INTRODUCTION

It has been my pleasure to be the *Israel Law Review* production editor for the years 2003-2011 (volumes 36 through 43). I am honored to be part of this academic endeavor that has provided a platform for research and scholarship in legal fields related to Israel, and recently under the stewardship of the Minerva Center of Human Rights, on issues relating to human rights, public law, and international law in general but usually highlighting situations in Israel with worldwide legal relevance.

Before presenting the articles published in this issue, I would like to take this opportunity to discuss two issues that have become of interest to me due to my work with the *Israel Law Review*: The first is the importance of academic legal writing, and the second is Israeli law schools' responsibility in actively teaching this writing skill—whether it be in the undergraduate programs for the overall improvement of general legal writing skills or in the graduate programs for the advancement of academic writing and success of future legal scholarship.

Law has an extended involvement in our lives (economic, political, international, and even social spheres to name some) and—by extension—writing about law too carries this extra burden. The relationship between research, scholarship, and social change is too large a task for this brief introduction and has been writing about by many scholars.[1] With that said, below I briefly outline the effects of legal writing on society that I see as important and believe are gained by promoting legal academic publications—such as the *Israel Law Review*.

Research, writing and the publication of research—which are really my interests here—helps rid predisposed, false information from the discussion table, replaces stereotypes with facts,[2] and acknowledges and brings to light—often painful truths.[3]

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[1] *See, e.g.*, Deborah L. Rhode, *Social Research and Social Change: Meeting the Challenge of Gender Inequality and Sexual Abuse*, 30 HARVARD J. L. & GENDER 11 (2007), http://www.law.harvard.edu/students/orgs/jlg/vol301/rhode.pdf (using three examples—sexual harassment, acquaintance rape, and domestic violence—to illustrate how social science research has transformed the understanding of social issues).

[2] *See, e.g.*, Bernard E. Harcourt, Against Prediction: Sentencing, Policing, and Punishing in an Actuarial Age Chicago Public, Law and Legal Theory Working Paper No. 94 (May 2005) (criticizing the new actuarial paradigm).

[3] Tally Kritzman-Amir, *"Otherness" as the Underlying Principle in Israel's Asylum Regime*, 42 ISR. L. REV. 603 (2009); Fiona de Londras, Prosecuting Sexual Violence in the Ad Hoc International

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Additionally, it makes available the examination of issues that in the past were taboo,[4] reports of the failure of old systems, introduces new ones, or examines their effectiveness.[5] Historical legal research may also present a unique analysis of studied issues by examining these concerns in a new light.[6]

Other academics and legal professionals are consumers of academic legal writing. Scholars may use their colleagues' research and writing to support or oppose their own theses and claims or learn about new avenues of research. Policymakers can use research to enhance their understanding of domestic violence through a geographical prism;[7] attorneys can even begin to question the use of litigation and learn instead of alternative mechanisms of dispute resolution through research and writing;[8] human right workers can read about the co-application of international humanitarian law and human rights law in Israel's occupied territories;[9] or family court judges adjudicating custodial petitions note research and writing on the rights of children to have their say in court.[10]

The relationship between research/academic writing and field work is, or should be seen as, a symbiotic relationship. One the one hand, legal professionals do not

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Criminal Tribunals for Rwanda and the Former Yugoslavia, University College Dublin Law Research Paper No. 06/2009 (2009).

[4] *See* Barak Medina, Political *Disobedience in the IDF: The Scope of the Legal Right of Soldiers to be Excused from Taking Part in Military Activities in the Occupied Territories*, 36 ISR. L. REV. 73 (2003); see also the rest of the articles in this issue examining selective conscientious objection by soldiers in the Israeli context. This was one of the first *Israel Law Review* issues that I edited and helped in my learning how to edit an academic journal as well as the importance of allowing an open, unbiased academic discussion.

[5] *See, e.g.*, DAVID WEISBURD, STEPHEN D. MASTROFSKI, ROSANN GREENSPAN, & JAMES J. WILLIS THE GROWTH OF COMPSTAT IN AMERICAN POLICING (2004) (discussing and examining the use of Compstat, a management tool for crime mapping and identifying problems, by American police departments), http://www.policefoundation.org/pdf/growthofcompstat.pdf. Publication of reports, journals, and articles online has proven to be a wonderful, usually free legal research tool for researchers, policymakers, field professionals, and the public at large.

[6] Stephanie Farrior, *Molding the Matrix: The Theoretical and Historical Foundations of International Law and Practice Concerning Hate Speech*, 14 BERKELEY J. INT'L L. 1 (1996).

[7] *See, e.g.*, Lisa R. Pruitt, *Gender, Geography, and Rural Justice*, 23 BERKELEY J. GENDER, L. & JUSTICE 338 (2008) (using space, place, and scale to inform policymakers about rural women's reality).

[8] *See, e.g.*, MICHAL ALBERSTEIN, ALTERNATIVE JUSTICE: MEDIATION, RESTORATION AND THERAPY THROUGH LEGAL MECHANISMS (forthcoming, 2011) [in Hebrew].

[9] Orna Ben-Naftali & Yuval Shany, *Living in Denial: The Co-application of Humanitarian Law and Human Rights Law to the Occupied Territories*, 37 ISR. L. REV. 17 (2004).

[10] Daphna Hacker, *Children's Exclusion from Divorce Proceedings*, 22 HAMISHPAT 63 (2006) [in Hebrew].

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have the time—nor the necessary skills gained through learning courses such as research methods, legal academic writing, and statistics, and through the experience gained conducting research—to research and write about issues that plague them professionally. On the other hand, issues arising from the field need to be brought to the attention of scholars who can research and write about them. Academics possessing a more objective, "purely academic" relationship to these concerns can address issues that legal professionals have yet to acknowledge or provide them with answers to the questions they have already asked.

While the importance of academic legal writing is fairly evident, the question remains, what can law schools do to teach, enhance, and support this important endeavor? A quick, informal survey of law schools shows the use of mandatory legal writing course (or courses);[11] writing labs,[12] which seem to me an good method for allowing "academic independence" while providing readily available assistance and guidance when necessary; student edited law reviews are abundant—and are also supported by Israeli laws schools;[13] law school backed peer-reviewed journals, such as the *Israel Law Review,* provide an important avenue for student editors to learn about writing, editing, and the publication process; and professors who are hired to teach legal writing and are mandated with strengthening this field in their law schools.

While many of these methods have been adapted to the curriculum available at Israeli law schools, Israeli law students face challenges that need to be noted. The first challenge—which is similar to those faced by law students worldwide—is the need to adjust and relearn writing styles. Legal writing is different than other writing.[14] Law students need to learn special writing skills for contracts, last will and testaments, court petitions, and academic writing to name a few. Moreover, many law students need to develop clear and concise writing styles that include recognizing the importance of article structure, sentence and paragraph development, continuation of a complete thought from start to finish, and how to use precedence, references, support for claims,

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[11] *See* Yale Law School Expands Legal Writing Instruction, http://www.law.yale.edu/news/12388.htm.

[12] Writing centers need not be located in law faculties and can be used by all university departments, see, e.g., the Writing Center at University of Madison Wisconsin http://writing.wisc.edu/Handbook/process.html, the Purdue University Online Writing Lab http://owl.english.purdue.edu/, and the Thomas Jefferson School of Law http://www.tjsl.edu/academics/academic-support/writing-lab.

[13] *See Mishpatim* (Hebrew University Law School student law review) *and Iyuenei Mishpat* (Tel Aviv University Law School student law review) just to name two of the several.

[14] Wayne Schiess, *Legal Writing Is Not What It Should Be,* 37 SOUTHERN U. L. REV. 1, 2 (2009) (terming "high school" writing as self-expression writing and legal writing as expository writing and recommending inter alia the better preparation and training of legal writing by law students).

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and summarizing,[15] all of which have proven difficult for new law students. The list goes on and on and is likely similar for students studying humanitarian subjects as well and those writing in Hebrew or English. Who—or whatever—is to blame for students poor writing skills—many have criticized society, poor public schools, disinterest in reading, the Internet, etc.—it is important to recognize that writing, as is true with all other skills and talents, needs to be taught, practiced, enforced, enhanced, corrected, and evaluated in order to be improved. Thus, writing courses, writing labs, tenured-legal writing professors, and platforms for writing (contests,[16] student law reviews,[17] and blogs[18]) are important means for achieving this.

The second challenge is writing in a foreign language.[19] In order for an Israeli academic to be competitive, she must be able to write in English—and not only common, daily use—but English compatible to that of her peers writing in U.S. or European universities. While many may claim—and perhaps rightly so—that legal scholarship should be conducted in the language of that country for practical as well as ideology reasons, the sad truth is that academic seats at Israeli law schools are very competitive: Young doctorate holders have really been known to perish after not publishing! And in order to receive tenure, Israeli academics need to publish articles in English with competitive journals abroad. Moreover, the growing nature of the Israel vis-à-vis the "global village," the use of comparative methods in examining legal issues,[20] the global relevance of local legal issues,[21] the growth in the number

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[15] Many write on how to improve legal writing: *See, e.g.*, EUGENE VOLOLKH, ACADEMIC LEGAL WRITING (4th ed. 2009) and Laurel CURRIE OATES & ANNE M. ENQUIST, THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING (5th ed. 2010).

[16] The University of Idaho Law School posts a list of writing competitions, http://www.law.uidaho.edu/legalwritingcontests.

[17] The law schools of colleges and universities in Israel have student law reviews that are written in Hebrew and are usually listed on the school's website.

[18] While a law blog is not written with the same care, research, or editing of that of a law article, it should not be pushed aside as a frivolous tool to improve legal writing. It is important to recognize that legal writing is dynamic and an avenue that in the past was unrecognized—i.e., blog—might play a future role. The American Bar Association (ABA) even has a law blog directory, http://www.abajournal.com/blawgs.

[19] This difficulty has been recognized by Israeli law schools vis-à-vis Arab Israeli and recent immigrant law students who receive extra time on examinations and other writing assistance.

[20] Pablo Lerner, *Foundations in Germany and Israel: An Analysis of the Legal Framework*, 36 ISR. L. REV. 41 (2002).

[21] Yaël Ronen, *Illegal Occupation and its Consequences*, 41 ISR. L. REV. 201 (2008); Sigal Shahav, The Social and Constitutional Implications of Adjudicating Terrorists Suspects: A Comparison of General Criminal Law Procedure and Specific Terrorist Law (PhD dissertation, Tel Aviv University, forthcoming 2011) (discussing the application of the Israeli criminal justice system in terror adjudication).

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of international law jurisprudence and adjudication,[22] and the increased opportunities for publication in English[23] all support the betterment of law students' English writing skills by Israeli law schools.

One step in the correct direction is to teach this skill to graduate students while they are still in law school. Courses need to be developed and taught that factor in English as a Second Language (ESL) tools, writing labs in general need to be added to the budgets of law schools, and tenure-tracked professors, with the sole responsibility of research and teaching about legal writing, while developing additional concepts and ideas to support academic writing, need to be hired. Finally, each law school needs to support a forum for legal academic writing in English: The *Israel Law Review* is a good example of one; yet, the forum need not be a formal publication. For example, the Hebrew University International Law Forum on SSRN[24] is a practical and relatively inexpensive way to support academic scholarship and is likely one of the many forums used by Israeli law schools.[25] Whichever method is chosen by the law school, I suggest that the first step is agreeing upon the importance of academic legal writing and the support thereof; after which each law school should choose the method or methods best suited for that school.

With no further ado it is my pleasure to introduce the articles in this issue.

The opening article by David Nelken, "Human Trafficking and Legal Culture," uses the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons to examine the role that legal culture has in defining the "the problem of human trafficking." It analyses law enforcements' shortfalls in handling the social problem of human trafficking by examining the relevance of legal culture on different enforcement patterns according to agencies and countries.

Guy Harpaz and Yuval Shany offer the next article in this volume, "The Israeli Supreme Court and The Incremental Expansion of The Scope of Discretion under Belligerent Occupation Law." Through the examination of the Israeli High Court of

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[22] Yuval Shany, *No Longer a Weak Department of Power? Reflections on the Emergence of a New International Judiciary*, 20 EUR. J. INT'L L. 73, 75 (2009).

[23] Washington and Lee University School of Law Index lists (and ranks) English-language law journals, http://lawlib.wlu.edu/LJ/index.aspx; or scroll down the Washburn Law School list of law reviews to get a taste of English-language law journals , http://www.washlaw.edu/lawjournal/.

[24] http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journalbrowse&journal_id=881738.

[25] Electronic databases, such as SSRN and bepress, which publishes two Israeli law school publications: *Theoretical Inquires in Law* and *Law & Ethics of Human Rights,* allow jurists and academics online access to articles and journals while saving the publishers printing and shipping costs.

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Justice (HCJ) decision in *Abu Safiya v. The Minister of Defense*, which annulled an order by an Israeli Military Commander barring Palestinian travel on Route 443, this article criticizes the HCJ continued willingness to expand the *ratione materiae* and *ratione personae* of occupation law. Additionally it notes that the HCJ jurisprudence enables Israeli military authorities protection of Israeli interests in the West Bank at the expense of the protection of Palestinian (stronger) rights conferred by the *lex specialis*—the laws of belligerent occupation.

In the third article, "'I am the Law!'—Perspectives of Legality and Illegality in the Israeli Army" using a medium less heard about—interviews with Israeli soldiers returning from duty from Hebron—Mathew Zagor examines issues of morality and legality which he notes inform of the soldiers' conduct in contrast to their inability to adhere to the conventional legal discourses regarding "legalization" of military activities. In order to understand this contrast, Zagor explores the ways that the stories told by the soldiers reflect attempts to negotiate normative and legal realities. He ends by noting the positive nature of the soldiers' storytelling that uses an ethic-based narrative and the existence of a movement willing to provide the soldiers a platform to do so.

Haim Sandberg's article, "Expropriations of Private Land of Arab Citizens in Israel: An Empirical Analysis of the Regular Course of Business," rejects the commonly accepted premise that Israel expropriated a large amount of Arab-owned land. The author finds that this premise does not differentiate between expropriations during the War of Independence and land expropriated during the State's "regular course of business," thus allowing the misconception that Israel regularly expropriates Arab lands. This article notes that premise of expropriations of Arab lands is greatly exaggerated and claims that the Arab population's share of expropriation was fairly small in absolute terms.

In the fifth article, Claudia Morini, "Secularism And Freedom of Religion: The Approach of The European Court of Human Rights," examines relevant jurisprudence of the European Court of Human Rights ((ECHR) on religious freedom and the principle of secularism (*Şahin, Dahlab*, and *Lautsi* cases), to establish a relationship between secularism and freedom of religion and the application of the "margin of appreciation doctrine." The article suggests that the ECHR uses instead a case-by-case approach to protect individual liberties and one that considers the political and cultural background as well as the State's impact on the individual behavior.

In the concluding article to this volume, "The Israeli *Millet* System: Examining Legal Pluralism through Lenses of Nation-Building and Human Rights," Yüksel Sezgin discusses Israel's highly fragmented personal status system inherited from the

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Ottoman Empire. The author notes that this system was traditionally used by imperial powers to separate and categorize the native population by ethno-religious and tribal groupings. The author notes the disjunction of this system and its traditional goals with Israel's proclaimed democratic nature; he also examines how this fragmentation affects individuals' fundamental rights and freedoms, and what tactics and strategies people employ to cope with the limitations imposed upon their rights by communal institutions.

In conclusion I would like to thank the various *Israel Law Review* editors with whom I have had the pleasure of working with over the years and from whom I have learned a great deal: Prof. Barak Medina, Prof. David Weisburd, Dr. Margit Cohn, Dr. Re'em Segev, Prof. Yuval Shany, Sir Nigel Rodley, Adv. Danny Evron, and for the last few years—Dr. Yaël Ronen. The *Israel Law Review* support staff, Ms. Revital Bahat and Ms. Anat Mishali and in the past Ms. Yaffe Laloshe, all have been gracious, professional, and a pleasure to work with. Finally, the *Israel Law Review* students over the years have made me rethink the answers I thought I knew and made me understand many of the concerns facing Israeli law students and future lawyers and academic scholars. I am optimistic that these students, as well as others, will rise to the occasion and meet the challenges facing lawyers in the future.

I wish the *Israel Law Review* continued success and many more years of academic, eye-opening publication.

Michele Manspeizer.*

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All websites last visited July 2011. In everything I do, and this endeavor as well, I am grateful to my loving family and their continued support.

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