



修復的司法とは、当該犯罪に関係する者との対峙を通じて、被害者への謝罪を促し、犯罪の影響とその被害を回復し、再び犯罪によって生じた害を修復し、よって司法の実現を指向する一切の活動である。修復式正義は、平和創建的な犯罪事件への対応として、法律観念と社会衝突、人際関係間の衝突事件、強調社会関係の修復的権利、尊厳獲得に満足、個人社區已損壞の關係亦得到應有之、社會復歸不只加害人均需復歸。

By Emily Walz

RESTORATIVE JUSTICE


Politics & Peace Activists

In the aftermath of World War II, the victorious Allied powers chose to bring their remaining enemy captives to trial rather than summarily executing them. The idea that even in the midst of war, there remains a line in the sand that must not be crossed, an international recognition of those atrocities bad enough to be distinguished as war crimes, was new, the categories of “crimes against peace” and “crimes against humanity” unprecedented.

These were the first international criminal tribunals, a milestone in the field of international law.

The most famous trials were at Nuremberg, where officers in the Nazi high command were prosecuted. The International Military Tribunal for the Far East, otherwise known as the Tokyo trials, followed a similar model, along with dozens of other trials and tribunals held throughout Asia.

After the second Sino-Japanese War (1937-1945), which overlapped with World War II in the Pacific, the Chinese likewise were left with enemy Japanese captives of all levels. Like other nations, China held military tribunals in various cities, including Nanjing. First run by the Nationalists, the tribunals ended in 1947 due to the Chinese Civil War. Eventually the Communist Party would arrange trials for other Japanese prisoners remaining on Chinese soil.



Far from being the sole purview of history buffs and international law scholars, these issues continue to influence domestic and international politics. Xinhua recently reported the launch of a new website; The Virtual Museum of the War of the Chinese People's Resistance Against Japanese Aggression (1937-1945), "designed to spread historical knowledge", while the National People's Congress this year approved two new holidays; one commemorating the victims of the Nanjing Massacre and the other victory in the war.

In a place as central to this conflict as Nanjing, the historical memory is especially close to the surface, but not all details are equally well known.

International Law Today

The 1998 Rome Statute laid the groundwork for a permanent International Criminal Court, which came into effect in 2002. States party to the Rome Statute plus members of the United Nations Security Council can refer cases to the Court for investigation and eventual adjudication. China is not yet a party to the Rome Statute, still looking to find that delicate balance between becoming a member of international institutions and preserving its closely-guarded sovereignty, but has participated in previous Security Council votes. It has been refusing in the case of Syria, but had earlier acquiesced in referring cases from Yugoslavia and Rwanda to the international criminal tribunals as well as the situation in Libya in 2011.

The ICC is meant to be a court of last resort, responsible for leading legal inquiries in war zones, acting where domestic courts cannot or will not. Current cases include investigations into violence in Northern Uganda, the Democratic Republic of Congo, the Central African Republic, and Sudan.

Restorative Justice

Earlier this year, Fudan University inaugurated the new Fudan International Criminal Law Center with a Symposium on Old Evidence Collection and War Crime Trials in Asia, inviting students and scholars from around the world to present on topics of history and criminal law.

One presenter put the spotlight on a peculiar turn of events; after the Japanese surrender in WWII, the Chinese were handed a number of Japanese POWs from the Soviet Union. Kept in a detention center in Liaoning province for several years, the prisoners were well cared for, given scarce food and medicine, and subjected to a process of "re-education" that led many to confess their crimes and beg for the death penalty. And then the Chinese let them go.

Some have seen this process cynically as an attempt to manipulate former Japanese soldiers, brainwash them and send them back home re-programmed to advocate for Chinese aims. Others have called it a kind of restorative justice, a forerunner to the Gacaca courts in Rwanda or the Truth and Reconciliation Commissions in South Africa. Like Desmond Tutu, they would contend "there is another kind of justice, restorative justice...the central concern is not retribution or punishment but, in the spirit of ubuntu, the healing of breaches, the redressing of imbalances, the restoration of broken relationships."

Diplomatic Maneuvering

Forgiveness and restoration was part of the Chinese political narrative of the 1950s, though Zhang Bixin, a scholar and professor at Xiamen University Law School, acknowledged a more complicated series of motives. International geopolitics had evolved significantly between the end of WWII and the era of the Korean War, when the American Imperialists were the enemy and Japan was haplessly under their direction.

By the mid-1950s, Zhou Enlai and the CPC Foreign Ministry were moving for a Sino-Japanese rapprochement, advancing a "People's Diplomacy" agenda. Japan had not yet recognized the PRC, but unofficially, the island country was pushing for the repatriation of its citizens left behind after WWII.

During the Korean War, Manchuria was an important strategic area. With the end of the Korean War and a more independent Japan, Fushun prisoners could have ended up pawns in a diplomatic game. 417 Japanese prisoners were released back to Japan in 1954. Some speculated that Zhou Enlai's foreign policy goals were to drive a wedge between Japan and the U.S. and encourage pro-China factions within Japan.

In a military courtroom in Shenyang in August 1956, 45 were convicted. Later that year Zhou Enlai announced his intention to restore relations with Japan.

While Zhang does not deny a clear political agenda, and that the trials were of questionable legality, given that they were conducted only after guilty pleas could be assured, her research points out that, while defense lawyers did not contest charges, they asked for lighter sentences on the grounds that their defendants had expressed remorse for their crimes. They had been "rehabilitated."

The Prisoners

The Japanese POWs, who were eventually to undergo this thought reform process, confess and be repatriated to Japan, were originally captured by the Soviets in Manchuria. They were subsequently transported to harsh labour camps in the Northeast Russian town of Khabarovsk where they would pass five years before being shipped back to China.

In mid-July 1950, nearly a thousand of these Japanese war criminals arrived at the Fushun War Criminals Management Center (also known as Liaoning Prison #3). Along with the Japanese were Nationalist and Manchu prisoners, including the toppled Emperor Pu Yi. Bernardo Bertolucci's film *The Last Emperor* would later make the prison famous for scenes shot on location.

The site was converted to a museum open to the public in 1986. It was here that a young Pu Yi, along with other Japanese and Kuomintang war criminals, was detained after the end of World War II. For ¥15 one can see galleries that show the transformation of the war criminals and their living conditions.



The Chukiren

The pardoned fighters found themselves founders of a controversial peace group, back in Japan in 1957. Known as the Association of Returnees from China, or Chukiren (中国帰還者連絡会, or in Japanese, “Chūgoku Kikansha Renraku Kai”), they were viewed with suspicion. Many reported coming home after 11 years in prison to find that their wives had remarried and their names had been crossed off village registrations.

They began telling their stories, in person and in writing, confessing to their crimes, testifying to the historical truth of WWII atrocities, and advocating for peace; activities not always popular with those segments of Japanese society, which even now might like to minimize the events of WWII. In a countermove, many of the aforementioned accused the returnees of being brainwashed.

Decades later, the Chukiren staged trips back to China, where they reunited with prison workers and families of their victims, telling their stories, asking forgiveness, working to build international peace and a “Sino-Japanese Friendship.”

Due to the dwindling numbers of their members, many of whom had passed away, the group disbanded in 2002. They were succeeded by a group calling itself the “Fushun Miracles Inheritance Association,” (Fujun no Kiseki wo Uketsugu Kai), formed of younger activists committed to preserving and sharing the group’s testimonies.

Opened in the mid-2000s in a suburb of Saitama prefecture, the modest Chukiren Peace Memorial Museum exhibits documents in which some 300 Japanese veterans confess to the inhumane acts they committed, thousands of pages of handwritten testimony of a history many would, but none should, rather forget. 