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‘WITH EVERY DAY THAT PASSES, WE SEEM TO BE GOING FURTHER AWAY FROM THE VALUES ON WHICH THIS COUNTRY IS BASED’: AN INTERVIEW WITH ALONA VINOGRAD

ALONA VINOGRAD

Alona Vinograd is Director of the Center for Democratic Values and Institutions at the Israel Democracy Institute. Deputy editor Samuel Nurning and intern Grant Goldberg sat down with her to discuss the state of Israel’s democracy. Fathom would like to thank the support received from the Academic Study Group.

Samuel Nurning: *The President of the Israel Democracy Institute, Yohanan Plesner, wrote in Fathom that Israeli democracy has ‘not only remained intact since its establishment in 1948 but has expanded and thrived’. At the same time, serious disputes have come to the surface between the governing coalition and the judiciary, the media, and civil society organisations. How do you understand the contexts of these disputes, and what impact are they having on the state of democracy in Israel?*

Alona Vinograd: Israel is a thriving democracy. The democratic institutions are functional; the Supreme Court is still strong, no NGO has been declared illegal, and the media is still publishing freely. However, there is a sense in Israel that the liberal arena in which all these institutions operate is shrinking and is under concrete and constant threat. The reality is that every other morning we wake up to a new initiative or legislative decision that challenges the delicate balance of our democracy. With every day that passes, we seem to be going further and further away from the values on which this country is based and which are articulated so beautifully in Israel’s Declaration of Independence.

If I have to pinpoint the most disturbing and severe threat to Israeli democracy, I would say that the understanding of the majority’s responsibility towards minorities in the country is of the greatest concern. Whether it’s Arab citizens, the LGBTQ community, or people holding different political values, we seem to be living in an age in which the majority is forgetting its responsibility towards the protection of minorities. But that’s also what democracy is about!

‘Tyranny of the majority’ is a harsh term that some use to describe current trends – we have to ensure that we don’t live up to this accusation. I would say that some politicians seem to forget that with great power comes great responsibility. If their aspiration is to ensure the rights only of the majority, then we are no longer living in a democracy. This should disturb every Jewish man

and woman not only in Israel, but around the world.

Several examples illustrate these trends – from statements made by politicians to proposed laws – that can only be characterised as anti-democratic. A large number of anti-democratic laws are being proposed, and even if they are not passed, they have a toxic effect on Israeli society; whether it is the ‘Override Clause Bill’ that was promoted until recently and aimed to diminish the power of the High Court, or the newly passed National-State Basic Law, which threatens the relationship between the Jewish majority and the Arab minority.

The Nation-State Law is likely to upset current delicate balances: between the very substantial Arab minority (around 20 per cent) and the Jewish majority; between Israel and the Diaspora; between minority groups and the state, and others. It is hard to fathom why a law was passed in Israel that refers to the identity of the country but does not mention ‘equality,’ includes no reference to the Declaration of Independence and the values it expresses, demotes Arabic’s official status and potentially drives a wedge between Israel and the Diaspora.

These are only two specific examples, but there are also proposed laws that target human rights organisations and their right to receive funds from foreign countries, laws that target LGBTQ rights to surrogacy to have a family, and laws targeted at the Arab community.

If you look back at Israel’s history and to its Declaration of Independence, its founding document, we see how the founders of the state understood that in order for Israel to thrive as a Jewish and democratic state it must acknowledge and protect minority rights. This should be the basis for any Basic Law, for legislation of any kind, and any decision of the state. So I would say that there is still a functioning democracy, but current concerns are justified.

SN: *So on one hand a bill seeks to entrench majority rule and the other seeks to allow that majority to use the executive to overrule the judiciary?*

AV: There seems to be confusion (and this is an understatement) regarding the role of the majority in a democracy. It is a very fundamental question that maybe we have been taking for granted and now is the time to re-examine it. Does democracy mean the rule of those who received the most votes in the election? Everything is ‘kosher’ as long as it pleases the majority and those in power? Or, does democracy also mean the protection of the rights of minorities? The answer to this question goes even deeper when we think about the different institutions that comprise the political system in Israel – the Israeli Parliament (legislative), the government (executive) and the courts (judiciary system). The checks and balances among these authorities are crucial to limiting power and protecting minorities’ rights. Undermining these balances will have an immediate impact on our democracy and will change the system as we know it.

The High Court’s role is to ensure that laws have constitutional validity. If we take that power from the High Court, as for example in the ‘Override Clause Bill,’ we may find ourselves heading down a slippery slope towards a tyranny of the majority. From polls conducted by IDI, we know that

Israelis don't want to see that happen. They still have relatively high levels of trust in the legal system as compared with their trust in Parliament (Knesset) members, which is on the decline. The checks and balances among the three branches are vital to Israeli democracy and they are being undermined by these initiatives.

SN: *A poll in December 2017 found that 45 per cent of Israelis, mainly those who identify as left-wing and Arab Israelis, believe Israel's democracy is in 'serious danger,' while 79 per cent of secular Jewish Israelis believe 'the religious population is gradually taking control of the state'. Do you believe those perceptions are well-founded or not?*

AV: Israel is very different now from what it was just ten years ago. It's not so much about 'right-wing' and 'left-wing' but about populism vs. statesmanship. The question is whether our leaders are putting themselves first – or the good of the state. This is a global trend (e.g. Poland and Hungary) and it is rooted in many causes. Current trends do not focus on protecting the rights of all Israeli citizens. Rather, they focus on strengthening and enhancing the power of elected officials and those who put them in power. Left-wing and Arab Israelis are not in power; the new laws target them and that is why they feel, as you mentioned, that the Israeli democracy is in trouble. As for tensions between religious and secular communities in Israel, there have been several initiatives that challenge the current status quo.

Why are these trends becoming stronger? There are several reasons. Research conducted by IDI's Center for Religion, Nation and State suggests that the motivation is often political opportunism rather than deeply entrenched ideology. Since its establishment, Israel is dealing with the inherent tension of being a Jewish and democratic state. In my opinion these are not conflicting values rather complementary. Others think differently.

SN: *There are many critics – mainly on the Right but also some on the Left, such as Haim Ramon – of the 'constitutional revolution' that was advanced by former Supreme Court Justice Aharon Barak and the 'judicial activism' of the Court. What do you think is the correct balance between the Knesset and the Court?*

AV: In Israel's unique democracy we do not have a constitution, or an equivalent to the European High Court of Justice to appeal to. Therefore we must protect our system of checks and balances. Some people believe that the fact that the High Court can revoke laws that threaten to violate human rights or contradict with one of the Basic Laws, means the majority cannot rule as it wishes, and that this isn't democratic. If we take away the power of the one institution whose vital role is to maintain our individual rights, we take away a very important balancing point in the triangular relationship between the legislative, executive and judiciary branches on which democracy rests. In general, I believe the current balance is the right one, and any attempts to change it will immediately lead to the overpowering of the other institutions. This might severely jeopardise the ability to maintain and protect human rights in Israel.

Grant Goldberg: *There are approximately 37,000 Sudanese and Eritrean migrants in Israel. In an op-ed in the Jerusalem Post you called for ‘evidence-based public discussion [that] will properly address public concerns about the treatment of the Eritreans and Sudanese nationals’. What is your opinion on how this debate in Israel is currently being conducted? And what would the discussion you recommend look like?*

AV: I’m a great believer in freedom of information and the public’s right to know, and serve as the Chairwoman of the Movement for Freedom of Information. When the public doesn’t have the full picture, it is impossible to have a proper discussion, and decision makers can manipulate the public debate. In this case, there wasn’t enough information collected when migrants began to arrive in Israel. We didn’t know how many requests for asylum were submitted to the government, how many were accepted, how many were declined, and why. Lots of fake news was circulated. It was only after the Israeli public began to ask for and receive information that the full picture was revealed. Questions arose regarding the costs of either deporting or absorbing the refugees, the legality of such decisions and the effects on their human rights – only then a serious public debate developed and civil rights organisations were able to challenge the government’s actions. As a result many the topic is constantly on the public agenda and civil rights organisations have developed alternative solutions to the challenging issue of asylum seekers. Although the issue has not yet been resolved, this is a good example of how a healthy democracy should function.

GG: *How is this problem going to be resolved?*

AV: We have to deal with the people already living in the overpopulated urban areas before we can resolve the whole crisis. Many of the asylum seekers live in a very poor district in south Tel Aviv, and this puts pressure on both the local residents and the municipality. The government has not provided any real solutions to deal with the tensions between the local community and the asylum seekers. The numbers are not so large – less than 36,000 asylum seekers live in Israel today and under 14,000 in south Tel Aviv. In my opinion the government’s backtracking on the UN proposal to resettle half of the asylum seekers in Western countries and absorb the other half was a mistake.

This is a global problem. Only a solution addressing all the facets – economics, infrastructure, social issues as well as community relations will be sustainable.

Unfortunately, the solutions the government has offered till now deny the asylum seekers their basic human rights: these include locking them in detentions centres for unlimited periods of time or deporting them back to the countries from which they fled. Due to the fact that the majority of them are located in South Tel Aviv, a low-level socio-economic area, this reality is a constant point of tension and friction, exacerbating the situation and leading to more and more problems – some of which are taken advantage of for political leverage.

At IDI, we recently published a study on the legal framework for the geographical distribution of

asylum seekers in Israel. Due to the inherent problems of restricting freedom of movement, geographical distribution is only a temporary solution that has to be considered in order to reduce the tension in Southern Tel Aviv and provide a better life for those asylum seekers who are waiting for a permanent resolution.

