

[Treatise]

The Shadow behind the Tokyo Trial

—Why was not the Head of State Prosecuted?—

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Introduction

In answering a question of what the Tokyo Trial was, Professor Kentaro Awaya, a leading historian of the International Military Tribunal for the Far East, has argued, “The Tokyo Trial refers to multi-factorial histories. And, it is also certainly a contemporary subject, reminding us of unsettled problems of war and peace.”¹ He said so rightly. The historical outcome of the Tokyo Trial was neither established only by a single factor, like American politics, nor convincing of its legitimacy every of us who has lived in the post-war period.

This view can be best learned from a study on why the Emperor Hirohito was not prosecuted in the tribunal. It is well known that the post-war disposal of the Japanese Emperor was “the biggest issue” about which the Allied Countries and Japan argued throughout the process of the Tribunal.² And, the United States consequently decided to keep the Japanese imperial family for its occupational policy, by exempting Hirohito from judgment. Regarding this historical fact, historical researchers agree that Douglas MacArthur, the Supreme Commander for the Allied Powers, played a crucial role in making the decision. In short, the United States granted immunity to Hirohito for the political reason.

However, it has come known gradually that it was not so America-

centric as it were. Past historians overlooked a broad range of public discussion around Japan as to the Emperor's war responsibility, because of their emphasis on international power politics behind the Trial. Also, they tended to consider post-war Japanese authorities as a whole to be sympathetic to defendants. This historiography, however, results in misunderstanding the crux of Japanese government's logic. Japan's government largely shared the idea with the defenders but, it is also true, the government held similar opinion about the post-war disposal of Hirohito to MacArthur's.

Thus, this paper firstly explores the actual process where the Allied Countries reached a decision by examining what strategy Japan deployed in defending its head of state from prosecution. In other words, it studies how Japan contributed to the immunity given to the Emperor. Particular attention is paid to the logic of the Japanese government, its defending activities and the activity of Ichiro Kiyose, a defense lawyer at the Trial.

Another important point to be considered is the relationship between the Emperor Hirohito and MacArthur which is most illuminated in Emperor's words at the "Hirohito-MacArthur" meeting. It has been said that the imperial message was a crucial factor in leading MacArthur to exempt Hirohito from the responsibility for the war. In 2008, however, Professor Narahiko Toyoshita has discovered that Hirohito's message announced for the public in the 1940s had a missing part that suggests us a way to rethink of the Emperor Hirohito.³ Referring to this study, I argue about what the post-war disposal of Hirohito has reminded us.

1. Japan's Reaction to the Coming Military Tribunal

This chapter surveys how Japan understood the war trial and made counter actions to it before its opening. In approaching this question, it

shows that Japanese government had studied the international military court before the defeat, but it failed to understand what it meant in the western context. Precisely to say, Japan expected its wartime leaders to be prosecuted for crimes, but lacked enough knowledge on “the war crime” that would be applied. In so doing, it had a particular interest in this study. It lies in a question whether the Emperor Hirohito would be called by the bar, or not, and how to prevent him from punishment.

Precedents for Prosecuting the Head of State

In the wartime, Japan’s authorities were fully aware of political risks arising from the defeat. Before the Potsdam Declaration, whose Clause 10 stipulates that the Allies punish all the war criminals including those who have abused its prisoners, Japan’s government had known of the coming international tribunal for war criminals through its diplomats. Hence, it started preparation for the Tokyo Trial in wartime. Ichiro Kiyose, a defender at the Tokyo Trial, later recollected:

In the later stage of the war, [Japanese authorities informally] entrusted a study of international laws to the legal consultants to the Army, suggested by Fumio Ohyama, lieutenant general in law of the Army. They were Junpei Shinobu, ex-lecturer in international laws at the Naval Academy, Kousaku Tamura, a distinguished historian of diplomacy, and me (Ichiro Kiyose). We met at an official residence of the Deputy Secretary for the War once a week in order to study the international treaties that had terminated the past war since the Westphalia Treaty, and in particular, we paid close attention to the Versailles Treaty after the Great War.⁴ [translated and supplemented by the author]

This can be considered as a preliminary study for the coming military trials in a context that Japan was going to lose the war. Hence, Kiyose possibly focused on the Versailles Treaty. He, however, never explained why he and his colleagues had such a meeting under the control of the Army. It was supposedly held behind the public.

It is inevitable that Japan studied the Versailles Treaty that spells out the punitive measures given to post-war Germany and its Kaiser, the head of the state. German experience threatened Japan whose constitution was centred on its royal family. For contemporary specialists in international laws, too, the Versailles' clause for Kaiser was controversial. Kisaburo Yokota, a jurist of international laws, wrote that it was a new phenomenon in history to prosecute the Kaiser, the head of state, for the war itself.⁵ Hence, Kiyose certainly investigated "the Kaiser Clause", unless he intentionally missed it. Kiyose, however, did not explain what a specific view they reached in the research. Nor did he mention the clauses for prosecuting "the Kaiser" (Clauses 227-230) which provide that the German Kaiser Wilhelm the Second be prosecuted for his disregarding the international treaties and committing to crime against international morality. Kiyose's memoir leaves unknown what opinion the Kiyose's team had about the precedent for prosecuting the head of state.⁶ It is least certain that Japan faced another international tribunal after the Versailles. While having been a victor in 1919, Japan was on the losing side in 1945.⁷

The Post-war Japanese Government and Tokyo Trial

On 2 September 1945, the International Military Tribunal for the Far East was inaugurated according to Japan's agreement to the Potsdam Declaration, an instrument of surrender, on the battleship Missouri.

This event made Japanese government to seriously consider a question: what “the war criminal” actually referred to. To this question, Kiyose answered:

It is necessary to obey the clause [of the Potsdam Declaration] that “war criminals”, such as those who committed to ill-treatment of prisoners, be inflicted a severe punishment. However, it is difficult to understand the phrase “war criminals” except abusing prisoners.⁸ [translated by the author]

Like Kiyose, Japan’s government sought most to know the meaning of “war criminals.” In its earlier studies on the military tribunal, Sigeharu Enomoto wrote a paper titled “an issue of the officials who were responsible for commencing the war” (“Kaisen ni kansuru sensu sekinin-sha no mondai”) In this, he offers a pessimistic prospect for the treatment of the Emperor Hirohito.

As Japan virtually antagonized the whole world in the last war, which made the war characterised as punishment rather than simply a battle, we face a difficulty with legitimizing the war. ... Thus, we have to contend against the Allied Countries, it is regrettable, for the responsibility for opening hostilities. However, it is also crucial to plead innocence of His Majesty the Emperor and regarding this issue, I hope you read my private memorandum “the responsibility for the exercise the imperial prerogative.” (Taiken sikou ni kansuru sekinin)⁹[translated by the author]

In addition to Enomoto’s study, the Emperor’s responsibility was

mentioned in another government's study titled "the study on the Emperor's responsibility for the war" (Tennou no sensou sekinin ni kansuru kenkyu) :

1. Principle

The problem is about the His Majesty the Emperor Hirohito. Hence, this study aims to argue about the responsibility for the war, based on the precise facts; even slight misrepresentation seems an irreparable mistake in the thinking of Anglo-American laws that would definitely respond; some Japanese subjects would conceal the truth for the fear that he might be punished; although arising from loyalty, it may result in a great mistake, for the reason I have mentioned above. Above all, it seems possible to prove how the Emperor had a sacred thought, hoping peace and disliking warfare at heart, if we bring it to light and avoid misunderstanding.¹⁰ [translated by the author]

Following this fundamental direction, the study explains its specific focus:

Accepting the Potsdam Declaration, Japan admits its diplomatic policies to have wrongly caused warfare. Therefore, we have to study the Emperor's responsibilities for the war. In short, it shall not defend itself but investigates its own fault in the past politics, and it had better demonstrate that the Army or government were responsible for waging the war, and thus how the reason why the Emperor should not be involved in the tribunal. In other words, our point is to criticize government's policy and censure the Army for its maneuvers.¹¹ [translated by

the author]

This study tells us that admitting its responsibility for the war after the Potsdam, Japan's government paid attention to the questions: whether the Emperor was included in war criminals, and how it could avoid the prosecution of the Emperor Hirohito. For these purposes, it did not hesitate to shift the blame for the war onto the wartime government and Army. This opinion differed from the defenders like Kiyose.

It is in this context that on 15 November 1945, the Shidehara Cabinet seconded a question as to "war responsibility," which shows:

Clause 1 General Directions

...

- (2) His Majesty the Emperor prays for a peaceful settlement with the United States.
- (3) His Majesty the Emperor could not reject the policies on commencing the war and military operations decided by the wartime government and Imperial General Headquarters, according to the custom (Kanrei) stipulated in the constitutional law.

Clause 2 Specific Directions

Explanation about His Majesty the Emperor.

- (1) His Majesty the Emperor persistently wished the government to make a peaceful agreement with the United States throughout the war.
- (2) His Majesty the Emperor could not reject the policies on commencing the war and military operations decided by the wartime government and General Staff Office, according to the custom stipulated in the constitutional law.

- (3) His Majesty the Emperor was reported the earlier general plan by the Chief of the Navy before the Attack on Pearl Harbor, but not informed of the specific military operation.¹² [translated by the author]

In short, Japanese government insisted that the Emperor was not responsible for the war, for the most reason that he had wished peace and, as a constitutional monarch, persistently obeyed the constitutional law. In making this decision, the Shidehara Cabinet possibly considered the above-mentioned preliminary studies on war responsibility.

Despite the fact that the post-war government tried to establish a view on the war responsibility of the Emperor by making a cabinet decision, it failed to wipe away a public feeling that the Allied Countries would prosecute the Emperor. This was framed a political trend that international leaders and journalism clamored for the prosecution of Japan's emperor. Even some of Japanese did so.¹³

While the Japanese government sought immunity for the Emperor, the General Headquarter of the Allied Countries had started arresting suspects. On 11 September, it issued the first 39 arrest warrants for those who include Hideki Tojo, the Prime Minister at the opening of the war. In December, it arrested additional suspects that ranged from Emperor's staff and senior politicians, like Koichi Kido, the Inner Minister, Fumimaro Konoe, the late Prime Minister, to such members of the Imperial family as Nasimotonomiya Morimasa-ou, the Marshal of the Army. To this end, it detained 103 Japanese servicemen, politicians, bureaucrats and entrepreneurs, for war crimes at Sugamo Prison.¹⁴

2. How did Hirohito Survive the Tokyo Trial?

This paper has explored Japan's counteraction against the international military tribunal in and after the war, specifically how Japan concentrated on an issue of prosecution of the Emperor. This section argues about another question embedded in the post-war disposal of Hirohito. It is why MacArthur decided not to prosecute Hirohito. Preliminary to answering this question, this paper examines how decisively MacArthur played a role in making the decision of not prosecuting Hirohito.

The powerful initiative of MacArthur arose from political contexts. The Allied Countries, it is well known, were divided in their opinions about the war disposal of the Japanese Emperor and the Emperor system of Japan. In the United States, too the Department of State was split into two factions; one sought abolition of the system, another demanding its preservation.¹⁵ Hence, US authorities had a difficulty in making a decision. It was the State-War-Navy Coordinating Committee (SWNCC) that made a breakthrough to muddle. It entrusted the issue to MacArthur. On its 28th meeting, it adopted a resolution that MacArthur confidentially investigate, and report to the committee, whether the Emperor Hirohito was responsible for the war and thereby should be prosecuted (SWNCC 5 5-6) .¹⁶

The Emperor Hirohito and General MacArthur

Assigned by the SWNCC, Douglas MacArthur had eleven meetings with Hirohito since 27 September 1945. Regarding these meetings, Professor Narahiko Toyoshita points out that the first meeting was the most significant in the arrangement for the immunity granted to the Emperor.¹⁷

At a crossroad meeting, it is said, the Emperor Hirohito expressed that “I come to you, General MacArthur, to offer myself to the judgment of the powers you represent as the one to bear sole responsibility for every political and military decision made and action taken by my people in the conduct of war.”¹⁸ This imperial message was delivered by newspapers, and moved Japanese public. It also impressed MacArthur himself, and almost impelled him to support him. This legendary anecdote is printed in MacArthur’s autobiography, and still gives us a touching story about the imperial words of Hirohito (unless it was constructed) .

The legend drawn from Emperor’s words, however, conceals an important story for its strategic purpose, by combining a bit of truth with a psychological leading. It was the Emperor’s criticism over Hideki Tojo. Professor Toyoshita reveals another word of the Emperor’s that Tojo did not follow the Imperial Rescript on waging the war in the way that the Emperor himself had wished. From this, Toyoshita infers that the Emperor attributed the war responsibility to Tojo at the meeting with MacArthur.¹⁹ This view has been criticized by those who strongly believe that the Emperor does never comment on individuals. And, Toyoshita was also said to argue with a circumstantial evidence. However, the Matsui Paper supports Toyoshita’s view.

It is not straightforward to understand Hirohito’s censure on Tojo, since it was largely known through a variety of historical documents that the Emperor preferred Tojo who was loyal to the Empire. Hence, it is wondered that Hirohito criticized Tojo despite the wartime close relationship. It seems not to arise from simply a bitter complaint against his primary staff. Rather, the reason is that the Emperor intended to answer why he had not stopped the war. In short, he seemingly argued that Tojo decided commencing the war, apart from the Emperor’s true intention for peace. To this end, he represented himself as a constitutional

monarch who could not resist the decision made by a constitutionally elected prime minister, but opposed to warfare. Importantly, this logic permeated all the actions taken by Japan and the United States for the exemption of Hirohito from the war responsibility.

As a consequence of the Hirohito-MacArthur, MacArthur inclined to seriously consider granting immunity for the Emperor. He said to the Emperor before his leaving Japan that when the Washington authorities asked him whether the United States should prosecute Hirohito, he of course objected it.²⁰ The Emperor replied, it is generally said, that he would accept MacArthur's treatment. This conversation may be very crucial in making of MacArthur's decision, since there seems no other psychological determinant but Hirohito's words. MacArthur did not meet any important event but those meetings with Hirohito between 22 October 1945, the day of SWNCC's initial request, and 25 January 1946 when he finally fixed the decision.

It has been so far considered what was true in the imperial words. Here, "psychological leading" that I mentioned above is to be examined closely. By "psychological leading," it means that the imperial words achieved a drastic result. In other words, only a specific phrase was released out of Hirohito's words and consequently praised, even although the full records has not been open to the public. Thus, it seems that some chose necessary information from the meeting, and spread it as imperial words of the legendary Emperor. Before thinking who might have done so, this paper looks into MacArthur's response to the SWNCC at Washington.

MacArthur's Decision

On 22 January 1946, MacArthur read a telegram from the Joint Chiefs of Staff, which tells that at a London meeting of the United Nations War Crimes Commission, Australian representatives submitted an original list of 62 Japanese suspects for war crimes, including the Emperor Hirohito.²¹ As mentioned above, at that time, MacArthur had almost settled a matter of the Emperor's war responsibility. Hence, he was possibly worried whether other Allied Countries would follow Australia. But MacArthur did not immediately bring his answer to Washington, because he had not yet started actual investigation into war responsibility of Hirohito's.²² As a consequence, he was impelled to fix his answer as soon as possible. On 25 January, he sent an urgent telegram to Dwight David Eisenhower, Chief of Staff of the United States Army. In this message, he said that he did not find clear evidence that the Emperor Hirohito committed to war crimes, and then recommended not prosecuting the Japanese head of state. Furthermore, he stated that according to his fullest investigation, he is surely impressed that the Emperor's constitutional functions related to waging the war relied on ministers and advisories around the Emperor. And, he continued, if the Emperor would be prosecuted for war crimes, the United States had to change our occupation plan. It means that it would be necessary for the United States to mobilize a million soldiers and several hundred thousand administrators for Japan's guerilla war, and to establish another wartime supply system.²³ Important in his making the message, he had not carried out any substantial investigation but significantly depended on his staff's advice, which is called Feller's memorandum.

Fellers, MacArthur, and Japan -Constructing a “Powerless Emperor”

The Feller’s memorandum is a private paper about the disposal of Japanese Emperor Hirohito that was written by Brigadier General Bonar F. Feller, a military secretary to MacArthur.²⁴ Its famous phrase regarding the Emperor’s war responsibility is that the Emperor Hirohito, the head of state, is responsible for the Imperial Rescript for a declaration of war issued on 8 December 1941. However, according to a highly credible source, it is proved that the war was not waged by the Emperor. The Emperor had had no intention to carry out the rescript in a way which Tojo actually did.²⁵ In short, Fellers argued that the Emperor wished avoiding warfare, but Tojo, disregarding his wish, commenced the war (which is not true). And, Fellers highly appreciated Hirohito for his cooperation to America’s bloodless occupation and demilitarization of Japanese army. On this ground, he argued that if having prosecuted the Japanese Emperor, the United States would have indispensably prepared another massive expeditionary force with more than several thousand administrators to suppress a national riot. Thus, he concluded, the prosecution of the Emperor would prolong America’s occupation.

In this part, he obviously aimed to lead American government to exempt Hirohito from indictment by emphasizing a strategic value of the Emperor. As for the intention embedded in the Fellers’ memorandum, Professor Toyoshita convincingly explained that it consisted of denial of Hirohito’s war responsibility and a strategic thinking of using the Emperor in the occupational policy.²⁶ As a result, Feller’s view was employed later in the MacArthur’s telegram.

It, however, does not employ Feller’s insistence relating to the Emperor’s war responsibility, and instead emphasizes an image of “powerless emperor” who could not constitutionally oppose to

the decision made by the cabinet. At a meeting with the SWNCC, MacArthur remarked that when he asked Hirohito why he had failed to prevent the war by his rescript, although he could have done so in finishing, Hirohito said that he did never wish waging war, but, even if he wished or other emperors had wished, could not resist the pressures arising from politicians and public opinion.²⁷ Not only in this passage, but in other occasions MacArthur represented the Japanese Emperor as a constitutional monarch. Only by spreading such innocent image of Hirohito, he called for immunizing him.

Along with American efforts, Japan also contributed to constructing “Hirohito, constitutional monarch.” To support the above view, oral evidences of Hirohito were collected by courtiers of Japanese imperial court. In the dictated documents, the Emperor commented on his own political standpoint as a constitutional monarch that “I have no choice but following cabinet’s decisions, even if I am not in favor of them” (translated by the authour). This word was not employed in the Tokyo Trial, but was supposedly read by MacArthur.²⁸ Over all, both Japan and the United States established an idea of “powerless emperor” for immunizing the Emperor.

However, the image of “powerless emperor” was a product of MacArthur’s misunderstanding of Emperor’s constitutional function. In short, he knew of it very roughly. This fact shows that he knew only an aspect of the imperial power (Tennou taiken) in Japanese constitution in terms of its relation to ministers of state.²⁹ In other words, he did not understand Emperor’s military power stipulated by the constitutional law, which means that the Emperor was a commander in chief that could exercise a power of supreme command (Tousui-ken). According to the constitutional law, it was required the Emperor’s agreement to commencing the war.

In consideration to this, it is wondered why the Emperor could not make his own decision at the opening stage of the war, while having been able to do so in accepting the Potsdam Declaration. To resolve this contradiction, I argues, the Emperor had to criticize Tojo for his disregarding the imperial decision-making. In other words, those who depicted Hirohito as a constitutional monarch intended to exempt him from war responsibility, attributing it to someone else. As an inevitable consequence, politicians and military figures were indicted for war crimes. This imputation of war responsibility was a few strategic option that MacArthur could take, who had already decided not to prosecute the Emperor in January 1946. At that time, he had to make a quick but little elaborated decision, when domestic and international public called for punishment of Hirohito. Such a dilemma required legitimacy, which he later found was the imperial message. And, it functioned as he wished. The Emperor's passage that he was responsible for "all the matters" was expected to reinforce an image of "a pathetic monarch" and to receive public sympathy to the maximum extent. MacArthur propagandized and spread it as "imperial words," and largely achieved his purpose. In other words, MacArthur manipulated the Emperor's words for the purpose of "preparation" for the Tokyo Trial. And, for his own purpose of obtaining the immunity, the Emperor made up his mind to accept political rhetoric. It was only a way for him to survive the post-war politics, and to protect the Japanese court (Kokutai) that had a long tradition.³⁰ Hence, the exemption of Hirohito from the Tokyo Tribunal was the very political product for which Japan and the United States cooperated with each other.

Conclusion

As shown above, this paper has argued that the United States exempted the Emperor Hirohito from war responsibilities at the Tokyo Tribunal for the reason that it was necessary in America's occupation to preserve the Imperial system. In the decision-making, MacArthur played a particularly important role. Facing Australian actions for prosecuting the Emperor, he sent an ad hoc message to Washington that the Emperor should not be indicted in the coming trial. This answer without much thought, however, put him into a difficulty. He was impelled to legitimize the immunity granted to the Emperor. Therefore, he propagandized a story of how important Hirohito was in carrying out American occupation. On the other hand, to legitimize the Emperor was also a logical preparatory work at the Tokyo Trial. In short, MacArthur needed the Emperor for its occupational policy, and the Emperor wished MacArthur's help in preserving his royal family and its history.³¹ In other words, despite their difference in political intention, they pursued the same political line as to preserve Japanese emperor system. A verbal device in the politics was the imperial message.

As a consequence that the Emperor was not called to account for the war, however, we have missed a chance to clarify his war responsibilities. As this paper shows, "the Tokyo Trial was not necessarily victor's justice."³² Rather, it seems to be constructed much more diverse agencies and factors as we have expected. The Emperor not judged was a shadow behind the Tokyo Trial.

(Endnotes)

- 1 Chihiro Hosoya, Nisuke Ando and Yasuaki Onuma, *Tokyo Saiban wo Tou*, Kodansha Gakujutu Bunko, 1989, p.119.
- 2 Ibid., p. 131.
- 3 See Narahiko Toyoshita, *Tennou Mac Arthur Meetings*, Iwanami Gendai Bunko, 2008.
- 4 Ichiro Kiyose, *Hiroku Tokyo Saiban*, Chuko Bunko, 1986, p.27.
- 5 Kisaburo Yokota, *Sensou Hanzai Ron*, Yuhikaku, 1947, pp. 22-27. In this monograph, Yokota seems to justify prosecution of Hirohito at the Tokyo Trial by referring to the precedent created by the Versailles Treaty.
- 6 In fact, Kaiser was not prosecuted because of his exile to Netherlands. In this light, it is often wondered whether this case can be seen a precedent by jurists.
- 7 In the earlier stages in the Versailles meeting, Japan opposed to the prosecution of the Kaiser proposed by the United Kingdom and France for fear that another head of state would be judged in future. In short, Japan wished to reduce a future risk for the Japanese imperial system. To this end, however, it agreed to Anglo-French disposal because its primary purpose was to maximize the national interest, not to secede from the peace conference.
- 8 Kiyose, op.cit., p.31.
- 9 Secretary Enomoto, “Kaisen ni kansuru Sensou Sekininsha no Mondai,” (6 September 1945) *A kyu Saiban Sankou Siryou- Sensou Sekinin Mondai*, National Diet Library, Japan.
- 10 Anon., “Tennou no Sensou Sekinin ni kansuru Kenkyu,” *A kyu Saiban Sankou Siryou- Sensou Sekinin Mondai*, National Diet Library, Japan.
- 11 Ibid.
- 12 Kentaro Awaya, *Siryou Nihon Gendai-Shi 2*, Ohtsuki Shoten, 1980, pp. 341-42.
- 13 For instance, the Japanese Communist Party and other related organizations hosted a mass meeting, “Sensou Hanzainin Tsuikyū Jinmin Taikai” on 8 December 1945. In this occasion, they nominated more than a thousand suspects including the Emperor Hirohito.
- 14 Kentaro Awaya, *Tokyo Saiban-Ron*, Ohtsuki Shoten, 1989, p.81. Out of 103 arrested suspects, so-called “Class A suspects” (A kyu yougisha), four committed to suicide.

- 15 Regarding American controversy over the Japanese Court System, see Kiyoko Takeda, *Tennou-Kan no Soukoku-before and after 1945*, Iwanami Shoten, 1993.
- 16 Akira Sangoku, Masanori Nakamura, Yoshinosuke Okada, *Siryō Nihon Senryō I-Emperor System*, Ohtsuki Shoten, 1990, pp. 453-54; Kentaro Awara, op.cit., 1989, p. 198.
- 17 No historian has detailed the MacArthur Hirohito meetings until Toyoshita did so by analyzing the “Matsui Paper” produced by Akira Matsui, a translator at the meetings (Narahiko Toyoshita, op.cit., pp. 87-131).
- 18 Douglas MacArthur, Kazuo Tsushima (Trans.), *MacArthur Kaisou-Ki*, Volume 2, Asahi Shimbunsha, 1964, p.288.
- 19 Ibid., p. 78.
- 20 Narahiko Toyoshita, op.cit., p.119.
- 21 Akira Sangoku, Masanori Nakamura, Yoshinosuke Okada, op.cit., Vol. 1, pp. 461-62.
- 22 Kentaro Awaya, op.cit., 1989, p.198.
- 23 Akira Sangoku, Masanori Nakamura, Yoshinosuke Okada, op.cit., pp. 463-64.
- 24 Fellers was the most experienced expert in Japan, who were around MacArthur. As for his biography, see Makoto Higashino, *Futatsu no Dokuhaku-Roku*, NHK Publications, 1991.
- 25 Akira Sangoku, Masanori Nakamura, Yoshinosuke Okada, op.cit., p.463.
- 26 Narahiko Toyoshita, op.cit., p.15.
- 27 Narahiko Toyoshita, op.cit., p.18.
- 28 Makoto Higashino, op.cit. This hearing record that includes Emperor’s monologue on the process between 1928 and the opening of the war has been unknown to public until 1990 when it was published as “Showa Tennou Dokuhaku-Roku.” Investigating this document, some historians argue that it was possibly a part of preventive measures for prosecuting the Emperor (Akira Fujiwara, Kentaro Awaya, Yutaka Yoshida and Akira Yamada, *Tettei Kenshou Shouwa Tennou Dokuhaku-Roku*, Ohtsuki Shoten, 1991).
- 29 The Emperor of Japan had a supreme power called “Tennou Taiken”, which consisted of such a wide range of powers as supreme command (“Tousui-Ken”).
- 30 Narahiko Toyoshita, op.cit., p.65; p.86.
- 31 In addition, it is to be noted that MacArthur’s decision on immunity of

the Emperor affected the negotiation about a new constitutional law and symbolization of the imperial system between Japanese Government and the General Headquarter. To this end, the General Headquarter convinced Japan's authority that it was necessary to incorporate a new constitutional principle in order for avoiding a big change in constitution and society, a republican system, and prosecution of the Emperor (Kentaro Awaya, op. cit., 1989, pp. 199-200).

32 Kentaro Awaya, *Tokyo Saiban he no Michi*, Koudansha, 2006, pp.183-85.