Towards a True Israeli Democracy

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Fifty years ago today, Yom Kippur 1973, Israel faced an alarming existential crisis. Caught unawares and unprepared, Israel sustained a surprise attack on Yom Kippur, a day that, because of the stoppage of most public transportation, slowed down the efficiency of the emergency mobilization. Some of you may remember hearing about the attack during Yom Kippur services that year. In the first few days of that war it looked like Israel could fall. But taking losses and through heavy fighting and eventually receiving critical assistance from the United States, Israel was able to hold off the attack and force its Arab neighbors to agree to a cease fire with terms that led, a few years later, to the Camp David accords between Israel and Egypt. While Israel was revealed as vulnerable at the start of the war, it has never again, thank God, had to face the armies of invading nations crossing its borders.

The story of the Yom Kippur War is an important one to recall, with its timeless lessons about overconfidence and vulnerability, particularly appropriate themes to reflect upon on any Yom Kippur. Some of you may have seen the new excellent film, *Golda,* starring Helen Mirren as Golda Meir and Liev Schreiber as Henry Kissinger. Our synagogue's Israel Action Chair, Manny Haber, has organized an exciting program for us, booking the Ridgewood movie theater on October 25th, a Wednesday evening about a month from now, for a private showing for Temple Israel members and friends, of *Golda,* followed by a brief Q and A with a veteran of the Yom Kippur War. We will be sending out information soon, so watch your emails. Thank you Manny.

Fifty years ago today, Israel faced an alarming existential crisis, facing invasion and potential destruction by its Arab neighbors. Fifty years later, just last week, President Biden remarked to Prime Minister Netanyahu, "Who would have thought, even ten years ago, that we would have been talking today about normalizing relations between Israel and Saudi Arabia." That is extraordinary. From Eilat, Israel's southern port and resort town on the Red Sea, you can see Saudi Arabia. Yes, it's much closer to Israel than Russia is to Alaska. If you stand there on the beach, as Alla and I did just last December for a couple days at the end of the secular year, you look to the left and you see a huge Jordanian flag flying over the city of Aqaba. In 1973 that was enemy territory, but these days you can cross the border there for a day trip to Petra, and get back to your hotel in Eilat in time for dinner. And if you look to the right, you see where the lights continue along the desert mountains in Egypt, where you can cross the border for a few hours to try your luck at an Egyptian casino. In 1973 that was enemy territory. I looked to the left and remembered my trip to Jordan some years ago, and I looked to the right and remembered the two times I visited Egypt, and then I looked down the sea, a bit further to the left, at about 11 o'clock, where the desert mountains get a little shorter and the lights stop, and knew that that was Saudia Arabia. So close and yet so distant. But now, perhaps not so distant for so much longer. How much has changed in fifty years.

Fifty years ago today, Israel faced an alarming existential crisis, but today, Israel again faces an alarming existential crisis. A different kind of danger faces Israel today. A danger posed not by external threats but by internal tensions that have grown and festered and threaten the very security and existence of the state.

We all follow the news, so I ask your forgiveness for this brief and somewhat simplified summary. The current government of Israel, constituting the most hardline right-wing government in Israel's history, came into power last November with an agenda to "reform" or modify the structure of the judiciary to give parliament, the Knesset, a freer hand to implement its social, political and religious agenda. Israel, you see, has only two branches of government, not like our system with three. There is no independent executive branch because in a parliamentary system the "government," which we call the executive, is run by the coalition that controls the majority of the seats in parliament. And parliament itself in Israel, the Knesset, is a unicameral body, that is, there is no back and forth between the House and the Senate the way our system works. The Knesset is one assembly of 120 members. The prime minister's job is to get 61 votes so that he or she can "govern" and will make whatever deals or promises must be made to secure those votes, much like the dance that we see Speaker McCarthy attend to in Washington. But in Washington, once the speaker secures control of the House, he or she must then get the Senate to agree on any legislation, and then the Congress must get the president to concur (or try to override a veto), whereas in Israel those additional steps do not apply. What does apply in Israel is the final check on the speaker's, or the prime minister's, polices, which is judicial review. The system of the courts, the judiciary, hears challenges to laws and can send them back to Congress, or to the Knesset, if the Court sees fit to do so. That is the final check on government short of a new election, and it is how most governments work. And that is what is in play in Israel today.

The current Israeli government succeeded in passing legislation through the Knesset, amidst massive and unprecedented protest, this past July that curbed the power of the judiciary

to review legislation. A word of explanation on what was passed. In our system, judicial review is focused on the "constitutionality" of a given law. Does the law comply with the Constitution, or does the Constitution, as interpreted by the courts—and ultimately by the Supreme Court—require that the law be struck down, returned to Congress for rewriting, or to the dustbin of the *Congressional Record.* Or, to reverse things from a negative to a positive, the court could also rule on the absence of a law by reading the Constitution as guaranteeing a certain right even if Congress fails to muster the necessary votes to determine such, as for example, the right, or not, of an abortion. In Israel, where there is no written constitution, the process of judicial review is focused on "reasonableness" rather than "constitutionality." That is not unusual. The UK also lacks a written constitution and yet its courts have a long tradition of judicial review through, among other things, use of the "reasonableness standard." The Israeli supreme court most recently employed the reasonableness standard, by the way, in rejecting the prime minister's appointment of a finance minister who was convicted and served time for tax fraud. But it was the use of the "reasonableness standard" that the July legislation in Jerusalem sought to change. The Knesset's Judiciary Reform Law stipulated that the Knesset, by majority vote, can overturn the court's decision on reasonability, essentially giving full power to the Knesset over the courts, because the Knesset would have needed a majority to pass the law in the first place. Now, I suggest that you not get too caught up in the semantics of constitutionality and reasonableness. In my view, this is semantics, because in the final analysis it is really a game of power, if not of thrones, where different branches of government balance and check each other. The current government in Israel has sought to eliminate the check on its power by the courts, and that is what is really at stake.

That, and the social and religious tensions that underlie the divisions in Israeli politics, tensions that have existed since the founding of the Zionist movement even fifty years before Israel became a country. These tensions have continued to escalate, as Israel's Supreme Court agreed, two days after the Knesset passed this legislation in July, to hear arguments on the reasonability of the Knesset's reasonability law. The court held those hearings just days ago. In a few months, it will issue its ruling, and there is the potential for a real constitutional crisis then if the government decides not to comply with the judicial review of the court. A constitutional crisis is not an intellectual argument between lawyers. It involves generals deciding who to take orders from. Enlisted soldiers deciding whether or not to report for duty. Foreign governments deciding on the legitimacy or not of the representatives of the country. It is, in short, an alarming existential crisis.

But if I were to bet on what will happen, and I am not a betting man—I have no interest in the Egyptian casino across the border from Eilat!—I don't think things will get quite that dramatic. I expect the court to hand down a measured decision, an order for revision, with a deadline that will be extended a few times, that will lead to an extended negotiation towards a compromise that everyone will have to live with, or a compromise that will force a reorganization of the coalition, or new elections that will reflect the wisdom of a sobered electorate.

I have faith that things will work out, but that doesn't mean that there is no angst, no concern. What can we do? First of all, we must engage with Israel, not turn away. There are means, through the Zionist movement, through the organizations of Conservative Judaism, through our friends and contacts in Israel, to stay engaged, and to make our voices heard, so that our allies in Israel do not feel alone. People can debate whether America should isolate itself or

engage in a globalized world. I vote for the latter. But there should be no argument that the Jewish people is one people tied to one another, sharing a common destiny. The tragedy of the years before the establishment of Israel should eliminate any doubt on that matter.

Alla and I are leading a Temple Israel group to Israel at the end of June. You should have received the information by email. The link is in the weekly announcements, and we will be sending the information out by regular mail soon. Geared as a family trip but open to everyone and all ages, I invite you to come with us. Meet Israelis living every day with the politics we read about. Meet Conservative Jews maintaining synagogues committed to our vision of Judaism amidst the pressure of a triumphant Orthodoxy. Meet Israeli soldiers, college-aged kids serving to defend their country, kids like my nephew Ilan Fine. Hopefully you'll get to meet his father, my brother Josh Fine, a Harvard Law graduate who made aliyah with his family to Israel a few years ago, who spoke here about Israeli politics a few months ago, and who regularly attends the weekly protests along with hundreds of thousands of other Israelis. And most importantly, come into contact with our heritage, with the land of our people, with the stones that tell a story that we tell our children. While travel is not cheap, our synagogue board will be working on providing some modest stipends to our youth to make it easier for families with children to afford the trip. More details to come soon, but if you are interested in the trip and could use some assistance, please feel comfortable to speak with Bob Obeiter or with me.

The other way to engage with Israel, besides using our feet, is using our heads. We need to understand what is at stake, understand the issues, understand the essence of the struggle. Why should we care so much about Israel's political system? Why is it so important that the judiciary hold a check and balance against the only other branch of government? The prime

minister has argued that judicial reform represents the essence of democracy, the power of the people to hold sovereignty and power against the overreach of an unelected and unrepresentative bench. But he is wrong. The courts, with the power of judicial review, represent the backbone of democracies, the protection of the people's rights. In a democratic system, laws are passed by a majority of elected representatives, which is the right and proper way to do things. But we must remember that a majority decision means that potentially 49 per cent of the electorate, not to mention those ineligible to vote, are excluded from the decisions of that legislative body. In the old system of monarchies, the crown protected the citizens, which is why Jews throughout history prayed for and sought influence with the crown. In a democracy, that protection is guarded and guaranteed by the courts. We, Jews, who have lived as minorities for most of our history, should understand more than anyone else the importance of protecting minorities. We should understand that everyone is a part of the people, and that true democracy must protect the whole people. A legislature must work by majority for anything to happen, but the court provides the necessary corrective. Some use the phrase "tyranny of the majority," a term traced to de Toqueville, to understand the importance of checks and balances. But I want to go further than that.

The problem of a system without checks and balances, where the majority does not have to engage in discussion and negotiation and compromise with "the other side," where society polarizes between a winning a losing side, should be a warning of the decay of true democracy. We can, and should, be alarmed by the continuing polarization of partisan politics in our own country. In Israel, however, the crisis has become existential. I want to offer some insight from the political theorist Hannah Arendt. I spoke a bit about her on the second day of Rosh Hashanah,

the German Jewish emigree who settled in New York City after escaping the Nazis. I have been studying Hannah Arendt in preparation for my Sunday morning adult ed series planned to begin on January 14th. I would like to share a powerful passage from Arendt on the danger of what she called "unanimity of opinion" where we favor one view without full engagement with the other:

> *Unanimity of opinion is a very ominous phenomenon, and one characteristic of our modern mass age. It destroys social and personal life, which is based on the fact that we are different by nature and by conviction. To hold different opinions and to be aware that other people think differently on the same issue shields us from the Godlike certainty which stops all discussion and reduces social relationships to those of an ant heap. A unanimous public opinion tends to eliminate bodily those who differ, for mass unanimity is not the result of agreement, but an expression of fanaticism and hysteria. In contrast to agreement, unanimity does not stop at certain well-defined objects, but spreads like an infection into every related issue.*[1]

She wrote those words in 1948 in an essay entitled "To Save the Jewish Homeland," pleading for a liberal and open dialogue between viewpoints within the Zionist movement and the government of Israel. Obviously, by "unanimity of opinion" she does not mean when everyone agrees on everything, as no one should be naïve enough to think that is ever possible. Her point is that we have to be careful not to function *as if* there is only one opinion. Her warning, that "a unanimous public opinion tends to eliminate bodily those who differ," is the argument she carefully draws out in her magisterial *Origins of Totalitarianism.* She argues there that essence of

[1] *The Jewish Writings,* pp. 391-392.

"totalitarianism" is the triumphalism of one view over all others so that even basic facts can be denied or ignored in the face of a fundamentalist ideology. Once the opinions of others are denied, it is not a huge step before such individuals become tragically "superfluous" in her words, unprotected, without rights, and ultimately vulnerable to persecution, suffering and, ultimately, murder. Most societies will not progress along these paths to construct death camps as the Germany of her youth did, but it was in part due to her experience coming out of Nazi Germany as a young Jewish intellectual that she understood how those dangers could develop. Remember, the Nazis came to power through a democracy, and one point that Arendt stresses in *Origins of Totalitarianism* is that the Nazis never actually repealed the constitution of the German republic. They "pretended" or believed that they represented its essence. But of course, they were wrong.

The way to protect the essence of democracy, according to Hannah Arendt, is to preserve and defend other voices, to negotiate, to compromise, to seek true agreements rather than victories for one side and defeats for the other. Those were her hopes for the eventual resolution of the Arab-Israeli conflict, and those were her hopes for the future of humanity in general. In a beautiful sentence she wrote in 1972 about democracy in America, Hannah Arend teaches us:

> *The booth in which we deposit our ballots is unquestionably too small, for this booth has room for only one.*[2]

True democracy can only exist where truth is valued, where freedoms are guaranteed, and where dialogue between people and ideas is the ground upon which policies and laws arise. True

[2] *Crises of the Republic,* p. 232.

democracy is about listening and hearing each other, not closing a curtain. That is the way we ought to view society, just as it is the way we view our spiritual lives.

We don't mark Yom Kippur within the confines of a voting booth. Yom Kippur is about engagement, with those around us, with those who came before us, and with God. We declare on Rosh Hashanah when we sing the Unetaneh Tokef that our judgments are written. But then we appeal before the sealing on Yom Kippur, as we show up today, fasting, contrite, genuine. Yom Kippur is the check-and-balance against Rosh Hashanah. God's mercy the check-and-balance against God's justice. This assembly of ours, today in this room, is the check-and-balance against God. The judgments of Rosh Hashanah can be reversed by the mercies of Yom Kippur. A stern decision can be softened by clemency. A wounded ego can be healed by a loving gesture. God can be brought down from the high heavens by our prayers here below.

If we believe in these kinds of checks-and-balances between each other and with God, then we should insist that they be enshrined in the societies we build, especially in Israel, which we pray may yet become a light unto the nations.