

In Israel, Prosecutors Gone Wild

by Conrad Black



The Israeli election last Tuesday, the fourth in that country in two years, is generally being portrayed in the Western media as the latest round in the gripping battle for survival of Prime Minister Benjamin Netanyahu, who has established himself as one of the most important figures in the history of the State of Israel, having served as prime minister for 15 years. The real issue, in this and previous Israeli elections, is the continued viability of Israel's democratic institutions. Over the course of the last 25 years, a highly independent, recently a rogue, prosecution service has been assembled by successive attorneys general of Israel in the shadow of the protection of the Supreme Court. Step by step, the power of Israel's attorney general has been augmented and liberated from any supervision or restraint.

The role of the crusading prosecutor has been a politically

popular one since Roman times. Famous tribunes, such as Tiberius Gracchus in 133 b.c., through such relentless and fearsome prosecutors as Fouquier-Tinville and Robespierre in the French Revolution, and up to more civilized times and prosecutors such as Thomas E. Dewey (twice Republican candidate for president) and Rudolph Giuliani, have advanced their political careers by punishing the corrupt and authoritarian abusers of public office. There was an element of this in the astounding career of J. Edgar Hoover, director of the FBI and its predecessor organization for 48 years. He never sought elective office but cultivated a mystique as the scourge of gangsters and then of communist subversives, and was a shadowy and powerful, but generally popular, figure in the land for decades.

Every Israeli prime minister in the last 25 years has been under investigation by the attorney general, and one, Ehud Olmert, as well as one president of Israel, Moshe Katsav, were convicted and imprisoned (and may conceivably have committed offenses, but they were stilted legal proceedings). Prime Minister Netanyahu faces three charges that are styled as "bribery" but consist of his receiving several favorable stories in the media from people whom he is rather sketchily accused of assisting with some unspecified public largesse. By normal standards of jurisdictions that require proof beyond a reasonable doubt of criminal action and criminal intent to convict, the prosecutors have a very weak case. Everybody in Israeli politics pays lip service to the need for legal reforms in some curtailment of the practically unlimited ability that the attorney general possesses to harass and defame even the prime minister. But the opposition leaders naturally propose that reforms be adopted after Netanyahu has been defeated and prosecuted, and preferably imprisoned, in the current affair (which began with his alleged intervention in the sale of German submarines to Israel and Egypt, of all unlikely subjects). Netanyahu is vulnerable because he long supported the aggrandizement of the attorney general before he

was prominent enough to attract such attention himself. He is not immune to charges of hypocrisy and opportunism, but neither are his opponents, who would cheerfully use the system they otherwise denounce as corrupt to dispose of him before modifying it to assist themselves.

Every election since April 2019 has really been fought over the powers of prosecutors, but the media in Israel and abroad have predictably represented them solely as referendums on Netanyahu's performance in office. The present attorney general, Avichai Mandelblit, was himself a victim of spurious investigation and defamation by a preceding attorney general, as were Reuven Rivlin (the current president of Israel) and many prominent former ministers, including former defense minister Avigdor Lieberman. Four justice ministers have been indicted. Mandelblit, having survived his own ordeal, has with biblical grimness turned it against all those, irrespective of party or personality, who would resist the absolute authority of his office.

The initiation of the investigation of the current prime minister was itself a violation of Israel's Basic Law because it has never been formally authorized according to the required criteria. And the claim that receiving positive press stories constitutes a bribe is not only a legal invention in Israel; it was used by Mandelblit as partial grounds for taking over the government's power to appoint the chief prosecutor and for barring the prime minister from having any role in the selection of the chief of Israel's national police. Mandelblit announced his indictment of Netanyahu in a prime-time press conference that took place while Netanyahu was being welcomed at the White House on an official visit. The attorney general purports to believe that his prosecution of the prime minister entitles him to decide whether Netanyahu has the right to try to form a government. Mandelblit has deliberately fomented acute political instability and has exploited it to seek the constant expansion of his own powers.

It all started to go horribly wrong in 2005, when the Knesset revoked the automatic criminal immunity of legislators for actions taken in an official capacity: Immunity would henceforth be accorded only if the Knesset ethics committee gave its approval. This was bound to be withheld, as the prosecutors laboriously isolated subjects and exploited partisanship and fear to deny the targets immunity and mercilessly assaulted them pseudo-legally. With infinite predictability, cowardly legislators ducked as their colleagues were singled out and tormented one after another. And even now, in the fourth election in two years, the opposition is incapable of making common cause with the incumbent prime minister to restore a balanced system because of their fear and dislike of Netanyahu, who has so often defeated them before. Despite the dishonesty of the Israeli media and the pusillanimity of its politicians, there is a significant chance that Netanyahu may prevail in the election and win what may be the last great battle of his political career.

Americans will recognize some similarities between these problems of over-mighty prosecutors and the craven abuse of prosecutorial and investigative powers for partisan reasons in the U.S. I was one of those who warned from my improbably distant and uninfluential newspaper in Quebec in 1973 and 1974 that the Watergate debacle was the beginning of a very dangerous criminalization of policy differences. That process has not ended, and it has in stages descended into a more and more corrupt assault upon the Constitution and the executive branch. There is still no probative evidence that Richard Nixon committed any illegalities, though a number of people in his entourage did. There was no justification for investigating President Reagan so strenuously in the Iran-Contra affair and spuriously indicting Defense Secretary Caspar Weinberger; nor for impeaching President Clinton over apparent untruths in grand-jury evidence over tawdry matters that were completely irrelevant to his execution of his

office. And the two impeachments of President Trump last year were utterly unfounded nonsense, doubly execrable coming as they did after what was almost certainly the politicization of senior echelons of the FBI and the intelligence community to produce the Russia–Trump collusion fraud and the massive smear-job of President Trump cloaked in the respectability of the muddled, geriatric Robert Mueller.

If Benjamin Netanyahu wins his great battle this week, he will render his greatest service to Israel, and it would be an encouragement to the resistance in the United States to unleashing criminal procedures against opponents for illicit motives. This is all in the context of an American criminal-justice system that is so loaded against defendants that the United States has six to twelve times as many incarcerated people per capita as the most comparable prosperous democracies (Australia, Canada, France, Germany, Japan, and the United Kingdom) and, with 5 percent of the world's population, has 25 percent of its incarcerated people. American justice is in a parlous condition all the way from the Supreme Court (which abdicated, apparently because politically intimidated, in the late election dispute) and the White House to the most vile catchments of criminal suspects in the great cities of the country.

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