

ALON HAREL
Phillip P. Mizock & Estelle Mizock Professor of Law
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EDUCATION

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|---|-------------|
| D. Phil. (Philosophy of Law) <i>Balliol College, Oxford</i> | 1988 |
| LL.M., (with distinction) <i>Hebrew University</i> | 1985 |
| LL.B., (with distinction) <i>Hebrew University</i> | 1983 |

EMPLOYMENT

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|---|---------------------|
| Philip P. Mizock & Estelle Mizock Professor of Law | 2005-present |
| Walter E. Meyer Professor of Law | 2003-5 |
| Professor of Law | 2000 |
| Senior Lecturer (associate professor) | 1996-2000 |
| Lecturer (assistant professor) | 1990-6 |

VISITING POSITIONS

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| Wissenschaftskolleg, Berlin (institute of advanced Studies) | 2019-20 |
| University of Chicago Law School Visiting Professor | 2015 |
| University of Texas Law School Visiting Professor | 2008 |
| University of Toronto (Center of Ethics) Faculty Fellow | 2003-4 |
| Harvard University (Center of Ethics) Faculty Fellow | 2002-3 |

PUBLICATIONS

Books:

Why Law Matters (Oxford University Press, 2014):

Translated to German:

Wozu Recht? Rechte, Staat Und Verfassung im Kontext Moderner Gesellschaften (2018, Kosmopolis, Karl Albers Press)

Translator Veit Friemert

Translated to Spanish:

Por Que el Derecho Importa (Marcial Pons, 2018)

Translator Mariano Vietetta

Reviewed in

- a. The Washington Post, Book Review: by Will Baude 6.11.2014.
 - b. Book Review: Mark Coombes 73 *University of Toronto Law Review* (2015).
 - c. Book Review Debate: Zucca and Harel 15 *International Journal of Constitutional Law* 301-318 (2015)
 - d. Arie Rosen, Book Review 34 *Law and Philosophy* 699-708 (2015)
 - e. Barbara Levenbook, Book Review *Notre Dame Philosophical Review* 6/10/2015
 - f. Rutgers Symposium Comments by Malcolm Thorburn, Ekow Yankaw, Leo Zaibert, Guyora Binder, Kyron Huigens with a response by Alon Harel 2 *Critical Analysis of Law* (2015)
 - g. Michel Paradis Dignity Under Law *New Rambler Review* 16/12/2015
 - h. Yossi Nehushtan, The Case for Modest Constitutional Instrumentalism 30 *Constitutional Commentary* 639-666 (215)
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- i. Jacob Weinrib, Book Review: Why Law Matters 29 *Canadian Journal of Law and Jurisprudence* 267-270 (2016).
- j. Leonard Kahn, Book Review 126 *Ethics* 831-836 (2016).
- k. Pierre Brunet, *Droit & Societe* 17/08/2017 (in French)
<https://ds.hypotheses.org/2277>
- l. Symposium Comments by Adam Slavny, Laura Valentini, Jason Brennan with a response by Alon Harel 11 *Criminal Law and Philosophy* 801-859 (2017).
- m. Symposium Comments by James Allan, T.R.S Allan, Martin Krygier with a response by Alon Harel in 9 *Jurisprudence* 132-168 (2018).
- n. Symposium Comments by Arthur Ripstein, David Estlund, Assaf Sharon, Christopher Essert and a response by Alon Harel 12 *Jerusalem Review of Legal Studies* 1-57 (2015).

Cambridge Handbook on Privatization eds. Avihay Dorfman & Alon Harel (2021)

Research Handbook on the Economics of Criminal Law (eds. Harel, Hylton, Elgar 2012)

Articles:

1. *Law as Standing* (forthcoming in 4 **Oxford Studies in Philosophy of Law**, 2021) (with A. Dorfman).
 2. *Hate Speech* in **Oxford Handbook of Freedom of Speech** (ed. Adrienne Stone & Fredrick Schauer, 2021).
 3. *Barak's Legal Revolutions and What Remains of Them: Authoritarian Abuse of the Judiciary-Empowerment Revolution in Israel* in **Towering Judges: A Comparative Study of Constitutional Judges** (eds. Rehan Abeyratne & Iddo Porat, 2021).
 4. *Populist Rhetoric, False Mirroring and the Courts* 18 **International Journal of Constitutional Law** 746 (2020).
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5. *Taking Internationalism Seriously: Why International Criminal Law Matters* in **The Oxford Handbook of International Criminal Law** chapter 9 (eds. Kevin Heller et al, 2020) (with M. Gur Arye).
 6. *In Defense of Non-Representational Constitutions: Why Constitutions Need not be Representational* in **Revolutionary Constitutionalism: Law Legitimacy** chap. 2 (ed. Richard Albert, 2020).
 7. *Constitutionalism and Justice* in **Constitutionalism Justified: Rainer Forst in Discourse** chapter 10 (Esther Herlin-Karnell & Mathias Klatt eds, 2019).
 8. *Alexander's Constitutionalism: A Qualified Defense* **Moral Puzzles and Legal Perplexities: Essays on the Influence of Larry Alexander** (ed. Heidi Hurd, 2018) pp. 221-228.
 9. *Why Privatization Matters? The Democratic Case Against Privatization* **Nomos LX** (eds. Jack Knight and Melissa Schwartzberg) (2018) p. 52-78.
 10. *The Real Case for Judicial Review* in **Elgar Research Handbook on Comparative Judicial Review** (Erin Delaney & Rosalind Dixon, eds.) (2018) (with A. Shinar).
 11. *Dignity, Emergency, Exception* in **The Rule of Crisis** (eds. P. Auriel, Pierre, , Olivier Beaud, Carl Wellman, (Eds.) 101-118 (2018) (with A. Sharon).
 12. *Torts for Non-Victims: The Case for Third Party Litigation* **University of Illinois L. Rev.** 1049-1090 (2018) (with E. Guttel & Shai Lavie).
 13. *Radical Privatization* 47(1) **Mishpatim** 287-326 (2018) (in Hebrew).
 14. *Embracing the Tension Between National and International Human Rights Law: The Case for Discordant Parity*, 15 **International Journal of Constitutional law** 36-59 (2017).
 15. *Why Privatization Matters* in **Criminal Law and the Authority of the State** eds. Antje du Bois-Pedain, Magnus Ulväng, Petter Asp (2017).
 16. *Against Privatization as Such*, 36 **Oxford Journal of Legal Studies** 400-427 (2016) (with A. Dorfman).
 17. *The Duty to Criminalize*, 34 **Law & Philosophy** 1-22 (2015).
 18. Alon Harel, Public and Private Law in **The Oxford Handbook of Criminal Law** (eds. M. Dubber & T. Hornle, 2014) pp. 1040-1063).
 19. Behavioral Analysis of Criminal Law: A Survey in **The Oxford Handbook of Behavioral Economics and the Law** 568-598 (2014).
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20. *Why Constitutionalism Matters: The Case for Robust Constitutionalism*, 1 **Critical Analysis of Law** 32-50 (2014).
 21. *Punishment and the State* in **Encyclopedia of Criminology and Criminal Justice** (eds., Bruinsma Gerben & Weisburd David, 2014)
 22. *The Case Against Privatization*, 41 **Philosophy & Public Affairs** 67-102 (2013) (with A. Dorfman).
 23. *Economic Analysis of Criminal Law: A Survey* in Alon Harel & Keith Hylton, **Research Handbook on the Economics of Criminal Law** 10-50 (Edward Elgar, 2012).
 24. *Between Judicial Review and Legislative Supremacy: A Cautious Defense of Constrained Judicial Review*, 10 **International Journal Of Constitutional Law** 950-975 (2012) (with A. Shinar).
 25. Freedom of Speech, in the **Companion to Philosophy of Law** (Andrei Marmor ed, Routledge 599-617 (2012).
 26. *On the Optimal Regulation of Unread Contracts*, 8 **Review of Law & Economics** 59-89 (2012) (with Y. Procaccia).
 27. *Hate Speech and Comprehensive Forms of Life*, in **The Content and Context of Free Speech: Rethinking Regulation and Responses** pp. 306-326 (eds. Michael Herz and Peter Molnar, Cambridge University Press 2012).
 28. *Necessity Knows No Law*, 61 **University of Toronto L.J.**, 845-865 (2011) (with A. Sharon). Reprinted in **Emergency Ethics vol I** (Ashgate Press, eds. A.M. Viens and Michael Selgelid, 2013).
 29. *Non-Consequentialist Voting*, **Journal of Behavioral Economics and Organization** 299-313 (2012) (with M. Shayo).
 30. *The Triadic Relational Structure of Responsibility: A Defence in Crime, Justice, And Responsibility: The Jurisprudence of Anthony Duff* pp. 103-121 (eds. Rowan Cruft, Matthew H. Kramer, Mark R. Reiff, Oxford University Press, 2011).
 31. *Commensurability and Agency: Yet Two Unmet Challenges to Law and Economics*, 96 **Cornell L. Rev.** 749 (2011) (with A. Porat).
 32. *Outsourcing Violence?* 5 **Law and Ethics of Human Rights** 396 (2011).
 33. *Law and Culture: A Critique* 40 **Mishpatim** 939-981 (2011) (in Hebrew) (with Y. Loverboim)
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34. *The Easy Core Case for Judicial Review*, 2 **Journal of Legal Analysis** 227-256 (2010) (with T. Kahana)
 35. *The Right to Judicial Review: A Liberal Defense* 40 **Mishpatim** 239-278 (2010) (in Hebrew).
 36. *Aggregating Probabilities Across Offences in Criminal Law*, 94 **Minnesota L. Rev.** 261-309 (2009) (with A. Porat).
 37. *Uncertainty Revisited: Legal Prediction and Legal Postdiction*, 107 **Michigan L. Rev.** 467-499 (2008) (with E. Guttel).
 38. *Theories of Rights* in **The Blackwell Guide to the Philosophy of Law and Legal Theory** chap. 13 (2008).
 39. *Social Norms, Self Interest and Ambiguity of Legal Norms: An Experimental Analysis of the Rule vs. Standard Dilemma* 4 **Review of Law and Economics** (2008).
 40. *The Economics of Stigma: Why More Detection of Crime May Result in Less Stigmatization*, 36 **Journal of Legal Studies** 355-377 (2007) (with A. Klement).
 41. *Regulating Modesty-Related Practices*, 1 **Law and Ethics of Human Rights** 213 (2007).
 42. *Why Only the State May Inflict Criminal Sanctions: The Case Against Privately-Inflicted Sanctions*, **Legal Theory** 113-133 (2008).
 43. *What is Really Wrong with Torture*, 6 **Journal of International Criminal Law** 241-259 (2008).
 44. *Philosophical Thoughts in and About the Law* 4 **Haifa L. Rev.** 17-54 (2008) (with David Enoch) (in Hebrew).
 45. *The Right to Judicial Review*, 92 **Virginia L. Rev.** 991-1022 (2006) (with Y. Eylon).
 46. *Matching Probabilities: The Behavioral Law & Economics of Repeated Behavior* 72 **U. Chicago L. Rev.** 1197-2005 (2005) (with E. Guttel).
 47. *Ex-Post Egalitarianism*, 21 **Journal of Law, Economics and Organization**, 57-75 (2005) (with Z. Safra & U. Segal).
 48. *The Virtues of Uncertainty in Law*, 89 **Iowa L. Rev.** 443-494 (2004) (with T. Baker & T. Kugler).
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49. *Whose Home Is It? Reflections on the Palestinians' Interest in Return*, 5 **Theoretical Inquires in Law** 333 (2004).
 50. *Benign Segregation: A Study of the Practice of Gender Separation in Buses in the Ultra-Orthodox Community in Israel* 20 **South African Journal of Human Rights** 64-85 (2004).
 51. *Rights-Based Judicial Review: A Democratic Justification* 22 **Law and Philosophy** 247-276 (2003).
 52. *An Economic Rationale for the Legal Treatment of Omissions in Tort Law: The Principle of Saliency*, 3 **Theoretical Inquiries in Law** (2002) (with A. Jacobs)
 53. *Crime Rates and Expected Sanctions: The Economics of Deterrence Revisited*, 30 **Journal of Legal Studies** 485-502 (June 2001) (with O. Bar-Gill).
 54. *The Boundaries of Democratic Pluralism*, in A. Soeteman ed. **Pluralism and the Law** pp. 133-153 (Kluwer Academic Publishers, 2001).
 55. *The Rise and Fall of the Israeli Gay Legal Revolution*, 31 **Colum. Hum. Rts. L. Rev.** 443-471 (2000); A Hebrew Version in 7 *Hamishpat* 195-216.
 56. *Liberalism versus Jewish Nationalism: A Case for the Separation of Zionism and State* 3 **Democratic Culture** 89-110 (2000).
 57. *On Hate and Equality*, 109 **Yale L.J.** 507-539 (1999) (with G. Parchomvosky).
 58. *Criminal Law and Behavioral Law and Economics: Observations on the Neglected Role of Uncertainty in Deterring Crime*, 1 **American Law and Economics Review** 276-312 (1999) (with U. Segal).
 59. *The Rule of Law in Israel: Philosophical Aspirations and Institutional Realities* 143-160 (David Dyzenhaus ed. **Recrafting the Rule of Law**, Oxford: Hart Publishing, 1999).
 60. *The Regulation of Speech: A Normative Investigation of Criminal Law Prohibitions of Speech* (David Kretzmer ed. **The Limits of Freedom of Expression**) 247-274. Published also in 30 **Mishpatim** 69-103 (1999) (in Hebrew).
 61. *The Boundaries of Justifiable Tolerance: A Liberal Perspective*, in **Toleration: An Elusive Virtue** ed. David Heyd, 1998).
 62. *Revisionist Theories of Rights: An Unwelcome Defense* 11 **Canadian Journal of Law and Jurisprudence** 227-244 (1998).
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63. *What Demands are Rights: An Investigation of the Relations Between Rights and Reasons*, 17 **Oxford Journal of Legal Studies** 101-114 (1997).
 64. *The Economics of the Law of Criminal Attempts: A Victim- Centered Perspective*, 145 **University of Pennsylvania L. Rev.** 299-351 (1996) (with O. Ben-Shahar).
 65. *Gay Rights in Israel: A New Era?* 1 **International Journal of Discrimination and the Law** (1996).
 66. *Blaming the Victims: Optimal Incentives for Private Precautions Against Crime*, 11 **Journal of Law Economics and Organization** 434-455 (1995) (with O. Ben-Shahar).
 67. *Efficiency and Fairness in Criminal Law: The Case for a Criminal Law Doctrine of Comparative Fault*, 82 **California L. Rev.** 1181-1229 (1994).
 68. *Coherence Theories of Law*, 18 **Tel Aviv University L. Rev.** 387-406 (1994) (in Hebrew).
 69. *Efficiency and Fairness in Criminal Law*, 22 **Mishpatim** 499-531 (1993) (in Hebrew).
 70. *Bigotry, Pornography, and the First Amendment: A Theory of Unprotected Speech* 65 **S. California L.Rev.** 1887-1931(1992).
 71. *The Libertarian Resolution of the Paretian Liberal Paradox* 47 **Journal of Economics** (1987) (with S. Nitzan)

Comments and Reviews

- 1) Alon Harel, *Basic Law: Israel as a Nation State of the Jewish people* 8 **Nation and Nationalism** 475 (2020)
 - 2) Alon Harel, *Law and the Leap of Faith: Why and When Law is Virtuous* 19 **Jerusalem Review of Legal Studies** 197-203 (2019)
 - 3) *Review: Calabresi: The Future of Law and Economics*, 16 **Jerusalem Review of Legal Studies J** 124–128 (2017)
 - 4) *Book Review R. A. Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo and Victor Tadros (eds): The Constitution of the Criminal Law* 10 **Criminal Law and Philosophy** 603-610 (2016)
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- 5) *On the Irrelevance of Neuroscience to Moral Theory* 9 **Law and Ethics of Human Rights** 173-179 (2015)
- 6) *Why (Constitutional) Law Matters: A Reply to Lorenzo Zucca* 13 **International Journal of Constitutional Law** 311-318 (2015).
- 7) *Human Rights and the Common Good: A Critique* 8 **Jerusalem Review of Legal Studies** 115-124 (2013)
- 8) *Book Review: Conscience and Conviction: The Case For Civil Disobedience*, **Notre Dame Philosophical Review** February 29 (2013).
- 9) *Book Review: Judicial Review in an Age of Moral Pluralism* **Perspectives on Politics** vol. 9(4) 946-47 (2011).
- 10) *Is Pornography a Speech or an Act and Does It Matter?* 3 **Jerusalem Review of Legal Studies** 5-14 (2011).
- 11) Alon Harel. *Judicial Review and the Value Theory of Democracy* 47 **Representation** 63-71 (2011).
- 12) *The Vices of Epistemic Institutionalism* 2 **Jerusalem Review of Legal Studies** 5-15 (2010).
- 13) *Book Review: Why Not Torture Terrorists? Moral Practical and Legal Aspects of the "Ticking Bomb" Justification for Torture* 2010 **Public Law** 628-633.
- 14) *On Privatization: Notes on Bagaz* 2605/05 **Mishpatim-Online** 2010. (in Hebrew)
- 15) *The Torture Lawyers: A Response* 51 **Harvard International Law Journal Online** March 30, 2010
- 16) *The Vices of Institutional Instrumentalism* 42 **Israel Law Review** 464-471 (2009) (A Comment on Mark Tushnet)
- 17) *Cost-Benefit Analysis and National Emergencies* 42 **Israel Law Review** 225-233 (2009) (A comment on Richard Posner, **Not a Suicide Pact: The Constitution in Times of Emergency**)
- 18) *Notes on Waldron's Law and Disagreement: Defending Judicial Review* 39 **Israel Law Review** 13-21 (2007)
- 19) *Book Review: Property at Crossroads* (by Hanoch Dagan) 30 **Tel Aviv University Law Review** 435-446 (2007) (in Hebrew)
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- 20) *In Defense of an Involuntary Polity: Comments on Otsuka Vision of the Consensual Polity* 55 **Iyun**, 310-316 (2006)
- 21) *Lecture: Uriel as a Metaphor* 36 **Mishpatim** 3-12 (2006) (Speech delivered at the retirement ceremony of Professor Uriel Procaccia) (in Hebrew)
- 22) *Victims and Perpetrators: The Case against a Unified Theory of Comparative Liability in Criminal Law* 8 **Buffalo Criminal Law Rev.**, 489-502 (2005).
- 23) *Skeptical Reflections on Judicial Optimism* 4 **Katharsis: A Critical Review in the Humanities and Social Sciences** 22-50 (2005) (in Hebrew); Published also in English: 39 **Israel L. Rev.** 261-283 (2006)
- 24) *Comments on Pornography and Gender Equality* in **Trends in Criminology: Theory, Policy and Practice** (589-593) Meir Hovav, Leslie Sebba, Menachem Amir eds. (2003) (in Hebrew).
- 25) *Economic Culturalism: A Comment on Dennis Mueller, Defining Citizenship*, 3 **Theoretical Inquiries** 167-174 (2002).
- 26) *Unconscionable Objection to Conscientious Objection: Notes on Sagi and Shapira*, 36 **Israel L. Rev.** 219-226 (2002).
- 27) Alon Harel, *Review Essay: Free Speech Revisionism: Doctrinal and Philosophical Challenges*, 74 **Boston U. L. Rev.** 687-714 (1994).
- 28) Alon Harel, *Using Hypnosis as an Investigative Technique*, 13 **Mishpatim** 168-178 (1983) (in Hebrew).

Popular Pieces

1. *Private Gain, Public Loss*

<https://aeon.co/essays/privatisation-is-bad-economics-and-worse-politics>

2. *Chief Justice Barak's Legal Revolutions and What Remains of Them: The Authoritarian Abuse of the Judicial-Empowerment Revolution*
March 20, 2019

<https://blog-iacl-aidc.org/2019-posts/2019/3/22/symposium-chief-justice-baraks-legal-revolutions-and-what-remains-of-them-the-authoritarian-abuse-of-the-judicial-empowerment-revolution>

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3. *The Israeli Override Clause and the Future of Israeli Democracy* (Verfassungsblog May 2018)

<https://verfassungsblog.de/the-israeli-override-clause-and-the-future-of-israeli-democracy/>

4. *Courts in a Populist World* (Verfassungsblog April 2017)

<https://verfassungsblog.de/courts-in-a-populist-world/>

5. *The Dignity and Freedom of Life Prisoners*, 204 **Hasanegor** 4 (2014) (in Hebrew).
6. *The History of a Crime with No Name* 14 **Odyssey** 60-66 (2012). (in Hebrew).
7. *A Modest Proposal for a Second Constitutional Revolution* (2011) (in Hebrew).
8. *Brief On Behalf of Conscientious Objectors* (submitted to the Israeli Supreme Court, 2003)
9. *Human Rights in Israel Between Universalism and Particularism* 11 **Filosofie Magazine** 8 (February 2002) (in Dutch).

Op-eds

1. The expulsion of Refugees and the Silence of Yad Vashem **Haaretz** 1.3.2018 (in Hebrew).
 2. Shech Jarach as a Fable **Haaretz** 19.5.2013 (in Hebrew)
 3. Pinkwashing and the Fallacies of Gay Politics
 4. The Death of Law **Haaretz** 24.11.2011 (in Hebrew); an English version The Death of Law
 5. The States' Attorneys Duties, **Haaretz**: 29.7.2011 (in Hebrew).
 6. Time for Legal Rebellion **Haaretz** 16.7.2011 (in Hebrew).
 7. Compelled To be a Traitor **YNET** 29.6.2011 (in Hebrew) .
 8. Justice Ltd **Haaretz** 3.1.2011 (in Hebrew).
 9. Condemned Homosexuals? Beware **Ynet** 5.7.2010 (in Hebrew).
 10. The Death of Research Universities in Israel **The Marker** 17.11.2008 (in Hebrew)
 11. Alon Harel, A New Conflict with the Court **Ha'aretz** 6.9.2007 (in Hebrew).
 12. Alon Harel, The Right to Strike, **Ynet**, 4.11.03 (in Hebrew)
 13. Alon Harel, Torture or Treatment, **Ha'aretz** 8.8.2001 B2 (in Hebrew).
 14. Alon Harel, Permissible but Illegitimate, **Ha'aretz** 7.2.2001 B2 (in Hebrew).
 15. Alon Harel, The Real Victim, **Ha'aretz** 6.2.1997 B2 (in Hebrew).
 16. Alon Harel Rights as Trivia, **Davar Rishon** 18.4.1996 (in Hebrew).
 17. Alon Harel, Another lesson from the Murder, **Ha'aretz** 15.11.95 B2 (in Hebrew)
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