These “laws” are the completion of an unusual and incremental constitutional process which has established a system whose foundations are to be found firstly in the acknowledged United Nations’ General Assembly Resolution adopted on November 29th, 1947 (providing the constitution of an Israeli state within the Palestinian region); and secondly, through the Declaration of Independence of the newly-born Israeli state, on May 14th 1948 after the failure of the British jurisdiction (ratified by the UK Parliament under the *Palestine Act* on April 29th, 1948).

According to Suzie Navot, the failure to draft a Charter to be approved by a Constitutional Assembly with effectiveness over ordinary laws was due to the opposition of Prime Minister David Ben-Gurion (rather than the concerns of a part of the Knesset, which considered the *Torah* as the only exclusive Constitution the Jewish people). In truth, no comprehensive constitutional process was ever deliberately set in motion. This was in order to avoid formulating over rigid principles which would ultimately create cultural divisions within the nation. Such concerns were exacerbated by the fact that the majority of the Jewish people had yet to re-enter the territories of the new state. The first Knesset ultimately approved a compromise (proposed by one of its members, the so-called *Harari Resolution* of June 13th, 1950), which certainly sets forth a unique precedent in comparative constitutional law. Indeed, the Knesset “decided not to decide” on the matter as it entrusted the Commission for Constitutional affairs and Justice with the task – on-going and with no deadlines – to draft one-by-one the “chapters” of the Constitution –i.e., the “basic laws”- which would then be approved one-by-one by the Knesset.

The 12 “basic laws” that have so far been ratified cover a large proportion of constitutional matters. These laws allow the author to organize the contents and themes of her work adopting a traditional ‘textbook’ approach. The book is both concise and comprehensive with reference first to historical origins followed by analysis of the fundamental principles of the system. The text then proceeds to discuss the powers of constitutional bodies, the sources of law, the form of government, the progressive judicial definition of fundamental rights and the mechanisms in place to protect them.

The unique character of certain institutions certainly demands the attention of comparative constitutional scholars. The very foundation of the Israeli system is to be found in the institutional framework of the British *Common Law*, as at the end of WWI, after the fall of the Ottoman Empire, the League of Nations granted Great Britain a mandate for Palestine. Indeed, since its very beginning, the government of the Israeli State has reproduced the so-called *Westminster* parliamentary system. This was except for a brief time-lapse (1996-2001) in which great political instability led (with unsettling results) to an unusual strengthening of the office of prime minister. The consolidation of the post was achieved through direct election simultaneous with the election of the representative Chamber by means of two separate ballot papers (however, even in this phase, the prime minister remained subject to a vote of no-confidence by the majority of the Parliament and, provided presidential approval could be obtained, retained the power to dissolve the Knesset).

Professor Navot provides a deeper assessment which covers the recent development of a strong “judicial activism”. This trend has gradually led to the abandonment of the formalistic approach derived from English law (even though under *stare decisis* lower courts are still bound by higher courts), in favour of a stronger “Americanisation” of the system. As the author highlights, this development can mainly be attributed to the contribution of the Israeli

Supreme Court through its "judicial review" over ordinary legislation. It is above all this process which has led to the establishment of a genuine judicial *Bill of Rights* (exceedingly important is the acknowledgment of the principle of equality along with other fundamental rights, e.g. freedom of speech, not even included in the "basic laws" of 1992, but however implied in the recognition of the value of human dignity).

The above-mentioned *Harari Resolution* left unsettled the question of the position, within the sources of law, of the "basic laws" adopted by the Knesset using a regular legislative procedure, however, the dominant opinion, endorsed by the jurisprudence of the Supreme Court, is that such laws limit the legislative authority of the Parliament. Indeed, it is worth remembering the 1995 Supreme Court decision, *Hamizrahi Bank v Migdal*. This decision followed the 1992 adoption (which the Supreme Court President Aharon Barak considered a "constitutional revolution") of two important basic laws concerning human rights. For the first time in a judicial review case an Israeli supreme judge stated the principle that if an ordinary law is in contrast with an inalienable right acknowledged by a "basic law", the former is to be considered invalid. This applied notwithstanding the formal fact that the latter was approved by a mere absolute majority of the Knesset, which has both legislative power and constitutional authority. Suzie Navot's conclusion (p. 36) is that, following the US example in *Marbury v Madison*, even without an explicit constitutional mandate, the Israeli Court considered itself in a position to judge whether legislation is in compliance with the contents of the "basic laws".

Certainly, the most stimulating part of the book is Navot's interpretation of the political and social reasons for the current obstacles to the approval of a Constitution for Israel. This is for reasons that the author believes lie in the enduring disagreement on the compatibility of the "democratic values" gradually emerging from the "basic laws" and the "Jewish State". In

other words it refers to the "natural right of the Jewish people to be, as any other people, independent in [their] own sovereign state" and reflects the nation's right of self-determination ratified in the declaration of independence of 1948, but already acknowledged in Palestine's partition plan approved by the United Nations in 1947. The balance between the two, potentially opposite, principles of this nation is very complex and, according to Navot (p. 73), depends on the notion of the "Jewish State" which sometimes refers simply to the majority of the people, whereas at other times refers to the right of political self-determination of the Jewish nation, and yet others it is used to highlight the peculiar religious features of the law.

However, on this latter point, the Court of Justice (3872/93 *Mitral v. The Prime Minister and the Religious Affairs Minister*) specified that the notion of "Jewish State" does not contemplate the possibility to approve "religious laws" (given the mandatory right that citizen must enjoy religious freedom as well as "freedom from religion") and that in any case, it is necessary that the legal system establish a balanced trade-off between potentially threatened religious sentiment and other concerned rights. For instance, it may involve balancing religious freedom threatened by the presence of butcher's shops selling pork and the freedom of establishment for those engaged in the business of selling food products (953/01 *Solodkin v. Bet Shemesh Municipality*).

Furthermore, the legal position of non-Jewish citizens (i.e., Arabic) and of orthodox or super-orthodox Jews in achieving substantial equality and equal treatment still remains only partly guaranteed. This is true notwithstanding the judgments endorsing the widest political participation together with the pre-eminent value of the standing electorate's rights (for example, in the 2003 *Tibi* case the Supreme Court annulled the provision of the central election committee which excluded from political elections two Israeli-Arab candidates. It

found that their political manifesto, even if it was in conflict with the Jewish nature of Israel, it did not lead to the destruction of the State, but rather called for a system for an all inclusive state).

It is not easy to anticipate the evolution of the Israeli constitutional system. According to the author, "in the second decade of the 21st century, the completion of the Israeli constitution still seems unrealistic". This acknowledges the persistent conflict within political institutions and civil society on fundamental questions, such as human rights, and, in particular, minority rights.

Can we conclude that today Israel has a complete Constitution? In respect to this crucial question Professor Navot expresses some doubts. While it is true, on the one hand, that the "chapters" written so far regulate large parts of the system, comparable to other written Constitutions of democratic States (p. 45) on the other, the current framework still appears "weak" and "unstable" lacking wide consensus on crucial issues. In consequence, it would be very difficult, at least for now, to be able to collect and entrench the "basic laws" in one single constitutional document. Finally, the complexity of many of these unanswered questions is depicted symbolically in the striking multi-coloured cover illustration of the book by the artist Putachad Leyland.