

# Contents

<b>1 Introduction</b> .....	1
1.1 A Moderate, Responsible Approach to History-Writing .....	5
1.2 Research Questions .....	15
1.3 Historical Narratives .....	21
1.4 Narratives Written by <i>Judges</i> of ICTs .....	25
1.5 Focus on <i>International</i> Criminal Courts and Tribunals .....	30
1.6 Overview .....	31
References .....	35
<b>2 Approaches to the History-Writing Function in International Criminal Adjudication</b> .....	41
2.1 Introduction .....	41
2.2 Theoretical Approaches to History-Writing .....	44
2.3 Restrictive Approaches .....	44
2.3.1 Strict Legality Approach .....	44
2.3.2 Incompatibility Theory .....	50
2.4 Expansive Approaches .....	53
2.4.1 Didactic Legality Approach .....	53
2.5 Moderate Approaches .....	59
2.5.1 Truth and Justice Approaches .....	59
2.5.2 Right to Truth .....	64
References .....	72
<b>3 The Individual-Centred Lens</b> .....	77
3.1 Introduction .....	78
3.2 Individual-Centred Lens .....	81
3.3 Colonial Legacies as a Counternarrative .....	90
References .....	96
<b>4 The Crime-Driven Lens</b> .....	99
4.1 Introduction .....	100

4.2	Constraints Relating to Interpretation . . . . .	101
4.3	Constraints Relating to Scope . . . . .	107
4.4	Natural Resources Crimes as a Counternarrative . . . . .	119
	References . . . . .	125
<b>5</b>	<b>The Law-Affirming Lens . . . . .</b>	<b>129</b>
5.1	Introduction . . . . .	129
5.2	The Tropes of the Law-Affirming Lens and the Colonial Period . . . . .	130
5.3	The Operation of the Law-Affirming Lens in the WWII Trials . . .	133
5.4	Law and Oppression as a Counternarrative . . . . .	136
	References . . . . .	141
<b>6</b>	<b>The Distinctive Approaches of History and Law . . . . .</b>	<b>143</b>
6.1	Introduction . . . . .	143
6.2	The Historiographical Debates . . . . .	144
6.3	Non-epistemic Policy Values in Criminal Trials . . . . .	152
6.4	Truth, Flattened . . . . .	155
6.5	Victory Over Truth . . . . .	159
6.6	Access to, and Engagement with, Evidence . . . . .	166
6.7	Closed Universes . . . . .	174
6.8	What Kinds of Narratives Do Judges of ICTs Write? . . . . .	178
	References . . . . .	184
<b>7</b>	<b>Aiming Towards Responsible History in International Criminal Adjudication . . . . .</b>	<b>191</b>
7.1	Introduction . . . . .	192
7.2	The Value of the History-Writing Function in International Criminal Adjudication . . . . .	193
7.3	Developing a Responsible History Framework . . . . .	205
7.3.1	A Recognition of the Value of the History-Writing Function in International Criminal Adjudication . . . . .	206
7.3.2	A Commitment to the Virtues of Accuracy and Sincerity in the Search for Truth . . . . .	208
7.3.3	A Recognition of the Constraints and Limitations of the Historical Narratives Written by Judges of ICTs . . . . .	231
7.3.4	A Recognition that Judges and Lawyers Do not Necessarily Have the Last Word on History . . . . .	235
	References . . . . .	238
<b>8</b>	<b>Conclusion . . . . .</b>	<b>245</b>
	References . . . . .	254
	<b>Index . . . . .</b>	<b>255</b>