

**Minerva Center for the Rule of Law
under Extreme Conditions**

Minerva Center for the Rule of Law under Extreme Conditions

Annual report - 2017

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Activity report

In accordance with the contract between the Minerva Stiftung Gesellschaft für die Forschung m.b.h. and the University of Haifa, we present this report which covers the Center's activities for 2017.

As mentioned in previous reports, the Center is managed by four professors from the University of Haifa: three from the Faculty of Law - Prof. Gad Barzilai, Prof. Amnon Reichman and Prof. Eli Salzberger, and one from the Department of Geography and Environmental Studies - Prof. Deborah Shmueli, in cooperation with four professors from the University of Hamburg's Faculty of Law - Prof. Florian Jeßberger, Prof. Stefan Oeter, Prof. Hans-Heinrich Trute and Prof. Stefan Voigt. The Principal Investigators embrace an interdisciplinary approach to the study of the rule of law under three categories of extreme conditions: war and terror including cyber-attacks; natural and man-made disasters; and socio-economic acute crises, fostering multifaceted empirical and theoretical research based on various methodologies – qualitative and quantitative – to study the rule of law as a social structure.

In 2017, the Center is home to a team of eight PIs, one academic coordinator (working part-time as researcher, administrator and website manager), seven young scholars (doctoral students and post-doctoral researchers), one project head and two to four research assistants, depending on project needs. During 2017 the Center hosted three visitors, from Germany, Albania and The Netherlands.

The Center is located in the Terrace ("Madrega") building at the University of Haifa, room 1013. The Center activities include: 1) research initiated by the principal investigators; 2) support for research projects and related activities conducted by external researchers, including graduate students, post-doctoral and established researchers; and 3) conferences, workshops and round tables, supporting and complementing the research activities of the PIs, and further developing a research community with connections to policy and decision-makers in relevant fields.

The Israeli-based Center team meets every two weeks on Wednesdays. A Young Researchers Forum is held in the morning in which the post-doc, docs, and additional

young researchers from the University meet to discuss their “work in progress”. Prior to each meeting, one of the young researchers distributes a draft of his/her work, which is presented and discussed among the group. A seminar talk is held in the afternoon, usually given by one of the Center’s community or by a scholar who has received a scholarship from the Center. These seminar talks are also considered as a colloquium course for students from the Law Faculty. The lectures are open to the public and most of them are streamlined on YouTube (reaching several thousands viewers).

The Israeli PIs hold separate meetings to discuss substantive as well as administrative aspects of the Center’s operation.

1. PI Initiated Research

I. Tools and mechanisms for public engagement in local authorities with regard to earthquake preparedness, response and recovery

Led by Prof. Deborah Shmueli, team: Dr. Michal Ben Gal, Dr. Emil Israel;
funded by the *Israel Ministry of Science and Technology*, 200,000 NIS (around 51,500 Euros), 1/12/2016-30/11/2019.

Findings from of the evaluation of the Israeli earthquake framework research conducted in 2013-2016 pointed to a significant gap in the preparedness of local authorities for earthquakes. This three years research project aims to explore international experience with stakeholder engagement and participation mechanisms for earthquakes (and other large-scale disasters) for three stages: preparedness (before), response (during) and recovery processes (after), and then suggest a framework for Israel, focusing on the preparation stage within local authorities. The research distinguishes between two types of ‘publics’: a) the general populous, and b) stakeholders and planners. The research addresses frameworks/models for both, and will test these through action research in one locality as a test case.

II. Institutional structures for governance of the home front in times of emergencies

Led by Prof. Eli Salzberger, team: Adv. Batya Sachs, Adv. Eran Shmueli; funded by Minerva Equipment/Project Grant, 50,000 EUR; time period: 1/1/2017-30/12/2017.

The research question focuses on positive (including comparative) and normative analyses of the institutional structures for governance of the home front in times of emergencies. The research is being conducted in house at the Center, together with government legal practitioners who are at this moment grappling with new major legislative initiatives.

The distinctions between emergency situations and routine events prevailing in legal regimes are no longer as clear as they used to be. Terrorist or rocket attacks on civilians which Israel has faced for years, regretfully have also become common in other countries. Ramifications of climate change and greater exploitation of natural resources, and greater density of populated areas has resulted in natural events such as tsunamis, earthquakes, hurricanes or flooding, having larger-scale impacts than they might have had in the past. Influxes of immigrants are perceived by some as a threat to national stability. Such new realities blur established distinctions and upset the legal order: The home front becomes a battlefield; civilians become terrorists, others become rescuers. Civilian uprising turns into a national threat; it is no longer clear what threats are internal and what are external; and the 'mighty state' alone proves inadequate at providing the population with necessary preparedness, protection and basic needs, and must rely on coordination with NGOs and the private sector for help.

In efforts to address emergency situations, we are witnessing governments' (i.e. France, Belgium and the US regarding terror, Austria, Hungary and other EU countries regarding the immigration crises, Japan regarding natural/nuclear disaster) applying measures which may infringe on civil and human rights - e.g. the freedom of movement, property rights, equality, transparency and the right of the public to know. At the same time, definitions of legal yardsticks such as 'proportionality' or 'necessity' become unclear. The justification of using extreme measures is the focus of much public, political

and academic debate; governance of extreme situations in the face of maintaining democratic values is both unclear and challenging.

In this context, one of the main questions relates to institutional design:

- Who is or should be the executive body authorized and responsible to lead and determine the measures to be taken in an emergency?
- What is the scope of this body's discretion and the means at its disposal?
- Is it necessary to declare an emergency in order for such authorized body to take measures? Who declares, and which measures?
- Should it be one centralized body responsible for disaster preparation and mitigation of impacts, coordination of response and rehabilitation (pre-during-post disaster) or separate institutions design to tackle different types of emergencies?
- Should the same body be responsible for all types of threats?
- Should the same body be responsible for providing the population with all basic needs - i.e. shelter, food, energy and water as well as rescue and evacuation?
- Or should the structure be a decentralized, or networked system?

Countries have developed different emergency regimes and institutional structures, based on the prevailing type of emergency the country is likely to experience, internal politics, legal doctrine and other factors. Yet, today's changing and escalating situations upset and push the limits of emergency powers, bringing countries to question their current regimes. This is evident for example in the UK, France, USA, and even Japan, as well as Israel.

The Israeli Ministry of Defense is in the midst of amending the legal tools with which emergency situations in Israel are handled. A new anti-terror law (The Counter Terrorism Law 5775-2016) came into effect on November 1, 2016. This bill replaced old British legislation that has been in force since the British Mandate and legislation of the Provisional Council from 1948. Furthermore, a new draft bill for the Preparation of the Home Front (3rd draft) was published in June 2016. This bill introduces significant changes to the structure of responsibilities for mitigation and preparedness for all types of emergencies in Israel. Other amendments in emergency legislation are also currently being considered. This creation of a new regime is the basis of a comparative and scientific examination:

- *What is the state of the law and institutional structure and decision-making*

procedures in other jurisdictions?

- *How one might analyze the optimal/ideal legal and institutional frameworks?*

The research includes a survey of existing institutional models, analyzing their components, discussing the pros and cons and providing an institutional design database. The project includes a background literature review and legal survey research.

On December 14, 2017, we held a workshop with researchers and legal practitioners from targeted countries, to analyze the models and designs and suggest concepts which will assist legal advisors in crafting desirable models suited to their countries. The workshop was videotaped and is available on our website [here](#).¹

The project is associated with three recent publications, one on the general theory and two on Israeli counterterrorism law and its reform in the perspective of the rule of law under extreme conditions:

Eli M Salzberger, *La Legislation Antiterroriste Israelienne*, 38 *Archives de Politique Criminelle* (2016) 189-226;

Eli M Salzberger, "The Rule of Law Under Extreme Conditions and International Law: A Law and Economics Perspective", in Thomas Eger, Stefan Oeter, Stefan Voigt (eds.), *The International Law and the Rule of Law Under Extreme Conditions*, Mohr Siebeck (2017), pp. 3-56;

Eli M. Salzberger, *Counter-Terrorism Law and the Rule of Law Under Extreme Conditions: Theoretical Insights and the Experience of Israel*, in Julie Alix and Oliver Cagn (eds.), *L'hypothese De La Gueree Contre Le Terrorism: Implications Juridiques*, Paris: Dalloz, 2017, pp. 43-62.

¹ <http://minervaextremelaw.haifa.ac.il/index.php/en/2-uncategorised/269-institutional-structures-for-governance-before-during-after-a-national-emergency>

III. Disasters in India – a welcome pretext for the federal government to get rid of state governments?

Led by Prof. Stefan Voigt.

The Indian constitution allows the federal government to dismiss a functioning state government, and dissolve the elected state legislature, if the federally appointed governor of a state recommends such a dismissal due to a breakdown of constitutional machinery. Such breakdown could be caused by natural disasters, but also by domestic strife, and communal riots. These constitutional emergency provisions are also known as “President’s rule.” They have been invoked by successive federal governments in over 120 instances since 1950 to impose direct federal rule in the states. The constitutional provision (Article 356) has been criticized for both undermining the federal structure of India, as well as for its rampant abuse by federal governments. We examine the factors that affect the invocation of emergency under Article 356. By studying every single state government ever formed, and those dismissed under Article 356, we analyze if President’s rule is used by federal governments to punish political opponents who have formed state governments.

IV. Determinants and Effects of Constitutions

Led by Prof. Stefan Voigt with Prof. Christian Bjørnskov

This research has spanned the lifetime of the Minerva Center and has come to fruition with publications in 2017 (forthcoming 2018). Stage 1: Research questions are twofold: How do constitutions deal with extreme conditions? How do politicians make use of those constitutional provisions in the case of an extreme condition?

Results: A description of the emergence and diffusion of constitutionalized emergency rules (“emergency constitutions” for short). The research introduces an “Index of Emergency Powers” (INEP) that contains six different variables that seem to be crucial for both the constraints as well as the competences a government enjoys under a state of

emergency. The researchers coded some 400 constitutions to attain their INEP values, enabling them to describe some trends that emergency constitutions have been subject to as well as group them into six different “types” based on cluster analysis (publication: (Publication: Bjørnskov, Christian, and Stefan Voigt. "The architecture of emergency constitutions." Forthcoming in *International Journal of Constitutional Law* 2018).

Stage 2: Research questions include: What factors make constitutional assemblies take emergency provisions into constitutions? The researchers distinguish a benevolent and a malevolent from an ELABORATE view and test these three competing theoretical prisms. Having an emergency constitution is not equivalent to using it. As a result the researchers ask why states of emergency are called.

(Publication: Bjørnskov, Christian and Stefan Voigt, “Why Do Governments Call a State of Emergency? – On the Determinants of Using Emergency Constitutions” (June 16, 2017).

Available at: SSRN: <https://ssrn.com/abstract=2988014>

or <http://dx.doi.org/10.2139/ssrn.2988014>)

Bjørnskov, Christian and Stefan Voigt, “The Determinants of Emergency Constitutions”.

Available at SSRN: <https://ssrn.com/abstract=2697144>

Stage 3: inquires into the determinants of calling a state of emergency. Declaring a state of emergency does not mean that governments attain the goals they intended to reach with the declaration. The publication: “Profiting from Natural Disaster? – Inquiring into the Effectiveness of Emergency Constitutions” inquires into the effectiveness of emergency constitutions as compared to governmental goals and analyzes this question. The focus is limited to natural disasters because with other extreme conditions such as domestic belligerencies, endogeneity concerns that can be neglected here loom large.

Stage 4: looks into other types of man-made extreme conditions. (Publication: (“Terror and States of Emergency”).

V. Effects of extreme conditions on important dimensions of the rule of law.

Led by: Prof. Stefan Voigt, with Prof. Jerg Gutmann and Prof. Katharina Pfaff

A first paper (Gutmann, Jerg and Stefan Voigt, "The Heterogeneous Effects of Natural Disasters on Human Rights" (October 6, 2017), available at SSRN: <https://ssrn.com/abstract=3049032> or <http://dx.doi.org/10.2139/ssrn.3049032>) takes a general look on the effects of natural disasters on human rights. A second paper ("Gutmann, Jerg, Katharina Pfaff, and Stefan Voigt. "Banking crises and human rights." *Applied Economics Letters* 24, no. 19 (2017): 1374-1377) focuses on another dimension of extreme conditions, namely severe financial crises, and inquires into its effects on human rights.

VI. Database

The Minerva Center for the Rule of Law under Extreme Conditions International, Interactive Database System: Regulatory Framework for Emergencies Preparedness, Response and Recovery

Led by Prof. Amnon Reichman and Prof. Deborah Shmueli; team: Dr. Michal Ben Gal, Adv. Ido Rosenzweig and Admit Ivgi, outside contractors.

The two research projects funded by the Ministry of Science and Technology in 2013-2016 (*Law, Cyber and Extreme Conditions*, and *Evaluating Israel's Regulatory Framework for Earthquake Preparedness, Response and Recovery*), yielded a large corpus of data on regulatory bodies and legal tools for dealing with Cyber (in 12 countries) and earthquake threats (in Israel). This led to a vision, now becoming a reality, of developing an interactive computerized database that will enable researchers, as well as practitioners, to use the data, update it and create more data for other extreme conditions.

The first stage of development of the computerized database system is almost complete and the empirical data is in the process of being uploaded. The database is an interactive, searchable, comprehensive, and visual tool that provides the ability to easily pose queries to the database either textually and/or using the graphic interface.

The system can create diagrams of regulatory bodies and the relations among them, as well as connect to links with additional data connected to these bodies, such as websites, laws, governmental decisions and other legal documents.

In November 2017 we applied to the Minerva Foundation call for equipment/project funds for Minerva Centers in the Social Sciences and the Humanities. We requested funding for the second stage of the database. Stage II of the database is designed to include events of extreme conditions that will be marked on a world map. In the future we hope to enlarge the database to include other extreme conditions (other natural disasters such as floods, fires, storms and pandemics, socio-economic meltdowns, and national security challenges: terrorism, armed conflict). in different countries around the world. The system will enable collaboration with authorized affiliates - other researchers and centers – who will be able to use and add data (with explicit permission).

In addition, we want the system to support more sophisticated research queries and to automatically create flow-charts of regulatory bodies active in the different phases of emergencies (i.e. – show which regulatory bodies are active before the emergency and which during or after). Another addition is the ability to track changes in the regulatory landscape over the years, and to examine changes following specific events.

2. Research Projects and Researchers Selected for Support

2.1. Graduate and Post-graduate Young Researchers

I. Young Researchers who Completed their Affiliation with the Center in 2017

One PhD (Alyssa-Nurit McBride) and three post-doctoral fellows (Myriam Feinberg, Rivka Brot and Olga Shteiman) completed their formal affiliation with the Center, although Olga and Nurit remain part of the team, without scholarships.

II. Doctoral Students

The Minerva Center for the RLuc is supporting two doctoral students enrolled in the

European Doctoral program in Law and Economy (EDLE), for excellent students focusing on Law and Economics. Prof. Eli Salzberger supervises one of them and Dr. Alan Miller of the Law Faculty is supervising the other.

a. Denard Veshi: The collective action in the management of refugee flow: an economic and legal comparative approach

This research aims to analytically study refugee law on the municipal, supranational and international levels. It applies a multidisciplinary approach, focusing on the economic analysis of refugee law and on the protection of refugee rights. The thesis will highlight the humanitarian approach through case-law study. In addition, it will offer a law and economics model constructed around the assumption that refugees might aim to maximize their net benefits. It will also focus on the most important “push” factors (e.g. protection of national security and the safeguarding of the national job market) that impact legislatures when enacting and modifying refugee laws. Furthermore, this project identifies the economic advantages and disadvantages of a centralized supranational (e.g. EU) asylum law that results in the elimination of competition between legal orders in refugee law and the removal of negative externalities caused by “asylum shopping”.

The principal goal of this project is to analytically explore and identify the diverse variables that impact the “push” and “pull” factors which influence the decision of persecuted individuals to flee. More specifically, this project aims to analyze the “demand and supply” in the refugee market. While “push” factors influence the decision of refugees to leave or flee, the “pull” factors are potentially controlled variables by host countries (e.g. the national refugee policy). This project aspires to investigate those segments of the issue which have not received due attention by applying a multidisciplinary approach to construct a positive analysis of the “refugee market”, as well as a normative model which takes in consideration the protection of refugee rights. In the concluding section, an eventual balance between European security and economic stability on the one hand and protection of refugee rights on the other will be suggested.

b. Jian Jiang: Vulnerabilities, cybersecurity, and the role of law and regulation herein

The issue of cybersecurity prefigures a host of new problems created by information technology, network interconnection, and the expending globalization of markets. Vulnerabilities, as a kind of by-product of software, have not received enough societal attention, but acted as the cause of many cybersecurity problems. The general idea of this thesis is to study the ultimate source of the problems of vulnerabilities and cybersecurity so as to define the role of law and regulation.

Vulnerability is a complicated problem for which the market may fail to produce a solution. On the one hand, software producers do not have adequate incentives to keep the number of vulnerabilities at the social optimal level because they do not bear fully the external costs. On the other hand, in a world of positive switching costs and network effects, individual users cannot react swiftly according to market principles when they are not satisfied with the flawed products.

Furthermore, much attention has been given to the so-called “responsible disclosure” by the public, which is in line with legal and ethical requirements. Meanwhile, as the media are advocating for more responsible disclosures, there are fast growing markets for vulnerabilities and exploits, which are either illegal or illegitimate. Media and many scholars believe that it is the participation of the government that boosts the growth of the cyber-weapon market. After the recent WannaCry crisis, the public voice, which is calling for the quitting of governmental branches like NSA, is getting louder and louder.

This research considers the nature of the problems above, trying to find possible explanations and solutions. Two main research questions are:

- *Should the involvement of government agencies in the vulnerability market be regulated? Or is there any other party that should be made responsible for the illegal trading of vulnerabilities and exploits?*
- *What is the optimal legal standard for assessing whether the software producer was careful enough?*

The research purpose is to look for a way in which law and regulation might serve to best

respond to the challenges of vulnerabilities and cybersecurity at the lowest social cost.

III. Continuing Post-Doctoral Research

Dr. Maya Mark: Between the rule of law and the law of the ruler: a political biography of the prevention of terrorism ordinance

The research is an interdisciplinary project of Law and History. The first act of terrorism in the history of Israel - the terrorism ordinance, and the way in which the government reacted to it - makes the ordinance, and the legal and political process in which it was created and shaped, an important and interesting case study for the study of the rule of law under extreme conditions. The first stage of the study analyzes the legal, political and historical context in which the terrorism ordinance was legislated. The second stage reflects on theoretical questions regarding the Rule of Law under terrorism. More specifically, the research discusses the three main issues delineated below: Firstly, the balance between maintaining the rule of law and presenting the government with the necessary tools to deal with terrorism. In the case of the Prevention of Terrorism Ordinance, the state was called upon for the first time to determine how it would cope with acts of terrorism. The dispute over the content of the order raised the fundamental question of the proper balance between the government's need to obtain all necessary authorities to deal with terror and the democratic principle of the rule of law.

Secondly, The Terrorism Ordinance, as a case study, offers important insight on the boundaries of the rule of law as a legal term. The dispute over the Terrorism Ordinance broke out several months before the first elections for parliament and became a key issue in the elections while generating a public battle between political forces that threw all their weight into the debate. The rule of law represents the crux of the argument over the terrorism ordinance, when both sides of the debate use, and in some cases exploit, the rule of law as an argument and a justification for their viewpoint. In this sense, the rule of law emerges as an elusive concept charged with different meanings and as an ideological standpoint that is subject to interpretation. Thirdly, the research argues that anti-terrorism laws may - in certain cases - serve as a juridical instrument toward a

political end, which weakens the rule of law in the pursuit of a political agenda. This political agenda delineates the boundaries of a camp and of a discourse and also, in particular, defines and marks those who are located beyond the borders of the camp and the discourse. The archival research is complete and includes locating, documenting and analyzing the relevant primary sources. She has finished writing the historical part of the research and sketched the theoretical framework for its analysis. On December 2017, she presented a paper based on this work at the Minerva center seminar.

IV. New Young Researchers

The **2017 call for proposals** drew **2** PhD and **20** post-doctoral proposals, from which five post-doctoral fellows were selected:

a. David Vitale: Public resource allocation in socio-economic crises: a trust-based perspective on judicial review

This research uses the concepts of trust and trustworthiness to develop a novel and valuable perspective on the judicial review by constitutional courts of public resource allocation decisions. It is especially interested in the relevance of such a perspective during/following socio-economic crises like the 2008 Global Financial Crisis.

Social scientists have long stressed the importance of public trust in government to well-functioning democracies. Research has shown that trust encourages public cooperation, affecting the public's willingness to accept authority decisions, its feelings of obligation to obey laws and its performance evaluations of authority figures. Given the link between trust and public cooperation, many scholars have called for greater attention to be paid by lawyers and lawmakers to the concept of trust. Thus, this research addresses two principal questions:

- *Can (and if so, how) trust be used to analyze public resource allocation disputes?*
- *Can (and if so, how) trust be used to define an appropriate role for constitutional courts in such disputes (both in normal financial circumstances as well as during/following socio-economic crises)?*

b. Nadav Dagan: Emergency, power and proper authorization

This normative research explores two main fields of law that regulate governmental powers and the exercise thereof in national emergencies: vires and discretion. The requirements of due authorization as well as discretion law are of special importance during large-scale emergencies, since situations of this sort dramatically increase the tendency to centralize powers and control.

During emergencies the general public and political institutions may show an increased propensity to grant the executive all tools deemed necessary to deal with the evolving emergency, including extraordinary measures, or acquiesce to governments' demands. Hence, new powers may be granted to the authorities by the legislature, and the government usually pushes to deepen and widen its discretion as per existing powers as far as it possibly can.

Exploring the complementary and closely connected fields of vires and discretion, this research aims to construct a normative framework for legal examination of which powers are (and should be) conferred on government officials and how these powers ought to be exercised in times of emergency. The research presently focuses on the legal requirement of authorization in public law.

This stage of the research concentrates on the nature of governmental powers during national emergencies and the justifications for the legal requirement of authorization, with special emphasis on statutory authorization. In particular, it investigates various theoretical and doctrinal approaches that can be classified into one of two broad categories: legality and non-legality, inclusive of prerogative powers and contra-legal acts.

c. Idit Shafran Gittleman: Political theories of the rule of law under extreme conditions

The famous Latin phrase *inter arma enim silent leges* ("in times of war, the laws fall silent") demonstrates an approach by which war is not part of civilized human life, subject to laws of decency and morality, but rather an outburst of primeval instincts of aggression

or survival, therefore not subject to any set of rules. War strips man of all dress of human civilization, and takes him back to his primal, primitive, pre-civilized form.

At least *prima facie*, the existences of just war theories, as well as laws of war, stand in some contradiction to this approach. They reflect the view according to which even at times of war there are basic human rules that should be maintained and observed, and that some actions should never be performed, whatever the circumstances. Indeed, putting moral realism supporters aside, it is widely agreed that both the law, as well as morality, speak, and should be speaking, *inter arma* as well.

However, we do tend to accommodate some flexibility to the rules under extreme circumstances or severe conditions, sometimes allowing violation of human rights for example, under such conditions, when unavoidable in order to prevent greater harm, or when characterized as security measures.

This tension between the approach according to which at times of such conditions the law should be silent, and the insistence that even when facing extreme conditions, we should nevertheless maintain the rule of law, at least to a certain degree, is present not only with regard to war-time, but also to other sorts of extreme conditions times such as natural disasters, etc.

During such times, it is often the case that states announce a "state of emergency" which allows them to either apply a whole different set of laws, or to amend the existing laws. For example, article 16 of the French constitution provides for "exceptional powers" (*Pouvoirs exceptionnels*) to the president in times of acute crisis. In Israel too, the continuation of the emergency regulations is approved every six months since the country's establishment in 1948, since, according to the state: "There's a fundamental need for the laws due to the war on terror".

The research reviews the different political theories facing this question. It first maps the theories, locating them on an imaginary graph at the one end of which stands the view that there should be no changes in the rule of law even under extreme conditions, while at the other end stands the view reflected by the above mentioned Latin phrase. The aim is to conclude with a normative theory of the role which law should play

under extreme conditions.

In addition, the Center participated in joint-support of two post-doctoral fellows of the Center for Cyber Law & Policy at the University of Haifa:

d. Moran Yemini: The Threat of Innovation

Much of classic Internet scholarship rests on the assumption that innovation is a value worth promoting. Moreover, innovation is often also treated as necessarily fostering other values, such as freedom and justice. A similar, romantic view of innovation dominates much of economic theory and popular politics.

It is time, however, to depart from the notion that innovation is necessarily good and reevaluate the focus on innovation as an Internet policy objective.

One reason for rethinking the common appeal to "innovation" as a policy objective is that a positive correlation between innovation and other values is not automatic.

Whether an improvement in the conditions for innovation actually improves the conditions for freedom and human well-being, largely depends on the broader legal and socio-cultural context in which innovation takes place. For example: when British scientists deciphered the Nazi Enigma code, their innovation undoubtedly contributed to the promotion of freedom; but when the Chinese government cracks Skype's encryption, it does so with the clear intention to limit human freedoms.

Innovations in DPI technologies, which enable total visibility and control of network traffic, are of great value for security and network performance, but so is their potential to infringe upon fundamental rights and interests, such as freedom of expression.

The purpose of the proposed research is to explain why a harmonized vision of the relations between innovation and other values cannot seamlessly follow from an unchecked assumption about the positive impact of innovation. Put simply, it will be argued that innovation, especially in the digital environment, is not always a blessing, but can also be a threat to things we have reason to value. Building on this assertion, the research will explore the place of innovation in current Internet scholarship and policy; describe its interrelations with other values, such as public security and human

well-being; discuss the normative grounds for pursuing (or not pursuing) innovation as a policy objective; and suggest principles for re-defining the place of innovation in Internet policymaking.

e. Sharon Bar Ziv: Confronting the Cyber Risks of Re-identification Attacks in Governmental Personal Data Transfers: Theory and Practice in Israel

The “Big Data”² evolution has brought with it substantial changes in both the public and private realm. Among others, this age has brought with it substantial pressures on governmental and public authorities to release and share the datasets at their disposal, or at least share with them selected research institutions.

Israel has been no exception. As many other countries, Israel has initiated steps to share the wealth of data gathered by government within government and outside of it, in several interesting contexts. For instance, databases of the Central Bureau of Statistics (CBS); the Ministry of Education and Ministry of Health, that allow external researchers to conduct studies based upon them.

There is no doubt that these agencies control vast sensitive information pertaining to the Israeli public, a substantial part of it collected without the data subjects' actual consent. In many instances, the Israeli government provides various forms of access to the personal data the government obtained. This is carried out by creating actual and virtual research rooms, releasing some files to the general public, and others to trusted parties who undertake legal and other commitments.

Supposedly, such databases and the data transfers should have been subjected to the limitations set out in Israel's Privacy Protection Act. However, the "identifiability" of information is the key to subjecting data to the laws of privacy and data protection, as prescribed by various laws worldwide, including the Israeli Privacy Act.³ Yet in most instances, the relevant personal data is de-identified prior to transfer. Therefore, once

² (here defined as the use of machine learning, statistical analysis, and other data mining techniques to extract hidden information and surprising correlations from very large and diverse data sets

³ Privacy Protection Act, 5341-1981, SH No. 1011 p.128 (Isr.).

anonymized, the relevant privacy-related regulations do not apply. In fact, “anonymization” proves to be a central measure to circumvent the data protection regime in Israel.

For years, it was widely held that once data sets are anonymized, they posed no privacy risk. Unfortunately, the notion of perfect anonymization has been exposed as a myth. Over the past twenty years, researchers have shown that individuals can be identified in many different data sets once thought to have been “anonymized.” As the amount of data available for analysis has increased exponentially, researchers have shown that almost any attribute, when combined with publicly available background information, can be linked back to an individual (when specific dynamics unfold).

Anonymization generates key questions with which policymakers and scholars from a variety of fields are currently struggling. In Israel, however, this issue has received very limited regulatory and academic attention. **This research focuses on legal issues underlying the protection of anonymized data from de-anonymization (or re-identification) attacks in Israel and in accordance to Israeli law.** Such attacks might originate from external adversaries (such as one of Israel's enemies), business entities or even internal parties within the government. **This research is concerned with possible attacks on centralized anonymized databases and the lack of harmonization in dealing with this challenge.** Using de-anonymization tools, hackers could potentially gain access to sensitive information in large magnitude. This risk is imminent in light of concerns raised by scholars as to the ability to truly anonymize data. Thus, the main question this research wishes to examine **how should governmental agencies prepare themselves in light of the cyber threats to sensitive data? What are the boundaries of their actions and what steps must they consider?**

2.2. External Research Funded by the Center

In response to the Call for Proposals for 2017, the following projects received support:

a. Michael Brzoska: Weather-related disasters and violent conflict

One of the consequences of climate change is an increase in extreme weather events, such as storms, droughts, floods and heatwaves. A good number of such events lead to destruction and death. The study of weather-related disasters has recently become more prominent as a way to analyze potential links between climate change and violent conflict with important new studies published. The study of the social consequences of disasters seems particularly promising to further our knowledge about structural conditions, conflict dynamics and particular mechanisms linking weather-related disasters and violent conflict. While in principle not different in terms of their environmental consequences, weather-related disasters are already stressing social and political fabrics of affected societies in more immediate ways than slow-onset consequences of climate change.

Important studies on the link between weather-related disasters and violent conflict were published in recent years, However, evidence of the link between climate change and violent conflict remains contested. Much seems to depend on the case, technicalities of the chosen method and interpretations of the relative weight of climate change-related factors to other factors. A good example of this complexity are the strongly diverging views of the role of a drought in Northeastern Syria between 2007 and 2011 for the onset of the civil war in Syria, which began in the spring of 2011. While some see the drought and the ensuing income losses and migration from Northeastern Syria to other parts of the country as crucial factors leading up to the protests against the government, others dismiss this narrative as unconvincing. They argue that for the population who rose in opposition to the government, the economic effects of the drought had few consequences and, furthermore, that the opposition's main concerns were political repression as well as the regime's violent reaction to its demands for more rights and freedom.

This project contributes to the growing body of literature which argues that both structural conditions of societies, such as poverty and the fragility of institutions, and the dynamics of conflicts need to be at the center of the analysis of the links between climate change and violent conflict. On the basis of a differing approach to the study of the consequences of climate change, conflicts are shaped by people, their agency based on their material capabilities as well as their perceptions about differences with other people in terms of interests, goals and values. Major changes in natural environments through climate change are likely to alter such perceptions. However, the outcome of the complex social and political processes which are set in motion by environmental change are not determined.

Seen from this perspective of conflict analysis, the prime challenge of research on the effects of climate change on violent conflict is to identify the circumstances under which environmental change is likely to lead to violent conflict and where it is likely to be managed peacefully. An important tool for such analysis is the search for mechanisms that drive the dynamics of conflict beyond single cases. In order to contribute to this effort, this project focuses on a review of the ten most deadly weather-related disasters between 2000 and 2016 and their relation to violent conflict with the goal to identify important mechanisms.

b. Barbara Korte: Countering terrorism via criminal law in autocracies and democracies

Barbara spent six months at the Center, from October 2017 to March 2018, participating in Center events, giving a seminar talk and conducting the following research.

Her project analyses the different approaches to countering terrorism through criminal law in two democracies and two autocracies. It tests the hypothesis that based on freedom from democratic election, authoritarian legislators adopt legislation criminalizing terrorism and related offences that are capable of or even intended to forestall a broader range of otherwise non-criminal activities of political opposition, dissidents or religious groups, far beyond the scope of actual terrorism-related activity. The hypothesis is tested by a comparison of terrorism and related offences in the criminal

codes of authoritarian Russia and China and democratic Germany and the USA. Benchmarks for evaluating that alleged overbreadth of terrorism legislation are the test of reasonable notice of the prohibited conduct and the existence of a clear delineation of the intended limitations of the offences' scope of application.

The research is split into two parts. The first paper deals with the legal definitions of terrorism over time in the four countries ("Legal definitions of terrorism: criminalizing a contested concept or criminalizing contestation itself?"), primarily focussing on the criminalization of actual terrorist activity. Its most important finding is that by virtue of basing terrorism-offence definitions on existing offences for the *actus reus* and adding various elements mostly referring to the terrorist purpose and consequences Germany and the USA forestall applicability of the terms of the offence to otherwise non-criminal behaviour. Russia and China, on the other hand, in their definitions do not require the *actus reus* to constitute a self-standing offence. Hence, by referring to purpose, consequences and methods of terrorism rather than to an independently criminal *actus reus* their offence definitions allow for application to otherwise non-criminal behaviour such as dissident, opposition or religious activities. In the first paper, the starting hypothesis is therefore confirmed.

The second phase of the research (also resulting in a paper) focuses on prevention of terrorism through criminal law, analysing the different national approaches to extending the range of adjudicable preparatory activities and to predating criminal liability. Unlike with definitions of "terrorism", here the differences between the jurisdictions do not correlate with regime type. Rather, each legislator has chosen a different approach to establishing criminal liability before an actual act of terrorism occurs. Similarities between all jurisdictions are the establishment of individual criminal liability based on either individual activities or self-alignment with certain types of organizations. Differences regard the types of organizations listed and the threshold between *actum internum* and *externum* with regard to individual activity. The national approaches differ to a great extent, as does the direction of the fallout of over-inclusiveness towards dissidents, religious observers or other - ordinary - criminals.

These findings contribute not only to our understanding of the differing political instrumentalization of terrorism and – related offences across regime types. They also illustrate that terrorist and preparatory activity pose substantial challenges for legislators across the board *per se*, regardless of the otherwise outstanding credentials in terms of the rule of law. Most importantly, the findings challenge us to reconsider whether criminalizing preparatory activities can be seen as a struggle between protecting national security and individual constitutional rights that is resolvable. They suggest that, instead, we might have to accept that there will always be fallout of offence over-inclusiveness and the real question to be decided by legislators is which direction is most acceptable for that fallout.

c. Itamar Man: “Island of legality”: refugee processing in Chios

In recent years, the EU has established refugee and migrant processing centers in a number of locations in the Mediterranean region, in Aegean islands and in Southern Italy. During the summer of 2017, the researcher and his team conducted preliminary research on the island of Chios, revealing the potential of socio-legal studies around the hotspots for uncovering micro-level legal processes of region formation. They participated as legal consultants and Arabic translators and integrated into the work of the German organization Refugee Law Clinics Abroad (RLCA). They found that the hotspot has become a site for transnational encounters between refugees, volunteers, European administrators, and local Greek populations, from which unexpected results often emerge. These “assemblages” of persons and legal rules provide an excellent “laboratory” for “integration from below.”

For example, the translation of legal procedures has become a particularly interesting site to examine emerging regional dynamics. Refugee-translators often perform a form of solidarity, above and beyond the seemingly technical task they are assigned for. On the other hand, they may be asked to determine where a certain person comes from, and thus to engage in a form of perceived disloyalty to the refugees as a group.

Family rights also generate interesting regional dynamics. After the height of the

migration crisis and the entry of refugees into Europe, the right to family unification is under constant political pressure. At the same time, extended families located on both sides of the Mediterranean and severed by differing citizenship and legal statuses have become networks for proto-political activities: information exchange, financial support, and cultural regeneration. The transnational legal terrain, in other words, has interestingly posed family and state against each other, with relationships constantly being renegotiated and reconstructed through formations of partially overlapping membership.

In this project the researchers plan to continue to examine both subjects through interviews as well as participant-observer tasks within legal aid organizations such as RLCA. To ensure the feasibility of this work, they have also established solid relations with a number of Greek lawyers doing cutting-edge legal work related to the hotspots, including, e.g., Giota Massouridou.

d. Katherine Hunt: The impact of extreme conditions on microfinance loan defaults

Microfinance provides access to financial services for 100 million poor worldwide, yet this system relies on 98% and above loan recovery rates in order for these institutions to be financially viable (Cassar, Crowley, & Wydick, 2007; Fischer & Ghatak, 2010; Husain, 2008; Menon, 2007). Since the start of public reporting for Microfinance Institutions (MFI's), very high repayment rates have been the norm among MFI's in most countries. Indeed, with average repayment rates of 99%, MFI's have higher repayments than retail banks in developed countries (Husain, 2008). Part of the reason for high repayment rates is the social capital which is used to secure each microloan, generally in the form of community references (Daripa, 2009; Getz, 2008). However, with only social collateral, communities which suffer extreme conditions are likely to all suffer the same socioeconomic shocks, resulting in systematic loan defaults. If there are systematic loan defaults of microfinance loans during extreme conditions such as natural disasters, this not only puts those families at risk, but also puts the entire microfinancial system at risk of collapse. The knock on effects of microfinancial system failure is one which has the potential to result in poverty increases (Arch, 2005; Muhammad Kashif Khan, Usman, Malik, & Shafiq, 2011) as well as

an increase in the responsibility of governments, which often do not have the assets to recover from natural disasters, let alone support affected families during a time of infrastructure recovery.

This is an important issue for long term financial inclusion and some countries have funding systems in place to account for these possibilities. For example, in Pakistan, the DIFID (the UK International Aid organisation which is government funded) has funded the establishment of the 'Z Fund' which provides security for all microfinance loans which are defaulted on as a result of natural disaster. This fund provides MFI's with the security of knowing that if there is a natural disaster, they will not be adversely affected as loans will be covered. However, this type of fund does not exist in any other country.

Countries which have thriving microfinance sectors often have established regulations regarding Microfinance Institution (MFI) operations, and the practices they are allowed to undertake in order to recoup defaulted loans. Most MFI's are financially self-sustainable businesses which rely on loan repayments to continue operations. Thus, the incentives are for the firms to seek repayment, regardless of personal circumstances of the borrower, including in extreme conditions such as natural disasters. Indeed, Microfinance Credit Bureaus ensure this happens, and most countries with MFI's also have a government supported credit bureau to which MFI's must report individual loan information. This ensures that MFI's do not provide loans to those who have been unable to repay in the past – a practice which can systematically derail a microfinance system while putting undue financial pressure on those already most vulnerable in the community. The prime example of this was the 2011 Andhra Pradesh (AP) crisis in India, where over-provision of microfinance loans, and aggressive repayment practices by MFI's resulted in suicides by some borrowers and led to the government shutting down the AP microfinance sector for a number of months (Das, 2012). Naturally, this type of problem combined with a knee-jerk response has crippled the AP microfinance sector and the sector has not yet recovered. Had there been effective rule of law in AP before the crisis, the implementation of the law would have averted the crisis.

The study of the rule of law under extreme conditions relating specifically to the

sector of microfinance has potentially wide ranging and long lasting implications. It is intuitive that microfinance would not be able to serve as many borrowers in countries with low rule of law, and those countries are also those which have the most extreme conditions such as socioeconomic crises, civil wars, and more infrastructure-impacted natural disasters (Canova, 2009). There is also a relationship between adherence to the rule of law and corruption levels (Uslaner, 2005), a factor which has the potential to affect the sustainability of MFI's in the long term (Hunt, 2014).

Extreme conditions for the purpose of this study include all natural disasters which are of a scale such that the affected country's government declares a state of emergency or equivalent⁴. Through identifying the appropriate extreme conditions (through interviews and data analysis), and matching the data to actual microfinance loan recovery rates, an understanding of the actual implementation of the rule of law which governs microfinance institutions can be understood, with direct reference to extreme conditions. The goals of this research are threefold:

- *Develop and make publicly available a database of Microfinance repayment rates at specific intervals before and after Extreme Events in Pakistan.*
- *To empirically analyse and publish the results of the role of the rule of law in extreme conditions on microfinance repayment and default recovery rates in Pakistan.*
- *To conduct a regulatory comparison and recommend policy changes to ensure adequate Rule of Law under extreme conditions is maintained, based on the results of this research.*

e. Dafne Richemond-Barak: Underground warfare

The goal of this project is the publication of the book entitled: "Underground Warfare", which is under contract as a monograph with Oxford University Press.

The book offers the first panoramic study of tunnel warfare across time and

⁴ This is generally implemented through national emergency services personnel (or military) being deployed to assist with the recovery of the affected area.

geography. It adopts an innovative and practical approach to underground warfare by combining historical, strategic, and legal perspectives on the topic. No such study of underground warfare has ever been undertaken. The project thus fits remarkably well within the three pillars of the Minerva Center's areas of research and activity – as it describes and analyzes a growing and global national security challenge for which states are surprisingly unprepared.

Tunnel warfare received unprecedented attention during Israel's Operation Protective Edge in the summer of 2014. Like so many times before in matters of law and security, Israel turned into the world's laboratory. The world watched as Israel launched a ground incursion into Gaza to destroy cross-border tunnels, searched and eliminated underground structures dug under civilian dwellings, and lamented about not having an Iron Dome to minimize the tunnel threat.

The strategic and security implications of tunnel warfare resonate with unique acuteness among the Israeli establishment and the Israeli public. Israel, however, is not alone. The research shows that tunnel warfare has reemerged on virtually contemporary battlefields since 9/11 – from Yemen to Syria, Afghanistan, Egypt, Lebanon, and Mali. The recent discovery of a sophisticated underground structure built by ISIS near Mosul, Iraq, exemplify the evolution and spread of the threat in recent years⁵.

The appeal of the underground is undeniable, particularly for non-state actors seeking to overcome a tech-savvy enemy. Tunnels neutralize the benefits of surveillance, satellite imagery and conventional weaponry, and minimize the relative advantage that comes with sophisticated, modern armor and training. States that have contended with underground warfare have found it extraordinarily challenging to overcome. The book provides a blueprint on how to do so while keeping to the rule of law and minimizing the harm to civilians. It addresses the use of tunnels as a potential *casus belli* (cross-border attacks under the *jus ad bellum*), and during war time (with a focus on the impact on civilians and civilian infrastructure). It also emphasizes the importance of strategy-building and decision-making processes in enhancing preparedness in times of crisis.

⁵ William Booth and Aaso Ameen Shwan, *Islamic State Tunnels Below Mosul Are a Hidden and Deadly Danger*, Wash. Post (Nov. 5, 2016)

f. Emanuela Gillard: The interplay of sanctions and counter-terrorism measures with principled humanitarian action, the Israeli regulatory framework

This work explores and suggests ways of reducing the tensions between sanctions and counter-terrorism measures and humanitarian action. In recent years a number of UN sanctions and international counterterrorism measures have required states to ensure that funds and other assets do not directly or indirectly benefit groups designated under such instruments. Frequently, these same groups are the Non State Armed Groups (NSAG) parties to armed conflict that exercise control over civilian populations. The prohibitions on providing any support to designated groups are framed extremely broadly, and can potentially include relief supplies that are diverted to such groups or that otherwise benefit them; payments that humanitarian actors must make to such groups to be able to operate; and even the provision of medical assistance to wounded and sick members of the groups.

Violations of these prohibitions are criminalized. Restrictions with similar effects are also frequently included in states' funding agreements with humanitarian actors. Private actors, including the banking sector, must comply with the same sanctions and counterterrorism restrictions. To minimize the risk of liability, they have imposed restrictions on the services they offer to humanitarian actors operating in 'high-risk' countries. Overlooked until fairly recently, these restrictions, as well as increased costs for financial services, are having a significant impact on the capacity of humanitarian actors to operate in certain contexts. All these measures are significantly affecting humanitarian actors' capacity to carry out essential humanitarian activities in accordance with humanitarian principles.

This situation raises legal and policy questions. The challenge is not new. It has been addressed in academic literature and policy circles for a number of years now. However, there has been limited progress in going to the next step and finding ways of addressing the tension. There are numerous reasons for this: the Security Council's close guarding of its role in designing and implementing sanctions; states' sensitivities in relation to counter-terrorism measures; the difficulties for states to elaborate a coherent

position on a topic that falls within the competence of numerous departments; but also humanitarian actors' apparent incapacity to develop a common position and to provide information on the actual adverse impact of sanctions and counter-terrorism measures on their operations.

A further and overarching reason is the complexity of the applicable legal framework. At the international level, restrictions arise from sanctions and counter-terrorism measures and, although the end result is the same – a risk that humanitarian action may be considered criminal material support to a designated group – the restrictions are not co-terminous and the ways of addressing the problem are different. At the national level, states have adopted different approaches to implementing their international obligations. Some may have adopted autonomous sanctions; others may have inserted exemptions for humanitarian action.

There has been some research of the approaches adopted by different states, but it has focused principally on that of key donor states to humanitarian action. Surprisingly, considering it in a context directly related to a situation where a NSAG, designated as terrorist by a number of states, Israel's national regulatory framework has not been considered – or at least not in English or French writings.

This research is about the Israeli regulatory framework. Key elements of the research include:

- *Analysis of Israel's framework for implementing UN sanctions;*
- *Analysis of any autonomous sanctions Israel may have imposed and of their potential adverse impact on humanitarian action;*
- *Analysis of Israel's framework for implementing international counterterrorism obligations such as those under the 1999 Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1373;*
- *Analysis of additional counter-terrorism measures adopted by Israel and their potential adverse impact on humanitarian action; and*
- *Analysis of any domestic court decisions addressing these issues.*

g. Matthias Lemke: Democracy and the state of exception. How governments expand their power

Contribution of funding towards the publication of a book.

Basically, the book argues that application of state of emergency regimes requires a justification by the government in the public sphere. This justification should present reasons that make the suspension of rights during a limited period of crisis intervention plausible for the citizens. In the book, Lemke studies fifteen cases, covering three centuries from 1866 to 2015, in five countries: Germany, Spain, The U.S., The Marshall Islands and France. Besides that, he also covers the concept of expansion of executive powers in crisis situations in the history of ideas, starting with the dictatorship in the Roman Republic, touching on Machiavel, John Locke, the Federalist Papers and ending with the writing of Giorgio Agamben. In the concluding chapter, Lemke presents some methodological reflections, introducing text mining tools into the analysis of public discourse in general, and the analysis of justification of state of emergency regimes in particular.

The key finding of the book shows that some very basic patterns of justification of the state of emergency regimes reoccur over time, regardless of the specific situation or the institutional settings of the political system. These basic patterns are described as “othering”, the “distinction between friends and enemy”, a call for “political and / or economic efficiency” and “necessity”. From 1866, they can be found in nearly any case that was part of the analysis.

In recent years, the picture has begun to change, as in the 21st century new patterns occur. For example, in the Marshall Islands, six states of emergency regimes were implemented after 2008. This was due to rising sea levels and more severe weather conditions linked with the ongoing climate change. The Government argued with the “vulnerability” of the state’s territory as a consequence of manmade greenhouse-gas emissions, made it necessary to implement a state of emergency.

Another example of a new pattern of justification is France. In the aftermath of the November 13th attack in 2015, French President Francois Hollande and Prime Minister

Manuel Valls argued, as a first step, that implementation of état d'urgence was necessary due to terrorist threats – justified by the concept of friend-enemy-distinction. But immediately after declaring France being in a war against terrorism, the government argued that it would need the state of emergency – and that it would need even more tools for prosecution and / or surveillance etc. Lemke describes this pattern in reference to the “insufficiency” of existing laws and tools, preventing the state executive from sufficiently facing the crisis. This is a reference that one would normally not expect in a crisis situation, when the picture of a strong state must be maintained – and this is also what makes the still ongoing situation of state of emergency in France so particular.

3. Conferences and Additional Activities

I. Conferences and Workshops

In 2017 we held the following events:

- February 1, 2017
Book talk: Dr. Karin Loevy's new book: Emergencies in Public Law, The Legal Politics of Containment, and Dr. Yoav Mehozai's upcoming book: Between the Rule of Law and States of Emergency, The Fluid Jurisprudence of the Israeli regime.
[Invitation is available at this link⁶](#)
- November 13-14. 2017
Democracy and the State of Exception
A conference organized at the German Historical Institute (DHIP) and the Goethe Institute in Paris, by Matthias Lemke (DHIP), Ece Goztepe (Bilkent University Ankara), Maureen T Duffy (University of Calgary) and Olivier Cahn (CES-DIP), Partially supported by the Minerva Center for the Rule of Law under Extreme Conditions
[Program is available at this link⁷](#)
- November 29, 2017

⁶ Link: http://minervaextremelaw.haifa.ac.il/images/Karin_and_Yoav-Invitation-Feb-1-2017Heb-Eng.pdf
Streamline of the event (in Hebrew) see here: [Part A](#) and [part B](#)

⁷ Link: http://minervaextremelaw.haifa.ac.il/images/Democracy_and_the_State_of_Exception-The_German_Historical_Institute_in_Paris-13-14Nov-2017.pdf

Workshop (Hebrew) - Dealing with Risks in Densely Populated Areas: Removal of Ammonia from the Haifa Bay Area as Case Study
[Program \(Hebrew\) is available at this link](#)⁸

- December 14, 2017
 Symposium - Institutional Governance Structures for National Emergencies - Before, During and After
[Program is available at this link](#)⁹

II. Seminars and Lectures

2017 seminars were given by Center researchers, visitors and grant recipients, as well as by outside lecturers whose research topics are relevant to the Center. The lectures in the Center also served as a colloquium for BA and MA students at the University of Haifa Law Faculty. Some of the lectures were streamlined and available to watch on the Center [YouTube channel](#). In 2017 we had around 1,500 views in the channel, from which only 36% from Israel. The other leading countries were: 18% from the US, 12% from the UK and 8.7% from Italy.

List of lectures:

- 08.03.2017: Natalie Davidson: **The changing definition of torture: a socio-legal inquiry**
- 05.04.2017: Eyal Ben Ari: **International humanitarian law, armed violence and military restraint: Israeli ground level commanders in the Occupied Territories**
- 19.04.2017: Hadas Fischer-Rosenberg: **Colonial rule and Colonial law in a time of war: Palestine emergency legislation, 1939-1945** (Hebrew) ([Link to streamline on YouTube](#))
- 26.04.2017: Moran Zaga: **Between the political borders and the socio-political conflicts in the Arab world** (Hebrew).
- 10.05.2017: Adi Hercowitz-Amir: **When the state is “under attack” by unwanted migratory flows: The disputed legality of Israeli asylum policy and the role of the courts.**
- 24.05.2017: Ittai Bar-Siman-Tov: **Judicial review of temporary legislation regulating emergencies.** ([Link to streamline on YouTube](#))
- 07.06.2017: Osnat Broshi-Chen: **Creativity and innovation in managing security-**

⁸ Link: <http://minervaextremelaw.haifa.ac.il/index.php/en/2-uncategorised/267-2017-11-07-06-47-44>

⁹ Link: <http://minervaextremelaw.haifa.ac.il/index.php/en/2-uncategorised/269-institutional-structures-for-governance-before-during-after-a-national-emergency>

induced tourism crises: a strategic perspective of an Israeli tourism case

- 14.06.2017: Deborah Housen-Couriel: **The rule of law in an extreme environment: the growing challenges to the rule of law in outer space**
- 1.11.2017: Prof. Eli Salzberger: **Theoretical introduction to the rule of law under extreme conditions**
- 15.11.2017: Prof. Amichai Cohen: **Emergencies in Israel** ([Link to streamline on YouTube](#))
- 27.12.2017: Dr. Maya Mark: **The prevention of terrorism ordinance as a case study for the rule of law under extreme conditions** ([Link to streamline on YouTube](#))

III. Visiting Scholars

In 2017 the Center hosted two visiting scholars:

Ester Herlin-Karnell is a Professor of EU Constitutional Law and Justice and a University Research Chair at VU University Amsterdam. During her visit, Ester presented her book project, which is still in its early stages, in which she investigates the implications of a non-domination oriented view for understanding EU security regulation and its constitutional implications. Her main question is how the non-domination template fits the EU legal model, and what it adds for the understanding of the establishment of an Area of Freedom, Security and Justice (EU policy area for security regulation). Moreover, she tentatively looks at the relationship between the question of coercion and domination as well as the question regarding non-arbitrariness in constitutional context. The project will try to link the question of security regulation to the longstanding debate in political theory on the connection between freedom and non-domination and to the constitutional debate on the formation of security regulation in Europe.

Barbara Korte is a PhD candidate at Goethe University Frankfurt, Frankfurt am Main (Germany). Barbara was invited for a short visit research stay at the Center. With additional funding for a short term research grant she obtained from the Minerva Stiftung, she was able to come for a six months research visit. Her work is described under External Researchers funded by Center.

IV. Website and Facebook

As was mentioned in previous reports, the Center has a website (<http://minervaextremelaw.haifa.ac.il>) and a Facebook page on which relevant items are posted, such as upcoming events at the Center, other academic events and media coverage of extreme conditions from which legal issues arise. Facebook items also appear on the website, alongside information on the Center's publications, research activities, the research team, ongoing research and findings, events and calls for proposals. The website is maintained by Dr. Michal Ben-Gal, among her many other responsibilities, with some technical help for databases maintenance. Should we determine that the website and facebook page should be upgraded, it would be necessary to hire a dedicated web manager.

4. Publications and Submissions

I. Publications 2017

Barzilai, Gad. "A Comment on Humanitarian Interventions", in Thomas Eger, Stefan Oeter, Stefan Voigt (eds.), *The International Law and the Rule of Law Under Extreme Conditions*, Mohr Siebeck (2017)

Barzilai, Gad. "Constitutionalism of Nation Building and Justice Deconstruction" *Tel Aviv Law Journal* 40 (2017) pp. 471-492

Brot, Rivka. "Conflicting Jurisdictions: The Struggle of the Jews in the Displaced Persons Camps for Legal Autonomy", (2017) *Dapim: Studies on the Holocaust*, 31:3, 171-199. To link to this article: <https://doi.org/10.1080/23256249.2017.1380890>

Bjørnskov, Christian, and Stefan Voigt. "Dealing with Disaster: Analyzing the Emergency Constitutions of the US States." *Arizona State Law Journal* 49 (2017): 883.

Bjørnskov, Christian, and Stefan Voigt. "Why Do Governments Call a State of Emergency?—On the Determinants of Using Emergency Constitutions." (2017). (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2988014). (R&R with *European Journal of Political Economy*)

Bjørnskov, Christian, and Stefan Voigt. "Notstandsverfassungen – Wer hat sie, wer nutzt sie und wem nützen sie?"; *Kriminalwissenschaften in Theorie und Praxis*, Frankfurt: Verlag

für Polizeiwissenschaft (2017).

Davidson, Natalie R. "Shifting the Lens on Alien Tort Statute Litigation: Narrating US Hegemony in Filártiga and Marcos." *European Journal of International Law* 28.1 (2017): 147-172.

Gutmann, Jerg, Katharina Pfaff, and Stefan Voigt. "Banking crises and human rights." *Applied Economics Letters* 24, no. 19 (2017): 1374-1377.

Hofnung, Menachem. "The Price of Counterterrorism Information Gathering: Intelligence Informers in the Israeli Courts" *Mishpat U'Mimshal, [Law and Government in Israel]*¹⁰, 18 (2017). (Hebrew).

Horovitz, Sigall. "The Or Commission and the Israeli-Palestinian Conflict: A Transitional Justice Moment in Comparative Perspective", *Law, Society and Culture (February, 2017)* 251-289 (Hebrew)¹¹

Kilovaty, Ido. "World Wide Web of Exploitations-The Case of Peacetime Cyber Espionage Operations under International Law: Towards a Contextual Approach." *Colum. Sci. & Tech. L. Rev.* 18 (2016): 42.

Mačák, Kubo. "Decoding Article 8 of the International Law Commission's Articles on State Responsibility: Attribution of cyber operations by non-state actors." *Journal of Conflict and Security Law* 21, no. 3 (2016): 405-428.

Oeter, Stefan. "How to Deal with International Terrorism: Comment on Tim Krieger and Daniel Meierrieks", in: Thomas Eger, Stefan Oeter, Stefan Voigt (eds.), *The International Law and the Rule of Law Under Extreme Conditions*, Mohr Siebeck (2017) pp 249-264.

Oeter, Stefan. Die friedensethische Bedeutung der Kategorie Recht, in: Ines-Jacqueline Werkner/Klaus Ebeling (Hg.), *Handbuch Friedensethik*, Wiesbaden: Springer VS, 2017, S. 139-151.

Roznai, Yaniv. *Unconstitutional Constitutional Amendments – The Limits of Amendment Powers* (Oxford University Press, 2017) [Oxford Constitutional Theory Series].

Roznai, Yaniv. "'We the People', 'Oui, the People' and the Collective Body: Perceptions of Constituent Power", in *Comparative Constitutional theory* 295- 316 (Gary Jacobsohn and Miguel Schor eds., Edward Elger, 2018).

Roznai, Yaniv. "Constituent Powers, Amendment Powers and Popular Sovereignty:

¹⁰ מנחם הופנונג, מחיר המידע: קליטה ושיקום של סיעיני מערכת הבטחון בערי ישראל, *משפט וממשל יח*, (תשע"ז)

¹¹ סיגל הורוביץ, [צדק מעברי בהיעדר מעבר: ועדת אור והשסע האתנו-לאומי בישראל](#), *משפט, חברה ותרבות*, (מרץ, 2017) 251-259

Linking Unamendability and Amendment Procedures”, in *The Foundations and Traditions of Constitutional Amendment 23-49* (Richard Albert, Xenophon Contiades and Alkmene Fotiados eds., Hart Publishing, 2017).

Salzberger, Eli M. *La Legislation Antiterroriste Israelienne*, 38 *Archives de Politique Criminelle* (2016) 189-226.

Salzberger, Eli M. "The Rule of Law Under Extreme Conditions and International Law: A Law and Economics Perspective", in Thomas Eger, Stefan Oeter, Stefan Voigt (eds.), *The International Law and the Rule of Law Under Extreme Conditions*, Mohr Siebeck (2017), pp. 3-56

Salzberger, Eli M. Counter-Terrorism Law and the Rule of Law Under Extreme Conditions: Theoretical Insights and the Experience of Israel, in Julie Alix and Oliver Cagn (eds.), *L'hypothese De La Guerre Contre Le Terrorism: Implications Juridiques*, Paris: Dalloz, 2017, pp. 43-62.

II. Publications Forthcoming

Albert, Richard and Yaniv Roznai (eds.), *Constitutionalism under Extreme Conditions: Law, Emergency, and Exception* (under contract with Springer, *Ius Gentium: Comparative Perspectives on Law and Justice Series*).

Bar-Siman-Tov, Ittai. "Temporary Legislation, Better Regulation and Experimental Governance: An Empirical Study", forthcoming in *Regulation and Governance* (2018). available at: <http://ssrn.com/abstract=2807564>

Bar-Siman-Tov, Ittai and Gaya Harari. "Temporary Legislation's Finest Hour?: Towards a Proper Model of Temporary Legislation in Israel" (Hebrew), Forthcoming in 41 *Tel Aviv University Law Review* ("luney Mishpat") (2018), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3064829

Bjørnskov, Christian, and Stefan Voigt. "The architecture of emergency constitutions." Forthcoming in *International Journal of Constitutional Law* 2018.

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Shmueli, Deborah, Ozawa, Connie, and Sanda Kaufman, forthcoming. "Mining

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III. Publications Submitted for Review

Berti, Benedetta. "Forced Displacement, Humanitarian Challenges and the evolution of conflict in the Middle East" (submitted to *Mediterranean Politics Journal*).

Shmueli, Deborah, Ehud Segal, Michal Ben Gal, Eran Feitelson, Amnon Reichman, "Earthquake Preparedness in Volatile Regions: when response overshadows mitigation, the case of Israel" (submitted to *Natural Hazards*)

Shmueli, Deborah, Michal Ben Gal, Ehud Segal, Amnon Reichman and Eran Feitelson, "Developing a Regulatory System Assessment Methodology: Earthquake Readiness in Israel", (submitted to *Evaluation and Program Planning*)

Yaniv Roznai, "The Spectrum of Constitutional Amendment Powers, in Comparative Constitutional Amendment" (forthcoming as a peer-reviewed edited collection)

IV. Technical Reports 2017

Kutner, Ran, Ben Gal, Micha, Khamaisi, Rassem and Shmueli, Deborah 2018. Emergency Preparedness for Extreme Conditions amongst Jews and Arabs in Wadi A'ra as a Means for Social Inclusion and Regional Cohesion: Assessment of feasibility. Discussion paper, Minerva Center for the Rule of Law under Extreme Conditions.

Shmueli, Deborah, Reichman, Amnon, Feitelson, Eran, Ben-Gal, Michal, Segal, Ehud, Barzilai, Gad and Salzberger, Eli 2017. Evaluating Israel's Regulatory Framework for Earthquake Preparedness, Response and Recovery, for the *Ministry of Science and Technology*. 92 pages plus interactive appendices (Hebrew)

V. Conference Presentations 2017

Eli Salzberger, Israeli Counterterrorism law in the perspective of the rule of law under extreme conditions, Lille, France, February 2017 and in the Austrian Law Commission, Schlogen, May 2017.

Myriam Feinberg, "The role of non-state actors in the transnational fight against online incitement to terrorism", International Society of Public Law 2017 Conference, University, of Copenhagen, July 2017.

Shmueli, Deborah, Ozawa, Connie, and Kaufman, Sanda. "Planning and decision-making in the face of impending natural hazards, Association of Collegiate Schools of Planning (ACSP), Denver, Colorado, October 2017.

Shmueli, Deborah, Ozawa, Connie, and Kaufman, Sanda. "Applying Collaborative Planning Principles to Disaster Preparedness and Response, International Society of City and Regional Planners (ISOCARP), Portland, Oregon, October 2017.

VI. Proposals Submitted to Outside Funding Agencies in Review

Shmueli, Deborah. "The Israeli population's perceptions of a major earthquake: developing a theoretical framework, analyzing implications for public-policy and regulation". Submitted to the Israel Ministry of Science and Technology, 6.2017.

5. Research Plan for 2018

I. Ongoing PI Initiated Research

The PIs will continue their low, mid and high resolution study on the rule of law under extreme conditions. The coming year will focus on institutional designs in the framework of the project mentioned in section 1.2 above.

National Knowledge and Research Center for Emergency Readiness

Prof. Deborah Shmueli, head. Funded by the *Israel Ministry of Science and Technology* and *NEMA (National Emergency Management Authority, Ministry of Defense)*

In September 2017 the Minerva PIs, headed a call for proposal issued by the Israel Ministry of Science and Technology and the National Emergency Management Authority of the Ministry of Defense, to establish this national Center. Five teams competed for the bid and the five proposals were sent out to twelve international reviewers. At the end of December we were told that the Center had been awarded to us.

The National Knowledge and Research Center for Emergency Readiness with eighty-five researchers was established in January 2018 by the Israel Ministry of Science and Technology and the National Emergency Management Authority (NEMA) of the Ministry of Defense. Core institutions involved are University of Haifa as the leader, the Technion and the Hebrew University, together with researchers from Rafael Advanced Defense Systems, Rambam Hospital, Tel Hai College, and the Israel School for

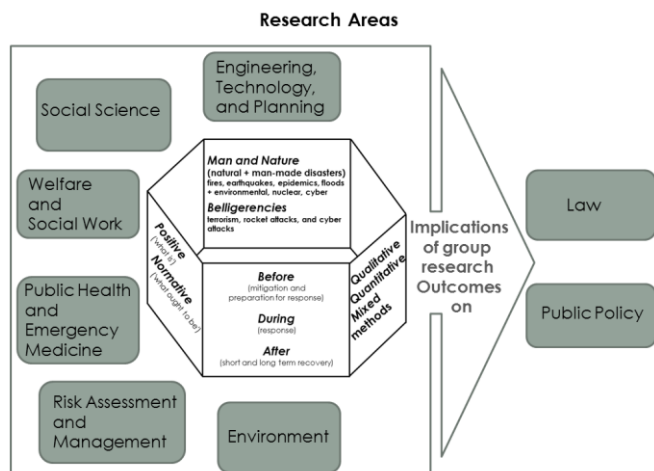
Humanitarian Aid; the municipality of Haifa and NATAN International Humanitarian Aid. The Center's mission is to construct a state-of-the-art scientific research institute to serve as a think-tank for policy framers, decision-makers, the academic community and practitioners from all sectors. The two intertwined functions of the Center are 1) independently generated, cutting-edge and multi-disciplinary research, and 2) solicited real-time response to requests by NEMA, government ministries, elected officials, NGOs and other stakeholders.

Conceptually the National Research and Knowledge Center for Disaster and Emergency Management is structured along two axes: the nature of the extreme condition and the time period. The relevant clusters of extreme conditions are:

- Man and Nature - natural (including fires, earthquakes, epidemics, hurricanes, and floods) and man-made disasters (including ecological, chemical, environmental, cyber, and nuclear); and
- Belligerencies - terrorism, rocket attacks, and cyber attacks.

These extreme events are situated temporally: Before (deterrence, mitigation, and preparation for response), During (crises management), and After the crisis (short and long term recovery). Coping with a disaster in each timeframe is approached through the multiple disciplines and their research frames, and a multidisciplinary lens. The research goals include not only understanding and documenting the current situation (the 'what is') but also normative analysis – including critical and constructive evaluations and suggestions for improvement (the 'what ought to be').

The Center is comprised of 8 disciplinary research groups: Social Science; Public Health and Emergency Medicine; Welfare and Social Work; Engineering, Technology, and Planning; Risk Assessment and Management; Environment; Law; and Public Policy. The Law and Public Policy groups have a dual role: they will conduct research on the law and policy frameworks in emergency, and they will receive the research outputs of the other six groups, assess their implications for law and policy and make recommendations, providing a built-in operational pipeline aspect to the research. This ensures the integrative dimension critical for the success of the Center.



The new Center's activities include mentoring graduate and post-graduate researchers, conducting workshops, and inter-disciplinary conferences, at the national and international levels, allowing for the exchange of data, comparative analysis, and dissemination of knowledge. The Center seeks to foster knowledge sharing and international research collaborations, with an aim of developing a cadre of comparative studies and evaluations of recommended practices. The funding amounts to 3 Million shekels for three years (divided between the three participating academic institutions)

II. On-going Seminars

In 2018-2019 we intend to continue with our seminar talks in our weekly team meetings. The lectures will be given by our post-docs, supported researchers and others. The lectures will be announced in advance to wide audiences, both academic and practitioners, and on our website under "[Upcoming Events](#)".

III. Minerva Center Edited Volumes in Preparation

"Regulation of disasters and Crisis Under Uncertainty" The International Journal for Constitutional Law has expressed interest in publishing an edited volume on the "Regulation of disasters and Crisis Under Uncertainty" following the conference held under this title at the Minerva Center for the Rule of Law under Extreme Conditions in June 2013. Leading this publication is Prof. Gad Barzilai and Dr. Suha Jubran-Ballan. The

list of contributors to this volume includes: Gad Barzilai, Michael Faure, Kenneth Feinberg, Sanda Kaufman, Connie Ozawa, Amnon Reichman, Yaniv Roznai, Deborah Shmueli, and Eli Salzberger.

“Constitutional and Legal Regulation of Emergencies in Democracies”

The mid-resolution study which was the first collective study of the Minerva team was concluded in an international workshop held in Hamburg in March, 2016. A book (lead by Eli Salzberger and Amnon Reichman, with Maya Mark - Post-Doc fellow at the Center) is now in final stages of preparations for publication. The list of contributors include: Dr. Alan Greene (UK); Prof. Matczak P., Chmielewski P.J.F, Adam Mickiewicz and Abgarowicz G. (Poland); Prof. Jeremy Finn and Prof. W. John Hopkins (New Zealand); Dr. Antonios E. Kouroutakis (Greece); Dr. Matthias Lemke (Germany); Dr. Fumito Tomooka (Japan); Dr. Olivier Cahn (France); Dr. Andrej Zwitter (Netherlands) and Prof. Amichai Cohen (Israel).