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BANGLADESH, 1971, WAR CRIMES TRIALS AND CONTROL OF THE NARRATIVE: THE STATE OR COLLABORATIVE ENTERPRISE?¹

*BANGLADESH, 1971, LOS JUICIOS POR CRÍMENES DE GUERRA Y EL CONTROL DE LA NARRATIVA:
¿EL ESTADO O LA EMPRESA COLABORACIONISTA?*

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ABSTRACT

Bangladesh was born in a violent struggle many label genocide. Few were ever prosecuted. The article considers the issue in terms of competing narratives and the issue of ownership of 'truth' and the contribution of images of 1971 to the constitution of Bangladesh. Since 2010 belated war crimes trials have been help for local collaborators; the accused mainly come from Islamic political parties and the verdicts have spurred popular protests resulting in violent confrontations. The trials have been criticised as political trials aimed at eliminating political opposition rather than achieving justice and healing historical wounds. Is this a defining moment for Bangladesh that can change the form of politics – one that breaks the hold of the state over the narrative and ushers in a new form of collaborative enterprise - or is this the occasion for a resurgence of religious sentiments that weakens the secular constitution and increases social instability?

Keywords: Bangladesh, genocide, imaginary, war crime trials, popular protest.

RESUMEN

Bangladesh nació en una violenta lucha que muchos califican de genocidio. Pocos fueron juzgados. Su legado continúa. Este artículo considera el asunto en términos de su contribución a la imaginaria de la constitución de Bangladesh y el impacto que tienen las

¹This article is work in progress on a changing scene. Bangladesh is infrequently written about; I have visited Bangladesh twice a year since 2001, teaching international students of the University of London and once writing on the Liberation War Museum 2006: ch. 9. I acknowledge the assistance of Md Khnirul Islam, LLB student, Queen Mary who prepared a term essay on this topic and who reflects the views of many in the Bangladeshi diaspora that the trials are deeply flawed although welcomes by many of the population.

imágenes de la lucha. Desde 2010, los tardíos juicios por crímenes de guerra han estado apoyados por colaboracionistas nacionales; los acusados provienen principalmente de los partidos políticos islámicos y los veredictos han resultado en protestas populares que causaron violentas confrontaciones. Los juicios han sido criticados por ser juicios políticos, que apuntan a eliminar la oposición política en lugar de conseguir justicia y sanar las heridas históricas. ¿Es este un momento definitivo para que Bangladesh pueda cambiar la forma de la política –una que rompa el control del Estado sobre la narrativa y los encargados del orden, por una forma nueva de empresa colaboracionista– o es ésta la ocasión para el resurgimiento de sentimientos religiosos que debiliten la Constitución secular e incrementen la inestabilidad social?

Palabras clave: Bangladesh, genocidio, imaginario, juicios de crímenes de guerra, protesta popular.

‘Those who devise and implement genocide seek to deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide.’ (*Prosecutor v Krstic* ICTY Appeals Chamber (2004) IT-98-33-A 36.)

‘Any attempt to downplay the horrifying experience [of the liberation war/genocide] would not only make the campaign for democracy irrelevant but also put into question the very birth of Bangladesh.’ (Ahmed, 2009: 41)

‘Don't push the country into a civil war by delivering one-sided verdicts against our leaders. If anything happens against Quader Mollah, every house will be on fire.’ (Jamaat acting secretary general Rafiqul Islam Khan, at a press release declaring a ‘hartal’ [nation-wide strike] Tuesday, February 5, 2013 awaiting verdict of Jamaat Assistant Secretary General Quader Mollah).

‘The butcher Quader [of 1971] and our leader Abdul Quader Mollah are not the same man. We will not remain idle at our homes if the tribunal shifts butcher Quader's blame to our Quader.’ (Selim Uddin, assistant secretary general of the Jamaat city unit, February 5, 2013)

‘In Bangladesh, a moderate Muslim nation of 160 million people, a revolution is unfolding to keep the country's secular character alive. For two months now, hundreds of thousands of people from young men and women, aging former guerrilla fighters and grandmothers who still carry the scars of genocide, have occupied Shahbag Square in the capital, Dhaka [calling for the death penalty against those found guilty by the War Crimes tribunal and aroused by a sentence of life imprisonment against Abdul Quader Mollah]. The collective anger of a nation, simmering below the surface for more than 40 years, has been called the country's second war of liberation... For the first time ever in the Muslim world, there has been a popular uprising against the fascism of an Islamist party that garnered only 3 per cent of votes in the last general election. One would have expected the western intelligentsia to be thrilled at this development and for the media to report from the square. Instead, there have been many distorted reports criticizing the war crimes trials in such major publications as *The Economist* of London.’ (Mozammel H. Khan, *Toronto Star*, Tue Apr 16 2013).

Introduction: a contemporary 'legal' judgment

In delivering its first judgment on January 26, 2013, the Second Tribunal of the War Crimes Tribunals of Bangladesh was conscious of an international readership. In declaring its legitimacy and locating itself as part of an on-going search for truth it drew upon the noted criminologist Stan Cohen: 'after generations of denials, lies, cover-ups and evasions, there is a powerful, almost obsessive, desire to know exactly what happened.'² The judgment continued: 'In Bangladesh, the efforts initiated under a lawful legislation to prosecute, try and punish the perpetrators of crimes committed in violation of customary international law is an indicia of valid and courageous endeavour to come out from the culture of impunity.'

The need to establish a transparent justice process that is aligned to the desire for truth is undoubtably an ethical imperative for Bangladesh. As Anthony Mascarenhas, the journalist whose stark headline in the Sunday Times in 1971 – Genocide – brought the events of the West Pakistan military repression to the West's attention, ended his account of the first 15 years of the new state in 1986: 'Machination and murder had been the curse of Bangladesh - its legacy of blood. It will not end until public accountability and the sequence of crime and punishment is firmly established' (1986: 183). Cohen stressed the importance of 'of truth in itself' and distinguished between knowledge and acknowledgment, where acknowledgement the process where what was known, but underground, becomes acknowledged by the state and becomes officially sanctioned. Through processes such as truth and reconciliation commissions and sometimes criminal trials what was partially glimpsed becomes officially recognised. In Bangladesh the Tribunal imports a certain – officially sanctioned - narrative as 'historical background', as context for its operation.

'Atrocious and horrendous crimes were committed during the nine month- long war of liberation, which resulted in the birth of Bangladesh, an independent state. Some three million people were killed, nearly a quarter million women were raped and over 10 million people were forced to flee to India to escape brutal persecution at home, during the nine-month battle and struggle of Bengali nation. The perpetrators of the crimes could not be brought to book, and this left a deep wound on the country's political psyche and the whole nation. The impunity they enjoyed held back political stability, saw the ascent of militancy, and destroyed the nation's Constitution.'(para. 4)

The judgment then immediately references two international scholars: "A well-known researcher on genocide, R.J. Rummel, in his book *Statistics of Democide: Genocide and Mass Murder Since 1900*, states:

'In East Pakistan [General Agha Mohammed Yahya Khan and his top generals] also planned to murder its Bengali intellectual, cultural, and political elite. They also planned to indiscriminately murder hundreds of thousands of its Hindus and drive the rest into India. And they planned to destroy its economic base to insure that it would be subordinate to West Pakistan for at least a generation to come.'

² At para 47; the reference to Stan Cohen was to *States of denial: knowing about atrocities and suffering* 2001: 225. The judgment was in the case of Abul Kalam Azad, charged with genocide, rape, abduction, confinement and torture and tried in absentia after having fled the country. The judgment for The Chief Prosecutor Vs Abul Kalam Azab Bacchn (Absconding) (ICT-BD Case no. 5 of 2012) is not yet in a full law report series but is available on the web.

Women were tortured, raped and killed. With the help of its local collaborators, the Pakistan military kept numerous Bengali women as sex slaves inside their camps and cantonments. Susan Brownmiller, who conducted a detailed study, has estimated the number of raped women at over 400,000. [Source: <http://bangladeshwatchdog1.wordpress.com/razakars/%5D>]” (webservice in original, para. 5)

The judgment thus seeks to cross boundaries to demonstrate that its account has international support. Certainly Rummel is an author who has done valiant work attempting to establish the huge dark figure of state sponsored crime and Brownmiller’s famous 1975 text was rightly characterised as an ‘overwhelming indictment’ of the global prevalence of rape and its use in war (her actual estimate for the 1971 conflict was between 200,000 to 400,000). But both writers worked with secondary accounts, accepting sources that themselves need investigation and critical appraisal.

The judgment rightly noted that Bangladesh is a signatory to various international conventions and states that the proceedings are in line with those commitments; it explains ‘the degree of fairness’ embedded in the Act and the Rules of Procedure (ROP) formulated by the Tribunals under the powers conferred in section 22 of the principal Act ‘are to be assessed with reference to the national needs such as, the long denial of justice to the victims of the atrocities committed during 1971 independence war and the nation as a whole’. It explains that it will accept as given a history of ‘common knowledge’. At Para 10 it sets the scene for the question why try collaborators?

‘In the War of Liberation... all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bengalis, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties, particularly Jamat E Islami (JEI) and its student wing Islami Chatra Sangha (ICS) joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in violation of customary international law in the territory of Bangladesh. As a result, 3 million (thirty lac) people were killed, near about quarter million women were raped, about 10 million (one crore) people deported to India...’

Again the figures of 3 million killed, of 250,000 raped are taken not as assertions to be analysed but common knowledge. Undeniably large-scale atrocities occurred in 1971, the vast majority of them were caused by the anti-liberation forces whether the West Pakistan military or the para-military supporters they set up; however these figures – repeated in the other five judgments delivered so far – are by far the highest estimates.³ In the Tribunals’

³ In 1970 the military leader, General Yahya Khan, decided to hold free elections across Pakistan. In East Pakistan Sheikh Mujibur Rahman’s Awami League trounced the Muslim League and became by far the largest party in Pakistan (considerably more than Zulfikar Ali Bhutto’s Pakistan People’s Party in West Pakistan). Theoretically Mujibur would be Prime Minister of all of Pakistan. However, this would have destroyed the hegemony of the West and the National Assembly was postponed. The Bengalis led by Mujibur entered into a process of civil disobedience (involving *hartels* or general strikes) and mass meetings in March 1971; at first the response of the Pakistan authorities seemed to be for a political solution but in late March there was a brutal military crack-down occasioning a civil war which lasted nine months, until the Indian military entered into East Pakistan and forced the surrender of the West Pakistan forces therein. There was considerable loss of life and at the peak 10 million refugees - mostly Hindu - had fled into India. Most independent commentators would today dispute the official Bangladesh Government figures but all would recognize that there were widespread atrocities such as brutal ethnic cleansing of Hindus by the Pakistani Military. (The revisionist historian Sarmila Bose – whose account is remarkably pro-Pakistan – is at the other extreme to the ‘official’ account claiming that

judgments importing this official history serves two purposes: it adds institutional power to the narrative and it sets a context which does not prove, it is an accepted framework within which the defendants and prosecution then set out the precise accounts of the individual they contest.

Constituting Bangladesh: the dream and the nightmare of violent beginnings

The Tribunal states its operation will help restore the constitution of Bangladesh. What does this mean? For Benedict Anderson (1983) nations are ‘imagined communities’; for Philip Oldenburg (1985) Bangladesh is ‘a place insufficiently imaged’. Bangladesh lies between these two quotes. Anderson links the rise of nationalism to technological developments that allowed linguistic forms to flourish over particular geographical spaces and give rise to popular expression (in the novel, song form, poetry): a nation needed its language and the printing press allowed expression to be captured and communicated. Oldenburg hints at a lack of positive conceiving of what Bangladesh would be. Born in the partition of India as East Pakistan – part of the Muslim home – the ‘liberation’ of Bangladesh was more of a reaction to developments in Pakistan (such as defending Bengali against the imposition of Urdu as State language, itself part a movement away from the secular and democratic image a founding statesman Jinnah had given).⁴ Lawyers tend to discuss nation-states in terms of their ‘public law’, by which they mean their ‘constitutions’ and constitutional procedures and protections. In pride of place is the set of (usually) written documents which contain basic statements and principles – the Constitution. For the nation to be a constitutional state this must be a living document, the words of which are not only interpreted by lawyers in particular institutional settings (opinions for Courts) but bear public trust and such constitutions derive a great deal of their authority from perceived acts of origin, from the actions and struggle that ‘founds’ the independent nation-state. Another meaning of the term ‘public law’ is vital: it is law made public, law put on display, law seen, visual experience.

A constitutional imagination contains a collection of recognised images and symbols; affinity pictured, conceived and dreamed. In central place for Bangladesh are accounts and images of the 1971 ‘war of liberation’, the ‘freedom fight’, the ‘genocide’, such as those collected and displayed in the Liberation War Museum Dhaka (see Morrison, 2006: ch.9) and the National Museum with bookstores normally carrying editions of collections of photographs⁵; some, such as the image of a (West) Pakistani soldier looking down the lungis of a Bengali man

only 50,000 to 100,000 perished in the conflict in East Pakistan/Bangladesh including those killed by the pro-liberation side. Bose, 2011: 181). It is common to put the atrocities into three phrases: first, Pakistani military killed young men and Hindus, Awami league members, intellectuals, students and academics, second, women were targeted for rape and were subjected to forced pregnancy, thirdly, as defeat was inevitable, in the last week of the war they targeted many intellectuals as possible. Local Bengali anti-liberation volunteers (termed ‘Razakar’ formed groups, Al-Shams and Al Badr) collaborated with Pakistani Military to commit these murders (Bose 2011 argues that account leaves out actions in early March against pro-Pakistan elements and revenge attacks after ‘liberation’ against those who supported the continuation of Pakistan).

⁴ ‘For the Pakistanis of the west wing, and particularly for the muhajirs [immigrants from India after partition], Pakistan was a state in which the Muslim nation would reach fulfilment, developing its strength on the basis of Islam and Islamic solidarity. For the Bengalis, Pakistan was most of all a state that gave them a chance to emerge from Hindu domination and wield power as the majority in their own land... The genocide attempted by the Pakistanis in East Bengal was thus not an excess committed by overzealous battlefield soldiers lusting for revenge; it was a cornerstone of the attempt to keep Pakistan united.’ (Oldenburgh, 1985: 730).

⁵ Such as *Bangladesh: The Price of Freedom* (photographs of Raghu Rai), and *Bangladesh – A Brutal Birth* (photographs by Kishor Parekh).

checking if he was circumcised and if not [therefore a Hindi] led away for killing are iconic, reproduced in facebook postings and websites giving a global reach. The images fall into different categories, the movement to preserve Bengali as an official state language within Pakistan (1952 onwards), student protests, the mass meetings listening to speakers such as Sheikh Mujibur Rahman assert the rights of East Pakistanis, the declaration of loyalty and ‘flag’ of Bangladesh designed by students, actions of the (West) Pakistan military, atrocities committed in the March 1971 response (of which the killings at the University of Dhaka are prominent), freedom fighters, refugees, atrocities committed when the war was lost (of which the killing of the intellectuals is again prominent), surrender, the joyful scenes of the return of Sheikh Mujibur Rahman from his captivity in Pakistan (10 January 1972).

For Sarmila Bose, author of a controversial revisionist ‘history’ the accounts and narrative through which images are understood and through which they become part of the social constitution of Bangladesh mislead. Bose relates how she was raised as an Indian West Bengali to accept a narrative of the creation of Bangladesh as fighting back against genocide, a narrative she now rejects. For her this is a ‘monstrous fable’ and part of a ‘persistent cultivation’ of a ‘victim culture’ that ‘glides effortlessly through allegations of exploitation by West Pakistan, “genocide” in 1971, neglect by an uncaring world and further exploitation by India, the erstwhile liberators.’ (Bose, 2001: 183) She rejects the tropes and visual signifiers: this was not a war of liberation but a rebellion, Bengali troops that left the Pakistan command and fought for the creation of Bangladesh were not freedom fighters but mutineers; subsequently – she claims - a Bangladeshi nationalist narrative has been accepted that has controlled the terms and the language of discussion: to question the narrative, to seek an open interpretation, is to disrupt the constitution of the Bangladeshi state.

Bose is, unintentionally no doubt, invoking Anderson when she states that ‘East Pakistan’s rebellion in 1971 expressed itself as a “Bengali” ethno-linguistic nationalism, sweeping aside the previous idea of a “Muslim nation” which had been the basis of the creation of Pakistan (2011: 167). Derrida in his classic *The Force of Law* joined ‘logos, speech’ and ‘force’ together in reminding us that the founding of a constitution – and all subsequent enactment of law by the constituted state (and in our case the judgment of a tribunal) rests on an original, founding, ‘performative force.’ For Derrida: ‘Since the origin of authority, the foundation or ground, the position of the law, can’t by definition rest on anything else but themselves, they are themselves a violence without ground. Which is not to say that they are in themselves “unjust”, in the sense of “illegal”. They are neither legal nor illegal in their founding moment. They exceed the opposition between founded and unfounded.’ (Derrida, 1990: 943) Herein lies what he terms the ‘mystical foundation’ of law, subsequently turned into ‘legitimate fictions’, and these moments, these occasions, may be ‘terrifying moments’: ‘This moment of suspense, this *epoché*, this founding all revolutionary moment in law is, in law, an instance of non-law. But it is also the whole history of law. The moment always takes place and never takes place in a presence. It is the moment in which the foundations of law remain suspended in the void or over the abyss, suspended by a pure performative act that would not have the answer to all before anyone.’ (1990: 993).

So to the operation of the Tribunal: it calls into play ‘legitimate fictions’ to found its justice; ultimately its institutional power is based on itself, on instituted legitimacy, but the system is always open to deconstruction, and always open to the possibility of the invocation of a presence. In the moment of origin there is indecision; the founding violence – which as Bose

accurately states – intensifies with the general strike (Hartal) called by Sheikh Mujibur in March 1971 and a withdrawal of authority by the Pakistan state until the (irrational and self-defeating) horrifying military repression beginning March 25 is given meaning by the performative act whose effectiveness gives it its success. The ‘war of liberation’ ‘always takes place and never takes place in a presence’. ‘History’ will give it meaning and will do so by imposing validity on some accounts and ignoring, suppressing, eradicating others.

Yet the images provide remnants of presences that may demand justice: such as those of refugees streaming into basic camps in India, refugees many of which appear as walking corpses? Many, many of whom did not survive or if they did they did not return to the new Bangladesh. These images are a product but not in themselves proof (for they cannot trace back to intention) of a political decision that consequently renders millions of human beings (here mostly Hindu) homeless and stateless, beyond law and unwanted, their life/death irrelevant (or even desired as part of a process to cleanse East Pakistan of unwanted diversity). Here, as with figure 1, the presence of the universal human is signified but the idea of human rights and the recognition of the human as a value carrier in and of themselves is at the same time problematised. Figure 1 may be termed the face of shame: it is a photo of a woman who has been victim of sexual abuse at hand of West Pakistani forces upon her release; there is no name and no face is visible.



Caption. Figure 1. One of the photographs taken by Naib Uddin Ahmed (died 2009) founder supporter of DRIK (Image courtesy of War of Liberation Museum; image also appears as front cover image of *Rising from the Ashes: Women's Narratives of 1971*, published 2013). The image is also reproduced in Saikia in her study of *Women, War, and the making of Bangladesh* (2011: 57) with the caption: ‘Making Women Invisible’.

The words of Judith Butler (2010, p. 94), considering images from a later conflict, are apt: ‘the obscured face and the absent name function as the visual trace - even if it is a lacuna within the visible field – of the very mark of humanity’. This mark is not the expression of a norm, but is registered through ‘the fragments that follow in the wake of an abrogation of the normatively human’. Ernest Becker reminds us that society ‘is and has always been a symbolic action system, a structure of statuses and roles, customs and rules for behaviour, designed to serve as a vehicle for earthly

heroism... Society itself is a codified hero system...' (1973, 4-7). In the new Bangladesh the term 'birangona' literally 'war heroines' was coined and officially sexually abused women were to be treated as heroes (reality, see further, was different). Crucial to the circulation of the 2nd image is the framing of it as including acts of betrayal, as an event facilitated by collaborators. Judith Butler talks of the production of an ontological horizon in which state power is situate and given meaning. This ontological horizon is already positioned by powers that proceed and exceed the state. The state needs to work with and utilise reservoirs of power that they have not themselves organised. The 'state both produces and presupposes certain operations of power that work primary through establishing a set of ontological givens' (Butler, 2010: 149).

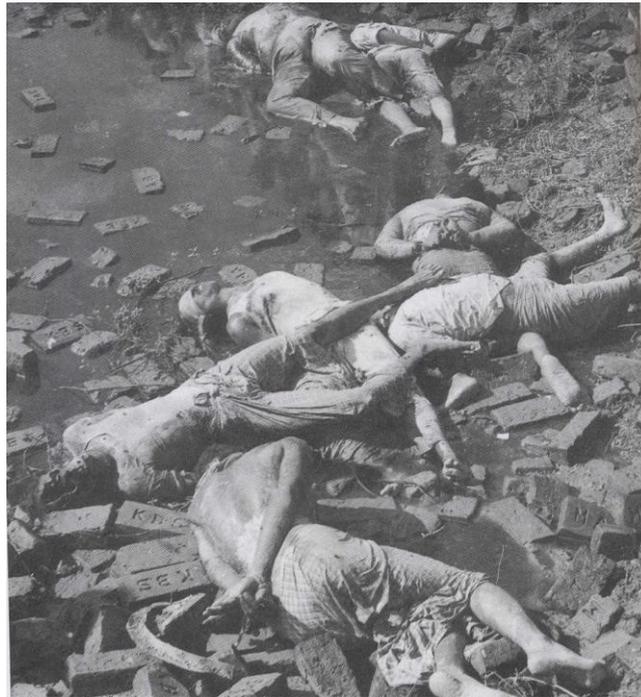


Fig: ch no .2) Caption. Image of intellectuals who have been rounded up and killed in the last days before surrender of West Pakistan forces. (Image courtesy Liberation War Museum) In *Shadhinata Sangramey Bangalee: An Album of Photographs by Aftab Ahmed*, the caption reads: 'Intellectuals were brutally killed by the Pakistan military with their local collaborators and dumped in the Brook field at Rayer Bazaar, Dhaka, during the last days of the liberation war' (emphasis added). Narratives of the days' events stress that the identities of those killed had to be identified, victims recognised as important or potentially important.

The categories of hero and betrayer are unstable and open to varying inputs: the 1971 images evoke conceptions of victimhood, repressive violence, brutality, betrayal and the deliberate massacre of those who would give cultural and intellectual leadership to a new nation. They provide a call to action and an active social layering underlying the law (the Constitution) they continue to resonate as part of the authority of the law (on the day that the first judgment of the tribunal was given the Foreign Minister of Bangladesh invited representatives of the world press to a function where images of the 1971 war were shown)⁶; they are joined by

⁶ What are not so common are photos, such as those at World Press Photo archives, of the public execution by bayoneting of a group of captured Biharis in December 1971 who allegedly collaborated with the West Pakistani forces. See www.archive.worldpressphoto.org/search for Bangladesh.

other images of the spirit of the people, of joyous energy, of an ever youthful population looking to the future.

Bangladeshi nationalism is Bengali, conceived of as embracing Hindus and Muslims (with a tiny population of others), for 90% of the population Bangladeshi identity has a tension between being Muslim and Bengali: ‘The split personality of Bangladesh confounds the international observer’ (Yasmin, 2013). Contemporary Bangladesh is rich in people and joyous in spirit even in the face of unrelenting poverty, corruption and institutional failure. The founding story of Bangladesh is geo-political, but it is a deeper research question to ask for the continuing function of the story of a fight back against an attempted ‘genocide’ by the West Pakistan authorities. The Awami League formed a government in exile which passed a secular ‘constitution’ and committed the state not to enforcing a particular image of the good, but to be tolerant. It is difficult for liberal constitutions to visualise positive freedom – it often looks banal – so the importance of the images as a trope of negative freedom – ‘we did not lie down and acquiesce!’

The Tribunal’s claim that it is seeking to redress a deficiency is echoed in many blogs and social media sites, to example:

... Bangladeshi Muslims are God fearing but not militant. Unfortunately many of them were made militant ... by anti-liberation pak [Pakistani] collaborators... they have amassed unlimited wealth trying to use Islam as a weapon to destroy our ago old religious harmony. [But now]The suppressed true history of the Liberation War is being studied by a generation which believes in a knowledge based society. This society is a secular society not asking for any alms, but asking for justice which will remove the stains caused by lies’. (Blog entry to Yasmin, 2013).

What is this justice and to whom is this supplication addressed? In *Scales of Justice* Nancy Fraser (2009) frames contemporary social justice between the image of scales (usually presented as Justina, holding aloft the sword and the balance/scales) and the map, the geographer’s metric for representing spatial relationships, the spatial division of the globe. Fraser poses a question: the scales denote impartiality but what is impartiality when there are a host of idioms in which the demand for justice is addressed: not simply re-distribution (of resources, of pain), but recognition (of identity, of past wrongs), feminist claims for advancing the position of women can be made at the same time as claims to be faithful to traditional or religious forms of ‘communal’ justice. And location: Bangladesh is ranked amongst the poorest in terms of GDP per head of population, quality of the environment (much of the water table is contaminated by arsenic), at its birth it was labelled a ‘basket case’ in Henry Kissinger’s (then US Secretary of State) well know phrase. What justice can it afford?⁷

In modernity justice theoretically occurs within, is asked for, and is delivered, in a geographical location of the Westphalian system of nation-states: a division of domestic space (to be made civilised space, Morrison, 2006) and an exterior world of similar territorial units linked in various relations (alliances) supposedly with the key norm of self-

⁷ At the time of writing – April 24 2013 – Bangladesh experienced the collapse of a building housing several garments factories with over 1,100 dead and many seriously injured (See Kevin Frayer’s wrenching photos of women who had limbs amputated at thestar.com. The garments were destined for cut price US and EU outlets and the building was originally designed as a shopping mall and offices and illegally redeveloped.

determination and non-interference with the affairs of another. The idea is of political communities as geographically bounded units, demarcated by sharply drawn borders, creating nation-states, invested with exclusive, undivided sovereignty over their territory, barring external interference in their internal affairs and not paying homage to any higher, supranational power. But this occurs only, of course, if a sovereign power could protect the space (can dominate to the exclusion of others), there is always a certain *nomos* of the world (a spatial ordering of norms): great power hegemony and imperialism provided a reality check on the theory.

Was 1971 a productive violence? Many commentators historicise the struggle as against a neo-colonialism of West Pakistan over East Pakistan (for example, Ahmed, 2009; at the time of conflict writers referred to a 'system of colonial exploitation' of 'internal colonialism', Jahan, 1972, pp. 30-38 and *passim*; Saikia, 2011, 31, counters that there is a silence about the Pakistan period that creates a 'totally skewed history and the only language that survives about the Pakistan era is "colonization"'). Violence in the de-colonising world comes with a dream and a nightmare. The dream is of violence acting as an ethically productive force.

Writing in 1961, 10 years before the Birth of Bangladesh, Frantz Fanon (psychiatrist and black Martinique native) depicts an overcoming of colonialism through 'pure violence'. Fanon considers that the psychological state resultant from colonialism makes reality disappear into delusions and irrational states. Colonialism constructs a distorted world, one in which the colonized and the colonist exist in a form of collective mental illness, profoundly irrational and the colonized is helpless to battle this lack of reason with a reasoned argument in return. Instead, the colonists' physical and emotional acts of violence must be met with a violence of the same magnitude, until 'the last become first' (1961: 10). Violent rebellion has the capacity to cure the ailments of the colonized while unifying a people as a basis for a new nation.

'At the individual level, violence is a cleansing force. It rids the colonized of their inferiority complex, of their passive and despairing attitude. It emboldens them, and restores their self-confidence' (Fanon, 1961: 51). Participating in this powerful and life-changing force allows the individual to feel at last that he is not only master of his own fate, but powerful enough to improve the fate of his comrades through his contribution: the dedication of his life to the cause. Out of this violence, properly understood, transformed from resentment and anger, comes the foundation of a new order. The colonizer is turned into an enemy, but only temporarily. A new identity is created from the ashes of the old world's destruction, and through the healing powers of violent uprising. A new man and a new world emerge, but not built on pure opposition to what was seen as the oppressor, the new consciousness cannot be the negative to the face of the oppressor, but rather 'a new beginning' that in itself contains the capacity to face the 'third space' of the unforeseeable. The new identity/consciousness is also built on a capacity to turn toward the unforeseeable.

Ahmed depicts the Pakistani actions as a reaction directed against subalterns actively striving to dislodge the semi-colonial state; while some Bengalis were wilfully taking up arms and fighting most were in a 'state of innocence'. In its genocidal response the 'hegemon lay bare its brutality' (2009, p. 25) and in being subject to it the people discovered 'neighbourliness' (a term reminiscent of Anderson's 'horizontal comradeship'). 'Neighbourliness is what made the genocidal killing futile or to put it inversely, genocide contributed to the neighbourliness of the victims and witnesses, indeed, to the point of uniting the people and concretizing the nation in the making' (2009, p. 29). Considering the images of villagers joining and being

trained as Mukti Bahini (Freedom Fighters) Ahmed is clear: 'people, particularly rural folks and children, were required to be taught... what they were really fighting for!' The violence is instrumental 'in bringing the individuals - the rich and the vagabonds, the city-dwellers and the rural folks, the empowered and disempowered, the Hindus and Muslims - into a state of neighbourliness which became a key factor in uniting the people and defeating the Pakistan military.... Save the genocide it is doubtful whether the people of Bangladesh would have rallied for [the idea of a new Nation] with such unity, hurriedness and passion' (2009, p. 29).

This is one reading of the war of 'liberation', the role of the freedom fighters and the victims: in the new, 'liberated', Bangladesh, our (abused) woman can look up, can meet the eye of her fellow Bengali's and adopt a new identity, proud to be a citizen of a country that has fought for and won freedom. So the dream...

The nightmare is that the unforeseeable loses any lustre, that it is a tedious return of the same, of an on-going cycle of violence. Certainly, violence – both of poverty and of industrial crime and of *hartels* (national strikes reinforced by violence) – continues.

The collection *Rising from the ashes: woman's narratives of 1971* (Zaman, 2013) provides words spoken by women who have been in similar position to that of our image. Their accounts are full of disappointment, some talk of a lack of hope for the country and ask: 'when I try to justify why my Parents sacrificed their lives. .. What have we got after the war of liberation?' (Rumana in Zaman 2013, p. 49) This is the voice of a presence at the founding violence that wants collaborators tried:

Collaborators are walking about freely. They have been granted citizenship. When I see that I feel really bad. How can those who raped woman, killed innocent people and freedom fighters walk about freely? ... We want the collaborators in 1971 to be punished. If war criminals could be tried 50 years after the Second World War, why cannot our country try collaborators after 25 years? (*Ibid*, pp. 49-50)

Another emphasises unrealised loyalty:

Lots of blood was shed for independence. But we didn't get the expected social environment in return. We hoped that people would be more loyal to the country, that the nation would progress. But this didn't happen. (Sharmin in *Ibid.*, p. 50)

A common theme of these women's accounts is that after 'liberation' no honour was restored to them for what they suffered. Duljan Nessa was tied up in a courtyard and raped in front of her husband: 'We did not sacrifice our honour for material gains. We sacrificed our honour for our country'. After liberation she was asked to speak publicly about what had happened and she went to Dhaka where her account was publically recorded:

After I returned from Dhaka, everyone knew about how I had been raped. We were ostracised. We were criticised for having gone to Dhaka and revealed what had happened to us. Our stories have been printed in newspapers, people said. All this has brought disgrace to the community. They said they would not give us *Eid shinni* [the exchange of gifts and food, the expression of a shared community], they would not come to our homes and we could not visit them in theirs. We could not show our faces to anyone.' (*Ibid.*, pp. 176-183)

So the image fails, the rupture to the normatively human has not been erased; the blindfold is taken off Justinia but no solace is given: ‘lots of people know about what happened to me. It’s like being raped twice. It is only fitting that I should get some justice from the government’ (Momena, in *Ibid*, p. 186).

There is deep argument over the failure to redress the wounds of 1971 and how the voices of those who were victims or who wished justice were silenced to maximise narrow political gains for the political parties in the country and not cause problems for the bigger inter-state politics of the cold war.

The inter-state narrative

‘1971 genocide is as much a tale of the state as it is of the person, and often the histories of the two do not match’ (Ahmed, 2009, p. 7).

In Westphalian modernity internationalism was Sovereigns (or their representatives) talking to other Sovereigns in the language of a reality politics of deal making (and threat of war). Thus the location of Bangladesh: the story of justice for 1971, of trials, or lack of is deeply integrated into the (inter-state) politics of the recognition of Bangladesh.

I would guarantee safety of all your military and paramilitary forces who surrender to me in Bangladesh.... I expect you to issue orders for the forces under your command to cease fighting immediately and surrender to my advancing forces where ever they are located.... (Orders of the Chief of Staff in the Indian Armed Forces, 14 December 1971)

Unlike WWII where the Allies had repeatedly referred to bringing the Nazi leadership to ‘justice’ the surrender document made no mention of anyone being called to account for the atrocities committed. Surrender resulted in around 90 thousand West Pakistani prisoners of war (POWs) held by the Joint Command of Bangladesh-India. On 29 March 1972 the Bangladeshi authorities declared that they would try around 1,100 Pakistan troops; by September some 32,000 local collaborators had been arrested on various charges. 20,000 prosecutions were planned for, while the rest would be safe due to lack of evidence.

Independent trial processes would take place for the Pakistani and local war criminals under separate laws. The Bangladesh Collaborators (Special Tribunals) Ordinance, 1972 was passed; the constitution of Bangladesh was amended to include Article 47 (3) to facilitate the trial of members ‘of any armed or defence or auxiliary forces’ for genocide, crimes against humanity or war crimes and The International Crimes (Tribunals) Act, 1973 was given Presidential assent on 19 July 1973 which provided ‘for the detention, prosecution and punishment of the persons for genocide, crimes against humanity, war crimes and other crimes under international law’, and provided for the Government setting up a special agency for investigation. High profile war criminals would be tried by a panel of national and international judges, while an all-Bangladeshi jurist panel would try the rest.⁸

⁸ I draw upon the account of Syeed Ahamed in his blog on the International Crimes Strategy Forum's Group Blog entitled ‘Trials and Errors’.

The 'Instrument of Surrender' signed on 16 December 1971, and the United Nations Resolution 307 passed on 21 December 1971, explicitly required both India and Pakistan to follow the Geneva Conventions of 1949. As Bangladesh was not a member of United Nations and was not recognized by most nations, India was held sole responsible for the safety of the Pakistani POWs, and all POWs were transferred to India within weeks.

Bangladesh requested India to hand over the accused POWs and India agreed to hand over those Pakistani POWs against whom Bangladesh could provide prima facie evidence of atrocities. At first, Bangladesh provided evidence against 150 POWs, and India agreed to hand them over; eventually, specific charges were brought against a total of 195 Pakistani soldiers.

Bangladesh now had a name and physical control of a territory but with a destroyed infrastructure and few resources; much of its police and armed forces were held in Pakistan. Only 2,848 trials were completed by October 31, 1973, with 752 local war criminals were convicted and sentenced.

The Pakistan government took a series of measures to prevent Bangladesh from trying any Pakistani soldiers, including preventing the 350-400,000 entrapped Bengalis from leaving Pakistan, keeping the Bengali officers in camps, imprisoning thousands of Bengalis without charges, and announcing a thousand rupee reward for capturing any Bengali attempting to escape from Pakistan. On August 10, 1972, Bhutto threatened to use China's veto power to stop Bangladesh from getting the UN membership if Pakistani soldiers were tried, and China actually vetoed Bangladesh's membership at the UN on August 25, 1972. On May 27, 1973, Bhutto announced that, if Bangladesh tried the Pakistani soldiers, Pakistan would also try the Bengalis in a similar tribunal for passing information during the war. Pakistan arrested around 200 senior Bengali officers for this threatened trial.

India and Pakistan (with Bangladesh's consent) signed the Delhi Agreement on 28 August 1973 to repatriate most Pakistani POWs in exchange for the release of entrapped Bengalis and repatriation of stranded Pakistanis in Bangladesh. However, the 195 Pakistani soldiers were not returned under this treaty. In 1973, Pakistan proposed that they would establish a judicial tribunal to try these 195 Pakistani officers if Bangladesh abstained from trying those POWs in Dhaka. They also kept around 200 Bengali Officers as hostages until the 195 Pakistanis were released.

An Islamic Summit was organised in Pakistan on 22-24 February 1974, with all Muslim nations inviting Bangladesh; Sheikh Mujibur (now commonly referred to as *Bangabandhu* or father of the nation) declared his intention to join the summit, but only with full Pakistani recognition, which Bhutto refused to give without the release of the 195 suspects. On 21 February the foreign ministers of 37 Muslim countries convened to solve the issue and a 7 member delegation visited Dhaka to persuade *Bangabandhu*. He was to abstain from trying the 195 Pakistanis in Dhaka in order to rescue Bengalis citizens from Pakistan, to get UN membership (which was being vetoed by China on Pakistan's behalf), and most importantly to ease the path to foreign aid and the Middle East labour market.

On 22 February 1974 Pakistan recognised Bangladesh and on 24 March it released the remaining Bengali hostages from their captivity. Finally, a tripartite agreement was signed between Bangladesh-India-Pakistan on 10

April 1974 under which the 195 were repatriated.

Trials of local criminals faced many difficulties. Although the Collaborator Ordinance cleared the way for trials, the criminal law in use required conventional evidences such as post-mortem reports that were impossible to find in a situation of disappearances, of unmarked mass graves, of bodies dumped into the river and swept out into the sea; a large number of acquittals resulted. The slow rate of trials and lack of resources meant thousands of potentially innocent people were languishing in prison. Mascarenhas (1986, p. 24-5) paints a scene with current overtones:

The main thrust of the Order was directed against Bengali politicians who had cooperated with the Pakistan authorities and the pro-Pakistan armed gangs... But it was invidious to single out the collaborating politicians for punishment when the entire civilian administration of East Pakistan had not only been immunised from retribution, but also been installed as the new administration of Bangladesh. When all is said and done these government functionaries and policemen were in a natural position to collaborate - and collaborate many of them did. Yet the Collaborators' Order, with minor exceptions, was not directed against them. At the same time the Awami League found the order a convenient instrument to pay off old scores against political opponents and to silence the opposition. At the end of November 1972 the Chief Whip of the Awami League... complained that those who were trying to oppose the party in the forthcoming general elections were the same collaborators who had sided with the Pakistani army junta

Bangabandhu announced a conditional general amnesty on 30 November 1973: for everyone except for those who were involved in rape, arson, looting or murder. Collaborators were covered by the general amnesty with a condition that if their role in murder, rape or arson is found, they would be brought to justice again.

Sheikh Mujibur and most of his immediate family (his daughter and later leader of the party Sheikh Hasina was abroad) was assassinated 15 August 1975, and afterwards the subsequent military regime repealed the Collaborator Ordinance altogether and the remaining collaborators in custody were released.

Theoretically future trials were still possible. The Tripartite Agreement stated that there was universal agreement that 'the 195 Pakistani prisoners of war should be held to account and subjected to the due process of law', however, as Article 15 says: 'having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past' the Government of Bangladesh had decided not to proceed with the trials as an act of clemency. Here the scope of clemency is clearly limited to Bangladesh's decision on not to try them on their soil. But it keeps the option open for a Pakistani or international trial of those Pakistani soldiers.

Bangladesh continued to provide evidence against and pressurise Pakistan for trials. When Pakistan's Hamoodur Rahman Commission submitted its supplementary report, it recommended that the Government of Pakistan should set up a high-powered Court or Commission of Inquiry to investigate allegations, and to hold trials; no action resulted. The Collaborator's Ordinance was repealed by the military regime of which Ziaur Rahman was the key member. However, that government (nor has any subsequent one) did not repeal Article 47(3) or the International Crimes (Tribunals) Act, 1973.

Reasserting the trials: a domestic issue or politics of a global subject?

Bangladesh has oscillated between civilian governments (led by the widow of Ziaur Rahman -who had himself been assassinated- and Sheikh Hasina, the daughter of Sheikh Mujibur) and Military or caretaker administrations backed by the military (coups, and the fear of attempted coups has been a familiar part of its institutional history). In 2008, while a Military backed Caretaker Government was in power, Sheikh Hasina as leader of the Awami League in her election manifesto committed her government to holding war crimes trials for citizens that have collaborated and who were not previously given amnesty.

Trials began in 2010 by a domestic court under the 1973 Act with amendments (individual responsibility, for example, was inserted), and soon faced allegations of bias and falling short of international standards. US Ambassador Rapp (Hunskey, 2012) convened a mini-conference which highlighted issues such as disclosure of evidence; pre-trial detention; time and facilities necessary for defence; protection of victims and witness; and the right to raise challenges. The tribunals Rule of Procedure issued in 2010 removed certain protections applicable under domestic law. Article 47(3) of the constitution was amended to exclude those accused of war crimes from some the rights and protections citizens are entitled to; the Act also enables the government to appoint the judges, prosecution and the investigators. Taken together the critics label proceedings a 'political show trial' organised by a Government to eliminate their political opponents (Cammegh, 2013).

These are certainly political trials in both a narrower and boarder sense. In the narrow sense they can be seen as opportunistically taken up by the Awami League in the hope they will be a successful vote gathering measure. In 2013, with the Government unpopular with corruption and inefficiency rife (but facing elections in December 2013), the trial serve to shifts focus away from their own weakness and displace attention onto the opposition's rather luke-warm acceptance of the trials, if not outright rejection. Cammegh (2013) argues that they are 'a selective prosecution' as the trials are only of opposition leaders in particular five of the accused belong to Jamaat-e-Islami and two from Bangladesh National Party (BNP). Echoing the 1970s, the government's response is that Jamaat as a political party collaborated with Pakistan and were Anti-liberation, while Quader Siddiqui, a well know freedom fighter, asserted the narrow focus of the trials, claiming there are collaborators in the Awami League government (Prio News, 2013).

In her classic work on political trials Judith Shklar (1964, 1986) accepts that all trials are political institutions, stating that we should always ask what political values they serve. Similarly, for Abel and Marsh 'trials derive their legitimacy (their evaluations as good or bad) from the cultural functions they serve and from the extent to which they empower or give energy to the pursuit of our goals and the preservation, promotion, and reformation of our values.' (Abel and Marsh, 1994, p 3)

Those who support the current trials locate them in a narrative originating with the IMT Nuremberg 1945 and depict them as belated recognition for a *Forgotten War: Forgotten Genocide* (Rahman and Farzana, 2001). In this narrative while the international order was happy to forget Bangladesh's pain, global conditions have changed and it is now time to reposition Bangladesh's atrocities in a developing global system of accountability. The claim, and it is a legally justifiable move, is that irrespective of the 'legal' status of the territory of 'East Pakistan/Bangladesh' in 1971 the

actions breached ‘Jus Cogens Norms’, thus the idea of a domestic tribunal trying ‘international crimes’ avoids claims of retrospective enactment.⁹

The 1945 Charter of the Military Tribunal at Nuremberg is, however, an ambiguous starting point. For while we tend to view the trials as ‘a judicial footnote to the holocaust; it stands [in our common imagination] for the condemnation and punishment of genocide, and its central achievement lies in recognising the category of crimes against humanity... for those who conceived of the trial, its greatest accomplishment was to be the criminalisation of aggressive war, inaugurating an age of world order’ (Luban, 1994, p. 336). It was intended to protect a world of nation states and preserve a new status quo against disruption; in other words to stop the ‘rebellion’ or ‘war of liberation’ that East Pakistan engaged in!

Yet as Derrida reminded us law and constitutionalism is founded on performative action. Those who face the War Crimes Tribunal cannot deconstruct the grand narrative of the founding of Bangladesh: they are the subjects of its language. Against any claim that it is a particular justice, an enclosed matter of controlled presences, the Tribunal(s) are defended in that they are domestic tribunals trying international crimes. But the enactment has subtly changed the core concept, genocide, for intent to destroy a political group is included as genocide in its definition; by contrast Article 2 of the 1948 *Genocide Convention* defines genocide as having two elements; (1) some act that promotes the destruction of a group, and (2) ‘the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such’. The actions in 1971 were designed to refute a political aspiration, what was targeted was a political movement (and almost certainly a religious group, i.e., Hindus). Article 2 of the 1948 *Genocide Convention*, does not include killing members of ‘political groups’, so the insertion into the 1973 Act on the face of it causes a tension since the events constituting the key claim in the narrative would not constitute genocide under international law. Political groups were deliberately excluded from the convention in a deal since states were uneasy with it as they were mindful that their own side could be tried for targeting their political enemies.¹⁰ However, we know this was included in Lemkin’s original formulations so the Bangladesh formulation is closer to the ‘ideal’!

⁹ For Larry May (2010) genocide is the crime of crimes and the period post WWII is one of growing recognition of international criminal law and the advent of prosecutions justified by ‘Jus Cogens Norms’. Jus Cogens norms ‘are universal norms that ground universal jurisdiction to international law’. They are laws and norms that are known to be binding throughout humanity and they give jurisdiction for international prosecution. Prior international law concerned relations between states, but now individuals take centre stage. For May the key issue is how to hold individuals accountable for ‘crimes against humanity’ and genocide ‘when their actions either must have need large scale coordination and direction, or the acts in question, such as murder, rape, and torture, look like garden-variety crimes that domestic courts have traditionally handled’ (2010: 11). Recognising and prosecuting ‘crimes against humanity’ plays off against sovereignty as prosecution may involve interfering in the affairs of an independent state and punishing the individual who has acted as an agent for that state in interfering in other states’ affairs. Thus the concept of a domestic tribunal prosecuting selected individuals for crimes that take their identity from developing international norms is problematic and fraught with difficulties but not a travesty of justice or the rule of law.

¹⁰ The International Commission of Jurists (ICJ) report on the 1971 events concluded that ‘to prevent a nation from attaining political autonomy does not constitute genocide: the intention must be to destroy in whole or in part the people as such...the intention [was not] to destroy the Bengali people.’ Nevertheless, they were of the opinion that particular acts may constitute genocide, where large numbers of people were killed and the ‘intent was to kill Bengalis indiscriminately as such’. There is a strong prima facie case where such was the intention, for example killing civilians in poorer parts of Dhaka during the ‘crack-down’ and a stronger prima facie case for killing the Hindu population and driving them out to India as refugees (Iliopoulos, 2010, as an example of contemporary accounts of specific targeting of Hindus see Schanberg, 1971).

The contemporary situation: towards a politics of collaborative enterprise?

By contrast to 1971 we are now in a new set of technologies of power and the display of law. The tribunal proceedings are open to be put online soon after proceedings are transcribed and present a ‘transparent’ face¹¹; however, attention focuses on what happened beyond this public surface and videos circulate with claims of extra judicial pressure on potential witnesses, and even disappearances of potential witnesses (‘Ever murkier’, *The Economist*, 2012). In December 2012, *The Economist* published an article ‘Discrepancy in Dhaka’ revealing leaks of 17 hours of recorded conversation and hundreds of emails exchanged between the Chairman of the Tribunal and a lawyer based in Belgium. This exposed contentious information about the fairness of the court. As a result the Chairman resigned (as of August 2013, this was being heard by the Tribunal as an action against *The Economist* for contempt of court and interference with the Judiciary).

The first verdict had sentenced Abul Kalam Azad to death in absentia; the second to be convicted (in February) was Abdul Quader Mollah, the assistant secretary general of the Muslim party, Jamaat-e-Islami who was given life imprisonment while the third to be convicted in late February was Islamist leader and cleric Delwar Hossain Sayeedi.

There was widespread dissatisfaction with the verdict of Abul Quader Mollah (who had flashed a “V” for victory sign when the life sentence was read out¹²) and a mass protest instigated by online bloggers and activists. Thousands gathered in Shahbagh square to demand the highest possible sentence, that of capital punishment, and the Shahbagh movement became a domestic and international sensation with similar protests being taken up in cities where the bengalí diaspora reside such as London and Toronto. (Hensher, 2013; *The Economist*, 2013). In the subsequent case of Sayeedi a death sentence was handed out. While there were scenes of joy in Shahbagh Square, this led to the Jamaat-e-Islami groups organising huge counter *hartels* and marches on Dhaka. A prominent blogger and protest activist was hacked to death by a group outside of his residence resulting in further protests and in escalating protest and counter protest by July estimates were of up to two hundred civilians had been killed in street protests by the police or counter groups; there were also claims of Hindu and Buddhist temples being attacked.

The protests became embroiled in claims and counter claims, of this as a paradoxical ‘watershed moment’ (Lewis, 2013), a ‘defining moment in the struggle for the soul of Bangladesh’ (Khan, 2013), that ‘the Tribunal is viewed as being a vindication of the present government’s commitment “to build a secular, democratic polity that cherishes its multi-religious, multi-ethnic and multicultural character”’ (Zamir, 2013), conversely, that ‘the call of the protestors at Shahbag is not the call of the Muslims of Bangladesh’, that it was part of a conspiracy to remove Islam from the politics of Bangladesh, that it was organised by ‘prominent atheists’ and bloggers who had insulted the Prophet (supporters of Jamaat-e-

¹¹ They are closely followed by several web sites of which the best is maintained by David Bergman at bangladeshwarcrimes.blogspot.com

¹² As elections were due in December 2013 and with the opposition BN party (aligned with the Jamaat parties) in the lead in polls, a sentence of life imprisonment may mean that he is pardoned by a new government. In late June the government announced that it intended to carry out any death sentences as soon as appeals were extinguished, probably September.

Islami deflected criticism and calls for justice by claiming that the attacks were directed at Islam itself, a common cry was that there was a global war on Islam).

For many the Shahbag movement was a new sun arising (Priyo, 2013), defined as the emergence of a new class of politically aware youth who demand justice in forms that a corrupt system cannot deliver relying on technologies that the government could not contain.¹³ But this was a social division, while the emerging middle class urban youth are in part products of lives shaped by access to information technology and social media many Bangladeshis live in villages and rural situations in which traditional cultural and religious authorities carry great weight. Facebook and Twitter face off against the lectures of the Friday Mosque.¹⁴

Concluding reflections

Bangladesh was born with violence and a devastated infrastructure, a client state of the Westphalian nomos. It has struggled since. The current trials are undoubtedly problematic but have provided a vehicle for the expression of desires and fears kept from the surface by the statistic discourse of the political elites.

The Shahbag protests – and the counter hartels – may indeed be a defining moment for (re)imagining Bangladesh. While at first asserting that they were non-political and only concerned with ensuring that the War Crimes Tribunals gave justice (banning politicians from appearing on the Square) the Shahbag protestors later gave demands to the government to arrest and charge specific individuals and ban Islamic parties from participating in elections, as well as ban financial organisations such as Islamic banks that seemed routes for unaccountable foreign money – demands which were in line with the government’s own agenda. The Government responded positively – on February 17 the ICT Act 1973 was amended to allow the prosecution of organisations as well as individuals paving the way for possible prosecution of political parties that collaborated - and announced it was seeking legislation to ban religion based politics. The claim that they were responding to a new form of democratic voice may be cynical, however, by late June the Square was again deserted. It is an emerging research agenda to understand the spontaneity of such protests and to what extent they point to new movements in an emerging postwestphalian world that gives hope for progress – a global interaction enterprise - or whether they will be manipulated by new forms of domination. Their outcomes are – in the short term at least uncertain. In August the High Court ruled that Jamaat-e-Islami could not contest the next elections as its charter put God above democratic processes. But this could push the extreme wings into greater violence and align themselves with terrorist groupings. Politically the violence has cost the Awami

¹³ Many urban youth distrust the official media seen as presenting state propaganda and censorship; most media outlets are pro-government, discussion and criticism of the government and the war crimes tribunal are not allowed in the mainstream outlets. Mahmudur Rahman (an editor of a newspaper called ‘Amer Desh’) was prosecuted for writing critically about the government; that newspaper also published many claims of alleged corruptions of the government and the Skype leaks that the Economist UK obtained.

¹⁴Tahmima Anam (*The Guardian*, 13 February 2013) claimed Shahbag was unique for Bangladesh for two reasons: one was the prevalence and visibility of women who frequently took the microphone to lead the crowd in chanting and the second was the movements use of social networking on Facebook and Twitter and dependence on the 24 hour satellite news channels (some of which were Indian) that have been covering the protest since the first day.

League for while security forces have responded to hartels and marches on Dhaka (called by Jamaat and other Islamic groups) harshly with the deaths of some, ‘the message young men took back to their villages was that thousands had been slaughtered. Across the country the effect on the government’s popularity has been devastating.’ (*The Economist*, August, 2013) The uncertainty on numbers and memory wars since 1971 continue: there is need for inspired research and writing that deconstructs and constructs a more nuanced account. Without that, whatever justice the tribunal offers will fail the aspiration for a true justice, which may in any event always be an unattainable justice fit for a Bangladesh yet to be fully imagined.

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