IDC HERZLIYA | Lauder School of Government, Diplomacy & Strategy | Program on Democratic Resilience & Development

KONRAD ADENAUER STIFTUNG

A Cure Worse than the Disease? The Impact of Israel's COVID Surveillance Regime on its Democracy

Dr. Alisa Rubin & Ariel D. Brodkey

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Abstract

This paper provides a comprehensive accounting of the events and forces that drove Israel to adopt a contact tracing regime unlike any other among democracies around the globe during the COVID-19 pandemic. The paper begins with an assessment of pandemic policy responses from around the world, from China's all-encompassing surveillance regime, suggestive of a dystopian future, to the responses in democracies which were successful in controlling the spread of the virus without abandoning safeguards for privacy and basic civil liberties. It raises the long-standing trade-off between privacy and public safety as the principal lens for analyzing Israel's unique decision to utilize its national security toolkit compared to opt-in privacy preserving solutions. The decision to rely on the Israel Security Agency (ISA) was the culmination of three factors which in and of themselves reflect potential challenges to contemporary democracy in Israel. First, the onset of COVID-19 in Israel coincided with an unprecedented political crisis that left many Israelis disillusioned and detached from the government's decision making. Second, the 'securitization' of policy and politics unique to Israel drove its political elites to revert to the mechanisms they knew rather than epidemiological best practices. Third, and finally, objections by the ISA were overruled despite warnings and early evidence that the program would not be successful in delivering the desired result. Public opinion polling data shows that an already growing crisis of confidence in democratic institutions was likely exacerbated by the ISA tracking program, and a non-representative survey conducted in this research shows that link may be more direct than previously thought. This crisis of confidence was compounded by systemic failures that wrongfully infringed on the civil liberties of hundreds of thousands of Israelis by sending them into isolation based on faulty ISA reporting. Both the State Comptroller and the High Court of Justice assessed that the program was ill-conceived and caused more harm to Israeli democracy than it alleviated the COVID crisis, and yet it remains to this day the single most consistent COVID policy implemented by the Israeli government since the onset of the pandemic. This research brings a vast corpus of both academic and non-academic knowledge about the ISA contact tracing program into one framework by which scholars can appraise the potential impacts on Israel's democratic culture and how it may alter its response to future pandemics to preserve democratic resilience.

Contents

1. INTRODUCTION

The outbreak of the Sars-Cov2 virus (COVID-19/COVID) presented decision makers around the globe with a profound learning curve as existing infrastructures and contingency plans proved insufficient or non-existent in dealing with the new threat. Uncharted challenges and dilemmas emerged overnight, and immense trade-offs were made, such as sacrificing economic and social well-being for the sake of managing a public health crisis. Moreover, these trade-offs have directly impacted the civil liberties of citizens across the democratic world, not just in the shuttered public sphere, but also in the confines of one's private life. Contact tracing is an epidemiological practice which had not entered the public lexicon before the COVID-19 pandemic; in nearly all efforts to combat the virus with the most current facts and data, regardless of geography or regime type, states began harvesting data from residents in a variety of digital contact tracing programs. Israel was no exception to this rule, and its contact tracing regime stands out in that it has been one of the only democracies that tasked its national security apparatus to lead the effort.

Based on the understanding that emergency measures often outlive their emergencies, Israel's 'Big Brother' approach raised serious concerns from its inception for Israeli civil society as well as the authors of this paper. This study initially set out to analyze comparative approaches to technological use in the pandemic and determine how the entrenchment of the surveillance state could be curbed - in other words, how can states reconcile a legitimate need for public safety in a pandemic with privacy rights and civil liberties which are a cornerstone of liberal democracies? However, as events unfolded in real time in Israel and around the globe, and as the research process progressed and findings began to coalesce, the methodology and scope of the study changed significantly. It became clear that Israel was truly an exceptional case, and one which raised far more questions and concerns than it answered. Moreover, the comparative analysis seems to suggest that states which chose to operate differently from Israel did not necessarily achieve better results or find a balance to the dilemmas in question - in democracies, digital contact tracing and surveillance technologies have largely not made the critical difference they were expected to in fighting the spread of COVID. Yet many democracies were able to combat the pandemic successfully without resorting to Israel's extreme approach, combining technological surveillance and data gathering approaches with high levels of public trust in the government, something sorely lacking in Israel.

After realizing that Israel's approach represented perhaps the most extreme case of a trade-off between privacy and public safety in the democratic world, the study then sought to analyze how this policy came to pass and what the impacts on Israel's democratic health might be. The research came to show that the Israel Security Agency, also known as the Shin Bet (ISA) contact tracing program resulted from a culmination of unique political factors in Israel, and more importantly, lacked any particular basis in public health best practices or input from relevant stakeholders. In addition, government reports suggest that not only was the ISA tracing program largely ineffective, but a survey conducted in this research shows that it likely exacerbated a growing crisis of trust in political institutions and actors among the Israeli public. Israelis across the political spectrum are concerned that their data might be abused for political purposes, and overall, they worry about the long term implications of COVID policies such as the ISA program.

This study also included an interview with Dr. Karine Nahon, an expert on the politics of information systems who was deeply involved in the deliberative process concerning the controversial policy. The analysis includes a comparative evaluation of approaches to digital contact tracing, primarily around the democratic world, as well as several important findings that indicate the long-term implications of this policy on Israeli democracy and future emergency decision making. For example, the contributions of this paper include figures demonstrating substandard adoption of the HaMagen application, the primary alternative to the ISA program, and the discovery that the invasive surveillance method of ISA contact tracing has been the one of if not the most consistent policy adopted by the Israeli government since the beginning of the pandemic. Ultimately, it provides an exhaustive accounting of the events which led to the program's creation, adoption, continuation, and its overall impact on democratic resilience in Israel.

2. The Privacy-Public Safety Dilemma: Cases and Approaches

Many governments have utilized technology to combat the pandemic, and in so doing have resurrected the discussions and debates surrounding privacy versus public safety which have been more endemic of the national security theater. A prime case study of such an evaluation of trade-offs can be seen in the public discourse surrounding the expansion of state surveillance through the Patriot Act (2001) in the United States. Policy makers often point to crises as an impetus for far-reaching legislation, as was the case in the wake of 9/11, often with only a handful of dissenting voices calling instead for foresight and moderation. Concerns over privacy in the digital age have garnered public interest in recent years, especially in two separate but related matters. The first is with regard to security agencies spying on private citizens and collecting massive quantities of metadata which can be mined and utilized with little civilian oversight or democratic recourse. Perhaps the best example of this from the past decade can be seen in the media and cultural attention paid to the case of American whistleblower Edward Snowden, who outed details not only of such programs in the United States, but of other states as well.

The second arena of digital privacy which has drawn outsized attention and concern focuses on what takes place in the private sector, particularly among big-tech companies. As the Cambridge Analytica affair (2018) illustrated, social media users and individuals holding accounts with tech giants like Google are often appalled by the extent and detail of information about them being harvested and sold to the highest bidder. Such data has been used to support not only micro-targeted advertising, but more importantly, political and influence campaigns around the globe with profound consequences. To the same extent that Edward Snowden's going public was a paradigm shift in the discourse and attitudes toward mass surveillance, the European Union's General Data Protection Regulation (GDPR) (adopted in 2016, implemented in 2018) signaled a major countervailing force against this apparent status quo.

In both of these examples, however, one cannot overlook the fact that, while such practices came to be considered taboo and egregious to the general public, they never truly ceased. National security bodies continue to collect massive quantities of data in opaque intelligence programs with little oversight. And while tech-companies are generally required to be more transparent in how they operate, the business models and financial incentives that existed beforehand have only grown in scale and scope. Moreover, the onset of COVID-19 has seemingly lent credibility to the other side of the privacy debate, in which public safety ostensibly assumed primacy in decision making processes around the globe.

2.1 CHINA'S DYSTOPIAN MODEL

2.1.1 The Rise of a Surveillance Society in China

China has been perfecting its use of technology for surveillance of its citizens since the commercial internet was introduced in the country in January 1995. Almost from the outset, the government blocked foreign search and social media services and succeeded in achieving its goal of creating a national internet which closely monitors its citizens' online activities. While

diversions such as shopping and games were allowed to flourish, control was the overarching goal of the country's leadership:

> *"The Chinese internet resembles a fenced-off playground with paternalistic guards... Allowing a distinctly Chinese internet to flourish has been an important part of building a better cage. But it is constantly watched over and manipulated."* [1]

From the beginning, the government developed software to track and analyze online behavior and to nip potential dissident activities in the bud before they could pose a serious threat to the top priority goal of social stability. China's government program to control the internet has three main pillars: 1) the Great Firewall (introduced in the late 1990s), a western name for China's system of blocking foreign websites; 2) Golden Shield, the system of domestic surveillance and filtering (introduced in 1998); and 3) Great Cannon, a tool to attack hostile websites.[2] In addition, many local and provincial governments have invested in their own tailored monitoring systems to quell any budding unrest.

In the early years of Chinese internet monitoring and surveillance, implementation was not monolithic and much of the deletion was performed manually. The government also hired online commentators to publish and spread desired messaging, especially following the introduction of Twitter-like microblogging services such as Sina Weibo in 2009 greatly increased the quantities of online content. This function became so widespread that one estimate counted one propaganda officer for every one hundred Chinese citizens.[3] Over the years, these processes have become more automated. China's basic rules put in place in response to the Tiananmen Square uprising in 1989 have been applied to the internet as well: 1) no threats to social stability; 2) no organization; and 3) no threats to the Communist Party.[4] To ensure the enforcement of these directives, a sophisticated tracking system immediately blocks messages containing sensitive terms that the government does not want to be discussed.

China has also not been shy about using the internet "kill switch." For example, in July 2009, following ethnically charged riots by members of the Muslim minority Uyghur community in the northwest province of Xinjiang, the government cut off the entire population (6m internet users) from the rest of China and the world and disabled long-distance phone calls and texts for nearly 10 months.[5] As this draconian policy attracted little censure, the government went on to establish "re-education" camps for nearly one million Uyghurs since 2017. Although the world has taken greater notice, international pressure has not been sufficient to persuade China to abandon its internment policy.

Over the years, China has tightened its surveillance and perfected its social control into a system commonly called a "digital dictatorship." The Chinese public accepted this development because years of unprecedented economic growth resulted in the rise of a massive middle class in a society with increasing levels of mistrust. To address this problem,

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[1] *The Economist, "*A Giant Cage: China and the Internet," April 6, 2013, p. 4 .
[2] *The Economist, "*A Giant Cage," p. 5; See also *The Economist, "*Creating a Digital Totalitarian State," December 17, 2016, p. 21.
[3] Evan Osnos, *Age of Ambition: Chasing Fortune, Truth, and Faith in the New China* (New York: Farrar, Straus and Giroux, 2014), p. 119.
[4] *The Economist, "*A Giant Cage," p. 6 .
[5] *The Economist, "*A Giant Cage," p. 15.

in 2015, the Chinese central bank announced a pilot project whereby top e-commerce companies would develop a personal credit scoring system based on data integration. The largest pilot was the "Sesame Credit" system devised by Alibaba's Ant Financial, acquiring more than 400 million users in just two years.[6] This system would use digital information to devise a set of rewards and punishments, in essence embarking on the world's most ambitious experiment in digital social control.[7] Gaining public support through its goal of cracking down on corrupt party officials and companies, the social credit system also offered the government a powerful tool to track and integrate all the online activity of its citizens—and to use rewards and punishments to incentivize desired behaviors. Beginning with the blacklisting of debt defaulters, the government expanded the mandate to monitor additional categories of "untrustworthy behavior" which could ultimately allow it to rate and punish dissent, expressions of undesirable opinions and perceived security threats.[8] However, it remains unclear to what extent the government currently has the capability to integrate all of the information on its citizens which populates a wide range of databases across the country. China has invested heavily in security cameras in recent years and, according to research conducted by Comparitech, 9 out of 10 of the most surveilled cities in the world (and 54% of the world's closed-circuit television (CCTV) security cameras) are in China.[9] However, despite extensive investment in security cameras in recent years, currently data integration remains limited, and there is no database that contains all of China's surveillance data.[10]

In addition to monitoring its citizens' online behavior, China also undertakes wholesale surveillance of its population. Ranging from neighborhood "grid management" plans whereby police and volunteer citizens monitor behavior in apartment blocks to the exponentially increasing use of closed-circuit television cameras and, more recently, facial recognition technologies, the increasingly sophisticated technological surveillance essentially means that privacy no longer exists in China.[11] Thus, for example, acquiring a cell phone account in China requires a face scan as a prerequisite.[12] In sum, China's system can be categorized as digital authoritarianism (also known as tech-enabled authoritarianism), which is "the use of technology by authoritarian governments not only to control, but to shape, the behavior of its citizens via surveillance, repression, manipulation, censorship, and the provision of services in order to retain and expand political control."[13]

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[6] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the Frontier of Power* (London: Profile Books, 2019), p. 390.
[7] *The Economist, "*Creating a Digital Totalitarian State," The Economist, 17 December 2016, p. 19.
[8] *The Economist, "*Creating a Digital Totalitarian State," p. 22.
[9] See Paul Bischoff, "Surveillance camera statistics: which cities have the most CCTV cameras?," https://www.comparitech.com/vpn-privacy/the-worlds-most-surveilled-cities/.
[10] See "State of Surveillance: Government Documents Reveal New Evidence on China's Efforts to Monitor Its People," https://www.chinafile.com/state-surveillance-china.
[11] *The Economist, "*Creating a Digital Totalitarian State," p. 21.
[12] *The Economist, "*Technology in China: A New Revolution," January 4, 2020, p. 9.
[13] Lydia Khalil, "Digital Authoritarianism, China and COVID" (Lowy Institute Analysis, 2020), p. 6.

2.1.2 The Chinese Surveillance State Responds to Covid-19

Following its failed attempt to cover up the spread of the SARS virus in 2003, China has gone to great lengths to publicize its harsh response to Covid-19, including rapid lockdowns of affected areas, extensive digitized contact tracing and strictly enforced quarantines as a 'best practice' model of authoritarian governance.[14] This model combined low tech human grid management (local officials and citizens who report on quarantine breaches) alongside technologically advanced digital technologies which combine the capacity for surveillance with big data analytics, enabling the country to automate its contact tracing.[15]

Chinese tech companies have also developed health code apps at the request of the government. Based on responses concerning personal information, exposure to infected individuals and high risk areas, travel and health information, the apps assign a QR code (green, orange or red) based on each individual's calculated infection risk. Chinese citizens are required to show their status in order to move around and, without a green code, mobility is strictly limited. The app apparently also collects and shares individual location data with the police.[16] Given China's lack of transparency, no data is given on how the app was designed, the criteria used for categorization or how the information is shared, stored and used.[17] While other democracies use contact tracing apps (i.e., Australia, South Korea and Taiwan), they are subject to privacy law, obligations of transparency and public debate and accountability for abuses.[18]

Moreover, the lockdown in China was draconian and much more stringent than was widely reported. In the words of one eyewitness, Dr. Dale Fisher of Singapore National University Hospital, China in mid-February 2020 was paralyzed:

> *"Unbelievable lockdowns with trains not moving, aeroplanes all with covers on their engines, and absolutely clear blue skies in [often polluted] Beijing. So it did spread across China, but they just shut it down."*[19]

While it is clear that the pandemic offers the government both a genuine incentive as well as an excuse to ramp up its surveillance capabilities, it is hindered by the sheer size of the country which limits its digital monitoring methods to an eclectic collection of disjointed initiatives by city and provincial governments alongside the technology firms Alibaba and Tencent.[20] It is not clear if and when the coordination of all of these surveillance systems could be coordinated into one overarching system of control.

As China's harsh and unprecedented measures indeed succeeded in taming the pandemic with few reported casualties, the country began to attempt to export its lessons through the International Department of the Communist Party, whose role is to gain support for China

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[14] Khalil, "Digital Authoritarianism, China and COVID," p. 5.
[15] Khalil, "Digital Authoritarianism, China and COVID," p. 16.
[16] See Maya Wang, "China: Fighting COVID-19 With Automated Tyranny," *The Diplomat*, April 1, 2020, https://thediplomat.com/2020/03/china-fighting-Covid-19-with-automated-tyranny/.
[17] Khalil, "Digital Authoritarianism, China and COVID," pp. 17–18. See also Wang, "China," also https://thediplomat.com/2020/03/china-fighting-Covid-19-with-automated-tyranny/.
[18] Khalil, "Digital Authoritarianism, China and COVID," p. 18.
[19] See *BBC News, "*Hong Kong pro-democracy tycoon Jimmy Lai detained for fraud," December 3, 2020, https://www.bbc.com/news/world-asia-china-55168823.
[20] *The Economist, "*Code Red," February 29, 2020, pp. 46–47.

among foreign political parties. The Department, which offers China's authoritarian development model as a "new option" of economic development without democracy for other countries purportedly has contact with more than 600 political organizations in over 160 countries.[21] Thus, China's approach has the potential of becoming a new dystopian model for the world.

2.2 WHY CONTRACT TRACING APPLICATIONS ARE NOT THE SOLUTION

Contact tracing has always been essential to battling pandemics. In the past century, contact tracing was conducted through personal interviews with infected individuals in order to determine who they had come in contact with. However, with Covid-19, characterized by airborne spread and a high percentage of asymptomatic individuals, it has proven to be insufficient to control virus spread. Today, technological tools aid in the contact tracing process, but remain insufficient to control it entirely.

To combat the pandemic, three categories of technological tools are required: 1) documentation (identifying people's locations and disease status, mainly to check quarantine status); 2) modeling (using data, collected mainly from cell phone and internet companies, to map disease spread); and 3) contact tracing (identifying individuals in contact with the infected).[22] Contract tracing, which involves the direct tracking of individuals, is the most problematic of the categories. Contract tracing technology exists in counter-terrorism but has not been routinely applied to civilians in western democracies. On March 16, 2020, Israel announced that the ISA, its internal security service, and the police would be using such technology to access the mobile phones of those infected with Covid-19, creating a precedent.

History teaches us that most voluntary technological platforms fail because they are unable to build up a critical mass of users (i.e., Google+). Contract tracing apps are no exception: to be effective, it is estimated that at least 60% of the population must adopt them on order to stop contagion; otherwise, the apps are highly inaccurate and even dangerous, as they could convey a false sense of security.[23] In most countries where such apps are optional, citizens have not been enthusiastic about downloading them. Thus, for example, only about 17% of Singapore's population and 40% of Iceland's population downloaded their country's contract tracing apps.[24]

Lessons from the business sphere demonstrate that such apps first must prove their value at the local level, to individuals and communities, before they are able to scale up to the regional and national levels. Thus, to be successful, contract tracing apps must launch with similar scale-up strategies to commercial apps. They must first be introduced in small communities such as universities or companies where high adoption rates would make them immediately useful and then scaled up and connected more broadly at the regional and national levels.[25]

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[21] *The Economist, "*How the Party Trains Foreign Politicians," December 12, 2020, pp. 50–51.
[22] *The Economist, "*Creating the Cornopticon," March 28, 2020, p. 17.
[23] See *Harvard Business Review, "*How to Get People to Actually Use Contact-Tracing Apps," July 15, 2020, https://hbr.org/2020/07/how-to-get-people-to-actually-use-contact-tracing-apps.
[24] *The Economist, "*A Global Microscope, Made of Phones," April 18, 2020, p. 59.
[25] *Harvard Business Review, "*How to Get People to Actually Use Contact-Tracing Apps," https://hbr.org/2020/07/how-to-get-people-to-actually-use-contact-tracing-apps.

It goes without saying that affordable, timely testing must also be provided to all those who receive notification that they have been exposed to someone with the virus.

For democratic countries, privacy proves to be one of the main challenges regarding contact tracing apps. The more privacy that is offered (i.e., anonymity of information), the more people are willing the use the app; however, privacy limits effectiveness. While countries like China have mandated the use of apps with no regard for privacy, other countries have not succeeded in getting the required numbers to adopt them without such coercion. The Chinese government has taken phone tracking to an extreme, monitoring citizens' locations and purchases to gauge their risk and restrict their movement.[26]

MIT Technology Review compiled a Covid Tracing Tracker to monitor COVID-19 tracing and exposure notification apps from around the world. Last updated on December 23, 2020, the database reveals that only 19 of the 49 apps on the list meet the full five-star criteria, in that they are voluntary, have limits on how the data is used, require that data is not retained, minimize data collection, and are transparent in design and use. Notably, most of the countries in the world which have been most successful in combatting the pandemic do not appear on this list.[27]

Given the current state of contact tracing technology, most of the existing apps, including the most invasive, nonvoluntary ones such as those of China or the ISA tracking in Israel, have not proven to be highly reliable or accurate.[28] Moreover, public acceptance of voluntary contract tracing apps has been severely limited due to privacy and freedom concerns. For these reasons, human contract tracing remained crucial throughout the pandemic. Thus, in addition to contact tracing from above, public discipline and cooperation was essential to the success of virus containment efforts across the globe. As stated by National University of Singapore Professor Chee, "We don't have this militant 'We must have freedom' approach that the West has. The technology supports the mission, but it's useless if people don't have that ethos and culture to apply it."[29] Currently, even the most sophisticated contact tracing tools are not enough on their own: public discipline and cooperation remain key elements for an effective pandemic response.

As the pandemic now enters its second year, it is interesting to note which countries have been most successful in controlling the spread of the virus. This section will briefly account for the success of China, the authoritarian example, as well as democratic countries whose

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[26] Kelly Servick, "COVID-19 contact tracing apps are coming to a phone near you: How will we know whether they work?," *Science*, May 21, 2020, https://www.sciencemag.org/news/2020/05/countries-around-world-are-rolling-out-contact-tracing-apps-contain-coronavirus-how.

[27] Bobbie Johnson, "The Covid Tracing Tracker: What's happening in coronavirus apps around the world," *MIT Technology Review*, December 16, 2020, https://www.technologyreview.com/2020/12/16/1014878/Covid-tracing-tracker/.
See https://www.technologyreview.com/2020/12/16/1014878/Covid-tracing-tracker/. The countries whose apps meet the five-star standard include: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Gibraltar, Iceland, Ireland, Italy, Japan, North Macedonia, Norway, Poland, Switzerland and the United Kingdom.

[28] Ashkan Soltani, Ryan Calo, and Carl Bergstrom, "Contact-tracing apps are not a solution to the COVID-19 crisis," *Brookings TechStream*, April 27, 2020, https://www.brookings.edu/techstream/inaccurate-and-insecure-why-contact-tracing-apps-could-be-a-disaster/.

[29] Sui-Lee Wee, "How Singapore Has Kept the Coronavirus Off Campus," *New York Times*, January 9, 2021, https://www.nytimes.com/2021/01/09/world/asia/singapore-coronavirus-universities.html?action=click&module=News&pgtype=Homepage.

systems more closely resemble that of Israel. It is interesting to note that the EU, where privacy is highly safeguarded through the General Data Protection Regulation (GDPR) and the ePrivacy Directive, have not been among the most successful countries in controlling the pandemic. It is clear that the tradeoff between safety and surveillance is not an easy line to draw for any society, especially a democracy.

2.3 CASE STUDIES

China, ground zero for the virus, adopted draconian measures to stop its spread, including extended, extreme lockdowns for millions of its approximately 1.4 billion citizens. According to the Johns Hopkins Coronavirus Resource Center, China has one of the world's lowest death rates at 0.35/100k population.[30] However, it is important to note that China is an authoritarian regime (Global freedom score-10/100-not free-on the 2020 Freedom House Global Freedom Status Index)[31] with highly limited transparency. According to a study by the Chinese Center for Disease Control and Prevention (CDC), actual infection rates in Wuhan could have been almost ten times higher than the officially reported numbers.[32] Similar analysis of cremation rates in Wuhan estimate that Covid deaths were also ten times higher than the reported numbers (around 36,000 rather than 2,524).[33] Moreover, the World Health Organization (WHO) and 14 countries have criticized China's lack of transparency and limited cooperation regarding its report on the origins of the virus.[34] With regard to its app, according to the MIT Technology Review, there is very little information on how China's health code system works although it clearly relies on data mining and location information.[35] Overall, China's pandemic response "remains distinct for its censorship, the intensity of its containment measures, and its reliance on digital tools to manage the process of reopening."[36]

Taiwan, a free society (Global freedom score-94/100-free-and full democracy according to the Global Democracy Index) succeeded in the remarkable feat of recording only 7 deaths in its population of 51.6 million (0.04 death rate/100k population according to the Johns Hopkins Coronavirus Resource Center). Its response was so successful that its Ministry of Foreign Affairs created a website detailing the "Taiwan Model for Combating Covid-19," stating that the "transparency and honesty with which Taiwan has implemented prevention measures is a

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[30] For all of the following death rate statistics, see Johns Hopkins University Coronavirus Resource Center, "Mortality Analyses," https://coronavirus.jhu.edu/data/mortality.
[31] See "Global Freedom Status," https://freedomhouse.org/explore-the-map?type=fiw&year=2021. China is classified as an authoritarian regime by the Economist Intelligence Unit Global Democracy Index 2020. See *The Economist, "*Global Democracy Index 2020," https://www.economist.com/graphic-detail/2021/02/02/global-democracy-has-a-very-bad-year.
[32] Nectar Gan, "True toll of Wuhan infections may be nearly 10 times official number, Chinese researchers say," *CTV News*, December 29, 2020, https://www.ctvnews.ca/health/coronavirus/true-toll-of-wuhan-infections-may-be-nearly-10-times-official-number-chinese-researchers-say-1.5247063.
[33] Mai He et al., "Cremation Based Estimates Suggest Significant Under- and Delayed Reporting of COVID-19 Epidemic Data in Wuhan and China," *SSRN*, 2020, https://doi.org/10.2139/ssrn.3612505
He, Mai & Li, Li & Dehner, Louis & Dunn, Lucia. (2020). Cremation based estimates suggest significant under- and delayed reporting of COVID-19 epidemic data in Wuhan and China. 10.1101/2020.05.28.20116012.
[34] See https://www.cnbc.com/2021/03/30/us-joins-13-other-nations-in-criticizing-whos-china-Covid-report.html.
[35] See Johnson, "The Covid Tracing Tracker," https://www.technologyreview.com/2020/12/16/1014878/Covid-tracing-tracker/.
[36] Hui W. Zheng, "Overcompensation or Necessary Precaution? Tracing China's Response to COVID-19," Munk School of Global Affairs and Public Policy, https://munkschool.utoronto.ca/overcompensation-or-necessary-precaution-tracing-chinas-response-to-Covid-19/.

democratic model of excellence in fighting disease."[37] In addition to establishing its first universal national health insurance system in the 1990s following the SARS epidemic in 2003, Taiwan established its Center for Disease Control (CDC) with jurisdiction over the Central Epidemic Command Center (CECC) with emergency powers that facilitated its rapid response. By rapidly imposing quarantines on travelers from China and swiftly cutting off flights from the mainland, Taiwan was able, through its open communication and high public trust, to contain the virus without ever imposing a national lockdown and maintaining economic growth during the period.[38] Perhaps the most distinguishing feature of Taiwan's response was its participatory nature, as the government created a forum called vTaiwan that enabled citizens to post feedback and suggestions regarding the government's pandemic response.[39] In Taiwan, there is a relationship of mutual trust regarding the handling of sensitive data between the public and the government. This approach contrasts sharply with the top-down approach adopted by China and Singapore.

South Korea, another free country (Global freedom score-83/100-free and full democracy) recorded a death rate of 3.34/100k population. Following its failed MERS epidemic containment strategy, the South Korean government developed an emergency plan for pandemics which included extensive testing, contact tracing, and the reliable dissemination of information. South Korea succeeded in containing the Covid-19 pandemic without resorting to a full lockdown. It is important to point out that the country's contact tracing was highly intrusive and involved integrating data from credit cards, security cameras and mobile phones and posting it online as well as sending it to the cellphones of individuals.[40] Following lawsuits and public protest, the government retreated and anonymized its contact tracing. Citizen trust in the government was also high and the public religiously followed the rules regarding social distancing and mask wearing, similar to Taiwan.

New Zealand (Global freedom score-99/100 and full democracy according to the Global Democracy Index) suffered only 26 casualties among its population of 5 million (0.53/100k population according to the Johns Hopkins Coronavirus Resource Center). A month after the country recorded its first case, in March 2020, the government announced an elimination strategy and imposed a national lockdown.[41] New Zealand's success in this strategy depended on strict border controls and quarantine protocols. In addition, Prime Minister Jacinda Ardern provided empathetic leadership and stressed a unified response from the "team of 5 million" which facilitated public trust and cooperation with the lockdown.[42]

Australia (Global freedom score-97/100-free-and full democracy to the Global Democracy Index) had a death rate of 3.64/100k population, with 909 total casualties from a population of

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[37] Ministry of Foreign Affairs, Republic of China, "The Taiwan Model for Combating COVID-19," https://en.mofa.gov.tw/theme.aspx?n=2294&s=87.
[38] Elizabeth Shaw, "Setting the precedent in unprecedented times: The "Taiwan model" for combatting COVID-19," Munk School of Global Affairs and Public Policy, https://munkschool.utoronto.ca/setting-the-precedent-in-unprecedented-times-the-taiwan-model-for-combatting-Covid-19/.
[39] Andreas Kluth, "If We Must Build a Surveillance State, Let's Do It Properly," *Bloomberg*, April 22, 2020, https://www.bloomberg.com/opinion/articles/2020-04-22/taiwan-offers-the-best-model-for-coronavirus-data-tracking.
[40] Emma Rogers, "From MERS to COVID-19: The South Korean Journey," Munk School of Global Affairs and Public Policy, https://munkschool.utoronto.ca/from-mers-to-Covid-19-the-south-korean-journey/.
[41] Sophie Cousins, "New Zealand eliminates COVID-19," *The Lancet* 395, no. 10235 (2020), https://doi.org/10.1016/S0140-6736(20)31097-7.
[42] Michael G. Baker, Nick Wilson, and Andrew Anglemyer, "Successful Elimination of Covid-19 Transmission in New Zealand," *New England Journal of Medicine* 383 (2020), https://doi.org/10.1056/NEJMc2025203.

25 million. Australia's rapid response to Covid-19 began with a closure of its international borders and a quick move to a mandatory hotel quarantine system. This gave the country time to build a testing and tracing system and implement a closure of state borders that enabled to tailor policies by state. However, its continued closure of its international borders with only limited flights entering the country has led to about 40,000 Australian citizens being stranded overseas in what has been termed a major human rights violation.[43] Australia also swiftly implemented a lockdown and communicated changes in the ongoing situation clearly to the public. It must be kept in mind that Australia, like New Zealand, is geographically isolated and does not share land borders with any other countries, a fact which facilitates containment of the virus.

Israel, another free society (Global freedom score-76/100-free and flawed democracy)in contrast, displayed poor mortality numbers alongside draconian measures which severely challenged democratic norms, with a death rate of 69.62/100k population. Israel's voluntary HaMagen app received a 4-star (out of 5) rating from the MIT Technology Review. It was not considered effective because it relied on GPS and voluntary information.[44] Interestingly, Israel fared poorly in facing the pandemic despite adopting the draconian measure of involuntary ISA tracing of the entire population, a policy previously restricted to the realm of counter-terrorism.

2.4 THE FAILURE OF HAMAGEN

The ISA program, which is the main focus of this research, was not the only attempt made at digital contact tracing in Israel. On March 22nd, a week after the ISA tracking began, the Ministry of Health (MoH) launched the HaMagen[45] application on both iOS and Android. Unlike the ISA program, HaMagen was designed with a privacy-first approach in mind, requiring users to download and opt-in to the contact tracing program rather than relying on mass surveillance. HaMagen was developed through a public-private partnership, and information about how and what data is collected and operationalized is readily available on the MoH website in multiple languages.[46] HaMagen operates primarily using Bluetooth proximity data, which is stored on the user's device rather than a centralized cloud service, in order to preserve anonymity and protection of personal information.[47] In addition, location data services and internet connectivity are required in order to cross reference a user's information with that of confirmed patients identified through the MoH's epidemiological investigations from the previous two weeks. Should the system detect that a user crossed paths with a known patient, the user is then required to verify their own location history in order to confirm the exposure and be sent quarantine instructions.[48]

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[43] See https://www.forbes.com/sites/williamhaseltine/2021/03/24/what-can-we-learn-from-australias-Covid-19-response/?sh=55bf637e3a01.
[44] See Johnson, "The Covid Tracing Tracker," https://www.technologyreview.com/2020/12/16/1014878/Covid-tracing-tracker/.
[45] "HaMagen" is Hebrew for "The Shield."
[46] Ministry of Health, HaMagen official webpage. See Ministry of Health, "HaMagen - The Ministry of Health App for Fighting the Spread of Coronavirus," https://govextra.gov.il/ministry-of-health/hamagen-app/download-en/
[47] Ibid.
[48] Ibid.

HaMagen mirrors many approaches adopted by other states, particularly throughout the EU where the Apple-Google/Bluetooth protocol became popular, and seemingly offers an elegant solution to contact tracing while preserving privacy and ensuring that data is not stored for future use or nefarious purposes. However, as is the case with most opt-in solutions, HaMagen carries with it a collective action problem as a certain percentage of the population must voluntarily participate in order for it to be effective. While there is some debate and variance regarding where that minimum threshold may lie, most studies indicate that in order for decentralized digital contact tracing to make a marked difference, adoption rates need to be in the 60 to 80 percent range.[49]

In an inquiry to the MoH, figures on HaMagen's downloads and deletions for both iOS and Android were requested by the authors of this paper. An official within the organization provided the most recent figures on HaMagen within the framework of the December 3rd MoH report to the Knesset Defense and Foreign Affairs Committee.[50] As of the beginning of December 2020, the application was downloaded 2,652,263 times since it was launched in March. Of the 2.6 million downloads, the application was removed from devices on 1,616,569 occasions, and at the time of the report, the application was operating on 1,035,695 devices around the country. As of October of 2019, the total population of Israel was 9,097,000, with 72.7 percent being over the age of 15[51] - meaning that of the ~6.5 million individuals more likely to own mobile devices capable of supporting the application, about 40 percent had downloaded HaMagen at some point, but only 15.6 percent still had it on their devices.[52] The report also stated that according to the Information Systems Department of the MoH, 9,814 individuals reported that they entered quarantine as a result of exposure notifications on the HaMagen application, of which 139 were still in isolation at the time of the report.[53]

3. The Onset of COVID-19 in Israel

The first confirmed case of the SARS-Cov-2 virus in Israel was reported at Sheba Medical Center on February 21st, 2020,[54] several weeks before the World Health Organization declared the novel coronavirus a global pandemic. On the same day, the Israeli government enacted its first domestic policy dealing with COVID-19 in the form of a mandatory home-

[49] Enrique Hernández-Orallo et al., "Evaluating the Effectiveness of COVID-19 Bluetooth-Based Smartphone Contact Tracing Applications," *Applied Sciences* 10, no. 20 (2020): 7113, https://doi.org/10.3390/app10207113 Hernandéz-Orallo, E., Calafate, T., Cano, J., and Manzoni, P. (2020). Evaluating the effectiveness of COVID-19 Bluetooth-based smartphone contact tracing applications. *Applied Sciences 10*(20), 7113.
[50] Knesset Foreign Affairs and Defense Committee, "Reports Submitted to the Knesset Foreign Affairs and Defense Committee," https://main.knesset.gov.il/Activity/committees/ForeignAffairs/Pages/CommitteeLegislationDocs.aspx.
[51] For Israel Central Bureau of Statistics 2019 Population data, see "Population - Statistical Abstract of Israel 2019-No.70" (Israel Central Bureau of Statistics, 2019), https://www.cbs.gov.il/en/publications/Pages/2019/Population-Statistical-Abstract-of-Israel-2019-No-70.aspx.
[52] Talia Agmon, "December Ministry of Health Report to Knesset Foreign Affairs and Defense Committee" (Ministry of Health, 2020), https://main.knesset.gov.il/Activity/committees/ForeignAffairs/LegislationDocs23/bit10-55.pdf.
[53] Ibid.
[54] *Times of Israel, "*Israel confirms first coronavirus case as cruise ship returnee diagnosed," February 21, 2020, https://www.timesofisrael.com/israel-confirms-first-coronavirus-case-as-cruise-ship-returnee-diagnosed/.

isolation for anyone returning from South Korea or Japan.[55] As more cases tied to those who had visited Israel were reported, the policy of home-isolation (quarantine) expanded rapidly, and by February 28th more than 1,600 Israelis were in quarantine after traveling abroad.[56] On March 9th, Prime Minister Netanyahu declared that all persons entering Israel from abroad would be required to quarantine[57] - at that point there were only 38 confirmed cases of the virus in Israel. Three days later Israel's case count surpassed 100, and eight days after that, on the 20th, it experienced its first COVID related death.[58] In the month that elapsed between its first confirmed case and first fatality, Israel's interim caretaker government, led by reigning Likud party, began enacting dramatic policies aimed at halting the spread of the virus and marshalling resources toward healthcare services and institutions; simultaneously, the PM was navigating tumultuous political negotiations under truly historic circumstances.

The arrival of COVID in Israel transpired against the backdrop of an unprecedented political crisis, which had led the country to conduct its first repeat elections, twice, due to an inability on the part of the Knesset to form a coalition, and thus, a government. The first election had taken place in April of 2019, though they had been originally scheduled for November, and were largely overshadowed by impending corruption charges against PM Netanyahu. Despite the Likud gaining 35 parliamentary seats and the right-wing bloc making up 61 seats, enough for a simple majority and thus a coalition, issues regarding national service for the ultra-orthodox derailed negotiations and a snap election was called for September of the same year.[59] In the snap election, the Blue and White party led by Benjamin "Benny" Gantz overtook the Likud in winning the most seats, but after failing to form a coalition within the time frame given by President Rivlin, and after the failure of anyone else in the parliament to do the same by mid-December, the Knesset again voted to dissolve itself without having formed a government.[60] That day, December 11th, the third round of elections was slated to be held on March 2nd of 2020 - ten days beforehand, on December 1st, a 70-year old man was identified as "patient-zero" of the SARS-CoV-2 virus in Wuhan, China.[61] The American Red Cross has detected the presence of COVID antibodies in blood samples from California and Oregon dating to as early as December 13-16th,[62] and the Italian National Institute of Health detected the presence of the virus in sewage samples from Milan and Turin dating to December 18th.[63] As Israel marched towards a third round of parliamentary elections, COVID-19 had begun its

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[55] Maayan Jaffe-Hoffman, "Second coronavirus case in Israel confirmed, as panic increases," *The Jerusalem Post*, February 23, 2020, https://www.jpost.com/HEALTH-SCIENCE/Netanyahu-International-coronavirus-quarantine-list-may-grow-618492.
[56] Sivan Hilaie, "1,600 Israelis are in 14-day quarantine for coronavirus," *Ynet*, February 26, 2020, https://www.ynetnews.com/article/H1nXPa7E8.
[57] *BBC News, "*Coronavirus: Israel to bring in 14-day quarantine for all arrivals," March 9, 2020, https://www.bbc.com/news/world-middle-east-51809818.
[58] Israel Ministry of Health, "National Information and Knowledge Center for the Fight Against the Coronavirus," https://www.gov.il/he/departments/corona-national-information-and-knowledge-center.
[59] Gil Hoffman and Lahav Harkov, "Israel goes back to elections as Netanyahu fails to form coalition," *Jerusalem Post*, May 30, 2019, https://www.jpost.com/Israel-News/Elections-set-for-Sept-17-after-coalition-talks-fail-591044.
[60] *Times of Israel, "*Knesset dissolves, sets unprecedented third election in under a year," December 12, 2019, https://www.timesofisrael.com/israel-calls-another-election-for-march-the-third-in-a-year/.
[61] Donna Lu, "The hunt to find the coronavirus pandemic's patient zero," *New Scientist* 245, no. 3276 (2020): 9, https://doi.org/10.1016/S0262-4079(20)30660-6.
[62] Sridhar V. Basavaraju et al., "Serologic testing of U.S. blood donations to identify SARS-CoV-2-reactive antibodies: December 2019-January 2020," *Clinical Infectious Diseases: An Official Publication of the Infectious Diseases Society of America*, 2020, https://doi.org/10.1093/cid/ciaa1785.
[63] Findings of the Italian National Institute of Health as reported in *Reuters*, see Kate Kelland, "Italy sewage study suggests COVID-19 was there in December 2019," *Reuters*, June 19, 2020, https://www.reuters.com/article/us-health-coronavirus-italy-sewage/italy-sewage-study-suggests-Covid-19-was-there-in-december-2019-idUSKBN23Q1J9.

march to becoming a full-blown global pandemic, and the confluence of these two events would produce drastic policies, the likes of which had never been seen before.

In the last week of February, political campaigns of the various parties entered into their final push to persuade the Israeli electorate not only to cast a vote for their party, but to cast a vote in general. A poll conducted by the Israel Democracy Institute (IDI) published on February 27th shows a fatigued and disillusioned Israeli public on the eve of the third round of elections; Jewish Israelis were found to be paying far less attention to the pending election compared to previous ones, and at least 30 percent of the public predicted that a government would again not be formed and that the country would head to a fourth election.[64] As a handful of COVID cases began to accumulate, the same poll found that only 30 percent of Jewish Israelis were concerned about contracting the virus whereas among Arab Israelis concern was much higher at 52.5 percent.[65] Likewise, a majority of Israelis at this time said that the MoH was handling COVID well, although this support was plausibly linked identity politics of the Haredi sector and then interim Health Minister Yaakov Litzman of the United Torah Judaism party.[66] At the time the IDI poll was published, there were only three confirmed cases of COVID in Israel, and the interim caretaker government was effectuating policy almost entirely in the realm of international travel in the form of travel bans and mandatory quarantines - much like the rest of the world, there was no discussion yet of mask mandates, public closures, or mass-scale contact tracing.

Despite decreased interest by Jewish Israelis in the lead up to the March 2nd election, participation actually increased from the previous round.[67] At the time there were 12 confirmed cases in Israel, but over 5,000 eligible voters were in mandatory quarantine either due to travel or exposure to other travelers; special voting booths were created as not to disenfranchise said constituents, and exactly 4,073 votes were cast in the coronavirus-special voting facilities.[68] Though the Likud regained the majority share of seats it had lost before, Avigdor Lieberman of the Yisrael Beitenu party, typically considered part of the right-wing bloc, gave his backing for Blue and White Chairman Benny Gantz to form a government.[69] The prospect of Gantz successfully forming a government was thrown into question briefly due to concerns over the Joint Arab List joining the coalition. Nonetheless, President Rivlin asked him to do so with 61 endorsements compared to Netanyahu's 58.[70] With his only path to forming a coalition being a center-left minority government with outside support from the Joint List, and with Rivlin articulating his desire for a unity government with the Likud, Gantz faced two options which

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[64] Israel Democracy Institute, "30% of the Public Predicts a Fourth Election," news release, February 27, 2020, https://en.idi.org.il/articles/30901.
Israel Democracy Institute (February 2020). Data from *February Israeli Voice Index,* Guttman Center for Public Opinion and Policy Research. See https://en.idi.org.il/articles/30901.
[65] Ibid.
[66] Ibid.
[67] Israel Central Elections Committee, "Election Results: March, 2020," https://votes23.bechirot.gov.il/
Israel Central Elections Committee (March 2020). See https://votes23.bechirot.gov.il/.
[68] Marcy Oster, "Israelis in quarantine due to coronavirus exposure vote at special polling locations," *Jewish Telegraphic Agency*, March 2, 2020, https://www.jta.org/2020/03/02/israel/israelis-in-quarantine-due-to-coronavirus-exposure-exercise-their-right-to-vote-at-special-polling-locations.
[69] Aaron Rabinowitz, "Gantz agrees to Lieberman's terms for entering government," *Haaretz*, March 8, 2020, https://www.haaretz.com/israel-news/elections/.premium-gantz-agrees-to-lieberman-s-terms-for-entering-government-1.8638959.
[70] Raoul Wootliff, "Rivlin to task Gantz with forming government after he receives 61 endorsements," *Times of Israel*, March 15, 2020, https://www.timesofisrael.com/with-libermans-nod-gantz-gets-61-backers-to-form-coalition-topping-netanyahu/.

challenged his campaign promises that he would not sit in a coalition either with the Arab parties or Netanyahu.[71]

Both Rivlin and Netanyahu advocated that the past year of failed attempts to form a government and pass a budget combined with the looming COVID crisis made a compelling case for Gantz to reverse course and join his rival, even at the risk of angering his partners in the Yesh Atid party, which merged with Gantz's Resilience party to form Blue and White. On the 16th the new members of Knesset were sworn in, and by the 21st, Gantz and Netanyahu had entered into negotiations about an emergency unity government with a rotation for the position of PM. Coalition negotiations dragged on through the rest of March, the entirety of April, and only on April 30th with Knesset approval of the emergency unity government was the spectre of a fourth election put to rest. The Netanyahu-led government was sworn in on May 17th, but in the 76 tumultuous days which had passed between the election and this formality, the interim government was aggressively attempting to combat the rapid spread of COVID, which had infected over 16,000 and claimed the lives of 275 Israelis.[72]

4. Inception of the ISA Contact Tracing Program

On the same day that calls were made by Netanyahu and Rivlin for a unity government, March 15th, Netanyahu's caretaker government proposed that the Israel Security Agency (ISA) begin tracking the mobile phones of persons diagnosed with COVID-19 in a state-managed contact tracing program. The agency would not be required to obtain a court order to access personal data of infected individuals, such as location history, and it would be used to identify individuals who had come into contact with the infected persons and notify them via text message that they were to enter a 14 day quarantine. In addition, location tracking data from the ISA would be shared with the Israel Police in order to ensure and enforce compliance with quarantine orders. The program was only to be instituted for a 30 day window, pending Knesset approval, after which all data would be deleted. However, it was made clear by Netanyahu and other cabinet ministers that the program would likely persist until such a time as the government deemed it no longer necessary.[73] When news of the highly invasive, somewhat Orwellian policy broke, many Israelis voiced objections to the program as a serious infringement of rights and civil liberties.

Nevertheless, the cabinet approved the measure on March 17th in the middle of the night in what was considered a highly controversial move; both the PM and the Attorney General argued that delayed use of capabilities at the disposal of Israel's security apparatus would

[71] Ibid.
[72] Israel Ministry of Health, "National Information and Knowledge Center for the Fight Against the Coronavirus" Data from the Israel Ministry of Health, *National Information and Knowledge Center for the Fight Against the Coronavirus* https://www.gov.il/he/departments/corona-national-information-and-knowledge-center.
[73] Judah A. Gross, "Knesset committee chair slams cabinet's phone tracking decision as 'power grab'," *Times of Israel*, March 17, 2020, https://www.timesofisrael.com/knesset-committee-chair-slams-cabinets-phone-tracking-decision-as-power-grab/.

unnecessarily endanger lives.[74] Despite guarantees to include members of the Foreign Affairs and Defense Committee in deliberating the policy, Netanyahu and his cabinet opted to approve the program as an emergency amendment and bypass the parliament - committee chairman Gabi Ashkenazi fiercely denounced the move as a unilateral "power-grab".[75] On March 19th, the High Court of Justice (HCJ) heard petitions by civil rights organizations to halt the tracking program while hundreds of protestors descended on the Knesset building to express their opposition to the program as well as other grievances. This included a recent decision by Justice Minister Ohana to reduce the operations of Israel's district courts, including postponing Netanyahu's corruption trial.[76] Several individuals were arrested for violating a public ban on gatherings over 10 people and the police restricted incoming traffic to Jerusalem; almost a year later, the conundrum of managing the right to protest during the pandemic continues to be a public issue in Israel.

The same day that the HCJ heard arguments, only two days after the measure was approved by the cabinet, the MoH had ordered over 400 individuals to quarantine in their homes via text-message based on ISA tracking. While all of this transpired on March 19th, the case count in Israel had risen to over 800, and the next day would surpass 1,000. The ISA announced on March 26th that their program had led to the successful location and diagnosis of 500 cases, seemingly vindicating embroiled PM Netanyahu who had championed the policy. That said, on the same day that the ISA touted this success, Israel had reached 2,988 confirmed cases, meaning that the ISA had identified 18 percent of new COVID cases at best.[77] This was the first indication that there was a marked imbalance in the trade-off between privacy and public safety made by the Israeli government, and would eventually illuminate a major rift between decision makers and those implementing the policy.

Those individuals and civil society organizations who had petitioned the court objecting to the program noted that its implementation with a Knesset deadlocked in coalition negotiations prevented the establishment of necessary oversight mechanisms.[78] Pursuant to instructions from the HCJ, the government created a special Coronavirus Committee in the Knesset on March 24th, which could oversee the program as well as other COVID policies. The committee, composed of both coalition and opposition members, often found itself at odds with Netanyahu's cabinet, leading many to doubt the effectiveness of the government response to the pandemic as cases surpassed 2,000.[79] After hearing arguments and petitions over a period slightly longer than a month, during which time the ISA program was carried out

[74] Davidovich, "The night is dark and full of tracking: 6 things to know for March 17," *Times of Israel*, March 17, 2020, https://www.timesofisrael.com/the-night-is-dark-and-full-of-tracking-6-things-to-know-for-march-17/.
[75] Gross, "Knesset committee chair slams cabinet's phone tracking decision as 'power grab.'"
[76] Netael Bandel, "Netanyahu Trial Postponed as Justice Minister Freezes Courts Over Coronavirus Emergency," *Haaretz*, March 15, 2020, https://www.haaretz.com/israel-news/elections/.premium-netanyahu-trial-postponed-by-two-months-1.8675477.
[77] *Ynet, "*Shin Bet: over 500 Israelis diagnosed with coronavirus thanks to agency's efforts," March 26, 2020, https://www.ynetnews.com/article/SyR8DwqUU.
[78] Decision of the Israel High Court of Justice, Ben Meir v. Prime Minister et al (HCJ/2109/20), The Association for Civil Rights in Israel v. Prime Minister et al (HCJ/2135/20), Adalah – The Legal Center for Arab Minority Rights in Israel v. Prime Minister et al (HCJ/2141/20). Hayut E., Melcer H. & Sohlberg N. (March 19, 2020).
[79] *Times of Israel, "*Knesset passes coronavirus law, weakening its oversight of government decisions," July 23, 2020, https://www.timesofisrael.com/knesset-passes-coronavirus-law-weakening-its-oversight-of-goverment-decisions/.

without interruption by adapting to minimal requirements set by the court, the justices issued their final judgement on April 26th. It held that the invasive program met criteria of exigent circumstances at the time it was enacted by the government, but that greater recourse was needed by way of primary legislation in order to comply with Basic (constitutional) laws if the program was to continue for an extended period.[80] This requirement was eventually met, in large part to circumvent the authority of the Coronavirus Committee, by passing of a sweeping "Coronavirus Law" which granted greater emergency powers to the cabinet, such as approving, overseeing, and prolonging the ISA contact tracing program.[81]

Thus, the controversial data collection and operationalization of the ISA, originally intended to last for only 30 days, was extended over and over again via cabinet decisions, committee approval, and eventually a law which brought it back to cabinet discretion again and continues even at the time this paper is being written. What's more, with a public mask mandate being enacted in mid-April,[82] closures being reversed multiple times, and travel restrictions fluctuating on almost a weekly basis, this research found that the ISA tracking program has in fact been one of the most consistent COVID policies enacted by the Israeli government. This begs the question, why exactly have members of the Israeli leadership remained so committed to this policy? One might imagine that perhaps it is due to the effectiveness of the program in delivering desired results. Or, alternatively, perhaps it was due to a desire to fill the gap left by the collective action problem of the opt-in HaMagen application, or maybe even due to institutional backing from those who implemented the policy in Israel's national security community. While all of these potential answers would make intuitive sense, such explanations are challenged by evidence from the Israeli government itself, suggesting that other forces served as the primary drivers of the ongoing ISA contact tracing program.

5. Securitization and Intragovernmental Discord

The decision by the Israeli government to lean on its national security infrastructure to conduct contact tracing had deep roots, which incidentally had very little if anything to do with epidemiological best-practices and everything to do with political culture. Many scholars have noted the significance of military service, particularly in the context of combat officers, in shaping Israeli decision-making. The military actively exerts influence on the cabinet due to the simple fact that service as a senior officer in the IDF is practically regarded as a prerequisite for political leadership. Given the prolonged state of conflict and threat of looming hostilities, Israeli voters have historically placed a primacy on national security above all other political issues; therefore, the perception has been that leaders who cannot fulfill this fundamental function in time of crisis cannot occupy the most key positions in the

[80] Decision of the Israel High Court of Justice, Ben Meir v. Prime Minister et al (HCJ/2109/20). Hayut E., Melcer H. & Sohlberg N. (April 26, 2020).
[81] *Times of Israel, "*Knesset passes coronavirus law, weakening its oversight of government decisions" See https://www.timesofisrael.com/knesset-passes-coronavirus-law-weakening-its-oversight-of-goverment-decisions/.
[82] *Haaretz, "*Israelis must now wear face masks in public. Here's what you need to know," April 12, 2020, https://www.haaretz.com/israel-news/.premium-face-masks-become-mandatory-for-israelis-on-sunday-here-s-what-you-need-to-know-1.8759337.

government.[83] Moreover, given the military background of these decision makers, they tend to approach policy dilemmas through the same leadership lens that they have been conditioned to.

This pattern has come to be known as 'securitization' of decision making, which can be best understood as viewing nearly all policy issues as problems of a national security nature, requiring a national security-oriented response. Israel stands as the primary case study in the modern world of what happens when this phenomenon is institutionalized, and it played a pivotal role in Israel's handling of the COVID crisis. Several scholars have analyzed the decision making of Israel's government early in the pandemic through this lens and presented extremely compelling evidence to support their claims. For instance, Hoffman (2020) notes that not only members of Netanyahu's cabinet viewed the crisis through a security lens, but also elements outside the government did the same.[84] This established pattern offers a compelling explanation about one of the factors which led to the adoption of the ISA surveillance program, especially when paired with the highly distracting and disappointing political crisis that preceded it. In addition, there is also a case to be made that apathy on the part of the Israeli public toward state security entities may have contributed to its hasty adoption.[85]

However, not all members of the national security establishment supported what Netanyahu advocated in that the government "deploy against it [the virus] measures we've only previously deployed against terrorists."[86] According to those present at the time and corroborated by subsequent news stories, Nadav Argaman, head of the ISA, pushed back against utilizing technological tools for such purposes as early as when the idea was first proposed in March 2020. There are two conceivable reasons for why Argaman was reluctant to use the ISA toolkit in this endeavor. One such reason is that until the government began discussing the idea, it was largely unknown to the general public that the ISA had been quietly collecting the metadata of all Israeli citizens, including geolocation data, since at least 2002. While this data pool could only be analyzed based on judicial approval, the revelation struck many Israelis as unnerving, but also not surprising; Edward Snowden did not specifically discuss Israeli state surveillance programs in his 2013 revelations, but he subtly alluded to them and many inferred from that time onward that given Israel's security situation it would make sense they would use similar procedures as Five Eyes countries.[87] The second likely reason Argaman opposed ISA COVID tracking was that the technology, and the agency as a whole, were not designed for such a task, and therefore the program wouldn't be able to deliver the desired results. This,

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[83] Yoram Peri, *Generals in the Cabinet Room: How the Military Shapes Israeli Policy* (Washington, D.C.: United States Institute of Peace, 2006).
[84] Adam Hoffman, "The Securitization of the Coronavirus Crisis in the Middle East" (Project on Middle East Political Science, 2020), https://pomeps.org/the-securitization-of-the-coronavirus-crisis-in-the-middle-east.
[85] Shaul A. Duke, "Nontargets: Understanding the Apathy Towards the Israeli Security Agency's COVID-19 Surveillance," *Surveillance & Society* 19, no. 1 (2021), https://doi.org/10.24908/ss.v19i1.14271.
[86] Yonah J. Bob and Gil Hoffman, "Shin Bet confirms it is currently using surveillance tools," *The Jerusalem Post*, March 17, 2020, https://www.jpost.com/breaking-news/use-of-digital-means-to-track-coronavirus-patients-approved-621237.
[87] David M. Halbfinger, Isabel Kershner, and Ronen Bergman, "To Track Coronavirus, Israel Moves to Tap Secret Trove of Cellphone Data," *New York Times*, March 16, 2020, https://www.nytimes.com/2020/03/16/world/middleeast/israel-coronavirus-cellphone-tracking.html?auth=login-google.

of course, is before adding concerns over democratic resilience that would emanate from such a program, which may have influenced Argaman's thinking.

Dr. Karine Nahon, perhaps one of the most prominent information scientists in her field and the elected President of the Israel Internet Association, was among the few actors from Israeli civil society privy to the earliest governmental discussions of the ISA tracking program. She and others opposed the program primarily due to civil liberty concerns and was able to participate in several policy debates in the Knesset; during these experiences, she was informed of the concerns raised by the ISA head and how these objections were largely ignored by other decision makers. In an informal interview with Nahon conducted for this study, she emphasized the implications of the fact that the government was tasking one of its most important agencies with a job that A) it did not want to do, and B) did not believe it could successfully deliver the desired outcomes. Moreover, she stated that many of these sentiments were conveyed by Argaman himself to civil society actors opposed to the program, only compounding the arguments against the ISA tracking based on democratic concerns.

As the program was implemented, suspended, and implemented again, Argaman's opposition increasingly became public knowledge. In June, several Israeli news outlets reported that he was encouraging the government to reevaluate its decision to continue with ISA tracking after public complaints about errors in reporting grew more frequent, sometimes culminating in lawsuits. Instead, Argaman endorsed the use of opt-in methods such as the HaMagen application, namely because data was stored locally on devices rather than by the government.[88] In leaked recordings from a high-level cabinet meeting in late June, Argaman implored ministers not to renew the program, which was paused pending the adoption of legislation ordered by the Supreme Court. Prime Minister Netanyahu is heard on this recording, apparently banging his fists on the table, pushing back against Argaman's requests, claiming that the ensuing rate of infection left them with no other choice:

> *"The ships are coming at us, one at a time, and we are refusing to believe it. And they say nothing will happen. Our responsibility is to stop this pandemic. The pandemic is coming back! Back! Now the question is, how much are we willing to do because of this thing [the virus], which is very quickly coming at us."* [89]

Minister of Health Yuli Edelstein is also heard on the recording advocating against Argaman's wishes:

> *"We are experiencing critical days, the tracking legislation is very important," said Edelstein, adding that "it is preferable that the information remain in the hands of the Shin Bet rather than a private company, who only the devil knows what its interests are."* [90]

As this was taking place in June, Israel's State Comptroller announced that his office would be probing the ISA tracking program, notwithstanding the fact that no one knew at the time it

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[88] *Times of Israel, "*Shin Bet urges reappraisal of its own controversial cellphone tracking program," July 8, 2020, https://www.timesofisrael.com/shin-bet-calls-for-reappraisal-of-controversial-cellphone-tracking-program/.
[89] *Times of Israel, "*Shin Bet chief implores ministers not to renew coronavirus surveillance," June 21, 2020, https://www.timesofisrael.com/shin-bet-chief-implores-ministers-not-to-renew-coronavirus-surveillance/.
[90] *Times of Israel, "*Shin Bet chief implores ministers not to renew coronavirus surveillance"
See https://www.timesofisrael.com/shin-bet-chief-implores-ministers-not-to-renew-coronavirus-surveillance/.

would persist for many more months to come.[91] By October, the program had been extended yet again by government ministers.[92] About halfway through the month, State Comptroller Matanyahu Englman published a report stating that the ISA tracking program was ineffective and infringing on the rights of Israeli citizens while only identifying 3.5 percent of verified patients:

> *"The outputs of its activity reflect the potential of many individuals entering isolation, among them many who did not come in close contact with an infected individual...The Health Ministry and the Intelligence Ministry, with the assistance of the National Security Council, should act to effectively implement alternative digital means in lieu of the [Shin Bet] tracking system."* [93]

Dr. Tehilla Shwartz Altshuler of IDI, responding to the Comptroller's October report, added that:

> *"The state comptroller's report shows that many of the half-million Israelis who were told to self-quarantine received the order erroneously...The social consequences, as well as loss of work days and income, are not appreciated by authorities."* [94]

What's more, the interim report also found that the ISA failed to adhere to the legal parameters of the program, for instance, failing to delete information in accordance with protocol. Overall, it seems that Argaman's concerns were vindicated, although not enough to bring the program to an end. The continuation of the program, despite its shortcomings, can therefore be attributed at least in part to the securitization of decision-making throughout the duration of the COVID crisis in Israel, as well as a disregard for the professional input of those tasked with carrying it out.

6. Evidence from Public Opinion Polling

6.1 PREVIOUS STUDIES

Many findings from opinion polls conducted by other researchers and institutes since the onset of COVID in Israel are corroborated by the online survey conducted in this research, although it is first necessary to understand what these findings are before introducing our own analysis. The polls referenced outside the one conducted in the framework of this research emanate from IDI, the Institute for National Security Studies (INSS) at Tel Aviv University, and the Program on Democratic Resilience and Development (PDRD) at the Interdisciplinary Center Herzliya. Questions about confidence in state institutions are endemic of most public opinion polls in Israel, and data from this study and others suggests an alarming downward trend

[91] Judah A. Gross, "Ombudsman says he'll probe controversial Shin Bet tracking of virus patients," *Times of Israel*, June 15, 2020, https://www.timesofisrael.com/ombudsman-says-hell-probe-controversial-shin-bet-tracking-of-virus-patients/.
[92] *Ynet*, October 1, 2020, https://www.ynet.co.il/news/article/HJ8AntfLv.
[93] Nathan Jeffay, "State comptroller cites 'significant shortcomings' in Israel's pandemic response," *Times of Israel*, October 26, 2020, https://www.timesofisrael.com/state-comptroller-cites-significant-shortcomings-in-israels-pandemic-response/.
[94] Ibid.

across several dimensions. An IDI poll conducted toward the end of March, 2020, meaning before the formation of a unity government and relatively early in the response to the pandemic, found that for the most part Israelis had higher levels of confidence in Netanyahu and public health professionals in the government.[95] Another IDI poll from late April shows that Israelis believed that information they were receiving from the PM's public briefings was fairly credible, though information gleaned from the MoH was significantly more so.[96] Generally speaking, concern for economic wellbeing was much higher than concerns over health and safety, likely due to the fact that Israel was one of the first countries to pursue aggressive strategies such as full-scale lockdowns in the fight against COVID.

However, as time went on and IDI continued to poll Israelis on trust in individuals and government professionals, a downward trend began to emerge as early as April across the board. Trust in Netanyahu and government medical experts went from 63 and 56 percent respectively in late March, to 40.5 and 27 percent by mid-July. The same survey found that when asked what word best describes their feelings on the government's functioning during COVID-19, 45.5 percent of respondents answered "disappointment," 22.5 percent answered "anger," and 7 percent answered "alienation" - meaning that three quarters of Israelis had negative opinions of the government's response in July.[97] An August poll by the INSS offered an even more detailed glimpse into the growing crisis of trust resulting from the government response to COVID. They found that 74 percent of Israelis did not trust the Knesset and 70 percent did not trust the government of Israel. Moreover, when asked about culpability for the ongoing difficulties of the crisis, 60 percent held that the PM was to blame and 70 percent blamed politicians.

Until now, it would seem plausible that such dissatisfaction stemmed entirely from dissatisfaction with COVID policy and not necessarily a fear of democratic erosion. However, the same INSS poll asked participants about their anxieties for the future of Israel; though the economy and health were the primary issues which made Israelis anxious, 68 percent of respondents also listed "democracy" in their answers.[98] Another IDI poll from August reveals important trends about optimism in the future of democratic governance over time. Where in April of 2019, the first round of parliamentary elections, 54 percent of Israelis were optimistic, such feelings plummeted to the mid-30s in concert with failed coalition negotiations in the second and third round of elections. What's more, despite a mild uptick in April with the formation of a unity government, by August 20th optimism about democratic governance was only at 39 percent. Similarly, 68 percent of respondents thought that there were high odds that the country would go to yet another round of elections and 66.5 percent said the "national mood" was "pessimistic".[99]

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[95] Israel Democracy Institute, "Coronavirus Special Survey," news release, March 31, 2020, https://en.idi.org.il/articles/31175.
[96] Israel Democracy Institute, "Most Israelis Trust Government Health Officials on Corona," news release, April 28, 2020, https://en.idi.org.il/articles/31440.
[97] Tamar Hermann and Or Anabi, "Israel in Times of Corona" (Israel Democracy Institute, 2020), https://en.idi.org.il/articles/32010.
[98] Zipi Israeli and Mora Deitch, "The Israeli Public and the Effects of the Coronavirus: Findings from a Public Opinion Poll in the Second Wave of the Crisis" (INSS, 2020), https://www.inss.org.il/publication/coronavirus-inss-survey/.
[99] Tamar Hermann and Or Anabi, "Israelis Pessimistic on the Country's Outlook but Hopeful on Peace with UAE" (Israel Democracy Institute, 2020), https://en.idi.org.il/articles/32420.

A September survey conducted by Dr. Amnon Cavari from the PDRD asked nearly 1,000 Israelis a multitude of questions on public policy and opinion; they found that 85.32 percent of respondents were not satisfied with the government response to the pandemic. When the same survey asked participants "who in your opinion should lead the response to the pandemic," an interesting and important distinction was made for the first time using empirical data. Although 27.36 percent of respondents said that the responsibility should fall on the Ministry of Defense, only 8.2 percent answered in favor of the PM, 37.27 answered the MoH, and 19.64 percent said that a special government body created specifically to deal with COVID should lead the charge.[100] It also found that when asked about individual rights, 62.57 percent of Israelis were dissatisfied and only 30.22 percent were satisfied, and 61.33 felt that the government should do more in this domain. Perhaps the most important finding in relation to this study, participants in the survey were asked "there are those who argue that the Shin Bet tracking infringes too much on privacy rights - to what extent do you agree or disagree with this claim?" Exactly 42.32 percent of respondents answered in the affirmative, 48.71 in the negative, and 8.96 said they did not know.

In mid-October as Israeli leaders mulled a second national lockdown on the eve of the Jewish high holidays, similar to the one enacted during the Passover holiday earlier in the year, IDI conducted a 13th poll as part of its ongoing series. In addition to finding that trust in the PM's COVID leadership was down to 31 percent, it found that 55.5 percent of respondents thought that political considerations were behind the government's decision to lock down.[101] All of this transpired in the wake of massive protests against the government and PM Netanyahu by a loose coalition of those opposed to him on legal grounds, those opposed to him politically, and those dissatisfied with the response to the pandemic. These protests made international headlines, and some began to speculate that Netanyahu's emphatic insistence on continuing the Shin Bet tracking program was somehow tied to monitoring his opposition and protestors.[102] While such theories remain disputed, they persist among many to this day.

6.2 SURVEY FINDINGS

A small internet-based survey was undertaken in this study to try and confirm the previous described trends and assess whether there was any connection between these concerning public sentiments and the topic of this research. The survey questions asked participants to share both their beliefs and behaviors with regard to data security, privacy, and policy in Israel. It was conducted throughout the month of October and asked a total of 30 non-demographic questions. This informal survey was circulated in a targeted manner, such as being made available via a handful of large Facebook groups. Therefore, it is recommended that this data be interpreted in the context of a preliminary inquiry on the subject that is supported by studies from the aforementioned institutes, each employing different methodologies and sample sizes, rather than a standalone set of findings. A total of 309 individuals participated in the online questionnaire, most of whom reside in the central coastal plain of Israel (68.1 percent), which

[100] The study by Dr. Amnon Cavari and Professor Alex Mintz that is part of the PDRD is ongoing and therefore not yet published at the time that this is written.
[101] Tamar Hermann and Or Anabi, "Majority Think 2nd Lockdown was Politically Motivated" (Israel Democracy Institute, 2020), https://en.idi.org.il/articles/32694.
[102] *Times of Israel, "*Shin Bet hacked into phones of anti-Netanyahu protesters — TV," January 9, 2021, https://www.timesofisrael.com/shin-bet-hacked-into-phones-of-anti-netanyahu-protesters-tv/.

constitutes the greatest concentration of Israel's Jewish residents. The most represented age group was 21-35 year-olds making up 43.9 percent of respondents, followed by 51-65 year-olds at 24.5 percent; 36-50 year-olds made up 11.9 percent, 65 and older constituted 11.6 percent, and finally 16-20 year-olds constituted 8.06 percent of those who participated. The ratio of women to men who answered the questionnaire was almost 2:1; this is dramatic, but not surprising considering that methodological studies have shown women respond in higher rates than men in both paper and online surveys.

The respondents also were also highly educated; 43.2 percent held undergraduate degrees, 38.4 percent held advanced degrees, and 18.1 percent had matriculated from high school. In terms of sectors in Israeli society, the two demographics most lacking were members of the Arab and the Haredi sectors, although both of these groups were difficult to penetrate in this research due to linguistic, technological, and cultural cleavages. This sample may not represent a perfect cross-section of Israeli society; however, it does capture some key demographics with high rates of political participation. A 2013 study by IDI found that Arabs and those with lower levels of education were among the main demographics which did not vote, as were 18-22 year-olds. With political beliefs one of the most important demographic identifiers in any study, the views of the respondents were somewhat equal in their representation, tilting toward the political right. When asked at the end of the questionnaire, 36.7 percent identified as some form of right-leaning, 32.6 percent as center, and 30.6 percent as some form of left-leaning; less than 1 percent identified as either far-left or far-right.

When asked about confidence in political institutions, participants in this survey echoed many of the sentiments expressed in previous opinion polls. Only 12.3 percent of respondents said that they had confidence in the current government, and even among right-wing individuals who voted in the March 2020 election, those with the highest levels of confidence, that figure only rose to 24 percent. Confidence in the political system as a whole was also found to be lacking at only 24.3 percent overall, where the highest levels of confidence were observed among 16-20 year-olds (40 percent), and was at its lowest level among 21-35 year-olds (18.4 percent). Over 85 percent of respondents disagreed with the statement "I think my country is better-off compared to others because of the steps taken my government has taken to combat the COVID-19 pandemic." Similarly, more than 86 percent of respondents thought that the government was not "handling COVID-19 better than other issues it's facing." In yet another indicator of deteriorating trust, only 34.8 percent of respondents said they felt accurately informed about what steps the government was taking to control the pandemic.

Something that distinguished this survey from previous opinion polls was that it asked questions relating to trust and privacy in the digital sphere, and also made important distinctions between peoples' trust in the private sector versus government entities. On the latter issue, it asked two similar but slightly different sets of questions. First, respondents were asked to indicate if they agree or disagree with the following statement: "I am comfortable with private companies/government bodies using my personal data to combat the spread of COVID-19." Not surprisingly, participants were more comfortable with government entities (65 percent agree) than private companies (50.3 percent agree) collecting personal data for these purposes. The second series of agree/disagree questions asked respondents to give their views on the statement "I trust government bodies/private companies to use my data responsibly and be transparent about how they use it & who they share it with." In this case, respondents expressed high levels of distrust toward both the government (58.4 percent

disagree) and the private sector (76.4 percent disagree). This indicates that when not given a choice in the matter, Israelis are more willing to accept that this task will fall on the government's shoulders and when it comes to trust, a majority do not trust either the government, or even more so, the private sector to operate transparently and honestly.

The principle of the right to privacy was a central theme in the questionnaire circulated throughout October 2020. More than 95 percent of respondents agreed that privacy is a fundamental right in democracies, and a little over half (53.9 percent) believed that it should be protected at all costs. On the other hand, 88.7 percent agreed with the statement "I believe privacy can be infringed upon for certain reasons (including public health emergencies)," showing that Israelis generally understand and accept the existence of trade-offs in the fight against COVID. That being said, only a slim majority of participants (54.2 percent) believed that when the government violates their privacy, it "must have a good reason for doing so." Arguably, the most common rebuttal privacy advocates encounter around the globe is the argument "if you have nothing to hide, you have nothing to fear." But 62.9 percent of respondents disagreed with this assertion, 17.4 percent of whom disagreed strongly. Left-leaning participants in particular disagreed with this argument at a significant 72.7 percent, but even among right-leaning individuals, 58.8 percent held the same position that this statement did not reflect their beliefs.

Perhaps the most surprising responses were in relation to questions that asked participants about their own behavior and the personal impact of the ISA tracing program on their lives. Over 45 percent of respondents said that they or someone they knew had been ordered into quarantine based on incorrect information, which was a well-documented side effect of the ISA program. As early as June 2020, some Israelis were preparing lawsuits against the ISA after receiving the same directive; one plaintiff, a non-pregnant woman, was told she was exposed to an infected person in a hospital delivery room, and another did not even live in the country anymore. "It cannot be that in the State of Israel people will find themselves as prisoners, state prisoners, in isolation at home over Shin Bet tracking mistakes," Marianna Kandov, who initiated the suit, told N12 news channel. Another surprising finding of this survey was that exactly one-third of respondents said that they or someone they knew had actively taken steps to avoid technological detection, such as leaving their phone at home while going out. Although it cannot be said due to the nature of this survey that this means a third of all Israelis did the same, it still indicates that a very large portion of the population was not only experiencing COVID fatigue, but that they were actively willing to defy state authorities, even at the expense of public safety.

Although a non-representative sample, the direction of the trends shown in these results correspond with those of previous polls. Israeli citizens, conditioned to accept policies that infringe on their rights in exchange for security, viewed this use of national security tools differently. This may have been due to the non-security nature of the threat, or perhaps the length of time these measures were in place, or more likely, different reasons at different stages of the pandemic. The defiance of many Israelis in the face of the ISA program and subsequent quarantine directives shows a reflex toward personal liberty which stands out in Israeli history compared to the application of other emergency measures, even if among a minority of respondents. That being said, when asked if they worry about their data being abused for political purposes, 72.6 percent of respondents answered in the affirmative. Among those of a left-wing political orientation the rate was 83.1 percent, but even among those of

the right, over 65 percent, a solid majority. If any of these findings are correlative to those of more representative sample surveys, the implications of this on Israeli democratic culture are profound and far-reaching.

7. CONCLUSION

7.1 IMPLICATIONS FOR ISRAEL

The ISA contact tracing program continued relatively unabated through the end of 2020 and into the early part of 2021, while simultaneously public criticism and concern over the program increased incrementally. Details about oversight, data storage, and accessibility remained and remain murky, even after the program has been operating for such a long period of time. In January 2021, Maya Fried of the Association for Civil Rights in Israel, one of the bodies responsible for repeatedly challenging the program in court, said the following to the public:

> *"The idea of a government watching its own citizens this closely should ring the alarm...This is against the foundations of democracy. You can't just give up on democracy during a crisis."* [103]

Despite the mounting evidence to the contrary, particularly that presented by the State Comptroller, Deputy Health Minister Yoav Kisch insisted that, "We believe that the cost is certainly reasonable...We haven't seen this tool be used exploitatively. This tool saves lives."[104] At the time these remarks were made in the twilight of 2020, the Ministry of Health stated that since July, 950 thousand people had been sent into quarantine based on data from the ISA program - 46 thousand of these individuals were found to be infected. Compared to numbers from traditional contact tracing, where in the same time frame 900 thousand people were sent into home isolation and 63 thousand of whom tested positive for the virus, there is little to suggest this surveillance tool made a marked difference in Israel's fight against COVID.[105] That being said, the traditional methods used by the Ministry of Health were handed over to the Israeli military at the beginning of August; this means that yet again, Israel leaned on its security infrastructure to address a problem with which they had no experience.

On March 1, 2021, the HCJ ordered that the ISA tracking program that gathered data on Israeli citizens be shut down. The ruling emphasized that what was originally meant to be an extreme, but temporary measure has now persisted for nearly a year, and the potential damage to democracy of it becoming permanent far outweighed the minimal value it has delivered. Justice Isaac Amit accurately observed in the ruling, "The State of Israel is the only western democracy that enlisted its clandestine spy agency in the war against the coronavirus pandemic." Justice Amit also wrote directly into the ruling references to George Orwell's "1984," as well as the horror film "I Know What You Did Last Summer"; "What did you do last summer? You don't remember? Do not worry, I, Big Brother, know what you did last

[103] *Times of Israel, "*Questionable virus surveillance tool puts Israel's democracy to the test," January 1, 2021, https://www.timesofisrael.com/questionable-virus-surveillance-tool-puts-israels-democracy-to-the-test/.
[104] Ibid.
[105] Ibid.

summer...No, this is not a horror film but rather the reality of our lives this past year." The Court instructed that the ISA was to remove itself from this role by March 15th.

This circles back to the original questions this research sought to address: what led to Israel's adoption of this policy, how did it contend with trade-offs between privacy and public safety, and what has been the overall effect on Israeli democracy? First, we explore the timeline of events in relation to Israel internally and to the virus globally offers some insights about how Israel's approach compares to that of other states. This is followed by analyses of the extraordinary political circumstances, culture, and decision making which facilitated adoption of Israel's 'Big Brother' approach. Finally, Israeli public opinion data is used to illustrate a growing crisis of trust in democratic institutions with seemingly direct links to the ISA tracking program. Through this process, we came to understand that Israel's unique approach to contact tracing was the culmination of three forces. First, a political crisis which was unprecedented in Israeli history, combined with implicit trust or apathy toward the security establishment, left many Israelis disappointed and disengaged from the policy deliberation during the earliest days of the pandemic in Israel. Second, an ethos of security among Israeli political elites created an environment in which securitization group-think set in rapidly, overlooking the nuances of a public health emergency and epidemiological best practices in favor of what they were already most familiar with. Third and finally, a top-down decision making process precluded and ignored input from those responsible for the program's implementation, despite valid concerns about feasibility, likelihood of success and drawing unnecessary attention to tools of Israeli national security.

Our findings suggest that not only was the ISA tracking program largely ineffective, but it contributed to a growing crisis of trust in political institutions and actors among the Israeli public. A mounting lack of trust by citizens in their government was seemingly met by policies rooted in a lack of trust by government in its citizens – the long term implications of this on democratic life are likely profound, and as our survey found, are of great concern to the Israeli public across political lines. Moreover, the comparative perspective suggests that contact tracing alone has not proven to be an effective tool in mitigating the spread of COVID-19 in democratic societies. In non-democratic societies, the effects of contact tracing seem to only be meaningful when paired with other policies that challenge the most basic notions of civil liberties, ergo there is little room for learning from actors like China. In other words, Israel elected to pursue the most invasive version of an ineffective practice, and what's more, the ISA program, aside from very short respites, was the most consistent government policy since the onset of the pandemic. Not only are Israelis deeply concerned about the scope and impact of this policy, but our survey suggests many of them are willing to circumvent the government's efforts in protest.

7.2 BROADER IMPLICATIONS OF COVID SURVEILLANCE ON DEMOCRACY

The expanding use of surveillance technologies during the pandemic has implications for the robustness of democracies worldwide.[106] It is clear that intrusive surveillance has spread in the world during the pandemic as it facilitates controlling the spread of the disease. While governments in well-established democracies are unlikely to abuse this power, the pandemic has provided an unprecedented opportunity for opportunistic leaders to increase their powers around the world, particularly in democracies with weak roots.[107] The danger lies in what happens when the pandemic ends. The temptation will be to continue to use surveillance, especially if China's continually expanding, effective (and draconian) response is seen as the model. Such a scenario is far from unrealistic as the Chinese government has been investing significant resources in exporting its cyber surveillance approaches to countering COVID-19.[108]

The free world must be vigilant about the crackdowns on basic liberties and increased surveillance which were justified by the emergency circumstances of the pandemic but are not acceptable in the post-COVID world.[109] Faith in the government is the bedrock of democracy, and one of its foundations is transparency, including regarding the use of citizens' personal data.[110] As the crisis subsides, citizens, legislatures and courts in democratic nations must fight for appropriate safeguards regarding cyber surveillance and data collection and dissemination.[111] According to Freedom House, a Washington, DC based think tank, the quality of democracy and the protection of fundamental human rights have declined since the onset of the pandemic and will have far-reaching implications. In the words of Freedom House Vice President of Research and Analysis Sarah Repucci, "The new COVID-era laws and practices will be hard to reverse."[112]

The danger is not that western democracies will turn into versions of China. China does not have democratic aspirations and its culture does not highly value privacy. According to NYU Professor Shoshana Zuboff, the author of *The Age of Surveillance Capitalism*, China's main goal has always been political control while, in the west, private corporations and the quest for revenues is currently predominant.[113] What is worrisome is that, while China has capitalized on digital technologies to advance its authoritarian rule, liberal democracies have failed to develop a vision of how to ensure the perpetuation of democracy in an increasingly digital world. Western democracies are at a crossroads. According to Zuboff, democracy and surveillance society are mutually exclusive options:

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[106] Khalil, "Digital Authoritarianism, China and COVID," p. 28.
[107] *The Economist, "*A Pandemic of Powergrabs," April 25, 2020, p. 7.
[108] *The Economist, "*Break Time," June 6, 2020, p. 44.
[109] *The Economist, "*Everything's Under Control," March 28, 2020, p. 18.
[110] *The Economist, "*Creating the Cornopticon," p. 18.
[111] Khalil, "Digital Authoritarianism, China and COVID" p. 29.
[112] Freedom House, "Democracy under Lockdown - The Impact of COVID-19 on Global Freedom," news release, October 2, 2020, https://freedomhouse.org/article/new-report-democracy-under-lockdown-impact-covid-19-global-freedom.
[113] Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the Frontier of Power* (London: Profile Books, 2019), p. 394.

> *"We may have democracy, or we may have surveillance society, but we cannot have both. A democratic surveillance society is an existential and political impossibility. Make no mistake: This is the fight for the soul of our information civilization."* [114]

The various responses to the pandemic, led by the creeping spread of China's authoritarian surveillance approach reinforce Zuboff's warning that building a democratic information civilization is an urgent priority.[115]

On March 29, 2021, following nearly a year of debate and two Supreme Court Rulings, Israel's Knesset Defense and Foreign Affairs Committee declined to renew the non-voluntary contact tracing by the ISA. According to the President of the Israel Internet Association and Interdisciplinary Center (IDC) Herzliya Professor Karine Nahon, Israel's policy set a dangerous precedent of applying weapons designed for the war against terror against the country's citizens. Israel was alone among democratic nations in choosing this path and it eroded the public support necessary to fight the pandemic effectively. She predicted aftershocks from the decision, which she feared would be used to justify other extreme measures such as electronic bracelets to monitor citizens in quarantine.[116] Now is the time for Israel's citizens, legislature and courts to take action to ensure that the dystopian future suggested by China's surveillance regime does not become tomorrow's reality.

[114] Shoshana Zuboff, "The Coup We Are Not Talking About," *New York Times*, January 29, 2021, https://www.nytimes.com/2021/01/29/opinion/sunday/facebook-surveillance-society-technology.html?referringSource=articleShare.
[115] Ibid.
[116] *Calcalist*, March 29, 2021, https://www.calcalist.co.il/local/articles/0,7340,L-3902075,00.html.

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