

Israel's Partial Constitution: The Basic Laws

By Amnon Rubinstein (April 2009)

Introduction

Israel has no formal constitution but it does have constitutional laws that are among the most progressive and liberal of any democratic nation. This is due to "the constitutional revolution," the adoption by the Israeli parliament, the Knesset, of two basic laws concerning human rights.

The saga of Israel's Basic Laws can be traced back to the country's birth in 1948. The Declaration of Independence prescribes a clear course for the development of a future constitution of the Jewish State:

We declare that, with effect from the moment of the termination of the [British] Mandate being tonight, the eve of Sabbath... 15th May, 1948 until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish State, to be called 'Israel.'

In this respect, David Ben Gurion, the drafter of the declaration and the first Prime Minister was loyal to the UN partition plan which was passed by the general assembly on November 29, 1947. The partition plan split the land of Palestine into two independent states: one Jewish and one Arab. That decision laid down the rules regarding the constitutional formulas of these states: The Constituent Assembly of each State shall draft a democratic constitution for its State and choose a provisional government to succeed the Provisional Council of Government appointed by the Commission. The constitutions of the States shall embody chapters 1 and 2 of the Declaration provided for in section C below..."

Accordingly, as soon as Israel's War of Independence ended on January 25, 1949, elections for the constituent assembly took place. The fledgling state's electorate went to the polls expecting to help draft a constitution. Initially, Prime Minister Ben Gurion was inclined to adopt the American model of a written constitution, but he changed his mind and began to advocate a legal code modeled after the British, which contained no formal constitution. It is not clear what motivated this change of heart, but Ben Gurion, like the other founding fathers, admired the strength behind the constitution-less British Parliament. ¹

In his speeches in the Knesset, Ben Gurion argued that "our state is being recreated every day. Every day, additional Jews liberate themselves by immigrating to our country; every day, additional parts of our country are liberated from their status as wasteland. This dynamism cannot tolerate a rigid framework and artificial constraints. The laws of Israel must adapt themselves to this dynamic development." ⁱⁱ

Ben Gurion presided over a transition from the provisional council that initially governed the state after the declaration of independence to a constituent assembly elected in 1949. In its first official act, the assembly changed its name to the First Knesset – a seemingly innocuous linguistic change, but one which gave a hint of things to come. The constituent assembly was destined to be reborn as a regular parliament.

Finally, Ben Gurion and his Mapai party - aided and abetted by the religious members of the Knesset who themselves objected to any secular constitution - came out openly against a formal written constitution.

Facing them with his rhetorical might stood Menachem Begin, leader of the opposition Herut party, who argued stubbornly and forcefully for the assembly's writing of a formal constitution as laid down by the Declaration of Independence. Ben Gurion and Begin locked horns for an entire year exchanging verbal broadsides for and against a written constitution. Finally, this emotional debate culminated in June 1950 in a compromise solution. The First Knesset voted for the following decision named after its initiator (MK Y. Harari):

“The first Knesset charges the Constitution, Law and Justice Committee with preparing a draft of the State Constitution. The Constitution will consist of separate chapters, each chapter constituting a Basic Law of its own. The chapters will be presented to the Knesset, as the Committee concludes its deliberations, and all of the chapters shall be consolidated into the State Constitution.”

It was in this way that the Basic Laws came into being as the half-legitimate heirs to the defunct constitution. The decision was intentionally vague. Would the Knesset intend to enact a constitution by installments that would be binding only after its completion, or would each Basic Law, have a constitutional standing and be normatively above ordinary legislation? No clear answer was given at the time.

The First Knesset charged its aforementioned Constitution, Law and Justice Committee with drafting and presenting the outlines of Basic Laws to the Knesset. No special procedure or majority were mentioned or later adopted. The first Knesset was dissolved in 1950 due to the first of Israel's many political crises centering on state and religion. The first Knesset had not passed one Basic Law and all of its powers were transferred to the soon-to-be-elected second Knesset. According to the Second Knesset (Transition) Law, 1951, "the Second Knesset and its members shall have all the powers which the First Knesset and its members had" and the law added that this shall be applicable to the Third Knesset and to all future Knessets." No specific mention of its constituent power was included, thus further obfuscating the question and causing within the Supreme Court half a century after the fact.

Future Knessets passed a series of Basic Laws as if they were the lawful inheritors of the First Knesset. These Basic Laws were generally ordinary laws in their content although in form they

had a specific character. Their titles did not include the year in which these laws were enacted. Indeed, the Basic Laws – except for one dealing with the Knesset itself, which will be detailed below – were pieces of ordinary legislation dealing with state institutions and did not pretend to be of superior normative standing. They dealt with the mundane business of government and in most cases embodied existing norms. Altogether, nine such laws were passed by the Knesset between 1958 and 1992 – the year in which the first Human Rights Basic Laws were passed.ⁱⁱⁱ

These pre-1992 laws were really “cut and paste” jobs. They contained only a handful of articles that were entrenched (i.e., immune to change and repeal by ordinary majorities) and consequently, little public or juridical attention was paid to them. There was one exception to this rule: The Basic Law about the Knesset – the only law of the nine which was drafted in accordance with the Harari Decision by the Committee – contained words which alluded to normative superiority. The words in this section entrenched the purely-proportional electoral system. The section, valid to this day, states that any amendment of the relevant section requires an absolute majority of Knesset members – i.e., 61 out of 120 – as distinct from the ordinary majority which is otherwise required for legislation.^{iv}

This provision gave rise to a number of petitions to the High Court of Justice dealing with the public finance of political parties. In its decisions, the court held that only entrenched articles were superior normatively to ordinary legislation and consequently, offending laws (i.e., laws which did not ensure financial equality between parties, and were not passed by the required majority of 61 members) were invalid.

All of this would change in 1992.

A short political explanation is necessary at this point. The 1990s was an unusual period in Israeli political and legislative history. In the spring of 1990, the Israeli political system fell into total disrepute. Shimon Peres, the leader of the Labor party, tried to oust and replace Yitzhak Shamir, leader of the Likud party, as Prime Minister. Peres succeeded in pushing a no-confidence motion through the Knesset – the first in Israel's political history – but found it difficult to form an alternative coalition government. The dirty deals that followed as each party attempted to “acquire” members of the Knesset to get the necessary 61 votes to form a new government stunned the public and were referred to as the “the smelly exercise” by Yitzhak Rabin.

The prestige of the government and the political class had sunk to a new low. In these circumstances, a number of Knesset members from different parties decided to shun party discipline, disregard coalition dictates and initiate a series of legislative reforms to save the political structure of the Israeli democracy. These reforms included a law severely limiting the power of individual Knesset members to “cross the floor” – i.e., to leave their faction and join another party; a new parties law regulating their internal structure; a new electoral law providing for direct election of a Prime Minister (a semi-presidential system which was revoked after three elections) and, finally, the enactment of two Basic Laws concerning Human Rights. The enactment of these two basic laws became known as the “constitutional revolution” and the history of these two Basic Laws – Israel's Bill of Rights – is both unique and dramatic.

For many years Knesset members attempted to pass Basic Laws protecting human rights but these attempts were frustrated by strong opposition from the Jewish–Orthodox parties, whose

cooperation was essential for Israel's fragile coalition governments. In 1989, Minister of Justice, Dan Meridor, initiated a Governmental Basic Law on Human Rights. As expected, the ultra-Orthodox coalition partner in the Likud cabinet vetoed the bill and Meridor had to shelve it. The Orthodox opposed the legislation out of fear that the power of religious authorities would be weakened.

This author nevertheless submitted the same bill to the Knesset. I argued:

The Jewish people have a long and continuing love affair with Human Rights. When, in 1789, the French National Assembly declared in words which still echo today that 'all men were born and remain free and equal in their rights', the Jews were directly connected to this event: first, in the Jewish Diaspora a recognition took root that revolutionary France grants a new meaning to the old Jewish credo that all human beings were created in God's image: and secondly, that this declaration opened up a new gate, a new dawn of equal rights for Jews. And since then to the present time, Jews have been champions of Human Rights.^v

The Orthodox parties again threatened to bring down the government if the bill was adopted and it was clear a compromise was required if the bill was to have a chance to pass through the three Knesset readings necessary to transform it into law.

The Bill was ultimately split into four separate parts – dealing respectively with personal dignity and liberty, freedom of professional occupation, freedom of speech and freedom of association. These smaller, less ambitious parts would be easier pills for the Orthodox parties to swallow for two reasons: First, dealing with four separate bills was easier than dealing with a complete charter of human rights, second, by dealing separately with distinct subjects, it was possible to sweeten the pill by passing from the less objectionable issues of personal freedom and freedom of employment to the less palatable ones, such as freedom of speech (which the Orthodox feared would legitimize pornography and blasphemy).

This move was helpful but not sufficient. Further concessions were needed, in particular, the preservation of the law that gave the rabbinical courts exclusive jurisdiction in matters of marriage and divorce. Additionally, the laws had to define the values of Israel as being of both a Jewish and a democratic nature; “freedom of movement” within the country had to be deleted so as not to enable vehicular traffic to pass through devout Orthodox neighborhoods on the Sabbath; and finally, an explicit reference to equality under the law had to be removed as the Orthodox feared that this would be interpreted as giving non-Orthodox communities and their rabbis equal status to that of their own privileged institutions. Later, however, an explicit reference to the Declaration of Independence was added to the article describing the purposes of the laws. Because the Declaration includes the principle of equality, the two Basic Laws incorporate, albeit indirectly, the constitutional guarantee of equal opportunity.^{vi}

There is no mention of judicial review in the laws, but the discussions in the Knesset Committee as well as the protracted conducted with Orthodox and other parties assumed that these Basic Laws would have constitutional standing and that any offending law could be judged invalid.

Prime Minister Yitzhak Shamir attempted to stall the proceedings and stop the deliberations of the Committee. In the then rebellious mood of the Knesset, however, the Likud chairman of the

Committee, Uriel Lynn, could disregard the government's wishes. In presenting the Bill, which incorporated the compromises with the orthodox parties, I said:

We live in a period in which Human Rights have acquired a meaning undreamt of even a few years ago. We witness in this most horrible of centuries, in which a third of our people were murdered [...] a new era of universal human rights. In the name of these rights, men and women raised barricades. The spring of 1989 in East Europe gave human rights a new political and universal significance [...] It is inconceivable that in the parliament of the state whose culture gave the world the concept of protecting everyone who is created in God's image, there will be no legal status to human rights. This is totally inconceivable. This is something we cannot live with. This is a stain on our statute-book. And we want to begin to remove this stain, in a spirit of compromise. We want to usher in a parliamentary consensus in order to remove this stain.^{vii}

The seemingly impossible then happened: The two first Basic Laws – Freedom of Occupation and Personal Dignity and Liberty – went to the Knesset plenum and, after many long sessions, were finally voted into law on March 13, 1992. After more than fifty years of futile attempts to enact a Bill of Rights, the Knesset had passed two laws which subscribed to a most progressive version of liberal philosophy.

That was not the end of the story, however. In 1995, the Supreme Court decided in the Mizrahi case that the two Basic Laws stand above ordinary legislation because in enacting them, the Knesset acted in its capacity as the inheritor of the 1949 Constituent Assembly. Consequently; the court had an inherent authority to judicially review laws which were incompatible with the 1992 Basic Laws.

Since that decision, the judicial review of the Knesset Acts has become a fact of legal and parliamentary life. Since then, the Supreme Court has based its power of review on an article which appears in the two laws, popularly called the "limitation clause." Under this article – which is couched in terms similar to those of article 1 of the Canadian Charter of Rights and Freedoms – "The rights according to this Basic Law shall not be infringed except by a law befitting the values of the State of Israel, enacted for a proper purpose and to an extent no greater than required."^{viii} The values of the State are defined in both laws in identical language:

Basic Principles

1. Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

Purpose

2. The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.

Thus the High Court of Justice Court could, under the Mizrahi rule, invalidate any law that did not fulfill the conditions of the limitation clause. As shall be explained, the High Court of Justice

has since used this power of constitutional review sparingly. In only four cases has the court rescinded an act or part of it and in all these cases the Knesset accepted the Court's rulings.

Furthermore, the Knesset, through its legal advisers, goes over any bill, proposed by either Government or Knesset members (i.e., private members bills), to ascertain its compatibility with the limitation clauses of these two Basic Laws. Thus the new Basic Laws constituted, in the words of Chief Justice Aaron Barak a "constitutional revolution." In actuality, the entire tenor of the public debate on human rights in Israel has been transformed by the 1992 laws and the subject of human rights has acquired a legal dominance it had previously lacked.

There was, however, a price to be paid for these acquired human rights. As a result of the Court's decisions and Chief Justice Barak dictum, the Orthodox parties let it be known that they would object to any further Basic Laws and would prevent their passage in the Knesset. Indeed, when the Supreme Court held that under the Basic Law of freedom of occupation the government could not constitutionally prevent the importation of pork and other non-kosher meat, the leader of the Shas ultra-Orthodox party publicly announced that henceforth he would even object to the Ten Commandments if they were to be incorporated into a Basic Law.

The result was a paralysis in the writing of a constitution. The two remaining drafts of this author's – dealing with Freedom of Speech and Freedom of Association – were dead and buried, and while more recently there have been brave attempts to draft an entire constitution, there are no signs that this will happen soon. Thus Israelis will have to content themselves with a partial constitution made up of Basic Laws and its Bill of Rights will consist of the two Basic Laws passed in 1992, before the religious parties clamped down on any further legislation.

Practical Implications of the Basic Laws

As discussed above, the language of the articles describing the principles of these Basic Laws is couched in liberal terms. The laws are based on the recognition of the centrality of the individual and the protection of his or her life and freedom. There is no direct reference to equal protection in the laws but the reference to the Declaration of Independence, which includes a strongly worded equality clause, is a substitute for this absence. The wording of this section can be compared favorably with the Canadian Charter of Right and Freedoms (part of the Constitution Act, 1982) which states that it guarantees rights and freedoms set out in it without specifying the philosophical principle on which these rights are founded except for the general constitutional statement that "Canada is founded upon principles that recognize the supremacy of God and the rule of Law." The Charter resembles the preamble to the European Convention of Human Rights that includes the Universal Declaration of Human Rights.

The formula invoked by Israeli law follows the principle established after World War I that restrictions on human rights must, in addition to being prescribed by law, be limited by an objective criterion that can be judicially reviewed. This is of course the major lesson drawn from the Nazi takeover of the German judicial system in which the organization relied on the formal authority of the Weimar constitution. The universal declaration of Human Rights indicated this new post-Nazi approach in article 29(2):

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the

rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The European convention on Human rights incorporates the same idea. After ensuring the right of privacy, article 8 states:

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society...."

A similar provision is incorporated in article 9 (freedom of religion and conscience), article 10 (freedom of expression) and 11 (freedom of assembly).

The Knesset opted to incorporate such a restriction in one comprehensive provision instead of enumerating it in separate articles relating to individual rights.

It has been argued that by placing this restriction in a limitation clause that refers to the values of Israel as "Jewish and democratic," the Basic Laws stray from the clear instruction of the Universal Declaration, the European Convention and the Canadian Charter.

This admonition is valid. That being said, as this phrase was suggested and inserted into the laws by the present author, I would like to defend its use. The term "Jewish and democratic" excludes a religious interpretation of the term. Indeed, the Supreme Court interpreted the term "Jewish" so as to be always compatible with "democratic." Moreover, the expression "Jewish and democratic" was often used by the politically left Peace Now movement so as to point out that Israel, if it were to annex the occupied territories, could not conceivably be both Jewish and democratic. Israel would either have to disenfranchise millions of Palestinian Arabs or, alternatively, lose its Jewish majority in the Knesset. This is perhaps the reason why the Arab parties in the Knesset did not vote against this section.

Having said that, I maintain that it is still desirable to move the Jewish element from specific human rights legislation to where it belongs: The preamble of a future constitution – if ever it materializes.

If one looks beyond mere declarations, the Israeli Basic Law falls short of similar constitutional instruments. Existing legislation – including the monopoly given to religious courts on family law matters – is preserved and is immune from judicial review; equality is only obliquely referred to and freedom of movement within Israel is absent, as is freedom of religion and conscience.

Yet, despite these shortcomings, the two Basic Laws have served a major purpose by turning Israel into a more liberal democracy. This process began to take root not only because of the decisions of the Supreme Court but also because two phrases coined by these laws – "Jewish and Democratic" and "Personal Liberty and Dignity" – became almost overnight catch phrases and their concepts are taught and debated in schools and universities. As to the judicial results of this "constitutional revolution," the harvest is small in size but impressive in its intensity.

Invoking the two Basic Laws, the Court has in the past intervened and declared null and void altogether four sections of laws passed by the Knesset. In all these cases, the Knesset acquiesced

and moreover accepted the rulings of the Court. Paradoxically, it was a decision of the Court in which, by a majority of one, the court did not annul a law of the Knesset which started an intensive debate as to the scope of its constitutional review.

The four cases in which the Court historically struck down sections of Knesset Laws were:

1. H.C. 1715/97 Lishkat Menahalei Hashkaot v. Minister of Finance (Piskei Din 51(4) 367 – Hebrew) in which the court declared null and void a section of a law imposing a new licensing regiment on investment brokers. The sections dealing with practicing brokers stated that those who have been practicing for less than seven years must pass an exam and the court ruled that this was an infringement of the Basic Law: Freedom of Occupation. The Knesset amended the law accordingly.
2. H.C. 6055/95 Tsemach v. Minister of Defense – (Piskei Din 53(5)241 – Hebrew) in which sections of the Military Jurisdiction Act were set aside because they allowed the detention of a soldier for a period up to 72 hours before bringing him or her before a court. The Knesset amended the law so as to lessen the period to 48 hours.
3. H.C. 1030/99 Oron M.K. v. Government of Israel – (Piskei Din 56(3) 640 – Hebrew) in which the court set aside a section of the law which gave licenses to pirate radio stations (mainly nationalist-religious) who had been operating illegally for at least five years prior to the law. The court held that this provision infringed on their lawful competitors' freedom of occupation and was therefore invalid. The Knesset did not attempt to revive these sections.
4. H.C. 1661/05 Hof Gaza Regional Council v. The Knesset – (Piskei Din 59(2) 481 – Hebrew) in which the unilateral Israeli withdrawal from Gaza was the subject of litigation. In that case, the Knesset passed a special law compensating the Jewish settlers, who were to be forcefully evicted, from their properties. The Court held that property rights of the settlers were infringed upon by the withdrawal. The Court examined whether the law fulfilled the conditions of the limitation clause. Eventually, the Court set aside four provisions of the disputed law with regard to rights to compensation but the majority – 10 of 11 judges – refrained from dealing with the actual decision to unilaterally withdraw from Gaza saying "that in such matters we cannot interfere except for extraordinary and extreme cases".^{ix} The dissenting Judge Levy was ready to set aside the withdrawal decision as incompatible with the "limitation clause."

The Court was divided between a majority of six judges who accepted the government's case and turned down the petition and a minority of five judges who were ready to set aside the disputed law. The minority opinion – headed by Barak, President of the Supreme Court – was strengthened by the fact that one of the majority judges – Judge Levy – agreed in principle with the minority but refused to set aside the law because it was provisional and was about to be replaced by a new law. The new law is again being challenged on similar grounds in the High Court of Justice.

This decision gravely antagonized certain parts of the Knesset. Had the minority view won, the result would have been the entry of tens of thousands of Palestinians into Israel. It is safe to assume that the majority of Knesset members would have taken legal measures to frustrate the decision, most likely by amending the Personal Liberty and Dignity Law. The inevitable result would have been a clash between the Supreme Court and the Knesset.

De Facto Entrenchment

The two 1992 Basic Laws differ in two respects. According to the first law, the right to occupation is entrenched – i.e., it cannot be amended or rescinded without an absolute majority of Knesset members (61 out of 120) and it incorporates a Canadian-style override clause which enables the Knesset to enact laws incompatible with the Basic Law provided their duration is at most five years and provided a majority of Knesset members vote for it.

The Liberty and Dignity Law is not entrenched and therefore can be amended by an ordinary majority of present members. Political circumstances can account for the differences in these laws. The entrenchment clause in the Dignity Law failed to pass by one vote as the members of the Knesset supporting it were only partially present in the plenum – this being primaries time.^x Despite growing agitation against the Supreme Court's recent "activism," there has been no attempt to change the un-entrenched Liberty and Dignity Law. The only explanation for this phenomenon is that the principle enshrined in this Basic Law and its popularity, as well as fear of international public opinion, has deterred Knesset members from changing a law which has become synonymous with Israel's Bill of Rights.

Conclusion

Has there ever been a similar case in the history of other democratic nations? Has ever a constitution – albeit a partial one – been passed by the private initiative of a single member of the opposition in parliament in the face of the Prime Minister's attempts to block it? Indeed, 1992 afforded a uniquely opportune moment created by political circumstances. While the old political establishment was reeling, the Knesset members shared the public sentiment that a change was needed. Meanwhile, the Law and Constitution Committee was chaired by an independent and courageous Member of Knesset who was willing to be the leader of this change. At the same time the religious parties were ready for a compromise that would secure their past achievements while allowing for future gains. Finally, the Minister of Justice “privately” gave his support for the initiative.

These extraordinary circumstances, in addition to a series of lengthy intra-party negotiations, enabled this author to carry out a mission which for many years seemed impossible. The constitution-less state of Israel acquired a partial constitution with a strongly worded Bill of Rights and full judicial review of offending laws. The Israeli political system emerged an island of constitutional stability.

Appendix

BASIC LAW: HUMAN DIGNITY AND LIBERTY, (5752-1992)^{xi}

Basic principles

1. Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

Purpose

1A. The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.

Preservation of life, body and dignity

2. There shall be no violation of the life, body or dignity of any person as such.

Protection of property

3. There shall be no violation of the property of a person.

Protection of life, body and dignity

4. All persons are entitled to protection of their life, body and dignity.

Personal liberty

5. There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.

Leaving and entering Israel

6. (a) All persons are free to leave Israel.

(b) Every Israel national has the right of entry into Israel from abroad.

Privacy

7. (a) All persons have the right to privacy and to intimacy.

(b) There shall be no entry into the private premises of a person who has not consented thereto.

(c) No search shall be conducted on the private premises or body of a person, nor in the body or personal effects.

(d) There shall be no violation of the confidentiality of conversation, or of the writings or records of a person.

Violation of rights

8. There shall be no violation of rights under this Basic Law except by a Law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required, or by regulation enacted by virtue of express authorization in such Law.

Reservation regarding security forces

9. There shall be no restriction of rights under this Basic Law held by persons serving in the Israel Defense Forces, the Israel Police, the Prisons Service and other security organizations of the State, nor shall such rights be subject to conditions, except by virtue of a Law, or by regulation enacted by virtue of a Law, and to an extent no greater than is required by the nature and character of the service.

Validity of laws

10. This Basic Law shall not affect the validity of any law in force prior to the commencement of the Basic Law.

Application

11. All governmental authorities are bound to respect the rights under this Basic Law.

Stability

12. This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required.

ⁱ Ben Gurion explained that the American constitution was the result of its revolutionary character and its federal structure – both factors inapplicable to Israel. In defending the British model he claimed that the British democracy was enhanced by the absence of a formal constitution. And he strangely reinforced this claim by mentioning the fact that during World War II, British law did not hesitate to apply preventive detention to a Member of Parliament – without showing cause and in order to serve the security of the state. Divrei haKnesset of 2.20.1950 at p.818-819.-in Hebrew)

ⁱⁱ Divrei haKnesset of 2.20.1950 at p.819 – in Hebrew.

ⁱⁱⁱ The laws are: [Basic Law: The Knesset \(1958\)](#);
[Basic Law: The Israeli Lands \(1960\)](#);
[Basic Law: The President of the State \(1964\)](#);
[Basic Law: The Government \(1968, replaced in 1992 and in 2001\)](#);
[Basic Law: The State Economy \(1975\)](#);
[Basic Law: The Army \(1976\)](#);
[Basic Law: Jerusalem, the Capital of Israel \(1980\)](#);
[Basic Law: The Judiciary \(1984\)](#);
[Basic Law: The State Comptroller \(1986\)](#);

^{iv} section 4 of this law states: “The Knesset shall be elected by general, country-wide, direct, equal, secret and proportional elections, in accordance with the Knesset Elections Law; this section shall not be amended, save by a majority of the members of the Knesset.”

^v Divrei haKnesset of 15.11.89, at page 403 (in Hebrew)

^{vi} Israel "will ensure complete equality of social and political rights to all its inhabitants irrespective of religion race or sex"

^{vii} Divrei haKnesset of December 10 (Human Rights day) 1991 (in Hebrew).

^{viii} The Canadian equivalent is more rudimentary: the Charter is "subject only to such limits prescribed by law as can be demonstrably justified in a free and democratic society." The case for judicial review of Knesset laws which offend against basic laws was made by this author as far back as 1966 in "Israel's Piecemeal Constitution", Scripta Hierosolymitana, Jerusalem 1966, also in the author's site: amnonrubinstein.org under "English."

^{ix} H. Sommer & G. Seidman note that this non-intervention was inconsistent with the court's dictum saying that it was ready to examine whether the law was compatible with the need to show "an appropriate purpose" as mentioned in the limitation clause :Mishpat U-Mimshal volume 9 page 579 – (in Hebrew).

^x The override clause was enacted in order to pass legislation forbidding the import of non-Kosher meat, thus enabling the Shas Ultra-Orthodox party to support Rabin's government on the eve of the Oslo accords.

^{xi} Taken from The Ministry of Industry, Trade and Labor official website:

<http://www.moit.gov.il/NR/rdonlyres/BD5CD349-E24D-4B22-9D1E-29D9529B9765/0/1.pdf>