

# Individual and Collective Guilt: Post-War Japan and the Tokyo War Crimes Tribunal

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It is a popular view that international war crimes tribunals are a tool for social transformation and reconciliation after conflicts. According to advocates, one of their strengths in this regard is the individual punishment of criminals, which is said to achieve justice for victims while avoiding the collectivization of guilt. This is also said to have the effect of endorsing the transformation of the nation by freeing it from the burden of collective guilt while detaching those responsible for war crimes from the society concerned and eliminating their political influence. Does individual criminal punishment achieve these? And is the de-collectivization of guilt through international trials desirable for post-conflict social transformation and reconciliation? This article addresses these questions by focusing on the impact of the Tokyo International Military Tribunal, which is analyzed through the ways in which it has been perceived in post-war Japan. It argues that the Tribunal's punishment of wartime leaders produced an ambiguous effect on the Japanese people's sense of war guilt and responsibility, which in turn became an obstacle for the nation to achieve reconciliation not only with its former victims but also with its own past. The article questions the assumption that international criminal justice can promote social transformation and reconciliation.

Since the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTs), international war crimes tribunals have become a topic of interest for academics and also for practitioners who regard them as a tool for social transformation and reconciliation after conflicts. One of their strengths in this regard is said to be the individual punishment of criminals. Advocates emphasize that this is vital in responding to the victims' cry for justice while also avoiding the collectivization of guilt that fuels the cycle of hatred and

violence.<sup>1</sup> It is also claimed that individual criminal punishment will endorse the transformation of the nation by freeing it from the burden of guilt and the traumatic past. In addition, individual criminal punishment is said to stigmatize the leaders who are most responsible for war crimes, detaching them from the majority of the population and eliminating their political influence.<sup>2</sup> War crimes prosecution is thus not an end itself but a means to achieve the broader aims of transformation and reconciliation. This understanding of the utility of international war crimes tribunals has been the basis of the establishment and operation of the ICTs, the Special Court for Sierra Leone, the earlier plan for an Iraqi Special Tribunal, the creation of a tribunal in Cambodia and the prospects for the International Criminal Court.

Does trial and punishment by international tribunals achieve these ends? And by detaching individual guilt from the collective responsibility of a society for the crimes committed in its name, do such trials run the risk of short-circuiting a more thorough and widespread reflection on past crimes without which neither social transformation nor reconciliation with former victims is truly possible? In order to address these questions, this article focuses on the Tokyo International Military Tribunal established in the aftermath of the Second World War. This provides an important alternative case study to the other, more famous international military tribunal at Nuremberg, which is widely regarded as a positive and universal model for the utility of international war crimes tribunals.<sup>3</sup> The article looks at the impact of the Tokyo Trial, which will be analysed through the ways in which it has been perceived in post-war Japan.<sup>4</sup> The aim is to examine whether a feeling of responsibility by a nation for a war is affected by their leaders having been prosecuted in an international war crimes trial.

### **The Tokyo Tribunal**

The Tokyo Tribunal, formally called the International Military Tribunal for the Far East, was established based on the Charter of the International Military Tribunal for the Far East, issued in January 1946. The Charter was modelled on that of Nuremberg and it included ‘crimes against peace’, conventional war crimes, and ‘crimes against humanity’ in its jurisdiction. The Tribunal was composed of 11 judges from the nine signatories of the Instrument of Surrender – Australia, Canada, China, France, Great Britain, the Netherlands, New Zealand, the Soviet Union, and the United States – plus India and the Philippines, each one of which also offered a member for the Prosecution section. Unlike Nuremberg, the Tokyo Trial was more an ‘American’ than an international tribunal. The Charter was issued through an executive decree of General MacArthur, who had the authority to appoint the justices as well as the President of the Tribunal.

Indictments were issued for 28 defendants on 29 April 1946. Among these were General Tojo Hideki, Prime Minister at the time of the attack on Pearl Harbor, and 17 other military officers. Four of the defendants were former Prime Ministers, and most others were members of wartime cabinets. The Tokyo Tribunal officially opened on 3 May 1946 and lasted until 16 April 1948. The 11 judges spent seven months after that writing the judgment, which took eight days to read out, starting from 4 November 1948. The Tribunal concluded that there was, in Japanese policy, a criminal conspiracy to wage wars of aggression and that the Japanese military had perpetrated serious war crimes against Allied POWs and civilians in China. On 12 November, the judgment was rendered to 25 defendants, excluding two who had died during the trial and one who had been discharged due to a mental disorder. All were found guilty. Seven, including Tojo, were sentenced to death, 16 to life imprisonment, one to 20 years' imprisonment and one to seven years' imprisonment. The seven executions took place on 23 December 1948.<sup>5</sup>

### **The pursuit of individual responsibility**

War crimes issues were an integral part of the policy of the Allies, especially the United States, to demilitarize and democratize post-war Japan.<sup>6</sup> But the punishment of war criminals was not enough; their guilt had to be accepted by the Japanese people. The Tokyo Tribunal was expected to contribute to this end. By prosecuting and punishing individuals, the Tribunal inculcated the military elite while seeking to detach them from the majority of the nation. Joseph Keenan, Chief Prosecutor of the Tribunal, declared in his opening statement: 'We must reach the conclusion that the Japanese people themselves were utterly within the power and forces of these accused, and to such extent were its victims.'<sup>7</sup> The Japanese people's consciousness of being victims was supplemented by a sense of 'having been deceived' by the wartime leaders. The Tokyo Tribunal consolidated this sense by revealing the aggressive aspects of Japan's war and the war crimes committed by the Japanese Imperial Army, of which the nation had not been informed.<sup>8</sup> This strengthened the nation's anger towards, and sense of detachment from, the wartime leadership, especially the military.<sup>9</sup>

In effect, the Tokyo Tribunal allowed the Japanese an opportunity to start from scratch as a peace-loving democratic nation, without looking back to its militarist past. On the day of the Tribunal's judgment, the editorial of *Asahi Shimbun* emphasized: 'What we need to bear in mind is that this trial demands *the complete burial of the Japan of the past*, which was coloured by the militarism that was cultivated by the defendants.'<sup>10</sup> The Tokyo Trial had an impact on the practical as well as the psychological demilitarization of post-war Japan and in this sense its pursuit of individual responsibility succeeded.

However, individual criminal punishment had several side effects that left an ambiguous legacy in the Japanese understanding of war guilt and responsibility at a more collective, societal level. First, punishing wartime leaders detached the majority of Japanese people not only from the defendants but also from the crimes they committed. This was partly because ordinary people did not take the Tokyo Tribunal personally and remained bystanders of the trials.<sup>11</sup> At the same time, their sense of having ‘been deceived’ and of being victims led to self-justification and self-immunization regarding responsibility for a war that the whole nation had supported.<sup>12</sup> This was well expressed by a political cartoonist at the time: ‘All of us were deceived and used by them [the defendants], and we cooperated in the war without knowing the true facts. Looking back now, *this was because of ignorance and being deceived*.’<sup>13</sup> The Japanese people’s self-image as victims of a war recklessly fought by their own military obviated the necessity of facing up to their own collusion in the suffering inflicted on other nations.<sup>14</sup> Such an attitude was made all the easier in that (with a few exceptions, such as the 1937 massacre at Nanking) the trial failed to focus on the suffering of Asian civilians under Japanese colonial rule.<sup>15</sup> Most of the cases concerned Japanese foreign and military policies that led to war and also the treatment of Allied prisoners. Hence, consciously or unconsciously, the Japanese displaced the burden of their war guilt and responsibility onto the shoulders of the defendants at the Tribunal. Some intellectuals were aware of the responsibilities of the Japanese nation more generally.<sup>16</sup> However, as Yoshida Yutaka explains, they did not talk about collective guilt for fear that this might nullify the impact of the attempt by the Tokyo Tribunal to make individual leaders responsible.<sup>17</sup>

Second, the Tribunal did not indict the Emperor. Whether Hirohito played a significant role in planning and waging the wars of aggression has been debated. But it is undeniable that the Japanese people believed that they fought the war in his name, and that all orders followed by soldiers during the war were made under his authority. By granting the Emperor immunity, the Tokyo Tribunal obscured Japanese war responsibility in a rather distorted way. As John Dower argues: ‘The result is that responsibility for the Pacific War came to rest with “everybody and nobody”.’<sup>18</sup> Awaya Kentaro, a scholar of the Tokyo Tribunal, suggests that the immunity given to the Emperor ‘became an obstacle for the Japanese in developing an active sense of war responsibility’.<sup>19</sup>

Third, for the Japanese, the accusation of war crimes was settled with the execution of seven defendants in December 1948. The Tokyo trials thus worked towards closure of the entire issue of responsibility for the war and wartime atrocities, including their moral and political implications for the whole nation.<sup>20</sup> It was assumed that issues not examined by the Tribunal were guilt-free, and in this way, individual criminal punishment not only freed the Japanese from responsibility but also deprived them of the will, and perhaps the opportunity, to reflect further on their and others’ war guilt.

It should be noted that the Tokyo Tribunal did not occur in a vacuum and was therefore far from the only cause of these ‘side-effects’. First, the Tokyo Trial appealed to national sentiment at the time for some reasons. Sudden defeat in a war that the nation had been told to win shocked the Japanese and created frustration and anger towards their wartime leaders.<sup>21</sup> In addition, the Japanese people needed to bury the past, look to the future and move on.<sup>22</sup> Second, the trials also took place in the context of the American occupation and were regarded as a ‘physical necessity’ for the vanquished.<sup>23</sup> Accordingly, the Tribunal was something that had to be gone through in order for Japan to re-enter the international community, but not as an occasion for deep inner reflection. All this helped produce a national feeling of apathy towards, and detachment from, the Tokyo Tribunal. According to a Japanese researcher, already in the 1960s very little had been said about the trials.<sup>24</sup> Apathy persisted until the mid-1980s, when the release of a feature-length documentary film, *Tokyo Saiban* [The Tokyo Trial], stimulated national interest. This long-standing indifference doubtless contributed to the broader Japanese lack of interest in war crimes and responsibility for the war that also prevailed until the 1980s.

### Perceptions of collective responsibility

Thus far, it seems that the Allies’ goal of pursuing individual responsibility for war crimes through the Tokyo Tribunal in order to detach the Japanese from wartime leaders and their war responsibility succeeded only too well. However, further consideration suggests that instead of liberating the Japanese from the past, the Allied prosecution and punishment of wartime leaders distorted perceptions of war responsibility and war guilt and even made the Japanese aware of a charge of collective responsibility. This occurred for a number of reasons.

Individualizing responsibility for the war and the mass violence conducted in the name of the nation raised the question of the basis on which the accused were to be selected. As a prosecutor at the Tokyo Tribunal admitted, this was not straightforward.<sup>25</sup> Individuals were selected, or eliminated, according to the political calculations of the Allied Powers, especially of the United States, one example being the immunity from prosecution granted to the Emperor. The arbitrary choice of defendants was recognized at the time and this made it unclear to the Japanese whom, and what, the Tokyo Tribunal was targeting. This in turn sent a contradictory message that the Tribunal was really prosecuting the Japanese collectively.<sup>26</sup> Soon after the occupation, a member of the Defence Counsel claimed that the Tokyo Tribunal indoctrinated the Japanese with the idea that they were all ‘international criminals who have waged aggressive war’, a charge repeated by subsequent critics.<sup>27</sup>

Moreover, the whole project of an international military tribunal mounted by former enemies gave the impression that the Tokyo Tribunal was trying the Japanese collectively. In 1946, Kiyose Ichiro, Tojo's counsel, expressed his ambivalent feeling as a defence lawyer at the Tribunal:

If the trial was to pursue the leaders' war responsibility against their nation, our attitude as the Defence Counsel might have been different from what it is now. However, because the Trial is international in its character, I do my best to express to the world our country's past position.<sup>28</sup>

The feeling that not individual leaders but Japan itself was on trial has been shared by many Japanese, albeit vaguely. It is still perceptible through the common view that the Tokyo trials were 'victors' justice' against the 'vanquished.'

This raises the further question of why one side only was subjected to war crimes trials – a point picked up enthusiastically by conservatives, nationalists, or revisionists who challenge the legitimacy and outcome of the Tokyo trials. They claim that the aim of the Tokyo Tribunal was not to pursue justice but to destroy the culture, philosophy, and national spirit of Japan, in order to remodel the vanquished nation. Tanaka Masaaki, for example, is vocal on this point: 'The Tokyo trial has deliberately instigated a consciousness [that we have committed a crime] and, by distorting the facts, concluded that Japan's whole past was a crime [...] It completely succeeded in weakening the Japanese nation.'<sup>29</sup>

By contrast, the majority of the Japanese have accepted 'victors' justice' passively. As noted earlier, people after the war regarded the trials as 'inevitable' because Japan lost the war, a sense still widely shared.<sup>30</sup> This shades readily into the cynical belief 'the Tokyo Tribunal was a result of the defeat, *nothing more*', which prevents people from contemplating the significance of the prosecution and punishment of war crimes and results in apathy or indifference towards the trials.<sup>31</sup> This attitude was already of concern to some academics at the time of the trials. Gushima Kanesaburo lamented the fact that many people considered the Tribunal to be based on the logic of 'might is right' and he felt that their understanding of the legal basis and jurisdiction of the trials was insufficient.<sup>32</sup>

This suspicion of 'victors' justice' created a scar in the Japanese mind. Despite some appreciations that the Tribunal sought to eliminate the military and militarism from the nation, which was vital for a Japan in transition, such a view is rarely expressed publicly. The fact that the Tribunal was imposed externally and unilaterally provokes a reaction of national, or nationalistic, pride, and leads to a sense of distaste, if not revulsion. Yui Daizaburo, a historian, pointed out in the late 1990s that at the root of the unsettled assessment of the Tokyo Tribunal among the Japanese lies a sense of unfairness, still detectable after more than half a century.<sup>33</sup> Onuma Yasuaki, an international legal scholar, states:

The Tokyo Trial was the judgment by the Allies, as outsiders, and it was conducted with some unfairness that was maintained by the authority of the

occupation army. This is why the Trial could not obtain universal moral acceptance. In that sense, the Tokyo trials may have been an obstacle to dealing with the issue of war responsibility without any distortion.<sup>34</sup>

### **The Tokyo Tribunal and ‘post-war responsibility’**

The Tokyo Tribunal could neither successfully individualize the responsibilities of the wartime generation nor prevent collective guilt from being passed on to future generations. In other words, the trials did not attain complete ‘closure’. The issues of past war crimes and war responsibility resurfaced in the 1980s and received greater attention in the 1990s, when the voices of the long-silent victims in Asia, notably the former ‘comfort women’, became louder against a backdrop of the end of the Cold War and the development and democratization of Asian countries. The government was pressured to admit the fact of the comfort women and provided ‘sympathy money’ to the victims. Some criticized its actions as insufficient but others saw them as too apologetic. The latter were also frustrated by the fact that the government was more or less supported by the nation, which in their eyes uncritically accepted that Japan had committed war crimes. The frustration gained momentum and led to the so-called neo-nationalist and revisionist movement in the 1990s, which attacked the Tokyo trials as the source of the people’s ‘apologetic’ and ‘masochistic’ attitude towards the past.<sup>35</sup> Revisionists and nationalists claimed that the guilty verdict of the Tribunal distorted history, labelled the Japanese war as aggressive, and instilled a sense of guilt in the Japanese people.

Neo-nationalist and revisionist claims did not necessarily represent the majority of the population. According to an opinion poll conducted in October 1993 by *Yomiuri Shimbun*, 53.1% agreed with the statement that ‘Japan was an “aggressor” in WWII’, while 24.8% disagreed and 22.1% did not answer.<sup>36</sup> In addition, it came to be argued more strongly in the 1990s that having not reacted adequately earlier, Japan currently has a ‘post-war responsibility’ [*Sengo Sekinin*] to respond to the victims’ claims and to make the government fulfil its responsibility.<sup>37</sup> As noted, the Tokyo Tribunal did not examine the alleged war crimes against Asian peoples under Japanese colonial rule. As some pointed out, the Tokyo trials enabled ‘post-war responsibility’ to be carried over to the present-day.<sup>38</sup>

However, ‘post-war responsibility’ is a bitter and uncomfortable concept for the current generation, which is ambivalent about the war and assuming responsibility for it. This can be seen from the fact that while an opinion poll in 1994 showed that more than 70% thought that the government ‘has not adequately compensated the people of countries Japan invaded or colonized’<sup>39</sup>, some 5 million signatures were gathered for a petition against a 1995 parliamentary resolution of apology.<sup>40</sup> The younger generation seeks a positive national identity

but is also dismayed by the outcry for apology and compensation that drags the country back to a dark past.<sup>41</sup> Some are even frustrated by this. An MP of the conservative Liberal Democratic Party stated in parliament: ‘Regarding the self-reflection of the Japanese nation as a whole, because I myself am not of the generation directly involved in the war, I do not engage in such self-reflection and see no reason to be asked to do so.’<sup>42</sup> The neo-nationalist claim that the Tokyo Tribunal instilled the Japanese with a sense of guilt appeals to precisely this sense of frustration. The advocates of international war crimes tribunals argue that individual criminal punishment would de-collectivize responsibility for war crimes and free the nation from the burden of guilt. It is ironic that the Tokyo trial not only failed to do so, but came to be attacked as the very source of a sense of collective guilt that has been inherited by the younger post-war generations.

The combination of the current Japanese people’s apathy and frustration regarding the Tokyo Tribunal and responsibility for war and war crimes is evident in the row over the Prime Minister’s visit to the Yasukuni shrine, where the spirits of about 2.5 million war dead since the 19th century are enshrined – among them 14 of those convicted by the Tokyo Tribunal. Under Prime Minister Koizumi Junichiro, who has visited the shrine every year ever since he took office in 2001, the row has caused tension with the neighbouring countries that suffered under Japanese occupation. In the eyes of the Chinese and Korean governments, it is a total contradiction that the Prime Minister expresses atonement for a war of aggression while also visiting the site where wartime leaders are enshrined.<sup>43</sup> Interestingly, although the majority of the Japanese recognize criminality in the country’s wartime history, public opinion has been completely divided with regard to Koizumi’s visit to Yasukuni. *Asahi Shimbun*’s opinion poll showed that 41% supported his plan for the first visit in 2001, and 42% had expected him to be ‘cautious’, expressing hesitation to support his visit.<sup>44</sup> Opinion became more hostile to the visits after a mass demonstration took place in China and diplomatic relations between the two countries worsened in spring 2005. An opinion poll of late June 2005 showed that 52% felt Koizumi ‘should stop his visit’, while 36% supported it.<sup>45</sup>

The Yasukuni controversy encapsulates the ambiguity and complexity of Japanese relationships with the Asia-Pacific War, entailing as it does both the commemoration of those who died and responsibility for the war and for the commission of atrocities by the armed forces. It blurs the demarcation between war criminals and the war dead. It pits the interests of the present against the memory of the past. In an opinion poll in May 2005, for example, 51% answered they ‘cannot understand the fact that China problematizes Yasukuni to this extent.’<sup>46</sup> And the pros and cons of the debate resurrect one of the core questions in the Tokyo trial – whether those convicted as war criminals were villains or patriotic war-dead. Hata Ikuhiko, a historian, argues that if they had been tried

by a domestic court and found guilty, the spirit of the defendants would not have ended up being enshrined at Yasukuni. But the Tokyo Trial ‘purified the “crimes” of the accused and turned them into martyrs.’<sup>47</sup>

### **Reconciliation, social transformation, and the Tokyo Tribunal**

The ambiguities of the process by which Japan has sought to address its responsibilities for the Asia-Pacific War, as exemplified by their experience with the Tokyo Tribunal, are problematic both for the country’s reconciliation with its neighbours and also for its relationship with its own past. For reconciliation to occur between perpetrator and victim, it is necessary for the former to admit their crimes as well as certain responsibilities arising from these. The victims, for their part, need to refrain from demonizing and blaming their former enemy collectively. However, the ambivalence of the Japanese government and many of the people infuriates the victim nations and causes disbelief. The Japanese, for their part, are frustrated by what they see as the sometimes excessive criticisms made by the Chinese and Korean governments of Japanese attitude towards the war. What is more, rows over neo-nationalists, neo-revisionists, and the Yasukuni shrine place the Tokyo Tribunal at their centre. All this suggests that the Tribunal not only has had little positive impact but also casts a long shadow over the country’s reconciliation with its Asian neighbours.

How people perceive the issue of their responsibility for the past at some collective level also frames the identity of the nation. This is why the very topic of guilt and responsibility for the war and for war crimes has provoked an emotional debate between commentators on the left and the right, with the former complaining of too little awareness of Japan’s responsibility for the past and the latter of too much. Ironically, the right cannot claim that the issue of war responsibility and compensation was laid to rest with the Tokyo Tribunal since they deny any validity to a legal process that (they claim) imposed an excessive sense of guilt that still haunts Japanese society. As for the left, which is eager to pursue responsibility for Japanese war crimes and to criticize the country’s militarist past, it cannot accept the Tokyo Tribunal wholeheartedly since it failed to indict the Emperor and deal with Japan’s war crimes against occupied Asian civilians. Both are critical about the Tokyo Tribunal but in different ways.

Caught in the middle, the majority of Japanese people prefer to remain silent about the Tribunal because it raises problems with regard to both what was judged and what was *not* judged, the examination of which forces the nation to face difficult and painful questions. The Japanese, as a nation, supported the war that was accompanied by various war crimes, and people are well aware deep down that the nation’s responsibility cannot be de-collectivized simply by individual criminal punishment.<sup>48</sup> This is why the Tokyo Tribunal became a national taboo,

which has been talked about emotionally and ideologically within a limited circle and simply ignored by the majority of the population. The apathy, or taboo, surrounding the trial indicates that Japan is still struggling to come to terms with its past and that the Tokyo Tribunal has been an unhelpful national experience.

The Tokyo Tribunal's criminal punishment of wartime leaders has left an ambiguous effect on the Japanese people's sense of war guilt and responsibility. Individual criminal punishment detached them not only from war criminals but also from war crimes as a whole, resulting in a national apathy towards the Tokyo Tribunal and its significance. At the same time, the perception of 'victor's justice' gave the impression that the Tribunal was collectively punishing the Japanese as a nation. These paradoxical impacts contributed to the ambivalent sense of Japanese responsibility for the war, which consists of a mixture of guilt, lack of interest, cynicism and frustration. This is problematic for Japan's reconciliation not only with its neighbours but also with its own past.

The lesson may have wider application. For it illustrates the possibility that international war crimes prosecutions may make the issue of responsibility more complex, especially in the long term, and may even distort people's sense of war guilt and their ability to reflect on broader responsibilities for war and violence. This does not help a society to go through the difficult processes of social transformation in the aftermath of war and mass violence or to promote reconciliation with former victims. The experience of the Tokyo Tribunal suggests the need to re-examine the strategy of ongoing international war crimes tribunals and to question the understanding of what international criminal justice can achieve and what outsiders can – and cannot – do to promote reconciliation and change attitudes.

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In this article, the Japanese names are cited with the family name first, then the first name, following Japanese convention.

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38. T. Takahashi (1999) *Sengo Sekinin-ron* (Tokyo: Kodansha), p. 21.
39. *Asahi Shimbun*, 23 August 1994.
40. Quoted in M. J. Osiel (1994) *Mass Atrocity, Collective Memory, and the Law* (New Brunswick, N.J.: Transaction Publishers) p. 189, footnote 74.
41. G. McCormack (2000) *The Japanese Movement to 'Correct' History* in: L. Hein and M. Selden (eds) *Censoring History: Citizenship and Memory in Japan, Germany, and the United States* (Armonk, N.Y.: M.E. Sharpe), p. 58.
42. Quoted in the editorial of *Asahi Shimbun*, 18 March 1995.
43. See for example 'Japanese shrine visit angers Seoul', Monday, 22 April, 2002, BBC News, <http://news.bbc.co.uk/1/hi/world/asia-pacific/1942086.stm>, 7 March 2004.
44. *Asahi.com*, <http://www.asahi.com/special/shijiritsu/TKY200404190343.html>, 1 July 2005.
45. *Asahi.com*, <http://www.asahi.com/special/050410/TKY200506270317.html>, 1 July 2005.
46. *Asahi.com*, <http://www.asahi.com/politics/naikaku/TKY200505300363.html>.
47. Quoted in I. Buruma (2002) *The Wages of Guilt: Memories of War in Germany and Japan*, paperback edition (London: Phoenix) p. 163.
48. This point was raised by the editorial of *Mainichi Shimbun* on 23 December 1948, the day seven defendants were executed.

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