



Proposed Constitution for the State of Israel

An Overview



Why?

And Why Now?



Intense Need

- In a world without a Constitution, *everything* is fair game
- This has led to numerous issues within Israeli politics and different political groups maneuver to assemble power without any clear set of rules limiting what they can do.
 - *These political groups include both the Supreme Court and parties in the Knesset*

Intense Challenge

- Traditional Constitutions do not work in the Israeli environment.
- There are three fundamental challenges:
 - Israel was created to protect the Jewish people and yet it wants to be an open democracy. Trying to balance these forces had led to maneuvering to ensure a Jewish majority and a de facto system that gives tremendous power to that majority to protect itself. A Constitution would limit this and is thus difficult to accept.
 - The primary dividing lines are *not* geographic. So traditional Constitutions that build on balancing geographically based divides (from Athen's city, plains, mountains to the U.S. North vs. South) don't apply. Thus, a useful balancing of powers is hard to imagine.
 - The primary dividing lines *are* sectarian. However, societies with these divides (such as Lebanon) have never had well-functioning Constitutional systems.

Acute Crisis

- With the changing of the democratic majority from secular, European, Jews to more religious, Middle-Eastern Jews, a fundamental cultural power struggle has emerged.
- The secular, European, Jews want to preserve their values, but in a system built on the majority having overwhelming power, they face fundamental challenges.
- If this isn't solved, the continuing emergence of a religious democratic majority will necessarily conflict with the secular and liberal minority seeking to preserve its power.
- The current system can't contain these two forces in their emerging realities.

Acute Opportunity

- The very flux we're experiencing creates an opportunity for a broad solution.
- Some polling has indicated that up to 80% of the population opposes the Judicial Reforms *and* 80% have never attended a protest.
 - There is massive political opportunity and demand for something new.
 - The greater disruption of the protest movement is not attracting new converts – it is just driving more people into a political no-man's land. This is why Benny Gantz' party, which takes a centrist position, has seen the greatest gains.

Acute Opportunity

- A Constitutional proposal would give form to the ‘centrist’ position. Rather than just weakly emphasizing compromise it could strongly emphasize a positive path forward.
- Those who headline a proposal that doesn’t take sides in the current debates could be massive political winners while fundamental serving the State and the People.
- Periods of great challenge are periods of great opportunity – and we are facing one today.

The Constitutional Solution

- This Constitution aims to integrate the great challenges to an Israeli Constitution by:
 - Recognizing Reality
 - Protecting minorities
 - Protecting the global Jewish population
- It this in a way that doesn't take sides on the great disputes of our day.
- The unique concept that enables that to occur is:

Streams (זרמים)

How?

Streams & the Constitutional
Assembly



What is a Stream (זרם)?

- The fundamental innovation in this proposed Constitution is the idea of Streams (זרמים)
 - A Stream is like a geographic state, province or prefecture – but *it is not geographic*.
 - Like States, Streams have:
 - Their own Constitutions
 - Their own budgets for welfare and education
 - And their own civil law systems (which only affect cases that have no impacted parties outside the Stream)
 - Unlike States, Streams do not have:
 - Their own tax revenue
 - Their own criminal law systems
 - Their own territory
 - A member of a Stream can live anywhere
 - People *can change Streams*
- Streams are the truly unique concept in this Constitution.

How is a Stream formed?

- A Stream must produce a Constitution that delineates how it will govern its own affairs.
- Every 10 years (or with certain life events) people select what Stream they belong to by order of preference.
- A Stream must have more than 100,000 members. If it has less, those who chose it are shifted to their next preference.
- Expected streams might include Haredi, Mizrachi, Muslim, Christian, Druze, Chofshi (Liberal) and Dati.

Powers of a Stream

- If a new stream is created, it has two years before it comes into force at which point it becomes responsible for education, welfare and civil law for its members.
- A Stream also has representatives in the Constitutional Assembly.
 - Every Stream starts with 2 members in the Assembly, with 1 more added for each 500,000 members. This gives *smaller* Streams more representation. It protects minorities.
 - There is a counter to a proliferation of small Streams. If you want to be under a civil law system of a particular sort (say Haredi or Sharia) then that system only applies if all parties are in the same stream. If there is a Chassidic *and* Litvakish stream then all disputes between members of those Streams would fall into the national courts.

Powers of the Constitutional Assembly

- The Constitutional Assembly can:
 - Approve judges (51% for lower-court judges, 66% for Supreme Court)
 - Change the Constitution (75% approval)
 - Dismiss members of Knesset (75%)
 - Select the President (51%)
 - Override the Supreme Court (66%)
- Because the Assembly overrepresents minorities, minorities are protected in this forum. This gives greater power to future minorities – so the Jewish people can protect their Constitution *even if they are a minority*.

Special Voting Considerations

- The Constitutional Assembly has a weighted voting system that gives *somewhat* greater voting power to those streams who make their members available for military and/or national service (e.g. are more invested in the State).
- Members *do not have to serve*; they just have to be available. So, Arab Muslims could make themselves available for the Army or National Service and would see voting benefits as a result, even if the Army did not draft them.
- A smaller Charedi Stream that refuses service would see some of their 'small stream' benefits eroded.

The Knesset Role

- In the areas of education and welfare, the Knesset would allocate funds on an economic and population basis alone. There would be no 'micro-allocation' based on particular interest groups.
- The Streams would have access to the funds effectively budgeted for their members and would use their own governments to apply the funds.
- Political combat in these areas would be moved off the Knesset board.

How would it work?

- Streams would be established and *if they did not serve their members well* then people would leave them at the next cycle. This is akin to leaving California and moving to Florida.
- This would create a constant competition for better governance in the areas the Streams affect.

Streams Recognize Reality

- Israel *already* has Streams.
 - The Arab and Charedi world already effectively have law and educational systems that are quite distinct from those of the State.
 - The Gemach system extends that to welfare within the Charedi world.
- A Stream-based Constitution would just recognize and formalize reality, thus making for a more stable government that brings peripheral groups into the system.

Jewish Protection

Protection of a Persecuted People



The Cultural Identity Distinction

- The text of the Constitution says:
 - “As the State of Israel has been established to protect the Jewish people from persecution, and in reaction to genocide in the Christian majority world and ethnic cleansing in the Muslim majority world, Jewish Cultural Identity shall provide for two specific rights.”
- Those rights include:
 - The Right of Return
 - The exclusive right to head Tzahal, Mossad and Shabak.
- These rights exist purely to protect the Jewish people. They do *not* result in greater representation in the Constitution Assembly or Knesset or the reservation of any other position including Prime Minister, President or Supreme Court.

Who is a Jew?

- The Constitution takes this out of the hands of the religious courts.
- For *State* purposes, the definition of a Jew is handled by a special committee with rolling membership elected by those recognized as having Jewish Cultural Identity.
- This has *no* religious bearing.
- If the Committee decides to extend Jewish Cultural Identity the only impact is to indicate who is eligible for immigration and the most senior Army and Intelligence service roles.

Recognizing Reality

- While it would be best *not* to have any such distinction, this clause also recognizes reality.
- The Jewish people need protection – *but not supremacy*.
- The Jewish religious courts *also* often strongly disagree with secular authorities on who should be considered a Jew. The reality is that the ethnic and religious definitions vary widely.

International Standards

- Various Constitutions have special rights for those who share aspects of cultural identity. For example, coming from a French-speaking country and speaking French as a mother tongue is important in becoming a French citizen.
 - These positive rights are expressed by the right of those with Jewish cultural identity (as defined by the special committee) to immigrate.
- Many systems effectively have *negative* rights but hide them. Being born in Germany or Japan isn't enough to be a German or Japanese citizen with all the rights that entails. These countries protect their Cultural Identity by denying a wide range of rights to those who don't share it.
- This Constitution attempts to make the rights of citizenship as broad as possible while still serving the critical protective role for the Jewish people.

Palestine & Settlements

A Multi-Stream State



Living in Fear

- Israelis have long lived in fear of an Arab majority.
- Whether or not the Arab population was willing to accept a Jewish state, an Arab majority would spell the end of Jewish protection and self-rule.
- This demographic reality is *one* force that has limited Israeli willingness to extend citizenship to those who identify as Palestinian.
- Other critical forces include:
 - Resistance by Palestinians to being part of the Jewish State
 - Concern that Palestinian citizens will be a fifth column that will undermine the State

The Constitutional Approach

- This Constitution does *not* eliminate these challenges.
- It *does* offer a roadmap to making them better.
- Municipalities and their territories can choose to join the State of Israel after a three-year probationary period if:
 - 80% vote to do so.
 - They hand over those suspected of crimes against the State, Streams or the Jewish cultural identity for criminal prosecution.
 - Their education system eliminates incitement against the State, Streams or the Jewish cultural identity for criminal prosecution.
 - They establish borders.
- Municipalities can also *leave* the State of Israel. If Umm El-Fahm wants out, they can elect to leave simply through an 80% vote.

The Constitutional Approach

- These provisions serve as a pressure valve on the conflict. Those who really want out of Israel can leave and those who really want in can join.
- There is no rule that excludes them on the basis of ethnicity, religious etc...
- However, even if Arabs form a majority of the state, the Constitutional Assembly will require other Streams to accept and approve any significant changes to the State and the Army and Intelligence Services will continue to be led by Jews.

Balance

- Critically, this also gives a way for Jewish settlements to annex themselves to the State.
- It thus provides benefits for both Jews and Palestinians – *so long as they are willing to accept and be part of the State of Israel.*

The Rest

A Conventional Constitution



Courts, President, Prime Minister & Knesset

- The Constitution is very conventional in the power is grants the various branches of government.
- Much of the content is copied from the Japanese Constitution (which was composed largely by the occupation American administration of McArthur).
- The Supreme Court has a role as an adjudicator of law – but not a Legislature.
- Its decisions can also be overturned by a 66% vote in the Constitutional Assembly – which requires *wide* agreement across society.

Risks

Common Concerns



Breakup of Society

With their own Streams, the sectors in society might drift further from each other...

- The society is already fracturing.
- This approach actually sews it together by making different systems a part of *the* system.
- Investing Streams with power also invests them with responsibility and loyalty to the system that has granted them that power.

Education

Self-control of education might lead to people not meeting state standards?

- Again, this is already happening. Part of this running from the State is due to concern about the State becoming overbearing. By carving out space for different Streams, the Streams can become less defensive.

Lack of Standards

Different definitions of terms like marriage and family can threaten the State

- Quite the contrary – these different definitions already exist and the majority/courts desires to enforce a single understanding is threatening it.
- By limiting the definition of families on a State level (perhaps allowing a simple economic definition of family groups no matter who the members are) these issues can be sidestepped in a future Knesset while allowing Streams to deal with things as they see fit.

Lebanon

Codifying the role of Streams could lead to a gridlocked situation such as in Lebanon

- Lebanon guarantees particular jobs to particular sects based on very out of date census data. This limits ethnic roles purely to military roles – otherwise everyone is equal.
- Lebanese sects are both ethnic and rigid. The Streams in this Constitution allow people to change and to self-define on terms other than ethnic terms.
 - I expect the Chofshi (Liberal) Stream to be the largest because most people will want to live under such a system – whether Muslim, Christian or Jewish.

Municipalities

Could Municipalities be Stream-based?

- There is no provision for Municipalities being governed by Streams. The whole point of a non-geographic Stream is that it allows mixing of different streams and thus a more vibrant society without hard and fast lines between people.

Viability

This can't possibly pass because...

- By virtue of effectively falling outside every political and ideological persuasion in Israel, I can take the perspectives of various persuasions into account.
- The strong *need* for a Constitution should make this not only viable, but desirable.
- Streams want this autonomy and its presence enables other issues – like those of the balance of Court and Legislative power – to be settled with a little less loser-loses-all attitude.

Rights to X, Y and Z

This has no guaranteed rights to healthcare or basic income or...

- By not codifying particular political beliefs, this Constitution becomes more viable. It is not attempting to grant any ideology a permanent 'win'.
- The goal is to create a stable playing field that respects the reality of different Streams – not create a reality that will not be embraced.
- Streams can certainly codify more 'positive rights' within their Constitutions.