

INTRODUCTION

This issue of the *Israel Law Review* focuses on transitional justice mechanisms and features, among others, articles presented in two major international conferences on transitional justice held by the Hebrew University's Minerva Center for Human Rights in 2011 and 2012.

The first cluster of articles addresses issues of transitional justice and democracy. Ruth Amir's 'Transitional Justice Accountability and Memorialisation: The Yemeni Children Affair and the Indian Residential Schools' compares two cases of transitional justice processes as test cases of the transitional justice institutions and processes in democratic regimes. Despite certain similarities – such as the aggressive assimilation policies directed at children in an attempt to wipe out the particular cultural influences of the children's family and community, and the isolation of children from the influences of their ethnic group in order to be resocialised into dominant culture – the outcomes of the transitional justice processes differ, as a result of the differences in the intent to redress, the types of institution and the processes implemented.

Ulad Belavusau's 'Hate Speech and Constitutional Democracy in Eastern Europe: Transitional and Militant? (Czech Republic, Hungary and Poland)' draws on the constitutional appraisal of free speech and non-discrimination in Central and Eastern Europe (from 1990 to 2012). It explores two models ('American' and 'European') of legal engagement with hate speech, targeting this recurring constitutional theme to trace the militant in the transitional discourse on the freedom of expression in three selected countries of Central and Eastern Europe: the Czech Republic, Hungary and Poland. The author concludes that the discourse on transitional democracy in this post-communist constitutionalism has been substantially constructed as a form of militant democracy, despite some visible influence of the American free speech narrative.

Erin Daly, in 'Transitional Justice in Iraq: Learning the Hard Way', argues that initiatives aimed at changing the structure of Iraqi society since the fall of Saddam Hussein – including but not limited to constitutionalism, frequent elections and the development of an independent judiciary – are more likely to contribute to the consolidation of democracy in the long term than are purely symbolic efforts. Although democracy has not fully taken root and violence continues to plague many parts of the nation on a regular basis, these structural developments have the greatest potential to transform society into a true democracy under the rule of law.

The second set of articles explores the role of transitional justice during ongoing conflict. In 'Investigations into Military Operations: What Impact on Transitional Justice?', Laurie R Blank explores the impact on transitional justice efforts of external investigations into military operations. The article addresses the relationship between investigations and the truth-telling aspect of transitional justice mechanisms, as well as the impact of the use of law and legal analysis on the legitimacy of the investigations and on potential transitional justice mechanisms.

‘Persistent or Eroding Impunity? The Divergent Effects of Legal Challenges to Amnesty Laws for Past Human Rights Violations’ – by Francesca Lessa, Tricia D Olsen, Leigh A Payne, Gabriel Pereira and Andrew G Reiter – highlights the persistence of amnesty laws despite efforts to curb them. The article examines amnesties for human rights violations committed by state agents that were enacted in transitional countries from 1970 to 2011, and the challenges that endeavoured to undermine the power of these laws. It finds significant variation in the outcome of challenges, with some leading to the removal or weakening of amnesty laws, and others validating them. Using emblematic country studies by way of illustration, the article explains the variation by reference to four actors: civil society, international governmental and non-governmental agencies, domestic executives and judicial leaders; as well as time.

In another exploration of amnesties, Andrew G Reiter, in ‘Examining the Use of Amnesties and Pardons as a Response to Internal Armed Conflict’, analyses the use and effectiveness of amnesties used in civil wars worldwide since 1970. The article first creates a typology of the use of amnesty during the civil war context. It then qualitatively examines the impact on peace of each type of amnesty. The article finds that most amnesties granted in the context of civil war have no demonstrable impact on peace and security. Yet amnesties granted as carrots to entice the surrender of armed actors occasionally succeed in bringing about the demobilisation of individual combatants, or even of entire armed groups. More importantly, amnesties extended as part of a peace process are effective in initiating negotiations, securing agreements and building the foundation for long-lasting peace.

Finally, Shai Stern examines another transitional mechanism process, conducted during conflict, under a democratic regime. ‘Taking Community Seriously: Lessons from the Israeli Disengagement Plan’ challenges the prevailing eminent domain formula. According to this formula, regardless of the circumstances of the expropriation, compensation for the property owner is determined by reference to the market value of the property. By exploring the case of Israel’s 2005 disengagement plan, as a result of which 21 residential communities were uprooted by expropriation, this article argues that loss of communality should be taken into account in expropriations that uproot entire communities, in a manner that considers the values that the society wishes to endorse and the inner meaning of these values.

We believe that this cross-cutting range of contributions offers a fine overview of important areas of research in the field of transitional justice. They demonstrate the wide reach of transitional justice issues, and underscore the increased relevance of this growing academic discipline to the study of human rights, public law and international law. We warmly call on authors conducting research on transitional justice to consider the *Israel Law Review* as an interested and interesting outlet for their work.

Sir Nigel Rodley and Professor Yuval Shany

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