

Victors' Justice: The Tokyo War Crimes Trial

Richard H. Minear

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Book Review by Tadashi Hama

There are two issues raised by “war crimes” trials. The first issue raised is that of historical accuracy. In the “International Military Tribunal for the Far East,” or the “Tokyo trial” the Allies used a historical narrative that fit their accusation, that a “criminal, militaristic” Japanese leadership waged an “aggressive war” and engaged in “crimes against peace, war crimes and crimes against humanity”. Contemporary “war crimes” trials have also engaged in such “historical revision,” fabricating a history to fit their accusations. Historical education in schools is used as a means of molding the next generation’s thinking not only about their past but also about themselves and their society. What are taught in Japanese history classes is an alien, non-Japanese view of Japanese history and the Allies’ judgment of the Tokyo trial, which, in turn, reinforces the alien version of history.

The second issue raised is one of the nature of democracy. “War crimes” tribunals wrap themselves in cloaks of western notions of fairness and justice, which in fact should alarm those who truly understand western traditions. In wars of this and the last century, the vanquished are at the mercy of the victor. As a price of defeat, more blood is to be shed, even though the defeated have laid down their arms—the losers need to be taught a lesson and are “tried” for “war crimes”. Horrible crimes are alleged, and the accused are inevitably convicted and promptly executed. The mere existence of these trials within democratic society demonstrates how grotesque and twisted contemporary democracy has become.

There are a number of books that have critically examined the Tokyo trial. A good beginning text is *Victors' Justice: The Tokyo War Crimes Trial* by Richard Minear. As a historian, Minear clearly elaborates the self-serving and blatantly undemocratic undercurrents that formed the basis of the Tokyo trial, in three parts: “Problems of International Law,” “Problems of Legal Process,” and “Problems of History”.

The undemocratic nature of the Tokyo trial can be seen in its creation. During the war, the Allies repeatedly promised, as a part of their campaign to defeat “fascism” and “promote democracy”, to mete out “stern justice” to “war criminals”. The legal and moral basis for meting “stern justice” was formed by the Big Four Allied countries (the U.S., Great Britain, France and the Soviet Union) at the London Conference (or the “International Conference on Military Trials”) in the summer of 1945.¹ Rather than

¹ The agreement between the Big Four at the London Conference would serve as the basis for the “Nuremberg Charter” and the “Tokyo Charter”. The charters stipulated the rules of conducting the trials. Of particular concern in terms of fairness is that the Tribunals “shall not be bound by technical rules of

develop a framework wherein the accused would be judged by the evidence and the rights of the accused would be protected, the Big Four claimed for themselves the right to “codify” international law such that “German and Japanese acts became criminal and individual enemy leaders became accountable”. Axis “war criminals” would be prosecuted not only for conventional war crimes, such as maltreatment of prisoners of war, but also for Orwellian crimes such as “crimes against peace,” and novel crimes such as waging a “war of aggression” and “crimes against humanity”. The wide-open nature of the charges ensured that the accused will be found guilty and punished. Since the Allies claimed the exclusive right to make law, they were also able to ignore any troubling doubts that the alleged crimes were, in fact, crimes “in a technical sense” or “against international law”.

Further reading of the London Conference should make absolutely clear that the Allies’ intent was not to practice liberal democratic notions of justice. American representative to the London Conference Robert H. Jackson stated that “There could be but one decision in this case.” In the case of accused Germans, the British simply “wanted to take the top Nazi criminals and shoot them without warning one morning and then announce to the world that they were dead,” doing away with any pretence to justice. While the British were quite frank regarding what to do with the accused, the Americans wanted a trial before the executions, with the idea that the trials would “command maximum public support” and “receive the respect of history”. In other words, a show trial would be held for the purpose of propaganda. The Americans planned to highlight their own pre-war and wartime policies as moral and proper, and cast the aggressors as criminals. As Miner points out, Allied policy would, in fact, be “in the dock along with the enemy leaders”. Against such a background, the outcome of the war crimes trials in Japan, as well as in Germany, should not be surprising.

Given the array of prewar neutrality violations by the U.S. and Britain, actions taken by the U.S. to economically and politically cripple Japan and the deliberate targeting of civilians by the Allies to achieve wartime goals, the defense could have argued that Allied policies were, in fact, not “moral and proper”. However, since the Allies gave themselves the authority to run the tribunals, it should not be surprising that these and other defense arguments were quashed. The Allies own “crimes against humanity”², for example, fire bombing of civilian areas and the atomic bombings, were never under consideration. Thus, even before the start of the Tokyo trial, there is a lack of confidence that any “justice” will be ensured by the process.

Miner goes on to point out that the Allies were not at all interested in judicial rigor. The fact that it was the Allies who qualified themselves as both judge and prosecutor and proscribed rules of evidence should raise serious concerns over the trial’s

evidence.” Thus, things that would not be allowed in a normal court of law as evidence, such as hearsay statements and unsigned documents, were allowed.

² The International Military Tribunal for the Far East Charter or the “Tokyo Charter” defined crimes against humanity as “...murder, extermination... and other inhumane acts committed against any civilian population, both before or during the war...” Justices Radhabinod Pal of India and Bert Roling of the Netherlands spoke out on the inhumanity of the atomic bombings.

objectivity and fairness. Also, the manner in which the defendants were sentenced to death is not at all consistent with the death penalty sentencing process. In the case of the Tokyo trial, a majority vote (six to seven out of 11) was all that was needed to allow for a sentence of death. By contrast, the U.S. Uniform Code of Military Justice mandates unanimous “concurrence of all members of the court martial” if a person is to be “sentenced to suffer death”. Even the life sentences handed out by the Tribunal, according to the Uniform Code, were invalid, since “life imprisonment or to confinement for more than 10 years” must be approved by the “concurrence of three-fourths of the members present...”

With regard to the Allies acting as judge, prosecutor, jury and executioner, it might be useful to emphasize here that the U.S. government is based on the concept of separation of powers, such that a clique or one person is prevented from dictating U.S. policy. The three branches of the U.S. government, executive, legislative and judicial, have specific roles as defined in the U.S. Constitution. For example, it is the Congress that makes declarations of war and in terms of deciding guilt or innocence, the Executive branch has no role in judicial matters³. In the case of the Tokyo Tribunal, it appears that the U.S. abandoned the notion of separation of powers along with western notions of justice. In fact, the Tokyo Charter was a directive issued by General Douglas MacArthur, with concurrence thereafter from the allied nations.

The prosecution’s recounting of history is another area that should raise serious doubts of the validity of the Tokyo trial. As mentioned earlier, the goal of the Tokyo trial was to punish the Japanese while at the same time putting Allied policies within the best possible light. Indeed, as stated by Chief Prosecutor Joseph Keenan, the “foremost service” of the Tokyo trial was to “establish the facts authentically, particularly with the Japanese people.” The unspoken goal here is the segregation of the “blameless” Japanese people from their “criminal, militaristic” leaders. The prosecution’s case is “war guilt propaganda” “forced upon the Japanese people in the most persistent and insidious manner” (Kobori, 2003). Putting aside the Allies’ lack of historical accuracy, the Tokyo trial served a purpose other than uncovering the truth and serving justice. “To regard a trial as propaganda device is to debase justice.” (Minear, p. 127).

The Allies presented the view that the Japanese “aggressors” were entirely responsible for the Pacific War. To historian Minear, the trials do not “meet minimal tests of historical accuracy”. The Allies alleged that the accused participated in the “formulation of ... a common plan or conspiracy,” and the purpose of this “conspiracy” was the “domination” of “the Far East” through force and in conjunction with Axis countries, “domination of the whole world”. Minear points out that the Tokyo Tribunal superimposed German historical and political conditions onto Japan to make the “conspiracy” charge fit. However, conditions found in Germany were not at all present in Japan. As Minear points out, in Japan, there was no unified political party or a single

³ Within the context of separation of powers, one could reflect on President Roosevelt’s Executive Order 9066, signed in February, 1942, ordering the evacuation of Americans of Japanese descent from the western U.S., or recent orders emanating from the White House allowing for the assassination of U.S. citizens.

“Hitler” type leader in charge who could have calculated a long-range policy of “aggression”. The purpose and nature of the Pacific War and the European War were entirely different. In fact, despite the existence of a “Tripartite Pact,” there was no coordination of war time strategy between Japan and Germany. This is clearly seen in Japan’s relationship with the Soviet Union during the war. Japan signed a non-aggression pact with the Soviet Union in 1941 and despite constant prodding from Germany to attack, Japan respected her treaty obligation. The Soviet Union declared war on Japan on August 8, 1945, violating neutrality. Bizarrely, in its own interpretation of history, the Allied tribunal actually found Japan guilty of aggression against the Soviet Union.

Minear summarizes the events that lead up to the Pacific War, which starkly contrasts with the Allied version of history. Of particular interest are American actions taken against Japan. A more expansive history of American pre-war neutrality as cited by the defense can be found in “*The Tokyo Trails: The Unheard Defense*,” by Keiichiro Kobori. As an island nation with limited natural resources, Japan was highly dependent on trade with the rest of Asia. Since trade is dependent on political stability and cooperation, Japan took keen interest in ensuring peace and stability existed in the region. However, the presence of hostile European colonies, a politically weak China and the Soviet Union were obstacles to the conduct of efficient trade with Japan. Furthermore, American trade policies discriminated against Japanese imports in favor of western or Chinese imports. Thus, Japan took actions that were necessary to survive in such an economic and political environment, actions that another island nation with limited natural resources, Great Britain, took during its early years as an empire. To the Allied tribunal’s thinking, the acts of a European colonial power are not to be questioned whereas those of Japan, despite similar circumstances, are criminal.

Minear also relates that America’s violation of its own neutrality law was a significant factor that pushed Japan to war. Detailed, unbiased histories that describe the American prewar years, free from the wartime propaganda that still permeates current histories, can be found elsewhere⁴. While the U.S. was officially neutral in the conflict between China and Japan, the U.S. nonetheless sided with China and supplied her with arms and generous amounts of financial aid, revoked a trade agreement with Japan and applied trade sanctions against Japan. Despite these hostile actions and violations of neutrality, the Allied tribunal declined the defenses’ request to consider these as mitigating factors. Thus, given the facts and what the Allies claimed to be the facts, there was much room for “reasonable doubt” concerning the charges against the defendants.

In any event, Minear points out that a “fair trial” would not have ended in a different result, as the Tokyo trial was a political trial. Chief Prosecutor Keenan, stated that each justice was more concerned with their “national interests and polices” rather

⁴ Barnes, H.E. (1953). *Perpetual War for Perpetual Peace*. Caldwell, ID: Caxton Printers.
Fleming, T. (2002). *The New Deale’s War: FDR and the War within World War II*. NY, NY: Basic Books.
Nash, G. (2011). *Freedom Betrayed: Herbert Hoover’s Secret History of the Second World War and Its Aftermath*. Stanford, CA: Hoover Institution Press.
Toland, J. (2003). *The Rising Sun: The Decline and Fall of the Japanese Empire, 1936-1945*. NY, NY: Modern Library.

than giving a fair trial. Justice Radhabinod Pal of India noted that the tribunal was merely “an instrument of political power.”

Justice Henri Bernard of France stated in his dissent opinion: “A verdict reached by a tribunal after a defective procedure cannot be a valid one.” Given what we know about the Tokyo trial, is it any wonder that there are those who question its validity? If the purpose of the Tokyo trial was justice then why were there no safeguards to protect the accused?

Since the beginning, there are many who reject the findings of Tokyo trial, not merely out of spite, but because propaganda replaced truth and because the sole purpose of the trial was revenge. In the case of the Tokyo trial, democratic precepts were frequently espoused but rarely practiced. There are many who support the existence of “war crimes” trials as necessary in a democratic society. However, given what we know about the Tokyo trial and its fundamental flaws, what can one say about the thinking of those who find the existence of “war crimes” trials compatible within a democratic society?

Reference

Kobori, K. (2003). *The Tokyo Trails: The Unheard Defense*. Rockport, ME: New England History Press.