

## **Key Elements of the Constitution proposed by The Institute for Zionist Strategies**

When drafting a constitutional text for Israel as a Jewish State, the Institute for Zionist Strategies has approached the task from a *tabula rasa*. We did not incorporate the existing Basic Laws which were passed in different eras and for different reasons and which have been interpreted by the current Supreme Court in a manner consistently enhancing the authority of the Court at the expense of the Knesset. Israel is built on a parliamentary system like Great Britain and not on a Presidential structure like the United States. In addition, Israel was established as a Homeland for the Jewish People and thus differs from those countries (a minority) like the United States which were not built on the base of a particular nation or people but rather witnessed the emergence of a nationality from the state itself. These distinctions are important and most be borne in mind.

The current Supreme Court, in a self-proclaimed "constitutional revolution", has interpreted Knesset laws as delegating it the authority to nullify Knesset laws as "unconstitutional". This, of course, is not in accord with a classic parliamentary system. A vast majority of the members of the Knesset assert that the Knesset never intended such a result. Moreover, the standards of the "Basic Law", which the Court uses to uphold or nullify the Knesset law (whether the purpose conforms to "the ethical values of the State of Israel as a Jewish and democratic State"), are so general and abstract as to provide the Court with virtually unlimited discretion

The following list of provisions introduced in our proposed constitution thus differs substantially from other proposals and from current judicial practice:

### **Israel as a Jewish State**

1. Israel is declared the Homeland of the Jewish People. The Basic Law used by the Supreme Court and adopted in the IDI<sup>1</sup> draft is "Jewish democratic state". This term by itself has no established referent in law and the unique value of "Jewish" in that phrase has been diluted by Supreme Court dicta. We chose instead to use a term which is clear and which has resonance in history and in international jurisprudence.
2. The Right of Return is granted to anyone with at least one Jewish parent or with a demonstrable connection to the Jewish People and its heritage. This formulation narrows the scope of the law (which currently includes one with a single, possibly long deceased, Jewish grandparent). It also obviates the divisive issue of heterodox conversion.
3. Shabbat and Jewish Holidays are the official days of rest. No worker shall be employed except as allowed by law. The objective here is to establish a constitutional principle protecting Shabbat as the day of rest for employees in

commerce while not constitutionally prohibiting cultural and entertainment activities and (by local prerogative) public transportation.

4. The State will act for the preservation and cultivation of the Jewish historical and cultural heritage, while respecting the cultures of minorities. The IDI proposal declares Israel a "Jewish democratic state", but does not require or set forth any operative imperatives. It also expressly forbids all religious legislation, no matter how minimalist or how widespread the national consensus (except for a short list of enumerated examples).
5. The State may permit distinct communities of all religions to maintain separate neighborhoods. The Court has upheld this right for non-Jews (Bedouin) but not for Jews. Jewish settlement, as carried on from the late nineteenth century - the cardinal tenet of Zionism - has been placed under a question mark (even within the Green line). If the logic of the Kaadan decision is pursued, it will not be possible to earmark settlements owned and financed by the Jewish People (Keren Kayemet) for exclusive settlement by Jews.
6. Every school serving Jewish students must include the study of Jewish history and heritage in its curriculum. Government funding may be provided for this purpose.
7. Any politician rejecting Israel as the "homeland of the Jewish People" or as a government ruled by democratic principles is ineligible to run for national public office.
8. The objective of the IDF is to defend the State, its citizens and any Jewish community in dire distress.
9. Religious courts are authorized to handle issues brought to them by agreement of all involved parties. They are also authorized to handle all matters pertaining to marriage and divorce *of those who previously chose to marry according to the religious law*. The italicized phrase permits the possibility of civil marriage while preventing the divisive danger of *mamzerut*. The IDI proposal actually includes a civil union law that does not distinguish between heterosexual and homosexual unions.
10. Israeli law is independent of all other legal systems. In the case of the absence of Israeli statute or judicial precedent, the court shall draw on the principles of justice in Jewish law.

### **Limitations on Rights and Judicial Prerogative**

11. The accepted list of human and civil rights is included, but these rights are defined as rights which are not to be abridged rather than rights which must be promoted even in the arena of national security or national purpose (e.g., Jewish Homeland).

12. Rights may be linked to the fulfillment of obligations
13. Rights and obligations related to national security may be limited to those with appropriate security clearance.
14. Rights may be encroached by a law intended for a worthy purpose, provided that the violation is no greater than necessary *for the achievement of the law's purpose*. The italicized phrase is a crucial addition to the existing Limitations Clause; its absence has allowed undue judicial latitude.
15. The constitution is the sole source of rights. The Supreme Court has suggested that the Court may rule according to higher principles of "natural law" not found in the law of the land.
16. The Court shall not hear a case unless the appellant is directly affected by the offending act. Currently, this seemingly axiomatic principle ("standing") has been ignored.
17. The Court shall not issue an order against an act unless such act is for an unworthy purpose or blatantly excessive.
18. If the Court rules that a law is unconstitutional, the law is invalidated only after the Knesset has had 90 days to reaffirm the law.

### **Strengthening the Legislature**

19. The current method of proportional elections for the Knesset (and in the view of many causing the multiplicity of small parties) is left subject to reform. This leaves open the future possibility of American-style regional elections. Our preference is for the German system, which combines proportional and personal elections.
20. The Knesset's term is four years and is not subject to early termination so that elections are not called according to public opinion polls.
21. Knesset members appointed to the cabinet must resign from the Knesset so that the Knesset is not dominated by the very government over which the Knesset is charged with supervising.