The David Berg Foundation Institute for Law and History **At Tel Aviv University**

ANNUAL REPORT / 2017-2018































The David Berg Foundation Institute for Law and History

The Buchmann Faculty of Law Dr. David Schorr, Director



המכון למשפט והיסטוריה ע"ש קרן דיויד ברג הפקולטה למשפטים ע"ש בוכמן ד"ר דוד שור, מנהל

August 23, 2018

Ms. Michele Cohn Tocci Ms. Abby Kaufthal 16 E. 73rd Street, Suite 1R New York, NY 10021

Dear Michele and Abby,

On behalf of all of us at the David Berg Foundation Institute for Law and History at the Tel Aviv University Buchmann Faculty of Law, I wish to thank you and the Foundation for your continued support of the Institute, and in addition for the increased funding granted to the Institute for the coming two years.

The outgoing year represents Year 9 of your support. We are grateful that you share our enthusiasm for the subject matter and the pride that we take in our role in leading the field in Israel and around the world. Please know that we recognize the great privilege afforded to us by the David Berg Foundation.

Enclosed please find our 2017-2018 Annual Report. Please be in touch if you need additional information.

Sincerely,

David Schorr, JSD

Director

We are delighted to submit the 2017-2018 Annual Report for the David Berg Foundation Institute for Law and History at the Tel Aviv University Buchmann Faculty of Law.

The past year was another year of intensive and productive activity, with further accomplishments by our faculty, students and visitors in advancing the field of legal history in Israel and beyond. We hosted a number of successful conferences, progressed in the establishment of our archive of the history of Israeli law, continued work on our book series on the history of Israeli law and continued to support high-quality scholarship through research grants and other channels.

The Institute recently parted ways, reluctantly, with Ms. Ayelet Avriel, who did such a good job as the administrative assistant of the Institute over the past two years that she was promoted to a full-time position at the Cegla Center (with which we frequently collaborate). Ms. Idit Paiess-Fried has taken over the position and is quickly learning the job under Ayelet's guidance.

Please note that the expenditures in the attached report total \$31,575. The reason is twofold: The publication of Dr. Rivka Brot's book is taking longer than anticipated, and many of the 2017-2018 research grants have not yet been distributed. The balance of \$8,425 will be used to support these activities in 2018-2019.

With the expanded support from the Foundation for the next two years, the David Berg Foundation Institute is positioned to advance further in leading the Israeli legal history community and setting an example internationally of what an institute of legal history can accomplish. We will continue to be a renowned institution with your support.

CONFERENCES

13th ANNUAL CONFERENCE OF THE ISRAELI LAW AND HISTORY ASSOCIATION October 2, 2017 | Appendix A

As in past years, the Berg Institute supported the annual meeting of the Israeli Law and History Association, in collaboration with the Yad Ben-Zvi Institute in Jerusalem. Eight traditional panels took place in which papers were presented on a wide range of topics; the central event of the day was an award ceremony to present the third annual prize for the best article in legal history (see below at #27). The conference (in Hebrew) can be viewed here.

The 2018 conference will take place on October 8 and planning is well underway; the organizing committee is being chaired by Dr. Orna Alyagon Darr of Carmel College.

CO-SPONSORS

Israeli Law and History Association Yad Ben-Zvi Institute, Jerusalem

ORGANIZING COMMITTEE

Dr. Ely Aharonson, University of Haifa (chair)

Prof. Iris Agmon, Middle East Studies, Ben Gurion University

Prof. Binyamin Blum, Faculty of Law, UC Hastings

Dr. Avishalom Westreich, Law School, College of Law and Business

Dr. Doreen Lustig, Buchmann Faculty of Law, Tel Aviv University

2. WESTERN LEGAL THOUGHT AND ROMAN JURISTS

December 15-17, 2017 | Appendix B

The Buchmann Faculty of Law partnered with European institutions and gathered in Paris to examine the ongoing legacy of Roman law on modern law and legal scholarship. Presenting papers was an international group of scholars from Italy, France, Germany, the US, the UK and Israel, including three participants from TAU's Buchmann Faculty of Law: Prof. Yifat Monnickendam, Roman Jurists and Jewish Law: Status Quaestionis; Prof. Assaf Likhovski, Roman jurists and Early Twentieth Century Jewish Law Scholarship; and Dr. Lena Salaymeh, Jurists and the State Between Roman and Islamic Legal Traditions.

CO-SPONSORS

Institut des Sciences Juridique et Philosophique de la Sorbonne ERC Project *Scriptores Iuris Romani*, Università di Roma, La Sapienza Société pour l'histoire des facultés de droit et de la culture juridique Centre Aquitain d'Histoire du Droit, Université de Bordeaux l'Institut Universitaire de France

ORGANIZING COMMITTEE

Dr. Nader Hakim, Law and Political Science, Université de Bordeaux Prof. Pierre Bonin, School of Law, Université Paris 1 Panthéon-Sorbonne Prof. Aldo Schiavone, Istituto Italiano di Scienze Umane

3. NINTH ANNUAL DAVID BERG FOUNDATION INSTITUTE INTERNATIONAL CONFERENCE

Legal Transfers in the Common Law World November 27, 2017 | Appendix C

The Ninth Annual David Berg Foundation Institute International Conference brought together researchers from TAU and the Max Planck Institute for European Legal History to discuss a leading topic for both institutions: *Legal Transfers in the Common Law World*. Videos of the conference, including a plenary session that included law students, are here.

Planning for further collaborative projects is already underway, and this relationship is anticipated to expand and bear valuable fruit in the coming years.

ORGANIZERS

Prof. Stefan Vogenauer, Managing Director, Max Planck Institute for European Legal History Prof. David Schorr, Buchmann Faculty of Law, Tel Aviv University

CO-SPONSOR

Max Planck Institute for European Legal History

4. **CONFERENCE ON CRIMINAL LAW IN MEMORY OF PROF. SHNEUR-ZALMAN FELLER** April 24-25, 2018 | Appendix D

Prof. Feller was a highly influential figure in the development of Israeli criminal law. His family recently donated his archival papers to the Berg Institute. David Schorr lectured (video in Hebrew here) on the Israeli Legal History Archive's establishment with this collection (see below #21). Many participants also volunteered to donate additional materials to expand it.

CO-SPONSORS

Faculty of Law, Hebrew University
Taubenschlag Institute of Criminal Law, Tel Aviv University

5. WHO NEEDS ARCHIVES – AND WHY DO THEY NEED TO BE OPEN?

June 5, 2018 | Appendix E

More than 95% of the material held by the Israel State Archives is publicly available. Many other existing archives and collections are entirely inaccessible. This conference was convened to call attention to the accessibility problem. In this democratic state, the materials should be in the public domain. The conference sustained the ongoing dialogue to remedy the problem. Videos of the conference (in Hebrew) are here.

CO-SPONSORS

Association of Israeli Archivists
Israeli Journalists Association
Association for Civil Rights in Israel
Social History Workshop
Movement for Freedom of Information
Historical Society of Israel
Akevot Institute for Israeli-Palestinian Conflict Research
Documentary Filmmaker Forum

6. **JEWISH LAW ASSOCIATION 20TH INTERNATIONAL CONFERENCE**

Mishpat Ivri: Past Present and Future July 23-26, 2018 | Appendix F

This year's annual meeting was held at Moscow State University and marked the 100th anniversary of the founding of the *Mishpat Ivri Society* in Moscow and had a dominant legal-historical theme. Scholars from around the world participated in a multiday program to examine the dominant legal and historical themes that intersect to determine approaches and lenses for studying Jewish law within that context.

CO-SPONSORS

Jewish Law Association
Zimin Foundation
Eliyahu Foundation Program for Instruction and Research in Mishpat Ivri, Tel Aviv University
Taubenschlag Institute of Criminal Law, Tel Aviv University

LECTURES, WORKSHOPS AND SYMPOSIA

7. THE IRREGULAR MONEY-DEPOSIT CONTRACT IN CLASSICAL ANTIQUITY

Workshop | September 6, 2017 | Appendix G

Visiting Berg Scholar Dr. Fernando Hernández Fradejas of the University of Valladolid presented a paper on his research at the Institute during the summer of 2017.

8. HOW THE GOLDEN STATE BECAME GREEN

Environmental Policy Leadership in California Workshop | November 14, 2017 | Appendix H

Prof. David Vogel, Haas School of Business and Department of Political Science at UC Berkeley, discussed a chapter from his book project, which has since been published by Princeton University Press under the title *California Greenin': How the Golden State Became an Environmental Leader*.

CO-SPONSOR

Law and Environment Program, Tel Aviv University

9. AFTER GLOBALIZATION: ENGAGING THE "BACKLASH"

Symposium | November 23, 2017 | Appendix I

The program opened with a provocative lecture by renowned scholar of international law Prof. Martti Koskenniemi, Erik Castrén Institute of International Law and Human Rights at the University of Helsinki, followed by a roundtable with TAU Law faculty members. Videos of the event can be viewed <a href="https://example.com/here/be/her

CO-SPONSOR

Minerva Center for Human Rights, Tel Aviv University

SPEAKERS

Prof. Martti Koskenniemi, Global Professor of Law, NYU; Erik Castrén Institute of International Law and Human Rights, University of Helsinki

Prof. Eyal Benvenisti, Buchmann Faculty of Law, Tel Aviv University

Prof. Roy Kreitner, Buchmann Faculty of Law, Tel Aviv University

Dr. Natalie Davidson, Buchmann Faculty of Law, Tel Aviv University

Dr. Hila Shamir, Buchmann Faculty of Law, Tel Aviv University

10. RAPE AND SEXUAL OFFENSES IN PRE-MODERN EUROPE

Lecture | November 27, 2017 | Appendix J

This student-organized presentation offered a historical look at the very timely topic of sexual violence with Dr. Daphna Oren-Magidor, Martin Buber Society of Fellows at Hebrew University.

CO-SPONSORS

Law and History Student Forum of the Berg Institute, Buchmann Faculty of Law Law and Women Club of the Student Law Council, Buchmann Faculty of Law Criminal Law Student Forum of the Taubenschlag Institute, Buchmann Faculty of Law

11. TAX LAW AND SOCIAL NORMS IN MANDATORY PALESTINE AND ISRAEL

Symposium | November 28, 2017 | Appendix K

We celebrated the publication of our very own Prof. Assaf Likhovski's *Tax Law and Social Norms in Mandatory Palestine and Israel* (Cambridge University Press, 2017). The panel included legal historians and a scholar of tax law. Videos of the event (in Hebrew) can be viewed <u>here</u>.

SPEAKERS

Prof. Menachem Mautner, Buchmann Faculty of Law

Prof. Roy Kreitner, Buchmann Faculty of Law

Prof. Yoram Margalioth, Buchmann Faculty of Law

Prof. Leora Bilsky, Buchmann Faculty of Law

Prof. Assaf Likhovski, Buchmann Faculty of Law

12. THE HOLOCAUST, CORPORATIONS, AND THE LAW: UNFINISHED BUSINESS

Symposium | December 28, 2017 | Appendix L

We celebrated the publication of our very own Prof. Leora Bilsky's *The Holocaust, Corporations, and the Law: Unfinished Business* (University of Michigan Press, 2017). Commentators included legal historians and a scholar of tort theory. Videos of the event (some in Hebrew) are <u>here</u>.

CO-SPONSOR

Minerva Center for Human Rights, Tel Aviv University

SPEAKERS

Prof. Assaf Likhovski, Buchmann Faculty of Law

Prof. Avihay Dorfman, Buchmann Faculty of Law

Prof. David Weber, Boston University School of Law

Dr. Doreen Lustig, Buchmann Faculty of Law

Prof. Leora Bilsky, Buchmann Faculty of Law

13. GLOBAL WOMEN, COLONIAL PORTS

Prostitution in the Interwar Middle East Symposium | March 14, 2018 | Appendix M

A program on Prof. Liat Kozma's *Global Women, Colonial Ports: Prostitution in the Interwar Middle East* (SUNY Press, 2016). Commentators included legal historians and a social historian of Mandate Palestine. Videos of the event (in Hebrew) can be viewed <u>here</u>.

CO-SPONSOR

Minerva Center for Human Rights, Tel Aviv University

SPEAKERS

Prof. Leora Bilsky, Buchmann Faculty of Law Dr. Doreen Lustig, Buchmann Faculty of Law

Prof. Deborah Bernstein, University of Haifa

Prof. Haggai Ram, Ben Gurion University

Prof. Liat Kozma, Department of Islamic and Middle Eastern Studies, Hebrew University



14. HOW CONSERVATIVES INVENTED SUPRANATIONAL JUSTICE

A New History of European Human Rights Law Workshop | April 9, 2018 | Appendix N

Prof. Marco Duranti of the University of Sydney presented a fascinating paper on the origin of postwar human rights law in Europe in the work of conservative jurists.

CO-SPONSOR

International Law Workshop, Tel Aviv University

15. EMPTIED LANDS: A LEGAL GEOGRAPHY OF BEDOUIN RIGHTS IN THE NEGEV

Symposium | April 22, 2018 | Appendix O

SPEAKERS

Prof. Michael Birnhack, Buchmann Faculty of Law

Prof. Avi Rubin, Middle East Studies, Ben Gurion University

Dr. Raef Zreik, Minerva Center for Human Rights, Tel Aviv University

Dr. Havatzelet Yahel, Ben Gurion University

Prof. Sandy Kedar, University of Haifa

Prof. Ahmed Amara, Van Leer Institute

Prof. Oren Yiftachel, Lynn and Lloyd Hurst Family Chair in Urban Studies, Ben Gurion University

16. HOW INDIA BECAME DEMOCRATIC

Citizenship and the Making of the Universal Franchise Symposium | April 29, 2017 | Appendix P

Law and political science scholars discussed Ornit Shani's book *How India Became Democratic: Citizenship and the Making of the Universal Franchise* (Cambridge University Press, 2017). Videos of the event (in Hebrew) can be viewed here.

ONGOING SERIES

17. THE YIGAL ARNON LAW & HISTORY WORKSHOP

Appendix Q

In the spring term, faculty, students and legal historians from Israel and abroad presented their works in progress on legal history topics from a wide variety of periods, regions and disciplinary perspectives.

CO-SPONSORS

Yigal Arnon & Co.

Zvi Meitar Center for Advanced Legal Studies

COORDINATORS

Prof. Assaf Likhovski Dr. Lena Salaymeh

18. ISRAEL FORUM FOR ENVIRONMENTAL HISTORY

The Berg Institute lent support to the Environmental History Forum this year to foster synergies between the fields of legal history and environmental history. Shira Shmueli (post-doc fellow, Safra Center for Ethics) presented on the changing legal status of apes in the 20th century, and Dr. Orly Sela (post-doc researcher at the Berg Institute) spoke about water rights in late Ottoman Palestine.

CO-SPONSORS

European Society for Environmental History
Zvi Yavetz School of Historical Studies, Tel Aviv University
Porter School of Environmental Studies, Tel Aviv University
Department of Middle Eastern and African History, Tel Aviv University

19. WEDNESDAY FACULTY LUNCHES

Each Wednesday, TAU Law faculty get together for informal talks or discussions. This year the Berg Institute sponsored two talks by legal historians, both, coincidentally, from Boston University: Prof. Pnina Lahav, who discussed the question of whether Golda Meir was a feminist, and Prof. Michael Zank, who presented on *Torah v. Jewish Law. A Genre-Critical Approach to the Political Theology of Reappropriation*.

CO-SPONSORS

Eliyahu Foundation Program for Instruction and Research in Mishpat Ivri, Tel Aviv University Minerva Center for Human Rights, Tel Aviv University

20. DAVID BERG FOUNDATION INSTITUTE STUDENT FORUM

Students interested in the field of law and history gathered for a robust program of meetings with legal historians (see, for example, #10 above). All students and guest speakers reported great satisfaction with the lineup.

ORGANIZER

Adi Dubson, Tel Aviv University student

RESEARCH

21. ISRAELI LEGAL HISTORY ARCHIVE

The archive of Israeli legal history continues to grow, slowly but surely. An archivist was hired to catalog the papers of S.Z. Feller, donated last year, under the supervision of the law library staff; but the resulting progress was not made as anticipated – funding was provided by external sources. This year's increased funding from the David Berg Foundation will allow us to hire a part-time research infrastructure coordinator to supervise this work and bring it to the finish line.

We were fortunate to spot the papers of lawyer and member of Knesset Moshe Ben-Ami (1898-1960) up for auction in Jerusalem; we purchased them at a very reasonable price. We plan to catalog these papers as soon as possible, along with the Feller papers, and make both collections available to researchers. We continue to keep our eyes open for similar opportunities in the future, and our research coordinator will be reaching out to Israeli lawyers, their families and legal institutions in order to expand our holdings.

CO-SPONSORS

David J. Light Law Library, TAU Zimin Foundation Law Fund, TAU

22. BERG-BGU LEGAL HISTORY BOOK SERIES

The first book in the series, Nir Kedar's *Blue and White Law: Identity and Law in Israel: A Century-Long Polemic*, received an honorable mention in the competition for the annual Shapiro Award for Best Book in Israel Studies of the Association for Israel Studies.

Dr. Rivka Brot's *Between Community and State: Trials of Jewish Collaborators with the Nazis* is currently in production with Open University Press and Ben-Gurion University Press. Brot's manuscript was winner of the prestigious Goldberg Fund Prize in 2016 and received rave reviews from our referees. It will be the second book in the Berg-Ben Gurion series, and we look forward to its publication soon.

The publications committee (Dr. David Schorr, Prof. Roy Kreitner, Prof. Assaf Likhovski and Prof. Orit Rozin) recently received another relevant manuscript submission. It is under review, and we have received inquiries from other authors that we hope will ripen into additional submissions this coming year.

CO-SPONSORS

Ben Gurion Institute for the Study of Israel and Zionism, BGU Open University Israel Press

23. OTHER PUBLICATIONS

The Berg Institute's support of legal history research, through individual grants (see below #26) and other activities, facilitates a great deal of scholarly work in addition to the book series, as well. Among the works published in the last year with the Institute's support:

Omer Aloni, *The Polygamy Issue: Early Israeli Law and the Question of Bigamy in Oriental Communities,* in Personal Status and Gender: Palestinian Women in Israel (Heba Yazbak and Liat Kozma eds.) 163-200 (2017) (PhD student, TAU) Profs. Yishai Blank & Issi Rosen-Zvi, *Reviving Federal Regions,* Stanford Law Review 70 (2018): 1895-1993

Dr. Rivka Brot, Conflicting Jurisdictions: The Struggle of the Jews in the Displaced Persons Camps for Legal Autonomy, Dapim: Studies on the Holocaust 31 (2017): 171-199 Dr. Natalie R. Davidson, Alien Tort Statute Litigation and Transitional Justice: Bringing the Marcos Case back to the Philippines, International Journal of Transitional Justice 11 (2017): 257-75

Dr. Natalie R. Davidson, *Shifting the Lenses on Alien Tort Statute Litigation: Narrating U.S. Hegemony in Filártiga and Marcos,* European Journal of International Law 28 (2017): 20-30

Dr. Natalie R. Davidson, *Toward a Self-Reflexive Law? Narrating Torture's Legality in Human Rights Litigation*, Law, Culture, Text 21 (2017): 100-122

Prof. Inbal Blau Maimon, A Socio-legal Examination of Mass Bodily Injury Events in Israel (PhD student, TAU, 2018)

Drs. David B. Schorr & Carol M. Rose, *The Tragedy of the Commons at 50: Context, Precedents, and Afterlife,* Theoretical Inquiries in Law 19 (2018): 395-703 (13 articles + introduction)

Many more publications and book projects are underway.

24. BERG VISITING AND POST-DOCTORAL SCHOLARS

The Berg Institute hosted a number of renowned visiting scholars this year:

- Dr. Rivka Brot (University of Haifa), Law and Order in the Chaos Administration of Law in Jewish Displaced Persons Camps
- Dr. Fernando Fradejas (University of Valladolid), A Historical Approach to the Deposit Contract of Fungible Goods
- Dr. Khinvraj Jangid (Jindal Global University), Re-Constructing Nations? A Comparative Study of the Historical Narratives in India and Israel
- Dr. Orly Sela (Tel Aviv University), Water Law in Early Israel

The visiting scholars enriched the intellectual fabric of the faculty by participating in Institute activities; at the same time their access to the breadth of academic resources and scholarship while at the Institute contributed significantly to advancing their research projects.

25. **RESEARCH RESOURCES ONLINE**

The Institute continues to update its bibliography of Israeli legal history, https://en-law.tau.ac.il/Berg main/Israeli Legal History Bibliography, and its page dedicated to resources useful for scholars researching the history of Israeli law, https://en-law.tau.ac.il/Berg main/Research Resources.

The Foundation's increased funding granted to the Institute helped create new digital resources, including an index to archival court files, which will be updated as these projects move forward.

26. **RESEARCH GRANTS**

The Institute provided research grants to three graduate students and nine faculty members at the Buchmann Faculty of Law. The funds supported archival and other relevant research in the field, as well as editing of publications. Doctoral student Talia Diskin received the Association of Israel Studies Ben Halpern Award for Best Dissertation in Israel Studies for her work, *Legal and Moral Values in Children and Youth Periodicals in the State of Israel, 1948-1958*, made possible with the support of a Berg Institute research grant.

GRADUATE STUDENTS

Omer Aloni, Back to the League of Nations – Evaluation of the Environmental Regime: 1919-1939 Inbal Blau, A Socio-legal Examination of Mass Bodily Injury Events in Israel Talia Diskin, Legal and Moral Values in Children and Youth Periodicals in the State of Israel, 1948-1958

FACULTY

Dr. Natalie Davidson, The Changing Definition of Torture: A Socio-Legal Inquiry
Prof. Arye Edrei, The Diaspora Jewish Community and Israeli Law
Prof. Ron Harris, The Birth of the Business Corporation East and West
Dr. Doreen Lustig, History of International Humanitarian Law; History of the Capture Concept
Prof. Elimelech Westreich, Debates Over Circumcision in the Lithuanian Jewish World

27. PRIZE FOR BEST LEGAL HISTORY ARTICLE

The Hounds of Empire: Forensic Dog Tracking in Britain and its Colonies, 1888-1953

Continuing the tradition established two years ago, this year's annual conference of the Israel Law and History Association (see above at #1) included a prize for the author of the best legal history article published in the preceding year by a member of the Association. The prize committee, comprising Prof. Deborah Bernstein (University of Haifa, Chair), Dr. Shai Wozner (TAU) and Dr. Avital Margalit (Sapir College), selected an article by Binyamin Blum (UC Hastings), *The Hounds of Empire: Forensic Dog Tracking in Britain and its Colonies, 1888-1953,* which was published in the August 2017 issue of *Law and History Review*.

The annual prize encourages Israeli scholars to invest in high-quality legal history research. The committee for the fourth annual prize, to be awarded October 2, is being chaired by Prof. Esther Cohen of the Hebrew University. The winner of the 2018 prize will soon be announced.

2018-2019 ACTIVITIES IN PRODUCTION

- The 10th Annual David Berg International Conference: Back to '48: Victims' Groups Quest for Justice and the Changing Landscape of International Law
- Publication of the second book in the Berg-BGU series on Israeli Legal History, Dr. Rivka Brot's Between Community and State: Trials of Jewish Collaborators with the Nazis
- Events with Sackler Fellow Prof. Jack Rakove (Stanford)
- Continued work on preservation of historic materials for the Israeli Legal History Archive and making them available to scholars
- Indexing case files from the courts of the Mandate period
- A conference on law in Israel in 1948
- The 14th Annual Meeting of the Israeli Law and History Association
- Symposia on new books by author Benjamin Balint, Prof. Avi Rubin, Dr. Rivka Brot and more