## Theoretical Inquiries in Law

Volume 17, Number 1, January 2016

**Editorial Board** 

**Editor in Chief:** Sharon Hannes, Tel Aviv University

**Guest Editors:** Guy Mundlak

Hila Shamir

**Associate Editor:** Yael Braudo

**Junior Editors:** Amir Benvenisti

Etia Rottman-Frand

**Assistant Editors:** Naama Ben Dov

Tamar Firon
Marh Ganaiem
Ortal Gishry
Daniel Kolko
Roy Mattar
Yochay Moshe
Nitzan Peled
Yoav Rosenberg
Mikhal Shachar
Shani Schnitzer
Erez Wollberg

**Managing Editor:** Aya Shalom

ISSN 1565-1509

(C)

Copyright 2016 by Theoretical Inquiries in Law
The Cegla Center for Interdisciplinary Research of the Law
The Buchmann Faculty of Law, Tel Aviv University
Printed in Israel
By XXX

THEORETICAL INQUIRIES IN LAW is a biannual English-language law journal published by the Cegla Center for Interdisciplinary Research of the Law at the Buchmann Faculty of Law, Tel Aviv University. The journal specializes in the application to legal problems of insights developed in other disciplines, such as moral and political theory, epistemology, history, cultural studies, social sciences, economics and game theory, probability theory, and cognitive psychology. The range of issues dealt with by the journal is virtually unlimited, in line with its commitment to the cross-disciplinary cultivation of ideas. Contributors to the journal are distinguished legal scholars working in different "law and . . ." areas. The journal also strives to offer a forum for contributions to legal theory by scholars working in disciplines outside of law.

The previous issues of the journal have been devoted to the following topics: Restitution and Unjust Enrichment; Judgment in the Shadow of the Holocaust; Contemporary Legal Scholarship: Achievements and Prospects; Protecting Investors in a Global Economy; Economic Analysis of Constitutional Law; Negligence in the Law (Parts 1 & 2); Writing Legal History; Liberty, Equality, Security; The Palestinian Refugees and the Right of Return: Theoretical Perspectives; The Role and Limits of Legal Regulation of Conflicts of Interest (Parts 1 & 2); The Excessive Use of Force; Personal Bankruptcy in the 21st Century: Emerging Trends and New Challenges; Critical Modernities: Politics and Law Beyond the Liberal Imagination; Why Citizenship?; Moral and Legal Luck; Legal Pluralism, Privatization of Law and Multiculturalism; Community and Property; Histories of Legal Transplantations; Money Matters: The Law, Economics, and Politics of Currency; Comparative Tax Law and Culture; Copyright Culture, Copyright History; Rights and Obligations in the Contemporary Family: Retheorizing Individualism, Families and the State; Back to the State? Government Investment in Corporations and Reregulation; International Courts and the Quest for Legitimacy; Public and Private, Beyond Distinctions?; New Approaches for a Safer and Healthier Society; and Sovereignty as Trusteeship for Humanity: Historical Antecedents and Their Impact on International Law. Forthcoming issues will include The Constitution of Information: From Gutenberg to Snowden (July 2016); and Law, Economy and Inequality (January 2017).

An online version of the journal, as well as comments on articles published in the journal, are available in the *Theoretical Inquiries in Law* website (http://en-law.tau.ac.il/til). All articles are also indexed and available on HeinOnline, LegalTrac, Lexis-Nexis, and Westlaw.

**Contact Information:** Theoretical Inquiries in Law, The Cegla Center for Interdisciplinary Research of the Law, The Buchmann Faculty of Law, Tel Aviv 69978, Israel. Tel.: 972-3-6406697; fax: 972-3-6405849; email: cegla@post.tau.ac.il.

# Theoretical Inquiries in Law

Volume 17, Number 1, January 2016

### Labor Organizing and the Law

#### **Contents**

	Preface	i
Benjamin I. Sachs	Introduction: Labor Scholarship in an Era of Uncertainty	
Jefferson Cowie	Reframing the New Deal: The Past and Future of American Labor and the Law	
Nathan Lillie	The Right Not to Have Rights: Posted Worker Acquiescence and the European Union Labor Rights Framework	39
Pnina Alon-Shenker and Guy Davidov	Organizing: Should the Employer Have a Say?	63
Catherine L. Fisk	Workplace Democracy and Democratic Worker Organizations: Notes on Worker Centers	101
Graciela Bensusán	Organizing Workers in Argentina, Brazil, Chile and Mexico: The Authoritarian- Corporatist Legacy and Old Institutional Designs in a New Context	
Guy Mundlak	Organizing Workers in "Hybrid Systems": Comparing Trade Union Strategies in Four Countries — Austria, Germany, Israel and the Netherlands	163

Ingrid Landau and John Howe	Trade Union Ambivalence Toward Enforcement of Employment Standards as an Organizing Strategy	201
Hila Shamir	Unionizing Subcontracted Labor	229
Ilda Lindell and Christine Ampaire	The Untamed Politics of Urban Informality: "Gray Space" and Struggles for Recognition in an African City	257
Supriya Routh	Informal Workers' Aggregation and Law	283
Einat Albin and Virginia Mantouvalou	Active Industrial Citizenship of Domestic Workers: Lessons Learned from Unionizing Attempts in Israel and the United Kingdom	321
Margriet Kraamwinkel	Organizing in the Shadows: Domestic Workers in the Netherlands	351

### Preface

The articles collected here are the product of the *Labor Organizing and the Law* Conference held at the Buchmann Faculty of Law, Tel Aviv University, in January 2015, with the support of Paula Goldberg Foundation and the Minerva Center or Human Rights. *Theoretical Inquiries in Law* thanks Guy Mundlak, Benjamin I. Sachs and Hila Shamir, the organizers of the conference, for bringing together an outstanding group of contributors. Guy Mundlak and Hila Shamir also served as guest editors of this issue, and Benjamin I. Sachs is the author of this issue's introduction. We also thank Ruvik Danieli for style-editing the articles, and all the conference participants and commentators. The articles published in this issue, as well as comments on the articles, are available online in the *Theoretical Inquiries in Law* Website (http://en-law.tau.ac.il/til).

The Associate Editor, Junior Editors, and Assistant Editors