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Chinese War Crimes Trials of Japanese, 1945–1956: A Historical Summary

Barak Kushner*

28.1. Introduction

As much as many who had suffered under Japanese imperial oppression might have wished, in the immediate aftermath of the Second World War, few had the ability or freedom to seek vengeance. As Marc Gallicchio explains: “Tokyo’s announced intention to surrender in August 1945 did not produce an end to hostilities in Asia. Instead it signaled the beginning of a period of transition from war to peace”.¹ The question then is how long did this transition take, who did it involve and what was at stake in the conflict? Newly energised political parties strove to move away from imperial violence and forge a new path for Sino–Japanese relations. China needed to emphasise and publicise its use of law to redress Japanese imperial wrongs as a way to demonstrate a victorious Chinese nation that deserved to be a member of the new post-war international order that formed in the wake of Japan’s downfall. China was no longer alone in the world, it was a partner of the victorious West but it had not yet necessarily earned that position in international eyes. Nor was everyone in China of the same opinion.

The thrust of this chapter centres on analysing the repercussions from the ensuing military and diplomatic manoeuvres to bring Japanese imperial behaviour to justice. Both sides, Japan and China, incorporated new strategies into their bilateral relationships following the cessation of war. I examine how the Chinese legally dealt with Japanese war crimes,

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¹ Marc Gallicchio, *The Scramble for Asia: US Military Power in the Aftermath of the Pacific War*, Rowman and Littlefield, Lanham, 2008, p. 42.

but in my larger work I also investigate the Japanese responses and how these processes shaped early Cold War Sino–Japan relations. Within this post-war surrender paradigm and fracture of the Japanese Empire, this research sits at the intersection of examining how Japanese rule was dissolved in post-war former colonies and occupied areas, the prosecution of Japanese war crimes and the dilemma of collaboration within the former empire. These problems are intimately tied together due to the transformation of post-war identity and colonial politics. In essence, this research derives from two historical reconsiderations. The first requires us to reframe Japan as a decolonising empire in a transnational context, not merely as a defeated country. The second point surrounds the shifting landscape of the concept of law in East Asia and how it sculpted relations in the region during the post-war era. International law was no longer merely the tool of the West to dominate the East. With the dawn of the United Nations (‘UN’) and a collective determination to pursue the new ideal of justice, China now had at its disposal a new set of tools to corral Japan. It was not a showdown between Japan and China, but the outcome was that for the first time both sides would look to use the vocabulary and ideas concerning international law and ideas of accountability that now seemed to permeate societies formerly at war. Ultimately, law was used to determine wartime responsibility but it was also linked with national identity. This lost narrative about efforts to adjudicate Japanese war crimes in China is a key element to understanding the full arc of post-war Sino–Japan relations. At the same time, this research exposes a critical juncture of the post-war era that can help us comprehend how contemporary China reacted towards what was then labelled its “magnanimous” policy toward the conquered Japanese.²

With such caveats in mind, I want to untangle how these issues were resolved, not only in Japan under the United States’ domain of a well-ordered and managed occupation where clear lines of command and control were drawn early on, but in the post-war chaos of China as well. We need to remember that Japan was an empire in 1945, not merely a country, and at the end of the war the important story occurred not only at the centre, on Japan’s four main home islands (and Okinawa), but at the periphery, the former imperial regions that lay outside the islands. We

² This was the “To Repay Hatred With Kindness” [以德报怨] speech that Chiang Kai-shek gave immediately after Japan’s surrender.

should conceive of Japan's imperial collapse in China as an "edge" in the way that the eminent historian of Europe, Tony Judt, employed the term. His terminology, "the edges of empire", forces us to think about Japan's colonial grasp and what it actually meant to be Taiwanese, Japanese or Chinese in an empire at that time. Although Judt was writing about Europe, his concept is useful for thinking about the Japanese situation as well. He wrote:

I prefer the edge: the place where countries, communities, allegiances, affinities, and roots bump uncomfortably up against one another – where cosmopolitanism is not so much an identity as the normal condition of life. Such places once abounded. Well into the twentieth century there were many cities comprising multiple communities and languages – often mutually antagonistic, occasionally clashing, but somehow coexisting.³

Reassessing the end of the Second World War in East Asia as a conflict that witnessed the demise of the Japanese Empire forces us to question what happened to the Japanese in post-war China and how the Chinese resolved the issue of Japanese imperial governance. Here, the notion of law was immediately important to both the Chinese and the Japanese since both sides wanted to claim equal domain over being able to implement the application of justice in their own jurisdictions. The Japanese seemingly believed that they were still in some form of managerial control over parts of China (and in fact were in many regions), while the Chinese needed to briskly establish military tribunals and courts to trumpet their own presence on the stage of international policy.

28.2. China and the Tokyo Trial

The International Military Tribunal for the Far East ('IMTFE' or 'Tokyo Trial') generated rivers of ink in the Japanese language and a few streams in the English and Chinese languages, but the history of war crimes trials in China has met mostly with academic silence until very recently. While the impact of the Tokyo Trial is still being debated, effectively the

³ Tony Judt, "Edge People", in *The New York Review of Books*, 23 February 2010; Willem van Schendel suggests that such an analysis of "fringe" areas affects the manner in which academic opinions are formed. See his article, "Geographies of Knowing, Geographies of Ignorance: Jumping Scale in Southeast Asia", in *Environment and Planning D: Society and Space*, vol. 20, no. 6, 2002, pp. 647–68.

number of Japanese it put into the dock for China-related offences remains miniscule. For all of its lofty aims, and there were many, the Tokyo Trial was fundamentally Western-oriented and centred on adjudicating the start of the war against the Western Allies with the attack on Pearl Harbor and crimes against Western soldiers in prisoner of war ('POW') camps. It is true that evidence about the Nanjing Massacre and the situation in parts of Asia was submitted, but the heart of the trial lay elsewhere. A more fitting approach to analysing the war crimes puzzle at Japan's imperial periphery requires turning our attention to the 5,700 Class B and C war criminals who were prosecuted in some 2,244 cases that were adjudicated in 49 venues throughout Asia.⁴

Within that large set of Class B and C war crimes trials, the Chinese trials of Japanese war crimes are, in the end, a microcosm of the Japanese Empire at its worst and, at best, a record of how the stated aims of the war were actually experienced at the local level. Kuomintang (Chinese Nationalist Party, 'KMT') war crimes trials of Japanese Class B and C crimes began first in April 1946 in Beijing, close to the time of the opening of proceedings against the Class A Japanese defendants in the IMTFE, and held centre stage in 10 major Chinese cities for almost three years. Although the statistics are not completely reliable, it is generally calculated that the KMT brought 883 Japanese defendants to court in 605 cases and found 355 men guilty. Only 149 men were executed and 350 men were found not guilty. The trial of General Okamura Yasuji was the last trial in January 1949. The Chinese Communist Party ('CCP') continued to pursue Japanese war crimes and held its own trials in the summer of 1956.

Consequently, the post-war Chinese adjudication of Japanese soldiers demonstrates not only how the Japanese were perceived during the imperial reign but also signifies the manner in which China – both the KMT and later the CCP – attempted to appropriate power in the aftermath of surrender.

⁴ If we count the Chinese Communist trials of Japanese war criminals that were held last, in 1956, there were 50 venues for tribunals. See one of the first mainland Chinese books to delve into war crimes beyond the Tokyo War Crimes Trial, Guo Dajun and Wu Guangyi, *Yuxue banian shufengbei: shouxiang yu shenpan* [浴血八年树丰碑: 受降与审判], Guangxi shifan daxue chubanshe, Guilin, 1994, pp. 349–83.

Regardless of the incongruity of responses to the war crimes trials between the two Chinas, one major reason these trials were really not spoken about until recently, either by the KMT or the CCP, gets to the heart of the matter concerning what happened to the rule of law in China post-1949 and in Taiwan.⁵ The problem with much of post-war Chinese jurisprudence, either within the Nationalist or Communist camps, was the lack of continuity and the fact that many of the important legal players who were involved in such trials were later purged from power or positions where they could have extended and maintained their initial work concerning the application of the rule of law. To suggest a few examples, on the Nationalist side would be the first post-war governor of Taiwan, CHEN Yi, who found himself in charge of the former colony for the precise reasons of his expertise and closeness to Japan. But later he would face the sharp end of political criticism for having supposedly been a traitor to CHIANG Kai-shek and he was executed. On the Taiwan side, with the CHEN Yi fiasco, ultimately no real legal continuity could be created and the war crimes trials were quickly submerged in a sea of indifference and ignorance. The years of harsh KMT military rule on Taiwan that followed the civil war were colloquially known as the “white terror”. YE Zaizeng, the young judge in charge of the Tani Hisao trial and several others in Nanjing, was also purged in post-war China. He had declined an invitation from his colleague SHI Meiyu, the Chief Justice of the KMT military trials in Nanjing, to flee to Taiwan with the Nationalists. Former Judge YE was arrested and imprisoned during the Cultural Revolution for four years from 1969 to 1974.⁶ No less egregiously on the Communist side, LUO Ruiqing, the head of public security who pushed along the war crimes trials of Japanese in the early 1950s, was himself caught up in a political trap not long after the trials’ closure. LUO had somehow or other irritated LIN Biao, who essentially controlled China’s military policies in the mid-1960s as the Vietnam War heated up under increasing American intervention. LUO Ruiqing quarrelled with LIN, though this might have had more to do with LIN’s chronic absences due to illness rather than strategic or ideological fissures

⁵ Neil J. Diamant, “Conspicuous Silence: Veterans and the Depoliticization of War Memory in China”, in *Modern Asian Studies*, 2011, vol. 45, no. 2, pp. 431–61.

⁶ Mei Xiaobin and Ye Shubing, *Wei zhengyi qiaoxiang fachu: shenpan riben zhanfan de junshi faguan Ye Zaizeng* [为正义敲响法槌: 审判日本战犯的军事法官叶在增], Nanjing chubanshe, Nanjing, 2007, p. 351.

between the two men. Nonetheless, from November 1965, LUO made his last public speech and thereafter dropped from public view. He was struggled against in March 1966 during the early days of the Cultural Revolution and he was soon dismissed from all posts.⁷ YANG Zhaolong, the international lawyer who helped craft China's legal framework, was also caught up in the anti-rightist movement of the late 1950s and briefly imprisoned. He was only rehabilitated decades later. If we start to line up all the important Chinese intellectuals and the other “purged” who had dealings with the Japanese war crimes trials, the lack of legal continuity within mainland China and Taiwan begins to appear less startling. The most famous, the Tokyo Trial Judge MEI Ru-ao (also spelt as Ju-ao by some authors), later followed LUO's public banishment during the Cultural Revolution.

28.3. Why Prosecute War Crimes?

At the onset of the early Cold War, the legal restructuring of East Asia and Japan's relations with its neighbours played a vital role in redressing colonial imbalances and imperial power claims to political authority. The Chinese and Japanese used the political shifts in the early Cold War to engage in new domestic and foreign propaganda to solidify support for their camps. During the late 1940s and early 1950s, new governments in East Asia shifted focus and raised the banner of “humanity and justice” as a means to fortify their own fragile legitimacy. Each nation tried to prove its level of “justness” by enacting what they deemed to be the proper and legal pursuit of Japanese war criminals in the immediate post-war period. John Ikenberry posed this as a question: “What is the glue” that holds industrialised societies and regions together?⁸ That “glue”, I argue, came in several forms – the most potent of which was the pursuit of justice through law rather than a dependence on military retribution to rectify wrongs. To pursue war crimes trials became an accepted trope in the immediate post-war period and served to help galvanise the leadership in these East Asian regions with a new sense of responsibility, but one tied

⁷ Harry Harding, “The Chinese State in Crisis, 1966–9”, in Roderick MacFarquhar (ed.), *The Politics of China, 1949–1989*, Cambridge University Press, Cambridge, 1993, pp. 163–65.

⁸ G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order After Major Wars*, Princeton University Press, Princeton, NJ, 2001, p. xii.

to laws that would sweep away vestiges of Japan's imperial management while setting the stage for post-war peace.

Legal questions concerning jurisdiction, international law and the nature of colonial responsibility still weigh heavily today within the historical legacy of Japanese imperialism. At the ground level, who exactly was responsible for Japan's war in Asia? In Nanjing, Chinese joined the prominent KMT leader WANG Jingwei's conciliatory government. Aborigines and Taiwanese served as soldiers for the Japanese imperial forces and guarded Allied POWs throughout the empire. Given the ambiguity of imperial guilt, in many circumstances it was often unclear precisely how post-war punishment and mercy should have been meted out. Those who previously lived in Manchukuo (Japan's puppet kingdom in northern China) and collaborators were difficult enough case studies due to the Chinese penchant for legally distinguishing between Japanese war crimes and Chinese treason. Taiwan was even more complex, unlike Korea or northern China, because even at the point of surrender, the Japanese had not really worn out their welcome as colonial overseers.⁹ Because the island was on the periphery of the newly established geographic borders of Chinese Nationalist rule after 1945, Taiwan was at first not even a priority for Chinese political management or military administration, and would not become so until a few years into the Cold War. As Ruti Teitel explains, the Nuremberg and Tokyo Trials were venues where state crimes were whittled down and adjudicated in singular cases; the aim was to charge individuals with a failure to effectively command their troops in the case of military leaders or failure to curtail their military in the case of civilian defendants. This is why the nationality of the defendant was such a key issue. However, the entire selection process for defendants was not exactly neutral. Teitel states: "As a practical matter, it would seem that some selectivity is inevitable given the large numbers generally implicated in modern state prosecution, scarcity of judicial resources in transitional societies, and the high political and other costs of successor trials. Given these constraints, selective or exemplary trials, it would seem, can advance a sense of justice".¹⁰

⁹ Tzeng Shih-jung documents these changes in Taiwanese perceptions about themselves in *From Honto Jin to Bensheng Ren: The Origin and Development of the Taiwanese National Consciousness*, University Press of America, Lanham, 2009.

¹⁰ Ruti G. Teitel, *Transitional Justice*, Oxford University Press, Oxford, 2000, p. 40.

The current wave of historical study tends to examine memory and its interaction with history, but we have failed to notice deep in the background the larger role the courts and the media of the time exerted in moulding this memory into firmer public opinion. Part of the reason for this neglect is that scholarship has needed to unearth the details and horror of the Japanese imperial atrocities first and has had less time to engage the process through which legal responsibility was pursued for all but the most tragic events. However, memory gives birth to emotional history – it tends toward personal recollection. Legal judgments, on the other hand, are a form of public memory that create *precedents* on which foreign policy and future strategy are built. Gerry Simpson notes that the reason war crimes trials are history and yet transcend it is because “[t]he trial confines a historical moment in its abnormality but wishes to make it less universal and atemporal”.¹¹ This is particularly so in the Chinese case. National memory is personal and domestic while legal opinions are public, publicised and, more importantly, strive to be international. Legal proceedings are an attempt to balance personal experiences and biases with an accepted standard of norms which will, if followed correctly, allow the nation to join an international brotherhood of like-minded states that base their societies on the twin pillars of truth and justice. In addition to this, we must mix in what Marianne Hirsch has labelled as “post-memory”, which “describes the relationship that the generation after those who witnessed cultural or collective trauma bears to the experiences of those who came before, experiences that they ‘remember’ only by means of the stories, images and behaviours among which they grew up. These experiences were transmitted to them so deeply and affectively as to *seem* to constitute memories in their own right”.¹² I aver that these Class B and C trials, the act of bringing war criminals to justice, codified a certain form of Sino–Japanese history. Marc Galanter urges that such trials and ideas shape how we see history because we want to “undo the injustice of

¹¹ Gerry Simpson, “War Crimes: A Critical Introduction”, in Timothy L.H. McCormack and Gerry J. Simpson (eds.), *The Law of War Crimes: National and International Approaches*, Kluwer Law International, The Hague, 1997, p. 21.

¹² Marianne Hirsch, “The Generation of Postmemory”, in *Poetics Today*, 2008, vol. 29, no. 1, pp. 106–7 (emphasis in the original).

history” and “attempt to make history yield up a morally satisfying result that it did not the first time around”.¹³

The issue of adjudicating legal responsibility for war crimes and collaboration became a struggle for legitimacy between the Chinese Nationalists and the Communists. The CCP touched on the idea of benevolence, as CHIANG Kai-shek had, but pushed harder on the issue of pursuing war criminals. In part, this was a calculated political move to show the Chinese populace that the CCP believed the KMT was reneging on its pledge to arrest Japanese war criminals, but it was also a move to force the matter more into the media spotlight. Contestation over the administration of post-war China and Taiwan remained a pitched battle between two main competitors – the KMT and the CCP – and sometimes the remaining Japanese. The KMT initially dragged its feet in looking at war crimes trials but faced the issue of traitors (*hanjian* [汉奸] in Chinese and *kankan* [漢奸] in the Japanese language) immediately. This was not just a major dilemma within the areas formerly occupied by Japan but a complex task in the relatively freer sections of the mainland where relations with the Japanese were often multilayered.¹⁴

The practical matter of assuming dominant power in formerly occupied China was the KMT’s priority, not necessarily the stern prosecution of Japan’s imperial misdeeds. One reason why Chinese war crimes trials did not mete out justice as harshly to the Japanese as they did to their own was because the Chinese Civil War distracted KMT efforts. Another major rationale was enmeshed within CHIANG Kai-shek’s policy that promoted dealing with the Japanese aggressors in a unique fashion. CHIANG expressly announced this policy of *yi de bao yuan* (以德报怨), “to repay hatred with kindness” on the day of Japan’s surrender. The Chinese generalissimo broadcast a radio message to the nation clearly enunciating that China held the “Japanese military clique as the enemy and not the Japanese people. We want to hold them responsible but do not

¹³ Marc Galanter, “Right Old Wrongs”, in Martha Minow (ed.), *Break the Cycle of Hatred, Memory, Law and Repair*, Princeton University Press, Princeton, NJ, 2002, p. 122.

¹⁴ The wartime Japanese government was already aware of the endless Chinese debates concerning the legal definition of traitor. *Shanghai jimusho chōsashitsu*, Mantetsu (ed.), *Jūkei seiken no keiji hōki tokuni kankan ni taisuru seisai ni tsuite* [重慶政權ノ刑事法規特に漢奸ニ對スル制裁ニ就テ], Mantetsu Shanhai Jimusho Cho sashitsu, Shanghai, 1941.

want to seek revenge on the innocent, nor add to their suffering”.¹⁵ The next day, an editorial in Chungking’s (Chongqing) newspaper, *Zhongyang Ribao* (中央日報, *Central Daily News*), glossed the same message and editorialised that keeping the peace after the war was a difficult undertaking. The paper postulated that if China were too harsh with the defeated Japanese post-war, the relationship could descend into a more hateful scenario. Should they be too lenient, however, the newspaper theorised that China risked assisting the Japanese “to once again rally to their fantasies” of imperial domination. The editorial drove home the message that it was necessary to destroy Japan’s machines of war and lead the defeated nation on the road toward democracy. “We have achieved peace, now we have to complete the process”, the article concluded in a voice of hope.¹⁶ This was a brave move given the lingering Japanese mood on the Chinese mainland. An Allied investigation team polled the Japanese who remained in Beijing in December 1945 concerning their thoughts on the war, East Asia and Japan. A clear majority of the respondents still believed that Korea was not mature enough to be independent and that Taiwan should not be returned to China. Even more telling was that an overwhelming percentage believed that Japanese were superior beings in East Asia and that if China had truly understood Japan’s aims Japan would have won the war.¹⁷ Japanese

¹⁵ Tian Huan (ed.), *Zhanhou zhongri guanxi wenxianji, 1945–1970* [战后中日关系文献集, Collected Documents on Postwar Sino–Japanese Relations, 1945–1970], Zhonguo shehui kexue chubanshe [中国社会科学出版社, China Social Sciences Publishing House], Beijing, 1996, p. 10. See also Qin Xiaoyi (ed.), *Zhonghua minguo zhongyao shiliao chubian: Dui ri kangzhan shiqi*, di 7 bian, *Zhanhou zhonguo*, vol. 4 [中華民國重要史料初編—對日抗戰時期, 第七編: 戰後中國, 第4冊, Initial Compilation of Important Historical Documents on the Republic of China: Sino-Japan War Period, Series 7: China after the War, Book 4] Dangshi weiyuanhui [黨史委員會, Committee on Party History], Taipei, 1981, pp. 633–35. The speech in which this phrase was employed was translated into the Japanese language two years and published in Japan. Shō Kaiseki, *Bō o motte bō ni mukuyuru nakare: kakumeika enzetsushū* [暴を以て暴に報ゆる勿れ], trans. by Yamada Reizō, Hakuyōsha, 1947, pp. 3–8. The Chinese were not the only ones to cut short pursuit of Japanese war crimes. See also John Pritchard, “The Gift of Clemency Following British War Crimes Trials in the Far East, 1946–1948”, in *Criminal Law Forum*, vol. 7, no. 1, 1996, pp. 15–50.

¹⁶ *Zhongyang Ribao* (中央日報, *Central Daily News*), Chungking, 16 August 1945, reprinted in Tian, 1996, pp. 11–12, see *supra* note 15.

¹⁷ Yoshida Yutaka, *Nihonjin no sensōkan: sengoshi no naka no henyō* [日本人の戦争観: 戦後史のなかの変容], Iwanami shoten, 2005, p. 57; and Aaron William Moore, *Writing War: Soldiers Record the Japanese Empire*, Harvard University Press, Cambridge, MA, 2013, pp.

wartime propaganda had shaped a sturdy mindset that was not going to deflate overnight, regardless of the empire's collapse.

The CCP was quickly at the heels of both the KMT and the Americans for what they assessed to be the slow delivery of suspected Japanese war criminals to court. A Communist Party press conference was published on 15 December 1945 under the title, “Punish Japanese War Criminals”, in *Jiefang Ribao*, (解放日报, *Liberation Daily*). WU Yuzhang, head of the Chinese Liberated Areas Investigation Committee on War Crimes, complained that already three months had passed after the war had ended and the US had occupied Japan. The Supreme Commander of the Allied Powers, General Douglas MacArthur, had put out arrest warrants for the former Japanese Prime Minister, Konoe Fumimaro, and some other lesser war criminals, but only slightly more than 300 people in total. The subtext of the media event was to proclaim that given the damage caused by Japan in China “this is an infinitesimally small figure” of arrested war criminals, the CCP complained.¹⁸ The Communist leadership aimed to promote the message that, “[i]n order to make sure that Japan does not retain reservoirs of militarism the Potsdam articles of surrender need to be more effectively executed [...]”.¹⁹ CCP officials wished to convince the Chinese population that in liberated areas, it was the Communists and not the Nationalists that pursued exactly the sort of justice that was lagging in occupied Japan.

28.4. KMT Legal Manoeuvrings

The varied Chinese attempts to pursue Japanese war crimes in the early post-war period did not occur in a vacuum but against the background of a diverse and cacophonous national and international debate about who owned the correct means to legally detain and try the Japanese. Moreover, as China had already experienced legal and political isolation during the previous century (including submitting to extraterritoriality), leaders on

248–49. See also Awaya Kentarô (ed.), *Shiryô nihon gendaishi*, vol. 3, *Haisen chokugo no seiji to shakai*, series 2 [資料日本現代史 3, 敗戦直後の政治と社会 2], Ôtsuki shoten, 1981, pp. 352–83.

¹⁸ Wu Yuzhang, *Wu Yuzhang wenji* [吴玉章文集], *The Collected Works of Wu Yuzhang*, Chongqing chubanshe, Chongqing, 1987, pp. 275–76. Konoe committed suicide after receiving the news of his arrest warrant.

¹⁹ *Ibid.*, p. 276.

all sides recognised that the pursuit needed to be conducted in concert with other like-minded nations. In China, as imperial Japanese power dissipated, Class B and C war crimes trials took up a larger portion of official and civilian attention as manifestations of the KMT leader CHIANG Kai-shek's and the CCP Chairman MAO Zedong's legal and moral magnanimity. These were shrewd political gambles but the rules of the game and the legal parameters behind such moves were not always known to all the players.²⁰

Virtually coterminous with Chinese participation in European deliberations on war crimes, Chinese legal representatives faced the glare of the spotlight at the IMTFE. The history of the Chinese experience at the Tokyo Trial, directly connected to the evolution of Class B and C war crimes trials in China, is significant for two reasons. First, the Tokyo Trial proved to the Chinese that war crimes trials were not merely show trials and that the legal issues at stake were being taken seriously by the international community. The Tokyo Trial served as a steep learning curve for the Chinese interested in pursuing international justice for Japanese war criminals and as a sort of template for their Class B and C war crimes trials. As Ni Zhengyu, the chief adviser for Chinese prosecutors at the Tokyo Trial explained in his memoirs as a judge and lawyer in pre-war and immediate post-war China, Chinese officials were wholly unprepared for the sort of jurisprudence the Tokyo Trial advocated. Ni had been out of China from 1945 to 1946 in the US and Britain to observe their legal systems and to draw up reports, arranging for China's re-entry into the international juridical system but also to prepare for the nation's pursuit and successful adjudication of Chinese justice for Japanese war criminals. Unfortunately, as Ni described the situation: "We were hoping for calm times but the wind never ceased blowing". He meant essentially that while the Chinese estimated the post-war pursuit of war crimes as a *fait accompli*, circumstances did not allow for the easy implementation of such a process.²¹ The situation was thus:

²⁰ For the Chinese view of Japan during the occupation, see Adam Cathcart, "Chinese Nationalism in the Shadow of Japan, 1945–1950", Ph.D. Dissertation: Ohio University, 2005.

²¹ Ni Zhengyu, "Ni Zhengyu huiyilu, danbo conrong li haiya" [倪征燠回忆录——淡泊从容莅海牙, Memoirs of Ni Zhengyu: Arriving in the Hague with a Peaceful Mind], in Yang Xiawu (ed.), *Nanjing datusha shiliaoji*, vol. 7, Dongjing shenpan [南京大屠杀史料集, 第7卷, 东京审判] Collections of Historical Documents on the Nanking Massacre, vol. 7,

NI returned in the early winter of 1946 to China from his excursion at the moment when the Chinese prosecution team realised that its experience with the rules for admittance of evidence in the Chinese system were fairly incompatible with the more prevalent American and British systems of law that would be in use at the Tokyo Trial. The Chinese staff were surprised at the robust system of defence to be employed at the trial.²²

The real issue vexing the Chinese team at the Tokyo Trial, the lawyers recalled, was that they had mistakenly assumed from the outset that the trial would merely be the victor's prosecution of Japanese war criminals and not a "real trial" so they really had not prepared quality evidence or given too much thought to its provenance or collection. As such, in the initial months the Allied defence lawyers made mincemeat of much of the evidence proposed by the Chinese side.²³ The defence's ability to poke holes in the Chinese prosecution's case was particularly damaging to the Chinese side when the Vice-Director for the Political Section of the KMT military, QIN Dechun, took the stand and was virtually laughed off for his hyperbolic statements that the Japanese killed Chinese and committed arson everywhere without leaving one place untouched.²⁴ QIN was the KMT head of the War Crimes Investigation Committee, established within the Ministry of Defence. He had met with MacArthur at least three times while in Tokyo but was caught off guard by the fierce questions concerning his supposed exaggerated testimony in court. When NI Zhengyu first went to see QIN Dechun back in China to talk about the legal whipping they had taken at the Tokyo Trial, QIN did not refrain from venting his frustration. "What part of that trial was us adjudicating them, it seemed more of a case where they put us on trial", he admitted to NI.²⁵ In his own memoirs, published years later, QIN does not remember it in the same manner but he did concede that his days of testimony in Tokyo were difficult and that he spent his nights worrying and preparing for the next day.²⁶ Chinese officials grossly miscalculated

Tokyo Trials], Jiangsu renmin chubanshe [江苏人民出版社, Jiangsu People's Publishing House], Nanjing, 2005, p. 642.

²² *Ibid.*, p. 643.

²³ *Ibid.*

²⁴ *Ibid.*, p. 644.

²⁵ *Ibid.*, p. 645.

²⁶ Qin Dechun, *Qin Dechun huiyilu* [秦德純回憶錄], Zhuanji wenxue chubanshe, Taipei, 1967, pp. 58–62.

what sort of process the Tokyo Trial would be and needed to regroup so as not to be caught behind. Prosecutor XIANG Zhejun and his team took advantage of the fact that the trial was still in its beginning stages and returned home to reorient, leaving the prosecution in US hands for the start of the trial. In their private conversations, QIN admitted to NI that no one had thought during the actual war of resistance to retain proof or think of collecting trial evidence so it was going to require redoubled efforts to collect after the fact.

There were several major issues impinging on war crimes trials in China: the ethno-political identity of those liable to be charged with war crimes and the availability of testimony with a viable court system in which to prosecute. Then there was the question of collaboration. The Nationalists needed to determine who was legally defined as a Japanese or a Chinese because this affected the manner in which the individual would or would not be prosecuted. Not only did the KMT have to delineate a policy regarding treatment for Taiwanese, particularly concerning collaboration, but lists also needed to be drawn up for the Japanese war criminals, many of whom had often already returned or even demobilised back to Japan years before the end of the war. Thus, before Chinese trials could even begin, officials needed the acquiescence and assistance of the occupying Americans to arrest and return suspected Japanese war criminals back to China. A further mitigating factor was the manner in which the Japanese responded to the end of the war in China and Taiwan; after all, at the dawn of surrender, there were still millions of armed Imperial soldiers (not to mention civilians) dotting the landscape and not all were pleased to lay down their arms or repatriate.

28.5. Ever-changing War Crimes Policies

On 6 November 1945 the KMT nominated QIN Dechun as head of the Committee to Deal with War Crimes. The following month the committee established offices in Shanghai, Nanjing, Beijing, Hankou, Guangzhou, Shenyang, Xuzhou, Jinan, Taiyuan and Taipei (Taipei) – a total of 10 venues where Chinese military courts for adjudication of war crimes were established. The KMT employed the legal precedents that grew from the start of the Tokyo War Crimes Trial, with a combination of the overriding concepts of international law, the Hague Convention on the Rules of Military Engagement, and added in its own domestic formulation of law

to prosecute Japanese war crimes.²⁷ The KMT defined surrendering Japanese soldiers not as POWs (*fulu*, 俘虏) but rather *tushou guanbing* (徒手官兵), a newly coined term that defined them literally as “bare-handed soldiers”, rendering them almost into bureaucratic cadres. The idea was that they were legally considered not to possess firearms. This KMT rhetorical flourish allowed Japanese soldiers in certain areas to retain their small arms and not be forced to hand over all weapons. The Japanese Army’s High Command in China was renamed as a “liaison group” to allow it to continue to function in a very different way from its original intent, while retaining its administrative talons. Chinese legal authorities continued to adapt processes even as the courts were dealing with cases. On 12 June 1946 the Committee to Deal with War Crimes decided that Japanese war criminals arrested and detained in China by the US, including US criminals, would have to be adjudicated along coordinated transactions with the Chinese Foreign Ministry and receive advance authorisation. This became practice from July so that Chinese local authorities could no longer just hand over war criminals to the US and wash their hands of the process to mete out justice. This had seemingly been the case with the actual first Allied war crimes trials in China, which the US had implemented in Shanghai. Part of the reason for these brisk American trials of Japanese and other former Axis Power alleged war criminals was that, according to the Chinese interpretation, the US President Franklin D. Roosevelt had declared that trials of war criminals should take place within the country where the crimes were committed and conducted by that country. In this vein, the US move to try its criminals in China was not in accord with the spirit of that deliberation. A memo of record from the American Embassy and the Chinese translation from a meeting on this issue, presumably from 19 August 1946, was polite but firm in its denunciation of the Chinese legal system. “[A]lthough Headquarters of the United States Army forces had every desire to cooperate with the civilian departments of the Chinese government, it is a fact that agreements in regard to war criminals of enemy nationality were reached at Chungking with appropriate Chinese military officials, concurred in by the representatives of several non-

²⁷ Mei and Ye, 2007, p. 101, see *supra* note 6.

military Chinese ministries who formed the Chinese-American Committee”.²⁸

28.6. CCP War Crimes Trials

Unlike the KMT’s goal of merely seeking justice, Communist China’s aim for its Japanese prisoners, in the words of the prisoners, Chinese guards and Beijing bureaucrats, was to make war criminals reflect on their crimes and to turn them from “devils back into men”. Very rarely in the KMT special military tribunals or Class B and C trials in other venues did Japanese soldiers admit their crimes, but in the 1956 CCP trials amazingly every single Japanese prisoner did.

The Nobel laureate Amartya Sen opined that there are two ways to pursue justice – the “arrangement focused view” and the “realization-focused understanding” process of justice. The first method centres on the establishment and creation of a bureaucracy that can operate the mechanical structure for achieving justice. This is the “active presence that justice is being done”, regardless if such a complex system actually achieves that goal. This sort of structure more closely followed the goals of what the Chinese Nationalists hoped to achieve. The “realization-focused understanding” process of justice was more the aim of the Chinese Communists who looked at the actual fruit legal institutions bore and whether justice as a palpable end had been achieved.²⁹ Nancy Rosenblum suggests that herein lies the gap between procedural and substantive justice. Substantive justice informs us about the actual harm caused, but the key point in Rosenblum’s analysis is that the international prosecution of war crimes stems from the growth of the idea of a “universal jurisdiction”. If we extrapolate in China’s case, the goal was justice and the audience for the prosecution and subsequent punishment was the “world community”.³⁰ The internationality of the law was not only in its application but also in its reception.

²⁸ I am assuming this is the Yalta Conference of February 1945 that was referenced but it was not specifically stated in the record. Quanzonghao 18, Anjuanhao 2278, “Guanyu meiguojun zaihua dibu yindu ji shenpan zhanfan de anjian”, Number Two Archives, Nanjing, China.

²⁹ Amartya Sen, *The Idea of Justice*, Allen Lane, London, 2009, p. 10.

³⁰ Nancy Rosenblum, “Justice and Experience of Injustice”, in Martha Minow (ed.), *Break the Cycle of Hatred, Memory, Law and Repair*, Princeton University Press, Princeton, NJ, 2002, p. 88.

The trials of Japanese war criminals held in the People’s Republic of China (‘PRC’) in 1956 were an entirely different affair from the sorts of trials the Chinese Nationalists and other Allies produced. First, the CCP had access to few Japanese war criminals they had arrested on their own. They began their pursuit with the 140 or so the CCP had taken prisoner in 1949 when the capital of Shanxi province, Taiyuan, fell to the People’s Liberation Army at the end of the civil war. These soldiers were the ones whom the KMT had hired and who had “volunteered” under the Japanese General Sumita Raishirô, former imperial Japanese soldiers fighting alongside their Nationalist brethren against the Communist threat. Several hundreds more of these men were also captured and not incarcerated in Taiyuan, but Xiling, just east over the prefectural border in Hebei Province. Most of these soldiers, like their commander Sumita, managed to escape arrest on the eve of defeat in the Chinese Civil War but many were not so lucky.³¹ The vast majority of the Japanese defendants in the CCP trials were actually transferred from Soviet custody in the summer of 1950 in an exchange. The CCP sponsored official trials in the cities of Taiyuan (Shanxi Province) and Shenyang (Liaoning Province) but many other unofficial “people’s trials” in former Manchuria and the surrounding areas resulted in summary executions of Japanese soldiers and civilians. Various estimates place the number at possibly 3,500 individuals who met such a fate but since records are rare or not available it is difficult to state with any certainty.³²

28.7. What Kind of Trials?

Suzuki Hiraku had never been an ideal Japanese prisoner of the Chinese Communists, but he had studied and pondered his crimes over many years of incarceration and eventually recanted in open court. His expression of contrition is emblematic of CCP results. “Over these last years I have thought about my crimes and they are just as expressed by the

³¹ There is also a whole other subset of related POWs who were tried, namely Chinese officials who collaborated with the Japanese and KMT soldiers who were captured during the Civil War. My research here only focuses on the Japanese interaction with the CCP even though the KMT should not be forgotten since it is clearly linked.

³² Handô Kazutoshi *et al.*, *BCKyû saiban o yomu* [BC 級裁判を読む], Nihon keizai shimbun shuppansha, Tokyo, 2010, pp. 24–25; Iwakawa Takashi, *Kotô no tsuchi to narutomo: BCKyû senpan saiban* [孤島の土となるとも: BC 級戦犯裁判], Kôdansha, Tokyo, 1995, pp. 544–47.

prosecution. I have killed many Chinese innocent civilians, burned homes, stolen much food and goods, and executed the ‘three alls’ policy. These are all things for which there is no way to express remorse”, Suzuki admitted. “I have committed such serious crimes that I deserve punishment but over these six years under the gracious benevolence of the Chinese people I have earned a chance to reflect on my actions”, he explained. In his personal testimony in front of the judges, Suzuki experienced a sort of epiphany, albeit one that had been written about and practised during the long years of incarceration. It might have been staged, but based on similar testimony after these men were released and their activities once repatriated in Japan, their zeal and emotion in their conversion from imperial aggressor to contrite war criminal is difficult to refute. “Who saved my life and protected me, that is to say who kept me healthy and alive after the war? It is the very same people that I murdered without reason, those whose very peaceful lives I destroyed, the very same ones who were harmed by me. When I consider what I have done it is almost unbearable and my heart feels as if it’s about to break”, he cried. The transcript then notes that Suzuki, a former Japanese imperial officer who fully believed in his mission during the war, began to weep in open court.³³

The story of where the CCP retained Japanese war criminals from and an analysis of their trials and history reveals a hitherto unrecognised aspect of early Cold War CCP foreign policy in general and specifically toward Japan. Japan formalised a peace treaty with the Chinese Nationalists on Taiwan but excluded Mainland China with whom it had no formal diplomatic relations until the 1970s. The fact that Communist China expended precious financial resources and time on treating Japanese war criminals well, while the nation dispatched virtually one million of its best and brightest young soldiers to the frontlines of Korea to fight the Americans and other Allies during the Korean War, is testimony to the importance of this policy. As Ôsawa Takeshi has noted, in comparison to the Tokyo War Crimes Trial and even the trials the KMT pursued against post-war Japanese war criminals, the CCP’s trials were the epitome of magnanimity. A majority of the Japanese detainees

³³ Wang Zhanping (ed.), *Zhengyi de shenpan: zuigao renmin fayuan tebie junshi fating shenpan riben zhanfan jishi* [正义的审判：最高人民法院特别军事法庭审判日本战犯纪实], Renmin fayuan chubanshe, Beijing, 1991, p. 486

were released from prison and no executions were ever held.³⁴ We could simplistically say that such benevolence was available because most of these Japanese soldiers had already been imprisoned for ten years in the Soviet Union but that avoids the Chinese decision-making process that ushered them to their final destination.

For the CCP, the goal was twofold. First, to testify to the world about Japanese aggressive war tactics and atrocities through the trials. Second, but no less important, to keep the Japanese prisoners in detention poised to “convert”. By re-educating the “Japanese devils”, who had managed a rapacious empire, and having them publicly admit their crimes, the CCP had them profess an understanding and ask for forgiveness. This policy was a qualitative ingredient of the Communist idea of justice. These aims were obviously quite separate from Allied and KMT legal requirements but very important to the new socialist PRC state. Western and KMT legal trials were mainly interested in convictions; Communist leaders ultimately remained focused on reformation. Such schemes had already started 20 years prior with the CCP plans for Japanese POWs in its policies to treat the Japanese well.³⁵ But even with such precedents, at the outset the CCP was divided in the path it wished to pursue. Premier ZHOU Enlai had initially stated that trials of Japanese war criminals did not belong to the realm of international law but rather military tribunals within China. This was because the PRC did not have a treaty with Japan, no diplomatic relations, and was thus still in a state of war.³⁶

³⁴ Ôsawa Takeshi, “Maboroshi no nihonjin ‘senpan’ shakuhô keikaku to Shû Onlai”, in *Chûgoku kenkyû geppô* [中国研究月報], June 2007, p. 1; and Ôsawa Takeshi, “Chûka jinmin kyôwakoku no nihonjin senpan shori – sabakareta teikoku”, in Masuda Hiroshi (ed.), *Dainihon teikou no hôkai to hikiage fukuin* [大日本帝国の崩壊と引揚・復員], Keiô gijiku daigaku shuppansha, 2012, pp. 109–38.

³⁵ For more on the CCP trials, see Adam Cathcart and Patricia Nash, “War Criminals and the Road to Sino–Japanese Normalization: Zhou Enlai and the Shenyang Trials, 1954–1956”, in *Twentieth Century China*, vol. 34, no. 2, April 2009, pp. 89–111. For details on how important Japan was to the post-war CCP message of revolution, see Çağdaş Üngör, “Reaching the Distant Comrade: Chinese Communist Propaganda Abroad (1949–1976)”, Ph.D. Dissertation, State University of New York at Binghamton, 2009. See also Toyoda Masayuki, “Chûgoku no tainichi senpan shori seisaku – genzaishugi kara ‘kandai’ e”, in *Shien* [史苑], vol. 69, no. 181, 2009, pp. 15–44.

³⁶ Arai Toshio, “Chûgoku no senpan seisaku to wa nan datta no ka”, in *Chûkiren* [中帰連], September 2000, p. 19.

There were actually three separate collections of Japanese war criminals in Communist China: those kept in Taiyuan, Shanxi Province; Xiling, Hebei Province; and Fushun, Liaoning Province. Those in Taiyuan were mainly remnants of Japanese soldiers who stayed on after 1945 but were taken prisoner when the province fell to the Communists, as were those soldiers in Xiling. The Fushun prison primarily housed Japanese who were “gifted” to China from the Soviet Union. In July 1950 the Soviets gave China 969 Japanese POWs to judge. In total, there were therefore close to 1,109 POWs in CCP custody by the early 1950s. Forty-seven died in custody so at the start of trials that meant approximately 1,062 were alive. Chinese sources sometimes have slightly different numbers but essentially the numbers break down to a bit more than 1,000 men. Most of the Fushun POWs were connected to the management of the former Manchukuo empire but there were some who had managed Mongolian relations as well. This selection suggests that the Soviet Union did not just randomly hand over a large number for the Chinese to adjudicate but, rather, chose carefully from among the ruling imperial class so that the new China could demonstrate its grasp of international law and show how it was now the authority over the Manchurian region. Among the POWs were former Manchukuo legislative and judicial staff, military men, policemen, South Manchurian Railway police, Japanese military police and affiliated staff.³⁷ The majority of these men were eventually released after their lengthy incarcerations as a demonstration of Chinese goodwill. The first lot, about 419 prisoners, was released from Xiling in August 1954. Then several times in 1956 other groups of POWs, mostly military, were released from Fushun prison and Taiyuan. Only 45 Japanese prisoners were put on trial and given longer sentences that kept them imprisoned in China, for some as late as 1964.³⁸

Even though far fewer former Japanese soldiers and statesmen were charged and tried by the CCP, the legacy of treatment effected the biggest change on post-war Japanese society and yielded more influence than the

³⁷ Chinese sources put the total at 1,069, Yuan Shaoying and Yang Guizhen (eds.), [从人到鬼, 从鬼到人: 日本“中国归还者联络会”研究], Shehui kexue wenxian chubanshe, Beijing, 2002, pp. 13–14; Tao Siju (ed.), *Xin zhongguo di yiren gongan buzhang Luo Ruiqing* [新中国第一任公安部长罗瑞卿], Qunzhong chubanshe, Beijing, 1996, p. 117.

³⁸ For a full list of the defendants’ names and sentences, see Arai Toshio and Fujiwara Akira (eds.), *Shinryaku no shōgen: Chūgoku ni okeru nihonjin senpan jihitsu kyōjutsusho* [侵略の証言—中国における日本人戦犯自筆供述書], Iwanami shoten, Tokyo, 1998, p. 278.

greater number of soldiers who had been involved in the KMT trials from 1946 to 1949, or arguably any other Class B and C war crimes tribunal. Once they returned home, Japanese who had been incarcerated by the CCP formed a lobby and education group called the Liaison Group of Returnees from China (Chugoku kikansha renrakukai, or Chûkiren for short) that took to publishing an account of Japan's atrocities before most other academic or civilian associations had even broached the topic in print.³⁹ Their diaries and memoirs form part of this chapter. In addition, there are a few Chinese memoirs that add to this picture, particularly those of the former warden in charge of education at the Fushun Correctional Facility, JIN Yuan.⁴⁰

Such was the impact of Communist re-education that in 1984 JIN Yuan travelled a second time to Japan at the behest of an invitation from his former prisoners. The Liaison Group of Returnees from China also donated to Fushun Prison a “memorial stele of apology” because they saw Communist China as the site of their psychological and physical rebirth. On 22 October 1988 the surviving members dedicated the monument and the inscription is the clearest and least vague of all concerning Japanese military action and goals during its 15-year war:

During the 15-year Japanese imperial war of aggression in China, we committed heinous crimes of arson, murder, and robbery. After the defeat, in Fushun and Taiyuan correctional facilities we received the Chinese communist

³⁹ This is now reprinted in expanded and revised form, Chûgoku kikansha renrakukai (ed.), *Kanzenban Sankô* [完全版三光, The Three Alls: A Complete Collection], Banseisha, Tokyo, 1984. The full history of the Chûkiren group, their trial experiences and activities in Japan to promote peace with China and educate subsequent generations about their war crimes has been written up in their edited volume, Chûgoku kikansha renrakukai (ed.), *Kaette kita senpantachi no kôhansei: Chûgoku kikansha renrakukai no 40nen* [帰ってきた戦犯たちの後半生—中国帰還者連絡会の四〇年], Shinpû shobô, Osaka, 1996. Some individual former prisoners took to publisher their accounts even more rapidly. See Hirano Reiji, *Ningen kaizô, watashi wa chûgoku no senpan de atta* [人間改造—私は中国の戦犯であった], Sanichi shobô, Kyoto, 1956.

⁴⁰ During his time with the Japanese prisoners Jin Yuan was assistant and then education director. Following their release he continued to work at the prison until 1978, rising through the ranks and ultimately to the position of warden of the prison, Fushun shi zhengxie wenshi weiyuanhui (ed.), *Weiman huangdi Puyi ji riben zhanfan gaizao jishi* [伪满皇帝溥仪暨日本战犯改造纪实], Zhongguo wenshi chubanshe, Beijing, 1990, p. 1. See also Liu Jiachang and Tie Han, *Ri wei Jiang zhanfan gaizao jishi* [日伪蒋战犯改造纪实], Chunfeng wenyi chubanshe, Shenyang, 1993.

party, the government, and the people's revolutionary humanitarian support of "hate the crime but not the criminal". In this manner we regained our human conscience. Adhering to this magnanimous policy, not one person was executed and all prisoners were released to return home. This was an unimaginable event.

Today, Fushun has been restored to its original state and here we dedicate our monument. We express our gratitude to the martyrs who opposed Japan and pledge to not let war break out again. We dedicate ourselves to peace and Sino-Japan friendship.⁴¹

Years later YUAN Guang, Deputy Chief Judge of the Chinese People's Supreme Military Tribunal, when estimating the significance of the CCP trials said: "Justice expanded its reach enough to offer solace to the spirits of those who valiantly fought against the Japanese or were martyred". He elaborated: "Within our national land, this is the first time in modern Chinese history that Chinese representatives of the people in a court of law judged Japanese war criminals and imperialist aggressors. These trials were not only the close of China's victory in the war against Japan but a sign that the Chinese people have arisen".⁴²

28.8. Conclusion

Gary Bass has said, as have others including Hannah Arendt, that for most massacres throughout history there is really no such thing as an appropriate punishment, "only the depth of our legalist ideology makes it seem so". Echoing American officials who were initially opposed to allowing Nazi war criminals to be tried, as opposed to their summary

⁴¹ Jin Yuan, *Qiyuan: yige zhanfan guanli suozhang de huiyi* [奇缘: 一个战犯管理所长的回忆, Unusual Destiny: Reminiscences of a Director of War Criminal Prison], Zhongguo renmin jiefangjun chubanshe, Beijing, 1999, pp. 278–79. Former war criminal Tominaga Shôzô writes about what this monument meant for the former prisoners, Fushunshi zhengxiehui wenshi ziliao weiyuanhui (ed.), *Nanwang de zhongguo* [难忘的中国, The Unforgettable China] Liaoning daxue chubanshe, Fushun, 1992, pp. 137–42. See also his post-war memoir, Tominaga Shôzô, *Aru BCKyû senpan no sengoshi* [あるBC級戦犯の戦後史], Suiyôsha, 1977.

⁴² Zhang Fulin, Tian Jingbao, Xia Mang and Zhang Yanfeng (eds.), *Shizheng: zhongguo jiaoyu gaizao riben zhanfan shilu* [史证: 中国教育改造日本战犯实录, Witness to History: a Record of China's Educational Reform of Japanese War Criminals], Jilin renmin chubanshe, Changchun, 2005, p. 317.

execution, Bass opines that “war crimes tribunals risk the acquittals of history’s bloodiest killers in order to apply legal norms that were, after all, designed for lesser crimes”.⁴³ The Japanese war crimes trials in China fit perfectly into this zero-sum scenario. Tony Judt further expanded the problem by searching for a resolution to the conundrum: “How do you punish tens of thousands, perhaps millions of people for activities that were approved, legalised, and even encouraged by those in power?” In addition, “how do you justify leaving unpunished actions that were manifestly criminal even before they fell under the aegis of ‘victor’s justice’?” he asks.⁴⁴ In his opinion, trials will at most be inadequate.

There is no doubt that various subsets of Chinese war crimes trials held many flaws – poor translations, at times scant evidence and a lack of legally trained staff, to name just a few major lacunae. But, at the same time, the trials were a significant step in the right direction to stem a cycle of repetitive violence. The fact that the important history of these trials and the effect they had on the post-war political Sino–Japanese memory of the war was subsumed by subsequent Chinese domestic turbulence is all the more reason for our continued investigation into these topics.

⁴³ Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, Princeton University Press, Princeton, NJ, 2000, p. 13. Kerstin von Lingen points to some of these same issues in her work: *Kesselring’s Last Battle: War Crimes Trials and Cold War Politics, 1945–1960*, University Press of Kansas, Lawrence, 2009; and *Allen Dulles, the OSS, and Nazi War Criminals: The Dynamics of Selective Prosecution*, Cambridge University Press, Cambridge, 2014.

⁴⁴ Tony Judt, “The Past is Another Country: Myth and Memory in Postwar Europe”, in Istvan Deak, Jan T. Gross and Tony Judt (eds.), *The Politics of Retribution in Europe: World War II and Its Aftermath*, Princeton University Press, Princeton, NJ, 2000, p. 300.

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Historical Origins of International Criminal Law: Volume 2

Morten Bergsmo, CHEAH Wui Ling and YI Ping (editors)

The historical origins of international criminal law go beyond the key trials of Nuremberg and Tokyo but remain a topic that has not received comprehensive and systematic treatment. This anthology aims to address this lacuna by examining trials, proceedings, legal instruments and publications that may be said to be the building blocks of contemporary international criminal law. It aspires to generate new knowledge, broaden the common hinterland to international criminal law, and further develop this relatively young discipline of international law.

The anthology and research project also seek to question our fundamental assumptions of international criminal law by going beyond the geographical, cultural, and temporal limits set by the traditional narratives of its history, and by questioning the roots of its substance, process, and institutions. Ultimately, the editors hope to raise awareness and generate further discussion about the historical and intellectual origins of international criminal law and its social function.

The contributions to the three volumes of this study bring together experts with different professional and disciplinary expertise, from diverse continents and legal traditions. Volume 2 comprises contributions by prominent international lawyers and researchers including Professor LING Yan, Professor Neil Boister, Professor Nina H.B. Jørgensen, Professor Ditlev Tamm and Professor Mark Drumbl.

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