

12-2018

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Recommended Citation

Cribb, Robert (2018) "Atrocity and the Limits of Historical Guilt," *Genocide Studies and Prevention: An International Journal*: Vol. 12: Iss. 3: 4-9.

DOI:

<https://doi.org/10.5038/1911-9933.12.3.1641>

Available at: <https://scholarcommons.usf.edu/gsp/vol12/iss3/5>

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Atrocity and the Limits of Historical Guilt

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In the middle of the 20th century, the international community began for the first time to grapple with the problem of reckoning with mass atrocity. A deep tension exists, however, between processes of judicial and para-judicial reckoning, which deal with the direct perpetrators and victims of atrocity and the instinct to attribute extended historical responsibility to whole categories of people.

Taking advantage of the unconditional surrenders of Germany and Japan that concluded the Second World War, the victorious allies conducted tens of thousands of trials of alleged perpetrators of atrocities both in Europe and the Asia-Pacific region.¹ The formal basis for these prosecutions varied from country to country – some prosecuting powers referred to otherwise undefined “laws and customs of war”, some used specific retrospective legislation, still others relied on existing domestic criminal law – but collectively the trials were based on a new vision of responsibility for wartime atrocity. Whereas wartime brutality had once been understood to be protected by the sovereign right of the state to wage war and by the so-called “belligerent rights” of military personnel to kill in the name of military necessity, the post-war trials asserted on a scale not seen before or since that individual perpetrators bore individual responsibility for their acts.

In asserting the individual responsibility of perpetrators on this unprecedented scale, the prosecuting powers had two motives. The first motive was to establish a framework for post-conflict justice that would both reduce the customary impunity of soldiers for wartime misdeeds and avoid the moral problem of harsh, generalized retaliation against a defeated enemy. The vast number of cases to be heard and the problems of identifying suspects and of collecting and assessing evidence meant that many of the post-war trials followed expedited procedures, accepting dubious evidence and paying scant attention to the defense case. Sentencing practice was uneven: some defendants were sentenced to death for relatively modest acts of brutality; other defendants received terms of imprisonment for apparently egregious acts of cruelty. The prosecuting powers, however, compared the trials with the arbitrary reckoning of previous times and regarded them as a major advance, rather than measuring them against the standards of civil criminal trials in peacetime.

The second motive of the victorious powers in conducting individual criminal trials was to diminish the attribution of guilt to whole nations as had happened after the First World War, when Germany was required in the Treaty of Versailles to acknowledge guilt for launching the war. This guilt clause, and other openly punitive articles in the Versailles Treaty, were widely perceived to have created a legitimate sense of grievance in Germany and thereby to have contributed to the conditions which led to the rise of Hitler. Accordingly, the Potsdam Declaration, issued by the United States, Britain and China in July 1945 in anticipation of the final victory over Japan, made an explicit distinction between the Japanese people as a whole and those who had committed war crimes: “We do not intend to enslave the Japanese people but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners.”²

Public rhetoric by officials and members of the public on the Allied side did not always maintain this distinction between perpetrators and the nation to which they had belonged. In the popular press and even in the trials themselves, it is easy to find references to the alleged collective guilt of Japan and of the Japanese people. Nonetheless, the distinction remained at the core of most informed discussion of the trial process. In September 1947, Sir William Webb, president of

¹ Sandra Wilson, Robert Cribb, Beatrice Trefalt and Dean Aszkielowicz, *Japanese War Criminals: The Politics of Justice after the Second World War* (New York: Columbia University Press, 2017); Norbert Frei, “Nach der Tat: Die Ahndung deutscher Kriegs- und NS-Verbrechen in Europa - eine Bilanz,” in Norbert Frei, ed., *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006), 7-36.

² United States Department of State, “Proclamation by the Heads of Governments, United States, China and the United Kingdom, July 26, 1945,” *Foreign Relations of the United States, Diplomatic Papers: The Conference of Berlin (the Potsdam Conference), 1945*, vol. 2 (Washington, DC: U.S. Government Printing Office, 1945), 1476.

the International Military Tribunal for the Far East (also known as the Tokyo Trial), blocked the prosecution from raising examples of good conditions and favorable treatment in camps:

We know that there are tens of thousands of kind-hearted Japanese. We would assume in the army itself, in the navy, in the air force, many Japanese behaved very well but that is not an answer to these charges. Meet the charges made against you and do not try to prove that in other cases where no charges were made no faults could be found.³

This determination to separate individual perpetrators from the nation to which they belonged was also encouraged by the United States' hope of reshaping Japan as an ally in the emerging Cold War.

In the period from late 1945 until 1951, seven Allied powers in the Asia-Pacific region – Australia, the Republic of China, France, the Netherlands Indies, the Philippines, the United Kingdom and the United States – prosecuted around 5700 men and one woman in 2362 separate trials. The defendants faced a variety of charges, some of them arising from infringements of the 1929 Geneva Convention relative to the Treatment of Prisoners of War, some of them arising from an expanded definition of war crimes which covered abuses carried out against civilians in occupied territories. The specific charges included murder, torture, rape, arbitrary execution, ill treatment of prisoners-of-war, including beatings and the deprivation of food, medicine and shelter as well as some more specific cases including medical experiments, cannibalism and forced prostitution. To this number must be added some thousands who were prosecuted in makeshift Chinese local courts and more thousands who were prosecuted by the Soviet Union. No significant research has been done on either of these categories of trials, but it is likely that at least two thousand men were prosecuted in each case, meaning that the total number prosecuted in Asia and the Pacific is around, but possibly greater than, 10,000. This number is dwarfed by that in Europe, estimated by Norbert Frei to have exceeded 96,000.⁴ Since that time, only the *gacaca* (“grassroots”) courts of Rwanda have processed a greater number of defendants, though at the cost of highly expedited procedures.⁵

One might expect that the scale of the reckoning with Japanese perpetrators would have established the post-war trials as a major landmark in the history of international humanitarian law. Yet this is not the case. Not only have the trials received relatively little attention until recently – notably, at the time of presentation there is no Wikipedia entry devoted to the topic – but a widespread public discourse maintains that Japan has failed to make proper amends for its wartime crimes. The initial insistence of the Allied powers that wartime guilt would be dealt with in the comprehensive prosecution of individual perpetrators appears to have been derailed. Instead, more than seventy years after the end of the Second World War, at a time when all but a tiny handful of victims, perpetrators and eyewitnesses have died, Japanese people are widely presumed to carry extended historical responsibility for the wartime actions of their forebears.

This derailment of the Allies' intentions occurred for three reasons. First, the trials ended before the full list of suspects had been exhausted. With the evidence available, Allied courts might have tried some hundreds, possibly thousands, more suspects. Instead, these suspects were released and the cases against them were dropped. This failure to pursue all suspects was partly a consequence of changing political circumstances in the Asia-Pacific region – independence, civil war, communist revolution and the economic incentives to restore good relations with Japan all played a part – along with the general fatigue of the prosecuting authorities. The consequence, however, was that men who had avoided trial emerged and played significant roles in post-war politics. Prominent examples included Kishi Nobusuke (later prime minister), who had been responsible for the recruitment of Chinese forced labor in Manchuria⁶ and Tsuji Masanobu (member of parliament) who had apparently played a significant role in the 1942 massacre of Chinese associated with

³ Transcript, Proceedings of the International Military Tribunal for the Far East, September 3, 1947, 27474, Legal Tools TR13-263-a_04.

⁴ Frei, *Nach der Tat*, 31-32.

⁵ Christopher J. Le Mon, “Rwanda’s Troubled Gacaca Courts,” *Human Rights Brief* 14, no. 2 (2007), 16-20.

⁶ Malcolm Trevor, *Japan: Restless Competitor: the Pursuit of Economic Nationalism* (Richmond: Japan Library, 2001), 123.

the Guomindang (Chinese Nationalist Party) in Singapore. The second reason for derailment was the growing awareness of the failure of the trial process to address the full range of Japanese wartime misdeeds. In particular, it became apparent that the United States had worked to prevent prosecution of Japanese personnel involved in the notorious experiments on living humans carried out by Unit 731 in Manchuria. The U.S. protected those responsible because it wished to gain access to the data arising from the experiments.⁷ Moreover, the trials did not address any Japanese crimes against Koreans or Taiwanese. Under international law at the time, actions by a state against its own people were not considered war crimes. Because Korea and Taiwan had been subject to Japan at the start of the period covered by the trials, the sometimes-forced recruitment of Koreans and Taiwanese as laborers and military prostitutes was outside the scope of the judicial process. The absence of attention to these issues increasingly cast a shadow of inadequacy over the trial process.

The third reason for the sense of unrequited Japanese guilt was a complex set of circumstances that cast Japanese atrocities as egregiously evil. One of these circumstances was the deep indignation of Western captives of the Japanese military at the conditions they had experienced during the war. For Westerners, the humiliation of subordination to Asians whom they had been led to despise, along with the loss of their former privileges in colonial societies, in the context of a catastrophic decline in living conditions for everyone in the Japanese occupied territories and Japanese unpreparedness for the task of managing large communities of captives, led to a large memoir literature that demonized the Japanese as a whole.⁸ Another circumstance was the general inclination to equate German and Japanese wartime atrocities, disregarding the absence of any program of genocide, as the term is commonly understood, on the Japanese side. Yet another circumstance was the growing awareness of the scale of damage caused by the dropping of the two atomic bombs on Japan near the end of the war. Especially as the invisible horror of radiation sickness became apparent, defenders of the bombs played them up as a necessary measure against the especial evil of Japan, particularly an alleged, but fictitious, Japanese intention to kill all prisoners as Allied forces approached.

In many parts of the world, the failure of courts to deliver socially-expected outcomes leads to vigilantism that is to violence against presumed perpetrators by indignant citizens. In the case of Japan, the perception that courts failed to deliver justice has led not to lynching but to what might be called the Great East Asia History War. For some Chinese and Korean government authorities and people, Japan's inadequate accounting for its past authorizes a sustained campaign to restrict Japan's role in regional and international affairs. For example, in 2016 a Chinese diplomat advised the Australian government against purchasing new submarines from Japan on the grounds of Japan's failure to deal with its history.⁹

At this point, I would like to introduce an unexpected comparison. In October 1965, a small elite group within the Indonesian Communist Party (Partai Komunis Indonesia, PKI) undertook a coup against the high command of the Indonesian army in which six generals, including the army commander, General Ahmad Yani, were killed.¹⁰ The coup took place in the context of the declining health of Indonesia's founding president, Sukarno, who managed an unstable, semi-authoritarian system he called Guided Democracy, which kept the major political forces – communists, the military and Islamists – in an uneasy stalemate. The PKI was the largest communist party in the non-communist world and it dominated public discourse in Indonesia. If elections had been held, it would probably have won a plurality of votes. The party, however, was vulnerable to repression because it lacked influence in the armed forces and there were rumors that the army high command

⁷ Sheldon H. Harris, *Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover-up* (London: Routledge, 1994).

⁸ See for instance, Rohan Rivett, *Behind Bamboo: An Inside Story of the Japanese Prison Camps* (Sydney: Angus & Robertson, 1946); John Coast, *Railroad of Death* (London: Hyperion Press, 1946).

⁹ Cameron Stewart, "Don't forget the war with Japan, China warns Australia," *The Australian*, February 17, 2016, accessed May 10, 2017, <https://www.theaustralian.com.au/national-affairs/foreign-affairs/dont-forget-the-war-with-japan-china-warns-australia/news-story/56d9a17c5b68a946c9ce4b00a2c42b7b>.

¹⁰ John Roosa, *Pretext for mass murder: The September 30th Movement and Suharto's Coup d'état in Indonesia* (Madison: University of Wisconsin Press, 2006).

planned a coup of its own later in October 1965. In these circumstances, it appears that the party leader, D.N. Aidit, conspired with junior army officers to kidnap the army leaders and to engineer a decisive shift to the left in Indonesian politics which would enable the PKI to accede to power as Sukarno's influence declined. In the event, six of the generals were killed, a mass assassination that shocked the Indonesian political community. The PKI coup, however, was poorly organized and it was quickly suppressed by anti-communist forces under the then little-known General Suharto.

Like Japan's 1941 attack on Pearl Harbor, the abortive PKI coup was an act of daring and desperation. In 1941, the United States had implemented against Japan an embargo on strategic materials that had the potential to cripple Japan's war effort in China. Faced with a choice between a humiliating, damaging backdown and a bold strike with only small chance of success, Japan's leaders chose the bold option of a pre-emptive strike. If the military, dominated by anti-communists, came to power in a coup against Sukarno, the PKI risked losing everything that it had worked for in the preceding decade. Japan's venture seemed promising for six months, but it ran aground in a war of attrition against a much better endowed enemy. Japan's cities were burnt to cinders in firebombing raids and defeat was sealed by the dropping of the atomic bombs. The PKI's venture was defeated within 24 hours. Over the next six months, Suharto not only engineered a transfer of political power to himself from Sukarno but also presided over a mass murder of PKI members and associates in which approximately 500,000 people were killed. The military played a major role in authorizing and coordinating this killing, but most of it was vigilante in the sense that it took place outside any legal process.¹¹ Both the Japanese people and the members of the PKI paid a terrible price for their leaders' adventurism.

In both cases, moreover, after the immediate brutal reckoning, both groups were encumbered with accusations of treacherous behavior and extraordinary cruelty. In addition to false stories of the torture of the murdered generals, Suharto's regime, known as the New Order, summoned up memories of the so-called Madiun rebellion 17 years earlier, when communist forces had certainly been involved in atrocities against their enemies. The government systematically portrayed communism as amongst the greatest threats that Indonesia continued to face and systematically discriminated against surviving party members and associates. Former detainees – possibly numbering hundreds of thousands – were denied civil rights. Under a later extension of discrimination, anyone deemed not to be “environmentally clean” – which included relatives of party members born long after 1965 – was excluded from sensitive positions, including post government jobs. Every year, all students in the education system were required to watch a lurid, government-sponsored propaganda film about the coup that spread falsehoods about the cruelty of PKI members towards the murdered generals. The government regularly sponsored publications with titles such as, *The latent danger of the PKI*.¹²

Japan and the PKI were punished for failed grabs for power accompanied by gratuitous cruelty. Japan was punished substantially, the PKI savagely. Since the time of punishment, each has faced accusations of historical guilt borne by generations that were not alive at the time the atrocities were committed.

The idea of extended historical responsibility has both unsavory and respectable origins. Its unsavory origins lie in the feud, the practice of cross-generational vengeance-seeking for ancient wrongs. Its respectable origins lie in the 1946 essay of Karl Jaspers, *Die Schuldfrage*, in which he proposed that all Germans, even those born after the Second World War, bear an enduring guilt for the Holocaust.¹³ Jaspers' assertion arguably attached unique significance to the Holocaust, but the American philosopher Michael Sandel has expressed the principle in much broader terms: if we take pride in the achievements of our ancestors, then we have to accept the shame that comes from their crimes.¹⁴

¹¹ Jess Melvin, *The army and the Indonesian genocide: Mechanics of mass murder* (Milton: Taylor and Francis, 2018).

¹² Ariel Heryanto, *State terrorism and political identity in Indonesia: Fatally belonging* (London: Routledge, 2006).

¹³ Karl Jaspers, *Die Schuldfrage* (Heidelberg: Lambert Schneider, 1946).

¹⁴ Michael J. Sandel, *Justice: What's the right thing to do?* (New York: Farrar, Straus and Giroux, 2010).

Plausible though Sandel's argument is, there are three reasons we should be wary of applying it uncritically. First, it is clear that imputing historical guilt has a strong political utility. It authorizes both general prejudice and a specific claim that particular groups are disqualified from the full exercise of civil or human rights. Whether historical guilt leads to the exclusion of communists from Indonesian politics or to Japan from regional and global affairs, we should be hesitant to accept it. Second, claims of historical guilt are unusually subject to selective moral outrage. The Chinese Communist Party rebukes Japan for the scale of Japanese atrocities during the Sino-Japanese War of 1937-1945 but restricts discussion of the deaths that its own policies inflicted on the Chinese people during the Great Leap Forward and the Cultural Revolution.¹⁵ Third, to resist the idea that historical guilt can ever be expunged will inevitably discourage all willingness to engage with the past on the part of the heirs of the perpetrators. Why should anyone accept an uncomfortable reckoning when they know that it will never be enough?

This unlikely pairing of fascist militarism and Third World communism suggests grounds on which we might limit the application of doctrines of historical guilt. First, it is important to ask what reckoning has been done. In the cases of both Japan and the PKI, a savage historical reckoning has been ignored in order to provide a basis for continuing political exclusion. This reckoning reduces the grounds for continuing to demand satisfaction for past wrongs. Second, it is important to ask whether the heirs of the perpetrators enjoy a present-day advantage as a result of crimes of the past. This question is especially relevant to settler colonial societies that prospered on the dispossession of indigenous peoples, but it applies to many colonial situations. Neither Japan nor the PKI obtained any advantage from adventurism, and this absence of advantage ought to count in regarding the ledger as closed. And third, it is important to ask whether the heirs of the victims still suffer the consequences of those past crimes. This question, too, is relevant to reckoning with the legacy of colonialism. Recompense and recognition for elderly victims ought to be matter of priority, but the broad picture in the cases of China, Korea and Indonesia is that these modern societies have outgrown whatever consequences they may have experienced in the past as a result of the adventurism of Japan and the PKI. In all three societies, dwelling on the grievances of these specific pasts is self-indulgent. We should reserve our indignation for the cases that matter.

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¹⁵ Frank Dikötter, *Mao's great famine: The history of China's most devastating catastrophe, 1958-62* (London: Bloomsbury, 2010); Frank Dikötter, *The cultural revolution: a people's history, 1962-1976* (New York: Dikötter, 2016).

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