

Juridical Arenas of the Allied War Crimes Trial Program

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From June 7-9, 2014, ten scholars from Japan, Germany, Britain, and the United States gathered at Boston College for an intensive workshop on re-conceiving the Allied war crimes trial program after World War II in Europe and Asia from a geographical perspective. Hosted by Franziska Seraphim of the History Department of Boston College and co-organized with Wolfgang Form of Marburg University and Kerstin von Lingen of Heidelberg University, the group exchanged rarely assembled quantitative as well as qualitative data on the trials in Asia and in Europe, learned about the uses of Geographic Information Systems (GIS) and other geo-visualizing methodologies that drove a recent geographical mapping project of the Holocaust, and discussed ways in which the Allied trials may be explored on different geographical scales, from the global spread of trials in vastly different historical and legal contexts to the social space of memory described in war criminals' testimonies.

The premise was to gather an exploratory task force to raise and size up new approaches to the post-World War II trials from the vantage point of our respective historical, legal, and comparative expertise, and to listen to feedback from GIS experts. To this end, the invited participants included Japan's foremost expert on Class B/C war crimes trials in Asia, Hayashi Hirofumi (Yokohama); the coordinator of the International Research and Documentation Center for War Crimes Trials and historian of the Allied trials in Germany, Wolfgang Form (Marburg); the author of a forthcoming book on the Chinese war crimes trials, Barak Kushner (Cambridge); a legal his-

torian of the American military war crimes policy in Germany, Michael Bryant (Smithfield, RI); an authority in international criminal law and a judge at the Federal Republic of Germany's Court of Justice, Henning Radtke (Karlsruhe); a scholar of transcultural legal flows and war crimes policy making in Europe and Asia, Kerstin von Lingen (Heidelberg); a historian of wartime and post-war Japanese relations with the Philippines and Southeast Asia, Nakano Satoshi (Tokyo); a historical geographer of the Holocaust and leading contributor to the recent mapping project „Geographies of the Holocaust,“ Tim Cole (Bristol); and a geographer and senior GIS specialist at the Center for Geographical Analysis at Harvard University, Jeff Blossom (Cambridge, MA).

The workshop began with a working dinner led by TIM COLE (Bristol) on the conceptual, technical, and collaborative insights gained from the US Holocaust Memorial Museum-sponsored project „Geographies of the Holocaust,“ a mapping project that made extensive use of GIS and other geo-visualizations. Key to the success of the project was the real-time co-researching and co-writing among teams of historians, geographers, and geo-visualizers, which is credited for having generated not only new ways to make history visible but entirely new questions for historians to consider.

The first two formal sessions on Sunday were preceded by an introductory talk by FRANZISKA SERAPHIM (Boston). It laid out the limitations of the current historiography on the Allied war crimes trials, which preclude a genuinely comprehensive understanding of the program in its multidimensionality and global reach, and offered a re-conceptualization via the geographical terms „territoriality“ and „scale“ to bring heretofore un- or underexplored aspects of the trials into sharper focus.

In Session 1, WOLFGANG FORM (Marburg), KERSTIN VON LINGEN (Heidelberg), BARAK KUSHNER (Cambridge), and HAYASHI HIROFUMI (Yokohama) reported on related research projects currently underway and assessed the potential for mapping of their findings, for example the many reels of film footage shot in trial locales all over

the world, of which Tokyo (not Nuremberg) trumps all others in sheer volume.

In Session 2, HAYASHI HIROFUMI (Yokohama) and WOLFGANG FORM (Marburg) compared the availability of official statistical data on the trials in Japan and Germany. They came to the surprising conclusion that in the face of Allied unwillingness to share their data on convictions with the German and Japanese governments, the Japanese Ministry of Justice had done far more in the late 1950s to statistically capture and analyze the trial program on the basis of formation supplied by Japanese lawyers and legal personnel than had been the case in West Germany, which lacked the political will to reappraise Allied justice. The Japanese government even visited and interviewed many of the several thousand released war criminals after 1958 to record what many claimed to be „the truth“ about what they had done in contrast to how they had testified in Allied courts. The discussion zeroed in on Japanese statistics of what crimes had been adjudicated in each trial (in contrast to a lack of such data concerning the trials of German war criminals except for UN War Crimes Commission lists established largely before the trials got underway). A large number of crime categories in fact have no basis in international criminal law but appear to be criminal acts that were declared to be „war crimes“ in response to local circumstances. This is in fact also true for many trials in Europe, especially in formerly Nazi-occupied territories in the east, but the only lists of war crimes categories available are those reflecting international criminal law and anchored in UN War crimes Commission policies as ‘prosecutable’ war crimes rather than categories actually used in indictments and convictions.

On Monday, Sessions 3 and 4 examined what the conveners have called „juridical arenas“ in relation to both war-historical and postwar-historical contexts, that is, depending on differing circumstances of war and occupation on the one hand, and of the different legal possibilities recognized by each of the Allied countries on the other hand. In Session 3, NAKANO SATOSHI (Tokyo) illuminated wartime juridical spaces with the example of the Battle of Manila in the spring

of 1945 on the basis of American War Crimes Investigation Reports. The subsequent discussion focused on specific circumstances of occupation within which an East-West comparison of crimes against civilians is possible, such as retribution against local „insurgents,“ or long-term mobilization of the local population for war. MICHAEL BRYANT (Smithfield, RI) gave an overview of the American war crimes program focusing on contributions to „aggressive war“ and „conspiracy“ rather than individual crimes and the relative ease with which the prosecution could prove „contribution to a common plan.“ It will be important to examine statistically and historically which kinds of crimes (committed under what circumstances) drew the most death sentences and what, if any, correlations can be made between convictions in Asia and in Europe.

In Session 4, HENNING RADTKE (Karlsruhe) added an important legal dimension to the historical by offering a comparative analysis of 25 national war crimes legislations which revealed that substantial legislative differences stemmed from both the status of the occupied country during the war (whether it had been an Axis ally at one point, for example), and from whether war crimes legislation followed international norms or whether it represented an adaptation of domestic criminal law to war/postwar circumstances. Apart from the International Criminal Court (ICC) statute, jurisdiction on the national level fell into several categories, including (1) whether the crimes adjudicated had been committed on national territory (e.g. China, the Philippines, France, Soviet Union, Eastern European countries) or outside it (e.g. US, Britain, Australia, France & the Netherlands in Asia), (2) whether legislation was passed by the prosecuting nation’s supreme court or the national parliament (as in Czechoslovakia), (3) the specific postwar circumstances under which offenses were added to the list of „war crimes,“ (4) whether jurisdiction included the political mandate to criminalize the wartime regime of the prosecuting nation (e.g. Romania, Bulgaria), and more. France is a particularly interesting case as it operated in three different „juridical arena:“ France proper (military

tribunals only of non-French defendants), the French-occupied zone of Germany, and Indochina (Saigon).

KERSTIN VON LINGEN (Heidelberg) outlined a transnational/ transcultural „juridical arena“ focusing on the East-West exchange of prominent legal experts or „traveling lawyers“ who were deployed in different trial contexts and acted as „carriers“ of legal concepts of international justice. BARAK KUSHNER (Cambridge) extended the geographical „juridical arenas“ with respect to China far into the postwar era in the context of civil war by calling attention to the „parading“ of war criminals from the trial venue to the prison as well as back to Japan, to the special circumstances of Taiwanese war criminals, and by (text)mapping collections of war criminals’ testimonies such as „Seiki no isho“.

Concrete mapping possibilities using GIS were explored in the last Session 5. TIM COLE (Bristol) illuminated the spatial relations within the German concentration camp system by showing, in a series of interactive maps, the development of the main and sub camps in Europe, the multiple uses of concentration camps as labor and extermination facilities, as well as virtual reconstructions of camp buildings and the correlation of the building boom at the end of the war and the staggering escape rate. JEFF BLOSSOM (Cambridge, MA) then presented a few first maps he had created on the basis of data on trial dates and location supplied in advance and offered examples from other projects that might be of use to mapping the war crimes trials. The group discussed getting basic training in ArcGIS and other geo-visualizations at Harvard University.

The workshop ended with a lively discussion about further steps. It is clear that this is a viable and very exciting project that needs serious multiyear funding to succeed beyond qualitative comparative research, and the organizers announced to go for competitive grant applications.

Conference Overview:

Tim Cole (University of Bristol), Presentation on the „Geographies of the Holocaust“ project

Discussion: A historical geography or a global

history?

Session 1: Historiographical assessments: convergences/divergences

Reports about current research projects on the trials around the world

Hayashi Hirofumi (Kanto Gakuin University) / Nakano Satoshi (Hitotsubashi University) / Barak Kushner (Cambridge University) / Kerstin von Lingen (Heidelberg University) / Wolfgang Form (Marburg University)

Session 2: Quantitative approaches: wrestling with the global scope of the trials

Discussion: How can quantitative data be generated? What can it tell us?

Hayashi Hirofumi (Kanto Gakuin University) / Barak Kushner (Cambridge University) / Wolfgang Form (Marburg University) / Franziska Seraphim (Boston College)

Session 3: „Juridical arenas“: temporal-spatial frames of the war crimes adjudicated

Discussion: What parallels between the German and Japanese war/occupation conduct were relevant to war crimes prosecution? What was singular?

Nakano Satoshi (Hitotsubashi University) / Barak Kushner (Cambridge University) / Michael Bryant (Bryant University) / Kerstin von Lingen (Heidelberg University) / Wolfgang Form (Marburg University)

Session 4: „Juridical arenas“: legal mandates to prosecute war crimes

Discussion: How do the legal foundations of war crimes prosecution compare across regions? What legal tools were shared and how? What incompatibilities emerged?

Henning Radtke (Frg Supreme Court, Karlsruhe) / Hayashi Hirofumi (Kanto Gakuin University) / Michael Bryant (Bryant University) / Wolfgang Form (Marburg University) / Kerstin von Lingen (Heidelberg University)

Session 5: Mapping war crimes trials: visualization methodologies

Jeff Blossom (Harvard University) / Tim Cole (Bristol University) / Wolfgang Form (Marburg University) / Franziska Seraphim

(Boston College)

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