The Australian Pursuit of Japanese War Criminals, 1943–1957

From Foe to Friend

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Introduction

For Australia's government, military, and people, the conflict with Japan that lasted from December 1941 to August 1945 was by far the most significant part of the Second World War. During those years Australian and Commonwealth forces, alongside those of the United States, battled the Japanese military on land, at sea, and in the air in a series of ferocious and bloody encounters. Japan achieved great military success early in its war against the US and its allies; at its peak the Japanese empire encompassed large areas of East and South East Asia and the Pacific. As a result of their sweeping early victories, Japanese forces captured roughly 320,000 prisoners, of whom 140,000 were Allied soldiers. The rest were civilians in areas that Japanese forces occupied.[1] Of the Allied soldiers, about 22,000 were Australian.[2] In August 1945 Japan surrendered unconditionally, and the Allies occupied Japan from September 1945 until the San Francisco Peace Treaty came into effect on 28 April 1952. The occupation was officially a multilateral undertaking by the Allies, whose interests were represented in Washington by the Far Eastern Commission (FEC), which was intended to be the main policymaking body for the occupation. In practice, however, the occupation was dominated by the United States, and chiefly by the Supreme Commander for the Allied Powers (SCAP), Gen. Douglas MacArthur, and a vast military and civilian organization under his control in Japan. Nonetheless, the occupation of Japan formed a dynamic part of several nations' post-war foreign policy, including Australia's.

In the early period of the occupation, the Allied authorities focused on the removal of militarist influence from Japan and the reform of Japanese institutions so that the country would become a democratic nation. A key part of this agenda was to bring alleged war criminals to justice. As the Second World War drew to a close, the Allied leadership had made special mention of war crimes, in particular they signalled in the Potsdam Declaration of July 1945 an intention to call to account all war criminals, including those Japanese soldiers who were responsible for cruelties against prisoners

1. Gavan Daws, *Prisoners of the Japanese: POWs of World War Two in the Pacific* (Carlton, Vic.: Scribe Publications, 1994), 96.
2. For details see Gavin Long, *The Final Campaigns* (Canberra: Australian War Memorial, 1963), 634.

of war.[3] In areas occupied by the Japanese, treatment of Allied prisoners and of the native peoples had been unsympathetic and often brutal. Moreover, as the tide of war turned against Japan, supply problems and the need to extract hard physical labour from POWs and civilians had led to further deterioration in conditions for those subject to Japanese authority. Japan's treatment of foreign civilians and POWs thus became a major focus of a series of military trials for 'ordinary' war crimes, which were conducted separately from the international trial in Tokyo of political, military, and diplomatic leaders. Australia was one of seven countries to prosecute Japanese soldiers for 'ordinary' war crimes. The political and social significance of the Australian pursuit of Japanese war criminals is the subject of this book.[4]

Overall, the crimes prosecuted at the Allied trials of Japanese war criminals were divided into three types, according to a categorization set out in Article 6 of the Charter of the International Military Tribunal of 8 August 1945. The charter was signed by the US, France, Great Britain, and the USSR, and was initially supposed to provide the legal basis of trials of major European war criminals. Suspected war criminals were to be divided into 'Class A', 'Class B', and 'Class C'. Class A suspects were considered to be major war criminals and were charged with offences that related to the planning, initiating, or waging of aggressive war. In the Japanese case, Class A suspects faced trial in the International Military Tribunal for the Far East (IMTFE) in Tokyo between April 1946 and November 1948.[5] Eleven judges sat on the tribunal, representing the US, UK, Australia, New Zealand, the Netherlands, the Philippines, India, China, Canada, France, and the USSR. On trial were twenty-eight Japanese civilian and military leaders. All twenty-five of those accused against whom verdicts were passed were found guilty of one or more charges. Seven were sentenced to death, sixteen to life in prison, one to twenty years, and one to seven years. Two other defendants died before they could be sentenced and one was declared insane.[6] The Class B and C trials of Japanese suspects began very soon after the war ended in late 1945. Class B suspects were to be charged with 'conventional war crimes', while Class C suspects would be charged with 'crimes against humanity'. There were

3. Potsdam Declaration, July 1945, in *Conflict and Tension in the Far East: Key Documents 1894–1960*, ed. John M. Maki (Seattle: University of Washington Press, 1961), 122.
4. This work is based on the author's PhD thesis, 'After the Surrender: Australia and the Japanese War Criminals, 1943–1958' (Murdoch University, 2013). The book also includes research from the author's other major work on war criminals, S. Wilson, R. Cribb, B. Trefalt, and D. Aszkielowicz, *Japanese War Criminals: The Politics of Justice after the Second World War* (New York: Columbia University Press, 2017).
5. For details of the Tokyo trial, see Yuma Totani, *The Tokyo War Crimes Trials: The Pursuit of Justice in the Wake of World War Two* (Cambridge, MA: Harvard University Press, 2008); Timothy Maga, *Judgment at Tokyo: The Japanese War Crimes Trials* (Lexington, KY: University of Kentucky Press, 2001); Richard Minear, *Victor's Justice: The Tokyo War Crimes Trial* (Princeton, NJ: Princeton University Press, 1971); Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (New York: Oxford University Press, 2008).
6. Boister and Cryer, *The Tokyo International Military Tribunal*, 240–41, 252.

in fact no prosecutions for crimes against humanity in Asia or the Pacific,[7] but the Allied authorities used the designation of 'Class B and C war criminals' to distinguish between the Japanese leadership, Class A, who were tried at Tokyo, and those war criminals who faced Allied courts elsewhere.[8] The accused in BC war crimes trials ranged from low-ranking Japanese soldiers to senior officers in command of units. The crimes ranged from slapping, beating, or mistreating a prisoner, to cases of murder and cannibalism. Some high-profile cases involved questions of 'command responsibility', which assessed the guilt of Japanese commanders in failing to prevent war crimes perpetrated by their units.

Class B and C suspects were not prosecuted in international courts but rather by individual Allied governments. In all, 5,677 Japanese soldiers were prosecuted for Class B and C war crimes by seven different governments, namely those of the US, Great Britain, the Netherlands, the Philippines, France, Nationalist China, and Australia, in about fifty venues around Asia and the Pacific, and in Darwin.[9] The USSR and the People's Republic of China (PRC) also conducted trials of Japanese war criminals, but did not recognize the categories of Class B and C and operated outside the system in which Australia participated, and on a completely different timetable. As Communist countries, the Soviet Union and the People's Republic of China did not work together with the other Allies, nor did they keep them or the Japanese government informed of the progress of their legal proceedings. In fact, the Soviet trials were conducted in secret and consisted of summary proceedings only.[10] The Allied trials, by contrast, featured dialogue among the prosecuting countries, similar legal frameworks, and an effort to conduct transparent proceedings. For these reasons, the Communist trials are not considered in detail in this book.

When the war ended, Australian authorities believed they had strong evidence that Japanese war crimes had been extensive. The Queensland judge, Sir William Flood

7. Sakai Takashi was charged by Chinese authorities for crimes against humanity, but the term appears to have been used loosely. See Wilson et al., *Japanese War Criminals*, 263.
8. Wilson et al., *Japanese War Criminals*. In this book I have adopted the convention used in the archival sources of referring to them as Class BC war criminals.
9. Several works on the other seven countries' trials exist. For a general overview of all the prosecutions, see Philip R. Piccigallo, *The Japanese on Trial: Allied War Crimes Operations in the Far East 1945–1952* (Austin: University of Texas Press, 1979), 130. For the Nationalist Chinese trials, see Barak Kushner, *Men to Devils, Devils to Men: Japanese War Crimes and Chinese Justice* (Cambridge, MA: Harvard University, 2015). For the French trials, see Beatrice Trefalt, 'Japanese War Criminals in Indochina and the French Pursuit of Justice: Local and International Constraints', *Journal of Contemporary History* 49 (2010): 727–42.
10. For the Soviet trials, see John W. Dower, *Embracing Defeat: Japan in the Aftermath of World War II* (London: Penguin Press, 1999), 449; Boris G. Yudin, 'Research on Humans at the Khabarovsk War Crimes Trial: An Historical and Ethical Examination', in *Japan's Wartime Medical Atrocities: Comparative Inquiries in Science, History and Ethics*, ed. Jing-Bao Nie et al. (London: Routledge, 2010), 59–78. For the PRC, see Adam Cathcart and Patricia Nash, 'War Criminals and the Road to Sino-Japanese Normalization: Zhou Enlai and the Shenyang Trials, 1954–1956', *Twentieth Century China* 34, no. 2 (2009): 89–111; Adam Cathcart and Patricia Nash, '"To Serve Revenge for the Dead": Chinese Communist Responses to Japanese War Crimes in the PRC Foreign Ministry Archive, 1949–1956', *China Quarterly* 200 (2009): 1053–69.

Webb, who would later be appointed as president of the IMTFE, conducted a series of investigations in 1943 and 1944 into alleged war crimes against Australian soldiers in New Guinea. The result was a lengthy report, which extended to over four hundred pages and found that Japanese war crimes against Australian soldiers had been widespread.[11] The Australian government moved quickly after the war ended to establish the legal framework for war crimes prosecutions. As a country that belonged to the British Empire, the Australian government could have used the legal framework the UK government had set up for its trials. The government decided against this option, however, and instead created the Australian War Crimes Act 1945 which was completed in October 1945.

The Australian prosecutions began in November 1945 and concluded in April 1951. Australia was the last of the seven Allied governments to conclude its trials, although for its part the PRC did not even begin proceedings until 1956. Continuing trials into the 1950s was not originally part of the Australian government's plan. Government officials initially thought the hearings would take twelve months to complete, but delays saw this loose deadline extended to 1947 and then finally to 1951. In total, three hundred Australian trials were held, and 924 accused were prosecuted. Because some accused appeared in two or more trials, the actual number of defendants was fewer, at 814. In all, 644 accused were convicted, with 148 death sentences handed down, and a total of 137 individuals actually executed.[12] Some of the trials were conducted with a single defendant, while others were large, with as many as 92 defendants in the most extreme case.[13] War criminals were prosecuted by the Australian government in Rabaul, Wewak, and Manus Island in Australian New Guinea; Singapore; Hong Kong; Morotai in the Netherlands Indies; and Labuan in Malaya. Early tribunals were also convened in Darwin, although after three trials there in March and April 1946, the Australian government decided that no more prosecutions should be conducted on Australian soil due to the intensely negative press reaction to the perceived leniency of the verdicts and sentences.[14]

11. Sir William Webb, 'A Report on Japanese Atrocities and Breaches of the Rules of War', 1944, National Archives of Australia (hereafter NAA), Canberra, A10943, 1580069.
12. Tim McCormack and Narelle Morris, 'The Australian War Crimes Trials, 1945–51', in *Australia's War Crimes Trials, 1945–51*, ed. G. Fitzpatrick, T. McCormack, and N. Morris (Leiden: Martinus Nijhoff, 2016); David Sissons, 'Sources on Australian Investigations into Japanese War Crimes in the Pacific', *Journal of the Australian War Memorial* 30 (April 1997): unpaginated. For details of the crimes, see 'Japanese War Criminals Charged Under the War Crimes Act 1945 by Australian Military Authorities 30 Nov 1945 to Apr 1951 Against Whom Findings and Sentences Were Confirmed', NAA, Melbourne, 1946–1957, MP927/1, 393718.
13. Piccigallo, *Japanese on Trial*, 130.
14. Caroline Pappas, 'Law and Politics: Australia's War Crimes Trials in the Pacific 1943–1961' (unpublished PhD diss., Australian Defence Force Academy, UNSW, 2001), 52; Georgina Fitzpatrick, 'The Trials in Darwin', in Fitzpatrick, McCormack, and Morris, *Australia's War Crimes Trials*.

The Australian government pursued Japanese war criminals with particular tenacity. By 1949, most of the wartime Allies had either completed their prosecutions or had begun to scale them back. Activity in the Australian trials, too, had stalled, but this was due to bureaucratic difficulties and a lack of resources rather than a desire to end the trials permanently. Many suspects remained in custody, still awaiting prosecution by the Australian authorities. There was a change of government at the federal level in December 1949, but the pursuit of war criminals proved to be a bipartisan policy. The Labor Party had been in power since 1941, under the leadership of Prime Minister Ben Chifley after John Curtin's death in office in July 1945. The party was firmly committed to war crimes trials, though its resolve was tempered at times by other considerations: determination to punish and resist any revival of Japanese militarism was balanced with a consciousness that the war had greatly diminished the financial and human resources available to the Australian military. War crimes trials absorbed considerable resources, and the army faced tight financial restrictions in the federal budget immediately after the war and thus was restructuring during a period of economic austerity.[15] Nevertheless, rather than end the prosecutions in the face of financial strain, or in an effort to follow its allies and wind down its trials, the Labor government began complicated negotiations in 1948 to restart prosecutions. As it happened, Labor was voted out of office in December 1949, before it could complete its plan to restart trials. A new government took office that represented a coalition of the Liberal and Country Parties and was led by Prime Minister Robert Menzies. The Coalition built on Labor's planning and rejuvenated the war crimes trial programme, beginning a new period of prosecutions on Manus Island in June 1950.

The Australian government also retained direct custody of prisoners after conviction longer than other countries did. Prior to enactment of the San Francisco Peace Treaty on 28 April 1952, convicted war criminals were incarcerated either in an overseas prison controlled by the prosecuting government or in Sugamo Prison in occupied Tokyo under US military jurisdiction. After the end of the occupation, Sugamo was transferred to Japanese administration. Article 11 of the peace treaty, however, stipulated that the convicting country retained the sole right to vary sentences, and thus to release prisoners, whether on parole or unconditionally, regardless of where they were held. Prosecuting countries could keep control of convicted war criminals in areas under their direct jurisdiction if they chose, but by the end of 1952, all BC criminals except those held by the Philippines and Australia had been transferred to Sugamo Prison to serve out the remainder of their sentences. Although a small number of war criminals convicted in Australian courts in Hong Kong and Singapore had been repatriated along with their British-tried counterparts to Sugamo by the

15. Jeffrey Grey, *The Australian Army: A History* (New York: Oxford University Press, 2001), 161–62.

end of 1951, the majority were imprisoned on Manus Island where they were being used as cheap labour by the Australian navy.[16]

In 1952, the Australian government began to consider repatriation from Manus Island. Pressure from Japan and a growing understanding that many of Australia's allies were moving on from tough policies on war criminals, had softened the government's stance to a degree. Negotiations between the Australian and Japanese governments over repatriation were nevertheless protracted and difficult. The last Japanese prisoners convicted by Australian courts were returned to Japan in July 1953, six weeks after the last prisoners from the Philippines, to serve out their sentences in Sugamo Prison.[17] In 1954, the Australian government created a new general policy for Japan that reflected the view held by the government that Japan should now be regarded as a Western ally against Communism in Asia rather than a potential military threat to the region. Moreover, the government position was that if the democracies of the region did not embrace Japan, the country could itself be overrun by Communist influence. A part of this new policy for Japan was a review of the parole arrangements for war criminals convicted by Australian courts and an effort to ensure that all Japanese war criminals who remained in Sugamo Prison would be released by the end of the decade. The last war criminals convicted by Australia were in fact released on 4 July 1957,[18] a year and a half before the last of those convicted by US courts. The last Japanese war criminals convicted by any country were released from prison in Tokyo unconditionally in December 1958.

The Australian BC trials have not been widely studied. Existing works have mainly been produced by legal scholars in attempts to assess the trials' fairness or to catalogue them as legal precedent for possible future war crimes proceedings.[19] This approach

16. 'Cabinet Agendum – Appendix', September 1952, NAA, Canberra, A1838, 140817.
17. 'External Affairs to Australian Embassy in Tokyo Regarding the Repatriation of War Criminals', 7 July 1953, NAA, Canberra, A1838, 246874, and Military History Section (now Australian Army History Unit), 'Report on the Directorate of Prisoners of War and Internees at Army Headquarters Melbourne 1939–1951', Part V, Ch. 9, NAA, Melbourne, A7711, 1898192. For repatriation from the Philippines, see Sharon Williams Chamberlain, 'Justice and Reconciliation: Post-war Philippine Trials of Japanese War Criminals in History and Memory' (unpublished PhD diss., George Washington University, 2010), Ch. 4; Beatrice Trefalt, 'Hostages to International Relations? The Repatriation of Japanese War Criminals from the Philippines', *Japanese Studies* 31 (2011): 191–210.
18. 'Japanese war criminal—Yasusaka Masaji', July 31 1957, NAA, Canberra, A1838, 271963.
19. See Pappas, 'Law and Politics' and Michael Carrel, 'Australia's Prosecution of Japanese War Criminals: Stimuli and Constraints' (unpublished PhD diss., University of Melbourne, 2006); Narrelle Morris, 'Justice for "Asian" victims: the Australian war crimes trials of the Japanese, 1945–51', in *The Hidden Histories of War Crimes Trials*, ed. Kevin Jon Heller and Gerry Simpson (Oxford: Oxford University Press, 2013), 348–66; Narrelle Morris, 'Unexpected Defeat: The Unsuccessful War Crimes Prosecution of Lt Gen. Yamawaki Masataka and Others at Manus Island, 1950', *Journal of International Criminal Justice* 11 (2013): 591–613; Georgina Fitzpatrick, 'War Crimes Trials, "Victor's Justice" and Australian Military Justice in the Aftermath of the Second World War', in Heller and Simpson, *Hidden Histories*, 327–47; Tim McCormack, Gideon Boas, Helen Durham, 'Australia's Post World War Two War Crimes Trials: A Systematic and Comprehensive Law Reports Series', forthcoming; David Sissons, 'Australia's War Crimes Trials and Investigations, 1942–1951',

has contributed much to our understanding of the legal and moral dimensions of the trials but leaves aside broader consideration of their political and social significance, which is much greater than such an approach would suggest. In this book I investigate the significance of the trials in Australian politics and society between 1945 and 1957. I seek to answer the question of how the BC trials were connected to Australian foreign policy, politics, and social change from the second half of the 1940s into the 1950s. Analysis of the Australian BC trials, plus the repatriation of prisoners to Japan and their eventual release, furthers our understanding of how Australia's diplomatic and political agenda evolved in the early post-war era. The government's treatment of issues relating to Japanese war criminals illuminates the shifts and tensions in political and social attitudes to Japan and to the region.

Though the government insisted that seeking justice for wartime wrongs was the motivation for the prosecutions, the Australian trials were never completely separate from politics and international diplomacy. The link between legal and political considerations became more pronounced as time went on, however, in particular because the continuation of the Australian trials after 1949 provoked tension with the US, one of Australia's major allies. Examination of the trials and their aftermath provides valuable insight into the divergence between official US and Australian assessments of Japan, of the Cold War, and of Pacific security in the post-war years.

This study also furthers our understanding of the evolution of Australia's relationship with Japan. During the occupation, the Australian government treated Japan primarily as a defeated enemy which needed to be reformed and held accountable for the war. When the San Francisco Peace Treaty ended the occupation in 1952, it also restored Japan to the community of nations. From this point on, the relationship between the two countries became more fluid. Japanese diplomats pressured the Australian government to repatriate war criminals and then later to release them. While this book shows that the Australian government was reluctant to accept Japan's new status after the treaty, and especially determined to keep war criminals in prison, there was a gradual acceptance that Australian policy for Japan needed to recognize that the war and the occupation were over. Official Australian views on Japan changed slowly after the treaty, until a landmark cabinet meeting in 1954 when the Australian government reconsidered its general policy for Japan and the security challenges it faced in the region. The government resolved to do what it could to embrace Japan as a democratic partner in Asia. Discussions between Australian and Japanese diplomats from this period show that devising more lenient Australian policy for war criminals and hastening their release from prison was a key part of Australia's push for better relations between the two countries.

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available at the website of the War Crimes Studies Center at University of California, Berkeley, https://www.ocf.berkeley.edu/~changmin/documents/Sissons%20Final%20War%20Crimes%20Text%2018-3-06.pdf; Fitzpatrick, Morris, and McCormack, *Australia's War Crimes Trials*.

Analysis of the trials and reactions to them also contributes to a better understanding of retrospective Australian perceptions of the wartime experience. Like their counterparts in other countries, Australian politicians, officials, and members of the public tended to see their wartime experience as unique. For many Australians, the apparent uniqueness of the wartime experience was derived from news of the suffering of Australian POWs and was reflected in an emphasis on the war crimes trials, and an insistence that they should continue until justice had been done. Australian officials were certainly resolute in their pursuit of war criminals, continuing to prosecute them longer than any other non-Communist country.

In summary, this book shows that the BC trials provide their own guide to the progression of Australia's relations with both Japan and the US. For the government, the pursuit of Japanese war criminals was a delicate balance between domestic concerns and regional opportunities. The trials and their aftermath reveal the Australian government's determination to pursue Japanese militarism after the end of the war, its steadfast attitude towards war criminals in the late 1940s, the relative slowness to accept Japan, even after the peace treaty, as a trusted friend, and then finally the commitment to better relations with Japan from the mid-1950s onwards.

War Crimes Trials and the Occupation of Japan

War crimes trials were one part of the Allied effort to reform Japan after the Second World War. The occupation of the Japanese home islands began in September 1945 and started with the goals of demilitarizing and democratizing the country. Originally, General MacArthur wanted Japan to become a country that avoided involvement in military conflicts but was nonetheless firmly aligned with US political and economic interests in the region.[20] The Japanese economy was to be allowed to function and develop to the extent that it could support a peaceful population, but beyond this the occupation forces were not to take positive steps to aid economic recovery or rehabilitation.[21] Ultranationalist influence was to be eliminated from the economy and government, and over 200,000 individuals were therefore removed from positions of responsibility in the 'purges' instituted by SCAP.[22] War crimes trials sat comfortably with these early aims. Occupation policy, however, was neither monolithic nor static.

20. Malcolm McIntosh, *Japan Re-armed* (New York: St Martins, 1986), 19.
21. Supreme Commander for the Allied Powers, Government Section, 'Initial Post Surrender Policy for Japan 29 August 1945', in *Political Reorientation of Japan: September 1945 to September 1948* (Westport, CT: Greenwood Publishing Company, 1970), 2:423–26.
22. Hans H. Baerwald, 'The Purge in Occupied Japan', in *Americans as Proconsuls: United States Military Government in Germany and Japan, 1944–1952*, ed. Robert Wolfe (Carbondale and Edwardsville: Southern Illinois University Press, 1984), 188–97. See also Peter Frost, 'Occupation', in *Kodansha Encyclopedia of Japan* (Tokyo: Kodansha, 1983), 6:52.

Most historians identify a major change in direction towards the second half of the occupation, a change known as the reverse course. With the intensification of the Cold War in Asia in the late 1940s, US officials increasingly regarded Japan less as a former enemy that might rise again and more as a key ally against Communism. Thus occupation policies began to focus on recovery, economic rehabilitation, and stability, rather than democratic reform for its own sake.[23]

The changing geopolitical situation in Asia, chiefly the 1949 Communist victory in China and the Korean War that began in June 1950, meant that the potential threat posed by Japan to Pacific security came to seem less grave to the Allies than the danger posed by a Japan vulnerable to Communism. The occupation authorities shifted focus to the 'red purge' of Communist influence from Japan.[24] Not only did the change in emphasis discourage further pursuit of Japanese militarism, it also undermined the success of initiatives implemented in the early occupation to counter militarism. By one count, over 300,000 Japanese military, government, and other officials purged in the initial crackdown on militarism were allowed to return to positions of influence in the early 1950s and conservative government was encouraged. In fact, the last years of the occupation had been so focused on combating Asian Communism that when the first post-occupation national election was held in Japan in October 1952, 40 per cent of the candidates elected to the lower house of parliament were former purgees who had been 'depurged' after the reverse course.[25] The peace treaty enacted on 28 April 1952 and a security treaty between Japan and the US, which came into force on the same day ensured that Japan was closely aligned with the US and other Western democracies during the Cold War and provided for the stationing of US troops in Japan after the occupation ended.[26]

In the latter part of the occupation, war crimes trials were no longer seen to be in the best interests of the US, its allies, or Japan. US officials as well as Japanese leaders believed that all prosecutions should be concluded before a peace treaty was signed. As early as 16 November 1948 the majority opinion on the Far Eastern Commission in Washington was that all trials should cease by 30 September 1949. In February 1949 this became the official FEC position and also that of SCAP: investigations were to be

23. See especially Michael Schaller, *Altered States: The United States and Japan since the Occupation* (New York: Oxford University Press, 1997) 7–31; Howard B. Schonberger, *Aftermath of War: Americans and the Remaking of Japan 1945–1952* (Kent, OH: Kent State University Press, 1989), 4–6; Takemae Eiji, *Inside GHQ: The Allied Occupation of Japan and Its Legacy*, trans. Robert Ricketts and Sebastian Swann (London: Continuum, 2002), 457–58; John W. Dower, *Empire and Aftermath: Yoshida Shigeru and the Japanese Experience, 1878–1954* (Cambridge, MA: Harvard University Press, 1979), 7–10, 273–78.
24. For the 'Red Purge', see Dower, *Embracing Defeat*, 273; Takemae, *Inside GHQ*, 491; Dower, *Empire and Aftermath*, 7–10, 273–78.
25. For depurge, see Takemae, *Inside GHQ*, 491–93; Richard B. Finn, *Winners in Peace: MacArthur, Yoshida and Postwar Japan* (Berkeley: University of California Press, 1992), 296.
26. Caroline Rose and Tomaru Junko, 'Introduction', in *Japanese Diplomacy in the 1950s: From Isolation to Integration*, ed. Iokibe Makoto (London: Routledge, 2008), 1–3.

completed by 31 March 1949 and, if possible, all trials concluded by 30 September.[27] Throughout 1948 and 1949, some suspects whom the Australian authorities still planned to try were being held in Sugamo Prison in Tokyo, where they had been since their arrest in Japan early in the occupation. SCAP now insisted that war crimes suspects could not be held in prison forever without trials and should therefore be released.[28] US moves to wind down the trials and release suspects, however, did not succeed in bringing the Australian trials to a close. Nor did the Australian government release the suspects in Sugamo.

Australia's Role in Remaking Japan

Conducting war crimes trials was not the only way in which Australia contributed to the remaking of Japan after August 1945. Australia participated directly in the military activities of the occupation as a member of the British Commonwealth. Some 22,000 Australian soldiers in total served in the British Commonwealth Occupation Force (BCOF), peaking at 12,000 between 1946 and 1948, along with troops from New Zealand, India, and Great Britain. BCOF shared the military tasks of the occupation with over 350,000 American troops. Australia's contribution to BCOF was significant not only because of the large number of soldiers who served but also because BCOF was commanded by Australians for the entire period of the occupation.[29] As well as playing a considerable role in BCOF, Australians contributed to the occupation in other areas. The political scientist and public intellectual William Macmahon Ball represented the British Commonwealth on the Allied Council for Japan, the body that supposedly oversaw occupation policy in Tokyo, on behalf of the Far Eastern Commission, which sat in Washington.[30] From April 1946, Sir William Webb served as the president of the IMTFE. Ball's and Webb's were prestigious appointments, as was the selection of the Australians to command BCOF.

Australian influence in the occupation was thus not negligible. While Australia participated in the tasks of demilitarization, however, it played little part in the governance of the occupation. In BCOF, the Allied Council for Japan, and the IMTFE,

27. 'SCAP Legal Section—Memorandum for Chief of Staff', 22 March 1949, Decimal 290–12–04–06, SCAP Legal Section, National Archives and Records Administration (Washington, DC, RG 331, box 1435.
28. Piccigallo, *Japanese on Trial*, 137.
29. George Davies, *The Occupation of Japan: The Rhetoric and the Reality of Anglo-Australasian Relations in 1939–1952* (St Lucia: University of Queensland Press, 2001), 311. On BCOF and its Australian contingent, see also James Wood, *The Forgotten Force: The Australian Military Contribution to the Occupation of Japan 1945–1952* (St Leonards, NSW: Allen & Unwin, 1998); Robin Gerster, *Travels in Atomic Sunshine: Australia and the Occupation of Japan* (Melbourne: Scribe, 2008); Christine de Matos, *Imposing Peace and Prosperity: Australia, Social Justice and Labour Reform in Occupied Japan* (North Melbourne: Australian Scholarly Publishing, 2008); Peter Bates, *Japan and the British Commonwealth Occupation Force, 1946–52* (London: Macmillan, 1993).
30. William Macmahon Ball, *Japan: Enemy or Ally?* (London: Cassell, 1948), 31–42.

Australian officials acted within the framework set by SCAP or under heavy US influence.[31] BCOF was directed by the US Eighth Army. The Allied Council was dominated by SCAP and was riven with Cold War tensions, which made it less effective than it might otherwise have been. Webb was one of eleven judges, and although he played the senior role in the IMTFE he was unable to successfully pursue other top Australian initiatives, as evidenced by the fact that Emperor Hirohito was not tried for war crimes even though the Australian government pushed hard for this outcome.[32]

In these circumstances Australia's BC war crimes trials constituted a rare opportunity for the government to create and direct policy for Japan on its own terms. While US policy constrained Australian action in BCOF and on the Allied Council, the prosecutions of 'lesser' war criminals were governed by Australian legislation and investigations, and courts were staffed by Australian personnel. Each government's BC war crimes trials programme was its own responsibility, and although the different countries' trials shared much in common, there was also room for independence and for individual characteristics. Such capacity for independent action was reflected in the Australian War Crimes Act, which provided a very broad jurisdiction for the pursuit of war criminals.[33] Furthermore, the Australian BC trials proved to be more resistant to US influence than were other policy areas on which Australia and the US disagreed, such as the pursuit of Hirohito, or later the advisability of Japanese rearmament. The best evidence that the Australian government could operate independently in conducting the trials is that officials continued to prosecute suspected war criminals well after the US had called on them to stop. US officials applied pressure on Australian trial authorities but did not determine Australian policy. The FEC and SCAP recommendations to end prosecutions only served to provide a greater sense of urgency, rather than to dramatically change Australian policy for war crimes trials. Australian prosecutions continued until the government brought the programme to a close in April 1951, almost two years after the FEC 'deadline' to end them.

Australia and the US did also differ on the question of Japanese rearmament, a matter that arose with some force as the Cold War intensified and the peace settlement with Japan drew near. To US officials, Japan needed a self-defence force to defend the country from the threat of Communism in Asia. While the Australian government accepted that the threat of Communism in Asia was increasing, for far longer than the other wartime Allies, with the possible exception of New Zealand, it maintained a stronger emphasis on the danger of a Japanese military resurgence and thus did not favour Japanese rearmament. Australian officials, including high-ranking

31. Richard Rosecrance, *Australian Diplomacy and Japan 1945–1951* (Parkville, Vic.: Melbourne University Press, 1962), 242–43.
32. For a description of the Australian government's pursuit of Emperor Hirohito and the failure of that pursuit see Piccigallo, *Japanese on Trial*, 124.
33. Ibid., 124–25.

members of the Department of External Affairs, expressed their anxiety openly. H. V. Evatt, the minister for external affairs, wrote a press article entitled 'Has the Menace of Japan Been Removed?', which was published in the *New York Times* on 3 February 1946. Evatt suggested that the occupation must remain vigilant and always focus on democratizing and demilitarizing Japan, so that Japan would not have the capacity to threaten the Pacific again.[34] Evatt did not substantially change his view while he was minister, and in general any concerns about Communism in Asia were secondary to the government until the 1950s. Part of the reason was probably that Australia, unlike the Philippines or Vietnam, for example, was not directly threatened by Communism, but on the other hand, was geographically closer to Japan than were the US and European powers. For most of the occupation, Australian policy on Japan remained more or less consistent. There was broad bipartisan agreement, indicating that the official attitude to Japan reflected widespread Australian views, not simply tough talk against a former enemy for short-term, domestic political gain. The Labor Party, in opposition federally from December 1949, supported the Coalition's opposition to Japanese rearmament in the early 1950s on the grounds that this stance conformed with the Labor Party's own position when it had been in government.[35] When drafts of the San Francisco Peace Treaty and the process of negotiation in 1950 and 1951 revealed that the treaty would not include a statement prohibiting or greatly restricting Japanese rearmament, Australian officials initially resisted, having always favoured a peace settlement that would reflect the security concern for the Pacific at the forefront of Australia's foreign policy agenda—that is, the supposed threat from Japan.[36]

The different assessments of threats to Pacific security by Australia and the US became the basis of a significant divergence in policy. Both governments were committed to combating Communism in Asia, but the US believed that to achieve this goal a peace treaty which allowed Japan to defend itself militarily was needed, whereas Australia initially did not. The official Australian stance did not change until late in the treaty negotiations, in 1951, when the government accepted that a lenient peace with Japan was inevitable. Two factors were significant in the Australian government's eventual acceptance of a comparatively lenient treaty. First, the UK government abandoned its earlier opposition to Japanese rearmament and insistence on restrictions on Japanese industry, leaving Australian officials without a major wartime ally supporting their stance.[37] Second, and most important, the US government agreed to another treaty, with Australia: the Australia, New Zealand, United States

34. Herbert Vere Evatt, *Australia in World Affairs* (Sydney: Angus & Robertson, 1946), 141–46.
35. Alan Renouf, *The Frightened Country* (Melbourne: Macmillan, 1979), 50–58.
36. Ibid., 50–51.
37. Rosecrance, *Australian Diplomacy and Japan*, 181, 198–99.

Security Treaty (ANZUS), which was signed on 1 September 1951, just before the San Francisco Peace Treaty conference.

From Australia's point of view, ANZUS had its roots in Australian concern for the Pacific during and after the war. Since 1945, the government had pursued a commitment from the US to enhancing the security of Australia's region. Officials had lobbied the US for a 'Pacific Pact', a security treaty that would rely heavily on US military backing for Australia's defence. For a time, they also attempted to take advantage of US interest in retaining an existing naval base on Manus Island, in the Admiralty group of islands in New Guinea, which was Australian mandated territory after the war. The US base on Manus would effectively have functioned as an outpost protecting Australia. In the end, however, the US withdrew from Manus.[38] If the US government had not later agreed to ANZUS it is hard to imagine that Australia would easily have accepted the terms of the San Francisco Peace Treaty, with its lack of comprehensive restriction on Japanese rearmament.[39] ANZUS substantially allayed Australia's concerns over the security of the Pacific.

The attitude of the Australian government to Japanese rearmament, and the initial divergence from US policy on this point, have long attracted the attention of Australian historians and diplomats.[40] Difference on policy towards the end of the war crimes trials, on the other hand, has been overlooked. The divergence between Australia and the US on war criminals persisted until mid-1953, when the Australian government repatriated convicted criminals to Japan. Thus, the difference in policy on war criminals remained in place longer than the divergence in policy over Japanese rearmament, which ended two or three years earlier. Alan Renouf has stated that Australia's relationship with Japan can be divided into the periods before and after the peace treaty, and that the treaty created the opportunity for a new Australian policy on Japan.[41] Alan Rix also identifies the peace treaty as the beginning of close political ties between the two countries, though he believes the groundwork had been laid earlier.[42] The point is valid, but the fact that war criminals remained a difficult issue well into 1953 shows that signing the San Francisco Peace Treaty in September 1951 did not fully or quickly alter Australian perceptions of Japan, and indicates that the division between before and after in the relationship is not so clear as other writers have suggested. A study of the negotiations over repatriating war criminals demonstrates that while the peace treaty created an impetus for a new relationship, long-standing

38. Ibid, 58–59.
39. Renouf, *Frightened Country*, 42.
40. Rosecrance, *Australian Diplomacy and Japan*, 236–40; Renouf, *Frightened Country*, 38–41; T. B. Millar, *Australia in Peace and War: External Relations, 1788–1977* (Canberra: Australian National University Press, 1977), 269–70.
41. Renouf, *Frightened Country*, 30.
42. Alan Rix, *The Australia-Japan Political Alignment: 1952 to Present* (London: Routledge, 1999), 1–12.

official Australian attitudes to Japan were slow to change, as was, according to official assessments, the opinion of the Australian public.

A Spirit of Vengeance and 'Victor's Justice'

Anti-Japanese sentiment was high in Australia after the war. There is little evidence of trial authorities openly discussing how to balance politics and legalities, but some comments indicate an official awareness that the Australian prosecutions might appear to some to be motivated by a desire for revenge. On 10 September 1945, six weeks before the first Australian trial, H. V. Evatt, Australian minister for external affairs, commented as follows:

> In its demand that all Japanese war criminals be brought to trial, the Australian Government is actuated by no spirit of revenge, but by profound feelings of justice and of responsibility to ensure that the next generation of Australians is spared such frightful experiences [as those of the prisoners of war].[43]

At ground level, such a spirit of vengeance was nevertheless evident at times. Some of the Australian military personnel working on the trials had actually fought the Japanese, and inevitably some staff harboured feelings of resentment. Some officers that sat in judgement in the courts were renowned for their aggressive sentencing; indeed, they seem to have had little intention of hiding their feelings.[44] The army legal personnel were often working long hours in difficult climates and remote locations, with the additional burden of knowing that Australians were relying on them to deliver justice. The papers of John Myles Williams, a prosecutor in the trials, indicate that legal personnel were often exhausted and low on morale. Correspondence between Williams and other prosecutors shows dissatisfaction with their job and conditions and a desire to return home to Australia.[45] Williams's correspondence indicates, however, that despite the workload and dissatisfaction with aspects of the process, prosecutors were committed to bringing war criminals to justice. Williams himself does not appear to have been motivated by strong anti-Japanese sentiment, as he made friends with the Japanese defence teams and conducted a professional relationship with them. On the other hand, he was very aware of the significance of the trials for former Australian POWs and felt that he was now partly responsible for punishing those Japanese who had committed war crimes against Australians. Tellingly, and contrary to the opinions of others at the trials, Williams wrote in 1988

43. Evatt, *Australia in World Affairs*, 68.
44. Pappas, 'Law and Politics', 130.
45. 'Letter from Captain Mackay to Williams', 31 March 1946, Papers of John Myles Williams (manuscript), Mitchell Library, Sydney, 1927–1989, MLMSS 5426, Vol. 1. See also 'Diary of Capt. Athol Moffitt', Papers of Athol Moffitt, ID PR01378, Australian War Memorial, Canberra, 1945.

that the prosecutions had been an 'expression of contemporary national sentiment', adding that a 'spirit of vengeance in this sentiment is not denied'.[46]

Much of the scholarship on the prosecution of Japanese war criminals has focused on what drove Allied justice and whether vengeance or the influence of politics made the trials unfair. Early work in English on the Tokyo trial concentrated on the question of 'victor's justice'—that is, on an examination of the fairness or otherwise of the trials and of the accusation that they represented exclusively the interests of the victors in the war, rather than any balanced assessment of wrongdoing. Most notably, Richard Minear's *Victor's Justice* appeared in 1971 as a trenchant criticism of the Tokyo trial.[47] The trial has since undergone many reappraisals such as Timothy Maga's *Judgment at Tokyo: The Japanese War Crimes Trials*, Neil Boister and Robert Cryer's *The Tokyo International Military Tribunal: A Reappraisal*, and Yuma Totani's *The Tokyo War Crimes Trials: The Pursuit of Justice in the Wake of World War Two*. The first English-language survey to focus mainly on the Allied BC trials was Philip R. Piccigallo's *The Japanese on Trial*. Piccigallo's work focused on the process the convicting countries took to investigate and prosecute Japanese war crimes, and he also addressed the accusation the trials were victor's justice. Each of these studies contributes to our understanding of whether the trials should be regarded as fair or not, but they remain tied to considering the trials as primarily a legal story.

Within a narrow legal study of the Australian war crimes trials, politics and vengeance sit uncomfortably, and to some it likely raises a question over the quality of justice dispensed in the courts. In this broader study of the Australian pursuit of Japanese war criminals that goes beyond the courtrooms, however, vengeance, justice, and politics are equal elements that reflect the temper of the Australian public and the priorities of the Australian government. As in most legal systems, conceptions of justice for war criminals operated within the scope of politics and public opinion, not as a separate force. This book shows that justice for war criminals evolved over the period from their investigation to their release, just as Australian public opinion and Australian foreign policy did.

46. 'History Essay – University of Sydney', 18 November 1988, 37, Papers of John Myles Williams, Vol. 1.
47. Minear, *Victor's Justice*.

Conclusion

Commerce began to dominate relations between Japan and Australia in 1957. The Japanese prime minister, Kishi Nobusuke (1896–1987), and representatives of the Australian government, signed the Japan-Australia Agreement on Commerce in Hakone, Japan, on 6 July 1957, in what was considered in both Japan and Australia to be a landmark trade deal.[1] The agreement was ratified by the Australian parliament later that year. Kishi visited Australia in December 1957, addressing several functions and speaking at length on a number of occasions. He was a controversial figure with close ties to Japan's wartime regime. He had been a senior bureaucrat in Japan's puppet government in Manchukuo in the late 1930s and served as minister for commerce and industry from 1941 to 1943 and as deputy munitions minister in 1943–1944. He was purged during the occupation and arrested as a suspected Class A war criminal, though he was released without charge in December 1948. In 1952, he was depurged and won election to the diet as a conservative.[2] Kishi's visit to Australia may have been about the future, but he also represented the past.

There were two main themes in Kishi's speeches to Australian officials in December 1957. He expressed gratitude at the welcome he had received in Australia, and focused heavily on the economic futures of the two countries, which he believed were on a parallel course and had great potential to be mutually beneficial.[3] Kishi gave his most significant address at Parliament House in Canberra on 4 December. In this speech he deviated from his strong focus on economic issues, highlighting Japan's transformation into a democracy and also alluding to the history of the relationship between the two countries. Kishi noted 'a long tradition of friendship between Australia and Japan, including, in the First World War, our cherished association with your immortal ANZACS', but also referred to 'four years of tragic interruption to that friendship', offering 'our heartfelt sorrow for what occurred in the war'.[4] During his visit he laid a

1. Pitty, 'The Post-war Expansion of Trade with East Asia', 242–45.
2. See David J. Lu, 'Kishi Nobusuke (1896–)', in *Kodansha Encyclopedia of Japan* (Tokyo: Kodansha, 1983), 4:223.
3. Kishi Nobusuke, 'Collection of Speeches', December 1957, NAA, Canberra, A10302, 1957/1171.
4. Kishi Nobusuke, 'Speech to Parliament House Luncheon', 4 December 1957, NAA, Canberra, A10302, 1957/1171.

wreath at the Australian War Memorial in Canberra. In the early 1950s it would have been unthinkable to the Australian public that someone who so clearly represented the Japanese wartime elite might play a key role in rebuilding friendship between the two countries. Kishi's 1957 visit, however, was met with only muted protest.[5]

The landmark events of 1957—the release of the last Japanese war criminals in Australian custody, the trade deal, and the Kishi visit—mark a new era in relations between Japan and Australia and the end of post-surrender diplomacy between the two countries. Kishi's professed regret over the war, the welcome that he claimed he received from Australian officials, and the strong focus on the future of the two countries, were signs that both governments were making a concerted effort to move on from the war. The emphasis was firmly on the opportunity associated with the future, not the record of the past, and in Australia government policy on Japan was dominated for the next fifteen years by commerce officials. External affairs no longer took the lead in Australia's relations with Japan, in marked contrast to the crucial role played by that department during the 1950s.[6]

The apparently bright outlook for rapprochement between the two countries in 1957 followed a twelve-year post-war period in which relations between Japan and Australia had been far less amicable. During the Second World War Japan had posed a direct threat to Australia and in 1945 Australia's future security remained highly uncertain in the eyes of many officials. Internally, Australian society was still in shock after the acute sense of danger produced by Japan's early victories in the war, the human and financial cost of the conflict, and especially the condition of returning prisoners of war. The sense of shock was fuelled by the press, which contributed to anger against Japan and overwhelming public support for war crimes trials. Japan's unconditional surrender had not been enough to satisfy either the government or the public that the problem of Japan had been dealt with. The government and the Australian people felt that they had sacrificed a great deal during the war and that this sacrifice ought to be recognized. Pursuing Japan quickly became a key part of the government's foreign policy agenda, driven by the imperative to act on the widespread outrage over Japanese wartime conduct, the need to preserve Australia's security against a possibly resurgent Japan, and a desire to emerge from the war as a significant diplomatic player in regional politics.

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5. The ceremony at the war memorial in Canberra took place on 4 December 1957. Veterans' associations do not appear to have protested strongly against Kishi's visit overall, but did try to convince the government to cancel the wreath-laying ceremony. See 'Council of the 8th Division Letter to Menzies', 26 November 1957, NAA, Canberra, 3024467. For other reactions to Kishi's visit, see Rix, *Australia-Japan Political Alignment*, 32–33.
6. External Affairs played a minor role during Kishi's visit, holding a discussion with him on security in South East Asia that focused on the Communist threat. See 'Agenda for Discussion with Kishi and Handwritten Notes', 4 December 1957, NAA, Canberra, 3024467.

The government secured a degree of representation in regional affairs when Australian officials were selected for several important roles in the occupation of Japan. The government soon found, however, that its ability to act independently and to express its vision for Japan's future was hampered by US domination of the occupation. Moreover, a key Australian policy of the early occupation, to ensure that the emperor was placed on trial, ended in disappointment. Australians thought their wartime experience had been unique, and wanted to bring Japan to account for the war and have a strong say in its future. The prosecution of Class B and C war criminals was one matter over which the government had almost complete and independent control. Through the trials, suspected war criminals could be brought to justice, and, at least potentially, Australia could thereby exert an influence over the future course of Japanese society, politics, and foreign policy. Thus, from the beginning, the tribunals reflected Australian national sentiment.

Senior Australian officials publicly described this national sentiment as a pursuit of justice, while at least one prosecutor later admitted it had also incorporated a desire for vengeance.[7] In fact the trials included both dimensions: they constituted a political issue that afforded Australian officials the opportunity to respond independently to Japanese wartime conduct, and at the same time they provided the Australian military and the public with an opportunity for revenge, by bringing actual perpetrators of crimes to account in military courts. The enthusiasm to do both of these things was such that it is difficult to see how Australia could have developed a policy on Japan in the initial years after the war without the opportunities presented by the war crimes trials.

The US-led occupation of Japan generally embraced retribution against Japan's wartime regime during the early years, but support for measures such as war crimes trials later receded. The occupation began with the goals of democratizing and demilitarizing Japan. By 1948, however, US aims for Japan were heavily influenced by the escalating Cold War. This shift in US policy contributed to the decision of most of the wartime Allies to conclude their prosecutions of suspected Japanese war criminals. Retributive policies focusing on the old regime in Japan were becoming less important in the new direction of the occupation, and in any case the separate governments conducting war crimes trials had other pressing concerns. The effect of the reverse course on the Australian trials, however, was different. The Australian government disagreed with the new US policies in Japan and was reluctant to accept the role the United States defined for Japan in the future security of Asia. Australian officials continued until 1951 to view Japan as a potential danger to the region, which limited their appreciation of Japan as an ally against the apparent Communist threat. While Australian officials did not necessarily want Japan permanently to remain an

7. 'History Essay – University of Sydney', 18 December 1988, 37, Papers of John Myles Williams, Vol. 1, manuscript, Mitchell Library, Sydney.

international pariah, the government did believe that policies created to punish the wartime regime and remove Japan's capacity to wage war should not at this stage make way for measures to reintegrate Japan into the community of nations and to rehabilitate its economy.

In late 1945 the Australian authorities had taken up the task of prosecuting suspected war criminals with alacrity, and with the intention of trying all those who deserved to be brought to account. In 1948 and 1949, however, they faced serious logistical difficulties. Despite these obstacles, which came on top of the now unfavourable international context, the government did not cancel its legal proceedings. Instead, it began planning for new prosecutions on Manus Island. In 1949, as a formal peace seemed to draw nearer, US officials, now concerned primarily with rehabilitating Japan to become a successful member of the democratic camp, tried to ensure that all prosecutions would finish well before the peace treaty was signed. It would have been easier for the Australian government to end its trials at this point, avoiding the danger of falling out of line with US policy on Japan and also saving time and resources, but it does not appear that this was ever considered a suitable option. In Australia the desire for trials was evidently still strong.

The Manus prosecutions began in 1950, reaffirming Australia's image as a nation that was tough on Japan. The proceedings represented much more than just unfinished military business. In fact, many suspects were released in an effort to conclude the trials as quickly as possible, so the effectiveness of Manus in 'finishing the job' was, at best, limited. The real reason the trials continued into 1950 and 1951 was that the two imperatives driving them from the start remained very potent. The government wanted to take a stand on Japan for political and diplomatic reasons, and both the government and the people wanted revenge.

The Australian government's hard line on war criminals in 1950 reflected an emerging tension between policies for dealing with the former enemy and policies aimed at building friendships with its allies in the region. One of the strategic and diplomatic realities the government faced after the war was that it could no longer rely solely on British strength in the Pacific. In the post-war world, Australia had to rely heavily on the United States for security. Yet despite this dependence on good relations with the United States, Australian policy on Japan was at odds with that of the United States on several points. Australian officials objected to the proposed role for Japan as a US ally in the region and were anxious about US willingness to encourage Japanese rearmament. Most of their concerns were allayed during the negotiations over the San Francisco Peace Treaty, and especially with the agreement on the ANZUS security pact with the United States and New Zealand. Nevertheless, Australia and the United States remained at odds over war criminals.

The Australian government managed to conclude its prosecutions prior to the signing of the peace treaty in September 1951, but it remained tough on war criminals,

and negotiations over the repatriation and release of Japanese prisoners after the end of the occupation in April 1952 were protracted and difficult. There would seem to have been little external political value in maintaining a strong stance on war criminals, especially when Australia's allies were moving on rapidly from retribution against Japan. A combination of mistrust of the Japanese government and wariness of domestic public opinion, however, compelled the government to continue to deal with Japan resolutely. Australian officials opposed the idea that Japan might be granted any share in decisions on the future fate of convicted war criminals, and they appear to have maintained an objection to Article 11 of the peace treaty even though it allowed Japan almost no power over the release of prisoners. Such a harsh approach to Japan and willingness to go against US preferences now contradicted the general trend of Australian foreign policy. The government supported the United States in the Korean War and had lobbied US officials hard for a security pact between the two countries, but policies on war criminals indicated that a significant area of disagreement persisted over the status of Japan. As I have shown, the United States remained outwardly supportive of Australia's right to conduct war crimes trials in 1950 and appeared patient with the continuing tough stance by the government thereafter, but US internal documents also show a clear sense of frustration at Australia's policies.

By August 1953 the Australian government had accepted that it could not indefinitely remain out of line with the policies of its allies for Japan, and it agreed to repatriate war criminals. The matter was not yet resolved, however, as the government then had to consider how to apply clemency to those incarcerated in Sugamo Prison in Tokyo. Over the next six months Australian policy on clemency was slow to develop. In 1954, things began to change significantly. The government created a new general policy on Japan on the basis that Australia should do whatever it could to create better relations between the two countries and to prevent Japan from falling under the influence of Communism. Policy on clemency altered accordingly to allow more Japanese prisoners to be released early. This change came almost two years after disagreement over Japanese rearmament had been resolved and two years after BCOF soldiers had returned home with the end of the occupation. The delay indicates that policy on war criminals remained both important and lively, long after other issues affecting relations among Japan, Australia, and the United States had been resolved. At the grass-roots level, reactions to the Australian government's policies for war criminals indicate the authorities were probably correct in concluding that the majority of the public preferred a tough stance on Japan. A 1952 Gallup poll showed that 60 per cent of respondents believed Japan would become a threat again in the future.[8] Press coverage of the BC trials, on the other hand, suggests that public opinion was more complex. At various points in the twelve-year process of convicting

8. Rix, *Australia-Japan Political Alignment*, 97.

and then releasing war criminals, public reaction was muted. Though a hard core of anti-Japanese sentiment persisted well into the 1950s, some people also appear to have wanted Australia to move on from the war or at least to treat war criminals as justly as possible.

Australian scholars have commonly regarded the enactment of the San Francisco Peace Treaty in 1952 as the watershed in Australia-Japan relations that propelled the two countries into a new era. In light of negotiations over war criminals, however, 1952 is too early a date to consider as the beginning of a new relationship. The peace treaty was without doubt a very significant event in the post-war era, but it did not resolve all the lingering wartime issues between the two countries, and post-surrender politics continued for years after the treaty. The two countries progressed slowly from being survivors of the war, to uneasy players in US security policy and finally to trade partners and friends. The evolution of Australian policy on BC war criminals charts this progression of relations more accurately than does any division of the post-war era in Japanese-Australian relations into a pre-peace treaty and a post-peace treaty period. Australia's war crimes trials constitute the one major foreign policy issue that spanned the entire era between the end of the war in 1945 to the landmark trade agreement of 1957.

Writing on the early post-war period in Australian history generally acknowledges that Japan was a significant focus of an increasingly independent and energetic Australian foreign policy agenda. Nevertheless, the BC trials have received little scholarly attention. The topics commonly discussed in relation to Japan are the formation and operation of BCOF, the forthright Australian opposition to leniency on rearmament in the peace treaty and to any occupation moves that could potentially allow Japan to threaten Australia in the future, and the burgeoning economic relationship between the two countries in the 1950s. Omitting the trials, however, overlooks a major part of the story of Australia's relationship with Japan, of the evolution of post-war foreign policy, and of the connections between foreign policy and domestic concerns. The omission is all the more glaring given the consensus among scholars that the POW experience was, and remains, particularly important to the Australian people. While the centrality of POWs in post-war Australian politics and culture is acknowledged, one of the issues most closely associated at the time with the returned prisoners, namely the trials of those Japanese soldiers suspected of mistreating them, is ignored.

Study of the BC war crimes trials makes two major contributions to the understanding of Australian foreign policy. First, the trials show how Australian policy on Japan developed when it operated free of direct US control, illuminating the distinctive aspects of the Australian government's approach to Japan. An assessment of the government's dealings with Japan that does not pay attention to the determined attempt to bring war criminals to justice might well conclude that the authorities

were cautious and even timid in their approach. A focus on the trials, however, shows Australian policy to have been much tougher. Second, and more fundamental, the pursuit of war criminals establishes that throughout the period between Japan's surrender and the 1957 trade deal, Australian foreign policy was a difficult balance of several competing imperatives. The government weighed domestic concerns against external political goals, developing a distinctively Australian response to Japanese wartime conduct against promoting closer relations with the United States, and maintaining a hard line on Japan against creating other policies that recognized it as an important partner in combating the new threat of Communism. No other policy matter so strongly combined such pressing social, diplomatic, and security concerns, and no other foreign policy issue in relation to Japan spanned the entire period from 1943, when investigations of war crimes began, to the new era of trade and friendship signalled by the 1957 agreement on commerce.

The pursuit of war criminals also had another implication for Australia's foreign policy agenda. Australia prosecuted a number of Japanese war criminals who were ethnically Korean or Taiwanese; this experience was one factor that confronted Australian officials with the volatility of Asian politics and diplomacy after 1945. The governments of China and Korea called for these war criminals to receive more lenient treatment than ethnically Japanese war criminals. The Australian government resisted any call to recognize the special status of the Korean and Taiwanese war criminals, but the question of what to do with them was a difficult one. On the one hand, the Australian government desired a greater role in Asia after the war and sought to be a champion of countries seeking independence. On the other hand, the cornerstone of Australia's post-war regional policy was a tough stance on Japan, and these war criminals had, after all, committed war crimes as Japanese subjects and while serving the Japanese military. The question of the Taiwanese and Korean war criminals drew the Australian government into the complexities of decolonizing Asia. It forced the government to view the war not only as a conflict between the Western Allies and Japan but also from the perspective of governments of countries formerly controlled by Japan. Moreover, the war crimes trials revealed that about half the Japanese war crimes prosecuted in the trials had been committed against Asian victims. While the pursuit of war criminals was an exercise through which the Australian people and government could reflect on the suffering of Australians in the war, it was also an opportunity for Australia to show solidarity for Asian victims of Japanese aggression. This opportunity was embraced at the level of the courtrooms, which prosecuted many Japanese war criminals for crimes committed against Asian victims, but the idea was never influential in government policy. Nor did it find traction within the broader Australian community.

Despite being an important feature of Australian foreign policy after the war and crucial to the development of Australia-Japan relations in the 1950s, the BC trials

have been most commonly studied to assess their fairness. The matter is far from settled, and the legal and moral fairness of the trials themselves is likely to remain contested for some time. The closest point to a consensus among scholars is that the trials were flawed proceedings that were fair overall. Certainly, there were procedures and practices in the trials that at best invited suspicion or criticism and at worst possibly led to some cases of wrongful conviction or disproportionate sentencing. The changes made to the rules of evidence are an example of one such set of procedures. Allowing cases to be made on affidavit evidence only removed the extra element of inquisition that occurs when a courtroom can hear live testimony in court and assess how the witness handled cross-examination, and indeed whether their evidence stood up under examination by opposing counsel.

The practice of holding mass trials was common during the Australian prosecutions. In these trials, the courts were often flooded with documentation and evidence, and trial records could extend to over a thousand pages. In these courts, the problem appears to be a lack of clarity as much as a specific procedure inviting doubt. Evidence was sometimes unclear, contradictory, and confusing to the court. In a case heard in the Australian court on Manus Island in April 1951, the trial records indicate that a defendant confessed to the crime of murder during the proceedings, yet was found not guilty while a number of guilty sentences were handed down to other defendants for the same crime. It appears the court simply could not keep track of all the evidence that had been tendered.[9] Repeatedly, the judge advocate general in the Australian trials was moved to comment on how confusing and dangerous the practice was.[10]

The lack of a true appeals system and documentation from the confirming authority means we are uncertain as to how much influence the judge advocate general could have as a legal safeguard overseeing the trials. The treatment of superior orders as an incomplete defence has also been a flashpoint for criticism of the trials. Some consider the trials to be a catalogue of how low-ranking Japanese soldiers were made to pay for the crimes of their superiors. These calls, mainly emanating from Japan, fail to acknowledge that very few of the lowest ranking Japanese military personnel were convicted in the Allied trials. That said, there is an argument that can be made that many junior officers and non-commissioned officers found themselves in difficult situations where they were operating under orders from more senior Japanese officers, or under orders from headquarters. These trials, however, were not unrecognizable from military courts and civilian trials in many Western legal systems. Nor were the results overly harsh; in fact, conviction rates in the Australian trials were moderate. Any allegation that the trials were victor's justice or even that they were

9. JAG, 'Pg. 2 of JAG Review of Tanaka Kikumatsu and Fourteen Others', 9 April 1951, NAA, Canberra, A471, 510472.

10. JAG, 'Review of Ito Hiroshi and 15 Others Case—Letter for Adjutant General Army Headquarters', 4 May 1951, National Archives of Australia, Canberra, A471, 720988.

systemically unfair appears to be unfounded. That said, there does appear to be scope for individual verdicts or sentences to have been questionable.

This book has shown that the focus on the trials only as legal proceedings or with only tacit acknowledgement of the political and social context, neglects how these forces drove policy on war criminals and how these factors have affected the legacy of the trials. The pursuit and release of BC war criminals is, in fact, overwhelmingly a political story, and this is why purely legal understandings of them are insufficient. Political considerations, like the need to hold successful trials, and idealistic ones like the need to punish militarism and create precedents for the conduct of war, produced trials and management of prisoner sentences that ultimately were focused on imperatives other than the need to punish individual perpetrators of terrible offences. Thus, concerns about the guilt of individual Japanese soldiers made way for pragmatism, idealism and political gain, as did concerns for victims of Japanese crimes when the sentences of war criminals became a political bargaining chip after the proceedings had ended. Therefore the question of 'were the trials legally fair or unfair' is extraneous, and it is more instructive to consider the pursuit of war criminals within the overall political approach the Allies took to Japan after the war, where justice was always viewed through the prism of politics.

On fairness, though, historicizing the issue by broadening the discussion to account for the political and social context is also instructive. Existing scholarship on war crimes prosecutions has oversimplified post-war conceptions of justice for war crimes. At no time during the investigation, trial, or release of war criminals, did the Australian government, or any other prosecuting Allied government, view justice and politics as two opposing forces constantly pulling against one another. Ideas about justice could and did coexist with actions taken from political motives; one did not necessarily undercut the other. Nor did conceptions of justice among the Allies remain static over time. As Japan returned to the community of nations as an ally of the Western democracies in the 1950s, the Australian government realized it could not maintain its previous attitude to Japanese war criminals. Rather, policy would need to be adapted so that convicted war criminals could return to society. Ultimately, this book argues that the tension between politics and justice did not undermine but in fact strengthened Australia's pursuit of post-war justice: acknowledgement of the close interrelationship between justice and politics allowed politicians and officials to adapt their policy from a means of punishing offenders to a mechanism for promoting reconciliation between Australia and Japan in the new circumstances of the Cold War.

With regards to international war crimes trials more generally, the Australian case tells us much about the role trials can play in satiating the public's call for vengeance in the aftermath of a conflict, as well as the broader role trials play in the politics of the end of a war. The post-war trials were the culmination of ideas developed

throughout the preceding decades about how wars should be fought and what rules should govern them. The Australian government realized that the large-scale prosecution of Japanese war criminals was a watershed moment in international war crimes law. The trials were not just about dealing with the past but also about making a statement for the future of Asia and the Pacific region. Though a standing international war crimes court was not created for fifty years, prosecutions have now become commonplace after major conflicts, both to apportion guilt and to punish those who have committed war crimes. The Australian case shows clearly that war crimes trials play a role that goes well beyond upholding the law.

This book shows that the Class B and C war crimes tribunals and their aftermath constitute a twelve-year foreign policy project that illuminates Australia's relations with Japan and the United States during an era when Australia sought energetically to establish itself as an enthusiastic and independent participant in Asia-Pacific politics. The increasingly political dimension of the BC trials, their propensity to inflame domestic opinion and to become entwined with high-level policies, and the persistence of issues associated with war criminals means they offer a unique perspective on post-war Australian politics, society, and, especially, foreign policy.

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