

**United Mizrahi Bank's Twentieth Anniversary:
On the Piquant Story of the Hybrid Israeli Constitution –
Comment on Weiler and Lustig**

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Twenty years after the Israeli Supreme Court rendered its decision in *United Mizrahi Bank*, there is still an ongoing discussion whether Israel has a formal Constitution. The Knesset's official site suggests that Israel lacks one. Those who recognize the existence of a formal Constitution seem to believe that the Constituent Authority theory provides the best explanation for Israel's constitutional development. While Weiler and Lustig suggest that the Israeli constitutional revolution is "banal" in comparative terms, the very debate over the existence of a formal Constitution exposes its uniqueness. This article suggests that the constitutional debate in Israel has focused on the wrong question due to the influence of American thought. Instead of inquiring whether Israel has a formal Constitution, the discussion should focus on the question which kind of a formal Constitution is developing in Israel.

This article suggests there are four competing theories as to how Israel's constitutional development is best explained, and the competition among them has not been settled yet. Supreme Court decisions in such cases as *Movement for Quality Government*, *Bar-On*, *Yekutieli* and *Gutman* may be explained under different theories, and each under a different theory than the other, and the justices are unaware of the ramifications of their decisions for this ongoing competition over theoretical primacy. Israeli constitutional development may contribute to comparative law the understanding that depending on the narrative and theory we develop to explain how the Constitution was adopted, the same constitutional text — be it limitation, override, entrenchment or eternity clause — has a different operative meaning. Understanding the different competing theories will enable the different political players — the Knesset, the government, the Court and the People — to reach deliberate decisions on the future of the Israeli Constitution and its character. Weiler and Lustig use comparative law to flatten the differences in the constitutional developments of various countries, while this article suggests that comparative law offers different menus from which each country chooses the elements of its unique Constitution.