Introduction

This collection of essays in legal history comes out of a conference held in Israel in 2002. The nine essays cover a great range of topics — topics that appear, at first sight, to have little or nothing in common. They range widely in time and space: we have Israel under the British Mandate; we have Bismarck's Germany; we have political trials in the United States; we have American family law, euthanasia, and the laws of the deathbed; we have Lincoln, Nebraska, and Czernowitz in the Austro-Hungarian empire. There are two essays on historiography and an essay on the uses of history by economists. This is, indeed, a rich, and varied, collection.

Despite all their differences, the papers have in common, as one expects, the specific historic sensibility of the days we live in. In particular, they are all children or grandchildren of a school of legal history whose main thrust has been to return *legal* history to history in general, to bring it back into the mainstream of historical thought. In the United States, this school of history is most closely associated with Willard Hurst, who taught at the University of Wisconsin and founded the so-called "Wisconsin School" of legal history. Hurst's work first won notice in the 1950s, when he published his first major books: *The Growth of American Law* and *Law and the Conditions of Freedom in Nineteenth-Century America*. Before that time, legal history was essentially a dead subject in the United States, and in the common law world in general, except for the mother country, England; and even there, legal history meant mainly medieval legal history, the glorious old days of the pure common law. Law school teaching, in the United States, in fact paid more attention to that tradition, and to English common law history, than to the legal history of Americans themselves. Hurst changed the emphasis dramatically. Later generations of legal historians in the United States, including such figures as Morton Horwitz of Harvard and Harry Scheiber of Berkeley, either built explicitly on Hurst's work or simply assumed some of the premises that underlay his work. In any event, in the United States, legal history has become less of an isolate, less of an outlier, and marches much more in step with academic history in general. Other countries of the

common law world — Canada and Australia, for example — have traveled in the same direction. And this type of legal history has also been packaged for export — very notably to Israel, among other countries.

The modern movement of legal history in the United States is in sharp contrast to the older, more conventional sort of legal history that flourished particularly in Continental Europe (and still does). The style of work in Europe is quite distinctive; it treats law very much in isolation from the rest of social life. It tends to ignore culture, economics, politics, and even history itself (except for "legal" history). None of the contributors to this volume are followers of this school or have this outlook. Their concerns are not the concerns of European formalism. Thus the nine essays have little or nothing to say about legal doctrine as such, about this or that draft of this or that code, about legal theories in the philosophical sense and so on. They ignore the great ideas of great jurists or the little ideas of not-so-great jurists — all of which are among the more usual topics of Continental legal history. The essays on historiography are only apparently exceptions; they are concerned with juridical and historical thought, to be sure, but as aspects of social history, not as ends in themselves. Thus all of the essays in this volume are really essays in socio-legal history; and that, I think, is one of the great strengths of this collection.

To be sure, if we were to bring the authors back together into one room and get them talking, there would be areas, subjects, where they would disagree and viewpoints they would not share. They might even disagree on very big questions, for example, How autonomous is the legal system after all? The classic jurists acted as if the legal system was *very* autonomous. It was, they believed, a world of its own, more or less growing and developing according to its own inner program, like some creature whose destiny is foretold by its DNA. None of our contributors believes in autonomy to this degree, as far as I can tell. All of them, explicitly or not, write as if the legal system depends on, and responds to, the world outside the courtroom and the legislature. They all feel that it answers to, and must answer to, the wants, desires, passions, and demands of real social groups and social interests. Some might give the legal order a bit more independence than others; some of them might consider it more "constituitive" than others. But the disagreements, such as they are, would be disagreements among allies and friends.

Nonetheless, as I said, these are very diverse essays — in subject matter and in method. Still, a number of points do stand out; and there are commonalities that bind at least some of them together. A number of the essays are concerned, implicitly or explicitly, with the problem of victor's history. History has winners and losers, and the winners usually control and

dominate the way history gets written. Their story becomes *the* story; and the story of the losers ends up lost or distorted. There is an eerie parallel between Christopher Tomlins' essay, which concerns the colonial past of the Americas, and the essay of Forman and Kedar, writing about land disputes in Mandate Palestine. European settlers conquered America with force — and with the power of their law. They used the law as one of their weapons of conquest. Law was a tool, which helped them to ignore, misunderstand, and ultimately erase the claims of the people who were already living in the land.

They did this so thoroughly, and successfully, that the original people almost disappeared from view. It became almost habit to refer to the land as "empty" or as "wilderness" — that is, until the settlers came and made it rich and productive. Today, the word "wilderness" suggests beauty, purity, the majesty of nature. To Americans of the eighteenth and nineteenth centuries, it suggested an obstacle, a void to be filled, a domain to be conquered. Swamps had not yet become "wetlands;" marshland was a problem, not an asset. There are close, and uncomfortable, analogies to the settlement of Palestine. Palestine, too, was seen as empty, unproductive, barren, a desert until the settlers made it bloom. They brought culture, civilization, technology, zeal, to a dead and almost empty land. Or so the settlers believed.

Tomlins points out that legal history, indeed history in general, acted for a long time as a kind of accomplice in the work of effacing the native tribes from the consciousness of past times. Even the "founding father" of legal history, Willard Hurst, ignored the whole colonial period; and his work, Tomlins argues, implies (by its silence on the subject) that "nothing that happened in America much before the beginning of the nineteenth century really had any relevance to the meaning of America per se." David Rabban's study of the historiography of legal history in the late nineteenth-century United States is far removed from the eradication of native Americans or the struggles over land rights in Israel; but it too tries to avoid the perils of victor's history. His victors are intellectuals, whose ideas are accepted today, or at least taken most seriously. The article is a close examination of the losers. Rabban describes the work of a group of thinkers, partly forgotten and partly misunderstood, who the history of legal thought has largely passed by. There is also a discussion of some winners, like Oliver Wendell Holmes, Jr., who, Rabban claims, are celebrated more for what they are not than for what they really were. Rabban finds the forgotten scholars far less simplistic than most people believe.

Rabban's essay is a good illustration of an aspect of history that the public hardly appreciates or understands and that is both exciting and frustrating. History is not a movable object. The past is not, in fact, forever fixed and

unchanging. In a curious way, it is dynamic, mutable, always in flux. The story is always getting retold, revised, reinterpreted. The story is never the same. What seems important to one generation seems unimportant to another. Old ideas get resurrected — or ignored. History never stands still. Each generation sees the past through its own lenses. Yesterday can seem vividly alive; but yesterday's historiography can seem awfully dead.

Revision has its limits, of course. History is not as cumulative as physics or biology; but it does inch ahead — it does make progress. As time goes on, we simply *learn* more. Ancient cities get excavated. Scholars decipher old scripts, and they learn to read mysterious inscriptions. Divers explore ships that sank centuries ago. Archaeologists poke around in ancient ruins. But progress is not just a matter of Mayan glyphs or the Rosetta stone. There is more known and understood about absolutely everything in the past. The graduate students with their Ph.D.s and the scholars with their monographs are not simply recycling old material. In an aggregate, there is a lot of new learning. We never go *exactly* back to where we were before.

Laura Kalman's essay, *The (Un?)Bearable Liteness of E-Mail: Historians, Impeachment and Bush v. Gore*, would seem, on the surface, to have little to do with victor's or loser's history. American historians by the hundreds signed statements protesting against the impeachment of President Clinton; others later raised arguments about the contested 2000 election. Kalman finds these statements unsettling, disturbing. For example, the historians claimed that the text of the Constitution did not support the impeachment process. Clinton could not be removed from office because of his sex life, or because he lied about his sex life. But the statement had a distinct flavor of originalism. Originalists insist that the Constitution must be interpreted according to its meaning as of the time it was written — that this meaning was fixed as of the late eighteenth century. Originalists tend to be politically very conservative; and it is a good bet that few if any of the signers were actually originalists — at any rate, not on other issues.

Of course, Clinton himself, and the Democrats generally, applauded the statement. The experts, they claimed, showed that Clinton was in the right. But Kalman is not convinced. Basically, the statement was a political statement, masquerading as science or scholarship. How many of the historians were really experts on the impeachment issue? Probably very few. Kalman makes the "modest suggestion" that historians would be best off sticking to things they actually know, matters on which they have "sufficient professional expertise." She would have them scrupulously avoid confusing their role as historians with their role as citizens. The problem, in other words, is the partisan use of history: history used as a weapon; history used to score points; history used to overwhelm or overawe opponents.

This is the problem with victor's history. It is essentially political; it tells the story with a triumphal slant. It is the kind of history written by all those historians who wrote books about the glorious British Empire and how it grew, or the triumph of France, or the continental surge of the United States, or the glory of any country you might name — including Israel. They write history as if it were a story that leads up to a particular (usually happy) ending, a history without contingencies, a stream that flows inevitably and inexorably into the way we live now.

Both Rabban and Kalman are also talking about what it means to know something about the past. What exactly does an expert know? If you are a specialist in ancient Elam, you have the rare ability to read and understand inscriptions in Elamite. Your views about Bush and Gore, on the other hand, are not worth taking seriously. But even suppose you are a genuine expert in the field — the history of impeachment, let us say. You know a lot more than almost anybody else; and yet, what can you really say, definitively, about policy issues, about whether Clinton should or should not be impeached, whether impeachment would hurt the country, and so on.

The historians' statement was, in short, basically a political tract. There are, of course, some extremists who argue that all history, all knowledge in fact, is political. There is no such thing as truth; there is not even any such a thing as a "fact." All opinions are warped. Bias is inevitable and pervasive. The "experts" have no special merit, no special key to reality. There is nothing but half-truths, shadows of truths, opinions, suppositions, hypotheses; and even these depend on who is doing the talking and the thinking and the writing.

In its extreme form, no real historian actually believes this. Yes, she knows that there is no absolute, immutable truth of history. The past is always an aspect of the present. Historians are only weak, fallible human beings, who (like all of us) can never really scrub themselves clean of bias. Bias in the very questions she asks, the answers she gives, the way she squints at the data. But it is all a question of degree. There is no absolute truth; but there definitely is an absolute lie. Evidence always has to be interpreted, squeezed and poked and massaged; but evidence is still evidence, radically different from no-evidence, or made-up evidence. Historians are certainly not supposed to make the data up. Of course they start with preconceptions; but they have to be at least a little bit open-minded. They have to maintain the capacity to be surprised. They have to be able to admit, I was wrong in this or that, I expected something else, I looked for A and found B instead; the evidence just does not bear me out.

In short, historians *do* know something. They know a lot, in fact. They also know about the richness and complexity of history. They know about

ambiguities and doubts. They know how hard it is to read records and understand what dead people thought and did. They do have something to contribute to public debate. Some of these debates turn (implicitly, sometimes) on a reading of history. They turn on — dare I say it?— facts. Was slavery as cruel and as heartless as it is depicted? What started the First World War? What did the Protestant ethic contribute to the rise of capitalism? Was McCarthy a complete fraud, or did he have something useful to say? *Was* Alger Hiss a spy, and *was* the American government riddled with Communists? Does the death penalty, historically, have any relationship to actual rates of homicide? Do generous welfare payments lead to laziness and social pathology? Or: Did Arab villagers really run away, voluntarily, during the Israeli War of Independence, or did the Israelis kick them out?

There are dozens of these questions, and historians very often give us useful insights and information. But in this age of sound bites and what we might call the unbearable lightness of public debate, a real historical message is awfully hard to get across. It may, in fact, be flat out impossible. This is one of Kalman's points. The real message is that history is not just black and white, it is all those shades of gray. Historians work patiently with intractable material. What they find is complicated. It cannot be reduced to slogans. Kalman wants historians to give the public a sense of how historians actually work; the methods they use to interpret the past. An excellent idea. But I am very dubious whether it can, in fact, be done. Not today. Maybe never.

In the late nineteenth century and early twentieth century, there was a reaction among legal scholars and jurists against formalism. Assaf Likhovski, in a very interesting essay, examines the work of two significant anti-formalists, Roscoe Pound, in the United States, and Eugen Ehrlich, in what was then the Austro-Hungarian Empire. Both of these thinkers, in the early years of the twentieth century, tried to direct attention toward the study of "living law" and away from the obsession with formal doctrines. Likhovski is intrigued with the fact that both men, so different in many ways, shared at least one trait: they were teaching law or associated with places that were provincial, out of the way, at the margins — in one case, the margin of an empire, in the other, the frontier of a massive country (Pound ended up at Harvard, but he hailed from Lincoln, Nebraska). Likhovski feels that this fact is highly relevant; jurists on the periphery are more likely to see through the veil of formalism. This is because the legal culture of the center gets weak and attenuated at these peripheral places. Likhovski's third example, Guido Tedeschi, was an Italian Jew who emigrated to Israel and taught at the Hebrew University. The Jewish community in Israel, at the time of

Tedeschi's work, was also in a way a frontier community. It was part of a very mixed and plural legal system, at the political margin of the British Empire.

The point about center and periphery is a fascinating one. We could add many examples, from the histories of various countries. There are some ways in which the law of colonial America was much more innovative than the law of the mother country. Likhovski mentions another interesting problem: Why did anti-formalism crop up in many different places, at more or less the same time? What were the intellectual, social, and cultural roots of this way of thinking about law? Likhovski gives us a good reason to expect it at the edges of legal empires; but why expect it at all?

In many ways, formalism is still dominant in the legal academy. Its most powerful rival in the law school world, certainly in the United States, is the law and economics movement — Ron Harris calls it "the most influential post-World War II jurisprudential movement." Harris' essay analyzes the use — or non-use — of history in law and economics. This movement, so different in many ways from legal formalism, does share one crucial trait with the older strand of thought. Both, for one thing, show little or no interest in history, or at least in the kind of history that a historian would recognize as history.

Law and economics, as a law school movement, has something else in common with formalism: it is heavily normative. Like the conceptual jurists, the law and economics scholars believe there are correct answers to legal questions. But the correct answers come from economics, not from "legal science." Some legal rules could be shown to be efficient, some inefficient. The right move is to choose the efficient ones. Law and economics is also heavily canted toward neo-liberalism. It is abstract, at times mathematical. Law and economics, however, has been turning toward a more empirical, fact-based mode of scholarship. In this mode, it has rediscovered history. History has been creeping into the citadel, sometimes disguised as "path dependence," sometimes embraced on its own.

One theme that resonates in a number of the articles is the increasing scale and scope of the law. In the modern world, law is truly ubiquitous. It is everywhere and covers, potentially, any and every area of business and of society in general. "Legalization" is a fact of life. "Legalization" is a slippery term and concept. The great civil codes of Europe were, in theory, gapless; that is, they covered everything, and everything was governed by the code, even if the "governing" consisted of leaving something alone. This is not what "legalization," as I use the term, has come to mean. "Legalization" implies that in the modern, complex, interdependent world, activities and situations once basically unregulated are now covered by a dense web of

rules and regulations. Traffic is the perfect example. There is an enormous body of traffic law in every modern country — rules about speed limits, parking, drivers' licenses, drunk driving, and many other things. This body of law touches almost everybody, one way or another. Petty driving offenses are the plankton of the sea of law. Virtually all of this law dates from the twentieth century, and almost all of it can be attributed to the automobile. In the age of the horse and buggy, there were a few simple rules of the road; but the whole subject had very little significance. The automobile has changed people's lives in many ways. It is powerful, it is ubiquitous, and it is dangerous. It affects behavior every day in many ways. It has put its stamp on society — the very shape of it, the structure of cities and suburbs, and so on. Building and selling cars is also a major economic factor in society. Out of all this comes an enormous new body of law.

"Legalization" also means that no area of life is immune from legal regulation. Every person, every thing, every activity is potentially subject to some legal rules and regulations. The word "potentially" is crucial here. In my university, for example, a student can, if she wishes, complain to the authorities about her grade in, say, her chemistry class. She can accuse the professor of grading her unfairly. The complaint will go through channels in the university; but, theoretically at least, after "exhausting" her university remedies, she can actually bring an action in court. To be sure, this almost never happens. But the possibility is there. And professors do bring lawsuits complaining about race or sex discrimination or improper denial of tenure; and they occasionally win. In any event, the mere fact that these sorts of actions are possible almost certainly has an impact on the way the organization behaves; and almost certainly on the way it structures itself. This is the real thrust of legalization.

José Brunner's essay *Trauma in Court* gives us another example of the process of legalization. His subject is the involvement of doctors, under the German compensation scheme at the end of the nineteenth century, in dealing with the issue of traumatic nervous disorders. The compensation scheme, to begin with, created new categories of liability, much broader than the older, inherited causes of action. But it also brought doctors into direct contact with legal process — it legalized, in other words, the doctor-patient relationship, at least in part. Brunner provides interesting insights on the "perceptions, conceptions and practices" of the doctors, as they were drawn into a morass of difficult and troublesome questions. Many doctors regarded the increasing "juridification" of their "lifeworld" as essentially "counterproductive." But the welfare state, if it meant anything, meant that the government, the regime, the state, was becoming more and more actively involved in the life of ordinary citizens.

In this regard, what Brunner reports is another step in a long process, in many countries, of increasing "legalization," or, if you will, penetration of the law into the lives and activities of more and more people and more and more classes of people. If we look at the common law of England, for example, what we think of as "the law," the body of rules, statutes, and decisions that are in the law reports and the volumes of statutes, the law that Blackstone wrote about, was really the law as it related to the landed aristocracy and the very rich. Poor people were, on the whole, outside the (formal) law. They were governed by "custom," rather than law; or by local rules, which were, in turn, based on custom. The law of the central government passed them by almost completely. The exception, of course, was criminal justice, which, indeed, fell most heavily on the poor and the underclass. But the criminal law certainly was unlikely to make the average person in England think of law as protective, as a source of "rights," or as anything other than an agency of repression. The repressive function, of course, is still with us; but along with it are dense webs of rights that belong if not to all then at least to the bulk of the population. And, from the nineteenth century on, we find in Western countries more and more examples of "social" rights: housing, education, medical care, pensions, health, and safety laws. And these too are widely applicable in society, not merely (or even primarily) for the rich and powerful. Brunner's compensation scheme is an early and important example of this branch of "legalization."

Shai Lavi's fascinating essay on euthanasia shows us a complicated and unusual kind of "legalization." This is primarily an essay on the changing (social) meaning of death and dying. In one sense, euthanasia was always subject to the law: killing a person was simply murder, regardless of the motive behind it. The euthanasia movement is thus a movement to decriminalize — a movement that seems to go contrary to "legalization." It is an instance of subtraction, not addition. But in fact, like other forms of decriminalization (of sexual relations, for example), what its proponents want is to replace a simple prohibition with a more complicated, nuanced form of regulation. What would remain illegal would be "euthanasia without legal regulation." Nobody suggests a simple carte blanche or a license to kill. Legal regulation would be at the heart of euthanasia, the "necessary condition of its application." Of course, euthanasia has, in most countries, made little headway: religious leaders object vehemently and the memory of Nazi atrocities hangs over the movement like a dark shadow.

A number of the essays in this collection are explicitly comparative — Likhovski's essay is an obvious example. Others are not explicitly comparative, but they do aim to present ideas and explanations that go beyond the particular case study. Of course, each place, period, incident,

and situation in legal history can be described and explained as something unique, to be understood in terms that fit that place, incident, period, and situation, and no others. But it is equally true that everything that occurs can be analyzed as part of some larger picture, can be fit into some larger scheme, like a piece in a jigsaw puzzle. We can take Pnina Lahav's essay on the Chicago Conspiracy Trial of 1969-1970 as an example. These were particular people on trial, at a particular time, and at the juncture of particular and unique events. Yet Lahav uses the trial as an example of something larger, the "archetypal political trial," and she sets out a list of "seven perennial motifs" that characterize a trial of this type. Not every political trial, she says, contains all seven elements; but each of them frequently occurs in trials of this nature.

The political trial is, above all, a drama. The government tries to use the trial not only to punish, but also to send a message, to warn, to deter. The trial also sends another message to the broader public, an emotionally charged message, a message of "demonization" as Lahav puts it, in which the government tries to "demonize" the defendants and those who support them. The defendants, for their part, can also try to make drama out of their defense, turning the trial into a kind of guerrilla theater. In this regard, political trials are only a heightened form of a more general phenomenon: the trial as didactic theater. Probably all the great, famous trials of American history fall into this category, even when they are not overtly "political." Thus, in the O.J. Simpson trial, a trial watched by millions all over the world on television, the defendant's lawyers labored, successfully, to transform the trial into a drama about race relations and police behavior. The famous American trial of Lizzie Borden, a woman accused of murdering her father and stepmother, in the late nineteenth century, turned into a drama about the nature of the bourgeois middle-class. The evidence against Lizzie was fairly strong; but her defense proved to be even stronger. Essentially, it was a defense of a whole way of life. The defense argued, or suggested, that a woman of her rank in society — a woman from a wealthy family, a church-going woman, unmarried, living at home, and outwardly respectable — could not possibly be guilty of a crime of violence. The jury agreed.

Lizzie Borden was unmarried, as we mentioned. She was thus a member of a class of women with whom Ariela Dubler deals in her contribution to this volume. Dubler wants to restore unmarried women to their proper place in legal history. She argues that the legal historians have simply ignored these women. They assumed, or implied, that whatever was important in "intimate lives" was "organized around marriage." But this, Dubler feels, is incomplete; it leaves a lot out of the story — and neglects an important group of women.

Recent legal history is striking in the way it has brought back into focus the role of submerged and subordinated groups. In the United States, this includes black people, women, gay people, handicapped people, Hispanics, Native Americans, and, in fact, the everyday life of working people, poor people, ordinary people. If you write history as a story of battles and triumphs — if you write victor's history, in short — you are apt to give these people very short shrift. But the political and social history of the United States (and other countries) in recent decades has brought more power and attention to these "losers." Finally, their story gets to be told.

In a way, it is easy to understand why legal history ignored unmarried women. They were always a minority. Most women did get married. But also, as Dubler points out, the legal status of the unmarried woman was "constructed" in such a way that her existence "actually served to bolster marriage's power." She mentions, for example, widows (women who used to be married) and also jilted women (women who were on the brink of getting married). The jilted woman had the right (in theory at least) to sue for breach of promise of marriage. In fact, these suits were far from unknown in the nineteenth century. They reflected the idea that an unmarried woman was incomplete and that a man who contributed to this incompleteness was blameworthy, sometimes criminally so. Moreover, the law often treated women who lived with men in long-term relationships as if they were married — this was the essence of the doctrine of the common-law marriage. In theory, these were men and women who had agreed to *be* married and said so to each other, but without witnesses or a ceremony. Most states in the nineteenth century recognized common-law marriage.

Social reality was surely more complicated, as Dubler argues, than the theory underlying common-law marriage. Many of these couples were simply "acting married"; they had never said the magic words and never intended to; they had never entered into the alleged contract or agreement. Dubler thinks some of these couples deliberately chose not to be married. I rather doubt that this happened, except in unusual circumstances. We will never really know. The law *assumed* the validity of these marriages, for various reasons; but surely one of these reasons was the idea that marriage was the norm, the usual path, the only safe harbor for women; living in sin was both a sin and (usually) a crime; and defining the status as if it were a marriage saved both her honor and her inheritance.

All in all, this is a remarkable collection of essays. The collection testifies to the strength of the field, in general, and, in particular, its growth as a discipline in Israel. These are not parochial scholars, and the Israeli historians who are represented in this volume are broad in their knowledge

and their range of coverage. They deal with many countries, many subjects. Still, I do want to single out and pay particular homage to the Israeli legal historians who have concentrated on the history of their own country.

History has a special meaning in Israeli culture. The Jewish population streamed into Israel and laid claim to the land on the basis of history and religion — the two are hopelessly intertwined. History and religion were the ideological core, the source of concepts and passions that justified the conquest and settlement of Israel. History and religion gave meaning to the project to build a nation in this particular spot; it was a meaning that Uganda or Birobidjan could never aspire to. History (and religion) have also been the basis for some of the more dubious aspects of Israeli politics and culture — claims, for example, to Hebron or the West Bank generally.

One thing that strikes a visitor to Israel is the way the ancient kingdom of David is celebrated, emphasized, and revered, along with such historical landmarks as Masada. We are meant to understand that the real history, the important, meaningful history, is this history of the ancient kingdom. Then history takes a huge leap, all the way to modern Zionism, as if the intervening period of about fifteen-hundred years was simply an interlude or a bad dream. The vast experience of the Diaspora is marginalized, or even ignored. Zionism and Israel overcame and superceded the Diaspora. Similarly, the history of the actual land, the history of Palestine, between ancient times and the First Aliyah, is ideologically ignored, as if the country, too, had fallen into a kind of deep sleep or even a coma; only with the arrival of Jewish settlers did the land revive, come to consciousness, and assume a vibrant new life.

Israel defined itself as a process of going back to the roots, a recapture of a once glorious past. The Hebrew language was successfully revived. There were practical reasons for doing so; but the language movement also had symbolic freight. This was what the real Jews spoke, the ancient Jews — the language of the liturgy, the holy language, the language of the past. To bring it back to life meant erasing the jargons that replaced it in the mouths of Jewish people, no matter how much richness, meaning, culture, and poetry these languages contained. There was also, in Israel, the Law of Return — the name is significant. This was an immigration law, plain and simple, an invitation to Jews all over the world to come settle in Israel. Nobody was "returning" to anything, of course. That your ancestors might (or might not) have lived in this spot two thousand years before hardly qualifies as "returning."

To say this is not to denigrate the achievements of the Israeli people. They did make the desert bloom. They did turn Hebrew into a modern spoken language, a rich, living language. This is, in fact, the only example

in human history of success in bringing a dead language to life. Israel took in hundreds of thousands of Jews from other countries, many of whom were running away from poverty and oppression. Its citizens turned Israel into a center of art, culture, and music — and a center, too, of technology. They built up a brisk and enviable economy. They hacked a thriving, turbulent, democratic state out of unpromising soil. They constitute an oasis of human rights (for their own citizens at least) in a sea of autocracies and hidebound kingdoms. They fought for their life against strong enemies; and so far have always been able to win. Perhaps the historical myth was part of the victory team — one factor out of many, to be sure, but one that maybe did its bit along with the others.

That was then. This is now. The times have changed. The country is more than fifty years old. It faces enormous problems, enormous challenges. The historical myth may have done its job well. But perhaps it has become, at last, counterproductive. This is what the young legal historians seem to be saying; and I believe they are right. In a country obsessed with digging up the ancient past, they want to excavate, cruelly and objectively, the more recent past as well. They want to tell the truth, as they see it. The truth is not always pleasant. In fact, it almost never is. But they believe the truth will be liberating, in the long run. They have a tough job selling their point of view to a frightened and embattled public. People cling desperately to their myths and preconceptions. They hate to hear bad news. But the historians are convinced that they have to get their message across. I admire and salute their courage.

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