

## Chapter 3

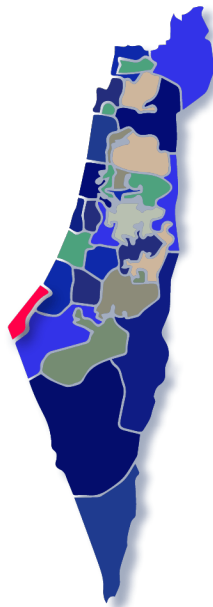
# A Federal State

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**The model:** A single state with a central federal government that is composed of federative districts—some districts having a Jewish character and others having a Palestinian character (see Figure 3). The division can involve just one Jewish district and one Palestinian district or several districts of each type.

**The main idea:** Avoiding the division of the land and maintaining the identity of Israel as a Jewish and democratic state, while transferring broad powers to the district level, creating self-rule for the Palestinians and the Jews in a variety of domains.

**Figure 3.** Federation



## **1. The territorial division**

The idea underlying the federation model is that there will be Palestinian districts and Jewish districts. The state can be divided into one Palestinian district and one Jewish district, or into several districts—Palestinian and Jewish. The latter case enables greater homogeneity in each district. If Gaza is part of the federation, it will constitute either a separate district or will become part of the Palestinian district; in the latter case, it will be necessary to define how the two parts of the Palestinian district will be connected.

Ideas have also been proposed for the creation of districts based on other characteristics, such as religious (Jewish) districts, ultra-Orthodox districts, secular districts, and so forth. This kind of setup, however, further complicates the already complex model.

Dividing the state into homogeneous districts according to nationality, namely districts whose residents are all Palestinian and others whose residents are all Jews, will be difficult, particularly if such districts are meant to have contiguous borders. However, if the territory of the district is not contiguous, this will create complexities in applying the different legal regimes of the separate districts and will necessitate giving the general government more authority.

If the idea of homogeneous districts is abandoned, then residents could live as part of a minority within a district. Since Palestinian districts will have a Palestinian national character and Jewish districts will have a Jewish national character, provisions are needed to ensure the rights of minority groups, so that they can preserve their identity, for example in the provision of educational and cultural services.

## **2. The status of the settlements**

The Israeli settlements will remain in place and will become part of the various districts, like any other city or town. Nonetheless, the location of some of the settlements will make it difficult to achieve Palestinian contiguity in the Palestinian districts, especially if there is only a single Palestinian district. As a result, such settlements, unless relocated, will essentially become Jewish enclaves within the district.

### **3. Jerusalem**

Jerusalem will require a separate solution. It could be decided that the city, or at least its sensitive areas (particularly the Holy Basin), should be given a special status with specific arrangements for the division of authority (like, for example, the city of Brussels in Belgium). It will be necessary to find creative solutions that will allow the Palestinians a certain status in some parts of the city and will take into consideration religious sensitivities.

### **4. Aspects of citizenship and residency**

All those living within the federation will become permanent residents of the state and will enjoy freedom of movement and other rights to which they are entitled. Furthermore, they will have the right to obtain citizenship in the country. Permanent residents of a district will be able to vote for the district's government. Citizenship will include the right to vote and to be elected to the state's federal institutions.

### **5. Governmental authority**

It will be desirable to provide as much authority as possible to the district governments to allow the two peoples to govern themselves to the greatest extent. Nonetheless, the federal government must maintain the power to decide on topics that relate to the national level and on interdistrict issues. The federal government will retain the residual powers, namely any authority that has not been conferred to the district.

There is no single formula for how to divide power between the federal government and the districts. Some responsibilities should clearly belong to the federal government, such as foreign affairs, national security, natural resources, macroeconomic policy, immigration policy, and aerial, maritime and electromagnetic control, while others should clearly be assigned to the districts, such as social welfare, municipal administration, local planning and construction, enforcement of criminal law, and local taxation. As for other responsibilities, such as setting official standards, communications, energy, and agriculture, the division is less clear and is affected by various considerations that lead in different directions. Given the small size of the State of Israel and the fact that

the district boundaries are likely to be convoluted, it makes sense to delegate powers to the federal government on issues where normative continuity is desirable, such as transportation, communications, and environmental protection. Furthermore, in some areas, such as education and culture, federal oversight might be necessary to ensure that the messages are consistent with the values of the state and also that the needs of the minorities in the districts are met.

Institutions that reflect the federal structure will need to be established. Thus, for example, it is common in federations for the legislature to be divided into two houses: a national council (or lower house), such as the Knesset, which is elected by all citizens of the state, and a district council (upper house) consisting of district representatives. The federal government can be elected separately (as in a presidential system) or can be assembled from the members of the elected houses. The method of elections to these institutions will affect the relative weight of the districts and of the general public in the government. A federal court system will adjudicate issues within the jurisdiction of the federal government. The federal government will be funded by federal taxes.

Since the federal government is to serve all the state's citizens and operate in all parts of the state, including the Palestinian districts, it will be necessary to ensure that the Palestinian community is represented within the bureaucracy and in the various mechanisms of power, including the court system. This is in line with democratic values and is also essential to encourage the Palestinians to agree to the federal model and avoid the frustration of non-inclusion over time. This means that Palestinian employees of the federal government will work in the Jewish districts and Jewish employees will work in the Palestinian districts. The federal government will need to operate in parallel in two languages—Hebrew and Arabic.

Each district will have its own institutions, which will include a government, a legislative council, and a judicial system that will have the power to adjudicate according to the district's laws. The district will also have policing powers to deal with criminal activity within its jurisdiction.

The government officials of the district will be elected from among the district's permanent residents. Should minorities reside in the various

districts, provisions must be made to protect their rights, such as ensuring adequate representation in the district's institutions. In addition, it will be important to address the concern that extremist elements who wish to undermine the state could be elected to power.

In the Jewish districts, the law will be based on Israeli law—with some changes and adjustments. In contrast, the Palestinian districts could potentially adopt existing Palestinian law in areas under district jurisdiction; this will be subject to adjustments in line with the legal framework applied at the federal level, which will be based on existing Israeli law, and will be aligned with basic constitutional rights and principles.

## **6. Palestinian involvement in government**

All the citizens of the state will be able to vote for and be elected to the institutions of the federal government. The Palestinians are likely to have significant political influence, even though they will be a minority in the state; this is due partly to the rifts within Jewish society. As a result, they will have the ability to influence federal policy on strategic issues, including foreign policy, national security, economic policy, and so forth.

Some proponents of this model suggest that the Jewish majority should continue to effectively control the state's institutions, for example, by creating more Jewish districts than Palestinian ones and giving greater weight to the representatives of the districts. In parallel, and to make this outcome more palatable, it is proposed to give veto power to each group on certain decisions, such that the Palestinians might be able to block initiatives that directly affect them. However, attempting to prevent the Palestinians from being elected to positions of influence—whether through the institutional framework or by means of various formulas—and thus excluding them from the decision-making process is in direct contradiction with democratic values. Moreover, it is highly improbable that the Palestinians will agree to such an arrangement, and even if they do, it will ultimately create feelings of frustration and dissatisfaction that will eventually threaten the stability of the federal state.

## 7. Freedom of movement within the state

There will be no physical boundaries between districts, and freedom of movement will be guaranteed throughout the state. In the event of a concrete security threat, provisional checkpoints may be set up, as is possible today within the State of Israel.

Freedom of movement includes the right to reside anywhere in the state. Thus, Palestinians will be able to move to Jewish districts and Jews to Palestinian districts.

To preserve the character of a district, the setting of quotas on new residents that do not belong to the dominant group of that district could be considered. Alternatively, it may be decided that the right to move to another district does not automatically confer resident status in the new district nor the right to vote for the district’s government, at least during a transition period. In this way, the original character of the district can be preserved, at least for a limited period of time.

Issues related to controlling the external borders and the international crossings, as well as policy regarding the entry and exit to and from the state, will be determined at the federal level.

## 8. The refugee issue

The federal government will define the policy regarding the entry of Palestinian refugees from abroad into the country. To the extent that the Palestinians have influence over federal decision making, they could exert pressure for the limited absorption of such refugees. Moreover, this could be one of the conditions for Palestinian acceptance of the model. Since there will be freedom of movement within the state, and to the extent that there will not be any restrictions on relocating from one district to another, descendants of the 1948 refugees living in the West Bank (and Gaza Strip—if it is part of the federation) could exercise the “right of return” to locations where their families originally resided, as discussed in the previous models.

Since the refugee camps in the West Bank (and Gaza Strip, if it is part of the federation) will be part of the state, they should be rehabilitated, with provision for the needs of their residents.

## 9. Security aspects

The federal government will be responsible for the state's overall security, including the fight against both internal and external threats, and the security of its external borders, its maritime domain, and its airspace. The security forces, including the IDF and the ISA, will be under the authority of the federal government and will also be able to operate in the territory of the districts when necessary.

The federal police will have the power to enforce laws that fall under federal jurisdiction, such as enforcing federal prohibitions. Therefore, the greater the powers of the federal government, the greater the reach of the federal police. The federal police will be comprised of both Jews and Palestinians, and hence Palestinian members of the police might operate within Jewish districts and vice versa. This is necessary, in part, to ensure equitable enforcement and to reduce the potential for conspiracy and corruption. At the same time, this setup has the potential to create friction.

The relationship between the security and police forces at the federal level and the police forces in the districts, as well as between the police forces in the various districts, must be defined. This becomes relevant in security incidents that occur within a district or in interdistrict incidents. Apart from the natural disputes over the division of power between the central government and the districts inherent in any federation, the national tensions add another dimension of complexity.

The question of whether to draft Palestinians into the military and security forces of the state will pose a dilemma.

## 10. Social aspects

Since a federation involves living side-by-side, its success will depend on whether Israeli and Palestinian societies can effectively reconcile. This will be a formidable challenge, given the deep-rooted hostility and the economic disparities.

## 11. Economic and civil aspects

Macroeconomic policy will be determined at the federal level. This is also the case for issues related to the development and exploitation of

natural resources, as well as any areas in which the lack of a uniform policy is liable to undermine fair trade due to the free movement of people and goods, including setting official standards, indirect taxation, intellectual property, and so forth.

Each district will decide on its own budget and on the economic development within its borders, including land planning and exploitation of the district's resources. The districts will be able to develop independent sources of revenue, including determining the local taxes.

The federal government will need to address the inherent economic disparities between the rich and poor districts and strive to narrow the gaps by investing in the weaker Palestinian districts, as well as in other weak districts in the state. This implies that the richer Jewish districts will essentially be subsidizing the poorer Palestinian districts.

As part of the federal framework, it will be necessary to harmonize the laws applicable to land and intangible property rights in all parts of the state. In addition, a process of consolidation and registration of land rights in the West Bank will be required, since most of the land there is not registered in the land registry.

## **12. Preserving the Jewish character of the state**

The Jewish identity of the state can be anchored in a way that cannot be reversed, for example, by enshrining it within the constitution that creates the federation. However, this will not entirely prevent the identity of the state from changing, due to its demographic composition and pressures to alter its identity.

## **13. Preserving the democratic and the liberal character of the state**

One of the most important aspects of a democratic regime is the protection of human rights in the state. The districts will need to respect the human rights of all their residents and of visitors within their territory. It could be challenging to ensure throughout the federation full respect for human rights, including the right to equal treatment and the prevention of religious coercion. In domains regulated at the district level, there could be tensions with the recognized democratic values of the state, especially if the districts have a religious and traditional outlook and



seek to introduce discriminatory regulations, for example, that relate to women or members of the LGBTQ community. However, if the regulation is at the federal level, and assuming it will adopt democratic–liberal values, it could be difficult to implement in some districts.

#### **14. Implications for Israel’s Arab citizens**

Whether to locate the Arab towns and villages that are currently within the State of Israel, such as the communities along the Green Line, within the Palestinian districts will pose a dilemma. The preference of the residents in these communities in choosing the district to which they will belong should be a determining factor.

The division into districts does not provide a solution to the national aspirations of the residents of the mixed cities, such as Haifa, Acre, and Jaffa, which will likely become part of the Jewish district, as well as Hebron, which will likely become part of the Palestinian district.

The model confronts Israel’s Arab citizens with the question of whether they should continue integrating into Israeli society and remain within the Jewish districts or join one of the Palestinian districts.

#### **15. Implications for the Palestinian Authority**

The PA in its present configuration will be dismantled, although it can serve as the basis for the government of the Palestinian district, especially if there is only one Palestinian district in the West Bank.

Implementing the federal solution will require the dissolution of the Palestinian security forces, which will be absorbed to some extent into the police forces of the Palestinian districts. Weapons and military equipment that are incompatible with the tasks of a police force will be handed over to the federation’s security forces.

The PA will have to give up its diplomatic representation in various countries and international organizations and will come under the auspices of the state’s Foreign Ministry.

#### **16. The Gaza Strip**

The Gaza Strip can be included in the federation as part of the Palestinian district or as a district on its own.

If Gaza is included in the federation, the number of Palestinians in the state will increase significantly. Furthermore, Gaza is an impoverished region and is plagued by problems, which will require solutions by the state.

## **17. The establishment of the federation**

To create the federation, and so that it will function, an agreement must be reached with the Palestinians. If the existing Palestinian leadership is not amenable to the idea, it will be difficult to find an alternative representative body with whom to negotiate agreements that will obligate the Palestinian public.

The creation of the federation will make it necessary to draw up a constitution, which will define the relations between the districts and the federal government and between the districts themselves. Given that this will be a dramatic regime change, the decision should be approved directly by the people, either by means of a referendum or elections. Drafting a constitution for Israel is challenging even without the federative element, given issues such as religion and state, which have prevented the adoption of a constitution until today. The deep cultural and religious gaps between Jews and Palestinians in the state pose an additional major obstacle to creating a constitution. Therefore, reaching an agreement on the constitution would be a complex and confrontational process.

Beyond the constitutional framework, other federal law will be based on the existing law in Israel, with the necessary modifications to the new structure of the regime.

The founding of a federation will necessitate the establishment of new institutions, at both the federal and district levels, and will be a long and costly process. Although building on existing institutions is possible, significant revisions will be necessary.

The federation will constitute a fundamental and comprehensive change in both the structure of the regime and the legal framework, both on the Israeli side and even more so on the Palestinian side. Therefore, the creation of the federation will require detailed interim arrangements and a long transition period to facilitate the introduction and gradual implementation of the new arrangements.

## 18. The feasibility of a federation

A federation cannot be created without the agreement of the Palestinians. It is unlikely that they will agree to a model in which they give up their national aspirations and become part of a state that will maintain its Jewish character. Moreover, since the relevant partner in negotiations is most likely the PA, it is difficult to see how it will agree to a model that entails its dissolution and the dismantling of its security forces. Nonetheless, the Palestinians could possibly consent should the Palestinian districts be given a greater degree of independence and have more meaningful influence at the federal level, in addition to giving Palestinians equal rights in the state. The Jewish public in the state, however, is liable to oppose such concessions.

Apart from agreement to the model in principle, the two sides will have to agree on numerous and complex details about how the federation will operate, including the division of power between the districts and the federal government, the structure and composition of the courts, the level of Palestinian involvement in the various processes, the integration of Palestinians within the state's institutions, the division of power between the federal security and police forces and the district police, and so on. Thus, a long and detailed negotiation process will be necessary, and it is far from certain that such a complex agreement is attainable.

### The chances of success as a permanent solution to the conflict

1. The model is based on the idea of bringing Jews and Palestinians into one state that necessitates numerous connections and ongoing daily interaction between them. Their deep cultural and religious differences, the many years of hostility between the populations, and the potential for violence will pose a major challenge.
2. The definition of the state as Jewish implies that the Palestinians must give up on realizing their national aspirations; this entails an inevitable tension within the federation. This tension is expected to increase should the Palestinians have limited ability to influence decisions in the federation and should they not be granted equal rights within the state. In addition, denying such rights will violate the state's democratic character.

3. Even if the Palestinians have full equality and full partnership in decision making, the federation does not necessarily represent a stable model. The fear will remain that the Palestinians will want to secede from the state or alternatively use their political power at the federal level to transform the state into a binational or even a Palestinian state, instead of one with a Jewish character.
4. Full freedom of movement, including the possibility of moving one's residence within the state, could potentially cause daily friction between Palestinians and Jews. It could culminate in violence and attempted terror attacks by Palestinians who oppose the existence of the state and by Jews who oppose the full integration of the Palestinians within the state. It will be difficult to monitor and control the movement between districts without obstructing the territorial continuity of the state.
5. Granting broad powers to the districts and limiting the intervention of the federal government will make it possible to expand the scope of self-rule for the Palestinians and will make the model more acceptable to them. However, this would lead to lack of harmony, overlaps, duplication, and complications in dealing with issues that concern more than one district, in moving between the districts, and in the relations between them. In addition, it will be necessary to create separate and parallel institutions in each district, such as bureaucracies for professional licensing, for tax collection, and for enforcement, which is a waste of resources for such a small country. The more districts there are, the greater this problem will become.
6. Including all the Palestinian territory as part of the state will create a heavy economic burden on the state due to the under development of most of these territories in comparison to Israel and the need to provide for the needs of the new residents. This problem will be exacerbated if the Gaza Strip is included in the federation.
7. The economic disparities between the districts are liable to lead to instability. Any attempt to bridge the gap will require the residents of the “rich” districts to essentially subsidize the “poor” ones. Since the Palestinian districts are poorer than the Jewish ones, the economic

disparities will cause tension, that will likely exasperate the nationalistic tensions.

8. For the federation to function, ongoing cooperation between the districts and the central government will be essential. If the Palestinians decide to cease their cooperation with the federal government, internal conflicts will ensue and possibly lead to the breakup of the federation.
9. The inclusion of Gaza in the federation—even as a separate district—will create a demographic problem in the country, as described in the previous models, and also an obligation to provide for the needs of the residents of Gaza. However, and as in the previous models, leaving Gaza outside the federation means that the conflict will not be fully resolved, and Gaza will remain a focus of instability, which will challenge the relations between Palestinians and Jews in the federation.