

# The Creeping Delegitimization Of Peaceful Protest

*Evelyn Gordon*

For the past several years, members of Israel's Haredi community have been among the most vocal critics of judicial activism—the Supreme Court's habit of overturning government decisions that violate no written law, either because they conflict with rights the court itself has created, or simply because the justices consider them unreasonable.<sup>1</sup> Not surprisingly, the chief concern of the Haredi leadership and press has been the court's activist incursions into religion-state issues. On February 9 of this year, upset by a recent spate of rulings altering the long-standing "status quo" agreement on religious issues,<sup>2</sup> Haredi leaders held a press conference at which they announced plans for a massive demonstration in Jerusalem.<sup>3</sup>

Almost instantaneously, the cry was raised among politicians, the legal establishment, the universities and the media that, as Meretz leader Yossi Sarid put it, "Israeli democracy is in danger."<sup>4</sup> A counter-demonstration dubbed "Defending Democracy" was organized by groups including the radical-Left Meretz party, the United Kibbutz Movement and the Constitution for

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Israel Movement, to be held in Jerusalem's Sacher Park, physically situated between the location of the planned Haredi demonstration and the Supreme Court building—symbolizing the intention of the demonstrators to “defend” the court from its religious detractors.

The ensuing controversy, which culminated with the competing demonstrations on February 14, proved that Israeli democracy was indeed in danger. But the peril came not from the anti-court demonstration, at which 250,000 participants peacefully assembled in prayer. Rather, the danger came from the lengths to which Israeli opinionmakers went to defend the deeply entrenched taboo against criticism of the court. In the name of protecting the court and the rule of law, the very people who should have served as the pillars of Israeli democracy sought instead to trample the fundamental civil liberties on which this democracy rests.

It must be acknowledged that certain Haredi leaders did everything possible to undermine their cause. At a press conference on February 9, former MKs Menahem Porush and Moshe Gafni called the Supreme Court's decisions “anti-Semitic,”<sup>5</sup> while R. Ovadia Yosef, spiritual leader of the Sephardic-religious Shas party, described the justices as “wicked, stubborn and rebellious,” “empty-headed and reckless” and “the cause of all the world's torments.”<sup>6</sup> His son, R. David Yosef, went so far as to call Supreme Court President Barak “the enemy of the Jews,” a reference to Haman, the arch-persecutor of the Jews in the book of Esther, whom Jewish tradition considers a descendant of the Amalekites—the ancient enemies whom Jews are obligated by biblical injunction to kill.<sup>7</sup> In a democracy, though, even the most deplorable language does not usually justify calling for criminal sanctions. And since the most unexceptionable Haredi criticisms of the court have been met in the past with equally vocal demands for indictments, it is hard to believe that it was solely the unusual vitriol of these attacks that prompted politicians, journalists and good-government groups to loudly demand legal action.

Some of the statements may actually have constituted incitement in the legal sense—such as the comparison of Barak to Haman. Had the response

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to the demonstration been limited to the demand that the attorney-general consider bringing charges against those individuals potentially guilty of this crime, it might have been understandable. But rather than focusing on the possibly illegitimate speech of certain individuals, the principal object of the tidal wave of criticism was the demonstration itself—based on the claim that even *peaceful* protest against the decisions of Israel’s Supreme Court undermined the “rule of law” and threatened democracy. Thus President Ezer Weizman condemned the demonstration’s organizers on the grounds that “the goal [of the attacks] is to undermine the rule of law.”<sup>8</sup> Justice Minister Tzahi Hanegbi similarly branded the Haredi demonstration “a protest against the legitimacy of the rule of law in Israel,” and prophesied blackly that it “is likely to cause a deterioration into escalation and violence.”<sup>9</sup> Labor Party leader Ehud Barak opined that “the Haredi demonstration is a threat to democracy”<sup>10</sup> and “a sign of a severe weakening in respect for democracy and the law,”<sup>11</sup> while Knesset Speaker Dan Tichon charged that the attacks on the court “could turn Israel into a lawless country and lead to anarchy.”<sup>12</sup>

The universities, which might have been expected to defend free speech, outdid even the politicians in their intolerance for the expression of the Haredi viewpoint. The administration of Hebrew University issued an official statement saying that “the attacks on the judicial system threaten basic democratic life,”<sup>13</sup> and Haifa University Law School’s Joseph Edrey declared apocalyptically: “We are talking about an existential threat to the State of Israel.”<sup>14</sup>

The media, to which democratic tradition assigns a leading role in championing free expression, offered similar fare, led by the country’s paper of record, *Ha’aretz*. One of the paper’s regular columnists, Tom Segev, called the Haredi assault “a battle against democratic government,”<sup>15</sup> while his colleague Uzi Benziman charged that the Haredim were “attempting to shatter the very foundation upon which Israeli democracy stands.”<sup>16</sup> Along the same lines, *Ha’aretz* legal commentator Ze’ev Segal, of Tel Aviv University’s law faculty, depicted the demonstration as “a war against the rule of law.”<sup>17</sup>

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All these statements are based on one astonishing argument: That a legal demonstration—the quintessential tool of democratic dissent—can be essentially undemocratic. Yet this argument carried a near-total consensus. Of the hundreds of journalists, politicians, jurists, academics and other public figures whose statements were reported in the media in the days before the demonstrations, almost none were willing to defend the right of the Haredim to hold their protest. The rare exceptions, like Communications Minister Limor Livnat, offered statements that under ordinary circumstances would be considered cliché: “In a democratic regime, everyone has the right to criticize, demonstrate or protest against any institution, even the Supreme Court.”<sup>18</sup>

A variant of the argument that the Haredi demonstration was detrimental to the rule of law stemmed from the equating of a peaceful mass protest with incitement to violence. This view was enunciated most clearly by Justice Minister Tzahi Hanegbi, who declared: “The initiative to convene tens of thousands of citizens to challenge legal verdicts endangers the safety of Israeli judges and the cohesion of the entire Israeli society.”<sup>19</sup>

The claim that harsh rhetoric against the judicial system is inherently threatening to judges’ lives, and must therefore be suppressed, is nothing new in Israeli discourse. But the idea that peaceful demonstrations can also be life-threatening is new, and marks an ominous logical extension of the previous illogic—one made all the more disturbing by the fact that the fear of Haredi violence was based not on any actual actions taken by the Haredi leaders or their followers, but rather on the protective steps taken by the police. Thus *Ha’aretz* columnist Yoel Marcus, noting that “a single demonstration turn[ed] the Supreme Court into an armed fortress with snipers on its rooftop and contingency plans for helicopter rescues,” reasoned that since such a heavy guard had been posted, it must also have been necessary: “It’s sickening that our Supreme Court justices need bodyguards to protect them, as do Sicily’s judges, to protect them from the Mafia, or Colombia’s, to protect them from drug barons.”<sup>20</sup> Marcus neglected to note that in Israel, unlike Sicily or Colombia, no judge has ever been murdered or kidnapped, by Haredim

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or anyone else.<sup>21</sup> Marcus' colleague, Zvi Bar'el, reached the identical conclusion from the police decision to assign guards to the justices' homes: "Immediately there comes to mind judges in places like Argentina and Chile, Nicaragua and El Salvador, some of whom still walk about in terror with a permanent escort of scowling bodyguards, while others have been murdered or have resigned in order to protect their families."<sup>22</sup>

Obviously, the fact that no judge has been murdered in Israel does not exempt the security forces from taking precautionary steps. But if public debate were to be halted every time the police decide such measures might be necessary, there could never be debate on any highly charged political issue—from diplomatic agreements with the Palestinians to the privatization of state-owned companies. The Supreme Court, by dint of its activism, now makes decisions in controversial matters that used to be handled by the Knesset and the government. The fact that the security forces have modified their approach to protecting the justices in the wake of this change cannot be used as an argument for prohibiting protest against the court's new role—any more than the stepped-up security for government ministers following the Wye agreement would have justified banning demonstrations against the accord.

But the critics of the Haredi demonstration did not stop there. A number of prominent public figures and institutions went beyond criticizing the demonstration, and actively worked to secure its cancellation. The Israel Democracy Institute, for instance, took out huge newspaper advertisements proclaiming that Israel was on "the verge of the abyss" and "at the threshold of losing all restraint," and calling on the organizers of the demonstration to cancel it immediately.<sup>23</sup> State Prosecutor Edna Arbel, while refraining from direct efforts to stop the demonstration, stated publicly that she "very much hoped the Haredi demonstration would be canceled," since "the courts and the judges must remain outside of any public debate."<sup>24</sup> But it was President Ezer Weizman who took the lead. Persuaded that the demonstration would "lead to bloodshed," he engaged in a frantic round of

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shuttle diplomacy in an effort to get it called off.<sup>25</sup> In doing so, he not only used the considerable prestige of his office to pressure the Haredim to refrain from exercising their right of free expression; he also implicitly libeled the Haredi community, the clear import of Weizman's words being that they could not be trusted to assemble and conduct themselves peacefully.

Numerous other politicians, including Prime Minister Benjamin Netanyahu and Education Minister Yitzhak Levy, also appealed to Haredi leaders to cancel the demonstration, claiming that a public disagreement of this sort would be bad for national unity. Inherent in their position was the belief that national solidarity could not survive the public airing of differences. Levy expressed this view clearly in explaining why he had not gone to either rally: "If I had participated in a demonstration, it would be hard for me to stand before students and speak in favor of dialogue and unity."<sup>26</sup> This is a bizarre argument even taken at face value, since dialogue is impossible without first recognizing that differences of opinion exist. Trying to sweep one side's grievances under the rug by preventing it from demonstrating is one of the most effective means conceivable of preventing dialogue. Yet even more worrisome is the fact that such a concept of unity—in which differences of opinion are suppressed to create the appearance of consensus—is generally associated with authoritarian regimes. In democracies, the norm is usually to encourage peaceful disagreement, and to view it as a sign of society's health.

A novel justification for calling off the demonstrations also came from the two ex-generals who occupy the top positions in the newly formed Center Party. They argued that both the Haredi demonstration and the pro-court counter-demonstration should be canceled, since holding them would be counterproductive to democratic governance. The party's prime ministerial candidate, former Defense Minister Yitzhak Mordechai, complained that "these demonstrations should have been prevented, since this method will not get us anywhere."<sup>27</sup> His running mate, former IDF Chief of Staff Amnon Lipkin-Shahak, declared: "Against any demonstration, a counter-demonstration will be organized. Therefore, it is impossible to run

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the country by demonstrations.”<sup>28</sup> Such an argument, if taken seriously, would also eliminate Knesset debates, courtroom hearings and most other forms of public discourse—in which one side’s attempt to persuade usually is met by the other side’s parry.

The calls to cancel the Haredi demonstration failed to achieve their aim but nonetheless succeeded in having a chilling effect on the participants’ freedom of expression, creating a climate in which the organizers felt compelled to accept limitations. Prime Minister Netanyahu extracted a promise that there would be neither speeches nor signs, but only prayer, at the anti-Barak demonstration.<sup>29</sup> Indeed, the only exception the organizers permitted to the no-speeches commitment was the reading of a summary declaration at the end of the demonstration, calling for an end to incitement against the Haredim and appealing to the court to stop intervening in religious affairs.<sup>30</sup>

No similar attempt was made to limit the 50,000-strong counter-rally in Sacher Park, held in support of the Supreme Court’s rulings. The counter-demonstration in fact featured highly charged speeches by many public figures.<sup>31</sup> This double standard was even given legal expression, as Attorney-General Elyakim Rubinstein and Civil Service Commissioner Shmuel Hollander decided that civil servants could not legally participate in the Haredi demonstration, because it was “political,” but could participate in the counter-demonstration—despite the fact that it, too, was co-sponsored by a political party, and even featured speeches by politicians.<sup>32</sup> Only after the organizers of the Haredi demonstration pledged to avoid speeches—and renamed the event as a rally for “the strengthening of Judaism”—did Rubinstein agree to permit civil servants to attend that one as well.<sup>33</sup>

The key institutions of civil society also adopted this double standard. The country’s major universities, which should have taken the lead in inculcating the value of free thought and dissent, instead chose to take sides and demand that their students and faculty follow the administration’s lead. Both Hebrew University and Tel Aviv University shut down classes the afternoon of the demonstrations, stating explicitly that the closure was meant to

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enable everyone to attend the counter-demonstration. The justification for this decision, as explained by Hebrew University's leadership in a statement to the press, was that "the attacks on the judicial system threaten the basic democratic life of academic work, research and teaching."<sup>34</sup> Bar-Ilan University sponsored its own on-campus demonstration against the Haredi rally, and senior administration officials lectured the students that the criticism of the court "had crossed all red lines."<sup>35</sup>

The national press, too, abandoned any pretense of objectivity. The major media routinely referred to the counter-demonstration as being "pro-democracy" or "defending democracy"—the latter being the term that Meretz used in its advertisements—with the clear implication that the Haredi demonstration was anti-democratic. By no means atypical was a news story in *Ma'ariv*, which described the counter-demonstration as "an impressive and powerful demonstration of unity on the part of secular and moderate-religious Israelis around the fundamental principles of democracy, the rule of law and defense of the Supreme Court and the judicial system."<sup>36</sup> *Ha'aretz's* account referred to "the mass rally of the democratic camp."<sup>37</sup> The bias in these accounts is especially transparent given that organizers of *both* demonstrations claimed to be defending democracy—the main claim of the Haredim being that the court, by substituting its judgment for that of the people's elected representatives, had been acting anti-democratically. Similarly, different criteria were used by media commentators in judging the rhetoric of the two sides. No one suggested, for example, that Meretz leader Yossi Sarid might be guilty of incitement for reportedly shouting "The Haredim understand only force!" to 50,000 people at the counter-demonstration.<sup>38</sup> Likewise, little stir was created by posters at that rally depicting Shas spiritual leader R. Ovadia Yosef side by side with a picture of the Ayatollah Khomeini—a man responsible for murdering thousands of his own citizens—over the challenge: "Find the differences."<sup>39</sup>

The message of the double standard transmitted by the legal establishment, the universities and the media alike is an extremely worrying one. The



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implication is that demonstrations—a tool meant to enable a minority to express the fact that it is suffering what it perceives as an injustice at the hands of the government—should be reserved for use only in causes favored by the majority. This is frighteningly close to the totalitarian view that demonstrations are permitted only for causes favored by the government—and it is far more dangerous to democracy than a peaceful demonstration on any subject could ever be.

But the assault on the Haredi demonstration did not stop even with the efforts to deprive the Haredim of the right to peaceful protest. Some public figures went even further, demanding that the Haredim be deprived of *other* basic rights because of their attacks on judicial activism.<sup>40</sup> Uriel Procaccia, dean of the Hebrew University Law School, demanded that all state funding for Haredi institutions be canceled as a direct response to the demonstration and the accompanying verbal attacks on the court: “They have cut themselves off from the basic contract of Israeli society, so we should not give one cent to their institutions. Perhaps in this way, they can be brought to rethink their stance.”<sup>41</sup> Sefi Rachlevsky, author of the anti-religious bestseller *The Messiah’s Donkey*, was given a platform in the national daily *Ma’ariv* for his demand that the government “dismantle the independent [Haredi] school systems.”<sup>42</sup> The most chilling proposal, however, was offered by *Ha’aretz* columnist Zvi Bar’el. The Haredim, he wrote, want to create “a different democracy, one in which an enlightened majority permits a Dark Ages minority to rule,” and therefore a strong response was necessary:

In this situation, we might do worse than to adopt the democratic principles of a close friend: Turkey. The Turkish constitution prohibits all activity liable to harm national unity.... The state has identified two dangers to democracy: The Kurdish minority and the religious extremists. It is against them that the national unity article in the constitution is invoked. Religious parties may operate within a political cage with very clear bars. In contrast to Israel, where drafting Haredim has become the mantra of the secular population, the Turkish army throws out soldiers and officers

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who display overtly religious inclinations. In Turkey the religious groups and their supporters constitute about 30 percent of the population—a large minority that accepts the situation. In Israel, a tail of 20 percent is wagging the dog. Turkey is an Islamic state, but the permitted dosage of Islam is determined by the administration.<sup>43</sup>

What Bar'el is proposing, in essence, is that Israel retaliate against the Haredim the way that Turkey—a democracy in name only—treats its religious citizens: By stripping them of their fundamental religious freedoms. One of the hallmarks of democracy is its ability to tolerate disagreement. Meeting dissent with demands that the dissenters be deprived of basic human rights—and it is hard to imagine a more basic right than the right to practice one's religion without the "dosage" being "determined by the administration"—is, again, a far greater threat to democracy than any peaceful demonstration could be.

**T**he most disturbing consequence of the virulent reaction to the Haredi demonstration, however, has been the almost universal unwillingness to consider the substance of complaints by the Haredim against the Supreme Court, or even to grant that there could be any substance in them worth considering. In effect, the country has been so wrapped up in trying to find ways to suspend the civil rights of Haredi Jews that it had no time to consider their grievances concerning judicial activism. The refusal to debate this issue is particularly striking given that the placing of limits on supreme courts, and the implications of judicial activism for democratic governance, are hot topics of debate throughout the Western world. And it is especially damaging to democracy because the question at stake, the compatibility of an activist Supreme Court with democratic theory, is such a fundamental one.

Rather than addressing the arguments raised by Haredi critics of the court, Israeli politicians, journalists, academics and jurists employed a number of methods for ducking them. At the heart of their approach was the assumption that the court's behavior could not possibly be the real

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reason for the furor. Thus Ze'ev Segal of Tel Aviv University claimed that the court—which has been termed the most activist in the world by such internationally renowned legal scholars as Hebrew University's Ruth Gavison and McGill University's Irwin Cotler—is actually not activist at all. Thus in Segal's opinion, "Recognizing the great judicial restraint that the High Court of Justice has imposed on itself ... it can be assumed that what is happening now is preparation for the Jerusalem District Court's upcoming verdict in the trial of MK Aryeh Der'i [head of the Shas party, on trial for bribe-taking, fraud and breach of trust].... The demonstration ... is no more than preparation for what is likely to happen after the Deri verdict, if it is not to [the Haredi leadership's] liking."<sup>44</sup> Having dismissed the claims of activism as fictitious, Segal is left with the explanation that a quarter of a million people showed up at a demonstration against the rulings of the Supreme Court to practice the response they might use against a possible verdict by a lower court against one man.<sup>45</sup>

Similarly, it was claimed that the Haredim had simply misunderstood the Supreme Court's actions. Shahar Ilan, *Ha'aretz's* religious affairs correspondent, wrote a story—billed by the paper as news rather than analysis or opinion—called "Three Haredi Fables About the Judges," with a kicker stating: "Their [i.e., the Haredi] treatment of the court is not based on facts."<sup>46</sup>

Do the Haredim have a legal leg to stand on in their arguments against the Barak Court? For the sake of illustration, let us examine one of the cases which supporters of the court have repeatedly touted as an example of its "restraint": The ruling on yeshiva deferments. In December 1998, the court nixed a five-decades-old arrangement whereby the defense minister was empowered to decide how many deferrals of army service to grant to yeshiva students. The court gave the Knesset a one-year grace period in which to draft a law setting explicit policy for such deferrals, but said that in the absence of such a law, all such deferrals would have to be discontinued. The argument advanced by defenders of the court was that the Haredim could not really be upset over this issue, since the court had merely transferred the decision to the Knesset—which is what the Haredim say they want.<sup>47</sup> Yet nothing could be further from

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the truth. The court explicitly ruled that the current system of draft deferrals was illegal. It permitted this arrangement to remain in force for another year to give the Knesset time to propose an alternative, but did not leave the Knesset the option of restoring the authority to the defense minister, which was the system that the Haredim, and the Knesset majority, had long preferred. In ruling that the deferral policy was patently unreasonable, the Supreme Court also created a public furor against the Haredi community, and thus applied pressure on the Knesset to draft a far more restrictive policy on the use of deferrals.

What further enraged the Haredim—a fact carefully ignored by those who cited this ruling as an example of judicial “restraint”—was that it was based on no law whatsoever, but only on the justices’ opinions. Indeed, the law in effect for Israel’s first five decades granted the defense minister the right to issue draft deferrals, and placed no limitations on their usage. Relying on this law, the court itself had three times previously rejected petitions on this issue. In 1970 and 1981, the court found the entire issue non-justiciable—that is, inappropriate for court decision—on the grounds that the reasonability of wholesale yeshiva deferments was a political rather than a legal question. In 1986, the court suddenly decided the issue was justiciable—though the applicable law had not changed in the interim—but that the defense minister’s policy was reasonable. In the subsequent twelve years, the law still did not change. Yet in their December 1998 ruling, the justices decided that another important change *had* occurred: A numerical one. In 1986, there were 17,017 yeshiva deferments, or 5.4 percent of that year’s eligible draftees. By 1998, there were 28,772 deferments, or 8 percent of eligible draftees. That quantitative change, Barak wrote, created a qualitative change that made it unreasonable to let the defense minister decide on his own.<sup>48</sup>

It is hard to imagine a flimsier legal argument than one which says that 5.4 percent and 8 percent are qualitatively different. But even if one accepts the court’s reasoning, the point is that this ruling, like many others the court has made on other issues, was essentially a value judgment by the justices

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rather than a decision based on law—and it is *this* to which the Haredim object. Opponents of judicial activism consider it dangerous to democracy precisely because they believe that value judgments of this sort should be made by a nation's elected representatives rather than by an unelected court. In pretending that the court had merely deferred to the Knesset on the issue of draft deferrals, those who dismissed the Haredi claim against judicial activism were deliberately ducking this argument.<sup>49</sup>

By denying that the Haredim had a legitimate grievance, the Supreme Court's apologists were not merely engaging in a harmless form of fantasy. They were effectively saying that no point of view other than their own could, or would, be taken seriously. Such a stance leaves few options for a minority that views its rights and prerogatives as being stripped away by a process it has little hope of influencing. Furthermore, it deprives the country as a whole of serious debate on an issue of fundamental importance to all Israelis: The role and powers that should be assigned to the various institutions of government.

In such an environment, where substantive arguments are suppressed or dismissed, it is also difficult for any sector of society to persuade others that it is genuinely aggrieved. This difficulty came across most strongly in a post-mortem on the Haredi demonstration by columnist Amnon Dankner. "There was clearly no vital, pressing and painful issue for the Haredi public here," he wrote, "since if there had been, surely such a large Haredi public would have been drawn into violence."<sup>50</sup> Having refused to take the arguments by the Haredim seriously, Dankner in effect tells them that the only way to prove they have real grievances is by turning to violence. The implication that any group wishing to have its interests taken seriously must resort to force is the logical conclusion of a refusal to recognize opposing views when they are communicated peacefully. As most Israelis do not want to live in such a society, it is incumbent upon them to make sure that dissent is permitted, respected and encouraged.

The reaction to the Haredi demonstration shows that the taboo on criticizing the Supreme Court can no longer be tolerated as an evil necessary for

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preserving the rule of law. It is an evil that not only undermines the rule of law, but also a host of other democratic freedoms and attitudes. The Supreme Court, which has done so much to advance freedom of expression in Israel, must be allowed to be the object of such freedom as well.

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*Evelyn Gordon is a journalist who writes on legal affairs.*

## Notes

1. For a more detailed discussion of this issue, see articles in *AZURE* 3, Winter 1998.

2. The "status quo" is the term for a long-standing agreement, reached by Ben-Gurion and representatives of the Orthodox Jewish community in Israel around the time of the state's founding, to govern issues such as how marriage and divorce would be handled, as well as the public observance of the Sabbath and kashrut.

3. The demonstration had actually been announced in the Haredi press four days earlier. However, it was only after the press conference that it attracted widespread public attention.

4. *Ma'ariv*, February 13, 1999.

5. *Ha'aretz*, February 10, 1999.

6. *Ha'aretz*, February 12, 1999.

7. R. David Yosef claimed that he had referred to Barak as the "enemy of Judaism," and not the "enemy of the Jews."

8. *Ha'aretz*, February 11, 1999.

9. *Yedi'ot Aharonot*, February 15, 1999.

10. *Yedi'ot Aharonot*, February 15, 1999.

11. *Yedi'ot Aharonot*, February 14, 1999.

12. *Ha'aretz*, February 11, 1999. Other, milder examples include: Prime Minister Benjamin Netanyahu ("the court and its judges are the guarantors of the rule of law in Israel, so they must be honored and not attacked," *Ma'ariv*, February 10, 1999); R. Yehuda Amital, head of the dovish religious Meimad party ("an injury to Israeli democracy," *Ma'ariv*, February 15, 1999); R. Yehuda Gil'ad, another leading Meimad figure ("this is an attempt to undermine the character of democracy,"

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*Ha'aretz*, February 12, 1999); and the Constitution for Israel Movement, which published ads proclaiming "We will not permit the subordination of democracy!" and calling on people to attend the counter-demonstration "in defense of the rule of law," *Yedi'ot Aharonot*, February 11, 1999.

13. *Ha'aretz*, February 14, 1999.

14. *Ha'aretz*, February 11, 1999.

15. Tom Segev, "The New Reactionary," *Ha'aretz*, February 12, 1999, p. B12.

16. Uzi Benziman, "In the State of Vulgaria," *Ha'aretz*, February 12, 1999, p. B2.

17. Ze'ev Segal, "The Court of Restraint and Forbearance," *Ha'aretz*, February 11, 1999, p. B1. Other papers followed suit. *Ma'ariv's* Zvi Gilat, for example, declared that "the rule of law will continue to be in danger." Zvi Gilat, "The Rule of Law Will Continue To Be In Danger," *Ma'ariv*, February 15, 1999, p. 7. *Ma'ariv* columnist Hemi Shalev termed the Haredi demonstration and criticism "a challenge ... to the rule of law." Hemi Shalev, "To the Honorable Chairman, For Your Eyes Only," *Ma'ariv*, February 12, 1999, p. 3. Author Sefi Rachlevsky wrote about the demonstration as "a rabbinic revolt against the government." Sefi Rachlevsky, "Guilt of the Rabbis, Silence of the Lambs," *Ma'ariv*, February 15, 1999, p. 3.

18. *Ma'ariv*, February 13, 1999. Other examples are Minister without Portfolio Michael Eitan, also cited in *Ma'ariv* of February 13, 1999; Nahum Barnea, "The Three that Went Astray," *Yedi'ot Aharonot*, February 14, 1999, p. 3; and Ran Kislev, "On the Bagatz Front," *Ha'aretz*, February 14, 1999, p. 2.

19. *Globes*, February 15, 1999.

20. Yoel Marcus, "Weaning Them from the State," *Ha'aretz*, February 16, 1999, p. B1.

21. There have been threats and occasional attacks against judges and court-houses in Israel, though usually not by Haredim.

22. Zvi Bar'el, "Judge, Don't Discuss," *Ha'aretz*, February 14, 1999, p. B1.

23. See, for instance, the ad in *Ha'aretz* on February 11, 1999.

24. *Ha'aretz*, February 14, 1999.

25. *Ha'aretz*, February 12, 1999.

26. Moshe Zak, "Dangerous Whirlpool," *Ma'ariv*, February 15, 1999, p. 6.

27. *Yedi'ot Aharonot*, February 15, 1999.

28. *Ma'ariv*, February 12, 1999.

29. *Ha'aretz*, February 14, 1999.

30. *Ha'aretz*, February 15, 1999. The highly publicized remarks by Menahem Porush, one of the demonstration's organizers, threatening "war" against the court if

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the anti-religious policy was not altered, were made not at the demonstration, but in response to questions from the press after the event.

31. Placards, however, were prominent at both demonstrations.

32. *Ha'aretz*, February 14, 1999.

33. *Ha'aretz*, February 15, 1999.

34. *Ha'aretz*, February 14, 1999. See also *Yedi'ot Aharonot*, February 14, 1999. The statement failed to explain how attacks on judicial activism threaten academic freedom.

35. *Ha'aretz*, February 15, 1999.

36. *Ma'ariv*, February 15, 1999.

37. *Ha'aretz*, February 15, 1999.

38. Shalom Yerushalmi, "A Show of Strength Before the Elections," *Ma'ariv*, February 15, 1999, p. 2. Even the complete lack of violence at the Haredi demonstration was not accepted at face value by all commentators. Michal Capra of *Ma'ariv* wrote: "This was not a violent demonstration, yet there was nevertheless violence in this enormous human mass. A quarter of a million people of religious faith, of uncompromising devoutness, crowded, aware of its own strength, vengeful." Michal Capra, "Dividing Up Jerusalem," *Ma'ariv*, February 15, 1999, p. 4.

39. *Ma'ariv*, February 15, 1999.

40. These demands were largely fueled by the deep-seated belief, harbored by many Israelis, that anything done by the Haredim is by definition undemocratic—since, in the words of Nehemia Strasler, a *Ha'aretz* columnist, their "clear strategic goal is to exchange democracy for theocracy ... and to turn modern Israel into the Iran of the ayatollahs." Nehemia Strasler, "Haredim Without Borders," *Ha'aretz*, February 14, 1999, p. B1. David Schwartz, the dean of Bar-Ilan's law school, offered an interesting variation on this theme: Anything the Haredim do is by definition wrong because most of them do not serve in the army. "Is this a war the national religious, whose sons fall in our wars, should fight together with the Haredim?" he asked rhetorically. *Ha'aretz*, February 15, 1999. For other examples, see authors A.B. Yehoshua, Amoz Oz, S. Yizhar and David Grossman ("Most segments of Orthodox Judaism are not willing to live by the rules of democracy." *Yedi'ot Aharonot*, February 14, 1999), and columnist Ben-Dror Yemini ("Experience shows that the Haredim don't want balance and compromise ... they want to replace the existing imbalance with total submission to themselves." Ben-Dror Yemini, "No Partnership, No Compromise," *Ma'ariv*, February 17, 1999, p. 7). These pre-existing anti-Haredi sentiments were fed by the anti-court demonstration, however, which was used to justify proposals that would normally be considered beyond the pale in a democratic society.

41. *Ma'ariv*, February 11, 1999.

42. Rachlevsky, "Guilt," *Ma'ariv*, February 15, 1999, p. 3.



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43. Bar'el, "Judge," *Ha'aretz*, February 14, 1999, p. B1.

44. *Ha'aretz*, February 11, 1999.

45. The claim is made even more absurd by the fact that the rally was organized not by Shas, but by its Ashkenazic rivals.

46. Ilan posited that there were three "fables" on which Haredi anger at the court was based. These revolved around a Labor Court verdict permitting a kibbutz to open shops on the Sabbath; a contempt of court fine believed to have been imposed by the Supreme Court on the Orthodox rabbi who heads the Jerusalem religious council; and Court President Barak's praise for a speech by Judge Oded Alyagon of the Beersheva Magistrate's Court, which referred to "human lice" trying to take over the justice system. In all three cases, Ilan claimed that the Haredim had misinterpreted the verdict or action in question, and that their anger was consequently misplaced. Even assuming that Ilan correctly identified both the Haredi interpretation of these events and the "correct" one, however, he ignored the far more significant Supreme Court decisions that were really disturbing the Haredim: The overturning of the arrangement that enabled the defense minister to give draft deferments to yeshiva students, the curtailment of the authority of the rabbinical courts, and a series of decisions requiring religious councils to give seats to Reform and Conservative Jews. Shahril Ilan, "Three Haredi Fables About the Judges," *Ha'aretz*, February 14, 1999, p. A3.

47. See, for instance, Segal, "Court of Restraint," *Ha'aretz*, February 11, 1999, p. B1, and Asher Ma'oz, "Why They Fear the High Court," *Yedi'ot Aharonot*, February 17, 1999, p. 7.

48. *Ha'aretz*, December 10, 1998.

49. So great was the desire to avoid addressing the substantive issue of the court's judicial activism that a number of legal scholars actually asserted that it was the Haredim who favored such activism, and that the point of their demonstration was to get decisions transferred *from* the Knesset *to* the court—an exercise in doublethink that would have made George Orwell proud. "[The demonstration] is no more than an attempt to move the arena from the Knesset, where the Haredim have failed, to the Supreme Court," declared Asher Ma'oz, a senior lecturer in law at Tel Aviv University. Ma'oz, "Why They Fear," *Yedi'ot Aharonot*, February 17, 1999, p. 7. "What they are not capable of achieving in the Knesset ... they are trying to achieve via terror against the judicial branch," said his colleague at Tel Aviv Law School, Ze'ev Segal. Segal, "Court of Restraint," *Ha'aretz*, February 11, 1999, p. B1. "The debate over the nature of the state must take place on the street and in the Knesset. Judges must be distanced from this debate," declared *Ha'aretz* in an editorial explaining why the Haredi demands were "dangerous and disturbing." *Ha'aretz*, February 14, 1999. Yet these arguments all somehow managed to ignore the plain meaning of what the Haredim had been saying: That the Knesset, rather than the Supreme Court, should be the ultimate arbiter of highly charged issues of religion and state.

50. Amnon Dankner, "The Big Chill," *Ma'ariv*, February 15, 1999, p. 13.