



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 (e.g. North vs. South or City vs. Rural) 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 I

- 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. This struggle will inevitably be followed by struggles within the winning majority.
- The current system can't contain these two forces in their emerging realities.

Acute Crisis II

- With the evolution of effectively separate systems for different 'sects' within Israeli society, cross-cultural communication has been limited.
- This has been accentuated by political parties that narrowly serve groups that are all-encompassing in a way that extends beyond mere politics.
- If this isn't solved, the society will pull itself apart.
- Presently the first crisis (sectarian dominance) and the second crisis (sectarian separation) are feeding on each other.

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
 - Moderating political forces by encouraging cross-sectarian political interaction
 - Protecting the global Jewish population
- It this in a way that doesn't take sides on the great disputes of our day.
- The unique concepts that enable this to occur are:

Streams (זרמים) and Clusters (קבוצות)

A Fundamental Tension

- We are being pulled apart by our different ways of life... and yet we need to be pulled together, despite those different ways of life.
- This Constitution is about enabling both to occur.

Distinct Lives for Distinct People

Streams & the Constitutional
Assembly



What is a Stream (זרם)?

- One 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*
- A Stream is *not* a Sect or Ethnicity.
 - Streams can be formed around any grouping, including broad ideological groupings.

How is a Stream formed?

- A Stream must produce a Constitution that delineates how it will govern its own affairs.
- Every 10 years the entire population selects what Stream they belong to by order of preference. This is an opportunity for new Streams to form or old ones to dissolve.
 - People can also elect to change Streams between national selection periods.
- 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.

Building Bridges across Cultures

Clusters & National Moderation



Clusters Draw Us Together

- Israel's current Knesset system favors parties that speak to the needs of a particular percentage of the population.
- This gives a national platform to extremists of various stripes and does little to draw the nation together.
- Some modern States create moderation by allowing only the highest vote receiver over a diverse geographic area to assume office. This mutes extremists who can not achieve electoral success across such a population.

What is a Cluster

- Clusters build on Streams, but act in tension with them.
- A Cluster is made up of citizens from different Streams in equal proportion to those Streams representation in the general population.
 - If 20% of the population belongs to a Muslim Stream, then every Cluster would have 20% Muslim Stream members.
- Clusters are assembled around each of the largest 150 Statistical Areas as defined by the Central Bureau of Statistics.
 - This means Clusters are loosely geographic, while also encompassing the full spectrum of streams.

What does a Cluster do?

- The highest vote receiver in each Cluster joins the Knesset.
- This favors politicians who can reach across boundaries and appeal to:
 - People broadly in their geography
 - People across Streams
- All non-Constitutional State laws require Knesset approval – but Knesset members will be incentivized to support wider populations.
- Knesset members will also represent their own constituents – creating a bond of responsibility between politicians and citizens.

How does a Cluster Moderate?

- Clusters do not only create more moderate politicians, they encourage cross-Stream communication.
- A Cluster based in a Tel Aviv Statistical Area may well need to draw on citizens from Bnei Brak, Jaffa and Lod, one based on Modiin is also likely to include members from Modiin Illit, Ramle and other areas while one based in Nazareth or Umm-El-Fam would include members from nearby Jewish settlements.
- More diverse areas will have tighter geographic Clusters – this gives more geographic power to cities like Haifa, Jerusalem and Ramle.
- Successful political activities will naturally reach across Sectarian lines.

Streams & Clusters

- Streams and Clusters will be in constant – balancing – tension.
- Streams will have Stream-focused mini-Constitutions, civil, educational and welfare systems. They may be very very distinct while they serve the national population of a Stream.
- Clusters will reach across all Streams and form the backstop of laws that apply in any cross-stream or criminal cases while guiding national laws and policy.
- The establishment of small Streams will be discouraged by the distribution of their limited membership across all Clusters and the resulting lack of geographic power in the Knesset.
- Distinct lives enabled even as the Constitution brings people together.

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 and separating the two will make each more stable.

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. The Spanish have similar clauses.
 - 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 for those who aren't part of the culture, 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 want out of the conflict can join the state with their residents picking the Streams that honor their self-determination.
- There is no rule that excludes them on the basis of ethnicity, religious etc...
- As a critical protection: 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.
 - The Army and Intelligence Services will continue to be led by those with Jewish Cultural Identity.

Balance

- Critically, this method of integration *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 multi-Stream 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 Streams alone sew 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.
- Finally, Clusters bring the Streams for the purposes of managing (but not defining) the State.

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.
- Streams would also become more responsible. If they aren't providing what people need, they will lose membership.

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 social continuity.
- 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 Constitution 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. Despite being Dati, I expect I would live in a Liberal system so long as it made some provision for religious education for members who desired it.

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 within single geographies and thus a more vibrant society without hard and fast lines between people.

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 political 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.

Split Stream Families

What happens if a husband and wife choose different Streams?

- The Constitution has provisions for this reality, including the assignment of Streams to children.
- If a woman wants to leave the Haredi or Chofshi Stream, for example, she can. All disputes between her and her husband (or involving their children) would then be heard in State Courts rather than Stream Courts. The clarity of court selection does not exist today.
- Streams choices don't have to be made public. This enables a safety valve for a woman concerned about her safety/relationship.

Special Courts

*Do Streams **need** Special Courts?*

- No, a Stream can choose to use the default State Court system.
- However, the management of education and welfare will remain within the Stream.

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.
- This approach offers a very strong path to viability.