

## PRESENTERS BIOS

**Ori Aronson** is Assistant Professor at the Bar-Ilan Faculty of Law, where he is a founding member of the Center for Jewish and Democratic Law. He is a visiting professor at the Berkeley Institute for Jewish Law and Israel Studies, 2014-2015. Aronson received an LL.B from The Hebrew University of Jerusalem and LL.M and S.J.D degrees from Harvard Law School and has served as a law clerk to Israeli Supreme Court Chief Justice, Aharon Barak, and to Judge Jon O. Newman (US Court of Appeals, Second Circuit). His research interests include constitutional law and civil procedure, and the political and constitutional implications of the institutional design of court systems.

**Hila Shamir** is Associate Professor at Tel-Aviv University Faculty of Law and a visiting scholar at the Berkeley Institute for Jewish Law and Israel Studies, 2014-2015. She earned a S.J.D. and LL.M. from Harvard Law School and a LL.B. from Tel-Aviv University. Shamir teaches and researches in the fields of Employment, Labor, Immigration, and Welfare Law, with a focus on issues of gender equality, informal work, and welfare state privatization.

**Shira Offer** is Associate Professor at the Department of Sociology and Anthropology at Bar-Ilan University. She is a visiting professor at the Berkeley Institute for Jewish Law and Israel Studies, 2014-2015. She earned her Ph.D. in Sociology from the University of Chicago and was a Research Analyst at the Alfred P. Sloan Center on Parents, Children, and Work. Her main research interests include personal networks, work and family, gender relations, and poverty.

**Avishai Benish** is Assistant Professor at the Paul Baerwald School of Social Work and Social Welfare at The Hebrew University of Jerusalem and The Rosalinde and Arthur Gilbert Foundation Visiting Professor of Israeli Law and Society, 2014-2015. He holds an LL.M from Columbia University Law School and an LL.D. from Hebrew University. His fields of expertise are public law, welfare law, and social policy.

**Malcom Feeley** is the Claire Sanders Clements Dean's Professor of Law at UC Berkeley School of Law. Before joining Boalt in 1984, Feeley was a fellow at Yale Law School and taught at New York University and the University of Wisconsin. He served as director of the Center for the Study of Law and Society from 1987 to 1992. He has also been a visiting professor at Hebrew University, Kobe University, and Princeton University.



BERKELEY INSTITUTE  
FOR JEWISH LAW  
AND ISRAEL STUDIES



CENTER FOR THE STUDY  
OF LAW AND SOCIETY

## THE PRIVATE SPHERE AS PUBLIC POLICY?: *A Symposium on Law and Society in Israel*

**TUESDAY, FEBRUARY 17, 2015**

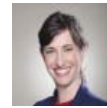
RECEPTION: 2:30; SYMPOSIUM 3:00 PM – 5:00 PM

GOLDBERG ROOM (297 BOALT HALL), BERKELEY LAW



### INTRODUCTION

Jonathan Simon, Adrian A. Kragen Professor of Law;  
Director, CSLS



### PRISON PRIVATIZATION

Hila Shamir, Associate Professor, Buchman Faculty of  
Law, Tel Aviv University



### JUDGING IN THE SHADOW OF THE LAW: PRIVATE FORUMS AND PRIVATIZED ADJUDICATION IN ISRAEL

Ori Aronson, Assistant Professor, Bar-Ilan University  
Faculty of Law



### 'I'VE GOT NO ONE TO LEAN ON': THE NEGOTIATION OF NETWORK RELATIONS AMONG LOW-INCOME MOTHERS IN ISRAEL UNDER A NEOLIBERAL DISCOURSE

Shira Offer, Associate Professor, Department of  
Sociology and Anthropology, Bar-Ilan University



### THE (LEGITIMACY) PRICE OF PRIVATIZED WELFARE

Avishai Benish, Assistant Professor, Paul Baerwald  
School of Social Work and Social Welfare, Hebrew  
University of Jerusalem



### RESPONDENT

Malcolm Feeley, Claire Sanders Clements Dean's  
Professor of Law

## ABSTRACTS

### ***PRISON PRIVATIZATION, BY HILA SHAMIR***

In a seminal decision in 2009, the Israeli Supreme Court ruled that private prisons violate the constitutional right of human dignity. Considered a milestone in Israeli law because it signaled the first time the Court set a limit on the government's widespread privatization policy, the opinion gained wide public support. The presentation will offer a critical reading of the prison privatization opinion arguing that the Supreme Court's opinion is the product of "institutional fetishism," an approach that assumes the state and the market each have a single natural and necessary institutional expression. The talk will challenge this approach by showing that the state and the market, far from being inherently separate and distinct, are in fact mutually constitutive, fluid and dynamic institutional networks whose content as well as interconnections are malleable. The talk will further suggest that in order to deal with the social and economic challenges of post-industrial welfare states it is time to re-think assumptions based on institutional fetishism.

---

### ***JUDGING IN THE SHADOW OF THE LAW: PRIVATE FORUMS AND PRIVATIZED ADJUDICATION IN ISRAEL, BY ORI ARONSON***

Two Supreme Court decisions from the past several years, concerning religious jurisdiction in Israel, have shared an effect of empowering private, community-based adjudication in significant fields of social activity. In 2006, the Court banned the practice of state-run Jewish religious courts deciding civil disputes as arbitration panels. The Court held that these public *battei-din* had jurisdiction over marriage and divorce alone. This decision turned out to enhance the religious standing and popularity of privately-run *battei-din* in Israel. In 2014, the Court ordered the state to recognize divorce decrees entered by the religious tribunal of the Karaite community, a Jewish stream whose practices are rejected by the orthodox establishment governing marriage and divorce in Israel; again a private forum won recognition and empowerment. These two episodes, of reliance on private-sphere provision of religious judicial services, can be read as workable pluralist solutions for a society split along multiple religious and cultural lines. But they can also be cast in the context of the more general trend toward the privatization of adjudication and away from the potential of courts as forums for the formulation and elucidation of public values. The presentation will discuss the social implications of privatized adjudication in Israel and explore some possibilities for innovative institutional design that would turn the plurality of private judicial forums into a resource for public engagement and accountability.

### ***"I'VE GOT NO ONE TO LEAN ON": THE NEGOTIATION OF NETWORK RELATIONS AMONG LOW-INCOME MOTHERS IN ISRAEL UNDER A NEOLIBERAL DISCOURSE, BY SHIRA OFFER***

Since the 1990s many industrialized countries, including Israel, have restructured welfare by cutting social benefits, imposing new eligibility requirements, and increasing deregulation and the privatization of state owned corporations. These reforms, which have been developed as part of the move towards a market-oriented neoliberal economy, have pressured families to assume greater responsibility in planning for and guaranteeing their own material well-being. They have also assumed that individuals have private safety nets to fall back on in times of need. This assumption, however, is unwarranted. Research has shown that those in the greatest need of network support are the least likely to have it. Using in-depth interviews with 50 low-income mothers in Israel, Prof. Offer seeks to demonstrate how the neoliberal ideas of independence and self-sufficiency shape not only the relations between the individual and the state, but also the interpersonal relations that low-income individuals maintain with their network members. Echoing the seminal work of Marcel Mauss, the talk examines the conditions under which the expectation to share resources and reciprocate support constitutes a mechanism of social fragmentation rather than integration as originally portrayed in sociological and anthropological theory.

---

### ***THE (LEGITIMACY) PRICE OF PRIVATIZED WELFARE, BY AVISHAI BENISH***

In August 2005, the Israeli government, as part of a global trend, implemented a far-reaching welfare reform. On the policy side, the reform adopted a strong "ending welfare dependency" and "work first" stance. On the governance side, as part of what is sometimes captured by the notion of "New Public Management" (NPM), the operation of the program was contracted out to private for-profit firms and the payment to these contractors was based on their performance in reducing welfare rolls. The talk will examine the implications of these transformations in welfare governance on legal accountability and administrative justice. Prof. Benish will argue that despite their 'privateness', significant public law norms – such as equality, transparency and fairness – were extended to the private welfare contractors, transcending the traditional public-private divide and reconstructing legal accountability on more functional lines. However, the Israeli case suggests that there might be a hidden "price" of privatization – in terms of the acceptability of decision making. The commitment of the contractors' workers to their employers' profit motives was widely seen as putting them in a structural conflict of interest, severely eroding trust in their decisions. At the same time, the managerial performance standards embodied in the programs' governance did not offer an alternative legitimacy argument for the acceptability of decisions, and, in fact, intensified concerns over conflict of interest.