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**Abstract book**

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**NORMATIVE ORDERS**

Exzellenzcluster an der Goethe-Universität Frankfurt am Main



9. Ofer Raban (University of Oregon School of Law / USA)  
**The Legal Principle of Public Reasoning**

**SPECIAL WORKSHOP**

SW 46 Law and Economics – Foundations and Applications	
Date	TUE 16 Aug 2011
Time	14.30 h – 18.30 h
Location	HOF 1.28 / Shanghai
Organizers	Prof. Dr. Klaus Mathis, Universität Luzern / Switzerland

**About the workshop:**

This workshop will deal with the economic analysis of law, its methodical and philosophical foundations as well as the possible applications in both legislation and application of law. Fifty years after the famous essay “The Problem of Social Cost” (1960) by the Nobel laureate Ronald Coase, Law and Economics seems to have become the lingua franca of American jurisprudence, and although its influence on European jurisprudence is only moderate by comparison, it has also gained popularity in Europe.

On the one hand this workshop intends to explore both the methodical and philosophical foundations of the economic analysis of law. In doing so, not only will the theories of economics (mostly the principles of microeconomics and

welfare economics) be analysed but also the methods behind empirical social research shall be critically reviewed. The findings of behavioural economics, which have called into question the basic assumptions of economic theory – for example the rationality or the selfishness of the players – are also of great significance in this debate.

On the other hand, the question of why the economic analysis of law has developed differently and the diverse impact it has had on America in comparison to continental Europe will also be discussed. The lawfulness of consequence based reasoning in law application may have played an important role in this discrepancy. Furthermore it shall be shown in which fields of law (Civil, Criminal, Public, Competition law etc.) economic based reasoning and methods have – explicitly or implicitly – found their way into continental European law. Please note that this special workshop is coordinated with the partner workshop “Theoretical and Methodological Foundations of Law and Economics (Second MetaLawEcon Workshop)” organized by Péter Cserne (Tilburg).

**List of Lectures:**

1. Klaus Mathis (Universität Luzern / Switzerland)

**Law and Economics Today – Some Introductory Remarks**

2. Tze-Shiou Chien (Academia Sinica / Taiwan)

**A Legal Interpretation of Coasean Economics**

3. Szabolcs Hegyi (University of Miskolc / Hungary)  
**The Scope and Limits of Consequentialist Reasoning – a Philosophical Approach**

4. Felix Ekardt (Universität Rostock / Germany)  
**A Critical Review of “Efficiency Ethics”**

5. Niels Petersen (MPI Bonn / Germany)  
**The Role of Law and Economics in Constitutional Adjudication**

6. Kai P. Purnhagen (Ludwig-Maximilians-Universität München / Germany)  
**Never the Twain Shall Meet – Cultural Limits Between Continental Dogmatism and Law and Economics Theory?**

7. Aurélien Portuese (Université Paris II / France)  
**The Case for a Principled Approach to Law and Economics: Efficiency Analysis and General Principles of EU Law**

8. Kristoffel Grechenig (MPI Bonn / Germany)  
**Wrongful Sanctions**

**SPECIAL WORKSHOP**

SW 47 When is the exercise of an interest a human right? Secular and religious responses to the legitimacy question.	
Date	TUE 16 Aug 2011
Time	14.30 h – 18.30 h
Location	RUW 1.303
Organizers	Prof. Ph.D. Angus Menuge, Concordia University Wisconsin / USA

**About the workshop:**

A right is a just entitlement to the exercise of an interest. A human right is a just entitlement one has simply because one is a human being. That is, a human right is not conditional on being a citizen, on having a particular cultural or religious identity, or on whether special agreements or contracts have been entered into. As the human rights movement has progressed, however, the scope of alleged human rights has greatly increased. This raises the concern that some widely supported claims of human rights may be unjustified.

Underlying this concern is the fundamental question of legitimacy: “What makes the exercise of certain interests a fundamental human right?” Initially, thinking about human rights was strongly influenced by religious sources (e.g. inalienable rights were derived from the Judeo-Christian teaching of the imago dei). However, the Enlightenment



proclaimed that the content of morality is discernible entirely apart from special revelation. And today, many people believe that human rights can be defended solely by appealing to the natural characteristics of human beings. This raises several important questions:

- (1) Are religious rationales for human rights still profitable today, or have they been superseded by superior, secular rationales?
- (2) More specifically, have popular Kantian, neo-Kantian, or similar analyses of rational beings made these religious rationales redundant?
- (3) Are religious rationales no longer acceptable, because they violate a principle of neutrality governing apt contributions to public discourse?

This workshop will address these and related questions, with the goal of assessing the relative merits of secular and religious responses to the underlying issue of legitimacy.

**List of Lectures:**

- 1. John Calvert (JD, Intelligent Design Network; [http://www.intelligent-designnetwork.org/], former Chairman of Lathrop & Gage Corporate Department) **Does the security of religious rights depend on state use of a functionally inclusive or neutral definition of religion?**
- 2. Dr. Dobrochna Bach-Golecka (University of Warsaw [http://en.wpia.uw.edu.pl/])

**Why is man the primary and functional way for the Church? The involvement of Christian teaching in contemporary human rights discourse**

- 3. Dr. Hendrik Kaptein (Leiden University /The Netherlands [http://www.law.leiden.edu/organisation/metajuridica/staff/scientific/kapteinhjr.html]) **Retribution as a fundamental human right**

- 4. Dr. Angus Menuge (Professor of Philosophy, Concordia University Wisconsin / USA [http://www.cuw.edu/fs/angusmenuge]) **Why Human Rights Cannot be Naturalized: the Contingency Problem**

- 5. The Honourable Dallas Miller (http://www.justice.gc.ca/eng/news-nouv/jan-j/2006/doc\_31982.html) **The New Mandate for Human Rights**

- 6. Dr. John Warwick Montgomery (Professor Emeritus of Law and Humanities, University of Bedfordshire / UK) and Christian Thought (Patrick Henry College, Virginia / U.S.A. [http://www.phc.edu/JWMontgomery.php]) **Restrictions on Religious Freedom: When and How Justified?**

- 7. Professor Dr. Friedrich Toepel (http://www.haarmann.com/en/lawyers/associates/12-angestellte/19-ft.html) **Which function does the legitimation of a human right fulfill?**

**SPECIAL WORKSHOP**

SW 48 The Philosophy of Home Schooling and Its Legal Implications Today	
Date	MON 15 Aug 2011
Time	14.30 h – 18.30 h
Location	HOF E.01 / Deutsche Bank
Organizers	Prof. Dr. Dr. Dr. John Warwick Montgomery, Patrick Henry College / USA

**About the workshop:**

The right to education and parental rights are guaranteed in a number of the international human rights conventions, but their scope is disputed. One of the most controversial areas is that of home schooling: the right of the parent to carry out a child’s education under his or her own supervision. This right exists in France, in the United Kingdom, and in every American jurisdiction, but is not recognised (except under very limited circumstances) in Germany and in Sweden. This workshop brings together specialists in American, German, and European human rights law to raise the underlying questions as to the philosophical and legal justification (or non-justification) of home schooling in modern society.

**List of Lectures:**

- 1. Michael Donnelly (J.D., Director of International Relations, Home School Legal Defense Association, U.S.A.) **Education As Creature of the State? Home Schooling at the Intersection of Law, Human Rights and Parental Autonomy**
- 2. Prof. Dr. phil. Dr.theol. Thomas Schirrmacher (State University of the West / Romania) **Compulsory Education—in Schools Only? Divergent Developments in Germany**
- 3. Prof. Dr Dr Dr John Warwick Montgomery (Patrick Henry College, Virginia / U.S.A.) **The Justification of Home Schooling vis-à-vis the European Human Rights System**