Professor Wayne Morrison, Queen Mary University of London

‘Law, Faith and the construction of historical memory: the case of Bangladesh War Crimes Trials’

ABSTRACT: Forty years after the devastating events of the ‘War of Liberation’ of 1971 Bangladesh has held controversial War Crimes trials that focus on members of Islamic political groups that opposed the creation of Bangladesh. These trials attempt to legally inscribe a particular meta-narrative of Bangladeshi identity, one in which moderate Muslims resisted ‘genocide’ and fought for and pledged their allegiance to a secular constitution. Against this image are pitted an imaginary of groups that never accepted Bangladesh, who were in 1971 ‘collaborators’ and para-military agents of Pakistani terrorism and who currently seek an Islamic state. The trial and execution of such individuals is evoked to do ‘justice’ and restore the (social) constitution. The operation of the trials and the public reaction to them however, raises questions for those who put their faith in law and due process. Do flawed legal processes undermine the very historical memory they attempt to inscribe and the social constitution they purport to defend?

Miguel Manero, University of Macau, China

‘Nullum Crimen, Nulla Poena Sine Lege in War Crimes Trials: In defense of the way International Criminal Tribunals fleshed out International Criminal Law from the roots of law’

ABSTRACT: Today most scholars put forward the argument that the ‘first’ war crimes trial at Nuremberg was characterized by a violation of the *nullum crimen nulla poena sine lege* principle. The idea took hold that, not only the crime of aggression, but also the rejection of the defence of superior orders and, to a lesser extent, crimes against humanity were *ex post facto* law. *This is not correct.* A careful analysis of the IMT judgment and a renewed scrutiny of the sources of international law in existence at the time of the facts unveil a different scenario.

In relation to crimes against peace, the highlight goes to customary law, resulting not only from the Treaty of Versailles and its’ accusation against the German emperor for a *supreme offense* against international morality and the sanctity of treaties but also, and more importantly, from the widespread declarations of virtually all states in the world declaring that *aggression is a crime.* In relation to crimes against humanity, the main argument is that general principles of law – including the ones common to the civilized nations, the laws of humanity and dictates of the public conscience – were *legitimate sources of international crimes.* The criminal norms at stake covered *some conduct* committed in Germany by Germans against Germans during and before the war. This is based on the premise that the Martens Clause had already normative force on its own and *not only in war but also in peace.*
The modern ad-hoc tribunals are often accused of something similar. These tribunals considered that punishment for certain crimes (example: acts or threats of terror) and modes of responsibility (example: joint criminal enterprise III) does not violate the principle of legality. They also set forth that to apply those crimes and modes and responsibility, not only to international armed conflicts, but also to civil wars was not *ex post facto* law. The point of view that international judges are acting like legislators and that violations of the *nullum crimen nulla poena sine lege* are again taking place is similarly rejected.

**Bibliography:**


**Dr Susan Twist, University of Central Lancashire**

‘*Retrospectivity, the crime of aggression and the Nuremberg Trials, Was the Rubicon crossed too soon?’*

**ABSTRACT:** As from 2017, it will be feasible for the International Criminal Court to exact punishment against those at the heart of government who plan, initiate or perpetrate a 'crime of aggression'. Initially deployed during the Trial of the Major Nazi War Criminals (1945-46), against the architects of World War II, the crime of waging aggressive war was subsequently affirmed and a directive issued for its formulation as a precept of international law, by the United Nations General Assembly (GA Resolution 95(1) December 11, 1946). Reflective of the intrinsically political nature of war and the concomitant complexity of defining 'aggression', almost seven decades will have elapsed before prosecution of alleged perpetrators will potentially resume.

Arguably attributable to the controversial provenance of the crime of aggression, the resistance of the international community to exploit the opportunity which Nuremberg appeared to afford, invites scrutiny of the extent to which the Allies relied on *ex post facto* criminal law. It is contended that the Nuremberg Charter, unilaterally enacted by representatives of the Allied nations on August 8, 1945, to govern the scope and conduct of the ensuing proceedings, violated the doctrine: *nullum crimen, nulla poena sine lege praevia* (no crime and no punishment without previously established law).
Further, that the Allies' reliance on the purported existence of pertinent international customary law was only obliquely articulated and that, even with more expansive elaboration, would have proved as flawed and fragile as the conventional precedent to which the Charter made generic reference. Never before had States been held accountable for the act of warfare (other than in the purely contractual or, perhaps, tortious sense of being required to make economic reparations); far less had individuals been deemed responsible for the 'crime' of waging aggressive war with the range of punitive sanctions this would have putatively entailed.

From the perspective of its proponents both politically expedient and empirically progressive, the criminalisation of aggressive war at Nuremberg was juridically regressive. Conjoined with the Allies' carefully-crafted interpretation of the non-retrospectivity norm, the consequential derogation from the 'rule of law' suggests that the ends do not always justify the means by which they are achieved. The Rubicon was, indeed, crossed too soon.

Professor Michael Salter, University of Central Lancashire

‘The involvement of US Intelligence in both immunity and logistical support for the Nuremberg war crimes process’

ABSTRACT: The involvement of intelligence officials within the prosecution of war criminals remains a difficult topic, particularly where this involves behind the scenes plea bargaining and the negotiation of de facto immunity deals in return for intelligence-related gains. This paper will provide an overview of both the supportive and “subversive” activities of US intelligence officials within the Nuremberg and related WW2 trials. It will summarise the findings and implications of a series of case studies the author and his collaborators have produced over the past decade, including with respect to Himmler’s deputy Major General Karl Wolff, who was assisted to evade prosecution during the Nuremberg process.

Anna Marie Brennan, University of Liverpool

‘Transnational Terrorist Groups and International Criminal Law: Utilising Complexity Theory to Understand the Accountability Gap’

ABSTRACT: A study of the emerging jurisprudence of the International Criminal Court suggests that attacks by transnational terrorist groups would be difficult to prosecute. Thus, this paper argues that a gap that has always existed in international criminal law is now becoming more apparent with the re-emergence of transnational terrorist groups such as ISIS. Purely legal approaches to the issue are unlikely to resolve the dilemma, and although some literature on terrorist groups suggests some bases for prosecuting members of transnational terrorist groups before the ICC, none are completely satisfying. Complexity theory shows why this is so. If the theory is correct, the transnational terrorist group is neither a legal abstraction nor reducible to the individuals who are supposedly members. Instead, it is a phenomenon that has emerged from complex interactions among individuals and
formal and informal networks. Using complexity theory, this paper will probe the limits of international criminal law in bringing members of transnational terrorist groups to justice in the context of changing methods of warfare. Since transnational terrorist groups are complex systems that lack a linear connection between the centralised command and its subordinate members, this suggests that the divide between the group and its members in the distribution of individual criminal responsibility may be challenging to bridge.

Dr Richard Saffrey-Mayger, University of Central Lancashire

‘Alternative responses to war crimes of torture under the ICC statute not involving the creation of the new ad hoc tribunal or an ICC trial’

ABSTRACT: This paper will seek to assess the use of alternative approaches to dealing with cases of torture without bringing proceeding in international courts and tribunals with may encounter various problems including delays and difficulty accessing defendants and witnesses.

The primary focus of the paper will be an examination of the use of inquiries such as the National Truth Commission in Brazil as an alternative remedy or a prelude to court proceedings against those responsible for acts of torture. The Commission examined abuses alleged to have taken place during the military dictatorship in the country, including extra-judicial killings and torture, which had not previously been addressed due to an amnesty law.

The paper will review the recommendations of the Commission in light of international standards including the United Nations Committee Against Torture’s General Comment No 2 and discuss their scope for preventing the occurrence of torture in the future.

This approach will be contrasted with that of other States in the region which, in the absence of similar amnesty laws, have been able to bring criminal proceedings against those involved in military dictatorships in the domestic courts, in order to assess the additional value to society and victims of such public examinations.

Dr Shivani Pal, University of Central Lancashire

‘Subaltern Studies, Plea Bargaining and International Criminal Law: a critical perspective’

ABSTRACT: This paper will consider how a theoretical approach drawing on the field of subaltern studies can assist the way in which one might approach analysing the processes and applications of international criminal law. I will argue that such an approach offers a productively different perspective through which one may study the international legal field and in doing this is able to offer a critique of the legal system from a standpoint that takes into account the cultural positions of those
who may be unable to navigate the complex procedures that are in place within trial structures due
to their backgrounds and experiences.

The paper will firstly look at what broadly constitutes subaltern studies and how it may relate to
international criminal law. It will then argue that certain practices in international law have the
potential to leave people outside the international criminal trial structure offering examples of how
this may take place. Primarily, it will consider the practice of plea bargaining to illustrate this argument
asserting that its use is very much embedded in the culturally rooted adversarial legal structures that
are prevalent. Centrally, it will investigate the way in which a bargain of this sort is reached and discuss
the fact that this is largely unregulated with very little guidance given to the trial participants, who
often lack experience of the adversarial system, as to what they might expect and what is expected of
them during the bargaining and trial process.

Finally, the paper will argue that this has the potential to create a position of power for practitioners
who have experience of this system in their own jurisdictions to lead the process of plea-bargaining
whilst leaving other participants who do not at a distinct disadvantage. A critical position that is
informed by the field of subaltern studies offers an alternative through which an understanding of this
cultural exclusivity may be reached, challenging the dominant acceptance, particularly amongst
practitioners, of certain models of justice as somehow ideologically neutral.

Rahela Akhter, University of Central Lancashire

‘Film Evidence in War Crimes Trials’

ABSTRACT: The use of atrocity film evidence within international war crimes trials has been a
controversial issue, in part, due to its conflict with the conventional common law rule against
admitting hearsay evidence into trials and relative to "fair trial" norms. Such controversies are
particularly evident in relation to the dramatic use of Nazi Concentration Camp at Nuremberg, which
has been subjected to varied debate. To this end, much of this debate is centred on whether the
screening of the atrocity film had a “prejudicial impact” or whether it was justified on the basis of
“serving the interests of justice” and contributing towards a “fair trial.” This area merits a study to
compare the problematic use of Nazi Concentration Camp at Nuremberg, with the use of atrocity film
evidence at The Hague, within the Popovic et al trial, to identify whether any valid lessons have been
learned and incorporated. By adopting a comparative approach between the atrocity films deployed,
both within the world’s first and second war crimes tribunal, the learning experience of the
International Criminal Tribunal for the former Yugoslavia is evident. As such, the lack of evidential
concerns relating to the utilisation of film at The Hague, coupled with the integrated use of film,
suggests the screening of atrocity film evidence can be justified, on the basis of “serving the interests
of justice,” and relative to “fair trial” norms, before the contemporary tribunal. This thesis will discuss
whether - on the basis of the two case studies - such evidence may now have become "normalised"
and if so what are its implications?
Danny Dyson, University of Central Lancashire

‘Japan’s Unit 731 and the American Led Cover-Up’

ABSTRACT: During World War II the Japanese Imperial Army became world leaders in the development of biological warfare research, carrying out identical studies to that of their infamous German counterparts. However, unlike the German physicians, the Japanese researchers would, on the whole, escape prosecution for their crimes against humanity, escaping scrutiny from the world at large.

From 1932 the Japanese had embarked on a highly advanced and rigorous biological warfare programme, conducting extremely unethical experiments on innocent men, women and children under the watchful eye of Doctor Shiro Ishii. Countless thousands would perish as a consequence, having been purposefully infected by the Unit with a veritable smorgasbord of highly epidemic diseases.

This thesis has been broken up in to three key elements. Firstly, Part One will chart Japan’s military expansionism and provide a historical backdrop for the rise of Ishii’s Unit 731.

Part Two will consider the transition to the post-war dilemma that the Allies found themselves in; how best to punish those alleged to have been complicit in Japanese war crimes? Part Two will provide a factual background to the creation of the Tokyo War Crimes Tribunal and its aims and ideals of the 12 Justices instructed to ensure justice was had by victorious nations of the Second World War.

Part Three will deal with the repercussions of the Judgment from the Tokyo Trial and the alleged American led cover-up. Unfortunately, those who acted in Unit 731 escaped punishment from the Allies despite having carried out experiments on Allied Prisoners of War amongst other victims. Members of Unit 731 would become a “large number of persons who might properly have been charged in this indictment” but who escaped prosecution.

Katherine Ogunleye, University of Central Lancashire,

‘Sexual Abuse of Women during Internal Armed Conflict in Nigeria as war crimes’

ABSTRACT: Sexual violence during armed conflict is not a new phenomenon. It has existed for as long as there has been conflicts. Despite growing awareness and intensified condemnation of sexual violence in conflict zones over past decades, rape and other forms of sexual violence continue to be widely used weapons in conflicts around the world. Both the individual and the society suffer from
the effects of these sexual violence. Belligerents have often capitalized upon the abuse of their women to garner sympathy and support for their side, and to strengthen their resolve against the enemy. Usually, the apparent concern for these women vanishes when the propaganda value of their suffering diminishes, and they are left without any prospect of redress. Sexual violence during conflicts in Nigeria was not common. However, recent upsurge is a cause for concern with evidence from reports showing that kidnapping and rape is now being employed as a weapon during conflicts in Nigeria.

My study is therefore set in the context of this debate. Its predominant objective is to critically analyse the implementation of legal regime in Nigeria in comparison to International Criminal Laws, on prevention and protection of women during internal conflicts. These laws Include; Roman Statute of International Criminal Court, The African Charter on Human and Peoples’ Right implemented under National Human Rights Commission Act 2011, Criminal Code of South and Penal Code of Northern Nigeria, Nigerian Sexual Offences Bill May 2015 and Nigerian Terrorism Prevention Act of 2011. Utilising a combination of methodologies. The Black-letter methodology and socio-legal empirical approach to elucidate legal doctrinal rules and principles. This empirical dimension including the analysis of the qualitative findings, policy implications for reforms derived from interview analysis of research subjects’ ideas, their experiences and perception of the Nigerian criminal justice system, largely from perspective of professionals’ views working with victims of rape.

The preliminary findings shows that, though there are laws formally prohibiting sexual violence against women, very few measures of enforcement have been taken to execute these laws. Laws like the Criminal Code practiced in the South and Penal Code of Northern Nigeria are ambitious and insufficiently comprehensive to protect or bring about any prosecution against offenders of sexual crimes.

Sara Booth, University of Central Lancashire,

‘The legitimacy of war crimes trials’

ABSTRACT: My research programme’s central research question concerns the adequacy and legitimacy of transnational war crimes trials held in response to various 20th and 21st century mass atrocities. In particular, I will be concentrating my critical assessment of such trials on the adequacy and legitimacy of charges of Genocide, Crimes against Humanity and War Crimes in the light of various expressly formulated criteria of “criminal justice” developed to legitimate legal responses. There are two strands to my overall research question: First, what is the most appropriate theoretical model for evaluating claims to legitimacy for this type of criminal trial? Secondly, to what extent can international criminal law scholarship benefit from an empirical socio-legal reconstruction and critical evaluation of the historical and contemporary details of war crimes trials when these are assessed in the light of the criteria of evaluation contained in my expressly formulated theoretical model of “legitimacy”?
Aims and Objectives: To develop a theoretical model of legitimacy in relation to the rationale and practice of criminal justice. This will involve discussing notions such as reaffirmation of democratic legality of the rule of law, victor’s justice, “truth and reconciliation,” just deserts and deterrence.

The overall objective is to investigate and draw empirically-supported conclusions concerning whether these new hybrid bodies have provided evidence of their capacity to become a viable alternative to both the ad hoc tribunals and the ICC in relation to the tasks of securing a legitimate form of criminal justice developed in response to atrocities.

Literature Review: I am currently writing my Literature review and have been looking extensively at the Literature in this area. I have split the texts into categories using their approaches, I will be looking at Autobiography’s, Legalist (using the black letter approach) International relations and multidisciplinary (socio legal approach) my aim here being to show the results on using the different methodologies within International Criminal Law and how successful/unsuccessful they have been, to pull out the points of each methodology that work well within this area and to hopefully add to this, creating my own methodology of this area of law.