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Judging where states will not: towards a theory of relational legitimacy for people's tribunals

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In December 2021, the Uyghur Tribunal delivered its judgment that the People's Republic of China had committed genocide against the Uyghur population in Xinjiang.¹ As a non-state actor, the tribunal had no formal jurisdiction, no enforcement powers and no state authorization. Beijing dismissed it as 'a political tool to fabricate lies',² which 'tramples on the international law'.³ Yet despite these condemnations, the tribunal's findings were subsequently cited in parliamentary debates across multiple jurisdictions,⁴ referenced by United Nations special rapporteurs⁵ and have influenced diplomatic responses to the situation in Xinjiang.⁶ This pattern, whereby a civil society body lacking conventional markers of legal legitimacy nonetheless influences international

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¹ Uyghur Tribunal, *Uyghur Tribunal judgment* (London, 2021), para. 182, <https://uyghurtribunal.com/wp-content/uploads/2021/12/Uyghur-Tribunal-Summary-Judgment-9th-Dec-21.pdf>; Joel Gunter, 'China committed genocide against Uyghurs, independent tribunal rules', BBC News, 9 Dec. 2021, <https://www.bbc.com/news/world-asia-china-59595952>. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 7 Aug. 2026.)

² 'Chinese Mission to UN slams anti-China forces fabricating lies on Xinjiang', CGTN, 13 Jan. 2022, <https://news.cgtn.com/news/2022-01-13/China-slams-anti-China-forces-fabricating-lies-on-Xinjiang-16MrsfZ3AgU/index.html>.

³ Embassy of the People's Republic of China in the United Kingdom of Great Britain and Northern Ireland, 'Embassy spokesperson's remarks on the so-called "Uyghur Tribunal"', 5 June 2021, https://gb.china-embassy.gov.cn/eng/xnyfgk/202106/t20210606_9039396.htm.

⁴ For instance, Hansard (Commons), 'Uyghur Tribunal judgment', vol. 707, 20 Jan. 2022; European Parliament, *European Parliament resolution of 9 June 2022 on the human rights situation in Xinjiang, including the Xinjiang police files*, 2022/2700(RSP) (Strasbourg, 2022); Houses of the Oireachtas, 'Uyghur Tribunal: motion', Seanad debates, 9 Feb. 2022; Henryk Szadziwski, 'Four years after the genocide judgment: reflections on the Uyghur Tribunal', Uyghur Human Rights Project, 8 Dec. 2025, <https://uhrp.org/insights/four-years-after-the-genocide-judgment-reflections-on-the-uyghur-tribunal>.

⁵ United Nations Human Rights Council, *Contemporary forms of slavery affecting persons belonging to ethnic, religious and linguistic minority communities: report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Tomoya Obokata, A/HRC/51/26 (Geneva: 2022), para. 23, footnote 57.

⁶ Reuters, 'UN seeks to publish findings on Xinjiang in coming weeks', *The Straits Times*, 12 Dec. 2021. See also Andrew Tettenborn, 'China should be worried about the Uyghur Tribunal', *The Spectator*, 8 June 2021.

discourse on mass atrocities, presents a puzzle that International Relations (IR) scholarship has largely overlooked.

People's tribunals (PTs) are civil society initiatives that involve 'the presentation to a body of eminent persons of evidence and arguments that seek to establish whether a state, international organization [or] specified individuals have committed breaches of international law'.⁷ While there is a diversity of PTs dealing with a range of subjects, my focus is solely on PTs dealing with allegations of mass atrocities. Since the Russell Tribunal on the United States' conduct in Vietnam convened in 1967,⁸ such tribunals have proliferated, addressing atrocities ranging from Japan's military sexual slavery during the Second World War,⁹ to the more recent persecution of women under Taliban rule in Afghanistan.¹⁰ The Permanent Peoples' Tribunal (PPT) alone has convened over 50 sessions since its establishment in 1979.¹¹ For victim communities that engage with these processes, PTs often represent their only avenue for recognition and access to justice.¹²

This analysis is timely as international law experiences an 'era of resistance to international justice and human rights'.¹³ This is evident in the crisis confronting the International Criminal Court (ICC), the quintessential symbol of international criminal justice that is now facing an 'existential challenge'.¹⁴ Meanwhile, reports of alleged mass atrocities continue to emerge from different parts of the world, with limited prospects for formal accountability. The structural deficiencies that Schwarzenberger identified as long ago as 1950 endure,¹⁵ with international criminal justice remaining subordinated to 'greater geopolit-

⁷ Andrew Byrnes and Gabrielle Simm, eds, *Peoples' tribunals and international law* (Cambridge, UK: Cambridge University Press, 2018), pp. 3–4. While the nomenclature 'people's tribunals' has been criticized for its Stalinist connotations, it is used here as the most commonly used term for these non-governmental entities: see Zachary D. Kaufman, 'Transitional justice delayed is not transitional justice denied: contemporary confrontation of Japanese human experimentation during World War II through a people's tribunal', in Regina Menachery Paulose, ed., *People's tribunals, human rights and the law: searching for justice* (Abingdon and New York: Routledge, 2019), p. 163. Practice varies on where the apostrophe falls (people's tribunal versus peoples' tribunal). This article uses the singular possessive throughout, but retains the plural form in institutional names and titles of works that use it.

⁸ Tor Krever, 'Remembering the Russell Tribunal', *London Review of International Law* 5: 3, 2017, pp. 483–92, <https://doi.org/10.1093/lril/lry006>; Marcos Zunino, 'Subversive justice: the Russell Vietnam War Crimes Tribunal and transitional justice', *International Journal of Transitional Justice* 10: 2, 2016, pp. 211–29, <https://doi.org/10.1093/ijtj/ijw007>.

⁹ W. L. Cheah, 'The potential and limits of peoples' tribunals as legal actors: revisiting the Tokyo Women's Tribunal', *Transnational Legal Theory* 13: 1, 2022, pp. 8–30, <https://doi.org/10.1080/20414005.2022.2081907>; Christine Chinkin, 'People's tribunals: legitimate or rough justice', *Windsor Yearbook of Access to Justice* 24: 2, 2006, pp. 201–20.

¹⁰ Permanent Peoples' Tribunal, 'People's tribunal for women of Afghanistan hearings', 2023, <https://afghan-istantribunal.com>.

¹¹ Permanent Peoples' Tribunal, see <https://permanentpeopletribunal.org/?lang=en>.

¹² See, for instance, Charlotte Burck et al., 'Witnessing and bearing witness: on offering systemic consultations and practices of solidarity at the Uyghur Tribunal', *Murmurations: Journal of Transformative Systematic Practice* 5: 2, 2022, pp. 1–13, <https://doi.org/10.28963/5.2.2>.

¹³ Stephen J. Rapp, 'Achieving accountability for atrocity crimes in an era of resistance to international justice and human rights', *Washington University Global Studies Law Review* 21: 1, 2022, pp. 137–53.

¹⁴ Mark Kersten, 'The International Criminal Court is facing an existential challenge from the United States: how does it survive it?', *Justice in Conflict*, 18 Dec. 2024, <https://justiceinconflict.org/2024/12/18/the-international-criminal-court-is-facing-an-existential-challenge-from-the-united-states-how-does-it-survive-it>.

¹⁵ Georg Schwarzenberger, 'The problem of an international criminal law', *Current Legal Problems* 3: 1, 1950, pp. 263–96, <https://doi.org/10.1093/clp/3.1.263>.

ical calculations'.¹⁶ Given these persistent challenges, PTs are likely to continue being established to address the unmet needs of victims, becoming enduring actors on the international justice landscape.

Yet from a realist–statist perspective, PTs appear as weak and marginal actors, easily dismissed. They lack the coercive capacity, institutional resources and legal basis of state justice actors. Critics have characterized them as 'kangaroo courts' with predetermined conclusions,¹⁷ or as well-intentioned but ultimately ineffectual exercises that promise 'more to the victims than they can deliver'.¹⁸ This scepticism reflects broader disciplinary hesitation about engagement with non-state actors,¹⁹ and non-state justice actors in particular.²⁰ As Byrnes and Simm observe, 'due to their inability to satisfy the criteria that are used to define the ideal form of state-centred court, they are frequently dismissed as illegitimate and ineffectual'.²¹

This article sits at the intersection of two strands of scholarship. The first is a growing body of IR research studying the legitimization strategies of non-state and informal actors in global governance. As Dal and Matsumoto note, 'scholarly attention has shifted beyond the confines of the state to encompass a variety of entities'.²² Some recent work has examined how informal intergovernmental organizations establish sociological legitimacy despite lacking treaty-based authority;²³ how low-authority actors within international organizations employ legitimization strategies to substitute for their lack of formal power;²⁴ how international organizations legitimate non-state actor engagement in domains such as global climate governance;²⁵ and how actors ranging from NGOs to international bureaucracies craft narratives to enhance their standing with relevant audiences.²⁶ This literature has developed sophisticated frameworks for

¹⁶ Payam Akhavan, 'Is grassroots justice a viable alternative to impunity? The case of the Iran People's Tribunal', *Human Rights Quarterly* 39: 1, 2017, pp. 73–103 at pp. 74, 102, <https://doi.org/10.1353/hrq.2017.0002>.

¹⁷ Nursyahbani Katjasungkana and Saskia E. Wieringa, 'Organisation and impact of the International People's Tribunal on 1965 crimes against humanity in Indonesia', in Saskia E. Wieringa, Jess Melvin and Annie Pohlman, eds, *The International People's Tribunal for 1965 and the Indonesian genocide* (Abingdon: Routledge, 2019), p. 23.

¹⁸ Chinkin, 'People's tribunals', p. 218.

¹⁹ As Darwich observes, foreign policy analysis has remained 'state-centric and almost completely ignores' armed non-state actors. See May Darwich, 'Foreign policy analysis and armed non-state actors in world politics: lessons from the Middle East', *Foreign Policy Analysis* 17: 4, 2021, <https://doi.org/10.1093/fpa/orab030>. For an early call for a shift in focus, see Ken Booth, 'Human wrongs and international relations', *International Affairs* 71: 1, 1995, pp. 103–26 at pp. 110 and 124, <https://doi.org/10.2307/2624012>.

²⁰ See Geoffrey Swenson, *Contending orders: legal pluralism and the rule of law* (Oxford: Oxford University Press, 2022), p. 8.

²¹ Byrnes and Simm, *Peoples' tribunals and international law*, p. 272.

²² Emel Parlar Dal and Nobuhide Mert Matsumoto, 'Assessing legitimacy of informal intergovernmental organizations in the context of changing multilateralism', *International Affairs* 101: 2, 2025, pp. 419–38 at p. 419, <https://doi.org/10.1093/ia/iaae317>.

²³ Dal and Matsumoto, 'Assessing legitimacy', p. 419.

²⁴ Lora Anne Viola, 'Two-sided legitimization strategies: informal groups at the World Trade Organization', *International Affairs* 99: 3, 2023, pp. 983–1002, <https://doi.org/10.1093/ia/iiaad113>.

²⁵ Hai Yang and Hayley Walker, 'Legitimizing non-state actor engagement in global climate governance', *International Affairs* 101: 2, 2025, pp. 439–58 at p. 439, <https://doi.org/10.1093/ia/iaae321>.

²⁶ Andreas Kruck and Andrea Schneiker, eds, *Researching non-state actors in international security: theory and practice* (Abingdon: Routledge, 2018); Susan Strange, *The retreat of the state: the diffusion of power in the world economy* (Cambridge, UK: Cambridge University Press, 2009).

understanding the strategies that various non-state actors deploy to enhance their legitimacy through discursive, institutional and behavioural practices.²⁷

The second strand is a smaller, but growing, body of international justice scholarship that focuses on PTs directly.²⁸ This work has analysed PT composition, procedures and outcomes, offering critical accounts of how these bodies operate and what they may or may not achieve. With respect to legitimacy, existing scholarship has examined how PTs seek to construct legitimacy outside formal legal frameworks by invoking ‘political will’;²⁹ how they have sought to derive legitimacy from civil society mobilization and moral authority;³⁰ how they have sought to co-produce legitimacy through collective engagement and practices of listening;³¹ and how they have sought to enhance their legitimacy by relying on the eminence of their judges,³² adherence to procedural fairness and the quality of their evidentiary processes.³³ However, no study has sought to explain how these non-state justice actors construct their legitimacy not in isolation but, as argued below, relationally—that is, in comparison with formal courts and tribunals.

Moreover, as far as IR scholarship is concerned, the subject of PTs *qua* non-state justice actors has remained conspicuously overlooked. This is a notable omission because PTs offer particularly instructive examples of non-state justice actors: they operate not merely informally but entirely outside state-sanctioned frameworks, thereby raising legitimacy questions in their sharpest form. They are also important for victims, some of whom place significant faith in them and put their lives at risk to participate. One witness at the Uyghur Tribunal stated: ‘I’m sacrificing myself. I know I’ll be killed for talking but I must for the sake of our community.’³⁴ Additionally, PTs could have, as noted above, real-world impacts on international discourse and policy. For all these reasons, therefore, understanding how PTs construct legitimacy could enrich existing debates about the legitimization strategies of non-state justice actors in international affairs. It could also contribute to broader debates about

²⁷ Tobias Lenz and Fredrik Söderbaum, ‘The origins of legitimization strategies in international organizations: agents, audiences and environments’, *International Affairs* 99: 3, 2023, pp. 899–920 at pp. 899, 907, <https://doi.org/10.1093/ia/iiaad110>.

²⁸ Byrnes and Simm, *Peoples’ tribunals and international law*; Paulose, ed., *People’s tribunals, human rights and the law*; Arthur Jay Klinghoffer and Judith Apter Klinghoffer, *International citizens’ tribunals: mobilizing public opinion to advance human rights* (New York: Palgrave Macmillan, 2002); Camille Montavon, *Les tribunaux d’opinion face à l’impunité des crimes de masse: quelle légitimité pour quelle efficacité?* (Basel: Helbing Lichtenhahn, 2023).

²⁹ Benjamin Duerr, ‘Political will and the people’s will: the role of people’s tribunals in international justice’, in Paulose, ed., *People’s tribunals, human rights and the law*, p. 22.

³⁰ Aboeprijadi Santoso and Gerry van Klinken, ‘Genocide finally enters public discourse: the International People’s Tribunal 1965’, *Journal of Genocide Research* 19: 4, 2017, pp. 594–608, <https://doi.org/10.1080/14623528.2017.1393970>.

³¹ Leah Bassel, ‘A promise of listening: migrant justice and the London Permanent Peoples’ Tribunal’, *Race & Class* 63: 4, 2022, pp. 35–55, <https://doi.org/10.1177/03063968221081417>.

³² Chinkin, ‘People’s tribunals’, p. 202.

³³ Cheah, ‘The potential and limits of peoples’ tribunals as legal actors’, p. 8; Dianne Otto, ‘Impunity in a different register: people’s tribunals and questions of judgment, law, and responsibility’, in Karen Engle, Zinaida Miller and D. M. Davis, eds, *Anti-impunity and the human rights agenda* (Cambridge, UK: Cambridge University Press, 2016), pp. 291–328; Akhavan, ‘Is grassroots justice a viable alternative to impunity?’, p. 73.

³⁴ Burck et al., ‘Witnessing and bearing witness’, p. 4.

how ‘low-authority, informal institutions composed of less powerful actors ... engage in legitimization strategies’.³⁵

This article addresses the gap in the literature by asking: how do PTs strategically construct their legitimacy claims by positioning themselves in relation to formal courts and tribunals? The analysis draws on ten tribunals spanning nearly six decades: the Russell Tribunal on Vietnam (1967), the Women’s International War Crimes Tribunal (2000), the World Tribunal on Iraq (2005), the Iran Tribunal (2012), the Indonesia Tribunal (2015), the Women’s Court in Sarajevo (2015), the Uyghur Tribunal (2021) and three sessions of the PPT addressing Myanmar (2017), Turkey–Kurdistan (2018) and Women of Afghanistan (2025). It develops a theory of relational legitimization to capture how PTs position themselves in relation to formal justice mechanisms. As will be discussed, this approach moves beyond viewing PTs as homogenous entities, suggesting that variations in their legitimization strategies may reflect fundamentally different assumptions about international order and justice itself.

The article proceeds as follows. The first section establishes the conceptual foundations, examining four perspectives on PT legitimacy. The next section introduces the instrumentalist/transformational typology, which the following three sections apply across input, process and output legitimacy. The penultimate section synthesizes the findings and their implications, while the conclusion offers some final reflections.

Conceptualizing the legitimacy of people’s tribunals

Before analysing *how* PTs construct legitimacy, a prior question must be addressed: *can* PTs possess legitimacy at all? If the answer is no, then examining their legitimization strategies would be moot. This section establishes the conceptual foundations for the analysis that follows and examines four perspectives that yield different assessments of PT legitimacy. As will become clear, different frameworks offer different plausible explanations of the legitimacy of PTs. As such, binary (‘legitimate’ or ‘illegitimate’) assessments are unhelpful; the more productive approach is to understand how particular PTs construct legitimacy claims, and specifically how they do so by positioning themselves in relation to formal justice mechanisms.

Legitimacy is a complex and contested concept, understood differently across disciplines.³⁶ One useful way of conceptualizing legitimacy is to distinguish between its legal, moral and social dimensions. Briefly, legal legitimacy concerns conformity with established legal rules and procedures.³⁷ Moral legitimacy concerns whether an institution is normatively justified, whether it

³⁵ Viola, ‘Two-sided legitimization strategies’, p. 985.

³⁶ Freya Baetens, ed., *Legitimacy of unseen actors in international adjudication* (Cambridge, UK: Cambridge University Press, 2019), p. 4.

³⁷ Christopher A. Thomas, ‘The uses and abuses of legitimacy in international law’, *Oxford Journal of Legal Studies* 34: 4, 2014, pp. 729–58 at p. 734, <https://doi.org/10.1093/ojls/gqu008>.

ought to be recognized as having the right to act as it does.³⁸ And social legitimacy treats legitimacy as an empirical matter concerning the beliefs of relevant audiences.³⁹ Dal and Matsumoto similarly distinguish between ‘normative legitimization’, which examines whether an institution ‘is morally acclaimed and is justified to rule’, and ‘sociological legitimization’, which ‘refers to an institution’s efforts to establish a system of authority and prestige that fosters compliance’.⁴⁰ The next part examines four perspectives from which the legitimacy of PTs may be assessed.

Four perspectives on the legitimacy of people’s tribunals

As will be argued below, legitimacy assessments of non-state justice actors, including PTs, are partly contingent on the theoretical perspectives one brings to the table, and different frameworks yield different assessments of the same actors. What may appear legitimate under one framework may appear less so under another. This complexity means that, rather than focusing on whether PTs are legitimate in absolute terms, we should focus on how they seek to construct their legitimacy in practice, including by engaging in relational legitimization, defined here as the strategic construction of legitimacy claims through positioning relative to the formal courts and tribunals against which they are most frequently measured.

The statist perspective represents the dominant view in international theory and practice. One of its core premises is that states hold an exclusive monopoly over justice-delivery functions. According to this view, only state-empowered institutions ‘are morally justified in engaging in governance functions’ such as justice delivery.⁴¹ As Buchanan observes, this statist view ‘has been by far the dominant view among international legal theorists’.⁴² Courts derive their legitimacy from the state, and their judgments gain force through state power. A tribunal without state backing would appear to lack the essential characteristic that distinguishes adjudication from mere opinion.

Charles de Gaulle’s response to the Russell Tribunal captures this view succinctly: ‘justice of any sort, in principle as in execution, emanates from the state’.⁴³ Contemporary state responses to PTs also echo this position. Chinese officials dismissed the Uyghur Tribunal as a ‘so-called “tribunal”’ that ‘is not a judicial organ or procedure as the term suggests. It is actually patched up by people with ulterior motives and carries no weight or authority. Its establish-

³⁸ Thomas, ‘The uses and abuses of legitimacy’, p. 738.

³⁹ Thomas, ‘The uses and abuses of legitimacy’, p. 741.

⁴⁰ Dal and Matsumoto, ‘Assessing legitimacy’, p. 421.

⁴¹ Allen Buchanan, ‘The legitimacy of international law’, in Samantha Besson and John Tasioulas, eds, *The philosophy of international law* (Oxford: Oxford University Press, 2010), p. 81.

⁴² Buchanan, ‘The legitimacy of international law’, p. 90.

⁴³ Jean-Paul Sartre, ‘Letter from de Gaulle to Sartre’, in John Duffett, ed., *Against the crime of silence: proceedings of the Russell International War Crimes Tribunal, Stockholm, Copenhagen* (New York: Bertrand Russell Peace Foundation, 1968), p. 28.

ment is completely void of any legal basis'.⁴⁴ These responses reflect the statist theoretical position about the monopoly on legitimate justice delivery. From this perspective, non-state actors purporting to participate in justice delivery are always going to come up short.⁴⁵ Their proceedings amount to little more than political theatre, and their judgments carry no more weight than the opinions of any private citizens. This assessment, however, is premised on accepting the view that states hold a monopoly over the legitimate administration of justice. And, as I argue below, there may be alternative viewpoints.

Scholars seeking to move beyond the narrow statist framing have turned to legal pluralism to conceptualize PTs. Legal pluralism holds that 'two or more legal systems coexist in the same social field'.⁴⁶ This is, as Swenson notes, 'the dominant feature of most legal orders worldwide'.⁴⁷ In different countries, a varying number of disputes are handled outside the state justice system.⁴⁸ Tamanaha argues that one must 'discard the assumptions of the monist law state, a false vision that continues to shape and distort the views of many ... it is normatively questionable, theoretically unjustified and has never been descriptively accurate'.⁴⁹ From this perspective, PTs can be understood as expressions of legal pluralism and, indeed, several scholars have framed them that way. For instance, Byrnes and Simm argued that 'admitting peoples' tribunals to a discussion of international law is only possible on the basis of a legal pluralist approach to international law'.⁵⁰ And similarly, Akhavan characterized the Iran Tribunal as 'a remarkable expression of legal pluralism'.⁵¹

From this pluralist perspective, PTs may be said to possess at least social legitimacy by the very fact of their existence and social acceptance. Their persistence over six decades, and their repeated convening by civil society groups facing accountability gaps, suggest they fulfil a recognized social need within the broader landscape of global justice. Within this pluralist framework, therefore, PTs function as meaningful actors recognized by significant constituencies, most notably the victim-survivor communities who are specially affected. From this perspective, rather than asking whether PTs can replace or rival formal courts, pluralism focuses attention on what distinctive contribution they make within a landscape where multiple justice mechanisms coexist. From this vantage point, PTs may claim a socially legitimate place in the broader pursuit of accountability for mass atrocities.

A third perspective for conceptualizing the legitimacy of PTs draws on cosmopolitan theory and fiduciary theories of sovereignty in international

⁴⁴ Embassy of the People's Republic of China, 'Embassy spokesperson's remarks'.

⁴⁵ Chinkin, 'People's tribunals', p. 217.

⁴⁶ Sally Engle Merry, 'Legal pluralism', *Law & Society Review* 22: 5, 1988, pp. 869–96 at p. 870, <https://doi.org/10.2307/3053638>.

⁴⁷ Geoffrey Swenson, 'Legal pluralism in theory and practice', *International Studies Review* 20: 3, 2018, pp. 438–42, <https://doi.org/10.1093/isr/vix060>.

⁴⁸ Swenson, 'Legal pluralism', p. 439.

⁴⁹ Brian Z. Tamanaha, *Legal pluralism explained: history, theory, consequences* (New York: Oxford University Press, 2021), p. 213.

⁵⁰ Byrnes and Simm, *Peoples' tribunals and international law*, p. 23.

⁵¹ Akhavan, 'Is grassroots justice a viable alternative to impunity?', p. 74.

law.⁵² The core cosmopolitan premise is that fundamental human rights norms belong to humanity as a whole, rather than to states.⁵³ States may be the primary vehicles for protecting these rights, but they hold them, in effect, in trust. And, so the argument goes, when these trustees fail in their obligations, the underlying duty to address mass atrocities reverts to humanity. On this account, civil society actors may possess moral legitimacy to fulfil that duty where states cannot or will not. PTs, from this vantage point, exercise a residual responsibility that emerges from institutional failure rather than competing with functioning state mechanisms.⁵⁴

The foundations of this argument were laid by Bertrand Russell and Jean-Paul Sartre in establishing the first international PT in 1967. Russell began from the premise that the Nuremberg Trials had articulated binding legal obligations, yet states that sat in judgement at Nuremberg showed little inclination to apply those same standards to their own conduct.⁵⁵ Sartre extended this argument, contending that Nuremberg marked a paradigm shift in international law, as it established the principle of individual criminal responsibility for mass atrocities wherever they occur.⁵⁶ Richard Falk then developed these arguments into a broader theoretical framework, articulating a ‘residual responsibility’ of citizens: ‘where the international legal order fails to implement its own fundamental norms, then citizens and civil society have a residual right and responsibility to act in support of these norms’.⁵⁷ This echoes the responsibility articulated by Booth, when he posited that ‘if governments cannot make a better job of the ethicscape of the twenty-first century than their record threatens, a major responsibility therefore passes to ... “sovereignty free” agents’.⁵⁸ From this perspective, rather than asking the statist question of whether PTs can claim the legal legitimacy of formal courts, the real question one should ask is whether the responsibility to address mass atrocities survives the failure of those entrusted to act. If answered in the affirmative, PTs derive moral legitimacy from the very accountability gaps that called them into being.

A fourth, and closely related, perspective grounds the legitimacy of PTs in a transitional justice framework. This framework evokes the right of victims to access justice. As Tamayo Gomez and Murphy posit:

Transitional justice is, fundamentally, an expression of a society’s values and obligations in the aftermath of atrocity. It operates on the conviction that there is an inherent duty to address grave injustices, not merely as a means to other ends but for its own

⁵² Francesca Strumia, ‘The citizen as other: the case from within for cosmopolitan state duties and freedom to migrate’, *Modern Law Review* 87: 3, 2024, pp. 670–96 at p. 674, <https://doi.org/10.1111/1468-2230.12867>.

⁵³ Roland Pierik and Wouter Werner, ‘Cosmopolitanism in context: an introduction’, in Roland Pierik and Wouter Werner, eds, *Cosmopolitanism in context: perspectives from international law and political theory* (Cambridge, UK: Cambridge University Press, 2010), pp. 1–2.

⁵⁴ Duffett, ed., *Against the crime of silence*, p. 15.

⁵⁵ Bertrand Russell, ‘Message to the Tribunal’, in Duffett, ed., *Against the crime of silence*, p. 39.

⁵⁶ Jean-Paul Sartre, ‘Inaugural statement’, in Duffett, ed., *Against the crime of silence*, p. 42.

⁵⁷ Richard Falk, *The costs of war: international law, the UN, and world order after Iraq* (Abingdon: Routledge, 2007), p. 180.

⁵⁸ Booth, ‘Human wrongs and international relations’, p. 124.

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sake. Justice has an intrinsic worth that cannot be reduced to calculations of utility or political expediency.⁵⁹

When formal channels are closed, society's obligations to address mass atrocities and offer justice do not disappear. In such contexts, PTs may legitimately step in to offer the only avenue for access to justice for victims. In situations where formal accountability mechanisms are either absent or non-functioning, PTs can play an 'important role in addressing crimes that would otherwise go unnoticed. They provide victims, who would otherwise be left without redress, a forum to tell their story.'⁶⁰ From the perspective of transitional justice, therefore, rather than asking whether PTs possess a formal legal basis, the real question is whether victims of mass atrocities retain a right to access justice when formal mechanisms fail them. If answered in the affirmative, then PTs may claim legitimacy as necessary vehicles for ensuring that access to justice.

What this analysis suggests is that the question is not whether PTs are legitimate or illegitimate in a binary sense, but rather which vantage point one adopts and how particular PTs construct their legitimacy. In this respect, from the analysis of the ten PTs studied in this article, a truly interesting pattern arises. Individual PTs do not seek to construct their legitimacy in isolation, as stand-alone actors. Rather they do so in relation to, and in comparison with, formal justice mechanisms. The study shows that PTs are themselves acutely aware of their contested legitimacy and have developed sophisticated strategies to construct and justify their claims. The following section introduces an analytical framework for examining their relational legitimization strategies: the instrumentalist/transformational typology.

Mapping the relational legitimization of people's tribunals: an instrumentalist/transformational typology

The pluralist, cosmopolitan and transitional justice perspectives discussed above suggest that PTs can possess legitimacy; they do not, however, explain how particular tribunals construct it. That requires examining what PTs actually say and do across their input, process and output dimensions. An analysis of the ten PTs in this study shows that, ever since the Russell Tribunal (1967) framed its legitimacy in relation to Nuremberg, PTs have sought to construct their legitimacy claims not in isolation, but by reference to formal justice mechanisms. They display sophisticated awareness of the ICC, the International Court of Justice, ad hoc tribunals, such as those for the former Yugoslavia and Rwanda, and domestic courts addressing mass atrocities. This awareness shapes their legitimization strategies: tribunals consistently position themselves relative to these formal counterparts, whether by emphasizing alignment or by articulating principled departures from them (see table 1).

⁵⁹ Camilo Tamayo Gomez and Colleen Murphy, 'Transitional justice in an age of resurgent authoritarianism', *International Journal of Transitional Justice* 19: 3, 2025, pp. 411–24 at p. 413, <https://doi.org/10.1093/ijtj/ijaf028>.

⁶⁰ Duerr, 'Political will and the people's will', p. 30.

While some scholars have identified a continuum in terms of how closely PTs adhere to existing institutions,⁶¹ the available scholarship has, so far, not examined the complex dynamic of relational legitimation: how PTs strategically position themselves relative to formal courts. This article addresses that gap by developing an instrumentalist/transformational typology to show how PTs deploy instrumentalist and transformational elements to construct their own distinctive mode of relational legitimation.

Understanding where individual PTs position themselves on the instrumentalist/transformational spectrum matters because it shapes every aspect of how a PT presents itself. It determines what sources of legitimacy the tribunal invokes, what procedures it adopts, what standards of proof it applies, how it frames its findings and whom it addresses. A tribunal that views itself as temporarily substituting for blocked formal mechanisms will construct its legitimacy quite differently from one that views formal mechanisms as part of the problem. The following sections trace these differences across input, process and output legitimacy, drawing on the founding documents and judgments of all ten tribunals.

Table 1: Instrumentalist and transformational legitimation strategies compared

<i>Dimension</i>	<i>Instrumentalist positioning</i>	<i>Transformational positioning</i>
Core legitimation mechanism	Alignment with formal international justice	Principled differentiation from formal international justice
Response to legitimacy critique	‘We apply the same law formal courts would apply’	‘The international justice system is structurally incapable of delivering justice for certain violations’
Normative foundation	Established international law that states have already accepted	Alternative foundations: people’s sovereignty, conscience of humanity, moral imperatives
Diagnosis of accountability gaps	Contingent: the system is sound but temporarily blocked by political obstacles	Structural: the system is inadequate or complicit in the injustices it addresses
Implied role for PTs	Gap-filler: temporary substitute until formal mechanisms can act	Necessary alternative: articulating what justice requires, regardless of formal mechanisms
Primary audience	States and existing institutions	Civil society, public opinion, the conscience of humanity
Success criterion	Institutional uptake, citation in formal proceedings, policy influence	Consciousness change, historical record, transformation of how justice is conceived

⁶¹ Byrnes and Simm, *Peoples’ tribunals and international law*, p. 260.

Input legitimacy

Input legitimacy concerns how a tribunal establishes its foundational authority. Who created it, and why should their initiative carry weight? What normative standards does it invoke? How does its institutional design support or undermine its claims to judge? The instrumentalist/transformational distinction shows how tribunals answer these questions.

Foundational mandate and normative basis

Instrumentalist tribunals ground their legitimacy within established international law. They situate their mandate in existing treaties, customary law and general principles, emphasizing that they will apply law states have already accepted. The implicit claim is derivative: the tribunal's legitimacy flows from the prior authority of the legal standards it applies.

The Uyghur Tribunal exemplifies this approach. Its judgment explicitly anchored the tribunal's work in established international law: 'The Tribunal has been guided in its work by the Genocide Convention, the Convention on Torture and, for alleged crimes against humanity, the 1998 "Rome Statute" of the International Criminal Court.'⁶² The phrase 'guided in its work' signals deference to existing frameworks rather than any claim to develop new ones. The tribunal reinforced this positioning by explicitly disavowing normative innovation: 'this Tribunal will not seek to interpret, enlarge, or narrow the established law. Instead, acting much like a jury, the Tribunal ... has applied relevant existing law, as advised by experts in the law.'⁶³ The jury analogy is significant: juries do not make law but apply it to facts, precisely the role the tribunal claimed for itself.

Similarly, the PPT on Turkey and the Kurds specified its focus as 'the analysis and assessment of the violations of the rights formally recognized by the international Conventions of the post Second World War period'.⁶⁴ The phrase 'formally recognized' signals that the tribunal intended to work within existing frameworks rather than challenge them. When examining the armed conflict, the tribunal emphasized that 'it is of critical importance to assess the juridical qualification ... to be given to the armed conflict between Turkey and the PKK, since the law applicable ... will be a direct consequence of such characterization'.⁶⁵ This careful attention to legal classification reflects the instrumentalist concern with adhering to established categories.

Transformational tribunals assert alternative normative foundations. They derive authority from 'people's sovereignty' or moral imperatives existing independently of state-centric frameworks. The Russell Tribunal provides the

⁶² Uyghur Tribunal, *Uyghur Tribunal judgment*, para. 4.

⁶³ Uyghur Tribunal, *Uyghur Tribunal judgment*, para. 5.

⁶⁴ Permanent Peoples' Tribunal, *Session on alleged violations of international law and international humanitarian law by the Turkish Republic and its officials in their relations with the Kurdish people and their organisations: judgment* (Paris, 2018), p. 5 (hereafter *Session on Turkey–Kurdistan*).

⁶⁵ Permanent Peoples' Tribunal, *Session on Turkey–Kurdistan*, p. 12.

paradigmatic example. Jean-Paul Sartre articulated the tribunal's alternative basis for authority: 'We are entirely conscious of the fact that we have received no mandate from anyone. But if we have taken the initiative of coming together, it is because we knew that nobody could give us a mandate.'⁶⁶ Rather than treating the lack of formal authorization as a deficiency, Sartre presented it as the very source of legitimacy: 'The Russell tribunal considers, on the contrary, that its legitimacy derives equally from its total powerlessness, and from its universality.'⁶⁷ Powerlessness, counter-intuitively, is framed as a guarantee of independence: a body with no power and no specific self-interest is far less likely to be susceptible to manipulation.

The World Tribunal on Iraq (WTI) adopted a similarly transformative foundation. Its 2005 *Declaration* stated: 'The legitimacy of the World Tribunal on Iraq is located in the collective conscience of humanity.'⁶⁸ This formulation explicitly locates its input legitimacy in moral standing grounded in common humanity. The *Declaration* went further, noting that 'The Tribunal was not interested in a debate solely as to legality. The legal issues were relevant to the extent that they added weight to the moral and political purpose of the Tribunal.'⁶⁹ This framing subordinates legal analysis to moral judgement: law becomes one strand of the PT's reasoning, not its central pillar. The WTI also claimed that 'the concerns of the WTI range much further than the demand for the implementation of international law, especially as much of this law currently serves the interests of wealth and power'.⁷⁰ This explicit critique of international law as serving dominant interests further indicates the PT's transformative orientation: if the law itself is structurally biased, its mechanical or unquestioning application will invariably produce unjust outcomes.

Several tribunals occupy intermediate positions. The Women's International War Crimes Tribunal (hereafter the Comfort Women Tribunal) explicitly stated: 'While recognising our authority as a Peoples' Tribunal to fashion the "law of peoples," we nonetheless consider our jurisdiction confined by the law of states as of the time of the violations charged herein.'⁷¹ This formulation acknowledges transformative potential while strategically constraining it. The tribunal explained the rationale: confining jurisdiction to existing law ensured 'that the state of Japan cannot evade the force of our Judgement' by claiming novel standards were being applied retroactively.⁷² By grounding its judgment in law Japan had already accepted, the tribunal sought to preclude the state from dismissing its findings. Adherence to established standards thus served as a strategic tool for strengthening the tribunal's legitimacy claim.

⁶⁶ Sartre, 'Inaugural statement', p. 43.

⁶⁷ Sartre, 'Inaugural statement', p. 43.

⁶⁸ World Tribunal on Iraq, *Declaration of the jury of conscience* (Istanbul, 2005).

⁶⁹ World Tribunal on Iraq, *Declaration of the jury of conscience*.

⁷⁰ World Tribunal on Iraq, *Declaration of the jury of conscience*.

⁷¹ The Women's International War Crimes Tribunal 2000 for the Trial of Japan's Military Sexual Slavery, *Judgment in the case of the prosecutors and the peoples of the Asia-Pacific region v. Hirohito Emperor Showa et al. and the Government of Japan*, PT-2000-I-T (The Hague, 2001), para. 69.

⁷² Women's International War Crimes Tribunal, *Judgment*, para. 69.

The PPT on the Women of Afghanistan similarly blended approaches, describing itself as ‘a bottom-up tribune of visibility, legitimacy and recognized justice for those people who requested its competence’ while simultaneously invoking ‘the conscience of humanity and internationally recognized legal norms’.⁷³ By locating its input legitimacy in these dual sources, the tribunal attempted a form of mutual reinforcement: it sought to locate its legitimacy not solely in popular mandate, which states might dismiss as invalid, but also in international legal norms, which states themselves had created and accepted.

Process legitimacy

Process legitimacy concerns how tribunals conduct their proceedings. Do they follow procedures that warrant confidence in their conclusions? This dimension is particularly important for PTs because they lack the institutional validation that formal courts enjoy. Legitimacy must be earned through the perceived quality of the process itself.

Evidentiary standards and fact-finding

Instrumentalist tribunals typically adopt evidentiary standards drawn from formal legal proceedings. The Comfort Women Tribunal, which framed itself as a ‘continuation’ of the Tokyo Tribunal process, expounded a highly legalist approach differentiating between different aspects of its work:

In adjudicating individual criminal responsibility under the Common Indictment, the Tribunal holds that ... the guilt of the individual accused must be established beyond a reasonable doubt ... In adjudicating state responsibility in accordance with Article 4, the Tribunal holds that the standard of proof applicable to civil proceedings, that is, proof on a balance of probabilities or proof established by the preponderance of the evidence, applies.⁷⁴

Through this legalist approach, the PT was signalling that it was operating within established and accepted procedural norms. The tribunal further held: ‘The Judges emphasise that, in conformity with formal judicial proceedings, our findings are based solely on the evidence before us.’⁷⁵ The phrase ‘in conformity with formal judicial proceedings’ explicitly positions the tribunal’s process as aligned with the due process standards applied by state-backed courts.

The Uyghur Tribunal similarly adopted established procedural norms, including the high criminal threshold of ‘beyond reasonable doubt’,⁷⁶ rather

⁷³ Permanent Peoples’ Tribunal, *55th session for the women of Afghanistan: judgment* (Madrid and Salamanca, 2025), pp. 3, 61. It is important to note here that, rather than relying exclusively on established international law, the PPT grounds its judgments in the 1976 Algiers Declaration, a document that asserts collective rights of peoples as a distinct normative foundation: see Permanent Peoples’ Tribunal website, <https://permanentpeopletribunal.org/wp-content/uploads/2016/06/Carta-di-algeri-EN.pdf>.

⁷⁴ Women’s International War Crimes Tribunal, *Judgment*, paras 25–6.

⁷⁵ Women’s International War Crimes Tribunal, *Judgment*, para. 86.

⁷⁶ Uyghur Tribunal, *Uyghur Tribunal judgment*, para. 73.

than a lower, easier to prove standard. The judgment explained this choice: 'A people's tribunal that does not apply established and readily understood law to facts proved according to the strictest test may well reduce its public value which comes from providing unassailable findings of fact and law for others to use.'⁷⁷ This passage is significant because it captures the instrumentalist conviction that adherence to established legal standards enhances the legitimacy, and hence the utility value, of the PT's findings for subsequent advocacy and accountability.

The Iran Tribunal adopted a similar commitment to formal procedures in articulating its process. Its judgment noted: 'The prosecution team presented their case with legal and factual opening statements ... The prosecution team then concluded their case ... summarising the factual case and ... submitting the closing legal arguments to the Tribunal.'⁷⁸ The tribunal also emphasized witness credibility: 'The Tribunal was impressed and moved by the sincerity of the witnesses and commends their courage in exposing these facts to the Tribunal.'⁷⁹ This combination of formal procedure and recognition of witness courage reflects the instrumentalist balance between seeking to adhere to formal processes while also emphasizing the tribunal's commitment, given its grassroots origins, to a victim-centred approach.

Transformative tribunals often prioritize different forms of evidence and adopt explicitly political orientations to fact-finding. The Russell Tribunal was transparent about its motivations:

We had no desire to practice the charade of pretending that it would be interesting to learn what was happening in Vietnam. A sense of agony about what the US was doing in Vietnam propelled us to put this crime on record while it was occurring.⁸⁰

This frank acknowledgement of moral purpose, or what scholars call situatedness,⁸¹ might seem to undermine evidentiary credibility. Yet the tribunal countered that political commitment was not what mattered: on issues as grave and well-documented as the atrocities in Vietnam, everyone held an opinion, whether they admitted it or not. What mattered was the extensiveness and compelling character of the evidence assembled, and the diversity of expertise brought to bear on it: 'The investigators were of many nationalities. They were surgeons, biochemists, radiologists, doctors, agronomists, lawyers ... Our legal, historical and scientific Commissions brought together research and reports, collated data which filled many trunks and file cabinets.'⁸² The breadth of disciplinary perspectives functioned as a legitimating device: findings produced by such extensive evidence and varied expertise could not easily be dismissed as ideologically predetermined.

⁷⁷ Uyghur Tribunal, *Uyghur Tribunal judgment*, para. 50.

⁷⁸ Iran Tribunal, *Iran Tribunal judgment* (The Hague, 2013), para. 24.

⁷⁹ Iran Tribunal, *Iran Tribunal judgment*, para. 22.

⁸⁰ Ralph Schoenman, 'Foreword', in Duffett, ed., *Against the crime of silence*, p. 8.

⁸¹ Donna Haraway, 'Situated knowledges: the science question in feminism and the privilege of partial perspective', *Feminist Studies* 14: 3, 1988, pp. 575–99, <https://doi.org/10.2307/3178066>.

⁸² Schoenman, 'Foreword', pp. 9–10.

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The Women's Court in Sarajevo developed an explicitly feminist approach to process legitimacy that challenged the ostensible 'neutrality' of formal evidentiary approaches. The organizers emphasized a process where 'women are not only a source of information, but agents and interpreters of history'.⁸³ This formulation, drawing on feminist methodologies, transformed witnesses from passive sources of evidence into active participants in constructing meaning, thereby enacting a form of epistemic justice.⁸⁴ The court emphasized: 'Testimonies should be genuine and authentic ... a personal touch must be seen in it, an energy of the person who testifies.'⁸⁵ Authenticity and personal voice are valued alongside factual accuracy. The court also implemented a feminist ethics of care for tribunal witnesses: 'Our process with women witnesses is a feminist one. Our care for them is crucial. The experience of institutional justice where nobody cared for women was a lesson for us. We provided a safe space for women.'⁸⁶ This critique of formal courts is itself a legitimation strategy. By identifying care for witnesses as something formal courts too often fail to prioritize, the Women's Court claims authority precisely on the ground that formal institutions have vacated. Its legitimacy derives not from mirroring formal procedures but from offering something 'better'.

Handling the absence of the accused

No PT can compel states to participate, and states are unlikely to participate voluntarily, particularly when they are the ones alleged to be committing the crimes.⁸⁷ Tribunals address this challenge differently depending on their orientation. The Comfort Women Tribunal adopted a sophisticated mechanism that took into consideration, 'in the interests of justice and fairness', the anticipated arguments of the defence, presented by an *amicus curiae* (friend of the tribunal) invited by the tribunal.⁸⁸ By actively engaging with likely counterarguments, the tribunal sought to approximate the adversarial process that formal courts provide.

The Iran Tribunal was concerned about the lack of representation by the Islamic Republic of Iran (IRI). It reviewed 'the possibilities of appointing a special counsel to represent the IRI or appointing an *amicus* to raise issues that the IRI would have raised'.⁸⁹ Though ultimately not implemented, these considerations reflect the instrumentalist desire to mirror the adversarial process, including its principle of *audi alteram partem* (hear the other side), even in the challenging context of PTs, where the accused refuses to engage.

⁸³ Staša Zajović, ed., *Women's Court: about the process* (Belgrade: Women in Black and Center for Women's Studies, 2015), p. 40.

⁸⁴ Miranda Fricker, *Epistemic injustice: power and the ethics of knowing* (Oxford: Oxford University Press, 2007).

⁸⁵ Zajović, *Women's Court*, p. 40.

⁸⁶ Zajović, *Women's Court*, p. 16.

⁸⁷ Arthur W. Blaser, 'How to advance human rights without really trying: an analysis of nongovernmental tribunals', *Human Rights Quarterly* 14: 3, 1992, pp. 339–70 at p. 345, <https://doi.org/10.2307/762370>.

⁸⁸ Women's International War Crimes Tribunal, *Judgment*, para. 42.

⁸⁹ Geoffrey Nice et al., 'The Iran Tribunal: an international People's Tribunal for the promotion of truth and justice', in Paulose, ed., *People's tribunals, human rights and the law*, p. 104.

The Russell Tribunal took a fundamentally different approach. Rather than attempting to approximate adversarial procedure, it rejected the adversarial model as unsuitable for its purposes and reconceptualized the tribunal's function. The tribunal stated explicitly: 'The Tribunal never pretended to be a trial. How could we have had a trial? We lack state power. We could not subpoena Johnson, Rusk or McNamara ... We never attempted an adversary proceeding.'⁹⁰ This reframing is significant. What instrumentalist tribunals treat as a gap requiring compensation, the Russell Tribunal recast as a deliberate methodological choice. By framing its work as investigative rather than adjudicative, it made the absence of the accused less central to the question it was actually asking, namely whether the evidence warranted charges in the first place.

Output legitimacy

Output legitimacy concerns the nature and reception of a tribunal's findings. What form do conclusions take? To whom are they addressed? What impact do they seek? This dimension captures how PTs position themselves relative to formal justice mechanisms through the character of their outputs.

The form and function of findings

Instrumentalist tribunals structure their findings to mirror conventional judicial decisions. Their verdicts are framed in established legal categories, presented in recognizable formats (closely mirroring formal judgments) and grounded in recognized standards to reach conclusions that formal courts could, in principle, endorse. The Uyghur Tribunal exemplified this approach, concluding that 'crimes against humanity have been established beyond reasonable doubt' and that 'the Tribunal is satisfied beyond reasonable doubt that the PRC, by the imposition of measures to prevent births intended to destroy a significant part of the Uyghurs in Xinjiang as such, has committed genocide'.⁹¹ These findings deploy precisely the legal language and evidentiary standards that an international tribunal would apply.

Similarly, the Iran Tribunal framed its verdict in terms that states recognize: 'The Islamic Republic of Iran has committed crimes against humanity in the 1980–89 period against its own citizens in violation of applicable international laws.'⁹² The judgment explicitly invoked state responsibility under international law, holding that 'as a matter of international law, the Islamic Republic of Iran can be held responsible for crimes against humanity, committed at its behest by state officials'.⁹³ This framing, as noted above, reflects instrumentalist logic: findings articulated in the register of established international law are more readily usable by formal mechanisms should political conditions permit.

⁹⁰ Schoenman, 'Foreword', p. 8.

⁹¹ Uyghur Tribunal, *Uyghur Tribunal judgment*, paras 180, 190.

⁹² Iran Tribunal, *Iran Tribunal judgment*, para. 170.

⁹³ Iran Tribunal, *Iran Tribunal judgment*, para. 165.

Transformative tribunals produce outputs designed for different purposes. The Russell Tribunal articulated a distinctive theory of how its findings would acquire output legitimacy. Sartre stated:

What we wish is that its legitimization should be retrospective or, if you prefer, *a posteriori* ... What we wish is to maintain, thanks to the collaboration of the press, a constant contact between ourselves and the masses who in all parts of the world are living and suffering the tragedy of Vietnam ... if the masses ratify our judgment, then it will become truth.⁹⁴

This formulation inverts the conventional relationship between judgment and legitimacy. Where formal courts derive authority from institutional mandate, Sartre locates legitimacy in post hoc democratic ratification: the masses, not prior authority, confer validity on the tribunal's conclusions.

The WTI similarly targeted public mobilization rather than addressing states directly. Its recommendations called for boycotts of corporations profiting from the war, conscientious objection by soldiers, and citizen resistance.⁹⁵ The 2005 *Declaration* expressed hope that the tribunal's work would 'lay the groundwork for a world in which international institutions will be shaped and reshaped by the will of people and not by fear and self-interest'.⁹⁶ This vision positions the tribunal's work not as a finding to be processed by existing channels, but as an important step towards fundamental transformation of global justice.

The Women's Court in Sarajevo also articulated a transformative view of output legitimacy: 'The Women's Court will not pass sentences, but it can contribute to the creation of a climate of opposition to crimes ... We all have to influence people from our communities, to change people's consciousness'.⁹⁷ The court was not interested in individual verdicts of guilt or innocence; it located its output legitimacy elsewhere, in its capacity to transform consciousness and change how communities respond to mass atrocities.

Recommendations and audiences

The distinction between instrumentalist and transformative orientations also shapes whom tribunals address. Instrumentalist tribunals direct recommendations towards states and existing institutions as their primary target audiences. The PPT on Turkey and the Kurds recommended that 'Turkey must restore the rule of law, release still-detained magistrates and journalists ... and fully implement the European Convention on Human Rights'.⁹⁸ These recommendations are framed in terms states can implement through existing mechanisms. Notably, the tribunal deferred on political solutions: 'It is not for the PPT to indicate specific solutions that allow the Kurdish people's right to self-deter-

⁹⁴ Sartre, 'Inaugural statement', p. 44.

⁹⁵ World Tribunal on Iraq, *Declaration of the jury of conscience*.

⁹⁶ World Tribunal on Iraq, *Declaration of the jury of conscience*.

⁹⁷ Zajović, *Women's Court*, p. 27.

⁹⁸ Permanent Peoples' Tribunal, *Session on Turkey-Kurdistan*, p. 21.

mination to be accorded to the needs of cohabitation and good administration within the Turkish state.⁹⁹ This restraint reflects the instrumentalist recognition that political negotiation lies beyond the tribunal's legal remit.

The Indonesia Tribunal also mainly targeted institutional audiences, calling upon 'the Indonesian government urgently and without qualification to: apologize to all victims, survivors and their families for the commission by the State of all the crimes against humanity'.¹⁰⁰ The tribunal expressed hope that its findings would 'provide impetus for the creation of concrete [fact-finding] structures or processes'.¹⁰¹ These recommendations envision the tribunal's output contributing to existing formal transitional justice mechanisms.

Several other tribunals occupy intermediate positions on output legitimacy, falling along the instrumentalist/transformational spectrum in seeking to address multiple audiences simultaneously. The PPT on Myanmar directed recommendations to existing institutions while also articulating demands, such as constitutional amendments, abolition of military representation in parliament and recognition of federal autonomy, that would require a fundamental transformation of current structures. This suggests a dual audience: states are addressed with demands they could act upon immediately, while civil society and reform movements receive a blueprint for the transformed institutions they should pursue.¹⁰²

The PPT on the Women of Afghanistan similarly sought to address multiple audiences. Given that the Taliban regime was unlikely to respond to tribunal findings, the judgment elevated civil society from secondary pressure mechanism to the tribunal's primary target audience. It recommended that 'civil society, human rights organizations, and global advocacy networks should centre Afghan women's expertise, testimony, and leadership in research, policy-making, and public discourse'.¹⁰³ These actors are not asked merely to exert pressure on states; they are called upon to do the substantive work themselves: centring Afghan women's voices, shaping research agendas and influencing policy discourse. The tribunal thus addresses civil society as the primary site of transformation rather than a conduit for state action. States remain a background audience, but immediate expectations fall on non-state actors who can act without waiting for formal authorization.

Analysis

From this analysis of how PTs strategically construct their legitimacy claims, three main insights emerge. First, relational positioning is the core mechanism through which PTs construct their legitimacy. These tribunals do not build

⁹⁹ Permanent Peoples' Tribunal, *Session on Turkey–Kurdistan*, p. 21.

¹⁰⁰ The International People's Tribunal on Crimes against Humanity Indonesia 1965, *Final report* (The Hague: 2016), p. 83.

¹⁰¹ International People's Tribunal Indonesia 1965, *Final report*, p. 13.

¹⁰² Permanent Peoples' Tribunal, *Session on state crimes allegedly committed in Myanmar against the Rohingyas, Kachins and other groups: judgment* (Kuala Lumpur: 2017), pp. 50–3, <https://permanentpeopletribunal.org/wp-content/uploads/2017/11/PPT-on-Myanmar-Judgment-FINAL.pdf>.

¹⁰³ Permanent Peoples' Tribunal, *55th session for the women of Afghanistan*, p. 71.

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legitimacy in isolation; they do so by positioning themselves relative to the formal courts and tribunals against which they are most frequently compared and critiqued. Every tribunal in this study displays sophisticated awareness of its formal counterparts and calibrates its strategy accordingly. This relational legitimization strategy is not incidental but constitutive of how PTs navigate their irreducible challenge: claiming legitimacy to adjudicate mass atrocities without state endorsement, in a context where the dominant view remains statist and justice delivery continues to be seen as the exclusive prerogative of states.

The instrumentalist/transformational distinction captures two contrasting responses to this challenge. Instrumentalist tribunals construct legitimacy through alignment and mirroring. By emphasizing that they apply the same law formal courts would apply, adopt comparable evidentiary standards and produce findings in recognizable legal categories, they claim derivative legitimacy. The implicit message is: we are doing what formal courts should be doing but are not. Transformational tribunals construct legitimacy through principled differentiation. By grounding authority in alternative normative foundations, they claim autonomous legitimacy independent of state sanction. The implicit message is: international justice is structurally incapable of delivering justice for certain violations. For IR scholarship, this finding extends existing work on legitimization strategies by indicating that non-state justice actors operating entirely outside state-sanctioned frameworks must nevertheless engage with those frameworks discursively. The choice is not whether to engage with formal institutions but how: through alignment or through differentiation.

Second, variation in positioning strategies reflects competing diagnoses of why accountability gaps exist. Instrumentalist tribunals proceed from the assumption that the international justice system is fundamentally sound but temporarily blocked by political obstacles. From this diagnosis, the appropriate role for a PT is gap-filler: producing findings that formal mechanisms can act upon once political conditions permit. Transformational tribunals proceed from a different diagnosis: that accountability gaps are structural rather than contingent, and that formal mechanisms may be inadequate or even complicit in the injustices they purport to address. From this diagnosis, the appropriate role for a PT is necessarily alternative: articulating what justice requires, regardless of whether current structures can deliver it.

This matters because legitimization strategies embody implicit theories of international order. Instrumentalist positioning accepts the fundamental soundness of the state-centric architecture while criticizing its operation; transformational positioning questions whether that architecture can ever deliver justice for certain categories of victim or certain types of violation. The PT ecosystem thus becomes a site where broader debates about the nature and limits of international order and justice are enacted.

Third, the analysis suggests that there is no single pathway through which non-state justice actors construct legitimacy. Instrumentalist and transformational tribunals address different audiences, operate on different temporal logics and

measure success by different criteria. Instrumentalist tribunals direct findings towards states and existing institutions, seeking prospective legitimacy through eventual institutional uptake. Transformative tribunals address civil society and public opinion, seeking retrospective legitimacy through popular endorsement and consciousness change. This has significant implications for how we evaluate non-state actor legitimacy. If there are multiple coherent pathways to legitimacy construction, then assessments of whether a particular actor's claims succeed depend on which pathway it has chosen. Applying instrumentalist criteria to transformative tribunals, or vice versa, could produce category errors. The question is not simply whether or not non-state actors have legitimacy, but what kind of legitimacy claim they are making and whether that claim succeeds on its own terms.

Conclusion

This article asked how PTs strategically construct their legitimacy claims by positioning themselves in relation to formal courts. The instrumentalist/transformational typology developed in this article helped unpack their relational legitimization strategies and provide a tentative answer to that question. The PTs examined positioned themselves either as temporary substitutes for blocked formal mechanisms or as principled alternatives to structurally inadequate ones. Importantly, moreover, the variations in their orientations reflected fundamental assumptions about what justice for mass atrocities requires and whether existing international law can deliver it.

The analysis has focused on how PTs construct their own legitimacy claims, not whether instrumentalist or transformative approaches yield superior outcomes; that assessment depends on context, and in particular on whether the relevant accountability gap is diagnosed as contingent or structural. The article also focused solely on PTs' internal point of view, and future research could usefully examine how external stakeholders perceive and respond to their claims, and under what conditions they achieve traction with their intended audiences. As accountability gaps persist, PTs will continue to emerge. The framework developed here offers tools for engaging critically with these non-state justice actors that will continue to proliferate as formal mechanisms falter; that victims will continue to turn to when other avenues close; and that, therefore, demand more sustained and systematic scholarly attention.