

紛争、正義、記憶と癒し

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CLEMENCY FOR JAPANESE WAR CRIMINALS, 1945-1958

When we think about post-conflict justice, we also have to consider clemency, meaning any reduction or removal of sentence after the original confirmation of sentence. No criminal sentence can be fully understood if we stop at the moment it is pronounced. In virtually every society, sentences are later changed, by granting parole, reducing or suspending sentences, or granting pardon or some other form of commutation. It was no exception when Allied governments passed judgment on Japanese war criminals after the Second World War. The pronouncement of sentence was thus only half the story. There is another reason to focus on clemency in the case of Japanese war criminals. Unless we do so, we lose sight of the influence of Japan. The Japanese authorities and the Japanese public were crucial players in war crimes justice, but the extent of their influence is only visible if we pay attention to the post-sentencing phase.

Between 1946 and 1948 the Allied powers jointly prosecuted 28 Japanese leaders in Tokyo at the International Military Tribunal for the Far East (IMTFE). From 1945 to 1951, separate national tribunals in 50 places around Asia and the Pacific were also run by seven Allied governments—those of Australia, the Republic of China, France, the Netherlands, the Philippines, the United Kingdom and the United States. These courts prosecuted 5,700 Japanese military personnel for ordinary war crimes against civilians in occupied territories and prisoners of war. Many of those convicted were originally held in prisons outside Japan, near to where they had been tried, but between 1945 and 1953, all were freed or were returned to Japan to serve out their sentences in Sugamo Prison in Tokyo. The Soviet Union and the People's Republic of China also prosecuted Japanese military personnel they designated as war criminals, though these trials took place outside the system created by the other wartime Allies.

Broadly speaking, the separate prosecuting authorities granted clemency for two related reasons. The first was disquiet about contradictions in the original sentencing: not everyone had received a similar sentence for a similar crime. Such anomalies worried officials because they had the potential to undermine the legitimacy of the war crimes trials and the perceived quality of Allied justice. The second was the intensification of the Cold War, and the growing Allied belief that Japan should assume a major role in combating Communism in Asia. In these circumstances, Allied governments came to believe that the political costs of keeping war criminals in prison outweighed the benefits. Japanese advocacy of clemency was influential in convincing the prosecuting powers that retaining war criminals was a political disadvantage.

Reductions of sentences began in the late 1940s. One major means was parole. During the Allied Occupation of Japan (1945-1952), the Occupation authorities introduced parole for prisoners in Sugamo, and by the time the peace treaty came into effect on 28 April 1952, they had paroled 892 war criminals. Under the terms of the treaty, the Japanese government did not recover control of

convicted war criminals held in Japan. Instead, the treaty gave the prosecuting countries the right to make the ultimate decision on any significant variation to sentences. All of the original prosecuting governments now had to decide separately on whether, how and when to grant clemency, though they tried to co-ordinate their actions at least roughly. In the case of the IMTFE prisoners, the eight governments which had participated in the Tokyo trial and had subsequently ratified the peace treaty jointly reviewed the sentences. They were Australia, Canada, France, the Netherlands, New Zealand, Pakistan (as a successor to British India), the UK and the U.S.

After April 1952, the Japanese government and the Japanese public became major players in the process of getting war criminals released. An energetic campaign lobbied the Japanese government and foreign authorities. Campaigners mounted a huge petition campaign, organised public rallies, and targeted the press, which published many stories sympathetic to the prisoners. War criminals became a volatile and emotive issue in Japanese domestic politics, and the public campaign became impossible to ignore. Meanwhile, Japanese officials started processing individual applications for clemency. All governments felt the pressure of the constant arrival of these applications.

The Republic of China was the first to release Japanese war criminals, in 1952. The French and Philippines governments followed, in 1953. Dutch officials insisted on a deal: they refused to release the last prisoners until the Japanese government agreed to pay compensation for losses suffered by civilians interned in the Netherlands Indies in wartime. The Japanese government approved a compensation payment in 1956 and the last Dutch-convicted prisoners were then freed.

Another kind of political consideration now became prominent. No government wanted to be the last to release Japanese war criminals and all were anxious about being left stranded. The eight governments that negotiated with each other over the IMTFE prisoners decided to parole them after they had served ten years, and the last one was released in March 1956. The Australian government decided in 1956 to release prisoners unconditionally after a maximum of ten years, and the last Australian-convicted war criminal left Sugamo in 1957. The British and U.S. governments had also decided in 1954-1955 to free prisoners after a maximum of ten years, but added a proviso that the 'worst cases' could be kept for longer. Thus it was still necessary to review each case. By the mid-1950s, both governments were left with a core group of prisoners who had committed terrible crimes, and for whom they could not find any plausible excuse.

In their reviews of the last remaining cases, British officials accepted more and more of the original Japanese defence arguments. They paid careful attention to the question of whether convicted war criminals had acted on the orders of their superiors, and made allowances if they judged that the crimes had been committed in particularly difficult military circumstances. The British managed to release all their prisoners by January 1957. By the end of that year, the U.S. had 45 left, and all were formally classed as very bad. Officials responsible for clemency were not prepared to recommend their release, because of their dreadful crimes. As a solution, the U.S. government essentially handed over decisions on clemency to the Japanese government, without openly admitting it was doing so. U.S. authorities accepted Japanese parole recommendations, on the understanding that the Japanese authorities had adequately reviewed each case. The last 18 war criminals left Sugamo on parole on 30 May 1958. Together with the prisoners released by the Dutch in 1956, they technically remained under sentence, but in December 1958, both governments reduced the sentences to time served. And so the long process of legal reckoning with Japanese war criminals finally came to an end.