

## **Professor Daphne Barak-Erez**

### **Full Publication List**

#### **Books**

##### **In English-**

1. HUMAN RIGHTS IN PRIVATE LAW (Daniel Friedmann & Daphne Barak-Erez eds., Hart Publishing, 2001).
2. OUTLAWED PIGS: LAW, RELIGION AND CULTURE IN ISRAEL (University of Wisconsin Press, 2007).
3. EXPLORING SOCIAL RIGHTS: THEORY AND PRACTICE (Daphne Barak-Erez & Aeyal Gross eds., Hart Publishing, 2007).
4. FEMINIST CONSTITUTIONALISM (Beverley Baines, Daphne Barak-Erez & Tsvi Kahana eds., Cambridge University Press, 2012).
5. ISRAELI CONSTITUTIONAL LAW IN THE MAKING (Gideon Sapir, Daphne Barak-Erez & Aharon Barak eds., Hart Publishing, 2013).

##### **In Hebrew -**

1. CONTRACTUAL LIABILITY OF PUBLIC AUTHORITIES (1990).
2. CONSTITUTIONAL TORTS (1993).
3. A JEWISH AND DEMOCRATIC STATE (Daphne Barak-Erez ed., 1996).
4. FIRST JUDGMENTS (Daphne Barak-Erez ed., 1999).
5. ARMY , SOCIETY AND LAW (Daphne Barak-Erez ed., 2002).
6. MILESTONE JUDGMENTS OF THE ISRAELI SUPREME COURT (2003).
7. LEGAL FEMINISM IN THEORY AND PRACTICE: COLLECTION OF ARTICLES (Daphne Barak-Erez ed., 2005).
- 8 STUDIES IN LAW, GENDER AND FEMINISM (Daphne Barak-Erez chief ed., 2007).
9. ADMINISTRATIVE LAW (The Israel Bar-Publishing House, 2010).
10. CONFLICT OF INTERESTS IN THE PUBLIC SPHERE (Daphne Barak-Erez, Doron Navot & Mordechai Kremnitzer eds., Israeli Democracy Institute and Nevo Publishing, 2009).
11. ESSAYS IN HONOR OF IZHAK ENGLARD (Daphne Barak-Erez & Gidon Sapir eds., Bar-Ilan University Press, 2009).

12. CITIZEN-SUBJECT-CONSUMER – LAW AND GOVERNMENT IN A CHANGING STATE (Kinneret Zmora Bitan Dvir, 2012).
13. ADMINISTRATIVE LAW – ECONOMIC ADMINISTRATIVE LAW (The Israel Bar-Publishing House, 2013).

## Articles

### **In English -**

1. *Damages Actions as a Means of Protecting Public Law Rights in Israel*, 12 TEL-AVIV STUD. IN LAW 67 (1994).
2. *From an Unwritten to a Written Constitution: The Israeli Challenge in American Perspective*, 26 COLUM. HUM. RTS. L. REV. 309 (1995).
3. *A State Action Doctrine for an Age of Privatization*, 45 SYRACUSE L. REV. 1169 (1995).
4. *Codification and Legal Culture: In Comparative Perspective*, 13 TUL. EUR. & CIV. L. F. 125 (1998).
5. *Civil Rights in the Privatized State: A Comparative View*, 28 ANGLO-AM. L. REV. 503 (1999).
6. Daphne Barak-Erez & Ron Shapira, *The Delusion of Symmetric Rights*, 19 OXFORD J. OF LEGAL STUD. 297 (1999).
7. *Civil Rights and Privatization in Israel*, 28 ISR. Y. HUM. RTS. 203 (1998).
8. *Constitutional Limitations on Privatization in Israel* in ISRAELI REPORTS TO THE XV INTERNATIONAL CONGRESS ON COMPARATIVE LAW 317 (1999).
9. *Collective Memory and Judicial Legitimacy: The Historical Narrative of the Israeli Supreme Court*, 16 CANADIAN JOURNAL OF LAW AND SOCIETY/ REVUE CANADIENNE DROIT ET SOCIETE 93 (2001).
10. *Introduction* in HUMAN RIGHTS IN PRIVATE LAW 1 (Daniel Friedmann & Daphne Barak-Erez eds., Hart Publishing, 2001).
11. *The Primaries System and Its Constitutional Effect: Where is the Revolution?*, 3 THEORETICAL INQUIRIES IN LAW 197 (2002).
12. *Judicial Review of Politics: The Israeli Case*, 29 J. LAW & SOC. 611 (2002).
13. *The Israeli Welfare State: Growing Expectations and Diminishing Returns* in THE WELFARE STATE, GLOBALIZATION AND INTERNATIONAL LAW 103 (Eyal Benvenisti & Georg Nolte eds., Springer 2004).
14. *Assigned Residence in Israel's Administered Territories: The Judicial Review of Security Measures*, 33 ISR. Y. HUM. RTS. 303 (2003).

15. *The International Law of Human Rights and Constitutional Law: A Case Study of an Expanding Dialogue*, 2 *ICON - INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW* 611 (2004).
16. *The Administrative Process as a Domain of Conflicting Interests*, 6 *THEORETICAL INQUIRIES IN LAW* 193 (2005).
17. *The Doctrine of Legitimate Expectations and the Distinction between the Reliance and Expectation Interests*, 11 *EUR. PUB. L.* 583 (2005).
18. *An International Community of Legislatures?* in *THE LEAST EXAMINED BRANCH: THE ROLE OF LEGISLATURES IN THE CONSTITUTIONAL STATE* 532 (Richard W. Bauman & Tsvi Kahana eds., Cambridge University Press 2006), *translated* in *IL FILANGIERI* 57 (*Rivista trimestrale de Scienza della Legislazione e Diritto Pubblico* 2005) (Ital.).
19. *Law in Society: A Unifying Power or a Source of Conflict* in *LAW AND SOCIOLOGY* 165 (Michael Freeman ed., Oxford University Press, 2006).
20. *The Security Barrier: Between International Law, Constitutional Law and Domestic Judicial Review*, 4 *ICON - International Journal of Constitutional Law* 540 (2006).
21. *Applying Administrative Law to Privatization in Israel* in *ISRAELI REPORTS TO THE XVI INTERNATIONAL CONGRESS ON COMPARATIVE LAW* 47 (2006).
22. *The Law of Historical Films: in the aftermath of Jenin Jenin*, 16 *USC INTERDISCIPLINARY L. J.* 495 (2007).
23. *The Feminist Battle for Citizenship: Between Combat Duties and Conscientious Objection*, 13 *CARDOZO J. L. & GENDER* 531 (2007).
24. *Israeli Administrative Law at the Crossroads: Between the English Model and the American Model*, 40 *ISR. L. REV.* 57 (2007).
25. *Human Rights in Private Law: The Israeli Case* in *HUMAN RIGHTS AND THE PRIVATE SPHERE – A COMPARATIVE STUDY* 252 (Routledge-Cavendish, Dawn Oliver & Jorg Fedtke eds., 2007).
26. *Terrorism and Profiling: Shifting the Focus from Criteria to Effects*, 29 *CARDOZO L. REV.* 1 (2007).
27. *Introduction: Do We Need Social Rights? - Questions in the Era of Globalisation, Privatisation, and the Diminished Welfare State* in *EXPLORING SOCIAL RIGHTS* 1 (Daphne Barak-Erez & Aeyal Gross eds., Hart Publishing, 2007).
28. Daphne Barak-Erez & Aeyal Gross, *Social Citizenship - The Neglected Aspect of Israeli Constitutional Law* in *EXPLORING SOCIAL RIGHTS* 243 (Daphne Barak-Erez & Aeyal Gross eds., Hart Publishing, 2007).
29. *Social Rights as Women's Rights* in *EXPLORING SOCIAL RIGHTS* 397 (Daphne Barak-Erez & Aeyal Gross eds., Hart Publishing 2007).

30. *Citizenship and Immigration Law in the Vise of Security, Nationality, and Human Rights*, 6 *ICON - INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW* 184 (2008).
31. *Law and Politics in Israel Lands: Toward Distributive Justice*, 14 *ISRAEL AFFAIRS* 662 (2008).
32. *Public Law Mechanisms for the Elimination of Corruption in the Public Service in Israel* in *ISRAELI REPORTS TO THE XVII INTERNATIONAL CONGRESS OF COMPARATIVE LAW* 45 (2008).
33. *Can Equality Survive Exceptions?* ,107 *MICH. L. REV. FIRST IMPRESSIONS* 134 (2009).
34. *Symbolic Constitutionalism: On Sacred Cows and Abominable Pigs*, 6 *LAW, CULTURE & THE HUMANITIES* 420 (2010).
35. *The Institutional Aspects of Comparative Law*, 15 *COLUM. J. EUROPEAN L.* 477 (2009).
36. *Law and Religion Under the Status Quo Model: Between Past Compromises and Constant Change*, 30 *CARDOZO L. REV.* 2495 (2009).
37. *Terrorism Law between the Executive and Legislative Models*, 57 *AM. J. COMP. L.* 877 (2009).
38. *Broadening the Scope of Judicial Review in Israel: Between Activism and Restraint*, 3 *IND. J. CONST. L.* 119 (2009).
39. *Terrorism and Human Rights: Challenges to the Foundations of the Legal Order* in *HUMAN RIGHTS TODAY - 60 YEARS OF THE UNIVERSAL DECLARATION* 187 (Miodrag A. Jovanovic & Ivana Krstic eds., 2010).
40. Barak-Erez Daphne & Matthew Waxman, *Secret Evidence and the Due Process of Terrorist Detentions*, 48 *COLUM. J. TRANSNAT'L L.* 3 (2009).
41. *The Privatization Contiunuum* in *PRIVATE SECURITY, PUBLIC ORDER* 71 (Simon Chesterman & Angelina Fisher eds., 2009).
42. *Three Questions of Privatization* in *COMPARATIVE ADMINISTRATIVE LAW* 493 (Susan Rose-Ackerman & Peter Lindseth eds., 2010).
43. *When Sexual Harassment Law Goes East: Feminism, Legal Transplantation and Social Change*, 47 *STAN. J. INT'L L.* 177 (2011) (with Jayna Kothari).
44. *Freedom of Speech, Support for Terrorism, and the Challenge of Global Constitutional Law*<sup>2</sup> *HARVARD NAT'L SECURITY J.* 1 (2011) (With David Scharia).
45. *The Private Prison Controversy and the Privatization Continuum*, 5(1) *LAW AND ETHICS OF HUMAN RIGHTS* 138 (2011).
46. *Judicial Conversations and Comparative Law: The Case of Non-Hegemonic Countries*, 47 *TULSA L. REV.* 405 (2011).

47. *Israel's Anti-terrorism Law: past, present and future* GLOBAL ANTI-TERRORISM LAW 597 (2nd ed., Victor V. Ramraj and others eds., 2012).
48. *Introduction: The Idea and Practice of Feminist Constitutionalism* 1 FEMINIST CONSTITUTIONALISM (Beverley Baines, Daphne Barak-Erez & Tsvi Kahana eds., 2012).
49. *Her-meneutics: Feminism and Interpretation* 85 FEMINIST CONSTITUTIONALISM (Beverley Baines, Daphne Barak-Erez & Tsvi Kahana eds., 2012).
50. *Distributive Justice in National Security Law* 3 HARVARD NAT'L SECURITY J. 283 (2012).
51. *Introduction: Israeli Constitutional Law at the Crossroads* ISRAELI CONSTITUTIONAL LAW IN THE MAKING 1 (Gideon Sapir, Daphne Barak-Erez & Aharon Barak eds., 2013) (with Gideon Sapir and Aharon Barak).
52. *The National Security Constitution and the Israeli Condition* ISRAELI CONSTITUTIONAL LAW IN THE MAKING 429 (Gideon Sapir, Daphne Barak-Erez & Aharon Barak eds., 2013).
53. *Whose Administrative Law is it Anyway? How Global Norms Reshape the Administrative State* 46 CORNELL INT'L L. J. 455 (2013) (with Oren Perez).
54. *Reproductive Rights in a Jewish and Democratic State* in CONSTITUTIONAL SECULARISM IN AN AGE OF RELIGIOUS REVIVAL 228 (Michel Rosenfeld & Susanna Mancini eds., 2014).
55. *Legislation as Transplantation* in COMPARATIVE LAW IN LEGISLATIVE DRAFTING - THE INCREASING IMPORTANCE OF DIALOGUE AMONGST PARLIAMENTS 17 (Nicola Lupu and Lucia Scaffardi, 2014).
56. *Who Is a Jew and the Law – Between London and Jerusalem* in MAPPING THE BOUNDARIES OF BELONGING: LAW BETWEEN RELIGIOUS REVIVAL AND POST-MULTICULTURALISM (Rene Provost ed., forthcoming).
57. *What Does it mean for a State to be Jewish?* In THE CAMBRIDGE COMPANION TO JUDAISM AND THE LAW (Christine Hayes ed., forthcoming).

#### **In Hebrew -**

1. *The Individual's Access to the Media: Balance of Interests and the Freedom of Speech*, 12 TEL AVIV U. L. REV. 183 (1987).
2. *The Right of Public Employees to Freedom of Expression*, 16 TEL AVIV U. L. REV. 369 (1991).
3. *The "Employment Contract" of Individuals in the I.D.F. on Regular Service*, 40 HAPRAKLIT 114 (1991).
4. *Shooting and Training Areas - The Legal Aspect*, 11-12 IDF L. REV. 153 (1991).

5. *The Enforcement of the State Budget and Administrative Contracts*, 1 HAMISHPAT 253 (1993).
6. *Civil Liability of Public Bodies: Normative Duality*, 1 MISHPAT UMIMSHAL 275 (1993).
7. *Administrative Damages and Public Tenders*, 2 MISHPAT UMIMSHAL35 (1994).
8. *Administrative Law*, YEARBOOK ON ISRAELI LAW 1992-1993 197 (1994).
9. *Relative Voidness and Judicial Discretion*, 24 MISHPATIM 519 (1995).
10. *Corporations in Public Law*, 19 TEL AVIV U. L. REV. 273 (1995).
11. *The High Court of Justice in the Role of the Attorney General*, 5 PLILIM 219-235 (1996).
12. *Symmetry and Neutrality: Reflections on the Nachmani Case*, 20 TEL AVIV U. L. REV. 197 (1996).
13. *Protecting Reliance in Administrative Law*, 27 MISHPATIM 17 (1996).
14. *Administrative Law: Review and Development*, YEARBOOK ON ISRAELI LAW 1996 -1997 307 (1997).
15. *The Reasonable Woman*, 6 PLILIM 115 (1997).
16. *An acre here, an acre there- Israel Land Administration in the Vise of Interest Groups*, 21 TEL AVIV U. L. REV. 613 (1998) (published also in: LAND LAW IN ISRAEL: BETWEEN PRIVATE AND PUBLIC 371(Hanoch Dagan ed. 1999)).
17. *Israeli Codification in the Perspective of Contract Law*, 22 TEL AVIV U. L. REV.793 (1999).
18. *Public Law and Private Law: Overlaps and Mutual Influences*, 5 MISHPAT UMIMSHAL 95 (1999).
19. *The Judiciability of Politics*, 8 PLILIM 369 (1999).
20. *Israel Lands Between Public Administration and Privatization: Distributive Justice in the Administrative Process* in DISTRIBUTIVE JUSTICE IN ISRAEL 203-219 (Menachem Mautner ed., 2000).
21. *The Democratic Challenge of Administrative Law*, 24 TEL AVIV U. L. REV. 369 (2000).
22. *Human Rights in an Age of Privatization*, 8 LABOR, SOCIETY AND LAW 209 (2001).
23. *Teaching Administrative Law: Between Constitutionalization and Privatization*, 25 TEL AVIV U. L. REV. 503 (2001).
24. *The Israeli Welfare State - Between Legislation and Bureaucracy*, 9 LABOR, SOCIETY AND LAW 175 (2002).

25. *And Thou Shalt Tell Thy Son: History and Memory in the Court*, 26 TEL AVIV U. L. REV. 773 (2002).
26. *Protecting Expectations in Administrative Law*, 27 TEL AVIV U. L. REV. 209 (2003).
27. *The Transformation of the Pig Laws: From a National Symbol to a Religious Interest?*, 33 MISHPATIM 403 (2003).
28. *Distributive Justice in Israel Lands: Following the Agricultural Lands Case*, 18 HAMISHPAT 54 (2004).
29. *Social Feminism and Social Rights of Women* in ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ISRAEL 855 (Yoram Rabin & Yuval Shany eds., 2004).
30. *Planning in Israel Lands: Toward Sustainable Development*, 7 MISHPAT UMIMSHAL 865 (2004) (with Oren Perez).
31. *The Legal Feminism of Catharine MacKinnon and the Move from the Margin to the Center* in LEGAL FEMINISM IN THEORY AND PRACTICE 7 (Daphne Barak-Erez ed. 2005).
32. *Constitutional Torts in the Era of Basic Laws*, 9 MISHPATUMIMSHAL103 (2005).
33. *Relative Voidness in Administrative Law: On the Price of Rights* in ITZHAKZAMIR BOOK: ON LAW, GOVERNMENT AND SOCIETY 285 (Ariel Bendor & Yoav Dotan eds., 2005).
34. *On Cinematographic Lies and Historic Truth: Between the Voice of the People and 'the Voice of the People' Precedent* in BE QUIET, SOMEONE IS SPEAKING! - THE LEGAL CULTURE OF FREEDOM OF SPEECH IN ISRAEL 141 (Michael Birnhack ed., 2006).
35. *The Military Service of Yeshiva Students: Between the Citizenship and Justiciability Dilemma*, 22 BAR-ILAN L. REV. 227 (2006).
36. *The Rescision of a Government Contract: A Test Case of Normative Duality*, 11 HAMISHPAT 111 (2007).
37. *On Women Pilots and Women Conscientious Objectors: One Battle or Different Ones?* in STUDIES IN FEMINISM, GENDER AND LAW 65 (Daphne Barak-Erez chief ed., 2007).
38. *Introduction: Law, Gender and Feminism in Israel* in STUDIES IN FEMINISM, GENDER AND LAW (Daphne Barak-Erez chief ed., 2007) (with Shlomit Yanisky-Ravid, Yifat Bitton & Dana Pugach).
39. *Administrative Law and the Struggle against Government Corruption*, 37 MISHPATIM 667 (2007).
40. *The New Civil Code: Between the Professional Community and Society*, 24 BAR-ILAN L. REV. 413 (2008).
41. *The Public Law of Privatization: Models, Norms and Challenges*, 30 TEL-AVIV U. L. REV. 461 (2008).
42. *The Justiciability Revolution: An Evaluation*, 50 HAPRAKLIT 3 (2008).

43. *The Administrative Law of Justice Cheshin: Between Lawyering and Judging*, 6 NETANYA L. REV. 443 (2007).
44. *Administrative Law in the Age of the Electronic State*, 13 HAMISHPAT 121 (2008).
45. *Military Service in Israel: Between Individual Justice and Distributive Justice* in DANIEL'S BOOK - INQUIRIES IN THE SCHOLARSHIP OF PROFESSOR DANIEL FRIEDMANN 1029 (Nili Cohen & Ofer Grosskopf eds., 2008).
46. *Comparative Law as a Practice: Institutional, Cultural and applicative Aspects*, 4 HAIFA L. REV. 81 (2008).
47. *Social Rights and the Struggle for Social Citizenship in Israel: Beyond Dignity* in DORNER BOOK 189 (2009) (with Aeyal Gross).
48. *Introduction: Conflict of Interests in the Public Sphere* in CONFLICT OF INTERESTS IN THE PUBLIC SPHERE 9 (Daphne Barak-Erez & others eds. 2009) (with Doron Navot & Morderchai Kremnitzer).
49. *Conflicting Interests and Conflict of Interests in Aadministrative Law* in CONFLICT OF INTERESTS IN THE PUBLIC SPHERE 209 (Daphne Barak-Erez & others eds. 2009).
50. *Human Rights in Contract Law and Tort Law: The Quiet Revolution*, 8 KIRYAT HAMISHPAT 11 (2009).
51. *Anti-Terrorism Law: An Institutional Perspective*, 32 TEL-AVIV U. L. REV. 47 (2010).
52. *Law and Social Cohesion in Israel*, 26 BAR-ILAN LAW STUDIES 259 (2010) (published also in GABRIEL BACH BOOK 667 (David Hahn & others eds., 2011)).
53. *Women and Law in Israel: From British Mandate to Statehood* in ONE LAW FOR MAN AND WOMAN – WOMEN, RIGHTS AND LAW IN MANDATORY PALESTINE 547 (Eyal Katvan & others eds., 2010)
54. *The Drafting of Yeshiva Students: From Compromise to Controversy* in CROSSROADS OF DECISIONS IN ISRAEL 13 (Dvora Hacoheh & Moshe Lissak eds., 2010)
55. *Toward Law of Democracy in Israel*, 33 TEL AVIV U. L. REV. 527 (2011)
56. *From Perceived Injustices to Legal Remedies: After Naming, Blaming, Claiming*, 3 TEL AVIV UNIV. J. L. AND SOCIAL CHANGE 33 (2011)
57. Daphne Barak-Erez and Oren Perez, *Israeli Administrative Law and the Global Challenge* 34 TEL-AVIV U. L. REV. 93 (2011).
58. *Feminist Interpretation* 16 HAMISHPAT 37 (2011)
59. *Governmental Instability in Israel: Should Only the Electoral System be Blamed?* 14 LAW & BUSINESS 493 (2012).

60. *Incitement to Terrorism and the Limits of Freedom of Speech: Between Direct and Indirect Limitations* 35 TEL AVIV U. L. REV. 555 (2012) (to be published also in MATSA BOOK (forthcoming)).

61. *Constitution for Emergency Times* SHLOMO LEVIN BOOK – ESSAYS IN HONOR OF JUSTICE SHLOMO LEVIN 671 (Asher Grunis & others eds., 2013).

62. *The Right to Hearing – Between Procedural Justice and Efficiency* in OR BOOK 773 (Aharon Barak & others eds., 2013).

63. *Selective Enforcement: From Right to Remedy* 200 HASANEGOR 14 (2014).

64. *Rules, Exceptions and Discretion in Law* in BEINISCH BOOK (Shahar Lifshitz & others eds., forthcoming).

### **Journals (editing):**

#### **In Hebrew -**

1. TEL-AVIV UNIVERSITY LAW REVIEW, Vol. 19 (Daphne Barak-Erez ed., 1994-1995).
2. PLILIM, Vol. 9 (Daphne Barak-Erez ed., 2000).

#### **In English -**

1. THEORETICAL INQUIRIES IN LAW, Vols. 11-13 (Daphne Barak-Erez chief ed., 2009-2011).