

**Historical Harm, Modern Mending:  
Conceptualising Transitional Justice as Social  
Control in Post-War Japan**

Rhiannon Griffiths

PhD

University of York  
York Law School

September 2023

## ABSTRACT

In the summer of 2019, South Korea experienced a surge of anti-Japanese sentiment resulting in a substantial decline in sales for major Japanese industries, including a staggering 97% drop in Japanese beer sales, as well as losses for cosmetics companies, car manufacturers, airlines, and fashion brands. The tensions extended beyond Japan and South Korea, impacting relations with China, the US, the UK, and other nations. Beneath the surface of these diplomatic issues lies a profound 'mnemonic battle' over historical war crimes perpetrated by the Japanese military during the Asia-Pacific War (1937-1945).

An apparent success of transitional justice – approaches to addressing mass violence and authoritarianism – Japan transformed from colonising state to a stable and peaceful democracy. Yet, the legacy of the war continues to impact its domestic and foreign policy. This thesis demonstrates how theories of social control can inform our understanding of transitional justice, proposing a new conceptual framework of *transitional control*. This typology and its three constituent strands – disciplinary control, organisational control, and narrative control – are applied to the context of Japan to reframe the analysis of transitional justice. Three case studies are used to test its application: the Tokyo Trial, Article 9 of the Constitution of Japan, and the Women's Active Museum. By employing the transitional control typology, the study illustrates how various transitional justice mechanisms can pursue aims beyond their conventional roles and be enacted by a wide range of actors.

I, Rhiannon Griffiths, declare that this thesis is a presentation of original work, and I am the sole author. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as references.

## ACKNOWLEDGEMENTS

In the autumn of 2017, Professor Ioana Cismas made one of her few questionable decisions – to supervise my PhD. Six years on, she has guided me through an LLM, an MA, and this thesis. Ioana has challenged me and supported me, answering my increasingly emotional late-night emails. I cannot adequately express my gratitude. Professor Paul Gready was unceremoniously dragged in too, but he has graciously given me feedback, opportunities, and inspiration.

A special thank you must also go to Dr Mariko Fukasaka who is not only the greatest Japanese teacher I could have ever asked for, but also a mentor and friend. Mark and Debbie Pegram have shown me what true strength is, helping me remember Sam through tears and through laughter. The staff at the Centre for Applied Human Rights and the York Law School have patiently endured my antics over the years, indulging my rambles and saving me coffee.

I am so grateful to those who have given up their time to participate in interviews across my LLM, MA, and PhD. It would not have been possible without them.

Henry Raby has been my rock, poet, and cheerleader. May he never have to hear me explain transitional justice ever again. My thanks must also go to all those who have, literally and figuratively, picked me up from the floor and dusted me off: Katrina, Holly, Jess, Alice, Atoosa, April, Emily, Ben, Carl, Pete, Cali, Dan, Pier ... and so many more people who await my reply on Whatsapp.

To my friends, far-flung across the ethernet, who have kept me company until the early hours, shared their portals, carried me through Dhuum, and rolled the dice on our adventures. Terius, Lady Q, Toon, Whisp, Ivarrs, Juno, Samara (sometimes), Cyrussium, Alistar, Sil, Mushu, Erza, Lily, Faith, and Marina, to name but a few who have taught me much.

And finally, a huge thank you to the Wilko-Alber-Griff clan, a hodgepodge of a family if ever there was one. Steven, Dewi, and Gwesyn – I love you as only a big sister can (deeply but reluctantly). Kevin, you rose to the challenge with sourdough dusted with patience and love. Nanny, your care-packages and put-downs have always been my joy. Grandad, I may cry most the way, but there is no one I'd rather climb mountains with (except maybe Uncle Henry). And Mum. I am so proud of you, fighting against the odds with naught but a tea-towel and a sieve. Thank you for believing in me, even when I had given up.

## Contents

Table of Cases .....	i
Table of Treaties, Legislation, and Agreements .....	ii
A Note on the Use of Japanese.....	iv
Chapter 1 – Introduction: Historical Harm .....	1
1.1 Historical Harm in East Asia .....	1
1.2 Context and Aims of the Thesis.....	2
1.3 Thesis Research Questions .....	7
1.4 Research Design.....	8
1.4.1 Multiple Case Study Design.....	9
1.4.2 Semi-structured Interviews .....	14
1.4.3 Challenges and Ethical Considerations .....	16
1.4 Thesis Structure .....	21
Part I Making Connections: the Asia-Pacific War, Transitional Justice, and Social Control.....	24
Chapter 2: A Thematic Overview of the Asia-Pacific War .....	25
2.1 Introduction .....	25
2.2 Japan’s Relationship with the West.....	26
2.2.1 Japan’s Relationship with the West: 1868-1937 .....	26
2.2.2 Japan’s Relationship with the West: 1937-1945.....	30
2.2.3 Japan’s Relationship with the West: 1945-1952 .....	35
2.3 Japanese Imperialism .....	39
2.3.1 Japanese Imperialism: 1868-1937.....	39
2.3.2 Japanese Imperialism: 1937-1945.....	41
2.3.3 Japanese Imperialism: 1945-1952.....	44
2.4 Japanese Collective Memory .....	46
2.4.1 Japanese Collective Memory: 1868-1937.....	46
2.4.2 Japanese Collective Memory: 1937 -1945.....	48
2.4.3 Japanese Collective Memory: 1945-1952.....	50
2.5 Conclusion .....	52
Chapter 3 – From War to Peace: Transitional Justice in post-war Japan .....	54
3.1 Introduction .....	54
3.2 An Overview of Transitional Justice .....	54
3.3 Transitional Justice in post-war Japan .....	63
3.3.1 Prosecuting War Criminals in the Asia-Pacific .....	64

3.3.2	Reforming Post-War Japan.....	66
3.3.3.	Providing Reparations for the Asia-Pacific War .....	70
3.4	Conclusion .....	74
Chapter 4	– A Typology of Transitional Control .....	76
4.1	Introduction .....	76
4.2	The Theory and Practice of Social Control.....	77
4.2.1	The Role of the Deviant.....	81
4.2.2	Human Rights and Social Control.....	85
4.3	A Typology of Transitional Justice as Social Control .....	88
4.3.1	Disciplinary Control.....	89
4.3.2	Organisational Control .....	97
4.3.3	Narrative Control .....	101
4.4	Conclusion .....	107
Part II	Transitional Control in Post-War Japan.....	110
Chapter 5	– The Tokyo Trial: Defining and Disciplining Deviance .....	111
5.1	Introduction .....	111
5.2	Legal Basis for the Tokyo Trial .....	112
5.3	The Tokyo Trial and Disciplinary Control .....	117
5.4	The Tokyo Trial and Organisational Control .....	127
5.5	The Tokyo Trial and Narrative Control.....	129
5.6	Conclusion .....	143
Chapter 6	– Article 9: Renouncing Deviance in Japan’s “Peace Constitution” .....	144
6.1	Introduction .....	144
6.2	Crafting the Constitution.....	146
6.3	Article 9 as Organisational Control.....	151
6.4	Article 9 as Disciplinary Control.....	164
6.5	Article 9 as Narrative Control .....	172
6.6	Conclusion .....	183
Chapter 7	– The Women’s Active Museum: Challenging the Denial of Deviance ..	185
7.1	Introduction .....	185
7.2	Contextualising the Museum.....	187
7.3	WAM as Disciplinary Control.....	189
7.4	WAM as Organisational Control .....	196
7.5	WAM as Narrative Control.....	200
7.6	Conclusion .....	208

Chapter 8 – Conclusion: Modern Mending .....	209
8.1 Modern Mending in East Asia.....	209
8.2 Developing the Transitional Control Typology .....	210
8.3 Applying Transitional Control to Post-war Japan.....	211
8.3.1 Disciplinary Control.....	212
8.3.2 Organisational Control.....	213
8.3.3 Narrative Control .....	214
8.4 Limitations and Avenues for Further Research .....	216
Bibliography .....	221
Appendix A – Documents Acquired from the Women’s Active Museum on War and Peace.....	257
Appendix B – Information Sheets .....	259
Appendix C – Consent Forms .....	263

## Table of Cases

*United States of America et al. v. Araki Sadao et al.* International Military Tribunal for the Far East, judgment of 12 November 1948, in John Pritchard and Sonia M. Zaide (eds.), *The Tokyo War Crimes Trial*, Vol. 22.

*United States of America et al. v. Göring et al.* International Military Tribunal, judgment of 1 October 1946, in *The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany*, Part 22 (22nd August 1946 to 1st October 1946)

### **International Military Tribunal for the Far East Separate Opinions**

*Concurring Opinion by the Honorable Mr. Justice Delfin Jaranilla, Member from the Republic of the Philippines*, 1 November 1948

*Opinion of Mr. Justice Röling, Member for the Netherlands*, 12 November 1948

*The International Military Tribunal for the Far East: Dissident Judgment of Justice Pal* (Kokusho - Kankokai, Inc. 1999)

## Table of Treaties, Legislation, and Agreements

'Amendment to article 8 of the Rome Statute of the International Criminal Court' (10 June 2010) 2969 UNTS 195

Cairo Communiqué, December 1, 1943

*Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis*, 8 August 1945

Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907

*International Military Tribunal for the Far East, Special proclamation by the Supreme commander for the Allied Powers at Tokyo January 19, 1946; charter dated January 19, 1946; amended charter dated April 26, 1946. Tribunal established January 19, 1946*, TIAS 1589 4 Bevens 20

*Instrument of Surrender, Signed at Tokyo, September 2, 1945*, EAS 493, ante, vol.3, p. 1251

No. 1832. Treaty of Peace with Japan. Signed at San Francisco, On 8 September 1951, UNTS 1952

No. 8471 Japan and Republic of Korea, Treaty on Basic Relations. Signed at Tokyo, on 22 June 1965, UNTS 1966 44

Proclamation Defining Terms for Japanese Surrender, Issued at Potsdam, July 26, 1945, The Ministry of Foreign Affairs "Nihon Gaiko Nenpyo Narabini Shuyo Bunsho: 1940-1945" vol. 2, 1966

Soviet-Anglo-American Communiqué, At Moscow Conference, December 27, 1945

The General Treaty for Renunciation of War as an Instrument of National Policy. Signed at Paris, August 27, 1928

Treaty of Mutual Cooperation and Security Between the United States and Japan.  
San Francisco, 8 September 1951

Treaty of Peace with Germany (Treaty of Versailles), signed at Versailles June 28,  
1919; protocol signed by Germany at Paris January 10, 1920

*United Nations Charter* (entered into force 24 October 1945) 1 UNTS XVI

UN General Assembly, 'Rome Statute of the International Criminal Court' (1998) UN  
Doc A/CONF.183/9

### **Germany**

The Basic Law of the Federal Republic of Germany (FRG), signed in Bonn on 23  
May 1949

### **Japan**

Legislation for Peace and Security 2015

The Constitution of the Empire of Japan 1889

The Constitution of Japan 1946

## A Note on the Use of Japanese

This thesis uses the Revised Hepburn system when romanising Japanese words by indicating long vowels with a macron (e.g. Shinzō). Words which are often used in English, such as “Tokyo”, are not transliterated. Japanese names are written family name first unless the individual commonly writes it otherwise.

*Kanji* and/or *kana* are used only when it provides a necessary and more nuanced understanding of the Japanese text.

Finally, unless noted otherwise, all translations between Japanese and English have been completed by the author. Professionals have been consulted where appropriate, however any errors are the author’s alone.

## Chapter 1 – Introduction: Historical Harm

### 1.1 Historical Harm in East Asia

At the tail-end of summer in 2019, anger filled the streets of South Korea with signs and stickers declaring “No Japan!”, while Japanese beer giants saw their sales plummet by as much as 97%, and cosmetics companies, car manufacturers, airlines, and fashion brands faced dizzying losses.<sup>1</sup> The boycott was a response to Japanese export restrictions, themselves widely believed to be retaliatory against a 2018 South Korean court ruling.<sup>2</sup> Tensions have similarly impacted relations with China,<sup>3</sup> the US,<sup>4</sup> the UK,<sup>5</sup> and others. What might seem like a trade spat between economic powerhouses or differing political regimes is really a ‘mnemonic battle’<sup>6</sup>, that is an entrenched dispute over the understandings of historic human rights violations, including forced labour and sexual violence perpetrated by the Japanese military during the Asia-Pacific War (1937-1945).<sup>7</sup> This recent episode in the battle over memory shows that the Asia-Pacific War has left deep scars across the wider region,

---

<sup>1</sup> Justin McCurry, ‘South Korean Boycott of Japanese Goods Hits Beer and Carmakers’ *The Guardian* (Tokyo, 4 September 2019) <<https://www.theguardian.com/world/2019/sep/04/south-korea-boycott-japanese-goods-beer-car-sales>> accessed 6 September 2019; Yeunjae Lee and Myoung-Gi Chon, ‘“Don’t Go, Don’t Buy”: Understanding the Motivations of the Anti-Japan Boycott Movement in South Korea During an International Conflict’ (2022) 15 *Negotiation and Conflict Management Research* 6.

<sup>2</sup> Lee and Chon (n 1) 10; AP Staff, ‘South Koreans Shun Japanese Products and Tours as Boycott Gathers Momentum’ (*The Japan Times*, 5 August 2019) <<https://www.japantimes.co.jp/news/2019/08/05/business/economy-business/south-koreans-shun-japanese-products-tours-boycott-gathers-momentum/#.XXd6T2Z7IPY>> accessed 7 August 2019.

<sup>3</sup> Ryan Woo, ‘Japan’s Return to Path of Militarisation “dangerous” - China Defence Ministry’ *Reuters* (2023) <<https://www.reuters.com/world/asia-pacific/japans-return-path-militarisation-dangerous-china-defence-ministry-2023-03-16/>> accessed 18 March 2023.

<sup>4</sup> Rangsook Yoon, ‘Erecting the “Comfort Women” Memorials: From Seoul to San Francisco’ (2018) 53 *De Arte* 70.

<sup>5</sup> Alice Chambers, ‘British Military Rugby Team Sparks Controversy with “naive” Photo at World War II Shrine in Japan: Report’ (*ABC News*, 21 September 2019) <<https://abcnews.go.com/International/british-rugby-team-apologizes-visiting-controversial-military-shrine/story?id=65748197>> accessed 10 October 2019.

<sup>6</sup> See, Duygu Gül Kaya, ‘Memory and Citizenship in Diaspora: Remembering the Armenian Genocide in Canada’ (2018) 22 *Citizenship Studies* 401, 424.

<sup>7</sup> The exact years of the war vary between scholars, and so does its designation. This thesis uses the occupation of Manchuria by Japan in 1937 as its starting point and the end of World War II in 1945 as its end. Referring to the war as the Asia-Pacific War, as opposed to the Pacific War, emphasises that the conflict began prior to the outbreak of World War II and that Asia was as much the battleground as the Pacific. See, for example, Saburo Ienaga, *The Pacific War, 1931 - 1945: A Critical Perspective on Japan’s Role in World War II* (Pantheon Books 1978); Keyao Pan, ‘Networking for War Criminal Amnesty: The Establishment of Japan’s War Convicted Benefit Society’ (2020) 18 *The Asia-Pacific Journal: Japan Focus*.

which trigger socio-political tension ranging from riots to diplomatic fissures, affecting trade, security, and even the Olympic games.<sup>8</sup> It is in this volatile landscape that the thesis explores the legacy of war and post-conflict initiatives in Japan.

This introductory chapter begins by outlining the theoretical framework that contextualises the research questions, which are then presented in section 1.3. The following section discusses research design, methodology, and the challenges faced in conducting the project. The chapter concludes with an overview of the thesis and its key arguments.

## 1.2 Context and Aims of the Thesis

This section introduces the key gaps in literature that the thesis seeks to address and the conceptual and empirical contributions it aims to make. A thorough review of relevant literature on the Asia-Pacific War and social control theory is presented in Chapters 3 and 4 respectively. Here, the thesis first outlines social control theory as a promising, yet underutilised framework for analysing transitional justice. Secondly, it justifies the choice of Japan as an important mature site for the study of transitional justice due to its historical significance, the potentiality to assess the impact of measures across time, and in light of recent topical policy shifts.

Transitional justice – the methods and approaches to addressing conflict and authoritarianism<sup>9</sup> – is one of the primary frameworks through which this research is conducted. Transitional justice is a framework through which societies may be able to

---

<sup>8</sup> Jonathan Watts, 'Violence Flares as the Chinese Rage at Japan' *The Guardian* (17 April 2005) <[www.theguardian.com/world/2005/apr/17/the\\_PRC.japan](http://www.theguardian.com/world/2005/apr/17/the_PRC.japan)> accessed 20 November 2019; Agence France-Press, 'Japan Recalls Envoy after South Korea Puts "Comfort Woman" Statue Outside Consulate' *The Guardian* (6 January 2017) <[www.theguardian.com/world/2017/jan/06/japan-says-recalling-envoy-to-skorea-over-new-comfort-woman-statue](http://www.theguardian.com/world/2017/jan/06/japan-says-recalling-envoy-to-skorea-over-new-comfort-woman-statue)> accessed 10 February 2018; Matt Alt, 'Tokyo's Olympics Have Become the Anger Games' *The New Yorker* (22 July 2021) <<https://www.newyorker.com/sports/sporting-scene/tokyos-olympics-have-become-the-anger-games>> accessed 2 June 2023.

<sup>9</sup> UN '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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 11 August 2019, 2.

'come to terms with a legacy of large-scale past abuses', with its range of judicial and non-judicial mechanisms 'ensuring' accountability and reconciliation.<sup>10</sup> This claim, although not undisputed,<sup>11</sup> is reflected in the variety of work carried out by UN bodies and non-governmental organisations that propose ways of best satisfying a victim's right to remedy, promoting the rule of law, and preventing the recurrence of human rights and humanitarian law violations.<sup>12</sup> Transitional justice as a 'field' – encompassing practice and academic work – has its roots in the 1980s and 1990s, responding to the post-conflict and post-authoritarian situations in South America and Eastern Europe.<sup>13</sup> Despite its increasing professionalisation and proliferation, transitional justice has been criticised for lacking an underpinning theory and effective evaluation techniques.<sup>14</sup> Furthermore, the "tool-kit" of transitional justice has traditionally favoured legal, state-led models, often at the expense of non-governmental organisations, civil society, and victim-survivors.<sup>15</sup>

---

<sup>10</sup> Ibid.

<sup>11</sup> See for example, Lea David, 'Against Standardization of Memory' (2017) 39 Human Rights Quarterly 296; Padraig McAuliffe, 'Reflections of the Nexus between Justice and Peacebuilding' (2017) 11 Journal of Intervention and Statebuilding 245; Anna Macdonald, "'Somehow This Whole Process Became so Artificial": Exploring the Transitional Justice Implementation Gap in Uganda' (2019) 0 International Journal of Transitional Justice 1.

<sup>12</sup> A central element to this codification has been the so-called van Boven/Bassiouni Principles which set out the legal obligations and rights regarding reparations, United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (21 March 2006) UN Docs A/RES/60/147; see also, UN General Assembly, 'Human rights and transitional justice' (11 October 2012) UN Docs A/HRC/RES/21/15; and an example of NGO advocacy on the efficacy of transitional justice see, Working Group on Transitional Justice and SDG16+, 'On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations' (ICTJ 2019) <[https://www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights?utm\\_source=Unknown+List&utm\\_campaign=32e368d739-NewYorkEvent\\_2019\\_invites&utm\\_medium=email&utm\\_term=0\\_-32e368d739->](https://www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights?utm_source=Unknown+List&utm_campaign=32e368d739-NewYorkEvent_2019_invites&utm_medium=email&utm_term=0_-32e368d739->)>.

<sup>13</sup> Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"' (2009) 3 International Journal of Transitional Justice 5, 6; Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 Human Rights Quarterly 321, 321.

<sup>14</sup> For example, Kate Cronin-Furman, 'Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity' (2013) 7 International Journal of Transitional Justice 434; Ron Dudai, 'Transitional Justice as Social Control: Political Transitions, Human Rights Norms and the Reclassification of the Past' [2017] British Journal of Sociology 1; Paul Gready and Simon Robins, 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society' (2017) 21 International Journal of Human Rights 956; Roman David, 'What We Know About Transitional Justice: Survey and Experimental Evidence' (2017) 38 Political Psychology 151.

<sup>15</sup> Kieran McEvoy, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice' in Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots activism and the struggle for change* (Hart Publishing 2008) 437; Gready and Robins (n 14) 956; Simon Robins, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' [2017] Human Rights and International Legal Discourse 41.

In 2017, Ron Dudai proposed that applying the theory of social control to transitional justice may address some of challenges and criticisms faced by the field, such as the dominance of legal mechanisms.<sup>16</sup> Social control, understood as methods of creating and maintaining social order, is a core concept in sociology; yet, it remains more often associated with state authority and even oppression.<sup>17</sup> Transitional justice is very rarely thought of as having a control function, rather its aims are presented as emancipatory and transformative.<sup>18</sup> As such, there are only a few studies that consider applications of social control to transitional justice. For example, Innes and Clarke briefly make the connection between social control and truth commissions,<sup>19</sup> and Moon writes about the 'coercive potential' of reparation programmes.<sup>20</sup> In a conceptual journal article, Dudai argues that social control can contribute to the theorisation of transitional justice in a way that encompasses a range of mechanisms, thereby introducing the idea of a more promising theoretical anchor for transitional justice.<sup>21</sup> The closest thematic literature frames human rights law as social control, wherein scholars have contested the popular conception of human rights as the antithesis of control that serves to protect against intrusive government action and disproportionate punishment.<sup>22</sup> However, this too has received little attention in scholarship.<sup>23</sup>

---

<sup>16</sup> Dudai (n 14) 3.

<sup>17</sup> Such as the use of the death penalty and other threats to human rights. See, Eric Neumayer, 'Death Penalty: The Political Foundations of the Global Trend toward Abolition' (2008) 9 Human Rights Review 241; Emma Blower, Kate Donald and Smriti Upadhyay, 'The Human Rights Implications of Contemporary Patterns of Social Control' (2012) 4 Journal of Human Rights Practice 187.

<sup>18</sup> Some literature exists making the comparison, but only through limited projects that do not engage with transitional justice as a holistic paradigm. See for example, Dudai (n 14); Nerida Chazal, *The International Criminal Court and Global Social Control: International Criminal Justice in Late Modernity* (Routledge 2018); Claire Moon, 'Who'll Pay Reparations on My Soul: Compensation, Social Control and Social Suffering' (2012) 21 Social and Legal Studies 187.

<sup>19</sup> Martin Innes and Alan Clarke, 'Policing the Past: Cold Case Studies, Forensic Evidence and Retroactive Social Control' (2009) 60 British Journal of Sociology 543, 558.

<sup>20</sup> Moon (n 18) 189.

<sup>21</sup> Dudai (n 14) 3.

<sup>22</sup> Paul Johnson and Silvia Falcetta, 'Human Rights as Social Control' [2017] Normative Systems in Legal and Moral Theory 1, 1; Dudai (n 14) 5. 'Modes and Patterns of Social Control: Implications for human rights policy' project conducted in – Emma Blower, Kate Donald and Smriti Upadhyay, 'The Human Rights Implications of Contemporary Patterns of Social Control' (2012) 4 Journal of Human Rights Practice 187.

<sup>23</sup> Paul Johnson and Silvia Falcetta, 'Human Rights Law as Social Control' (2021) 18 European Journal of Criminology 603, 604.

This thesis seeks to build on these emerging strands of literature by systematically examining the theoretical connections between transitional justice and social control, building a ‘transitional control typology’, and applying this to Japan as a concrete site of transitional justice, and in reference to specific case studies. In so doing, the research aims to make a significant conceptual and empirical contribution that presents and tests an innovative typology for theorising transitional justice and enables a more effective analysis of its concrete outcomes. The thesis addresses gaps in transitional justice and social control literature by deconstructing traditional dichotomies such as formal/informal, state/non-state, and peace/justice, suggesting instead that a range of actors engage in the same control strands.

There are several advantages to investigating post-war Japan as the context for developing and testing the theoretical framework of transitional control. Although the trials at Nuremberg and Tokyo after World War II are frequently referenced as the early seeds of transitional justice, there is very little literature analysing Japan through the lens of transitional justice.<sup>24</sup> The studies that do so are almost exclusively focused on international and regional criminal tribunals, and none take a holistic approach to developments in Japan since 1945.<sup>25</sup> This is surprising considering the country’s arguable status as a transitional justice success story: Japan has renounced war, rapidly grown its economy, implemented and adhered to human rights norms, and it has long been a stable democracy. Applying transitional justice to established democracies is relatively new in the literature, as they may not be ‘ideal types of traumatized societies’ for study.<sup>26</sup> However, scholars are increasingly recognising the potential for such contexts to inform transitional justice policies, arguing that these

---

<sup>24</sup> With some notable exceptions: Urs Matthias Zachmann, ‘From Nanking to Hiroshima to Seoul: (Post-)Transitional Justice, Juridical Forms and the Construction of Wartime Memory’ (2016) 14 *Journal of Modern European History* 568; Zachary D Kaufman, ‘Transitional Justice for Tojo’s Japan: The United States Role in the Establishment of the International Military Tribunal for the Far East and Other Transitional Justice Mechanisms for Japan after World War II’ (2013) 27 *Emory International Law Review*; Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Routledge 2008).

<sup>25</sup> Since 2017, I have consistently searched for literature using a combination of relevant terminology such as: transitional justice, Japan, post-war Japan justice, Japan in transition, as well as specific terms for transitional justice mechanisms. Although the scholarship on post-war Japan is vast, I could find nothing analysing the period from a transitional justice perspective.

<sup>26</sup> Nicola Henry, ‘From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies’ (2015) 9 *International Journal of Transitional Justice* 199, 217.

cases come with new risks and opportunities.<sup>27</sup> The very nature of these settings – long periods of peace and democracy – can yield data not found in other sites, such as how transitional justice evolves over generations and adapts to the peacetime environment. This gap in scholarship is further compounded by the dearth of studies on Asia more broadly, in comparison to work on South America, Africa, and Eastern Europe.<sup>28</sup>

One of the issues that can arise when applying transitional justice to established democracies is a question of temporality. In the case of Japan, this can involve the retroactive use of modern concepts, standards, and literature to analyse events which happened several decades ago. However, this has enhanced the thesis in several ways. Firstly, literature on social control, Japanese history, and indeed transitional justice (despite its comparatively short lifespan) has evolved and become increasingly global. For example, the improved accessibility of primary and secondary materials in Japanese and/or by Japanese authors. Secondly, it is precisely the historical context of the research problem that promotes it as an important area for study. This relates both to Japan as an opportunity to examine peaceful societies with enduring controversy over the past, and how we can investigate what factors have or have not sustained influence over the decades. Finally, the thesis has actively sought to not misrepresent the past and instead recognise contemporary principles. This is clearest when discussing transitional justice policies which would not have been accepted norms in the mid-20<sup>th</sup> century, such as reparations to individual victims and vetting procedures<sup>29</sup> which are noted and examined with historical perspective.

---

<sup>27</sup> For example, see the works of, Tine Destrooper, 'Belgium's "Truth Commission" on Its Overseas Colonial Legacy: An Expressivist Analysis of Transitional Justice in Consolidated Democracies' (2023) 22 *Journal of Human Rights* 158; Mark McMillan and Sophie Rigney, 'The Place of the First Peoples in the International Sphere: A Logical Starting Point for the Demand for Justice by Indigenous Peoples' (2016) 39 *Melbourne University Law Review*; James Gallen, *Transitional Justice and the Historical Abuses of Church and State* (Cambridge University Press 2023); Jonathan Hafetz, 'Resisting Accountability: Transitional Justice in the Post-9/11 United States' (2015) 19 *The International Journal of Human Rights* 429.

<sup>28</sup> Renee Jeffery and Hun Joon Kim, 'Introduction: New Horizons: Transitional Justice in the Asia-Pacific' in Renee Jeffery and Hun Joon Kim (eds), *Transitional Justice in the Asia-Pacific* (Cambridge University Press 2015) 2.

<sup>29</sup> Sections 3.3.3 and 6.3/6.4 respectively.

Furthermore, the evolving security situation in Japan offers a rich and timely opportunity for reflection. As will be discussed in Chapter 6, the activities of Japan's military and the government's interpretation of its post-war constitution have changed dramatically over the last decade, and acutely so since the invasion of Ukraine in 2022.<sup>30</sup> It is therefore a significant time in which to examine the legacy of the Asia-Pacific War, and the potential social control function of transitional justice in Japan with implications for the wider region. This thesis thus contributes to literature on social control, transitional justice, and Japanese studies by synthesising key theories and phenomena under one framework. It also sheds light on how ostensibly different mechanisms of transitional justice can engage in the same control modes, evolving their objectives to adapt to socio-political developments.

### 1.3 Thesis Research Questions

The research aims to analyse the potential social control function of transitional justice by building a theoretical framework of transitional control and applying it to post-war Japan. To do so, three research questions guided the design and process of the thesis:

- 1) What transitional justice mechanisms have been implemented in post-war Japan?
- 2) In what ways can transitional justice be considered a form of social control?
- 3) To what extent can transitional justice conceptualised as social control be applied to post-war Japan?

The first question is necessary for situating transitional justice as an applicable concept in post-war Japan, a context which has rarely been analysed under this lens as discussed in the previous section. Due to the dearth of literature, the thesis first determines the scope of transitional justice used in Japan after 1945, albeit long before the academic field took hold. This is then used to inform the choice of case studies for answering the subsequent questions. Question two is a theoretical query, identifying

---

<sup>30</sup> As can be seen in the recent annual budget, Japan Ministry of Defense, 'Wagakuni no bōei to yosan (an): Defense Programs and Budget of Japan' (2023) <[https://www.mof.go.jp/policy/budget/budger\\_workflow/budget/fy2023/seifuan2023/20.pdf](https://www.mof.go.jp/policy/budget/budger_workflow/budget/fy2023/seifuan2023/20.pdf)> accessed 19 July 2023.

existing scholarship that can be drawn on to build a unifying framework of transitional control. Finally, question three applies the findings of the previous analytical steps, interrogating the theory's applicability to actual transitional justice mechanisms used in post-war Japan.

## 1.4 Research Design

The research design was informed by social constructivism, therefore regarding knowledge as 'the outcome of people having to make sense of their encounters with the physical world and with other people.'<sup>31</sup> The social constructivist approach recognises that phenomena are not devoid of temporal, social, or political context and are continually informed by their landscapes.<sup>32</sup> This specific lens also requires that I acknowledge my own place in the co-construction of reality and impact on the research as important elements of the methodological approach.<sup>33</sup> My positionality added complex layers to the project: as a white British researcher, and also as someone who had been active in the "Comfort Women" redress movement, I acknowledge that I could not be impartial in the research process.<sup>34</sup> The impact of these identities on the research design informed the selection of methods – unforeseen consequences are discussed further in section 1.4.2.1.

Multiple methods were utilised in this thesis as appropriate to answer each research question. A thematic analysis of different fields of scholarship, including transitional justice and Japanese studies, was conducted to answer question one (What transitional justice mechanisms have been implemented in post-war Japan?). The first stage of the analysis involved examining the broader historical context of the research problem and delineating key themes.<sup>35</sup> The second stage defined transitional justice and identified its core features and debates, which in turn became the selection criteria

---

<sup>31</sup> Norman Blaikie, *Approaches to Social Enquiry: Advancing Knowledge* (Polity Press 2007) 22.

<sup>32</sup> Alan Bryman, *Social Research Methods* (Oxford University Press 2016) 30–31.

<sup>33</sup> Ibid 29–30; Blaikie (n 30) 19.

<sup>34</sup> Although, as Becker's seminal work discusses, impartiality in research is almost impossible.

Howard S Becker, 'Whose Side Are We On?' (1967) 14 *Problems* 239.

<sup>35</sup> Bryman (n 31) 584.

for post-war Japan. These stages resulted in Chapter 2 and 3 respectively, and provided the knowledge required to select case studies, as discussed further below.

A similar desk-based approach was taken to research question two (In what ways can transitional justice be considered a form of social control?), analysing the historical context and transitional justice features and then applying theories of social control. A thematic synthesis was conducted to triangulate data, generate cross-cutting themes, and answer the research question.<sup>36</sup> Importantly, the findings have shown that existing theories on transitional justice and on social control do not complement one another sufficiently to provide a workable framework. Guided by the literature and the research problem, Chapter 4 therefore proposes a new typology of “transitional control”.

#### 1.4.1 Multiple Case Study Design

To answer to the third research question (To what extent can transitional justice conceptualised as social control be applied to post-war Japan?), a multiple case study design was selected as the most appropriate method. A case study constitutes a focused setting that can generate a deeper comprehension of phenomena and an opportunity to test the validity of prior theoretical findings.<sup>37</sup> As such, the transitional control typology could be interrogated through the analysis of actual post-war transitional justice mechanisms, while augmenting the social constructivist approach. In this vein, the case study analysis uses a method of ‘thick description’<sup>38</sup> which can be fed back into theory-building in an iterative process.<sup>39</sup> Considering multiple cases can yield broader contextual data and patterns by first investigating cases separately then performing cross-case analysis, thus facilitating more rigorous findings with potentially wider applicability to similar contexts.<sup>40</sup> This method also enabled the

---

<sup>36</sup> Ibid 596.

<sup>37</sup> Robert K Yin, *Case Study Research: Design and Methods* (5th edn, SAGE Publications 2014) 2.

<sup>38</sup> This means discussing the cases in their meaning-rich social contexts and revealing deeper patterns and dynamics. See, Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (Basic Books 1973) Chapter 1. Sharan B Merriam, *Qualitative Research and Case Study Applications in Education* (Jossey-Bass Publishers 1998) 29.

<sup>39</sup> Yin (n 36) 64–65; Nick Emmel, *Sampling and Choosing Cases in Qualitative Research: A Realist Approach* (SAGE Publications 2014) 114.

<sup>40</sup> Yin (n 36) 64–65.

consideration of seemingly contrasting modes of transitional justice, such as state and non-state initiatives, therefore offering a greater variety of data for the typology. The case studies were selected through purposive sampling, wherein theory and literature informed the choice of data-rich cases most relevant to the research questions.<sup>41</sup> Section 3.3 investigates the variety of mechanisms that might be examined as transitional justice in post-war Japan and justifies the chosen phenomena for analysis. Based on this, the following cases were selected:

1. **The International Military Tribunal for the Far East**, widely known as the Tokyo Trial: This international criminal trial was set up by the victorious Allies after World War II and concluded in 1948. The tribunal convicted Japanese individuals of war crimes, crimes against humanity, and crimes against peace. It was,<sup>42</sup> and has remained,<sup>43</sup> a site of contested meaning. The Tokyo Trial is a “classic” form of transitional justice, which has often focused on the use of criminal prosecutions in post-conflict societies.<sup>44</sup> It also exhibits features commonly discussed in social control literature such as prohibition and punishment of deviant behaviour.<sup>45</sup>
2. **Article 9 of the Japanese Constitution**: In 1946, Japan promulgated a new constitution which renounced the state’s right to wage war or maintain armed forces.<sup>46</sup> While it has inspired generations of peace activists,<sup>47</sup> the constitution has been subject to incremental reinterpretation and Article 9 is the focus of the

---

<sup>41</sup> Emmel (n 38) 33; Greg Guest, Emily E Namey and Marilyn L Mitchell, *Collecting Qualitative Data: A Field Manual for Applied Research* (SAGE Publications 2017).

<sup>42</sup> The convictions and lengthy prison terms were protested by civilians and government officials in Japan, see Sandra Wilson, ‘The Sentence Is Only Half the Story: From Stern Justice to Clemency for Japanese War Criminals, 1945-1958’ (2015) 13 *Journal of International Criminal Justice* 745.

<sup>43</sup> Debates on the trials centre around the charge of “victors’ justice” but also whether the trials went far enough. See in general, Henry (n 26); Kei Ushimura, ‘Pal’s “Dissentient Judgment” Reconsidered: Some Notes on Postwar Japan’s Responses to the Opinion’ (2007) 19 *Nichibunken Japan Rev.* 215.

<sup>44</sup> For example see, Brianne McGonigle Leyh, ‘Nuremberg’s Legacy Within Transitional Justice: Prosecutions Are Here to Stay’ (2016) 15 *Washington University Global Studies Law Review* 559.

<sup>45</sup> Donald Black, *The Behavior of Law* (Special Edition [1976], Emerald 2010) 4–5.

<sup>46</sup> The Constitution of Japan, Article 9.

<sup>47</sup> For example, Millie Creighton, ‘Civil Society Volunteers Supporting Japan’s Constitution, Article 9 and Associated Peace, Diversity, and Post-3.11 Environmental Issues’ (2014) 26 *Voluntas* 121.

government's reform agenda.<sup>48</sup> Constitutional revision can be classified as a guarantee of non-recurrence or mode of institutional reform under a transitional justice lens.<sup>49</sup> In addition, law has long been analysed as a conduit through which to exert social control.<sup>50</sup>

3. **The Women's Active Museum on War and Peace (WAM):** This small site is both an archive and a museum, inspired by the "Comfort Women"<sup>51</sup> survivors' movement. It was originally created to store the documents produced by The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, held in 2000. This was an international people's tribunal without formal legal powers and led by civil society.<sup>52</sup> In contrast to the other case studies, where international involvement and state-led initiatives dominate, WAM was set up by Japanese private citizens and is a non-state organisation. Memorialisation, a process to which WAM subscribes, has been increasingly recognised as an important part of transitional justice.<sup>53</sup> The role of such initiatives in social control is less developed, however Dudai has proposed their potential for regulating public discourse.<sup>54</sup>

---

<sup>48</sup> Rosalind Dixon and Guy Baldwin, 'Globalizing Constitutional Moments? A Reflection on the Japanese Article 9 Debate' (2019) 67 *American Journal of Comparative Law*.

<sup>49</sup> UN 'Guidance Note of the Secretary General' (n 9) 9.

<sup>50</sup> This has been a central theme in literature since Roscoe Pound's seminal work. Roscoe Pound, *Social Control Through Law: With a New Introduction by A. Javier Trevino* (Transaction Publishers 2002).

<sup>51</sup> The term "Comfort Women" refers to women taken from across Asia during the war to serve as sex slaves for the Japanese military. It derives from the derogatory Japanese word *ianfu* (慰安婦). While some contest the use of the word, it is used in this research as it is globally recognisable and employed by survivors and activists. Aiko Ogoshi, 'Against the Engendered Nation' (2002) 2002 *Housha kaigaku* 40; Ji Young Kim and Jeyong Sohn, 'Settlement Without Consensus: International Pressure, Domestic Backlash, and the Comfort Women Issue in Japan' (2017) 90 *Pacific Affairs* 77; Yoon (n 4).

<sup>52</sup> Ustinia Dolgopol, 'The Judgment of the Tokyo Women's Tribunal' (2003) 28 *Alternative Law Journal*

<sup>53</sup> Office of the United Nations Higher Commissioner for Human Rights, 'Rule-of-law Tools for Post-Conflict States: Reparations programmes' (United Nations 2008) available at <[https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf)> accessed 11 August 2019, 23; Frédéric Mégret, 'Of Shrines, Memorials and Museums: Using the International Criminal Court's Victim Reparation and Assistance Regime to Promote Transitional Justice' (2010) 16 *Buffalo Human Rights Law Review* 8.

<sup>54</sup> Dudai (n 14) 5–6.

The Tokyo Trial is a historic international criminal tribunal involving twelve states, two languages, and thousands of pages of documentation. The collection of data was guided by the theory developed in Part I (Chapters 2, 3, and 4), pursuant to which doctrinal legal methods were employed to analyse primary and secondary sources to ascertain 'what the law is.'<sup>55</sup> International treaties, judgments, and court transcripts were among the data consulted, as well as specialist publications and commentary to support the research interpretations. The analysis was conducted through a socio-legal lens which asks not only what the law is, but also how it functions in practice.<sup>56</sup> Complementing the social constructivist ontology of the thesis, this socio-legal approach situates the law in its constructed context such as considering the political influences behind international agreements and mechanisms.<sup>57</sup>

The Tokyo Trial case study also necessitated archival research methods. For the purpose of this thesis archives are defined as collated records of cultural memory – from photographs to diaries, from libraries to individually maintained digital spaces.<sup>58</sup> Although an archive can take a myriad of forms, Mbembe notes that the enduring image of an archive is of the physical 'symbol of a public institution' that derives its authority from the state.<sup>59</sup> This is highly relevant to the Tokyo Trial and accessing related records, most of which were found in digital archives such as the Japanese state-run National Diet Library.<sup>60</sup> The availability of online records was essential to this thesis considering the global restrictions on travel during the Covid-19 pandemic, however it heightens the risk of reliance on those documents that were 'deemed archivable'.<sup>61</sup> For example, the National Diet Library's Shōwa era collection<sup>62</sup> was a

---

<sup>55</sup> Ian Dobinson and Francis Johns, 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007) 18–19.

<sup>56</sup> Mike McConville and Wing Hong Chui, 'Introduction and Overview' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (2007) 4–5.

<sup>57</sup> Elizabeth Mertz, 'Conclusion: A New Social Constructionism for Sociolegal Studies' (1994) 28 *Law & Society Review* 1243, 1248; McConville and Chui (n 55).

<sup>58</sup> Michael R Hill, *Archival Strategies and Techniques* (SAGE 1993) 2–3; Kevin Hetherington, 'Rhythm and Noise: The City, Memory and the Archive' (2013) 61 *The Sociological Review* 17.

<sup>59</sup> Achille Mbembe, 'The Power of the Archive and Its Limits' in Carolyn Hamilton and others (eds), *Refiguring the Archive* (Springer Science and Business Media 2002) 19.

<sup>60</sup> Available in English and Japanese, although the former usually has a greater volume of information. <https://dl.ndl.go.jp/ja/>

<sup>61</sup> Mbembe (n 58) 19.

<sup>62</sup> 'Shiryō Ni Miru Nippon No Kindai' (*National Diet Library*)

<<https://www.ndl.go.jp/modern/utility/index.html>> accessed 14 July 2023.

major site of data collection but it is a curated archive with only a small selection of scanned documents. Two additional obstacles complicated the use of archival research methods. Firstly, as Roque and Wagner write:

...reliance on the archives...has also been accompanied by strong disagreement as regards the epistemological value of colonial accounts, and the kind of claims about colonialism, indigenous realities, and past events that they allow us to make.<sup>63</sup>

This perspective emphasises the need to reflect on provenance: documents from both the Japanese government and the US occupation were created in exceptional circumstances informed by experiences of war and imperialism. It was therefore imperative to reflect on the origin and context of the studied archival data, adjusting any findings accordingly. Secondly, some of the historical documents were written using highly stylised print or classical Japanese<sup>64</sup> which I am not trained to translate. To moderate these limitations, secondary research and authoritative commentaries were also consulted to cross-reference archival data.

The second case study, Article 9 of the Japanese Constitution, initially followed a similar methodological process to the Tokyo Trial analysis. Doctrinal legal methods were used to examine the constitution and relevant legal documents such as the constitutional text in Japanese and English and relevant treaties. In addition, the National Diet Library collections, among other archives, were searched for historical sources and contemporary commentary to contextualise the law. Two semi-structured interviews were conducted which are explored in the sub-section below.

Archival methods were also used to collect data on the third case study, WAM, predominantly using the digital and physical collections of the museum itself as well

---

<sup>63</sup> Ricardo Roque and Kim A Wagner, 'Introduction: Engaging Colonial Knowledge' in Ricardo Roque and Kim A Wagner (eds), *Engaging Colonial Knowledge: Reading European Archives in World History* (Palgrave Macmillan 2012) 2.

<sup>64</sup> Like many other linguistic traditions, the Japanese language has evolved across the millennium and 'classical Japanese' is a somewhat catch-all term to describe pre-modern linguistic standards. Although modern Japanese has been used in written texts since the 20<sup>th</sup> century, many legal or otherwise official documents are written in classical Japanese. The substantial differences in grammar and orthography require training far beyond what I have had to effectively translate. John R Bentley, *Descriptive Grammar of Early Old Japanese Prose* (Brill 2001) 2.

as the UN documents database. In addition, a site visit was conducted in December 2022 shortly after Japan reopened its borders to visitors. This visit consisted of spending the day in the museum, taking field notes on the exhibitions, reflecting on my own experience as a visitor, gathering physical material, and an interview with the director. The fieldwork in Japan was unexpected and occurred late into the process,<sup>65</sup> thus it was not envisaged as a substantial element of data collection for the thesis. However, visiting WAM proved to be illuminating and has impacted the analysis greatly, in addition to supplementing data in the other case studies.

#### 1.4.2 Semi-structured Interviews

The research design originally intended to conduct around 15-20 semi-structured qualitative interviews with individuals from civil society groups, victim's groups, and political parties. Semi-structured interviews were chosen to give flexibility to the participant while ensuring that the process remains relevant to the research questions.<sup>66</sup> This method was also in keeping with the social constructivist approach of the thesis, as the interviews aimed to elicit 'descriptions' of experience and meaning assigned to this by the participants.<sup>67</sup> Finally, the use of this technique reflected the politically divisive and potentially sensitive nature of the Asia-Pacific War legacy. The semi-structured format aimed to give more agency to the participant regarding topic and depth and enable me as interviewer more time to build rapport with them.<sup>68</sup>

Several factors resulted in the thesis shifting away from using interviews as a core dataset – instead they were used to supplement data not available in archival or secondary sources. Firstly, as the desk-based research progressed it became clear that there was an existing body of data on civil society and victims' groups working on

---

<sup>65</sup> Ethics approval was gained for this thesis in 2021, which included a potential visit to Japan depending on reduced risk of Covid-19. The December 2022 visit followed these guidelines.

<sup>66</sup> Svend Brinkmann, 'Unstructured and Semistructured Interviewing', *The Oxford Handbook of Qualitative Research* (2nd edn, Oxford University Press 2020) 437.

<sup>67</sup> *Ibid* 437–438.

<sup>68</sup> Guest, Namey and Mitchell (n 40) 116.

the case studies.<sup>69</sup> The research questions did not require information beyond that available in the public sphere, including in archives and museums, and so the inherently intrusive and potentially distressing nature of semi-structured interviews was considered unnecessary. Secondly, the onset of the Covid-19 pandemic led to a much-reduced period of language training and indefinite postponement of fieldwork. As such, the thesis took a deeper theoretical focus and adjusted the methods of data collection to rely more heavily on desk-based research and accessible archival material, as outlined above. Importantly, as the research does not seek to produce statistically representative findings, a smaller number of high-quality interviews with key informants have still proven to be critical in providing valuable insights on the case studies.<sup>70</sup>

Purposive sampling was used to identify interview participants, drawing on the thematic analysis in Part I of the thesis and evaluating what data was not available in archival or secondary sources.<sup>71</sup> Snowball sampling was also helpful in facilitating contact with specific individuals.<sup>72</sup> Four participants were recruited for this thesis.<sup>73</sup> Five semi-structured interviews conducted during my LLM and MA studies, respectively, were also included in the analysed dataset, with the participant's full informed consent.<sup>74</sup> All nine participants were offered a range of levels of anonymity

---

<sup>69</sup> Some key examples are: Maki Kimura, *Unfolding the 'Comfort Women' Debates: Modernity, Violence, Women's Voices* (Palgrave Macmillan 2015); Hee Jung Serenity Joo, 'Comfort Women in Human Rights Discourse: Fetishized Testimonies, Small Museums, and the Politics of Thin Description' (2015) 37 *Review of Education, Pedagogy, and Cultural Studies* 166; Millie Creighton, 'Civil Society Volunteers Supporting Japan's Constitution, Article 9 and Associated Peace, Diversity, and Post-3.11 Environmental Issues' (2014) 26 *Voluntas* 121, 9; Daiki Shibuichi, 'The Article 9 Association, Leftist Elites, and the Movement to Save Article 9 of Japan's Postwar Constitution' (2017) 34 *East Asia* 147.

<sup>70</sup> Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 934.

<sup>71</sup> Purposive sampling of participants involves using research from the early phases to select individuals with relevant knowledge of the case studies. Uwe Flick, *Designing Qualitative Research* (SAGE Publications 2007) 80.

<sup>72</sup> Snowball sampling refers to participants recommending others for the study. See generally, Guest, Namey and Mitchell (n 40).

<sup>73</sup> Two participants were interviewed in relation to the Article 9 case study: Teraya Koji, Professor of Law at the University of Tokyo and member of the UN Human Rights Committee, and Murase Shinya, former member of the International Law Commission and member of a national security panel under the late Prime Minister Abe Shinzo. For the WAM case study, the two participants were: Watanabe Mina, Director of WAM, and Wakabayashi Hideki, Director of THINK Lobby as well as a leading member of several Japanese non-governmental organisations.

<sup>74</sup> The list is as follows: Professor Ustinia Dolgopool acted as Chief Prosecutor for the Tokyo Women's Tribunal and was involved in organising the event. Nursyahbani Katjasungkana, a prominent human

to choose from<sup>75</sup> and all participants – including those from the previous studies – opted to be identified. Although anonymous interviews are more common in qualitative research, a thorough ethics assessment of the project indicated low levels of risk,<sup>76</sup> and hence recognising the agency of interviewees to speak “in their own voice” was prioritised.<sup>77</sup> The transformative principles of the research and nature of work engaged in by the participants problematised the enforcement of anonymity, thus, full information on consent was given to participants but it was ultimately their decision.<sup>78</sup>

#### 1.4.3 Challenges and Ethical Considerations

Several difficulties arose during the data collection phase. Among the expected challenges was the use of online conferencing and the obstacles posed by wearing masks for face-to-face interviews. Software such as Skype and Zoom have become increasingly ubiquitous since the onset of the Covid-19 pandemic, including as a method for qualitative interviewing. Not only do they allow the researcher to reach a wider range of participants, with greater flexibility and less expense, but the addition of real-time video facilitates observation and connection with the interviewee.<sup>79</sup> However, the reliance on this technology raises challenges such as those I faced: a sudden loss of internet connection, unstable video, and poor-quality audio, all of which jeopardised the interviews. Irani has outlined these issues and recommends steps such as ensuring the participant is familiar with the technology,<sup>80</sup> but in practice this

---

rights lawyer in Indonesia, was the General Coordinator for the IPT 1965, Indonesian Prosecutor at the Tokyo Women’s Tribunal, and has been involved in other peoples’ tribunals. Professor Saskia Wieringa was instrumental in setting up the IPT 1965 and is the Chairperson of IPT 1965. Ruben Carranza is the Director of the Reparative Justice Program at the International Centre for Transitional Justice, and has experience in working with victims, governments, and civil society in reparative processes. Professor Mark Drumbl is an expert in international criminal law and has written on international law and cultural memory.

<sup>75</sup> The options ranged from ‘fully anonymous’ to ‘I wish that the organisation I represent/work for, my position/ job title, and my name be identified’. A full list is available in the Appendices.

<sup>76</sup> Ethics approval was obtained from the University of York’s Economics, Law, Management, Politics and Sociology Ethics Committee. Decision received 23 July 2021, reference number 71 2020 21.

<sup>77</sup> Katja M Guenther, ‘The Politics of Names: Rethinking the Methodological and Ethical Significance of Naming People, Organizations, and Places’ (2009) 9 *Qualitative Research* 411.

<sup>78</sup> Phil Scraton, ‘Speaking Truth to Power: Experiencing Critical Research’ in Marie Smyth and Emma Williamson (eds), *Researchers and their ‘subjects’: Ethics, power, knowledge and consent* (Bristol University Press and Policy Press 2004) 190.

<sup>79</sup> Elliane Irani, ‘The Use of Videoconferencing for Qualitative Interviewing: Opportunities, Challenges, and Considerations’ (2019) 28 *Clinical Nursing Research* 3, 4.

<sup>80</sup> *Ibid* 6–7.

did little to prevent problems. On reflection, a telephone call would have been a more appropriate method for the participant in question rather than using ‘tech for tech’s sake’.<sup>81</sup>

The face-to-face interviews, held in Tokyo in December 2022, were not free from issues of miscommunication. Due to the ongoing pandemic, the participants and I wore face masks, and we sat several feet away from each other. While necessary, the use of masks made comprehension more difficult both in-person and on the recordings because of reduced visual cues and the muffling effect of the fabric. This was most pronounced when the participant spoke in Japanese and significantly increased the time needed for transcription. Furthermore, this somewhat reduced the advantages of in-depth interviews: it was more difficult to build rapport, pick up on facial expressions, assess emotional state, and respond promptly.

During one interview, several issues arose from my mishandling of expectations and lack of experience. Firstly, I was caught off guard by how reluctant one of the participants was, who cautiously went through each part of the Consent Form and Information Sheet with questions I had not prepared for. Most notably, the participant queried my research questions and challenged the use of social control theory, proposing that its negative connotations might imply that I was hostile towards transitional justice. This could be termed an ‘ethically important moment’, an interruption to data collection that was not expected but yielded reflections about the nature of the research topic and my own positionality.<sup>82</sup> I found myself scrabbling for an adequate response and was so perturbed that I forgot to record the interview, leading to intense notetaking. This compromised the process to some extent as my questions were more stilted and I was limited to referring to my notes rather than a

---

<sup>81</sup> As Dunbar highlights, sometimes using the latest technology does not enhance the work, rather it serves only to say that it has been used. Laura Dunbar, ‘Music for Music’s Sake and Tech for Tech’s Sake’ (2016) 30 *General Music Today* 38.

<sup>82</sup> Marilys Guillemin and Lynn Gillam, ‘Ethics, Reflexivity, and “Ethically Important Moments” in Research’ (2004) 10 *Qualitative Inquiry* 261, 262; Carol Robinson, ‘Ethically Important Moments as Data: Reflections from Ethnographic Fieldwork in Prisons’ (2020) 16 *Research Ethics* 1, 2.

transcript.<sup>83</sup> Thus, I have only used this interview where I can be sure of the accuracy of my notes.

Reflexive diarising was a useful tool before and after the interviews, most often used in qualitative research to consider positionality, continually reflect on methodology, and facilitate data collection.<sup>84</sup> I took notes on the environment, confirmed Covid-19 protocol, and examined how my emotions may have impacted the process. The reflective diary also monitored my physical and mental health during the research. This was an important consideration during the field visit to Tokyo because of the risk of contracting Covid-19 and potentially infecting my participants; as such, I received all necessary vaccinations beforehand, took daily tests and temperature checks, and followed relevant protocol throughout.

The monitoring of mental health is worth exploring here as it made an unexpected impact on the methodology of this thesis. A variety of studies have shown that PhD students are more likely to have anxiety and/or depression, which may be triggered or worsened by the doctoral process.<sup>85</sup> This is compounded by the nature of the project itself – human rights researchers are vulnerable to secondary or vicarious trauma and increased likelihood of burnout<sup>86</sup> – and by the unprecedented context of Covid-19.<sup>87</sup>

---

<sup>83</sup> Helen Simons, *Case Study Research in Practice* (SAGE Publications 2012) 52.

<sup>84</sup> For examples, see: Claudia Malacrida, 'Reflexive Journaling on Emotional Research Topics: Ethical Issues for Team Researchers' (2007) 17 *Qualitative Health Research* 1329; Brendan Ciarán Browne, 'Writing the Wrongs: Keeping Diaries and Reflective Practice' in Althea-Maria Rivas and Brendan Ciarán Browne (eds), *Experiences in Researching Conflict and Violence: Fieldwork Interrupted* (2018); Sharon Jackson, Kathryn Backett-Milburn and Elinor Newall, 'Researching Distressing Topics: Emotional Reflexivity and Emotional Labor in the Secondary Analysis of Children and Young People's Narratives of Abuse' [2013] *SAGE Open* 1; Lucy Kelly, Grace Huxford and Catherine Kelly, "'In Our Daily Struggles": Diaries as a Tool for Teacher Well-Being' (2022) 19 *Life Writing* 261.

<sup>85</sup> Sara M González-Betancor and Pablo Dorta-González, 'Risk of Interruption of Doctoral Studies and Mental Health in PhD Students' (2020) 8 *Mathematics* 1, 2; Sylvia Anne Mackie and Glen William Bates, 'Contribution of the Doctoral Education Environment to PhD Candidates' Mental Health Problems: A Scoping Review' (2019) 38 *Higher Education Research and Development* 565, 566; Katia Levecque and others, 'Work Organization and Mental Health Problems in PhD Students' (2017) 46 *Research Policy* 868, 869.

<sup>86</sup> Elise Baker and others, 'Safer Viewing: A Study of Secondary Trauma Mitigation Techniques in Open Source Investigations' (2020) 22 *Health and Human Rights* 294; See generally, Naomi Ortiz, *Sustaining Spirit: Self-Care for Social Justice* (Reclamation Press 2018).

<sup>87</sup> Marine Paucsik and others, 'Self-Compassion and Savouring Buffer the Impact of the First Year of the COVID-19 on PhD Students' Mental Health' (2022) 38 *Stress and Health* 891, 891; Kirsi Pyhälä, Lotta Tikkanen and Henriikka Anttila, 'The Influence of the COVID-19 Pandemic on PhD Candidates'

This thesis did not directly undertake the kind of primary data collection that is commonly associated with such risks, like speaking to victims or survivors about their experiences.<sup>88</sup> However, it was necessary to review audio-visual data and witness testimony,<sup>89</sup> and interview participants also shared unexpected personal details of their experiences.

Engaging in reflexive practice did mitigate these concerns to some extent and had several advantages for the thesis such as developing empathy, acknowledging the impact of researcher positionality, and continual evaluation of process and methods.<sup>90</sup> Similarly to Browne's experience, keeping a diary did 'aid catharsis and help to rationalise and overcome the emotional uncertainties that permeate conflict research.'<sup>91</sup> However, the thesis subject-matter coalesced with the consequences of the Covid-19 lockdown and events in my personal life, and I began experiencing severe symptoms of post-traumatic stress disorder (PTSD)<sup>92</sup> which were intensified by reviewing research notes. This led to a prolonged leave of absence, a course of therapy, and some substantial changes to the methodology. I was very fortunate to have had supportive supervisors, but it does raise questions about the rigour with which higher education – and students – approach personal risk.

Robinson wrote that:

---

Study Progress and Study Wellbeing' (2022) 42 Higher Education Research and Development 413, 414.

<sup>88</sup> Sinéad Walsh, 'Empathy as a Critical Methodological Tool in Peace Research' in Althea-Maria Rivas and Brendan Ciarán Browne (eds), *Experiences in Researching Conflict and Violence: Fieldwork Interrupted* (Policy Press 2018) 225–226.

<sup>89</sup> Baker and others (n 85) 294; Jason M Newell and Gordon A MacNeil, 'Professional Burnout, Vicarious Trauma, Secondary Traumatic Stress, and Compassion Fatigue: A Review of Theoretical Terms, Risk Factors, and Preventive Methods for Clinicians and Researchers' (2010) 6 *Best Practices in Mental Health: An International Journal*.

<sup>90</sup> Linda Finlay, 'Negotiating the Swamp: The Opportunity and Challenge of Reflexivity in Research Practice' (2002) 2 *Qualitative Research* 209, 225; Jackson, Backett-Milburn and Newall (n 83) 3.

<sup>91</sup> Browne (n 83) 199.

<sup>92</sup> This is not uncommon among those who work in the human rights field. See, Baker and others (n 85) 294.

Far from being problematic, the dissonance between the procedural ethics of research ethics committees and real-world research can provide opportunities for a more subtle and nuanced understanding of the field.<sup>93</sup>

It is with this in mind that I outline here some of the lessons from this experience, albeit with the gift of hindsight. To reduce the impact of my mental health on the thesis, and vice versa, several measures were put in place in consultation with my supervisors: I stepped down from external activist roles; sought professional help; limited 'exposure to graphic content'; and changed one of the case studies to a less traumatising, but still relevant, mechanism.<sup>94</sup> More deliberate positive feedback from supervisors was also critical to fostering open communication and transparent project updates.<sup>95</sup>

While it is difficult to eliminate personal risk altogether, the project would have benefited from several preventative measures. Firstly, universities could promote mental health support that is research-led and designed for PhD students, instead of the more common approach of using undergraduate interventions.<sup>96</sup> Secondly, peer-to-peer and student-staff networks could offer a way to share good practice and identify training needs, given systematic oversight rather than relying on student initiative.<sup>97</sup> The emotional labour often performed by doctoral supervisors should also be considered, who not only face risk in their own research but also in the undertaking of pastoral support for which they are rarely adequately trained.<sup>98</sup> Finally, Sloan and Drake point out that in many cases the experience of the researcher '*cannot compare*' to that of the participant, but that this should not preclude the acknowledgment of secondary or vicarious trauma.<sup>99</sup> Further awareness of these issues in ethics training and research into mitigation techniques, with reference to intersectionality, could be

---

<sup>93</sup> Robinson (n 81) 1.

<sup>94</sup> Baker and others (n 85) 301.

<sup>95</sup> Ibid 301.

<sup>96</sup> Mackie and Bates (n 84) 566.

<sup>97</sup> Baker and others (n 85) 301.

<sup>98</sup> Elizabeth A Stanko, "I Second That Emotion": Reflections on Feminism, Emotionality, and Research on Sexual Violence' in Martin D Schwartz (ed), *Researching Sexual Violence against Women: Methodological and Personal Perspectives* (SAGE Publications 1997) 78; Mackie and Bates (n 84) 570.

<sup>99</sup> Emphasis in the original. Jennifer Sloan and Deborah H Drake, 'Emotional Engagements: On Sinking and Swimming in Prison Research and Ethnography' (2013) 91 *Criminal Justice Matters* 24, 25.

helpful.<sup>100</sup> From an economic point of view, doctoral candidates can greatly increase the quality and quantity of university outputs.<sup>101</sup> On a moral level, greater attention to training and wellbeing can result in more ethically robust and sustainable research.<sup>102</sup>

## 1.4 Thesis Structure

Pursuant to this introduction, the thesis is divided into two parts. Part I, *Making Connections*, addresses the theoretical underpinnings of the research. Chapters 2 and 3 aim to answer the first research question: what transitional justice mechanisms have been implemented in post-war Japan? Chapter 2 presents a thematic overview of the Asia-Pacific War to guide the proceeding analysis of literature and situate it in its historical context. The overview identifies three themes that are critical to understanding the research problem: (1) Japan's relationship with the "West"; (2) Japanese imperialism; and (3) Japanese collective memory. Chapter 3 draws out the debates on transitional justice and builds on the historical themes to identify the most relevant types of mechanisms implemented in post-war Japan in relation to them: prosecutions, institutional reform, and reparations. It is from this synthesis that the case studies are selected and justified as analytically rich phenomena to investigate the research questions.

Chapter 4 is the final section of Part I, outlining theories of social control and evaluating their appropriateness to transitional justice and post-war Japan. It answers the research question: in what ways can transitional justice be considered a form of social control? The chapter proposes a new typology – "transitional control" – which demonstrates how transitional justice acts as social control in three ways. Firstly, disciplinary control seeks to stop deviant action through punitive measures. This concept breaks from the transitional justice focus on accountability or prosecutions, instead reflecting how punishment is not limited to criminal law or legal tools. Secondly, organisational control counters deviance at a structural level and proliferates control

---

<sup>100</sup> Baker and others (n 85) 302.

<sup>101</sup> González-Betancor and Dorta-González (n 84) 2.

<sup>102</sup> Newell and MacNeil (n 88) 63.

through its reconstruction. The thesis argues that organisational control goes beyond the usual conceptualisation of guarantees of non-recurrence or institutional reform that are traditionally state-centric. Thirdly, narrative control aims to label certain discourse about the past as deviant and offer new mnemonic devices for classifying historical harm. This strand of transitional control emphasises how transitional justice can actively seek to classify some narratives as “wrong” and enact control through that process.

Part II, *Transitional Control in Post-War Japan*, seeks to answer the third research question: to what extent can transitional justice conceptualised as social control be applied to post-war Japan? The transitional control typology is investigated through three case studies. Chapter 5 analyses the Tokyo Trial under this lens and demonstrates how the tribunal engaged primarily in disciplinary and narrative control. However, the control aims were stymied by the perceived (il)legitimacy of the tribunal.

The second case study, Article 9 of the Constitution of Japan, is examined in Chapter 6 and illustrates how applying the transitional control typology can reframe transitional justice mechanisms. For example, although Article 9 would be classified as a guarantee of non-recurrence under a transitional justice lens, it is shown that the aims and impact of this case had punitive and discursive drivers.

Finally, Chapter 7 examines the third case study of WAM, exploring how this non-state initiative engages extensively in transitional control. The findings illuminated how private citizens have effectively and proactively used punitive and discursive methods, which have then been buttressed by organisational control aims.

In the concluding chapter, several cross-case findings are discussed in relation to the transitional control typology. It is shown how the typology contributes a framework for analysing different transitional justice mechanisms that does not separate civil society initiatives from state initiatives. Rather, it highlights how a range of strategies,

mechanisms, and actors can be brought together when considering the control functions. The research is thus brought together to articulate how the transitional control typology as applied to post-war Japan contributes significantly to the literature. Three broad reflections are drawn from the analysis: firstly, it highlights how various actors can create, engage with, and disrupt the same control functions; secondly, control strands can intersect to impact each other positively or negatively; thirdly, transitional control can develop and adapt over time. The chapter ends by identifying some of the limitations and avenues for further research.

Part I

Making Connections:

the Asia-Pacific War, Transitional Justice, and Social Control

## Chapter 2: A Thematic Overview of the Asia-Pacific War

### 2.1 Introduction

This chapter takes a thematic approach to the historical context of transitional justice in post-war Japan. The importance of this history cannot be overstated, for it is the foundation upon which modern memory of the war is built. The Asia-Pacific War ended over 75-years ago, yet it provokes the intense debate and anguish discussed in Chapter 1, at both an individual and collective level. Similarly, transitional justice itself is premised on an interpretation of the past – that harm was done and should not be repeated. The thesis research questions also require an understanding of the critical historical elements. Transitional justice in post-war Japan considers atrocities committed in the mid-20<sup>th</sup> Century and several of the mechanisms were used immediately after the war. Thus, answering how transitional justice may act as social control in post-war Japan, and ascertaining what mechanisms were used, necessitates historical enquiry.

This chapter is not a comprehensive analysis of Japanese history, rather it is an indication of the major elements that influenced the rise and fall of the Empire of Japan (*dai nippon teikoku*, 1868-1947). In considering the events, relationships, and movements of these periods, several themes are identified that are relevant to this research. At times, these themes overlap and inform one another, adapting and evolving throughout the time periods. Each theme frames the choice of, and reaction to, post-war transitional justice mechanisms. This in turn will facilitate answering the research questions. The most prominent themes are conceptualised as: (1) Japan's relationship with the West; (2) Japanese imperialism; and (3) Japanese collective memory. These thematic sections are then further divided into pre-war, wartime, and post-war chronologies.

## 2.2 Japan's Relationship with the West

The first of the themes can also be understood as Japan's place in the global order. However, it is important to emphasise the distinction of the West as a concept that has a prevailing influence on Japanese narratives across the timeline of this research. In this thesis, "the West" (*seiyō*) refers to those nations that would have been understood and referred to as such in 19<sup>th</sup> and 20<sup>th</sup> Century Japan. From the series of "unequal treaties" imposed by the US, the Netherlands, the British Empire, and others in the 1850s, the West was used to refer to those predominantly white, Christian states that Japan came into contact with.<sup>1</sup>

These states also visibly dominate post-war judicial and institutional changes, such as at the Tokyo Trial (where only three of 11 judges were from non-Western countries) and dominated the country militarily through the US-led occupation (1945-1952). Furthermore, "Western imperialism" was specifically critiqued in the pre-war period rather than imperialism in and of itself, thus highlighting the distinction between Japan's relationship with the West rather than the world in general.<sup>2</sup> To analyse how transitional justice acts as social control in post-war Japan, it is therefore important to understand its historical relationship with the West as they were primary conduits of such policies.

### 2.2.1 Japan's Relationship with the West: 1868-1937

The Tokugawa Era (or Edo Period, 1603-1868), was characterised by 200 years of Japanese isolationist economic policies towards the international stage. Known as

---

<sup>1</sup> Such as those visited during the Iwakura Ambassadorial Mission in the 1870s: France, the USA, 'England' (meaning the British Empire), Prussia, Holland, Russia, Belgium, Denmark, Sweden, Italy, Austria, and Switzerland. The primary text consistently refers to all these nations as "the West". See, Kunitake Kume, *Japan Rising: The Iwakura Embassy to the USA and Europe 1871-1873* (Tsuzuki Chushichi and R Jules Young eds, Cambridge University Press 2009); Mark Caprio, 'To adopt a small or large state mentality: The Iwakura mission and Japan's Meiji-era foreign policy dilemma' (2020) 18 *Asia-Pacific Journal: Japan Focus* 1, 10.

<sup>2</sup> This is particularly clear at several points in Justice Pal's dissenting judgment. Radhabinod Pal, *The International Military Tribunal for the Far East: Dissident Judgment of Justice Pal* (Kokusho - Kankokai, Inc. 1999), see particularly pages 251 and 274.

*sakoku* (“closed country”), edicts severely restricted the presence of traders from countries which had carried Christianity along with its goods, such as the British Empire, Spain, and Portugal.<sup>3</sup> Trade in intelligence and commodities continued with Asia and the Dutch, but Japan’s interaction with the West was extremely limited. In 1853 however, Commodore Perry’s “Black Ships” arrived – American warships tasked with opening Japan for trade.<sup>4</sup> Japan was forced to sign the Treaty of Kanagawa (1854) and this was followed by a series of unequal economic treaties with Britain, Russia, and France.<sup>5</sup> Under these treaties, Japan could not set its own tariffs and Western merchants were given extremely favourable terms.<sup>6</sup> A British naval bombardment in 1863 showed willingness to use their superior firepower to enforce these terms.<sup>7</sup>

In part stimulated by these imposed economic conditions, the ruling Tokugawa class was overthrown, and the Meiji Restoration (1868-1912) marked the beginning of a modernisation programme that radically changed Japan. Japan’s new rulers set out ambitious reforms informed by the 1871 Iwakura Mission, which had travelled to the US and parts of Europe to report on their socio-political structures.<sup>8</sup> The education system, criminal law, a new constitution, the parliament and judiciary, industrial complexes, and the huge surge in demand for modern weaponry were influenced by what they saw in the US, Britain, France, Prussia, Germany, and others.<sup>9</sup> The rapid industrialisation culminated with Japan winning the first Sino-Japanese War (1894-1895) and the Russo-Japanese War in 1905.<sup>10</sup> As a demonstration of its powerful

---

<sup>3</sup> Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (2nd edn, Oxford University Press 2009) 19.

<sup>4</sup> Mark Ravina, *To Stand with the Nations of the World: Japan's Meiji Restoration in World History* (Oxford University Press 2017) 2.

<sup>5</sup> Gordon (n 3) 134.

<sup>6</sup> Mikiso Hane, *Modern Japan* (Westview Press 1992) 85.

<sup>7</sup> Harald Fuess, ‘The Global Weapons Trade and the Meiji Restoration: Dispersion of Means of Violence in a World of Emerging Nation-States’ in Robert Hellyer and Harald Fuess (eds), *The Meiji Restoration: Japan as Global Nation* (Cambridge University Press 2020) 83.

<sup>8</sup> H Sasamoto-Collins, ‘Progress Impeded: Constraints on Legal Equality in Post-Restoration Japan’ (2008) 20 *Japan Forum* 337, 343.

<sup>9</sup> See, Michio Nagai, ‘Westernization and Japanization: The Early Meiji Transformation of Education’ in Donald H Shively (ed), *Tradition and Modernization in Japanese Culture* (Princeton University Press 2015); Sasamoto-Collins (n 8); Ravina (n 4) Hane (n 6); Gordon (n 3) 134; Fuess (n 7).

<sup>10</sup> Gordon (n 3) 135.

status, Japan successfully renegotiated the unequal treaties and began to play a greater role in international affairs.<sup>11</sup>

Having begun its own colonial programmes (discussed later in this section) the Empire of Japan declared war on Germany alongside the Entente Powers in 1914, thus entering the First World War. Japan was granted a seat at the table after the war, taking part in the Paris Peace Conference and joining the League of Nations.<sup>12</sup> Japan was one of the 'Principal Allied and Associated Powers' which signed the Treaty of Versailles in 1919, acquiring territories and resources from Germany.<sup>13</sup> It became clear that this status was dependent upon the rejection of Japan's proposed racial equality clause which read:

The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States members of the League, equal and just treatment in every respect, making no distinction, either in law or fact, on account of their race or nationality.<sup>14</sup>

This was highly controversial among the Entente powers, particularly the British Empire, and was ultimately quashed by President Woodrow Wilson.<sup>15</sup> This clause was unlikely to be an act of benevolence on behalf of the Empire of Japan, which blocked the participation of its colonies at the Conference,<sup>16</sup> but it nonetheless sent a symbolic message about Japan's "place" among the Western powers.

The Manchurian Incident further deteriorated Japan's relationship with the League of Nations. On 18 September 1931, the Kwangtung Army (the Japanese forces stationed in Southern Manchuria, China) detonated part of the major railway and blamed it on the local Kuomintang forces.<sup>17</sup> The ensuing conflict prompted the Chinese government

---

<sup>11</sup> Ibid.

<sup>12</sup> Jan Schmidt and Katja Schmidtpott, 'The East Asian Dimension of the First World War: An Introduction' in Jan Schmidt and Katja Schmidtpott (eds), *East Asian Dimension of the First World War: global entanglements and Japan, China and Korea, 1914-1919* (Campus Verlag 2020) 13.

<sup>13</sup> Treaty of Peace with Germany (Treaty of Versailles), signed at Versailles June 28, 1919; protocol signed by Germany at Paris January 10, 1920, preamble and pages 156-157.

<sup>14</sup> David Hunter Miller, *The Drafting of the Covenant Volume II* (GP Putnam's Sons 1928) 324.

<sup>15</sup> Ian Clark, *International Legitimacy and World Society* (Oxford University Press 2007) 89.

<sup>16</sup> Gordon (n 3) 177.

<sup>17</sup> Ibid 187.

to appeal to the League of Nations for help, who sent a commission to the region. Japan had used the incident to justify invading part of Manchuria, renamed Manchukuo, while claiming it remained independent under their protection.<sup>18</sup> The League established a commission to investigate which reported that ‘the military operations of the Japanese troops during this night... cannot be regarded as measures of legitimate self-defence’.<sup>19</sup> Japan was condemned for its actions and the breaking of treaty terms, prompting it to withdraw from the League of Nations entirely in 1933.<sup>20</sup>

No longer in the League but embroiled in continuous skirmishes at the Mongolian-Manchukuo border with the Soviet Union, the Kwangtung Army sought out other possible allies. Despite government concern for being dragged into the brewing European conflict, military pressure succeeded, and Japan signed the Anti-Comintern Pact with Germany in 1936.<sup>21</sup> This public commitment to fighting communism was a less than subtle alliance against the Soviet Union, later also signed by Italy.<sup>22</sup> Germany turned its back on the agreement in 1939 when it signed a non-aggression pact with the Soviet Union, causing considerable embarrassment within Japan and the entire Cabinet resigned.<sup>23</sup>

Both episodes were used in post-war transitional justice projects to illustrate Japan’s aggression and the authority of the military, while also being a key issue for apologists of the empire. The Manchurian Incident is discussed in detail in the Tokyo Trial judgment under the section titled ‘The Military Domination of Japan and Preparation for War’, in which several defendants are connected to the incident.<sup>24</sup> Also included in

---

<sup>18</sup> Lord Russell of Liverpool, *The Knights of Bushido: A Short History of Japanese War Crimes* (Cassell & Co 1958) 19.; Y Tak Matsusaka, ‘Managing Occupied Manchuria, 1931-1934’ in Peter Duus and others (eds), *The Japanese Wartime Empire, 1931-1945* (Princeton University Press 1996) 97.

<sup>19</sup> League of Nations, *Appeal by the Chinese Government, Report of the Commission of Enquiry*, 1 October 1932, League of Nations Publications VII (12) 71.

<sup>20</sup> Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (Oxford University Press 2008) 12; Gordon (n 3) 189; Saburou Ienaga, *The Pacific War, 1931 - 1945: A Critical Perspective on Japan's Role in World War II* (Pantheon Books 1978) 61.

<sup>21</sup> Richard Sims, *Japanese Political History since the Meiji Renovation 1668-2000* (Palgrave 2001) 199.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.* 211.

<sup>24</sup> International Military Tribunal for the Far East, judgment of 12 November 1948, in John Pritchard and Sonia M. Zaide (eds.), *The Tokyo War Crimes Trial*, Vol. 22, 48523.

that part of the judgment section is a lengthy presentation of Japan's conflicts with the Soviet Union throughout the 1930s. These expeditions are used as evidence of Japan's 'active preparations'<sup>25</sup> for war against the Soviet Union and expansion across the region, thus forming the starting point for Japan's crimes of aggression.<sup>26</sup>

### 2.2.2 Japan's Relationship with the West: 1937-1945

In 1939, World War II broke out and although Japan had not yet entered the war, it was increasingly clashing with the Allied powers and the US. Japan's colonial ambitions and the threat they presented to Western interests in Asia were factors in the US oil and scrap metal embargo of the same year, along with the freezing of Japanese assets.<sup>27</sup> While the US had been aiding Manchuria throughout the 1930s and had morally condemned Japan's aggression, this embargo presented a truly severe threat to Japan.<sup>28</sup> With little to no natural resources of its own, Japan was reliant on imports to run its military and infrastructure and 85% of its oil came from the US.<sup>29</sup> The back and forth of trade agreements, threats, underhanded dealings, and political rhetoric have been analysed in other scholarship.<sup>30</sup> The complexities of this period are beyond the scope of this research, however, the embargo is most relevant here as a mnemonic hook for interpreting what resulted – Pearl Harbour.

The Japanese navy attacked Pearl Harbour, an American base in Hawaii, on 8 December 1941 and formally entered World War II. Discourse surrounding Pearl Harbour is almost as conflicted now as it was at the time, ranging from an unprovoked and cowardly surprise attack,<sup>31</sup> to an act of self-defence under harsh economic

---

<sup>25</sup> Ibid 49,368.

<sup>26</sup> Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asian Center 2008) 93.

<sup>27</sup> Sims (n 21) 222–223.

<sup>28</sup> A detailed analysis of the trading agreements and impact of the embargo see, Ilai Z Saltzman, 'Soft Balancing as Foreign Policy: Assessing American Strategy toward Japan in the Interwar Period' (2012) 8 *Foreign Policy Analysis* 131, 141.

<sup>29</sup> Chris Maechling, 'Pearl Harbor: The First Energy War' [2000] *History Today* 41.

<sup>30</sup> For example, see Titli Basu, 'Decoding Japan's Security Discourse: Diverse Perspectives' (2016) 72 *India Quarterly*; Saltzman (n 28).

<sup>31</sup> Carl Boggs, 'Pearl Harbor: How Film Conquers History' (2006) 28 *New Political Science* 451.

blockades.<sup>32</sup> It was to become a defining moment for US occupation policies in Japan, as well as in the trials of military leaders, shaping collective memory of the war itself.

Japan had several early victories against Western controlled colonies across the Asia-Pacific. The Dutch East Indies, the Philippines, Malaya, and Singapore received Japan as Asian 'liberators' to begin with, and many Western soldiers became Prisoners of War.<sup>33</sup> The cruel treatment of these prisoners was well documented at the Tokyo Trial and has remained a powerful memory for those nations affected.<sup>34</sup> Perhaps the most infamous episode remains the building of the Burma-Siam railway in modern-day Thailand, where Allied troops and locals worked under brutal conditions to complete the track, which has spawned numerous dramatisations in popular culture.<sup>35</sup> This became a point of contention at the post-war tribunals, as Japan had signed but not ratified the Geneva Prisoner of War Convention (1929).<sup>36</sup>

In the latter war years, two agreements made in relation to Japan are of relevance to this research: the Cairo Communiqué and the Potsdam Declaration. On 1 December 1943, Britain, the US, and China produced the Cairo Communiqué.<sup>37</sup> The communiqué stated that 'The Three Great Allies are fighting this war to restrain and punish the aggression of Japan', adding that areas 'stolen' from China would be returned and that Korea would be freed from its 'enslavement'.<sup>38</sup> The irony of the British Empire referring to 'stolen' territory and expansion motivated by 'violence and greed' would not have gone unnoticed. Nor would the fact that Japanese control had,

---

<sup>32</sup> Tony Taylor, 'Denial in the Classroom: Political Origins of the Japanese Textbook Controversy' in Tony Taylor and Robert Guyver (eds) (Information Age Publishing 2014) 91.

<sup>33</sup> Boister and Cryer (n 20) 16–17.

<sup>34</sup> Richard H Minear, *Victor's Justice: The Tokyo War Crimes Trial* (Princeton University Press 1973) 69; Lord Russell of Liverpool (n 18) 56; Boister and Cryer (n 20).

<sup>35</sup> Two films in particular captured a global audience: *The Bridge on the River Kwai* (1957), and *The Railway Man* (2013). Further details on the building of the rail track can be found in, Olive Checkland, *Humanitarianism and the Emperor's Japan, 1877-1977* (St Martin's Press 1994) 109–112.

<sup>36</sup> Boister and Cryer (n 20) 183.

<sup>37</sup> US Department of State, 'The Cairo Conference, 1943' <<https://2001-2009.state.gov/r/pa/ho/time/wwii/107184.htm>> accessed 14 May 2021.

<sup>38</sup> Cairo Communiqué, December 1, 1943. Available at <[https://www.ndl.go.jp/constitution/e/shiryo/01/002\\_46shoshi.html](https://www.ndl.go.jp/constitution/e/shiryo/01/002_46shoshi.html)> accessed 14 May 2021.

in some cases, been granted by the West or was contested only because of existing Western colonial interests (such as in the Treaties of Portsmouth and Shimonoseki).

The Cairo Communiqué made clear the intention to punish Japan for the war and this was expanded upon in the Potsdam Declaration of 26 July 1945. The Declaration set out terms for an unconditional surrender, including the punishment of war criminals and those who ‘visited cruelties’ upon prisoners of war.<sup>39</sup> The Potsdam Declaration can be read as a blueprint for transitional justice in post-war Japan, even as an early (if crude)<sup>40</sup> form of transitional justice policy more generally. Four of the articles are particularly important in this context:

6. There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

...

10. We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.

11. Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to re-arm for war. To this end, access to, as distinguished from control of, raw materials shall be permitted. Eventual Japanese participation in world trade relations shall be permitted.

12. The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established in accordance

---

<sup>39</sup> [Potsdam Declaration] Proclamation Defining Terms for Japanese Surrender, Issued at Potsdam, July 26, 1945, The Ministry of Foreign Affairs "Nihon Gaiko Nenpyo Narabini Shuyo Bunsho: 1940-1945" vol. 2, 1966.

<sup>40</sup> For example, the Declaration includes the threat of ‘prompt and utter destruction’ if it was not accepted which is unlikely to be endorsed by modern transitional justice policy. Ibid art.13.

with the freely expressed will of the Japanese people a peacefully inclined and responsible government.<sup>41</sup>

These articles reflect several features of transitional justice policy, such as institutional reform, disarmament, reparations programmes, and reintegration.<sup>42</sup> In particular, Article 10 indicates the centrality of human rights principles and accountability for those who have committed war crimes, including the respect for democracy and related rights. Article 12 alludes to an exit strategy, also considered a key principle of transitional justice.<sup>43</sup> The impact of the Potsdam Declaration will be discussed further as an instrument establishing the Tokyo Trial, but here it contextualises the post-war occupation policies as well as the approach of the Allied powers toward Japan.

Soon after the issuing of the Potsdam Declaration, the US dropped atomic bombs on two Japanese cities: Hiroshima on 6 August and Nagasaki on 9 August 1945. Over 200,000 people died either from the impacts themselves or subsequent medical complications.<sup>44</sup> Many more have since died from radiation exposure or have been left with long-term severe illnesses. President Truman announced the attack on Hiroshima and ushered in two prevailing discourses: that the bomb was retribution for Pearl Harbour, and it was necessary to prevent further bloodshed.<sup>45</sup> Truman made clear the consequences of not accepting the Potsdam Declaration:

If they do not now accept our terms they may expect a rain of ruin from the air, the like of which has never been seen on this earth.<sup>46</sup>

The severe trauma of the nuclear bombs remains at the heart of Japanese victimisation narratives. Japan remains the only country to have experienced a nuclear

---

<sup>41</sup> Ibid arts 6 and 10-12.

<sup>42</sup> UN '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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 11 August 2019, 2.

<sup>43</sup> Ibid 6-7.

<sup>44</sup> Kotaro Ozasa, Eric J Grant and Kazunori Kodama, 'Japanese Legacy Cohorts: The Life Span Study Atomic Bomb Survivor Cohort and Survivors' Offspring' (2018) 28 *Journal of Epidemiology* 162.

<sup>45</sup> 'August 6, 1945: Statement by the President Announcing the Use of the A-Bomb at Hiroshima' (*Miller Center*) <<https://millercenter.org/the-presidency/presidential-speeches/august-6-1945-statement-president-announcing-use-bomb>> accessed 14 May 2021; Yuki Tanaka and Richard Falk, 'The Atomic Bombing, The Tokyo War Crimes Tribunal and the Shimoda Case: Lessons for Anti-Nuclear Legal Movements' (2009) 7 *The Asia-Pacific Journal: Japan Focus* 293.

<sup>46</sup> 'August 6, 1945: Statement by the President Announcing the Use of the A-Bomb at Hiroshima' (*Miller Center*).

bombing. This harm and the direct link made to Pearl Harbour feeds into discourses of “victor’s justice” – that post-war policies were revenge against a defeated nation.<sup>47</sup> The dismissal of the bomb’s relevance by the judges at the Tokyo Trial proved challenging for the acceptance of post-war punitive measures and will be explored in Chapter 5. 1945 also brought the indiscriminate firebombing campaign against Japan, complementing that of the Allies in Germany.<sup>48</sup> According to the US Strategic Bombing Survey, 1,667 tons of bombs were dropped on Tokyo in just one attack.<sup>49</sup> ‘15 square miles of Tokyo’s most densely populated area were burned to the ground’ in the attack, and similar bombings were carried out in 60 other cities.<sup>50</sup> These final phases of the war also saw some of the most horrific battles, such as that of Iwo Jima and Okinawa. The devastating conflicts have been the subject of films, animation, and comics in both the US and Japan.<sup>51</sup> In Okinawa, over 150,000 Japanese troops and civilians died alongside 12,281 US troops.<sup>52</sup> The local populace suffered greatly, and their treatment by both armies has been the subject of historical debate.<sup>53</sup>

Suffice it to say the relationship between Japan and the West during World War II was characterised by horror and loss on both sides of the Pacific. The Allied powers lost countless prisoners of war to brutality and neglect, as well as the trauma of Pearl Harbour and immense battles across the ocean. As a nation, Japan was defeated through international efforts and then occupied by the US, almost 100-years since Perry’s Black Ships had landed. The people of Japan were left with decimated homes,

---

<sup>47</sup> Yuma Totani, ‘Japanese Receptions of Separate Opinions at the Tokyo Trial’ in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016) 170.

<sup>48</sup> William W Ralph, ‘Improvised Destruction: Arnold, LeMay, and the Firebombing of Japan’ (2006) 13 *War in History* 495, 495 and 498.

<sup>49</sup> ‘The United States Strategic Bombing Surveys: European War, Pacific War’ (Air University Press 1987) 83.

<sup>50</sup> *Ibid* 85.

<sup>51</sup> Iwo Jima has inspired works such as Clint Eastwood’s films *Letters from Iwo Jima* (2006) and *Flags of Our Fathers* (2006) and the HBO series *The Pacific* (2010). Okinawa has been depicted mostly in Japanese media, for example in 1971’s *Gekidō no Shōwashi: Okinawa Kessen* (激動の昭和史 沖縄決戦) and more recently in 2005, *otoko-tachi no yamato* (男たちの大和).

<sup>52</sup> Barak Kushner, *The Thought War: Japanese Imperial Propaganda* (University of Hawai’i Press 2005) 163.

<sup>53</sup> For example, Japanese textbooks have been accused of whitewashing the forced suicides of Okinawans. See, Masako Shibata, ‘Contested Memory of Okinawa’s Colonial and War Past: History Teaching in and beyond Formal Education’ [2021] *Asia Pacific Journal of Education* 1.

famine, and radiation sickness.<sup>54</sup> The war left scars on all fronts that would demand much of post-war reconciliation.

### 2.2.3 Japan's Relationship with the West: 1945-1952

On 15 August 1945, the Japanese public heard Emperor Hirohito's voice on the radio for the first time as he announced surrender.<sup>55</sup> The end of the Asia-Pacific War ushered in a new era for Japan, which went through radical socio-political and economic reforms. The Supreme Commander of the Allied powers, General Douglas MacArthur, arrived to begin the US occupation in September 1945 and remained until 1952. It is in this period that the raw beginnings of transitional justice can be identified. Japan rapidly transformed from an authoritarian, imperial, and military power into a constitutional monarchy built upon democracy and human rights.

Officially, the occupation of Japan was overseen by the Far Eastern Commission, made up of representatives from the Allied powers – this 'highest international organ', however, in practice it was very much a US-led and resourced operation.<sup>56</sup> MacArthur increasingly took on this responsibility by controlling foreign relations and trade, security, and the economy.<sup>57</sup> The towering figure of General MacArthur became a somewhat revered figurehead of the occupation and emblematic of Japan's evolving relationship with the West. This section will present some of the key facets of this relationship in the immediate post-war years, namely widescale reform, the conclusion of international treaties, and Japan's new place in the world order.

---

<sup>54</sup> Gordon (n 3). Tanaka and Falk (n 45) 2.

<sup>55</sup> Ruriko Kumano, 'The US Occupation and Japan's New Democracy' (2007) 40 *Educational Perspectives* 36, 36.

<sup>56</sup> Totani (n 26) 28.

<sup>57</sup> Garren Mulloy, 'Ordered to Disarm, Encouraged to Rearm: Japan's Struggles with the Postwar' in Barak Kushner and Andrew Levidis (eds), *In the Ruins of the Empire of Japan: Imperial Violence, State Destruction, and the Reordering of Modern East Asia* (Hong Kong University Press 2020) 141; Paul J Heer, *Mr. X and the Pacific: George F. Kennan and American Policy in East Asia* (Cornell University Press 2018) 22; Yoneyuki Sugita, *Pitfall or Panacea: The Irony of US Power in Occupied Japan, 1945-1952* (Routledge 2003) 8.

MacArthur arrived with the objective to demilitarise and democratise Japan and the early years of occupation were characterised by sweeping reforms across post-war Japanese society. The details and impact of the most relevant changes are discussed in proceeding chapters. One of the first initiatives was the forming of the Tokyo Trial, which is analysed in Chapter 5. The Trial implemented the Potsdam Declaration's provision for the prosecution of war criminals. The Constitution of Japan is outlined in Chapter 6, including reflection on the disbanding of the Japanese military.

As part of the democratisation initiative, MacArthur enacted the Directive for the Disestablishment of State Shinto (the Shinto Directive) on 15 December 1945. This formally detached Shintoism from the State and this separation was later codified in the new Constitution.<sup>58</sup> It should be noted that the distinction between secular and religious was not a binary in Japan – particularly when related to Shintoism, the categorisation of which continues to be debated.<sup>59</sup> Shinto teachings in public schools and prominent Shinto textbooks were also banned by the directive.<sup>60</sup> MacArthur and the US government had publicly expressed their wishes for the Christianisation of Japan, which influenced occupation policy, though the impact was conversely limited by the application of the Shinto Directive to all religions.<sup>61</sup> The *New York Times* reported in 1949 that MacArthur would be distributing bibles with the belief that Christianity would ensure Japan's resistance to Communism.<sup>62</sup> The activities of the occupation frames the use of transitional justice in post-war Japan. The imposition of Western conceptualisations of religion is an example of the context in which mechanisms were used.

MacArthur began reversing the disarmament of Japan after the onset of the Korean War in 1950 and the perception of a growing Communist threat from the Soviet

---

<sup>58</sup> Akiko Takenaka, *Yasukuni Shrine: History, Memory, and Japan's Unending Postwar* (University of Hawai'i Press 2017) 132.

<sup>59</sup> Ernils Larsson, 'Jinja Honchō and the Politics of Constitutional Reform in Japan' (2017) 30 *Japan Review* 227, 230.

<sup>60</sup> Masafumi Okazaki, 'Chrysanthemum and Christianity: Education and Religion in Occupied Japan, 1945-1952' (2010) 79 *Pacific Historical Review* 393, 401.

<sup>61</sup> *Ibid* 405.

<sup>62</sup> 'For a Christian Japan' *New York Times*, 28 April 1949.

Union.<sup>63</sup> Japan had been financially and socially reluctant to rearm, but the Korean War provided an opportunity for 'militarists' to return to public life and Japan's economy boomed as a major producer of arms for the US.<sup>64</sup> The National Police Reserve created during the Korean War became the Self-Defense Forces in 1954, arguably with much stretching and cajoling of the constitutional clause which proclaimed Japan's renunciation of war.<sup>65</sup> The Self-Defense Forces were limited in size and resources and unable to be dispatched overseas; they were justified by the occupation and Japanese government as a purely defensive initiative.<sup>66</sup> The debate over the compatibility of the Self-Defense Forces with the constitution remains relevant and topical today and is analysed in Chapter 6.

On 8 September 1951, the Treaty of Peace with Japan (the San Francisco Treaty) and the Treaty of Mutual Cooperation and Security Between the United States and Japan (hereafter Anpo, the common Japanese abbreviation) were signed and both came into force in April 1952, officially ending the occupation.<sup>67</sup> MacArthur may have left the country, but Anpo provided for the US 'neocolonial domination' of Japan.<sup>68</sup> Anpo allowed the US to station land, air, and sea forces in Japanese territory, but permitted that these forces 'put down' riots and demonstrations.<sup>69</sup> Though it has since been revised, Anpo provoked huge civil society protests in Japan in the late 1950s and early 1960s which demanded that the treaty be revoked and full sovereignty returned to

---

<sup>63</sup> Yoneyuki Sugita, 'Constrained Rearmament in Japan, 1945-1954: US Strategic Preference for Securing Military Bases and Impact of Japanese Financial Community' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013) 91.

<sup>64</sup> *Ibid* 101.

<sup>65</sup> Stephanie Trombley Averill, 'Demilitarization and Democratization in the Post-World War II World' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013) 166.

<sup>66</sup> Glenn D Hook, 'From Demilitarization to Remilitarization: External and Internal Pressures on Japanese Security Policy' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013) 115.

<sup>67</sup> [San Francisco Treaty] No. 1832. Treaty of Peace with Japan. Signed at San Francisco, On 8 September 1951, UNTS 1952; [Anpo] Treaty of Mutual Cooperation and Security Between the United States and Japan. San Francisco, 8 September 1951.

<sup>68</sup> Nick Kapur, 'Japan's Streets of Rage: The 1960 US-Japan Security Treaty Uprising and the Origins of Contemporary Japan' (2020) 18 *Asia-Pacific Journal: Japan Focus* 1, 1.

<sup>69</sup> [Anpo] (n 67) art. 1.

Japan.<sup>70</sup> To this day, the US military base on Okinawa (the island remained occupied until 1972) is the target of protests and activism.<sup>71</sup>

Japan's relationship with the West in the post-war period was one of transformation, both in terms of domestic reforms and the reframing of the US from dominant enemy to key ally. Earlier in this chapter, the Treaty of Versailles was used to highlight Japan's relative position on the world stage – being treated as somehow below the West. The paternalism of the occupation and the Allied powers, particularly in reference to its military policies, could be framed as reasserting Japan's "place". Prior to this point, Japan had sought to stand as an equal to the West and push back against foreign encroachment through the so-called "Asia for the Asians" doctrine.<sup>72</sup> Not only did Japan lose the war, but it also then experienced seismic change imposed by the US occupation. The occupation's exit strategy can also be problematised. The Potsdam Declaration specifies that all Allied forces will be withdrawn once its goals had been achieved – that of disarmament, reparations, prosecutions, and democracy.<sup>73</sup> Indeed, transitional justice and peacekeeping literature highlight the need for encouraging strong local institutions and reforming the security sector, which is a gradual but finite process.<sup>74</sup> Despite this, the US continues to have a military presence in Japan 75-years after the war. This apparent contradiction may determine the level to which transitional justice norms are internalised by the local population. Such factors must be considered when analysing the case studies.

---

<sup>70</sup> See generally, Kapur (n 68).

<sup>71</sup> Kyodo, 'Okinawa Marks 49th Anniversary of Reversion as Pandemic Limits Base Protests' *The Japan Times* (15 May 2021) <https://www.japantimes.co.jp/news/2021/05/15/national/us-okinawa-reversion-49th-anniversary/> accessed 20 July 2021; Mika Kuniyoshi, 'Defying Okinawa Protests, US Continues Low-Flight Training' *The Asahi Shimbun* (11 February 2021) <<https://www.asahi.com/ajw/articles/14181620>> 20 July 2021.

<sup>72</sup> See section 2.3.1

<sup>73</sup> [Potsdam Declaration] (n 39) art. 12.

<sup>74</sup> UN Security Council, 'No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations. Report of the Secretary-General' (20 April 2001) UN Docs S/2001/394, 4; Dominik Zaum, 'The Norms and Politics of Exit: Ending Postconflict Transitional Administrations' (2009) 23 *Ethics and International Affairs* 189, 205; Jennifer S Easterday, 'Peace Agreements as a Framework for Jus Post Bellum' in Carsten Stahn, Jennifer S Easterday and Jens Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Oxford University Press 2014) 411.

## 2.3 Japanese Imperialism

Japanese imperialism is the second integral thread throughout the time periods, connecting the various expansion projects of the Empire of Japan across the Asia-Pacific. It exposes the duality of Japan's colonial project, as both perceived liberator and cruel overseer, which frames domestic and international discourse on the war. While it was but one focus of the immediate post-war era, discussed at the Tokyo Trial for example, it has evolved into the core divisive issue in East Asia – the survivors of Japanese colonial ambitions are now the key actors engaging with the transitional justice paradigm. Understanding the historical harm that these modern movements are founded on is thus critical to analysing the research problem.

### 2.3.1 Japanese Imperialism: 1868-1937

In the pre-war period, Japan had been consolidating its power in East Asia. Military missions in Taiwan (1874), the Kuril Islands (1875), and the colonisation of modern-day Okinawa (1879) are but a few examples.<sup>75</sup> The situation escalated with the conflict with China over Korea. After defeating China in the Sino-Japanese War (1894-1895), Japan took Taiwan and attempted to hold influence over Korea in the face of Russian opposition.<sup>76</sup> But soon after, following the Russo-Japanese War and the US-brokered Treaty of Portsmouth (1905), the Western powers 'abandoned [Korea] to the Japanese.'<sup>77</sup> This treaty resulted in several advantages for the Japanese state: non-Japanese interests in Korea were renounced, Port Arthur and the South Manchurian Railway were to be controlled by Japan, and the Japanese public was galvanised into support for foreign wars.<sup>78</sup>

Gaining control of the South Manchuria Railway Company also gave Japan the opportunity to expand its influence in China. Matsusaka describes the company as

---

<sup>75</sup> Boister and Cryer (n 20) 7.

<sup>76</sup> Michael E Robinson, *Cultural Nationalism in Colonial Korea, 1920-1925* (University of Washington Press 2014) 17–18.

<sup>77</sup> Ibid 32.

<sup>78</sup> Robinson (n 76) 32; David Wells and Sandra Wilson, *The Russo-Japanese War in Cultural Perspective, 1904-1905* (Palgrave Macmillan 1999) 13–15 and 19–20.

'...in effect an organ of colonial administration'<sup>79</sup> which facilitated the political and economic influence of Japan over the region and a well-connected military presence. Japan's impressive recovery from the Shōwa Depression can partly be attributed to the rapid industrialisation and exploitation of natural (and human) resources of their new colonies and assets.<sup>80</sup> This advantage had a tremendous impact in the war years.

The consequences for Korea, on the other hand, were dire and brutal. Japan annexed the peninsula in 1905, legitimised by agreements with Britain and the US and the defeat of Russia.<sup>81</sup> Under the guise of pan-Asianism (discussed below), Japan implemented systematic policies of 'inclusionary racism',<sup>82</sup> socio-political oppression, cultural assimilation, and heavy policing.<sup>83</sup> This narrative was also applied elsewhere, asserting that Japanese occupations in the Asia-Pacific were ideologically motivated by a sense of 'Asiatic spirit' and unification against the West.<sup>84</sup>

Pan-Asianism threads throughout the themes and time periods of this chapter and contextualises the problem of memory in modern-day East Asia. The concept gained traction around the time of World War I, growing from a sense of regional 'vague...solidarity' to a commitment that Asia must be ruled by Asians, not the Western

---

<sup>79</sup> Matsusaka (n 18) 99.

<sup>80</sup> Robinson (n 76) 36; Gordon (n 3) 191.

<sup>81</sup> Robinson (n 76) 37.

<sup>82</sup> Hyun uses this term to describe the particular features of racism used in colonial Korea by the Japanese. In contrast to racial superiority theories in Britain or Nazi Germany, many Japanese intellectuals argued that Koreans and Japanese were related and shared an ancestral bond. It was Japan's cultural, economic, and political "superiority" that gave them a *responsibility* to colonise. For further discussion on this subject see, Jaehwan Hyun, 'Racializing Chōsenjin: Science and Biological Speculations in Colonial Korea' (2019) 13 *East Asian Science, Technology and Society: An International Journal*; Tessa Morris-Suzuki, *Re-Inventing Japan: Nation, Culture, Identity* (ME Sharpe 1998) Chapter 5; Yuehtsen Juliette Chung, *Struggle for National Survival: Eugenics in Sino-Japanese Contexts, 1896-1945* (Routledge 2002).

<sup>83</sup> Hyun (n 82) 489; Robinson (n 76) 31–39; Hildi Kang, *Under the Black Umbrella: Voices from Colonial Korea, 1910–1945* (Cornell University Press 2001) 2.

<sup>84</sup> Kawai Tatsuo, *The Goal of Japanese Expansion* (The Hokuseido Press 1939) 15; Arita Hachirou, 'The Greater East Asian Sphere of Common Prosperity', Excerpt from *Contemporary Japan*, Vol. X, No. 1, January 1941' in Joyce Lebra (ed), *Japan's Greater East Asia Co-prosperity Sphere in World War II: selected readings and documents* (Oxford University Press 1975) 77; Duara Prasenjit, 'The Discourse of Civilization and Pan-Asianism' (2001) 12 *Journal of World History* 110; Ienaga (n 20) 153.

powers.<sup>85</sup> This rhetoric of Asian unity soon became justification for brutal colonisation, but it is important to note that Japan was initially welcomed by some.<sup>86</sup> Japan's victory over Russia in 1905 garnered respect across the Arabic and Turkish spheres, and went on to inspire independence movements in the Western colonies of South East Asia.<sup>87</sup> Thus, while Japanese imperialism led to tremendous suffering, reactions were complex and diverse. This is borne out today as victimised countries and communities have vastly differing memories of Japanese imperialism.<sup>88</sup>

### 2.3.2 Japanese Imperialism: 1937-1945

As the 1930s proceeded, the dark undertone of pan-Asianism and Japan's colonial ambitions serve as a backdrop to atrocities committed in the Asia-Pacific. The war crimes and crimes against humanity committed by the Empire of Japan during this period were featured in post-war transitional justice mechanisms but are particularly relevant to the modern-day issue of war memory. The breadth of war crimes committed by the Empire of Japan are too numerous and complex to explore here, though scholars such as Ienaga, Dower, Nagahara, Utsumi and others, and Tanaka have explored the issues in commendable depth.<sup>89</sup> As such, this section will briefly touch upon the issues that are most relevant to the research questions. Specific events during this period directly relate to the use of, and the reception to, transitional justice in post-war Japan.

---

<sup>85</sup> Sven Saaler, 'Pan-Asianism in Modern Japanese History: Overcoming the Nation, Creating a Region, Forging an Empire' in Sven Saaler and J Victor Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, regionalism and borders* (Routledge 2007) 7.

<sup>86</sup> Tatsuo (n 84) 15.

<sup>87</sup> See for example, Kelly A Hammond, 'Managing Muslims: Imperial Japan, Islamic Policy, and Axis Connections during the Second World War' (2017) 12 *Journal of Global History* 251; Kristine Dennehy, 'Overcoming Colonialism at Bandung, 1955' in Sven Saaler and J Victor Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, regionalism and borders* (Routledge 2007).

<sup>88</sup> One of the starkest comparisons is the impact of imperialism on modern day South Korean relations as opposed to Southeast Asia. See, Lam Peng Er, 'Japan's Postwar Reconciliation with Southeast Asia' (2015) 3 *Asian Journal of Peacebuilding* 43.

<sup>89</sup> Ienaga (n 20); John W Dower, *War Without Mercy: Race and Power in the Pacific War* (1986); Yoko Nagahara (ed), *Shokuminchi Sekininron: Datsushokuminchi No Hikakushi* (Aoki Shoten 2009); Aiko Utsumi and others, *Sengo Sekinin: Aija No Manazashi Ni Kotaete* (Iwanami Shoten 2014); Yuki Tanaka, *Hidden Horrors: Japanese War Crimes in World War II* (Westview Press 1996).

Japan's claim of "Asian liberation" was falling apart during the 1930s as the reality of colonial rule set in. On 7 July 1937, Japanese and Chinese soldiers clashed near the Marco Polo Bridge which led to further fighting and the occupation of Beijing, thus formally beginning the second Sino-Japanese War.<sup>90</sup> The official occupation of puppet-state Manchukuo (1937) incensed Chinese populations across Southeast Asia, prompting boycotts and resistance against Japanese propaganda.<sup>91</sup> Colonial policies in Korea had also had devastating effects, with deadly epidemics, high taxes, and the erosion of Korean cultural life.<sup>92</sup> In Taiwan, which had been obtained in the Treaty of Shimonoseki 1895, Japan rapidly mobilised the youth by enforcing the Japanese language and other assimilationist programmes.<sup>93</sup>

Within the first few years of World War II, Japan ousted Western powers and occupied Malaya, the Philippines, Burma, islands in the Central and South Pacific and much of the Dutch East Indies.<sup>94</sup> The breadth of the empire gives some indication of the variety of wartime experiences and memories. For example, large numbers of Taiwanese young people volunteered for military service after decades of assimilation policies focused on education cultivated loyalty to the empire even among its colonial subjects.<sup>95</sup> However, certain incidents remain seared onto collective memory for their brutality and the vigour with which they are denied. The Nanjing Massacre (December 1937) is one such controversy which is refuted and inflated with similar ferocity.<sup>96</sup> The rape and killing of local resident by the Imperial Army continued for several weeks without the intervention of military command, however death count estimates vary considerably (ranging from the tens of thousands<sup>97</sup> to the hundreds of thousands).<sup>97</sup> A

---

<sup>90</sup> Gordon (n 3) 202.

<sup>91</sup> Mark R Peattie, 'Nanshin: The "Southward Advance," 1931-1941, as a Prelude to the Japanese Occupation of Southeast Asia' in Peter Duus, Ramon H Myers and Mark R Peattie (eds), *The Japanese Wartime Empire, 1931-1945* (Princeton University Press 1996) 230–231.

<sup>92</sup> Robinson (n 76) 168 and 170.

<sup>93</sup> Sayaka Chatani, *Nation-Empire: Ideology and Rural Youth Mobilization in Japan and Its Colonies* (Cornell University Press 2018) 140.

<sup>94</sup> Gordon (n 3) 207.

<sup>95</sup> Chatani (n 93) 151.

<sup>96</sup> The most famous of which are Tanaka's nationalist, apologist whitewash of the massacre which was in turn a response to Chang's immensely popular book that overgeneralised Japanese society. See, Masaaki Tanaka, *What Really Happened in Nanking: The Refutation of a Common Myth* (Sekai Shuppan 2000); Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (Penguin Books 1997).

<sup>97</sup> Gordon (n 3) 203.

further example of the trauma experienced during this period was the human experimentation programme of Unit 731. Based in then-Manchukuo, the Japanese Imperial Army detachment specialised in biological warfare and used the local population in horrific projects.<sup>98</sup> These crimes were not investigated at the Tokyo Trial, where evidence was withheld ‘purposely and for very sinister reasons.’<sup>99</sup> Ishii Shirō, the founder of Unit 731, handed over the data gathered through experiments to the US ‘in exchange for immunity to war crimes charges.’<sup>100</sup>

Japan’s colonies and occupied territories also presented a source of cheap and “expendable” labour. Alongside prisoners of war, civilian men, women, and children were coerced or forced to work in munitions factories, coal mines, building military installations, and more.<sup>101</sup> The 1938 National Mobilisation Law was enacted in Korea for example, with other iterations throughout the war, which forcibly sent millions across Asia into horrendous working conditions.<sup>102</sup> From the 1980s, survivors began taking their stories to court and there has since been a strong movement calling for formal reparations.<sup>103</sup>

Within the ‘mobilisation’ of the colonies was the establishment of “Comfort Stations”. This is where “Comfort Women” taken from Korea, the Philippines, the Dutch East Indies, China, and other territories were imprisoned and raped by Japanese Imperial Army soldiers, as well as forced to do hard labour.<sup>104</sup> The lack of effective remedy for this system has led to a movement of survivors and activists calling for justice and is

---

<sup>98</sup> Kushner (n 52) 117.

<sup>99</sup> Jonathan Watts, ‘Victims of Japan’s Notorious Unit 731 Sue’ 360 *The Lancet* (Tokyo, 24 August 2002); Totani (n 47); Bert VA Röling and Antonio Cassese, *The Tokyo Trial and Beyond: Reflections of a Peacemonger* (Polity Press 1993).

<sup>100</sup> John W Powell, ‘Japan’s Germ Warfare: The US Cover-up of a War Crime’ (1980) 12 *Bulletin of Concerned Asian Scholars* 7.

<sup>101</sup> Timothy Webster, ‘The Price of Settlement: World War II Reparations in China, Japan and Korea’ (2019) 51 *International Law and Politics* 301.

<sup>102</sup> Petra Schmidt, ‘Japan’s Wartime Compensation: Forced Labour’ (2000) 2 *Asia-Pacific Journal: Japan Focus on Human Rights and Law* 1.

<sup>103</sup> *Ibid*; Webster (n 101); He-rim Jo, ‘Supreme Court Orders Mitsubishi to Compensate Korean Forced Labor Victims’ *The Korea Herald* (Seoul, 29 November 2018) <<http://www.koreaherald.com/view.php?ud=20181129000300>> accessed 21 June 2022.

<sup>104</sup> Yoshimi Yoshiaki, *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (Columbia University Press 2000); Asian Women’s Fund, ‘Women Made to Become Comfort Women - Netherlands’ (*Digital Museum: The Comfort Women Issue and the Asian Women’s Fund*) <<http://www.awf.or.jp/e1/netherlands.html>> accessed 10 June 2020.

arguably at the very heart of modern-day diplomatic conflict regarding the Asia-Pacific War. Finally, men from China, Taiwan, Korea, and across the occupied territories were drafted (some by force, others not) into the war effort itself and have been conspicuously absent from Japanese public memory.<sup>105</sup>

Not all expansion efforts were met with hostility, however. Japan continued its support of anti-Western movements, such as financing nationalist fringe groups in British-ruled India, Burma, Malaya, and the Dutch East Indies.<sup>106</sup> Most famously, Japan supported the creation of the Indian National Army and directly aided their fight against the British during World War II as well as joining forces for the Burma Campaign.<sup>107</sup> This feeds into the narrative of pan-Asianism, that Japan was fighting a war of liberation, which is repeated throughout the post-war period and frames sites of contested memories.

### 2.3.3 Japanese Imperialism: 1945-1952

Japan's surrender in 1945 meant the dissolution of an empire which had stretched from the islands of Ryūkyū and Nauru to the mountains of Burma. For many of its former "protectorates" and colonies, Japanese rule was replaced by that of another foreign power. The former administrations were reinstated in Sakhalin (the Soviet Union), Taiwan (China), Malaya (Britain), French Indochina (France) and Timor-Leste (Portugal) among other such transfers of power. Korea was divided into two by the Soviet Union and the US, leading to the Korean War in 1955. Similarly, the Vietnam War broke out in the same year after a struggle for independence first from France, then from the US.

---

<sup>105</sup> This research does not go into depth on the subject of colonial military mobilisation, however further information can be found in, Takashi Fujitani, *Race for Empire: Koreans As Japanese and Japanese As Americans During World War II* (University of California Press 2011).

<sup>106</sup> Peattie (n 91) 232.

<sup>107</sup> For more details on the Indian National Army and Japan's influence, see, Jangkhomang Guite, 'Representing Local Participation in INA–Japanese Imphal Campaign' (2010) 37 *Indian Historical Review* 291; Mithi Mukherjee, 'The Right to Wage War against Empire: Anticolonialism and the Challenge to International Law in the Indian National Army Trial of 1945' (2019) 44 *Law and Social Inquiry* 420.

The impact of Japanese imperialism on the individual nations involved is far too wide-reaching and complex to be discussed here. Of importance to the thesis' research questions however, is the engagement of the victims of imperialism in transitional justice. Chapter 3 discusses the mechanisms used in the post-war period such as prosecutions, reparations, and institutional reform – some considerations should be briefly highlighted here.

Firstly, there were several trials held in Japan and on territories previously occupied by Japan, such as those in China and Malaya, which were often conducted by the Allied powers.<sup>108</sup> The Tokyo Trial was the “flagship” tribunal and considered international crimes committed during Japan’s expansion across the Asia-Pacific and the war. For example, the judges heard evidence on the Burma-Siam railway, the Nanjing Massacre, torture, and inhumane treatment of prisoners of war and what they term ‘native labor’.<sup>109</sup> Secondly, several international treaties between Japan and other states were signed which “resolved” the issue of reparations. The San Francisco Treaty of 1951 and the Treaty on Basic Relations between Japan and Korea of 1965 waived all further claims for compensation.<sup>110</sup> However, the trials and treaties all have one thing in common: they were initiated and overseen by governments with no apparent consultation with the victims of Japanese imperialism. Chapter 3 discusses this impact further, but it is important to note here that the primary actors in modern redress movements were not represented in these early mechanisms.

There were several aspects of Japanese conduct in occupied territories that did not receive attention in post-war period. As previously mentioned, the experiments of Unit 731 were not discussed at the Tokyo Trial and Judge Röling, among others, have noted

---

<sup>108</sup> Sandra Wilson and others, *Japanese War Criminals: The Politics of Justice After the Second World War* (Columbia University Press 2017).

<sup>109</sup> International Military Tribunal for the Far East, judgment of 12 November 1948, in John Pritchard and Sonia M. Zaide (eds.), *The Tokyo War Crimes Trial*, Vol. 22, Part B Chapter VIII of the judgment.

<sup>110</sup> John Price, ‘Cold War Relic: The 1951 San Francisco Peace Treaty and the Politics of Memory’ (2001) 25 *Asian Perspective* 31; Webster (n 101) 301. See also, [San Francisco Treaty] No. 1832. Treaty of Peace with Japan. Signed at San Francisco, On 8 September 1951, UNTS 1952; No. 8471 Japan and Republic of Korea, Treaty on Basic Relations. Signed at Tokyo, on 22 June 1965, UNTS 1966 44.

that the US wished to obtain their data and thus did not indict on this charge.<sup>111</sup> The “Comfort Women” system was also not investigated or tried. This has been one of the major motivations for the civil society and survivor-led movement calling for reparations.<sup>112</sup>

## 2.4 Japanese Collective Memory

The third theme in this historical overview is that of Japanese collective memory. Constructed narratives used to explain, justify, or critique events are intrinsically linked to understanding transitional justice and social control in Japan. Education and historical memory are an important way of ‘promoting reconciliation’ and redressing victims in communities transitioning from conflict.<sup>113</sup> The consequences of fractured collective memory is apparent in modern relations in East Asia, where the role of the emperor, the existence of “Comfort Women” stations, and the treatment of war criminals remains divisive.<sup>114</sup> Thus, it is useful to frame transitional justice and the research problem in the developing, and at times conflicting, narratives of the Asia-Pacific War.

### 2.2.1 Japanese Collective Memory: 1868-1937

The context of war memory in Japan should be traced back to the Meiji Restoration mentioned earlier in this chapter. Described as an ‘aristocratic revolution’, many of the elite samurai class revolted against the entrenched Tokugawa *bakufu* – the military

---

<sup>111</sup> Röling and Cassese (n 99) 31.

<sup>112</sup> Ustinia Dolgopol, ‘Knowledge and Responsibility: The Ongoing Consequences of Failing to Give Sufficient Attention to the Crimes against the Comfort Women in the Tokyo Trial’ in Yuki Tanaka, Timothy LH McCormack and Gerry Simpson (eds), *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011) 252.

<sup>113</sup> United Nations, ‘Guidance Note of the Secretary General’ (n 42) 8-9.

<sup>114</sup> Regarding the Emperor’s absence from the Tokyo Trial see, Tetsuya Takahashi, ‘How to Deal with the Past which was Traumatized by the Crimes against Humanity?’ (2002) 2002 Housha Kaigaku 16; An example of the impact of denying the “Comfort Women” see, Nicola Henry, ‘Memory of an Injustice: The “Comfort Women” and the Legacy of the Tokyo Trial’ (2013) 37 Asian Studies Review 362; Yasukuni Shrine is at the heart of the debate over remembering war criminals, see, Mark Selden, ‘Japan, the United States and Yasukuni Nationalism’ (2008) 43 Economic and Political Weekly 71.

feudal system which had governed Japan for over 250-years.<sup>115</sup> The emperor was “restored” to national leadership (although then-Emperor Meiji was barely a teenager) alongside a new political elite. Writing in 1906, Itō Hirobumi (Japan’s first Prime Minister) described this seismic shift in Japan’s political landscape as a period of rapid growth and Imperial piety.<sup>116</sup> Japan’s industrialisation in the late 1800s and early 1900s was accompanied by what Anderson calls ‘official nationalism’, spurred by the intrusion of the West.<sup>117</sup> This shift from feudalism to a centralised nation-state broke down the centuries of localised militias and rulers and consolidated power around the emperor and the new Tokyo government. Male suffrage and literacy movements, national conscription, and the newly enacted Meiji Constitution paved the way for an identity based on citizenship and dedication to the state.<sup>118</sup>

This national identity became an important rallying cry during the Asia-Pacific War and centred on constructed histories and idolatry of the emperor.<sup>119</sup> According to the Meiji Constitution, the emperor was ‘sacred and inviolable’ and held command over the military and any military action.<sup>120</sup> The Sino-Japanese and the Russo-Japanese Wars are key examples of this identity taking hold. These victories, particularly the latter battle against a primarily white Western power, were met with celebrations, commemoration in popular culture, and an ‘intensification of Japan’s emperor worship and self-image as a superpower’.<sup>121</sup>

The Yasukuni Shrine in Tokyo took on a central role in promoting this narrative and forging national collective memory. Built in the late 19<sup>th</sup> Century, Yasukuni functions as both a Shinto shrine and a war memorial, commemorating the war dead from conflicts

---

<sup>115</sup> Engelbert Kaempfer, *The History of Japan, Together with a Description of the Kingdom of Siam, 1690-92* (MacLehose 1906).

<sup>116</sup> Hirobumi Itō, *Commentaries on the Constitution of the Empire of Japan* (Miyoji Translated by Itō tr, University Publications of America 1979).

<sup>117</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Revised edn, Verso 2016) 98; Tessa Morris-suzuki, *Re-Inventing Japan: Time, Space, Nation* (M. E. Sharpe 1998) 163.

<sup>118</sup> Anderson (n 117) 95; *The Constitution of the Empire of Japan 1889*.

<sup>119</sup> Kenneth J. Ruoff, *Imperial Japan at its Zenith: The Wartime Celebration of the Empire's 2,600th Anniversary* (Cornell University Press 2010) 33.

<sup>120</sup> *The Constitution of the Empire of Japan 1889* art.3 and art. 11-14.

<sup>121</sup> Kim Puja, ‘Global Civil Society Remakes History: “The Women’s International War Crimes Tribunal 2000”’ (2001) 9 *Positions: East Asia Cultures Critique* 611, 615; Takenaka (n 58) 67.

between 1868 and 1945.<sup>122</sup> In the pre-war period, Yasukuni mobilised the public by celebrating the sacrifice of their compatriots in overseas campaigns such as the Sino-Japanese and Russo-Japanese wars, honouring the fallen and emphasising the gratitude of the emperor for their bravery.<sup>123</sup> This role became ever more important during the Asia-Pacific War and it served an integral purpose in maintaining support for the war and respect for the emperor.

The development of the emperor's role in the national consciousness is a key feature in analysing post-war transitional justice in Japan. Emperor Hirohito was conspicuously absent from the Tokyo Trial indictment, the reasons for which will be analysed in Chapter 5 within a transitional justice framework. In addition, this absence has been critiqued by activists in the "Comfort Women" movement as undermining post-war reparations measures which will be discussed further in Chapter 7.

#### 2.4.2 Japanese Collective Memory: 1937 -1945

Japan required vast amounts of resources to sustain its war effort. Alongside material concerns, Takenaka describes one of the most important demands as 'emotional readiness'.<sup>124</sup> She focuses on the Yasukuni Shrine as a vehicle for 'institutionalising grief' and 'institutionalising joy', which was critical to maintain public support both at home and on the frontlines.<sup>125</sup> The use of coercive<sup>126</sup> collective action, such as ritualised public funerals and victory parades, proliferated the narrative of honourable death in which a family's grief was censured.<sup>127</sup> Takenaka uses the *shōkon* rituals as the exemplar of such practices. *Shōkon* ceremonies that took place at Yasukuni (attended by the families of the fallen, public figures, and the mass media), purified and enshrined the spirits of the war dead in semi-annual events.<sup>128</sup> *Shōkon* memorials

---

<sup>122</sup> Takenaka (n 58) 3.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid 95.

<sup>125</sup> Ibid.

<sup>126</sup> Not all wished to take part, but the censorship and crackdowns on resistance to the war worked with the social pressure of these occasions to ensure people took part. See, Takenaka (n 58) 95.

<sup>127</sup> Takenaka (n 58) 95.

<sup>128</sup> Ibid 97.

were often the final point of a multi-stage journey in public grieving and partly served to tell the public that the empire, and the emperor, understood and honoured each individual sacrifice.<sup>129</sup>

The positive public reaction to the aforementioned Manchurian Incident in 1931 demonstrated the growing support for overseas military action, such as the increasingly militaristic stance of newspapers.<sup>130</sup> Yasukuni was also mobilised as a site for memory and propaganda. The on-site Yūshūkan military museum reopened in 1931 with exhibitions glorifying Japan's war efforts and the showcase dedicated to the Manchurian Incident attracted nearly 30,000 visitors.<sup>131</sup> While the event was condemned by the League of Nations, it was, and still is, framed as an act of self-defence and sacrifice at the Yūshūkan.<sup>132</sup>

This rallying of national pride and construction of war memory is critical to understanding transitional justice as social control. First, it indicates the kind of national stories that were told during the war and thus is the foundation upon which post-conflict mechanisms will rest. Second, modern visits by Japanese officials to the Yasukuni Shrine is a key source of tension and international protest.<sup>133</sup> Thus, this history and the symbolism of such national institutions contextualises the research problem.

In August 1945, Japan agreed to the terms of the Potsdam Declaration on the proviso that the emperor would remain Sovereign Ruler.<sup>134</sup> This marked the end of the Asia-

---

<sup>129</sup> Ibid 96.

<sup>130</sup> Christopher WA Szpilman, 'Between Pan-Asianism and Nationalism: Mitsukawa Kametaro and His Campaign to Reform Japan and Liberate Asia' in Sven Saaler and J Victor Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, regionalism and borders* (Routledge 2007) 97.

<sup>131</sup> Takenaka (n 58) 104.

<sup>132</sup> Author's visits to the Yushukan 2008-2013; Yasukuni Jinja, 'Yasukunijinjin No Yuisho' <<https://www.yasukuni.or.jp/history/detail.html>> accessed 13 May 2021.

<sup>133</sup> Yoshinobu Higurashi, 'Yasukuni Jinja to Hanzai: Goushi Ni Itarumichi' *Nippon* (Tokyo, 20 August 2013) <<https://www.nippon.com/ja/in-depth/a02404/>>; Jonathan Watts, 'Violence Flares as the Chinese Rage at Japan' *The Guardian* (17 April 2005) <[www.theguardian.com/world/2005/apr/17/the-PRC.japan](http://www.theguardian.com/world/2005/apr/17/the-PRC.japan)> accessed 20 November 2019; Mark Selden, 'Japan, the United States and Yasukuni Nationalism' (2008) 43 *Economic and Political Weekly* 71.

<sup>134</sup> Boister and Cryer (n 20) 21.

Pacific War and the start of judicial and non-judicial processes determined to reform Japan.

#### 2.4.3 Japanese Collective Memory: 1945-1952

By applying a transitional justice framework to post-war Japan, this research intrinsically emphasises the occurrence, memory, and legacy of Japanese atrocities committed during the Asia-Pacific War. However, these discussions must be understood alongside the immense trauma experienced by Japan and its people – without justifying any of these crimes. The process of remembering something often implies forgetting it first, an active or passive shaping of the past. Thus, today's struggle to confront history should be contextualised by how it was forgotten.

Like many nations across the world, Japan suffered immense losses during the war. As discussed above, the populace had lost their homes and their loved ones in the firebombing of cities and brutal battles. Japan also has the unique and horrific status of experiencing an atomic bomb not once, but twice. Over 200,000 people were killed by the atomic bombs dropped by the US on Hiroshima and Nagasaki.<sup>135</sup> To add to the trauma, the perpetrator of these acts became their occupier, preaching peace and disarmament. If the war years in Japan are characterised by national commemoration, ritual, and collective remembrance of the war-dead, the post-war period finds them conspicuously absent. Igarashi describes this as ‘...a constant struggle to render memories of war into a benign, nostalgic form.’<sup>136</sup> By renouncing the military, Shintoism, divinity of the emperor, and its political framework, a line was drawn between the “past Japan” and “present/future Japan”. The US was essential to this transformation, reinforcing the narrative of ‘rescue and conversion’ – that it was the militarists who waged the war, not Japan or its people.<sup>137</sup>

---

<sup>135</sup> Kumano (n 55) 37.

<sup>136</sup> Yoshikuni Igarashi, *Bodies of Memory: Narratives of War in Postwar Japanese Culture, 1945-1970* (Princeton University Press 2000) 10.

<sup>137</sup> *Ibid.* 13.

This narrative can be found in the post-war constitution and at the Tokyo Trial. In its preamble, the constitution states that the Japanese people ‘...[are] resolved that never again shall we be visited with the horrors of war through the action of government...’<sup>138</sup> The Tokyo Trial reflects this, by absolving the emperor of any responsibility and punishing the individual high-ranking officials who had ‘lost the war’.<sup>139</sup> Unlike the Holocaust in Europe, Japanese atrocities could more easily be seen as the terrible consequences of far-off military ventures.<sup>140</sup> If we accept the premise that prosecuting international crimes provides an educative account of the past,<sup>141</sup> then it follows that those crimes ignored by the Trial (such as the “Comfort Women” and Unit 731) be forgotten. Also, massacres and brutality can be relegated to the actions of a select few who were duly punished. Here, we can see in practice how selective and politicised trials can be detrimental to the goals of accountability and truth-telling.<sup>142</sup> By focusing on a few individuals, trials may frame violations as ‘totalitarian, intentionalist, [and] top-down’ as well as implicitly prioritising certain crimes and victims.<sup>143</sup> Thus, in the case of the Tokyo Trial, the extent of forced labour, sexual slavery, and medical experimentation remained generally unknown for decades after the war.

This is a somewhat reductive discussion of the Tokyo Trial and its impact on Japanese collective consciousness, as its reception and legacy are as varied now as they were then.<sup>144</sup> For example, the public campaign to release and reintegrate war criminals counters the image of a “forgetful” Japan.<sup>145</sup> In contrast, prominent thinkers such as Ishibashi Tanzan and Prime Minister Higashikuni Naruhiko publicly discussed

---

<sup>138</sup> The Constitution of Japan 1946, preamble.

<sup>139</sup> Boister and Cryer (n 20) 316.

<sup>140</sup> Ian Buruma, *Wages of Guilt: Memories of War in Germany and Japan* (Vintage 1995) 162.

<sup>141</sup> Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge University Press 2007) 174–175.

<sup>142</sup> Conor McCarthy, *Reparations and Victim Support in the International Criminal Court* (Cambridge University Press 2012) 360.

<sup>143</sup> Cécile Aptel, ‘Prosecutorial Discretion at the ICC and Victims’ Right to Remedy: Narrowing the Impunity Gap’ (2012) 10 *Journal of International Criminal Justice* 1357, 1371; Steve Heder, ‘Politics, Diplomacy, and Accountability in Cambodia: Severely Limiting Personal Jurisdiction in Prosecution of Perpetrators of Crimes Against Humanity’ in Manfred Berg and Bernd Schaefer (eds), *Historical Justice in International Perspective: How Societies Are Trying to Right the Wrongs of the Past* (German Historical Institute 2012) 188.

<sup>144</sup> Boister and Cryer (n 20) 316.

<sup>145</sup> Keyao Pan, ‘Networking for War Criminal Amnesty: The Establishment of Japan’s War Convicted Benefit Society’ (2020) 18 *The Asia-Pacific Journal: Japan Focus*.

collective responsibility for the Asia-Pacific War for which Japan must atone.<sup>146</sup> Forgetting the war was both a necessity and encouraged policy in the immediate post-war, however. The US facilitated this forward-looking approach, their vast reforms were generally well-received and marked a disruption and distance from bloody defeat.<sup>147</sup>

The later years of the occupation changed these sentiments, as rearmament met with staunch opposition. The US perceived the Soviet Union and its new atomic capabilities as a huge threat warranting their military presence in Japan, however in so doing much of the Japanese public felt it made them a target.<sup>148</sup> Additionally, the influence of the US on the Self-Defence Forces gave it a seemingly Western character (such as the use of English as a primary language) which hindered public acceptance of the new forces.<sup>149</sup> Furthermore, occupation policies and the defeat itself arguably facilitated this “forgetting” by complexifying public mourning. The Shinto Directive eliminated government support for shrines, such as financial maintenance, and the once symbolic Yasukuni Shrine was privatised.<sup>150</sup> Takenaka notes that, for the families of the 37,053-enshrined war dead, this represented a disavowal of their sacrifice for the State.<sup>151</sup>

## 2.5 Conclusion

This chapter presented a thematic overview of the Asia-Pacific War and reflected on three themes present in the history of Japan in the pre-war, wartime, and post-war years. The themes analysed are key to contextualising the research questions regarding transitional justice as a form of social control and identifying relevant mechanisms. Firstly, analysing Japan’s relationship with the West provides essential historical background to the use of, and reaction to, transitional justice. The forced opening of Japan to trade by Western ships in the late 1800s, the hypocrisy of Western

---

<sup>146</sup> Takenaka (n 58) 132.

<sup>147</sup> Duccio Basosi and Rosa Caroli, ‘Introduction’ in Rosa Caroli and Duccio Basosi (eds), *Legacies of the US Occupation of Japan: Appraisals after Sixty Years* (Cambridge Scholars Publisher 2015) xi.

<sup>148</sup> Averill (n 65) 170.

<sup>149</sup> Ibid. 171.

<sup>150</sup> Takenaka (n 58) 132.

<sup>151</sup> Ibid.

empires, and the seven-year US occupation are examples of a pattern of domination and Japan's inequality on the global level. This in no way justifies atrocities committed by Japan, but it does form a backdrop for the initiation and impact of transitional justice.

Secondly, understanding the history of Japanese imperialism is integral to framing modern day transitional justice efforts and the problem of contested war memories. Examining this theme situated issues such as the "Comfort Women" and forced labour in a history of oppression which came long before, justified with pan-Asianism and anti-Western rhetoric. Currently, those who call for transitional justice and acknowledgment are overwhelming the survivors of Japanese atrocities and their supporters in civil society.

Finally, Japanese collective memory connects the evolving narratives on the Asia-Pacific War, the above themes, and modern-day reluctance to acknowledge victims. This chapter reflected on the place of the emperor, the memorialisation of war-dead, and the immense change brought about by the occupation as historical factors that may impact the role of transitional justice as social control. The case studies all implicate forms of denial; thus, Japanese historical discourse forms the context for why the target of transitional justice may react to such mechanisms and control modes. The next chapter builds on this analysis by examining the transitional justice paradigm and identifying specific policies used in post-war Japan.

## Chapter 3 – From War to Peace: Transitional Justice in post-war Japan

### 3.1 Introduction

This chapter answers the first research question: what transitional justice mechanisms have been implemented in post-war Japan? In doing so, the aim is to provide a solid justification for the choice of case studies and explain how the findings here have guided data collection. The chapter is divided into two parts: firstly, transitional justice scholarship is analysed to draw out themes most relevant to the research problem; secondly, mechanisms and policies employed in post-war Japan are identified and related to transitional justice. The two stages lay the foundation for answering the research questions by examining what phenomena can be termed transitional justice in post-war Japan. Applying a transitional justice lens to Japan's post-war period also contributes to the vast literature on Japanese history and politics, as well as to the transitional justice field itself. Japan is often overlooked by scholars of historical harm and post-conflict justice, despite its potential to problematise and expand our understanding of such mechanisms.

### 3.2 An Overview of Transitional Justice

Transitional justice has increasingly become the framework through which scholars analyse societies emerging from violence; it has grown to encompass a range of perspectives and activities spanning multiple disciplines.<sup>1</sup> Bell notes that as a field, transitional justice is 'both a sphere of practice...and a sphere of academic knowledge, with a praxis relationship between the two.'<sup>2</sup> As a practice and academic pursuit, it took shape in the 1980s and 1990s in response to South American and East European states transitioning from regimes which had committed mass human rights violations, and proliferated in the 2000s through the work of non-governmental organisations and

---

<sup>1</sup> Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 *Human Rights Quarterly* 321, 321; Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"' (2009) 3 *International Journal of Transitional Justice* 5, 7; Paul Greedy and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 *International Journal of Transitional Justice* 339, 339.

<sup>2</sup> Bell (n 1) 7.

various UN bodies.<sup>3</sup> Transitional justice is a critical concept in the research questions of this thesis, thus this section seeks to systematise relevant literature and identify the most salient themes to the research problem. The core pillars of transitional justice are discussed alongside broader questions of theory and terminology. Then, key debates are examined considering the research problem and the thematic analysis of the previous chapter.

Transitional justice is often considered to have four pillars, with a fifth recently suggested by the UN Special Procedures.<sup>4</sup> The first pillar, truth, seeks to illuminate “what really happened” during the conflict or authoritarian regime – whilst the definition of truth or truth-seeking remains contested it is the guiding principle in mechanisms such as truth commissions and independent investigations.<sup>5</sup> The second pillar is “justice” and/or accountability, which has traditionally been associated with criminal prosecutions (although this will be problematised later in the chapter). Thirdly, the reparation pillar guides the process of ‘providing a range of material and symbolic benefits to victims’, such as through monetary compensation and commemoration.<sup>6</sup> The fourth pillar is guarantees of non-recurrence, mostly in reference to institutional reform which seeks to (re)build trust in the state apparatus and prevent future repetition of conflict or repressive practices – such as by reforming the security sector or legal frameworks.<sup>7</sup> The most recently articulated pillar – although long discussed in scholarship and practice – is memory. Fabián Salvioli, the current UN Special Rapporteur on the Promotion of truth, justice, reparation and guarantees of non-recurrence, produced a report in 2020 advocating memory practices as integral to

---

<sup>3</sup> Bell (n 1) 8–9; Arthur (n 1) 321.

<sup>4</sup> Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, ‘2018-2020: Contemporary Perspectives on Transitional Justice Issues’ (2021) available at <<https://www.ohchr.org/Documents/Issues/Truth/contemporary-perspectives-transitional-justice-user-friendly.pdf>> accessed 03 February 2022; UN ‘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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 28 January 2020, 2; Paul Gready and Simon Robins, ‘Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and “New” Civil Society’ (2017) 21 *International Journal of Human Rights* 956, 956.

<sup>5</sup> Naftali explores the emergence of this concept and its obstacles. See, Patricia Naftali, ‘Crafting a “Right to Truth” in International Law: Converging Mobilizations, Diverging Agendas?’ (2016) XIII *Champ pénal* 1.

<sup>6</sup> UN ‘Guidance Note of the Secretary General’ (n 4) 8.

<sup>7</sup> Emanuela Ceva and Colleen Murphy, ‘Interactive Justice in Transitional Justice: A Dynamic Framework’ (2022) 66 *American Journal of Political Science* 762, 765.

transitional justice.<sup>8</sup> This could include the use of art, archives and museums, memorials, and education initiatives that aim to publicly remember victims.<sup>9</sup> Each pillar encapsulates core principles, areas of knowledge, and guides for practice, with multiple points of intersection. They also represent the salient concepts around which transitional justice literature has grown, connected by the normative aims of ‘more justice, more peace and more freedom’.<sup>10</sup>

Despite these apparent aims, there are several challenges in the transitional justice literature which are relevant to Japan and its historical context. This section first examines the relationship and apparent tension between peace and justice. Second, the traditional dominance of state-led approaches is problematised. Thirdly, the expanding scope of transitional justice is explored to situate post-war Japan as a critical study. Finally, the current gaps in literature are outlined and key elements are identified for the overall research project.

The first theme that is highly relevant to transitional justice in post-war Japan is the relationship between justice and peace. Baker and Obradovic-Wochnik write that ‘the underlying logic of external intervention’ is often that through transitional justice, peace can be built, yet there remains the so-called ‘peace versus justice debate’.<sup>11</sup> This ‘age-old conceptual struggle’ reflects the uneasy compromise between achieving political stability and an end to violence on the one hand, and accountability for human rights and humanitarian law violations on the other.<sup>12</sup> For instance, conceptualising justice as criminal prosecutions can deepen societal division and be perceived as retribution,

---

<sup>8</sup> UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.’ (9 July 2020) UN Docs A/HRC/45/45.

<sup>9</sup> Ibid. [60] – [64].

<sup>10</sup> Briony Jones and Ulrike Lühe, ‘Knowledge for Peace: Transitional Justice and the Politics of Knowledge in Theory and Practice’ in Briony Jones and Ulrike Lühe (eds), *Knowledge for Peace: Transitional Justice and the Politics of Knowledge in Theory and Practice* (Edward Elgar Publishing 2021) 1.

<sup>11</sup> Catherine Baker and Jelena Obradovic-Wochnik, ‘Mapping the Nexus of Transitional Justice and Peacebuilding’ (2016) 10 *Journal of Intervention and Statebuilding* 281, 282–283.

<sup>12</sup> Katharina Merkel, ‘Peace versus Justice: A False Dichotomy? Mapping Tensions and Complementarities between Conflict Resolution and Human Rights Advocacy in Afghanistan’ (2014) 5 *Journal of Conflictology* 19.

as authors point out in the case of the International Criminal Tribunal for the former Yugoslavia.<sup>13</sup>

The Human Rights Committee has condemned amnesty or pardons in cases of gross human rights violations, emphasising the state's obligation to prosecute – a position supported at the Inter-American Court of Human Rights.<sup>14</sup> This legal duty is tempered by prosecutorial discretion, and by the mere fact that it is generally not possible to investigate and convict every perpetrator involved in mass violations, even for bodies such as the International Criminal Court.<sup>15</sup> Dancy's analysis of a disaggregated data set of amnesties following civil war argues that, in fact, under certain conditions amnesties can contribute to sustainable peace.<sup>16</sup> Several authors have criticised this dichotomy inherent in the justice versus peace debate, arguing that attaining political stability must be – and can be – complemented by holding perpetrators accountable.<sup>17</sup> As Royer notes however, merely moving beyond this black and white conceptualisation does not resolve the balancing act.<sup>18</sup>

---

<sup>13</sup> Baker and Obradovic-Wochnik (n 11) 284–285; Pdraig McAuliffe, 'Reflections of the Nexus between Justice and Peacebuilding' (2017) 11 *Journal of Intervention and Statebuilding* 245, 249; Though others have argued that the tribunal actually aided in peace efforts, see, Jacqueline R McAllister, 'The Peace versus Justice Debate Revisited: The ICTY's Impact on the Bosnian Peace Process' in Carsten Stahn and others (eds), *Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Approach* (Oxford University Press 2020) 537.

<sup>14</sup> UNHRC, 'General comment No. 31 [80] The Nature of General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, [18]; Brianne McGonigle Leyh, 'Nuremberg's Legacy Within Transitional Justice: Prosecutions Are Here to Stay' (2016) 15 *Washington University Global Studies Law Review* 559, 565.

<sup>15</sup> Christof Royer, 'International Criminal Justice Between Scylla and Charybdis—the "Peace Versus Justice" Dilemma Analysed Through the Lenses of Judith Shklar's and Hannah Arendt's Legal and Political Theories' (2017) 18 *Human Rights Review* 395, 409; Cécile Aptel, 'Prosecutorial Discretion at the ICC and Victims' Right to Remedy: Narrowing the Impunity Gap' (2012) 10 *Journal of International Criminal Justice* 1357; William A Schabas, 'Prosecutorial Discretion v. Judicial Activism at the International Criminal Court' (2008) 6 *Journal of International Criminal Justice* 731.

<sup>16</sup> Geoff Dancy, 'Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace' (2018) 72 *International Organization* 387, 416.

<sup>17</sup> Ellen Lutz, 'Transitional Justice: Lessons Learned and the Road Ahead' in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-first Century: Beyond Truth versus Justice* (Cambridge University Press 2006) 327; Mark Kersten, *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace* (Oxford University Press 2016) 35–36; Bartłomiej Krzan, 'International Criminal Court Facing the Peace vs. Justice Dilemma' (2016) 2 *International Comparative Jurisprudence* 87.

<sup>18</sup> Royer (n 15) 407.

Sriram connects this debate to the liberal peacebuilding framework that has underwritten much of the practice and scholarship in post-conflict contexts.<sup>19</sup> The “blueprint” of liberal peace privileges democracy and free market capitalism as critical transformations for stemming violence.<sup>20</sup> Liberal peace is a core concept in peacebuilding literature and practice, intersecting with transitional justice in its aim to promote the rule of law, institutional reform, and democratic governance.<sup>21</sup> The methods focus on ‘reconstruction’ of the state framework: (re)building public trust in elections, the constitution, the security forces, and others to achieve peace.<sup>22</sup> This approach brings its own normative assumptions that democracy and entering the neo-liberal economic paradigm will bring stability, often ignoring the socio-economic inequalities that may have led to conflict.<sup>23</sup> This thesis aims to contribute to the debate by analysing Japan, a state that ostensibly had justice measures yet also retained decades of stable peace, an influential place in the global market, and democracy. The case study choices were guided by this goal, highlighting phenomena that emphasised accountability and/or stability.

These critiques link to the second theme guiding the research into post-war Japan: the dominance of legal and/or state-led transitional justice mechanisms. The adherence to criminal prosecutions, legislative reforms, and rule-of-law initiatives under the transitional justice paradigm could be considered a ‘triumph of human rights’,<sup>24</sup> borne from the codification of international crimes and the duty to prosecute.<sup>25</sup> Thus, ‘the justice of transitional justice’ often refers to criminal responsibility of the individual, with mechanisms and actors situated in relation to the state.<sup>26</sup> This is reinforced by the

---

<sup>19</sup> Chandra Lekha Sriram, ‘Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice’ (2007) 21 *Global Society* 579, 586.

<sup>20</sup> Lekha Sriram (n 19) 580; Gready and Robins (n 1) 341.

<sup>21</sup> Or Avi-Guy, ‘Transformation – Overcoming the Limits of Liberal Peace and Transitional Justice in Deeply Divided Societies: Reconciliation in Liberal Peace Theory’ (2021) 54 *Israel Law Review* 289, 291.

<sup>22</sup> *Ibid.* 293.

<sup>23</sup> Lekha Sriram (n 19) 581.

<sup>24</sup> Kieran McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice’ (2007) 34 *Journal of Law and Society* 411, 418.

<sup>25</sup> For a discussion on the development of this duty, see McGonigle Leyh (n 14) 563-568.

<sup>26</sup> Gready and Robins (n 1) 957.

advocating of trials as a deterrent, wherein prosecution is touted by influential actors as a critical factor to prevent future violations.<sup>27</sup>

The consequences of relying predominantly upon state-led and criminal justice focused measures are multifold. The promise of healing, sanctions, and adequate reparation has resulted in victims being let down, if not re-traumatised, by the process.<sup>28</sup> However, it is precisely the power-laden authority of the law that is desirable for some victims. Dolgopol writes of how former “Comfort Women” have chosen to reclaim the legal frameworks that had thus far failed them, using the language and structures of international criminal law to legitimise their calls for redress.<sup>29</sup> Moreover, these debates are fostering developments within judicial and institutional measures which emphasise the advantages of victim participation and this process as a mode of reconciliation.<sup>30</sup>

Conceptualising justice as solely criminal justice, and transition as the move to democracy, can obscure the important role of non-state actors. This is relevant in East Asia where civil society and survivors have taken increasingly vocal roles.<sup>31</sup> As McEvoy notes, often the state does not have a monopoly on forms of transitional

---

<sup>27</sup> Some examples are in the presumptive wording of documents such as: UNGA, ‘Rome Statute of the International Criminal Court’ (1998) UN Doc A/CONF.183/9, preamble; UN Economic and Social Council, ‘Promotion and Protection of Human Rights: Impunity, Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher’ (8 February 2005) UN Docs E/CN.4/2005/102/Add.1, principle 1; UN General Assembly, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (21 March 2006) UN Docs A/RES/60/147, [3b].

<sup>28</sup> Simon Robins, ‘Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations’ [2017] Human Rights and International Legal Discourse 41; Cronin-Furman (n 20); Claire Moon, ‘Who’ll Pay Reparations on My Soul: Compensation, Social Control and Social Suffering’ (2012) 21 Social and Legal Studies 187.

<sup>29</sup> “Comfort Women” is the term used to refer to the women and girls used in the military’s system of sexual slavery during the Asia-Pacific War. Ustinia Dolgopol, ‘The Tokyo Women’s Tribunal: Transboundary Activists and the Use of Law’s Power’ in Andrew Byrnes and Gabrielle Simm (eds), *Peoples’ Tribunals and International Law* (Cambridge University Press 2018) 101–103.

<sup>30</sup> Valentina Spiga, ‘No Redress without Justice: Victims and International Criminal Law’ (2012) 10 Journal of International Criminal Justice 1377, 1393; Brianne McGonigle Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia 2011), 126.

<sup>31</sup> The “Comfort Women” movement is an example of global activism aiming to pressure states and institutions, as well as redress survivors. See, Kim Puja, ‘Global Civil Society Remakes History: “The Women’s International War Crimes Tribunal 2000”’ (2001) 9 Positions: East Asia Cultures Critique 611; Mary M McCarthy and Linda C Hasunuma, ‘Coalition Building and Mobilization: Case Studies of the Comfort Women Memorials in the United States’ (2018) 6 Politics, Groups, and Identities 411.

justice and encouraging greater participation at every level is a necessary broadening which could lead to more impactful change.<sup>32</sup> Despite this, the focus on states and state institutions within transitional justice has resulted in relatively little attention to the role of others.<sup>33</sup> This overemphasis on top-down strategies is supplemented by the ‘tendency to equate civil society with [non-governmental organisations]’, as well as the study of civil society often done in relation to the state rather than as independent actors.<sup>34</sup> Armed groups, international and local corporations, civil society organisations, can all be implicated in the protection, violation, and redress of human rights and facilitation of post-conflict mechanisms.<sup>35</sup> This is an emerging interest in the transitional justice field however, interrogating how non-state actors can be held accountable not only through criminal proceedings but also in reparative approaches among others.<sup>36</sup> Taking this into account, the thesis seeks to advance knowledge on non-state and non-legal mechanisms, actors, and processes by constructing a theoretical framework that can be applied to all contexts. Therefore, it was critical to have at least one case study with little to no ties to any state or official apparatus.

The third theme that is relevant to post-war Japan is the expansion of applications and definitions in transitional justice literature. The field has broadened in its scope in response to the nature of conflict; Lutz describes how the ‘first generation’ literature focused on moving from dictatorship to democracy but has evolved to encompass civil war, ongoing conflicts, and the International Criminal Court.<sup>37</sup> While “transition” has generally been understood to mean political change (such as authoritarian rule to democracy), scholars have increasingly seen developments in ‘established

---

<sup>32</sup> Kieran McEvoy, ‘Letting Go of Legalism: Developing a “Thicker” Version of Transitional Justice’ in Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots activism and the struggle for change* (Hart Publishing 2008) 437.

<sup>33</sup> Gready and Robins (n 4) 956.

<sup>34</sup> Gready and Robins (n 4) 956.

<sup>35</sup> For an overview of the importance of NSAs in law and human rights, see, David Weissbrodt, ‘Roles and Responsibilities of Non-State Actors’ in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013); Cristina Lafont, ‘Accountability and Global Governance: Challenging the State-Centric Conception of Human Rights’ (2010) 3 *Ethics and Global Politics* 193.

<sup>36</sup> Ioana Cismas, ‘Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability’ in Roger Duthie and Paul Seils (eds) *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Centre for Transitional Justice, New York) 308.

<sup>37</sup> Lutz (n 17) 326.

democracies' such as Canada and Australia through the lens of transitional justice.<sup>38</sup> Henry posits that fluid definitions of "transition" and "justice" provide useful frameworks for post-colonial contexts which might not be examples of 'ideal types of traumatized societies' yet remain disturbed over past wrongs.<sup>39</sup> Henry reflects on how the terminology of transitional justice is 'necessarily contested and incomplete', demonstrating how states which have long since "transitioned" into peace still wrangle with the tension of reconciliation and redress.<sup>40</sup>

Gallen's recent book on violations by the Catholic Church has furthered the understanding of non-state actors as perpetrators, but also of how transitional justice can be applied to different contexts.<sup>41</sup> He argues that the field must adapt to situations of 'historical-structural injustice and, in particular, the dimensions of power and of emotions in responding to this longer form of injustice.'<sup>42</sup> Although a very different context, Gallen's framing is applicable to the heightened socio-political tension in East Asia, where many people are seeking acknowledgment for harms sustained generations ago.<sup>43</sup> Furthermore, while Japan has been a stable democracy for several decades, its own brutal imperialism was followed by a military occupation and massive structural, economic, and political change, suggesting complex layers of trauma that should be examined.

The preconceptions and definitions around transitional justice is perhaps why Japan has received so little attention in the literature. As in Henry's and Gallen's book, Japan is an established democracy impacted by the legacy of historical injustice. Furthermore, Japan is an unusual site for analysis because of the range of actors and victims. Transitional justice scholarship is almost exclusively related to violations

---

<sup>38</sup> Ruti G Teitel, 'Transitional Justice Genealogy' (2003) 16 *Harvard Human Rights Journal* 69; Nicola Henry, 'From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies' (2015) 9 *International Journal of Transitional Justice* 199.

<sup>39</sup> Nicola Henry, 'Memory of an Injustice: The "Comfort Women" and the Legacy of the Tokyo Trial' (2013) 37 *Asian Studies Review* 362, 217.

<sup>40</sup> Henry (n 37) 199.

<sup>41</sup> James Gallen, *Transitional Justice and the Historical Abuses of Church and State* (Cambridge University Press 2023).

<sup>42</sup> *Ibid.* 1.

<sup>43</sup> *Ibid.*

committed by an actor(s) against people in the same state. Ranging from apartheid-era South Africa, genocide in Rwanda, violence by the Revolutionary Armed Forces of Colombia (FARC), to the varied combat in the Yugoslav wars, post-conflict mechanisms often involve victims and perpetrators in the same country. The Asia-Pacific War departs from this model, wherein the Imperial Japanese Armed Forces committed war crimes primarily outside of their own territory – spanning from China to the Dutch East Indies. The implications of this difference are highlighted at the Tokyo Trial: the range of states and state interests represented, such as among the judges; the relative absence of crimes against humanity charges in comparison to Nuremberg; and victims spread across a huge geographical area. The impact of this is examined in Chapter 5. The atypical attributes of Japan as a transitional justice study illustrates how this thesis can advance the scholarship in both fields. Firstly, it furthers the definition of transitional justice by problematising the assumption that it relates only to intra-state violence. Secondly, it demonstrates how post-war Japan can and should be discussed in relation to transitional justice.

Literature and practice related to transitional justice is vast and covers a variety of mechanisms, communities, and perspectives. Several gaps in knowledge and theory exist that this thesis seeks to address. Firstly, scholars across disciplines such as Gready and Robins,<sup>44</sup> David,<sup>45</sup> Cronin-Furman,<sup>46</sup> and Dudai<sup>47</sup> criticise the lack of rigorous theorisation and evidence base for current transitional justice policy. This thesis applies the concept of social control to seek new perspectives on the field. Secondly, despite transitional justice being implemented in Asia, the scholarship has focused predominantly on Latin America, Africa, and Eastern Europe.<sup>48</sup> Literature that does analyse Asia, although essential, almost exclusively focuses on criminal

---

<sup>44</sup> Gready and Robins (n 4).

<sup>45</sup> Roman David, 'What We Know About Transitional Justice: Survey and Experimental Evidence' (2017) 38 *Political Psychology* 151.

<sup>46</sup> Kate Cronin-Furman, 'Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity' (2013) 7 *International Journal of Transitional Justice* 434.

<sup>47</sup> Ron Dudai, 'Transitional Justice as Social Control: Political Transitions, Human Rights Norms and the Reclassification of the Past' [2017] *British Journal of Sociology* 1.

<sup>48</sup> Renee Jeffery and Hun Joon Kim, 'Introduction: New Horizons: Transitional Justice in the Asia-Pacific' in Renee Jeffery and Hun Joon Kim (eds), *Transitional Justice in the Asia-Pacific* (Cambridge University Press 2015) 2.

tribunals.<sup>49</sup> Zachmann, Kaufman, and Futamura have produced exceptional work on Japan using the vocabulary and principles of transitional justice, but such examples are rare and disproportionately focus on the Tokyo Trial.<sup>50</sup> Thirdly, Japanese civil society has often been portrayed as ‘weak’, highly professionalised, and lacking in civic engagement.<sup>51</sup> Two participants interviewed for this research agreed that this was a common perception, noting that civil society is more based on donations than activism.<sup>52</sup> While this holds truth, it is notable that several initiatives relating to the Asia-Pacific War legacy have been established from within, or in collaboration with, civil society, private individuals, and non-governmental organisations in Japan. Poignant illustrations are the “Comfort Women” redress movement and the groups working to protect the post-war constitution.<sup>53</sup> This thesis therefore takes a holistic approach, situating transitional justice mechanisms in Japan’s historical development and seeking to include a broad range of strategies and actors.

### 3.3 Transitional Justice in post-war Japan

This section outlines the mechanisms and policies that were to facilitate Japan’s post-war transition from authoritarianism to democracy and peace. Utilising the discussion of the transitional justice framework, three pillars are identified as highly relevant to post-war Japan: justice and accountability, guarantees of non-recurrence, and

---

<sup>49</sup> Such as, Kerstin von Lingen (ed), *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* (Palgrave Macmillan 2016); Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016).

<sup>50</sup> Urs Matthias Zachmann, ‘From Nanking to Hiroshima to Seoul: (Post-)Transitional Justice, Juridical Forms and the Construction of Wartime Memory’ (2016) 14 *Journal of Modern European History* 568; Zachary D Kaufman, ‘Transitional Justice for Tojo’s Japan: The United States Role in the Establishment of the International Military Tribunal for the Far East and Other Transitional Justice Mechanisms for Japan after World War II’ (2013) 27 *Emory International Law Review*; Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Routledge 2008).

<sup>51</sup> Daiki Shibuichi, ‘The Struggle Against Hate Groups in Japan: The Invisible Civil Society, Leftist Elites and Anti-Racism Groups’ (2016) 19 *Social Science Japan Journal* 71, 148; Robert Pekkanen, ‘Japan: Social Capital Without Advocacy’ in Muthiah Alagappa (ed), *Civil Society and Political Change in Asia: Expanding and Contracting Democratic Space* (Stanford University Press 2004) 245–246; Simon Andrew Avenell, *Making Japanese Citizens: Civil Society and the Mythology of the Shimin in Postwar Japan* (University of California Press 2010) 190.

<sup>52</sup> Interview with Teraya Koji, Professor of Law at the University of Tokyo and Member of the UN Human Rights Committee (Tokyo, 14 December 2022); Interview with Wakabayashi Hideki, Director of THINK Lobby (Tokyo, 14 December 2022).

<sup>53</sup> Akutibu myuujiamu: onnatachi no sensou to heiwa shiryokan, ‘Wam Nitsuite’ (2019) <<https://wam-peace.org/about/>> accessed 4 January 2019; Daiki Shibuichi, ‘The Article 9 Association, Leftist Elites, and the Movement to Save Article 9 of Japan’s Postwar Constitution’ (2017) 34 *East Asia* 147.

reparations. The most data-rich and relevant case studies are then chosen from these categories and will be used to answer the remaining questions. For the purposes of this section, connections to social control theories are made to justify their relevance to the overall thesis.

### 3.3.1 Prosecuting War Criminals in the Asia-Pacific

In line with the discussion of the previous section, by far the most present mechanism of transitional justice in post-war Japan was criminal prosecution. Other strategies such as vetting were used, but this was rapidly reversed. The use of judicial, punitive measures is considered as a way of ensuring accountability, establishing a formal record of violations committed, a mode of reparation for victims, and reinforcing the legitimacy of international law.<sup>54</sup> McGonigle Leyh argues that while transitional justice has begun to focus on 'less retributive responses', the enduring status of criminal prosecutions is a direct legacy of the Nuremberg and Tokyo Trial.<sup>55</sup> Prosecutions can also be understood through a basic understanding of social control. Punitive mechanisms inherently identify a deviant (the defendant) and deviant behaviour (the criminal charge) through organised methods of control (criminal law for example).<sup>56</sup> Therefore, post-war prosecutions were identified as highly relevant to answering the overarching research question of this thesis.

Following the end of the war, over 5,700 individuals<sup>57</sup> were tried across the Asia-Pacific for conventional war crimes committed by the Japanese Empire.<sup>58</sup> Between 1945 and 1951, 300 trials were conducted by Australian Military Courts covering

---

<sup>54</sup> See section 3.2. See also, United Nations General Assembly, 'Basic Principles' (n 27) s.VIII; UN '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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 11 August 2019, 7.

<sup>55</sup> McGonigle Leyh (n 14) 561.

<sup>56</sup> Donald Black, *The Behavior of Law* (Special Edition [1976], Emerald 2010) 5.

<sup>57</sup> This includes individuals from Japanese colonies such as Korea and Taiwan. Keyao Pan, 'Networking for War Criminal Amnesty: The Establishment of Japan's War Convicted Benefit Society' (2020) 18 *The Asia-Pacific Journal: Japan Focus* 1.

<sup>58</sup> Xiudong Gao, 'The Tokyo Trial and Its Influence on Contemporary International Criminal Justice' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016) 101.

crimes such as the treatment of prisoners of war and acts of severe brutality on the battlefield.<sup>59</sup> Similarly, China held military tribunals in 10 cities, sentencing eight individuals to death for the massacre at Nanjing.<sup>60</sup> Japanese atrocities were also prosecuted in Vietnam, Hong Kong, the Philippines, the Soviet Union, Burma (now Myanmar), Malaya (now Malaysia), and Singapore, among others.<sup>61</sup> These trials formed a network of accountability for the crimes of the Japanese Empire, although criticism is charged against these for seeking vengeance rather than justice and for re-establishing colonial power.<sup>62</sup> While these prosecutions were numerous and important, it is the Tokyo Trial which has left an enduring imprint on both war memory and international law.

The Tokyo Trial, 1946-1948, prosecuted 28 individuals from Japanese military and civilian backgrounds deemed responsible for the war.<sup>63</sup> Prosecuting crimes against peace, conventional war crimes, and crimes against humanity, the trial was widely reported by the Allied and Japanese press and was open to the public.<sup>64</sup> A judge at the tribunal, Justice Röling, has since described it as ‘...a huge-scale theatrical production.’<sup>65</sup> Also unlike other contemporaneous trials, the court bench and International Prosecution Section drew from 11 of the Allied Powers including three directly affected by Japanese imperialism.<sup>66</sup> The Tokyo Trial was to be a major global event. In this vein, the Tokyo Trial remains a key point of contention in remembering the war. For example, the Yasukuni controversy centres on the enshrinement of those

---

<sup>59</sup> Narelle Morris, *Japanese War Crimes in the Pacific: Australia's Investigations and Prosecutions* (National Archives of Australia 2019) 4 and 6.

<sup>60</sup> Daqun Liu, ‘The Nanjing Trials – Victor’s Justice? Revisiting the Case of Tani Hisao’ in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016) 113 and Annex I.

<sup>61</sup> Sandra Wilson and others, *Japanese War Criminals: The Politics of Justice After the Second World War* (Columbia University Press 2017) 74; WL Cheah and Moritz Vormbaum, ‘British War Crimes Trials in Europe and Asia, 1945-1949: A Comparative Study’ (2018) 31 *Leiden Journal of International Law* 669.

<sup>62</sup> For a discussion of these critiques in relation to Nanjing and Indochina, see, Liu (n 59); Beatrice Trefalt, ‘Japanese War Criminals In Indochina and the French Pursuit of Justice: Local and International Constraints’ (2014) 49 *Journal of Contemporary History* 727.

<sup>63</sup> Aleksandra Babovic, *The Tokyo Trial, Justice, and the Postwar International Order* (Palgrave Macmillan 2019) 4.

<sup>64</sup> Bert VA Röling and Antonio Cassese, *The Tokyo Trial and Beyond: Reflections of a Peacemonger* (Polity Press 1993) 20–21.

<sup>65</sup> *Ibid.* 20.

<sup>66</sup> Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asian Center 2008) 19.

convicted at the trial, and the dissenting opinion of Justice Pal is key to narratives of “victor’s justice” which paint the court as judicial vengeance against a defeated Japan.<sup>67</sup>

The tribunals conducted across the Asia-Pacific would make enlightening case studies for the application of social control theory to transitional justice. Compared to the Tokyo Trial however, the other courts were not as suitable for analysis. Firstly, as noted by Trefalt, the other war crimes trials held by individual Allied powers each took place in considerably varied contexts – geographically, socially, and politically.<sup>68</sup> Comparative analysis of the thesis case studies would need to take into account these factors and the historical overview indicated that they would yield more data on the hosting states rather than Japan. Secondly, there are less primary and secondary data available on the trials held outside of Japan, although some such as the Australian Military Courts do have accessible archives. Thirdly, the Tokyo Trial is the only such phenomena to have a clear, substantive, and long-term impact on the research problem. It was a momentous undertaking and designed to impress upon the Japanese public ‘the fact of their defeat’ and the Yasukuni Shrine is evidence of its continued impression.<sup>69</sup> The Tokyo Trial is the most prominent of the post-war prosecutions of Japanese war criminals, archival data is readily available, and it is an integral element of modern conflicting memories. For these reasons, the Tokyo Trial was selected as the first case study and is examined in Chapter 5 of this thesis.

### 3.3.2 Reforming Post-War Japan

The second form of transitional justice most evident in post-war Japan is institutional reform, a core element of guarantees of non-recurrence that restructures state

---

<sup>67</sup> Mark Selden, ‘Japan, the United States and Yasukuni Nationalism’ (2008) 43 *Economic and Political Weekly* 71; Takeshi Nakajima, ‘The Tokyo Tribunal, Justice Pal and the Revisionist Distortion of History’ (2011) 9 *The Asia-Pacific Journal: Japan Focus*.

<sup>68</sup> Trefalt [n 62] 728.

<sup>69</sup> State War Navy Coordinating Committee, ‘Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15), 3 November 1945’ [4(e)] <<https://www.ndl.go.jp/constitution/e/shiryō/01/036/036tx.html>> accessed 10 October 2022.

apparatus to promote human rights and prevent conflict.<sup>70</sup> Additionally, institutional reform has social control features, as it often uses formal processes to identify deviancy and seek to control and prevent it.<sup>71</sup> Although guarantees of non-recurrence need not only take place through the state, the reform of institutions features heavily in post-war Japan, particularly through MacArthur's "democratise and demilitarise" doctrine discussed in Chapter 2.

The United States Initial Post-Surrender Policy for Japan (1945) outlined the aims and methods through which reform would be implemented.<sup>72</sup> One priority was the and nationalist influences from the public and private sphere: identified individuals would be 'removed and excluded from public office and from any other position of...responsibility.'<sup>73</sup> Organisations were shut-down, atomic energy related research facilities seized, and key officials were taken into custody.<sup>74</sup> Around 186,000 individuals were removed from government roles and military personnel were 'automatically banned from public office.'<sup>75</sup>

Other policies such as land reform, political freedom, and revision of the economic system carried recognisable transitional justice rhetoric of redistribution, equality, and participation. Some key examples are the support of labour unions and the right to strike, the Communist Party was decriminalised, and the *zaibatsu* (business conglomerates) were to be dissolved.<sup>76</sup> While the social impact of these reforms is

---

<sup>70</sup> Ana Cutter Patel, 'Transitional Justice, DDR, and Security Sector Reform' in Ana Cutter Patel, Pablo De Greiff and Lars Waldorf (eds), *Disarming the Past: transitional justice and ex-combatants* (Social Science Research Council 2009) 271.

<sup>71</sup> Stanley Cohen, *Visions of Social Control: Crime, Punishment, and Classification* (Blackwell 1985) 3.

<sup>72</sup> State War Navy Coordinating Committee, 'Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15), 3 November 1945' <<https://www.ndl.go.jp/constitution/e/shiryō/01/036/036tx.html>> accessed 10 October 2022.

<sup>73</sup> United States Initial Post-Surrender Policy for Japan (SWNCC1150/4), 6 September 1945, available at <[https://www.ndl.go.jp/constitution/shiryō/01/022/022\\_001r.html](https://www.ndl.go.jp/constitution/shiryō/01/022/022_001r.html)> accessed 11 July 2021, 266.

<sup>74</sup> Toshio Nishi, *Unconditional Democracy: Education and Politics in Occupied Japan, 1945-1952* (Hoover Institution Press 1982) 50–51.

<sup>75</sup> *Ibid.* 56.

<sup>76</sup> Yong Wook Lee, 'The Origin of One Party Domination: America's Reverse Course and the Emergence of the Liberal Democratic Party in Japan' (2004) 18 *The Journal of East Asian Affairs* 371, 377.

disputed,<sup>77</sup> the changes reflect the transition of Japan from an authoritarian state to one premised on democracy.

In the late 1940s however, the occupation changed tact in what is commonly called the “reverse course” (*gyaku kōsu*).<sup>78</sup> The perceived threat of the Soviet Union and Communism placed Japan as a key regional base for the US which increased in importance with the onset of the Cold War and the Korean War.<sup>79</sup> Those reforms deemed detrimental to the evolving international situation were altered or discarded entirely, thus reversing much of what could be retroactively considered transitional justice. One key example is the “Red Purge”. Having been liberated from political internment, members of the Japanese Communist Party were increasingly targeted by occupation and government policies. A 1947 general strike was blocked by MacArthur, unions were curtailed, and perceived communists were fired from spheres such as higher education.<sup>80</sup> Other policies were also reversed or contradicted, such as the softening of *zaibatsu* restrictions and imposing strict censorship of the press during the occupation.<sup>81</sup>

While the initial attempts at institutional reform resemble transitional justice practice to some extent, it is the Constitution of Japan which is most relevant to this research. Enacted on 3 November 1946 and in force since 3 May 1947, the constitution radically changed core elements of Japan’s political structure. The emperor was designated the ‘symbol of the State’ with restricted powers, Shintoism was disestablished as a national religion, human rights were codified, and war was renounced as a sovereign

---

<sup>77</sup> Such as whether the occupation land tenure regulations were ‘draconian’ land grabs or a viable way of ‘alleviating unemployment’. See, J Mark Ramseyer, ‘The Fable of Land Reform: Leases and Credit Markets in Occupied Japan’ (2015) 24 *Journal of Economics and Management Strategy* 934, 935; Davide Torsello, ‘The Paths to Difference: Social and Economic Choices in Three Post-War Agrarian Settlements of North-Eastern Japan’ (2002) 5 *Social Science Japan Journal* 37, 38.

<sup>78</sup> Hans Martin Kramer, ‘Just Who Reversed the Course? The Red Purge in Higher Education during the Occupation of Japan’ (2005) 8 *Social Science Japan Journal* 2.

<sup>79</sup> Paul J Heer, *Mr. X and the Pacific: George F. Kennan and American Policy in East Asia* (Cornell University Press 2018) 53.

<sup>80</sup> Wesley Sasaki-Uemura, *Organizing the Spontaneous: Citizen Protest in Postwar Japan* (University of Hawai’i Press 2001) 81–82; Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford University Press 2009) 237; Kramer (n 75).

<sup>81</sup> Kramer (n 75) 2; Etou Jun, *Closed Linguistic Space: Censorship by the Occupation Forces and Postwar Japan* (Japan Publishing Industry Foundation for Culture 2020) see Chapter 8 generally.

right.<sup>82</sup> These measures are clear examples of wholesale institutional reform which can be situated within a transitional justice framework.

Although other provisions were considered as potential case studies, such as the new place of the emperor, Article 9 is the most relevant to the core of this thesis due to its sustained importance to Japanese socio-political narratives. The issue of constitutional amendment has been central to the platform of the ruling Liberal Democratic Party since it was formed in 1955.<sup>83</sup> Controversy is most heated when discussing Article 9: the 'Renunciation of War'. A 2021 survey by the *Asahi Shimbun* (a major national newspaper) showed 30% of respondents supported revising Article 9 compared to 60% who did not, yet it remains a priority for Japanese Prime Ministers and their Cabinets.<sup>84</sup> This debate is highly relevant to the problem of contested war memories because of the prevailing connection between Article 9 and the Asia-Pacific War.

The constitution also contextualises transitional justice and social control through the way in which it was created and implemented. It was drafted and enacted by MacArthur, prompting the critique that it was imposed on the Japanese people.<sup>85</sup> However, the process was more complex and did involve the participation of the government and it remains the 'oldest unamended constitution in the world.'<sup>86</sup> As such, it offers insights into the use of formal, legal social control and the intricacies of top-down institutional and legal reform. The recent intensification of the amendment debate, focused on Article 9, also establishes its timeliness as a case study.

In contrast, other important reforms lack the same salience in public and political discourse. For example, section 3.2 noted that recent transitional justice scholarship has highlighted the role that non-state actors, including corporations, have in conflict

---

<sup>82</sup> The Constitution of Japan 1946, arts. 1, 11, preamble, and art. 9 respectively.

<sup>83</sup> Shigenori Matsui, *The Constitution of Japan: A Contextual Analysis* (Hart Publishing 2011) 262.

<sup>84</sup> Yoshitaka Isobe, 'Survey: Voters Evenly Split on Need for Revising the Constitution' *The Asahi Shimbun* (Tokyo, 3 May 2021) <<https://www.asahi.com/ajw/articles/14342228>> accessed 9 May 2022.

<sup>85</sup> Kenneth Mori McElwain and Christian G Winkler, 'What's Unique about the Japanese Constitution? A Comparative and Historical Analysis' (2015) 41 *The Journal of Japanese Studies* 249, 251; Ray A Moore and Donald L Robinson, *Partners for Democracy: Crafting the New Japanese State under MacArthur* (Oxford University Press 2002) 3.

<sup>86</sup> McElwain and Winkler (n 82) 249; Matsui (n 80) 21; Moore and Robinson (n 82).

situations. The attempted control of the *zaibatsu*, vetting of higher education, and dismantling of State Shinto were therefore considered as potential case studies. However, in part due to the “reverse course”, these reforms were cut short, entirely rescinded, and/or have become uncontroversial aspects of post-war Japan. This thesis seeks to answer the research questions in light of ongoing mnemonic battles in East Asia and Japanese war memories, Article 9 is debated in this context both by the public and politicians, thus it was chosen as the most appropriate case and is explored further in Chapter 6.

### 3.3.3. Providing Reparations for the Asia-Pacific War

Finally, the third form of transitional justice that is relevant to post-war Japan is the use of, or lack of, reparations. While this often involves financial compensation, other forms can be more symbolic in nature such as public apologies and memorials, as well as the reforms and prosecutions discussed in the preceding sections.<sup>87</sup>

In the context of post-war Japan, the character of reparations discourse has changed over the decades. In the immediate post-war, reparations were formalised and initiated by other nations – as stipulated by the Potsdam Declaration which was accepted as part of Japan’s surrender.<sup>88</sup> The San Francisco Treaty was, and remains, the cornerstone of deliberations regarding war reparations.<sup>89</sup> 48 States signed in September 1951, with the conspicuous absence of China and Taiwan who were not invited, the Republic of Korea, and the Soviet Union whose delegation walked out of the conference.<sup>90</sup> The San Francisco Treaty resulted in reparations being paid to the International Committee of the Red Cross (to be distributed to prisoners of war), as

---

<sup>87</sup> UNHRC, ‘General comment No. 31 [80] The Nature of General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, [16].

<sup>88</sup> [Potsdam Declaration] Proclamation Defining Terms for Japanese Surrender, Issued at Potsdam, July 26, 1945, The Ministry of Foreign Affairs “Nihon Gaiko Nenpyo Narabini Shuyo Bunsho: 1940-1945” vol. 2, 1966 art. 12.

<sup>89</sup> [San Francisco Treaty] No. 1832. Treaty of Peace with Japan. Signed at San Francisco, On 8 September 1951, UNTS 1952 218.

<sup>90</sup> Gordon (n 77) 239–240.

well as other sums to states.<sup>91</sup> As Scheiber has pointed out, the treaty has no provisions for the reparation of harm done to individuals or war crimes beyond that of prisoners of war.<sup>92</sup> It is the following section that is most relevant to the research:

(b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecutions of the war, and claims of the Allied Powers for direct military costs of occupation.<sup>93</sup>

As can be seen above, States Parties not only relinquished their own right to such reparation, but that of their nationals too. Similarly, the 1965 Treaty on Basic Relations Between Japan and the Republic of Korea (hereafter the Basic Treaty) and the accompanying agreement make no mention of individual reparations.<sup>94</sup> The waiver of reparation claims beyond those limited by the treaty was in part due to the financial situation of post-war Japan as well as concern for the brewing Cold War, where Japan's economic revival would be integral.<sup>95</sup> Moffett notes that after World War II, re-establishing economic relations and security took priority for the Allies and indeed Japan's former colonies.<sup>96</sup> His historical analysis of reparations demonstrates that the focus on individual redress has developed in part from human rights law, and that prior to this it was the state who was considered the injured party.<sup>97</sup>

The lack of such provision in the San Francisco Treaty and the Basic Treaty are important to note because they are relied upon to refute the reparations claims of victims of Japanese war crimes and crimes against humanity. Thus, while other post-war bilateral treaties involved some form of reparation, the two discussed here are of greatest relevance to this research. Both treaties are cited by the Japanese

---

<sup>91</sup> The Law Library of Congress, 'Japan: WWII POW and Forced Labor Compensation Cases' 22 <<http://www.law.gov>>.

<sup>92</sup> Harry Scheiber, 'Taking Responsibility: Moral and Historical Perspectives on the Japanese War-Reparations Issues' (2002) 20 Berkeley Journal of International Law 233, 237.

<sup>93</sup> [San Francisco Treaty] (n 86), Art. 14(b).

<sup>94</sup> The Treaty and the Agreement were signed on the same day. No. 8471 Japan and Republic of Korea, Treaty on Basic Relations. Signed at Tokyo, on 22 June 1965, UNTS 1966 44.

<sup>95</sup> John Price, 'Cold War Relic: The 1951 San Francisco Peace Treaty and the Politics of Memory' (2001) 25 Asian Perspective 31, 33.

<sup>96</sup> Luke Moffett, *Reparations and War: Finding Balance in Repairing the Past* (Oxford University Press 2023) 89.

<sup>97</sup> *Ibid.* 71.

government and the Supreme Court of Japan as voiding any such claims and have also been used in the US to refute the possibility of reparations.<sup>98</sup> Despite this, litigation and advocacy in support of Asia-Pacific War victims has gained renewed momentum. Several lawsuits have been filed seeking reparations from Japanese companies for forced labour during the Asia-Pacific War. Although there have been successful cases – gaining modest compensation and memorialisation – many companies have won appeals at the Supreme Court of Japan.<sup>99</sup> According to Webster, over 100 such lawsuits have been filed against the Japanese government and businesses in the last 25 years.<sup>100</sup> These campaigns seek reparations for forced labour, sexual slavery, medical experimentation, among other violations during the Asia-Pacific War.<sup>101</sup>

Arguably the most emblematic of all the reparation movements is that of the “Comfort Women”. Beginning with Kim Hak-Sun’s public testimony in 1991, the call for compensation and acknowledgment has grown into a worldwide phenomenon. The “Comfort Women” issue was not addressed by the Tokyo Trial, post-war reparations, or reforms, therefore presenting an interesting case of “delayed” transitional justice and social control. As a state, Japan has been inconsistent at best in its use of apologies, financial compensation, and official acknowledgment. However, unlike the first phase of reparations in the 1940s and 1950s, reparations discourse has primarily been led by activists and civil society – triggered by the coming forward of survivors.<sup>102</sup> For example, the Asian Women’s Fund was set up by Japan in 1995 after a series of ‘tactical concessions’ responding to “Comfort Women” support campaigns.<sup>103</sup> The fund was highly controversial, inciting fierce debates between survivors’ and national

---

<sup>98</sup> An example of the Japanese government line can be found at, Ministry of Foreign Affairs of Japan, ‘Aja: Rekishi Mondai Q&A’ (1 February 2021) <<https://www.mofa.go.jp/mofaj/area/taisen/qa/index.html>>; Timothy Webster, ‘The Price of Settlement: World War II Reparations in China, Japan and Korea’ (2019) 51 *International Law and Politics* 301, 357 and 359; Scheiber (n 89) 236.

<sup>99</sup> See generally, Timothy Webster, ‘The Price of Settlement: World War II Reparations in China, Japan and Korea’ (2019) 51 *International Law and Politics* 301.

<sup>100</sup> Webster (n 95).

<sup>101</sup> For a discussion of the range and details of cases see, Webster (n 95).

<sup>102</sup> Vera Mackie and Sharon Crozier-De Rosa, ‘Remembering the Grandmothers: The International Movement to Commemorate the Survivors of Militarized Sexual Abuse in the Asia-Pacific War’ (2019) 17 *The Asia-Pacific Journal: Japan Focus* 4.

<sup>103</sup> Ji Young Kim and Jeyong Sohn, ‘Settlement Without Consensus: International Pressure, Domestic Backlash, and the Comfort Women Issue in Japan’ (2017) 90 *Pacific Affairs* 77, 84.

groups as to whether the money should be accepted.<sup>104</sup> Several scholars have analysed the initiative, explaining how it had been poorly designed and failed to consult survivors first.<sup>105</sup>

Taking a bottom-up approach, the “Comfort Women” reparations movement also interacts with the transitional justice paradigm and social control theory. A variety of civil society groups, survivors, and activists have used the language of transitional justice to call for measures such as memorialisation and apologies.<sup>106</sup> One of the most notable examples is the Women’s Active Museum on War and Peace (referred to as WAM): a non-state archive and museum dedicated to educating the public on the “Comfort Women”. The site was established to archive the documents of the Tokyo Women’s Tribunal, a civil society initiative involving survivors to emulate a criminal court and investigate Japan’s responsibility.<sup>107</sup>

WAM was chosen as a case study because of its continued operation and accessibility, although the other initiatives discussed in this section were also considered for potential analysis. Firstly, the civil litigation around forced labour may have illuminated how victims have held companies to account. However, the literature review of transitional justice and the preceding historical thematic overview informed the decision that the thesis would greatly benefit from a case study with two key features: one that did not primarily function through legal or state frameworks, and it should be related to the “Comfort Women” issue as it is the most prominent and controversial reparations movement today. The former criteria is also why the Asian Women’s Fund was not chosen. Secondly, an established and enduring reparations programme would

---

<sup>104</sup> Hee-Kang Kim, ‘Nationalism, Feminism, and Beyond: A Note on the Comfort Women Movement’ (2015) 17 *New Zealand Journal of Asian Studies* 1, 11.

<sup>105</sup> Ibid. 10–11; Ustinia Dolgopol, ‘The Judgment of the Tokyo Women’s Tribunal’ (2003) 28 *Alternative Law Journal* 242–243; Yayori Matsui, ‘Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery: Memory, Identity, and Society’ (2001) 19 *East Asia: An International Quarterly* 119, 130.

<sup>106</sup> For examples see, Rangsook Yoon, ‘Erecting the “Comfort Women” Memorials: From Seoul to San Francisco’ (2018) 53 *De Arte* 70; Mariko Izumi, ‘Asian-Japanese: State Apology, National Ethos, and the “Comfort Women” Reparations Debate in Japan’ (2011) 62 *Communication Studies* 473.

<sup>107</sup> Akutibu myuujiamu: onnatachi no sensou to heiwa shiryokan (n 52); Transcript of Oral Judgment’ (Women’s Caucus for Gender Justice) available at <<http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html>> accessed 12 July 2021, [147].

be the most relevant considering that the research problem emphasises ongoing debates about the Asia-Pacific War. The Asian Women's Fund, the Tokyo Women's Tribunal, compensation to prisoners of war, and other such activities have been short-term or "one-off" phenomena. Thirdly, WAM has several unique elements which if analysed can contribute to the literature on transitional justice, post-war Japan, and social control: WAM is a civil society organisation with no state support; it is run by, and for the education of, the Japanese public; and there is little scholarship on the museum in comparison to the other potential cases noted. These factors led to WAM being chosen as the third case study and is analysed in Chapter 7.

### 3.4 Conclusion

This chapter sought to answer the first research question: what transitional justice mechanisms have been implemented in post-war Japan? In doing so, it has also highlighted how the thesis contributes to the literature on transitional justice and post-war Japan. First, transitional justice literature was reviewed to draw out key debates that are most relevant, highlighting the discussion around peace and justice, established democracies, and dominance of legal approaches. The chosen case studies reflect these themes, such as the stable peace ensured by Article 9 in contrast to the judicial mechanism of the Tokyo Trial, and the grassroots movement represented by WAM. The thesis thus seeks to advance knowledge in these areas by applying transitional justice, and social control, to post-war Japan – a context that has received scant attention in the scholarship.

Second, it was noted that the literature on post-war Japan is vast and includes much on the Tokyo Trial, the "Comfort Women" movement, and Article 9. However, there is no existing study that considers these developments holistically under a transitional justice lens. This thesis rectifies such a gap. Post-war programmes in Japan were grouped into three categories and the critical mechanisms were discussed. The issue of justice and accountability was a core factor in this period, although this was predominantly implemented through criminal prosecutions and the Tokyo Trial in particular. Institutional reform was also widespread, a strategy related to guarantees

of non-recurrence, and the new constitution was identified as the most appropriate for further study. Finally, reparations were shown to have a complex and contested legacy in post-war Japan. Although several reparations mechanisms have been employed, to varying success, WAM was chosen as a case study due to its grassroots history and the importance of the “Comfort Women” movement.

## Chapter 4 – A Typology of Transitional Control

### 4.1 Introduction

The aim of this chapter is to propose a framework of transitional justice as social control which can then be interrogated through the case studies of the Tokyo Trial, Article 9 of the Constitution of Japan, and the Women's Active Museum. This chapter addresses the second research question: In what ways can transitional justice be conceptualised as a form of social control? To answer this question, relevant theories in social control scholarship are identified. The most analytically appropriate theories are selected based on the findings of Chapter 3, which outlined the aims and mechanisms of transitional justice in the context of the research problem.

Due to the dearth of literature on transitional justice as social control, the relationship between human rights and social control is posited as a useful frame of reference. Arthur's important conceptual history of transitional justice proposes that while it is a distinct field with its own 'normative aim[s]', transitional justice developed from the human rights movement.<sup>108</sup> In addition to these roots, the promotion of international human rights law is inexorably woven into transitional justice policies. It seeks to redress gross human rights violations,<sup>109</sup> develop the rule of law,<sup>110</sup> and promote democracy.<sup>111</sup> This relationship is clearly seen in Japan's post-war constitution which, among other large scale transitional reforms, enshrined women's rights and universal suffrage.<sup>112</sup> Thus, section 4.2.2 considers the relevant scholarship on human rights as social control to illuminate potential sites of analytical crossover.

---

<sup>108</sup> Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 *Human Rights Quarterly* 321, 358.

<sup>109</sup> UNGA, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (21 March 2006) UN Docs A/RES/60/147

<sup>110</sup> 'Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence' (Office of the High Commissioner for Human Rights) <<https://www.ohchr.org/en/issues/truthjusticereparation/pages/index.aspx>> accessed 1 February 2022.

<sup>111</sup> Tricia D Olsen, Leigh A Payne and Andrew G Reiter, 'The Justice Balance: When Transitional Justice Improves Human Rights and Democracy' (2010) 32 *Human Rights Quarterly* 980, 981.

<sup>112</sup> The Constitution of Japan 1946, arts. 11 and 15.

As the analysis in this chapter will disclose, the application of existing social control theories, while useful, does not result in a framework that sufficiently captures the range of actors, aims, and conduits of transitional justice. Section 4.3 proposes three alternative typologies, specific to transitional justice, with which to answer the research question: disciplinary control, organisational control, and narrative control. The chapter concludes by outlining how these three features of transitional justice as social control will be applied to the case studies in the following chapters.

## 4.2 The Theory and Practice of Social Control

Theories on social control have been a mainstay of sociological thought since the 1950s. It was the late Stanley Cohen however who brought social control firmly into the intellectual Zeitgeist in the 1980s.<sup>113</sup> The term has increasingly been used to describe a diverse range of coercion and regulation, and has influenced various fields such as criminology, social psychology, and political philosophy.<sup>114</sup> This proliferation led Cohen, in his seminal 1985 book, to warn of social control becoming a 'Mickey Mouse' concept with little analytical use.<sup>115</sup> He proposed a narrower definition of social control which remains recognised across disciplines,<sup>116</sup> that social control is:

...organized responses to crime, delinquency and allied forms of deviant and/or socially problematic behavior which are actually conceived of as such, whether in the reactive sense ... or in the proactive sense...<sup>117</sup>

This thesis uses Cohen's definition as a starting point given its analytical clarity and recognised influence on the field of sociology. It provides a set of basic, defined

---

<sup>113</sup> Lara Helena Kuhn, *Social Control and Human Nature: What Is It We Are Controlling?* (LFB Scholarly Publishing 2009); Stanley Cohen, *Visions of Social Control: Crime, Punishment, and Classification* (Blackwell 1985).

<sup>114</sup> Martin Innes, *Understanding Social Control: Deviance, Crime and Social Order* (Open University Press 2003), 17-19.

<sup>115</sup> Cohen (n 6) 2.

<sup>116</sup> Innes (n7) 5; Thomas G Blomberg and Carter Hay, 'Visions of Social Control Revisited' in David Downes and others (eds), *Crime, Social Control and Human Rights: From moral panics to states of denial* (Willan Publishing 2007) 174.

<sup>117</sup> Cohen (n 6) 3.

principles to narrow the scope of study and delineate relevant phenomena in transitional justice. Consequently,

1. Social control targets deviant behaviour through organised responses – that is to say, measures and policies developed with the *purpose* of curbing deviant actors and actions.
2. The targeted behaviours are identified as deviant by others.
3. The method of control can arise as a reaction to a behaviour that has already occurred (reactive), or as a method of preventing it from happening or happening again (proactive).

The definition is useful in part because it offers flexibility. First, it is sufficiently broad to encompass the “before and after” period of an action. This is a highly relevant point of analysis considering the transitional justice pillars discussed in Chapter 3, which have integral reactive and proactive features. For example, tools that aim to provide remedy to victims of violations are a reaction to harm. On the other hand, guarantees of non-recurrence are more proactive, in that it strives to prevent future harm.

Second, it recognises that the meaning given to social behaviour is constructed by the perspectives of those in a particular society and is not static. The question, and implications, of who dominates the creation of such perceptions of deviance is discussed in the next section. By doing so, we do not presume that the form of control or the target of control is inherently “good” or “bad” for any individual or for any society irrespective of time and place.<sup>118</sup> As such, and as the proceeding section will elaborate, social control has had a range of ideological inferences. The definition is therefore allied with this research’s social constructivist epistemology and is appropriate for the research problem which spans temporal and territorial boundaries.

Before considering the forms which social control can take, this section provides an overview of key theories of social control to contextualise its relevance to the research. The theorisation of social control can be traced back to the works of Hobbes,

---

<sup>118</sup> Blomberg and Hay (n 9) 174.

Rousseau, and Durkheim on social contract theory, subsequent to which a distinct field of social control studies developed in the early to mid-20<sup>th</sup> century.<sup>119</sup> Influential work by scholars such as Park and Burgess related social control to social organisation and the collective effort to regulate a society.<sup>120</sup> This period of social control scholarship reflects its conception as a generally progressive force, rather than a “cynical” mode of coercion or conformity.<sup>121</sup>

Roscoe Pound’s seminal 1942 work, *Social Control Through Law*, heralded the study of the state and legal apparatus as a conduit for social control. He argued that the development and enforcement of law was governed by sets of social interests, as a desire to ‘establish just precepts...governed by some ideal.’<sup>122</sup> Akin to social engineering rather than socialisation, Pound proposed that the law (and thus the state) acted as the dominant mode of regulating behaviour.<sup>123</sup> This thinking has continued to be influential and is the entry point for considering the relevance of social control to transitional justice. As noted in Chapter 3, transitional justice has been criticised for an overreliance on state-centralised policy making and legal/judicial interventions. The use of state apparatuses and emphasis on the rule-of-law are established features of transitional justice which hints at its potential for social control.

In the latter half of the 20<sup>th</sup> century, scholars turned their attention to the concept of deviance as the target of social control. This is highlighted in Cohen’s definition, wherein ‘deviant...behaviour’ is that which may be seen as problematic (but not necessarily criminal) by members of a society.<sup>124</sup> Although sociologists were divided over the degree of disorder produced by deviance, and whether social control was beneficial for society, it was generally accepted that there existed a “controller” (agent

---

<sup>119</sup> Kuhn (n 6).

<sup>120</sup> Robert E Park and Ernest W Burgess, *Introduction to the Science of Sociology* (University of Chicago Press 1921); Morris Janowitz, ‘Sociological Theory and Social Control’ (1975) 81 *American Journal of Sociology* 82, 93.

<sup>121</sup> Janowitz (n 13) 84.

<sup>122</sup> Roscoe Pound, *Social Control Through Law: With a New Introduction by A. Javier Trevino* (Transaction Publishers 2002) 3.

<sup>123</sup> *Ibid.* 25.

<sup>124</sup> The concept of deviancy is discussed further in section 4.2.1. See, Cohen (n 6) 3.

of control) and a “controlled” (deviant).<sup>125</sup> Therefore, to convincingly conceptualise transitional justice as social control and answer the research question, the analysis must identify the agent and deviant.

Alongside the developments in literature, the practice of social control has also undergone changes. Cohen noted that there have been two major transformations in social control practice, which he termed ‘master patterns’: a transformation at the turn of the 18<sup>th</sup> century and a destructuring movement in the 1960s.<sup>126</sup> In states such as the US and UK, Garland explains that the first pattern is of ‘penal-welfare’, spurred by changing attitudes to the management of deviance.<sup>127</sup> Prior to this, theory and practice was almost entirely focused on prisons and physical punishment as conduits of social control. ‘Penal-welfarism’, ushered in with the development of the welfare state, increasingly turned to reform, rehabilitation, and medical diagnosis governed by state apparatus.<sup>128</sup> This shift in the practice of social control offers possible comparisons with transitional justice. While punitive mechanisms, such as international criminal tribunals have long been used in post-conflict situations, there is a growing call for less retributive methods which look to the underlying context of structural violence.<sup>129</sup> The reflection of such changes in approach is relevant to the research question as it broadens the scope of analysis, rather than restricting the investigation of transitional justice as social control to penal strategies.

These key developments in social control provide several elements important to the thesis. The dominance of the state and the law in control practice, the central place of the agent of control and target of control (the deviant), and the evolution of approaches

---

<sup>125</sup> Robert F Meier, ‘Perspectives on the Concept of Social Control’ (1982) 8 *Annual Review of Sociology* 35, 44.

<sup>126</sup> Cohen (n 6).

<sup>127</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press 2002).

<sup>128</sup> *Ibid.* 34.

<sup>129</sup> Dáire McGill, ‘Tackling Structural Violence through the Transformative Justice Framework’ in Matthew Evans (ed), *Transitional and Transformative Justice: Critical and International Perspectives* (Routledge 2019) 17; Brianne McGonigle Leyh, ‘Nuremberg’s Legacy Within Transitional Justice: Prosecutions Are Here to Stay’ (2016) 15 *Washington University Global Studies Law Review* 559, 568; Gözim Visoka, ‘Arrested Truth: Transitional Justice and the Politics of Remembrance in Kosovo’ (2016) 8 *Journal of Human Rights Practice* 62, 63.

from the punitive to the transformative, are points of reference for how transitional justice may act as social control. The next sections explore the concept of deviance and its importance to social control and how human rights have featured in relevant scholarship.

#### 4.2.1 The Role of the Deviant

The “deviant” actor and/or “deviant” behaviour emerge often in social control scholarship and are also central to Cohen’s definition. Their importance to social control and this thesis requires a brief discussion of the concept. These terms often carry negative connotations of perversion and malice in many Western cultures, but the sociological concept is less value laden.<sup>130</sup> Rather, deviant behaviour is that which is, or would be, widely perceived in society as wrong or atypical. This definition is contested however and can indicate theoretical or political positions.<sup>131</sup>

Goode and Ben-Yehuda point out that deviance can be hard to quantify or name, and that in fact ‘... “deviantness” is a matter of degree.’<sup>132</sup> Scholars argue that deviance in any given group can mean homosexuality or skipping school, stealing or having a mental health diagnosis, and within these meaning we find scales of “severity”.<sup>133</sup> Howard Becker’s seminal 1963 work, *Outsiders*, recognises the inherent subjectivity of labelling something or someone as deviant because it is, at its core, a social construct.<sup>134</sup> In essence, something is deviant only if others label it as such.

---

<sup>130</sup> Erich Goode and Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance* (Blackwell 1994) 70.

<sup>131</sup> David Downes, Paul Rock and Eugene McLaughlin, *Understanding Deviance: A Guide to the Sociology of Crime and Rule-Breaking* (Oxford University Press 2016) 21.

<sup>132</sup> Goode and Ben-Yehuda (n 23).

<sup>133</sup> Elizabeth Such, Oliver Walker and Robert Walker, ‘Anti-War Children: Representation of Youth Protests against the Second Iraq War in the British National Press’ (2005) 12 *Childhood* 301, 320; Howard S Becker, *Outsiders: Studies in the Sociology of Deviance* (Revised [1963], Free Press 2018) 79; Stephen Pfohl, *Images of Deviance & Social Control: A Sociological History* (2nd edn, Waveland Press 2009) 125.

<sup>134</sup> Becker (n 26) 7.

Deviance is therefore situated in socio-political, cultural, and historical contexts, which poses difficulties in its definition. The perception of Japanese wartime Prime Minister, Tōjō Hideki, is illustrative of this complexity. In 1942, those who openly criticised Tōjō were classed as deviants who could even face imprisonment – Japanese citizens were generally supportive of the Prime Minister and the expansion into Manchuria.<sup>135</sup> Six years later, Tōjō was convicted of crimes against peace for being ‘a principal in the making of the plans and in the waging of the wars.’<sup>136</sup> But clearly, the judges, as did the Allies considered Tōjō criminally deviant, illustrating how behaviours and/or individuals can be labelled deviant by one group, while not so by another in a short time span.

Downes, Rock, and McLaughlin have noted that something may not be ‘objectively harmful’, criminal, nor concealed to be deviant.<sup>137</sup> Similarly, something that is criminal might not fit the societal definition of deviance. The example of Tōjō is also useful here. Despite having been sentenced to death by hanging as a war criminal, he was enshrined among others at the Yasukuni Shrine in 1979.<sup>138</sup> While visits to the Shrine cause international protests (themselves an organised response to perceived deviance), Japanese government officials continue to publicly pray at the site, contesting that Tōjō’s judicially proven criminality equates to deviance for them.

The social construction of deviance thus relies on the society itself and the rules it establishes – yet society is not homogenous and its various groups are not driven by the same interests. Social groups are ‘highly differentiated along class lines, ethnic lines, occupational lines, and cultural lines’,<sup>139</sup> and are as varied as modern states, transnational religious communities, local neighbourhood groups, school cohorts, and many others. Becker argues that the ‘actual operating rules’ of the group are created

---

<sup>135</sup> Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford University Press 2009 2<sup>nd</sup> ed), 215-216.

<sup>136</sup> *International Military Tribunal for the Far East, judgment of 12 November 1948*, in John Pritchard and Sonia M. Zaide (eds.), *The Tokyo War Crimes Trial*, Vol. 22, 49,844.

<sup>137</sup> Downes, Rock and McLaughlin (n 24) 21–22.

<sup>138</sup> The symbolic meaning of enshrinement is discussed further in Chapter 5. See, Akiko Takenaka, ‘Enshrinement Politics: War Dead and War Criminals at Yasukuni Shrine’ (2007) 5 *The Asia-Pacific Journal: Japan Focus* 4.

<sup>139</sup> Becker (n 26) 14.

and enforced according to hierarchies of power, particularly along political and economic lines.<sup>140</sup> Pfohl puts it in stronger terms, stating that ‘social control is always an exercise of power’ and it therefore follows that ‘deviance is always a power struggle’.<sup>141</sup> He explains how in societies stratified by hierarchies, deviance is most often defined and regulated by those with the privilege to do so.<sup>142</sup>

This raises important questions regarding the definition of deviance within the transitional justice paradigm. In contrast to most studies of deviance and group rule-breaking, transitional justice often promotes a new or heavily reformed wholesale framework for social behaviour that is a radical break from the recent past. As Dudai writes, transitional justice performs a retroactive function by ‘signifying past events as deviance’ and asserting that the denial of these events is also a deviant act.<sup>143</sup> The power differentials in post-conflict situations can be unstable, where previously divided groups might suddenly be required to share power, or there is vast political transformation.<sup>144</sup> As was seen in post-war Japan, Or Avi-Guy points to ‘rapid democratisation’ as one cause of destabilisation which can lead to power struggles and a paradigmatic shift in hierarchies.<sup>145</sup> Thus, in the space of just a few months, Tōjō’s status evolved from political elite to international criminal as the authority to classify what is or is not deviant changed hands. In this case, the power to enact social control on the national level moved from the Japanese government to the US occupation which retroactively identified his behaviour as deviant. That is not to say that only such large entities can decide and regulate deviance, rather it illustrates how those with greater influence or power can dominate the social control landscape.

This transference of authority is an important reflection for transitional justice conceptualised as social control because it may further marginalise or exclude

---

<sup>140</sup> Ibid. 15.

<sup>141</sup> Pfohl (n 26) 408.

<sup>142</sup> Ibid. 409.

<sup>143</sup> Ron Dudai, ‘Transitional Justice as Social Control: Political Transitions, Human Rights Norms and the Reclassification of the Past’ [2017] *British Journal of Sociology* 1, 3.

<sup>144</sup> Or Avi-Guy, ‘Transformation – Overcoming the Limits of Liberal Peace and Transitional Justice in Deeply Divided Societies: Reconciliation in Liberal Peace Theory’ (2021) 54 *Israel Law Review* 289, 297.

<sup>145</sup> Ibid. 297.

portions of a population. The Tokyo Trial for example has been criticised for not thoroughly investigating the “Comfort Women” system of sexual slavery and of ‘downplaying’ crimes committed against Japanese colonies.<sup>146</sup> It is argued that the Allied Powers enforced their own notions of deviance and simultaneously reinforced ‘a racialised and gendered hierarchy of victimisation.’<sup>147</sup> It is therefore critical to assess not only who is defining deviance, but the context and assumptions in which they do so.

A final note on the concept of deviance regards how its relationship with social control has evolved beyond Cohen’s definition through the broadening of control schemas. The proliferation of surveillance mechanisms, through state and non-state actors, has been generally welcomed by the US and UK public since the 9/11 terrorist attacks.<sup>148</sup> Our data is increasingly being mined by authorities (and sometimes non-state actors) seeking to monitor terrorist activity and our movements are watched by CCTV to prevent criminality.<sup>149</sup> The important pattern here is that *non*-deviance is being subjected to social control in the same way as deviance, a transformation in our social lives.<sup>150</sup> This has only become more central as the world responded to the Covid-19 pandemic and the rise of contact tracing.<sup>151</sup> Therefore, while Cohen’s definition implies a deviant target for social control, modern developments show that this is not necessarily the case.

This research utilises the social constructivist understanding of deviance, that of behaviour contrary to accepted social norms and thus relative to those societies. To answer the research question, in what ways can transitional justice be conceptualised

---

<sup>146</sup> Nicola Henry, ‘Memory of an Injustice: The “Comfort Women” and the Legacy of the Tokyo Trial’ (2013) 37 *Asian Studies Review* 362; Lisa Yoneyama, *Hiroshima Traces: Time, Space, and the Dialectics of Memory* (University of California Press 1999) 156.

<sup>147</sup> Henry (n 39) 366.

<sup>148</sup> Blomberg and Hay (n 9) 186.

<sup>149</sup> Peter Margulies, ‘The NSA in Global Perspective: Surveillance, Human Rights, and International Counterterrorism’ (2014) 82 *Fordham Law Review* 2137; David Lyon, ‘Everyday Surveillance: Personal Data and Social Classifications’ (2002) 5 *Information, Communication & Society* 242.

<sup>150</sup> Innes (n 7).

<sup>151</sup> Sarah Boseley, ‘England’s Covid Contact-Tracing App Will Reach 70% of Those at Risk’ *The Guardian* (13 August 2020) <<https://www.theguardian.com/world/2020/aug/13/new-trials-to-begin-in-england-for-covid-19-contact-tracing-app>> accessed 10 June 2022.

as social control, the thesis determines deviance according to the mechanisms themselves. Identifying the aims and actors in transitional justice is therefore integral to understanding the role of the deviant and the potential for social control.

#### 4.2.2 Human Rights and Social Control

The lack of literature on the relationship between transitional justice and social control prompted the broadening of the scope of enquiry. As a closely allied framework, human rights scholarship offers some indication of how the thesis might situate transitional justice as a form of social control. A literature review produced two contrasting themes: firstly, human rights law is a protection against social control; and secondly, human rights law is a form of social control.

By far the most dominant theme in this literature was that the relationship between human rights and social control is antagonistic, framing the latter as intrusive and the former as protective. Johnson and Falcetta have also noted this trend, stating that human rights law is often conceptualised ‘as a means by which individuals resist the regulation of their conduct.’<sup>152</sup> This ranges from safeguarding those with mental ill-health<sup>153</sup> to the prevention of torture.<sup>154</sup> This trend is interlinked with the notion that social control is a threat to individual and/or collective human rights. It may be that the method of control is deemed excessive and cruel (such as the death penalty),<sup>155</sup> or that the classification of deviance itself is problematic (such as the criminalisation of unhoused people).<sup>156</sup>

---

<sup>152</sup> Paul Johnson and Silvia Falcetta, ‘Human Rights Law as Social Control’ (2021) 18 *European Journal of Criminology* 603, 603.

<sup>153</sup> Matthew Morgan and Craig Paterson, ‘“It’s Mental Health, Not Mental Police”: A Human Rights Approach to Mental Health Triage and Section 136 of the Mental Health Act 1983’ (2019) 13 *Policing: A Journal of Policy and Practice* 123 <<https://academic.oup.com/policing/article/13/2/123/4096708>> accessed 10 August 2023.

<sup>154</sup> David Kretzmer, ‘The Torture Debate: Israel and Beyond’ in David Downes and others (eds), *Crime, social control and human rights: from moral panics to states of denial: essays in honour of Stanley Cohen* (Willan Publishing 2007) 122.

<sup>155</sup> Eric Neumayer, ‘Death Penalty: The Political Foundations of the Global Trend toward Abolition’ (2008) 9 *Human Rights Review* 241, 252.

<sup>156</sup> Emma Blower, Kate Donald and Smriti Upadhyay, ‘The Human Rights Implications of Contemporary Patterns of Social Control’ (2012) 4 *Journal of Human Rights Practice* 187, 194-196.

Although transitional justice is not specifically addressed in human rights and social control scholarship, ongoing situations of conflict or oppression which might precede it have been analysed as social control. For example, Rebecca Tapscott writes about the coercive measures employed by Museveni's authoritarian regime in Uganda, wherein 'the state produces a self-policing population' perpetuated through fear and seemingly arbitrary violence.<sup>157</sup> However, the impact of social control on human rights is not always perceived as negative by wider society. This is illustrated by Blomberg and Hay who explore the post-9/11 period and the so-called "War on Terror", showing how it prompted greater public support for retaining the death penalty and broadening surveillance technologies.<sup>158</sup>

The evolving nature of social control has concurrently adapted its relationship to human rights. From the 1960s onwards, political movements 'aimed at decreasing the size, scope and intensity of the formal deviancy control system', a pattern which Cohen refers to as 'destructuring'.<sup>159</sup> This discourse involved decentralisation and deprofessionalisation of formal control structures and advocated reduced state intervention.<sup>160</sup> These progressive intentions had unforeseen consequences with implications for human rights, as noted by Blower, Donald, and Upadhyay.<sup>161</sup> They explain how shifts to community initiatives and expanding the probation service have not replaced but rather *supplemented* the increase in prison sentences and harsher punishments.<sup>162</sup> This development has been called a bifurcation of control.<sup>163</sup> Cohen refers to this as 'the structural principle of binary opposition', the need to decide between the treatable and the untreatable, the redeemable and the irredeemable.<sup>164</sup> Inevitably, this further marginalises groups that are already excluded in society due to preconceived bias. For example, as is the case in many parts of the world, foreign

---

<sup>157</sup> Rebecca Tapscott, *Arbitrary States: Social Control and Modern Authoritarianism in Museveni's Uganda* (Oxford University Press 2021) 6.

<sup>158</sup> Blomberg and Hay (n 9) 184–186.

<sup>159</sup> Cohen (n 6) 43.

<sup>160</sup> *Ibid.*

<sup>161</sup> Emma Blower, Kate Donald and Smriti Upadhyay, 'The Human Rights Implications of Contemporary Patterns of Social Control' (2012) 4 *Journal of Human Rights Practice* 187, 190.

<sup>162</sup> Emphasis in original. Garland (n 20) 174.

<sup>163</sup> Nikolas Rose, 'Government and Control' (2000) 40 *British Journal of Criminology* 321; Innes (n 7).

<sup>164</sup> Cohen (n 6) 286.

migrants to Japan are often perceived to be disproportionately deviant and even criminal.<sup>165</sup> Yamamoto and Johnson describe a ‘convergence of control’, whereby anti-immigrant political rhetoric is reinforced by a higher rate of prosecutions and longer sentencing for non-Japanese residents.<sup>166</sup> Thus, while Japanese suspects are more likely to be *included* in rehabilitative measures, foreign migrants are more likely to be *excluded*. These exclusionary and inclusionary effects of social control, whether intended or not, are an important feature of modern control practices and highlight how human rights can be negatively impacted.

The second theme in the literature is that human rights law forms a part of and reinforces the control apparatus, yet this is examined by far fewer scholars.<sup>167</sup> International human rights law has been described as ‘meta control’ which overrides the long tradition of state sovereignty by ascribing a form of global morality.<sup>168</sup> This is relevant to transitional justice as it too is often informed by supranational bodies or the values of a global society (imagined or no). In a systematic review of cases at the European Court of Human Rights, Johnson and Falcetta argue that despite scholarly attention to its control resistant features, human rights law can:

...shape perceptions of deviance in contemporary societies, encourage obedience among a general population in respect of defined parameters of acceptable behaviour, and result in sanctions against those whose behaviour does not conform...<sup>169</sup>

Savelsberg and Chambers similarly illuminate how ‘violations of human rights [sic]’ have increasingly become criminalised and controlled through treaties, ad-hoc tribunals, and the International Criminal Court.<sup>170</sup> Their chapter divides social control into modes that are either formal, such as trials, or informal, such as commemorative

---

<sup>165</sup> Robert Stuart Yoder, *Deviance and Inequality in Japan: Japanese Youth and Foreign Migrants* (Policy Press 2011) 152.

<sup>166</sup> Ryoko Yamamoto and David Johnson, ‘The Convergence of Control: Immigration and Crime in Contemporary Japan’ in Sandra M Bucerius and Michael Tonry (eds), *The Oxford Handbook of Ethnicity, Crime, and Immigration* (Oxford University Press 2014) 759.

<sup>167</sup> *Ibid.*, 1: Blower, Donald, and Upadhyay (n 17) 191.

<sup>168</sup> Innes (n 9) 43.

<sup>169</sup> Johnson and Falcetta (n 45) 605.

<sup>170</sup> Joachim J Savelsberg and Brooke B Chambers, ‘Human Rights and Social Control’ in Mathieu Deflem and Charles F Wellford (eds), *The Handbook of Social Control* (Wiley 2019) 442.

spaces.<sup>171</sup> The formal/informal dichotomy skews heavily toward privileging legal responses which are then ‘supplemented by other control mechanisms’ such as truth commissions.<sup>172</sup> Savelsberg and Chambers at times seem to conflate international and domestic human rights law with international criminal law and international humanitarian law,<sup>173</sup> referencing many transitional justice examples without the adequate space for in-depth analysis. Although the analysis of what they term ‘human-rights offending’ does add to the modest literature on human rights law as a mode of social control, the lack of conceptual clarity highlights the undertheorisation of transitional justice and the disproportionate emphasis on legal tools.

This section identified two themes in scholarship which examines the relationship between human rights and social control. Firstly, that human rights law can be understood as seeking to curb intrusive or disproportionate control measures. Secondly, that human rights law can result in new, or reshaped, definitions of deviance and structures of social control. These themes highlighted the prevailing focus on law and state or state-led initiatives, a preoccupation this thesis seeks to problematise.

### 4.3 A Typology of Transitional Justice as Social Control

This section builds on the preceding foundation by linking principles of transitional justice to specific modes of social control. Chapter 3 identified three key areas of transitional justice which are relevant to post-war Japan, those of accountability, reform, and reparations. Guided by these, the following sub-sections address the second research question and argue that transitional justice does exhibit features of social control as conceptualised in the literature. However, current theory does not provide an adequate framework to capture the range of mechanisms, aims, and actors of transitional justice. The remainder of the chapter reflects on existing analysis and proposes a typology of “transitional control”, encompassing three strands through which transitional justice can be conceptualised as a form of social control. First,

---

<sup>171</sup> Ibid. 453.

<sup>172</sup> Ibid. 451.

<sup>173</sup> Such as using ‘human rights-trials’ to refer to post-conflict prosecutions. Savelsberg and Chambers (n 64) 451.

disciplinary control: control *of* and *through* punitive measures. Second, organisational control: control *of* and *through* the reform of institutions or structures. And third, narrative control: control *of* and *through* social discourse.

#### 4.3.1 Disciplinary Control

The first way in which transitional justice can be conceptualised as social control is through *disciplinary control*. This element of the transitional control typology arises from the justice and accountability pillar, a major component of transitional justice. Chapter 3 explored how this is often associated with criminal prosecutions and international criminal law, yet it has been critiqued for limiting post-conflict initiatives to these state-centric and legalist approaches.<sup>174</sup> This section argues that by applying theories of social control to justice and accountability aims, a wider array of mechanisms, agents, deviants, and goals are revealed. Disciplinary control refers to attempts to curb deviance with punitive consequences, regardless of whether the law is relied upon, or the state is directly involved. Firstly, criminal law is examined, and it is highlighted that just as in transitional justice literature, law and punishment are salient phenomena in social control scholarship. Secondly, the theories of inward social control and social control from below are utilised to demonstrate how non-state actors can engage in defining and regulating deviance. The section concludes by asserting that disciplinary control can be applied to a range of methods, expanding how justice and accountability can be approached.

Criminal law and prosecutions as social control are well-established in sociology, spurred by the works of Pound, Weber, and Habermas, among others.<sup>175</sup> In 1974, Black theorised his influential “pure” forms which exercised control through ‘...prohibition, accusation, punishment, and compensation’.<sup>176</sup> He posited that the use

---

<sup>174</sup> Paul Gready and Simon Robins, ‘Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and “New” Civil Society’ (2017) 21 *International Journal of Human Rights* 956, 957.

<sup>175</sup> Pound (n 15); Max Weber, *The Theory of Social and Economic Organization* (Free Press 1947); Jürgen Habermas, *The Theory of Communicative Action: Reason and the Rationalization of Society*, vol 1 (Beacon Press 1984).

<sup>176</sup> Donald Black, *The Behavior of Law* (Special Edition [1976], Emerald 2010) 2.

of law or legal frameworks to regulate a person's actions constituted governmental, formal control, as opposed to informal modes such as interpersonal influence.<sup>177</sup> Black proposed four “pure” forms of control: penal control, the prohibition of an act and punishment of the deviant; compensatory control, a victim seeks compensation from an accused; therapeutic control, the victim might be the deviant and offered support to return to ‘normality’; and conciliatory control, the use of mediation.<sup>178</sup> The severity of control depends on the deviant and the deviance in the question, but Black states that ‘[t]o be subject to criminal law is especially unrespectable, and the more serious the crime, the more unrespectable it is.’<sup>179</sup> Considering the scale and nature of crimes often in the remit of transitional justice, this reflection may explain some of the focus on international criminal tribunals in transitional justice.

Brianne McGonigle Leyh wrote that ‘[criminal] prosecutions are here to stay’, despite the increasingly varied mechanisms employed in post-conflict contexts.<sup>180</sup> The obligation of states to investigate, identify perpetrators, and prosecute violations of international law has been noted by the Human Rights Committee (HRC),<sup>181</sup> UN Special Procedures,<sup>182</sup> and appears in various transitional justice instruments.<sup>183</sup> Prosecutions have been enacted in post-conflict settings through a variety of means such as the use of international criminal law by international ad hoc tribunals,<sup>184</sup> “hybrid” courts applying both domestic and international norms,<sup>185</sup> (concurrent) local

---

<sup>177</sup> Black (n 71); Arthur Lewis Wood, *Deviant Behavior and Control Strategies* (Lexington Books 1974).

<sup>178</sup> Black (n 71) 4–5.

<sup>179</sup> *Ibid.* 111.

<sup>180</sup> McGonigle Leyh (n 22) 573.

<sup>181</sup> UNHRC, ‘General comment No. 31 [80] The Nature of General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, [18].

<sup>182</sup> Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, ‘2018-2020: Contemporary Perspectives on Transitional Justice Issues’ (2021) available at <<https://www.ohchr.org/Documents/Issues/Truth/contemporary-perspectives-transitional-justice-user-friendly.pdf>> accessed 03 February 2022, 47;

<sup>183</sup> For example, UN, ‘Updated Set of principles for the protection and promotion of human rights through action to combat impunity’ (8 February 2005) UN Docs E/CN.4/2005/102/Add.1, Principle 19; UNGA, ‘Basic Principles’ (n 2) [4].

<sup>184</sup> Such as the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993 by the UN Security Council during the Yugoslav wars. Rachel Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law Politics and Diplomacy* (Oxford University Press 2004).

<sup>185</sup> Such as the Extraordinary Chambers in the Courts of Cambodia (ECCC) set up in 2006 as a shared initiative between the Cambodian government, the UN, and UN member states. Anne Heindel and John D Ciorciari, *Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia* (University of Michigan Press 2014) 4.

prosecution initiatives,<sup>186</sup> and by the permanent International Criminal Court (ICC).<sup>187</sup> The consistent motif is the use of a judicial and legal framework to identify, prosecute, and punish perpetrators of gross violations of human rights and humanitarian law.

The use of criminal law is perhaps the most obvious way in which transitional justice exercises social control. Somewhat unique as a transitional justice method, prosecutions can be viewed as ‘a struggle *against perpetrators*’ (as opposed to for victims) wherein the defendant is targeted by criminal judicial procedures which have been established to identify and curtail infractions of the law.<sup>188</sup> The behaviour on trial is often considered some of the most egregious to society – genocide, crimes against humanity, and war crimes. Under a social control lens, the alleged perpetrator becomes the ‘deviant’, and the prosecutorial process itself is an ‘organised response’ to classify behaviour considered ‘socially problematic’.<sup>189</sup> Finally, prosecutions fulfil both a reactive and a proactive function by punishing past harm and aiming to deter future incidents (though the deterrence effect is highly contested).<sup>190</sup> The agent(s) of control would theoretically be those who instigated or oversees the process, such as the state or the prosecutor. Perhaps most importantly, this mapping of Cohen’s definition not only illuminates how prosecutions might enact control but actually *intend* to do so. This is through the implementation of law and policies which criminalise certain acts of deviance, highlighting their problematic nature for society, and aiming to suppress it. Although this framing also fits with Black’s concept of penal control, there are some limitations to this perspective.

---

<sup>186</sup> For example, some war crimes cases were transferred from the ICTY to domestic courts in Bosnia and Herzegovina. Michael Bohlander, ‘Last Exit Bosnia - Transferring War Crimes Prosecution from the International Tribunal to Domestic Courts’ (2003) 14 Criminal Law Forum 59, 77.

<sup>187</sup> This body was established through the Rome Statute (adopted in 1998) as a permanent court to prosecute war crimes, crimes against humanity and genocide. See, Valentina Spiga, ‘No Redress without Justice: Victims and International Criminal Law’ (2012) 10 Journal of International Criminal Justice 1377; Marco Bocchese, ‘Coercing Compliance with the ICC: Empirical Assessment and Theoretical Implications’ (2015) 24 Michigan State International Law Review.

<sup>188</sup> Emphasis in original. Office of the United Nations Higher Commissioner for Human Rights, ‘Rule-of-law Tools for Post-Conflict States: Reparations programmes’ (United Nations 2008) available at <[https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf)> accessed 11 August 2019, 2.

<sup>189</sup> Cohen (n 6) 5.

<sup>190</sup> Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (WW Norton & Company 2011).; Kate Cronin-Furman, ‘Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity’ (2013) 7 International Journal of Transitional Justice 434; Bocchese (n 81).

Criminal prosecutions may be intended to identify and punish deviance, but this criminalisation does not always reflect social perception, nor does it necessarily result in transformation. Section 4.2.1 discussed how a criminal act might not be considered a deviant act, depending on the social group, and vice versa. Much has been written on the impact – or lack thereof – of the International Criminal Tribunal for the former Yugoslavia (ICTY), which has been received differently by different communities.<sup>191</sup> The ICC has similarly had to navigate its role ‘as a legal institution and a political actor’; even inspiring a BBC drama problematising the court’s perceived focus on Africa.<sup>192</sup> These contexts illustrate that the issue of control goes deeper than whether or not something is deemed criminal, instead highlighting the legitimacy of the agents of control. The example of convicted war criminal Tōjō demonstrated this point: he is both honoured and condemned, both deviant and victim of deviance. This is in part due to contemporary and modern perceptions of the Tokyo Trial as vengeance by the Allied Powers, contesting their authority to define deviance.<sup>193</sup> Others have sought to discredit the tribunal for failing to define deviance by not indicting Emperor Hirohito, supreme commander-in-chief, nor prosecuting the “Comfort Women” system.<sup>194</sup> However, the (in)effectiveness of criminal prosecutions does not negate that they are, and are implicitly meant to be, a mode of social control. Just as in the bifurcation of

---

<sup>191</sup> Matias Hellman, ‘Challenges and Limitations of Outreach: From the ICTY to the ICC’ in Christian De Vos, Sara Kendall and Carsten Stahn (eds), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (Cambridge University Press 2015) 271; Mirko Klarin, ‘The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia’ (2009) 7 *Journal of International Criminal Justice* 89, 89–90; Marko Milanovic, ‘The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Post-Mortem’ (2016) 110 *American Journal of International Law* 233, 234; Orli Fridman, ‘“Too Young to Remember Determined Not to Forget”: Memory Activists Engaging With Returning ICTY Convicts’ (2018) 28 *International Criminal Justice Review* 423, 425.

<sup>192</sup> Christof Royer, ‘The Bête Noire and the Noble Lie: The International Criminal Court and (the Disavowal of) Politics’ (2019) 13 *Criminal Law and Philosophy* 225, 242; William A Schabas, ‘Prosecutorial Discretion v. Judicial Activism at the International Criminal Court’ (2008) 6 *Journal of International Criminal Justice* 731, 749–741; Ben Allen, ‘Rwanda, Genocide and the ICC: Hugo Blick Explains the True Story behind Black Earth Rising’ (Radio Times, 10 June 2019) <<https://www.radiotimes.com/tv/drama/black-earth-rising-bbc2-real-political-history-rwandan-genocide-international-criminal-court/>> accessed 21 August 2023.

<sup>193</sup> Latha Varadarajan, ‘The Trials of Imperialism: Radhabinod Pal’s Dissent at the Tokyo Tribunal’ (2015) 21 *European Journal of International Relations* 793; Takeshi Nakajima, ‘The Tokyo Tribunal, Justice Pal and the Revisionist Distortion of History’ (2011) 9 *The Asia-Pacific Journal: Japan Focus* 1.

<sup>194</sup> Franziska Seraphim, *War Memory and Social Politics in Japan, 1945-2005* (Harvard University Asian Center 2006) 245; Ustinia Dolgopol, ‘The Judgment of the Tokyo Women’s Tribunal’ (2003) 28 *Alternative Law Journal* 243.

control discussed earlier, '[social control] disgraces some, but protects the reputation of others.'<sup>195</sup>

Criminal prosecutions may be a dominant mode of seeking justice and accountability, but transitional justice literature has increasingly criticised their inherent focus on 'legalism' and state-centric strategies.<sup>196</sup> By framing law and punishment as 'governmental' or 'formal' control, we risk limiting justice to a positivist, top-down transaction of institutional power.<sup>197</sup> It is thus critical that the role of non-state actors be considered as agents in this matrix; civil society, private individuals, non-governmental organisations, victims and survivors, and others engage in justice and accountability and must inform the conceptualisation of transitional justice as social control. Civil lawsuits are one way in which the lack of accountability under state-centric frameworks are challenged. For instance, the cases against Mitsubishi for forced labour during the Asia-Pacific War were filed by victims who had yet to receive any reparation for the harm suffered.<sup>198</sup> These jurisprudential developments were concerned with violations committed by and against non-state actors, thereby complicated the view of law as formal, downward control. Instead, they show how non-state actors can be agents of control in their own right – identifying deviance, utilising legal processes, and stimulating punishment.

Black's "pure" styles can be applied to lawsuits; however a more nuanced theory can be found in Horwitz's 'inward social control', whereby the 'marginal' target the behaviour of the 'integrated'.<sup>199</sup> Johnson and Falchetta reflect on this in human rights law. They argue that complainants at the European Court of Human Rights regulated private individuals with more power by successfully winning their cases and gaining

---

<sup>195</sup> Black (n 70) 105.

<sup>196</sup> Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34 *Journal of Law and Society* 411; Simon Robins, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' [2017] *Human Rights and International Legal Discourse* 41; Gready and Robins (n 69).

<sup>197</sup> Black (n 70) 2.

<sup>198</sup> Timothy Webster, 'The Price of Settlement: World War II Reparations in China, Japan and Korea' (2019) 51 *New York University Journal of International Law and Politics* 301, 366.

<sup>199</sup> AV Horwitz, *The Logic of Social Control* (Springer US 1990) 14.

court mandated change.<sup>200</sup> Under this lens, victims can use non-criminal judicial arenas in the vacuum of state control, yet this too relies on institutional structures.

Nils Christie's highly influential article 'Conflicts as Property' explains how the victim is fundamentally lost in criminal court proceedings, the initial harm compounded in that 'he has lost participation in his own case'.<sup>201</sup> Borrowing from his paper on a descriptive level, rather than theoretical, Christie's narration of conflict (broadly defined) as a valuable commodity is compelling in that the state-centric control system strips a victim's '*potential for activity, for participation*'.<sup>202</sup> Unwittingly rising to this challenge are international people's tribunals. Since the late 1960s, civil society has increasingly used these non-state initiatives to 'respond to gaps and failures in the formal legal system'.<sup>203</sup> The tribunals are varied but generally use legal norms, judicial aesthetics and principles, and authoritative voices in international law to "prosecute" perpetrators and facilitate victim acknowledgment.<sup>204</sup> Most importantly, they are often highly participatory.

In the last decade, such tribunals have tackled issues such as massacres in Indonesia, crimes against Uyghurs in China, mass executions in Iran, and the violation of socio-economic rights in Southern Africa.<sup>205</sup> While they have no legal power of enforcement, they remain the last opportunity for accountability in some cases and demonstrate alternative modes for justice. For example, the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (the Tokyo Women's Tribunal) was held in

---

<sup>200</sup> Johnson and Falchetta (n 45) 613.

<sup>201</sup> Nils Christie, 'Conflicts as Property' (1977) 17 *The British Journal of Criminology* 7.

<sup>202</sup> Ibid. 7; William R Wood and Masahiro Suzuki, 'Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice' (2020) 29 *Social & Legal Studies* 903, 905.

<sup>203</sup> Gabriela Cuadrado-Quesdada and Gabrielle Simm, 'Peoples' Tribunals: A Progressive Mechanism to Achieve Justice' (2014) 23 *Human Rights Defender* 21, 16.

<sup>204</sup> Andrew Byrnes and Gabrielle Simm, 'Introduction' in Andrew Byrnes and Gabrielle Simm (eds), *Peoples' Tribunals and International Law* (Cambridge University Press 2018).

<sup>205</sup> Respectively: Saskia E Wieringa, 'The International People's Tribunal on 1965 Crimes against Humanity in Indonesia: An Anthropological Perspective' in Andrew Byrnes and Gabrielle Simm (eds), *Peoples' Tribunals and International Law* (Cambridge University Press 2018); 'Uyghur Tribunal' (Uyghur Tribunal) <<https://uyghurtribunal.com/>> accessed 11 February 2022; 'Iran Tribunal: An International People's Tribunal' (Iran Tribunal) <<https://irantribunal.com/>> accessed 11 February 2022; 'Permanent Peoples' Tribunal on Transnational Corporations in Southern Africa' (Stop Corporate Impunity) <<https://www.stopcorporateimpunity.org/permanent-peoples-tribunal-transnational-southern-africa/#>> accessed 11 February 2022.

part because surviving “Comfort Women” were passing away without seeing the perpetrators even investigated, let alone punished.<sup>206</sup> By establishing a tribunal which uses (but does not rely on) international legal norms, the Tokyo Women’s Tribunal both critiques the *lack* of control exercised through criminal law and attempts to create its own. Indeed, its quasi-legal performance was a direct request of survivors and of victim’s groups.<sup>207</sup> Victim acknowledgment was a dominant goal for tribunal organisers, but in so doing they aimed to publicly admonish the Japanese state and those complicit in not holding perpetrators to account, hoping to illicit an acceptance of responsibility.<sup>208</sup>

Held under a social control lens, international people’s tribunals function similarly to criminal prosecutions – identifying and sanctioning deviance through organised processes. Thus, despite not punishing perpetrators in a traditional sense, their potential to ‘generate moral condemnation of previously unacknowledged human rights violations’ and essentially discipline through public shame complicates social control through prosecutions as currently theorised.<sup>209</sup> Baumgartner recognised this gap in the early control literature and proposed the theory of ‘social control from below’.<sup>210</sup> He theorised a more adversarial style necessitated by little recourse to traditional resources of power through ‘...rebellion, covert retaliation, noncooperation, appeals for support, flight, and distress.’<sup>211</sup> Appeals for support for example involves ‘subordinates’ appealing to third parties against those with more power, such as influencing public opinion.<sup>212</sup> However, the theory remains focused on the use of

---

<sup>206</sup> Yayori Matsui, ‘Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery: Memory, Identity, and Society’ (2001) 19 *East Asia: An International Quarterly* 119.

<sup>207</sup> Interview with Ustina Dolgopol, Chief Prosecutor for the Tokyo Women’s Tribunal (Skype, 16 July 2018).

<sup>208</sup> Ustina Dolgopol, ‘The Tokyo Women’s Tribunal: Transboundary Activists and the Use of Law’s Power’ in Andrew Byrnes and Gabrielle Simm (eds), *Peoples’ Tribunals and International Law* (Cambridge University Press 2018).

<sup>209</sup> Dudai (n 36) 13; Christine Chinkin, ‘Women’s International Tribunal of Japanese Military Sexual Slavery’ (2001) 95 *The American Journal of International Law* 335.

<sup>210</sup> MP Baumgartner, ‘Social Control from Below’ in Donald Black (ed), *Toward a General Theory of Social Control: Volume 1 Fundamentals* (Academic Press 1984).

<sup>211</sup> MP Baumgartner, ‘Social Control from Below’ in Donald Black (ed), *Toward a General Theory of Social Control: Volume 1 Fundamentals* (Academic Press 1984) 303.

<sup>212</sup> *Ibid.* 316.

‘informal’ modes, rather than appreciating how those with less power can use the law and its institutions to further their own interests.<sup>213</sup>

To conclude, there are several theories in social control that can apply to the justice and accountability pillar of transitional justice. While concepts like formal, inward, control from below and other analyses offer some insight, they remain inadequate to describe transitional justice programmes and remain focused on criminal law. Black recognised that the emphasis on the state and legal institutions obscures the vast number of ways in which social action is regulated.<sup>214</sup> However, as Innes points out, the prevailing dichotomy of formal/informal or legal/non-legal is ‘attractive’ but far too simple to capture social realities.<sup>215</sup>

I argue instead that *disciplinary control* should be used to acknowledge the increasing emphasis on non-state actors, as well as the unique elements of post-atrocity accountability. This expands the focus of justice and accountability to recognise actors and initiatives – beyond the state and criminal law – that seek to implement punitive measures against perceived deviance. Although both social control and transitional justice literatures speak of “punitive” mechanisms, I suggest the term “disciplinary” to evoke the nuance of seeking behavioural change beyond the exercise of violence. Some elements of disciplinary control do equate to punishment, such as the use of the death penalty in the Tokyo Trial. However, other initiatives may intend negative consequences for the deviant without necessitating criminal or even legal enforcement. The term disciplinary control recognises that adversarial strategies in transitional justice aim to identify the perpetrator/deviant, publicly hold them to account, and that this negative impact is the intention – whether the agent is state, non-state, or uses non-judicial means.

---

<sup>213</sup> Innes (n 7) 4.

<sup>214</sup> Donald Black, ‘Social Control as a Dependent Variable’ in Donald Black (ed), *Toward a General Theory of Social Control*, vol 1 (Academic Press 1984) 2.

<sup>215</sup> Innes (n 7) 6; An example of the continued influence of this dichotomy can be seen in Savelsberg and Chambers (n 64).

#### 4.3.2 Organisational Control

The second way in which transitional justice can be conceptualised as social control is through *organisational control*. Chapter 3 identified that the guarantees of non-recurrence or reform pillar of transitional justice was prominent in post-war Japan through the occupation policy to “democratise and demilitarise”. This approach emphasised reform of and through state apparatus and legal-institutional frameworks, reflecting the priorities espoused in liberal peace discourse.<sup>216</sup> To analyse these processes as social control, this section first applies Cohen’s definition to a clear example of reform – the post-war constitution of Japan. Then, the concept of organisational deviance is examined, showing how institutions, corporations, and other structures can be defined as deviant. To go beyond the state as agents of control, the destructuring movement and social control from below are reflected on. Finally, it is concluded that organisational control is the most appropriate way of understanding how a range of actors engage in various methods to demand transformation.

There are many mechanisms that may be considered guarantees of non-recurrence: constitutional reform, the vetting of public officials, the reform or implementation of procedures in line with human rights norms, and security sector reform.<sup>217</sup> While other pillars of transitional justice are primarily a reaction to violations, guarantees of non-recurrence can be thought of as ‘future-oriented’ and preventative.<sup>218</sup> Japan’s post-war constitution is emblematic of wholesale institutional reform intended to prevent the recurrence of militarism and aggression and to codify human rights. Taking this as an example, Cohen’s definition of social control can be applied to some extent. The US occupation, with input from the Japanese government, drafted a new constitution

---

<sup>216</sup> Avi-Guy (n 37) 290.

<sup>217</sup> UNGA, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (21 March 2006) UN Docs A/RES/60/147, [23]; UN ‘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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 11 August 2019, 9.

<sup>218</sup> Ana Cutter Patel, ‘Transitional Justice, DDR, and Security Sector Reform’ in Ana Cutter Patel, Pablo De Greiff and Lars Waldorf (eds), *Disarming the Past: transitional justice and ex-combatants* (Social Science Research Council 2009) 276; Alexander Mayer-Rieckh, ‘Guarantees of Non-Recurrence: An Approximation’ (2017) 39 *Human Rights Quarterly* 416, 422.

because the previous one was deemed unfit for purpose and for having facilitated a war of aggression.<sup>219</sup> It was therefore the framework itself that was deviant, or promoted deviant behaviour, and legal reform was thus the proactive organised response intended to prevent repetition. Reform under transitional justice presents a duality of control, it both aims to deter deviance through structural means as well as to 'rebuild [...] trust' between society and institutions.<sup>220</sup> This is interesting to note as it implies not only the creation of new controls but the nurturing of an environment *conducive* to a control apparatus.

Institutional reform does not adequately account for the place of non-state organisations however, reflecting the salience of legal-institutional reform in both transitional justice and social control literature.<sup>221</sup> Black states that:

Every theory of deviant behavior assumes that deviant behavior is the behavior of individuals... [and] explains deviant behavior with the conditions that motivate an individual.<sup>222</sup>

He theorises that this is because the law responds differently to organisational deviance, such as that of corporations, and that this form of deviance is placed lowest on the 'rank of seriousness'.<sup>223</sup> Post-war Japan is an example of this: immediately after the Asia-Pacific War, the *zaibatsu* (large business conglomerates) were designated deviant structures for their roles in the war effort and the US occupation resolved to reform them. Concerns for Japan's economic productivity – and the looming Cold War – led them to rescind the decision.<sup>224</sup> Decades later, private individuals and groups of survivors have taken Japanese companies to court for forced labour with some

---

<sup>219</sup> Kyoko Inoue, *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making* (The University of Chicago Press 1991) 1.

<sup>220</sup> Working Group on Transitional Justice and SDG16+, 'On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations' (ICTJ 2019) 10 <[https://www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights?utm\\_source=Unknown+List&utm\\_campaign=32e368d739-NewYorkEvent\\_2019\\_invites&utm\\_medium=email&utm\\_term=0\\_-32e368d739->](https://www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights?utm_source=Unknown+List&utm_campaign=32e368d739-NewYorkEvent_2019_invites&utm_medium=email&utm_term=0_-32e368d739->).

<sup>221</sup> Arthur (n 1) 347; Avi-Guy (n 37) 293; Black (n 71) 2; Innes (n 9) 4.

<sup>222</sup> Black (n 70) 99.

<sup>223</sup> *Ibid.* 98.

<sup>224</sup> Paul J Heer, *Mr. X and the Pacific: George F. Kennan and American Policy in East Asia* (Cornell University Press 2018) 56; Hans Martin Kramer, 'Just Who Reversed the Course? The Red Purge in Higher Education during the Occupation of Japan' (2005) 8 *Social Science Japan Journal* 2.

success and public apologies.<sup>225</sup> This is more akin to disciplinary control under the transitional control typology however, as the lawsuits did not intend to alter how the companies operated but instead sought reparations and acknowledgment.<sup>226</sup>

Falchetta and Johnson apply the theory of ‘upward’ control to cases at the European Court of Human Rights, such as in *Moldovan and Others v Romania (no.2)* (2005).<sup>227</sup> They argue that Roma individuals exerted control over state agents through their complaint, resulting in the Romanian authorities establishing new training schemes and regulation to better protect Roma people.<sup>228</sup> Beyond the deviance of the state, international human rights law and domestic regulation is arguably “catching up” to the conduct of companies and organisations through strategies such as due diligence and corporate (social) responsibility.<sup>229</sup> Whilst subject to some regulation under international humanitarian law, non-state armed groups have traditionally not been subject to international human rights law as it is ‘a predominantly state-centric system’, but this is also changing and is increasingly discussed in the literature.<sup>230</sup> Although these debates illustrate how an organisation can be defined as deviant, the framework remains focused on the state and/or legal institution as the primary agent of control.

---

<sup>225</sup> See generally, Webster (n 92).

<sup>226</sup> Ibid. 306.

<sup>227</sup> Johnson and Falchetta (n 45) 608.

<sup>228</sup> Ibid. 609.

<sup>229</sup> As can be seen in the so-called “Ruggie Principles”. UN Human Rights Council, ‘Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (21 March 2011) UN Docs A/HRC/17/31. See also, Jonathan Bonnitcha and Robert McCorquodale, ‘The Concept of “Due Diligence” in the UN Guiding Principles on Business and Human Rights’ (2017) 28 *European Journal of International Law* 899, 900; Ruti Teitel, ‘On Corporate Responsibility, Human Rights, and Transitional Justice: Quo Vadis?’ (2018) 112 *Proceedings of the Annual Meeting (American Society of International Law)* 324, 324; Karin Buhmann, ‘Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU’s Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action’ (2018) 3 *Business and Human Rights Journal* 23, 44.

<sup>230</sup> Daragh Murray, *Human Rights Obligations of Non-State Armed Groups* (Hart Publishing 2016) 10; Jelena Aparac, ‘Business and Armed Non-State Groups: Challenging the Landscape of Corporate (Un)Accountability in Armed Conflicts’ (2020) 5 *Business and Human Rights Journal* 270, 273; Alessandro Mario Amoroso, ‘Should the ICC Assess Complementarity with Respect to Non-State Armed Groups?’ (2018) 16 *Journal of International Criminal Justice* 1063, 1090.

Cohen proposed that the '*destructuring impulse*', proliferating since the 1960s, led to deviance control modes rejecting the state, the expert, the institution, and the focus on individual pathology.<sup>231</sup> The purported desire to move 'from the state to the people' emphasised community-based approaches, however the movement resulted in more dispersed control and privatisation.<sup>232</sup> The restorative justice tradition arguably rose from these ideologies, seeking local 'ownership' and rejecting institutions, demonstrating to some extent how non-state actors engage with this framework.<sup>233</sup> Geeta Koska's study of the South African Truth and Reconciliation Commission problematises this narrative, arguing that the process inversely gave mining companies the opportunity to 'reinforce power imbalances' and obscure responsibility.<sup>234</sup> This work illustrates how resources, politics, and entrenched hierarchies can limit the control of – and through – ostensibly non-state organisations.

Although studies are not often explicitly framed in social control terms, scholars have analysed the authority and influence of non-state actors such as religious groups, non-governmental organisations, and armed groups.<sup>235</sup> For example, Volker Schneider's study of Amnesty International points to the network of domestic and transnational organisations working to influence human rights issues.<sup>236</sup> Amnesty International is supported by members and volunteers – as individuals, local groups, themed networks and other structures – who undertake activities such as writing letters to governments.<sup>237</sup> Individuals are empowered to call for change from a variety of actors engaging in perceived deviance, such as demanding policy reform from Airbnb

---

<sup>231</sup> Emphasis in original. Cohen (n 6) 31.

<sup>232</sup> Others have argued that this was a deliberate consequence, however, see Kenneth Polk, 'When Less Means More: An Analysis of Destructuring in Criminal Justice' (1987) 33 *Crime & Delinquency* 358, 376; Cohen (n 6) 34 and 63.

<sup>233</sup> Carsten Erbe, 'What Is the Role of Professionals in Restorative Justice?' in Howard Zehr and Barb Toews (eds), *Critical Issues in Restorative Justice* (Willan Publishing 2004) 289; Gerry Johnstone, 'Restorative Justice and the Culture of Control' (2022) 61 *The Howard Journal of Crime and Justice* 23, 30; Wood and Suzuki (n 98) 906.

<sup>234</sup> Geeta Koska, 'Corporate Accountability in Times of Transition: The Role of Restorative Justice in the South African Truth and Reconciliation Commission' (2016) 4 *Restorative Justice* 41, 61.

<sup>235</sup> Annette Idler and James JF Forest, 'Behavioral Patterns among (Violent) Non-State Actors: A Study of Complementary Governance' (2015) 4 *Stability: International Journal of Security & Development* 1, 4; Volker Schneider, 'The Global Social Capital of Human Rights Movements: A Case Study on Amnesty International' in Karsten Ronit and Volker Schneider (eds), *Private Organizations in Global Politics* (Taylor & Francis 2001) 148.

<sup>236</sup> Schneider (n 130) 151.

<sup>237</sup> *Ibid.* 153–154.

regarding their business practice in Palestine.<sup>238</sup> Dudai's theory of 'civil society and social control from below', influenced by Baumgartner's aforementioned work, would be relevant here.<sup>239</sup> Dudai is speaking to a different context, but the advocacy against Airbnb could be framed as 'public outings' intending to shame the company (and consumers) to change their behaviour.<sup>240</sup> "Shaming" as a method may be punitive, but the intended function of control is organisational change.

In conclusion, theories of social control can be applied to the guarantees of non-recurrence pillar of transitional justice. The reform of institutions and organisations can be analysed as upward control, social control from below, or simply as proactive control. I argue instead that *organisational control* is better suited as a theoretical framework. By emphasising the intended outcome, that of structural change, a broader series of actors can be shown to engage in this typology whether as agent of control or target deviant. Furthermore, the method by which control is implemented is opened beyond the legal system, institutional structures, or strategies traditionally "bound" to civil society, such as protest. This strand of the transitional control typology is applied to the case studies in the forthcoming chapters.

#### 4.3.3 Narrative Control

The third way that transitional control can be conceptualised as social control is through *narrative control*. This analysis originally sought to illustrate how reparations constituted a form of social control, identified in Chapter 3 as a core pillar of transitional justice implemented in post-war Japan. Applying Cohen's definition of social control to reparative programmes as varied as financial compensation, memorials, and apologies faced several obstacles which are explored further below. Searching for "the deviant" in reparations led to the research focusing on the secondary aim of many such mechanisms, shaping collective memory. This section argues that is not the act

---

<sup>238</sup> 'UK: Airbnb Using Commonwealth Games to Sportswash Its Reputation' (Amnesty International UK, 28 July 2022) <<https://www.amnesty.org.uk/press-releases/uk-airbnb-using-commonwealth-games-sportswash-its-reputation>> accessed 24 August 2023.

<sup>239</sup> Dudai (n 36) 12; Baumgartner (n 105).

<sup>240</sup> Dudai (n 36) 13.

of reparation itself that targets deviant behaviour, it is the meaning given to the act. Narrative control thus refers to the process of designating certain discourses as deviant and promoting new or previously hidden frameworks of remembering. It is not restricted to reparations but can apply to any coordinated effort to change how something is understood. Firstly, Cohen's definition is applied to several core reparative mechanisms, but it is argued that the result is unwieldy and limited. Secondly, the role of discourse is explored through theories of retroactive social control and transitional social control. Finally, the section concludes that narrative control is evident when transitional justice mechanisms aim to alter discourse that is designated deviant.

Reparations, primarily, serve a different goal to accountability and reform – that of explicitly benefiting victims.<sup>241</sup> The previous chapter outlined how reparations are commonly implemented through restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Specific measures range from psychological care, commemorations, financial reparation, and educational initiatives.<sup>242</sup> The Asian Women's Fund is an example of a 'complex reparation programme' because it was designed with both symbolic and material elements.<sup>243</sup> The fund was set up in 1995 by the Japanese government as an 'atonement project' offering two-million-yen, medical support, and a letter of apology to former "Comfort Women".<sup>244</sup> A surface level application of Cohen's social control definition would indicate that the agent of control is the Japanese government and the organised response is the reparation itself. This could be framed as therapeutic control, one of Black's "pure" forms, in which the target is to be returned to 'normality'.<sup>245</sup> However, on this account it is the deviant in need of medical and/or diagnostic intervention for having committed a social wrong.<sup>246</sup> In contrast, the former "Comfort Women" do not fit the definition of deviance, quite the

---

<sup>241</sup> Office of the United Nations Higher Commissioner for Human Rights (n 82) 3.

<sup>242</sup> UNGA, 'Basic Principles' (n 2) [19]-[23].

<sup>243</sup> UN Security Council, 'The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General' (23 August 2004) UN Docs S/2004/616 22.

<sup>244</sup> 'Ajia jyosei kikin no tanjō to jigyō no kihon seikaku' <<https://awf.or.jp/2/foundation.html>> accessed 25 August 2023; Hee-Kang Kim, 'Nationalism, Feminism, and Beyond: A Note on the Comfort Women Movement' (2015) 17 *New Zealand Journal of Asian Studies* 1, 5.

<sup>245</sup> Black (n 70) 4.

<sup>246</sup> John Braithwaite, John Walker and Peter Grabosky, 'An Enforcement Taxonomy of Regulatory Agencies' (1987) 9 *Law and Policy* 323, 343.

opposite. Those who receive reparations are technically having their *non-deviance* confirmed – as is the case with the Asian Women’s Fund, which represents a recognition of the Japanese government’s ‘moral responsibility’ (道義的責任) for the women’s treatment.<sup>247</sup> Financial compensation, apologies, and rehabilitation are thus ways in which a victim is acknowledged and essentially told “it was not *your* behaviour that was deviant.”

The nature of harm to be redressed by transitional justice is also on a much larger scale than that examined in most social control scholarship. Gross violations of human rights law and serious violations of international humanitarian law are by definition committed *en masse* and implicate many victims in ‘irreparable’ conditions.<sup>248</sup> This is one reason why symbolic reparations are considered so integral to redress, as it presents a public acknowledgment that the violation happened and that it was morally reprehensible.<sup>249</sup> Against this conceptual context, recall that the Asian Women’s Fund was rejected by many former “Comfort Women” on the grounds that it avoided legal responsibility, and that the money was raised through public donations.<sup>250</sup> Kim Hee-Kang’s study of the initiative illustrates the critical tension for all sides of the debate: competing discourses.<sup>251</sup> Although the government’s primary objective was seemingly to redress the harm suffered, it is indisputable that the initiative also promoted a narrative of reconciliation, albeit hampered by political backlash in Japan.<sup>252</sup>

---

<sup>247</sup> ‘Ajia jyosei’ (n 139).

<sup>248</sup> Commission on Human Rights, ‘Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur’ (2 July 1993) UN Docs E/CN.4/Sub.2/1993/8, [131].

<sup>249</sup> Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) *Report of the International Law Commission on the work of its Fifty-Third Session*, available at <[http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)> accessed 10 August 2019, 105; UNGA, ‘Second Report on State Responsibility by Mr. Gaetano Arangio-Ruiz, Special Rapporteur’ (9 June 1989) UN Docs A/CN.4/425, [13].

<sup>250</sup> Kim (n 100) 5–6.

<sup>251</sup> *Ibid.*

<sup>252</sup> Ji Young Kim and Jeyong Sohn, ‘Settlement Without Consensus: International Pressure, Domestic Backlash, and the Comfort Women Issue in Japan’ (2017) 90 *Pacific Affairs* 77, 83–84; Kazuhiko Togo, ‘Development of Japan’s Historical Memory: The San Francisco Peace Treaty and the Murayama Statement in Future Perspective’ (2011) 35 *Asian Perspective* 337, 349; Lisa Yoneyama, *Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes* (Duke University Press 2016) 124–125.

As several scholars have noted, transitional justice attends to the development of a specific narrative around past violence.<sup>253</sup> Moon's important study of compensation and social control points to how reparations can be used to confirm official stories. She illustrates this by describing how the *Madres de Plaza de Mayo* in Argentina turned down compensation as it would signify an acceptance that their loved ones were dead whilst official investigations were pursued.<sup>254</sup> In a contrasting example, the apology of former Chilean President Patricio Aylwin for the State's historical abuses is held up as an example of good practice in reparative measures.<sup>255</sup> This formal and public apology sought to acknowledge the responsibility of the state and the status of those affected as victims and reinstate them as rights-holders. In both instances, actors seek to control the narrative of the past by rejecting the prevailing discourse.

In the context of policing cold cases in the UK, Innes and Clarke have proposed the theory of 'retroactive control',<sup>256</sup> which offers some useful insight into post-conflict narrative and social control. In their empirical study, the authors identify four phases in which the control of memory and *through* memory constitutes a reshaping of the past.

1. Retrieval: the past incident is broadly defined and information pertaining to it is collected. Physical evidence is used to provide 'a set of anchoring points' by which to build a narrative.<sup>257</sup>
2. Counterfactuals: alternative explanations and motives for the incident are proposed, which may counter or contradict earlier narratives.<sup>258</sup>

---

<sup>253</sup> Dudai (n 36); Barbara Misztal, *Theories of Social Remembering* (McGraw-Hill 2003); Claire Moon, 'Who'll Pay Reparations on My Soul: Compensation, Social Control and Social Suffering' (2012) 21 *Social and Legal Studies* 187.

<sup>254</sup> Moon (n 148) 193.

<sup>255</sup> Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence (n 76) 28.

<sup>256</sup> Martin Innes and Alan Clarke, 'Policing the Past: Cold Case Studies, Forensic Evidence and Retroactive Social Control' (2009) 60 *British Journal of Sociology* 543.

<sup>257</sup> *Ibid.*

<sup>258</sup> *Ibid.* 554–556.

3. Deconstructive: purposefully highlight the inconsistencies and problems in an understanding of past event, in so doing destabilising the previously accepted “truth”.<sup>259</sup>
4. Constructive: alternative understandings of the past are built and disseminated. This can be done through indicating blame or victimisation previously overlooked, exposing other causes and experiences of the incident in question, or giving more gravity to certain parts of the narrative by which to ground its overall definition.<sup>260</sup>

These stages do not necessarily constitute a linear process, with Innes and Clarke finding that the police force jumped between phases and co-produced narratives when reviewing cold cases.<sup>261</sup> Although highly innovative, the phases assume a level of resources or structure which would limit the participation of many non-state and indeed statal transitional justice actors.

Dudai has addressed these issues in his framework of ‘transitional social control.’<sup>262</sup> He builds on retroactive social control and adjusts it for transitional justice by constructing three strands. ‘Truth, memory and retroactive social control’<sup>263</sup> through measures such as truth commissions; ‘censure, celebration and transitional social control’<sup>264</sup> using vetting and giving praise; and ‘civil society and social control from below’.<sup>265</sup> This conceptualisation links to Dudai’s argument that the denial of human rights (and of international humanitarian law) violations is the ‘core problem facing societies’ in transition.<sup>266</sup> Cohen described three types of denial: (1) literal denial rejects that something happened; (2) interpretive denial rejects the narrative framing of what happened; and (3) implicatory denial rejects responsibility for or severity of what happened.<sup>267</sup> Dudai contends that transitional justice counters denial by

---

<sup>259</sup> Ibid. 556–557.

<sup>260</sup> Ibid. 557–558.

<sup>261</sup> Ibid. 558.

<sup>262</sup> Dudai (n 36).

<sup>263</sup> Ibid. 5–6.

<sup>264</sup> Ibid. 8–9.

<sup>265</sup> Ibid. 11–12.

<sup>266</sup> Ibid. 5.

<sup>267</sup> See chapter 1 generally, Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Polity Press 2001).

retroactively labelling past events and individuals as deviant, thus drawing together various mechanisms under his analysis. This thesis developed from Dudai's work and supports his reasoning that transitional justice tools share a 'common function of reclassifying past events'.<sup>268</sup> However, I propose that narrative control can be separated as a distinct aim of actors which therefore necessitates altogether different or adapted methods.

Take, for instance, the vetting process instituted by the US occupation of Japan under the so-called "Purge Directive".<sup>269</sup> Disciplinary control can be seen not only in the act of dismissing an individual from their job, but in the additional punitive measure of denying them their pensions.<sup>270</sup> In the spirit of this directive, Article 66 of the new constitution prescribed that all cabinet members must be civilians,<sup>271</sup> thus exerting organisational control through legal reform. The function of narrative control was performed through public accusation and discrediting the institutions from which people were removed – this was a strategic objective.<sup>272</sup> What distinguishes narrative control is that it is not aimed at a distinct deviant actor, rather it seeks to alter societal discourse around a broader issue or conduct – often with its own sanctioned story. This objective must be present however, or such an argument could theoretically be applied to any and all transitional justice programmes. Vetting might not always constitute narrative control, such as if it is done in secrecy or the reasons for dismissal are obscured. Furthermore, the agent(s) of control and methods employed are not restricted to the state although it is more likely to be a collective.

Whilst the reparations pillar initiated the discussions in this section, reparations in and of themselves do not necessarily equate to specific control strands. The transitional

---

<sup>268</sup> Dudai (n 36) 14.

<sup>269</sup> General Headquarters Supreme Commander for the Allied Powers, 'Removal and Exclusion of Undesirable Personnel from Public Office (4 Jan 1946)' (National Diet Library) <[https://www.ndl.go.jp/modern/e/img\\_r/M006/M006-001r.html](https://www.ndl.go.jp/modern/e/img_r/M006/M006-001r.html)> accessed 15 May 2023.

<sup>270</sup> Ibid. [5].

<sup>271</sup> The Constitution of Japan 1946, Art. 66.

<sup>272</sup> State War Navy Coordinating Committee, 'Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15), 3 November 1945' [4(e)] <<https://www.ndl.go.jp/constitution/e/shiryō/01/036/036tx.html>> accessed 10 October 2023.

control typology emphasises the methods and aims of transitional justice initiatives, encompassing a wide array of agents. As a distinct strand, narrative control refers to mechanisms the primary control function of which is the creation and distribution, through organised means, of discourse that promotes an altered or contrasting framing of the past. By doing so, deviant narratives are identified and replaced.

#### 4.4 Conclusion

This chapter answered the second research question – in what ways can transitional justice be conceptualised as a form of social control? To do so, the literature on social control and transitional justice was analysed and guided by themes identified in previous chapters. The pillars of justice and accountability, guarantees of non-recurrence, and reparations were found to be the most salient in post-war Japan and formed the basis for applying Cohen’s definition of social control. Although theories of social control from below, retroactive social control, upward control, and others were relevant to the research question, they did not adequately address the range of actors and mechanisms involved in transitional justice. I therefore argued that a typology of transitional control is a more appropriate way to conceptualise transitional justice as social control. This typology has three strands: disciplinary control, organisational control, and narrative control. While there is overlap between the three, the cross-strand units of analysis provide a way of identifying initiatives with its theoretical control type. The table below sets out the key elements of the control type which will inform the examination of the three case studies in the proceeding chapters.

	<b>Disciplinary Control</b>	<b>Organisational Control</b>	<b>Narrative Control</b>
<b>Control Aim</b>	Punitive	Transformative	Discursive
<b>Deviance</b>	A behaviour or entity	Structures that facilitated behaviour	Societal discourse about the behaviour
<b>Agent of Control</b>	Theoretically, any actor engaged in transitional justice. Including civil society, victims, states, and international organisations.		
<b>Example of Methods/Modes</b>	Criminal trials Boycotts	Constitutional reform Civil lawsuits	Apologies Outreach

*Table 1: A Typology of Transitional Control*

Each strand has: (1) a goal to be achieved through social control; (2) a targeted form of deviance; (3) an agent of control; and (4) example of organised methods through which to achieve control. The agent of control is purposefully not designated, as this typology does not restrict different actors to specific modes. Furthermore, the methods are illustrative and reflect how modalities shift to meet the control aim.

This chapter also advances the existing scholarship on both transitional justice and social control. It was noted that there is very little literature framing post-conflict mechanisms as intended control schemas and that, on the contrary, the human rights field demonstrates how social control is often posed as the obstacle to such values. However, it is clear that transitional justice can exhibit all the key characteristics – and intentions - of social control. The typology is a significant contribution to both fields of literature because the three strands capture new and more inclusive ways of understanding the desired impact of “organised methods”. By not requiring specific actors to be mapped to correlated strands, the typology resolves some of the tension in transitional justice debates around non-state/state and non-legal/legal modes. Applying social control to transitional justice has resulted in a more integrative yet

flexible approach which can theoretically be utilised across geography, time, and participant. The following three chapters interrogate the typology by applying the theory to “real world” phenomena in post-war Japan and drawing lessons for its adequacy as an approach to transitional justice.

Part II

Transitional Control in Post-War Japan

## Chapter 5 – The Tokyo Trial: Defining and Disciplining Deviance

### 5.1 Introduction

This chapter applies the typology of transitional control developed in Chapter 4 to the International Military Tribunal for the Far East, better known as the Tokyo Trial. This landmark international tribunal is the first of three case studies through which the third research question will be answered: to what extent can transitional justice conceptualised as social control be applied to post-war Japan? The aim here is to use the Tokyo Trial to interrogate whether the previously developed typology is confirmed, refuted, or altered when applied to this “real-world” phenomena.

The Tokyo Trial is the “sister” tribunal to that of Nuremberg. It lasted two years and began with: 11 prosecutors, one Chief Prosecutor, and 11 judges drawn from states which had been at war with Japan;<sup>1</sup> 28 accused; 26 defence counsels, later adding 28 American defence lawyers; 55 indictment counts;<sup>2</sup> more than 100 translators; and a final judgment of over 1,000 pages long.<sup>3</sup> The numbers are staggering,<sup>4</sup> and it is this scale and historical legacy that situate the Tokyo Trial as an ideal case study for this research. It was the most prominent of the post-World War II prosecutions in East Asia, manifesting arguably the most traditional of transitional justice pillars, that of accountability and criminal justice. Furthermore, it exhibits a clear connection to social control as a punitive and formal mode of curbing deviance. The Tokyo Trial is therefore

---

<sup>1</sup> Zachary D Kaufman, ‘The Nuremberg Tribunal v. the Tokyo Tribunal: Designs, Staffs, and Operations’ (2010) 43 *The John Marshall Law Review* 753, 766.

<sup>2</sup> 45 of these charges were dismissed in the judgment or merged with other counts. See, IMTFE [The Tokyo Trial], *Indictment* [1946], digitised copy available from the University of Virginia IMTFE Digital Collection at <<http://imtfe.law.virginia.edu/collections/tavenner/1/2/full-indictment>> accessed 11 July 2020; Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (Oxford University Press 2008) 70.

<sup>3</sup> Urs Matthias Zachmann, ‘Loser’s Justice: The Tokyo Trial from the Perspective of the Japanese Defence Counsels and the Legal Community’ in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal The Allied Struggle for Justice, 1946-48* (Brill 2018) 288; Boister and Cryer (n 2) 54 and 100.

<sup>4</sup> Note that Nuremberg had far fewer judges and prosecutors, Kaufman (n 1) 759–760.

a rich case for analysing the typology of transitional control and answering the research question.

This chapter begins by outlining the legal basis for the Tokyo Trial, highlighting the three documents that are critical to the analysis that follows. The transitional control typology is then examined in turn. Firstly, the lens of disciplinary control demonstrates the intent to punish deviance through the tribunal, but inconsistencies resulted in disrupted justice. Secondly, evidence of organisational control was not found in the data analysis, despite the Tokyo Trial having had the opportunity to pursue this type of control. Thirdly, narrative control is identified in the tribunal's processes that sought to promote a discourse amenable to the Allied powers. Finally, the chapter concludes that the Tokyo Trial exhibits strong elements of the transitional control typology. However, its (in)ability to shape a stable and shared narrative amongst the Japanese public and legal scholars, at the time and to this day, has greatly reduced its potential to engage in effective control modes. A variety of primary and secondary data is drawn upon for analysis of the Tokyo Trial to ascertain its aims, agents of control, targeted deviance, and outcomes. The data was drawn from archival documents and legal instruments, and secondary literature was used to aid in the interpretation of the primary material.

## 5.2 Legal Basis for the Tokyo Trial

The legal basis for the Tokyo Trial underscores much of the analysis in this chapter, as the context for how the tribunal operated and has since been understood. On 19 January 1946, General MacArthur (the Supreme Commander of the Allied Powers) issued the 'Special Proclamation on the Establishment of an International Military Tribunal for the Far East' (hereafter, Special Proclamation), as well as the 'Charter of the International Military Tribunal for the Far East' (hereafter, the Tokyo Charter).<sup>5</sup> These documents outlined the jurisdiction and process of the Tokyo Trial. Unlike its

---

<sup>5</sup> [Tokyo Charter] *International Military Tribunal for the Far East, Special proclamation by the Supreme commander for the Allied Powers at Tokyo January 19, 1946; charter dated January 19, 1946; amended charter dated April 26, 1946. Tribunal established January 19, 1946, TIAS 1589 4 Bevans 20.*

Nuremberg counterpart, which was established by one international treaty, the Special Proclamation instead draws on three documents for its mandate: the Potsdam Declaration, the Instrument of Surrender, and a communiqué from the Moscow Conference.<sup>6</sup>

The Potsdam Declaration, signed in July 1945 by the US, UK, China, and later the USSR, set the terms for Japan's unconditional surrender and states that '...stern justice shall be meted out to all war criminals...'<sup>7</sup> The articles of the declaration clearly evidence the intention of the drafters to punish those alleged to have committed war crimes.<sup>8</sup> On 10 August, the Japanese government communicated its intent to accept the terms of the Potsdam Declaration and signed the Instrument of Surrender in September 1945. This Instrument thus ended the war and Japan confirmed that it would 'carry out its provisions in good faith'.<sup>9</sup>

The third basis for the Tokyo Trial, as identified in the Special Proclamation, is the Soviet-Anglo-American Communiqué adopted at the Moscow Conference in December 1945. The Communiqué set out the plans for the occupation of Japan and established the Far Eastern Commission.<sup>10</sup> While the Far Eastern Commission was to represent 11 allied nations,<sup>11</sup> it was accepted in the communiqué, and reiterated in the Special Proclamation, that authority for the occupation and fulfilling the Instrument of

---

<sup>6</sup> Ibid.; United Nations, *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis*, 8 August 1945 (commonly referred to as the Nuremberg Charter); Johannes Fuchs and Flavia Lattanzi, 'International Military Tribunals' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (2011) para 13.

<sup>7</sup> [Potsdam Declaration] *Proclamation Defining Terms for Japanese Surrender, Issued at Potsdam, July 26, 1945*, The Ministry of Foreign Affairs "Nihon Gaiko Nenpyo Narabini Shuyo Bunsho: 1940-1945" vol. 2, 1966, [10].

<sup>8</sup> Kentarō Awaya, *Tōkyō Saiban e No Michi* (Kodansha gakujutsu bunko 2013) 32.

<sup>9</sup> Xiao Mao and others, "70 Years Later: The International Military Tribunal for the Far East" - an Overview of the International Conference Held by the International Nuremberg Principles Academy 17-19 May 2018' (2019) 11 *Amsterdam Law Forum* 66; *Instrument of Surrender, Signed at Tokyo, September 2, 1945*, EAS 493, ante, vol.3, p. 1251; Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asian Center 2008) 51.

<sup>10</sup> Soviet-Anglo-American Communiqué, At Moscow Conference, December 27, 1945, digitised version available at <<http://www.ibiblio.org/pha/policy/post-war/1945-12-27a.html>> accessed 10 July 2022; Fuchs and Lattanzi (n 6) para 13.

<sup>11</sup> That is, the USSR, the UK, the US, China, France, the Netherlands, Canada, Australia, New Zealand, India, and the Philippines. See the Soviet-Anglo-American Communiqué, *ibid*, 149.

Surrender ultimately rested with MacArthur, and thus the US, whilst the Far Eastern Commission retained powers of approval and review.<sup>12</sup> These three pillars – the Potsdam Declaration, the Instrument of Surrender, and the Moscow Communiqué – were therefore referenced to justify the establishment of the Tokyo Trial and the powers given to MacArthur vis-à-vis its operation.

The Tokyo Trial is perhaps most contentious with regards to its subject-matter jurisdiction, which included crimes against peace, conventional war crimes, and crimes against humanity. The controversy over crimes against peace is critical to each stage of analysis so that it warrants examination prior to applying the transitional control typology. Specifically, the charge of crimes against peace dominated the tribunal's proceedings, 'came to define the Japanese remembrance of the Tokyo Trial' and remained the focus of academic research in the field until the 1990s.<sup>13</sup> The idea that crimes against peace were justiciable and gave way to individual criminal responsibility was debated at several stages of the trial, from opening motions to the dissenting judgments, cutting to the heart of the Tokyo Trial's legitimacy.<sup>14</sup> As a debated matter at the Nuremberg Trial too, the charge itself – known now as the crime of aggression – has been covered extensively in scholarship.<sup>15</sup> This chapter does not seek to conduct a detailed analysis of the debates, legal arguments, and development of crimes against peace: rather, the overview given here highlights how the legitimacy of the Tokyo Trial has been questioned and why this is impactful in the context of transitional control.

---

<sup>12</sup> Fuchs and Lattanzi (n 6) para 12; Yuma Totani, 'Japanese Receptions of Separate Opinions at the Tokyo Trial' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016) 28.

<sup>13</sup> Yuma Totani, 'The Case against the Accused' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011) 147; Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 190.

<sup>14</sup> Boister and Cryer (n 2) 115.

<sup>15</sup> See, for example: Yoram Dinstein, *War Aggression and Self-Defence* (Cambridge University Press 2005); Nikola Hajdin, 'The Nature of Leadership in the Crime of Aggression: The ICC's New Concern?' (2017) 17 *International Criminal Law Review* 543; Darin Clearwater, 'When (and How) Will the Crime of Aggression Amendments Enter into Force?: Interpreting the Rome Statute by Recognizing Participation in the adoption of the Crime of Aggression Resolutions as "subsequent Practice" under the VCLT' (2018) 16 *Journal of International Criminal Justice* 31; Gerhard Kemp, *Individual Criminal Liability for the International Crime of Aggression* (Intersentia 2010).

Crimes against peace were addressed in counts 1-36 of the indictment.<sup>16</sup> As the prerequisite charge for all defendants at Tokyo, it took a central position in the trial and determined who was to be accused and what actions would be judged.<sup>17</sup> The Tokyo Charter, with some modifications from the Nuremberg Charter, defined crimes against peace as:

the planning, preparation, initiation or waging of a *declared or undeclared* war of aggression, or a war in violation of international *law*, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;<sup>18</sup>

At Nuremberg, crimes against peace were described as ‘...the supreme international crime’ in that it contained ‘...within itself the accumulated evil of the whole.’<sup>19</sup> Despite this grand description, the criminalisation of aggression and individual liability has remained controversial (until recently)<sup>20</sup> and has not been prosecuted since the 1940s.<sup>21</sup>

There were two major points of debate at both tribunals regarding this charge. First, was a war of aggression in violation of international law as it existed at the time (*de lege lata*)? Second, would such an act give rise to individual criminal responsibility? Crimes against peace were refuted by the Tokyo defence counsel as *ex post facto* law and therefore non-justiciable.<sup>22</sup> At both Nuremberg and Tokyo, it was argued that the inclusion of this charge violated the principle of *nullum crimen sine lege, nulla poena sine lege* – that is to say, “no crime without law, no punishment without law.”<sup>23</sup> The Nuremberg Judgment, as Tokyo would later refer to, countered this by referring to the

---

<sup>16</sup> Boister and Cryer (n 2) 70.

<sup>17</sup> Totani, ‘The Case against the Accused’ (n 13) 147.

<sup>18</sup> Emphasis added to highlight the words in the Tokyo Charter which are not included in the Nuremberg Charter. *The Tokyo Charter* (n5) art.5a.

<sup>19</sup> [Nuremberg Judgment] IMT, judgment of 1 October 1946, in *The Trial of German Major War Criminals. Proceedings of the International Military Tribunal sitting at Nuremberg, Germany*, Part 22 (22nd August 1946 to 1st October 1946) 421.

<sup>20</sup> It was defined by the International Criminal Court in a 2010 amendment. See, ‘Amendment to article 8 of the Rome Statute of the International Criminal Court’ (10 June 2010) 2969 UNTS 195.

<sup>21</sup> Kemp (n 15) 6–7.

<sup>22</sup> Totani, ‘The Case against the Accused’ (n 13) 150.

<sup>23</sup> Fuchs and Lattanzi (n 6) paras 55–57; Bert VA Röling and Antonio Cassese, *The Tokyo Trial and Beyond: Reflections of a Peacemonger* (Polity Press 1993) paras 68–69.

General Treaty for the Renunciation of War of 27 August, 1928.<sup>24</sup> Better known as the Kellogg-Briand Pact or the Pact of Paris, this treaty had 62 States Parties by 1929 including Japan, Germany, and the Allied powers.<sup>25</sup> Article I declares that parties ‘...condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.’<sup>26</sup> Dinstein refers to the pact as a turning point in international law, from ‘*jus ad bellum* to *jus contra bellum*’, signalling the shift from war as a sovereign right to a system that emphasises collective peace and security.<sup>27</sup>

The Nuremberg judgment acknowledged that this was a point of contention: ‘...it is argued that the pact does not expressly enact that such wars [of aggression] are crimes, or set up courts to try those who make such wars.’<sup>28</sup> Indeed, the only mention of any consequence for violating the Kellogg-Briand Pact is found in its preamble, ‘... [the violating party] should be denied the benefits furnished by this Treaty’.<sup>29</sup> These benefits remain undefined. The judges rose to this challenge, in an argument later relied upon by the Tokyo Trial:

...International Law is not the product of an international legislature, and [thus] such international agreements as [the Kellogg-Briand Pact] have to deal with general principles of law, and not with administrative matters of procedure.<sup>30</sup>

The issue of *ex post facto* law was compounded by the question of individual criminal liability, also controversial at the Tokyo Trial. Even within the Kellogg-Briand Pact, the consequences for utilising force in lieu of ‘*pacifc means*’ could be interpreted as a collective concept emphasising state responsibility.<sup>31</sup> The Nuremberg judgment rejects this point too, emphasising that ‘*crimes against International Law are committed by men, not by abstract entities*’.<sup>32</sup> It pointed to the similar lack of punitive

---

<sup>24</sup> [Nuremberg Judgment] (n 19) 444; Mithi Mukherjee, ‘The Right to Wage War against Empire: Anticolonialism and the Challenge to International Law in the Indian National Army Trial of 1945’ (2019) 44 *Law and Social Inquiry* 420, 433.

<sup>25</sup> [Kellogg-Briand Pact] The General Treaty for Renunciation of War as an Instrument of National Policy. Signed at Paris, August 27, 1928.

<sup>26</sup> *Ibid.*, Art.1.

<sup>27</sup> Dinstein (n 15) 83; Kemp (n 15) 49.

<sup>28</sup> [Nuremberg Judgment] (n 19) 445.

<sup>29</sup> *Ibid.*, preamble.

<sup>30</sup> [Nuremberg Judgment] (n 19) 445. See also, Hajdin (n 15) 546.

<sup>31</sup> [Kellogg-Briand Pact] (n 24) art. 2; Kemp (n 15) 76.

<sup>32</sup> [Nuremberg Judgment] (n 19) 447.

provisions in the Convention (IV) respecting the Laws and Customs of War on Land (the Hague Convention 1907), which nevertheless resulted in criminalisation.<sup>33</sup> Nuremberg and Tokyo thus departed from the traditional focus of international law on state responsibility to contribute the historic development of international criminal law and the criminal responsibility of individuals for state policy.<sup>34</sup> Despite these rebuttals, the accusation of *ex post facto* law has remained a common critique of the Tokyo Trial until today, as is evidenced by the topic having dominated the 2018 conference held by the International Nuremberg Principles Academy – in turn, the controversy has implications for the application of the transitional control typology.<sup>35</sup> The issue highlights that defining deviance, and the acceptance of that definition, is intricately linked to the perceived legitimacy of that claim.

This section has identified the key sources that established and justified the Tokyo Trial. Firstly, MacArthur's Special Proclamation and the Tokyo Charter were informed by the Potsdam Declaration, the Instrument of Surrender, and the Moscow Conference' Communiqué. The subject-matter jurisdiction was then discussed, exploring the legal controversy of the crimes against peace charge. It was shown that the judges at Nuremberg tackled the critique of *ex post facto* law, arguing that the Kellogg-Briand Pact legitimised the prosecution of this international crime – the Tokyo judges relied on this interpretation. Let us then rely on the critical context of the legal basis to apply the transitional control typology to the Tokyo Trial.

### 5.3 The Tokyo Trial and Disciplinary Control

The first strand of the transitional control typology is disciplinary control, proposed in section 4.3.1 of this thesis and defined as methods which utilise punitive measures against deviance. The aim of disciplinary control is to stop the deviant actor from engaging in harm, as perceived by the transitional justice paradigm, by punishing them

---

<sup>33</sup> Kemp (n 15) 83; Ian Brownlie, *International Law and the Use of Force by States* (Clarendon 1981) 162. [Nuremberg Judgment] (n 19) 445; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

<sup>34</sup> Kemp (n 15) 74.

<sup>35</sup> Mao and others (n 9).

in some way. Whilst Chapter 4 emphasised that disciplinary control may include methods such as retributive compensation and reputational damage, the Tokyo Trial is representative of one of its most recognisable forms, criminal punishment. This section shows how the theory of disciplinary control is applicable to the Tokyo Trial, identified through its punitive aims and methods which defined deviant behaviour and criminalised it. The following analysis examines the objectives of the trial and those individuals targeted for control, as well as reflecting on the decision to exclude certain key actors, such as Emperor Hirohito. Pursuant to this, the methods employed by the Tokyo Trial are framed as organised measures through which to direct punishment, and the agents of control are identified. This section concludes with a critical analysis of how the trial's disciplinary control was disrupted by differing interests and inconsistent policy.

The punitive objectives of the Tokyo Trial can be first ascertained from three primary documents produced by the Allied Powers: the Cairo Declaration, the Potsdam Declaration, and the Tokyo Charter. These documents are cited in the tribunal's final judgment as the cornerstones of the Tokyo Trial and its jurisdiction.<sup>36</sup> Firstly, the Cairo Declaration stated that 'the Three Great Allies [the USA, Great Britain, and the Republic of China] are fighting this war to restrain and punish the aggression of Japan'.<sup>37</sup> Secondly, the Potsdam Declaration shows the Allied approach to post-conflict punishment:

9. The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

10. We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. [...]

---

<sup>36</sup> [Tokyo Trial Judgment] *International Military Tribunal for the Far East, judgment of 12 November 1948*, in John Pritchard and Sonia M. Zaide (eds.), *The Tokyo War Crimes Trial*, Vol. 22, 48,416.

<sup>37</sup> Cairo Communiqué, December 1, 1943, available through the National Diet Library at <[https://www.ndl.go.jp/constitution/e/shiryō/01/002\\_46shoshi.html](https://www.ndl.go.jp/constitution/e/shiryō/01/002_46shoshi.html)> accessed 21 February 2023.

11. Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to re-arm for war.<sup>38</sup>

Notably, the Allies specifically assign responsibility for war crimes to a specific group rather than the whole population, framing post-war mechanisms as 'justice'.<sup>39</sup> This is supported further by the references to the non-retributive approach to be taken towards the military more generally and to the economy, instead limiting punitive measures to criminal prosecutions. Finally, the Tokyo Charter reiterates the objective to conduct 'the just and prompt trial and punishment of the major war criminals in the Far East.'<sup>40</sup> For the purposes of applying the theory of disciplinary control, these documents confirm the punitive aim that lay behind the Tokyo Trial: to target specific individuals accused of war crimes and punish their actions.

Having established that punishment was amongst the aims for the Tokyo Trial, it should be clarified who or what was to be targeted. It was noted in Chapter 4 that one of the challenges inherent in researching social control is the definition of deviance, and that it often refers to regulation through law. The Tokyo Trial and its operations were planned by the Allied powers and MacArthur, who therefore shaped what, and who, was to be considered deviant. The subject-matter and personal jurisdiction of the trial is therefore integral to identifying the behaviour that had been defined as deviant – as an international military tribunal, deviance was equated with criminality. As such, the nature of the charges and the selection of the defendants are units of analysis for applying the theory of disciplinary control. As previously discussed, Article 5 of the Tokyo Charter outlined the Tokyo Trial's competency to exercise jurisdiction over three crimes: crimes against peace, conventional war crimes, and crimes against humanity.<sup>41</sup> The Indictment covered these three offences across 55 counts, with numerous individual charges therein, against 28 Japanese defendants.<sup>42</sup> 45 of these

---

<sup>38</sup> [Potsdam Declaration] (n 7) [9]-[11].

<sup>39</sup> Dan Zhu, 'From Tokyo to Rome: A Chinese Perspective' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016) 42.

<sup>40</sup> [The Tokyo Charter] (n 5) art. 1.

<sup>41</sup> *Ibid.*, art.5.

<sup>42</sup> Ōkawa Shūmei was however deemed mentally unfit and the charges against him were dropped. Matsuoka Yōsuke and Nagano Osami died during the trial. Latha Varadarajan, 'The Trials of Imperialism: Radhabinod Pal's Dissent at the Tokyo Tribunal' (2015) 21 *European Journal of International Relations* 793, 5. IMTFE, *Indictment* [29 April 1946], digitised copy available from the

counts were eventually dismissed by the judges, 'on the grounds of redundancy, lack of jurisdiction, the merging of one count into another or because a charge was stated obscurely.'<sup>43</sup> As such, this section will discuss the three charges more broadly, rather than the individual counts.

Firstly, crimes against peace have been examined in the context of their controversy in section 5.2 of this chapter, outlining their dominance at the Tokyo Trial as the prerequisite charge for defendants. Under a lens of disciplinary control, it is important to note that the codification of crimes against peace and eventual conviction of defendants led to key developments: such acts were recognised, by the court, as deviant from international standards and individuals could be punished for partaking in them. Thus, the Tokyo Trial reinforced the Nuremberg "precedent"<sup>44</sup> whereby crimes against peace became a criminalised form of deviance.

Secondly, the Tokyo Charter provided for jurisdiction over conventional war crimes, defined in article 5(b) as 'violations of the laws or customs of war'.<sup>45</sup> Boister and Cryer have described war crimes at Tokyo as 'an afterthought', both during the trial and in its legacy.<sup>46</sup> This is not entirely accurate, although they were certainly not the primary focus of the trial. To receive the death penalty, a defendant had to be found guilty of war crimes – with or without the other charges – as was seen in the conviction and executions of seven defendants.<sup>47</sup> Additionally, Chapter VIII of the judgment produced a critical overview of war crimes committed which took up hundreds of pages, covering the Nanking Massacre, the Burma-Siam "Death Railway", and the torture of prisoners of war, among many other atrocities.<sup>48</sup> Through witness testimony, documents, and

---

University of Virginia IMTFC Digital Collection at

<<http://imtfc.law.virginia.edu/collections/tavenner/1/2/full-indictment>> accessed 11 July 2020.

<sup>43</sup> Boister and Cryer (n 2) 73.

<sup>44</sup> As Acquaviva and Pocar note 'the doctrine of stare decisis does not apply to international law as such', yet 'international courts and tribunals [...] tend to apply it to their own decision-making processes in order to ensure consistency and predictability'. See Guido Acquaviva and Fausto Pocar, 'Stare decisis' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (2011) paras 14-18.

<sup>45</sup> [The Tokyo Charter] (n 5) art.5(b).

<sup>46</sup> Boister and Cryer (n 2) 175.

<sup>47</sup> Yoshinobu Higurashi, *The Tokyo Trial: War Criminals and Japan's Postwar International Relations* (Japan Institute of International Affairs 2022) 100 and 226.

<sup>48</sup> [Tokyo Trial Judgment] (n 35) 49,593-49,762.

government reports, the Tokyo Trial thus confirmed that these acts were deviant from international law and were definitively war crimes – the legacy of these findings is discussed further under narrative control.

Whilst crimes against humanity represented the third and final charge under the Tokyo Trial's jurisdiction, these have been generally subsumed under conventional war crimes.<sup>49</sup> Crimes against humanity were seen as *ex post facto* law – yet, because they had not received much substantive attention during the Tokyo Trial itself, no similar controversy to that raised by crimes against peace can be observed.<sup>50</sup> Judge Röling, for example, has since argued that crimes against humanity was not an appropriate charge for the Japanese sphere.<sup>51</sup> Thus, although the codification of crimes against humanity as international crimes was a pivotal development in law and world history, it does not seem to be a relevant factor in identifying deviance for the Allies at the Tokyo Trial. This is also an example of how Japan is unusual as a transitional justice case, which, as discussed in Chapter 3, is more often applied to a state's internal violence. The Tokyo Trial was more focused on crimes against peace than crimes against humanity in part because of this uncommon feature. Scholars have critiqued this from an anti-colonial, anti-racist perspective, arguing that the lack of judgment on crimes against humanity grounds reflects the dismissal of the colonised experience.<sup>52</sup> For example, Yoneyama has strongly argued in her writings that the 'downplaying' of crimes against humanity at the Tokyo Trial, compared to Nuremberg, was due to a 'subtle conflation of Japanese and other Asians' and a reinforcement of Western colonial perspectives.<sup>53</sup>

---

<sup>49</sup> See, for example: Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 103; Xiudong Gao, 'The Tokyo Trial and Its Influence on Contemporary International Criminal Justice' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016) 94; Higurashi (n 47) 28; Röling and Cassese (n 23) 55.

<sup>50</sup> Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 103.

<sup>51</sup> Röling and Cassese (n 23) 55.

<sup>52</sup> Lisa Yoneyama, *Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes* (Duke University Press 2016) 156.

<sup>53</sup> Lisa Yoneyama, *Hiroshima Traces: Time, Space, and the Dialectics of Memory* (University of California Press 1999) 10; Yoneyama (n 51) 156.

The defendants themselves were selected from across the temporal and political context of the Asia-Pacific War and chosen to represent different stages of the conflict.<sup>54</sup> They could be termed as what Drumbl has called, 'conflict entrepreneurs' and 'leaders': the influential perpetrators who may not have pulled the trigger themselves, but orchestrated the environment in which atrocity was committed.<sup>55</sup> As discussed in Chapter 3, the scale of international crimes often means that not all those responsible can possibly be held accountable and a level of discretion is required.<sup>56</sup>

Defendants are chosen according to a set of criteria and become necessarily symbolic in their status as *the* deviant. Specifics on the intricacies of this process at the Tokyo Trial have been covered by scholars such as Boister and Cryer,<sup>57</sup> Totani,<sup>58</sup> and Awaya,<sup>59</sup> who also outline the inconsistencies and challenges faced. It is sufficient here to note that the US State-War-Navy Commanding Committee, MacArthur, and the Far Eastern Commission influenced the initial list of potential defendants, and it was the International Prosecution Section which had the task of reducing the number of accused.<sup>60</sup> The selection process for the Tokyo Trial has been criticised as 'arbitrary', but the accused did purposefully represent key phases of the Asia-Pacific War and several different state institutions, such as the Cabinet and the Privy Council.<sup>61</sup> Although most were reportedly unknown to the Japanese public, the defendants consisted of former Prime Ministers, ambassadors, intellectuals, and military officials.<sup>62</sup> The narrative arc cast by this selection is discussed further in section 5.5. For the organisers of the Tokyo Trial then, crimes against peace and conventional war crimes were to be the focal definition of deviant behaviour, with the selected accused

---

<sup>54</sup> Boister and Cryer (n 2) 54.

<sup>55</sup> Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge University Press 2007) 25–26.

<sup>56</sup> Cécile Aptel, 'Prosecutorial Discretion at the ICC and Victims' Right to Remedy: Narrowing the Impunity Gap' (2012) 10 *Journal of International Criminal Justice* 1357.

<sup>57</sup> Boister and Cryer (n 2) Chapter 3.

<sup>58</sup> Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) chapter 3.

<sup>59</sup> Awaya (n 8) Chapter 2.

<sup>60</sup> *Ibid.*, 78. Urs Matthias Zachmann, 'From Nanking to Hiroshima to Seoul: (Post-)Transitional Justice, Juridical Forms and the Construction of Wartime Memory' (2016) 14 *Journal of Modern European History* 568, 573; Boister and Cryer (n 2) 50.

<sup>61</sup> Minear (n 22) 93; Solis Horwitz, 'The Tokyo Trial' (1950) 28 *International Conciliation* 475, 496.

<sup>62</sup> Meirion Harries and Susie Harries, *Sheathing the Sword: The Demilitarisation of Japan* (Hamish Hamilton 1987) 126; Röling and Cassese (n 23) 33.

representing such behaviour from across the timeline of the war and power structures of the Japanese state. These were the individuals and actions identified for disciplinary control and upon which its definition was consolidated.

The Tokyo Trial also offers an important reflection on how deviance is crucial to disciplinary control both in its definition and in its absence. One of the enduring debates surrounding the selection process of those to face charges by the Tokyo Trial concerns who was not indicted. Primarily the controversy refers to Emperor Hirohito, *de jure* Head of State and Supreme Commander; members of Unit 731, who conducted human experimentation in occupied China; overseers of the “Comfort Women” system of sexual slavery; and indeed, the Allied powers themselves. This chapter argues that the decision to exert disciplinary control on certain deviants exclude others intentionally or by omission results in an intersection with narrative control, in that the lack of punishment has far-reaching discursive consequences. As such, it is examined in section 5.5.

Having established the target deviance (the charges) and target deviants (the defendants) of the Tokyo Trial, the organised methods through which disciplinary control was exerted can be identified. Of the 25 defendants, seven were sentenced to death, 16 to life imprisonment, one to a 20-year term, and finally one to seven years.<sup>63</sup>

These punishments seem indicative of the ‘stern justice’ and intent to remove leaders from their spheres of influence as announced in the Potsdam Declaration,<sup>64</sup> however, the trial and post-trial reality belies this claim. There was considerable disagreement among the judges on sentencing, particularly regarding the death penalty which – following the Nuremberg precedent – was not handed down for crimes against peace alone.<sup>65</sup> For example, Röling criticised the inconsistency of sentencing, arguing for the

---

<sup>63</sup> Ōkawa Shūmei was declared unfit for trial while Matsuoka Yōsuke and Nagano Osami died during the proceedings. [Tokyo Trial Judgment] (n 35) 49,854-49,858; Boister and Cryer (n 2) 252.

<sup>64</sup> [The Potsdam Declaration] (n 7), art. 6 and 10.

<sup>65</sup> Boister and Cryer (n 2) 254–255.

acquittal of five defendants;<sup>66</sup> Jaranilla highlighted the Tokyo Trial's inconsistent rulings but argued, on the contrary, that they were 'too lenient' to act as a deterrent,<sup>67</sup> and, finally, in his infamous dissent, Pal considered that all defendants should be found not guilty.<sup>68</sup> These contradictory views were publicly discussed after the trial and reported on by newspapers such as the Asahi Shimbun – Pal's dissenting opinion, in particular, has gone on to inspire many who critique the convictions.<sup>69</sup> Although the death sentences were carried out, all defendants who had been incarcerated – and had not passed away – were released by the end of the 1950s, with three of the convicted going on to hold government positions.<sup>70</sup> The reasons for this are examined at length by Pan<sup>71</sup> and Wilson,<sup>72</sup> who analyse the advocacy movements and geopolitical context which led to these acts of clemency and even reintegration in the political apparatus. The impact of the dissenting opinions is discussed further in this chapter under narrative control.

As well as identifying the organised methods, aims, and target deviance under disciplinary control, it is important to consider the agents of control. According to the Tokyo charter, MacArthur was empowered to appoint the justices and their President, the Secretariat, and the Chief of Counsel for the prosecution.<sup>73</sup> He was also expected to review all sentences and apply leniency if desired.<sup>74</sup> Judges were recommended to MacArthur by the states parties to the Instrument of Surrender: the US, China, the UK, the USSR, Australia, Canada, France, the Netherlands, and New Zealand.<sup>75</sup> The Tokyo Charter was later amended and finalised on 26 April 1946 to allow for additional

---

<sup>66</sup> [Röling Dissent at the Tokyo Trial] *Opinion of Mr. Justice Röling, Member for the Netherlands*, 12 November 1948, 178.

<sup>67</sup> [Jaranilla Opinion at the Tokyo Trial] *Concurring Opinion by the Honorable Mr. Justice Delfin Jaranilla, Member from the Republic of the Philippines*, 1 November 1948, 34.

<sup>68</sup> Radhabinod Pal, *International Military Tribunal for the Far East: Dissident Judgment of Justice Pal* (Kokusho-Kankokai 1999) 679.

<sup>69</sup> Totani, 'Japanese Receptions of Separate Opinions at the Tokyo Trial' (n 12) 59.

<sup>70</sup> Cherif M Bassiouni, 'From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court' (1997) 10 *Harvard Human Rights Journal* 11, 34.

<sup>71</sup> Keyao Pan, 'Networking for War Criminal Amnesty: The Establishment of Japan's War Convicted Benefit Society' (2020) 18 *The Asia-Pacific Journal: Japan Focus*.

<sup>72</sup> Sandra Wilson, 'The Sentence Is Only Half the Story: From Stern Justice to Clemency for Japanese War Criminals, 1945-1958' (2015) 13 *Journal of International Criminal Justice* 745.

<sup>73</sup> [The Tokyo Charter] (n 5) respectively art.2, art.3(a), art.3(b), and art.8; Awaya (n 8) 36–37.

<sup>74</sup> [The Tokyo Charter] (n 5) art.17.

<sup>75</sup> Boister and Cryer (n 2) 27.

judges, thus including representative judges from the Philippines and India.<sup>76</sup> Totani notes that whilst there is a prevailing belief that MacArthur ultimately held power, rather than the Far Eastern Commission, much of his influence over the Tokyo Trial was theoretical and partly an image propagated by the General himself.<sup>77</sup> MacArthur did, however, appoint the Chief Prosecutor, the American Joseph B. Keenan.<sup>78</sup> Thus, while MacArthur did take a prominent role in the establishment of the trial, the Allied states of the Far Eastern Commission – of a far greater number when compared to Nuremberg – could also be considered agents of control.<sup>79</sup>

The analysis presented in this section has also highlighted the role of the judges in the process of exerting disciplinary control. It may be that judges are seen to be neutral arbiters of justice; however they exert a great influence over punishment as a control mode. Courtrooms are ‘perhaps the most heavily formalized of all social settings’, and judges sit – often literally – above all others.<sup>80</sup> Judges assess the evidence and produce authoritative decisions that are archived and studied, and their legitimacy is linked to that of the trial itself.<sup>81</sup> Nerida Chazal’s analysis of the International Criminal Court (ICC) provides one example, where the variety of actors with different legal traditions and political views (including among the judiciary and prosecutorial teams) results in a ‘fragmented and divided’ system.<sup>82</sup> At the ICC, the Office of the Prosecutor is very influential, whereas at the Tokyo Trial it was arguably the judges.<sup>83</sup> The judges at Tokyo had considerable discretion and each came to Japan with preconceived opinions on the legitimacy of the trial, which would ultimately influence their participation. Kerstin von Lingen’s edited volume *Transcultural Justice at the Tokyo Tribunal* speaks to the diverse interests, war experiences, and legal backgrounds of

---

<sup>76</sup> [The Tokyo Charter] (n 5) art.2.

<sup>77</sup> Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 28–31.

<sup>78</sup> Kaufman (n 1) 760.

<sup>79</sup> Kerstin von Lingen, ‘Introduction’ in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal The Allied Struggle for Justice, 1946-48* (Brill 2018) 5.

<sup>80</sup> James J Chriss, *Social Control: An Introduction* (2nd edn, Polity Press 2013) 236.

<sup>81</sup> Nevenka Tromp, ‘In Search for Truth at Mass Atrocities Trials: Will Judges and Lawyers Have the Last Word?’ (2018) XII *The Journal of Comparative Law* 61, 73; Chiara Giorgetti, ‘Between Legitimacy and Control: Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals’ (2016) 49 *The George Washington International Law Review* 205, 255.

<sup>82</sup> Nerida Chazal, *The International Criminal Court and Global Social Control: International Criminal Justice in Late Modernity* (Routledge 2018) 103.

<sup>83</sup> *Ibid.*, 61.

the eleven judges, each of whom are examined in an own chapter.<sup>84</sup> Decades after the Tokyo Trial, the Dutch representative on the bench, Bert Röling, reported that the final judgment was drafted by seven judges, independent of the other four, and presented as a *'fait accompli'*.<sup>85</sup> On his account, those who did not question the Tokyo Trial's legitimacy formed a 'manufactured majority', whilst the bench was characterised by interpersonal conflict and tension based on where each judge fell.<sup>86</sup> Furthermore, there were no standard criteria provided, nor agreed upon, for sentencing even in the use of the death penalty – death by hanging was eventually decided by simple majority.<sup>87</sup> Röling, Bernard, and Pal resisted pressure from their respective governments by writing dissenting opinions.<sup>88</sup> These are discussed further below under narrative control. The judges were thus more than mere conduits of their respective states, they were agents of control participating in the meaning-making and implementation of disciplinary control.

To conclude, the intent to use disciplinary control is strongly evidenced at the Tokyo Trial: the punitive aims, the methods, and their implementation against designated deviant actors. The Tokyo Trial criminalised arguably new acts of deviance (under crimes against peace) and reinforced existing norms (conventional war crimes) in an early form of punitive transitional justice. The analysis showed that while disciplinary control theory can be applied to this case, punishment is disrupted. Perhaps most notably, the discussion found intersections with narrative control, wherein those who were chosen or not chosen for punishment created discursive ripples and further refuted the legitimacy of the trial.

---

<sup>84</sup> Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946-48* (Brill 2018).

<sup>85</sup> The majority judgment was written by the judges from the US, the UK, China, the Soviet Union, the Philippines, Canada, and New Zealand. Röling and Cassese (n 23) 63; See also, James Burnham Sedgwick, 'Building Blocs: Communities of Dissent, Manufactured Majorities and International Judgment in Tokyo' in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946-48* (Brill 2018).

<sup>86</sup> Sedgwick (n 84) 30–32.

<sup>87</sup> Bassiouni (n 22) 476; Röling and Cassese (n 23) 64.

<sup>88</sup> von Lingen (n 78) 2; Röling and Cassese (n 23) 61; Ann-Sophie Schoepfel, 'Defending French National Interests? The Quai d'Orsay, Ambassador Zinovy Peshkoff, Justice Henry Bernard and the Tokyo Trial' in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946-48* (Brill 2018).

## 5.4 The Tokyo Trial and Organisational Control

The second strand of the transitional control typology is that of organisational control, proposed in section 4.3.2 of this thesis. This form relates to how actors engage in the reform or disestablishment of formalised structures that facilitated deviance. Examples within transitional justice can include security sector reform, company restructuring, and the adoption of new legal frameworks. The primary and secondary material analysed for this research does not provide evidence that the Tokyo Trial was intended to reform any organisational structures, such as political groups or state institutions. However, the omission of corporations from the trial does offer points of reflection to enrich the transitional control typology.

The absence of any leaders of the *zaibatsu* (business conglomerates), the military police, and nationalist secret societies has drawn criticism and raised questions over the selection of defendants.<sup>89</sup> Although the Tokyo Trial did not indict or discuss at great length the role of corporations in the Asia-Pacific War, the context of the *zaibatsu* is worth noting. The *zaibatsu* emerged in the late 1800s, building powerful monopolies of key industries, with close ties to government and bearing such familiar names as Mitsui, Mitsubishi, and Sumitomo.<sup>90</sup> During the Asia-Pacific War, many companies were supported by the military and mobilised prisoners of war and colonised peoples for labour, such as the forcibly conscripted shipyard workers brought over from Korea.<sup>91</sup> At the Tokyo Trial, Soviet affidavits criticised the wartime actions of the *zaibatsu* and several companies that had been implicated in opium trafficking, however there was little else in the tribunal proceedings addressing these issues.<sup>92</sup>

Horwitz argues that this can be explained by the tribunal's charter which did allow for the punishment of members of an organisation but was limited to those who could be

---

<sup>89</sup> Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Routledge 2008) 124.

<sup>90</sup> Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford University Press 2009) 96.

<sup>91</sup> *Ibid.*, 193.

<sup>92</sup> Higurashi (n 38) 123; [Tokyo Trial Judgment] (n 35) 49, 163.

charged with crimes against peace.<sup>93</sup> He differentiates between industrialists who complete work or produce material ‘to be used in connection with an aggressive war’, and industrialists who work with state officials ‘in the formulation and execution of a program of aggression.’<sup>94</sup> The US occupation had intended to dissolve the *zaibatsu* through the FEC-230 economic policy as part of its “democratise and demilitarise” approach, recognising the role these corporate giants had played during the war.<sup>95</sup> These efforts were struck down by those who argued it would lead to the collapse of the economy, particularly risky given the growing concerns over the imminent Cold War.<sup>96</sup>

As Green has noted, organisations such as corporations, charities, and state institutions are not exempt from being considered deviant actors.<sup>97</sup> As the organisation can contravene norms, so too can it be subject to control, through financial and structural sanctions, direct and indirect ‘shaming’, and other such restrictions.<sup>98</sup> This was provided for in the Nuremberg Charter, which allowed for the criminalisation of groups and organisations: four associations were found to be criminal in its final judgment.<sup>99</sup> However, no corporations were charged at the Nuremberg Trial or Tokyo Trial, though there were proceeding trials held in Germany that indicted individuals for their corporate roles.<sup>100</sup> The aforementioned sanctioning of legal entities in Germany may amount to organisational control, yet the question was not considered by the Tokyo Trial in relation to Japanese companies. Since the 2000s, many of these companies have faced numerous lawsuits from victims of wartime forced labour and

---

<sup>93</sup> [The Tokyo Charter] (n 5) art. 5; Horwitz (n 61) 497.

<sup>94</sup> Horwitz (n 61) 498.

<sup>95</sup> Paul J Heer, *Mr. X and the Pacific: George F. Kennan and American Policy in East Asia* (Cornell University Press 2018) 56.

<sup>96</sup> This was part of the so-called ‘reverse course’ discussed in section 3.2.2 of this thesis. Heer provides a comprehensive analysis of this shift in economic policy, Heer (n 94) 57–59; Hans Martin Kramer, ‘Just Who Reversed the Course? The Red Purge in Higher Education during the Occupation of Japan’ (2005) 8 *Social Science Japan Journal* 2.

<sup>97</sup> Penny Green, *State Crime: Governments, Violence and Corruption* (Pluto Press 2004) 5.

<sup>98</sup> Michael Cunningham, ‘Prisoners of the Japanese and the Politics of Apology: A Battle over History and Memory’ (2004) 39 *Journal of Contemporary History* 561; John Braithwaite, ‘Criminological Theory and Organizational Crime’ (1989) 6 *Justice Quarterly* 333, 340.

<sup>99</sup> Fuchs and Lattanzi (n 6) para 41.

<sup>100</sup> Jonathan A Bush, ‘The Prehistory of Corporations and Conspiracy in International Criminal Law: What Nuremberg Really Said’ (2009) 109 *Columbia Law Review* 1094, 1098.

some have resulted in settlements and formal apologies, indicating that the Tokyo Trial failed to exercise organisational control in respect to these entities.<sup>101</sup>

Be that as it may, by indicting individuals who the Allies considered were representative of deviant institutions, and specifically the military, the trial resulted in a type of reform by removing those influential leaders – much like a vetting process. However, the removal of 28 people from the political and military landscape without broader structural reform was not going to substantively alter the workings of the Japanese state. The Allies adopted an individual focus for the tribunal, as evidenced by the language used in Articles 4, 6, and 10 of the Potsdam Declaration: ‘self-willed militaristic advisers’, ‘those who have deceived’, and ‘justice shall be meted out to all war criminals.’<sup>102</sup> Thus, although the military establishment is identified as deviant and in need of reform by other mechanisms, the Tokyo Trial itself was not envisaged as a way to change the organisation.

To conclude, the primary and secondary data analysed for this thesis do not suggest that the Tokyo Trial aimed to engage in organisational control. This is despite the probable cause on which the trial could have done so, by investigating the *zaibatsu* for example, or at the very least corporate leaders. Considering the growing interest in corporate accountability under international law, the Tokyo Trial could be seen as a missed opportunity from which important lesson can be drawn for the (in)effectiveness of transitional control measures.

## 5.5 The Tokyo Trial and Narrative Control

Narrative control is the third strand of the transitional control typology and refers to mechanisms that aim to change societal discourse. It operates by designating certain narratives – such as the denial of past harm – as deviant and promoting new narratives to replace them. Chapter 4 explored how narrative control can be achieved through

---

<sup>101</sup> See, Timothy Webster, ‘The Price of Settlement: World War II Reparations in China, Japan and Korea’ (2019) 51 *International Law and Politics* 301.

<sup>102</sup> [Potsdam Declaration] (n 7) arts. 4, 6, and 10.

reparations including financial compensation, education, memorialisation, vetting, and other transitional justice tools. This section argues that the organisers of the Tokyo Trial sought to enact narrative control by using the tribunal to legitimise Allies-approved histories of the Asia-Pacific War. The trial aimed to prevent discursive deviance through legal authority, documentation, and publicity. However, several factors including the dissenting opinions and omission to indict certain perpetrators, interrupted the effectiveness of narrative control and directly contributed to the Tokyo Trial's complex discursive legacy in Japan.

It can first be established that the Tokyo Trial organisers intended to engage in narrative control by analysing the Potsdam Declaration and the Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (the Basic Directive). The Asia-Pacific War was framed as a war of aggression undertaken by deviant individuals within the Japanese army and state, and this framing was intended to be reinforced by the Tokyo Trial itself. Through the trial, the Allies were thus crafting an understanding of the Asia-Pacific War where Japan's political and military elite were the instigators of the war and responsible for committing atrocities. The Potsdam Declaration offers a distinct narrative of responsibility framing:

4. The time has come for Japan to decide whether she will continue to be controlled by those self-willed militaristic advisers whose unintelligent calculations have brought the Empire of Japan to the threshold of annihilation, or whether she will follow the path of reason.

[...]

6. There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, [...] <sup>103</sup>

As was noted in the discussion of disciplinary control, there is a clear focus on individual criminal responsibility of an elite rather than on the responsibility of the nation. More specifically, the blame is laid upon militarists and the Japanese population are framed as having been unwittingly taken in by their schemes. This

---

<sup>103</sup> [Potsdam Declaration] (n 7) [4] and [6].

narrative is further evidenced in the Basic Directive, issued to MacArthur in November 1945 by the State-War-Navy Coordinating Committee. MacArthur is instructed to make the Japanese population 'realize that their suffering and defeat have been brought upon them by the lawless and irresponsible aggression of Japan...'<sup>104</sup> It goes on to list a variety of military, civilian, and political groups, the members of which should be 'arrested as rapidly as practicable and held as suspected war criminals'.<sup>105</sup>

Identifying the aim of narrative control at the Tokyo Trial illuminates what discourse was to be promoted and, by implication, what discourse was considered deviant. Two narrative threads are emphasised in the Potsdam Declaration and the Basic Directive: firstly, that the Asia-Pacific War was orchestrated and driven by militarists; secondly, that the war itself was an international crime. In contrast to the earlier analysis of disciplinary control, the target deviance of narrative control is not individual behaviour. Instead, this section argues that narrative control engages with the understanding of such behaviour, deeming contrary narrative as deviant. Where disciplinary control, in the case of the Tokyo Trial, sought to punish the deviance of criminal behaviour, narrative control was enacted in tandem to promote knowledge of the war, in particular among the Japanese population, as the responsibility of Japanese elites. Although the tribunal was reported on globally, I argue that – based on the data – the primary audience for narrative control is the Japanese public and its strategies were based on this objective. Discursive deviance can of course go beyond this geographical boundary, however the documents that set out the aims for the Tokyo Trial clearly show that narrative control was designed to impact Japanese society as it transitioned from war.

Criminal prosecutions as a site for meaning-making and social change is not a new endeavour. Feinberg famously wrote about the 'expressive function of punishment', arguing that "hard" punishment carries a symbolic moral condemnation of both

---

<sup>104</sup> State War Navy Coordinating Committee, 'Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15), 3 November 1945' [4(e)] <<https://www.ndl.go.jp/constitution/e/shiryō/01/036/036tx.html>> accessed 10 October 2022.

<sup>105</sup> *Ibid.*, [7].

perpetrator and the act in question.<sup>106</sup> To use Garfinkel's seminal concept, the Tokyo Trial can be conceptualised as a 'status degradation ceremony': denouncing the accused as outsider, deviant, and thus of lower status.<sup>107</sup> Garland adds that 'penality communicates meaning' far beyond the crime, speaking also to power, legitimacy, and social relations among others.<sup>108</sup> Under this lens, holding an international criminal tribunal in Japan conveyed the message set forth in the Potsdam Declaration and the Basic Directive to the wider population.<sup>109</sup>

The Tokyo Trial engaged in narrative control, both explicitly and implicitly, through a variety of methods, such as its chosen design, location, legal jurisdiction, and use of popular media. Firstly, the courtroom itself is a conduit of narrative. As Drumbi noted, 'trials create archives of information' through documents and testimony, educating their audiences 'through the spectacle of theater'.<sup>110</sup> Through a focus on due process, international norms, and the widely recognisable authority of the court setting, international trials can narrate history in an authoritative manner.<sup>111</sup> The court room and its proceedings take on ritualistic symbolism, imbued with assertions of order and authority.<sup>112</sup> It is therefore especially notable that the Tokyo Trial was held in the building previously occupied by the Japanese War Ministry, built in the style of European colonial architecture.<sup>113</sup> As Totani describes it, the building served the function of 'impressing the Japanese public with the fact of defeat and putting a symbolic end to the unquestioned authority of the Japanese military establishment.'<sup>114</sup> The court's central location in Ichigaya, Tokyo, also facilitated a narrative function in its accessibility to the Japanese public and the media.<sup>115</sup> Judge Röling has since described the trial as 'a huge-scale theatrical production', which was 'staged in a very

---

<sup>106</sup> Joel Feinberg, 'The Expressive Function of Punishment' (1965) 49 *The Monist* 397.

<sup>107</sup> Harold Garfinkel, 'Conditions of Successful Degradation Ceremonies' (1956) 61 *American Journal of Sociology* 420.

<sup>108</sup> David Garland, *Punishment and Modern Society: A Study in Social Theory* (The University of Chicago Press 1990) 252.

<sup>109</sup> Henham writes how this a core strategy of transitional justice. See, Ralph Henham, 'International Sentencing as a Force for Achieving Peace through Justice' in Nicola Palmer, Phil Clark and Danielle Granville (eds), *Critical Perspectives in Transitional Justice* (Intersentia 2012) 177.

<sup>110</sup> Drumbi (n 54) 175.

<sup>111</sup> *Ibid.*, 174.

<sup>112</sup> Garland (n 109) 68.

<sup>113</sup> Kaufman (n 1) 758.

<sup>114</sup> Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 9.

<sup>115</sup> *Ibid.*, 10.

ceremonial way'.<sup>116</sup> This serves the purpose of distributing the Allies' narrative more widely, while simultaneously legitimising this narrative of the war through a presentation of authority.

However, according to Garland, the ceremonial aspect of court proceedings is intensely contextualised by the 'particular community of belief, grounding their practices within the social relations, authorities, and traditions of that community.'<sup>117</sup> This is perhaps more pronounced in an international tribunal such as the Tokyo Trial, where 11 states sat in judgment in a country far removed from the cultural and legal praxis to which they were accustomed. Indeed, the impression of authority can never be universal: where one audience recognises legitimacy through a trial, another may view it as 'coercion'.<sup>118</sup> Some research has been conducted on this aspect of the Tokyo Trial, examining in particular the local responses to the trial from the perspectives of counsel and the public, and the trial's discursive legacy.<sup>119</sup> McGoldrick's claim that the defendants were seen 'as victims rather than criminals' by the Japanese public is not convincing, although, as shown below, there are many that support that position.<sup>120</sup> At the time, a variety of Japanese public intellectuals, parts of the general population, and newspapers were vocally in favour of the trial, albeit one must note that during this the occupation authorities exercise censorship.<sup>121</sup> Be that as it may, others have noted that ordinary Japanese citizens were more concerned with their own 'victim consciousness' – led into a war which left them under occupation and facing severe famine.<sup>122</sup> The Tokyo Trial thus succeeded at the time of the proceedings in

---

<sup>116</sup> Röling and Cassese (n 23) 20.

<sup>117</sup> Garland (n 108) 69.

<sup>118</sup> Garland (n 108) 70.

<sup>119</sup> Zachmann (n 3); Kei Ushimura, 'Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion' (2007) 19 *Nichibunken Japan Rev.* 215; Totani, 'Japanese Receptions of Separate Opinions at the Tokyo Trial' (n 12).

<sup>120</sup> Dominic McGoldrick, 'Criminal Trials Before International Tribunals: Legality And Legitimacy' in Dominic McGoldrick, Peter Rowe and Eric Donnelly (eds), *The Permanent International Criminal Court: Legal And Policy Issues* (Hart Publishing 2004) 21.

<sup>121</sup> Madoka Futamura, 'Japanese Societal Attitudes Towards the Tokyo Trial: A Contemporary Perspective' (2011) 9 *The Asia Pacific Journal: Japan Focus* 2; Zachmann (n 3) 303.

<sup>122</sup> Yutaka Yoshida, 'Senryōki Niokeru Sensō Sekininron' (1991) 105 *Hitotsubashi ronsō* 121, 137; Futamura (n 121) 3; Akiko Takenaka, *Yasukuni Shrine: History, Memory, and Japan's Unending Postwar* (University of Hawai'i Press 2017) 15–17.

establishing some narrative control, as the militarists were blamed for ‘tricking’ the country into the situation they were now in.<sup>123</sup>

Despite this, the Tokyo Trial has faced its biggest obstacle in *maintaining* narrative control. If all international trials are to some extent ‘drama’ and ‘show trials’ to which perceived legitimacy is of great concern, the trial at Ichigaya has become unconvincing.<sup>124</sup> Several aspects faced by the Tokyo Trial challenged its legitimacy and impacted its ability to perform narrative control functions in the longer-term, once the show-trial effect and the victim consciousness (naturally) faded with time. The legitimacy-challenging aspects that had a lingering effect include the selection of defendants, the charge of crimes against peace, and the dissenting opinions.

Firstly, as noted by Boister and Cryer, those indicted were ‘chosen mostly on the basis of position rather than direct evidence of culpability’.<sup>125</sup> The International Prosecution Section, in keeping with the objectives of the trial, wove a ‘narrative arc’ by selecting defendants that represented different stages and institutional bodies engaged in the war effort.<sup>126</sup> However, on one hand this led to criticism of the trial as propaganda, on the other, many among the Japanese public were not, at least initially, aware of who the defendants were.<sup>127</sup> An enduring aspect of the Tokyo Trial’s legacy was not who was indicted, but who was spared prosecution. Most notably, Emperor Hirohito was not to be investigated or indicted in a move generally understood to have been politically motivated.<sup>128</sup> The US and the UK recognised the power of a stable ally against rising communist regimes in East Asia and pushed for his exclusion from the indictment.<sup>129</sup>

---

<sup>123</sup> 「ダマサレタ」 to quote Yoshida. Yoshida (n 122) 137.

<sup>124</sup> McGoldrick (n 121) 9; Kate Leader, ‘The Trial’s the Thing: Performance and Legitimacy in International Criminal Trials’ (2020) 24 *Theoretical Criminology* 241, 253.

<sup>125</sup> Boister and Cryer (n 2) 73.

<sup>126</sup> Eric A Posner, ‘Political Trials in Domestic and International Law’ (2005) 55 *Duke Law Journal* 138; Totani, ‘The Case against the Accused’ (n 13) 149.

<sup>127</sup> Boister and Cryer (n 2) 60–61; Posner (n 127) 138.

<sup>128</sup> Yoneyama (n 52) 30–31; Totani, ‘Japanese Receptions of Separate Opinions at the Tokyo Trial’ (n 12) 36.

<sup>129</sup> *Ibid.*, 31.

Section 2.4.2 of this thesis demonstrated the vital importance of the Japanese emperor to nation-building in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The Meiji Restoration of the late 1800s had consciously cultivated a sense of ‘official nationalism’ centred on the unbroken imperial dynasty with the emperor as the unifying head of a state taking its place in modern – predominantly European – power structures.<sup>130</sup> Yet, the debate raged over whether his role as the Supreme Commander-in-Chief of the Empire of Japan was purely symbolic, something the defendants upheld in their interviews.<sup>131</sup> On the other hand, Justice Webb, president of the Tokyo Trial bench, Judge Bernard, members of the International Prosecution Service from China, the Soviet, and New Zealand all strongly argued for his prosecution.<sup>132</sup> In brief, the Emperor’s immunity from prosecution is an example of the so-called justice versus peace quandary in transitional justice: protecting Hirohito was seen as necessary to guarantee Japan’s cooperation in the region and stabilise the country. Whether or not he was guilty of the charges under the Tokyo Trial’s jurisdiction, the exclusion has undoubtedly altered the narrative control potential of the tribunal both within Japan and internationally.

The Tokyo Trial also neglected addressing the issue of Unit 731 and their projects in occupied China, which used biological weapons in severely inhumane experiments on civilians and prisoners of war. There were 12 individuals prosecuted by the Soviets after the war, but the Unit and its work was largely denied and indeed absorbed by the US bioweapon programme.<sup>133</sup> Yoneyama aptly complements the well-worn axiom of “Victor’s Justice”, adding that ‘the [Tokyo Trial] and its legacy might well be assessed as showcases for the “Victor’s Exoneration” of the vanquished’.<sup>134</sup> Rather than only seeking to subvert criminal behaviour, a trial underscores who is in control and by whose rules society should be governed. As Garland noted:

---

<sup>130</sup> Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 2016) 95–97.

<sup>131</sup> Boister and Cryer (n 2) 66.

<sup>132</sup> Nariaki Nakazato, *Neonationalist Mythology in Postwar Japan: Pal’s Dissenting Judgment at the Tokyo War Crimes Tribunal* (Lexington Books 2016) 38; Boister and Cryer (n 2) 65.

<sup>133</sup> Alexander Gillespie, *A History of the Laws of War: The Customs and Laws of War with Regards to Arms Control* (Hart Publishing 2011) 108.

<sup>134</sup> Yoneyama (n 52) 31.

...a significant failure to punish can undermine the sovereignty and authoritativeness of a particular legal and moral order and the ruling powers which support it. [...] [Punishment] is also a sign that the authorities are in control, that crime is an aberration and that the conventions which govern social life retain their force and vitality.<sup>135</sup>

From this perspective, the Tokyo Trial was more than a process of investigation and punishment, it was also a vehicle for the assertion of power and certain legal norms. As such, the impunity enjoyed by Unit 731, the Emperor, and others exemplify a pattern of narrative control wherein deviance in relation to some crimes and criminals is asserted yet limited in relation to others. By deciding that the Emperor could not be indicted, and that certain crimes were not to be prosecuted, the narrative control failed to establish the value of certain norms. It was also a show that MacArthur and the US were 'in control' as Garland put it, forgoing justice for politics,

Secondly, the Tokyo Trial's legitimacy was questioned with regards to the charges brought. Crimes against peace, and the conspiracy charges therein, were more central to the proceedings at Nuremberg than at Tokyo, where all defendants stood accused of them.<sup>136</sup> Yet, the Tokyo Trial repeatedly relied upon its predecessor to dismiss claims of *ex post facto* law, rather than taking the opportunity to tackle this issue in the context of the Asia-Pacific War.<sup>137</sup> Both the prosecution and the judges were reticent to directly engage with a definition of aggression and the majority judgment provided several inconsistent applications of the concept.<sup>138</sup> This is best seen in the early misgivings of the judges, who were themselves not in agreement: Chief Justice Webb, Röling, and Pal were dubious of the status of crimes against peace, the latter judge producing a 260-page critique of the charge.<sup>139</sup> The separate opinions given at the end of the Tokyo Trial – three dissenting and two concurring – reflect the vastly different perspectives on the legitimacy of the tribunal.

---

<sup>135</sup> Garland (n 108) 59.

<sup>136</sup> Thomas Weigend, "In General a Principle of Justice": The Debate on the "Crime against Peace" in the Wake of the Nuremberg Judgment' (2012) 10 Journal of International Criminal Justice 41, 42; Totani, 'The Case against the Accused' (n 13) 141.

<sup>137</sup> Totani, 'The Case against the Accused' (n 13) 150.

<sup>138</sup> Boister and Cryer (n 2) 122–123.

<sup>139</sup> Higurashi (n 47) 203.

This leads to the third major way the trial's legitimacy has been challenged, thus influencing its capacity to enact narrative control in the longer run. The dissenting opinions highlight how judges can serve as agents of control in the typology, either to reinforce control, or disrupt it. The ability to produce separate opinions has long been subject to debate but support has increased globally because, ironically, they purportedly augment the legitimacy of the courts.<sup>140</sup> Hemi Mistry refers to the 'paradox of dissent', contending that these opinions can undermine but 'ultimately strengthen the legitimacy of those institutions and the aims that they seek to advance.'<sup>141</sup> Here we argue that dissenting opinions had quite the opposite impact on the Tokyo Trial's narrative control legacy.

The Tokyo Trial is best remembered for its narrative contestations rather than as an authoritative retelling of the past. Alongside the final judgment, three dissenting opinions and two concurring opinions were submitted.<sup>142</sup> The Chief Justice himself, William Webb, wrote a concurring opinion critical of Emperor Hirohito's omission from the indictment.<sup>143</sup> The dissenting opinions of Röling, Bernard, and particularly Pal, have attracted the most attention in historical research.<sup>144</sup> These contrarian accounts contribute to the Tokyo Trial as an 'interrupted performance', wherein the narrative authority of justice is disturbed by rebellious actors.<sup>145</sup>

The dissents also show the judges as individual agents of narrative control with an agency beyond their roles as state representatives. For instance, Justice Henri Bernard wrote his dissenting opinion in opposition to pressure from the French Ministry of Foreign Affairs, strongly criticising the tribunal for not indicting the Emperor and for not adequately respecting the rights of the defendants.<sup>146</sup> Although all the separate

---

<sup>140</sup> Nancy Amoury Combs, 'Dissent and Legitimacy in International Criminal Law' (2022) 57 *Wake Forest Law Review* 1061, 1097; Gregor Maučec and Shai Dothan, 'Judicial Dissent at the International Criminal Court: A Theoretical and Empirical Analysis' (2022) 35 *Leiden Journal of International Law* 945, 946.

<sup>141</sup> Hemi Mistry, 'The Paradox of Dissent: Judicial Dissent and the Projects of International Criminal Justice' (2015) 13 *Journal of International Criminal Justice* 449, 451.

<sup>142</sup> von Lingen (n 79) 3.

<sup>143</sup> Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 205.

<sup>144</sup> von Lingen (n 79) 10.

<sup>145</sup> Drumbi (n 55) para 177.

<sup>146</sup> Schoepfel (n 88) 234–235.

opinions can demonstrate this role, it is Pal's that has endured to become a defining factor of discourse on the Tokyo Trial.

Pal is a strong example of the "disruption" of narrative discussed earlier in this section and demonstrates the potential for judges to act as agents of control. It had initially been established that minority opinions would be kept from the public, but Pal – on his late arrival to Tokyo – made it clear that he would not agree to this.<sup>147</sup> Although not the only judge to be conspicuously absent for many sessions, Pal was reportedly away from court the most and had made his decision long before hearing evidence.<sup>148</sup> In his dissent, he argued against the judgment 'on almost every aspect of the trial', compellingly drawing on the brutal history of the Allies own colonialism and dismissing the trial as hypocritical vengeance.<sup>149</sup> Latha Varadarajan writes that Pal's upbringing under the British Raj likely influenced his anti-colonial views, but this does not undermine nor explain all his writing.<sup>150</sup> The dissenting opinion is long, at times it is confusing and contradictory, but it is also painted the Tokyo Trial as:

...a more refined kind [of vengeance] afforded by the power to legitimize a particular rendering of not just the Second World War, but also the existing world order.<sup>151</sup>

In Neha Jain's *Radical Dissents*, Pal's opinion is highlighted as 'arguably the most famous dissent in international criminal law' which, despite its many failings, facilitated debate in Japan.<sup>152</sup> Although others support this argument,<sup>153</sup> it obscures the fact that Pal's legacy is only really discussed outside of academia by one section of Japanese political society – right-wing revisionists and denialists. Firstly, the separate opinions (concurring and dissenting) were reported on at the time, but it was not until after the occupation ended that they gained traction in Japanese media and literature.<sup>154</sup>

---

<sup>147</sup> Higurashi (n 47) 203.

<sup>148</sup> von Linggen (n 79) 14; Boister and Cryer (n 2) 95; Röling and Cassese (n 23) 28–29.

<sup>149</sup> Varadarajan (n 43) 6.

<sup>150</sup> Ibid., 3.

<sup>151</sup> Ibid., 14.

<sup>152</sup> Neha Jain, 'Radical Dissents in International Criminal Trials' (2018) 28 *European Journal of International Law* 1163, 1173.

<sup>153</sup> Mistry (n 142) 456; Gerry Simpson, 'Writing the Tokyo Trial' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011) 32.

<sup>154</sup> Nakazato (n 133) 147.

Pal's prominence rose due to a concerted effort by former militarists and political apologists who showcased this dissenting opinion as evidence of 'Japan's innocence'.<sup>155</sup> Secondly, long after the trial Pal proactively spread his message through multiple visits to Japan where he met families of the convicted and politicians, even receiving the First Order of the Sacred Treasure from Emperor Hirohito himself in 1966.<sup>156</sup> This final section demonstrates how the Tokyo Trial's narrative control has been irrevocably disrupted by Pal's dissenting opinion, showing how the agents of narrative control have shifted since the tribunal's establishment.

The granddaughter of Tōjō dedicated her later life to discrediting the Tokyo Trial and rescuing the reputation of her grandfather, inspiring the 1998 film *Pride*, a 'landmark revisionist project' that performed very well at the box office in Japan.<sup>157</sup> Tōjō Yūko established herself with the Japanese right wing and strongly advocated for Prime Ministers to visit the Yasukuni Shrine and pay respect to those enshrined there.<sup>158</sup> The Yasukuni Shrine in Tokyo illustrates the enduring influence of Pal's dissenting opinion.

Chapter 2 provides the historical context for the site, which enshrined 14 Class-A war criminals in 1979 and has provoked intense debates ever since.<sup>159</sup> Indeed, Yasukuni has become a central element in contesting the Tokyo Trial narrative, both in the shrine grounds and at the Yūshūkan – the on-site military and war museum. The Yūshūkan was closed by MacArthur in 1945 but reopened in 1961 and has been renovated several times since; it is now a beautifully designed and well curated space.<sup>160</sup> Although visitor numbers have not reached the heights seen during the Asia-Pacific

---

<sup>155</sup> 「日本無罪論」, see: Nakazato (n 132) 148–150; Masaaki Tanaka, *Pāru hanji no Nihon muzairon* (Shōgakukan bunko 2001).

<sup>156</sup> Totani, 'Japanese Receptions of Separate Opinions at the Tokyo Trial' (n 12) 62–63.

<sup>157</sup> David McNeill, 'Family Ties: The Tojo Legacy' (2005) 3 *The Asia Pacific Journal: Japan Focus* 4.

<sup>158</sup> McNeill (n 158) 8.

<sup>159</sup> Akiko Takenaka, 'Enshrinement Politics: War Dead and War Criminals at Yasukuni Shrine' (2007) 5 *The Asia-Pacific Journal: Japan Focus* 1–2.

<sup>160</sup> I have made several visits to the museum since 2010, most recently in December 2022. See also, Takashi Yoshida, 'Revising the Past, Complicating the Future: The Yushukan War Museum in Modern Japanese History' (2007) 5 *The Asia-Pacific Journal: Japan Focus* 3.

War,<sup>161</sup> it has always been bustling with activity during my own excursions and I have occasionally had to queue for exhibitions.

The displays are mostly available in Japanese and English, carefully worded but nonetheless contradicting the Tokyo Trial narrative. Panels frequently highlight ‘Japan’s Quest for Avoiding a War’<sup>162</sup> and present the Empire of Japan as a purely liberating force. One of the largest displays, which a visitor cannot fail to see on the way out, includes photos of independence leaders from across South and Southeast Asia along with the text:

Not until Japan won a stunning victory in the early stages of the Greater East Asia War, did the idea of independence enter the realm of reality. Once the desire for independence had been kindled under Japanese occupation, it did not fade away, even though Japan was ultimately defeated.<sup>163</sup>

Beyond how extremely problematic this statement is, it also directly contradicts the Tokyo Trial judgment and replaces its narrative with a discourse of pan-Asian ideals and anti-colonialism. To reinforce the message, the gift shop hosts a plethora of merchandise, DVDs, and books such as Kobayashi Yoshinori’s (in)famous *On War (sensōron)* – a bestselling manga that justifies Japan’s war efforts, and Tanaka Masaaki’s *Justice Pal’s Argument for Japanese Innocence (Pāru hanji no Nihon muzairon)*.<sup>164</sup>

The influence of Pal on Tokyo Trial discourse continues just outside museum – accessible to the millions of Yasukuni visitors – through the Monument to Dr. Pal. This large stone memorial has several metal plaques and engravings quoting parts of his dissenting opinion. The memorial is one of several sites across Japan commemorating the judge – at Yasukuni the focus is on the ‘illegality’ of the Tokyo Trial, Pal as the ‘only

---

<sup>161</sup> Ibid., 3.

<sup>162</sup> 「平和を模索する日本の動き」

<sup>163</sup> The panel is titled ‘Postwar Independence Movements’ or「第二次世界大戦後の各国独立」and the English text is a good reflection of the Japanese. The display is given an entire page of the Yūshūkan catalogue.

<sup>164</sup> Satomi Ishikawa, *Seeking the Self: Individualism and Popular Culture in Japan* (Peter Lang Publishing 2007) 102; Tanaka (n 156).

specialist in international law' among the judges on the bench, and the innocence of the defendants.<sup>165</sup> It is intensely complimentary of Pal, combined with an impressive and large photograph of him dressed in a judicial gown which renders him quite literally larger than life. The legacy of Pal's dissent demonstrates the difficulty faced by criminal trials enacting long-term narrative control. Nevenka Tromp compellingly critiques the ability of prosecutions to record history at all, highlighting the complexity of trial archives:

Deniers of the crimes charged are likely to be able to find in the massive trial archives as well as in court judgments of such length, enough factual details or commentary or even a paragraph from a judgment taken out of context material on which to construct, advance or support an apologetic historical narrative, regardless of the verdict.<sup>166</sup>

Yasukuni and the Monument to Dr. Pal starkly demonstrate Tromp's analysis. In addition, some of the atrocities prosecuted during the Tokyo Trial have also remained "unsettled" in the debate over Japan's war history. The Nanking Massacre of 1938, referred to as 'the Rape of Nanking' in the final judgment,<sup>167</sup> is an example of how the Tokyo Trial could not maintain control over the narrative. Having reviewed documentary evidence and heard witness testimonies, the judgment describes the mass rape, wanton murder and destruction committed by the Japanese army resulting in over 200,000 deaths; the three accused were found guilty.<sup>168</sup> Despite these convictions, and the lacklustre defence in court, politicians, nationalists, and other figures in modern Japan either deny the massacres or severely downplay their horror.<sup>169</sup>

In an infamous response to Iris Chang's *The Rape of Nanking*, the influential Japanese author Tanaka Masaaki published the English version of his book *What Really*

---

<sup>165</sup> These themes are repeated across the audio guide, information sheet, and memorial plaques, mostly in Japanese, which I have archived and translated.

<sup>166</sup> Tromp (n 81) 68.

<sup>167</sup> [Tokyo Trial Judgment] (n 35) 49,604-49,612.

<sup>168</sup> The accused were Matsui Iwane, Mutō Akira, and Hirota Kōki. Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (n 9) 131.

<sup>169</sup> Totani, 'Japanese Receptions of Separate Opinions at the Tokyo Trial' (n 12) 129; Ian Buruma, *Wages of Guilt: Memories of War in Germany and Japan* (Vintage 1995) 121.

*Happening in Nanking: The Refutation of a Common Myth*.<sup>170</sup> A war veteran himself, Tanaka “debunks” the witnesses, evidence, and photographs presented at the Tokyo Trial and accuses the Allies of fabrication. A common theme throughout Tanaka’s various publications is his veneration of Pal and ‘Dr. Pal’s judgement in Japan’s favour’, even penning a poem to the Indian judge.<sup>171</sup> These interpretations of the trial are not ones of fringe extremists, but influential commentators backed by politicians and professors.<sup>172</sup>

The denial of atrocity in and of itself is, unfortunately, not uncommon even in the aftermath of prosecutions. What is important to note here however, is that the disruption of narrative control modes have developed into the central pillars of denial, quite the opposite of the original intentions. Pal’s dissenting opinion is a critical example of this, such as the selective use of his arguments at the Yasukuni Shrine memorial which utilise his authority as a judge to validate their rebuttal of the Tokyo Trial narrative. This is despite Pal’s clear condemnation of the atrocities committed by the Japanese army.<sup>173</sup> This chapter is not arguing that such disruptions are “good” or “bad”, rather that applying a narrative control theory to the Tokyo Trial illustrates the complex nature of influencing post-conflict discourse.

This section has demonstrated how the Tokyo Trial was intended to act as a form of narrative control by designating militarism and its related discourses as deviant. Through its location, ceremonial performance, and process, the tribunal sought to provide a new narrative on the Asia-Pacific War. However, debate over crimes against peace, judicial disruption, and omission of certain parties from prosecution heightened the perception of the Tokyo Trial as illegitimate.<sup>174</sup> Thus the trial’s capacity to enact long-term narrative control was hampered by these concerns over legitimacy,

---

<sup>170</sup> Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (Penguin Books 1997); Masaaki Tanaka, *What Really Happened in Nanking: The Refutation of a Common Myth* (Sekai Shuppan 2000).

<sup>171</sup> Tanaka (n 171) 145.

<sup>172</sup> *Ibid.*, Foreword; Buruma (n 170) 119.

<sup>173</sup> Boister and Cryer (n 2) 203.

<sup>174</sup> *Ibid.*, 73.

highlighting how a criminal trial can be temporally bound. This continues to haunt the trial and perversely contributes to a revisionist telling of the past.

## 5.6 Conclusion

As a criminal prosecution, the Tokyo Trial represents both a “staple” mechanism of transitional justice and an obvious site for social control. This chapter applied the transitional control typology to the tribunal to answer the third research question: to what extent can transitional justice conceptualised as social control be applied to post-war Japan? The legal basis for the trial was outlined first, to contextualise the proceeding analysis. Three strands of transitional control were then interrogated by identifying the aims, deviance, methods, and agents present in the Tokyo Trial. Framed as disciplinary control, the case study clearly exhibited punitive aims and methods, wherein the definition of deviance was central to performance. It was demonstrated however, that inconsistencies in application and conflict with the narrative control strand greatly reduced its potential. The chapter found that organisational control was not at all present, despite the Tokyo Trial’s ability to indict members of organisations. Finally, the application of narrative control highlighted how the Allied Powers designated deviant discourses and sought to mould an understanding of the war. This function was ultimately disrupted by questions of its own legitimacy and the importance of judges as agents of control.

These insights contribute to the literature on transitional and post-war Japan by highlighting aspects of the Tokyo Trial not explored in other scholarship. As noted in this chapter, the tribunal is not as well studied as its German counterpart but there is still a range of scholarship available. However, there are few that systematically analyse it through a transitional justice lens. The transitional control typology has illustrated that the Tokyo Trial is an important case beyond its default categorisation as a justice and accountability measure. It is particularly significant that narrative control was not only an aim of the trial but resulted in the interruption of another strand, disciplinary control. This demonstrates how unknown variables can work against the initial objectives and that all strands must be considered for each one to be effective.

## Chapter 6 – Article 9: Renouncing Deviance in Japan’s “Peace Constitution”

### 6.1 Introduction

The Constitution of Japan (“the constitution”) was promulgated on 3 November 1946 and came into effect on 3 May 1947. Article 9 of the constitution entailed one of the most radical changes to law and society in post-war Japan: the renunciation of war and demilitarisation. Chapter 3 discussed how Article 9 is an example of transitional justice, with several key features: it codified pacifism into a national, binding legal framework; it fundamentally altered the substance and meaning of the Japanese armed forces, as the primary perpetrators of international crimes in the Asia-Pacific War; and, despite controversy, has remained in place for over 75-years.

The present chapter aims to situate the transformation brought about by Article 9 in the framework of transitional control developed in Chapter 4. The strands of organisational, disciplinary, and narrative control are evaluated through empirical analysis of this case study and its development over time. This chapter draws on primary and secondary data, including legal instruments, archival documents, and related literature to analyse Article 9 and constitution. Additionally, data obtained through two key informant interviews will be used. The interviews were conducted with Teraya Koji, Professor of Law at the University of Tokyo and member of the UN Human Rights Committee, and Murase Shinya, former member of the International Law Commission and member of a national security panel under the late Prime Minister Abe Shinzo. Both were interviewed in a personal capacity, rather than as representatives of organisations with which they are or were affiliated.

Article 9 is the reason for the Japanese constitution’s recognisable monicker as the “peace constitution” or “pacifist constitution”.<sup>1</sup> Although the term is widely used in

---

<sup>1</sup> Millie Creighton, ‘Civil Society Volunteers Supporting Japan’s Constitution, Article 9 and Associated Peace, Diversity, and Post-3.11 Environmental Issues’ (2014) 26 *Voluntas* 121, 124.

scholarship and the media, Japan is not a “pacifist” state. This chapter concurs with writers such as Oros and Le who demonstrate that rather than “pacifist”, “anti-militarist” is a far more accurate description of Japan’s stance, and this is examined in further detail under section 6.5. As these terms are used throughout the chapter, they warrant an initial explanation at this early stage. While pacifism can be defined as committed opposition to the use of force, anti-militarism refers to ‘a rejection of or reluctance toward military institutions, ethos, and values.’<sup>2</sup> Anti-militarists may accept state violence in certain situations, such as self-defence, while prioritising alternative methods of conflict resolution:<sup>3</sup> thus, anti-militarism is a more accurate description of modern-day Japan. The converse concept, “militarism” is both a key to and a multifaceted concept in the study of Japan’s 20<sup>th</sup> and 21<sup>st</sup> centuries.<sup>4</sup> In this research, “militarism” and “militarists” are used to denote the ideological support for strong military institutions and the legitimisation of state violence.<sup>5</sup> This terminology is used to reflect the definition employed by historical and modern documents examined in this doctoral project.

In the next section, the case study is contextualised by providing an overview of why the constitution represents a significant change to Japan’s legal architecture and what Article 9 stipulates. Pursuant to this, the three strands of the transitional control typology are discussed and related to elements of the case study. Section three finds that organisational control is strongly applicable to the present context, with the aim to restrain the military complex and prevent future aggression through the renunciation of war. Section four notes that disciplinary control is discernible in the demilitarisation process; yet it also shows that the measures were short-lived and not the primary function of Article 9. Section five is dedicated to the narrative control analysis. It illustrates a complex relationship between the Japanese population and anti-militarism,

---

<sup>2</sup> Stéphane Roussel and Jean-Christophe Boucher, ‘The Myth of the Pacific Society: Quebec’s Contemporary Strategic Culture’ (2008) 38 *American Review of Canadian Studies* 165, 166.

<sup>3</sup> Tom Phuong Le, *Japan’s Aging Peace: Pacifism and Militarism in the Twenty-First Century* (Columbia University Press 2021) 17.

<sup>4</sup> Peter H (Peter Hamish) Wilson, ‘Defining Military Culture’ (2007) 72 *The Journal of Military History* 11, 39. Le (n 3) 34.

<sup>5</sup> Cynthia Enloe, *The Curious Feminist: Searching for Women in a New Age of Empire* (University of California Press 2014) 219.

drawing on findings from the previous strands, and reflects on how transitional control can be internalised and perpetuated.

## 6.2 Crafting the Constitution

Article 9 is an inextricable part of the broader constitutional reform of post-war Japan, a grand project in which state institutions, power structures, and the place of the citizen were fundamentally altered. The constitution is more than the legal backbone of Japanese society, it is an enduring symbol of peace, prosperity, and rights in which many take enormous pride.<sup>6</sup> The importance of Article 9 is thus grounded in both the constitution in which it is codified, and the constitution that preceded it. This section frames the case study by outlining the significance of the constitution, the drafting process, and the specific provisions of Article 9.

The constitution represented a major shift in legal and socio-political norms, transforming Japan from an absolute monarchy to an imperial democracy. Its predecessor was the Constitution of the Empire of Japan, better known as the Meiji Constitution, which was promulgated in 1889 and included an ‘unequivocal declaration of imperial sovereignty’.<sup>7</sup> It was in many ways revolutionary: mandating the first national elections in Japan’s history, albeit for a limited number of men and only on certain issues; instituting military service; and somewhat restraining the power of the Meiji oligarchs.<sup>8</sup> The Meiji Constitution was not the result of public demand, but a ‘gift from the Emperor to his subjects’, and the work of several visionary elites seeking to establish Japan’s place on the modern international stage.<sup>9</sup> As discussed in more depth in Chapter 2, the far-reaching power of the military was enshrined in the Meiji Constitution. The military had ‘significant autonomy’ from government officials and

---

<sup>6</sup> Michael A Panton, ‘Japan’s Article 9: Rule of Law v. Flexible Interpretation’ (2010) 24 Temple International & Comparative Law Journal 129; Daiki Shibuichi, ‘The Article 9 Association, Leftist Elites, and the Movement to Save Article 9 of Japan’s Postwar Constitution’ (2017) 34 East Asia 147; Kenneth Mori McElwain and Christian G Winkler, ‘What’s Unique about the Japanese Constitution? A Comparative and Historical Analysis’ (2015) 41 Journal of Japanese Studies 249.

<sup>7</sup> Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (Oxford University Press 2009) 91.

<sup>8</sup> Ibid.

<sup>9</sup> Kyoko Inoue, *MacArthur’s Japanese Constitution: A Linguistic and Cultural Study of Its Making* (The University of Chicago Press 1991) 51.

answered, in theory, to the Emperor.<sup>10</sup> The presence of serving military officers in the Cabinet strengthened the military's position and the difficulty of restraining its influence continued to be a source of political friction, ultimately leading to the authoritarian regime which started the Asia-Pacific War.<sup>11</sup>

The post-war constitution introduced a marked change in the relationship between the state and its people, borne from desire to rid Japan of its 'despotic government'.<sup>12</sup> Who instigated and drafted the constitution is relevant to all stages of applying the transitional control theory and identifying the agents of control. The head of the occupation forces, General Douglas MacArthur (Supreme Commander for the Allied Powers), took a keen interest in Japan's constitutional reform and used his resources at the occupation's General Headquarters (GHQ), but not without push back. There was tension between MacArthur and the Allied members on the Far Eastern Advisory Commission, who were dissatisfied with their lack of influence over occupation policies.<sup>13</sup> This body was renamed the Far Eastern Commission and it was to take a greater role, particularly in any proposed constitutional changes.<sup>14</sup> This threat of intrusion by the Allies seemingly pushed MacArthur into action and he used the logistical delay in setting up the Far Eastern Commission to put into motion a new constitution without their input.<sup>15</sup>

MacArthur made it clear to the Japanese government that if it did not initiate reforms soon, there would be 'more radical demands' made by the occupation, and he would not refrain from imposing them.<sup>16</sup> As such, a committee of Japanese Cabinet members and scholars, under Minister of State Matsumoto, produced a revised version of the

---

<sup>10</sup> Harukata Takenaka, *Failed Democratization in Prewar Japan: Breakdown of a Hybrid Regime* (Stanford University Press 2014) 82.

<sup>11</sup> *Ibid.*, 60–62.

<sup>12</sup> Inoue (n 9) 1.

<sup>13</sup> Ray A Moore and Donald L Robinson, *Partners for Democracy: Crafting the New Japanese State under MacArthur* (Oxford University Press 2002) 88; 'The Far Eastern Advisory Commission Terms of Reference (SWNCC65/7), 22 August 1945' <<https://www.ndl.go.jp/constitution/e/shiryō/01/019shoshi.html>> accessed 23 March 2023.

<sup>14</sup> Moore and Robinson (n 13) 88; 'Incoming Message to CINCAFPAC [MacArthur] from Washington (War), Nr WCL 32355 [Communiqué of Moscow Conference, December 27, 1945]' <<https://www.ndl.go.jp/constitution/e/shiryō/03/053/053tx.html>> accessed 12 June 2022.

<sup>15</sup> Inoue (n 9) 15; Moore and Robinson (n 13) 91.

<sup>16</sup> Moore and Robinson (n 13) 59.

existing Meiji Constitution in February 1946.<sup>17</sup> The proposed reforms were cautious at best, drawing criticism from both domestic media and MacArthur who considered them too conservative to reflect the Potsdam Declaration.<sup>18</sup> Under MacArthur's direction, and based on the principles espoused at Potsdam and in US government communications, a number of committees within the occupying bureaucracy came together to produce the so-called 'MacArthur draft'.<sup>19</sup>

Many of the reforms that appeared in the new constitution were radical, at least on paper: the emperor became a symbolic figurehead, religion and state were separated, there was to be universal suffrage, and women were to gain equal rights in marriage.<sup>20</sup> This document, which included the first iteration of Article 9, was given to the Cabinet on 13 February 1946, and MacArthur told then-Prime Minister Shidehara that the "no war clause" was non-negotiable.<sup>21</sup> Cabinet members debated for several weeks, producing a Japanese document with negotiated alterations – it was presented by the government as its own creation.<sup>22</sup>

There remains some debate over who was responsible for the birth of Article 9 – Shidehara is often credited with the idea, based on his own and MacArthur's testimonies.<sup>23</sup> McNelly's thorough analysis of the documentary evidence suggests that Shidehara may have first articulated the idea for such a provision to MacArthur, yet he made little to no attempt to actually include demilitarisation during the constitutional drafting process.<sup>24</sup> Thus, MacArthur stepped in and ensured Article 9 was included in the constitutional draft.<sup>25</sup> It could be argued that the subsequent attribution of Article 9 to Shidehara was part of a strategy to present the constitution as one predominantly

---

<sup>17</sup> *Ibid.*, 52.

<sup>18</sup> Theodore McNelly, 'The Renunciation of War in the Japanese Constitution' (1962) 77 *Political Science Quarterly* 350, 363–364.

<sup>19</sup> Inoue (n 9) 16; Moore and Robinson (n 13) 52.

<sup>20</sup> Gordon (n 7) 228; Inoue (n 9) 221.

<sup>21</sup> 'Constitution of Japan [MacArthur Draft], 12 February 1946' <[https://www.ndl.go.jp/constitution/e/shiryo/03/076a\\_e/076a\\_etx.html](https://www.ndl.go.jp/constitution/e/shiryo/03/076a_e/076a_etx.html)> accessed 12 February 2021.

<sup>22</sup> Inoue (n 9) 1.

<sup>23</sup> Naoki Kobayashi, 'The Japanese People and the Peace Article' (1966) 13 *Japan Quarterly* 445.

<sup>24</sup> McNelly demonstrates how Shidehara's cabinet, who produced the first draft, actually retained many of the military provisions from the Meiji Constitution or altered them only slightly. McNelly (n 18) 358–363.

<sup>25</sup> *Ibid.*, 365.

of Japanese origin, rather than one emanating from the occupation. As shall be further elaborated, the constitutional drafting process is important context for applying the transitional control typology and for identifying the agent of control corresponding to each strand. While it can be said that the Japanese government<sup>26</sup> and, to a lesser extent, the Allied Powers influenced the creation of the constitution, it was MacArthur and GHQ that instigated the instrument and ensured the inclusion of Article 9.

Article 9 of the constitution stipulates:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.<sup>27</sup>

The Japanese text presents some minor differences.<sup>28</sup> Firstly, the English ‘forever renounce war’ is more powerful in its Japanese counterpart, using more profound vocabulary and grammatical structure.<sup>29</sup> Secondly, ‘other war potential’ could be read as less restrictive in Japanese: ‘その他の戦力’ (*sono ta no bouryoku*) is, in context, more consistent with ‘other such military power/forces’. In addition, while the English version states that war potential ‘will never be maintained’, the Japanese text omits ‘never’ and reads ‘shall not/will not be maintained’ (これを保持しない, *kore wo hoji shinai*). The

---

<sup>26</sup> Inoue has produced a thorough socio-linguistic analysis of the Constitution, examining the ways in which the Japanese text is more aligned with Japan’s traditional social values and differs in significant ways to the English version. Her work suggests that the Japanese government had more agency over the constitution than the English text would indicate, particularly regarding the Imperial system and human rights. This can be seen to a lesser extent in Article 9. Inoue (n 9).

<sup>27</sup> The Constitution of Japan 1946 Art. 9.

<sup>28</sup> I translated the text and consulted international lawyers who are native speakers of Japanese. Any inaccuracies are my own. Other literature that points to the difficulty of translating Article 9 are: Guy Almog, ‘The Myth of the “Pacifist” Japanese Constitution’ (2015) 12 *The Asia Pacific Journal: Japan Focus* 15, 12; Yūji Hatakeyama and Akira Ikegami, ‘GHQ Wa `nihonkokukenpō` o Kō Yonde Ita’ *Toyo Keizai Online* (2016) <<https://toyokeizai.net/articles/-/123044?page=4>> accessed 25 March 2023.

<sup>29</sup> ‘永久(えいきゅう)にこれを放棄(ほうき)する.’ While the English translation is correct, the word ‘永久’ (eikyuu, permanently) and use of ‘これを’ (kore wo, this) gives a more dramatic reading in Japanese.

somewhat vague language and omissions in the Japanese translation were used to ‘soften the impact of Article 9’ and to allow more space for interpretation.<sup>30</sup>

The international legal context against which Article 9 of the Constitution of Japan was developed deserves attention. The Kellogg-Briand Pact first introduced the renunciation of war as a lawful means to settle international disputes in 1928 – although it had clearly not prevented the breakout of World War II, including the hostilities in the Asia-Pacific.<sup>31</sup> In 1945, the UN Charter had authoritatively prohibited the “threat or use of force” to settle international disputes under Article 2(4).<sup>32</sup> The prohibition on the use of force – with two exceptions, self-defence and collective security under Chapter VII of the UN Charter – is now considered customary international law.<sup>33</sup> Note that Japan codified the renunciation of war as a sovereign right and the prohibition of the use of force in its constitutional law already in 1946.<sup>34</sup> The rationale for the changes are examined further under each element of the transitional control typology.

Similarly, the content and consequences of Article 9’s second paragraph is relevant to the different features of transitional control. At this juncture, it is important to pause and focus on Japan’s constitutional provision for demilitarisation. Demilitarisation is not as such prescribed by international law, nor was it so explicitly stated in the 1949 respective constitutions of the Federal Republic of Germany or the German Democratic Republic.<sup>35</sup> For example, in the case of the former, Article 24(2) and (3) committed the state to peace but allowed for ‘mutual collective security’.<sup>36</sup> The

---

<sup>30</sup> Kenneth L Port, *Transcending Law: The Unintended Life of Article 9 of the Japanese Constitution* (Carolina Academic Press 2010) 52.

<sup>31</sup> McNelly (n 18) 352.

<sup>32</sup> *United Nations Charter* (entered into force 24 October 1945) 1 UNTS XVI art.2(4).

<sup>33</sup> Christine Gray, ‘The Charter Limitations on the Use of Force: Theory and Practice’ in Vaughan Lowe and others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (Oxford University Press 2010) 87.

<sup>34</sup> Nikola Hajdin, ‘The Nature of Leadership in the Crime of Aggression: The ICC’s New Concern?’ (2017) 17 *International Criminal Law Review* 543, 544.

<sup>35</sup> Stephanie Trombley Averill, ‘Demilitarization and Democratization in the Post-World War II World’ in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013); David Clay Large, *Germans to the Front: West German Rearmament in the Adenauer Era* (University of North Carolina Press 1996).

<sup>36</sup> The Basic Law of the Federal Republic of Germany (FRG), signed in Bonn on 23 May 1949 art. 24(2) and (3).

following sections thus seeks to understand why this constraint (or as we shall argue measure of transitional control) was put on Japanese military capability, and how it has continued to influence policy and practice.

Article 9 is a critical case study. As a transitional justice mechanism and a mode of social control, the constitutional renunciation of war is a powerful, authoritative, and enduring embodiment of a nation's rejection of violence. In addition, 75-years after it came into effect, it remains unamended but heavily debated – this provides rich ground for the analysis of how transitional control may develop a formidable legacy.

### 6.3 Article 9 as Organisational Control

Organisational control is the second strand of the transitional control typology, outlined in section 4.3.2 of the thesis. This concept broadly relates to the guarantees of non-recurrence pillar of transitional justice, aiming for the reform of legislation, including constitutions, state institutions, non-state organisations and other bodies which may have been complicit in, or facilitated, conflict and repression.<sup>37</sup> As a theoretical framework, organisational control describes the processes whereby structures considered deviant to transitional justice core values are identified as deviant, reforms are enacted or the structures are dismantled and replaced. Organisational control thus serves two purposes: to amend deviant frameworks and prevent their future participation in and/or perpetuation of deviance. Article 9 is therefore a prime case study through which to analyse this theory because it is both a product of legal reform and the cornerstone of Japan's security policy. This section first examines how Article 9 aimed to enact organisational control of the military as the (perceived) deviant institution. Then, it analyses how control was implemented and in what ways the security establishment was changed. Finally, although MacArthur can be seen as the initial agent of control, subsequent socio-political developments highlight how the Japanese public and elected officials have continued to both uphold and challenge

---

<sup>37</sup> UN '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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 11 August 2019, 9

this control function. The thesis thus argues that organisational control exerted through Article 9, both reformed the legislative backbone of Japan and disrupted traditional power structures and has been a significant factor in Japanese domestic and foreign policy.

The aims and target deviance of organisational control can be identified through the constitution-making process and the text of Article 9 itself. Although “democratisation and demilitarisation” was the buzz phrase of the occupation, constitutional reform was not anticipated by the post-war Japanese establishment. Many officials believed that a strengthening of the Meiji Constitution, with a greater focus on democratic processes, would be sufficient and that the Potsdam Declaration required nothing more.<sup>38</sup> The latter document, which outlined the terms of surrender, did offer some clues however:

4. The time has come for Japan to decide whether she will continue to be controlled by those self-willed militaristic advisers whose unintelligent calculations have brought the Empire of Japan to the threshold of annihilation, or whether she will follow the path of reason.

[...]

6. There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.<sup>39</sup>

These provisions make it clear that it is these ‘militaristic advisers’ are the deviants, and that their power in Japanese society must be dismantled.<sup>40</sup> However, although removing militarism ‘for all time’ would require some sort of legal reform, the occupation policy did not show early intentions to strip Japan of its military forever. In October 1945, the State-War-Navy Coordinating Committee issued a note stating that if ‘Japan should ever again be permitted armed forces, the ministers of state for those

---

<sup>38</sup> Moore and Robinson (n 13) 52.

<sup>39</sup> [Potsdam Declaration] Proclamation Defining Terms for Japanese Surrender, Issued at Potsdam, July 26, 1945, The Ministry of Foreign Affairs "Nihon Gaiko Nenpyo Narabini Shuyo Bunsho: 1940-1945" vol. 2, 1966, art. 4 and 6.

<sup>40</sup> Moore and Robinson (n 13) 52.

armed forces should be civilians.<sup>41</sup> And as late as January 1946, official US policy gave more concrete details that still did not envisage complete disarmament:

Although the authority and influence of the military in Japan's governmental structure will presumably disappear with the abolition of the Japanese armed forces, formal action permanently subordinating the military services to the civil government by requiring that the ministers of state or the members of a Cabinet must, in all cases, be civilians would be advisable.<sup>42</sup>

MacArthur pushed ahead his vision for constitutional reform with three priorities: the renunciation of war, an end to feudalism, and a symbolic role for the emperor.<sup>43</sup> The original American draft of Article 9 was considerably stronger in its language, particularly paragraph two: 'No army, navy, air force, or other war potential will ever be authorized and no rights of belligerency will ever be conferred upon the state.'<sup>44</sup> It was toned down for the final version and, as noted in section 6.2, the Japanese text contains some vague language, likely due to concerns over self-defence capabilities.<sup>45</sup> MacArthur reportedly told Shidehara that his initial draft included the renunciation of war because 'Japan should refrain from raising suspicions among other nations that it would rebuild its armed forces'.<sup>46</sup> This was indeed an insightful judgment considering that, 75-years on, this remains of great concern for Japan's East Asian neighbours.

Article 9 itself thus became a method of enacting organisational control over the deviant military establishment: by abolishing the armed forces, Japan was guaranteed to have to renounce war.<sup>47</sup> Firstly, in the immediate aftermath of the war, there was a wholesale disarmament and dissolution of Japan's existing military apparatus under

---

<sup>41</sup> SWNCC Subcommittee for the Far East, 'Politico-Military Problems in the Far East: Reform of the Japanese Governmental System (PR-32), October 8, 1945' 5(f)

<<https://www.ndl.go.jp/constitution/e/shiryō/01/028shoshi.html>> accessed 22 March 2023.

<sup>42</sup> 'Reform of the Japanese Governmental System (SWNCC 228) 7 January 1946'

<<https://www.ndl.go.jp/constitution/e/shiryō/03/059/059tx.html>> accessed 15 March 2023.

<sup>43</sup> Sayuri Umeda, 'Japan: Interpretations of Article 9 of the Constitution' (Library of Congress 2015); Jeffrey P Richter, 'Japan's "Reinterpretation" of Article 9: A Pyrrhic Victory for American Foreign Policy?' (2016) 101 *Iowa Law Review* 1223; Rosalind Dixon and Guy Baldwin, 'Globalizing Constitutional Moments? A Reflection on the Japanese Article 9 Debate' (2019) 67 *American Journal of Comparative Law*.

<sup>44</sup> 'Constitution of Japan (GHQ Draft)' (*National Diet Library*, 1946)

<[https://www.ndl.go.jp/modern/e/img\\_t/105/105-001tx.html](https://www.ndl.go.jp/modern/e/img_t/105/105-001tx.html)> accessed 23 April 2023.

<sup>45</sup> Richter (n 43) 1233.

<sup>46</sup> Inoue (n 9) 19.

<sup>47</sup> The Constitution of Japan 1946, Art. 9.

the auspices of the US, as well as largescale vetting procedures.<sup>48</sup> The latter was more commonly referred to as a “purge” (or *kōshoku tsuihō*, expulsion from public office), as distinct from the “red purge” of the 1950s,<sup>49</sup> and began prior to the constitution.<sup>50</sup> 90% of the Diet was removed, as were thousands more ‘who had held positions of responsibility since 1937 across a range of sectors’, and those standing for election in 1946 faced strict vetting procedures.<sup>51</sup> This was also codified under Article 66 of the Constitution, which required all Cabinet members to be civilians.<sup>52</sup> Vetting was therefore an important part of reforming Japanese institutions that the occupation saw as deviant, clearly set out in a memorandum from GHQ in January 1946. The Removal and Exclusion of Undesirable Personnel from Public Office (known as “the Purge Directive”) outlines how, to implement the Potsdam Declaration, officials who have actively supported ‘militaristic nationalism and aggression’ or had been influential in certain political associations must be dismissed.<sup>53</sup> It refers to paragraph 6 of the Potsdam Declaration, implying that by ridding Japan of the officials who have ‘deceived and misled the people’, more reliable institutions would be created.<sup>54</sup> This shows some aspects of transitional justice perspectives which have claimed that vetting can ‘help to facilitate a stable rule of law in post-conflict countries’, though far more heavy handed.<sup>55</sup> However, it soon became clear that such wholesale “purging” would threaten the very stability the occupation aimed to foster.

The proposed use of vetting to remove the influence of militarism faced a huge obstacle, as articulated by Kushner: ‘on the eve of surrender no element of Japan had

---

<sup>48</sup> Christopher W Hughes, *Japan’s Re-Emergence as a ‘Normal’ Military Power* (Routledge 2005) 21–22.

<sup>49</sup> Masuda Hajimu, ‘Fear of World War III: Social Politics of Japan’s Rearmament and Peace Movements, 1950-3’ (2012) 47 *Journal of Contemporary History* 551.

<sup>50</sup> Moore and Robinson (n 13) 156; Yoshihiro Sakita, ‘Haisen Chokugo No Mitsuhashi Kikuo Nikansuru Ichi Kōsatsu?: Kōshoku Tsuihō o Tegakari Toshite’ (2017) 62 *Taikugaku kenkyū* 275.

<sup>51</sup> Moore and Robinson (n 13) 148.

<sup>52</sup> The Constitution of Japan 1946 Art. 66.

<sup>53</sup> General Headquarters Supreme Commander for the Allied Powers, ‘Removal and Exclusion of Undesirable Personnel from Public Office (4 Jan 1946)’ (*National Diet Library*) [2] <[https://www.ndl.go.jp/modern/e/img\\_r/M006/M006-001r.html](https://www.ndl.go.jp/modern/e/img_r/M006/M006-001r.html)> accessed 15 May 2023.

<sup>54</sup> *Ibid.*, [1].

<sup>55</sup> UN Security Council, ‘The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General’ (23 August 2004) UN Docs S/2004/616, [52]; see also, UN ‘Guidance Note of the Secretary General’ (n 37) 9.

been left untouched by the military'.<sup>56</sup> The dismissal of Japan's most experienced and skilled bureaucrats left gaps in the administration, and very few of the occupation forces were proficient in Japanese and able to assist.<sup>57</sup> The 1946 General Election saw the consequences of this when hundreds of politicians were barred from standing, others resigned before they could be dismissed, and the process was closely observed by a 'heavy-handed' GHQ.<sup>58</sup> Hatoyama Ichirō, leader of the Liberal Party, was removed just days before he was to become the elected Prime Minister and Yoshida Shigeru was nominated as his successor – an example of how quickly the political environment would change.<sup>59</sup> The restrictions on candidates and surveillance by US officers undermined MacArthur's claim of democratisation and highlights the possible disruption caused by organisational control. 2,782 candidates stood for election, most of whom did not have parliamentary experience, and political parties were started, disbanded, and merged with others.<sup>60</sup> However, the newly formed democratic framework did not collapse – it stabilised in the early 1950s, and since then Japan has presented one of the world's most steadfast political systems.<sup>61</sup>

The beginning of the Cold War and the Korean War shifted US priorities, and it was now politically expedient for them to have "the deviant militarists" once again in power. Known as the "reverse course", GHQ severely cracked down on communists, labour unions, and Koreans living in Japan, and the occupation pushed for rearmament.<sup>62</sup> To support this, many of the elites who had been dismissed for their roles in the Asia-Pacific War were returned to politics: three of whom went on to become Prime

---

<sup>56</sup> Barak Kushner, *The Thought War: Japanese Imperial Propaganda* (University of Hawai'i Press 2005) 179.

<sup>57</sup> Trombley Averill (n 35) 158; Kushner (n 56) 179–180.

<sup>58</sup> Moore and Robinson (n 13) 148.

<sup>59</sup> Kentoku Yamamuro, 'Hatoyama Ichirō: A Tenacious Attachment to the Restoration Of Relations with the Soviet Union and Constitutional Revision' in Akio Watanabe (ed), Robert D Eldridge (tr), *The Prime Ministers of Postwar Japan, 1945-1995: Their Lives and Times* (Lexington Books 2016) 74.

<sup>60</sup> US Department of State, 'No. 3492 Analysis of the 1946 Japanese General Election (May 15, 1946) 7; Axel Klein, 'Japan' in Dieter Nohlen, Florian Grotz and Christof Hartmann (eds), *Elections in Asia and the Pacific: A Data Handbook: Volume II: South East Asia, East Asia, and the South Pacific*, vol II (Oxford University Press 2001) 355–356.

<sup>61</sup> Klein (n 60) 355.

<sup>62</sup> Yong Wook Lee, 'The Origin of One Party Domination: America's Reverse Course and the Emergence of the Liberal Democratic Party in Japan' (2004) 18 *The Journal of East Asian Affairs* 371, 392; Hans Martin Kramer, 'Just Who Reversed the Course? The Red Purge in Higher Education during the Occupation of Japan' (2005) 8 *Social Science Japan Journal* 2; Amin Ghadimi, 'Shot through with Democracy: Japan's Postwar Myths and the 1948 Hanshin Education Incident' (2018) 21 *Social Science Japan Journal* 193.

Ministers (Hatoyama in 1954, Ishibashi in 1956, and Kishi in 1957).<sup>63</sup> The complementary policies of disbanding the military and removing their influence in government were the methods through which organisational control was implemented: targeting those associated with the deviant structure blamed for the war, taking away their authority, and instituting legal safeguards for prevention. Article 9 was then the formal codification of these principles, but in practice the swift reversal of vetting procedures demonstrates how organisational control can be interrupted. This is further substantiated by rearmament.

Since the 1950s, Article 9 has undergone several interpretive stages instigated by a range of actors who have shifted the boundaries for control yet recognised its importance. These developments show that “agents of control” are not temporally bound and can disrupt the original goals of organisational control. This is evident in the reversal of militarist vetting and in the rearmament of Japan. In the first instance it was widely held that Japan could not maintain any military establishment even for self-defence due to the second paragraph of Article 9, even though it was permitted in international law.<sup>64</sup> This understanding was quickly revised in light of the Korean War and in 1950 the National Police Reserve was formed to provide a modicum of domestic security.<sup>65</sup> These early years of post-war foreign policy have been referred to as the Yoshida Doctrine,<sup>66</sup> named after Yoshida Shigeru (Prime Minister, 1948–1954), under which the US was the main provider of national security, military spending was minimal, and economic development was the priority.<sup>67</sup> This rested on the ‘Security Treaty Between the United States and Japan, September 8 1951’ (hereafter, Anpo) which reiterated the goal of disarmament:

---

<sup>63</sup> Yamamuro (n 59) 84.

<sup>64</sup> James E Auer, ‘Article Nine of Japan’s Constitution: From Renunciation of Armed Force “Forever” to the Third Largest Defense Budget in the World’ (1990) 53 *Law and Contemporary Problems* 171, 176.

<sup>65</sup> *Ibid.*, 176.

<sup>66</sup> This is not uncontested, with some scholars citing historical inaccuracies and retroactive literature as the source of the “myth” of the Yoshida Doctrine. Whether or not these policies were part of a grand strategy by Yoshida however, it is accurate to say that the three principles were initially a hallmark of Japan’s foreign policy. See, Yoneyuki Sugita, ‘The Yoshida Doctrine as a Myth’ (2016) 27 *The Japanese Journal of American Studies* 123; Hiroyuki Hoshiro, ‘Deconstructing the “Yoshida Doctrine”’ (2022) 23 *Japanese Journal of Political Science* 105; Hajimu (n 49) 553 footnote 4.

<sup>67</sup> Pantou (n 6) 146; Richard J Samuels, *Securing Japan: Tokyo’s Grand Strategy and the Future of East Asia* (Cornell University Press 2008) 31; Hughes (n 48) 22.

On the coming into force of [this] Treaty, Japan will not have the effective means to exercise its inherent right of self-defense because it has been disarmed.

There is danger to Japan in this situation because irresponsible militarism has not yet been driven from the world.<sup>68</sup>

Soon after, at the encouragement of the occupation, the National Police Reserve expanded and was renamed to the National Safety Force in 1952, until it finally became the Self-Defense Forces (jieitai) in 1954.<sup>69</sup> These developments are contextualised by the perceived Communist threat growing in Asia, the ongoing Korean War, and redistribution of US forces.<sup>70</sup> Prominent US diplomats George F. Kennan and William H. Draper pushed MacArthur to reduce the dismissal of militarists, believing it would bolster political and economic stability in the face of the Cold War.<sup>71</sup> Thus, those who were 'depurged' were brought back to rebuild Japan's military-industrial complex; and in 1950–1952 70% of Japanese exports were military procurements for the US forces.<sup>72</sup>

Article 9 as organisational control had been adapted to meet the changing international environment. For the decades that followed, moderate centrist politics won out amongst a war-weary population and Japan took an anti-nuclear stance and restricted military spending to below 1% of GDP.<sup>73</sup> Politicians who had previously been staunch militarists, now depurged, softened their rhetoric and acquiesced to civilian control of the Self-Defense Forces and a focus on economic growth.<sup>74</sup> This is undoubtedly a result of support for Article 9 within the Diet and in civil society, which was extremely proactive in defending Japan's newfound pacifism. For example, the security treaty was renewed in 1960 as the 'Treaty of Mutual Cooperation and Security between the

---

<sup>68</sup> [Anpo 1951] Treaty of Mutual Cooperation and Security Between the United States and Japan. San Francisco, 8 September 1951.

<sup>69</sup> Hughes (n 48) 22.

<sup>70</sup> John M Maki, 'The Constitution of Japan: Pacifism, Popular Sovereignty, and Fundamental Human Rights' (1990) 53 *Law and Contemporary Problems* 73, 74; Richter (n 43) 1234.

<sup>71</sup> Paul J Heer, *Mr. X and the Pacific: George F. Kennan and American Policy in East Asia* (Cornell University Press 2018) 71.

<sup>72</sup> Samuels (n 67) 30 and 33.

<sup>73</sup> *Ibid.*, 33.

<sup>74</sup> *Ibid.*, 34.

United States and Japan' (Anpo 1960): its collective self-defence provision prompted huge protests across the nation who saw it as a violation of Article 9.<sup>75</sup>

The protests of the 1950s and 1960s (against the renewal of Anpo) demonstrate how Article 9 influenced civil society to engage in organisational control. Although the treaty was renewed, the movement stirred hundreds of thousands of people across social groups to collectively critique the political status quo and demand change.<sup>76</sup> As a student, Murase joined the demonstrations outside Tachikawa Air Base and explained in our interview how there was a strong belief that: 'the US-Japan Security Treaty functioned as a supporting vehicle of the US war in Vietnam.'<sup>77</sup> The US-run Tachikawa Air Base is well-known for the 1956 Sunagawa protests, where students joined local people to object to the extension of the runways. The scenes of peaceful protestors subjected to police brutality were widely broadcast; the public backlash contributed not only to the plans being rescinded, but also influenced the renegotiation of the treaty.<sup>78</sup>

Article 9 has faced consistent calls for revision however, pushing to alter the organisational control framework and redefine deviance. Constitutional amendment has been a key aim of the ruling Liberal Democratic Party since it was established in 1955, though reinterpretation has been the limit of their results.<sup>79</sup> This is surprising considering that the Liberal Democratic Party has essentially had a governmental monopoly over post-war Japan, with only two periods of being in opposition (1993–1994 and 2009–2012).<sup>80</sup> In practical terms, amending the constitution is daunting, requiring a two-third majority in both Houses of the Diet and a public referendum,

---

<sup>75</sup> Sayuri Umeda, 'Japan: Article 9 of the Constitution' (Law Library of Congress 2006) 19; Shibuichi (n 6) 151.

<sup>76</sup> Jennifer Chan, 'Gendered Dimensions of Anti-War Protest in Japan' [2016] Handbook on Gender and War 438, 440.

<sup>77</sup> Interview with Murase Shinya, former member of the International Law Commission and Professor of International Law (Zoom, 17 July 2022).

<sup>78</sup> Nick Kapur, 'The Japanese Student Movement in the Cold War Crucible, 1945-1972' (2022) 20 *The Asia Pacific Journal: Japan Focus* 8; Jennifer M Miller, *Cold War Democracy: The United States and Japan* (Harvard University Press 2019) 189.

<sup>79</sup> Sheila A Smith, *Japan Rearmed: The Politics of Military Power* (Harvard University Press 2019) 154.

<sup>80</sup> Yu Uchiyama, 'Japanese Prime Ministers and Party Leadership' (2023) 8 *Asian Journal of Comparative Politics* 83, 83.

however it is not ‘uncommonly difficult’.<sup>81</sup> McElwain and Winkler write that the constitution has remained unamended for so long because it is unusually short and sufficiently vague – except on civil rights – for the Diet and the courts to interpret and expand upon.<sup>82</sup> In addition, the intense public opposition ranging from the Japanese Socialist Party in the post-war decades and the Article 9 Association since the 1990s, has made amendment a controversial topic amongst the public.<sup>83</sup>

Considering this, Article 9 has instead faced incremental reinterpretation. These developments are illuminating for the theory of organisational control, suggesting that post-conflict reform policies can, and maybe should, evolve and adapt. Furthermore, Japan is illustrative of the influence of international law on domestic practice, particularly evident in the last three decades during which Article 9 has faced its most serious threats. This can partly be attributed to the charismatic and divisive Abe Shinzō (Prime Minister, 2006–2007 and 2012–2020), who led the Liberal Democratic Party’s push to revise the constitution. One such initiative was Abe’s Advisory Panel on the Reformulation of the Legal Basis of National Security (*Anzen hoshō no hōteki kiban no sai kōchiku ni kansuru kondan-kai*, hereafter the National Security Panel), which was convened in 2007 and 2013-2014.<sup>84</sup> The issue at hand was the right to collective self-defence and its status under the constitution, centring on Article 9.<sup>85</sup> Murase was invited to serve on the panel as an expert in international law and described Abe’s diligent reading of the numerous memoranda Murase wrote on the subject for the meetings.<sup>86</sup> He argued that, despite the Liberal Democratic Party’s wishes, the Constitution did not have to be amended and that, as had been done before, reinterpreting Article 9 was possible.<sup>87</sup> Murase holds that paragraph 1 of Article 9 only prohibits the use of force to settle disputes ‘to which Japan is a party’, allowing for the Self-Defense Forces to participate in peacekeeping missions. This is consistent with

---

<sup>81</sup> McElwain and Winkler (n 6) 263; The Constitution of Japan, 1946 art. 96.

<sup>82</sup> McElwain and Winkler (n 6) 263.

<sup>83</sup> Shibuichi (n 6).

<sup>84</sup> ‘Anzen Hoshō No Hōteki Kiban No Sai Kōchiku Nikansuru Kondankai No Kaisai Nitsuite’ (*Cabinet Secretariat of Japan*, 2007) <<https://www.cas.go.jp/jp/seisaku/kondankai/konkyo.html>> accessed 24 April 2023.

<sup>85</sup> Ibid.; Shinya Murase, *Kokusaihō to Mukiau: Suteru Kami Areba Hirō Kami Ari* (Shinyamasha 2022) 140–143.

<sup>86</sup> Interview with Murase Shinya, former member of the International Law Commission and Professor of International Law (Zoom, 17 July 2022).

<sup>87</sup> Ibid.

earlier interpretations such as those by Ashida in the 1950s.<sup>88</sup> For paragraph 2, regarding war potential, scholars often state that self-defence is not listed as an exception, however they tend to omit a key sentence: '*In order to accomplish the aim of the preceding paragraph*, land, sea, and air forces, as well as other war potential, will never be maintained.'<sup>89</sup> This is how Murase explained the constitutionality of the Self-Defense Forces: they are not maintained for the purpose of paragraph 1, to wage war.<sup>90</sup>

This interpretation is also supported in international law: Articles 43 and 51 of the UN Charter ask states to 'contribute to the maintenance of international peace and security' and expressly provide for individual and collective self-defence.<sup>91</sup> Panton points out that Japan has often used international norms to bypass a stricter reading of Article 9 and diversify the tasks of the Self-Defense Forces.<sup>92</sup> For example, the 1992 Peacekeeping Operations Law permitted Japan to take part in UN missions in a limited capacity, though there was considerable anger from the Diet and the public.<sup>93</sup> This trend was continued by Abe who published the government's reform proposal in 2012, on the anniversary of the end of US occupation.<sup>94</sup> Following the report of the National Security Panel, Abe adopted by Cabinet Decision the 'Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People' (known as the Legislation for Peace and Security) on 1 July 2014. This expanded the Self-Defense Forces' role in 'support activities' and added three conditions for the use of force as self-defence, which again prompted large protests.<sup>95</sup> Despite the opposition, Diet

---

<sup>88</sup> Hajimu (n 49) 158.

<sup>89</sup> Emphasis added. This sentence is present in the Japanese text. Creighton (n 1) 126.

<sup>90</sup> Interview with Murase Shinya, former member of the International Law Commission and Professor of International Law (Zoom, 17 July 2022).

<sup>91</sup> UN Charter (n 32) arts. 43 and 51 respectively.

<sup>92</sup> Panton (n 6) 143.

<sup>93</sup> Jaemin Lee, 'Collective Self-Defense or Collective Security? Japan's Reinterpretation of Article 9 of the Constitution' (2015) 8 *Journal of East Asia and International Law* 373, 389; Umeda (n 43) 20; Panton (n 6) 136.

<sup>94</sup> McElwain and Winkler (n 6).

<sup>95</sup> The three conditions are: '(1) When an armed attack against Japan occurs or when an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan's survival and poses a clear danger to fundamentally overturn people's right to life, liberty and pursuit of happiness, (2) When there is no other appropriate means available to repel the attack and ensure Japan's survival and protects its people, (3) Use of force limited to the minimum extent necessary.' Cabinet Decision on the Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People, 1 July 2014, available at

legislation has been passed to confirm these provisions.<sup>96</sup> The US has made clear its relief that Japan will be stepping up its military expenditure, easing the resource burden of their 'Alliance deterrence'.<sup>97</sup>

The use of legislation such as this indicates that Article 9 maintains a level of organisational control over post-war Japan, restricting the role of the military in so far as the government can only tinker with its implementation. As Hajimu notes, the role of the Yoshida Doctrine and the US in post-war military policy is often over-emphasised at the expense of the significantly vocal Japanese public.<sup>98</sup> The social stability of Japan has been a concern alongside its security, influencing Prime Ministers from Yoshida to Abe to compromise on hard-line amendment policy.<sup>99</sup> Grassroots organisations have sprung up against proposed revisions, a dynamic range of active, accessible, and diverse groups such as: the Article 9 Association, Students Emergency Action for Liberal Democracy, Save Article 9, and Mothers Against War.<sup>100</sup> This raises important questions on the participation of civil society in organisational control, particularly in the case of Article 9 which was arguably imposed by a victorious nation yet internalised by the defeated nation across several generations. These groups are discussed further under narrative control in section 6.6, analysing how and why civil society overwhelmingly contests constitutional revision.

Although Article 9 has restrained the military and security policies of Japan, the nation's supposed pacifism should be problematised. The US has openly been the primary benefactor of Japanese protection since Anpo was signed in 1951. In its 2022 annual white paper, Japan's Ministry of Defense calls these arrangements 'a cornerstone for Japan's security'.<sup>101</sup> In turn, Japan has given moral, financial, and

---

<[https://www.mofa.go.jp/fp/nsp/page1we\\_000084.html](https://www.mofa.go.jp/fp/nsp/page1we_000084.html)> accessed 27 April 2023; Dixon and Baldwin (n 43) 162.

<sup>96</sup> Dixon and Baldwin (n 43) 158.

<sup>97</sup> 'Joint Statement of the 2023 US– Japan Security Consultative Committee ("2+2")' *US Department of Defense* (2023) <<https://www.defense.gov/News/Releases/Release/Article/3265559/joint-statement-of-the-2023-usjapan-security-consultative-committee-22/>>.

<sup>98</sup> Hajimu (n 49) 553.

<sup>99</sup> *Ibid.*, 567.

<sup>100</sup> Dixon and Baldwin (n 43) 163; Shibuichi (n 6) 156; Creighton (n 1).

<sup>101</sup> Japan Ministry of Defense, 'Defense of Japan (Annual White Paper)' (2022) 15 <[https://www.mod.go.jp/en/publ/w\\_paper/index.html](https://www.mod.go.jp/en/publ/w_paper/index.html)>.

political support for US foreign policy. For example, prior to the Iraq War in 2003, former Prime Minister Koizumi Junichiro said that while Japan would not participate, they would 'support the use of force by the United States.'<sup>102</sup> Lockenour eloquently writes that 'while Western nations may be internally pacific, they are the premier exporters of violence', pointing to the arms trade and belligerence in the Gulf.<sup>103</sup> Certainly, Japan has not deployed drones or ordered airstrikes, but it would be remiss to ignore the deployment of Self-Defense Forces in support of operations in Afghanistan, Iraq, and the Indian Ocean.

Murase observed that changes in Article 9's interpretation over the decades have been 'in response to the security environment, especially the North Korean threat.'<sup>104</sup> In just the last few years, this environment has become increasingly unstable. Three areas are highlighted in Japan's 2023 Ministry of Defense budget: China's aggressive stance towards Taiwan, North Korean missile launches, and Russia's invasion of Ukraine.<sup>105</sup> Japan already had the world's ninth highest military expenditure, but these situations led to the proposed 26% increase in the Self-Defense Forces budget.<sup>106</sup>

On 22 April 2023, Japan ordered the use of interceptors in the face of North Korea's continued test-firing of missiles, which often land in Japanese territory, in what is but the latest example of growing tensions in the region.<sup>107</sup> Such threats are not new,

---

<sup>102</sup> 'Prime Minister Junichiro Koizumi's Interview on the Issue of Iraq' (*Ministry of Foreign Affairs of Japan*, 2003) <[https://www.mofa.go.jp/region/middle\\_e/iraq/pm\\_int0303.html](https://www.mofa.go.jp/region/middle_e/iraq/pm_int0303.html)> accessed 27 May 2023.

<sup>103</sup> Jay Lockenour, 'The Demilitarization of Germany, 1945-2010' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013) 50.

<sup>104</sup> Interview with Murase Shinya, former member of the International Law Commission and Professor of International Law (Zoom, 17 July 2022).

<sup>105</sup> Japan Ministry of Defense, 'Defense Programs and Budget of Japan' (2023) 2.

<sup>106</sup> Xiao Liang and Nan Tian, 'The Proposed Hike in Japan's Military Expenditure' (*Stockholm International Peace Research Institute*, 2023) <<https://www.sipri.org/commentary/topical-background/2023/proposed-hike-japans-military-expenditure>> accessed 24 April 2023; Ra Mason, 'Japan's Doubling of Its Defence Budget Will Make the World a More Dangerous Place – Here's Why' (*The Conversation*, 2022) <<https://theconversation.com/japans-doubling-of-its-defence-budget-will-make-the-world-a-more-dangerous-place-heres-why-182625>>.

<sup>107</sup> Japan Ministry of Defense, 'Dandō Misairutō Nitaisuru Hakai Sochi No Junbi Nikansuru Tai Ippan Meirei Nitsuite' (2023) <<https://www.mod.go.jp/j/press/news/2023/04/22a.html>> accessed 24 April 2023; 'Japan Readies to Shoot down North Korea Spy Satellite Debris' *Al Jazeera* (2023) <<https://www.aljazeera.com/news/2023/4/22/japan-readies-to-shoot-down-north-korea-spy-satellite-debris>> accessed 24 April 2022.

except in the details; since the 1990s, China and North Korea have been used by the Liberal Democratic Party, as a spectre through which to stimulate public support for military expansion.<sup>108</sup> However, the Self-Defense Forces have also become far more socially acceptable, not least due to their public efforts during the 2011 Fukushima disaster.<sup>109</sup> That interpretations of the Constitution, and Article 9 in particular, should adapt after more than 70-years seems logical and necessary. Since the Liberal Democratic Party announced the raise in military spending, scholars, politicians, and news outlets have cautioned of a return to militarism and the threat posed to the Asia-Pacific.<sup>110</sup> At best, this rhetoric is 'recycling tired and misleading memes of Japan'.<sup>111</sup> At worst, it is indicative of patronising postcolonial attitudes that frame Japan as somehow more prone to aggression than fellow signatories of the UN Charter.

To conclude, Article 9 has arguably been an extremely successful mode of organisational control. It was initiated by MacArthur but influenced by the post-war government, aimed at curbing the deviant military establishment and eliminating its authority in politics. To do so, Article 9 put stringent safeguards on Japan's war potential, complemented by vetting and disarmament. Japan has not declared war since the Asia-Pacific War, nor has it engaged in the use of force, the constitution remains unamended, and no military personnel can serve in the Cabinet. Article 9 can be seen as having succeeded in not only reforming the state apparatus but also ensuring it cannot easily be stripped away or substantively adjusted. This supports the theory of organisational control, which suggests that control is enacted *on* the framework as well as *through* it. However, by applying the theory of organisational control several complexities arise: the incremental reinterpretation of Article 9's original functions, the rapid rearmament and creation of the Self-Defense Forces, and

---

<sup>108</sup> Samuels (n 67) 149.

<sup>109</sup> Interview with Murase Shinya, former member of the International Law Commission and Professor of International Law (Zoom, 17 July 2022).

<sup>110</sup> Esteban Flores, 'The Japanese Constitutional Amendment: National Defense or a Return to Japanese Militarism?' (2017) 38 *Harvard International Review* 10; Ryan Woo, 'Japan's Return to Path of Militarisation "dangerous" - China Defence Ministry' *Reuters* (2023) <<https://www.reuters.com/world/asia-pacific/japans-return-path-militarisation-dangerous-china-defence-ministry-2023-03-16/>>; 'Russia Condemns "Militarization" of Japan under Kishida Defence Plan' *Reuters* (2022) <<https://www.reuters.com/world/russia-condemns-militarization-japan-under-kishida-defence-plan-2022-12-22/>> accessed 18 March 2023; Liang and Tian (n 106).

<sup>111</sup> Adam P Liff, 'Kishida the Accelerator: Japan's Defense Evolution After Abe' (2023) 46 *The Washington Quarterly* 65.

the frequent attempts at amendment. Be that as it may, the organisational control put in place by Article 9 has remained a check on Japanese security procedures, requiring the government to justify any policy change according to its provisions,<sup>112</sup> and providing a rallying point for those who disagree. The developments highlighted throughout this section also show how organisational control can have short-term and long-term goals, design, and impact. Article 9 on the whole is an ongoing process of control that continues to restrict and frame the military development of Japan, albeit with changes in interpretation over the decades. However, the initial method of demilitarisation resulted in only short-term change. Despite one of Article 9's modes of organisational control being unexpectedly cut-short, it has not led to the collapse of the overall strand. This case study indicates that flexibility around the specific design of organisational control may in fact be beneficial for sustaining the control structure.

Through these factors, the research illustrates how the Japanese government has morphed into a more dominant agent of control, as has the public, showing how socio-political and cultural factors influence organisational control beyond its initiators. This challenges the assumption that the reform of organisations is a top-down mechanism of control and demonstrates how they can be perpetuated, curbed, and adapted by wider society and that the processes is bidirectional.

#### 6.4 Article 9 as Disciplinary Control

This section relates elements of Article 9 to the disciplinary control strand of the transitional control typology, proposed in section 4.3.1 of this thesis. Disciplinary control was identified as the ways in which transitional justice processes target deviance with punitive measures, aiming to stop and/or prevent problematic behaviour by impairing the deviant. It was shown in the previous chapter that the Tokyo Trial engaged in this type of control through criminal prosecution, yet this thesis posits that disciplinary control goes beyond such traditional conceptualisation of punishment. This section argues that while disciplinary control was not the core aim for Article 9, several punitive intentions and consequences can be demonstrated. Firstly, the Allied Powers

---

<sup>112</sup> For example, Japan Ministry of Defense, 'Defense of Japan (Annual White Paper)' (n 101) 192.

and General MacArthur can be analysed as agents of control who sought to define the Japanese military establishment as deviants dangerous to both the world, and to Japan itself. Secondly, demilitarisation in practice and in law are shown to be the method by which this section of society was punished. Finally, the rapid remilitarisation of Japan and the continued existence of US military bases problematise the use and impact of disciplinary control, illustrating how evolving state interests undermined their initial objectives.

Hook writes that the provisions of Article 9 were 'at least partly motivated by the desire of the Allies to punish Japan for the aggressive war',<sup>113</sup> which can be inferred from several contemporary documents. As discussed in the previous section, the Potsdam Declaration made clear that the Allied Powers blamed 'those self-willed militaristic advisers' for misleading the Japanese people into war and that their 'authority and influence' must be ended.<sup>114</sup> This is also evident in the 'Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan' (hereafter, the Basic Directive) issued in November 1945.<sup>115</sup> This document outlined the primary objectives for the occupation, which included 'the disarmament and demilitarization' of Japan to ensure it could not engage in warfare again.<sup>116</sup> Section 4(e) provides critical evidence of disciplinary control aims:

... you will make clear to all levels of the Japanese population the fact of their defeat. They must be made to realize that their suffering and defeat have been brought upon them by the lawless and irresponsible aggression of Japan, and that only when militarism has been eliminated from Japanese life and institutions will Japan be admitted to the family of nations. They must be told that they will be expected to develop a non-militaristic and democratic Japan which will respect the rights of other nations and Japan's international obligations. You will make it clear that military occupation of Japan is effected in the interests of the United Nations and is necessary for the destruction of Japan's power of aggression and her war potential and for the

---

<sup>113</sup> Glenn D Hook, *Militarisation and Demilitarisation in Contemporary Japan* (Taylor & Francis 2016) 33.

<sup>114</sup> [Potsdam Declaration] (n 39) [4] and [6].

<sup>115</sup> State War Navy Coordinating Committee, 'Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15), 3 November 1945' <<https://www.ndl.go.jp/constitution/e/shiryō/01/036/036tx.html>> accessed 10 October 2022.

<sup>116</sup> *Ibid.*

elimination of militarism and militaristic institutions which have brought disaster on the Japanese.<sup>117</sup>

It is a powerful and clear message that demilitarisation was not simply a security concern, it was a symbolic and punitive impingement on state sovereignty to be sustained until Japan's behaviour changed. As was highlighted in section 6.2, the renunciation of war or prohibition on the use of force to settle disputes was already an accepted norm under international law treaty (and possibly emerging under customary law) but there was no specific requirement to disband armed forces. As Lockenour states in his analysis of post-war Europe, disarmament had been prescribed under the Versailles Treaty yet failed to prevent German aggression; thus it was critical to the Allies that demilitarisation take place rather than simply reducing military power.<sup>118</sup> Although revision of the Meiji Constitution was not proposed at this stage, Article 9 can be seen as the codification of this disciplinary control: the deviance of 'militarism and militaristic institutions' would be punished through demilitarisation, and only when such deviance was reformed would Japan be rewarded with a return to the international stage.

Demilitarisation was to be achieved through several methods and maintained as a constitutional principle, stipulated as it was by the second paragraph of Article 9. Firstly, the Basic Directive ordered that all Japanese forces immediately give up arms and 'cease hostilities', factories with war potential were shut down, a range of weapons were confiscated, military research facilities were closed, and vetting procedures were put in place.<sup>119</sup> Until 1950, Japan's national defence was left entirely in the hands of their occupiers and many interpreted Article 9 to mean that there would never be rearmament.<sup>120</sup> The permissibility of self-defence in Article 51 of the UN Charter, and Article 43 on the contribution to international security, highlights demilitarisation as a radical departure from (then already existing) global norms. Moore and Robinson assert that Article 9 and disarmament were 'the price of having lost the war', stripping Japan of part of its sovereignty.<sup>121</sup> A similar situation can be seen in post-war Germany,

---

<sup>117</sup> Ibid. [4(e)].

<sup>118</sup> Lockenour (n 103) 40.

<sup>119</sup> State War Navy Coordinating Committee (n 115) [4a]; McNelly (n 18) 353.

<sup>120</sup> Auer (n 64) 176.

<sup>121</sup> Moore and Robinson (n 13) 335.

where the Wehrmacht was abolished, and the state was regarded as not having ‘the ethical capacity’ to maintain military forces.<sup>122</sup> West Germany also enacted its own “peace constitution” which did not envision armed forces, but its articles were less restrictive than those in the Japanese constitution.<sup>123</sup>

To achieve the intended punitive function of Article 9 and restrict the influence of the military, the US occupation also instituted vetting procedures as mentioned in section 6.2. While a method of organisational control, the so-called Purge Directive can also be understood as a punitive instrument to support Article 9’s disciplinary control. For example, in the Purge Directive, it was stipulated that those who were dismissed would not receive ‘public or private pensions or other emoluments or benefits’, unless agreed with GHQ, and they would not be allowed hearings.<sup>124</sup> Demilitarisation through vetting was also not restricted to politicians with a military background or militaristic views: in October 1945, a directive was issued to remove any teaching staff ‘who are known to be militaristic, ultra-nationalistic, or antagonistic’ to the occupation and bar them from future work in education.<sup>125</sup> Thousands of educators were to be dismissed and over 100,000 resigned before they could be screened, facing social issues in addition to loss of employment.<sup>126</sup> Bickford’s work on post-unification Germany offers a useful comparison, explaining how former security officers were punished through social and career stigmatisation where they were unlikely to be prosecuted.<sup>127</sup>

---

<sup>122</sup> Trombley Averill (n 35).

<sup>123</sup> Ibid; Russell A Miller, ‘Germany’s Basic Law and the Use of Force’ (2010) 17 *Indiana Journal of Global Legal Studies* 197; Lockenour (n 103) 41.

<sup>124</sup> General Headquarters Supreme Commander for the Allied Powers, ‘Removal and Exclusion of Undesirable Personnel from Public Office (4 Jan 1946)’ (n 53) [5]. Note that this approach contrasts with modern transitional justice perspectives on vetting processes, which recommend oversight and appeal mechanisms and due process safeguards. See UN Security Council, ‘The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General’ (23 August 2004) UN Docs S/2004/616, [52]; Cynthia M Horne, ‘Transitional Justice: Vetting and Lustration’ in Cheryl Lawther, Luke Moffett and Dov Jacobs (eds), *Research Handbook on Transitional Justice* (Edward Elgar 2019) 426.

<sup>125</sup> General Headquarters Supreme Commander for the Allied Powers, ‘Investigation, Screening, and Certification of Teachers and Educational Officials (30 Oct 1945)’ (*National Diet Library*) [1a] <<https://dl.ndl.go.jp/pid/9885276>> accessed 2 March 2023.

<sup>126</sup> Julian Dierkes, ‘Japanese Bureaucrats and Empiricist Textbook Historiography’ [2020] *Postwar History Education in Japan and the Germanys* 118, 113; Sakita (n 50) 284.

<sup>127</sup> Andrew Bickford, ‘Demilitarization: Unraveling the Structures of Violence’ in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013) 28.

One important aspect is to be retained from this discussion. Pan uses network analysis to show that many of the Japanese officials who were ‘purged’ or suspected and/or charged with war crimes founded the War Convicted Benefit Society (*Sensō jukeisha sewakai*) in and through which to share experiences and lobby the government.<sup>128</sup> Indeed, rather than instilling anti-militarist sentiments or reforming the deviant behaviours, Pan points to these groups as a movement of solidarity which re-labelled war criminals (*senpan*) to mean ‘those who are suffering punishments due to the war’, or war prisoners (*Sensō jukeisha*).<sup>129</sup> This society assisted the post-occupation government and advocated for amnesty for their networks which perversely led to members building strong political bonds and eventually returning to positions of power.<sup>130</sup> One member, Kishi Nobusuke, had been imprisoned as a suspected Class A war criminal for his critical role in occupied Manchuria and in the wartime cabinet, yet went on to establish a political dynasty.<sup>131</sup> Kishi himself became Prime Minister in 1957, his brother was elected Prime Minister in 1964, and his grandsons rose to power in 2012: Kishi Nobuo as Defence Minister, and Prime Minister Abe Shinzō. Thus, while vetting was a punitive aspect of demilitarisation, the reversal of the policies may have resulted in disrupting the exerted disciplinary control.

More broadly, these initial demilitarisation initiatives cannot be divorced from the later militarisation of Japan – this time with the assent or under the control of US forces. Okinawa is an archipelago to the south of Japan’s main islands (called the Ryukyu Kingdom before being annexed by Japan in 1879) – it became and today remains the primary site for US operations in the Asia-Pacific.<sup>132</sup> Although the occupation formally ended in 1952, the US held ‘sole administering authority’ over the region under the multi-lateral Treaty of Peace with Japan (the San Francisco Treaty) and was not

---

<sup>128</sup> Keyao Pan, ‘Networking for War Criminal Amnesty: The Establishment of Japan’s War Convicted Benefit Society’ (2020) 18 *The Asia-Pacific Journal: Japan Focus* 7.

<sup>129</sup> *Ibid.*, 8.

<sup>130</sup> The group aided the government by negotiating terms regarding “third nationality” war criminals, Koreans and Taiwanese residing in Japan, and essentially allowed the government to avoid handling the sensitive affair in public. See, Pan (n 128) 1.

<sup>131</sup> John Delury, ‘The Kishi Effect: A Political Genealogy of Japan-ROK Relations’ (2015) 39 *Asian Perspective* 441, 445; Shinichi Kitaoka, ‘Kishi Nobusuke: Frustrated Ambition’ in Akio Watanabe (ed), Robert D Eldridge (tr), *The Prime Ministers of Postwar Japan, 1945-1995: Their Lives and Times Their Lives and Times* (Lexington Books 2016) 102.

<sup>132</sup> Luke Franks, ‘The Politics of Stalemate: Local Power, US Military Bases, and the Japanese Courts’ (2017) 24 *ASIANetwork Exchange: A Journal for Asian Studies in the Liberal Arts* 56, 63.

relinquished until 1972.<sup>133</sup> The establishment of American military bases in Okinawa is steeped in colonial attitudes, both those of the US and of Japan. Inoue's analysis of early post-war government literature highlight how Okinawans were at once Japanese and non-Japanese, offering a "palatable" compromise for Tokyo and Washington.<sup>134</sup> The 30 military bases in Okinawa make up over 70% of US land in Japan, the 'physical embodiments of a continuing regime of neocolonial domination' abetted by the mainland government.<sup>135</sup> Local support for the high concentration of bases is far below that of the rest of Japan, which Hikotani and others describe as classic 'not-in-my-back-yard' terms.<sup>136</sup>

A further way in which Article 9 can be conceptualised as disciplinary control is through symbolic punishment. Whilst symbolism and discourse are explored under narrative control in the following section, how such elements were used punitively is relevant for the present analysis. In some social and political spheres, the occupation has elicited raw analogies of the US as the disciplinarian of a vanquished Japan that remains beholden to external forces. For example, the security alliance, the military bases on Okinawa, and the constitution have been interpreted as an erosion of Japanese agency and sovereignty based on "victor's justice".<sup>137</sup> A refrain of right-wing revisionists is that Japanese society indulges a 'masochistic view of history', voluntarily sustaining these punishments inflicted by the occupation.<sup>138</sup> Marran also points to the dichotomy exhibited socially, between a dominate US and subordinate Japan, prevalent in literature and art such as the works of Shimada Masahiko and Ōe

---

<sup>133</sup> Glenn D Hook, 'Intersecting Risks and Governing Okinawa: American Bases and the Unfinished War' (2010) 22 *Japan Forum* 195, 198.

<sup>134</sup> Masamichi Inoue, *Okinawa and the US Military: Identity Making in the Age of Globalization* (Columbia University Press 2007) 80.

<sup>135</sup> 'US Military Base Issues in Okinawa' (*Okinawa Prefectural Government*) <<https://dc-office.org/basedata>> accessed 20 May 2023; Tze M Loo, "'Paradise in a War Zone": The US Military and Tourism in Okinawa, 1945–1972' (2019) 2019 *Japan Review* 173, 175.

<sup>136</sup> Referring to the idea that people are more likely to contest something controversial if it will be local to them. Takako Hikotani, Yusaku Horiuchi and Atsushi Tago, 'Revisiting Negative Externalities of US Military Bases: The Case of Okinawa' (2023) 23 *International Relations of the Asia-Pacific* 325, 366.

<sup>137</sup> Igarashi Takeshi, 'Peace-Making and Party Politics: The Formation of the Domestic Foreign-Policy System in Postwar Japan' (1985) 11 *Journal of Japanese Studies* 323, 340; Marc Yamada, "'Sophisticated Masochism" in the Work of Shimada Masahiko' (2014) 48 *Japanese Language and Literature* 175, 180; Ruriko Kumano, 'The US Occupation and Japan's New Democracy' (2007) 40 *Educational Perspectives* 36, 36; Kramer (n 62) 3.

<sup>138</sup> Takeshi Nakajima, 'The Tokyo Tribunal, Justice Pal and the Revisionist Distortion of History' (2011) 9 *The Asia-Pacific Journal: Japan Focus* 1.

Kenzaburō which envisage the ‘symbolic castration of the post-war Japanese male’.<sup>139</sup> Symbolic castration is a potent concept when applied to demilitarisation: the dismantling of an institution historically associated with masculinity and masculine power. This visceral and uncomfortable phrasing reveals that Article 9 not only “punished” Japan in practice, but in its very identity (albeit understood as social constructed, and thus re-constructed).

The gendered nature of warfare and its components is well documented, such as research into individual notions of “manliness”<sup>140</sup> and Belkin’s analysis of military masculinity and its institutional impact.<sup>141</sup> In the latter, Belkin looks to the US context and contends that men and women, individuals and entire nations, engage in military masculinity to ‘claim authority on the basis of affirmative relationships with the military or with military ideas’.<sup>142</sup> The demilitarisation of Japan is a heightened symbolic castration, removing what has been a long-held power of the nation-state which, unlike in Germany, was then codified in the constitution. Furthermore, Frühstück articulates the ‘childlike state’ ascribed to Japan by MacArthur and reinforced by decades of international media attention to its “abnormal” security status, connecting demilitarisation with infantilisation.<sup>143</sup> There is a famous photograph of the 6-foot-tall MacArthur, dressed and stood casually, towering over the impeccably presented Emperor Hirohito. This picture of their first meeting was received by the government as humiliating, but it was printed in the newspapers as if to reinforce the emasculation of Japan and its once god-like ruler.<sup>144</sup> Frühstück writes that Article 9, MacArthur’s divisive achievement,

---

<sup>139</sup> Christine Marran, ‘Empire through the Eyes of a Yapoo: Male Abjection in the Cult Classic *Beast Yapoo*’ (2009) 4 *Mechademia* 259, 260; Yamada (n 137).

<sup>140</sup> Fidelma Ashe, ‘Gendering War and Peace: Militarized Masculinities in Northern Ireland’ (2012) 15 *Men and Masculinities* 230, 236.

<sup>141</sup> Aaron Belkin, *Bring Me Men: Military Masculinity and the Benign Facade of American Empire, 1898-2001* (Hurst & Company 2012).

<sup>142</sup> *Ibid.*, 3.

<sup>143</sup> Sabine Frühstück, ‘After Heroism: Must Real Soldiers Die?’ in Sabine Frühstück and Anne Walther (eds), *Recreating Japanese Men* (University of California Press 2011) 91.

<sup>144</sup> Michio Kitahara, ‘Douglas MacArthur as a Father Figure in Occupied Japan After World War II’ (1989) 64 *International Social Science Review* 20, 22; Moore and Robinson (n 13) 43; Peter Mauch, ‘Hirohito and General Douglas MacArthur: The First Meeting as Documented by Shōwa Tennō Jitsuroku’ (2017) 28 *Diplomacy and Statecraft* 585, 585.

... forcefully disrupts the mutually reinforcing mechanisms of the potency of the state and the potency of its military men and women, creating a dramatically different framework for service members' negotiations of their militarized masculinity within a domestic, international, and historical setting.<sup>145</sup>

Under a disciplinary control framework it can be argued that this disruption was intentional and punitive in nature. This is most clearly demonstrated in the Basic Directive issued to MacArthur. It states that Japan will not be 'admitted to the family of nations' until the influence of the military establishment is deconstructed and explicitly demands that the population's 'pain and suffering' be attributed to militarism.<sup>146</sup> Reading the Basic Directive in this way frames the military as deserving of punishment, but it also presents the occupation as saviours: symbolically castrating the state to rescue the population from its deviant influences. Thus, Article 9 and demilitarisation can be understood as disciplinary control in its narrative impact, illustrating how control modes intersect and reinforce one another. This framing also opens the analysis of punitive post-conflict justice beyond the traditional mould of prosecution and criminal law.

This section has demonstrated how Article 9 can be conceptualised as disciplinary control, enacted by the occupation to punish the deviant "militarists" through demilitarisation and vetting, establishing US bases, and symbolic power. However, these conclusions are contextualised by the reversal of punishment within years of the constitution's promulgation. On 8 July 1950, MacArthur wrote to Prime Minister Yoshida authorising the establishment of the National Police Reserve – to consist of 75,000 men charged with protecting the Japanese coast and internal security.<sup>147</sup> He writes that:

...the Japanese people today may take justifiable pride in [the police] for the enforcement of law at all levels of government. Indeed, it may be credited to both organizational police efficiency and the law-abiding character of the Japanese people

---

<sup>145</sup> Frühstück (n 144) 91–92.

<sup>146</sup> State War Navy Coordinating Committee (n 115) [4(e)].

<sup>147</sup> General Headquarters Supreme Commander for the Allied Powers, 'Douglas MacArthur's Letter to the Prime Minister 8 July 1950 [Regarding the National Police Reserve]' (*National Diet Library*, 1950) <[https://www.ndl.go.jp/modern/e/img\\_1/M010/M010-0011.html](https://www.ndl.go.jp/modern/e/img_1/M010/M010-0011.html)> accessed 15 May 2023.

that [...] Japan stands out with a calmness and serenity which lends emphasis to the violence, confusion and disorder which exist in other nearby lands.

The letter is congratulatory, the National Police Reserve framed as a reward for Japan's agreeable behaviour since the wholesale demilitarisation just a few years earlier. The comparison to 'nearby lands' is also telling; the Korean War broke out in the weeks before the letter was sent, and the US would soon withdraw many of their troops from Japan in support of South Korea. The National Police Reserve thus signalled the beginning of remilitarisation, albeit on a small scale.

## 6.5 Article 9 as Narrative Control

Narrative control is the final strand of the transitional control typology outlined in section 4.3.3 of this thesis. It theorises the way in which transitional justice processes seek to alter the societal understanding of past harm by framing both the behaviour and types of discourse as deviant. This section argues that Article 9 is a strong indicator of the enduring potential of narrative control, drawing organisational control and disciplinary control into a broader framework of collective identity. Firstly, the aims and target deviance of narrative control are explored, explaining how the US occupation sought to establish a new understanding of the Asia-Pacific War. Secondly, the methods through which this narrative was perpetuated are categorised under two themes: the promotion of a pacifist identity, and the censorship of counter-narratives. Thirdly, it is argued that while MacArthur and GHQ were initial agents of control, the anti-militarist narrative has been internalised and promoted by the Japanese people. The final part considers the counter-narratives which have criticised Article 9 as the remnant of American imperialism and continue to glorify a militarist past.

This chapter has demonstrated how Article 9 grew from the provisions of the Potsdam Declaration, which was then enacted by MacArthur and guided by the Basic Directive. It is in these two documents that the aim and target deviance of narrative control can be found. Articles 4, 6, and 10 of the Potsdam Declaration are written in such a way as to start a discursive shift. First, 'militaristic advisers' are accused of 'unintelligent calculations' and of having 'deceived and misled' the Japanese population, thus

distinguishing proponents of the military as deviant and separate from the general public.<sup>148</sup> Second, the Allied Powers are framed as fair and merciful victors who will not punish the Japanese people – in fact, they will ensure that the government ‘remove all obstacles’ to democracy and establish human rights protections.<sup>149</sup> This discourse is reinforced in section 4(3) of the Basic Directive, quoted in full earlier, which shows the importance placed on narrative. The section instructs MacArthur that the Japanese public must realise their defeat, recognise that militarism is to blame for their suffering, and understand that the occupation is a benevolent measure to protect them from further harm.<sup>150</sup> Further illustrating the narrative implications of these instructions is the wording used: ‘you will make clear...’, ‘they must be made to realize...’, ‘they must be told...’, and ‘you will make it clear that...’<sup>151</sup> Previous sections in this chapter have shown that renouncing war by *dismantling* militarism was the impetus for Article 9, but when analysed as narrative control the complementary objective of *discrediting* militarism becomes clear. This moves the focus from control through organisation and discipline to one of discourse.

Article 9 was therefore the culmination of a strategy to promote occupation approved knowledge of the Asia-Pacific War: Japan was the aggressor, misled by deviant militarists, it could not be relied upon to responsibly oversee a military establishment, and counter-narratives would be considered deviant. This supports the theory proposed in Chapter 4 of this thesis, that narrative control constitutes the “control of memory and *through* memory” by the proliferation of pre-determined discourse. It is interesting to note how the target audience of narrative control interacts with the unusual attributes of Japan as a study of transitional justice. Chapter 3 discussed how, unlike more studied sites such as South America, victims of the Asia-Pacific War were predominantly outside of the offending state. Although this resulted in the dismantling of the Japanese military, Article 9 as a narrative, organisational, and disciplinary device is intended for the Japanese people, shown clearly by the Basic Directive. Militarism is the target deviance, but it was also a priority for the occupation that Article 9 be a

---

<sup>148</sup> [Potsdam Declaration] (n 39) arts. 4 and 6.

<sup>149</sup> *Ibid.*, art. 10.

<sup>150</sup> State War Navy Coordinating Committee (n 115) [4(3)].

<sup>151</sup> *Ibid.*

delineation between the public and the past government that led them to war. The target audience is unequivocally the Japanese people.

Several methods were utilised to amplify the narrative control of Article 9, at times intersecting with modes of disciplinary and organisational control. These can be thematically categorised into two main ones: the promotion of a pacifist identity, and the censorship of counter-narratives. The promotion of a pacifist identity was key to Article 9's narrative control function, the rejection of militarism and aggression in international relations. Alongside presenting the constitution as a Japanese government output, GHQ promoted demilitarisation and democratisation through the Civil Information and Education Division whose mandate was to reform society to fit with occupation principles.<sup>152</sup> Occupation propaganda spread these messages through the media and popular culture, such as by insisting that new *kabuki* plays be written that focused on peace and human rights.<sup>153</sup>

The UN Charter allows for individual and collective defence, and this is a right explicitly acknowledged for Japan in the San Francisco Treaty of 1951, signed several years before Japan joined the UN.<sup>154</sup> And yet, the debate over what Article 9 allows and whether the Self-Defense Forces are constitutional has continued for decades. The apparent success of Article 9 can initially be attributed to MacArthur and the occupation as the primary agents of control. However, the fact that Article 9 has remained unamended, and Japan continues to be anti-militarist in its foreign policy,<sup>155</sup> owes much to the internalisation of a core narrative: aggression is deviant. Le describes Japan as having an 'anti-militarist ecosystem' with several constraints (e.g., lack of resources) and restraints (e.g., international agreements) on its potential to

---

<sup>152</sup> David Jortner, "Imposing the Standards of Boston on Japan": Kasutori Performance, Censorship, and the Occupation' (2014) 33 Theatre History Studies 130, 131.

<sup>153</sup> James R Brandon, "Democratic Kabuki" for a "Democratic Japan": 1945–1946' (2014) 31 Asian Theatre Journal 103, 104.

<sup>154</sup> No. 1832. Treaty of Peace with Japan. Signed at San Francisco, On 8 September 1951, UNTS 1952 art. 5.

<sup>155</sup> Although the German Basic Law has been amended, Germany has similarly internalised anti-militarist norms without having the extent of restrictions applied to Japan. Lockenour (n 103) 51.

adopt a more aggressive security policy.<sup>156</sup> On this analysis, Article 9 acts as a 'strong normative restraint' bolstered by a peace culture of diverse and passionate activists.<sup>157</sup>

The Asahi Shimbun, a major national left-leaning newspaper, conducted a survey in 2021 which showed 45% of respondents supported revising the constitution with 44% not in favour of doing so.<sup>158</sup> The immediate post-war generations were far less likely to respond positively to revision, compared to those in their 30s which made up the largest group backing reform. Regarding Article 9 specifically, 65% opposed amendment and 30% supported it. The Asahi Shimbun also asked those surveyed to select up to three of eight reasons for their answers:

Among pro-revision voters, the most common reason selected for their stance was "a lack of sufficient provisions concerning defense," at 58 percent, followed by the Constitution is "getting old," at 46 percent, and "it does not reflect the national characteristic because it was imposed by the United States," at 35 percent.

The three most common answers chosen by respondents against revisions were: "the Constitution brought peace to Japan," at 71 percent; "there is no major problem with the Constitution that needs to be revised," at 41 percent; and "the Constitution has taken root among the public," at 40 percent.<sup>159</sup>

This data may not be wholly robust, with little information on its methodology, but the reasons chosen do illustrate the range of approaches to Article 9. It is critical that proponents of revision not reductively be labelled as 'neo-nationalists' touting a return to military domination, as Penney and Wakefield prudently highlight, though these groups certainly exist.<sup>160</sup> In the decades since its enactment, politicians, and the public on both sides of the revision debate have inched toward the centre and support the constitutional protection of rights and democracy.<sup>161</sup>

---

<sup>156</sup> Le (n 3) 6.

<sup>157</sup> Ibid., 9 and 164.

<sup>158</sup> Yoshitaka Isobe, 'Survey: Voters Evenly Split on Need for Revising the Constitution' *The Asahi Shimbun* (Tokyo, 3 May 2021) <<https://www.asahi.com/ajw/articles/14342228>> accessed 9 May 2022.

<sup>159</sup> Ibid.

<sup>160</sup> Matthew Penney and Bryce Wakefield, 'Right Angles: Examining Accounts of Japanese Neo-Nationalism' (2008) 81 *Pacific Affairs* 537, 540.

<sup>161</sup> Christian G Winkler, *The Quest for Japan's New Constitution: An Analysis of Visions and Constitutional Reform Proposals 1980-2009* (Routledge 2010) 195.

Civil society in Japan is the 'lifeblood' of what Le calls the 'antimilitarist ecosystem', a plethora of individuals, non-governmental organisations, grassroots collectives, and others who advocate for peace.<sup>162</sup> These activists are varied in aims but their efforts often centre around protecting Article 9, reducing, or dismantling US bases in Japan, and working towards a world without nuclear technology, including non-proliferation.<sup>163</sup> Jennifer Chan's analysis of anti-war protest in post-war Japan illustrates how the emphasis has shifted over time and in response to global and domestic socio-political developments.<sup>164</sup> For instance, the Vietnam War and Anpo 1960 triggered greater levels of mobilisation for peace, and preserving Article 9 has become a key rallying point since the 1990s.<sup>165</sup>

Some of the more prominent activist groups are specifically concerned about the reinterpretation of Article 9 to permit foreign military intervention. Shibuichi's excellent history of this movement points to the umbrella organisation of 'Do not Let Japan Wage War, Do not Destroy Article 9!' Combined Action Committee as a leading player, as well as the Students Emergency Action for Liberal Democracy (SEALDs), and the Article 9 Association.<sup>166</sup> For instance, the Article 9 Association, has thousands of subgroups, the influence and tactics of which adapt to contemporary politics. The number of members rose dramatically as constitutional reform was increasingly debated in the Diet and the Self-Defense Forces were deployed overseas.<sup>167</sup> The Article 9 Association uses strategies such as public seminars, petitions, advertisements, and networking to proliferate an anti-militarist narrative.<sup>168</sup> Their discourse highlights Article 9 and the movement itself as 'Japan's unique contribution to global peace', even bidding to be nominated for the Nobel Peace Prize.<sup>169</sup> The association thus supported and propagated the narrative control enacted by Article 9, or rather, their interpretation of it. In this way, the group identified deviance in narratives

---

<sup>162</sup> Le (n 3).

<sup>163</sup> Ibid., 148.

<sup>164</sup> Chan (n 76) 439.

<sup>165</sup> Ibid., 439.

<sup>166</sup> Shibuichi (n 6) 149.

<sup>167</sup> Ibid., 154.

<sup>168</sup> Ibid.

<sup>169</sup> Chan (n 76) 444; Dixon and Baldwin (n 43) 164.

that were contrary to a strictly pacifist reading of the constitution, becoming agents of control in the process.

This shifting of the “agent” is also demonstrated by comparing the initial objectives of Article 9 to current framings. When analysing the peace movement as a product, or proponent, of narrative control it becomes clear that its roots cannot be (entirely) traced to the narrative control aims initially expounded by the US occupation. The anti-war movement in Japan is more generally founded in victimhood rather than war-guilt, that is its inspiration comes from the victims of *both* the atomic bombs (and by implication, victims of the US who had deployed these) and of those “irresponsible” Japanese militarists. To process the immense trauma of war and the nation’s role in its conduct, Le writes that:

The Japanese highlighted the suffering caused by two nuclear bombs, which served as impetus for an antinuclear movement and provided legitimacy for a universal peace movement. Moreover, peace discourse shielded the modern citizen by obfuscating the nation’s shameful past and attributing excessive militarism to rogue militarists.<sup>170</sup>

Prime Minister Kishida was certainly aware of the symbolism in holding this year’s G7 summit in Hiroshima which saw the global leaders visit the Peace Memorial Museum and lay wreaths at the cenotaph.<sup>171</sup> In my own visits to the renowned museum, the harrowing and graphic exhibits I also experienced the dedicated space for action where guests are invited to write messages of peace and call on their own governments for nuclear disarmament. Although the museum is conspicuously absent of historical context for the atomic bomb or Japanese war crimes, some scholars have unfairly referred to the victimhood portrayed in this space as mythmaking, suggesting that trauma must always be relativised.<sup>172</sup> Certainly, the narrative of victimhood has been used by some to evade responsibility for the war, but it has also nurtured the

---

<sup>170</sup> Le (n 3) 142.

<sup>171</sup> Gabriel Dominguez, ‘Symbolism Rich as G7 Leaders Visit Hiroshima A-Bomb Museum’ *The Japan Times* (19 May 2023) <<https://www.japantimes.co.jp/news/2023/05/19/national/g7-leaders-hiroshima-abomb-museum/>> accessed 20 May 2023.

<sup>172</sup> See Chapter 8, Robert P Newman, *Truman and the Hiroshima Cult* (Michigan State University Press 1995); Benedict Giomo, ‘The Myth of the Vanquished: The Hiroshima Peace Memorial Museum’ (2003) 55 *American Quarterly* 703.

anti-militarist ecosystem.<sup>173</sup> That is not to say that exceptional violence is required to foster peace, nor that Japanese war crimes should be minimised, rather it illustrates that the narrative control exerted by the US occupation adapted in ways it did not intend but arrived at a similar destination. Ironically, anti-militarist policies have been a major concern for the US who have advocated for Japan to take a firmer role in international security since the Korean War.<sup>174</sup> Article 9 has thus prevailed as a mode of narrative control beyond MacArthur and GHQ as agents of control, as civil society groups and the socio-political landscape have made its provisions their own by adding their own discursive implications.

Let us then return to the second category of methods used to promote narrative control: the censorship of counter-narratives. The US occupation dismantled the framework for Japanese wartime censorship but replaced it with their own regulations – in 1945 any perceived support of the military became deviant and required censorship.<sup>175</sup> This was conducted through the Civil Censorship Detachment and its Press, Pictorial and Broadcast Division, which identified deviant cultural properties for removal.<sup>176</sup> For example, the storytelling medium of *kamishibai* was heavily regulated and around 70 *kabuki* plays were banned for promoting the military or nationalism.<sup>177</sup> This amounts to a restriction of important and traditional cultural knowledge, a policy that does not fit with transitional justice narratives of emancipation and community development. The media was also censored, and news outlets were prohibited from showing admiration for the Japanese military, as well as from criticising the occupation and discussing atomic bomb radiation.<sup>178</sup> Narrative control here sought to reduce

---

<sup>173</sup> James J Orr, *The Victim as Hero: Ideologies of Peace and National Identity in Postwar Japan* (University of Hawai'i Press 2001) 12–13; Le (n 3) 143.

<sup>174</sup> Titli Basu, 'Decoding Japan's Security Discourse: Diverse Perspectives' (2016) 72 *India Quarterly* 42; Glenn D Hook, 'From Demilitarization to Remilitarization: External and Internal Pressures on Japanese Security Policy' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013) 120.

<sup>175</sup> Oleg Benesch, *Inventing the Way of the Samurai: Nationalism, Internationalism, and Bushido in Modern Japan* (Oxford University Press 2014) 216; Gordon (n 7) 229.

<sup>176</sup> Jortner (n 153) 131–132.

<sup>177</sup> Emily Horner, "'Kamishibai' as Propaganda in Wartime Japan' (2005) 2 *Storytelling, Self, Society* 21, 29; Brandon (n 154) 104.

<sup>178</sup> See Chapter 8 of Etou Jun, *Closed Linguistic Space: Censorship by the Occupation Forces and Postwar Japan* (Japan Publishing Industry Foundation for Culture 2020); Janet Farrell Brodie, 'Radiation Secrecy and Censorship after Hiroshima and Nagasaki' (2015) 48 *Journal of Social History* 842, 846; Lisa Yoneyama, *Hiroshima Traces: Time, Space, and the Dialectics of Memory* (University of California Press 1999) 19–20.

militarism and prevent a recurrence of violence, however the specific methods used demonstrates how it can negatively impact the expression of individual freedom and cultural expression.

The deliberate policy of misleading the Japanese population as to the extent of damage caused by the atomic bombs is an example of how narrative control that is detrimental to human rights and truth-seeking sought to exerted. GHQ implemented the Press Code which aided the suppression of victim testimonies and news reports on Hiroshima and Nagasaki, all while the occupation promoted a 'war-guilt campaign' which emphasised Japanese aggression.<sup>179</sup> This policy reflects the Potsdam Declaration and the Basic Directive, which cast Japanese militarists as the guilty and the Allies as liberators. Article 9 and its disavowal of warfare, with positive implications for human rights realisation, was thus supported by the strategic control of approved narratives of the war, including those with negative consequences for human rights enjoyment. Although these policies could be conceptualised as disciplinary control, the data suggests that they were not designed with this in mind, rather that censorship was directed at public discourse but resulted additionally in sanctions.

The censorship of counter-narratives is also illustrated by the vetting procedures instituted under the Purge Directive,<sup>180</sup> discussed in more detail in the previous sections. It was shown how the targeted dismissal of public officials who supported militarist or ultra-nationalist ideals, or were influential during the war, was a method of organisational and disciplinary control. Under a narrative lens, vetting served to discredit militarists by publicly accusing them of war crimes, dismissing them from office, and/or ostracising them from Japanese society. For example, one major political party retained only 27 of its 274 members in the House of Representatives after the occupation began "purging" before the 1946 General Election.<sup>181</sup> MacArthur believed the election could be an opportunity for citizens to engage with the recently published

---

<sup>179</sup> Hook, *Militarisation and Demilitarisation in Contemporary Japan* (n 113) 168–169.

<sup>180</sup> General Headquarters Supreme Commander for the Allied Powers, 'Removal and Exclusion of Undesirable Personnel from Public Office (4 Jan 1946)' (n 53).

<sup>181</sup> Moore and Robinson (n 13) 147.

draft constitution,<sup>182</sup> yet the dismissed many of the Diet members. The objective of post-war vetting – to remove deviant influences – demonstrates how different control types can work together, triangulating the strategy to strengthen its impact.

Despite the success of narrative control on pacifism, as demonstrated above, the narrative control exercised by the occupation through censorship and vetting, that sought to assign guilt to Japan and specifically its military for the war and war crimes was equivocal. This strand of narrative control was undermined already before MacArthur and GHQ had even arrived in Tokyo. On 15 August 1945, the national radio played a pre-recorded speech by Emperor Hirohito announcing the defeat the Japan in what is called the ‘Jewel Voice Broadcast’ (*gyokuon hōsō*). Across the country people heard the Emperor’s voice for the first time and learnt that they were surrendering, however, the speech is not one of defeat.<sup>183</sup> In what is perhaps the first example of a post-war Japanese official minimising the Asia-Pacific War, Emperor Hirohito said that:

...we declared war on America and Britain out of our sincere desire to insure [sic] Japan’s self-preservation and the stabilization of East Asia, it being far from our thought either to infringe upon the sovereignty of other nations or to embark upon territorial aggrandizement. [...] We cannot but express the deepest sense of regret to our allied nations of East Asia, who have consistently cooperated with the Empire toward the emancipation of East Asia.<sup>184</sup>

Taylor describes the speech as a ‘historical travesty’, perpetuating the imperial myth of Japan as Asia’s liberator and setting the way for decades of war crimes denial.<sup>185</sup> The use of archaic, elevated Japanese gave the speech an authority and ethereal quality not conveyed by the English text,<sup>186</sup> legitimising the counter-narrative that prevails to this day among sections of Japanese society and its elites.

---

<sup>182</sup> Ibid.

<sup>183</sup> Tony Taylor, ‘Denial in the Classroom: Political Origins of the Japanese Textbook Controversy’ in Tony Taylor and Robert Guyver (eds) (Information Age Publishing 2014) 95.

<sup>184</sup> ‘Text of Hirohito’s Radio Rescript’ *New York Times* (New York, 15 August 1945); Japanese text available at ‘Shūsen No Gyokuon Hōsō (Broadcast 15 Aug 1945)’ <<https://www.kunaicho.go.jp/kunaicho/koho/taisenkankei/syusen/syusen.html>> accessed 10 February 2023.

<sup>185</sup> Taylor (n 183) 95–96.

<sup>186</sup> Ken C Kawashima, ‘The Voice of Interpellation and Capitalist Crisis: Notes toward an Investigation of Postwar Japanese Ideology Ken’ (2015) 42 *Boundary 2* 63, 75.

The Yasukuni Shrine, as noted in Chapter 5, is also an example of competing narrative control. Much like the emperor's broadcast, Yasukuni and the on-site war museum proactively seek to counter the US occupation's definition of deviance. Section 5.5 quotes from a museum display panel, for example, that purposefully paints the Empire of Japan as actively avoiding war and liberating the Asia-Pacific from Western imperialism. Along with other mnemonic devices, the shrine uses the Yūshūkan museum to advance its own narrative that contradicts that of the US occupation and Article 9. This push back highlights how other actors in post-conflict societies can challenge transitional control strands.

Narrative control is also undermined by the involvement of MacArthur and GHQ in the drafting of the constitution and Article 9 – that this provision was mandated by the occupation is an enduring criticism from many who seek to revise it.<sup>187</sup> Numerous books, endorsed by politicians and commentators, call for the Japanese to “open their eyes” to the continued influence of occupation policy.<sup>188</sup> Some more far right leaning publications veer into the realm of conspiracy theories, but they do also reflect the less radical belief that the constitution was ‘imposed’ by the US.<sup>189</sup> This was also highlighted in the aforementioned Asahi Shimbun opinion poll, where 35% of those who wanted to revise Article 9 stated that it was because of the occupation's involvement.<sup>190</sup> During fieldwork in Tokyo in December 2022, I was handed a flyer which had a small section titled ‘Breaking Free of US Occupation Laws’. The group, *Sokoku Saisei Dōmei*,<sup>191</sup> advocates for the return of the Meiji Constitution and denounces the legitimacy of the post-war constitution as one borne of oppression.

---

<sup>187</sup> McElwain and Winkler (n 6).

<sup>188</sup> For example, Akiyoshi Yamamura, *GHQ Ga Sen'nō Dekinakatta Nihonjin No 'kokoro' Amerika No Senryō Seisaku to Kanarazu Norikoe Rareru Nihon* (KK Besutoserāzu 2016); Kōichi Mera, Yasuo Inōe and Sadao Imamori, *Makkāsā No Noroi Kara Mezameyo Nipponjin* (Seiunsha 2012); Shigenobu Tamura, *Shin Kenpō Wa Kō Naru: Utsukushī Kono Kuni No Katachi* (Kōdansha 2006).

<sup>189</sup> Yamamura Akiyoshi, for example, proposes that the occupation was led by ‘jews, protestants, and communists’ in a chapter that is riddled with racial undertones. Yamamura (n 189).

<sup>190</sup> Isobe (n 158).

<sup>191</sup> Which would translate to ‘Alliance for the Restoration of the Motherland’, their Japanese website can be found at <[sokokusaisei.jp/about/](http://sokokusaisei.jp/about/)> accessed 25 April 2023.

While it is a fringe political party, these counter-narratives show that even 75-years on, the discourse on the war and its legacy is contested.

To conclude this section, the enduring narrative influence of occupation policies is encapsulated in TIME magazine's recent interview with Prime Minister Kishida, who appeared on the front cover of the online edition. The article originally stated that he was 'turning a once pacifist Japan into a military power' but this headline was softened considerably after complaints from the Foreign Ministry.<sup>192</sup> Kishida's government, which committed to the rise in defence spending and acquisition of counter-strike capabilities,<sup>193</sup> would naturally be sensitive to such alarming language. Kishida has framed his defence policies in the language of Article 9, such as in a 2022 press conference where he emphasised that counterstrike measures were part of a policy of 'non-aggressive defence' (*senshubōei*) that honoured the spirit of the constitution and international law.<sup>194</sup> It is here that narrative control is exposed, demonstrating how the decades of anti-war movements, political centrism, and incremental change to security policy has resulted in every change being meticulously justified in line with the constitution. The Allied Powers and MacArthur aimed to change the way the war was perceived by Japan, emphasising the deviant militarists that had "led them astray". Using propaganda, censorship, and vetting, the occupation promoted a new narrative of peace and anti-militarism. However, Article 9 has been internalised into the Japanese socio-political landscape through a proactive civil society, compromises in government, and notions of victimhood. Although counter-narratives endure, the anti-militarist ecosystem remains, and Article 9 provides a focal point for those seeking to justify non-aggression.

---

<sup>192</sup> Charlie Campbell, 'Exclusive: Prime Minister Fumio Kishida Is Giving a Once Pacifist Japan a More Assertive Role on the Global Stage' *TIME* (Tokyo, 9 May 2023) <<https://time.com/6278122/fumio-kishida-japan-prime-minister-interview-g7/>> accessed 22 May 2023; 'Japan Takes Issue with Time's Headline for Kishida Interview' *The Japan Times* (2023) <<https://www.japantimes.co.jp/news/2023/05/12/national/time-kishida-headline-criticism/>> accessed 27 May 2023.

<sup>193</sup> Liff (n 111) 64.

<sup>194</sup> 'Kishida Naikaku Sōri Daijin Kisha Kaiken' *Prime Minister's Office of Japan* (2022) <[https://www.kantei.go.jp/jp/101\\_kishida/statement/2022/1216kaiken.html](https://www.kantei.go.jp/jp/101_kishida/statement/2022/1216kaiken.html)> accessed 29 March 2023.

## 6.6 Conclusion

This chapter has analysed the transitional control typology by applying the theories developed in Chapter 4 to Article 9 of the Constitution of Japan. The case study was chosen to answer the research question: to what extent can transitional justice conceptualised as social control be applied to post-war Japan? Firstly, the context and process of crafting the Constitution was examined, highlighting how MacArthur, and thus the occupation, were dominant forces in its creation. The chapter then applied the three typology strands of disciplinary, organisational, and narrative control, identifying the aims, target deviants, methods, and agents for each form of transitional control. Section 6.3 showed how Article 9 clearly functioned as organisational control, dismantling the military establishment and providing an enduring restraint against more aggressive policies. The subsequent decades illustrate how politicians, the public, and the international security environment have altered the interpretation of Article 9 and demonstrates how control modes can adapt to changing socio-political context across time. Disciplinary control was applied in section 6.4, framing demilitarisation as a way of punishing militarists through vetting, symbolic harm, and the installation of US bases. The rapid reversal of these policies and remilitarisation undermined the disciplinary potential but also highlighted how these punishments can be short-term when required. Finally, section 6.5 considered Article 9 as narrative control and noted several areas where control modes overlap in methods. The intended discourse of militarist responsibility and promotion of peace was successful in many respects, yet it is apparent that the experience of war and victimhood of Japanese people enhanced the internalisation of these narratives. Categorising Article 9 merely as a guarantee of non-recurrence under the mainstream transitional justice paradigm obfuscates the aims, methods, and impacts which are driven by punishment or discursive approaches.

The broader theoretical implication of the discussion in this chapter is twofold. Firstly, it becomes clear that the same transitional justice mechanism can pursue various aims. By applying the transitional control typology – disciplinary, organisational and narrative – it becomes easier to identify the aims pursued by the various mechanisms and whether those were achieved and how. Secondly, the typology also facilitates a deeper

understanding that several mechanisms may pursue one and the same aim, thus problematising the automatic identification of a specific transitional justice effort with a specific type of outcome (e.g., criminal prosecution with punitive aims). To assess whether a given aim was achieved, one should measure the impact of multiple mechanisms and of their interactions. The thesis contributes to the literature on transitional justice and social control through this analysis. It demonstrates how a mechanism has more complex goals and impacts than categories like “guarantees of non-recurrence” and “downward control” and that these evolves over time.

## Chapter 7 – The Women’s Active Museum: Challenging the Denial of Deviance

### 7.1 Introduction

In this chapter, the third and final case study of the thesis is examined: the Women’s Active Museum on War and Peace (commonly known as WAM). Its aim, together with the previous two chapters, is to answer the research question: how can transitional justice conceptualised as social control be applied to post-war Japan? As with the case studies examined in Chapters 5 and 6, WAM is a “real-world” phenomenon employed here to test the utility of the theoretical typology of transitional control developed in Chapter 4.

WAM is an archive and museum for information on the so-called “Comfort Women” (*ianfu*), a euphemistic term used to refer to women and girls from across the Asia-Pacific housed in “Comfort Stations” (*ianjo*) to provide sex to soldiers of the Imperial Japanese Army during the Asia-Pacific War.<sup>1</sup> Opened to the public in August 2005, WAM functions concomitantly as an exhibition space, an archive, and an activist group. The museum receives no funding or support from the Japanese Government, relying instead on entry fees, memberships, and donations.<sup>2</sup>

This museum-cum-archive focuses on the history and experience of the “Comfort Women”, as well as more recent examples of sexual violence against women during war. WAM can be situated within the transitional justice paradigm as a form of recognition for the victims and education for the public, under what has been termed the ‘fifth pillar of transitional justice’, memorialisation.<sup>3</sup> It is also a space of collective

---

<sup>1</sup> Mariko Izumi, ‘Asian-Japanese: State Apology, National Ethos, and the “Comfort Women” Reparations Debate in Japan’ (2011) 62 *Communication Studies* 473, 473; Gabriel Jonsson, ‘Can Memories of the Japan-Korea Dispute on “Comfort Women” Resolve the Issue?’ (2019) *Fall/Winter International Journal of Korean Studies* 64, 65.

<sup>2</sup> Interview with Watanabe Mina, Director of the Women’s Active Museum (Tokyo, 10 December 2022).

<sup>3</sup> UNHRC, ‘Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice. Report of the Special Rapporteur

action, a “bottom-up” memorial project run by civil society, notably Japanese civil society, and a public facing educational centre – all these aspects situate the WAM as a highly relevant case study to the present project. These elements provide alternative points of analysis compared with the Tokyo Trial and Article 9 of the Japanese Constitution, enriching the application of the transitional control typology.

There are some key pieces of literature<sup>4</sup> that analyse the work of WAM, however the scholarship remains sparse. To supplement this information, I conducted a site visit in December 2022, during which I collected a variety of data, including interviews, leaflets, brochures, and exhibit catalogues (listed under Appendix A). This data and reflexive diarising form the basis for much of the following analysis – further details on the methodology and the process of this visit have been discussed in Chapter 1.

First, this chapter outlines the critical context for WAM as a case study, highlighting its place within an international redress movement for the “Comfort Women” and the reasons for its establishment. In section 7.3, the first strand of the transitional control typology – disciplinary control – is applied to the museum, arguing that it enacts punitive measures through the identification of alleged perpetrators. Section 7.4 considers WAM’s methods of organisational control through the analysis of its use of UN mechanisms. Finally, section 7.5 asserts that the final strand of the typology, narrative control, can be applied most strongly to WAM through its initiatives to counter the denial of the “Comfort Women” system.

---

on the promotion of truth, justice, reparation and guarantees of non-recurrence.’ (9 July 2020) UN Docs A/HRC/45/45, [60]; Amy Sodaro, ‘The Memorial Museums: The Emergence of a New Form’ [2018] *Exhibiting Atrocity. Memorial Museums and the Politics of Past Violence* 12, 5.

<sup>4</sup> Key sources include, Fabrice Virgili, “La Mémoire Des Ianfu”: Le Women’s Active Museum on War and Peace (Tokyo) (2015) 15 *Genre & Histoire*; Jonsson (n 1); Mina Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (2015) 12 *Journal of Peace Education* 236.

## 7.2 Contextualising the Museum

This section discusses the history of the “Comfort Women” redress campaign and the founding of WAM. The socio-political background is critical to the analysis of the museum and its engagement in transitional control. The discussion of context will also emphasise how WAM, a Japanese-led grassroots civil society initiative, contrasts with the previous two case studies, the Tokyo Trial and Article 9 of the Japanese Constitution, where the control agency lay primarily with the Allies and Japanese state actors.

Firstly, WAM cannot be separated from the decades long transnational movement which has called on the Japanese government to acknowledge victims of the “Comfort Women” system. There had been awareness of the system and its victims in the early post-war period, including evidence held by the UN War Crimes Commission and the Allied powers.<sup>5</sup> Yet, the Tokyo Trial did not investigate the systematic programme of “Comfort Stations”, forced prostitution, and sexual enslavement.<sup>6</sup> In the 1990s, the public testimony of former “Comfort Woman” Kim Hak-Sun ignited global interest and sparked a concerted effort to provide redress to survivors.<sup>7</sup> Joo describes the movement as being ‘rooted in a deep and specific anticolonial activism’ which demanded that the Japanese state take legal responsibility for historic violence.<sup>8</sup> In 2010, then Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, described the “Comfort Women” movement as ‘the single most organized and well-documented movement for reparations for women’.<sup>9</sup> The variety of methods employed by survivors and their advocates has spanned

---

<sup>5</sup> Ustinia Dolgopol, ‘Knowledge and Responsibility: The Ongoing Consequences of Failing to Give Sufficient Attention to the Crimes against the Comfort Women in the Tokyo Trial’ in Yuki Tanaka, Timothy LH McCormack and Gerry Simpson (eds), *Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011).

<sup>6</sup> Nicola Henry, ‘Memory of an Injustice: The “Comfort Women” and the Legacy of the Tokyo Trial’ (2013) 37 *Asian Studies Review* 362, 367.

<sup>7</sup> Wang Siyi, ‘Memorials and Memory: The Curation and Interpretation of Trauma Narratives—Using the Examples of Exhibitions on the Theme of “Comfort Women” in East Asian Society’ (2020) 53 *Chinese Studies in History* 56, 57.

<sup>8</sup> Hee Jung Serenity Joo, ‘Comfort Women in Human Rights Discourse: Fetishized Testimonies, Small Museums, and the Politics of Thin Description’ (2015) 37 *Review of Education, Pedagogy, and Cultural Studies* 166, 166.

<sup>9</sup> UNHRC, ‘Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo’ (23 April 2010) UN Docs A/HRC/14/22, [71].

lawsuits,<sup>10</sup> weekly demonstrations,<sup>11</sup> official and unofficial memorials,<sup>12</sup> and museums,<sup>13</sup> among other initiatives.

This international movement demanding acknowledgment for “Comfort Women” survivors is the context for why and how WAM was established. The museum was the result of years of fundraising and the financial assets left by the late Matsui Yayori, a Japanese journalist and activist passionate about achieving justice for the “Comfort Women”.<sup>14</sup> Matsui’s life and work are the subject of the museum’s December 2022 – July 2023 special exhibition which emphasises her involvement in anti-war protests, women’s rights campaigns, and her belief that Japan must take responsibility for the “Comfort Women” system.<sup>15</sup> An early objective of WAM was to archive the materials produced during the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery held in Japan (hereafter, the Tokyo Women’s Tribunal). Held over several days in December 2000, activists, scholars, and survivors of wartime sexual violence participated in an “international people’s tribunal” – a court-like initiative in which civil society investigates and judges alleged violations of international law without state-backed legal power.<sup>16</sup> Matsui was a key driver behind the tribunal and wrote of the sense of ‘responsibility’ felt by some Japanese women to advocate for “Comfort Women” victims.<sup>17</sup> She passed away shortly after the conclusion of the Tokyo Women’s Tribunal, leaving her estate to be used for the creation of an archive for the testimonies, evidence, and other documents associated with the tribunal.<sup>18</sup> WAM’s guiding principles will be explored in the following sections, but it is important to note

---

<sup>10</sup> Timothy Webster, ‘The Price of Settlement: World War II Reparations in China, Japan and Korea’ (2019) 51 *International Law and Politics* 301.

<sup>11</sup> Okano Yayo, ‘Toward Resolution of the Comfort Women Issue — The 1000th Wednesday Protest in Seoul and Japanese Intransigence’ (2012) 10 1.

<sup>12</sup> Rangsook Yoon, ‘Erecting the “Comfort Women” Memorials: From Seoul to San Francisco’ (2018) 53 *De Arte* 70.

<sup>13</sup> Shu-Hua Kang, ‘Toward a Humanistic Discourse: Approaches to Gaining Public Support for Taiwanese Comfort Women’ (2021) 13 *Journal of Human Rights Practice* 703.

<sup>14</sup> Akutibu myuujiamu: onnatachi no sensou to heiwa shiryokan, ‘Wam Nitsuite’ (2019) <<https://wam-peace.org/about>> accessed 4 January 2019.

<sup>15</sup> See Appendix A, A-03.

<sup>16</sup> Andrew Byrnes and Gabrielle Simm, ‘Introduction’ in Andrew Byrnes and Gabrielle Simm (eds), *Peoples’ Tribunals and International Law* (Cambridge University Press 2018) 3.

<sup>17</sup> Yayori Matsui, ‘Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery: Memory, Identity, and Society’ (2001) 19 *East Asia: An International Quarterly* 119, 139.

<sup>18</sup> Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (n 4) 237.

here that they were directly inspired by Matsui. She wished for the museum to take a gendered perspective on wartime sexual violence, to present the stories of “Comfort Women” survivors and identify those responsible for their harm, and for the museum to be independent of any state apparatus.<sup>19</sup>

WAM consists of a couple of small rooms on the 1<sup>st</sup> floor of a grey building in central Tokyo, hidden among seminar houses and dormitories which are run by local church organisations and the nearby Waseda University. It is an unobtrusive site, and one is unlikely to happen upon it. Between 2,000 and 3,000 people visit every year, (although the number dwindled during the Covid-19 pandemic), with variations in age, gender, and origin.<sup>20</sup> Watanabe Mina, Director of WAM, considers that the small numbers of visitors reflects the divisive nature of the “Comfort Women” issue in Japan and the lack of interest in the institution from the media.<sup>21</sup> Despite this, the museum remains an integral part of the global “Comfort Women” movement, the first of its kind in Japan and at the forefront of Japanese activism on the issue.<sup>22</sup>

The creation of the museum and its objectives underline that WAM is not a neutral or apolitical establishment, instead it engages in transitional justice with specific aims. It is a civil society-led initiative rooted in decades of activism that seeks to influence the actions of the Japanese state. In this way, WAM provides an analytically rich case study through which the transitional control typology can be interrogated.

### 7.3 WAM as Disciplinary Control

As previously discussed in section 4.3.1 of this thesis, disciplinary control, as one of three strands of the transitional control typology, seeks to identify deviant behaviour and those individuals, groups or entities that are responsible for such behaviour with

---

<sup>19</sup> *Ibid.*, 137.

<sup>20</sup> WAM does not record of visitor demographics, this information is based on: Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (n 4).

<sup>21</sup> Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (n 4) 244–245.

<sup>22</sup> See Appendix A, A-14.

the aim to hold them accountable through punitive means. This is not limited to traditional forms of punishment, such as criminal prosecution, but extends to any organised method that aims to limit or stop deviance through measures that penalise deviants. This section argues that WAM directly and indirectly engages in disciplinary control in two main ways: the identification of perpetrators of the “Comfort Women” system *and* the condemnation of those who would deny the existence of this system. The analysis in this section will proceed by firstly, outlining the aims of WAM and then relating them to the organised methods through which the museum seeks to achieve these aims. Second, this section distinguishes the target deviants, deviant behaviour, and agents of control which are key to establishing how WAM pursues the enactment of disciplinary control.

The museum’s guiding principles and objectives most relevant to disciplinary control are outlined on WAM’s website:

1. Focus on wartime violence with the objective of upholding that justice free from any gender bias shall be universally applied
2. Gather and exhibit data on individual victims, clarifying who is to take responsibility for such victimization.<sup>23</sup>

The first principle is not specific to the “Comfort Women” or the Asia-Pacific War but clarifies that a gender and global approach frames WAM’s understanding of justice. The original Japanese webpage has a slight alteration to the second principle, which only says that it aims ‘to clarify the harm and who is responsible’.<sup>24</sup> WAM is primarily aimed at those who live in Japan and speak Japanese, which is evidenced by its almost exclusive use of Japanese in its exhibitions, events, and membership requirements.<sup>25</sup> Therefore, the identification of harm and its perpetrators is emphasised in this section as the dominant aim for exploring disciplinary control.

---

<sup>23</sup> Women’s Active Museum on War and Peace, ‘About Us’ <<https://wam-peace.org/en/about>> accessed 16 January 2023.

<sup>24</sup> The Japanese text is: ‘higai to dōjini kagai sekinin o meikaku ni’. Akutibu myuujiamu: onnatachi no sensou to heiwa shiryōkan (n 14).

<sup>25</sup> This was also confirmed by Watanabe. Interview with Watanabe Mina, Director of the Women’s Active Museum (Tokyo, 10 December 2022).

The disciplinary control framework inherently highlights the place of the perpetrator, as it relates to taking punitive measures against them. WAM employs organised methods to achieve its aims of identifying those responsible for perpetrating the “Comfort Women” system, the clearest of which is the display of alleged perpetrators in the museum. This is primarily done through the exhibition space that details the process and outcome of the Tokyo Women’s Tribunal. Large panels are displayed on the wall to the right of the entrance, with photographs and information on the tribunal. A table spans the area with two chairs and two copies of the final judgment, one in English and one in Japanese, where visitors are invited to sit and browse at their convenience. The display explicitly emphasises several elements that legitimise the tribunal: the roles of high profile and well-respected legal professionals, the use of international legal norms and frameworks, in-person testimonies, and the in-depth research by scholars.<sup>26</sup> The trial is also referred to by a case name, *The Prosecutors and the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showa et al.* [2001], and its judgment is written and presented as an official legal document would be. These factors give legitimacy to the tribunal’s naming of the perpetrators of the “Comfort Women” system, who they identify as ten Japanese men who hold criminal responsibility. The judgment, and exhibition, also call out the lack of effective investigation and prosecution of the “Comfort Women” system by the Allied powers at the Tokyo Trial, and the lack of adequate reparations and acknowledgment by subsequent Japanese governments.<sup>27</sup>

Next to the display on the Tokyo Women’s Tribunal, there is a section with photographs of the ten men indicted at the people’s tribunal – including a larger portrait of Emperor Hirohito.<sup>28</sup> Having read the panel on the tribunal, and inferred the legitimacy of its judgments, the series of photographs give the visitor a name and face to which responsibility for the “Comfort Women” system can be assigned. The dominating

---

<sup>26</sup> Ustinia Dolgopol, ‘The Tokyo Women’s Tribunal: Transboundary Activists and the Use of Law’s Power’ in Andrew Byrnes and Gabrielle Simm (eds), *Peoples’ Tribunals and International Law* (Cambridge University Press 2018).

<sup>27</sup> Transcript of Oral Judgment’ (Women’s Caucus for Gender Justice) available at <<http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html>> accessed 12 July 2021, [150] and [147] respectively; see also Appendix A, A-13 and A-08.

<sup>28</sup> The photographs are of Emperor Hirohito, Ando Rikichi, Hata Shunroku, Itagaki Seishiro, Kobayashi Seizo, Matsui Iwane, Terauchi Hisaichi, Toujou Hideki, Umezu Yoshijiro, and Yamashita Tomoyuki. Also included in Appendix A, A-13.

presence of Hirohito is especially noteworthy, given his exclusion from prosecution at the Tokyo Trial and the continued controversy over his role in the Asia-Pacific War.<sup>29</sup> While all these alleged perpetrators are deceased and can no longer be subject to (state-led) accountability mechanisms, Watanabe wrote that this identification is 'indispensable in order to end impunity for sexual violence in war and armed conflict' and to show who gave the orders.<sup>30</sup> It also emphasises that the "Comfort Women" were victims of an institutionalised system for which accountability must be sought at the very top of Government.<sup>31</sup>

A final element of this display on the Tokyo Women's Tribunal is a painting by South Korean survivor Kang Duk-Kyung (1929-1997), titled *Punish the Guilty – for the Sake of Peace*. The image depicts a blindfolded Japanese imperial soldier bound to a tree by barbed wire. Pointing in from the edges are disembodied hands holding cocked guns, aimed at the soldier, and white doves fly against a red background. The painting is disturbing in its unapologetic hostility which Kwon describes as revealing the 'tension between conflict and peace, as well as external violence and internal reconciliation'.<sup>32</sup> During my site visit, witnessing this picture was one of the most uncomfortable experiences. Across the transitional justice and peacebuilding paradigms, reconciliation and the rejection of violence have been proposed as core tenets.<sup>33</sup> *Punish the Guilty* raises difficult questions about the very nature of punitive responses to deviance and whose definition of punishment is valid under transitional justice. The painting is a form of symbolic discipline, and yet it also suggests that there is no justice – or peace – without material punishment.

---

<sup>29</sup> Eika Tai, 'Museum Activism against Military Sexual Slavery' (2016) 39 *Museum Anthropology* 35, 38.

<sup>30</sup> Watanabe, 'Passing on the History of "Comfort Women": The Experiences of a Women's Museum in Japan' (n 4) 242.

<sup>31</sup> Dolgopol (n 26) 93.

<sup>32</sup> Hyunji Kwon, 'The Paintings of Korean Comfort Woman Duk-Kyung Kang: Postcolonial and Decolonial Aesthetics for Colonized Bodies' (2017) 43 *Feminist Studies* 571, 572.

<sup>33</sup> See, for example, Elizabeth A Cole and Pamina Firchow, 'Reconciliation Barometers: Tools for Postconflict Policy Design' (2019) 13 *International Journal of Transitional Justice* 546, 546; David Bloomfield, Teresa Barnes and Luc Huyse (eds), *Reconciliation after Violent Conflict: A Handbook* (International Institute for Democracy and Electoral Assistance 2003) 14–16; Yasmin Sooka, 'Dealing with the Past and Transitional Justice: Building Peace through Accountability' (2006) 88 *International Review of the Red Cross* 311, 315.

The photographs of those “prosecuted” at the Tokyo Women’s Tribunal and the *Punish the Guilty* painting are in stark contrast to the other perpetrators present within the museum. Near to the survivor testimonies, and using the same aesthetic structure, are two panels detailing the lives of Kondo Hajime and Iwamura Shohachi. Stationed in China and East Timor respectively, these two men are veterans of the Asia-Pacific War who chose to come forward about the atrocities they witnessed, and indeed took part in. Both have featured in documentaries, news stories, and books to educate the public and combat the denial of the “Comfort Women” system promoted by their government.<sup>34</sup> The juxtaposition between the two sets of named perpetrators (those identified by the Tokyo Women’s Tribunal, and Kondo and Iwamura) is illuminating because it condemns the lack of accountability but gives space to those who have taken responsibility for their actions. Thus, WAM’s use of disciplinary control in respect to the former is contrasted with the reconciliatory framing of the panels on the latter. The museum has facilitated what Nils Christie argues is lost in criminal justice: ‘a potential for activity, for participation’ and ‘opportunities for norm-clarification.’<sup>35</sup> The repentant perpetrator and the unredressed victim are displayed in the same space to bring nuance and context, and by doing so they attest to how it was – and how it *should* be.

The identification of victims and perpetrators, and holding the former accountable, are key elements of transitional justice as noted in UN documents such as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereafter, the Basic Principles), the Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence, and

---

<sup>34</sup> Gareth Harris, ‘Harrowing Film on Japanese War-Time Atrocities in China Is among Shortlisted Works on Show in UK’s Biggest Art Prize’ *The Art Newspaper* (10 June 2021) <<https://www.theartnewspaper.com/2021/06/10/harrowing-film-on-japanese-war-time-atrocities-in-china-is-among-shortlisted-works-on-show-in-uks-biggest-art-prize>> accessed 23 June 2023; Edward Willis, ‘A Story of Reconciliation and Redemption: The Visit of Former Japanese Officer Shohachi Iwamura Who Served in Portuguese Timor to Perth in August 1993’ (2/2 *Commando Association of Australia*, 12 May 2022) <<https://doublereds.org.au/forums/topic/354-a-story-of-reconciliation-and-redemption-%E2%80%93-the-visit-of-former-japanese-officer-shohachi-iwamura-who-served-in-portuguese-timor-to-perth-in-august-1993/>> accessed 30 June 2023; ‘Japanese Soldier in China [Audio Testimony of Kondo Hajime]’ (*WW2History*) <[http://ww2history.com/testimony/Pacific/Japanese\\_soldier\\_in\\_China](http://ww2history.com/testimony/Pacific/Japanese_soldier_in_China)> accessed 23 June 2023.

<sup>35</sup> Emphasis in original. Nils Christie, ‘Conflicts as Property’ (1977) 17 *The British Journal of Criminology* 7.

reports of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.<sup>36</sup> Importantly, these sources clearly state that the obligation to investigate gross violations of human rights, and hold perpetrators accountable, rests with the state. In the absence of (effective) state action, this documentation, in Japan, has fallen on civil society organisations such as WAM. McGonigle Leyh points out that the collection of data on serious human rights violations has long been an important role for civil society, eventually leading to the task's 'professionalisation'.<sup>37</sup> This may happen in countries where the state shirks its obligation to adequately investigate, or indeed where the state is openly antagonistic to those who conduct fact-finding missions.<sup>38</sup>

WAM's efforts in gathering, archiving, and exhibiting documentation on the "Comfort Women" illustrates the integral part civil society can play in accountability and justice – a role which has been recognised in the transitional justice literature.<sup>39</sup> However, the evidence that WAM has collated will never be used in a court of law to punish the individuals responsible, as all have passed away. What then does this activity contribute to justice? Under the lens of disciplinary control, WAM holds deviance itself accountable – beyond the confines of criminal law – by publicly denouncing individuals and governments, and by educating the population of the perpetrating state. Of course, the relative safety in which WAM exists is not a privilege afforded to many civil society or private organisations. Surviving "Comfort Women" may not receive the justice

---

<sup>36</sup> UNGA, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (21 March 2006) UN Docs A/RES/60/147, [3(b)] and [22(c)]; UN, 'Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence' (2014) available at <<https://www.unwomen.org/en/docs/2014/6/reparations-for-conflict-related-sexual-violence>> accessed 15 July 2019, 7-8; Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, '2018-2020: Contemporary Perspectives on Transitional Justice Issues' (2021) available at <<https://www.ohchr.org/Documents/Issues/Truth/contemporary-perspectives-transitional-justice-user-friendly.pdf>> accessed 03 February 2022.

<sup>37</sup> Brianne McGonigle Leyh, 'Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations' (2017) 33 *Utrecht Journal of International and European Law* 44, 45.

<sup>38</sup> Such as Rwanda's response to an investigation into violations committed in the Democratic Republic of the Congo in 2010, which the state vehemently protested. Philip Alston and Sarah Knuckey, 'The Transformation of Human Rights Fact-Finding: Challenges and Opportunities' in Philip Alston and Sarah Knuckey (eds), *The Transformation of Human Rights Fact-Finding* (Oxford University Press 2016) 6.

<sup>39</sup> For example, Molly K Land, 'Democratizing Human Rights Fact-Finding' [2016] *The Transformation of Human Rights Fact-Finding* 399; Alston and Knuckey (n 38).

envisaged in Kang's *Punish the Guilty*, but their experiences are given power through recognition and rigorous evidence gathering, evidence that is then passed on into education initiatives.

Furthermore, WAM illustrates the methods of disciplinary control which would not fit so neatly into transitional justice or social control theories. Former "Comfort Women" face the reality that those most culpable for their sexual slavery, such as the ten men investigated by the Tokyo Women's Tribunal, cannot be held to account in the traditional or legal sense because they are long dead. The creativity with which WAM proposes alternatives is on one hand subtle, yet very direct in another. For the latter, the stark black and white photographs – and the emperor's larger sized image – are challenging and accusatory. They are symbolically not given respite even though they are not alive to refute the charges, instead they are publicly denigrated. For the former, Japan's history provides an enlightening if subconscious proposition. Ancestor worship has been a critical element of religious, social, and cultural practice in Japan for generations, and it was particularly fervent during the Meiji and Shōwa eras.<sup>40</sup> It is notable therefore that rather than venerating the souls of the dead, they are displayed and admonished for their crimes, including the emperor. This may not have been WAM's intent, but it highlights how disciplinary control as a theory can help shift our conceptualisation of accountability in different contexts.

To conclude, the exhibition on the Tokyo Women's Tribunal and the portraits of the individuals deemed responsible are important elements in WAM's engagement in disciplinary control. The museum does not display these events neutrally, they are intentionally curated to take the visitor on a journey with "Comfort Women" survivors, who sought recognition and found it to some extent<sup>41</sup> in a civil society mechanism. This mechanism drew on the legitimacy of international criminal law, while bypassing its formal authority and state-centric assumptions. A target deviance and agents of control that employ punitive measures can be identified. Firstly, through these displays,

---

<sup>40</sup> For a more detailed analysis of this development see Chapter 11 in: Helen Hardacre, *Shinto* (Oxford University Press 2017).

<sup>41</sup> Interview with Ustinia Dolgopol, Chief Prosecutor for the Tokyo Women's Tribunal (Skype, 16th July 2018).

the ten Japanese officials deemed responsible for the “Comfort Women” system are labelled as criminally and morally deviant. Secondly, the Allied powers – and by extension, the Tokyo Trial – are also targeted as deviant actors given their failure to investigate and prosecute the issue. Thirdly, the ongoing lack of effective acknowledgment by the Japanese state is “called out” as deviant. Finally, the way in which disciplinary control is exercised is novel. While the ten officials identified have long passed away, and can no longer be held criminally accountable, WAM names them clearly, in particular Emperor Hirohito, and presents them as individuals culpable for a system of sexual enslavement and the traumatic experiences detailed in the rest of the museum. In so doing, the reputations and legacies of these men and the system they represented are defiantly criticised in a way that is compelling to the visitor. Thus, as a non-judicial, non-state initiative, WAM manages to engage in punitive measures by illuminating and condemning the actions of the individuals, the Japanese state, and the Allies.

#### 7.4 WAM as Organisational Control

Organisational control is the second strand of the transitional justice typology as outlined in section 4.3.2 of this thesis. This mode of control aims to reform structures which have engaged in or facilitated deviant behaviour, such as state institutions, companies, or legal frameworks. The aim of organisational control is to change systems in such a way as to prevent deviant behaviour happening again, or from happening at all. WAM has developed projects related to institutionalised deviance, such as the 10<sup>th</sup> special exhibition titled ‘The Military does not Protect Women’ that critically explored allegations of sexual violence in Okinawa by the US and Japanese militaries.<sup>42</sup> Projects such as this highlight how WAM can use its platform to problematise formalised structures and potentially promote reform through awareness raising. However, these exhibitions do not represent systematic or distinctly choreographed efforts to reform formal structures. This section argues that it is in

---

<sup>42</sup> Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (n 4) 244.

organised methods outside of the museum apparatus that WAM engages in organisational control, such as through submissions made to UN mechanisms.

WAM has made use of UN mechanisms to promote reform of the Japanese state, primarily through the Universal Periodic Review (UPR). The UPR was envisioned as a key process of the newly formed Human Rights Council in 2006; it is a forum for states representatives, experts, and civil society to review national human rights obligations.<sup>43</sup> Independently or jointly with other non-governmental organisations, WAM has submitted information to the UPR for Japan in all four of its cycles to date (2008, 2012, 2017, and 2023). The reports are compiled into a 'Summary of stakeholders' submissions on Japan' which identify key issues submitted by a variety of interested parties. WAM's entries included the following:

- 1) A critique of the Japanese government's engagement with international human rights guidance, such as the lack of a 'systematic human rights education programme' (2008 cycle, joint submission).<sup>44</sup>
- 2) The rejection by some "Comfort Women" survivors of the government's compensatory scheme, the Asian Women's Fund, and recommendations to include the "Comfort Women" in compulsory education (2012 cycle, independent submission).<sup>45</sup>
- 3) Calling for Japan to accept 'the crimes of its military in the past' and redress victims (2017 cycle, joint submission).<sup>46</sup>
- 4) Noting Japan had yet to implement any recommendations brought through the UPR regarding the "Comfort Women"; asking that Japan provide redress to victims of slavery and for government officials to 'rescind' statements undermining this;

---

<sup>43</sup> UNGA, 'Resolution adopted by the General Assembly on 15 March 2006, 60/251. Human Rights Council' (3 April 2006) UN Docs A/RES/60/251, [5e]; Valentina Carraro, 'The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?' (2017) 39 Human Rights Quarterly 943, 944.

<sup>44</sup> Joint submission by the Japanese International Human Rights NGO Network and 50 signatory organisations. UNHRC, 'Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(C) of the Annex to Human Rights Council Resolution 5/1: Japan' (3 April 2008) UN Docs A/HRC/WG.6/2/JPN/3, [6].

<sup>45</sup> UNHRC, 'Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Japan' (20 July 2012) UN Docs A/HRC/WG.6/14/JPN/3, [73].

<sup>46</sup> Joint submission by WAM and the Japanese Committee for Filipino "Comfort Women". UNHRC, 'Summary of Stakeholders' submissions on Japan' (23 August 2017) UN Docs A/HRC/WG.6/28/JPN/3, [31].

that the “Comfort Women” be included in history textbooks (2022 cycle, independent submission).<sup>47</sup>

The summary of stakeholders’ information is reviewed alongside a national report and a compilation of UN bodies-produced information, resulting in a final report to which the state must respond.<sup>48</sup> Watanabe noted that the UPR, and documents issued by other UN mechanisms such as Treaty Bodies and Special Rapporteurs, are useful tools in “Comfort Women” advocacy.<sup>49</sup> She specified that the recommendations produced through these processes are then used to lobby the government and gain media attention.<sup>50</sup>

WAM’s use of organisational control can be seen in the UPR process, wherein their submissions can be conceptualised as a method of control that uses an existing, and high profile, apparatus. The aims of the submissions are to reform contemporaneous government policy and enact new measures, such as reparations and history education. In this example, the Japanese state is deviant and facilitates ongoing deviant behaviour by not acknowledging “Comfort Women” victims and by not providing public education on the issue. WAM is thus the primary agent of control both in acting through an intermediary (the UN) and subsequently using the outcomes to further its control agenda through advocacy. It should not be inferred that civil society groups must rely on established institutions or state processes to promote organisational control, rather that WAM’s primary engagement has been through the UN.

To a lesser extent, WAM engages in organisational control through its critique of the Japanese education system. This can be seen in the previous summary of its submissions to the UPR that advocate for the inclusion of the “Comfort Women” in

---

<sup>47</sup> UNHRC, 'Summary of Stakeholders' submissions on Japan' (31 October 2022) UN Docs A/HRC/WG.6/42/JPN/3, [33]-[35].

<sup>48</sup> Jane Connors and Markus Schmidt, 'United Nations' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press 2014) 363–364.

<sup>49</sup> Interview with Watanabe Mina, Director of the Women's Active Museum (Tokyo, 10 December 2022).

<sup>50</sup> *Ibid.*

history textbooks. Additionally, the museum's fifth special exhibition, *The 'Comfort Women' Issue A to Z – Introduction for Junior High School Students*, ran June 2007 – May 2008.<sup>51</sup> It has also hosted events on the politicisation of history teaching and criticised the influence over compulsory education held by those who deny that the “Comfort Women” were victims of rights violations.<sup>52</sup> However, Watanabe has noted that it is difficult for teachers to plan school trips to the museum or even promote it to students due to the political stance it would imply.<sup>53</sup> WAM's displays utilise a textbook-like aesthetic, implicitly critiquing the lack of “Comfort Women” related information in the education system, employing a question-and-answer format with images and sources.<sup>54</sup> As Jonsson points out, the decline of “Comfort Women” material in compulsory education and its absence in national museums makes WAM an important source of such information in Japan.<sup>55</sup>

These activities could be conceptualised as organised responses to systematic deviance, that being the insufficient attention paid to “Comfort Women” in the Japanese education system. However, the gathered data is not rich enough to provide grounds for testing the organisational control strand and thus further inferences that can be drawn are limited. Reforming the education system may not be a key driver behind WAM's work, but the museum does seek to provide an alternative space for students to learn about “Comfort Women” as an un-redressed legacy of the Asia-Pacific War.

In conclusion, this chapter has shown that organisational control is a secondary objective for WAM, one that is not a dominant part of its mission as a museum and archive. Further analysis, which is beyond the scope of this thesis, should be conducted on the outcomes of WAM's recommendations to the UPR and its proposed

---

<sup>51</sup> Watanabe, 'Passing on the History of “Comfort Women”': The Experiences of a Women's Museum in Japan' (n 4) 239.

<sup>52</sup> See Appendix A, A-11; Watanabe, 'Passing on the History of “Comfort Women”': The Experiences of a Women's Museum in Japan' (n 4) 237.

<sup>53</sup> Watanabe, 'Passing on the History of “Comfort Women”': The Experiences of a Women's Museum in Japan' (n 4) 237.

<sup>54</sup> Siyi (n 7) 64.

<sup>55</sup> Jonsson (n 1) 74.

and enacted educational initiatives to establish how effective its use of organisational control is in practice.

## 7.5 WAM as Narrative Control

The final strand of the proposed transitional control typology is narrative control. This form enacts control through the creation and/or proliferation of narratives on past harm that are conducive to transitional justice objectives. This discursive strategy deems certain societal discourse as deviant and seeks to alter the narrative to acknowledge victims and harm. This section argues that WAM is strongly engaged in narrative control, utilising methods such as awareness-raising, memorialisation, and victim testimony to counter denial of the “Comfort Women” system and promote the understanding of survivors as victims who must be redressed. This section proceeds by firstly identifying the aims of WAM’s narrative control and relating them to targeted deviance. Then, the specific methods employed by WAM to effect control are outlined and situated in the wider context of the “Comfort Women” redress discourse. Finally, the section reflects on the range of agents of control who are able to participate in the museum’s objectives.

To effectively identify modes of narrative control, the research must first establish that WAM aims to disrupt existing discourse on the “Comfort Women” and/or promote new discourses. Based on the data collected, the following analysis argues that one of the museum’s key objectives is to counter the denial of the “Comfort Women” system and its victims. While doing so, WAM also offers its own narrative by, in its own words, ‘clarifying who is to take responsibility’ and educating the Japanese public.<sup>56</sup>

The museum’s narrative control aims are best understood by locating the target deviance. Watanabe wrote that WAM ‘is also a response to the conservative backlash from within Japan’, by which she referred to the right-wing campaign that sought to

---

<sup>56</sup> Akutibu myuujiamu: onnatachi no sensou to heiwa shiryokan (n 14); Women’s Active Museum on War and Peace (n 23).

remove mention of the “Comfort Women” from school textbooks.<sup>57</sup> The museum is thus an active component in what has been termed a “metaconflict”. Horwitz distinguishes between ‘the conflict itself, and...the conflict over the nature of the conflict’; identifying this second feature as ‘divergent understandings’ of political and structural violence which he calls the metaconflict.<sup>58</sup> Mallinder argues that metaconflicts interrupt the process of transitional justice, as different interests compete to proliferate their own narratives on victimhood, harm, and responsibility.<sup>59</sup>

The concept of metaconflicts is highly relevant in post-war Japan and for analysing WAM’s narrative control functions. Chapter 1 discussed the problem of contested collective memory of the Asia-Pacific War, which has resulted in protests, boycotts, and diplomatic disputes.<sup>60</sup> Debates are particularly intense where the “Comfort Women” are involved – here, the metaconflict relates to how centralised the system was, how women were “recruited”, how many women were victims, and most strikingly, whether or not these women were actually victims. For example, the Ministry of Foreign Affairs of Japan has an extended section on its website about the “Comfort Women”, where it condemns the use of terms such as ‘forceful taking away’ (*kyōsei renkō*) or ‘sexual slavery’ (*seidorei*), as on the Ministry’s understanding, these are unsubstantiated claims.<sup>61</sup>

The extent to which this metaconflict impacts the socio-political landscape of Japan can be seen in the case of the 2018 documentary, *Shusenjō – Comfort Women and Japan’s War on History*, by American Japanese director Miki Dezaki. The film includes

---

<sup>57</sup> Watanabe, ‘Passing on the History of “Comfort Women”’: The Experiences of a Women’s Museum in Japan’ (n 4) 237.

<sup>58</sup> AV Horwitz, *The Logic of Social Control* (Springer US 1990) 2.

<sup>59</sup> Louise Mallinder, ‘Metaconflict and International Human Rights Law in Dealing with Northern Ireland’s Past’ (2019) 8 Cambridge International Law Journal 5.

<sup>60</sup> See, for example, Jung-a Song, Edward White and Kana Inagaki, ‘South Koreans Vent Anger with Growing Boycott of Japanese Goods’ *The Financial Times* (Seoul and Tokyo, 7 August 2019) <<https://www.ft.com/content/2af08890-b74c-11e9-8a88-aa6628ac896c>> accessed 20 September 2019; Jee-ho Yoo, ‘Officials from Far-Right Japanese Party Protest S. Korean Banners at Olympic Village’ *Yonhap News Agency* (Seoul, 16 July 2021) <https://en.yna.co.kr/view/AEN20210716008700315> accessed 12 October 2021; Yoon (n 12); Akiko Takenaka, ‘Enshrinement Politics: War Dead and War Criminals at Yasukuni Shrine’ (2007) 5 *The Asia-Pacific Journal: Japan Focus: Japan Focus*.

<sup>61</sup> Ministry of Foreign Affairs of Japan, ‘Rekishu Mondai Q&A’ (6 April 2018) <<https://www.mofa.go.jp/mofaj/area/taisen/qa/index.html>>.

interviews with historians, experts, victims' groups, and indeed Watanabe, who contribute to the film's portrayal of decades of injustice faced by the former "Comfort Women". There are also interviews with influential right-wing commentators in Japan such as Fujioka Nobukatsu, Sakurai Yoshiko, Sugita Mio, and Kent Gilbert. These interviews seek to cast doubt on the existence of "Comfort Women" by undermining victim testimonies. For example, Fujioka, the Vice-President of the Association to Create New History Textbooks,<sup>62</sup> calls such testimonies 'exaggerated' and financially motivated. Sugita Mio, Member of the Japanese House of Representatives for the Liberal Democratic Party, challenges the testimonies as the 'only evidence' of the "Comfort Women" system and claims that they are inconsistent and untrustworthy.<sup>63</sup> After the release of the film, several of the conservative interviewees sued Dezaki and the film distributor for defamation and misrepresentation in what became a major national news story.<sup>64</sup> The plaintiffs' claims were dismissed in 2019, appealed, only to be dismissed again in 2022 by the Intellectual Property High Court of Japan.<sup>65</sup> This case is an example of the enduring metaconflict over the "Comfort Women" and their experiences, wherein high-profile individuals and groups contest understandings of the past.

The 'conservative backlash' alluded to by Watanabe can be conceptualised as the deviant behaviour which is targeted by WAM's narrative control modes.<sup>66</sup> More specifically, the museum aims to counter denialist rhetoric on the "Comfort Women" within Japan. WAM is very much a Japanese initiative: run by two members of staff and a few volunteers, the museum is reliant on membership fees from people living in

---

<sup>62</sup> Known as "*tsukurukai*", this organisation seeks to promote textbooks which promote pride in Japanese history and not 'unjustly show Japan in a bad light'. 'Tsukurukai to Wa' (*Atarashi rekishi kyōkasho o tsukuru kai*) <<https://tsukurukai.com/aboutus/yakuin.html>> accessed 11 March 2023.

<sup>63</sup> *Shusenjo: Comfort Women and Japan's War on History* (Directed by Miki Dezaki, Tofoo Films 2018).

<sup>64</sup> Hiroaki Kazuto, 'Shōso Shitanoni ... "Shusenjō" Wa Tabūna No Ka Ianfu Mondai Eiga Kantoku No Tōshi' *Mainichi Shimbun* (2022) <<https://mainichi.jp/articles/20220314/k00/00m/040/036000c>> accessed 7 March 2023; 'Eiga "Shusenjō" San Nen No Saiban Shūketsu Hōkoku Miki Dezaki Kantoku "Shōso Shimashita. Anshin Shite" Haishin Ga Sutāto' *Nikkan supōtsu* (2022) <<https://www.nikkansports.com/entertainment/news/202209280001364.html>>.

<sup>65</sup> *Ibid.*

<sup>66</sup> Watanabe, 'Passing on the History of "Comfort Women": The Experiences of a Women's Museum in Japan' (n 4) 237.

Japan and international donations.<sup>67</sup> The exhibits are almost exclusively written in Japanese, and it is, of course, situated in the country's capital city. Watanabe notes that WAM is aimed at the citizens of Japan, despite its transnational projects.<sup>68</sup> She indicated that this is in part because the Japanese government will not remember the "Comfort Women", and thus the museum acts to preserve documentation and display it to the public.<sup>69</sup> This chapter thus shows that those who deny the harm done to former "Comfort Women" are perceived by WAM to be engaging in deviant behaviour which must be countered. Therefore, the target audience for narrative control is the Japanese public.

Organised methods of enacting narrative control are present in WAM's work. These can be divided into three categories: exhibiting the experiences of the former "Comfort Women", preserving the legacy of the Tokyo Women's Tribunal, and museum-adjacent activist strategies. Firstly, WAM's display panels and site curation brings the victims of sexual slavery to the fore. The faces of former "Comfort Women" are the first images a visitor sees upon arriving, and the last when leaving. Their black and white photographs line the walls of the entranceway: 179 women from across the Asia-Pacific and the Netherlands who consented to their portrait being exhibited.<sup>70</sup> A volunteer guide explains that the white flowers adorning so many of the pictures are to represent those who have passed away, and with this knowledge the exhibit becomes part memorial. The former "Comfort Women" are very much at the heart of the museum and the focus of many of the display panels. Watanabe says that the testimony panels are the most important section, a rotating series where the experiences of individual women are written in the first-person.<sup>71</sup> The use of first-

---

<sup>67</sup> Interview with Watanabe Mina, Director of the Women's Active Museum (Tokyo, 10 December 2022), 'Donation' (*Women's Active Museum on War and Peace*) <<https://wam-peace.org/en/donation>> accessed 11 March 2023.

<sup>68</sup> Interview with Watanabe Mina, Director of the Women's Active Museum (Tokyo, 10 December 2022).

<sup>69</sup> *Ibid.*

<sup>70</sup> Watanabe, 'Passing on the History of "Comfort Women": The Experiences of a Women's Museum in Japan' (n 4) 236.

<sup>71</sup> Interview with Watanabe Mina, Director of the Women's Active Museum (Tokyo, 10 December 2022).

person narration was a deliberate choice, an attempt to speak directly to the visitors and present the survivors as individuals with whom one could relate.<sup>72</sup>

This is a deliberate discursive choice by WAM's curatorial team and must be understood in the context of the history of portraying "Comfort Women" victims. Much of the early focus of activists on the "Comfort Women" relied on a 'fetishized' consumption of survivor testimonies, highlighting those which fit patriarchal narratives of victims as "innocent virgin girls" abducted by the military.<sup>73</sup> In the 1990s and early 2000s, activist groups in South Korea and Taiwan have also framed redress for the "Comfort Women" as a matter of national pride, tapping into ethno-nationalism to raise support for the movement.<sup>74</sup> A more enduring discourse engaged in by "Comfort Women" redress advocates has centred the issue as one of women's human rights. This focused on transnational feminist solidarity, relating the "Comfort Women" to sexual violence across the world, and was a key element in the organising of the Tokyo Women's Tribunal in 2000.<sup>75</sup> This can also be seen at WAM, which curates special exhibitions on wartime sexual violence against women spanning history and geography.<sup>76</sup>

Kang Shu-Hua, former Director of the Taiwanese "Comfort Women" museum, *Ama*, has described a growing 'humanistic turn' in "Comfort Women" discourse.<sup>77</sup> According to Kang, a 'humanistic approach' contests the "Comfort Women" as a collective (be it as women or national citizens), and highlights the individual experiences of survivors.<sup>78</sup> Thus, rather than seeing survivors as 'a victim of the Japanese or a women's rights activist', the intersectional factors of an individual's life – before and after the war – informs a more holistic approach to survivors' needs and stories.<sup>79</sup>

---

<sup>72</sup> Ibid.

<sup>73</sup> Chunghee Sarah Soh, *The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan* (University of Chicago Press 2008) 47; Joo (n 8) 168.

<sup>74</sup> Hee-Kang Kim, 'Nationalism, Feminism, and Beyond: A Note on the Comfort Women Movement' (2015) 17 *New Zealand Journal of Asian Studies* 1, 6; Kang (n 13) 166.

<sup>75</sup> Kang (n 13) 707.

<sup>76</sup> Watanabe, 'Passing on the History of "Comfort Women": The Experiences of a Women's Museum in Japan' (n 4) 243.

<sup>77</sup> Kang (n 13) 710.

<sup>78</sup> Ibid., 704.

<sup>79</sup> Ibid., 710.

Similarly, whilst WAM utilises a combination of narratives to present the history of the “Comfort Women”, it is the use of humanistic discourse that Watanabe identifies as integral to the exhibitions.<sup>80</sup> The survivor testimony panels<sup>81</sup> are the best example of this. Rather than only displaying the account of their rape and enslavement, these panels have photographs and information from various stages of their lives, showing anger, relief, activism – a range of life experiences. This discursive context is how WAM presents the “Comfort Women” to the public, individualising and humanising victims. The museum contests the common tactic of denialists who focus on challenging numbers, the “innocence” of the victims and their reliability, instead choosing to highlight that the “Comfort Women” are not homogenous, and a violation of their occurred no matter their circumstances or background.

A further way in which WAM strategically counters the discursive denial of the “Comfort Women” system is by preserving and displaying information on the Tokyo Women’s Tribunal. As previously noted, the museum draws on the tribunal’s legitimacy, such as the inclusion of renowned international legal experts, and uses its judgment to emphasise the criminal responsibility of those “prosecuted” by the people’s tribunal. The very first special exhibition held by WAM in 2005, was titled ‘The Women’s International War Crimes Tribunal: “Comfort Women” victims and perpetrator responsibility’ (*josei kokusai senpan hōtei no subete: ‘lanfu’ higai to kagai sekinin*).<sup>82</sup> The exhibition included displays such as survivor and perpetrator testimonies, expert witness statements, government documents, and the final judgments.<sup>83</sup> Currently, as outlined in section 7.3, a large wall by the museum entrance is dedicated to the Tokyo Women’s Tribunal and includes a display of photographs of the ten men deemed criminally responsible for the “Comfort Women” system.

---

<sup>80</sup> Interview with Watanabe Mina, Director of the Women's Active Museum (Tokyo, 10 December 2022).

<sup>81</sup> A “panel” refers to the rectangular display boards used throughout WAM to communicate information to the visitors, through text, illustrations, and photographs. Except for some English titles, all panels are in Japanese. See, Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (n 4) 240.

<sup>82</sup> See Appendix A, A-13.

<sup>83</sup> Ibid.

One of the concerns after the Tokyo Women's Tribunal was how to properly preserve the vast amount of documentation produced during the trial. In the final judgment, it is recommended that – as a redress method – the Japanese government should ensure '...public access and historical preservation of the materials' related to the "Comfort Women" system.<sup>84</sup> This has not happened, nor are there any plans to do so. After the conclusion of the work of the tribunal, an application for document preservation to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) was proposed, but success seemed highly unlikely considering the Japanese government's funding for, and political sway within the organisation.<sup>85</sup> Thus, WAM conserves the materials and 'passes on women's stories hidden from history' in the conspicuous absence of a state-sanctioned body in Japan.<sup>86</sup> The archiving of these documents, and the exhibition on the Tokyo Women's Tribunal is one method of countering the denial of the "Comfort Women" system. WAM presents the process, legitimacy, and judgment of the tribunal as key evidence for its assertions on what happened to victims, alongside its other research activities. The display of international law, albeit not judicially enforceable, is used to reinforce other elements of WAM's work to "prove" that the information given is credible.

Finally, it is useful to briefly mention the employment of activism outside of the museum context. Activist strategies are a further way in which WAM counters the denial of the "Comfort Women" system, by proliferating its own discursive understanding and utilising external networks. Aside from the awareness-raising implicit in its exhibits and archiving, WAM also publishes a newsletter,<sup>87</sup> writes academic and non-academic articles,<sup>88</sup> hosts seminar events<sup>89</sup> and collaborates with other organisations. In 2006,

---

<sup>84</sup> Transcript of Oral Judgment' (Women's Caucus for Gender Justice) available at <<http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html>> accessed 12 July 2021.

<sup>85</sup> Interview with Ustinia Dolgopol, Chief Prosecutor for the Tokyo Women's Tribunal (Skype, 16th July 2018).

<sup>86</sup> Sit Tsui and Lau Kin Chi, 'Building a Global Feminist Alliance for Peace in East Asia Sit Tsui and Lau Kin Chi' (2020) 28 *Positions* 481, 492.

<sup>87</sup> Several listed in Appendix A: A-08, A-09, A-10, A-11.

<sup>88</sup> Mina Watanabe, 'Nothing About Us Without Us: Recalling the Strong Voices of "Comfort Women" Survivors' (*Positions: critical reflections on 'comfort women' 75 years on (eikon)*, 2020)

<<https://positionspolitics.org/nothing-about-us-without-us/>> accessed 13 February 2023; Mina Watanabe, 'Owaranai Koto o Hikiukeru: Nippongun "Ianfu" Ni Mukiau Tame Ni' [2020] *Sekai*; Watanabe, 'Passing on the History of "Comfort Women": The Experiences of a Women's Museum in Japan' (n 4).

<sup>89</sup> See Appendix A, A-04 and A-10.

WAM participated in a protest in solidarity with the “Wednesday Demonstration” (a weekly protest outside the Japanese embassy in Seoul) and was heavily involved in the ‘Yasukuni No!’ campaign against the visit to Yasukuni Shrine by former Prime Minister Koizumi.<sup>90</sup> Most recently, WAM has applied for inclusion on the “Memory of the World” register, a UNESCO project which ‘lists documentary heritage’ according to ‘significance and outstanding universal value.’<sup>91</sup> As noted in section 7.4 of this chapter, Watanabe has also described the use of UN recommendations as a useful way to raise awareness through the Japanese media and a method for lobbying the Japanese government.<sup>92</sup>

One of the most notable aspects of WAM’s use of narrative control is the democratisation of who can participate. It could be said simply that the museum itself is the agent of control, it is – after all – the key party in its own activities. However, one of WAM’s defining features and objectives is to act ‘as a popular movement’.<sup>93</sup> Firstly, the humanistic and collaborative approach to “Comfort Women” survivors suggests that they too, become agents of control. For example, the Tokyo Women’s Tribunal exhibit is notable for its energy, not only in encouraging the visitors to directly engage with the judgment, but also in how the panels highlight the active participation of survivors in the process. This area of WAM focuses on the former “Comfort Women” as transnational activists exercising their agency, similarly to how each of the survivor photographs in the entrance hall were displayed with the permission of each woman.<sup>94</sup> Additionally, if an individual donates to the museum or joins as a member, it is arguable that that person adds their participatory agency to WAM and the “Comfort Women’s” narrative control potential. Although the museum acts as the primary conduit of control, further research into the participation of survivors, activists, members, and visitors could yield interesting reflections.

---

<sup>90</sup> Appendix A, A-10; Tai (n 29) 43.

<sup>91</sup> Interview with Watanabe Mina, Director of the Women’s Active Museum (Tokyo, 10 December 2022); Memory of the World, ‘The International Register’ (UNESCO) <<https://www.unesco.org/en/memory-world/register?hub=1081>> accessed 27 March 2023.

<sup>92</sup> Interview with Watanabe Mina, Director of the Women’s Active Museum (Tokyo, 10 December 2022).

<sup>93</sup> Akutibu myuujiamu: onnatachi no sensou to heiwa shiryokan (n 14); Women’s Active Museum on War and Peace (n 23).

<sup>94</sup> Watanabe, ‘Passing on the History of “Comfort Women”: The Experiences of a Women’s Museum in Japan’ (n 4).

## 7.6 Conclusion

This chapter sought to answer the research question: to what extent can transitional justice conceptualised as social control be applied to post-war Japan? WAM provided a specific context through which to test the transitional control typology. The chapter outlined the “Comfort Women” redress movement and positioned WAM as a non-state mechanism of transitional justice through its work on awareness-raising, archiving, advocacy, and memorialisation. In section 7.3, the typology of disciplinary control was applied to the case study. It was asserted that disciplinary control could be identified in some aspects of WAM’s work, particularly through the identification of perpetrators. Section 7.4 concerned the applicability of an organisational control theory, analysing WAM’s submissions to the UPR as an organised method of reforming the Japanese state. However, it concluded that organisational control was not as strongly correlated with the museum’s aims. Finally, in section 7.5, it was argued that WAM shows strong engagement in narrative control, aiming to disrupt Japanese denialist discourse on the “Comfort Women” and promote an understanding of the women as victims of historical injustice which must be redressed.

The application of transitional control to WAM also develops several aspects of the literature on transitional justice, social control, and post-war Japan. This chapter demonstrates that a grassroots, local, and entirely non-state initiative can engage in all aspects of the typology and is not restricted to purely narrative modes. It also shows how civil society movements are alive and well in Japan, significantly contributing to the definition and control of deviance even in a hostile environment.

## Chapter 8 – Conclusion: Modern Mending

### 8.1 Modern Mending in East Asia

This thesis began in September 2019 at the height of the “No Japan!” boycott in South Korea; the sale of Japanese cars and beer sharply declined along with diplomatic relations.<sup>1</sup> Japan had already seen its share of global controversy that year – export restrictions,<sup>2</sup> ill-advised photo opportunities,<sup>3</sup> the withdrawal of military intelligence sharing<sup>4</sup> – all of which stemmed from or linked to the legacy of the Asia-Pacific War. While writing this concluding chapter in July 2023, a highly unusual trilateral meeting is taking place between the US, South Korea, and Japan to discuss the latest North Korean ballistic missile test headed to Japanese waters.<sup>5</sup> Priorities have shifted over the last three years – prompted by the invasion of Ukraine, China’s policies towards Hong Kong and Taiwan, and increased hostility from North Korea. However, any hope of sincere rapprochement between Japan and South Korea is tempered by inter-generational trauma and memories of the Asia-Pacific War.

It is in this tenuous environment that the research sought to shed new light on transitional justice and its mechanisms for addressing conflict and authoritarianism. Japan is in many ways an example of successful post-conflict initiatives: a stable

---

<sup>1</sup> Justin McCurry, ‘South Korean Boycott of Japanese Goods Hits Beer and Carmakers’ *The Guardian* (Tokyo, 4 September 2019) <<https://www.theguardian.com/world/2019/sep/04/south-korea-boycott-japanese-goods-beer-car-sales>> accessed 6 September 2019.

<sup>2</sup> AP Staff, ‘South Koreans Shun Japanese Products and Tours as Boycott Gathers Momentum’ (*The Japan Times*, 5 August 2019) <<https://www.japantimes.co.jp/news/2019/08/05/business/economy-business/south-koreans-shun-japanese-products-tours-boycott-gathers-momentum/#.XXd6T2Z7IPY>> accessed 7 August 2019.

<sup>3</sup> Alice Chambers, ‘British Military Rugby Team Sparks Controversy with “naive” Photo at World War II Shrine in Japan: Report’ (*ABC News*, 21 September 2019) <<https://abcnews.go.com/International/british-rugby-team-apologizes-visiting-controversial-military-shrine/story?id=65748197>> accessed 10 October 2019.

<sup>4</sup> Alexis Dudden, ‘America’s Dirty Secret in East Asia: Japan and South Korea Are at Odds Today Because Washington Has Been Playing Favorites for Decades.’ (*The New York Times*, 23 September 2019) <<https://www.nytimes.com/2019/09/23/opinion/america-japan-south-korea-dispute.html>> accessed 11 October 2019.

<sup>5</sup> Idrees Ali, ‘US, Japan, South Korea Hold Rare Military Meeting as North Korea Launches Missile’ (*Reuters*, 12 July 2023) <<https://www.reuters.com/world/us-japan-skorea-hold-rare-military-meeting-nkorea-launches-missile-2023-07-12/>> accessed 12 July 2023.

democracy (with its faults as many others) and at peace for over 75-years. Yet, its socio-political landscape is regularly disrupted by the denial of war crimes and debates over the role of its military. As such, Japan's lengthy post-war period is an excellent site for the analysis of transitional justice, a field which is lacking in solid theoretical underpinnings. To address this conceptual gap, the lack of studies on transitional justice in Asia, and assessments of mature transitions, this thesis proposed to analyse post-war Japan through a lens of social control, building on the work of Dudai<sup>6</sup> and Martin and Innes.<sup>7</sup> Three research questions were posed:

- 1) What transitional justice mechanisms have been implemented in post-war Japan?
- 2) In what ways can transitional justice be considered a form of social control?
- 3) To what extent can transitional justice conceptualised as social control be applied to post-war Japan?

The thesis was divided into two parts to answer these questions and utilised different research methods as appropriate. This concluding chapter starts by outlining how Part I addressed the first question, drawing on transitional justice and social control theory to develop a typology of transitional control, situated in the context of post-war Japan. Section 8.3 summarises the key findings of Part II, which applied the typology to three cases studies, demonstrating how transitional control was enacted by a variety of actors with enduring consequences. Importantly, this section will also include reflections on aspects that contributed to the success, or failures of the aims pursued by the three transitional control types. The final section considers the study's limitations and potential avenues for future research.

## 8.2 Developing the Transitional Control Typology

Part I of this thesis had two aims: to situate the research in its historical context and theorise how transitional justice might be considered a form of social control. Chapter

---

<sup>6</sup> Ron Dudai, 'Transitional Justice as Social Control: Political Transitions, Human Rights Norms and the Reclassification of the Past' [2017] *British Journal of Sociology* 1.

<sup>7</sup> Martin Innes and Alan Clarke, 'Policing the Past: Cold Case Studies, Forensic Evidence and Retroactive Social Control' (2009) 60 *British Journal of Sociology* 543.

2 began this process by presenting a thematic overview of the Asia-Pacific War across three time periods (1868-1937, 1937-1945, and 1945-1952), identifying themes which were essential to understanding the research problem. These themes provided the vital context for the research questions, guiding the selection of case study and theoretical frameworks.

Chapter 3 sought to build on this history and identify what forms of transitional justice were applied to post-war Japan, several decades before the field was established. This analysis was conducted to further support the choice of case studies and assist in narrowing the potential application of social control theories. Three case studies were designated as most data-rich and relevant to the research questions: the International Military Tribunal for the Far East (the Tokyo Trial), Article 9 of the Japanese Constitution, and the Women's Active Museum on War and Peace (WAM).

Finally, Chapter 4 consolidated the findings of Part I by evaluating theories of social control and its applicability to both transitional justice and post-war Japan. The chapter answered the second research question, proposing that transitional justice can be considered a form of social control through the *transitional control typology*. Transitional control was defined as coordinated methods of transitional justice which designate deviance and seek to stop or alter its conduct. The typology has three strands: (1) disciplinary control is characterised by punitive measures; (2) organisational control aims to affect structural change; and (3), narrative control refers to the ways in which certain discourses are perceived as deviant.

### 8.3 Applying Transitional Control to Post-war Japan

Part II of the thesis answered the third research question: to what extent can transitional justice conceptualised as social control be applied to post-war Japan? The transitional control typology was examined through multiple case study design based on analysis from preceding chapters. The case studies demonstrated that transitional control is evident to a great extent in post-war Japan and that a range of mechanisms

and actors can engage in multiple strands of the typology simultaneously. This section summarises the key findings by comparing the case studies and finally by reflecting on the intersections between disciplinary, organisational, and narrative control.

### 8.3.1 Disciplinary Control

The first strand, disciplinary control, aims to stop deviance, as defined by transitional justice actors, through negative sanctions. The case studies illustrated that a wide array of actors and mechanisms of transitional justice perform such functions under a control lens. As a criminal prosecution, the Tokyo Trial was the most explicitly engaged in disciplinary control by criminalising deviance and sentencing the accused to punishment. However, the strand was evident in all three studies and cross-case analysis displayed several common features.

The case studies confirmed that the methods of disciplinary control are far broader than what might be inferred from transitional justice's pillar of "justice and accountability". Instead, such measures exhibited symbolic, corporal, individual, and collective negative consequences for deviance. Ranging from individual imprisonment by an international and external body (the Tokyo Trial), to the public condemnation of long-dead alleged perpetrators by Japanese citizens (WAM), disciplinary control is unexpectedly creative. One commonality however is that the exercise of disciplinary control in the case studies is short-term – whether by design or circumstance. Except for those sentenced to death, civil society and regional politics led to the release of all remaining defendants at Tokyo. Demilitarisation under Article 9 was reversed, and the presence of repentant perpetrators at WAM demonstrates that deviants can to some extent be redeemed. Applying the transitional control typology to other contexts may yield data on whether this is Japan specific, or a feature of disciplinary control more widely.

Chapter 4 stated that the definition of deviance by transitional justice actors was key to the typology, but the case studies demonstrated that this process is more nuanced.

Firstly, there is significance in the *confirmation* of deviance and secondly, *omission* from definitions nevertheless impacts its meaning. The Tokyo Trial and WAM are examples of the former, wherein existing conceptions of deviance were reinforced or reiterated through disciplinary control, such as the prohibition of war crimes as a legal norm. While this may seem a subtle distinction, I would argue that it is critical in post-conflict societies where what has been defined as deviant/not-deviant may have been temporarily subverted, such as a government sponsored genocide. The second point relates to omission, or the absence of discipline: the Tokyo Trial prosecuted wartime ministers, but not the emperor; Article 9 was a way of punishing “militarists”, not the Japanese people; and WAM, at its core, contests the absence of “Comfort Women” in post-war justice. Although this played out differently in each case, it highlights how what is omitted from the definition of deviance can be just as critical to what is included.

### 8.3.2 Organisational Control

The second strand of the typology relates to how state institutions and other forms of organisations are defined as deviant or as having facilitated deviance with the aim of reforming or disbanding them. Article 9 demonstrated the greatest use of this strand of the transitional control typology – importantly, the analysis found that the deployment of organisational control went beyond what can be understood through guarantees of non-recurrence. By renouncing war, complemented by demilitarisation and effective narrative processes, Article 9 was not only control *of* an apparatus but control *through* it. Over the decades since its implementation, the Constitution of Japan has shifted from the US occupation as the primary agent of control to Japanese society which continues to interpret and adapt it. As such, long after the end of the occupation, civil society, non-governmental organisations, and politicians have proactively sought to protect the anti-militarist ecosystem.

Comparing organisational control through Article 9 with the other cases, the importance of non-state actors is evident despite vast differences in how the case studies engaged with the typology. Non-state actors have proved to have a strong influence in enacting and maintaining organisational control, both in the absence of

the state and against it. The Tokyo Trial for example did not aim to reform any collective entities, despite having the potential to, and thus individual victims of forced labour have sought policy change and reparations through civil litigation.<sup>8</sup> Additionally, WAM has used both intermediary, “official” channels such as the UN’s Universal Period Review and grassroots means such as protests to push for political and educational reform. This demonstrates both the range of methods of organisational control and how its importance may change over time.

### 8.3.3 Narrative Control

The final strand of the transitional control typology is narrative control. Through this strategy, transitional justice actors define certain discourses as deviant and seek to de- and re-construct them, and to proliferate their own. Of all the strands, narrative control has the most implications for our understanding of transitional justice. The typology as applied in this thesis demonstrates that post-conflict mechanisms can intentionally seek to supplant public and private narratives with an approved understanding of the past. It was strategically employed in all the case studies and often complemented, or disrupted, the use of other forms of control.

Cross-case analysis highlights the difficulty of maintaining narrative control over time. The Tokyo Trial has struggled to preserve its message over the decades, the perceived legitimacy of the tribunal was irreparably damaged by the omission of perpetrators and use of dissenting opinions which have conversely strengthened denial of the very discourse the trial sought to promote. However, it is possible that the Tokyo Trial has simply lost relevance in modern Japan because it was a short-term mechanism. Further research into public awareness and knowledge of the tribunal would prove illuminating on this point.

---

<sup>8</sup> Petra Schmidt, ‘Japan’s Wartime Compensation: Forced Labour’ (2000) 2 *Asia-Pacific Journal on Human Rights and Law* 1.

In contrast, Article 9 and WAM show how narrative control can be strengthened over time and adapt to modern needs. For Article 9, the initial agents of control morphed from the US occupation to the Japanese public, shifting the desired discourse and becoming a cornerstone for anti-militarist norms. Article 9 highlighted how the diffusion of agency has led to a strong culture of public engagement on the issue of Japan's military. Although the Japanese government has incrementally reinterpreted the provisions of Article 9, the country remains broadly anti-militarist, instead evolving with global changes and in line with international law. WAM has similarly evolved or reflected the evolution of discourse in the "Comfort Women" reparations movement. As Chapter 7 noted, narratives about the victims have changed with greater understanding of the issues, moving through advocacy based on nationalism, then feminism, and now a humanistic approach. Narrative control can therefore be an exchange within society and is potentially stronger for it.

Each case study engaged, or had the potential to engage, with the three strands on an independent basis with separate aims, strategies, and target deviance. It became clear however that intersections of disciplinary, organisational, and narrative control could work to disrupt or support one another. This is most clearly shown by narrative control wherein the diffusion of agency leads to unexpected consequences. In the Tokyo Trial, the typology illuminated how disciplinary control was interrupted to a significant extent by the judges and the perceived legitimacy of the process. Counter-narratives also challenge its effectiveness, with actors such as the Yasukuni Shrine working to undermine the work of the tribunal. Thus, ineffective elements of both disciplinary and narrative control through the Tokyo Trial negatively impacted on one another and reduced its ability to perform overall control. For example, the trial did not exert disciplinary control of perpetrators of the "Comfort Women" system, and this has directly led to sites such as WAM opposing its authority to narrate history of the war.

On the other hand, Article 9 has shown how organisational control and narrative control have worked together, adapting to each other, and strengthening the whole. Regulation of Japan's military potential has been buttressed by the understanding of the war as the fault of militarism, and in turn this reform has supported decades of anti-

war discourse. This mutual reinforcement of control strands is arguably critical to its long-term success.

#### 8.4 Broader Reflections and Avenues for Further Research

To the best of my knowledge, this thesis represents the first in-depth application of social control and transitional justice theories to post-war Japan. Chapter 1 discussed the limitations inherent in the research methodology, impacted by the Covid-19 pandemic, vicarious trauma, and indeed language ability. Such a research project cannot claim to provide a generalisable theoretical framework that can be applied to all post-conflict contexts. However, it has constructed a typology informed by actual phenomena that can be further tested through alternative case studies. Although this is a limitation of the work, it contributes to multiple fields of literature and provides avenues for future research.

The thesis contributes to the literature on transitional justice and social control, demonstrating that an integrative framework can be applied and yield new insights. Although the two fields are rarely examined together, it is clear from the typology that a variety of post-conflict mechanisms not only enact social control but intend to do so. Transitional justice can therefore be analysed as a way in which actors engage in behavioural control, aiming to replace deviance (as defined by the actor and/or transitional justice principles) with approved alternatives. The broad range of actors that can engage in transitional control shows that the roles played by state and non-state actors, legal and non-legal mechanisms and similar distinctions do not necessitate separation but can be analysed under the same theory. This finding is also relevant to social control scholarship, contributing to a more nuanced understanding that does not automatically distinguish between formal/informal, upward/downward, and other such dichotomies. The study was limited by resources and indeed its core aim which was to show that such a typology was possible and useful. The analysis highlighted that different types of actors in transitional justice can engage with all three strands, but further research is needed to thoroughly investigate how this impacts the use of transitional control. A future study could, for example, focus on non-state actors

beyond those examined here such as international non-governmental organisations, armed groups, and religious institutions. This could greatly improve the application of the typology and strengthen its relevance to global efforts to transition from violence. Finally, as noted in the introductory chapter, the thesis aimed to address the gap in literature on post-war Japan which has thus far not studied the period in a holistic fashion. By analysing the Tokyo Trial, Article 9, and WAM, I have shown that a deliberate and sustained programme of transitional control has been ongoing in Japan since the US occupation.

The multiple case study analysis has resulted in three broader observations with potential applicability in other post-conflict and post-authoritarian contexts. Firstly, by applying the transitional control typology we can understand that *various* transitional justice mechanisms can pursue *various* aims, beyond those traditionally assigned to them. For instance, classifying Article 9 as a guarantee of non-recurrence (a legitimate step, since it ensued from constitutional reform), we are likely to overlook or obscure the provision's punitive function. Instead, by examining Article 9 through the lens of transitional control we reveal its disciplinary aim, alongside its organisational and discursive goals. These objectives employed different strategies directed at different subjects, yet they reinforced each other and adapted over time. The broader point is that analysing the intended control aims of a transitional justice measure provides a deeper understanding of its constituent elements, which is essential to assessing its success.

Secondly, in respect to each of the three cases studies (Tokyo Trial, Article 9, and WAM), the analysis noted how strands of the transitional control typology can intersect. If strands are in tension with each other for socio-political reasons, for example, pursuing one strand of control can disrupt the success of another. When they are weaved harmoniously, they can potentiate each other's success. The previous section demonstrated how this was critical at the Tokyo Trial, wherein the omission of key deviants from disciplinary control has negated its narrative legitimacy. This observation reveals the importance of examining social, political, and economic contextual factors that shape the interest of agents of control in pursuing different strands. The narrative

control strand was the most significant example of this and was a key factor in all the case studies. Even when the primary objective was to enact disciplinary or organisational control, it was clear that these transitional justice mechanisms had an overarching aim to fundamentally alter social discourse. The extent to which these strands were successfully weaved together impacted how transitional control was ultimately received. In the case of the Tokyo Trial, failing to maintain narrative control after the end of the legal proceedings has negatively impacted its discursive legacy in the long run. In contrast, Article 9 has retained influence in Japanese society – albeit in a different form to that intended by the initial agents of control. At WAM, the strands are used together to inform their activities and invite participation, thereby strengthening the potential of transitional control.

Thirdly, applying the transitional control typology to post-war Japan – an established democracy – illuminated how time is an important factor. The reception to and impact of control strands invariably changes with society and therefore defining its “success” is context specific. This temporal adaptation, or evolution, is present in all three strands of the typology. For disciplinary control, Chapter 5 showed that the Tokyo Trial exercised strong and direct punishment through the public condemnation, criminalisation, and prosecution of key wartime figures. By the end of the 1950s, however, the remaining defendants were released from prison, and several continued their work in politics – some even becoming government ministers. It is around this period that narrative control also sharply deteriorates, as more people question the legitimacy of the tribunal and thus weaken the potential for disciplinary control. The print publication of Pal’s dissenting opinion in the 1970s and the enshrinement of war criminals at Yasukuni Shrine in the following decades for example strengthened right-wing rhetoric about “victor’s justice”. On the other front, greater public awareness about the selective prosecutions (such as excluding Unit 731) and the swell in victims of forced labour and former “Comfort Women” who came forward in the 1990s, examined in Chapter 7, has problematised the Tokyo Trial’s intention to punish.

Similarly, such change in effectiveness over time was seen in Article 9’s use of organisational control. Its provisions did not develop in the manner originally intended

and Japan now has one of the world's most well-financed military systems. Yet, the adaptability of transitional control has allowed for different strands to take precedence across the decades. Article 9 was initially a relatively extreme form of top-down punitive control allowing for little interpretation, stripping Japan of its military and weapons. Within a decade, the state had developed a small armed contingent and large-scale production industry supplying and supporting the US effort in Korea. Section 6.3 details how, since the 1950s, Article 9 has been interpreted and reinterpreted according to the security landscape and public opinion. Japanese society has taken ownership of its stipulations and adapted them to meet the demands of each generation. In this way, the “no-war clause” provides an anti-militarist framework with space enough to redefine how this can best work for the country. It may be that Japan scraps Article 9 altogether in the not-so-distant future, but it has informed 75-years of national policy. This temporal variable in the transitional control typology warrants further research to thoroughly map changes in method, impact, and actors.

The transitional control typology opens the analysis of post-conflict mechanisms and challenges the traditional conceptualisation of transitional justice pillars. Further research could explore to what extent the typology strands can be designed to strengthen transitional justice aims and promote social internalisation. This could be achieved by adjusting or adding different parameters to test the typology in different contexts. For example, the conflict between the Colombian government and guerrilla forces has several significant differences with the Japan case: it has only recently reached an uneasy and contested “peace”, the victims and perpetrators were generally within the country, and non-state armed groups have been involved in the violence.<sup>9</sup> This would raise questions about how the typology plays out with different types of actors, temporal distance/closeness to the violence, and in a national rather than international arena. Researching these elements, of a greater variety than what was possible in this thesis, could provide insight into how the strands change or are reinforced.

---

<sup>9</sup> James Meernik, Jacqueline HR DeMeritt and Mauricio Uribe-López, ‘Introduction’ in James Meernik, Jacqueline HR DeMeritt and Mauricio Uribe-López (eds), *As War Ends: What Colombia can tell us about the sustainability of peace and transitional justice* (Cambridge University Press 2019) 1.

In addition, the application of the transitional control typology to other post-conflict regions, or those undergoing conflict, could reveal what factors lead to “successful” or “unsuccessful” transitional control and how these change across time. The massacres in Indonesia in the mid-1960s is one possible case, a relatively lesser-known period of extreme violence which has never been the subject of concerted state-led transitional justice efforts.<sup>10</sup> In the absence of official measures, transnational civil society, survivors, and victim’s families have engaged in bottom-up approaches to accountability, reparations, and challenging denial.<sup>11</sup> Research in this area could delve deeper into transitional control exercised by non-state actors with little to no state or judicial input.

This thesis has highlighted how Japan, an established democracy, provides unexplored avenues for analysis that can greatly inform how generations of socio-political developments adapt, disrupt, and own post-conflict initiatives. The typology of transitional control is an innovative theory that should be investigated in other contexts to examine how transitional justice seeks to effect change.

---

<sup>10</sup> Vanessa Hearman, ‘Between Citizenship and Human Rights: The Struggle for Justice after Indonesia’s 1965 Mass Violence’ (2018) 22 *Citizenship Studies* 175.

<sup>11</sup> Saskia E Wieringa, ‘The International People’s Tribunal on 1965 Crimes against Humanity in Indonesia: An Anthropological Perspective’ in Andrew Byrnes and Gabrielle Simm (eds), *Peoples’ Tribunals and International Law* (Cambridge University Press 2018).

## Bibliography

### **Primary Sources**

#### **Archive Documents**

‘Constitution of Japan [MacArthur Draft], 12 February 1946’  
<[https://www.ndl.go.jp/constitution/e/shiryō/03/076a\\_e/076a\\_etx.html](https://www.ndl.go.jp/constitution/e/shiryō/03/076a_e/076a_etx.html)> accessed 12 February 2021

‘For a Christian Japan’ *New York Times*, 28 April 1949

General Headquarters Supreme Commander for the Allied Powers, ‘Douglas MacArthur’s Letter to the Prime Minister 8 July 1950 [Regarding the National Police Reserve]’ (National Diet Library, 1950)  
<[https://www.ndl.go.jp/modern/e/img\\_l/M010/M010-001l.html](https://www.ndl.go.jp/modern/e/img_l/M010/M010-001l.html)> accessed 15 May 2023

—, ‘Investigation, Screening, and Certification of Teachers and Educational Officials (30 Oct 1945)’ (National Diet Library) <<https://dl.ndl.go.jp/pid/9885276>> accessed 2 March 2023

—, ‘Removal and Exclusion of Undesirable Personnel from Public Office (4 Jan 1946)’ (National Diet Library) <[https://www.ndl.go.jp/modern/e/img\\_r/M006/M006-001r.html](https://www.ndl.go.jp/modern/e/img_r/M006/M006-001r.html)> accessed 15 May 2023

‘Incoming Message to CINCAFPAC [MacArthur] from Washington (War), Nr WCL 32355 [Communiqué of Moscow Conference, December 27, 1945]’  
<<https://www.ndl.go.jp/constitution/e/shiryō/03/053/053tx.html>> accessed 12 June 2022

IMTFE [The Tokyo Trial], *Indictment* [1946], digitised copy available from the University of Virginia IMTFE Digital Collection at  
<<http://imtfe.law.virginia.edu/collections/tavenner/1/2/full-indictment>> accessed 11 July 2020

League of Nations, *Appeal by the Chinese Government, Report of the Commission of Enquiry*, 1 October 1932, League of Nations Publications VII (12)

‘Reform of the Japanese Governmental System (SWNCC 228) 7 January 1946’  
<<https://www.ndl.go.jp/constitution/e/shiryō/03/059/059tx.html>> accessed 15 March 2023

‘Shiryō Ni Miru Nippon No Kindai’ (National Diet Library)  
<<https://www.ndl.go.jp/modern/utility/index.html>> accessed 14 July 2023

‘Shūsen No Gyokuon Hōsō (Broadcast 15 Aug 1945)’  
<<https://www.kunaicho.go.jp/kunaicho/koho/taisenkankei/syusen/syusen.html>> accessed 10 February 2023

State War Navy Coordinating Committee, 'Basic Initial Post Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan (JCS1380/15), 3 November 1945'  
<<https://www.ndl.go.jp/constitution/e/shiryo/01/036/036tx.html>> accessed 10 October 2022

SWNCC Subcommittee for the Far East, 'Politico-Military Problems in the Far East: Reform of the Japanese Governmental System (PR-32), October 8, 1945'  
<<https://www.ndl.go.jp/constitution/e/shiryo/01/028shoshi.html>> accessed 22 March 2023

'Text of Hirohito's Radio Rescript' *New York Times* (New York, 15 August 1945)

'The Far Eastern Advisory Commission Terms of Reference (SWNCC65/7), 22 August 1945' <<https://www.ndl.go.jp/constitution/e/shiryo/01/019shoshi.html>> accessed 23 March 2023

US Department of State, 'No. 3492 Analysis of the 1946 Japanese General Election (May 15, 1946)

U.S. Department of State, 'The Cairo Conference, 1943' <<https://2001-2009.state.gov/r/pa/ho/time/wwii/107184.htm>> accessed 14 May 2021

### **Documents issued by United Nations General Assembly, Special Procedures, and other UN bodies**

'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (21 March 2006) UN Docs A/RES/60/147

Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) *Report of the International Law Commission on the work of its Fifty-Third Session*, available at  
<[http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)> accessed 10 August 2019

Office of the United Nations Higher Commissioner for Human Rights, 'Rule-of-law Tools for Post-Conflict States: Reparations programmes' (United Nations 2008) available at  
<[https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ\\_EN.pdf](https://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf)> accessed 11 August 2019

Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, '2018-2020: Contemporary Perspectives on Transitional Justice Issues' (2021) available at  
<<https://www.ohchr.org/Documents/Issues/Truth/contemporary-perspectives-transitional-justice-user-friendly.pdf>> accessed 03 February 2022

UN Economic and Social Council, 'Promotion and Protection of Human Rights: Impunity, Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher' (8 February 2005) UN Docs E/CN.4/2005/102/Add.1

UN General Assembly, 'Human rights and transitional justice' (11 October 2012) UN Docs A/HRC/RES/21/15

—, 'Second Report on State Responsibility by Mr. Gaetano Arangio-Ruiz, Special Rapporteur' (9 June 1989) UN Docs A/CN.4/425

—, 'Resolution adopted by the General Assembly on 15 March 2006, 60/251. Human Rights Council' (3 April 2006) UN Docs A/RES/60/251

UN '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](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)> accessed 11 August 2019

UN Human Rights Committee, 'General comment No. 31 [80] The Nature of General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13

—, 'Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.' (9 July 2020) UN Docs A/HRC/45/45

—, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo' (23 April 2010) UN Docs A/HRC/14/22

UN Human Rights Council, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 March 2011) UN Docs A/HRC/17/31

—, 'Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(C) of the Annex to Human Rights Council Resolution 5/1: Japan' (3 April 2008) UN Docs A/HRC/WG.6/2/JPN/3

—'Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Japan' (20 July 2012) UN Docs A/HRC/WG.6/14/JPN/3

—, 'Summary of Stakeholders' submissions on Japan' (23 August 2017) UN Docs A/HRC/WG.6/28/JPN/3

—, 'Summary of Stakeholders' submissions on Japan' (31 October 2022) UN Docs A/HRC/WG.6/42/JPN/3

UN Security Council, 'No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations. Report of the Secretary-General' (20 April 2001) UN Docs S/2001/394

—, 'The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General' (23 August 2004) UN Docs S/2004/616

### **Japanese Government Reports and Statements**

'Anzen Hoshō No Hōteki Kiban No Sai Kōchiku Nikansuru Kondankai No Kaisai Nitsuite' (Cabinet Secretariat of Japan, 2007)  
<<https://www.cas.go.jp/jp/seisaku/kondankai/konkyo.html>> accessed 24 April 2023

Cabinet Decision on the Development of Seamless Security Legislation to Ensure Japan's Survival and Protect its People, 1 July 2014, available at  
<[https://www.mofa.go.jp/fp/nsp/page1we\\_000084.html](https://www.mofa.go.jp/fp/nsp/page1we_000084.html)> accessed 27 April 2023

Japan Ministry of Defense, 'Defense of Japan (Annual White Paper)' (2022)  
<[https://www.mod.go.jp/en/publ/w\\_paper/index.html](https://www.mod.go.jp/en/publ/w_paper/index.html)>

—, 'Dandō Misairutō Nitaisuru Hakai Sochi No Junbi Nikansuru Tai Ippan Meirei Nitsuite' (2023) <<https://www.mod.go.jp/j/press/news/2023/04/22a.html>> accessed 24 April 2023

—, 'Wagakuni no bouei to yosan (an): Defense Programs and Budget of Japan' (2023)  
<[https://www.mof.go.jp/policy/budget/budger\\_workflow/budget/fy2023/seifuan2023/20.pdf](https://www.mof.go.jp/policy/budget/budger_workflow/budget/fy2023/seifuan2023/20.pdf)> accessed 19 July 2023

'Joint Statement of the 2023 U.S.– Japan Security Consultative Committee ("2+2")' *U.S. Department of Defense* (2023)  
<<https://www.defense.gov/News/Releases/Release/Article/3265559/joint-statement-of-the-2023-usjapan-security-consultative-committee-22/>>

'Kishida Naikaku Sōri Daijin Kisha Kaiken' *Prime Minister's Office of Japan* (2022)  
<[https://www.kantei.go.jp/jp/101\\_kishida/statement/2022/1216kaiken.html](https://www.kantei.go.jp/jp/101_kishida/statement/2022/1216kaiken.html)> accessed 29 March 2023

Ministry of Foreign Affairs of Japan, 'Rekishi Mondai Q&A' (6 April 2018)  
<<https://www.mofa.go.jp/mofaj/area/taisen/qa/index.html>> accessed 27 September 2022

—, 'Ajia: Rekishi Mondai Q&A' (1 February 2021)  
<<https://www.mofa.go.jp/mofaj/area/taisen/qa/index.html>> accessed 27 September 2022

'Prime Minister Junichiro Koizumi's Interview on the Issue of Iraq' (Ministry of Foreign Affairs of Japan, 2003)  
<[https://www.mofa.go.jp/region/middle\\_e/iraq/pm\\_int0303.html](https://www.mofa.go.jp/region/middle_e/iraq/pm_int0303.html)> accessed 27 May 2023

'U.S. Military Base Issues in Okinawa' (Okinawa Prefectural Government)  
<<https://dc-office.org/basedata>> accessed 20 May 2023

## **Secondary Sources**

### **Articles and Chapters in Edited Volumes**

Acquaviva G and Pocar F, 'Stare decisis' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (2011)

Almog G, 'The Myth of the "Pacifist" Japanese Constitution' (2015) 12 *The Asia Pacific Journal: Japan Focus* 15

Alston P and Knuckey S, 'The Transformation of Human Rights Fact-Finding: Challenges and Opportunities' in Philip Alston and Sarah Knuckey (eds), *The Transformation of Human Rights Fact-Finding* (Oxford University Press 2016)

Amoroso AM, 'Should the ICC Assess Complementarity with Respect to Non-State Armed Groups?' (2018) 16 *Journal of International Criminal Justice* 1063

Aparac J, 'Business and Armed Non-State Groups: Challenging the Landscape of Corporate (Un)Accountability in Armed Conflicts' (2020) 5 *Business and Human Rights Journal* 270

Aptel C, 'Prosecutorial Discretion at the ICC and Victims' Right to Remedy: Narrowing the Impunity Gap' (2012) 10 *Journal of International Criminal Justice* 1357

Arthur P, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 *Human Rights Quarterly* 321

Ashe F, 'Gendering War and Peace: Militarized Masculinities in Northern Ireland' (2012) 15 *Men and Masculinities* 230

Auer JE, 'Article Nine of Japan's Constitution: From Renunciation of Armed Force "Forever" to the Third Largest Defense Budget in the World' (1990) 53 *Law and Contemporary Problems* 171

Averill ST, 'Demilitarization and Democratization in the Post-World War II World' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013)

Avi-Guy O, 'Transformation – Overcoming the Limits of Liberal Peace and Transitional Justice in Deeply Divided Societies: Reconciliation in Liberal Peace Theory' (2021) 54 *Israel Law Review* 289

Bachmann S-D and Kemp G, 'Aggression as Organized Hypocrisy - How the War on Terrorism and Hybrid Threats Challenge the Nuremberg Legacy' (2012) 30 *Windsor Yearbook of Access to Justice* 233

- Bacon P and Nakamura H, 'Diffusing the Abolitionist Norm in Japan: EU "Death Penalty Diplomacy" and the Gap between Rhetoric and Reality in EU–Japan Relations' (2021) 59 *Journal of Common Market Studies* 1230
- Baker C and Obradovic-Wochnik J, 'Mapping the Nexus of Transitional Justice and Peacebuilding' (2016) 10 *Journal of Intervention and Statebuilding* 281
- Baker E and others, 'Safer Viewing: A Study of Secondary Trauma Mitigation Techniques in Open Source Investigations' (2020) 22 *Health and Human Rights*
- Basosi D and Caroli R, 'Introduction' in Rosa Caroli and Duccio Basosi (eds), *Legacies of the U.S. Occupation of Japan: Appraisals after Sixty Years* (Cambridge Scholars Publisher 2015)
- Bassiouni CM, 'From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court' (1997) 10 *Harvard Human Rights Journal* 11
- Basu T, 'Decoding Japan's Security Discourse: Diverse Perspectives' (2016) 72 *India Quarterly*
- Baumgartner MP, 'Social Control from Below' in Donald Black (ed), *Toward a General Theory of Social Control: Volume 1 Fundamentals* (Academic Press 1984)
- Becker HS, 'Whose Side Are We On?' (1967) 14 *Problems* 239
- Bell C, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"' (2009) 3 *International Journal of Transitional Justice* 5
- Bickford A, 'Demilitarization: Unraveling the Structures of Violence' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013)
- Black D, 'Social Control as a Dependent Variable' in Donald Black (ed), *Toward a General Theory of Social Control*, vol 1 (Academic Press 1984)
- Blomberg TG and Hay C, 'Visions of Social Control Revisited' in David Downes and others (eds), *Crime, Social Control and Human Rights: From moral panics to states of denial* (Willan Publishing 2007)
- Blower E, Donald K and Upadhyay S, 'The Human Rights Implications of Contemporary Patterns of Social Control' (2012) 4 *Journal of Human Rights Practice* 187
- Bocchese M, 'Coercing Compliance with the ICC: Empirical Assessment and Theoretical Implications' (2015) 24 *Michigan State International Law Review*
- Boggs C, 'Pearl Harbor: How Film Conquers History' (2006) 28 *New Political Science* 451
- Bohlander M, 'Last Exit Bosnia - Transferring War Crimes Prosecution from the International Tribunal to Domestic Courts' (2003) 14 *Criminal Law Forum* 59

Bonnitcha J and McCorquodale R, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights' (2017) 28 *European Journal of International Law* 899

Braithwaite J, 'Criminological Theory and Organizational Crime' (1989) 6 *Justice Quarterly* 333

Braithwaite J, Walker J and Grabosky P, 'An Enforcement Taxonomy of Regulatory Agencies' (1987) 9 *Law and Policy* 323

Brandon JR, "'Democratic Kabuki" for a "Democratic Japan": 1945–1946' (2014) 31 *Asian Theatre Journal* 103

Brinkmann S, 'Unstructured and Semistructured Interviewing', *The Oxford Handbook of Qualitative Research* (2nd edn, Oxford University Press 2020)

Brodie JF, 'Radiation Secrecy and Censorship after Hiroshima and Nagasaki' (2015) 48 *Journal of Social History* 842

Browne BC, 'Writing the Wrongs: Keeping Diaries and Reflective Practice' in Althea-Maria Rivas and Brendan Ciarán Browne (eds), *Experiences in Researching Conflict and Violence: Fieldwork Interrupted* (2018)

Buhmann K, 'Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU's Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action' (2018) 3 *Business and Human Rights Journal* 23

Bullock K and Johnson P, 'The Impact of the Human Rights Act 1998 on Policing in England and Wales' (2012) 52 *The British Journal of Criminology* 630

Carraro V, 'The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?' (2017) 39 *Human Rights Quarterly* 943

Ceva E and Murphy C, 'Interactive Justice in Transitional Justice: A Dynamic Framework' (2022) 66 *American Journal of Political Science* 762

Chan J, 'Gendered Dimensions of Anti-War Protest in Japan' [2016] *Handbook on Gender and War* 438

Cheah WL and Vormbaum M, 'British War Crimes Trials in Europe and Asia, 1945-1949: A Comparative Study' (2018) 31 *Leiden Journal of International Law* 669

Chinkin C, 'Women's International Tribunal of Japanese Military Sexual Slavery' (2001) 95 *The American Journal of International Law* 335

Christie N, 'Conflicts as Property' (1977) 17 *The British Journal of Criminology*

Cismas I, 'Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability' in Roger Duthie and Paul Seils (eds) *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (International Centre for Transitional Justice, New York)

Clearwater D, 'When (and How) Will the Crime of Aggression Amendments Enter into Force?: Interpreting the Rome Statute by Recognizing Participation in The adoption of the Crime of Aggression Resolutions as "subsequent Practice" under the VCLT' (2018) 16 *Journal of International Criminal Justice* 31

Cole EA and Firchow P, 'Reconciliation Barometers: Tools for Postconflict Policy Design' (2019) 13 *International Journal of Transitional Justice* 546

Combs NA, 'Dissent and Legitimacy in International Criminal Law' (2022) 57 *Wake Forest Law Review* 1061

Connors J and Schmidt M, 'United Nations' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press 2014)

Creighton M, 'Civil Society Volunteers Supporting Japan's Constitution, Article 9 and Associated Peace, Diversity, and Post-3.11 Environmental Issues' (2014) 26 *Voluntas* 121

Cronin-Furman K, 'Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity' (2013) 7 *International Journal of Transitional Justice* 434

Cuadrado-Quesdada G and Simm G, 'Peoples' Tribunals: A Progressive Mechanism to Achieve Justice' (2014) 23 *Human Rights Defender* 21

Cunningham M, 'Prisoners of the Japanese and the Politics of Apology: A Battle over History and Memory' (2004) 39 *Journal of Contemporary History* 561

Dancy G, 'Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace' (2018) 72 *International Organization* 387

David L, 'Against Standardization of Memory' (2017) 39 *Human Rights Quarterly* 296

David R, 'What We Know About Transitional Justice: Survey and Experimental Evidence' (2017) 38 *Political Psychology* 151

Delury J, 'The Kishi Effect: A Political Genealogy of Japan-ROK Relations' (2015) 39 *Asian Perspective* 441

Dennehy K, 'Overcoming Colonialism at Bandung, 1955' in Sven Saaler and J Victor Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, regionalism and borders* (Routledge 2007)

Destrooper T, 'Belgium's "Truth Commission" on Its Overseas Colonial Legacy: An Expressivist Analysis of Transitional Justice in Consolidated Democracies' (2023) 22 *Journal of Human Rights* 158

Dierkes J, 'Japanese Bureaucrats and Empiricist Textbook Historiography' [2020] *Postwar History Education in Japan and the Germanys* 118

Dixon R and Baldwin G, 'Globalizing Constitutional Moments? A Reflection on the Japanese Article 9 Debate' (2019) 67 *American Journal of Comparative Law*

- Dobinson I and Johns F, 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007)
- Dolgopol U, 'The Judgment of the Tokyo Women's Tribunal' (2003) 28 *Alternative Law Journal*
- , 'Knowledge and Responsibility: The Ongoing Consequences of Failing to Give Sufficient Attention to the Crimes against the Comfort Women in the Tokyo Trial' in Yuki Tanaka, Timothy LH McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011)
- , 'The Tokyo Women's Tribunal: Transboundary Activists and the Use of Law's Power' in Andrew Byrnes and Gabrielle Simm (eds), *Peoples' Tribunals and International Law* (Cambridge University Press 2018)
- Dudai R, 'Transitional Justice as Social Control: Political Transitions, Human Rights Norms and the Reclassification of the Past' [2017] *British Journal of Sociology* 1
- Dunbar L, 'Music for Music's Sake and Tech for Tech's Sake' (2016) 30 *General Music Today* 38
- Easterday JS, 'Peace Agreements as a Framework for Jus Post Bellum' in Carsten Stahn, Jennifer S Easterday and Jens Iverson (eds), *Jus Post Bellum: Mapping the Normative Foundations* (Oxford University Press 2014)
- Erbe C, 'What Is the Role of Professionals in Restorative Justice?' in Howard Zehr and Barb Toews (eds), *Critical Issues in Restorative Justice* (Willan Publishing 2004)
- Feinberg J, 'The Expressive Function of Punishment' (1965) 49 *The Monist* 397
- Finlay L, 'Negotiating the Swamp: The Opportunity and Challenge of Reflexivity in Research Practice' (2002) 2 *Qualitative Research* 209
- Flores E, 'The Japanese Constitutional Amendment: National Defense or a Return to Japanese Militarism?' (2017) 38 *Harvard International Review* 10
- Franks L, 'The Politics of Stalemate: Local Power, U.S. Military Bases, and the Japanese Courts' (2017) 24 *ASIANetwork Exchange: A Journal for Asian Studies in the Liberal Arts* 56
- Fridman O, "'Too Young to Remember Determined Not to Forget": Memory Activists Engaging With Returning ICTY Convicts' (2018) 28 *International Criminal Justice Review* 423
- Frühstück S, 'After Heroism: Must Real Soldiers Die?' in Sabine Frühstück and Anne Walthall (eds), *Recreating Japanese Men* (University of California Press 2011)
- Fuchs J and Lattanzi F, 'International Military Tribunals' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (2011)
- Fuess H, 'The Global Weapons Trade and the Meiji Restoration: Dispersion of Means of Violence in a World of Emerging Nation-States' in Robert Hellyer and

- Harald Fuess (eds), *The Meiji Restoration: Japan as Global Nation* (Cambridge University Press 2020)
- Futamura M, 'Japanese Societal Attitudes Towards the Tokyo Trial: A Contemporary Perspective' (2011) 9 *The Asia Pacific Journal: Japan Focus*
- Gao X, 'The Tokyo Trial and Its Influence on Contemporary International Criminal Justice' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016)
- Garfinkel H, 'Conditions of Successful Degradation Ceremonies' (1956) 61 *American Journal of Sociology* 420
- Ghadimi A, 'Shot through with Democracy: Japan's Postwar Myths and the 1948 Hanshin Education Incident' (2018) 21 *Social Science Japan Journal* 193
- Giamo B, 'The Myth of the Vanquished: The Hiroshima Peace Memorial Museum' (2003) 55 *American Quarterly* 703
- Giorgetti C, 'Between Legitimacy and Control: Challenges and Recusals of Judges and Arbitrators in International Courts and Tribunals' (2016) 49 *The George Washington International Law Review* 205
- González-Betancor SM and Dorta-González P, 'Risk of Interruption of Doctoral Studies and Mental Health in PhD Students' (2020) 8 *Mathematics* 1
- Gray C, 'The Charter Limitations on the Use of Force: Theory and Practice' in Vaughan Lowe and others (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (Oxford University Press 2010)
- Gready P and Robins S, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 *International Journal of Transitional Justice* 339
- , 'Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and "New" Civil Society' (2017) 21 *International Journal of Human Rights* 956
- Guenther KM, 'The Politics of Names: Rethinking the Methodological and Ethical Significance of Naming People, Organizations, and Places' (2009) 9 *Qualitative Research* 411
- Guillemin M and Gillam L, 'Ethics, Reflexivity, and "Ethically Important Moments" in Research' (2004) 10 *Qualitative Inquiry* 261
- Guite J, 'Representing Local Participation in INA–Japanese Imphal Campaign' (2010) 37 *Indian Historical Review* 291
- Gül Kaya D, 'Memory and Citizenship in Diaspora: Remembering the Armenian Genocide in Canada' (2018) 22 *Citizenship Studies* 401
- Hachirou A, 'The Greater East Asian Sphere of Common Prosperity', Excerpt from *Contemporary Japan*, Vol. X, No. 1, January 1941' in Joyce Lebra (ed), *Japan's*

*Greater East Asia Co-prosperity Sphere in World War II: selected readings and documents* (Oxford University Press 1975)

Hafetz J, 'Resisting Accountability: Transitional Justice in the Post-9/11 United States' (2015) 19 *The International Journal of Human Rights* 429

Hajdin N, 'The Nature of Leadership in the Crime of Aggression: The ICC's New Concern?' (2017) 17 *International Criminal Law Review* 543

Hajimu M, 'Fear of World War III: Social Politics of Japan's Rearmament and Peace Movements, 1950-3' (2012) 47 *Journal of Contemporary History* 551

Hammond KA, 'Managing Muslims: Imperial Japan, Islamic Policy, and Axis Connections during the Second World War' (2017) 12 *Journal of Global History* 251

Hearman V, 'Between Citizenship and Human Rights: The Struggle for Justice after Indonesia's 1965 Mass Violence' (2018) 22 *Citizenship Studies* 175

Heder S, 'Politics, Diplomacy, and Accountability in Cambodia: Severely Limiting Personal Jurisdiction in Prosecution of Perpetrators of Crimes Against Humanity' in Manfred Berg and Bernd Schaefer (eds), *Historical Justice in International Perspective: How Societies Are Trying to Right the Wrongs of the Past* (German Historical Institute 2012)

Hellman M, 'Challenges and Limitations of Outreach: From the ICTY to the ICC' in Christian De Vos, Sara Kendall and Carsten Stahn (eds), *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (Cambridge University Press 2015)

Henham R, 'International Sentencing as a Force for Achieving Peace through Justice' in Nicola Palmer, Phil Clark and Danielle Granville (eds), *Critical Perspectives in Transitional Justice* (Intersentia 2012)

Henry N, 'Memory of an Injustice: The "Comfort Women" and the Legacy of the Tokyo Trial' (2013) 37 *Asian Studies Review* 362

——, 'From Reconciliation to Transitional Justice: The Contours of Redress Politics in Established Democracies' (2015) 9 *International Journal of Transitional Justice* 199

Hetherington K, 'Rhythm and Noise: The City, Memory and the Archive' (2013) 61 *The Sociological Review* 17

Hikotani T, Horiuchi Y and Tago A, 'Revisiting Negative Externalities of US Military Bases: The Case of Okinawa' (2023) 23 *International Relations of the Asia-Pacific* 325

Hook GD, 'Intersecting Risks and Governing Okinawa: American Bases and the Unfinished War' (2010) 22 *Japan Forum* 195

——, 'From Demilitarization to Remilitarization: External and Internal Pressures on Japanese Security Policy' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013)

- Horne CM, 'Transitional Justice: Vetting and Lustration' in Cheryl Lawther, Luke Moffett and Dov Jacobs (eds), *Research Handbook on Transitional Justice* (Edward Elgar 2019)
- Horner E, "'Kamishibai'" as Propaganda in Wartime Japan' (2005) 2 *Storytelling, Self, Society* 21
- Horwitz S, 'The Tokyo Trial' (1950) 28 *International Conciliation* 475
- Hoshiro H, 'Deconstructing the "Yoshida Doctrine"' (2022) 23 *Japanese Journal of Political Science* 105
- Hyun J, 'Racializing Chōsenjin: Science and Biological Speculations in Colonial Korea' (2019) 13 *East Asian Science, Technology and Society: An International Journal*
- Idler A and Forest JJF, 'Behavioral Patterns among (Violent) Non-State Actors: A Study of Complementary Governance' (2015) 4 *Stability: International Journal of Security & Development* 1
- Innes M and Clarke A, 'Policing the Past: Cold Case Studies, Forensic Evidence and Retroactive Social Control' (2009) 60 *British Journal of Sociology* 543
- Irani E, 'The Use of Videoconferencing for Qualitative Interviewing: Opportunities, Challenges, and Considerations' (2019) 28 *Clinical Nursing Research* 3
- Izumi M, 'Asian-Japanese: State Apology, National Ethos, and the "Comfort Women" Reparations Debate in Japan' (2011) 62 *Communication Studies* 473
- Jackson S, Backett-Milburn K and Newall E, 'Researching Distressing Topics: Emotional Reflexivity and Emotional Labor in the Secondary Analysis of Children and Young People's Narratives of Abuse' [2013] *SAGE Open* 1
- Jain N, 'Radical Dissents in International Criminal Trials' (2018) 28 *European Journal of International Law* 1163
- Janowitz M, 'Sociological Theory and Social Control' (1975) 81 *American Journal of Sociology* 82
- Jeffery R and Kim HJ, 'Introduction: New Horizons: Transitional Justice in the Asia-Pacific' in Renee Jeffery and Hun Joon Kim (eds), *Transitional Justice in the Asia-Pacific* (Cambridge University Press 2015)
- Johnson P and Falcetta S, 'Human Rights as Social Control' [2017] *Normative Systems in Legal and Moral Theory* 1
- , 'Human Rights Law as Social Control' (2021) 18 *European Journal of Criminology* 603
- Johnstone G, 'Restorative Justice and the Culture of Control' (2022) 61 *The Howard Journal of Crime and Justice* 23
- Jones B and Lühe U, 'Knowledge for Peace: Transitional Justice and the Politics of Knowledge in Theory and Practice' in Briony Jones and Ulrike Lühe (eds),

*Knowledge for Peace: Transitional Justice and the Politics of Knowledge in Theory and Practice* (Edward Elgar Publishing 2021)

Jonsson G, 'Can Memories of the Japan-Korea Dispute on "Comfort Women" Resolve the Issue?' (2019) Fall/Winter International Journal of Korean Studies 64

Joo HJS, 'Comfort Women in Human Rights Discourse: Fetishized Testimonies, Small Museums, and the Politics of Thin Description' (2015) 37 *Review of Education, Pedagogy, and Cultural Studies* 166

Jortner D, "'Imposing the Standards of Boston on Japan": Kasutori Performance, Censorship, and the Occupation' (2014) 33 *Theatre History Studies* 130

Kang S-H, 'Toward a Humanistic Discourse: Approaches to Gaining Public Support for Taiwanese Comfort Women' (2021) 13 *Journal of Human Rights Practice* 703

Kapur N, 'Japan's Streets of Rage: The 1960 US-Japan Security Treaty Uprising and the Origins of Contemporary Japan' (2020) 18 *Asia-Pacific Journal: Japan Focus* 1

——, 'The Japanese Student Movement in the Cold War Crucible, 1945-1972' (2022) 20 *The Asia Pacific Journal: Japan Focus*

Kaufman ZD, 'The Nuremberg Tribunal v. the Tokyo Tribunal: Designs, Staffs, and Operations' (2010) 43 *The John Marshall Law Review* 753

——, 'Transitional Justice for Tojo's Japan: The United States Role in the Establishment of the International Military Tribunal for the Far East and Other Transitional Justice Mechanisms for Japan after World War II' (2013) 27 *Emory International Law Review*

Kawashima KC, 'The Voice of Interpellation and Capitalist Crisis: Notes toward an Investigation of Postwar Japanese Ideology Ken' (2015) 42 *Boundary 2*

Kelly L, Huxford G and Kelly C, "'In Our Daily Struggles": Diaries as a Tool for Teacher Well-Being' (2022) 19 *Life Writing* 261

Kim H-K, 'Nationalism, Feminism, and Beyond: A Note on the Comfort Women Movement' (2015) 17 *New Zealand Journal of Asian Studies* 1

Kim JY and Sohn J, 'Settlement Without Consensus: International Pressure, Domestic Backlash, and the Comfort Women Issue in Japan' (2017) 90 *Pacific Affairs* 77

Kitahara M, 'Douglas MacArthur as a Father Figure in Occupied Japan After World War II' (1989) 64 *International Social Science Review* 20

Kitaoka S, 'Kishi Nobusuke: Frustrated Ambition' in Akio Watanabe (ed), Robert D Eldridge (tr), *The Prime Ministers of Postwar Japan, 1945-1995: Their Lives and Times Their Lives and Times* (Lexington Books 2016)

Klarin M, 'The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia' (2009) 7 *Journal of International Criminal Justice* 89

Klein A, 'Japan' in Dieter Nohlen, Florian Grotz and Christof Hartmann (eds), *Elections in Asia and the Pacific: A Data Handbook: Volume II: South East Asia, East Asia, and the South Pacific*, vol II (Oxford University Press 2001)

Kobayashi N, 'The Japanese People and the Peace Article' (1966) 13 *Japan Quarterly*

Koska G, 'Corporate Accountability in Times of Transition: The Role of Restorative Justice in the South African Truth and Reconciliation Commission' (2016) 4 *Restorative Justice* 41

Kramer HM, 'Just Who Reversed the Course? The Red Purge in Higher Education during the Occupation of Japan' (2005) 8 *Social Science Japan Journal*

Kretzmer D, 'The Torture Debate: Israel and Beyond' in David Downes and others (eds), *Crime, social control and human rights: from moral panics to states of denial: essays in honour of Stanley Cohen* (Willan Publishing 2007)

Krzan B, 'International Criminal Court Facing the Peace vs. Justice Dilemma' (2016) 2 *International Comparative Jurisprudence*

Kumano R, 'The US Occupation and Japan's New Democracy' (2007) 40 *Educational Perspectives* 36

Kwon H, 'The Paintings of Korean Comfort Woman Duk-Kyung Kang: Postcolonial and Decolonial Aesthetics for Colonized Bodies' (2017) 43 *Feminist Studies* 571

Land MK, 'Democratizing Human Rights Fact-Finding' [2016] *The Transformation of Human Rights Fact-Finding* 399

Larsson E, 'Jinja Honchō and the Politics of Constitutional Reform in Japan' (2017) 30 *Japan Review* 227

Leader K, 'The Trial's the Thing: Performance and Legitimacy in International Criminal Trials' (2020) 24 *Theoretical Criminology* 241

Lee J, 'Collective Self-Defense or Collective Security? Japan's Reinterpretation of Article 9 of the Constitution' (2015) 8 *Journal of East Asia and International Law* 373

Lee Y and Chon M-G, "'Don't Go, Don't Buy': Understanding the Motivations of the Anti-Japan Boycott Movement in South Korea During an International Conflict' (2022) 15 *Negotiation and Conflict Management Research* 6

Lee YW, 'The Origin of One Party Domination: America's Reverse Course and the Emergence of the Liberal Democratic Party in Japan' (2004) 18 *The Journal of East Asian Affairs* 371

Lekha Sriram C, 'Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice' (2007) 21 *Global Society* 579

Levecque K and others, 'Work Organization and Mental Health Problems in PhD Students' (2017) 46 *Research Policy* 868

Liff AP, 'Kishida the Accelerator: Japan's Defense Evolution After Abe' (2023) 46 *The Washington Quartley*

Liu and Zhang B (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016)

Liu D, 'The Nanjing Trials – Victor's Justice? Revisiting the Case of Tani Hisao' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016)

Lockenour J, 'The Demilitarization of Germany, 1945-2010' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013)

Loo TM, "'Paradise in a War Zone": The U.S. Military and Tourism in Okinawa, 1945–1972' (2019) 2019 *Japan Review* 173

Lutz E, 'Transitional Justice: Lessons Learned and the Road Ahead' in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-first Century: Beyond Truth versus Justice* (Cambridge University Press 2006)

Lyon D, 'Everyday Surveillance: Personal Data and Social Classifications' (2002) 5 *Information, Communication & Society* 242

Macdonald A, "'Somehow This Whole Process Became so Artificial": Exploring the Transitional Justice Implementation Gap in Uganda' (2019) 0 *International Journal of Transitional Justice* 1

Mackie SA and Bates GW, 'Contribution of the Doctoral Education Environment to PhD Candidates' Mental Health Problems: A Scoping Review' (2019) 38 *Higher Education Research and Development* 565

Mackie V and Crozier-De Rosa S, 'Remembering the Grandmothers: The International Movement to Commemorate the Survivors of Militarized Sexual Abuse in the Asia-Pacific War' (2019) 17 *The Asia-Pacific Journal: Japan Focus: Japan Focus*

Maechling C, 'Pearl Harbor: The First Energy War' [2000] *History Today*

Maki JM, 'The Constitution of Japan: Pacifism, Popular Sovereignty, and Fundamental Human Rights' (1990) 53 *Law and Contemporary Problems* 73

Malacrida C, 'Reflexive Journaling on Emotional Research Topics: Ethical Issues for Team Researchers' (2007) 17 *Qualitative Health Research* 1329

Mallinder L, 'Metaconflict and International Human Rights Law in Dealing with Northern Ireland's Past' (2019) 8 *Cambridge International Law Journal* 5

Mao X, 'Substantive or Jurisdictional? The Tokyo Charter and the Legality Challenge at the International Military Tribunal for the Far East' (2018) 11 *Journal of East Asia and International Law* 435

- , “70 Years Later: The International Military Tribunal for the Far East” - an Overview of the International Conference Held by the International Nuremberg Principles Academy 17-19 May 2018’ (2019) 11 *Amsterdam Law Forum*
- Margulies P, ‘The NSA in Global Perspective: Surveillance, Human Rights, and International Counterterrorism’ (2014) 82 *Fordham Law Review* 2137
- Marran C, ‘Empire through the Eyes of a Yapoo: Male Abjection in the Cult Classic *Beast Yapoo*’ (2009) 4 *Mechademia* 259
- Matsui Y, ‘Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery: Memory, Identity, and Society’ (2001) 19 *East Asia: An International Quarterly* 119
- Matsusaka YT, ‘Managing Occupied Manchuria, 1931-1934’ in Peter Duus and others (eds), *The Japanese Wartime Empire, 1931-1945* (Princeton University Press 1996)
- Maučec G and Dothan S, ‘Judicial Dissent at the International Criminal Court: A Theoretical and Empirical Analysis’ (2022) 35 *Leiden Journal of International Law* 945
- Mauch P, ‘Hirohito and General Douglas MacArthur: The First Meeting as Documented by Shōwa Tennō Jitsuroku’ (2017) 28 *Diplomacy and Statecraft* 585
- Mayer-Rieckh A, ‘Guarantees of Non-Recurrence: An Approximation’ (2017) 39 *Human Rights Quarterly* 416
- Mbembe A, ‘The Power of the Archive and Its Limits’ in Carolyn Hamilton and others (eds), *Refiguring the Archive* (Springer Science and Business Media 2002)
- McAllister JR, ‘The Peace versus Justice Debate Revisited: The ICTY’s Impact on the Bosnian Peace Process’ in Carsten Stahn and others (eds), *Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Approach* (Oxford University Press 2020)
- McAuliffe P, ‘Reflections of the Nexus between Justice and Peacebuilding’ (2017) 11 *Journal of Intervention and Statebuilding* 245
- McConville M and Chui WH, ‘Introduction and Overview’ in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (2007)
- McElwain KM and Winkler CG, ‘What’s Unique about the Japanese Constitution? A Comparative and Historical Analysis’ (2015) 41 *The Journal of Japanese Studies* 249
- , ‘What’s Unique about the Japanese Constitution? A Comparative and Historical Analysis’ (2015) 41 *Journal of Japanese Studies* 249
- McEvoy K, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice’ (2007) 34 *Journal of Law and Society* 411

——, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice' in Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots activism and the struggle for change* (Hart Publishing 2008)

Mcgill D, 'Tackling Structural Violence through the Transformative Justice Framework' in Matthew Evans (ed), *Transitional and Transformative Justice: Critical and International Perspectives* (Routledge 2019)

McGoldrick D, 'Criminal Trials Before International Tribunals: Legality And Legitimacy' in Dominic McGoldrick, Peter Rowe and Eric Donnelly (eds), *The Permanent International Criminal Court: Legal And Policy Issues* (Hart Publishing 2004)

McGonigle Leyh B, 'Nuremberg's Legacy Within Transitional Justice: Prosecutions Are Here to Stay' (2016) 15 Washington University Global Studies Law Review 559

McCarthy C, 'Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights Violations' (2017) 33 Utrecht Journal of International and European Law 44

McMillan M and Rigney S, 'The Place of the First Peoples in the International Sphere: A Logical Starting Point for the Demand for Justice by Indigenous Peoples' (2016) 39 Melbourne University Law Review

McNeill D, 'Family Ties: The Tojo Legacy' (2005) 3 The Asia Pacific Journal: Japan Focus

McNelly T, 'The Renunciation of War in the Japanese Constitution' (1962) 77 Political Science Quarterly 350

Meernik J, DeMeritt JHR and Uribe-López M, 'Introduction' in James Meernik, Jacqueline HR DeMeritt and Mauricio Uribe-López (eds), *As War Ends: What Colombia can tell us about the sustainability of peace and transitional justice* (Cambridge University Press 2019)

Mégret F, 'Of Shrines, Memorials and Museums: Using the International Criminal Court's Victim Reparation and Assistance Regime to Promote Transitional Justice' (2010) 16 Buffalo Human Rights Law Review 8

Meier RF, 'Perspectives on the Concept of Social Control' (1982) 8 Annual Review of Sociology 35

Merkel K, 'Peace versus Justice: A False Dichotomy? Mapping Tensions and Complementarities between Conflict Resolution and Human Rights Advocacy in Afghanistan' (2014) 5 Journal of Conflictology

Mertz E, 'Conclusion: A New Social Constructionism for Sociolegal Studies' (1994) 28 Law & Society Review 1243

Milanovic M, 'The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Post-Mortem' (2016) 110 American Journal of International Law 233

Miller RA, 'Germany's Basic Law and the Use of Force' (2010) 17 *Indiana Journal of Global Legal Studies* 197

Mistry H, 'The Paradox of Dissent: Judicial Dissent and the Projects of International Criminal Justice' (2015) 13 *Journal of International Criminal Justice* 449

Moon C, 'Who'll Pay Reparations on My Soul: Compensation, Social Control and Social Suffering' (2012) 21 *Social and Legal Studies* 187

Morgan M and Paterson C, "'It's Mental Health, Not Mental Police": A Human Rights Approach to Mental Health Triage and Section 136 of the Mental Health Act 1983' (2019) 13 *Policing: A Journal of Policy and Practice* 123

Mukherjee M, 'The Right to Wage War against Empire: Anticolonialism and the Challenge to International Law in the Indian National Army Trial of 1945' (2019) 44 *Law and Social Inquiry* 420

Mulloy G, 'Ordered to Disarm, Encouraged to Rearm: Japan's Struggles with the Postwar' in Barak Kushner and Andrew Levidis (eds), *In the Ruins of the Japanese Empire: Imperial Violence, State Destruction, and the Reordering of Modern East Asia* (Hong Kong University Press 2020)

Naftali P, 'Crafting a "Right to Truth" in International Law: Converging Mobilizations, Diverging Agendas?' (2016) XIII *Champ pénal* 1

Nagai M, 'Westernization and Japanization: The Early Meiji Transformation of Education' in Donald H Shively (ed), *Tradition and Modernization in Japanese Culture* (Princeton University Press 2015)

Nakajima T, 'The Tokyo Tribunal, Justice Pal and the Revisionist Distortion of History' (2011) 9 *The Asia-Pacific Journal: Japan Focus*

Neumayer E, 'Death Penalty: The Political Foundations of the Global Trend toward Abolition' (2008) 9 *Human Rights Review* 241

Newell JM and MacNeil GA, 'Professional Burnout, Vicarious Trauma, Secondary Traumatic Stress, and Compassion Fatigue: A Review of Theoretical Terms, Risk Factors, and Preventive Methods for Clinicians and Researchers' (2010) 6 *Best Practices in Mental Health: An International Journal*

Ogoshi A, 'Against the Engendered Nation' (2002) 2002 *Housha kaigaku* 40

Okazaki M, 'Chrysanthemum and Christianity: Education and Religion in Occupied Japan, 1945-1952' (2010) 79 *Pacific Historical Review* 393

Olsen TD, Payne LA and Reiter AG, 'The Justice Balance: When Transitional Justice Improves Human Rights and Democracy' (2010) 32 *Human Rights Quarterly* 980

Ozasa K, Grant EJ and Kodama K, 'Japanese Legacy Cohorts: The Life Span Study Atomic Bomb Survivor Cohort and Survivors' Offspring' (2018) 28 *Journal of Epidemiology* 162

- Pan K, 'Networking for War Criminal Amnesty: The Establishment of Japan's War Convicted Benefit Society' (2020) 18 *The Asia-Pacific Journal: Japan Focus*
- Panton MA, 'Japan's Article 9: Rule of Law v. Flexible Interpretation' (2010) 24 *Temple International & Comparative Law Journal* 129
- Patel AC, 'Transitional Justice, DDR, and Security Sector Reform' in Ana Cutter Patel, Pablo De Greiff and Lars Waldorf (eds), *Disarming the Past: transitional justice and ex-combatants* (Social Science Research Council 2009)
- Paucsik M and others, 'Self-Compassion and Savouring Buffer the Impact of the First Year of the COVID-19 on PhD Students' Mental Health' (2022) 38 *Stress and Health* 891
- Peattie MR, 'Nanshin: The "Southward Advance," 1931-1941, as a Prelude to the Japanese Occupation of Southeast Asia' in Peter Duus, Ramon H Myers and Mark R Peattie (eds), *The Japanese Wartime Empire, 1931-1945* (Princeton University Press 1996)
- Pekkanen R, 'Japan: Social Capital Without Advocacy' in Muthiah Alagappa (ed), *Civil Society and Political Change in Asia: Expanding and Contracting Democratic Space* (Stanford University Press 2004)
- Peng Er L, 'Japan's Postwar Reconciliation with Southeast Asia' (2015) 3 *Asian Journal of Peacebuilding* 43
- Penney M and Wakefield B, 'Right Angles: Examining Accounts of Japanese Neo-Nationalism' (2008) 81 *Pacific Affairs* 537
- Polk K, 'When Less Means More: An Analysis of Deconstructing in Criminal Justice' (1987) 33 *Crime & Delinquency* 358
- Posner EA, 'Political Trials in Domestic and International Law' (2005) 55 *Duke Law Journal*
- Powell JW, 'Japan's Germ Warfare: The U.S. Cover-up of a War Crime' (1980) 12 *Bulletin of Concerned Asian Scholars*
- Prasenjit D, 'The Discourse of Civilization and Pan-Asianism' (2001) 12 *Journal of World History*
- Price J, 'Cold War Relic: The 1951 San Francisco Peace Treaty and the Politics of Memory' (2001) 25 *Asian Perspective* 31
- Puja K, 'Global Civil Society Remakes History: "The Women's International War Crimes Tribunal 2000"' (2001) 9 *Positions: East Asia Cultures Critique* 611
- Pyhältö K, Tikkanen L and Anttila H, 'The Influence of the COVID-19 Pandemic on PhD Candidates' Study Progress and Study Wellbeing' (2022) 42 *Higher Education Research and Development* 413
- Ralph WW, 'Improvised Destruction: Arnold, LeMay, and the Firebombing of Japan' (2006) 13 *War in History* 495

Ramseyer JM, 'The Fable of Land Reform: Leases and Credit Markets in Occupied Japan' (2015) 24 *Journal of Economics and Management Strategy* 934

Richter JP, 'Japan's "Reinterpretation" of Article 9: A Pyrrhic Victory for American Foreign Policy?' (2016) 101 *Iowa Law Review* 1223

Robins S, 'Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations' [2017] *Human Rights and International Legal Discourse* 41

Robinson C, 'Ethically Important Moments as Data: Reflections from Ethnographic Fieldwork in Prisons' (2020) 16 *Research Ethics* 1

Roque R and Wagner KA, 'Introduction: Engaging Colonial Knowledge' in Ricardo Roque and Kim A Wagner (eds), *Engaging Colonial Knowledge: Reading European Archives in World History* (Palgrave Macmillan 2012)

Rose N, 'Government and Control' (2000) 40 *British Journal of Criminology* 321

Roussel S and Boucher J-C, 'The Myth of the Pacific Society: Quebec's Contemporary Strategic Culture' (2008) 38 *American Review of Canadian Studies* 165

Royer C, 'International Criminal Justice Between Scylla and Charybdis—the "Peace Versus Justice" Dilemma Analysed Through the Lenses of Judith Shklar's and Hannah Arendt's Legal and Political Theories' (2017) 18 *Human Rights Review* 395

——, 'The Bête Noire and the Noble Lie: The International Criminal Court and (the Disavowal of) Politics' (2019) 13 *Criminal Law and Philosophy* 225

Saaler S, 'Pan-Asianism in Modern Japanese History: Overcoming the Nation, Creating a Region, Forging an Empire' in Sven Saaler and J Victor Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, regionalism and borders* (Routledge 2007)

Sakita Y, 'Haisen Chokugo No Mitsuhashi Kikuo Nikansuru Ichi Kōsatsu?: Kōshoku Tsuihō o Tegakari Toshite' (2017) 62 *Taikugaku kenkyū* 275

Saltzman IZ, 'Soft Balancing as Foreign Policy: Assessing American Strategy toward Japan in the Interwar Period' (2012) 8 *Foreign Policy Analysis* 131

Sasamoto-Collins H, 'Progress Impeded: Constraints on Legal Equality in Post-Restoration Japan' (2008) 20 *Japan Forum* 337

Savelsberg JJ and Chambers BB, 'Human Rights and Social Control' in Mathieu Deflem and Charles F Wellford (eds), *The Handbook of Social Control* (Wiley 2019)

Schabas WA, 'Prosecutorial Discretion v. Judicial Activism at the International Criminal Court' (2008) 6 *Journal of International Criminal Justice* 731

Scheiber H, 'Taking Responsibility: Moral and Historical Perspectives on the Japanese War-Reparations Issues' (2002) 20 *Berkeley Journal of International Law* 233

Schmidt J and Schmidtpott K, 'The East Asian Dimension of the First World War: An Introduction' in Jan Schmidt and Katja Schmidtpott (eds), *East Asian Dimension of the First World War: global entanglements and Japan, China and Korea, 1914-1919* (Campus Verlag 2020)

Schmidt P, 'Japan's Wartime Compensation: Forced Labour' (2000) 2 *Asia-Pacific Journal: Japan Focus on Human Rights and Law* 1

Schneider V, 'The Global Social Capital of Human Rights Movements: A Case Study on Amnesty International' in Karsten Ronit and Volker Schneider (eds), *Private Organizations in Global Politics* (Taylor & Francis 2001)

Schoepfel A-S, 'Defending French National Interests? The Quai d'Orsay, Ambassador Zinovy Peshkoff, Justice Henry Bernard and the Tokyo Trial' in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946-48* (Brill 2018)

Scraton P, 'Speaking Truth to Power: Experiencing Critical Research' in Marie Smyth and Emma Williamson (eds), *Researchers and their 'subjects': Ethics, power, knowledge and consent* (Bristol University Press and Policy Press 2004)

Sedgwick JB, 'Building Blocs: Communities of Dissent, Manufactured Majorities and International Judgment in Tokyo' in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946-48* (Brill 2018)

Selden M, 'Japan, the United States and Yasukuni Nationalism' (2008) 43 *Economic and Political Weekly* 71

Shibata M, 'Contested Memory of Okinawa's Colonial and War Past: History Teaching in and beyond Formal Education' [2021] *Asia Pacific Journal of Education* 1

Shibuichi D, 'The Struggle Against Hate Groups in Japan: The Invisible Civil Society, Leftist Elites and Anti-Racism Groups' (2016) 19 *Social Science Japan Journal* 71

——, 'The Article 9 Association, Leftist Elites, and the Movement to Save Article 9 of Japan's Postwar Constitution' (2017) 34 *East Asia* 147

Simpson G, 'Writing the Tokyo Trial' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011)

Siyi W, 'Memorials and Memory: The Curation and Interpretation of Trauma Narratives—Using the Examples of Exhibitions on the Theme of "Comfort Women" in East Asian Society' (2020) 53 *Chinese Studies in History* 56

Sloan J and Drake DH, 'Emotional Engagements: On Sinking and Swimming in Prison Research and Ethnography' (2013) 91 *Criminal Justice Matters* 24

Sodaro A, 'The Memorial Museums: The Emergence of a New Form' [2018] *Exhibiting Atrocity. Memorial Museums and the Politics of Past Violence* 12

Sooka Y, 'Dealing with the Past and Transitional Justice: Building Peace through Accountability' (2006) 88 *International Review of the Red Cross* 311

- Spiga V, 'No Redress without Justice: Victims and International Criminal Law' (2012) 10 *Journal of International Criminal Justice* 1377
- Stanko EA, "'I Second That Emotion": Reflections on Feminism, Emotionality, and Research on Sexual Violence' in Martin D Schwartz (ed), *Researching Sexual Violence against Women: Methodological and Personal Perspectives* (SAGE Publications 1997)
- Such E, Walker O and Walker R, 'Anti-War Children: Representation of Youth Protests against the Second Iraq War in the British National Press' (2005) 12 *Childhood* 301
- Sugita Y, 'Constrained Rearmament in Japan, 1945-1954: US Strategic Preference for Securing Military Bases and Impact of Japanese Financial Community' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013)
- , 'The Yoshida Doctrine as a Myth' (2016) 27 *The Japanese Journal of American Studies* 123
- Szpilman CWA, 'Between Pan-Asianism and Nationalism: Mitsukawa Kametaro and His Campaign to Reform Japan and Liberate Asia' in Sven Saaler and J Victor Koschmann (eds), *Pan-Asianism in Modern Japanese History: Colonialism, regionalism and borders* (Routledge 2007)
- Tai E, 'Museum Activism against Military Sexual Slavery' (2016) 39 *Museum Anthropology* 35
- Takenaka A, 'Enshrinement Politics: War Dead and War Criminals at Yasukuni Shrine' (2007) 5 *The Asia-Pacific Journal: Japan Focus: Japan Focus*
- Takeshi I, 'Peace-Making and Party Politics: The Formation of the Domestic Foreign-Policy System in Postwar Japan' (1985) 11 *Journal of Japanese Studies* 323
- Tanaka Y and Falk R, 'The Atomic Bombing, The Tokyo War Crimes Tribunal and the Shimoda Case: Lessons for Anti-Nuclear Legal Movements' (2009) 7 *The Asia-Pacific Journal: Japan Focus* 293
- Taylor T, 'Denial in the Classroom: Political Origins of the Japanese Textbook Controversy' in Tony Taylor and Robert Guyver (eds) (Information Age Publishing 2014)
- Teitel R, 'On Corporate Responsibility, Human Rights, and Transitional Justice: Quo Vadis?' (2018) 112 *Proceedings of the Annual Meeting (American Society of International Law)* 324
- Togo K, 'Development of Japan's Historical Memory: The San Francisco Peace Treaty and the Murayama Statement in Future Perspective' (2011) 35 *Asian Perspective* 337

- Torsello D, 'The Paths to Difference: Social and Economic Choices in Three Post-War Agrarian Settlements of North-Eastern Japan' (2002) 5 *Social Science Japan Journal* 37
- Totani Y, 'The Case against the Accused' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011)
- , 'Japanese Receptions of Separate Opinions at the Tokyo Trial' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016)
- Trefalt B, 'Japanese War Criminals In Indochina and the French Pursuit of Justice: Local and International Constraints' (2014) 49 *Journal of Contemporary History* 727
- Trombley Averill S, 'Demilitarization and Democratization in the Post-World War II World' in Peter N Stearns (ed), *Demilitarization in the Contemporary World* (University of Illinois Press 2013)
- Tromp N, 'In Search for Truth at Mass Atrocities Trials: Will Judges and Lawyers Have the Last Word?' (2018) XII *The Journal of Comparative Law* 61
- Tsui S and Chi LK, 'Building a Global Feminist Alliance for Peace in East Asia Sit Tsui and Lau Kin Chi' (2020) 28 *Positions* 481
- Uchiyama Y, 'Japanese Prime Ministers and Party Leadership' (2023) 8 *Asian Journal of Comparative Politics* 83
- Ushimura K, 'Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion' (2007) 19 *Nichibunken Japan Rev.* 215
- Utsumi A and others, *Sengo Sekinin: Ajia No Manazashi Ni Kotaete* (Iwanami Shoten 2014)
- Virgili F, "'La Mémoire Des Ianfu": Le Women's Active Museum on War and Peace (Tokyo)' (2015) 15 *Genre & Histoire*
- von Lingen K, 'Introduction' in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal The Allied Struggle for Justice, 1946-48* (Brill 2018)
- Walsh S, 'Empathy as a Critical Methodological Tool in Peace Research' in Althea-Maria Rivas and Brendan Ciarán Browne (eds), *Experiences in Researching Conflict and Violence: Fieldwork Interrupted* (Policy Press 2018)
- Watanabe M, 'Passing on the History of "Comfort Women": The Experiences of a Women's Museum in Japan' (2015) 12 *Journal of Peace Education* 236
- , 'Owaranai Koto o Hikiukeru: Nippongun "Ianfu" Ni Mukiau Tame Ni' [2020] *Sekai*
- Watts J, 'Victims of Japan's Notorious Unit 731 Sue' 360 *The Lancet* (Tokyo, 24 August 2002)

- Webley L, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010)
- Webster T, 'The Price of Settlement: World War II Reparations in China, Japan and Korea' (2019) 51 *International Law and Politics* 301
- Weigend T, "In General a Principle of Justice": The Debate on the "Crime against Peace" in the Wake of the Nuremberg Judgment' (2012) 10 *Journal of International Criminal Justice* 41
- Wieringa SE, 'The International People's Tribunal on 1965 Crimes against Humanity in Indonesia: An Anthropological Perspective' in Andrew Byrnes and Gabrielle Simm (eds), *Peoples' Tribunals and International Law* (Cambridge University Press 2018)
- Wilson PH 'Defining Military Culture' (2007) 72 *The Journal of Military History* 11
- Wilson S, 'The Sentence Is Only Half the Story: From Stern Justice to Clemency for Japanese War Criminals, 1945-1958' (2015) 13 *Journal of International Criminal Justice* 745
- Wood WR and Suzuki M, 'Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice' (2020) 29 *Social & Legal Studies* 903
- Yamada M, "Sophisticated Masochism" in the Work of Shimada Masahiko' (2014) 48 *Japanese Language and Literature* 175
- Yamamoto R and Johnson D, 'The Convergence of Control: Immigration and Crime in Contemporary Japan' in Sandra M Bucerius and Michael Tonry (eds), *The Oxford Handbook of Ethnicity, Crime, and Immigration* (Oxford University Press 2014)
- Yamamuro K, 'Hatoyama Ichirō: A Tenacious Attachment to the Restoration Of Relations with the Soviet Union and Constitutional Revision' in Akio Watanabe (ed), Robert D Eldridge (tr), *The Prime Ministers of Postwar Japan, 1945-1995: Their Lives and Times* (Lexington Books 2016)
- Yayo O, 'Toward Resolution of the Comfort Women Issue — The 1000th Wednesday Protest in Seoul and Japanese Intransigence' (2012) 10 1
- Yoon R, 'Erecting the "Comfort Women" Memorials: From Seoul to San Francisco' (2018) 53 *De Arte* 70
- Yoshida T, 'Revising the Past, Complicating the Future: The Yushukan War Museum in Modern Japanese History' (2007) 5 *The Asia-Pacific Journal: Japan Focus*
- Yoshida Y, 'Senryōki Niokeru Sensō Sekininron' (1991) 105 *Hitotsubashi ronsō* 121
- Varadarajan L, 'The Trials of Imperialism: Radhabinod Pal's Dissent at the Tokyo Tribunal' (2015) 21 *European Journal of International Relations* 793
- Visoka G, 'Arrested Truth: Transitional Justice and the Politics of Remembrance in Kosovo' (2016) 8 *Journal of Human Rights Practice* 62

Zachmann UM, 'From Nanking to Hiroshima to Seoul: (Post-)Transitional Justice, Juridical Forms and the Construction of Wartime Memory' (2016) 14 *Journal of Modern European History* 568

—, 'Loser's Justice: The Tokyo Trial from the Perspective of the Japanese Defence Counsels and the Legal Community' in Kerstin von Lingen (ed), *Transcultural Justice at the Tokyo Tribunal The Allied Struggle for Justice, 1946-48* (Brill 2018)

Zaum D, 'The Norms and Politics of Exit: Ending Postconflict Transitional Administrations' (2009) 23 *Ethics and International Affairs* 189

Zhu D, 'From Tokyo to Rome: A Chinese Perspective' in Daqun Liu and Binxin Zhang (eds), *Historical War Crimes Trials in Asia* (Torkel Opsahl Academic EPublisher 2016)

### Books

Anderson B, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 2016)

Avenell SA, *Making Japanese Citizens: Civil Society and the Mythology of the Shimin in Postwar Japan* (University of California Press 2010)

Awaya K, *Tōkyō Saiban e No Michi* (Kodansha gakujutsu bunko 2013)

Babovic A, *The Tokyo Trial, Justice, and the Postwar International Order* (Palgrave Macmillan 2019)

Bassiouni MC, *Introduction to International Criminal Law: Second Revised Edition* (Martinus Nijhoff Publishers 2013)

Becker HS, *Outsiders: Studies in the Sociology of Deviance* (Revised [1963], Free Press 2018)

Belkin A, *Bring Me Men: Military Masculinity and the Benign Facade of American Empire, 1898-2001* (Hurst & Company 2012)

Benesch O, *Inventing the Way of the Samurai: Nationalism, Internationalism, and Bushido in Modern Japan* (Oxford University Press 2014)

Bentley JR, *Descriptive Grammar of Early Old Japanese Prose* (Brill 2001)

Black D, *The Behavior of Law* (Special Edition [1976], Emerald 2010)

Blaikie N, *Approaches to Social Enquiry: Advancing Knowledge* (Polity Press 2007)

Bloomfield D, Barnes T and Huyse L (eds), *Reconciliation after Violent Conflict: A Handbook* (International Institute for Democracy and Electoral Assistance 2003)

Boister N and Cryer R, *The Tokyo International Military Tribunal: A Reappraisal* (Oxford University Press 2008)

Brownlie I, *International Law and the Use of Force by States* (Clarendon 1981)

- Bryman A, *Social Research Methods* (Oxford University Press 2016)
- Buruma I, *Wages of Guilt: Memories of War in Germany and Japan* (Vintage 1995)
- Bush JA, 'The Prehistory of Corporations and Conspiracy in International Criminal Law: What Nuremberg Really Said' (2009) 109 *Columbia Law Review* 1094
- Byrnes A and Simm G, 'Introduction' in Andrew Byrnes and Gabrielle Simm (eds), *Peoples' Tribunals and International Law* (Cambridge University Press 2018)
- Chang I, *The Rape of Nanking: The Forgotten Holocaust of World War II* (Penguin Books 1997)
- Chatani S, *Nation-Empire: Ideology and Rural Youth Mobilization in Japan and Its Colonies* (Cornell University Press 2018)
- Chazal N, *The International Criminal Court and Global Social Control: International Criminal Justice in Late Modernity* (Routledge 2018)
- Checkland O, *Humanitarianism and the Emperor's Japan, 1877-1977* (St Martin's Press 1994)
- Chriss JJ, *Social Control: An Introduction* (2nd edn, Polity Press 2013)
- Chung YJ, *Struggle for National Survival: Eugenics in Sino-Japanese Contexts, 1896-1945* (Routledge 2002)
- Clark I, *International Legitimacy and World Society* (Oxford University Press 2007)
- Clay Large D, *Germans to the Front: West German Rearmament in the Adenauer Era* (University of North Carolina Press 1996)
- Cohen S, *Visions of Social Control: Crime, Punishment, and Classification* (Blackwell 1985)
- , *States of Denial: Knowing About Atrocities and Suffering* (Polity Press 2001)
- Dinstein Y, *War Aggression and Self-Defence* (Cambridge University Press 2005)
- Dower JW, *War Without Mercy: Race and Power in the Pacific War* (1986)
- Downes D, Rock P and McLaughlin E, *Understanding Deviance: A Guide to the Sociology of Crime and Rule-Breaking* (Oxford University Press 2016)
- Drumbl M, *Atrocity, Punishment, and International Law* (Cambridge University Press 2007)
- Enloe C, *The Curious Feminist: Searching for Women in a New Age of Empire* (University of California Press 2014)
- Flick U, *Designing Qualitative Research* (SAGE Publications 2007)
- Fujitani T, *Race for Empire: Koreans As Japanese and Japanese As Americans During World War II* (University of California Press 2011)

- Futamura M, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (Routledge 2008)
- Gallen J, *Transitional Justice and the Historical Abuses of Church and State* (Cambridge University Press 2023)
- Garland D, *Punishment and Modern Society: A Study in Social Theory* (The University of Chicago Press 1990)
- , *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press 2002)
- Geertz C, *The Interpretation of Cultures: Selected Essays* (Basic Books 1973)
- Gillespie A, *A History of the Laws of War: The Customs and Laws of War with Regards to Arms Control* (Hart Publishing 2011)
- Goode E and Ben-Yehuda N, *Moral Panics: The Social Construction of Deviance* (Blackwell 1994)
- Gordon A, *A Modern History of Japan: From Tokugawa Times to the Present* (2nd edn, Oxford University Press 2009)
- Green P, *State Crime: Governments, Violence and Corruption* (Pluto Press 2004)
- Guest G, Namey EE and Mitchell ML, *Collecting Qualitative Data: A Field Manual for Applied Research* (SAGE Publications 2017)
- Habermas J, *The Theory of Communicative Action: Reason and the Rationalization of Society*, vol 1 (Beacon Press 1984)
- Hane M, *Modern Japan* (Westview Press 1992)
- Hardacre H, *Shinto* (Oxford University Press 2017)
- Harries M and Harries S, *Sheathing the Sword: The Demilitarisation of Japan* (Hamish Hamilton 1987)
- Heer PJ, *Mr. X and the Pacific: George F. Kennan and American Policy in East Asia* (Cornell University Press 2018)
- Heindel A and Ciorciari JD, *Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia* (University of Michigan Press 2014)
- Higurashi Y, *The Tokyo Trial: War Criminals and Japan's Postwar International Relations* (Japan Institute of International Affairs 2022)
- Hill MR, *Archival Strategies and Techniques* (SAGE 1993)
- Hook GD, *Militarisation and Demilitarisation in Contemporary Japan* (Taylor & Francis 2016)
- Horwitz AV, *The Logic of Social Control* (Springer US 1990)
- Hughes CW, *Japan's Re-Emergence as a 'Normal' Military Power* (Routledge 2005)

- Ienaga S, *The Pacific War, 1931 - 1945: A Critical Perspective on Japan's Role in World War II* (Pantheon Books 1978)
- Igarashi Y, *Bodies of Memory: Narratives of War in Postwar Japanese Culture, 1945-1970* (Princeton University Press 2000)
- Innes M, *Understanding Social Control: Deviance, Crime and Social Order* (Open University Press 2003)
- Inoue K, *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making* (The University of Chicago Press 1991)
- Inoue M, *Okinawa and the U.S. Military: Identity Making in the Age of Globalization* (Columbia University Press 2007)
- Ishikawa S, *Seeking the Self: Individualism and Popular Culture in Japan* (Peter Lang Publishing 2007)
- Itō H, *Commentaries on the Constitution of the Empire of Japan* (Miyoshi Translated by Itō tr, University Publications of America 1979)
- Jun E, *Closed Linguistic Space: Censorship by the Occupation Forces and Postwar Japan* (Japan Publishing Industry Foundation for Culture 2020)
- Kaempfer E, *The History of Japan, Together with a Description of the Kingdom of Siam, 1690-92* (MacLehose 1906)
- Kang H, *Under the Black Umbrella: Voices from Colonial Korea, 1910–1945* (Cornell University Press 2001)
- Kemp G, *Individual Criminal Liability for the International Crime of Aggression* (Intersentia 2010)
- Kerr R, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law Politics and Diplomacy* (Oxford University Press 2004)
- Kersten M, *Justice in Conflict: The Effects of the International Criminal Court's Interventions on Ending Wars and Building Peace* (Oxford University Press 2016)
- Kimura M, *Unfolding the 'Comfort Women' Debates: Modernity, Violence, Women's Voices* (Palgrave Macmillan 2015)
- Kuhn LH, *Social Control and Human Nature: What Is It We Are Controlling?* (LFB Scholarly Publishing 2009)
- Kume K, *Japan Rising: The Iwakura Embassy to the USA and Europe 1871-1873* (Tsunami Chushichi and R Jules Young eds, Cambridge University Press 2009)
- Kushner B, *The Thought War: Japanese Imperial Propaganda* (University of Hawai'i Press 2005)
- Le TP, *Japan's Aging Peace: Pacifism and Militarism in the Twenty-First Century* (Columbia University Press 2021)

Lord Russell of Liverpool, *The Knights of Bushido: A Short History of Japanese War Crimes* (Cassell & Co 1958)

Matsui S, *The Constitution of Japan: A Contextual Analysis* (Hart Publishing 2011)

May L, *Aggression and Crimes Against Peace* (Cambridge University Press 2008)

McCarthy C, *Reparations and Victim Support in the International Criminal Court* (Cambridge University Press 2012)

Mera K, Inōe Y and Imamori S, *Makkāsā No Noroi Kara Mezameyo Nipponjin* (Seiunsha 2012)

Miller DH, *The Drafting of the Covenant Volume II* (GP Putnam's Sons 1928)

Miller JM, *Cold War Democracy: The United States and Japan* (Harvard University Press 2019)

Minear RH, *Victor's Justice: The Tokyo War Crimes Trial* (Princeton University Press 1973)

Misztal B, *Theories of Social Remembering* (McGraw-Hill 2003)

Moffett L, *Reparations and War: Finding Balance in Repairing the Past* (Oxford University Press 2023)

Moore RA and Robinson DL, *Partners for Democracy: Crafting the New Japanese State under MacArthur* (Oxford University Press 2002)

Morris N, *Japanese War Crimes in the Pacific: Australia's Investigations and Prosecutions* (National Archives of Australia 2019)

Morris-Suzuki T, *Re-Inventing Japan: Nation, Culture, Identity* (ME Sharpe 1998)

Murase S, *Kokusaihō to Mukiau: Suteru Kami Areba Hirō Kami Ari* (Shinyamasha 2022)

Murray D, *Human Rights Obligations of Non-State Armed Groups* (Hart Publishing 2016)

Nagahara Y (ed), *Shokuminchi Sekininron: Datsushokuminchi No Hikakushi* (Aoki Shoten 2009)

Nakazato N, *Neonationalist Mythology in Postwar Japan: Pal's Dissenting Judgment at the Tokyo War Crimes Tribunal* (Lexington Books 2016)

Newman RP, *Truman and the Hiroshima Cult* (Michigan State University Press 1995)

Nishi T, *Unconditional Democracy: Education and Politics in Occupied Japan, 1945-1952* (Hoover Institution Press 1982)

Orr JJ, *The Victim as Hero: Ideologies of Peace and National Identity in Postwar Japan* (University of Hawai'i Press 2001)

Ortiz N, *Sustaining Spirit: Self-Care for Social Justice* (Reclamation Press 2018)

Pal R, *International Military Tribunal for the Far East: Dissident Judgment of Justice Pal* (Kokusho-Kankokai 1999)

Park RE and Burgess EW, *Introduction to the Science of Sociology* (University of Chicago Press 1921)

Pfohl S, *Images of Deviance & Social Control: A Sociological History* (2nd edn, Waveland Press 2009)

Port KL, *Transcending Law: The Unintended Life of Article 9 of the Japanese Constitution* (Carolina Academic Press 2010)

Pound R, *Social Control Through Law: With a New Introduction by A. Javier Trevino* (Transaction Publishers 2002)

Ravina M, *To Stand with the Nations of the World: Japan's Meiji Restoration in World History* (Oxford University Press 2017)

Robinson ME, *Cultural Nationalism in Colonial Korea, 1920-1925* (University of Washington Press 2014)

Röling BVA and Cassese A, *The Tokyo Trial and Beyond: Reflections of a Peacemonger* (Polity Press 1993)

Samuels RJ, *Securing Japan: Tokyo's Grand Strategy and the Future of East Asia* (Cornell University Press 2008)

Sasaki-Uemura W, *Organizing the Spontaneous: Citizen Protest in Postwar Japan* (University of Hawai'i Press 2001)

Seraphim F, *War Memory and Social Politics in Japan, 1945-2005* (Harvard University Asian Center 2006)

Sikkink K, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (WW Norton & Company 2011)

Simons H, *Case Study Research in Practice* (SAGE Publications 2012)

Sims R, *Japanese Political History since the Meiji Renovation 1668-2000* (Palgrave 2001)

Smith SA, *Japan Rearmed: The Politics of Military Power* (Harvard University Press 2019)

Soh CS, *The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan* (University of Chicago Press 2008)

Sugita Y, *Pitfall or Panacea: The Irony of U.S. Power in Occupied Japan, 1945-1952* (Routledge 2003)

Takenaka A, *Yasukuni Shrine: History, Memory, and Japan's Unending Postwar* (University of Hawai'i Press 2017)

Takenaka H, *Failed Democratization in Prewar Japan: Breakdown of a Hybrid Regime* (Stanford University Press 2014)

- Tamura S, *Shin Kenpō Wa Kō Naru: Utsukushī Kono Kuni No Katachi* (Kōdansha 2006)
- Tanaka M, *What Really Happened in Nanking: The Refutation of a Common Myth* (Sekai Shuppan 2000)
- , *Pāru Hanji No Nippon Muzairon* (Shōgakukan bunko 2001)
- Tanaka Y, *Hidden Horrors: Japanese War Crimes in World War II* (Westview Press 1996)
- Tapscott R, *Arbitrary States: Social Control and Modern Authoritarianism in Museveni's Uganda* (Oxford University Press 2021)
- Tatsuo K, *The Goal of Japanese Expansion* (The Hokuseido Press 1939)
- 'The United States Strategic Bombing Surveys: European War, Pacific War' (Air University Press 1987)
- Totani Y, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asian Center 2008)
- Umeda S, 'Japan: Article 9 of the Constitution' (Law Library of Congress 2006)
- , 'Japan: Interpretations of Article 9 of the Constitution' (Library of Congress 2015)
- von Lingen K (ed), *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* (Palgrave Macmillan 2016)
- (ed), *Transcultural Justice at the Tokyo Tribunal: The Allied Struggle for Justice, 1946-48* (Brill 2018)
- Weber M, *The Theory of Social and Economic Organization* (Free Press 1947)
- Wells D and Wilson S, *The Russo-Japanese War in Cultural Perspective, 1904-1905* (Palgrave Macmillan 1999)
- Wilson S, *Japanese War Criminals: The Politics of Justice After the Second World War* (Columbia University Press 2017)
- Winkler CG, *The Quest for Japan's New Constitution: An Analysis of Visions and Constitutional Reform Proposals 1980-2009* (Routledge 2010)
- Wood AL, *Deviant Behavior and Control Strategies* (Lexington Books 1974)
- Yamamura A, *GHQ Ga Sen'nō Dekinakatta Nihonjin No 'kokoro' Amerika No Senryō Seisaku to Kanarazu Norikoe Rareru Nihon* (KK Besutoserāzu 2016)
- Yoder RS, *Deviance and Inequality in Japan: Japanese Youth and Foreign Migrants* (Policy Press 2011)
- Yoneyama L, *Hiroshima Traces: Time, Space, and the Dialectics of Memory* (University of California Press 1999)

——, *Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes* (Duke University Press 2016)

Yoshiaki Y, *Comfort Women: Sexual Slavery in the Japanese Military During World War II* (Columbia University Press 2000)

### News Articles

Agence France-Press, 'Japan Recalls Envoy after South Korea Puts "Comfort Woman" Statue Outside Consulate' *The Guardian* (6 January 2017)

<[www.theguardian.com/world/2017/jan/06/japan-says-recalling-envoy-to-skorea-over-new-comfort-woman-statue](https://www.theguardian.com/world/2017/jan/06/japan-says-recalling-envoy-to-skorea-over-new-comfort-woman-statue)> accessed 10 February 2018

Ali I, 'US, Japan, South Korea Hold Rare Military Meeting as North Korea Launches Missile' (Reuters, 12 July 2023) <<https://www.reuters.com/world/us-japan-skorea-hold-rare-military-meeting-nkorea-launches-missile-2023-07-12/>> accessed 12 July 2023

Alt M, 'Tokyo's Olympics Have Become the Anger Games' *The New Yorker* (22 July 2021) <<https://www.newyorker.com/sports/sporting-scene/tokyos-olympics-have-become-the-anger-games>> accessed 2 June 2023

AP Staff, 'South Koreans Shun Japanese Products and Tours as Boycott Gathers Momentum' (The Japan Times, 5 August 2019) <<https://www.japantimes.co.jp/news/2019/08/05/business/economy-business/south-koreans-shun-japanese-products-tours-boycott-gathers-momentum/#.XXd6T2Z7IPY>> accessed 7 August 2019

Boseley S, 'England's Covid Contact-Tracing App Will Reach 70% of Those at Risk' *The Guardian* (13 August 2020) <<https://www.theguardian.com/world/2020/aug/13/new-trials-to-begin-in-england-for-covid-19-contact-tracing-app>> accessed 10 June 2022

Campbell C, 'Exclusive: Prime Minister Fumio Kishida Is Giving a Once Pacifist Japan a More Assertive Role on the Global Stage' *TIME* (Tokyo, 9 May 2023) <<https://time.com/6278122/fumio-kishida-japan-prime-minister-interview-g7/>> accessed 22 May 2023

Chambers A, 'British Military Rugby Team Sparks Controversy with "naive" Photo at World War II Shrine in Japan: Report' (ABC News, 21 September 2019) <<https://abcnews.go.com/International/british-rugby-team-apologizes-visiting-controversial-military-shrine/story?id=65748197>> accessed 10 October 2019

Dominguez G, 'Symbolism Rich as G7 Leaders Visit Hiroshima A-Bomb Museum' *The Japan Times* (19 May 2023) <<https://www.japantimes.co.jp/news/2023/05/19/national/g7-leaders-hiroshima-abomb-museum/>> accessed 20 May 2023

Dudden A, 'America's Dirty Secret in East Asia: Japan and South Korea Are at Odds Today Because Washington Has Been Playing Favorites for Decades.' (The New

York Times, 23 September 2019)

<<https://www.nytimes.com/2019/09/23/opinion/america-japan-south-korea-dispute.html>> accessed 11 October 2019

'Eiga "Shusenjō" San Nen No Saiban Shūketsu Hōkoku Miki Dezaki Kantoku "Shōso Shimashita. Anshin Shite" Haishin Ga Sutāto' *Nikkan supōtsu* (2022)

<<https://www.nikkansports.com/entertainment/news/202209280001364.html>> accessed 21 July 2023

Harris G, 'Harrowing Film on Japanese War-Time Atrocities in China Is among Shortlisted Works on Show in UK's Biggest Art Prize' *The Art Newspaper* (10 June 2021) <<https://www.theartnewspaper.com/2021/06/10/harrowing-film-on-japanese-war-time-atrocities-in-china-is-among-shortlisted-works-on-show-in-uks-biggest-art-prize>> accessed 23 June 2023

Hatakeyama Y and Ikegami A, 'GHQ Wa `nihonkokukenpō' o Kō Yonde Ita' *Toyo Keizai Online* (2016) <<https://toyokeizai.net/articles/-/123044?page=4>> accessed 25 March 2023

Higurashi Y, 'Yasukuni Jinja to Hanzai: Goushi Ni Itarumichi' *Nippon* (Tokyo, 20 August 2013) <<https://www.nippon.com/ja/in-depth/a02404/>> accessed 23 June 2023

Isobe Y, 'Survey: Voters Evenly Split on Need for Revising the Constitution' *The Asahi Shimbun* (Tokyo, 3 May 2021) <<https://www.asahi.com/ajw/articles/14342228>> accessed 9 May 2022

'Japan Readies to Shoot down North Korea Spy Satellite Debris' *Al Jazeera* (2023) <<https://www.aljazeera.com/news/2023/4/22/japan-readies-to-shoot-down-north-korea-spy-satellite-debris>> accessed 24 April 2022

'Japan Takes Issue with Time's Headline for Kishida Interview' *The Japan Times* (2023) <<https://www.japantimes.co.jp/news/2023/05/12/national/time-kishida-headline-criticism/>> accessed 27 May 2023

Jo H, 'Supreme Court Orders Mitsubishi to Compensate Korean Forced Labor Victims' *The Korea Herald* (Seoul, 29 November 2018) <<http://www.koreaherald.com/view.php?ud=20181129000300>> accessed 30 September 2020

Kazuto H, 'Shōso Shitanoni ... "Shusenjō" Wa Tabūna No Ka Ianfu Mondai Eiga Kantoku No Tōshi' *Mainichi Shimbun* (2022) <<https://mainichi.jp/articles/20220314/k00/00m/040/036000c>> accessed 7 March 2023

Kuniyoshi M, 'Defying Okinawa Protests, U.S. Continues Low-Flight Training' *The Asahi Shimbun* (11 February 2021) <<https://www.asahi.com/ajw/articles/14181620>> 20 July 2021

Kyodo, 'Okinawa Marks 49th Anniversary of Reversion as Pandemic Limits Base Protests' *The Japan Times* (15 May 2021)

<<https://www.japantimes.co.jp/news/2021/05/15/national/us-okinawa-reversion-49th-anniversary/>> accessed 20 July 2021

McCurry J, 'South Korean Boycott of Japanese Goods Hits Beer and Carmakers' *The Guardian* (Tokyo, 4 September 2019)

<<https://www.theguardian.com/world/2019/sep/04/south-korea-boycott-japanese-goods-beer-car-sales>> accessed 6 September 2019

'Russia Condemns "Militarization" of Japan under Kishida Defence Plan' *Reuters* (2022) <<https://www.reuters.com/world/russia-condemns-militarization-japan-under-kishida-defence-plan-2022-12-22/>> accessed 02 June 2023

Song J, White E and Inagaki K, 'South Koreans Vent Anger with Growing Boycott of Japanese Goods' *The Financial Times* (Seoul and Tokyo, 7 August 2019)

<<https://www.ft.com/content/2af08890-b74c-11e9-8a88-aa6628ac896c>> accessed 20 September 2019

'UK: Airbnb Using Commonwealth Games to Sportswash Its Reputation' (Amnesty International UK, 28 July 2022) <<https://www.amnesty.org.uk/press-releases/uk-airbnb-using-commonwealth-games-sportswash-its-reputation>> accessed 24 August 2023

Watanabe M, 'Nothing About Us Without Us: Recalling the Strong Voices of "Comfort Women" Survivors' (Positions: critical reflections on 'comfort women' 75 years on (eikon), 2020) <<https://positionspolitics.org/nothing-about-us-without-us/>> accessed 13 February 2023

Watts J, 'Violence Flares as the Chinese Rage at Japan' *The Guardian* (17 April 2005) <[www.theguardian.com/world/2005/apr/17/the\\_PRC.japan](http://www.theguardian.com/world/2005/apr/17/the_PRC.japan)> accessed 20 November 2019

Woo R, 'Japan's Return to Path of Militarisation "dangerous" - China Defence Ministry' *Reuters* (2023) <<https://www.reuters.com/world/asia-pacific/japans-return-path-militarisation-dangerous-china-defence-ministry-2023-03-16/>> accessed 18 March 2023

Yoo J, 'Officials from Far-Right Japanese Party Protest S. Korean Banners at Olympic Village' *Yonhap News Agency* (Seoul, 16 July 2021) <<https://en.yna.co.kr/view/AEN20210716008700315>> accessed 12 October 2021

## Reports

Working Group on Transitional Justice and SDG16+, 'On Solid Ground: Building Sustainable Peace and Development After Massive Human Rights Violations' (ICTJ 2019) <[https://www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights?utm\\_source=Unknown+List&utm\\_campaign=32e368d739-NewYorkEvent\\_2019\\_invites&utm\\_medium=email&utm\\_term=0\\_-32e368d739-](https://www.ictj.org/publication/solid-ground-building-sustainable-peace-and-development-after-massive-human-rights?utm_source=Unknown+List&utm_campaign=32e368d739-NewYorkEvent_2019_invites&utm_medium=email&utm_term=0_-32e368d739-)>

## Websites

'Ajia Josei Kikin No Tanjō to Jigyō No Kihon Seikaku' (Ajia josei kikin)  
<<https://awf.or.jp/2/foundation.html>> accessed 25 August 2023

Akutibu myuujiamu: onnatachi no sensou to heiwa shiryokan, 'Wam Nitsuite' (2019)  
<<https://wam-peace.org/about>> accessed 4 January 2019

Allen B, 'Rwanda, Genocide and the ICC: Hugo Blick Explains the True Story behind Black Earth Rising' (Radio Times, 10 June 2019)  
<<https://www.radiotimes.com/tv/drama/black-earth-rising-bbc2-real-political-history-rwandan-genocide-international-criminal-court/>> accessed 21 August 2023

Asian Women's Fund, 'Women Made to Become Comfort Women - Netherlands'  
(Digital Museum: The Comfort Women Issue and the Asian Women's Fund)  
<<http://www.awf.or.jp/e1/netherlands.html>> accessed 10 June 2020

'August 6, 1945: Statement by the President Announcing the Use of the A-Bomb at Hiroshima' (Miller Center) <<https://millercenter.org/the-presidency/presidential-speeches/august-6-1945-statement-president-announcing-use-bomb>> accessed 14 May 2021

'Donation' (Women's Active Museum on War and Peace) <<https://wam-peace.org/en/donation>> accessed 11 March 2023

'Ford Lawsuit (Re Argentina)' (Business and Human Rights Resource Centre)  
<<https://www.business-humanrights.org/en/latest-news/ford-lawsuit-re-argentina-2/>> accessed 11 February 2022

Global Initiative for Justice Truth and Reconciliation, 'Roles and Responsibilities of the Private Sector in Transitional Justice Processes in Latin America: The Cases of Colombia, Guatemala, and Argentina' (2021)  
<<https://www.dplf.org/en/resources/roles-and-responsibilities-private-sector-transitional-justice-processes-latin-america>>

'Iran Tribunal: An International People's Tribunal' (Iran Tribunal)  
<<https://irantribunal.com/>> accessed 11 February 2022

'Japanese Soldier in China [Audio Testimony of Kondo Hajime]'  
<[http://ww2history.com/testimony/Pacific/Japanese\\_soldier\\_in\\_China](http://ww2history.com/testimony/Pacific/Japanese_soldier_in_China)> accessed 23 June 2023

Joint Statement of the 2023 US– Japan Security Consultative Committee ("2+2") *US Department of Defense* (2023)  
<<https://www.defense.gov/News/Releases/Release/Article/3265559/joint-statement-of-the-2023-us-japan-security-consultative-committee-22/>>

Liang X and Tian N, 'The Proposed Hike in Japan's Military Expenditure' (Stockholm International Peace Research Institute, 2023)  
<<https://www.sipri.org/commentary/topical-background/2023/proposed-hike-japans-military-expenditure>> accessed 24 April 2023

Mason R, 'Japan's Doubling of Its Defence Budget Will Make the World a More Dangerous Place – Here's Why' (The Conversation, 2022)  
<<https://theconversation.com/japans-doubling-of-its-defence-budget-will-make-the-world-a-more-dangerous-place-heres-why-182625>>

Memory of the World, 'The International Register' (UNESCO)  
<<https://www.unesco.org/en/memory-world/register?hub=1081>> accessed 27 March 2023

'Permanent Peoples' Tribunal on Transnational Corporations in Southern Africa' (Stop Corporate Impunity) <<https://www.stopcorporateimpunity.org/permanent-peoples-tribunal-transnational-southern-africa/#>> accessed 11 February 2022

'Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence' (Office of the High Commissioner for Human Rights)  
<<https://www.ohchr.org/en/issues/truthjusticereparation/pages/index.aspx>> accessed 1 February 2022

The Law Library of Congress, 'Japan: WWII POW and Forced Labor Compensation Cases' <http://www.law.gov>

Transcript of Oral Judgment' (Women's Caucus for Gender Justice) available at  
<<http://iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html>> accessed 12 July 2021

'Tsukurukai to Wa' (Atarashī rekishi kyōkasho o tsukuru kai)  
<<https://tsukurukai.com/aboutus/yakuin.html>> accessed 11 March 2023

'Uyghur Tribunal' (Uyghur Tribunal) <<https://uyghurtribunal.com/>> accessed 11 February 2022

Willis E, 'A Story of Reconciliation and Redemption: The Visit of Former Japanese Officer Shohachi Iwamura Who Served in Portuguese Timor to Perth in August 1993'  
<<https://doublereds.org.au/forums/topic/354-a-story-of-reconciliation-and-redemption-%E2%80%93-the-visit-of-former-japanese-officer-shohachi-iwamura-who-served-in-portuguese-timor-to-perth-in-august-1993/>> accessed 30 June 2023

Women's Active Museum on War and Peace, 'About Us' <<https://wam-peace.org/en/about>> accessed 16 January 2023

Yasukuni Jinja, 'Yasukunijinja No Yuisho'  
<<https://www.yasukuni.or.jp/history/detail.html>> accessed 13 May 2021

## Other

*Shusenjo: Comfort Women and Japan's War on History* (Directed by Miki Dezaki, Tofoo Films 2018)

Appendix A – Documents Acquired from the Women’s Active  
Museum on War and Peace

Item No.	Document Type	Document Title	Date	Document Language
A-01	3-fold brochure	アクティブ・ミュージアム「女たちの戦争と平和資料館」(wam)	06/22	Japanese
A-02	3-fold brochure	Women’s Active Museum on War and Peace	04/19	English
A-03	Flyer	wam 企画展示と wam 常設展示	n.d.	Japanese
A-04	Flyer	wam セミナー-天皇制を考える	n.d.	Japanese
A-05	Catalogue	第 8 回特別展ミニカタログ	09/10	Japanese
A-06	Map	‘Comfort Stations’ of the Japanese Military	2019	English
A-07	Map	日本軍慰安婦マップ	12/19	Japanese
A-08	Newsletter	wam だより vol.16	11/10	Japanese
A-09	Newsletter	wam だより vol. 26	03/14	Japanese
A-10	Newsletter	wam だより vol. 51	07/22	Japanese
A-11	Newsletter	wam だより vol. 52	11/22	Japanese
A-12	Catalogue	日本人「慰安婦」の沈黙～国家に管理された性	05/18	Japanese
A-13	Catalogue	女性国際戦犯法廷のすべて：「慰安婦」被害と加害責任	2006	Japanese
A-14	Guidebook	ミュージアムへ行こう！日本軍「慰安婦」博物館ガイド	01/04/2017	Japanese and English

A-15		女性国際戦犯法廷から 10 年・国際シ ンポジウム報告集：「法廷」は何を裁 き、何が変わったか	10/7/2011	Japanese
------	--	---	-----------	----------

## Appendix B – Information Sheets

Historical Harm, Modern Mending: conceptualising transitional justice as social control in post-war Japan

### **Participant Information Sheet**

This information sheet explains the research project being carried out by Rhiannon Griffiths as part of her PhD thesis at the University of York.

Before agreeing to take part, please read this information sheet carefully and contact the researcher if anything is unclear or you would like further information.

### **Brief outline of the project**

This research project concerns the legacy of the Asia-Pacific War (1931-1945) in Japan and East Asia. Specifically, it looks at “transitional justice” (ways of transitioning society from conflict to peace) and “social control” (methods by which society maintains social order). The research considers how modern-day politics in Japan remains divisive when remembering the war and asks how transitional justice acts as a form of social control in this context. Three case studies are being examined to investigate this: the Tokyo Trial, Article 9 of the Constitution, and the Women’s Active Museum on War and Peace. The project aims to understand these phenomena in order to inform more effective and meaningful policies in transitional justice.

### **Why have I been invited to take part?**

You have been invited to take part because you have some form of relationship with one of the case studies, or you have a perspective on the research that can help advance the project. Your knowledge and experience offers an invaluable insight into the research topic.

### **Do I have to take part?**

No, participation is optional. If you do decide to take part, you will be given a copy of this information sheet for your records and will be asked to complete a participant consent form.

You are able to withdraw your consent any time up until three months after the date of your interview – this date will be confirmed via email by the researcher once the

interview date is organised. You do not have to answer any questions you do not wish to during the interview, and you can also withdraw at that time. You do not have to give a reason for withdrawing from the project.

If you withdraw from the project, all your information and records of your participation will be destroyed.

### **What does participating in the research involve?**

You will be asked to take part in a discussion with the researcher which should last between 45-60 minutes. It will be arranged at a convenient time and date for you. If Covid-19 regulations allow, the interview will take place in-person in a location agreed to by you and the following ethical and safety guidelines. Otherwise, interviews will be conducted using Zoom, an audio-video conferencing software or over the telephone. You can indicate your preference when organising the interview. The interview will be conducted in English. If you require the interview to be conducted in Japanese, please confirm this with Rhiannon Griffiths (the researcher) who will discuss this with you.

During the discussion, you will be asked about your understanding of transitional justice and Japanese society relating to the Asia-Pacific War. You will not be asked about the Asia-Pacific War itself and you do not have to answer any questions which make you uncomfortable. Please do not disclose any sensitive personal or organisational information. If you have any concerns, or wish that any topics to be avoided in the discussion, please email the researcher.

Once the research is completed, estimated as November 2023, you will be sent a copy of the thesis via email.

### **On what basis will you process my data?**

Under the [Data Protection Act 2018](#), the University has to identify a legal basis for processing personal data and, where appropriate, an additional condition for processing [special category data](#).

In line with our charter which states that we advance learning and knowledge by teaching and research, the university processes personal data for research purposes under Section 8 of the Act: "Processing is necessary for the performance of a task carried out in the public interest".

Research will only be undertaken where ethical approval has been obtained, where there is a clear public interest and where appropriate safeguards have been put in place to protect data.

In line with ethical expectations and in order to comply with common law duty of confidentiality, we will seek your consent to participate where appropriate. This consent will not, however, be our legal basis for processing your data under the [Data Protection Act](#).

### **Will you share my data with 3<sup>rd</sup> parties?**

No. Data will be accessible to the researcher and the research supervisor only.

If you recommend that the researcher speaks to someone other than yourself regarding the research, your name and information will not be shared with this 3<sup>rd</sup> party. Likewise, the researcher will not confirm your participation with someone if they recommend the researcher speak with you. However, please keep in mind that there is a risk of identification if you have a relationship with this individual (such as through your work).

### **How will you keep my data secure?**

The University has put in place appropriate technical and organisational measures to protect your personal data and/or special category data. For the purposes of this project, the researcher will only collect the minimum amount of personal data such as your name and contact details. This information will be stored securely on the University of York private servers in password protected, encrypted files. This information will be deleted as soon as the project is finished.

### **Will you transfer my data internationally?**

Possibly. The University's cloud storage solution is provided by Google which means that data can be located at any of Google's globally spread data centres. The University has data protection compliant arrangements in place with this provider. For further information see, <https://www.york.ac.uk/it-services/google/policy/privacy/>.

### **Will I be identified in any research outputs?**

If you agree to take part in the research, you will be granted anonymity by default. However, you will have the option to indicate on the consent form and in verbal or written communications with Rhiannon Griffiths, whether you wish to be identified instead. Quotes from the data will not be attributed to specific individuals unless express permission has been given via a participant's informed consent form. If you

feel uncomfortable answering any specific questions, please abstain from answering and inform the researcher. You can withdraw the information you have provided and change your level of anonymity at any point up to 3 months from the date of the interview. This date will be confirmed when organising the interview.

If you choose to be anonymised, all personal or identifying data will be removed and a pseudonym will be given as soon as the transcription takes place. Research outputs will not contain identifying information. However, complete anonymity can be difficult to guarantee, especially if you speak about a topic that may make it easier for someone to identify you. For example, if you work for a small organisation. Please consider these risks if you wish to take part in the project. The researcher will take all measures possible to mitigate this and contact you if there are any concerns and you may decide to withdraw from the study.

### **How long will you keep my data?**

Data will be retained in line with legal requirements or where there is a business need. Retention timeframes will be determined in line with the University's Records Retention Schedule. All personal data and transcriptions will be destroyed by the end of the project which is estimated to be 31<sup>st</sup> November 2023.

### **What rights do I have in relation to my data?**

Under the [Data Protection Act 2018](#), you have a general right of access to your data, a right to rectification, erasure, restriction, objection or portability. You also have a right to withdrawal. Please note, not all rights apply where data is processed purely for research purposes. For further information see:

<https://www.york.ac.uk/records-management/general-dataprotectionregulation/individualsrights/>.

### **Questions or concerns**

If you have any questions about this participant information sheet or concerns about how your data is being processed, please contact the researcher, Rhiannon Griffiths (Rhiannon.griffiths@york.ac.uk).

Further concerns may be raised with the research supervisor (Dr Ioana Cismas: ioana.cismas@york.ac.uk) or the chair of the university ethics committee that approved this project (Professor Tony Royle: tony.royle@york.ac.uk).

## Appendix C – Consent Forms

### Historical Harm, Modern Mending: conceptualising transitional justice as social control in post-war Japan

#### Participant Consent Form

Thank you for reading the information sheet provided on this research project. Please read the following questions and mark “Yes” or “No” as appropriate. If anything is not clear, or you wish to ask a question, please contact the researcher. Electronic signatures will be accepted.

Have you read and understood the information sheet about the project? Yes  No

Have you had an opportunity to ask questions about the study? Yes  No

If you have asked questions, were they answered satisfactorily? Yes  No

Do you understand that the information you provide will be held in confidence by the researcher? Yes  No

Do you understand that your participation is voluntary and that you may withdraw up to 3 months after the date of the interview, without giving reasons?

*(Should you withdraw your participation none of the information provided will be used and no record of your participation kept.)*

Do you agree to take part in this research project? Yes  No

Do you understand that you do not need to discuss any topics that may be sensitive or distressing, and that you may stop the interview at any time? Yes  No

Do you agree to your interview being recorded? Yes  No   
*(You may take part in the study without agreeing to this).*

The dissertation may be published and thus available in the public domain. You will remain anonymised if you requested anonymity, and a copy of the publication will be sent to you on submission. Yes  No

Do you consent to information gained in the interview being included in published material?

Please tick *one* of the following options regarding anonymity:

- I wish to remain fully anonymous;
  - I wish that the organisation I represent/work for be identified;
  - I wish that the organisation I represent/work for and my position/ job title be identified;
  - I wish that the organisation I represent/work for, my position/ job title, and my name be identified.
- 

Participant Name: \_\_\_\_\_

Researcher Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

***All data is held in the University of York's Central Storage System in accordance with the UK Data Protection Act.***

## 研究課題名

### 歴史上の侵害と近代における関係修復 — 戦後日本における社会統制としての移行期正義の概念化 —

#### 研究参加者同意書

当研究につきまして、別紙「研究協力の依頼説明書」をお読みいただきありがとうございます。本同意書では、以下のご質問をお読みいただき、ご回答をお願いいたします。ご不明な点やご質問がございましたら、どうぞ遠慮なくいつでも当研究者へご連絡ください。また、ご署名につきましては、電子署名でも問題ございません。

**「はい」あるいは「いいえ」をお選びください。**

当研究に関する「研究協力の依頼説明書」を読み、内容を理解しましたか。 はい いいえ

当研究に関し、質問をする機会を与えられましたか。 はい いいえ

(ご質問いただいた方はお答えください。)

その質問に十分な回答が得られましたか。 はい いいえ

当研究に参加することに同意しますか。 はい いいえ

インタビューが録音されることに同意しますか。

(録音にご同意いただけない場合でも、研究にご参加いただけます。) はい いいえ

当博士論文は出版され、一般に公開される可能性があります。その際、匿名であることを希望した参加者の個人情報とは特定されません。(匿名性については下記のセクションをご参照ください。) また、当研究に基づいて出版される本や論文は、参加者へ送付されます。以上を踏まえて、当インタビューで得られた情報が、出版される際にも記載されることに同意しますか。

はい

いいえ

**匿名性（個人情報特定しない方式）のご希望について、以下の選択肢から一つお選びください。**

どのような個人に関する情報も特定されたくない。

所属する組織名や職場名は特定されてもよい。

所属する組織名や職場名と、役職は特定されてもよい。

所属する組織名や職場名と、役職、及び個人名が特定されてもよい。

**以下の内容をご確認いただき、ご理解いただければ「理解した」に○をお書きください。**

個人情報や、個人が特定できるような情報は、当研究者が厳重に保管します。個人情報や個人が特定できるような情報は、上記「匿名性」のセクションで情報の公開にご賛同いただかない限り、当研究者以外の目に触れることはありません。  
理解した

当研究への参加は自由意思に基づいており、インタビュー実施日から三か月間以内であれば、いかなる理由を付すことなくいつでも参加を取り消すことができます。

（ご参加を取り消された場合は、当インタビューにより得られたいかなる情報も使用されることはなく、当研究者が全ての情報を破棄いたします。）

理解した

話しにくいことや話したくないことなどを無理に話す必要は一切なく、いつでもインタビューを中止することができます。

理

解した

研究参加者氏名： \_\_\_\_\_

研究者氏名： \_\_\_\_\_

署名： \_\_\_\_\_

署名： \_\_\_\_\_

令和 年 月 日

全てのデータは、英国データ保護法に基づきヨーク大学の中央ストレージシステム（Central Storage System）に保管されます。