

THE TOKYO TRIAL

Recollections and Perspectives from China

The International Military Tribunal for the Far East, often known as the Tokyo Trial, was held by the Allied Nations from 1946–1948 to try Japanese military and civil officials for war crimes committed during World War II. The trial proceedings were controversial at the time and remain a highly emotive subject, particularly in East Asia. This collection of essays from leading Chinese historians, presented here in English translation for the first time, represents a distinctively Chinese approach to the interpretation of the trial and its significance today. The essays are supplemented by a detailed chronology and by first-hand accounts of the trial by two men who represented China in the proceedings: the judge Mei Ru'ao and the prosecution consultant Ni Zhengyu.

Cambridge University Press
978-1-107-06038-8 — The Tokyo Trial
Compiled by The Tokyo Trial Research Centre
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The Tokyo Trial

Recollections and Perspectives from China

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UNIVERSITY PRESS

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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo, Mexico City

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press,
New York

www.cambridge.org

Information on this title: www.cambridge.org/9781107060388

Originally published by Shanghai Jiao Tong University Press as Collected
Works of the Tokyo Trial in 2011 (9787313071705)

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International Programme

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First published 2016

Printed in the United Kingdom at the University Press, Cambridge

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication Data

Names: Shanghai jiao tong da xue. Center for the Tokyo Trials Studies, editor.

Title: The Tokyo Trial: recollections and perspectives from China /

compiled by The Tokyo Trial Research Centre.

Description: New York: Cambridge University Press, 2016. |

Series: The Cambridge China library |

Includes bibliographical references and index.

Identifiers: LCCN 2016045343 | ISBN 9781107060388 (hardback)

Subjects: LCSH: Tokyo Trial, Tokyo, Japan, 1946–1948. |

War crime trials—Japan—Tokyo—History. |

BISAC: POLITICAL SCIENCE / History & Theory.

Classification: LCC KZ1181 .T653 2016 | DDC 341.6/90268—dc23

LC record available at <https://lccn.loc.gov/2016045343>

ISBN 9781107060388 Hardback

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Introduction: The Tokyo Trial as Chinese History

Timothy Brook

On 13 December 1937, the Japanese army under the command of General Matsui Iwane forced its way into the besieged city of Nanjing. The Chinese army of the Nationalist government, unable to turn back the assault, abandoned the defence of the city and fled west. Over the next seven weeks unfolded one of the most sustained and deadly massacres of civilians and prisoners of war of World War II. The events of those weeks were called at the time the Rape of Nanking, and are referred to by the authors of this volume as the Nanjing Massacre.

Nanjing, China's capital, became the primary target of the military campaign that Japan launched in the summer of 1937 to force the Chinese government to repudiate the leadership of Jiang Jieshi (Chiang Kai-shek). Jiang had steadfastly refused to acquiesce to Japan's demands that he make China politically and economically subservient to Japan's interests. The seizure of Nanjing was intended to bring Japan's military operations against China to a conclusion, but the intensity of China's refusal to submit meant instead that it launched Japan on a long-term military occupation, and China onto an eight-year war of resistance. It also played a part in propelling the world to war. The occupation ended only when Japan surrendered to the American military in 1945.

The atrocities and humiliations the Japanese military committed against soldiers and civilians during these years were so great that Chinese ever since have yearned for full redress. That yearning rose powerfully in the 1990s, as China and Japan started to switch places as the most powerful nation in East Asia. Many Chinese even today voice their belief that justice has not been done, and must be; and many Chinese historians have responded by digging ever deeper in the archives and issues of the massacre. This book is an outcome of that politics of redress, focused in particular on the question of justice for war crimes.

The decision to put the leaders of Germany and Japan on trial emerged through a series of conferences in London in the early 1940s, as a result of which two international military tribunals were convened after the war, one in Nuremberg (from November 1945 to October 1946) and

one in Tokyo (from April 1946 to November 1948). The International Military Tribunal for the Far East (IMTFE), as the Tokyo Trial is formally known, became the longest running special tribunal in the history of war crimes adjudication prior to the establishment of the International Criminal Tribunal for the Former Yugoslavia in 1993. The intention in convening these military tribunals was first of all to try Germans and Japanese who had led the world into war, but secondly to establish precedents that would demonstrate the criminality of that war and signal the resolve that hereafter war would be subject to criminal prosecution. Neither trial was free of legal or political flaws, yet both were consequential for setting standards for the adjudication of war criminality and shaping international law today.

The nine states that were at war with Japan, plus the newly independent states of India and the Philippines, furnished the judges and personnel of the Tokyo trial. China's leaders were eager that China participate in this process, and among other grievances had a particular interest in seeing that justice was done for the perpetrators of the Nanjing Massacre. This crime was accordingly given special status as Count 45 of the Indictment, which reads:

The Defendants ARAKI, HASHIMOTO, HATA, HIRANUMA, HIROTA, ITAGAKI, KAYA, KIDO, MATSUI, MUTO, SUZUKI and UMEZU, on the 12th December, 1937, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Nanking in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown.¹

The tribunal would find all of the men named herein guilty, but not on this particular count. No one was convicted on Count 45. This was not because the tribunal was uninterested in what happened in Nanjing: its final judgment includes an eight-page narrative of the massacre.² Nor was it because the court found Japanese conduct in Nanjing anything but criminal. It was rather because the prosecution found the massacre too difficult for bringing evidence that could stand up under

¹ John Pritchard and Sonia Zaide, eds., *The Tokyo War Crimes Trials* (New York: Garland, 1981), vol. 1, p. 54. The "Rape of Nanking" is mentioned once in the Indictment, in the appended statement of individual responsibility against Hashimoto Kingorō, who was charged with commanding an artillery regiment during the attack on Nanjing, though what mainly counted against him was his regiment's shelling of the British steamship, the *Ladybird*, and the sinking of the American gunship, the USS *Panay*.

² Pritchard and Zaide, *The Tokyo War Crimes Trials*, vol. 20, pp. 604-612. Count 45 is mentioned only once in the Judgment in the overall summary of charges, on p. 423.

cross-examination and secure convictions. Instead, it built its arguments against the accused on other grounds. Those other grounds, conspicuously Count 55—which charged all but two of the Japanese defendants with having “deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches” of the laws of war—secured convictions of six. Of these, two—General Matsui Iwane and Foreign Minister Hirota Kōki—were condemned explicitly for their failure to stop the massacre in Nanjing. It was the only count on which General Matsui was found guilty, and it was sufficient to result in a death sentence.

The decision of the tribunal not to make findings with regard to Count 45 has been one of the reasons why some Chinese have felt that the process in Tokyo slighted the victims of the Nanjing Massacre. Their disappointment has been influenced by the pervasive sense that, in terms of delivering justice, Tokyo failed where Nuremberg succeeded. The reasons for this perception are complicated, but the strongest may be the context in which the trial was concluded. Whereas Nuremberg produced its judgment within a year of the end of the war, the Tokyo trial dragged on for another two years into the opening phase of the Cold War, when the semblance of unity and shared resolution among the former allies was crumbling. In part as a result of this lag, the verdict was not as widely accepted in Japan as the Nuremberg judgment was in Germany. That failure of acceptance came back to haunt the China–Japan relationship in the 1990s, as the Japanese economy stumbled and the Chinese economy took off. One reaction on Japan’s side was to repudiate responsibility for what Japan had done half a century in the past, and to cast doubt on the stories of atrocities that haunted the Japanese military record, including the Nanjing Massacre. The web of doubt came to include not just what happened in Nanjing, but the judgment that the Tokyo tribunal handed down for what happened. The Tokyo verdict, they argued, simply served to pave the way for American hegemony in the region and placate Chinese desire for vengeance.³

The Nanjing Massacre moved to centre stage in 1997 with the publication of *The Rape of Nanking* by the Chinese-American journalist Iris Chang. The book grabbed headlines and enthralled Chinese overseas Chinese readers who felt increasingly cut off from their heritage and

³ Some of the legwork for this interpretation was done by Richard Minear, who in *Victor’s Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971) argued that the trial was a political attack on Japan’s legitimate concern to protect itself against foreign powers. Although Minear’s polemic played a key role in opening international debate over the trial, his refusal to accept that Japan should be charged with war criminality precluded conversation with Chinese colleagues.

uneasy about their relationship with a former homeland that was rapidly growing away from the country they had known, and who also resented how mainstream culture outside China neglected their history. This desire to recall Chinese suffering in World War II and honour the victims offended some Japanese, who resented what they felt was psychological profiling and questioned whether the sins of the wartime generation should be laid at their door of their grandchildren. The book received mixed reviews from professional historians, who felt Chang's emotionalism got the better of her arguments and questioned her use of evidence, but it opened a public discussion far better than an academic writer would have done, and led to new research and some revision of what we thought we knew about what went on in that first terrible year of the war.

Japanese scholars were cautious about entering this conversation, given the level of vituperation with which some Chinese treated them. But scholars in China were also cautious, for different reasons. The centrality of the resistance narrative to the official history of the war made it difficult to know how to approach what actually happened at Nanjing, which was if anything a failure of resistance. Some also worried whether it was politically inadvisable to destabilize the Japan-China relationship at a time when the trade relationship between the two countries was close and critical to both sides. Several large-scale research projects were set up with central state funding in the 1990s, but little new interpretive work came out of this research. To the extent that there was a problem, it did not lie within the Chinese academy, but stemmed rather from the postwar condition of the Chinese state.

The postwar is simply, quite literally, the era following a war, but it is also a condition that infects regimes that survived the war or emerged in its wake. This condition is viewed as the right to claim and enjoy the success of having survived against terrible odds. To those who actually experienced the war, it justifies the righteousness of victory and the right to pursue whatever policies are necessary to re-stabilize the government and the people after the war. To those who came in their wake, it endowed them with the right to inherit that honour, and the expectation that the arrangements that emerged at the end of the war should continue to work in their favour. The political effect of the postwar condition in the 1940s and 1950s was to allow the survivor regimes to claim a free pass to construct whatever postwar order or state of emergency they regard as necessary to consolidate the state.⁴ Charles de Gaulle in France, Chiang Kai-shek in Taiwan, Mao Zedong in China, Josef Stalin

⁴ On the idea of postwar, see Tony Judt, *Postwar: A History of Europe since 1945* (New York: Penguin, 2005). On the postwar in East Asia, see my "The Shanghai Trials,

in the Soviet Union, Harry Truman and Dwight Eisenhower in the United States, David Ben-Gurion in Israel: every one of them in his different way exploited the postwar condition to project a moral legitimacy for their policies and their regimes, and for silencing their critics.

The postwar condition was not a recipe for unity. It led in the late 1940s to the Cold War, a stand-off that did not just grow out of this condition but perpetuated it, allowing the largest postwar states—the USA and the USSR in particular—to hold up their war record as evidence of their right to exercise hegemony over other states. Not until the Cold War ended in 1989 was it possible to begin the process of dismantling the legitimacy-granting authority of the postwar. Of course, the postwar condition will naturally dissipate as the generations who lived through the war or grew up hearing its stories die off. In Europe, the authority of political claims based on the postwar began to fade in 1968, when the first generation born after the war began to suspect that the tales of resistance and sacrifice they heard from their fathers and grandfathers were components of a political mythology. The movie industry in the United States did much to keep the postwar alive there, until the brutal realities of the Vietnam War unravelled the myth of heroism on which postwar reputation relied. It was only well after Vietnam that an American filmmaker could attempt to represent the Asian theatre of World War II. Although Clint Eastwood relied on certain rhetorical conventions to film *Flags of our Fathers*, he chose carefully to escape from American postwar propaganda by reshooting the story from a Japanese perspective in *Letters from Iwo Jima*.

It is impossible to imagine a Chinese film director at this moment having Eastwood's distance from charged events in the national past to stage the reciprocal dialectic between *Flags of our Fathers* and *Letters from Iwo Jima*. The People's Republic of China still depends heavily on its wartime record for regime legitimacy, and so cannot narrate the Japanese occupation as anything but a war resistance. Both the Communist Party and the Nationalist Party narrated themselves into legitimacy by constantly retelling the struggle against Japanese imperialism as the story of their own heroism—which meant that each had to contradict the other in order to do so. This claim has become increasingly awkward and inconsequential in Taiwan with the defeat of the Nationalists in the 2015 election. That summer, as it happens, the Nationalist Party sought to bolster its right to rule by mounting a propaganda campaign reminding Taiwanese of the Nationalists' victory over Japan seventy years earlier and of their privilege

1946: "Conjuring Postwar Justice," in *Postwar Changes and War Memories*, ed. Academia Historica (Taipei: Academia Historica, 2015), pp. 127-155.

to share in that victory. Judging by sceptical remarks in letters to the popular press, the campaign was not persuasive, particularly for younger Taiwanese. It is hardly surprising that this vestige of postwar identity had little appeal, given that Taiwan was under Japanese occupation during the war, and that any Taiwanese who served in that war did so on Japan's side.⁵ The postwar condition is rapidly disappearing in Taiwan, which is one of the reasons why the old ideal of re-uniting with the mainland has less and less appeal.

The fountain of postwar authority still flows in the People's Republic, however. It may indeed be the last government in the world that stakes its right to rule on the role it played in the war against fascism three-quarters of a century ago. Reminding its citizens, as it has regularly done since the 1980s (the Nanjing Massacre Memorial was built in 1985), that the Communist Party defeated Japan and that its virtue is matched by Japan's duplicity and criminality has been useful for emotionalizing Chinese nationalism and securing allegiance to the Party's leadership as China expands its power in the region, to no small degree at Japan's expense. Reliance on a version of World War II as a war of resistance sits so deeply at the heart of regime legitimacy that this history is not open to critical inquiry. So many topics are accordingly impossible to discuss: that not all Chinese resisted, that some Chinese chose to collaborate with Japan for reasons other than crass economic gain or political advantage, that China depended on foreign assistance to withstand Japan, and that the Communist Party was not the only force of the resistance.⁶ Instead, Chinese historians are expected to narrate the war against Japan as a story of autonomy from foreign influence, of the unbreakable unity of the nation, and of the certainty that history always produces the correct outcome.⁷ This has placed a distinct burden on the agenda of Chinese historians of modern China, whose duty it is to prove what has already

⁵ The campaign included an international conference sponsored by Taiwan's national institute of history, Academia Historica (Guoshiguan), entitled "War in History and Memory: An International Conference on the Seventieth Anniversary of China's Victory in the War of Resistance against Japan," at which this author presented the paper referenced in the previous footnote.

⁶ These and other questions are raised in my *Collaboration: Japanese Agents and Chinese Elites in Wartime China* (Cambridge: Harvard University Press, 2005). The book was published in Chinese, after a long delay, in 2015 as *Zhixu de lunxian* (Beijing: Shangwu yinshuguan, 2015) in China and *Tongdi: Zhanshi Zhongguo de Riben dailing yu difang jingying* (Taipei: Yuandong, 2015) in Taiwan.

⁷ There are, of course, individual exceptions to the observation that Chinese scholars have not broached such questions. Among these I would note Pan Min, the translator of *Collaboration*, whose earlier study, *Jiangsu Ri-wei jiceng zhengquan yanjiu* [Studies of the Japan-puppet regime at the local level in Jiangsu] (Shanghai: Shanghai renmin chubanshe, 2006), anticipated my own approach. For new insights into the question of

been asserted to be true, not to interrogate the grounds on which these truth claims stand.

With regard to the study of the Tokyo Trial, this hermeneutic context has imposed expectations and limits on Chinese historians. Questions that have been addressed in the Western scholarship on the trial have proven almost impossible to approach or resolve in China. Here are a few: Should China repudiate Nationalist China's role in the trial as an accomplice of American interests, or celebrate it as evidence that China had earned its rightful place on the postwar world stage? Should the Chinese justice on the Tokyo bench, Mei Ru'ao, be dismissed as a dupe of the Americans, or regarded as a champion of international justice? Should the decision to indict only twenty-eight Japanese be treated as grossly inadequate for the atrocities that Japan committed in China during the war, or can this way of addressing the culpability of war leaders be contextualized positively given the state of international law at the time? Was the use of examination/cross-examination an Anglo-American trick to prevent critical evidence from making it into the record, or was it a necessary safeguard for achieving a sufficient level of justice? Finally, did the trial fail to address China's grievances, especially over Nanjing, either by misprision or intention, or did it bring justice?

Research on the Tokyo Trial by Western historians was slow to develop, but has grown significantly over the past two decades. The examination of the role of the Nanjing Massacre in the trial may be said to have begun only in 1999 with the publication of a sourcebook on the Nanjing Massacre that I compiled for teaching purposes. There, I believe for the first time, I sought to align the trial's findings with the documentary record of the massacre in English on which, to a large extent, the tribunal relied. I explored this alignment more fully two years later in an essay in *The Journal of Asian Studies*.⁸ My purpose in undertaking this research was not particularly to answer Japanese accusations that the atrocity never occurred, but to alleviate the popular misconception among Chinese that the Tokyo trial failed to punish Japanese leaders for

collaboration, seeo Li Zhiyu, *Wang Jingwei de zhengzhi shengya* [The political life of Wang Jingwei] (Hong Kong: Oxford University Press, 2014).

⁸ Timothy Brook, *Documents on the Rape of Nanking* (Ann Arbor: University of Michigan Press, 1999); idem., "The Tokyo Judgment and the Rape of Nanking," *The Journal of Asian Studies* 60:3 (Aug. 2001), pp. 673-700. The latter is cited in this volume when it was republished in as "Radhabinod Pal and the Rape of Nanking: The Tokyo Judgment and the Guilt of History," in *The Nanjing Atrocity, 1937-1938: Complicating the Picture*, ed. Bob Tadashi Wakabayashi (New York: Berghahn Books, 2007), pp. 149-180. Both the book and the essay appeared in an enlarged Chinese translation published in Taiwan as *Nanjing datusha yingwen shiliao ji* [Collection of English-language documents on the Nanjing massacre] (Taipei: Shangwu, 2007), but could not be published in China.

what happened in Nanjing. I felt that this misperception needed to be corrected if Chinese were to find firmer ground on which to respond to Japanese denials. Work by other scholars has followed. A certain unwillingness within the China's establishment to notice or credit the findings of foreign scholars on sensitive issues of Chinese history has meant that this research has gone largely unacknowledged.⁹ Chinese scholars of course have to obligation to cite Western work, or vice versa, but there are benefits to both sides of entering more fully into conversation. Failing to do so limits the potential of our combined research.

One exception is Cheng Zhaoqi, the lead author of the present volume. Cheng took up the task of researching the role that the Nanjing Massacre played in the Tokyo tribunal while he was still a junior scholar at the Shanghai Academy of Social Sciences. Trained in modern Japanese history, Cheng brought his findings to the public in 2002 by publishing a suite of powerful essays on a variety of topics related to the Nanjing Massacre, including how the Tokyo Trial addressed it. His most extended essay that year was written as a direct counterblast to the attack on the Tokyo judgment by the right-wing press in Japan. Like their Holocaust-denying counterparts in the West, Japanese polemicists were eager to remove from history any record that their ancestors did anything wrong. The danger of such denial is that it is only one small step from excusing Japan's wartime conduct, and even tacitly approving it. Cheng's counter-attack became the lead chapter in a collection of his essays on Nanjing Massacre denial published in book form later that year.¹⁰

Cheng Zhaoqi's work was featured in a large collection of essays and testimonials published in 2011 under the auspices of the Tokyo Trial Research Centre at Jiao Tong University in Shanghai.¹¹ The present book consists of chapters, including Cheng's, that were published

⁹ For example, the most important book-length study in English of the trial's handling of Japanese atrocities, Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, Mass.: Harvard University Asia Center, 2008), has not to my knowledge received the attention that it should in China.

¹⁰ Cheng Zhaoqi, *Nanjing datusha yanjiu: Riben xugoupai pipan* [Research on the Nanjing Massacre: a critique of the Japanese fabrication school] (Shanghai: Shanghai Cidian chubanshe, 2002). Parts of Cheng's book have been superseded by the findings in Bob Tadashi Wakabayashi, ed., *The Nanjing Atrocity, 1937-1938: Complicating the Picture*, notably Wakabayashi's conclusion in Chapter 6 that the so-called "hundred-man killing contest" was a hoax perpetrated by the Japanese media on a gullible wartime public. Chapter 6 essentially repeats his earlier article, "The Nanjing 100-Man Killing Contest Debate: War Guilt amid Fabricated Illusions, 1971-1975," *Journal of Japanese Studies* 26:2 (2000), pp. 307-340.

¹¹ Shanghai jiao tong daxue Dongjing shenpan yanjiu zhongxin [Tokyo Trial Research Centre of Jiao Tong University, Shanghai], *Dongjing shenpan wenji* [Collected works on the Tokyo Trial] (Shanghai: Shanghai jiao tong daxue chubanshe, 2011).

in that volume. Of the seven scholarly essays that make up Part I of the present volume, Cheng contributes four: his main essay from 2002 plus another three published between 2007 and 2010. One of these deals with General Matsui Iwane, another with one of the witnesses for Matsui's defence, and the third takes a Japanese film re-enactment of the Tokyo Trial as a springboard to survey a broad range of issues from the challenges of interpreting crimes against humanity to Emperor Hirohito's war responsibility. The rest of Part I of this volume consists of two chapters on the organization and conduct of the trial by Song Zhiyong, a historian of Sino-Japanese relations, and one chapter focusing on testimony in the Tokyo Trial transcript co-authored by Zhang Sheng, an influential historian of Japan's wartime occupation of China, and Zhai Yi'an, a specialist in the Japanese study of China.¹² This chapter engages in a close reading of the sworn testimony and oral arguments concerning Nanjing in the trial transcript to show just how testimony relating to the massacre was used in the courtroom.

Part II of this volume presents testimony from two Chinese participants at the Tokyo Trial. One is a reminiscence written by the Chinese justice on the bench, Mei Ru'ao. Other Tokyo judges have published important reflections on the trial, most conspicuously the Indian justice, Radhabinod Pal, who dissented from the entire judgment,¹³ as well as the Dutch justice, Bert Röling, who discussed both its strengths and its weaknesses.¹⁴ Mei's text is by comparison a brief reflection rather than a legal analysis, but it is valuable nonetheless for introducing a Chinese perspective on the conduct of the trial. Mei's memoir is preceded by a

¹² Zhang Sheng is the coauthor, with Pan Min, of a path-breaking study that sought to historicize the local collaborationist regime that emerged in Nanjing in the wake of Nanjing, *Ri-wei guanxi yanjiu: yi Huadong diqu wei zhongxin* [Studies of the relationship between Japan and collaborationist regimes, based on the east China region] (Nanjing: Nanjing chubanshe, 2003). His introduction to that book is a quiet plea to treat the history of collaboration as a worthy subject of scholarly research.

¹³ Radhabinod Pal, *International Military Tribunal for the Far East: Dissident Judgment* (Calcutta: Sanyal); see also his "International Law," *Indian Law Review* 3:1 (1949), pp. 31-60; and *Crimes in International Relations* (Calcutta: University of Calcutta Press, 1955).

¹⁴ B.V.A. Röling, "The Tokyo Trial and the Development of International Law," *Indian Law Review* 7:1 (1953), pp. 4-14. See also his introduction to *The Tokyo Judgment: The International Military Tribunal for the Far East, 29 April 1946-12 November 1948*, co-edited with C.F. Rüter (Amsterdam: AAPA-University Press, 1977). Röling offers his most candid views in interviews he gave to Antonio Cassese shortly before he died in 1985, which Cassese edited and published as *The Tokyo Trial and Beyond: Reflections of a Peacemaker* (Cambridge: Polity Press, 1993). The influence of Röling's assessment of Tokyo on the subsequent history of war crimes adjudication is suggested by the fact that Cassese, his interviewer and editor, was appointed as the first President of the International Criminal Tribunal for the Former Yugoslavia the year he published his interviews with Röling.

helpful introduction by He Qinhua, China's senior historian of China's adaptation to Western law.¹⁵ Professor He explains that Mei had the misfortune of being in the midst of writing a book-length account of the Tokyo Trial at the time of the Cultural Revolution, when his home was searched and his drafts and notes confiscated. Mei died in 1973 before he was able to restore what had been taken from him, but four chapters of the manuscript have survived, on which basis He is able to contextualize Mei's views and role. Mei's reflection is also preceded by a reminiscence by another Chinese participant in the Tokyo Trial, Ni Zhengyu, who worked as a member of staff for the Chinese prosecutor, Xiang Zhejun (Hsiang Che-chun). Ni's account provides instructive insights into the work that prosecutors did to build China's case at Tokyo, including the challenge of adapting their procuratorial style to Anglo-American adversarial procedure.

The signal contribution of this book lies in presenting insights from Chinese scholarship that, until now, have been unavailable to Anglophone readers. Too often Chinese and Western scholarship exist as two solitudes, though it must be noted that our Chinese colleagues have translated far more of our scholarly work on China than we have theirs. As their work on the adjudication of Japanese war crimes comes into view, it should at least remind us that our post-postwar perspective, if I may call it that, is not the only position from which Chinese history is being written today. Entering into conversation could contribute to unblocking the postwar condition that, to some extent, still defines the Sino-Western relationship. More ambitiously, it might also contribute to the work that still needs to be done to unblock the Sino-Japanese relationship and escape the zero-sum game of grievance that each side directs at the other. This may be asking of scholarship far more than it is able to deliver, but opening a conversation with our Chinese colleagues is a good place from which both sides can start.

¹⁵ He Qinhua is known for his research on the history of legal thought in China, published in three volumes as *Zhongguo faxue shi* [The history of legal studies in China] (Beijing: Falü chubanshe, 2000-2006). He Qinhua has also written on comparative legal culture; see his *Falü wenhua shilun* [Essays on the history of legal culture] (Beijing: Xinghua shudian, 1998). A succinct summary of his views on the Chinese adaptation to Western law may be found in his edited conference volume, *Fa de yizhi yu fa de bentuhua* [The transplantation of law and the indigenization of law] (Beijing: Falü chubanshe, 2001), pp. 537-539.

Note on Translation

Many of the quotes included in these essays have been retranslated into English from Chinese editions of document collections, reflecting the sources to which the authors had access. Where possible, this has been indicated in the notes. Readers are directed to the select bibliography of published sources in English at the back of this volume, and are encouraged to cross-reference and compare any quotation from the trial with the published transcript: John Pritchard and Sonia Zaide, eds., *The Tokyo War Crimes Trials* (22 vols, New York: Garland, 1981).

Contributors

Ni Zhengyu (Ni Judson) was the Chief Advisor of the International Prosecution Team at the International Military Tribunal for the Far East. Dr Ni earned his Juris Doctor degree at Harvard University and was an honorary fellow at Johns Hopkins University. He was elected as academician of the Institute of International Law.

Mei Ru'ao (Mei Ju-ao) was a Chinese jurist at the International Military Tribunal for the Far East. He was awarded a Bachelor of Arts degree from Stanford University and Juris Doctor degree from University of Chicago Law School. He was a delegate of the 1st session of the National People's Congress, and a member of the national committee of CPPCC.

He Qinhua is Professor of Law and the former President of East China University of Political Science and Law. He obtained his Juris Doctor degree from Peking University. He is currently the Vice-President of the Institute of Chinese Judicial Studies.

Cheng Zhaoqi is Professor and Director of the Tokyo Trial Research Center, Shanghai Jiao Tong University. Dr Chen has engaged in Tokyo Trial research over many years and has published a number of monographs. He serves as the chief editor of the book series "Collection of the Tokyo Trial Studies".

Song Zhiyong is Professor and Dean of the Institute of Japan Studies of Nankai University. He is Chairman of the China Japanese History Association and the expert on Japanese education in the Ministry of Education.

Zhang Sheng is Professor of History in Nanjing University. He obtained his doctoral degree from Nanjing University. Dr Zhang is currently Vice-Director of the China History Research Center and Vice-President of the Institute of Nanjing Massacre Studies.

Zhai Yi'an is a lecturer of history in Nanjing University, and he obtained his doctoral degree from Nanjing University. Dr Zhai focuses mainly on research on Chinese modern and contemporary history.

Chronology of the Tokyo Trial

BEFORE SESSION

1943

Nov. 17 The Cairo Declaration proclaimed that Japan should be punished for its war crimes.

1944

May 10 The United Nations War Crimes Commission decided to set up the Far Eastern Sub-Committee.

1945

Jul. 26 The Potsdam Declaration proclaimed that justice should be meted out to the Japanese war criminals (in Term 10).

Aug. 14 The Imperial Conference of Japan decided to accept the Potsdam Declaration.

Aug. 15 *Imperial Rescript on the Termination of the War* read by Japanese Emperor Hirohito was broadcast, announcing its surrender to the Allies.

Aug. 29 The United Nations War Crimes Commission proposed to convene the International Military Tribunal for the Far East.

Sep. 2 On behalf of the Japanese government, Japanese Minister of Foreign Affairs, Shigemitsu Mamoru and Chief of the Imperial Japanese Army General Staff, Umezu Yoshijiro signed the Japanese Instrument of Surrender aboard the United States Navy battleship USS *Missouri*.

Sep. 11 The General Headquarters ordered the arrest of 39 suspected war criminals, including Tojo Hideki, Togo Shigenori, Shimada Shigetaro, Kaya Okinori and Suzuki Teiichi.

Sep. 21 The General Headquarters ordered the arrest of two suspected war criminals including Dohihara Kenji.

Sep. 24 United States Pacific Command approved the regulation for Class-B and Class-C War Criminals.

Chronology of the Tokyo Trial

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- Oct. 5 Suspected War Criminals were transferred to Ōmori Detention.
 Nov. 11 Sugamo Prison started housing the suspected Class-A War Criminals.
 Nov. 19 General Headquarters ordered the arrest of 11 suspected war criminals, including Araki Sadao Koiso Kuniaki, Matsuoka Yosuke, Matsui Iwane, Minami Jiro and Shiratori Toshio.
 Nov. 24 General Headquarters ordered the ending of allowance for the suspected war criminals.
 Dec. 2 General Headquarters ordered the arrest of 59 suspected war criminals, including Hata Shunroku, Hiranuma Kiichiro, Hirota Koki, Hoshino Naoki, Ōkawa Shūmei and Sato Kenryo.
 Dec. 6 General Headquarters ordered the arrest of nine suspected war criminals, including Kido Kōichi, Oshima Hiroshi, etc.
- 1946
 Jan. 4 General Headquarters ordered to deprive the militarists of their public posts and dissolve 27 ultra-nationalist organisations.
 Jan. 9 MacArthur, the Supreme Commander of the Allied Powers, issued a proclamation ordering the establishment of the International Military Tribunal for the Far East (IMTFE), which was to function under the Charter of the International Military Tribunal for the Far East (CIMTFE).
 Jan. 22 The Charter of the International Military Tribunal for the Far East (CIMTFE) was approved.
 Feb. 15 The Supreme Commander for the Allied Powers MacArthur appointed Judges and President of the Tribunal.
 Mar. 9 General Headquarters Office of Legal Affairs vetoed Japan's participation in the war trial.
 Mar. 16 General Headquarters ordered the arrest of Nagano Osami.
 Mar. 23 Reconstruction work of the International Military Tribunal for the Far East (Lecture Hall of former Imperial Japanese Army Academy in Ichigaya) was completed.
 Apr. 7 General Headquarters ordered the arrest of Oka Takazumi.
 Apr. 21 The Supreme Commander for the Allied Powers MacArthur signed the Indictment.
 Apr. 24 Japanese Defence Team of the International Military Tribunal for the Far East was formed.
 Apr. 25 Original Rules of Procedure of the International Military Tribunal for the Far East with amendments were promulgated.
 Apr. 29 The General Headquarter ordered the arrest of Umezu Yoshijiro and Shigemitsu Mamoru.
 Lodging of the Indictment.

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IN SESSION

Preliminary Stages

May 3, May 4, May 6

Procedures for the court establishment, Arraignment

May 13, May 14, May 15, May 17

Argument on the jurisdiction of the Tribunal

The Case for the Prosecution

Jun. 4

Prosecution Opening statement by Keenan

Basic Treaties and Laws Introduced

Jun. 13, Jun. 14, Jun. 17

Personal Histories of the Accused Introduced

Jun. 17, Jun. 18, Jun. 19, Jun. 20, Jun. 21, Jun. 24, Jun. 25, Jun. 26,

Jun. 27, Jun. 28, Jul. 1

Conspiracy to Prepare Japanese Public Opinion for war

Jul. 1, Jul. 2, Jul. 3, Jul. 5, Jul. 6, Jul. 8, Jul. 9, Jul. 10, Jul. 15

Military Aggression against Manchukuo

Jul. 22, Jul. 23, Jul. 24, Jul. 25

Military Aggression against China

Jul. 25, Jul. 26, Jul. 29, Jul. 30

Nanjing Massacre, Opium and Narcotics

Jul. 30, Jul. 31, Aug. 1, Aug. 2

Military Aggression against Manchukuo

Aug. 5

Domestic public opinion

Aug. 5, Aug. 6

Military Aggression against Manchukuo

Aug. 5, Aug. 6, Aug. 7, Aug. 8, Aug. 9, Aug. 12, Aug. 13, Aug. 15

Military Aggression against China

Aug. 15, Aug. 16

Nanjing Massacre

Aug. 16, Aug. 19, Aug. 20, Aug. 21, Aug. 22, Aug. 23, Aug. 26, Aug. 27,

Aug. 28

The Establishment of Manchukuo

Aug. 28

Economic Aggression and the Traffic in Opium and Narcotics

Aug. 29, Aug. 30, Sep. 3

Atrocities connected with Japanese Military Aggression in China

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- Sep. 3, Sep. 4, Sep. 5
 Opium and Narcotics
- Sep. 6, Sep. 9, Sep. 10
 Economic Aggression against China
- Sep. 6
 Atrocities against Civilians and against Prisoners of War
- Sep. 11, Sep. 12, Sep. 13, Sep. 16, Sep. 17, Sep. 18, Sep. 19
 Atrocities against Prisoners in Singapore
- Sep. 19, Sep. 20, Sep. 23, Sep. 24, Sep. 25, Sep. 26, Sep. 27
 Relations with Germany and Italy
- Sep. 30
 Atrocities against Prisoners of War
- Sep. 30, Oct. 1, Oct. 2, Oct. 3, Oct. 4, Oct. 7
 Relations with France and Indo-China
- Oct. 8, Oct. 9, Oct. 10, Oct. 11, Oct. 14, Oct. 15, Oct. 16, Oct. 17, Oct. 18, Oct. 21
 Japan–Soviet Relations
- Oct. 21, Oct. 22, Oct. 23, Oct. 24, Oct. 25, Oct. 28, Oct. 29
 Economic Preparations
- Oct. 29, Oct. 30
 Army Armaments
- Oct. 31, Nov. 1
 Naval Armaments
- Nov. 1, Nov. 4, Nov. 5, Nov. 6, Nov. 7, Nov. 8, Nov. 12, Nov. 13, Nov. 14, Nov. 15, Nov. 18, Nov. 19, Nov. 20, Nov. 21, Nov. 22, Nov. 25, Nov. 26, Nov. 27
 Relations with United States, Britain and the British Commonwealth
- Nov. 27, Nov. 29, Dec. 2, Dec. 3, Dec. 4, Dec. 5
 Conventional War Crimes
- Dec. 6, Dec. 9, Dec. 10
 Relations with Netherlands, the Dutch East Indies and Portugal
- Dec. 10, Dec. 11, Dec. 12, Dec. 13, Dec. 16
 Relations with Philippines
- Dec. 16, Dec. 17, Dec. 18, Dec. 19, Dec. 20, Dec. 23, Dec. 24, Dec. 26, Dec. 27, Dec. 30, Dec. 31
 Conventional War Crimes
- 1947
- Jan. 2, Jan. 3, Jan. 6, Jan. 7, Jan. 8, Jan. 9, Jan. 10, Jan. 13, Jan. 14, Jan. 15, Jan. 16, Jan. 17
 Conventional War Crimes

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Jan. 17

Additional statements for each phrase

Jan. 20, Jan. 21, Jan. 22, Jan. 23, Jan. 24

Individual responsibility of the defendants

Jan. 27, Jan. 28, Jan. 29, Jan. 30, Jan. 31, Feb. 3

Motions to Dismiss Charges lodged by the Defence

The Case for the Defence

Feb. 24

Opening Statement by the Defence

Feb. 24, Feb. 25, Feb. 26, Feb. 27, Feb. 28, Mar. 3, Mar. 4, Mar. 5, Mar. 6,

Mar. 7, Mar. 10, Mar. 11, Mar. 12, Mar. 13, Mar. 14, Mar. 17, Mar. 18

General Problems

Mar. 18, Mar. 19, Mar. 20, Mar. 21, Mar. 24, Mar. 25, Apr. 2, Apr. 3,

Apr. 4, Apr. 8, Apr. 9, Apr. 10, Apr. 11

Relations with Manchuria

Apr. 11, Apr. 14, Apr. 15, Apr. 16, Apr. 17

Individual Defence of the accused: MINAMI

Apr. 17, Apr. 18, Apr. 21, Apr. 22

Relations with Manchuria

Apr. 22, Apr. 23, Apr. 24, Apr. 25, Apr. 28, Apr. 29, Apr. 30, May 1,

May 2, May 5, May 6, May 7, May 8

Relations with China

May 12, May 13, May 14

Relations with China

May 14, May 15

Relations with Manchuria

May 15, May 16

Relations with China

May 16, May 19, May 20, May 21, May 22, May 23, May 26, May 27,

May 28, May 29, Jun. 2, Jun. 3, Jun. 4, Jun. 5, Jun. 6, Jun. 9, Jun. 10

Relations with the Soviet Union

Jun. 10

General Problems

Jun. 10, Jun. 11

Relations with China

Jun. 12, Jun. 13, Jun. 16, Jun. 17, Jun. 18, Jun. 19

The Pacific War: The Tripartite Pact

Aug. 4, Aug. 5, Aug. 6, Aug. 7, Aug. 8, Aug. 11, Aug. 12, Aug. 13

The Pacific War: Economic Problems

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- Aug. 13, Aug. 14, Aug. 15, Aug. 18, Aug. 19, Aug. 20
 The Pacific War: Diplomatic Problems
 Aug. 21, Aug. 22, Aug. 25, Aug. 26
 The Pacific War: Naval Preparations
 Aug. 26, Aug. 27, Aug. 28
 The Pacific War: Army Preparations
 Aug. 28, Aug. 29, Sep. 2, Sep. 3, Sep. 4, Sep. 5, Sep. 8, Sep. 9
 The Pacific War: Prisoner of War and Civilian Atrocities
 Sep. 9, Sep. 10
 Supplement of each section
 Sep. 10–Oct. 27
 Individual Defences of the Accused:
 ARAKI (Sep. 10, Sep. 11, Sep. 12, Sep. 15, Sep. 16)
 DOHIHARA (Sep. 16, Sep. 17, Sep. 18)
 HASHIMOTO (Sep. 18, Sep. 19)
 HATA (Sep. 19, Sep. 22, Sep. 23)
 HOSHINO (Sep. 23, Sep. 24)
 HIRANUMA (Sep. 24, Sep. 25)
 HIROTA (Sep. 25)
 HATA (Sep. 26)
 HIROTA (Sep. 26, Sep. 29, Sep. 30, Oct. 1, Oct. 2, Oct. 3)
 ITAGAKI (Oct. 6, Oct. 7, Oct. 8, Oct. 9, Oct. 10)
 KAYA (Oct. 10, Oct. 13, Oct. 14)
 KIDO (Oct. 14, Oct. 15, Oct. 16, Oct. 17, Oct. 20, Oct. 21, Oct. 22,
 Oct. 23)
 KIMURA (Oct. 24, Oct. 27)

The Case for the Prosecution

- Oct. 27, Oct. 28, Oct. 29, Oct. 30, Oct. 31
 Japan–Soviet Relations

The Case for the Defence

- Oct. 31, Nov. 3, Nov. 4, Nov. 5, Nov. 6
 Individual Defence of the accused: KOISO

The Case for the Prosecution

- Nov. 6
 Japan–Soviet Relations

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The Case for the Defence

Nov. 6–Dec. 31

Individual Defence of the accused:

MATSUI (Nov. 6, Nov. 7)

MINAMI (Nov. 10, Nov. 12)

MUTO (Nov. 12, Nov. 13, Nov. 14, Nov. 17)

OKA (Nov. 17, Nov. 18, Nov. 19)

MINAMI (Nov. 19, Nov. 20)

MUTO (Nov. 21)

OSHIMA (Nov. 21, Nov. 24)

MATSUI (Nov. 24, Nov. 25)

OSHIMA (Nov. 25, Nov. 26, Nov. 28, Dec. 1, Dec. 2, Dec. 3)

SATO (Dec. 3)

SHIGEMITSU (Dec. 3, Dec. 4)

SHIMADA (Dec. 4, Dec. 5, Dec. 8, Dec. 9)

SHIRATORI (Dec. 9, Dec. 10, Dec. 11, Dec. 12)

TOGO (Dec. 12, Dec. 15, Dec. 16, Dec. 17, Dec. 18, Dec. 19, Dec.
 22, Dec. 23, Dec. 24, Dec. 26)

TOJO (Dec. 26, Dec. 29, Dec. 30, Dec. 31)

1948

Jan. 2–Jan. 8

Individual Defence of the accused:

TOJO (Jan. 2, Jan. 5, Jan. 6, Jan. 7)

UMEZU (Jan. 7, Jan. 8)

Jan. 8, Jan. 9, Jan. 12

Additional statements from individual departments

Jan. 12, Jan. 13, Jan. 14, Jan. 15, Jan. 16, Jan. 19, Jan. 20, Jan. 21, Jan. 22,

Jan. 23, Jan. 26, Jan. 27, Jan. 28, Jan. 29, Jan. 30

Rebuttal by the Prosecution

Jan. 30, Feb. 2, Feb. 3, Feb. 9, Feb. 10

Surrebuttal by the Defence

Feb. 11–Mar. 2

Summations by the Prosecution:

General statement (Feb. 11, Feb. 12, Feb. 13, Feb. 16, Feb. 17, Feb.
 18, Feb. 19)

Personal statement (Feb. 19, Feb. 20, Feb. 24, Feb. 25, Feb. 26, Feb.
 27, Mar. 1, Mar. 2)

Mar. 2–Apr. 15

Summations by the Defence:

- General argument (Mar. 2, Mar. 3, Mar. 4, Mar. 5, Mar. 8, Mar. 9, Mar. 10, Mar. 11)
 Personal argument (Mar. 11)
 General argument (Mar. 12, Mar. 15)
 Personal argument (Mar. 15, Mar. 16, Mar. 17, Mar. 18, Mar. 19, Mar. 22, Mar. 23, Mar. 24, Mar. 25, Mar. 26, Mar. 29, Mar. 30, Mar. 31, Apr. 1, Apr. 2, Apr. 5, Apr. 7, Apr. 8, Apr. 9, Apr. 12)
 General argument (Apr. 13)
 Personal argument (Apr. 13, Apr. 14, Apr. 15)
 Apr. 15, Apr. 16
 Reply by the Prosecution to the Defence Summations

AFTER SESSION

Nov. 4, Nov. 5, Nov. 8, Nov. 9, Nov. 10, Nov. 11, Nov. 12

Judgment reading and sentencing:

DOHIHARA Kenji, HIROTA Koki, ITAGAKI Seishiro, KIMURA Heitaro, MATSUI Iwane, MUTO Akira, TOJO Hideki were sentenced to death by hanging.

ARAKI Sadao, HASHIMOTO Kingoro, HATA Shunroku, HIRANUMA Kiichiro, OSHIMA Hiroshi, SATO Kenryo, SHIMADA Shigetaro, SHIRATORI Toshio, SUZUKI Teiichi, HOSHINO Naoki, KAYA Okinori, KIDO Koichi, KOISO Kuniaki, MINAMI Jiro, OKA Takasumi, UMEZU Yoshiji were sentenced to life imprisonment.

TŌGŌ Shigenori was sentenced to 20 years' imprisonment. SHIGEMITSU Mamoru was sentenced to seven years' imprisonment. ŌKAWA Shūmei was immune from prosecution. (MATSUOKA Yosuke and OSAMI Nagano died during the trial.)

Dec. 20

Supreme Court of the United States rejected the seven defendants' appeal.

Dec. 23

TOJO Hideki and the other six criminals who were sentenced to death by hanging were executed at Sugamo Prison.