Chapter 5
The Decision Not to Prosecute the Emperor
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I. Introduction
Against a backdrop of threatened military annihilation, a call for unconditional surrender was issued to Japan by the Allied Forces on 26 July 1945. Nearly a month later, and after the atomic bombings of Hiroshima and Nagasaki, Japan capitulated. In performing the surrender the then sovereign of Japan, Emperor Hirohito, broadcast a speech across the nation, breaching tradition and speaking to his subjects – directly, as it were – for the first time in history. Following the United States’ ‘occupation’ of Japan, the Emperor was not brought to trial, but rather, made to renounce his divine origins. He was transformed from a sovereign head of State into a symbolic one: from a divine sovereign into a so-called secular one. Since 1945, there has been much debate amongst lawyers, historians and Japanologists about why the Emperor was not prosecuted for war crimes. This chapter returns to the texts of unconditional surrender and responds to this debate in three parts: first, by asking what the surrender signified (‘The Unrepentant Sovereign’); second, by examining the legal and political implications of the abstention from prosecution (‘A Lovers’ Discourse’); and third, by proposing some reasons for the decision (‘Recognition in the International Order’).

The question of Emperor Hirohito’s war responsibility is one which has been shielded from public inquiry, for the most part, since World War II. Recently, however, this has changed, with scholars and politicians aligning themselves with either one or another view on Hirohito’s accountability. The dominant school of thought proposes that the Supreme Commander General Douglas MacArthur ‘saved’ Hirohito to preserve public order within newly-occupied Japan. According to MacArthur’s memoirs, the Emperor took full responsibility for the consequences of the war, and when the Australian representative to the United Nations War Crimes Commission (UNWCC) indicated that he would introduce a motion to prosecute...
Hirohito, the Commander sent a telegram to Eisenhower saying that the Emperor was the symbol of Japanese unity, and that, if he were prosecuted, the nation would disintegrate. This view has been contested, with some scholars arguing that the decision to retain the Emperor was part of a more general US policy arising out of events as early as the late 19th century.

The question, however, extends beyond a simple debate as to whether Hirohito had knowledge of the Army’s activities, and whether he was or should be held responsible for war crimes. While there were many political reasons for the decision not to prosecute, I propose that by looking at that decision within the context of the actual texts of unconditional surrender we can develop a broader understanding of its significance, both in terms of Japan’s identity and in terms of the development of international law in the 20th century. By focusing on the act of ‘legal speech’ by the Emperor I seek to bring what the feminist poststructuralist Julia Kristeva calls the ‘speaking body’ back into the analysis.

The main argument developed in this chapter is that despite their demand for unconditional surrender and subsequent claim of debellatio, the Allied Forces chose to retain the Emperor (albeit as a symbol rather than as an official sovereign head of State) because they needed Japan to enter the emerging fraternity of States as a secular entity; an equal among brothers capable of recognising its others and of being sutured into the new international economic system. Following a brief background to Japan's surrender, this chapter will discuss the jurisdictional significance of the Emperor’s speech and examine the colonial and patriarchal complicities evident in the discourses of both victor and vanquished.

So the story begins, perhaps, in 1852 when Commodore Perry sailed into Japan after several unsuccessful visits by US representatives to negotiate trade agreements. He visited again in 1854 with coal-fired war ships, forcing Japan to sign a ‘Treaty

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4 Kristeva’s work includes, among others: Julia Kristeva, Séméiétique: Recherches pour une sémianalyse (1969); Julia Kristeva, Le Texte du roman (1970); Julia Kristeva, La Révolution du langage poétique (1974); Julia Kristeva, Polylogue (1977). This call is in response to Derrida’s work on writing, which concluded that even when a text tries to privilege speech as immediacy, it cannot completely eliminate the fact that speech, like writing, is based on a différence … between signer and signifié inherent in the sign … [Furthermore], [t]he hidden but ineradicable importance of writing that Derrida uncovers in his readings of logocentric texts in fact reflects an unacknowledged, or ‘repressed,’ graphocentrism [the privileging of the written, over spoken, word]. It may well be that it is only in a text-centered culture that one can privilege speech in a logocentric way. The ‘speech’ privileged in logocentrism is not literal but is a figure of speech: a figure, ultimately, of God.


5 This in fact mirrored the Emperor’s traditional role, where s/he would act as a symbolic head of State, not directly involved in politics and the day-to-day running of the country.