

"Overcrowding the Profession" – An Artificial Argument?

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Katvan, E., 2013. "Overcrowding the Profession" – An Artificial Argument?. *Oñati Socio-Legal Series* [online], 3 (3), 409-429. Available from: <http://ssrn.com/abstract=2298419>



Abstract

It has been claimed that Israel has the highest per capital rate of lawyers in the world, resulting in belief that the Israel Bar is overpopulated. The first law colleges, which were established 20 years ago, are newcomers to the production of legal professions. The leadership of the Israel Bar have held the law colleges responsible for Israel's overpopulation of lawyers and for the legal profession's decline in prestige. This paper examines whether the perception of overcrowding of the profession is a new "discovery" or rather the recycling of a standard dynamic between professionals and legal education institutions. While this paper focuses specifically on Israel, concern about the overpopulation of the profession has become a central concern in many other jurisdictions.

Key words

Legal Profession; Legal Education; Legal History; Israel

Resumen

Se ha asegurado que Israel tiene el ratio de abogados per cápita más alto del mundo, lo que hace creer que el Colegio de Abogados de Israel está superpoblado. Las primeras facultades de derecho, que se establecieron hace 20 años, son recién llegados de la producción de abogados. El liderazgo del Colegio de Abogados de Israel ha hecho que las facultades de derecho sean responsables de la superpoblación de abogados en Israel y del descenso del prestigio de la abogacía. Este artículo analiza si la percepción de superpoblación de la profesión es un nuevo "descubrimiento", o, por el contrario, el reciclaje de una dinámica estándar entre profesionales e instituciones de formación en derecho. Aunque este artículo se centra especialmente en Israel, la superpoblación de la profesión se ha convertido en una preocupación central en muchas otras jurisdicciones.

Article resulting from the paper presented at the workshop Too Many Lawyers? Facts, Reasons, Consequences and Solutions held in the International Institute for the Sociology of Law, Oñati, Spain, 19-20 April 2012, and coordinated by Eyal Katvan (College of Law and Business, Ramat Gan), Carole Silver (Indiana University) and Neta Ziv (Tel Aviv University).

I would like to thank Prof. Daphne Barak-Erez, Prof. Angela Melville, Prof. Dudi Schwartz, Prof. Carole Silver, Dr. Boaz Shnoor, Dr. Limor Zer-Gutman and Prof. Neta Ziv, the Oñati Workshop Participants on 'Too Many Lawyers' and the anonymous readers for their important comments. I would also like to thank my research assistant Meytal Aharon for her excellent assistance on this article.

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Palabras clave

Abogacía; formación en derecho; historia del derecho; Israel

Table of contents

1. Introduction.....	412
2. Historical perspective: The first wave of newcomers	413
3. New teaching institutions: recycling discourses of overcrowding	415
4. Preception or reality: empirical findings	417
5. Immigration and professional integration: Manifest and latent functions of the overcrowding argument.....	420
6. Conclusions	423
Bibliography	425

1. Introduction

No subject seems to be attracting more attention in the Israeli Bar Association than the oversaturation of the profession and the crossing of professional boundaries. These two phenomena are interconnected to a certain extent, for the “newcomers” seeking admission to the bar test the profession’s boundaries and stretch them further and further, at least from a numerical perspective. Some will assert that it is clear why this issue is so prominent in the professional discourse: currently, Israel has, apparently, the highest per capita rate of lawyers in the world. Only a few days ago, more than 2000 lawyers were admitted to the bar, joining the 55,000 already licensed lawyers, in a population of 8 million people.¹ But is this a local, uniquely Israeli phenomenon? There are those who claim that it is. Recently, at the annual conference of the Israel Bar Association (following the admission of thousands of new lawyers) one lawyer explained, “The over-supply stems perhaps from the Jewish culture, where every Jewish mother’s greatest wish is for her son to be a lawyer or a doctor. The flooding of the profession harms the overall legal quality of all those practicing law” (Ma’anit 2013). But these claims were made a year ago as well, when we conducted the Oñati workshop entitled “Too Many Lawyers?”; and they were also made a year prior to that, when Professor Dafna Barak-Erez and I prepared the proposal for this workshop.

Truth be told, these claims were made in Mandatory Palestine ninety years ago and elsewhere in the world both earlier and in the years since (on which I will elaborate). In other words, this is neither a singularly Israeli phenomenon nor a new one, but rather a far broader and rather long-standing phenomenon. The awareness of this fact served as the rationale underlying the proposal to conduct a workshop at Oñati around the question of whether there are too many lawyers. While the dramatic increase in the number and proportion of lawyers in Israel may have been the trigger to the proposal for this workshop, it was driven by the understanding that Israel is not unique in this respect and that the legal profession has undergone shifts and transformations across the world—changes that have bearing also on the question of the “flooding of the profession.” Of course, this workshop was not the first forum to address this matter. Throughout history, special issues in law journals and colloquia have been devoted to investigating the phenomenon of the “overcrowding” of the profession (Wickham 1889). The workshop was focused on the phenomenon or claim of oversaturation in the contexts of different geographic spaces, the reality of globalization, the era of professionalization, and the transformation of the character of the legal profession and education, as well as changes, developments, and different approaches in the legal-historical-sociological research, for example. That is to say, the workshop sought to examine this issue from a comparative, interdisciplinary, and multidisciplinary perspective at the turn of the twenty-first century.

With the entry of more and more lawyers into the profession, Israel has witnessed a development and growth of litigation, leading to a need for more judges. Albeit not directly related, while we were immersed in preparations for the workshop, Professor Dafna Barak-Erez was appointed a justice of the Israel Supreme Court. Fortunately, Professors Carole Silver and Neta Ziv were available to fill her place on the team, and together—and, I must add, with considerable enjoyment and through close collaboration—we conducted the workshop.² The papers presented at the workshop responded well to the objectives we had set. In the framework of the discussions, we had sought to examine four central layers of the “flooding” of the legal profession: facts/data, reasons, consequences/outcomes and solutions. These

¹ That is to say, those who pay membership dues to the bar association.

² We take this opportunity to express our thanks to the Onati International Institute for the Sociology of Law, headed by Prof. Angela Melville for hosting this workshop. Special thanks to Mrs. Malen Gordo Mendizabal. We would also like to thank the workshop participants – the authors of this issue, and Mrs. Cristina Ruiz López for coordinating this publication.

layers of discussion are manifested in the thematic division of this volume. But more, significantly, the workshop discussion in this form led, it seems, to a number of interesting conclusions: First, when addressing the question of oversaturation of the profession, it is vital to first clarify the relevant definitions—today, there is not even an unequivocal answer to the question “Who is a lawyer?” Second, even if it is possible to “count” the number of lawyers (licensed or active, it could also be asked), numbers do not explain or account for everything. In other words, the claim that the profession has been overcrowded cannot be grounded on the number or proportion of lawyers in the population. For example, it is possible that a certain area of legal activity or a certain geographic area will be characterized by a profusion of lawyers, whereas there may be a lack of lawyers in the geographic periphery, for instance. Third, it is vital to understand that an abundance of lawyers and competition in the profession is not necessarily a negative thing (access to justice is only one example in this respect).

While no concrete answers arose from the workshop, this was not our goal. Rather, the workshop illuminated paths for the continued consideration of these issues, including identifying methodological and multidisciplinary approaches. Our hope is that others will take up the challenge of joining in the discussion. In 2012, 14 law schools operated in Israel. Four of these are faculties within universities³ and ten comprise part of colleges⁴ – two of which are state funded⁵ and the remainder private. The number of law students at the colleges and of college alumnae who are accredited attorneys greatly exceeds the number of university law students and graduates. This has produced concern that new graduates will not obtain professional positions. Alongside this issue, this concern that the legal professional's prestige is in a state of decline (see for example, Danus 2008, Shihor-Aronson and Danus 2011).

A consensus exists among the leadership of the Israel Bar that law colleges, as new producers of legal professionals, are responsible for Israel's overpopulation of lawyers and for legal profession's decline in prestige years. Yet, it is unclear whether the profession's overcrowding presents a new “discovery” or the recycling of a standard dynamic between legal professionals and legal education institutions. This article aims to address this issue by evaluating several options: is the “overcrowding of the profession” argument an attempt to protect the public (a common public interest approach), an attempt to prevent competition and to elevate status (a critical approach), (Abel 1988a, pp. 187, 227, Ziv 2008, 2009) or –as has not been previously suggested– is it rather an artificial argument aimed (perhaps also unconsciously) at creating a professional melting pot?

The paper largely follows an analogy between immigrating into the country and entering the profession to clarify how various rituals are intended to create a melting pot. I posit that whereby the professional saturation argument is indeed consistent with many of the explanations offered for it in studies to date (e.g., the desire to prevent competition and concern for the prestige of the profession), but given the ritual opposition to newcomers to a profession (students and teaching institutions alike), which is not necessarily based on objective motivations, and given the fact that the legal profession in Israel has passed the point of overcrowding a long time ago (according to the definition of the professionals themselves) (Barzilai 2007), the opposition might indeed be mainly motivated by a desire to achieve group cohesion.

2. Historical perspective: The first wave of newcomers

A well-known Israeli sketch portrays established immigrants deriding recent arrivals. Later, as the recent arrivals become established in the country, they in

³ Tel-Aviv University, Bar-Ilan University, the Hebrew University, and Haifa University.

⁴ In Israel universities are considered more prestigious than the private institutions.

⁵ These institutions are subsidised by the state, so that tuition is the same as at the universities.

turn deride the next wave of immigrants arriving, and so on. The sketch reflects a type of solidarity felt by "veterans" vis-à-vis the newcomers, a solidarity that forms "veterans" into a group apparently lacking in hierarchies. To some extent, the sketch also reflects the prevalent attitude among professional legal veterans toward law students and recently accredited attorneys, as well as that of the established law schools toward the new players in the field of legal education in Israel.

This sketch provides a useful analogue in order to examine the profession's arguments about the overcrowding of the profession. It firstly suggests that the suspicion of newcomers by established groups is hardly new, but has a well-established historical tradition. Likewise, it appears that suspicions against newcomers to the legal profession also has a long tradition in Israel.

Palestine had very few lawyers during the late Ottoman period (Likhovski 2006, p. 25). Yet lawyers considering immigration inquired with the Zionist institutions in Palestine whether they would be able to find work, invariably received a negative reply. At the start of the British Mandate in Palestine (1917-1948), the number of lawyers "could be counted on the fingers of two hand" (Likhovski 2006, p. 25), although the numbers of lawyers then steadily increased. Initially, the majority of lawyers were Arabs who had received no formal education, although formal education became established in 1920 the British had established a law school.

From the 1920s onwards the distinction between lawyers from already established groups and newcomers intensified. In 1922, the Advocates Ordinance was enacted, which contained instructions concerning the accreditation of new lawyers, and in the same year the Legal Board was established (later to become the Law Council). Aspiring lawyers needed to pass an exam, and spend two years training in the office of a practicing advocate. Those who arrived from foreign countries needed to take specific tests to prove their knowledge of the laws of the country (Likhovski 2006, p. 26, Strassman 1985, pp. 250-253, Roda 1945, pp. 149, 152, 156, Saker 1961, p. 234). These restrictions appear to have served the interests of the British, who sought to limit increasing immigration. Many new immigrants were Jewish refugees, including legal professionals, fleeing from Nazi Germany (Doar Hayom 1935, p. 26). The Chief Justices (British judges who headed in turn the judicial pyramid in Palestine) also complained about the overcrowding of lawyers. In general, these notions were expressed during new lawyers' graduation ceremonies (Davar 1941).

The fear of overcrowding the profession concerned both those already serving in the legal profession in Palestine and potential immigrants in the field. Moshe Zmora, ultimately the first Chief Justice of the State of Israel, immigrated in 1922. In a letter to his wife, he noted that "... there are already seven Jewish lawyers and the country doesn't need any more" (Zmora 2002, p. 12). In 1926, given the economic crisis that afflicted the country, the argument concerning overcrowding again arose:

The crisis afflicting the country ... damaged heavily the legal profession. This has been particularly felt in light of the proliferation of lawyers and the great competition that developed as a result. Therefore, a noticeable decline of the profession was felt both in the spiritual sense ('every man does what is right in his own eyes') and in the material sense (given the lack of a tariff for the lawyer's fees) (Strassman 1985).

Criticism regarding the overpopulation of lawyers appeared in the press as well. Nevertheless, professionals were cautious in their arguments about overcrowding of the profession because indirectly, such voices could be interpreted as opposition to the absorption of immigrants and cooperation with the British.

The establishment of the State changed this position of the local jurists, making the opposition to the absorption of immigrant lawyers public (Maariv 1949). Apparently, this opposition was rooted in an ideology of concern for the public at large, which

the lawyers representing this view were supposed to serve. By contrast, the foreign lawyers argued that the opposition was rooted exclusively in "fear of professional competition" (Maariv 1948, Davar 1951).

In 1961, 13 years after the establishment of the State, the Israeli Bar Law was enacted.⁶ The Israeli Bar became the body dealing with the professional qualification process and supervision of interns. These extensive involvements and others granted the Israeli Bar an unprecedented status of professional autonomy by international standards (Salzberger 2002). The heads of the Israeli Bar were able to restrict access to the profession as not only those who seek to prevent the entrance of new lawyers, but also those who hold the authority to do so. Some of the legislators understood this on the eve of the vote on the Israeli Bar Law. Knesset (the Israeli Parliament) Member Baruch Azania, for example, objected to granting such broad authorities to the Bar Association: "There is a danger that young people who are already 'riding the bus' of the profession will shut the door before young people who didn't yet have a chance to get on." (Maariv 1959). As expected, MK Azania's fears also proved to have been justified, not because the path leading to the professional inception of law school graduates was blocked, but rather since the argument of the overcrowding of the profession became a factor acting to unify the Bar, especially on the eve of elections (Hon 1959). Indeed, some thirty years later, a similar criticism was voiced by one of the lawyers responding to the proposals to prevent the establishment of additional institutions for law degrees:

The request is especially strident when it comes from young lawyers. It reminds us of the episode of the passenger who pushes his way forcibly onto the bus and as soon as he is firmly planted on the steps yells to the driver and to those standing outside that the bus is already full and there is no more room (Steinhart 1988).

At the end of the 1960s, additional items appeared in the press about the saturation of the profession, mostly written by heads of the Israeli Bar (Peri 1968).⁷ In that period, the number of immigrant lawyers in the country declined, and only two law schools operated – one in Jerusalem and one in Tel-Aviv – demonstrating that the saturation argument was inherent in the professional rhetoric, regardless of the ratio of lawyers per capita, which was relatively stable between the establishment of the State and the mid-1970s. Thus, the argument of the overcrowding of the profession seems to have been a standard claim that was raised already in the early days of the profession in the Mandatory Palestine and continued to be voiced to this day.

3. New teaching institutions: recycling discourses of overcrowding

Just as the established legal profession greeted the arrival of new immigrants with concern that the profession would become overcrowded, the next wave of newcomers faced similar arguments. The opening of new teaching institutions in the late 1960s represent the next influx of newcomers. In 1969, shortly after the separation between the School of Law and Economics of Tel-Aviv University from the Hebrew University and its establishment as part of Tel-Aviv University, an additional law school was established at Bar-Ilan University. Some academics welcomed the new university, for instance Dr. Amnon Rubinstein, Dean of the Law Faculty at Tel-Aviv University, argued: "As far as I'm concerned, Bar-Ilan University can open a law faculty. We don't want a monopolistic position in the teaching of law." (Ben-Amir 1969). Dr. Rubinstein was not concerned with the surplus of

⁶ Yuval (1955) has argued that at that time already, the ratio of lawyers in Israel per capita was among the highest in the world: "Across the State of Israel already 1,200 independent lawyers are working, in other words, 1,250 citizens per lawyer. This division already places Israel at the head of the nations by the ratio of lawyers in it."

⁷ President of the Israel Bar, Rothenstreich: "The country has been long suffering from an explosion in the population of lawyers, and the situation is getting worse and worse." See also Arad (1967), quoting Rothenstreich: "For 2.5 million citizens there are 4,000 lawyers in Israel. In other words, one lawyer for every 6,250 citizens."

lawyers. "We train jurists, not lawyers." The Director General of the Ministry of Justice, Zvi Tarlo, also opposed placing limitations on the entrance to the profession: "Israel is a country of immigration and absorption. The restrictions will hurt working people, immigrants, and members of the Oriental communities, and will turn lawyering into a profession of the elite." However, the legal profession were not so encouraging. This new institution caused concern in the Bar Association (Ben-Amir 1969), and this time also at the Hebrew University Law Faculty. Prof. Reuven Yaron, the Dean of the Law Faculty, said that "two law faculties are sufficient for training jurists" (Ben-Amir 1969).

The advent of the new universities also produced a new argument for exclusion. The new universities were seen to open up opportunities for disadvantaged social groups. For instances, students who studied in the Advanced School of Law and Economics in Tel-Aviv did not receive official recognition for many years. One reason for this appears to be efforts to protect the status of the Mandatory law school in Jerusalem (Likhovski 2001), as well as difficulties raised after the establishment of the State by the Hebrew University (Cohen 2009). MKs sought to relieve the situation of the students in Tel-Aviv so that:

...every suitable and talented youth in Israel can learn this profession. By this I mean the children of laborers, of immigrants, and also of the Oriental communities. One of our failures is that missing in the profession are the children of all the communities and of the various social strata in the country (Strassman 1985).

Until the 1990s, only three faculties of law operated in Israel,⁸ when the new law colleges were established. Despite the argument by the profession that the advent of a new university would cause overcrowding, it appears that supply of lawyers outstripped demand. This was a result of the few available slots for law students, which also resulted in a high number of law school applicants being rejected. Only students whose qualifications were particularly high were admitted. Whereas it was seen that the advent of a new law school would assist disadvantaged candidates from underprivileged neighborhoods, new immigrants, and other groups, in practice law students represented a highly homogeneous population

During 1990-1991, the first three law colleges were established largely in an effort to diversity the profession. In 1995, the Council for Higher Education Law was enacted, which detached the colleges from the faculties of law, and made it possible for them to grant diplomas. Between 1994 and 1995 the first two colleges, established in conjunction with the faculties of law, were closed, and their founders opened instead independent colleges. Several other colleges were established in the following years. In recent years, additional tracks for legal studies opened at two private colleges, as well as at two state-funded colleges: Safed (in the North) and Sapir (in the South). The latter perhaps reflect an answer to claims that the colleges that opened did not realize the objectives for which they were established, namely to give excluded groups an opportunity to acquire legal education. Indeed, the colleges continue to charge tuition that is threefold that of what the universities charge, and most of them operate in the center of the country. The opening of legal studies at Safed and Sapir Colleges addressed this problem, for these were not only colleges that charge university rates but both are located in the periphery, in Israel's north and south.

The law new colleges now represent the latest wave of newcomers. Their advent has been met by accusations from the established profession that they are not only overcrowding the profession, but have also lowered the standard of legal practice.

Hence, over the years, the argument of the overcrowding of the profession has been repeated by the professionals, and later also by the law faculties. In the past twenty years, the same argument has been raised with respect to the new colleges training the human capital that has joined the profession. The heads of the Bar

⁸ In 1992, the fourth faculty of law was established at Haifa University.

even joined in supporting the deans of the university law faculties, who in a closed meeting sharply attacked the quality of students and of the education provided in the colleges out of public concern, as they claimed.⁹ Thus, the veterans of academia and the veterans of the profession joined forces in calling for the colleges to be shut down, arguing for the need to "protect the public."

While the situation in Israel should be understood within its specific historical context, accusations of overcrowding have been used in other jurisdictions in order to exclude newcomers. For instance, in the beginning of the 20th century in the US, a similar discourse was used to exclude Jewish immigrants from entering the legal profession (Auerbach 1977). More recently, the American Bar Association has considered further deregulation of legal education, meaning that new producers of legal education including for-profit colleges and some online courses will receive accreditation. Arguments for these changes echo those that supported the rise of the new colleges of law in Israel, namely the desire to increase diversity. Likewise, arguments against these changes also have resonance with Israel, and this move has been met with predictions that dubious colleges will engage in unscrupulous practices in order to have their students pass the bar exam, and the profession will be flooded with low quality practitioners. In addition, the provision of courses online has now moved the debate about the encroachment of newcomers from a national stage to a focus on the globalisation of legal education. Therefore, the examples that I have given from Israel have potential ramifications beyond the local context.

4. Preception or reality: empirical findings

So far, this paper has shown that newcomers to the legal profession, whether new immigrants or students from previously excluded social background, have been seen to disrupt the homogeneity of the profession. However, the question remains whether this argument is based on mere perception, or whether it has its basis in empirical reality. Hence, the question is whether students from the new colleagues are indeed different from university law students, and thereby 'disrupt' homogeneity across the profession.¹⁰ Empirical findings confirm this claim and illustrate both the discrepancies between the two groups at their starting points and the equality between them (in certain parameters) after entering the profession. This equality is achieved over time by creating new professional bodies, unified around the argument of the overcrowding of the profession.

My argument relies on two data sources: one is a survey of lawyers in Israel conducted in 2010 with Limor Zer-Gutman among lawyers. The survey had 2000 respondents working within the profession;¹¹ the other is a dedicated survey I conducted in 2011 among law students at the end of their first year of study or the beginning of their second year, in two law colleges and one university law school. Respondents reflect the demographic reality among law students today.

The lawyers' questionnaire included 107 questions divided into four categories: (a) demography (e.g., age, professional seniority and education); (b) gender (e.g., number of female partners in the office); (c) professional occupation (e.g., type of employment, type of professional occupation); and (d) professional ethics and

⁹ "Our sense is that to some degree we are like the Bar Association, servants of the public. We are not a commercial body, we are not for profit. We have a certain input that can be of benefit" (Zarchin 2011). See also: "Lecturers who teach in the faculties of law and moonlight in the colleges... will admit that these are students of a different quality..." (Salzberger 2010).

¹⁰ Studies conducted in the U.S. illustrate how the demographic attributes of law students in the 1970s and 1980s were different from those of their colleagues in other fields. Jurists were considered to come from a higher socio-economic background (Daicoff 1997, p. 1355).

¹¹ The survey was mailed at the end of the December 2010 as an online link to 25,000 addressees of the Israel Bar's mailing list. The response rate of 8% was considered to be a reasonable one among Israeli professionals. It appears that the sample population reflects the population of lawyers with respect to such measures as seniority, as well as in the division between respondents who are university graduates (842) and college graduates (857).

reputation (e.g., whether the respondent has a disciplinary past). The law students' questionnaire was primarily demographic, comprised of 27 questions.¹² The purpose of the data collection relevant to the present study was to examine whether differences and gaps existed between the demographic attributes of college and university law students. The data (table 1 and 2) indicate that a substantial portion of law college students begin their studies at an older age, and have more extensive life experience than their peers in the universities, including the parameter of both parenting and previous academic studies.

Table 1. First-year law student characteristics by institution: Parenthood, age, and previous academic degrees¹³

	College 1	College 2	University
Parenthood	11.4%	57.2%	4%
Average age	27.4 (men: 28.6, women 26.3)	34.3 (men: 38.3, women: 32.3)	24.3 (men: 26.1, women: 22.7)
Prior academic degrees:			
2 Bachelors degrees		2.9%	1.4%
1 Bachelors degrees	6%	22.6%	8.5%
Masters		11.3%	
Doctorate		1.25%	

Table 2. Lawyers' characteristics before commencing legal studies by training institution (colleges/universities): Parenthood, previous degree/s¹⁴

	Colleges	Universities
First child born	37.5%	8.8%
Previous degree/s	33.8%	25.8%

My findings confirm the notion that at least a portion of law college student start studying when they are more "mature." According to Daicoff:

Law students' and lawyers' stated reasons for entering the field of law are relevant because they indicate what is important to law students and lawyers. Studies of these motives provide information about a specific set of lawyer attributes: their values, goals, and ideals (Daicoff 1997, p. 1356; see also Ogloff *et al.* 2000, pp. 82-84).

The lawyers' questionnaire presented 12 possible motives for choosing the profession.¹⁵ In most parameters, law college students and university law students indicated similar motives; however, differences emerged regarding two parameters: (a) personal interest/experience in law (22.6% of law college students vs. 15.4% of university law students), and (b) by default only (2.4% of law college students vs. 8.4% of university students). In other words, in this context it appears that at least a portion of law college students joined the field of law with some life experience or at least after having grappled with legal matters. Thus, the motive of most of them to study law is not a default action, contrary to university students who perhaps lack the maturity and the understanding of "what they want to do when they grow

¹² E.g., sex, age, previous education, marital status, number of children, father's and mother's level of education and country of birth, economic status, reasons for choosing law studies).

¹³ The survey's questionnaires were administered to students in the classrooms. Respondent numbers: 71 university students (32 men and 39 women); 70 students at College 1 (34 men and 36 women); 243 students in College 2 (124 men, 112 women, 7 did not specify gender).

¹⁴ This table is based on data from the lawyers' survey.

¹⁵ Namely: family pressure; influence of a family relative who is a lawyer; personal interest/experience in law; intellectual attraction; prestige; potential for higher earning capacity; desire to contribute to others/society; desire to integrate into the legal academia; desire to engage in politics; default; "other".

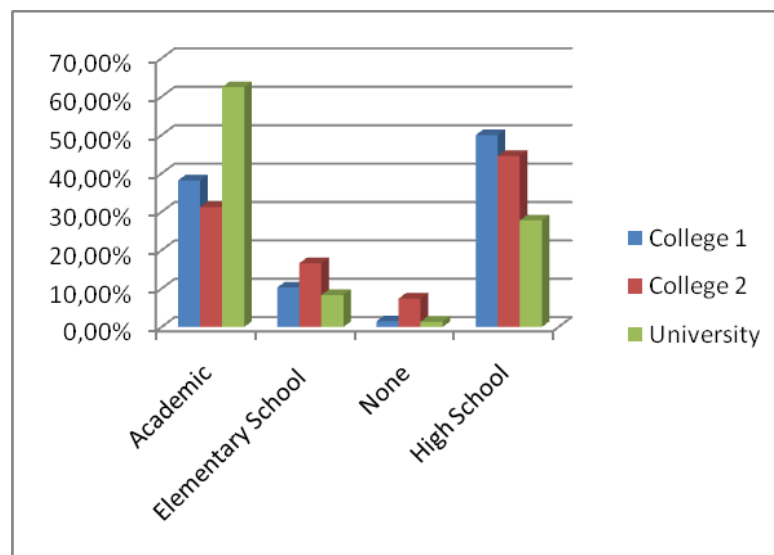
up." Likewise, a substantial portion of law college students and graduates held previous degrees before their law studies. However, not all law college students fall into this category. As Dean Uriel Reichman, (of a private college) noted, for example,

in the [Tel-Aviv University] faculty some 15% of students are Jews of Middle Eastern heritage,¹⁶ and we have 30%. We also have much greater openness toward Arab students. In the [Tel-Aviv University] law school there are almost no Arab students."¹⁷

Indeed, directors of the law colleges claim that they serve the needs of marginalized populations (Levi-Weinrib 2010).¹⁸

However, the data demonstrate homogeneity on the country of birth parameter, with the overwhelming majority of law students today in the two colleges and in the university being native Israelis (87% and 83.6%). Moreover, the three sampled institutions have a similar the rate of students who emigrated from Eastern Europe (12.85% and 9.2%). The various institutions are also marginally similar with respect to percentages of students' parents being born in Israel. Apparently, no significant differences exist these days between the country of origin of college and university students. However, a no less significant (albeit hidden) finding regarding parents' education attests to the gap between law college and university law students today; whereas the parents of most university law students have academic degrees, the parents of most law college students do not.

Figure 1: (Student's) Fathers' education¹⁹



This finding is most significant (Ermisch and Pronzato 2010). In Israel, parents' education is among the most influential parameters on their children's education. The psychometric test (Israel's SAT test) is no longer mandatory for admission into academic institutions, but rather an auxiliary factor in cases where matriculation exam grades are insufficient for meeting various institutions' admission standards.

¹⁶ Commonly referred to as "Sephardi" Jews.

¹⁷ Protocol No. 232 of the Constitution, Law and Justice Committee (18.2.1991) concerning amendment No. 18 to the Bar Association Law [Hebrew].

¹⁸ Prof. Dudi Schwartz (Ono College) explains that the colleges allow marginalized populations such as Ethiopians and the ultra-Orthodox to study. Nevertheless, some argue that today the universities also meet these needs. And compare with Levi-Weinrib, 2009. Prof. Eli Salzberger (Haifa University) notes that there is adequate representation of all social strata at the University of Haifa law school, including 20% Muslims. Regarding financial status, we found a certain advantage to university students. Respondents were asked to specify their economic status on a 5-point scale ranging from 1 (difficult economic situation) to 5 (excellent economic situation); among university students, the lowest stratum (1) is almost unrepresented but over-representation exists in the highest stratum (5).

¹⁹ Data regarding mother's education is almost identical to the father's education.

Thus, applicants whose matriculation exam grades are inadequate for admission to their desired department tend to take the SATs. Nevertheless, the motivation to take the SATs depends also on the parents' education. The more educated the parents are, the greater the motivation to take the SATs is and the greater the applicants' access to the tests is. Moreover, the applicants' success on the SATs also depends to a great extent on the parents' education (Dvir *et al.*, 2009, see also Beenstock 2005). It is not surprising, therefore, that the law colleges, where the matriculation grade required for admission is lower, so that fewer applicants must take the SATs, attract more students whose parents do not hold academic degrees (not to mention those whose parents have no high school diploma) (See also Caplan *et al.* 2009, p. 20) This gap between university and college students is concealed, but it is very important.²⁰

In sum, the empirical findings point to significant gaps and heterogeneity between college and university law students. Were it not for the colleges, various groups would most likely be excluded from the professions including those whose parents had no higher education, students of "Sephardi" origin, and older, more experienced students who study law while working to support their families and maintaining their ongoing careers (compare Abel 1988a, p. 201). As we shall see, such groups were indeed excluded until the establishment of the law colleges, which challenged the profession's homogeneity. Graduates of the colleges are integrated into the legal labor market despite various gaps between the groups, and despite the resistant towards them. Interestingly, findings show great similarity in respondents' satisfaction with the legal practice. For example, 21.1% of college graduates are very satisfied, vs. 20% of university graduates; 4% of college graduates are not satisfied at all, vs. 3.4% of university graduates. In light of these levels of satisfaction, lawyers' concern with professional glut (that is, with the number of lawyers being accredited each year) is striking. Potentially, precisely because lawyers find satisfaction in their work, they are more worried about the newcomers to their market. Nevertheless, results indicate that university graduates are more worried about the situation than college graduates are. University-trained lawyers are also less likely to recommend to their friends to study law and work in the field than their college-trained peers (56.3% of college graduates recommend that their friends study law, vs. 40.6% of university graduates; 52.1% of college graduates do not recommend that their friends work in the legal field, vs. 62.2% of university graduates).²¹

Hence, the question arising is, what role does the "overcrowding of the profession" argument play in a situation in which a substantial portion of legal practitioners are themselves college graduates who oppose colleges' continued training of more lawyers for reasons of apparent professional overcrowding?

5. Immigration and professional integration: Manifest and latent functions of the overcrowding argument

The warnings against the overcrowding of the profession are well-known. The public interest argument claims that the proliferation of lawyers harms service to the public as a result of unbridled competition between professionals and ethical offenses on the part of the newcomers –although Zer-Gutman (2013) shows that in fact, veterans commit more such offenses.

Naturally, from the perspective of the professionals, the undesirable outcome is also manifest in reduced income and reduced professional prestige.²² To the extent

²⁰ In this sense, the colleges still provide an important solution to the need that arose decades ago for admission of populations that would otherwise have no access to the legal profession. The sheer fact that these students can pursue academic studies can lead to a reduction in social gaps, encourage social mobility and affect the education of future generations.

²¹ See also Organ (2011).

²² See, for example, Larson (1977).

that the "overcrowding of the profession" argument touches on the new players in the field –that is the law colleges– it also appears to be based on the rationale of preventing the public harm liable to occur from the absence of meaningful admission criteria to legal studies, deficient training, and dubious foundations of the students admitted –in addition to the fear of competition.

Yet there is an additional aspect to the overcrowding of the profession debate–perhaps an unconscious one – resulting in the consolidation of a collective identity and group cohesion, in a reality of elevated homogeneity (Abel 1988a, p. 186). This argument is based on a known conception present in other areas, for example the opposition to integrating women into military positions that have been reserved for men, for fear that "the integration of women will hurt bonding between male soldiers, which is considered to be vital for the performance of their military functions" (Almog 1996, p. 638).²³ It appears that initially, the opposition to the newcomers, especially to the law college graduates, was based on the fear that the public would discover that lawyers are not necessarily illustrious individuals and that people from the periphery, "Sephardi" Jews of Middle Eastern ancestry, and those whose matriculation and SAT grades were not the highest can also serve as successful lawyers.

Once extraneous groups already joined the profession, the natural conclusion was that the integration of the newcomers should be promoted according to the codes and patterns that have already been defined by the dominant group. In this sense, the legal profession is similar to the state, with the Bar Association as its government. This analogy is derived from another research project that I have been pursuing in recent years, investigating the medical examination of immigrants to Palestine between the two world wars (Katvan 2011). In that research, I investigated the manifest and latent functions of the immigrants' examinations. By nature, the manifest functions are easy to reveal: protecting the health of inhabitants and of the immigrants themselves from disease and epidemics. But various evidences indicate that these examinations carried out on a massive scale were in fact quite superficial (Fairchild 2003) and only few were prevented from entering the country on their basis. In other words, if the manner in which the examinations were carried out was not adequate to protect public health, what was their purpose? I posited that the examinations formed part of the social melting pot image achieved by absorption and welcoming ceremonies (Katvan 2011). Indeed, I propose that the "overcrowding of the profession" argument comprises a parallel latent and even unconscious function. This argument is to a large extent artificial, perhaps similar to the Bar examinations – which the vast majority of law degree graduates pass, indicating that they do not achieve the real objective of preventing entrance to the profession by allowing entrance to only a select few. When limitations to joining the profession do not achieve their objectives in the sense that more and more applicants turn to legal studies and seek admissions to the Bar, doubts arise not with regard to the effectiveness of the limitations (see Abel 1988a, p. 195), but with regard to their rationale. After passing the examinations, women and men, Sephardi and Ashkenazi,²⁴ Arabs and Jews become part of an (at least apparently) undifferentiated profession, and they can jointly oppose the next wave of law students.

However, Bar exams are only one example of such exclusionary rituals and symbols. As noted above, the internship period, the professional accreditation, and even the accreditation ceremony all bear potential to achieve cohesion and uniformity. Court dress and robes are clearly the best known example in this regard, intended to create a uniform, cohesive and unique identity, differentiating lawyers for the sake of both the practicing professionals and the public at large (Isani 2006, p. 51, Leiper 2006, Brundage 2008, p. 209). Even after accreditation,

²³ Women have been excluded initially from study as well (Mossman 2006, pp. 77-78).

²⁴ Jews of European ancestry, the traditional "veterans" of the Israeli legal profession.

the Israeli Bar maintains rituals such as professional advancement courses, conferences and professional journals, among others. The argument of the overcrowding of the profession assists these initiatives in serving as a cohesive factor.

The argument of the overcrowding of the profession was voiced in (pre-State) Israel even when fewer than ten lawyers were practicing in the country, and it is voiced today, when there are more than 50,000 registered lawyers in a country of seven million inhabitants. In this sense, Israel serves as a good test-case for analyzing the issue. What is the validity of the overcrowding argument in light of the fact that Israel has a record number of lawyers? If we accept the claim that overcrowding of the profession is evident in the number of lawyers, then the profession is indeed overcrowded - so what is the objective of struggling against an overcrowded profession in this situation?

Moreover, the argument of the overcrowding of the profession originates with both the more established professionals (some of whom did not meet the requirements demanded from those whose acceptance they now oppose)²⁵ and with the less established ones, graduates of the colleges, who are also concerned about the arrival of new lawyers. These facts also suggest the possibility that the arguments are superficial. Indeed, the arguments about overcrowding of the profession serve as a common denominator for all professionals who have already joined the profession. Indeed, selectivity –even if it is imaginary– strengthens intra-professional cohesion. This selectivity does not begin upon commencement of legal practice but rather already with the selection and admission ritual of new candidates to law studies (Guinier 2003, pp. 113-224, Abel 1988a, p. 194). Axiomatically, academic-legal knowledge is the central foundation in the definition of the profession (Abbott 1988, pp. 196-197). When facing a parallel situation in the U.S., in 1881 the American Bar Association preferred extended legal training in law schools over other types of training, and even that only in “reputable schools”:

The proponents of such measures, which they clearly saw would limit entry into the profession, often argued that such restrictions would meet the vexing problems of “overcrowding”. For the prosperous lawyers of the association, this overcrowding did not hold much of an economic threat. Rather for them it seemed to bring wrong kind of people into law and led to the sort of scoundrelism at the lower ranks of the profession that they believed brought disgrace to the entire fraternity. The rising standards of education at the reputable schools, however, never cut the growing number of students entering the law schools. In part, the appearances and flourishing of part-time and nighttime law schools accounts for this (Haber 1991, p. 222).

Legal studies also play a significant role in the formation of professional identity, (Nystrom 2010), which is why this stage is perceived to be so important by the profession, which seeks to influence its content (Abel 1988a). Indeed, this is the beginning of the melting pot²⁶ and part of the process of shaping the identity of the jurists according to the general codes in which the profession is interested, including the learning of new tools, and no less important, of a new language and terminology that contain much ceremony – the language of the law. As noted above, the legal profession is like a state; the state also has a language that it seeks to impose on its citizens. If citizens who speak foreign languages arrive in the country, the state loses an important unifying indicator. Indeed, one of the criticisms being voiced against part of the newcomers to the profession, aimed primarily at students of the law colleges, is that their language is slurred. Language is no doubt part of the professional’s socialization process – of creating a lawyer (Mertz 2007). And the responsibility is placed upon the institutions that accept and

²⁵ Some pointed to a portion of veterans as themselves not reflecting the required standard: “The absurdity is that it is precisely those whose professional level is controversial who lead the battle on behalf of the lawyer’s professional level” (Atias 1990). This argument indeed had a basis.

²⁶ See Yaar (2007, p. 72) for the concept of the melting pot.

qualify them, those mediators, the legal training institutions – that is, the colleges. When there was a tacit understanding between the profession and the universities about the desired model of future jurists, no problems arose. Nevertheless, the rules of the game changed with the entrance of the colleges into the arena. As Prof. Ron Shapira noted,

The covert deal between them [between law professors and the legal profession – E.K.] in the past was that the professors of law will serve as the guardians of the barricades of the legal profession, and in return will benefit from shares of the economic bounty of members of the profession and from social prestige... At a time of crisis, when the monetary temptation from breaching the walls increased, the professors of law preferred to join the besiegers, and the deal reached a state of efficient violation" (Shapira 2004, p. 844).

It was the law colleges that caused the breach in the walls.

6. Conclusions

An examination of the history of newcomers entering the legal profession demonstrates that the argument concerning overcrowding is not new (Helmholz 2011), but rather has been raised repeatedly ever since lawyers began working in Mandatory Palestine. In each instance, newcomers were accused of jeopardising the standards of the profession. This recycling of familiar discourses is akin to the comedy sketch mentioned in the opening of the article. Indeed, it appears that since the foundation of the profession, the established professional group has tried to reject newcomers by arguing that the field was too narrow to include them and that the existing institutions were sufficient for the provision of law degrees.

Since the early 1990s, the veteran professionals and academic institutions joined forces and accused the colleges of causing overcrowding within the legal profession. This was the second time in Israel's history that legal professionals joined forces to accuse others as a "group;" the first time involved an attempt to thwart the new immigrants who had studied abroad and sought to ply their trade in Israel. During this latter phase of criticism was targeted at law college students – the children and grandchildren of new immigrants, who were excluded from the homogeneous fabric of members of the profession.²⁷ In both cases, the criticism was aimed at the new practitioners' quality of academic training and linguistic skills. The historical dynamics illustrate how the players involved tried to shape the profession in their image (and language). This is what the British did, and with the establishment of the State, this is what Israeli lawyers did through their opposition to the acceptance of new immigrants into the profession. The legal establishment benefitted from the fact that there were only a few institutions that provided law degrees in Israel, which conferred academic dignity and lessened competition within the profession.

In sum, lawyers have been zealously guarding the boundaries of the profession since its inception, and continue doing so (Abbott 1988). This zeal has produced a relatively homogeneous group, whose members appear to have similar socio-economic characteristics (see also Abel 1988a, p. 187).²⁸ This fact can explain why the organized members of the profession, from the days of the British Mandate to present-day Israel, have been united on two related matters: the war against those who trespass the boundaries of the profession (Ziv 2013) and "the overcrowding of the profession." In the words of Abel (1988a, p. 210): "The project of controlling

²⁷ This situation is exactly parallel to that in the U.S. at the beginning of the 20th century, when the dominant phenomenon was that of the children of immigrants entering the profession: "Many of these new entrants were sons of immigrants, who might have been kept out of the profession if it had still trained its new lawyers as apprenticeships" (Haber 1991, p. 223; see also Abel 1988a, pp. 192, 199, 201).

²⁸ "In Weber's view, it was the key to professional exclusivity, allowing groups of people with common characteristics to pursue collective interests by restricting access to their knowledge, education, credentials, and markets. Thus, by defining itself a "legally privileged group," a profession is designed to exclude those whom its members see as "outsiders"" (Leiper 2006, p. 21).

the production of producers tends to unite all those within the charmed circle of qualified professionals". This is not merely an attempt to protect the livelihood of lawyers and to guard against competition. It is an attempt to protect cohesion among professionals who are generally not motivated by ideals. As Abel stated: "In order to become a profession they [the producers of a service] must seek social closure" (Abel 1988b, p. 10).

In the reality of a continuously over-crowding profession, the argument of "too many lawyers" serves to achieve an artificial "social closure". The overcrowding argument is, therefore, a standard discourse, part of the legal jargon, a narrative that reflects on one hand an attempt at separation and on the other the intent to strengthen the self. Similar to lawyers' trial robes, the "overcrowding of the profession" argument is addressed at both legal professionals and at the public at large. Among the professionals, it involves the creation of cohesion and uniqueness, and aims to enhance the status of members. It serves their self-interest by bonding various individuals over a topic agreed upon by all – the fear of the overcrowding of the profession.

Empirical findings show that to this day, law college students differ from university law students in many attributes. They bring a different skill set and background to the profession, which reduces the homogeneity to which the profession had been accustomed for many years. Precisely because of the fear of damage to homogeneity (and "the sense of professional community," as Abel (1988a, p. 188) stated), the "overcrowding of the profession" argument has acquired added poignancy. Once members of the profession understood that such "overcrowding" and the significant rise in the ratio of lawyers per capita is inevitable, the argument became merely symbolic. Indeed, gradually, law college graduates will become the majority of legal professionals in Israel. Yet the argument of the overcrowding of the profession continues to be voiced, with the accusation pointed at the law colleges. This insistence provides further proof that the argument is mostly artificial, both because some of those who voice it today are themselves graduates of the law colleges, and because the rhetoric of the need to shut down the colleges is clearly impractical. In other words, I do not claim that the profession is not overcrowded, but rather note that in the past, the argument of the overcrowding of the profession has been voiced also when the ratio of lawyers in the population was much lower. In previous years, there was no need to achieve homogeneousness but, but perhaps just a unifying factor among individuals. Today, this argument does not prevent new lawyers from joining the profession, but it serves the veterans in achieving cohesion with those who have newly joined the ranks of the profession, under conditions of much greater heterogeneity.

In this situation, there is no alternative but to accept the newcomers, even if with a certain opposition, so that they internalize the professional codes and become integrated into the profession on the terms of the veterans. With the massive entry of law college graduates into the market, to the point where they have become – or will soon become – the majority among the professionals, the opposition to the newcomers seems somewhat puzzling. Nevertheless, such opposition must be regarded as even more vital, precisely within a reality in which many lawyers are being integrated into the profession: the need exists to increase bonding and group cohesion and avoid the stratification of classes within the profession, at least outwardly. This need is particularly acute when lawyers hail from different backgrounds and additional gaps might form, such as in the areas of specialization and employment patterns,²⁹ so that assimilation and the strengthening of the common denominator are especially important. The "overcrowding of the profession" argument achieves this cohesion objective. At the same time, the

²⁹ Although, at least according to the Lawyers' survey, the 'two hemispheres' theory (Heinz and Laumann 1982) doesn't exist in the legal profession in Israel. University and college graduates are not differ dramatically in areas of legal practice.

melting pot continues its operation, and indeed, a new professional fabric is created continuously, which continues to oppose the possibility of the new lawyers joining the profession.

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