McFaul: You’re listening to World Class from the Freeman Spogli Institute for International Studies at Stanford University. We bring you in-depth expertise on international affairs from Stanford’s campus, straight to you. I’m your host, Michael McFaul, the director of Freeman Spogli Institute.

Today I’m talking with Amichai Magen, a scholar of law, governance, and international relations at Reichman University in Israel. But he’s a longtime friend of us here at FSI and CDDRL. In fact, we even edited a book together many moons ago.

He’s an alumnus of the Stanford Law School and formerly a fellow here and scholar at the Center on Democracy, Development and the Rule of Law. But most recently, he has rejoined us at FSI as the inaugural fellow of our newly launched Visiting Fellows in Israel Studies program.

What great timing, Amichai, that we have you today! Literally in the newspapers I was reading this morning — I still get one physical paper, just so you know; I’m really old school — the future of Israeli democracy has been in the headlines here in the United States. And we want you to help us understand what is going on.

So, welcome to World Class.

Magen: Thank you so much, Mike. It’s great timing for me personally. Not so happy days for Israel, but we’ll try to make sense of what’s going on.

McFaul: I don’t even know where to begin. I mean, we could go back many decades or even thousands of years. We don’t have time to do that.

But I think our listeners and viewers know that there’s a crisis in democracy in Israel. We’re reading what’s happening politically. We’re watching these incredible demonstrations — I want to talk about the societal reaction, too. But it’s pretty complicated. I have to tell you, even for me it’s pretty complicated.
So, start where you want to, but help us understand how Israel got to this moment in terms of this crisis — and I don't even know if I should be using the word “crisis,” or if that's the wrong word — but help us understand how we got where we’re at today.

**Magen:** Yes, it is complicated, because Israel — like any political system — is a complex system. There are all these variables interacting with one another: societal, institutional, personal, regional, international, and all these things are interacting as they do in any political system.

But in Israel, that tends to sort of be on steroids, and things have been moving so quickly that we could spend an hour on what's happened in the last 24 hours, but we can't do that.

I think it is very, very important that we have some context. I'll try to simplify things, but I'll try to give a little bit of context that I think we need to understand the current crisis. And it is a crisis in the Greek sense of being a moment of change and of crisscrossing paths. And Israel could go down a different path from here from where it's been.

But in order to understand this, I think we need to tackle a paradox that is at the heart of Israeli democracy. And the paradox, I think goes as follows:

On the one hand, Israel is a very established democracy. It was born as a democracy in 1948. In many respects, its democratic culture goes back to the pre-state institutions. It's proven itself to be durable and resilient. We've never experienced a military coup or any other kind of breakdown of Israeli democracy despite numerous wars and security challenges, or even the assassination of Yitzhak Rabin.

So this has been a country that from very inauspicious circumstances has not only survived, but thrived as an open and pluralistic society. And if you and I looked at Israel this time last year, we would kind of be in awe of the country. Let me give you just a few statistics. In 2022, Israel was the fastest growing economy in the OECD.

**McFaul:** I did not know that! The fastest of all OECD countries?

**Magen:** Yes.

**McFaul:** Wow, I did not know that.

**Magen:** It was the fastest growing economy in the OECD. It bounced back from the pandemic with remarkable speed. It was doing incredibly well. It became the 18th wealthiest society in the world.
Israel achieved a GDP per capita that was higher than that of Austria, Canada, Belgium, and Germany. It was ranked as the fourth happiest country in the world. So, Israel was thriving. Israel was doing extremely, extremely well.

And yet, here I come to the to the other side of this paradox: For several decades now, but especially over the last three, three and a half years, there's been a brewing sense of what can only be called a kind of an identity crisis. And I think a lot of vulnerabilities that were hidden from view and that were in the background started coming to the fore.

And I think we can spend a lot of time in trying to figure out why that is. Is it social media? Is it sort of a resurgence of identity politics that we see not only in Israel, but in the United States and in many other countries around the world? We can spend a lot of time analyzing why this sort of vulnerability exists, and why this particular moment of crisis emerged when it did.

But what we have to bear in mind is that culturally and institutionally, Israeli democracy was always vulnerable. I'll try to explain that.

**McFaul:** Yes, help us understand.

**Magen:** It was always very vulnerable for cultural and for institutional reach reasons. So, culturally, Israel is a country where the majority of the population that immigrated to Israel did so from North Africa and the Middle East, and also places like Russia, Belarus, Ukraine, et cetera. So the vast majority of the Israeli population came from societies that didn't have very strong, democratic cultural traditions.

That was also true of Israeli elites. The founding fathers and mothers of Israel did not come from England or from Philadelphia. They came, again, from Ukraine and Poland and Russia, and from North Africa and the Middle East. And to add to that, Israel was born and has lived in the Middle East in a neighborhood that is devoid of other democracies and lacks a regional underpinning for democracy.

So that vulnerability was always there. And in retrospect, perhaps the cultural democratic roots of Israel were not as deep and not as well entrenched as we may have thought, or as was reflected in international indices of the quality of democracy, the rule of law and governance. That's a question that I think we need to put on the table. And the answer to that question, I think, has profound ramifications for the depth and durability of Israeli democracy.

But at the same time —and I think this really brings us to the current crisis — Israel has some real institutional vulnerabilities when it comes to democratic stability. Israel has no fully codified constitution. It has very few formal checks and balances. We've been reliant on norms and what Montesquieu or Alexis de Tocqueville would describe as "mores of
democracy” on what is done and not done in democratic politics. And there’s a sense in which those mores have been eroding, and we've become more polarized, and our elites have become more open to experimenting with non-liberal, more authoritarian forms of politics, and more populist forms of politics.

Just to complete this picture: I think that for 75 years, Israel has decided not to decide on some of the critical questions that are normally settled in constitutional conventions. We don’t have formal rules on separation of church and state. We decided not to decide on whether the ultra-orthodox in Israel should serve in the army or not serve in the army. We decided not to decide what should be the relationship between the Jewish majority and the Arab-Israeli minority that makes up 20% of the Israeli population. So, there's a variety of issues.

McFaul: Those are big, hard issues. Those are not little issues; those are big ones.

Magen: Those are really big ones. And again, Israel has done pretty well by fudging those issues, by not bringing them to the fore, and by essentially trying to focus on mundane bread-and-butter political issues.

But in a way, those questions of identity are really bubbling and they're really coming to the forefront now. And I think that provides us with the context that helps us understand where Israel is right now, in terms of strengths and vulnerabilities.

If Israeli democracy were to falter in 2023 or 2024, that would be more akin to the faltering of British democracy, or Canadian democracy, or indeed American democracy than it would be to a country like Turkey, or historically Russia, because of that long democratic tradition.

You were referring to these extraordinary demonstrations and this unbelievable mobilization of Israeli civil society, which I was personally involved in with my family and my friends and my colleagues until we traveled here to Stanford two weeks ago. But we’re talking about somewhere between 3 and 5 percent of the entire Israeli population, that for the last six months, every week goes out into the streets very peacefully — families and children — to stand up for the rule of law and to stand up for making sure that Israel continues to be an open society and a thriving democracy.

That is that is a real strength. But we find ourselves confronting a coalition government that today wants to take Israel down a different path.

McFaul: Well, let's dig a little bit into what the coalition government is trying to do that the superficial reading is the majority — though it’s a small majority — in the parliament wants to limit the powers of the Supreme Court. And that's unconstitutional, even though there's not a written constitution, as you already explained. But that violates the checks and balances
between those two. Or to put it into the American parlance, the judiciary versus the parliament.

I'm sure it's way more complicated than that, so help us understand exactly what the prime minister's doing and the vote that just happened recently in terms of the balance of power between these two sets of institutions.

**Magen:** I think you've captured it brilliantly. In essence, like the British parliamentary system, the Israeli executive emerges out of the legislature. So, we don't have a real separation of powers between the legislative branch and the executive branch. Whoever controls the Knesset controls the government and vice versa, which means that the only real formal check on executive power in Israel is the Israeli Supreme Court, or more broadly, what I would define as the Israeli legal establishment, which includes not only what has so far remained a very robust and a very independent Israeli judicial branch, but also the position of the Attorney General and the legal counsel officers that provide legal counsel to the Israeli executive in every single governmental department that you can think of.

Now, the big difference between the United States and Israel in this regard — and this is something that's important to understand — is that in Israel, the legal advice of the Attorney General is legally binding upon ministers unless and until the Israeli Supreme Court rules otherwise.

So we're talking about a very powerful Attorney General's office. And the crux of the issue really has to do with the desire of this coalition government to remove some of those checks and balances that in the Israeli context can only be imposed by the Supreme Court through judicial review and by the Attorney General's Office. And that is really the crux of the matter.

So there's a whole variety of legislative proposals. Some of them are on hold right now. Some of them are making their way through the Knesset. One of them was just passed by the Knesset yesterday. But the bottom line is . . .

**McFaul:** Before you get to the bottom line, tell us what's just happened. Because it's hard for those of us who don't understand the system to follow. What passed? I saw that everybody who didn't vote for it walked out. What exactly happened to make them so animated about it that they would walk out of the Knesset?

**Magen:** So what happened yesterday, was that a bill proposing to essentially eliminate one of the cause of action that historically has been used by the Israeli Supreme Court to review appointments, whether ministerial appointments or senior civil servant appointments. That course of action is called the “reasonableness cause of action.” This is an administrative and legal instrument that Israel adopted from the British common law system, which essentially says (this is called “Wednesbury unreasonableness”) that if an elected official or a civil
servant makes a decision that is so outrageous, that is so unreasonable, that no reasonable politician, elected official, or appointed official would make such a decision.

Let me give you an example: That all red-headed people would need to live in a particular neighborhood. Or to make it more realistic, that the prime minister can appoint his son to be the Attorney General without the court being able to review the reasonableness of that decision.

Historically, the Israeli Supreme Court has relied somewhat on this cause of action in order to strike down those types of decisions. It hasn’t done it very many times. We have some data on this. So this was a cause of action that was used 22 times over the last 20 years. But it acts as a deterrence and essentially sent a signal to the executive saying, “There are certain things that you cannot do.”

What happened yesterday was that the coalition government managed to pass by a vote of 64 members of the Knesset — we have 120 members in the Knesset, so this is a bare majority — that essentially removes the ability of the Supreme Court to invoke that cause of action to review executive decisions.

McFaul: Got it. And remind everybody who appoints the Supreme Court in Israel?

Magen: Well, the Supreme Court in Israel is appointed like every other judicial appointment. We have a committee a judicial appointment committee that combines representatives from the government and from the opposition, but also from the judiciary and the Israel Bar Association.

McFaul: Interesting. Wow! It’s very complicated.

Magen: Yes. And this is a system that has been looked at by other countries around the world as a model for how to achieve professional appointments that that enjoy broad consensus.

And it's interesting that you've mentioned it, because one of the changes that the current coalition wants to make is a change to the judicial appointment committee so that it would essentially give the governing coalition a majority over judicial appointments. So that's another one of the changes that they want to introduce.

McFaul: Right. Correct me if I'm wrong, but I'm assuming that the Supreme Court is popular as an institution within Israeli society. Or is it more divided in terms of their attitudes towards it? In our country, as you know, the Supreme Court's reputation has gone way down recently. Is that true in Israel or not?
**Magen:** Just like in the United States and in other democracies, we've seen a decline in popularity and trust of all government institutions, including the executive, the legislature, and the Supreme Court.

However, the Israeli Supreme Court still enjoys far higher rates of popular trust than the executive or the legislator in Israel. In fact, the only institution in Israel that enjoys higher levels of popular support is the IDF, the Israel Defense Forces.

**McFaul:** Right.

**Magen:** I believe that this similar to the United States, where the military is seen as sort of a national, unifying institution that is above the fray of politics. But I believe that the Israeli Supreme Court comes right after the IDF.

**McFaul:** Interesting. So, is there a way out? Is there is there an institutional fix or a political fix you see for how this might be resolved, or do you think this is going to go on for a while?

**Magen:** I don't know. I think that the current situation is one of growing mistrust and what I would call “toxic polarization.” Again, this is not unique to Israel. I think we've seen something similar happening, even in places like Holland, Sweden, and Germany. As you know, there's something in the air that is driving mistrust and polarization and a kind of collapse in public trust in elected authorities all around the world. And that is something we need to do a better job at understanding, let alone fixing.

So Israel is afflicted with that at the moment. But clearly a moment of crisis is also a moment of opportunity. We do see in the public polling — and we have very reliable public polling in Israel — that if general elections were held in Israel tomorrow, Netanyahu would lose. Levels of support for his coalition are declining. So I think that is sending an important message to the current coalition.

But at the moment, particularly given the vote in the Knesset yesterday, and the sense that many Israelis have that this particular government is not really interested in broad dialogue and consensus, I don't see a short-term fix. But I do see this crisis potentially worsening.

There are alarm bells going off in terms of international credit rating companies. Moody's just published a report essentially warning Israel that if it continues down this path, its credit rating may suffer. We've seen Israeli reservists, pilots, and people who serve in in special units signing petitions and announcing that they will not serve in an Israel that is not free and democratic.

**McFaul:** That's pretty alarming.
Magen: That is very, very alarming. Right now, the Israeli security establishment is assessing the seriousness of that and seeing whether this is something that might undermine Israeli national security.

So, there are plenty of signs being sent to Netanyahu and his government that would suggest that this might be a good time to take a breather and to reconsider.

In the longer term, I'm going back to this issue of fudging and the fact that Israelis have decided not to decide. I think that in the longer term, we will have to have a very rich and very energetic public conversation about the need for clearer rules of the game. And I think that there are two possible ways forward with that. We might call this sort of a “thick” constitutional moment versus a “thin” constitutional moment. I don't want to get too wonky on this.

But one way forward would essentially say, “We've really taken the country to the brink. We understand that we can no longer avoid these questions, and Israel really needs a constitutional convention. We really need to get together and to decide to decide and to decide to set in place a codified constitution that will define what it means for Israel to be a Jewish and democratic state. What does that what does that actually mean?”

I think that's going to be very, very difficult. But we may be moving towards some kind of arrangement in which Israelis try to put together what I would call a “thin” constitutional settlement, which would essentially say, “We might not be able to decide on questions of separation of religion and state, we may not be able to legislate a full bill of rights or to decide what should be kind of majority-minority relations in Israel, but at the very least, we will set in place the procedural rules of the game to make sure that we have stronger guardrails around how we're going to conduct our national politics.”

I think there's going to be quite a lot of pressure for Israelis to move in that direction. It might happen in one grand bargain, but I think more realistically, we will see a series of incremental changes of finer grained reforms that will try to put in place those guardrails. I think that is the space to watch over the coming months and years.

McFaul: Interesting. So finally, why should communities outside of Israel be interested or invested in these issues and what role do you think programs like ours, the Visiting Fellows in Israel Studies at FSI, have to play in addressing these challenges?

Magen: The first thing to say about that is that Israel needs to hear from its friends outside of the country. I think that sometimes, especially when you have a democracy that has been a democracy for a long time, we kind of take it take it for granted.

McFaul: Right.
Magen: There's a tendency to say, “Well, that's a domestic issue. Let the Israelis figure it out.”

I think that friends should be able to say difficult things to one another. And this is a time when the people of Israel — not only the Israeli government — really need needs to hear from friends around the world, including, and I would say first and foremost, in the United States.

And they essentially need to hear I think, two messages:

One is that, “We are with you. Israeli democracy is important. We value this extraordinary mobilization of Israeli civil society. We support you and our loyalty and our friendship is to Israel as a society and as a state, not to a particular government or particular politician.” I think I think it's very, very important for Israelis to hear that.

And then I think it's also entirely legitimate and also something very, very interesting, that Israelis have been in very close dialogue with colleagues and friends in places like Hungary, Poland, and Turkey, and they have been trying to make the case to the Israeli government and the Israeli public to say, “Look at what happened to Hungary. Look at what happened to Poland. Look at what happened in Turkey. This is not a path we want to go down.”

So I think that just as authoritarians and populists have their international networks and circles, we really need to strengthen the circles and the networks of support for democracy all around the world, including for Israeli democracy. And we'd better do it earlier rather than later.

Thinking specifically about our program here at FSI, the Visiting Fellows Program in Israel Studies: I think it can do a number of really, really important things. I had the great pleasure and honor of teaching a course on Israeli politics this past academic year. It was fantastic. The students were amazing. And one of the great pieces of advice and feedback that I received from those students is that they really appreciated the inside view and understanding of how Israeli politics actually works.

I think we can make a really valuable contribution in explaining that. As you as you can see, it is a complex system. It’s a dynamic system. And so one of the things that we can do is to provide a better understanding of how Israel actually works as a political order and as a political system.

Israel is an important country increasingly in its own right, whether we're looking at governance, cybersecurity, energy, entrepreneurship, or innovation. This is this is a country that punches way above its weight, regionally and internationally. I think it's very, very important for us to understand Israel as Israel.
But secondly, we need to look at Israel comparatively. And we need to connect the dots and say, what is going on here? Why, why are incredibly successful, open societies undermining the very institutions and values that have given them success for so long? Why is it that that societies from Germany to Sweden to Holland, to France to Italy, to the United States to Israel — what is it about this historical moment that is getting these incredibly successful societies that have thrived within a liberal mindset and a liberal international order — why are we undermining the very values and institutions that have given us this tremendous success?

I think that's something that we don't understand that we really need to work on together.

Let me mention one more reason why I think this is incredibly important. The fate of Israel and the strength or weakness of Israel will have repercussions not only for U.S. foreign policy and for Israel itself, but also for the Middle East and the broader international system. Iran is watching what is happening in Israel very, very, very closely. Hezbollah is watching very, very closely. Hamas is watching very, very closely. The UAE, Bahrain, and Saudi Arabia are watching this very, very closely.

We've managed to make tremendous progress in Middle Eastern peace based on the understanding that Israel's neighbors have that Israel is a powerful, cohesive, and coherent international actor. If that is undermined, then we could find ourselves in a much more precarious regional and international environment with very serious consequences for energy markets and for stability in the Middle East and Europe and beyond.

So, I think for all of those reasons, it's great and I am grateful for the opportunity that FSI has provided us to be able to explore this country and the various issues that that it presents us.

**McFaul:** Well, that's fantastic. And I think we're really lucky to have you.

We would have been lucky to have you any year, but to have you during this period is tremendous. Thanks for coming on World Class. I guarantee you it's not the last time you're going to be here, because I don't think this crisis is going away anytime soon.

Thanks for being here.

**Magen:** Thank you so much, Mike.

**McFaul:** You've been listening to World Class from the Freeman Spogli Institute for International Studies at Stanford University. If you like what you've heard, please leave us a review and be sure to subscribe on Apple, Spotify, or wherever you get your podcasts, to stay up to date on what's happening in the world, and why.