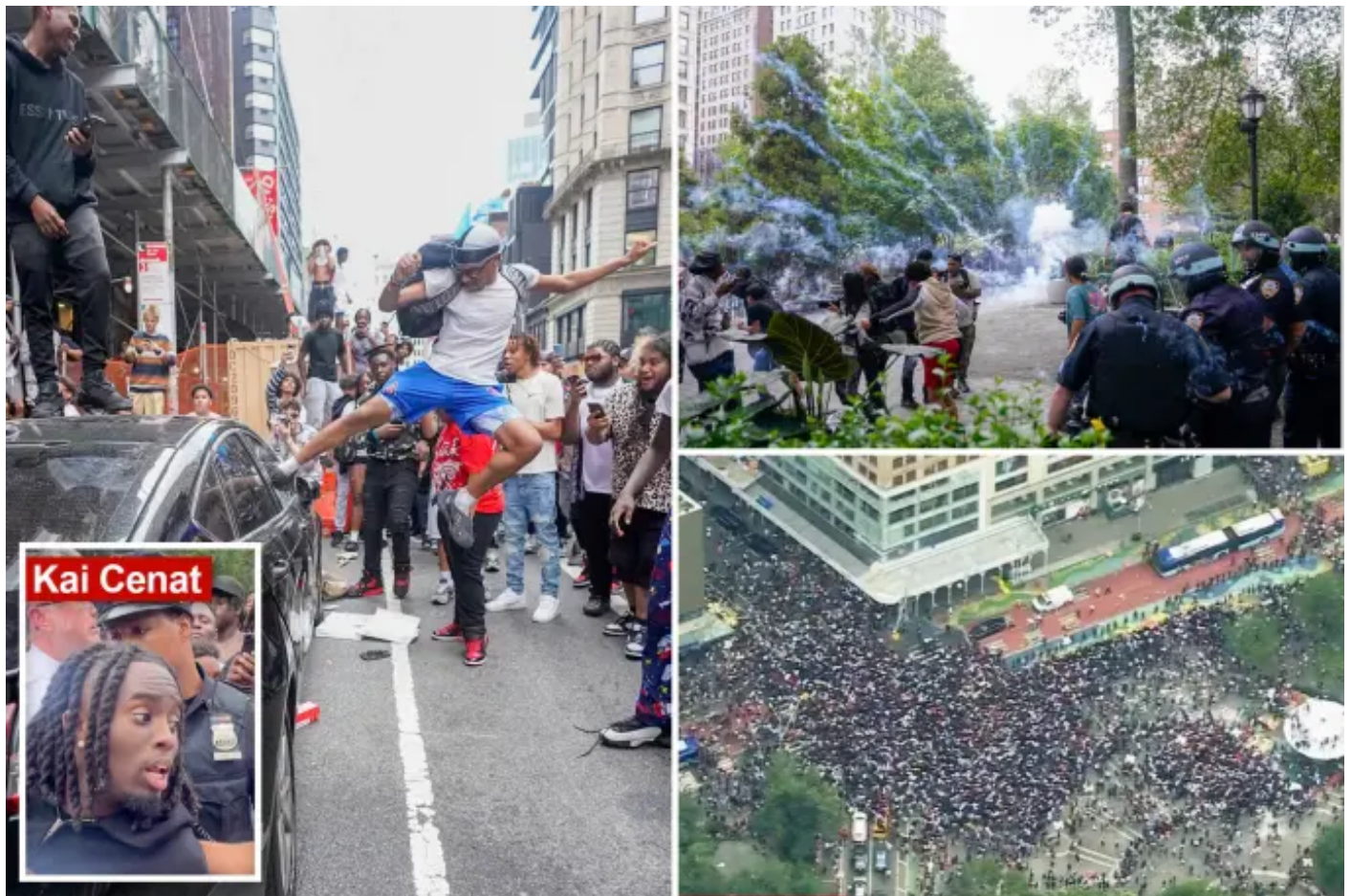
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