Introduction

New Horizons: Transitional Justice in the Asia-Pacific

Renee Jeffery and Hun Joon Kim

The question of how the human rights violations of previous regimes and past periods of conflict ought to be addressed is one of the most pressing concerns facing governments and policy makers today. New democracies and states in the fragile post-conflict peace-settlement phase are confronted by the need to make crucial decisions about whether to hold perpetrators of human rights violations accountable for their actions and, if so, the mechanisms they ought to employ to best achieve that end. Since the 1980s, post-transitional states have increasingly opted in favour of accountability for human rights violations and have used a wide range of measures from prosecutions and punishment to truth telling, lustration of police and security forces, reparations, and judicial reforms, to reconciliation processes, apologies, forgiveness ceremonies, exhumations and reburials, memorialization projects, traditional and indigenous justice practices, and other guarantees of non-repetition. In doing so, they have contributed to the emergence of what has variously been termed ‘the justice cascade’ or as a ‘revolution in accountability.’

TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC

The purpose of this book is to provide an in-depth analysis of the practices, processes, and problems of transitional justice in the Asia-Pacific region. Although the practice of transitional justice is global in its reach, scholarship concerned with theorizing and analyzing the practice has focused on cases in Latin America, Africa, and Eastern Europe. The reasons for this are largely historical. During the 1980s and 1990s large numbers of states in Latin America, Africa, and Eastern Europe experienced transitions to democracy and, in doing so, pioneered efforts to hold state officials accountable for past human rights violations. For example, exemplary truth commissions were established in the 1980s and 1990s in Argentina and South Africa, and foreign and international criminal prosecutions were carried out in response to human rights violations that occurred in Chile, the former Yugoslavia, and Rwanda throughout the 1990s. Although the use of transitional justice mechanisms to address past human rights violations has been similarly prevalent in the Asia-Pacific, however, this region has attracted decidedly less scholarly attention than Latin America, Africa, and Eastern Europe.

A simple comparison of the number of publications reveals this imbalance. As the Transitional Justice Database Project reveals, of the 1,520 country-specific studies of transitional justice published in recent years, only seventy-eight (5 percent) are on countries of the Asia-Pacific region. By contrast, 629 studies (41 percent) have appeared on transitional justice in Africa, 474 (31 percent) on Europe, and 336 (23 percent) on Latin American cases. The imbalance is not caused by the number of new democracies in the region because the Asia-Pacific region, with twenty-four new democracies since 1980, ranks second, following Africa (twenty-nine countries), and followed by Europe (twenty-one countries) and Latin America (seventeen countries). More strikingly, studies of...
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Japan, Cambodia, and East Timor make up almost 90 percent of all regional research. This suggests a lack of interest in those cases which do not get much attention from the international media. This is a significant oversight. The Asia-Pacific, as the region that has most recently embraced the practice of transitional justice, following, developing, and modifying practices employed in the rest of the world, has shaped many of the most innovative, dynamic and, at times problematic, processes. Examining the practices and processes of transitional justice in the Asia-Pacific will thus provide not only sorely lacking regional analysis but also broader insights into the theory and practice of transitional justice.

The remainder of this introductory chapter thus explains our understanding of transitional justice in the twenty-first century. By expanding the conceptual horizons of what constitutes a ‘transition’ and what the term ‘justice’ means, we provide a broad understanding of transitional justice that encompasses the range of contexts within which states and other actors pursue accountability for past human rights violations as well as the various means by which they seek that end. In order to situate our work within the development of transitional justice scholarship over the past three decades, we then provide an overview of the three key debates that have shaped the sub-field: prosecution versus pardon, retributive versus restorative justice, and bottom-up versus top-down approaches. In doing so, we suggest that a new trend in transitional justice is emerging and consolidating in the Asia-Pacific, where previous dichotomous divides are no longer relevant and synthetic and holistic approaches that combine different transitional justice mechanisms and notions of justice have taken hold. This provides the basis on which we explain the selection of cases included in this book before outlining its structure and content.

Redefining Transitional Justice in the Twenty-First Century

Transitional justice has traditionally been defined as ‘the conception of justice associated with periods of political change, characterized by
legal responses to confront the wrongdoings of repressive predecessor regimes. In this book, however, we adopt a broader understanding of transitional justice that extends both the constitutive elements of transition and justice beyond their original conceptualizations. By redefining its parameters, we hope to reflect developments in both the practice and study of transitional justice that have seen its contours significantly expanded over the past three decades.

Although transitional justice has been practiced since at least the time of the ancient Greeks and found form in the aftermath of World War II with the Nuremberg and Tokyo Trials, the origins of the contemporary study and practice of transitional justice are most commonly associated with the 'third wave' of democratic transitions from authoritarian rule in the 1980s in Latin America. Democratization in this contextcommonly referred to the movement from a repressive and closed regime, such as military, authoritarian, and one-party dictatorships, or communist regimes, to more open and decentralized government marked by free, fair, secret, and direct national elections for major government offices including head of state. Reflecting this, transitional justice was primarily focused on 'justice associated with periods of political change', specifically the 'movement from repressive regimes to democratic societies'.

Justice, in this context, was generally conceived in terms of the establishment of trials and truth commissions to address past human rights violations.

manifested in judicial activities such as criminal and civil proceedings and
the punishments, which exact certain costs on the perpetrator that fol-
lowed them. Transitional justice may also attempt to right the wrongs
of the past by reinterpreting that past, re-establishing suppressed facts,
reconceiving distorted ideas, and rewriting official narratives in san-
tioned documents and history textbooks. At its most basic, reparative
justice seeks to repair damage or harm that has been unjustly inflicted
on an individual, group, or state. In its ideal extreme it is 'designed to
re-establish the situation prior to... [a] wrongful act or omission' and, in
doing so, 'wipe out all consequences of the illegal' or, indeed, immoral
act. Reparative justice may be administered through a formal legal sys-
tem with current efforts concentrated on recovering stolen assets from
former dictators for redistribution to victims, or through informal com-
munity or grass-roots processes. Similarly, restorative justice aims to
'create peace in communities by reconciling the parties and repairing
the injuries caused by the dispute.' It commonly does so through truth
telling, reconciliation processes, apologies, forgiveness ceremonies,
the payment of compensation, and participation in traditional dispute rec-
ociliation practices. Finally, rectification is the restoration of the prior
social and political status of the victims of human rights violations and
their family members. It seeks to specifically address the injustice of
'direct physical violence suffered by people during conflict' by providing

15 Many traditional, customary, and indigenous justice practices also incorporate retribu-
tive elements alongside those commonly deemed 'restorative'.
16 Louis B. Sohn and R.R. Baxter, 'Responsibility of States for Injuries to the Economic
Interests of Aliens,' American Journal of International Law, Vol. 55 (1961), pp. 545-
546; Jo M. Pasqualucci, 'Victim Reparations in the Inter-American System: A Critical
Assessment of Current Practice and Procedure,' Michigan Journal of International
17 Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corrup-
tion and Economic Crimes?,' International Journal of Transitional Justice, Vol. 2,
18 Burt Galaway and Joe Hudson, 'Introduction' to Burt Galaway and Joe Hudson (eds.),
Restorative Justice: International Perspectives, Monsey: Kugler, 1996, p. 2; Allison Mor-
ris, 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice,' British
restitution or rehabilitation. Of course, these represent ideal types of justice that, in reality, are often pursued in combination with one another. Nonetheless, all, in their different ways, seek to address the wrongs of the past and attempt, as far as is possible, to put those wrongs right.

With this we arrive at our broad understanding of transitional justice as the pursuit of accountability for, and attempts to make right, the wrongs of human rights violations committed in the past associated with major political shifts, including movements from authoritarian rule to democracy, or ruptures, such as those that mark the end of violent conflicts. This understanding, as we will see, not only reflects the changing nature of transitional justice over the past thirty years or so, but provides a starting point for examining the actual dynamics of transitional justice as it is practiced in the Asia-Pacific region.

Three Debates in Transitional Justice

Developments in the theory and practice of transitional justice have also been reflected in three main debates that have preoccupied scholars and practitioners since the 1980s. The historical development of these debates is important for our purposes for it serves to further underpin our broad understanding of transitional justice and helps to further establish the context in which new developments in transitional justice have taken place in the Asia-Pacific. The three key debates in question emerged around three sets of dichotomous extremes:

(1) prosecution versus pardon, also referred to as trial versus amnesty, or justice versus peace;
(2) retributive versus restorative justice, variants of which included justice versus truth, perpetrator-focused versus victim-centered approaches, and backward-looking versus forward-looking approaches; and,

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(3) top-down versus bottom-up, or state-led versus civil society-initiated approaches, or international versus local approaches.

Prosecution versus Pardon

In the early years of scholarship concerned with transitional justice, a fault line emerged between international lawyers and social scientists over questions of the morality, legality, and efficacy of pursuing criminal proceedings against former state officials. At their core, these ‘major debates’ concerned whether or not new democracies should ‘prosecute or punish…[or] forgive and forget’ crimes committed by members and supporters of past authoritarian regimes.\(^\text{20}\) In the main, the lawyers who engaged this question endorsed the criminal prosecution of the perpetrators of human rights violations on both deontological and utilitarian grounds.\(^\text{21}\) They argued that criminal prosecutions were either necessary moral and legal responses to criminal offenses or were useful means of endorsing the criminal justice system, upholding the rule of law, and preventing future abuses through the effects of deterrence, or both. These scholars explicitly opposed the main alternative to prosecutions – amnesties – and questioned their ability to serve the instrumental function of bringing peace and stability to transitional countries with which they had been readily associated.\(^\text{22}\)

By contrast, scholars of democratization viewed the rising demand for accountability that had accompanied the Latin American transitions as a fad that would pass with the passage of time. For example, in

\(^\text{20}\) Huntington, \textit{The Third Wave}, pp. 211, 213.


accordance with his view that transitional justice is 'shaped exclusively by politics', Huntington observed that no effective criminal prosecution and punishment occurred in most transitional countries before concluding that '[i]n new democratic regimes, justice comes quickly or it does not come at all.'

His guidelines for democratizers thus advised that only when it is both 'morally and politically desirable' should the leaders of past authoritarian regimes be prosecuted. Similarly, O'Donnell and Schmitter predicted that such prosecutions would become less likely as 'the bitterness of memories attenuated with the passage of time' in transitional societies. These scholars openly supported the positive function of amnesties in bringing democratization and raised concerns that pushing new democracies to prosecute still-powerful members of former regimes might derail transitions and precipitate renewed violence.

The punishment versus pardon debate came to a head in 1993 with the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY). In this instance, the 'Security Council voted to create' an ad hoc international tribunal 'while the fighting and atrocities still raged.' Skeptics of criminal prosecutions vehemently criticized the tribunal for obstructing the ongoing peace process and thus prolonging a war that brought great human suffering. As one anonymous analyst famously wrote, one of the lessons of the former Yugoslavia was that the 'quest for justice for yesterday's victims should not be pursued in such a manner that it makes today's living the dead of tomorrow.' Lawyers and human rights activists responded to these criticisms and supported the

24 Huntington, The Third Wave, p. 228.
tribunal by arguing that the ‘enforcement of international law’ was ‘an immediate priority, subordinate to neither political nor military imperatives.’

With the signing of the Rome Statute in July 1998 and the arrest of the former Chilean president Augusto Pinochet in October of the same year, the prosecution versus pardon debate continued and intensified. Both events instigated debate over the legitimacy and efficacy of invoking the principle of universal jurisdiction and raised questions about the international status of amnesties granted at the domestic level. While proponents of trials heralded their ability to deter future human rights violations, others voiced concerns that pursuing international prosecutions through bodies such as the ICC ‘could initiate prosecutions that aggravate bloody political conflicts and prolong political instability in


any negative effects, they do not appear to contribute to reducing the recurrence of civil war or improvements in human rights practices.\textsuperscript{38} The debate thus continues.

\textit{Retributive Justice versus Restorative Justice}

At the same time as scholars were initially debating the relative merits of prosecuting and pardoning the perpetrators of human rights violations, a new and potentially powerful alternative to criminal prosecutions began to emerge in the form of the truth commission. As early as 1988, an international group of experts unanimously agreed on ‘the central importance of establishing and acknowledging the truth about past violations.’\textsuperscript{39} As Alice Henkin noted, ‘There was common agreement that the successor government has an obligation to investigate and establish the facts so that the truth be known and be made part of the nation’s history. Even in situations where pardon or clemency might be appropriate there should be no compromising of the obligation to discover and acknowledge the truth.’\textsuperscript{40} Over time, truth commissions became a frequently used feature of post-transitional states in Latin America and, with this, scholars began to assess their efficacy, recording some encouraging results.\textsuperscript{41}

This new demand for the establishment and acknowledgment of the truth precipitated a further scholarly divide characterized in terms of


truth versus justice. Its emergence coincided with debate over how South Africa ought to address its violent past as part of its transition to democracy. The course of action chosen in the end for South Africa was posed as a deliberate “third way”, a compromise between the extreme of Nuremberg trials and blanket amnesty or national amnesia’ that came in the form of the South African Truth and Reconciliation Commission before which individual perpetrators could tell the truth about their actions in exchange for amnesty.\(^{42}\) By criticizing criminal prosecutions and eschewing wholesale impunity, the South African model added another dimension to the prosecution versus pardon debate. In particular, it helped to shift the focus of debate away from the simple peace versus justice and truth versus justice dichotomies to concentrate on the question of the particular types of justice that ought to be prioritized. As truth became acknowledged as an instrument of justice, what was initially framed as the ‘truth versus justice’ debate gave way to debates over retributive versus restorative justice.\(^{43}\)

As noted above, retributive and restorative justice are not wholly opposed but characterized by overlapping goals and common practices. They can, nonetheless, be distinguished by their different understandings of who the subjects of crimes are and who constitutes the focus of justice.\(^{44}\) Retributive justice conceives crime as a ‘violation of the law’ of which the state or the international community is the victim. The aim of justice, by this view, is therefore ‘to establish blame’ and administer punishment.\(^{45}\) Critics of punitive justice thus point out that criminal prosecution is ‘a struggle against perpetrators, rather than an effort on behalf

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of victims." By contrast, restorative justice conceives crime as "a violation or harm to people and relationships." That is, crime is primarily viewed as "a conflict between individuals that results in injuries to victims, communities and the offenders themselves, and only secondarily as a violation against the state." Justice conceived in this way thus focuses on repairing injuries and reconciling communities and draws on a range of mechanisms including truth telling, apologies, forgiveness, compensation, reparations, and participation in traditional dispute resolution practices. Proponents of restorative forms of justice thus argue that victim-centered justice and the forward-looking restoration of social relationships ought to take precedence over backward-looking measures that focus on the perpetrators of human rights violations.

However, there is a still unresolved issue of whether amnesties could be constituted as a justice or accountability mechanism. Amnesties are "official state declarations that individuals or groups accused or convicted of committing human rights violations will not be prosecuted or further prosecuted or will be pardoned for their crimes and released from prison." Amnesties can take different forms depending on beneficiaries. Olsen, Payne, and Reiter divide the amnesty according to the four sets of beneficiaries: armed non-state actors; state forces in armed conflicts;

47 Zehr, 'Restorative Justice,' p. 68.
domestic political opposition for crimes against state; and state agents for actions committed against non-state agents (i.e. state repression).\textsuperscript{51} Here, the first and last categories are most controversial because it is difficult to discern these types of amnesties from either impunity or blanket amnesty. Some scholars further note that even these kinds of amnesties have an element or a hint of accountability by ‘acknowledging the past human rights violations’ and ‘generating a larger discussion of transitional justice’ but these arguments are still highly controversial.\textsuperscript{52}

\textbf{Top-down versus Bottom-up}

With the global expansion of transitional justice marked, most notably, by the establishment of the ICC in 2002, came a further set of debates about whether transitional justice ought to be directed or imposed from above, or whether it should be encouraged to emerge from the grass-roots. As more and more countries have come to adopt transitional justice mechanisms, so too have international organizations increasingly adopted and promoted transitional justice as one of their policy goals. For example, new international nongovernmental organizations, such as the International Center for Transitional Justice (ICTJ), have emerged, while older NGOs, such as Amnesty International and Human Rights Watch, have begun to frame much of their work in terms of transitional justice. In 2004, the United Nations secretary general issued a report on the rule of law and transitional justice in conflict and post-conflict societies, thus officially launching transitional justice as a policy tool to promote and protect human rights.\textsuperscript{53} Although the UN clearly states that it tries to avoid imposing a ‘one-size-fits-all’ approach, the UN Office of the High

\textsuperscript{51} Olsen, Payne, and Reiter, \textit{Transitional Justice in Balance}.
complexities that are too often glossed over, due in part to the privileging of a cluster of liberal normative goods, such as the rule of law, peace, reconciliation, civil society, human rights, combating impunity, and justice.\textsuperscript{58}

Thus international efforts are often referred to as transitional justice 'from above' and posed as being in opposition to the efforts made by 'grass-roots actors.'\textsuperscript{59}

Debate about the relative merits of top-down versus bottom-up or international and state-led versus civil society-led accountability processes resonates strongly with similar debates about liberal-international versus local peace-building approaches. In large part this is a function of the blurring of practical and, now scholarly, distinctions between transitional justice and peace building. In accordance with its antecedents in peace management and peacekeeping, the practice of peace building tends toward state-oriented, top-down processes.\textsuperscript{60} Perjoratively termed the 'liberal peace' by critics, this approach to peace building favors the promotion of democracy and the establishment of a liberal market economy as the means of attaining self-sustaining peace.\textsuperscript{61} Within this frame, the optimal functioning of the rule of law is conceived as a key component of democracy and, as such, a strengthened criminal justice system (or, failing that, an international criminal tribunal) is viewed as the best place to pursue accountability for human rights violations.


\textsuperscript{61} This idea is, of course, based on the central tenets of the democratic peace thesis. On this, see Michael Doyle, 'Three Pillars of the Liberal Peace,' \textit{American Political Science Review}, Vol. 99, No. 2 (2005), pp. 463-466.
In recent years, however, scholars from within the critical theory tradition have, as is their modus operandi, criticized the ‘creeping neo-imperialist tendencies of peace promoted by hegemonic forces.’\(^\text{62}\) That is, they have opposed the imposition of Western liberal approaches to peace building on non-Western societies and the apparent marginalization of local, indigenous processes that have accompanied them. Embedded within these critiques is the assumption that marginalized local forms of justice are inherently ‘good’ and thus deserving of protection against the ‘bad’ imperialist justice imposed by intervening forces. However, just as MacGinty cautions us against the tendency to ‘romanticize’ indigenous and traditional approaches and to assume that they are “good” or [of] higher normative value’, so too we must avoid automatically demonizing the liberal approach.\(^\text{63}\) Both have strengths, and both are susceptible to criticism, based not on ideology but on evidence of the justice outcomes they produce.

In recognition of this and in response to recent practice, some scholars have begun to discuss the emergence of ‘liberal-local hybrid’ forms of peace building. Also termed ‘post-liberal’ peace, liberal-local hybridity ‘represents a transmutation of both the liberal and the local’ whereby the two approaches ‘meet each other on the ground, react and modify each other.’\(^\text{64}\) Where justice is concerned the assumption inherent in the very notion of a ‘liberal-local hybrid’ approach is that both liberal international and local forms of justice will be transformed by their interactions with one another – that is, that a symbiotic relationship exists between state-led and civil society transitional justice projects.\(^\text{65}\)

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Emerging Trends in Transitional Justice and the Asia-Pacific

As hinted at in the discussion above, the dichotomous extremes that once defined the key debates have softened with far more nuanced accounts of transitional justice dominating contemporary thought. As a recent UN OHCHR report notes, "the assumed tension between justice and peace has gradually dissolved." In its place is the widespread recognition that "in reality the choice is seldom simply "justice" or "peace" but rather a complex mixture of both." A new trend has thus emerged where a range of diverse transitional justice mechanisms are applied simultaneously or in sequence with one another, thus allowing transitional and post-conflict states to pursue prosecutions and amnesties, truth commissions and justice measures, and international, state, and local initiatives at the same time. In accordance with this development, the UN now endorses the pursuit of 'comprehensive' approaches to transitional justice, while the ICTJ, which initially focused on promoting the South African model of truth commissions, now favors holistic solutions to transitional justice.

This approach has garnered some degree of support from scholars who have found empirical evidence that transitional justice approaches that combine trials and amnesties, or trials, amnesties, and truth commissions provide the best sets of outcomes for democracy, peace, and human rights. This approach was not entirely new; the ICTJ, the 2005 revision

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69 Olsen, Payne, and Reiter, Transitional Justice in Balance.
of the Principles to Combat Impunity by Diane Orentlicher, and the 2004 report of the UN Secretary-General upheld the holistic and comprehensive approach in principle. However, the application of these principles and promotions in the field and serious academic engagement came more recently.

It is within the Asia-Pacific, in particular, that many of these recent developments in transitional justice have occurred. We have to make it clear that this new development in transitional justice is not exclusively confined to the experience of the countries in the Asia Pacific. Certainly, many combined and holistic approaches have been taken in places such as Chile, Guatemala, Peru, Sierra Leone, Rwanda, and Uganda. However, as mentioned earlier, compared to these cases, the country cases in the Asia Pacific have not fully explored either by international practitioners and scholars so far. In this book we define the Asia-Pacific as a contiguous region of the world that includes East Asia, Southeast Asia, South Asia, Melanesia, and Oceania (primarily Australia and New Zealand). In one sense this is a narrower understanding of the Asia-Pacific than that adopted by the Asia-Pacific Economic Cooperation (APEC) which also includes states that reside on the Pacific Rim such as Russia, the United States, Chile, Peru, and Mexico. In another sense, by excluding the states of Central Asia and the Middle East, it also represents a narrowing of the normal geographical boundaries of Asia.

Addressing the past wrongs is not a new theme for countries in the Asia-Pacific. Although much less mentioned compared to the Nuremberg counterpart, the Tokyo international military tribunal was set up for reminding us of this valid point.
immediately after the end of the World War II to address war crimes and crimes against humanity, and more than 5,000 Japanese nationals were brought to the court. Moreover, the legacy of Japanese colonialism left a deep chasm between Japan and its neighbors, especially China and two Koreas, over issues such as sex slavery and forced labor, apologies and reparations, territorial ownership, the content of Japanese history textbooks, and Japanese state officials' visits to the Yasukuni Shrine.\(^7\) On the other side of the equator, human rights violations perpetrated by Western settlers in Australia and New Zealand have also left emotionally-charged tensions between new settlers and aborigines, issues that their respective governments continue to address.\(^4\)

In the past decade or so, however, the Asia-Pacific region has experienced a significant increase in the use of transitional justice mechanisms to address past human rights violations. In this it has lagged behind Latin America, Eastern Europe, and Africa where the pursuit of transitional justice gained momentum in the 1980s and 1990s. Coming to transitional justice relatively late, however, the approaches pursued in the Asia-Pacific reflect the range of mechanisms available, both individually and in combination with one another and the contemporary challenges faced by transitional justice more broadly.

Table 1 illustrates the overall trend of adopting three main transitional justice mechanisms – trials, truth commissions, and amnesties – in the Asia-Pacific region. Although this data measures only the existence of these mechanisms in the country within a given year, it is still useful to get the bigger picture of the general trend. Notably, all the cases

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\(^4\) However, we do not include these measures addressing historical injustices since it is outside the scope of our definition of transitional justice, which requires democratization of a peace process, which is a widely accepted definition in the literature of transitional justice.
TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC

of transitional justice in the Asia-Pacific since the 1980s have involved the granting of amnesties. Rather than simply choosing impunity over accountability, however, most have also instituted human rights trials at the domestic or international level. Significantly, it was in the Asia-Pacific case of Cambodia that the idea of instituting hybrid international-domestic criminal tribunals to prosecute the perpetrators of human rights violations was first developed. Although it did not come into operation until 2006, the genesis of the Extraordinary Chambers in the Courts of Cambodia gave rise to what has become known as the ‘Cambodia model’, replicated in the East Timor Serious Crimes Special Panels, the Kosovo Courts’ ‘Panels 64’, and the Special Court for Sierra Leone. In addition, truth commissions have also found form in the Asia-Pacific, particularly from 2000 onward. Also significant about the implementation of transitional justice in the Asia-Pacific is that the vast majority of cases listed in Table 1 have implemented more than one mechanism.

Of the nineteen cases of transitional justice in the region since 1980, only six have instituted just one mechanism and, in each case, this was an amnesty. More common has been the implementation of two or more mechanisms either simultaneously, as in the case of East Timor, or in sequence, as in the case of the Solomon Islands in which amnesties in 2000 and 2001 were followed by trials in 2005, and then a truth commission which began in 2009 and is still conducting its investigations. As such, the Asia-Pacific provides fertile ground for examining the practices, processes, and problems associated with the newly endorsed comprehensive or holistic approach to transitional justice. The cases examined in this book are highlighted in bold in Table 1 and constitute a representative sample of the combinations of transitional justice mechanisms used in the region: amnesty only (Aceh, Indonesia); amnesty and trials (Cambodia);

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amnesty, trials, and truth commissions in combination (East Timor); amnesty, trials, and truth commissions in sequence (Solomon Islands and South Korea); and truth commissions and amnesties (Sri Lanka).

Considered in political terms, the Asia-Pacific also brings together two major contexts in which transitional justice is instituted: transitions from authoritarian rule to democracy and from conflict to peace. Since 1980, twenty-eight states in the region have experienced some form of political transition. Of these, eleven have undergone at least one transition to democracy. During the same period, East Timor has gained independence from Indonesia while Aceh and Bougainville have been granted autonomy from Indonesia and Papua New Guinea, respectively. At the same time, some sixteen states in the region were engaged in violent civil or, less commonly, interstate conflicts. Of these, seven also involved a transition from authoritarian rule while two involved a transition to autonomous democratic rule within another state (Bougainville/Papua New Guinea, and Aceh/Indonesia).

Table 2 provides an overview of the political transitions that have taken place in the various sub-regions of the Asia-Pacific in which at least one of the transitional justice mechanisms included in Table 1 (trials, truth commissions, and amnesties) have been used. This means that political transitions in which no transitional justice mechanisms were employed have not been included. Dividing the Asia-Pacific into its various sub-regions is also significant because it is within the sub-regions that the

Table 2. *Political Transitions Involving Transitional Justice in the Asia-Pacific, 1980–2010*

<table>
<thead>
<tr>
<th>Sub-Regions</th>
<th>Transition from Authoritarianism and Civil War</th>
<th>Transition from Civil War</th>
<th>No Transition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northeast Asia</td>
<td><strong>South Korea</strong></td>
<td>Philippines, Cambodia, Thailand, Indonesia (Aceh)</td>
<td>Burma, Laos, East Timor</td>
</tr>
<tr>
<td>Southeast Asia</td>
<td></td>
<td>Pakistan, Nepal, Bangladesh</td>
<td>Afghanistan, India, Sri Lanka</td>
</tr>
<tr>
<td>South Asia</td>
<td></td>
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<td>Solomon Islands, Papua New Guinea (Bougainville)</td>
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<td>Oceania</td>
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<td>Fiji</td>
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</tbody>
</table>

The greatest commonalities in historical, cultural, and linguistic terms lie and the influences of the great powers of the region are felt. Thus while China and Japan exert influence over Northeast Asia, India looms large over the politics of South Asia, China over Southeast Asia, and Australia over the small island states of Oceania.78 As we will see in the case studies to follow, these influences have in some instances had great bearing on the contexts in which transitional justice has been pursued in the region and the choice of mechanisms according to which it has been implemented. In order to provide a representative sample of cases across the sub-regions of the Asia-Pacific and the three major types of transition the cases highlighted in bold have been selected for individual consideration. Note that neither of the cases listed under the heading of ‘No Transition’ have been

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78 This is not to suggest that Australia is a great power, only that it exerts significant influence over a small cluster of Pacific Island states.
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Included. This is because each of these is a case of an amnesty being instituted in isolation (as addressed in the case of Indonesia/Aceh). In addition, Fiji is something of an anomaly for in this case, an amnesty was granted to those engaged in a military coup in 2000 but was followed by another military coup in 2006, the leaders of which are still in power. Together the cases selected are emblematic of the contexts in and mechanisms by which transitional justice is pursued across the various sub-regions of the Asia-Pacific.

Certainly, this volume does not aim at collecting a comprehensive list of all transitional countries in the Asia-Pacific region. We chose a representative sample of cases from the Asia-Pacific region rather than aiming for comprehensiveness. The main reason for the choice is because, as many of the cases are relatively unknown, we believe that in-depth analysis of these cases is required to delve further into the historical contexts in which transitional justice have taken place and explain some detailed processes and practices that have been undertaken.

The Collection

Chapter 1, by Kathryn Sikkink and Leigh Payne, serves two main purposes, the first empirical and the second theoretical. First, it serves to situate the study of transitional justice practices and processes implemented in the Asia-Pacific region in a global context. Drawing on transitional justice database projects undertaken at the Universities of Minnesota and Wisconsin, it presents global and regional transitional justice trends from 1980 to 2010 and compares transitional justice practices in the Asia-Pacific region to those of other regions. In doing so, the chapter seeks to highlight what is distinctive about the practice of transitional justice in the Asia-Pacific. Second, the chapter also considers the impact that trials, truth commissions, and amnesties have on human rights and democracy.

establishment of a TRC for Aceh has faced stiff opposition and obstacles at every turn. They thus conclude that in the absence of strong political support for transitional justice it is likely that Aceh will become like several other post-conflict societies, such as Mozambique, where ongoing peace processes continue but without truth or reconciliation.

By contrast, the case of East Timor, examined by Lia Kent in Chapter 5, has experienced a wide range of transitional justice mechanisms, from the establishment of the Serious Crimes Special Panels, a hybrid tribunal to prosecute human rights violations, to the Commission for Reception, Truth, and Reconciliation (CAVR) and the joint East Timorese/Indonesian Commission for Truth and Friendship (CTF), as well as various grass-roots initiatives. As Kent argues, however, despite implementing such a wide range of transitional justice mechanisms, 'there remains a profound sense of community disappointment with the lack of justice in relation to the violence of the past.' In particular, she notes that the failures to prosecute senior members of the Indonesian military, to provide material assistance to survivors, and to assist in the recovery of bodies, coupled with a disjuncture in local and international understandings of 'justice' have significantly limited the success of transitional justice in East Timor. However, the story she tells is not an entirely negative one. Rather, Kent demonstrates that 'new and unforeseen possibilities are emerging from the CAVR and CTF' processes and within local justice initiatives that are helping to redefine how justice is being pursued in East Timor.

In Chapter 4, Kirsten Ainley examines the other example of a hybrid domestic-international tribunal operating in the Asia-Pacific, the Extraordinary Chambers in the Courts of Cambodia (ECCC). She argues that although the ECCC was ostensibly set up to help 'heal' the trauma inflicted by the Khmer Rouge, its establishment 'represents less a victory for advocates of transitional justice than...a reflection of the interests of the Cambodian government.' In particular, Ainley argues that the ECCC represents the coincidence of power and principle, where the power of the domestic government has come together with international principles
surrounding the pursuit of accountability for serious human rights violations. Thus, despite the efforts of its offices devoted to victim participation and outreach, the ECCC's activities have fallen well short of the expectations of the victims in whose name it was established.

In Chapter 6, Renée Jeffery turns to the case of the Solomon Islands, a case in which amnesties, domestic human rights trials, and a truth and reconciliation commission have operated. She notes that in the aftermath of the civil conflict in the Solomons, two dominant approaches to post-conflict justice emerged. The first, implemented by the Regional Assistance Mission to the Solomon Islands (RAMSI), favored a rule of law approach according to which large numbers of militants on both sides were arrested and processed through the criminal justice system resulting, in many cases, in the imposition of lengthy periods of imprisonment. The second, 'reconciliation' approach, favored local, grass-roots, traditional, and indigenous justice processes and were routinely implemented by community groups, women's organizations, and churches. Jeffery argues that in the absence of a formally planned transitional justice process, these two approaches to post-conflict justice have come into serious tension with proponents of each accusing the other of hampering their justice efforts. She examines those tensions and analyzes the extent to which the Solomon Islands' Truth and Reconciliation Commission, designed in part to provide a bridge between the rule of law and reconciliation approaches, has been able to quell this new set of tensions.

In contrast to the negative or, at best, mixed, appraisals of the transitional justice mechanisms implemented in Sri Lanka, Cambodia, Aceh, East Timor, and the Solomon Islands, the story of South Korea Hun Joon Kim tells in Chapter 7 is one of success. He notes that since democratization in 1987, South Korea has adopted three types of transitional justice measures: criminal prosecutions, truth commissions and investigatory committees, and reparations. Focusing on three of South Korea's ten truth commissions, Kim argues that 'truth commissions have had a positive impact on Korean society as a whole by improving human rights and enhancing democracy.' He notes key changes in Korean society that
have followed the truth commissions, including the issuing of formal apologies, the revision of history textbooks and official histories, and the excavation and reburial of victims. Kim concludes that by pursuing this course of action, South Korea has served to strengthen the core values of democracy: justice, human rights, and the rule of law.

In the Conclusion, we turn to questions of success and failure in implementing transitional justice mechanisms. We note that, with the exception of the case of South Korea, the assessments made of the pursuit for accountability for past human rights violations in the region make for sobering reading. Failures of design, capacity, and, in particular, political will, appear to mark efforts at transitional justice in the Asia-Pacific far more than stories of successful outcomes. We consider whether this is a fair assessment by providing a comparative overview of the successes and failures of transitional justice in the cases examined in the book. We argue that although there are grounds on which to be critical of the pursuit, or lack thereof, of accountability for human rights violations in the region, the Asia-Pacific has made significant efforts to address the wrongs of the past. These efforts have brought a measure of justice, however imperfect it may be, to bear on human rights violations committed in the region. We argue that this is a significant and positive outcome that provides the foundations on which further attempts at transitional justice might be built in the future.