

Constitution by Consensus
Proposed by the Israel Democracy Institute

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The Israel Democracy Institute

Constitution by Consensus

Proposed by the Israel Democracy Institute

Under the Leadership of
Justice Meir Shamgar

DRAFT



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Introduction

Justice Meir Shamgar

Proposal for a “Constitution”

The Israel Democracy Institute has prepared the text for a constitution which is intended to serve the legislature in its discussions and perusal of the issue of a constitution and provide it, in advance, with a preliminary version of a compilation of provisions which could serve as a platform for such perusals and discussions. The Institute did not base its activity on the assumption that the legislature would adopt its draft version in every detail. Quite the contrary, the legislature is free to do as it pleases, as Israel's Declaration of Independence and the Knesset decision of June 1950, dubbed the Harari Decision, endowed the Knesset with the authority to enact a constitution for the State of Israel. Consequently, this draft is intended solely to aid those appointed to the task; the decision rests ultimately in the hands of the legislature. The fellows of the Institute do not have any pretensions as to owning a copyright on this Constitution, and we do not believe that any future constitution must adhere to the version proposed here solely for discussion and perusal by those authorized to do so.

How is this Proposal Different from Previous Proposals?

Undoubtedly, it may be assumed that some will contend that many proposed versions of a constitution have already been submitted, and therefore, yet another draft is unnecessary. In response, the Israel Democracy Institute's proposal relies on an updated version of Basic Laws passed by the Knesset to date. This proposal also strives to incorporate most of the lessons which may be drawn from the way in which the constitutional provisions in Basic Laws and other laws have been functioning. The version proposed here, therefore, is a compilation incorporating the key lessons and conclusions which may be drawn from the governmental processes since the establishment of the State to date.

An important and central principle in this Constitution may be taken from the chapters governing the principles of the state and the basic rights of the citizen. Whereas because under this proposal, the constitution will have the status of supreme law, superceding ordinary legislation, that is, its provisions will constitute obligatory guidelines for ordinary legislation, such principles and rights will also be elevated to a special and privileged legal and educational status, which will serve as a basis for ordinary legislation.

What is a “Constitution”?

I would add a number of clarifications about the essence of a “constitution” when adopted. A constitution is a codex, a collection of legal statutes, through which the state organizes the division of labor, powers, and obligations among the branches of government, and defines the relationships among them, and between them and the citizen. Most of the current constitutions also include a list of basic human rights (a Bill of Rights), which every governmental authority must respect and refrain from violating. The constitution, therefore, is a compilation of the fundamental principles upon which the government is based.

This is very general description, and so I shall add the following: by virtue of a constitution, we fashion the ruling institutions and delineate their powers, rights, and obligations. In a liberal democracy, a constitution endeavors to articulate the division of powers, granted by the people to each of the branches and institutions. A democratic constitution refrains from granting unlimited power to any one of the branches, but rather institutes checks and balances to ensure that the powers are defined and delineated in advance. Thus, we also allow for mutual review and supervision among the different branches, preventing each authority from exceeding its circumscribed powers.

The objective in all the above is to grant the power to rule, in other words, to create “governance,” in concert with applying restraints and limits to each of the branches, to prevent an over-concentration of power in the hands of any one branch – a concentration which could result in a totalitarian regime.

As such, the constitution is intended to grant powers to the authorities responsible for governing the state, with the following functions:

- a. Defining the rights and obligations of the branches, and defining basic human rights; this is an expression of the character and essence of the state;
- b. Imposing limitations on the powers of the branches, so as to prevent them from exceeding their circumscribed powers; this is a structural limitation;
- c. Compelling the branches of government to conform to the limitations prescribed by law, so that their activity shall be subject to those supra-norms which express the fundamental beliefs of the state; this is a value-based limitation;
- d. Creating a balance among the branches, ensuring mutual supervision and review; this is an expression of mutual dependency among the government authorities.

The restraints which the constitution places upon the powers of each of the branches are aimed at integrating protection of the rights of every individual, including effective protection of the minority, into a foundation necessary for efficient and effective government. These restraints prevent arbitrariness and the unreasonable use of power, allowing people with different opinions and beliefs to live together; they create a legal basis for the division of powers, which, as mentioned above, prevents a concentration of absolute power in the hands of one authority, while ensuring that the democracy will protect every minority within its borders, and granting it all the liberties which constitute the basic rights in a free society.

“Constitution” – a Product of Necessary Compromise

We are aware that the Knesset’s attempts to author a complete constitution have failed in the past. The Israel Democracy Institute has been guided by the desire to outline contours which would merit consensus which is as broad as possible among the public, and among the elected representatives in the legislature. Broad consensus necessitates compromise; but it is clear that the “very good” is, as always, the primary enemy of the “good.” Every

compromise includes some concession to absolute perfection, which by nature does not take into account any existing debate.

In this context, an objection has been raised that perhaps the very fact that the constitution necessitates compromise is reason enough to delay approval of a constitution to some later date, even if such date is not known in advance. The Israel Democracy Institute does not adopt such a stance. Postponing approval of the constitution, and allowing Israel to remain without a constitution for many more years, as a lone state among democracies and non-democracies alike, merely prolongs the damage. The disadvantages are clear to all, both in terms of establishing norms and in terms of the State's image in the eyes of the world. It does not merely perpetuate, for an unknown length of time, a lack of normative supreme values depicting the lines for action by the legislative, executive, and judicial branches, but rather, in fact, also anticipates that change will come at some unknown future date. There is no reason to believe that a time will yet come when compromise will become unnecessary, for compromises have been adopted in most of the constitutions of the world. Whosoever delays a compromise by consensus also delays the willingness to accept the yoke of principles by consensus. The expectation of "better" days to come is not only indeterminate, but also involves a gamble which does not consider the danger inherent in a continued lack of binding norms. Maintaining the status quo does not constitute a change for the better, but is only an acceptance of the inability to achieve the most, leaving the field wide-open. In summary, compromise increases consensus, and postponing compromise perpetuates disagreement. It is not irrelevant in this context to cite the opinion of a foreign legal scholar:

"Yet it might not be a bad idea if a democratic country, about once every twenty years or so, assembled a group of constitutional scholars, political leaders, and informed citizens to evaluate its constitution in the light not only of its own experience but also of the rapidly expanding body of knowledge gained from the experience of other democratic countries" (Robert A. Dahl, **On Democracy**, Yale University Press, 2000, at 141).

Conclusion

This draft is the product of long, fruitful, and interesting hours of discussion, both by the Public Council, established for this purpose, and by the Israel Democracy Institute. This draft can serve as a platform for discussion and lead Israel towards clear, comprehensible, and unambiguous norms to guide all its branches of government. It is not a panacea, for its success, that is, achieving its goals, rests to a great extent on an active and open public which will, in fact, track its functioning and implementation, and will be diligent about upholding its principles. The very existence of a constitution provides the public with a sturdy foundation upon which it can rely. The absence of a constitution decreases the breadth of consensus and leaves the public at a dead end, stranded in an endless, circular argument over the essence of its guiding principles. The Israel Democracy Institute prefers the first alternative over the second.



Introduction

Arye Carmon

We, the fellows of the Israel Democracy Institute under the leadership of the President of the Supreme Court (Emeritus), Justice Meir Shamgar, have undertaken to draft, together and by mutual consensus, a proposal for the Constitution by Consensus. We are pleased to present it to the Knesset of the State of Israel and to the general public.

The Constitution by Consensus is the product of exceptional effort and experience; the result of the work of individuals who are acquainted with one another, who collaborate on intellectual endeavors with the object of improving the structure and foundation of Israel's democracy, and who have developed bonds of friendship and mutual admiration. Even so, the fruit of this joint effort, the document presented here to the Knesset and the general public for discussion, has been accompanied by long, difficult, and sometimes agonizing birth-pangs. I, who have guided the process and monitored my colleagues, can bear witness that, at the conclusion of this process, not one of the fellows of the Institute is entirely satisfied with the final draft which we have all signed. Nevertheless, it may be said that the drafters of the proposed Constitution by Consensus are satisfied with their effort of imperfection, that is, with their willingness to compromise. Despite the heavy personal price paid by each of us in achieving this compromise, it is clear to us all that there is no alternative but compromise. No other path could have come within the realm of possibility at all, for we are convinced, with deep inner convictions, that the creation of a Constitution by Consensus, with compromise as an integral element, is an existential need in Israel now.

Completing the full text of our proposal for a Constitution by Consensus took two and a half years. After overcoming the hurdles in our path and completing our proposal, the real challenge still lies before us: assimilating the significance of compromise, and striving for consensus among the general populace and its elected officials in the Knesset. The path is neither easy, nor short; our proposal is not an ideal text in terms

of those viewpoints prevailing in the “marketplace of ideas” in Israel: the religious or secular, the national or Arab. As a result, we are left with the question of how to convince the general public and its representatives to choose the middle path, which entails abandoning dreams, hopes and extreme positions, in other words, which rejects a strictly liberal position, a wholly Torah-oriented position, or an undiminished ethnic-national position.

To this weighty question must be added another, shaped in light of the date of publication of this consensually constitutional document: is this not a hubristic mission? For these are days after the “disengagement,” rife with mistrust, frustration, and anger. On the other hand, perhaps in the reality of these very times, the opposite holds true for our distressed souls, and this is the moment to talk about a common existence, reliance upon consensus and willingness to compromise?

What the future brings is difficult to anticipate. But it is certainly possible to assert decisively that compromise is a democratic foundation, and it is most clearly expressed through its parliamentary aspect. Compromise, the basis for agreement and consensus, is greatly weakened in a direct democracy, particularly in a presidential democracy. In our proposal, presented for public and parliamentary discussion, we have chosen to adhere to the Basic Laws enacted by Israel’s Knesset during the first five decades of its existence, laws intended to serve as a basis for the parliamentary system in Israel. We hold fast to these Basic Laws not only because necessity knows no law, for a decision to propose a presidential regime instead of the current parliamentary system, for instance, would entail the investment of resources in reformulating the entire existing basic legislation which shapes the current system in Israel, but rather, we have chosen to preserve the parliamentary system, while offering suggestions for its improvement, mainly because we believe that no other method but this is the appropriate form of government for Israel.

Why? The parliamentary system of democracy is the best way to attain **representation**. In a complex world which necessitates a wide range of intricate and nuanced decisions, we elect officials who shoulder the responsibility of decision-making. In a society as multifaceted as

ours, elections must be proportional in order to increase the variety of representatives. Even when we take steps which limit that representation, for instance, by raising the minimum required threshold or in other ways which “engineer” party unifications to decrease their sheer proliferation, the parliamentary system is still to be preferred over the direct system (the presidential system), in which close to half of the participants in the democratic process are always defeated. Moreover, the parliamentary system strengthens **mediation**; through the parties, the parliament mediates between the public and those who engineer and execute government policies. The mediatory basis in a democracy moderates the pace of political processes, thus improving them.

Moreover, a look at developed and established democracies clearly reveals that the vast majority of them are based on the parliamentary system. As nothing is more important to strengthening the governing infrastructure of democracy in Israel than striving for stability, we do not see an alternative to a parliamentary democracy. The presidential system is dangerous to Israel, and is thus unfeasible.

My colleagues, partners in drafting this proposal for a Constitution by Consensus, emphasize time and again the great importance of the chapter on human rights in the proposed Constitution. And indeed this chapter is the most noteworthy innovation, as it conveys an array of reinforcements and restraints to our democratic system. In a society of immigrants such as ours – multicultural in its character and rife with rifts in its orientation – the Bill of Rights has a central role in shaping and strengthening the normative infrastructure, allowing many minorities to exist and share their lives within the fabric of the whole. Those interested in our proposal are invited to examine this Chapter thoroughly, guided by the comprehensive explanations compiled in the third section of this book. The first Section collates the personal statements, the credos, the “I Believe,” of each participant in the creation of the Constitution by Consensus; the second Section presents the full text of our proposal.

Our proposals for various compromises are found within the text of the Constitution, in the second Section of this book, and their explanations are laid out in the third Section. The entirety of these

suggested compromises position the IDI's proposal for a Constitution by Consensus in the middle, aspiring to strike a golden path among the hopes, values, and normative perspectives of four central groups in Israeli society: the religious, liberals, nationalists, and Arabs. It is worth noting that one of the compromise "packages" is not presented in the text, as it relates to a proposal for two ancillary laws. They are to have the status of ordinary laws as such, distinguished from this constitutional text. These are the proposals for the Sabbath (and Jewish Holidays) Law and the Spousal Registry Law. These two proposals, to be published separately by us and not in the constitutional text that follows, should be viewed as an inseparable part of the "package deal" struck by the Constitution by Consensus. They are the tangible completion of the compromises in the spheres of state and religion, as such appear in Article 164 of our proposal for the Constitution by Consensus.

We, the authors of the IDI's proposal, are convinced that the Knesset's adoption of the constitution, and its ratification by the people, will spur processes which will alter Israel's political culture. Israeli society and democracy as its ultimate way of life are in dire need of these changes as a necessary panacea for its ills. As such, the coming years, years of discussion and assimilation, will, of necessity, be designated for the purpose of establishing a healthier political culture, a more stable shared foundation, and ground rules which are clear and acceptable to all. The Constitution by Consensus is intended to be at the core of this entire effort, and in the future – the backbone of a stable and flourishing democracy.



Section I

“I Believe” of the Authors



Justice Meir Shamgar

The question of why Israel needs a constitution arises time and again. The response to this question could be rendered superfluous by directing one's attention to the fact that all the nations of the world have established a constitution for themselves, be it of an elevated and protected status, or (in a minority of cases) without a formal elevated and protected status. The question, therefore, should have been why is Israel different from all other states in that it, in particular, should not have a constitution to articulate the normative principles and values which bind its state authorities and residents. Nevertheless, we should not shirk from the substantive treatment of this question and shall provide an organized and detailed response, as follows.

(1) **Supreme Value Norms:** The constitution allows the determination of binding norms, especially significant in the sphere of basic human rights and liberties, which guide all the branches of government and the residents of the state. The binding force of these norms is ensured by endowing the constitution with a special and elevated status. At the base of this determination is the triangulated division among the constitution, ordinary law, which may not contravene the principles of the constitution, and secondary legislation, which may not contravene the provisions of the authorizing law, in which the authority to promulgate such secondary legislation is set forth.

The constitution establishes value-based super-principles in every sphere, including with respect to basic rights and the system of government, which obligate every branch of government, including the legislature. Thus, the constitution forges a fundamental perspective which ensures the rule of law, as such is delineated in its text which applies to all, including supremacy of the fundamental constitutional norms, according to which state actions are conducted.

It should be remembered that no entity, including the various levels of

the court system, currently has the authority to declare a law as infringing upon a fundamental liberty, such as freedom of speech; this holds true for the other liberties as well, with the exception of those included in the two Basic Laws of 1992. In contrast, freedom of speech is protected and safeguarded by the constitutions of the United States (the First Amendment was ratified in 1791), Canada and France, as well as by all the other democratic states, that is, the Czech Republic, Hungary, Belgium, Italy, among others, and now, finally even Britain, following passage of the Human Rights Act of 1998. However, in Israel, freedom of speech still does not enjoy protected status.

The import of this fact is that, though the courts are currently authorized, for example, to nullify a minister's order or regulation, such as the Minister of the Interior's order which was the subject of the 1953 Kol Ha'am case, there is no entity authorized to review the constitutionality of primary legislation of the Knesset which abridges freedom of speech.

One should note that, on June 6, 1950, over 55 years ago, upon concluding the disagreement regarding the very need for a constitution, the Knesset brokered a compromise, dubbed the Harari Decision after its sponsor, which stated:

The First Knesset instructs the Constitutional, Law and Justice Committee to prepare a draft constitution for the State. The constitution shall be assembled chapter by chapter, in such a way that each chapter will constitute an independent Basic Law. When the committee completes its work, the chapters shall be presented to the Knesset, and all the chapters shall be combined together to form the constitution of the State.

In other words, the Knesset desired a constitution, but, 55 years ago, postponed the effort by breaking the legislation up into stages, where ultimately all the legislated chapters would be unified into one complete constitution.

Namely, the Harari Decision of June 1950 also established that, upon completing all the chapters of the constitution, they would be compiled into one complete constitution. Currently, 55 years later, it

is appropriate to go directly to the whole, and not to continue with the partial and incomplete. That is, in 1950, the Harari Decision initiated a step-by-step process, although in principle, it clearly established that the process was to culminate in the creation of one complete constitution. The time has come for integrating the current Basic Laws and finalizing implementation of this comprehensive undertaking, that is, to legislate a complete constitution which will also include a chapter on basic human rights.

(2) **Equality:** The definition of rights in the constitution ensures their equal application to every human being; in other words, it places everyone on an equal footing. Moreover, the constitution does not deal with particular and partial instructions, for instance, the authority of the Minister of the Interior to close down a newspaper (the Kol Ha'am case) but rather, establishes a general right of free speech, encompassing the entire population.

At the end of the day, the constitution ensures the rule of law by defending the fundamental freedoms and the foundations of the legal system by endowing these norms with a guiding constitutional status. By virtue of the constitution, these norms are applied to the state's entire existence, and every individual therein, forming a basis where each and every individual is afforded an equal opportunity to file for legal protection, against a violation of his or her rights.

The supremacy of the constitutional provisions precludes, in advance, undemocratic legislation which contravenes the constitution. The rights, defined in advance, govern that permitted and prohibited, including that permitted and prohibited by legislation, and create a protective wall behind which every person can find shelter.

(3) **Clarity:** The constitution defines the liberties and essence of the government. Their definition in the constitution ensures certainty and clarity through language which is clear to all; the constitution will lead to language which is complete, straightforward and transparent.

In other words, the normative constitutional principle is clear, defined simply, straightforward, and known, and all are bound to honor it. The existence of a written constitution heightens clarity, as the written version, transparent to all, allows for a clear presentation of the principles. Thus, it is possible to avert, in the main, disagreements and regrets, and to create, in advance, guidelines for each branch of government as well as for each individual.

(4) **Independence of the Three Branches:** The constitution allows us to study the distinctions and definitions of the powers of the branches of government diligently. The separation of powers which prevents a totalitarian, centralized government is the outcome, differing in its implementation in each system of government, beginning with the full and unlimited separation which exists in the United States, and culminating with the system prevailing in Britain, namely, that in which the parliamentary system diverges from full separation (the English Westminster system permits ministers to serve as members of Parliament or the Upper House).

The independence of the legislative and judicial branches is derived from the constitutionally defined domain of each branch. This independence creates government stability, thus preventing the infringement of one branch upon the domain of another, such as preventing an attempt by the executive powers to issue directives to the judicial branch. The last word is given to the legislature, which shapes the law in accordance with constitutional norms.

(5) **Minority Rights:** The constitution defines the rights of the individual and of minorities; protection of the rights of the minority, (any minority: whether ethnic, religious, or social) is, alongside the democratic principle of majority rule, a fundamental component, without which there is no democratic system.

It should again be noted here that the principles which protect the minority can deflect a sudden change by a chance majority, changes which would strike at the general fundamental arrangements prescribed by the

constitution. In other words, since the constitution is a codex whose principles must be honored, and which requires special procedures to be amended, every constitutional arrangement ensuring protection of minority rights enjoys greater stability and a greater binding force than any protection of rights in an ordinary law.

It should also be mentioned in this context, as an example, that when the Protection of Holy Places Law was enacted in 1967, we were asked by representatives of an esteemed religious community whether we would agree to include similar provisions when Israel would have a constitution. Obviously, we answered positively, thus calming their fears that the independence of the religious institutions and their right to religious rituals would be violated.

(6) **Written versus Oral Version:** As mentioned, the constitution reflects the power of the written word, in comparison with oral agreements or arrangements secured merely by ordinary legislation which may be amended by a simple majority. It is commonly accepted that the majority of us would rely on a written document to a greater degree, take, for instance, a written rental contract, than we would rely on an arrangement based solely on oral directives which are not governed by a written and binding document; the constitution is, to a great extent, a quasi-contract between the citizen and the government.

(7) **Limitations on Governmental Power:** The constitution limits the power of governmental authorities, thus strengthening the rights of the individual. The government has no power save that which it is granted by the constitution; a government entity, in the absence of such a grant of authority, is proscribed from acting. On the other hand, the individual person is permitted to do anything which is not prohibited under the constitution or law.

(8) **Concentration versus Dispersal:** The constitution allows for the concentration of constitutional norms, instead of having them scattered throughout various laws. Thus their status is strengthened, and incidental

and unintentional amendments are averted. In other words, when amending the constitution, there is the assurance that the legislature will be fully cognizant that it is altering a constitutional principle.

(9) **Unifying Value:** In light of the trend towards attaining consensus by different sectors of the public for the purpose of adopting a constitution, establishing a consensual constitution includes a form of expressing identification and reliance upon the general public, reliance which generates greater social unity between the extremes. Currently, the State of Israel is, much to our dismay, a society filled with rifts and antagonisms, as is well-known. The Constitution by Consensus will foster links among the different sectors of the nation, since each of these main sectors will view the constitution, a document which applies to all, as a framework which obligates the entire public, which was approved by a decisive majority, and which also affords it protection.

(10) **Educational Value:** The written constitution has great educational value. As in other countries, the didactic power of the constitution, which educates the entire society regarding its values and perspectives, constitutes an educational foundation which accompanies the resident, in particular our youth, from childhood. This power deepens trust in the stability of the system, the existence of liberties, and the ability to rely securely on governmental arrangements and fundamental freedoms.

Thus, the constitution assists in consolidating democratic public opinion, which is the primary assurance of the practical existence of that which is determined by the constitutional norms. It should be remembered that the constitution, in and of itself, is not an isolated legal tool whose essence can ensure a functioning democracy. Quite the contrary, only an alert and attentive public, educated in the spirit of the foundations of the constitution, and insisting upon its implementation, can guarantee that the constitution becomes a living, active, and activating tool. Therefore, we must fully identify with the values of the constitutional norms which unite us all, and this identification can be the result of education and recognition of the values of the constitution.

(11) **The International Aspect:** The democratic world currently pays great attention, and demonstrates great sensitivity, to the existence of human liberties. Through legislating a constitution we will be incorporated into the family of nations which already have constitutions, increase the stability of our system in the view of the world, and remove suspicions and concerns regarding the practical existence of human liberties here, fears which stem from the lack of a constitution.

Moreover, Y.L. Peretz entitled one of his stories, “If Not Higher.” I would suggest adopting this title to emphasize the need for a constitution. Many years have passed since the State was established. Despite all its problems, crises, and tribulations, it has reached a maturity and readiness, and its population has stabilized.

Although a constitution is not all-encompassing, it is, nonetheless, an important tool for shaping the form, and strengthening the personality, of the State. We can no longer defer constitutional action in this regard. The Knesset currently enjoys all the powers of the Constitutive Assembly, as established back in 1950 by the above-mentioned Harari Decision, and subsequently by legislation – through the passage of 11 Basic Laws which have been approved by the Knesset to date. The time has come now to complete the labor. The spirit of President Agranat’s language in the Yardor case guides me:

The issue of the continuity – and, even, it could be said, the ‘eternality – of the State of Israel constitutes a fundamental constitutional given’, which, Heaven forbid, any State authority whatsoever – whether an administrative, judicial, or quasi-judicial authority – should deny when exercising any of its powers.

The prescription of normative templates, which emphasize the supremacy of principles which apply to all, and the obligations which apply to public officers and servants, is a refreshing breeze clearing away the fog, establishing fundamentality, stability, and constancy and restoring our faith in ourselves.

Although we are no worse than others, we are also no better; however, we can attempt to transform ourselves, to a greater extent, into the bearers

of positive values. With a goal of filling any lacunae, and consolidating educational perspectives and appropriate patterns of behavior, approving a constitution can lead to the adoption of principles whose educational influence will be profound and effective.

Asher Arian

My beliefs and perceptions rest on two guiding principles: (a) an analytic rational attitude towards institutions, laws, and agreements; and (b) a deep belief and loyalty to Jewish nationalism and Judaism. In everything related to social arrangements and personal motivations, my approach is one of a skeptical and critical man of science. However, this does not diminish the depth of my identification with Judaism and Zionism.

I find myself shunning categories which divide groups and nations, yet at the same time I identify fully with Judaism and Zionism. These two components together comprise the world of my identity. But just as I do not accept a scientific analysis which does not live up to the proper standards, so, too, I avoid attempts by nationalists to steal the dream of the State from me, and I reject the claims of religious extremists that they possess the key to understanding Judaism. As a man of science, I feel uncomfortable in the face of subjective or misleading analyses, and as a secularist, I adopt a strict stance when others try to dictate religious truth. I have been fortunate enough to work in a profession which I enjoy, and in a cultural-religious-national framework with which I identify entirely. My strong feelings of belonging to the State and its residents guide me in dealing patiently with the complexity of the question of a constitution.

My grandfather immigrated to America, not Israel, but he prayed three times a day to fulfill his aspirations for the Land of Israel. When I immigrated to Israel from the United States, it was clear to me that I was fulfilling the prayers of my grandfather, and I therefore felt a deep sense of mission. Perhaps for this reason, on my first Sabbath in Israel, I felt the need to visit my grandmother's brother who lived in the ultra-Orthodox Mea She'arim neighborhood in Jerusalem, despite the fact that neither my grandmother, nor I, had ever met him. Since then we became very close, and at that time I had the privilege of studying Gemara (Jewish Oral Law) with him twice a week.

My credo, my “I Believe,” is built on a convergence of the historical

and scientific understanding of the study of comparative politics, my strong belief in our right and obligation to the State of Israel as a Jewish and democratic state, and my deep belief in the values of liberty, equality, humanism, and liberalism. The combination of belief and interests characterizes all of us, and we must try to acknowledge these aspects as well as the interests of the various groups in society.

In my opinion, the key to the success of a constitution is in achieving *tikkun olam* (a reformation of the world) in non-violent ways. Today every person in Israel defines the center of his or her life differently, and therefore a proliferation of sectors and centers abound. The purpose of the constitution is to establish a system of shared symbols which will embrace all sectors of the Jewish nation, as well as the stranger who dwells among us, in order that all may feel “at home” here.

If I had to choose the primary word in the phrase, Constitution by Consensus, I would choose “consensus,” as this, in my view, is the most important issue. Political institutions which do not enjoy legitimacy, and arrangements which are not adapted to reality and its requirements, are empty vessels. Nevertheless, it is neither the constitution’s function nor within its capacity to solve the great dilemmas of a society, the greatest of which today, in my mind, being the dichotomy between modernism and Judaism. A constitution should serve as the basis for a binding framework for coexistence while the content of the decisions is left for future generations.

Amir Avramovitz

A Constitution as the Basis for Coexistence Here

The State of Israel is the practical manifestation of the Zionist vision: a national Jewish state, with a Jewish majority, in the Land of Israel. The establishment of the State, two thousand years after the last Jewish sovereignty was destroyed and the Jews' exile from their land began, constitutes a great and far-reaching contribution to the development and continued existence of the Jewish people. The founding fathers, both those who dreamed and formulated the vision of the State of the Jews, and those who actually brought about its establishment, intended it to absorb and gather Jews from the various exiles with the intent of building the national homeland of the Jewish people, a home which would provide them with refuge and protection and allow for the development of Jewish culture and heritage, undisturbed and unendangered. In order to achieve this, a Jewish majority within the State's borders is needed.

A Jewish majority is also necessary for the realization of another Zionist goal – democracy. Without such a majority, it will be impossible to create a state which will be both a national Jewish state and a democracy, and which will treat all its citizens with equality and without discrimination, while meticulously protecting human rights.

In my opinion, Israel will only survive if it is a democracy as well as if it is identified and linked with the Jewish people and Judaism. Should either of these two components cease to serve as its base, it will be a different state, not the State of Israel. Despite this, Israel finds it difficult to define and maintain these two fundamental components, the two founding values constituting its identity, character, uniqueness, modes of action, and conduct. We could have done so in a consensual constitution, which would enjoy broad legitimacy – the most common and important method by which states define and preserve their values, their identity, and their government – but to date, we have failed to do so.

The failure to establish a constitution stems from the inability of the

leaders of Israel, throughout all the years of its existence, to overcome differences of opinions and beliefs, and similarly to overcome prejudices and stereotypes, and to consent to a complete and balanced constitution. This leads to a current and disquieting question like no other: after more than 57 years of existence, can we continue to live here together? Can secular and religious, Jews and Arabs, liberals and ultra-Orthodox, proponents of a Greater Israel and those in the peace camp, socialists and capitalists, live here together? Do we know how to do it? Do we grasp the moral, ethical, and political basis for life here together?

I am convinced that “life here together” is still an important and central value for the Israeli public. We want to live here together, we are convinced of the importance of the matter, but we do not know how to do it, or whether we will be able to reach a civil common denominator which will allow for a life here together, without the majority of us having to relinquish that which is truly important to us. I believe that a Constitution by Consensus can provide us with the basis for a common life here together; I am concerned that without it, we will have a very difficult time living together normally.

Social Unity in the Absence of a Constitution

A constitution is a set of entrenched laws with supra-legal status which establishes the central values and the principal norms by which the State administers, and the collective lives. The constitution defines the permitted and the prohibited, the rights and the protection of the individual, the group, and the minority, in the face of the arbitrariness of the majority and the government. Each sector in Israeli society has a dream of its image of the State, and in the absence of a constitution, such dreams are without limit. Every dream has a plan of action and a political platform: from a state of religious law, administered in accordance with the commandments of the Jewish religion, and led by rabbis who prescribe its rules and its limitations, to the separation of religion and state, and its transformation into a nation devoid of any identity, character, or connection with Judaism; from a state of “all its citizens” to an apartheid state which discriminates and deprives a broad range of its

citizens. One individual's dream is, therefore, another's nightmare. And if one individual's dream may come true, so may the other's nightmare. This is an unstable reality that prevents certainty, security, and defense, and therefore, it constitutes a “politics of rifts,” meaning sectorial and opportunistic actions which are dictated by fear and struggle, enmity and self-defensiveness, and based on a desire to subjugate the opposition. The lack of a constitution, especially in times which require decision-making on weighty matters subject to bitter dispute, is liable to lead to continued deterioration and an exacerbation of the relations among different groups in Israeli society and between them and the State, to the point of the disintegration of Israeli society.

A Constitution by Consensus can ensure the rights of every individual, every group, and every minority in the State, and would lessen the fear of the “other” who is perceived as one who intends to violate, thwart, and harm. The constitution would provide each of us with security and protection, but it would also limit the extent of our dreams. A constitution which would enjoy broad legitimacy would be a common basis for coexistence here, and would eliminate one of the central reasons for the presence of deep and wide rifts in Israeli society. A Constitution by Consensus will noticeably strengthen social unity in Israel, and as a result – also its own power. Thus, I see a need for the establishment of a constitution with broad consensus.

The Importance of the Constitution for Democratic Stability

Without a consensual constitution, the authority of the branches and institutions of the State, as well as the rules of procedure and methods of decision-making which bind the Israeli collective, are left in doubt and in dispute. Israel's democracy is unstable and has difficulty in ruling and making decisions. Even when decisions have already been made, there is a noticeable difficulty in implementing them. In the framework of such a democracy, a society which is fragmented, existing in a reality of crisis, which requires painful decision-making, is liable to generate a lack of trust in its processes. Therefore, such a democracy is also motivated to change by finding a magical solution, such as a “strong leader.” Even worse: it is

liable to engender physical resistance to decisions which are taken without proper authority, as it were – resistance that is liable to deteriorate, Heaven forbid, into the collapse of democracy and civil war. A Constitution by Consensus is likely to form a base for, and institutionalize, democracy in Israel. It will determine and regulate the division of powers among the branches of government, and imbue their actions with authority and legitimacy. Therefore, I am in favor of a constitution which will enjoy broad and comprehensive support and legitimacy.

Constitution by Consensus and not Constitution by Coercion

For years, many in Israel have viewed the constitution as a tool in the struggle among different groups in society regarding the image and character of Israel. The constitution has served as an axe to grind against certain sectors in order to arouse fear, deterrence, obedience, and submission. The constitution has merely been an instrument to be used in the politics of rifts in Israel, through which it was possible to “win” the political struggle, crowning one ideology as prevailing over another, defeated one. Their aspiration has been to make a political-parliamentary decision, achieve a victory through a close vote, and establish a constitution. The model was a Constitution by Coercion.

However, coercion on these fundamental questions, as opposed to consensus, will achieve the very opposite of our aims, whatever those may end up being. Not only will we be unable to establish the central values and norms which we wish to incorporate into the life of the Israeli collective, and not only will we be unable to minimize the rifts and strengthen the system which we desire, but we will also, with our own hands, exacerbate the argument, the conflict, and the lack of legitimacy of the principles and arrangements which will be established, and we will ourselves create a strong desire to change them by means of reverse constitutional revolutions.

The State of Israel has refrained from making a serious, honest, and continued attempt to reach a consensus regarding a constitution. Moreover, the issue has never been raised with the appropriate gravity; we have internalized the social divisions, we have extrapolated from

the everyday politics of rifts, and we have become convinced that it is impossible to reach a consensus, and therefore, we should cling to coercion in the struggle over the image of the State.

Fortunately, something in this approach has changed. The process of a Constitution by Consensus, headed by the Israel Democracy Institute has, since June 2000, implanted in many of us the hope and belief that it will be possible to reach a consensus. The Knesset Constitution, Law and Justice Committee, under the guidance of Knesset Member Michael Eitan, began, in May 2003, the process of formulating and drafting a constitution with broad consensus, proving that there has been a sea change in Israeli politics regarding the chances for attaining a constitution through consensus and regarding the practice of coercion. Moreover, the Knesset now understands that there is a good chance of achieving a constitution by consensus which is broader than the one which could be attained through coercion. The future of the Knesset process will demonstrate whether we, and in particular our leaders, are ripe for such a change.

Existence of a Common Denominator

I believe that it is possible to reach a consensus regarding a constitution. After decades of Jewish sovereignty and coexistence in the Land of Israel, there is a common denominator among the main groups in Israeli society, even if not readily apparent in light of the politics of rifts conducted in Israel. Most citizens and sectors in Israeli society are interested in Israel's advancement, development, and prosperity, as a state which is Jewish and democratic, and believe that the “Jewish and democratic” arrangement is the best possible one which may be achieved. So believe secular, religious, and ultra-orthodox alike, as well as the majority of Israel's Palestinian citizens.

But the big question is what is “Jewish and democratic,” and can one individual's definition of “Jewish and democratic” accord with that of another? It is reasonable to assume that each of us would define and interpret “Jewish and democratic” in terms which we view as clear and preferable, while it is also reasonable to assume that each of us would be

unwilling to accept the majority of the definitions proposed by others. Nevertheless, I believe, with all my heart, that the great and decisive majority would agree to accept a specific compromise proposal of “Jewish and democratic,” a compromise which would protect our truly important values and implement them. While this would certainly be a proposal which would force us to relinquish our dreams, it would also protect us from our nightmares; it would achieve a preferential, desired, improved, and realistic arrangement which would generate a better reality than exists today, for every sector individually, and even more so for the Israeli collective, and the State as a whole.

The Democratic Home

I wish to live and dwell only in Israel, and I hope that my children and grandchildren in the future will do the same. I could not live, under any circumstances, in an undemocratic state. I wish to live in a state which ensures broad human rights for the people living in it, and allows them to develop and progress as they see fit. I wish to live in a state which protects its people from governmental arbitrariness, and from possible suppression by the majority. Should Israel cease to be a democracy, I would be unable to find my place within it. Our proposal for the Constitution by Consensus, which includes a broad, comprehensive and modern Bill of Rights, will transform democracy in Israel into a substantive democracy, by prescribing a broad and modern Bill of Rights for the people, all people, minorities and groups living within it, and will provide effective tools to preserve these rights.

Throughout all the years of its existence, Israel has discriminated against its Arab citizens, treating them with inequality, and causing deprivation. This is not because it is a “Jewish and democratic” state. On the contrary, inequality, deprivation, and discrimination constitute conduct which is neither democratic nor Jewish, and it is time to put a stop to this. I believe in the right of the Jewish people to establish a nation-state of their own, as well as in the right of the Palestinian people to establish a nation-state of their own.

The national aspirations of the Palestinians, including the Palestinian

citizens of Israel, must be realized through the establishment of a Palestinian nation-state alongside that of the State of Israel, and under no circumstances in its stead. Two states for two peoples. I am unwilling to abandon the identity, the link, and the connection of the State of Israel to the Jewish people, it being the home of the Jewish people. To precisely the same extent, I am unwilling to accept discriminatory, depriving, humiliating, embarrassing, and harmful behavior towards the non-Jewish citizens of Israel.

Aside from the Law of Return, which prescribes the right of *aliya* (Jewish immigration to Israel) and Israeli citizenship, there is absolutely no justification for discrimination and unequal treatment between Jews and Arabs in Israel. Israel's constitution must ensure equality and prevent discrimination, recognize that its Arab-Palestinian citizens are a national minority, and not simply single individuals, and ensure their right to preserve and develop their culture, language, identity, religion, history, and tradition. Israel's constitution should recognize Arabic as an official language of the State, and to prescribe it as such. It should also remove every limitation and obstacle blocking the complete and full integration of all of its citizens from all strata and in all spheres of the State. The Israel Democracy Institute's proposal for its Constitution does so, and therefore I support it.

Everyone who is familiar with the Palestinian citizens of Israel knows that the overwhelming majority of them view Israel as their country, aspire to continue to live and integrate within it, succeed within its framework, and feel that the State is acting towards them with respect and equality. The great majority of the Arab-Palestinian minority in Israel desires the success and prosperity of Israel, and expects that it will grant legitimacy, validity and substance to its citizenry here. Should the State grant all this to the Arab minority who lives here, the vast majority of them will accept it and grant legitimacy to its definition as a “Jewish and democratic” state.

At the same time, I estimate that a large portion of the elected Arab leadership in Israel, and especially the majority of Arab Knesset members, would find it difficult to support, officially and publicly, a constitution which defines Israel as “Jewish and democratic,” a constitution whose

introduction is the Declaration of Independence, and whose symbols are Jewish and Zionist ones. It will be difficult for them to identify with such an arrangement, and they would be concerned that their very support would grant *de facto* legitimacy to Zionism and to its result, which is perceived in their eyes as a “nakba,” a national catastrophe. A leading and important Arab member of Knesset belonging to an Arab party told me, “You understand that I cannot support such a constitution, but I would be very happy to live in a state which would legislate it. Our situation would be greatly improved over our current one.” I certainly understand that.

The Jewish Home

I am a secular Jew who is not punctilious about religious commandments – whether lenient or stringent – merely because they are religious commandments. I choose to live here not because Israel is a safe place for the Jews, for in Israel, Jews are killed just because they are Jews; not because only in Israel is it possible to live as a Jew, for in many places in the world Jews live as Jews; and not because it is pleasant to live here, for there are many places where it is more pleasant to live than Israel. I want to live only in Israel because only in Israel do I feel that I “belong”: only here do I feel at home. Yossi Beilin, the leader of the Yahad-Meretz party, who is considered an avowed leftist and secularist, once told me that he lives in Israel and wants to see his descendants do so, “because only in Israel do they celebrate Lag Ba’Omer.” He is correct. The history, geography, and link to Judaism, customs, experience and Jewish-Israeli-Hebrew culture which make Israel unique among all the countries in the world, create the natural environment for my life, my identity, and my development.

I see Sabbaths and holidays as special days, not only because they are the public days of rest in Israel, but also because they are one of the manifestations of the Jewish link and culture from long-ago days, and because they are an expression of the uniqueness of the public nature and public domain of Israel. The holidays and the Sabbaths, like the Lag Ba’Omer bonfire, are for most of us, uniquely Israeli – a continuation of culture, religion, and the Jewish people, and we hope that our descendants will feel that which is special and different on the Sabbath and holidays,

in comparison with weekdays, and in comparison with other countries in the world.

Work and business on the Sabbath and holidays are not, in my view, a secular achievement, but rather exploit and harm thousands of workers forced to work on public days of rest. I see these workers as being denied leisure and recreation time with their families and friends on the days of rest given to the general public, being the slaves of the Sabbath and the servants of business-owners. Anyone seeking to preserve and defend the rights of the workers, and the weak and poor from exploitation by people with money and power, must oppose, with all their might, labor and commerce on the Sabbath. It harms and ruins equitable social relations, and the special experience and character of life in Israel. It violates our reasons for living here, thanks to which we feel at home only here.

It is disappointing, surprising, and even outrageous that many liberals and secularists who believe in pluralism and consideration of the other cease to so believe when it comes to religious people. For a religious person, the public nature of the Sabbath and holidays is very important. Walking to synagogue on the Sabbath morning through an active and commercially bustling street, while the buses roar down the road, disturbs the Sabbath experience for religious people, and infringes upon their ability to feel at home, here in Israel. Why can we not consider their sensitivities? Why can we, the secular people, also not relate with openness, tolerance, and understanding to religious sensitivities? Why do we seek to push them aside, to prevail over them? Are we really interested in this? Or perhaps we have grown accustomed to a politics of rifts, in which everyone tries to control, triumph, grab, and win? At the same time, the religious people must understand our sensitivities, and our rights, and our desire to enjoy the Sabbath and holidays in a different fashion. I do not understand religious people who try to prevent secular people from enjoying the day, relaxing and resting on the Sabbath day and holidays as they choose, and I am not prepared to accept it. On the Sabbath we should open places of entertainment, recreation, culture, leisure, and sport to the general public, and organize public transportation as appropriate, though not necessarily buses.

The Jewish-Democratic Home

The Jewish-democratic home is where these two fundamental elements are ostensibly balanced. This balance is partly rigid and formal, and should not be subject to change or infringement, such as the identity of the State, or the application of basic human and minority rights, and partly flexible, developing, and adaptable to the realities of life.

The public domain should be an expression of a balance among the rights of the individual, the rights of the secular group, the rights of the religious individual, the rights of the religious group and religious sensitivities. For an appropriate balance to possibly be acceptable to me, it would have to be determined by a court, (although I might also accept a determination by a forum other than a court); moreover, “dragging” the courts into the picture to render a decision on these issues is liable to harm both the status of the courts and the legitimacy of the resultant arrangement. A proper balance must be the result of broad public discourse, a decision by the Knesset, and interpretation by the courts. This is the model which we are proposing to adopt for this issue in the Constitution which we have drafted, and we are appending to it a proposal for an ordinary law (the Sabbath (and Jewish Holidays) Law) which presents a proper and fair balance with respect to the special arrangements for the Sabbath and holidays.

I am a secular person and a democrat, yet I do not view the proposed arrangement as a compromise with the religious in order to gain a different achievement in its stead. Rather, it attains a very important value in and of itself on a personal level, and even on a national level, a value which affects the Jewish people and their future. I am convinced that I am not alone or unique in my feelings. The majority of Israelis feel the same.

I would object should the future constitutional arrangement deny a person his or her rights simply on the basis of religion or belief, or solely for reasons related to religious commandments. For instance, Israel cannot continue preventing couples from establishing a family solely because of religion or a religious commandment, as in the prohibition against a *kohen* (a member of the Jewish priestly caste) and a divorcee establishing a

family together. This constitutes a serious infringement on human rights, and must be abolished in Israel.

At the same time, in resolving the matter, Israel must consider the ramifications of the possible arrangements regarding this issue on the future, and the way in which the Jewish people will develop. In drafting our proposal with regard to the issue of marriage and divorce in accordance with religious law, and the covenant for civil partnership and its dissolution, we have kept these components and principles in mind. Couples who are joined in the Spousal Registry will enjoy the same status, and the same rights, as a couple marrying in accordance with their religious precepts. It seems that Israel’s rabbinic leadership is leaning towards approving the arrangement for entering into a Partnership Covenant and its dissolution by State institutions, without rabbinic intervention, without viewing it as jeopardizing and creating *mamzerut* (illegitimacy of children under Jewish law), which is liable to create a serious schism in the unity of the Jewish people. I am convinced that the existence of this civil arrangement for a Spousal Registry is in all our common interests, including that of the religious community. A proposal for a law which would arrange for the civil Spousal Registry is appended to the Institute’s constitutional proposal.

The Constitution and Education

The moment of establishing the constitution is a historic one, and it is likely to be a golden opportunity to amend bad habits and adopt better ones. Such a moment, undoubtedly, will give the State a chance to transform the constitution into a first-class designer educational tool. To date, the educational system has abstained from educating and training the democratic citizen in Israel. In school, children learn very little, if at all, about what a democracy is, and rarely deal with the citizen’s rights and obligations in a democratic state, or with the rights of the minority. It is very difficult to understand and accept this. It is preferable to correct this immediately, even prior to approving the constitution, or at the very least, prepare to change the way in which democracy will be studied in school as soon as possible. Perhaps the constitutional process currently

taking place, and the progress made towards a constitution, will create an incentive for change.

The Essence of the Proposal – Compromise

The proposal for a Constitution by Consensus by the Israel Democracy Institute, under the guidance of Justice Shamgar, is a compromise which protects and ensures that which is truly important to us and implements the values and principles which we view as central. Without a doubt, this compromise will not fulfill all of our desires; certainly not the dreams of each of us, nor the dreams of each sector in Israel. In this proposal, everyone concedes something, primarily their dreams, but at the end of the day, everyone should receive much more than they have today. This proposal strengthens Israel and fortifies Israeli society and its unity, because it lays the groundwork for its democracy and its identity.

The Responsibility of Israel's Leaders

Precisely because it is a compromise requiring dreams to be relinquished, this constitutional proposal presents a serious challenge to Israel's leaders. It forces each and every one of them to make a decision which is brave and historical, with far-reaching consequences for the future of the State and society in Israel, precisely as Knesset Member Michael Eitan, Chairperson of the Constitution, Law and Justice Committee, has made a brave, important, and historic decision to begin, finally, after 55 years of the State's existence, a process of establishing a constitution with broad consensus. Israeli leaders from politics, religion, academia, and the legal world, must decide whether to continue to promote and to advocate for the full realization of their sectorial dream, even if they will never be able to achieve it, or to agree upon a broad civil common denominator. Each has to decide whether to deepen the rifts in Israeli society further and thereby weaken the State, or whether to advance towards a preferably realistic, desired, and improved arrangement, which will constitute a better reality than the one which currently exists for each sector separately, including "their" sector, and *a fortiori* – for the Israeli collective and the State as a whole.

The challenge which this compromise proposal of the IDI, under the leadership of the President of the Supreme Court (Emeritus), Justice Meir Shamgar, presents, is also a test for the leaders of Israel: their patriotism, commitment to the entirety of society, priorities, honesty, integrity, trustworthiness, and courage. Assuming that Israel’s political, religious, academic, and legal leaders are responsible and upstanding, I believe that in the coming years the Knesset will establish a constitution with broad consensus. The failure to establish such a constitution will harm the welfare and strength of Israel and will enlighten us as to its leaders and their priorities.

Avi Ben-Bassat

I joined the staff of the Constitution by Consensus as the wagon was winding its way to the top of the mountain. At that time, a preliminary draft had already been written, but it was covered in red and blue ink testifying to no small number of disagreements; sections which resulted in protracted and heated arguments about a line, a word, and even minutiae. And although the discussions were often stormy, the desire to reach a consensus and find a compromise which would allow us to live together was paramount. We need not live the life of a pair of lovers whose emotions overflow although they do not yet know what life may have in store for them after the wedding, but rather the life of a sober couple that has withstood all the temptations of divorce and are now renewing their golden wedding vows. And because the couple originally married hastily, without a *ketuba*, a marriage contract, they are eager to fill in the blanks. As they are acquainted with all the obstacles of a life together, they strive to remove these obstacles one by one, while each spouse examines the outside limits of the concessions that their counterpart could make, yet still remain standing together under the wedding canopy.

From the moment that I joined the staff, I, too, became infected with the enthusiasm of consensus, which will strengthen the foundations of the house already built. Deep down, I, too, have considered more than once whether it would be better to just give up and hold out for a constitution which would be even closer to my heart. Yet each time I became caught up in these misgivings, I concluded that the auspicious time just grows more distant. Social rifts and ideological disagreements are dissolving the glue which holds us together, and threatening both the Zionist dream and democracy.

More than I agree with my colleagues over each and every line of the Constitution which we are proposing, I share their belief in its necessity, goals, principles, and urgency. Like Yaron Ezrahi and Asher Arian, I, too, want to ensure that the return to Zion which my forefathers dreamed

of lasts forever, even if some of my dreams for a Jewish, democratic, humanistic, and liberal state are diminished. Like Dan Meridor and Mordechai Kremnitzer, I, too, am happy to take part in drafting a constitution which places the individual supreme, a constitution which waves the flag of human dignity and liberty, the sanctity of life, and equality for all. By virtue of all these, such a constitution promises full equality to national minorities who live in our midst, as Amir Avramovitz emphasizes. The concerns of Uri Dromi and Arye Carmon regarding the destructive ramifications of tears in our social fabric, as the sand disappears through the hourglass motivate me as well to seek, and find, common ground between secular and religious cultures, as delineated by Yedidia Stern and Aviezer Ravitzky. A lack of government stability also prompts me, as it does Shlomo Guberman and Baruch Nevo, to establish principles which will immunize society and its governmental institutions from frequent fluctuations. Armed with all these, nothing remains but for me to adopt the principles of the Constitution drafted by Justice Meir Shamgar, President of the Supreme Court (Emeritus).

The path of consensus is not perfect, but it is almost certainly the only one which allows all segments of society to live together in coexistence based on values and principles fundamental to democracy.

Arye Carmon

The willingness of the fellows of the Israel Democracy Institute to take upon themselves the task of drafting the proposal for a constitution and, even more so, the willingness of the President of the Supreme Court (Emeritus), Justice Meir Shamgar, to direct the task of drafting, reflect the deep feelings of vocation which have motivated me throughout these years. The moments of writing my credo, my “I Believe” are, therefore, celebratory. They signify the conclusion of a great effort, an effort to propel a process forward, preserve its momentum, and see it through to the end.

During the course of this process, there have been a number of twists and turns in our feelings regarding the feasibility of completing our efforts and the chance for achieving consensus regarding the content. In the end, the collective process of the drafters of the proposal for a complete Constitution by Consensus culminated with a personal “I Believe,” whose essence is the unique path of each of the drafters of the Constitution at the Israel Democracy Institute, woven into one general harmonious tapestry, built into a unified mosaic composed of differences. And indeed, our joint product is based on compromises, on a supreme effort to reach out towards one another.

The “gasoline” which has fueled the process and the “oxygen” which has maintained it throughout, have been the recognition of the necessity for compromise, a recognition which has been continuously strengthened and built upon, layer by layer. Even as the process was launched, the drafters agreed to delineate their own “red lines” and made a tremendous effort to come as close as possible to them, that is, they conceded their complete dream and demonstrated a willingness to compromise on their overall vision in order to make it a possible reality. The willingness to compromise is the parent of consensus, which allowed for weaving the full tapestry of this proposed Constitution.

The unifying “cement” which has allowed for compromises by us all

is the perception that the State of Israel is the realization of the Zionist vision. From the perspective of one who took it upon himself to guide the discussions, I shall state that my effort to bring the opinions, beliefs, and principles closer together drew strength from its Zionist base, which has served as our common denominator: **the recognition of the importance of the State of Israel as a sovereign home for the Jewish people, as a place where the Jewish people are able to realize their right to self-determination.** The common denominator which has motivated our willingness for individual concessions and compromise is, therefore, the recognition that the State of Israel is the rebirth of the ambitions of the Jewish people down through the generations, and that the force driving this rebirth is the Zionist movement.

The proposal for the Constitution by the Israel Democracy Institute’s fellows, under the leadership of President (Emeritus) Shamgar, expresses a Zionist “I Believe” in all its broad and diverse meanings. As such, and as grounded on Zionist foundations, the constitutional proposal views granting full civil equality to the Israeli Arabs as an essential basis for the justification of its existence in that it reflects the Zionist effort to base Jewish sovereignty in Israel upon the values of humanism, liberalism, and fraternity.

My Zionist approach is the source for my sense of mission. This approach is based on integrating dreams – the dreams of both thinkers and doers: on the Herzlian approach, which aimed to synthesize the universal, humanistic, and liberal values of Europe during the latter part of the 19th century, on the approach of Ahad Ha’am, who hoped that the State of Israel, when it would be established, would be a spiritual and cultural center, and on all those whom, for me, symbolize the socialist Zionist flower-bed in which I grew up, including Berl Katzenelson and A.D. Gordon, who synthesized, in their Jewish approaches, the fundamental values of equality, liberty, etc.

I have approached my role in guiding the task of drafting the “proposal for a complete Constitution by Consensus” as a historian, as one for whom the establishment of Jewish sovereignty for the people of Israel in its Land is not, and cannot be, merely a technical matter, as grand and

unprecedented as that may be, after two thousand years.

In my opinion, the significance of establishing sovereignty is far-reaching. From the point of view of the historian, the founding of the State of Israel is the conclusion of a long reality in the Diaspora, an end which occurred by virtue of the enlightened national movement which took upon itself to change the Jewish fate. The reality of the Diaspora was one of homelessness and of powerlessness; it was a reality of a collective which struggled for uninterrupted continuity without a territorial or national base. Given this background, the basic challenge of Zionism is, in my opinion, to juxtapose the fundamentals of the Jewish value code with liberal values, through a constant assessment of political action. We make political decisions, we use weapons, we employ force; but the true test of power is the extent to which those who wield it rely upon a solid ethical foundation, on matters within an enlightened normative framework. In my mind, the test of the Jewish collective in a reality of territoriality and statehood is the ability to build a system of citizenship based on a normative-ethical foundation that grants significance and meaning to such citizenship.

The absence of a territorial basis during past Israeli sovereignty spurred the formation of numerous and varied fears within Israeli society. The tensions between the religious and secular, between Jews and Arabs, and between newcomers and veterans, are fed and influenced, to no small degree, by these same fears. I feel that I am a member of a generation whose primary task is to establish a basis for the future, a generation whose essence and significance in life are situated at a historical, defining juncture. This is the juncture, where on the one side stand our founding fathers, the initiators of the Zionist revolution, who changed the lives and way of life of the Jewish people, and where on the other side stand our grandchildren, great-grandchildren, great-great-grandchildren and their descendants until the end of time, whose purpose of existence as partners in the emerging sovereign collective is the continued reinforcement of a tradition of taking responsibility for political sovereignty, for a nation for whom the sovereign experience which has just begun, stretches before it.

Thus, at this critical, historical juncture, the creation of an accepted normative framework, that is, agreed-upon ground rules, is not just a formal solution, but a national necessity. As such, enforcing this normative framework is, in my opinion, an imperative existential condition for embarking on a path to reduce fears and enable a discourse acceptable to all parties.

The constitution is the construction of a design. Over the years, this design will allow Israeli society itself to shape and determine what its identity will be. Although such a determination is the result of a multi-generational process, nevertheless, I feel that this generation bears the historical obligation to enable the determination of this design in order to avert the disintegration of the common foundations of Israeli society.

Against this setting, with the background of the Diaspora on one side and the socio-political reality of Israel on the other, the *raison d'être* of the State of Israel becomes clear to me. This *raison d'être* may be summed up in its Jewish content and democracy as the ethical-normative foundations for its government. In our collective effort, my colleagues at the Israel Democracy Institute have intended, *inter alia*, to find a balance, an equilibrium, between these two foundations. We have endeavored so that in the constitutional tapestry both Jewishness and democracy will be woven together into one fabric.

The supporting Jewish pillar in this constitutional draft is not monolithic. A look into its centrality as a factor in shaping the identity of the Israeli collective is open to many reactions and observations. The other supporting pillar, the counterpart to Jewishness, is the democratic character of the State of Israel. Basing democracy as a way of life, as a foundation for imparting significance and meaning to our common existence, is another force driving the completion of the Constitution by Consensus project forward. The drafters of the proposal for the Israeli Constitution at the Israel Democracy Institute wish to reinforce in their proposal the claim that “Jewish” and “democratic” can live under one roof.

Affixing the term “consensus” to “constitution” happened almost by chance, occurring at the preliminary stages of the internal process by the

fellows of the Israel Democracy Institute. Almost unnoticeably, in the most natural way possible, “consensus” was attached to “constitution.” For us, the drafters of the Institute’s proposal, the term “consensus” reflects the personal willingness of each of us to compromise in the internal process in order to achieve our common goals.

Moreover, consensus contains within it two basic values, an instrumental value and a normative value. The instrumental value is completely clear: consensus is the only means to establish such a joint document, more than 50 years after the inception of the State; consensus is instrumental to unity, to granting stability to the mosaic, in terms of the cement which unifies the mosaic of our opinions. In its normative value lies the potential for the meaning and significance of a life in common. In the multi-faceted and multi-dimensional Israeli society, the resources for a “common ethical asset” lie in the mosaic and are spread out among the groups which compose the Israeli collective. A constitution which is anchored in consensus is likely to lead to utilizing those reserves and resources of common values and weaving them together into a common tapestry.

Clearly this is a vision towards which we should strive, on a horizon hidden behind the gathering of clouds of rifts, internal tensions, and threats to the joint existence of the Israeli collective. Entering the constitutional process, where such process is a rigorous investigation of shared values and norms, culminating in approval of the Constitution by Consensus, is, in practice, also the force behind a multi-dimensional educational process. The purpose of this educational process is two-fold: to lay down a consensual foundation which includes ground rules which are clear and inscribed in a Bill of Rights, as well as to assimilate the presence of a multicultural and very diverse society. The conclusion of the process, most probably after ratification of an agreed-upon constitution, is the basis for a political culture focused on behavior characterized by the following guiding question: What am I – religious, secular, Arab, nationalist, liberal, socialist – willing to concede so that those different from me can live with me in coexistence?

Uri Dromi

How do I know that a constitution is necessary for Israel’s fragile and fragmented society? From personal experience. During the years 1992-1995, I had the great honor of serving under the late Prime Minister Yitzhak Rabin. I was a witness to significant processes which the government was conducting under Rabin’s leadership with respect to three sizeable communities: the religious, the Arabs, and the settlers. I learned that, in the absence of an all-encompassing super-framework, constituting some set of ground rules approved by all, Israeli society would deteriorate into a series of unrestrained struggles, a “seize all you can.”

At the beginning of the premiership of the late Yitzhak Rabin, Minister Shimon Shetreet initiated a process of reform in the Religious Councils. The reform was especially necessary and proper, and was intended to correct an insufferable situation: the waste of public funds and corruption which accelerated a contempt for religion by large sectors of the secular public. Quickly, however, the process was portrayed as an attempt by a “secular” government to harm whole religious communities and it turned into a focal point for a political “tug-of-war.” If there had been an *a priori* agreement regarding the appropriate integration of religion and state, a consensus governed by the highest collective level (a constitution), it would have been possible to reduce the alienation which developed as a result of the process – which, in and of itself, was a proper process – by the government.

The Rabin government also turned its attention to the Arab sector. There is no doubt that, in the history of the State, this was the government which, more than any of its predecessors and even its successors, changed the State’s priorities with respect to the Arabs Israelis. Although the willingness of the Rabin government to rectify decades of wrongdoings was praiseworthy, it only emphasized the depth of the discrimination experienced by Arab Israelis throughout the years. Even at that point, I thought that if the rights of this important minority could be determined

in an organized and respectful manner, and not given to the benevolence of random politicians, this minority would feel a greater sense of belonging to Israeli society.

Ultimately, with the Oslo process, a great rift was created between Rabin and his government on the one hand, and the large community of settlers and their supporters on the other. In an unprecedented atmosphere of incitement, Israeli society was split and dragged towards violence, culminating in the assassination of the Prime Minister. Not only in hindsight, but even during those very times, I hoped for any type of framework through which we could “agree about how to disagree.”

Today, as an “alumnus” of the protracted process of the Constitution by Consensus, these things have become absolutely clear to me. I have personally experienced and learned how a diverse group, whose members disagree with one another regarding almost every issue in the world, has been able to find a common language. Listening in a civilized manner to the words of the other, truly examining red lines, and reestablishing priorities – both personal and collective – all of these have transformed me into a different person: less obdurate in his opinions, more open to listening to the opinions and world-views of others, and more interested in measures for calming a turbulent Israeli society, enabling all its members to move forward together, while preserving our rich multifaceted character. It seems to me that a Constitution by Consensus is the answer.

Yaron Ezrahi

My grandfather, Mordechai Krichevsky, immigrated to the Land of Israel from Russia in 1896, infused with the socialist Zionist dream. He headed the Hebrew Teacher’s Association in pre-State Israel, and was one of the architects of the first educational program in Hebrew at the beginning of the previous century. Since then, the entire existence of my family, including its various branches, has been conducted in the context of promoting the Zionist mission. Mordechai changed his family name from Krichevsky to Ezrahi (meaning “civic”), reasoning that when the State of Israel would be established, he could, as a Jew, enjoy the status of a “citizen” which he did not have in Russia.

My choice of political science as my field of study stemmed from an understanding, or feeling, that the Jewish people had no political experience in establishing and administering a modern state. Thus, this was a field worth studying and delving into, and perhaps even an area to which I would be able to contribute. My joining the Israel Democracy Institute many years later was also influenced by this same perception of “mission” which has been ingrained in me since childhood.

This initial intuition also motivated my decision to pursue advanced studies (in the United States) regarding the inter-relationship between science and politics. At that time, as I embarked upon my intellectual journey, I perceived of politics in the spirit of the European Enlightenment: a field open to discourse and rational behavior. I believed that all that needed to be done was to learn how to assemble and deploy the technical knowledge which would guide the Knesset (for which I served as an advisor) and the government, and rational decisions would follow. This perception was further solidified after delving into the writings of European philosophers such as Condorcet and Kant, and based on my early, naïve, theoretical perspective, which was far removed from political experience. However, very quickly I realized that I had erred in understanding political machinations. In fact, it became clear to me – and

it was such a momentous and illuminating revelation to me that in its wake I wrote an entire book – that, in politics, science is a greater source for political legitimacy than it is for knowledge; it became clear to me that politicians have an exceptional ability to utilize, for their own needs, the authority of science while abandoning scientific knowledge itself. Over the course of time, I have dealt with various aspects of the relationship between knowledge and politics, and I have come to the realization that, in fact, in politics, I am dealing with the forces of emotion and fantasy, no less than knowledge.

Considering the dismal record of tragic mistakes committed by Israeli governments and realizing that political leaders can lead an entire society astray, I concluded that there is a very real danger to the existence of the State of Israel. In an article in the newspaper Haaretz on the eve of the elections in 2001, I said as much: since the establishment of the State in 1948, Israel has tried to shift from the revolutionary, “pre-state” phase to a state governed by the rule of law, a necessary and essential transition for a political entity if it wishes to exist. And indeed, during the State’s first few years, certain encouraging signs that we were moving in the direction of constitutionalizing the use of power could be recognized. Although a formal constitution was not successfully instituted, branches of government, separated from one another to a reasonable degree, as well as democratic institutions, were established. Despite the political corruption which had flared up even then, a process had begun in the direction of formalizing political life and structuring the relationships among authority, responsibility, and power.

This process deteriorated greatly after 1967. It is possible, in my opinion, to assert that if, in 1948, Israel had begun pursuing the path of building itself as a solid parliamentary democracy, the massive Jewish settlement of the occupied territories following the Six Day War sent Israel back to the stage of an “emerging state,” with all the uncertainty, risks, and instability typical of a pre-state society unable to institute rules for the use of force.

Israel consists of many communities, including ultra-Orthodox Jews, religious-Zionist Jews, secular-nationalist Jews, secular-social-democratic

Jews, Christians, Arabs, Druze, Bedouin, and Circassians. In this multi-faceted society, there is one Jewish group which has been losing more and more of its earlier willingness to recognize the legitimacy of the State, and which believes that the State must have a Jewish identity in its absolute sense (as defined by such group). This group believes that the state, perceived in the Western political tradition merely as a tool directed at preserving the liberties of its citizens and civil order, should be the “site” or “arena” for realizing the collective Jewish identity. This perception is a gross distortion of the legitimate relationship between collective identities and democracy, and is the result of a grave failure in understanding the essence of the contemporary modern state. In modern democratic legal thinking, the state is only a framework. It cannot, and therefore even, is not meant to, be the place to realize or express the identity of one group – whether self-designated or designated by others – at the expense of the rights and identities of all the other groups and of the citizens as individuals.

Moreover, I am concerned that, because we still do not have a consensus regarding the concept of government legitimacy, the struggle which led to the assassination of the late Prime Minister Yitzhak Rabin, and the current ongoing protest against the authority of democratic institutions, have inflicted a very deep wound upon the infrastructure of the very legitimacy of the State of Israel. These developments have created a dangerous situation which raises doubts about the ability of the State and the government to make decisions of existential and historic importance to the State of Israel, decisions involving a high internal political cost. When a country reaches such a situation – and I claim that it is not only a product of a failure of leadership, but also of an undemocratic political culture – the tremendous importance of a constitution intended to stabilize the basic norms and procedures of the system becomes abundantly clear.

On the other hand, I would be disregarding the truth if I did not state that, from a long-term historical perspective, protesting the legitimacy of the state, on condition that it does not lead to harsh violence and a collapse of the system, has an additional important democratic aspect: potentially contributing to a restraint of the forces which encourage the cult of the state as such. Just as in previous centuries, religious wars gave

rise to a recognition of the importance of the separation between religion and state, and checked the state from interfering in the lives and beliefs of the citizens, so, too, the conflict between religious and secular, or between ideological settlers and law-abiding liberal-democrats can, over time, promote a degree of appreciation for the limits on the capability of a democratic state to embody a singular and homogenous group identity in a multi-ethnic and multicultural society.

Nevertheless, where decisions which are likely to be seen as necessary for the commitment of citizens to the rule of law are ignored, and given a series of attempts to drag Israel's constitutional politics down to the lowest levels of wheeling-dealing coalition politics, Israel's parliamentary democracy is in danger of sliding into an authoritarian regime.

As a result, I am very apprehensive. I believe that we are unable to make decisions, neither with respect to peace nor with respect to war, without being at risk of breaking all the rules. Even if we wanted to protect the fundamental interests of the State and society, the means that currently lie at the disposal of the elected bodies are weak and fragile. It appears to me that the leaders also sense this: the enthusiasm for creating a national unity government in Israel demonstrates a deficit in governmental legitimacy.

Over the course of the years of our diligent work in drafting the constitution, I have tried to direct my contribution to the document in accord with the assessment that the constitution is a historic document whose strength lies in its ability to diverge from the boundaries of formal legal language and create layers of meaning richer than appear at first blush. In a society such as ours, a constitution will not succeed in serving as a basis for political order and sustaining it, if it does not capture a place in the imagination and hearts of the citizens who maintain links with a variety of groups and world-views. It is somewhat similar to postmodern architecture, in which there are references to classical, Renaissance, Byzantine, and Baroque architecture, among others. As an analogy, from a symbolic and practical point of view, the constitution needs to be allowed to resonate in varied directions and to diverse groups, so that it can become a conceptual and normative home for the entire Israeli population.

Therefore, the approach I have adopted is neither philosophical nor legal, in a sense which venerates the principle of consistency, but rather a dialectic and flexible approach, seeking to embrace true contradictions without discounting or negating them. For this reason, the text of this Constitution contains elements of compromise, and even I am, as is each one of us, not entirely satisfied with all of its sections. Nevertheless, the language was chosen with an eye to appropriate flexibility within reason. Certainly both the “Jewish” language and the modern Israeli language must allow for a range of interpretations which will permit the Israeli social and political system to continue its development. A state which is both Jewish and democratic, and I wish to emphasize this point, is a dynamic system which depends on continued constitutional interpretations and reinterpretations. Neither Judaism nor democracy are historically static, but rather change over the course of history. As a society which rules itself, or is ruled by itself, Israel must be able to amend, not revolutionize, the structure of its political system by itself while in motion.

The political system does not have an absolute rigid nature, and the ground rules are also given to change under certain circumstances, although they are protected from frivolous changes. The alternative renders law and liberty meaningless. However, the constitution should not permit this to happen easily. As Professor Bruce Ackerman has asserted, the politics of the constitution must be “high politics,” the lofty politics of statesmen who think long-term, and not dirty-gray, everyday politics and “hallway lobbying.” One of the drafters has said that he would speak for generations; I will not attempt to speak for “generations,” but I will certainly not speak for “next week” or “the morning-after papers.” The politics of the constitution are elevated above ordinary politics, and the problem in Israel is to create a dualism: between lobbying and statesmanship, and between everyday politics and the politics which examine the whole system from a comprehensive and panoramic perspective.

My work on the text of this Constitution is also guided by the position that no institution, person, or group of individuals shall have the authority to define my identity or that of any other person in our society. Unfortunately, there are people in Israel who strive to impose

labels of identity and inner nature upon other citizens, while ignoring an individual's right to self-definition. The ability to choose and shape an inner identity and a way of life are essential to the contemporary concept of "liberty." Since the independent judgment of every citizen, and not only on election day, is the source for the authority of the state and the elected government, no person or group may assume such authority to determine the value-shaped content and the personal life-style for another individual.

The time has long passed where states grant their citizens an "identity card" (in the metaphorical sense of the expression). A state does not confer identity, and therefore a modern state, even if it possesses a domestic character, is better off not aspiring to develop an "identity" in the most profound sense of the word. An identity may grow out of free choices in society or societal groups; identity can be for families and people; identity cannot be imparted through a mechanism of coercion and public administration.

A state cannot be a "personality" or a "spiritual entity," unless as a fascist regime. Free people would not abandon the authority and power to define their identity and their inner world to politicians, clerks, and rabbis. But every citizen and every group is entitled to attempt, through peaceful means, and without employing a state mechanism of coercion, to persuade the other citizens that their path is the preferred one. A constitution should ensure this freedom. The constitution should be a framework in which people are free to define and transform themselves without causing harm to one another.

Shlomo Guberman

Why a Constitution?

The greater part of my career in the legal profession was spent in legislative drafting; until retiring, I served many years as the Deputy Attorney-General (Legislation). When the President of the Supreme Court (Emeritus), Justice Meir Shamgar, and the President of the Israel Democracy Institute, Dr. Arye Carmon, invited me to join the Public Council of the Israel Democracy Institute to prepare a draft of the Constitution by Consensus, I readily accepted their invitation. I note here that which motivated me, a veteran legal draftsman, to join the massive efforts of the Israel Democracy Institute to fuse together a constitution for Israel, in addition to the classic motives, which need not be enumerated here.

I will admit, without embarrassment, that at one point, I supported the position of a former Minister of Justice, Dr. Dov Joseph, that Israel does not need a written constitution, just as Britain does not. But the early sparks of recognition of the need for a formal constitution were ignited in me following the High Court of Justice case of *Bergman v. Minister of Justice* (1969), in which I assisted then Attorney-General Shamgar in his appearance before the Supreme Court. At the heart of the case was section 4 of Basic Law: The Knesset (1958), concerning the issue of the method of elections for the Knesset. The section provides that: “The Knesset shall be elected by general, national, direct, equal, secret and proportional elections, in accordance with the Knesset Elections Law; this section shall not be varied save by a majority of the members of the Knesset.” This provision was passed on the second reading of the Basic Law, with a majority of 56 members of Knesset against 54, at the close of the debate on the reservations presented by Knesset Members Rafael and Rosenberg (Knesset Minutes, Vol. 23 at 900).

A similar phenomenon, where a requirement for a special majority in order to amend a provision of legislation was set by an ordinary majority of members of Knesset, who were fewer in number than the special

majority required for the amendment, has occurred in the Knesset time and again.

Thus, Basic Law: Freedom of Occupation, in its first version enacted in 1992, provided in section 5 that, “This Basic Law shall not be varied save by a basic law passed by a majority of members of the Knesset.” Yet this very same Basic Law was passed in its third, and final, reading by a majority of 23 members of Knesset, without any objections (Knesset Minutes, Vol. 125 at 3393).

So, too, Basic Law: The Government, in its 1992 version, provided for the direct election of the Prime Minister and was revoked as a result of enacting another Basic Law on the subject in 2001; the 1992 Basic Law was passed in its third reading by a majority of 55 against 32. Section 56(a) prescribed that the Basic Law shall not be amended except by an absolute majority of Knesset members and, moreover, that such a majority “will be required for decisions of the Knesset plenum in the first reading, the second reading, and the third reading.” Thus, a minority of Knesset members restricted the right of future Knessets to legislate a basic law by an ordinary majority.

The government has submitted bills to the Knesset for Basic Law: The Legislation in 1975, 1978, 1992, and again in 1993. This Basic Law, prescribing that basic laws can be legislated only by an absolute majority of members of Knesset, has yet to be enacted. Apparently, each Knesset, at its own point in time, has been unwilling to relinquish its power to limit, by a simple majority, the power of future Knessets to legislate basic laws by the same simple majority.

This phenomenon demonstrates a severe flaw and flagrant injustice, and, therefore, I decided that a supra-legal provision was needed to establish a sound foundation for the requirement of a “special majority” for the purpose of enacting or amending a basic law.

A Constitution vis-à-vis “Private Legislation”

Another phenomenon which first developed in the Knesset in the 1980s, and has proliferated until reaching its current colossal dimensions, is that of “private legislation” by Knesset members. Since the establishment of

the State, it has been customary that the primary initiative for legislation came from the government. While legislative initiatives by Knesset members – “private legislation” in the parlance of the Knesset Rules of Procedure – were recognized, they were marginal in quantity and limited in content, concentrating generally on specific amendments to existing laws. However, when Knesset members began to submit an ever-increasing quantity of bills, this began to have an impact on the State budget. A form of competition developed in the Knesset: Who will be the “champion legislator?” In a word-play on their Hebrew term, the private bills earned the nickname “Declarations of Law,” according to then Knesset Speaker, Professor Shevah Weiss, instead of the proper term “Bills of Law.” There were instances where the Ministry of Justice did not have time to examine the torrent of laws which flowed from the Knesset members properly, which on occasion impaired the quality of the legislation. The attempts to impose limitations on this private legislation, both in terms of quantity and in terms of their impact on the State budget, were not enforced. One received the impression that the Knesset members had adopted the mien of American Senators; like the Americans, the Israelis also liked to refer to themselves as “legislators.”

In order to address the proliferation of private legislation, from a budgetary standpoint, the government was in need of a procedure deferring commencement of such laws. Another course of action which the Treasury has taken is to amend laws which it deems to be too onerous for the State budget in the framework of a special omnibus law termed the “Arrangements Law,” which accompanies the annual Budget Law. At times, laws completely unrelated to the budget have been amended through this mechanism. The laws which were amended had originally been deliberated in various Knesset committees, whereas the Arrangements Law is deliberated, together with the Budget Law, in the Finance Committee of the Knesset, and therefore, it is no wonder that the various committee members felt circumvented and resentful as a consequence of such Arrangement Laws. As a result of such constant conflict between the Ministry of Finance and the Knesset, a solution which will find expression in a constitutional document has become necessary.

Moreover, the Knesset is heading down another dangerous course of collision, this time with the Supreme Court. More than once murmurings have been heard in the Knesset regarding certain Supreme Court rulings. President (Emeritus) Aharon Barak has said on several occasions that the Knesset has the power, and it is its function, to amend the existing law whenever a certain judicial ruling is not to its liking. However, the problem is that the Knesset is sometimes unable to garner the necessary majority for legislation on those same central issues.

Only a constitution is able to determine, both with respect to the Knesset and the courts, the substance of the law. Although even in developed countries with a constitution, there naturally exists a tension between the legislative body and the Supreme Court, the character of that tension is different from the one existing here in Israel, where there are those who question the very standing of the Supreme Court.

The Constitution's Functions

Therefore, we need a constitution which will grant stability to governmental institutions and make them impervious to frequent changes which are subject to chance political alliances.

Therefore, we need a constitution which will serve to consolidate the administrative law in our country, the majority of which is based upon judicial precedent.

Therefore, we need a constitution which will create a balance between the ambitions of the Knesset and appropriate conduct by the government and other governmental authorities – all while defending basic human and civil rights.

Therefore, we need a constitution which will preserve the character of the State of Israel as a Jewish, Zionist, and democratic state, as an advocate of human rights.

These, then, are the primary reasons which have brought me to place the experience of many “years of legislation” which I have accumulated at the disposal of the Israel Democracy Institute for the purpose of preparing a constitution for the State of Israel.

Mordechai Kremnitzer

I believe in the necessity of a constitution for Israel.

I believe in the necessity of a constitution with broad consensus.

The Danger of the Status Quo: A Constitution – Why and for What Purpose?

Despite their importance, Basic Laws on human rights (Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation) also entail the risk of a very severe crisis brewing for the constitutional system. Such a crisis is liable to develop because the courts will not be able to withstand the temptation to expand the arena of rights beyond that which the legislators intended to elevate to the constitutional level at the time of enacting these two Basic Laws. It is clear that this act, the legislation of these enervated Basic Laws, was intended to convert only some of the basic human rights into rights which are constitutionally protected. Giving in to such a temptation is liable to generate a serious reaction by the political system, including a withdrawal from the process of Basic Laws; such a severe reaction is likely to create a most grave crisis. The basic weakness of Basic Law: Human Dignity and Liberty already influences the extent of the courts' willingness to render liberal decisions. I believe, therefore, that we must not leave the status quo as is, and, in order to change it, we must stride towards a complete constitution, which will include all basic human rights.

Near Completion

In terms of the historical process of establishing a constitution for Israel, the time is ripe for the final step. As is well-known, Israel adopted a system whereby it was to build a constitution through a multistage, gradual process. Now, over 50 years after the establishment of the State, it is proper to bring this process to completion. The process which the State began in its infancy must come to a close, since it is impossible to claim

endlessly an eternal state of “infancy.” The gap between what we already have (the existing Basic Laws), and what we need in order to work the “existing” into a whole, complete constitution, is not great. It seems to me that, with only slight exaggeration, it is possible to declare that the fruit is already on the tree, and that it requires only the effort needed to pick it. In considering how close we are to a complete constitution, it would be a mistake not to attempt to finish the race in the “final straight.”

Political Stability

A constitution may be expected to address a major weakness in our political life. By that I mean our tendency to make fundamental system changes, as illustrated in the switch to direct elections for the Prime Minister and its subsequent reversal, and, similarly, in the great ease with which the provisions of the Basic Laws are amended. By its nature, a constitution promotes political stability. Establishing basic political arrangements and ensuring that they are difficult to amend is likely to stabilize a system currently characterized by instability. Clear and stable rules for decision-making are especially necessary in Israeli society, where more than one voice may be heard calling for changing the rules for decision-making in the context of a certain political struggle, while delegitimizing the current rules for decision-making, such as the struggle against the disengagement from the Gaza Strip.

Strengthening Democracy’s Substantive Aspect

The decisive aspect, in my opinion, in the constitutional process is Part Two containing a full and complete Bill of Human Rights. This is the crowning achievement of this proposal for the Constitution. Such a complete Bill of Rights will transform the currently absurd situation, wherein the right to freedom of occupation is constitutional, while the right to equality and the right to freedom of expression are not explicit constitutional rights. The true, great achievement of the Constitution offered here is that it grants the individual his or her rightful due, that is, protection of the individual, protection of minorities, and especially critical, protection of the largest minority, the Arab-Palestinian minority.

A Constitution which waves the banner of equality should open a new page in the relationship of the State and its Jewish majority with its Arab-Palestinian minority. Moreover, it adds the important idea of limiting governmental power. In this approach, the citizens are the sovereign and governmental authorities are the public's trustees; the latter's powers are limited, and they are not entitled to act arbitrarily or in contravention to the public welfare. This is of particular significance in our patch of the world.

Under the conditions reigning in Israel, there is a tendency to perceive the ends as being so important, that they can (almost) legitimize any means. In a profound way, constitutional thinking emphasizes the merit of the means given the merit of the ends. This is a central constitutional concept necessary for Israeli society, specifically in the present reality of our lives. Even unconnected to a specific reality, the short range of politics obligates us to balance it with long-term considerations built upon stable values. A constitution is intended to do exactly this.

Israel as a “Jewish State” in the National Sense

I see Israel as a Jewish state, first of all, in the national sense. In my opinion, this is a necessary foundation, for the Jewish national state is an existential necessity for the Jews. Without a state in which the Jews rule over their fate, it is impossible to ensure their physical existence. Moreover, in my opinion, it is impossible to ensure a democratic state in this region if we do not ensure the Jewish character of such a state, considering the region in which we live and its character. Therefore, both for reasons of physical survival as well as for reasons of democracy, the existence of the Jewish national state is necessary and justified. It is necessary to anchor this characteristic of the state – which people have begun to question – in a constitution, through an act of ratification: the link between the Jewish nation and its historic homeland and its state, a state in which it realizes its natural right to self-determination.

Common Denominators for a Polarized Society

A constitution approved by consensus has a chance of serving as a common

denominator for unifying and uniting a polarized and fragmented society which is demonstrating a dangerous tendency to disintegrate. If the process for adopting this Constitution is proper, in my mind, it could be compared with pouring cement for the shaky foundations of a structure which requires reinforcement.

The dimension of a constitution has more than just immediate significance. A constitution, in addition to its legal significance, is also a constitutive educational document. One facet of the minimal common ethos, which accommodates great diversity in world-views and different opinions, is its long-term aspect. The proposed Constitution is also a renewed covenant of all the democratic forces in the State – secular and religious, Jews and Arabs, old-timers and new immigrants – who seek to strengthen a democratic system in the face of undemocratic fundamentalist and extreme forces.

Possibility of Upgrading Politics

It is possible that a constitution which is approved through an appropriate process of reaching a broad political and public consensus will contribute to the upgrading of politics; such a constitution, where accompanied by appropriate conduct, will add respectability to politics, and such will, in turn, encourage quality people to enter politics. If the constitution will indeed make such a contribution, it shall be a contribution of prime importance.

This Constitution by Consensus – Why and for What Purpose?

A constitution approved at a historic moment does not have to rely on broad consensus. But this is not true for our proposed Constitution, which is not meant to be approved at any such historic moment. This Constitution needs broad public legitimacy; in any case, it is clear that it cannot be a document which serves as the aspiration for each of the sectors of which Israeli society is comprised. In other words, the constitution must be based upon compromise, in that the various groups in the State will complete the process with only a part of their wish list fulfilled.

As for myself, unfortunately I was unable to convince my colleagues to

support the idea of a “quasi-second House” in the Israeli legislature, the proposal raised where, with regard to the matters of public law, judicial functions would be carried out by one special department at the Supreme Court, whose judges would be distinguished jurists, reflecting a broad range of judicial viewpoints – appointed for a prescribed period of ten to twelve years, and other proposals regarding the Arab minority, issues of religion and state, and the “limitations clause” (concerning conditions under which a violation of basic rights are justified).

Various provisions in the proposal for the Constitution are not, in my mind, completely perfect. A clear example is the arrangement for disqualifying a Knesset list; a proper arrangement would have also included “endangering the democratic regime” and “racist propaganda” as grounds for disqualification. But apparently it is impossible to reach a consensus on such an arrangement without also including grounds that are inappropriate for a democracy, namely, negating the existence of Israel as a Jewish state. Therefore, I have proposed a partial arrangement as an alternative to the existing arrangement, which contains a serious flaw in the democratic nature of the State. In my view, the proposal for the Constitution overly emphasizes the Jewish nature of the State, considering that it is a Constitution for all: the entirety of the citizens of the State, including those who are not Jews. The arrangement which removed core topics regarding the relationship between religion and state beyond the pale of the Constitution is as difficult as splitting the Red Sea; the most important and difficult being the arrangement dealing with marriage and divorce. In light of this, it was agreed that approval of the Constitution would be accompanied by the creation of a civil track for founding a family based upon a Spousal Registry, where such civil track would be anchored in the Constitution itself, and by the enactment of the Sabbath Law, which would allow for public transportation in a manner appropriate to the Sabbath day, and to activities relating to culture and recreation. Such a graduated process is, in my opinion, a compromise which is difficult to digest, yet nevertheless – an appropriate one.

Concerns

Two concerns nestle in my heart. The first is that the process of establishing a constitution, driven recently by the Israel Democracy Institute, will conclude with the approval of a constitution, but that its contents will be significantly different, and for the worse, than those which appear in the draft proposed by the Institute. If such a development becomes apparent, it will become necessary to fight against it, because a bad constitution is worse than no constitution at all. The second concern is that a good constitution will have a bad interpreter. In a certain sense, such a state of affairs would be even worse than no constitution at all, since defective legal arrangements which should be revoked would instead receive constitutional legitimacy, thereby purifying the impure. Since the political system has discovered the power of the Supreme Court, there is a concern that it will try to “castrate” the effect and significance of the constitution by influencing the appointments to the bench of the Supreme Court. We must remain ever vigilant on this issue.

Yet, notwithstanding my concerns – I believe in the Constitution by Consensus.

Dan Meridor

The Essence of a Constitution

A constitution establishes the foundations for a system of government – on the one hand, basic human rights and their limits, while on the other, governmental obligations and powers. In a democratic system, a constitution is founded on the basic democratic values of society which include liberty, equality, human dignity, and the sanctity of life.

A constitution sets the ground rules between citizens and institutions of government. It prescribes the methods for settling differences of opinion: which issues citizens will entrust to a decision by the majority, and how the majority will so decide, as distinguished from those issues which should not be entrusted to a decision by the majority, but remain within the province of human rights which the majority may not deny the individual or minority, and how such rights should be protected from the arbitrariness of the majority.

These primary matters should be stable and fixed, unbreakable and unbending in the face of periodic coalition agreements, or a majority which has a change of heart and becomes impassioned, angry, or intolerant, or abandons the fundamental values of democracy.

Consequently, such basic principles must be immune from change by a simple majority. A Knesset law which can be passed or revoked by a simple majority is not the appropriate vehicle. These principles need to take precedence over ordinary laws in order to protect the fundamental values of democratic society and its ground rules from the arbitrariness of the majority. This is the role of a constitution; it ranks above ordinary laws in the democratic hierarchy.

If such matters hold true for all other nations, then *a fortiori* they apply to us. For we are composed of groups each differing from each other in world-views, beliefs, and cultures – and these painful rifts among us threaten the entire fabric of our society. In such a society, it is absolutely essential to establish a consensus regarding a common basis and

framework, fundamental values and ground rules, including procedures for making decisions and accepting judgments.

Throughout the decades, since the establishment of the State, even in the absence of a constitution, there has been extremely broad consensus concerning fundamental values and democratic ground rules. Despite acerbic debate stemming from different beliefs and world-views, there was no debate about the decision-making process. This held true with respect to Knesset elections, where all citizens – irrespective of nationality or religion – are entitled to participate with full equality; with respect to Knesset resolutions, which were accepted as binding upon all; and with respect to court rulings concerning the individual’s struggle against the government: judgments were accepted as binding, and no one contested their legitimacy. We all understood that, as Menachem Begin said, “There are Judges in Jerusalem.”

Why Now?

Lately, political discourse has exceeded traditional bounds, to the point where an attack has been launched against the foundations of the national consensus, both with respect to the Knesset (A simple majority versus a special majority? A Jewish majority? A referendum versus a Knesset resolution?) as well as with respect to the courts (allegations of judicial imperialism and politicization, among others). Where there is no consensus regarding the legitimacy of a decision, and an unwillingness to accept court judgments, the risk to the political and social fabric, and even to our very ability to coexist, increases exponentially. Therefore now, more than ever, a constitution for the State of Israel is necessary: a constitution which will codify the fundamental values upon which our State is founded, and the rules for settling disputes. As we have learned from *Pirkei Avot* (the Chapters of our Fathers), in the name of Hanina, the Deputy High Priest: “Pray for the welfare of the state, for without fear thereof, people would devour each other.”

The Zionist Revolution

The Constitution which we seek to adopt should be viewed in a broad

historical perspective. Our generation and that of our parents are both the architects and the progeny of the Zionist revolution. It is one of the glorious revolutions in the annals of nations, and perhaps even the most glorious of all. We did not continue the Jewish existence formed in the Diaspora; we rebelled against it. Neither prayers to the Almighty, nor the expectation of a miracle, nor belief in the Messiah saved the Jews from their plight in the Diaspora and from destruction and annihilation. These did not ignite the revolution. Zionism did not rely on a miracle, and grew tired of waiting eternally for the Messiah, who was to have led us from exile to redemption. We rebelled against all these and took our fate into our own hands. We are no longer a nation in exile, landless, powerless, subject to the mercy of other nations, identified and unified only by religious commandments (*mitzvoit*). A new type of Jew has been created. We have returned and mounted the stage of history, and today we are creating a new existence of sovereignty and national independence in our homeland, from developing a modern Hebrew language and culture, to contending with issues of nation and state as we have not done during the entire period of our exile.

This is not merely a continuation of the Jewish existence as shaped in exile, but rather the creation of a new Jewish experience, drawing upon all that is beautiful and good both from the wellsprings of our heritage as well as all that mankind has created in various and varied spheres of life, including the values of democracy and human rights, as such have developed in the West in the modern era.

What Constitution Do We Need?

When we draft a constitution for the Jewish people returning to their homeland, and for the minorities who live among us, we are forging the common base encircling and uniting us all. Political disagreements do not disappear; differences regarding beliefs and world-views are not diminished – such is not the task of a constitution. A constitution establishes the democratic basis agreed upon by all, or most, citizens of the State; it allows for debates and determines the means of settling them. No more and no less.

In order to create a democratic system in a Jewish nation-state, with which all its citizens – Jews and minorities, with all of the controversies within and among them – can identify, we must draft a constitution which chooses from our rich Jewish heritage those values which are compatible with the values of democracy. We must leave future disputes open to free debate and binding decisions by the public, based upon this Constitution and the fundamental values legislated therein. This Constitution will ensure such free public debate and will determine the process for making binding decisions.

This is a prescription for a “minimalistic” version, for a constitution appropriate to all, or at least the decisive majority of citizens, precisely because it does not force a specific ideology on them, other than fundamental democratic values common to us all. The more a constitution is identified with a certain sector of citizens, the greater other sectors will be alienated from it. The more a constitution allows for one group to impose its way of life upon others, the greater those coerced will resist against a constitution itself.

Therefore, not every idea, important though it may be, is worthy of being cloaked in constitutional garb. This is certainly true where the idea is not acceptable to significant segments of society, and where the idea could survive and flourish without a constitutional stamp. This is true for certain Jewish – religious or secular – values which are very important to many of us. It is not always necessary to mention them specifically in a constitution, where at times they arouse debate or resistance.

Every Jewish issue is dear to me. The Jewish existence in the past and present, in Israel and in exile, in all its complexity and richness, is an inseparable part of me, my spheres of interest, and my personal and professional life. This is my culture. This is my people. Yet not all issues need rest on coercive mechanisms of law, nor on blunt pronouncements embedded in the constitutional text. A constitution is not drafted to this end. I continue to believe in Ze'ev Jabotinsky's statement made when testifying in front of the Peel Commission about the future constitution for the Jewish state: “When I speak of a ‘Jewish State’... I do not think it is desirable that the Constitution of any State should contain special

paragraphs explicitly safeguarding the ‘national’ character of it; I think the less of such paragraphs we find in a Constitution the better. The best way, and the natural way, is that the ‘national’ character of a State should be guaranteed *ipso facto* by the presence of a certain majority.”

All citizens of the State deserve to feel that this is their Constitution and that it expresses their fundamental values and their agreement, the agreement of all, to the process of deliberation and decision-making concerning differences of opinion among them. Hence the need for broad consensus for this Constitution and for compromises necessary to achieve such a broad consensus. Broad consensus – yes; the right to veto – no. Broad consensus – yes; but not at the expense of democratic principles. This is also why a liberal constitution is appropriate for the State of Israel, a state for the Jewish people returning to their homeland, whose sons and daughters constitute the majority, and in which they – together with members of the minorities for whom this is also their state – enjoy full equality.

A National-Liberal Constitution

I grew up in the Zionist movement and was educated in the national-liberal school of thought. I seek to base the constitution for the State of Israel on this world-view. On this matter, I will quote Ze’ev Jabotinsky:

In the beginning God created the individual. Every individual is a king equal to the other, who is also a king. It is better that the individual sin against the public than the public should sin against the individual. Society was created for the good of the individuals, and not vice-versa.

The individual is the supreme concept [...] for the individual was created in the image of God.

Democracy means liberty. Even a government supported by the majority can deny liberty. In a place where there are no guarantees for individual liberty – there is no democracy [...] In the Jewish State one should arrive at a form of government in which the minority will not be defenseless.

As far as I am concerned, a constitution must express this spirit. At its core lie human dignity and liberty, equality for all people and the sanctity of life. It must determine the powers of government, set its limits, and ensure the protection of the individual and the minority in face of the arbitrariness of those exercising majority power.

Treatment of Minorities

Our historical test came to pass when we established the State, which had a sizable Jewish majority wielding power. For many generations, while in exile, we lived as a minority among other nations. Many Jews were renowned as brave fighters for human and minority rights. But the true test of a person and a nation is not as a minority fighting for its own rights, but rather as a majority, exerting power. Power is now in our hands. We are the majority. Will we treat the minority living among us as we have demanded that others treat us while we were in exile, that is, with full equality, dignity, and decency, or will we alienate the minority from a sense of belonging to the State, withhold full equality from them, and explain to them that the State is not theirs, too, but rather ours alone? Having won, with Zionism prevailing, will we adopt the magnanimity of the victor, or the arrogance of the strong? Hillel the Elder has taught us not to do unto the other that which is hated unto us. We have an obligation, then, to establish a constitution which will bring glory and honor to us and our historical heritage, and set an example for the nations of the world.

We must correct the impression generated over the past few years that a contradiction has ostensibly arisen between our being a state for the Jewish people or a Jewish state, and our being a state for all its citizens. There is no democratic country which is not a state for all its citizens. If the State of Israel is not also the state for the minorities which live in it, what then is their state? But there is no contradiction in fact: a substantial and stable majority of our citizens are Jews, and therefore the Jewish people is realizing its right to national self-determination here, without infringing upon the equality of all citizens, and by granting certain group rights to those minorities living in our midst.

This treatment of the minority living among us is derived not only

from our democratic values, but also from our Jewish values, for thus we are commanded to act according to our Jewish heritage. This is our test when we write our *Hukka*, our Constitution: “One *Hukka*, [...] one Torah and one Law shall there be for you and for the stranger that dwells among you” (Numbers 15:15-16), for this is the ethical-historical reason for the warm treatment of the stranger: “[...] for you were strangers in the land of Egypt” (Deuteronomy 10:19).

The Supreme Court – Protector of Democracy and Defender of Human Rights

In this proposal, Part Two: Basic Human Rights is set forth immediately after Part One: Principles and before Part Three: Governmental Authorities. Human rights are at the heart of the Constitution. They must be protected, and the purpose of the Constitution is to ensure this protection.

For both fundamental and practical reasons, we have placed protection of human rights from violation by the authorities in the hands of the court system, to be headed by the Supreme Court. The body that protects the individual from a power-wielding majority cannot be subordinate to the ever-changing will of such a majority, as manifested in the results of Knesset elections. The entity responsible for protecting the individual from the government must be committed to the fundamental democratic values of the State of Israel, even if the majority is liable to abandon them in anger or passion.

Therefore, our proposal explicitly grants the Supreme Court the authority to determine the constitutionality of Knesset laws, subject to a compromise reached regarding certain topics. This is the most important and successful mechanism, in light of past Israeli experience, for restraining the power of the majority and defending human rights.

The Constitutional Revolution

Out of deep conviction of the necessity for a constitution for the State of Israel, and with a feeling that the time for legislating a decent and fair constitution is running out, I have worked for many years, in various

positions in government and the Knesset, to complete a constitution for Israel. As Minister of Justice, I submitted a bill for Basic Law: Basic Human Rights. After an arduous political battle, with the welcome help of my “partner,” former Knesset Member Amnon Rubinstein, we succeeded in enacting two Basic Laws with respect to human rights, thus generating a constitutional revolution. I also submitted, on behalf of the government, another bill to the Knesset, Basic Law: Legislation; nevertheless it has not yet been passed.

And so it has come about that we do not yet have a full and complete constitution. We have a partial constitution, composed of 11 Basic Laws legislated by the Knesset, which are but chapters of a whole. We must finish a Bill of Rights and enact Basic Law: Legislation, which prescribes the normative and institutional hierarchy for the constitution (Basic Laws) and ordinary laws, and codifies the concept of judicial review of the constitutionality of the law. There is no need to start from scratch. The labor begun should be concluded, the existing should be expanded, brought to its culmination in a full and complete constitution. This is the Knesset’s task. The sooner completed, the better.

Compromise for the Sake of Broad Consensus

During the past two years I have participated, together with my colleagues at the Israel Democracy Institute, in an effort to draft a proposal for a constitution for the State which would enjoy broad consensus. Indeed, it is fitting that a constitution be adopted based on broad consensus, even if not everyone concurs. In the process of formulating this document, each of us has been forced to compromise in order to reach a consensus among those with differing opinions. Upon doing so, we have seen the need to garner broad political support in the Knesset for such a process. The compromises were, at times, painful, and each one of us is distressed by our sacrifices. But without our willingness to concede, we would not have achieved a document acceptable to individuals holding differing viewpoints on the central and important issues in the life of the nation. Not one of us leaves fully content. However, we will all benefit from one Constitution. This is the test, and our proposal lies before you.

Baruch Nevo

How would I prefer to see life conducted in Israel? I divide the principles of existence in Israel into two categories: (a) universal principles, in other words, the proper way according to which each individual, whomever he or she may be, and every society, whichever it may be, should act; and (b) specific, concrete principles for Israel as a Jewish and Zionist state with all its unique concerns. Examples of universal principles are equality, individual liberties, humanitarianism and assistance for the weak, truth and justice, environmentalism, and, of course, democracy. Examples of distinctively Israeli principles include a national language, issues of religion and state, and the Law of Return. In general, a great deal of wisdom is necessary to prevent legislative and ethical conflicts between these two categories of principles.

When I ask myself to define the term “constitution,” I respond with a metaphor: Israel is a ship tossed about at sea, with great waves surrounding it, a somewhat rickety vessel, carrying passengers, sailors, officers, and non-commissioned officers, all preoccupied with difficult conflicts because each wants to sail to a different destination. Furthermore, outside, high waves and strong winds pound away at the ship. In my mind, the constitution is a lighthouse or a set of coordinates, which during tumultuous and confusing times is meant to give the ship a general direction, a compass, to help it maintain a certain course and advance towards it.

This constitution, which we have undertaken to draft, while emerging many years after the constitutions of other countries, will also materialize long before other nations set about drawing up their own constitutions. In my opinion, this is the opportunity to serve as a “light unto the nations” in the most positive and pure meaning, that is, with the hope that this will be an innovative constitution which would then serve as a model for other countries.

Another central term is “consensus.” In my opinion, this term is also

under debate. What is consensus? Does it mean 75 members of the Knesset? Possibly 61? Or perhaps even two-thirds of the entire nation? Does consensus include minority groups, even if not represented in Knesset? This has become a crucial question. When we embarked on our journey many years ago, we thought that we understood what “by consensus” meant. Now this conundrum presents itself with all its complexities, because “consensus” is not an obviously understood term, and “consensus” certainly does not refer to the staff of the Israel Democracy Institute. Therefore, we must define, without delay, to what extent we are willing to give up on achieving a general consensus. It is worthwhile to be realistic: there is no chance of succeeding in drafting a constitution which will be both meaningful, while at the same time acceptable, to all members of Israeli society, marginalized as they might be.

Aviezer Ravitzky

Preface to the Constitutional Process

I pen these lines with mixed emotions. I am a full partner to the celebratory feelings accompanying the completion of the protracted and essential effort to author a comprehensive proposal for a constitution worthy of the State of Israel. I am not aware of any other similar effort to achieve such a result following such profound deliberations among persons with different world-views, discussions conducted over months and years. Only one who has undergone such an experience can appreciate what obstacles and pitfalls lay before our desire to achieve agreements in writing on fundamental questions of nation and man, and what revelations of identity and emotional involvement were expressed in the theoretical discourse from which this proposal arose. I therefore commend this achievement and hope to see it bear fruit in social and legislative spheres.

Nonetheless, I must confess that my participation in this process could not have been taken for granted. It was accompanied by not a few doubts and hesitations, both with regard to the anticipated benefit from the constitution in society's present condition, and with regard to the specific phrasing of wording proposed at various stages of the discussion, some of which have even been included in the final proposal.

My doubts arise for three reasons. First of all, I am not comfortable with the attempt to shape cultural and political agreements through formal legal means. In my opinion, under proper social conditions, the order of things would have been reversed: the constitution would have grown naturally from a common cultural base; it would have been drafted as a result of a lengthy communal dialogue which would have reflected the wills of men and women, factions and sectors, mutual solidarity, and would have forged the arrangements for a life in common. For years I have been greatly disturbed by the fact that legal discourse has taken over all aspects of our way of life and by the fact that it marginalizes the ethical, literary,

cultural, and philosophic discourse or renders it superficial. Therefore, the question must be posed as to whether or not the present constitutional initiative merely reinforces this process.

Secondly, I do not identify with the widespread desire to make clear-cut decisions on issues of principle. I do not seek to limit the progression of future generations and to lock the door in the face of profound future changes. It is true that, with the rebirth of the State of Israel, some of its architects attempted to design it in one sharp image, to paint the faces of the new Jew and the new Israeli in bold colors. But today, everyone understands that reality has developed differently: the political rebirth has stimulated this argument anew, giving it new dimensions; it did not create an arena of decisions, but rather an arena of struggle and a field of discourse on identity and culture, about values and beliefs. And since, in my opinion, this is a welcome development, I must ask whether the proposed Constitution does not lead in the opposite direction.

And finally, I will not deny that the very use currently of the biblical term "*Hukka*" for "constitution," to a certain extent, grates on the ears of a Jew who grew up with traditional Jewish sources. "This is the *Hukka* of the Torah" (Numbers 19:2), as I learned in the Jewish *Beit Midrash* (study hall). "There shall be one *Hukka* for you, the stranger and the citizen of the Land" (Numbers 9:14), and in this instance, as in others, I am not comfortable with the secularization of the concepts which is occurring in the revival of the Hebrew language. To tell the truth, I also do not like the repeated use of the term "sovereignty." Both for cultural and religious reasons, I prefer the term "independence:" in contrast to the term "sovereignty," which expresses "control over," the term "independence" expresses "freedom from;" it therefore limits hubris and human pretensions to be master over the world, master over land, or master over man.

Why Then Did I Participate in Drafting a Constitutional Proposal?

Are there, despite these reservations, opposing considerations which support the initiative of the Israel Democracy Institute, and even tip the scales in its favor? I will begin by commenting, not as to the essence of the constitution, but rather as to the path that leads towards it. True,

the constitution is a formal legal document, but by its constitutive and elevated nature, of necessity, the path towards it passes through ideological and moral reflection. True, the present document has not been prepared as a result of a comprehensive communal discussion, as would have been required under ideal conditions, but by the very nature of the process, it combines a constitutional discourse with a cultural discourse, conceptual thinking, and formal thinking which sustain each other. As I have learned, jurists and politicians who have taken part in the process have also invested their ideological world-views and have exposed their hidden beliefs and principles through it. One would hope then that, from the moment the present initiative is brought before the public and the legislator, it will encourage broad study, debate, and critiques, and at the least – some fraction of the desired public debate.

Moreover, a constitution does not focus only on the permitted and the prohibited, nor merely on institutions and arrangements – especially not the Constitution proposed here, which intentionally focuses on symbols and values. Even the decision to begin the document with the full text of the Israeli Declaration of Independence is a prime ideological pronouncement. It is not derived from legal discourse, but rather is imposed upon it, framing it with a super-structure (interestingly enough, even the Arab members of Knesset did not reject the idea). The same is true for the super-status of the sanctity of life, human dignity, and a person’s right to liberty, and certainly for the Sabbath, the Law of Return, and minority rights. This is no longer just about laws guided by values (as in the previous paragraph) but also about declared and explicit values. We are no longer dealing with the reflexive layer which is concealed in formal drafts, but with exposed symbols and explicit content which delve into the core of beliefs, thoughts, and feelings. In this sense, a constitution serves as an educational document, no less than a legal document.

But to tell the truth, the central factor which overcame my doubts regarding the issue of a constitution was a pointed feeling of emergency, in terms of the proper administration of society and in terms of its ability to pave the way in a sea of contradictory values and opposing beliefs. I do not find ideological polarization to be at all evil. Quite the

contrary, I long for the ideology and belief-based enthusiasm which in the past had characterized various parties and streams and had not been limited to just one sector. My concern does not stem from that which is different but rather from an “obsession with that which is different,” the growing phenomenon of people and groups who do not define themselves according to their own positive content and values, but instead according to conflict with the other – “Are you with us or against us?” – Jew or Arab, secular or ultra-Orthodox, anyone whose world is composed solely of negating his or her adversary’s world. I will not list examples, lest I harm the spirit of the Constitution by Consensus, but the examples are familiar and clear to all. The threat does not stem then from the lack of consensus, but rather from a lack of solidarity; it is not reflected in the ideological gap regarding the “Covenant of Faith,” but rather in the psychological gap regarding a “Covenant of Fate.” In such a social situation, every endeavor to forge a common bond which will encourage (in descending order) fraternity, cooperation, coexistence, or even ground rules, is an attempt which should be commended; *a fortiori* regarding decisions on issues of beliefs and values. A community whose members uphold contradictory supreme values is likely to resolve its disputes in one of two ways: with swords and guns, or with ballots and laws. A determined constitutional attempt certainly helps reinforce the second alternative.

Furthermore, from my point of view, when we speak of the content of values, worry turns into fear. Two value systems dear to my heart, both Judaism and humanism, are currently being threatened. Both are gradually beating a retreat from the Israeli public domain. Although they are threatened from different, and at times, contradictory directions, the outcome is likely to be the same – a distancing of Israeli society from those origins upon which its cultural and ethical world is based (which are also my origins). Again, under ideal conditions I would prefer to deal with this fear through educational and literary means, but under social “life-saving” conditions, I also allow myself to utilize legislative means to determine fundamental values and to close the door slightly in the face of calamity. “Sin crouches at the door” (Genesis 4:7). I am aware of the price that I must pay in other areas dear to my heart, but if this is the price necessary

to strengthen the foundations, I am willing to pay it. “For it is a time to act for G-d – they have voided your Torah” (Psalms 119).

What about the Religious Reservation to a “Constitution” and “Sovereignty?” The linguistic distaste remains. If Israeli society had acceded to my request, it would have chosen other terms. But the same is also true regarding the secularization or reversal of meaning which was consciously done to other Hebrew terms drawn from religious tradition (Keren Kayemet, Maccabi, Ma’apilim, and others). It seems that in a modern, centralized, and territorial state, where a fifth of the population is not Jewish, another fifth are secular on principle, and two-fifths draw from the tradition in accordance with their personal choice, there is no escape from this process. But this is not true about the very duality of Torah and constitution, religious law and state law. As I have illustrated in other writings, the religious sources themselves recognize this duality *de facto*, and, at times, even promote it *de jure*. They do not attribute sovereignty to human rule, but they certainly imbue humankind with political and legal authority. In other words, according to them, the metaphysical Sovereign is the One Who confers such authority on the political sovereign.

My support of the constitutional initiative and this proposed document relates to its principles and rules, but not necessarily to all its finer points. Although it is natural that the current version is built upon a compromise among competing principles, and in this regard, no one left the discussion with all his or her desires fulfilled, nevertheless, it would be too lengthy to detail all the assumptions which guided me when I took a stand on fundamental issues of society and state. I have dealt with this in other places, especially with regard to issues of state and religion, matters which have occupied a significant role in shaping the present document.

Yedidia Z. Stern

Preface

The Jewish sovereign existence, an exceptionally rare commodity in history, is the fundamental experience of my life. For me, the Jewish State is not just a socio-political framework which allows for the national group to organize conveniently – in terms of security, society, economics, or otherwise – but it is a prime component of identity, an important manifestation of my Judaism, of my existence, of who I am. I cannot be counted among those who know without a doubt that the Jewish State is a stage in the redemptive-religious process (although that is what I wish for every day). My religious world-view is connected to the State, but is not dependent upon it. Rooted in a strong historical feeling – as a result of the exile of previous generations, the wretchedness of their existence, and the Holocaust of the last generation – I see myself as being fortunate to merit being born into the State. The greater the merit, the greater the responsibility. Against this background it is clear that participating in the writing of the constitution of the State of Israel is, in my opinion, a task of supreme importance.

Constitution and Vision

Which constitution would I want? A constitution with whose soul, my forefathers and foremothers, when they prayed to Zion and to Jerusalem as distant places of yearning, could identify; a constitution of whose finer points my children, and their descendants following after them, when they experience Israel and Tel-Aviv as real, nearby places, could be proud.

Such a constitutional vision – even though its drafting is possible in my opinion – would not garner broad consensus at the moment. The previous generations, unlike ours, sought to “restore Your Judges as in the beginning” (Isaiah 1:26). The sovereignty for which they yearned in their hearts was of a religious character, and therefore its fundamental document

should have been a holy document which is connected to, and derived from, other holy documents which have shaped the Jewish religion.

A great, even painful, gap exists between the constitution I myself would have desired and the constitution which is possible in the here and now. For me, Judaism is not just a nation and a civilization but also a religion. This religion does not suffice with an existence hidden away from view in the private domain but is interested in organizing the public domain. It has concrete opinions about communal Jewish existence, and, if it had the chance, it would guide the public agenda in accordance with its values. However, since the Jewish majority in Israel does not accept the religious expression of Judaism as a way of life for itself, the proposed Constitution does not suggest a religious meaning for the State, and it does not impose religious arrangements upon a general public that does not desire them. Indeed, the proposed Constitution negates the dreams which the religious public had on the eve of the establishment of the State, and expresses religion's practical inability to be a central shaping factor in Israeli society and law.

Alongside the religious vision exist others, competing visions in Israeli society. There are those among us who aspire to establish a liberal, neutral state. In the constitutional context, calls are heard to fashion Israel as a state of all its citizens, a state of all its communities, a multicultural state, and more. In certain circles there is a demand for separation between state and religion, or for a secular civil revolution which can find expression in a constitution. In Israeli society there exist significant streams which would be interested in a constitution which would reflect Israel's unqualified membership in the family of enlightened states, in other words, states with universal values. There is no need to say that the members of the Arab minority would feel more comfortable in the State of Israel were this vision to materialize. However, it appears to me that the proposed Constitution negates all of these dreams. A large group within the Jewish majority in Israel is traditional and/or nationalist. This group would find it difficult to accept a disengagement of Israeliness from Jewish uniqueness. They are not interested in a liberal constitution devoid of Jewish character. In their view, should this occur, such a constitution would express the spirit

of some other people or the spirit of a community which is not a people.

The proposed Constitution – which is the possible Constitution – is not alienated from the Jewish uniqueness of the State on one hand but also does not encumber it with coercive, religious content on the other. As a rule, the constitutional identity proposed here for the State of Israel gives Judaism a significant role as a national framework and a dominant cultural system, without dictating that the State have an isolationist quality which turns its back on the world. The Constitution hints at a vision for a civilizing merger of perspectives: the unique perspective of the Jewish nation, which reflects the developed culture of a “chosen people,” with the universal perspective of humanist culture, the ancient and the new, with its variety of achievements in developing the human spirit. The proposed Constitution serves as a sound box in which a general Western spirit resonates in concert with a unique Jewish spirit.

The vision for merging these perspectives does not negate the place of the other, the non-Jewish minority, who share their lives with us. Our Constitution is not neutral, but it is also not aggressively nationalist. Indeed, the very choice of Jewish uniqueness obligates us to resist the temptation to use force against the stranger. The Torah affirms, “You shall not oppress the stranger, for you know the soul of the stranger, as you were strangers in the land of Egypt” (Exodus 23:9). Our Judaism obligates us to give the stranger an equal and fair place among us. This is what we have strived to achieve.

Constitution and Culture

The definition of the State as Jewish and democratic reflects the cultural duality of the Jewish society in Israel. The majority of the Jewish people living in Israel hews its life from the rich mines of two cultures simultaneously: the Jewish-traditional and the Western-liberal.

Cultural dualism could have been potentially productive for Israeli society. In practice we experience the opposite – a paralyzing struggle. Under the worn face of a blessing of cultural diversity, we suffer from a curse of cultural excess. The agents which influence these two cultures tend to obscure the points of similarity and overlap between the two. They

prefer to present them as alternatives, adversaries to one another, ready for inevitable battle – a cultural war. They market each of the two as an exclusive cultural-social product, which “belongs” to one of the groups, and they do not reveal the inclusive dimension of the cultural duality. They reject a perception of a complex reality in favor of a perception of a simplistic one. They refuse to conduct the cultural debate on a pluralistic basis and choose a monistic one.

What are the strategies for behavior which the different groups adopt in the face of this threatening dichotomy? The religious-nationalist community evades decision-making through a technique of compartmentalization. The religious person functions in different cultural contexts in accordance with the circumstances: in the house, synagogue, and religious institutions – she’s Jewish; at work, as a consumer, and in the marketplace of life – she’s Western. The religious person erects boundaries between the two worlds and is careful never to mix the two components of identity. The ultra-Orthodox community chooses segregation and alienation; it is willing to engage in civic cooperation of a technical nature, but is not ready for value-based cooperation and therefore does not promote joint responsibility. The secular public, in a gross generalization, chooses to distance itself from an intimacy with its heritage. It has substantially conceded the living, current utilization which could have been made of the treasures of experience, memory, and significance of the Jewish existence down through the generations, as preserved by its cultural heritage. Indeed, general Israeli culture is impoverished by the lack of significant traces of Jewish culture.

These three strategies – compartmentalization, alienation, and concession – have a common element: not one of them includes a substantive, ideological encounter with the reality of existing under conditions of cultural dualism. Not one of them allows for harmonious existence in the shadow of both cultures; thus, the experiential difficulty.

In the past, the State of Israel benefited from a high level of internal-Jewish consensus: the Holocaust, sovereignty, and security were the fundamental building blocks of the organized democracy which prevailed in Israel during its first thirty years. Against this background, we can

understand how the triad of strategies, despite their substantive paucity, allowed for joint existence among the divided communities. But internal and external events have caused the traditional system of consensus to crumble, and Israel has long since become a democracy in crisis. At this moment, public discourse focuses on sharply exposing cultural discord, and as a result, continued pressure on each of these three strategies becomes apparent. If, in the past, under conditions of consensus, it was possible to survive in the cultural dichotomy even without existential meaning, today, under crisis conditions, the major groups in Jewish society in Israel have been stripped of those ideological frameworks which could have helped them confront the tension of identity between the two cultures.

The distressing result is that we are all thrust into a power-struggle in the marketplace of ideas. The two cultures stand opposite one other as on a battlefield, where each side sees a deterministic necessity in solely implementing its stance. It is not merely about interests, but also elements which, subjectively, establish reality and constitute meaning. The zealots of liberal truth are interested in determining the culture-war and see it as an indispensable rite of passage through which the State must pass on its path to normalcy. For them, the presence of Judaism, and especially the religious component (and for some of them, also the nationalist component) in public life, corrupts politics, violates human rights, lowers the level of rational discourse, and diverts Israel from the proper path (the universal or the Zionist path). In contrast, the zealots of Jewish heritage in its religious-ultra-Orthodox version, who espouse a Jewish state free of “foreign” democratic influences, see the manifestations of Western cultural values in Israel as a kind of loss of national identity, a betrayal of Jewish history, and a nullification of the significance of national rebirth. Each side reinforces a single, cultural truth. The realization of one side’s dream comes at the expense of the other’s nightmarish reality.

Against this background, one can ask what is the point of a constitution. Can a legal document, as meticulous and cautious as it may be, heal the rifts and bridge the cultural gaps? Is not the constitution an illusory magic trick, given our present tribal existence? Moreover, the reality of our life makes it difficult to conduct serious and honest discussions of identity; discussions

which would reveal an interest in the other, and attribute importance to the other's concrete completeness, not merely out of tolerance or pluralism, which are also unusual phenomena, but rather out of an internal desire to become acquainted with the identity alternatives and to examine their possible contributions. The constitutional process is liable to exacerbate that difficulty. It grants additional weight to a discussion of rights and creates a dangerous illusion that our unresolved identity may be resolved through the sharp, legal guillotine which a constitution would provide for us. As is well-known, the cultural dichotomy in Israel has long been transmuted into a normative dichotomy: secular law on one side and Jewish law on the other. A complete constitution, which is the ultimate legal tool, is liable to add fuel to the fire. It will encourage those competing in the Israeli ideological marketplace to conduct their discourse in the courts, with the drama of competition and hopes of victory.

These are serious arguments, but one should evaluate them against the thorny implications of continuing in the current situation – without a full constitution. In the absence of a constitution, we are conducting our discussion on shifting sands. We have no clear ground rules. We have no boundaries to delineate what is possible in the tribal struggle which we are conducting. We have no unifying document which we can all regard as expressing the Israeli ethos. Cultural doubts about the constitution can, in my opinion, be resolved when examining its value as a tool for prescribing fundamental consensus in Israeli society.

Constitution and Fundamental Consensus

The State of Israel is in need of a constitution which will consolidate the fundamental consensus and ground rules according to which it will be possible for components of the Israeli mosaic to interact. The constitutional backbone, which will allow us to stand up straight as a nation, is comprised of educational-symbolic vertebrae and practical-implementive vertebrae. I will enumerate some of them:

First of all, the proposed Constitution enjoys the approval of members of different communities. In the course of its preparation, a variety of publics participated (although in my opinion, it would have been possible

to diversify even further). The team of experts, each of whom could have exercised veto power on any one of the proposed arrangements, reached the draft presented here after complex negotiations. The project was able to move forward primarily due to an effort by each of the participants not to force anyone else to exercise their veto power. It is easy to assume that the outcome is the fruit of general compromise, often frustrating. But therein lies the power of the document: a group of individuals representing and carrying the weight of different identities and varied stances has succeeded on agreeing on all the details of an inclusive constitutional agreement.

An Israeli constitution must draw its strength from the fact that it will be approved by a considerable and significant majority in the Knesset and in the general public. This will be possible only if it can answer the minimal expectations of the key groups in Israeli society. Should it succeed in doing so, we would become convinced that we are able to agree about the core of those major questions on which we differ. A consensual constitutional document possesses exceptionally great educational and symbolic value. It is likely to assist in shaping a common consciousness, in strengthening the “covenant of fate.”

Second, a consensual constitutional document will abolish the extremist hopes of those on the margins. Israel will be defined as a “democratic state,” thus weakening the non-democratic mass which exists in Israel (originating in religion, nationality, self-interest, imported political tradition, and more). Israel will be defined as a “Jewish state,” and, thus, the Jewish character of the nation-state will be strengthened in the face of internal opposition (originating in a crisis of identity, intellectual and cultural fashions, and more) and external attacks (originating in the call for a Palestinian return, international waves of immigration, global forces striving for unification and obliteration of cultural and national uniqueness, and more). The Constitution will eliminate the extremist expectations of Jewish nationalist factors against the national-Arab minority, and will establish in this minority’s consciousness the fact that the State has a national Jewish identity, with all that it entails. The Constitution will minimize the ambition of the religious public to assimilate Halakhah (Jewish religious law) into national law by force,

and will simultaneously ensure freedom of religion and rituals, as well as delineating the boundaries of the secular majority’s power in relation to the religious minority. Religious revolution as well as secular revolution will be removed from the realm of possibility. As such, the Constitution on its own will not resolve the debates, but will establish that which is not possible. This is likely to lower the level of hostility and hatred among groups in our society, and allow more breathing space for the creation of a substantive discussion among us.

Third, the rifts in Israeli society are many, deep, and to a great extent overlapping, and therefore chronic. So, for example, members of the ultra-Orthodox community and the Arab community are also the poorest and the most isolated culturally. They do not create family ties with the rest of the Israelis, they live separately, they do not serve in the army, and, in general, they are not part of the Israeli ethos. A formal democracy, without experiential depth, lacking a balanced political culture, given to internal and external pressures, and whose level of leadership is not on a high caliber, is liable to wield destructive power against minorities of this kind. The proposed Constitution will prevent this. It recognizes the minority communities – ethnic, religious, and others – and grants their members invaluable defenses against the majority’s abuse of its power. It also grants them rights which will allow them to preserve and develop the unique heritage of such minority group.

Fourth, Israel has a Bill of Human Rights which is short and pathetic. A chance majority in the Knesset can amend some of the existing Basic Laws. A law can violate freedom of expression, equality, or, for instance, profound religious sensitivities. In the absence of a constitution, citizens of Israel are not immune from governmental violation of their basic social rights, for example, the right to education, housing, health, strikes, or proper work conditions, none of which are protected constitutional rights. In this aspect, Israel lags dramatically behind other countries in the world. Although the explanation is well-known and even understandable, it does not negate the bitter irony that the State of the Jewish people, whose ancient culture played a basic role in creating the foundations for the universal Bill of Rights, is left, almost alone, without such a Bill. The

proposed Constitution will rectify this situation.

Fifth, the existing Basic Laws deal with varied issues. The Knesset's intention has always been, and still is, to connect one piece of legislation to another, in a continuous process, so that at the end, the puzzle will create a full picture – a constitution. At the present point in time, however, there is more undone than done. As during the past decade the Knesset has refrained from progressing in the constitutional process, the court itself has expanded the application of existing Basic Laws through questionable interpretative means. The result is that a *de facto* constitution has been established in Israel without a broad popular process, but rather through rulings by a non-representational body. Over time, such a constitution is liable to suffer from lack of trust. In contrast, the Constitution proposed here is a full and coherent document organizing all the constitutional issues. The public and political discussion will return the constitutional helm to its natural hands: the people. Negotiations regarding a wide variety of topics will be initiated; trade will be conducted with respect to the constitutional goods based on their marginal value for each of the parties, and in the tempest of the storm, all the parties will be able to attain some of their goals. A broad “package deal,” after a transparent and open public debate, is the necessary basis for a functional constitution.

Sixth, constitutions universally include norms which aim at regulating principles of governance. This constitutional function is critical in Israel, where the political system is unstable, relationships among the branches are not clear enough, governmental tradition is shallow, and the political culture is impulsive and corrupted. Since our national agenda is overloaded with existential issues, and since our democracy is in continual crisis, there is a special need to stabilize the government in Israel via constitutional norms. The constitution, at its most basic level, is meant to limit governmental power and to ensure that it will be used faithfully for the public's welfare only on the basis of explicitly granted authorization. The constitution is an important tool in the war against governmental corruption, which in our present reality may be categorized as a strategic threat.

Constitution and Power

There are those who view the constitution as a manipulative weapon through which the present generation attempts to dictate to future generations the norms it deems proper. They interpret the attempts to promote a constitution as the urgent act of the elite who fear that the balance of powers in Israeli society is about to be shifted from the hegemony to the periphery. It appears to them that members of the elite are interested in imposing, through the constitution, their preferred value system prior to losing power. Some members of the Knesset and legal experts maintain that the court has adopted a broad interpretation of the norms which were prescribed in the two Basic Laws of 1992 based on such motivations. Social critics maintain that agents of the constitution are interested in “saving the state from its citizens” by transferring power to legal institutions which do not fully represent the rainbow of Israeli identities. Either way, anyone who is interested in the practical side of the constitutional discourse in Israel recognizes the barrier of mistrust which alienates sectors of the public from the judiciary.

I believe that we need to fully internalize the fact that the struggle of the nationalists, the religious, the poor, the Arabs, and other groups, to impact the course of the State and protect interests close to their own hearts, is a legitimate, value-based struggle. Each of the groups lays a package of values and identities unique to it on the national table. The Israeli public should choose among a variety of alternatives and balance them through use of the political system, with its representational character. If I were convinced that the constitutional process *was meant* to dilute the benefits of cultural diversity by transferring power to a professional judicial system, I would have withdrawn from this process and opposed it.

Indeed, a constitution transfers power from politics to the law, but it also imposes great responsibility on the court regarding the way such power is used. The court must recognize the limits of the power which ensue from the socio-cultural context in which it functions. The great successes of the court as a protector of human rights, as a national alleviator of suffering, and as an ambassador of Israel’s positive image to the world will not endure over time if the court takes upon itself the Herculean task

of ruling on the cultural duality. In order to preserve its standing and its strength as a prime strategic asset of Israeli democracy, it must be careful to act not only within the realm of reasonableness, but also within the realm of public legitimacy. The court's prime duty is to cling tenaciously to the goal of preserving the values of the constitution, while trying to distance itself from the attempt to guide society to a cultural breakthrough. The court must promote a continuous process of maturation which will encourage interpretations of the constitution which do not accentuate and provoke, but rather round out and conciliate.

A structural tension exists: On the one hand, because Israeli society is fractured and fragile it is desirable to place it on a solid legal-constitutional anvil; on the other hand, there is concern that precisely because an anvil is inflexible, it will shatter completely under the weight of the tensions in society. How can this tension be alleviated? The proposed Constitution adopts a unique and original path. In general, it chooses to make use of the constitutional anvil, assuming that it has enormous utility, as explained above. However, it prescribes a mechanism for releasing tensions on issues which it is reasonable to assume will be too great to bear, to the point where a fear of cracking the anvil exists. These important, though limited, number of core issues relate to the relationships between state and religion and to the dialogue between competing identities in Israel. Any law passed by the Knesset on such issues will be immune from judicial review, even where it contradicts a constitutional value. We suggest that the Knesset, the representational body, should have the final word regarding the conflicting visions on these very delicate topics.

The Constitution and My Personal Identity

Throughout the years of fascinating, emotional, and, at times, painful work on the proposal for the Constitution, a personal compass, comprised of my values and identity, has guided me. The stances which I have adopted, the compromises which I have chosen, and the agreements which I have signed – sometimes with a heavy heart – have been influenced by the four circles of identities which I share (and their respective values which I continually try to balance):

The first: as a citizen of the State of Israel I am very much aware of the unique character the only Jewish state in 2,000 years should have. Israel is simultaneously a link in the chain of Jewish existence, which ties it to its heritage in a diachronic axis, and a link in the chain of democratic existence, which ties it to its own period in a synchronic axis. It is dissimilar to the other links in each of the two chains: it is the sole appearance of a dominant democratic culture in the annals of the Jewish nation, while also being the only appearance of a dominant Jewish culture in the midst of the democratic nations. The proposed Constitution is meant to express and preserve this uniqueness by nurturing the content of the Jewish democratic nation-state.

The second: being a member of the Jewish majority in Israel, I bear the responsibility for reining in the force of the majority in order to prevent it from aggressively promoting its particular interests while systematically harming “the stranger who dwells among us:” the Israeli Arabs – as individuals and as a minority group. The tragic, continuous exile has prevented Jewish civilization from needing to contend with the test of the use of force. As a result, the Jewish sovereignty can hardly avail itself of living historical memory with regard to its relationship to minorities. The proposed Constitution will be tested by its ability to ensure the Jewish character of the nation-state on the symbolic level and the practical level, while also meticulously safeguarding the rights of the Arab citizen, a member of the national minority community. The necessary balance requires recognition of the uniqueness of the Arab Israeli national community, without permitting it to exist as autonomy (politically, geographically, or otherwise).

The third: being a member of the religious minority group, which sees in Judaism not just a nation and culture but also a religion, I perceive it to be my duty to create a normative framework which will not foment continuous friction between state and religion. Religion in its Orthodox form is not folklore, nor mere tendencies, nor is it an entry ticket into a social club. Its essence is a system of laws replete with details, which regulate wide swathes of human reality. It is an imperialistic system: it sees itself as applying to all Jews, as well as to the Jewish public domain.

This drives the religious motivation to assimilate norms and patterns of behavior according to Jewish law onto the Israeli law books, and into the public sphere. However, half a century of attempts to coerce religious legislation demonstrates grave harm to the quality of the encounter between the religious and secular publics. The great prominence of the struggle surrounding religious legislation has blurred the cultural value of the religious experience in all its nuances, a rich tapestry from which and within which it would have been possible to weave the Jewish Israeliness. The struggle has not helped fortify the ramparts of Jewish law in the State, and, unfortunately, has contributed to transforming Jewish law, our national historic law, into a failed name brand in the Jewish State. Coercion of religious norms strengthens secular movements which are liable to be seduced to use the force of the majority in order to dictate arrangements which do not consider the unique needs of the religious minority. On the one hand, the proposed Constitution consciously chooses to prevent legislation motivated mainly by religion, and on the other hand, it allows it regarding few core issues (such as personal law) where there is a reason to believe that, in the absence of religious legislation, the observant and the non-observant Jews may split into two separate nations.

The fourth: I am a member of a minority group within the religious minority group whose members internalize simultaneously and without reservation both the Jewish world of values in its Orthodox religious version, and the humanistic liberal world of values. This dual obligation is not free of symbolic, principled, and practical difficulties. Yet, nonetheless, members of this group are always inescapably subject to two masters: the Sovereign of the World and the state sovereign; the King of Kings and the earthly kingdom. Two systems of law rule over their lives *a priori* and unconditionally: Jewish law and Israeli law. These two spheres of loyalties – like a pair of parents – guide them in existing in a cultural and normative duality. The central challenge for the members of this group is to create a harmonious and integrative existence bridging both worlds, and this is a task which few, far too few, in Jewish society in Israel confront seriously and with the necessary firmness. I have tried to influence the navigation of the constitutional creation of the Israel Democracy Institute in a

manner which will be in accord, to the extent possible, with this complex existential position.

If our mission succeeds, the proposed Constitution will create secure conditions, a safe harbor, for future generations to achieve a national home for the Jewish people. A spacious room in this home will be reserved for members of the national minority, although its public areas will reflect the national uniqueness of the majority. In this home a receptive spirit will reign, one which will encourage dialogue among the basic cultures of its residents, so that the wealth hidden in their cultural diversity will be preserved for the benefit of us all.

I Believe.

A Collective “I Believe”

A recurring thread interweaves the personal, unique, and special “I Believe” by each of the drafters of the Constitution of the Israel Democracy Institute together into one harmonious tapestry, creating a unified embroidery composed of many colors and fibers: the recognition of the importance of the State of Israel as the sovereign home of the Jewish people, the place in which the Jewish people can assert its right to self-determination. Our common product is based on compromises, on our efforts to reach out towards the other. The unifying needlework which has made these compromises possible is the belief that the State of Israel is the realization of the Zionist dream – the rebirth of the Jewish people’s aspirations throughout the generations. The force driving this rebirth is the Zionist movement. The proposal by the fellows of the Israel Democracy Institute for a Constitution, under the leadership of President of the Supreme Court (Emeritus) Justice Meir Shamgar, articulates the Zionist “I Believe” in its broadest and most diverse sense. As such, and being that it is grounded in a Zionist foundation, this Constitution views granting full civil equality to the Arabs of Israel as a necessary platform in justifying its existence, as it reflects the Zionist effort to base Jewish sovereignty in Israel upon the values of humanism, liberalism, and fraternity.

For more than 100 years, the Zionist movement has been multi-hued; so it is for us, as well. Its complexity, the multiplicity of opinions it encompasses, the nuances and perceptions of the Zionist movement, in myriad ways, are manifested in the constitutional proposal presented here for public discussion. Our collective Zionist “I Believe” includes liberal, religious, socialist, and revisionist foundations, based on the diverse philosophies of Herzl, Ahad Ha’Am, Alkalai, Kalisher, Pinsker, Katzenelson, A.D. Gordon, HaRav Kook, Jabotinsky, and many others.

Israel’s *raison d’être* is the inclusion of Judaism and democracy as ethical-normative foundations of its system. In our collective effort, the

fellows of the Israel Democracy Institute have intended, *inter alia*, to create a balance, an equilibrium, between these two foundations. We have strived to interweave both values, Judaism and democracy, into one constitutional tapestry.

The Jewish supporting pillar for the draft Constitution is not monolithic; a look into its centrality as a factor in shaping the identity of the Israeli collective is open to many reactions and observations. Its twin supporting pillar is the democratic character of the State of Israel. The underpinning of democracy as a way of life, as a platform for imparting significance and meaning to our common existence, is another force driving the completion of the Constitution by Consensus project forward.

When discussing democracy as a way of life, the intent is not only to concepts such as “majority rule,” “rule of law,” “proper administration,” or “separation of powers.” The democratic nature of the State of Israel will be drawn first and foremost from the status of human rights in general, and the rights of minorities – ethnic, religious, and others – in particular. The Bill of Rights, for us, is the juncture where democracy merges with Judaism: human rights and minority rights are derived from the values of Jewish culture as well as from the set of humanistic, universal values.

Why a Constitution?

Completing the constitutional project and its adoption by the Israeli Knesset enables the creation of a stabilizing, prescribed channel for the overflowing stream of the political Sambatyon in Israel. Indeed, our daily reality in Israel may be compared to an overflowing Sambatyon, which is fed by an overwhelming daily agenda which demands fateful decisions every morning, yet where the foundations for such decision-making processes are fragile and rickety. For some time now, the reality of our life has been fluid, complex, and replete with problems. The internal tensions are growing deeper, borne by mistrust and instability. This mistrust is fed, not only by the intensive nature of our common agenda; in such an extraordinarily diverse society, filled with minorities (immigrants, religious, Arabs) and saturated with feelings of deprivation, mistrust is a behavioral characteristic which threatens the unity necessary

to preserve society as one which will endure and remain vital for the long term. The reality of our life is extremely fluid and complex to the point where we suffer collectively from high blood pressure – already defined as the “silent killer.”

Over time, the Constitution will establish the guidelines for creating stability and certainty against the complex twists and turns of political decisions. This will occur on two levels. First, the Constitution will set out the liberties and rights of the individual, define social rights, and codify group rights for ethnic, religious, and other minorities. As such, it is likely to lower the tension level and create the trust necessary for coexistence by a diverse and fractured collective. Second, it will define the ground rules and the norms clearly, serving as a platform for a healthy relationship among the governmental authorities which direct our lives, as individuals and as a community. In a concrete manner, these norms and ground rules are intended, *inter alia*, to repair the cracks in the relationships between our house of representatives and the courts, and between the legislative and executive branches.

These advantages, described above, results of a complete and rich Bill of Rights and of lucid ground rules for political and governmental configurations, are universal advantages of a Constitution; they hold true and apply in every democratic-sovereign entity qua it being democratic.

In the State of Israel, the Constitution will be established more than fifty years after achieving State sovereignty. During the course of the last fifty years the struggle has intensified, in both open and covert ways, to forge an identity for Israeli society: “the State of Israel is the answer to what question?” Throughout this period, in the shadow of continual preoccupation with physical survival, no satisfactory answer has been found to this seminal question of identity. On the contrary, one could say that the opposite has occurred: discord regarding the Jewish characteristics of the collective identity has intensified, while at the same time, disagreement regarding the ability to balance between democratic and Jewish in defining the character of the State society has increased.

These obviously are not the only issues on the common agenda

precluding formulation of a response to the identity crisis in Israel. There is no doubt that our being a “democracy without a border” constitutes a weighty factor in perpetuating this identity crisis, for a border is not merely a geographic line which delineates the boundaries of the State. Over the line defined as a “border,” there is another collective, speaking another language, nourished by the values of another heritage, and conducting itself according to different principles; all these are elements which strengthen our own identity, and we should recognize that. However, even if there is no connection between establishing a Constitution and establishing a geographical border, achieving consensus regarding the content of the first will create, for the first time, clear and explicitly shaped boundaries regarding the Jewish and democratic sources of our collective identity. The entirety of values and norms interwoven throughout the constitutional document which reflect the democratic and Jewish sources of the Constitution are intended to guide the establishment of a common, harmonious basis for the mosaic and social diversity in Israel. As such, the Constitution will serve as a lighthouse beacon, which, over time, will guide and shape the political culture of Israeli democracy.

This Israeli Constitution will prove that “Jewish” and “democratic” can indeed be interwoven into one tapestry, constituting its specific contribution to the Jewish-democratic identity of the Israeli collective, while its universal contribution to that same identity stems from its emphasis on the centrality of the human being.

Human rights, the State’s obligation towards the individual, and the individual’s obligations to the State, are the “software” of democracy. Its structure, its institutions, and the normative values, which define the actions of the authorities, are its “hardware.”

Why Consensus?

Israeli society missed the founding historical moment, at the time of establishing the State, for codifying a constitution. Decades after the establishment of the State, the ability of a complete and comprehensive constitutional document to fulfill its ethical-normative, political, and social goals is dependent upon broad consensus. Instilling these goals in

the personal and collective consciousness is a prerequisite for these goals to guide the behavior of individuals and institutions. Such assimilation is contingent upon the level of legitimacy which the Constitution will acquire within the society which it is supposed to serve. In other words, for the citizens of the State to feel that they live in a society which ensures them basic rights, which preserves basic values, and establishes political stability, it is necessary that every person experience a basic sense of identification and agreement with the constitutional document.

In general, one can list four groups which represent approaches and hopes which differ from those prescribed in the joint constitutional document: religious, liberals, nationalists, and Arabs. None of these groups is comprised of one bloc, and there are different shades and even different expectations within each group. In any case, in order to establish the necessary consensus, each of these groups, with all its variations, must be ready to compromise about what it holds dear. This is our basic assumption in drafting our proposal for a Constitution by Consensus. It is impossible, so we assume, for each of us to leave with all that our hearts desire.

Moreover, it is clear to us that, for certain sectors within each of these groups, the compromises and concessions will be painful. The returns for each one of the groups will also be different: religious Israelis will gain, *inter alia*, a Constitution which accords an exceptional status to issues which they define as close to their hearts; liberal Israelis will gain, *inter alia*, a comprehensive, rich, and modern Bill of Rights; nationalist Israelis will gain, *inter alia*, a Constitution which explicitly defines and reinforces the Jewish character and symbols of the State; and Israeli Arabs will gain, *inter alia*, a Constitution which establishes full civil, political, and social equality. Each will have to understand, as we have stated, that these returns are compromises and, at times, painful ones.

The idea of broad consensus, valid for adoption of the Constitution, will continue to apply to future amendments as well, if and whatever such may be. Broad consensus will continue to serve the interests of each of the groups which comprise our society: principles important to a certain group which are included in the Constitution, are accorded the

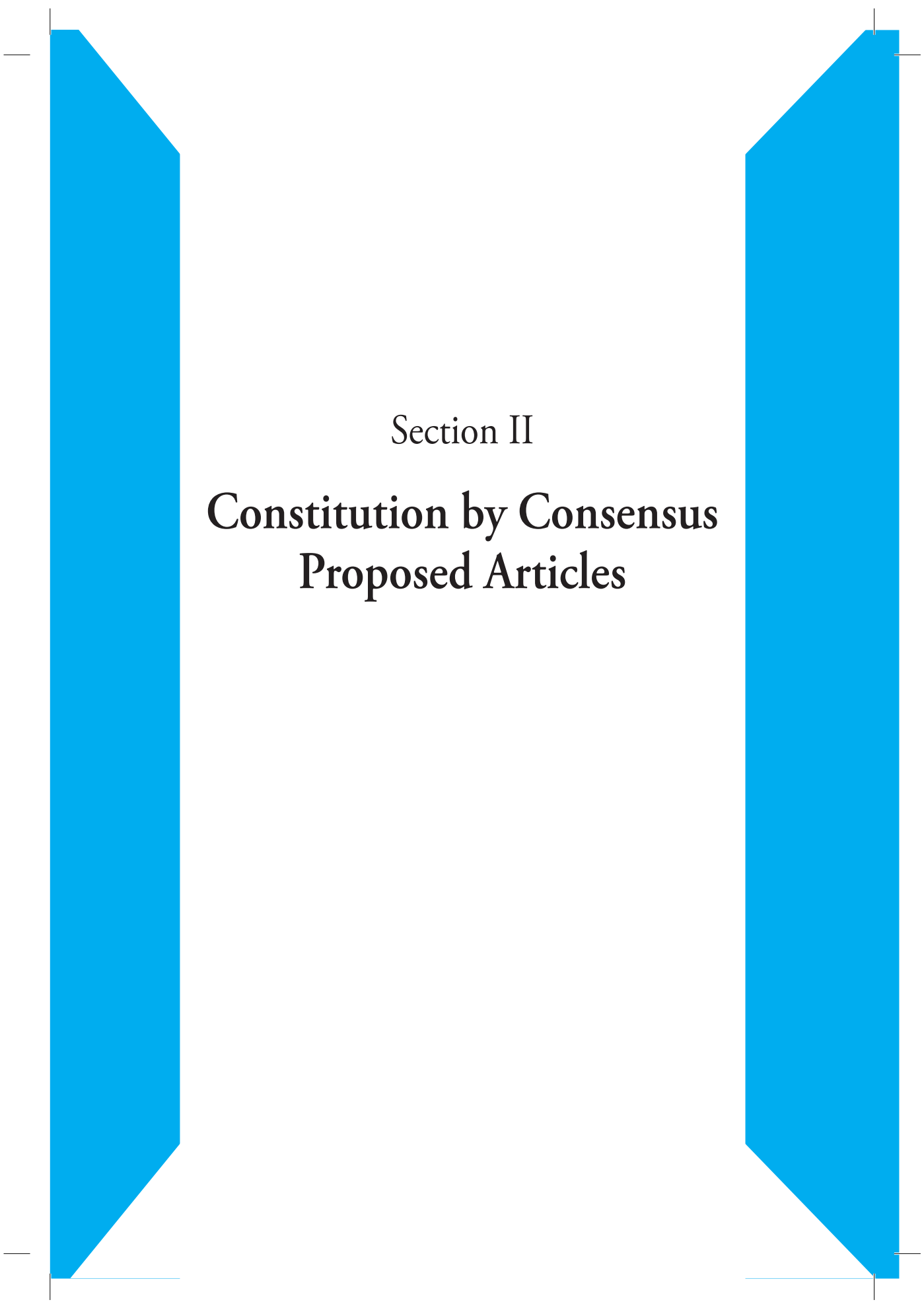
agreement (and, as a result, also the undertaking) of all the other groups. The arrangements to be determined will not be able to be amended easily, as they will be protected and entrenched.

Why Now?

The agenda of the State of Israel is very crowded; weighty topics vie for the top spot in the national order of priorities. Is the Constitution by Consensus one of those issues which should be elevated to the top of this crammed agenda? And even if a Constitution should be essential, why now? In the face of the difficult political issues which crouch at our door, and in the face of the social ramifications which are liable to result from wrestling with the solutions for such political issues – for instance, the evacuation of settlements and the growing tensions among different factions of Israeli society, recurring tensions which have begun to adopt a violent dimension – in the face of these and many other issues, is there really justification for dealing with the establishment of a Constitution now?

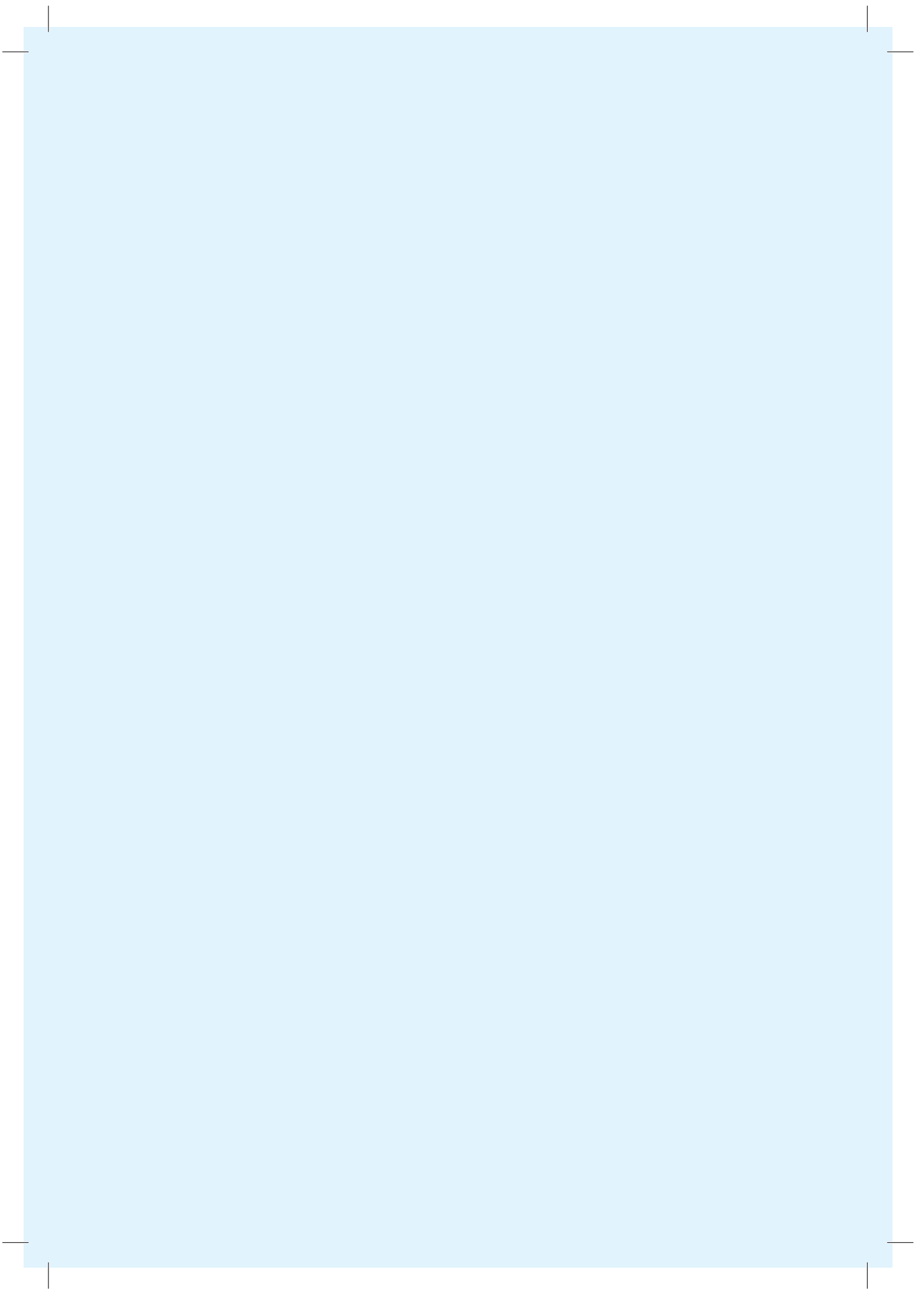
These and similar questions can receive only one response: as they mount, these great difficulties create a tangible threat to the very existence of democracy in Israel, and certainly to the ability to survive and continuity of the existence of society. Therefore, not only is the Constitution not a luxury with which we may dispense, but it is vitally necessary for our very existence, **here and now**. The burden of the public agenda has indeed become too heavy to bear, and in the absence of agreed-upon ground rules and normative foundations, only a comprehensive and complete Constitution can adequately respond to the threat hovering over our heads in the form of a collapse of the political systems and the disintegration of the unity necessary for the continued existence of society.





Section II

**Constitution by Consensus
Proposed Articles**



Introduction:

Declaration of Independence

***On the 5th of Iyar 5708 (May 14, 1948),
the Jewish People's Council declared the
establishment of the State of Israel in the
following words:***

ERETZ-ISRAEL (the Land of Israel) was the birthplace of the Jewish people. Here their spiritual, religious and political identity was shaped. Here they first attained to statehood, created cultural values of national and universal significance and gave to the world the eternal Book of Books.

After being forcibly exiled from their land, the people kept faith with it throughout their Dispersion and never ceased to pray and hope for their return to it and for the restoration in it of their political freedom.

Impelled by this historic and traditional attachment, Jews strove in every successive generation to re-establish themselves in their ancient homeland. In recent decades they returned in their masses. Pioneers, ma'pilim (immigrants coming to Eretz-Israel in defiance of restrictive legislation) and defenders, they made deserts bloom, revived the Hebrew language, built villages and towns, and created a thriving community controlling its own economy and culture, loving peace but knowing how to defend itself, bringing the blessings of progress to all the country's inhabitants, and aspiring towards independent nationhood.

In the year 5657 (1897), at the summons of the spiritual father of the Jewish State, Theodore Herzl, the First Zionist Congress convened and proclaimed the right of the Jewish people to national rebirth in its own country.

This right was recognized in the Balfour Declaration of the 2nd November, 1917, and re-affirmed in the Mandate of the League of Nations which, in particular, gave international sanction to the historic connection between the Jewish people and Eretz-Israel and to the right of the Jewish people to rebuild its National Home.

The catastrophe which recently befell the Jewish people – the massacre of millions of Jews in Europe – was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Eretz-Israel the Jewish State, which would open the gates of the homeland wide to every Jew and confer upon the Jewish people the status of a fully privileged member of the comity of nations.

Survivors of the Nazi holocaust in Europe, as well as Jews from other parts of the world, continued to migrate to Eretz-Israel, undaunted by difficulties, restrictions and dangers, and never ceased to assert their right to a life of dignity, freedom and honest toil in their national homeland.

In the Second World War, the Jewish community of this country contributed its full share to the struggle of the freedom- and peace-loving nations against the forces of Nazi wickedness and, by the blood of its soldiers and its war effort, gained the right to be reckoned among the peoples who founded the United Nations.

On the 29th November, 1947, the United Nations General Assembly passed a resolution calling for the establishment of a Jewish State in Eretz-Israel; the General Assembly required the inhabitants of Eretz-Israel to take such steps as were necessary on their part for the implementation of that resolution. This recognition by the United Nations of the right of the Jewish people to establish their State is irrevocable.

This right is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own



sovereign State.

ACCORDINGLY WE, MEMBERS OF THE PEOPLE'S COUNCIL, REPRESENTATIVES OF THE JEWISH COMMUNITY OF ERETZ-ISRAEL AND OF THE ZIONIST MOVEMENT, ARE HERE ASSEMBLED ON THE DAY OF THE TERMINATION OF THE BRITISH MANDATE OVER ERETZ-ISRAEL AND, BY VIRTUE OF OUR NATURAL AND HISTORIC RIGHT AND ON THE STRENGTH OF THE RESOLUTION OF THE UNITED NATIONS GENERAL ASSEMBLY, HEREBY DECLARE THE ESTABLISHMENT OF A JEWISH STATE IN ERETZ-ISRAEL, TO BE KNOWN AS THE STATE OF ISRAEL.

WE DECLARE that, with effect from the moment of the termination of the Mandate being tonight, the eve of Sabbath, the 6th Iyar, 5708 (15th May, 1948), until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish State, to be called "Israel".

THE STATE OF ISRAEL will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.

THE STATE OF ISRAEL is prepared to cooperate with the agencies and representatives of the United Nations in

implementing the resolution of the General Assembly of the 29th November, 1947, and will take steps to bring about the economic union of the whole of Eretz-Israel.

WE APPEAL to the United Nations to assist the Jewish people in the building-up of its State and to receive the State of Israel into the comity of nations.

WE APPEAL – in the very midst of the onslaught launched against us now for months – to the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.

WE EXTEND our hand to all neighboring states and their peoples in an offer of peace and good neighborliness, and appeal to them to establish bonds of cooperation and mutual help with the sovereign Jewish people settled in its own land. The State of Israel is prepared to do its share in a common effort for the advancement of the entire Middle East.

WE APPEAL to the Jewish people throughout the Diaspora to rally round the Jews of Eretz-Israel in the tasks of immigration and upbuilding and to stand by them in the great struggle for the realization of the age-old dream – the redemption of Israel.

PLACING OUR TRUST IN THE “ROCK OF ISRAEL”, WE AFFIX OUR SIGNATURES TO THIS PROCLAMATION AT THIS SESSION OF THE PROVISIONAL COUNCIL OF STATE, ON THE SOIL OF THE HOMELAND, IN THE CITY OF TEL-AVIV, ON THIS SABBATH EVE, THE 5TH DAY OF IYAR, 5708 (14TH MAY, 1948).

The Constitution of the State of Israel is founded upon the principles in this Declaration of Independence.

Part One

Principles

1. Basic Principles

- (a) The State shall be called “Israel”;
- (b) Israel shall be a Jewish and democratic state;
- (c) The State shall act with equality towards all its citizens;
- (d) The system of government shall be a parliamentary democracy.

2. Sovereignty

The source of the government’s authority is the sovereign will of the citizens, as expressed in the Constitution and in free elections.

3. Flag, Insignia, Anthem

- (a) The flag of Israel shall be white, with two light blue strips adjacent to its top and bottom margins, and a light blue Star of David at its center;
- (b) The emblem of Israel shall be a seven-branched candelabra flanked by two olive branches, with the word “Israel” at its base;
- (c) The national anthem shall be “Hatikva” (“The Hope”).

4. Capital

- (a) Jerusalem shall be the capital of Israel;
- (b) Jerusalem shall be the seat of the President of the State, the Knesset, the government, and the Supreme Court.

5. Language

- (a) Hebrew shall be the language of the State;
- (b) Arabic shall be an official language. The use of the Arabic

language within or in the presence of State institutions shall be regulated by law or pursuant thereto.

6. Sabbath and Festivals

The Sabbath and the Jewish holidays shall be official days of rest in the State of Israel. Non-Jews shall retain the right to days of rest on their Sabbaths and holidays.

7. Hebrew Calendar

The Hebrew calendar shall be the official calendar of the State of Israel.

8. Right of Return

The following shall be entitled to immigrate to Israel:

- (a) A child born to a Jewish father or mother according to Jewish law, provided he or she did not convert to another religion willingly;
- (b) A convert to Judaism;
- (c) An individual with a proven bond to the Jewish people, as shall be prescribed by law.

9. Citizenship

- (a) Israeli citizenship shall be granted to any person who was born where his or her father or mother was a citizen of Israel and resident thereof, to a person who immigrated to Israel by virtue of the Right of Return, to [such person's] spouse and children;
- (b) A law may prescribe the granting of Israeli citizenship to relatives of one eligible to immigrate to Israel;
- (c) Provisions regarding the granting of Israeli citizenship, renunciation, or revocation thereof shall be prescribed by law;
- (d) Citizenship may be revoked only by the procedures established by law and on the grounds prescribed therein, provided, however, that no person shall become totally stateless as the result of such revocation.

10. Minorities

The State of Israel shall guarantee the status of the Arab minority, the Druze minority, and other minorities in its midst.

11. Religions

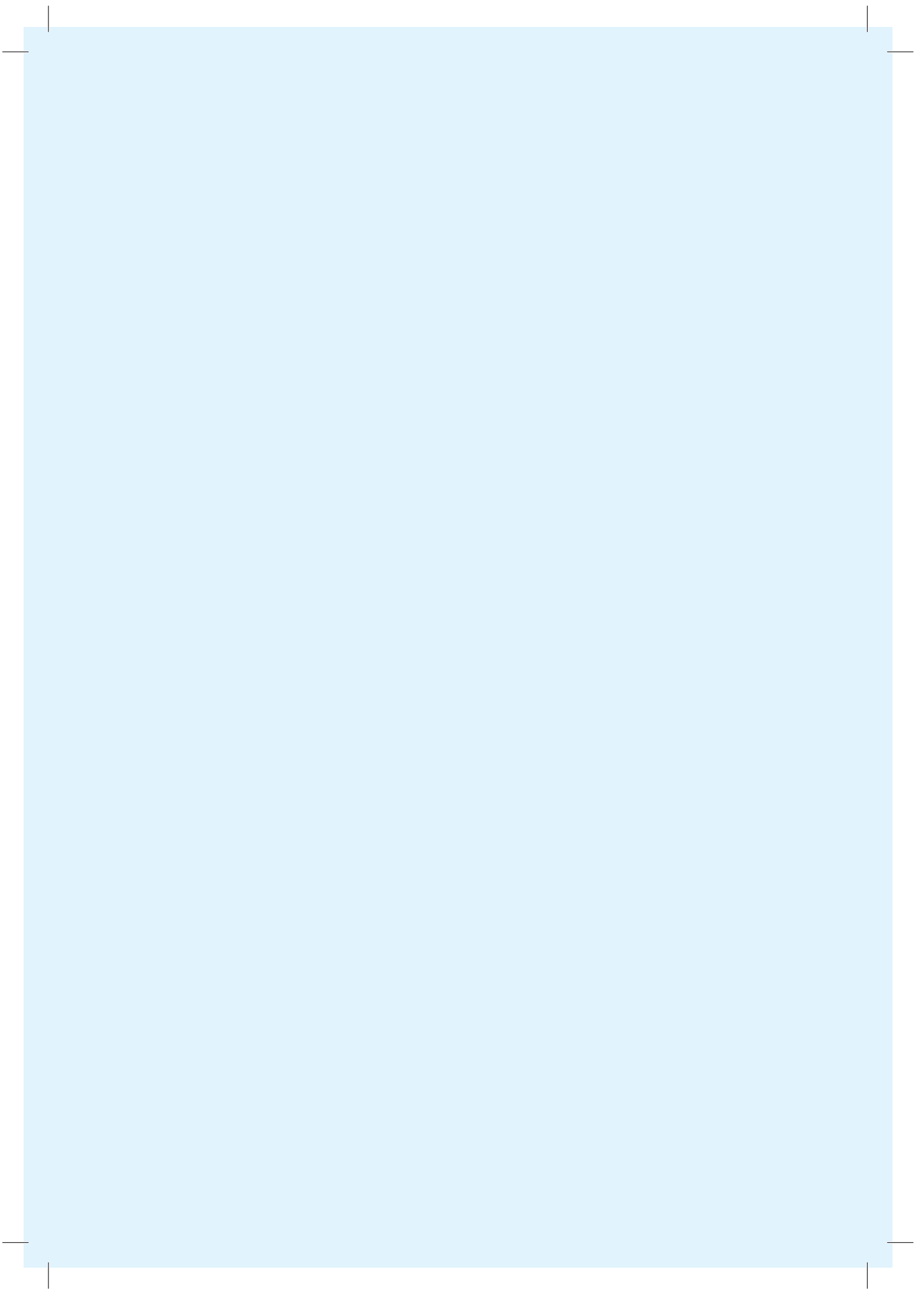
- (a) The State of Israel shall guarantee the status and independence of all the religions therein;
- (b) The State of Israel may provide and finance religious services;
- (c) The holy sites shall be guarded from desecration, other damage, and from anything which is liable to impair the freedom of members of the religious communities to access the sites which are sacred to them or infringe upon their sensibilities toward such sites.

12. Protecting the Heritage of the Land and its Residents

The State shall guarantee the preservation and development of the historical and cultural heritage of the land and its residents.

13. Protection and Development of the Land

The State shall cultivate the value of the landscape, the environment, and natural resources and shall act to prevent their being harmed, while preserving a balance with the need to develop the land.



Part Two

Basic Human Rights

14. Basic Principles

Basic human rights in Israel shall be founded upon the sanctity of life, human dignity, human liberty, equality, and the aspiration to achieve social justice.

15. Right to Life, Body, and Dignity

- (a) Every person shall have the right to life, body, and dignity;
- (b) The death penalty shall not be imposed;
- (c) It is prohibited to torture or treat any person in a manner which is cruel, inhumane, or dehumanizing;
- (d) Every person shall have the right not to participate in medical or scientific experiments on his or her body without consent.

16. Liberty

- (a) Every person shall have the right to liberty;
- (b) No person shall be subjected to slavery, oppression, or forced labor.

17. Equality under Law and the Prohibition against Discrimination

All are equal before the law; persons shall not be discriminated against on the basis of race, religion, nationality, gender, ethnicity, country of origin, disabilities, or on any other grounds.

18. Freedom of Opinion and Expression

Every person shall enjoy freedom of opinion and expression in private and in public, including the freedom to publish opinions and information through any means.

19. Freedom of Information

Every citizen or resident shall have the right to receive information from a public authority.

20. Freedom of Assembly, Procession, and Demonstration

Every person shall have the freedom to hold assemblies, processions, and demonstrations.

21. Freedom of Faith and Conscience

Every person shall have freedom of faith and conscience.

22. Freedom of Religion and the Prohibition against Infringement on Religious Grounds

- (a) Every person shall have freedom of religion;
- (b) No person shall be deprived of rights, and no obligations shall be imposed on a person, on grounds which are essentially religious.

23. Freedom of Art, Creativity, Research, and Instruction

Every person shall have freedom of art, creativity, and scientific research and instruction.

24. Privacy and Good Reputation

Every person shall be entitled to privacy, modesty, and a good reputation.

25. Freedom of Movement

- (a) Every person lawfully in Israel shall be free to travel within the country as he or she wishes;
- (b) Every person shall be free to leave Israel;
- (c) Every Israeli citizen and every resident of Israel shall be entitled to enter into Israel.

26. Legal Rights

- (a) Every person shall have the right of recourse to judicial authorities;
- (b) Every person shall have the right to a fair judicial process;
- (c) Every person shall have the right to legal representation of his or her choice; the State shall place legal representation at the disposal of a person, in cases and under conditions to be prescribed by law;
- (d) Every person shall have the right to defend himself or herself if accused;
- (e) Every person shall be presumed innocent until proven guilty by law; no person shall bear criminal liability for an offense unless it has been proven beyond a reasonable doubt; no person shall be convicted or indicted for an act or omission for which previously convicted or acquitted;
- (f) There shall be no offense or penalty with respect thereto, unless prescribed by law or pursuant thereto; no person shall be criminally liable for an act or omission which did not constitute a legal offense at the time of the act or omission, and no person shall be subjected to a penalty more severe than that prescribed by law at the time of committing the offense.

27. Rights of Detainees

- (a) Every person who shall be arrested shall have the right to the following: to be informed, upon being arrested, of the grounds for the arrest; to have notice of the arrest transmitted to a person close to him or her as soon as possible; to meet, without any unreasonable delay, with an attorney of his or her choice and to consult therewith; and to be informed of these rights;
- (b) A person who shall be arrested on suspicion of committing a crime shall be entitled to be brought before a judicial authority for a review of his or her arrest as soon as possible;
- (c) The arrest or incarceration of a person shall be in a manner that ensures the maximum protection of human dignity and other rights.

28. Right to Property

- (a) Every individual shall have the right to property;
- (b) There shall be no confiscation of an individual's property unless for public purposes and in consideration of appropriate compensation.

29. Freedom of Occupation

Every citizen or resident of the State is entitled to engage in any occupation, profession, or trade.

30. Freedom of Association

- (a) Every citizen or resident of the State shall have freedom of association, including the right to establish parties and political associations;
- (b) Every citizen or resident of the State shall have the freedom to associate with trade unions.

31. Strike

Workers shall be entitled to strike over a labor dispute, in accordance with a decision by their workers' union, and employers shall be entitled to a lockout, provided the orderly functioning of essential civil services is not severely harmed. The right to strike and the right to lockout, including for those not associated in a workers' union, shall be prescribed by law.

32. Social Rights

- (a) The State of Israel shall act to promote the personal and economic welfare of its citizens and residents, out of recognition of human dignity;
- (b) The extent of the social rights detailed in Articles 33 to 36 shall be prescribed by law or pursuant thereto.

33. Right to Social Security

The State of Israel shall act to promote social security.

34. Right to Health

The State of Israel shall act to ensure public health and shall ensure the provision of health services.

35. Right to Education

- (a) The State of Israel shall be diligent in advancing education, out of recognition of its value and importance in developing a person's spirit and talents, and ensuring equal opportunities for all its residents;
- (b) The State of Israel shall ensure 13 years of free education, where the first 11 shall be mandatory.

36. Rights at Work

The State of Israel shall act to promote fair work conditions, out of recognition of the value of work.

37. Rights of the Child

- (a) Every child shall have the right to basic conditions of life, and to development, to the extent possible, within the framework of the family;
- (b) Parents, the natural guardians of their children, and any other legal guardian, shall have the responsibility, the obligation, and the right to ensure the well-being of the child;
- (c) Should the parents or any other legal guardian not fulfill their obligations towards their child, the State shall act to fulfill the parental obligations as defined by law.

38. Group Rights

Every person affiliated with a national-ethnic, religious, cultural, or linguistic group has the right – on his or her own or with other members of the group – to preserve and develop his or her culture, religion, language, and heritage.

39. Violation of Rights

There shall be no violation of rights under this Constitution except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required, or by a law as aforesaid by virtue of express authorization therein.

40. Commission on Human Rights

- (a) A Commission on Human Rights shall be established by law, which shall act to promote the awareness, respect, and preservation of the human rights guaranteed by this Constitution or by law, and which shall handle complaints on this issue;
- (b) The aforesaid law shall regulate the Commission's appointment process and the manner in which it operates.

Part Three

Governmental Authorities

41. Powers of the Governmental Authorities

Governmental authorities shall have no powers save by virtue of the Constitution and under law.

42. Duties of Publicly Elected Officials and Civil Servants

Elected officials, civil servants, and those fulfilling official functions shall act to advance the public welfare, preserve basic human rights and prevent their violation, and shall discharge their duties with loyalty, fairness, integrity, appropriate transparency, and accountability.

Chapter on the President

43. Status

A President, who shall express the independence and sovereignty of the country, shall be head of state.

44. Term

The President of the State shall be elected to serve for one term of seven years.

45. Eligibility

Every Israeli citizen who is a resident of Israel, and 40 years of age or older, is eligible to be a candidate for the office of the President of the State.

46. Election of the President of the State

- (a) The President of the State shall be elected by the Knesset, before completion of the term of the outgoing President and if impossible – immediately thereafter;
- (b) Ten members of the Knesset may propose a candidate, with his or her consent;
- (c) The election shall be by secret ballot; the candidate who shall receive the votes of the majority of Knesset members shall be elected; should no candidate receive such a majority – a second ballot shall be held; in the second ballot and all subsequent ballots, the candidate who shall have received the least number of votes in the previous ballot shall not stand for election, unless only one or two candidates remain; the candidate who shall receive the majority of votes of those participating in the ballot in the third ballot or subsequent ballots – shall be elected; should two candidates receive an equal number of votes – the balloting shall be repeated.

47. Commencement of Term and Declaration of Allegiance

The elected President shall commence his or her term upon the conclusion of the term of the previous President and after declaring allegiance in the Knesset, where the language of the declaration shall be: “I pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, and to carry out my office as President of the State faithfully.”

48. Functions and Powers

- (a) The President of the State –
 - (1) Shall sign every amendment to the Constitution and every law;
 - (2) Shall fulfill functions regarding the formation of a government and the dissolution of the Knesset as set forth in the Constitution;

- (3) Shall receive a report from the government of its meetings;
 - (4) Shall accredit the diplomatic representatives of the State, shall receive the credentials of diplomatic representatives sent to Israel by foreign states, shall certify the consular representatives of the State, and shall confirm the appointments of consular representatives sent to Israel by foreign states;
 - (5) Shall execute such treaties with foreign states as have been approved or ratified pursuant to the provisions of the Constitution;
- (b) The President of the State shall have the power to pardon offenders and to lighten penalties by the reduction or commutation thereof; in instances determined under law, before exercising the power to pardon an offender or lighten a penalty, under circumstances which shall be specified by law, he or she shall consult with a special committee which shall be chaired by one who was a Supreme Court justice;
 - (c) The President of the State shall carry out the functions, and have the powers, assigned by the Constitution or by law.

49. Countersignature

The signature of the President of the State on an official document while discharging his or her duties shall require the countersignature of the Prime Minister or such other minister, as the government may decide, except for a document with respect to the formation of the government, dissolution of the Knesset, and other than the President's letter of resignation.

50. Immunity

- (a) The President of the State shall have criminal and civil immunity in discharging his or her duties, which shall continue even after ceasing to serve;
- (b) The President shall not be criminally prosecuted during his or her

term, and the period during which, by virtue of this Article, his or her prosecution for an offence is barred, shall not be considered in calculating the period of prescription for such offence.

51. Exclusivity of Office

The President of the State shall hold no other office nor exercise any function other than his or her office and function as President of the State.

52. Cessation of Office

- (a) The President of the State shall cease to hold office upon any of the following:
 - (1) At the end of the period of his or her term;
 - (2) The President shall resign by submitting a letter of resignation to the Speaker of the Knesset;
 - (3) The President shall die;
 - (4) The Knesset shall resolve, by a majority of its members, that for reasons of health the President of the State is permanently unable to fulfill his or her functions;
 - (5) The Knesset shall resolve, by a three-fourths majority of its members, to remove the President from office, after ascertaining that he or she has acted during the term or prior thereto in a manner unbecoming to the status of the Presidency;
- (b) A President of the State who shall have ceased to hold office shall not be a candidate for Knesset and shall not be appointed as a minister in the government unless five years have passed from the day he or she ceased holding such office.

53. Temporary Inability by the President of the State to Discharge Functions

The President of the State shall temporarily cease to fulfill his or her functions and exercise his or her powers –

- (1) Upon notifying the Speaker of the Knesset that he or she shall be

temporarily unable to fulfill his or her functions, and the Knesset Committee shall have confirmed such notice by a majority of its members, for a period which it shall determine;

- (2) Upon the Knesset resolving, by a majority of two-thirds of its members that, for reasons of health, the President of the State shall be temporarily prevented from fulfilling his or her functions for a period which it shall determine.

54. Acting President

Where the position of the President of the State shall fall vacant, or where the President of the State shall be temporarily unable to discharge his or her duties – the Speaker of the Knesset shall serve in his or her stead, except for the authority to dissolve the Knesset.

Chapter on the Knesset

55. Essence

The Knesset is the parliament and the Legislative Branch of the State.

56. Composition

The Knesset shall, upon its election, consist of 120 members.

57. Elections to the Knesset

The Knesset shall be elected by general, direct, equal, secret, and proportional elections.

58. Right to Vote

Every Israeli citizen, 18 years of age or older, who is a resident of Israel, shall be entitled to vote for the Knesset.

59. Right to be Elected

- (a) Every Israeli citizen, 21 years or older, who is a resident of Israel,

shall be eligible to be elected to the Knesset unless a court shall have denied him or her that right pursuant to law;

- (b) In the elections for the Knesset, the following shall not be candidates: the President of the State, a Chief Rabbi of the State of Israel, a judge, a judge (*dayyan*) of a religious tribunal, the State Comptroller, and employees who are senior civil servants of such ranks or in such positions as shall be prescribed by law, army officers, policemen, prison officials, or employees of entities established by law.

60. List of Candidates

- (a) The list of candidates for the Knesset shall be submitted pursuant to the conditions and arrangements for submitting lists of candidates and only by a party;
- (b) A list of candidates shall not participate in the elections to the Knesset, and a person shall not be a candidate in elections for the Knesset, where the objectives or the actions of the list or the person, explicitly or implicitly, shall constitute a danger to the very existence of the State of Israel. Disqualification of a list or a candidate shall require confirmation by the Supreme Court;
- (c) The Knesset shall be permitted to limit by law the right of a Knesset member who shall resign from his or her faction to be included in the list of candidates to be submitted by the party which was represented by a faction of the outgoing Knesset.

61. Knesset Term

- (a) The term of the Knesset shall be four years from the day of its election; the date for elections shall be on the last Tuesday prior to completing the four years;
- (b) The Knesset shall not extend its term, unless there are special circumstances which prevent timely elections from being held; the decision to extend the term shall be by a law passed by a majority of 80 members of Knesset; the term of the extension shall not exceed the period required by said circumstances; said law shall set the date of elections.

62. Dissolution of the Knesset

- (a) The Knesset shall be dissolved before the end of its term upon any of the following:
 - (1) Enacting of a law for that purpose by a majority of members of Knesset in which it shall be prescribed that the date of elections for Knesset shall be no later than 90 days from the date the law was enacted;
 - (2) After the period for forming the government shall have passed, where a new government shall not have been formed according to the provisions of Articles 87, 92, or 93;
 - (3) By a decision of the Prime Minister, with the consent of the President of the State, as set forth in Article 93;
 - (4) By a failure to adopt the Budget Law prior to the beginning of the fiscal year;
- (b)
 - (1) Where the Knesset shall be dissolved according to the aforesaid in Paragraphs (2) through (4) of Subarticle (a), elections shall take place within 90 days from the date the grounds for dissolution shall be established;
 - (2) Where the date of elections for the Knesset shall be determined pursuant to this Article, and not by law, the Knesset may, by a decision of a majority of its members which shall be passed within five days from the date establishing the grounds for holding elections, determine that because of the proximity of the date of elections to a holiday, festival, or memorial day, the elections shall be deferred to a date which it shall determine and which is no later than 100 days from the date on which the grounds shall be established.

63. Continuity of the Knesset

The outgoing Knesset shall continue to hold office until the incoming Knesset shall have convened.

64. Convening the Knesset

The Knesset shall convene for its first session within two weeks from the day of elections.

65. Declaration of Allegiance

One who shall be elected shall assume office as a member of Knesset after declaring allegiance before the Knesset as follows: “I pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, and to discharge my mandate in the Knesset faithfully.”

66. Knesset Work Procedures

- (a) The Knesset shall hold two annual sessions;
- (b) The Knesset shall meet publicly;
- (c) The Knesset shall determine its work procedures, including all provisions relating to its committees and parties, its decision-making processes of all types, the provisions regarding temporary or permanent disqualification of those holding office, and all the rules which apply to the members of Knesset and its institutions;
- (d) The Knesset shall deliberate and make decisions by any number of its members where the Constitution does not provide otherwise regarding the matter;
- (e) The Knesset shall make decisions by a majority of those participating in the voting where those abstaining shall not be counted among the quorum participating in the voting and where the Constitution does not provide otherwise regarding the matter.

67. Speaker and Deputy Speakers of the Knesset

- (a) The Knesset shall elect a Speaker and Deputy Speakers from among its members; until election of the Speaker, the most senior member of Knesset who is not a minister or deputy minister shall serve as acting Speaker;
- (b) The Speaker shall represent the Knesset;
- (c) The Speaker, or in his or her absence, any of the Deputy Speakers, shall conduct the Knesset sessions;
- (d) The Speaker and the Deputy Speakers shall fulfill their offices with impartiality;

- (e) The Knesset may, by a decision of the majority of its members, suspend the Speaker or the Deputy Speakers or remove them from office or prescribe restrictions.

68. Opposition Leader

- (a) The opposition leader shall be a member of Knesset selected from among, and by, the members of the opposition parties;
- (b) (1) The opposition leader shall be updated on affairs of state by the Prime Minister;
- (2) The opposition leader shall have the right to address the Knesset plenum immediately after the Prime Minister.

69. Knesset Committees

- (a) The Knesset shall appoint permanent committees from among its members and may also appoint committees on specific issues from among its members;
- (b) The Knesset shall decide upon the composition of the permanent committees, whose members shall be selected by the Knesset, to the extent possible, according to the relative strengths of the Knesset parties.

70. The Knesset and the Executive Branch

- (a) The Knesset and its committees shall supervise and review the actions of the Executive Branch;
- (b) The ministers, in the framework of their parliamentary responsibility, shall transmit to the Knesset and its committees any information they possess necessary for the fulfillment of their functions; restrictions for reasons of State security, foreign affairs, international commercial relations, human rights, and matters necessary for the State, shall be prescribed by law;
- (c) The Knesset may compel a minister to appear before it;
- (d) A minister may be allowed to speak before the Knesset.

71. Knesset and Government Committees

Any of the Knesset committees may, in the context of fulfilling its functions and through the relevant minister, or with his or her knowledge, obligate a civil servant or anyone prescribed by law to appear before it. However, the [civil] servant is entitled not to appear before the committee, should the Speaker of the Knesset authorize his or her supervising minister to appear in lieu thereof.

72. Commissions of Inquiry

The Knesset shall be authorized to decide upon the appointment of a commission of inquiry from among its members; each commission of inquiry shall also include representatives of parties which do not participate in the government, according to the relative strengths of the parties in the Knesset; the manner of forming the commission and its powers shall be prescribed by law.

73. Immunity of Knesset Buildings

The buildings of the Knesset shall have immunity.

74. Immunity of Knesset Members

Members of Knesset shall have immunity.

75. Member of Government Who is Not a Member of Knesset

A member of the government who is not a member of Knesset shall, as to everything relating to the Knesset, have the same status as a member of the government who is a member of Knesset, except that he or she shall not have the right to vote.

76. Resignation of a Member of Knesset

A member of Knesset may resign from office.

77. Termination of Term or Candidacy of a Member of Knesset

Where a member of Knesset or a candidate for the Knesset shall be elected or appointed to a position, the holder of which is barred from being a candidate for the Knesset, then such membership in, or candidacy for, the Knesset, as applicable, shall terminate upon the election or appointment to any such position; in this regard, “candidate for the Knesset” is one whose name is included on the list of candidates to the Knesset as of the date of submitting of the list until the date on which the term as a member of Knesset begins.

78. Termination of the Term of a Member of Knesset Who Has Been Convicted in a Final Judgment

- (a) A court which shall have convicted a member of Knesset of a criminal offense shall set forth in its ruling whether such offense involves moral turpitude; where the court shall have so determined, the term of the member of Knesset shall be terminated as of the date on which the court’s ruling was made final;
- (b) Subarticle (a) shall also apply to a member of Knesset where the ruling in such case shall have been made final after assuming office as a member of Knesset.

79. Suspension of a Member of Knesset Who Has Been Convicted

- (a) The Knesset Committee may suspend from office a Knesset member who shall have been convicted of a criminal offense which involves moral turpitude, for such time as the ruling has not become final;
- (b) Where the member of Knesset shall have been convicted of a criminal offense and sentenced to prison, the Knesset Committee may, at the recommendation of any member of Knesset, suspend him or her from office at the Knesset for the length of time of the prison sentence; the provisions of this Article shall apply also to

a member of Knesset who shall have been convicted of such an offense in this Article prior to becoming a member of Knesset.

80. Replacement of Members of Knesset

- (a) Where the position of a member of Knesset falls vacant, another candidate – from among the list of candidates that included his or her name – whose name is first noted after the name of the last of those elected, shall replace him or her;
- (b) Where one's membership in the Knesset shall have been suspended under Article 79, such office shall be vacated during the time of the suspension, and he or she shall be replaced by a candidate as aforesaid in Subarticle (a); upon returning to office, the last one to have become a member of Knesset from the list of candidates shall cease to hold office, and the right of the last person to again become a member of Knesset later by virtue of Subarticle 79(a) shall not be prejudiced solely for this reason.

Chapter on the Executive Branch

81. Essence

The Executive Branch is the public's trustee; it shall act to promote public welfare, preserve basic human rights, and shall act with loyalty, fairness, integrity, and appropriate transparency.

82. Composition

- (a) The Executive Branch shall be composed of the government and its ministries, the army, security and intelligence forces, as well as all the bodies which fulfill functions of a governmental nature and which are not part of any other authority of the State;
- (b) A law may prescribe that the aforesaid bodies are not part of the Executive Branch if they are not subject solely to the authority of the government or a local authority;
- (c) A law may prescribe that public bodies are part of the Executive Branch if the matter is to benefit the public.

Subchapter A: The Government

83. Essence

The government stands at the head of the State's Executive Branch; it is composed of the Prime Minister and other ministers; the government is entrusted with the administration of State matters pursuant to the Constitution and the law.

84. The Knesset's Confidence in the Government

The government holds office by virtue of the confidence of the Knesset.

85. Responsibility

The government is collectively responsible to the Knesset; a minister is responsible to the Knesset for fulfilling his or her function; a minister is responsible to the Prime Minister for fulfilling his or her function.

86. Members of the Government

- (a) The number of members of the government shall be no less than eight ministers and shall not exceed 18 ministers;
- (b) One of the members of the government shall serve as acting Prime Minister;
- (c) The Prime Minister and the acting Prime Minister shall be members of Knesset; every other minister need not be a member of Knesset;
- (d) A minister shall be in charge of a ministry, although there may be a minister without portfolio in the government.

87. Formation of the Government

- (a) After Knesset elections, within two days from the date on which the results of the Knesset elections shall have been published, the President of the State shall assign the member of Knesset who is first on the list of candidates of the party which garnered the

- greatest number of votes the task of forming a government and leading it;
- (b) Where a government shall not have been formed according to Subarticle (a), or where the term of the government shall have terminated under the grounds enumerated in Article 91, the President of the State shall assign a member of Knesset the task of forming a government and leading it, after consulting with the representatives of the parties in Knesset;
 - (c) Where a government shall not have been formed according to Subarticle (b), the President of the State shall assign another member of Knesset the task of forming a government and leading it. However, a majority of Knesset members may request that the President shall assign a member of Knesset, who shall have given his or her written consent thereto, the task of forming a government and leading it;
 - (d) A member of Knesset to whom the President of the State shall have assigned the task of forming a government shall be given a period of 14 days to complete this function; the President may extend this period by additional periods, as long as they shall not exceed seven days in total;
 - (e) Where a law shall be adopted for the dissolution of the Knesset, procedures for forming the government shall be terminated;
 - (f) Where a government shall be formed, the member of Knesset shall inform the President that he or she has succeeded in forming a government, shall appear before the Knesset, advise it of the government's basic policy outlines, its composition, and the distribution of functions among the ministers, and request the Knesset's expression of confidence in the government; the government shall be established once the Knesset has expressed confidence therein;
 - (g) Where the government shall not have been formed under this Article within 100 days, the Knesset shall be dissolved at the end of such period.

88. Declaration of Allegiance

Where the Knesset has expressed confidence in the government, the Prime Minister and the ministers shall make the following declaration of allegiance before the Knesset:

“I (name of Prime Minister or minister) as Prime Minister/as a minister pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, to carry out my office as the Prime Minister/as a minister faithfully, and to comply with the decisions of the Knesset.” Immediately after such declaration, the Prime Minister and ministers shall assume office.

89. Addition of a Minister

The government may, upon recommendation by the Prime Minister, add an additional minister to the government. Where the government shall resolve to add a minister, it shall notify the Knesset of such fact and of the function of the additional minister. Upon the Knesset’s approving the notification, the additional minister shall make a declaration of allegiance and shall assume office.

90. Acting Prime Minister

- (a) Where the Prime Minister shall announce, or the government shall determine, that the Prime Minister is temporarily unable to discharge his or her duties, for reasons prescribed by law, his or her place shall be filled by the acting Prime Minister; where 100 consecutive days shall have passed in which the acting Prime Minister shall have served instead of the Prime Minister, and the Prime Minister shall not have returned to discharge his or her duties, he or she shall be deemed as one who is permanently unable to exercise office;
- (b) Where the government shall determine that the Prime Minister is permanently unable to discharge his or her duties, for reasons prescribed by law, or where his or her term shall terminate due to an offense, the acting Prime Minister shall serve in his or her stead until a new government shall be established.

91. Termination of the Term of the Government

The government shall have its term terminated by any of the following:

- (1) The Prime Minister shall resign by submitting a letter of resignation to the President of the State;
- (2) The Prime Minister shall die or shall be permanently unable to exercise office;
- (3) The Prime Minister shall cease to function as a member of Knesset;
- (4) Within 14 days from the day of filing an indictment against the Prime Minister for an offense carrying a sentence of more than three years (*peshah*), unless, within this time period, the Knesset shall resolve, by a majority of its members, that he or she may continue to serve;
- (5) The Prime Minister shall be convicted of an offense which the Supreme Court shall have defined as involving moral turpitude, and the Knesset shall resolve, by a majority of its members, to remove him or her from office, or when such judgment shall become final.

92. Expression of No-Confidence in the Government

- (a) The Knesset may, at any time, express no-confidence in the government;
- (b) An expression of no-confidence in the government shall be by a resolution, adopted by the majority of the members of Knesset, requesting that the President assign the task of forming a government to the Knesset member noted therein and who shall have agreed thereto in writing;
- (c) Where the Knesset shall have so resolved, the government shall be deemed to have resigned at such time; the President shall, within two days, charge the Knesset member noted in the resolution with the task of forming a government;
- (d) Where the Knesset member did not form a government within 21 days from the date so charged or where the Knesset did not

express confidence in the government so formed, the Knesset shall dissolve at the end of the said period or on the date it so resolves.

93. Authority to Dissolve the Knesset

- (a) Should the Prime Minister ascertain that a majority of the Knesset opposes the government, and that the effective functioning of the government shall be prevented as a result, he or she may request that the President of the State dissolve the Knesset; should the President of the State consent, an order shall be published in the official Gazette for the dissolution of the Knesset and holding new elections. The order shall enter into effect 21 days after its publication, unless a written request is submitted to the President by a majority of the members of Knesset to charge one of its members, who shall have given his or her written consent thereto and who is not the Prime Minister, with the task of forming a government; where a request as aforesaid shall have been submitted, the President shall charge, on that same date, the member of Knesset designated in the request, the task of forming and leading a government; where the Knesset member shall not have formed a government within 21 days from the day he or she is charged with the task, or where the Knesset shall not have expressed confidence in the government formed, the Knesset shall dissolve at the end of such period;
- (b) The Prime Minister shall not be entitled to exercise his or her authority under this Article:
 - (1) From the beginning of the term of a new Knesset until the formation of a new government;
 - (2) After the Knesset shall have expressed no-confidence in the government;
 - (3) After the resignation of the Prime Minister, or from the day he or she is convicted, until the day of a Knesset resolution, pursuant to Article 91(5);
- (c) An acting Prime Minister shall not be entitled to exercise the authority of the Prime Minister pursuant to this Article.

94. Continuity of the Government

- (a) Where a new Knesset shall be elected, or upon the termination of the term of the government, the outgoing government shall continue to carry out its functions until the new government shall be formed;
- (b) The Prime Minister, upon approval of the government in office pursuant to this Article, may appoint a member of Knesset to be a minister in lieu of a minister who shall have ceased to hold office; notice regarding the appointment of a minister under this Subarticle shall be given to the Knesset but shall not require approval by the Knesset.

95. Termination of Term of a Minister

A minister, excluding the Prime Minister, will cease holding office upon any of the following:

- (1) The minister shall resign by submitting a letter of resignation to the Prime Minister;
- (2) The Prime Minister shall remove the minister from office;
- (3) The minister shall die or shall be permanently incapable of holding office;
- (4) The minister shall have been convicted, in a final judgment, of an offense which the convicting court shall have determined involves moral turpitude.

96. Acting Minister

Should a minister cease to serve, or be temporarily incapable of holding office, the Prime Minister or another minister determined by the government shall act in his or her stead.

97. Deputy Ministers

- (a) The minister in charge of a ministry may, upon authorization of the government, appoint one deputy minister from among the members of Knesset to such office;
- (b) The deputy minister shall act, in Knesset and in the ministry

- to which appointed, on behalf of the appointing minister and within the parameters of those matters transferred thereto;
- (c) The number of deputy ministers in the government shall not exceed four.

98. Termination of Term of a Deputy Minister

The term of a deputy minister shall be terminated upon any of the following:

- (1) The deputy minister shall resign by submitting a letter of resignation to the minister who appointed him or her;
- (2) The appointing minister shall cease to be a minister or cease to be in charge of that ministry;
- (3) The Prime Minister, the government, or the minister who appointed the deputy minister shall decide to terminate his or her term;
- (4) A new government shall be formed;
- (5) The deputy minister shall cease to be a Knesset member;
- (6) The deputy minister shall be convicted, in a final judgment, of an offense which the convicting court shall have determined involves moral turpitude.

99. Suspension of a Minister or a Deputy Minister

The term of a minister or a deputy minister in the government shall be suspended upon the filing of an indictment attributing the commission of offenses involving moral turpitude to him or her.

100. Functioning of the Government

- (a) The government may appoint ministerial committees which are permanent, provisional, or relate to specific issues; where a committee is appointed, the government may act thereby;
- (b) The government shall prescribe procedures for its sessions and work, its methods of deliberation, and the manner in which it makes decisions, in its Rules of Procedure; it shall be entitled to do so also with respect to a specific matter.

101. Delegation of Powers

The conditions under which the government may delegate its powers to a minister, a minister may delegate powers to a civil servant, and a minister may assume powers from a civil servant shall be prescribed by law; powers of a judicial nature are not to be assumed or delegated.

102. Commissions of Inquiry

The government shall be authorized, under conditions prescribed by law, to decide on the need to appoint a commission of inquiry; the commission shall be appointed by the President of the Supreme Court.

103. Residual Powers of the Government

The government shall be authorized to perform, on behalf of the State, and subject to any law, any action not legally incumbent upon another authority.

104. Declaration of War

- (a) The State shall not declare war, unless pursuant to a government decision;
- (b) Nothing in this Article shall prevent military actions necessary for the defense of the State and public security;
- (c) Notice of a government decision to declare war under Subarticle (a) or said military actions under Subarticle (b) shall be transmitted to the Knesset as soon as possible;
- (d) The Knesset may, by a decision pursuant to a recommendation of the Knesset's Committee of Foreign Affairs and Security, and in a special session called for such purpose, direct the government to cease waging war or to cease military action; the decisions of the Committee and the Knesset shall be adopted by a majority of their members; specifics shall be prescribed by law.

Subchapter B: Civil Service

105. Composition

The Civil Service includes all those holding office or filling a position in the Executive Branch, whether they have the status of employee or are under contract, however, it does not include ministers and others elected by the public.

106. Additions to the Civil Service

Adding persons to the Civil Service shall be done only to promote public interest and where they possess the appropriate qualifications to fill their position; the law shall prescribe provisions according to which persons shall not be appointed to fill vacant positions in the Civil Service – excluding offices of trust as interpreted by law – unless by tender, in which equal opportunity shall be given to all those interested in participating and in which the candidate who is the most qualified shall be selected.

107. Obligations of the Civil Service

- (a) The Civil Service shall be the public's trustee and its servant;
- (b) An appointee to the Civil Service shall exercise authority according to the purpose of the law which prescribed it, for the public welfare, fairly, reasonably, and while preserving the value of equality; administrative procedures shall be prescribed by law;
- (c) An appointee to the Civil Service shall not violate the rights of an individual before such individual shall be given the right to assert a claim;
- (d) The Civil Service shall be subject to disciplinary action.

Subchapter C: The State Economy

108. Taxes, Compulsory Loans, and Fees

- (a) Taxes, compulsory loans, fees, and other compulsory payments shall not be imposed, and their amounts shall not be varied, save by law or pursuant thereto;
- (b) Where the amounts of any taxes, compulsory loans, fees, or other compulsory payments, payable to the State Treasury, shall not have been prescribed in the law itself, and where the law shall not have set forth a provision that the determination of such [amounts] in regulations shall require approval by the Knesset or one of its committees – [then] the determination of such [amounts] in the regulations shall require approval, in advance or within the period prescribed by the law, by a decision of the Knesset or one of its committees which the Knesset has authorized to do so.

109. State Property

Transactions in State property and the acquisition of rights and assumption of liabilities on behalf of the State shall be effected by a person authorized to do so by law or pursuant thereto.

110. The State Budget – Principles and Goals

Planning of the public expenditure and its implementation shall be directed towards growth, economic stability, and the reduction of economic inequality, while preserving standards of transparency, efficiency, fairness, and accountability.

111. The State Budget

- (a) (1) The State budget shall be prescribed by law;
(2) The budget shall be for one year and shall include the expected and planned expenditures of the government;
- (b) (1) The government shall submit the budget bill to the Knesset at the time prescribed by the Knesset or by one of its

committees, which the Knesset shall have empowered in that regard, but not later than 60 days before the beginning of the fiscal year;

- (2) The budget bill shall be detailed;
 - (3) The detailed budget bill for the Ministry of Defense shall not be submitted to the Knesset but rather to a joint committee of the Finance Committee and the Foreign Affairs and Security Committee of the Knesset;
 - (4) The budget bill shall be accompanied by an estimate for financing the budget;
- (c) If necessary, the government may submit an additional budget bill during the fiscal year;
 - (d) Where it appears to the government that the Budget Law will not be adopted before the beginning of the fiscal year, it may submit an interim budget bill;
 - (e) The Minister of Finance shall submit a report on the implementation of the State budget to the Knesset annually.

112. Multi-Year Budget

- (a) The government shall prepare in advance of each fiscal year a multi-year budgetary plan which shall include the budget bill for the upcoming year as well as the budgetary plan for the two years thereafter;
- (b) The government shall submit the multi-year budgetary plan together with the budget bill to the Knesset.

113. Failure to Adopt the Budget Law

- (a) Where the Budget Law shall fail to be adopted before the beginning of the fiscal year, the government may spend, on a monthly basis, the amount equaling one twelfth of the previous annual budget;
- (b) Where the Knesset shall not have approved the budget bill by the beginning of the fiscal year, it shall be deemed as though the Knesset shall have decided to dissolve before the completion of its term, in accordance with Article 62(a)(4).

114. Budgetary Legislation

A law may prescribe restrictions and conditions for the adoption of bills initiated by members of Knesset which may affect the expenditures from the State budget, or the State's income, and a law may also prescribe restrictions and conditions on adopting bills submitted by members of Knesset to amend a bill which is likely to have such an effect.

115. Bills and Coins

The printing of bills and the minting of coins, and the issuance thereof, shall be done pursuant to law.

Subchapter D: The Military

116. Purpose

The Israel Defense Force is entrusted with the security of the State and its defense and the defense of its citizens, its residents, and all who enter its territory, against an enemy.

117. Additional Purposes

- (a) The Israel Defense Force may undertake actions whose immediate execution is intended to save lives or cope with natural disasters; such missions outside the borders of the State require a decision by the government and shall be reported to the Knesset in the manner to be prescribed;
- (b) A law may authorize the Israel Defense Force – with the approval of the government – to act to achieve essential national-governmental goals, provided that the actions of the Israel Defense Force are necessary in order to achieve these goals; such actions shall be carried out with the consent of those who shall execute them.

118. Subordination to Civil Authority

- (a) The army shall be subject to the authority of the government; the minister in charge of the army on behalf of the government shall be the Minister of Defense;
- (b) The Knesset shall supervise the army and its activities.

119. General Chief of Staff

- (a) The commander of the army shall be the General Chief of Staff;
- (b) The General Chief of Staff shall be subject to the authority of the government and subordinate to the Minister of Defense;
- (c) The General Chief of Staff shall be appointed by the government upon recommendation of the Minister of Defense, with the consent of the Prime Minister.

120. Duty to Serve and Enlist

- (a) The duty of serving and enlisting in the army shall be as prescribed by law;
- (b) The authority and standards for granting exemptions from military service or an alternative to military service shall be prescribed by law.

Subchapter E: Security and Intelligence Forces

121. Security and Intelligence Forces

The government, and it alone, may establish security and intelligence forces, which shall be subject to its authority, and it shall bear responsibility for their actions; the modes of supervision by the Knesset over these forces shall be prescribed by law.

Chapter on Legislation

122. Laws

Laws shall be enacted by the Knesset by virtue of its power as the Legislative Branch.

123. Supremacy of the Constitution

Provisions of law shall be in accordance with the provisions of the Constitution.

124. Prescribing Details to be Implemented by Law

A law may prescribe details necessary for implementing a constitutional provision.

125. Bills

- (a) A bill shall be submitted to the Knesset by the government or by a Knesset committee;
- (b) A bill of the government or of a Knesset committee shall be published in the official Gazette and shall be submitted to the Knesset;
- (c) A provisional bill of a Knesset member shall be brought for preliminary deliberation by the Knesset plenum; where the Knesset shall decide to approve the provisional bill, the bill shall be transferred to a Knesset committee; where the committee shall approve the provisional bill, the bill shall be published in the official Gazette in the version determined by the committee and shall be submitted to the Knesset;
- (d) The Knesset shall not begin deliberations on a bill until seven days after its publication in the official Gazette, unless the Speaker of the Knesset shall authorize an earlier date on special grounds regarding which the Knesset shall be notified;
- (e) Provisions regarding arrangements for the submission of bills and provisional bills and arrangements for their deliberation, to the extent not prescribed in this Chapter, shall be prescribed by law or in the Knesset's Rules of Procedure.

126. Stages of Legislation

- (a) A law shall be passed upon three readings in the Knesset plenum;
- (b) A law shall be passed in the Knesset plenum by a majority of votes of Knesset members who voted; those abstaining shall not be counted among the quorum of votes.

127. New Version and Consolidated Version

The principles for determining a new Hebrew version of legislative material which existed on the eve of the foundation of the State and is still valid, and for determining a consolidated version of laws and the procedures for their preparation, shall be prescribed by law; in this Constitution, “legislative materials” – [means] a law or a regulation.

128. Regulations

Regulations are secondary legislation pursuant to law and have legislative status.

129. The Supremacy of the Constitution and the Law

A regulation shall accord with the provisions of the Constitution or with a provision in the law. In this Constitution, “regulation” – includes a provision in a regulation.

130. Issuing Regulations

- (a) A law may authorize the government and the ministers, a local authority, another governmental authority, or an authority under law to issue regulations for the implementation of the law or to achieve the purposes prescribed therein;
- (b) One authorized to issue regulations may prescribe therein that the penalty for one who violates any of its provisions shall be a fine not to exceed the amount so prescribed under law, and may, if explicitly authorized to do so by law, prescribe a prison sentence not to exceed six months.

131. Knesset Supervision over Regulations

- (a) The Knesset shall supervise the issuing of regulations;
- (b) A regulation which prescribes offenses and punishments shall require the approval of one of the Knesset committees.

132. Publication in the Official Gazette

- (a) Laws and regulations shall be published in the official Gazette;
- (b) The version of the laws and regulations as published in the official Gazette shall be the binding version;
- (c) Provisions regarding the procedure for publishing and amending errors in the published version shall be prescribed by law.

133. Application

- (a) The application of laws and regulations shall be at the start of the day of their publication in the official Gazette, unless they include a different provision on this matter, and all subject to the aforesaid in Article 26;
- (b) Notwithstanding that set forth in Subarticle (a), a regulation shall not be applied prior to its publication, unless the law shall have authorized its application as aforesaid, or for the purpose of amending a printing error;
- (c) It is possible to issue regulations by virtue of law even prior to their applicability should the matter be necessary for their implementation.

134. Extension of Validity of Laws and Regulations

Any law or regulation due to expire during the last two months of the term of the outgoing Knesset, or within four months after the Knesset shall have decided to dissolve itself, or during the first three months of the term of the incoming Knesset, shall remain in effect until the expiration of said three months.

Chapter on International Treaties

135. Definitions

[In this constitution] “treaty” – [means] an international agreement made in writing between the State of Israel and a foreign state, an international organization, or an entity recognized by international law, and regulated by international law, irrespective of the title of the agreement;

“Ratification” – includes entering into a treaty.

136. Authority

The authority to enter into treaties shall be granted to the government.

137. Knesset Approval

- (a) The government shall not ratify a treaty which requires ratification and shall not execute a treaty which does not require ratification until after the treaty shall be submitted to, and approved by, the Knesset, unless the treaty shall be one of the following:
 - (1) A treaty of a technical nature;
 - (2) A treaty for the implementation of a previous treaty;
 - (3) A treaty which is principally declarative;
- (b) Details regarding the Knesset’s deliberations on the treaty aforesaid in Subarticle (a), including the date of the deliberations and the manner in which the Knesset’s decision shall be published, shall be prescribed by law;
- (c) The Knesset may approve the treaties submitted, even with reservations.

138. Interim Provision

Treaties which the State of Israel shall have entered prior to the adoption of the Constitution shall be submitted to the Knesset in accordance with that set forth in Article 137.

139. Special Treaties

Where the Foreign Minister shall authorize in writing, after consulting with the Minister of Defense and the Minister of Justice, that for special reasons of State security and its foreign relations the treaty may not be submitted to the Knesset for approval, the government may ratify the treaty or execute it after receiving approval of a Knesset committee or subcommittee.

140. Execution by the President of the State

Where the Knesset shall approve a treaty with a foreign state or an international organization, the President of the State shall affix his or her signature upon a copy of the approving resolution.

141. Legal Force under Domestic Law

- (a) Where a treaty shall be approved by the Knesset as set forth in Article 137, it shall become part of the law of the State, and it shall have the status of law; for such purpose it shall be irrelevant whether the treaty shall require ratification and shall have been ratified, or whether the treaty shall not require ratification and shall have been signed;
- (b) Notwithstanding that set forth in Subarticle (a) the government may defer [the date on which] a treaty shall enter into effect under domestic law for a period of up to a year from the date of such treaty's ratification, or its signature, should it not require ratification;
- (c) Legislation shall be interpreted to the extent possible in a manner which shall accord with the treaties which the State of Israel shall have entered.

Chapter on the Judiciary

142. Judicial Power

Judicial power shall be vested in the Judiciary Branch, composed

of courts and tribunals of all types, entrusted with carrying out true justice.

143. Courts

- (a) The following are the courts vested with judicial authority:
 - (1) The Supreme Court;
 - (2) A District Court;
 - (3) A Magistrate’s Court;
 - (4) Another court designated as a court by law.In this Constitution, “judge” shall mean a judge of a court as aforesaid;
- (b) The courts shall be administered by the Minister of Justice and the President of the Supreme Court.

144. Tribunals

Judicial authority shall also be vested in the following:

- (1) A religious tribunal;
- (2) Another tribunal;
- (3) Another authority established under law.

145. No Other Courts

No court or tribunal shall be established unless prescribed by law; no court or tribunal shall be established for a particular case.

146. Independence

- (a) In judicial matters, a person vested with judicial powers shall not be subject to any authority other than that of the law;
- (b) A judge shall not be permanently transferred from the locality where he or she is serving to a court in another locality unless with the consent of the President of the Supreme Court or pursuant to a decision of the disciplinary tribunal for judges, and a judge shall not be appointed to an active position at a lower court without his or her consent.

147. Publicity of Proceedings

A person vested with judicial powers shall judge in public unless otherwise prescribed by law or unless otherwise directed under law.

148. Appointment of Judges

- (a) A judge shall be appointed by the President of the State upon election by a Judges' Election Committee;
In this Constitution, a "Permanently Appointed Justice" – [means] a justice appointed in accordance with this Article;
- (b) The Committee shall consist of nine members, namely, the President of the Supreme Court, two other justices of the Supreme Court, elected by such body of justices, the Minister of Justice and another minister designated by the government, two members of Knesset, elected by the Knesset, and two representatives of the [Israel] Bar Association elected by the National Council of the Bar. The Minister of Justice shall chair the Committee;
- (c) The Committee may act even should the number of its members be reduced, so long as it is not comprised of less than seven [members].

149. Eligibility

- (a) The eligibility of judges shall be prescribed by law;
- (b) A judge who is not a citizen and resident of Israel shall not be appointed.

150. Declaration of Allegiance

A person appointed as a judge shall pledge allegiance before the President of the State where the language of the declaration shall be: "I pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, to dispense justice fairly, not to pervert the law, and to show no favor."

151. Judges' Term

- (a) A judge shall assume office upon pledging allegiance;
- (b) A judge shall conclude his or her term upon any of the following:
 - (1) Retirement on pension;
 - (2) Resignation;
 - (3) Being elected or appointed to a position the holder of which is barred from being a candidate for the Knesset;
 - (4) A resolution by the Judges' Election Committee proposed by the chairperson of the Committee, or the President of the Supreme Court, or the Commission of Public Complaints against Judges and passed by a majority of at least seven members;
 - (5) A resolution by the disciplinary tribunal;
 - (6) Where the judge shall have been convicted in a final judgment of an offense which the convicting court shall have defined as involving moral turpitude;
- (c) A judge who has retired on pension may be appointed to a judicial position, with his or her consent, to the same court or tribunal, for such time, in such manner, and on such conditions as may be prescribed by law.

152. Judges' Immunity

- (a) No criminal investigation shall be opened against a judge without the consent of the Attorney-General, and no indictment shall be filed against a judge other than by the Attorney-General;
- (b) Where a complaint shall have been filed, or a criminal investigation shall have been opened, or an indictment shall have been filed against a judge, the President of the Supreme Court may suspend such judge for such period as is determined.

153. Exclusivity of Office

A judge shall not engage in an additional occupation, and shall not carry out any public function, unless pursuant to law or upon the consent of the President of the Supreme Court and the Minister of Justice.

154. Disciplinary Proceedings

- (a) A judge shall be subject to the jurisdiction of a disciplinary tribunal which shall be established pursuant to law; members of the tribunal shall be appointed by the President of the Supreme Court;
- (b) Provisions as to the grounds for disciplinary proceedings, the modes of filing complaints, the composition of the bench, the powers of the disciplinary tribunal, and the disciplinary measures which it shall be authorized to impose shall be prescribed by law; the rules of procedure shall be in accordance with the law.

155. Commissioner for Public Complaints against Judges

A Commissioner for Public Complaints against Judges, who shall investigate complaints regarding the conduct of judges in the framework of discharging their duties, including the manner in which they conduct trials, shall be appointed.

156. Judicial Authorities

The provisions of this Chapter regarding judges shall apply to others vested with judicial authority as well, *mutatis mutandis*, as shall be prescribed by law.

157. The Supreme Court

- (a) The Supreme Court shall hear appeals against judgments and other decisions of the District Courts;
- (b) The Supreme Court, when sitting as the High Court of Justice,

shall hear petitions against the decisions, actions, or omissions of persons or entities fulfilling public functions by law;

- (c) The Supreme Court shall consist of the number of judges which shall be determined by the Knesset in a resolution pursuant to the recommendation of the Judges' Election Committee, such number shall not be less than 9 nor exceed 15;
- (d) Other powers of the Supreme Court and its composition shall be prescribed by law.

158. Other Courts

The establishment, powers, composition, location of sessions, and areas of jurisdiction of the District Courts, the Magistrates' Courts, the tribunals, other courts, and other bodies vested with judicial authority shall be by law or in accordance therewith.

159. Appeal

A judgment by a court of first instance, other than a judgment of the Supreme Court, shall be subject to appeal as of right.

160. Further Hearing

In a matter adjudicated by the Supreme Court by a bench of three or five, a further hearing may be held in the Supreme Court by a bench of a greater number on such grounds and in such manner as shall be prescribed by law.

161. Retrial

In a criminal matter for which a final judgment has been rendered, a retrial may be held on such grounds and in such manner as shall be prescribed by law.

162. Precedent

- (a) A ruling laid down by a court shall guide a lower court;
- (b) A ruling laid down by the Supreme Court shall bind any court other than the Supreme Court.

163. Constitutional Justiciability

- (a) The Supreme Court, and it alone, by a bench of no less than two-thirds of the body of Permanently Appointed Justices, may rule that a law is not valid because it is unconstitutional;
- (b) Where a doubt regarding the validity of a law because of its unconstitutionality shall arise before a judicial authority, and it shall be ascertained that it is impossible to decide the matter without determining the aforesaid issue of validity, and [such judicial authority] cannot remove the doubt and affirm the validity of the law, it shall bring the issue before the Supreme Court; the issue of the validity of a law may be brought for a ruling by the Supreme Court, according to the arrangements prescribed in this Article, by a litigant through a direct appeal of the decision, as set forth at the beginning of this Subarticle;
- (c) A question referred according to Subarticle (b) shall be brought before the Supreme Court with a bench of three justices. Where the Supreme Court shall rule that there is a basis for the conclusion set forth in Subarticle (b), the issue shall be brought before a bench of no less than two-thirds of the body of Permanently Appointed Justices;
- (d) Where a doubt shall arise, as set forth in Subarticle (b) during a Supreme Court hearing conducted by one justice, such justice shall raise the issue before a bench of three justices, as stated in Subarticle (c). Where a doubt shall arise, as set forth in Subarticle (b), during a Supreme Court hearing held before a bench of three or more justices, the bench adjudicating the issue shall act with the authority of the three justices as set forth in Subarticle (c);
- (e) Where the Supreme Court shall rule that it should not hear the matter referred by a judicial authority or by a litigant, or where it shall have decided the issue and ruled that the law is valid, the one vested with judicial authority shall continue to hear the matter in accordance with the decision of the Supreme Court;

- (f) Where the Supreme Court shall so rule in Subarticle (a), it may give any directive or relief which it deems necessary under the circumstances of the case, including ruling regarding the date as of which a provision will be repealed.

164. Constitutional Non-justiciability

- (a) Article 163 shall not apply with respect to a piece of legislation which concerns any of the topics enumerated in Subarticle (c);
- (b) Where the court shall interpret legislation which concerns any of the topics enumerated in Subarticle (c), it is not obligated to grant interpretive preference to the provisions of this Constitution;
- (c) The topics are as follows:
 - (1) Joining a religion, including conversion, belonging to a religion or renouncing it;
 - (2) The authority of the religious tribunals at the time of establishing this Constitution, conducting marriages and divorces according to religious law, creating partnerships and their dissolution in accordance with law, and the application of religious law to issues of personal status, which as at the establishment of the Constitution are adjudicated pursuant to the personal law of the parties;
 - (3) The Jewish character of the Sabbath and Jewish holidays in the public domain;
 - (4) Maintaining Jewish dietary laws in governmental institutions;
 - (5) Granting Israeli citizenship to relatives of one eligible to immigrate to Israel;
- (d) That stated in this Article does not derogate from the obligation of the State to recognize marriages and divorces of couples according to their religious law and so, too, does not derogate from its obligation to establish a spousal registry according to which a partnership covenant shall be recognized pursuant to law, which shall also regulate its dissolution.

Chapter on the State Comptroller and Commissioner for Complaints from the Public

165. The State Comptroller

The State audit shall be performed by the State Comptroller.

166. Essence

The State Comptroller –

- (a) Shall audit the actions of the State, government ministries, every enterprise, institution, or corporation of the State, local authorities, and entities or other institutions which are subject by law to audit by the State Comptroller;
- (b) Shall inspect the legality of the actions, integrity, managerial norms, efficiency, economy, and activities for the public welfare, of the audited bodies, as well as any other matter which he or she deems necessary;
- (c) Shall investigate complaints from the public about entities and persons, as provided by law or pursuant thereto: in this capacity the State Comptroller shall bear the title “Commissioner for Complaints from the Public”;
- (d) Shall fulfill other functions as shall be prescribed by law.

167. Independence and Accountability to the Knesset

- (a) In carrying out his or her functions, the State Comptroller shall be accountable only to the Knesset and not subject to the government;
- (b) The budget of the State Comptroller’s Office shall be determined by the Finance Committee of the Knesset, upon the recommendation of the State Comptroller, and shall be published together with the State budget.

168. Elections and Term of Office

- (a) The State Comptroller shall be appointed by the President of the State, pursuant to a decision by the Knesset;

- (b) The State Comptroller shall be elected by the Knesset in a secret ballot;
- (c) The State Comptroller shall serve for one term of seven years.

169. Eligibility

Any Israeli citizen who is a resident of Israel shall be eligible to be a candidate for the office of State Comptroller; additional qualifications for eligibility may be prescribed by law.

170. Exclusivity of Office

The State Comptroller shall not engage in any additional business or occupation and shall not fill a public function unless by law.

171. Declaration of Allegiance

The elected State Comptroller shall assume office after making the following declaration to the President: “I pledge allegiance to the State of Israel, to its Constitution, and to its laws, and to discharge my duties as State Comptroller faithfully.”

172. Duty to Provide Information and Material

An entity subject to audit by the State Comptroller shall, upon request, immediately provide the Comptroller with information, documents, explanations, or any other material which the Comptroller deems necessary for purposes of the audit and investigation of complaints.

173. Results of Audit and Contact with the Knesset

- (a) The State Comptroller shall submit reports and opinions within the scope of his or her duties to the President of the State and to the Knesset and shall publish them publicly;
- (b) The arrangements for handling the results of the audit shall be prescribed by law.

174. Termination of Term

Removal of the State Comptroller from office shall be pursuant to a Knesset decision, by a majority of two-thirds of its members.

Chapter on Local Authorities

175. Essence and Powers

- (a) The local authorities shall administer the local public affairs to benefit their residents, while considering the general public welfare, and subject to government policy in spheres which shall be prescribed by law;
- (b) The powers of the local authorities to shape and implement policy, to provide services, and to administer their internal affairs shall be prescribed by law;
- (c) The local authorities shall encourage the participation and involvement of their residents in their activities.

176. Elections and Elected Institutions

- (a) A representational council, which shall be elected by the residents of the authority in general, direct, equal, and secret elections, shall serve in every local authority, with the power to issue regulations and holding additional powers to be prescribed by law;
- (b) The procedures for the election, eligibility, and powers of the head of the local authority shall be prescribed by law;
- (c) The term of office of the head of the local authority and the members of the council shall be five years;
- (d) The grounds for terminating the term of the head of the local authority or the members of the council shall be prescribed by law.

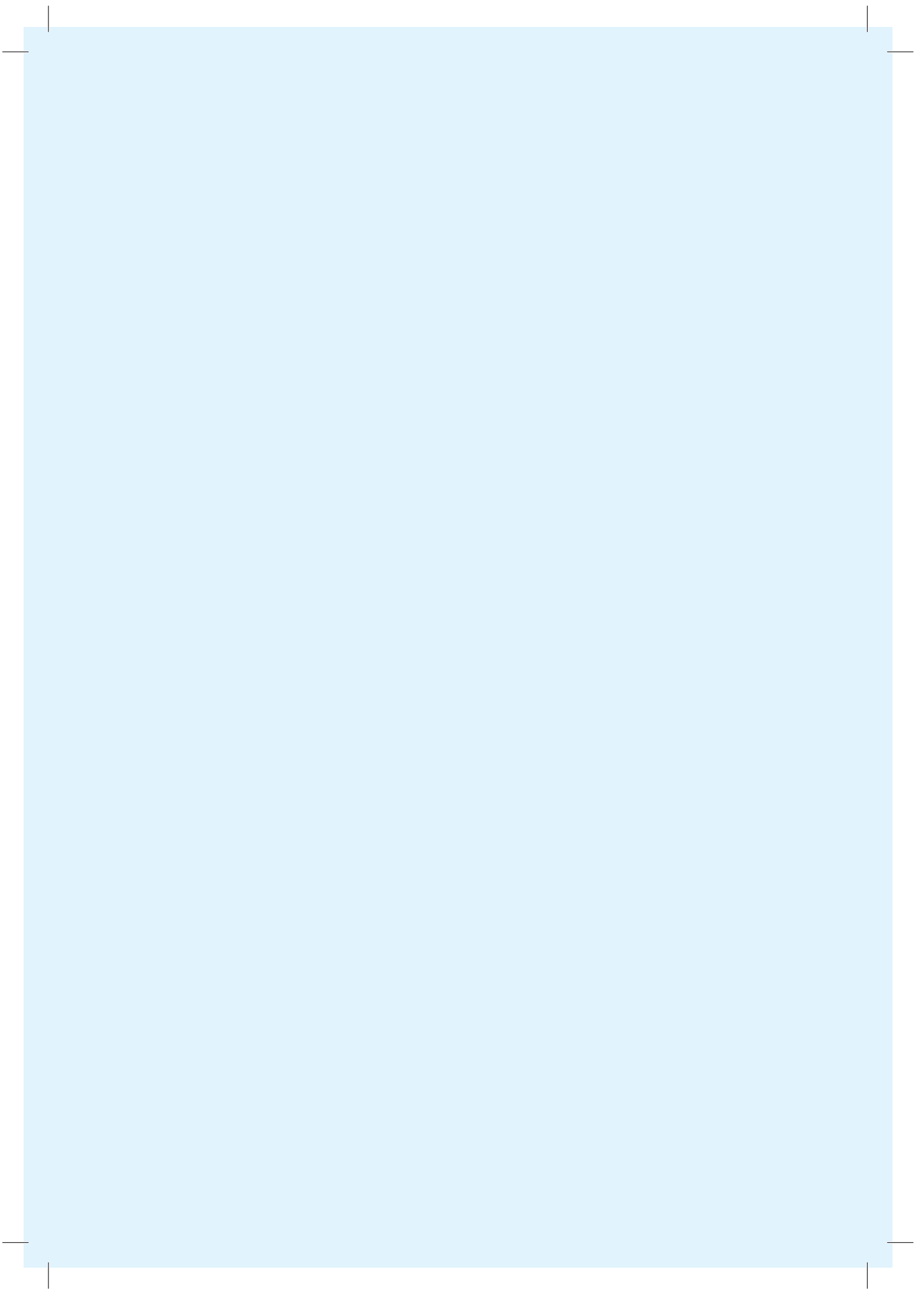
177. Financing and Taxes

The local authority shall have powers regarding matters of financing and taxes:

- (1) To issue regulations which apply to the authority;
- (2) To impose compulsory payments and to collect fees; all as shall be prescribed by law.

178. Supervision and Control

- (a) Supervision and control of the local authority and its activities shall be conducted by the local authority and the State authorities pursuant to law;
- (b) A law may prescribe powers to the government:
 - (1) To suspend or remove elected officials in the local authority from office on grounds and in a manner which shall be prescribed by law;
 - (2) To suspend the legal force of a regulation issued by the local authority, or to repeal it, where the government shall find that it harms, to an extent which is greater than required, the public welfare, another local authority, or the general policy of the government.



Part Four

Arrangements Regarding the Status of the Constitution

Chapter on Amending the Constitution

179. Amendments to the Constitution

Amendments to the Constitution shall be legislated by the Knesset, by virtue of its power to establish a Constitution.

180. Initiative to Amend the Constitution

A bill to amend the Constitution shall be submitted to the Knesset by the government, by the Knesset's Constitution Committee, or by at least one-third of Knesset members who shall submit their proposal jointly; the bill shall be published in the official Gazette and shall be submitted to the Knesset.

181. Stages of Amending the Constitution

- (a) A constitutional amendment shall be adopted in four readings in the Knesset plenum;
- (b) A constitutional amendment shall be accepted in its first, second, and third readings in the Knesset plenum by a majority of two-thirds of the Knesset members;
- (c) During the deliberations between readings, the Knesset's Constitution Committee may decide to amend the bill as it deems fit, provided that it shall not exceed the limits of the subject of the bill or that it shall not be necessary to bring other constitutional articles into accord with the proposed amendment;

- (d) A constitutional amendment shall be adopted in the fourth reading in the Knesset plenum, in the version which shall have been approved in the third reading, by a majority of two-thirds of the Knesset members; the fourth reading shall be at a Knesset session intended solely for this purpose which shall be held not earlier than at least six months after the conclusion of the third reading.

182. Submission and Deliberation

Provisions regarding the procedure for submitting bills for a constitutional amendment, and regarding the procedure for their deliberation in the Knesset plenum and in the Constitution Committee, to the extent not prescribed in this Chapter, shall be prescribed by law.

183. Publication

- (a) A constitutional amendment shall be published in the official Gazette;
- (b) The version of a constitutional amendment as published in the official Gazette shall be the binding version;
- (c) Provisions regarding the procedure for publication and amending errors shall be prescribed by law.

184. Application

A constitutional amendment shall enter into force as of the date of its publication in the official Gazette unless the amendment shall prescribe a later date.

Chapter on State of Emergency

185. Definition of Emergency Conditions

For purposes of this Chapter, “emergency conditions” – [means] a state of war or severe and immediate threat to the existence of the

State, its security, its constitutional order, or the lives of its residents due to a natural disaster or health hazard.

186. State of Emergency Committee

The Knesset shall establish from among its members a State of Emergency Committee which shall appoint 20 members of the Knesset; the Chair of the Committee shall be the Speaker of the Knesset, and representation on the State of Emergency Committee shall be, to the extent possible, according to the relative strengths of the Knesset parties, provided that every party which has six or more members shall have a representative on the Committee; a number of parties may inform the Speaker of the Knesset that they constitute one party for the purposes of representation on the Committee; the procedure for establishing the Committee shall be prescribed by law.

187. Declaration of State of Emergency

- (a) Where the Knesset shall determine that emergency conditions exist in the State, it may, at its initiative or the recommendation of the government, declare a state of emergency for a period of time as shall be determined in such declaration, provided it does not exceed half a year; the Knesset may repeat such declaration of a state of emergency as aforesaid;
- (b) Where the State of Emergency Committee shall determine that emergency conditions exist in the State, and that, due to the urgency of the situation as a result of the emergency conditions, a state of emergency should be declared even before the Knesset may be convened, it may declare a state of emergency; the force of such declaration shall expire seven days after the date it shall be made should it not be approved or revoked prior to that date by the Knesset in a decision by a majority of its members; where the Knesset shall not have convened, the Committee may repeat such declaration of a state of emergency as set forth in this Subarticle;

- (c) Declarations of the Knesset or the State of Emergency Committee of the Knesset shall be published in the official Gazette. Where it is not possible to publish a declaration of the state of emergency in the official Gazette due to the emergency conditions, the declaration shall be published in another appropriate manner provided it shall be published in the official Gazette as soon as it shall become possible to do so;
- (d) The Knesset may, at any time, revoke the declaration of a state of emergency; an announcement of such revocation shall be published in the official Gazette.

188. Emergency Regulations

- (a) From the time that a state of emergency shall have been declared, the Knesset's State of Emergency Committee may issue emergency regulations which are necessary for the defense of the State or the public or for the maintenance of supplies and essential services;
- (b) Where the Prime Minister shall determine, after consulting with the Speaker of the Knesset, that it is not possible to convene the Knesset's State of Emergency Committee at the necessary time under the circumstances, because of the emergency conditions, and that there is an urgent and critical need to issue emergency regulations, he or she may issue them or authorize a minister to issue them; emergency regulations shall be submitted to the Knesset's State of Emergency Committee as soon as possible after being issued;
- (c) Emergency regulations shall enter into force upon being published in the official Gazette; should it not be possible to publish them in the official Gazette, they shall be published through other appropriate means provided that they shall be published in the official Gazette as soon as it shall become possible to do so;
- (d) Emergency regulations shall have the power to amend any law,

temporarily suspend its validity, or set conditions therein, and may also impose or increase taxes or other compulsory payments provided there is no other provision in the Constitution or by law;

- (e) Emergency regulations shall not have the power to amend the provisions of the Constitution, temporarily suspend their validity, or set conditions therein, however, the emergency regulations may order an infringement of rights enumerated in the Part on Basic Human Rights or the deferment of dates pursuant to this Constitution, provided such infringement of rights or deferment of dates shall occur while preserving the values of the State, for a necessary purpose and for a period and to an extent not greater than required. Notwithstanding the aforesaid, the emergency regulations may not discriminate on the basis of race, religion, nationality, gender, ethnicity, country of origin, disabilities, or any other grounds, nor shall capital punishment, torture, or slavery be permitted;
- (f) Emergency regulations shall not have the power to violate the constitutional status and functions of the Supreme Court, infringe upon the continued functioning of the central or local governmental institutions where the circumstances shall not have derogated from their ability to function, prevent recourse to the courts, or to prescribe a punishment retroactively;
- (g) Emergency regulations which prescribe provisions as aforesaid in Articles 188(d) or (e) shall not be issued, and arrangements, measures, or powers shall not be implemented by virtue thereof, except to the extent warranted by the state of emergency, and provided there is no possibility to act through legislation within the necessary time period;
- (h) The validity of the emergency regulations shall expire three months from the date on which they were promulgated unless their force shall be extended by law or where they shall have been revoked by the Knesset by law or by a decision of a majority of Knesset members;

- (i) Where the state of emergency shall have ceased to exist, the emergency regulations shall continue to exist for the period for which they are valid, however, not more than sixty days after the end of the state of emergency and provided they shall not be implemented other than for the purpose of completing the execution of an individual order issued before the end of the state of emergency.

Chapter on General Provisions

189. Interpretation

The substance and purpose of the Constitution shall guide its interpretation.

190. Eligibility

Conditions regarding the eligibility of the President of the State, ministers, one vested with judicial authority, or the State Comptroller may be prescribed in law in addition to those set out in the Constitution.

191. Ineligibility for Office

- (a) A person shall not be eligible for the office of the President of the State, Knesset member, minister, one vested with judicial authority, or the State Comptroller if convicted in a final judgment of an offense which the court shall have determined in its ruling as involving moral turpitude and where, on the day of assuming office, ten years have not yet passed since the day of such verdict or completion of serving the sentence, whichever is the later;
- (b) Where the court shall not have determined the issue of moral turpitude in its ruling, the court shall determine whether the offense involves moral turpitude.

192. Salary

The President of the State, Prime Minister, ministers, deputy ministers, members of Knesset, State Comptroller, and judges shall receive their salary from the State Treasury as shall be prescribed by law.

193. Validity of Laws – Temporary Order

Legislative provisions, which but for the Part on Basic Human Rights would have been valid on the eve of the commencement of this Constitution, shall remain in effect for ten years from the day of adopting the Constitution where not revoked prior thereto, however, such provisions shall be interpreted in the spirit of the provisions of this Constitution unless prescribed otherwise.





Section III

Constitution by Consensus
Explanations of Articles



Preface

We hereby propose the text for a Constitution for the State of Israel based upon extensive public discourse conducted at the initiative of the Israel Democracy Institute. The public discussion took place at a series of conferences run by the Public Council, headed by President of the Supreme Court (Emeritus), Justice Meir Shamgar, to consolidate a draft for the Constitution by Consensus for the State of Israel. Hundreds of individuals, drawn from a wide range of groups and sectors in Israeli society, attended these conferences – men and women, Jews and Arabs, secular, traditional, religious, and ultra-Orthodox – expressing a broad spectrum of stances and opinions. The participants in these discussions were not appointed by the Institute, nor did the Institute ask organizations or groups to send their representatives to these discussions. Citizens who demonstrated an interest in the topic and a willingness to voice their opinion in a public forum participated. As may be expected, the forum was not formally representative of Israel's citizens, but did run the gamut of opinions and interests. At the conclusion of these discussions, a select team of senior researchers at the Institute drafted the proposed text for a Constitution for Israel.

The Constitution proposed here is not intended to prompt a revolution in, nor spur fundamental changes to, the character of the State of Israel. In essence, the proposed Constitution expresses the basic viewpoints accepted in Israeli society regarding the character of the system and the fundamental principles of the State of Israel, as such are presently articulated in Basic Laws and in other arrangements. The proposed Constitution gives full expression to these basic viewpoints through a complete Bill of Human Rights, whose current absence in our legal system is sorely felt.

The objective of codifying these basic viewpoints in a written Constitution is two-fold. The first is of a public nature. The public discussions which accompany the adoption of a Constitution, and accessibility to the provisions of the Constitution after its adoption, are likely to increase the willingness of

many groups in society to consent to a common framework, allowing for a greater degree of unity and mutual trust than exists today. The Constitution expresses consensus regarding the “ground rules” and fundamental shared values, and is likely to assist the public in assimilating the basic values agreed upon by society. Adoption of the Constitution is also likely to increase the efficacy of public supervision over the branches of government, thereby increasing the commitment by such branches of government to society’s basic values and to shared democratic values. The second objective is of a legal nature. A constitution serves as a central source for interpreting the entirety of the law prevailing in the State. Explicitly codifying the entirety of society’s basic principles provides a clearer degree of validation for the standards of judicial review over the branches of government than those currently existing. In essence, a Constitution expresses the principle of the “rule of law,” according to which the branches of government are not omnipotent. The Constitution is a collection of arrangements which constitute a source for the authority of the branches of government; hence the Constitution also determines the limits of such authority.

By virtue of this attribute of a Constitution, it is clear that every state, including the State of Israel, has a constitution. The written Constitution is intended to articulate, explicitly and by consensus, the basic principles of society. According to the viewpoint currently accepted in Israel, all the provisions prescribed in the 11 Basic Laws adopted by the Knesset have constitutional status. They express the source, and the limits, of the authority of the government – including limits on the Knesset’s powers. But Basic Laws are only chapters in an as yet uncompleted Constitution; they do not fully express the entirety of the fundamental principles of the State, nor do all of the provisions included in Basic Laws assert fundamental principles worthy of being included in the Constitution.

As mentioned, this proposed Constitution is intended to codify those basic viewpoints accepted in Israeli society. It asserts the State’s character as Jewish and democratic. It establishes the parliamentary system, and the national-proportional system of elections. Nevertheless, the proposed draft does not preclude the Knesset from conducting regional elections, in part or entirely, as long as the principle of proportionality is maintained.

The proposed Constitution prescribes a recognition of basic human rights and sets forth their particulars. It recognizes the authority of the Supreme Court to enforce the provisions of the Constitution on the branches of government, including the Legislative Branch.

The proposed Constitution is based on the assumption that the Knesset is authorized to establish a Constitution. A procedure is proposed for enabling the Knesset to amend the Constitution, but naturally, the Constitution does not include provisions regarding adopting the Constitution itself. For that, it seems, the Knesset would need to legislate a Basic Law to regulate the manner in which the Constitution is to be adopted.



Structure of the Constitution

The Constitution is composed of five sections, consisting of an Introduction and four Parts: (a) Principles; (b) Bill of Basic Human Rights; (c) Governmental Authorities; and (d) Arrangements Regarding the Status of the Constitution.

The **Introduction** to the Constitution is the Declaration establishing the State. The Declaration expresses the historical and ethical background for the foundation of the State of Israel as a Jewish and democratic state, and it includes a general articulation of the basic guiding principles. The Introduction to the Constitution constitutes a source of inspiration for interpreting the Articles of the Constitution. **Part One** of the Constitution includes a concise list of the basic principles of the State of Israel, most significantly the characterization of the State as Jewish and democratic. **Part Two** is the Bill of Basic Human Rights. Basic rights limit the power of the branches of government. This limitation is not absolute but rather subject to the arrangement currently prescribed in Basic Laws, according to which rights may be violated if pursuant to law or by virtue of an express authorization by law, for a proper purpose and to an extent no greater than is required, in accordance with the values of the State of Israel as a Jewish and democratic state. In the proposed Constitution, additional rights supplement those enumerated explicitly in Basic Laws, including equality, freedom of expression, freedom of belief and conscience, freedom of religion, the right to strike, social rights, and group rights. **Part Three** of the Constitution regulates the actions of the branches of government and the manner in which such governmental powers operate (legislative, executive, and judicial). **Part Four** sets out the procedures for amending the Constitution and includes Articles governing the provisions of law which apply in a state of emergency.



Introduction to the Constitution

The Introduction to the Constitution constitutes a historical and ethical background for the establishment of the State of Israel as a Jewish and democratic state and the fundamental values on which it is based. In principle, selecting the Declaration as the Introduction to the Constitution has two main purposes. The first is symbolic: the Declaration was adopted at the “revolutionary moment” of establishing the State and was the result of broad national consensus among the Jewish community in the Land of Israel. The Declaration was not intended to be a Constitution, but rather a general declaration of intent – by articulating the credo, the “I Believe” of the people – regarding the character of the State of Israel. As such, it is appropriate to serve as the Introduction to a Constitution which is intended to concretize such a declaration of intentions. Adopting the Declaration, complete and verbatim, as the Introduction to the Constitution also symbolically expresses the view that the Constitution is founded upon the principles contained in the Declaration of Independence. Although the Declaration is not the source for conferring legal validity on the Constitution, as the Constitution will be approved by virtue of the public’s common perception of the Knesset’s authority to establish a constitution, it is, nevertheless, the historical source for the Constitution.

The second purpose is interpretative. As written at the end of the Introduction, “the Constitution of the State of Israel is based on the principles which are in the Declaration of Independence,” the Declaration constitutes an important source for interpreting the Articles of the Constitution. According to accepted thinking, the Constitution is to be interpreted in accord with society’s basic viewpoints and with the “I Believe” of the people and is, therefore, a central source for such key perceptions. In this sense, the legal status of the Declaration is not expected to change, according to which the Declaration constitutes a “source from which the interpreter learns the values of the legal system, and constitutes a legal norm which expresses the nation’s proclamation of [its] values” (A. Barak, *Interpretation in Law: Constitutional Interpretation* [1983],

at 633). According to the accepted approach, “insofar as [the Declaration of establishment of the State] expresses the vision of the people and its faith [...], we are bound to pay attention to the matters set forth in it when we come to interpret and give meaning to the laws of the State, [...] for it is a well-known axiom that the law of a people must be studied in the light of its national way of life.” (H.C. 73/53 Kol Ha’am Co. Ltd. v. Minister of Interior, 7 P.D. 871, 884).

The provisions of the Declaration express the Jewish character of the State, particularly in its introductory section, which describes the historical background on which the Jewish people’s right to self-determination is based, and in the section which asserts the principles which will guide the State of Israel. The most important affirmation appears at the end of the first section of the Declaration: “This right is the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign State.” Thus, the perception that the State of Israel is the framework for the realizing the Jewish people’s right to self-determination as a national group is given expression. This is the fundamental import of the State of Israel being a “Jewish state.”

In concert with forming a basis for the Jewish character of the State, the Declaration also expresses its democratic nature. Although the Declaration does not explicitly define the State as “democratic,” it asserts principles of equality and justice for all its citizens. It determines that “The State of Israel [...] will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice and peace as envisaged by the prophets of Israel; it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions; and it will be faithful to the principles of the Charter of the United Nations.” The Declaration also recognizes the rights of the Arab citizens of Israel to equality, by calling upon this public to “participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.”

Part One

Principles

This Part affirms a series of basic principles regarding the character of the political system in the State of Israel, as well as a number of general arrangements which express the character of the State as a Jewish and democratic state. These basic principles are super-principles, or “framework” principles: they constitute a central basis for the interpretation of law in Israel, including the Articles of the Constitution itself, and they are an important means of developing the law and filling in lacunas.

This Part includes two types of Articles: those which constitute the basic principles of the system (including its character and the source of governmental authority) and those which express the State’s fundamental arrangements (including symbols, language, and citizenship).

1. Basic Principles

- (a) The State shall be called “Israel”;
- (b) Israel shall be a Jewish and democratic state;
- (c) The State shall act with equality towards all its citizens;
- (d) The system of government shall be a parliamentary democracy.

Subarticle (a) proposes to accord the name “Israel” to the State, as was determined by the Declaration of the establishment of the State of Israel. Although in one section the Declaration states that “[WE] HEREBY DECLARE THE ESTABLISHMENT OF A JEWISH STATE IN ERETZ-ISRAEL, TO BE KNOWN AS THE STATE OF ISRAEL,” it continues: “the Jewish State [...] to be called Israel.” In practice, the first version is often employed (as in passports and identity cards), but it would seem that “Israel” (and not “the State of Israel”) should be the preferred version, as has become

accepted around the world. The name “Israel” conveys the character of the State as a Jewish state.

Subarticle (b) articulates the accepted position regarding the character of the State of Israel: a Jewish and democratic state. This is the phrase which currently appears in the purpose clause (Section 1A) of Basic Law: Human Dignity and Liberty (as well as in Section 7A of Basic Law: The Knesset). Being a Jewish state is a fundamental attribute of the State of Israel, determined by the international community in framework of the Partition Plan adopted by the General Assembly of the United Nations on November 29, 1947, prior to the founding of the State. This characteristic was clearly stated in the Declaration of the establishment of the State of Israel and, in the main, is expressed in a long line of arrangements as actually implemented in the State of Israel.

The State of Israel is a Jewish state in the following two senses: it is the political framework in which the right of the Jewish people to self-determination is manifested and it is a “Jewish nation-state.” A first and necessary condition to being a Jewish and democratic state is a decisive majority of Jews in the State. Israel’s attribute as a Jewish and democratic state is conveyed through aspects of Zionism and Jewish heritage; first and foremost, each and every Jew has the right to immigrate to the State of Israel. Other aspects are Hebrew being the main official language of the State and the inextricable link to Jewish culture in public life. On the other hand, the characterization of the State as Jewish is not intended to bestow extra privileges on its Jewish citizens and does not obligate the imposition of religious requirements by state law.

The State of Israel is democratic in the following sense: the sovereign is the entire community of the nation’s citizens (and it alone), irrespective of ethnic-national origin. In the main, the character of the State as a democratic country is manifested by two basic principles: the first being the recognition of the dignity of man qua man, and the second, derived from the first, is the recognition of the values of equality and tolerance. Arrangements regarding free and equal elections, the recognition of the core human rights, including dignity and equality, separation of powers, the rule of law, and an independent judiciary, are all drawn from these principles. Democracy’s basic principles require equal treatment of all those included as citizens of the State, without regard to their ethnic, religious, cultural, and linguistic affiliations.

The definition of Israel as a “Jewish state” does not contradict its definition as a “state of its citizens.” Although the State is Jewish in that, within its framework, the realization of certain interests of the Jewish people is ensured and its identity is protected and developed, nonetheless, its sovereignty lies in its community of citizens, including the non-Jewish community. The definition of the State as a Jewish state does not make those members of the Jewish people who are not citizens of Israel partners in the sovereignty of the State. Its commitment to the basic values of the democratic approach, most important among which is the recognition of equality among all people, and the right of every person, whomever he or she may be, to dignity, leads to the fact that the State of Israel is a Jewish nation-state, whose particular values are balanced against universal democratic values.

Subarticle (c) emphasizes the cornerstone of the political system in the State of Israel: equality among all citizens of the State. Subarticle (d) defines the system of government – a parliamentary democracy. This system of government is characterized by the elevated status of the legislative body, which is representative of public positions and to which the government is accountable.

2. Sovereignty

The source of the government’s authority is the sovereign will of the citizens, as expressed in the Constitution and in free elections.

This provision articulates two basic principles of a democratic system: the first – the citizens of the State are the sovereign, and second – the will of the sovereign is expressed in the Constitution and through the mechanism of free elections. These basic characteristics of the State are derived from the classification of the system as a constitutional democracy.

3. Flag, Insignia, Anthem

(a) The flag of Israel shall be white, with two light blue strips

- adjacent to its top and bottom margins, and a light blue Star of David at its center;
- (b) The emblem of Israel shall be a seven-branched candelabra flanked by two olive branches, with the word “Israel” at its base;
 - (c) The national anthem shall be “Hatikva” (“The Hope”).

This provision codifies, within the Constitution, the main symbols of the State: the flag, the emblem, and the anthem. These symbols express the Jewish and Zionist heritage of the State.

4. Capital

- (a) Jerusalem shall be the capital of Israel;
- (b) Jerusalem shall be the seat of the President of the State, the Knesset, the government, and the Supreme Court.

These provisions, currently included in Basic Law: Jerusalem, Capital of Israel, are intended to affirm the status of Jerusalem as the nation’s capital. Subarticle (b) articulates the accepted arrangements regarding the seat of the central institutions of the government.

5. Language

- (a) Hebrew shall be the language of the State;
- (b) Arabic shall be an official language. The use of the Arabic language within or in the presence of State institutions shall be regulated by law or pursuant thereto.

Subarticle (a) affirms the character of the State of Israel as a Jewish state. According to existing law, by virtue of Article 82 of the Palestine Order in Council 1922, Israel has two official languages: Hebrew and Arabic. In practice, Hebrew is clearly given preference over Arabic and is, in fact, the

language of the State in which legislation and regulations are enacted. Not only social reality, but also various formal arrangements, have transformed Hebrew, and it alone, into the State language.

The status of Hebrew as the State language stems from the special status of Hebrew in the culture of the Jewish people: the courts have recognized that “the Hebrew language is the property of the entire nation” and have determined that “the existence of the Hebrew language, its development, flourishing and success are a central value of the State of Israel. The revival of the language preceded the founding of the State, and it is one of the powers that unites us as a nation.” The purpose of the proposed arrangement is to articulate explicitly the exclusive status of Hebrew as the language of the State.

Subarticle (b) proposes granting constitutional recognition to Arabic, the language of the Arab minority, as an official language. This is also one of the ways to acknowledge, in accordance with Article 10 of Part One of the proposed Constitution, the special status of the Arab minority. The State of Israel is not a “bi-national” state, Jewish-Arab, and therefore the two languages should not be granted equal status as State languages. Nevertheless, acknowledging the status of the Arab minority finds expression in the recognition of the official status of Arabic. It is suggested that the legislator determine the details of the arrangements for the practical implementation of the status of Arabic as an official language in Israel.

6. Sabbath and Festivals

The Sabbath and the Jewish holidays shall be official days of rest in the State of Israel. Non-Jews shall retain the right to days of rest on their Sabbaths and holidays.

The prescription that the Sabbath and Jewish holidays are official days of rest is a manifestation of the character of the State of Israel as a Jewish state, and is an essential expression of Jewish culture in Israeli public life. This constitutes constitutional recognition of the arrangement currently found in Section 18A of the Law and Administration Ordinance, 5708-1948, and in Sections 9 and 9A of the Hours of Work and Rest Law, 5711-1951.

By recognizing freedom of religion, the Constitution also recognizes the right of non-Jews to days of rest on their own Sabbaths and festivals. A similar arrangement is prescribed in Section 7(b)(2) of the Hours of Work and Rest Law and in Section 18A of the Law and Administration Ordinance.

7. Hebrew Calendar

The Hebrew calendar shall be the official calendar of the State of Israel.

The purpose of this Article is to designate the Hebrew calendar as one of the symbols of the State of Israel as a Jewish state, and, therefore, it is given the status of the official calendar of the State of Israel. This does not negate nor prejudice the status or use of the conventional civil calendar, or any other calendar, in the State of Israel, including at governmental institutions.

8. Right of Return

The following shall be entitled to immigrate to Israel:

- (a) A child born to a Jewish father or mother according to Jewish law, provided he or she did not convert to another religion willingly;
- (b) A convert to Judaism;
- (c) An individual with a proven bond to the Jewish people, as shall be prescribed by law.

The principle regarding the right of each and every Jew to make *aliya* (immigrate) to Israel is a fundamental principle of the State of Israel and is based on three cornerstones: (a) the right of Jews throughout the world to immigrate to, and become citizens of, the State where the Jewish people exercises its national right to self-determination; (b) the group right of the Jewish people to absorb and naturalize those who wish to exercise this right, in the State in which its right to self-determination is being exercised; (c) the group right of the Jewish people to prefer, in matters of immigration and citizenship, the members of

their national community over the members of another national community.

The Right of Return expresses the approach that “the State of Israel regards itself as the creation of the entire Jewish people, and its gates are open, in accordance with its laws, to every Jew wishing to immigrate thereto” (Section 1 of World Zionist Organization-Jewish Agency (Status) Law). Moreover, there is an acknowledgement that a necessary condition for the existence of the State of Israel as a Jewish and democratic state is the existence of a decisive Jewish majority among the citizens of the State.

The authors of this Constitution view the Right of Return and *aliya* as cornerstones to the existence of the State. This proposal for a Constitution does not intend to amend the application of the Law of Return in its current form. The drafters of the proposed Constitution all have different opinions regarding the desired scope of the application of the Law of Return on non-Jews. This Constitution proposes establishing a framework for those eligible to make *aliya* to Israel – and receive citizenship – by virtue of the Right of Return, which shall differ from the framework for those entitled to do so currently pursuant to the Law of Return. However, this will not necessarily compel an amendment to the Law of Return, in light of the legislator’s authority to grant the Right of Return to “an individual with a proven bond to the Jewish people.” Nevertheless, there is a certain degree of constitutional codification of the Right of Return in a more limited scope than that prescribed in the existing Law of Return. According to the proposed arrangement, even those born to a Jewish father – and not just a child with a Jewish mother – are eligible for the Right of Return, and likewise any person with a proven bond to the Jewish people, even without such a familial connection, as will be prescribed by law. The proposed framework is more limited than the current one, as the Constitution does not recognize the Right of Return for a grandchild of a Jew. In Article 9(b) of the Constitution, the legislator is authorized to enact a provision similar to Section 4A of the Law of Return. Likewise, it is explicitly asserted that the Right of Return is given to a child of a Jewish father or mother “according to Jewish law.” It is suggested that the issue of conversion not be regulated by the Constitution but rather be left to be determined by the legislator.

9. Citizenship

- (a) Israeli citizenship shall be granted to any person who was born where his or her father or mother was a citizen of Israel and resident thereof, to a person who immigrated to Israel by virtue of the Right of Return, to [such person's] spouse and children;
- (b) A law may prescribe the granting of Israeli citizenship to relatives of one eligible to immigrate to Israel;
- (c) Provisions regarding the granting of Israeli citizenship, renunciation, or revocation thereof shall be prescribed by law;
- (d) Citizenship may be revoked only by the procedures established by law and on the grounds prescribed therein, provided, however, that no person shall become totally stateless as the result of such revocation.

This provision regulates three issues: (a) the right to citizenship; (b) the naturalization processes; (c) the revocation of citizenship. Subarticle (a) establishes the basic principle, according to which Israeli citizenship is acquired by virtue of being born to an Israeli citizen or resident, and by virtue of the Right of Return. In principle this is the arrangement currently prescribed in the Citizenship Law. It is proposed, establishing that citizenship will also be granted to the spouse and children of an Israeli citizen who received citizenship by virtue of birth or by the Right of Return. Subarticle (b) regulates the granting of the Right of Return to family members of a Jew.

Subarticle (c) recognizes the power to grant Israeli citizenship which exists in other cases. It is suggested that the legislator be entrusted with prescribing the terms for naturalization. Subarticle (d) limits the power of governmental authorities to revoke an individual's citizenship, by requiring that the revocation be based on grounds and procedures prescribed by law, and by virtue of stipulating that such revocation not leave such an individual totally stateless. This provision expresses the principles of public international law, according

to which one may not revoke an individual's citizenship arbitrarily, and one must avoid a situation where a person becomes completely stateless.

10. Minorities

The State of Israel shall guarantee the status of the Arab minority, the Druze minority, and other minorities in its midst.

One of the key developments in modern liberal thinking is the recognition of the importance of safeguarding the right of an individual to belong to a certain cultural framework. At the basis of this perception lies the recognition that an individual's collective-cultural affiliation is vital to shaping one's character and exercising one's autonomy. The significance of affiliation is important to every person. This interest is particularly important where one is a member of a minority group. In principal, the strength of the interest depends upon the social and legal conditions in a given society, which determine the minority culture's level of weakness and fragility in the face of the pressure by the majority's culture and accordingly – determine the extent of protection necessary for the minority's culture. Under the conditions existing in Israel, protection of the Arab and Druze minorities, and similarly other minorities, is of great importance.

The Arab minority in Israel is large, relative to other minorities, comprising almost a fifth of the State's citizens. These include natives of the land who have a continuous historical connection with the region. Although the Arab minority is not composed of a single bloc, and includes other subgroups, nevertheless, the majority of those included in the group define themselves as belonging to one national-cultural unit and have many characteristics in common – including language, shared national interests, and more. For the first time since its inception, the State has recognized in its Constitution the existence of minorities and has identified them by name. The purpose of Article 10 is to express recognition of the special status of these minorities and as a result, to apply the provisions of Article 38, in Part Two of the Constitution, to these minorities, by virtue of which individuals belonging to the group are granted

certain group rights. Subject to restrictions which stem from said Article 38, it is proposed that governmental authorities be entrusted with determining the arrangements which will give expression to the special status of such minorities. By virtue of the latter portion of the Article, it is likely that additional groups in Israel will also be recognized as minorities deserving of protection.

11. Religions

- (a) The State of Israel shall guarantee the status and independence of all the religions therein;
- (b) The State of Israel may provide and finance religious services;
- (c) The holy sites shall be guarded from desecration, other damage, and from anything which is liable to impair the freedom of members of the religious communities to access the sites which are sacred to them or infringe upon their sensibilities toward such sites.

This provision acknowledges the special status of religions in Israel, as accepted in our legal system. On the one hand, religions are granted powers of self-administration, which are intended to guarantee their independence from governmental intervention. On the other hand, the special status of religions in Israel is ensured both by the public financing of many religious services as well as by granting various governmental powers to religious institutions. Subarticle (a) entrusts the legislator with the task of regulating this special status of religions, while establishing the principle that the State is obligated to guarantee such special status of religions in Israel and their freedom against interference by governmental authorities in their internal administration. Subarticle (b) adheres to the approach accepted in Israel and allows the government to provide for, and publicly finance, religious services.

Subarticle (c) expresses the provision currently included in Basic Law: Jerusalem, Capital of Israel and in Section 1 of the Protection of Holy Places Law, 5727-1967. It expresses a recognition of the State's obligation to protect the holy places and the sensibilities of the believers in the various religions

towards those places. Beyond the obligation to prevent desecration of the holy places, there is also an obligation to allow members of the religions the right of access, in a manner which demonstrates the importance of freedom of religion in the State of Israel.

12. Protecting the Heritage of the Land and its Residents

The State shall guarantee the preservation and development of the historical and cultural heritage of the land and its residents.

This provision expresses the importance of the historical and cultural heritage of the residents of the State and the lengthy history of various cultures in this geographical region. Together with the rights of the citizens of the State to culture, prescribed in Article 38 in Part Two, this provision also expresses the State's commitment to preserving that heritage. It augments the protection of the citizens' freedom of action to preserve their culture from being violated, by recognizing the State's obligation, in principle, to act to preserve and develop the historical and cultural heritage of the land and all of its residents. This heritage includes, *inter alia*, archeological and historical sites, literary and artistic creations, languages.

13. Protection and Development of the Land

The State shall cultivate the value of the landscape, the environment, and natural resources and shall act to prevent their being harmed, while preserving a balance with the need to develop the land.

This provision constitutes an expression of the State's commitment to act to preserve the environment, in concert with its obligation to act to develop the land and promote the quality of life of its residents. Both of these goals are included in this provision, while imposing an explicit obligation to consider

both of them and balance between them as appropriate. Naturally this Article does not prescribe specific arrangements but is rather a general declaration regarding the State's obligation to consider both the needs of preserving the environment and the needs of developing the land.

Part Two

Basic Human Rights

This Part aims to establish the protection of basic human rights in Israel. Constitutional affirmation for the protection of basic rights is intended to allow an individual to develop his or her personality freely and prevent unjustified violation of an individual's basic rights by governmental authorities. At the very core of the State of Israel as a Jewish and democratic state lies the perception that the objective of government is to serve the individual and his or her welfare. Governmental authorities are obligated to act to promote the public interest while respecting basic human rights. Recognition of certain interests such as "basic rights" is intended to imbue such interests with a special status in order to ensure that they will enjoy greater weight when balanced against the public interest.

The Articles set forth in this Part are based primarily on the existing formula in Basic Law: Human Dignity and Liberty. This Chapter begins with an Article enumerating the basic principles and goes on to list the basic rights of the individual (and in certain cases of the citizen or the resident); finally, in Article 39, a "limitations clause" is prescribed, regarding the extent of the protection of basic rights and the conditions under which governmental bodies may violate the basic rights. The rights enumerated here are more comprehensive than those listed in Basic Law: Human Dignity and Liberty; they articulate those interests commonly recognized as basic rights, encompassing civil and political rights (the right to vote and to be elected is included in Part Three, in the Chapter on the Knesset), "social" rights as well as "group" rights.

In contrast with Basic Law: Human Dignity and Liberty, we suggest deleting the purpose clause (Section 1A of the Basic Law) which establishes that the goal of Basic Law is to "protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state," and similarly to omit the reference to "spirit of the principles set forth

in the Declaration of the establishment of the State of Israel” found currently in Section 1 of such Basic Law.

The rationale behind these deletions is twofold. First, the Introduction and Part One of the Constitution establish the values of the State of Israel as a Jewish and democratic state in a manner which makes the need for their repetition in this Part superfluous. Second, the determination in the purpose clause that the objective of the Basic Law is “to protect human dignity and liberty,” serves as a central base for the interpretation that the basic rights which protect by virtue of the Basic Law consist not only of those rights explicitly listed, but rather consist of the entirety of rights stemming from recognition of the right of a person to “dignity.” The expansion of rights enumerated in this Part, in contrast to those listed in the Basic Law, with the goal of exhaustively regulating those interests recognized as basic rights in the Constitution, justifies removal of the purpose clause. Nevertheless, in the Article of Basic Principles, it is proposed that “human dignity” be listed explicitly as one of the fundamental principles upon which protection of basic human rights is based.

As is oft the case in Bills of Human Rights, basic rights are phrased in general and broad terms, allowing the meaning assigned to them to shift in accordance with changes in reality and the accepted perceptions of society. Basic rights in the Constitution are not phrased “negatively” (for example, “there shall be no violation,” “there shall be no deprivation,” etc.), as currently phrased in Basic Law: Human Dignity and Liberty. Instead, they are drafted as positive declarations recognizing the existence of rights. In concert with this formulation, the second to last Article in this Part recognizes the power of the government to violate basic rights under circumstances enumerated in the limitations clause.

As mentioned, basic rights are intended to restrict the powers of governmental authorities and obligate them to consider those interests deemed basic rights when employing governmental powers. The extent of the protection of basic rights, and the balance between them and other interests, is carried out in accordance with the parameters prescribed in the limitation clause. In cases where one individual’s basic rights conflict with those of another, the rights are balanced against one another, with the intent of ensuring as broad protection as possible for each of the conflicting rights.

All governmental decisions – including Knesset legislation – are subject to the provisions of the Constitution in general, and to this Part in particular. Nevertheless, Article 164, Part Three, Chapter on the Judiciary, establishes that legislation concerning any of the topics set forth therein will not be revoked by virtue of constitutional Articles, and the courts are not even obligated to give interpretive preference to such constitutional Articles. Following are such topics: joining a religion, including conversion; belonging to or renouncing a religion; the authority of the religious tribunals at the time of establishing this Constitution; conducting marriages and divorce in accordance with religious law, creation and dissolution of partnerships under law, and the application of religious law to matters of personal status, which at the time of adopting this Constitution are judged according to the personal status of the parties; the Jewish character of the Sabbath and Jewish holidays in the public domain; maintaining Jewish dietary laws (*kashrut*) in governmental institutions; and granting Israeli citizenship to relatives of those eligible to immigrate to Israel.

14. Basic Principles

Basic human rights in Israel shall be founded upon the sanctity of life, human dignity, human liberty, equality, and the aspiration to achieve social justice.

This Article expresses the fundamental principles upon which recognition of certain interests of the individual as basic rights is based. It constitutes a basis for determining the extent of the coverage of the basic rights (interests and claims of the individuals to be recognized as basic rights) and the extent of their protection (basic rights as balanced against other interests). The declaration regarding basic principles expresses the vision of Israel's prophets regarding the essence of society: recognition of the value of the human being and an aspiration for social justice.

This Article differs from the provisions of Section 1 of Basic Law: Human Dignity and Liberty in several aspects. The Basic Law prescribes that "Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that

all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the establishment of the State of Israel.” It is suggested that mention of the sanctity of human life be brought to the fore so that it heads the list of basic principles, thus expressing the prime importance of human life. In addition, it is proposed that the phrase “value of the human being” be replaced with the expression “human dignity.” “Human dignity” has a central role in interpreting the extent of coverage of the basic rights and their protection; and given the removal of the purpose clause, it is suggested it be given its expression in the Article of Basic Principles. As mentioned, the latter part of the provision in Basic Law is deleted, in light of the Introduction and Part One of the Constitution.

An important addition to the Article on Basic Principles is the prescription that basic rights are also based on “equality and the aspiration to achieve social justice.” Equality among human beings, in terms of equal treatment of all human beings and in terms of treating all human beings as equals, is a basic value of the democratic system. The latter part of the Article emphasizes constant striving and efforts to promote equality based on social justice. This Article articulates the principle of mutual responsibility and social solidarity, by virtue of recognizing the importance of ensuring basic means of existence in order to achieve human dignity. The phrase “social justice” enjoys solid foundations in Jewish tradition as well as in liberal tradition. The term “aspiration” – in contrast to “commitment” – expresses the purely declarative and general nature of the latter part of this Article.

15. Right to Life, Body, and Dignity

- (a) Every person shall have the right to life, body, and dignity;
- (b) The death penalty shall not be imposed;
- (c) It is prohibited to torture or treat any person in a manner which is cruel, inhumane, or dehumanizing;
- (d) Every person shall have the right not to participate in medical or scientific experiments on his or her body without consent.

This Article constitutes a combination of the provisions set out currently in Sections 2 and 4 in Basic Law: Human Dignity and Liberty. It expresses the most fundamental rights of a person: the right to life, body, and dignity. Limitations upon the power of governmental authorities to infringe upon these essential interests are drawn from these Sections. Therefore, three more provisions are added here which are not currently included in the Basic Law: the prohibition on imposing the death penalty, the prohibition on torture and cruel or inhumane behavior or behavior which is dehumanizing, and the right not to participate in a medical or scientific experiment without consent. These are absolute prohibitions, recognized as such in international treaties. The provisions of the “limitation clause” do not entitle governmental authorities to contravene these prohibitions, because they are, as stated, absolute.

16. Liberty

- (a) Every person shall have the right to liberty;
- (b) No person shall be subjected to slavery, oppression, or forced labor.

This provision differs from Section 5 of Basic Law: Human Dignity and Liberty which provides that “There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.” The language suggested here is more general and broader and actually comprises two layers: recognition of the right of every individual to liberty, in terms of autonomy of an individual’s will and the resultant freedom of action, and recognition of the right of the individual to freedom from imprisonment and other restrictions on one’s freedom of movement. The provisions of Subarticle (b) articulate an additional expansion of the right to personal liberty by applying it to freedom from slavery, oppression, or forced labor.

17. Equality under Law and the Prohibition against Discrimination

All are equal before the law; persons shall not be discriminated

against on the basis of race, religion, nationality, gender, ethnicity, country of origin, disabilities, or on any other grounds.

This provision establishes the right to equality, which is not currently set forth in Basic Law: Human Dignity and Liberty. The principle of equality is indeed recognized in Israeli law, in the provisions of certain statutes and in Supreme Court rulings. This provision is intended to express, constitutionally, recognition of equality as a basic human right. Equality among individuals is a basic axiom of the democratic system (and as such is already mentioned in Article 1 of Part One of the Constitution) and is derived from recognition of human dignity. The provision includes two sections: equality before the law and the prohibition against discrimination.

The first provision is a manifestation of the principle of the rule of law: the law is applicable equally to every individual. Everyone, including governmental authorities, is subject to the law. The second provision expresses the view that governmental authorities are not permitted to adopt policies which discriminate against individuals on irrational grounds. The grounds set forth here do not constitute a closed list, and there is a presumption that they are rational. The accepted viewpoint in Israeli caselaw is that differentiation, based on any of these grounds, constitutes discrimination, even if based on relevant grounds, that is, even if there exists a “relevant difference” and, in order to justify it, one must demonstrate that it serves a necessary interest which cannot be achieved without relying on such differentiation. According to the interpretation accepted in Israel, differentiating among individuals in order to remedy a previous wrong done to a certain group, or to achieve equality through the outcome (“affirmative action”) does not necessarily constitute prohibited discrimination.

18. Freedom of Opinion and Expression

Every person shall enjoy freedom of opinion and expression in private and in public, including the freedom to publish opinions and information through any means.

Freedom of expression and freedom of opinion were recognized many years ago in Israeli caselaw, and they constitute a cornerstone of the democratic system. Freedom of expression is important in advancing the democratic system, which is based on the exchange of ideas and the attempt of mutual persuasion; protecting this freedom expresses the value of the individual as an intelligent being. The recognition of a person's right to publish opinions and information through any means is intended to expand recognition of freedom of expression to the arena of freedom of the press and the media as well.

19. Freedom of Information

Every citizen or resident shall have the right to receive information from a public authority.

This provision establishes recognition of the right to receive information from governmental authorities, as asserted in the Freedom of Information Law, 1998. The recognition of freedom of information as a basic human right expresses the view that information in the hands of governmental authorities belongs to the public, as well as recognition of the importance of the information which is in the hands of an authority for exercising the right to freedom of expression and the right to enlightened civic participation. Nevertheless, in contrast to the right to freedom of expression, it is suggested that the right to freedom of information should only be granted to a citizen or resident. This provision also expresses the view that the government is accountable to the public (accountability).

20. Freedom of Assembly, Procession, and Demonstration

Every person shall have the freedom to hold assemblies, processions, and demonstrations.

The freedom of assembly, procession, and demonstration is recognized as an important means of exercising the right to freedom of expression. The

uniqueness of assemblies, processions, and demonstrations lies in their being ancillary-practical means of expression, and therefore, the right of an individual to utilize these means should be explicitly recognized as part of one's right to freedom of expression. The right to utilize these means (as a way of exercising freedom of expression in assemblies, processions, and demonstrations) is broad, but limited; clearly this freedom does not encompass violent acts, but is only applicable to non-violent acts of expression conducted in a peaceful manner.

21. Freedom of Faith and Conscience

Every person shall have freedom of faith and conscience.

This provision expresses the view that the democratic system recognizes the individual's right to freedom of faith and conscience alongside its commitment to majority rule, and it is derived from recognition of human dignity. It is manifested in the obligation imposed upon governmental authorities to consider, to the extent possible, the individual's freedom of faith and conscience, where such authorities apply the general obligation imposed upon each individual to respect the rule of the majority.

22. Freedom of Religion and the Prohibition against Infringement on Religious Grounds

- (a) Every person shall have freedom of religion;
- (b) No person shall be deprived of rights, and no obligations shall be imposed on a person, on grounds which are essentially religious.

This provision expresses recognition of every individual's right to freedom of religion and freedom from religion. The right to freedom of religion includes the right to religious ritual, to freedom of belief, and to an exemption from the application of the general norms where their content contradicts an individual's principles of religious faith. The right to freedom from religion means that the

government will not make use of its authority for the purpose of enforcing religious precepts. This provision does not negate governmental enforcement of norms having a religious source, provided that their main rationale is not religious but rather under circumstances which entail national, cultural, or social rationales.

23. Freedom of Art, Creativity, Research, and Instruction

Every person shall have freedom of art, creativity, and scientific research and instruction.

Freedom of art, creativity, and scientific research and instruction is of great importance in ensuring human dignity and in exercising one's autonomy and freedom of expression. This is the right to create and research freely, without governmental interference. Academic freedom for teachers and researchers is included within the framework of these liberties.

24. Privacy and Good Reputation

Every person shall be entitled to privacy, modesty, and a good reputation.

This provision is more general than that prescribed in Section 7 of Basic Law: Human Dignity and Liberty. The right to privacy includes the principles enumerated in the Article – an individual's right to modesty and a good reputation – as well as other principles derived from the essence of recognizing one's human dignity and autonomy.

25. Freedom of Movement

- (a) Every person lawfully in Israel shall be free to travel within the country as he or she wishes;
- (b) Every person shall be free to leave Israel;

- (c) Every Israeli citizen and every resident of Israel shall be entitled to enter into Israel.

Subarticle (a) expresses recognition of the right of every person to move freely around Israel. This recognition is an expression of the importance of freedom of movement, derived from the right to personal liberty. The provisions of Subarticles (b) and (c) are currently included in Section 6 of Basic Law: Human Dignity and Liberty. The right to enter Israel is a basic right only for the citizen and the resident, as customary in international law.

26. Legal Rights

- (a) Every person shall have the right of recourse to judicial authorities;
- (b) Every person shall have the right to a fair judicial process;
- (c) Every person shall have the right to legal representation of his or her choice; the State shall place legal representation at the disposal of a person, in cases and under conditions to be prescribed by law;
- (d) Every person shall have the right to defend himself or herself if accused;
- (e) Every person shall be presumed innocent until proven guilty by law; no person shall bear criminal liability for an offense unless it has been proven beyond a reasonable doubt; no person shall be convicted or indicted for an act or omission for which previously convicted or acquitted;
- (f) There shall be no offense or penalty with respect thereto, unless prescribed by law or pursuant thereto; no person shall be criminally liable for an act or omission which did not constitute a legal offense at the time of the act or omission, and no person shall be subjected to a penalty

more severe than that prescribed by law at the time of committing the offense.

This provision expresses the substantive foundations of the rule of law. Subarticle (a) expresses recognition of the right of recourse to judicial authorities. This right is perceived as a necessary condition for ensuring the proper protection of the individual's basic liberties, in order to enforce the rule of law and to examine the propriety of the actions by the governmental authorities.

Subarticle (b) expresses recognition of the right to due process. The right to due process includes a long line of arrangements relating to the way in which the judicial process is conducted including the right of discovery, the right of pleading, the right to be present at a judicial procedure being held regarding one's own case, the prohibition against conflict of interests and the prohibition against partiality in the actions of the judicial official, the obligation to provide a reasoned ruling, and the right to legal representation. The right to due process is not limited to criminal proceedings, and it includes also other, quasi-judicial proceedings. Subarticle (c) codifies the right to legal representation which constitutes an important condition for the existence of due process.

The other three Subarticles relate to criminal procedures. The constitutional codification of these rights is necessary, out of a real concern that the rights of the defendant in a criminal process may be violated, together with the severe consequences as a result thereof. These arrangements are a manifestation of the basic principles of the substantive rule of law which express principles of "formal justice," including the "principle of legality," that is, the prohibition against retroactive punishment and the obligation to formulate offenses clearly. In addition, constitutional recognition is given to the presumption of innocence, the particularly heavy burden of proof, that is, beyond a reasonable doubt, in a criminal procedure, and also the prohibition against double jeopardy.

27. Rights of Detainees

- (a) Every person who shall be arrested shall have the right to the following: to be informed, upon being arrested,

- of the grounds for the arrest; to have notice of the arrest transmitted to a person close to him or her as soon as possible; to meet, without any unreasonable delay, with an attorney of his or her choice and to consult therewith; and to be informed of these rights;
- (b) A person who shall be arrested on suspicion of committing a crime shall be entitled to be brought before a judicial authority for a review of his or her arrest as soon as possible;
 - (c) The arrest or incarceration of a person shall be in a manner that ensures the maximum protection of human dignity and other rights.

It is proposed that the rights of those arrested be codified separately, in addition to the general recognition of the rights to due process, personal freedom, and freedom of movement. The rights in Subarticle (a) are listed in the chronological order in which they are to be implemented. Subarticle (b) expresses the prime importance of bringing a person promptly before a judge in order to review his or her detention, in order to prevent an unnecessary infringement upon his or her freedom, and to ensure the exercise of the right to a fair trial. Subarticle (c) articulates the rights of those arrested or imprisoned to dignity and to proper conditions for such arrest and incarceration.

28. Right to Property

- (a) Every individual shall have the right to property;
- (b) There shall be no confiscation of an individual's property unless for public purposes and in consideration of appropriate compensation.

This provision is similar to that set forth currently in Section 3 of Basic Law: Human Dignity and Liberty. The wording is general thus allowing broad interpretation and [allowing] for conforming the scope of application of the

right to property in accordance with changing social perceptions. This provision recognizes an individual's right to accumulate property, as well as a right to property already accumulated. Subarticle (b) recognizes the power of the State to confiscate an individual's property subject to two limitations: the existence of a proper purpose ("public purposes") and appropriate compensation. This provision expresses recognition that the mere act of compensation does not negate the significance of confiscation being a violation of an individual's right to property.

29. Freedom of Occupation

Every citizen or resident of the State is entitled to engage in any occupation, profession, or trade.

This is a provision which is similar to that set forth currently in Section 3 of Basic Law: Freedom of Occupation. The wording is general, thus allowing broad interpretation and [allowing] for conforming the scope of the application of the right in accordance with changing social perceptions. This right is granted to a citizen or a resident.

30. Freedom of Association

- (a) Every citizen or resident of the State shall have freedom of association, including the right to establish parties and political associations;
- (b) Every citizen or resident of the State shall have the freedom to associate with trade unions.

The right of association is recognized as an important foundation for exercising other basic freedoms, including the right to be elected, freedom of expression, freedom of occupation, and more. Two types of especially important associations in a parliamentary democracy are emphasized: parties and political associations. Additionally, there is an explicit recognition of the right to establish trade unions, necessary to develop proper work conditions, in

light of the generally inferior bargaining position of the non-unionized worker in relation to the employer.

31. Strike

Workers shall be entitled to strike over a labor dispute, in accordance with a decision by their workers' union, and employers shall be entitled to a lockout, provided the orderly functioning of essential civil services is not severely harmed. The right to strike and the right to lockout, including for those not associated in a workers' union, shall be prescribed by law.

It is proposed that the right to strike be recognized as a basic right. A strike is a means of attaining fair work conditions, in light of the inferior position of workers in relation to employers. Nevertheless, the extent of the application of the right to strike is limited by three principles. First, a person has the right to strike only when the issue is a "labor dispute;" a "political strike," directed at changing political decisions which are not directly relevant to a work dispute, is not recognized as a basic right. Second, workers are permitted to strike only by virtue of a decision by their workers' organization. Third, the right to a strike which would harm the orderly functioning of necessary civil services is not recognized.

32. Social Rights

- (a) The State of Israel shall act to promote the personal and economic welfare of its citizens and residents, out of recognition of human dignity;
- (b) The extent of the social rights detailed in Articles 33 to 36 shall be prescribed by law or pursuant thereto.

This provision expresses recognition of basic rights which are in a separate category from those enumerated in Articles 15 to 31 in this Part of the

Constitution: it relates to basic rights which do not restrict the powers of governmental authorities, but rather, impose affirmative obligations in certain spheres, with an aspiration for ensuring results. In this Article, the fundamental obligation is placed upon the government to act “to promote the personal and economic welfare of its citizens and residents, out of recognition of human dignity.” By virtue of this Article, every resident and citizen is entitled to have the State act to fulfill these goals, including in the spheres of education, health, and more.

The extent to which the personal and economic welfare of the State’s citizens and residents is to be promoted is a political decision, influenced by circumstances and by the fundamental social perceptions of the majority. For this reason, not many democratic States have constitutions which explicitly recognize social rights or obligations, imposed upon the State, to provide certain products and services. The proposed arrangement expresses an approach midway between full recognition of the State’s obligation to provide certain products and services and absolutely avoiding any recognition of the obligation to respect social rights. The proposed arrangement recognizes the obligation in principle imposed upon the State to act to promote the welfare of its residents, with the Article even explicitly listing specific spheres in which such an obligation in principle is imposed upon the State. However, it does not impose the specifics of such obligations (except with regard to the number of years of education in the framework of “free education”), and, therefore, the proposed arrangement does not result in a consensus that judicial intervention will guarantee that such social rights may be exercised.

33. Right to Social Security

The State of Israel shall act to promote social security.

This Article prescribes the State’s obligation to promote the right to the social security of the residents of the State. The importance of the right to social security lies in creating a “security net” for each resident in the State, a net which will ensure a dignified existence.

34. Right to Health

The State of Israel shall act to ensure public health and shall ensure the provision of health services.

In this Article, the State's obligation to take care of public health is recognized by virtue of recognizing that health is not merely a commodity but also a citizen's basic right. Recognition of the State's obligation to act to ensure public health includes a long list of actions, including preventive medicine, guaranteeing proper hospitalization conditions, full access to the health care system, medical treatments, and medicine. The State's obligation to ensure health services also includes regulating the hospitals and medical institutions, as well as the health funds and health insurance companies.

35. Right to Education

- (a) The State of Israel shall be diligent in advancing education, out of recognition of its value and importance in developing a person's spirit and talents, and ensuring equal opportunities for all its residents;
- (b) The State of Israel shall ensure 13 years of free education, where the first 11 shall be mandatory.

This Article recognizes the State's obligation to provide every resident with a proper education, in recognition of the importance of education. In a democratic state which cherishes the value of equality, education is the means of achieving such a value. Moreover, education is the key path to permitting the fulfillment of the potential of every person. A portion of the State's resources, and one of its foundations, especially in a democratic state, is education for its residents.

36. Rights at Work

The State of Israel shall act to promote fair work conditions, out of recognition of the value of work.

This Article is intended to ensure fair work conditions for every person who works within the State's territory. This framework includes protective legislation in the sphere of labor laws, which is intended to ensure proper work conditions, the protection of workers' rights in the workplace, and the like, and the State's obligation to enforce such protective legislation. This provision does not impose an obligation on the State – or a private entity – to employ a certain worker, but it does recognize the importance of ensuring fair work conditions. This provision complements other provisions in this Part regarding the right to associate in workers' unions and the right to strike.

37. Rights of the Child

- (a) Every child shall have the right to basic conditions of life, and to development, to the extent possible, within the framework of the family;
- (b) Parents, the natural guardians of their children, and any other legal guardian, shall have the responsibility, the obligation, and the right to ensure the well-being of the child;
- (c) Should the parents or any other legal guardian not fulfill their obligations towards their child, the State shall act to fulfill the parental obligations as defined by law.

This provision expresses recognition of the basic rights of every child, that is, one who is under 18 years of age, including the right to physical, intellectual, emotional, and cultural development. The special status of the child's parents and family is acknowledged both by providing that the child's basic rights shall be exercised to the extent possible within the familial framework and also by acknowledging the parents' rights – as well as obligations and responsibilities – to ensure the child's well-being. Subarticle (c) expresses recognition of the obligation imposed on the State to act to exercise the child's rights should the parents not fulfill their parental duties. The proposed arrangement affirms the principle of the child's well-being as the basic principle underlying the arrangements in the sphere of the family and the parents' rights and duties.

38. Group Rights

Every person affiliated with a national-ethnic, religious, cultural, or linguistic group has the right – on his or her own or with other members of the group – to preserve and develop his or her culture, religion, language, and heritage.

One of the important developments in liberal modern thought is recognition of the importance of protecting a person's right to be affiliated with a specific cultural framework. At the base of this approach lies the recognition that a person's group-cultural affiliation is of significant import in shaping character and establishing autonomy. The interest of affiliation is important to every person. This interest has particular importance for a member of a minority group – and, therefore, there is a tendency to classify it as a “basic right” or as a collection of “group rights,” to the extent one is a member of a minority group. The intensity of the interest is dependent, in essence, upon social and legal data in a given society which determine the level of vulnerability and fragility of the minority's culture in the face of the pressure from the majority culture and therefore determine the level of protection necessary for such minority's culture. The four group categories set forth in this provision are common to constitutions around the world, as well as in the European Convention on Human Rights, and are categories deemed appropriate for enabling affiliated groups to preserve their cultural heritage.

This provision expresses a general recognition of the right of every person affiliated with a cultural group to preserve and develop the culture, religion, language, and heritage of that group to which he or she belongs. The language of this provision is general, thus allowing the contents of those rights recognized thereunder to be adapted to changing circumstances.

In essence, recognition of group rights is likely to be articulated, *inter alia*, by giving expression to the relevant culture in public life, preserving the culture of the group, refraining from imposing restrictions, and even providing governmental assistance (primarily in the realm of education), granting exemptions to members of the group from the requirement to respect certain general norms, and by respecting the right to equality when allocating public resources.

39. Violation of Rights

There shall be no violation of rights under this Constitution except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required, or by a law as aforesaid by virtue of express authorization therein.

This provision is similar to the limitation clause in Section 8 of Basic Law: Human Dignity and Liberty and Section 4 of Basic Law: Freedom of Occupation; it is intended to preserve the rulings and interpretations given to this language by the courts in Israel and to implement them, *mutatis mutandis*, with respect to the rights added to the Bill of Rights by virtue of the Constitution. This provision prescribes the extent of the protection of the basic rights. Two main conditions are established for recognizing the validity of an infringement of a basic right. The formal condition is that the violation must be determined by law or pursuant to a law, as stated, by virtue of express authorization therein; this condition is intended to ensure that a violation of an individual's liberties will be the result of a majority decision, which was made in accordance with formal, known, accepted, and public procedure. To this, a substantive condition is added: the violation must indeed be necessary to promote a proper public interest, and its scope should be no greater than required. This provision expresses recognition that basic rights are not absolute while simultaneously asserting the special status of basic rights.

40. Commission on Human Rights

- (a) A Commission on Human Rights shall be established by law, which shall act to promote the awareness, respect, and preservation of the human rights guaranteed by this Constitution or by law, and which shall handle complaints on this issue;
- (b) The aforesaid law shall regulate the Commission's appointment process and the manner in which it operates.

It is proposed that a Commission on Human Rights be established for the purpose of promoting the protection of human rights. The Constitution does not regulate the specifics of the activities of this Commission. The Commission on Human Rights is an entity operating with great success in many democratic countries around the world. This entity is intended to function alongside existing bodies which supervise the governmental authorities. Its primary purpose is to act to promote the protection of human rights in a systematic and institutionalized manner, including taking action to increase awareness of the importance of protecting human rights, both within governmental bodies as well as among the citizen public.

Part Three

Governmental Authorities

Part Three of the Constitution regulates the status of the various governmental authorities, the way they are elected, the division of powers among them, and the way in which they fulfill their functions. This Part includes six Chapters on the following institutions: the President of the State, the Knesset, the Executive Branch (which includes subchapters regarding the Government, the Civil Service, the State Economy, the Military, Security Forces and Intelligence), the Judiciary Branch, the State Comptroller and Commissioner for Complaints from the Public, and the Local Authorities. This Part also includes two additional Chapters which regulate legislative powers and procedures for entering into international treaties.

This Part is based to a great extent on the provisions prescribed currently in nine Basic Laws (in addition to the two Basic Laws dealing with human rights). The main additions to the existing arrangements relate to the activities of the Executive Branch and the local authorities as well as to the regulation of legislative powers and entering into treaties.

This Part opens with two provisions which express the basic principles of the activities of the governmental authorities in a democratic state: the principle of administrative legality and the fiduciary duty by elected officials and civil servants.

41. Powers of the Governmental Authorities

Governmental authorities shall have no powers save by virtue of the Constitution and under law.

The principle of separation of powers is predicated upon the desire to limit the power of the governmental authorities, and is expressed by the nature of

the powers given to the governmental authorities and in the arrangements for supervising their activities. This is manifested most significantly in the “principle of legality”: a governmental authority is authorized to act in accordance with the powers granted to it by the Constitution and by law. This principle expresses the view that the purpose of governmental authorities is to implement policy which the Legislative Branch has prescribed and which expresses the will of the public. The principle of “administrative legality” establishes that an administrative body is permitted to employ only those rights granted to it by law. This principle applies first and foremost to the exercise of powers which contain some element of infringement on basic human rights, and where such principle is explicitly prescribed in the limitation clause in the Part on Basic Human Rights. But the principle of legality applies also to the use of other powers by the administration, including the allocation of public resources and wielding other governmental powers. The principle of legality applies not only to the Executive Branch in general but also to the division of powers within its framework: the presumption is that administrative authority is given only to that authority in the Executive Branch which was granted the power by law, and which may not transfer – nor “delegate” – it to another, unless expressly authorized to do so under law or where justified by the conditions of the situation.

However, within these various aspects of the principle of legality, many exceptions may be recognized. *Inter alia*, an administrative authority is entitled to exercise “auxiliary powers” necessary to use the power granted to it by law. The government also possesses “general governmental powers” (“prerogative powers”) which allow it to wield the powers given to the State even without explicit authorization by law (subject to the demand for authorization by law when violating a basic right).

Despite the exceptions, the principle of legality is of great importance. From a theoretical perspective, the principle of legality expresses the democratic approach in two main aspects. First, it is based on the idea that unlimited power should not be granted to officials in the governmental authorities. They, generally, do not stand for election, nor are they subject to direct supervision by the public. Delineating their powers in legislation is intended to alleviate concerns that governmental power will be inappropriately exercised. A

governmental authority is liable to prefer promoting the specific interest which it administers at the cost of violating basic human rights and the general interests of society. Second, according to this principle, the value judgments entailed in employing governmental power will be made, to as great an extent as possible, by a body which represents public opinion, in other words, by the legislature. The legislative process is a public one, in which public opinion is expressed, in contrast to the decision-making process in the Executive Branch.

From a practical standpoint, the importance of the principle of legality may be seen in diverse aspects. It constitutes an important interpretative principle. Without explicit authority in law, the presumption is that the governmental authority is not allowed to act; the strength of the presumption – or at least the willingness to contradict it – is dependent upon the extent to which the two considerations, discussed above, are expressed: the more the exercise of powers relates to issues which are subject to public debate, or entails some violation of basic human rights, the greater the tendency to implement the principle of legality strictly. Likewise, the greater the concern of a possibility that the power will be used improperly, the greater the tendency not to allow exceptions to the principle of legality.

42. Duties of Publicly Elected Officials and Civil Servants

Elected officials, civil servants, and those fulfilling official functions shall act to advance the public welfare, preserve basic human rights and prevent their violation, and shall discharge their duties with loyalty, fairness, integrity, appropriate transparency, and accountability.

This provision gives expression to another basic principle in a democratic system: governmental officials are the public's trustees and must act to advance the public interest, not their personal interests. This provision contains an element of "general purpose" for the granting of any governmental power to any entity whatsoever, in addition to the particular authority under discussion. The point of this general purpose is to establish that the exercise

of governmental power must be performed for the purpose of promoting the public welfare, and for the purpose of protecting basic human rights. General duties regarding loyalty, fairness, integrity, transparency, and accountability are also prescribed here. These are the provisions constituting the basis for the entirety of arrangements customary in the sphere of public administrative law. This provision applies both to State employees and to publicly elected officials. It expresses the principle that all governmental officials are accountable for the manner in which they wield their power.

Chapter on the President

43. Status

A President, who shall express the independence and sovereignty of the country, shall be head of state.

This Article expresses the unique role of the President as an apolitical and official governmental authority who represents the State and the fact that it is independent and sovereign. The President is the head of the State, not as one of the governmental authorities but rather as a figure symbolizing the State as a whole.

44. Term

The President of the State shall be elected to serve for one term of seven years.

In the past, the term for the President of the State was set at five years, and the President was eligible to be elected for an additional term. However, it became clear that the election process for an additional term was liable to harm the special status of the President of the State who was required to participate, even if indirectly, in the election process to ensure reelection as well as out of a concern that not being reelected would be interpreted as a dismissal. Therefore,

Basic Law: President of the State was amended in 1999 to provide that the President of the State would be elected for only one, seven-year term (Section 3 of the Basic Law).

45. Eligibility

Every Israeli citizen who is a resident of Israel, and 40 years of age or older, is eligible to be a candidate for the office of the President of the State.

Due to the importance of the status and functions of the President, and due to the need for the President to have garnered experience in public life, it is suggested restricting the minimum age for a candidate for the presidency of the State to 40 years of age. A similar qualification exists in a number of European states, for example in Italy and Greece, where the president serves as a symbolic figure.

46. Election of the President of the State

- (a) The President of the State shall be elected by the Knesset, before completion of the term of the outgoing President and if impossible – immediately thereafter;
- (b) Ten members of the Knesset may propose a candidate, with his or her consent;
- (c) The election shall be by secret ballot; the candidate who shall receive the votes of the majority of Knesset members shall be elected; should no candidate receive such a majority – a second ballot shall be held; in the second ballot and all subsequent ballots, the candidate who shall have received the least number of votes in the previous ballot shall not stand for election, unless only one or two candidates remain; the candidate who shall receive the majority of votes of those participating in the ballot in the third ballot or subsequent ballots – shall be

elected; should two candidates receive an equal number of votes – the balloting shall be repeated.

This provision preserves the main points of the arrangements currently prescribed in Sections 3 through 8 in Basic Law: The President of the State. According to Section 5 of Basic Law, the election of the President of the State shall be conducted “not earlier than ninety days and not later than thirty days before the expiration of the period of tenure of the President in office” or within 45 days from the day on which such office falls vacant should the office fall vacant before the expiration of the term. It is suggested refraining from prescribing rigid dates on this issue in the Constitution. It is further proposed maintaining the process of a secret ballot, though this is an exception to the general principle that voting in the Knesset is public. Underlying this view is the recognition of the unique nature of a ballot which elects a person to a governmental office, which is intrinsically different from the purpose of a ballot to establish general norms.

47. Commencement of Term and Declaration of Allegiance

The elected President shall commence his or her term upon the conclusion of the term of the previous President and after declaring allegiance in the Knesset, where the language of the declaration shall be: “I pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, and to carry out my office as President of the State faithfully.”

The elected President of the State is inaugurated only at the end of the term of the previous President. The wording of the declaration of allegiance is identical to the one currently set forth in Section 9 of Basic Law, other than the addition that the President shall also bear allegiance “to the Constitution” of the State.

48. Functions and Powers

- (a) The President of the State –
 - (1) Shall sign every amendment to the Constitution and every law;
 - (2) Shall fulfill functions regarding the formation of a government and the dissolution of the Knesset as set forth in the Constitution;
 - (3) Shall receive a report from the government of its meetings;
 - (4) Shall accredit the diplomatic representatives of the State, shall receive the credentials of diplomatic representatives sent to Israel by foreign states, shall certify the consular representatives of the State, and shall confirm the appointments of consular representatives sent to Israel by foreign states;
 - (5) Shall execute such treaties with foreign states as have been approved or ratified pursuant to the provisions of the Constitution;
- (b) The President of the State shall have the power to pardon offenders and to lighten penalties by the reduction or commutation thereof; in instances determined under law, before exercising the power to pardon an offender or lighten a penalty, under circumstances which shall be specified by law, he or she shall consult with a special committee which shall be chaired by one who was a Supreme Court justice;
- (c) The President of the State shall carry out the functions, and have the powers, assigned by the Constitution or by law.

The powers of the President of the State enumerated in Subarticle (a) concern formally validating governmental decisions of other bodies. The proposed arrangement is similar in principle to that prescribed in Section 11 of Basic

Law, where it speaks, *inter alia*, of signing laws legislated by the Knesset, and it is proposed adding – amendments to the Constitution. Regarding international treaties, it is suggested prescribing that the President sign not only treaties approved by the Knesset, as set out in Section 11(a)(5) of Basic Law, but also any treaty approved or ratified pursuant to the provisions of the Constitution. The actions of the President in these situations are solely symbolic, and it would seem that refusing to fulfill this function, should such occur in the future, would be subject to judicial review by ruling that the appointment or governmental action would be valid even without the signature of the President.

Subarticle (b) regulates the President's powers to pardon offenders. Section 11(b) of Basic Law provides that "the President of the State shall have power to pardon offenders and to lighten penalties by the reduction or commutation thereof." The proposed arrangement differs from this Section in a number of aspects: under circumstances which will be prescribed by law, for instance, where dealing with a mandatory sentence of life imprisonment or a full pardon, the President must consult with a professional committee chaired by a retired Supreme Court justice, which will be established under law and must take their opinions into consideration. The Article codifies the existence of a special committee advising the President regarding the reduction of life sentences of prisoners, as already prescribed by the Conditional Release from Prison Law, 5761-2001. The present version will obligate an amendment to the language of this law, since the present version provides that the judge who shall chair such committee shall be a retired Supreme Court justice and not an officiating District Court judge.

49. Countersignature

The signature of the President of the State on an official document in discharge of his or her duties shall require the countersignature of the Prime Minister or such other minister, as the government may decide, except for a document with respect to the formation of the government, dissolution of the Knesset, and other than the President's letter of resignation.

The President's signature on an official document requires a "countersignature" by a minister in accordance with the arrangement prescribed in Sections 12 and 19 of Basic Law. This requirement reflects the fact that, notwithstanding the signature of the President on a law or a writ of appointment, the President is not the entity bearing public responsibility for these decisions. To the extent the function is symbolic, the countersignature is also symbolic, and therefore does not allow for discretion. In contrast, where the President has authority to exercise discretion with regard to decisions on pardons, the minister authorized to countersign such decisions is also allowed to exercise discretion.

50. Immunity

- (a) The President of the State shall have criminal and civil immunity in discharging his or her duties, which shall continue even after ceasing to serve;
- (b) The President shall not be criminally prosecuted during his or her term, and the period during which, by virtue of this Article, his or her prosecution for an offence is barred, shall not be considered in calculating the period of prescription for such offence.

The President of the State is granted immunity with respect to fulfilling his or her functions, which applies even after the termination of the term. The arrangement proposed here differs from that set forth in Section 13 of Basic Law. First, it is proposed that the provision that the President be exempt, when giving evidence, from having to disclose anything which came to his or her knowledge in the discharge of his or her functions, be deleted (Section 13(b) of Basic Law). Second, it is proposed that the immunity set forth in Section 13(a) of Basic Law, according to which the President "[. . .] shall not be amenable to any court or tribunal, and shall be immune from any legal act, in respect of anything connected with his functions or powers," be limited. It is suggested limiting the President's immunity to personal immunity, that is, immunity for a legal action directed towards the President himself or herself, including being criminally prosecuted or sued in a civil claim. The immunity relates solely to

the President fulfilling his or her functions, and therefore it applies only to those prohibited actions with respect to which, although not part of the President's functions, are closely linked to such functions, whether explicitly set forth in law or derived from his or her special public status. The immunity does not apply to proscribed actions which are irrelevant to the President's function, such as accepting bribes. In such case, only "procedural" immunity, prescribed in Subarticle (b), will apply and only during the President's term.

It is suggested limiting the extent of the immunity so that the President's decisions will not be immune from judicial review. As stated, pursuant to Section 13(a) of the Basic Law, the President "shall not be amenable to any court or tribunal, and shall be immune from any legal act, in respect of anything connected with his functions or powers." This provision bars judicial deliberation of a petition filed directly against the President of the State, with a claim for nullification of a decision which he or she made. Nevertheless, according to the accepted approach, this provision does not negate the power of the courts to examine the validity of the decision itself. It is suggested that this approach be expressed explicitly through a narrower drafting of the scope of the immunity granted to the President of the State.

51. Exclusivity of Office

The President of the State shall hold no other office nor exercise any function other than his or her office and function as President of the State.

In the spirit of the arrangement currently prescribed in Basic Law, the President is not permitted to hold any other post, or exercise any other function, except for his or her office as the President of the State. It is proposed that the authority of the Knesset Committee, set forth in Section 17(a) of Basic Law, permitting the President to serve in additional posts be abolished. Likewise, it is suggested eliminating the provision in Section 17(b) of Basic Law exempting the President from any compulsory service, as this provision does not accord with the principle that all are equal before the law.

52. Cessation of Office

- (a) The President of the State shall cease to hold office upon any of the following:
 - (1) At the end of the period of his or her term;
 - (2) The President shall resign by submitting a letter of resignation to the Speaker of the Knesset;
 - (3) The President shall die;
 - (4) The Knesset shall resolve, by a majority of its members, that for reasons of health the President of the State is permanently unable to fulfill his or her functions;
 - (5) The Knesset shall resolve, by a three-fourths majority of its members, to remove the President from office, after ascertaining that he or she has acted during the term or prior thereto in a manner unbecoming to the status of the Presidency;
- (b) A President of the State who shall have ceased to hold office shall not be a candidate for Knesset and shall not be appointed as a minister in the government unless five years have passed from the day he or she ceased holding such office.

This arrangement is similar in principle to that currently set forth in Basic Law. The President will cease his or her functions prior to the end of a term, should he or she resign (Section 19 of Basic Law), die, or be removed from office by the Knesset. The Knesset is allowed to remove the President from office for reasons of health or for conduct unbecoming a President. It is suggested prescribing the details of this arrangement regarding removal from office, currently included in Section 20 of Basic Law, in a law and not in the Constitution itself.

In Subarticle (b), it is suggested setting a “cooling-off period” which will bar a person who has served as President of the State from participating in the

political system, as a candidate for the Knesset or as a minister, during the five years commencing from the day on which he or she shall have ceased holding office. In this way, the symbolic and apolitical status of the institution of the Presidency will be expressed.

53. Temporary Inability by the President of the State to Discharge Functions

The President of the State shall temporarily cease to fulfill his or her functions and exercise his or her powers –

- (1) Upon notifying the Speaker of the Knesset that he or she shall be temporarily unable to fulfill his or her functions, and the Knesset Committee shall have confirmed such notice by a majority of its members, for a period which it shall determine;
- (2) Upon the Knesset resolving, by a majority of two-thirds of its members that, for reasons of health, the President of the State shall be temporarily prevented from fulfilling his or her functions for a period which it shall determine.

The arrangement set out in this Article is essentially similar to that in Section 22(1) of Basic Law, with minor differences. The period during which the President ceases holding office shall be determined by the President, with confirmation by the Knesset Committee, and not by the Committee, as determined in Basic Law. It is suggested abolishing the provision that the President ceases to exercise office temporarily when abroad; this provision does not accord with the fact that the President represents the State when abroad.

54. Acting President

Where the position of the President of the State shall fall vacant, or where the President of the State shall be temporarily unable to discharge his or her duties – the Speaker of the

Knesset shall serve in his or her stead, except for the authority to dissolve the Knesset.

The Speaker of the Knesset shall serve as acting President of the State from the moment that the position of the President of the State shall fall vacant and as long as a new President of the State shall not begin to serve, in the spirit of the arrangement set out in Section 23(a) of Basic Law: President of the State, as well as for any period during which the President shall have temporarily ceased fulfilling his or her functions for health reasons. In contrast thereto, it is suggested eliminating the arrangement that the Speaker of the Knesset serves as acting President while the President is abroad (Section 23(b) of Basic Law). The President shall continue to hold office even while abroad. In serving as actual President of the State or as acting President, the Speaker of the Knesset shall be vested with all the powers granted to the President, other than powers relating to dissolution of the Knesset, which is intrinsically a political act. According to custom, the Speaker of the Knesset shall refrain from exercising Presidential powers in his or her absence. Likewise, the Speaker of the Knesset shall refrain from conducting Knesset sessions while he or she is acting President of the State.

Chapter on the Knesset

This Chapter regulates four main issues: the status of the Knesset as the elected parliament and the Legislative Branch of the State; the basic principles for Knesset elections and the term of the Knesset; the principal arrangements regarding the Knesset's activities and powers; and the status of members of Knesset. By and large, the amendments proposed here are not significant when compared with the arrangements currently set forth in Basic Law: The Knesset.

55. Essence

The Knesset is the parliament and the Legislative Branch of the State.

The Knesset has three central functions: establishing the Constitution and enacting laws; supervising the actions of the government, which include setting the State budget (by enacting the Budget Law) and affirming secondary legislation; and conducting deliberations on issues of public importance. It is suggested prescribing explicitly that the Knesset is not only the parliament of the State, as is established in Section 1 of Basic Law: The Knesset, but that it is also the Legislative Branch. The Chapter on Amending the Constitution prescribes that the Knesset is also the branch authorized to establish a Constitution and amend it.

56. Composition

The Knesset shall, upon its election, consist of 120 members.

This provision is identical to that set forth in Section 2 of Basic Law. During the term of a Knesset, the number of Knesset members is liable to be less than 120, should any seat of a Knesset member fall vacant and no additional candidate appear on the list of candidates which includes his or her name.

57. Elections to the Knesset

The Knesset shall be elected by general, direct, equal, secret, and proportional elections.

The requirement that Knesset elections be “general, equal, and secret” is an expression of the character of the State as a democratic state; the existence of these three basic principles is a necessary precondition for holding democratic elections. The prescription that elections shall be direct and proportional conforms to the system of elections customary in Israel. Representation

in Knesset is not determined by a “majority” system but by a proportional system which guarantees representation of the variety of streams and groups in society.

It is suggested deleting the requirement, currently set out in Basic Law, that the elections be “national.” In a national electoral system, the entire area of the State constitutes a single electoral district as far as dividing up mandates. This system allows small parties to win representation in the Knesset, diminishes the affinity between the voter and the Knesset member, and harms representation of the periphery in the legislature. Deleting the requirement in the Constitution that elections necessarily be “national” is intended to permit the Knesset to amend the voting system and include regional components within it, without necessitating a constitutional amendment to achieve this. Nevertheless, the proposed arrangement obligates maintaining the principle of proportionality even if a fully or partially regional system is instituted.

It is also proposed that the provision of Section 10 of Basic Law: The Knesset, which determines that election day be a day of rest, be abolished. Such a provision belongs in a law, not the Constitution. Likewise, it is suggested that the provisions of Section 8 of Basic Law, according to which the results of the election are to be published in the official Gazette within eight days of an election day, be deleted. Again, such a provision belongs in a law and not in the Constitution.

58. Right to Vote

Every Israeli citizen, 18 years of age or older, who is a resident of Israel, shall be entitled to vote for the Knesset.

The proposed arrangement differs from that determined in Section 5 of Basic Law in three aspects. First, it is suggested that a requirement for residency in addition to citizenship be added regarding the right to vote. The requirement for residency stems indirectly from a provision of the Knesset Election Law, according to which the right to vote is granted only to one who is registered on the List of Voters. The importance of the requirement for residency is inherent in the approach that a person who takes part in the decision-making process

should be an active participant in also bearing the consequences. Second, it is suggested that the provisions currently set forth in Basic Law, according to which arrangements may be established in law authorizing the courts to deny a person the right to vote, be deleted. On this issue, Article 39 shall apply, that is, denying the right to vote may be accomplished through enacting a law which fulfills the conditions set forth therein. Third, it is proposed that the provision that a law may prescribe the date on which a person will be considered 18 years of age, for the purpose of exercising the right to vote, be deleted.

59. Right to be Elected

- (a) Every Israeli citizen, 21 years or older, who is a resident of Israel, shall be eligible to be elected to the Knesset unless a court shall have denied him or her that right pursuant to law;
- (b) In the elections for the Knesset, the following shall not be candidates: the President of the State, a Chief Rabbi of the State of Israel, a judge, a judge (*dayyan*) of a religious tribunal, the State Comptroller, and employees who are senior civil servants of such ranks or in such positions as shall be prescribed by law, army officers, policemen, prison officials, or employees of entities established by law.

It is suggested adding the requirement of residency for the right to be elected, similar to its inclusion regarding the right to vote. It is proposed that the provision included in Section 6 of Basic Law, according to which the right to be elected is denied to a person sentenced to actual imprisonment for a period greater than three months and where on the day that the list of candidates is submitted seven years have not passed from the day such person completed serving his or her prison sentence in fact, or where it was determined that the offense for which such person was convicted does not involve moral turpitude, be deleted. It is suggested that the prescribed conditions for denying the right to be elected by the courts be set forth in a law.

Subarticle (b) lists the officials who, by their very function, may not be candidates for Knesset elections, similar to the arrangement currently prescribed in Section 7 of Basic Law. This provision expresses the hope that politicization of the governmental offices specified here will be avoided. It is proposed that the authorization currently prescribed in Basic Law be deleted and, instead, a “cooling-off period” for such officials be prescribed which would be longer than the time period required for submitting the list of candidates.

60. List of Candidates

- (a) The list of candidates for the Knesset shall be submitted pursuant to the conditions and arrangements for submitting lists of candidates and only by a party;
- (b) A list of candidates shall not participate in the elections to the Knesset, and a person shall not be a candidate in elections for the Knesset, where the objectives or the actions of the list or the person, explicitly or implicitly, shall constitute a danger to the very existence of the State of Israel. Disqualification of a list or a candidate shall require confirmation by the Supreme Court;
- (c) The Knesset shall be permitted to limit by law the right of a Knesset member who shall resign from his or her faction to be included in the list of candidates to be submitted by the party which was represented by a faction of the outgoing Knesset.

This provision combines the arrangements set in Sections 5A, 6A, and 7A of Basic Law: The Knesset. Subarticle (a) codifies the status of the parties as the sole bodies authorized to submit lists of candidates.

Subarticle (b) follows in the footsteps of the existing arrangement in Section 7A of Basic Law regarding a “defensive democracy.” Section 7A of Basic Law enumerates three grounds for denying the right to be elected: negating the existence of the State of Israel as a Jewish and democratic state, incitement to racism, and support for an armed struggle against the State of Israel. Here

it is suggested to suffice with the provision that the right to be elected may be denied in every instance where the goals or actions of the list or the candidate constitute a “danger to the very existence of the State of Israel,” while leaving the power to establish under law the conditions for disqualification. The approach underlying this proposal is that the power to disqualify a list or a candidate is a power which harms the essence of democracy. Therefore, only the most fundamental and clearest reason can justify the use of such power. Such grounds are: a danger to the very existence of the State. The harm of such a platform is inherent and is not contingent on the probability of it coming to pass. It is proposed broadening the requirement currently prescribed in Section 7A and establishing that the disqualification of a list or a candidate be dependent upon confirmation by the Supreme Court. This arrangement is meant to ensure that the decision to disqualify is not the result of narrow, political-factional considerations.

Subarticle (c) deals with the arrangement prescribed in Section 6A of Basic Law. It is proposed that the issue be regulated in an ordinary law while sufficing with a provision in the Constitution that the Knesset has the authority to legislate such an arrangement.

61. Knesset Term

- (a) The term of the Knesset shall be four years from the day of its election; the date for elections shall be on the last Tuesday prior to completing the four years;
- (b) The Knesset shall not extend its term, unless there are special circumstances which prevent timely elections from being held; the decision to extend the term shall be by a law passed by a majority of 80 members of Knesset; the term of the extension shall not exceed the period required by said circumstances; said law shall set the date of elections.

The arrangement proposed in Subarticle (a) is intended to resolve the inconsistency between Section 8 of Basic Law, according to which the term

of the Knesset will be four years from the date of its election, and Section 9 of Basic Law, pursuant to which Knesset elections shall be on the third Tuesday of the month of Heshvan in the year in which the term of the outgoing Knesset ends. It is suggested setting the date of elections in accordance with the end of the term of the Knesset and, in this way, avoiding the term from, in fact, being extended beyond the four years. The guiding principle in the proposed arrangement is that the term of the Knesset should be limited to four years.

Subarticle (b) is similar in nature to the arrangement prescribed in Section 9A of Basic Law. There are two exceptions to extending the Knesset's term: the existence of special circumstances which prevent timely elections from being held and a decision passed by a majority of 80 Knesset members extending the term. It is suggested eliminating the provision set forth in Section 9A(b) of Basic Law, according to which the Knesset is free to repeal, by a decision by a majority of its members (not necessarily through a law), such law extending the term. Advancing elections is regulated by Article 62 and requires legislation.

62. Dissolution of the Knesset

- (a) The Knesset shall be dissolved before the end of its term upon any of the following:
 - (1) Enacting of a law for that purpose by a majority of members of Knesset in which it shall be prescribed that the date of elections for Knesset shall be no later than 90 days from the date the law was enacted;
 - (2) After the period for forming the government shall have passed, where a new government shall not have been formed according to the provisions of Articles 87, 92, or 93;
 - (3) By a decision of the Prime Minister, with the consent of the President of the State, as set forth in Article 93;
 - (4) By a failure to adopt the Budget Law prior to the beginning of the fiscal year;

- (b) (1) Where the Knesset shall be dissolved according to the aforesaid in Paragraphs (2) through (4) of Subarticle (a), elections shall take place within 90 days from the date the grounds for dissolution shall be established;
- (2) Where the date of elections for the Knesset shall be determined pursuant to this Article, and not by law, the Knesset may, by a decision of a majority of its members which shall be passed within five days from the date establishing the grounds for holding elections, determine that because of the proximity of the date of elections to a holiday, festival, or memorial day, the elections shall be deferred to a date which it shall determine and which is no later than 100 days from the date on which the grounds shall be established.

This provision enumerates all the reasons for the Knesset's dissolution prior to the expiration of its term while prescribing a single arrangement for all the following cases: by a decision by a majority of Knesset members regarding the dissolution of the Knesset; after procedures for creating a government have been exhausted (after elections, after a no-confidence vote, after the resignation or death of the Prime Minister); after the Prime Minister has dissolved the Knesset; and by a failure to adopt the Budget Law. These directives are similar in nature to those currently prescribed in Basic Law: The Knesset and Basic Law: The Government.

Subarticle (b) establishes that the date of the elections will be within 90 days (and in cases enumerated in Subarticle (b)(2) – within 100 days) of the date the grounds for early dissolution of the Knesset are established. In contrast to the arrangement set out in Section 35 of Basic Law: The Knesset, it is proposed that this provision also be applied where the Knesset is dissolved by virtue of law and that the maximum time period between the adoption of the law and the date of elections be shortened from five months to 90 days.

63. Continuity of the Knesset

The outgoing Knesset shall continue to hold office until the incoming Knesset shall have convened.

This provision is identical to the one set out in Section 37 of Basic Law: The Knesset and is intended to ensure continuity of the Knesset's work. Section 38 of Basic Law: The Knesset, "Any enactment due to expire during the last two months of the term of office of the outgoing Knesset [...] or during the first three months of the term of office of the incoming Knesset shall continue in force until the expiration of the said three months," is included in the framework of the Chapter on Legislation in the Constitution. Likewise, it is suggested adhering to the existing arrangement in which provisions regarding the continuity of deliberations on bills are prescribed in ordinary legislation and in the Knesset's Rules of Procedure and not in the Constitution.

64. Convening the Knesset

The Knesset shall convene for its first session within two weeks from the day of elections.

This is an arrangement similar to that set forth in Section 12 of Basic Law while deleting the specifics of the arrangements provided there which do not belong in the Constitution. Likewise, Sections 13 and 14 have been deleted, as they relate to the procedures for the Knesset's opening session. These, too, belong in an ordinary law or in the Knesset Rules of Procedure and not in the Constitution.

65. Declaration of Allegiance

One who shall be elected shall assume office as a member of Knesset after declaring allegiance before the Knesset as follows: "I pledge myself to bear allegiance to the State of

Israel, to its Constitution, and to its laws, and to discharge my mandate in the Knesset faithfully.”

This arrangement differs from that prescribed in Sections 15 and 16 of Basic Law: The Knesset in two aspects. First, it is proposed that the words “to its Constitution and to its laws” be added to the language of the declaration. Bearing allegiance to the Constitution and to the laws of the State comes within the parameters of being a basic principle in the activity of a Knesset member. It does not negate the Knesset member’s power to act to amend existing laws or the Constitution in accordance with arrangements prescribed in the Constitution itself. Second, it is suggested setting forth that a member of Knesset will assume office only after declaring allegiance in the aforesaid language. This constitutes an amendment in comparison with the current situation, according to which, although a failure to declare allegiance will negate the Knesset member’s rights as a member of Knesset (Section 16 of the Basic Law), it will not bar assuming office, including, it would seem, the right to vote in the Knesset plenum. It is also suggested that the provisions of Section 16A of Basic Law, regarding a Knesset member who holds dual citizenship, be deleted.

66. Knesset Work Procedures

- (a) The Knesset shall hold two annual sessions;
- (b) The Knesset shall meet publicly;
- (c) The Knesset shall determine its work procedures, including all provisions relating to its committees and parties, its decision-making processes of all types, the provisions regarding temporary or permanent disqualification of those holding office, and all the rules which apply to the members of Knesset and its institutions;
- (d) The Knesset shall deliberate and make decisions by any number of its members where the Constitution does not provide otherwise regarding the matter;

- (e) The Knesset shall make decisions by a majority of those participating in the voting where those abstaining shall not be counted among the quorum participating in the voting and where the Constitution does not provide otherwise regarding the matter.

This directive combines that set forth in Sections 19, 24, 25, 26, 27, and 31 of Basic Law: The Knesset. These arrangements codify the practices followed in the Knesset. It is suggested that the practice of holding two sessions annually be set forth explicitly. It is suggested that Section 28 of Basic Law, regarding publishing the proceedings and statements made in the Knesset sessions, be deleted; this provision should come under the laws of libel and does not belong in the Constitution.

67. Speaker and Deputy Speakers of the Knesset

- (a) The Knesset shall elect a Speaker and Deputy Speakers from among its members; until election of the Speaker, the most senior member of Knesset who is not a minister or deputy minister shall serve as acting Speaker;
- (b) The Speaker shall represent the Knesset;
- (c) The Speaker, or in his or her absence, any of the Deputy Speakers, shall conduct the Knesset sessions;
- (d) The Speaker and the Deputy Speakers shall fulfill their offices with impartiality;
- (e) The Knesset may, by a decision of the majority of its members, suspend the Speaker or the Deputy Speakers or remove them from office or prescribe restrictions.

This provision determines the status, election, and powers of the Speaker of the Knesset. It is similar in principle to the arrangement set out in Sections 20 and 20A of Basic Law: The Knesset. The detailed provisions of Section 20A

of the Basic Law, about suspending the Speaker of the Knesset from office, are deleted, while leaving them to be prescribed by law.

68. Opposition Leader

- (a) The opposition leader shall be a member of Knesset selected from among, and by, the members of the opposition parties;
- (b) (1) The opposition leader shall be updated on affairs of state by the Prime Minister;
- (2) The opposition leader shall have the right to address the Knesset plenum immediately after the Prime Minister.

This provision prescribes the principles of the arrangement set forth in Sections 11 to 16 of the Knesset Law, 5754-1994. These provisions express the democratic perspective that the opposition plays an important and substantive function in the workings of the democratic system and supervision over the government.

69. Knesset Committees

- (a) The Knesset shall appoint permanent committees from among its members and may also appoint committees on specific issues from among its members;
- (b) The Knesset shall decide upon the composition of the permanent committees, whose members shall be selected by the Knesset, to the extent possible, according to the relative strengths of the Knesset parties.

This provision is similar in nature to that of Section 21 of Basic Law: The Knesset. Subarticle (a) suggests keeping with the approach that the Constitution – or a law – is not the place to specify the permanent Knesset committees but that

rather this should be left to be determined by the Knesset. Subarticle (b) codifies the existing practice in the Knesset, which also finds expression in Section 2A of the Knesset Law, regarding the appointment of a regulatory committee which will recommend the composition of the Knesset committees to the plenum. This provision is intended to ensure the proper functioning of the Knesset and its supervision over the workings of the government. A requirement to grant the parties appropriate representation in chairing the permanent committees as well is not included here, although it is the current practice.

70. The Knesset and the Executive Branch

- (a) The Knesset and its committees shall supervise and review the actions of the Executive Branch;
- (b) The ministers, in the framework of their parliamentary responsibility, shall transmit to the Knesset and its committees any information they possess necessary for the fulfillment of their functions; restrictions for reasons of State security, foreign affairs, international commercial relations, human rights, and matters necessary for the State, shall be prescribed by law;
- (c) The Knesset may compel a minister to appear before it;
- (d) A minister may be allowed to speak before the Knesset.

This provision expresses the Knesset's role as supervisor over the workings of the government. Subarticle (b) is similar in nature to Section 42 of Basic Law: The Government. It is suggested that only general provisions regarding the government's obligations to deliver information and regarding the ministers' obligation to appear before the Knesset be prescribed, while regulating these details in a law. Likewise, it is suggested expanding the obligation imposed upon the government by specifying that the obligation to deliver information is not conditional upon a request to do so by the Knesset or its committees.

71. Knesset and Government Committees

Any of the Knesset committees may, in the context of fulfilling its functions and through the relevant minister, or with his or her knowledge, obligate a civil servant or anyone prescribed by law to appear before it. However, the [civil] servant is entitled not to appear before the committee, should the Speaker of the Knesset authorize his or her supervising minister to appear in lieu thereof.

This provision grants the Knesset committees the authority to supervise the actions of the Executive Branch by obligating officials to appear before them. This provision is similar to Section 21 of Basic Law: The Knesset. It is suggested that the arrangement prescribed there, where the supervising minister may request to appear before the committee instead of the summoned civil servant, be amended, by providing that it is possible to do so only upon authorization of the Speaker of the Knesset. This limitation is intended to reduce any concern that the minister would attempt, in such a way, to evade effective supervision over the actions of his or her office.

72. Commissions of Inquiry

The Knesset shall be authorized to decide upon the appointment of a commission of inquiry from among its members; each commission of inquiry shall also include representatives of parties which do not participate in the government, according to the relative strengths of the parties in the Knesset; the manner of forming the commission and its powers shall be prescribed by law.

This arrangement is similar in principle to that provided in Section 22 of Basic Law: The Knesset. It is suggested refraining from making a general declaration regarding the powers of the parliamentary committees of inquiry and leaving the issue to be prescribed under law. It is also suggested establishing in this

context the principle of representation, which is also set forth in Article 69(b) of this Chapter, regarding the formation of permanent committees of the Knesset.

73. Immunity of Knesset Buildings

The buildings of the Knesset shall have immunity.

This is an arrangement identical to that prescribed in Section 18 of Basic Law: The Knesset. It expresses recognition of the special status of the Knesset.

74. Immunity of Knesset Members

Members of Knesset shall have immunity.

It is suggested leaving the existing arrangement as it stands (Section 17 of Basic Law) and leaving the details of the immunity of Knesset members to be prescribed under law. The provision of Section 39 of Basic Law, “The members of the Knesset shall receive remuneration as provided by law,” is included in the Chapter on General Provisions of the Constitution.

75. Member of Government Who is Not a Member of Knesset

A member of the government who is not a member of Knesset shall, as to everything relating to the Knesset, have the same status as a member of the government who is a member of Knesset, except that he or she shall not have the right to vote.

This provision is identical to the provision in Section 23 of Basic Law: The Knesset, and is intended to regulate the status of ministers who are not Knesset members, in particular with regard to their immunity.

76. Resignation of a Member of Knesset

A member of Knesset may resign from office.

It is suggested sufficing with this general statement without the additional details included in Section 40 of Basic Law: The Knesset regarding the submission of the letter of resignation and the date of its signature and in Section 41 regarding the date on which the resignation shall become effective. It is sufficient for these matters to be regulated by law.

77. Termination of Term or Candidacy of a Member of Knesset

Where a member of Knesset or a candidate for the Knesset shall be elected or appointed to a position, the holder of which is barred from being a candidate for the Knesset, then such membership in, or candidacy for, the Knesset, as applicable, shall terminate upon the election or appointment to any such position; in this regard, “candidate for the Knesset” is one whose name is included on the list of candidates to the Knesset as of the date of submitting of the list until the date on which the term as a member of Knesset begins.

This provision is identical to the provision in Section 42 of Basic Law: The Knesset. It is intended to regulate the status of an individual who is included on the list of Knesset candidates but was not elected to the Knesset. In light of the fact that such a candidate may be appointed as a Knesset member if the term of a Knesset member from that same list of candidates terminates, the status of such a candidate should also be regulated.

78. Termination of the Term of a Member of Knesset Who Has Been Convicted in a Final Judgment

(a) A court which shall have convicted a member of Knesset

- of a criminal offense shall set forth in its ruling whether such offense involves moral turpitude; where the court shall have so determined, the term of the member of Knesset shall be terminated as of the date on which the court's ruling was made final;
- (b) Subarticle (a) shall also apply to a member of Knesset where the ruling in such case shall have been made final after assuming office as a member of Knesset.

This provision is similar in substance to Section 42A of Basic Law: The Knesset. The ability to remove a Knesset member from office against his or her will is extremely limited. The termination of a member of Knesset's term is possible only in instances where convicted of an offense which involves moral turpitude. Therefore, even should a member of Knesset be prevented from discharging his or her duties, for example, due to illness, he or she remains in office, and as long as he or she does not resign, there is no possibility of removal.

Termination of office under the circumstances set forth in this Article is automatic, without giving members of Knesset the authority to exercise their own discretion. In the past, this result was restricted to cases where such member of Knesset was actually sentenced to prison, but currently, any conviction for an offense which involves moral turpitude leads to the termination of office. This arrangement is broader than the one prescribed in Section 6 of Basic Law: The Knesset, according to which a person may not be included on the list of candidates for Knesset elections where he or she shall have been sentenced in a final judgment to an actual term in prison for a time period exceeding three months and, on the date of submitting the list of candidates, seven years shall not yet have passed from the time that he or she finished serving his or her prison sentence, unless the chairperson of the Central Election Committee shall have determined that the offense for which convicted, under the circumstances, did not involve moral turpitude. A person who shall have been convicted of an offense which involved moral turpitude, but who shall not have been sentenced to actual imprisonment (or was sentenced to a period of time under

three months), may participate in elections and may be elected to the Knesset. The proposed wording of Article 59(a) of this Chapter, which does not specify the conditions under which the right to be elected may be denied, resolves this contradiction.

79. Suspension of a Member of Knesset Who Has Been Convicted

- (a) The Knesset Committee may suspend from office a Knesset member who shall have been convicted of a criminal offense which involves moral turpitude, for such time as the ruling has not become final;
- (b) Where the member of Knesset shall have been convicted of a criminal offense and sentenced to prison, the Knesset Committee may, at the recommendation of any member of Knesset, suspend him or her from office at the Knesset for the length of time of the prison sentence; the provisions of this Article shall apply also to a member of Knesset who shall have been convicted of such an offense in this Article prior to becoming a member of Knesset.

This provision is similar to Section 42B of Basic Law: The Knesset. It is intended to regulate the status of a member of Knesset who has been convicted of a criminal offense involving moral turpitude but whose judgment has not yet become final. In such a situation, the Knesset Committee is given the discretion and authority to temporarily suspend his or her membership until the judgment becomes final. The proposed arrangement limits this suspension authority to cases where the offense involves moral turpitude or for which the Knesset member was sentenced to actual imprisonment, and therefore the provision for this arrangement corresponds with the provision regarding removal from office.

80. Replacement of Members of Knesset

- (a) Where the position of a member of Knesset falls vacant, another candidate – from among the list of candidates that included his or her name – whose name is first noted after the name of the last of those elected, shall replace him or her;
- (b) Where one's membership in the Knesset shall have been suspended under Article 79, such office shall be vacated during the time of the suspension, and he or she shall be replaced by a candidate as aforesaid in Subarticle (a); upon returning to office, the last one to have become a member of Knesset from the list of candidates shall cease to hold office, and the right of the last person to again become a member of Knesset later by virtue of Subarticle 79(a) shall not be prejudiced solely for this reason.

This provision is similar to Section 43 of Basic Law: The Knesset which regulates the principle of substitutes for Knesset members. In the case of resignation, dismissal, or termination, under Article 79, the one who replaces the Knesset member is the “next-in-line” on the list of candidates of the Knesset member who vacated his or her seat. Therefore, all those who are included on the list of candidates have a status of “candidate” even after the elections are completed. If there is no other candidate on the list, the seat of the Knesset member shall be left vacant. This is the only situation where the Knesset will have fewer than 120 members.

Chapter on the Executive Branch

This Chapter governs five main topics: the principles underlying the actions of the Executive Branch; the status of the government and the manner of its formation; the civil service; the State budget; and the activities of the security authorities. Some of these subjects are currently regulated by Basic Law: The

Government and other Basic Laws, but some have yet to be regulated by Basic Laws. Codifying these principles in the Constitution is necessary, in light of the great power in the hands of the Executive Branch which requires determining constitutional arrangements for circumscribing the power of this branch. The arrangements proposed here delineate the basic principles regarding the status of the Executive Branch as the public's trustee, entrusted with promoting the public interest as a whole.

81. Essence

The Executive Branch is the public's trustee; it shall act to promote public welfare, preserve basic human rights, and shall act with loyalty, fairness, integrity, and appropriate transparency.

This Article is intended to express the fundamental approach that the Executive Branch is the public's trustee; the purpose of its existence is to advance the public interest and preserve human rights. Establishing the obligation placed upon this Branch to act in loyalty, fairness, honesty, and transparency expresses the accepted approach in Israeli administrative law regarding the status of the government authorities.

This provision supplements Article 41: "Governmental authorities shall have no powers save by virtue of the Constitution and under law," and Article 42: "Elected officials, civil servants, and those fulfilling official functions shall act to advance the public welfare, preserve basic human rights, and prevent their violation, and shall discharge their duties with loyalty, fairness, integrity, appropriate transparency and accountability."

82. Composition

(a) The Executive Branch shall be composed of the government and its ministries, the army, security and intelligence forces, as well as all the bodies which fulfill

- functions of a governmental nature and which are not part of any other authority of the State;
- (b) A law may prescribe that the aforesaid bodies are not part of the Executive Branch if they are not subject solely to the authority of the government or a local authority;
 - (c) A law may prescribe that public bodies are part of the Executive Branch if the matter is to benefit the public.

This provision regulates the bodies which constitute a part of the Executive Branch. Bodies with governmental powers, as well as any entity which fills a function of a governmental nature, are included. This provision expresses the accepted approach that certain bodies have a dual character (“dual-nature” bodies): private in terms of organization but public in terms of the character of their activities. These bodies are subject to obligations under public law, unless the legislator shall have exempted them from certain obligations. At the basis of this approach lies the awareness that many private bodies have significant social and economic power, obligating the regulation of their activities to prevent harm to the public interest.

Subchapter A: The Government

This Subchapter regulates the status of the government, which heads the Executive Branch. The provisions herein are based, in general, on Basic Law: The Government. The main modification proposed with respect to forming a government is the provision that the President has an obligation to require the leader of the largest party to form the government.

83. Essence

The government stands at the head of the State’s Executive Branch; it is composed of the Prime Minister and other

ministers; the government is entrusted with the administration of State matters pursuant to the Constitution and the law.

This provision establishes the status of the government not as a body which is identical to the Executive Branch in its entirety but rather as a body which heads the Executive Branch, and one which is entrusted with setting out policy for the Executive Branch under law. This provision differs from that set forth in Section 1 of Basic Law: The Government: “The government is the executive branch of the State.”

84. The Knesset’s Confidence in the Government

The government holds office by virtue of the confidence of the Knesset.

This provision, prescribed in Section 3 of Basic Law: The Government, expresses the nature of the political system as a parliamentary system in which the office of the government – its establishment and continuation of office – are contingent upon receiving the Knesset’s confidence. This expresses the Knesset’s role in supervising the government, and the government’s responsibility to the Knesset and its obligation to give the Knesset an ongoing report of its activities.

85. Responsibility

The government is collectively responsible to the Knesset; a minister is responsible to the Knesset for fulfilling his or her function; a minister is responsible to the Prime Minister for fulfilling his or her function.

This provision is similar to that set out in Section 4 of Basic Law. One of the basic principles of government action is the principle of collective responsibility. By virtue of this principle, each of the members of the government is a full partner

in the decisions and the lapses of the government – even if he or she opposed the decision, whether it was approved by the full government, a ministerial committee, or even just one minister.

The issue of collective responsibility does not necessarily entail bearing legal liability for the actions of the government or its ministers but rather demands public and parliamentary accountability for government decisions and policies.

The principle of collective responsibility is expressed mainly through the political culture. Its enforcement through legal and formal means is, by the nature of things, very limited because of political constraints.

The principle of collective responsibility has two facets. On the one hand, it limits freedom of action by the members of the government in critiquing the government, initiating legislation, and voting in the Knesset against the government's positions. Exceeding these limits exposes a member of government to public and parliamentary review and is liable to lead to removal from office by the Prime Minister. On the other hand, the principle of collective responsibility imbues the government and the ministers with authority: by virtue of this principle, ministers are granted the authority to demand information, participate in decisions, and question the decisions of ministerial committees before the full government, and by virtue thereof, the government is granted broad authority to direct the ministers, and others in public administration, as to the manner in which they are to wield their powers.

The second part of Article 85 focuses on ministerial responsibility. By virtue of this principle regarding ministerial responsibility, a minister is responsible for all the actions taken by the office which he or she administers. Ministerial responsibility is expressed both as “administrative” responsibility, that is, in establishing standards – and in appropriate circumstances, to prescribe them in secondary legislation – for the use of power by the various entities in the administration, selecting those in office, determining work procedures which ensure proper supervision and review, and the like; as well as the responsibility to determine general policy for the areas under the minister's purview. Recognition of the minister's duty to the Knesset and to the Prime Minister to fulfill his or her function loyally and to bear public responsibility for that done by his or her ministry is of prime importance.

86. Members of the Government

- (a) The number of members of the government shall be no less than eight ministers and shall not exceed 18 ministers;
- (b) One of the members of the government shall serve as acting Prime Minister;
- (c) The Prime Minister and the acting Prime Minister shall be members of Knesset; every other minister need not be a member of Knesset;
- (d) A minister shall be in charge of a ministry, although there may be a minister without portfolio in the government.

This provision differs from the arrangement set out in Section 5 of Basic Law: The Government, in two aspects. First, it is suggested that the limitation which was included in the previous Basic Law: The Government which was repealed in 1999, regarding the minimum and maximum number of Ministers, be reinstated. This provision is intended to ensure the proper functioning of the government and to prevent the phenomenon of appointing members of Knesset to positions as ministers in exchange for their political support of the Prime Minister, and not for functional considerations. Second, it is proposed that the requirement to appoint an acting Prime Minister be established to ensure stability and continuity in the functioning of the government.

87. Formation of the Government

- (a) After Knesset elections, within two days from the date on which the results of the Knesset elections shall have been published, the President of the State shall assign the member of Knesset who is first on the list of candidates of the party which garnered the greatest number of votes the task of forming a government and leading it;
- (b) Where a government shall not have been formed according to Subarticle (a), or where the term of the government

shall have terminated under the grounds enumerated in Article 91, the President of the State shall assign a member of Knesset the task of forming a government and leading it, after consulting with the representatives of the parties in Knesset;

- (c) Where a government shall not have been formed according to Subarticle (b), the President of the State shall assign another member of Knesset the task of forming a government and leading it. However, a majority of Knesset members may request that the President shall assign a member of Knesset, who shall have given his or her written consent thereto, the task of forming a government and leading it;
- (d) A member of Knesset to whom the President of the State shall have assigned the task of forming a government shall be given a period of 14 days to complete this function; the President may extend this period by additional periods, as long as they shall not exceed seven days in total;
- (e) Where a law shall be adopted for the dissolution of the Knesset, procedures for forming the government shall be terminated;
- (f) Where a government shall be formed, the member of Knesset shall inform the President that he or she has succeeded in forming a government, shall appear before the Knesset, advise it of the government's basic policy outlines, its composition, and the distribution of functions among the ministers, and request the Knesset's expression of confidence in the government; the government shall be established once the Knesset has expressed confidence therein;
- (g) Where the government shall not have been formed under this Article within 100 days, the Knesset shall be dissolved at the end of such period.

This provision comes in lieu of the arrangement provided in Sections 7 through 13 of Basic Law: The Government. The principal amendment, in comparison with the existing arrangement, is prescribed in Subarticle (a), according to which the Knesset member whom the President is obligated to charge with the task of forming the government after holding elections is the leader of the party which received the greatest number of votes in the elections, without allowing the President any discretion on the matter. Granting the pre-emptive “first right” to the Knesset member who heads the party which received the majority of votes is intended to increase the stability of the political system and to decrease the length of the initial political negotiations, conducted immediately after the election results are published. Nevertheless, the proposed arrangement does not negate the power of a Knesset majority to form a coalition led by a different member of Knesset. Likewise, it is suggested that the time span available to the Knesset member charged with forming the government be shortened, from 28 days with an extension of 14 additional days to 14 days with an extension of only seven days. The proposed arrangement also differs from the existing arrangement in that it limits the total time period for the formation of the government to 100 days.

88. Declaration of Allegiance

Where the Knesset has expressed confidence in the government, the Prime Minister and the ministers shall make the following declaration of allegiance before the Knesset: “I (name of Prime Minister or minister) as Prime Minister/ as a minister pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, to carry out my office as the Prime Minister/as a minister faithfully, and to comply with the decisions of the Knesset.” Immediately after such declaration, the Prime Minister and ministers shall assume office.

The declaration of allegiance is similar to that of Knesset members and differs from the existing declaration, set out in Section 14 of Basic Law, in that it adds

the phrase “to its Constitution.” It is suggested explicitly establishing that the ministers assume office only after making the declaration and not from the time that the Knesset expresses confidence in the government, as provided in Section 13(d) of Basic Law.

89. Addition of a Minister

The government may, upon recommendation by the Prime Minister, add an additional minister to the government. Where the government shall resolve to add a minister, it shall notify the Knesset of such fact and of the function of the additional minister. Upon the Knesset’s approving the notification, the additional minister shall make a declaration of allegiance and shall assume office.

This provision is identical to Section 15 of Basic Law: The Government, except that the minister assumes office after the declaration and not only after approval by the Knesset.

90. Acting Prime Minister

- (a) Where the Prime Minister shall announce, or the government shall determine, that the Prime Minister is temporarily unable to discharge his or her duties, for reasons prescribed by law, his or her place shall be filled by the acting Prime Minister; where 100 consecutive days shall have passed in which the acting Prime Minister shall have served instead of the Prime Minister, and the Prime Minister shall not have returned to discharge his or her duties, he or she shall be deemed as one who is permanently unable to exercise office;
- (b) Where the government shall determine that the Prime Minister is permanently unable to discharge his or her duties, for reasons prescribed by law, or where his or

her term shall terminate due to an offense, the acting Prime Minister shall serve in his or her stead until a new government shall be established.

This arrangement is similar to the one set out in Section 16 of Basic Law. It is suggested specifying the reasons according to which the government may determine that the Prime Minister is temporarily unable to fulfill his or her function in the law. In light of the obligation imposed to appoint an acting Prime Minister, Subsection 16(c) of Basic Law, regarding situations where there is no acting Prime Minister, is deleted. Moreover, Subsection 16(a), regarding situations in which the Prime Minister is out of the country, is deleted. The Prime Minister continues to exercise office even when abroad.

Unlike the arrangement set out in Basic Law, in situations where the Prime Minister's term shall terminate under Subarticle (b), it is proposed that the acting Prime Minister – and not “another of the ministers who is a member of Knesset and of the Prime Minister's faction” (Section 30(c) of Basic Law) – shall replace the Prime Minister.

91. Termination of the Term of the Government

The government shall have its term terminated by any of the following:

- (1) The Prime Minister shall resign by submitting a letter of resignation to the President of the State;
- (2) The Prime Minister shall die or shall be permanently unable to exercise office;
- (3) The Prime Minister shall cease to function as a member of Knesset;
- (4) Within 14 days from the day of filing an indictment against the Prime Minister for an offense carrying a sentence of more than three years (*peshah*), unless, within this time period, the Knesset shall resolve, by a majority of its members, that he or she may continue to serve;

- (5) The Prime Minister shall be convicted of an offense which the Supreme Court shall have defined as involving moral turpitude, and the Knesset shall resolve, by a majority of its members, to remove him or her from office, or when such judgment shall become final.

The government's term shall end upon termination of the term of the Prime Minister. This is one of the key expressions of the special status of the Prime Minister as "first among equals." The three grounds for terminating a Prime Minister's term are similar to those set out in Basic Law: The Government (Sections 19 through 21).

Regarding filing an indictment against the Prime Minister, the proposed arrangement determines a different arrangement from the one set out in Basic Law, which does not deal with the implications of filing an indictment against a Prime Minister on the continuation of his or her term. However, pursuant to the Supreme Court rulings (regarding ministers), filing an indictment for serious offenses is likely to constitute sufficient grounds for terminating the Prime Minister's term. In this spirit, the arrangement suggested in Subarticle (4) establishes a provision regarding the termination of a term in cases of an indictment for a serious offense which carries a punishment of more than three years (*peshah*). Nevertheless, in light of the fact that the removal of the Prime Minister from office is, by its nature, irreversible, as it triggers the dissolution of the entire government, and in light of the fact that this is only the indictment stage, it is suggested allowing the Knesset to resolve, by a majority of its members, whether to allow the Prime Minister to continue in office.

The arrangement set out in Subarticle (5) regarding the conviction of the Prime Minister for committing an offense is similar to that prescribed in Section 18 of Basic Law. By virtue thereof, termination of a term after a conviction requires a decision by the Knesset, but once the judgment becomes final, termination is automatic.

92. Expression of No-Confidence in the Government

- (a) The Knesset may, at any time, express no-confidence in the government;
- (b) An expression of no-confidence in the government shall be by a resolution, adopted by the majority of the members of Knesset, requesting that the President assign the task of forming a government to the Knesset member noted therein and who shall have agreed thereto in writing;
- (c) Where the Knesset shall have so resolved, the government shall be deemed to have resigned at such time; the President shall, within two days, charge the Knesset member noted in the resolution with the task of forming a government;
- (d) Where the Knesset member did not form a government within 21 days from the date so charged or where the Knesset did not express confidence in the government so formed, the Knesset shall dissolve at the end of the said period or on the date it so resolves.

This provision is similar to the one set out in Section 28 of Basic Law. An expression of no-confidence requires the support of the majority of Knesset members of an alternate candidate to form the government, and the failure of this alternate to form the government leads to the dissolution of the Knesset. It is suggested that the period given to the Knesset member to form a new government be shortened to 21 days.

93. Authority to Dissolve the Knesset

- (a) Should the Prime Minister ascertain that a majority of the Knesset opposes the government, and that the effective functioning of the government shall be prevented as a result, he or she may request that the President of the

State dissolve the Knesset; should the President of the State consent, an order shall be published in the official Gazette for the dissolution of the Knesset and holding new elections. The order shall enter into effect 21 days after its publication, unless a written request is submitted to the President by a majority of the members of Knesset to charge one of its members, who shall have given his or her written consent thereto and who is not the Prime Minister, with the task of forming a government; where a request as aforesaid shall have been submitted, the President shall charge, on that same date, the member of Knesset designated in the request, the task of forming and leading a government; where the Knesset member shall not have formed a government within 21 days from the day he or she is charged with the task, or where the Knesset shall not have expressed confidence in the government formed, the Knesset shall dissolve at the end of such period;

- (b) The Prime Minister shall not be entitled to exercise his or her authority under this Article:
 - (1) From the beginning of the term of a new Knesset until the formation of a new government;
 - (2) After the Knesset shall have expressed no-confidence in the government;
 - (3) After the resignation of the Prime Minister, or from the day he or she is convicted, until the day of a Knesset resolution, pursuant to Article 91(5);
- (c) An acting Prime Minister shall not be entitled to exercise the authority of the Prime Minister pursuant to this Article.

The proposed arrangement is similar to that set out in Article 29 of Basic Law. It allows the Prime Minister, with the consent of the President, to dissolve the

Knesset – and thus, bring about the end of the term of the government itself – provided there is a majority in the Knesset which opposes the government. The Knesset may prevent its dissolution only if the Knesset majority supports an alternate candidate for the position of the Prime Minister, who succeeds in forming a government within 21 days.

94. Continuity of the Government

- (a) Where a new Knesset shall be elected, or upon the termination of the term of the government, the outgoing government shall continue to carry out its functions until the new government shall be formed;
- (b) The Prime Minister, upon approval of the government in office pursuant to this Article, may appoint a member of Knesset to be a minister in lieu of a minister who shall have ceased to hold office; notice regarding the appointment of a minister under this Subarticle shall be given to the Knesset but shall not require approval by the Knesset.

The government shall hold office until a new government is established (similar to the arrangement set out in Section 30(b) of Basic Law). This directive is necessary in order to ensure continuity in administering affairs of state. The Prime Minister shall continue to hold office until the establishment of a new government, even after the Knesset which shall have expressed confidence in him or her shall have dissolved and even after the Knesset shall have expressed no-confidence in the government or the Prime Minister shall have resigned from office or ceased to serve as a member of Knesset. On the other hand, the acting Prime Minister shall assume the office of Prime Minister where the Prime Minister shall die, shall permanently cease to be able to perform his or her functions, or shall be removed from office for a criminal offense (Article 90(b) of this Chapter).

A government which serves without continuing to enjoy the Knesset's confidence – or after the Prime Minister shall have resigned or shall have been

removed from office – is dubbed a “care-taker government.” Similar to the arrangement in Basic Law, it is proposed that a minister not be barred from resigning from a care-taker government. A care-taker government may appoint a Knesset member to be a minister in the office of a minister who shall have ceased to serve, without requiring the approval of Knesset for the appointment, similar to the arrangement in Section 30(d) of Basic Law. According to the accepted interpretation, the care-taker government’s powers are not limited, and it may act as does any government. Nevertheless, the rule is that the “range of reasonableness” for using the authority granted to it is narrower: in exercising its powers, the care-taker government must consider the fact that it no longer enjoys the Knesset’s confidence, and therefore must refrain from taking sides in central issues under public debate which are liable to bring about irreversible changes in the situation, if there is no vital public interest requiring it to do so.

95. Termination of Term of a Minister

A minister, excluding the Prime Minister, will cease holding office upon any of the following:

- (1) The minister shall resign by submitting a letter of resignation to the Prime Minister;
- (2) The Prime Minister shall remove the minister from office;
- (3) The minister shall die or shall be permanently incapable of holding office;
- (4) The minister shall have been convicted, in a final judgment, of an offense which the convicting court shall have determined involves moral turpitude.

The grounds prescribed in this Article for the termination of the term of a minister are similar to those prescribed in Sections 22 and 23 of Basic Law. The Article proposes that the term be terminated immediately upon these grounds being established, without a 48-hour waiting period.

A similar provision found in Section 6 of Basic Law: The Government,

regarding the eligibility for a ministerial position, is included in the Chapter on General Provisions. A provision regarding the termination of a term of a minister who shall have been indicted, regarding which the Supreme Court has ruled, is prescribed in Article 99.

96. Acting Minister

Should a minister cease to serve, or be temporarily incapable of holding office, the Prime Minister or another minister determined by the government shall act in his or her stead.

This is an arrangement similar to that set out in Section 24(b) of Basic Law. It is suggested that the provisions in Sections 24(a) and 24(c), regarding the replacement of a minister who is abroad, and regarding the maximum term for an acting minister, be deleted.

97. Deputy Ministers

- (a) The minister in charge of a ministry may, upon authorization of the government, appoint one deputy minister from among the members of Knesset to such office;
- (b) The deputy minister shall act, in Knesset and in the ministry to which appointed, on behalf of the appointing minister and within the parameters of those matters transferred thereto;
- (c) The number of deputy ministers in the government shall not exceed four.

It is proposed that the number of deputy ministers be limited to four in total and to only one deputy in any particular ministry. It is also proposed that the limitation prescribed in Section 25 of Basic Law, according to which the deputy minister must be a Knesset member, be retained.

98. Termination of Term of a Deputy Minister

The term of a deputy minister shall be terminated upon any of the following:

- (1) The deputy minister shall resign by submitting a letter of resignation to the minister who appointed him or her;
- (2) The appointing minister shall cease to be a minister or cease to be in charge of that ministry;
- (3) The Prime Minister, the government, or the minister who appointed the deputy minister shall decide to terminate his or her term;
- (4) A new government shall be formed;
- (5) The deputy minister shall cease to be a Knesset member;
- (6) The deputy minister shall be convicted, in a final judgment, of an offense which the convicting court shall have determined involves moral turpitude.

The grounds for the termination of term of a deputy minister are similar to those prescribed in Section 26 of Basic Law.

99. Suspension of a Minister or a Deputy Minister

The term of a minister or a deputy minister in the government shall be suspended upon the filing of an indictment attributing the commission of offenses involving moral turpitude to him or her.

This provision is not set out in Basic Law: The Government, and it codifies a Supreme Court ruling from 1993. The ruling is that there is a distinction in this specific context between the office of a member of Knesset and the office of a member of the government: a Knesset member is liable to be suspended from office in the Knesset only after being convicted of an offense and is removed from office after a final judgment determining that the offense involves moral

turpitude. Underlying this approach is the position that the main function filled by a Knesset member is political, as a representative of the public which elected him or her, and therefore, one should refrain from suspending him or her based merely on suspicions so as not to tarnish his or her integrity. On the other hand, with respect to a minister, “as one in charge of a government ministry and who directs its activities, the public function retreats in the face of the administrative function, which entails its own rules of conduct.” Therefore, *a fortiori*, all the norms applying to other officials in the civil service certainly apply to a minister, including those stemming from the need to ensure the public’s trust in the integrity of those wielding governmental powers. The political aspect of a minister’s office is manifested in that the obligation imposed upon the Prime Minister to remove a minister from his or her position is limited in application only to extreme circumstances, “in which the seriousness of the circumstances of the attributed offense does not accord with continuing in such position.” The provision regarding eligibility of one convicted of an offense to hold office is included in the Chapter on General Provisions of the Constitution.

100. Functioning of the Government

- (a) The government may appoint ministerial committees which are permanent, provisional, or relate to specific issues; where a committee is appointed, the government may act thereby;
- (b) The government shall prescribe procedures for its sessions and work, its methods of deliberation, and the manner in which it makes decisions, in its Rules of Procedure; it shall be entitled to do so also with respect to a specific matter.

This is an Article similar to that set out in Sections 31(e)-31(f) of Basic Law: The Government. By virtue of Subarticle (a), the government may authorize ministerial committees to make decisions “for the government,” and the decision of the ministerial committee is then deemed to be the decision of the government. It is proposed that Section 35 of Basic Law regarding the secrecy

of the discussions and decisions of the government on certain issues be deleted. The provision of Section 36, regarding the salaries of the ministers, is included in the Chapter on General Provisions of the Constitution. The provisions of Section 37, regarding the authority to promulgate regulations, is included in the Chapter on Legislation.

101. Delegation of Powers

The conditions under which the government may delegate its powers to a minister, a minister may delegate powers to a civil servant, and a minister may assume powers from a civil servant shall be prescribed by law; powers of a judicial nature are not to be assumed or delegated.

It is suggested that the provisions prescribed in Sections 31(a) to 31(d) of Basic Law, regarding the division of powers between the ministers and the government ministries, be deleted from the Constitution. It is suggested leaving these issues to be regulated by law. Likewise, it is suggested that Sections 33 and 34 of Basic Law, regarding the delegation and assumption of powers, be deleted, leaving a general provision that the conditions for delegation will be determined by law, while prescribing, in the Constitution, the prohibition against assuming or delegating powers of a judicial nature.

102. Commissions of Inquiry

The government shall be authorized, under conditions prescribed by law, to decide on the need to appoint a commission of inquiry; the commission shall be appointed by the President of the Supreme Court.

This provision codifies, in the Constitution, the authority of the government to establish a commission of inquiry, set out today in the Commissions of Inquiry Law, 5729-1968.

103. Residual Powers of the Government

The government shall be authorized to perform, on behalf of the State, and subject to any law, any action not legally incumbent upon another authority.

This provision is identical to that prescribed in Section 32 of Basic Law: The Government. Nothing herein limits the provision set out in Article 41: “Governmental authorities shall have no powers save by virtue of the Constitution and under law.” Likewise, it does not restrict the need for legal authorization in any instance where basic rights are violated.

104. Declaration of War

- (a) The State shall not declare war, unless pursuant to a government decision;
- (b) Nothing in this Article shall prevent military actions necessary for the defense of the State and public security;
- (c) Notice of a government decision to declare war under Subarticle (a) or said military actions under Subarticle (b) shall be transmitted to the Knesset as soon as possible;
- (d) The Knesset may, by a decision pursuant to a recommendation of the Knesset’s Committee of Foreign Affairs and Security, and in a special session called for such purpose, direct the government to cease waging war or to cease military action; the decisions of the Committee and the Knesset shall be adopted by a majority of their members; specifics shall be prescribed by law.

The provisions of Subarticles (a) to (c) are identical to those set out in Section 40 of Basic Law: The Government. It is suggested adding Subarticle (d), which

is a substantive exception; in general, the decisions of the Knesset are not binding upon the government, and the Knesset is required to legislate laws in order to obligate the government. Nevertheless, the great importance of military action and the urgent need which is liable to arise in order to halt military action necessitate granting the Knesset authority to direct the government, through a resolution, to cease such actions. The requirement that the resolution be supported by a majority of Knesset members and a majority of the Foreign Affairs and Security Committee limits the possible use of this power.

Subchapter B: Civil Service

The provisions of this Subchapter are not currently included in Basic Laws. They are intended to establish the basic principles regarding the appointments of civil servants and the manner in which such employees are to act. These principles codify the status of the Civil Service as an apolitical body entrusted with promoting the public interest.

105. Composition

The Civil Service includes all those holding office or filling a position in the Executive Branch, whether they have the status of employee or are under contract, however, it does not include ministers and others elected by the public.

This is the definition of the composition of the civil servants for this Subchapter: civil servants do not include ministers and other elected officials (for example, the heads of local authorities) for whom separate arrangements have been prescribed in the Chapter on the Executive Branch.

106. Additions to the Civil Service

Adding persons to the Civil Service shall be done only to promote public interest and where they possess the

appropriate qualifications to fill their position; the law shall prescribe provisions according to which persons shall not be appointed to fill vacant positions in the Civil Service – excluding offices of trust as interpreted by law – unless by tender, in which equal opportunity shall be given to all those interested in participating and in which the candidate who is the most qualified shall be selected.

It is proposed here that the basic principles of the Civil Service (Appointments) Law be codified in the Constitution. The basic principle is the obligation to appoint to the Civil Service the most appropriate persons for the position, based solely on relevant considerations. The aim is to set out explicitly in the Constitution a prohibition against appointments based on external considerations, such as advancement of the political-factional interests of the appointing individual. It is also proposed that the obligation to hold a tender for choosing officials in the Civil Service be explicitly codified in the Constitution, while leaving regulation of the specific arrangements on the matter to legislation.

107. Obligations of the Civil Service

- (a) The Civil Service shall be the public's trustee and its servant;
- (b) An appointee to the Civil Service shall exercise authority according to the purpose of the law which prescribed it, for the public welfare, fairly, reasonably, and while preserving the value of equality; administrative procedures shall be prescribed by law;
- (c) An appointee to the Civil Service shall not violate the rights of an individual before such individual shall be given the right to assert a claim;
- (d) The Civil Service shall be subject to disciplinary action.

This Article completes Article 42, which states that “Elected officials, civil servants, and those fulfilling official functions shall act to advance the public welfare, preserve basic human rights and prevent their violation, and shall discharge their duties with loyalty, fairness, integrity, appropriate transparency, and accountability.” This Article emphasizes the status of the Civil Service as entrusted with promoting the public interest and obligated to promote society’s basic values. Subarticles (b) and (c) express the basic principles of the activities of public administration, including the obligation to grant the right to assert a claim to one liable to be harmed by the exercise of governmental authority.

Subchapter C: The State Economy

This Subchapter codifies the main arrangements prescribed in Basic Law: The State Economy in the Constitution. The sole innovation is in Article 110, regarding the specifics of the fundamental principles of the State budget and the goals which one should aspire to reach with respect thereto.

108. Taxes, Compulsory Loans, and Fees

- (a) Taxes, compulsory loans, fees, and other compulsory payments shall not be imposed, and their amounts shall not be varied, save by law or pursuant thereto;
- (b) Where the amounts of any taxes, compulsory loans, fees, or other compulsory payments, payable to the State Treasury, shall not have been prescribed in the law itself, and where the law shall not have set forth a provision that the determination of such [amounts] in regulations shall require approval by the Knesset or one of its committees – [then] the determination of such [amounts] in the regulations shall require approval, in advance or within the period prescribed by the law, by a decision of the Knesset or one of its committees which the Knesset has authorized to do so.

This provision is identical to the provision set forth in Section 1 of Basic Law: The State Economy. One of the primary aspects of the Executive Branch's activities is the State budget. The Executive Branch is entrusted with collecting taxes and supervises use of the State's income to finance the products and services which it provides to the public. These are important powers, decisive in shaping the character of society and regarding which there is great concern that they may be abused. The principle of no taxation without representation, meaning that the decision to impose taxes must be approved by a body which represents the people, has long been recognized as a fundamental principle of every democratic system. Its application is necessary, both to prevent the ruler from employing authority to promote personal interests and to ensure that value judgments regarding the tax burden and the manner of its distribution will reflect the perspective accepted by the public and the fundamental values of the democratic system.

109. State Property

Transactions in State property and the acquisition of rights and assumption of liabilities on behalf of the State shall be effected by a person authorized to do so by law or pursuant thereto.

This provision is identical to the provision of Section 2 of Basic Law: The State Economy. It ensures that the exercise of authority with respect to State property rests only in the hands of one empowered to do so by law. Detailed provisions on this issue are prescribed in Foundations of the Budget Law, 5745-1985.

110. The State Budget – Principles and Goals

Planning of the public expenditure and its implementation shall be directed towards growth, economic stability, and the reduction of economic inequality, while preserving standards of transparency, efficiency, fairness, and accountability.

This is a provision which is not included in Basic Law. Its purpose is to delineate the standards for setting the State budget and the central goals which are intended to guide the government, which proposes the budget bill, and the Knesset, which approves the budget bill, when drafting the State budget. Three central policy goals are enumerated here: growth, economic stability, and the reduction of economic inequality. Fundamental principles regarding the manner in which State resources are allocated are added, including transparency, efficiency, fairness, and accountability. This provision is the substantive basis for the arrangement set out in Section 3A of the Foundations of the Budget Law regarding the obligation to establish equal standards for the allocation of money from the State budget to the recipient entities.

111. The State Budget

- (a) (1) The State budget shall be prescribed by law;
- (2) The budget shall be for one year and shall include the expected and planned expenditures of the government;
- (b) (1) The government shall submit the budget bill to the Knesset at the time prescribed by the Knesset or by one of its committees, which the Knesset shall have empowered in that regard, but not later than 60 days before the beginning of the fiscal year;
- (2) The budget bill shall be detailed;
- (3) The detailed budget bill for the Ministry of Defense shall not be submitted to the Knesset but rather to a joint committee of the Finance Committee and the Foreign Affairs and Security Committee of the Knesset;
- (4) The budget bill shall be accompanied by an estimate for financing the budget;
- (c) If necessary, the government may submit an additional budget bill during the fiscal year;

- (d) Where it appears to the government that the Budget Law will not be adopted before the beginning of the fiscal year, it may submit an interim budget bill;
- (e) The Minister of Finance shall submit a report on the implementation of the State budget to the Knesset annually.

This provision is identical to the arrangement prescribed in Section 3 of Basic Law: The State Economy. It delineates the principle that State expenditures must be regulated by law in order to ensure the Knesset's supervision over the workings of the government and economic policy guidelines.

112. Multi-Year Budget

- (a) The government shall prepare in advance of each fiscal year a multi-year budgetary plan which shall include the budget bill for the upcoming year as well as the budgetary plan for the two years thereafter;
- (b) The government shall submit the multi-year budgetary plan together with the budget bill to the Knesset.

This Article is identical to the provision set out in Section 3A of Basic Law: The State Economy, and it covers the need for long-term planning of the economic policy. It is suggested that Subsection 3A(c) of the Basic Law, "Every Budget Bill which the Government shall submit to the Knesset shall be based on the multi-year budgetary plan [...]," be deleted. This restriction has proven to be impossible to implement. It is suggested sufficing with a general guideline derived from the multi-year budgetary plan.

113. Failure to Adopt the Budget Law

- (a) Where the Budget Law shall fail to be adopted before the beginning of the fiscal year, the government may

- spend, on a monthly basis, the amount equaling one twelfth of the previous annual budget;
- (b) Where the Knesset shall not have approved the budget bill by the beginning of the fiscal year, it shall be deemed as though the Knesset shall have decided to dissolve before the completion of its term, in accordance with Article 62(a)(4).

This is an arrangement similar to that prescribed in Section 3B of Basic Law: The State Economy. The purpose of this provision is to increase the incentive for the political system to reach an agreement regarding the budget bill. It is suggested eliminating the deferral currently set out in Basic Law: The State Economy in applying the consequences of the Knesset's dissolution and early elections in the event of a failure to adopt the Budget Law in the three months after the beginning of the fiscal year. Experience shows that deferring these consequences has led more than once to a delay in passing the Budget Law until after the beginning of the fiscal year. This is an undesirable consequence, and it is possible to prevent it by prescribing that the outcome of the Knesset's dissolution, in the event that the Budget Law is not adopted, shall apply as at the beginning of the fiscal year. It is also suggested that Section 3A(b) of Basic Law, regarding the designation of monies which the government is entitled to spend in such a situation, be deleted. The government's obligation to use the money for essential services stems from general basic principles and does not require an explicit provision in the Constitution.

114. Budgetary Legislation

A law may prescribe restrictions and conditions for the adoption of bills initiated by members of Knesset which may affect the expenditures from the State budget, or the State's income, and a law may also prescribe restrictions and conditions on adopting bills submitted by members of Knesset to amend a bill which is likely to have such an effect.

This is a provision similar to the one set out in Section 3C of Basic Law. It is suggested sufficing with a general authorization to prescribe restrictions on legislation which requires a budget, and not to codify these details in the Constitution itself, in order to leave greater flexibility in amending the content of the arrangement applying to such matters.

115. Bills and Coins

The printing of bills and the minting of coins, and the issuance thereof, shall be done pursuant to law.

This is a provision identical to that prescribed in Section 4 of Basic Law: The State Economy, regarding the authorization to issue money.

Subchapter D: The Military

This Subchapter grants constitutional expression to the provisions of Basic Law: The Military. It is suggested that an Article detailing the purpose of the Israel Defense Force, and the missions with which the government may entrust to it, be added to the provisions of Basic Law. It is also suggested that the Constitution explicitly prescribe the obligation to codify the standards for granting exemptions from military service or an alternative to military service in the law; these shall be determined by law or by virtue thereof, in the spirit of the Supreme Court's ruling on the issue. It is proposed that the provisions of Section 5 of Basic Law, regarding the status of military instructions and orders, be deleted.

116. Purpose

The Israel Defense Force is entrusted with the security of the State and its defense and the defense of its citizens, its residents, and all who enter its territory, against an enemy.

This provision is intended to establish the purpose of the Israel Defense Force explicitly. This provision emphasizes that the Israel Defense Force is intended solely for purposes of State security and defense.

117. Additional Purposes

- (a) The Israel Defense Force may undertake actions whose immediate execution is intended to save lives or cope with natural disasters; such missions outside the borders of the State require a decision by the government and shall be reported to the Knesset in the manner to be prescribed;
- (b) A law may authorize the Israel Defense Force – with the approval of the government – to act to achieve essential national-governmental goals, provided that the actions of the Israel Defense Force are necessary in order to achieve these goals; such actions shall be carried out with the consent of those who shall execute them.

It is suggested that other missions which the government may entrust to the Israel Defense Force, with the restrictions detailed in this provision, be recognized. Subarticle (a) deals with emergency missions necessary to save lives or cope with natural disasters. The government is entitled to activate the army in this context outside the borders of the State but must report this to the Knesset. Subarticle (b) recognizes the possibility of activating the army for other national missions as well, in the spirit of the arrangement currently set out in the Security Forces Law. It is suggested limiting, to a great extent, the possibility of using the army for such purposes by instituting three restrictions: first, activating the army in this way requires explicit authorization in a law; second, these must be “essential national-governmental goals, provided that the actions of the Israel Defense Force are necessary in order to achieve these goals”; and third, the consent of the soldiers required to participate in the mission is needed.

118. Subordination to Civil Authority

- (a) The army shall be subject to the authority of the government; the minister in charge of the army on behalf of the government shall be the Minister of Defense;
- (b) The Knesset shall supervise the army and its activities.

This is a provision similar to that set out in Section 2 of Basic Law: The Military. Although security forces are a necessity in every democratic system, nevertheless their actions must be subject to supervision by elected government figures. Civil supervision over the army is known to carry great importance; the actions of the army are the basis for securing the lives of civilians and the very existence of the State, and thus, it is necessary to ensure that this activity is carried out appropriately. Army actions also create a danger to the welfare of those civilians who serve in its framework as well as an infringement of many of their other basic rights. Similar concerns exist also with respect to the well-being and rights of the citizens of the State and of foreigners. As a result, creating guidelines regarding the manner of the army's activities, as well as for the State's security policy, are a prime responsibility placed upon the political echelon. Military action has far-reaching consequences, and accordingly, it is suggested that an explicit provision regarding the Knesset's supervision of the army and its actions be added.

119. General Chief of Staff

- (a) The commander of the army shall be the General Chief of Staff;
- (b) The General Chief of Staff shall be subject to the authority of the government and subordinate to the Minister of Defense;
- (c) The General Chief of Staff shall be appointed by the government upon recommendation of the Minister of Defense, with the consent of the Prime Minister.

This is a provision similar to that set out in Section 3 of Basic Law: The Military. It is suggested that another restriction, that the appointment of the General Chief of Staff requires the consent of the Prime Minister, be added. It is suggested refraining from prescribing specific arrangements in the Constitution regarding the extent to which the Minister of Defense and the government are permitted to intervene in army affairs.

120. Duty to Serve and Enlist

- (a) The duty of serving and enlisting in the army shall be as prescribed by law;
- (b) The authority and standards for granting exemptions from military service or an alternative to military service shall be prescribed by law.

The provisions of Subarticle (a) are identical to those of Section 4 of Basic Law: The Military. Subarticle (b) codifies the ruling of the Supreme Court, according to which the standards for granting exemptions from military service or alternatives to military service come within the framework of “primary arrangements” which must be prescribed by the Knesset, by law.

Subchapter E: Security and Intelligence Forces

121. Security and Intelligence Forces

The government, and it alone, may establish security and intelligence forces, which shall be subject to its authority, and it shall bear responsibility for their actions; the modes of supervision by the Knesset over these forces shall be prescribed by law.

This provision completes the Chapter regarding the Israel Defense Force. It prescribes the government’s authority to establish security and intelligence

forces subject to its control. It is suggested that arrangements for Knesset supervision over the activities of these entities be determined under law.

Chapter on Legislation

This Chapter is intended to regulate the status of the Constitution as the supreme law, the legislative process for laws and for secondary legislation, and the additional arrangements regarding legislation. These provisions are not, by and large, included in Basic Laws. The provisions proffered here reflect the accepted Israeli view regarding the legislative process.

122. Laws

Laws shall be enacted by the Knesset by virtue of its power as the Legislative Branch.

This Article defines the source of legislative authority in the State.

123. Supremacy of the Constitution

Provisions of law shall be in accordance with the provisions of the Constitution.

This provision expresses the status of the Constitution as supreme law which prescribes the limits of the Knesset's legislative authority.

124. Prescribing Details to be Implemented by Law

A law may prescribe details necessary for implementing a constitutional provision.

This provision grants the Knesset the general authority to regulate, by law, general provisions which are prescribed in the Constitution.

125. Bills

- (a) A bill shall be submitted to the Knesset by the government or by a Knesset committee;
- (b) A bill of the government or of a Knesset committee shall be published in the official Gazette and shall be submitted to the Knesset;
- (c) A provisional bill of a Knesset member shall be brought for preliminary deliberation by the Knesset plenum; where the Knesset shall decide to approve the provisional bill, the bill shall be transferred to a Knesset committee; where the committee shall approve the provisional bill, the bill shall be published in the official Gazette in the version determined by the committee and shall be submitted to the Knesset;
- (d) The Knesset shall not begin deliberations on a bill until seven days after its publication in the official Gazette, unless the Speaker of the Knesset shall authorize an earlier date on special grounds regarding which the Knesset shall be notified;
- (e) Provisions regarding arrangements for the submission of bills and provisional bills and arrangements for their deliberation, to the extent not prescribed in this Chapter, shall be prescribed by law or in the Knesset's Rules of Procedure.

The provisions of this Article articulate the legislative processes customary in the Knesset and currently prescribed by the Knesset's Rules of Procedure.

126. Stages of Legislation

- (a) A law shall be passed upon three readings in the Knesset plenum;

- (b) A law shall be passed in the Knesset plenum by a majority of votes of Knesset members who voted; those abstaining shall not be counted among the quorum of votes.

The provisions of this Article articulate the legislative process customary in the Knesset and currently prescribed by the Knesset's Rules of Procedure. Subarticle (b) prescribes that the passage of a law is dependent upon its receiving the support by the majority of those who participate in the voting, without counting those abstaining, in such a manner as to negate the Knesset's authority to prescribe "reinforcing provisions," that is, to require a special majority for ordinary legislation.

127. New Version and Consolidated Version

The principles for determining a new Hebrew version of legislative material which existed on the eve of the foundation of the State and is still valid, and for determining a consolidated version of laws and the procedures for their preparation, shall be prescribed by law; in this Constitution, "legislative materials" – [means] a law or a regulation.

This provision grants validity to the customary arrangements for enacting a new version and a consolidated version of laws.

128. Regulations

Regulations are secondary legislation pursuant to law and have legislative status.

This provision defines the status of regulations: they are prescribed by virtue of authorization by law; they are characterized as "legislation," that is, as general

norms, and “have legislative status,” meaning they amend the existing legal situation, and accordingly, are legally binding.

129. The Supremacy of the Constitution and the Law

A regulation shall accord with the provisions of the Constitution or with a provision in the law. In this Constitution, “regulation” – includes a provision in a regulation.

This provision articulates the status of regulations in relation to the Constitution and to legislation.

130. Issuing Regulations

- (a) A law may authorize the government and the ministers, a local authority, another governmental authority, or an authority under law to issue regulations for the implementation of the law or to achieve the purposes prescribed therein;
- (b) One authorized to issue regulations may prescribe therein that the penalty for one who violates any of its provisions shall be a fine not to exceed the amount so prescribed under law, and may, if explicitly authorized to do so by law, prescribe a prison sentence not to exceed six months.

This provision replaces the general authority given to ministers to issue regulations, prescribed in Section 37 of Basic Law: The Government. By virtue of this provision, authorization by law is required to issue regulations. Subarticle (b) grants general authority to prescribe sanctions in the regulations should they be violated, while establishing the maximum prison sentence which the regulator may be authorized to prescribe in the regulations.

131. Knesset Supervision over Regulations

- (a) The Knesset shall supervise the issuing of regulations;
- (b) A regulation which prescribes offenses and punishments shall require the approval of one of the Knesset committees.

This provision determines the general supervisory authority over the issuing of regulations while stipulating Knesset approval as a condition for a regulation which prescribes offenses and punishments to enter into force. This provision prescribes a more general arrangement than that set out currently in Section 21A of Basic Law: The Knesset on this subject.

132. Publication in the Official Gazette

- (a) Laws and regulations shall be published in the official Gazette;
- (b) The version of the laws and regulations as published in the official Gazette shall be the binding version;
- (c) Provisions regarding the procedure for publishing and amending errors in the published version shall be prescribed by law.

This provision codifies the accepted approach, derived from the principle of the rule of law, regarding the obligation to publish laws and regulations, as a condition for their entering into force.

133. Application

- (a) The application of laws and regulations shall be at the start of the day of their publication in the official Gazette, unless they include a different provision on this matter, and all subject to the aforesaid in Article 26;

- (b) Notwithstanding that set forth in Subarticle (a), a regulation shall not be applied prior to its publication, unless the law shall have authorized its application as aforesaid, or for the purpose of amending a printing error;
- (c) It is possible to issue regulations by virtue of law even prior to their applicability should the matter be necessary for their implementation.

This provision establishes a presumption regarding negating the retroactive applicability of laws and regulations, prior to their publication date. Subarticle (a) does recognize the power of the legislator – or a regulator, if so authorized by the legislator – to grant retroactive validity to norms, but subject to that set forth in Article 26(f), “[...] no person shall be criminally liable for an act or omission which did not constitute a legal offense at the time of the act or omission, and no person shall be subjected to a penalty more severe than that prescribed by law at the time of committing the offense.” Subarticle (c) grants the authority to issue regulations by virtue of a law which has already been enacted, but has not yet entered into force, if necessary for the implementation of the law.

134. Extension of Validity of Laws and Regulations

Any law or regulation due to expire during the last two months of the term of the outgoing Knesset, or within four months after the Knesset shall have decided to dissolve itself, or during the first three months of the term of the incoming Knesset, shall remain in effect until the expiration of said three months.

This provision is identical to that set forth in Section 38 of Basic Law: The Knesset. It is intended to resolve the difficulties liable to arise from problems

in continuity regarding the work of the Knesset until the incoming Knesset actually begins to function.

Chapter on International Treaties

The goal of this Chapter of the Constitution is to regulate the issues of the State entering into international treaties. Powers on the foreign affairs level in Israel are not currently regulated by legislation. According to the accepted approach, these powers are given to the government by virtue of recognition of the existence of “general government powers” which the government possesses. As a result, the government is granted the power to recognize other states and foreign governments, to establish diplomatic relations with other states, and to grant diplomatic status to their representatives, and, similarly, to abstain from any of these. The power to enter into international treaties on behalf of the State is given to the government as part of the general governmental powers granted to it.

In general, entering into an international treaty entails two stages: first, execution of the treaty by the representative of the government and second, ratification of the treaty by the authorized state body. The treaty obligates the state only after its ratification (and in many cases, only after its ratification by a certain number of countries).

In certain countries (including the United States), upon ratification, a treaty becomes integrated into domestic law. In these cases, the need for granting ratification powers to the legislature is clear. On the other hand, in Israel – and similarly in England – the accepted approach is that entering into a treaty places obligations upon the State towards other countries, meaning that the treaty obligates the State on the level of international law, but the provisions of the treaty do not have force under domestic law unless they are explicitly adopted by the Knesset as law. Therefore, the courts have adopted the approach that entering into treaties – including their ratification – is a matter relating to the administration of state foreign relations, given to the authority of the government. At the core of this approach is also appreciation of the fact that granting the Knesset power to ratify treaties is liable to delay the ratification

process and therefore harm the efficient administration of the State's foreign affairs.

The view that the government has been given the power to ratify treaties, and not the Knesset, is under debate. It is not accurate to assert that the government is authorized to ratify treaties because, in any case, a Knesset law is required to ensure application of the treaty under domestic law. The difficulty with this assertion is threefold. First, the rule that treaties are not valid under domestic law is based to a great extent on the assumption that the authority for approval is given to the government and not the Knesset. In other words, lack of validity under domestic law is a product of granting the authority for approval to the government, not its explanation. Second, in recent years, the rule which negates the effect on domestic law as a result of entering into an international treaty, in the absence of a Knesset law, has been significantly limited. Third, in certain situations, entering into a treaty obligates the state to amend its domestic law. Although this is only an obligation on the international law level, practically, it does limit the Knesset's freedom of action to a great extent.

Consequently, the position that ratification of treaties is a foreign affairs issue for Israel – and therefore should be properly granted to the government – is not accurate. And indeed, many have asserted that it is appropriate to modify the accepted position on this issue and grant the Knesset the power of ratification. Recognition of the importance of the legislature's participation in the treaty ratification process is manifested in establishing arrangements by virtue of which the fact that the State has entered into a treaty is brought to the Knesset's attention. Nevertheless, it is clear that merely giving notice does not ensure proper Knesset supervision over treaties which the government executes on behalf of the State.

Therefore, it is suggested here that the government's power to ratify treaties should not be exercised until it has received the Knesset's approval. In accordance therewith, it is further proposed that the status of international treaties be amended so that they shall automatically become part of the State's domestic law. By establishing in the Constitution that treaties require Knesset ratification, modification of the accepted arrangement in this context becomes possible so that a treaty approved by the Knesset shall be deemed a law. This does not, however, negate the Knesset's power to depart from the provisions

of the treaty by legislating a subsequent law which contravenes the provisions of the treaty.

135. Definitions

[In this constitution] “treaty” – [means] an international agreement made in writing between the State of Israel and a foreign state, an international organization, or an entity recognized by international law, and regulated by international law, irrespective of the title of the agreement; “Ratification” – includes entering into a treaty.

This provision defines the extent of the applicability of this Chapter of the Constitution. The term “treaty” is defined in a broad manner so that the provisions of this Chapter shall apply even where the agreement is not specifically entitled a “treaty.”

136. Authority

The authority to enter into treaties shall be granted to the government.

It is suggested retaining the accepted approach that entering into treaties comes under the authority of the government in administering the State’s foreign affairs. It is the government which conducts negotiations for entering into a treaty on behalf of the State and which is authorized to enter into treaties on behalf of the State. This arrangement is necessary to ensure the possibility of conducting negotiations on behalf of the State. Nevertheless, as detailed in Article 137 below, this government power requires approval by the Knesset.

137. Knesset Approval

- (a) The government shall not ratify a treaty which requires ratification and shall not execute a treaty which does

not require ratification until after the treaty shall be submitted to, and approved by, the Knesset, unless the treaty shall be one of the following:

- (1) A treaty of a technical nature;
 - (2) A treaty for the implementation of a previous treaty;
 - (3) A treaty which is principally declarative;
- (b) Details regarding the Knesset's deliberations on the treaty aforesaid in Subarticle (a), including the date of the deliberations and the manner in which the Knesset's decision shall be published, shall be prescribed by law;
- (c) The Knesset may approve the treaties submitted, even with reservations.

This provision constitutes the main innovation of this Chapter of the Constitution. It is suggested explicitly prescribing that the government's power to ratify a treaty requires the Knesset's approval, except in the cases enumerated in this Article. In practice, over the last few decades, a constitutional custom has developed where treaties of particular importance – including treaties which involve the transfer of land, under State sovereignty or possession, to another sovereign – are ratified by the Knesset. The proposed arrangement is intended to solidify and even expand this custom so that it does not apply only to treaties and agreements of special import, such as political-military agreements, that are also currently brought, by custom, for Knesset approval before entering into force, but also to routine treaties and agreements such as international treaties which the State may enter, extradition treaties, and aviation and transportation treaties, subject to the restrictions enumerated in this Article.

138. Interim Provision

Treaties which the State of Israel shall have entered prior to the adoption of the Constitution shall be submitted to the Knesset in accordance with that set forth in Article 137.

This provision is intended to apply the new arrangement prescribed in Article 137 to treaties which the State of Israel has entered prior to adopting the Constitution.

139. Special Treaties

Where the Foreign Minister shall authorize in writing, after consulting with the Minister of Defense and the Minister of Justice, that for special reasons of State security and its foreign relations the treaty may not be submitted to the Knesset for approval, the government may ratify the treaty or execute it after receiving approval of a Knesset committee or subcommittee.

This provision allows the government to ratify treaties without submitting them to the Knesset for approval in situations where special reasons require not publicizing the contents of the treaties or the fact that they have been executed. In these situations, the government's authority of ratification is contingent upon receiving the approval of a committee or a subcommittee of the Knesset.

140. Execution by the President of the State

Where the Knesset shall approve a treaty with a foreign state or an international organization, the President of the State shall affix his or her signature upon a copy of the approving resolution.

A similar provision is also currently prescribed in Article 11(a)(5) of Basic Law: The President, but the extent of its applicability is limited in light of the fact that many treaties are not approved by the Knesset. The adoption of Article 137 will lead to the majority of treaties which the State enters being ratified by the Knesset, and accordingly, a copy of the approving resolution shall be signed, as a formal act, by the President.

141. Legal Force under Domestic Law

- (a) Where a treaty shall be approved by the Knesset as set forth in Article 137, it shall become part of the law of the State, and it shall have the status of law; for such purpose it shall be irrelevant whether the treaty shall require ratification and shall have been ratified, or whether the treaty shall not require ratification and shall have been signed;
- (b) Notwithstanding that set forth in Subarticle (a) the government may defer [the date on which] a treaty shall enter into effect under domestic law for a period of up to a year from the date of such treaty's ratification, or its signature, should it not require ratification;
- (c) Legislation shall be interpreted to the extent possible in a manner which shall accord with the treaties which the State of Israel shall have entered.

In recent years, there has been a noticeable trend towards greater recognition of the status of international law under domestic law than in the past. The prevalent basic distinction in this context is between arrangements recognized as “international custom” (“customary international law”) and other arrangements which originate from international treaties to which the State is a signatory (“codified international law”). To the extent arrangements of the first type are concerned, the rule in domestic Israeli law is that international custom is automatically incorporated into Israeli law, on a normative level of primary legislation, without requiring an act of incorporation by the legislator or the government. Nevertheless, the rule is that international custom is incorporated automatically into Israeli law only to the extent that it does not conflict with the provisions of existing primary legislation. On the other hand, the rule is that codified international law is not automatically incorporated into Israeli law unless explicitly adopted by Knesset legislation. To date, only some of the State's obligations on an international level have been incorporated into Knesset legislation, although various international treaties which Israel has

entered, especially in the realm of the protection of human rights, require their full incorporation into legislation. However, there are more than a few exceptions to the rule that codified international law is not automatically incorporated into Israeli law. First, the accepted approach is that treaties which Israel has executed have great significance in interpreting legislation, through an application of the presumption that legislation is not intended to conflict with a State commitment stemming from a treaty. Therefore, the tendency is to interpret provisions of the law in such a manner so as not to conflict with the provisions of the treaties to which the State is a signatory. Likewise, the rule is that the provisions set out in such treaties are meant to guide the governmental authorities in exercising their powers, and any deviation therefrom is liable to be considered unreasonable and therefore illegal.

This arrangement is unsatisfactory, as it leads to a fair number of violations of the State's international commitments. The difficulty in granting treaties the status of law stems from the fact that the authority to ratify is granted solely to the government, and the government should not be given the power to legislate by entering into treaties. The determination in the Constitution that treaties require Knesset approval allows the accepted arrangement on this issue to be modified, so that a treaty approved by the Knesset shall be considered law. This does not negate the Knesset's power to depart from the provisions of the treaty by legislating a subsequent law which contravenes the provisions of the treaty. Subarticle (b) is proposed in order to allow the government to defer the date on which the treaty enters into force under domestic law. Such a delay would allow for legislation which would appropriately integrate the provisions of the treaty into domestic law.

Chapter on the Judiciary

This Chapter regulates the powers of the Judiciary Branch, with respect to its examination of the constitutionality of legislation, and is based primarily on the provisions of Basic Law: The Judiciary. The principal innovation is in the Articles establishing the extent of judicial review of laws in reliance upon provisions of the Constitution, while making an exception (by means of

Articles 163-164) to the arrangements for examining the constitutionality of legislation and methods of interpretation.

142. Judicial Power

Judicial power shall be vested in the Judiciary Branch, composed of courts and tribunals of all types, entrusted with carrying out true justice.

This provision grants judicial power only to the Judiciary Branch. The principle of separation of powers requires that the Legislative Branch or Executive Branch refrain from employing judicial powers as they are neither neutral nor independent.

143. Courts

- (a) The following are the courts vested with judicial authority:
 - (1) The Supreme Court;
 - (2) A District Court;
 - (3) A Magistrate's Court;
 - (4) Another court designated as a court by law.In this Constitution, "judge" shall mean a judge of a court as aforesaid;
- (b) The courts shall be administered by the Minister of Justice and the President of the Supreme Court.

This provision enumerates those courts with the power to adjudicate. It is determined that, similar to the currently existing situation, the court system shall be administered jointly by the Minister of Justice and by the President of the Supreme Court.

144. Tribunals

Judicial authority shall also be vested in the following:

- (1) A religious tribunal;
- (2) Another tribunal;
- (3) Another authority established under law.

This provision distinguishes between courts, as enumerated in Article 143, and tribunals. The distinction is necessary because some of the provisions of this Chapter are applicable only to the courts. The tribunals are not part of the court system but are given judicial powers and therefore are part of the Judiciary Branch. By virtue of Article 156, tribunal judges are subject to the provisions of this Chapter, *mutatis mutandis*, by virtue of the special status of the tribunals, as detailed in the explanation to Article 156.

145. No Other Courts

No court or tribunal shall be established unless prescribed by law; no court or tribunal shall be established for a particular case.

This provision is similar to the one set out in Section 1(c) of Basic Law: The Judiciary. It is intended to ensure that the creation of courts or tribunals shall be accomplished through legislation, and its purpose is to prevent the establishment of a tribunal for a particular case in such a way as is liable to prevent fair and impartial judging.

146. Independence

- (a) In judicial matters, a person vested with judicial powers shall not be subject to any authority other than that of the law;
- (b) A judge shall not be permanently transferred from the locality where he or she is serving to a court in another

locality unless with the consent of the President of the Supreme Court or pursuant to a decision of the disciplinary tribunal for judges, and a judge shall not be appointed to an active position at a lower court without his or her consent.

This provision is similar to the provision set out in Sections 2 and 9 of Basic Law, expressing the obligation placed upon the judges to judge impartially and independently (Subarticle [a]), and protects the judges from attempts to interfere in their activities by threats to transfer them to another locality.

147. Publicity of Proceedings

A person vested with judicial powers shall judge in public unless otherwise prescribed by law or unless otherwise directed under law.

This provision expands the arrangement prescribed in Section 3 of Basic Law which applies only to the courts. It is suggested that the requirement for public proceedings be applied to all those authorized to judge unless otherwise prescribed by law. The publicity of proceedings is a central element in ensuring the public's trust in the Judiciary.

148. Appointment of Judges

- (a) A judge shall be appointed by the President of the State upon election by a Judges' Election Committee; In this Constitution, a "Permanently Appointed Justice" – [means] a justice appointed in accordance with this Article;
- (b) The Committee shall consist of nine members, namely, the President of the Supreme Court, two other justices of the Supreme Court, elected by such body of justices,

- the Minister of Justice and another minister designated by the government, two members of Knesset, elected by the Knesset, and two representatives of the [Israel] Bar Association elected by the National Council of the Bar. The Minister of Justice shall chair the Committee;
- (c) The Committee may act even should the number of its members be reduced, so long as it is not comprised of less than seven [members].

This provision is identical to the provision set forth in Section 4 of Basic Law: The Judiciary. It is suggested that the customary mechanism for appointing judges in Israel be retained.

149. Eligibility

- (a) The eligibility of judges shall be prescribed by law;
- (b) A judge who is not a citizen and resident of Israel shall not be appointed.

It is suggested that a requirement of residency be added to the constraint set out in Section 5 of Basic Law.

150. Declaration of Allegiance

A person appointed as a judge shall pledge allegiance before the President of the State where the language of the declaration shall be: “I pledge myself to bear allegiance to the State of Israel, to its Constitution, and to its laws, to dispense justice fairly, not to pervert the law, and to show no favor.”

The wording of this declaration is identical to the one prescribed in Section 6 of Basic Law, with the addition of “to its Constitution.”

151. Judges' Term

- (a) A judge shall assume office upon pledging allegiance;
- (b) A judge shall conclude his or her term upon any of the following:
 - (1) Retirement on pension;
 - (2) Resignation;
 - (3) Being elected or appointed to a position the holder of which is barred from being a candidate for the Knesset;
 - (4) A resolution by the Judges' Election Committee proposed by the chairperson of the Committee, or the President of the Supreme Court, or the Commission of Public Complaints against Judges and passed by a majority of at least seven members;
 - (5) A resolution by the disciplinary tribunal;
 - (6) Where the judge shall have been convicted in a final judgment of an offense which the convicting court shall have defined as involving moral turpitude;
- (c) A judge who has retired on pension may be appointed to a judicial position, with his or her consent, to the same court or tribunal, for such time, in such manner, and on such conditions as may be prescribed by law.

The provisions of this Article are identical to the arrangement set forth in Sections 7 and 8 of Basic Law. It is suggested that the sixth cause for terminating a judge's term, regarding a judge's conviction in a final judgment of an offense which the court has determined involves moral turpitude, be added.

152. Judges' Immunity

- (a) No criminal investigation shall be opened against a judge without the consent of the Attorney-General, and no indictment shall be filed against a judge other than by the Attorney-General;
- (b) Where a complaint shall have been filed, or a criminal investigation shall have been opened, or an indictment shall have been filed against a judge, the President of the Supreme Court may suspend such judge for such period as is determined.

This provision is identical to the arrangement set out in Sections 12 and 14 of Basic Law. It is suggested that the provision set out in Section 12(b) of Basic Law, regarding the composition of the court which will try the criminal case against the judge, be deleted from the Constitution.

153. Exclusivity of Office

A judge shall not engage in an additional occupation, and shall not carry out any public function, unless pursuant to law or upon the consent of the President of the Supreme Court and the Minister of Justice.

This provision is identical to the arrangement set out in Section 11 of Basic Law.

154. Disciplinary Proceedings

- (a) A judge shall be subject to the jurisdiction of a disciplinary tribunal which shall be established pursuant to law; members of the tribunal shall be appointed by the President of the Supreme Court;

- (b) Provisions as to the grounds for disciplinary proceedings, the modes of filing complaints, the composition of the bench, the powers of the disciplinary tribunal, and the disciplinary measures which it shall be authorized to impose shall be prescribed by law; the rules of procedure shall be in accordance with the law.

This provision is identical to the arrangement set out in Section 13 of Basic Law. It is suggested that determining the composition of the members of the disciplinary tribunal be left to the discretion of the President of the Supreme Court.

155. Commissioner for Public Complaints against Judges

A Commissioner for Public Complaints against Judges, who shall investigate complaints regarding the conduct of judges in the framework of discharging their duties, including the manner in which they conduct trials, shall be appointed.

This provision is intended to codify in the Constitution the status of the Commissioner for Public Complaints against Judges, acting by virtue of Commissioner for Public Complaints against Judges Law, 2002.

156. Judicial Authorities

The provisions of this Chapter regarding judges shall apply to others vested with judicial authority as well, *mutatis mutandis*, as shall be prescribed by law.

The provisions of this Chapter are meant to ensure the status of the judicial authorities. In principle, any person with judicial power should act in

accordance with the standards detailed in this Chapter, including the provisions on independence, immunity of the judicial official, and exclusivity of office. This provision expresses, on a theoretical level, this approach. At the same time, this provision limits the applicability of such provisions in this Chapter, regarding judicial authorities who do not serve as judges in the courts, to their application under law. This arrangement expresses a balance between the theoretical aspiration that all those vested with judicial authority in Israel should act in accordance with such standards and the recognition of the uniqueness of certain officials, especially in the religious tribunals. Application of religious law in the religious tribunals is accompanied, under existing arrangements, by a recognition of the limited applicability of the rules which apply to judicial officials.

157. The Supreme Court

- (a) The Supreme Court shall hear appeals against judgments and other decisions of the District Courts;
- (b) The Supreme Court, when sitting as the High Court of Justice, shall hear petitions against the decisions, actions, or omissions of persons or entities fulfilling public functions by law;
- (c) The Supreme Court shall consist of the number of judges which shall be determined by the Knesset in a resolution pursuant to the recommendation of the Judges' Election Committee, such number shall not be less than 9 nor exceed 15;
- (d) Other powers of the Supreme Court and its composition shall be prescribed by law.

This provision prescribes the powers of the Supreme Court. Subarticle (a) is identical to the current version set forth in Section 15(b) Basic Law. Subarticle (b) defines the authority of the High Court of Justice differently. Under the arrangement prescribed in Section 15(d) of Basic Law, the Supreme Court is authorized to issue various orders detailed there and, according to Section

15(c), to hear “matters which it deems it necessary to grant relief for the sake of justice and which are not within the jurisdiction of another court or tribunal.” It is suggested replacing this residual language with more precise language, regarding hearing “petitions against the decisions, actions, or omissions of persons or authorities fulfilling public functions by law.” This version deals only with the subject matter jurisdiction of the court; it defines it, and does not refer to the relief which the court may grant, the grounds on which it may base itself, or the question of standing.

The provision of Article 157(c) alters the present arrangement. Basic Law: The Judiciary does not establish the number of judges serving in the various courts. Section 25 of the Courts Law (Consolidated Version), 5744-1984 states: “In the Supreme Court there shall be a number of judges as determined by the Knesset in its decision.” This type of power is inappropriate as it is liable to be used improperly. Therefore, it is suggested that a maximum and minimum number of Supreme Court Justices be established in the Constitution and that the Knesset’s authority on this point be limited to following the recommendation of the Judges’ Election Committee.

158. Other Courts

The establishment, powers, composition, location of sessions, and areas of jurisdiction of the District Courts, the Magistrates’ Courts, the tribunals, other courts, and other bodies vested with judicial authority shall be by law or in accordance therewith.

It is suggested that the details of the powers of the remaining courts and tribunals be left to be legislated by law, similar to the arrangement currently prescribed in Section 16 of Basic Law.

159. Appeal

A judgment by a court of first instance, other than a judgment of the Supreme Court, shall be subject to appeal as of right.

This provision is identical to the arrangement prescribed in Section 17 of Basic Law.

160. Further Hearing

In a matter adjudicated by the Supreme Court by a bench of three or five, a further hearing may be held in the Supreme Court by a bench of a greater number on such grounds and in such manner as shall be prescribed by law.

This provision is similar to the arrangement prescribed in Section 18 of Basic Law. It is suggested that the possibility of conducting an additional hearing on a matter adjudicated by the Supreme Court, ruled on by a bench of five justices, as has been held by the Supreme Court, should be explicitly set forth.

161. Retrial

In a criminal matter for which a final judgment has been rendered, a retrial may be held on such grounds and in such manner as shall be prescribed by law.

This provision is identical to Section 19 of Basic Law.

162. Precedent

- (a) A ruling laid down by a court shall guide a lower court;
- (b) A ruling laid down by the Supreme Court shall bind any court other than the Supreme Court.

This provision is identical to the arrangement prescribed in Section 20 of Basic Law.

163. Constitutional Justiciability

- (a) The Supreme Court, and it alone, by a bench of no less than two-thirds of the body of Permanently Appointed Justices, may rule that a law is not valid because it is unconstitutional;
- (b) Where a doubt regarding the validity of a law because of its unconstitutionality shall arise before a judicial authority, and it shall be ascertained that it is impossible to decide the matter without determining the aforesaid issue of validity, and [such judicial authority] cannot remove the doubt and affirm the validity of the law, it shall bring the issue before the Supreme Court; the issue of the validity of a law may be brought for a ruling by the Supreme Court, according to the arrangements prescribed in this Article, by a litigant through a direct appeal of the decision, as set forth at the beginning of this Subarticle;
- (c) A question referred according to Subarticle (b) shall be brought before the Supreme Court with a bench of three justices. Where the Supreme Court shall rule that there is a basis for the conclusion set forth in Subarticle (b), the issue shall be brought before a bench of no less than two-thirds of the body of Permanently Appointed Justices;
- (d) Where a doubt shall arise, as set forth in Subarticle (b) during a Supreme Court hearing conducted by one justice, such justice shall raise the issue before a bench of three justices, as stated in Subarticle (c). Where a doubt shall arise, as set forth in Subarticle (b), during a Supreme Court hearing held before a bench of three or more justices, the bench adjudicating the issue shall act with the authority of the three justices as set forth in Subarticle (c);

- (e) Where the Supreme Court shall rule that it should not hear the matter referred by a judicial authority or by a litigant, or where it shall have decided the issue and ruled that the law is valid, the one vested with judicial authority shall continue to hear the matter in accordance with the decision of the Supreme Court;
- (f) Where the Supreme Court shall so rule in Subarticle (a), it may give any directive or relief which it deems necessary under the circumstances of the case, including ruling regarding the date as of which a provision will be repealed.

This provision regulates the manner in which judicial review of laws is applied. Applying judicial review to enforce the supremacy of the basic principles of the system, as such are articulated in the Constitution, to Knesset legislation is preferable to the alternatives: absolutely refraining from enforcing the restrictions or granting the authority to do so to a political entity. The experience of the last decade demonstrates that judicial review has a moderating influence upon the Knesset. The Constitution is meant to restrict the power of the majority in order to protect the basic values of the system, and therefore the power to interpret the provisions in the Constitution and enforce the directives therein should be granted to an entity which is neither political nor subject to public opinion.

Subarticle (a) proposes that the power to apply judicial review to laws be unified in the Supreme Court, sitting as an expanded bench. This arrangement is meant to express the special import given to judicial review of Knesset legislation and the exceptional nature of repealing primary legislation. Nevertheless, there is no need to set a requirement for a special majority of justices to hear the matter as a condition for repealing the law.

Subarticle (f) codifies the accepted approach regarding partial repeal and deferred repeal of a piece of legislation. This approach expresses the recognition of the need to consider the public interest and the public's possible reliance upon the provisions of the law before it is repealed.

164. Constitutional Non-justiciability

- (a) Article 163 shall not apply with respect to a piece of legislation which concerns any of the topics enumerated in Subarticle (c);
- (b) Where the court shall interpret legislation which concerns any of the topics enumerated in Subarticle (c), it is not obligated to grant interpretive preference to the provisions of this Constitution;
- (c) The topics are as follows:
 - (1) Joining a religion, including conversion, belonging to a religion or renouncing it;
 - (2) The authority of the religious tribunals at the time of establishing this Constitution, conducting marriages and divorces according to religious law, creating partnerships and their dissolution in accordance with law, and the application of religious law to issues of personal status, which as at the establishment of the Constitution are adjudicated pursuant to the personal law of the parties;
 - (3) The Jewish character of the Sabbath and Jewish holidays in the public domain;
 - (4) Maintaining Jewish dietary laws in governmental institutions;
 - (5) Granting Israeli citizenship to relatives of one eligible to immigrate to Israel;
- (d) That stated in this Article does not derogate from the obligation of the State to recognize marriages and divorces of couples according to their religious law and so, too, does not derogate from its obligation to establish a spousal registry according to which a partnership covenant shall be recognized pursuant to law, which shall also regulate its dissolution.

This provision deals with a limited number of core issues under public debate; it is intended to allow for a national compromise in adopting the Constitution. This provision does not prescribe any arrangement on the subjects enumerated in Subarticle (c), and it does not preserve laws existing at the time of adopting the Constitution other than as stated in the general Articles on the preservation of laws in the Chapter on General Provisions in this Constitution. Instead, the provision leaves the regulation of these topics for the public to determine through the political system, as it may deem appropriate from time to time.

The special nature of these subjects necessitates that they be determined by the Legislative Branch, as in the past, while neutralizing the influence of the Constitution. Therefore, the constitutional arrangement negates the power of the courts to repeal a piece of legislation on these issues and prescribes that the interpretation of legislation on these issues does not have to prefer the values or provisions prescribed in the Constitution over the values or provisions originating in an ordinary law. The proposed arrangement expresses recognition that, on these issues, the final word shall be given to the decisions of a representational body – the Knesset.

The provision of Subarticle (d) expresses a compromise arrangement whereby recognition of the right to marriage is not prescribed in the Constitution, but it is clarified that this does not negate the State's obligations in this sphere.

Chapter on the State Comptroller and Commissioner for Complaints from the Public

This Chapter regulates the activities of the State Comptroller, who serves also as the Commissioner for Complaints from the Public. The provisions of this Chapter are based upon Basic Law: The State Comptroller.

165. The State Comptroller

The State audit shall be performed by the State Comptroller.

This provision is identical to Section 1 of Basic Law: State Comptroller.

166. Essence

The State Comptroller:

- (a) Shall audit the actions of the State, government ministries, every enterprise, institution, or corporation of the State, local authorities, and entities or other institutions which are subject by law to audit by the State Comptroller;
- (b) Shall inspect the legality of the actions, integrity, managerial norms, efficiency, economy, and activities for the public welfare, of the audited bodies, as well as any other matter which he or she deems necessary;
- (c) Shall investigate complaints from the public about entities and persons, as provided by law or pursuant thereto: in this capacity the State Comptroller shall bear the title “Commissioner for Complaints from the Public”;
- (d) Shall fulfill other functions as shall be prescribed by law.

This provision is identical to Sections 2, 4, and 5 of Basic Law: State Comptroller.

167. Independence and Accountability to the Knesset

- (a) In carrying out his or her functions, the State Comptroller shall be accountable only to the Knesset and not subject to the government;
- (b) The budget of the State Comptroller’s Office shall be determined by the Finance Committee of the Knesset, upon the recommendation of the State Comptroller, and shall be published together with the State budget.

This provision is identical to Sections 6 and 10 of Basic Law: State Comptroller.

168. Elections and Term of Office

- (a) The State Comptroller shall be appointed by the President of the State, pursuant to a decision by the Knesset;
- (b) The State Comptroller shall be elected by the Knesset in a secret ballot;
- (c) The State Comptroller shall serve for one term of seven years.

This provision is identical to Section 7 of Basic Law: State Comptroller.

169. Eligibility

Any Israeli citizen who is a resident of Israel shall be eligible to be a candidate for the office of State Comptroller; additional qualifications for eligibility may be prescribed by law.

This provision is identical to Section 8 of Basic Law: State Comptroller.

170. Exclusivity of Office

The State Comptroller shall not engage in any additional business or occupation and shall not fill a public function unless by law.

This provision is identical to the arrangement prescribed in Section 7 of the State Comptroller Act, 5718-1958.

171. Declaration of Allegiance

The elected State Comptroller shall assume office after making the following declaration to the President: “I pledge allegiance to the State of Israel, to its Constitution, and to its laws, and to discharge my duties as State Comptroller faithfully.”

This provision is identical to Section 9 of Basic Law: State Comptroller other than the inclusion of the words “to its Constitution.”

172. Duty to Provide Information and Material

An entity subject to audit by the State Comptroller shall, upon request, immediately provide the Comptroller with information, documents, explanations, or any other material which the Comptroller deems necessary for purposes of the audit and investigation of complaints.

This provision is identical to Section 3 of Basic Law: State Comptroller.

173. Results of Audit and Contact with the Knesset

- (a) The State Comptroller shall submit reports and opinions within the scope of his or her duties to the President of the State and to the Knesset and shall publish them publicly;
- (b) The arrangements for handling the results of the audit shall be prescribed by law.

This provision is similar to Section 12 of Basic Law: State Comptroller.

174. Termination of Term

Removal of the State Comptroller from office shall be pursuant to a Knesset decision, by a majority of two-thirds of its members.

This provision is similar to Section 13 of Basic Law: State Comptroller.

Chapter on Local Authorities

This Chapter regulates the status of the local authorities: they have broad powers, and their manner of operation decisively influences the life of the citizen. It is suggested that the basic principles regarding the nature, powers, activities, supervision, and control of the local authorities be set forth.

175. Essence and Powers

- (a) The local authorities shall administer the local public affairs to benefit their residents, while considering the general public welfare, and subject to government policy in spheres which shall be prescribed by law;
- (b) The powers of the local authorities to shape and implement policy, to provide services, and to administer their internal affairs shall be prescribed by law;
- (c) The local authorities shall encourage the participation and involvement of their residents in their activities.

This provision establishes the basic principles of the activities of the local authorities. Subarticle (a) delineates the obligation imposed upon the local authorities to act in promoting the welfare of the residents of such local authority, as its primary and central goal, and simultaneously, the obligation to consider the general public welfare and government policy. Subarticle (b) prescribes that the local authorities have the power to shape and implement

policy, and to administer their internal matters. It is proposed that the precise division of powers between the local authorities and the central government not be codified in the Constitution, but there is an obligation imposed to prescribe by law such division of power. Subarticle (c) expresses the importance of public participation in the activities of the local authority.

176. Elections and Elected Institutions

- (a) A representational council, which shall be elected by the residents of the authority in general, direct, equal, and secret elections, shall serve in every local authority, with the power to issue regulations and holding additional powers to be prescribed by law;
- (b) The procedures for the election, eligibility, and powers of the head of the local authority shall be prescribed by law;
- (c) The term of office of the head of the local authority and the members of the council shall be five years;
- (d) The grounds for terminating the term of the head of the local authority or the members of the council shall be prescribed by law.

This Article regulates the basic principles for the activities of the elected bodies in the local authorities. It is suggested that the Constitution establish two bodies in the local authority: the council and the head of the authority. The main arrangement established in the Constitution is the status and the powers of the council: its election by the residents of the local authority in general, direct, equal, and secret elections, and its power to issue regulations. It is also suggested that the length of term of the head of the authority and the council be codified in the Constitution. Additional arrangements shall be prescribed by law.

177. Financing and Taxes

The local authority shall have powers regarding matters of financing and taxes:

- (1) To issue regulations which apply to the authority;
- (2) To impose compulsory payments and to collect fees; all as shall be prescribed by law.

This provision establishes a basic principle: the local authority has the power to enact secondary legislation and to impose compulsory payments and collect fees. These powers are necessary to ensure freedom of action for the authority and to ensure the possibility that it may set policy and act to promote the interest of its residents. Nevertheless, it is proposed that detailed arrangements on this issue not be prescribed in the Constitution in order to allow for flexibility and adjustments in accordance with the public's needs and priorities.

178. Supervision and Control

- (a) Supervision and control of the local authority and its activities shall be conducted by the local authority and the State authorities pursuant to law;
- (b) A law may prescribe powers to the government:
 - (1) To suspend or remove elected officials in the local authority from office on grounds and in a manner which shall be prescribed by law;
 - (2) To suspend the legal force of a regulation issued by the local authority, or to repeal it, where the government shall find that it harms, to an extent which is greater than required, the public welfare, another local authority, or the general policy of the government.

This provision delineates the main supervisory powers given to the central government regarding the activities of the local authorities. Experience has shown that there are often operative failures in the local authorities which cause serious harm to the residents in the authority. It is proposed that recognition of the local authorities' powers be balanced by recognizing the obligation to supervise and control the actions, both of the local authority itself and by the state authorities, in accordance with the arrangements which shall be prescribed by law. Likewise, it is proposed that the government's authority to remove publicly elected officials in the local authorities from office, and suspend the validity of regulations issued by the local authority, be recognized, provided this is by virtue of a law and under conditions enumerated in this Constitutional provision.



Part Four

Arrangements Regarding the Status of the Constitution

Chapter on Amending the Constitution

The provisions of this Chapter regulate the manner in which constitutional amendments are to be adopted. These provisions, which should have been included in Basic Law: Legislation, are not currently codified in any Basic Law. The proposed arrangement “safeguards” the constitutional provisions against being altered by a simple majority. Nevertheless, it is possible for the Knesset to amend the Constitution by a special majority (two-thirds of the Knesset members) and with a special procedure (four readings, where the fourth reading takes place at least six months after the third reading). It is suggested that a uniform arrangement be prescribed for amending any constitutional provision, without differentiating among the various provisions. Likewise, with regard to the method of adopting amendments, it is suggested that “formal” safeguards suffice, without a need for “substantive” safeguards which would limit the content of the possible constitutional amendments.

179. Amendments to the Constitution

Amendments to the Constitution shall be legislated by the Knesset, by virtue of its power to establish a Constitution.

The Knesset, as the Constitutive Authority for the Constitution, is the authorized body to establish the Constitution and is also the authorized body, by virtue of the Constitution, to amend it.

180. Initiative to Amend the Constitution

A bill to amend the Constitution shall be submitted to the Knesset by the government, by the Knesset's Constitution Committee, or by at least one-third of Knesset members who shall submit their proposal jointly; the bill shall be published in the official Gazette and shall be submitted to the Knesset.

It is suggested granting the government, the Knesset's Constitution Committee, and at least forty Knesset members the power to propose constitutional amendments.

181. Stages of Amending the Constitution

- (a) A constitutional amendment shall be adopted in four readings in the Knesset plenum;
- (b) A constitutional amendment shall be accepted in its first, second, and third readings in the Knesset plenum by a majority of two-thirds of the Knesset members;
- (c) During the deliberations between readings, the Knesset's Constitution Committee may decide to amend the bill as it deems fit, provided that it shall not exceed the limits of the subject of the bill or that it shall not be necessary to bring other constitutional articles into accord with the proposed amendment;
- (d) A constitutional amendment shall be adopted in the fourth reading in the Knesset plenum, in the version which shall have been approved in the third reading, by a majority of two-thirds of the Knesset members; the fourth reading shall be at a Knesset session intended solely for this purpose which shall be held not earlier than at least six months after the conclusion of the third reading.

It is proposed that requirements for a special majority and a special procedure to amend the Constitution be established to ensure that the provisions of the Constitution will not be amended frequently or to promote narrow and short-term interests. The Constitution is intended to constitute a fundamental document, codifying society's basic principles, and therefore such frequent changes should not be permitted. Nevertheless, amendments should be allowed, whether the provisions be found lacking or whether it transpires that a deep-seated change has occurred in society's basic outlook. It is suggested that constitutional amendments be permitted through a process of four readings in Knesset. The first three readings are similar in essence to the process for enacting laws, and the fourth reading shall be conducted at a later date, at least six months after the third reading, in order to allow for public discussion and an additional examination of the proposed amendment. The deferment also increases the chances that amendments will not be made to promote narrow and short-term interests.

Moreover, it is suggested that a constitutional amendment require a special majority of two-thirds of Knesset members for each one of the four readings. This majority – the support of at least 80 Knesset members – is generally greater than those Knesset members in a coalition. Therefore, this requirement should ensure that the amendment will not be intended to promote the narrow interests of the government, as, in most cases, adopting the amendment will be contingent upon receiving the support of Knesset members from the opposition. Yet, it is suggested sufficing with a majority of two-thirds, and not requiring a larger majority, in order to allow for constitutional amendments when circumstances justify such an amendment.

182. Submission and Deliberation

Provisions regarding the procedure for submitting bills for a constitutional amendment, and regarding the procedure for their deliberation in the Knesset plenum and in the Constitution Committee, to the extent not prescribed in this Chapter, shall be prescribed by law.

Similar to the legislative process, it is suggested sufficing in this Chapter with setting basic principles and supplementing the provisions of the Constitution through ordinary legislation.

183. Publication

- (a) A constitutional amendment shall be published in the official Gazette;
- (b) The version of a constitutional amendment as published in the official Gazette shall be the binding version;
- (c) Provisions regarding the procedure for publication and amending errors shall be prescribed by law.

A constitutional amendment is a binding legal norm, and therefore all the accepted arrangements regarding legislation apply to it, including an obligation to publicize it and amend printing errors.

184. Application

A constitutional amendment shall enter into force as of the date of its publication in the official Gazette unless the amendment shall prescribe a later date.

A constitutional amendment alters the existing law. It is therefore necessary that this change apply only prospectively (and not retroactively), that is, as of the date of its publication in the official Gazette or a later date if so prescribed in the amendment.

Chapter on State of Emergency

This Chapter regulates the powers of the government during an emergency.

A state of emergency is one in which the State is endangered by an existential threat, for instance, due to war or where the lives of the residents

are endangered due to a natural disaster. In such a situation, it is likely that a need will arise to take special steps in order to contend appropriately with the state of emergency. These special needs may be expressed in a requirement to impose severe limitations on individuals' freedom of action, including freedom of movement, freedom of expression, freedom of occupation, the right to property, and more, or in the need to utilize exceptional enforcement and disciplinary measures.

From a legal standpoint, recognition of these special needs may be expressed in two ways: first, a state of emergency is likely to influence the way in which government powers, existing even where there is no state of emergency, are exercised. So, for example, in an emergency, the Knesset may be authorized, through legislation, to limit basic freedoms to a greater extent than that which is permitted during a non-emergency as long as the restriction is indeed necessary to contend with the state of emergency; likewise, the Executive Branch may do the same when exercising its own powers. In such cases, the emergency is not a condition for exercising the power, but it may influence the way in which it is employed. Second, a state of emergency can instigate a grant of power through legislation, the exercise of which is limited to emergency periods. By virtue of the fact that these powers are activated only in an emergency, they are characterized not only by a grant of power to impose far-reaching limitations on individual freedoms, but also by being exceptions to the accepted basic principles regarding the rule of law (in its substantive meaning) and separation of powers. Thus, for example, by virtue of the authority to issue emergency regulations, the government is entitled to invalidate laws and has the power to place an individual in "administrative detention" without the need to conduct a legal process to prove guilt. This Chapter deals with arrangements of the latter type.

In Israel, a state of emergency was officially declared immediately upon the establishment of the State. Ever since, the State has, legally, been under a state of emergency. Recognition of the fact that the Executive Branch is likely to need special powers during a state of emergency has caused the Legislature to grant the government, in a string of laws, special powers which it may exercise only when the State is in a declared state of emergency. There are four principal provisions: authorizing the government to issue emergency

regulations; authorizing ministers to place far-reaching restrictions on the freedom of occupation and the manner of supply and consumption of goods and services (Supervision of Goods and Services Law, 5717-1957); authorizing the Minister of Defense to order the detention of a person for a period of up to six months (Emergency Powers [Detentions] Law, 5739-1979); and seriously limiting the freedom of association, freedom of expression, and the right to property, by virtue of the government's power to declare that a group of people is a "terrorist organization" (Prevention of Terror Ordinance, 5708-1948). The primary means which the Knesset has adopted to prevent the abuse of these powers is to determine that they are given to the government only for the period for which the Knesset has declared that "a state of emergency exists in the State."

This Chapter regulates the declaration of a state of emergency and the powers to issue emergency regulations. In this framework, it is suggested that a State of Emergency Committee be established in the Knesset, which may declare a state of emergency when required by the circumstances, even before it is possible to convene the Knesset, and that such Committee be entitled to issue emergency regulations.

185. Definition of Emergency Conditions

For purposes of this Chapter, "emergency conditions" – [means] a state of war or severe and immediate threat to the existence of the State, its security, its constitutional order, or the lives of its residents due to a natural disaster or health hazard.

This provision defines the "emergency conditions" under which the Knesset may declare a state of emergency. In Section 38 of Basic Law: The Government, and similarly in the arrangement set out in Section 9 of the Law and Administration Ordinance, there is no detailed description of the circumstances justifying a declaration of a state of emergency. This lacuna is one of the reasons that a continuous state of emergency has been in effect since the establishment of the State. The definition of "emergency conditions" is intended to cover

circumstances which are likely to warrant exercising the special powers granted to the government during an emergency. The definition brought here is very limiting as it covers only a severe and immediate threat.

186. State of Emergency Committee

The Knesset shall establish from among its members a State of Emergency Committee which shall appoint 20 members of the Knesset; the Chair of the Committee shall be the Speaker of the Knesset, and representation on the State of Emergency Committee shall be, to the extent possible, according to the relative strengths of the Knesset parties, provided that every party which has six or more members shall have a representative on the Committee; a number of parties may inform the Speaker of the Knesset that they constitute one party for the purposes of representation on the Committee; the procedure for establishing the Committee shall be prescribed by law.

According to the arrangements set forth under Section 38(c) of Basic Law: The Government, the government may declare a state of emergency if it believes it necessary to do so before it is possible to convene the Knesset for such a purpose. The arrangement proposed here is intended to replace that provision by authorizing a special Knesset committee with representatives from the Knesset parties. The assumption is that it will be possible to convene this committee in order to declare an emergency situation even under those special circumstances where the Knesset cannot convene.

187. Declaration of State of Emergency

- (a) Where the Knesset shall determine that emergency conditions exist in the State, it may, at its initiative or the recommendation of the government, declare a state of emergency for a period of time as shall be

- determined in such declaration, provided it does not exceed half a year; the Knesset may repeat such declaration of a state of emergency as aforesaid;
- (b) Where the State of Emergency Committee shall determine that emergency conditions exist in the State, and that, due to the urgency of the situation as a result of the emergency conditions, a state of emergency should be declared even before the Knesset may be convened, it may declare a state of emergency; the force of such declaration shall expire seven days after the date it shall be made should it not be approved or revoked prior to that date by the Knesset in a decision by a majority of its members; where the Knesset shall not have convened, the Committee may repeat such declaration of a state of emergency as set forth in this Subarticle;
 - (c) Declarations of the Knesset or the State of Emergency Committee of the Knesset shall be published in the official Gazette. Where it is not possible to publish a declaration of the state of emergency in the official Gazette due to the emergency conditions, the declaration shall be published in another appropriate manner provided it shall be published in the official Gazette as soon as it shall become possible to do so;
 - (d) The Knesset may, at any time, revoke the declaration of a state of emergency; an announcement of such revocation shall be published in the official Gazette.

The arrangement proposed here regarding the declaration of a state of emergency is similar in principle to that set out in Section 38 of Basic Law: The Government. The main differences are: first, and as mentioned above, it is suggested defining the “emergency conditions” under which the Knesset may declare a state of emergency; second, the time period covered by the declaration

is shortened from a year to up to half a year. Experience has shown that there is no justification for applying the declaration for a continuous period of a year. A true state of emergency, which could justify the use of emergency powers, is short by nature, and therefore, it is appropriate to limit the length of the period during which the declaration is in force.

188. Emergency Regulations

- (a) From the time that a state of emergency shall have been declared, the Knesset's State of Emergency Committee may issue emergency regulations which are necessary for the defense of the State or the public or for the maintenance of supplies and essential services;
- (b) Where the Prime Minister shall determine, after consulting with the Speaker of the Knesset, that it is not possible to convene the Knesset's State of Emergency Committee at the necessary time under the circumstances, because of the emergency conditions, and that there is an urgent and critical need to issue emergency regulations, he or she may issue them or authorize a minister to issue them; emergency regulations shall be submitted to the Knesset's State of Emergency Committee as soon as possible after being issued;
- (c) Emergency regulations shall enter into force upon being published in the official Gazette; should it not be possible to publish them in the official Gazette, they shall be published through other appropriate means provided that they shall be published in the official Gazette as soon as it shall become possible to do so;
- (d) Emergency regulations shall have the power to amend any law, temporarily suspend its validity, or set conditions therein, and may also impose or increase taxes or other compulsory payments provided there is

- no other provision in the Constitution or by law;
- (e) Emergency regulations shall not have the power to amend the provisions of the Constitution, temporarily suspend their validity, or set conditions therein, however, the emergency regulations may order an infringement of rights enumerated in the Part on Basic Human Rights or the deferment of dates pursuant to this Constitution, provided such infringement of rights or deferment of dates shall occur while preserving the values of the State, for a necessary purpose and for a period and to an extent not greater than required. Notwithstanding the aforesaid, the emergency regulations may not discriminate on the basis of race, religion, nationality, gender, ethnicity, country of origin, disabilities, or any other grounds, nor shall capital punishment, torture, or slavery be permitted;
 - (f) Emergency regulations shall not have the power to violate the constitutional status and functions of the Supreme Court, infringe upon the continued functioning of the central or local governmental institutions where the circumstances shall not have derogated from their ability to function, prevent recourse to the courts, or to prescribe a punishment retroactively;
 - (g) Emergency regulations which prescribe provisions as aforesaid in Articles 188(d) or (e) shall not be issued, and arrangements, measures, or powers shall not be implemented by virtue thereof, except to the extent warranted by the state of emergency, and provided there is no possibility to act through legislation within the necessary time period;
 - (h) The validity of the emergency regulations shall expire three months from the date on which they were

promulgated unless their force shall be extended by law or where they shall have been revoked by the Knesset by law or by a decision of a majority of Knesset members;

- (i) Where the state of emergency shall have ceased to exist, the emergency regulations shall continue to exist for the period for which they are valid, however, not more than sixty days after the end of the state of emergency and provided they shall not be implemented other than for the purpose of completing the execution of an individual order issued before the end of the state of emergency.

This provision is intended to replace the arrangement set out in Section 39 of Basic Law: The Government, regarding the issuing of emergency regulations. Under a state of emergency, it is likely that legislation will need to be amended quickly in order to allow the State to contend with the emergency situation properly. To this end, the government is given the authority to issue emergency regulations which have the power to “amend any law, temporarily suspend its validity or set conditions therein, and may also impose or increase taxes or other compulsory payments [...]” (Section 39(c) of Basic Law: The Government). In other words, unlike “ordinary” secondary legislation, which concerns government legislation subject to primary legislation, the authority to issue emergency regulations grants the government legislative authority on par with that of primary legislation while circumventing the Knesset. Moreover, emergency regulations enter into force even where they are not published in the official Gazette, provided it is not possible to so publish them (although they must then be published in another appropriate manner) (Section 39(h) of Basic Law). This is a serious violation of the basic principles of the democratic system regarding the separation of powers and the rule of law, in their substantive sense. It is therefore proposed that the authority to issue emergency regulations be severely curtailed.

One such restriction is that power is granted to the State of Emergency Committee and not to the government. Granting authority to a committee lessens the chance of a violation of the principle of separation of powers that arises out of the issuing of regulations, mainly by virtue of the fact that the Knesset parties are represented on the Committee, including representatives of the opposition. Subarticle (b) vests in the Prime Minister the authority to issue regulations only under exceptional circumstances, where there is no possibility of convening the State of Emergency Committee. A second restriction is that prescribed in Subarticle (a), regarding the purpose of the regulations, and it is identical to that prescribed in Section 39(a) of Basic Law. This restriction has been interpreted by the courts as limiting, to a great extent, the authority to use this power.

Subarticles (c) and (d) prescribe provisions similar to those set forth in Sections 39(c) and (d) of Basic Law. They express the necessity of having the means to amend the existing legislation swiftly due to emergency conditions. Subarticle (e) prescribes a new arrangement intended to allow for a different balance between the individual's freedoms and the public interest in times of emergency. Nevertheless, it ensures proper protection of such individual freedoms. Subarticle (f) completes this arrangement by establishing absolute protection of certain interests, inspired by the International Covenant on Civil and Political Rights. Subarticle (g) limits the use of the power to issue emergency regulations, in the spirit of the restriction set out in Section 39(e) of Basic Law. It adds the requirement that "there is no possibility to act through legislation within the necessary time period," in light of court rulings on this issue.

Chapter on General Provisions

189. Interpretation

The substance and purpose of the Constitution shall guide its interpretation.

This provision is intended to clarify the sources of Constitutional interpretation: the substance of the Constitution – to express the basic values of the system; and the purpose of the Constitution – to codify basic principles in a formal document which limits the powers of the various branches of government.

190. Eligibility

Conditions regarding the eligibility of the President of the State, ministers, one vested with judicial authority, or the State Comptroller may be prescribed in law in addition to those set out in the Constitution.

This provision clarifies that the conditions for eligibility prescribed in the Constitution for serving in certain offices are not exhaustive and may be supplemented through legislation.

191. Ineligibility for Office

- (a) A person shall not be eligible for the office of the President of the State, Knesset member, minister, one vested with judicial authority, or the State Comptroller if convicted in a final judgment of an offense which the court shall have determined in its ruling as involving moral turpitude and where, on the day of assuming office, ten years have not yet passed since the day of such verdict or completion of serving the sentence, whichever is the later;
- (b) Where the court shall not have determined the issue of moral turpitude in its ruling, the court shall determine whether the offense involves moral turpitude.

This provision unifies various provisions in different Basic Laws and prescribes a general restriction on serving in governmental positions, including membership in Knesset, for one convicted of a crime which involves moral

turpitude. A similar, though not identical, provision applies to members of the Knesset in Section 6 of Basic Law: The Knesset, and it is suggested here that it be applied to other officials. The proposed arrangement is not based on the severity of the punishment imposed but rather on the severity of the action for which convicted.

192. Salary

The President of the State, Prime Minister, ministers, deputy ministers, members of Knesset, State Comptroller, and judges shall receive their salary from the State Treasury as shall be prescribed by law.

This provision unifies various provisions included in different Basic Laws and prescribes a general norm: the salary of officials listed herein shall be prescribed by law.

193. Validity of Laws – Temporary Order

Legislative provisions, which but for the Part on Basic Human Rights, would have been valid on the eve of the commencement of this Constitution, shall remain in effect for ten years from the day of adopting the Constitution where not revoked prior thereto, however, such provisions shall be interpreted in the spirit of the provisions of this Constitution unless prescribed otherwise.

This provision is intended to preserve certainty and stability during the period surrounding the adoption of the Constitution. Unlike the provision of Section 10 of Basic Law: Human Dignity and Liberty, which prescribes that laws be preserved for an unlimited period of time, the proposal here is to maintain the validity of laws for ten years. A determination that all legislation is subject to judicial review, based on the Part on Basic Human Rights, is liable to harm the chances of achieving a national consensus for adopting the Constitution and is

liable to create great uncertainty regarding the validity of various provisions of law, notwithstanding Article 164. Therefore, it is suggested that the date for repealing laws which are not in accord with the provisions of the Part on Basic Human Rights be deferred for ten years. The assumption is that a decade is a reasonable time period for the Legislature to amend existing legislation so that it will concur with the provisions of this Constitution.





