

## **EZRAHUT: Chapter 3**

### Constitution and Basic Laws

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#### Political Norms and Institutions in a Democratic System

- \* Every society has its own social norms based on values seen as accepted by that society. Norms establish what is considered right and what is wrong, what is proper and what is improper, and what is allowed and what is disallowed. Society could not function without agreed-upon norms.
- \* Working definition of norms: “Rules and expectations by which society anticipates the behavior of its members.”
- \* Some norms are seen as very important, and violating them could be interpreted as dangerous to society, and therefore violation should be subject to severe punishment.
- \* Some norms are seen as less important, and therefore, violating them would entail a less harsh reaction.
- \* When studying civics, we focus on political norms usually as set by government institutions, for example, constitutional law, laws, and ordinances.

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#### Law and Constitution in a Democratic System

- \* A law is a set directive established by the legislative body that binds all the members of a society equally. Ideally, democratic laws are intended for the general good of society.
- \* A state’s legal system establishes what is permitted or prohibited and what rights are enjoyed by or what obligations are incumbent upon the individual.
- \* Every state expects adherence to its laws and sets punishments for violating those laws. The state makes sure to publicize its laws in official publications and newspapers.
- \* The Law is also meant to prevent a leader from acting as he pleases, without regard to the considerations of others, and therefore, even the heads of state and government are not above the Law.
- \* Modern states have laws for all sorts of issues: family law, labor law, business law, educational law, etc. Other laws concern government services, their relationships to each other, how they are chosen, their specific jobs, and how they execute government policy. There are also laws that detail human rights due to and obligations of the citizens.

- \* These laws also help prevent the government from eventually turning against the people.
- \* The “rule of law” gives special meaning to a law passed in a democratic system: the Law was accepted through democratic means, and the Law does not stand in opposition to democratic principles.
- \* A constitution is a collection of basic laws that define the governmental system and its protocols. A constitution presents the ideological basis that unites the segments of a society into a cohesive whole.
- \* A constitution defines the rules of the political game which allow for political changes in a stable manner, and describes the powers granted to the government and the limitations thereof, the government institutions and their relationships to each other, the relationships of government institutions to the people, and the rights and obligations of the people.
- \* A constitution protects the rights of the people, especially by preventing legislation that would infringe on civil and human rights.

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#### The Knesset as the Legislative Body and Constituent Assembly

- \* As detailed in Israel’s declaration of independence, the Constituent Assembly was to have composed and adopted a constitution by October 1, 1948, to be followed by the first national elections.
- \* A committee started work on Israel’s constitution in 1948, but because of the continuing War of Independence, the Constituent Assembly only convened for the first time in January 1949 for a series of four meetings, at the end of which, in February 1949, it drafted the Transfer Directive, which provided for the Knesset, the elected legislature of the state, to draft the state constitution.
- \* This resulted in a public debate that lasted until the middle of 1950. Some arguments on both sides were practical, whereas others were theoretical; some were only relevant at the time, others are still relevant today.
- \* In the first few years, the main political parties that pressed for a constitution were mostly in the opposition: Herut (the forerunner of today’s Likud), the Israeli Communist Party, and Mapam. The Progressive Party also pressed for a written constitution, although they did join the government coalition. The main opposition to adopting a constitution came from the ruling party, Mapai, and the religious parties (on the theological grounds that for Jews there could be no supreme legal document higher than the Torah).

#### Arguments for Adopting a Written Constitution

- \* The UN resolution of November 29, 1947 and Israel’s declaration of independence explicitly call for such.

- \* A constitution would define and protect the human rights and individual liberties of the people.
  - \* A constitution would limit the government by setting clear definitions of government institutions and their roles.
  - \* A constitution would express the shared values and principles of the entire people, and serve as a rallying point.
  - \* A constitution would shape the ideological character of the coming generations.
  - \* A constitution would serve as the basis for future Knesset legislation.
- A constitution would be a living symbol of the nation's sovereignty, and holds value in the eyes of the nations of the world.

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#### Arguments Against Adopting a Written Constitution

- \* The Declaration of Independence already includes the characteristic principles of a constitution, thereby eliminating the need for a constitution, even in light of the UN resolution of November 29, 1947.
- \* There is no true necessity for a democratic system to have a constitution.
- \* The state and society of Israel are in a state of flux, and have not yet reached the maturity necessary for a set constitution. State protocols have also not taken their final form.
- \* Most of the people of Israel, world Jewry, are still in the diaspora, and therefore the state of the Jews can not adopt a constitution that would obligate the absent members of the nation.
- \* Drafting and adopting of a constitution could cause an ideological schism between sectors of the population.
- \* In Israel, the belief in human rights, liberty, and democratic principles is already very strong.
- \* Preserving democratic principles and laws is dependent on educating the people, and not on a constitution.
- \* A constitution could impinge on the authority of the Knesset, i.e. on its ability to represent the will of the people.
- \* The current reality would necessitate a constitution containing compromises, which could cause harm.

#### The Knesset's Final Decision

- \* On June 13, 1950, the Knesset accepted the proposal of MK Yizhar Harari: "The First Knesset assigns to the Constitution, Law and Justice Committee the preparation of a proposed constitution for the state. The constitution will be made up of chapters, each of which will constitute a separate basic law. The chapters will be brought to the Knesset, as the Committee completes its

work, and all the chapters together will constitute the constitution of the state."

- \* The "chapters" referred to in his proposal came to be known as "Basic Laws," which were adopted over the years by the Knesset.
- \* The Harari Proposal did not provide for when Basic Laws would be prepared, what such laws would contain, how such laws would be distinguished from ordinary laws, what legal status such laws would enjoy, what would signify the completion of drafting the constitution, and whether the final constitution would be formal or material, and flexible or rigid.

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The Basic Laws of the State of Israel.

- \* Basic laws undergo a legislative process like that of ordinary laws: they are passed by a simple majority of the members of Knesset, and their legal status is not special, except for certain article that are protected from changes, or laws specifically passed as having special legal status.
- \* The majority of the Basic Laws deal with the government and its structure, and some deal with the jewish character of the state and the protection of human rights.
- \* In order to allude to their timelessness, the Basic Laws were intentionally written in general language, and, unlike other laws, do not have their dates of acceptance attached to their names.
- \* Protection: certain basic laws have clauses that provide for the inability to undergo emendation unless certain criteria are met, often greater majorities of Knesset votes.
- \* Limitation clause: a legal term for a condition in a Basic Law that limits the Knesset's future ability to legislate another law in contradiction, e.g. the Basic Law: Human Dignity and Liberty, has a limitation clause preventing any legislation that would infringe on human rights, unless the law is necessary for protection of a higher principle, like the fundamental values of the state, etc.

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The Eleven Basic Laws of the State of Israel

a. Basic Law: The Knesset

- \* The law defines the Knesset as the body of elected representatives of the people, where it sits, and its composition.

- \* Article four details the electoral process, and other articles discuss who is eligible to vote and hold office, the right to submit a party's list of candidates, Also details the ceremonial opening of each Knesset, including the swearing in ceremonies, the chairman and vice chairmen of the Knesset, Knesset committees, investigative committees, Knesset meetings and conventions, Knesset electoral immunity, MKs' salaries, resignation procedures, suspension and replacement of MK's, and matters related to Knesset operating protocols.
- \* The law established that emergency enactments may not be used to change this Basic Law in any way, and that this stipulation may only be overridden by a majority of 80 MK's. A similar majority is necessary for a decision to extend the term of a Knesset.
- \* Election law may only be changed, or a Knesset may only be dispersed before the completion of its term, by a majority of 61 MK's.

b. Basic Law: Israel Lands.

- \* "The ownership of Israel lands, being the lands in Israel of the State, the Development Authority, or the Jewish National Fund, shall not be transferred either by sale or in any other manner."
- \* The term "lands" not only refers to actual land, but also to houses and other buildings, and to anything that is permanently attached to the ground.
- \* This law has no protected clauses.

c. Basic Law: The President of the State

- \* The law defines the President as the Head of State. It also details where he is to live, how he is elected and how long he serves, who is eligible to serve, what his role and authorities are, his immunity from prosecution during his tenure, his salary, and resignation and impeachment procedures.
- \* Article 25 provides that no emergency enactments may change this law.

d. Basic Law: The State Economy

- \* "The State Budget shall be prescribed by Law."
- \* Also deals with state taxes, state loans, and bonds, and prescribes that they also be subject to Knesset law.
- \* The state economy will be subject to audit by the State Comptroller.
- \* This law has no protected clauses.

e. Basic Law: The Army

- \* "The Israel Defense Forces is the army of the state."

law, the army is subordinate to the government, and the commander of the IDF is the Minister of Defense. The Chief of General Staff is appointed by the government on the advice of the Minister of Defense, and in turn is subordinate to the government and the Minister of Defense.

- \* This means that the army is subordinate to the people's institutions of government.
- \* The law also deals with the obligation to serve in the army and conscription, and the authority to issue orders and commands.
- \* This law has no protected clauses.

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f. Basic Law: Jerusalem, Capital of Israel (complete text)

"1. Jerusalem, complete and united, is the capital of Israel.

Seat of the President, the Knesset, the Government and the Supreme Court  
2. Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court.

Protection of Holy Places

3. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.

Development of Jerusalem

4. (a) The Government shall provide for the development and prosperity of Jerusalem and the well-being of its inhabitants by allocating special funds, including a special annual grant to the Municipality of Jerusalem (Capital City Grant) with the approval of the Finance Committee of the Knesset.  
(b) Jerusalem shall be given special priority in the activities of the authorities of the State so as to further its development in economic and other matters.  
(c) The Government shall set up a special body or special bodies for the implementation of this section.

Area of the jurisdiction of Jerusalem (Amendment no. 1)

5. The jurisdiction of Jerusalem includes, as pertaining to this basic law, among others, all of the area that is described in the appendix of the proclamation expanding the borders of municipal Jerusalem beginning the 20th of Sivan 5727 (June 28, 1967), as was given according to the Cities' Ordinance dBasic law:

Prohibition of the transfer of authority (Amendment no. 1)

Jerusalem Municipality may be transferred either permanently or for an allotted period of time to a foreign body, whether political, governmental or to any other similar type of foreign body.

Entrenchment (Amendment no. 1)

7. Clauses 5 and 6 shall not be modified except by a Basic Law passed by a majority of the members of the Knesset.

MENACHEM BEGON  
Prime Minister

YITZCHAK NAVON  
President of the State

\* This law has no protected clauses.

g. Basic Law: The Judiciary

\* This law defines the judicial authority of the various courts, and their independence from the rest of the government: "A person vested with judicial power shall not, in judicial matters, be subject to any authority but that of the Law."

\* The law also provides for the publication of legal proceedings, appointment of judges, duration of their terms, their salaries, and operating protocols of the various courts.

\* "This Law cannot be varied, suspended, or made subject to conditions by emergency regulations."

h. Basic Law: The State Comptroller

\* The law provides that state audits be conducted by the State Comptroller, details the procedure for his election, his precise role and authority, the issues under his jurisdiction, state salaries and budget, the relationship of the comptroller to the Knesset, and other issues.

\* This law has no protected clauses.

i. Basic Law: The Government

\* In Israel, the government receives authorization from and answers to the Knesset.

\* The law details what the government is, its right of power, its composition, its establishment, its roles, and its protocols, and the procedures for exacting changes in the government.

\* The law also provides for declarations of states of emergency, and emergency regulations.

- \* motions for votes of no confidence in the government, the Prime Minister's authority to disperse the Knesset, the relationship between the government and Knesset committees, and the mandatory dispersion of Knesset if a budget can not be finalized.
- \* This law has been emended a number of times, the most recently being in 2001.
- \* "This Law cannot be varied, suspended, or made subject to conditions by emergency regulations."
- \* The law is protected from legislative changes, and may only be modified by a majority of more than 61 MK's.

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i. Basic Law: Freedom of Occupation

- \* This is one of the laws that deal with the liberal-democratic nature of the state.
- \* "The purpose of this Basic Law is to protect freedom of occupation, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state."
- \* "Every Israel national or resident has the right to engage in any occupation, profession or trade." Every government ministry and service must respect this right.
- \* "There shall be no violation of freedom of occupation 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 regulation enacted by virtue of express authorization in such law."
- \* "This Basic Law shall not be varied except by a Basic Law passed by a majority of the members of the Knesset."
- \* This law was emended after its original adoption, as it resulted in a coalition crisis.
- \* "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."

j. Basic Law: Human Dignity and Liberty

- \* "The purpose of this 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."

The law establishes principles regarding the preservation of life, persons, and dignity, the prohibition of harming another's property, and the right to self defense and privacy

- \* "imprisonment, arrest, extradition or otherwise."
- \* "There shall be no violation of rights under this Basic Law 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."

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#### 9. Conclusion

- \* Being that the Basic Laws are no different from ordinary laws with regards to their mode of adoption and vulnerability to change or revocation, they do not, as of yet, serve as a state constitution. However, the bases for an eventual constitution do exist.
- \* The former President of the Supreme Court, Aharon Barak, believed that the Basic Laws: Freedom of Occupation, and Human Dignity and Liberty, were the start of a "constitutional revolution" in Israel, by turning human rights into legal norms.
- \* According to Barak, basic human rights could now obligate the Knesset, and the Knesset no longer had the power to legislate any further restrictions on human rights.
- \* As on most issues, many disagreed with Barak, for the simple reason that these laws, like any others, can be overturned or replaced, and even if they are here to stay, most of the other basic human rights that are recognized in democratic societies have yet to find their expression in Basic Laws.