



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

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

## **Biennial report – 2020-2021**

Haifa and Hamburg, March 2022

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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 2020-2021.

## 1. Personnel and framework of activity

The past two years -2020-2021 - Corona years - were marked by intensive online activity at the Center. We fully adopted ourselves to the new circumstances and we are planning to utilize the new possibilities into a post-Corona era.

The Minerva team included:

- Eight (8) PIs: Prof. Eli Salzberger, Prof. Gad Barzilai, Dr. Itaman Mann, Prof. Amnon Reichman and Prof. Deborah Shmueli from the University of Haifa; Prof. Stefan Voight, Prof. Stefan Oeter and Prof. Anne van Aaken from the University of Hamburg, with the participation of Prof. Florian Jessberger who moved from the University of Hamburg to Humboldt University in Berlin.

- Eleven (11) young scholars - post-doctoral researchers and research fellows: Dr. Ronen Ben Arie, Dr. Oren Shlomo, Dr. Tamar Megiddo, Dr. Shelly Aviv-Yeini, Dr. Rottem Rosenberg Rubins, Dr. Robert Neufeld, Dr. Omri Grinberg, Dr. Hadeel Abu Husein, Dr. Talia Diskin, Dr. Assaf Mond and Dr. Gil Rothschild Elyassi (see page 10).

- One research fellow: Prof. Mohammed Wattad

- One academic coordinator - Dr. Michal Ben-Gal, working part-time as researcher, administrator and website manager.

- One project head - Adv. Ido Rosenzweig.

- two to four research assistants, depending on project needs.

- One administrative assistant - Eran Beit Halachmi.

**Details of all the team is available in our website under "[People](#)".**

In addition, the Center hosted a young researcher: MA student, Lavinia Parsi, from Università degli Studi di Milano, Italy, who came for a study and research period in 2020.

The Center is located in the Terrace (“Madrega”) building at the University of Haifa, room 1013. 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 during semesters period. A Young Researchers Forum is held in the morning in which the post-doc and additional young researchers 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 members of the Center’s community or by a scholar who has received support from the Center. The lectures are open to the public and most of them are streamlined on [Facebook](#), as well as recorded and uploaded to [YouTube](#) (reaching several thousand viewers).

The Israeli PIs hold separate meetings to discuss substantive as well as administrative aspects of the Center’s operation. In February 2020, a conference accompanied by a meeting of the PIs was held in Hamburg; all other Center activities were conducted on-line. Towards the end of 2021 we held a couple of 'physical' meetings in hybrid format (both in person and via Zoom), but regrettably, Omicron forced us to resume the Zoom format.

## **2. PI Initiated Research**

### **I. Towards an Israeli doctrine and legislative-regulative framework dealing with emergencies**

Led by Prof. Eli Salzberger and our post-doc, Dr. Robert Neufeld with the participation of Prof. Shlomo Mizrahi (from the School of Political Science at the University of Haifa); time period: 1/1/2019-30/12/2021.

Funded by the National Emergency Knowledge and Research Center (Supported by the Israel Ministry of Science and Technology and The National Emergency Management Authority, Ministry of Defense) and by the Minerva Center

During Israel's short history the country has experienced numerous emergencies, most of which were related to national security incidents. It is surprising, therefore, that Israel lacks a solid doctrine and comprehensive legislative and regulative framework dealing with preparation for emergencies, handling and mitigating such emergencies and recovering from them. Furthermore, the legislation that does exist on the law-books is a far cry from reality, creating a dangerous gap between the law in the books and law in action. Covid-19 is a case in point. Initially there was no central management of the crises and when the government looked for a coordinating body it did not think at all of the National Emergency Management Authority and finally assigned the task to the National Security Council in the Prime Minister's Office, which is an advisory (rather than an operative) body designated to advise in matters of foreign affairs and national security.

The research focused on the institutional and regulatory gaps. Based on a comparative study of the emergency doctrines and legislative frameworks in other countries, as well as the current Israeli formal and practiced frameworks and numerous State Comptroller reports on the issue, and following in-depth interviews with key individuals related to the emergency realm (completed last year), we put forward a policy document and legislative proposal to deal with the structure and management of the emergency field. It is based on policy research analysis of the main regulatory and

coordination problems that characterize emergency management in Israel and puts forth alternatives to deal with them. The outcome was forwarded to decision-making bodies and is already discussed internally by them.

## **II. National Research and Knowledge Center for Emergency Preparedness**

**The National Knowledge and Research Center for Emergency Readiness** with ninety 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, following a competitive process which was led by the Minerva team in cooperation with key researchers from the Hebrew University and the Technion. The Center operates in integrative parallel to the Minerva Center for RLUeC.

An overview of the Center is available on its website: <http://muchanut.haifa.ac.il>.

Outlines of research at the Center is available on its website: <http://muchanut.haifa.ac.il>

>> [Center Research](#)

Led by Prof. Deborah Shmueli (Center Head) and Dr. Michal Ben Gal (research coordinator), the center includes a team of 90 researchers consisting of 8 disciplinary research groups. The Law group is led by Prof. Eli Saltzberger, with Prof. Gad Barzilai and Prof. Amnon Reichman as members of group. The Center received 3,000,000 NIS in 2018-2020 and additional 700,000 NIS were granted for the Center by the Israeli Ministry of Science and Technology for 2021. The Law group (Minerva) received funding for research on a competitive basis from among the Center researchers.

**The Center's contributions to the effort during the COVID-19 pandemic** were in two strata: 1) Streaming insights, data, and recommendations for decision makers and supporting teams, based on short term research relevant to coping with pandemics in general, and Covid-19 in particular. 2) Characterizing issues that require addressing and answering decision-makers' questions (in the National Security Council (NSC), Ministry of

Science Team 19; National Emergency Management Administration (RACHEL), and other governmental institutions and think tanks).

In addition, the Center's website (<http://muchanut.haifa.ac.il>) collects up-to-date knowledge including information sources, articles, lectures, position papers and various publications.

### **1. Research - short, medium and long term**

A. The Knowledge Center conducted a number of studies on preparing and dealing with the Corona crisis. Some dealt in the short and medium term, and some were longer range. Some research projects which began before the outbreak of the crisis, expanded to address COVID, and others were initiated and funded specifically to address different dimensions of COVID.

#### Selected list of COVID-related Research Projects:

- "The day after" – multi-disciplinary strategies for coping, gradual exit and crisis recovery, including:
  - Stage A: Review of experience in East Asian countries that experienced the SARS crisis and advance Israel in dealing with the Corona (Prof. Deborah Shmueli).
  - Stage B: The day after the corona crisis: Comparative Study of the COVID 19 European Experience: Austria, Switzerland, Italy and Greece (Prof. Deborah Shmueli)
  - Stage C: Can Wellbeing Effects of COVID-19 be Mitigated Amidst and Economic Crisis (Prof. Eran Feitelson)
  - A survey of Israeli Health Experts views on the Handling of the Corona Virus (Prof. Hagai Levin)
- Managing the COVID-19 Epidemic Locally: A birds' eye view of the challenges faced by local governments, local responses, and the differential local needs of municipalities in Israel
- Evaluating the Success of Local Authorities in Israel in Minimizing the Impact of COVID-19
- Using crowd-sourcing surveys for input from the public on the ongoing crisis management
- Smart and portable autonomous structures to deal with epidemic - a reserve of isolation and treatment facilities
- Building public resilience and trust in times of Coronavirus global pandemic hazards: An integrative approach of citizens within society

- The domino effect in the tourism industry of the Corona virus: analysis and recommendations
- Agent-based simulation of the spatial spread of the Corona virus in major cities in Israel
- Corona epidemic - estimating the economic costs of various coping measures. sensitivity analysis
- Predictors of Community and National Resilience Throughout The COVID-19 Epidemic
- Post-traumatic stress response, uncertainty, world assumptions and loss of resources in the end and after the corona epidemic
- Can Children Study during These Times? Examining the Relationship between Parents' Meta-Abilities and their Children's Learning Ability from Home During the Corona Pandemic
- Poverty in the Corona: Challenges and struggles of people living in poverty following the Corona epidemic

B. The Center provided decision-makers with a bi-weekly summary of insights, key findings, and recommendations from 54 social science and health studies funded by the Ministry of Science and Technology (Center and non-Center research):

The Ministry of Science and Technology chose to fund 54 social science research projects on a variety of topics that were determined to be crucial for addressing the corona crisis. In order to streamline the gathering of insights from these studies and to inform the Ministry of Science and Technology and other decision-makers of information gathered and to assist in dealing with the crisis in real time, the Center provided decision makers with a bi-weekly summary which included:

- Interesting statistics and findings that emerge during the research
- Findings that seem surprising or contradictory to accepted beliefs
- Key insights that have crystallized up to the point in time of the report
- Action suggestions that have crystallized up to the point in time of the report
- Comments on numerous draft legislation and regulations related to the Covid-19 crises

## **2. Short answers to questions raised by decision-makers and others**

The Knowledge Center employs around 90 researchers with expertise in a variety of emergency areas. During the COVID-19 crises these researchers related to specific issues that they were requested to address by the National Security Council, Ministry of



Science and Technology (Tzevet – 19 headed by the Minister of Science who was a member of the Israeli Parliament's Corona Cabinet), the National Emergency Management Administration (RACHEL) and other bodies.

#### **Information on the Center website**

The Center's website added two pages dedicated to the Corona crisis in [English](#) and Hebrew, which include: links to data sites, articles, research and recent events, as well as articles and videos produced by the Center's staff on related topics. In addition, the Center [Library](#) on its website is continually updated and expanded with new scientific articles.

### **III. Databases**

**A database within the framework of the new National Knowledge and Research Center for Emergency Readiness** that was developed in 2018 and continues to grow. This database is part of [the center's website](#) (see under "Resources") and is linked with the Minerva website. It includes three types of data:

(1) Publication repository: data on bibliographic sources on emergency readiness retrievable by: A) research topic (Engineering Technology and Planning; Environment; Law; Public Health and Emergency Medicine; Public Policy; Risk Assessment and Management; Social Science; and Welfare and Social Work). The Law and Public Policy components are Minerva products. B) Emergency type (Natural, Man-made, Belligerencies) and C) Disaster type (Fire, Flood, Earthquake, Epidemic, Environmental, Chemical, Nuclear, Cyber, War, Terror).

(2) Links to other related databases

(3) Case studies and emergency events

### 3. Research Projects and Researchers Selected for Support

#### 3.1. Post-doctoral Researchers

Our post-doctoral fellows are in the core of the center and we are proud to note that many of them were subsequently recruited as tenure track position in various universities.

In 2020-2021 the Center sponsored and hosted eleven (11) post-doctoral researchers: Shelly Aviv Yeini, Tamar Megiddo, Rottem Rosenberg Rubins, Robert Neufeld<sup>1</sup> and Oren Shlomo, joined in October 2019 and received scholarships through September 2021. Ronnen Ben Arie joined the team in October 2018 and continued through September 2020.

All but Tamar and Oren, who received a faculty position at the Open University, continue their affiliation as Research Fellows (for three years). Rottem received a faculty position at the Academic Center for Law and Business as of October 2022.

Omri Grinberg Joined the Minerva Center in October 2020 and continues through 2022. Talia Diskin, Hadeel Abu Husein, Assaf Mond and Gil Rothschild Elyassi joined in October 2021 for at least one year with an option for two. Gil received a tenure track position at the University of Haifa Faculty of Law beginning in October 2022.

Following are details about the post-docs and their research projects.

#### A) Dr. Shelly Aviv Yeini

##### 1) Charming Betsy and the Constitution

(Published with Ariel Bendor, *Cornell Int'l LJ* 53 (2020): 429).

One of the main disputes in regard to how courts should interpret the federal Constitution pertains to the legitimacy of relying on international law in constitutional

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<sup>1</sup> Shelly Aviv Yeini was a joint appointment with the HCGES (Haifa Center for German and European Studies), and Robert Neufeld was a joint appointment with the National Research and Knowledge Center for Emergency Preparedness, mentioned above.

interpretation. This article examines the interpretative status of international law, in general, and the controversy over the use of international law in constitutional interpretation, in particular. The Article offers an innovative approach to the controversy based on the significant difference between customary international law and treaty law; namely, that constitutional interpretation with reference to international law should be limited to customary international law, as opposed to treaty law.

## **2) The Persistent Objector Doctrine: Identifying Contradictions**

Published in *22 Chicago Journal of International Law* (2022)

The Persistent Objector Doctrine (POD) in international law provides that the rule of Customary International Law (CIL) would not oblige a state if it had persistently objected to the development of such rule of CIL. While the requirement of 'persistency' has been discussed in the legal literature, the term 'contradiction' with reference to such consistency, which disqualifies a state from Persistent Objector (PO) status, has not. Therefore, it is not clear what type of behavior would represent a contradiction to the persistency of an objection and interfere with PO status.

This research suggests that while substantive contradictions should disqualify a state's PO status, a minor contradiction should not affect its PO status. Given the modern political reality of the contestation and plurality of voices among a state's branches and institution, some amount of contradiction should be allowed otherwise POD would be practically nullified. Therefore, the research suggests guidelines to differentiate minor contradictions from substantive ones, as only the latter would impair PO status. Such guidelines include the direct connection between the contradiction and the rule in question; the proximity of the statement or action to international relations; the position of the initiator of the contradiction within the inner hierarchy; the legitimacy of the contradictory act (whether the initiator of the contradiction acted with authority); the influence of the contradiction over a state's behavior; and the accumulation of minor contradictions.

### **3) The Term "War" in Modern International Law**

The term "war" in the legal context is considered a term of the past that has no substance in modern international law. The desire to abandon the term has a clear rationale—historically, war was triggered by a formal declaration and fought between states, allowing parties with more power to manipulate the application of international humanitarian law, which would commence only upon a declaration of war. However, the post–Geneva Convention understanding of hostilities has largely changed, most notably in the adoption of the notion of "armed conflict", which is based on factual assessment rather than on a declaration in both international and non-international contexts.

However, this research would suggest that the term "war" is still in use by many states, international courts, international institutions, and legal scholars. The term "war" has not ceased to exist in the context of international law; rather, it has evolved to indicate an escalation in the intensity of hostilities within the paradigm of "armed conflict". This new use of the term "war" has significant explanatory value because the term "armed conflict", especially in the international context, covers a wide spectrum of intensity. While the intensity of hostilities is not relevant to the application of international humanitarian law, once an armed conflict has started, any escalation of intensity and efforts to prevent such an escalation may still be important in various arenas, including the provision of humanitarian aid, humanitarian intervention, the planning of military objectives, and the perception of urgency by international tribunals. This research is highly relevant in context of the definition of extreme conditions vis-à-vis the rule of law.

#### **b) Dr. Tamar Megiddo**

##### **1) Inclusion and Representation: The Settlement of Property Claims of the Dispossessed in the Aftermath of an Armed Conflict**

(published with Eyal Benvenisti, Tel Aviv University, in *Theoretical Inquiries in Law*, 21(2), 397-425 (2020) )

This project examines the authority of states to settle individual private property claims in post–conflict negotiations towards settlement. It is analyzing this question by

exploring the limits of states' authority to take or limit private property rights for the public good. It argues that this authority rests on two cumulative justifications: the inclusion of the property owners among the public that stands to benefit from the public good, and their representation by the government that decides on the taking of the property. In post-conflict settlement, the negotiating states may redistribute both private property and the public good between and within their respective communities. Their authority to redistribute continues to rest on the same justifications of inclusion and representation. Hence, their authority extends only to the redistribution of property of owners who are members of the respective communities that negotiate the agreement, and who are represented by a negotiating government.

## **2) Babysitter Justice**

With the rise of populist politics around the world, progressive, activist courts have been a primary target of criticism by populist politicians and thinkers. Plausibly, one consequence of the threatened legitimacy of courts may be a renewed reluctance to rule on politically high-stakes issues. This project studies one course of action to which courts may resort in such situations: evading ruling on the merits of a case, preferring, rather, to "babysit" it, in the hope that the underlying conflict resolves itself without explicit judicial intervention. By "babysitting" a case, a court keeps a case pending, refraining from ruling on its merits for an extended period of time. During that time, the court might hold occasional hearings, urge the parties to negotiate, or require them to report on the underlying dispute.

The court's choice to keep cases pending rather than rule on their merits raises concerns, as the court's formal mandate is to decide the cases brought to it and not preside over negotiations, and given that rights may continue to be gravely violated in the interim. Simultaneously, the value of the court's function as an arena for inter-party engagement should not be easily dismissed.

The practice of judicial evasion from ruling on the merits has received little scholarly attention. There is a robust literature on the strategy of, and conditions under

which courts have expanded their judicial review powers. Voluminous scholarship also exists with respect to the motives for instigating, and the benefits for parties who engage in public interest litigation. However, the research argues that there is an important qualitative difference between cases where a final decision on the merits is realistically anticipated – and cases where it is not (e.g., babysitting), regardless of the favorability of such decision.

The paper explores an Israeli case study in order to illustrate and analyze the practice of judicial babysitting. In 2007, a petition was filed with the Supreme Court of Israel against the pushback policy exercised by the IDF against migrants and asylum seekers crossing the Israeli-Egyptian border. This practice was alleged to violate the non-refoulement principle, which prohibits the deportation of person to a place where she faces risk to her life or liberty. Although voicing its discomfort with the practice in hearings, the court kept the case pending for almost four years, declining to issue an interim injunction. In 2011 the government decided to halt the practice. Shortly after, the court finally ruled that the petition has exhausted itself and should be denied. By babysitting the case, the court achieved several things: (1) it avoided having to render a decision and commit to a specific normative position and thus exposing itself to political criticism; (2) it was able to convey to the government certain signals which triggered reconsideration of its position, even without issuing an explicit decision; (3) it was also able to provide litigants with certain benefits, including, primarily, a forum in which the government was bound to engage with them.

The government was able to avoid an adverse decision at the price of having to undertake certain steps which it might not otherwise wish to take. Following the court's guidance, it promulgated and later amended a procedure regulating the pushback policy and occasionally reported on its implementation. Nonetheless, the government was forced to operate under some legal uncertainty as the court refrained from legitimizing its practice.

As for the petitioners, even though they were not able to obtain the judicial decision they were hoping for, they were able to utilize the proceedings to generate

support for their cause otherwise. Among others, the proceedings served as a measure to force the government's attention and responsiveness to their arguments; as an axis around which to beckon the intervention of international bodies, including UN bodies and global NGOs, and to generate public awareness and media attention.

Nevertheless, babysitting continues to suggest certain foundational difficulties. First, the court clearly did not fulfill its role as a settler of disputes. Arguably, the petitioners' right to access to justice also includes a right to have their case decided, not only heard. Second, babysitting did a disservice to the court's role as a guide for behavior and as an institution entrusted with furthering the coherence of the law and its implementation on the ground. Further, when deciding to babysit, the court seems to operate on a certain tentative assessment of the facts and the law, but this remains preliminary, unspecified and unreasoned.

Third, the deterring factor of babysitting vis-à-vis the government that is attached to the threat of an adverse ruling may over time erode if the court often resorts to babysitting and rarely acts on the threat. Finally, and most importantly, the court's refusal to rule on the case and even to issue an interim injunction allowed for the pushback of over 600 individuals, some of which are known to have been held incommunicado in Egypt or deported back to their countries, tortured or killed. This, most starkly, was babysitter justice's highest price

The contribution of the paper is threefold. First, at the descriptive level, by calling attention to the phenomenon of judicial babysitting that is likely to expand in the present political climate. Second, by conceptualizing the practice of babysitting, mapping and categorizing the conditions under which a court may engage in babysitting and evaluating the practice's implications for litigants. Finally, from a theoretical and normative point of view, by evaluating the implications of this practice for democratic checks and balances and rights' protection.

**c) Dr. Rottem Rosenberg Rubins****1). Crimmigration and the 'Paradox of Exclusion'**

(Published in *Oxford Journal of Legal Studies*, 2021)

Much scholarship underscores the exclusionary nature of crimmigration (the policy of criminalising infringements of immigration rules and imposing adverse immigration consequences as sanctions for criminal conduct), viewing it as a system of social marginalisation designed to prevent integration. This article, conversely, demonstrates crimmigration's potential to contribute to the partial and symbolic acceptance of migrants. The article argues that crimmigration is characterised by a 'paradox of exclusion'—a contradictory attempt to exclude undesirable migrants via the field of criminal law, which is designed primarily for citizens. Consequently, crimmigration regimes extend to migrants certain rights associated with membership and provide irregular migrants with various opportunities to gain admittance into the community. Two main processes contribute to this dynamic: the extension of principles typical of 'citizen criminal law' to migrants and the equation of law abidance with 'good citizenship', which informally confirms the right of certain migrants to remain in the country or their suitability for membership. The article discusses crimmigration's consequent contribution to the process of civic stratification.

**2) From a state of exception to hyper-legality: Israeli counterterrorism law in the post-two-state era**

(Presented in the [Center seminar, April 22, 2020](#))

The research is based on the case study of Israel/Palestine and focuses on Israel's comprehensive 2016 Counterterrorism Bill. This legislation was adopted to allow Israel to cope with security offences within the confines of its conventional criminal procedure, rather than by using emergency measures. The case study combines a critical analysis of the Bill with an empirical study of the decisions made on the ground in accordance with this legislation.

Using a methodology of Critical Analysis of Law, Rottem identifies the underlying



logic of the Counterterrorism Bill and the type of relationship it envisions between Israel and Palestinians living under Israeli occupation. She demonstrates that such Palestinian residents are the main group targeted by the legislation, which views them not as an external enemy but rather as “homegrown terrorists”, who are neither “insiders” nor complete “outsiders” to the Israeli political community. However, the legislation is also likely to apply to two other groups that present a particular threat in the eyes of the state, namely, Palestinian citizens of Israel and Jewish settlers living in the occupied territories. The legislation is largely preventative by nature and focuses on averting anticipated violence incited by these three groups. While striking a new balance between emergency powers and conventional criminal measures, the legislation also constitutes a strategic combination between the two types of measures, allowing the state to apply them interchangeably. This model for preventing terrorism is consistent with what Hussein (2007) has termed “hyper-legality” – an inflation of laws and legal mechanisms that causes the subjects of power to be over-regulated rather than abandoned by the rule of law.

To test these hypotheses, Rottem conducted an empirical study of the judicial and administrative decisions reached in cases involving the three identified groups of presumed enemies, examining both the concrete decisions and the judicial discourse characterizing each group.

**d) Dr. Oren Shlomo**

**From Contested Sovereignty to Urban Politics: Palestinian Rights-Claiming and 'Accessing the State' in post-Oslo East Jerusalem**

(Presented in Center [seminar, January 6, 2021](#))

This research explores new forms of Palestinian encounters with the state and the local government in Jerusalem, hypothesizing their shifting in the post-Oslo era from non-recognition and rejection of Israeli rule, to the utilization of civil society and legal apparatus to make claims on the state for social and urban rights. The analysis facilitates an assessment of the implications of this development in relation to Palestinians’ partial

inclusion in state apparatus and the restructuring of their political positioning, the development of civil sentiment between the Palestinians and state agencies, and the overall restructuring of urban politics, governance and modes of control and resistance under the extreme urban and political conditions in Arab Jerusalem.

**e) Dr. Robert S. Neufeld**

See PI initiated research above: Towards an Israeli doctrine and legislative-regulative framework dealing with emergencies

(Presented with Eli Salzberger in [Center seminar talk, November, 2020](#) – in Hebrew)

**f) Dr. Omri Grinberg**

**Mediating Influence and Achieving Failure: NGOs in Israel/Palestine and the Paradoxical Itineraries of Human Rights**

This research project contends with a paradox that shapes the work of human rights non-governmental organizations (hereinafter, NGOs), and has significant bearings on contemporary struggles over liberalism and definitions of violence. The paradox is between the pervasive presence of human rights-talk in media and culture—general notions of “human rights” (hereinafter, HR) and related terms denoting legal protections and moral imperatives—and NGOs’ inability to achieve their stated goals of protecting and improving the lives of the populations they aim to assist.

This is an anthropological project based on a case study: The initial formations of Israeli NGOs, which occurred in two distinguishable historical time-frames – the first (1988-1991) and second Intifadas (2001-2005), Palestinians’ uprising against Israel’s occupation. Israel/Palestine is a paradigmatic geopolitical context in the histories of HR, where—as recent scholarship shows—HR projects fail to reach their objectives and NGOs (unwittingly) further perpetuate violence. Such studies of HR are useful, but problematically rely on philosophical critiques of liberalism, and overlook failure as a productive analytical category (and, for those failing, as important practice). In this

project, Omri argues that the paradox of HR can be a rich source of critical insight if we analyze NGO failures as achieved: failure parallels the achievement of success, requiring production, adaption, and inter-systematic coordination.

Using interviews and archival research, he is collecting and analyzing discussions and communications within NGOs, and between them and outside actors (such as: state agencies, media, UN extensions, “parent” NGOs and donors). Through these materials, he traces HR terms – including abstract notions such as violence and rights, and more specific definitions (torture, administrative detention, and citizenship status). Mapping semiotic trajectories shows how HR language was shaped during NGOs’ formation phases: who introduced terms and based on what source, their adaptation and translation, circulation, and responses from significant outside actors. In turn, NGOs often form during, or in the wake-of, times of heightened violence and tension. Thus, this study contributes to our understanding of how state and non-state actors negotiate—within and between them—the legitimacy of violence in times of crises.

Currently, Omri is working on the first article based on this study, with Dr. Sarai Aharoni (Ben-Gurion University), focusing on a small, long-running Israeli NGO that deliberately counters the pervasive logic of other NGOs in two distinct manners: avoiding any public activity and recognition, and functioning without a central organizational archive.

Concurrently, in addition to this research, he also engaged in two other projects: adapting his doctoral dissertation (titled *Writing Rights, Writing Violence: The Bureaucracy of Palestinian Testimonies in Israeli NGOs*) as an ethnographic book, and a study carried with Dr. Yael Berda (Hebrew University and Harvard University) about the changes in Israel’s bureaucracy and practices regulating Palestinians’ permits to travel and work in Israel, due to COVID-19. Specifically, they are examining what these changes tell us about the history of Israel’s most persistent policy: disallowing West Bank and Gaza Palestinians from spending the night within Israel.

**g) Dr. Talia Diskin****Away from the Mainstream: Democracy and The Rule of Law in Marginal Political Youth Periodicals during the State of Israel's First Decade**

(Three related articles were published in 2021 - in *Israel Studies* 26(2), 133-151, *Journal of the History of Childhood and Youth*, 14(1), 44-62 and *History of Education* 50, 5: 647-662).

This project aims to trace, from a legal-historical perspective, the roots of Israeli democracy from its primary origins to its marginal edges: the peripheral parties, who appealed to youths through their own periodicals. The project offers a study of how three different politically periodicals communicated, from their unique points of view, subjects of law and morality to their adolescent readers in the first decade following Israel's establishment (1948-1958) – extrinsically: from “outside” of mainstream periodicals. It will focus on three allegedly marginal periodicals in particular, all published in the 1950s – as the country transitioned from a Jewish community (Yishuv) ruled by the British Mandate to a sovereign state. The project offers some new perspectives on alternative voices that countered (and sometimes expressed their loathing for) the dominant voice of Mapai (Israeli Labor Party), the ruling party at that time, led by Prime Minister David Ben-Gurion. In regard to the Israeli nation that, from its very own beginning, constantly fought for its democratic identity, this is a local project; from a global viewpoint, it raises questions regarding other countries, as well as the legitimacy of provocation, especially at times of state or nation building.

**h) Dr. Assaf Mond****The Untalked-of Concentration Camps: Imprisonment of Civilians in Liberal States (Britain, USA, Canada, and Australia) during two World Wars**

This research is focused on concentration camps for civilians of the enemy in liberal states during the two world wars. By studying this phenomenon, it argues, we can learn about the limits of liberalism, about the power of modern sovereignty and its ability to control the ‘legal order’ (as defined by Carl Schmitt), and about the implementation of the ‘state

of exception' (as defined by Giorgio Agamben). It enriches our understanding of the liberal spaces, where people expect their civil rights and human rights to be assured. The civilians who were imprisoned in Britain, the USA, Canada, and Australia during the world wars were not imprisoned in camps because they had broken the law, but because of their origin. Their experiences in the camps should be part of the history of the modern liberal state and the modern liberal spaces. The study of liberal states' concentration camps during the two world wars sheds light on the ways in which physical boundaries between people in wartime represent the blurred boundaries of the state's liberal heritage. That is why, apart from its contribution to the historiography of war and urban societies in the twentieth century, this is a crucial subject for understanding the burning political issues of the twenty-first century, chiefly how the western states cope with modern migration and movement of war refugees.

**i) Dr. Hadeel Abu Husein**

**Minority Rights and Ethnocratic Democracy: Historical Narrative and the Law**

This project is an attempt to address the constructed isolation of Palestinian Arab Israeli citizens from civil and political life in Israel through the use of legal methods to prevent them from achieving equality in different fields. Moreover, it sets out to interrogate the status of Palestinian Arab citizens of Israel and the residents of East Jerusalem as a community that is dependent on Israel's politics and economy.

The research will discuss a contemporary aspect of the Israeli Palestinian conflict and focus on exploring how the Israeli state is turning towards an ethnocratic democracy which favours Jewish ethnicity, by creating laws and policies that widen the inequality gap between Jewish and Arab Palestinians citizens of Israel.

The project will start by examining the history leading up to the current Israeli-Palestinian conflict, providing a useful backdrop to the current status of Palestinian Arab citizens of Israel - Palestinians who have remained within the "Green Line" after being physically separated from Palestinians living in the West Bank and Gaza Strip. There is significant literature that examines the backdrop to the Israeli-Palestinian 'meta-conflict'. These

historical narratives are rarely contested. The history-building project of the Israeli state competes for space with the Palestinian search for recognition and identity. Hence, understanding of the historical background to the creation of the legal system towards empowering the ideologically strong nationalism domination of one ethnic group. This superimposes a Jewish ethnicity into the state together with the attempts to minimize the Palestinian Arab citizens of Israel ethnicity presence. The ethocratic regime prefers one ethnic nation in a multi-ethnic territory. Allowing these ethnic nations to become dominant. Therefore, the main criteria for the distribution of power and resources is ethnicity-Jewish, in the case of Israel, where the legal structure and public norms enable the control of an expanding ethnic nation. Therefore, the architecture of exclusion that they face can be demonstrated by focusing on discrimination in various legal fields. The research will then, turn to explore the underpinning of new legislation in Israel, using three critical contemporary examples which will help to illustrate in detail how the framework of inequality has been created. This systematic nature of marginalisation is mapped out in various ways across the civil, political, and socio-economic landscape. Israeli authorities caused the marginalisation of Palestinian Arab citizens in Israel through pursuing exclusionary policies toward them and limiting their access to resources along with narrowing their political power and dominating them within the state of Israel.

#### **j) Dr. Gil Rothschild**

##### **1. Reading Punishment with Du Bois: Toward a Double Consciousness Hermeneutics**

Contemporary social-scientific research about law, punishment, and state power is characterized by analytic plurality. This was not always the case, as recent decades have seen a shift away from the reign of grand-theoretical traditions to a proliferation of coterminous approaches. And yet, in some important respects this analytic plurality continues to stand on common grounds .In general terms, most prominent approaches for the study of law and punishment presume a one-world world in which all aspects of society can be captured in the language of sociology, linked to other aspects ,and ultimately included in a bigger picture.

In this paper, I draw from the writings of W.E.B. Du Bois to articulate a theoretical reorientation that breaks with the one-world presumption. In general terms, Du Bois's sociology, and particularly his notion of the color line, recognizes the possibility of unreconciled ontologies, indeed of two or more "separate-yet-adjacent worlds" that may refuse assimilation.

Accordingly, Du Bois's sociology opens up ways for treating difference as something that may refuse to be included, and thus as articulating alternative grounds from which to see, think, and act amidst unreconciled worlds. This reorientation encourages us not only to recognize the limits of sociology, but also to foreground understudied dynamics of translation and mediation across unreconciled worlds.

As I show through the case of penal supervision, this reorientation entails meaningful implications for how we think about law and penal practice. In this respect, I demonstrate what it may mean to consider penal supervision as an ontologically-liminal institution, namely, a set of technologies that mediate vision and action between the world of the law and the worlds of people and communities who are frequently rendered visible yet do not get to define the field of vision, nor its parameters.

## **2. The Place of Blackness: Toward a Dialectic Interpretive Approach (with Adane Zawdu)**

In this paper, we begin to elaborate a dialectic interpretive approach for the study of Blackness in Israel, indeed of dynamic, embodied relationships between Blackness and place. Departing from established approaches that typically require analysts to take "a stance," a dialectic approach encourages analysts to employ variable hermeneutics for exploring discontinuous-yet-concurrent registers of embodied existence. The paper consists of three central parts. In part I, we identify two distinct orientations in the local study of Blackness, each locates Blackness differently and, respectively, each employs a different interpretive approach. In general terms, the first orientation is grounded in the Middle Passage and the trans-Atlantic slave trade and, accordingly, it considers local "instantiations" of Blackness in reference to "deep" processes that may be spatially and temporally removed. By contrast, the second orientation grounds "the local" as the

orienting context and, accordingly, it seeks to articulate local vocabularies for its consideration. Part II of the paper then elaborates the essence of our proposed shift. Instead of positioning these distinct orientations on two far ends of one spectrum, we suggest a way to think of them as two concurrent registers of embodied existence: while one pertains to the dialectic between dark bodies and globalized forces, including whiteness and racial capitalism, the second pertains to occasions wherein people do not strictly experience their “being for others.” Such recognition in the concurrent existence of irreconcilable worlds, we suggest, should lead analysts to focus not on any particular notion of Blackness but, instead, on the ongoing movement between spheres of existence. Finally, in part III, we focus on the case of Ethiopian Jews to elaborate some methodological principles by which to consider and explore this dialectic as it is in fact lived and experienced across space and time. We conclude by advocating for approaches and networks that are capacious enough to sustain multiple starting points, yet also durable enough to foster solidarity.

### **3.2. Visiting Scholars**

In 2020 the Center hosted a visiting young researcher:

#### **Ms Lavinia Parsi**

Lavinia Parsi is a MA student at Università degli Studi di Milano who won a scholarship from her university to conduct a thesis research abroad. Lavinia’s thesis is about the legality of torture:

Given the extraordinary circumstances the Israel authorities face, national-security policies tend to sacrifice individual rights for the sake of collective safety.

Torture and other inhumane treatments are, in fact, ordinarily used by the Israeli Security Service and the Israeli Police Service in the context of interrogation and detention of those suspected of being involved in terroristic activities. As reports from the UNCAT, the UNHRC, Amnesty International and Human Rights Watch prove, these strategies often come to the point of entailing grave breaches of major norms of international and domestic law, constituting war crimes and crimes against humanity. However, the highest



jurisprudences, authoritative scholars and the administrative branch itself have created a narrative where torture cannot be recognized as such and the perpetrators are systematically relieved from criminal responsibility.

In particular, three tools are being used to create an appearance of legality on torture. First, the Supreme Court is progressively promoting a distortion of the definition of torture, drifting from the one agreed upon in international understandings and treaties (of which Israel has long been a contracting party).

Secondly, the administrative branch is creating a parallel justice system based on a wide use of prosecutorial discretion, a visible shift of the burden of proof on the side of the victims, and a system of confirmations and consultations in the ISA hierarchy, which ultimately makes officers' accountability an unreachable objective.

Lastly, an extremely large and inconsistent interpretation of necessity defense. In this sense, the allowance of an *ex ante* regulation of the cases where necessity may be applied, promoted by the Supreme Court itself, implies a dilution of key features of this legal defense, as the immediacy and concreteness of the danger threatened. Moreover, authoritative scholars and judges are theorizing the qualification of necessity not as an excuse (i.e. a relief from criminal responsibility, in light of the particular circumstances which make us deem the author's behavior as reasonable), but rather as a justification (where the circumstances are altered to the point of removing the qualification of unjustness from the action itself, qualifying it as entirely coherent with the legal system).

The certainty of impunity, together with the influence played by the judiciary positions, contributes in qualifying torture as intrinsically legitimate and therefore in making it socially perceived as acceptable, in a vicious circle; such an entanglement of executive and judiciary organs strongly departs from the norms agreed upon nationally and internationally, resulting in a blatant and dramatic breaking of the rule of law.

Moreover, the development of these permissive doctrines in scientific terms contributes to their pacific and prolific circulation, as it admittedly happened with the migration of the Israeli authorities' narrative to the American system *post* 9/11.

### **3.3. External Research Funded by the Center**

In 2020 the Center selected the following projects for funding, after a competitive call:

#### **a) Zachary Kaufman: The Law and Politics of Bystanders and Upstanders**

Third parties play a significant—and underappreciated—role in the commission of crimes and the spread of non-criminal crises. The magnitude of these emergencies often increases when “bystanders” remain passive or, worse, actively facilitate. Conversely, calamities can sometimes be thwarted, or at least mitigated, by “upstanders” (people who intervene to help others in need).

This research concentrates on the law (and, to a lesser extent, politics) addressing bystanders and upstanders. The research features domestic and foreign case studies in which a person is aware of another person who is exposed to, or has suffered, grave physical harm. These situations involve, among other crises, genocide (Zachary's area of specialization). After canvassing the analytical space, he proposes using a combination of positive incentives (“carrots”) and negative incentives (“sticks”) to prompt would-be bystanders amid emergencies to act instead as upstanders. His legal prescriptions include strengthening, spreading, and standardizing domestic “Bad Samaritan laws” as well as introducing the first international Bad Samaritan law. His social prescriptions include creating what he calls “upstander commissions” to identify and “upstander prizes” to honor and reward upstanders. The research also introduces original typologies of bystanders and upstanders that promote greater nuance in their classifications and a corresponding range of legal (and moral) responsibilities. These typologies are designed to maximize generalizability to a variety of crimes and non-criminal crises. (For additional information on these typologies, please see Zachary's article, *Protectors of Predators or Prey: Bystanders and Upstanders amid Sexual Crimes*).

The research will culminate in a book tentatively titled *The “Law and Politics of Bystanders and Opstanders”* with Cambridge University Press. A series of law review articles and op-ed pieces that are building to this book were already published so far by *Foreign Policy*, the *San Francisco Chronicle*, the *Boston Globe*, the *Stanford Law & Policy*

Review, and the Southern California Law Review.

**b) Ori Sharon: Climate Change, Sinking Islands, and Disappearing Sovereignities: the Rule of International Law Under Extreme Conditions of Our Ecological Crisis**

(Presented in the [Center seminar, May 20, 2020](#))

In August 2016, the International Geological Congress formally recognized that the world has entered a new geological era, the Anthropocene. The new designation signifies a shift in human-nature relationships. Once governed by nature, humankind has now risen to the position of itself being a force of nature. Unfortunately, this new status has been achieved at great cost. Like other forces of nature, man's power is unchecked and chaotic, decimating ecosystems at an unprecedented rate. According to scientific estimates, if not stopped, the procession of human-induced ecological disturbances will render many regions of the Earth uninhabitable by the end of the century.

To address these global catastrophes, states need to work together. Unfortunately, our system of international law, that collection of norms that determines the "rules of the game" for interstate cooperation, has been developed during periods of relative ecological balance. It is therefore not surprising that the instruments and doctrines of international law are ill-equipped to address the political realities of a world in constant ecological flux.

This research is the second of three articles aimed at developing innovative theoretical legal frameworks for the stresses and extreme conditions that result from global climatic challenges. In particular, this research addresses one of the most pressing climate-related challenges in international law: the potential disappearance of Small Islands Developing States (SIDS). Sea levels are rising. In the last century alone, the sea has risen fifteen centimeters. As greenhouse gas emissions escalate and global temperatures rise, sea level is expected to rise at an accelerating rate. By the end of this century, according to some estimates, sea level will rise an additional two meters. At that level, one billion people will be exposed to environmental and climatic risks like

floods, king tides, and superstorms. For SIDS, climate change poses an existential threat. As low-lying island territories, SIDS are extremely vulnerable to changes in sea level. If sea levels continue to rise, many SIDS may become uninhabitable or even submerged. As the oceans cover their territories, according to conventional legal thinking, the statehood of SIDS will cease. Under the Montevideo Convention on the Rights and Duties of States (Montevideo Convention), territory is a criterion for statehood. No territory, scholars argue, means no state.

This legal outcome is extremely unjust. In effect, it means that the most disadvantaged countries of the world will pay the price for actions taken by the richest and most powerful nations on Earth. With a combined population of 65 million and nonindustrial economies, SIDS have contributed less than 0.03 percent of total CO<sub>2</sub> emissions worldwide, but few other nations will suffer from the harsh consequences of climate change as much as SIDS will. If SIDS are to lose their territory and their sovereignty, they will be victimized for acts they did not commit. Not only will their people become landless refugees, their only means for maintaining self-determination and exercising political rights will be taken away as well. To mitigate the injury to SIDS, this study develops a novel, equity-based doctrine for recognizing a new legal subject in international law – the non-territorial state.

[See here](#) for Ori Sharon's talk about his research at the Center's seminar (in Hebrew)

**c) Ina Kubbe and Rosa da Costa: The Role of Corruption and Human Rights Violations in Migratory Flows: Impact and Perceptions**

(Presented in the [Center seminar, June 2, 2021](#))

The research aim is to identify and explore the ways in which migration, and particularly irregular and mixed migration flows, are affected by corruption and human rights violations. Through the use of a variety of methodologies, it seeks to illustrate these effects and demonstrate how the link between migration, corruption and human rights violations is manifested in specific settings. Through critical analysis and the data gathered, the project will contribute towards better legal and policy responses.

Conceived as a pilot project, it will initially focus on four European countries - Germany, Sweden, Denmark and the United Kingdom.

**d) Stavros-Evdokimos Pantazopoulos: The Role of International Courts and Tribunals in Adjudicating Wartime Environmental Damage**

(Presented in the [Center seminar, June 3, 2021](#))

Parts of the natural environment have been used as a weapon or suffered reverberating effects during wars since ancient times. More recently, resembling the practices of Iraqi troops when they were retreating from Kuwait during the early 1990's Gulf War, ISIS fighters blew up eighteen oil wells in June 2016, creating a vast black cloud stretching over tens of kilometres. The toxic black smoke was so thick that was referred to by locals as the 'Daesh winter'. Notwithstanding the fact that environment, the 'silent' victim of warfare, has suffered great damages in times of war, remedies for wartime environmental damage are not readily available for various reasons. To begin with, the enforcement of the laws of war is inherently fraught with difficulties and in many past wars violations either went unnoticed or were not dealt with for political reasons. In addition, wartime environmental damage is usually difficult to assess in the aftermath of the armed conflict, despite -and because of- its lasting impact. In the same vein, issues of causation and proof only serve to further complicate matters. Last but not least, remedying environmental damage ranks lower than other priorities at the post-conflict phase, such as addressing humanitarian needs, notwithstanding the fact that recent conflicts have showcased that the protection of the environment can act as a catalyst for a sustainable peace, since a competition over natural resources was the primary reason that led to the outbreak of the armed conflict in the first place.

In the light of the above, this research project examines how international courts and tribunals (ICTs) have dealt with the issue of environmental damage caused during an armed conflict, either of an international or of a non-international character, the main objective being to identify their strengths and weaknesses in their effort to uphold the rule of law. As mentioned above, environmental protection does not usually rank high at

the post-conflict phase and this partly serves as an explanation of why it remains at the backstage. As a In addition, the research will survey the factors that enable and empower ICTs to bring within the remit of their competence wartime environmental damage issues, as well as to inquire how their engagement with those issues has influenced their legitimacy in the eyes of their respective audiences.

**e) Emre Turkut and Sabina Garahan: The 'Reasonable Suspicion' Test of Turkey's Post-coup Emergency Rule Under the ECHR**

(Support for publication of: Turkut, Emre and Garahan, Sabina (2020). "The 'Reasonable Suspicion' test of Turkey's Post-coup Emergency Rule under the ECHR". *Netherlands Quarterly of Human Rights* 38(4), 264-282.  
<https://journals.sagepub.com/doi/10.1177/0924051920967182>)

**Emre published two more related articles in 2020-2021<sup>2</sup>**

Since the 15 July 2016 failed coup, Turkey has seen the mass arrests and detention of hundreds of thousands of people; among them are judges and prosecutors, military personnel, police officers, journalists, lawyers, human rights defenders and opposition politicians that have been deprived of their liberty on an array of terrorism-related charges. While this has raised numerous human rights issues, this article focuses on those pertaining to pre-trial restrictions imposed on the right to liberty and security of individuals during the post-coup state of emergency. Building on the theory and use of the reasonableness concept in the field of pre-trial detention through a particular focus on the 'reasonable suspicion' test under Article 5 § 1 (c) of the European Convention on Human Rights ('ECHR' or 'the Convention'),

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<sup>2</sup> Turkut, Emre and Phillips, Thomas. "Non-discrimination, minority rights and self-determination: Turkey's post-coup state of emergency and the position of Turkey's Kurds" in H. Aydin & W. Langley (eds.), *Human Rights in Turkey: Assaults on Human Dignity* (Springer Press, 2021) 109-129 [https://link.springer.com/chapter/10.1007/978-3-030-57476-5\\_5](https://link.springer.com/chapter/10.1007/978-3-030-57476-5_5)  
 Turkut, Emre "Osman Kavala v Turkey: unravelling the Matryoshka dolls" *European Human Rights Law Review* 18(3), 288-297. (2020)

the article analyses the role of the European Court of Human Rights ('the Court' or 'the ECtHR') in enforcing the guarantees of the right to liberty in the Turkish post-coup cases of Mehmet Hasan Altan, Şahin Alpay, Alparslan Altan and Kavala. Against the background of pre-existing Convention standards on pre-trial reasonable suspicion in emergency settings, it finds that the ECtHR has adopted a stronger supervisory stance regarding the compatibility of Turkish post-coup detention practices than the more hesitant approach shown in the prior emergency context of Northern Ireland. While these decisions give some cause for optimism in the hope for a judicial boldness on the part of the ECtHR in condemning Turkey's detention practices during the state of emergency, the article argues that there is further scope for the Court to strengthen its protection in this respect. Notably, despite the positive aspects in the Court's approach, by continuing to support the notion that the Turkish legal landscape is capable of addressing Article 5 violations and not tackling the underlying structural issues so clearly at play, the Court leaves a glaring gap in rights protection for those seeking justice.

**f) Dov Shinar: Media Coverage of COVID-19: A collection of academic and professional sources on the culture and behavior of printed, broadcast, digital and social media in reporting the COVID-19 crisis**

This project contributes a basic collection of sources on the culture and behavior of printed, broadcast, digital, and social media with relation to COVID-19. It is intended to help explore social and cultural implications of crises ranging from sporadic experiments to more focused and systematic projects, and to assist researchers, teachers, students, media professionals and general audiences interested in COVID-19.

[See report here](#)

In 2021 the Center supported the following projects:

**a) Jori Breslawski: Non-State Armed Groups & Public Health Emergencies**

This study examines the extent to which people living under the control of armed groups are willing to comply with public health advisories. The study will use the most-likely case of Hezbollah, and employ a survey experiment to compare reported willingness to comply with public health advisories between two randomly assigned groups of participants—one that received a hypothetical endorsement from Hezbollah and one that received a hypothetical endorsement from the Lebanese government. Survey participants (n=500) will be recruited using Facebook ads and then redirected to a qualtrics survey.

**b) Klaas H. Eller: Towards Resilient Global Governance of Supply Chains: Performative Sites of Trade Disruptions Under COVID-19**

This project sheds light on the micro-level of supply chain distortions during the COVID-19 pandemic by linking together in-depth socio-legal studies of the performative sites of global supply chains of essential goods like Personal Protective Equipment (PPE), including factories, ports, wholesale markets, and hospitals. It will illustrate the entanglements and global/local dynamics between actors, norms and processes that mark current global supply chains and serve as a basis for an empirically informed vision of a more resilient post-neoliberal trading regime. The project overcomes the patchworked legal regime between international economic law and private governance that currently animates supply chains and will break new ground for socio-legal research by retracing the legal regimes of global supply chains through the lens of a specific site. It aims at displaying how a global crisis (and other ‘extreme conditions’) oscillate between the micro- and the macro-level of their occurrence and what role law plays in this oscillation. The analysis cuts through and engages with transnational law, international economic law, legal anthropology and geography, and socio-legal studies broadly understood.

**c) Carmela Lutmar & Leah Mandle: Regional Catastrophe Politics: Disasters, Diplomacy, and Regional Alliances in the Middle East**



The beginning of 2020 has drawn worldwide attention to the difficulties of disaster management. As we learn globally and collectively how COVID-19 spreads, infects, and kills, we contend domestically and separately with levels of development and international relationships that can exacerbate or mitigate COVID-19's effects. Although events like the development of new viruses may be exogenous in the short term, scholars consider resulting pandemics, and disasters themselves, to be endogenous, conditioned by the quality of government and management, and with direct influence on diplomacy, human rights, conflict, and peace (Diehl and Goertz, 2000).

There is perhaps no better time to examine these issues than right now. We are in a critical moment, when these processes can be examined as they unfold and to get a better understanding of how disasters affect all the areas mentioned above, and contribute to concrete policy decision-making through high-quality academic research. We therefore propose having a workshop that will explore some of these issues – but with a regional focus – that is, regional bilateral relations and alliances in the Middle East, as they unfold these days following the “Abraham Accords” (but not restricted to them).

Because disasters such as the COVID-19 pandemic require both inward-facing and outward-facing efforts, they offer opportunities to examine critical questions in International Studies. Disasters can change perceptions of rivals, allow for the manipulation of emotions by political elites, and increase domestic demand for changes in international governance. The research, the workshop we plan to have based on it, and the book and special issue that will come out of it, attempt to advance our understanding of the conditions under which disasters and hazards governance can drive changes in in-group/out-group perceptions, diplomatic communication, and public sentiment. Contributors to the workshop will examine the effect of disasters on bilateral relations, the human rights implications of disaster policy, the extent to which states' choices are shaped by domestic institutions, variations in disaster diplomacy practices, and whether long-life disasters such as the pandemic can serve as catalysts for negotiation, mediation, and resolution of intractable conflicts.

**d) Daphna Canetti: How Internet Deprivation Upends Democratic Participation and the Rule of Law**

This research project aims to investigate the democratic implications of a mounting vulnerability to digital disconnection. Technological innovations have created unparalleled social opportunities, yet these technologies are not rolled out evenly to all segments of the population. Minorities, rural residents, the poor and the elderly have all struggled to maintain high levels of connectivity in an increasingly interconnected world. Pervasive cyber-attacks, ransomware and Internet shutdowns further threaten stable Internet connectivity. We posit that the effects of this technological deprivation are more insidious than the short-term technical and economic nuisances that are referred to most commonly. Rather, as modern democracies transition online (e-government, digital public fora, etc.), the deprivation of Internet access fundamentally harms the ability to engage in democratic participation. This dual reality of digital dependence and digital vulnerability raises troubling questions about whether access to the Internet should be a protected social right, or could even reach the level of a modern technological human right. As such, using a series of empirical controlled experiments, the research will develop a theory of Internet access as a gatekeeper for modern democratic participation, and examine how this theory meets current policy.

**e) Guy Lurie and Amir Fuchs: The Emergency Constitution of Israel – Lessons from the Covid19 Crisis**

This research asks if the emergency constitution of Israel, detailed in sections 38-39 of the Basic Law: The Government, is aligned with democratic principles. Does it supply effective tools to deal with emergencies, all the while keeping human rights and proper checks and balances?

In dealing with the Covid19 Pandemic, Israel relied basically on two major legal instruments. The first one was a wide-ranging usage, for the first time in many years, of the Government's authority to promulgate emergency regulations. The second legal instrument was the passing of the so-called "Covid19 Law" and the promulgation of regulations according to this law. In this research we will focus on the promulgation of

emergency regulations, made by the Government's authority in section 39 of the Basic Law: the Government, with reference too to the promulgation of regulations according to the Covid19 Law and the Public Health Ordinance.

The wide-spread usage of emergency regulations offers a case study of the application of section 39 of the Basic Law: the Government, in order to ask if this arrangement is aligned with democratic principles. For this purpose, we will need to review what democratic principles should this emergency constitution include (representation, governability, protection of minorities, values and human rights). We will do so through using principles discussed in the literature in the past few years and through a comparative research of the application of these principles in practice in constitutions. We will also conduct an international comparison of constitutional and legislative emergency arrangements (among others, to jurisdictions dealing with lengthy emergencies), with particular reference to the ways in which other jurisdictions dealt with the Covid19 challenges from a legal standpoint.

**f) Nir Kosti and Yoav Mehozay: Emergency Policies in Israel: Between Exception and Routine**

The COVID-19 pandemic has rekindled the debate over the inherent link between exception and routine in Israel. The proposed book seeks to rethink and update the existing knowledge of Israel's emergency regime and jurisprudence, following the coronavirus crisis and the enactment of the Counter-Terrorism Law in 2016. These recent developments require a major revision to the existing knowledge on Israel's emergency regime and jurisprudence. We introduce a revised analytical analysis of Israel's emergency powers for scholars and the general Israeli public alike. By presenting a unique dataset of legal emergency tools used in Israel between 1948 and 2020, the book seeks to become the most up-to-date source of Israel's emergency regime. In light of the widespread use of emergency tools during the coronavirus crisis, we believe that making this knowledge accessible to the academic community and general public is a valuable contribution to our understanding of Israel's political regime.

**g) Joel Slawotsky: The Impacts of National Crisis on Contractual Obligations**

(Presented in the [Center seminar, December 29, 2021](#))

Keep-well agreements (or comfort letters) are enigmatic “assurances” long used in a variety of business contexts. In recent years, these contentious letters have risen in popularity as evinced by numerous Chinese entities issuing debt with such provisions. Are these letters enforceable obligations or are they merely expressions of reassurance that “best efforts” will be undertaken for re-payment? In particular, comfort letters issued by sovereigns or state-linked businesses (and the Covid-19 crisis has also incentivized resort to such instruments see EU governments) present an overarching intriguing legal issue in international economic law. Skyrocketing sovereign debt and the moral hazards of bailing out state-backed businesses may occur in the context of a severe economic crisis (and the Covid-19 crisis). Can the sovereign or state-linked entity issuing the letter invoke the essential security exception (or other contractual clause if it exists) to override the letter? To what extent does the issuance of such a letter (without reference to any exceptions) serve to act as a “written revision” strengthening the sovereign’s obligation? As our world faces transformative changes the conceptualization of security will need to be re-conceptualized. But what are the parameters and how does that (or should) effect contractual obligations such as comfort letters? Can an economic crisis constitute a threat to an essential interest that would nullify a comfort letter? Other emergencies can also potentially be included such as health and social stability. Yet the slope is slippery and contracts should be honored. Thus the focus is to what extent are governments (or state-linked entities) obligated to guarantee payment when the sovereign claims a crisis or emergency constitutes an essential security interest overriding the letter? Drawing from corporate law in the parent-subsidary context (in various jurisdictions), this paper will examine the impact of comfort letters and the interplay with the essential security exception in international economic law in times of crisis.

### **h) Haim Abraham: Tort Liability in War**

(Presented in the [Center seminar, December 15, 2021](#))

This research project examines whether it should be possible for civilians to hold states liable for losses states inflict on them during warfare. Answering this question requires turning into two bodies of laws that appear to be incompatible and unable to yield clear conclusions. First, the laws of war, which regulate states' conduct in combat, but do not provide individuals with a private law claim-right against states or impose duties of compensation on states towards civilians. Second, tort law, which offers civilians a cause of action, yet its structure seems difficult to apply in the battlefield, and its availability is frustrated in many common law jurisdictions by a special immunity. Consequently, arguments relating to the liability of states tend to be polarized, advocating for either complete immunity or total liability, and are divorced, to various degrees, either from the laws of war or from tort law.

This project develops a novel account of the tortious liability of states for wrongs they inflict during combat that is informed by the laws of war, tort law theory and doctrine, and substantive rule of law principles. The central claim is, that by examining the laws of war, it is possible to articulate the rights and duties of states and civilians during war, including what amounts to an imposition of wrongful losses for which corrective justice duties arise. Only losses that are inflicted while violating the laws of war are wrongs for which liability can and should be imposed, as such actions are outside the scope of states' authority. By exposing the nexus between the laws of war and tort law and defining which losses amount to belligerent wrongs, the framework offered illuminates how tort doctrines can apply in the battlefield and why tort liability should be available for civilians against states.

### **i) Ayelet Ben-Yishai: Genres of Emergency: Indian Literature and the Iteration of Crisis**

(support for book publication, forthcoming, Oxford University Press 2022)

#### Synopsis

The Coronavirus pandemic has brought a renewed consideration of states of emergency, employed variously world-wide to combat the global health crisis. In many

countries, emergency measures have sat far too easily with ongoing erosions of democratic government and governance. The severe limitations to individual and collective rights imposed for the sake of public health seem oddly of a piece with those already in place in the name of “security” or “public safety.” In India, the harsh and hastily-imposed lockdown, and the callousness with which millions have been left to their fate resonates with ongoing authoritarian measures instituted by what is increasingly called the “undeclared Emergency” led by the BJP. Emergency measures thus seem to form an amalgam of crisis and continuity. This nexus—the relationship of past to future in states of emergency—is the focus of this book.

Rather than insisting that the state of Emergency is mundane (although it is) or that it is rooted in colonial structure (although it is), *Genres of Emergency* brings together literary form with politics, sociology, and history to show how the Emergency functions simultaneously as exceptional and non-exceptional, unexpected and yet familiar; analyzing it as a discursive figure of authoritarianism, democracy, and corruption. *Genres of Emergency* offers literary genre as a way to understand and negotiate the varied states of emergency and crisis that have become a fixture of our contemporary world. Building on a critical study of the literature written during and about the State of Emergency declared by Prime Minister Indira Gandhi in India (1975 – 1977), the book establishes emergency and its genres as an important interpretative site: an exceptionally violent episode marked as a one-off crisis, which also functions as a locus for an ongoing renegotiation of a modern polity and culture. The manuscript offers both a cultural history of Emergency discourse at the time and an analysis of the literary genres in which Emergency fiction was written after the fact. Reading a wide-ranging archive of English-language texts – from prison memoir to popular magazine, from high-brow literary fiction to boilerplate thriller, from the unrelentingly realistic to the mythically allegorical – *Genres of Emergency* traces the tension between crisis and continuity that these genres mediate. I argue that the discourse of the Emergency, like its events, straddles the tension between the singular and the generic, between the unprecedented and ongoing.

In addressing this tension, the authors of Emergency fiction take seriously the genres in which they write and use them to mobilize literary conventions as political interventions. More specifically, these novels use the conventions of realism, epic, allegory, and the thriller to reach back in time and across cultures and languages, invoking past iterations of these genres and histories and anticipating those to come. Arguing that the horizon of expectations generated by a genre carries political meaning, one that is explored and exploited by a novel's engagement with its generic form, my case study of India's Emergency fiction can serve as a paradigm for thinking about emergencies world-wide via the genres – literary and non-literary – in which they are written. Building on my formal literary analysis, I finally argue that the Emergency itself needs to be understood in terms of genre – a structure or template which each iteration modifies – offering a novel and productive way to analyze individual historic events as well as the more general political phenomenon of states of emergency and the cultures that they draw on and generate. Combining literary criticism with cultural history, *Genres of Emergency* thus has implications for the study of literary genre, for the historical events that these genres recount, and for understanding the politics of literary form.

## 4. Conferences, Workshops and other events

### 2020

#### Conferences and workshops

February 27-28, 2020: Symposium: [Perpetuating the State of Emergency: Punitive Responses to Terrorism, 20 Years after 9/11](#). University of Hamburg, Warburg Haus.

May 24, 2020: Webinar: [Democracy in the Time of Corona](#) (With Law Faculty and The Center for Cyber Law & Policy University of Haifa, Hebrew)

July 22, July 27 and July 29, 2020: International Webinar: [Twenty Five Years since Oslo: Contemporary Forms of Governance, Control and Resistance in Israel and Palestine](#)

August 26, 2020: [Debating Futures for Israel/Palestine: Online discussion with Peter Beinart](#) (following “Twenty Five Years since Oslo” webinar below)

September 24, 2020: 1st Early Career Researchers Virtual Conference of [“What are YOU going to do with THAT?”](#) podcast

October 13, 2020: [Coping with Coronavirus: It’s All About Governance](#). A special webinar for the International Day for Disaster Risk Reduction With the National Knowledge and Research Center for Emergency Readiness. (In Hebrew)

December 9, 2020: [The Abraham Accords and Middle Eastern Crises: Legal and Political Aspects](#)

#### Bi-weekly seminar

January 1, 2020: Yaniv Roznai: [Who will Save the Redheads? Towards an Anti-Bully Theory of Judicial Review and the Protection of Democracy](#)

January 29, 2020: [Margit Cohn](#) : [Fuzziness in Emergency Law](#).

April 13, 2020: [Yoav Mehozai](#): [Israel almost stopped using Emergency Regulations. Until the Corona](#). (in Hebrew)

April 16, 2020: [Itamar Mann](#): [Disentangling Displacements: Historical Justice for Mizrahis and Palestinians in Israel](#).

April 19, 2020: Gad Barzilai: Democracies amid Legal Emergencies: [Why models are limited, but some are useful](#).



April 22, 2020: Rottem Rosenberg-Rubins: [From a state of exception to hyper-legality: Israeli counter-terrorism law in the post-two-state era.](#)

April 26, 2020: Amnon Reichman: [Judicial Review and the Coronavirus.](#)

April 30, 2020: Itay Epshtain: [Normative Challenges of the COVID-19 Pandemic Humanitarian Response and Human Rights Protection.](#)

May 4, 2020: Stefan Voigt, Christian Bjørnskov and Nir Kosti: [Declarations of state of emergency and government responses to the COVID-19 pandemic.](#)

May 19, 2020: Amnon Reichman: [Israeli Emergency Law.](#)

May 20, 2020: Ori Sharon: [State Extinction through Climate Change](#) (in Hebrew).

June 3, 2020: Stavros Pantazopoulos: [Wartime Environmental Damage Before International Courts and Tribunals: Strengthening the Environmental Rule of Law.](#)

June 18, 2020: Dr. Orly Stern: [International Humanitarian Law's Principle of Distinction and Women in Armed Groups.](#) (With [Forum Dvora](#) and [ALMA](#)).

June 18, 2020: Prof. Dr. Jan Soeffner: [A state of Exception Beyond Carl Schmitt: Corona in Germany.](#) (with the Haifa Center for German and European Studies ([HCGES](#))). See [here for recording on YouTube.](#)

September 9, 2020: Ittai Bar-Siman-Tov: [Covid-19 Meets Politics: The Novel Coronavirus as a Novel Challenge for Legislatures.](#)

October 28, 2020: Eli Salzberger: [Introduction to the Rule of Law under Extreme Conditions](#) (in Hebrew).

November 11, 2020: Robert Neufeld and Eli Salzberger: Management of Emergencies in Israel: [Towards a Comprehensive Doctrine and Legislative-Regulative Framework](#) (in Hebrew)

December 2, 2020: Michael Birnhack: [Constitutional Engineering and Privacy Engineering](#)

December 23, 2020: Antal Berkes: [Compliance by tribunals of armed opposition groups with international law](#)

**2021****Conferences and workshops**

January 20, 2021: [Prisoners and vaccination in Corona times](#) – open discussion (in Hebrew)

February 16, 2021: [Special Session on Recent Developments in the International Criminal Court – Israel / Palestine](#). With the International Law Forum, The Hebrew University of Jerusalem

March 10, 2021: [The ICC decision about its jurisdiction in the situation of Palestine](#) – Open discussion

April 7, 2021: Event for the publication of Dr. Dana Schmalz's book: "[Refugees, Democracy and the Law: Political Rights at the Margins of the State](#)"

June 23, June 28 and June 30, 2021: Workshop: [Relations between 'the State' and Civil Society/NGOs in Times of COVID-19: Insights and Lessons for Future Emergencies](#)

October 6, 10, 11 and 13, 2021: The 4th Young Researchers Workshop on Terrorism and Belligerency: "[Human Enhancement and Advanced Technologies in Terrorism and Belligerencies](#)"

October 27, 2021: [International webinar: COVID-19 Impacts and Takeaways for Policy and Planning](#) (with the National Knowledge and Research Center for Emergency Readiness)

**Bi-weekly seminar**

January 6, 2021: Oren Shlomo: [From Contested Sovereignty to Urban Politics: Palestinian Rights-Claiming and 'Accessing the State' in post-Oslo East Jerusalem](#)

March, 4, 2021: Prof. Jeff Staton: "[Psychic Numbing and Mixed Appeals in Immigration Advocacy](#)". (With the Haifa Center for German and European Studies – [HCGES](#))

April 28, 2021: Dr. Sharon Gordon: [Democratic Deadlock and Leadership – Germany and Austria and the Rise of Nazism/Fascism](#)

May 5, 2021: Gad Barzilai and Rottem Rosenberg-Rubins: [The Intersection of International Law and Domestic Law in Counterterrorism: A Prologue](#)

May 19, 2021: Shelly Aviv Yeini: [Promoting Peace in International Law: Bringing States to the Mediation Table](#)

June 2, 2021: Ina Kubbe and Rosa da Costa: [The Role of Corruption and Human Rights Violations in Migratory Flows: Impact and Perceptions](#)

June 16: Amnon Alkalai, retired Chief of Staff, Operations and Policing Division, Israel police: [Policing in Corona times](#) (in Hebrew)

November 10, 2021: Avichai Levit: [Legislative Deliberative Democracy: Debating Acts Restricting Freedom of Speech During War](#)

November 24, 2021: Bernard S. Black – [Coronavirus: Science, Uncertainty, and Policy](#)

December 1st, 2021: Ziv Bohrer: The Defense of Justification for Obeying an Illegal Order in the Israeli Law ([in Hebrew](#))

December 15, 2021: Haim Abraham: [Tort Liability in War](#)

December 29, 2021: Joel Slawotsky: [The Impacts of National Crisis on Contractual Obligations](#)

## **5. Social media: Website, Facebook, Twitter, YouTube and Podcast**

After eight years of operation, the Center's website has been renovated. In order to save the large amount of data [the old website](#) was left accessible, and the new site has a slightly different new URL: <https://minervaxtremelaw.haifa.ac.il>. We are in a process of transferring all materials to the new website

The [Facebook](#) and [Twitter](#) pages remains the same - with relevant items posted, such as upcoming events at the Center, other academic events and media coverage of extreme conditions from which legal issues arise. Most Facebook and Twitter items also appear on the website, alongside information on the Center's publications, research activities, the research team, ongoing research and funding opportunities, events and calls for proposals.

Most of the lectures at the Center are streamlined or recorded, edited and uploaded to [the Center's YouTube channel](#). The website is maintained by Dr. Michal Ben-Gal, with some technical help; Facebook and Twitter are maintained by Ido Rosenzweig

and Yulya Zaslavskaya. All recordings and editing are done by Ido and Michal.

The YouTube channel has 170 subscribers. In 2020 we had 4,767 views in the channel viewing 448.3 hours of broadcast, from which only 10.7% of viewers were from Israel. Other countries are not specified by YouTube – meaning an even wider distribution. In 2021 we had 5,413 views, viewing 457 hours. 10.6% from Israel, others from North Macedonia, USA, Germany, Poland, Switzerland, UK and Sweden. For comparative purposes, the 2019 statistics was 5,271 viewers, 280 hours, 18% from Israel.

In 2020 we opened a new podcast, focusing on early career scholars titled: [What are YOU going to do with THAT?](#) In the podcast, produced by Ido Rosenzweig, Danni Reches, a PhD candidate at the University of Haifa, interviews young researchers and scholars to learn about their academic process, their success stories, obstacles and the way they overcame them. By the end of 2021, the podcast had 45 episodes, some of which were interviews with senior scholars, advising the young.

## 6. Publications and Submissions

### I. Publications – 2020-2021

Albert, Richard and Roznai, Yaniv (eds). *Constitutionalism Under Extreme Conditions. Law, Emergency, Exception*. Springer (2020). <https://doi.org/10.1007/978-3-030-49000-3>

Aviv Yeini, Shelly. “The Ministerial Exception: A Comparative Analysis”, 54 *Vanderbilt Journal of Transnational Law* 955 (2021)

Aviv Yeini, Shelly and Bendor, Ariel L., “Charming Betsy and the Constitution”, *Cornell Int’l LJ* 53 (2020): 429.

Babanoski, Kire, “The Threats of Returning Foreign Terrorist Fighters for the European Security”. *Journal of Applied Security Research*, vol. 15, issue 1, 2020, pp. 10-27. <https://doi.org/10.1080/19361610.2019.1695499>

Backhaus, Sophia, Gross, Michael L., Waismel-Manor, Israel, Cohen, Hagit, & Canetti, Daphna. “A cyberterrorism effect? Emotional reactions to lethal attacks on critical infrastructure”. *Cyberpsychology, Behavior, and Social Networking*, 23(9), 595-603. (2020)

Barzilai, Gad, Mann, Itamar and Salzberger, Eli (Guest Editors) "Law and COVID-19" - Special Issue of *Mishpat UMimshal* (Law and Government in Israel) Vol. 24 - No. 1 (February 2022)

Barzilai, Gad, Salzberger, Eli, Yefet, Karin Carmit and Man, Itamar. "The Law amid the Corona" *University of Haifa Law Review* (Mishpat U'Mimshal) Vol. 23 (2021) (Hebrew)

Barzilai, Gad. "Jupiter or Fortuna: On Constitutional Reforms in the Attorney General Institution" *ICON-IS* August 31, 2021

Barzilai, Gad. Uncertainty and the Corona Law: Legal-Social Models for Emergency Legislation" *ICON-S The International Society of Public Law* (January 2021) [Hebrew]

Barzilai, Gad. "A Land of Conflict: Law as a Means of Hegemony." *Israel Studies* 25, no. 3 (2020): 201-212.

Bjørnskov, Christian, and Voigt, Stefan. "Is constitutionalized media freedom only window dressing? Evidence from terrorist attacks", *Public Choice* (2020): 1-28

Bjørnskov, Christian, and Voigt, Stefan. "When does terror induce a state of emergency? And what are the effects?." *Journal of conflict resolution* 64, no. 4 (2020): 579-613.

Boister, Neil, Gless, Sabine, and Jeßberger, Florian (eds.) *Histories of Transnational Criminal Law*. Oxford University Press, 2021.

Diskin, Talia, "Legal Consciousness and Moral Conscience in Children's Education: Children's Weeklies in the State of Israel's First Decade", *Israel Studies* 26(2), 133-151 (2021).

Diskin, Talia, "Socializing Austerity: Imparting Legal and Moral Values in Children's Periodicals During Israel's First Years", *Journal of the History of Childhood and Youth*, 14(1), 44-62 (2021).

Diskin, Talia. "Law, politics and education: children's periodicals in Israel's first decade." *History of Education* 50, no. 5 (2021): 647-662.

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Diskin, Talia. Memory, Evidence and Revenge in the Israeli Criminal Law: of a Children's Serial from Eichmann's Trial's Period by Sara Nishmit (Shner) *DOR LE'DOR* 55, 85-113 (2021) [Hebrew].

Felsenstein, Daniel, Shmueli, Deborah and Thomas, Deborah. "Cascades - Mapping the multi-disciplinary landscape in a post-pandemic world", *International Journal of Disaster Risk Reduction*, Vol. 51, 101842 (2020)

Felsenstein, Daniel, Shmueli, Deborah and Thomas, Deborah (Eds). Special Issue: Cascading Effects in Disaster Risk Science: Multi-Disciplinary Perspectives, *International*

*Journal of Disaster Risk Reduction*, (2020)

Horovitz, Sigall, "Attempted Transitional Justice and Historical Dialogue: The Case of Israel's Or Commission", in Barkan, Elazar, Goschler, Constantin and Waller, James E., eds. *Historical Dialogue and the Prevention of Mass Atrocities*. (Routledge, 2020), p. 50.

Jessberger, Florian and Geneuss, Julia. "Peace and Punishment: Reflections from the Perspective of International Criminal Law", in: Shany, Yuval & Ghanayim, Khalid (eds) *The Quest for Core Values in the Application of Legal Norms, Essays in Honor of Mordechai Kremnitzer*, Springer, 2021 pp 289-304

Jessberger, Florian, "A Short History of Jurisdiction in Transnational Criminal Law", in: Boister, Neil, Gless, Sabine, and Jeßberger, Florian (eds.), *Histories of Transnational Criminal Law*, Oxford University Press, 2021

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Jessberger, Florian, "Present State and Future Perspectives of International Criminal Justice" (in German), in Hoven, E. & Kubiciel M. (eds.), *Future Perspectives of Criminal Law (Festschrift für Thomas Weigend)*, Nomos 2020.

Jessberger, Florian and Geneuss, Julia "The Need for a Robust and Consistent Theory of International Punishment", in: Jessberger, Florian and Geneuss, Julia (eds.), *Why Punish Perpetrators of Mass Atrocities?* Cambridge University Press, 2020

Mann, Itamar and Berda, Yael, "Voting as a Vehicle for Self-Determination in Palestine and Israel". 100 *Texas Law Review* (2022), Available at SSRN: <https://ssrn.com/abstract=3796079>

Mann, Itamar, "Border Masquerades", *Berkeley Journal of International Law* (2021) 39.1(8): 127-160.

Mann, Itamar, "The Genocide that Did Not Happen: Keter Aram Tzova and the Question of Cultural Property", *Iyunei Mishpat* (2021) Vol. 43: 657-688 (Hebrew)

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Mann, Itamar. "The Right to Perform Rescue: Jurisprudence and Drowning", *German Law Journal* (2020), 598-619

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Oeter, Stafan and Ibold, Shino. "Conflicting Human Rights Perspectives on the French Burqa Ban: European Court of Human Rights v. UN Human Rights Committee", in: Anja Matwijkiw/Anna Oriolo (eds.), *Law, Cultural Studies and the "Burqa Ban" Trend. An Interdisciplinary Handbook*. Cambridge/Antwerp: Intersentia 2021, pp. 131-161

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Oeter, Stafan. "Plädoyer für die Normierung roter Linien des nicht mehr Hinnehmbaren – Rechtswissenschaftliche Perspektive", in: Matthias Rogg/Sophie Scheidt/Hartwig von Schubert (Hrsg.), *Ethische Herausforderungen digitalen Wandels in bewaffneten Konflikten*, Hamburg: German Institute for Defence and Strategic Studies 2020, S. 97-112

Rosenberg Rubins, Rottem. "Crimmigration and the 'Paradox of Exclusion'." *Oxford Journal of Legal Studies* (2021). <https://doi.org/10.1093/ojls/ggab025>

Rosenthal, Maoz, Barzilai, Gad and Meydani, Assaf. "Judicial Review in a Defective Democracy: Judicial Review and Judicial Nominations in Constitutional Courts" *Journal of Law and Courts* 9 (1) (Spring 2021)

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Turkut, Emre "Osman Kavala v Turkey: unravelling the Matryoshka dolls" *European Human Rights Law Review* 18(3), 288-297. (2020)

Turkut, Emre and Phillips, Thomas. "Non-discrimination, minority rights and self-determination: Turkey's post-coup state of emergency and the position of Turkey's Kurds" in H. Aydin & W. Langley (eds.), *Human Rights in Turkey: Assaults on Human*



*Dignity* (Springer Press, 2021) 109-129 [https://link.springer.com/chapter/10.1007/978-3-030-57476-5\\_5](https://link.springer.com/chapter/10.1007/978-3-030-57476-5_5)

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Voigt, Stefan and Bjørnskov, Christian.. Emergencies: On the misuse of governmental powers. *Public Choice* doi/10.1007/s11127-021-00918-6 (2021).

Voigt, Stefan and Bjørnskov, Christian. Contracting for Catastrophe: Legitimizing Emergency Constitutions by Drawing on Social Contract Theory. *Res Publica* doi/10.1007/s11158-021-09518-z (2021).

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## II. Publications Forthcoming

Aviv Yeini, Shelly. *The Persistent Objector Doctrine: Identifying Contradictions*, 22 CHICAGO JOURNAL OF INTERNATIONAL LAW (forthcoming, 2022)

Aviv Yeini, Shelly. *Iron Dome and the Interception of Jus ad Bellum Proportionality*, 13 HARVARD NATIONAL SECURITY JOURNAL (forthcoming, 2022).

Bjørnskov, Christian, Stefan Voigt, and Mahdi Khesali. "Unconstitutional states of emergency." accepted for publication in the J of Legal Studies. Available at SSRN

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Diskin, Talia. *The Law and the Child: Legal and Society Discourse in Children's Journalism in Israel's First Decade* [Hebrew], The Ben Gurion Institute and Berg Institute [A book, Hebrew].

Diskin, Talia. "Women wisdom" after Shoshana Persitz: Educator and Legislator" [Dapim, Hebrew].

Housen-Couriel, Deborah, "New Property Rights in Cyberspace: Testamentary Transferability of Digital Property Rights". Accepted for publication in *International Journal of Law and Information Technology*

Feitelson, Eran. Plaut, Pnina, Salzberger, Eli, Shmueli, Deborah, Altshuler, Alex, Amir, Smadar and Ben-Gal, Michal, "Learning from Others' Disasters? A Comparative Study of SARS/MERS and COVID-19 Responses in Five Polities". *International Journal of Disaster Risk Reduction*

Feitelson, Eran, Plaut, Pnina, Salzberger, Eli, Shmueli, Deborah, Altshuler, Alex, Ben-Gal, Michal, Israel, Fabian, Rein-Sapir, Yonat and Zaychik, Danielle. "The Effects of COVID-19 on Wellbeing: evidence from Israel". *Sustainability*

Jessberger, F., Counter-Terrorism Criminal Law and Humanitarian Assistance (in German), in: H. Kudlich, M. Engelhardt & B. Vogel (Hrsg.), *Festschrift für Ulrich Sieber*, Nomos 2021

Mann, Itamar, (with Lihi Yona), "The Executors: Mizrahis and Sovereign Violence in Israel", *Mishpat Umimshal* (Hebrew)

Mann, Itamar, (with Neta Tauber), "No Person is an Island: on Corona and Mutual Responsibility". *Mishpat Umimshal* (Hebrew)

Mann, Itamar, (Julia Mourao Permoser), "Floating Sanctuaries: The Ethics of Search and Rescue at Sea", *Migration Studies* Mond, Assaf, "Alexandra Palace: A Concentration Camp in the Heart of London". In Rotem Kowner and Iris Rachamimov (eds.) *Out of Line, Out of Place: A Global and Local History of World War I Internments*, Cornell University Press, 2022. pp. 92-117.

Rosenberg Rubins, Rottem. "Crimmigration under International Protection: Constructing Criminal Law as Governmentality". (forthcoming: Routledge, *New Advances in Crime and Social Harm* series).

Rosenberg Rubins, Rottem. "Three Wrongs Don't Make a Right: on the Near Impossibility of Post-conviction Forensic Testing in Israel", in Wrongful Convictions, Barriers to Exoneration: Comparative Perspectives (Working title; forthcoming: Routledge).

### III. Publications Submitted for Review

Feitelson, Eran. Plaut, Pnina, Salzberger, Eli, Shmueli, Deborah, Altshuler, Alex, Ben-Gal, Michal, Israel, Fabian, Rein, Yonat and Zaychek, Danielle. "Wellbeing: conceptual and empirical application in the context of COVID-19". Submitted to *Sustainability*

Mond, Assaf, "The Greater Game": Professional Football and Urban Communities in London during the First World War" Submitted to *History* (Hebrew)

Reichman, Amnon and Salzberger, Eli (eds). "The Rule of Law and Extreme Conditions: A Comparative Analysis of Emergency Powers" (submitted to *Oxford University Press*).

Rosenberg Rubins, Rottem, "Financial punishment following amendment 113 to the criminal code" (submitted to *Aley Mishpat*, 2021) (with Efrat Fink) [Hebrew].

### IV. Proposals Submitted

#### I. To the Minerva Stiftung

**Proposal for Small project:** Young Researchers Workshop on "Human Enhancement and Advanced Technologies in Terrorism and Belligerencies" (submitted in Dec. 2019, granted with 22,000 EUR in Jan. 2021, was implemented in October 6, 10, 11 and 13, 2021 – [see here](#))

**Project proposal for the internationalization of Minerva Centers:** International Workshops on "Hate Speech – an interdisciplinary approach" 2021 (submitted Dec. 2020, granted with 45,000 EUR in Jan. 2021. Project period was extended to June 2022. First part was implemented in January 17-19, 2022 – [see here](#))

**Project proposal for the internationalization of Minerva Centers:** application for project funding for International Research Workgroup and publication on Rightlessness in Comparative and International Law (submitted Dec. 2020, awarded 22,800 EUR in Jan. 2021. Project period was extended to March 2022)

#### II. To other sources

Research Program "Maïmonide-Israel" (Israeli Ministry of Science): A Multi-Disciplinary and Cross-Country Assessment of the Dynamics of Pandemic Recovery: France and Israel (submitted with the National Knowledge and Research Center for Emergency Readiness, April 2021, rejected)

**German-Israeli Project Cooperation (DIP)** – Pre Proposal: Parallel Legal Systems in Germany and Israel - Challenges to the Modern Nation-State (submitted Oct. 2021, rejected)

**German-Israeli Foundation for Scientific Research and Development (GIF)** proposal: Parallel Legal Systems in Germany and Israel – Challenges to Human Rights, Social Justice and to the Modern Nation-State (submitted Dec. 2021, pending)

## V. Conference Presentations

Deborah Shmueli: The day after the coronavirus crisis Multidisciplinary and comparative research on corona exit strategies. ECTT –European Chambers of Commerce, June 18, 2020 Taiwan

Eli Salzberger: Responses to Terrorism 20 Years After 9/11 – Israel. Perpetuating the State of Emergency: Punitive Responses to Terrorism 20 Years After 9/11 Workshop at Universität Hamburg , 27 February 2020

Omri Grinberg: The Bureaucratic Poetics of Palestinians’ Testimonies in Israeli Human Rights. (invited) Seminar presentation at the departmental seminar of the Anthropology Department, University of Haifa. November 26, 2020

Oren Shlomo: From Contested Sovereignty to urban politics? Palestinian protest and urban right claiming in post-Oslo East Jerusalem. Twenty-five years since Oslo: contemporary forms of governance and resistance in Israeli and Palestine, the Minerva Center for the Rule of Law under Extreme Conditions, July 2020 (conference co-organizer).

Robert Neufeld: Comments on Country Reports and Comparative Perspectives. Perpetuating the State of Emergency: Punitive Responses to Terrorism 20 Years After 9/11 Workshop at Universität Hamburg , 27 February 2020

Rottem Rosenberg Rubins: From a state of exception to hyper-legality: Israeli counterterrorism law in the post-two-state era. Twenty-five years since Oslo: contemporary forms of governance and resistance in Israeli and Palestine, the Minerva Center for the Rule of Law under Extreme Conditions, July 2020 (conference co-organizer).

Tamar Megiddo: Online Activism, Digital Domination, and the Rule of Trolls, ICON-S-IL Conference, Haifa University, March 5, 2021

## 7. Research Plan for 2022

We hope that in 2022 we will be able to return to normal activity, after the Covid-19 pandemic crisis, and resume face-to face seminars, meetings and research. Nevertheless, zoom and hybrid venues will continue regardless of the situation. As in 2020-2021, we will continue our close cooperation with the *National Emergency Knowledge and Research Center*.

Below is our research plans, if COVID-19 allows.

### I. Ongoing PI Initiated Research

We plan to continue our work in line with the original Center concept, undertaking research in three levels of resolution: low - statistical analysis of the “big picture”, mid - the national level and high - local test cases, but at the same time developing additional methodological tools and conceptual frameworks to tackle the new challenges and developments. More specifically, within the existing framework we plan to focus on:

1. Extending the mid-resolution study to additional countries, combining also non-democracies, and making the results available to decision-makers, the scientific community, and the public in large, in a more interactive and accessible modes.
2. Extending the low-resolution study which focused on constitutions, to statutory analysis (very challenging as, unlike constitutions, databases of legislation worldwide are incomplete).
3. Selecting new themes for high resolution studies, focusing mainly on Israel. Among the themes we plan to examine are: Climate Change as a trigger to cascading disasters and extreme conditions and their implications on the rule of law; the responses to the 'Israeli' refugee crises; institutional structure of decision-making under declared and undeclared extreme conditions, and the legal aspects of preparedness (in cooperation with the new NATIONAL KNOWLEDGE AND RESEARCH CENTER FOR EMERGENCY READINESS) reflected by public as well as private law norms. In addition, we are considering a joint comparative German-Israeli project examining parallel laws or legal systems within law or legal systems.
4. To study the notion of the rule of law under extreme conditions in international law, from both a theoretical prism and in practice, with a focus on the Russian-Ukrainian crisis.

5. To encompass the behavioral approach to law (for example, the differences between behavior under natural extreme conditions and man-made extreme conditions).

## II. Planned conferences and workshops

In light of the Russian-Ukrainian crisis we will convene one or two online events on its ramifications to the global rule of law. Themes may focus on:

- Challenges to international law in keeping global world order
- The role of the ICC (and impacts on the Palestinian-Israeli case?)
- The difference between European wars and other armed conflicts around the world (with possible focus on refugees)
- Economic aspects in war
- The role of the private sector in war (with possible emphasis on banking, satellite industries, social media or Cyber warfare - with the Cyber Center)

Thanks to generous grant from the Minerva Stiftung, we will conduct two events:

1. Part two of the workshop on: **Hate Speech – an Interdisciplinary Approach** will be held (hopefully) in Berlin. This part will be built on the draft papers presented and discussed in [the first part in January 2022](#), and will include two parts: a public conference and a closed thematical workshop discussion on policy aspects of the research.

2. An International Research Workgroup on “**Rightlessness in Comparative and International Law**”. This project aims to form an international workgroup which will meet to discuss and study the topic of rightlessness in international and comparative law. We believe this framing may significantly advance our understanding of gaps in the rule of law that are generated in extreme conditions, contribute to the Center's mandate and advance internationalization. The two-day workshop, aims to include 10 researchers from around the world, and result in a Special Issue of a leading peer reviewed journal.

In addition, in cooperation with the National Knowledge and Research Center for Emergency Readiness, we will convene a round table with stakeholders to discuss the Israeli doctrine and legislative-regulative framework dealing with emergencies, as proposed in the research by Prof. Salzberger and Dr. Neufeld.

## III. On-going Seminars

In 2022 bi-weekly seminar talks will continue. 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](#).

## **Financial report**

In a separate file