TEL AVIV UNIVERSITY
THE BUCHMANN FACULTY OF LAW
THE CENTER FOR ADVANCED LEGAL STUDIES

אוניברסיטת תל-אביב
הפקולטה למשפטים ע"ש בוכמן
המרכז ללימודי משפט מתקדמים

משפט והיסטוריה – סדנת יגאל ארנון ושות'
The Yigal Arnon & Co. Legal History Workshop

משפט והיסטוריה – מאמרים בדרך
Legal History Working Papers
3/08

THE AMERICAN MOMENT: WHEN, HOW AND WHY DID ISRAELI LAW SCHOOLS COME UNDER THE INFLUENCE OF AMERICAN LEGAL CULTURE?

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2.6.08

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Essay: The American Moment: When, how and why did Israeli law schools come under the influence of American legal culture.

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Preface

Open the sophisticated website of the Faculty of Law at Tel Aviv University and you will find, beside the faculty's motto :"Training the future leaders of the legal community", also a link to its "Executive LL.M program in commercial law in cooperation with the University of California at Berkeley, Boalt Hall School of Law[1] Another link takes you to the an LLM program in cooperation with Northwestern University's Law School where the instructors are "top professors" from both the Tel Aviv and the Northwestern law schools and the degree is bestowed by both institutions . A look at the LL.B (J.D.) curriculum at Tel Aviv shows a wide variety of concentrated courses, taught in English by American Professors who come to Tel Aviv especially for this purpose. For example, in the spring of 2008 semester a student may take up to twelve different concentrated courses, eleven of which taught in English. The instructors are such illustrious professors as Alan Schwartz of Yale, William Forbath of the University of Texas in Austin, Gregory Alexander of the Cornell Law School and Ruti Teitel of the New York Law School and Lynn Cohen of the Northwestern Law School. Of the twelve, ten (83% come from the United States[2]. Five of the twelve -- 41% -- are Israelis who are currently members of US law schools and these are no less illustrious than the bona fide US born and raised group. Among them are Professor Yochai Benkler of the Harvard Law School, Professor Meir Dan Cohen of the University of California at Berkeley, Professor Oren Bracha of the University of Texas in Austin, Professor Andrei Marmor of the University of Southern California Law School and Professor Hadar Aviram of the University of California at Hastings. [3]

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[1] The program is made of three semesters, with the third semester (in summer) to take place at Berekely with courses "taught in English, by …[Boalt] profressors who specialize in business law."

[2] Professor Arie Freiberg of Monash University in Australia and Professor Kurt Siehr of the Max Planck Institute in Hamburg. They my symbolically represent the historic influence on Israeli law of the British Commonwealth and Germany respectively.

[3] At the Hebrew University of Jerusalem, the semester of spring 2008 has seven visitors from abroad teaching intensive courses in English: Professor Marshall Brieger, Catholic University, Washington DC, Professor Jeffrey Rachlinksy, Cornell Law School , Professor Phillipe Sands, University College of London, Professor Suzanne Last Stone, Cardozo Law School at Yeshivah University, Professor Mark Tushnet, Harvard Law School, and Professor Tom Ulen, College of Law, University of Illinois. The list is augmented by a seventh visitor: Judge Gerald Rosen of the Distric Court for the Eastern District of Michigan. The pattern observed in the text is repeated: most of the professors come from the United States. In addition to these two law schools Haifa University and Bar Ilan University also have law schools. To these one should add six private law schools established primarily in the Tel Aviv area, all founded since the 1990's. All law faculties engage in the practice of inviting foreign professors to give intensive courses in English.

This description indicates that the collaboration between Israel and the United States is rather intense. American professors and the American legal method of research and education (eclectic as they may be) are embedded in the Israeli legal landscape. The American visitors to Israel's law schools no longer arrive with a vision of Israel as a far-away exotic land where one admires a kibbutz or fantasizes the women soldiers brandishing an "uzi" and flushing a radiant smile. Rather, it is a space culturally and professionally similar to their own. [4] In what follows I shall try to explore the intellectual origins of this development and suggest a few factors which affected and enhanced its occurrence.

The history of American influence on Israeli legal education: periodization.

Today Israeli law students are exposed to a wide variety of American courses and professors. English, if not perfectly, is spoken, read and written and American legal thought and substantive law are neither alien nor inaccessible. Almost every elite law school in the United States has at least one Israeli on its faculty, persons who serve as a bridge between their native home and their adopted habitat.[5]
This has not always been the case. Moving 20 years backwards to 1982 we find a short article by then Dean Joshua Weisman's of the Hebrew University Faculty of Law, titled "On Legal Education in the United States and in Israel".[6] In his article Dean Weisman issued a warning that "the exposure of law professors in Israel to the conventional methods of legal education in American law schools carries the risk that the teacher who returns to Israel will teach his students what he has learnt and not what they should study."[7] Let me dwell on this statement briefly. Weisman, an eminent scholar of property law, was not discussing American law professors teaching while visiting in Israel (surely he would not interfere with their academic freedom) and did not anticipate the Israeli network of law professors presently expanding in the United States. [8] In 1982 he was concerned with a simple exercise of transplantation: Israeli graduates who studied in the US, returned to Israel and enthusiastically imported the American legal method. In 1982 Dean Weisman smelled a problem: the American teaching method. It was a sufficiently big problem to be already detected, yet appeared to be sufficiently small to justify an expectation that it could be nipped in the bud. I shall return to the methods Dean Weisman rejected and those he endorsed momentarily, but for now all I wish to record is the moment of resistance. By the early 1980s something was happening to the Israeli law

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[4] Similarly, if through the mid 1970s Israel held few international conferences and could not attract the best and the brightest from the US to attend, today there are scores of such conferences, studded with star law professors in every field.
[5] Brain Drain article
[6] The article was first published in English, as a part of a symposium on legal education conducted at Tel Aviv University Faculty of Law, 5 Tel Aviv Studies in Law, 1980-1982.
[7] Cite
[8] In Givat Ram the law school building was located behind the national library and opposite the buildings of the science faculties, thereby perhaps signaling the aspiration to conceptualize law as science rather than as art. On Mount Scopus the law school is neighboring the social sciences. Under the armistice agreement between Israel and Jordan following the 1948 war (war of independence) the Mountain should have been in Israeli hands. The Jordanians did not honor this agreement.

school which was disturbing to some of the leaders in the field. Many did not approve of the American influence and warned that it was unfit for Israel.

Fast backwards to the fall of 1967, fifteen years before Weisman delivered his warning. The spring and summer of that year witnessed the war that changed the face of Israel. In all probability the Six Day War had something to do with our story, albeit through subtle and sometimes unseen channels. [9]

But this comes later. In the academic year 1966-1967 two Israeli law professors from Hebrew University spent a year as visiting scholars at Harvard, Aharon Barak and Yitzhak Zamir.[10] Barak, then 30 years old, had completed his PhD under Professor Gad Tedeschi at the Hebrew University. Zamir, then 36 years old, had completed his PhD at the University of London. At Harvard Law School the two friends took, among other courses, the ground breaking course on legal process and another course on American legal education. Both courses were etched in their minds.

Upon return to Jerusalem the two initiated reforms in legal education in keeping with the American spirit which they absorbed at Harvard. In my view, this was the American moment when seeds of American influence were planted on Israeli law schools' soil. Plantation was not a smooth operation. As we shall see, it encountered skepticism and resistance. But the seeds would not die. The close interaction between American and Israeli legal education can and should be traced to 1967.

I am therefore suggesting three dates along a continuum: 1967 – beginnings, 1982 – resistance and 2008 – augmentation and peak. These dates will roughly periodize the process of the rising American influence over Israeli legal education. I should also add the conventional caveats: nothing happened overnight. This has been a slow process where small steps took place incrementally. Only in hindsight may these dates assume any critical significance.

Nor am I suggesting that American legal education was transplanted wholesale into Israeli law. A great deal about Israeli legal education is authentic and specific to Israel, and surely there have been other influences, particularly from continental Europe. Rather, this short essay only points to the complex meaning of the process of transplantation. Seeds flying over territories are planted in a foreign environment and grow to be a little bit of this and a little bit of that. The similarities reflect the act of transplantation, but the discerning eye should notice the differences as well as the mutations. In addition, it is important to realize that many persons beside Barak and Zamir were involved in this process from its beginnings, and their support as well as

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[9] One change may be mentioned immediately – the faculty of law of the Hebrew University, located in the Givat Ram campus, spearheaded the relocation of the campus to Mount Scopus, as Israel reasserted its sovereignty over the Mountain and celebrated the re-unification of its capital. The second volume of Mishaptim opened with a forward from the editor in chief, Mordechai Kremnizer, late dean and professor at the Hebrew University Faculty of Law reporting that "[t]he Hebrew University returned to Mount Scopus, the faculty of law ascended the mountain. [A] project of renovation and the joy accompanying it". Mordechai Kremnizer, "From the peak of Mount Scopus" 2 Mishpatim 3 (1970)

[10] After a short period as dean of the faculty, between 1974 and Barak accepted an offer to serve as the Rabin's (first) government attorney general. He had several disagreements with Rabin and his decision to prosecute Rabin's wife for illegally holding bank accounts in the US led to Rabin's resignation. However, Barak did share with Rabin an admiration for the American political system and culture. In ___ Barak was appointed to the Supreme Court and in ___ retired after serving ___ years as chief justice. See Nomi Levitzki, Kvodo and Lahav, ___ Zamir followed Barak to the deanship, and later served as attorney general in the Begin government. He too was appointed to the court and served between _____

resistance affected the outcome. I shall only mention here Professor Amnon Rubinstein and Professor Amos Shapira of the Tel Aviv Faculty of Law, who were among the carriers of the seeds to Israel's shores at roughly the same time. These men were acting in the context of a major transformation of Israeli society, a transformation in which our subject matter -- legal education -- is a mere footnote. It is also interesting to mention, as I shall elaborate in the conclusion, that the picture appears in such clarity now at exactly the moment when Israelis may begin to note a shift – and the budding of a new-old romance with continental Europe and especially with Germany.

Certainly, American influence over Israel's legal system did not begin in the late 1960s.[11] As Assaf Likhovksy has shown, a program of collaboration between Israel and Harvard Law School began as early as 1950.[12] Moreover, prominent members of the Israeli legal community have had their legal education in the United States. For example, Chief Justice Simon Agranat graduated from the Law School of the University of Chicago Law School in 1928, just before embarking on a boat to Palestine. Agranat served as the professor of criminal law at the faculty of law in Jerusalem from the early 1950s to the mid 1960s and his approach to criminal law bore the marks of his American legal education.[13] Three Israelis received their SJD at Harvard Law School during the 1950s: Avigdor Levontin in 1954 and Yehezkel Dror and Theodor Meron in 1957. All three went on to have formidable academic careers, but only Levontin had tied his lot with the faculty of law at Hebrew University, served as dean and taught there several courses including an introductory course to the English Legal System and Conflicts of Law. [14] In the early 1960s two Israeli students Daniel Friedman and Ami Ben-Porat took

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[11] There has been an American presence in Israeli higher education from the very beginnings of the Hebrew University of Jerusalem in the 1920s. See e.g., Walter Ackerman, The Americanization of Israeli Education, 5 Israel Studies 228 (2000)(reviewing influence of John Dewey's work on Israeli educators and stating that "several generations of curriculum workers and students in Israel have been taught a conception of curriculum – and, by extension, of teaching and other aspecs of schooling – which is peculiarly American." Id. At 235. Similarly, the department of economics at the Hebrew University had a strong American presence since the late 1940's, due primarily but not exclusively to the fact that Professor Dan Patinkin, a graduate of the University of Chicago, was its energetic and influential dean. See Nachum Gross, 'Economics' at the Hebrew University before the 'Patinkin Age' The Maurice Falk Institute For Economic Research in Israel , Discussion Paper No. 00.05 and Nachum Gross, "The Department of Economics At the Hebrew University During the 1950s, The Maurice Falk Institute For Economic Research in Israel , Discussion Paper No. 04.06. I thank Professor Ephraim Kleiman for directing me to these materials.

[12] See Likhovsky, ____. Also, in 1958 a conference of the International Lawyers Convention was held in Israel, and Harvard Law Professor David Cavers was a guest of honor. Likhovsky, Id. At p.

[13] i.e., he had scores of students, including Barak and Zamir's. Cite biography, Hastings. Justice Shneur Zalman Cheshin, a founding father of Israel's supreme court, received his law degree at NYU Law School.

[14] Levontin also spent a year teaching at Yale Law School. In 1976 Dean Abraham Goldstein told me that Yale offered Levontin a tenure track position which he turned down. Theodor Meron, who also had a degree from Cambridge, England, returned in 1957 to serve in the Israeli Ministry of Foreign Affairs and since 1975 has been a professor of international law at NYU Law School. More recently he served as president of the international criminal tribunal for the former Yugoslavia. Yehesqel Dror whose thesis at Harvard Law School addressed "Law as an policy making instrument" returned in 1957 to join the faculty of political science at Hebrew University and became an internationally known expert in policy studies. Like Levontin and Meron he was courted by the US academy. Among other things he he served as a fellow at the prestigious Center for Advanced Studies in the Behavioral Sciences in Palo Alto, California in the early 1960s and in 1968 he served as a senior researcher at the Rand Corporation. Most recently he was

their LLM at Harvard Law School, and at least one of them, Ami Ben Porat (later a prominent attorney in Tel Aviv) wrote Chief Justice Agranat an admiring letter about the course on legal process.[15] During the 1960s Yale Law School produced four Israeli graduates: Yuval Levy (1960) and Amos Shapira who joined the faculty of law at Tel Aviv and Michael W. Reisman and Arie David who remained in the United States.[16]

Somehow, this distinguished group of Israeli graduates of American law schools did not turn the ship of Israeli legal education toward American shores. It may well be that the conditions were not ripe for such a development.

Meanwhile, the late 1960s saw not only the return of Barak and Zamir from Harvard law school but also the establishment of a second law school at Tel Aviv University. Until 1966/7 the Tel Aviv law faculty was formally a "branch" of the Hebrew University Faculty of Law and many of its teachers were members of the faculty at Hebrew University. [17] By now the independent faculty was ready to make its mark, and one way it was hoping to do so was through educational reforms. The inspiration for these reforms was sought in the United States. Thus the reforms in both law faculties mirrored and trailed each other.[18]

Three major reforms beginning at the end of the 1960s ushered what I call "the American moment": the establishment of a student run law review, curricular reform and the introduction of a different teaching method, based primarily on a more lively class discussion culminating in an open-book exam. To these one should add clinical programs and moot courts, two important educational tools tracing the American model but which I shall not discuss.[19]

What I call the American moment is primarily the time when these ideas were consciously put on the table. Some of the suggestions for reform, such as the

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appointed by Israel's Prime Minister to serve as a member in the Winograd Committee which investigated the government's behavior during the Second Lebanon War.

[15] Friedman returned to Israel and pursued his PhD with Professor Uri Yadin, a senior official at the Ministry of Justice and a member of the faculty of the Hebrew University. He became the second dean of the Tel Aviv Law faculty and is now Minister of Justice at the Olmert government, leading the campaign to roll back Barak's jurisprudence as Chief Justice of the Supreme Court.

[16] "I was an uncritical fan" he remembered in interview. Shapira proceeded to obtain his SJD from Yale Law School,. Prior to his SJD studies Shapira received received his MCL (Master in Comparative Law) from the School of Law at Columbia University and upon return never tired of informing everyone of the "way we do things at Columbia."see infra, note … Yuval Levy founded a prosperous law firm in Tel Aviv but continued teaching as well. Michael Reiseman joined the Yale Law School Faculty. Arie David was a member of the faculty of law at the Hebrew University but decided to return to the United States

[17] The current building serving as a home to the faculty was the first on the Tel Aviv Campus. Originally it was home to the High School for Law and Economics, which was closed down to give way to the "branch." See Assaf Likhovsky,

[18] My introduction opens with a description of Tel Aviv University's Faculty of Law in the text and a parallel description of the Faculty of Law at the Hebrew University in the footnote. Both law faculties were influenced by the United States. However, it is my impression that Tel Aviv was a more fertile ground for accepting American influence and that the Hebrew University has experienced more resistance. This matter calls for further research. It could be that Barak and Zamir's retirement from the faculty during the 1970s (both served as attorney general and thereafter as justices of the Supreme Court) left a vacuum which empowered the resistance to American influence at that institution.

[19] Olga Frishman, "Curricular trends in Law Schools – the Case of Tel Aviv University" seminar paper submitted to Professor Ron Harris in fulfillment of the requirements in his seminar the history of Israeli Law. I thank Professor Harris for bringing this paper to my attention and to Ms. Frishman for sharing it with me.

establishment of a student run law review, were relatively easily accepted. Others encountered substantial resistance. At the end of the process, however, it does appear that the "American moment" heralded a new era for Israeli law schools. I shall review these reforms and then suggest some factors which spurred and facilitated their integration into Israel.

Law Reviews As Educational Tools: Mishpatim and Iyuney Mishpat

Until 1968 the legal community had two law reviews: Ha-praklit, and the Israel Law Review. Ha-Praklit (The Attorney), established in 1943 was the journal of the Israeli Bar and was run by attorneys. It published primarily short pieces on practical issues in Hebrew.[20] The Israel Law Review, established at the Hebrew University in 1966, was published in English and was more ambitious academically. It had two purposes: to showcase Israeli scholarship to the world and to give Israeli scholars the opportunity to publish in English and thereby meet the requirements of publication for purposes of promotion within the university.[21] It was run by senior members of the faculty at the Hebrew University, was peer reviewed and assisted by a professional editorial staff. Students had no connection to either journal.

In 1968 the Faculty of Law at the Hebrew University decided to establish a new law review that will be run by students. They called it Mishpatim. This was a major step, signaling (to use Assaf Likhovsky's theory[22]) that there is, or should be, enough legal scholarship to justify a second Hebrew venue, that active students were or should be an integral part of the educational and scholarly enterprise and, last but not least, that the faculty of law at the Hebrew University was aspiring to resemble the model of excellence embodied by Harvard Law School.[23]

Indeed, in form Mishpatim did resemble the Harvard Law Review. In interview, Barak remembered visiting the editorial board of the Harvard Law Review at Gannett House, studying their modus operandi and consulting their bylaws. When he returned to Israel he proposed that the same model be adopted. The idea of a student run law review

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[20] Ha-Praklit is now run by the students of the law faculty of the Administrative College in Rishon L'Zion under the supervision of a faculty member.

[21] There was very little interest in Israeli law outside of Israel throughout the 1950s and 1960s and the likelihood that a law review would be interested in publishing scholarship about it was not too high. Israeli scholars required to publish in English were therefore obliged to publish either comparative pieces (also not too popular at that time) or scholarship related to American law or the common law. It could also be that the fact that they were affiliated with a law school in Jerusalem failed to make their scholarship attractive to law students in the US who were running the law reviews. It is interesting to observe that the decision was made to publish the Israel Law Review in English, not in French or German. This, despite the fact that it has been said that Israeli law was influenced by Continental Law and that many of its founders had legal training in Central Europe. The decidion to publish in English may signal attachment to the common law, the fact that most of the academics were not versed in continental languages even though they did study with European masters and probably the fact that the process of promotion was dependent upon letters of recommendation from professors whose professrional language was English.

[22] See ____

[23] In his forward to the first issue Dean Reuven Yaron stated that the main purpose of Mishpatim was " to serve as an important educational tool, first and foremost to the best students who are its editors, and beyond them to the many who will use it as a venue to publish their scholarship." 1 Mishpatim p. 3 (1968).

was not easily swallowed by the faculty. Members of the faculty were skeptical about the ability of students to make serious editorial decisions and probably were puzzled about the wisdom of submitting their own scholarship to the judgment of students. Joshua Weisman, a young professor who followed Barak and Zamir as a visiting scholar at Harvard Law School felt strongly that the American model was misguided. Weisman was not against a law review, but thought that editing was a professional skill which the students did not possess. Furthermore, in his view, any accumulated professional experience would disappear as old editors were replaced by new. Interviewed in 2008, he was only strengthened in view that the professional scholar's interaction with the student editors had enough drawbacks to trump the pedagogic advantages[24].

In 1968, however, Barak applied his formidable persuasive skills and the law review was launched. The best students were chosen for the editorial board, and they were placed in charge of reviewing manuscripts and making decisions on publication. To alleviate the anxiety of the faculty, Barak volunteered to serve as the first faculty advisor to the board. As a member of that first editorial board, I recall Barak's pivotal role in guiding the students. Some of the board's meetings were held in his small apartment in Jerusalem, sometimes with his babes playing in the same living room. He provided invaluable advice and certainly exerted weighty influence. In interview, Barak remembered that he wrote the bylaws of Mishpatim by himself, making sure that the new creation will maintain editorial independence.

He viewed Mishpatim as an educational tool, not merely as a venue for faculty publications. The expectation and message was that the student-editors will develop the capacity to distinguish between bad and good scholarship and that their writing skills will grow with the responsibility of editing. Moreover, there was a clear anticipation that students will make an effort to publish. Writing a note for the law review, Barak never tired repeating, was the best way to launch a scholarly career.[25]

To ensure autonomy the law review was registered as an independent company with shares going to the dean, to two senior student-editors and to the center for legislative studies.[26] Indeed, within a very short time the student-editors did develop considerable independence. The number of rejections of manuscripts was reasonably high and the young editors seemed to have no qualms about rejecting even work submitted by senior law professors at their school.[27] In one case a lecture submitted by former Chief Justice Simon Agranat (previously a professor at the school) was rejected as "unfit for publication in a journal oriented towards a "professional" – legal audience" (quotation

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[24] In interview (April 10, 2008) Weisman did concede that the idea of a student run law review has advantages. However, his experience has been that each submission to the law review ends up with the scholar writing a second "article" in response to the editors' criticisms, elaborating the reasons why their comments and suggestions reflected lack of sufficient understanding of the field. The criticism that student-editors sit as judges over scholarship which they have no skills to evaluate is widespread in the US as well. In his forward to Mishpatim Dean Reuven Yaron responded to this reservation: "The frequent change of editors will prevent sinking into the conventional and will promise a fresh approach that does not hesitate to introduce necessary and useful reforms." Supra n. at p. 3

[25] Indeed, the very first issue of Mishpatim had eight student notes.

[26] From a report to the University Comptroller: "The journal Mishpatim is published by a registered company… the university established a special fund to support the expenses involved in publication" Submitted April 1, 1982, MP/3877, Faculty of Law Hebrew University Archive, box 35/1.

[27] A 1978 report to the dean states that of 26 submissions 16 were accepted, 7 rejected and 3 were pending. H Archive, Box 35/1

marks in the original). A handwritten note from the faculty advisor to the dean, said: "I am very sorry about this development. I tried to prevent it but my arguments fell on deaf ears." [28] Despite the apparent discomfort with the editors' decision, there is no indication in the files that the faculty sought to prevail upon the students. The freedom of editorial discretion was honored and evidently this by itself had an impact on the students' confidence. A report to Dean Weisman in 1982 recommended keeping the law review "as a separate and independent entity in order to preserve its autonomy." [29] Despite his skepticism, Weisman endorsed the report.

Tel Aviv followed suit two years later. Amos Shapira, a member of the faculty's nucleus of American graduates[30] and then a young man intensely interested in legal education, first encountered the law review when he was pursuing a master of comparative law at Columbia Law School in 1962. Shapira was very impressed by the idea of the law review as an educational tool. The idea that students would be encouraged to be involved in the scholarly process, write, edit and think critically about scholarship was so novel and attractive, that he decided to write a seminar paper about it. In interview, he remembered approaching Kent Greenawalt , then the editor-in-chief of the law review, to learn more about the institution.

The Tel Aviv decision to establish its own law review was more circumspect than Jerusalem's. Its law review, Iyuney Mishpat, vested the editorial authority in a joint professor/student team. Interestingly, the professor who launched the Tel Aviv Law Review was not an Americanist. Professor and district court judge Zeev Zeltner, whose legal background was decisively German, was chosen as editor in chief and with him as co-editor served Nili Cohen, then a fourth year student and now a senior professor at Tel Aviv. [31] Both law reviews had trouble soliciting materials and worked hard to fill their pages with adequate publications.[32]

Curricular Reform: From Mandatory to Elective Menues

[28] Letter to Chief Justice Agranat dated October 28, 1983. Hebrew University Faculty of Law Archive, box 35/1.

[29] Report of May 17, 1982 HU Law Archive box 35/1.

[30] Shapira got his SJD from Yale Law School where he studied under Dworkin, Calabresi and ___. He also held an MCL (Master of Comparative Law) from Columbia Law School.

[31] Cohen was not an Americanist either. She pursued her PhD at Tel Aviv University and only then spent a post doctoral year at the University of Pennsylvania Law School, interview with Professor Nili Cohne ___ The Tel Aviv Faculty went through a series of experiments concerning the composition of the editorial board. It started with a joint faculty/student team. It then changed into a system were the teacher was the editor and the students were "vice editors." Today a member of the faculty is the editor in chief and an editorial board of students work under his authority. Nili Cohen, Iyuney Mishpat is thirty years old, Iyuney Mishpat,

[32] Interview with Professor Nili Cohen. See also Nili Cohen, 30 years to Iyuney Mishpat. As a result, many of the editorial boards were publishing their seminar papers as student notes. Barak remembered that when he solicited funds for the Law Review (which as an independent company needed its own financial resources) at the Ministry of Justice he was made to promise that indeed he will see to it that four issues will be published every year. Cohen remembered the need to pursue potential scholars and the hesitation people had of publishing with the young Iyuney Mishpat when they had an opportunity to publish in Mishpatim or Ha-praklit. Interviews, supra notes ___

The second major innovation advancing the influence of the American model on Israeli legal education was curricular reform.

Again, some background information to highlight the difference between Israeli and American legal education is useful. To this day and since its inception, Israeli legal education has been an undergraduate degree (the diploma conferred upon graduates is LL.B). Most students enroll following military service, equipped with some real life experience and high school diplomas.[33] Originally, the law faculty curriculum was based on the traditional continental model, due primarily to the fact that the men (there were no women) at the helm had contintental legal education and hence were primarily familiar with the continental model.[34] These two factors, the lack of college education among the students and the familiarity of the professors with the European model coupled with the dearth of available instructors combined to create a first year curriculum which was mostly devoted to introductory courses followed by three years of mandatory courses, few electives and fewer seminars. In the first year students studied courses such as an "introduction to the theory of law" and "introduction to Roman Law" in addition to introductions to psychology, political theory and economics. The mandatory courses, taken between the second to the fourth year of studies, were contracts, torts, property and civil procedure, but also labor law, tax law, conflicts of laws and public international law.[35] The senior professors were kings of their fields and any young professor joining the faculty and teaching in their area served under them and depended on their good will for promotion, a fact that in all probability encouraged conformism and chilled thoughts about change.

Both universities began a movement for curricular reform in the late 1960s, with the abolition of the monopoly of the senior professors over their respective fields.[36] Thus, curricular reform reflected not only American influence but also a generational shift. The retirement or the impending retirement of the old guard opened the gate for change and innovation. In both law faculties, the change and innovation were inspired by the American model.

Barak and Zamir, exposed in 1966/67 to the Harvard Law School curriculum and having taken David Cavers' course on legal education, returned home firmly convinced

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[33] thus, compared to the American law school Israeli students are more mature, due to their military experience but are less roundly educated due to the fact that they have not attended college.

[34] Yoram Shachar reports that when the faculty of law at the Hebrew University was established the small group of founders adopted the Swiss law school curriculum as presented to them by Professor Nathan Feinberg. Shachar, Mishkan Ke-Mishpato, 19 Mekherey Mishapt 397 at p.407 (2003). But note that European ideas about legal education were themselves diverse and that there has been an attempt to develop an alternative and interdisciplinary continental model in Palestine and subsequently in Israel. The High School of Law and Economics, established in Tel Aviv, was founded by professors who sought an alternative to the traditional model. See Assaf Likhovsky, supra n. . This institution did not survive the competitive spirit of the Hebrew University which imposed a monopoly over the field of higher education in Israel of the early 1950s. In addition, the Hebrew University's leadership was uncomfortable with fields of study that had a "professional" orientation. This factor could have influenced the determination of the founders to present law as a "pure discipline" rather than as a system connected to society and politics. For the University's chilled attitude towards professional training see Nachum Gross, 'Economics' At the Hebrew University Before the Patinkin Era, supra n. __ at 10.

[35] Contracts and torts were taught sequentially, in a one year long course, as "obligations."

[36] Interview with Professor Joshua Weisman,. This monopoly was known as the "latifundia system" – the system known for concentrating large parcels of land in the hands of the wealthy few.

of the need to engineer reform. But the skepticism of their senior colleagues was considerable and reform had to wait until the retirement of the old guard and the arrival of a new group of young teachers. It should be noted that at the Hebrew University the impetus for change also emerged from below. In 1973 one finds a letter to the editor penned by Baruch Avrahami, one of Mishpatim's editors, titled "Give Us a Faculty for Lawyers." [37] The young editor, evidently one of the better students in the faculty (only high achievers were appointed to the editorial board), complained bitterly of the archaic curriculum which fails to expose students to many of the fields of law in the daily lawyerly practice. The subsequent issue of Mishpatim included responses from two members of the faculty, one totally rejecting the student's complaints and the other mildly agreeing that some reform was indeed needed.[38] A third response, by a young lecturer at Tel Aviv University, enthusiastically endorsed the call for curricular reform.[39]

Clearly, the faculty of Tel Aviv University was less encumbered by institutional tradition and more able to promote reform. Professor Amnon Rubinstein, then dean at the newly independent law faculty at Tel Aviv[40] was attracted to the American way of teaching law even though (or because) he himself was a graduate of the London School of Economics. In interview he recalled sending for and studying the curricula of the major American Law Schools.[41] His agenda for reform was revolutionary for his time: less mandatory courses and more electives. Rubinstein was a dynamic dean, eager to lead his young faculty to the modern age which he identified with the United States. He also enjoyed the advantage that most (not all) of the older guard at the Tel Aviv faculty of law were full time practitioners who did not wish to be too involved in the life of the faculty and therefore were less determined and able to fight the "Young Turks." Assisting him were Professor Daniel Friedman, who obtained his LLM from Harvard Law School in

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[37] Baruch Avrahami, "Give Us A Faculty For Lawyers" 4 Mishpatim 225(1973)

[38] Itzhak Englard, "Give Us Students Who Will Study Law" 4 Mishpatim 743(1973), Englard defended the status quo and blamed the philistinism of the students. ; I. Zamir, "The Other Side Of The Faculty" 4 Mishpatim 745 (1973) Zamir sounded more conciliatory, supported change and even expressed willingness to turn his course, labor law, into an elective. Id. At 748

[39] Amos Shapira, Give Us Appropriate Legal Education, 4 Mishaptim 739 (1973)

[40] The first dean of the independent law faculty at Tel Aviv was Professor Gualtiro Proccacia, who studied law in Italy and served as professor of roman law and corporate law. The history of the Proccacia family illustrates the history of Israeli legal education. The elder Procaccia's son, Uriel, obtained his SJD at the University of Pennsylvania in ___ and returned to the Hebrew University to assist in the reforms and introduce law and economics to the curriculum. Uriel's son, Yuval, obtained his SJD at Harvard Law School and is a member of the Radzyner Law School at the Center for Interdisciplinary Studies in Herzlia (IDC).

[41] Interview with Professor Amnon Rubenstein, April 13, 2008. Rubenstein studied both law and economics at the Hebrew University and in interview expressed admiration for the rigorous and interactive study at the faculty of economics compared with the lethargic instruction at the faculty of law. The faculty of economics, the reader should recall, was formed and led by Professor Dan Patinkin, a graduate of the University of Chicago, see supra, n. __ In the archives of Tel Aviv University Faculty of Law, attached to the report on curricular reform there is a collection of documents from the law schools at the Universities of California (Berkeley), Stanford, Pennsylvania, Virginia, Chicago, George Washington, Illinois, and Wisconsin. Olga Frishman, "Trends in Law School Curricula – The Case of Tel Aviv University", seminar paper submitted to Prof. Ron Harris in fulfillment of the requirements of the seminar on the "History of Israeli Law." Curiously, the curricula of Harvard and Yale Law School do not appear, but this may be an archival omission or based on the fact that the reformers were already familiar with these curricula. At the Hebrew University in Jerusalem [FILL IN]

1962 (check) and Professors Amos Shapira and David Libai who obtained their SJD's from Yale Law School and the University of Chicago respectively.[42]
Throughout the 1970s the experimentation in curricular reform gained momentum. The introductory courses were eliminated or became electives, substantive courses such as criminal law and contract law moved into the first year and electives and seminars were added. In addition, the requirement of moot court coupled with instruction on legal argumentation was added. [43]
One does not see a blind imitation of the American model in these reforms. For example, courses such as property law and civil procedure never became a part of the first year curriculum. In addition, both faculties retained a component of general education in the first year curriculum.[44] However, the idea of exposing students to the substantive aspects of law in the first year and the emphasis on electives were certainly American and they were enthusiastically embraced by the young faculties of both faculties of law.

Teaching Method: From Frontal Lectures To Class Discussion [45]

The third innovation and the one that proved to be most contentious was the introduction of more lively teaching methods. Throughout the 1950s and 1960s the conventional method of teaching at both faculties of law was frontal lecturing, also known as lectures "ex cathedra." [46] The professor would come to class and dictate a lecture which the students would copy diligently into their notebooks. With very few exceptions, the professor did not pose any questions; nor were the students expected to question points stated by the professor. If someone did dare interrupt the lecture by posing a question the answer came as short and authoritative. I should also add that there were no office hours and professors had almost no interaction with students. The professors considered the body of knowledge to be fixed and predetermined and therefore barely changed their lectures from year to year.[47] Sections were attached to the required

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[42] Friedman proceeded to obtain his PhD from the Hebrew University in Jerusalem. In 2007 he was appointed the Minister of Justice in the Olmert government. Shapira followed Friedman into the deanship of Tel Aviv University, increasing the ties with the US of which he was very supportive. Libai turned to criminal defense practice, and between _____ he served as Israel's Minister of Justice under the (second) Rabin government and the short lived Peres government between 1992-1996.
[43] Frishman, supra n. Pp. 18-20 and 31 respectively
[44] At Tel Aviv University students have to choose two courses from a cluster of courses called "meta legal" courses. One of these courses should be taken in the first year. The courses include Law and History, Law and Feminism, Legal Systems (emphasizing comparative law), Theories of State and Morality, Law, Society and Culture, Law and Economics. At the Hebrew University three introductory courses are mandatory in the first year: Jurisprudence, Legal Systems and Introduction to Jewish Law. Jurisprudence and Introduction to Jewish Law have always been Mandatory at the Hebrew University and have survived the various waves of reform.
[45] According to the Israeli Index of Legal Periodicals thirty eight scholarly articles have been published in Hebrew on the topic of legal education in Israel. The discussion below mentions only a few of these. I apologize to the authors whose work is not cited herein. This is by no means a reflection on the quality of their work.
[46] Latin for "from the chair" denoting the Professor's chair but also the authority with which the text is delivered. The term is used in Catholic theology to denote the infallibility of the Pope. By implication, its use in the university environment designated the infallibility of the professor.
[47] Of course, the lectures did reflect new opinions by the court, but often the professors would delegate the study of new cases to the sections. See text accompanying note 37, infra.

courses, and attendance was sometimes mandatory, but these sections mostly consisted of dull and tedious rehearsals of the facts contained in cases mentioned in the main lecture.[48] A culture therefore developed whereby students did not attend classes and instead relied on mimeographed materials which were either sold or passed on from one generation to another. Sometimes a particularly bright or entrepreneurial student would gather the professor's notes and publish them with the students' publishing house. The young student Aharon Barak did this himself when in 1956 he prepared for publication his notes from Professor Tedeschi's course, "Introduction to the Theory of Law".[49] Evidently, it takes one very versed in the old system to understand its limitations.

Barak himself was a gifted teacher and his experience at Harvard Law School propelled him towards a different mode of instruction. Upon return he conducted classes where questions were asked and dialogues with students were welcome and encouraged. This was not the typical socratic method as immortalized by Professor Kingsfield in the Paper Chase. Barak was warm and gentle and his demeanor always reflected love of knowledge and immense curiosity. Questions were probed in the true Socratic method of deepening understanding.[50] In the fall of 1967 Barak taught for the first time a course in torts law (until then the subject was a part of a course known as obligations, where contracts and torts were taught back to back as is the custom in continental Europe). He chose David Kretzmer, then a young LL.M student and later an eminent professor at the Hebrew University, to lead the sections. Kretzmer's method of instruction was particularly challenging and at least to the students appeared to fit Barak's style hand in glove. Kretzmer distributed sheets with legal problems, required prior reading by way of preparation for the analysis of these problems, and in class proceeded to dissect the problems instead of to rehearse the reading materials.

I should pause and disclose that I have always been under the impression that the problem method of legal instruction was another innovation brought over from Harvard Law School by Barak. But I have been wrong. It turns out that the young Kretzmer was not aware of the American pedigree of this method. He borrowed the problem method from the property law course taught two years earlier by Professor Joshua Weisman.[51] Weisman, a graduate of the second class of the faculty of law at the Hebrew University, had his PhD from the London School of Economics. In interview, he recalled how he came by himself to the problem method as a preferred mode of teaching. He was unhappy with the frontal lecture and looked for ways to enliven the class and force the students to think analytically. Merely teaching cases (the Langdellian case method) did not satisfy him as he did not wish to discuss what has already been resolved by courts but rather to

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[48] Periodically, if the professor felt he could not complete the lectures due to time constraints, he would ask the section leader ("me-targel") to shift to lecture mode and dictate the relvant subjects. In interview with Professor Amos Shapira I learnt about the title "Mae-sha-nen" which he thought was "tutor" but literally means "repeater" or "rehearser." The idea conveyed is that of someone who helps the students study the facts by heart. In interview Barak did not recall this term but conceded that this was the nature of the instruction.

[49] G. Tedeschi, Introduction to the Theory of Law, editor Aharon Barak, Mif-al Ha-shichpul, Akademon, 1956. Other examples are Sh. Ginossar, Evidence, editor E. Harnon, Mif-al Ha-shichpul, Akademon, 1956; Sh. Ginossar, Civil Procedure, Editor Aharon Barak,, Mif-al Ha-Shichpul, Akademon, 1957. Generally the professors did not oppose this development, but insisted that the cover of the publication include the caveat that the professor has not reviewed these notes.

[50] These, at least, are my own recollections as a law student in 1968, P.L

[51] Interview with David Kretzmer,

apply legal knowledge to new problems.[52] Weisman was surprised to realize, when he arrived at Harvard Law School on the heels of Barak and Zamir in the fall of 1967, that the problem method was ascending there as well.

This point deserves emphasis. No one will deny that the American teaching method had significant influence on Israel. Still, not everything that looks similar, even identical, was actually imported. It is quite possible that similar pedagogic solutions developed at the same time in different parts of the world. The fact that one country is the center of an empire and the other a remote province should not lead one to jump to the conclusion that the province imported from the center. The independent development of the sophisticated and demanding problem method is an excellent example of the need to address transplantation carefully and skeptically. Something that looks like a transplant may in fact be home grown.

At Tel Aviv, the younger faculty was also eager to introduce new teaching techniques. As dean, Amnon Rubinstein recalled in an interview that he was keen on discussion and made efforts to encourage his colleagues to do likewise.[53] The spirit of reform was in the air and itself became the subject of scholarship. In 1972, Amos Shapira, a young senior lecturer published an article titled "Changing Patterns in Legal Education in Israel"[54]. Shapira who earned his SJD from Yale Law School in 1968 was enthusiastically reporting to the world, in English, that Tel Aviv has been engaged in curricular reforms and called for this reforms to be "coupled with effective teaching".[55] Shapira's description of the ideal method of teaching reflects both the dream and the reality of legal education at both Jerusalem and Tel Aviv at the time: "This (effective teaching, PL) would mean, first and foremost, relinquishing the formal lecture ex cathedra as the principal method of instruction. Lecturing should be replaced by dialogue, by group discussion, by a process of give and take shared by teachers and students. .. Mechanical note-taking and memorizing should give way to independent thinking and a critical approach."[56]

The scholar Shapira was mindful of the distinction between the is and the ought. After two full pages describing the ideal teaching method, he returned to the reality of Israel and stated that "The Tel Aviv University Law School is making genuine efforts to render law teaching more effective" and that "Ever more faculty members are abandoning pure lecturing in favor of class discussions." He was careful not to be more specific than "ever more." [57]It is safe to say that at the time of Shapira's writing only very

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[52] Weisman recalled that students did complain bitterly about this teaching method, which forced them to read and prepare for class in a manner unprecedented. He acquired the reputation of a "hard teacher". In the days before student teaching evaluations when popularity was not a factor this was not considered a serious impediment.

[53] Interview with Amnon Rubinstein, supra n.

[54] Amos Shapira, Changing Patterns in Legal Education in Israel, 24 Administrative L. Rev. 233 (1972)

[55] Id. At 241

[56] Id. At 241

[57] One more signal of the changing approach to legal education must be mentioned and this is the examination. The conventional way of testing the students, the closed book examination, was challenged by Barak upon return from Harvard Law School. "you may bring anything, all your books, your notes, you may come with full suitcases of materials if you wish." He said. In the examination you need to apply your knowledge, not regurgitate. This was a radical innovation which had a tremendous impact on the students, who suddenly felt that agency became a factor in their well being. Similar innovations took place at Tel Aviv.

few professors were moving to class discussions and that the majority, at both Tel Aviv and Jerusalem, were not terribly excited about the new ideas. Yet clearly Shapira was observing something real.

The new spirit could be poured into several American vessels, not all identical. There was the Socratic method associated with Langdell, designed to "discover" great principles of law and doctrine through a close session of questions and answers in the classroom. This method, as all know, was linked to the case method as the assigned materials were leading judicial opinions. There was the more loosely defined "discussion method" meant to enliven the class through debate and deliberation. There was the problem method, distinguished from the case method because it did not offer a solution or outcome. The legal solution had to be developed by the students on the basis of the assigned materials. This method required intense work on the part of both teachers and students.[58]

The frontal lecture stood ashamed and dwarfed before these "new age" methods, and yet it too had pedagogic justifications. As originally conceived, the lecture method was designed to give the students a coherent, systematic review of any particular field of law rather than to expect them to "reinvent the wheel" as sometimes happens with the Socratic method. If one accepts the premise that students don't read (or worse, barely attend class) then the method of discussion may not end in intellectual rigor but rather in the reinforcement of less understanding and more shallow thinking.

These points appeared clearly in the debate on the pages of Mishpatim in the early 1970s, already mentioned above. In his short polemical essay the student Baruch Avrahami attacked the frontal lecture and called for an introduction of the socratic method.[59] Shimon Shetreet, at the time a young member of the faculty of the Hebrew University and a graduate of the University of Chicago, showed that the disagreement crossed generational lines and that some of the young favored the status quo. New teaching methods cannot work in Israel, Shetreet wrote in his apologetic response to the editor, because the students would not cooperate: "the Israeli student, unfortunately, does not want and cannot (because of more difficult objective conditions) to withstand the academic pressure like his American peer. Therefore, it is not possible to adopt in Israel the Socratic method wholesale. "The Socratic method, he wrote, "is conducted with great aggression by the professor and intense emotional pressure is placed on the students, which contributes nothing to the cause". Shetreet was also critical of the problem method: "it is an excellent system for the good student but not to a less able or weak student and it leads the student to see the law as a collection of cases, not as a harmonious system."[60]

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[58] discuss Yale Harvard difference in Shapira

[59] Baruch Avrahami, "Give Us A Faculty For Lawyers" 4 Mishpatim 225(1973). After criticizing the lecture method Avrahami called for "a class where the student takes an active part." As "active part" he listed "the case method, class discussion" and moot courts." Id. At 226.

[60] Shimon Shetreet, letter to the editor, on file with the author. Professor Yitzhak Englard and Professor Yitzhak Zamir also responded. Professor Englard was a thorough apology for the existing system whereas Professor Zamir, while disagreeing with Avrahami pointed out that the faculty is beginning to introduce the discussion method in the classroom. I. Englard, "Give Us Students Who Will Study Law" 4 Mishpatim 743(1973); I. Zamir, "The Other Side Of The Faculty" 4 Mishpatim 745 (1973).

The debate continued. To avoid discord the faculties adopted a variation of Chairman Mao's slogan: "let a thousand flowers bloom."[61] The various teaching methods co-existed as they presumably have done ever since. In 1982 this "live and let live" approach was publicly challenged when Professor Joshua Weisman, then dean of the faculty of law in Jerusalem delivered a direct attack on the "American way of teaching" and charged that it was not only inadequate in the Israeli context but also harmful: "The exposure of law professors in Israel to the conventional pedagogic approach in Law Schools in the United States harbors a risk that upon returning to Israel the professor will teach his students what he has studied, not what they should learn." [62]

The reader may remember that it was Weisman himself who has developed the problem method, unaware that it was being developed in the United States as well. Evidently, his arrow was not targeted at the problem method. Weisman distinguished between two approaches to legal education. One was technical, doctrinal and cabined within the four corners of the law as traditionally conceived. Its rival was a discussion based upon "broad policy considerations", a discussion which investigated the general principles underlying the technical legal problem. It is safe to say that Weisman was advocating a pedagogic method that would give center stage to arguments internal to the law. In his opening remarks Weisman conceded that the policy method, allowing external factors to be weighed in, was more interesting and appealing to students but he insisted that professionalism and precision were thereby lost or compromised. Weisman did his homework well. He built a list of eight factors distinguishing Israel from the United States and which therefore militated against the "policy oriented" method of deliberation in the law school classroom.

Of these eight, I shall focus on the first, which I intuit was also the most important and where the attack on the policy oriented method is clearest. [63] Weisman contended that in

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[61] The original Mao slogan was "let a hundred flowers bloom, let a hundred schools of thought contend." I heard the phrase from both Professor Barak and Professor Amos Shapira in interviews.

[62] Weisman, supra n. Weisman's attack was delivered the previous year (1982) at an international conference on legal education at the Faculty of Law at Tel Aviv University. Id, at __.At about the same time, Professor Itzhak Englard, also of the Faculty of Law at the Hebrew University denounced the socratic method as evil (deriving his understanding of the system from the fictitious Professor Kingsfield in the Paper Chase). Professor Englard also opined that teaching methods were secondary to students' ability and motivation and mentioned the frontal lecture respectfully . Professor Englard based his remarks on continental sources exclusively. I. Englard, Reflections About the Faculty of Law, 12 Mishpatim 217 (1982).

[63] The other seven were in this order: 1. federalism, which leads to the operation of American law schools as national schools with minimal emphasis on the technical aspects of any state's legal system. 2. codification, which is a central part of Israel's private law and which requires close attention to legislation. 3. the fact that in Israel there is a period of internship where young graduates are trained for a period of time by attorneys prior to taking the bar exams [it is not clear whether this point works to support or challenge Weisman major idea, but I shall not get into this here. PL]. 4. the fact that Israelis, unlike their peers in the US, come to law school without college education and therefore not as equipped to discuss policy issues 5. the lack, in Israel, of published textbooks and casebooks which make access to knowledge easier 6. the fact that in the US lawyers are allowed to advertise their skills means that they lean toward specialization whereas in Israel self-advertising is prohibited and therefore the tendency to specialize is weaker. 7 in the US there is very little emphasis on comparative law whereas in Israel the tendency to consult "how other countries have approached the problem" is prevalent. The purpose of this paper is not to critically examine Weisman's list of factors and therefore I do not go beyond offering a description.

the United States the presence of the written constitution was critical. Legal professionals were required to evaluate the validity of legislation under the constitution, and consequently had to take into consideration the broad principles embedded in the fundamental document. In contradistinction, Israel had no constitution, parliament was supreme and its legal professionals were concerned merely with legislative acts. Weisman illustrated the difference by examples. In the United States a legal professional would ask "does the particular legislative act fit the general principles embedded in the constitution" By contrast, in Israel professionals were only asking "what does the statute say?"[64]. While advocating caution, while conceding that policy considerations should occasionally enter the classroom and while certainly agreeing that the baby should not be thrown out with the bathwater, Weisman was delivering an attack on US legal education as it was experienced in the 1980s. His eight factors only sharpened the differences between Israel and the United States and therefore solidified the need to chill the reception of American influence on the law faculties.[65]

The key to understanding Weisman's objection is his strategy in framing his question. Weisman frames the difference between the two legal systems in terms of the tasks facing each legal community. Are the tasks of both communities similar, he asks? He answer is that they are not.[66] Israelis are charged with merely interpreting legislative acts whereas Americans must consider the impact of the constitution.

This way of framing the difference between the two legal systems allowed Weisman to divert attention from the deeper question of the meaning of law. Weisman assumed that all agreed that law was a set of given rules awaiting interpretation. If , however, law is a conceived as a part of a broader and complex web of social phenomena, then all norms, whether found in the tax code or in the constitution, require an equally intensive investigation into their deeper meaning.[67]

So understood, Weisman's attack was not really on the "American teaching style" but rather on American legal theory predominant at the time. It was a plea to keep law as a closed system of rules and restrict the discussion to the internal legal arguments rather than to shift the understanding to law as a social system which reflects and interacts with other social systems.

In the year 1982 Weisman was making a heroic effort to prevent an influence that was already settling in Israel. Already a decade before Weisman delivered his attack Amos Shapira eloquently announced the need to shift to a different understanding of law:

" A functional legal education must, first and foremost, abandon the illusion that law is a "pure" discipline, hovering in a conceptual universe all to itself, hermetically sealed off from the other social sciences….Logical deductions from abstract legal doctrines cannot provide the judge with … ready-made answer[s]. In short: the complex problems

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[64] Id. At p. ___

[65] in all probability, Weisman was not against exposure to American legal education. Rather, he probably thought that it would be better to educate the next cadre of law teachers in Israel and only then, when they are rather mature and committed to the "Israeli way of thinking" send them for a post doctoral year in the US.

[66] In interview Weisman stated that this point may be obsolete because Israel today does have a form of a constitution.

[67] Weisman did understand this issue, and in later in his presentation conceded that "considerations of general policy are not absent from the Israeli [read proper Israeli, PL] judicial process." But he did insist that in Israel there is and should be less emphasis on policy considerations

confronting modern society involve, almost invariably, the different aspects of the social process." [68] A decade before Weisman suggested that there was a distinction between public law and private law and that private law should be taught as a closed system of rules, Shapira already protested that such approach was ill advised:

"It is meaningless … to examine currently proposed auto compensation plans separately from economic and sociological questions, such as: how the substitution of fault as criterion of liability by a principle of strict liability (linked to an insurance scheme of one sort or another) is likely to affect the car industry? The development of new and better safety devices? The number and severity of car accidents? The propensity of drivers and pedestrians to behave more – or less – prudently? The profits of the insurance industry? The case- load of trial courts? The business of the legal profession? The claim consciousness of accident victims? " [69]

One is tempted to think of Dean Weisman as one of the last Mohicans trying to stop the "hostile" takeover or that Shapira's eloquent call for interdisciplinarity (he devoted an entire section in his article to the virtues of interdisciplinarity) and a broad understanding of law won the day. But this has not been so.[70] Indeed, Shapira was not alone in his criticism. Dean Amnon Rubinstein at Tel Aviv was an ardent supporter of the "law and " movement as were many others.[71] And yet Weisman was representing a strong camp, resentful of the "American way" and determined to flag the fundamental differences between the Israeli legal system and that of the United States.

One indication of the tenacity with which the "anti American" camp was holding to its approach and its success on the ground, is the fact that successive generations of brilliant Israeli law graduates, who went to study in the elite law schools in the United States repeatedly echoed the same observations made by Shapira. Persons who graduated through the 1990s (I was asked not to name names) reported that they arrived in the United States confident that they "understood what law was" only to realize that they were provincial and ignorant. Half jokingly, one graduate of the 1990s who made a brilliant career reported that "in JFK [airport, arriving in the US, PL] we came down from the trees." They meant to say that their Israeli training was mostly of law as a closed system; that the idea of law as an open and integrated social system was only discovered away from home. In short, they were reporting that Israeli legal education followed the Weisman, not the Shapira model.

Ten years after Weisman published his warning Tel Aviv law professor Menachem Mautner published what came to be called a "manifesto" about legal education. Mautner elaborated on Amos Shapira's themes. He rejected the formalistic approach, extolled the virtues of interdisciplinarity and called for adoption of a different paradigm of thinking about the law, in keeping with the "new paradigm" of legal

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[68] Shapira, supra n. at 237. Shapira of course was not alone. His dean at the time , Amnon Rubinstein, was an avowed supporter of the "law and " movement and a firm believer in the need for interdisciplinarity. Interview with Dean Amnon Rubinstein.

[69] Shapira supra n. at 237

[70] In fact, their disagreement reflect two stages of globalization. See Duncan Kennedy, this controversy has roots in the struggle between classical legal theory, prevalent in Europe during the 19th century and "The Social" perceiving law as social engineering.

[71] Among them Uriel Reichman, Yoram Shachar and Leon Shellef.

thought.[72] In a footnote, Mautner did mention his senior colleagues such as Amos Shapira at Tel Aviv and a few at the Hebrew University advocated the same two decades earlier, but did not pause to reflect on the reasons why, despite their efforts, the "formalistic" and "traditional" approaches still prevailed.[73] Nor did he deny the fact that his "manifesto" was inspired by the long years he had spent in the United States. [74] Rather, like Shapira two decades earlier, Mautner announced that the "new paradigm" of interdisciplinary is ascending and called upon the legal academy to adopt it.

Following the publication of his article Mautner was appointed dean of the Tel Aviv Law Faculty and has been credited with having consolidated the ascent of the American influence. Under his leadership more graduates of leading American law schools were hired, more curricular reforms were introduced and more interdisciplinary scholarship was produced and published. And yet, experience has a tendency to modify the fervent fires of manifestos. Ten years after his manifesto, Mautner modified his position in another article. As dean, he said, he came to recognize the need of the law faculty to train lawyers and therefore the role of technical doctrine in the curriculum. He now suggested that law faculties legitimately divided into three groups: doctrinalists, theoreticians and critics. He conceded the significance of the doctrinalists and called for tolerance, dialogue and mutual respect of one group towards the other. [75]

Professor Ron Shapira, a colleague of Professor Mautner in the 1990s and later dean of the Bar Ilan law faculty responded with a critique of Mautner's thesis. Ron Shapira (to be distinguished from Amos, by now a senior professor) focused primarily on Mautner's "manifesto" and opined that behind it was an effort by law professors to create an interest group that will maintain a monopoly over the field of legal education, at the expense of lawyers and judges who have been an integral part of the pedagogic enterprise. Ron Shapira also defended formalist legal thought and challenged the thesis that it has been declining:" Even before the new paradigm advocated by Mautner and Proccacia became dominant, it encountered an opposition in the form of those anxious to maintain the old doctrinal mode of legal research." [76]

Ron Shapira relied on Justice Antonin Scalia and Professor Fred Schauer to sustain his claim. Earlier, in his article he enlisted Judge Richard Posner in support of his challenge to the "policy oriented" mode of legal analysis. Mere policy arguments, based on

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[72] M. Mautner, The Law School: between the University, The Bar and the Courts, Yearbook of Israeli Law1992-1993. See also Dean Uriel Procaccia of the Faculty of Law at the Hebrew University, challenging the prevailing "pure law" approach at his institution and calling for recognition that the study of law requires an interdisciplinary approach, and calling for an interdisciplinary understanding of law. U. Procaccia, "Legal Bubbles" 20 Mishpatim 9 (1990).

[73] Id. Note 28.

[74] "In the decade prior to writing this article I spent considerable time in the United States as a student and then as a teacher. Every time I returned to Israel, I found myself frustrated because of the fact that things that were treated as given in leading US law schools were looked upon with suspicion, if not with actual delegitimation in the Israeli law schools." M.Mautner, On Legal Education, Ramot (2002) at p. 5 (this slim volume contains the two Mautner articles on legal education, see also infra n.)

[75] Mautner, On Legal Education (2002) Id, at 91.

[76] Ron Shapira, Book Review, Menachem Mautner: On Legal Education, 27(3) Iyuney Mishpat 821, __ (2004)

generalizations and unsupported by empirical verifications, he declared, were empty and barren and only served to confuse legal analysis. [77]

Which brings us back to Dean Weisman. It was Dean Weisman who, in 1982 issued the warning that Israelis should beware of importing the policy oriented mode of legal instruction into Israel. Ron Shapira was echoing Weisman, but like Mautner, did not situate the debate as continuing any particular Israeli historical tradition. There was however, a glaring difference between Shapira and Weisman. Weisman argued that Israel was fundamentally different from the United States and painstakingly developed an eight points list to persuade his audience that adoption of the policy oriented pedagogy was ill advised. Ron Shapira's challenge to the "new (American) paradign" was based on another American paradigm, that advanced by Scalia on the one hand and Posner on the other[78].

From this perspective, the American moment appeared triumphant. In the twenty first century, all the participants in the Israeli debate were Americanists.[79]

All three features of the American legal education: the law reviews, curricular reforms and a shift away from the frontal lecture mode to open discussion have taken root in Israel. And yet, curiously, the conflict between teaching law as rule bound system as distinguished from teaching law as a "law and" discipline has not been resolved. Rather, it simply changed garb and obtained support from the changing legal climate in the United States. Is it possible to call this turn a complete triumph of the American moment? I shall return to this question in my conclusions, after a short discussion of some of the reasons for the strong influence of US legal thought in Israel today. For now, and by offering further reflections on transplantation, let me remind the reader that even though I claim that the American moment was triumphant I still maintain that the Israeli legal education has retained its peculiar and authentic profile. The Israeli law faculty still reflects important aspects of Israeli culture which are different from those of the United States. One such glaring difference is the method of grading. Israeli law professors who teach mandatory courses do not grade their own exams. Similarly, Israeli law professors who teach electives will not grade their own exams if the class is sufficiently big.[80] In this, they resemble more their European colleagues. To balance the prerogative of professors(which many American professor are likely to envy) Israeli students have a right to take the examination in two different occasions, and consider this right as natural and inalienable.[81] Thus, and without underplaying the American influence, it is important to remember that an Israeli law faculty is not a clone of the American Law School and does retain distinctive features.

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[77] Id. At p. ___ (footnote 6 and text accompanying) quoting Judge Posner, Problematics of Moral and Legal Theory (Cambrirdge, Mass, 1999).

[78] Of course there are fundamental difference between Scalia and Posner. Ron Shapira was relying on the similarities.

[79] Still, this may not mean that the "culture of learning" in the Israeli law school mirrors the culture of learning in any elite American Law School. For a devastating critique of the Israeli environment of legal learning by an eminent scholar well acquainted with the American, the European and the Israeli legal cultures see Joseph Weiler and Yaniv Friedman, "On The Education for Superficiality" 25(2) Iyuney Mishpat 421 (2001)

[80] quote weiler's observations about the impact on legal education.

[81] The two separate dates for exam taking (Mo-ed aleph and Mo-ed Beit), one soon after the end of the school year and the other several weeks later, was invented in order to accommodate students who do military reserve duty. All students regardless of whether they do military duty benefit from this system.

Context: Israel as a willing importer of American influence, the United States as an active exporter.

So far I reviewed the migration of some of the cornerstones of American legal education into Israel by attributing the process to a few individuals, Barak, Zamir, Rubenstein, Amos Shapira and in later generations Menachem Mautner and Ron Shapira. I should pause to add that a few women were also involved in this struggle, even though none obtained positions of formal influence. Frances Raday and Orit Kamir at the Hebrew University; Irit Haviv-Segal and Leora Bilsky at Tel Aviv were actively involved in promoting the "law and" movement into Israel.[82] However, without conditions to facilitate, even encourage these changes all of these professors may well have failed. In what follows I only too briefly suggest some of the external factors responsible for this project's success.

The courts

The story must turn one last time to Aharon Barak, who as a young post doctoral fellow returned to Israel in 1967 with eagerness to make his law faculty into an elite institution, preferably modeled after the Harvard Law School. Barak was destined to positions more versatile and influential than the conventional law professor. From 1980 to 2006 Barak served as associate and then as chief justice of Israel's Supreme Court.[83] He brought to the Court a different way of thinking about the law and a willingness to explore the relevance of American law.[84] He used such doctrines as balancing and purposive interpretation in order to make Israeli decisional law more liberal and less authoritarian. On the way, he also made it less formalistic. Utilizing two basic laws authored by Amnon Rubinstein (when Rubenstein served as a member of the Knesset) Barak launched a constitutional age in Israel, which invigorated the idea that Israel was not a mere majoritarian democracy but rather a democracy striving to honor political and civil rights and liberties, especially of minorities. Concepts such as freedom of expression, gender equality, gay rights and more became household terms in the Israeli legal discourse.[85] As expected, some of the faculty and students in the various law

[82] It is also interesting to note that three of these four women taught law and feminism and made a substantial contribution to the development of feminist consciousness in Israel. See also Leora Bilsky, Cultural Import: The Case of Feminism in Israel, 25 Iyuney Mishpat 523 (2001).

[83] Barak served as attorney general between 1975 and 1978. He was followed by Zamir. It may well be that the absence of these two from the faculty at the Hebrew University had weakened the resolve to reform the law school in Jerusalem.

[84] But see Yoram Schahar

[85] See Barak, A judge in a democracy, Israeli law students coming to the US were puzzled by the strict construction and formalistic opinions emerging from the Rehnquist Court. They had no idea that what they thought of "the different Israeli approach" was an approach characteristic of the Warren and Brennan Courts in the US of the 1960s and 1970s. It should also be mentioned that Barak never gave up his academic affiliations. He was known for his annual visits to Yale Law School, where he either taught seminars or updated himself on the most cutting edge scholarship.

schools reacted with enthusiasm of the Court whereas others reacted with concern or alarm.[86]

The legal profession

The legal profession has also witnessed considerable changes in the last two decades. If in the 1950s and 1960s the equivalent of the American law firm, large, bureaucratized and regimented barely existed in Israel, in the 1990s such firms began to proliferate, mainly due to the closer relationship with the United States (of which more momentarily) and the wish to maximize profits.[87] A process of cross fertilization must have taken place between the law schools and the legal profession in order to produce and facilitate this change. [88]

The privatization of law schools

Since 1990 the number of law schools has proliferated. In 1967 there were two law schools situated inside two established universities; today there are ten law schools six of which are in private hands.[89] The idea of the private law school is itself an American import and a quick look at the curriculum of these schools confirms that they bear American influence. So too is the proliferation of law students. The expansion of the legal profession in Israel traces the same expansion in the United States.[90] One reason for the proliferation of law schools in Israel is the fact that the University Law Faculties, particularly in Jerusalem and Tel Aviv, recognized their potential to become elite schools and raised the requirements of admission. For a while, an entry ticket to one of these schools was so desirable that it was harder to be admitted to law school than to highly competitive medical schools. Students who could not pass the high level of requirements

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[86] See Lahav and references there

[87] See Ron Shapira,

[88] For example, Israeli law schools today not only compete for students, but also strive to place their graduates with the most prestigious firms and then rely on this data to recruit more able students. An article in The Marker, the daily Haaretz' financial magazine, titled "Partners in the heights of Manhattan" describes three graduates of the Tel Aviv Law Faculty who made it to partnership in big New York firms. The article advises those who wish to follow suit to get: 1. an LLM from a prestigious American law firm 2. to pass the bar examination in the particular state. 3. to get letters of recommendation from attorneys who are employed in the US law firm or from Israeli attorneys who are valued in the US 4. letters of recommendation from American professors 5. past employment experience in a big Israeli law firm which has working relationship with American firms and 6. specialization in areas relevant to Israeli companies which are active in the US – Intellectual property, Mergers and Acquisitions and Securities . The article also states that "in almost all the leading New York law firms today you will find at least one Israeli attorney." The Marker, April 28, 2008 p. 26.

[89] List. Of these, one should flag out the Interdisciplinary Center, whose name alone discloses the wish of its founder to align Israel with the interdisciplinary approach to law, advocated in many American law schools. The IDC's founder, Professor Uriel Reichman, emphasizes the link between business and technology and a bastion of advocacy for a stong nationalist coupled with free market ideology for Israel. It is not surprising that he is a graduate of the University of Chicago Law School. The IDC, paying its professors American salaries, is both competitive and successful in the Israeli academic landscape.

[90] Cite Kalman

sought legal education abroad, particularly in England. The opening of more law schools diverted their tuition revenue back to Israel.[91]
The rising status of the legal profession, coupled with the increasingly privatized market in Israel, are symptoms of the watershed changes that Israel has gone through since the late 1960s and are closely tied to American influence on Israel in general.[92] Furthermore, in the beginning these law schools relied on the existing pool of law teachers from the already existing schools, but they needed new blood and therefore signaled to excellent students interested in law teaching that slots were available. [93] These students were encouraged and one assumes, also personally inclined, to study in the United States. Thus, between 2000 and 2006 63 Israelis were pursuing the SJD degree in elite law schools in in the United States, compared with eight through the 1950s and 1960s.[94] Inevitably, these graduates returned to Israel with the knowledge and tools acquired in the United States, determined to apply what they have learnt abroad.

Globalization /Americanization

In the 1950s and 1960s the self image of Israelis was captured by a small cartoonish figure called "Srulik" (nickname for Israel), a childlike, rather innocent and vulnerable sabra. In 2004 Israeli sociologist Oz Almog published a two volume book titled "Farewell to Srulik". The cover said it all: on it appeared little Srulik, still wearing sandals but with something new on his shirt: an American flag.[95] Almog was describing the process through which Israel abandoned its erstwhile socialist, idealist and rather secluded culture in favor of Americanization and globalization.
[incorporate Uri Ram, Ilan Troen, Guy Mundlak, Israel Studies on Americanization]
Globalization barely needs elaboration. Israel has been an active part of this trend in almost every field and corner of its being. Globalization has meant an increasing Americanization of Israeli culture, politics and economy. Israel as a welfare state was coming to an end and a Reaganist (or Thacherist) version of economics was taking its

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[91] The flood of new lawyers (Barzilai) led the Bar to forgo the traditional oral examination where passage was practically guaranteed and introduce somewhat more rigorous written examinations.
[92] Gad Barzilai, *"The Ambivalent Language of Lawyers in Israel: Liberal Politics, Economic Liberalism, Silence and Dissent", in* Halliday T.C., Karpik L., Feeley M. (eds.) ***Fighting for Political Freedom [****Hart: 2007]. pp. 247-279.*
Barzilai observes: [T]he number of lawyers during the years 1968 to 2005 has increased by 1552 per cent, while the population growth has increased by 246 percent. Accordingly, demography may explain [only] some of the growth in number of lawyers… Most of the dramatic increase … was absorbed by legal departments in commercial banks, insurance companies, municipalities, and by the state attorneys general and general prosecutor offices … yes the private market of lawyers has noticeably been expanded as well. Since the late 1980s, as part of international capital flow onto and from Israel, a phenomenon of mega law offices (law offices that have included several dozen lawyers) has been developed. Several law offices have established branches overseas, e.g., in London and New York City. Indeed, the Israel economy has become more liberal and lawyers have been one major vehicle to incite it and to benefit from it." Id., 257
[93] For example, the law school at the College of Management was founded by Professor Daniel Friedman of the Tel Aviv law faculty. The law school in Ramat Gan was established by the faculty of the Hebrew University. The law school in Netanya was established by members of the Bar Ilan faculty.
[94] I thank Gail Hupper for sharing this information with me. The schools included in Hupper's study are Columbia, Harvard, Michigan, NYU, Wisconsin and Yale
[95] Oz Almog, Farewell to 'Srulik', Changing Values Among The Israeli Elite, University of Haifa Press (2004).

place. American political advisors were hired to guide election campaigns, shopping malls and branches of McDonald began to pepper the landscape and the media was practically imitating the predominant trend in American popular communications. Lawyers, says political scientist Gad Barzilai, "became more engaged in politics as agents of liberal economy and have significantly contributed to the economic liberalisation of the state and afterward to its interactions with the global economy. Economic privatization of currency, financial institutions, governmental agencies, public services, and the labour market has altered the basic relationship between state power foci and lawyers, since the liberal maze of economic transactions requires the veil of certainty that legal knowledge may provide". [96] A cause and effect relationship between these trends and American influence on Israeli legal education is hard to document, but it seems that a relationship between these phenomena is not altogether farfetched.[97] The more Americanized and globalized Israel is becoming, the more its institutions are likely to resemble the United States.

Foreign Affairs

The last factor I wish to mention is foreign affairs. Israel has perceived itself as being, and in many ways has indeed been, isolated in the world. Until the 1967 war, its main alley has been France. France gave Israel the weapons it needed to feel secure and France helped Israel create its nuclear plant in Dimona. However, while the strong relationship with France did yield extensive cultural ties, they failed to influence the legal system. It is thus another lesson in transplantation and a warning not to get carried away by appearances of collaboration. Language must have been a formidable barrier. French was taught in Israeli high schools as an elective, while English has always been required. The dominant role of English has certainly been felt in the law schools, where some proficiency in English was essential.[98] Of course, the history of the British Mandate in Palestine and the strong influence of the common law system have played a dominant part, but another reason was the clear aspiration of Israel's leadership, from the very beginning, to align itself with the United States.[99] In the 1950s and 1960s Israeli prime ministers courted the United States and tried to curry favor with its presidents and its congressional leadership. This has been an uphill battle, as the United States, anxious about the cold war and battling the Soviet Union for hegemony in the Middle East, was not keen on putting too many eggs in the Israeli basket. For a variety of factors that will not be reviewed here, 1967 proved to be a watershed event. The fact that France snubbed Israel as it was about to launch the Six Day War was also critical. American presidents from Lyndon Johnson to Ronald Reagan and George W. Bush showed increasing

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[96] Barzilai, supra n. at 255.

[97] See Duncan Kennedy, supra n. ___. His stages of the globalization of law correspond to the stages described in this article.

[98] Today English is being taught by the many visiting professors coming to Israel to teach crush courses, but it is hard to imagine a French professor delivering a course in Israel in French.

[99] See e.g., Elizabeth Stephens, US Policy Towards Israel: The Role of Political Culture in Defining the Special Relationship (Portland, OR: Sussex Academic Press, 2006). For an interesting analysis of the formation of law in Mandatory Palestine see Assaf Likhovsky,

sympathy for Israel.[100] Since the 1980s the support given by the US Congress has been legendary.

After 1967 Israel accelerated its own military defense and defense industries, and this effort, coupled with gigantic purchases of arms from the United States, tilted the balance decisively. Much of the high tech boom in Israel is due to Israel's military industrial complex and rooted in the early 1970s. The eagerness of its business community to intensify the ties with the United States has been clear throughout these years. In many ways Israel became a client state of the United States and inevitably opened its gates to more and more American influence. The Americanization of Israel has been intensively documented. Universities and law school could not and did not wish to escape it. The best proof is the American components present at the faculties of law in Jerusalem and Tel Aviv as described in my preface.

A view from the other side: the cow and the baby calf

A Talmudic sage observed that "the cow may be more eager to nurse than the baby calf wishes to suck."[101] We should pause and ask what has been the active American contribution to the developments described above. I wish only briefly to offer some suggestions. Gail J. Hupper has shown that in the late 20th century American Law Schools, particularly the elite law schools, have been quite active in training foreign lawyers and academics and exporting the American legal culture abroad.[102] Hupper even goes as far as to note the particular case of Israel. American wealth, grants, scholarships and attractive learning environments have attracted foreign graduates, among them Israelis.[103] LLM and SJD programs in American law schools have expanded, even proliferated. These programs generate tuitions for the American law schools and enhance their prestige abroad, an important asset in our age of globalization. Exchange programs between American law schools and sister schools abroad have become an attractive feature of the JD program, thereby further encouraging the presence of American law abroad. Thus, America has done its share to lure and influence the foreign law graduate, thereby increasing its influence, prestige and business profits. Israelis are merely one segment of a general trend of foreigners studying in the US and returning to share their acquired knowledge with the professionals at home.

The Jewish factor may also be relevant. After the 1967 war Israel's prestige in America was ascending. Again, I am only talking of general impressions, but it is not farfetched to assume that the large Jewish presence in American law faculties and leading law firms bred extra sympathy toward the Israeli legal professional, student, faculty member and attorney. The brilliance of the Israeli graduates, and their eagerness to

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[100] In 1958 Secretary of State John Foster Dulles declined Israel's government invitation to attend the celebration of its 10th anniversary. In 2008 President George W. Bush found time in his busy schedule to honor Israel with a special visit as it celebrates its 60th anniversary.

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[102] Gail J. Hupper, The Academic Doctorate in Law: A Vehicle for Legal Transplants? http://ssrn.com/abstract=1126358. Hupper found that close to half of the faculty of law at Tel Aviv hold an American SJD degree, compared with close to 25% at the law school of the National Taiwan University and 17% at Seoul national University. Id. At 3. For further specific discussion of Israel see Id. At 39-40.

[103] Simultaneously, it appears that the budget of the British Council, which has financed several Israeli graduates over the years, has shrunk.

absorb the American way may have been matched by the eagerness of the American Jewish law professors to facilitate their integration and to get closer to Israeli culture. One should not be surprised to discover that this has been an instance of the proverbial "marriage made in heaven".

Conclusion: Nothing Lasts Forever: where is the wind blowing?

Israeli law schools look more and more like American law schools.[104] This does not necessarily mean that we have witnessed a complete act of successful transplantation or that there are no differences between the American law school and its Israeli brother. All I claim is that there has been a substantial effort to improve and reform the Israeli Law School and that those leading the effort have borrowed substantially from the United States. [105]

In conclusion I wish to observe another trend, one which may pull Israel away from the United States and towards Continental Europe. The reader is aware of the fact that much of my data comes from interviews with persons who were influential at one critical step or another of the process of shaping the Israeli law school in the American model. These interviews have yielded an additional and interesting insight: many of those interviewed pointed out that in their opinion the ground has been shifting. Europe, particularly Germany, has become more attractive to Israeli scholars and educators. The meaning of this shift, if indeed it is a shift, is not yet clear as it appears to be in its initial stage. Some opined that German scholarship today, or European community scholarship, is more interesting and relevant to Israel. Some said the brutal dominance of market forces in the United States has turned them off and that they were looking for legal alternatives in Europe. Others thought that the contentious faculty relations in the United States, particularly at Harvard Law School, have affected them negatively and made them search for other models. It may well be that European or more specifically, German grants and scholarships have something to do with the new romance.

Another reason may be the maturity of the Israeli legal academy. Confidence in itself and in its path may enable it to look more critically and soberly at what America has to offer. It may also allow it to connect to its deeper roots and see that the gold that appeared to shine so powerfully when it came from the American elite law school has actually been lying around Israel itself. After all, sociological jurisprudence or interdisciplinary were discussed in Israel as early as the 1930s, by European immigrant were the founders of the High School for Law and Economics. These scholars were rejected by the professors at the Hebrew University Law Faculty, who were disciples of the "law as science" tradition. It should not be surprising to learn that these old European roots of Israeli legal education are somehow at the root of the attraction to America and that the old controversy changes appearance and yet has the quality of a déjà vu. The European turn, if a turn it is, is something to observe and follow for a while before any

[104] In the best Israeli law schools the best students are as good as students in elite American schools, and are often recruited to teach in American Law Schools once they complete a period of study in the United States

[105] For an astute analysis of the difference between the United States and Israel, based on the fundamentally different "cultures of learning" prevailing in Israel as distinguished from the United States see Weiler and Friedman, supra n.

solid conclusions may be drawn. I shall conclude with a final observation of an interesting twist: scholarship on American legal education has itself excavated the European, more specifically German, roots of the academic law school in the United States.[106] Thus, we may all be Americanists, but it is also quite possible that deep down, we are all continentalists of one sort or another.

[106] Laura I Appelman, The Rise of the Modern American Law School: How Professionalization, german Scholarship, and Legal Reform Shaped Our system of Legal Education, 39 New Eng. L. Rev. 251 (2004-2005) and also Duncan Kennedy, supra n. ___ at ___