

Israel Ponders Constitution With Head Throbbing

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JERUSALEM, Sept. 16— For 52 years, Israel has avoided drafting a constitution for fear of provoking a civil war between secular and religious Jews. But when Prime Minister Ehud Barak returned empty-handed from his latest frustrations with the peace effort, he switched to an agenda of civic reform and proposed a constitution, just like that.

Stunned, a group of senior Israeli academics and political figures who have been working to lay the groundwork for a constitution were propelled into furious debate about whether they should take advantage of this sudden interest from an Israeli leader.

But having spent two years in seminar rooms dissecting every delicate issue -- the separation of religion and state, the rights of minorities, women's rights, among others -- most mocked the idea of an instant constitution as a prescription for failure. The issues are simply too loaded, Israeli society too polarized and its democracy too fragile, they said.

"It's like somebody who offers to marry you on the first date," said Yaron Ezrahi, a senior fellow at the Israel Democracy Institute. "Given the complexity of the issue and the significance for this country, a leader doesn't generate a constitution in a month to save his political career."

The constitutional experts' skepticism about Mr. Barak's initiative reflects the way the public at large has received his "civil-social agenda," dubbed the Secular Revolution by the news media. His proposals are widely seen as a transparent political ploy to rescue his faltering government or provide a platform for his next campaign.

In addition to creating a constitution, Mr. Barak has proposed a laundry list of changes, most of which have been blocked by the religious establishment for years. These include civil marriage for those "hundreds of thousands of Israelis" who are not Jews or not recognized as Jews by the rabbinate, eliminating the "nationality" listing on identification cards that distinguishes between Jews and non-Jews and the operation of El Al Airline and public buses on the Sabbath.

Some, like Yossi Beilin, the justice minister, suggest that Mr. Barak's motives be disregarded and that this rare moment -- when no religious parties are in the government -- be seized. The religious parties and a small Russian immigrant party defected before Mr. Barak traveled to the Camp David summit meeting in July, leaving him with an unstable minority government.

The New York Times

In a strategy session this week, Mr. Beilin urged the constitutional committee at the Israel Democracy Institute to act quickly.

"I'm a great believer in windows of opportunity," he said. "Now Barak wants a constitution. He asks, 'Where's a constitution?' We should say, 'Here's a constitution,' and hand him a document."

Avraham Ravitz, a strictly Orthodox member of Parliament, said he had no objection to a constitution, "so long as it includes one paragraph that says constitutional law cannot be above religious law, that's all." In other words, he does object to a constitution -- which he described as "the strange need of secular people in Israel to import something from Canada or Sweden rather than use what belongs to them."

Israel's Declaration of Independence stipulated that a constitution would be established no later than Oct. 1, 1948. Its first Parliament, in fact, was elected to serve as a constitutional convention.

But from the beginning the secular-religious divide was wide, and as far as religious Israelis were concerned, they already had their constitution: the Bible. Rather than rip apart a young nation that needed to focus on pragmatic matters, the country's first leaders decided that a constitution should be assembled piecemeal, through a series of basic laws.

It took eight years for Parliament to pass the first basic law, the one that establishes the existence of Parliament. The next seven laws mostly set up the institutions of the state, including the role of the president, the army and the courts. It was not until 1992 that the subject of human rights was touched -- and then incompletely because of the controversy sparked by even the fundamental idea of making man, and not God, central.

In a passing political moment when the government was not dependent on religious votes, Parliament did adopt a basic law of human dignity that Israel's Supreme Court has interpreted liberally.

But it does not address, among other issues, freedom of religion, freedom from religion, freedom of speech, freedom of association and basic equality -- equality, that is, between Jews and non-Jews as well as between men and women (something that the powerful strictly Orthodox and the powerless Bedouins do not want imposed on them). And as a whole, the basic laws are not empowered as the supreme law of the land; they can be overturned by a simple plurality in Parliament.

The New York Times

Dan Meridor, a centrist legislator, tried as justice minister in 1989 to pass a full bill of rights, which got whittled down to the basic law of human dignity several years later.

Now a member of the democracy institute's constitutional committee, Mr. Meridor advocates a "thin" constitution that, among other things, leaves aside the Jewish character of the state, so as not to alienate Israeli Arabs or create legal contradictions between the state's Jewish identity and the idea of equality for all.

"We don't want to create a constitution that causes conflict," he told the constitutional committee. "Religious and ethnic wars are devastating, and we should avoid them."

Ruth Gavison, a Hebrew University professor, a leading civil libertarian and the only woman on the committee, threw her hands in the air. "What are you talking about, put religion aside, put the equality of women aside, put this aside and that aside?" she asked. "We know that these are issues that will blow up the whole thing. We must tackle them."

A poll released on Friday by the newspaper Maariv showed overwhelming public support for a constitution -- 73 percent -- and little confidence that a dysfunctional government could produce and pass one.

But what would it say? The Justice Ministry has prepared three more basic laws -- concerning due process, free speech and social rights like education and housing -- that go to a parliamentary committee on Sunday. Deputy Attorney General Joshua Schoffman said that if they were passed, "they would produce something close to a constitution," especially if Parliament also approved a bill that elevated their status and made them more difficult to annul or amend.

Justice Minister Beilin suggested immediately pursuing those laws and, in a separate effort, a full constitution at the same time. But Professor Gavison, a secular Jew who has become a hero to many of the strictly Orthodox for her criticism of the Supreme Court, advocates a slow deliberative process that grows out of a dialogue with the right wing and the religious.

Beyond the institute, there is a rival, more populist and clearly anticlerical constitutional advocacy group. Under the guidance of Uriel Reichman, who is president of a private college in Herzliya, it wrote the basic law that changed the political system to provide for the direct election of the prime minister. The democracy institute says the change has radically destabilized Israel's politics, although Professor Reichman still supports it as a way to keep extremists out of power.

The New York Times

Observing the heated debate at the democracy institute, Uri Dromi, the institute's publications director and a retired colonel, said he could not help but think of the old joke about the Yeshiva University rowing team. It had a terrible record, and so it sent a spy to Yale to ascertain the key to their success. On return, the spy said, "You wouldn't believe it! We've been doing it backwards! It's supposed to be eight people rowing, and one shouting!"