

Chapter 7

Israel as an Ethno/Religious State

*“Democracy is two wolves and a lamb voting on what to have for lunch.
“Liberty is a well-armed lamb contesting the vote!”*

– Benjamin Franklin

The Formation of the State

Israel proclaimed its independence as a “Jewish, Democratic, Secular” state on 14 May 1948. This self-description highlights the contradictions at the core of the Israeli state. If “Jewish” refers to ethnicity, it might be a secular state, but is it democratic, inclusive of all citizens, regardless of ethnicity? If “Jewish” is a statement of religious affiliation, how can it be a secular or a democratic state? These contradictions are highlighted by the Constitutional debate in the forming of the Israeli state, a debate that remains unresolved in 2023. As we will see in *Chapter 20 - Israeli Domestic Politics*, this debate is reaching a head in the form of a true constitutional crisis, which is curious for a state without a constitution.

The founders of the State of Israel represented a variety of political philosophies, ethnic origins, and relationships to the religion of Judaism. The one matter of consensus of the first Constituent Assembly was that a state would be formed in Palestine explicitly for the “Jews”. As to what a “Jew” is and what form this state should assume, and even whether or not this state should have a constitution, were all contested. These matters were not, and to this day have not been, resolved, and compromises were made to avoid the necessity of resolving these issues, opting instead to establish hegemony over the indigenous population before democratic practices were to interfere with this process or the world community was able to stop them.

Upon the second meeting of the Constituent Assembly in 1949, the Assembly transformed itself into a single-chambered parliament, the Knesset, that holds both legislative power to create laws and constituent power to create a constitution. A year and a half later, the Knesset decided to not create a formal constitution. The primary advocate for drafting a constitution, including a comprehensive Bill of Rights, was Menachem Begin, the head of the Likud Party, and the main objector to this process was David Ben-Gurion (Labor Party), who would become the first Prime Minister of Israel. Ben-Gurion did not want executive powers to be limited by a constitution. With legislative and executive powers consolidated into one body, the new government would be able to adopt whatever measures necessary to focus on their most urgent need of bringing Jewish immigrants into Palestine to establish the demographics required such that even if democratic principles were implemented, the new nation could retain the intended Jewish quality. Ben-Gurion summarized this position by stating, “When there will be 2 million Jews in Israel, that will be our constitution.” By facilitating massive Jewish immigration as rapidly as possible and expelling the indigenous, Arab population outside of Israel’s new borders, the nation could be established as unequivocally Jewish, so that whatever is ultimately decided regarding the definition of a “Jew”, whether or not ethnic or religious principles should be codified into law, or if principles of equality of individuals’ treatment under law should be incorporated into the legal

system, the citizenry will be overwhelmingly Jewish before these matters are decided upon. As we will examine in later chapters, this is one of the main drivers for the on-going colonization of the Occupied Territories with Israeli settlements, establishing de facto obstacles to pragmatically establishing a Palestinian state in these territories. Might may not make right, but if it precedes it, establishing right becomes more difficult.

The government of Israel was and is now structured as the legislative and executive functions held within the proportionally elected, 120 member Knesset, and a judicial branch headed by a Supreme Court. The predominant party within the Knesset is tasked with building a coalition to select a Prime Minister, as directed by the President, a primarily administrative function with no direct power or influence over government. The Israeli Judiciary, as a separate branch of government, with limited powers of legislative review, is intended to provide a balance to the legislative and executive powers of the Knesset. As we explore below in the section *Basic Law - Constitutional Framework* and in *Chapter 20 - Israeli Domestic Politics*, the Israeli Supreme Court is ultimately subjugated to the Knesset, ensuring that power is centralized into a body that the Zionists can utilize to ensure that their primary objective of maintaining a purely Jewish state is preserved.

Electoral districts

One of the topics of political argument within Israel, from the first Assembly and until today, is whether the electoral process should remain centralized, with the entire country constituting a singular voting district, or if the electoral process should be regionalized, with various voting districts distributed throughout the country. The current, centralized electoral model facilitates the centralization of power and the Zionists' desire to leverage the demographic reality that within the official borders of Israel, Jews represent an overwhelming majority. Many agree that a distributed electoral model, with regionalized voting districts, would allow the political diversity within Israel to be more accurately reflected in government. None of the various factions of Zionists oppose this principle, so long as the government reflects the political diversity among Jews to the exclusion of non-Jewish citizens. So long as there exists concentrated pockets of non-Jewish citizens, the regionalization of the electoral process could lead to non-Jewish influences being reflected in the government. This is yet another reason for the colonization of the Occupied Territories with Israeli settlements. In case the Occupied Territories are ever incorporated into the state of Israel, and in case the ingenious Arab population are ever granted voting rights, establishing Jewish demographic dominance must occur first, in order to protect the fundamentally Jewish character of government.

Basic Law - Constitutional Framework

If Israel ultimately adopts a constitution, one will be able to look back and see this as a gradual process that began with the first Constituent Assembly of 1948. The concept of Basic Law for a nation without a constitution is that a collection of immutable, foundational laws serve as a basis from which all other laws are derived. Criminal, civil, and administrative laws are subject to change and adaptation to suit contemporary needs and conditions of the nation, while basic law

is intended to be more durable and more difficult to amend or change. In this way, basic law can be seen as being, collectively like a constitution or as the foundation for a constitution yet to be developed. As we will see in *Chapter 20 - Israeli Domestic Politics*, the weakness of Basic Law relative to an actual constitution presents the opportunity for a legislature, in this case the Knesset, to assert dominance over the law, eroding the balance of power between the legislative and judicial branches of government. The fundamental difference between a constitution and a collection of basic laws is that a constitution stands above the multiple, balanced branches of government, whereas basic law is subjugated to the legislative branch. From the first meeting of the Assembly in 1948 until today, there has been a movement to establish a constitution and a movement in opposition. The movement opposed to the adoption of a constitution is not fundamentally opposed to constitutionality, it simply wants to establish clear demographic dominance so that democratization will not threaten the ethnic and religious nature of the state. This is the reason that the Zionists care not if “Jew” denotes ethnic origin or religious affiliation, so long as Israel remains as a Jewish state.

Fourteen Basic Laws currently constitute the basis of the Israeli legal system. As we will see in *Chapter 20 - Israeli Domestic Politics*, it was an attempt to change these laws to further subjugate the Judiciary to the Knesset and the ruling Likud party that instigated the constitutional crisis that preceded the Hamas-Israel War of 2023 (which we will examine in Chapters 20 and 21, *Israeli Domestic Politics* and *Hamas-Israel War 2023*, respectively).

Year passed	Basic Law	Description
1958; updated in 1987	The Knesset	States legislative functions of the parliament of the state.
1960	Israel Lands	Ensures state lands remain national property.
1964	The President of the State	Deals with status, election, qualifications, powers, and procedures of work of the President of the State.
1968	The Government	(Replaced by the 1992 law, and then restored, with amendments, by the 2001 law.)

1975	The State Economy	Regulates payments made by, and to, the state. Authority to mint currency.
1976	The Military	Upholds constitutional and legal basis for the operation of the Israel Defense Forces . Subordinates military forces to the government, deals with enlistment, and states that no extra-legal armed force outside the Israel Defense Forces may be set up or maintained.
1980	Jerusalem Law	Establishes the status of Jerusalem as the capital of Israel; secures the integrity and unity of Jerusalem; deals with holy places; secures rights of members of all religions; grants special preference with regards to development.
1984	The Judiciary	Deals with authority, institutions, principle of independence, openness, appointment, qualifications, and powers of the judiciary.
1988	The State Comptroller	Deals with the powers, tasks, and duties of supervisor of government bodies, ministries, institutions, authorities, agencies, persons, and bodies operating on behalf of the state.
1992	Human Dignity and Liberty	Declares that basic human rights in Israel are based on the recognition of the value of man, the sanctity of his life, and the fact that he is free. Defines human freedom as the right to leave and enter the country, privacy (including speech, writings, and notes), intimacy, and protection from unlawful searches of one's person or property. Any violation of this right shall be "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". This law also includes instruction regarding its own permanence and protection from changes by means of emergency regulations.
1994	Freedom of Occupation	Guarantees every Israel national or resident's "right to engage in any occupation, profession, or trade". Any violation of this right shall be "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". This law also includes instruction regarding its own permanence and protection from changes by means of emergency regulations.

2001	The Government	Overturns its own 1992 addition, the direct election of the prime minister, and restores the 1968 system with some amendments.
2014	Referendum	Establishes that if the Israeli government adopts a decision or signs an agreement stipulating that the laws, jurisdiction, and administrative authority of the State of Israel will no longer apply to a certain geographical area, such agreement or decision must either be adopted via a treaty approved by 80 MKs, or by an absolute majority vote in a referendum. ^[44] ¹ This means that Israeli sovereign territory (East Jerusalem , Golan Heights , and any land within the 1949 armistice lines), under Israeli law, can only be relinquished either through a treaty approved by over 80 MKs, in which case a referendum is not necessary, or, before a treaty is valid, it must be approved by an absolute majority vote in a referendum. ^[45] ²
2018	Nation-State	Defines Israel as the nation-state of the Jewish people. ^[46] ³ The Nation-State Law also asserts that the Jewish people have the unique claim to national self-determination in the State of Israel, defines Hebrew as the official language of the state, and gives Arabic a special status in the state. It additionally defines the national symbols, holidays, and calendar of the state. ^[47] ⁴

Ethnic and Religious Laws

There are at least 65 Israeli laws that apply only to non-Jews. Further, there are specific laws regarding who is and who is not considered to be a Jew, as well as how one's status as a Jew might be revoked. In addition to the obvious discriminatory nature of establishing laws that differentiate between individuals upon the basis of religion or ethnic origin, some of these laws are inherently contradictory. For example, one may be a declared atheist and still be considered to be a Jew, whereas a Jew that converts to another religion is no longer considered to be a Jew in the eyes of the law. This is yet another example where "Jew" is in some cases treated as

¹ Harkov, Lahav (12 March 2014). "[Knesset passes first Basic Law in 22 years: Referendum on land concessions](#)". *The Jerusalem Post*. Retrieved 22 June 2015.

² [^] Harkov, Lahav (12 February 2014). "[Bill reinforcing referendum on peace talks moves toward final vote](#)". *The Jerusalem Post*. Retrieved 19 May 2015.

³ [^] Wootliff, Raoul (18 July 2018). "[Israel passes Jewish state law, enshrining "national home of the Jewish people"](#)". *The Times of Israel*. Retrieved 18 July 2018.

⁴ [^] "[Full text of Basic Law: Israel as the Nation-State of the Jewish People](#)" (PDF). *The Knesset: Laws*. State of Israel. Archived from [the original](#) (PDF) on 10 April 2021. Retrieved 9 August 2018.

an ethnic distinction and as a religious affiliation in another. This reflects one of the divisions within Zionism that was overcome through compromise in the formation of the legal system, yielding inherent contradiction within that system.

A Jewish Democratic Secular State

By expelling that majority of the indigenous Palestinians to territories outside of Israel's legal borders and denying them citizenship, Israel maintains demographics such that the indigenous Arab influence is insufficient to impact government policy in a meaningful way.