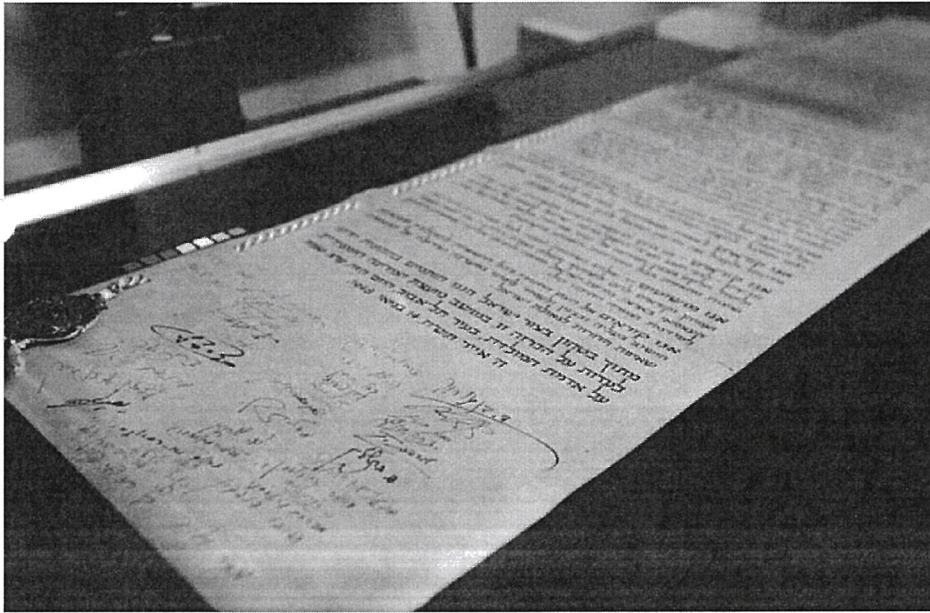


(Jones, C., 2023)

# Israel, UK: 2 countries without written constitutions and shared lessons

The Media Line speaks to constitutional experts to explore lessons for Israel from the United Kingdom, which has operated for more than a millennium without a written constitution.

By CRYSTAL JONES/THE MEDIA LINE Published: MAY 22, 2023 16:41



Israel's Declaration of Independence  
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In the face of proposed controversial judicial reforms, the long-standing debate concerning Israel's absence of a written constitution, a decision made during the tumultuous times following its establishment in 1948, has resurfaced.

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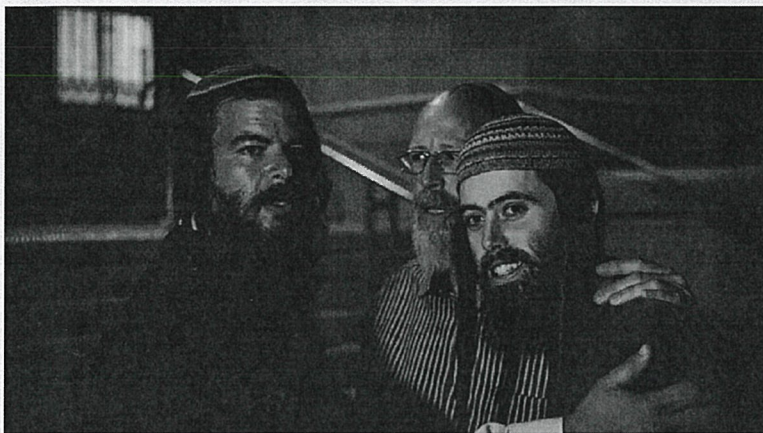
When Israel was established in 1948, its Declaration of Independence mandated that a constitution would be written within five months. But those tasked with drafting the constitution were unable to come to a consensus, and Israel has now gone 75 years without a written constitution.

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stead, Israel has a series of Basic Laws—quasi-constitutional laws that had originally been intended as the basis for the eventual constitution. The status of the Basic Laws and the requirements for passing new ones have

been among the subjects of the proposed judicial reforms. Some critics of the reforms say that Israel's democratic nature would be better protected if Israel had an actual written constitution and not just the Basic Laws.

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**"The UK never had a written constitution because it never needed one. Israel never had a written constitution because it could never afford one."**

Eugene Kontorovich

"The UK never had a written constitution because it never needed one. Israel never had a written constitution because it could never afford one," Kontorovich told The Media Line. Amid war, mass immigration, and austerity following Israel's founding, the country was unable to devote the time to writing a constitution and was unwilling to risk tearing the public apart.

One reason for the UK lacking a written constitution is simply the country's age, Kontorovich said. The English Parliament dates to the 13th century.

Although the UK lacks a codified written constitution, it does have a collection of written documents and unwritten arrangements that establish the country's principles.

Retired Israeli jurist Philip Marcus, who was born and educated in the UK, said that England's unwritten constitution includes not just written laws but

Opposition leader Yair Lapid is one of the main voices calling for Israel to establish a written constitution. In an essay he published on his Facebook page, Lapid said that the crisis around the judicial reforms should lead to the creation of a better, more complete, less hateful Israeli society. "In other words, we must write a constitution," he wrote. "A constitution is the only thing that will give us one ethos, clearly, that we all have in common."

David Newman, a professor in the Politics and Government Department at Ben-Gurion University of the Negev, said that he supports Israel having a constitution but thinks that it's unlikely to happen given how polarized Israeli society is.

"There has to be agreement on Israeli contentious issues about religion in the state, about the rights of Palestinians, the rights of all its citizens" in order to write a constitution, Newman said.

He noted that even writing a constitution would not be a perfect way to enshrine a certain set of elements of Israeli governance, since a constitution can be changed with a large enough majority.

Much of Israel's current clashes can be traced back to the 1990s, when Israeli Chief Justice Aharon Barak advanced the notion that Basic Laws should be treated as having constitutional authority. Barak empowered the High Court to strike down legislation that contradicted a Basic Law, broadening constitutional protections even without a formal written constitution.

There are now moves from the Knesset to limit and override the High Court's power of **judicial review**, which critics say will leave Israel vulnerable to potential undemocratic abuses of power unless the country adopts a formal, written constitution.



Israel's High Court of Justice (credit: ISRAELTOURISM / WIKIMEDIA COMMONS)

## Why doesn't Israel have a constitution and what can it learn from the UK?

Israel is one of only five countries without a written constitution, along with Saudi Arabia, New Zealand, Canada, and the United Kingdom.

Prof. Eugene Kontorovich, a professor of law at George Mason University and a scholar at the Kohelet Policy Forum, the Israeli think tank behind the proposed judicial reforms, said that the UK and Israel have very different reasons for lacking a constitution.

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Eugene Kontorovich