

# 'CLOSING THE BOOKS'<sup>1</sup>: THE GENEALOGY OF TRANSITIONAL JUSTICE (TJ)

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## Abstract

Drawing from secondary literature and three years of fieldwork in various post-conflict societies in Africa, Asia, Europe, and Latin America, this article revisits the conceptual development of a term 'Transitional Justice (TJ)' in order to illuminate the political construction and deconstruction of TJ in international politics. Major patterns and themes are identified within the international thought and practice of TJ to unravel its potentials and pitfalls, with the aim to emphasise the difficulty in 'defining justice' in war-torn societies. TJ mechanisms are explored which indicate more culpability for perpetrators and compensation for victims in the midst of authoritarianism and civil wars across the globe. There is an immediate pragmatic need to move beyond rigid and thick legal positivist traditions and going beyond romanticising 'liberal' values that TJ represent in arriving at an epistemological understanding about TJ. As such, and drawing from poststructuralist intellectual strands in International Relations, this article illuminates the unstable binary distinction between the idea that both law and politics represents in 'defining' TJ.

**Keywords:** transitional justice, post-conflict societies, transitional politics, critical approach, liberal cosmopolitanism, Michel Foucault, Friedrich Nietzsche

## Introduction

The past twenty years have seen the emergence and proliferation of Transitional Justice (TJ) mechanisms, which promised culpability for perpetrators and compensation for victims in the wake of authoritarianism and civil wars across the globe (Boraine 2006; Teitel 2000). TJ efforts may include (but are not limited to), criminal tribunals, truth commissions, lustrations, institutional reforms, public memorials, reparations, and amnesties.<sup>3</sup> In this article, I will first explore the three genealogical developments of TJ in international thought and practice. Understanding these three development is crucial as part of the international determinism that has endured since the end of the Cold War in order to address the issue of post-conflict justice or TJ.<sup>4</sup> Second, I will discuss major potentials and pitfalls provided by the development of TJ, with the aim to highlight the difficulty in defining justice in the midst of conflict and post-conflict societies; by explaining the increasing both legal and political concerns of the international society in building peace through law, of what is popularly depicted by a renowned international

political historians, John Elster (2004), as 'closing the book' or 'coming to terms with the past injustice'. In the conclusion, I highlight the idea of bringing politics back<sup>5</sup> in order to suggest that we should move beyond a rigid legal positivist tradition or liberal values that TJ represents in arriving at our epistemological understanding about TJ in highly diverse world politics.<sup>6</sup> The aim is to highlight the danger in ignoring the elements of power relations in TJ theory and practice.<sup>7</sup>

### Three Genealogical Developments in Transitional Justice (TJ)

At the outset, it is reasonable for readers to question the expediency of pursuing academic exercises that supposedly highlight the developments in Transitional Justice (TJ). Rather than dismissing it as mere academic contemplation removed from everyday practical concerns, I believe that the analytical discussion proposed here helps to improve policymaker's understanding on the major ideas and historical events that shape the intellectual traditions and foundations of TJ and its polygonal features which are crucial to understanding the intensifications of international institutions such as the United Nations (UN) and other regional bodies with its rudimentary features in legal human rights and humanitarian machineries, including the European Union (EU), Africa Union (AU), Associations of Southeast Asian Nations (ASEAN) and so forth.<sup>8</sup> In return, the proliferation of these institutions and its human rights machineries consolidated the TJ mechanism in war-torn societies since the 1990s (Drumbl 2007:15-36).

While numerous scholars<sup>9</sup> have debated the modern origins of the term, a few scholars like Ruti Teitel (2000), John Elster (2006), Priscilla Hayner (2011), and Baxter (2009) blend their interdisciplinary research, expertise, and their legal activism for the last twenty years in attempts to highlight the significance of TJ as an academic discipline as well as an international practice. Legal historians and political commentators like William Schabas (2006; 2009; 2014) and Katryn Sikkink (2001; 2011) describe the writings of Teitel on TJ for example, as 'very significant' because her works have shaped the contemporary international understanding of the term 'transitional justice'.

In this article, I borrow the term 'genealogy' used by Ruti Teitel (2005; 2004; 2008) in order to explain the modern intellectual tapestry that conditioned the inception of TJ since the end of World War Two, especially with the birth of the UN system, in particular, the International Court of Justice (ICJ) and the later formed International Criminal Court (ICC).<sup>10</sup> The ICC is primarily responsible for enacting the legal and political enforcement of the TJ. Teitel borrowed the term 'genealogy' from Friedrich Nietzsche's *Beyond Good and Evil* (2003) in order to illuminate the intellectual development of the field. TJ was largely conditioned by major international historical events that took place since 1945. Arguably, such international historical developments conditioned the understanding of TJ, both as an academic discipline, as well as an international crusade to secure greater international political awareness on criminal justice at the global level through international law and institutions, especially in the recent decades for addressing atrocities or appalling crimes emanated from war-torn societies.<sup>11</sup>

Accordingly, there are three major focal points of TJ which Teitel (2000) coined the 'three genealogical developments' that shaped the modern understanding and practice of TJ in more recent post-conflict reconstruction policies under the banner of the UN. It can be divided into three separate (but interrelated) periods. The first period is that which covers the post-World War Two years, which prioritised retributive justice and punishment for the crimes of genocide and the worst form of human rights violations, as well as systematic violence committed by political

leaders through the state system (Teitel 2000:70). The genesis of this can be traced back to the war crime tribunals in Nuremberg and Tokyo respectively, where, for the first time, responsibility for large-scale or mass atrocities was attributed to political perpetrators (individual accountability) rather than sovereign states (collective accountability) (Teitel 2008:1-4). The beginning of the second development was marked by what Samuel Huntington<sup>12</sup> termed the 'third' or 'late wave' of democratisation at the end of the 1980s, following the demise of the Soviet Union and of authoritarian rules in various parts of Latin America (Teitel 2000:15-67). A third and more contemporary period of TJ was officially marked by the International Criminal Court (ICC) through the ratification and enforcement of the Rome Statute between 1998 and 2003. As the world's first permanent court, the Preamble of the Rome Statute clearly state that the overall mandates of the ICC lay in its unique legal and political functions of investigating and prosecuting crimes of genocide, crimes against humanity, crimes of aggression (war crimes), and crimes emanated from international terrorism (McCarthy 2009: 250-68). Additionally, and apart from the ICC, other types of interim international tribunals have operated in former Yugoslavia, Rwanda, and Sierra Leone that reveals the increased demand for international legal norms to be integrated into peacebuilding missions. The 2004 UN Report on *the Rules of Law and Transitional Justice in Conflict and Post-Conflict Societies* has arguably 'neologized' the international liberal peacebuilding agenda in terms of not only addressing the political complexity of building peace after conflict, but also the legal complexity of war-torn societies by building peace through law or TJ mechanisms (see United Nations 2004).

In debating the modern origins of TJ, scholars like Teitel and Priscilla Hayner concluded three major approaches currently subject to critical discussions among the UN policymakers (Teitel 2008; Hayner 2011; Olsen et al. 2010a). Firstly, the 'maximalist' approach emphasises the necessity of criminal prosecution, tribunals, and punishment through the philosophical function of retributive justice as a form of deterrence (the basic function of criminal justice) (Olsen et al. 2010a:13-45). Secondly, the 'minimalist' approach is concerned with the political environment of post-conflict justice, and calls for the incorporation of amnesty as a political compromise in replacing the basic function of retributive justice with an alternative (restorative) form of justice, in which non-legal mechanisms like the truth commission are more relevant and effective in dealing with mass atrocities (Olsen et al. 2010b:804-5). Finally, the 'pragmatic' approach calls for a balance between and combination of both retributive and restorative justice (Lessa et al. 2014:85-6). The current precedents of TJ operations in Sierra Leone, Kenya, Libya, Rwanda, Timor Leste, and Cambodia reflect the third approach.

In debating the effectiveness of administration of justice since the UN peacekeeping missions in former Yugoslavia (1992), Cambodia (1992), Rwanda (1994), Timor Leste (1999), and Sierra Leone (2000), arguably, the strong demand for accountability instead of amnesty have triggered the birth of the ICC, and marked the return to predominant themes of the retributive justice measures adopted in the first genealogical period (Buckley-Zistel et al. 2014). Commentators like Lutz Ellen and Kathryn Sikkink have coined the phrase 'justice cascade' to refer to instances where advocates of the third genealogical period, inaugurated by the inception of the ICC, harbour normative legal criticisms of the weakness of previous measures identified and widely adopted in the other two genealogical periods (Teitel 2000; 645-659). These include the inability of the post-conflict regime to cope with intra-state conflict (mostly civil wars) and poor judicial capacity of the post-conflict regimes, and an increase in peacebuilding missions in Africa and Asia.

In addition to the above genealogical periods highlighted by Teitel, recent research by Lauren Balasco (2013:119) also mapped TJ in three more accurate functions and periods of

development in world politics since 1945. In the first period of post-1945, although the idea of TJ had existed before the 1945 war crime tribunal and the 1980 truth commission waves, the concept only entered common usage in the language of policy recommendation following the growing international concern over the systematic violation of human rights and the unstable democratic processes of developing countries. Hence, this period saw a normative exploration of TJ as part of the currency of international relations, especially in the subject of human rights and comparative politics of developing countries (Balasco 2013: 200)

The *second wave* was concerned with the growth of TJ enterprises and their functions as some of the TJ options and mechanisms were afforded to African countries (Balasco 2013:201). Borrowing from Latin America's experiments, South Africa's Truth and Reconciliation Commission (TRC) opted for amnesty and restorative justice.<sup>13</sup> By the middle of the 1990s, the growing popularity of using criminal and legal languages of prosecution and sanction led to the installation of hybrid tribunals, and later the tribunal in Rwanda, Balkan, and Sierra Leone. Simultaneously, there was a call for hybridity and more comprehensive approaches, which lead to a growth in comparative studies evaluating the nature and viability of justice mechanisms in war-torn societies, especially the broader impact of such mechanisms on development, democratisation, and peacebuilding (Mutua 2015:1-9). As a consequence of such developments in theory and practice of TJ, this introduced more difficult research themes on the scope of transition, the types of mechanisms employed, cultural resonance, clashes between values and interests, the relevance of the case study being examined and the measures that could plausibly be used for international intervention, and other purposes that are not necessarily related to TJ (Merwe et al. 2009:1-12). The ambiguity of its goals, the external factors that limit the effectiveness of TJ mechanisms, and the broader form of justice that it encompasses (ranging from retributive justice and prosecution-based justice to restorative and amnesty-based justice) have challenged the relevance of the field of TJ (Garcia-Godos and Sriram 2013:12-23). For instance, the debate about the most suitable mechanism with which to deal with past atrocities as part of the liberal peacebuilding agenda has ventured into dangerous terrain, in which TJ is recognised as a permissible form of justice despite being indeterminate in forming a realistic strategy for post-conflict reconstruction (Brown 2013:238-40).

In sum, the recent growing research in critical peace studies and, conflict, security, and development have all explicitly and implicitly shaped the polygonal or multifaceted features of present TJ practices (see also Vandeginste and Sriram 2011). Finally, the current wave of TJ follows the relatively recent trend of incorporating methodological concerns about data collection, single or large case studies and the merits of quantitative or qualitative approaches to the field. Despite the growth in the literature of TJ, evidence to this date has failed to produce a single standard of international measurement, owing to the old debate concerning merits of positivist versus critical approaches at the epistemological and methodological levels (Olsen et al. 2010a:78-84).

As a result of the above discussion on the genealogical developments of TJ, the field faces a disciplinary crisis in academic debate and a paradox of success in actual international practice, "The less effective its mechanisms seems to be in their efforts to build democracy and peace, the more we are demanding from them" (Balasco 2013:198). In theory, the critical challenges it has received are concerning the boundary that it shares with older disciplines (such as history, comparative politics, international relations, democracy, human rights, peacebuilding, and international development). TJ has come under pressure from policymakers who demand that it expand its scope and the increased claims of scholars of the aforementioned disciplines that it must identify itself with a particular field (Balasco 2013:199). Additionally, as I have argued<sup>14</sup>, in

practice, the genealogical developments of the field provide a unique view of justice during the regime transition in post-conflict societies. However, the danger of viewing TJ in this way lies in the agents' tendency to manipulate human rights (see also Azman 2014a). Once the situation of justice considerations in post-conflict societies can be characterised as being beyond straight forward understanding of justice, the deep, normative commitment to the language of human rights, democracy, and peace reduces TJ to a strategic toolkit or an instrument that is up for grabs for any powerful actor or peace-spoiler that wishes to wage war, prosecute enemies, or manipulate victims. In a nutshell, three major developments in TJ have provided more significant potentials and pitfalls in the way TJ has been understood in international thought and practice.

### **Defining 'Justice' in the Midst of Conflict and Post-Conflict Societies**

In reviewing the literature on TJ, it can be argued that the two major philosophical strands of justice (retribution and restoration) can be connected to the two popular TJ mechanisms widely adopted by various post-conflict societies in signifying a transition from war to immediate peace, namely the war crime tribunal and the truth commission. While the actual function and operation of these two major TJ mechanisms are highly diverse and contested, understanding the essential ideas of retributive and restorative justice that underpin these two mechanisms have provided a very comprehensive, yet expansive definition of justice, especially in the midst of conflict and post-conflict societies (Sriram 2007 and 2010; Ross and Sriram 2012). However, in general, they share a deeper affinity with political liberalism (See Wall 2015; Arenhövel 2008). The UN and other experts in the field of TJ, have long, albeit implicitly, defined the end goal of TJ operations as being the cultivation of some form of liberal democracy (Mindzie 2010:128).

Additional to the liberal peace tenets, the broadly understood 'positive peace' provided by Johan Galtung (1969) and extended by the former UN Secretary-General Boutros Ghali's *Agenda for Peace* (1992), employs a wide range of political and legal mechanisms in its attempts to nurture democracy and to prevent the recurrence of violence. Such a hybrid approach to sustaining peace and democracy has been proven not to be the most immediate means of securing a transition to a credible democracy, as exemplified by the recent protracted transitions of Tunisia, Egypt, Libya, and the Ivory Coast (Fisher and Stewart 2014; Volpi 2013). It is within this paradox of success that TJ mechanisms are designed specifically with the aim of guiding the transition of these nations from post-conflict societies into functional democracies.

While the three genealogical developments of TJ highlighted earlier illuminates the actual administration of justice mechanisms, constructing a broader and more normative definition of the objectives of TJ remains problematic due to the continued disagreements among the international policymakers and commentators as to whether justice should be viewed as a means or as an end (Fourlas 2015:115). The idea of having TJ institutions is strongly connected to the normative assumptions that the post-conflict society needs to 'close the book' or confront the past in order to move forward. As such, direct amnesties hinder criminal prosecutions and providing absolute pardon for the appalling crimes are no longer politically and legally acceptable (Hansen 2014:105-6). As a result of these liberal cosmopolitan persuasions concerning justice, I have observed during my fieldwork in Kenya, Zimbabwe, Liberia, South Africa, Brazil, Canada, Japan, and former Yugoslavia that researchers' and policymakers' conception of TJ as the idea of coming to terms with past crimes provides them with political and legal opportunities to handle transition and address violence in a way that is based on the relatively similar analogy of peculiarity from cases like the Nuremberg trial or Rwandan genocide, which were believed to transcend the domain of domestic human affairs (Azman 2014a:364-7). The glorification of a 'before-and-after narrative of change' – a particularity of the TJ experiments in all those countries

- confirms the international teleological view of justice (both in the midst of conflict and post-conflict societies), in that it is generally believed that after each of the political crises that have occurred in those countries, they will necessarily find itself in a better situation, especially if those crises are addressed through TJ mechanisms (see Arendt 1969). This also suggests that such a teleological approach to justice in world politics can be loosely connected to John Rawl's *Theory of Justice* (1971:510) where he states that:

What justifies as a conception of justice is not its being true to an order antecedent and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realisations that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine to us.

However, few have normatively and analytically investigated whether the Rawlsian assumptions of justice (shared by advocates of the liberal traditions in politics and international relations) can be easily accepted to promote the liberal cosmopolitan teleology of TJ when such mechanisms are conditional institutions constructed to achieve 'normal' political transition or progress. As such, Kora Andrieu (2014:85) confirmed that while 'liberal' policymakers and commentators have cited John Rawl's writings - which has controversially inspired Francis Fukuyama's perverse views of liberal democracy as marking the *End Of History* (Fukuyama 1993) - in order to convince others that liberalism is a dominant institutional ideology of the UN (especially the ICC), few have made empirical investigations to the contrary, such as the fact that the Libyan National Transitional Council opted for Islamic law in the post-Gadhafi constitution. The Muslim Brotherhood's victory in Egypt's first election and the renewed post-colonial sentiments in rejection of the ICC jurisdictions in various parts of African post-conflict societies have become a powerful indicator that challenge the normative argument concerning the idea of post-Cold War justice based on liberal political institutions in international thought and practice of TJ (Lang 2010; Wiener et al. 2012; Lang and Williams 2005). Hence, the process of defining justice by observing various TJ experiments across the globe and the international predisposition to normalising the rules of law through ICC have confirmed Anthony Lang Jr.'s (2008) observation of international justice and punishment in post-Cold War politics as not only negating the Rawlsian principles of political liberalism, but also the current predominant punitive nature of international justice that hinders the construction of a just and peaceful order (though often receiving their justification through liberal norms) since they do not exist within a just political order nor are they based on the UN Charter. This leads to ironic results when those major Western powers concerted their brute efforts (through sanctions and military interventions) in preaching against rampant corruptions among the Global South states while exhibiting aggressive unjust behaviours themselves. The idea of 'increased judicialisation' in world politics is marked by selective prosecutions and inconsistent stances of Western partners in cherry-picking the atrocities while they remain silent over the colonial genocides and crimes of aggression in Afghanistan and Iraq (Cameron 2012; Dedring 2008; Lowe et al. 2008).

In such instances, rather than romanticising the legal positivist features or the liberal values that TJ represents, perhaps Christian Bell's innovative approach in defining TJ may lead to a greater recognition of politics in the debate surrounding the definition of TJ, thus providing a more fruitful understanding of its ambiguous roles (Bell 2008). Bell argues that as a field of theory, TJ was informed by the competition between various normative ideas; for instance, the debate between peace and justice, international and national politics, retribution and restoration

justice, and law and politic (Bell 2000:15). Simultaneously, however, as a form of policy of intervention, TJ enforces a dominant narrative of liberal peace. It offers a westernised notion of justice and a one-size-fits-all package for justice and reconciliation-seeking policy for most crises that have occurred in non-western societies (Bell 2008:48) Even in countries that are geographically located within the European domain (such as the conflicts in Balkan and Northern Ireland), the TJ prescriptions issued by external actors (especially by the UN) have not been easily accepted by the locals (Bell 2009:8-9). Having emerged in the 1990s, by 2001 the field had become more distinct. A liberal cosmopolitan approach began to be adopted, which provided a normative language for human rights, human security and humanitarian intervention with which to pursue justice and to apply transitional politics (Bell 2009:9-10). However, the normative justification for human rights and humanitarian laws are not impartial, and does not address the substantive issue of which type of justice (retributive or restorative) should be implemented, and who to decide on its execution.

As such, "TJ does not constitute a coherent field but rather a label of cloak that aims to rationalise a set of diverse bargains in relation to the past as an integrated endeavour" (Crook and Short 2014:299-315). Bell (2009) identified these diverse bargains as belonging to three distinct projects Firstly, continuing the struggle against impunity, wherein TJ is understood as being a legal measure for addressing violations of human rights. Secondly, introducing a set of conflict resolution techniques that involve the formulation of justice measures as a means of pressuring conflicting parties (peace spoilers) to return to the negotiation table. Finally, creating a standardised instrument for intervention under the multi-layered cloaks of international state building, human security and responsibility to protect. Although these diverse bargains are distinct from each other, they appear together as one package, as transitional justice discourse is created with the help of international assistance in dealing with regime changes. By romanticising the nature of transitional politics, the new post-conflict regime that emerges during the transitional phase perceives these diverse bargains or projects as tools (in the form of TJ) with which to elicit recognition of their legitimacy and gain assistance (in the form of liberal peacebuilding) from the international society (Sriram 2007, Sriram 2006, Richmond 2005). By adopting a particular TJ mechanism, the new ruling elite that emerges after conflict invokes the authority of transitional norms as a way of communicating to the international society that they intend to uphold human rights laws and other international principles (Bell et al. 2004:315). Through the adoption of TJ mechanisms, the post-conflict elite reinvents itself as a new regime entity, and convinces the international society that it is committed to upholding liberal democratic values, political reforms, and good governance (Azman 2014a and 2014b). As such, the entire operations of TJ through interventions in the aftermath of political crisis turns the legalistic nature of TJ into a discussion about power relations (Thomson and Nagy 2011:28-29).

## **Conclusion: 'Bringing Back the Politics' in TJ**

The heavy reliance upon international support among post-conflict elites during the process of implementing TJ reveals the features of top-down power relations which effects the long-term functions of TJ (Thomson 2011; Clark 2010; Clark 2011). As such, TJ should be viewed as a process of negotiation, and an attempt to legitimise new forms of power relations and political order (Azman 2014b: 36). TJ is not an objective process, and is never legally executed in response to past atrocities committed during the violent conflict episodes (see Azman 2014a). Rather, it is a means in negotiating a complex political scenario, which cannot be summarised vaguely as a moral conflict between good and evil. To set it alongside Friedrich Nietzsche's maxim of 'beyond good and evil', TJ should not be approached as a dogmatic scheme laden with values and morals, as it

is envisaged by liberal cosmopolitanism. In *On the Genealogy of Morals* (2008), Nietzsche criticises the personification of societal morals based on the monolithic allegories of good for the strong and bad for weak (see also Magnus and Higgins 1999). To romanticise the rule of law in the liberal sense is to neglect the essential characters of power and to depoliticise TJ is to repeat international peacebuilding's mistake of negotiating transitional space through the empty vessel of the state (Richmond 2011:15). The ethnographical research of Susan Thomson (2013) in Rwanda, Claire Moon (2006) in South Africa, Tim Kelsall (2009) in Sierra Leone, Tim Allen (2006) in Uganda, and Oliver Richmond (2007) in Cambodia have provided a more specific location in visualising power relations or configurations in TJ placements in post-conflict societies. Drawing from Michel Foucault (1984, 1977, 1980 and 1997a), they all illuminated power configuration that conditioned the TJ operations and activities. Any attempt to exclude power relations from TJ results in the implementation of justice institutions alien to these post-conflict societies. These scholars confirmed TJ mechanisms as being products of hierarchical power relations, enacting legitimacy, and structured by the existing patronage system as methods of historical exploitations used by those in power.

For that, the liberal cosmopolitan projections of TJ fail to acknowledge the position of TJ within a constellation of power relations. TJ is not only concerned with addressing past abuses of power, but is also part of the political process of enacting a new power relation through a new state crafted from the international peacebuilding project. Of particular relevance here is Foucault's commentary on Carl von Clausewitz's famous argument, "power is war, a war continued by other means" (1997a:61). TJ is the personification of this phrase, in that its mechanisms must recognise and, "uphold the disequilibrium of forces that [were] displayed in war" (Foucault 1997b:14). The significance of interpreting TJ as a form of power relations or configurations is crucial in bringing back the politics in defining TJ. In this respect and as I have suggested elsewhere (Azman 2014a, 2014b), the pursuit of TJ through various recent liberal peacebuilding projects reveal the complexity of restoring security, law, and order after war is heavily conditioned by politics. Building peace through TJ divulges the fascinating intricacy between law and politics. The research by Hazel Cameron (2012:75-8) in post-genocide Rwanda concludes that an understanding of politics as the act of manipulation by the international and local elite is not immediately obvious to the casual observer. Such a tacit understanding of power relations results in creation of the circumstances in which the ability to perform the immediate task of human rights through TJ institutions is highly influenced by the geostrategic and economic interest of the West and the newly created post-conflict ruling elite (Vinjamuri 2012; Subotic 2012; Brown and Sriram 2012; Vandeginste and Sriram 2011). This should serve as a reminder that pursuing justice in the midst of conflict and post-conflict societies is more about politics rather than a simple legal exercise, suggesting any future research on TJ must justify a departure for the existing theoretical and heavily legal analysis in favour of a more political and contextual reading of TJ that considers the national peculiarity of the TJ case study.



## Endnotes

<sup>1</sup> In this article, I borrowed the phrase 'closing the book' from Elster, J. 2004. *Closing the Book: Transitional Justice in Comparative History*. Cambridge: Cambridge University Press. This is a pragmatic phrase used by the majority of commentators in this field to highlight the main objectives on TJ policy as basically to coming to terms with past violation of human rights as the country moved forward after the regime changes. See Sriram, C.L., Garcia-Godos, J., Herman, J. & Martin-Otega, O (eds). 2013. *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants*. London: Routledge.

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<sup>3</sup> For a useful discussion on the overview of TJ, see Kritz, N. 1996. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington D.C: US Institute of Peace Press.

<sup>4</sup> The term 'TJ' instead of 'post-conflict justice' has been widely used since 1990s and by 2000, it emerged as a distinct discipline, especially in describing various legal and non-legal mechanisms that have been employed during the peacebuilding project in various post-conflict societies. See Aukerman, M.J. 2002. Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice. *Harvard Human Rights Journal*, 39.

<sup>5</sup> The limitations of legal measures in addressing past atrocities are owing simply to their legal characteristics, especially in terms of trial. Despite the strong features of retributive justice that have appeared since the trials of Nuremberg, the preference of prosecution may not be as effective as it was originally hoped to be. Lessons learned from war crimes tribunals in Rwanda and Sierra Leone have led to a call for a political contextualization of TJ in response to past atrocities. See Drumbl, M.A. 2007. *Atrocity, Punishment, and International Law*. Cambridge: Cambridge University Press; Futamura, M. 2008. *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy*. London: Routledge.

<sup>6</sup> Since its interaction with other fields like peacebuilding, democratization and development, TJ has moved increasingly towards an examination of how various societies come to terms with the past wrongdoings. Consequently, TJ has found its way into hybrid and legal pluralist domains that cannot be reduced based on a legal template imported from the Western experiences. See Findlay, M., & Henham, R. 2010. *Beyond Punishment in International Criminal Justice*. New York: Palgrave Macmillan; Weindling, P.J. 2004. *Nazi Medicine and the Nuremberg Trials: From Medical Warcrimes to Informed Consent*. New York: Palgrave Macmillan.

<sup>7</sup> In using the concept of power relations within the broader literature concerning this concept in International Relations, scholars have built up a matrix specialized research on power. This research has shown that investigations of power relations in infra-politics are more suitably conducted by adopting Foucault's and Nietzsche's approach to power. Accordingly, the political analysis of TJ in this paper is conducted through critical scholarship that inspired by both Foucault and Nietzsche respectively. Indeed such epistemological traditions are recognized by poststructuralist scholarship itself, in its attempt to explore the question of power relation and the location of agency in the structure of the social process. See Barnett, M. & Duvall, R. 2005. Power in International Politics. *International Organization*, 59(1); Macmillan, A. 2010. Foucault's History of the Will to Knowledge and the Critique of the Juridical Form of Truth. *Journal of Power*, 3(3).

<sup>8</sup> While the mushroomed proliferations of human rights machineries at various regional bodies took place within its own regional peculiarities, the developments have helped a speedy formalization or institutionalization of some forms of legal and non-legal mechanisms when addressing disputes among members states within those regional bodies. Scholars used the term 'justice cascade' to describe a likely situation where those regional arrangements served as the bedrock for the foundation in international criminal cooperation and before the establishment of the ICC in 2003. See Sikink, K. 2011. *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. New York: W.W. Norton and Company.

<sup>9</sup> For a useful discussion on debating the modern origins of TJ, see Osiel, M.J. 1997. *Mass Atrocity, Collective Memory and the Law*. New Jersey: Transaction Publishers; Minow, M. 1998. *Between Vengeance*

and Forgiveness: Facing History after Genocide and Mass Violence. Boston: Beacon Press; Falk, R. 1999. The Pursuit of International Justice: Present Dilemmas and an Imagined Future. *Journal of International Affairs*, 52(2); Colson, A.J. 2000. The Logic of Peace and the Logic of Justice. *International Relations*, 15(1); Linton, S. 2001. Cambodia, East Timor and Sierra Leone: Experiments in International Justice. *Criminal Law Forum*, 12.

<sup>10</sup> See also McLaughlin, D. (2013). *International Criminal Tribunals: An Overview*. New York: Leitner Center for International Law and Justice; Weingartner, J. J. (2011). *Americans, Germans, and War Crimes Justice: Law, Memory, and "The Good War"*, New York, Praeger; Mendes, E. P. (2010). *Peace and Justice at the International Criminal Court: A Court of Last Resort*. Cheltenham: Edward Elgar; Hagan, J. (2010). *Who are the Criminals? The Politics of Crime Policy from the Age of Roosevelt to the Age of Reagan*. Princeton: Princeton University Press.

<sup>11</sup> For a detailed discussion on the international attempts to institutionalise criminal justice since 1945, see Nollkaemper, A. & Wilt, H. (eds). 2009. *System Criminality in International Law*. Cambridge: Cambridge University Press; Lutz, E.L., & Reiger, C. (eds). 2009. *Prosecuting Heads of State*. Cambridge: Cambridge University Press; Clarke, K.M. (2009). *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge University Press; Schiff, B.N. 2008. *Building the International Criminal Court*. Cambridge: Cambridge University Press.

<sup>12</sup> Like many other disciplines that shared its intellectual foundation from various fields and sub-fields in Politics, History, Philosophy, Sociology and Law, Huntington's *Third Wave Democracy* is widely used in the literature of TJ in order to highlight 'changes', 'regime change', and 'democratic transition'. See Huntington, S.P. 1991. Democracy's Third Wave. *Journal of Democracy*, 2(2); Robins, S. 2015. Mapping a Future for Transitional Justice by Learning from Its Past. *International Journal of Transitional Justice*, 9.

<sup>13</sup> Various TJ experiments since early 1990s that began in South Africa and then mushroomed in other African countries can be regarded as providing an important landmark in the intellectual development of TJ. Experiences of securing justice and addressing impunity from violent conflict in various civil wars in Africa had shaped various major debates that signified a paradigm shift from legal to more political debate of TJ in Africa, as well as in broad war-torn societies across Asia and Eastern Europe. See Haye, E. 2008. *War Crimes in Internal Armed Conflicts*. Cambridge: Cambridge University Press; Pouligny, B., Chesterman, S., & Schnabel, A. (eds). 2007. *After Mass Crime: Rebuilding States and Communities*. Tokyo: United Nations University Press; May, L. 2007. *War Crimes and Just War*. Cambridge: Cambridge University Press.

<sup>14</sup> See Azman, D. 2014b. Transitional Justice and Peacebuilding in Africa: Nexus or Nemesis? *Malaysian Journal of International Relations*, 2.

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