The legal brain drain

Globes
By Yuval Yoaz
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When: Monday, last week, in the afternoon. Where: Austin Hall conference room, Harvard Law School, Cambridge, USA. No fewer than four panels were invited to participate in the gala conference organized by the most prestigious of all law schools for its star professor, who retired from Harvard this year after 50 years of teaching - Prof. Alan Dershowitz.

The moderator of the first panel, Prof. Noah Feldman, was positively excited about the speakers sitting on both sides of him, and who opened the gala event. Two of the five panelists, it should be mentioned, were retired presidents of the Israeli Supreme Court, Prof. Aharon Barak and Dorit Beinisch.

“We have the dream team of panels,” opened Feldman. “If you have a panel with one retired president of the Israeli Supreme Court, that’s a tremendous honor. But when you have two presidents, it’s simply incredible.”

Barak shared his recollections with those present, giving much credit to his long-time friend, Dershowitz. “I came to Harvard for the first time in 1966,” he recalled. “I had just finished my doctorate and came for a post-doctorate program. It was cold. It was a different generation. But there was one guy who was so important. And that was Alan. And I will never forget Alan. We took classes together with Prof. Henry Hart, and we met many times. Alan has been my best friend in the world ever since. I have a huge pile of decisions in which we cited Alan’s book and articles.”

After the event, everyone hugged, shook hands and went on their merry way. Barak, who came to Harvard from his annual visit to Yale in New Haven, Connecticut, went on to a week of teaching at Columbia University in New York, and from there to an intensive seminar at the University of Toronto. Beinisch also returned to New York, where she is a permanent guest lecturer at New York University. On her way downtown, she might have passed her long-time colleague, Eliezer Rivlin, who is currently teaching at Cardozo, Yeshiva University’s law school.

The Israeli presence at Ivy League law schools is not limited to generations of judges from Israel’s Supreme Court. About an hour before the event in honor of Dershowitz, in came Prof. Alon Tal, a specialist in environmental law and environmental policy from Ben-Gurion University, to speak before Harvard faculty on “creating peace through environmental activism.” At the end of his lecture, Tal went back to the west coast, to Stanford, where he is currently a visiting professor.

We’re most like the Americans

It would appear that there is no an area where relations between Israel and the US are warmer and more productive that in academic legal circles. Several days after the event in honor of Dershowitz, a two-day conference was held in another building of the law school, as part of a joint multiannual project between Harvard and Stanford. Each year, junior legal scholars, who
completed their doctorates less than seven years ago, are invited from around the world to submit drafts of academic articles they have written. Among all of the applications received, the ten best articles are selected, and the authors are flown in to the prestigious workshop, where the most senior lecturers dedicate one hour to each article. During that time, they receive comments, criticism and direction. No single author is declared a winner, but their very participation is considered a tremendous honor, a major line on their resumes and foundation for networking among the people whose hands you really want to shake.

In the six years the International Junior Faculty Forum has been held, virtually every year an Israeli is included among the winners. This year, like last, two out of the ten were Israelis, and that was also the case the first year the contest was held. There is no other country that has gained such an honorable representation in this esteemed legal forum.

One of the winners in the first year the contest was held was Prof. Moshe Cohen-Eliya, currently Dean of the law school at the College of Law and Business in Ramat Gan. This year he was there again, but as a senior scholar invited to serve as a “sponsor” for one of the junior faculty, and to share his insights and comments on the research paper.

“They contacted me, because I was the winner of the first Forum,” said Prof. Cohen-Eliya. “In 2008, I won together with Iddo Porat. This is now the second year in a row that I am reading and judging articles. By the way, we were the first to take this model and implement it in Israel. Last year we held a workshop for young scholars based on this model, and four articles were selected. We took senior lecturers such as Eyal Benvenisti, Hanoch Dagan and Alon Harel as the Selection Committee, and we issued a call for papers to junior faculty in Israel. We received 21 submissions from young scholars in Israel and selected four of them. By the way, the four winners are every bit as good, if not better, than the ten who won the Harvard-Stanford Forum. It’s really quite clear, we are simply good.”

Try to unravel the mystery for me, why are Israeli jurists so prominent in American academia?

“One key reason is the level of our law schools. If you look at the world, Israeli schools are the closest to the American ones. Since Aharon Barak was at Harvard and brought the law journal managed by students back with him, and the Socratic method of presenting students with questions, he truly disconnected us from the European academic education of lecturers reading from a podium, and brought us to the American model, which is one of democratization, sharing of students, of workshops and lecturers who sit in the workshop and speak to the students in a manner that is not hierarchical, and Israelis relate to it well.”

So it’s the Israeli nature, lack of inhibition?

“The fact that Israelis are anti-authoritarian and very opinionated also makes them stand out in the classroom. Lecturers always compare the Israelis to the foreign Chinese or Japanese students, who don’t speak, out of respect for the lecturer who is speaking. For the Israelis, what the lecturer says is purely an invitation to argue with him. So there are many things that are similar between the way Americans and Israelis think. Also, the level of the research and discussions at the Israeli law schools, both at the universities and private institutions, is very high, because the teaching staff is high caliber. The critical approach - to know to ask the right
questions. The start-up nation doesn’t just stop in high-tech, we also see it in legal thought.”

“Israel is a small place”

Among the ten young scholars who were flown to Harvard to participate in the prestigious workshop was Shiri Krebs, who previously served as an intern and legal assistant to President Beinisch, and now is beginning her fourth year as a doctoral student in law at Stanford. Krebs, well versed in presentations and familiar with the legal academic elite, refuses to get excited. “It’s not really recognition or respect, as it is a forum where they give opinions of drafts of our articles in order to improve them. You might say that it’s recognition that these articles have potential. It’s an exciting position, but I’ve been at Stanford for three years already. This isn’t my first time, and I also know many of the professors.” Why are you doing your doctorate in the US and not in Israel?

“There’s something very attractive about the universities here, as far as methodology goes, in terms of possible advisors. I came for my doctorate, when I was already mature - I was a student for ten years, I had experience and knew what I wanted to do, and at Stanford they let me do what I wanted. Israel is a small place. I do surveys over the Internet. Something that I don’t think I would have gotten to do had I stayed in Israel, because here I’ve been exposed to many people who conduct research in many areas. My research is multidisciplinary, and I have lecturers from psychology, law and political science. That’s something Stanford really promotes. It lets you move out of the box and break your habits of how to work and how to write. Here you have opportunities that are eye openers that expand your horizons. It’s important to experience.”

Krebs, too, like other students and young scholars, was encouraged by her advisors in Israel to go out into the world. “When I finished my degree in law, the advice I received from my advisors was: if you want to be part of the academia in Israel, go get your doctorate abroad,” she said. “This is a problem for academia in Israel, the feeling that without a doctorate from Harvard or Stanford, you evidently won’t be able to find a place in Israeli academia. It’s definitely something that pushes Israelis to look outside of Israel. An academic career is what I want most, and if you know that the only way to join the faculty of the Hebrew University is to bring home a degree from an Ivy League school in the US, it has an influence. It’s pretty clear that if you want to be part of a certain discourse in your professional arena, you need to study in the US.”

“It enriches you”

Another Israeli guest at the Harvard-Stanford workshop is Dr. Shelly Kreiczer Levy, who teaches property law at the College of Law and Business - a college that boasts of its far-reaching cooperative ventures with its big sister in Cambridge. Kreiczer Levy is one of the four winners in 2013 of the Israeli version of the Junior Faculty Forum, held by the college in Ramat Gan. Her prize was a flight along with accommodation and academic guidance to the university of her choice - Oxford, Stanford or Harvard. She chose Harvard.

“We’re a small country, and in any field you choose there are very few people with whom you can discuss your subject,” said Kreiczer Levy, explaining her reasons. “Now I’m entering the field of inheritance, very few people are involved in this field in Israel. My ability to talk to people and hear ideas is far more limited. You want people to respond to your research, give you good feedback, you want to enrich your work, so this enriches you, but also clearly pushes towards theorizing. I also write theoretically, and that’s fine as far as I’m concerned.”
“Aside from that, at the instrumental level, you certainly realize that part of our professional advancement is based on how much and how well we publish in American journals and the opportunities we leverage. The more people you meet, the more conferences you are invited to. That’s how it is in every academic field. Only in law, there really is an anomaly, because it truly is a very local field. We teach Israeli law and write American law.”

How is it that Israelis are so prominent in the field?

“It starts with the fact that many people do their doctorates here in the US. I did an Israeli doctorate and knew that it was a less conventional choice for the academic legal track. Many do their doctorates or post-doctorates or sabbaticals here, and travel to many conferences. Those things are very important. I was a guest scholar during my doctorate at Yale, and my impression was that European jurists don’t have any incentive to publish in American journals. From the outset, Canadians, the British and Israelis are motivated towards an international track.”

“I know many foreign students here, not just Israelis,” says Kaplan, “They don’t really become part of American academia. They come here, from Brazil for example, do work about Brazil, their professor has an interest in Brazil, and then they go back to Brazil, and they don’t need to publish in the US. But the unique requirement we, the Israelis, have is to publish in the US. It’s not like that anywhere else in the world, the only other place is Taiwan, I think. Whoever wants to integrate into the American market must publish in the US. The requirements in Israel force you to publish here. To do that, you need to be relevant here. So you work on issues that you know will interest the Americans. It creates more opportunities to stay in the US. It pushes you to be relevant to the American market.”

“There’s an Israeli kibbutz here”

The Israeli pioneer among the faculty at Harvard is Prof. Arye (Lucian) Bebchuk, who is currently considered one of the most important scholars worldwide in the economic analysis of law. Bebchuk still teaches at Harvard, and he is responsible for bringing more than a few Israelis over. The doors for the two other Israeli faculty members, Prof. Yochai Benkler and Prof. Gabriella Blum, were opened in no small measure thanks to help from Bebchuk.

“There is a long and rich tradition of Israeli scholars at Harvard,” agreed Vice Dean Prof. David Wilkins. “Prof. Bebchuk had an important role in attracting outstanding Israelis. I think that everyone agrees that relative to its size, there are many Israeli academics who have come here and decided to stay and make an important contribution. I think it’s related to the fact that the Israeli legal system is similar to ours - both systems are based on common law, the roots of which are in English law. Aside from that, US jurists who have visited Israel over the years, particularly during the formative years of Israeli law, in the 1960s and 1970s, made a mark on Israeli legal education, which in turn paved the way for the Israeli students to come here to continue their studies.”

Wilkins points to Aharon Barak as someone who brought the two academic worlds, the American and Israeli, closer. “Barak spent a long time at Harvard. I met him when I was a young professor in the 80s. He would come and spend a semester here every three years. He had an important presence here, and I’m sure it had an impact. There were numerous attempts to
implement the American legal education model in many countries, but it most cases they did not prove successful. In Israel it worked.”

Dershowitz believes that the key factor is the quality of the Israeli law schools, and as a matter of fact reveals that given their tremendous success, Israeli applicants today actually face discrimination. “I think that there are phenomenal institutions of legal education in Israel,” he said. “There are many outstanding law schools, excellent students, who excel when they come here.

“There is evidently some discrimination against Israeli students and faculty members at Harvard, simply because there are so many of them. One of the deans once told me that if they were to accept students solely according to talent, there would be too many Israelis. That’s the good news. The bad news is that most of the Israeli academics don’t help Israel. The fact that there are many Israelis at US law schools is very good for the US. Thank you, Israel, for helping us improve our legal education. But it’s not great for Israel.”

Harvard, Edmond J. Safra Center for Ethics director Prof. Larry Lessig, one of the best-known and most popular lecturers at the university, whose active presentations have earned him an international reputation, agrees that “Israeli competition to be accepted to Harvard is intense, because there are so many good Israelis. But in our law school’s international program, if you want to create an international community, you have to ensure spots for representatives of more than one legal system, despite how wonderful Israel truly is. Israel has strong historic and economic ties with the US, and it has a natural second language, English, that makes the connection to the US very easy. The legal academia in Israel is extremely competitive, and the people themselves are truly very good.”

“We are a school of 107 people, and there are three Israeli faculty members, so statistically we are way above our relative power in the population,” said Prof. Gabriella Blum, who is now embarking on her ninth year on the faculty of the law school. She earned her LL.B. in law and economics at Tel Aviv University as an atudait (program that allows for academic studies prior to military service), and after her service with the Military Advocate General’s Office, she went on to her LL.M. at Harvard, which in the end led her to join the senior faculty.

Trying to explain the statistical deviation, Blum notes the similarity in the legal philosophy. “I must say that at Tel Aviv, I was exposed to most of what I was exposed to here. The concept is to think of the law as something that incorporates and converses with many other disciplines. It is meaningless to think about law without thinking about the political, economic, cultural and international contexts of the law in practice. People who came back to Israel with an American education passed this down, to think about what power relations led the law to be what it is. When Israeli students come here today, they don’t have the same culture shock students from other places do.

“The Israelis who come here need less language training, and I don’t mean Hebrew and English, but the language of the law spoken here. We don’t need to teach people who come from Israel that in reality much of law is political, or how to read between the lines of rulings, or how to think of the meaning of the role of law in society, politics, economics. The Israeli students know it. I see that they are also a very strong community. The only others like them in this regard
are the Colombians. They immediately accept you and raise you, you’re not alone. There’s an Israeli kibbutz here of people who work together and help, give advice. There is lots of togetherness, and it's very nice to see. It’s also very helpful. Somebody shows you the way.”