

Social Protest and the Absence of Legalistic Discourse: In the Quest for New Language of Dissent

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Abstract Legalistic discourse, lawyers and lawyering had minor representation during the 2011 summer protest events in Israel. In this paper we explore and analyze this phenomena by employing content analysis on various primary and secondary sources, among them structured personal interviews with leaders and major activists involved in the protest, flyers, video recordings made by demonstrators and songs written by them. Our findings show that participants cumulatively produced a pyramid-like structure of social power that is anchored in the enterprise of organizing the protest. Our findings explicate how the non-legalistic and even anti-legalistic discourse of the protest was formed, shaped and generated within the power relations of the protest, and how a pyramid of power produced a new poetics of protest that rejected the traditional poetics of state law. The power relations that generated the discourse regarding state law were embedded in socioeconomic stratification along the divide of center and periphery in Israel.

Keywords Social protest and law · Legal poetics · Pyramid of power relation

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“For last year words belong to last year’s language
and next year’s words await another voice”

(T. S. Eliot, *Little Gidding*, *Four Quartets*)

“If I would have mentioned laws...

The crowds would not have come.”

Daphni Leef [prominent protest leader], March 22, 2012

1 Prologue: Law and Protest

The events known as Israel’s 2011 Social Protest Movement began on July 14, 2011, when Daphni Leef, a 25-year-old video editor set up a tent on Rothschild Boulevard in Tel Aviv, in protest against extraordinarily high rent prices. People joined the Facebook page-event that she had opened, and in weeks her one-woman one-tent protest evolved into a rapidly burgeoning “tent city”, in part due to extensive media coverage. Simultaneously, dozens of encampments were set up in cities throughout Israel. The camp cities served as channels for airing an enormous amount of public discontent concerned with—besides housing costs and availability—other issues linked to social order and fundamentals of public policy in Israel. The Social Protest Movement also manifested itself in a series of massive rallies, with an especially large one on September 3, 2011 in Tel Aviv and other locations around Israel, with about 500,000 people (approximately 6 % of Israel’s population), participating. If we compare these demonstrations of summer 2011 in Israel to other protests around the world (adjusted for population size), these were the largest non-violent demonstrations in democracies since the conclusion of the Vietnam War (1963–1972). Following this peak in participation and exposure, the protest gradually waned, until the Rothschild tent city was voluntarily cleared on October 3, 2011 [38].

It is our contention that legalistic discourse, lawyers and lawyering were practically nonexistent during the 2011 summer protest events in Israel, almost from the start of the protest [33]. Our purpose here is to explore and analyze this absence by using the protesters’ own words. Probing such articulations also reveals which perceptions of law were manifested within the protest movement’s events.

We employed content analysis on various primary and secondary sources. We conducted 29 structured personal interviews with leaders and major activists involved in the protest. We also analyzed flyers, video recordings made by demonstrators and songs written by them. Our findings show that participants cumulatively produced a pyramid-like structure of social power that is anchored in the enterprise of organizing the protest. Legalistic discourse which has traditionally been prominent in Israeli society especially since the mid 1980s was basically absent in almost all the layers of the pyramid of protest. Its absence is associated with disillusionment, apprehension, and distrust towards state law and evolved into an overwhelming social phenomenon.

In our opinion, the absence of lawyers—as agents of legalistic discourse—from leadership positions is indicative of the general absence of legalistic language from the protest movement. This omission paved the way for the creation of a new poetic system providing novel means for articulating demands for a fundamental social change. This new syntactical system attempted to replace the conventional method

for demanding social change, which uses traditional legal practices and legal representations, e.g., litigation and legislation, as central tools.

Section 2 delineates a theoretical background, focusing on the links between legal discourse and social protest. Section 3 analyzes the political structure of 2011 protest movement as a pyramid of power, and examines the perceptions toward law that we identified within the pyramid. Section 4 explicates the poetics of the protest, and the novel set of representations it introduces in lieu of conventional legal representations, discarded by most protestors. Section 5 depicts the actions of protesters who applied their new poetics. We conclude by suggesting that the Israeli protest manifested intense disillusionment with the legalistic language of rights, litigation and legislation, alongside an attempt to create alternative modes of expression and protest in order to achieve social mobilization.

2 Theoretical Context: Collective Action, the Legal Profession, and Discourse

There is an inherent animosity between state law (hereafter law) and public socio-political protest (hereafter protest). Law in democracies often symbolizes the pursuit of stability and maintenance of the socio-political-economic status quo, while protecting human rights. Protest, conversely, derives from the urge to challenge and reform the very same status quo, asserting that the conventional construction of society, politics and public policy through legislation, regulation, and litigation has failed significantly. Nevertheless, not a few protest movements around the globe have used lawyers and legalistic arguments focusing on state law for advancing social visions of liberal and more egalitarian society [4, 14, 16, 17, 30, 31, 35, 36:499]. Prominent positions in protest movements have been held by jurists and brandishing legal arguments focusing on state law have been considered efficient mechanisms when negotiating with those wielding political power.. state's rule and ruling elites [16]. Robert Kagan coined the term 'explosion of litigation', in order to depict the hyper litigious essence of contemporary democracies [24]. Despite the abovementioned tension between protest and law, modern societies have become ever more litigious and litigation has been an efficient tool used by social activists to protest and strive for social change [16, 17, 30].

The move for social change through litigation and the utilization of legalistic language may, however, have changed somewhat and also been significantly challenged. The wave of public protests in 2011 in the Middle East (primarily in Egypt and Tunisia), Europe (primarily in Greece and Spain), and in the US has vividly demonstrated the emergence of demands for social and political reforms through collective action that does not rely primarily on legalistic language of state law. Consequently, with a few exceptions, the involvement of jurists and lawyers in organizing and leading the abovementioned protests was secondary and even marginal [8]. While the causes of these protests in democratic and authoritarian states varies from country to country and region to region, most of these protest movements demonstrated the absence of legalistic discourse. In the following sections we present and analyze evidence from Israel, one of the most litigious countries in the world, with the highest number of lawyers per capita [8, 29].

Litigation in Israel has intensified due to economic growth of a neo-liberal market, the establishment of a large middle class that sanctified legalistic professionalism, institutional fragmentation of the partisan system, and an American-inspired culture of litigation permeating Israeli society [29, 37:7]. The proclivity for litigation grew as the result of an extensive model of constitutional judicial review adopted by the Israeli Supreme Court (hereafter HCJ), [21] in reaction to these changes. After the mid-1990s, the Court shifted from the more traditional administrative post-Mandatory Palestine judicial review that had emphasized solely legal interpretations of legislation to a more active type of constitutional judicial review of political rules of the public sphere, including the judicial power to declare that state laws are voidable or null and void. Scholars have pointed that extensive litigation was one ramification of such a sweeping constitutional model [19, 29, 33:93, 52, 9]. Public faith in the judiciary and the HCJ was very high until the end of the 1990s. The Court enjoyed more public support than any other public institution in Israel with the exception of the armed forces and the state comptroller [7, 34:358, 53].

Furthermore, especially since the 1990s but also earlier, lawyers in Israel became leading political players in organization and activation of NGOs. Lawyers initiated litigation in courts during the 1970s and onwards in order to facilitate legal mobilization around issues such as post 1973 War protest, equality in military conscription, and the drafting of a written constitution that embeds individual rights. Israeli lawyers were prominent in past protest movements. They facilitated public claims to impose more legal and social responsibility on politicians, to enforce more governmental political transparency and accountability, to promote individual rights, and to change the electoral system in ways that would stabilize the political system and improve governability. The legal profession, in general, has been a leading force in the generation of neo-liberal politics in Israel [29, 33].

Accordingly, one could have expected to find lawyers among the leading figures when the waves of protest erupted in Israel in the summer of 2011. However, lawyers in general and in the Israeli context in particular have taken a relatively secondary role in leading social protest, and have had a relatively greater role only in efforts of legal mobilization within the regular structure of political power [30].

Since the beginning of the twenty-first century legalistic discourse—namely, the language and practices—about state law has been in some decline in Israeli society and it might be the case in other countries as well, since it has failed to provide path breaking social reforms [5, 33]. Attempts to use state law in order to alter and reform political reality have been prominent in Israeli society, especially since the 1973 War, as noted above. None of the efforts, however, have resulted in social reforms. Even a lawyer-led legalistic discourse to promote and constitutionally embed social legal rights has been neglected. In the 1980s, lawyers were at the forefront of a movement—which attracted about forty to fifty thousand demonstrators—that demanded the enactment of a written constitution. Yet, this movement failed to achieve any social and political reform realities. In light of the sharp decline of legal discourse and legalistic practices in the spheres of the social protest, we assume the emergence of an alternative discourse that is shaped by means of a new poetics. The high visibility and presence of the protest in Israeli public

consciousness can be attributed to novel poetics that was employed as an unorthodox alternative to the conventional legal discourse around state law.

3 Methodology

In addition to content analysis of various primary and secondary sources (e.g., flyers, video records made by the demonstrators and songs written by them), our methodology is based on individual structured interviews of 29 leaders and major activists in all regions of Israel who were involved in the protest. Personal interviews enabled us to study the poetics and power relations of the protest and helped us focus our investigation on the top tier of leaders of the protest and not on the public mood surrounding it. We drafted a set of 11 open questions designed to explore the issues described above. We identified the interviewees in a ‘snowball’ sampling that allowed us to unveil through stakeholders’ social networks the real—and not imagined—leaders and major activists of the protest movement and understand its power structure and relation to poetics regarding state law.

In planning the sample we considered important issues such as gender, ethnicity, nationality, and socioeconomic center versus periphery. While a common drawback of ‘snowball’ sampling might be possible statistical errors, such criticism is hardly relevant to our research. The focus here is not a survey into the general public’s mood, but to determine why legalistic discourse was so blatantly absent from the dialogue of the movement’s leadership. Each interview that we conducted lasted on average for about 90 min; in total, we documented and analyzed about 45 h of structured personal interviews using the set of questions we developed. We devoted about 6 months to the field interviews in which each interviewee also identified who she or he considered to be the protest leaders. The personal interview snowball method enabled us to not only learn in-depth about the protest, but also to assess the interactions among the leadership and activists as well as their concept of and attitudes towards lawyers, state law and the legal profession.

In the following sections we apply two complementary layers of discussion and analysis in regard to the materials we gathered. First, we analyze the power structure and power relations of the protest as revealed by our findings. Our objective is to understand the sociopolitical position of lawyers and jurists among those who organized and directed the protest. The poetics of law cannot be analyzed in-depth unless we know the power relations in which their meaning was constructed and deconstructed. We also presume that images and concepts of state law were both affected and impacted, shaped and were shaped, in the context of the protest’s power structure and power relations [22, 25]. Once we explore the place of lawyers and its meaning, it is crucial to explicate the discursive dynamic context that constructed and articulated the relative absence of lawyers and legalistic discourse.

The materials will be examined by using a poetics’ perspective. In its most basic form, poetics is the system of aesthetic principles that determine the nature of a literary form [20]. The term refers also to the attempt to comprehend and describe how such principles operate [1:183]. The earliest theory of poetics is Aristotle’s *Poetics*, written sometime in the middle of the fourth century BCE [3]. Over the

ages, the term acquired a much wider connotation than the Aristotelian one, and today, the term “poetics” often refers to how meanings are produced and why they are accepted as meaningful in any sphere of life. Poetics investigation thus analyzes a phenomenon in terms of the effects it generates among those who encounter it. In our analysis, we will refer to the representations created during the protest as products of a poetics system that was activated in the 2011 protest.¹ The focus on poetics will be used to identify the distinctive characteristics of various articulations that created and shaped the representational power of the protest, while exploring how and to what extent perceptions of law resonated within these articulations.

4 The Power Structure of the Protest and the Place of Law

4.1 A Protest of the Middle Class

The protest appears to have been a spontaneous wave of social resistance, stripped off legalistic jargon, which expressed massive collective anger towards the government and the political establishment. Thousands of protestors incited many others to articulate public dismay of soaring housing prices, decline in quality of life, reduced access to basic social services, and the lack of an egalitarian governmental economic and social policy to address such emerging socio-economic concerns. While Israel’s GDP per capita has increased dramatically since the 1980s, its cost of living has risen as well. In our interviews with them, all the protest leaders claimed that the high cost of living in both the center of the country and its periphery had been the main drive for the immense demonstrations.

All protest leaders and activists underscored that other acute issues in Israeli society—such as the 1967 military occupation and the monopoly of Jewish religious Orthodoxy in some spheres of public life—were purposely marginalized amid the protest in order to consolidate public awareness of the main focus of the protest and avoid the possibility of breaking down social coalitions between different segments of the political groups participating in the demonstrations and hence to facilitate a more unified dissent. Thus, while some interviewees were activists in left wing political parties and left wing political groups, they consciously avoided making the 1967 military occupation a prominent issue amid the protest. Even the Israeli Arab-Palestinian activists participating in the demonstrations primarily emphasized the connection between Jewish ethno-national hegemony and social deprivation of Israeli Arab-Palestinians, and sidelined the issue of the military occupation.²

Comparing the summer 2011 protests around the world to the Israeli movement highlights the latter’s uniquely democratic essence. No clear and cohesive political leadership was detected during the revolts in Egypt, Tunisia, Spain and the US. There was no unified political organization or major source of funding, e.g., a political

¹ We make frequent use of the term “representation”, which has a wide range of connotations that are beyond the scope of this paper. Here we use representation in its characterization as a poetics construct. Its core essence is the meaning it creates. The meaning can be assigned to the representation both by its creators and by its audiences through their interpretation.

² Interviews with Alon Lee, April 23, 2012, and Raja Zaatra, June 17, 2012.

party, which guided and led these social upheavals. Lawyers were marginal in leading the demonstrations, and the local Bar associations were absent from organization of the protests. Similarly, in all our 29 snowball personal interviews the Israeli social activists testified that these international events fueled their desire to express public and organized dissent. As one leader, Itzik Shmuli, who was the Chair of the National Union of Israeli Students, told us: “Tahrir Square was certainly in the background”.³ As the other interviewees, Shmuli affirmed that it was in fact impossible to stay indifferent in the face of the other protest events taking place in the Middle East. In his personal interview, Shmuli revealed connections between the Israeli students’ union and environmental student activists in Iran.

As in the US, Europe and the Middle East, cyberspace facilitated mass mobilization to support the protest [23]. All the leaders and activists stated that social media, particularly Facebook, was instrumental in disseminating posts and calls for protest. The Internet helped activists rapidly organize demonstrations and establish social networks supporting the protest. None of our 29 interviewees, even those living in the far peripheries of Israel, denied this claim. In Israel the 2011 protest was ignited by Daphni Leef, who pitched a tent in Tel Aviv, following her difficulties in finding a reasonably priced apartment⁴. Her Facebook page, inviting others to join her and protest, produced a huge public response of hundreds of thousands of demonstrators [28]. Alongside Leef, who was perceived from the first days as a symbol and leader of the protest, other activists gained prominence, again, mainly due to intensive coverage by the mass media that chose to focus on them and nurture their leadership status [40]. Among these people were Stav Shaffir, Itzik Shmuli, Yigal Rambam, Yonatan Levi, Regev Contes, Shir Nosatzki and Barak Cohen, whom we interviewed. These individuals, seen and heard on every Israeli TV or computer screen during the summer of 2011, became the faces of the protest, in spite of voices that questioned their alleged status as leaders [11].

4.2 The Protest’s Pyramid of Power

The protest was socially stratified and its power structure correlated with the image of and attitudes toward state law. The presence and absence of state law and legalistic discourse in the poetics of the protest was dependent on the power relations among the protestors (Fig. 1).

Our research and the personal interviews revealed a pyramid of power relations among the protestors (depicted graphically in Fig. 2). The structure of power was based on several layers. At the top of the pyramid was a small group of leaders who composed and dictated the protest’s messages and who were the focus of public attention, which was necessary for social non-legalistic poetics, and consequently, mobilization. In general, as we show in Section 5 below, the leadership considered state law (including the rhetoric of legal rights) was detrimental to the protest

³ Interview with Itzik Shmuli, March 1, 2012.

⁴ Daphni Leef, a 27-years-old editor and video artist, was considered by many as the leader as well as the face of the protest. See, for example, an analysis of Internet discourse during summer 2011, which points out that Leef was perceived by the Israeli public as the unrivaled leader of the protest [18].

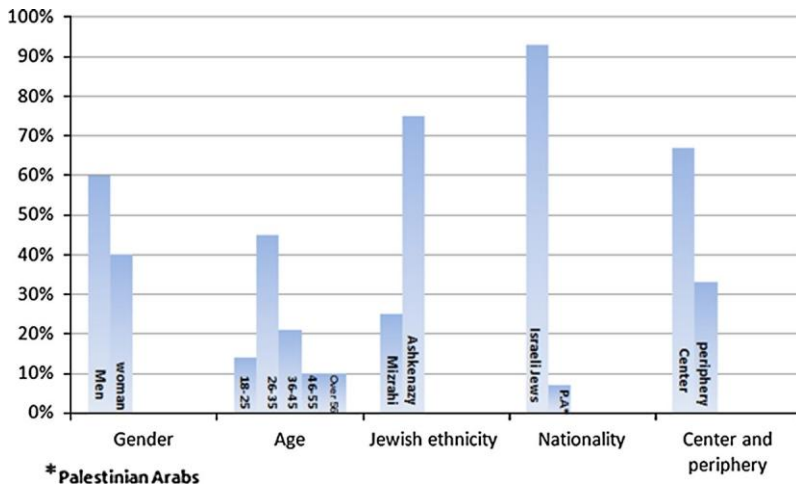


Fig. 1 Composition of Leadership and Activists (Snowball Sampling)

mobilization process or at best, irrelevant to it. The images of state law and more generally the images of legalistic discourse were viewed, constructed and generated as anachronistic and not useful for attaining social reforms.⁵

One type of leadership was located in the center of Israel, mainly north of and in the center of Tel Aviv. This group was identified by mass media as the ‘leadership of the protest’ or ‘the Rothschild leadership’. Being politically active in Tel Aviv, the most globally oriented city in Israel, and very outspoken, they were the object of most domestic and international media coverage. A socioeconomic peripheral leadership, located in Israel’s developing towns, deprived neighborhoods in large cities, and Israeli Arab-Palestinian municipalities, also existed but was much less publicly known to the general public and did not receive the same level of media coverage. There was significant fragmentation between the two types of leadership and even though some coordination of activities took place, the periphery’s leaders resisted attempts by the center’s leaders to dominate the protest.

The misalignment between the thinking of the two types of leaders was also evident in other areas. The center’s leaders believed that state law and the legalistic discourse, due to its image as anachronistic, non-marketable, and unhelpful as a means of social mobilization, was detrimental to the protest’s objectives. The leadership in the periphery, however, considered it to be controlled essentially by an economically elite group, which is completely foreign and hostile to the purpose of the protest. Both types of leadership considered the legal right’s achievements of the 1990s as a discourse that in practice sanctioned deeper socioeconomic stratification and further marginalization of underprivileged groups.⁶

⁵ Interview with Yosi Yona, February 22, 2012; interview with Regev Contes, February 26, 2012; interview with Daphni Leef, March 22, 2012; interview with Barak Cohen, May 13, 2012; interview with Michal Greenberg, May 21, 2012.

⁶ Interview with Stav Shafir, April 23, 2012; interview with Alon Lee, April 23, 2012; interview Raja Zaatra, June 17, 2012.

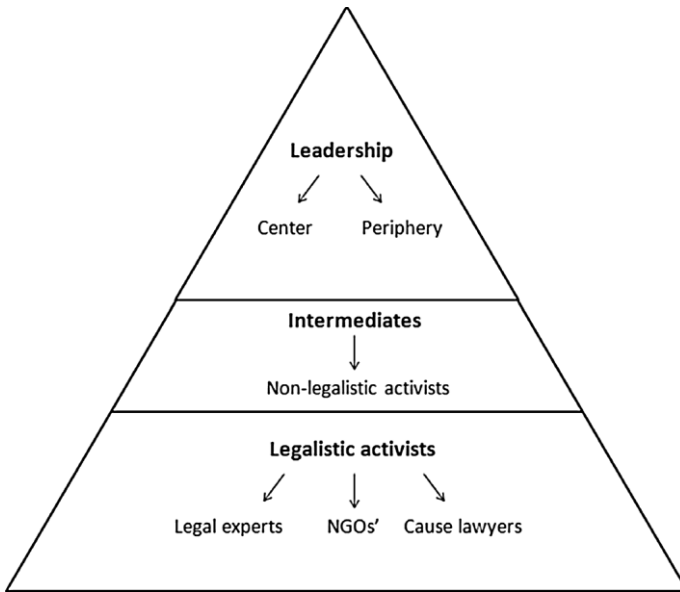


Fig. 2 Pyramid of Power Relations—Sociopolitical Legal Perspective

The second layer of power comprised several types of intermediates, i.e., experts and organizational activists whose aim was to assist the leadership. They offered the leadership their professional advice and help in organizing the protest events. The non-jurists among them sought to work as much as possible in the shadow of the law; namely, they aimed to organize large non-violent demonstrations better but not necessarily with police permits. Unlike the leadership (having no lawyer at all among its members), some among the second layer intermediates were jurists and lawyers who considered state law to be instrumental for promoting the protest's aims. Generally, the legal experts were subordinated to the non-jurists, primarily supplying them with legal information on how to organize the events. Largely, the flow of information between the legalistic intermediates and the leadership was very infrequent and only very rarely was there direct exchange of data and messages between the leaders and the jurists.

Among the lawyers in the second layer were cause lawyers [35, 36], who mainly assisted the protest in legally representing several dozens of protestors who were arrested by the police. There were also lawyers who served in civil rights organizations in this layer. These lawyers perceived themselves as providers of professional data and legal information for supporting the protestors' demands in areas such as public and affordable housing and more equitable distribution of land. A third type of lawyers was those who served as members of the Experts Committee that was established by the leadership in order to give professional legitimacy to their acts. The legal experts in this committee were supposed to submit policy papers in areas such as housing, basic law of social rights, law and public health,

and law and the national budget. Yet, in our study we found that the influence of the Experts Committee on the leadership was rather marginal, and in fact, some leaders were unable to recognize the names of most, if not all, of the legal experts on the committee.⁷

This analysis demonstrates that the legal profession and lawyers were largely absent and lacked significant influence on the formation and generation of the protest and its poetic characteristics. Jurists who were active were subordinated to non-legalistic intermediates and largely disconnected from the leadership. The legalistic discourse and lawyers were positioned both instrumentally and in the consciousness of the leadership on the lower level of the power structure. In fact, through our personal interviews we perceived that the protest leaders did not consider the jurists as having significant role in the protest and its poetics.⁸ Hence, the legal profession, and accordingly the legalistic discourse, lacked any significant place in the power structure of the protest. Albeit, civil rights organizations aired the demand for a right to housing; lawyers argued against the relatively few illegal arrests; and in places where municipalities tried to evacuate tent camps, a few cause lawyers argued against it, yet, unlike other non-violent demonstrations in previous periods in Israel history, the legal stories that were told were marginal.

5 The Poetics of the Protest

5.1 The Protest as a Crowd-Pleasing Performance

After analyzing the absence of legalistic discourse, we now examine the representational aspects of the social protest by employing a poetic perspective. As will be elaborated below, the protesters, aspiring to influence the state to re-allocate resources, bypassed the hegemony-subjected tools, including the conventional employment of state law, opted to use a new system of representations, created by the protest and promoted by the media. The result was a wide-scale performance that touched and exhilarated masses of Israelis without using legal mobilization and in the absence of lawyers as leaders.⁹ While linkage between social protest and performance has previously been demonstrated [9, 32], the 2011 Israeli protest was unique in its aggregation of representational means, as will be described below.

Some interviewees ascribed certain characteristics of the protest to their own or their colleagues' calculated planning. Others talked about the spontaneous nature of the events. All of them are probably right. Some aspects of the demonstrations were carefully crafted. Others evolved spontaneously. However, none among the leaders and activists can lay claim to being the protest's main engineer and mastermind.

⁷ Interview with Daphni Leef, March 22, 2012; interview with Regev Contes, February 26, 2012.

⁸ Interview with Daphni Leef, March 22, 2012; interview with Regev Contes, February 26, 2012; interview with Michal Greenberg, May 21, 2012; interview with Yigal Rambam, June 18, 2012.

⁹ It should be noted that the unique nature of the protest also evoked public criticism from those who viewed the protest as merely a summer light-headed happening [12].

There is no way to distribute fair and accurate credit for the formulation of each event. Yet, there is no doubt of the powerful effect of the sum-total.

We now describe the poetic nature of the protest by employing the interviews we conducted, alongside complementary media sources. Our examination shows the ways in which law was perceived and employed by the protesters. Although important poetic characterizations, such as the appropriation of public space and the use of certain slogans that were present in Tel Aviv, could also be found in the protesting periphery, our findings reveal that there were substantial differences between the performance of the protest created by the “Rothschild protest” and the performance that took place in Haifa, Kiryat Shmona, Be’er Sheva and other socioeconomic peripheral locations. Correspondingly, there were considerable differences between how law was perceived in the center and the periphery, and between the explanations offered at the two sites for the minimal representation of law. Accordingly, our analysis will distinguish between the different protest arenas and explicate the different representations produced by each arena—the Tel Aviv protest and the more socioeconomic peripheral protest.

5.2 The Rothschild Protest: City of Tents, Mass Demonstrations, and Media-Nurtured Leaders

Following are some quotes taken from “The Revolution Songbook—Tent Poetry” [10] that was compiled and published while the protest was transpiring. The introduction opens with the sentences: “In July 14 2011, the Tel Aviv Ficus treetops caught the fire that was lit in Cairo and Tunis, and drove the citizens of Israel to the main streets—from Kiryat Shmona to Eilat, from Holon to Nazareth. In the cities of tents...we got back our citizenship” [10:4].

The main themes articulated by these lines—the clusters of tents, the crowds and the collective excitement—resonate in many of the songbook’s texts. Below are two excerpts from poems written by Erez Bitton¹⁰ and Maya Bejerano,¹¹ two well-known Israeli poets.

Erez Bitton wrote:

“Because every tent in Rothschild Boulevard
Is a small declaration of beauty,
Of courage” [10:27].

And Maya Bejerano writes:

“And the many, hundreds of thousands of hearts, marveled
And the many lonely individuals
That left their one painful heart
To find their fellow person
To create one heart” [10:113]

¹⁰ Erez Bitton was born in 1942 in Algeria. He lost his sight and his left hand when he was 10 years old. He is perceived as one of the spiritual leaders of the struggle of Mizrahi Jews; see: http://www.ithl.org.il/page_13570.

¹¹ Maya Bejerano was born in Kibbutz Elon in 1949, and now lives in Tel Aviv; see: http://www.ithl.org.il/page_13512.

As echoed in the poems, the most conspicuous symbols of the protest were indeed the tent, or rather the cluster of tents within the urban space, and the solidarity of the masses. The tents first appeared in the center of Tel Aviv and became the primary icon of what was soon termed the ‘Rothschild Protest’. In fact, the protest was often also named “The Tent Protest”.

On July 14, 2011 the first tents were set up in Tel Aviv, followed later by clusters of tents in all of Israel’s main cities and in the periphery. A lively community existence soon developed. The tent environment engendered various services and activities, such as common kitchens, alternative medical centers, mobile libraries and street theaters, and many open spaces that hosted debates, lectures and cultural endeavors [13]. The tent cities replaced legalistic discourse as a means of mobilization. As was the case in regard to protests all over the globe, the somewhat carnival-like atmosphere was perceived by many as a window of opportunity for social change [9]. In this context the role left for lawyers was only marginal.

The slogan that became synonymous with the protest aptly expresses the representational dimension of the tents: “Beth is a tent.” The slogan is a paronomasia referring to a famous Israeli song for children, which goes: “Aleph is a tent, Beth is a home.”¹² It echoed the protesters’ collective resentment of the high cost of housing, which initiated the protest. Daphni Leef’s iconic status in Facebook “bring tents!!!” was so successful in instigating the events, because the symbolic act of tent-pitching succinctly captured the difficulties experienced by young people, like Leef, who felt highly frustrated and even threatened by the high cost of housing and living expenses. Any individual who opted to join the tent city could readily and easily do so. The tent city, in the hot Israeli summer, soon became a colorful and vivid ‘scene’, linked to excitement, creativity, and young people.

Consequently, it soon drew the media. The intense coverage further empowered the representational value of the tents. Moreover, the tents brought to mind protests with similar background that took place that summer in other places around the globe, as well as other past protests,¹³ thus emphasizing the moral power and the validity of the protesters’ demands.

“Beth is a home” was one of many short, catchy slogans that replaced lengthy legalistic reasoned demands and formalistic rhetoric. The use of such slogans soon became another major poetic vehicle of the protest. The preface of “The Revolution Songbook” mentions some of the main slogans that were written with markers on cardboard and chanted by the masses of people: “The people demand social justice”; “The boulevard of ‘If I was a Rothschild’” (A Hebrew paraphrase of the famous song: “If I were a rich man”); “Let us live in this country”; and “We demand justice, we do not want charity” [10:4].

The protesters embraced sign language gestures for signifying agreement (wiggling fingers in the air) or disagreement (wiggling fingers pointing down). This method of communication was adopted from the events in Spain, and later used in

¹² Aleph is the first letter of the Israeli Alphabet, and Beth is the second letter. The Hebrew word “tent” begins with an Aleph, and the word “home”—with a Beth.

¹³ The use of protest camps was described by the protest leaders as being inspired by the Hooverville tent cities in Central Park, New York City and other locations in the United States, in which Americans lived during the Great Depression. <http://www.culanth.org/?q=node/655>.

the Occupy Wall Street protest, thus helping enhance the Israeli protests' poetic resemblance to international events. As one commentator wrote: "Within the Rothschild debate circles, the participants use signs as substitutes for interjections... This sign language that seems to by passersby bizarre or funny, developed within different protest movements, especially among the previous decade anti-globalism wave, to facilitate a multi-participants attentive and respectful discourse" [26].

The profusion of catchphrases, slogans and signs can be attributed to the fact that some of the dominant figures that directed the events were media, communication, film making and copyrighting orientated young people who marginalized the place of legalistic discourse.¹⁴ Regev Contes, a prominent activist who is a creative director, said: "In its best parts, the protest was a campaign. It addressed a certain public. We aimed to absolutely change the vocabulary of this public".¹⁵ Shir Nosatzki, who had journalistic experience from working in a Tel Aviv weekly magazine, elaborated: "The entire language was journalistic...the slogans emerged somehow from the streets, and I cannot even reconstruct from where and how. But the creative parts were done by Regev Contes. And of course, what came from the streets is not phrased in legal language."¹⁶ No matter what their source was, it seems that the protest's slogans were etched into the Israeli collective consciousness.

The leaders of the protest were flagged as symbols of unique personal and public stories. Leef herself alluded to it: "What happened that summer was a sort of Cinderella story. It was about a person comes from nowhere and induces a social change."¹⁷

5.3 The Periphery Protest: Scattered Tents and Discursive Assemblies

Outside Tel Aviv, the primary manifestations of the protest were not clusters of tents, but rather public assemblies and circles of discourse constituted by the protesters. To quote one protest leader in Kiryat Shmona, Gaby Wineroth: "Assembly is the heart of the protest." Wineroth elaborated on the ambience that prevailed within the peripheral assemblies: "Every person that passed by the tents became a partner in the assembly that was characterized by discourse culture, attentiveness, containment and openness to the opinion of others... Rothschild was a very unaccommodating place for assemblies."

Other interviewees from the main peripheral arenas of the protest also emphasized the difference between the Rothschild protest and the protest in the

¹⁴ However, it should be noted that the slogans of the protest were criticized by some for being merely catchy puns, lacking profound or meaningful insights to the Israeli society's disappointments. Shir Nosatzki commented in her interview that in her eyes "Occupy Wall Street" is a slogan that addresses much more meaningfully the subconscious of American society. Interview with Shir Nosatzki, April 15, 2012.

¹⁵ Interview with Regev Contes, February 26, 2012.

¹⁶ Interview with Shir Nosatzki, April 15, 2012.

¹⁷ Interview with Daphnie Leef, March 22, 2012.

periphery. Yael Ben-Yefet, Director of The Democratic Mizrahi Rainbow, from the southern poorer parts of Tel Aviv,¹⁸ criticized the bourgeoisie Ashkenazi nature of the protest in the center. Keren Kastenband, the coordinator of Kiryat Shmona encampment, contrasted the essence of the protest in the center and in the periphery: “The assembly is the heart of the matter. There everything starts. The assembly is not hierarchical. There is an attempt to reach consensus in regard to certain decisions. Freedom of speech is granted to each and every one. That is what is missing, in my opinion, in the center. There the assembly is used mainly for ventilation. They take out, take out...maybe soon they will start listening to each other.”¹⁹ Michal Grinberg who participated in organizing the Maabarah encampment in Jerusalem denoted the Rothschild protest “a festival”, as opposed to the Jerusalem protest that was “a demonstration of rage.”²⁰ Another Jerusalem activist, Ayala Sabag, a leader in one of the most deprived Mizrahi neighborhoods in Jerusalem, allowed us to interview her while under house detention for destroying a police car during the protest, and stressed a similar point: “One protest was about one’s own pain. We are not going to sing; we are not going to dance. We are going to cry and scream and complain!”²¹

Another major disparity between the signs of protest in Tel Aviv and the signs in the socioeconomic periphery was the public image of the protest. As mentioned, the media identified several individuals as the leaders of the protest and covered them intensively. The faces of Daphni Leef, Stav Shaffir, Itzik Shmuli, and Regev Contes became ubiquitous. Yet, many people in the peripheries claimed that the coverage of these leaders, initiated by media, was a sham. In the words of Lony Natanzon, one of the Kiryat Shmona leaders: “Their leadership is flat, we are all leaders.”²² Haim Bar Yaakov, one of the leaders of Be’er Sheva’s protest and the founder of the “Living with Dignity” movement, said: “From the beginning there was remoteness from the Rothschild leadership. Daphni Leef represented the ‘Ashkenazi-bourgeoisies’ shop window. In my opinion, there is no leader.”

To sum up, the protest in Tel Aviv differed from the periphery’s protest in several significant poetic aspects. Yet, as will be elaborated in Section 6, a theme running through all the protest arenas unites them: a focus on the creation of new ways of rousing broad parts of the public to address major concerns. Legal discourse around state law was considered irrelevant and even damaging in this regard both by the Rothschild leaders and the periphery’s activists.

¹⁸ The Democratic Mizrahi Rainbow is a social movement aimed at bringing a change into Israeli society as a whole and to its institutions. The organization’s members are Jews from Arab and Muslim countries who identify with its values—democracy, human rights, social justice, equality and multiculturalism; see: <http://www.ha-keshet.org.il>.

¹⁹ Interview with Keren Kastenband, May 20, 2012.

²⁰ Interview with Michal Grinberg, May 21, 2012.

²¹ Interview with Ayala Sabag, May 21, 2012.

²² Interview with Lony Natanzon, May 20, 2012.

6 The Fields of Social Protest: Where Legal Language is Scarce

6.1 Interviewees' Perceptions of Law

The cumulative picture created by our interviewees reveals an intricate perception of state law, lawyers and legal discourse. In order to present this picture, we will elaborate on three approaches to law that have emerged from the assembled materials. The most frequently occurring one, identified among a large amount of the protesters, both leaders and activists, and located in the center and the periphery, we named "law as non-agent". The second approach, held by some interviewees, we called "law as a minor agent" and the third approach, held by relatively few interviewees, we termed "law as a significant agent".

The first approach, "law as a non-agent", reigned supreme as a means of social mobilization. It had different justifications among the leaders of the protest. While the tendency among the Tel Aviv leadership was to regard law as obsolete, toothless and an unattractive cliché, in the periphery, law was regarded as insignificant to the protest due to its strong ties to the socioeconomic cultural hegemony of the political establishment and elite groups. Thus, Regev Contes, said: "We felt deep aversion from everything that smelt like previous conflicts... and the HCJ's decisions, I felt that they do not really help any issue and that they make the public hate the issue they deal with...There was a feeling that law is not an impotent tool...maybe less in a practical manner, but in ideological manner...It is a fact that actually nobody came near the HCJ. ...We wanted to take the clichés out of the discourse, and the HCJ is a cliché."²³ He also referred to the incompatibility between the practices of the protest and the 'nature' of legal processes: "There was a momentum. So why HCJ?! It was not in our agenda. Should we wait for the judge's say-so? It was much more important and interesting to hear the people who at last found a way to make themselves heard."

Professor Yossi Yonah, who co-headed the Experts Committee, explained why, in his view, the law cannot accompany large-scale protest, and why legal mobilization is futile for achieving significant social change: "when you have masses, legal language is irrelevant...Law is not the domain of revolutions...it cannot and need not lead a social struggle...You cannot perform a U-turn using the law."²⁴ Interestingly, similar concepts of deconstruction of the legalistic discourse were expressed by the few lawyers that participated in assisting the protest leadership. Barak Cohen, A Lawyer who was, active in representing the activists that were detained or arrested by the police, emphasized that he had subordinated his professional status as a lawyer to his identity as an activist: "I was a slave of the occurrence. In the first days they did not know that I am a lawyer. During the first arrest I said: I am a lawyer."²⁵ In one media interview, Cohen referred to the protest as a means of challenging the HCJ's judicial hegemony: "I think that the distilled message of the protest...is a comprehensive war for human rights in Israel...This

²³ Interview with Regev Contes, February 26, 2012.

²⁴ Interview with Yossi Yonah, February 22, 2012.

²⁵ Interview with Barak Cohen, May 13, 2012. Barak Cohen is a lawyer and Tel Aviv's social protest activist.

means a constitutional revolution, not in the court, but rather within the public.”²⁶ Thus, Cohen was referring to the judiciary as a structural obstacle that should be deconstructed.

Lastly, perhaps the most striking comment pertinent to the “law as a non-agent” approach was made by Talia Sasson, an ex-deputy of the State Attorney who co-headed the team of legal experts that was somewhat active during the protest. Sasson emphasized that any social change carries inherent legal aspects, yet she firmly negated the option of ‘going to the court’ in order to promote the social change: “The protest is acute by nature. Demands of people running in the streets, loudly shouting: we want change. The HCJ (Sis totally not the address. It is the anti-address. Should it sit now for 5 years to reach a decision? It will be a wrong way to go there...If they would have asked me, I would have said: ‘Are you mad? What does the HJC have to do with social protest?’”²⁷

Unlike the protest leaders who held the power to mobilize the masses, most NGO lawyers and cause lawyers, who were active in the protest, tended to embrace the “law as a minor agent” approach, and a few took the “law as a significant agent” approach. Carmel Pomerantz who set up a legal counsel tent on Rothschild Boulevard described the law as a potential vehicle for social change, and as a method that eventually translates protesters’ demands into real social achievements.²⁸ Yet she stressed the inaptness of legal language: “The language of the protest is very general; it is more a language of emotion than a language of logic. Any attempt...to use it in a legal context sterilizes it.”²⁹

Gil Gan-Mor, A Lawyer from ACRI (Association for Civil Rights in Israel), who represented the Coalition for Affordable Housing and offered legal counseling to the activists, expressed similar ideas: “There was a feeling that now it is not the time to work according to the rules, rather it is the time of public rage and demands for a change of the system, a dramatic change of perception...As a social lawyer, the legal tool is just one of many, even not the best when we deal with social rights.”³⁰ Hence, these lawyers considered law to be a very limited tool for legal mobilization.

A few lawyers considered the role of law to be more significant than this. Ela Alon, a moderator of the Law in the Service of Community project at Tel Aviv University told us that believed that though the protest started with non-legal discourse, the leaders “greedily drank” the legal terms pertaining to social rights, and eventually navigated the protest towards directions that “we, the jurists, perceived important.”³¹ Yael Barda, who was one of the Mothers’ Protest organizers, felt that legal knowledge was important and relevant, and that it

²⁶ In this spirit, Cohen elaborated on his view of a constitutional revolution in an interview by Globes magazine [27].

²⁷ Interview with Talia Sasson, March 8, 2012.

²⁸ Pomerantz mentioned, as an example of such translation, the last verdict given by Chief Justice (Ret.) Beinisch: HCJ 10662/04 Salah Hassan v. The institute for Social Security [2012] (Isr.), which in her view manifests the transforming of the protest’s spirit into substantial judgment [21].

²⁹ Interview with Carmel Pomerantz, April 15, 2012.

³⁰ Interview with Gil Gan-Mor, March 14, 2012.

³¹ Interview with Ela Alon, February 22, 2012.

facilitated a better waging of the struggle.³² We note that these few lawyers were remote from the protest's leadership, did not have direct contact with it and their visibility during the protest was relatively limited.

Sometimes these approaches merged and revealed highly dialectical stances regarding the law. As explicated by our findings, the borders between the three approaches were not always delineated clearly.³³ Additionally, it is likely that the three basic approaches towards law illustrated here do not exhaust the full range of perceptions held by protest leaders, activists and participants in the assemblies and demonstrations in regard to law. Law may be seen and assessed by some of them in different ways. Notwithstanding, we maintain that our findings and the pertaining typology indicate that the more or less absence of lawyers and the legalistic discourse from the arena of the protest originated in a significant shift in the way law is perceived by its potential consumers. Inter alia, this suggests interesting insights regarding the lack of social consensus around the vision of "world reform through jurisdiction" that has underlined the justifications for extensive involvement of the HJC in public life [39]. The power relations, the socioeconomic stratification along the country's center and periphery, and the poetic choices reflected by the absence of state law, legal rights' discourse, the judiciary, and lawyers, provide a key to understanding of the extent of the very limited realization of this imaginary vision of legalistic discourse.

Our findings add a significant layer to past seminal findings that have illustrated the major role of law in public perception as a motivating engine for collective and personal changes. Patricia Ewick and Susan Silbey identified three narratives of law common to stories that people tell. In all the different stories, law was perceived as an important, meaningful vehicle [15]. In their article, "The Emergence and Transformation of Dispute: Naming, Blaming, Claiming..." Felstiner, Abel and Sarat [37], describe a fundamental mechanism of enlisting the legal machinery in order to pursue a claim despite the burdens and risks involved. Through this mechanism individuals characterize themselves as having a valid grievance, identify antagonists, and pursue a quest in which they are called to enlist and fight injustice [37]. Both these two important works stress the importance ascribed to law as a primary means that individuals turn to in order to address grievances and injustice.

The basic perception that these works manifest is in line with the "law as a significant agent" approach. Accordingly, as Ewick and Silbey [15] explained, the differing stories people told themselves about law assisted in conceptualizing law as an apt and pragmatic mechanism in sustaining its authority and legitimacy: "Taken together, these apparent contradictions permit individuals wide latitude in interpreting social phenomena and personal experience in ways that are consistent with prevailing ideologies of legality". The protest of summer 2011 indicates that

³² Interview with Yael Barda, April 16, 2012.

³³ Two examples: Wasim Abu-Shakra, an Israeli Arab-Palestinian who was an activist in Haifa's protest, while stressing the ineffectiveness of law because of the courts' unwillingness to intervene in the issues with which the protest was concerned and because of law's inherent slowness, told us that during the protest he made up his mind to study law so that he could use the knowledge that such an education offers. Renen Yeserzki, a Be'er Sheva activist, expressed doubts in regard to the law's effectiveness alongside satisfaction with certain legal decisions and hoped for future legal involvement.

state law's positioning as a major factor to which individuals turn in order to alleviate all kinds of grievances is seriously undermined. The protest encompassed an alternative sociopolitical trend focusing on complaining and by-passing of the "Naming, Blaming, Claiming" processes, through a non-legalistic discourse of social mobilization.

6.2 Poetics of Folk Protest Versus Legal Poetics

Various elements transformed Daphni Leef's modest personal protest into an immense popular and spectacular performance and according to our findings the absence of legalistic discourse, state law and lawyers was one of them. Alon-Lee Green, a young intellectual who inspired some protest leaders, captured the quintessence of the disparity between legal discourse and the essence and purposes of the invigorated performance that the protest gave rise to: "We created an arena that was distinctly defined by us, the actors. By using reflections and tactics we shaped the definitions of the field. And within this field...law, as a tool for achieving social and political destinations, has no place."³⁴

Performance is not foreign to legal practices [2:7]. In order to create meaningful representations of doing justice, law unfailingly uses a wide repertoire of poetic means. Distinct architecture of courthouses and courtrooms, unique dress codes, and distinctive language are just a few tools from a wide plethora employed by legal institutions and legal actors. The main legal performances—the trials—take place within designated enclaves, the courts, according to old visual and verbal poetics, both formal and informal [1:183]. The result is rigid, slow-paced performances, which are meant to convince their audience that justice is definitely delivered.

Our interviewees' words demonstrate why the protest was at odds with the representations that state law has produced. Yonatan Levi described the innovative nature of the summer 2011 demonstrations in comparison to previous demonstrations he had experienced: "There was very active public participation and not just passive reception of the happening on the stage. There was plenty of ardor, plenty of life-loving."³⁵

Gil Gan-Mor also talked about the active role of the public in establishing the lively and creative nature of the protest: "there was a feeling ...that now is our turn...the turn of folk protest, of YouTube clips...the graphics, the slogans and the ideas...people came out with a flood of creativity that amazed me... there was feeling that now is not the time to play by the rules, but the time for public rage."³⁶ Similarly, Regev Contes asserted: "We had a rule: we meet and talk with everyone, provided that they come to the encampment. We do not go anywhere. And there is no tête-à-tête." Contes also described the novel nature of the language created during the protest: "One of the things I loved about the tents is that they meant starting over, back to basics. Precisely in the age of Smartphones...people said: Here, we exchanged the iPhone and the computer with a tent, guitar, rug,

³⁴ Interview with Alon-Lee Green, April 23, 2012.

³⁵ Interview with Yonathan Levi, April 15, 2012.

³⁶ Interview with Gil Gan-Mor, March 14, 2012.

megaphone and people. There was something that restarted the discourse, a new language.”³⁷

The participants in the summer 2011 events jointly shaped the protest as an evocative performance, replete with innovative verbal and visual representations, while adamantly avoiding reference to the legal domain. They did not appeal to the courts, they did not toil at preparing legalistic proposals for reform,³⁸ and they refrained from asking for the assistance of lawyers in order to promote the demands that were at the core of the protest. Influenced by global social protests, the country with the highest number of lawyers (per capita) in the world was characterized by a new type of social performance embedded in an alternative discourse that sought to attain social reforms while avoiding a legalistic discourse.

7 Conclusion

Our findings explicate how the non-legalistic and even anti-legalistic discourse of the protest was formed, shaped and generated within the power relations of the protest, and how a pyramid of power produced a new poetics of protest that bluntly rejected the traditional poetics of state law. The power relations that generated the discourse regarding state law were embedded in socioeconomic stratification along the divide of center and periphery.

The Rothschild protesters, mainly middle-class Tel Aviv residents, perceived state law in the neo-liberal capitalist regime as obsolete due to its inability to successfully respond to the middle class expectations. The periphery rejected state law as an instrument that serves the hegemony perpetuating the socio-economic domination of the Haves, the upper middle class and the upper class. A remarkable feature, underscored by our research, is the intricate convergence between substance and form that the protest presented. The content of the protesters’ demands—reallocation of public funds and resources, relinquishing of neo-liberal values entrenched by the state law—was highlighted and expressed by the new poetics, which encouraged appropriation of public spaces and avoidance of conventional signifiers of legal battles.

The result of this distinctive convergence emerges from our research as a highly powerful performance that marginalized legalistic discourse into “last year’s language”, to use T.S. Eliot’s phrasing, while shaping next year’s voices of protest. The protesters refused to use traditional political and legal channels, and insisted on a new language and a new system of signs. Employing Roland Barthes’ terminology, we can say that the protest introduced a new semiotic system that managed to deflect the conventional mechanisms that shield the current reigning institutions, including the legal ones, from meaning-making [6].

³⁷ Interview with Regev Contes, February 26, 2012.

³⁸ It should be noted that the Israeli Democratic Institute and the Association for Civil Rights in Israel did draft a social rights bill for legislation, but they did so without much cooperation of prominent figures identified with the protest or hardcore activists and leaders; see interview with Talia Sasson, 8 March, 2012.

The fact that the protest was such a crowd-pleaser lends credence to the conjecture that the rejection of regular legalistic language echoed a widely-shared emotion. In light of the complex picture of poetics that emerged from the data we gathered, it seems that the summer 2011 protests invite new insights pertaining to the ways in which law, and particularly the language of legal rights and its agents, are perceived by Israeli society, also in comparison to other democracies, and to the range of social expectations attached to it.

As emerges from the interviews with the protest's leaders, the language of legal rights has failed, and can no longer be considered suitable for promoting social reforms. In this sense, the protest exposed a gap between more traditional human rights' NGOs, focused mainly upon legal actions, often litigation and advice to legislators, and the protest's initiators, leaders, and social activists. Furthermore, our research revealed a tension between the leadership of the protest that explicitly meant to expel state law, and particularly legalistic language, from the protest, and some NGOs, which aspired to take advantage of the events in order to promote social legislation.

Hence, legal scholars should address careful attention to the new types of discourse that the twenty-first century's protests are producing. Within this discourse state law is not only being seriously questioned, but is, in fact, being literally ignored as a major tool to attain justice. We are not arguing that the downfall of traditional judiciaries and the lawyering profession is unavoidable, nor do we assert the complete fragility of the traditional legalistic discourse. Yet, as the new century unfolds, it appears that nations and communities are looking for fresh types of collective action and political poetics, which are not necessarily violently opposing state law but actively questioning its ability to deal with acute social difficulties.

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