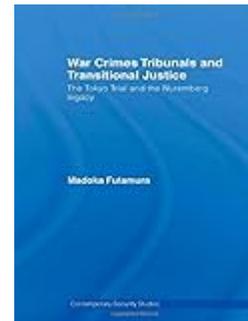




Madoka Futamura. *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy.* Contemporary Security Studies Series. London: Routledge, 2008. xii + 213 pp. \$150.00 (cloth), ISBN 978-0-415-42673-2.



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Is the Nuremberg Principle Universal?

Madoka Futamura's *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* is an intriguing analysis of the Tokyo war crimes trial written in an attempt to discover whether the Tokyo Trial has had the same impact on Japan that the Nuremberg Trial had on Germany. As Futamura states, "this work focuses not only on the trial itself but also on its short- and long-term impact on post-war Japanese society" (p. 11). While the goal is admirable, the scope appears to have been expanded too far for such a compact tome. Just prior to narrowing her focus on Japanese society, Futamura states that the entire Nuremberg legacy needs to be reexamined for assessing the success of *all* international criminal tribunals and prosecution of war criminals in general. It is this hypothesis that receives short shrift in the remaining parts of the book, until reemerging in the final concluding chapter.

Futamura provides a historical overview of the process by which international justice emerged beginning with the Nuremberg Trial. Since the Tokyo Trial was substantively based on its predecessor at Nuremberg, a

discussion of Tokyo is necessarily grounded in what happened at Nuremberg. As Futamura explains, prior to the Cold War, the idea of international threats usually only involved a military threat instigated by one nation against another. An evolving understanding of this concept, however, now including nonmilitary threats, has led to the creation of the Tokyo Trial and more current International Criminal Tribunals (ICTs).

Laying the groundwork for international justice at Tokyo and beyond, the main purposes of Nuremberg, according to Futamura, were to avoid collective responsibility by imposing justice on individual defendants and to create a definitive record of what happened in Germany during World War II. Germany has accepted the Nuremberg judgment and flourished, which may be why the generality of these principles has been adopted. Futamura's analysis of the Tokyo Trial is designed to test these core principles in an attempt to judge their universality.

Once discussion of the Tokyo Trial begins in earnest,

Futamura provides a highly detailed account of the trial, its purposes, and its deficiencies. The Tokyo Trial differed from Nuremberg in many respects. A key difference, which came to influence the way in which the judgment is perceived and accepted in Japan, was that the Tokyo Trial was controlled almost entirely by the United States alone and was fashioned to suit the direction of U.S. policy toward postwar Japan. In addition, procedural differences between Nuremberg and Tokyo led the latter to focus more on the motives of the Japanese in World War II rather than on their conduct. This nourished the sentiment in Japan that the Tokyo Trial was victor's justice, a sentiment that has been reinforced by scholarly publications, like the 1971 book *Victor's Justice: The Tokyo War Crimes Trial* by Richard H. Minear.

According to Futamura, the view of the Tokyo Trial as victor's justice has prevailed throughout Japan from 1946 to the present. In her view, the trial, instead of achieving justice, seems to have achieved apathy about the past on the part of most Japanese. This apathy is based on the widespread belief that the trial was little more than the United States's display of power over Japan after the war. This accounts for a central observation made by Futamura: that the Tokyo Trial is either discussed in Japan only in small and ideologically circumscribed groups or ignored completely.

Based on comparisons to Nuremberg, the perceived errors of the Tokyo Trial, and the Japanese apathy toward the entire event, Futamura draws several conclusions about the Tokyo Trial. First, she claims that the U.S. decision to utilize conspiracy as the legal basis for the indictments was faulty because of the disjointed policies of wartime Japan. This created difficulty in physically identifying conspirators for trial purposes, casting perhaps too broad of a net. Second, the Tokyo Trial excluded many important potential defendants, including the emperor, which has allegedly distorted the history of what happened in Japan during the war—violating an expressed goal of international justice to create an honest historical record for posterity. Finally, by focusing on the war in the Pacific, the tribunal failed to examine the fuller issues of the war (such as the role of imperial power and colonialism) and reduced the complexities to an Axis versus Allies dichotomy. Again, this narrow view failed to provide answers either for the Japanese about what their leaders did or for the victims of Japanese aggression about why they were victimized.

These alleged deficiencies challenge the core purposes of the Tokyo Trial—the assertion of individual re-

sponsibility and the creation of an official narrative. Instead, Futamura argues that the outcome of the Tokyo Trial has in fact been an obstacle for reconciliation within Japan. As time has passed, an inevitable generation gap has emerged. As highlighted in Futamura's interviews and roundtable discussions, the younger generation still lacks an understanding of who was punished at the Tokyo Trial and for what reasons. They have accepted the general responsibility without further research or comprehension of the tribunal's history.

The qualitative data that Futamura collected appears mainly in the final chapter of the book. While definitely an important aspect of the book, its use sometimes seems just tacked on at the end of a historical review of the Tokyo Trial. Futamura conducted semi-structured intensive interviews with people from a range of backgrounds, ages, experience and social group[s] (p. xi). These twenty-one individuals ranged in age from twenty-four to sixty-eight; four of the interviews occurred in London, England, and the remaining took place in Kyoto, Japan. Futamura also conducted five focus groups of mixed ages and genders; the focus groups consisted of people with connection to Doshisha University. Futamura cites these interviews and focus groups as an important source (p. xi), and no doubt they are, but the process of selection is not elaborated upon, leaving one to wonder if the interviewees or focus group participants can truly represent an entire nation's views. This is of course a problem with qualitative research in general; however, a discussion, or at least an acknowledgement, of the potential pitfalls and limitations of this method would have been appreciated.

Through these interviews, Futamura presents a view of the Tokyo Trial that conflicts with its expressed goals and those accomplished at Nuremberg. Instead of imposing responsibility on individuals, the interviewees saw the Tokyo Trial as an imposition of collective punishment. Generations of students, most of whom have no connection to the war, feel as if they bear the burden of responsibility. This burden has resulted in a certain detachment from the war in general and apathy on the part of many Japanese citizens. Unlike Nuremberg, which is seen as having united Germany postwar due to the individualization of responsibility, the Tokyo Trial has left Japanese people with an overall sense of guilt on the one extreme and wounded nationalism on the other. She states that the procedures at Tokyo led to this apathy. The culture of ignorance about the trial developed because they failed to copy the Nuremberg principle of individual responsibility.

This dichotomy and other failures of the Tokyo Trial perhaps point to the obvious conclusion that culture plays a part in how international justice is achieved. From a sociological standpoint this is the clear result; however, in the law, culture plays little to no role in its function. Sensitivity to cultural differences cannot be mandated by law regardless of how universal the body may be. One question raised by Futamura's research is thus what other options exist for bringing war criminals to justice if we cannot rely on the universality of the Nuremberg principles? If the ICTs as currently constructed do not and cannot respect culture, which is a distinct possibility since the International Criminal Tribunal for the former Yugoslavia (ICTY) sits in The Hague and the International Criminal Tribunal for Rwanda (ICTR) sits in Tanzania, both hundreds of miles from the site of conflict, what is the alternative? Local trials have proven to be insufficient (Leipzig) and doubt exists about their fairness. Following World War I, the Versailles Treaty called for Germany to conduct trials of German war criminals. The trials occurred at the Supreme Court of the Empire in Leipzig, though only a small number of people were tried and their sentences were exceedingly lenient.[1]

Futamura closes by saying that she would not wish to maintain that the findings here are the *real* legacy of war crimes tribunals (p. 149, emphasis in original). This leaves open the question then: what is the real legacy of war crimes tribunals? Absent more data, it may be premature to try to answer that question. International

criminal trials are few and far between when looking at the history of peace and justice. Futamura has constructed a signpost on the road of international justice that adds to our understanding of the limitations of the assumption of universality of the Nuremberg principle.

Futamura's work may be the beginning of more in-depth research on ICTs, and there are areas on which the next work could productively build, including the way international justice is interpreted by future generations. While qualitative data may be the best indicator of success or failure for a long-term issue like post-conflict justice, a more thorough explanation of how interviewees were chosen and why would be useful. In addition, some more information on the questions and format of interviews could be useful for replication studies. Despite any minor faults, Futamura has provided a comprehensive overview of the Tokyo Trial and its impact on Japan. I hope that this will influence and encourage others to explore the issue of international justice and the usefulness of ICTs for creating sustainable peace in post-conflict societies.

Note

[1]. William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009); and John C. Watkins Jr. and John Paul Weber, *War Crimes and War Crime Trials: From Leipzig to the ICC and Beyond* (Durham: Carolina Academic Press, 2006).

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