

Daphne Barak-Erez, *Outlawed Pigs: Law, Religion, and Culture in Israel* (University of Wisconsin Press, Madison, 2007), 188 pp.

The pig taboo in a Jewish and democratic state

Introduction

The fascinating “pig project” of Prof. Daphne Barak-Erez, starting with her 2003 article, “The transformation of the pig laws: From a national symbol to a religious interest?”, continuing with the reviewed book, *Outlawed Pigs*, and followed by her 2010 article, “Symbolic constitutionalism: On sacred cows and abominable pigs,” opens the eyes of the reader to a world that brings together law, religion, culture, history and, as I shall point out, food and anthropology. The interest the book evoked has led to some illuminating commentaries (Barzilai, 2008; Ben-Shemesh, 2008; Lahav, 2009; Sapir, 2008), all of which emphasize the high value of the piece while raising some additional arguments stimulated by this interdisciplinary topic. In the current review, I offer my own insights.

The structure of the book

In her book, Barak-Erez focuses on the processes that culminated in the adoption of prohibitions against pig breeding and pork trading, and on the resistance they provoked. She stresses that “the controversies surrounding this issue provide a key to changing attitudes toward religion and tradition in Israeli society” (p. 3) and hence traces changes in the perception of pig-related legal prohibitions in Israeli law, arguing that they can be seen as a microcosm of changes in Israeli society in general (p. 4). Thus, following three chapters that describe pig prohibitions in Jewish and Israeli culture (Ch. 2), the pre-state period of the British Mandate in the 1930s and 1940s (Ch. 3) and during the establishment of the state (Ch. 4), she describes the history of pig regulations in the Israeli state, dividing it into three periods.

The first period (Ch. 5), which covers the 1950s and 1960s (the first two decades after the establishment of the state of Israel), is described as a time of determined and significant legal activity aimed at absorbing pig prohibitions into Israeli law (p. 57). Two important laws were enacted during this period: the Local Authorities (Special Enablement) Law, 1956 (11 LSI 16) and the Pig-Raising Prohibition Law, 1962 (16 LSI 93). The author reports that the two laws were not merely declarative statements, but rather included mechanisms aimed at their effective enforcement (p. 59). Barak-Erez sums up that the pig-related regulations enjoyed relatively popular support in the 1950s and 1960s, and were strictly enforced after their enactment (p. 68).

Chapter 7 discusses these regulations in the 1970s and 1980s. During the 1970s, the issue waned, but the 1980s witnessed renewed energy in the debate over this legislation, although this had no practical effect on its scope. Some bills were submitted by members of the religious parties, seeking to expand the prohibitions, but their success was confined to evoking the old debate. The status quo prevailed.

Finally, Chapter 8 covers the last period of the 1990s and onwards, during which the issue reappeared in full force. In 1992, for the first time since the establishment of the state of Israel, the Knesset enacted basic laws dealing with human rights—Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation—which were interpreted as empowering the judiciary to overrule legislation infringing upon human rights.¹ Pig prohibitions were thus a potential target for petitions prompted by the basic laws, particularly the latter. In the Solodkin case,² a Russian politician petitioned against bylaws banning pork sales. The ruling sought a compromise in which every local government must find a solution proportional to the needs of residents. Therefore, a flat ban would not be legitimate in a place where a significant majority opposes the limitations and might not be proportional in a mixed population. The practical result, as Barak-Erez points out, is that “pork is available for sale in Israel almost everywhere, or more accurately, wherever demands for this exists” (p. 102).

The hypotheses of the book

While the main value of the book lies in its detailed and comprehensive description of the processes of change in the political and legal treatment of pig raising and pork sales, from the British Mandate to the present, it also addresses a number of hypotheses. Firstly, Barak-Erez provides some explanations for the renewed concern over the issue in the 1990s. One such explanation focuses on legal developments, mainly the Basic Laws mentioned above, that forced rethinking of the prohibitions (pp. 12, 81). Moreover, these constitutional developments led to a change in the social mores and hegemonic public view of the importance of individual rights and liberties (pp. 12, 109). A second explanation is primarily sociological and links the pork demand to the dietary practices characterizing immigrants from the former USSR, who were detached from traditional Jewish culture (pp. 12, 83, 110). A third explanation focuses on the political background: due to changes in the electoral system, the 1990s were marked by flourishing sectarianism and the emergence of small parties promoting religious or anti-religious agendas (pp. 12, 84, 111).

In addition, the book aims to explain the legal changes by dealing with the distinction between national symbols and religious concerns (Ch. 9). The pig prohibition assumed symbolic meaning mainly in the Diaspora, and this was reflected in the early years of the state. However, over the years, the symbolism of pig-related prohibitions has progressively eroded within the secular Jewish public.

It should be noted that a similar insight underlies the fascinating article, “Symbolic constitutionalism: On sacred cows and abominable pigs,” where Barak-Erez (2010:433–435) asks: Why is it that cattle slaughter prohibitions in India are growing with the constitutional backing of the Indian Supreme Court, while pig-related prohibitions in Israel are declining with the constitutional backing of the Israeli Supreme Court? In an attempt to explain this divergence, she focuses on the politico-historical analysis which she labels “majority-minority tensions vis-à-vis tensions within the majority.” She explains that the basic tension with the Muslim community in India that led to the legislation remains just as powerful today, encouraging the preservation and expansion of laws forbidding cattle slaughter. By contrast, over time, the importance of pig prohibitions for secular Israeli Jews within the context of their national identity has declined and shifted to the level of internal tension between secular and religious Jews.

I most certainly agree with this analysis. The intuition that underlies both the book and the article is backed by the common knowledge whereby a great many Israeli Jews who eat pork in Israel avoid doing so when they are abroad in an effort to preserve the “exclusion mechanism,” which identifies the pig as distinguishing between the Jewish community and the Gentiles. Nonetheless, I wish to add a few of my own thoughts on the matter.

The right to choose your food

I believe that the uniqueness of food-related prohibitions should be emphasized. Indeed, while food is a sociological and cultural phenomenon, the question of what a person chooses to ingest is intensely personal, almost as personal as choosing a life partner. Therefore, although there are sanitary provisions pertaining to food just as there are regulations governing marriage and divorce, the gap between this and selecting food or a life partner is tremendous.³

In the reviewed book, Barak-Erez points out that the two Israeli basic laws dealing with human rights do not expressly protect freedom of religion, but they include freedom of occupation, which is highly relevant to restrictions on pork trade (pp. 81–82). I am not sure whether addressing this issue within the scope of the right to freedom of occupation or freedom of religion and conscience is sufficient. Clearly, this is part and parcel of the autonomy of individual will anchored in human dignity⁴ and the case may even be made for independent right. Either way, this uniqueness is also tightly correlated with the difficulty involved in enforcing prohibitions, which are highlighted in the book and presumably differ from the difficulty involved in enforcing other “national” prohibitions (such as the prohibition on opening certain businesses on the fast day of Tisha B’Av). It seems that the further away we get from regulations about sanitation, location, timing and the like, and the closer we get to the issue of what one should eat, the more problematic become the restrictions and their enforcement.

The problematics of “entering one’s plate” is reinforced when we deal with restriction on the sale of swine in a community of meat eaters. Eating meat is an accepted custom among several of Israel’s ethnic groups. Barak-Erez mentions the Russian culture in this context, to which one could also add the South American culture. Although eating meat does not necessarily mean eating pork, the prohibition is much more problematic in a meat-eating culture. This insight can also clarify the point made in Barak-Erez’s (2010) article regarding the growth of cattle slaughter prohibitions in India. While vegetarianism is exceptional in Israel, Indian culture touts vegetarianism alongside the sanctity of the cow. One of the sources of this vegetarianism is primarily philosophical—*ahimsā*, namely, the principle of non-violence, which also calls for refraining from eating food that is the product of violence.⁵ Moreover, vegetarianism in India is rooted in harsh sanitary conditions, which do not make it possible to keep meat fresh. As a result, there is a great wealth of non-meat dishes, which makes respecting the prohibition a breeze. This is the backdrop against which the court found it easier—as Barak-Erez stresses—to provide general, scientific and other justifications rather than religious or national ones (2010:430).

The abominable pigs

The pig is not merely a religious prohibition in Judaism; it is abominable.⁶ In the eyes of a believer whose religion forbids her to eat a certain food, the prohibition is sufficient rationale to refrain from eating it. However, the Bible has forbidden both blood and pork. In fact, there are seven prohibitions in the Torah against eating blood and only one against eating pork. Nonetheless, whereas eating meat that was not sufficiently salted and contains blood is merely a strict prohibition, eating pork is tantamount to profanity (Soloveitchik, 2003:16–17). Thus, prohibitions of pork do not concern keeping something sacred (as in the case of cows in India, for example), but rather are about withholding something perceived as profane.

It might be easier—and this is a research question in its own right—to protect something sacred than something that certain people believe to be profane. For example, the Israeli court legitimizes the sanctity of the Sabbath, even though an alternative day of rest could have been opted for.⁷ Conversely, the attitude toward pork as something that evokes aversion and disgust naturally diverts the discussion toward the issue of restricting rights so as not to offend people’s sensitivities, and this is more problematic in a democratic state (Cohen-Almagor, 1994). As Barak-Erez stresses in *Outlawed Pigs*, “If the legal system is willing to make room for such feelings, it is also obligated to take into consideration the feelings of others, including the secularists’ objections to ‘religious coercion’” (p. 113).

Passiveness vs. activeness of the state

Another distinction that should be emphasized is how passive or active the state is. Barak-Erez cites another example that may merit similar discussion of affirming symbols through law, namely, the display of crucifixes in public places (p. 8). A case in point: the European Court of Human Rights has recently ruled that crucifixes are acceptable in public school classrooms.⁸ The court argued that, although the crucifix is a fundamentally religious symbol, displaying it does not constitute religious indoctrination or affect the country's neutrality because it is only a passive symbol.⁹ On the other hand, one must bear in mind that sanctioning legislation that forbids raising or buying pork in Israel constitutes active intervention of the state in favor of religion. This is where the court is attempting to preserve its neutrality. And this brings me to what I believe to be the main argument.

Totem and taboo

Another explanation which might shed light on this complicated issue is the difference between a totem and a taboo. A totem is a concept found in certain tribal cultures in the form of an object or, in most cases, an animal with religious significance to which a symbolic or supernatural connection is attributed, thereby affecting the tribe's life.¹⁰ The monumental totem poles which Indian tribes carved out of wood represented, among other symbols, the tribe's totem. The totem symbolizes identity as well as something coveted and sought after but off limits, yet sometimes it just has to be touched. For example, the attitude toward cows in the Hindu culture can be likened to the attitude toward a totem—a means of identifying the community culture.

The connection between the religious totem and civil religion is the key to understanding societies and the struggle between positions.¹¹ The struggle is all the more intense in a society divided into historical factions fighting for hegemony. Thus, for example, the prohibition on cattle slaughter among the Hindus versus the prohibition on swine slaughter among Muslims reflects the communities' attitudes and serve as a source of tension between them.

The pig in Jewish culture is a taboo and the attitude toward it is dichotomous; either it is eaten or not. Religious people who cut corners in several areas will not do so where pigs are concerned. There is no option to touch them even in necessity. In other words, beyond the fact that the pig is a totem, it is a religious taboo. Accordingly, I believe the struggle in Israel goes far beyond the hegemonic one; rather, it is a struggle between Israel's essence as a Jewish state and its essence as a democratic state. The tension between the Jewish and the democratic essence is dual in nature.¹² Firstly, it is "Jewish-internal," i.e., tension surrounding the meaning of the state's Jewishness: What is the Jewish ethos? What is its relation to Jewish law?

Along with this initial tension is the tension between Jews and non-Jews. In this instance, it is an internal tension in nature.

A Jewish and democratic state

Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation declare that their purpose is to establish the values of the state of Israel as a Jewish and democratic state (Basic Laws, §1a, §2). The process of incorporating the concepts of “Jewish and democratic” into the basic laws has shifted the discussion toward legal issues and not just politico-ideological ones. This is a far-reaching procedure, moving the decision making from the politico-ideological institution to the judicial-professional institution, which is supposed to be apolitical.¹³

The basic laws require a compromise between liberalism and Judaism and, as Menachem Mautner wrote, “gave new impetus to the claim that the Halakhah [Jewish religious precepts] should play a central role in the future development of Israeli law” (2011:53). The term “Jewish state” can potentially be used as a basis for an argument that requires the Supreme Court to restrict the scope of application of basic rights when they clash with the element of Israel Jewish identity. However, Justice Aharon Barak proposed an interpretation that applies the “Jewish state” at a “high level of abstraction” in order to unite all citizens and find their common ground: the degree of abstraction should be high enough as to make the Jewishness of the state compatible with its democratic nature (Barak, 1992:9,30).

Indeed, when the court finds it easy to reconcile between the two, it leans toward the Jewishness of the state. Thus, for example, the court consistently rejects petitions that attack the law preventing work on the Sabbath.¹⁴ The reasoning behind this is that the aim of the law is both religious and social, and since Judaism bequeathed the day of rest to the world—and sanctified the Sabbath in the process—there is no reason for the day of rest *not* to be Saturday. However, where the pork issue is concerned, Judaism and democracy clash head on.

Barak-Erez explains that the distinction between national symbol and religious concern has practical significance regarding pig-related prohibitions:

If these prohibitions protect only religious interests, the doctrine of proportionality would lead to applying them only in religious neighborhoods. If, however, they protect a national symbol, the symbolic purpose can only be achieved through a relatively broad application (p. 111).

Nevertheless, she agrees that the Solodkin case (mentioned above) seems to be at odds with this analysis, since the court recognized the national symbolism of the pig

but still applied the restrictions in a limited manner (p. 111).¹⁵ In another place in the book, she mentions that the court tried to refrain from normative judgments, but actually reflected “a secular worldview completely alien to the symbolism of the pig” (p. 99).

In my opinion, there is something much more substantial going on here. Preference is given to democracy over Judaism in cases where it is impossible to reconcile the two. Legitimizing pig sales is more than a blow to national identity, as when the totem is affected, since Judaism (at any level of abstraction) will not compromise on pork. Legitimizing the breaking of the taboo is hence tantamount to a victory of the second part of the term “Jewish and democratic state” in matters of head-on collision.

A final word

The book concludes with the sentence: “The question dangling over all these controversies is: What should be the role of cultural and historical factors in the legal system of state that defines itself as both Jewish and democratic? The verdict is still pending” (p. 121). I hope we can take this as a promise for continuation of Dafne Barak-Erez’s fascinating “pig project.”

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NOTES

¹ On the basic law of Human Dignity and Liberty, see Zamir and Zysblat (1996); see also http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm. On the basic law regarding Freedom of Occupation, see http://www.knesset.gov.il/laws/special/eng/basic4_eng.htm.

² HCJ 953/01, Solodkin v. Municipality of Beth Shemesh, 58(5), PD 595 (2004).

³ See Michael Pollan’s (2006, 2007) writings about nutritionism, suggesting that man’s relationship to food has lost its cultural-symbolic meaning in American culture, which only relates to the nutritional value of food.

⁴ See HCJ 7052/03, Adalah Legal Center for Arab Minority Rights in Israel v. Minister of Interior (2006) (1) IsrLR 443 (J. Barak opinion, 71; Hebrew) and High Court of Justice 6427/02, Movement for Quality Government in Israel v. Knesset

(unreported decision of May 11, 2006; J. Barak opinion, 52–53; Hebrew), which interpret human dignity (*kvod ha'adam*) broadly, as including everything that expresses the autonomy of free will.

⁵ See Feuerstein (1989:85), Sutra 2.35: “When [the yogin] is grounded in [the virtue of] nonharming (*ahimsā*), enmity ceases in his presence.”

⁶ For anthropological and theological explanations of the abhorrence of pigs, see pp. 15–17 of Barak-Erez’s reviewed book.

⁷ See, e.g., HCJ 5026/04, Design 22 v. The Supervision Department in the Ministry of Labor (April 4, 2005; Hebrew).

⁸ Lautsi and Others v. Italy (Application no. 30814/06), The European Court of Human Rights, sitting as a Grand Chamber (March 18, 2011), http://www.echr.coe.int/echr/resources/hudoc/lautsi_and_others_v_italy.pdf.

⁹ “Furthermore, a crucifix on a wall is an essentially passive symbol and this point is of importance in the Court’s view, particularly having regard to the principle of neutrality... It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities” (p. 29).

¹⁰ For an explanation of a totem, see Freud (1946).

¹¹ “The struggle over political hegemony is a struggle between rival totems within one comprehensive kinship frame, the state” (Barshak, 2000:3).

¹² Gavison (1999) points to at least three independent but interrelated sources of the Jewish–democratic tension. One is that Israel, a state defined and structured as the locus of Jewish self-determination, has a 17% Palestinian minority within its borders. The second is the inter-Jewish debate about the meaning of the Jewishness of the state, with fierce competition between religious and secular-cultural-historical conceptions of Jewish identity. The third is the deep political debate in Israel concerning its borders and its nature.

¹³ Maoz (1995:5,36) explains that occasionally the courts must struggle in order to achieve a just balance.

¹⁴ High Court of Justice 5026/04, Design 22 v. The Supervision Department in the Ministry of Labor (April 4, 2005; Hebrew).

¹⁵ Ben-Shemesh (2008:96) stresses that Israeli courts are not neutral in relating to pig prohibitions, as they minimize the legitimacy of religious considerations in general.

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