

JUDICIAL BALANCING IN ISRAEL – THE CASE OF BALANCING IN THE
JURISPRUDENCE OF CHIEF JUSTICE AHARON BARAK

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Abstract

This paper discusses the reasoning method of balancing interests in the jurisprudence of Israeli Supreme Court Justice, Aharon Barak.

The paper presents both a descriptive and an evaluative argument. On the descriptive level, the paper presents the view that a dominant characteristic of Barak's judicial and jurisprudential framework is his endorsement of the balancing method. Further on the descriptive level it presents the view that Barak's balancing can be divided into two kinds according to its application – ideological balancing and security balancing - and that these have important differences.

The second and more substantive argument in this paper is that Barak's balancing takes its legitimacy and justification from purporting to be a “modest” account of society and of judging: balancing admits the complexity of social life and portrays the judicial work as a delicate and difficult maneuvering between the competing societal interests. The paper's argument is that, by and large, this justification cannot hold.

The importance of Barak's balancing lies first in the importance of Barak himself as the most prominent legal figure in Israel today. It further lies in its overreaching affects on both the style and content of Israeli Court decisions.

The contribution of the paper lays both in attempting to give a holistic account for this feature of Barak's jurisprudence, an attempt that was not made before, and in evaluating it in view of its origins – the American Sociological Jurisprudence.