Chapter 10
Justice Pal (India)

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I. The Dissenting Opinion of Justice Pal and Historical Revisionism in Post-War Japan

Since the middle of the 1990s, Japan has been witnessing the rampancy of right-wing forces. This rightward tilt is seen across Japanese society: in education, culture and politics, as manifested respectively in the activation of the Japanese Society for History Textbook Reform, the best-selling comic book Sensō Ron (On War) by cartoonist Kobayashi Yoshinori, and the establishment of the Abe Shinzo and Aso Taro Cabinets which emphasised ‘conservatism’.

In this tilt, Japanese historical revisionists have contrasted themselves with what they term the ‘Tokyo Trial view of history’ and the ‘masochistic view of history’. These revisionists regard as ‘masochistic’ any characterisation of Japan’s military advances in Asia during the pre-World War II period as an ‘invasion’. And they claim a ‘spell’ lingering from the International Military Tribunal for the Far East (‘Tokyo Tribunal’) underlies this ‘masochistic view of history’. Arguing that the Tokyo Tribunal created and developed a false perception of the Greater East Asia War as ‘the war in which the liberal Allies defeated a fascist Japan’, the revisionists stress that denouncing and denying the Tribunal is the key to shaking off this ‘masochistic view of history’.

In their discourse on the denial of the Tribunal, revisionists frequently invoke the so-called ‘Pal’s Judgment’. An Indian judge participating in the Tokyo Tribunal, Radhabinod Pal issued a Dissenting Opinion entitled Dissentient Judgment of Justice Pal, and asserted that all Japanese Class A defendants at the Trial were criminally innocent. Since the Tribunal’s language department omitted the word ‘dissentient’, the Opinion became widely known in Japan as ‘Pal’s Judgment’.

However, the Opinion is often presented without a thorough examination of its content. Instead, only the decontextualised conclusion – that the Japanese suspects were not guilty – is singled out. In 2007, I published Pāru Hanji: Tōkyō Saiban hihan to zettai heiwa-shugi (Justice Pal: Criticism of the Tokyo Trial and Absolute Pacifism) in order to draw attention to misreadings of ‘Pal’s Judgment’. While the book was well-received, it also became a target of historical revisionists, such as Kobayashi Yoshinori, and was subjected to their severe bashing.

Based on my book, the object of this chapter is to analyse the bones of Justice Pal’s theory in his Dissenting Opinion and to examine the philosophy behind it. I also

1 Translated by Kasahara Hikaru.

introduce an overview of how Justice Pal’s Opinion first became misinterpreted by Japanese historical revisionists, in order to explain how current revisionist discourse on the Opinion has been shaped.

II. Theory of Justice Pal’s Dissenting Opinion

Based on the principle of non-retroactivity of law, Justice Pal, first of all, explicated his criticism of the Tribunal’s ex post facto legislation in his Dissenting Opinion. He affirmed that the alleged ‘conventional war crimes’ by the Japanese defendants came within the jurisdiction of the Tribunal because they were already classified as crimes in pre-existing international law. However, Justice Pal opposed ‘crimes against peace’, and ‘crimes against humanity’, as defined in the Tribunal’s Charter, because these crimes had no previous grounds in international law. If the defendants were to be found guilty of crimes which did not exist in international law when the alleged acts were actually executed, Pal said, then ‘the Tribunal will not be a “judicial tribunal” but a mere tool for the manifestation of power’.

Justice Pal objected to the introduction of an ex post facto law at the Tribunal because he believed that by ruling on ex post facto law, international society would not be bound by a common understanding against war. Instead, it would subscribe to an understanding that the victors of wars were entitled to judge the defeated while disregarding the rules of international law. Thus, he argued that if the Tokyo Tribunal invoked an ex post facto law it would eventually foment the expansion of wars of aggression and a breakdown of the foundation of international order, rather than lead toward the eradication of war. He stressed the importance of genuine legal processes and the establishment of the rule of law as follows:

Such a trial [a tribunal with ex post facto legislation] may justly create the feeling that the setting up of a tribunal like the present is much more a political than a legal affair, an essentially political objective having thus been cloaked by a juridical appearance. Formalized vengeance can bring only an ephemeral satisfaction, with every probability of ultimate regret; but vindication of law through genuine legal process alone may contribute substantially to the re-establishment of order and decency in international relations.

He questioned the Tokyo Charter, which was promulgated on 19 January 1945 and established the Tribunal. In adding to ‘conventional war crimes’, the Charter upheld

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2 Charter of the International Military Tribunal for the Far East, signed in Tokyo on 19 January 1946, amended 26 April 1946, TIAS 1589, 4 Bevans 20 (‘Tokyo Charter’).