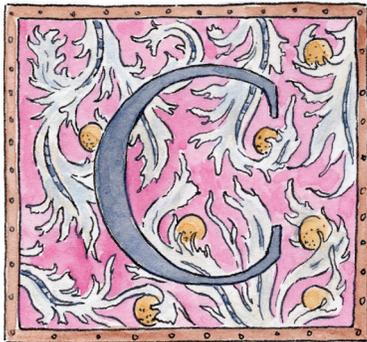


YEDIDIA STERN

# An Israeli Constitution

*Necessary, doable, and overdue*



ONSTITUTIONS are often created around the time a state is born. Israel missed that opportunity in 1948. Instead, another inspiring and foundational document was adopted—the Declaration of Independence—a secular sacred text in the eyes of most Israelis. Yet it doesn't carry the force of law and lacks the core components that characterize national constitutions. Today, Israel is an almost singular international exception: a democracy without a constitution.

The absence of a constitution carries significant implications. Just as the exodus from Egypt was a hurried flight from slavery to freedom, so too was the Jewish people's return from exile to statehood. Herzl's *Judenstaat* became Ben-Gurion's *medina yehudit* (Jewish state) in the blink of a historical eye—about 50 years. Political Zionism managed to build governing institutions, ensure security, stabilize the

economy, make the desert bloom, and ingather exiles. Yet it failed to lay all this on the solid foundation of broad social agreements regarding identity, values, and the institutions of governance—in effect, the “regime”—that are the core elements of any constitution.

In retrospect, this is understandable: Jews had no recent political experience in establishing and running a state. For nearly 2,000 years, Jews lived as a dispersed minority under the rule of others. Time was needed for the experiential maturation required to internalize what it means to have a Jewish state and to concretize that idea into a binding constitution.

In its early decades, even without a constitution, Israel functioned as a consensual democracy, operating through cooperation among its diverse sectors to achieve national goals. This came at a cost, such as the melting-pot policy that suppressed the distinctive voices of diverse cultural, geographic, linguistic, and religious backgrounds. But success was recorded in the test of results—and the results, on the whole, were good.



In recent decades, however, Israel has shifted from consensual democracy to crisis democracy. Public discourse has become obsessively focused on identity disputes among Israelis, degenerating into constant power struggles. And unlike in other countries, Israel conducts these struggles without a constitutional compass—that is, without any principled or practical limits on conduct in the public sphere. How can a constitution help stabilize Israeli democracy?

### *The Governmental Level*

In the absence of a constitution, the powers of the three branches of government and the checks and balances between them can be easily

altered by a simple Knesset majority. Over the years, the Knesset has legislated some of these issues as “Basic Laws” intended to serve as chapters of an eventual Israeli constitution. But these, too, can be amended, even overridden, by a simple parliamentary majority and, as a result, undergo frequent changes. In the past decade alone, the number of amendments to Israel’s Basic Laws has exceeded the total number of amendments to the U.S. Constitution. The fragility of Israel’s system of government tempted the current coalition to declare a sweeping judicial reform, which many Israelis perceived as a regime revolution that could undermine the democratic character of the state.

In a reality where an election winner can change the rules of the democratic game to suit his coalition’s immediate political interests, Israeli governance stands on shifting sands. The result is instability in public life, severe clashes between the branches of government, erosion of public trust in institutions, and deepening social polarization that resembles a cold civil war. A constitution is needed to set the rules of the game. These rules must be entrenched so that changing them requires broad consensus. They would provide a safety net that enables ideological disputes to be managed within an agreed framework—a safe harbor for Israel’s democracy.

The aspiration to stabilize democracy may be fulfilled by a “thin constitution” that will regulate only the particulars of governance and will not deal with fundamental values-based questions such as a bill of human rights, the interplay of religion and state, or relations between the country’s national majority and minority populations. The thinness of the constitution is required to enable broad public consensus on the contents of its text. This is possible, despite the ongoing culture war, since all political actors operate, to borrow a phrase from John Rawls, “behind a veil of ignorance.” There is no telling which camp will be charged with forming the next governing coalition or the one after that. Fair and effective rules—under which

the winner does not take all and the loser is not trampled — provide a necessary safety net for all.

According to a December 2025 poll by the Jewish People Policy Institute (JPPI), most Israelis believe that internal tensions pose a greater danger to the country's future than do external security threats. A thin constitution is an ambitious attempt to reduce the hazards arising from internal conflict — not by settling it but by reaching an agreed-upon arrangement for managing civic conduct under conditions of deep disagreement. With this in mind, JPPI is currently working on a detailed proposal for a thin constitution to be submitted to whoever forms Israel's next government.

### *The Symbolic and Educational Level*

A thin constitution is an urgent, vital treatment. It's not a cure. It would stabilize the patient, as doctors do in an emergency room, allowing state and society to move toward a more ambitious therapeutic process: the establishment of a full constitution.

A full constitution would articulate and codify a political imagination shared by the vast majority of Israelis — a vision that would enable them to feel always at home in Israel, now and in generations to come, despite cultural, religious, political, and ethnic diversity. A full constitution would forge, alongside the *covenant of fate* imposed on Israelis by enemies, a *covenant of destiny* chosen of their own volition. But is this within the realm of possibility?

Today, the tension between the two components of Israel's self-definition as a Jewish and democratic state has become a tug-of-war among identity groups. At the extremes, some (parts of the ultra-Orthodox Jewish public) reject the democratic element, while others (some non-Jewish Israelis) reject the Jewish element. But even the broad Israeli mainstream, which supports the dual definition, tussles

over how to balance its elements and is generally divided about the universal and particular aspects of national life. This reflects the fact that Israeli society is still in its national adolescence: wrestling with identity, battling inner demons, and struggling to agree on its core values. In a sense, Israel is like a 77-year-old behaving like a 17-year-old.

Against this backdrop, it's worth asking whether a full constitution can heal rifts and bridge cultural divides. Every constitution has inherent limitations stemming from its legal nature (which replaces open-ended discourse with binding decisions) and from its presumptuousness (as the founding generation seeks to impose its preferences on future generations). It may even turn out to be a double-edged sword, since it grants power to its interpreter—and who can guarantee what the motives and interests of future interpreters will be?

Nevertheless, despite such risks, Israel would do well to strive for a full constitution in the foreseeable future. A constitution has tremendous educational and symbolic value, defining the collective credo of the society it regulates. It is the mine from which a nation extracts its meaning for generations down the line. It determines the boundaries of the possible and shapes the depths of the personal and collective consciousness of its citizens.

### *The Values Level*

Which social agreements should shape the Israeli credo? Which values should be promoted, and which should be rejected?

As mentioned, Israelis are deeply divided over these questions. Given this division, the Israeli constitution should delineate an open normative and conceptual framework—"a sphere of constitutional legitimacy"—that provides sufficient space for future generations to choose the specific value preferences that seem right to them in Israel's continuing journey toward maturity. But it must also rule

out completely the possibility of choosing the extremist ideas that threaten Israel today.

If this is done, Israel will be able to regain its social balance. The menacing specter lurking in the Jewish collective memory—the destruction of the Temple brought about by internal strife—will be laid to rest.

Here are some precepts that could serve as a basis for a future constitutional framework:

On the *identity* level, the constitutional protection of democratic statehood would weaken existing antidemocratic tendencies in Israel rooted in religion, nationality, or vested interests. At the same time, the constitutional entrenchment of Jewish statehood would safeguard against both internal opposition (arising from extreme progressive ideologies, identity crises, or demographic anxieties) and external attacks (rooted in delegitimization of Zionism, the Palestinian “right of return” demands, or global homogenizing forces that seek to erase cultural and national uniqueness).

On the *national* level, the constitution should guarantee the individual human rights of Israel’s Arab minority while also instilling awareness that the state has a Jewish national identity and all that implies for the character of the public domain. Extremes—from Jewish Kahanism on one side to Arab autonomy movements on the other—should be rejected outright.

On the *religious* level, the constitution should clarify that there is no place for religious coercion, even if the political power of religious and ultra-Orthodox groups grows. At the same time, it should ensure that no “secular revolution” could infringe on freedom of religion and worship. The place of religion in the state would be both limited and defined.

Regarding *human rights*, Israel’s current law permits a simple Knesset majority to easily constrain freedom of expression, equality, or the right to education. In this respect, Israel dramatically lags behind the

world's other democracies. It is shameful that the nation-state of the Jewish people, whose thought and heritage helped inspire the Universal Declaration of Human Rights, remains nearly alone without such a charter. A full constitution must correct this.



Twenty years ago, I was among the youngest participants in the effort to draft a “Constitution by Consensus” under the late Supreme Court Chief Justice Meir Shamgar. At the time, I wrote a personal credo that began with these words:

Sovereign Jewish existence, a rarity in human history, is the fundamental experience of my life. For me, the State of Israel is not merely a socio-political framework that allows convenient organization—security, social, economic, or otherwise—of a national collective. It is a primary element of my identity, a vital expression of my Judaism, of my being, of who I am....With a keen historical sense—aware of the exile of past generations, their deprivation, and the Holocaust of the last century—I consider myself extraordinarily fortunate to have been born into this state. And as great as the privilege is, so too is the responsibility. Against this backdrop, participation in drafting Israel's constitution is, for me, a task of the utmost importance.

That effort, like many others over the years, failed. Yet events have proved that it remains as necessary as ever—indeed, even more. A covenantal people require a covenant with destiny to ensure their survival and prosperity in their own land. \*

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