

The Hebrew University of Jerusalem

Syllabus

Introduction to Transitional Justice - 62103

Last update 18-09-2023

HU Credits: 2

Degree/Cycle: 2nd degree (Master)

Responsible Department: Law

Academic year: 0

Semester: 1st Semester

Teaching Languages: English

Campus: Mt. Scopus

Course/Module Coordinator: Dr. Limor Yehuda

Coordinator Email: Limor.Yehuda@mail.huji.ac.il

Coordinator Office Hours: by appointment

Teaching Staff:

Dr. Limor Yehuda

Course/Module description:

This course introduces the field of Transitional Justice (TJ). TJ is an interdisciplinary field of practice and study focused on socio-legal processes that accompany situations of regime change following large-scale human rights abuses. It is defined by the United Nations as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.” TJ’s processes and mechanisms include criminal prosecutions, truth commissions, reparations, constitutional and institutional reform, as well as vetting procedures, amnesties, apologies, practices of commemoration and more. TJ’s processes and mechanism are aimed at assisting states and societies devastated by conflict or emerging from repressive rule to (re-)establish the rule of law and come to terms with their past in a context marked by broken institutions, insecurity, and a divided population. The course will introduce basic terms, central theoretical accounts, key historical cases and contemporary critiques that characterize the development of the field and its debates.

Course/Module aims:

- *Obtaining knowledge of key definitions, concepts and theories of the field of TJ*
- *Familiarity with key historical cases of TJ mechanisms and processes*
- *Understanding the historical role of TJ mechanisms and processes*
- *Ability to critically evaluate the strengths and limitations of the existing concepts, practices and knowledge, and their applicability to different situations.*

Learning outcomes - On successful completion of this module, students should be able to:

- *To know key definitions, concepts and theories in the field of TJ*
- *Become familiar with key cases of TJ processes in diverse places around the world*
- *To understand how TJ’s practices relate to human rights and other international norms*
- *To understand how TJ’s practices evolved and changed the expectations and experience of political transitions*
- *To understand and critically assess TJ policies and processes and their applicability in different situations.*

Attendance requirements(%):

100

*Teaching arrangement and method of instruction: lectures
small group discussions
research project
students presentations
writing and posting on a virtual wall*

- *Videos that illustrate processes around the world*
- *Class practice with written texts*
- *Discussions that bridge theory and practice*
- *Case studies*
- *International guests*

Course/Module Content:

- 1. Basic definitions and concepts*
- 2. TJ history/ies and conceptual foundations*
- 3. Trials*
- 4. Truth commissions*
- 5. Amnesties, vetting / lustration*
- 6. Victims, reparations and restitution*
- 7. Constitutional and institutional reform*
- 8. Recognition, commemoration, apologies*
- 9. Goals: peace, democracy, reconciliation*
- 10. Challenges and critique*

Required Reading:

Classes and required readings:

Class 1 – 16 October 2023

Topic: What is Transitional Justice: basic definitions and concepts

- 1. “Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice” (2010), available at:
https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf (last accessed 21.7.2022).*

- 2. UN Security Council and General Assembly resolutions on “sustaining peace”, April 2016.*

- 3. International Center for Transitional Justice, “What is Transitional Justice?”
<https://www.ictj.org/what-transitional-justice>*

Class 2 – 23 October 2023

Topic: TJ’s histories

- 4. Ruti G. Teitel, “Transitional Justice Genealogy” 16 (2003) Harvard Human Rights*

Journal 69-94.

Class 3 – 30 October 2023

Topic: Trials

5. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), ch. 3, Trials.

6. Naomi Roht-Arriaza (2013), "Introduction: The Role of International Criminal Justice in Transitional Justice", *International Journal of Transitional Justice* 7(3):383-392.

Class 4 – 6 November 2023 and Class 5 – 13 November 2023

Topic: Truth commissions

7. Film viewing: *Long Night's Journey into Day: South Africa's Search for Truth and Reconciliation*, Deborah Hoffman and Frances Reid, Snagfilms, 2000.

8. Agata Fijalkowski, Truth and reconciliation commissions, in Simić, Olivera, ed. *An introduction to transitional justice*. Routledge, 2016.

Class 6 – 20 November 2023

Topic: Amnesties, vetting / lustration

9. McEvoy, K., & Mallinder, L. (2012). "Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy". *Journal of Law and Society*, 39(3):410-440.

Class 7 – 27 November 2023

Topic: Reparations and restitution

10. García-Godos, Jemima, "Reparations", in Simić, Olivera, ed. *An introduction to transitional justice*. Routledge, 2016. Ch. 9, pp. 177-199.

Class 8 – 4 December 2023

Topic: Constitutional, legal, and institutional reform

11. *The Good Friday (Belfast) Agreement* (April 1998).

12. *Sejdić & Finci v. Bosnia & Herzegovina* (22 December 2009) ECtHR Application Nos. 27996/06, 34836/06.

Class 9 – 11 December 2023

Topics: Recognition, commemoration, apologies & Goals of TJ

13. Andrieu, Kora. "'Sorry for the Genocide': How Public Apologies Can Help Promote National Reconciliation." *Millennium* 38.1 (2009): 3-23.

14. Listen to: Fanie Du Toit - Guest Lecture JCRS Part 1, 8 Dec. 2020, available at: <https://www.youtube.com/watch?v&eq;fe9-NETIhtk> (last accessed 21.7.2022).

Class 10 – 18 December 2023

Students' presentations

TBD according to students' presentations topics

Class 11 – 1 January 2024

Students' presentations

TBD according to students' presentations topics

Class 12 – 8 January 2024

Students' presentations

TBD according to students' presentations topics

Class 13 – 15 January 2024

Topic: Concluding discussion

15. Gready, Paul, and Simon Robins. *"Transitional Justice and Theories of Change:*

Towards evaluation as understanding." *International Journal of Transitional Justice* 14.2 (2020): 280-299.

Additional Reading Material:

Additional resources:

What is Transitional Justice: basic definitions and concepts

1. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), ch. 1, Introduction & ch. 2, Vengeance and Forgiveness.

2. Shaw, Rosalind, Lars Waldorf, and Pierre Hazan, eds. *Localizing transitional justice: Interventions and priorities after mass violence*. Stanford University Press, 2010.

TJ's histories and conceptual foundations

3. Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice" 31 (2009) *Human Rights Quarterly*, pp. 321-67.

4. Teitel, Ruti G. *Globalizing transitional justice*. Oxford University Press, 2015. Introduction (pp. XI-XXII)

5. Zunino, Marcos. *Justice framed: a genealogy of transitional justice* (Cambridge University Press, 2019), Introduction, pp. 1-18.

TJ's conceptual foundations

6. De Greiff, Pablo. "Theorizing transitional justice." *NOMOS: Am. Soc'y Pol. Legal Phil.* 51 (2012): 31.

7. Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge University Press, 2017), introduction.

8. Vasuki Nesiah, "Theories of Transitional Justice: Cashing in the Blue Chips" in *The Oxford Handbook of the Theory of International Law*, ed. Anne Orford and Florian Hoffmann (Oxford University Press, 2016), pp. 779-96.

Trials

9. Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9 (1998), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (last accessed 21.7.2022).

10. United Nations Human Rights Council, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence, Pablo de Greiff. UN Doc. A/HRC/21/46 (2012), available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf (last accessed 21.7.2022).

11. Okafor, Obiora Chinedu, and Uchechukwu Ngwaba. "The International Criminal Court as a 'transitional justice' mechanism in Africa: Some critical reflections." *International Journal of Transitional Justice* 9.1 (2015): 90-108.

12. Milanovic, Marko. "The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem." *American Journal of International Law*, 110(2), April 2016, 233-259.

13. Ron Synovitz, Ajla Obradovic, "On Srebrenica Massacre Road, School Won't Teach Of Tragedy", August 31, 2019.

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14. Mendeloff, David. "Trauma and vengeance: Assessing the psychological and emotional effects of post-conflict justice." *Human Rights Quarterly* (2009): 592-623.
Truth commissions
15. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), ch. 4, Truth commissions
16. Hayner, Priscilla B. *Unspeakable Truths 2e: Transitional Justice and the Challenge of Truth Commissions* (Routledge, 2010), Introduction and Chapters 1& 2, pp. 1 - 26; Chapter 14, pp. 195 - 209.
Argentina
17. Film: *Las Madres: The Mothers of Plaza De Mayo*, 1985.
18. Emilio Crenzel, *Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice*, *International Journal of Transitional Justice*, Volume 2, Issue 2, July 2008, pp. 173-191.
19. National Commission on the Disappearance of Persons (Argentina), *Nunca Más: Report of the National Commission on the Disappearance of Persons* (1986), available at: http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_001.htm (last accessed 21.7.2022).
20. Bilsky, Leora. "Transitional Justice as a Modern Oedipus: The Emergence of a Right to Truth." *Critical Analysis of Law* 2.2 (2015).
South Africa
21. Claire Moon, "Narrating Political Reconciliation: Truth and Reconciliation in South Africa" 15 (2006) *Social and Legal Studies* 257-75.
22. Mahmood Mamdani, "Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)" 32 (2002) *Diacritics* 33-59.
23. Dugard, John. "Reconciliation and Justice: The South African Experience." *Transnat'l L. & Contemp. Probs.* 8 (1998): 277.
24. Asmal, Kadar. "Truth, reconciliation and justice: The South African experience in perspective." *The Modern Law Review* 63.1 (2000): 1-24.
25. Chapman, Audrey R. "Truth commissions and intergroup forgiveness: The case of the South African Truth and Reconciliation Commission." *Peace and Conflict* 13.1 (2007): 51-69.
26. Cole, Catherine M. "Performance, transitional justice, and the law: South Africa's Truth and Reconciliation Commission." *Theatre Journal* (2007): 167-187.
27. Rieff, David. *In praise of forgetting: Historical memory and its ironies*. Yale University Press, 2016, ch. 8, *Against Remembrance*.
Sierra Leone
28. Shaw, Rosalind. "Memory frictions: Localizing the truth and reconciliation commission in Sierra Leone." *The International Journal of Transitional Justice* 1.2 (2007): 183-207.
29. Millar, Gearoid, *Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice*, 2011
30. Millar, Gearoid, *Assessing local experiences of truth-telling in Sierra Leone: Getting to 'why' through a qualitative case study analysis*, 2010
Amnesties, vetting / lustration
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31. The Belfast Guidelines on Amnesty and Accountability: https://peacemaker.un.org/sites/peacemaker.un.org/files/BelfastGuidelines_TJI2014.pdf

32. Film: *The Lives of Others* (2005)

33. Nedelsky, Nadya. "Divergent responses to a common past: Transitional justice in the Czech Republic and Slovakia." *Theory and Society* 33.1 (2004): 65-115.

34. Stan, Lavinia. "Lustration and vetting." In Simić, Olivera, ed. *An introduction to transitional justice*. Routledge, 2016, ch. 7, pp. 137-156.

Victims, reparations, and restitution

35. UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> (last accessed 21.7.2022).

36. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), ch. 5, "Reparations".

37. García-Godos, Jemima (2008). "Victim reparations in transitional justice—what is at stake and why." *Nordic Journal of Human Rights* 26(2):111-130.

38. Adrian Vermeule, "Reparations as Rough Justice." *NOMOS: Am. Soc'y Pol. Legal Phil.* 51 (2012): 151.

39. Williams, Melissa S., Rosemary Nagy, and Jon Elster, eds. *Transitional justice*. (New York University Press, 2012), pp. 151–65.

40. O'Donnell, Thérèse. "The restitution of Holocaust looted art and transitional justice: the perfect storm or the raft of the Medusa?" *European Journal of International Law* 22.1 (2011): 49-80.

41. Garcia-Godos, Jemima. "Addressing land restitution in transitional justice." *Nordic Journal of Human Rights* 28.2 (2011): 122-142.

Constitutional, legal, and institutional reform

42. Ellison, Graham. "A blueprint for democratic policing anywhere in the world? Police reform, political transition, and conflict resolution in Northern Ireland." *Police quarterly* 10.3 (2007): 243-269.

43. Christopher McCrudden, "Equality and the Good Friday Agreement: Fifteen Years On", *UK Const. L. Blog* (29th March 2013) (available at <http://ukconstitutionallaw.org>)

44. Catherine Turner, "Transitional Constitutionalism and the Case of the Arab Spring", *International & Comparative Law Quarterly*, 64 (2015), 267-91.

45. Yehuda, Limor. "Collective Equality: Theoretical Foundations for the Law of Peace." *Oxford Journal of Legal Studies* (2022).

46. Yehuda, Limor. *Collective Equality: Human Rights and Democracy in Ethno-national Conflicts*. Cambridge University Press, 2023.

Recognition, commemoration, apologies

47. Howard-Hassmann, R. (2013). "Official Apologies", *Transitional Justice Review*, 1(1) pp. 31-53.

48. Buckley-Zistel, Susanne, and Annika Björkdahl. "Memorials and transitional justice." In Simić, Olivera, ed. *An introduction to transitional justice*. Routledge, 2016, ch. 12, pp. 249-268.

Goals: Peace, Democracy and Reconciliation

49. Leebaw, Brownwyn Anne. "The irreconcilable goals of transitional justice." *Hum. Rts. Q.* 30 (2008): 95.

50. Listen to: Fanie Du Toit - Guest Lecture JCRS Part 2, 8 Dec. 2020, available at: <https://www.youtube.com/watch?v&eq;fe9-NETlhtk> (last accessed 21.7.2022).

51. Du Toit, Fanie. *When Political Transitions Work: Reconciliation as Interdependence.* (Oxford University Press, 2018), ch. 8.

52. Satkunanathan, Ambika. "The Politics of Reconciliation in Transitional Justice", (2014) *International Journal of Transitional Justice*, 8(1):171-182.

53. Aiken, Nevin T. "Learning to live together: Transitional justice and intergroup reconciliation in Northern Ireland." *International Journal of Transitional Justice* 4.2 (2010): 166-188.

54. Yehuda, Limor. *Collective Equality: Human Rights and Democracy in Ethno-national Conflicts.* Cambridge University Press, 2023, pp. 214-217.

Actors

55. Skaar, Elin, and Eric Wiebelhaus-Brahm. "The drivers of transitional justice: An analytical framework for assessing the role of actors." *Nordic Journal of Human Rights* 31.2 (2013): 127-148.

56. Dudai, R. (2012). "Rescues for Humanity": Rescuers, Mass Atrocities, and Transitional Justice. *Human Rights Quarterly*, 34(1):1-38.

57. Gready, Paul, and Simon Robins. "Rethinking civil society and transitional justice: lessons from social movements and 'new' civil society." *The International Journal of Human Rights* 21.7 (2017): 956-975.

58. Backer, David. "Civil society and transitional justice: Possibilities, patterns and prospects." *Journal of Human Rights* 2.3 (2003): 297-313.

59. Arthur, Paige. "Notes from the Field: Global Indicators for Transitional Justice and Challenges in Measurement for Policy Actors." *Transitional Justice Review* 1.4 (2016): 9.

Critiques

60. Miller, Zinaida. "Effects of invisibility: In search of the 'economic' in transitional justice." *The International Journal of Transitional Justice* 2.3 (2008): 266-291.

61. Ní Aoláin, Fionnuala. "Advancing feminist positioning in the field of transitional justice." *International Journal of Transitional Justice* 6.2 (2012): 205-228.

62. El-Masri, Lambert, T., & Quinn, J. R. (2020). *Transitional Justice in Comparative Perspective: Preconditions for Success* (1st ed. 2020, p. 1 online resource (244 pages)).

63. Yehuda, Limor and Natalie Davison, *The Invisibility of Nationalism in Transitional Justice and Liberal Constitutionalism* (2022, draft paper).

TJ and the Israeli-Palestinian conflict

64. Peled, Yoav, and Nadim N. Rouhana. "Transitional justice and the right of return of the Palestinian refugees." *Theoretical Inquiries in Law* 5.2 (2004): 317-332.

65. Meyerstein, Ariel. "Transitional Justice and Post-Conflict Israel/Palestine: Assessing the Applicability of the Truth Commission Paradigm." *Case W. Res. J. Int'l L.* 38 (2006): 281.

66. Dudai, Ron. "A model for dealing with the past in the Israeli-Palestinian context." *The international journal of transitional justice* 1.2 (2007): 249-267.

67. Dudai, Ron, and Hillel Cohen. "Dealing with the past when the conflict is still

present: *Civil society truth-seeking initiatives in the Israeli-Palestinian conflict.*" *Localizing transitional justice: Interventions and priorities after mass violence* (2010): 228-52.

68. Dudai, Ron. "Does any of this matter? Transitional justice and the Israeli-Palestinian conflict." *Crime, Social Control and Human Rights*. Willan, 2013. 367-380.

69. Kapshuk, Yoav. "Transitional Justice in the Israeli-Palestinian Negotiations: What Can Be Learned From the Colombian Case?." *Journal of Peacebuilding & Development* 14.1 (2019): 73-78.

70. Bahdi, Reem, and Mudar Kassis. "Institutional Trustworthiness, Transformative Judicial Education and Transitional Justice: A Palestinian Experience." *Transitional Justice in Comparative Perspective*. Palgrave Macmillan, Cham, 2020. 185-215.

71. Kapshuk, Yoav, and Lisa Strömbom. "Israeli pre-transitional justice and the Nakba law." *Israel Law Review* 54.3 (2021): 305-323.

72. Yehuda, Limor. *Collective Equality: Human Rights and Democracy in Ethno-national Conflicts*. Cambridge University Press, 2023.

Grading Scheme:

Essay / Project / Final Assignment / Home Exam / Referat 30 %

Presentation / Poster Presentation / Lecture/ Seminar / Pro-seminar / Research proposal 20 %

Active Participation / Team Assignment 30 %

Submission assignments during the semester: Exercises / Essays / Audits / Reports / Forum / Simulation / others 20 %

Additional information:

Assessment and Grades:

The learning process in the course combines between preparatory work (reading, listening and/or viewing (i.e., films, video's)), active participation and independent research and the grade is designed to reflect these various components.

Individual learning – 50%

1. Active participation in classes – 30%.

Active participation requires and goes beyond presence in the classes. It requires active listening and speaking, an effort to engage with the lecturer's questions and respectful participation in the various discussions during the course's classes. It will include in-class individual assignments such as posting questions, reflections, comments, and photos, on a common virtual wall.

2. Short writing assignment to be submitted during the course – 20% (300 words)
A short response paper to be submitted between the 2nd-8th class.

Final project (recommended done in pairs) – 50%

3. Oral presentation in class – 20% (15 min. presentation)

4. Final paper – 30% (2,000 words)

The presentation and final paper will cover a research topic, selected from the topics of the course, approved by the course instructor.