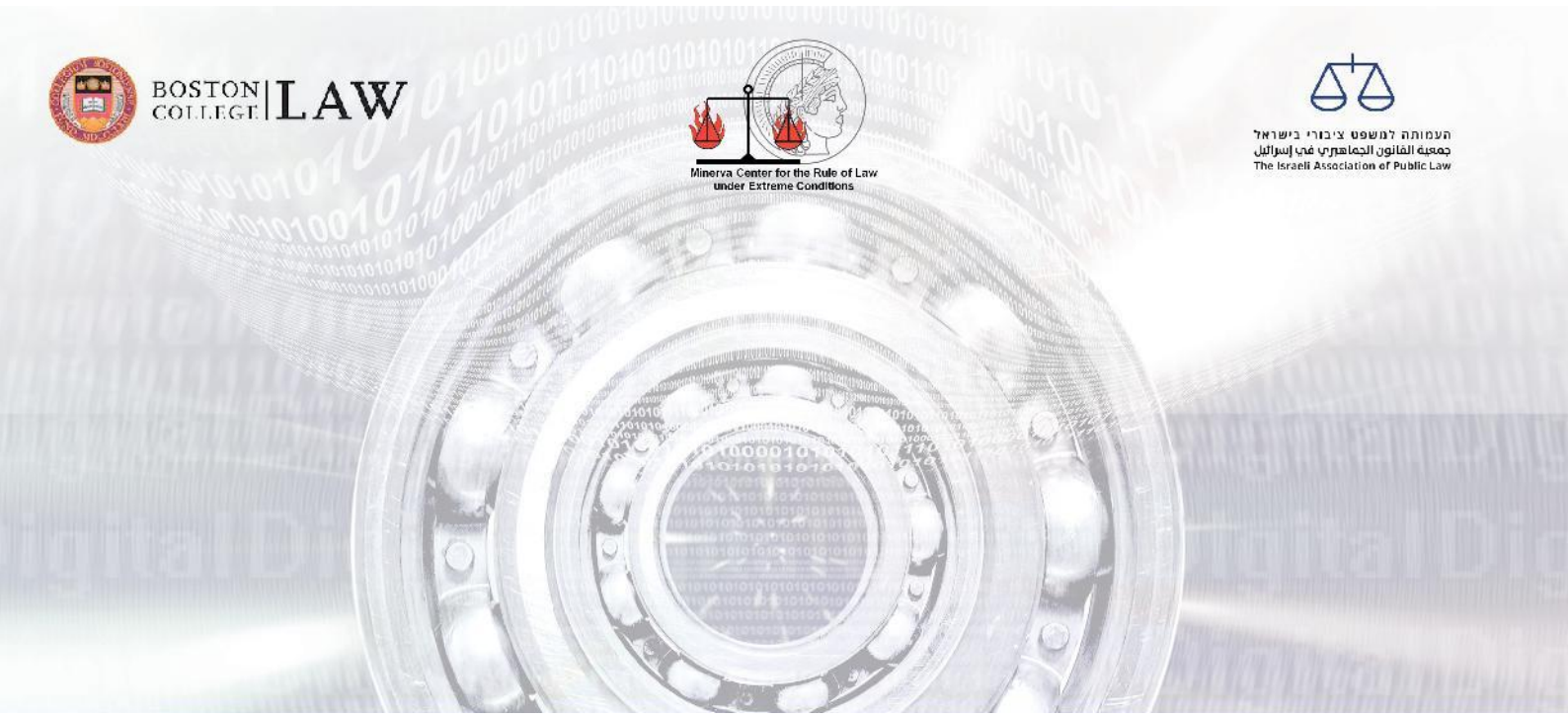

CONSTITUTIONALISM UNDER EXTREME CONDITIONS

THE MINERVA CENTER FOR THE RULE OF LAW UNDER EXTREME CONDITIONS in collaboration with BOSTON COLLEGE LAW SCHOOL, under the auspices of THE ISRAELI ASSOCIATION OF PUBLIC LAW

18-19 July 2016

University of Haifa, Israel
Rabin Building, Rabin Observatory

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Minerva Center for the Rule of Law under Extreme Conditions

העמותה למשפט ציבורי בישראל
جمعية القانون الجماهيري في إسرائيل
The Israeli Association of Public Law

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Conveners

Prof. RICHARD ALBERT and Dr. YANIV ROZNAI

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Prof. SUZIE NAVOT, Chairperson, The Israeli Association of Public Law
Dr. YANIV ROZNAI, Fellow, Minerva Center for RLuEC

Monday, 18 July 2016

9:00-09:15 **Registration**

09:15-09:30 **Welcoming Remark**

09:30-11:00 **Panel: State of Exception and Normalcy**

MING-SUNG KUO (University of Warwick),
From Institutional Sovereignty to Constitutional Mindset: Rethinking the Domestication of the State of Exception in the Age of Normalization

Discussant: ELI SALZBERGER (University of Haifa)

KUMARAVADIVEL GURUPARAN (University College London),
Constitutions as Instruments for Normalising Abnormalcy: The Sri Lankan and Indian Experience

Discussant: YAIR SAGY (University of Haifa)

11:00-11:30 **Coffee Break**

11:30- 13:00 **Panel: Constitution-Making**

MANAR MAHMOUD (Hebrew University),
Challenges of Reconciliatory Constitution-Making inTunisia and Egypt: A Comparative Perspective

Discussant: GAD BARZILAI (University of Haifa)

ANDREAS BRAUNE (University Erfurt/Friedrich Schiller University Jena),
Authoritative Constitution-Making in the Name of Democracy?

Discussant: AMNON REICHMAN (University of Haifa)

13:00-14:00 **Lunch**

14:00-15:30 **Panel: The Next Frontier of Human Rights**

PEDRO A. VILLARREAL (Max Planck Institute for Comparative Public Law and International Law), Public Health Emergencies and Constitutionalism: Between the International and the National

Discussant: ANNA MROZEK (Universität Leipzig)

YORAM RABIN (Office of the The State Comptroller of Israel), **LIAV ORGAD** (IDC) & **ROY PELED** (The College of Management), The Law Governing the Right of Enemy Alien's Access to Courts

Discussant: LUKAS HRABOVSKY (Palacky University Olomouc)

15:30-16:00 **Coffee Break**

16:00-17:30 **Panel: Divided Societies**

NIKOS SKOUTARIS (University of East Anglia) & **ELIAS DINAS** (University of Oxford), The Paradox of Territorial Autonomy: How Subnational Representation Leads to Secessionist Preferences

Discussant: MAJA SAHADŽIĆ (University of Antwerp)

NASIA HADJIGEORGIOU (UCLan Cyprus) & **NIKOLAS KYRIAKOU** (University of Cyprus),
Entrenching Hegemony in Cyprus: The Doctrine of Necessity and the Principle of Bi-communality

Discussant: ILAN SABAN (University of Haifa)

17:30 **Keynote Address:**

AHARON BARAK, President (ret.) of the Supreme Court of Israel and Professor of Law at the Interdisciplinary Center, Herzliya

"Human Rights in Times of Terror – A Judicial Point of View"

18:30 **Dinner**

Tuesday, 19 July 2016

09:15-09:30 **Registration**

09:30-11:00 **Panel: Economic and Financial Crises**

ANTONIA BARAGGIA (University of Milan),
The 'Judicialization' of Emergency: The Case of the Eurozone Crisis

Discussant: DANIEL BENOLIEL (University of Haifa)

ELISA BERTOLINI (Bocconi University Milan),
Financial crisis as a New Genus of Constitutional Emergency?

Discussant: SUHA JUBRAN BALLAN (University of Haifa)

11:00-11:30: **Coffee Break**

11:30-13:00 **Panel: Actors in Constitutional Change**

FATIH ÖZTÜRK (Istanbul University),
Again: From 1867 to Today, Making a Constitution under an Elite Umbrella in Turkey

Discussant: GUY LURIE (University of Haifa)

TILMANN J. RÖDER (Max Planck Foundation for International Peace and the Rule of Law in Heidelberg),
Militaries as Actors in Constitutional Change Processes

Discussant: Ricardo Sousa Da Cunha (Service of Legal and Constitutional Affairs of the Presidency of the Democratic Republic of Timor-Leste)

13:00-15:00 **Lunch & Poster Session**

Poster Presenters:

PATRICK GRAHAM (University of New England),
In Pursuit of Power: the Common Law Constitution

LUKAS HRABOVSKY (Palacky University Olomouc),
Emergencies and Constitutional Rights in a Time of Terrorist Threat in the Czech Republic: Do We Need a New Dimension of Emergency?

JOSHUA SEGEV (Netanya Academic College),
Detaining Unlawful Enemy Combatant in Israel. A Matter of Misinterpretation?

MAJA SAHADŽIĆ (University of Antwerp), The Constitution of Emergency - Reasons Behind Asymmetrical (Constitutional) Arrangements in Bosnia and Herzegovina

RICARDO SOUSA DA CUNHA (Service of Legal and Constitutional Affairs of the Presidency of the Democratic Republic of Timor-Leste), The Constitutional "Big Bang" in Timor-Lest

15:00-16:30 **Political Emergencies and Political Trauma**

DANTE GATMAYTAN (University of the Philippines),
Reluctant Radical: Political Trauma and Judicial Review in Post-Marcos Philippines

Discussant: JOSHUA SEGEV (Netanya Academic College)

IOANNIS A. TASSOPOULOS (University of Athens),
Political Emergencies as Challenges to the Impartiality of Public Law: A Defense of the Constitutional Stability of Practical Reason Based on Greek Experience

Discussant: PATRICK GRAHAM (University of New England)

16:30-16:45 **Concluding Remarks**

BIOGRAPHIES & ABSTRACTS

Albert Richard

Richard Albert is a tenured Associate Professor and Dean's Research Scholar at Boston College Law School and, in 2015-16, a Visiting Associate Professor of Law and the Canadian Bicentennial Visiting Associate Professor of Political Science at Yale University. His scholarship focuses on constitutional change, including both formal and informal amendment. He is currently completing a monograph on constitutional amendment, to be published by Oxford University Press.
Since December 2014 he has been Book Reviews Editor for the American Journal of Comparative Law, which awarded him the Hessel Yntema Prize in 2010 for "the most outstanding article" on comparative law by a scholar under the age of 40. He is also a member of the Governing Council of the International Society of Public Law, an elected member of the International Academy of Comparative Law, an elected member of the Executive Committee of the American Society of Comparative Law, and a founding co-editor of I-CONnect. A former law clerk to the Chief Justice of Canada, Albert holds law and political science degrees from Yale, Harvard and Oxford.

Baraggia Antonia

Antonia Baraggia is Postdoctoral Fellow in Constitutional Law at University of Milan, Department of National and Supranational Public Law. She has been Visiting Fellow at Fordham University School of Law. She holds a PhD in Public Law from University of Turin. She serves as one of the members of the Affiliates Advisory Group of the Younger Comparativists Committee (YCC), American Society of Comparative Law. Her research interests include bicameralism, the role of courts, the Eurozone crisis, social rights considered in a comparative perspective.

ABSTRACT: THE 'JUDICIALIZATION' OF EMERGENCY: THE CASE OF THE EUROZONE CRISIS

The paper aims to assess the role of the judiciary, both at the EU and national level during the Eurozone crisis. Starting from Dyzenhaus's assertion that courts play a fundamental role in counteracting executive predominance in times of emergency, this paper will compare the attitudes of national constitutional courts and the Court of Justice of the European Union (CJEU) in judging austerity measures adopted under emergency circumstances. While the former have played a fundamental role in counterbalancing the executive power in adopting austerity measures, the latter have avoided judging the legitimacy of the bailout measures,

which therefore represent a sort of black hole in the EU legal framework and a breach of the rule of law. I will explain the reticence of the CJEU in light of the new paradigm of governance developed during the crisis. Through the case law analysis, I argue that while the CJEU is reluctant to invalidate emergency measures, national supreme courts are the effective watchdogs of the fundamental rights protection and of the legitimacy of austerity measures.

Barak Aharon

Aharon Barak was born in Kaunus, Lithuania and immigrated to Israel in 1947. He was for many years a faculty member at the law School of the Hebrew University in Jerusalem, in which he served as its Dean (1974-75). From 1975 he served as Attorney General of the State of Israel. In 1978 he was appointed Justice of the Supreme Court of Israel, where he served in the capacity as President from August 1995 until his retirement in September 2006. Since 2007 academic year, Prof. Barak is a faculty member at the Interdisciplinary Center (IDC) Herzliya. Prof Barak is a visiting professor at Yale Law School. Prof. Barak published many books and articles. His books in English are: Judicial Discretion (1987); The Role of a Judge in a Democracy (2003) Purposive Interpretation in Law (2005); Proportionality: Constitutional Rights and their Limitations (2012); Human Dignity: The Constitutional Value and the Constitutional Right(2015) .

Barak is a member of the Israeli National Academy of Science and the Accademia Nazionale dei Lincei in Italy, and was chosen as a foreign honorary member of the American Academy of Arts and Sciences and he received the Israel Prize for Law. He also received honorary doctorates from many institutions of higher education including honorary doctorates from Yale, Columbia, Bologna, Oxford and Michigen.

Barzilai Gad

Gad Barzilai is a Full Professor of law, political science and international studies and the Dean of University of Haifa School of Law. He is also teaching at University of Washington. His academic degrees and training are from Tel Aviv University, Hebrew University Jerusalem, Yale, and University of Michigan Ann Harbor. He has published extensively 17 books and 165 articles and essays in academic top journals and publishing houses on issues of law, society and politics. Several of his books are award winning books. Thus, for example, in his Communities and Law: Politics and Cultures of Legal Identities [University of Michigan Press, 2003, 2005] he paved the way for a new understating of the role of communities in shaping practices in law and towards it. This book was awarded the Best Book Prize by the AIS. In his Law and Religion [Ashgate, International Series on Law and Society, 2007] he has edited some of the classics on law and religion and made a meaningful contribution to our understanding of this topic. In his Wars, Internal Conflicts and Political Order [SUNY 1996], he has suggested a new way for understanding the construction of political-legal order and disorder in times of national security emergencies. The Hebrew manuscript of this book was awarded the Best Book Award in National Security by the Ben Gurion Foundation. Among others he has published on politics of rights, comparative law, law and political power, law and violence, communities and law, group rights, liberal jurisprudence, national security, democracies and law, and issues concerning Middle East and Israeli politics and law. In his research he is often combining knowledge in the social sciences, mainly political science and political sociology, with political theory, theories of jurisprudence, comparative politics and comparative law. He has been trained to use both qualitative and quantitative methodologies. Barzilai is the President of the Association for Israel Studies and the Founding First Director of the Dan David Prize. He is a Board member of editorial boards in several world leading professional journals.

Benoliel Daniel

Dr. Benoliel is an associate professor at the University of Haifa's Faculty of Law. His main fields of research and teaching are within the fields of international intellectual property, patent law, public international law and entrepreneurship law. He holds a Doctor of the Science of Law (J.S.D.) from the School of Law at UC Berkeley (Boalt Hall) and is an alumnus of the Information Society Project (ISP) center at the Yale Law School. Dr. Benoliel's leading articles within these fields are with the California Law Review, Berkeley Law & Technology Journal, Yale Journal of Law and Technology, Michigan Journal of International Law, and the University of Pennsylvania Journal of International Law. He has two forthcoming books, titled: Patents, Innovation and the North-South Divide (Cambridge University Press, Intellectual Property and Information Law series, 2016) and Improbable Leaders: The Battle of Developing Countries for Access to Patented Medicines (with Bruno M. Salama) (FGV University Press, 2016) (in Portuguese).

Bertolini Elisa

I was born in Pavia (Italy) on February 26, 1981.

In 2004, I graduated cum laude in Political Sciences, University of Pavia, with a dissertation on "Il sistema giuridico giapponese e le influenze del costituzionalismo occidentale" ("The Japanese Legal System and the Influences of Western Constitutionalism").

In 2008, I got my PhD in Law, majoring in Comparative, International and European Politics and Institutions, University of Teramo (Italy), with a dissertation on "La tutela dei diritti fondamentali della persona dal Giappone antico ad oggi: tra tentazioni occidentali e radicamento asiatico" ("The Protection of Fundamental Rights in Japan: Historical and Legal Study between Western Temptations and Asiatic Rooting").

Since March 1, 2013, I am assistant professor of comparative law at the Law School "Angelo Sraffa", Bocconi University, Milan. Since the same year, I teach Introduction to the Legal System-Module 2, for students graduating in management and finance.

In October 2015, I have been visiting professor at the Nanzan University, Nagoya (Japan).

My main research field is the Japanese constitutional law and in particular the system of protection of rights. My monographic work, published in 2011, "La tutela dei diritti fondamentali in Giappone: studio storico-giuridico tra tentazioni occidentali e radicamento

asiatico" ("The Protection of Fundamental Rights in Japan: Historical and Legal Study between Western Temptations and Asiatic Rooting"), is a first global approach to the issue. Since then, I have continued to study the issue, with a particular focus on the Supreme Court judicial passivism and the freedom of expression.

Other East Asian legal systems are however part of my research field, namely China and Indonesia. With respect to China, the focus is the internet governance and the infringements of the right to privacy and the freedom of expression, among others. With respect to Indonesia, the focus is on the role of the Islamic law in the hierarchy of legal sources as a non-official legal source and its progressive penetration in the official system.

More recently, I have started to examine the financial crisis and the new tentative economic governance both at an EU and national level, from the perspective of the violation of the democratic principle and a basic lack of accountability. The research question that, with some changes is also at the basis of my paper, is on possible solutions that could promote a new role for both Parliaments and Courts in a necessary rethinking of the balance between powers.

ABSTRACT: FINANCIAL CRISIS AS A NEW GENUS OF CONSTITUTIONAL EMERGENCY?

The paper aims at analysing the economic crisis in the frame of a more traditional emergency situation. More precisely, whether or not it is possible to equate an economic crisis to a traditional emergency or whether or not we are facing a sort of new genus of constitutional emergency. The paper will examine the crisis-related measures adopted at the European and national level, with a particular focus on their adoption procedure and of their content, both raising constitutional concerns with respect to proportionality, transparency, accountability, non-discrimination, supremacy of rights and democratic principle. Moreover, all these measures lack the temporary character opposite to traditional emergency provisions. Then the paper considers the possible response of constitutionalism in terms of protection of the aforementioned principles through constitutional courts and parliaments. Therefore, the conclusion is that the present economic emergency cannot be framed within the category of traditional emergency, but should be considered as a new genus of emergency, not free of many constitutional concerns.

Braune Andreas

Andreas Braune studied Political Science and Modern History at the Friedrich Schiller University Jena and at the Institut d'Etudes Politiques de Rennes. From 2009 to 2010 he worked in an interdisciplinary research project on the concepts of "Bildung und Freiheit" in Hegel's (practical) philosophy. He is assistant professor for political theory in Jena since 2011.
In 2014 he finished his dissertation on "Zwang und Heteronomie in der politischen Theorie der Moderne" (Coercion and Heteronomy in Modern Political Theory). He is currently Christoph Martin Wieland research fellow at the University of Erfurt where he starts to work on a new major research project under the title "The Problem of Founding: Constitution-making in a non-ideal World." Beside his general interest in modern political theory, another field of work lies in theories of protest and civil disobedience.

ABSTRACT: AUTHORITATIVE CONSTITUTION-MAKING IN THE NAME OF DEMOCRACY?

As various historical examples from the French Revolution to the Arab spring show, founding a democratic polity is a tricky task. In a highly politicized situation, which is at the same time prone to violence, the constituent power of the people is easily misused or dangerously fragmented. The usurpation of power by particular groups, the re-establishment of an authoritarian order or even civil war may be the unintended consequences.
On the other hand, democratic constitutions know provisions for states of exception which allow for authoritative means to cope with such situations and preserve the constitutional order. Why should they then be banned to create one? That would mean that authoritative constitution-making might be an effective alternative to democratic constitution-making for the establishment of a well-ordered polity.

This hypothesis is formulated on the basis of Aristotelian political philosophy, the theory of constitutions as rational precommitments and some aspects of the political theory of John Rawls and Jean-Jacques Rousseau. And even though it is formulated in terms of normative political theory, it is primarily meant to be an empirical hypothesis.

Dinas Elias

Elias Dinas is an Associate Professor of Comparative Politics at the University of Oxford, where he also co-directs the Oxford Spring School of Statistical Methods. He is also the Tutorial Fellow of Politics at Brasenose College. His research involves areas of political behaviour, comparative political institutions and political methodology. His work has been published in various peer-reviewed journals and his findings have been discussed in the Atlantic, the NYT and the Economist.

ABSTRACT: THE PARADOX OF TERRITORIAL AUTONOMY: HOW SUBNATIONAL REPRESENTATION LEADS TO SECESSIONIST PREFERENCES

Nikos Skoutaris,University of East Anglia, N.Skoutaris@uea.ac.uk
Elias Dinas, University of Oxford, Elias.dinas@politics.ox.ac.uk

The quest for peace, democracy and political stability has led a number of divided societies in Europe to opt for arrangements that entail segmental autonomy in order to accommodate ethnic diversity, avoid secession or even civil war. Although there are various institutional devices through which this idea can be implemented, in practice, one of its typical manifestations involves the devolution of legislative competences to the regional level. This process is in turn accompanied by the establishment of subnational representative institutions: governments, parliaments and elections. Although, such decentralization of political authority aims at accommodating the centrifugal tendencies existing in a given plurinational State, it may also have long-term unintended consequences. By focusing on Spain, the paper examines how subnational elections strengthen subnational identity, disseminate views in favour of further decentralization and may potentially cultivate secessionist preferences.

Gatmaytan Dante

Dante Gatmaytan* is a Professor in the UP College of Law where he teaches Constitutional Law, Local Government Law, and Legal Method among others. He graduated with a Bachelor's Degree from the Ateneo de Manila (B.S. Legal Management) and earned his law degree from the University of the Philippines in 1991. He holds Masters Degrees from Vermont Law School (cum laude) and the University of California, Los Angeles.

Before he entered the academe in 1998, he practiced law through public interest law offices working with rural poor communities involved in environment and natural resources law, indigenous peoples' rights, agrarian reform, and local governance.

Professor Gatmaytan writes on a range of issues which include the environment, gender, the judiciary, and the intersection of law and politics. His works have appeared in the Asian Journal of Comparative Law, the Oregon Review of International Law, the UCLA Pacific Basin Law Journal, the Georgetown International Environmental Law Review, and the Harvard Women's Law Journal among others.

* Professor, University of the Philippines, College of Law. The author wishes to thank Yanna Perez for her research.

ABSTRACT: RELUCTANT RADICAL: POLITICAL TRAUMA AND JUDICIAL REVIEW IN POST-MARCOS PHILIPPINES[**]

The Philippine Supreme Court held that the factual bases for declaring an emergency are beyond the pale of judicial review. It gave Ferdinand Marcos free rein in administering his martial law regime. When Marcos was ousted by protests in 1986, the new government drafted a constitution that strengthened the role of the Judiciary by giving it the power to review the factual bases of emergency powers. However, the Supreme Court has been avoiding its responsibilities and made judicial review the final, and not a primary remedy for the abuse of executive power.

The Supreme Court's reluctance in assuming a more powerful role comes from its inability to imagine a role outside the classic understanding of separation of powers. A constitutional directive that alters the balance of power among the three branches of government did not override the rationale for deference to the executive branch in times of political trauma.

** Paper delivered at the "Symposium on Constitutionalism under Extreme Conditions," The Minerva Center for the Rule of Law under Extreme Conditions, University of Haifa, Haifa, Israel, July 18-19, 2016.

Graham Patrick

Dr Patrick Graham is a lecturer in law. He joined the University of New England (Australia) in January 2016. He was born and grew up in Ireland. Patrick completed his LL.B. and LL.M. at the London School of Economics, before completing a Ph.D at Queen Mary, University of London, on the historic use of emergency power in Britain. His research interests primarily lie in constitutional law, competition law, and Australian native title law.

ABSTRACT: IN PURSUIT OF POWER: THE COMMON LAW CONSTITUTION

Britain's common law constitution came under immense pressure during the 1910s and 1920s. The scope and nature of the British state changed dramatically as Britain responded to the twin pressures of profound industrial strife and a catastrophic war. In the midst of this prolonged crisis, the government's law officers scrambled to offer a constitutional grounding for the use of sweeping, unparalleled executive power during an emergency. This resulted in a transformation in the shape and form of emergency law in Great Britain: one that has implications for how we should conceptualize contemporary claims made about the source and extent of emergency legal powers sited within the British constitution.

My work looks at how policymakers designed a regulatory framework of emergency power in Great Britain during the period 1914–26 given the many competing legal sensibilities: as well as the source of those constitutional powers. It also looks at the strength of contemporary British governments' claims to source emergency legal power from within the uncodified constitution, particularly those related to the Crown prerogative.

Guruparan Kumaravadivel

Kumaravadivel Guruparan is a Lecturer in Law at the University of Jaffna, Sri Lanka and is a Commonwealth PhD Scholar at University College London. He has an LLB (Hons) from the University of Colombo, Sri Lanka and received his BCL from Balliol College, University of Oxford on a Chevening Scholarship.

ABSTRACT: CONSTITUTIONS AS INSTRUMENTS FOR NORMALISING ABNORMALCY: THE SRI LANKAN AND INDIAN EXPERIENCE

Lecturer in Law, University of Jaffna, Sri Lanka (on study leave)
PhD Candidate, University College London

Carl Schmitt argued that constitutions (and in general law) are adopted for times of normalcy and that hence that they cannot govern situations of exception. According to Shmitt it is impossible to legalise the exception and hence Schmitt's argument that the sovereign is known by the exception. While being vary of Schmitt's decisionism, Agamben's engagement with Schmitt's work has shown how such states of exception have become the rule rather than the exception in the modern security state. According to Agamben, sovereign power as expressed routinely and casually through the 'exception' has come to define modern life and daily existence. In such blatant use of power constitutions and laws aren't anymore part of the normal but have become the instruments that normalise the abnormalcy.

I take Agamben's work on the exception becoming the rule to explain how constitutions and laws of a state in deeply divided societies can in a permanent sense convert abnormal conditions into the new normalcy for oppressed peoples who are permanently pushed into the domain of the exception. In states that have been riddled by conflict and war, prolonged abnormalcy in fact may become the new normalcy by perpetuation or worse is deliberately converted into the new normalcy. In such circumstances which I shall call the normalisation of the abnormalcy, state's constitution and laws can legislate for state of exceptions and identify parts of the populations for which the exception becomes the normal. The argument presented here is that while Agamben is right to say that the state of exception is a normality of the modern state and that it affects all citizens indiscriminately, in deeply divided societies/states the experience is varied and is worse for those questioning the very legitimacy of the state itself. In deeply divided societies the paper argues, states of exceptions are used to engage in violent projects of nation-building that aim at identifying the state with a particular community and 'othering' the rest.

The paper takes up Sri Lanka as the main case study while also referring to India as a minor case study. For the Sri Lankan case study the Second Republican Constitution is taken as the main point of reference. The case study on Sri Lanka will consist of two parts. The first will seek to analyse the ideological underpinnings of the first and second republican constitutions of Sri Lanka and their relationship with the emergency/public security provisions enshrined therein. It will particularly focus on the constitutional philosophy of centralising power in both the constitutions as they relate to matters of

nation-building and security but are nevertheless presented as an exception to the normal. The second part will seek to study the use of emergency laws in Sri Lanka, in particular the Prevention of Terrorism Act to demonstrate the normalising of abnormalcy through law aimed at othering the Tamil community in the country. The paper will also draw parallels to the Sri Lankan experience by reference to the Indian experience with the Armed Forces Special Powers Act as applied in Kashmir and the North-East of the State.

Key words: state of exception, normalcy, abnormalcy, constitutions, emergency

Hadjigeorgiou Nasia

Dr Nasia Hadjigeorgiou holds an LLB (First Class Honours) from University College London, a LLM from the University of Cambridge and a PhD from King's College London. She is currently a lecturer of International Law at the University of Central Lancashire, Cyprus campus. Nasia is currently working on the publication of a monograph entitled Protecting Human Rights and Building Peace, which focuses on the protection of four human rights (the rights to life, property, vote and equality) in four ethnically divided, post-conflict societies (Bosnia and Herzegovina, Cyprus, Northern Ireland and South Africa). The monograph critically examines the extent to and ways in which the protection of human rights in such divided societies can contribute to the building of peace among the different ethnic groups. Most recently, she has published on the right to property in Cyprus, in the Cambridge Yearbook of European Legal Studies (forthcoming) and the Cyprus Human Rights Law Review. She has also consulted the Office of the Attorney-General of the Republic of Cyprus on different areas of International Law. Nasia has presented her work at conferences at Tel-Aviv University, the University of Oxford, the University of Cambridge, the London School of Economics, King's College London, the University of Nottingham and the University of Ghent. She can be reached at ahadjigeorgiou@uclan.ac.uk.

ABSTRACT: ENTRENCHING HEGEMONY IN CYPRUS: THE DOCTRINE OF NECESSITY AND THE PRINCIPLE OF BI-COMMUNALITY

When Cyprus became an independent state, the provisions included in the newly-drafted Constitution sought to safeguard the rights of the different communities that were making up its population – Greek Cypriots, Turkish Cypriots, Maronites, Armenians and Latins. Nevertheless, most political power since then has been concentrated in the hands of the Greek Cypriot majority, with the other groups remaining largely marginalised. This hegemony of the Greek Cypriot political elite has been the result of a dual, and rather contradictory approach. On the one hand, the constitutional protections for the different groups have been eroded through the application of the doctrine of necessity, a mechanism intended to keep the Constitution up to date with the political developments in the country. Conversely, in cases where the doctrine could be used to safeguard rather than restrict the rights of the ethnic groups' members, the government has highlighted the unamendable nature of certain articles of the Constitution and relied on the obsolete constitutional provisions that the doctrine of necessity was designed to avoid.

Hrabovsky Lukas

Lukas is PhD student at Palacky University Olomouc, Faculty of Law, Department of Constitutional Law and at Facultad Derecho, Universidad de Oviedo, Oviedo, Spain. He holds LL.M. degree in Law (Palacky University Olomouc), M.A. in European Studies focused on European Law (Palacky University Olomouc, Faculty of Law) and LL.B. from Law in Public Administration (Palacky University Olomouc, Faculty of Law).
In his professional life he is devoted to the relations between terrorism and constitutional rights and to the relationship between European law and national legal orders. His dissertation being supervised under both Universities is focused on the comparative analysis of the impact of anti-terror legislations on the constitutional rights in the USA, Spain and Germany. In 2015 Lukas spent 4 months at Universidad de Oviedo, Spain as research-fellow under supervision of professor Benito Alaez Corral, where he performed research of the anti-terror legislation in Spain and their impacts on the constitutional rights.

ABSTRACT: EMERGENCIES AND CONSTITUTIONAL RIGHTS IN A TIME OF TERROR THREAT IN THE CZECH REPUBLIC: DO WE NEED A NEW DIMENSION OF EMERGENCY?

Nowadays, governments are facing several security issues endangering directly security of state and freedom

and liberties of individuals; one of them is terrorism. Accordingly, terrorism endangers not only national security but also a paradigm of modern constitutionality by pushing governments to adapt to meet the terrorist threat on its own playground. From a legal point of view this "playground" refers to the frame of reference, which is legal order of particular state in largo sensu and constitutional law of particular state in sensu stricto.

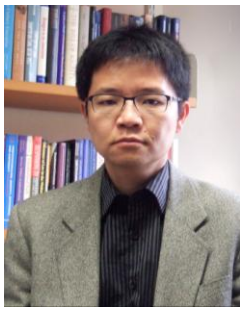
This article maps the discourse in the relations between emergencies and constitutional rights on the background of terrorist threat. It strives to answer the question whether analyzed states of emergency are sufficient enough to deal with terrorist threat and simultaneously whether states of emergency should be modified in order to accommodate terrorism or whether new dimension of the state of emergency is needed to meet terrorism on state's own turf.

Jubran Ballan Suha

Suha Jubran-Ballan is a post-doctoral fellow in the the Minerva Center for the Rule of Law under Extreme Conditions at the University of Haifa, Faculty of Law and the Geography and Environmental Studies Department. In her research she focuses on the implications of economic crises on the international obligations of states in the era of bilateral investment treaties. She also works as an adjunct lecturer at Tel Aviv University, The Buchmann Faculty of Law. She has completed her obligations as a Ph.D. Candidate at The Buchmann Faculty of Law under the supervision of Prof. Eyal Benvenisti, and submitted her dissertation by February 2015. Her dissertation examined the judicial reasoning of investment treaty arbitration and identifies different patterns of judicial reasoning according to the institutional arrangements of the arbitral panel. Suha holds an LL.B (cum laude) from Haifa University and LL.M (cum laude) from Tel Aviv University. In the year 2012 Suha was granted the scholarship of the Counsel for Higher Education in Israel for minority Doctorial students. During her LLM studies she was granted a scholarship for distinguished LLM students of the Faculty of Law, Tel Aviv University, and a scholarship of the Cegla Center for Interdisciplinary Research of Law. During her Doctorial studies she organized a workshop for research students on Legal Theory and is member of the forum for Law, Corporations and the Transnational Sphere in Tel-Aviv University. During the academic year 2010-2011 she was an

academic coordinator of the course "Theoretical Approaches of Law" for L.L.M students at the Faculty of Law, Tel-Aviv University.

Kuo Ming-Sung



Dr Ming-Sung Kuo is a tenured associate professor of law at University of Warwick (UK). His research interests are in the fields of constitutional and legal theory, comparative constitutional law, administrative law and regulatory theory, and public international law. He has also written on global constitutionalism and global administrative law, European constitutionalism and integration, and judicial review in Taiwan. His publications have appeared in leading law journals, including Modern Law Review, International Journal of Constitutional Law, European Journal of International Law, Ratio Juris, and Oxford Journal of Legal Studies. He earned his JSD and LLM from Yale and his LLB and another master degree from National Taiwan University. Dr Kuo previously held a Max Weber Fellowship at European University Institute in Florence (Italy), a visiting fellowship at Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Germany), and a visiting associate professorship at National Taiwan University.

ABSTRACT: FROM INSTITUTIONAL SOVEREIGNTY TO CONSTITUTIONAL MINDSET: RETHINKING THE DOMESTICATION OF THE STATE OF EXCEPTION IN THE AGE OF NORMALIZATION

This paper aims to provide a prognosis of the unease about the question of emergency power in contemporary constitutional scholarship. I shall first argue that constitutional scholarship on emergency powers has long centred on the idea of institutional sovereignty. With the normalization of the state of exception, however, this control paradigm of constitutionalizing emergency powers underpinned by institutional sovereignty falters. Departing from the law vis-à-vis politics dichotomy, I suggest that the post-World War II experiences shows that constitutional orders have functioned as the institutional arrangement for framing political judgements and making them responsible. Hence conceiving the domestication of emergency powers should shift emphasis from who controls with the final say to how serial judgements concerning the state of exception are made responsible through constitutional framing. Instead of legal managerial techniques, the domestication of the state of exception lies in the (re)discovery of constitutional mindset at the heart of the constitutional framing of judgment vis-à-vis responsibility.

Kyriakou Nikolas

Nikolas Kyriakou holds an LL.M. from the University of Leiden and a Ph.D. from the European University Institute (Florence). His doctorate thesis was on the practice of enforced disappearances viewed from an international human rights law perspective.
He has worked in private practice as a human rights lawyer and as a diplomat at the Law Department of the Ministry of Foreign Affairs of Cyprus. Currently, he is working as Counsel at the Law Office of the Republic of Cyprus and represents Cyprus to various fora, including the Council of Europe.
He has published on issues pertaining to human rights, enforced disappearances, EU law and the protection of minority rights.

ABSTRACT: ENTRENCHING HEGEMONY IN CYPRUS: THE DOCTRINE OF NECESSITY AND THE PRINCIPLE OF BI-COMMUNALITY

The article argues that the use of the doctrine of necessity in the constitutional arena can be defended from principled criticisms, but that its practical application is problematic. As a result, Cyprus' sociopolitical scene today shows a very different picture than the one imagined by the drafters of the Constitution. The article argues that the hegemony of the Greek Cypriot political elite is not an accident. Rather, the erosion of the rights of Turkish Cypriots and of the other minorities has been the result of a dual, and rather

contradictory, strategy. On the one hand, the legislature has restricted their rights by arguing that the special political circumstances that exist on the island justify the departure from constitutional protections through the doctrine of necessity. On the other, the argument has been that any limitations on these rights are mandated by the Constitution itself, which is impossible to amend, even with the use of the doctrine.

Lurie Guy

Dr. Guy Lurie is a post-doctoral fellow at the Faculty of Law, University of Haifa, and a researcher at the Israel Democracy Institute. He completed his LLB (law and international relations) at the Hebrew University of Jerusalem, and received his PhD in History from Georgetown University (2013). His doctoral dissertation focused on citizenship in later medieval France (c. 1370 – c. 1480). Dr. Lurie's publications are in the fields of French history, legal history, and history of political thought, as well as on the subject of judicial and prosecutorial reforms.

Mahmoud Manar

Post-Doctoral Fellow at The Leonard Davis Institute for International Relations and The Harry S. Truman Institute for The Advancement of Peace. I am also teaching at the Department of International Relations, Hebrew University.

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During my academic studies I won several Academic Awards and Research Grants, among them: Research grant from the Tami Steinmetz Institute for Peace Research (2010-2011); Research Scholarship at the Gilo Center for Citizenship, Democracy and Education at the Hebrew University (2009-2010); Sergio Gribitch Award for promoting relations between Jews and Arabs in Israel (2009-2010); "Werner Otto" Foundation grant for Outstanding Female Arab Students for Advanced Studies, Haifa University (2004-2005).

My research focuses on political analysis of constitution-making processes and reconciliation in conflicted societies. The Ph.D dissertation based on the presentation of a theoretical model that I named "reconciliatory constitution-making process", meant to explore the nature of the constitution making process, and explain the circumstances in which the process of establishing a constitution can also achieve reconciliation between conflicted groups. The dissertation focused on comparative historical analysis of three cases: South Africa, Canada and Belgium. My current research attempts to develop the model through its examination in other cases such as Tunisia and Egypt.

My main research interests are: Contemporary Political Theory, Constitutional Theory, Comparative Politics, Reconciliation in Conflicted Societies, Transitional Justice, Transitions in\to Democracy, Politics and Law.

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ABSTRACT: CHALLENGES OF RECONCILIATORY CONSTITUTION-MAKING IN TUNISIA AND EGYPT: A COMPARATIVE PERSPECTIVE

In the last years several Arab countries, such as Tunisia, Egypt, Syria, Libya and Yemen witnessed a massive popular mobilization that has brought about dramatically changes in the political structure of these societies. Some of these states have deteriorated into a difficult situation characterized by struggle between the different groups concerning its management during the transitional period, the identity of the new regime, the rights of the different groups and the establishment of a new constitution. The disagreements on these issues have led to violence and even civil war. However, other states have tried to overcome these disagreements, avoided violence and maintained the differences between various political forces within the frame of the political process. In such a reality, the constitution-making process served as a political tool that aimed on one hand to build a new regime, a common identity and a constitution that is acceptable to all groups and on the other hand, aimed to achieve reconciliation between the conflicted groups. The article I will present in this symposium aims to examine the Egyptian and Tunisian constitutional processes in the last three years, seeking to understand the major factors behind the differences between them, assuming

that the two countries introduce two different models of constitution-making. Whereas Tunisia's process is steady, gradual, widely accepted and attempts to seek reconciliation, the Egyptian process has been disrupted, exclusionary and heavily criticized and failed in achieving reconciliation.

Mrozek Anna

Anna Mrozek (Dr. jur., Leipzig University) is a Postgraduate and Assistant Professor at the Faculty of Law, Leipzig University. She specialises in public and constitutional law. Her research focuses on issues of constitutional law and human rights protection in multi-level systems, migration, (transnational) police and security law, data protection with cross-references to European law and public international law and correlations between law, politics and culture. She is also one of the coordinators of the German-Indonesian interdisciplinary project "Exploring Legal Cultures". Her major publications include a monograph on border surveillance as a supranational task (Grenzschutz als supranationale Aufgabe, Baden-Baden 2013). Her articles deal with issues of border surveillance, extraterritorial execution of power, data retention. Her major postgraduate project revolves around questions regarding the use of military force in contemporary conflicts under the condition of the rule of law.

Orgad Liav

Liav Orgad is a Senior Lecturer at IDC Radzyner School of Law, a Marie Curie Fellow at the Freie Universität Berlin, a Fellow at the Edmond J. Safra Center for Ethics at Harvard, and a Member of the Global Young Academy. He is the recipient of the Eric Stein Prize by the American Society for Comparative Law (2011), and the author of "The Cultural Defense of Nations: A Liberal Theory of Majority Rights" (Oxford University Press, 2016).

ABSTRACT: THE LAW GOVERNING THE RIGHT OF ENEMY ALIENS' ACCESS TO COURTS

Liav Orgad, Roy Peled & Yoram Rabin

It was settled for centuries that as a matter of law, enemy aliens when residing in enemy territory cannot seek redress in courts of the country with whom their own country is engaged in warfare. This law was accepted across jurisdictions and practiced through many instances of military confrontations. More and more exceptions to the rule have been carved along the years, as courts dealt with the uneasy implications of democracies denying individuals the fundamental human right of access to justice. The changing nature of warfare in the 21st century changes presents another challenge to this traditional rule. Nevertheless, courts across democratic jurisdictions have thus far refrained from defining an overall alternative rule. Rather, they have resorted to solving specific cases through narrowly tailored decisions.

The article surveys the developing jurisprudence in regard to access of enemy aliens to courts in various jurisdictions. It presents recent developments in the field, and then suggests a new model by which to design an alternative rule compliant with contemporary human rights law and relevant to 21st war realities. It goes on to consider why courts are hesitant to declare the traditional law void and what can be learned from this hesitance as to the interaction between war and legal institutions.

Öztürk Fatih

Professor Öztürk was born and raised in Istanbul. He is Assistant Professor in Constitutional Law at Istanbul University, Faculty of Law. He is currently working on federalism in Canada and the U.S., public participation in constitution making, and application of check and balances in presidential systems. He holds an L.L.B from Istanbul University, Turkey, an L.L.M from California Western University, USA and an L.L.M from Queens University in Canada. He completed his Ph.D from Istanbul University,Turkey.

His publications include: (Books) "Karşılaştırmalı Anayasa Yargısında Politik Sorun ve Yargısal Aktivizm Doktrini (Political Question and Judicial Activism Doctrine in Comparative Constitutional Jurisdiction), (Istanbul, Beta Publishing House, 2012), Yeni Anayasa İçin Yol Haritası, ed. Fatih Öztürk (A Route Map of A New Constitution For Turkey), (Istanbul, Bion Publishing, 2012), Essays in Turkish and Comparative Law, Ottoman & Turkish Law, (Bloomington, Indiana, USA, iUniverse LLC, 2014), and A Road Map of A New Constitution for Turkey: Essays in Comparative Constitutional Law, ed. Fatih ÖZTÜRK, Murat YANIK, Hüseyin ÖZCAN, (Durham, North Carolina, USA, Carolina Academic Press, 2014). (Articles) The Concept of Judicial Independence and the Removal from Office of Superior Court Judges in the Canadian Judicial System, in memory of Prof. Dr. Huseyin Hatemi, Volume II, (Istanbul, Vedat Kitapcilik, 2009), The Ottoman Millet System, 15 Journal of South-East European Researches (2010), Manifestation of Religion and Religious Education under the ECHR Jurisdiction, Volume LXIX, İÜHFM, No: 1-2, in memory of Prof. Dr. İlhan Özay, Introduction to Minority Issues in Turkey: The Constitution-Making Process and EU Integration, Volume 5-2 International Journal of Arts & Sciences (2012), Critics of Will Kymlicka's Liberal Minority Rights: Failure to Protect Religious Minorities, e-akademi (Hukuk, Ekonomi ve Siyasal Bilimler Aylık İnternet Dergisi, January 2012, No: 119, The Republic of Turkey and Women in Divorce Cases, Human Rights Review, Volume II, Issue 2, pg. 35-65 (2012), Religious Freedom and Religious Minorities: The Right to Religious Education under the UN System, Human Rights Review, Volume III, Issue 1, June 2013, pg. 49-106 (2013).

ABSTRACT: AGAIN: FROM 1867 TO TODAY, MAKING A CONSTITUTION UNDER AN ELITE UMBRELLA IN TURKEY

Turkey is a country which is rich in culture and history. It is also one of the few modern states that practices Islam, yet also has an established democratic system. This democracy, however, is flawed due to non-involvement from the masses. This paper explores the instability of Turkish democracy by looking at the details and issues that surround the making of constitutions and the elite, with specific focus on elite-public participations relations in a historically chronological order, which is a necessity in comprehending the complexity of the topic at hand. Elite involvement without public participation in making constitution caused a weak and unstable democracy in Turkey. Extremist elite powers have, and still, prevent harmonization within the state system and contribute to inequality among all members of society. The country currently needs a new constitution, which was promised by the

government that was re-elected on November 1st, 2015, ever since its rise to power on November 3rd, 2002. It seems that a new constitution which will eliminate the imbalance between state elites such as bureaucrats, high military officers and academics vs. the nation. In conclusion, the author recommends that in any case, that the new constitution should lead to the participation of the public before and after political events which take place in the administration of the country. With this in mind, the privileges of the elitist system should be outlined as a set rate that does not vary from term to term, or if possible, be eliminated from the political system all together and re-inserted into its own realm of affairs in order for a flourishing Turkish democracy.

Peled Roy

Roy Peled is an Administrative Law professor at the Striks Law School of the College of Management in Israel and an adjunct professor at the Hebrew University. A former associate-in-law at Columbia Law School, he is an independent researcher for the Open Government Partnership and for Columbia Global Freedom of Expression Initiative.

ABSTRACT: THE LAW GOVERNING THE RIGHT OF ENEMY ALIENS' ACCESS TO COURTS

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The article surveys the developing jurisprudence in regard to access of enemy aliens to courts in various jurisdictions. It presents recent developments in the field, and then suggests a new model by which to design an alternative rule compliant with contemporary human rights law and relevant to 21st war realities. It goes on to consider why courts are hesitant to declare the traditional law void and what can be learned from this hesitance as to the interaction between war and legal institutions.

Rabin Yoram

Prof. Yoram Rabin obtained his LL.B. from the College of Management Law School (1995). He worked for a short time as a lawyer in the Yuval Levy & Co. law firm in Tel Aviv (1995-1997). Shortly after that he attended Tel-Aviv University earning LL.M. degree on 1997 and JSD (doctorate) degree on 2002. His LL.M. thesis focused on the constitutional right of access to courts. His JSD thesis focused on the constitutional right to education. The two dissertations were published at books (1997, 2002). Prof. Rabin was editor of "Hamishpat" Law Review (2005) and the "Hapraklit" Law Review (The Israeli Bar Law Review) (2005-2015). In 2008 he published (together with Dr. Yani Vaki) what has become Israel's leading textbook on Criminal Law (Second edition 2009; Third edition 2014). In 2009 he was awarded the rank of Professor. Rabin served as the Dean of the Haim Stricks School of Law at the College of Management from 2011 to 2015. His main teaching and research fields are Criminal Law; Administrative Law; Constitutional Law and Human Rights. In October 2015 Rabin was appointed Legal Adviser of the Israeli State Comptroller.

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Reichman Amnon

Amnon Reichman is a an Associate Professor of law (tenured 2006) at the faculty of law, University of Haifa and a co-Principal Investigator (PI) of the recently-established Minerva Center for the Rule of Law Under Extreme Conditions at the University of Haifa. Professor Reichman specializes in public law (constitutional law and administrative law), and his areas of expertise include models of regulation, neo-institutionalism, separation of powers, theories of judicial review, human rights, and comparative constitutional and administrative law. He is the founder and chair of the Research Forum on the Rule of Law (faculty of law), and heads the graduate program (LL.M.) that specializes in civil and administrative law. He taught and developed the syllabus for the legal segment of the graduate program in Emergency and Disaster Management (Geography Department). Professor Reichman is the recipient of numerous grants and awards, including the Israeli Science Foundation (ISF). He is a member of the European Group of Public Law, and has taught in several leading institutions, including UC Berkeley (Boalt Hall), Yeshiva University (Cardozo School of Law) and the Center for Judicial Studies (University of Reno, Nevada). He holds an LLB (Cum Laude) from the Hebrew University in Jerusalem (1994), an LL.M. from the University of California at Berkeley (Boalt Hall) (1996) and an S.J.D from the University of Toronto (2000). He conducted his post-

graduate studies at the Center for Ethics and the Professions at Harvard University (2001). Prior to his graduate studies, professor Reichman clerked for the Hon. Justice Aharaon Barak at the Supreme Court of Israel (1995).

Röder Tilmann J.

Tilmann Röder is a Managing Director of the Max Planck Foundation for International Peace and the Rule of Law in Heidelberg, Germany. From 2006 until 2012, he was a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law. Tilmann is currently responsible for rule of law projects in Afghanistan, Pakistan, Kyrgyzstan, Ukraine, and Colombia. He mainly writes on constitutional and international law, legal pluralism, and legal history. His recent publications include *Constitutionalism, Human Rights, and Islam after the Arab Spring* (OUP 2016, with Rainer Grote) and *From Gentlemen's Agreement to Judicial Instrument: The History of Contract Practice and Conflict Resolution in Reinsurance* (in: G. Jones, N. Viggo-Haueter, eds., *Managing Risk in Reinsurance*, OUP 2016). Moreover, he is a co-editor of the Max Planck Yearbook of United Nations Law (Brill Publ.). Tilmann is a Member of the Advisory Panel on Civilian Crisis Prevention of the German Federal Government.

ABSTRACT: MILITARIES AS ACTORS IN CONSTITUTIONAL CHANGE PROCESSES

The role of the armed forces in a state is a classical subject in political sciences. In contrast, scholars of constitutional law prefer to keep the topic at bay – surprisingly, as the militaries in many countries play a significant role in constitutional politics. This becomes

particularly visible in situations of upheaval or reform.

My current research focuses on militaries as actors in constitutional change processes. I analyze and, at a later stage, intend to compare the cases of countries where the militaries have been recently challenged by political reform movements, such as Egypt, Myanmar, Pakistan, Thailand, and Turkey.

The starting point of every country analysis is the mandate of the armed forces in the respective constitutional system. In most countries, this is primarily the defense of the state and its citizens against external threats. Some constitutions also allow the deployment of armed forces in support of allies. A secondary, frequent function of the armed forces is to ensure the safety and security of the state and its citizens in the domestic sphere. Tertiary functions include guarding important objects, providing disaster relief, serving as honor guards and the like.

In a second step, I analyze the civil-military relations from a constitutional angle. To this end I use five sets of criteria. Firstly, the question of command over the armed forces needs to be answered: Which institution or figure commands the military in times of peace and times of war? How is this command secured? This institutional aspect forms the core of civil-military relations; it is usually regulated in a country's constitution.

Secondly, what institutional control mechanisms exist, if any? Particularly, does the constitution necessitate parliamentary approval of the military budget and its deployment? Clearly, such control mechanisms will only take effect in a functioning system with separated state powers that check and balance each other.

Thirdly, under which conditions, and for which tasks, may the military act in the domestic sphere? How is its relation *vis-à-vis* the police defined? What is the role of the military during the state of emergency? May the military justice organs also prosecute civilians?

Fourthly, does the constitution allow for economic activities of the military that may be misused to exert undue influence on society and the state?

And fifthly, does the constitution define the fundamental rights or limitations of rights of military personnel?

After analyzing the civil-military relations in the respective constitutional system I continue with an assessment of their role in recent constitutional change processes. Important research questions include the following: How do the militaries involve in constitutional change? What efforts do they make to legitimize their involvement? Under what conditions are they able to retain their constitutional status and under what conditions are they forced to subject themselves to civilian control? In Turkey, where the military "deep state" was dismantled over a period of over a decade (roughly from 1999-2010), and Egypt, where the military elite extended its power in the aftermath of the Arab Spring (2011-2014), historical episodes of change that have come to an at least preliminary, conclusion will be compared. In Myanmar, the process of democratization that began around 2010 is still on-going and the future of the decades-old stratocracy far from being determined.

At the conference I will concentrate on the case of Egypt, as I have not yet completed my research on the other countries.

Roznai Yaniv

Yaniv Roznai is was a Post-Doc Fellow at the Minerva Center for the Rule of Law under Extreme Conditions, University of Haifa. As of October 2016 he will be an Assistant Professor at the Interdisciplinary Center (IDC) Herzliya. He holds a PhD and LL.M from The London School of Economics, and LLB and BA degrees in Law and Government from the IDC. In 2013, he was a visiting researcher at LAPA, Princeton University, and in 2015 he was a Post-Doc Fellow at the Hauser Global Law School, NYU. He is an elected board member and Secretary General of the Israeli Association of Public Law. Yaniv's publications appeared in journals such as The American Journal of Comparative Law, International and Comparative Law Quarterly, Stanford Law and Policy Review, European Review of Public Law, German Law Journal, and the International Journal of Constitutional Law. In 2015, he was awarded the 2014 Thesis Prize of the European Group of Public Law for his dissertation on "unconstitutional constitutional amendments," which is forthcoming as a book with Oxford University Press.

Saban Ilan

Dr. Ilan Saban is a lecturer in University of Haifa, Faculty of Law, where he teaches constitutional and administrative law. He has graduated from the Tel-Aviv University Faculty of Law, and earned a LL.M from American University, Washington College of Law, and LL.D. from the Hebrew University. His main fields of interest are minority rights in deeply divided societies, comparative constitutional law, and law and social change. He has dealt theoretically with the rights of the Arab-Palestinian minority in Israel and he is active in trying to promote these rights by directing a clinic of the faculty dealing with it.

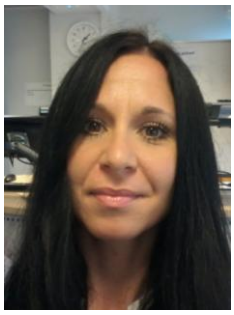
His publications include: 'Theorizing and Tracing the Legal Dimensions of A Control Framework: Law and the Arab-Palestinian Minority in Israel's First Three Decades (1948-1978)', 25(1) Emory International Law Review 299-378 (2011); 'Citizenship and its Erosion: Transfer of Populated Territory and Oath of Allegiance in the Prism of Israeli Constitutional Law', Law and Ethics of Human Rights (2010); 'Appropriate Representation of Minorities: Canada's Two Types Structure and the Arab-Palestinian Minority in Israel' 24 Penn State International Law Review563-594 (2006); 'Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel', 36 New York University Journal of International

Law & Politics 885-1003 (2004); 'Lessons for Comparative Analysis of Free Speech Doctrines', 2 The Journal of International and Comparative Law at Chicago-Kent 62-83 (2002)

Sagy Yair

Yair Sagy is a lecturer at the University of Haifa Faculty of Law, Israel. He specializes in U.S. and Israeli legal history, public law, theories of regulation, and courts as organizations. His major publications discuss, among others, the intellectual history of regulation in the United States, the history of the Israeli High Court of Justice, and organizational dimensions in the operation of courts. He received an LL.B. and a Master's Degree in History and Philosophy of Science and Ideas from the Tel-Aviv University, and an LL.M. and a J.S.D. from New York University. He was a Golieb Fellow in Legal History at NYU and a Research Fellow at Harvard Law School.

Sahadžić Maja



Maja Sahadžić is a researcher, lecturer, and expert legal advisor. At present, she is the doctoral researcher and doctoral student in the Government and Law research group at the Faculty of Law, University of Antwerp. Her work experience includes earlier academic positions at universities in Bosnia and Herzegovina, Croatia and the United States of America. She has also worked as a lawyer, legal consultant, journalist, PR person and program coordinator. She has published over 50 books, book chapters and papers in journals and conference proceedings, within the field of constitutional law, international law, diplomacy, and security. She has participated in numerous scientific research projects.

ABSTARCT: THE CONSTITUTION OF EMERGENCY
REASONS BEHIND ASYMMETRICAL (CONSTITUTIONAL) ARRANGEMENTS IN BOSNIA AND HERZEGOVINA

The General Framework Agreement for Peace in Bosnia and Herzegovina in its Annex IV envisaged a federal system of government as a way out of the conflict. Elazar (2006) affirms that an existence of more than one government over the same territory became an increasingly common phenomenon, as well as that federal arrangements are often introduced to reconcile a diversity. The post-Dayton constitutional design, however, renders issues common to asymmetrical federalism and multinationalism but established under extreme conditions. It manifests issues Watts (2008) identified as those affecting a character of constituent units, distribution of functions, and role and status of a constitution. The first aim of this article is to determine reasons behind asymmetry. The second aim is to determine if asymmetry has a potential to accommodate diversities in conflicting societies.

Keywords: asymmetrical federalism, multinational states, extreme conditions, times of crisis

Salzberger Eli

Was the Dean of the Faculty of Law at the University of Haifa and the President of the European Association for Law and Economics. He is a graduate of the Hebrew University Faculty of Law (1st in class). He clerked for Chief Justices Aharon Barak and Dorit Beinish. He wrote his doctorate at Oxford University on the economic analysis of the doctrine of separation of powers. His research and teaching areas are legal theory and philosophy, economic analysis of law, legal ethics, cyberspace and the Israeli Supreme Court. His latest book (co-authored with Niva Elkin-Koren) is The Law and Economics of Intellectual Property in the Digital Age: The Limits of Analysis (Routledge 2012), preceded by Law, Economic and Cyberspace (Edward Elgar 2004). He was a member of the board of directors of the Association for Civil Rights in Israel; he is member of the public council of the Israeli Democracy Institute and of a commission for reform in performers' rights in Israel. He was awarded various grants and fellowships, among them Rothschild, Minerva, GIF, ISF, Fulbright, ORS and British Council. Salzberger was a visiting professor at various universities including the Microsoft-LAPA fellow at Princeton, University of Hamburg, Humboldt University, University of Torino and UCLA. Currently he is the director of the Haifa Center for German and European Studies, the director of the Minerva Center for the Rule of Law under Extreme Conditions and he is the co-director of the International Academy for Judges at the University of Haifa Faculty of Law

Segev Joshua

Joshua Segev is a senior lecturer at the Netanya Academic College School of Law (Israel) and a visiting lecturer at the Herzog Faculty of Law Bar-Ilan University. Joshua's research focuses on theories of judicial review, constitution-making and political philosophy. Joshua has an S.J.D. (2003) and LL.M. (2001) from the University of Virginia School of Law; and an LL.B. from the Buchman Faculty of Law Tel-Aviv University (1999). Joshua Segev was Editor in Chief of the Netanya Academic College Law Review, an Associate Editor of the Tel-Aviv University Law Review and an Associate Editor of Israel Yearbook on Labor Law.

ABSTRACT: DETAINING UNLAWFUL ENEMY COMBATANT IN ISRAEL A MATTER OF MISINTERPRETATION?

Since the terrorist attacks of September 11, 2001 legal experts have been debating the constitutionality of detaining "unlawful enemy combatants" not entitled to lawful combatant's rights, immunities and privileges, in the so-called "war on terror". The article argues against the territorial and over-individualized interpretation given to the Unlawful Enemy Combatant Act of 2002 by the Israeli Supreme Court. Namely, that the purpose of the Unlawful Enemy Combatant Act establishes an "ordinary" administrative detention mechanism to be used beyond Israel's borders (i.e. in Gaza and Lebanon but not in Israel or the West Bank), and which requires the showing of an "individual threat" emanating from the detainee to state national security.

The article defends an associative theory of culpability for detaining enemy combatant: the detention should be based also on who they are (i.e., high ranking commander versus low ranking officers or "field" soldier); on collective national goals (i.e., in order to release Israeli MIA soldiers); and not only on what they might do. Additionally, constitutional frameworks (i.e., the proportionality requirement) should be reframed accordingly to satisfy the demands and principles of the associative theory of culpability.

Skoutaris Nikos

Nikos is a Lecturer of EU Law in the UEA Law School. His research lies in the intersection between EU law, comparative constitutional law and conflict resolution. His doctoral thesis was published as a monograph with a leading publisher (The Cyprus Issue: the four freedoms in a (member-) state of siege) (Hart Publishing 2011). At the moment he is finalising his second monograph. (Territorial Pluralism in Europe: Territorial Pluralism in Europe: Vertical separation of powers in the EU and its Member States (Oxford, Hart Publishing, forthcoming in 2016)). His current research focuses on the constitutional accommodation of ethno-territorial conflicts in Europe.

ABSTRACT: THE PARADOX OF TERRITORIAL AUTONOMY: HOW SUBNATIONAL REPRESENTATION LEADS TO SECESSIONIST PREFERENCES

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The quest for peace, democracy and political stability has led a number of divided societies in Europe to opt for arrangements that entail segmental autonomy in order to accommodate ethnic diversity, avoid secession or even civil war. Although there are various institutional devices through which this idea can be implemented, in practice, one of its typical manifestations involves the devolution of legislative competences to the regional level. This process is in turn accompanied by the establishment of subnational representative institutions: governments, parliaments and elections. Although, such decentralization of political authority aims at accommodating the centrifugal tendencies existing in a given plurinational State, it may also have long-term unintended consequences. By focusing on Spain, the paper examines how subnational elections strengthen subnational identity, disseminate views in favour of further decentralization and may potentially cultivate secessionist preferences.

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ABSTRACT: THE CONSTITUTIONAL "BIG BANG" IN TIMOR-LESTE

1. Timor-Leste inaugurated the first constitutional order of the XXI century with the restoration of the independence, which had been unilaterally declared in 28.11.1975, in 20.05.2002. The Timorese people fought to exercise the right to self-determination for 24 years after the invasion of Indonesia at the end of the Portuguese colonial rule in 1975.

2. An emerging constitutional order always has to deal with the consequences of state succession, which in Timor-Leste was decisive in matters of succession of legal orders, particularly regarding the subsidiary legal system to fill in the gaps of the nascent Timorese legal order and the succession in matters of international obligations. The new legal order of Timor-Leste has had to choose between the recognition of effects (even if only *de facto*) of and legal order based on the illegality of an armed invasion and occupation and the transition from colonial legal order long unknown to its citizens - the strict legality meets the legal stability to the citizens. The constitutional legal order of Timor-Leste also had to deal with the state succession regarding international agreements, in particular regarding the maritime borders in the oil-rich South Sea bordering Australia. The Treaty signed by the occupant was not recognised by the new State, under international law and is clearly established in the Constitution. Today this matter is still discussed regarding the definition of private property of the land, considering the conflicting property titles from the Portuguese colonial rule, the Indonesian occupant authorities and the independent Timorese.

3. The constitutional legal system has also faced many challenges from an emerging political domestic democratic order. The option for a semi-presidential system of Government is both the result of crossed influences from the Portuguese-speaking countries and the result of the internal struggles of power. In 2006, a President, elected with 80% of the popular vote but unsatisfied with the lack of executive power, forced the dismissal of the Government only to establish a political party and run the legislative election of the following year. Despite being the second most voted party, the parliamentary alliances established allowed for his nomination as PM and a Government that has lasted since, winning the elections of 2012.
The independence of the judiciary is a daily challenge, particularly, since the Government revoked the working visas

of international judges that supported the establishment of the judicial system. Also the weight the traditional system of dispute settlement and all of the customary law question the Constitutional legal order, namely the formal system of the courts.

4. Other internal crises have questioned the constitutional legal order established in 2002, particularly the cooperation between the military and the political forces. After the independence, the guerrilla force that had led the fight for national liberation was converted into a defensive force, mostly composed of the veteran fighters. A bloody struggle between police and military forces in 2006 permanently challenged the constitutional division of work between National Defence (article 147.º) and Internal Security (article 146.º). In particular, in 2008, an attempted coup, with the shooting of them President Ramos-Horta (the Nobel Peace Prize Laureate of 1996), led to the declaration of the State of Siege and later State of Emergency in parts of the territory, with a military-police cooperation that tested the constitutional provisions on the limitations of Fundamental Rights in cases of constitutional exception (article 25.º).

5. The conditions have been "extreme" for the emergence of the Constitution in Timor-Leste. The emerging constitutional order has faced a social and political context with traditions, values and worldviews very different from those for which it was created and in which it traditionally lives. The Constitutional "Big-Bang" in Timor-Leste has created perfect conditions for the study of an emerging legal order in "extreme conditions".

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ABSTRACT: POLITICAL EMERGENCIES AS CHALLENGES TO THE IMPARTIALITY OF PUBLIC LAW
(ON CONSTITUENT POWER AND GOVERNMENT BY CONSENT)

The hard cases of emergency are not isolated episodes. Rather, they spring out of deep political conflicts. Their resolution is the measure of endurance of democratic Constitutions, which are tested on two grounds: the ability of the state to take the necessary measures, and of the political system to deliberate and resolve the political conflicts according to the rules of the game. Government by consent depends, therefore, on the collective capacity of political societies for practical reason and prudence. Constitutional politics are very much Hobbesian in nature, operating on a rule of reciprocal impartiality, which guides the rivals to a democratic venue for the peaceful resolution of their disputes. Consequently, government by consent is inherently in tension with two influential, but pernicious, doctrines: Carl Schmitt's decisionism over emergencies, and the excessive voluntarism of constituent power. Greece's rich constitutional experience with political emergencies offers an excellent case study of these problems.

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ABSTRACT: PUBLIC HEALTH EMERGENCIES AND CONSTITUTIONALISM: BETWEEN THE INTERNATIONAL AND THE NATIONAL

Recent public health emergencies like the 2009-2010 H1N1 influenza pandemic, the 2014-2016 West
African Ebola crisis, or the 2016 Zika epidemic, have put several constitutional frameworks to the test.
Each of these public health emergencies varied in magnitude, and, consequently, the legal mechanisms employed were also different. They have ranged from a reaffirmation of ordinary, 'Business as Usual' measures to full-blown states of exception entailing derogations of human rights.
An overview of these recent events can illustrate how constitutionalism has a role to play in such scenarios, namely to guide national governments in their responses within a frame of established legal limits, aimed at preventing

excesses or power-grabbing. Though empirically these limitations may not have always been complied with, at the very least constitutional limits allow us to identify when an arrogation of powers, or the adoption of certain human rights-restrictive measures, are not justified from a legal perspective.

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