

The Tokyo Trials and the Truth of “Pal’s Judgment”

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Japanese and Chinese personal names have been rendered surname first, in accordance with Japanese and Chinese custom.

The hanyu pinyin Romanization system has been used to translate Chinese personal and place names, with the exception of Wade-Giles translations that are still in common use (e.g., Yangtze River, Chiang Kai-shek).

The quotations from *Pal's Judgment* retain their original spelling, punctuation, and systems of indicating emphasis.

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Foreword to the English-language Edition

Few in the West are familiar with the name Radhabinod Pal. This is a pity.

Pal, a contemporary of Gandhi and Neru, was an Indian jurist who was noted for his attention to legal detail and his devotion to the rule of law. He was the Indian representative on the bench of the International Military Tribunal for the Far East (better known as the Tokyo Trials), which was MacArthur's answer to the Nuremberg Trials.

Of the eleven judges at the Tokyo Trials, only Pal had specialized in international law. At the general meeting of the Association of International Law in 1937, he was inaugurated as one of the association's chairmen. (Afterward, he was also twice elected chairman of the United Nations International Law Commission — serving in 1958, and again from 1962 to 1967.) Many of the other justices, in fact, were no longer active jurists, but rather politicians in the various nations of the Allied Powers who had returned to the bench from their official governmental positions.

The critical factor, though, that makes Justice Pal so noteworthy, and makes him truly stand out from his ten colleagues, is that *his* was the lone dissenting voice in the convictions of Japan's accused Class-A war criminals. Basing his position strictly on the law and the rules of evidence, Pal maintained that the Tokyo Trials were in error.

What was the result of his dissent?

By dictat from the GHQ, his verdict was not allowed to be published in Japan during the period of occupation, and it was not publicized in the West. To this day, *Pal's Judgment* (as it ultimately came to be called) remains virtually unknown outside Japan; inside Japan, it is the subject of considerable debate.

Broadly speaking, there are two views on the twenty years of Emperor Shōwa's (Hirohito's) reign leading up to Japan's defeat. The first is the viewpoint of the Tokyo Trials: that is, the viewpoint of the prosecutors and the judges who handed down the many verdicts of the Trials. In many countries, America included, this view is the mainstream: that it is obvious even today that Japan was an aggressor nation.

Pal stands in direct opposition to this, proclaiming the innocence of all the Class-A war crime defendants on all charges. It would probably be fair to call Pal's take on those twenty years of Japanese history in *Pal's Judgment* "the *Pal's Judgment* view." In point of fact, over half of the extensive amount of material making up this legal document is taken up by his interpretation of the events, one by one, of the previous twenty years.

There are many (including Japanese) who mistakenly think that Pal wrote a judgment sympathetic to the Japanese because he, like the Japanese, was an Asian. Years later, however, when Pal was visiting Japan and a Japanese man expressed his thanks to that

effect, he himself strongly denied that point. Indignant, Pal replied, “If you think that I would present a judgment out of sympathy to Japan, then you are making an outrageous mistake. I did not judge as a sympathizer to Japan, and it was not a judgment born of hatred of the West. I sought the truth *as* the truth, and to that end, I applied the proper law that I believe in. Nothing more, nothing less.”

For one to study the history of the Second World War down to its conclusion, it is essential that one read *Pal’s Judgment*. There have been many books written on the Tokyo Trials, exploring them from legal or political or historical perspectives. But since the Tokyo Trials were a historical event, one should study the people who were involved in the incident itself, and what they said about the events they lived through.

I, too, have been reading up on books concerning the Tokyo Trials for several decades, and wrote my own little book on the subject: *Tōkyō saiban o saiban suru* (“Trying the Tokyo Trials,” published by Chichi Press). My recent conclusion, however, is that the average person doesn’t really need to know about the Tokyo Trails. Rather, the only thing that they need is a thorough knowledge of one critical book: *Pal’s Judgment*.

Why is that?

In the face of criticism that the Tokyo Trials were nothing more than the victors judging the vanquished, those who orchestrated and prosecuted the Trials claimed that their object was a civilized judgment, punishing those who directed an aggressive war, so as to prevent future wars and with the intent of guaranteeing safety to the international society. There were those among the Japanese of the time — experiencing as they were an unprecedented defeat — who were in agreement with the occupiers’ reasoning. For example, this was the claim of many, including Yokota Kisaburō (a professor of law at Tokyo University, and later Chief Justice of the Supreme Court), one of the translation team of the Tokyo Trials.

Within two years, however, of the executions of those who were made out to be Class-A war criminals — before the ink on their verdicts had even sufficiently dried, to use a literary turn of phrase — the Korean War had begun, and many nations joined in and were once again in a state of war. After that there was the Vietnam War, wars in the Middle East, the Sino–Indian War, etc. Indeed, if one wanted to try to take count, there was a great number of small wars. Wars were fought among the countries who had provided prosecutors for the Tokyo Trials, so it had been no help at all. In other words, the Tokyo Trials were not “civilized trials” — they were proven to have been nothing more than simple “victors’ justice”

All the more conclusive was a statement made by Gen. Douglas MacArthur, the supreme commander of the GHQ and the man who had been entrusted by the Allied Powers with establishing the Tokyo Trials and had had the Charter for the Trials drawn up. On May 3, 1951, some two and a half years after the execution of the Class-A war criminals, at a meeting of the joint Senate Committee on Foreign Relations and Military Affairs — that is, in a public forum — he completely negated the evidence of the Tokyo Trials. Of the Japanese, he said: **“Their purpose, therefore, in going to war was largely dictated by security.”**

With this, the banner of a “civilized trial” with its stated policy of “punishing those who directed an aggressive war” was blown away. MacArthur took those Japanese who had been called A-Class war criminals, too, to have been people who had been fighting a defensive war. It is an important point — one that cannot be downplayed — that the per-

son who had brought the Trials about had himself essentially stated in public that “it was a mistake.” With this, the significance of *Pal’s Judgment* rises to the surface.

The purpose of this book is to attempt to relate what Pal wrote in his *Judgment*. Direct quotations, taken from *Dissentient Judgment of Justice Pal* (Kokusho-Kankōkai, Tokyo, 1999), appear in a sans-serif typeface for clarity and are documented with footnotes to the page on which they appear. With this, Pal’s conclusions on those twenty years of Japanese history should be clear.

I believe that the reader will come to see that the Tokyo Trials viewpoint, making as it does *a priori* assumptions on history, is very far removed from the historical truth. It is my hope that people all over the world will come out dealing with the source material.

Watanabe Shōichi
May 10, 2009

Chapter One

Documents that Overturn the Tokyo Trials

§1 The Tokyo Trials are at the heart of all the post-War issues

Radhabinod Pal, the Indian representative at the Tokyo Trials, handed down a decision that said, “I would hold that each and everyone of the accused must be found *not guilty of each and everyone of the charges in the indictment and should be acquitted of all those charges.*” It was when China and Korea lodged complaints about visits to the Yasukuni Shrine as Prime Minister Koizumi was forming his cabinet that I first realized that I had to again read *Pal’s Judgment*, wherein he recorded his views in meticulous detail.

As I think about it, immediately after the War, when the country was at its weakest, no country complained about Japan when the prime minister paid visits to Yasukuni Shrine. Complaints about Yasukuni Shrine visits date to about the time the textbook problems were raised. That shows that there was something very new taking place in the history after the Greater East Asian War.

When protests were first raised, the prime minister apologized and defused the situation. Complaints erupted again shortly thereafter, however. The prime minister apologized again at this, calming things down again. The pattern of protest and apology has been repeated any number of times right down to the present as Japanese prime ministers and Chinese and Korean leaders changed.

Then I suddenly realized something. For over forty years, I have worked as a university professor. When I started, student parties were originally organized or ran by the men, but from the mid-1980s, women began to take over. I felt that it was as if Japanese men had lost their spirit and vitality. Strangely, this was after an increase in textbooks saying that “Japan was bad.” I just can’t imagine that these issues are unrelated.

In point of fact, after the War, men in England, too, lost their spirit. The circumstances of that was an incident that resulted in a loss of self-confidence. For example, when Nazi Germany was defeated, the English returned a large number of Ukrainians who had been used as laborers by Nazis to the Soviet Union. The reasoning was that they had been cooperating with the Nazis; but had not been cooperating — in fact, they had been *used* by the Nazis. The Ukrainians, who knew that they faced death sentences if they were returned, begged not to be sent back. The English forces didn’t want to hear of it. Of course, all the Ukrainians were executed. When this was made known in England, the men all were shocked, thinking, “what did we fight for?” and “we felt pride in fight-

ing the Nazis, but haven’t we just killed more than they did?” The pride of the upper-class men was particularly injured.

The nature of complaints from China and Korea regarding so-called comfort women and transportation for forced labor grew worse by degrees. Though I say there was a gradual worsening of the situation, allow me to offer an example by way of a simile: syphilis. The disease seems controllable now, but it often used to end in death. When one contracts syphilis, after chancres first appear, the disease goes into remission. At this, one thinks the disease is gone; but several years later the chancres return and the disease worsens. Once again it goes into remission; but with the third or fourth reoccurrence, one’s nose collapses. Even with no nose, it may look yet again as if the disease has gone away, but finally it invades the brain and spinal cord, becoming cerebral syphilis — and then it’s all over.

The Chinese government marshaled all their effort to raise protests at visits to Yasukuni Shrine by the prime minister during the Koizumi years, and as the Japanese government bowed to the pressure, I took this to be as if it were syphilis at the cerebral stage. Then, I wondered: “Just what is it that is at the core of all the issues of post-War Japan — that is to say, that thing represented as the syphilis bacterium?” What occurred to me at this point was that it was the Tokyo Trials. It was nothing other than the Tokyo Trials, which had decided Japan was an aggressor nation and a bad country. The education by the left wing (in particular the Japan Teachers’ Union and others) soaked into the heads of the Japanese that their country stood “convicted” at the Tokyo Trials. The Chinese and Koreans would bandy it about, and suddenly it was in remission again. In other words, the original cause of the Yasukuni Shrine “disease” was the Tokyo Trials, and if it is truly to be treated, that is where one must begin.

Thus, having read *Pal’s Judgment* any number of times by this point, I reached for it anew.

§2 The trial for which impartiality didn’t matter

When we look back at the Tokyo Trials, the most important feature of note is that its foundation was not in international law. Justice Pal, too, insistently pointed out that, “it was not based on international law,” and that there was nothing then extant in international law that would allow for the formation of the Tokyo Trials. Properly speaking, as Pal said, the only things that were valid were those that under international law were eligible for adjudication (for example, conventional war crimes).

On what basis, then, were the Trials held and administered? It was authority from the Charter of the International Military Tribunal for the Far East (CIMTFE) that was promulgated by Douglas MacArthur, the Supreme Commander of the Allied Powers (SCAP). This Charter established the criteria and rules for the Tokyo Trials. In short, SCAP created the Charter and proceeded from that to the Trials.

As the chief prosecutor of the trial, former assistant attorney general of the United States Joseph Keenan was involved in the production of the Charter. He participated in drafting the regulations for the prosecution. It can’t be helped but be seen that he created the conventions to judge to fit in with the prosecuting attorneys’ arguments.

Furthermore, all of the judges came from the victor nations. For example, the judge

from the Philippines, who advocated the death penalty on all twenty-five Class-A war criminals, was a man who had been a prisoner of the Japanese at Bataan. Surely anyone can grasp the common sense that having as a judge a person who bore animosity toward the defendants meant it was as if saying that an impartial trial was not needed.

Figuratively speaking, it was as if, in *The Godfather*, after the Corleones won the gang war against the Tataglias after Sonny was gunned down, the Corleones decided on their own to hold a court to judge the Tataglia men and made eleven of their own higher-ups serve as judges (including among them those who had suffered during the struggle). Of such stuff were the Tokyo Trials.

War criminals were divided into three grades: Classes A, B, and C. It was decided that the Class-B and Class-C criminals were not to be dealt with at the Tokyo Trials.

As a point of reference on B- and C-Class criminals: Class-B crimes were violations of the rules of war under international law during wartime. That is, those who directed conventional war crimes such as cruelty to prisoners were named Class-B criminals. Those who carried out those orders were made Class-C criminals.

Class-A war crimes were firstly "crimes against peace." Article Five of the Charter begins, "Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

Incidentally, those listed as Class-A war criminals were judged variously for three things: crimes against peace, conventional war crimes, and crimes against humanity.

There were some magnificent efforts by their lawyers. First among these is the fact that there were no death sentences handed down to those charged only with crimes against peace. We can understand the implication that they demolished the charge of crimes against peace.

It was the second category that was substantially investigated as requiring the death penalty: conventional war crimes. We can say that these were such things as the crime of mismanagement in supervising prisoners of war. As an example, let us consider Hirota Kōki. Nanking fell when Hirota was Japan's foreign minister, and it was determined that the Nanking Massacre took place, and it was charged that, as the foreign minister, Hirota failed to stop it. It was completely beyond the scope of his duties for the foreign minister to be expected to have responsibility for directing troops on the field of battle.

Moreover, in the charges presented was the strained interpretation that those killed in the attacks on Pearl Harbor, Hong Kong, and Kota Bharu, as they took place before declarations of war, were victims of *murder* instead of being among the war dead. Although this was raised in the prosecutor's statements, it really did not become an issue and was ignored.

The third category, "crimes against humanity," also appeared at the Nazis' trial at Nuremberg; but on this point there were none found guilty.

Looking at the trial process, it seems that most of the prosecutors' charges were refuted. Seven people, however, were sentenced to death. Gen. Matsui Iwane, the man found responsible for the so-called Nanking Massacre, received the death penalty for Class-B and C charges. In addition, charged with participating in a conspiracy to commit war, and with that combined with the charge of oppressing prisoners, sentences of death were passed down. In other words, it feels as if the two charges were combined into one.

Moreover, the sentence of death was not unanimous. Of the eleven judges, Justice Pal voted “not guilty” on all charges; Justices Bert Röling of Holland and Henri Bernard of France also dissented in places; and Justice Sir William Webb, the president of the court, also handed down a separate opinion and was opposed to the use of the death penalty. Of the seven death sentences handed down, the six military personnel were sentenced on a judicial vote of seven-to-four; civilian defendant Hirota Kōki’s sentence was particularly close, with a one vote margin in the six-to-five decision to give him the death penalty. I can only imagine that the sentences of death were given out to allow the Allied governments to save face.

§3 America’s abandonment of chivalry

I feel that at the very least the death penalties should have been prevented in the Tokyo Trials. It was a tribunal created according to MacArthur’s Charter, so MacArthur had the authority to put a stop to the death penalties — but he did not do so. The reason can be found in America’s history.

America was a nation founded by the Puritans, and the Puritans were essentially a radical Protestant sect. They viewed Europe’s medieval period as “the dark ages” and had no use for its traditions. America’s founders largely threw off much of their European roots with the Revolutionary War. So determined were Americans to create something “new,” that they seem to have forgotten to a large extent their European past. A certain sense of chivalry was lost.

Chivalry had been born in the middle ages, and it flourished there. The spirit of chivalry was, on its face, one taking one’s opponent as an equal; but the American immigrants did not take the Indians to be their equals. Along with a disregard for the middle ages came a disregard for chivalry, and the result can be understood to be a dilution of its spirit and values.

For example, in 1648, the Peace of Westphalia was concluded, bringing to an end the Thirty Years War in Europe. The treaty begins by addressing the territorial disputes, then says that religion and government will be separate matters; it then says that both large and small countries shall have the same rights, and that any sovereign nation can wage war. The treaty has these values and assigns them down to posterity. It also takes the position that it holds neither side good or bad concerning war; but if the conduct of the war is bad (through the mistreatment of prisoners, killing or harming of civilians, etc.) they would be subject to punishment.

After 1648, these rules were generally followed in Europe. For that reason, at Napoleon’s trial, too, criticism was made in Europe that the English were being merciless, and there was extremely strong opinion that exiling the deposed emperor to Elba had not been necessary. Despite this, England exiled him to the island. That’s as far as it went, however. The sense of the time was that the idea of condemning an enemy general to death would go against the code of chivalry.

America seems to have abandoned such views when she severed ties with the mother country. I believe it is for this reason that they deem all their enemies to be like devils. To put it another way, they sidestepped the world view of the religious wars like the Thirty Years War. That is why they all took the Indians who they fought to be *evil* Indians. In

Westerns, the Indians who were losing their land were the bad guys, and the white men taking their land were the good guys.

For the Americans, fighting a war with the Japanese was the same as fighting wars with the Indians; they viewed both enemies exactly the same way. That is, the enemy was completely evil, and their generals were devils incarnate. This means they had no need to treat them as people and fairly under international law.

We can’t but think that this idea was reflected in the Tokyo Trials. There was no margin for a splendid chivalrous deed such as saying, “death sentences have been handed down, but under the compassion of the commanding officer, the sentences are suspended.” Quite the opposite, in fact. In the trials held in Manila, MacArthur barbarously called Lt. Gen. Arthur Percival, the defeated British commander of the Singapore forces, so he could witness the death sentence of General Yamashita Tomoyuki, the man who had conquered Singapore. He also had Lt. Gen. Honma Masaharu, who had chased MacArthur himself out of the Philippines, executed.

§4 MacArthur, too, recognized its meaninglessness

One gets the feeling that the idea permeating the statements of the prosecutors at the Tokyo Trials was, “if they are judged here, war will not again occur. Therefore, here we shall judge all those evil men who perpetrated the war.” In other words, it can be imagined that they had the delusion that, “with this, the world will not again be plunged into war.”

A Soviet judge and a Soviet prosecutor also took part in the Tokyo Trials. It would not be unreasonable to assume that if the Allied nations won the day, the world would become an uneventful place. That did not turn out to be the case. Antagonism was born between the East and West, and before two years had passed after the end of the Tokyo Trials, the Korean War broke out.

In the Korean War, the UN forces, at one point on the verge of being pushed off the Korean peninsula, struck back at Inchon changing the course of the war and moved north reaching the border with Manchuria. When MacArthur was feeling his best about conditions, he met with President Harry Truman on Wake Island on Oct. 15, 1950.¹ It was there that MacArthur said something of great interest. Averell Harriman, who sat in on the meeting, asked, “What about the war criminals?”, to which MacArthur replied, “Don’t touch the war criminals. It doesn’t work. The Nuremberg Trials and the Tokyo Trials were no deterrent.” In other words, he recognized that those tribunals had been pointless.

Even looking objectively at his having seen that the Charter was drawn up and then holding the trials, it was a bust. This is a valuable piece of information that shows MacArthur plainly was disgusted at the Tokyo Trials.

MacArthur painfully realized suddenly — upon fighting the Korean War — that the complaints of the Japanese side had basically been right all along. The most important part of the Japanese claims during the Tokyo Trials had been the threat of Communism. Had Manchuria not been defended, it would have become Communist. China would have

¹ America usually regards the meeting as taking place on the 14th, but Wake Island is on the other side of the international dateline, so on Wake, it was the 15th.

been next to go Red. Tōjō Hideki claimed that regardless of the Manchurian Incident and of the Second Sino–Japanese War, the Comintern had been moving behind the scenes of all along.

Two years after their execution, it turned out to be exactly as he had said. All of China — including Manchuria — had become Communist. That was the point when America first began to realize just how serious things really were. No sooner was the lie of the verdict of the Tokyo Trials out than action was undertaken to conclude a peace treaty with Japan.

Such circumstances were connected to my life, so my memories are particularly vivid. At the high school in which I matriculated, there were sciences and arts tracks, and I went into the sciences track. The person who designed the propeller for the Mitsubishi J2M Raiden fighter, a graduate of Tōhoku Imperial University’s department of engineering, had been my physics teacher. He told the students on the science track, “It’s too bad that you all are on a science track. Even if you go into in the science department at university, the very pinnacle of the study of physics — nuclear physics — is forbidden in Japan, so you won’t be able to do any real research. They’ve taken the guts out of it. The engineering department is the same. From now on, forget heavy industry; you’ll hardly be able to make airplanes or anything like that. All you’ll be able to build will be bicycles. In the future, all you’ll be able to do is something like make bicycles and export them to East Asia.”

Around 1949, we were being told, “this will continue for at the very least twenty-five years, and perhaps as many as fifty,” and “America will perpetually keep Japan capable of nothing but agriculture and light industry.” On top of that, with my professor’s admonition that both the science and engineering departments were useless, many of the students on the sciences track switched to the liberal arts. I was one of these, and I went on to study in the literature department of Sophia University.

During my second year at Sophia, however, the Korean War broke out, so the next year the peace treaty was ratified in San Francisco with some sense of disquiet. In one stroke, America’s basic take on Japan changed, as if to say, “Japan wasn’t an evil country. We must hurry up and make them independent, and attach them to the West. Also, if we don’t recoup Japan’s heavy industries, we won’t be able to service the tanks and planes we’re fighting the Korean War with.”

§5 Only *Pal’s Judgment* was legally meaningful

As the North Korean army was being forced back to the border with Manchuria, Mao Zedong sent in an army said to have been one million strong, and the Soviet Union sent limitless support via Manchuria. Because of this, the UN forces were pushed back. MacArthur, unable to stomach this, sent a letter to President Truman seeking permission to bomb Manchuria and blockade mainland China on the East China Sea. Truman, fearing that such measures would only lead to a third World War, fired MacArthur, who stubbornly advocated the action. MacArthur, recalled home to America, gave testimony at a public hearing of the joint Senate Committee on Foreign Relations and Military Affairs.

The Senate mainly handles issues in common with all the states. The principal issues in common with all the states are the military and foreign relations. Thus, giving testi-

mony at a hearing before the joint Senate Committee on Foreign Relations and Military Affairs meant it was testimony that was extremely important.

So what, then, did MacArthur say? What he said that should have been noted by the Japanese was, “Their purpose, therefore, in going to war was largely dictated by security.” MacArthur was saying the same thing that Tōjō Hideki had said in his affidavit.

The Tokyo Trials’ verdict that Japan had been an aggressor nation and an evil one troubled Japan post-War. It was nothing but the Tokyo Trials that convicted Japan of being an evil nation. The Tokyo Trials’ legal foundation was the of Supreme Commander MacArthur’s Charter. It would be fair to say that the person who put out that Charter had, in a public forum, completely obliterated the story that Japan was guilty.

Be that as it may, what remains to this day a problem of the Tokyo Trials has had a huge effect in MacArthur’s testimony not having been reported in Japan.

I got my hands on the original text of MacArthur’s testimony from Kobori Keiichirō, a professor emeritus of Tokyo University. It was ten years ago that I first used the text, quoting it in the magazine *Voice*; but from that time till the present this critical item has not been reported in any major newspapers, nor has it been brought up on television or radio.

Unlike the previously cited record of the Wake Island meeting, this testimony was made in a public hearing before the United States Senate, and was published in its entirety in the *New York Times*. It was not a secret. Yet it is unknown in Japan — it’s as if it was classified. How could such an unfathomable situation have come to be? I’m not quite certain of the reason, but I have suspicions it is not unlike the Ibuse Masuji plagiarism case.

Over ninety percent of Ibuse’s most important work, the book *Kuroi Ame (Black Rain)*, was directly copied from the notes of survivors of the atomic bombing. There is a novella in Russia that is exactly like his famous work *Sanshōuo (“Salamander” and Other Stories)*. His *Jon Manjirō hyōryūki (John Manjiro, the Cast-Away: His Life and Adventures)* is word-for-word the same as John Manjirō’s own records. His “*Sayōnara dake ga jinsei da* (“Life is only ‘goodbyes’”), a translation of Chinese poetry, is exactly like an Edo period translation of them.

Inose Naoki pointed this out in his book. It should come as no surprise that this became a sensation. His identification of the situation, however, was not taken up in any great extent by any television station, magazine, or newspaper literary column.

Tanizawa Eiichi, an authority in post-Meiji philology and a professor emeritus at Kansai University, conducted a follow-up survey and wrote an essay verifying each and every one of Inose’s points, but no literary journal would publish it. Ultimately, Tanizawa’s piece was published in *Voice*.

What I realized then was that *Voice* and the PHP Institute were essentially a magazine and company not much connected to literature; if it were *they* who publicized the Ibuse problem, there was no one there who would suffer for it. For companies having highly-placed people who have deep connections to Ibuse Masuji, it would likely be extremely uncomfortable to take up such an issue.

The mass media’s failure to publish MacArthur’s testimony was exactly the same thing. After the War, over 200,000 officials were purged, and there were people who came in after them and took their now-vacant positions. It could be said that the top 200,000 were essentially all the most important positions in all of Japan. Moreover, there

were those who before the War had been in contact with the Comintern and those who were anarchists working in journalism and at Tokyo and Kyoto Universities and their law and economics faculties who had been made to quit their posts. After the order to purge the officials came down, *these* were the people who, in a reversal of fortune, were able to move in to fill up the now empty positions.

Thanks to their badmouthing of Japan before the War, they were able to secure their post-War social status, so they were not about to say “pre-War Japan was brilliant” or “Japan was magnificent.” This was in accord with the policies of civil government officer Charles Kades of the GHQ, which had taken control of the occupational government. Kades seems not to have been a member of the Communist Party, but he *was* a left-winger. As a result, many in his sphere were also left-wing, including people like Comintern agent Herbert Norman. What this means is that those who became the mainstream post-War Japanese elite had been pre-War left-wingers and who were on the same wavelength as the civil government office of the GHQ. MacArthur’s testimony about Japan’s war for “security” would mean that those who had been judged at the Tokyo Trials had in fact been fighting for the defense of Japan. That would endanger the positions of all those who had risen to eminence and had said everything was bad pre-War, and had badmouthed Japan post-War. *That* is why MacArthur’s testimony has remained virtually sealed.

Recently, however, the existence of MacArthur’s testimony and its contents have gradually come to be known. His comments on Wake Island, too, must become better known.

If such words by MacArthur can be taken as something that undermines the very foundation of the Tokyo Trials, then *Pal’s Judgment*, as a work that brought up in detail the points at issue that were seen during the trial process and written by a judge who took part at the Tokyo Trials, is truly a valuable primary source. I have heard from a scholar of international law that, of all the decisions and judges of the Tokyo Trials, the only one that today has any legal significance is *Pal’s Judgment*. If it were possible, I’d like to see *Pal’s Judgment* appear on the senior government office examinations as one view of recent Japanese history. Even though there are many people who know of the existence of *Pal’s Judgment*, the number of those who have actually read it is extremely small.

Yes, there are parts of *Pal’s Judgment* that are tedious, and I’m sure there are many who would find it verbose. Some may say that Indians can be wordy, and Pal’s descriptions are typical of this. It is true that one can precisely grasp the important matters to the extent that one can thoroughly study it, but on that point, it would surely be a tiresome book to read on one’s own. In this volume, then, I will pick out the important points of *Pal’s Judgment*, and I hope to be of assistance for the reader’s study.

Chapter Two Ritualized Revenge

§1 Was this court able to function justly?

In the first chapter, I wrote of the significance of reading *Pal’s Judgment*, but from this chapter on, we shall waste no time in making *Kyōdō kenkyū: Paru hanketsusho* (“Collaborative research: Pal’s Judgment”; Tokyo Trials Research Committee, eds., Kodansha, 1984) our text to lay out the gist of the claims and views of Radhabinod Pal. Hereafter, I will indicate extracts by using a sans-serif face in quotation marks.

What is impressive at first is that, in the first lines of Pal’s Judgment, he wrote “I sincerely regret my inability to concur in the judgment and decision of my learned brothers,”² demonstrating thereby his opposition to the judgment of the Tokyo Trials. One gets a sense of Pal’s pride in his position in his making the claim that, unlike the other judges, he alone had specialized in international law.

The defendants at the Tokyo Trials were indicted on charges organized as follows: “Category One: Crimes against Peace,” “Category Two: Murder,” and “Category Three: Conventional War Crimes and Crimes against Humanity.” After Pal sorted these out and introduced the specifics of the prosecution’s claims, he identified the features of the prosecution’s closing arguments.

Especially remarkable, Pal cited the prosecutor’s “conspiracy method of proof” — “that the object and purpose of the said conspiracy consisted in the complete domination by Japan of all the territories generally known as Greater East Asia described in this indictment.” He called to attention the prosecution’s claim that “...[t]he guilt of the accused would be established without anything more and that it would not matter whether any particular accused had actually participated in the commission of any specified act or not.”³

Pal claimed that in taking on this method, “material questions of law” arose, and they were,

whether military, naval, political and economic domination of one nation by another is crime in international life. Whether wars of the alleged character became criminal in international law.... Whether any *ex post facto* law could be and was enacted making such wars

² Radhabinod Pal, *Dissentient Judgment of Justice Pal: International Military Tribunal for the Far East* (Tokyo: Kokusho Kankokai, Inc., 1999), 5.

³ *Ibid.*, 7.

criminal so as to affect the legal character of the acts alleged in the indictment. Whether individuals comprising the government of an alleged aggressor state can be held criminally liable in international law in respect of such acts.⁴

After this, Pal intended to add a detailed examination of this problem, but several preliminary legal questions had to be dealt with first, so he presented a few issues.

What he brought up first was the defendants’ concerns: “The apprehension is that the Members of the Tribunal being representatives of the nations which defeated Japan and which are accusers in this action, the accused cannot expect a fair and impartial trial at their hands and consequently the Tribunal as constituted should not proceed with this trial.”⁵ In other words, they couldn’t expect a fair judgment coming from victors who had become plaintiffs.

After introducing several opinions on this point, Pal disagreed with the defense’s objections that there was a potential for prejudice stemming from issues racial to political, although he felt that the defendants’ concerns had not been without merit. “The judges are here no doubt from the different victor nations, but they are here in their personal capacity,”⁶ he said. He continued by pointing out that one essential factor considered in the selection of judges had to be moral integrity, and on this point Pal had no objections.

In the variety of opinions introduced by Pal there are many things worth listening to. One example Pal cited was Professor Hans Kelsen of the University of California, who said that, “The victorious states too should be willing to transfer their jurisdiction over their own subjects who have offended the law of warfare to the same independent and impartial international tribunal.”⁷

Incidentally, Kelsen had originally been a legal scholar in Austria, but later he moved to California. He first pointed out that the Potsdam Declaration called not for an unconditional surrender, but a conditional one, and this truly bolstered the spirits of the extremely few Japanese scholars of international law. The implication had a good effect on the Japanese international law scholars, but Kelsen’s argument was fundamentally comparatively useful to those who held the Tokyo Trials.

What is interesting is Pal’s pointing out that, “Administration of justice demands that it should be conducted in such a way as not only to assure that justice is done but also to create the impression that it is being done.”⁸

It is slightly removed from Pal’s intent, but it is fundamentally painful for the Tokyo Trials trying to adhere to this point. No impression of impartiality would be seen by anyone, given that the prosecutors and judges were all concerned parties from the enemy nations.

§2 Reversing several centuries of civilization

⁴ Ibid., 9.

⁵ Ibid., 9.

⁶ Ibid., 10.

⁷ Ibid., 10.

⁸ Ibid., 11.

Concerning other objections raised by the defense, Pal divided them into two categories: “those relating strictly to the jurisdiction of the Tribunal,” and “those which, while assuming the jurisdiction of the Tribunal, call on the Tribunal to discharge the accused of the charges contained in several counts on the ground that they do not disclose any offense at all.” On accounts related to these, I would first like to direct the reader’s attention to points of view concerning the war: “A war, whether legal or illegal, whether aggressive or defensive, is still a war to be regulated by the accepted rules of warfare.”⁹

After laying this out, Pal quoted the opinion of L.F.L. Oppenheim, who said:

The right of the belligerent to punish, during the war, such war criminals as fall into his hands is a well-recognized principle of international law. It is a right of which he may effectively avail himself as he has occupied all or part of enemy territory, and is thus in the position to seize war criminals who happen to be there. He may, as a condition of the armistice, impose upon the authorities of the defeated state the duty to hand over persons charged with having committed war crimes, regardless of whether such persons are present in the territory actually occupied by him or in the territory which, at the successful end of hostilities, he is in the position to occupy.¹⁰

According to this theory, even if Article 11 of the San Francisco Peace Treaty is unusual, it would not go against international law.¹¹ Pal said that it should not be forgotten that this principle applies only at times when these crimes are not the acts of a state, and the mere high position of the parties in their respective states would not exonerate them from criminal responsibility in this respect. What Pal said of this, however, is that it is important to note that this refers to war crimes in the strictest sense (such as the mistreatment of prisoners) that go against the laws of war.

The defense’ position on the court’s jurisdiction — that “The first substantial objection relating to the jurisdiction of the Tribunal is that the *crimes triable by this tribunal must be limited to those committed in or in connection with the war which ended in the surrender on 2 September, 1945*”¹² (emphasis in original) — was, of course, acknowledged by Pal. In other words, the China Incident (which was essentially a precursor to the conflict known as the Greater East Asia War) was in no way within the scope of the Tokyo Trials and should not have been included.

⁹ Ibid., 12.

¹⁰ Ibid., 12.

¹¹ Article 11 says: “Japan accepts the judgments of the International Military Tribunal for the Far East and of other Allied War Crimes Courts both within and outside Japan, and will carry out the sentences imposed thereby upon Japanese nationals imprisoned in Japan. The power to grant clemency, to reduce sentences and to parole with respect to such prisoners may not be exercised except on the decision of the Government or Governments which imposed the sentence in each instance, and on recommendation of Japan. In the case of persons sentenced by the International Military Tribunal for the Far East, such power may not be exercised except on the decision of a majority of the Governments represented on the Tribunal, and on the recommendation of Japan.”

¹² Pal, 13.

The prosecutors, however, reading together the Cairo Declaration and Article 8 of the Potsdam Declaration,¹³ understood the scope of their judgment to be extremely broad. The Cairo Declaration insisted that Japan should be divested of Pacific island territories that she occupied during the First World War (the Marianas, the Caroline Islands, Yap, etc.); that territories taken from Qing China (Manchuria, Taiwan, and the Pescadores) should be returned to Nationalist China; and that Korea should be liberated. Article 8 of the Potsdam Declaration implemented the Cairo Declaration, recognizing only Japan’s sovereignty over Honshu, Hokkaido, Kyushu, Shikoku, and whatever small islands the Allied Powers chose to give her.

On this, Pal said, “*These declarations are mere announcements of the intention of the Allied Powers. They have no legal value. They do not by themselves give rise to any legal right in the United Nations.*”¹⁴ (Emphasis in the original.) As such, he claimed, there was no legal basis for them to be binding on Japan. He wrote that, in international law, the right is not granted to victorious nations to judge and punish crimes that occurred in incidents and wars *not related* to a war lost by a defeated nation (in the case of the Tokyo Trials, this was the Greater East Asia War). It is perhaps only natural that this would be the claim of a scholar of international law.

In addition, he pointed out that the Cairo Declaration, cited in the Potsdam Declaration, was inconsistent with the prosecutors’ claims:

That Declaration expressly refers to certain specified past matters and proclaims what steps should be taken in respect to them. I do not find anything in that Declaration which would suggest any trial or punishment of any individual war criminal in connection with those past events. Nor do I find anything in the Charter which would entitle us to extend our jurisdiction to such matters.¹⁵

Of events claimed by the defense as outside the jurisdiction of the court — the Manchurian Incident; activities of the Japanese Government in the provinces of Liaoning, Jilin, Heilong River and Jehol; and armed conflicts between Japan and the USSR relating to the Lake Khasan and Khalkhingol River affairs — Pal wrote: “Apart from their being parts of the overall conspiracy charged in count 1, the hostilities relating to these matters ceased long before the Potsdam Declaration of 26 July 1945 and the Japanese Surrender of 2 September 1945.”¹⁶ Thus, he concluded, “If on the evidence on the record we are unable to find the over-all conspiracy as alleged in count 1, then, in my opinion, the charges in the above named counts would fall for want of our jurisdiction.”¹⁷

Pal explained prosecutorial claims concerning applied law in connection with other objection raised by the defense, for “cancellation of legal action on facts charged but indicating no crimes.” Pal stated: “My appreciation of the position taken up by the

¹³ Article 8 reads in its entirety, “The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.”

¹⁴ Pal, 13.

¹⁵ *Ibid.*, 14.

¹⁶ *Ibid.*, 14.

¹⁷ *Ibid.*, 14.

prosecution in this case is that according to it, it is the already existing rules of international law, existing at the date of commission of the acts alleged, on which the indictment is based, and that whether the charges shall stand or fall will depend up on what view the Tribunal takes of those rules.”¹⁸

In other words, regardless of what position one takes, was this part of existing international law or not? This is a point that deserves examination.

The prosecutors of the Tokyo Trials indicated a “theory for judgment.” For example, Sir Arthur S. Comyns-Carr, the British prosecutor, said that international law was the product of “gradual creation of custom and of the application by judicial minds of old established principles to new circumstances,”¹⁹ and that “the duty of this Tribunal is to apply well-established principles to new circumstances, if they are found to have arisen, without regard to the question whether precise precedent for such application already exists in every case.”²⁰ This was a theory unconcerned with whether international law was being turned into *ex post facto* law.

Pal, however, took the position that, “the criminality or otherwise of the acts alleged must be determined with reference to the rules of international law existing at the date of the commission of the alleged acts.”²¹ The Charter for the Tokyo Trials, he argued, had not allowed (and *could* not allow) for the prosecution to define any such crimes. At any rate, Pal stuck to the position that the crimes being adjudicated had to be judged under the international law in existence at the time of the crimes

Also, the prosecution claimed that it was “pursuant to the Potsdam Declaration of 20 July, 1945, and the Instrument of Surrender of 2nd September, 1945, and the Charter of the Tribunal,”²² but Pal continued to cite the Potsdam Declaration as an example that under international law, “however impotent such law may be to afford any real protection, it at least does not *legally* place the vanquished at the absolute mercy of the victor.”²³ (Emphasis in the original) He objected to the inclusion of the unconditional surrender of Japan, saying, in essence, that an unconditional surrender did not mean that the side forced to surrender could be dealt with willy-nilly. If the defeated nation understood this position, however, it would be a different story.

So, then — what about Japan’s surrender? Pal’s opinion was that, “so far as the terms of the demand of surrender and of the ultimate surrender go there is nothing in them *to vest any absolute sovereignty* in respect of Japan or of the Japanese people either in the victor nations or in the Supreme Commander,”²⁴ (emphasis in the original) and “there is nothing in them which either expressly or by necessary implication would authorize the victor nations or the supreme Commander to legislate for Japan and for the Japanese or in respect of war crimes.”²⁵

Next, he examined the rules for the Trials — that is, MacArthur’s Charter.

On Aug. 8, 1945, the four countries of America, Great Britain, France, and the Soviet Union met together in London. Several things were decided at that meeting, and mostly it

¹⁸ Ibid., 16.

¹⁹ Ibid., 16.

²⁰ Ibid., 16.

²¹ Ibid., 16.

²² Ibid., 16.

²³ Ibid., 18.

²⁴ Ibid., 18.

²⁵ Ibid., 18.

was decided based on this that there would be a tribunal in Tokyo. Lord Wright (Robert Alderson Wright, Baron Wright), said of the agreement, “they are not crimes because of the agreement of the four governments; but that the governments have scheduled them as coming under the jurisdiction of the Tribunal because they are already crimes by existing law.”²⁶

Pal demonstrated assent to Lord Wright’s views, saying, “We have been set up as an International Military Tribunal. The clear intention is that we are to be ‘a judicial tribunal’ and not ‘a manifestation of power.’ The intention is that we are to act as a court of law and act under international law.”²⁷ Matters decided in consultation among countries that had made war could not be judged.

In line with this, a famous and often cited passage appears: “The so-called trial held according to the definition of crime *now* given by the victors obliterates the centuries of civilization which stretch between us and the summary slaying of the defeated in a war.”²⁸ (Emphasis in the original.)

He was protesting that carrying out judgments based on MacArthur’s Charter, decided upon one-sidedly by the victor nations, had no foundation in law and was turning back a civilization that had continued over the centuries since the Peace of Westphalia was ratified in 1648.

Pal went so far as to say,

A trial with law thus prescribed will only be a sham employment of legal process for the satisfaction of a thirst for revenge. It does not correspond to any idea of justice. Such a trial may justly create the feeling that the setting up of a tribunal like the present is much more a political than a legal affair, an essentially political objective having thus been cloaked by juridical appearance. Formalized vengeance can bring only an ephemeral satisfaction, with every probability of ultimate regret.²⁹

He had put his finger on it quite accurately. This is because those serving as judges in the Tokyo Trials would later, more or less, express a strong sense of having made a mistake.

Also, concerning claims included in the Moscow Declaration that had been signed on Oct. 30, 1943, and which made “war criminals” of those who had committed “crimes against peace,” Pal insisted, “this, their Declaration alone, will not invest them with any such *legal* authority, if international law be otherwise,”³⁰ (emphasis in the original), in line with the argument Prof. Kelsen, whose opinion was most advantageous to the prosecutors.

Pal quoted Prof. Kelson’s opinion: “If individuals shall be punished for acts which they have performed as acts of state, *by a court of another state, or by an international court*, the legal basis of the trial, as a rule, *must be an international*

²⁶ Ibid., 21.

²⁷ Ibid., 21.

²⁸ Ibid., 21.

²⁹ Ibid., 21.

³⁰ Ibid., 22.

treaty concluded with the state whose acts shall be punished, *by which treaty* jurisdiction over these individuals is conferred upon the national or international court.”³¹ (Emphases in the original.)

For it to be acceptable for another to judge that any crime were to be punished in any manner, it could only be in cases where there was treaty in place with that country that individuals could be punished. There was no such treaty between Japan and the Allied Powers, however. Thus they could not be indicted for “crimes against peace.”

§3 The authority of the victors was not limitless

Concerning the question of whether the victorious nations were able to create law, Pal put forth a number of theories and refuted them one by one. One may think we wouldn’t have to interfere there, but Pal’s opinion was, “such a power is opposed to the principles of international law and it will be a dangerous usurpation of power by the victor, unwarranted by any principle of justice.”³²

Pal repeated his points that the victors must not give themselves the rights of life and death over the defeated just because they won, the victors did not have the right to define crimes, and that the victors did not have the right to create *ex post facto* law.

He took the position that courts adjudicating war crimes had to follow *extant* international law, saying, “Under international law, as it now stands, a victor nation or a union of victor nations would have the authority to establish a tribunal for the trial of war criminals, but no authority to legislate and promulgate a new law of war crimes.”³³ Again there was repetition that if they didn’t follow extant law, it would be a turning back of civilization.

Pal cited Oppenheim’s advice on the point that the authority of the victorious nations was not without limit: “As has been warned by Oppenheim, ‘subjugation must not be confounded with conquest, although there can be no subjugation without conquest.’”³⁴

How are conquest and subjugation different? Conquest is the taking of enemy lands by means of military power, and the action is completed with the occupation of that territory. Subjugation, on the other hand, is the extermination of the enemy’s forces and absorption of the conquered lands, encompassing the destruction of that country.

At the time of the Tokyo Trials, Japan had been conquered — not subjugated. Pal claimed, “It is obvious that mere conquest, defeat and surrender, conditional or unconditional, do not vest the conqueror with any sovereignty of the defeated state.”³⁵

Prisoners, so long as they remain so, were under the protection of international law. No national state, neither the victor nor the vanquished, could make any *ex post facto* law affecting their liability for past acts. Pal clearly stated, in other words, that one could not simply create new laws on the fly to deal with the treatment or punishment of prisoners.

³¹ Ibid., 22–23.

³² Ibid., 24.

³³ Ibid., 30.

³⁴ Ibid., 31.

³⁵ Ibid., 32.

Pal’s position was that, “International laws of war define and regulate the rights and duties of the victor over the individuals of the vanquished nationality. In my judgment, therefore, it is beyond the competence of any victor nation to go beyond the rules of international law as they exist, give new definitions of crimes and then punish the prisoners for having committed offense according to this new definition.”³⁶

In this series of arguments, it would be fair when seeing the word “prisoners” to think of the word “defendants” (of the Tokyo Trials).

§4 Authority existed to question the charter

In Pal’s view, Lord Wright and the others who had had a hand in the Nuremberg Trials claimed “the sole source of the powers of the judges of the Tribunal are the Charter and their appointments to act under the Charter.”³⁷ The reason, he states, is that “each judge of this Tribunal accepted the appointment to sit under the Charter and that apart from the Charter he cannot sit at all nor pronounce any order at all.”³⁸ If one follows this way of thinking, then, it seems the Tokyo Trials had no need of international law.

Pal wrote, “I sincerely regret I cannot persuade myself to accept this view.”³⁹ As far as he was concerned, the Trials could not operate outside international law. He argued that the field established by the Tokyo Trials was already occupied by international law, and that even the Charter itself derived its authority from international law. Therefore, the Trials’ Charter could not override the authority of international law, and the tribunal was competent (under the authority of extant international law) to question the validity (or lack thereof) of the provisions of that Charter.

Finally, Pal wrote:

After careful consideration of the question, I come to the conclusion:

1. That the Charter has not defined the crime in question;
2. (a) That it was not within the competence of its author to define any crime;
(b) That even if any crime would have been defined by the Charter that definition would have been *ultra vires*⁴⁰ and would not have been binding on us.
3. That it is within our competence to question its authority in this respect.
4. That the law applicable to this case is the international law to be found by us.⁴¹

³⁶ Ibid., 33–34.

³⁷ Ibid., 34.

³⁸ Ibid., 34.

³⁹ Ibid., 34.

⁴⁰ A legal term meaning “beyond powers” and referring to conduct by a body that exceeds its legally allowed powers.

⁴¹ Pal, 35.

What Pal expressed at great length to this point was the basic position that the judges had the authority to interject doubts about the Charter, and that the judges had to hand down judgment in keeping with international law. He said, “The principal question which thus ultimately arises for our decision is whether the acts alleged in the indictment under the category of ‘Crimes against Peace’ constituted any crime under international law.”⁴²

Pal went on to state, “The acts alleged are ‘the planning, preparation and initiation’ of wars of specified characters.”⁴³ In other words, Pal said, the prosecution’s claims were not that “‘war,’ irrespective of its character, became a crime,” but that “a war possessing the alleged character was made illegal and criminal in international law,” and that those who planned such a war and prosecuted such a criminal war had “committed a crime under international law.”⁴⁴

If that was the case, Pal explained, there were two important questions needing to be addressed:

1. Whether the wars of the alleged character became criminal in international law.
2. Assuming wars of the alleged character to be criminal in international law, whether the individuals functioning as alleged here would incur any criminal responsibility in international law.⁴⁵

After this, Pal examined the questions of whether there was any such thing as “an aggressive war,” and if there was, exactly what “an aggressive war” might be.

⁴² Ibid., 35.

⁴³ Ibid., 35.

⁴⁴ Ibid., 35.

⁴⁵ Ibid., 36.

Chapter Three War to Resist Domination

§1 Defining defensive war is the agenda of the countries at war

Pal’s “Preliminary Question of Law” in investigating aggressive war indicated four periods. The first period went until the First World War. The second period went from the First World War through to the treaty of Paris — and the so-called Kellogg-Briand Pact. The third was from the Kellogg-Briand Pact to the start of the Second World War. The fourth was during the War.

During that first period, no matter what war, there was no issue with international law. Therefore, even if the war was unjust, he concluded that there had been no crime under international law.

Pal said, “In fact any interest which the western powers may now have in the territories in the Eastern Hemisphere was acquired mostly through armed violence during this period and none of these wars perhaps would stand the test of being ‘just war’.”⁴⁶

Pal’s words here resound scathingly as we think of his position as an Indian.

After that, Pal cites various opinions regarding the second period (until the establishment of the Kellogg-Briand Pact), but none is conclusive.

The problem is the third period — after the Kellogg-Briand Pact. Japan was blamed with violating the Kellogg-Briand Pact at the Tokyo Trials. I don’t know how many times after the War Japan was criticized for violations of the Kellogg-Briand Pact.

The Kellogg-Briand Pact was an international treaty signed in 1928. Pal quotes signatories therein: “The High Contracting Parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies.... [and] agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.”⁴⁷

After Pal laid out his views of the Kellogg-Briand Pact, he made a study of its effectiveness, opining that it “did not in any way change the existing international law... [and] failed to introduce any new rule of law in this respect.”⁴⁸ Frankly put, he said that it was functionally meaningless. Why was the Kellogg-Briand Pact meaningless? This is where the issue of self-defense comes up. The Kellogg-Briand Pact was *an anti-*

⁴⁶ Ibid., 36.

⁴⁷ Ibid., 41.

⁴⁸ Ibid., 40.

war treaty that declared a renunciation of war, but it allowed for wars of self-defense. On this point, Pal quotes Frank B. Kellogg, the American Secretary of State and one of the principal framers of the treaty, who said the following to the United States Congress:

*The right of self defense was not limited to the defense of territory under the sovereignty of the state concerned, and that under the treaty, each state would have the prerogative of judging for itself what action the right of self-defense covered and when it came into play, subject to the risk that this judgment might not be endorsed by the rest of the world. The United States must judge ... and it is answerable to the public opinion of the world if it is not an honest defense; that is all.*⁴⁹ (Emphases in the original.)

It is of great interest that the man who is responsible for creating this treaty explained this point in a public forum: that wars of self-defense would be decided by nations themselves, and that whatever actions they took in self-defense would be determined only by those nations themselves as well. Moreover, in such cases, the right of self-defense was a broad right not limited to the protection of territories under the dominion of the states in question.

When Great Britain and Germany had been at war, America was undertaking overt and improper (given that she was a neutral state) support of Britain, but under the Kellogg-Briand Pact, this, too, could be termed “self-defense.”

Pal wrote: “*The single fact that war in self defense in international life is not only not prohibited, but that it is declared that each state retains ‘the prerogative of judging for itself what action the right of self defense covered and when it came into play’ is, in my opinion, sufficient to take the Pact out of the category of law.*”⁵⁰ (Emphases in the original.) In other words, the Kellogg-Briand Pact was not *law*.

Pal further observed that, “So long as the question whether a particular war is or is not in self-defense remains unjusticiable, and is made to depend only upon the ‘conscientious judgment’ of the party itself, *the Pact fails to add anything to existing law.*”⁵¹ (Emphasis in the original.) He pointed out, “Nothing can be said to be ‘law’ when its obligation is still for all practical purposes dependent on the mere will of the party.”⁵²

Concerning this point, the prosecutors at the Tokyo Trials themselves admitted at their conclusion that, “When the Kellogg-Briand Pact was signed, it was stipulated that it did not interfere with the right of self-defense, and that each nation was to be the judge of that question.”⁵³ Pal, quoting them, expanded his case that the Kellogg-Briand Pact was invalid.

§2 War is outside the domain of law

⁴⁹ Ibid., 45.

⁵⁰ Ibid., 45.

⁵¹ Ibid., 48.

⁵² Ibid., 48.

⁵³ Ibid., 49.

The legal position of war was unaffected by the Kellogg-Briand Pact. In Pal’s view, “The only effect produced by the Pact is the possible influencing of the world opinion against the offending belligerent and thereby developing the law-abiding sentiment as between states.”⁵⁴ He concluded, “My own view is that war in international life remained, as before, outside the province of law, its conduct alone having been brought within the domain of law.”⁵⁵ In other words, the only thing in the conducting of war that was within the domain of the law was that there should be no maltreatment of prisoners and no killing of non-combatants; the making of war itself was outside the control of law.

As I presented in chapter one, the origin of international law is an analogy of the duel. Regardless of the pros and cons of the duel itself, what matters is that the forms of the duel be conducted properly. For example, having decided that “both sides will take ten paces, turn, and fire,” one must not then take *seven* paces and then turn and fire.

In like fashion, in war the mistreatment of prisoners, reducing private homes to ashes, killing or injuring civilians, etc., are acts contrary to law, but one cannot judge the war *itself*. After laying this out in minute detail, Pal pointed out with clarity that,

Within four years of the conclusion of the Pact, there occurred three instances of recourse to force on a large scale on the part of the signatories of the Pact. In 1929 Soviet Russia conducted hostilities against China in connection with the dispute concerning the Chinese Eastern Railway. The occupation of Manchuria by Japan in 1931 and in 1932 followed. Then there was the invasion of the Colombian Province of Leticia by Peru in 1932. Thereafter, we had the invasion of Abyssinia by Italy in 1935 and of Finland by Russia in 1939. Of course there was also the invasion of China by Japan.⁵⁶

He declared, “No category of war became illegal or criminal either by the Pact of Paris⁵⁷ or as a result of the same. Nor did any customary law develop making any war criminal.”⁵⁸

If you will pardon the digression, among the examples offered by Pal was the trouble connected with the Chinese Eastern Railway in 1929, which Japan was deeply involved in — although surprisingly it is not much mentioned. This was an incident that occurred concerning the Soviet Union and Zhang Zuolin.⁵⁹ In the book *Mao*,⁶⁰ published in 2005, it was written that it was the Soviet Union who had killed Zhang and this became a topic of conversation. It was an account not totally without foundation. At the time, Zhang’s

⁵⁴ *Ibid.*, 52.

⁵⁵ *Ibid.*, 57.

⁵⁶ *Ibid.*, 62.

⁵⁷ That is, the Kellogg-Briand Pact.

⁵⁸ Pal, 62.

⁵⁹ Zhang (1875–1928) was a powerful warlord in China who ruled Manchuria and much of north China. He was known as “the Old Marshal” and “the Mukden Tiger.” His assassination, when a bomb under his train exploded in June of 1928, laid the groundwork for the Chinese to seize the Manchurian Chinese Eastern Railway. The Soviet Union then entered into a brief armed conflict with the Republic of China over control of the Railway.

⁶⁰ Jung Chang and Jon Halliday, *Mao* (New York: Alfred A. Knopf), 2005.

strife with the Soviet Union was more intense than his strife with Japan, so one could say the Soviets had more incentive to kill him than the Japanese had.

Putting that aside, I think that Pal’s conclusion that the Kellogg-Briand Pact did not add anything to international law was correct. And it was the Tokyo Trials that dragged such a thing out to make judgment.

Though the Kellogg-Briand Pact was invalid, there were other factors that were used to condemn aggressive war. One of these was the prosecution’s argument that international law was evolving, and that it was acceptable to add new elements that had hitherto not existed. One of those who appealed for “this progressive character of the law and to a widening sense of humanity”⁶¹ was Prof. Sheldon Glueck of Harvard University. Glueck claimed that, “the time has arrived in the life of civilized nations when an international custom should be taken to have developed to hold aggressive war to be an international crime.”⁶²

Pal disagreed with this view, saying, “international society has not yet reached the stage where the consequences contemplated by these learned authors would follow.”⁶³

At the time, the most high-level body of international law was the League of Nations, of which Pal said, “It was simply a *system of international cooperation*.”⁶⁴ (Emphasis in the original.) Pal claimed, “The League showed particularly scrupulous regard for national sovereignty and laid special emphasis on such sovereignty by adopting the *principle of unanimous vote*... The international organization as it now stands still does not indicate any sign of abrogation of the doctrine of national sovereignty in the near future.”⁶⁵ (Emphasis in the original.)

As Pal said, the League of Nations (as well as the present United Nations) showed absolutely no indication of a repeal of the principle of national sovereignty.

§3 Sublime irony and the use of the atom bomb

Pal said, “As to the ‘*widening sense of humanity*’ prevailing in international life, all that I can say is that at least before the Second World War the powerful nations did not show any such sign.”⁶⁶ (Emphasis in the original.) Pal described the response of the major powers when Japan made an appeal for a “widening sense of humanity” before the Second World War:

I would only refer to what happened at the League of Nations when Baron Makino of Japan moved a resolution for the declaration of the equality of nations as a basic principle of the League of Nations. Lord Robert Cecil of Great Britain declared this to be a matter of highly controversial character and opposed the resolution on the

⁶¹ Pal, 64.

⁶² Ibid., 64.

⁶³ Ibid., 65.

⁶⁴ Ibid., 65.

⁶⁵ Ibid., 65.

⁶⁶ Ibid., 65.

ground that it “raised extremely serious problems within the British Empire.”⁶⁷

Speaking concretely, England’s Lord Cecil opposed Baron Makino Nobuaki’s resolution and made it an object of dispute, claiming it would lead to “extremely serious problems within the British Empire.” President Woodrow Wilson was in agreement with Lord Cecil, and Baron Makino’s appeal was turned down.

At the time, Baron Makino made a comment to the effect that, “As different conditions likely exist in every country, I am not saying it should be done at once. I would like it to be thought of as the ideal.” Despite this, neither America nor Britain would accept it.

I doubt that there are many people in Japan today who know what kind of places the colonies created by Western European nations at the time were. White people were the masters, and it would be fair to think that everyone else existed as something like slaves. Pal, who had just come from the British colony of India, was probably indirectly indicating that it seemed strange that countries who had formerly denied Baron Makino’s suggestion of humanity were now the same countries judging Japan for crimes against that humanity.

Pal referred to American jurist Robert H. Jackson’s summation at the Nuremberg Trials, where the latter intimated that, “a preparation by a nation to dominate another nation is the worst of crimes.”⁶⁸ Pal went on to state, “This may be so now. But I do not see how it could be said that such an attempt or preparation was a crime before the Second World War when there was hardly a big power which was free from that taint.”⁶⁹

He also declared, “Instead of saying that all the powerful nations were living a criminal life, I would prefer to hold that international society did not develop before the Second World War so as to make this taint a crime.”⁷⁰

If I may add something to Pal’s opinion that any country may have undertaken “preparation ... to dominate another nation,” it is the point that only Britain and America undertook preparations for the destruction of ordinary private homes. Japanese and German bombers were twin-engine ones, so there was a limit to the number of bombs they could carry and their bombing targets were generally military in nature. Before the War, however, Britain and America had both developed four-engine bombers. Four-engine bombers were capable of carrying a larger bomb load, with the potential to deliver devastating strikes on cities. The firebombing of Tokyo is a classic example of this potential. One can only say that it is strange that those who had undertaken the preparation of ordinance for such large-scale indiscriminate killing should sit in judgment of those who had not undertaken such preparations.

As for indiscriminate killing, Pal referred to the use of the atom bomb. America’s claim was that they used the atom bomb to bring the war to a swift conclusion. Pal, however, expressed doubts about this, citing the example of Kaiser Wilhelm II in the First World War. In a letter sent to the Austro-Hungarian emperor, Kaiser Wilhelm wrote, “To swiftly end this war, it is acceptable to kill the people and destroy their homes. At any

⁶⁷ Ibid., 65–66.

⁶⁸ Ibid., 66.

⁶⁹ Ibid., 66.

⁷⁰ Ibid., 66.

rate, it would be best to end the war quickly.” Pal wrote, “I do not perceive much difference between what the German Emperor is alleged to have announced during the First World War in justification of the atrocious methods directed by him in the conduct of that war and what is being proclaimed after the Second World War in justification of these inhuman blasts.”⁷¹

Pal wondered if the claims made by those who dropped the atom bomb were not in fact the same as those of Kaiser Wilhelm. It was a sublime irony.

Hiroshima and Nagasaki, on which the atom bombs were dropped, as well as every other part of Japan that had been bombed, starting with the firebombing of Tokyo, were virtually “Holocausted” cities. Tens of thousands of people were killed in a single day in Hiroshima, in Nagasaki, and in Tokyo. There was simply no justification that *just anything* was acceptable to bring the war to a swift conclusion.

If anything was acceptable, would the use of poison gas have been acceptable? Anyone would recoil at such a question. Why is that? The first thing is that one can’t use poison gas as this is forbidden under international law. One other reason I can think of is that Japan had stockpiled poison gas. If poison gas had been loaded onto kamikaze planes and they struck a warship, even if the ship didn’t sink, the poison would be carried through the ship’s ducts and could have killed all aboard. If America used poison gas, it would have given Japan an excuse to do the same. Such was the fear, certainly. In other words, deterrence was effective with poison gas.

Thinking of the nuclear threat to Japan posed by North Korea and China today, this is a thought-provoking account. During the Cold War, the Soviet Union deployed the SS20, an intermediate-range, ballistic nuclear missile. The countries of western Europe tried to deploy American Pershing II missiles to counter this threat. In the British Parliament, there was discussion over the concern that if these missiles were deployed in England, England, too, might be targeted. To counter this, Prime Minister Margaret Thatcher pointed out that Japan had not possessed nuclear weapons, and yet she had been struck by them, and that having nuclear weapons as the Soviet Union did could serve as a deterrent. As a result of western Europe having this deterrent in place, the Soviet Union agreed to a mutual removal of the missiles and the danger of nuclear war in western Europe was lessened somewhat.

§4 Judge the victors equally

Next, Pal examined the theories of several scholars in the last of the “Preliminary Question of Law” — the problem of personal responsibility in war. The thing that I feel is most important is his reference to the 1907 Fourth Hague Convention. He wrote,

It will be a “war crime” *stricto sensu* on the part of the victor nations if they would ‘execute’ these prisoners *otherwise than under a due process of international law....* [I]f the alleged acts do not constitute any crime under the existing international law, the trial and punishment of the authors thereof *with a new definition of crime*

⁷¹ Ibid., 66–67.

given by the victor would make it a “war crime” on his part.⁷² (Emphases in the original.)

I understand that this means that it was the Tokyo Trials that demonstrated an abuse of prisoners. The armistice with Japan began on Sept. 2, 1945; with the promulgation of the San Francisco Peace Treaty in 1952, the state of war came to a close and peace was established. Until the signing of the peace treaty, the war was not completely officially ended. Therefore, the defendants at the Tokyo Trials were all technically prisoners of war, and though judgment of war crimes in the strict sense of the word is a good thing under international law, if they judge them by carrying out unplanned-for new concepts while under warning that they are acting in advance of cessation of hostilities, it is the ones *judging* who commit the war crime. Put simply, it is the victors who have mistreated prisoners of war.

One more point: Pal’s critical identification of the Soviet academic Prof. A.N. Trainin should not be overlooked. Pal wrote: “*Mr. Trainin does not base his conclusion either on any pact or convention or on any customary law. He does not say that international law, as it stood before World War I, did contemplate such acts as criminal. It is not his case that any particular pact, including the Pact of Paris, made such acts criminal.*”⁷³ (Emphasis in the original.) In other words, he denounced Trainin for speaking as he liked.

As I read between the lines, that “as he liked” came out of the following background condition: Trainin makes reference to granting legal expression to demands for retribution against crimes committed by “Hitlerites” (to use Pal’s term) as an “honorable duty” of Soviet legal scholars. Put in simpler terms, Trainin’s claims were made so as to fulfill Soviet demands for revenge against Germany.

Pal probably thought that frequently bringing up Trainin would show there was no right for the Soviet Union to be judging this trial.

The prosecutors at the Tokyo Trials, though, were in agreement with Trainin’s claims. That is, thinking that that war was the last war the earth would ever have, they probably felt that “if we really punish them here and now, another war will never occur.”

Pal’s view, however, was different. He said, “So long as the international organization continues at the stage where the trial and punishment for any crime remains available only against the vanquished in a lost war, the introduction of criminal responsibility cannot produce the deterrent and preventative effects.”⁷⁴

If one actually intended to shut out warfare by means of punishment, it is necessary that both victor and vanquished be judged equally by applying the same laws.

§5 Is it acceptable to be a dependent nation forever?

Pal had the following to say regarding the question of war and the international soci-

⁷² Ibid., 85–86.

⁷³ Ibid., 100.

⁷⁴ Ibid., 102.

ety: “*Peace in such a community* is only a negative concept — it is simply a negation of war, or an assurance of the status quo. Even now each state is left to perform for itself the distributive function. The basis of international relations is still the competitive struggle of states, a struggle for the solution of which there is still no judge, no executor, no standard of decision.”⁷⁵ (Emphasis in the original.)

He said, “There are still dominated and enslaved nations, and there is no provision anywhere in the system for any peaceful readjustment without struggle. It is left to the nations themselves to see the readjustment.”⁷⁶

In seeking a settlement to a conflict by whatever means other than peaceful, so long as there are no special agreements to the contrary, he pointed out that, “no state is bound to submit its disputes with another state to a binding judicial decision or to a method of settlement resulting in a solution binding upon both parties.”⁷⁷ Without recourse to such a solution, it is the same thing as telling a dominated or subordinated people, “always remain as you are!”

Pal wrote: “This is a fundamental gap in the international system. War alone was designed to fill this gap — war as a legitimate instrument of self-help against an international wrong, as also as an act of national sovereignty for the purpose of changing existing rights independently of the objective merits of the attempted change.”⁷⁸

This implies an extremely difficult problem. America claims to be fighting a war on terror. The prevailing view, of course, is that it is perfectly accepted that terrorism is something that cannot be tolerated. If, for example, there were terrorists working for Tibetan independence, however, and if they were suppressed using the same logic, Tibet would forever be a subjugated and dependent state of China. The issue is: is that acceptable?

Pal’s claims are probably only naturally the words of a person from India — a former colony. Independence movements generally begin with terrorism or uprisings.

⁷⁵ Ibid., 106.

⁷⁶ Ibid., 106.

⁷⁷ Ibid., 106.

⁷⁸ Ibid., 106.

Chapter Four

Was Japan an Aggressor Nation?

§1 Unbelievable arrogance and ignorance

The second section of Pal’s analysis, titled “What Is ‘Aggressive War,’” follows up from the first section, “Preliminary Question of Law.” Here, Pal again took up the issue of “aggression.” There was no shortage of important points introduced in the previous chapter, but there were many significant arguments, and the number places where the Pal’s position as an Indian figured in are quite interesting.

What must first be noted is the definition of “aggression” put forth by Robert H. Jackson, the American chief prosecutor at the Nuremberg Trials. Pal quotes Jackson:

“An aggressor is generally held to be that state which is the first to commit any of the following acts:

“(1) Declaration of war upon another state.

“(2) Invasion by its armed forces, with or without declaration of war, of the territory of another state.

“(3) Attack by its land, naval or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another state.

“(4) Provisions of support to armed band formed in the territory of another state, or refusal notwithstanding the request of the invaded state, to take in its own territory, all the measures in its power to deprive those bands of all assistance or protection.”

According to Mr. Jackson:

“It is the general view that no political, military, economic, or other considerations shall serve as an excuse or justification for such actions; but exercise of the right of legitimate self-defense, that is to say, *resistance* to an act of aggression, or *action to assist* a state which has been subjected to aggression, shall not constitute a war of aggression.”⁷⁹ (Emphases in the original.)

⁷⁹ Pal, 116.

In the Second World War, it was not the Germans who first issued a declaration of war. England and France (who had entered into defensive treaties with Poland) declared war on Germany upon the latter’s invasion of Poland. This probably would fit in with the latter half of Jackson’s opinions.

Pal further quoted Jackson as saying, “Our position is that whatever grievances a nation may have, however objectionable it finds the *status quo*, aggressive warfare is an illegal means for settling those grievances or for altering those conditions.”⁸⁰

Pal, as an Indian, criticized Jackson’s “conception of peace.” That is, in the world of the time, where the United States and the various European countries had colonies, the independence of the colonies would have caused a collapse of the stability and status quo of international society; and if all of such forces were defined as “aggressors,” Pal wondered, would it then not be impossible to bring an end to the colonial condition?

Pal opined, “In the present state of international relations such a static idea of peace is absolutely untenable. Certainly, dominated nations of the present day *status quo* cannot be made to submit to eternal domination only in the name of peace.”⁸¹

This was surely the thinking of a man who had come from a colony. America and Britain, however, with ignorance and unbelievable arrogance, had no ability for reflection. It was hypocrisy. This is exactly the same as the resolution in the American House of Representatives concerning Japan and the Comfort Women, which was reached without any consideration of what America herself had done.

At the time, whether for good or ill, Japan had legalized, state-regulated prostitution, so comfort women were organized based on that system and extending the soldiers’ sexual outlet to include women from occupied territories. Conversely, when the American forces moved into Japan, one of the first orders received from the Tokyo government’s director of public relations was for the establishment of a “recreation center.” There are many different types of recreation center, but put into concrete terms, we find upon enquiring exactly what had been requested, it meant to make a red-light district for the American soldiers.

Looking at it with today’s reasoning, prostitution is acceptable neither in America nor Japan. However, in terms of using women from occupied territories rather than the victor bringing their own women over to serve as prostitutes — which one deserves consideration? That they have not given any thought to this issue is a frightening aspect of the Americans. With the centuries of continued white supremacy, it is likely that they have lost the ability for self-reflection.

Putting that aside, Pal’s thoughts are strikingly clear. He said: “Every part of humanity has not been equally lucky and a considerable part is still haunted by the wishful thinking about escape from political dominations. To them the present age is faced with not only the menace of totalitarianism but also the *actual plague* of imperialism.”⁸² (Emphasis in the original.)

This indicates that if one says that Japan was a totalitarian state and the plague was the Second World War, the plague was the same as the imperialism that created the colo-

⁸⁰ Ibid., 116.

⁸¹ Ibid., 116.

⁸² Ibid., 117.

nies in the previous period. Pal wrote, “When international law will be made to yield the definition suggested by Mr. Justice Jackson, it would be nothing but ‘an ideological cloak, intended to disguise the vested interests of the interstate sphere and to serve as a first line for defense.’”⁸³ This is like saying Jackson’s definition was hypocrisy.

§2 The Soviet Union and the Netherlands lacked authority to convict Japan

Once again, Pal launched a scathing criticism of the Soviet Union. He began, “We must remember that the U.S.S.R. and the Netherlands are some of the prosecuting nations in this case and both declared war against Japan first.”⁸⁴

The objects of Japan’s declaration of war were Britain and the United States; of course no war declaration was made against the Soviet Union — let alone Holland. The next declaration of war came from Australia against Japan. Australia probably declared war on Japan specifically because of the idea that they were part of the Commonwealth and joined in Britain’s declaration. Pal’s bringing up the Soviet Union and Holland while making no reference to Australia or New Zealand’s declarations of war was, I suspect, to avoid getting into some difficult theorizing.

At any rate, Pal quoted the prosecution’s summary: “The Japanese Army was suffering defeat from the allies,”⁸⁵ and went on to posit, “It may be difficult to guess any necessity, instant or otherwise, overwhelming or otherwise, for defense where there is no danger of attack.”⁸⁶ The Soviet declaration of war on Japan came on August 8, 1945; the atomic bomb had already been dropped, and Japan was fatally weakened. The government of the Soviet Union knew this. Pal questioned, why would the Soviet Union nevertheless rise up *in self-defense*? The Soviets had had no reason to declare war on Japan.

Criticism concerning the Soviet entry into the war reached to Britain and the United States as well.

Pal indicated that, “The evidence discloses that this action on the part of the U.S.S.R. *had been arranged beforehand* with the other allied Powers who were all parties to the Pact of Paris. In my opinion, we should not put such a construction on the Pact which would lead us to hold that all these big powers participated in a criminal act.”⁸⁷ (Emphasis in the original.)

Pal’s “Pact of Paris” here was the Kellogg-Briand Pact — a so-called anti-war treaty. At the Yalta summit Britain and America, as signatories to the treaty, encouraged the Soviet Union to join the war. This was a criminal act, but they shut their eyes to that fact. The Tokyo Trials only saw Japan being held to the Kellogg-Briand Pact. Was this not, Pal pointed out, somewhat peculiar? Pal stated that Japan’s prosecution of the war was her right under international law, and if it was not right, then, *both* Japan and the Allied Powers had been aggressive and criminal. Returning to the issue of the Soviet Union and

⁸³ Ibid., 117.

⁸⁴ Ibid., 118.

⁸⁵ Ibid., 118.

⁸⁶ Ibid., 118.

⁸⁷ Ibid., 119.

the Netherlands, Pal said, “All that I need point out is that from the very fact that the prosecuting nations including these two nations made a common case, the test of aggression must be sought somewhere else.”⁸⁸

There were no reasons for the Soviet Union and Holland’s violations of international law in going to war with Japan. If that is not the case, then a different standard is required — creating a double-standard. If follows, then, as Pal wrote, “I cannot believe for a moment that the nations themselves having thus committed crimes would combine to prosecute the defeated nationals for the same crime, ignoring altogether similar criminal of their own nationalities.”⁸⁹ This passage is clearly ironic.

§3 The aggressors were the leaders of the losing party

Several academic theories of international law were laid out under the heading, “Basis of the Definition,” but the one that Pal thought particularly pointed was the view that the reason Britain, America, and France went to war against Germany had been to help Holland and other nations who had been attacked by Germany. Pal wrote:

An action to assist such a dominated nation, which has thus been subjected to aggression, to free itself from such aggression, must also be accepted as justifiable. Mr. Jackson supports, as justifiable, an action to assist a *state* which has been subjected to aggression. I do not see why in an international community organized on the footing of humanity, similar action to assist a *nation* subjected to aggressive act of domination should not be equally justifiable.⁹⁰ (Emphases in the original.)

What Pal was looking at here was Asia. The Philippines, Indonesia, Burma, and India, all were “nations subjected to aggressive acts of domination.” During the War, the Philippines and Burma became independent, and in the final stages Japan gave Indonesia a pledge of independence and supported the Indian National Army’s independence movement and establishment of a provisional government. What is the difference between Japan helping nations like this, and England and France going to war with Germany for the latter’s invasion of Poland? Colonies had originally been invaded by imperialist powers; so Pal was suggesting that Japan’s war had been like when Poland was overrun and Britain and France declared war on Germany.

Up till this point there was much repetition concerning issues of “self-defense” but it bears mentioning that Pal pointed out Kellogg’s testimony to the United States Senate Committee on Foreign Relations, indicating, “The right of self-defense extended even to economic blockade.”⁹¹ It is a fact beyond any doubt that before the outbreak of the war, there was an economic blockade by the so-called ABCD Line (made up of the Americans, British, Chinese, and Dutch) which had been created to counter Japan. If the

⁸⁸ Ibid., 119–120.

⁸⁹ Ibid., 120.

⁹⁰ Ibid., 121.

⁹¹ Ibid., 122.

right of self-defense extends even to economic blockade, then Japan had the right to view this as an official initiation of war. If one denies this, then the Kellogg-Briand Pact cannot be applied to Japan. Pal repeated that, ultimately, it was as if there were no Kellogg-Briand Pact, which recognized a self-defensive war and left the definition of self-defense up to the judgment of each country.

What is interesting is a declaration by the prosecution, quoted by Pal:

It must be for the Tribunal to determine

- (a) whether the facts alleged raise a case of self-defense within the proper meaning of the term;
- (b) whether the accused honestly believed in the existence of that state of affairs, or whether it was ... a mere pretext; and
- (c) whether there were any reasonable grounds for such a belief.⁹²

If these conditions were satisfied, the prosecution said, each nation’s right to judge for itself would be operable. To this claim, Pal pointed out, “None of these conditions would be satisfied in the case of the war by the U.S.S.R. against Japan.”⁹³ Moreover, he added, “Perhaps at the present stage of the international Society the word ‘aggressors’ is essentially ‘chameleonic’ and may only mean ‘the leaders of the losing party.’”⁹⁴

“The aggressors are just the leaders of the losing party.” In addition to describing the true situation of the Tokyo Trials, it is a rather decisive point of view.

§4 Communism means “the withering away of the state”

Pal made reference to Chinese communism as a “matter for which consideration was deemed necessary.” He wrote, “This may lead us to the consideration of the real character of the world’s ‘terror of communism’ and its bearing on the extent of legitimate interference with other states’ affairs.”⁹⁵ Since the Russian Revolution, it was (to use Pal’s own words) “a notorious fact” that communism had become “the world’s nightmare,” and as such, he explained at great length, communism was fundamentally different from every other ideology.

In introducing this point, communism in a given country was not like a struggle between political parties with other ideologies; it was as if the country had been invaded by an outside power. For example, even for China, communists directed by the Soviet Union had authority over their own — that is, Chinese — troops. It was just like a foreign country had moved in. Pal put it succinctly: “In short, communism means and attempts at ‘withering away of the state’.”⁹⁶ When talking of the communist ideal, vocabulary like “democracy” and “freedom” are used, but, as Pal said, “they are made to bear a fundamentally different import. The ‘democracy’ of the communistic ideal means and

⁹² Ibid., 123.

⁹³ Ibid., 123.

⁹⁴ Ibid., 123.

⁹⁵ Ibid., 124.

⁹⁶ Ibid., 124.

implies the withering away of the present day ‘democracy.’ The possibility of communistic ‘freedom’ is seen only in the disappearance of the present day democratic state organizations.”⁹⁷ On these points, communism is different from the conventional meaning of ideology or philosophy. This was how Pal fathomed communism’s true nature.

Japan had witnessed just this problem with communism on the continent. At the time, however, America had yet to “get it.” It wasn’t until after the Korean War that America finally understood.

Pal next shifted his focus to the Chinese boycott. Today when we think of the word “boycott,” we take it to mean “we won’t buy anything.” At the time, however, the boycott by China included much more violent action.

To present a concrete example: before the Manchurian Incident, there was a ludicrous law passed decreeing the death penalty for any Chinese who rented a house to a Japanese. Also, rocks were thrown at the Japanese, and primary school children became unable to attend school. The Japanese at the time were incensed over the Chinese boycotting them. (Incidentally, the Tokyo Trials did not bring up the Japanese opinion over this.)

Japan’s foreign minister at the time of the Manchurian Incident, Shidehira Kijūrō, inexplicably shut his eyes to the injuries to Japanese. Had the Japanese government formally protested before the Manchurian Incident, the world would have realized that China had done such things — but unfortunately, Japan had not done so.

A note was specifically appended at the appearance of the term “boycott” in the Lytton Report (detailing the League of Nations’ investigation of the Manchurian Incident) explaining exactly what all was included by its usage, and it included malicious acts far from our thoughts at the word “boycott.” For himself, Pal stated repeatedly that he viewed this conduct as unjustifiable. Pointing out that these were principles of conduct in regions outside the Occident at the time, he wrote, “In the event of such delinquency, it is said, ‘the delinquent member must be regarded as inviting conquest or an external attempt to subject it to wardship.’”⁹⁸

§5 America was involved before the outbreak of war

Pal continued by addressing neutrality issues. Therein, he pointed out aspects of propaganda, some of which even continue today. He wrote, “The effect of a nation’s broadcasting may alone do more harm to a combatant than the destruction of any army corps; so that if a combatant feels that the broadcasting and the press utterances of a nation which owed the duty of remaining neutral are sufficiently damaging to him, he may be within his right to demand discontinuance of such utterances or fight.”⁹⁹

The media have the ability to overwhelm the military. Japan surely had the right to demand America and Britain cease their anti-Japanese broadcasts, and if they did not do so, did not Japan have the right to make war on those countries? I am grateful that Pal touched on this point. Even today it holds true. It would be fair to say that because of the

⁹⁷ Ibid., 124.

⁹⁸ Ibid., 126–127.

⁹⁹ Ibid., 127.

damaging effect malignant propaganda (such as the “comfort women” issue) has on Japan, it is the equivalent of smashing a division of the Japan Self-Defense Force.

A point that had to be noted on the question of neutrality was the opinion of Sir John Simon, Viscount Simon, the former Lord Chancellor of England. Pal concluded from it that, “If a government bans the shipment of arms and munitions of war to one of the parties to an armed conflict and permits it to the other, it intervenes in a conflict in a military sense and makes itself a party to a war, whether declared or undeclared.”¹⁰⁰ If that is taken to be so, America became an involved party at the time of the China Incident. America was giving munitions to the Nationalist Government of Generalissimo Chiang Kai-shek, even going so far as to provide an air force. On this point, Pal wrote, “The prosecution admits that the United States ‘rendered aid economically and in the form of war materials to China to a degree unprecedented between non-belligerent powers and that some of her nationals fought with the Chinese against the aggression of Japan.’”¹⁰¹

Incidentally, the American civilians who “fought with the Chinese” include the fighter pilot corps, “the Flying Tigers.” Although they were civilians, President Roosevelt later treated them as military, so rather than being civilian volunteers in the traditional sense, they were really military personnel in mufti, so to speak.

Next, Pal considered the issue of neutrality when mixed up with not only direct assistance, but economic sanctions and boycotts as well. He wrote, “*The employment of a boycott against a country engaged in war amounts to a direct participation in the conflict, which may, in fact, prove to be as decisive of the result as if the boycotters were themselves belligerents.*”¹⁰² (Emphasis in the original.) Continuing, Pal said, “The economic measures taken by America against Japan as also the factum of ABCD encirclement scheme will thus have important bearings on the question of determining the character of any subsequent action by Japan against any of these countries.”¹⁰³ Given these points, it was a situation where war had already begun, and it was just that Japan was only striking *back*.

Based on such an argument, Pal called attention to the fact that, “In deciding whether or not any particular action of Japan was aggressive we shall have to take into account the antecedent behavior of the other nation concerned including its activity in adverse propaganda and the so-called economic sanction and the like.”¹⁰⁴

§6 War is legitimate even without a declaration of war

In discussions on the Second World War, Japan frequently comes under attack because her declaration of war was late. Pal, however, pointed out that, “In the Seventh Edition of *Wheaton’s International Law*, Dr. B. Keith discusses the history and the

¹⁰⁰ Ibid., 128.

¹⁰¹ Ibid., 128.

¹⁰² Ibid., 130.

¹⁰³ Ibid., 131.

¹⁰⁴ Ibid., 131.

principle of declaration of war and concludes that non-declaration does not make the war illegal.”¹⁰⁵ Pal cited examples from the eighteenth century on, showing that declarations of war were only announcing redundant information, and said, “According to Lord Stowell a war might properly exist without a prior notification — the notification only constituted the formal evidence of a fact.”¹⁰⁶ He further pointed out, “This practice was uncertain and was only a matter of courtesy rather than of legal obligation.”¹⁰⁷ Looking next at the Hague Conventions, Pal observed, “A careful reading of the articles will show that the Convention¹⁰⁸ only created contractual obligation and did not introduce any new rule of law in the international system.”¹⁰⁹

After this, Pal discussed the attack on Pearl Harbor. He wrote, “The prosecution characterizes this attack as a treacherous one and claims it to be symbolic of the whole program of fraud, guile and duplicity.”¹¹⁰ In response to this claim by the prosecution, the defense wondered whether Roosevelt didn’t in fact know beforehand of the coming attack on Hawaii. Pal disagreed with the prosecution’s counter-argument that, “The quality of treachery rests in the minds of those making the attack and cannot be cured by the fact that it is found out.”¹¹¹ Pal simply could not accept the prosecution’s claims. He went on: “We are not much concerned with the mental delinquency of treachery but with the initiation of war being treacherous and for this purpose it is of vital importance whether the treacherous design could be kept concealed from the other party and whether the other party was really deceived by this design.”¹¹²

Pal had only one more point that he wished to reiterate on this issue. He said, “I would only like to observe once again that the so-called Western interests in the Eastern Hemisphere were mostly founded on the past success of these western people in ‘transmuting military violence into commercial profit.’ The inequity, of course, was of their fathers who had had recourse to the sword for this purpose. But perhaps it is right to say that ‘the man of violence cannot both genuinely repent of his violence and permanently profit by it.’”¹¹³

This was a strong statement that it was, instead, America and the countries of Europe who were about to convict Japan for military violence, who should have looked back to themselves instead.

¹⁰⁵ *Ibid.*, 134.

¹⁰⁶ *Ibid.*, 134.

¹⁰⁷ *Ibid.*, 135.

¹⁰⁸ Pal referred here specifically to the “Convention Relative to the Opening of Hostilities,” part of the Hague Conference of 1907. It entered into force in 1910.

¹⁰⁹ *Pal*, 135.

¹¹⁰ *Ibid.*, 136.

¹¹¹ *Ibid.*, 136.

¹¹² *Ibid.*, 136.

¹¹³ *Ibid.*, 137.

Chapter Five Ignored Evidence

§1 Former PM Abe, who met with Pal’s son

At the end of August of 2007, the Japanese Prime Minister, Abe Shinzō, visited India. His meeting at this time with Pal’s son, Prasanta Pal, was a truly meaningful event. One can say that, broadly dividing the Japanese post-War viewpoint into two, there was the viewpoint of the Tokyo Trials and the viewpoint of Pal’s verdict. Upon reading the writings of former Prime Minister Kishi Nobusuke,¹¹⁴ we find him totally in support of Pal’s verdict. This is likely only to be expected given that Kishi himself had been suspected of having committed Class-A war crimes. The visit with Pal’s son by Abe, Kishi’s grandson, made an indirect statement that he did not acknowledge the Tokyo Trials view of history.

Abe visited a memorial hall dedicated to Subhas Chandra Bose¹¹⁵ and met with some of his family. During the Greater East Asia War, Bose had organized the Indian National Army and fought alongside Japan. He also participated in the Greater East Asia Congress in 1943, held in Tokyo, as an observer representing a free Indian government. As a patriot working for Indian independence, he is still held in high regard in India; and Abe’s visit here, too, had deep meaning. Scholars of Japanese history really must pay closer attention to the message Abe was making.

Let us now return to *Pal’s Judgment*. Part three, “Rules of Evidence and Procedure,” is certainly interesting in terms of legal scholasticism, but there is no shortage of things of more general interest as well. Let us look at several important points.

Pal first pointed something out about the Charter, which set the guidelines for the Tokyo Trials. He says, “Following these provisions of the Charter we admitted much material which normally would have been discarded as *hearsay evidence*.”¹¹⁶

¹¹⁴ 1896–1987. He served two consecutive terms as prime minister from February, 1957, to July, 1960. Kishi had been imprisoned after the War suspected of Class-A war crimes due to his involvement in the development of Manchukuo in his capacity as minister of commerce and industry. He was never indicted or tried, however. During his tenure as PM, he played a major part in India receiving ODA from Japan.

¹¹⁵ 1897–1945?. Also known as Netaji (“Respected Leader”). He was one of the most respected politicians of modern India. He opposed Gandhi and proposed violent resistance to British rule. With Japanese support, he organized the Indian National Army to take advantage of Britain’s weakened condition. Officially, he died in a plane crash in 1945, but as his body was never found, this account of his death has not been universally accepted.

¹¹⁶ Pal, 142.

(Emphasis in the original.) Even though it is hearsay evidence, it is not unconditionally useless. Pal explained that with the cross-examination of the witness, there is the possibility of drawing forth the unreliability in the hearsay evidence. The problem at the Tokyo Trials was, “the observation, memory, narration and veracity of him who utters the offered words remain untested when the deponent is not subjected to cross-examination.... *The major part of the evidence given in this case consists of hearsay of this category.* These are statements taken from persons not produced before us for cross-examination.”¹¹⁷ (Emphases in the original.)

Hearing this, there can be no doubt that all those who are at all connected to jurisprudence — whether justices, defense attorneys, or prosecuting attorneys — would voice their opposition and say that there was no way such a thing could constitute a trial. Jurists would immediately perceive a trial that has given the go ahead for hearsay evidence was not proper.

One instance of accepting the testimony of witnesses without cross-examination was the Nanking Incident. What we need to keep in mind when speaking of the Nanking Incident is that it was frequently referenced at the Tokyo Trials and that hearsay evidence *sans* cross-examination was accepted.

Continuing in this vein, Pal developed his argument over the evidentiary value of diaries.

“Kido’s Diary” and “The Saionji–Harada Memoir” were extremely important at the Tokyo Trials, but Pal’s take on them was contrarian. Pal’s view concerning the former, the diary of Kido Kōichi,¹¹⁸ former minister of the interior, was that, “The possibility of ... a distorting influence becomes greater when the author of the diary, instead of being a disinterested observer, is himself a chief participant in the entire event.”¹¹⁹ That is to say, as it is possible that there are many accounts in his diary where Kido (as a central person to the events) wrote positively of his own situation, we cannot place total reliability on this document.

“The Saionji–Harada Memoir” was a document containing rumors that Baron Harada Kumao had heard and picked up in various places and told to the wife of Viscount Konoe Hidemaro¹²⁰ to be recorded in shorthand. They were then organized and shown to Prince Saionji Kinmochi.¹²¹ The prosecution seized on these, saying, in essence, “this is how it was in the diaries!” but Pal was different again. Of the Memoir, he wrote, “This meant introduction into the case of hearsay ... or perhaps something worse than that.”¹²² He concluded, “I for myself find great difficulty in accepting and acting upon an

¹¹⁷ Ibid., 142.

¹¹⁸ 1889–1977. Prosecuted as a Class-A war criminal, he received a life sentence but was released for health issues in 1953. During the War, he was Lord Keeper of the Privy Seal, had been one of the emperor’s closest advisors, and was a major liaison between the emperor and the government. Between 1937 and 1939, Kido served briefly minister of education, then minister of welfare, and finally as minister of home affairs. It was he who recommended Tōjō Hideki be made prime minister.

¹¹⁹ Pal, 144.

¹²⁰ 1898–1973. Hidemaro was the younger brother of Prince Konoe Fumimaro, wartime prime minister of Japan. Unlike his politically inclined sibling, Hidemaro went in for music and was a famous conductor and composer, founding what is now the NHK Symphony Orchestra.

¹²¹ 1849–1940. Prince Saionji Kinmochi was the last surviving *genrō* (elder councilor) of the Meiji period, and had served twice as prime minister. Saionji was liberal and internationalist in his views, and throughout his career as a statesman tried to curb Japan’s military involvement in politics.

¹²² Pal, 144.

evidence of this character in a trial in which the life and liberty of individuals are concerned.”¹²³

In fact, Pal quoted the testimony of Viscountess Konoe, when she said, “These notes taken by me in shorthand were transcribed in Japanese by me and given to Baron Harada for approval. Baron Harada took the transcription to Prince Kim-mocchi [*sic.*] Saionji for corrections and suggestions. Prince Saionji’s corrections and/or suggestions were incorporated in the completed form which I wrote in my own handwriting.”¹²⁴ In other words, it had been rewritten several times over. That record was used as evidence for a strong conviction.

Pal made the allusion that the way in which “The Saionji–Harada Memoir” was presented was excessive. He said, “This document, it must be noted, was offered in evidence only after the defense closed their case. It was sought to be presented under the garb of evidence in rebuttal.”¹²⁵

This is a completely unsupportable method of dealing with evidence and procedure, and Pal gave a true account of how something that in a normal trial would be totally unacceptable had been boldly gotten away with.

The defense counsel, Mr. Logan, rose in objection to the admission of “The Saionji–Harada Memoir” as evidence. He claimed that the small notebooks that Harada was said to have from time to time used to dictate the memoirs were more appropriate, but they were not presented as evidence and Logan’s objection was overruled.

§2 Ignored statements of the British and American Ambassadors in Japan

One after another Pal puts on the chopping block points that could not be entirely sound yet were used as evidence at the Tokyo Trials.

For example, there was a diplomat named Morishima Morito who was a witness for the prosecution. Morishima became popular after the War, and his book *Inbō, ansatsu, guntō* (“Conspiracy, assassination, military swords”), published by Iwanami in 1948, became a best-seller. Pal recorded his assessment: “As regards the affidavit of Morishima it was no evidence at all in so far as it consisted of his opinion or belief.”¹²⁶ Nonetheless, Morishima’s testimony was accepted.

On the other hand, at the Tokyo Trials, several critical items of evidence were ignored. Pal wrote, “We rejected much evidence sought to be adduced in this case which, in our opinion, simply purported to testify to the opinion entertained by the authors thereof.”¹²⁷

Albeit testimonies of opinion or belief, there were those that were accepted and those that were rejected.

What manner of items of evidence, then, were rejected?

“We rejected the statements of Mr. Grew expressive of his estimate of the

¹²³ Ibid., 145.

¹²⁴ Pal, 146.

¹²⁵ Ibid., 147.

¹²⁶ Ibid., 151–152.

¹²⁷ Ibid., 152.

events happening in China or in Japan during the relevant period,”¹²⁸ Pal recalled. Grew’s statement was an advantageous assessment for Japan.

Pal next wrote of the refusal of the testimony of others, naming the Honorable Sir Robert Craigie, Sir Reginald Johnston, etc., as those whose testimony was not accepted.

Sir Robert Craigie had been Britain’s ambassador to Japan during the years 1937–1941. He, too, had judged Japan favorably, having said, “Japan is honestly endeavoring for peace,” and “I think they are honestly trying to bring the Chinese Incident to a close.” Despite the fact that these were the words of Great Britain’s ambassador to Japan, his testimony was refused *en toto*.

Sir Reginald Johnston had been the tutor of Emperor Puyi¹²⁹ during the last days of the Qing dynasty, and wrote *Twilight in the Forbidden City*¹³⁰ based upon his experiences. Barely escaping with their lives, he fled to the Japanese consulate along with Puyi. This caused Japan considerable consternation, but he recorded that ultimately they received help from Japan and were able to return to Puyi’s hereditary land of Manchuria. If *Twilight in the Forbidden City*, in which such details were written, had been admitted as evidence, the conspiracy would have been blown off and it is possible that the Tokyo Trials might not have taken place.

With only the knowledge that the evidence of Grew, Craigie, and Johnston had been ignored, a normal person would probably conclude that the Tokyo Trials were no good. We can only imagine that Pal, too, was not pleased, as he wrote, “Contemporaneous views, opinions and beliefs of diverse statesmen, diplomats, journalists and the like of different nationalities including Japan would have much evidentiary value.”¹³¹

Evidence advantageous to the defense was thrown out in accordance to the rules for the exclusion of evidence. All the evidence put forth by the prosecution, however, was admitted. In other words, odd complaints were made against the evidence presented to the court by the defense and it was not allowed. On this point, Pal wrote, “I, for myself, did not see much sense in the rule of exclusion at a trial where any amount of hearsay evidence had to be taken in.”¹³² He then went on to list his objections, saying, “At any rate, in a proceeding where we had to allow the prosecution to bring in any amount of hearsay evidence, it was somewhat *misplaced caution* to introduce this best evidence rule, particularly when it operated practically against the defense only.... I don’t see why, even, then, these statements could not be admitted into evidence.”¹³³ (Emphasis in the original.)

Of critical import is the question of what manner of evidence was disallowed. Pal listed for us evidence the defense tried to offer but that was refused:

“1. Evidence relating to the state of affairs in China prior to the time when the Japanese armed forces began to operate.”¹³⁴ The mainland was in a state of civil

¹²⁸ Ibid., 152.

¹²⁹ 1906–1967. He was the last ruler of the Qing dynasty, and after the establishment of Manchukuo he became its first and only emperor. His eventful life was dramatized in the Bernardo Bertolucci film, *The Last Emperor*.

¹³⁰ Published in 1934.

¹³¹ Pal, 152–153.

¹³² Ibid., 155.

¹³³ Ibid., 156.

¹³⁴ Ibid., 157.

war and the property and lives of people (including Japanese) were threatened. This was recorded in detail in the Lytton Report. The Lytton Report was the published findings of the League of Nations and was not altogether favorable toward Japan, yet the material therein still was not accepted as evidentiary.

"2. The evidence showing that the Japanese forces in China restore peace and tranquility there."¹³⁵ This was not to be saying that everything was good everywhere, but the public order in the places the Japanese armed forces went were better after they arrived than before they got there. Thus a small military force had been able to preserve public order for eight years.

If I may digress, something I find interesting is the account of Lt. Onoda Hiroo.¹³⁶ Originally, Onoda had been sent to Hankou as an employee of a trading firm. Afterward, at the age of twenty, as an active-duty serviceman, he departed for his unit in Nanchang. While there, Onoda saw a brothel. It was a large-scale, prosperous operation, and the proprietor was Chinese. He wrote of such situations and conditions in the January, 2005, edition of the magazine *Seiron*.

"3. Evidence relating to the Chinese trouble with Great Britain in 1927."¹³⁷ Communism enflamed Chinese nationalism, and before trouble broke out with Japan in 1927, China had a dispute with Britain. This was made an untouchable topic.

"4. Evidence showing the public opinion of the Japanese people that Manchuria was the life-line of Japan."¹³⁸ Therefore, the reasons that Japan had fought the Qing and the Russians could not be touched.

"5.a. Evidence as to the relations between the U.S.S.R. and Finland, Latvia, Esthonia [*sic.*], Poland and Roumania [*sic.*]"¹³⁹ In the same manner as Hitler, the Soviet Union had seized these countries. This was untouchable. "5.b. Evidence as to the relations between the U.S. and Denmark *vis-à-vis* Greenland and Iceland"¹⁴⁰ and "5.c. Evidence as to the relations between Russia and Great Britain and Iran"¹⁴¹ was also disallowed.

"6. Evidence relating to the A-Bomb decision.

"7. Evidence regarding the Reservation by the Several States while signing the Pact of Paris.

"8. The United Nations Charter [and] the Lansing-Scott Report."¹⁴²

What has to be shocking was the next item. "9. Statements prepared by the then Japanese Government for the Press: — Press release— [and] Statements made by the then Japanese Foreign Office."¹⁴³ Why were *these* no good? The reason, they said, was that statements of the Japanese government were propaganda with no true probative value, and statements of the Japanese foreign office were one-sided and advantageous only to their own country. Newspapers of other countries, and statements of for-

¹³⁵ *Ibid.*, 157.

¹³⁶ Born in 1922, Onoda is most well known for not believing that the war was over, and having fought a guerilla war in the jungles of the Philippines and not surrendering until 1974.

¹³⁷ Pal, 157.

¹³⁸ *Ibid.*, 157.

¹³⁹ *Ibid.*, 157.

¹⁴⁰ *Ibid.*, 157.

¹⁴¹ *Ibid.*, 157.

¹⁴² *Ibid.*, 157.

¹⁴³ *Ibid.*, 157.

eign services of other countries, however, were accepted.

Pal pointed out the contradiction: “We had, however, admitted in evidence press release [*sic.*] of the prosecuting nations when offered in evidence by the prosecution.”¹⁴⁴ Pal made an argument for allowing Japanese material: “[Press releases] would present us with one version of the event, the prosecution having given us another version. It will be for us to decide which version we should accept.”¹⁴⁵ That is, he claimed both the defense and the prosecution should have been allowed to present, and it was the duty of the judges to make the decision.

§3 The overlooked Lytton Report

Number 10 on the list of disallowed evidence for the defense was “Evidence relating to Communism in China.”¹⁴⁶ Concerning this, we have to turn our attention to the restrictive regulations for deciding on evidence presented. “The Tribunal was of the opinion that no evidence of the existence or spread of Communism or of any other ideology in China or elsewhere is relevant in the general phase.”¹⁴⁷ Evidence that there were attacks made was allowed to be presented but in the defendants’ testimony there was absolutely no talk of acknowledging cases where fear of communism was the explanation of incidents that took place.

According to the affidavit of Tōjō Hideki, however, the Comintern’s clout was extensive both on the continent and inside Japan and the threat of communism was a real and great problem. As I have repeatedly said, before two years had lapsed after the end of the Tokyo Trials, the Korean War had broken out and the Communist Party had occupied all of mainland China. Japan’s claims had been correct.

Today, the intrigues of the Comintern have gradually become more and more clear. Since Vladimir Putin became the president of Russia, information has come out more seldom, but during the tenure of President Boris Yeltsin after the breakup of the Soviet Union, classified Soviet documents were produced. There are things we have come to know about from them, and there are things we have come to know of since the Venona messages¹⁴⁸ came out in Washington.

On the subject of Comintern plots, there is a tendency to criticize this idea, asking “is anything and everything a plot?” We have come to realize that in the past when people who were considered conservative, or the military in pre-War days, said something was “a Comintern plot,” they were usually right. For example, as Professor Nakanishi Teruo of Kyoto University demonstrated, the genius Willi Münzenberg organized Japanese students overseas not in Moscow but in Berlin. While not all of the organized students became Party members, they were all in like mind. The celebrated theatrical director Senda Koreya was one of the students Münzenberg had organized.

¹⁴⁴ Ibid., 158.

¹⁴⁵ Ibid., 159.

¹⁴⁶ Ibid., 157.

¹⁴⁷ Ibid., 157–158.

¹⁴⁸ The Venona Project was a long-running espionage activity by American and British intelligence agencies to track, decrypt, and record secret Soviet intelligence. It began in 1943, and lasted until 1980. The declassified Venona papers are all available as PDF documents on the website of the National Security Agency. The homepage for the Venona Project is http://www.nsa.gov/public_info/declass/venona/.

Putting that aside and returning to *Pal’s Judgment*, we find that he wrote, “We have rejected the evidence relating to the development of *Communism in China*.”¹⁴⁹ (Emphasis in the original.) We take the position that this was an error committed by the court. Pal shines a light on the Lytton Report.

In the second part, “What is ‘Aggressive War,’” Pal presented the kind of thing communism in China was. In the previous chapter I introduced that point, but Pal wrote of the Lytton Report in the third part that, “[It] gives some account of this Communism in China and characterizes it as a menace to the authority of the Chinese Central Government as such.... Here I need only point out what the Commission found in this connection.”¹⁵⁰ According to the Lytton Report, actions undertaken by the Chinese Communist Party since its establishment entangled relations with the Nationalist government and assailed them.

I would now like to note one of the items Pal indicated concerning the Lytton Report: “7. (a) So far as Japan is China’s nearest neighbour and largest customer, she has suffered more than any other power from the lawless conditions in China. (b) Over two-thirds of the foreign residents in China are Japanese.”¹⁵¹

Previously, I mentioned that the Lytton Report was not altogether favorable toward Japan, but even still, the commission perceived that this was the situation prior to the Manchurian Incident. The report indicated that Japan suffered damage from the Communist Party, but the Tokyo Trials ignored this.

In their summation, the prosecution claimed that “Japan raises the communist threat, but since 1927, the government of Chiang Kai-shek has waged a campaign of resistance against communism, and by July of 1931, the Communist Party’s base of operations was occupied and the Communist Party was pushed into the mountains. Because of the conflict with Japan, Chiang Kai-shek had no choice but to cease attacks against the Communist Party. When Japan claimed the threat of the Communist Party in China, the Communist Party was well under control in China.” To this, Pal wrote,

In view of the very nature of the Communist movement in China as indicated in the Report of the Lytton Commission, the evidence offered by the defense might not have been beside the point. In any case, after excluding the evidence offered by the defense we cannot now accept what the Prosecution offers in its summation as stated above. If the matter at all enters into our consideration, we are, I believe, bound to take it as the defense contended it to be.¹⁵²

§4 When America abandons Japan

Drawing the focus to the boycott that took place on the Chinese mainland, Pal wrote, “We have rejected some evidence relating to the *Chinese boycott movement offered* by the defense, but that is because the existence of the boycott and its

¹⁴⁹ Pal, 162.

¹⁵⁰ Ibid., 162.

¹⁵¹ Ibid., 164.

¹⁵² Ibid., 164.

aims and effects were not seriously questioned by the prosecution.”¹⁵³ (Emphasis in the original.) I touched on the boycott in the previous chapter. Pal cited the accounts in the Lytton Report, thereby making clear the nature of the events. Put succinctly, it was not simply an agreement not to buy products; what was done can only be called abominable.

Pal wrote, “It overlooks the fact that ... the injury had been done to Japanese interests by the employment of methods which were illegal under Chinese law, and that failure to enforce the law in such circumstances implies the responsibility of the Chinese Government for the injury done to Japan.”¹⁵⁴

Put in modern terms to be easily understandable, it would be as if Japanese stole by force the property of Americans in Japan, and even if the Americans appealed to the Japanese police they would do nothing about it. That was one aspect of the boycott in China. This boycott was ignored at the Tokyo Trials.

The Japanese Left has frequently said that it was wrong that the Japanese were on the Chinese mainland at all, but as Pal pointed out, “Japan too had acquired special treaty rights in China and a large number of her citizens had been in China under those treaty rights.”¹⁵⁵

Still, what was unfortunate was that the section regarding communism was not investigated by the Tokyo Trials. If they had properly done so, I suspect that history after that point would have been greatly different.

The greatest cause that kept communism from being an issue was probably America’s failure at the time to realize the threat. Their inability to grasp it until the Communist Party gained total control over the Chinese mainland was America’s blind spot. So, once Japan was defeated, America simply dropped Chiang Kai-shek’s government — which they had been supporting full-steam to that point. In America’s view, it was a decadent government with rampant corruption, so they figured “why support it?” Stalin, however, was unstinting in giving munitions to Mao Zedong. With their own efforts neither Mao Zedong nor Chiang Kai-shek could make machine guns or anything. What it comes down to is, whoever has the weapons, wins. It was the Communist Party who won handily.

It would be fair to say that America’s actions *vis-à-vis* South Vietnam was the same as those *vis-à-vis* Chiang Kai-shek. As the administration of South Vietnam’s Ngo Dinh Diem fell because of corruption, all of Vietnam ultimately fell to the Communist Party. Thinking like this, we realize that America is a country who will abandon her allies in a trice to suit her own purposes.

This thick headedness of America’s and her tendency to abandon her allies indicate a danger that even today presents a serious problem.

Jiang Zemin once visited America, eagerly asserting that at one time China and America had fought together against Japan. The Chinese who America had fought alongside had been the Nationalist Party (the Guomindang, currently the government in Taiwan), not the Communist Party. This fact makes no difference for America, however. America’s education in history is lacking and moreover America is thickheaded, so there are any number of opportunities for China to take advantage.

China is now searching for an external enemy. Dissatisfaction with inequality is ris-

¹⁵³ Ibid., 166.

¹⁵⁴ Ibid., 167.

¹⁵⁵ Ibid., 170.

ing to the point of breaking down “the equally poor society” of an open economy and, once again, people are saying that there is a need to return to a primitive communist society. If that happens, there is nothing for it but for China to look to the outside to find an “enemy.” At that time, the most likely “enemy” will probably be Japan.

For example, if America were having a hard time with the Iraq situation and the president cuts back his support and the Chinese say, “you look to be having some problems — should we send a lot of troops over to Iraq to help?”, and America accepts — what would happen? Unlike America or Japan, China is a country that would not be concerned over several hundred thousand battlefield deaths. Several hundred thousand Chinese have already been sent to Africa. Thirty thousand or fifty thousand deaths is nothing, so they could pull it off easily. As a result, Japan’s deployment of the Self-Defense Force to Iraq brings a stifling unease. That there is a fundamental gap separating China from America and Japan is something that is not being taken into account in America. Before this wedge is driven in any number of times, is it possible that America might readily abandon her ally, Japan? I just can’t brush off these misgivings.

Chapter Six Was There a Conspiracy?

§1 The “conspiracy” fixation

The fourth part of *Pal’s Judgment*, “Over-all Conspiracy,” could be called “studying modern Japanese history.” I have already made an argument that *Pal’s Judgment* should be included in the examinations for top-level governmental positions. It is relatively objective and I think it is a pertinent text for adding to the study of modern Japanese history for its relevance to contemporary issues.

The fourth part entered into subject of the concrete charge of “conspiracy” and accompanied the waging of aggressive war. Pal presented the prosecution’s case:

[The] accused ... participated as leaders, organizers, instigators, or accomplices in the formation or execution of a common plan or conspiracy,...” the object of such plan or conspiracy being the securing by waging declared or undeclared war or wars of aggression etc. of “the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans and of all countries bordering thereon and islands therein.¹⁵⁶

He then pointed out that it was necessary to heed the fact that,

One of the difficulties in relation to the analysis of this conspiracy is that it was of such a breadth of scope that it is difficult to conceive of it being undertaken by a group of human beings.... That it is of vital importance in this proceeding to grasp the significance of the fact that none of the events which took place during this fourteen year period occurred by accident.... That though the accused from time to time differed among themselves, at no time during the entire course of the conspiracy did any of the accused differ with the others on the fundamental object of the conspiracy itself.¹⁵⁷

Pal followed this by bringing up the view of defense counsel George Yamaoka “re-

¹⁵⁶ Ibid., 177.

¹⁵⁷ Ibid., 179.

ferring to the vastness of the conspiracy charged.”¹⁵⁸ Yamaoka observed:

The alleged conspiracy which the prosecution has attempted to trace and describe is one of the most curious and unbelievable things ever sought to be drawn in a judicial proceeding. A long series of isolated and disconnected events covering a period of at least fourteen years are marshaled together in hodgepodge fashion; and out of this conglomeration the prosecution asks the Tribunal to find beyond all reasonable doubt that a “common plan or conspiracy” existed to accomplish the objectives stated in the indictment.¹⁵⁹

Yamaoka then named several of the defendants, and pointed out that these men had “had no opportunity to come into contact with Hirota during the days he occupied the Foreign Ministership and Premiership; and, of course, Hirota had no opportunity to know any views entertained by those men or views entertained by most of the men indicated [*sic.*] with him in this case.”¹⁶⁰

Pal cited Yamaoka making the case that, if one were to apply the same standards, the major powers of Europe and America had also entered into a conspiracy. Pal presented this as a pertinent viewpoint. Concerning the conspiracy trial, Pal had this to say:

At least on an occasion like the present, we cannot entertain our mind with the pleasure which it is apt to take in readily adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole. This is specially so, when no direct evidence of the fact to be proved could be presented to us, and, the presented facts, by inference from which we are invited to conclude the enormous conspiracy, mostly admit of a plurality of causes.¹⁶¹

To the prosecution’s claim that, “if any one having entered into the conspiracy and having taken part in the preparation for committing the offenses alleged, be out of office when the actual offense is committed, he is not exonerated from liability,”¹⁶² Pal said, “The propositions of law, thus enunciated by the prosecution, certainly raise very grave questions for national societies of the so-called International Community. They involve unprecedented risk and responsibility on the part of those who might be called upon to work the machinery of their own national governments.”¹⁶³ A system where one continues to hold all the responsibility even after having resigned one’s position is a peculiar one.

It was a preliminary thing, but what had to be known about the legal action in the To-

¹⁵⁸ *Ibid.*, 179.

¹⁵⁹ *Ibid.*, 179.

¹⁶⁰ *Ibid.*, 179.

¹⁶¹ *Ibid.*, 180.

¹⁶² *Ibid.*, 180.

¹⁶³ *Ibid.*, 180.

kyo Trials *vis-à-vis* conspiracy was the connection with the Nuremberg Trials. The provisions of the Charter of the Tokyo Trials were “within the power of the Supreme Commander *to lay down*,”¹⁶⁴ but “the prosecution offered to accept the law in this respect to be as expounded in the Nurnberg [*sic.*] judgment.”¹⁶⁵

The object of the Nuremberg Trials was not the nation of Germany; rather, it was the Nazi political party. The Nazis were a single party, so a “conspiracy” was feasible and they were clearly beyond any doubt a conspiratorial organization. Conversely, in Japan, from the ascension to the throne of Emperor Shōwa (Hirohito) in 1926, one cabinet doing one thing was succeeded by the next cabinet doing the exact opposite. The reason was that the two major political parties, the Seiyūkai (“Friends of Constitutional Government”) and the Minseitō (“Constitutional Democratic Party”), were rivals. It was impossible for the two parties to join together in a conspiracy. Regardless, from the moment the Allied Powers said they would be following the pattern of the Nuremberg Trials, they had no choice but to go ahead with it — though it bore no relationship to the actual truth.

Pal began, “I should proceed to examine the facts first.”¹⁶⁶ He started with the prosecution’s offer to prove that, “once the common design was established, all the evidence, regardless of how disconnected it might seem to be, or regardless of how disconnected the actions of the various defendants might seem, would fall easily into its proper and logical sequence.”¹⁶⁷ This expressed well the prosecution’s attitude that they were fixed on the idea of a conspiracy and would somehow make the connections work.

The materials that “would evidence the *factum probandum*,¹⁶⁸ (the over-all conspiracy)”¹⁶⁹ presented by the prosecution in the Tokyo Trials laid out events that had happened in modern Japanese history.

Such things as the return to the “active-duty system” for the ministers of the army and navy were part of the conspiracy. During the Taishō period (1911–1925), Prime Minister Yamamoto Gonnohyōe¹⁷⁰ went against the extant system and introduced a policy whereby those appointed to be ministers of the army and navy no longer had to be active-duty flag officers. Thereafter, first and second reserve officers as well as retired officers — and from time to time civilian officials as well — were appointed to be ministers of the army and navy. It seems, however, that this unfortunately annoyed contemporary Japanese military personnel. Taking advantage of the February 26 Incident¹⁷¹ of 1936, a move

¹⁶⁴ Ibid., 183. Emphasis in the original.

¹⁶⁵ Ibid., 183.

¹⁶⁶ Ibid., 184.

¹⁶⁷ Ibid., 184.

¹⁶⁸ That is, “the fact to be proven.”

¹⁶⁹ Pal, 185.

¹⁷⁰ 1852–1933. He was also known as Yamamoto Gonbee, an alternate reading of the *kanji* in his name. He was a count and a naval admiral and served as minister of the navy before serving as PM 1913–1914. During his first administration, he abolished the rule that the ministers of the army and navy had to be active-duty flag officers. He returned as head of the “earthquake cabinet” in the emergency after the Great Kanto Earthquake, serving again as PM 1923–1924.

¹⁷¹ An attempted *coup d’état* begun on Feb. 26, 1936, when an ultra-right faction of the army tried to seize power. Several leading political figures, including the finance minister and the Lord Keeper of the Privy Seal, were killed, and parts of Tokyo were even under insurgent control briefly. Saionji Kinmochi, one of their targets, managed to flee. Though the officers claimed to be acting in the emperor’s name, he himself denounced them as “rebels.” The coup collapsed on Feb. 29; ultimately, nineteen officers were sentenced to

was made to return to the old “active-duty” system, central to which was making Terauchi Hisaichi¹⁷² the minister of war. Prime Minister Hirota Kōki acquiesced to this.

The return to the active-duty system for appointments of army and navy ministers was the greatest wrong committed by Hirota Kōki. Thereafter, the army could do whatever they wanted in the formation of a cabinet without hindrance. For example, the cabinet of Yonai Mitsumasa¹⁷³ was against the signing of the Tripartite Pact. It isn’t believed that Yonai’s army minister, Hata Shunroku,¹⁷⁴ personally was that much in support of the Tripartite Pact, but the environment of juniors overwhelming their seniors was flourishing and the main body of the military was backing it. Yonai’s cabinet accepted responsibility and was crushed by the controversy. The next cabinet, under Prime Minister Konoe Fumimaro,¹⁷⁵ enacted the Tripartite Pact. We can see from just this single event that the return of the “active-duty” system was a significant incident. It wasn’t done so they could make war against America, however. It was done so the army could seize authority. That, too, was one of the conspiracies.

Pal wrote, “As has been claimed by the prosecution, the existence of the overall conspiracy as alleged in Count 1 is indeed “the basic matter of transcendent importance in this case.” ... I have already expressed my view that the crimes triable by this Tribunal must be limited to those committed in or in connection with the hostility or hostilities which ended in the surrender of the 2nd September 1945.”¹⁷⁶ As I pointed out in the second chapter on “Preliminary Questions of Law,” Pal claimed that the Manchurian Incident, the Marco Polo Bridge Incident, and so forth, were outside the jurisdictional purview of the Tokyo Trials. It therefore goes without saying that it was meaningless bringing up the Manchurian Incident and other events as if they were parts of a conspiracy.

The prosecution presented “four successive steps” to explain their theory of conspiracy. First was gaining control of Manchuria. Second was the expansion of this control to the rest of China. Third was allying with the Axis powers (via the Tripartite Alliance). Fourth was expansion by further “aggressive wars” into the rest of East Asia and the Pacific and Indian Oceans. To be sure, these were steps involved. It is pointless, however, to say that they were, taken together, encompassing a conspiracy.

Pal undertook to try to follow this division of four steps. Pal stated that, “The fact to be proved is the existence of the conspiracy as asserted in the indictments.”¹⁷⁷ He then pointed out that, ultimately, the prosecution “did not claim to have given any direct evidence of this conspiracy. As a matter of fact, there is no such direct evi-

death (two others had already committed suicide) and seventy to prison terms. Ironically, one result of the coup was a strengthened Japanese military.

¹⁷² 1879–1946. He was a count and field marshal, and later commanded the Southern Expeditionary Army Group in WW2.

¹⁷³ 1880–1948. Yonai was an admiral and navy minister before becoming prime minister briefly in 1940. He again later served as navy minister during the War.

¹⁷⁴ 1879–1962. Hata held the rank of field marshal at the end of the War. He was army minister 1939–1940, and later the commander of the China Expeditionary Army. He received a life sentence from the Tokyo Trials, but was paroled in 1955.

¹⁷⁵ 1891–1945. Prince Konoe Fumimaro, a scion of the ancient Fujiwara house, served three times as PM (1937–1939, and twice 1940–1941). He was always “the compromise candidate.” After the War, rather than face arrest, he committed suicide.

¹⁷⁶ Pal, 188.

¹⁷⁷ *Ibid.*, 188–189.

dence on the record.”¹⁷⁸ We can only say that it is a critical point that the prosecution acknowledged lacking any “direct evidence.”

Such were the preliminary arguments for the case of conspiracy.

§2 The Lytton Report as critical evidence

We now turn to the Manchurian Incident. If its content were to be lengthened a bit, one would be able to write a valuable history of the Shōwa period.

First, Pal addressed the assassination of Zhang Zuolin on June 4, 1928. He quoted the prosecution’s claims that Zhang’s assassination was the “first overt act in the conspiracy to carry out the objective of the conspiracy.”¹⁷⁹ The Lytton Report, however, as Pal quoted it, said, “The responsibility for this murder has never been established. The tragedy remains shrouded in mystery, but the suspicion of Japanese complicity to which it gave rise became an additional factor in the state of tension which Sino–Japanese relations had already reached at that time.”¹⁸⁰ Examination of Zhang’s assassination was required, Pal said, concerning: “whether what was shrouded in mystery according to the Lytton Report has now been cleared up and Japan’s complicity clearly established [and] ... what evidence is there to connect this incident in any way with any larger conspiracy as asserted by the prosecution.”¹⁸¹

In the end, the prosecution failed to present facts to clear away the “mystery” shrouding the event. Chang and Halliday’s *Mao* cites the viewpoint that it was done by the Comintern. To be sure, Zhang and the Soviet Union had a strained relationship at the time. Zhang had conducted a search of the offices of the Communist Party, was opposed to Soviet government involvement with the North Manchuria Railway, and fought armed conflicts against them. It’s obvious that the Soviet government of the time hated him. To be fair, Zhang wasn’t on good terms with Japan, either. By nature, Zhang was a Manchurian mounted bandit, and he had worked as a Russian spy during the Russo–Japanese war and had been captured by the Japanese. His life had been spared, however, and he had been turned, becoming a spy working for the Japanese. As he was a man who had been saved by the Japanese, I do not think he was someone who could then become someone so hated by Japan that he had to be killed.

Pal stressed the importance of the Lytton Report in investigating the issues related to Manchuria that started with the assassination of Zhang Zuolin. He wrote, “The most important evidence in this phase of the case is the Lytton Commission Report which is Exhibit 57 in this case.”¹⁸²

The Lytton Commission, dispatched by the League of Nations, was an independent party. People assembled from Britain, America, France, Germany, and Italy, over a period of some months traveled through Japan, Manchuria, and China, conducting a careful examination. Their report is of course a fundamental resource, but Pal saw that full use

¹⁷⁸ Ibid., 189.

¹⁷⁹ Ibid., 193.

¹⁸⁰ Ibid., 193.

¹⁸¹ Ibid., 193.

¹⁸² Ibid., 194.

had not been made of it.

Pal cited the Lytton Report’s summary of the relationship between Japan and China in connection to Manchuria:

The Commission dismissed the past with this final reflection: “It must be apparent to every reader of the preceding chapters that the issues involved in this conflict are not as simple as they are often represented to be. They are, on the contrary, exceedingly complicated, and only an intimate knowledge of all the facts, as well as their historical background, should entitle anyone to express a definite opinion upon them. This is not a case in which one country has declared war on another country without previously exhausting the opportunities for conciliation provided in the Covenant of the League of Nations. Neither is it a simple case of the violation of the frontier of one country by the armed forces of a neighbouring country, because in Manchuria there are many features without an exact parallel in other parts of the world.”¹⁸³

The Lytton Report acknowledged China’s position, concluding that Manchuria, “although legally an integral part of China, *had a sufficiently autonomous character to carry on direct negotiations with Japan on the matters which lay at the root of this conflict.*”¹⁸⁴ (Emphasis in the original.)

Logically thinking that “there must be some connection between China and Manchuria” was the perception of the time. It would appear that the members of the Lytton Commission did not know that in 1616 a Manchurian named Nurhaci¹⁸⁵ subjugated Manchuria, or that his grandson later captured Beijing. The Qing were not a Chinese dynastic house, but a conquering Manchurian dynasty. Moreover, they didn’t see that the Qing were already functionally useless so China could make no claim on Manchuria. Johnston’s *Twilight in the Forbidden City* was published before the report of the Lytton Commission was issued. Had the members of the Lytton Commission read the book, they would have had to have written that Manchuria was not Chinese property.

Pal wrote, “These final reflections of the Commission, if properly appreciated, should, according to the defense, suffice to dispel the present charge of *crime.*”¹⁸⁶ (Emphasis in the original.)

The defense’s claim was that using only the Lytton Report it should have been clear that there was no need to deal with the Manchurian Incident. Pal presented the defense’s assertions that Japan’s military actions, even if violations of the charter of the League of

¹⁸³ Ibid., 195.

¹⁸⁴ Ibid., 195.

¹⁸⁵ 1558–1626. The founder of the Manchu state, and layer of the groundwork for China’s Qing dynasty. It was his son, Huang Taiji, who changed the dynastic name from Jin to Qing, and it was *his* son, Shuzhi, who seized Beijing in 1644 and was the first Qing emperor of a unified China. Nurhaci’s descendant Puyi was the last emperor in China and Manchuria.

¹⁸⁶ Pal, 195.

Nations, the Kellogg-Briand Pact, and the Nine-Power Treaty,¹⁸⁷ were justifiable defensive acts and that Japan’s right to do so was explicit in all the treaties.

As has already been presented, given that each country had the authority to decide for itself what constituted self-defense, claims of treaty violations — no matter how many — were meaningless.

Apart from these claims by the defense, Pal pointed out the following:

*The actions of the various western members of the international society in respect of the Chinese Territory are justified as being almost inevitable, being the inevitable reasonable consequences of the failure on the part of the Chinese sovereign to exercise full territorial sovereignty therein in special relation to the safe-guarding of alien life and property according to the western standard.*¹⁸⁸ (Emphasis in the original.)

The thinking of the great powers of the West was, “if the Chinese are incapable of protecting people, we will have to do it ourselves.” With the collapse of the shogunate in the 1850s and 1860s, the Western powers scrambled to push for the rights of consular jurisdiction in Japan, too. Japan was only doing the same thing as everyone else — so where was the wrong? The question for Pal was, “What have those Western nations who sit in judgment on Japan done *themselves*?”

§3 The Russian Revolution that crushed the basis of Russo–Japanese conciliation

Pal read between the lines of the Lytton Report to get a recent history of China. Let us consider several points therein. First, at the time of the Lytton Commission’s investigation, it was realized that, “Disruptive forces in China are still powerful.”¹⁸⁹ Pal cited several concrete examples the Commission found, among which were the points that: “At the time of the Washington [Naval] Conference, China had two completely separate governments, one at Peking and one at Canton, and was disturbed by large bandit forces — preparations were being made for a civil war involving all China,”¹⁹⁰ and “As a result of the Civil War, which was preceded by an ultimatum sent to the Central Government on January 13, 1922, ... the Central Government was overthrown in May, and the independence of Manchuria from the Government installed at Peking in its place was declared in July by Marshal Chang Tso-Lin [Zhang Zuolin].”¹⁹¹ China was in such a state of confusion that it wasn’t as simple as saying “Germany attacked France” or “France attacked Germany.”

A point that should not be overlooked was that, “The Washington Treaty was designed to start China upon the road of international co-operation for the purpose

¹⁸⁷ Signed in Washington, DC, in 1922, affirming the sovereignty and territorial integrity of China (per the “open door policy”) as part of the Washington Naval Conference. The signatories were the United States, Britain, France, Japan, China, Italy, Belgium, the Netherlands, and Portugal.

¹⁸⁸ *Ibid.*, 195.

¹⁸⁹ *Ibid.*, 198.

¹⁹⁰ *Ibid.*, 198.

¹⁹¹ *Ibid.*, 198.

of solving her difficulties. China could not make the desired and expected progress as she was hampered by the virulence of the anti-foreign propaganda which she pursued.”¹⁹²

Yet another point was, “*The Communist Movement in China* gained considerable influence since 1921. After a period of tolerance with regard to Communism there was a complete break between the Kuomintang and Communism in 1927.”¹⁹³ (Emphasis in the original.) Taking these points into account, the conclusion is that one can’t view China as a typical country, nor judge Japan for her actions.

A pointed observation was: “Without Japan’s activity, Manchuria could not have attracted and absorbed any large population.”¹⁹⁴ In addition, “At first, Manchuria entered into this great conflict of policies *only* as an area, only for its strategic position.... *It became coveted for its own sake* later, when its agricultural, mineral and forestry resources had been discovered.”¹⁹⁵ (Emphases in the original.) During this, Russia moved into Manchuria, and then fought with Japan, who had moved into the Korean peninsula. However, “China at first showed little activity in the field of development.”¹⁹⁶ During the Qing Empire, Manchuria was closed off and Han Chinese people were not allowed into the ancestral land of the Manchurian royalty. Manchuria was, literally, a no-man’s land. That it became a territory that everyone wanted was due to the actions of the Japanese.

Pal turned his attention to the Russo–Japanese War, but much of what he brought up we already know. What has unexpectedly been forgotten, however, was that after the Russo–Japanese War, relations between Russia and Japan *improved*. Rather than letting America have her own way, Russia and Japan worked together to put a stop to it. As Pal pointed out, however, “The Russian Revolution of 1917 shattered the basis of Russo–Japanese understanding and co-operation in Manchuria.”¹⁹⁷

It’s not written in *Pal’s Judgment*, but the Soviet Union twice formulated a “Five-Year Plan” and stationed twenty divisions in the vicinity of Manchuria. At the time of the Manchurian Incident, the Kwantung Army¹⁹⁸ (Japan’s army force in Manchuria) had at best a single division, so it is only natural that there was a sense of foreboding. In point of fact, as Pal pointed out, “This resulted in raids by Soviet Troops across the Manchurian Border which developed into a military invasion in November 1929.”¹⁹⁹

§4 Pal’s international ideas

In Pal’s historical investigation, he drew attention to an extremely interesting point:

¹⁹² Ibid., 199.

¹⁹³ Ibid., 200.

¹⁹⁴ Ibid., 201.

¹⁹⁵ Ibid., 201.

¹⁹⁶ Ibid., 203.

¹⁹⁷ Ibid., 203.

¹⁹⁸ In modern Pinyin orthography, this would be the “Guandong Army.”

¹⁹⁹ Pal, 204.

“Japanese interest in Manchuria began ten years before that war.”²⁰⁰ Pal was writing about the Russo–Japanese War.

“Ten years before” was the time of the First Sino–Japanese War, fought between the Japanese and the Qing. In the peace treaty concluded with the Qing — and their Manchurian royal house — the Liaodong peninsula was ceded to Japan “in perpetuity.” At the time, the territory of the Liaodong peninsula was not just a peninsula with Port Arthur and Dalian; it extended far into the mainland. What particularly pleased the Japanese at the time was the fact that this new territory would alleviate Japan’s population problems.

The Tripartite Intervention,²⁰¹ however, wrested Liaodong from the Japanese. Pal pointed out, though, that, “To the Japanese, the fact that Russia, France and Germany forced them to renounce their cession does not affect their conviction that Japan obtained this part of Manchuria as the result of a successful war and thereby acquired a moral right to it which still exists.”²⁰² Forced by the great powers of Europe to renounce things legitimately obtained at the conclusion of the First Sino–Japanese war — the Japanese probably thought there was nothing that could be done about that kind of authority.

Pal wrote,

But assuming that these had been acquired by Japan by prior aggressions, her legal position in the present international system would not, in the least, be affected by that fact. It would be pertinent to recall to our memory that the majority of the interests claimed by the Western Prosecuting Powers in the Eastern Hemisphere including China were acquired by such aggressive methods, and when they were making reservations in relation to their respective interests in the Eastern Hemisphere while signing the Pact of Paris, they were certainly contemplating their right of self-defense and self-protection as extending to such interests.²⁰³

Pal was writing an indictment of the countries of the white men, who had done whatever they wished.

After making the point that, “I would like to add in this connection that at least Great Britain recognized this ‘special position’ in her treaties of alliance with Japan,”²⁰⁴ Pal went on to make the important point that “this Treaty of Washington of 1922 might not deprive her of such interests.”²⁰⁵ That is, besides being the right of the state, self-existence is the state’s highest duty; Japan had not said she had abandoned her unique position, so she could not be deprived of it.

We mustn’t see that Pal is defending the Japanese position with these points, however.

²⁰⁰ *Ibid.*, 206.

²⁰¹ This was a diplomatic intervention by Germany, Russia, and France, on Apr. 23, 1895, over the terms of the Shimonoseki Treaty (which ended Japan’s war with China). In return for a monetary payment from China, Japan was forced to relinquish control of Liaodong. To Japan’s amazement, Russia immediately moved in and occupied the peninsula and fortified Port Arthur themselves.

²⁰² Pal, 206.

²⁰³ *Ibid.*, 211.

²⁰⁴ *Ibid.*, 211.

²⁰⁵ *Ibid.*, 212.

He is merely saying that, from his position as a judge, “viewed internationally, this is how it was.” We know that afterward, when powerful people in Japan invited Pal to visit, he resolutely said, “I spoke not for Japan, but from the position of international law.” As Japanese, we were struck by the strong international view taken by this Indian gentleman.

Chapter Seven The Manchurian Incident

§1 Five important incidents presented by the defense

Even today, Japan is criticized for going against the Nine-Power Treaty, which was intended to create Chinese territorial integrity and equal opportunity. Pal raised the problems of the Nine-Power Treaty many times. One of these was when he pointed out that there was no government in China *able* to govern. On this point, Pal quoted the American secretary of state, Kellogg:

*“One of the most difficult questions,[”] he said, in the discussion and settlement of the problem relating to conventional tariffs, extra-territorial rights and foreign settlements in China, “is whether China now has a stable government capable of carrying out these treaty obligations.” ... It is a notorious fact that the treaty was not given effect to by any of the signatories and one of the reasons for this was given by the British Government in 1926 to be the progressive decline, during this interval, in the effective power of the government, nominally representing all China, at Peking.*²⁰⁶ (Emphases in the original.)

In addition to pointing this out, he catalogued the “five important incidents [that] occurred in the Far East which had not been anticipated at the time of the conclusion of the treaty”²⁰⁷ as presented by the defense.

The first of these was, “The abandonment by China of the very basic principle of the treaty.”²⁰⁸ The “very basic principle” China had abandoned was that China was to maintain friendly relations with foreign countries. The occurrence of large-scale anti-Japanese activities was a fundamental abandonment of that requirement.

The second was, “The development of the Chinese Communist Party.”²⁰⁹ The Communist Party was not a typical political party; it had its own laws, army, and government. It was as if there was second government that was separate from the Nationalist

²⁰⁶ Pal, 213.

²⁰⁷ Ibid., 215.

²⁰⁸ Ibid., 215.

²⁰⁹ Ibid., 215.

government.

The third incident was the “Increase in the Chinese armament.”²¹⁰ A reduction in Chinese military strength was required by the Washington Naval Conference, but rather than undertaking a reduction, China appears to have had a large standing army equipped with the latest weapons.

Fourth was, “The development of the Soviet Union into a powerful state.”²¹¹ At the time of the conclusion of the Nine-Power Treaty, Russia was still cleaning up after the revolution and the Soviet Union was not yet a major power. The Soviet Union had not been invited to the Washington Naval Conference and thus did not participate in the Nine-Power Treaty. Through repeated five-year plans, the Soviet Union became a powerful country. Their military might was a threat to Japan.

The fifth was, “A fundamental change in the world economic principle.”²¹² During 1929–1930, tariffs were applied in America to 1,000 articles. With the Ottawa Conference,²¹³ Great Britain, too, renounced free trade and established a policy of applying high tariffs to those outside the commonwealth. Thus the world ended up on a path to setting up economic blocs. Under these conditions, the need for secrecy in Japan’s economic connections to their neighbor, China, was born.

In addition to pointing out the defense’s claims on these changes, Pal noted that, “The Nine-Power Treaty sets no definite time of expiration.... [S]uch a treaty is understood, in international law, as concluded with the tacit condition, ‘if things remain as they are’ — *clausa rebus sic stantibus*.²¹⁴ Things having all changed, the defense claimed that the treaty obligation terminated.”²¹⁵ To this claim by the defense, Pal said conclusively that, “There is much force in these contentions and if anything turns upon this treaty obligation, these certainly would require serious consideration.”²¹⁶

Pal made a significant point concerning the directive from the League of Nations which had been based on the Lytton Report. Pal began, “Much has been made of the fact that Japan did not obey the League injunctions.”²¹⁷ According to the League’s directive, Pal said, Manchuria was to be made an autonomous region of China, the Japanese army was to withdraw, and an international police force was to secure public order. At that time, Japan had no idea just what kind of police force would be sent, but things would not go well with a bandit-like army of 200,000 already there.

How did Pal see it?

He said, “The League insisted that the Japanese Forces must withdraw before anything else was discussed. As was observed in some quarters this attitude of the League might not have been justifiable in the circumstances of the case. the position of the Japanese forces was not that of a force having violated a national

²¹⁰ Ibid., 215.

²¹¹ Ibid., 215.

²¹² Ibid., 215.

²¹³ Also known as the British Empire Economic Conference, the Ottawa Conference was held July 21–Aug. 20, 1932, to discuss issues related to the economic depression. It produced a plan to establish reduced tariffs throughout commonwealth nations, but very high tariffs for all other countries.

²¹⁴ A legal term often seen with treaty law. It literally means “binding so long as things stand [as they are].”

²¹⁵ Pal, 216.

²¹⁶ Ibid., 216.

²¹⁷ Ibid., 219.

frontier.”²¹⁸

He concluded, “*The League had no means to step in and restore order in Manchuria. The League equally had no means to guarantee security to the Japanese Force.*”²¹⁹ (Emphasis in the original.) In other words, the directive from the League of Nations was irresponsible.

§2 The man who did the prosecution’s bidding

Times change, but to the prosecution’s claims about the assassination of Zhang Zuolin in 1929 that, “The utmost this evidence can establish is that the murder of Chang Tso-lin [*sic.*] was the act or [*sic.*] a group of Japanese officers of the Kwantung army, that the same was planned by Col. Kawamoto, the then senior staff officer of that army, and that the plan was executed by one Captain Ozaki or Captain Tomiya or both,”²²⁰ Pal countered, “There is absolutely nothing to connect this plan or plot with the alleged conspiracy.”²²¹ In other words, we may say that Pal’s conclusion was that even if Japan *had* carried out the assassination, it had no connection to any “conspiracy tale” the prosecution was alleging to have continued on from 1929.

“The evidence brought in to supplement the Lytton Report in this respect”²²² was the testimony given by Baron Okada Keisuke,²²³ Tanaka Ryūkichi,²²⁴ and Morishima Morito. The prosecution also questioned Prime Minister Hamaguchi Osachi’s²²⁵ minister of foreign affairs, Shidehara Kijūrō;²²⁶ Prime Minister Wakatsuki Reijiro,²²⁷ and

²¹⁸ Ibid., 219.

²¹⁹ Ibid., 219.

²²⁰ Ibid., 220.

²²¹ Ibid., 221.

²²² Ibid., 223.

²²³ 1868–1952. Baron Okada was an admiral, and served as prime minister from 1934–1936. He was a supporter of the arms reduction treaty of the London Naval Conference of 1930, for whose ratification he worked. Okada was one of the targets for assassination during the Feb. 26 Incident, but his brother-in-law and secretary were mistakenly killed instead. He played a leading part in the overthrow of the Tōjō cabinet in 1944.

²²⁴ 1896–1972. Gen. Tanaka was an officer gathering intelligence in China 1929–32, and was in Shanghai at the time of the Shanghai Incident in 1932. In 1941 he became head of the Nakano School, the army’s primary espionage and sabotage training facility. He retired for health reasons after being attached to the Eastern Defense Army in 1942. He was recalled in 1945, and was used by the prosecution during the Tokyo Trials to get Tōjō Hideki to change his testimony.

²²⁵ 1870–1931. Hamaguchi was prime minister 1929–1931. He was a voice against the rise of the military, but his support of the London arms reduction treaty led many to feel he had sold out Japan. He barely survived after being shot in an assassination attempt in 1930, but still won re-election to the premiership. He resigned a month later and died soon after.

²²⁶ 1872–1951. Baron Shidehara was a diplomat. Both before and during the war, Shidehara advocated pacifism. The term “Shidehara diplomacy” described Japan’s liberal diplomatic policy in the 1920s led by him while foreign minister. He was also the interim prime minister while Hamaguchi recuperated from his gunshot wound. The Kwantung Army’s occupation of Manchuria in 1931 put an end to his career as foreign minister. He served in the House of Peers during the War, keeping a low profile, but after the War his pro-American sentiment led to his appointment to the premiership, where he served 1945–1946.

²²⁷ 1866–1949. He took over the premiership from Hamaguchi in June of 1931, holding office till that December. He had previously been PM 1926–1927. He, too, had been a supporter of the arms reduction treaty,

Inukai Takeru,²²⁸ who had been secretary to Prime Minister Inukai Tsuyoshi²²⁹ — but in Pal’s view, “apparently they had no knowledge of this plotting.”²³⁰ As Okada couldn’t even produce the names of the officers connected with the assassination of Zhang Zuolin, this is something that in no way could be called evidence.

What is interesting is the reference to Tanaka Ryūkichi. He testified to hearing various people say “this was done,” or “that was done.” Pal’s view of him was as follows: “Next comes the witness Tanaka Ryukichi whose services were freely requisitioned by the prosecution to fill in all possible gaps in its evidence. Here is a man who seems to have been very much attractive to every wrong doer of Japan who after having committed the act, somehow and sometime sought out this man and confided to him his evil doings.”²³¹

Tanaka said that in addition to Col. Kawamoto Daisaku (made out to be a person central to Zhang’s assassination) exposing the whole plan in 1935, he also heard accounts from Capt. Chō Isamu, Lt. Col. Hashimoto Kingorō, Ōkawa Shumei, and Maj. Gen. Tatekawa Yoshitsugu. If that was true, it would seem that all of them would have wanted to confess to Tanaka, and gone running to him. That is ridiculous. Pal concluded, “It will not be possible for me to accept his statement that the plotters of the Chang Tso-lin [*sic.*] murder, of the Mukden Incident,²³² of the other sinister incident of the period, all came to him and confessed their heinous acts.”²³³

Pal wrote, “The material for the reconstruction of the list of conspirators is mainly supplied by the testimony of Tanaka Ryukichi. This witness again, as usual with him, derives his knowledge entirely from the voluntary confessions of the alleged conspirators.”²³⁴

In other words, Keenan and the other prosecutors first created the conspiracy story, and then got Tanaka Ryūkichi to fill in the missing parts. Tanaka assisted Keenan in the documentary search. According to an article titled “*Oni kenji Kiinan gyōjō ki*” (“Record of the behavior of the demon prosecutor Keenan”) in the October, 1959, issue of the magazine *Bungei Shunjū*, for example, when Keenan wanted to make time with the ladies, he would have Tanaka brought along.

Of Col. Kawamoto himself, Pal had his doubts. He wrote, “The Colonel was still alive when Tanaka was being examined and according to Tanaka, was in Taiyuan, Shansi Province, China. We are not told why he could not be produced before us by the Prosecution. Apparently he was under the allied control.”²³⁵ Pal

and suffered politically for that support. He was unable to control the army, and was a strong voice against war against the United States.

²²⁸ 1896–1960. In addition to being the PM’s amanuensis, he was also his third son. He himself was a politician, serving in the Diet after his father’s assassination. He tried to restore good Sino–Japanese relations, and supported the government of Wang Jingwei. After the War, he served as minister of justice 1952–1953.

²²⁹ 1855–1932. Inukai served as PM 1931–1932. He was unable to control the military’s actions in China following the Manchurian Incident. His conflict with the military led to his assassination in the May 15 Incident of 1932, when radical elements of the army, led by military cadets, attempted a *coup d’état*. His death marked the end of civilian control of the government.

²³⁰ Pal, 223.

²³¹ *Ibid.*, 226.

²³² *I.e.*, the Manchurian Incident.

²³³ Pal, 227.

²³⁴ *Ibid.*, 238.

²³⁵ *Ibid.*, 229.

quoted Tanaka's testimony that Kawamoto had said "it was a plan of his alone."²³⁶ Given that, surely they should have had to call Kawamoto to testify. That Kawamoto was not summoned by the court and Tanaka's testimony alone was relied upon to settle the issue is an important point that should cause us to consider the credibility of Tanaka's testimony.

Of the Lake Liutiao Incident²³⁷ of Sept. 18, 1931, which is considered the direct cause of the Manchurian Incident, "The Lytton Commission seems to have attached some weight to the fact that the Japanese were better prepared than the Chinese when hostilities began on the night of September 18."²³⁸ He went on, however: "Remembering the tense situation and high feeling preceding the incident, and keeping in view the relative military strength of the parties in the locality, this preparedness on the part of Japan is nothing unusual and may indicate nothing beyond efficient farsightedness and vigilance on the part of the army authorities."²³⁹

At the time, the Kwantung Army had some 10,000 men, while the army of Zhang Xueliang numbered 200,000. Anti-Japanese sentiment was high, so it was only natural that, given the military disparity alone, the Japanese army would be vigilant and make preparations — so this fact would not by itself determine whether they were aggressors. Pal admitted the possibility for supposition that the Incident was in fact done by Zhang Xueliang's side in the hopes for some intervention by a third party. He introduced the testimony of Gen. Minami Jirō,²⁴⁰ the written statement left behind by Gen. Honjō Shigeru²⁴¹ before his suicide, and the preliminary memoranda for the requested examination of Staff Officer Gen. Ishiwara Kanji,²⁴² all of whom denied that the Manchurian Incident had been planned by the Japanese.

Pal concluded: "We shall not be entitled to go beyond the report of the Lytton Commission.... If necessary, I would not have hesitated in saying that this incident was not aggressive war within the meaning that can be assigned to that expression for the purpose of fixing criminal responsibility on those who were at the helm of affairs of the Japanese Government and the Army at the time."²⁴³ This

²³⁶ *Ibid.*, 229.

²³⁷ It is also called the Fengtian Incident. This was the explosion on a railway line near Lake Liutiao. The position was not strategic beyond being less than a kilometer from the Chinese garrison of Beidaying, whose men were subordinate to Zhang Xueliang, the son of Zhang Zuolin. The intent was supposedly to blame Chinese and give Japan a pretext for their military presence.

²³⁸ *Ibid.*, 230.

²³⁹ *Ibid.*, 230.

²⁴⁰ 1874–1955. Gen. Minami was minister of war in the Wakatsuki cabinet, where he tried to curb the actions of the Kwantung Army. After the Feb. 26 Incident, he was forced to retire from active service. He served in the Privy Council during the War years. At the Tokyo Trials, he was convicted of waging a war of aggression against China (since he had been minister of war when the Manchurian Incident occurred) and sentence to life in prison; but he was paroled in 1954 due to ill health.

²⁴¹ 1876–1945. Baron Honjō was the commander in chief of the Kwantung Army at the time of the Manchurian Incident. Before that, he had been Zhang Zuolin's Japanese advisor from 1921–1924. He served on the Supreme War Council from 1932–1936, and served as the emperor's aide-de-camp until the Feb. 26 Incident, when he retired. He was to stand trial as a war criminal, but committed suicide before the Tokyo Trials began.

²⁴² 1889–1949. He was a major general by the end of the war. He served in Manchuria, but opposed the Kwantung Army leadership. As an opponent of Tōjō Hideki, he was forced to retire as the latter rose in power. At the Tokyo Trials he was a witness for the defense, and never faced any charges himself.

²⁴³ Pal, 247.

wording may be difficult to understand, but Pal was saying that it could not be called an aggressive war.

§3 Ōkawa Shūmei’s testimony was accurate

The prosecution claimed that Ōkawa Shūmei was involved in exchanges with “conspirators” Gen. Doihara Kenji²⁴⁴ and others, and was influenced by them. In court during the Tokyo Trials, Ōkawa engaged in odd behavior, striking Tōjō Hideki on the head and so on. It was said he was peculiar, but at the time he was one of the pre-eminent minds in Japan. A graduate of a first-rate high school, he went on to the Tokyo Imperial University where he studied Indian philosophy. He went to India where he became indignant at British colonial policies and became involved in movements the main point of which was Asian independence. During that time, he began to create an ideology based on socialist ideas.

There are many things in statements made by Ōkawa that are correct even when viewed today. For example, his observation that “the age of the great powers was gone and that the age of super-great powers had come”²⁴⁵ was particularly astute. Why had it gone from an age of the great powers to an age of the super-great powers? “For a nation to keep going as an independent country in this present age, she would possess a territory that is at least self-sufficient.”²⁴⁶ In other words, as a modern state, if one is not an autarchy having self-sufficient lands even without conducting foreign trade, one cannot be an independent state — and if one is not a super-great power, one cannot be an autarchy. If that is the case, without something like Manchuria, Japan would not be able to respond to the age of the super-great powers. Such was the thinking of Ōkawa Shūmei.

The word “autarchy” has seldom been heard since the end of the War, but pre-War it was a word so much in use that as a primary school student I had heard it. America, Britain, the Netherlands, and France were autarchies, and they had colonies from which they obtained oil and other resources. The Soviet Union had no colonies per se, but was an autarchy nonetheless. Important modern countries that were not autarchies before the Second World War were Japan, Germany, and Italy.

Soldiers fighting in the Chinese mainland were struck by Ōkawa’s thoughts. They certainly must have felt that if their supplies of iron and oil were made to stop, they would quickly become incapable of fighting. In actual truth, bloc economies were formed and it was great powers moving in the direction of stopping free trade that got tangled up in the Second World War. Ōkawa had sniffed it out more rapidly than any others.

Pal grasped Ōkawa’s way of thinking, and said, “Reading the testimony as a whole it is difficult to find any advocacy of development or incorporation by force. Incorporation contemplated here seems to be more an economic incorporation

²⁴⁴ 1883–1948. Gen. Doihara was instrumental in the Japanese inroads into Manchuria; so much so that he was nicknamed “Lawrence of Manchuria.” Doihara was the one who brought Puyi back to Manchuria to take the throne. At Japan’s surrender, he was commander in chief of the First General Army. After the War, he was sentenced to death at the Tokyo Trials and hanged.

²⁴⁵ Pal, 255.

²⁴⁶ *Ibid.*, 255.

than a political one. It is something like the ‘British World Order’ depicted by the Surveyor of International Affairs in 1931.”²⁴⁷ In other words, Japan had only attempted to create a bloc economy in the Far East; it was the same idea as Britain attempting to create a British economic sphere.

After the Manchurian Incident, on May 31, 1933, the Tanggu Truce was signed, and friendly relations were restored between Chiang Kai-shek’s government and Japan. Pal wrote, “The prosecution itself says that after this truce the relations between China and Japan became good for the time being and on May 17, 1935, it had been decided to raise the Japanese legation in China to an embassy.”²⁴⁸ At the time, there was a great difference between whether to be an embassy or to be a consulate. Embassies were put in place by first-rate countries; there were many countries that only had consulates in China. Since Sino–Japanese relations improved after the signing of the Tanggu Truce, Japan, too, recognized China as a first-rate nation and so decided to place an embassy there. It is a critical point that on this occasion with the Tanggu Truce Japan and China came to an agreement. With the Truce, the matter of the Manchurian Incident was fully settled; but it is strange that this was left out of the Tokyo Trials.

On the point that the prosecution’s alleged “continuity” of the conspiracy was broken, a passage of Pal’s is particularly interesting. He observed: “We may notice here the several cabinets that came into office since the fall of the Tanaka Cabinet on [sic.] July 1929. The Tanaka Cabinet was succeeded by the Hamaguchi Cabinet on July 2, 1929. In this Cabinet Baron Shidehara was the Foreign Minister and General Ugaki, and then General Abe, were the War Ministers. None of them are alleged by the prosecution to have been in the conspiracy.”²⁴⁹

It was the prosecution’s claim that the conspiracy continued from Prime Minister Tanaka Giichi’s cabinet. There were no people in the cabinet of Prime Minister Hamaguchi Osachi, which followed the Tanaka cabinet, who were connected with the conspiracy, however. How could this possibly be *continuity*?

Pal followed up with the facts:

The Hamaguchi Cabinet was succeeded by the Wakatsuki Cabinet on the 14th April 1931 with Baron Shidehara as Foreign Minister, and accused Minami was War Minister. Excepting Minami none else of this Cabinet is alleged to have anything to do with the conspiracy. This Cabinet was succeeded by [the] Inukai Cabinet on 13 December 1931 with the accused Araki as War Minister. Excepting Araki none else of this Cabinet also is alleged to have been in the conspiracy. On 26 May 1932 this was followed by the Saito Cabinet. Count Uchida was its Foreign Minister and accused Araki continued as War Minister. Excepting Araki again none else of this Cabinet too is alleged to have been connected with the conspiracy.²⁵⁰

²⁴⁷ Ibid., 255–256.

²⁴⁸ Ibid., 267.

²⁴⁹ Ibid., 276.

²⁵⁰ Ibid., 276.

In the cabinet of Saitō Makoto, Hirota Kōki came in as foreign minister after Uchida. After the cabinet of Okada Keisuke came the cabinet of Hirota Kōki. Pal stated it clearly: “All that we should remember is that till the accession of the Hirota Cabinet on 9 March 1936, the government as such is not alleged to have been in the conspiracy.”²⁵¹

§4 An Asian “Monroe Doctrine”

Pal also turned his attention to the infamous “Amau Statement.” The Amau Statement was issued in 1934. In it, Japan gave notice to the signatories of the Nine-Power Treaty that she would brook no interference with her various plans in China. Pal, however, citing the original text, corrected a misperception and said, “The statement itself did not say ‘that the Japanese Government would not tolerate any interference with *her plan in China*.’”²⁵² (Emphasis in the original.) He went on to refer to activities behind the issuance of the Amau Statement:

In order to appreciate the occasion for this statement, it will be pertinent just to notice a few of the Western activities of the time in China which were the ostensible cause of this utterance. These activities consisted of proposals of loans to China, the sale of aeronautical equipment, the engagement of military experts and advisors, and the technical assistance supplied by the League of Nations experts who were attached to the Nanking Government.²⁵³

He also pointed out that, “Military assistance to China furnished a more substantial ground for Japanese protests.”²⁵⁴

Around April, 1934, when the Amau Statement was issued, countries appeared in China openly assisting her. One of the principals was America:

The Nanking government, in their efforts to create an air force, had not only entered into large purchases of aeronautical equipment, but had also engaged the services of a considerable number of foreign experts and instructors. The United States had provided China with aircraft, including as many as seventy fighting planes as well as other machine [*sic.*] for observation, bombing and training. The Curtis-Wright Company had, earlier in the year, contracted to erect an airplane factory to be operated with the help of American engineers.²⁵⁵

Scenes set in the war were often printed in magazines for children like *Shōnen kurabu*

²⁵¹ Ibid., 276.

²⁵² Ibid., 289.

²⁵³ Ibid., 290.

²⁵⁴ Ibid., 290.

²⁵⁵ Ibid., 290.

(“Boys’ club”) and *Yōnen kurabu* (“Children’s club”) or children’s picture books from Kodansha around the start of the Second Sino–Japanese War. Even today I remember there were heroic tales of Japanese biplanes who brought down enemy monoplane fighters and returned safely. Often in the magazines and books Japanese fighters were biplanes and the Chinese ones were Curtis monoplanes. The Zero would not appear until a bit later. At that point, still, the performance of the Chinese fighters was better.

Chinese machine guns, too, performed better. This was because the Chinese were equipped with Czech machine guns. Soldiers returned and told tales of the battlefield, and these were turned into magazine articles. Among them were accounts of how the Czech machine guns were objects of fear. It was Germany who had supplied those Czech guns to China.

Germany also sent military advisors to China. In April of 1934, the former German army chief of staff, Gen. Hans von Seeckt, was in Nanking working as their chief military advisor. The Nanking government had invited him so they could attack the Japanese forces in the Shanghai district. They built trenches and fortified bunkers around Shanghai and emplaced Czech machine guns. When preparations were completed, they would strike the Japanese forces which had been sent to help the embattled Japanese residents. It was a strategy sure to win. On Aug. 13, 1937, Chinese forces began the bombardment of Shanghai; at that time, the only Japanese defense was a landing force of the Japanese navy. This landing force was made up of sailors who apparently possessed machine guns and artillery. They were different from the American marines, however. In a panic, Japan sent their army into Shanghai. Japan sustained high casualties in the area around Shanghai, however. Lt. Gen. Yanagawa Heisuke’s Tenth Army was rapidly formed and landed on the mainland at Hangzhou Harbor, whence they rapidly marched on Shanghai from the rear. The outcome was a general rout of the Chinese, but there can be no doubt that the Japanese endured a hard battle due to the German military assistance.

Pal pointed out that, “The assertion that a state may deem it proper as well as wise to act alone on its own responsibility in relation to the conduct of other powers of other continents towards areas and countries in a relative proximity to itself finds obvious precedent in the conduct of the United States in pursuance of the Monroe Doctrine.”²⁵⁶ In the Monroe Doctrine, if any European or Asian power interfered in any region of North or South America, it would be taken as touching on the American rights of self-defense. This is why in our youth we frequently heard the Amai Statement referred to as “the Asian Monroe Doctrine.” As the Americans had said in the Monroe Doctrine, “Europe, keep your noses out of North and South American business,” Japan here said, “America and Europe, keep your noses out of our affairs in China.”

America did not recognize the “Asian Monroe Doctrine,” however. Pal said,

On the grounds of self-defense, the United States has for a long period asserted the right to oppose the acquisition by any non-American power of any fresh territorial control over any American soil by any process. The claim involved in the Monroe Doctrine is grounded on self-defense.... I do not see why a similar Japanese claim should be denied this defensive character and be character-

²⁵⁶ *Ibid.*, 291.

ized as aggressive.²⁵⁷

Viewed objectively, “Japan was counting upon a friendly co-operation of China in the field of economics.”²⁵⁸ Pal said, “In the field of economics, the fundamental idea was the creation of a Sino–Japanese economic bloc. In view of the bloc economy developing everywhere in the world, this can hardly be condemned as aggressive or criminal on the part of Japan. It was indeed of supreme importance to Japan to develop a source of supply within her own sphere of control.”²⁵⁹ Regardless of this, Japan’s actions were condemned by the Tokyo Trials. They gave their approval to other countries creating bloc economies, but Japan’s doing the same thing they made out to be a crime. Pal was criticizing this gap — or to put it more plainly, this Anglo–American hypocrisy.

²⁵⁷ Ibid., 291.

²⁵⁸ Ibid., 292.

²⁵⁹ Ibid., 297.

Chapter Eight Racial Discrimination

§1 Nishibe Susumu’s points missed the mark

Ushimura Kei and Nishibe Susumu wrote articles about Pal that were published in the January, 2008, issue of the magazines *Shokun!* and *Seiron*. Both of them took advantage of the publication of Nakajima Takeshi’s *Paru hanji: Tokyo saiban hihan to zettai heiwa shugi* (“Pal’s Judgment: A critique of the Tokyo Trials and peace at any price”) by Haku-suisha the year before.

Ushimura’s study was an exact evaluation produced by a gentlemanly and faithful reading of the historical record. In particular, in contrast to the double standard applied by Nakajima when he criticized Tanaka Masaaki (to whom Pal was introduced shortly after the War), the criticism of his point regarding the application of historical materials that Tanaka had had a hand in was most impressive.

Nishibe, on the other hand, repeatedly pointed out two things I wrote of in the December, 2007, issue of *Seiron*. I said that the historical view of the Tokyo Trials inculcated a masochistic ideology in the Japanese in post-War Japan, and I wrote of the historical view of Justice Pal, who claimed that all the defendants were innocent. Nishibe wrote, “Placing these two historical views in a confrontational arrangement, we come to see that Justice Pal completely accepted the war as a war of self-defense. Justice Pal, a Gandhi-ist (more or less), would not have held such a viewpoint. And not just that — we confront the contradiction that, given a Gandhi-ist historical view, he should not have been able to (essentially) accept the Greater East Asia War.”

This was slightly off. What I saw as the issue was *not* “whether Pal accepted the Greater East Asia War” — it was that “the Tokyo Trials were not based in international law, and clarifying that it was on the basis of legal and historical grounds that all of the Japanese defendants indicted by the prosecution were innocence on all counts.”

To begin with, the question of whether Pal was a pacifist or even a follower of Gandhi becomes completely irrelevant upon reading *Pal’s Judgment*. Once when I was in Germany I asked someone, “If a law allowing abortion were to pass, what would a Catholic judge do?” Abortion is not permitted under Catholicism. The reply was, “Since the Enlightenment, individual feelings of piety are not put out there in the public sphere.” Even if the judge is a strictly conservative Catholic who viewed all abortion as wrong, if there is a *law* that allowed abortion, he could not hold as guilty a person who had an abortion. He understood that this was the professional logic of the judiciary. The gist of something said by the philosopher Immanuel Kant in his essay, *An Answer to the Ques-*

tion: *What is Enlightenment?*, is, “however large a congregation, it is viewed as private within in a public place.” This was taken as a self-evident truth by the civilized nations after the 1684 Peace of Westphalia. With this logic, we can fairly say that when perusing *Pal’s Judgment* we understand that what has become rumored to have been Pal’s personal thoughts is actually trampling on Pal’s professional conscience.

A view many Japanese hold is that Pal was substantially critical of Japan. Upon reading *Pal’s Judgment*, however, that view is soon proven incorrect. To be sure, at times Pal makes a logical point to the effect that, “the things Japan is made out to be the lone offender for — didn’t America and European nations do the same things?” Put another way, “In terms of international law, isn’t it really strange that while other countries did all that, only those *other* countries are allowed to flourish?”

When reading through *Pal’s Judgment* one surely must come to the understanding that he was trying to carefully demonstrate that Japan’s conviction in the Tokyo Trials did not merit conviction for *everything*. In truth, what is important is that one judge faced that tribunal and apparently exerted all of his efforts in proving his point. It doesn’t matter whether that judge was a Christian, a Buddhist, or a follower of Gandhi — that is *completely* not the issue. Nishibe Susumu should have taken a look at *Pal’s Judgment* before speaking out.

§2 Is “The Japanese were superior” a crime?

Let us return to Pal’s work. The prosecution introduced three factors to support claims that Japan had entered the war as a result of a conspiracy. The factors in this “psychological preparation of the nation for war”²⁶⁰ were: “(a) militarization of education, (b) control and dissemination of propaganda and (c) mobilization of the people for war.”²⁶¹ In this chapter, we will look at education, which was taken as one of the charges by the Tokyo Trials.

Pal stated his understanding of the prosecution’s claims: “Much was sought to be made of what was characterized as *a change in the Japanese educational policy* whereby it was designed to create in every youthful mind a feeling of *racial superiority*.”²⁶² (Emphasis in the original.)

After the war, “it is bad to believe that the Japanese are better than the Chinese or Koreans” was an idea often voiced by progressive members of the Japanese intelligentsia, but this is the same as saying it was a *crime* for Japan to have taught her own people “Japan is superior.”

On this point, Pal wrote, “I believe this is a failing common to all nations. Every nation is under a delusion that its race is superior to all other as, so long as racial difference will be maintained in international life, this delusion is indeed a defensive weapon.... [T]he western racial behaviour necessitates this feeling as a measure of self-protection.”²⁶³ In other words, when “Caucasian superiority” was being foisted on them by Whites, the defensive response was, “No, we’re superior, too.”

²⁶⁰ Ibid., 315.

²⁶¹ Ibid., 315.

²⁶² Ibid., 315.

²⁶³ Ibid., 315–316.

We can see that this was not connected to any attempt at a conspiracy.

On the issue of racial sentiments, Pal referred to the views of the respected historian Arnold Toynbee as expressed in his book, *A Study of History*.²⁶⁴

[He] ... points out how in the Western World of our day racial explanations of social phenomena are much in vogue and how racial differences in human physique, regarded as immutable in themselves and as bearing witness to likewise immutable racial differences in the human psyche, are put forward by them as accounting for the difference which we observe empirically between the fortunes and achievements of different human sciences.²⁶⁵

Pal referenced several more of Toynbee’s theories, but one that I think of great importance was the passage:

The outcome of the Seven Years’ War decided that the whole of North America from the Arctic Circle to the Rio Grande, should be populated by new nations of European origin whose cultural background was the Western Civilization in its English Protestant version, and that a Government instituted by English Protestants and informed with their ideas should become paramount over the whole of Continental India. Thus the race-feeling engendered by the English Protestant version of our western culture became the determining factor in the development of race-feeling in our Western Society as a whole.²⁶⁶

Thinking about it, the concept of racial discrimination is not that old. Rome studied the culture of Greece, whom they conquered; and even in Japan before 1600 when great people from China or Korea came over they were respected, and the only ones treated with contempt had to have been those who were not great. Though there was an awareness of “otherness” of countries, I think ideas based on racial prejudice such as where “higher” races felt it acceptable to attack and even enslave “lower” races were fairly rare.

So, when did racial discrimination start? I have to think that it was after the Reformation, in the core nations wherein Protestantism was born: Holland, Germany, and Britain. I forget whether it was in Toynbee or Spengler, but I read somewhere that the strongest sense of racial discrimination was among the Protestants of Holland. At any rate, I have to think that the concept of racial discrimination appeared fairly recently in Western society and spread throughout the Caucasian world.

Pal quoted Toynbee on the European Caucasian, who “has inevitably identified himself with Israel obeying the will of Jehovah and doing the Lord’s Work by taking possession of the Promised Land, while he has identified the non-Europeans who have crossed his path with the Canaanites whom the Lord has delivered un-

²⁶⁴ The twelfth and final volume was published in 1961, but the first six volumes were published by the Oxford University Press between 1934 and 1939.

²⁶⁵ Pal, 316.

²⁶⁶ Ibid., 316.

to the hand of His Chosen People to be destroyed or subjugated.”²⁶⁷ Pal wrote that Toynbee then pointed out “how this exploitation has gone on.”²⁶⁸ The idea he introduced was that when Westerners used the word “native,” they were expressing the sentiment that these were not people per se; rather, they were objects to be used in any manner as seen fit.

§3 The rejected proposition for racial equality

When the charter was being drafted for the League of Nations after the First World War, Japan suggested a proposition for racial equality. Pal cited an account of the incident when this proposal was rejected. He reported, “For centuries, the white man, by his mastery of the arts of power, had been hammering into the mind and spirits of the non-white people the conviction that they were his *natural* inferiors. The Russo–Japanese War had indeed demonstrated that this supremacy could be challenged in the fields of battle. But the stigma still remained.”²⁶⁹ (Emphasis in the original.)

The Russo–Japanese War showed that a people of color were not inferior to Whites, but the practice of discrimination did not change. The problem of race relations even afflicted Japan. For example, there was the persecution of Japanese immigrants in America. Regardless that the persecutors were Whites who themselves were immigrants who had crossed the Atlantic Ocean to get to America, the immigrants who were crossing the Pacific to get to America were people of *color*, and America seemed to be saying that they were therefore no good.

It was under circumstances that Japan sought racial equality at the formation of the League of Nations and the inclusion of words to that effect in the League’s charter.

Pal quoted further from the account: “The Japanese found that the British Empire Delegation blocked their path. It was not Great Britain which stood in the way, but principally Australia, or rather it was a single Australian, Mr. William Morris Hughes, the then Premier of the Commonwealth, who constituted himself Champion of the cause of White Supremacy.”²⁷⁰

Before the war, Australia had followed a “White Australia” policy wherein not a single immigrant of color was allowed into the country, and “aborigine hunts” — where the native population was hunted down and killed — were admired. White supremacy was particularly strong in Australia.

Pal quoted from the resolution drafted by Viscount Chinda Sutemi of the Japanese delegation: “The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agreed [*sic.*] to accord, as soon as possible, to all alien nationals of states members of the League, equal and just treatment in every respect, making no distinction, either in law or fact, on account of their race and nationality...”²⁷¹

²⁶⁷ Ibid., 316.

²⁶⁸ Ibid., 316.

²⁶⁹ Ibid., 317. Pal did not explicitly say whose account he was quoting here.

²⁷⁰ Ibid., 317–318.

²⁷¹ Ibid., 318.

The motion to include the resolution in the League charter was made by Baron (later Viscount) Makino Nobuaki. Pal went on: “At the same time, he admitted that deep-lying prejudices were involved and therefore he did not expect an immediate practical realization of the principle that he was putting forward. He would be content to ‘leave the working out of it in the hands of the responsible leaders of the states members of the League, who will not neglect the state of public opinion.’”²⁷² Makino’s manner was moderate, and he said that he would not mind if it were not inserted as a substantive item supported in the charter proper; if the general principle could be placed in the preamble of the charter instead, it would be fine.

Britain’s Lord Robert Cecil (Viscount Cecil of Chelwood) objected, but Makino was not deterred. Japan’s delegates requested a vote. Of the nineteen members, eleven supported Japan, two were absent, and there were no negative votes. Thereupon, President Woodrow Wilson “ruled that, in view of the *serious objections* on the part of some of us, the amendment was not carried.”²⁷³ (Emphasis in the original.) To that point, everything had been settled by majority vote, but because the vote was not *unanimous* this one time, Wilson made the decision to reject it out of hand.

This is why there was no premise in the charter for the League of Nations that would do away with racial discrimination. In only twenty-five years, however, after Japan had lost in the Second World War, the whole world had no choice but to accept the principles that Japan had proposed. It is ironic that the victors had to accept the words of the defeated in founding the United Nations.

§4 A people ineligible for naturalization

As the League of Nations was the top of the list, no kind of international organization was able to resolve the racial issues. Pal pointed out, “Add to this the actual application of this feeling in the movement on the part of the white nations on the Pacific rim to exclude Asiatic on economic and racial grounds.”²⁷⁴

People of color — not just the Japanese — were oppressed in America. Chinese who had immigrated to the United States before the Japanese as well as others had no protection from the state, and there were incidents of massacres of whole groups. Pal wrote, “In its initial stages the movement on the part of the white nations fringing the Pacific to exclude Orientals was of a purely local character. Gradually, however, the movement everywhere assumed a national form characterized by national legislation and national machinery for enforcement.”²⁷⁵

Pal said that things occurring in and around California became a national movement throughout America after the First World War. Bluntly put, Pal meant America’s anti-Japanese immigration laws.²⁷⁶ Pal recounted:

²⁷² Ibid., 318.

²⁷³ Ibid., 319.

²⁷⁴ Ibid., 319.

²⁷⁵ Ibid., 319.

²⁷⁶ The *Immigration Act of 1917* (also known as the *Asiatic Barred Zone Act*) passed Congress overwhelmingly, overriding Pres. Wilson’s veto. In addition to barring “idiots,” “feeble-minded persons,” and “criminals,” it designated much of Asia as a “barred zone” from which immigration was disallowed. This included Japan. The *Immigration Act of 1924* (also called the *Johnson-Reed Act*) included the *Asian Exclu-*

This exclusion sentiment went on unabated after the First World War and the trend of emphasis gradually passed from economic to cultural and biological arguments for restriction and exclusion. I may refer only to the American Acts of 1917 and 1924. In their exclusion movements the white nations did not show any consideration for the national sensibilities of the excluded nations including the Japanese and it may not be denied that these exclusion laws did not foster any ideal human relations organized on the basis of humanity.²⁷⁷

In particular, the 1917 law could be called a “totally anti-Japanese immigration law.” When this bill passed, a weeping Viscount Shibusawa Eiichi²⁷⁸ delivered a speech in protest at the Imperial Hotel. I have stenographic notes of the speech, but the gist is, “I think Japan and America have a complementary relationship, and up to this point I have made efforts for the friendly relations between our two countries. Now with this — I think it would have been better had I carried on with that sense of ‘expelling the barbarians’ that I slew within myself when I was young.” Of course, the average Japanese people were also angry at the insult. Clearly, not much careful thought was given to the national sensibility of the nations that were targeted for rejection.

My generation felt that we were being discriminated against racially before the War began. It made us angry, and that is one thing that young people today find most difficult to understand. I’d like to offer a couple of examples.

For one thing, at the time, the phrase “people ineligible for naturalization” was in use. The implication was that Japanese were a people who could not be assimilated into American culture. Edward Sapir’s *Language* (1921) is a famous work in the field of linguistics. In a cited linguistic essay in this book, a claim is reported that, “in America, Whites must not marry people of color.” The reason was said to be that the more advanced White person marrying a (culturally or evolutionarily) retarded non-White person would run counter to the rule of evolution. This is a shocking racist sentiment to appear in an academic treatise, and unthinkable today.

Pal quoted jurist Prof. George Schwarzenberger’s *Power Politics* (1941) touching on race relations with Japan. Schwarzenberger said, “The more fundamental issue of the alleged superiority of the white race and the overemphasis on Europe compared with the rest of the world are problems which have accompanied the League throughout the years.”²⁷⁹

Pal also took up the issue of Japanese overpopulation, which had been given no

sion Act, National Origins Act, etc., and limited immigration to countries where emigrants from that country already made up more than 2 percent of the U.S. population per the last census; southern and eastern European immigration slowed to a trickle, and Asians were again shut out altogether.

²⁷⁷ Pal, 319.

²⁷⁸ 1840–1931. Shibusawa was “the father of Japanese capitalism” and the founder of Japan’s first modern bank as well as the Tokyo Stock Exchange, the Japan Chamber of Commerce and Industry, and a number of schools, universities, and hospitals. As a youth, he had been caught up in the “*sonnō jōi*” (“revere the emperor and expel the barbarians”) ideology, but he abandoned that and became an internationalist. For his economic contributions to Japan, he was made a viscount. He had been born the son of a farmer.

²⁷⁹ Pal, 319.

thought whatsoever. Pal quoted Lord Balfour: “The world said that they could not go to Africa; they could not go to any white country; they could not go to China, and they could not go to Siberia; and yet they were a growing nation, having a country where all land was tilled; but they had to go somewhere.”²⁸⁰

Lord Balfour, at the time Great Britain’s foreign secretary, sympathized over this, but this situation was the background for the Manchurian Incident. If America had only not shut out immigration from Japan, things might have developed totally differently.

Here Pal returned to the issue of education, citing Schwarzenberger: “According to him, this move on the part of the Peace Conference was ‘partially responsible for the inculcation of an inferiority complex into Japan.’”²⁸¹ If this was done to Japan, it makes the argument that Japan *had* to teach in school that she was superior.

Pal naturally concluded: “I cannot condemn those of the Japanese leaders who might have thought of protecting their race by inculcating their racial superiority in the youthful mind.... I don not find any reason to doubt their *bona fides* if they considered this to be a *necessary measure of protection* for their race.”²⁸² (Emphasis in the original.)

§5 The lies of Ōuchi Hyōe and Takigawa Yukitoki

With the “militarization of education,” military training was also put on the chopping block. Pal wrote, “Military training was first introduced in the schools of Japan in the name of ‘physical exercise.’ ... Its original purpose was to encourage social discipline and reasonable national defense: (Witness Ouchi, page 968, *Kaigo*, pages 905–13).”²⁸³ Briefly after the end of the First World War, interest in military education lessened, but “the training was revived in 1922–25 under the pressures of depression and unrest. (*Ouchi*, 955, 968).”²⁸⁴ (Emphasis in the original.)

Starting in 1925, a serving, commissioned officer was attached to many schools in Japan. Lectures on military affairs were added to collegiate curricula (although few attended). Baron Araki Sadao²⁸⁵ (then a Class-A war crimes defendant) testified that he “demanded compulsory attendance to the military classes. He tried also to introduce drill with rifles but was successfully opposed: (*Kaigo: Takikawa [sic.]*, 994–1, 021; *Ouchi*, 936–44).”²⁸⁶ (Emphasis in the original.)

Thereafter, as things moved toward war, the militarization of education gradually grew stronger. When Gen. Araki was made minister of education in 1938, “he was able to put his ideas into effect; (*Takikawa [sic.]*, 994–1, 021; *Ouchi*, 936–44). Com-

²⁸⁰ Ibid., 320.

²⁸¹ Ibid., 320.

²⁸² Ibid., 320.

²⁸³ Ibid., 323.

²⁸⁴ Ibid., 323.

²⁸⁵ 1877–1966. Baron Araki was a full general who served in various positions in government, including stints as army minister and minister of education. He was a strong right-wing supporter of the imperial system and promoted military and spiritual training for Japanese and the concept of the *bushidō* code. He resigned from the military after the Feb. 26 Incident, but remained active in government. The Tokyo Trials sentenced him to life for “war crimes” but he was released for health reasons in 1955.

²⁸⁶ Pal, 323.

pletion of the military training course became a requirement for graduation with the added inducement that those who passed would be required to do only one year of military service, as against the usual two or three.”²⁸⁷ (Emphasis in the original.)

With this, the inclusion into the curriculum of military training while he was minister of education, Araki — a soldier since the Russo–Japanese War, later army minister, and one who had served on the army general staff — was made a Class-A war criminal. After being released from prison, Araki himself said, “It was not due to me being a soldier that I became a Class-A war criminal.” Instead, he said, it was due to the impact of the testimony of the two witnesses Ōuchi and Takigawa. “Witness Ōuchi” was Ōuchi Hyōei, and “witness Takigawa” was Takigawa Yukitoki.

Both Ōuchi and Takigawa were men who nursed a grudge toward Japan from before the War. There was testimony, cited by Pal, stating, “Teachers who expressed pacifistic ideas about world affairs were sometimes discharged, and sometimes penalized under the Public Peace Law.”²⁸⁸ Ōuchi was removed from Tokyo University for his activities with the Popular Front (a Communist organization), but Takigawa’s situation was different. He taught anarchistic legal codes — and that was such a mixed up concept that the Ministry of Education asked him to refrain and keep a lower profile. Takigawa refused, however, and resigned his position at the university.

Of Takigawa, Pal wrote, “The witness was discharged from the University in 1933. According to the witness this happened because of his article in opposition to the Manchurian Incident and another article in opposition to the Nazi form of Government.”²⁸⁹ On cross-examination, however, “It further transpired that the witness’ criticism of court procedure or trials in his book called ‘Keiho Tokuhon’ developed into some affair between him and the then Minister of Education Hatoyama Ichiro and he was ultimately dismissed for that book.”²⁹⁰ Takigawa was lying from the witness stand.

Pal’s astuteness was also demonstrated by his take on Ōuchi. Pointing out the witness’ problematic credibility, he wrote:

In cross-examination it transpired that all these persons wrote some articles which were considered offensive. As *regards his opinion* as to the effect of military education the witness in cross-examination says that the statement is made on the basis of the facts which were brought to his attention by his students. The witness himself never heard any lecture. He heard from the students the contents of the lectures. The student told the witness that they were inculcated with a desire to gain control of the Far East and thereafter the world. He could not name any student.²⁹¹ (Emphasis in the original)

²⁸⁷ Ibid., 324.

²⁸⁸ Ibid., 324.

²⁸⁹ Ibid., 331–332.

²⁹⁰ Ibid., 332.

²⁹¹ Ibid., 331.

Finally, let us consider Pal's views on one of the prosecution's examples of conspiracy: "changing the direction of Japanese education." Pal wrote:

Remembering that the Peace Conference after the first World War did its best for "the inculcation of an inferiority complex into Japan by its rejection of the Japanese demands to recognize the principle of racial equality as one of the fundamentals of the new community system" and remembering also that in International society "a Greater Power is a country which has at its disposal more than an average amount of powers (military, political, economic and financial) and, furthermore, is willing to use this power in order to maintain or improve its own position in international society," I do not see why this change in the educational policy of Japan would indicate anything beyond this legitimate ambition in the minds of its statesmen and politicians.²⁹²

America and the countries of Europe distastefully exemplified, "you're no good if you're not strong!" — was it not only natural that Japan would aim to be a strong nation in response to this?

Pal said, "The very fact that the prosecution had to introduce evidence of this character in its attempt to set up a case of an over-all conspiracy indicates its hopeless character."²⁹³

This is truly a scathing comment.

²⁹² Ibid., 342.

²⁹³ Ibid., 342.

Chapter Nine The Tōjō Cabinet

§1 Pre-War Japan: more magnanimous than the Roman Empire

It is likely that the repercussions from the “Tanaka Memorial” were at the bottom of the charge at the Tokyo Tribunal that there was a conspiracy dating from the cabinet of Tanaka Giichi in 1927. This was a report that was supposed to have been made to the emperor by the prime minister, and supposedly it was an account of plans for the conquest of Asia and of the world — but we now know it was a product of the Comintern.

Japanese at the time quickly recognized it for being a low-quality forgery, so they ignored it and made no serious effort to refute it. It even included such errors as mentioning the long-dead Yamagata Aritomo²⁹⁴ as sitting in on the meeting. There is no way that Tanaka, a disciple of sorts of Yamagata, would have made such a mistake. It must have been perceived as some really peculiar document that had shown up.

Nonetheless, this fabricated report was circulated all over the world in Chinese, German, English, and Russian translations. President Roosevelt, who had leftist tendencies himself, read and believed it. It can be imagined that he thought, “If they have plans like this, Japan has to be crushed.” On that point, the “Tanaka Memorial” had extremely important implications.

There is a lesson here that still holds true today: When spread over the whole world, even a lie has power.

Recently, we have been made keenly aware of that fact to the point of disgust over the “comfort women” issue.

Putting that aside for now, at any rate the reasoning becomes inconsistent if we take the bogus “Tanaka Memorial” to be the basis of some Japanese conspiracy. It would be fair to say that it was only natural that Pal felt, “The prosecution does not seem to be sure of its attitude toward the Tanaka Cabinet.”²⁹⁵ The prosecution’s view was that the Tanaka cabinet put forth activist, positive policies, overturning previous policies. Of the pre-Tanaka diplomacy, Pal wrote, “at least before the Tanaka Cabinet, the Japanese Government had been studiously and persistently pursuing a ‘genuine pol-

²⁹⁴ 1838–1922. Prince Yamagata had been a field marshal, and served as Japan’s third prime minister from 1889–1891 and served again from 1889–1900. He had spent time in Europe and was a proponent of using Western models — notably Prussian — to modernize the Japanese military when he became war minister in 1873. He was one of the seven *genrō* (“elder [statesmen]”) who dominated Japanese government in the reigns of Emperors Meiji (r. 1867–1912) and Taishō (r. 1912–1926). He is still held in high regard.

²⁹⁵ Pal, 348.

icy of peace in harmony with the spirit of a deliberately Pacific World Order.”²⁹⁶
He commented that this was totally evident, and offered the following examples:

Japan, in this phase of her history, gave impressive evidence of her will to peace in a number of practical ways: in her acquiescence in the laps of the Anglo–Japanese alliance; in her decision to withdraw her troops from the [*sic.*] Vladivostok and from Tsingtao [Qingdao]; in her dignified self-restraint in face of the provocative American Immigration (exclusion) clause of 1924; and not least in her deliberate practice of her non-retaliation to Chinese provocation on certain notable occasions; for instance on the occasion of the Nanking outrages of 1927, when the Japanese were decidedly less militant in their own self-defense than either the Americans or the British.²⁹⁷

“The Nanking outrages of 1927” mentioned here was the incident in which the Comintern instigated an attack by the Chinese Nationalists on the consulates and possessions and citizens of Japan, Britain, France, America, and other countries in Nanking. Japan, moving forward with the “friendship policies” of the then foreign minister Shidehara Kijūrō, totally eschewed retaliation. Therefore, when the Japanese consulate in Nanking was attacked, and even when the wife of the consul was stripped naked by the attackers, the naval landing force obeyed their orders not to retaliate, returning humiliated, instead, to their ship on the Yangzi River — tragically some planning suicide.

British and American warships on the Yangzi bombarded Nanking, but the Japanese ships did not. Thereafter, the anti-foreign movement in China concentrated solely on the Japanese. They must have thought Japan’s unwillingness to fight back indicated cowardice, or perhaps weakness. I think this demonstrates a particular trait of the Chinese.

Recently, Abe Shinzō, the former prime minister, demonstrated the appropriate action concerning this trait of the Chinese. This was an incident connected with the June, 2007, G8 summit at Heilingendamm, Germany. China was going to be present at the summit as an observer, so Japan took the opportunity to try to arrange a meeting between the Japanese and Chinese leaders and issued an invitation to talk, which China, posturing, accepted. Then towards the end of May, word came that China had announced that the meeting was off. China proposed that if Japan would cancel the expected May 30 visit to Japan by Taiwan’s Lee Teng-hui, *then* they could meet. Prime Minister Abe refused on the position that a full member of the G8 should not be making concessions to someone allowed to attend with only the status of an observer. Thereupon, the Chinese responded that they didn’t really mind about Lee’s visit, but asked that no political speeches be made. When this, too, was refused, the Chinese finally acquiesced, agreeing to meet without any preconditions. This is how the Chinese are. There is a saying to the effect that, when buying something from an Arab, you shouldn’t buy it for the price set by the seller. It is just like that with China, too. The conventional wisdom of the Japanese isn’t found everywhere: he is not foolish enough to believe a promise made by a Chinese means what he says it does.

²⁹⁶ Ibid., 348.

²⁹⁷ Ibid., 348.

Returning to *Pal’s Judgment*, we see the prosecution’s take on the policy of Tanaka Giichi (serving simultaneously as prime minister and foreign minister), which overturned the non-retaliatory, friendly policies of Foreign Minister Shidehara. Pal quoted the prosecution’s position: “This ‘positive policy’ placed great emphasis on the necessity for regarding Manchuria as distinct from the rest of China and contained a declaration that if disturbances spread to Manchuria and Mongolia, thus menacing Japan’s special position, Japan would defend them.”²⁹⁸ Pal finds a contradiction in the prosecution’s position, however: “In another place, however, the policy of Tanaka is characterized as one of ‘obtaining Japan’s desire in Manchuria by peaceful means.’”²⁹⁹

Pal then brought up the Royal Institute of International Affairs to evaluate the policies of the Tanaka cabinet. This is wonderful for his argument. The critique by Britain’s Royal Institute was considered the most objective report of the time; it was highly reliable and most persuasive. From the Royal Institute’s report, we understand that what with the revolution or the civil war, China was not a country that was capable of stopping the fighting. Pal quoted part of the report, including the observation that, “Japanese interests in the Tsingtao–Tsinanfu [Jinanfu] Railway were placed in jeopardy; and the Japanese Government acted as the British Government had recently done, in somewhat similar circumstances at Shanghai, by sending a defense force to the spot.”³⁰⁰ In other words, the British actions in Shanghai *had been the same* in response to a situation resembling one that had occurred and was given as an example of the “active policy” of the Tanaka cabinet. That is, it was to protect Japanese citizens and interests that Japan had sent troops to Shantung. The Tanaka government announced that the troops would be recalled “immediately when the fear of danger to Japanese residents ceased to exist,”³⁰¹ and true to their word, “the withdrawal was duly completed by the 8th September.”³⁰²

Pal introduced several points as “intimations” in Prime Minister Tanaka’s announcement of Aug. 29, 1927. He quoted a part of the announcement which I would particularly like to address: “We remain firmly confirmed that the timely dispatch of troops certainly accounts for the fact that, notwithstanding serious disturbances, we have been able to protect our residents satisfactorily and to prevent the occurrence of any untoward event.”³⁰³ This would have been only natural for the time.

Allow me to present an example. Something that even terrified my mother (who had absolutely no political associations) was the Nikolayevsk Incident. At the time of the Russian Revolution, there was an incident at a Russian port town called Nikolayevsk-on-Amur where all the Japanese residents were slaughtered to a man.³⁰⁴ The methods of the

²⁹⁸ Ibid., 349.

²⁹⁹ Ibid., 349.

³⁰⁰ Ibid., 350.

³⁰¹ Ibid., 351.

³⁰² Ibid., 351.

³⁰³ Ibid., 352.

³⁰⁴ The town of 15,000 included 450 civilian Japanese and 350 soldiers, in addition to a garrison of 300 White Russians. In Jan. 1920, 4,000 Red partisans under Yakov Triapitsyn surrounded the town. The commander of the Japanese garrison let Triapitsyn in under flag of truce — but the Reds began to round up and execute the White Russians. The Japanese attempted an intervention, but their attack failed. In retaliation,

killings were horrible — there were many accounts of people who had each leg tied to a different horse and were torn apart. We often heard this story as children. Japan was terrified that this incident might be repeated. That was why when there was a disturbance, Japan dispatched soldiers to protect the Japanese residents. No one knew what the Chinese might do. There was a feeling that it was as bad as Russia, if not worse. Actually, to give an example of that, there was an incident at Tongzhou in July of 1937 wherein some 200 Japanese were massacred with extreme cruelty.

As I think about it, it was probably only natural that the Tanaka cabinet believed what they did, and in their not wanting chaos in Manchuria (which was responsible for keeping public order since the Russo–Japanese War) as there was in China. To begin with, one must consider whether the Japanese Manchurian policy was indeed such a great mistake. This goes a bit beyond the Tanaka policy, but for a time after the Manchurian Incident there was some number of powerful provincial families declaring independence. When Puyi appeared, backed by the Japanese, they ended their actions for independency. Everyone must have recognized Puyi was in direct line to be emperor in Manchuria. Whatever one may think of the Manchukuo policy, it must have been the best thing they could think of at the time.

When I had the opportunity to speak with Shiono Nanami, an independent scholar and writer on Italian history, she spoke of the Roman Empire’s extraordinary magnanimity in how when she conquered, she took the conquered people in as part of the empire. In comparing Rome and America, Shiono found America *not* magnanimous; to be sure, the lands of the Native Americans were taken from them and there was no talk of their chiefs being made nomarchs.

Before the War, Japan was truly magnanimous. There were members of the Diet’s House of Peers from Taiwan, and members the royal Yi family of Korea were given royal status in Japan in accordance with the Japanese imperial family’s standing. The powerful *yangban*³⁰⁵ were made Japanese peers, and there were those in the military who were made generals. In Manchuria, Japan had an emperor from the imperial line crowned. I suppose it would be fair to say this was a magnanimity that surpassed that of the Roman Empire. Up to now, no one would have understood if one spoke in Japan of imperial Roman magnanimity, but fortunately Shiono is making this well known. I think it would be a good thing to bring up the example of Rome when speaking to foreigners from now on.

§2 It was not because Tōjō was ambitious

Pal wrote the following:

It has been shown that since 1928, eleven different cabinets rose and fell in Japan till the formation of the Tojo Cabinet.

According to the Defense, many of them fell because of purely domestic reasons unrelated to any international situation....

Unlike Hitler, no one in Japan was in a continuous position of

Triapitsyn murdered the rest of the garrison and all but 122 Japanese civilians. In late May, as a Japanese relief force approached, he executed all his remaining prisoners (Japanese and Russian) and razed the town.

³⁰⁵ The Korean ruling aristocracy. They were the gentry —whether landed or not — of the Joseon dynasty.

control in these cabinets or in the military during the period of time covered in the indictment.³⁰⁶ (Emphasis in the original.)

Moreover, Pal pointed out, of the cabinets of Tanaka Giichi, Hamaguchi Osachi, and Hayashi Senjūrō,³⁰⁷ “not one of the accused was even a member nor were any of them Chief of the Army General Staff or Navy General Staff during those times.”³⁰⁸

He went on to say, “The military clique charged with the various political assassinations during this period is not any particular Army or Navy. Not a single prosecution witness could say that this clique was the Kwantung Army itself or any other Army or Navy.”³⁰⁹ Concerning the defendant Gen. Araki, he said, “No one connected General Araki with this clique. Inukai Ken [*sic.* = Inukai Takeru], on the other hand, testified that Araki tried his best to check the spreading of the Manchurian Incident, but it was beyond his power to control the ‘young officers’ group. Araki himself was sought to be murdered by the group.”³¹⁰

Of Hirota Kōki, Pal wrote: “The utmost that we get from this evidence against Hirota is that his policy towards the U.S.S.R. was hostile to that Government. But at that time many other responsible statesmen were entertaining similar policies against the U.S.S.R. We may remember that even the United States of America did not accord its recognition to that state till the year 1933.”³¹¹ Indeed, Pal quotes President Wilson, who said, “There cannot be any common ground upon which it [i.e., the U.S. government] can stand with a power whose conception of international relations are [*sic.*] so entirely alien to its own.”³¹² The Soviet Union was a nuisance to the whole world, and it was only natural that Hirota would adopt policies that were not friendly toward the USSR.

Pal continued in his defense of Hirota: “His advent to foreign ministry or to premiership has not been established to be the result of any design either on his own part or on the part of anybody else.”³¹³

This also holds true for Tōjō Hideki. Tōjō was the army minister in the second cabinet of Konoe Fumimaro, which followed the cabinet of Yonai Mitsumasa. As Pal wrote:

Tojo had nothing to do with the downfall of that cabinet. The Prosecution could not adduce any evidence to show that any action or attitude of Tojo was the cause of the downfall of that Cabinet in July 1940. Up to that time Tojo occupied the post of Inspector General of the Army Air Post and was devoted wholly to the training of Japanese air force personnel, not having the slightest concern or

³⁰⁶ Pal, 365.

³⁰⁷ 1876–1943. Gen. Hayashi was a military man and a politician. He served in Korea where he was commander of the Chōsen Army of Japan. He also served as army minister, and as a member of the Supreme War Council. He was prime minister for four months in 1937.

³⁰⁸ Pal, 365–366.

³⁰⁹ *Ibid.*, 366.

³¹⁰ *Ibid.*, 367.

³¹¹ *Ibid.*, 373.

³¹² *Ibid.*, 374.

³¹³ *Ibid.*, 374.

interest in politics.³¹⁴

Army Minister Hata Shunroku resigned in protest from the cabinet of Yonai Mitsumasa as the latter was opposed to the Tripartite Pact, and his resignation caused a collapse of the Yonai government. Hata put forth the name of Tōjō Hideki as a candidate for the position of army minister in the subsequent cabinet of Konoe Fumimaro. On that point, however, Tōjō seems to have occupied duty posts removed from any political concerns and he had little connection with politics — so it would probably be fair to say he was dragged into government. That Tōjō himself had no political ambitions is shown in every piece of documentation.

I don’t think it is particularly well presented in *Pal’s Judgment*, but I believe Tōjō was singled out because the government needed to control the army so there would not be a reoccurrence of the February 26 Incident, and there was need for someone capable of conducting negotiations with America. At the time, anti-American sentiment was growing stronger. There was concern that if policies to improve relations with America went forward, there might be another *coup d’état* like the February 26 Incident. When it occurred, Tōjō had been in Manchuria, and he had effectively put down the faction who had supported it. It was perhaps due to those abilities that Hata put forward Tōjō’s name and instigated his rise.

§3 The unhappy nominations

The Konoe cabinet then fell, and the Tōjō cabinet was established.

Pal wrote, “Tojo’s part in the fall of the Konoe Cabinet was very much emphasized by the prosecution. But certainly it was no part of any sinister design.... The evidence clearly shows that at that time, in view of the critical situation of the country, the entire Cabinet, including Tojo, desired to go out of office so as to enable a fresh batch of statesmen to try, and, if possible, to avert disaster.”³¹⁵

I am of the belief that the reason Tōjō received the imperial mandate to form a cabinet was due to the lingering deep repercussions of the February 26 Incident. Interior Minister Kido Kōichi proposed his name to Emperor Shōwa as only Tōjō would be able to control the army so as not to give rise to a state of affairs such as during the February 26 Incident. The emperor was said to have responded, “Lest you brave the tiger’s den, you cannot get the tiger’s cub.” That is, if he wasn’t capable of controlling the army, then no one — no matter who — would be able to. Such was the political climate at the time.

Tōjō met with the emperor, and at the Imperial Council meeting on Sept. 6, he was told that Japan preferred the path of peace — so he determinedly pursued that path. There is a famous story that when he got back to the War Ministry, Tōjō shouted elatedly, “His Majesty’s heart is set on peace!” What this means is, right out of the gate the Tōjō cabinet was a cabinet that was to continue controlling the army and to go forward in seeking peace with America. In point of fact, they contrived to undertake every possible measure to talk peace with the United States. Pal clearly grasped that the Tōjō cabinet was not one formed for the purpose of making war. In that, Pal was unlike the prosecution. He said,

³¹⁴ Ibid., 375.

³¹⁵ Ibid., 375.

"The prosecution characterizes it as the complete grouping of the conspirators. The combination of Shimada, Togo, and Tojo itself is looked upon as something sinister."³¹⁶

Pal went on to investigate whether this was in fact true.

First he considered the navy minister, Shimada Shigetarō.³¹⁷

Shimada never had any political assignment before he became the Navy Minister. His entire early career had been relegated to sea assignment and in the Naval General Staff.... There is absolutely no evidence before us to show any design behind his selection as the Navy Minister. It appears that no Navy Minister of Japan has ever been other than a senior officer on the active list.... [A]s the position of this Navy Minister is concerned, the Ordinance of 1936 really did not affect the position, if we keep in view the actual practice in this matter.³¹⁸

The navy put forward ministers sequentially, and "such nomination was tantamount to appointment, for in practice it was accepted as mandatory upon the Premier who had no personal choice in the matter."³¹⁹

The prime minister only accepted nominations for the navy minister; he had no authority to select them. What this means is that Tōjō had not nominated Shimada to a post in his cabinet.

Pal was somewhat favorably disposed toward Shimada:

I must say he impressed me as a highly straightforward soldier, always giving straight answers to straight questions. He told this Tribunal in a straightforward fashion that he accepted the assignment although it was never solicited, initially refused and in fact was an unwelcome assignment. These statements by Admiral Shimada are fully substantiated by the testimony of Admiral Oikawa [Koshirō]. Nothing has been placed before us which would entitle us to say that there was any connection between Tojo and Shimada either personally or through any mutual political interest. Admiral Shimada and Tojo were not even acquainted with each other at that time.³²⁰

The situation with Togo Shigenori³²¹ was similar:

³¹⁶ *Ibid.*, 375.

³¹⁷ 1883–1976. Adm. Shimada was a career navy man. He became navy minister in Oct. 1941. Some in the navy criticized him for being too submissive to Tōjō. He was made the supreme commander of the navy in Feb. 1944. He was replaced as navy minister later that year, and in Jan. 1945 retired from active duty. He was charged with war crimes by SCAP and sentenced to life in prison; he was released on parole in 1955.

³¹⁸ *Pal*, 375.

³¹⁹ *Ibid.*, 376.

³²⁰ *Ibid.*, 376.

³²¹ 1882–1950. Togo was a career diplomat and served as foreign minister 1941–1942 and again Apr.–Aug. 1945. He doubted Japan could win a war with America, supported the Potsdam Declaration, and even ad-

When he received the call from the premier designate to serve as foreign minister in the Cabinet to be formed, Mr. Togo had been in effect in retirement without rank and the nominal post of ambassador but with no assignment since November 1940. The offer of the appointment was not the result of any personal relationship between Gen. Tojo and Mr. Togo. There was no such relationship between the two nor was there any intimacy between Mr. Togo and others of the new ministry. Mr. Togo was then a senior of the Foreign Ministry, eligible in the normal course for appointment to the highest post in that ministry.³²²

There could therefore not have been any connection with any conspiracy.

§4 “A critical moment in the life of Japan”

It probably couldn’t have been helped as he was a prosecutor, but the British prosecutor Arthur Comyns-Carr overflowed with prejudice with a constant sense of anti-Japanese bigotry. Pal wrote, “Mr. Comyns Carr for the prosecution asserted that ‘a consideration’ of all of the evidence leads to *the inevitable conclusion that* Tojo was one of the ‘Young Army’ officers who in the early days of conspiracy plotted for the conquest of all East Asia.”³²³ (Emphasis in the original.)

Pal strongly disagreed, writing, “I do not see how Mr. Carr could be so assertive of Tojo’s being one of the ‘young army officers’ referred to by the witnesses. None of the witnesses named him.”³²⁴

For foreigners, Tōjō was similar to Roosevelt, Churchill, Chiang Kai-shek, Hitler, Mussolini, and Stalin. The actuality in Japan was completely different, however. There was the sense in Japan that it was only someone like Tōjō who could have been able to prevent another February 26 Incident, and he suddenly popped up on the scene after having been theretofore totally distanced from the heart of politics. That is worlds apart from being someone like Hitler or the others.

What is interesting is Pal’s position after turning his attention to Japanese–American relations and looking at the evidence. He wrote: “It would be sufficient for my present purpose to say that the evidence clearly indicates that long before July 1941 the U.S. Government had arrived at a decision that the issue between the U.S. and Japan was irreconcilable. Actions taken by that government against Japan at least since March 1941 could not have left any statesmen of either country in doubt about this decision.”³²⁵ What this says is that over five months *before* Japan’s declaration of war, America had already set her mind on war.

vocated surrender in the summer of 1945. He was convicted of war crimes and sentenced to 20 years, but died in prison.

³²² Pal, 376–377.

³²³ Ibid., 379.

³²⁴ Ibid., 379.

³²⁵ Ibid., 381.

Concerning this point, Pal said:

I would again emphasize that for the present purpose it is immaterial which party was to blame for this situation. That was the situation and Tojo clearly saw it. At any rate, he came to his own conclusions and based his decisions thereon.

...

As the evidence now amply discloses, it was not a moment in the life of Japan when power was considered to be of any consequence to any individual or group of individuals. It was a critical moment in the life of Japan....³²⁶

When I was a child, I indeed truly felt that “it was a critical moment in the life of Japan.” Pal wrote of the threat: “It is in evidence that Tojo came in with full knowledge of the impending danger. He, to the best of his ability as a statesman, continued the diplomatic move, but ultimately failed in coming to any honourable settlement with the U.S.”³²⁷

After investigating the prosecution’s claims that the government was controlled and directed by a conspiracy, Pal wrapped it up with the observation that, “The story has been pushed a little too far, perhaps, to give it a place in the Hitler series.”³²⁸

It is a moderate expression, but he was likely being ironical about being lumped together with the Nuremberg Trials and pointlessly making out that there was a conspiracy. As I pointed out in chapter six, Japan was not led by a unified political party like the Nazis. From the start, the misdirection of the concept of a conspiracy for which the Nazis were judged was simply unreasonable.

³²⁶ Ibid., 381–382.

³²⁷ Ibid., 382.

³²⁸ Ibid., 382.

Chapter Ten The Tripartite Alliance

§1 Japan’s spur-of-the-moment preparations for war

Within the charges for conspiracy was the entry, “general preparation for war,” “which deals with the general naval, military production and financial preparation for aggressive war which were made by Japan from 1932 onward.”³²⁹ This preparation, it was charged, had been a war crime.

Yoshino Shinji,³³⁰ who rose through the bureaucracy in the Ministry of Commerce and Industry to become its minister, spoke from the witness stand concerning Japan’s rationalization of industry. Pal quoted him as saying, “It was not a problem which concerned only Japan, but was a policy common to all countries, including Britain, the United States and others. Japan was late in this and her measures were modelled after those of the others.”³³¹

To give an example, there was the Law for Control of Vital Industries which was passed in 1931. Yoshino, quoted by Pal, explained the law thus: “While it appears to be totalitarian in ideology, its contents would show it was not so in the least. This law aimed at controlling medium and small-scale industry and a voluntary agreement among industrialists.... It was a measure to promote cartels.”³³² In other words, it was a law intended to strengthen business since small and medium-sized companies all by themselves were weak.

What is particularly interesting to me about this law is the year in which it was promulgated. It doesn’t come out in *Pal’s Judgment*, but the Smoot-Hawley Tariff Act³³³ had been passed in the previous year, creating, as it were, a tariff “Great Wall” around America in relation to thousands of goods. What this means is that the Law for Control of Vital Industries had not been created simply because Japan wanted it; it had been created in response to America’s move toward a bloc economy.

³²⁹ Pal, 385. Pal was here quoting a Brig. Gen. Quillium, otherwise unidentified.

³³⁰ 1888–1971. Yoshino served in the first cabinet of Konoe Fumimaro beginning in 1937. He was the governor of Aichi for two years during the War, and afterward he continued in politics, eventually being a cabinet minister again in 1955.

³³¹ Pal, 388.

³³² *Ibid.*, 389.

³³³ This act raised US tariffs on over 20,000 items to record levels — as high as 60% on over 3,000 specific goods. It resulted in retaliatory legislation in several countries, and American imports and exports fell by half. Though passed after the stock market crash in 1929, many economists credit the debate leading up to its passage as a major factor in the crash itself, and it in fact deepened the Great Depression.

Pal wrote, “Japan’s plans for industrial rationalization followed orthodox methods practiced by other countries and do not deviate from them.”³³⁴ He pointed out that the National Electric Power Control Law, the Shipbuilding Encouragement Law, and other similar laws, which the prosecution had made out to be intended as preparing for war, were unrelated to any conspiracy.

Moving on, Pal then took up the testimony of Adm. Kondō Nobutake³³⁵ concerning the issue of the navy’s preparations for war. Kondō said:

By the Washington Treaty, Japan’s capital ships and aircraft carriers were limited to 60% of the U.S. and Britain. However, information collected after the Treaty showed that the U.S. Navy was preparing for trans-ocean operation, and it was felt that if necessary the U.S. fleet could at any time reach Japan’s home waters. To oppose this, efforts were made to complete national defense with fleet-footed cruisers and lesser craft which would depend principally on torpedoes for interception in the home waters.³³⁶

Trans-oceanic operations carried the implication of an attack on Japan. In response, the Japanese navy made smaller ships — ships that were outside the scope of the Washington Naval Reduction Treaty — with plans to defend Japan with torpedoes.

That plan soon ran into a wall, however, as Kondō testified. “With the limitation placed on strength of auxiliary vessels by the London Treaty of 1930, the characteristic armament of the Navy was restricted. They had to watch while the U.S. Navy constructed new types of warships.”³³⁷

This became a major problem. As a result, Japan withdrew from the London Naval Treaty.

Around the beginning of 1940, Kondō continued, “The movements of the U.S. fleet in Hawaii, together with strengthened U.S. and British support to Chungking [Chongqing], made Chungking confident of victory, and made more difficult the settling of the China Incident.”³³⁸ Then, toward the end of that same year:

Information was received that the Philippine Reserve was mobilized, that the U.S. War Secretary declared martial law in Pearl Harbour, that U.S. troops in North China were withdrawn, and that mines were being laid in the eastern entries of Singapore Straits, that Australian troops were being reinforced in Malaya, and that the U.S., Britain and Australia were conferring to reinforce the Philippine Army in Manila, etc.³³⁹

With intelligence to this effect, Japan took it to mean she was being targeted for war. Pal noted that the navy undertook “an Emergency Armament Program for one car-

³³⁴ Pal, 389.

³³⁵ 1886–1953. Adm. Kondō was commander of the 2nd Fleet during the War, second in importance only to Adm. Yamamoto. After his defeat at Guadalcanal, Kondō was removed from Fleet command.

³³⁶ Pal, 393.

³³⁷ *Ibid.*, 393–394.

³³⁸ *Ibid.*, 394.

³³⁹ *Ibid.*, 394.

rier, two cruisers, 26 destroyers, 33 submarines, and other defense forces.... [But the] plans were formulated on the spur of the moment, and were mainly based on small defensive warships.”³⁴⁰ Kondō thus clarified that Japan’s posture had been passive.

Pal quoted Kondō on U.S. Adm. James O. Richardson’s affidavit, which indicated “the Japanese Navy in its preparation for an aggressive war, had exerted itself toward building aircraft carriers,”³⁴¹ but Kondō pointed out that “Japanese Naval authorities believed that carriers were absolutely needed for defense purposes as long as other powers had them.”³⁴²

The reason was that the best defense against warplanes was warplanes, and as a nation of many small islands it would have not been feasible for Japan to build the number of airbases that would have been necessary. Kondō stated:

It was therefore advantageous to maintain the fleet carrier strength at a point where it could fully hold its own against opponents and thereby serve national defense....

It can be seen from the nature and capacity of Japanese carriers that they were built for defensive purposes. To utilize carriers offensively, it is necessary to have attending warships, but the Japanese Navy did not have them.³⁴³

Aircraft carriers can make incredible time, and Japan lacked sufficient battleships with corresponding speed. When making an attack, warships are necessary for the protection of the carrier, but as they were not provided, it is plain that the carriers could not have been built in preparation for waging an *aggressive* war.

§2 Wars of democracies are terrifying in nature

It was the prosecution’s claim, Pal wrote, that, “The fact that Japan was keeping herself prepared for war.... [and] the fact that Japan ultimately started aggressive war, should lead to the inference that *the preparation itself was for such aggression.*”³⁴⁴ (Emphasis in the original.) Pal’s conclusion was different. “I am afraid I cannot accept this contention of the prosecution.”³⁴⁵ The reason was that the First World War “succeeded in raising a world-wide apprehension of a future war of attrition in the mind of every nation,”³⁴⁶ so every nation went forward with the idea of *preparing* for war.

Pal then referred to “the new driving powers of industrialization and of democracy,”³⁴⁷ pointing out that war that envelops even the common folk started with the

³⁴⁰ Ibid., 395.

³⁴¹ Ibid., 395.

³⁴² Ibid., 395.

³⁴³ Ibid., 396.

³⁴⁴ Ibid., 405.

³⁴⁵ Ibid., 405.

³⁴⁶ Ibid., 405.

³⁴⁷ Ibid., 405.

American Civil War.

No doubt it is the American Civil War of 1861–65 which marks the new epoch in the history of war because it saw the application of both the two new driving forces — democracy and industrialism — to an ancient international evil....

... As has been observed by Professor Toynbee, “since then war has no longer been ‘the sport of kings’; it has been the *absorbing business* of whole nations.”³⁴⁸ (Emphasis in the original.)

I believe this is very persuasive as a way of looking at the history of warfare. As I think about it, the warfare of democracies and the warfare of monarchies are quite different.

Napoleonic wars are spoken of as “citizens’ wars,” but Napoleon himself was democratic (though he later became emperor) and his counterparts were kings. Therefore, even though he only fought that type of war, there was no sense of “war crimes” and Napoleon was exiled to Elba (and later St. Helena) and that was an end to it. Even still, given the extent of the criticism of Britain by Australia, Germany, and other countries that Napoleon had so injured, who claimed that it was criminal to exile one who has been an emperor to some island, wars of monarchs if fought after this were moderate.

Pal observed, “Democracy has turned ‘the sport of kings’ into the wars of Nationality passionately.”³⁴⁹ Wars between kings were generally not a matter of “rousing the nation.” In wars fought by democracies, on the other hand, the populace is roused and they fight the war. What this means is that wars fought by democracies are fearful things.

Pal then made the following point:

Industrialism has converted the entire material wealth of a belligerent community into *materiel de guerre*, and has at the same time enabled and compelled a belligerent government to mobilize the entire working population of the belligerent country. The men and women who produce the supplies and munitions in the interior are as indispensable for the waging of war, and as strongly imbued with the spirit of it, as the soldiers at the front.³⁵⁰

Pal saw these type of intensive controlling measures finally take shape towards the end of the First World War. He said:

During the first war the few who did think of preparedness, thought of it in terms of men and not of materials. Resources had not been catalogued; the army lacked knowledge of its own requirements, and there were no plans for initiating the necessary production. Keeping in view these defects every nation was devoting its resources to economic mobilization similar to that adapted by

³⁴⁸ Ibid., 405–406.

³⁴⁹ Ibid., 406.

³⁵⁰ Ibid., 406.

Japan.³⁵¹

With this analysis, Pal said:

Evidence adduced in the case does not carry us beyond the picture of such mobilization on the part of Japan.... It shows no doubt a preparation for war but keeping in view the circumstances stated above and remembering that similar preparation was being made more or less everywhere throughout the world, I do not see any reason why this should drive us to hold that Japan was *preparing for any aggressive war*.³⁵² (Emphasis in the original.)

In other words, Japan was only doing what every other country was doing, and they could not have all been embroiled in some conspiracy.

Pal also brought up Japan’s alliance with Germany. It is certain that the prosecution stressed only the ties to Hitler, whose evil was acknowledged by everyone. As the first step in Hitler’s close connection to Japan, the prosecution raised “what the parties named as ‘Agreement against the Third International’”³⁵³ — generally referred to as the “German–Japanese Agreement.”³⁵⁴

The *précis* of the German–Japanese Agreement was “co-operating in the defense against Communist subversive activities”³⁵⁵ as the goal of Communism International (the Comintern) was a country’s collapse or suppression by any means, fair or foul.

Pal said, “There is absolutely nothing in the Pact and the Protocol in support of the Prosecution case. The prosecution had to admit this. Its contention, however, was that there was a secret agreement contemporaneous with this Pact and it was this secret agreement which really mattered.”³⁵⁶

Concerning the contents of the secret pact entered as evidence at the Trials, Pal said, “Certainly this secret agreement relates to the U.S.S.R. but I cannot say that it had anything aggressive in it.... But now we have the secret agreement and now we know that it was only a defensive alliance against the U.S.S.R.”³⁵⁷

To begin with, *everyone* was afraid of communism. As Pal pointed out, “We know that even the United States could not free itself of that fear, so much so that it was afraid of according its recognition to the U.S.S.R. until November 16, 1933.”³⁵⁸ Japan had recognized the Soviet Union earlier, so perhaps America had been the more vigilant. Conciliation between the Soviet Union and the United States began under Franklin Roosevelt.

Concerning the tripartite alliance of Japan, Germany, and Italy, Pal made an extremely ironic comment to show that although Japan allied with Germany the Japanese

³⁵¹ *Ibid.*, 407.

³⁵² *Ibid.*, 409.

³⁵³ *Ibid.*, 418.

³⁵⁴ This treaty was signed in 1935, and was an immediate predecessor to the better known Anti-Comintern Pact, signed a few months later, also between Japan and Germany.

³⁵⁵ Pal, 418.

³⁵⁶ *Ibid.*, 419.

³⁵⁷ *Ibid.*, 421–423.

³⁵⁸ *Ibid.*, 423.

did not become as the Nazis: “The most superb retribution of the doctrines of ideological fronts would be seen in the alliance between the democratic states and the U.S.S.R. as also between the U.S.S.R. and Germany.”³⁵⁹

America has long painted the Second World War as a conflict between democracy and fascism. The Soviet Union, however, was right in there with the democratic nations. It was a ludicrous thing to claim.

What, then, is an alliance?

“These alliances in international life are entered into to fulfil [*sic.*] certain important functions. ‘They are the compensation for an imaginary or real inferiority of a state as compared with a rival Power.’”³⁶⁰ Such was Pal’s take on an alliance between states.

I think that, in other words, there are times when the influence of the balance of power is great, and if it comes to war one might even have to join hands with the devil. As for the Tripartite Alliance itself, there were three industrialized states that would not have been able to continue to exist in a closed world of bloc economies: Japan, Germany, and Italy. This must be why they joined together.

According to the testimony of Baron Ōshima Hiroshi,³⁶¹ Japan’s ambassador to Germany, there were three pressing goals in Japan’s alliance with Germany. First was that since the Manchurian Incident, Japan had been isolated internationally and was having difficulty making allies. Second was that the Comintern had infiltrated every country, so many countries had to band together to defend against it. Third was that Japan was feeling considerable pressure from the reinforcement of the Soviet Union’s Far-East Army. Pal also quoted the opinion of Britain’s Maj. Gen. Francis Stewart Gilderay Piggot, who had been born in Japan and lived there for many years until 1937, on the Tripartite Alliance: “The very origin of the Three-Power Pact was really Psychological rather than Political, due to Japan’s feeling of loneliness.”³⁶²

§3 Japan was always afraid of a clash

It’s a story we’re getting tired of, but another of the conspiracy charges entered was that Japan invaded the Soviet Union. Soviet prosecutor Sergei Aleksandrovich Golunsky explained the conditions between the time of the Russo–Japanese War and the Second World War and presented a huge volume of evidence “supplying the historic background in which the aggression to be dealt with by him was developing.”³⁶³ Pal’s take, however, was, “It does not indicate the over-all conspiracy now under our consideration.... [At] least so far as the U.S.S.R. is concerned, Japan did not take

³⁵⁹ Ibid., 426.

³⁶⁰ Ibid., 426.

³⁶¹ 1886–1975. Baron Lt. Gen. Ōshima was first military attaché in Berlin 1934–1939 where he was befriended by Joachim von Ribbentrop, and in 1941 returned as full ambassador. He was instrumental in the Anti-Comintern and Tripartite pacts. He was even a personal confidante of Adolf Hitler. Ōshima was arrested when Germany surrendered and charged with war crimes. Found guilty by the Tokyo Trials, he was sentenced to life in prison, but was paroled in 1955. Many of his dispatches were intercepted and decoded by the Allies, making him, ironically, one of their best sources of German intelligence.

³⁶² Pal, 428.

³⁶³ Ibid., 431.

any aggressive steps against it throughout the period of war, and even Germany could not induce her to take such steps.”³⁶⁴

In addition, Gen. Vassiliev³⁶⁵ claimed that, “the aggressive acts with the major Japanese war criminals are charged with are closely linked up with the war of Japan against Russia in 1904–05 and with the Japanese intervention in Siberia in 1918–22.”³⁶⁶

To this, Pal said of the Soviet Union (which came into being in 1917): “Japan accorded her recognition *de jure* in 1925.... Persons responsible for the alleged acts against the Czarist Russia or against the unrecognized Soviet Union are not before us.”³⁶⁷ In other words, the charges were *not subject to the court*. He said, “Even if we are prepared to visit on sons their fathers’ guilt, I do not think that we can in any way reach the present accused or judge their guilt by any reference to the actor or attitude of the Japanese government or the then ‘small military group’ who might have behaved in some particular way towards Russia of 1904–05 or of 1918–22.”³⁶⁸

These are all just obvious points.

Incidentally, Pal meticulously laid out how, after Japan returned the Liaodun Peninsula as a result of the Triple Intervention, Russia leased Port Arthur and then, taking advantage of the Boxer Rebellion of 1900, overtly invaded Manchuria. Taking a viewpoint similar to one a Japanese might have, Pal said, “All that they asked was no more than China had voluntarily given Russia.”³⁶⁹

Also, concerning the Japanese military deployment to Siberia (which today earns nothing but scorn), Pal referred to the *Survey of International Affairs* by the Royal Institute of International Affairs, quoting it as saying:

The Japanese Government long hesitated to plunge into the indeterminate responsibilities of a Siberian campaign. The European Allies then realized that Japan would never move without a signal from America; and President Wilson, after at first holding back, gave way....

Accordingly in July 1918, the United States Government published a declaration to the Russian people announcing that, on the proposal of the United States and with the previous approval of Great Britain, France and Italy, the American and Japanese Governments had decided to send troops to Vladivostok in order to assist the Czechoslovaks.³⁷⁰ (Emphases in the original.)

Wilson called on the Japanese to come forth as well, and Japan complied, sending

³⁶⁴ Ibid., 434.

³⁶⁵ Otherwise unidentified in *Pal’s Judgment*, this is probably “Col. Gen. Vasiliev,” the *nom de guerre* of Marshal Aleksandr Mikhailovich Vasilevskii, the commander-in-chief in the Far East in 1945 — the officer who accepted Japan’s surrender.

³⁶⁶ Pal, 434.

³⁶⁷ Ibid., 435.

³⁶⁸ Ibid., 435.

³⁶⁹ Ibid., 446.

³⁷⁰ Ibid., 452.

troops into Siberia. Pal concluded: “The Japanese intervention of 1918 was not at all Japanese design and certainly was not the result of any conspiracy of the kind alleged in the indictment.”³⁷¹

Concerning the Guandong Army, Pal understood that, “The Kwantung Army was not assigned to the invasion or the occupation of Soviet territory.”³⁷² He made the pointed argument that:

The evidence shows that the purpose of this army being stationed in Manchuria was for defense. At any rate, this stationing of the army in Manchuria was no part of any conspiracy.

The Kantoquen or the Kwantung army special maneuver again does not advance the prosecution case so far as the question now under consideration is concerned. We may again recall in this connection that Japan did not even take advantage of Russia’s involvement in the European war and if conduct is any evidence of the mind, here is positive evidence contrary to the existence of any design or conspiracy against the U.S.S.R.³⁷³

After demonstrating his insight that, “The evidence sufficiently indicates [Japan’s] anxiety to avoid clash with the U.S.S.R. She seems always to have been afraid of such a clash,”³⁷⁴ Pal ultimately repeats his earlier point, saying, “Even [a] German request could not induce her to move against the U.S.S.R.”³⁷⁵

§4 Problems of modern history are current affairs problems

What is interesting in the section on “Over-all Conspiracy Aggression against the Soviet Union” in the fourth part of *Pal’s Judgment* is Pal’s response to prosecutor Golunsky’s proffered account of the historical background of the events. He wrote, “If it is at all legitimate to refer to any historical background, I do not see why we should start with the years 1904–05 or 1918–22.”³⁷⁶

Pal then went back and wrote a thumbnail accounting of Japanese history starting at the arrival of the American “black ships” of Commodore Matthew Perry in 1853.

Using as an example Japan’s annexation of Korea, Pal wrote that Japan had not acted totally willy-nilly, and that when Japan had made Korea a protectorate after the Russo-Japanese War:

“The United States and the other treaty powers recognized the logic of events and withdrew their legations from Seoul.” Mr. Roosevelt realized that Korea “had shown herself utterly impotent for

³⁷¹ Ibid., 453.

³⁷² Ibid., 460.

³⁷³ Ibid., 460.

³⁷⁴ Ibid., 460.

³⁷⁵ Ibid., 460.

³⁷⁶ Ibid., 435.

self-government or self-defense" and refused to intervene.

"During the next three years, under Marquis Ito, as Resident General, many striking improvements were made, which won the admiration of foreigners who were familiar with conditions in the old days." But unhappily, that great statesman lost his life at the hands of a Korean fanatic in Manchuria on October 26, 1909.³⁷⁷

Moreover, he made the point on the subject of Korean annexation that, "After this event, both the governments of the United States and the British Empire testified to their desire to maintain the traditional friendship with Japan by entering into treaties."³⁷⁸ It would be fair to say that he makes a point central to Japan's contentions concerning her history with Korea.

These days, I continue to say that problems of modern history are actually current event problems. The First World War began fifty years before the Tokyo Olympics of 1964, but at the Tokyo Olympics there was not any talk of any problems at all about the First World War. Although there may have been some effects from the great war that occurred between those two events, the Tokyo Olympiad and the First World War were in completely different worlds.

Nonetheless, 2007 marked the "Memorial of the Seventieth Anniversary of the Great Nanking Massacre" and so forth, and many obviously bogus movies were made, and the Memorial Hall of Victims of the Nanjing Massacre was greatly expanded. Problems between Korea and Japan were little different; a resolution was passed the same year in both the Lower House of the United States Congress and in the European Parliament condemning Japan over the issue of so-called comfort women. Though these were events over fifty years in the past, they are entirely problems of the present.

Therefore, Japanese must be resigned to the fact that things that occurred in the days between around 1927 and the Tokyo Trials will always appear as current affairs problems. When looking at history as a current events problem, the most expeditious, and yet the most theoretical and firmly truthful and credible thing is thus *Pal's Judgment*.

³⁷⁷ Ibid., 447. The quotations enclosed, Pal said, were from *Japan and the United States: 1853–1921* by Prof. Payson Treat, published by Houghton Mifflin in 1921.

³⁷⁸ Ibid., 448.

Chapter Eleven The Ultimatum

§1 A conspiracy among the allied nations

The final step in the prosecution’s repeated refrain of over-all conspiracy was sequence of events leading to hostilities between the United States and Japan. First, *was* the aggression toward French Indo-China (present-day Vietnam, Cambodia, and Laos) and Dutch Indo-China (present-day Indonesia) a conspiracy? Pal repeatedly stressed that, according to the testimony, Japan was being induced by her opponents and had no option but to act.

French Indo-China admittedly occupies a strategic position of the highest importance even in respect of China Proper.... The evidence now before us clearly establishes Japan’s case of help coming to China through Indo-China.

It is also admitted that the United States “rendered aid economically and in the form of war materials to China to a degree unprecedented between non-belligerent powers and that some of her nationals fought with the Chinese against Japan.”

...

Japan was so worried about the economic pressure that she endeavoured with renewed vigour to enter into new negotiations with the Netherlands East Indies, particularly with respect to oil.... In the meantime, further economic pressure was exerted by the United States by the issuance of further embargo proclamations.

As a result of the embargoes, what steps might reasonably be expected to be taken by Japan would be amply indicated from what President Roosevelt himself said on July 21, 1941 in course of his conversation with the Japanese Ambassador. The President stated that the United States had been permitting oil to be exported from the United States to Japan because *otherwise* the Japanese Government would have moved down upon the Netherlands Indies.³⁷⁹
(Emphasis in the original.)

What I want to say is that Japan didn’t start the War. The thing was, America and the

³⁷⁹ Pal, 490–491.

other countries backed Japan into a corner and made it so that she had no other choice. The “Netherlands East Indies” referred to above was the Dutch territory in Indo-China — that is, the modern-day Indonesia — which was prohibited from selling its oil to Japan. For argument’s sake, if the process leading to the war in the Pacific is taken to have been a conspiracy, it wasn’t a Japanese one. Rather, from his investigations, Pal suggests that it had been *a conspiracy by the allied nations*.

Pal wrote:

Japan was a country without any material resources of her own. She started on her career when “Western Society had come to embrace all the habitable lands and navigable seas on the face of the planet and the entire living generation of mankind.”

The Japanese emulated the western powers in this respect but unfortunately they began at a time when neither of the two essential assets, “a free-hand” for their ability and a world-wide field, was any longer available to them. The responsibility for what Japan was thinking and doing during the period under our consideration really lies with those earlier elder statesmen of Japan who had launched her upon the stream of westernization and had done so, at a moment when the stream was sweeping towards a goal which was a mystery even to the people of the West themselves.³⁸⁰

This is extremely ironic. Ishihara Kanji,³⁸¹ sick at home in Sakata in Yamanashi prefecture, did not attend the trial but he proclaimed that had Perry not come to Japan, nothing would have happened. He was saying the exact same things as Pal did.

Moreover, the prosecution claimed that Japan deliberately dragged its feet in negotiations with America so that preparations could be made for war. Pal, however, took an opposing view, saying, “If the negotiation can be taken as contrived by any of the parties only for the purpose of taking time for preparation, then it must be said that such time was not with Japan but with America. Remembering their respective resources, Japan was not to gain anything by lapse of time.”³⁸²

It is certain that the longer the negotiations went on, the more Japan’s oil reserves continued being depleted day by day, and there was nothing that Japan could do about it. Pal said, “The evidence in the case rather goes to show that the time which became necessary for the negotiation was benefiting America but was injuriously affecting Japan’s war resources. In fact, Japan’s impatience in the negotiation was mainly due to this fact.”³⁸³

Japan’s situation continued to get gradually worse and worse, and it is a solid fact that

³⁸⁰ Ibid., 499.

³⁸¹ 1889–1949. Maj. Gen. Ishihara had been assigned to the Kwantung Army and one of the people often considered responsible for the Manchurian Incident. After a time back in Japan (where he came down against the rebels in the Feb. 26 Incident), he returned to Manchuria as vice chief-of-staff for the Kwantung Army. He was an outspoken opponent of the policies of Tōjō Hideki, and for this was forced into retirement. During the War, he lived peacefully in Yamagata. He was called as a witness during the Tokyo Trials, but faced no charges himself.

³⁸² Pal, 514.

³⁸³ Ibid., 514.

Japan wanted to come to a quick settlement. It doesn’t come out in Pal’s Judgment, but when negotiations between Japan and America reached the end of the tether, Konoe Fumimaro took it on himself to try to arrange a personal meeting with Roosevelt. The Americans rebuffed his overtures, however.

In 1941, Pal said, “America was ... rapidly and irrevocably becoming involved in the European War.”³⁸⁴ They passed an absurd law to provide limitless military assistance to Britain, plainly moving forward toward war with Germany.

Pal continued, “Any further involvement which was foreseen at that time would inevitably and in an openly avowed state of war between America and Germany, be brought about, in the American view, as a result of *America’s action* in self-defense.”³⁸⁵ (Emphasis in the original.)

Pall stressed the concession that, given such a situation, Japan understood that the Americans were concerned that if they rushed into a state of war with Germany, Japan would have to go to war against the United States given her obligations with the Tripartite Alliance. He quoted the American ambassador to Japan, Joseph Grew, concerning the Japanese response: “In regard to Japan’s Axis relations, the Japanese Government, though refusing consistently to give an undertaking that it will overtly renounce its alliance membership, actually has shown a readiness to reduce Japan’s alliance adherence to a ‘dead letter’³⁸⁶ by its indication of willingness to enter formally into negotiations with the United States.”³⁸⁷

Japan, foolishly honest, felt that ending an alliance once agreed upon — when the cutoff point had not been reached — was contrary to what was owed to international fidelity. The Japanese then displayed an attitude whereby they could honestly proceed as if it *were* a dead letter.

The Americans, however, deliberately made as if they did not understand Japan’s diplomatic presentation that there was no intent to “automatically go to war.” Even if one grants that there was a misunderstanding between Japan and America here, I have to think that it demonstrated President Roosevelt’s intention to go to war at any event.

§2 The Hull note that severed diplomatic relations

At the time of the Chinese Incident, during the first government of Konoe Fumimaro, he formally announced that Japan would “no longer deal with Chiang Kai-shek.” The Japanese then recognized the government of Wang Jingwei³⁸⁸ in Nanjing, making the government of Chiang Kai-shek in Chongqing a regional political power. In June of 1941,

³⁸⁴ Ibid., 518.

³⁸⁵ Ibid., 518.

³⁸⁶ This refers to a legislative fiat by which passed and enacted law or treaty is treated as (and therefore rendered *de facto*) not existing, null, and void.

³⁸⁷ Pal, 521.

³⁸⁸ 1883–1944. Wang, a staunch anti-communist official of the Guomindang, was a close associate of Sun Yat-sen and a rival of Chiang Kai-shek. Wang’s supporters lacked the military and financial power of Chiang, and he was forced into exile. He reconciled with Chiang during the Second Sino–Japanese War, but believed a negotiated settlement with Japan was necessary. On Mar. 30, 1940, he became head of what is called “the Wang Jingwei Government.” He lived in Nagoya through the War. His name in China is now used like Benedict Arnold or Quisling in the West.

however, during Konoe’s second cabinet, at a meeting between Japanese embassy staff and officials of the American State Department, Japan showed an attitude of compromise on this point. Pal wrote:

It was made clear in the course of discussion of revised clauses that notwithstanding Japan’s policy not to regard the Chungking [*sic.* = Chongqing] government as more than a regional regime, she did not intend, in pursuance of the proposed understanding, to deal with Chungking for settlement of the China Incident, and that Japan expected to leave it to the Chinese people to decide whether the Nanking [*sic.* = Nanjing] or the Chungking or a coalition of the two should be the eventual government of China. It was also made clear that the American proposal of providing by the agreement for withdrawal of naval as well as military forces was accepted with only the phraseology to be settled.³⁸⁹

Japan was extremely temporizing in her negotiations at this time. When the government of Tōjō Hideki came to power, it was the same way. The withdrawal of forces from the Chinese mainland became a huge issue, however. In November of 1941, at a meeting with the American secretary of state Cordell Hull, Japan’s ambassador, Adm. Nomura Kichisaburō, “in response to a question, ‘how many soldiers would the Japanese want to retain in China’, answered by saying that possibly 90 per cent *would be withdrawn*.”³⁹⁰ (Emphasis in the original.)

Pal went on: “In the meantime America intercepted several telegrams sent from Tokyo to Ambassador Nomura and, it seems these intercepted telegrams largely influenced the American attitude.”³⁹¹ In addition, there was a problem with the decoding of intercepted coded telegrams, where the nuances were not well understood. “Yet the whole spirit of the communications seems to have suffered such a distortion as is likely to give rise to some misgiving in the mind of one reading this intercept about the trend of its author’s intention.”³⁹²

Pal compared the original text of the telegrams with their translations. He offered an example where the original transmission said, “In view of the strong American opposition to the stationing for an indefinite period, it is proposed to dismiss her suspicion by defining the area and duration of the stationing,”³⁹³ but the translation read “In view of the fact that the United States is so much opposed to our stationing soldiers in undefined area our purpose is to shift the regions of occupation and our officials, thus attempting to dispel their suspicions.”³⁹⁴ We can see by just the subtle phraseology that the interpretation of the intercepted telegrams yielded misunderstanding.

In any case, without oil Japan’s planes could not fly, and her tanks and warships could not move. Japan, cut off as she was by the ABCD Line from resources, *needed* oil.

³⁸⁹ Pal, 530.

³⁹⁰ *Ibid.*, 533.

³⁹¹ *Ibid.*, 533.

³⁹² *Ibid.*, 534.

³⁹³ *Ibid.*, 536.

³⁹⁴ *Ibid.*, 536–537.

In this, the so-called Plan B indicated to Nomura was a particularly conciliatory one. Japan approved the withdrawal of troops from southern French Indo-China, the occupation of which was an issue that hardened the American attitude, and requested that somehow oil be supplied to them.

In the Hull note, however, there was no promise for the sole request that oil be sold. With that, the Japanese took the Hull note to be a notice of severance of diplomatic relations, and considered it an ultimatum.

Pal cited the defendants’ views: “As one of the defendants pointed out, ‘Such a political condition or situation would of itself affect even the area of Korea. That is to say, Japan would be placed in a predicament wherein she must also withdraw from Korea.’”³⁹⁵ The Hull note essentially called for a return to the *status quo ante* prior to the Russo–Japanese War. Pal finished his quotation of the witness’ remarks with, “In other words, this was asking for Japan’s suicide as a great Power in East Asia.”³⁹⁶ Pal then famously stated, “Even contemporary historians could think that ‘as for the present war, the Principality of Monaco, the Grand Duchy of Luxembourg, would have taken up arms against the United States on receipt of such a note as the State Department sent the Japanese Government on the eve of Pearl Harbour.’”³⁹⁷

Incidentally, one of the “contemporary historians” cited by Pal was the American historian Albert Jay Nock, who, before his death in 1945, was a passionate opponent of what he characterized as the American government’s aggressive foreign policies.

Pal quoted the historian: “President Roosevelt and Secretary Hull were so certain of Japanese refusal to accept the proposals of the memorandum that, without waiting for the Japanese reply, they authorized a war warning to the American outpost commanders the very next day after the document had been handed to the Japanese representatives.”³⁹⁸

In other words, it would be fair to understand that the Americans assumed the Japanese would take the Hull note as an ultimatum.

If I may make a slight digression, there is a debate over whether Roosevelt knew in advance of an attack on Pearl Harbor. Wake, Guam, and the Philippines were completely on a war footing, so it is certain that they were anticipating a Japanese attack. It is my understanding, though, that they did not expect the attack to be made on Hawaii.

Naval tactics are different from land-based tactics: it is battle based purely on levels of civilization, and the one with the highest level is the strongest. Nowhere in the world did anyone conceive of the idea that there could be a naval task force with a main force of six aircraft carriers capable of traveling 6,000 kilometers and striking from the skies with decisive action. It was inconceivable to Caucasians that they could be done in by Japanese using large-scale naval tactics that they themselves couldn’t imagine.

Caucasians at the time had disdain for the Japanese — something along the lines of “what can the Japanese do with their monkeying about?” Even at Pearl Harbor, it was said, there were not a few Americans who, upon seeing the fighters flying at low altitude, thought that they must have been piloted by Germans. This was probably because, ac-

³⁹⁵ Ibid., 546.

³⁹⁶ Ibid., 546.

³⁹⁷ Ibid., 546.

³⁹⁸ Ibid., 547.

ording to "conventional wisdom," the Japanese were not capable of such a thing.

No doubt it is due to this "conventional wisdom" that the American forces in Hawaii were unprepared. Still, the sinking of a Japanese midget sub before it could enter Pearl Harbor, and that the Americans were able to return fire from antiaircraft guns in the short time between the first and second wave of air raids, shows that they had been under orders to be ready for war.

§3 Japan went all out to avoid the collision

In Pal's words, the Hull note, which disregarded all the progress made with negotiations, "amounted to the maximum terms of an American policy for the whole Orient."³⁹⁹

Shimada Shigetarō, the naval minister under the Tōjō cabinet, gave the following testimony regarding the one-sided demands:

Not a single member of either group⁴⁰⁰ wanted war with the United States and Great Britain. The military men knew too well that Japan had on its hands the China Affair of over four years duration and which promised no hope of being successfully terminated. Therefore, to reason that we would voluntarily incur additional hostilities with such powers as the United States and Great Britain would be to attribute to us unthinkably juvenile military reasoning.

...

... It contained no recognition of the endeavours we had made toward concessions in the negotiations. There were no members of the Cabinet nor responsible officials of the General Staff who advocated acceptance of the Hull Note. The view taken was that it was impossible to do so and that this communication was an ultimatum threatening the existence of our country.⁴⁰¹

Pal then harshly criticized America:

[At] least a week before the attack on Pearl Harbour, Mr. Hull told the British Ambassador that "the diplomatic part of their relations with Japan was virtually over and that the matter will now go to the officials of the Army and Navy". In fact, after the embargo of July 1941 the United States was simply taking time.

...

... Since American strength was growing, the longer they could postpone hostilities, the better. Time was working in their favour and they had every reason for wanting to gain time.

³⁹⁹ Ibid., 547.

⁴⁰⁰ I.e., the Japanese government and the Japanese high command.

⁴⁰¹ Pal, 551–552.

The reason why any effective embargo was not applied earlier is not that the United States was friendly towards Japan at that time. The view which prevailed was that Japan would be ruined if a complete embargo was laid down. So she would be compelled to fight. But America was not yet ready to take the risk of war with Japan. They could not take the chance of a full scale war in the Pacific until they were reasonably sure that Germany could not attack them through South America and in the Atlantic.

...

As has already been pointed out, the employment of measures like those taken by the Allied nations against Japan, then engaged in war with China, amounted to a direct participation in the conflict. Their conduct was in defiance of the theory of neutrality and of the fundamental obligations that the law of nations still imposes upon non-belligerent Powers.... [T]he Allied Nations had already participated in the conflict by these actions and any hostile measures taken against them by Japan *thereafter* would not be “aggressive”.⁴⁰² (Emphasis in the original.)

Pal then wrote the following:

... [T]hese facts sufficiently explain the subsequent developments leading to the attack on Pearl Harbour without there being any conspiracy of the kind alleged in the indictment. The evidence convinces me that Japan tried her utmost to avoid any clash with America, but was driven by the circumstances that gradually developed to the fatal steps taken by her.⁴⁰³

After laying out his investigation, Pal concluded with the following assertion:

As I have already pointed out, there is no direct evidence of this conspiracy or design. The factum of this alleged conspiracy, design or plan has not been attested to directly by any witness, thing, or document.

...

I believe I have already given enough materials in the foregoing pages of this judgment to satisfy any but a pre-occupied mind that these events happened without the alleged conspiracy.⁴⁰⁴

In other words, there was no validity to the major premise of the Tokyo Trials.

I am garrulously repeating the same things, so I will not introduce them one by one; but here, too, Pal raised several examples. For one, that the assassination of Zhang Zuolin, (taken by the prosecution as the starting point of the conspiracy), the Manchurian Inci-

⁴⁰² Ibid., 552–554.

⁴⁰³ Ibid., 554.

⁴⁰⁴ Ibid., 557–558

dent, etc., were not a conspiracy; for another, that the Tokyo Trials tried to judge things of national responsibility by lowering them to the level of individual responsibility (something even the United Nations charter does not recognize); criticism of the rules of the Tokyo Trials and support of trials according to international law; the right of self-defense; etc.

I would like to introduce one of these — Pal’s point that:

The population of Japan was not enslaved as in Hitler’s Germany. Members of the public retained complete freedom in respect of their own creeds, beliefs and behaviour.... Any influence exercised on their views is not fundamentally different from what is done even in other peace-loving, democratic countries.

...

...There was no dictator in Japan. Neither any particular individual nor any group of individuals did ever emerge as dictator, rising above all democratic control.⁴⁰⁵

There is simple evidence to this fact. There was a general election during the War — in 1942. In addition to those who had been put forth for membership in the Diet and recommended by the Cabinet in that election were many others who were elected, like Saitō Takao⁴⁰⁶ and Sasakawa Ryōichi.⁴⁰⁷ Surely there is no way one can call this a “loss of democracy.”

§4 War, but *which* war?

In the fifth section after “Over-all Conspiracy Conclusion,” Pal wrote of “The Scope of [the] Trial’s Jurisdiction.” I took up this issue in chapter two, but Pal again indicated his position that the cessation of Taiwan and the annexation of Korea had nothing to do with the Tokyo Trials, and they had no jurisdiction over the possession of the Kuriles and Sakhalin, the Nomonhan Incident, or the independence of Manchuria. He wrote, “I am of the opinion that this Tribunal would have no jurisdiction ... for the simple reason that the *hostilities* related to these matters ceased long before the Potsdam Declaration of 26 July 1945 and the Japanese Surrender of 2 September 1945.”⁴⁰⁸ (Emphasis in the original.)

Pal said, “The question is which ‘war’ they intended to mean in their Potsdam Declaration or in the Cairo Declaration, when they used the word ‘war’.”⁴⁰⁹ The Cairo Declaration called for taking the South Sea Islands, Manchuria, Taiwan, etc., from

⁴⁰⁵ Ibid., 561.

⁴⁰⁶ 1870–1949. Saitō was a politician and long-time member of the Diet. After his expulsion from the Diet in 1940 over a speech critical of the war in China, he was re-elected to his seat in 1942.

⁴⁰⁷ 1899–1995. Sasagawa was a politician, a businessman, and a philanthropist. He personally financed a training program for pilots during the Sino–Japanese War and built his own airfields, later turning them over to the government. He was elected to the Diet in 1942. He was arrested but not indicted as a Class-A war criminal. After the War, he devoted himself to his businesses and his philanthropic endeavors.

⁴⁰⁸ Pal, 577.

⁴⁰⁹ Ibid., 580.

Japan — territories she ruled after the First World War. At issue was whether the Tokyo Trials were entitled to deal with them.

Pal reached this conclusion: “In these Declarations, the war that is referred to seems to be the war which these three Powers were jointly waging. In this sense, strictly speaking, it can only mean the war which commenced on the 7th of December 1941 with the Japanese attack on Pearl Harbour.”⁴¹⁰

He then made an interesting point concerning the Chinese Incident.

Japan did not give the hostility the name of “war” perhaps because she thereby expected to elude the constraints of the Kellogg–Brind [sic. = Briand] Pact, perhaps she thought that simply by omitting to issue a declaration it would be possible for her to avoid the opprobrium of waging war, and to evade the duties imposed by international law for the conduct of war.

Japan says that she was anxious to localize the matter. Of course, it must be said that by not declaring the hostility to be war, Japan deprived herself of certain valuable rights of belligerency also, like rights of blockade, etc.

China also did not want to give the name of “war” to this hostility before Japan became involved in war with the United States of America by her attack on Pearl Harbour.

China did not give it the name of “war” perhaps because she needed the assistance of the so-called neutral countries who were anxious to avoid being openly at war.

America also did not give it that name: perhaps she desired to escape the disabilities of her neutrality legislation whereby the shipments of arms and munitions of war to belligerents were automatically forbidden. America certainly could have openly acknowledged a state of war.

...

Thus, if they were consistent, neither China nor the United States, two of the three declaring powers at Potsdam, could have given the name of “war” to that course of the hostility which elapsed before the date of the attack on Pearl Harbour.⁴¹¹

Thus, strictly speaking, the Tokyo Trials had no jurisdiction over the Chinese Incident. To make doubly sure, Pal provided the jurisdictional limit of the Tokyo Trials:

“[T]he Allied Powers, by using the term ‘war’ in the Cairo and Potsdam Declarations, referred only to the war which commenced on the 7th December 1941 and was being jointly waged by the three declaring Powers and, therefore, the surrender must be taken as terminating only that war. The jurisdiction of the Tribunal should, therefore, be confined to the acts in or in connection with that

⁴¹⁰ Ibid., 580.

⁴¹¹ Ibid., 581.

war.”⁴¹²

In other words, all of the biggest problems in the Tokyo Trials — the Manchurian Incident, the Battle of Lake Khasan,⁴¹³ the Nomonhan Incident, the Marco Polo Bridge Incident, the Shanghai Incident, etc. — had to have been outside the scope of the Trials.

⁴¹² Ibid., 582.

⁴¹³ This is called the Changkufeng Incident in Japan.

Chapter Twelve The Scales of Justice

§1 Similar tales of brutality

In part six, in the section “War Crimes *Stricto Sensu*: Charges of Murder and Conspiracy,” Pal investigated the charges of maltreatment of prisoners and acts of brutality directed at regular civilians as parts of the conspiracy.

Pal began, “Very voluminous evidence has been led before us to establish the atrocities actually perpetrated at various places at various times. But not an iota of evidence having any direct bearing on the establishment of the *alleged plan or conspiracy* could be adduced in this case.”⁴¹⁴ (Emphasis in the original.)

As these “atrocities” resembled each other in the ways in which they were carried out, the prosecution concluded that they had been ordered from above. Pal’s take on this was that, “The similarity in the alleged atrocities may cut just the other way as well. It may as well indicate some common source shaping the allegations and evidence.”⁴¹⁵ Pal brought up an unexpected example:

The world is not quite unaware of some baseless atrocity stories designed to arouse animosities. Professor Arnold Anderson of the Iowa State College in his recent Article on “The Utility of the Proposed Trial and Punishment of Enemy Leaders” points out how in connection with the American Civil War ‘prison atrocity stories’, later disproved almost totally, were the major elements in a propaganda designed to arouse the animosities.⁴¹⁶

Pal seems to think the Tokyo Trials appeared via the Union’s judgment of the Confederacy following the Civil War, and he explored the records of the war, including, “W.B. Hesseltine’s ‘Civil War Prisons; — A Study in War Psychology’, where these stories are dealt with in considerable detail. It will be interesting to notice here that the prison atrocity stories there given bear a striking similarity to the stories of atrocities now before us.”⁴¹⁷

He presented the types of things written:

⁴¹⁴ Pal, 591–592.

⁴¹⁵ *Ibid.*, 592.

⁴¹⁶ *Ibid.*, 592.

⁴¹⁷ *Ibid.*, 592.

The world was told of the southerners “slashing the throats of some prisoners of war from ear to ear, cutting off the heads of others and kicking them about as foot-balls; setting up the wounded against trees and firing at them as targets or torturing them with plunges of bayonets into their bodies.” ... There were stories of bad food, cruel treatment and utter destitution.... An escaped quartermaster ... said that two hundred and fifty officers who shared his confinement received *less than one fourth* the rations of a private in the United States Army and were “subjected to all the hardships and indignities which venomous traitors could heap upon them.” “The prisoners were confined in a foul and vermin abounding cotton shed.” “They were forbidden to leave the crowded room to go to the sinks at a time when diarrhoea was prevalent;⁴¹⁸ (Emphasis in the original.)

“A *joint committee* to investigate the treatment of prisoners by the two sides”⁴¹⁹ (emphasis in the original) was created before the end of the Civil War and it exposed all these reports as false. Pal essentially indicated it was possible that the examples of maltreatment of prisoners brought up at the Tokyo Trials, like the propaganda that had been used in the American Civil War, may have been baseless tales of cruelty made-up to “arouse the animosities.”

He then said, “All that I want to emphasize is that a certain amount of caution is needed in the sifting of the evidence on this point. Even narratives of personal experiences revealing a uniformity of testimony do not, by the very mass of such testimony, necessarily guarantee the truthfulness of the charges.”⁴²⁰

In other words, we cannot say for certain that there is no suspicion that there was some lingering effect from mental issues with the evidence that was presented.

Pal then brought up the Japanese-made film *Nippon Presents*, which showed Dutch and other prisoners in Japanese-occupied Java. He wrote:

We can understand that the persons who were made to take part in the film, adult male and female and small children, — were all forced by the Japanese to assume cheerful appearance when the pictures were being taken. It is however difficult to see how after starvation for a period exceeding one year they could be forced to appear well-fed. The picture apparently shows the prisoners and internees all well-fed and cheerful.⁴²¹

It was because the prisoners were being treated well in accordance with the orders of

⁴¹⁸ Ibid., 592.

⁴¹⁹ Ibid., 593.

⁴²⁰ Ibid., 593.

⁴²¹ Ibid., 594.

Gen. Imamura Hitoshi,⁴²² the local commander, that they had sufficient food and were in good spirits.

In Pal’s view, it was possible that the criticism of the Japanese for their “cruelty” was made to hide their embarrassment. Pal inferred the following: “The prisoners of war in the hands of the Japanese were extraordinarily overwhelming in number and indicated as a result of the fight which, as every white nation felt, completely undermined the myth of white supremacy. A certain amount of propaganda against the non-white enemy might have been thought of to repair the loss.”⁴²³

Pal then said:

One of the items of maltreatment relates to the quantity of food and medical help given to the prisoners. But even the prosecution evidence goes to show that there was not always insufficiency in the supplies in this respect from the government...

...

The prosecution might have seen this difficulty. In any case they gave up these charges in their summation of the case, though for a different reason.⁴²⁴

What they viewed as a problem at the beginning, they abandoned midstream.

Even today there are people who say that the Japanese military used poison gas, but concerning the use of poison gas in the Republic of China in the written indictment, Pal wrote, “Item 9 (Employing poison gas) may at once be disposed of as abandoned by the prosecution.”⁴²⁵ The reason for this was that, “No evidence to substantiate this charge was adduced at the hearing.”⁴²⁶

§2 The truth of the Nanking Incident is...

Pal next referred to the section, “War Crimes *Stricto Sensu*: Counts 54 and 55 in Relation to the Civil Population of Territories Occupied by Japan.”

Pal didn’t deny the possibility of acts of brutality having been committed against non-combatants by the Japanese forces. He said, however, that those who had likely committed such actions had already been judged in various locales as B- and C-Class criminals and paid with their lives. The problem was, did the people being judged at the Tokyo Trials bear any responsibility for this?

Pal wrote, “As I have already pointed out, there were in evidence at the Nurnberg [sic.] trial many orders, circulars and directives emanating from the major war criminals indicating that it was their policy to make war in such a reckless,

⁴²² 1886–1968. Imamura served in Manchuria in the ’30s, and became commander of the 16th Army (leading the invasion into the Dutch East Indies) in Nov. 1941. He and V.Adm. Kusaka Jin’ichi surrendered to the Australians in Sept. 1945. War crime trials began at Rabaul and Imamura asked for his own trial to be expedited. He was sentenced to 10 years in prison and released in 1954.

⁴²³ Pal, 595.

⁴²⁴ Ibid., 595.

⁴²⁵ Ibid., 604.

⁴²⁶ Ibid., 604.

ruthless way.”⁴²⁷

I must re-introduce the letter from Kaiser Wilhelm II during the First World War I mentioned in the third chapter, where he said, in effect, “To swiftly end this war, it is acceptable to kill the people and destroy their homes. At any rate, it would be best to end the war quickly.” Pal referred to this letter, saying:

In the Pacific war under our consideration, if there was anything approaching what is indicated in the above letter of the German Emperor, it is the decision coming from the allied powers to use the ATOM BOMB. Future generations will judge this dire decision.... It would be sufficient for my present purpose to say that if any indiscriminate destruction of civilian life and property is still illegitimate in warfare, then, in the Pacific war, this decision to use the atom bomb is the only near approach to the directives of the German Emperor during the first world war and of the Nazi leaders during the second world war. Nothing like this could be traced to the credit of the present accused.⁴²⁸

In other words, he is saying that there was not one person charged with Class-A war crimes who issued an order for indiscriminate slaughter; if there was anyone who had done such a thing, in fact, was it not actually the Allies?

Concerning the so-called Nanking Incident, too, Pal had trouble wholly accepting the prosecution’s account, saying “There have been some exaggerations and perhaps some distortions,”⁴²⁹ but not specifically denying cruel acts on the part of the Japanese army.

Pal indicated that reports of the cruelty in Nanking were transmitted to the government in Tokyo, writing:

The evidence also discloses that the Government did move in the matter and ultimately the Commander-in-Chief, General Matsui [Iwane], was replaced by General Hata [Shunroku]. The atrocities also abated by the first week of February. I do not see why, from this evidence, we should be driven to the conclusion that such atrocities were the results of the policy of the Japanese Government.⁴³⁰

A point Pal made — one that we reading this today surely must take note of — was that, “The defense did not deny the fact of atrocities having taken place at Nanking. It only complained of exaggerations and suggested that a number of the atrocities were committed by retreating Chinese soldiers.”⁴³¹ If it were today, I imagine the defense would certainly deny it, but back then there was no time to assemble all

⁴²⁷ Ibid., 620.

⁴²⁸ Ibid., 620–621.

⁴²⁹ Ibid., 624.

⁴³⁰ Ibid., 623.

⁴³¹ Ibid., 625.

the materials necessary for their case. If the capital of a country becomes a battlefield, there’s no way one could say it was just caught up in the conflict. Therefore, they had no choice but to acknowledge that acts of cruelty had been committed, and even though they knew it was exaggeration there was insufficient documentation to allow them to refute the charges one by one. Also, it was difficult to verify the activities of defeated stragglers and guerillas in civilian dress, and all they likely had to work with was hints.

For example — what was it like in other cities? Two defense witnesses delivered testimony concerning similar cruelty charges from the fallen city of Hankou which was “quite a different account from what was given”⁴³² by prosecution witnesses. Pal pointed out that the prosecutors did not cross-examine these witnesses, though. He said, “The Prosecution admits that there is no evidence of the alleged atrocities at Hankow [*sic.*] having ever been reported to the Japanese Government as in the case of Nanking. This is not a negligible factor in these days of propaganda.”⁴³³

In other words, there were no atrocities in Hankou.

At the root of the troubles that happened in Nanking was the fact that Nanking had been a battlefield. If it had been an open city, this would not have occurred. When Paris was occupied by the Germans, it was made an open city. Having done so, Paris’s occupation was a relatively bloodless one. This has become a modern rule.

Though the Japanese army advised the Chinese to make Nanking an open city, the Chinese ignored them. Other towns learned from the experience and became open cities, however. That’s why there are no tales of atrocities from even Shanghai. Pal said, “The Prosecution evidence does not convince me of the account given”⁴³⁴ regarding cases in Changsha, Hengyang, Guilin, and Liuzhou.

He brought up Gen. Matsui’s words before he entered Nanking: “Entry of the Imperial Army into a foreign capital is a great event in our history and one that is to be perpetuated in history, attracting the attention of the world. Therefore let no unit enter the city disorderly; let the various units of ours be careful not to shoot one another; and above all let them be absolutely free from unlawful deeds.”⁴³⁵

Matsui also ordered, “Absolutely observe off-limits of zone of neutrality ... except for cases of necessity, disposing sentry on needed points, to say nothing of absolutely refraining from encroaching upon foreign rights and interests.... Beside, entry into Chungshan Mausoleum and the cemetery of other Revolutionary heroes as well as the Mausoleum of Emperor Hsiao, Ming Dynasty, is strictly prohibited.”⁴³⁶

In addition, after returning to Shanghai, it was made known to Matsui that American newspapers had carried reports claiming unlawful activities had been taking place in Nanking. He had the following orders transmitted:

As I gave instructions on the occasion of the entry ceremony into Nanking, no such acts should be taken under any circumstance for the honour of the Japanese Army. Especially, because Prince

⁴³² Ibid., 626.

⁴³³ Ibid., 626.

⁴³⁴ Ibid., 628.

⁴³⁵ Ibid., 633. The original grammar presented in the transcripts and quoted in *Pal’s Judgment* — a sub-par English translation — is preserved here and in the following quotation.

⁴³⁶ Ibid., 633.

Asaka is our Commander, military discipline and morals must be even more strictly maintained. Anyone who would misconduct himself must severely be punished. As for damage done, measures should be taken that they may be compensated or returned.⁴³⁷

There is therefore no way one can say that atrocities were committed “under orders.”

Higashinakano Shudō made a particularly pertinent realization. Previously, the misrepresentation of the academic career of a successful candidate in an election for membership in the Lower House of the Diet had become an issue. At that time, someone got the idea that looking into the original documentation would be the thing, so someone went to Pepperdine University (the candidate’s putative alma mater) to look for the politician’s records. He found that Pepperdine had not issued the politician a diploma. With that, the argument of “did he graduate or didn’t he” ended. Various claims are made about the Nanking Incident, so Higashinakano decided he should follow up by looking for the original documents and records. He meticulously investigated Chiang Kai-shek’s propaganda texts. From a period of almost year starting just before the fall of Nanking, the Central Propaganda Bureau (CPB) of the Guomindang held some 300 press conferences for foreign journalists in Hankou, and materials related to these press conferences were found in contemporary internal documents of the International Propaganda Section of the CPB. Higashinakano discovered that according to these documents, not one single mention was ever made in any those 300 press conferences of a massacre of civilians or the unlawful killing of prisoners of war in Nanking.

§3 Did they plan a brutal war?

Concerning the treatment of prisoners, Pal said, “The evidence is overwhelming to establish maltreatment of the prisoners of war in various ways. It will serve no useful purpose to discuss this evidence in detail. The actual perpetrators of these brutalities are not before us. Those of them who could be got hold of alive have been adequately dealt with by the allied powers.”⁴³⁸ That is to say, the Class-A defendants had nothing to do with it.

Also, the prosecution said of Japan’s failure to ratify the Geneva Conventions concerning the treatment of the wounded and prisoners of war, “there had already been the over-all conspiracy for aggressive war at the time ... because the opposing group had already formed this policy of brutal treatment of the prisoners taken during the designed war.”⁴³⁹ Pal, however, said that Japan, in not ratifying the Geneva Conventions, had no foresight of the Pacific War in 1934, and that, “they cannot be credited with any foresight of the extraordinary phenomena that took place during this war.”⁴⁴⁰ The “extraordinary phenomena” was that Japan had not expected such an extremely large number of troops to surrender.

⁴³⁷ Ibid., 633–634.

⁴³⁸ Ibid., 640–641.

⁴³⁹ Ibid., 643.

⁴⁴⁰ Ibid., 645.

Sometimes the surrendered army was much larger than the Japanese army on the spot to which the surrender was made. Last year an account was published in America of a Secret Session of British Parliament in which Mr. Churchill stated that 1000,000 [*sic.* — intended to be 100,000] British in Malaya surrendered to 34,000 Japanese. This extraordinary fact made the administration of the prisoners of war a really difficult one and contributed largely to what happened to these prisoners.⁴⁴¹

As the number of prisoners turned out to be beyond expectations, there was nothing that could be done about it when shelter and food supplies proved to be more or less insufficient.

Regarding the use of prisoners as laborers, Pal recalled testimony:

Uyemuia [*sic.* = Uemura Mikio], Chief of the Military Affairs — Prisoner of War Information Bureau, said that engaging prisoners of war of the rank of warrant officers and above in forced labour would be in violation of the Geneva Convention.... War Minister Tojo gave the decision of utilizing these officers for labour purposes in the light of the fact that Japan had not ratified the Geneva Convention, although it was the government’s position to respect the spirit of that Convention.

It was decided that prisoner of war camps be established not only in the southern areas but also in Japan proper, in Formosa, Korea, China, and Manchuria, and to send prisoners of war to these areas as a means of enhancing the trust and confidence of the peoples of Asia in Japan.⁴⁴²

For example: “[T]he arrival of 998 [English] prisoners captured in Malaya had so great an effect upon the people in general, especially upon the Koreans, that about 120,000 Koreans and 57,000 Japanese bystanders lined the roads of Fusan [*sic.* = Busan], Seoul and Jinsen to see the prisoners of war being transported.”⁴⁴³

This was a most unpleasant thing for the Caucasians. Pal wrote, “They were taken to those places simply to convince the people there that even white soldiers could be defeated and could be taken prisoners. Their faith in white supremacy as considered by the Japanese authorities concerned to be mere myth and they simply thought that the very fact that white soldiers could be taken prisoners would demolish that myth.”⁴⁴⁴

In other words, Pal grasped that the Japanese used the prisoners to wipe out the non-Caucasians’ inferiority complex *vis-à-vis* Caucasians.

Young women, who thought “those poor men!” when they saw Caucasian prisoners

⁴⁴¹ Ibid., 645.

⁴⁴² Ibid., 655.

⁴⁴³ Ibid., 663.

⁴⁴⁴ Ibid., 663.

made to work construction around Tokyo’s Ginza district, became a considerable problem, but many non-Caucasians looked at Caucasians as a different breed of people (almost god-like), so there can be no doubt that White prisoners were put on display to people with the intention of opening their eyes. This cannot be called prisoner abuse.

Should the accused Class-A criminals have been punished as expected because of prisoner mistreatment? Pal wrote:

We have in evidence before us that the express directions and instructions emanating from the War Ministry were against such treatment. However inadequate in comparison with the stories of atrocities, there are in evidence cases of punishments of the guards and officers concerned for maltreatment of the prisoners. There are admittedly cases where the treatment was unobjectionable....

... In my opinion, no such inaction in this respect on the part of the accused has been established in this case as would entitle us to infer that these acts of inhuman treatment meted out to the prisoners of war were ordered, authorized or permitted by any of the accused. The war here might have been aggressive. There might have been many atrocities. Yet, it must be said in fairness to the accused that one thing that has not been established in this case is that the accused designed to conduct this war in any ruthless manner.⁴⁴⁵

Pal here gave us a full account of his point of view on the issue.

§4 The crimes of those who judged Japan

The seventh part of *Pal’s Judgment* — “Recommendation” — begins with this text: “For the reasons given in the foregoing pages, I would hold that each and every one of the accused must be found not guilty of each and every one of the charges in the indictment and should be acquitted of all those charges.”⁴⁴⁶ (Emphasis in the original.) Pal’s conclusion was that all of the Class-A war crime defendants — from Tōjō Hideki on down — were completely innocent of the charges laid against them.

After that, he spelled out his recommendations while recapping all the points he had presented in the work to that point. I would like to present a few pieces that I find particularly impressive.

First, there is this sentence: “It has been said that a victor can dispense to the vanquished everything from mercy to vindictiveness; but the one thing the victor cannot give to the vanquished is justice.”⁴⁴⁷ (Emphasis in the original.)

We could say this was ironically like the Tokyo Trials themselves.

Next, it was often said that one of the objects of the Tokyo Trials was the elimination

⁴⁴⁵ Ibid., 661–662.

⁴⁴⁶ Ibid., 697.

⁴⁴⁷ Ibid., 700.

of a “future threat to the ‘public order and safety’ of the world,”⁴⁴⁸ but Pal disagreed, saying, “There is absolutely no material before us to judge of any such future menace. The parties were never called upon to adduce any evidence in this respect.”⁴⁴⁹ Well, then — for what purpose *was* this trial? Pal, maintaining that it was a “means of revenge,”⁴⁵⁰ offered some advice: “We may not altogether ignore the possibility that perhaps the responsibility did not lie only with the defeated leaders.”⁴⁵¹

The last one is a famous sentence — one that brings *Pal’s Judgment* to a conclusion: “When time shall have softened passion and prejudice, when *Reason* shall have stripped the mask from misrepresentation, then justice, holding evenly her scales, will require much of past censure and praise to change places.”⁴⁵² (Emphasis in the original.)

These last were originally the words of Jefferson Davis, president of the Confederate States of America. But why would Davis say such a thing?

It concerned the death penalty meted out to Capt. Henry Wirz, commandant of the infamous prisoner of war camp in Andersonville. Wirz was sentenced to death because of his mistreatment of Union prisoners, but there was no basis for it. The Union prosecutors tried to get him to admit that he had done wrong, but suggested that they would let him go if he were to acknowledge that everything that was done was on the orders of Jefferson Davis. Wirz refused to admit to the lie, and so was sentenced to death. Davis’ heart bled for Wirz, and he wrote that one day his dishonor would be expunged.

I feel these words are perfectly suited to the Tokyo Trials as well. One could even call it a prediction. The more time passed, the more the crimes of those who judged Japan have become clear. With its indiscriminate bombing and atomic bombs, America itself has crimes on its hands neither God nor man can forgive. America’s then-ally, the Soviet Union, was also vicious. The centuries of Dutch plundering of Indonesia, the boundless malignant exploitation by the French of Vietnam and Laos, the harsh British regime in Burma.... All has become clear as time has passed. It is exactly as the “prediction” had it.

Something the Japanese strongly stressed was the advance of communism — and sure enough, once Japan lost the war, mainland China (including Manchuria) quickly became communist; and as more time passed we came to know that Mao Zedong killed several tens of millions of his own countrymen.

When we give thought to these things, the “justice” Pal wanted to challenge moves us once again.

⁴⁴⁸ Ibid., 700.

⁴⁴⁹ Ibid., 700.

⁴⁵⁰ Ibid., 700.

⁴⁵¹ Ibid., 701.

⁴⁵² Ibid., 701.

Chapter Thirteen

From the Tokyo Trials’ View of History to Pal’s View of History

§1 Deep-seated misunderstanding of *Pal’s Judgment*

In an occupied Japan where freedom of speech was restricted, the solitary locale where free speech was *preserved* was in the courtroom at the Tokyo Trials. At the beginning, defense counsel Kiyose Ichirō made a jurisdictional challenge, and a manifestation of that fact was that the president of the court was unable to respond to this.

We can’t say from that, however, that there was any legality to the Tokyo Trials. Without a basis in international law and having prosecutors and judges from countries that had fought against Japan made the Tokyo Trials something quite far removed from impartiality. I believe that had all the judges been chosen from Portugal or Switzerland or some other neutral power, and had the trials been conducted in accordance with the rule of international law, there would have been no convictions.

Pal was the only justice there who realized that the Tokyo Trials had no legal validity and approached the proceedings from the standpoint of international law. The significance of his debate on the law was great, but it is only natural that for the Japanese the import of *Pal’s Judgment* was that he examined Japan’s post-1928 history. I want to stress yet again the importance of reading *Pal’s Judgment* as a history of the Shōwa era. There are only two historical takes on the Shōwa era in post-war Japan: the Tokyo Trials’ take and Pal’s take.

There are those who criticize Pal concerning this, saying in essence, “Pal was a pacifist, and as such there should have been no way he would have defended Japan’s aggressive war in *Pal’s Judgment*.” Perhaps he was unfamiliar with judgment in civilized countries. In Emmanuel Kant’s brief essay, *An Answer to the Question: What is Enlightenment?*, Kant said that a religious group is a personal group — no matter what that religious group may be. Trials are public at the *state level*; nothing personal enters therein. That is, a judge’s verdict must not reflect his personal beliefs. Civilized nations have established this as a matter of course.

After the country regained her independence in 1952, Pal was invited to come back and visit Japan. On that occasion, someone told him, “I wanted to thank you for your efforts in defending Japan.” Pal replied, in essence, “I didn’t defend Japan. I was defending international law.” Ultimately, Pal thought *publicly* — so even if he *was* inclined toward pacifism it was only natural that this belief should not enter into his decisions as a judge. For that reason, bringing up his personal beliefs in discussing *Pal’s Judgment* is naught

but so much noise.

§2 The post-war Left that gave birth to the “Tokyo Trials’ view on history”

Pal’s Judgment is difficult to refute either legally or historically, but while Pal’s historical view has not been disseminated in Japan, the Tokyo Trials’ view on history has made its presence felt. I believe this is due to support by post-war journalism and academia.

So why are post-war journalism and academia supporting the Tokyo Trials’ view? My impression is that the start of it was the order to purge some 200,000 public officials from all fields in 1946. There were many in the economic and political fields who were purged at that time, but almost all were later reinstated and made a come-back to public life, so the purge was clearly nonsensical. This compares unfavorably to the fields of academia and journalism, however, where most of those who had been purged were unable to make a come-back. In other words, it was thanks to the SCAP purges the people who had taken up these posts were able to keep them.

When one thinks about what kind of people came into the universities on the tail of the SCAP purge, we must take note of who it was who drew up the list of names of those to be purged. It goes without saying that it was spearheaded by the GHQ’s civil administrative office, led by Charles Kades, but there were no Americans in the GHQ who had any deep knowledge about Japan. Therefore, Kades had to have had people to advise him in the creation of the list of those to be purged, and they must have believed that their advisors were giving them a truthful roster for purging. I view Herbert Norman as central to these advisors.

Herbert Norman was a Canadian, but he had been born in Japan as the son of a missionary. Because he grew up in Japan, he spoke Japanese at a native level. He was quite intelligent, and graduated from Cambridge University. While at Cambridge, he joined the Communist Party, and struck up a close relationship with Tsuru Shigeto⁴⁵³, who had fled Japan due to his leftist leanings. Norman received his doctorate at Harvard and entered the foreign service in Canada. MacArthur knew little about Japan, so he requested Norman (who had just written his dissertation on modern Japanese history and could be useful overseas) to come to Japan and assist him at the GHQ.

For the civil administration office of the GHQ, seemingly a hive of leftists, Norman was just the person they needed. I have to believe that Norman selected the names and drew up the list in conversations with his leftist friends Tsuru and Hani Gorō.⁴⁵⁴ Incidentally, the GHQ also designated some 7,000 pre-war books for scrapping, and I believe that these books could not have been chosen as candidates for the “banned books” list without the input of Norman and his friends. According to one investigation, several lu-

⁴⁵³ 1912–2006. Tsuru was a Marxist economist who received his Ph.D. at Harvard in 1940. Post-war, he had a very public career in academia and in politics in Japan and was president of Hitotsubashi University.

⁴⁵⁴ 1901–1983. Hani was a Marxist historian. When Norman was growing up in Japan, Hani had been his tutor in modern Japanese history. Hani was imprisoned during the war but after was elected to the Diet. He was instrumental in the creation of the National Diet Library. His book *Toshi no ronri* (“Urban logic”) became a bestseller.

minaries of Tokyo University⁴⁵⁵ participated in this book-banning. I have to wonder if it was not in fact Norman and his friends who had Tokyo University undertake this task.

In filling up important positions made vacant at influential universities due to the purge, it was only natural (in consultation with Norman, Hani, and Tsuru) that those who before the war had been ousted from imperial universities for anti-Japanese activities would now return to them.

In chapter eight, I addressed the cases of Takigawa Yukitoki and Ōuchi Hyōe. Takigawa was a man who had taught anarchistic law at Kyoto University and when it came to official notice, he was recalcitrant about it and resigned his position. After the purge, Takigawa returned to Kyoto University in something like a triumphal show, becoming first chair of the law department and later president of the university itself. Moreover, those who had participated in activities along with Takigawa returned with him, and one of that party assumed the post of president of Ritsumeikan University. After the war, Ōuchi Hyōe, who had been ousted from Tokyo Imperial University for his activities with the communist Popular Front, became chairman of an economic think tank for the cabinet, and afterward became president of Hōsei University.

Nanbara Shigeru was president of Tokyo University, Japan's most influential university, and while there is no evidence that Nanbara was a leftist, his opposition to the San Francisco Peace Treaty suggests such a position. Opposition to the San Francisco Peace Treaty was Stalin's desire. Following in line with that were the Japanese Socialist Party (since 1996 known as the Social Democratic Party), the Japanese Communist Party, and an academic faction called "The Iwanami Group" (one representative member of which was Nanbara). Prime Minister Yoshida Shigeru called Nanbara and his people the "truth-twisting mob." At the very least, we can say that he was someone who was acting in accordance with Stalin's designs at the time. Yanaihara Tadao, Nanbara's successor as president of Tokyo University, was a Christian and I believe he was an outstanding fellow. When he was an associate professor at Tokyo Imperial University, however, he wrote a piece, the gist of which was "O Lord, please crush Japan." It was troubling that one teaching at an imperial university would ask God to crush Japan, so he left the university; but after Japan's defeat he returned to Tokyo University and in time became its president.

For people who would have been arrested before the war, pre-war Japan was an object of hatred. Such were the people who occupied important positions in Japan's influential universities, and like weeds sprouting after a rain, these teachers at Japanese post-war universities turned out their disciples to make other disciples. It is something that people familiar with universities will understand: if one is not in alignment with one's teacher's views, one will not be able to obtain a posting; and those who become professors at a university are those who think as their teachers did. Thus, like a progressive cancer, postwar academe in Japan became suddenly Red.

That is how a system where anti-Japanese people oversee the universities has come to be; and I believe that one of their key points is the dissemination into society of the Tokyo Trials' view of history. First, the most docile college students go on to become school teachers, join the teachers' union, and then teach children. The more gifted stu-

⁴⁵⁵ Three professors were named: Makino Eiichi (a law professor and recipient of the Order of Cultural Merit and the Order of the Sacred Treasure), Kaneko Takezō (an ethics and philosophy professor), and Odaka Kunio (a professor of sociology and recipient of the Order of the Sacred Treasure).

dents from influential universities go on to careers with top-level mass media such as NHK or the *Asahi Shinbun* and into the world of journalism. With such trends, can the Tokyo Trials’ view of history become anything but an immovable force?

Shortly following the collapse of the Soviet Union, a convention was held of the presidents of Japan’s private universities at which I was a panelist. I said at that time, “There are academics at our universities who believe in Marx. Since we can’t cut their heads off, how about from now on we exclude Marxists from being hired as educators?” The mood of the place immediately chilled, and the moderator, a former vice-minister of education, did not speak to me any more after that.

Reading *Pal’s Judgment* is the most important thing to do in putting a halt to the reproduction of the Tokyo Trials’ view of history. At the very least, career government officials need to read it. I believe that *Pal’s Judgment* should be included in bar examinations, foreign affairs officers’ examinations, and as a subject for the central governmental agencies’ examinations. If it became a subject in state examinations, study guides would come out, and people willing to teach it would emerge, disseminating all at once without any need for anyone to go on to actually read it.

§3 For the sake of Japan’s mental recovery

There are those who maintain that having accepted the Tokyo Trials and re-entering international society, Japan cannot now deny the Tokyo Trials. What amazed me is that Asō Tarō, when he was Abe Shinzō’s foreign minister, said just that on national television. The Foreign Minister said, “We have accepted the Tokyo Trials,” and it certainly seems as if the Foreign Office has in fact done so. This, too, is part of the curse of the Tokyo Trials.

Article Eleven of the San Francisco Peace Treaty begins: “Japan accepts the judgments of the International Military Tribunal for the Far East....” The wording here is very specific. Japan promised to accept and abide by *the judgments* — but not to accept the *trials themselves*.

It is important to explain the distinction between “a trial” and “a judgment.” I cannot think of anyone who more clearly presents the principle of not acknowledging the trial, but accepting judgment than the case of the Greek philosopher Socrates. Socrates was tried by the Athenian court, and though he proclaimed his innocence, he chose to accept its judgment of death. To protect the rule of law, Socrates drank the hemlock even though it was unjust. This was the same as what should be Japan’s proper view of the Tokyo Trials: accepting the judgment does not mean that it is necessary to accept the trial itself.

Normally, peace treaties settle situations that exist up to the point the treaties are enacted, so in truth the San Francisco Peace Treaty did not need Article Eleven. We hear, however, that it was included because of concerns held by Great Britain. Members of the defeated Nazi party fled to South America and other locations and hid, and they probably insisted that the imprisonment of those convicted at the Tokyo Trials should continue for a little while longer so that such a thing would not happen with Japan. I have to wonder if Japan thought it was pointless to ask, but after negotiations with the relevant countries, Japan got approval for early release of the prisoners and so let them out on parole.

Japan’s Foreign Ministry at the time of the San Francisco Peace Treaty understood

the distinction between “judgments” and “trial” when translating the treaty, but before anyone knew it, the interpretation of the Japanese government and the Ministry of Foreign Affairs changed, and Japan seems to have come to accept the Tokyo Trials. There is no way one can conduct upright diplomacy this way.

For Japan’s independence, it is necessary to read *Pal’s Judgment* and to recognize the innocence of the defendants of all the charges laid at the Tokyo Trials. It is my conviction that if Japan doesn’t start with *Pal’s Judgment*, Japan will never be able to mentally recover.

