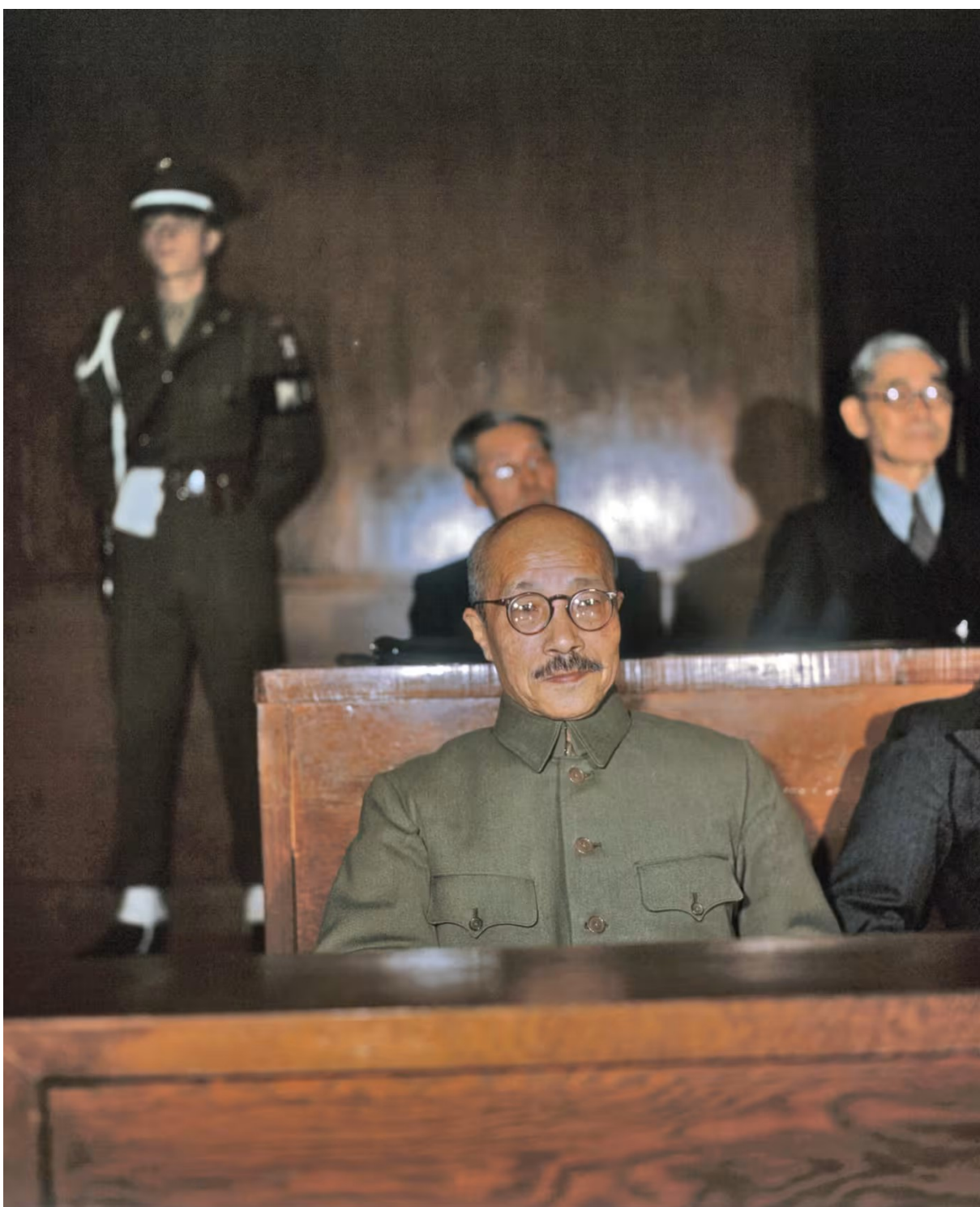


History books

Judgement at Tokyo – what is justice for war crimes?

Gary Bass's grand account of the postwar trial of Japan's leaders shows politics and public opinion matter more than legalities



Japan's wartime prime minister Hideki Tojo on trial at the International Military Tribunal for the Far East © Universal History Archive/ Universal Images Group via Getty Images

Bill Emmott 7 HOURS AGO

The conflict began with a series of “incidents”, which the aggressor blamed on the country it was invading. Later came what today might be called “special military operations” — surprise Japanese attacks on the American naval base at Pearl Harbor

and on British forces in Malaya, Singapore and Hong Kong, all prior to any declaration of war. And the whole conflict, from 1937 to 1945, featured the slaughter of millions of civilians, culminating in the dropping of atomic bombs on Hiroshima and Nagasaki, the “proportionality” of which is still being argued over by historians.

The euphemisms may have changed but the realities of war remain the same, as do the difficulties of defining, let alone achieving, justice in the aftermath of conflict. There can be no doubt that Russia invaded Ukraine in February 2022 without bothering to declare war on a country that Russia’s leader, President Vladimir Putin, considers has no right to exist. Nor can there be any doubt that Hamas, the elected government of Gaza, made a surprise attack on Israel on October 7 last year, and that Israel has responded with an assault in Gaza that has killed tens of thousands of civilians along with Hamas fighters.

In March 2023, the International Criminal Court issued warrants for Putin’s arrest for alleged war crimes. But whether anyone ever appears in front of judges, for his war or for that between Hamas and Israel, will depend on the outcomes and on the balance of geopolitical power. The court of public opinion looks likely to play a bigger role in both cases than courts with begowned judges and solemn procedures.

In *Judgement at Tokyo*, Gary Bass gives us copious detail about the judges and procedures in a magisterial history of the International Military Tribunal for the Far East of 1946-48, the less well-known of the two great war crimes trials that followed the second world war and helped shape the 1949 revision to the Geneva Conventions that forms the basis for modern international humanitarian law. Yet, ultimately, as his analysis shows, in Tokyo too it was politics and public opinion that mattered most.

The Tokyo trial led to the conviction and execution of Japan’s wartime prime minister, Hideki Tojo, along with six other defendants, and sentences for life imprisonment for 16 others. This made it smaller than its predecessor at Nuremberg, in which 24 were indicted and 12 sentenced to death, though its proceedings were more convoluted.

The strange truth is that the Tokyo trial played a part in the successful creation of what is now Asia’s strongest and most prosperous democracy, and of a security alliance between Japan and the US that is one of the world’s closest, and yet was steeped in ad hoc judicial invention, colonial hypocrisy and an inescapable stench of injustice.

Japanese politics ever since have featured a similarly awkward dualism: a powerful

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allegiance to the American alliance and to the international rule of law, alongside a powerful urge among the country's ruling conservatives to defend Japan's wartime history and, in effect, to continuously relitigate the Tokyo trial. Their desire to pay homage at Tokyo's Yasukuni Shrine, the national memorial for the war dead, at which Tojo and other convicted war criminals were enshrined in 1978, helps China to label

Japanese official apologies for its wartime conduct as insincere.

That dualism could be seen above all in the person of the late Shinzo Abe, Japan's longest-serving prime minister ever, who in 2016 flew to New York immediately after the US presidential election to bond with Donald Trump and yet who publicly denied many elements of Japan's wartime conduct that had featured in the Tokyo trial, particularly the forced-prostitution services for Japanese forces known euphemistically as "comfort women".

One lesson is that memories are short and even a well-publicised trial with countless witnesses can be readily countered, decades later, by efforts to deny and rewrite history. One of the declared purposes of the Tokyo trial was to lay out what had happened during the 1937-45 war in China, in which perhaps 20mn Chinese died, and the rest of Asia and the Pacific, and thereby to inform the Japanese people of what had really happened. Modern revisionism among the Japanese elite shows that no such information victory can be for ever.

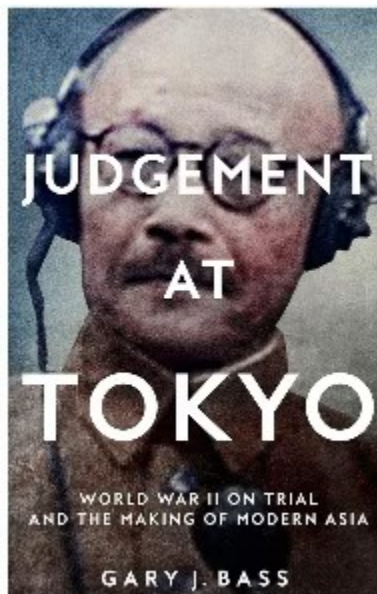




Crowds queue outside the International Military Tribunal for the Far East in around 1946 © AFP via Getty Images

For that reason alone, Bass, professor of politics and international affairs at Princeton (and who, in full disclosure, worked for a year and a half in the 1990s at *The Economist* when I was its editor), has done a great service by spending a decade researching and writing what will surely be the definitive history of this trial. Japanese revisionist historians and politicians might not want to read it, and nor will Chinese historians constrained by state propaganda to for ever condemn Japan, but the rest of us now have something authoritative to consult when trying to assess their claims.

Almost certainly, no one will write a longer study of the trial and its proceedings, but also few studies will be so balanced. *Judgement at Tokyo* arguably dwells for too long on the history that led up to the trial, but on the proceedings the book is a well-crafted, warts-and-all account from which almost no one emerges unscathed. The villains range from the drunken American chief prosecutor, Joseph Keenan, to the openly racist European and Australian judges, to the robotic Soviet officials whose forces were meanwhile imprisoning and often slaughtering Japanese prisoners in Manchuria, to the often deceitful Japanese defendants, and even to Radhabinod Pal, the Indian judge whose vast dissenting opinion made him a hero to Japanese conservatives but who was absent for long periods and was privately disowned by the newly independent government of Jawaharlal Nehru.



The perhaps hard-to-avoid flaw in the Tokyo trial was that many of the Allied judges came from colonial powers whose empires were destined to be dismantled or to

collapse soon afterwards. No one could pretend that either Tokyo or Nuremberg were other than victors' justice, and the British, French and Dutch empires were (for that moment at least) among the victors. Even so, essentially they were convicting Japan's leaders for doing what their own countries had done so successfully and brutally for hundreds of years.

However, the central weakness lay in the decision, as at Nuremberg, of the tribunal to make the main crime one of conspiring and then waging "aggressive war" itself. To some extent this reflected the fact that retreating Japanese forces and defeated ministries had destroyed so many documents as to make assigning responsibility for orders more difficult. But it was also a political decision to give the tribunal sweeping powers to examine Japanese actions and to make life harder for defending counsel.

As Bass describes, this caused problems even among the 11 judges, who proved unable to provide a coherent or consensus account of why the tribunal could claim jurisdiction over this very general indictment and whether it really accorded with existing international law. The Dutch and French judges joined Pal by writing their own dissenting opinions. Most of all, that broad indictment also served to divert attention from the many more specific accusations, such as the rape and slaughter of Chinese civilians in 1937 in the then-capital of Nanjing, or the mistreatment of civilians and prisoners-of-war alike in huge swaths of south-east Asia.

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This also gave ex-prime minister Tojo the perfect platform on which to conduct his defence even though — or perhaps because — he knew he was bound to be executed. His testimony, almost at the close of the trial, might prove a doleful model in the unlikely event that Putin were ever to find himself in front of the ICC.

Tojo argued that by leading his country into war he was just doing his duty, and that "I feel that I committed no wrong". A combined argument of justified national self-defence and *raison d'état*, it was easy to conclude — as Bass says many Japanese did — that Tojo's main crime was not having fought the war but, rather, having lost it.

If the idea of the Tokyo Trial was to provide a proper accounting for what had happened during the Pacific war, it failed. Meanwhile, far larger and more arbitrary

war crimes trials happened elsewhere in Asia, leading to at least 1,000 executions of so-called Class B criminals, and an unknown number following trials held by Soviet and Chinese forces.

Bass quotes approvingly the great American historian of postwar Japan, John Dower, who wrote that the Japanese “embraced defeat”. The US occupation, the restoration of democracy and then Japan’s emergence as a beacon of modernisation and liberal values stand as one of the great diplomatic and institutional successes of all time. The effort to bring justice and to shape the future conduct of war through law was a great deal less successful. Embracing injustice turns out to be a lot harder than embracing defeat.

Judgement at Tokyo: World War II on Trial and the Making of Modern Asia by Gary J Bass *Pan Macmillan, £30 / Knopf, \$46, 912 pages*

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