ESSAY

LAW AND SOCIETY JURISPRUDENCE

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INTRODUCTION

Professor Pierre Schlag recently sent shockwaves through the American legal academy. In a witty and merciless essay, he argued that "American legal scholarship today is dead."[1] Schlag believes that "for most people in the legal academy these days, there's no elaborated conception of what legal scholarship is supposed to be or do . . . ."[2] Moreover, lacking great texts, great methods, and great questions,[3] current legal scholarship is mostly a mimesis of what lawyers and judges do—produce advocacy-oriented reviews with legalist arguments over judicial concerns.[4] According to Schlag, imitating the judicial discourse reduces the legal academy's potential for "intellectual edification."[5]

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I am also grateful to the participants at the Graduate Students Workshop on Socio-Legal Studies in Germany and Israel (Tel Aviv University, December 2009) for their insightful comments on a talk that inspired this Essay and to Ronen Shamir, Tali Margalit, Hanoch Dagan, Ariel Porat, and the participants at the Future of Legal Theory Conference (Tel Aviv University, June 2010) for their useful comments on previous drafts.

1 Pierre Schlag, *Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening (A Report on the State of the Art)*, 97 GEO. L.J. 803, 804 (2009).

2 *Id.* at 806.

3 *Id.* at 812. Here, Schlag relies on Richard Posner's claims in a speech he delivered at the 1991 Association of American Law Schools. *See id.* at 812 n.27.

4 *Id.* at 813.

5 *Id.* at 819.

Schlag argues that there were three exciting periods in the history of American legal scholarship: the Langdellian era, the realist period, and the "law and . . . " period. These were exciting phases because they made people think. However, according to Schlag, even these three phases "failed to reproduce themselves as vital intellectual enterprises."[6] Unfortunately, Schlag leaves unanswered the questions of what the current legal academy should be and should do. He only gives a very vague clue by arguing that for the legal academy to avoid mediocrity, it has to produce "a reorientation of the gaze, a disruption of complacency, a sabotage of habitual forms of thought, a derailing of cognitive defaults."[7]

Although I find Schlag's essay a brilliant and important example of "a sabotage of habitual forms of thought" about the legal academy, I disagree with his disposal of the ongoing relevance and importance of the three phases in American legal history that he describes. In particular, I will focus in this Essay on the law and society movement, which is part of the "'law and . . . ' phase," and will argue for its ongoing significance to the production of a vivid, critical, and inspiring jurisprudence.

My point of departure is Robin West's response to Schlag's essay.[8] In her response, West claims that legal scholarship should strive to answer three questions: What is the law? Why is the law what it is? What should the law be?[9] West agrees with Schlag that far too much energy is devoted to the "mind-numbing"[10] first question of what the law is, but she argues that because "what the law is" is not all that clear, even the answer to this question may and should involve normative, political, and moral analyses—not just imitate judicial discourse. Certainly, by trying to answer the other two questions, legal scholarship can depart from mainstream judicial discourse and aim to produce "imaginative reconstruction"[11] of the law and its normative goals. West argues that Schlag is wrong in calling for less normativity in mainstream legal scholarship. On the contrary, jurisprudence should be more engaged in explicitly utopian, nonimitative, and nonadjudicative normative questions, which are part of one metaquestion: "[H]ow might a decent law contribute to a humane and just society and world[?]"[12]

West argues that it is too soon to determine what nonimitative, normative legal scholarship could or would be, since there is not yet

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6 *Id.* at 821.
7 *Id.* at 829.
8 Robin West, *A Reply to Pierre*, 97 GEO. L.J. 865 (2009).
9 *Id.* at 870–72.
10 *Id.* at 870.
11 *Id.* at 873.
12 *Id.* at 874.

enough of it.[13] However, she points to the variety of sources that might inform such scholarship, including sociology, economics, moral philosophy, liberal political theories, political commitments, gut instincts, poetry, and more. In this Essay, I wish to demonstrate the actual and potential contribution of the law and society movement to the creation of such nonimitative, normative jurisprudence.

In Part I of this Essay, I will analyze the work of Israeli scholars who identify themselves as part of the law and society community. This analysis will then be used to demonstrate this community's contribution to answering the three questions West argues should be at the heart of legal scholarship. In Part II, I will delve further into the Israeli case study and identify three major problematic tensions within law and society scholarship. In Part III, I will suggest ways that these tensions can be dealt with so that the law and society movement's contribution to a nonimitative, normative jurisprudence might be utilized.

I
Law and Society in Israel

It is extremely difficult to find one conclusive definition of the current field of knowledge of law and society scholarship. Even Austin Sarat, in his recent attempt to edit a canonical body of texts in this field, admits:

> Today then while law and society research and scholarship is vibrant and vital, the field is experiencing a period of pluralization and fragmentation. There is no longer a clear center of gravity nor a reasonably clear set of boundaries. Important scholarship proliferates under the banner of law and society even as that designation loses its distinctiveness.[14]

Sarat argues that, in the past, the American law and society movement was centered around the consensus that its work "enlist[s] social science to understand law and inform legal policy"[15] but that law and society projects today include theories and methods from the humanities and arts and relate to questions and issues such as globalization and identity politics that are outside the traditional scope of national legal policy.[16]

Hence, rather than attempting to provide an all-inclusive definition of the law and society movement, I ask what it is that Israeli schol-

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13 *Id.* at 875.

14 Austin Sarat, *Vitality Amidst Fragmentation: On the Emergence of Postrealist Law and Society Scholarship*, *in* The Blackwell Companion to Law and Society 1, 8 (Austin Sarat ed., 2004).

15 *Id.* at 2.

16 *Id.* at 4.

ars who identify themselves as part of this movement do. I chose the Israeli case study as part of my commitment, which I share with other Israeli law and society scholars,[17] to study Israeli society[18] and, hopefully, as an encouragement to other scholars to study the actual and potential jurisprudential contribution of law and society communities in other places.[19]

The Israeli law and society movement is a vibrant and relatively organized community with its own association, annual meetings, and website.[20] The impact of this movement in Israel is evidenced by a very significant change that has occurred within law faculties in recent years: all law faculties now offer introductory courses in law and society or more specific courses dealing with certain aspects of law and the society in which it operates.[21] Another significant development is the fact that in recent years Israeli law faculties have hired faculty members and teachers who are trained in the social sciences, either solely or in addition to legal training.[22] However, it is important to note that

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17 *See infra* text accompanying note 46.

18 This choice posits a methodological challenge because, in a sense, I am studying myself and my academic home. Hopefully, even though I am an active member of the Israeli law and society community as well as a member of the Israeli Law and Society Association, I have managed to distance myself enough from the familiar to produce a reliable account. On turning the familiar to the unfamiliar in the research process, see DEBORAH K. PADGETT, QUALITATIVE METHODS IN SOCIAL WORK RESEARCH: CHALLENGES AND REWARDS 25–27 (1998).

19 Much attention has been devoted to the evolution and nature of the American law and society movement. *See* Howard S. Erlanger, *Organizations, Institutions, and the Story of Shmuel: Reflections on the 40th Anniversary of the Law and Society Association*, 39 LAW & SOC'Y REV. 1, 3–8 (2005); Lawrence M. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763, 764–70 (1986); Bryant Garth & Joyce Sterling, *From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State*, 32 LAW & SOC'Y REV. 409, 417–19 (1998); Felice J. Levine, *"His" and "Her" Story: The Life and Future of the Law and Society Movement*, 18 FLA. ST. U. L. REV. 69, 70–75 (1990); David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 FLA. ST. U. L. REV. 1, 24–31 (1990). However, I did not find an empirical project delving into the question of the law and society movement's contribution to jurisprudence.

20 The Israeli Law and Society Association has a chair and a board but is not yet institutionalized as a formally registered organization. The association operates a mailing list of 143 members and a website. *See* THE ISRAELI LAW AND SOCIETY ASSOCIATION, http://www.ilsa.org.il/ (last visited Feb. 14, 2011). It also designates the organizers of the annual meeting and has recently established an annual competition for the best paper by a young scholar.

21 For Tel Aviv University Faculty of Law, see, for example, Professor Leora Bilsky's course on Law, Society and Culture, http://www2.tau.ac.il/yedion/syllabus.asp?year=2009&course=1411113001; for Haifa University Law Faculty, see, for example, Dr. Zohar Lechtman's course on Law, Society and Culture, http://weblaw.haifa.ac.il/en/yedion/pages/Course.aspx?ItemId=264; for Hebrew University Faculty of Law, see, for example, Dr. Irit Negbi's Course on Law and Society, http://sites.huji.ac.il/htph/shnaton/index.php; for Bar Ilan University Faculty of Law, see, for example, Dr. Avital Margalit's course on Law and Society, http://www.law.biu.ac.il/files/law/shared/74-100.pdf.

22 For example, the Tel Aviv University Faculty of Law recruited Shai Lavi, who has an MA in sociology and a PhD from the Jurisprudence and Social Policy Program, University of California, Berkeley, and myself, who holds a PhD in sociology.

there is no Israeli journal dedicated to law and society scholarship[23] and that the only LLM program in this field, which operated for ten years at Tel Aviv University (TAU), no longer exists. Moreover, among those law students who pursue an additional degree, very few choose the social sciences, preferring instead the managerial-accounting economic realm.[24]

The vitality of the Israeli law and society movement is also evident at the annual meetings of the American Law and Society Association (LSA).[25] Israeli scholars attend these meetings each year, and a few even hold leading positions within the LSA.[26] Notwithstanding that fact, it is important to note that Israelis are but a fraction of the population that attends the annual LSA meetings, especially when compared to the impressive relative numbers of Israelis at the conferences of the American and European law and economics associations.[27]

I chose to study the scholarly activity of those Israelis who identify themselves as part of the law and society movement by looking at the Israelis who participated at the LSA annual meeting that took place in Berlin in 2007—a meeting where the Israeli Law and Society Association (ILSA) was reestablished.[28] This meeting attracted an excep-

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23 Notwithstanding this fact, the Tel Aviv University Faculty of Law publishes an interdisciplinary book series in which many of the articles are embedded within the law and society movement. *See Law, Society & Culture*, TEL AVIV UNIVERSITY FACULTY OF LAW, http://www.law.tau.ac.il/Heb/?CategoryID=305 (last visited Feb. 14, 2011).

24 For example, in 2007, seventy-two percent of the law students at the Tel Aviv University Faculty of Law who went on to pursue an additional degree chose economics, accounting, or management. Less than one percent took sociology as their second degree. I thank Nira Sherman, at the time the Assistant to the Faculty Administrator for Students Affairs, for this information.

25 The influence of American academia in general on the Israeli law and society community is evident from the educational training of its members. Out of the forty-three Israeli PhD/JD participants at the 2007 LSA meeting (which will be discussed below), twenty-two have a PhD/JD from the United States. In addition, four of the seventeen participants with Israeli PhDs earned their MAs at U.S. universities. The other four have a PhD/JSD from England (three) or Canada (one).

26 For example, Professor Ronen Shamir is an active member of the LSA and was the chair of the 2010 Herbert Jacob Book Prize committee. Professor Gad Barzilai held several positions within the LSA, including member of the board of trustees in 2006 and member of the annual-meeting program committee in 2003. Dr. Michal Alberstein was a member at the 2009 annual-meeting program committee. *See 2009 Program Committee*, THE LAW AND SOCIETY ASSOCIATION, http://www.lawandsociety.org/ann_mtg/am10/pc.htm (last visited Feb. 14, 2011).

27 Oren Gazal-Ayal found that Israelis' participation in the American Law and Economics Association (ALEA) and the European Law and Economics Association is the highest when taking the state's population size into consideration. Although Israelis comprised only 2.6% of the LSA annual meeting in 2004, they comprised 11.31% of the ALEA annual meeting participants in that year. *See* Oren Gazal-Ayal, *The Past and the Future of Law and Economics in Israel*, 23 BAR ILAN L. STUD. 661, 672 (2007) (Hebrew).

28 ILSA was first established by Professors Menachem Hofnung and Ronen Shamir in the late 1990s and held a conference in both 1999 and 2000. In 2001, after a controversy over a panel he organized at the LSA that dealt with focused exterminations, Professor Shamir resigned and ILSA's activities ceased until its reestablishment in 2007. *See* E-mail

tional number of Israelis,[29] most of whom proved their ongoing commitment to the law and society movement by also attending later LSA meetings.[30] The conference's book registered fifty-seven participants as coming from Israel.[31] My study revealed that of the fifty-seven Israelis registered, nine did not attend the conference. Still, forty-eight participants is a significant enough number to allow an investigation of what it is that Israeli law and society scholars do and in what ways their work relates to the questions: What is the law? Why is the law what it is? What should the law be?

The study of the Israeli participants at the LSA conference in Berlin included obtaining all possible information from the conference book; searching electronically for the abstracts of the papers presented at the conference; and documenting the participants' institutional affiliations, educational degrees, academic fields of interest, the courses they teach, and their involvement in nongovernmental organizations for social change (NGOs). In addition, participants were contacted for missing information. Of the forty-eight participants, thirty-nine presented papers (including five who coauthored the paper with another Israeli participant, five who presented two papers, and one who presented her book), seven participated only as chairs and commentators, and two were passive participants. Two participants came from NGOs, one was a lawyer at the TAU clinics, two were advanced students, and the rest were PhD/JSD academics.

The educational training and the institutional affiliation of the participants reveal a very interesting picture. Out of the forty-five participants whose educational information we managed to gather, thirty-seven have a degree in law.[32] Of those with no legal education, one had all her degrees within the humanities, five had them within the social sciences, and two were trained in both. Moreover, of the forty-five cases in which we managed to locate the participant's academic institutional affiliation, thirty-three were from law faculties, one was a joint delegate of a law faculty and a social science faculty, one was a

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from Menachem Hofnung to author (Apr. 4, 2010, 16:30 IDT) (on file with author); E-mail from Ronen Shamir to author (May 8, 2010, 15:19 IDT) (on file with author).

29 While fifty-seven Israelis were registered for the LSA meeting in 2007 and forty-eight actually attended, only eighteen Israelis registered for the 2008 meeting, twelve for the 2009 meeting, and twenty-two for the 2010 meeting. *See* E-mail from Lissa Ganter to author (June 23, 2010, 18:54 IDT) (on file with author).

30 Out of the fifty-two Israelis registered for the 2008–2010 LSA meetings, thirty participated at the Berlin meeting in 2007. *Id.*

31 This number, and hence this study, does not include Israelis that took part in the conference while affiliated with a non-Israeli institution. For example, Jonathan Yovel is now a part of the Haifa University Faculty of Law, but at the time of the conference was at Columbia University and so is registered in the conference book index as coming from the United States.

32 Within these figures, a degree in criminology was counted as a degree in the social sciences and not in law.

joint delegate of a law faculty and an interdisciplinary program, nine were from social-science faculties, and one was from the humanities. Hence it is clear that most of those who see themselves as part of the law and society community in Israel are first and foremost legal scholars embedded in the institutional framework of law faculties.[33] The dominance of legal scholars was also evident in the reestablishment of ILSA, which took place at the 2007 LSA meeting. Although the driving force behind the organization and its chair for the next three years was Professor Menachem Hofnung from the Department of Political Science at the Hebrew University,[34] five out of the other six board members were from law faculties and law schools.[35]

Notwithstanding this strong evidence of legal dominance in the movement, it is important to note that of the thirty-seven participants with a legal education, eight also have one or more degrees in the social sciences (political science, sociology, economy, psychology), one has a sociolegal degree, and eight have one or more degrees in the humanities (philosophy, history, education). Hence, while almost forty-two percent of the participants at the conference had only legal degrees and twenty-three percent had no legal education, many law and society scholars embody in their academic training an interdisciplinary attempt to combine law with other fields of knowledge.[36]

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33 For similar findings on the dominance of legal scholars within the Israeli law and economics movement, see Gazal-Ayal, *supra* note 27, at 679.

34 Interestingly, three of the four "founding fathers" of the Israeli law and society community were from the social sciences (Menachem Hofnung, Ronen Shamir, Gad Barzilia) and only one from law (Menachem Mautner). However, Ronen Shamir claims that at a very early stage it became clear that law faculty members dominate this community. *See* E-mail from Ronen Shamir to author, *supra* note 28.

35 Ely Aharonson was at the London School of Economics but later joined the Haifa University Law Faculty. Moreover, out of the four conferences planned since the reestablishment of ILSA, three were exclusively sponsored by law faculties or schools and only one was cosponsored by a social-science faculty. *See* E-mail from Menachem Hofnung to author, *supra* note 28. Some argue that the dominance of the law is also evident in the American law and society movement. *Cf.* Jonathan Simon, *Law after Society,* 24 LAW & SOC. INQUIRY 143, 155 (1999) (reviewing STEWART MACAULAY ET AL., LAW AND SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW (1995)) (describing the emergence of the law and society movement in American law schools). Ronen Shamir has recently argued at the Graduate Students Workshop on Socio-Legal Studies in Germany and Israel, hosted by Tel Aviv University, that the LSA has been "conquered" by jurists. *But see* Marc Galanter & Mark Alan Edwards, *Introduction: The Path of the Law* and*s,* 1997 WIS. L. REV. 375, 380 (arguing that law and society has established little presence in legal academia). Likewise, Theodore Eisenberg has recently found that between 2004–2010, only 7.7% of the articles published in the *Law and Society Review* were written by writers whose leading field of study is law; 40.7% are embedded in sociology and 30.2% in political science and government. *See* Theodore Eisenberg, *The Origins, Nature, and Promise of Empirical Legal Studies*, TEL AVIV L. REV. (forthcoming 2011).

36 Likewise, forty percent of the legal scholars in Gazal-Ayal's study on law and economics in Israel also had a degree in economics. *See* Gazal-Ayal, *supra* note 27, at 679. These findings echo Balkin's argument that at most elite U.S. law schools "a bright young scholar who professed no interest whatsoever in interdisciplinary scholarship would find it

The abstracts of the thirty-eight papers and one book presented by Israeli participants, and the nine roundtables and sessions in which Israeli participants who did not present a paper took part as chairs, commentators, or discussants, reveal a wide range of issues. The issue most dealt with was labor rights, represented in five papers and two sessions (the evolvement of the right to work, the privatization of programs from welfare to paid work, infringement of employees' rights, labor-law enforcement, labor organization); four papers and one roundtable dealt with discrimination (against women, people with disabilities, or on the basis of ethnicity, nationality, or sexual orientation). The family was a relatively common theme (two papers dealt with corporal punishment of children, one with parental surveillance, one with same-sex parents, one with interreligious couples, and one with the tender-years doctrine); four papers dealt with courts and judges (court activism, constitutional court, Sharia court, and judges' attitudes toward the media); four papers dealt with issues related to space (segregated communities, the Separation Wall, the Bedouin in the Negev); four additional papers dealt with political, state, or semistate bodies such as parties, committees, and regulators; three papers dealt with globalization (group representation in global organizations, changes in the global legal system, effect of global norms on Israeli law); one paper and two roundtables dealt with legal education and methodology (legal education and the humanities, courses on historical trials, how to do fieldwork); two papers and one book dealt with law, culture, and religion (ritual slaughter, pigs); one paper and one session dealt with property and capital (obligation in ownership, credit cooperative societies); one paper and one roundtable dealt with legal consciousness; one paper with mediation; one with the law's impact on behavior; one with transgendering; one roundtable with torture and security; and one session with "history for an era of transformation, resistance, and futures."

Notwithstanding this variety of issues, there is a clear line connecting more than half of the papers presented by Israelis at the 2007 LSA meeting. This line involves the third question: What should the law be? Moreover, correlating West's call, the normative departure point of many of these papers is the metaquestion: "How might a decent law contribute to a humane and just society and world?" No fewer than twenty papers out of the thirty-eight presented dealt with the ways the law should be shaped, interpreted, changed, enforced, or overcome so that members of disempowered, excluded, discriminated, or exploited groups might enjoy justice, equality, freedom, and

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very hard to get a job." J.M. Balkin, *Interdisciplinarity as Colonization*, 53 WASH. & LEE L. REV. 949, 950 (1996). Indeed, Simon argues that in the 1990s a slogan for academic law in the United States could be "We are all interdisciplinary now!" Simon, *supra* note 35, at 169.

other basic human rights. Although some of the abstracts include a clear ideological statement, most join the mission of looking at the law from a humane and just perspective by revealing its actual or potential impact on social power relations in a concrete context.[37] In addition to this significant group of papers, there are some papers that do not directly deal with discrimination and exclusion but are still preoccupied with the question of the legal changes that are needed to promote a more humane and just society. These include the paper that looks at the law's attitude towards financial bodies that promote "mu-

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[37] This group includes the following papers presented at the Annual Meeting of the Law and Society Association in Berlin, Germany (July 25, 2007): Issachar Rosen-Zvi, *'Pigs in Space': Geographic Separatism in Multicultural Societies*, *in* LAW AND SOCIOLOGY 225, 226 (Michael Freeman ed., 2006); Avishai Benish, *Outsourcing Discretion: Privatized Welfare Eligibility Determination and the Limits of Regulation*, *abstract available at* http://www.allacademic.com/meta/p181772_index.html; Yifat Bitton, *The Limits of Equality and the Virtues of Discrimination: The Formation of Discriminated Groups in the United States*, *abstract available at* http://www.allacademic.com/meta/p177667_index.html; Yishai Blank, *The Gated Community as a Private City: Fragmentation of Public Space in Israel*, *abstract available at* http://www.allacademic.com/meta/p177671_index.html; Guy Davidov, *Public-Sector Subcontracting: Harsh Consequences for Workers and Some Possible Solutions*, *abstract available at* http://www.allacademic.com/meta/p175983_index.html; Yoav Dotan, *The Boundaries of Social Transformation Through Litigation: Women and Gay Rights in Israel*, *abstract available at* http://www.allacademic.com/meta/p175548_index.html; Eran Golan, *New Legal Strategies for Enforcing Labor Rights*, *abstract available at* http://www.allacademic.com/meta/p182139_index.html; Aeyal Gross, *Gender Outlaws Meet the Law: Feminism and Queer Theory at the Borderlands*, *abstract available at* http://www.allacademic.com/meta/p178172_index.html; Daphna Hacker, *Continuity and Change in Parental Roles Constructions upon Divorce in Israel*, *abstract available at* http://www.allacademic.com/meta/p177643_index.html; Daphna Hacker, *From Moabian Ruth to Norly the Filipino: Intermarriage in Israel*, [hereinafter Hacker, *Intermarriage in Israel*] *abstract available at* http://www.allacademic.com/meta/p177637_index.html; Alexandre (Sandy) Kedar, *Constructing Marginality Through Illegality: Israeli Law and the Bedouins of the Negev*, *abstract available at* http://www.allacademic.com/meta/p177248_index.html; Alexandre (Sandy) Kedar, *Israeli Courts and the Construction of a Separation Zone/Regime Between Israel/Palestine*, *abstract available at* http://www.allacademic.com/meta/p177630_index.html; Faina Milman-Sivan, *Incorporating Civil Society into Global Governance: Lessons from the International Labor Organization (ILO)*, *abstract available at* http://www.allacademic.com/meta/p177660_index.html; Sagit Mor, *Reduced Minimum Wage for Disabled People: A Path to Work or a Poverty Trap?*, *abstract available at* http://www.allacademic.com/meta/p178006_index.html; Tamar Morag, *Law and Change: Parental Corporal Punishment from a Comparative Perspective*, *abstract available at* http://www.allacademic.com/meta/p177058_index.html; Guy Mundlak, *The Paradox of Organizing Workers in Centralized Industrial Relations Systems*, *abstract available at* http://www.allacademic.com/meta/p178167_index.html; Orna Rabinovich & Faina Milman-Sivan, *The Next Phase of Mediation: Between Relationship and Identity, Satisfaction and Accountability*, *abstract available at* http://www.allacademic.com/meta/p177661_index.html; Ilan Saban, *Law's Erosive Power upon a Certain "Control" System: The Arab Minority in Israel 1976–2000*, *abstract available at* http://www.allacademic.com/meta/p177276_index.html; Benjamin Shmueli & Ayelet Blecher-Prigat, *In the Eye of the Camera and the Law: Parental Surveillance of Children*, *abstract available at* http://www.allacademic.com/meta/p178358_index.html; Els Sol, Guy Mundlak & Eva Schram, *Governing Temp Agency Work by New Modes of Regulation: Lessons for Europe?*, *abstract available at* http://www.allacademic.com/meta/p178018_index.html; Michal Tamir & Dalia Cahana-Amitay, *The Hebrew Language Has Not Created a Title for Me: A Legal and Sociolinguistic Analysis of New-Type Families in Israel*, *abstract available at* http://www.allacademic.com/meta/p177145_index.html.

tuality, partnership[,] and solidarity,"[38] the paper that seeks to advance legal "non-hierarchal" and reflexive institutions,[39] and the paper concerned with the breach of the legal expenditure ceiling by political parties and hence with the dangerous connection between capital and politics.[40] The emphasis on a humane and just society is also evident from the fact that while terms such as "efficient/cy," "transaction costs," and "wealth maximization" are not mentioned even once in the abstracts,[41] the word "right/s" appear in eight abstracts, "human/istic" in five, discrimination in three, and "just/ice" in three.[42]

Indeed, the abstracts suggest that members of the Israeli law and society community value a social vision of and moral commitment to a substantial welfare state that does not privatize its basic obligations toward its weakest members and fights discrimination on the basis of sex, gender, ethnicity, nationality, and religion. Members of this community seek a legal system that prevents parents from harming their children, employers from exploiting their employees, and the powerful from segregating geographic space.[43]

Moreover, this group of scholars is committed to studying its own society and focuses its studies on Israel. Twenty-three out of the thirty-eight papers and one book presented at the LSA 2007 meeting dealt exclusively with Israel and an additional five dealt with Israel and one or two other countries. This commitment is not trivial, as it presents an obstacle to integration into Western academia and especially to the

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38 Neta Ziv, *Credit Cooperative Societies in Early Israeli Statehood: Financial Institutions as a Mirror of Social Transformation*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p178026_index.html.

39 Oren Perez, *Purity Lost: The Paradoxical Face of the New Transnational Legal Body*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017296.

40 Menachem Hofnung, *Do They Matter? Expenses Ceilings in Electoral Campaigns*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p181837_index.html.

41 Carrie Menkel-Meadow argues that these phrases, along with *risk allocation*, *moral hazard*, and *externalities* (which were also missing from the abstracts in this study), are the leading unifying concepts developed by the law and economics movement. Carrie Menkel-Meadow, *Taking Law and _____ Really Seriously: Before, During, and After "The Law,"* 60 VAND. L. REV. 555, 568 (2007). This is not to say, however, that law and economics scholars cannot be interested in a humane and just society.

42 This count does not include *human* as a noun or *just* in contexts other than fairness.

43 This Israeli finding correlates with Trubek's more general observation regarding the law and society movement's commitment to uncovering various forms of inequality and injustice. *See* Trubek, *supra* note 19, at 9. It likewise correlates with Richard Posner's impression that liberals dominate the sociology of law while the law and economics community is more politically conservative. *See* Richard A. Posner, *The Sociology of the Sociology of Law: A View from Economics*, 2 EUR. J.L. & ECON. 265, 274 (1995).

likelihood of publication in non-Israeli journals, which in recent years has become a condition for promotion within Israeli universities.[44]

The conclusion that many Israeli law and society scholars are committed to a more humane and just Israeli society is strengthened by an examination of the participants' involvement in NGOs. In addition to the two participants who were employed by NGOs at the time of the conference, at least twenty-one other participants are or were involved as founders, board members, or pro bono consultants in NGOs such as the Association for Civil Rights in Israel, Itach (Women Lawyers for Social Justice), Bimkom (Planners for Planning Rights), and the Association of Law in the Service of the Elderly.[45]

The second question, "Why is the law what it is?" is also one that preoccupies the Israeli law and society community, but less so than the third question. One interesting finding is that this second question is a main motivation of the nonlegal scholars who participated in the conference. Out of the eleven papers that dealt with explanations of the current legal situation, only two were written by law faculty members without nonlegal education background (out of twenty-two participants with these characteristics). Indeed, it seems that this second question, one that usually demands an empirical study to be answered, attracts those who are interested in the law from a historical, sociological, or political-science perspective and have the required methodological tools to answer it due to their educational background in the social sciences.

The professional activity of the Israeli participants at the 2007 LSA meeting proves that, notwithstanding their preoccupation with the second and third questions that West argues should be at the heart of legal scholarship, they do not neglect the first question of "What is the Law?"[46] Out of the thirty-one participants who hold a position within a law faculty or school,[47] eighteen teach doctrinal legal courses.[48] An additional six participants mention one or more doctri-

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44 In comparison, Gazal-Ayal argues that one reason Israeli legal scholars are attracted to law and economics is that it allows them to meet the growing institutional demand for publication in U.S. law journals as a condition for promotion. *See* Gazal-Ayal, *supra* note 27.

45 There may be more participants who are or were involved in NGOs because information on the Internet might be partial and because not all of those whom we asked about this aspect of their activity via e-mail replied.

46 Clearly, those who are interested in the second and third questions must be familiar with what the law is. However, there is a big difference between such familiarity and an expertise in doctrinal law.

47 Due to the particular curricula they teach, this number does not include the two participants from the Criminology Institution at the Hebrew University Law Faculty, the head of the Tel Aviv University Legal Clinics, or one of the Clinic's lawyers who attended the conference.

48 This number does not include those who are on sabbatical (two) or those with no data available on their courses (two).

nal fields of law as one of their fields of interest but do not teach it (at least not in the 2009–2010 academic year that was examined for this study). The doctrinal legal courses and fields of interest include tort law (six), administrative law (six), labor law (five), constitutional law (four), family law (three), local-government law (two), property (two), contracts (two), environmental law (two), civil procedure (two), criminal law (one), criminal procedure (one), corporate law (one), military law (one), tender law (one), real-estate law (one), taxation (one), and international law (one). Hence, it is clear that most of the legal academics that identify themselves as part of the law and society community consider the question of what the law is as an integral part of their work and are sufficiently regarded as experts in doctrinal analysis to teach it in their faculties and schools. The legal doctrines these scholars teach and study demonstrate a wide and varied interest in different fields of law, not merely a concentration on the more apparently obvious fields of law for those interested in a just and humane society, such as labor law and environmental law.

Moreover, the nondoctrinal courses taught by this group demonstrate the revolution law and society has brought into legal education. Law students today can choose from a range of courses unheard of when I was a law student at the Hebrew University twenty years ago, a time in which the academic program for law students included mostly obligatory doctrinal courses. This variety includes courses such as "Therapeutic Jurisprudence," "Multicultural Negotiation," "Feminism in Literature and in Law," "The Sociology of the Criminal Justice System," "Law and Social Change," "Law and Welfare," "Behavioral Analysis of Law and Psychology," "Qualitative Methods for Law Students," "The Philosophy and Ethics of Biotechnology," "Property in Its Social Context," "Globalization and Law," and "Rights of the Arab-Palestinian Minority in Israel." Many of these titles support the conclusion drawn above that this group is a community that shares a moral obligation towards a humanistic and just law as well as society at large.

II
Three Major Tensions

As we saw in the previous Part, the Israeli law and society community does contribute to the legal scholastic project, as defined by West. Its members engage the questions of why the law is what it is and what the law should be; many are also occupied with the question of what the law is. In this Part, I wish to further highlight the contribution of law and society scholarship to legal theory and discuss the risks it might bring. Indeed, as we shall see, these contributions and risks are centered on three major tensions that might each be either different

sides of the same coin or different views regarding the same possible impact.

A. Complexity and Confusion

The scholarship of the Israelis identifying with the law and society movement highlights its contribution to a complex understanding of law within the society in which it functions. Although law is at the center of this community's studies, its analysis goes far beyond a description of the law using regular doctrinal tools. As the participants in the 2007 LSA meeting demonstrate, these scholars ask questions about law in action, while broadening the definition of law to include subnational[49] and transnational legal arenas.[50] They seek to understand social forces that shape the written law[51] and the law's impact on different social groups.[52] Likewise, they are interested in the ways legal professionals perceive the law[53] and how laypeople act in its shadow.[54] Moreover, these scholars use a variety of methodologies including case study analysis,[55] poetic[56] and sociolinguistic analysis,[57] theoretical modeling,[58] hypothetical questionnaires,[59] qualitative in-

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49 *See* Sol, Mundlak & Schram, *supra* note 37.

50 *See* David Levi-Faur, *Varieties of Regulatory Capitalism*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p178231_index.html; Oren Perez, *From Intel to Tel Aviv "White City": Law Between Globalization and Localization at 21st Century Israel*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p175553_index.html; Perez, *supra* note 39.

51 *See, e.g.*, DAPHNE BARAK-EREZ, OUTLAWED PIGS: LAW, RELIGION, AND CULTURE IN ISRAEL (2007); Shani Bar-On, *The History of Labor in Ofakim, Israel, and the Construction of a Right to Work*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p173696_index.html.

52 *See, e.g.*, Benish, *supra* note 37; Hofnung, *supra* note 40.

53 *See* Anat Peleg, *Reluctant Partners: The Relationship Between Judges and the Media in Israel*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p175706_index.html.

54 *See* Hacker, *Intermarriage in Israel*, *supra* note 37.

55 *See* Gross, *supra* note 37.

56 *See* Shulamit Almog & Michal Alberstein, *Legal Education and the Humanities: Poetics of Interpretations*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p175964_index.html.

57 *See* Tamir & Cahana-Amitay, *supra* note 37.

58 *See* Margit Cohn, *Constitutionalism and Judicial Activism: British and Israeli Debates*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p177749_index.html.

59 *See* Yuval Feldman & Doron Teichman, *Were All "Legal Dollars" Created Equal?*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p176944_index.html.

terviews,[60] surveys,[61] historical analysis,[62] comparative analysis,[63] and anthropological fieldwork.[64]

Hence, this scholarship is more evidence of the law and society movement's significant contribution to what is by now an almost taken-for-granted jurisprudential understanding of the law as a dynamic, interpretive, and political social-institution, discourse, symbol, and cooperative behavior.[65] Indeed, without the law and society movement's contribution to this understanding of the law, it is hard to imagine other nontraditional jurisprudential projects that have followed it, such as critical legal studies, feminist jurisprudence, and even law and economics.[66] Moreover, as we have seen, this complexity of concerns and methods has dramatically changed academic legal education in Israel and enriched it with courses that go far beyond doctrinal analysis.[67] Israeli law faculties and schools still might not fully follow Menkel-Meadow's call for an interdisciplinary approach to legal education, but they certainly no longer solely follow the Langdellian version that she argues still governs law schools in the United States.[68] Furthermore, the presence of law and society scholars within law faculties and schools affects the institutional discourse and exposes other staff members to questions and insights that challenge such notions as objective and effective legal rule or reform.[69]

However, the "cacophony of voices"[70] caused by this variety of questions, and ways to answer them, raises questions about this move-

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60 *See* Hacker, *Intermarriage in Israel*, *supra* note 37.

61 *See* Yifat Holzman-Gazit & Raanan Sulitzeanu-Kenan, *Commissions of Investigation and Public Opinion: A Survey of Israeli Society*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p175483_index.html.

62 *See* Shai Lavi, *Dead Rite: The Ritual Slaughter Debate in Early Twentieth Century Germany*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p177426_index.html.

63 *See* Morag, *supra* note 37.

64 *See* Ido Shahar, *On the Sources of Dynamism in Shari'a Courts: A Neo-Institutional Perspective*, Paper Presented at the Annual Meeting of the Law and Society Association, Berlin, Ger. (Jul. 25, 2007), *abstract available at* http://www.allacademic.com/meta/p178054_index.html.

65 *See* Trubek, *supra* note 19, at 6.

66 *See id.* at 46–47.

67 *See also* MENACHEM MAUTNER, LEGAL EDUCATION, TEL AVIV: RAMOT (2002) (Hebrew).

68 *See* Menkel-Meadow, *supra* note 41, at 560–63; *see also* Bryant G. Garth, *Strategic Research in Law and Society*, 18 FLA. ST. U. L. REV 57, 67 (1990) (arguing that law and society knowledge would enrich law students and be relevant to their professional lives on many levels).

69 *See* Galanter & Edwards, *supra* note 35, at 375 (arguing that the law and society movement has contributed to a much more varied American law-school world compared to the past).

70 Malcolm M. Feeley, *Three Voices of Socio-Legal Studies*, 35 ISR. L. REV. 175, 182 (2001).

ment's identity and future. Indeed, the downside of the LSA's pluralist policy not to scrutinize the abstracts submitted to its annual meetings, generally adopted by ILSA,[71] is that it creates large gatherings of people possibly with little in common; in an LSA annual meeting, unless you are part of an organized session, it is very likely that you will find yourself with other participants who do not share your ontological and epistemological assumptions and methodological background. This downside is somewhat attenuated in ILSA annual meetings due to the dominance of legal scholars described above. Still, even with a shared legal background, the diversity of fields of interests, theories, and methods might reduce the effectiveness of a conference that brings together such a diverse audience.[72]

Moreover, this lack of clear boundaries[73] can diminish the Israeli law and society community's impact on law faculties, as is the case in the United States, especially when compared to the impact of the law and economics movement's impact. Indeed, the relative impact of these two offspring of the match between law and the social sciences on Israeli legal academia could yield another study, but there is already some evidence to suggest that relations between them might evolve into that not of loving twins, but of rivals who struggle for precedence.[74]

The confusion over what constitutes the Israeli law and society movement is fueled not only by the complexity of disciplines, missions, and methods—manifestations of the more general legal academia identity crisis[75]—but also by the identity crisis within the social sciences, which is relevant to another tension within the law and society community, discussed next.

B. Legitimization and Shallowness

In the United States, one central force in the integration of law and society scholarship into law faculties was the "quest for social re-

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71 The preparations for both the 2008 and 2009 ILSA conferences were accompanied by discussions among ILSA board members (including myself) as to the scrutiny policy that should be adopted. In both cases, a minimalist approach was adopted.

72 One way to attempt to overcome the problem of lack of shared ground is to decide on a general theme for the annual meeting that will affect both the scrutiny policy and the organization of key events during the conference. The downside of this option would be the exclusion of those who are not interested in the theme. ILSA is struggling to find a way to benefit from the advantages of such an organizing theme without paying too high a price of exclusion.

73 Simon, *supra* note 35, at 188.

74 Kenneth G. Dau-Schmidt, *Family Gatherings and a Dirty Little Secret of the Law and Society Association*, 33 LAW & SOC'Y REV. 1081, 1082–84 (1999).

75 *See generally* Hanoch Dagan & Roy Krietner, *The Character of Legal Theory*, 96 CORNELL L. REV. 671 (2011); Shai Lavi, *Turning the Tables on "Law and . . . ": A Jurisprudential Inquiry into Contemporary Legal Theory*, 96 CORNELL L. REV. 811 (2011).

form."[76] The social sciences, perceived as valid and objective, were co-opted by those who wished to use the law to engineer society.[77] Likewise, many of the Israelis who identify with the law and society movement are preoccupied with the third question of what the law should be, and hence with legal reforms aimed at achieving social goals. It seems that in order to gain legitimacy, especially within the legal realm to which most of these scholars belong, one must engage with social engineering through the law.

However, only fifteen out of the forty-five Israeli participants in the 2007 LSA meeting about whom we managed to collect full educational information had any background in the social sciences. Not surprisingly then, only seven abstracts mention classic social-science methodologies such as interviews, surveys, and fieldwork. In the rest of the abstracts, the methodological part is the weakest link, and in many cases it is hard to tell what kind of a methodology was employed, if any. Hence, it seems that much of Israel's law and society scholarship does not rely primarily on independent social-science research.[78] In addition, these findings raise doubts as to the ability of these scholars to read social-science work and use it as a secondary resource. Finally, one should point out the risk of these scholars performing shallow research that they are not trained to complete.[79]

A different concern emerging from the findings—also related to the tension between legitimacy and shallowness—is what Sarat and Susan Silbey call the "pull of the policy audience."[80] The warning from the subordination of the social sciences to the legal is extremely relevant in the Israeli context because, as we saw, those who do law and society work are mostly connected to the legal institution. This connection can stem not only from an essential wish to be part of the legal community but also from material interests in cases in which law faculties and schools are financially better off when compared to other academic institutions.

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76 Feeley, *supra* note 70, at 175.

77 *Id.* at 178.

78 This is not to say that uncritical and unreflective trust in empirical research as revealing the truth about the sociolegal reality is justified. On the contrary, empirical studies are not and cannot be a neutral and perfect presentation of an external truth. *See* Daphna Hacker, *Empirical Study of Law—Why Now and If at All?*, 34 TEL AVIV L. REV. (forthcoming 2011) (Hebrew).

79 Manifestations of this risk are the law students—whom I meet as a supervisor or reviewer—who conduct sociological studies without sufficient training in social sciences. Even I, who did my PhD in sociology, can detect that my shortcomings as an empirical researcher stem from the fact that my bachelor's and master's degrees were not achieved within the social sciences but, rather, in law.

80 Austin Sarat & Susan Silbey, *The Pull of the Policy Audience*, 10 LAW & POL'Y 97, 98 (1988); *see also* Elizabeth Warren, *The Market for Data: The Changing Role of Social Sciences in Shaping the Law*, 2002 WIS. L. REV. 1, 3.

In their search for legitimacy, law and society scholars run the risk of adopting the concerns of the legal elite that hosts them[81] and the bodies that fund them.[82] The funding element is crucial because empirical studies are much more expensive than traditional armchair legal studies.[83] This risk includes asking only the questions that interest the legal elite, politicians, and government officials, conducting uncritical studies, and using only quantitative research methods perceived by the policy audience as objective and valid. One might argue that such characteristics of law and society scholarship pose a risk not to law but, if at all, to other disciplines. I would argue that the potential jurisprudential contribution of the law and society movement is extremely limited if it is not allowed to develop into a critical field of knowledge interested in a broad range of questions and equipped with a varied methodological toolkit.

Finally, in its struggle for legitimacy, the law and society community has to face the crisis of legitimacy within the social sciences themselves. While the prosperity of law and economics and empirical legal studies within legal academia demonstrates the latter's ongoing belief in neutral and objective science, many within the social-sciences community have abandoned the positivist perception of science as apolitical and have delved into a reflexive analysis of science as an institution of power.[84] One possible response to this legitimacy crisis is to move away from classic social-science research of the law to postsocial research strategies embedded in the humanities.[85] Indeed, as we saw, some of the abstracts of the Israeli scholars in the 2007 LSA meeting do exactly that.[86] Those law and society scholars who insist on the social sciences, however, must struggle for legitimacy in an age of skepticism, a consequence that is relevant also to the third and final tension, discussed next.

C. Optimism and Pessimism

As we have shown, many Israeli law and society scholars tend to strive for an egalitarian and just society. As in the United States (at least in the 1960s),[87] Israelis who identify themselves as part of the law

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81 *See* Trubek, *supra* note 19, at 20.

82 *See* Warren, *supra* note 80, at 7–13.

83 On the importance of funding for the law and society project, see Simon, *supra* note 35, at 147; Trubek, *supra* note 19, at 29.

84 Trubek, *supra* note 19, at 34–36.

85 Feeley, *supra* note 70, at 182; Simon, *supra* note 35, at 154.

86 A surprising finding that highlights the success of the postsocial study of law is that, from 1982 to 1991, interpretive articles that stream from feminism, critical race theories, and critical legal studies were three times more present in the most cited list in law reviews than law-and-society- and law-and-economics-based articles combined. *See* Galanter & Edwards, *supra* note 35, at 384.

87 Feeley, *supra* note 70, at 18; Trubek, *supra* note 19, at 8–9.

and society movement perceive their work not as neutral scholarship but as a normative project committed to uncovering various forms of inequity and injustice. From such a normative standpoint, it is hard to understand the academic project of the law and society community without faith in the ability of the law to produce progressive social change.[88] Indeed, some of the papers presented at the 2007 LSA meeting by Israelis dealt directly with ways in which the law should be improved so that the underprivileged will be better protected and society as a whole will be more just and humane.[89]

However, it seems that in many cases the preoccupation of the Israeli law and society scholars with the ways the law discriminates against and harms the disempowered is not embedded in an optimistic view of the law's ability to bring about justice and equality but in a pessimistic outlook that doubts the law's capacity as an effective tool for reform.[90] Indeed, much of the law and society work was, and still is, aimed at pointing out the gap between the promises of equality and justice made by liberal legal systems and the financial, gendered, race-focused, and other unequal power relations preserved by these very systems.[91] Such a pessimistic standpoint is in tension with the legitimacy of the field as able to produce valid data to inform law reform and moreover with the law and society project as a whole, since it questions the importance of studying the law if it is but a mirror of more dominant social forces.

III
Facing the Challenges

The tensions discussed in the previous Part highlight the challenges that the legal academics and law and society community must face if they are to utilize to its fullest the latter's potential to contribute to the nonimitative, normative, legal scholarship that West urges us to develop.

I believe it is clear that the law and society community must maintain its flexible, open, and dynamic boundaries. It is this openness that allows one to challenge the positivistic perception of the law and of science and to produce reflective and complex knowledge. However, these flexible boundaries should not be mistaken for a lack of quality standards. I find the no-scrutiny policy of the LSA an example of the kind of laxity that leads to low-quality sessions, with presenters who come unprepared or do not show up at all. Although other

88 Trubek, *supra* note 19, at 9.

89 *See, e.g.*, Davidov, *supra* note 37; Shmueli & Blecher-Prigat, *supra* note 37.

90 *See, e.g.*, Dotan, *supra* note 37; Gross, *supra* note 37; Kedar, *supra* note 37.

91 One famous example is Gerald N. Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? (2d ed. 2008).

methods are employed to ensure excellence,[92] the law and society community in Israel, as elsewhere, must make sure it does not become a platform for mediocrity.

Legal academia, for its part, must not only tolerate the confusion caused by law and society scholarship (as well as by other nonpositivistic voices) but also embrace it as the condition for the proliferation of a nonimitative jurisprudence. A discipline that is burdened by the necessity of training professionals must elevate itself with questions and ways of answering that are not subordinate to the ways lawyers and judges currently think and act, or it is doomed to become no more than a manual.

Furthermore, this openness of boundaries must not be confused for nihilism or even radical relativism. I adopt here Marc Galanter and Mark Alan Edwards's position that the law and society community should distinguish itself from postmodern movements in the law by insisting that the "state of the world ha[s] to be validated by some appropriate method of investigation."[93] The realization that no research can be politically neutral and that every study—whether quantitative or qualitative, involving interpretation[94]—should not lead to an abandonment of trustworthy, credible, transferable, dependable, and confirmed research.[95] Hence, those who wish to join the law and society community should overcome the current failure of legal education to provide social science theoretical and methodological training and acquire it outside of law schools. Legal academia, for its part, must offer such training, if not as a mandatory LLB course, then at least as an option for advanced students. Moreover, it should encourage its students to combine social-science education with their legal studies. This is crucial for the potential contribution of the law and society movement to an ethical and reflexive legal education[96] in an era of aggressive capitalism that pressures lawyers to compromise their ethics for economic survival.

Exposure to the social sciences during law school is especially important in Israel, since we do not have a college education system like that in the United States that provides an opportunity for exposure to social-science education. Likewise, U.S. law faculties might consider

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92 One means to ensure excellence, which is used by the leading law and society journals such as *Law and Society Review* and *Law and Social Inquiry* is peer review. For the importance of the peer-review model, see Lee Epstein & Gary King, *The Rules of Inference,* 69 U. CHI. L. REV. 1, 125–30 (2002). Another way to single out excellent works, which is used by the law and society association, is granting prizes for excellent articles and books.

93 Galanter & Edwards, *supra* note 35, at 383.

94 *See* Hacker, *supra* note 78.

95 Egon G. Guba & Yvonna S. Lincoln, *Epistemological and Methodological Bases of Naturalistic Inquiry*, 30 EDUC. COMM. & TECH. J. 233 (1982).

96 *See* Garth, *supra* note 68, at 67–68.

following the example of the Israeli law faculties that recruit only PhD holders, rather than lawyers,[97] since this guarantees a broad education and experience in research. Of course, for the law and society community to significantly impact jurisprudence, these recruits must include PhD graduates with substantial training in the social sciences.

Moreover, to realize law and society scholarship's potential contribution to a nonimitative jurisprudence, law faculties must allow independent law and society research and provide the requisite resources.[98] Without such funding, law and society scholars might have to sacrifice their concerns to the interests of those who can provide the funds or be unable to conduct any empirical research whatsoever. Moreover, the law and society community must insist on including scholars who are interested in the law as a social phenomenon but work outside law faculties (and hence are relatively independent of the policy audience). Likewise, it is important to collaborate with law and economics scholars who share the vision of a humane and just society and to realize that, with such a shared vision, much law and society and law and economics scholarship can be complementary.[99]

Finally, Bryant G. Garth is right to insist on reimagining society and to believe that we can change social relations,[100] even for those of us who have lost our belief in cause-and-effect science and in the ability of the law to engineer society. One way to do so is to become a bridge between legal academia and life outside campus. By challenging the ivory-tower practices of law faculties and developing ways that legal scholarship can become part of the society in which it functions, the law and society community can significantly contribute to a nonimitative, normative jurisprudence and carve an optimistic niche in a pessimistic reality. The current Israeli political era, with its increasingly extremist nationalism, uncompassionate neoliberalism, and orthodox religiosity, makes this mission more urgent and important than ever. Legal clinics, participatory action research, active member-

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97 In 1994–1995, out of the 8,231 people listed in the Association of American Law Schools directory, only 562 held PhD degrees. Laura Kalman, *Garbage-Mouth*, 21 LAW & SOC. INQUIRY 1001, 1003 (1996). However, more elite law schools are recruiting PhD and multidisciplinary scholars. *See* Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819, 828; Jeffrey J. Rachlinski, *Evidence-Based Law*, 96 CORNELL L. REV. 901 (2011).

98 This is especially crucial if law faculties wish their students to be able to conduct empirical studies. With no funds, LLM or PhD students must, for example, transcribe the interviews they conduct themselves and bear the costs of archival work. This means that they will not be able to conduct the study or will be forced to compromise its quality.

99 On the importance of law-and-society and law-and-economics collaboration, see Dau-Schmidt, *supra* note 74, at 1083–85, Galanter & Edwards, *supra* note 35, at 384–85.

100 Garth, *supra* note 68, at 61; *see also* Howard Erlanger et al., *Is It Time for a New Legal Realism?*, 2005 WIS. L. REV. 335, 345.

ship in NGOs seeking social justice, and participation in governmental committees are some of the activities in which law and society scholars do, can, and should take part. Moreover, this community should continue to develop new ways of making law an academic discipline relevant to the struggle for a more humane and just society.

Conclusion

In this Essay I tried to learn from the nascent Israeli law and society community about the actual and potential contribution of law and society scholarship to the understanding of current and desirable law on the books and in action. Much more can and should be said about law and society outside the legal realm and outside Israel, and more can be said about the relations between the law and society scholarship and other movements in the law. My humble mission was to convince my readers of the relevancy of law and society scholarship to the development of a nonimitative, normative jurisprudence. I look forward both to future discussions about such a jurisprudence that will most certainly keep us reflexively busy and to the productive and activist scholarship I hope these discussions will engender.