



Committee for the Evaluation of Law Study Programs in Israel

General Report

Evaluation Report

2015

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Chapter 1- Background

The Council for Higher Education (CHE) decided to evaluate study programs in the field of Law during the academic year of 2014.

Following the decision of the CHE, the Minister of Education, who serves ex officio as Chairperson of the CHE, appointed a Committee consisting of:

- **Prof. Edward B. Rock**- University of Pennsylvania Law School, Pennsylvania, USA: Committee Chair
 - **Prof. Arye Edrei**- Tel Aviv University Faculty of Law, Israel
 - **Prof. Silvia Ferreri**- University of Turin Law School, Turin, Italy
 - **Prof. Stewart J. Schwab**-Cornell University Law School, Ithaca, New York, USA
 - **Lucie E. White**- Harvard Law School, Cambridge, Massachusetts, USA
 - **Prof. David Schizer**- Columbia Law School, New York, USA
- Ms. Alex Buslovich-Bilik*** - Coordinator of the Committee on behalf of the CHE.

Within the framework of its activity, the Committee was requested to:*

1. Examine the self-evaluation reports, submitted by the institutions that provide study programs in Law, and to conduct on-site visits at those institutions.
2. Submit to the CHE an individual report on each of the evaluated academic units and study programs, including the Committee's findings and recommendations.
3. Submit to the CHE a general report regarding the examined field of study within the Israeli system of higher education including recommendations for standards in the evaluated field of study.

The entire process was conducted in accordance with the CHE's Guidelines for Self-Evaluation (of October 2013).

* The Committee's letter of appointment is attached as **Appendix 1**.

Chapter 2-Committee Procedures

The Committee held its first meetings on May, 7th, 2014, during which it discussed fundamental issues concerning higher education in Israel, the quality assessment activity, as well as Law Study programs in Israel.

In May 2014, the Committee held visits of evaluation, and visited the College of Management, Sha'arey Mishpat College, College of Law and Business and Haifa University.

In June 2014, the Committee held visits of evaluation, and visited Netanya Academic College, Ono Academic College and Bar Ilan University.

In December 2014, the Committee held visits of evaluation, and visited the Interdisciplinary Center Herzliya, the Hebrew University and Tel Aviv University.

During the visits, the Committee met with various stakeholders at the institutions, including administrators, faculty, staff, and students.

This report deals with the general state of Law Programs in Israel.

Chapter 3: Executive Summary

This Report relates to the situation current at the time of the visit to the institutions, and does not take account of any subsequent changes. The Report records the conclusions reached by the Evaluation Committee based on the documentation provided by the institutions, information gained through interviews, discussion and observation as well as other information available to the Committee.

General Overview

Since the founding of the state, Israeli legal academia has shifted from an orientation towards the U.K. and continental Europe towards a much greater focus on the U.S.[†] Although there is substantial disagreement over the extent to which Israeli law schools have been “Americanized,” all agree on several prominent phenomena. First, since the 1980s, Israeli legal academics have increasingly received advanced training in the U.S. Second, university promotions often depend on publications in English which has contributed to motivating Israeli legal academics to publish in U.S. law reviews. Third, with English as the most prominent foreign language studied in Israel, it is relatively easy for Israeli legal academics to participate in the U.S. legal academic discourse. Whatever the reason and whatever the extent, many Israeli legal academics believe that there has been an “Americanization” of Israeli legal education. The composition of this committee, with one Israeli member, one Italian member, and four U.S. members, is consistent with this view.

3.1 Curriculum and Pedagogy

Although there were differences among institutions, all followed some version of the standard Anglo-American common-law law curriculum, with some small modifications. During the first two years, students take a variety of required courses that provide a conceptual introduction to the law, including Torts, Contracts, Property, Administrative Law, Criminal Law, and Civil Procedure. Israeli law schools typically add several additional required courses: Jewish Law; Sources of the Israeli Legal System; and Jurisprudence. In addition to the required standard curriculum, a variety of elective courses are offered.

Again, in keeping with international standards, Israeli law schools also introduce students to legal writing during the first year. Finally, as is common, there are typically seminars for upper level students in which students examine a field in

[†] For very helpful discussions, see Pnina Lahav, American Moment[s]: When, How, and Why Did Israeli Law Faculties Come to Resemble Elite U.S. Law Schools? 10 Theoretical Inq. L. 653 (2009); Celia Wasserstein Fassberg, Comment on Pnina Lahav, American Moment[s], http://www.degruyter.com/view/j/til.2009.10.issue-2_Forum/issue-files/til.2009.10.issue-2_Forum.xml; Oren Gazal-Ayal, Economic Analysis of Law in North America, Europe and Israel, 3 Rev. L. & Econ. 485 (2007).

depth (including reading and discussing scholarly articles or important cases), and produce a substantial independent research paper.

Overall, the curriculum is fairly standard with some very interesting variations (noted in our reports on the relevant schools).

One recent trend is the encouragement of joint and dual degree programs. As we note in our recommendations, these programs hold great promise in providing students with a broader education but pose challenges in implementation.

The pedagogic approach largely follows the European tradition of “frontal lectures” or lectures *ex cathedra*. As the Lahav and Fassberg articles, *supra*, both make clear, and as we heard in our visits, there is substantial student resistance to more demanding modes of teaching that require more active student engagement. At all the law schools we visited, we were told that the prevailing student culture is not to read assigned material in advance of class, except in small workshops and seminars. Although many students felt that they needed to read the assigned materials (or at least a substantial portion) before the final exam, and could not rely solely on the “notebooks” maintained by students for required courses in all the law faculties, few students indicated that they regularly completed the reading in advance of lectures. The Americans on the committee all felt that the amount of class preparation common in Israel was substantially less than they were accustomed to in their home institutions. Silvia Ferreri, the Italian member of the committee, thought the level of preparation was comparable to what was common in European universities where lectures *ex cathedra* are widespread. No Israeli teachers complained of a different attitude met in Europe: students being reluctant to express their opinions in class.

3.2 Legal Research in Israel

Israel boasts an incredibly productive and intense legal academic sector. In every law faculty, we found committed researchers producing quality research on both domestic and foreign legal issues. This was true in both the university law faculties as well as among faculty members at the law colleges.

Law, as a discipline, is both local and global in a way that Biology or Physics is not. Physics is the same in Tel Aviv, Moscow, Cambridge England and Cambridge Massachusetts, and Physics scholarship can be evaluated by the same uniform criteria. Law and legal scholarship are quite different. Because law represents a variety of choices and commitments of a given culture and society, there is an inescapably local aspect to legal regulation and, most importantly, to scholarship on legal regulation. U.S. corporate law scholars thus write mostly about Delaware corporate law, the jurisdiction in which most large publicly held firms are incorporated. U.S. constitutional law scholars mostly write about the U.S. Constitution. U.S. tax scholars spend much of their energies writing about U.S. tax law and policy. The same is true in Europe, with German scholars devoting

significant attention to German legal issues, Italian scholars analyzing Italian issues, and so forth.

In addition to “local” topics, there is also a “general” aspect to legal scholarship. There are issues in tax policy that transcend the particular tax system of a particular jurisdiction. There are lively international debates over the philosophy of criminal law and tort law. Comparative and international law are inherently transnational, as are Roman Law and Jurisprudence.

There is general agreement that there needs to be a balance between contributing to the discussion of local legal problems, in which the main discussion is in Hebrew, and contributing to transnational and international discussions, in which the discussion is typically not in Hebrew (except in Jewish law). In reviewing Israeli law schools, we have been struck by the degree of emphasis placed on publishing abroad (typically but not exclusively in English language journals), and the relative lack of encouragement for writing about Israeli legal issues in Hebrew.

The current practice in CHE’s review of tenure files from Law Colleges and for at least some of the universities’ internal procedures sets an expectation that scholars publish 2/3 of their work in foreign law journals. As a committee, we believe that this rule is excessively rigid, and places an excessive emphasis on publishing abroad. When this is combined with the particular value given to publishing in U.S. student edited law reviews (discussed below), it distorts scholarly output in three unfortunate ways.

First, because of the local nature of law, and the limited horizons of U.S. student law review editors, there is limited interest in publishing articles about Israeli law. An incentive or desire to publish in those journals thus leads scholars to write about things that are likely to appeal to U.S. law students (whether or not, as we note below, they are of interest to U.S. based scholars).

Second, this emphasis impoverishes the discussion of Israeli legal problems in ways that hurt Israel. If the best Israeli legal academics do not address Israeli legal problems, the discussion of those problems, and the analysis of proposed solutions, will be impoverished.

Third, this emphasis leads Israeli legal scholars to *undervalue* the interest of Israeli legal institutions and problems for the international discussion. By shifting the focus of scholars’ research agendas, it can lead to ignoring interesting and important local legal issues with international significance. In doing so, it needlessly hurts Israeli legal academics’ contribution to the international discussion. Israeli property law, with its unique history, raises a variety of issues that should be of interest to property scholars everywhere. With the discovery of significant deposits of natural gas, and a decision to change the taxation regime retroactively, Israel provides a fascinating case study for both oil and gas law and retroactive taxation. Similarly, the recent proposal to selectively reduce VAT for real estate

transactions poses a fascinating natural experiment that cries out for serious academic inquiry.

We wish to emphasize that we firmly believe that in every field, it is important for Israeli scholars to participate actively in the international discussion and thus that generally there should be excellent foreign publications for any promotion. Moreover, we recognize that, in a country as small as Israel, where everyone knows everyone else, basing promotion only on Israeli readers can be problematic. Finally, we certainly understand, and encourage, the desire of every scholar to be part of an international discussion. Yet, notwithstanding these reasons for encouraging publications abroad, we believe that this should be balanced with the need to contribute to Israeli law, and to give respect and encouragement to those who decide to do so.

4. General Recommendations and Comments

The Committee was deeply impressed with the seriousness and excellence of the Israeli legal academy. Across the board, we found faculty members who were well trained, ambitious and serious scholars deeply committed to teaching and research, and who show real excellence in both. Israel should be proud of its law schools.

These accomplishments are particularly significant in light of the resource constraints that the university law faculties and the law colleges all struggle under. With relatively low salaries, the need to make ends meet results in faculty members taking on additional responsibilities. Despite these demands, every law faculty we visited was research active, and, in many, we encountered excellent scholars deeply engaged in Israeli, American and European debates.

We endorse law schools' efforts to promote the diversification of their student bodies. Such efforts include recruiting, mentoring and providing academic support for students from the geographical periphery, students for whom Hebrew is not a first language, students from low socioeconomic backgrounds, and students from diverse religious communities.

To the extent that the Committee is asked to make a global assessment of the state of play, the state of play is very good.

Recommendation: Greater Transparency in Educational and Employment Outcomes

We have heard numerous reports that indicate that there is an oversupply of lawyers, that many students face real difficulties in finding internships and permanent jobs. We have also heard reports that some students are not provided adequate academic education and not held to sufficiently rigorous academic standards. In the U.S., an important response to similar concerns, driven by both internal and external demands, has been to increase transparency of employment

outcomes. All U.S. law schools are now required to provide detailed disclosure regarding post graduate outcomes. This has been enormously valuable for students considering law school whether or not they intend to practice law. This also provides a valuable incentive for law schools by giving them a stake in their students' subsequent success. In a similar vein, ministries of education in several European countries have increasingly focused on the success of students as part of allocating financing to universities based in part on outcomes.

We strongly recommend that CHE immediately mandate that all Israeli law schools provide standardized reporting of what their students do after completion. This disclosure should, at a minimum, include the percentage of all graduating students who find internships, the size of the firms in which they intern, and where those who do not intern end up. In addition, because of the importance of student faculty ratio, we recommend that all law faculties be required to disclose the student faculty ratio. We understand that the bar passage rates are already published, and believe that it, too, should be available on the website of each school, including the percentage of graduates who sit for the bar exam. Finally, we recommend that schools be required to collect and disclose their students' first jobs after the bar exam.

We recognize that this sort of data collection can be time consuming and difficult, especially when students may not reply to emails. U.S. law schools have adjusted to these problems, and have succeeded in tracking their students, in significant measure because “non-reporting” students are treated as unemployed under the ABA disclosure rules.

The benefits of this disclosure to students are huge and well worth the effort. Many students come to law school in order to become lawyers. In choosing whether and where to study, they are entitled to know their likelihood in finding an internship and employment after completing 3.5 years of legal study. This is particularly important during a period of oversupply or declining demand. Faculties should, of course, be free to make additional disclosures as well. Some law schools target older students interested in changing careers, or students from particular areas, and additional disclosures may be useful in providing context.

We view this recommendation as the single most important recommendation in this report and the one most likely to improve legal education in Israel.

Attached are samples of the ABA mandated disclosures.

Recommendation: Tenure and Promotion Standards should not distort research in a way that impoverishes Israeli legal analysis and discourse
The committee was struck by the Israeli tenure and promotion procedures' focus on publishing outside of Israel. We were told that, at least in some institutions, scholars are expected to publish two thirds of their work outside of Israel. For the

reasons given above, we believe that this degree of focus is unfortunate when applied to legal scholarship.

We are all convinced that requiring or strongly encouraging scholars to publish two-thirds of their articles abroad is unwise and are concerned that it impoverishes Israeli legal discourse. As to a better approach, we identify several alternative approaches that should be considered:

- If a rule is preferred, a better rule would be to provide that normally 1/3 of articles should be published abroad, 1/3 should be published in Israel, with the balance left to a scholar's discretion.
- Alternatively, one could leave the balance to the discretion of scholars and law faculties, without any stated expectation.
- Another alternative would be to instruct scholars and reviewing committees to take into account the importance of publishing in Israel, without specifying any particular rule.
- Whichever approach is adopted, it is necessary to allow enough flexibility so that scholars who write in fields that are nearly entirely Israeli (e.g., Jewish Law), or entirely transnational (e.g., Public International Law) will be able to develop and publish in ways that are appropriate to their fields.

This is an Israeli problem that demands an Israeli solution. **As a first step, we recommend that a committee with representation of all ten of the reviewed law faculties be created and charged with developing a recommended standard.**

Recommendation: CHE review of the finances of the private law colleges

As noted in our reports for the private institutions, we often heard administrators claim that financial constraints prevented the institution from providing a lower student-faculty ratio, tenure for permanent members of the faculty, sabbatical and other research support, or financial aid for students who cannot afford the high tuition fees.

We are unable to evaluate these claims because we did not have any access to the private institutions' financial information.

Given the large sums involved and the relationship between finances and educational quality, we strongly recommend that CHE review the finances of the private institutions in order to have a more informed view about issues such as the student-faculty ratio, tenure and research support, and financial aid.

Recommendation: Eliminate outside letters from one step on the promotion ladder

Israeli law faculties have four ranks: lecturer (marzeh); senior lecturer (marzeh bachir); associate professor (professor chaver); full professor (professor min ha minyan). Typically, faculties seek outside letters evaluating the candidate's scholarship for each of the promotions and even sometimes for the initial appointment. By contrast, most U.S. law faculties now have only two ranks: assistant professor; professor. The Israeli approach places unreasonable burdens on outside reviewers who, of course, have no obligation (other than collegueship) to assist in the promotion process. We strongly recommend eliminating one of the stages in which outside letters are sought. We understand that Hebrew University has already adopted this approach.

Recommendation: CHE should reduce the maximum student-faculty ratio from 80:1 to 60:1.

There are wide disparities in the student-faculty ratios between the university law faculties and the law colleges. In the universities, the student-faculty ratio is comparable to top programs abroad (e.g., at Haifa, there are approximately 23 LLB students for each faculty member). At the law colleges, the student faculty ratio is generally around 60:1 (with some variation above and below), even though CHE permits a larger ratio of 80:1 and even though a larger student-faculty ratio was apparently common before the recent decline in applications.

In our experience, many strategies for enhancing pedagogy and research are enabled by, and correlate with, a reduction in the student faculty ratio. At a minimum, the ratio must be disclosed. We also think 80 to 1 is high, and that 60 to 1 is likely to represent a significant improvement. However, a concern about mandating a reduction is that schools could respond in potentially counterproductive ways, for instance, by replacing clinics with lower-cost methods of instruction, reducing financial aid, or lowering standards in faculty hiring. A reduction also would have budgetary implications, and we have not reviewed the school's budgetary information. **Accordingly, we recommend transparency as the immediate response. The student-faculty ratio should be reported. In addition, we recommend that Malag reduce the ratio to 60:1 so long as Malag is convinced that this can be done in a manner that avoids counterproductive results and is respectful of the budgetary constraints faced by the schools.**

The Academic Program

In our discussions with LLB students across the ten faculties, we were struck by the challenges to education presented by a student culture that does not prioritize preparation and participation. Even allowing for variation and exaggeration, it is clear that many Israeli law students do not read the assigned material in advance of class. In addition, beyond the first year, many do not even attend class. Faculties have adapted to this student culture in a variety of ways, including various inducements (e.g., attendance requirements and quizzes), but it remains one of the most significant challenges facing Israeli legal education. This is not a new problem, and we understand that students stubbornly resist any efforts to change the system. Nonetheless, no one should think that the status quo is educationally desirable.

Small group learning experiences are one way to induce or encourage students to prepare for class and to participate. In visiting the different institutions, we were struck by the possibility that, in some institutions, students can complete their degree without ever having participated in significant small group learning experiences. We believe that this is undesirable from an educational perspective. Although small group learning experiences are more resource-intensive, and thus could pose budgetary challenges to the schools, they offer significant pedagogical advantages. Our hope is that schools could find ways to provide these experiences at a manageable cost.

Recommendation: We recommend that students for the LLB degree should be given substantial opportunities to complete courses that have 30 students or fewer and that are taught by a faculty member. Ideally, students would be required to take two such courses, if such a requirement is feasible.

Israeli Ph.D./LL.D. Programs

The four existing Ph.D. programs are of a high quality. In addition, we saw no evidence indicating a general shortage of Israeli Ph.D.s in law (although there may be shortages in particular fields). Indeed, given the number of Israelis studying for doctorates in Israel and abroad, it is clear that far more Ph.D.s are being produced than can find teaching positions (although we accept that, in Israel, a Ph.D. in law is valuable in some non-academic careers).[‡] We understand that a number of institutions that are not currently permitted to offer Ph.D. programs have requested permission to do so, and that CHE is currently considering these applications. Given this, we express the following views.

Most importantly, Ph.D. programs require significant infrastructure. In particular, a quality program requires:

[‡] To date, Israel does not attract many foreign Ph.D. students who expect to return to their home countries to begin their academic careers.

- A dedicated curriculum within the law faculty to teach research methods.
- Interdisciplinary resources that are necessary for some contemporary legal research. Given current trends in legal research, Ph.D. students often require advanced courses outside of the law faculty in the departments of Economics, Finance, History, Sociology, etc.
- A critical mass of Ph.D. students, both within law and from other disciplines. For example, for Ph.D. candidates interested in law and psychology, it is very valuable to be able to collaborate with Ph.D. students in psychology.
- Workshops for Ph.D. candidates in which candidates can present their work to other candidates.
- General faculty workshops that candidates attend and can participate in.
- Financial support for candidates so that they can finish in a reasonable time period

We view the necessary infrastructure to be a high standard that will be difficult for new programs to meet.

Recommendation: We recommend that CHE authorize additional Ph.D. programs only if it is convinced (a) that there is a need to create an additional program or programs (or replace existing programs) and (b) that new programs can marshal the resources to provide training on par with the training currently provided in the existing programs.

Recommendation: With regard to existing Ph.D. programs: Given that only a minority of Israeli Ph.D. candidates will find full time teaching jobs, it is necessary to provide placement services that include exposing students to the full range of options for which a Ph.D. in law is useful. In addition, Ph.D. programs should report the placement of each of their graduates over the preceding decade.

A second set of issues relating to Ph.D. programs is worth mentioning. Israel continues to follow the European tradition of first, second and third degrees in Law. For scholars whose primary interest is Law, this can provide excellent training. At the same time, many Israeli legal academics engage in interdisciplinary legal scholarship and seek to participate in the international interdisciplinary discussion that, as noted elsewhere, is largely centered in the U.S. This creates some particular challenges in training interdisciplinary scholars in Israeli Ph.D. in Law programs. First, a note of background. Not only is law not a first degree in the U.S., but the Ph.D. in law (or S.J.D. or J.S.D.) is generally not a degree that U.S. law schools look for in hiring. On the contrary, the trend in U.S. law schools, when interdisciplinary

scholars are hired, is to hire scholars who have advanced degrees (often Ph.D.s) in the allied discipline. If you review the credentials of faculty in any major U.S. law school, you will find faculty members with Ph.D.s in Economics, Philosophy, History, Sociology, Political Science, Anthropology and Psychology. The value of Ph.D. level training is that it provides interdisciplinary scholars with “professional” level training in the methodology of the other discipline.

Recommendation: There are a range of possible approaches which law faculties can tailor in order to develop options for students with an interdisciplinary focus. For example, universities might establish joint interdisciplinary/interdepartmental Ph.D. programs on the model of the J.D./Ph.D. programs common at many U.S. law schools. Alternatively, law faculties might require interdisciplinary Ph.D. candidates to complete at least a well-designed research-focused M.A. in the allied discipline. In addition, law faculties might encourage students interested in interdisciplinary work to seek Ph.D.s in their associated disciplines.

Tenure and Promotion Standards and the Requirement to Publish Abroad: A separate note on U.S. law reviews from the Americans on the committee

Background

Any serious review of scholarship, whether for appointment, tenure and/or promotion, seeks to determine quality and impact. It typically includes two steps: internal review by a committee of scholars; and solicitation of outside letters from experts in the field. Because both internal committees and outside letters are imperfect procedures for evaluating the quality and impact of scholarship, it is useful to supplement those procedures with additional “objective” measures that are well correlated with quality. Thus, in many fields, placement of articles in top peer reviewed journals is taken as an indication of quality because the peer review process – in which articles are sent for blind review to leading figures in the field – can be a reliable measure of quality.

The evaluation of legal scholarship in the United States stands as an exception to these general approaches for a variety of historical reasons. With very few exceptions, the leading journals for the publication of legal scholarship in the United States are edited by second and a third year law students with no significant faculty supervision. There is no referee process. There also is no “sole submission” rule, with authors submitting articles often to twenty or more different journals simultaneously, with publication decisions often made quickly. Student editors rarely consult with faculty members of their own school and, when they do, only occasionally accept the recommendations of the faculty members consulted. As a result, the placement of articles in U.S. law reviews does not provide a reliable signal of *quality* as opposed to *visibility*.

In case it is useful background, in tenure and lateral hiring decisions at the leading U.S. law schools represented on the committee (Columbia, Cornell, Penn and Harvard), the quality judgment by our internal readers and the outside reviewers weighs much more heavily than the identity of the student edited journal in which articles appear. In our entry level hiring, we also focus more on the work itself than on the journals in which it is placed. We do not rely on the Washington and Lee index, and have not created our own indices. Thus, without the aid of the kind of “objective” signal that is used in Economics or Physics or other fields dominated by peer reviewed publishing, at the U.S. law schools represented on the committee, we have little choice but to read the articles ourselves and in some cases seek outside letters.

The Israeli Practice

In reviewing Israeli law schools, we have reservations about the fact that Israeli tenure and promotion decisions rely so heavily on placement of articles in U.S. law reviews, and thus on the judgments of our second and third year students. They are not experts in any of the fields they publish, and their selections do not provide a useful signal or proxy of quality.

In some specialty areas, especially involving highly technical scholarship, some faculty-edited peer reviewed journals have emerged and, in some cases, command significant respect (depending on how rigorous a peer review process is used and how selective reviews are in accepting articles). These journals, however, publish such a small portion of scholarship that they are rarely relevant.

The widespread focus on placing articles in U.S. student edited law reviews raises two significant concerns for Israeli legal academia. First, while it is clearly desirable for Israeli legal academics to participate in international discussions and to contribute to the international literature, the emphasis on publishing in student edited law reviews is not well tailored to this goal. Rather, it provides an incentive to write in a style and with an approach that will appeal to U.S. law students, whether or not it also appeals to U.S. and other legal scholars. As we have all seen, scholars can become expert in placing articles in student edited law reviews, even when the articles themselves are not viewed by other scholars in the field as making significant contributions to the field. Many articles published in “top” law reviews are not cited by or relied upon by other scholars in the field.

Second, as discussed further above, because U.S. law students, not unnaturally, are mainly interested in U.S. law, a requirement to place articles in U.S. law reviews provides an incentive to write about U.S. law rather than, for example, Israeli law. Given the intrinsically local nature of law and much legal scholarship, this impoverishes Israeli legal discourse and deprives Israel of much needed analysis of pressing legal issues. It also deprives the international legal academia of high quality studies of important Israeli legal phenomena.

Alternative Quantitative Measures

Other “objective” measures, while useful in highlighting the arbitrariness of relying on the placement in law reviews, are hardly a panacea. For example, one can examine the number of downloads from *ssrn.com*, the site used to distribute working papers in some fields. This is better than relying on the “rank” of the law review, as it at least shows whether people are interested in reading the work, but is crude in the extreme, and evaluating the significance of the number of downloads requires knowing the baseline average number of downloads in a given field.

Another approach sometimes used in identifying scholars who are attracting attention from others in a field is to use one of the legal scholarship data bases (e.g., Lexis), and to search the “first name +2 last name & last name.” This search provides all citations to the person’s name, as well as internal citations within articles. Using this search, the total number of citations is irrelevant, but it is a useful way to see whether others in the field are reading and responding to the work in a serious way. These are both useful tools for various purposes but should not be used as the major basis for granting or denying promotions or tenure.

In particular, these more direct measures of impact provide substantial evidence of the limitations of relying on placement of articles in student edited law reviews. To see this, choose an Israeli scholar who has been very successful in publishing articles in U.S. law reviews. Then run two tests: how many downloads of the articles are there from SSRN (for those fields covered) compared to a comparable U.S. scholar? And, using the above search, to what extent are other scholars in the field responding to the work? Where there is a gap, it is evidence that one can succeed in convincing U.S. law students to publish an article without convincing law professors that the article is interesting.

Recommendation: Because we have serious reservations about any effort to develop objective indicators of quality of scholarship, we believe that the Israeli legal academy, like the U.S. legal academy, has no alternative other than to rely on the traditional approach of (a) reading the work and (b) soliciting rigorous outside letters.

Clinical Programs

All of the Israeli law schools we visited have well established legal clinical programs. As a whole these programs are impressive. They both train large numbers of law students in the non-courtroom aspects of client representation and engage in important public interest issues. The clinics’ substantial accomplishments in these two areas are often exemplary of best practices in the rapidly emerging global clinical legal education.

For the most part, the clinics we visited share five features to varying degrees. While these features deserve recognition, they also sometimes point to areas of potential improvement. These features are as follows.

First, the students' clinical work is centered in either live client representation outside of courtroom settings or policy work on behalf of "partner" organizations, rather than limited to simulated exercises in a classroom setting. Though such clinics give students an immersion experience, they also require greater funding and more extensive supervision than the simulation alternative. Furthermore, conflicts of interest or political controversies may arise regarding cases the clinics take on.

Second, and following directly from above, the clinics tend to be "in house" rather than "externship based". Thus all of the law schools we visited designate a tenured or tenure track professor as the head of the clinic. They then hire a group of "clinicians," i.e., full time, non tenure-track lawyer/teachers, often paid with "soft money" (i.e., funded by sources not guaranteed to continue such as grants or contributions), who both supervise clinical students on their cases and teach clinical seminars in which those students learn both relevant substantive law and practice skills, often through a method that blends a seminar format, simulations linked to students' live client representation, and "case rounds."

Third, the clinical *programs* are divided into several separate "clinics." Each addresses a separate substantive area such as disability, women's poverty, low income housing, civil rights of Arab-Israelis, etc. The schools we visited vary in how much integration these "clinics" have with one another and the clinical program as a whole about such matters as the selection of cases, case supervision, clinical pedagogy, working with "stand-up" faculty members, and the like.

Fourth, though each institution is taking steps to integrate its clinics into the academic curriculum through such measures as having core faculty members co-teach clinical seminars, clinics tend to be administered and perceived by both students and faculty as distinct from the academic program. Thus, clinical degree requirements (if any), grading, enrollment procedures and the like may have their own separate features. And even though clinicians may be expected to do practice-based scholarship, the clear status hierarchy between members of the standing faculty and clinicians, so common in US and elsewhere, seems to be present in Israeli clinics as well.

Fifth, the clinics teach a wide range of different lawyering skills. This is especially, but not exclusively, true of the clinics at Tel Aviv University, where it is clear that a great deal of thought has been devoted to how a range of different lawyering skills – apart from trial advocacy -- can be taught through live client cases. Indeed, because Israel has no court rule or Bar policy that allows clinical students to represent their clients in court, the Israeli clinics have had no choice but to do this.

Yet regardless of the reason for their innovation, the Israeli clinics can be a global model in this regard.

And sixth, both the substantive *issues* on which each clinic specializes and the particular *cases* it takes reflect core social values like human rights, anti-discrimination, inclusion, basic needs, and social equality played out in what are sometimes politically controversial contexts. Although the clinics generally choose cases that are within the boundaries of these broad values, we heard from some students that they would prefer to work on cases with a different political valence than those typically offered in their law school's clinical programs. Though we found that on the whole, the clinics are doing a commendable job to offer a range of differently valenced clinical opportunities for their students, the clinics' procedures for establishing clinics and choosing cases are not transparent. Without making a specific Recommendation in this regard, we urge clinical programs to offer clinics that focus on a diversity of public interested issues and perspectives, and to enable relevant stakeholders to contribute to the processes through which clinical programs prioritize among potential substantive issues.

Observations/Recommendations:

1. If a school's clinical program is funded by a separate stream of "soft money," pursue means of bringing it into the school's mainstream budget.
2. Set a goal of offering a core of excellent and dedicated clinicians long-term contracts at competitive salaries that are renewable on good performance.
3. Create a transparent process, which might include stake-holder input, for choosing the issues that new clinics will address. This will be particularly important to consider when that clinic's potential cases might raise an appearance of conflict of interest and/or when the clinic's focal issue might be viewed as unnecessarily divisive in social or political terms. This is *not* to say that clinical programs should veer away from issues that raise core social justice issues or human rights themes.
4. Encourage greater collaboration between the clinics and the "stand-up" faculty and academic Centers through such measures as the co-teaching of clinical courses, collaboration between graduate students and clinical students on clinical policy papers, joint writing, and workshops or symposia co-sponsored by policy clinics and relevant academic Centers.

The Self Study Process:

Recommendations

As is perhaps inevitable in a process of this sort, examined institutions were, on the whole, quite careful and selective in who the committee met with. In some places, it seemed like every student we met was at the very top of his/her class.

Similarly, some of the reports clearly endeavored to paint a rosy view of the institution rather than to engage in a frank self-analysis.

In future Self-Evaluation processes, CHE should ask institutions to seek explicit input from students who face challenges to full participation in campus life. In particular, in future self-studies, it would be wise for the self-study teams to reach out to students who are less immersed in campus activities, either because of specific challenges, e.g., from disabilities, difficult life events, parenting, particularly among women, or long work hours. Efforts should also be made to reach out for the perspectives of less well integrated Arab Israeli students, other students whose first language is not Hebrew, and students who feel themselves to face discrimination or other systemic obstacles to full inclusion. Finally, it would be useful to gather input from students at the bottom of the class as well as those at the top.

On a more pedestrian note, it would be valuable to future committees if every self-study had a detailed table of contents and possibly even tabs separating each chapter. This would make them more “reader-friendly.”

The people we met had an impressive knowledge of English (teachers, staff and students). This is an impressive accomplishment; only in the Scandinavian countries and the Netherlands does one find such a high standard of English.

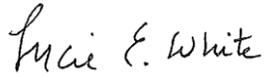
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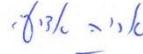
Prof. Edward B. Rock



Prof. Silvia Ferreri



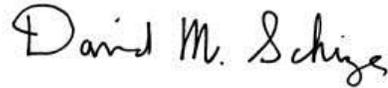
Prof. Lucie E. White



Prof. Arye Edrei



Prof. Prof. Stewart J. Schwab



Prof. David Schizer

Appendix 1: Letter of Appointment

April 2014

Prof. Edward B. Rock
University of Pennsylvania Law School,
Pennsylvania
USA

Dear Professor Rock,

The Israeli Council for Higher Education (CHE) strives to ensure the continuing excellence and quality of Israeli higher education through a systematic evaluation process. By engaging upon this mission, the CHE seeks: to enhance and ensure the quality of academic studies, to provide the public with information regarding the quality of study programs in institutions of higher education throughout Israel, and to ensure the continued integration of the Israeli system of higher education in the international academic arena.

As part of this important endeavor we reach out to world renowned academicians to help us meet the challenges that confront the Israeli higher education. This process establishes a structure for an ongoing consultative process around the globe on common academic dilemmas and prospects.

I therefore deeply appreciate your willingness to join us in this crucial enterprise.

It is with great pleasure that I hereby appoint you to serve as the chair of the Council for Higher Education's Committee for the Evaluation of the study programs in Law. In addition to yourself, the composition of the Committee will be as follows: Prof. Arye Edrei, Prof. Silvia Ferreri, Prof. Richard L. Revesz, Prof. David Schizer, Prof. Stewart J. Schwab and Prof. Lucie E. White.

Ms. Alex Buslovich-Bilik will be the coordinator of the Committee.

Details regarding the operation of the committee and its mandate are provided in the enclosed appendix.

I wish you much success in your role as the chair of this most important committee.

Sincerely,

Prof. Hagit Messer-Yaron
Deputy Chairperson,
The Council for Higher Education (CHE)

Enclosures: Appendix to the Appointment Letter of Evaluation Committees

