

Hebrew University President Magidor's Incompetence: The fall of the Hebrew University Faculty of Law

Hebrew University Deceptive Administration: Part 2

And truth is absent,
and the Lord has observed with remonstrance;
because there is no law.
Isaiah 59, 15

וְתִהְיֶה הָאֱמֶת נֶעְדָּרָת
וַיִּרְא יְהוָה וַיִּרְע בְּעֵינָיו
כִּי-אֵין מִשְׁפָּט
יִשְׁעִיהוּ נִיט, ט"ו

To Mr. Harvey Krueger
Vice President Lehman Brothers
and Honorary Chairman of
HU Board of Governors

To Professor Henry Rosovsky
Harvard University Dean of the Faculty
of Arts and Sciences (Emeritus)
Co-chair of the Task Force for Higher Education
of the World Bank and UNESCO and
Member of the Board of Governors of the Hebrew U

To HU Governors (only to those whose addresses President Magidor cannot conceal from the public)
Hebrew University Community (about 3500 email addresses)
Heads of the Israeli universities
MALA"G and VATA"T members
The Knesset Education Committee
The Media in Israel
Many More

From Yaacov Bergman (Yaacov.Bergman@huji.ac.il)

November 7, 2004

1 The Downfall of the HU Faculty of Law

“Academics are talking about the downfall of the Hebrew University Faculty of Law,” reports the main Israeli financial newspaper, *Globes*, in a 26/9/04 article (available at http://pluto.mscc.huji.ac.il/~msyberg/YB_files/Globes_HU_Law.pdf — the URLs herein are clickable). “The whole middle generation has left,” comments one academic observer to the *Globes* reporter, Hadas Magen, “leaving gaping holes, where entire academic areas like commercial law and labor law used to be.” And he adds, “Recruiting young faculty with potential is fine, but what does the HU law school have to offer now?” Another senior academic comments, “The Hebrew University Law Faculty is flaunting past glory, to cover up that at present, it is academically at rock bottom.”

Indeed, Dean Eyal Zamir concedes that his Faculty of Law has been deteriorating. But now, he insists unconvincingly, the HU Law Faculty problems are water under the bridge. Granted, the experienced, productive scholars went were better compensation was on offer, but they were replaced by fresh off the mint recruits who, he can already guarantee, “are bound for an impressive academic future of international repute.”

But would you, HU Dean of the Faculty of Law Zamir, entrust someone dear to you to a hospital, which the experienced cardiologists had left and were replaced by young, unexperienced doctors recently out of internship, on the mere promise by the hospital deputy chief that the medical hatchlings he just hired would someday become excellent cardiologists themselves? Would you not seriously question the deputy chief’s statement that the hospital is now taking off, paraphrasing your unfounded statement, “The Law Faculty is Taking off,” to the *Globes* reporter, which she then turned, tongue-in-cheek, into the title of her most informative article?

Dean Eyal Zamir, your pathetic attempts to cover-up the sorry state of the HU Faculty of Law are so obvious, that they can only fool the disinterested Hebrew University Chairman of the Board of Governors, the superannuated Yigal Arnon; see below. I invite all to read the *Globes* article and see for themselves (see the URL above). Here, though, I would like to pull for the readers two skeletons out of the closet of your replies to the *Globes* reporter.

2 The vanishing-reappearing set of leading law journals

Dean Eyal Zamir, replying to the *Globes* reporter question, “How do you measure quality of a Faculty of Law?” you said, “an additional measure is the quality of the faculty. Even after the exodus [of the middle generation], I suppose that if we check the number of publications [by the remaining faculty] in the leading law journals, we would find that we continue to lead [over the other Israeli law schools].”

Dean Eyal Zamir, why do you need to “suppose”? Why don’t you actually check? Here is my challenge: If you provide me with the titles of the *leading law journals*—your own words—which you suggest should be used in order to compare the research output of the different law schools, then I volunteer to do the checking that you are suggesting. You let me know which are the *leading law journals* in the morning, and I promise to give you the resultant ranking of Israeli law schools in the evening of the same day. What say you?

But here is a catch. In the article about the universities,¹ that *Maariv*, the second largest Israeli newspaper, published on January 23, 2004, you told the reporter, Vered Kelner, that you are refusing to submit a quality ranking of law journals to the office of the Hebrew University Rector as requested, because, contrary to all other academic disciplines, one cannot distinguish the leading *law journals* from those of lower quality.

Obviously, Dean of the HU Faculty of Law Eyal Zamir, your two statements; the one you made to *Maariv*, “There is no set of leading law journals,” and the other that you effectively made to the *Globes*, “There exists a set of leading law journals,” contradict each other. You must have been misinforming one of the newspapers, and through it – the Israeli public.

Which newspaper did you misinform, Dean Zamir? Let me suggest that you did that to *Maariv*, since it is well known that leading academic journals are identifiable in law as they are in all other academic disciplines. Those leading journals include the *Harvard Law Review*, the *Yale Law Journal*, and the *Stanford Law review*, which are also the three top most in the set of 103 law journals that are quality ranked by the Journal Citations Report (JCR), that is published by the Institute of Scientific Information (ISI). It follows that you are also misrepresenting the truth to the Hebrew University administration, Dean Zamir, when you refuse to inform it, per its request, about the set of leading law journals on the false pretext that those journals cannot be identified, when, in fact, you admitted to the *Globes* that they can be.

3 A legal scholar of international repute?

Dean Eyal Zamir, trying to preserve the fallen reputation of your law school, you told the *Globes* reporter: “In the area of private law, the Faculty is rather strong: starting with Professor Israel Gilead, former Dean of the Law Faculty, who is a tort law scholar of international repute, etc.”

But is Professor Israel Gilead truly *a tort law scholar of international repute*? Well, on his official web-page,² Gilead informs: “Recent publications include ‘Tort Law and Internalization: The Gap between Private Loss and Social Cost,’ 17 *International Review of Law and Economics* (1997) pp. 589-608.” No other papers; just this one.

¹ The article is at http://pluto.mscc.huji.ac.il/~msyberg/Higher_Education/Maariv_article.pdf

² <http://law.mscc.huji.ac.il/law1/newsite/segel/gilad/gilad.html>

The observer might at first conclude that this is a case of very rare modesty; Gilead displays just one paper out of several that he has presumably published in leading law journals; that gem of a paper that is cited profusely throughout the influential legal literature, and that is even featured, most probably, on some course reading lists of reputable PhD programs.

Unfortunately, that is not the case at all. Surprisingly, a quick check in the ISI's Social Science Citation Index³ (SSCI) reveals the following:

- (a) The paper that Gilead displays on his web-page is, in fact, the one and only paper that he has ever published throughout his academic career in any journal that is covered by the ISI.
- (b) The ISI covers 103 law journals which are ranked by the JCR from the first, the *Harvard Law Review* with an Impact Factor⁴ (IF) of 7.2, down to the *Juvenile Fam Court J*, ranked 103rd with IF of 0.026. The latter tiny IF score means that being covered by the ISI is no sign of distinction, but since journal editors clamor to be covered by the ISI, non-inclusion is a reliable signal for very low quality and impact. University administrators the world over—including those of the HU; or so they give the impression—use the ISI data for promotion decisions; and budgeting agencies, like the Israeli Planning and budgeting Committee (VATA" T), use it for allocation of research grants to institutions.

Disappointingly, it turns out, that the *International Review of Law and Economics*, in which Israel Gilead published his one and only ISI covered paper, is ranked very unimpressively by the JCR as 77th(!) out of the 103 law journals that the service covers, with the rather low Impact Factor of 0.4 (recall, *Harvard Law Rev's* is 7.2).⁵ The simple, sad truth is that Gilead does not list his other papers in journals that are covered by the ISI, *because there are none!*

- (c) By definition, low-ranking journals usually publish low impact papers. Israel Gilead's paper is no exception. Indeed, it has accumulated only 6 citations to date. The rest of Gilead's work has added another one(!) citation to a sum total of seven(!) citations to Gilead's whole academic work.

Before judgement is passed, it should be first noted that tort law, on which Israel Gilead is supposedly "an expert of international repute," is not a local subject like ancient Hebrew Law. Tort law is as internationally academic as are economics or sociology.

³ Counterpart of the Science Citation Index (SCI).

⁴ Impact Factor of a journal is the average annual citations yield of a paper published in that journal.

⁵ This information can be summarized in a single line in the way that I introduced back in 1997, which has become the standard in vitae prepared for HU promotions: **77/103; 0.4/7.2**

Secondly, one needs to compare Gilead's academic record to the records of others in the same academic calling. Professor Daniel Friedmann of Tel Aviv University Law Faculty is a highly regarded legal scholar in Israeli terms, so I am told. Indeed, the SSCI shows 78 citations to his work; eleven(!) times Gilead's citation count. More importantly, since scoring of a goal in a third league match is much less of an achievement than doing the same in the super-league, it is remarkable that about a quarter of Friedmann's 78 citations are in top ranking law journals.

Extending the comparison, Professor Wendy J Gordon (whom I do not know) of the Boston University School of Law, which is not one of the top ten in the US, has 501 citations to her record with a similar percentage in the leading law journals.⁶

The upshot is, Dean Eyal Zamir, that Israel Gilead's work—featuring a single ISI covered paper, and seven life-time citations—has had a negligible impact on the legal academic profession. Therefore, your crowning him “a tort law scholar of international repute” is yet another of your obfuscations to the public.

The following now explains the adamant refusal of former Dean of HU Faculty of Law—the same Israel Gilead—to submit to the HU Rector's office a quality classification of law journals, and your, current Dean Zamir, continued refusal to do so. It also explains why “collegiality” is more important than academic achievements at the Hebrew University, in general, and at the HU Law School, in particular, as demonstrated by the infamous case (also mentioned in the *Globes* article) of the Hebrew University against Orit Kamir, which was played out—in and out of court —under the deanship of Israel Gilead.

This is then the explanation: Any reasonable designation of the set of leading law journals cannot possibly include the 77th low-ranking journal which published Gilead's single ISI paper. But amazingly, it turns out that Israel Gilead was promoted recently to the rank of full professor at the Hebrew University.

But without any publications in any of the leading law journals, and with just one insignificant publication in an ISI low-ranking journal, the fear must have been that such promotion would have been denied to Israel Gilead. Indeed, even the granting of tenure on such a poor publication record should have been questioned.

Therefore, the “solution” that former Dean Israel Gilead has adopted was to defy altogether the Rector's request to designate the set of leading law journals. Dean Zamir has then upheld this stratagem, except that he made the mistake of admitting publicly to the *Globes* that a set of leading law journals does exist, contrary to what he told to *Maariv* and to what he tells the HU Rector to this very day.

⁶ Interestingly, of Gordon's 501 citations, 306 (61%) are citations to only three of her papers, which, not surprisingly, she published in the top law journals. Similarly, of Daniel Friedmann's 78 citations, 56 (72%) are citations to only two of his papers. Those too were published in the top law journals. The distribution of citations is usually skewed like this, where most of the citations are to less than a handful of one's papers; those with most impact on the profession.

Now, HU President Magidor, who is responsible to the public for the academic well being of the University, in general, and for the integrity of its promotion process, in particular, has never intervened as the journal classification effort has been continuously sabotaged before his half closed eyes and shut ears for the last seven years. (Only recently, I am successful in coercing the people involved—without Magidor’s help—to go back and redo the journal classification process based on my original plan from 6 years ago.⁷)

President Magidor, you have ultimately approved the promotion of Israel Gilead to full professor at the Hebrew University based on his questionable publication record that I analyzed above. You owe the Israeli public an explanation. And if, you doubt, President Magidor, if an explanation is owed, and whether legal action can be brought to bear on possible corruption in the Hebrew University promotion process, then please read the following excerpts from the *Nature* journal.

Magidor, you should explain out of court why you awarded Israel Gilead full professorship, lest you will have to do that in court like those eight corrupt Italian professors.

NATURE, VOL 366, 25 NOVEMBER 1993

Court backs critics of Italian jobs ‘carve-up’

In a decision widely seen as a blow to the traditional power of ‘old-boy networks’ in Italian universities, Gian Franco Gaetani of the University of Genoa Medical School has successfully challenged the results of a nationwide recruitment examination held to recommend the appointment of individuals to full professor.

In November 1989, the hematology committee recommended the appointment of five candidates. But Gaetani subsequently showed that their track records, *based on indices of the impact of scientific publications listed in the Science Citations Index*, were lower than those of four of the ten losers (see *Nature* 353, 10; 1991).

NATURE, VOL 374, 27 APRIL 1995

Concorsi corruption leads to court

In the first case of its kind, eight Italian professors have been suspended from their academic duties after being charged with corruption in making academic appointments.

⁷ The detailed letter containing that plan, which I wrote for former Rector Ben-Sasson to the chairs of HU departments and schools was submitted as testimony to the Maltz Committee, but was never sent out to its intended addressees. It can be viewed at http://pluto.mscc.huji.ac.il/~msyberg/YB_files/Classification_letter.pdf

I am serious, President Magidor. You owe everyone an explanation. You would be well advised to explain out of court why you awarded Israel Gilead full professorship, lest you will have to do that in court, like those eight corrupt Italian professors.

4 HU Law Faculty fall: Magidor's Incompetence

Dean Eyal Zamir was trying unsuccessfully to conceal the fall of the Hebrew University Faculty of Law, but the fall itself is not his doing. It is President Magidor's!

Specifically, it is a basic economic law, taught to high school students, that an organization that is bent on offering the same compensation to all without regard to market and merit, would be oversupplied with those whose outside options are worse, and would lose those whose outside options are better.

That major breakdown, the desertion by the middle generation that befell the HU Law School is a direct consequence of HU President Magidor's adamant opposition to differential, fair pay by market and merit at the HU. See on this my recent article in the "Haaretz" newspaper.⁸ The direct result is the destruction that Magidor's policy brings on major units of the HU, like the Law School, the Business School, the Sociology department, and more. I shall devote a whole letter to this topic in the near future, but here let me dwell on just one point in the *Globes* article.

Magidor, even those close to you do not believe you, when you tell them—and the public—that you did not summon visiting committees to the HU because of the "Intifada."

People who are close to Magidor excuse his major failures as president of the Hebrew University by the fact that he devoted most of

his managerial time to HU's pension problems. This is the reason that he was not interested in almost anything else, to the point that he did not even bother to bring external visiting committees to HU (except for a meagre three), which are the most important, indispensable managerial tool in understanding what is really happening in a university.

(You see, Magidor, even those close to you do not believe you, when you tell them—and the public—that you did not summon visiting committees to the HU because of the "Intifada" (Palestinian uprising).)

But lo and behold! Dean Zamir tells the *Globes*, "The HU Law Faculty was hurt by the Hebrew University pension schemes. As a result of its pension arrangements, many faculty members, who were supposed to retire at age 67, left to early retirement at 60."

⁸ See the article at <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=492502>

It follows then that even the HU pension schemes that received Magidor's undivided attention, are acting against the mission of the Hebrew University, which should be distinguished from the personal pecuniary interests of its pensioners. But, obviously, differential pay could have undone the harm that the HU pension schemes did to the Faculty of Law. But Magidor shall not let that happen. Unchecked he would mismanage the Hebrew University down to its ultimate demise.

So much for Magidor's *pension excuse* for his incompetent neglect of the Hebrew University.

To conclude this part, it is obvious that the Hebrew University Faculty of Law needs an urgent visitation by an external visiting committee which would comprise true legal scholars as evidenced, among other indications, by a truly distinguished journal publication record. The essence of its report should then be made public on the Internet, following the example of UC Berkeley.⁹

5 Chairman Yigal Arnon, you don't have a clue!

For some unclear reason, the *Globes* reporter has not interviewed Magidor, although he is the one who is responsible for the HU Law Faculty downfall. On the other hand, she did ask HU Chairman of the Board of Trustees Yigal Arnon for his comments. As usual, totally detached from university reality, the superannuated Arnon uttered one of his pearls: "I look at the grades that the HU law students get on the bar exam, and what I see is that this is the leading Faculty of Law."

Well, Mr. Arnon, if you believe that the main mission of an academically excellent Faculty of Law is generating good grades for its students on the *bar exam*, then you don't have the slightest idea what that mission should be. In addition to your Philistine ideas of what the mission of the Hebrew University is, you are also so disinterested, so I am told, that you seldom show up to the meetings of the HU Executive Committee, whose duty it is, under a competent chairman of the board unlike yourself, to monitor the performance of the HU administration.

But not for long, Mr. Arnon; not for long. Let me wish you old age happiness and comfort on the forthcoming occasion of your 75th birthday on December 9, 2004. Thereafter, according to the HU constitution (General Bylaws, Chapter A, section 7) which limits the age of Governors to 75 for good reason, you cannot be reelected as a governor in the next HU Governors meeting. Therefore, your term as Chairman will then be over, and the HU will get the vigorous, interested chairman that it deserves. There are quite a few talented people in Israel in their sixties, fifties, or even forties, who can take upon themselves the highly responsible position of the HU Chairman of the Board and do a much better job at it than you have ever done. But if you want to give the HU an important present on your upcoming 75th birthday; please, do resign

⁹ See http://www.berkeley.edu/news/media/releases/2003/05/06_physicsreport.shtml

then – for the good of the Hebrew University and for the good of the public whose trust you have failed.

6 HU Senate should comprise the academic elite

I should take this occasion to make more explicit the warning that I issued in my previous letter.¹⁰ Indeed, the analysis I made of Israel Gilead's journal publication record would be publicly repeated for anyone who is elected to the new compact HU Senate and whose academic record does not measure up to high academic standards relative to what should be expected at HU—not at Harvard—which was recently ranked 90th in the world (not 6th) in a ranking¹¹ that was quoted by the *Economist*.

Let me explain better, by way of an example, why an academic select Senate is important for the mission of the Hebrew University. In his Feb 20, 2001 public letter to me which I quoted in my "Haaretz" article, former Chairman of the Higher Education Planning and Budgeting Committee (VATA"T), the late Nehemia Levtzion, wrote

The "Criteria"¹² should have opened the door for differential payments, but since the definition of these criteria was left to the university senates, the result was again equal payment to all.

In other words, it was the mediocre majority in the former huge Senate, that included all full professors irrespective of their academic distinction, which defeated excellence promoting differential pay, that would have benefited the interests of the public, but not those of the mediocre.

The false "criteria," now in effect, must be replaced by true criteria for excellence. But a senate that would simply be a miniature replica of the former mediocre majority Senate, would again uphold the interests of the mediocre, and would resist fixing the ridiculous "criteria." This is the reason that only the academic excellent should be members of the new compact, academically select Senate.

Therefore, candidates for election to the new Senate, please heed my warning.

¹⁰ "Hebrew University Deceptive Administration: Part 1" is at http://pluto.mscc.huji.ac.il/~msyberg/YB_files/Deception_1.pdf

¹¹ <http://ed.sjtu.edu.cn/rank/2004/2004Main.htm>

¹² The "criteria" were the attempt of the finance ministry to establish differential pay at the Israeli universities by making extra compensation available only to those faculty who fulfilled criteria for true excellence. The senates together with the academic trade unions (same people) defeated that plan by formulating ridiculous criteria that almost every faculty member fulfills by merely being alive.

7 Recap

- In this letter, I told you about the downfall of the HU Faculty of Law and about the desperate denial attempts by its Dean Eyal Zamir as related by the *Globes* newspaper.
- In particular, I exposed Dean Zamir's statement that "Israel Gilead is a tort law scholar of international repute" as false, by analyzing Gilead's exceptionally unimpressive journal publication record.
- I also exposed as false the statement that Dean Zamir has made to *Maariv* and to the HU Rector's office that the leading law journals cannot be identified.
- I identified as motive for Zamir's false statement the facilitation of undeserved promotions.
- I then demanded that President Magidor explain why he promoted Israel Gilead to full professor, which, based on my analysis, he should not have done. I suggested that if this is not explained out of court, then Magidor would be asked to explain that in court.
- I also identified Magidor's adamant opposition to differential pay by market and merit as his disastrous policy that brought the downfall of the HU Faculty of Law, of its Business School, of its Sociology Department, and of other important HU units.
- I wished HU Chairman of the Board of Trustees a happy 75th birthday (9/12/04), and asked him to step down on this joyous occasion and clear the way for a much more vigorous, interested Chairman whom the Hebrew University deserves.
- I repeated my demand that only the academic elite should consider themselves candidates for the new compact senate, because a senate with a mediocre majority would act contrary to the interests of the HU and to those of the public. I backed my demand with the warning that I shall do a public analysis of the academic publication records—similar to that which I did on Gilead's—of those full professors who are elected to the Senate, and who should not have been.

8 Please inform your fellow HU Governors

Governor Harvey Krueger and Governor Henry Rosovsky, the Israeli government appointed Maltz Committee has determined in its August 2000 Report (p. 9) that the HU Governors are not concerned, nor are they familiar with the affairs of the university which is entrusted to them.

Following this letter and other communications that you have received, you should be more familiar with the Hebrew University affairs and problems. I would like to ask you then to instruct the Office of the Board of HU Governors to see to it that all the other

HU Governors become as familiar with the HU affairs as you are. In particular, I would like to ask you to bring to their attention the table I have drawn, which compares and contrasts the transparency of the University of California to the Californian public with the total opaqueness of the Hebrew University to the Jewish people to which it belongs. The table is at http://pluto.msc.huji.ac.il/~msyberg/YB_files/Table_Governors.pdf In fact, I tried to pass the table on to the Governors during their last meeting in May, but was denied access to them.

I am confident that you feel a moral obligation towards the Jewish people to inform your fellow Governors about the problems of the Hebrew University. Otherwise, by US law, it is your legal fiduciary duty to do so. On my part, I shall soon do my share of informing the HU Governors through 206 Jewish newspapers and dozens of Jewish organizations across the world.

–Yaacov Bergman