A SELF-UNDERMINING PARADIGM: A CRITIQUE OF AMERICA'S LIBERAL
INTERNATIONALIST FRAMING OF TRANSITIONAL JUSTICE


by


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# ABSTRACT

This paper investigates the relationship between Liberal International (LI) principles – peacebuilding, Human Rights (HR), and Human Security (HS) – and the rise of Tj (TJ) utilization in American foreign policy. Two questions guide the literature review encompassed in this paper: first, is the LI paradigm detrimental to TJ theory and practice, and second, why does the US promote this paradigm? In exploring these questions, three tasks are undertaken. First, the history and development of LI and TJ is outlined to show the conceptual link in question.  Second, a range of critical literature is explored to make the claim that LI undermines TJ, necessitating a theoretical disunion from the liberal paradigm. Lastly, the critique against LI is contextualized by analyzing the American led interventions in Haiti and Iraq, revealing the failures of peacebuilding, HR and HS, while considering the notion that the LI paradigm is beneficial to strategic American interests.

# CHAPTER 1

## 1    INTRODUCTION: PURPOSE, QUALIFICATIONS AND METHODOLOGY

Before reviewing the relevant literature concerning the relationship between transitional justice (TJ) and liberal internationalism (LI), it is worthwhile to explicitly outline the purpose of the research to follow. The literature review that follows is shaped to support the critical argument that LI ultimately undermines the goals of TJ, and that this paradigm is promoted by the US to advance their strategic interests.

### *1.1    PURPOSE*

This paper compiles and critiques the relevant academic literature regarding TJ and its historical relationship with LI. The former refers to the theory and praxis behind possible post-conflict responses for both domestic and international actors, whereas the latter refers to the paradigm that shapes the scope of what is appropriate, or even possible in TJ. Increasingly, Western states have justified TJ measures strictly under LI principles, normalizing the paradigm attached to the field. This raises concerns surrounding the potential and efficacy of TJ, suggesting that its integration with LI ultimately prevents genuine fulfillments of justice in post-conflict scenarios.  The aim of this paper is to illustrate how TJ as it is dominantly theorized under LI places limits on how justice can be achieved, arguing that this framework is set up and maintained ultimately to benefit American strategic interests and consequently to the detriment of the field of TJ.

There is a gap in the theorization and practice of TJ. The aftermath of civil wars, genocides, and episodes of state-sanctioned human rights violations undoubtedly demand a response from the international community. However, LI as the normalized paradigm that influences and ultimately shapes these responses needs to be further analyzed and

critiqued. It would be inappropriate to consider LI as the only paradigm through which TJ can be theorized and implemented, just as it would be inappropriate to defend Fukyama's *End of History* assertion that Liberal Democracy represents the apogee of theoretical political organization. If TJ aims to achieve post-conflict peace and stability, and LI is the sole vehicle by which to reach this goal, then there is a gap between the means and ends of TJ. In revealing this gap, this paper aims to motivate further research into alternate paradigms that may influence TJ, stimulating discussion towards new theories and practices that better cope with post-conflict societies in contrast to the illegitimate and destabilizing nature of LI.

To achieve this purpose, the paper is divided into three distinct sections. The initial section explores the literature that outlines the evolution of both TJ and LI as distinct phenomena. The second section considers builds upon the first, exploring the critical literature debate regarding the LI influence within TJ. The third section builds upon the theoretical critique of the former section, and considers a range of case studies that reveal how the use of LI principles in American foreign policy has been deliberate and beneficial to the West. The paper ends with a brief review of the research presented in the paper, suggesting further considerations for critical research on this topic.

### 1.2    QUALIFICATIONS AND METHODOLOGY

With the purpose of this paper in mind, it is important to qualify the choices and omissions of the research to follow, and explain the methodologies chosen to analyze the literature. With respect to the choices made in research, the paper limits its scope to critical theory, while still paying due consideration in analyzing the counterarguments and responses of traditional liberal perspectives where applicable. According to Cox,

there is an important dichotomy in academic discourse between traditional and critical scholars, where the former struggles with the problems posed within the frame of an accepted theory or paradigm, and the latter aims to seek out potential sources of contradiction that may undermine the theory or paradigm in question.[1] Rather than being perceived as mutually exclusive and at odds, Cox perceives the ongoing dialogue between traditional and critical theory as necessary in the pursuit of a 'fuller' theory. In other words, "the strength of the one is the weakness of the other."[2] Thus, the following critique is not intended to dismiss the paradigm and theory of LI as such, but rather to reveal how the flaws of its implementation undermine the goals of TJ, necessitating a dissociation from certain LI principles as they are currently formulated.

In addition to the critical scope of the research presented, the methodology used to contemplate foreign policy instances is a comparative case-study method. An entire chapter is devoted to case studies on American TJ acts in Haiti and Iraq, reflecting the critical commentary outlined in preceding chapters. This was done with the intent of showing that the development of American TJ behaviour has become increasingly forceful and unilateral, and furthermore, how American foreign TJ policy is still responded to with acquiescence on behalf of the international community.

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[1] Robert Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," *Neorealism and its Critics*. Ed. Robert Keohane (New York: Columbia UP, 1986), 207-208.
[2] Ibid., 209.

# CHAPTER 2

## 2    TRANSITIONAL JUSTICE AND LIBERAL INTERNATIONALISM

Though many terms and theories will be explained as they arise throughout the course of the paper, some terms deserve initial attention, namely, the two theories at the center of this literature review, *TJ,* and *LI*.

### 2.1    HISTORY OF TRANSITIONAL JUSTICE

TJ is a contested term both in theory and in practice. Several definitional issues arise when trying to outline the goals and methods of the field. It is important for the sake of argument that follows to establish when the concept first gained traction as a field of study. This provides a working definition that will frame the rest of the paper, immediately allowing for a better understanding of what the goal of a 'transition' is, and the type of 'justice' that TJ aims to achieve. Arthur argues that the inaugural moment for TJ lies in its first accepted use in academia, that is, throughout Kritz's in-depth volumes entitled *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*.[3] Arthur uses this starting point to allow for backward-looking analysis and comparison of former TJ-related initiatives. Marking a starting point is significant because inherent biases are most easily identifiable at the outset of theory and practice.

### 2.2    TRANSITIONAL JUSTICE IN PRACTICE AND THEORY

If Kritz's work is accepted as the pioneering series of texts on TJ, then it would seem intuitive that a proper definition could be extracted from it. This is not the case, however, given the contested conceptions and semantic differences between the different contributors. Instead of providing an unambiguous definition of TJ, the volumes instead

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[3] Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of TJ." *Human Rights Quarterly* 31 (2009), 329.

illuminate the common political processes utilized in various distinct post-conflict settings. From this, TJ is inferred as a practical set of political 'tools' such as commissions of inquiry, criminal sanctions, lustration, and restitution or reparation programs.[4] Benomar and Albon provide useful terminology to categorize these initiatives and what they aim to achieve. Benomar frames the TJ debate as the choice to strive for either retribution or reconciliation in post-conflict scenarios. It is near-impossible to have both. The former refers to punishment that serves "not only as a symbolic break with the ugly legacy of authoritarian rule, but also as an affirmation of adherence to new democratic values."[5] The later advocates a more prudential approach, wherein past regimes may be granted amnesty or political impunity to avoid the possibility of reignited conflict.[6]

In addition to retribution and reconciliation, Albon adds a further dimension to the debate by introducing the choice between acknowledgment and accountability. The former provides an opportunity for perpetrators to recount their crimes and abuses, suggesting a form of amnesty for the accused, whereas the former is more concerned with making perpetrators 'pay' for the wrongs they have done through legal means.[7] Combing Benomar and Albon's dichotomous dimensions neatly organizes TJ measures into four categories. Retributive accountability suggests measures such as criminal sanctions that include culturally appropriate forms of punishment, whereas retributive acknowledgment measures include non-criminal sanctions such as lustration programs. On the other end of

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[4] Ibid., 321.

[5] Jamal Benomar, "Justice After Transitions," *TJ: How Emerging Democracies Reckon with Former Regimes*. Ed. Neil J. Kritz. Vol. 1 (Washington, D.C.: United States Institute of Peace, 1995), 33.

[6] For more detail on the value of reconciliatory processes, see: Trudy Govier, *Forgiveness and Revenge,* (Abingdon, Oxon: Routledge, 2002).

[7] Mary Albon, "Project on Justice in Times of Transition: Report of the Project's Inaugural Meeting," *TJ: How Emerging Democracies Reckon with Former Regimes*. Ed. Neil J. Kritz. Vol. 1 (Washington, D.C.: United States Institute of Peace, 1995), 45.

the spectrum, reconciliatory efforts at accountability include compensation programs or restitution efforts, whereas reconciliatory efforts aimed at acknowledgment include truth and reconciliation commissions.  In this sense, the praxis of TJ is clear and demarcated to these practical tools. What is less evident is the theory behind this accepted toolkit.

There are references to this theoretical ambiguity in Kritz' self-written introduction, "The Dilemmas of TJ." Kritz speaks of the 'tensions' that accompany the search for justice as the battle between competing intentions of breaking from an old regime through prosecution while adhering to the principles of law and democracy.[8] Inherent but not acknowledged in this conception of TJ is the acceptance of liberal democracy as the end-goal of the measures outlined and justified throughout the volumes. This unacknowledged assumption is critical towards the framing of the academic field. In the first paragraph of his introduction, Kritz poses the questions that TJ aims to answer in post-conflict scenarios, namely, how to identify and compensate victims, and how to enact reconciliation and prevent future occurrences of violence.[9] It is taken for granted that the intention of instituting liberal democracy will satisfy both.

### 2.3    DECONSTRUCTING 'TRANSITION' AND 'JUSTICE'

Given this initial bias towards liberal democracy, it is worthwhile to further investigate how this frames the conception of what it means to 'transition' and what it means to achieve 'justice'. It's only appropriate to breakdown the field's name and deconstruct the paradigm that ascribes its value and meaning.

With regards to 'transition', it is clear that Kritz and his contributors insinuate illiberal, non-democratic societies to be 'point A' and liberal democracies to be 'point b'.

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[8] Neil J. Kritz, "The Dilemmas of TJ." *TJ: How Emerging Democracies Reckon with Former Regimes*. Ed. Neil J. Kritz. Vol. 1. (Washington, D.C.: United States Institute of Peace, 1995), Xxi.
[9] Ibid., Xx.

This teleological end-point has been mirrored in the traditional TJ texts that have followed Kritz in following decades. [10] This is problematic when considering the implications for defining and administering 'justice'. Repeating Albon and Benomar, justice is supposedly granted through means tied to retribution, reconciliation, acknowledgment and accountability. Thus, once any or all of the above processes are concluded, the process of TJ can be said to be complete. This narrowly defines the field as a temporary fix to post-conflict situations, or rather, a necessary reaction or response in times of violent crisis. Undoubtedly this is an important responsibility of the international community, but the fault lies with the assumption that post-conflict states have the potential to complete a full transition to democracy once the TJ 'toolkit' has been emptied. This is not the case because legal-institutional justice – the imposition of liberal democracy and civil law – is only half the battle. What is excluded from the realm of TJ is socioeconomic reform that must follow the de-escalation of violence. Only then will post-conflict societies become self-sufficient in the transition to liberal democracy.

Arthur situates this civil-political bias of the field within the context of the end of the Cold War. The late 1960s saw a decline in support for modernization theory that focused on socio-economic development as a means towards democracy – mirroring the ideological disdain for centrally planned economies typical of the communist 'other'.[11] The social conditions and political attitudes surrounding the inauguration of TJ resulted in academic and policy shifting from a preference toward long-term socioeconomic stability to short term democratic fixes through elite bargaining and legal-institutional

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[10] Texts that note TJ's historical bias towards democratization include: Ruti Teitel, *TJ* (Oxford: Oxford University Press, 2000); Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001); Tricia Olsen, Leigh Payne, and Andrew Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (Washington, DC: United States Institute of Peace, 2010).
[11] Paige, 338.

reforms, aptly termed 'legalism'. During this time, it was thought to be more prudent from a political perspective to support the imposition of an authoritarian dictator within a pseudo-democratic system than to allow a state to adopt Communist-organizing principles, regardless of how well suited a society was in adapting democratic principles. Put succinctly, the ideological clash of the Cold War prevented American-led democratization in international relations, leaving the only strategic alternative of supporting authoritarianism under a democratic guise. Guilhot suggests that this conceptual merger of legalism with liberalism, as well as authoritarianism with pseudo-democracy served as a direct contrast to the type of socio-economic development that was tied to communism. Eventually the Cold War ended with the West as the victor, leaving legalism as the dominant form of social development: "The end of ideology thus overlapped with a deliberate effort to de-ideologize Americanism by presenting it as a form of social modernization that was democratic, pragmatic, and rational – as opposed to Communism which was ideological."[12] Civil and political means to transition became normalized, whereas socio-economic routes to development became stigmatized as a reminder of the Communist ideology. This historical bias would become imbedded in TJ activities, consequently making socioeconomic concerns more difficult to address.

In summary, 'transition' has historically implied the end-goal of liberal democracy, whereas 'justice' has referred to legal-institutional or civil-political reform. Returning to Kritz' concerns about the 'tensions' of TJ, limiting the framework of transitions and justice in this manner ultimately undermines the processes of identifying and compensating victims and ultimately preventing future violence. Simply put, policies

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[12] Nicolas Guilhot, "From Cold Warriors to Human Rights Activists*." The Democracy Makers: Human Rights & The Politics of Global Order* (New York: Columbia UP, 2005), 48.

of socio-economic development that have been accepted prior to the Cold War must be considered once again to lend more legitimacy to the field of TJ – this argument will be at the heart of the critique of LI in the sections to follow. Now that the origins of TJ have been explored as well as the implications this has towards the conception of 'transition' and 'justice', it is appropriate to consider in depth the significance of Liberal Internationalism.

### *2.4     THE HISTORY OF LIBERAL INTERNATIONALISM*

If TJ refers to the theory and praxis used in post-conflict situations, then LI can be thought of as the paradigm that outlines the practical applications of TJ that are appropriate and preferable. Before the critical literature review can take place, it is necessary to define LI and what it entails. Similar to the prior section defining TJ, this paper will consider the history of LI, the theory and practice that underlies it, and deconstruct two crucial pillars of LI: liberal peacebuilding, and human security.

LI has been referred to in different contexts, and can be thought of in two distinct 'waves,' [13] the first prioritizing sovereign statehood, and the second emphasizing cosmopolitan human rights. This paper critiques how this latter wave of LI has become detrimentally intertwined with TJ – not with the intention of justifying the violent and oppressive behaviour that LI responds to, but to question the tendency of TJ in allowing liberal states to unilaterally intervene in the face of traditional norms of sovereignty. Just as Kritz' pioneering work on TJ marked the introduction of the field, it is prudent to identify a similar starting point for this current formation of LI. Linda Bishai identifies

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[13] Stanley Michalak, "Post-Democratic Cosmopolitans: The Second Wave of LI," *Orbis* 48, no. 4 (2004), 593.

the apogee document of this second 'wave' of LI as the Princeton Project on National

Security – a report written by Anne Marie Slaughter and John Ikenberry in 2006.

The report constituted a shift in American foreign policy from a stance of Cold

War-era *containment* to cosmopolitan-framed LI. In other words, the report framed

foreign policy in regards to a wider diversity of threats than previously acknowledged,

including global terrorism, nuclear proliferation, and infectious pandemics – issues never

conceptualized during and prior to the Cold War.[14] This diversification of threats shifted

the foreign policy stance from 'containment' of threats by acting inwardly, to the need to

form a global order that can respond to threats beyond one's domestic borders. Slaughter

and Ikenberry advocate a pro-active role for the US, justifying insertion of liberal values

abroad that, supposedly, eliminate the source of the threat rather than its symptoms:

> A strategy cannot consist simply of responses to many different threats…
> The Princeton Project seeks to help America grasp this opportunity to lay
> the foundations for advancing America's interests on every front, rather
> than just vanquishing one enemy. While America's tactics and short-term
> policies must take the world as it is, a long-term strategy should strive to
> shape the world as we want it to be.[15]

It should not go without noting that members of the US Institute of Peace wrote the

defining texts for TJ and LI, and the intended audience was the US foreign policy

establishment.

Michael Doyle traces the roots of comspolitan-framed LI back to Kant's

*Perpetual Peace*, which suggests that liberal behaviour at the international level creates a

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[14] Linda S. Bishai, "LI and the Law vs Liberty Paradox," *Journal of International Relations and Development* 15 (2012): 214; For an indepth consideration of the development of post-Cold War international threats see, J. Peter Burgess,. *The Routledge Handbook of New Security Studies* (London: Routledge, 2010).

[15] Anne-Marie Slaughter and John G. Ikenberry, *Forging a World of Liberty Under Law, U.S. National Security in the 21st Century.* Rep. Princeton: Woodrow Wilson School of Public and International Affairs, 2006. 58. <http://www.princeton.edu/~ppns/report/FinalReport.pdf>

dichotomous international sphere between liberal and illiberal populations.[16] Illiberal populations represent a threat that can only be neutralized through the *acceptance* of liberal values. The main difference between these two waves is the standard for intervention based on illiberal values. As mentioned, traditional first wave LI ascribes to a 'containment' policy, where states can only influence liberal principles inwardly. Traditionally, illiberal states could only become liberal by their own will, now it is believed they can change through interventionist forces.

### 2.5    LIBERAL INTERNATIONALISM IN PRACTICE AND THEORY

Two pillars of LI help to define the paradigm in practice and theory: the practice of peacebuilding and the accompanying norm or 'cascade' of international criminal accountability, and the paradigm of human security and its connection to Human Rights.

Despite the relatively recent adherence to second-wave LI, there have been instances throughout the 20th century when contemporary LI principles have guided foreign policy. 'Peacebuilding', a central tenant of LI, has been strategically promoted by the West dating back to Woodrow Wilson's administration. According to Sriram, peacebuilding is predicated on the twin emphases on democratization and marketization as a means towards domestic and international peace.[17] There is much critical literature on the unintended conseuquences of peacebuilding, ranging from Roland Paris' 'institutionalization-before-liberalization' thesis, suggesting that stable liberal institutions are a pre-requisite for democratization,[18] to Tadjbakhsh's assertion that the failing of liberal peacebuilding lies not in its practice, but in the 'assumptions and contradictions'

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[16] Michael W. Doyle, "An International Liberal Community," *Liberal Peace: Selected Essays* (New York: Routledge, 2012), 151.

[17] Chandra Lekha Sriram, "Justice as Peace? Liberal Peacebuilding and Strategies of TJ." *Global Society* 21, no. 4 (2007): 579-91.

[18] Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge, U.K.: CUP, 2004), 179-211.

inherent within the model's aims. [19] Much of this literature will be explored in the following critique of LI, but for now it is important to recognize the two defining characteristics of liberal peacebuildling: the promotion of free markets and democracy. Wilson promoted democratization abroad on the condition that it would be instituted through American actors, proclaiming the US as the moral leader of the global liberal order. This 'Americanized' LI paradigm would remain prevalent in American foreign policy well into the following century with the administration of President George W. Bush's actions in the Middle East. This will be explored in the second section of the paper, considering the implications this would have on the beginnings of TJ.

The trend of peacebuilding in American foreign policy remained prevalent until the onset of the Cold War. Paris cites the ideological clash between Communism and Liberalism as the reason why peacekeeping behaviour halted – differences in political organization made it impossible for the UN to agree on a proper model of governance to institute in post-conflict scenarios. [20] This is not to suggest that there was an absence of American influence. On the contrary, as an alternative to peacekeeping as a means to prevent global Communist influence, many authoritarian dictatorships under a democratic guise were backed and supported by the US during the Cold War. US-backed dictators in many countries in Latin America, such as Argentina or Guatemala, led to the government-sanctioned killings of populations greater than that of their colonial period. [21] In fact, the severity of the human rights violations that were carried out by the militaries

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[19] Shahrbanou Tadjbakhsh, *Rethinking the Liberal Peace: External Models and Local Alternatives* (Abingdon, Oxon: Routledge, 2011), 5.
[20] Paris, 15.
[21] Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: Norton, 2011), 245.

in Argentina and Guatemala served as a shock that helped motivate the norm of international criminal accountability that followed the end of the Cold War.

The fall of the Iron Curtain was taken as empirical proof of Kant's perpetual peace thesis - liberal democratic states of the world remained in relative peace, preventing escalation towards a ground war between global superpowers. As such, peacebuilding operations resumed in the name of American liberal democracy. With democracy perceived as the 'winner' of global ideologies, the theorization of international relations no longer focused on illiberal practices of states, but rather the non-democratic organization of states. [22] Democratic status recognized by the international community took priority over visible liberal behaviour, resulting in impunity for states already accepted within the liberal-democratic order, and a perpetual state of enmity for the illiberal 'other'. This began a trend where liberal states could prosecute non-democratic states (perceived as illiberal by definition) unilaterally without consequence via international criminal law, a theoretical extension of peacebuilding.

Kathryn Sikkink notes and investigates the proliferation of  international criminal law in her book *The Justice Cascade*. She suggests that the prosecutions that took place following the Argentinian Human Rights abuses at the hands of the Argentine military regime during the mid-70's caused "a shift in the *legitimacy of the norm* of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm."[23] Annie Bird confirms the West's strategic support for this 'cascade', arguing that American support of criminal prosecutions for state leaders was motivated from a dual-strategic perspective. Externally, American leadership

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[22] Bishai, 206.
[23] Sikkink, 5.

would support and shape international criminal law and, societally, global mirroring of the American legal system would affirm traditional American legal practices abroad.[24] The support of international retributive measures comes from a justificatory basis in cosmopolitan thought, embodied in the contemporary paradigm of Human Security and Human Rights protections.

The second pillar of LI, the paradigm of Human Security – first outlined in detail in the UN's 1994 Human Development Report[25]– marks a shift in international relations from defining threats from the perspective of state actors to individual actors. Kofi Annan, the secretary general of the UN, defined human security at his speech at Millennium Summit in 2000:

> Human security, in its broadest sense, embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her potential. Every step in this direction is also a step toward reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear, and the freedom of future generations to inherit a sustainable natural environment—these are the interrelated building blocks of human—and therefore national—security.[26]

Through the language of human rights and humanitarian law, Human Security effectively motivates and secures the expansion of liberal states. Liberal advocates insist that membership in this league of rights-respecting states foreshadows to the inevitability of a 'global civil society', whereas critics suggests that LI an instrument of US hegemony and neoliberal empire.[27]

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[24] Annie R Bird, *US Foreign Policy on TJ* (New York: Oxford UP, 2015), 15.
[25] United Nations Development Programme, *Human Development Report 1994* (New York: Oxford UP, 1994.)
[26] Ruti G. Teitel, *Humanity's Law* (Oxford: Oxford UP, 2011), 149.
[27] David Chandler, "The Limits to Emancipation in the Human Security Framework," *Critical Perspectives on Human Security: Rethinking Emancipation and Power in International Relation* (New York: Routledge, 2011), 117.

# CHAPTER 3

## 3 LIBERAL INTERNATIONALISM WITHIN TRANSITIONAL JUSTICE

Now that the purpose of the paper has been outlined in detail and key terms have been defined in historical and theoretical context, the paper proceeds to its main task of outlining the implications LI has had upon TJ as an academic field. This section will explicate the critical literature that considers the two pillars of LI mentioned in the prior section, namely, liberal peacebuilding, and human security. Each pillar will be critiqued and then considered with regards to TJ. The argument against peacebuilding is that it is ultimately destabilizing, and furthermore that it lacks a sense of legitimacy on behalf of locals. The argument concerning the concept of Human Security is that its promotion amounts to a form of colonial practice in terms of geo-politics and ideology, actualizing in practices of unilaterally initiated international criminal accountability. This section situates these criticisms within the context of TJ with the intent of showing how the embedded nature of LI within TJ ultimately undermines the well-being of those in transitional states. Once the connection between LI and TJ has been established, chapter four proceeds to consider empirical examples of these practices within American Foreign Policy. This demonstrates how the current paradigm of TJ ultimately serves and is maintained by Western states, necessitating discussion and theorization of alternative TJ measures that more appropriately aid those who suffer in post-conflict scenarios.

### 3.1 A SELF-UNDERMINING OBJECTIVE: 'THE LIBERAL PEACE'

The twin emphasis on democratization and marketization as a means of state development lies at the core of LI, and by extension, TJ. This strategy of externally-imposed liberalization, known as liberal peacebuilding, has developed throughout the last half-century in four distinct waves, each differing in the use of force and multilateral cooperation towards achieving its explicit goal. Baranyi demarcation of these waves

serves as a useful analytical starting point: the first wave refers to Cold-War era peacekeeping, a strategy of indirectly supporting authoritarian regimes as a means of preventing the spread of communism.[28] The second wave refers to the aftermath of the Cold-War, characteristic of the early-1990s peace agreements. The third wave refers to the increased role of multilateral interventions and use of international law, following the Rwandan and Yugoslavian genocides. Lastly, the fourth and current wave refers to the current trend of unilateral military intervention on humanitarian grounds, characteristic of the American invasion of Iraq during the Bush Administration.

Baranyi's demarcation is useful to qualify the following critique of peacebuilding. Two arguments consistently arise throughout the literature: first, that liberal peacebuilding is destabilizing particularly in post-conflict societies, and secondly, that impositions of market democracy lack legitimacy and coherence amongst post-conflict populations. These critiques become all the more significant given the context of fourth-wave peacebuilding, given that forceful unilateral impositions of market democracies can further amplifly the instability and perceived illegitimacy of liberal democracy in the eyes of post-conflict populations. In other words, if peacebuilding was formerly considered destabilizing and illegitimate, there now exists a further concern in the fact that global hegemon regarded as the leader of the liberal order manipulates this practice.

The prior waves of peacebuilding are still significant, however. The second section of this paper analyzes American Foreign Policy along these waves, and considers how each wave further embedded US hegemony, gradually allowing an "increase in the use of force, external leadership, and unilateralism, and a decrease in negotiated peace

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[28] Stephen Baranyi, "What Kind of Peace Is Possible in the Post-9/11 Era?" *The Paradoxes of Peacebuilding Post-9/11.* Ed. Stephen Baranyi. (Vancouver: UBC, 2008), 3-31.

processes, national ownership, and multilateralism," [29] amongst TJ peacebuilding efforts. These earlier conceptions allow for peacebuilding's development to be tracked.

### 3.1.1  PEACEBUILDING: THE INSTABILITY ARGUMENT

It is relevant at this point to outline the instability argument to recognize and respond to relevant counter-arguments, and to consider the broader implications this poses for TJ. The argument suggests that post-conflict societies are not politically or societally prepared to operate Western-imposed societal structures, that is, liberal market democracies. This is at direct odds with the liberal peace thesis, which suggests that liberal democratic governance is sufficient to bring about peace. Empirically, this has not been the case for non-Western countries, more so for those in post-conflict states. Jack Snyder notes how democratization has the tendency to result in violence due to competitive elections between hostile political factions.[30] In particular, Snyder focuses on the rise of nationalist political rhetoric during early post-conflict democratic elections, suggesting that this further deepens ethnic cleavages and incites violent conflict. He argues that imposition of liberal rights such as free-speech and political representation ultimately cause harm due to the 'imperfect competition' within the civil 'marketplace of ideas.' [31] In other words, the fragile 'negative peace' [32] that is enacted through peacebuilding fails to account for the suppressed and latent anger between previous combatants. By not addressing these issues, democratic procedures often lead to violence.

A further point in favour of the instability argument is presented by Sriram. She argues that the dismissal of socioeconomic concerns in the promotion of market

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[29] Ibid., 7.

[30] Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict,* (New York: Norton, 2000), 45-88.

[31] Ibid., 58.

[32] Johan Gatlung, *Peace: Research – Education – Action. Essays in peace Research.* (Copenhague: Christian Ejlers, 1975), 245. Briefly, Gatlung defines negative peace as an absence of violence, without addressing roots of conflict.

democracies is the underlying cause of instability in post-conflict societies.[33] Snyder cites

nationalism as the *spark* towards violence, whereas Sriram extends this argument to cite

social inequity as the *root* of violence, which is exacerbated after violent civil conflict.

This relates to the deconstruction of 'justice' undertaken in chapter one. Recall the

inherent bias towards civil-political and legal-institutional reform as indicators of justice

in Kritz' seminal TJ collection. Largely overlooked are socioeconomic ills that Sriram

lists as all too familiar and consistent in post-conflict settings: "Absolute poverty and

relative inequality, alongside competition for scarce and/or valuable resources, can

contribute to conflict."[34] Thus, by not addressing issues of socioeconomic inequity,

peacebuilding plants the precursors to violence within the negative peace it has instituted.

In summary, peacebuilding is destabilizing in its practice as evident with the

antagonizing nature of post-conflict elections, and further destabilizing in its theorization

via the dismissal of socioeconomic development.

It is useful to consider the merits of counters to the instability argument that

represent a more 'traditional' peacebuilding perspective. Roland Paris, is representative

of this class of traditional scholars, known for arguing that *process* of liberalization is

destabilizing, rather than the *endpoint* of liberal democracy.[35] This is the essence of his

'institutionalization-before-liberalization' (IBL) thesis.[36] The IBL thesis agrees with the

criticism that violent conflict is generated within a political context, that is, amongst

competing electoral parties. To prevent this violence, IBL suggests that the solution lies

in prioritizing the embedding of liberal institutions and regulations rather than rushing

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[33] Chandra Lekha Sriram, "Liberal Peacebuilding and TJ: What Place for Socioeconomic Concerns?" *Justice and Economic Violence in Transition*. Ed. Dustin N. Sharp (New York: Springer, 2014), 27-49.
[34] Ibid., 33
[35] Paris, 185.
[36] Ibid., 179-212.

early elections as indicators of TJ success. In other words, Paris grants the destabilizing nature of markets and hostile democracy, but nevertheless believes that gradual steps should be taken to meet these ends with the caveat that liberal attitudes precede liberal procedures. As such, civil political traditions such as drafting rights-based constitutions, holding elections, and granting free-speech in the media are pushed to the side in favour of developing civil society, regulating hate-speech, and developing a neutral bureaucracy.[37] Paris suggests that fair elections amongst other traditional liberal pillars cannot be undertaken until these institutional necessities are developed. IBL, thus, represents a peaceful alternative to retain the endgoal of peacebuilding while altering the process to prevent the tendency of violent conflict.

Though the IBL thesis acknowledges the destabilizing nature of traditional peacekeeping, it fails to recognize the transitive nature of violent conflict, and underestimates the extent to which ethnic resentment remains amongst post-conflict populations. In response to the efficacy of IBL, Sriram argues that this peacebuilding strategy "may merely relocate conflict form the realm of politics to the realm of institutions of governance."[38] Opposing interests that remained unsettled following conflict will perceive the IBL approach as an opportunity to embed future power arrangements, particularly significant given the liberal institutional mandate to address amnesties, appoint judges, and draft legislation.

The instability critique of liberal peacebuilding posits some implications for TJ. Once accepted that democratization and marketization as a means of 'shock therapy'[39] is

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[37] Ibid., 188.

[38] Sriram, *Liberal Peacebuilding and TJ,* 120.

[39] For more detail on this phenomena, see: Naomi Klien, *The Shock Doctrine: The Rise of Disaster Capitalism*, (London: Penguin 2007); for critical commentary, see: Slavoj Žižek, *First as Tragedy, Then as Farce,* (London: Verso 2009), 17-27.

destabilizing in post-conflict societies – attributed to the lack of attention towards underlying socioeconomic tensions at the root of the conflict – it is clear that peacebuilding as it is conceptualized is inadequate to bring about peace. Thus, for TJ, it is imperative as an academic field to explore whether peacebuilding as it is currently conceived is a worthwhile tool. There are two perspectives on the matter: the reformist perspective, encapsulated in Paris' IBL thesis that suggest that peacebuilding can remain intact with necessary adjustments, and the critical perspective that is skeptical of the merit of the peacebuilding approach given its empirical destabilizing nature.

These two perspectives are a part of the wider debate in TJ scholarship, namely, the question of 'sequencing': "whether it is sensible to prioritize certain peacebuilding challenges above others, and if it is in practice necessary for certain peacebuilding objectives to be achieved as a pre-requisite to others."[40] Edward Newman suggests that most peacebuilding literature is concerned with the pace at which democratic elections and the free market should be introduced in post-conflict societies. As it stands, there is no clear-cut answer given the context-specific needs of each TJ effort.[41] Paris' IBL thesis is an example of an alternate sequencing pattern that may better establish peacebuilding goals. However, as Sriram's critique shows, the roots of conflict can migrate from one sphere of society to another, making the sequencing debate obsolete if roots of conflict cannot be adequately addressed. For TJ, this warrants a deeper theorization of peacebuilding abstracted from its defining traits of democratization and marketization. As Sriram hints, an emphasis on alleviating socioeconomic ills may prove more appropriate

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[40] Edward Newman, "'Liberal' Peacebuilding Debates," *New Perspectives on Liberal Peacebuilding*. Ed. Edward Newman, Roland Paris, and Oliver P. Richmond. (Tokyo: United Nations University, 2009), 30.

[41] Barrington Moore, *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, (Boston: Beacon, 1996). Moore is representative of the traditional democratization literature, where he notes that democratization is only viable in societies with stable liberal values.

towards preventing conflict, and a more efficacious means of exporting liberal democratic principles. The implications for failing to widen theorization will be considered in the conclusion of this paper.

### 3.1.2 *PEACEBUILDING: THE LEGITIMACY ARGUMENT*

The second critical argument against peacebuilding is known as the legitimacy argument.[42] This argument suggests that the populations of post-conflict societies do not recognize the legitimacy of an imposed liberal democratic governance structure for two main reasons. First, the communitarian perspective[43] emphasizes how democratic governance is a new concept to many post-conflict societies, and due to this novelty institutional inefficiencies inevitably arise and are often met with skepticism and a demand for a return to traditional forms of governance.[44] Liberal democratic governance may be perceived as culturally inappropriate in a society where religious and ethnic traditions previously guided the local way of life. Sriram notes two examples where democratic governance was viewed as illegitimate by local populations: the local populations' disregard for the formal justice sector in favour of traditional justice measures in Sierra Leone,[45] and Ugandan tribal leaders urging against the criminal prosecution of leaders of the Lord's Resistance Army (LRA) out of fear that it would

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[42] For more persepctives on the legitimacy argument see: Kieran McEvoy, "Commentary on Locality and legitimacy," *Critical Perspectives in TJ*, Ed., Nicola Palmer, Phil Clark and Danielle Granville, (Cambridge, UK: Intersentia, 2012), 311-318; Newman, "'Liberal' Peacebuilding Debates'

[43] Shahrbanou Tadjbakhsh and Oliver P. Richmond, "Typologies and Modifications proposed by Critical Approaches," *Rethinking the Liberal peace: External Models and Local Alternatives*, Ed. Shahrbanou Tadjbakhsh, (Abingdon, Oxon: Routledge, 2011), 223-24.

[44] Sriram, Snyder, localizing TJ book.

[45] Chandra Lekha Sriram, "Wrong-Sizing International Justice? The Hybrid Tribunal in Sierra Leone," *Fordham International Law Journal* 29, no. 3 (2006).

increase LRA violent activity.[46] The examples of liberal peacebuliding in Haiti and Iraq contextualize this point, and will be developed further in the chapter.

The second reason why post-conflict societies do not recognize the legitimacy of liberal democratic governance structures is the fact that peacebuilding is often perceived as a Western hegemonic imposition of liberal values. This post-colonial perspective allows for the questioning of the nature and intent of the Western genesis of liberal peace in theory and in practice.[47] The heart of any post-colonial critique is the concern with how the post-colonial 'subject' is represented by the actions of intervention. The argument in this case is that liberal development policies label post-conflict populations as the 'subalterns' or the 'other' in direct relationship to the liberal subject.[48] This is a concern because it often permits the liberal order to liberate the 'other' by any means necessary, even if this paradoxically requires illiberal interventionist behaviour.

Lidén poses a relevant counter-response to the illegitimacy argument, namely that post-colonial criticism is unable to render solutions to the concern they pose, because all political solutions will inevitably be construed as a hegemonic act by local populations.[49] Simply put, if governance systems are externally imposed, there will always be local actors that perceive the act as hegemonic, regardless of intent or effect. If this response is accepted, then theoretically TJ measures are unjustified in any foreign policy context. In other words, if any externally imposed act is inevitably perceived as hegemonic by significant portions of the population, then fighting for legitimacy is meaningless

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[46] Chandra Lekha Sriram and Amy Ross, "Geographies of Crime and Justice: Contemporary TJ and the Creation of 'Zones of Impunity'," *International Journal of TJ* 1, no. 1 (2007), 45-65.

[47] *Tadjbakhsh and Richmond,* "Typologies," 229-32.

[48] Ibid., 231; for more detail on the colonial nature of peacebuilding, see: Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World,* (Princeton: PUP, 1995).

[49] Kristoffer Lidén, "Peace, self-governance and international engagement: From neo-colonial to post-colonial peacebuilding," *Rethinking the Liberal peace: External Models and Local Alternatives*, Ed. Shahrbanou Tadjbakhsh, (Abingdon, Oxon: Routledge, 2011), 57-62.

endeavor. This makes it all the more necessary to re=conceptualize TJ measures that include local grassroots actors as a means of bypassing the legitimacy critique.

The traditional TJ theory response to Lidén's claim is that liberal governance structures can *only* be externally imposed, and *only* by Western liberal actors because the alternative of a 'local-hybrid' peacebuilding effort would require the accommodation of unacceptable social institutions and consequent human rights violations.[50] Though there is validity in this claim that local populations would struggle with democratic transitions, the argument is ultimately paradox in the sense that the liberal order is suspicious of local involvement for the same reasons why those populations question liberal legitimacy. If it is assumed that locally-initiated governance structures lead to inefficiencies and a desire to return to traditional modes of governance, then the liberal order will never allow for local populations to transition on their own. Given that these traditional governance forms are often 'anti-liberal' in the sense that civil and political rights are often denied in favor of cultural norms and traditions, local populations cannot be considered apt to participate in peacebuilding operations. This is self-justifying logic, maintaining the dichotomy between the liberal savior – capable of carrying out peacebuilding operations – and the illiberal 'other' whose subjectivity is reduced to a passive entity who must accept liberal assistance in any form it is implemented.

Returning to the fact that peacebuilding serves as a central TJ mechanism in post-conflict societies, the legitimacy argument against peacebuilding presents issues for the ultimate goals of achieving reconciliation and preventing future conflict. Two pressing concerns arise: firstly, the communitarian concern of the extent to which traditional

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[50] Oliver P. Richmond, "Post-colonial hybridity and the return of Human Security," *Critical Perspectives on Human Security: Rethinking Emancipation and Power in International Relations,* Ed. David Chandler and Nik Hynek, (Abingdon, Oxon: Routledge, 2011), 43-55.

justice mechanisms ought to be incorporated into TJ theory and practice, and secondly, the wider post-colonial concern of liberal democracy representing an inappropriate goal of TJ.

The communitarian concern is exemplified by the discourse surrounding the use of the *Gacaca* court system in post-genocide Rwanda.[51] Briefly, the Gacaca method of reconciliation emphasized restorative TJ measures, as opposed to Western normalized criminal retributive measures. What was unique, in particular, was that suspects were tried by neighbours of their respective communities, determining whether an individual would receive punishment, amnesty, or restitution.[52] Many scholars recognize the potential for this methodology to be used in formal TJ theory and practice, praising the incentive-structure that encourages voluntary truth-telling as opposed to discussion through forceful means of prosecution; recognizing the Gacaca court's tendency to improve societal coexistence amongst tribal groups; and citing the improved bureaucratic efficiency and perception of achieved 'justice' amongst local populations.[53] Though Gacaca arguably represents a moment of success for non-traditional methods of TJ in contrast to the failings of traditional liberal peacebuilding, it is not without its limitations and issues.[54] The main critical response to Gacaca points to the empirical fact that it has

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[51] For more detail on how Gacaca was operated, see Paul Christoph Bornkamm, *Rwanda's Gacaca courts : between retribution and reparation,* (New York: Oxford UP, 2012), 31-91; Helen HinTjens, "Explaining the 1994 Genocide in Rwanda." The Journal of Modern African Studies 37, no. 2 (1999): 241-86.

[52] Alana Erin Tiemessen, *"After Arusha: Gacaca justice in post-genocide Rwanda," African Studies Quarterly* 8, no.1 (2004): 61.

[53] Various pro-Gacaca scholars include: Hollie Nyseth Brehm, Christopher Uggen, and Jean-Damascène Gasanabo, "Genocide, Justice, and Rwanda's Gacaca Courts," *Journal of Contemporary Criminal Justice* 30, no. 3 (2014): 333-352; Max Rettig, "Gacaca: Truth, Justice, and Reconciliation in Postconflict Rwanda?" *African Studies Review* 51, no. 3 (2008): 25-50; Karan Lahiri, "Rwanda's 'Gacaca' Courts A Possible model for local Justice in International Crime?" *International Criminal Law Review* 9, no. 2 (2009): 321-332; Peter Uvin and Charles Mironko, "Western and Local Approaches to Justice in Rwanda," *Global Governance* 9, no. 2 (2003): 219-231.

[54] For structural inefficiencies and general issues with Gacaca, see: Kasaija Phillip Apuuli, "Procedural Due Process and the Prosecution of Genocide Suspects in Rwanda." *Journal of Genocide Research* 11, no 1. (2009): 11-30; Jacques Fierens, "Gacaca Courts: Between Fantasy and Reality*." Journal of International Criminal Justice* 3, no. 4 (2005): 896-

been biased against one tribal group. Tiemessen points out that the Tutsi 'ethnocracy' – that is, the concentration of Tutsi political power in positions of governance – lead to a disproportionate amount of trials against the Hutu population, effectively ascribing mass wrongdoing and responsibility to one cultural group and providing amnesty to the other.[55] As such, the roots of ethnic conflict and violence are not adequately addressed through Gacaca means, and have arguably caused further agitation between groups.

Leaving aside the communitarian implication of the legitimacy argument, post-colonial implications for the future of TJ theory and practice also arise. From a post-colonial perspective, it is unclear whether the liberal democratic project is an objectively worthwhile endeavor, given the accusations of its hegemonic, Western-dominant nature. In the face of this uncertainty, the post-colonial critique requires a meta-theoretical consideration of the value of liberal democratization as the dominant means of TJ. This is not to suggest that democratization ought to be abandoned in theory and practice, but rather that TJ would benefit from a detached theorization from its liberal foundation. Habermas' theorization of liberal, republican, and proceduralist modes of democracy is useful analytical tool to investigate alternatives of peacebuilding to respond to the post-colonial critique.[56] According to Habermas, the liberal view of democratic politics is takes place against the backdrop of political compromises between competing interests. The republican process takes place against a background of ethical-political discourse where cultural norms and traditions share consensus amongst the population. Lastly, the proceduralist perspective interprets the democratic process as the following of ethical

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919; Bert Ingelaere, "'Does the Truth Pass across the Fire without Burning?' Locating the Short Circuit in Rwanda's Gacaca Courts." The Journal of Modern African 47 no. 04 (2009): 507-528.

[55] Tiemessen, 67.

[56] Jürgen Habermas, "Three Normative Models Of Democracy." *Constellations* 1, no. 1 (1994): 1-10.

rules that are drawn from practical reason, similar to how human rights have been theorized and used to place limits on what is democratically necessary and acceptable.[57]

Peacebuilding as it is conceptualized within the LI paradigm can be said to fall under Habermas' liberal mode of democracy, wherein political discourse is stripped from cultural context and individuals are conceived of in terms of civil and political rights. In contrast, the traditional justice measures used in the Rwandan Gacaca courts can be considered a form of republican democratic implementation – it represented a culturally-accepted form of prosecuting suspects without strict adherence to civil and political necessities emphasized by the liberal order.

Returning to the significance this has for TJ theorization, the academic field must consider whether the liberal mode is most appropriate for achieving democratization, compared to the locally-pursued republican mode that more closely resembles the nature of Gacaca in Rwanda. This paper sides with the latter. The Republican 'mode' of democracy is ultimately better suited to reach the endgoal of authentic democratization, because as Habermas notes, republican discourse "preserves the original meaning of democracy in terms of the institutionalization of a public use of reason jointly exercised by autonomous individuals."[58] As such, the legitimacy argument against peacebuilding puts pressure on TJ to theorize methods of democratization that are less liberal from an external perspective, and more republican from an internal, locally-based perspective.

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[57] Ibid., 6.
[58] Ibid., 3.

## *3.2     HUMAN RIGHTS & HUMAN SECURITY: COSMOPOLITAN OR COLONIAL?*

Having considered the LI pillar of peacebuilding and the implications it poses towards TJ, it is relevant to now consider how Human Rights (hereon referred to as HR) and Human Security (hereon referred to as HS) are also framed within the LI paradigm, posing implications for the field of TJ. This section will first discuss the concept of HR, considering its theoretical development throughout the past century, and examine the critical literature that suggests HR is not an emancipatory project. Three arguments will support this claim: the pragmatic argument against moral universalism, the non-parochial argument against cosmopolitan citizenship, and the argument that HR serves as a 'trigger' for military intervention. Once the literature concerning HR has been explored, the paper proceeds to outline the theoretical development of HS, followed by an inquiry into the critical literature that suggests that HS justifies neo-colonial practices. Three supporting arguments will be examined: the 'concept stretching' argument, the 'arbitrariness' argument, and the 'mobilization' argument. The implications these arguments raise for TJ will be considered once the arguments have been laid out.

### *3.2.1   HUMAN RIGHTS: CHALLENGING THE UNIVERSALISM OF COSMOPOLITANISM*

The concept of HR is contested in both theory and in practice. Though codified recently in the Universal Declaration of Human Rights (UDHR), HR has theoretical foundations in natural law, as well as the American and French revolutions.[59] The idea of natural law posits that there exists a 'higher' law beyond the positive laws formulated amongst humans in legal codes, and that all individuals have duties under this law. This is reflected in the language of the American Declaration of Independence: "We hold these

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[59] Chandra Lekha Sriram,, Olga Martin-Ortega, and Johanna Herman, *War, Conflict and Human Rights: Theory and Practice,* (London: Routledge, 2010), 30-47.

truths to be self-evident, that all men are created equal… with certain unalienable rights," as well as the French Declaration on the Rights of Man and Citizen: "Men are born and remain free and equal in rights…"[60] This is further mirrored in the first two articles of the UDHR, namely that "all human beings are born free and equal in dignity and rights," and that "everyone is entitled to all the rights and freedoms set forth in this declaration," without discrimination. Admittedly, this natural law-framed cosmopolitan mandate has been dominantly Western-influenced, a source of contention that serves as the basis for much of the critical literature to follow.

While contested in theory, HR is also controversial in practice. The emphasis upon certain rights has changed throughout the past century, ranging from an initial prioritization of individual civil and political rights, followed by socioeconomic and cultural rights, and eventually a further consideration of traditional group and community rights.[61] The UDHR reflects this initial civil-political bias, and consequently justifies the primacy of establishing liberal democracies as a means of securing HR. Though an explicit list of HR are codified in international law, its content is still greatly disputed by non-Western nations who place less value in civil-political rights.

This traditional view of HR is emancipatory in its scope, aiming to liberate those without access to civil and political rights. It is this emancipatory claim that this section challenges, outlining three counterarguments that prove HR is not as cosmopolitan in nature as it may seem; that it limits entry into the global community; and that it triggers external military interventions. As such, HR, on the contrary, is far from an emancipatory project, but rather a strategic paradigm that benefits the Western liberal order.

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[60] Ibid., 32.
[61] Ibid., 36.

The first argument against the moral Universalist rhetoric of HR is supported by what Sen has coined 'Asian Values'. Sen uses this term to describe how Asian authoritarian states are "less supportive of freedom and more concerned with order and discipline," and that "the claims of human rights in the areas of political and civil liberties are, therefore, less relevant in Asian than in the West." [62] Though this is a broad generalization, and there surely exist counterexamples of non-Western states that thrive with newly afforded civil political rights, the idea of Asian values is still useful for critiquing the universality claim of HR. This is not to suggest that civil and political rights are not worthwhile, but rather that its necessity and legitimacy are not universally accepted in states that prioritize a different set of rights. Often, a Western-imposed set of rights is perceived as illegitimate because it does little to remedy the socioeconomic ills of post-conflict societies. As aforementioned in the critique on peacebuilding, instituting liberal democracy and running elections does little to combat the underlying social tensions that ignite conflict, and ultimately HR violations.

The second argument – which can be described as the argument for 'non-parochialism'[63] - takes a skeptical view of the cosmopolitan characteristic of HR and the promise of 'cosmopolitan citizenship', suggesting there are limits to inclusion inherent through the liberal tendency of political 'othering'. As the UDHR suggests, rights extend to all individuals, implying the concept of a 'global citizen' who is granted certain protections simply by virtue of being human – this greatly undermines the role of territorial sovereignty by shifting the arena of political power back to the individual, who

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[62] Amartya Sen, "Human Rights and Asian Values," *Sixteenth Morgenthau Memorial Lecture on Ethics & Foreign Policy, (*New York City, 1997), 10.

[63] John Tasioulas describes this as a 'desideratum' that determines the adequacy of a theory of human rights, i.e., a theory of human rights must not marginalizes the claims of non-western and non-liberal traditions. See note 64 for more detail.

uses the language of HR as protection regardless of what state's rules they are required to follow. However, critical theorists suggest that being granted this global citizenship status is contingent on joining the liberal world order, and all the societal and governmental adjustments that it entails. As such, the HR campaign is not an emancipatory, but exclusionary in its scope. Upon this view, HR is considered another tool of hegemonic Western actors who single out those unable or unwilling to respect HR. This is problematic for non-Western states, who's territorial state sovereignty no longer assures their legitimacy in the international realm, but rather their ascription to Western values: "states that fail the assessments of their legitimacy will no longer have equal standing or full sovereign rights and could be legitimately acted against in the international arena."[64] Thus, if cultural norms and traditions are deemed a HR violation, the superior liberal state is justified in labeling the illiberal state as an 'outlaw,' leaving them susceptible to intervention from an authoritative liberal actor.

The third relevant argument refers to the colonial tendencies of HR in the sense that they act as a 'trigger' for military or humanitarian intervention. Tasioulas best encapsulates this argument, coining the dominant HR paradigm a 'coercive intervention account,' of international aid, suggesting that the universal nature of HR is "capable of generating a defeasible or *pro tanto* justification for forceful intervention by well-ordered societies against the society responsible for severe and widespread violations."[65] Given the aforementioned argument for non-parochialism, the hegemony of HR theorization and application is taken a step further into the colonial realm when states that refuse to

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[64] David Chandler, "The Limits of Human Rights and Cosmopolitan Citizenship." *Rethinking Human Rights: Critical Approaches to International Politics.* Ed. David Chandler, (Houndmills, Hampshire: Palgrave Macmillan, 2002), 129.
[65] John Tasioulas, "Are Human Rights Essentially Triggers for Intervention?" *Philosophy Compass* 4, no. 6 (2009): 940.

acknowledge the legitimacy of 'universal' rules that contradict their cultural traditions ultimately have their territorial sovereignty invaded due in part to the rules they don't recognize. There is an inherent process of political 'othering' when universal rules are developed from a Western-liberal perspective, not only condemning the non-liberal order, but also legitimizing their geographical colonization.

A further note on the colonial nature of HR is warranted, as it pertains to the following critique on human security as well. Verracini presents two unique scopes to critique the use of human rights as a means for intervention: the *colonial* and *settler colonial* situation.[66] A modern understanding of colonialism is best encapsulated in Jürgen Osterhammel's definition, namely that colonialism is:

> a relationship of domination between an indigenous (or forcibly imported) majority and a minority of foreign invaders. The fundamental decisions affecting the lives of the colonized people are made and implemented by the colonial rulers in pursuit of interests that are often defined in a distant metropolis.[67]

This definition allows for some distance from the liberal mindset, providing insight into the colonial nature of how HR are imposed by external actors. This is not to suggest that HR ought not be promoted, but rather that local customs and traditions should be considered in the theorization of true 'universal' rights, and that local actors should have a more distinct role in shaping their society. Under a more inclusive view, socioeconomic rights – such as the right to a certain standard of living – may be more prevalent in a global understanding of HR, while still giving due consideration to important civil-political rights.

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[66] Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview*, (Houndmills, Basingstoke: Palgrave Macmillan, 2010), 1-33.

[67] Jürgen Osterhammel, *Colonialism: A Theoretical Overview*, (Princeton: M. Wiener, 1997), 16-17.

The second view of HR, the *settler colonial* understanding, paints a much darker situation. Verracini suggests that settler colonialists are often "autonomous collectives that claim both a special sovereign charge and a regenerative capacity," and that this done by the 'removal' of the former society, "either by setting up an ideal social body or by constituting an exemplary model of social organization."[68] On this view, the methods of liberalism and the international enforcement of HR in particular are viewed not as inclusive, cooperative endeavors, but rather missions to homogenize non-liberal states into the liberal order. Liberalism is both autonomous and regenerative by appealing to the universalist logic of natural rights –  HR are beyond the realm of dispute having presumed moral authority. Upon this view, physical migration need not even take place to establish a settler colonial society – all that is required is the giving up of local traditions and methods of social organization, acquiescing to the 'universally' approved methods of liberalism.

The above three criticisms of the emancipatory claim of HR are significant for the practice and theorization of TJ. Each critique poses a unique problem for achieving post-conflict peace, and preventing future violence. In particular, the dismissal of cultural prioritization of rights represents a further step towards de-legitimizing the liberal peace – if HR violations are used as a justificatory basis for implementing liberal democracy, then there is a two-fold perception of illegitimacy on the part of locals considering the prior critique of liberal peacebuilding. Further, the argument for non-parochialism illuminates the way in which TJ is essentially a Western-dominated theory and practice, excluding the perspective of the subject it intends to aid. Finally, the colonial and settler colonial critiques imply that TJ is essentially a guise for the assimilation of the non-liberal into the

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[68] Veracini, 3-4.

liberal world order. Rather than representing a mission of emancipation, the three aforementioned arguments prove that TJ practices are illegitimate from the perspective of local populations,  and are perceived as hegemonic and colonial practices that further alienate the post-conflict subject. Thus, the way the HR is theorized and practiced paradoxically undermines the goals of TJ, necessitating a sideways theorization that includes the traditions and culture of post-conflict societies.

### 3.2.2   HUMAN SECURITY: IDENTIFYING THE ILLIBERAL 'OTHER'

Attached to the discourse on HR is the field of Human Security (HS), indeed, one mutually reinforces the credibility of the other in the sense that the universal rights rhetoric has established the violation of HR as a HS issue. This section considers the historical development of HS, and analyzes how political rhetoric manipulates and shapes the securitization agenda. This supports the wider critical argument that the field of HS is ultimately utilized by Western states to serve Western strategic interests, rather than to indiscriminately protect global citizens. Once this has been achieved, it will be considered how this negatively impacts the efficacy of TJ.

The literature surrounding HS is far from agreement on a definition of the term itself. Similar to how other terms were defined, it is appropriate to identify the 1994 Human Development Report made by the UNDP as the defining apogee  moment for HS. In particular, three main facets that comprise the 'broad conception' of HS are implied within the UNDP Human Development Report: freedom from fear, freedom from want, and the respect for liberty and rights. This conception allows for a broad theorization of potential threats, seen as a strength of the field by traditional HS theorists, but as a weakness by critical scholars. This intentional ambiguity has lead to a wide range of

academic and policy interpretations. According to Tadjbakhshand HS simply amounts to the shift in designation of the individual rather than the state as the 'referent object' of security. [69] Freedom from fear represents traditional state-focused security concerns; freedom from want represents socioeconomic equity and justice; and the respect for liberty and rights pertains to the upholding of HR.[70] Each of these freedoms is considered from the perspective of the individual, not the state, as security has been traditionally framed in political discourse. Hampson builds upon this conceptualization, arguing that a minimum guarantee for these three facets amounts to the securing of individual 'dignity', the broadest overarching goal for HS.[71] Simply put, the individual as the subject of HS is only secure once they can be said to have been afforded the right to dignity, meeting all three aforementioned criteria. This is a useful conceptualization because it allows for easy identification of missing components that result in insecurity, however, it does little to solve the ambiguity issue. Since no concrete steps are given for how to concurrently achieve and maintain security, this responsibility is largely up to the securitizing actor, that is, the state.

Other definitions of HS exist, moving along a spectrum towards more narrow conceptions where one or more of the aforementioned facets are minimized to an extent. The most minimal approach would be the sole pre-occupation of establishing freedom from fear, namely, by using state-centric means to prevent direct threats to the physical integrity of citizens. [72] This minimalist approach stays as true to traditional state-sanctioned security means as possible while still acknowledging the individual as the

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[69] Shahrbanou Tadjbakhshand Anuradha M. Chenoy, *Human Security: Concepts and Implications,* (Abingdon, Oxon: Routledge, 2007), 13
[70] Ibid., 51.
[71] See: Fen Osler Hampson and Jean Daudelin, *Madness in the Multitude: Human Security and World Disorder*, (Oxford: Oxford UP, 2002).
[72] Tadjbakhshand, *Human Security: Concepts and Implications*, 40.

referent subject of HS. The more that freedom from want and the respect of rights and liberties are emphasized, the more that security is framed from at the individual level, and the less that security is framed as a state-centric issue.

In addition to the issues of scope, there exists a range of typologies that utilize the HS paradigm for different political ends, allowing for further subjectivity in using HS for justificatory means. Newman contextualizes this claim by distinguishing between four distinct approaches: first, the 'basic human needs' approach focuses on upholding the HR paradigm as it is currently conceptualized; second, the 'assertive interventionist' [73] approach justifies breaching a state's territorial sovereignty if rights are violated; third, the 'social welfare and development' approach demands just and equitable levels of socioeconomic development; and lastly, the 'new security' approach widens the securitization debate to include non-traditional threats such as terrorism or environmental concerns.[74] Different securitizing actors utilize HS in unique ways according to their political agendas, lacking cohesiveness and consistency in its application and use. The 'assertive interventionist approach', in particular, will be explored in chapter four when analyzing the Bush administration's intervention in Iraq. HS is a widely contested concept both in terms of its scope, as well as its intentions – these theoretical ambiguities are the foundation of the critical arguments to follow.

Much of the critical literature explored in the prior sections on HR and peacebuilding are still relevant with HS.[75] This section steps aside from those arguments, and explores two critical issues unique to HS with the aim of applying it towards

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[73] Taylor Owen, "Human Security: A Contested Contempt," *The Routledge Handbook of New Security Studies,* (Abingdon, Oxon: Routledge, 2010), 46; Lloyd Axworthy, "Human Security and Global Governance: Putting People First," *Global Governance* 7, no. 1 (2001): 19-23.

[74] Edward Newman, "Human Security and Constructivism," *International Studies Perspectives* 2, no. 3 (2001): 239-51.

American foreign policy in the chapter to follow. The first issue is that of securitization, more specifically, how formulations of global threats are susceptible to political manipulation through a select group of international actors.[76] Threats conceptualized at a global level reflect the discourse of 'civilizational security,' a tendency of the liberal ideology that acts to alienate the non-liberal order in a similar manner as HR. The second issue regards the backdrop of international criminal accountability upon which HS gains its relevancy and significance, in particular with prosecutions and sanctions toward those deemed a security threat. This latter concern brings up issues of ICC neutrality, questioning the impartial nature of international law as well as American impunity. Both these concerns center around the larger problem that HS serves as a practical tool for serving Western liberal interests, rather than aiding its referent subject, the individual.

The first critique against HS concerns the nature of how a threat comes to be identified and subsequently mobilized against. A useful analytic framework for this is 'securitization theory,' which according to Burgess is a, "'speech act theory' of security that focuses on the means by which security issues are constructed through language."[77] On this view, a securitizing actor has the ability to shift a seemingly benign topic into the realm of exceptional politics by labeling said phenomena as threat to global security, effectively distributing the fear of the threat to fellow liberal states. As long as the securitizing actor is perceived as an authority figure, there is no limit to what could be potentially accepted as a threat.[78] The argument against HS points out that the process of identifying threats is a highly subjective task that Western liberal actors have had a

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[77] J. Peter Burgess, "Introduction," *The Routledge Handbook of New Security Studies,* (Abingdon, Oxon: Routledge, 2010), 2.

[78] Examples include: Steve Wiggins and Rachel Slater, "Food Security,"; Roland Dannreuther, "Energy Security,"; Myriam Dunn Cavelty, "Cyber-Security," all of which are found in J. Peter Burgess, *The Routledge Handbook of New Security Studies,* (Abingdon, Oxon: Routledge, 2010).

monopoly over, self-justifying their mobilization against whatever they consider a security threat. One type of speech act that is prevalent in securitization deserves unique attention, namely, speech acts that enact 'civilizational security'.[79]

The concept of political 'othering' was briefly mentioned during the critiques of HR, suggesting that the cosmopolitan membership that affords HR requires assimilation into the liberal order, and that intervention based on HR alienates post-conflict populations, ultimately causing behaviour that is perceived as non-liberal. Similarly, civilizational security and its relevant securitization acts serve to identify the 'un-civilized' and mark their existence as a threat to the civilized way of life,[80] meaning that civilization security can only be achieved through the neutralization of the un-civilized threat. This is what Bowden refers to as 'the security that comes with civilization,' which manifests in the external intervention of states that "have failed the test of modernity in that they are seen as collapsed states, rogue states, or something in between or approaching one of these conditions."[81] Within an LI paradigm, this security threat is synonymous with non-liberal authoritarian states who don't recognize the legitimacy of HR. The obvious issue with this form of securitization is that its use is monopolized by hegemonic actors in the West to mobilize against non-liberal actors, effectively silencing the perspective of the subjectively labeled 'uncivilized'. From this perspective, the TJ efforts of building liberal democracies and enforcing human rights are not an act of international aid, but rather an opportunity to neutralize a threat. Labeling a population 'uncivilized' effectively reduces them to a binary between a terrorist threat, and the

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[79] Brett Bowden, "Civilizational Security," *The Routledge Handbook of New Security Studies,* (Abingdon, Oxon: Routledge, 2010), 7-16.

[80] Jean Starobinski, "The Word Civilization," *Blessings in Disguise, or, The Morality of Evil*, trans. Arthur Goldhammer, (Cambridge, Mass: Harvard University Press, 1993), 7-8.

[81] Bowden, 12-13.

victim in need of saving. Taken a further dimension, this civilizational securitization rhetoric becomes more problematic when it becomes official foreign policy, as the last chapter of the paper explores.

It would be appropriate at this point to cast a glance backward and measure the road already covered in this section. With the intent of outlining the implications the LI paradigm has on the field of TJ, the critical literature surrounding liberal peacebuilding as well the HR and HS paradigms was explored to outline the historical development of LI practices, as well as outlining the reasons why these acts are often perceived as illegitimate in post-conflict societies. The paper up to this point has given sufficient evidence to question the merits of LI as a normative framework for TJ moving forward. The remainder of the paper highlights the aforementioned critiques within the context of TJ-related American foreign policy decisions. Establishing a link between the international community's acceptance of LI principles and the benefits this has had for American interests raises further questions about the merits of LI framing TJ theory and practice. By showing this link, this paper will achieve its purpose of showing how LI ultimately undermines the TJ goals of preventing violence in post-conflict societies, ultimately to the benefit of American strategic interests.

# CHAPTER 4

## 4    LIBERAL INTERNATIONALISM, AMERICAN FOREIGN POLICY, AND

## TRANSITIONAL JUSTICE

To further support the claim that LI is detrimental to the field of TJ, this section contextualizes the flaws mentioned in the prior chapter within particular instances of American foreign policy. Establishing a link between the international community's acceptance of LI principles and the benefits this has had for American interests raises further questions about the dominant LI paradigm that shapes TJ. By showing this link, this paper will achieve its purpose of arguing LI ultimately undermines the TJ goals of preventing violence in post-conflict societies, ultimately prioritizing American interests.

### *4.1    DISCUSSING CASE SELECTION: HAITI AND IRAQ*

The following section limits its scope of analysis to two contemporary events that saw foreign policy action initiated by the US. The 1994 peacebuilding efforts in Haiti and the 2001 military intervention in Iraq were selected for three distinct reasons. First, the seven year time gap between these foreign policy acts reveals the normative development of LI principles to culminate in a conception of TJ that accepts unilateral American intervention as normal behaviour. The USA's symbolic position as global hegemon and leader of the liberal order raises questions about the one-sided implementation and benefit of practices such as peacebuilding and the manipulation behind the language of human rights and human security. Second, the mid-1990s to the early 2000s encapsulates the 'pioneering' years of TJ theorization and practice, a time period where American behaviour acted as the exemplar for TJ processes to follow. TJ gained its academic acceptance with Kritz's 1995 anthology after president Clinton's actions in Haiti, but

before Bush's intervention in Iraq. Thus, these events mark the justification of, and extension of LI principles in TJ theory and practice, respectively. Lastly, both these cases represent 'failed' attempts at TJ, wherein the ultimate outcome was that of further social disintegration and an escalation of violence. Both Haiti and Iraq remain in relative conflict at the time of this writing, questioning the merits of how TJ is operationalized under the paradigm of LI. Both post-conflict societies represent cases that would benefit from a conception of TJ dissociated in theory and practice from LI.

In analyzing Haiti and Iraq, each section first provides the historical context behind each country's relationship to the US. Once the historical context has been considered, the aforementioned critical literature is applied toward American TJ measures, including issues of peacebuilding, HR, and HS. Both sections will end off with an examination of how LI was promoted within TJ with the ultimate aim of benefiting American interests, contrary to the TJ goals of preventing further conflict.

### 4.2    *HAITI*

To understand the significance of the American TJ actions in Haiti during the early 1990s, a brief note on the two countries' relationship over the past century is warranted. Prior to the Cold War, Haiti was considered to be under American jurisdiction according to the Monroe Doctrine, which asserted American regional hegemony over the American territories in conjunction with an isolationist stance towards foreign activity.[82] Following the Second World War, the US remained active in shaping Haitian political organization by passively and actively supporting the authoritarian regimes of François and Jean-Claude Duvalier, and finally in the American support of a military overthrow of

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[82] For early 20th-century-specific commentary on the Monroe Doctrine's application to Haiti, see: William A. MacCorkle, "The Monroe Doctrine and its Application to Haiti," T*he Annals of the American Academy of Political and Social Science* 54, (1914): 28-56.

democratically elected Haitian President, Jean-Bertrand Aristride.[83] This aligns with the Baranyi's classification of 1st-wave peacebuilding, where authoritarianism was tolerated as the lesser of two evils when considered in contrast to a communist alternative. Since UNSC gridlock prevented democratization efforts initiated by the Americans, the only means to preventing the communist spread was to support stable authoritarian regimes. The Duvalier reign can be characterized as stable, but only due to brutal government control of its population. Secret police known as the 'Tontons Macoutes' loyal to Duvalier essentially became a domestic terrorist faction, killing and torturing those suspected of being political dissidents or potential opponents. [84] These blatant HR violations at the hands of the Haitian government went unnoticed by a Western world preoccupied with the Communist threat – the passive support of authoritarianism was justified as a means to protect what was perceived as major security threat to the US.

Clinton's intervention in Haiti was influential given the era-dependent rise of TJ in international relations, legitimated by an international system that encouraged multipolar cooperation through the UN. Liberal democratic and HR frameworks being accepted at the international level meant that American foreign policy had to correspondingly alter its framework, again, to lead by example. Being a global hegemon and leader of the liberal order meant that the US had to take a more prominent leading role in responding to post-conflict societies. Thus, Haiti represents a unique starting point of critical analysis. The peacebuilding efforts, as well as the framework of HR and HS utilized by the US would become archetypal in the practice of TJ, raising questions about the efficacy of these measures, and how they ultimately serve American interests.

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[83] Lester H. Brune, *The United States and Post-Cold War Interventions: Bush and Clinton in Somalia, Haiti, and Bosnia 1992-1998,* (Claremont, California: Regina Books, 1998), 38-42.
[84] Ibid., 39.

### *4.2.1  ESTABLISHING A FLAWED TRADITION OF LIBERAL PEACEBUILDING*

It is now appropriate to identify the American TJ initiatives in Haiti that were representative of LI. In doing so, each argument will outline the TJ measure in question, consider the relevant critical literature surrounding the event, and consider why that particular TJ response was chosen from a strategic American foreign policy perspective. Two defining characteristics of Clinton's TJ initiatives in Haiti will be explored: the shift towards multilateralism in American foreign policy, and the use of economic sanctions as a means of peacebuilding.

Though a series of military coups took place in Haiti in the late 1980s, decisive American action did not take place until 1991 when Raoul Cédras, a member of the military group, *Securite Intelligence nationale* (SIN), overthrew the democratically elected Jean-Bertrand Aristide. The American foreign policy response that would follow is significant because it marks the transition towards what Baranyi has labelled 3rd-wave peacebuilding, wherein interventions were premised on international law and multilateral consensus, particularly after the Rwandan and Yugoslavian genocides.[85] Given the trend in international relations away from unipolarity, the US utilized what Kreps has labeled *full* and *formal* multilateralism, where the former implies the cooperation of international and the latter suggests that the US maintained the ability to intervene operationally alone in terms of the planning and execution of the intervention.[86] In practice this amounted to the gathering of support throughout the Americas and the Carribean, but that this support was largely symbolic in the sense that these states refrained from planning the intervention, committed few if any troops, and fully relinquished the leadership role to

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[85] See note 25.
[86] Sarah E. Kreps, *Coalitions of Convenience: United States Military Interventions After the Cold War,* (New York: Oxford UP, 2011), 81.

the US. Although the endeavor was multilateral in name, operationally it was fully under the command of the American hegemonic state.

Two contrasting perspectives arise to explain the pretense of multilateralism surrounding the Haiti intervention. The first points to the significance of domestic American interest groups in elevating the issue of Haiti into public discourse. The lobbying efforts of the Congressional Black Caucus was particularly effective, using high-visibility protest tactics such as hunger strikes and labelling Clinton's policies as 'racist'.[87] The multilateral route provided a useful way to provide more legitimacy to the intervention and appease domestic interest groups who perceived it as an internationally cooperative endeavor. The second position, representing a critical post-colonial perspective, is skeptical of the ability of the US to unilaterally gather the political support needed to pursue its foreign policy goals. Zolo claims that the UN approval of the Haitian intervention delegitimizes the value of the world's forefront international institution, allowing the US to carry out its geopolitical objectives through the vehicle of the UN.[88] This perspective echoes the legitimacy critique against peacebuilding, where intervention by an external actor is viewed as illegitimate because the local population doesn't acknowledge the authority of imposed liberal values. [89] On this view, formal multilateralism and UN cooperation was merely a guise for unilateral behavior.[90]

In addition to being framed as a multilateral endeavour, the intervention also used economic sanctions as a means to incentivize a return to democratic Haitian governance.

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[87] For more detail on the influence of the Congressional Black Caucus, see: Paige Whaley Eager, "The Voice of the Congressional Black Caucus in American Foreign Policy," *The National political science review* 11, (2007): 271-289.

[88] Danilo Zolo, *Cosmopolis: Prospects for World Government* (Cambridge, MA: Polity, 1997), 164.

[89] See note 46.

[90] For more information on the unilateral tendencies of the American intervention in Haiti, see : Sarah E. Kreps, "The 1994 Haiti Intervention: A Unilateral Operation in Multilateral Clothes," *The Journal of Strategic Studies* 30, No. 3, (2007): 449 – 474.

This inherently disregarded the socioeconomic wellbeing of Haitians when contemplating the use of sanctions as a means towards achieving civil-political rights. Before peacebuilding forces were considered an option, the UNSC passed resolution 841 that placed a fuel and arms embargo on Haiti.[91] President Clinton imposed further sanctions when he issued executive order No. 12853, freezing the assets of Haitian national elites considered to be funding the military regime. [92] This had negative unintended consequences for the local Haitian population, giving legitimacy to the critique that American peacebuilding was ultimately destabilizing for Haiti. As outlined in section 3.1.1, the inherent bias towards civil and political democratization as a means of peacebuilding dismisses socioeconomic concerns that better deal with the *root* of violence.[93] In posing sanctions, the US enacted a limited 'negative peace' in Haiti where military elites could not access everyday necessities, but neither could the local population. The sanctions were finally lifted in 1993 after Cedras met with Aristride in New York to discuss terms of his democratic return, only to be reinstated after a failed effort to install UN peacebuilding forces further delegitimized the effort in the eyes of both Haiti and the wider International community.[94]

Thus, the events that occurred in Haiti are significant for identifying the influential nature of post-Cold War American foreign policy and contextualizing both the instability and legitimacy arguments against the use of liberal peacebuilding. Haiti reveals how the multilateral nature of post-Cold War peacebuilding has been true only in name, given the empirical reality of American dominance in post-conflict societies they

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[91] Chetan Kumar, "Sustaining Peace in War-Torn Societies," *Military Intervention: Cases in Context for the Twenty-First Century,* Ed. William J. Lahneman (New York: Rowman and Littlefield, 2004), 115.
[92] Kreps, *Coalitions of Convenience,* 79.
[93] See note 32
[94] The de-legitimizing nature of the US-initiated 'United Nations Mission in Haiti' (UNMIH) is covered in detail in: Ian Martin, "Haiti: mangled Multilateralism," *Foreign Policy* 95, (1994), 72-89.

deem to be a matter of national interest. Furthermore, the sanctions route towards incentivizing a return to democracy has undeniably placed a strain on the Haitian populace, giving value to the claim that the methods of peacebuilding are destabilizing to the very subjects it intends to aid. Finally, the resistance to peacebuilding forces from Haitian locals provides a poignant example of how post-conflict societies perceive external interventions as hegemonic colonial acts, as foretold in the legitimacy argument. Given the empirical failings of peacebuilding in Haiti, it is clear that for TJ to achieve its stated goals it must dissociate itself in theory and practice from this defining LI trait.

### 4.2.2  *HUMAN RIGHTS: THE FAILURE TO HOLD THE PAST ACCOUNTABLE*

This section considers the hypocrisy of American involvement in Haitian affairs, arguing that American support of authoritarian regimes in Haiti directly contradicts the paradigm of HR and HS that the US uses to justify post-conflict intervention. Considered from a different angle, this section argues that this hypocritical tendency is reflective of a 'neo-classical realist' understanding of TJ, that is, that foreign policy is a direct response to a state's strategic interests, rather than a sincere cosmopolitan commitment to upholding universal principles and values via international cooperative efforts.[95] From a strategic perspective, the US aimed to assert itself atop the global liberal order as a moral authority, and Haiti proved an opportunity for an American-initiated effort to do just that.

One of the phenomena that made it strategically necessary for the US to intervene in Haiti was the presence of HR violations at the hands of the military *junta*. The hypocrisy of this justification ought not be overlooked in the sense that senior agents of

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[95] Neil Fenton, *Understanding the UN Security Council: Coercion or Consent?* (Burlington, VT: Ashgate, 2004); for a 'neo-classical realist' understanding of TJ as a process of balancing and comprising interests amongst UNSC members see: Tudor Onea, "Putting the 'Classical' in Neoclassical Realism: Neoclassical Realist Theories and US Expansion in the Post-Cold War," *International Relations* 26, no. 2 (2012): 139-164.

the Central Intelligence Agency (CIA) and the Department of Defense's Intelligence Agency (DIA) financially supported the authoritarian regime that overthrew the democratically elected Aristide.[96] While the American efforts that lead to Aristide's return should be commended, the lack of accountability for America's pre-junta actions poses implications for the legitimacy of US-led TJ initiatives. The American support of anti-democratic regimes in Haiti stems from the Cold-War political climate wherein the US shaped its foreign policy to prevent the spread of communism into the West. In particular, the United States Agency for International Development (USAID) provided funds to Haiti that aided in the construction of factories that employed low-wage workers, where by 1991, 90 percent of Haiti's exported manufactured items were produced by U.S. companies.[97] The US profited considerably from this policy, which to them, represented a stable, predictable alternative to the uncertainty that Aristide's democratic regime encapsulated. In an effort to maintain the status quo established pre-Cold War, the CIA-DIA spent over $400 million to assist SIN political operations with the intent of preventing a democratic uprising, but this instead manifested in the rise of SIN terrorism that eventually led to Aristide's overthrow.

The hypocrisy outlined above speaks to the tension between transitioning from pre-Cold War political rhetoric, to the current HR approach, raising questions about the sincerity of global liberal values and principles. The universal, cosmopolitan nature of HR in theory leaves no act of injustice unaccountable. Indeed, the significance of 'acknowledgement' in post-conflict societies is theorized as a key restorative principle of

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[96] Brune, 39.

[97] Michel-Rolph Trouillot, "Haiti's Nightmare and the Lessons of History," *Haiti: Dangerous Crossroads,* Ed. Deidre McFayden, et. al., (Boston: South End Press, 1995): 121-132.

TJ. [98] However, the literature takes the post-conflict population as its subject of analysis without giving due consideration to the past actions of intervening actors that had a hand in the development of the conflict. Simply put, TJ measures implemented by an actor with a history of political manipulation are undoubtedly going to result in a perception of illegitimacy in local post-conflict populations. Thus, it is strategic for the US to promote intervene on the basis of HR violations because their status as global hegemon and leader of the liberal order prevents HR violations from being directed inwardly.

The literature considered above has given significant reason to be critical of the American TJ initiatives in post-conflict Haiti. The issues with peacebuilding and the protection of HR were not necessarily reflective of a sinister American foreign policy agenda, but rather a combination of naïve implementation and a pressured eagerness to act. Clinton's response to Haiti was timed in conjuncture with the rise of TJ as an academic field, meaning that the inherent peacebuilding and HR biases would inevitably arise accompanied with its critical issues. What made matters worse was the post-Cold War political climate that propelled the US to lead by example. A sober second thought inclusive of multilateral concerns was disregarded in favour of cementing the US as the leading role international aid affairs. Given this context, the failure of American led TJ efforts in Haiti was inevitable, but provided valuable learning moments that would benefit TJ in the future. Unfortunately, as the following section shows, not only were these lessons not heeded, but American led-TJ became more unilateral and forceful, making the dissociation of LI from TJ all the more imperative for future success of TJ as a field.

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[98] For more detail on the politics of acknowledgement, see: Joanna R. Quinn, *Reconciliation(s): Transitional Justice in Postconflict Societies,* (Ithaca, NY: McGill-Queens University Press, 2009); Trudy Govier, *Forgiveness and Revenge,* (Abingdon, Oxon: Routledge, 2002).

### 4.3     IRAQ

The Al Qaeda attacks on New York and Washington on September 11, 2001 (colloquially known as 9/11) was a pivotal event for TJ in American foreign policy, marking the transition toward 4th-wave peacebuilding, and signifying a new era in human security that utilized the 'War on Terror' as the justificatory basis for US-led interventions thereafter. The comparison between Haiti and Iraq is useful to illuminate the rapid pace at which LI principles have gained dominance within TJ. Less than a decade passed before the TJ measures were used in Haiti, they were re-conceptualized in their application in Iraq further infringing upon human rights manipulating the HS paradigm. This section first outlines the contemporary historical relationship between Iraq and the US, then considers the critical literature surrounding peacebuliding and HS regarding TJ in Iraq.

The roots of the 2003 invasion of Iraq were planted at the end of the Persian Gulf War in 1991 when the Liberal coalition exited Iraq, leaving political power in the hands of Saddam Hussein.[99] The American disdain for Saddam was prevalent throughout the 1990s culminating in the 1998 Iraq Liberation Act (P.L 105-338) that framed American foreign policy towards Iraq with the explicit goal of removing Saddam from power and implementing democratic reforms.[100] The tipping point, however, was undoubtedly the shift in American political culture following 9/11, where as Kreps notes, "after the attacks, threats that had previously been addressed over time took on more urgency."[101] While Saddam was always on the radar of foreign policy concerns, Americans sincerely thought that his regime posed an immediate threat to national security following 9/11. The fear of the Iraqi threat culminated in the October 2002 Congressional vote to

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[99] Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (New York: Penguin, 2006), 59.
[100] Iraqi Liberation Act of 1998, available at: <https://www.congress.gov/bill/105th-congress/house-bill/4655>
[101] Kreps, *Coalitions of Convenience* 115.

authorize war against Iraq, where the justificatory basis was the Iraqi support of terrorist groups, pursuing of WMDs, and harboring members of al Qaeda.[102] One year later in 2003 the peacebuilding intervention in Iraq started, forcing Saddam into hiding and implementing liberal democratic reforms in his wake with the hope of providing peace and stability to the region. However, the end of the authoritarian regime left a power vacuum after the lustration policy of 'De-Ba`thification' [103] that barred all Ba`thist members from public sector employment, the majority of whom were Sunni Muslims. This had the destabilizing effect of inciting the hostile politics of ethnicity and sectarianism, arguably leaving the country more unstable than before the intervention.

### *4.3.1   DE-BA`THIFICATION: WHEN PEACEBUILDING VIOLATES HUMAN RIGHTS*

Considering the political climate and historical context surrounding the 2003 US-led intervention in Iraq, two particular issues are relevant to the study of TJ: the manner of which liberal peacebuilding was carried out through the process of De-Ba`thification, and the manner of which HS was assimilated into the rhetoric of the War on Terror. The former issue contextualizes the instability and legitimacy arguments against peacebuilding, whereas the latter exemplifies how liberal securitization acts can mobilize forces against any perceived threat under the contemporary HS paradigm.

The process of De-Ba`thification was an explicit act of lustration, that is, removing those who were compliant with the previous regime and held political positions of power. Lustration acts have precedent with the 'De-Nazificatio'n efforts following the Second World War when the Nazi ideology was banned from being visible in any

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[102] Authorization for Use of Military Force against Iraq Resolution of 2002, available at:
<https://www.congress.gov/bill/107th-congress/house-joint-resolution/114>
[103] For more detail on the De-Ba`thification process, see: Beth K. Dougherty, "De-Ba`thification in Iraq: How Not to Pursue TJ," *Middle East Institute. Middle East-Asia Project (MAP) Essays on TJ*. 30 Jan. 2014. 1-7; Jens Meierhenrich, "The Ethics of Lustration." *Ethics & International Affairs Ethics* 20, no. 1 (2006): 99-120.

institutional setting. The institutional cleanse of Ba`th party members was initiated by American interests via the Coalitional Provisional Authority (CPA), placing direct TJ responsibility with the US.

The main difference between the two lustration acts – and the crux of the critique to follow – is that De-Ba`thification resulted in further HR violations of the Iraqi population, causing physical violence as well as the denial of civil-political freedom. In this sense, De-Ba`thification was overly destabilizing, and dealt a blow to the legitimacy of the liberal peace project that has focus of traditional TJ theory. The argument against De-Ba`thification is fairly straightforward: rather than providing peace and stability through liberal democratization, the lustration process in Iraq has had the opposite effect by promoting the rise of nationalist rhetoric and consequently encouraging social instability. The power vacuum left behind after the overthrow of Saddam meant that competing political factions comprised of different religious sects were competing for power, resulting in what Snyder calls an 'imperfect competition' within the civil 'marketplace of ideas.' [104] The Iraqi political climate succumbed to into ethnic violent rhetoric between opposing groups, often stirring up accusations of Sunni politicians supporting the Ba`th ideology, and by extension sympathizing with Saddam.

The communitarian framing of the legitimacy argument is a logical extension of instability argument, and provides a relevant critique to this American-led TJ effort. It infers that Iraq could not be expected to handle the rapid implementation of market democracy governance due to their historical inexperience with this system, as well as their preference for local customs and traditions. The Saddam regime ill-prepared the

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[104] See note 30.

Iraqi population for the intricacies of liberal democratic governance, leading to inevitable inefficiencies that lead to frustration on the part of locals. According to Shlash and Tom:

> If market mechanisms had not provided jobs and prosperity, if democratic institutions had failed to take root, and if instability endured, it was because of the weakness and inefficiency of institutions and the lack of transparency and accountability of the government… A stronger rule of law and institutions capable of administering and monitoring it, would be able to save the liberal peace.[105]

The standard blueprint of liberal peacebuilding democratization was at odds with how traditional Iraqi governance already operated. In other words, Iraqi societal traditions and culture were not taken into consideration when implementing a Western form of governance. Purging all Ba`thist members from the public sector amounted to a government sanctioned exclusion of an organized collective from the political sphere - and by extension, an institutional division between Sunni and Shi'a religious sects.[106] It was inevitable that politically repressed Sunni Muslims would perceive this external democratic governance structure as illegitimate. Even if the Sunni population acknowledged the validity of the HR paradigm, their denial of basic political rights would still be perceived as unjust, further undermining the legitimacy of liberal democracy.

### 4.3.2  HUMAN SECURITY: DEFINING A TERRORIST

In addition to the illegitimacy of the De-Ba`thification peacebuilding effort, the securitization acts that justified the intervention in Iraq under the paradigm of HS deserve further attention. Recall the significance of securitization speech acts within HS,[107] wherein an authoritative international actor has the ability to define and shape the scope

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[105] Amal Shlash and Patrick Tom, "Is Liberal Democracy Possible in Iraq?" *Rethinking the Liberal peace: External Models and Local Alternatives*, Ed. Shahrbanou Tadjbakhsh, (Abingdon, Oxon: Routledge, 2011), 211.
[106] Dougherty (2014) notes how the Ba`thist political affiliation was politically manipulated to become tied to the Sunni religious identity.
[107] See note 72.

of global threats, and consequently mobilize those under a collective security framework – the liberal order – towards neutralizing said threat. This is directly applicable to how the American foreign policy establishment tied the Iraqi intervention to the rhetoric of the 'War on Terror'.

Nine days following 9/11, in his address to a joint session of Congress and the nation, President Bush announced his commitment to America's "War on Terror":

> Our enemy is a radical network of terrorists and every government that supports them. Our war on terror begins with Al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.[108]

This was a significant securitization act, identifying the threat of terrorism, implying a identifiable enemy to mobilize against. However, this also marks a significant turning point in HS, raising the level of subjectivity in identifying global threats and localizing this subjectivity within the realm of American foreign policy.

The critical literature is concerned with this American monopoly of subjectivity. By defining terrorism as a threat to HS, the US essentially mobilizes the liberal order against a multitude of threats that could come from anywhere, at anytime. In a study performed by Tsoukala, political speech acts following 9/11 were analyzed to quantify what themes arose most often regarding the definition of the terrorist. She notes that the terrorist threat was emphasized to be unpredictable, presents a limitless barrage of enemies, be long-lasting in time frame, global in nature, and significant as direct threat to the American way of life.[109] All these traits are admittedly vague, and susceptible to

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[108] George W. Bush, *Presidential Address to a Joint Session of Congress and the Nation*, September 20, 2001.
Available at: <http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html>
[109] Anastassia Tsoukala, "Defining the Terrorist Threat in the Post-September 11 Era," *Terror, Insecurity and Liberty: Illiberal Practices of Liberal Regimes after 9/11,* Ed. Didier Bigo and Anastassia Tsoukala, (London: Routledge, 2008), 49-99; for more detail on how political speech acts justified Iraq as a terrorist threat see: Chaim Kaufmann, "Threat Inflation and the Failure of the Marketplace of Ideas: The Selling of the Iraq War," *American Foreign Policy and the*

manipulation via scapegoating a particular demographic or population into the position of 'terrorist'.

The ambiguous nature of the terrorist threat becomes a heightened issue when linked to Civilizational Security, a common framing of HS. Presenting the Saddam regime as 'uncivilized' and consequently as threat to the 'civil' way of life made the American public all the more accepting of intervention based on liberalization. This reflects the utility of the humanitarian narrative utilized in political rhetoric, wherein intervention is not only morally permissible, but necessary and indeed encouraged because only the members of the liberal order can be "heroes as guarantors of stability, bearers of democracy and protectors of human rights and of the oppressed," whereas the 'uncivilized' can only have agency as the helpless 'other' in need of liberation.[110] Thus by linking terrorism as a matter of civilization security, the Bush administration was further able to 'sell' the Iraq intervention to the American people, firstly by labeling Saddam a terrorist sympathizer, and secondly by marking the Iraqi state as in need of civilizational liberation.

The issues outlined above suggest that the LI paradigm that guides TJ efforts in Iraq have ultimately undermined the goals of providing political stability and preventing future violence in the country. Also, it is apparent that the use of LI principles has unilaterally benefitted the interests of American foreign policy, further validating the critical prescription to dissociate TJ from LI.

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*Politics of Fear: Threat Inflation since 9/11.* Ed. A. Trevor. Thrall and Jane K. Cramer, (London: Routledge, 2009), 97-116
[110] Orford, 166.

# CHAPTER 5

## 5        CONCLUSION

The track record of Transitional Justice (TJ) has seen relatively few authentic moments of success, albeit relatively early in its formal theorization. The end-goal of instituting liberal democracies where it didn't previously exist represents a noble task and should not be disregarded as a viable means towards peace. In itself, this endgoal has not been the focus of the critical literature explored in this paper. Rather, the critical literature reexamines the manner in which TJ measures are instituted, and the power interests that they ultimately serve, ultimately through a framework of LI principles. The flaws inherent in liberal peacebuilding, Human Rights, Human Security have all been shown to be destabilizing and illegitimate when applied toward post-conflict societies, necessitating a step backwards and a re-theorization of alternate means towards sustainable peace, as well as the appropriate actors to carry out this process. Though LI has been inherent from the defining moments of TJ theory and practice, this is not to suggest that it is the only paradigm through which to achieve a stable post-conflict peace. It has been shown that peacebuilding, HS, and HR are not sufficient in themselves to bring about peaceful democratic governance. Other necessary conditions must be theorized and explored towards this endgoal, or the possibility that liberal democracy itself is insufficient to bring about post-conflict peace and stability must be considered.

Two questions have guided the preceding research: what effect does the liberal internationalist paradigm have on TJ, and  why does the US promote this paradigm? Throughout the course of the paper, principles and tactics of LI have been shown to negatively undermine the goals of TJ in both theory and practice.

Though the paper has completed its intended inquiry, only a fraction of the debate has been considered. One significant point worth further consideration is the alternative theorizations of TJ severed from liberal principles. This necessitates a look *beyond* the 'end of history' hinted by Fukyama, and actively considering the possibility that liberal democratic governance is either not the final development in ideal political organization, or that its current conception is flawed in its implementation, deserving refinement. If the former is accepted, precedent already exists to further build upon, such as the traditional justice inspired Gacaca courts mentioned in section 3.1.2. If the refinement route is preferred, a deeper look into the market side of liberalization is required given the perceived lack of socioeconomic justice in post-conflict societies. How socioeconomic justice looks like in a practical TJ context is unclear and deserves further attention. What is clear however, is that theory is needed now more than ever.

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