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Israel

The Fight Over Israel's Judicial Reform Neglects Palestinian Rights

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In July, Israel's far-right government pushed through a law undermining the power of the country's Supreme Court. Israeli protests against the law have scarcely mentioned one of its key features: making it even easier for Israel to trample the rights of Palestinians.

Last month, despite unprecedented mass protests, strike threats, and military resignations, Benjamin Netanyahu's government in Israel passed a controversial judicial reform law through the Knesset, the Israeli parliament, to weaken the Supreme Court's ability to strike down government decisions. Dubbed a "judicial coup," the law is seen by Israeli liberals as an existential threat to Israeli democracy, and it has intensely divided Jewish Israeli society. But "pro-democracy" protests against Netanyahu exhibit a glaring omission: the Palestinians, for whom Israeli democracy has never really existed.

Sami Abu Shehadeh is a Palestinian citizen of Israel, a former member of the Knesset, and the leader of the political party Balad (the National Democratic Assembly). While Palestinian citizens of Israel face institutional discrimination and the state openly proclaims itself "not a state of all its citizens," Palestinian citizens have voting rights and are much better off than their fellow Palestinians in the West Bank and Gaza. The latter live under military occupation, displacement, blockades, and frequent military attacks, and have no rights at all under the Israeli state that rules them.

For *Jacobin*, Jordan Bollag spoke with Shehadeh about the current political moment in Israel and how Palestinians feel about a conflict over an Israeli "democracy" that has never truly included them.

Jordan Bollag: What is going on in Israel? What's your reaction to the passage of the judicial reform law?

Sami Abu Shehadeh: What's happening in Israel is a very complicated situation, but those who are reading it as something new are far from reality. What we are seeing now are the results of at least two decades of deterioration toward the fascist right, and the extreme national religious Jewish groups controlling nearly all the important decision-making processes in Israel. We are also seeing deterioration of political discourse in Israel into a fanatical, religious way of reading reality and dealing with it.

There has been a long process of religious national extremists — Zionists — taking control of all the important decision-making processes and being overrepresented in all the Israeli ministries, in all the important places in the Israeli government. These new elites are fighting with the old elites; the old elites that established the State of Israel were liberal Zionists. From a Palestinian point of view, both of them are settler colonialist, and both of their agendas are built on Jewish supremacy.

The struggle between them is about what kind of Jewish supremacy they want to lead in this part of the world. The old elites want to have Jewish supremacy built on race, but which deals in a liberal way with the Jewish people who live here, and the new elites want to lead a Jewish supremacy that is established on a fanatical national religious discourse. They are struggling over the identity of the apartheid state they want to lead in Israel.

Jordan Bollag: We've seen massive protests and threats of strikes and military resignations in response to the judicial reforms. How do you, as a Palestinian citizen of Israel, fit into this oppositional pro-democracy movement?

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Sami Abu Shehadeh: We're not part of the protest movement, because its political demands are very far from our political demands. The old elites, who are trying to gain back control of the state, do not want to build a state and society on the values of justice and equality for all. The only thing they want to do is to go back a few months before the last elections in Israel. From their point of view, the old racist apartheid regime, as long as it only destroyed Palestinian lives, was bearable. It was something that they could live with.

For us, as the victims of this racist apartheid regime, we don't have any good past in Israeli history that we want to go back to. Our political agenda is totally different. We are aiming at building a better future, which is built on the values of human rights — mainly on justice and equality for all the people who are living in this part of the world.

We want a serious change inside the Israeli government, to change it from a state that is built on race, a Jewish state, into a normal democracy that is built on justice and equality for all, that deals equally with all citizens, whether they are Jewish or not. We are the indigenous population in this part of the world, and we are not Jewish. We are 20 percent of the population of this state, and we want to have a better future for all, for Jews and for us. We believe that we should have a political project different than what has existed until today because both sides — those who are for the judicial changes and those who are against the judicial changes — each want a system of Jewish supremacy.

The Arab Palestinian minority that represents 20 percent of the population in the State of Israel — it is not just that we are not part of the protest movement, but that we are not [seriously involved in Israeli institutions at all]. If you check all the ministries since the establishment of the Israeli state, we have barely existed. If you check all the heads of these ministries, we were never represented there. If you look at any important decision-making process that has to do with planning the present and the future of the state and society in Israel, we are not there. Not in the media, not in the culture, not in sports, not in anything.

Jordan Bollag: When the mainstream media talks about the pro-democracy movement, they've mostly focused on Netanyahu and his personal corruption as the reason for the judicial overhaul. But it's also become clear that the reforms have been pushed by ideologues like Justice Minister Yariv Levin specifically to stop the court from protecting Palestinian rights, to facilitate more legal settlements, to block Arabs from Jewish neighborhoods and Palestinians from Israeli highways.

On the other hand, the Israeli Supreme Court very rarely protects Palestinian rights anyway. Given this reality, how do Palestinians navigate the current moment?

Sami Abu Shehadeh: You are right: the Israeli high courts, in all the important big issues that have to do with the Palestinian question — we did not have justice there. But still, we don't want the situation to get worse. Those who will be affected first and foremost by this weakening of the judicial system in Israel will be the Palestinians on both sides of the Green Line: Palestinian citizens of Israel and the Palestinians who are living under the occupation of 1967.

I'll give you a few examples. First, I am the head of a political party called the National Democratic Assembly [Balad]. Since we established our party — because our main agenda is changing Israel from a Jewish state into a normal democracy, a state of all its citizens — all the Zionist parties have been against us. Under Israeli law, the Elections Committee is composed of members of the Knesset. So every election they ban us from running in the elections! We used to apply to the high courts, and the high courts would give us the right to at least compete in the elections. With the new judicial reform, we will not be able to do that.

In any political system, there are checks and balances that can defend individual citizens or groups against oppression. Usually the main thing is a constitution. In Israel, there is hardly a constitution, so there is nothing that

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can save or defend our rights. Another important form of checks and balances is having different systems [e.g., the executive, the legislature, and the judiciary] balancing each other. In Israel, this also does not exist, because the government and the parliament are the same.

The only place that we could seek justice, or at least reduce the system's oppression of us, is through the high court in Israel. The new judicial changes want to remove a lot of authority from the high courts. So we'll not be able to do the minimum we did before. We did not win all of what we wanted there, but at least we had a place that we could try to defend ourselves. If the judicial reform passes, we will not have even this minimum.

Jordan Bollag: These reforms surround the court's powers in interpreting the "reasonableness" of laws. But the court has only needed this power because Israel does not have a written constitution, which may be difficult for an American audience to understand. Why doesn't Israel have a constitution, and what are the implications of this?

Sami Abu Shehadeh: Israel does not have a constitution for a few important reasons. The Orthodox religious groups in the old times dealt with Zionism as a secular movement: they accused Zionists of infidelity, of not believing in God, and they did not think that there could be a consensus between themselves and the Zionists. Writing a constitution would've wrote the religious groups totally out from the state and society at that time. So in order to keep them as part of the project, the founders did not write a constitution.

This is one reason. Another important reason is that the State of Israel, from the beginning, was built on Jewish supremacy. [Israel's founders] could not write a democratic constitution because they knew from the beginning that they were building a system on Jewish supremacy that discriminates against 20 percent of the population, who are considered the indigenous people in this part of the world — the Arab Palestinian minority.

Another important thing is that after the establishment of the Israeli state, Israel put that 20 percent of the population under military control. Imagine a state controlling 20 percent of its citizens with a military system; this could not work with a constitution.

Nowadays, when we are talking about a democratic constitution, unfortunately we don't have partners among the Zionists. The vast majority of the Zionist parties are ready to compromise on different systems, but all of them must maintain, according to the Zionist parties, Jewish supremacy. Keeping any kind of Jewish supremacy means that the system cannot have equality among its citizens. No equality, no democracy — it's as simple as that. The Zionists were quite aware that they had a problem with the value of equality from the beginning.

Jordan Bollag: In the wake of all this turmoil, we're seeing high-tech companies moving assets out of the "start-up nation" or leaving entirely, and the Bank of Israel is warning of economic risks from the judicial overhaul. With assets leaving the country, the Netanyahu government has ironically accomplished what the Boycott, Divestment, and Sanctions (BDS) movement has been working toward for years. And in the New York Times, Bret Stephens lamented Israel's "self-inflicted wound" as more damaging than BDS.

Does this instability in the Israeli state present opportunities for Palestinian movements, and is there an upside to all of this?

Sami Abu Shehadeh: I don't think there's an upside to all this. There's a proverb that we use: the train has already left the station. What we are seeing inside the Israeli state and society is quite similar to Italy on the eve of fascists controlling the state. Unfortunately, there is no serious, rational democratic movement among the Jewish majority that can salvage the situation and lead us to a better place. Of course, on the margins, there are great activists —

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great people trying to build something better — but these are totally marginal, and their numbers are very small.

Is there an opportunity for the Palestinians here? I'm seeing a very big opportunity. I think that what's happening now is helping the world to see what we have been warning them about for decades, is helping the world to see the truth, to see the real face of the State of Israel, to see the apartheid system that was built in this part of the world, to see the racist elements of the Zionist project, to see the way Israel has been dealing with Palestinians for decades.`

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