
Tokyo War Crimes Trial Reconsidered : Orientalism and Pal's Dissenting Opinion

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Orientalism and Japanology

Tracing back the long history of Western attitudes toward the Orient, Edward W. Said employed the term "Orientalism", but in a sense quite different from previous use of the word. Before Said, the term had almost always been associated with something romantic and exotic in the Orient. According to Said's new definition, "Orientalism is a style of thought based upon an ontological and epistemological distinction made between 'the Orient' and (most of the time) 'the Occident'...it [Orientalism] is, above all, a discourse..."¹⁾ Said severely criticized this discourse by referring to it as "a Western style for dominating, restructuring, and having authority over the Orient."²⁾

A bold, stimulating argument, to be sure, but Said did not satisfy the Japanese readership completely, for he did not make any reference to Japan in his perspective of the Orient. Richard Minear, well-known for his provocative book on the Tokyo war crimes trial, *Victor's Justice*, took over where Said left off in this respect. In his critique of Said's *Orientalism*, Minear declares: "[A] similar analysis can be made of the tradition of Japanese studies"³⁾ in Western countries. Minear here takes up the three most influential giants in Japanese studies in the West: Basil Hall Chamberlain, George B. Sansom, and Edwin O. Reichauer, with the conclusion that "Sansom joins Chamberlain in praising selected aspects of the Japanese past while denying relevance for the future to any but Western pictures...The parallel with Said's Orientalism is striking."⁴⁾

Even Reichauer, in Minear's analysis, is considered to be a part of the same category, for in a series of his works dating back to 1946, it could be found that "the categories held at least through the 1960's—'the West' and 'the East', 'Europeans' or 'Americans' and 'Japanese,' 'we' and 'they'—and with them the pejorative implication of the comparison."⁵⁾ In short, Minear's contention is that the same discourse as Said's Orientalism has been prevalent in Japanese studies from the West.

Indeed, Minear's statement seems no less striking than Said's, but he refers only to

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the discourse on Japan among Japanologists in the West. It should not be overlooked, however, that Orientalism has also entered Japanese discourses about themselves. As to the post World War period, for instance, the official judgment of the Tokyo war crimes trial may safely be said to be one of the most influential events shaping such discourse to a great extent among the Japanese people. During the chaotic times right after the war, this judgment gave the people a Western interpretation of their modern history and even their own national characteristics. Thus, the judgment formed and helped to make prevalent an influential discourse among the Japanese people in general. Providing Japan with a framework for reconstructing an identity after the war, the judgment could be regarded in a broad sense as a product of Orientalism.

Unlike its Nuremberg counterpart, Tokyo received several separate opinions, together with the official judgment. Among them was the dissenting opinion by the Indian judge Radhabinod Pal. Based on a profound knowledge of world history and international law, Pal presented a totally different interpretation of this period: an interpretation unmistakably from the standpoint of a non-Westerner.

In this short essay, I will examine first how the official judgment, as discourse, has been influential on the Japanese up to now, followed by an analysis of Pal's interpretation of both the tribunal and Japanese history from the viewpoint of comparative civilization.

The Tokyo Trial View of History

More than half a century has passed since the International Military Tribunal for the Far East handed down its judgment. The tribunal was conducted as a major component of the Allied powers' occupation policies in Japan; criticism of the trial was therefore severely curtailed. For instance, Takeyama Michio, one of the leading intellectuals of post-war Japan, wrote a short essay on the trial, "Mr. Hyde's Trial" (1946)⁶⁾, in which he held that "the real defendant is none other than modern civilization," not the vanquished Japanese leaders. His acute observations are full of meaning and worthy of consideration even fifty years later. Still, his challenging essay went unpublished.

Officially, the Occupation ended in 1952; nonetheless, an atmosphere open to free discussion and possible criticism of the tribunal was nonexistent. Right after the Occupation, for example, Takikawa Masajirou, one of the defence counsels, published a two-volume work severely criticizing the defects of the tribunal. Contrary to Takikawa's expectations, the publisher went bankrupt due to the poor sales of the books.

In 1945, to say nothing of during the war, most Japanese knew almost nothing about what had happened in the wartime period. The trial, therefore, functioned as

one of the few sources of information for the Japanese people. Furthermore, the trial carried out the task of interpreting and providing an overview of the period. The very picture the tribunal painted was a great shock to them. In fact, it was this picture that gave birth to the expression 'Tokyo trial's view of history.'⁷⁾

Much has been said about the tribunal; up until now, two main approaches have come from the viewpoints of international law and modern history. These approaches are understandable in themselves and have thus far generated contributory works. On the other hand, quite regrettably, tribunal discussions have too often been based largely on ideologies and sterile emotionalism. The official pamphlet distributed at the international symposium on the trial held in 1983 succinctly sums up this deplorable situation:

One stance stands on the side of the prosecution and the majority opinion judgement, accepting the conclusions of the tribunal without question. The other one, represented by the argument that the tribunal was victor's justice, stands on the side of the defense and totally rejects the tribunal... The confrontation between these two positions is barren and unproductive⁸⁾.

In the educational sphere in particular, the discourse has played a significant role. Virtually all history textbooks used in Japanese high schools are compiled on the interpretation of the official judgment. 'The Tokyo trial's view of history' could thus be a major discourse both with Japanese scholars and the people in general. As one historian observes, "consciously or unconsciously, we are all bound by this view and have not escaped its influence."⁹⁾ Some go so far as to say that this view of history leads to the "tendency to treat Japan as an 'ex-con.'"¹⁰⁾

Indeed, the Tokyo trial was a one-sided, flawed trial, as every panelist, except the Russian representative, admitted at the international symposium. This was due, in part, because "emphasis was placed on the hasty trial and punishment of the atrocities that had been committed by a defeated Japan."¹¹⁾ It was this emphatic view that produced discourse among the Japanese in general. The positive side of the tribunal, however, should not be ignored: "if there had not been a trial, there would have been more people put to death. If there had not been a trial, there would not have been minority opinions."¹²⁾ Among them, of course, is the Indian judge Pal's totally dissentient view.

Pal's Opinion

The greater the shock of the picture drawn by the tribunal, the more enthusiastically was Pal's dissenting opinion welcomed in Japan. At the time of the judgment, Pal's dissenting opinion was neither read aloud in court nor published;

few people had the opportunity to become familiar with its content,

Among the eleven judges, only Pal was a specialist in international law. His voluminous paper of approximately 250,000 words was much longer than the official judgment. The essential points were that Japan's war was fought for the liberation of Asia from Western colonialism, and that all warring parties committed conventional war crimes, not only the defeated countries. In other words, he pointed out that the necessity of considering the past actions of the Western powers before judging Japan. He argued that all defendants were innocent of all charges; still, he was far from affirming wholesale, all of Japan's past actions. In short, Pal only held that the defendants' actions were not illegal. He did not fail to refer, of course, to the wrong acts committed by the Japanese army:

...These are the instances of atrocities perpetrated by the Japanese Army against the civilians at different theatres during the entire period of the war. The devilish and fiendish character of the alleged atrocities cannot be denied.¹³⁾

His opinion begins by proclaiming:

I sincerely regret my inability to concur in the judgment and decision of my learned brothers. Having regard to the gravity of the case and of the questions of law and of fact involved in it, I feel it my duty to indicate my view of the questions that arise for the decision of this Tribunal.¹⁴⁾

The opinion consists of seven chapters: "Preliminary Question of Law," "What is 'Aggressive War,'" "Rules of Evidence and Procedure," "Over-all Conspiracy," "Scope of Tribunal's Jurisdiction," "War Crimes *Stricto Sensu*," and "Recommendation" As early as in the first chapter, "Preliminary Question of Law," Pal bitterly criticized the judicial foundation of the tribunal:

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. A trial with law thus prescribed will only be a sham employment of legal process for the satisfaction of a thirst for revenge...Formalized vengeance can bring only an ephemeral satisfaction, with every probability of ultimate regret.¹⁵⁾

"Formalized vengeance" must have been the first published criticism against the tribunal.

81 In chapter II, "What is 'Aggressive War,'" he puts forth his argument that the past
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actions of the Western powers should be considered before judging Japan's acts:

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."¹⁶⁾

Nothing points more succinctly to the essence of the history of the colonization of Asia by Western countries.

At the Tokyo trial, racism on the Japanese side was one of the issues that the prosecution condemned. After quoting the prosecution's statement, Pal presented his view as follows:

...it [a change in the Japanese education policy] was designed to create in every youthful mind a feeling of racial superiority. I believe this is a failing common to all nations. Every nation is under a delusion that its race is superior to all others, and so long as racial difference will be maintained in international life, this delusion is indeed a defensive weapon...The western racial behaviour necessitates this feeling as a measure of self-protection... The ideal of asceticism and self-repression has not yet been adopted by any of the modern civilized nations.¹⁷⁾

This observation immediately reminds one of Said's phrase:

It is therefore correct that every European, in what he could say about the Orient, was consequently a racist, an imperialist, and almost totally ethnocentric...human societies, at least the most advanced cultures, have rarely offered the individual anything but imperialism, racism, and ethnocentrism for dealing with "other" cultures.¹⁸⁾

Said maintains that all people in "the more advanced countries," not just Europeans, have been deeply involved in racism. Likewise, the Indian judge demonstrates that Japan is not the only modern civilized nations bound by the notion of racial superiority. Here, we can see an unmistakable similarity between Pal and Said—between Pal's dissenting opinion and the Saidian concept of Orientalism.

Pal did not finish his argument here, but instead went on to criticize without hesitation one major country of the Allied powers:

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.¹⁹⁾

With these words, he explicitly accused the United States: an accusation which most typically expresses his contention that this tribunal was one-sided, and none other than formalized vengeance.

In sum, Pal's dissenting opinion is, as a recent work on the trial points out, two-fold: "one was that the West was sitting in judgment of Japan and applying a double standard, since the Japanese had done in Asia only what the West had done before. The other was an anti-racism refrain, that Japan had sought to demolish the myth in Asia of the white man's superiority."²⁰⁾

He came to the conclusion in his final chapter:

For the reasons given in the foregoing pages, I would hold that each and everyone 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.²¹⁾

Aftermath

The whole passage [of Pal's opinion] is characterized by independence, lucidity, and learning...I have no doubt at all that Mr. Justice Pal is absolutely right.²²⁾

Lord Hankey, an influential British politician, referred to Pal in this manner only two years after the conclusion of the trial. From then on, Hankey's book played a significant role in having the rest of the world learn about Pal's opinion.

So far as Japan is concerned, unfortunately, Pal's opinion was first introduced on a nation-wide scale as "An Opinion about Japan's Total Innocence," the title seeming to imply that Pal affirmed all of Japan's past actions. This was far from Pal's true intention. Since then the possibility that his opinion would serve as a wholesale indulgence to Japan's actions during the war has been realized in part; this trend has regrettably continued to the present. "In recent years, with the revival in Japan of nationalist sentiments, Pal has become a hero of sorts among the neo-ultras."²³⁾

Despite the danger that Pal's opinion will always be abused by paying no heed to his real intention, the significance of the opinion in Japanese intellectual history cannot be overemphasized. For it has given and will continue to give clues to ponder again on the interpretations of Westerners on Japan in 1948. Radhabinod Pal should be remembered forever as one of the few brave pioneers who condemned not only the shortcomings of the international trial but the Orientalism toward Japan among Western countries as well.

Notes

I am deeply grateful to Dr. Patricia Wells, my colleague, for her devoted help with polishing my English.

- 1) Edward W. Said, *Orientalism* (New York, 1979), p. 2 and p. 12.
- 2) *Ibid.*, p. 3.
- 3) Richard Minear, "Orientalism and the Study of Japan," *Journal of Asian Studies*, vol. 39, No. 3, May 1980, pp. 507-8.
- 4) *Ibid.*, p. 511.
- 5) *Ibid.*, p. 513-14.
- 6) Takeyama Michio, "Mr. Hyde's Trial," *Showa no Seishinshi* (Tokyo, 1983).
- 7) Hosoya et al., *The Tokyo War Crimes Trial* (Tokyo, 1986), p. 103.
- 8) *Ibid.*, p. 146.
- 9) *Ibid.*, p. 103-4.
- 10) *Ibid.*, p. 77.
- 11) *Ibid.*, p. 68.
- 12) *Ibid.*, p. 195.
- 13) B. V. A. Röling et al., *The Tokyo Judgment* (Amsterdam, 1977), p. 981.
- 14) *Ibid.*, p. 527.
- 15) *Ibid.*, p. 540.
- 16) *Ibid.*, p. 627.
- 17) *Ibid.*, pp. 759-60.
- 18) Said, p. 204.
- 19) Röling et al., p. 982.
- 20) Arnold C. Blackman, *The Other Nuremberg* (New York, 1987), p. 392.
- 21) Röling et al., p. 1035.
- 22) Lord Hankey, *Politics; Trials and Errors* (London, 1950), p. 133 and p. 135.
- 23) Blackman, p. 392.