

# LAW BETWEEN NORMATIVITY AND PRAGMATISM

## The 2<sup>nd</sup> Annual TAU Workshop for Junior Scholars

10-11 November 2014

Sponsored by: David Berg Foundation Institute for Law and History · Cegla Center for Interdisciplinary Research of the Law · Batya and Isachar Fischer Center for Corporate Governance and Capital Markets Regulation · GlobalTrust Research Project · Law and Environment Program · Zvi Meitar Center for Advanced Legal Studies · Minerva Center for Human Rights · Edmond J. Safra Center for Ethics

Academic Organizers: **Masua Sagiv & Keren Yalin-Mor** · PhD Candidates at the Zvi Meitar Center for Advanced Legal Studies, Buchmann Faculty of Law, Tel-Aviv University

### Monday - November 10

#### 9:00-9:30 Greetings

**Prof. Ron Harris**, Dean, Faculty of Law, TAU

**Prof. Leora Bilsky**, Faculty of Law, TAU

#### 9:30-11:00

#### Corporate Governance and Capital Markets Regulation

CHAIR: **Barak Yarkoni**, TAU

**Katrien Morbee**, University of Leuven, Belgium · *Free Choice of Corporate Law Evaluated Against the Effect of the Incorporation Decision on Creditor Protection*

**Itai Fiegenbaum**, TAU · *The Geography of MFW-Land*

**Radek Goral**, Stanford Law School, USA · *Justice Dealers: The Ecosystem of American Litigation Finance*

COMMENTATORS:

**Prof. Ron Harris**, Dean, Faculty of Law, TAU

**Prof. Ehud Kamar**, Faculty of Law, TAU

**Dr. Shay N. Lavie**, Faculty of Law, TAU

#### 11:15-12:45

#### Science, Ethics and Democracy

CHAIR: **Maytal Gilboa**, TAU

**Benjamin Perryman**, Yale Law School, USA · *Formalism vs. Pragmatism: The Role of Social Facts in Implementing Balancing in Canadian Constitutional Law*

**Madeleine Gorman**, Leiden University, Netherlands · *Going Off Script: A Legal Challenge to the Gender Narrative on International Crimes of Sexual Violence*

**Amos Israel-Vleschouwer**, Bar Ilan University · *Human Cognition as the Bounded Meeting Point between Normativity and Pragmatism: Legal Complexities demonstrated in Jewish law*

COMMENTATOR: **Prof. Shai Lavi**, Faculty of Law, TAU

#### 15:00-16:40 Room 017, Zvi Meitar Center for Advanced Legal Studies

#### The Obligations of States to Foreign Stakeholders

Joint with the GlobalTrust Seminar

CHAIR: **Suha Jubran Ballan**, TAU

**Heidi C. Matthews**, Freie Universität Berlin, Germany · *The Other Side of COIN: A Critique of Contemporary Counterinsurgency Doctrine*

**Ivana Stradner**, UC Berkeley School of Law, USA · *The Path of International Law After the Kosovo War*

**Erlend M. Leonhardsen**, University of Oslo, Norway · *In the Shadow of Default Rules: Exiting BITs and Ex Post Bounded Rationality Bargaining*

**Tietie (Frank) Zhang**, Cornell Law School, USA · *Public Policy in International Commercial Arbitration Chinese Practices*

COMMENTATOR: **Prof. Eyal Benvenisti**, Faculty of Law, TAU

#### 17:00-18:20

#### Social, Cultural and Civil Rights

CHAIR: **Roni Liberson**, TAU

**Roman Zinigrad**, Yale Law School, USA · *Symmetrical Educational Policies: Towards a Genuinely "Fair and Balanced" Treatment of Minority Groups*

**Mahesh Menon**, West Bengal National University of Juridical Sciences, India · *Free Riding on Due Process: Operationalizing the Right to Livelihood by the Constitutional Courts of India*

**Yael Braudo-Bahat**, TAU · *The Transformative Power of Autonomy Within the Family*

COMMENTATOR: **Prof. Guy Mundlak**, Faculty of Law, TAU

### Tuesday - November 11

#### 9:00-10:40

#### Courts and Judicial Decision Making

CHAIR: **Nasreen Alemy-Kabha**, TAU

**Rolando Garcia Miron**, Stanford Law School, USA · *Selecting Precedents: A Study of the Mexican Supreme Court and Its Discretionary System to Create Precedents*

**Juliana Pondé Fonseca**, Federal University of Parana, Brazil · *The Vanishing Boundaries Between Technical and Political: The Brazilian Courts' Adjustment of Public Policies*

**Junqi Zhang (Richard)**, Peking University School of Transnational Law, China · *Ex Post v. Ex Ante: From the Perspective of China*

**Olga Frishman**, Hebrew University · *Courts and Their Audiences*

COMMENTATOR: **Prof. Roy Kreitner**, Vice Dean, Faculty of Law, TAU

#### 10:50-12:10

#### Transitional Justice and Human Rights

CHAIR: **Emilie E. Kuijt**, Leiden University

**Natalie Davidson**, TAU · *Alien Tort Statute Litigation as Transitional Justice: An Ambiguous Way to Address the Neo-Colonial Past*

**Maria Pichou**, University of Luxembourg, Luxembourg · *International Criminal Law Between Pragmatism and Normativity: The Principle of Equality of Arms and the Discretionary Power of International Criminal Tribunals to Obtain Additional Evidence Through Subpoenas*

**Jastine Barrett**, University of Cambridge, UK · *An Exercise in Pragmatism? UNICEF's Approach to Child Rights and the Child Génocidaire*

COMMENTATOR: **Prof. Aeyal Gross**, Faculty of Law, TAU

#### 13:10-14:50

#### Law and History

CHAIR: **Maya Mark**, TAU

**Marco Basile**, Harvard University, USA · *International Norms and National Politics on the Marshall Court*

**Katharina Isabel Schmidt**, Yale Law School, USA · *Towards a More 'Realistic' Jurisprudence: Facticity, Normativity and the Turn to 'Life' in Early 20th Century German and American Legal Thought*

**Uladzislau Belavusau**, Vrije Universiteit Amsterdam, Netherlands · *Armenian Genocide v. Holocaust: Strasbourg Pragmatism and Normative Trivialization*

**Inbal Maimon-Blau**, TAU · *The Maa'gan Flight Crash: A Social, Historical and Legal Examination of Disasters*

COMMENTATOR: **Prof. Assaf Likhovski**, Faculty of Law, TAU

#### 15:00-16:30

#### Law, Environment and Science

Joint with the Law and Environment Workshop

CHAIR: **Omer Aloni**, TAU

**Bruce R. Huber**, Notre Dame Law School, USA · *Moral Hazard, Property, and Nuclear Energy*

**Tamara Lotner Lev**, TAU · *The Narrow Environmental Protection from Offshore Petroleum Industry: What are We Talking About When We Talk About Environmental Protection?*

**Nir Harel**, University of Ottawa, Canada · *The Emerging Genetic Supermarket's Erosion of the Human Rights Law and Legal Boundaries to Prenatal Genetic Interventions*

COMMENTATOR: **Dr. David Schorr**, Faculty of Law, TAU

The sessions will take place at Buchmann Faculty of Law, Trubowicz Building, Sonia Kossoy Conference Room (Room 307)

For further information on the Workshop and access to the Workshop papers contact us at: [tau.workshop2014@gmail.com](mailto:tau.workshop2014@gmail.com)