

Israel's Partial Constitution: The Basic Laws

By Amnon Rubinstein (April 2009)
(Jewish Virtual Library)

Introduction

Israel has no formal constitution but it does have constitutional laws that are among the most progressive and liberal of any democratic nation. This is due to "the constitutional revolution," the adoption by the Israeli parliament, the Knesset, of two basic laws concerning human rights.

The saga of Israel's Basic Laws can be traced back to the country's birth in 1948. The Declaration of Independence prescribes a clear course for the development of a future constitution of the Jewish State:

We declare that, with effect from the moment of the termination of the [British] Mandate being tonight, the eve of Sabbath...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.'

In this respect, David Ben Gurion, the drafter of the declaration and the first Prime Minister was loyal to the UN partition plan which was passed by the general assembly on November 29, 1947. The partition plan split the land of Palestine into two independent states: one Jewish and one Arab. That decision laid down the rules regarding the constitutional formulas of these states: The Constituent Assembly of each State shall draft a democratic constitution for its State and choose a provisional government to succeed the Provisional Council of Government appointed by the Commission. The constitutions of the States shall embody chapters 1 and 2 of the Declaration provided for in section C below..."

Accordingly, as soon as Israel's War of Independence ended on January 25, 1949, elections for the constituent assembly took place. The fledgling state's electorate went to the polls expecting to help draft a constitution. Initially, Prime Minister Ben Gurion was inclined to adopt the American model of a written constitution, but he changed his mind and began to advocate a legal code modeled after the British, which contained no formal constitution. It is not clear what motivated this change of heart, but Ben Gurion, like the other founding fathers, admired the strength behind the constitution-less British Parliament.

In his speeches in the Knesset, Ben Gurion argued that "our state is being recreated every day. Every day, additional Jews liberate themselves by

immigrating to our country; every day, additional parts of our country are liberated from their status as wasteland. This dynamism cannot tolerate a rigid framework and artificial constraints. The laws of Israel must adapt themselves to this dynamic development."

Ben Gurion presided over a transition from the provisional council that initially governed the state after the declaration of independence to a constituent assembly elected in 1949. In its first official act, the assembly changed its name to the First Knesset – a seemingly innocuous linguistic change, but one which gave a hint of things to come. The constituent assembly was destined to be reborn as a regular parliament.

Finally, Ben Gurion and his Mapai party - aided and abetted by the religious members of the Knesset who themselves objected to any secular constitution - came out openly against a formal written constitution.

Facing them with his rhetorical might stood Menachem Begin, leader of the opposition Herut party, who argued stubbornly and forcefully for the assembly's writing of a formal constitution as laid down by the Declaration of Independence. Ben Gurion and Begin locked horns for an entire year exchanging verbal broadsides for and against a written constitution. Finally, this emotional debate culminated in June 1950 in a compromise solution. The First Knesset voted for the following decision named after its initiator (MK Y. Harari):

"The first Knesset charges the Constitution, Law and Justice Committee with preparing a draft of the State Constitution. The Constitution will consist of separate chapters, each chapter constituting a Basic Law of its own. The chapters will be presented to the Knesset, as the Committee concludes its deliberations, and all of the chapters shall be consolidated into the State Constitution."

It was in this way that the Basic Laws came into being as the half-legitimate heirs to the defunct constitution. The decision was intentionally vague. Would the Knesset intend to enact a constitution by installments that would be binding only after its completion, or would each Basic Law, have a constitutional standing and be normatively above ordinary legislation? No clear answer was given at the time.