

There is growing concern and even fear that the current GOI will move forward to complete the process of passing legislation which would, among other things, rebalance the powers of the judiciary vs the Knesset in ways which would, at least in the minds of perhaps a majority of Israelis, cause them to lose rights and protections they currently have afforded because of the existing prominence of the Israel Supreme Court in being able to override Knesset decisions. Those concerns and fears and the anger that accompanies them is well placed because, much as the current situation is unbalanced in favour of the judiciary, the new legislation if implemented as is would effectively eliminate virtually all judicial power relative to the Knesset. And this, in a country where there the prime minister heads a coalition which controls the government through one legislative body, the Knesset. There are no provinces or states with competing powers, no upper house as a place to consider legislation, and with the proposed legislation, no judiciary to monitor and react to the legislation. In addition, there is little of constitutional import to inform and direct legislation. So clearly there is a fundamental problem in the way in Israel's democratic infrastructure which has led to the current situation where the judiciary has taken far more power than, as a judiciary, it should. Indeed, you might wonder why this crisis took so long to explode. Perhaps Israelis were far too busy trying to survive their many foes including many existential threats, to pay attention to the lack of judicial oversight in the early days, and the dramatic increase and many would suggest judicial overreach which takes place today.

That there is now a right wing government which is far right, and that includes those who clearly have no interest in the majority secular population nor the minority Arab population, is already an affront to many in the center and on the Left. But the proposals that coalition

government has tabled, and is moving through various readings, will turn the situation on its ear, and will be a 180 degree swing from the current situation. Ah, if Justice Barak had not several decades ago decided that the Supreme Court could question any piece of legislation or any action of government simply on the principle of what is reasonable, perhaps Israel could have avoided this constitutional crisis for many more decades. But he did not, and there is a group of coalition members of this government which insists on fixing the problem- their way, without a lot of consideration for what the best outcome would be for the country as a whole.

Well balanced and healthy democracies exist because there are fair and well run elections- Checkmark to Israel (and a lot better than Canada which doesn't even recognize the importance of foreign interference or the US where a significant chunk of the population thinks the elections are unfairly run and where the electoral college is an override to the principle of one person, one vote.). There is a strong and diverse press representing all points of view- checkmark Israel. There is a strong judiciary with clear rules that dictates their role... no check mark for Israel on this one. And there is a population which is involved in, and takes part in issues of importance- checkmark Israel. Oh and yes, to make democracies stronger, there is often a constitution, a guiding document that a parliament must operate under, and a judiciary must work with in interpreting laws. Israel's constitution is limited, and this is where the problem lies. And the vacuum created by the inadequacy of the constitution as it is today has been filled primarily by the judiciary which has achieved a level of power unheard of in other democratic states.

The purpose of this article is not to take a position (although I will summarize my view in a moment) but rather to discuss optimal ways to respond to Israel's current challenge as caring Zionist Jews living in the Diaspora.

My position in brief... the current coalition has brought to bear a number of valid concerns about the way in which judicial powers have evolved over time in Israel, especially in the past 30 years. The judiciary has taken the position that it can rule on virtually anything using the guide of reasonableness as the basis for decisions. Arguably, this is not particularly democratic since the people do not elect the judiciary and they are, for the most part, self-chosen so that it's a self-perpetuating set of judicial values that drives the court.

The current coalition government has decided that it wishes to correct the imbalance, but their proposals to first, essentially take over the entirety of the justice appointment processes, and secondly to put themselves in a position where they can override any decision of the Supreme Court of Israel with a majority vote of the Knesset arguably creates a cure which is at least as bad as the disease and perhaps worse.

Is it worse? Perhaps for now. Given the number of senior members of this coalition who have been offside with the law, and the significant portion of the coalition which is far to the right, I would suggest that the cure for the moment would be worse than the disease for most Israelis.

What needs to happen for the good of the country, and indirectly the good of Jews everywhere, is that the two sides sit down and discuss and negotiate an outcome which solves for at least some of the problem but is enough of a compromise that the public will for the most part support it and feel good about the way in which their government works. And given my extreme faith in Israelis to solve their problems, I believe it is actually possible that out of this mess will come an improved situation in Israel where there are more check and balances, and a greater basis of constitutional legitimacy on which to base the law making of the Knesset as well as the decisions of the judiciary. I have included one article below with an interesting idea worth considering, but there are many more ideas out there especially coming from Israelis who of course have the most at stake.

It is actually remarkable that the problem we are seeing now did not happen long ago. Israel has such a nebulous set of laws which are quasi constitutional and so little guidance in its Declaration of Independence that this problem was bound to crop up at some point. But the problem as I see it is that there are so many underlying challenges in Israeli society, and there is so much polarization (as there is worldwide) it is coming at a difficult time. Kudos to President Herzog who, from his relatively powerless position as President has attempted to come up with compromise positions.

So Israel has a serious problem, and it is divided and there are a lot of angry people, many confused people, almost everyone is worried, and the cohesion necessary to allow this small country with so many enemies to not only survive but prosper, has weakened under the pressure of this constitutional challenge.

When this situation first broke, I had counselled patience, believing that Bibi would pull things together and establish a process to have the necessary discussions to gain consensus with a compromise position. Thus far, that has not happened. There are some I speak to who are closer to the GOI than I am who believe things will settle down soon and that Bibi does indeed have a plan. But in the interim, Israelis on both sides are angry and committed to their positions, and the crisis if anything is growing. That the President of Israel, Herzog, would cobble together a compromise for consideration and have it summarily rejected by Bibi is not a good sign, and I can understand the consternation of centrist and left leaning Israelis given the current situation, especially as several of the Ministers who populate this coalition have unsatisfactory legal histories and many have made extreme comments that do not belong in a liberal democracy. So I get the anger, I get the need to protest, I am pleased to see Israelis care about their country enough to protest (unlike Canadians who sit on our hands as our government carries on with its subpar performance) and I am pleased that the protests on balance are non-violent.

I am less pleased with the tag line for the protests... this is not the “end of democracy”. What it would be if the current legislation passes is the end of a period where a small group of justices had too much power, to a new period where a small majority of Knesset members have all the power, and where some minorities in the coalition will benefit, where other minorities outside the coalition as well as many in the Diaspora, will lose out. Seems like something worth protesting for and against....

So what do we caring Zionists who love Israel do in a case like this?

Intelligent superstars like Irwin Cotler and others have written extensively recommendations and have communicated with the senior people in the GOI to make their case. Many Israelis have done the same. President Herzog has tried to find a compromise, working day and night. But the crisis continues. Israeli seems to be much better at winning wars against much larger countries than it is at solving for their constitutional government problems...so far.

What about the rest of us?

CIJA has been hard at work communicating with GOI officials and keeping our own government up to date. This is their role and while we cannot see most of what they do (because to publicize it would undermine their processes), I believe from personal experience and direct knowledge that they are communicating well and effectively, not only with recommendations and solutions, but with information as to the impact this Israeli chaos is having on diaspora communities.

At the international level, various governments have chimed in, including our own,(at the behest of elements of our Jewish community,) as well as President Biden, and some European leaders. Given the shenanigans taking place in the US and Canada, its rather a joke to see the leaders of those countries or their minions providing cautionary advice to the Israelis. In Canada for example, we seem to be more concerned with Israel solving its problems than our own government which seems to be uncaring of evident Chinese influencing of our elections- and the response of our PM was to put someone in charge of the related investigation who is compromised! And I won't even start to get into the shenanigans taking place in the US.

Yet Israel is now the focus of too many, not just well-meaning Jews, but not so well meaning Jews and their allies in the BDS movement. Indeed, the BDS folks must be licking their lips watching Israelis attacking each other, so polarized, and seeing elements of our own community attacking others in our community. Who needs to attack the Jews when they attack each other!

And this is where I must confess that I am extremely disappointed by the actions of some. Today I read an article by Andrew Cohen in the Globe and Mail (reproduced below) which, in summary, said that the people in charge in our community are useless, they are not saying anything or taking a position and therefore are irresponsible or worse, and btw, this fellow hates Shimon Fogel and CIJA because a few decades ago CIC and CJC was amalgamated to create CIJA. I was on the Board of CIC at that time and I lost my role as well, but I stopped crying about it a few minutes later. The lovers of the CJC for some reason have never let it go... and this is one of those individuals. So, he takes his old grievances out on one of the hardest working public servants for the Jewish people of Canada, Shimon Fogel. And the Globe and Mail, supposedly a quality media outlet, run Cohen's rant.

And then there is JSPACE which has decided that it has properly surveyed all of the Jews in Canada and that they are the appropriate people to reflect the views of the majority of Jews in Canada. In fact, they are probably right that most Canadian Jews are not happy with the proposals of the current Israeli Government coalition. But that does not mean they are the logical representatives of our community. Having said that, they are entitled to their views, and their desire to

protest in Israel when they are there, and locally, is a reflection of their love for Israel combined with a fundamental belief that their views on what should happen are correct, and that they can actually impact what happens in Israel with protests here in Canada, petitions with a few hundred or thousand names, etc. Except they cannot. Israelis have enough challenges amongst each other and the existence of a few left wing protesters in Canada will not even make it into their consciousness.

CIJA is working behind the scenes, as are the leaders of the various Canadian Federations to the extent that they have relationships with senior people in Israel. And the funding UJA provides to the Jewish Agency in part supports the efforts of that organization to create a consensus and encourage compromise. Note that President Herzog in his previous position was the head of the Jewish Agency. The JA carries the banner most of us carry- and that is- sit down at the table, work out a compromise, get consensus on that compromise and make Israel a stronger constitutional democracy as a result...

People all over the world pile on Israel always. The level of that pile on per capita is higher than any other country by far. THE UN would have too little to do without piling on Israel. BDS and other antisemites, often aided by disaffected Jews take their shots. And Israel is held to a higher standard than any other country. That is a form of antisemitism in my view.

We Jews have many attributes, but our one country ought to be measured as one would measure any young country with so many challenges, both internal and external. And while I often disagree with

things that take place in Israel especially around the role of the religious right, and the more extreme settlers, I never make my concerns known publicly because I don't want to be an unwitting ally of the many enemies of Israel who would prefer that it did not exist.

And in Canada at the governmental level, I also strongly believe that the best situation for Israel and the Jewish community of Canada is for the support of Israel to be a nonpartisan issue. Which is why I would never recommend requesting that our government call out Israel's government, as JSPACE and NIF have done.

In short, JSpace is hurting more than helping. And articles like that penned by Andrew Cohen in the Globe which attack elements of our own community are entirely counter-productive, hurt our own community and do nothing to help Israel or Israelis. To quote Adam Minsky, CEO of UJA Federation...". In an environment where Canadian Jews are working to address growing antisemitism, the thrust of the article (by Andrew Cohen in the Globe) is to tell Canadian society and our government that the main organization that engages with all levels of Canadian government is unrepresentative of the community." How is that helpful?

And how is it helpful to protest in Canada against the government of Israel when it is going to make no difference to the outcome in Israel, and will again send a message to Canadians and our governments that we , the Jewish community, are in disarray.

Just as the solution of the coalition in my view is a cure that is potentially worse than the disease, the actions of the so-called

progressive Left in Canada, who to my knowledge are well meaning and passionate Zionists, are doing things which will have no positive impact (other than perhaps allowing them to feel better and less frustrated) and yet provide evidence that our community is divided, and that Israel is a problem deserving of major attacks and criticism. It's not their opinions I disagree with, and in fact I likely would agree with many of their opinions (I am much closer to the Left on these issues than the current right wing Israeli government)- it's the way in which they are going about doing what they see as their duty. For me, there is little benefit, little return, along with lots of negative outcomes as a result of their actions.

As for the article by Andrew Cohen, the Globe should have done a much better job of assessing the validity of an article that was essentially a hatchet job on a key Jewish Canadian institution, CIJA, its CEO, and the Federations that support it.

I continue to believe that Israel is going to figure this out. And I am not so arrogant as to suggest that I have the solution for them, nor that I have the right to tell the Israelis how to run their country. My kids did not serve in the IDF, and I don't pay taxes there. I have done more than most for Israel and for the relationship of Israel and our part of the Diaspora, but I don't believe that entitles me to harm Israel with public pronouncements in the spirit of "I am right and you are not". So, I don't, while still attempting to influence those I can get to in Israel with my concerns and suggestions.

Someone reading this might then comment... so what should we be doing? The answer is anything which encourages compromise in Israel,

anything which reduces the temperature, anything which does not increase the worldwide tendency to pile on Israel, and nothing that will polarize our own community here in Canada. That could mean supporting Israeli organizations which share your point of view. That could mean writing respectful articles which recommend a way out for Israel, and sharing those articles widely in the Jewish community, as Irwin Cotler (who is one of the great Jewish heroes of our time) has done. And maybe, just maybe, save some of your energy to deal with the malfeasance taking place in our own countries.

Below is a statement put out by UJA back in late January which remains relevant. I have highlighted a few sections of note.

Also included is the article by Andrew Cohen and an article about constitutional change in Israel I found useful. Finally, there is a short article worth reading written by the CEO of a smaller but meaningful Federation in Canada, the Calgary Federation which provides some sense of how Canadian institutions, led by CIJA, are managing to get their views across in Israel.

And a message to Andrew Cohen... Amos Oz once said “when you criticize Israel in the Jerusalem Post, you are speaking TO other Jews; when you criticize Israel in the New York Times (or the Globe and Mail), you are speaking ABOUT them. “

Am Israel Chai!