



RESEARCH WORKSHOP OF
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Bar-Ilan
University

Faculty of Law

Trends in legal formalism and the judicial role:

Jurisprudence meets empirical legal studies

18-20 December, 2016

Sunday, December 18th - Faculty Lounge

09:00-10:30 First Session: Opening Comments and Conceptual Debates About Formalism

Chair: Prof. Michal Alberstein, Bar-Ilan University

Dr. **Limor Gabai-Egozi** and Prof. **Bryna Bogoch**, Bar-Ilan University,

Formalisms of Law: The Fluctuating Paths of Legal Rhetoric

Prof. **Lawrence Solan**, Brooklyn Law School,

Rhetoric in the US Supreme Court: From Formalism to Pragmatism

Prof. **Dennis Kurzon**, Haifa University,

Sir Thomas More as a Legal Formalist

Prof. **Barak Medina**, Hebrew University,

Rules vs. Standards in Constitutional Adjudication

Coffee break

11:00-12:30 Second Session: Socio-legal and Historical Aspects of Legal Formalism

Chair: Dr. Ori Aronson, Bar-Ilan University

Prof. **Menny Mautner**, Tel-Aviv University,

The Decline of Formalism and the Rise of Values in Israeli Legal Culture 1980-1993-2016

Prof. **Brian Tamanaha**, Washington University,

The Inevitability of Formalism and Realism

Prof. **Nir Kedar**, Sapir Academic College/Bar-Ilan University,

A Broader Historical Look at Legal Formalism

Lunch break

14:00-15:30 Third Session: Formalism in Jewish Law

Chair: Prof. Tsilly Dagan, Bar-Ilan University

Prof. **Yair Lorberbaum**, Bar-Ilan University,

Halakhah, Kabbalah and Legal Formalism

Prof. **Haim Shapira**, Bar-Ilan University,

Judicial Arbitration as an Anti- Formalistic Mechanism in the Jewish Judging System

Prof. **Suzanne Stone**, Benjamin N. Cardozo School of Law/Yeshiva University,

Formalism and Aesthetics: From Blackstone to Brisk

Prof. **Adiel Schremer**, Bar Ilan University,

The Textualist Shift and the Rise of Formalism in Early Rabbinic Legal Thought



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16:00-17:30 Fourth Session: Reconstructions of Legal Formalism

Chair: Prof. Shai Stern, Bar-Ilan University

Prof. **Yishai Blank**, Tel-Aviv University,

The Re-Enchantment of Law

Prof. **Hanoch Dagan**, Tel-Aviv University,

The Real Legacy of American Legal Realism

Prof. **Amnon Reichman**, Haifa University,

Formal Legal Pluralism

Dr. **Karni Perlman**, College of Management Academic Studies,

Are Therapeutic Judges Human? Formalism, Legal Realism and Therapeutic Judging

Monday, December 19th , **Weissfeld Hall**, Feldman International Conference Center
(Building 301)

09:00-10:30 First Session: Changes in Legal Formalism in Civil Law

Chair: Dr. Nourit Zimmerman, Bar-Ilan University

Prof. **Shahar Lifshitz**, Bar-Ilan University,

*The Complex Relations Between Judicial Activism, Legal Certainty and the Protection of the
"Weak" Partner: The Case of Israeli Marital Property Law*

Dr. **Ayelet Blecher-Prigat**, Sha'arei Mishpat Law School and Dr **Shelly Kreiczer-Levy**,
College of Law & Business, Ramat Gan,

The Formalist Puzzle of Intestate Succession

Dr. **Arlette Slomianski**,

Usage and Practice in Civil Legal Systems – Protectors of the Code and Creators of the Law

Dr. **Masood Ahmed**, University of Leicester,

Legal Formalism in the Digital Age of Civil Justice

11:00-12:30 Second Session: Legal Formalism and Jurisprudence

Chair: Dr. Lisa Bernstein, Chicago Law School

Prof. **Ariel Bendor**, Bar-Ilan University,

Judicial Discretion in Israeli Public Law: On Three Eras

Prof. **Shai Lavi**, Tel-Aviv University,

Outside the Formalist/Realist Problem-Space

Prof. **Meir Dan Cohen**, Berkley University

Prof. **Michal Alberstein**, Bar-Ilan University

Formalism and the Shadow of "the Shadow of the Law"

Lunch break



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14:00-15:30 Third Session: Empirical Legal Studies and Legal Formalism: The Challenge of Measurement

Chair: Dr. Limor Gabai-Egozi, Bar-Ilan University,

Dr. **Gali Aviv**, Israeli Courts Research Division, Supreme Court of Israel

Measuring the Judicial System from Within: Challenges, Methods and Policy Implications

Prof. **Nadav Davidovitch**, Ben-Gurion University,

Combining Qualitative and Quantitative Methods in Studying Medicine and Law

Prof. **Bryna Bogoch**, Bar-Ilan University,

Empirical Challenges in Evaluating Legal Formalism

Dr. **Ayelet Sela**, Bar-Ilan University,

Outside the Formal Case Record: A Methodology for Capturing the Undocumented Realities of Court Hearings

16:00-17:30 Fourth Session: Judges, Formalism and Conflict Resolution

Chair: Dr. Ayelet Sela, Bar-Ilan University

Prof. **Janet Martinez**, Stanford University,

The Court as Designer: Appropriate Dispute Resolution to Online Access to Justice

Dr. **Nourit Zimmerman**, Bar-Ilan University,

Regulating Judicial Discretion: Between Formal and the Informal

Prof. **Lela Porter Love**, Benjamin N. Cardozo School of Law/Yeshiva University,

Reflections of a Mediator on the Decline of Formalism and the Rise of the Judge as a Dispute Resolver

Dr. **Orna Rabinovich-Einy**, Haifa University,

Formalism and Informalism in the Digital Age

18:00-19:30

The New Roles of Judges and the Empirical Challenge

Chair: Prof. Michal Alberstein, Bar-Ilan University

Round Table: Discussion with the participation of judges and academics including

Justice **Dalia Dorner** (retired), Supreme Court of Israel

Judge **Iris Rabinovitch Brun**, Central District Court

Judge **Ofer Grosskopf**, Central District Court



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Tuesday, December 20th **Weissfeld Hall**, Feldman International Conference Center (Building 301)

09:00-11:00 Empirical Measures to Assess Legal Formalism

Prof. **Michal Alberstein**, Prof. **Bryna Bogoch** and Dr. **Limor Gabay-Egozi**

Presentation of ISF Research Findings and Discussion

11:30-13:00

The Decline of Formalism and the Rise of Values: Intellectual Perspectives from Within the Seminar Circle

This part of the workshop is an intellectual reunion of a formative seminar which was conducted at Tel Aviv University Faculty of Law between 1992-1994. The seminar, led by Professor Menachem Mautner and Professor Meir Dan-Cohen, dealt with several fundamental jurisprudential issues. One of the topics discussed in the seminar was the claim that since the 1980s legal reasoning in the opinions of the Israeli Supreme Court reflected the “the decline of formalism and the rise of values”.

Opening Remarks and Recollections

Prof. **Menachem Mautner**, Prof. **Meir Dan-Cohen**

Lunch Break

14:00-15:15 Responses to the Formalism Debate: Inside the Academia

Prof. **Oren Perez**, Bar-Ilan University, Prof. **Michal Alberstein**, Bar-Ilan University, Dr. **Sagit Mor**, Haifa University

Coffee Break

15:45-17:00

Responses to the Formalism Debate:

Outside the Academia: Politics, Social Activism, Art:

Dr. **Ram Vromen**, Adv. **Lilach Tal-Nir**, Dr. **Roei Amit**

Please confirm participation in the workshop by rsvp to erc.jcr@biu.ac.il.

Organizing Committee: Prof. Michal Alberstein (Bar-Ilan University), Prof. Bryna Bogoch (Bar-Ilan University), Prof. Yair Lorberbaum (Bar-Ilan University), Prof. Barak Medina (Hebrew University), Prof. Roy Kreitner (Tel Aviv University), Dr. Nourit Zimmerman (Bar-Ilan University), Michal Roness (Bar-Ilan University)