**Reading Group on Transitions to and from Democracy**

The Minerva Center for Human Rights

TAU & HUJI

2019-2020

Conveners: Limor Yehuda and Natalie Davidson

# **Overview**

In this reading group we wish to investigate the concept of “democracy”, the required conditions for its consolidation and success and the possible reasons for its decay in the current era through engagement with two bodies of literature that have until now not been brought into conversation with one another—newly emerging scholarship on “democratic decline” and the established field of “transitional justice”.

A new phenomenon of “democratic crisis” or “democratic decline” in both young and veteran democracies has become a central issue of concern in public debate and academic research in recent years. While the public debate revolves around allegations of rising “nationalism”, “populism” and “fake news” (a “post-truth” era has been declared), scholars have identified an erosion of democracy and observed that it is effected by (ab)using democratic procedures and in particular legal and constitutional tools. Within this new body of scholarship many terms are now used to refer to the incremental degradation of democratic rule. These include “abusive constitutionalism”, “constitutional backsliding”, “authoritarian legalism”, “illiberal democracies” etc..

The field of transitional justice consists of judicial and non-judicial measures aiming to address legacies of human rights abuses in times of political transitions. It has usually focused on the role of law, human rights and truth in consolidating democracy. These three subjects also stand at the heart of analyses of and activism against democratic decline. Moreover, just as the concept of incremental transition holds a central place in transitional justice practice and scholarship it also plays (although in the opposite direction) a central role in literature on the democratic decline.

Given such parallels, this reading group will explore these two bodies of scholarship together. As multidisciplinarity is a basic feature of both bodies of research, we will be drawing from multiple disciplines, including law, political science, political philosophy, sociology, psychology and history. We aim to use critical assessments found in each to expose blind spots in the other, in order to better understand recent global developments in new and established democracies, and to come up with new insights regarding what can and should be done in general and with regard to the special challenges of Israel/Palestine.

The reading group will focus on themes proposed by participants and will build on the group’s research interests. Beyond exploration of the basic themes of “transitions” and “democracy”, other proposed themes are: the roles of law, constitutionalism, and the human rights discourse in establishing and maintaining democracy and social justice; the place of the economy and economic actors in transitions to and away from democracy; the political and social justice paradigms which underly transitional justice and democratic decline scholarships and their adequacy to the social reality in the 21st century.

The group, composed mostly of faculty and young researchers, will meet three times each term. Since the topic of the reading group is closely connected to the theme chosen for the annual international conference on Transitional Justice planned for the end of June 2020 at TAU and HUJI, the meetings during the first term will be dedicated to close reading of texts, and the second term will focus on discussions of related research of reading group members, including research concerning transitional justice and/or democracy in Israel/Palestine.

If you are interested in joining please email Limor Yehuda at limor.yehuda7@gmail.com and/or Natalie Davidson at davidson@tauex.tau.ac.il.

# **Themes and reading list**

## **1. Democracy and transition**

How are “democracy” and “transition” conceptualized in each body of scholarship? What are the underlying assumptions about the temporality of transitions to and from democracy, and the roles of law, constitutionalism, human rights, truth, and ethnicity/religion in the process?

*Reading:*

* Catherine Turner, 'Transitional Constitutionalism and the Case of the Arab Spring”, International & Comparative Law Quarterly, 64 (2015), 267-91.
* Aziz Huq & Tom Ginsburg, “How to Lose a Constitutional Democracy”, 65 UCLA L. Rev. 78 (2018).

*Additional Background Reading:*

* Bell, C. (2009). Transitional justice, interdisciplinarity and the state of the ‘field’ or ‘non-field’. International Journal of Transitional Justice, 3(1), 5-27.‏
* Teitel, R. G. (2015). Globalizing transitional justice: contemporary essays. Oxford University Press., Introduction.
* Ercan, S. A., & Gagnon, J. P. (2014). The crisis of democracy: which crisis? Which democracy?. Democratic Theory, 1(2), 1-10.‏
* Daly, Tom Gerald. "Democratic Decay: Conceptualising an Emerging Research Field." Hague Journal on the Rule of Law11.1 (2019): 9-36.‏

## **2. The economic dimensions of democratic transitions**

* Ganesh Sitaraman, Economic Inequality and Constitutional Democracy, in Constitutional Democracy in Crisis?  (Oxford University Press, 2018)
* Ronald Inglehart and Pippa Norris, "Trump and the populist authoritarian parties: the silent revolution in reverse." Perspectives on Politics 15.2 (2017): 443-454
* Ian Bruff, The Rise of Authoritarian Neoliberalism, Rethinking Marxism, (2014) 26:1, 113-129

*Additional Background Reading:*

Crisis of democracy

* Inglehart, R. F., & Norris, P. (2016). Trump, Brexit, and the rise of populism: Economic have-nots and cultural backlash.
* Michaela hailbronner. (2018). Beyond Legitimacy: Europe’s Crisis of Constitutional Democracy. In Graber, M. A., Levinson, S., & Tushnet, M. (Eds.). (2018). Constitutional democracy in crisis?. Oxford University Press.
* Schneiderman, D. (2018). Disabling Constitutional Capacity: Global Economic Law and Democratic Decline. In Graber, M. A., Levinson, S., & Tushnet, M. (Eds.). (2018). Constitutional democracy in crisis?. Oxford University Press.
* Rodrik, Dani. "Populism and the Economics of Globalization." Journal of International Business Policy 1.1-2 (2018): 12-33.
* Marcel Gauchet, SUR L’AVÈNEMENT DE LA DÉMOCRATIE (2018) (בצרפתית)
* Martti Koskenniemi, International Law and the Far Right: Reflections on Law and Cynicism, Annual T.M.C. Asser Lecture Series (2019) (זמין גם כהרצאה מצולמת)
* Whyte, Jessica. The morals of the market: Human rights and the rise of neoliberalism. Verso Books, 2019.
* García, H. A. (2019). Neoliberalism as a form of authoritarian constitutionalism. In Authoritarian Constitutionalism. Edward Elgar Publishing.
* Fraser, N. (2019). The Old Is Dying and the New Cannot Be Born: From Progressive Neoliberalism to Trump and Beyond. Verso Books.
* Norris, P., & Inglehart, R. (2019). Cultural backlash: Trump, Brexit, and authoritarian populism. Cambridge University Press.

Transitional justice

* Gross, A. M. (2004). The constitution, reconciliation, and transitional justice: Lessons from South Africa and Israel. Stan. J. Int'l L., 40, 47.
* Arbour, L. (2007). Economic and social justice for societies in transition. NYUJ Int'l L. & Pol., 40, 1.
* Miller, Z. (2008). Effects of invisibility: In search of the ‘economic’in transitional justice. The International Journal of Transitional Justice, 2(3), 266-291.
* Arthur, P. (2009). How transitions reshaped human rights: A conceptual history of transitional justice. Hum. Rts. Q., 31, 321.‏
* Dennis M Davis & Karl Klare (2010) Transformative Constitutionalism and the Common and Customary Law, South African Journal on Human Rights, 26:3, 403-509
* Gready, Paul, and Simon Robins. "From transitional to transformative justice: A new agenda for practice." International Journal of Transitional Justice 8.3 (2014): 339-361.
* Bilsky, L. (2017). The Holocaust, Corporations, and the Law: Unfinished Business. University of Michigan Press.

## **3. Nationalism and democratic transitions**

* ארנסט פרנקל, המדינה הדו-ערכית, תרומה לתיאוריה של הרודנות, מבוא מאת אורי גרינברג
* John Stuart Mill, Chapter 16, “On nationality, as connected with representative government”, p. 546-547.
* Wimmer, Andreas. "Shadows of Modernity." (2002). Shadows of modernity, p. 1-7
* Mouffe, Chantal. "Carl Schmitt and the paradox of liberal democracy." Canadian Journal of Law & Jurisprudence 10.1 (1997): 21-33.

*Additional Background Reading:*

* Miller, David. On nationality. Clarendon Press, 1995
* Beissinger, Mark R. "A new look at ethnicity and democratization." Journal of Democracy 19.3 (2008): 85-97.
* Banting, K., & Kymlicka, W. (Eds.). (2017). The strains of commitment: The political sources of solidarity in diverse societies. Oxford University Press.‏
* Miller, D. (2017). Solidarity and its sources. The strains of commitment: The political sources of solidarity in diverse societies, 61-79.‏
* Fukuyama, F. (2018). Why National Identity Matters. Journal of Democracy, 29(4), 5-15.‏
* Tamir, Y. (2019). Why nationalism. Princeton University Press.‏

## **4. Democratic decline and corruption**

* Samuel Issacharoff, The Corruption of Popular Sovereignty (draft paper)

## **5. The role of constitutional courts**

Guest lecturer: Francesco Biagi

* Biagi, Francesco. European Constitutional Courts in Transition to Democracy. Cambridge University Press, 2020, chapter 5
* Rainer Grote, Constitutional Review in Arab Countries: Dawn of a new era?, in Grote, Rainer, and Tilmann J. Röder. Constitutionalism, Human rights, and Islam after the Arab spring. Oxford University Press, 2016.
* Bugaric, Bojan. "Can Law Protect Democracy? Legal Institutions as “Speed Bumps”." Hague Journal on the Rule of Law 11.2-3 (2019): 447-450.

## **6. Social-psychological dimensions**

* Krastev, Ivan, and Stephen Holmes. "Explaining Eastern Europe: imitation and its discontents." Journal of democracy 29.3 (2018): 117-128.
* Brudholm, Thomas. Resentment's virtue: Jean Améry and the refusal to forgive. Temple University Press, 2008, excerpts attached
* Jasper, James M. "Emotions and social movements: Twenty years of theory and research." Annual review of sociology 37 (2011): 285-303.

*Additional Background Reading:*

* Krastev, Ivan, and Stephen Holmes. The Light that Failed: A Reckoning