



Now's the Time for a Constitution

By Mordechai Kremnitzer and Amir Fuchs

Op-Ed

August 21, 2011

History teaches that adopting a constitution is usually possible only at the point at which a state is first established; if that opportunity is missed, it is only at a time of real crisis that it is politically feasible to set new rules of the game. In the following op-ed, which was originally published in Hebrew in *Haaretz* on August 17, 2011, IDI Vice President of Research Prof. Mordechai Kremnitzer and Attorney Amir Fuchs assert that such a moment of crisis has come and it is time to restart the process of adopting a constitution by consensus for Israel.

The wave of social protest in Israel seems to have moved to a new stage in the past week. After a preliminary phase in which erosion of the middle class was placed squarely on the public agenda, which was then followed by the establishment's recognition (after initial denial) that the problem indeed exists, the time has come to formulate demands and propose solutions.

We are in the midst of a fascinating public debate on the necessary reforms: revision of the tax structure, reduction of economic concentration, changing the budget priorities, reconsidering the size of the budget and the national debt, and increasing the size of the welfare budget. These are all questions worthy of consideration. But the yearning that emerges from the protests, from the articles in the press, and from current public discourse reflects a desire for something greater: a profound change in the social contract in Israel.

Looking beyond the price of housing, beyond sectorial monetary and budgetary policies, beyond the current government, and even beyond a change in the form of government (which we tried in the past, only to get burned), the conventional wisdom is that in the end, life will go on as usual and there will be no real change in our society. Economic plans can be changed by slashing budgets across the board; new priorities can be changed again due to coalition agreements after elections; and the form of government can be changed repeatedly by a random majority in the Knesset. For this reason, there is a yearning for a new order, for a new future, for what Nadav Eyal called a "new deal" (*Maariv*, July 28th), and for what Guy Rolnik called an "administrative, cultural, and moral revolution" (*The Marker*, August 11th). There is a yearning for a fundamental change with new rules of the game.

How do we create such change? Our proposal is both old and new. It contains the spark of "reconstruction" that is currently being sought. It has the potential to fundamentally change basic tenets from their very foundation and to alter the relationship between the state and its citizens. Our proposal is the adoption of a constitution for the State of Israel.



The very essence of a constitution is the determination of fixed rules of the game that are not subject to the whims of changing governments and that serve as the basis of agreement and identification among all citizens of the state. A constitution also includes an extensive bill of rights, which the state upholds and does not infringe without justification. The "Constitution by Consensus" that was drafted by the Israel Democracy Institute includes a list of economic—social rights that could bring about the very change that is currently desired in Israeli society—a fundamental change that includes the right to social security, the right to health, the right to education, and the right to fair work conditions.

It is important to remember that a constitution also safeguards society and its citizens against irresponsible policies of its legislators—against legislation such as that of the current Knesset, which has passed offensive and blatantly anti-democratic laws due to populist concerns and coalition considerations. A constitution also helps democracy protect itself against radical forces that take advantage of the weakness of the political center, which is forced to pay a price in return for a coalition that enables it to stay in power.

It is likely that adopting a constitution is not politically feasible at present. Accordingly, we are not recommending that this be raised as a demand from the government. But anyone who has recently awakened from hibernation and who understands that the time for change has truly arrived should carefully consider the real way to establish a "new country" in Israel. The issue of a constitution should be placed at the forefront of the political agenda as we approach the next elections, whenever they may be held. Similarly, the protest movement should discuss the question of adopting a constitution and formulate a position on this matter, if only to put the issue back on the public agenda. There should be no concern that this might politicize the protest movement, since leaders from both left and right (including Menachem Begin) dreamed for years of obtaining the national consensus necessary to adopt a constitution. In addition, it may well be that since the current wave of protest has strengthened the common and unifying foundations of Israeli society, the chances of reaching a consensus on the question of a constitution have improved.

History teaches us that adopting a constitution is usually possible only at the point at which a state is first established; if it is not adopted then, it is only at a time of real crisis that it is politically feasible to set new rules of the game. Such a moment of crisis has come. Now is the time to restart the process of adopting a constitution by consensus in Israel.

Prof. Mordechai Kremnitzer is the Vice President of Research at the Israel Democracy Institute. Attorney Amir Fuchs is a researcher at the Institute.

A Hebrew version of this op-ed was published in Haaretz on August 17, 2011