

Chapter 16

Japanese War Crimes, Retroactive Laws and Mr Justice Pal*

Radhabinod Pal was born in 1886 and died in 1967.¹ From 1946 to 1948 he sat on the International Military Tribunal for the Far East—the Tokyo War Crimes Tribunal. The Tribunal produced a majority judgment by six of its eleven judges—those from the United States (Major General Cramer), the United Kingdom (Lord Patrick), the Soviet Union (Major General Zaryanov), China (Mr Justice Ju Ao Mei), Canada (Mr Justice McDougall) and New Zealand (Mr Justice Northcroft). In that judgment the Tribunal convicted the defendants, all Japanese, on at least one charge. It sentenced seven defendants to death by hanging, 16 defendants to life imprisonment, one to 20 years' imprisonment and one to seven years' imprisonment. General MacArthur did not interfere with the sentences. The death sentences were carried out. Six of those imprisoned died in gaol, one was released in 1950, and the rest were released in 1958.²

The President, Sir William Webb of Australia, wrote a substantially but not completely concurring judgment.³ Mr Justice Jaranilla of the Philippines wrote a substantially concurring judgment,⁴ but thought that some of the sentences were lenient.⁵ Mr Justice Röling of the Netherlands would have acquitted five defendants, but sentenced three more to death.⁶ Mr Justice Bernard of France went further. He thought the verdicts were invalid because the Tribunal's procedure was defective in various respects. He also thought that though various of the defendants bore responsibility for the "atrocities" committed by Japanese forces, he was not "certain" of their guilt.⁷

* Revised version of an address delivered at Cortina, Italy, 10 January 2011. Previously published in (2011) 85 *Australian Law Journal* 627. Reproduced with permission of Thomson Reuters (Professional) Australia Limited, legal.thomsonreuters.com.au. I am indebted to Alexandra Eggerking, Ryan May, Katie O'Byrne, Kim Pham and Jane Taylor for their assistance, and to Mr Justice Sackar and Richard Cobden SC for supplying me with relevant materials in their possession. This paper is only a sketch of the problems discussed, for much of the literature on Mr Justice Pal is in Japanese, and has not been translated; and a scholarly analysis of Mr Justice Pal's judgment would be lengthy. The vital primary source is BVA Röling and CF Rüter, *The Tokyo Judgment: The International Military Tribunal for the Far East (IMTFE) 29 April 1946-12 November 1948* (APA-University Press, 1977). Below this work will be referred to as "Röling and Rüter".

1 This is the common spelling, which he himself employed, and it will be used below, except when quoting, although some sources, particularly Indian ones, but also Röling and Rüter (eg at p XI), sometimes suggest that the correct spelling is "Radha Binod". "Radha Benode" is the spelling used by KK Basu, "Tokio Trials" (1949) 3 *Indian Law Review* 25 at 28.

2 Röling and Rüter p XVII.

3 Röling and Rüter pp 471-479.

4 Röling and Rüter pp 497-515.

5 Röling and Rüter p 514.

6 Röling and Rüter pp 1116-1117.

7 Röling and Rüter pp 492-496.

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