

# Law and Collective Memory: International Military Tribunal for the Far East and Japanese Collective Memory of the Nanjing Massacre<sup>1</sup>

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**Abstract:** This paper examines the role of law in influencing collective memory. It specifically analyzes how the International Military Tribunal for the Far East (IMTFE) shaped post-war Japan's collective memory regarding the Nanjing Massacre, which is the mass murder of an estimated 200,000 to 300,000 Chinese civilians by the Imperial Japanese Army in 1937 during World War II. An analysis of the Nanjing Massacre's description in Japanese textbooks published from the 1940s to the 2000s, shows that the IMTFE's narrative has become a prominent constituent of Japanese collective memory. Nevertheless, due to criminal law's institutional logic, including the trials' adversarial nature, criminal law's focus on individual perpetrators, and IMTFE's substantivized application of the law, the IMTFE record facilitates a selective remembrance of the Nanjing Massacre among the Japanese public and gives rise to ambiguous historical narratives. This case study sheds new light on the intricate relationships between the law and collective memory.

## Introduction

Criminal legal institutions may play pivotal roles in curtailing cycles of mass violence. This is because these institutions, through legal proceedings, can mold the collective memory of past atrocities. In reverse, this rewritten collective memory can spur the creation of new laws and drive responses that deter future violence. The mechanism of "Trials - Collective Memory -

Response" illustrates how legal processes can prevent mass violence (Savelsberg and King, 2011: 9).

This paper delves into the "Trials - Collective Memory" link, exploring how the law can influence collective memory. Since the establishment of the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East (IMTFE) in the aftermath of World War

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II, the primary objective of international criminal courts has been to contribute to the historical record and shape the collective memory of societies. Justice Robert H. Jackson highlighted this at the Nuremberg Trial, stating, "We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow" (International Military Tribunal, 1946). He emphasized that the power of the law, when addressing heinous crimes, can dictate how societies remember their past. Moreover, the IMTFE also had the goal of using law to shape collective memory by serving as an instructive tool. For instance, Judge Erima H. Northcroft from New Zealand believed the tribunal's judgment could aid the re-education of the Japanese people. She argues that "[t]he tribunal's judgment has placed in the hands of the occupation authorities a document which could be of substantial assistance in the re-education of the Japanese people." (Northcroft, 1949)

The primary goal of this research is to discern how the law shapes collective memory and the mechanisms through which it does so. I take an empirical approach, examining how the IMTFE contributes to post-war Japan's collective memory, which can be illustrated by textbook descriptions of the Nanjing Massacre.<sup>2</sup> The paper dissects the relationship between law and collective memory, delves into the intricacies of the IMTFE, and scrutinizes how the Tokyo Trials

influenced textbook content from the 1940s to the 2000s.

First, I consider the relationship between the law and collective memory. Second, I examine the IMTFE in detail, focusing on its judgment, its institutional logic, and its substantive focus. Finally, I explore how the Tokyo Trial influenced textbook narratives about the Nanjing massacre from the 1940s to the 2000s.

## Collective Memory and Law

### Collective memory

The concept of memory in psychology refers to an individual's faculty of encoding, storing, and retrieving information (Squire, 2009). It is regarded as a property of individuals. It is not social, and is not a shared collection of individuals' memories, in contrast to collective memory.

The concept of collective memory in sociology was first proposed by French philosopher and sociologist Maurice Halbwachs, who defined it as a shared repertoire of memories, knowledge, and information of a social group, significantly associated with its identity. Collective memories are, by definition, constructed, shared, reinforced, and passed on by small and large collectivities ranging from families to generations to nation-states and global communities (Halbwachs, 1992). It is important to note that collective memory is socially constructed in the sense that one

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<sup>2</sup> In the Chinese Postal Romanization adopted from 1919 to 1947, "Nanjing" was transliterated as "Nanking". Therefore, "Nanjing" and "Nanking" are used interchangeably. "Nanjing Massacre" was also

called the Nanking Massacre or Rape of Nanking. It is also worth noting that since the IMTFE took place from 1946 to 1947, the use of "Nanking" is prevalent in the written record of the IMTFE that will be referenced later in this paper.

need not necessarily have directly experienced the past (Savelsberg and King, 2011: 9). Moreover, collective memory can be reflected in various mediums, such as texts, images, and rites (Assmann and Czaplicka, 1995).

In addition, the collective memory of past atrocities is not just a reflection of what happened in the past. The construction of collective memory is often motivated by present-day actors' material and ideal interests. And multiple actors always offer competing versions of the past. Thus, a crucial feature of collective memory is that it is always conflicted and in flux (Savelsberg and King, 2011: 10, 18-19).

Nevertheless, it is worth considering how legal proceedings build a collective memory of atrocities. Law after all can reconstruct collective memory, serving as an official denouncement of past records, an end to violence, and promotion of reconciliation. The law, however, is also characterized by its specific institutional logic that shapes narratives and thereby uniquely affects our collective memory, different from other mediums that contribute to collective memory.

## Law and Collective Memory

There are three primary ways in which the law can shape collective memory:

1. The court's narrative is seen as the official memory and serves as a reference point for the production of collective memory.
2. The court's institutional logic, including its focus on individual perpetrators and adversarial nature, not only operates within

the court but also affects how we selectively remember an event.

3. The law's substantive focus potentially generates controversy over the validity of the official narrative of trials, which can affect our collective memory.

First, legal memory has the power to pronounce a definite judgment on an event, suppress alternative meanings, and shape how future generations understand an event (Finley, 1989: 888). Moreover, since the law is omnipresent, represents morality, and is backed by the coercive apparatus of states, churches, or other organized groups (Weber, 1976), legal memory has always been the default reference in the production of collective memories.

Secondly, trial-generated memories reflect the institutional logic of the law. Laws operate under a particular set of institutional rules concerning the presentation of evidence, the establishment of truth, and decision-making (Weber, 1976). As a result, legal proceedings are bound by rules that differ from those used in other fields, such as science, art, or religion. Thus, trial-produced memories differ from those produced in those other social fields.

One critical aspect of the institutional logic of criminal law proceedings at IMTFE is that the trials operate on the Common Law's adversarial model where two opposing parties—the prosecution and the defense—present their cases before an impartial judge. The prosecution represented the Allied Powers, and the defense represented the accused individuals, who were mostly high-ranking officials and military leaders of the

Empire of Japan during World War II. In an adversarial model that relies on binary reasoning, each side strives to present its version of events in the most compelling manner, emphasizing its own perspective while attempting to undermine the credibility of the opposing side. This clash of narratives in the trial is then etched into the memories of the wider audience and generates conflicting collective memories. As Sedgwick (2009) noted for the case of IMTFE, adversarial criminal proceedings, an inherently contested process designed to construct a monolithic judgment, may not validate the traumatic narratives. And the adversarial model unavoidably creates a disputed narrative, which is particularly evident in the ongoing controversy over the Nanjing Massacre.

Another essential aspect of the institutional logic of criminal law is that trials target a limited scope of the population. The broader population who supported the campaign that led to atrocity, social processes, or contributing economic and political structures are generally neglected in trial narratives and thus do not enter trial-generated collective memory. Consequently, merely targeting individuals produces individualizing and decoupling effects, making the public feel either apathy toward or exculpated from an atrocious crime (Savelsberg and King, 2007: 195). For instance, Germans in the aftermath of World War II, through domestic trials, assumed the role of "the third party" and distanced themselves because German legal proceedings against former Nazis played a role in separating individuals from the guilt associated with collective actions (Giesen,

2004). Devin and Pendas (2006) shows how the Frankfurt Auschwitz Trial against 21 leading perpetrators of the Auschwitz concentration and extermination camp focused on the volition of a small number of individuals, engaged in particular cruelties, thereby distracting from the operation of the murder machine and the underlying organizational structure.

It is also important to consider evidentiary rules and legal classification systems when examining the influence of institutional logic over collective memory. Legal trials are bound by evidentiary rules, which determine what information and materials can be presented as evidence in courts. These rules are created to ensure fairness, reliability, and the proper administration of justice in the legal process. As a result, even though the law relies on personal memory as evidence to assess a case, it is not adequate to establish the veracity of an account because it is subject to rigorous legal evaluation (Henry, 2013: 364). Additionally, only evidence that is admitted in the court can enter into the "official truth" of legal memories. In addition, trials only deal with actions captured in legal classification systems, weakening the memory of cruelties that were not tried in trials. For example, despite the extensive knowledge and documentation of rape crimes at IMTFE, crimes against "comfort women," including forced prostitution and sexual enslavement were never tried at IMTFE in the 1940s because they were not enumerated in the tribunal's classification system of offenses. Consequently, the comfort women issue was absent from people's collective memory and did not receive international attention until

almost 50 years later, in 1991, when Kim Hak Sun, a Korean woman gave public testimony about being forced into sexual slavery by the Japanese military during World War II when she was 17 years old (Henry, 2013: 373).

Thirdly, legal logic is not necessarily the dominant factor that shapes collective memory. This is because legal trials and investigatory work can be guided by extra-legal criteria such as political and moral considerations in a substantivized type of law (Savelsberg and King, 2007: 195; Weber, 1976). According to Weber, a "substantive" focus refers to a legal approach that prioritizes moral values and emotional considerations, compared with "formal" rationality, which is driven by formal procedures and technicality (Weber, 1976). A substantivized type of law can be illustrated by victor's tribunals, which refers to a legal mechanism set up by the winning side in a conflict to address violations of international law committed by individuals from the losing side. Deniers of atrocity often accused trials of being guided by non-legal rationales to reject the existence of crimes and produce a collective memory different from the trial's official narrative.

In sum, the law's authoritative position can generate a legal narrative that contributes to a collective memory that acknowledges past wrongdoings. However, due to the law's institutional logic and its potential reliance on non-legal rationales, criminal proceedings contribute to selective memories of an event and simultaneously generate controversies over collective memory.

## **Nanjing Massacre and Nanjing Massacre at IMTFE**

### **The Nanjing Massacre**

The Nanjing Massacre took place in the context of the Sino-Japanese War during World War II. It was the mass murder of Chinese civilians by the Imperial Japanese Army. The massacre lasted about six weeks, starting on December 12, 1937. It extinguished approximately 200,000 to 300,000 lives.

War crimes such as mass killings of civilians, rape, looting, and arson were prevalent during the Nanjing Massacre. Historical photos and documents record countless atrocities, such as photos of a pond outside Nanjing filled with the corpses of people who were killed by the Japanese troops, film footage showing a boy who was bayoneted in the head after having been beaten by Japanese soldiers with an iron bar, and a newspaper which reads "Incredible Record in the Contest to Cut Down 100 People," which reports about two Japanese officers competing to see who could kill one hundred Chinese people first. (Yale's Nanking Massacre Project, n.d).

Finally, in April 1946, the International Military Tribunal for the Far East (IMTFE) was convened to try leaders of the Empire of Japan for their crimes and to address the Nanjing Massacre.

### **The International Military Tribunal for the Far East (IMTFE)**

One week after the surrender of Japan on September 2, 1945, and Japan's occupation



by the Allies, U.S. General Douglas MacArthur—the Supreme Commander of the Allied Powers—ordered arrests of Japanese suspects. On January 19, 1946, he ordered the creation of the IMTFE and approved the Tokyo Charter, designed to mirror the Nuremberg Trials.

On April 29, 1946, the IMTFE convened in Tokyo to try the leaders of the Empire of Japan for war crimes committed during the Second World War, including crimes against peace, conventional war crimes, and crimes against humanity.

The tribunal was formed by eleven countries, which were Australia, Canada, China, France, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, the United Kingdom, and the United States. It was composed of 12 judges and prosecutors from the eleven countries that had fought against Japan as part of the Allies. The defense side included Japanese and American lawyers.

Twenty-eight defendants were charged. Most of them were high-ranking Japanese military and political leaders ranging from imperial military officers to cabinet members to former prime ministers. From May 3, 1946, to November 12, 1948, the trial heard testimony from 419 witnesses and saw 4,336 pieces of evidence. Seven defendants were sentenced to life imprisonment. Sixteen defendants were sentenced to imprisonment ranging from seven years to a lifetime. Among the sixteen defendants, five died in prison, and eleven were released on parole. Among the remaining five defendants, two died during the trials, and one was found medically unfit to stand trial and later

released. The other two were either acquitted or granted immunity.

## **Nanjing Massacre at IMTFE**

### ***Official Legal Narrative of Nanjing Massacre***

The twenty-eight defendants were charged with fifty-five different counts. The first thirty-six counts were labeled "crimes against peace," the next sixteen "murder," and the final three "war crimes and crimes against humanity." For example, the prosecution wrote the Japanese attack on Nanking into the indictment as Count 45, a charge of "murder." Count 45 charged that twelve of the Japanese defendants "on the 12 December 1937, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Nanking in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and number are at present unknown" (IMTFE, 1981, Vol.1: 1-13).

However, 45 of the 55 counts, including Count 45, were eventually ruled redundant or not authorized under the IMTFE charter (IMTFE, 1981, Vol. 20: 49762-49772). Moreover, the twelve defendants who were charged with crimes related to the Nanjing massacre were narrowed to only two people: Matsui Iwane, who was a general in the Imperial Japanese Army and the commander of the expeditionary force sent to China in 1947, and Hirota Koki, who was Japan's foreign minister until May 1938.

Nevertheless, the prosecution utilized the evidence from Nanking to charge Matsui and Hirota under Count 54 and Count 55 with "having conspired to order, authorize or permit" their subordinates to "commit breaches of the laws and customs of war" (Count 54) and having "violated the laws of war" by having "deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches thereof" (Count 55; IMTFE, 1981, Vol.1: 13)

Finally, in November 1948, an authoritative and official narrative of the Nanjing massacre was established by IMTFE. According to the Judgment of International Military Tribunal for the Far East (n.d., Vol.2: 1011-1014, 1180 -1182), the court confirmed that during Japan's capture of Nanking from 13 December 1937 to early February 1938, around 100,000 to 200,000 people died, and approximately 20,000 women were raped. The court regarded what happened in Nanking as "an orgy of crime." Furthermore, as noted in the Judgment of International Military Tribunal for the Far East (n.d., Vol.2: 1011-1014), the court's judgment on the Nanjing Massacre states that:

*"Japanese soldiers swarmed over the city and committed various atrocities. According to one of the eyewitnesses they were let loose like a barbarian horde to desecrate the city. It was said by eyewitnesses that the city appeared to have fallen into the hands of the Japanese as captured prey, that it had not merely been taken in organized warfare, and that the numbers of the victorious Japanese Army had set upon*

*the prize to commit unlimited violence. Individual soldiers and small groups of two or three roamed over the city murdering, raping, looting, and burning. There was no discipline whatsoever... Organized and wholesale murder of male civilians was conducted with the apparent sanction of the commanders on the pretense that Chinese soldiers had removed their uniforms and were mingling with the population. Groups of Chinese civilians were formed, bound with their hands behind their backs, and marched outside the walls of the city, where they were killed in groups by machine gun fire and with bayonets."*

In short, the court's official narrative, along with the court's indictment and estimates of the number of victims and the duration of the massacre, explicitly and unambiguously acknowledges the severity of the atrocity in Nanjing and identifies the soldiers of the Imperial Japanese Army as the victimizer, holding them responsible for such violence.

### ***Institutional Logic of the IMTFE***

The institutional logic of criminal law generally and the IMTFE's proceedings specifically includes an emphasis on individual responsibility rather than a concern with broader systemic issues. In the aftermath, six members of the Imperial Japanese Army were executed for the killing of hundreds of thousands Chinese civilians. Notably, of these six, only Matsui and Hirota were held accountable by the IMTFE for the Nanjing atrocities, which, according to the trial's estimates, resulted in around 100,000

to 200,000 deaths. As Eykholt highlights (2000: 23), by centering the trial on individual culprits, the broader and more intricate factors encompassing state ideologies, philosophical foundations, and societal structures were overshadowed, allowing many to ignore these critical aspects.

The other aspect of the institutional logic of IMTFE is its adversarial model. IMTFE confirmed the existence of the Nanjing massacre by accepting and validating diaries and written eyewitness accounts, setting precedents for death tolls of around 200,000, and pronouncing its judgment that held Japan responsible. In fact, the court's judgment almost followed the prosecution's narrative verbatim (IMTFE, 1981, Vol.17: 41229-31, 40116). Yet the trials' adversarial nature both helped and hurt representations of the Nanjing Massacre. In an adversarial trial, each defense case offered a platform to reject the prosecution's arguments. Usually, the defendants and defense attorneys played down and denied the Nanjing massacre. The strategies the defense used in the tribunal have since been exploited by much revisionist literature to challenge the veracity of the Nanjing Massacre. For example, during cross-examination, Matsui stated, "I do not know of any fact of Chinese women and children being killed within the walls of Nanking" (IMTFE, 1981, Vol.14: 33866). This assertion has been seized upon in much massacre denial literature, such as Tanaka Masaaki's "What Really Happened in Nanking: The Refutation of a Common Myth", published in 2000 (Brook, 2001: 680; Tanaka, 2000: 21-23).

### ***Non-legal Rationales Reflected at IMTFE***

IMTFE is often criticized for being heavily influenced by the political considerations of the Allied victors. In this section, I examine how non-legal rationales can be reflected in the IMTFE's work by analyzing the prosecution's decision not to try Hirohito, the critique of IMTFE being victor's justice, the validity of law, and IMTFE's evidentiary rules.

First, with respect to the allegations, the prosecution chose not to call to court or indict Emperor Hirohito, under whose leadership Japan waged war (Futamura, 2011: 38). Joseph Keenan, the primary American prosecutor in Tokyo, received explicit instructions against indicting Emperor Hirohito. Furthermore, witnesses were urged to minimize references to the emperor's involvement and attendance at pivotal discussions. This decision likely stemmed from concerns about maintaining stability in post-war Japan during the occupation. The occupation officials, including General MacArthur, believed that while the Japanese people might hold the emperor's aides responsible, they would not accept penalizing or dethroning Hirohito. MacArthur feared that indicting the emperor might spark a surge in guerrilla warfare, necessitating a significant increase in U.S. troops to maintain the Allied Occupation (Osiel, 1997: 138).

Second, Justice Pal, a judge who laid out his dissenting opinions in 1235 pages, denounced IMTFE as victors' justice. He argued that although Article 1 called for a "just and prompt trial and punishment of the major war criminals in the Far East" without specifying the nationality of those who could



be indicted, Article 2 showed that the trial was designed to charge only Japanese actors. Article 2 states that the tribunal members should be drawn from "the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines." It thus excludes both Japan and neutral countries (Brook, 2001: 685; Ginn, 1992: 261). Pal objected fundamentally to assigning judges from the victor nations to sit in judgment over the defeated and condemned what he considered the trial's presumption of guilt. He argued thus: "if a tribunal be rooted in politics as opposed to the law, no matter what its form and pretenses, the apprehension thus expressed would be real, unless 'justice is really nothing else than the interest of the stronger.'" (Brook, 1999: 294)

Third, the evidentiary rules used by the court show how non-legal rationales may have influenced the IMTFE. Article 13 of the Tokyo Charter emphasized that "the Tribunal shall not be bound by technical rules of evidence" but should admit any evidence with "probative value".<sup>3</sup> Moreover, Section

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<sup>3</sup> "Technical rules of evidence" quoted here is not to be confused with "evidentiary rules of law" referenced earlier. "Evidentiary rules" of law means the rules by which a court determines what evidence is admissible at trial. On the other hand, "technical rules of evidence," according to IMTFE, refers to a kind of "evidentiary rules" that are based on a strict interpretation of the law. For example, according to "technical rules of evidence," hearsay evidence is not admissible. Nevertheless, if it is deemed to have "probative value," tribunals "not bound by technical rules of evidence" might admit such evidence. In short, "technical rules of evidence" are a subset of "evidentiary rules." And in the case of IMTFE, the "evidentiary rules" of the court is "admit any evidence with probative value."

<sup>4</sup>Detailed witness accounts of Dr. Xu Chuanyin and John Magee are as follows:

IV, Article 13(c) allowed state documents "without proof of its issuance or signature" and "unsworn statements" in private writings (UN, n.d.: 25). Therefore, the IMTFE's legitimacy as a truth constructor could be undermined by these evidentiary rules, which may prejudice the defense.

Justice Pal was also wary of the procedural leniencies of the IMTFE, speculating that victor's justice motivated them. He was especially concerned about the court's acceptance of second or third-hand testimonies without thorough verification. To him, these lax standards potentially admitted unreliable accounts affected by intense emotions instead of facts, favoring the prosecution. His skepticism was notably evident when considering Dr. Xu Chuanyin's and John Magee's testimonies, two witnesses from the Nanking Safety Zone. Dr. Xu Chuanyin and John Magee provided detailed accounts of the tragedy of murder and rape that befell Xia Shuqin's family in December 1937 (IMTFE, 1981, Vol.2: 2572, 3911-3912).<sup>4</sup>While both testimonies were impassioned

Dr. Xu Chuanyin and John Magee were brought before the court to give testimonies of what happened to the family of Xia Shuqin in December 1937. Dr. Xu Chuanyin described what he saw as follows: "I went there myself with Mr. Magee. In that house there were eleven killed—three raped and two—there were two of the three, one is fourteen and one is seventeen. After raping, they put foreign stuff into the vagina and the grandmother showed me the stuff. The young girl was raped on the table; and while I was there the blood spilled on the table not all dry yet." (IMTFE, 1981, Vol.2: 2572)

John Magee described what he saw as follows: "Only two children escaped out of the thirteen people in that house. A little girl of about eight or possibly nine told me the story. . . [Japanese soldiers] went into this room to the side of the court and there grabbed and started to strip two young girls, fourteen and sixteen. . . They then raped these girls I don't know

and moving, they contained discrepancies regarding the details of murder and rape and the victims' age and numbers. Justice Pal, though acknowledging the facticity of the atrocity, questioned the reliability of traumatic recollections and challenged the prosecutors' witness choices and preparation. Pal argued that the two testimonies could be tainted by strong emotions or biases of "excited or prejudiced observers," leading to "distortions and exaggerations" (Brook, 2001: 686). Despite the inconsistencies, the prosecution adopted both accounts into their final narrative of Japanese war crimes. The court's willingness to accept inconsistent accounts may indicate an inherent bias of victors' nations, undermining the principles of fair judgment, as Pal remarked, "All the irrelevancies of rumors and cunning guesses were overshadowed by a predisposition to believe the worst, likely fueled by the emotions typical of victims of injury." Pal asserted that evidence should be examined thoroughly to ensure its credibility, lest it only serve the victor's narrative. (Brook, 2001: 687)

Fourth, it has been suggested that the law created by the IMTFE indicates that non-legal motives drove the trials. Critics argue that law applied by the court was *ex post facto* because the Tokyo Charter upheld new crimes that did not have a foundation in pre-existing international law: 'crimes against peace' and 'crimes against humanity. Justice

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how many times, and killed them. . . In another room, off the same larger courtyard, the mother was hiding under a bed with her one year old baby, and when the body was found there was a bottle pushed into the vagina of the woman. . . . The bodies had been carried out of the building by the time I got there, which was possibly six weeks afterwards, but the blood was

Pal argued that if the defendants were to be found guilty of crimes that did not exist in international law at the time when the alleged acts were executed: "The tribunal will not be a judicial tribunal but a mere tool for the manifestation of power." He highlighted the substantive focus in the law applied by the IMTFE and severely criticized the control of trial by the political intentions of statesmen. He argued that relying on *ex post facto* law would allow international society to act unbound by a common legal understanding against war and promote the expansion of wars of aggression and a breakdown of international order (Nakajima, 2011: 128).

### **Summary**

To summarize, the IMTFE established its pronouncement of the Nanjing Massacre that evaluated Japan as the main aggressor and offered the court's estimates of death tolls and the duration of the atrocity. At the same time, IMTFE, as a legal trial, was bound by its legal logic, including its focus on individuals and its adversarial nature. Besides its institutional logic, the IMTFE was influenced by non-legal rules or political and ethical concerns such as its decision not to try Emperor Hirohito, its appointment of judges from victors' nations, its imperfect evidentiary rules, and its legislation.

Has the trial become a force in shaping Japanese collective memory about the

spattered everywhere. . . If I had had colored film it would have shown blood spattered on the table where one of the girls was raped and on the floor where another person was killed." (IMTFE, 1981, Vol.2: 3911-3912)

Nanjing Massacre? If so, what role have these features of the IMTFE proceedings been playing in Japanese collective memory? What does the collective memory about Nanjing Massacre that is affected by the IMTFE look like? The next section examines these questions. I use textbooks as a proxy to analyze Japan's collective memory and investigate the development and evolution of history textbooks in Japan, published from post-war in the 1940s to 2000s, that mention and describe the Nanjing Massacre.

## **IMTFE and Japanese collective memory of Nanjing Massacre**

### **Nanjing Massacre in the Classroom**

History textbooks can communicate historical events to a younger, impressionable audience and shape its collective memory of historical events that it did not experience first-hand. Textbooks also reflect the writers' memory because the construction of collective memory depends on previous ways of remembering history (Savelsberg and King, 2011: 19). In addition, court trials can reach a broader public through history textbooks because textbook writers draw on various sources, including historical and highly significant criminal trials that may authoritatively shape knowledge. Thus, one way to examine how the IMTFE shapes Japanese collective memory is to use Japanese history textbooks as sources.

However, trials are not all-encompassing in creating narratives in history textbooks because textbook production is driven by its own institutional rules and is likely to privilege state-certified views of history.

Textbooks often reflect what those in positions of authority regarding the production and certification of textbooks see as valid interpretations of history. Therefore, the construction of collective memory is motivated by the interests of present-day actors (Savelsberg and King, 2011: 10, 41-42). This also applies to Japan because all textbooks used up to the end of secondary education must pass the compulsory screening and authorization system of the Japanese Ministry of Education (MOFA, n.d.).

Therefore, the following sections will mainly discuss how the IMTFE has influenced textbook writing and the debate over textbook writing, along with changes in governmental and political policies and environments.

### **Source Collection**

Within the U.S., Japanese textbooks are scarcely available, making it nearly impossible to conduct a firsthand analysis. Attempts were made to access digital versions or copies of these textbooks online. However, the lack of comprehensive digital archives of these resources in the public domain posed significant hurdles. Consequently, this study had to rely on secondary sources and analyses conducted by other researchers who have had the opportunity to scrutinize Japanese textbooks and investigate Japanese historiography.

Though not ideal, this reliance has been instrumental in bridging the gap created by the inaccessibility of primary resources. In the end, I was able to assemble a bibliography with nine Japanese history textbooks, selected to showcase the contours

of Japanese collective memory throughout different epochs (see appendix for a bibliography of all textbooks).

### **From the 1940s to 1950s: The First-Time Mentioning of Nanjing Massacre in Textbooks**

At the end of World War II, the victorious Allies occupied Japan following the empire's surrender. The Occupation was overseen by U.S. General Douglas MacArthur, who established the IMTFE. As the U.S. occupational forces settled, they introduced American narratives about Japan's wartime conduct. Therefore, Japanese memory became deeply intertwined with the sociopolitical reforms dictated by the American Occupation.

The Supreme Commander for the Allied Powers (SCAP) worked to integrate Nanjing into Japan's official history and actively promoted the truth about the Nanking Massacre. Textbooks published between 1940 and 1950, despite their brief discussion of Nanking, generally validated the IMTFE's stance on Japan's aggression. Notably, the second volume of *The Course of the Nation*, edited by the Ministry of Education, which came under the Occupation authority, reinterpreted Japanese wartime history. For the first time, it acknowledged the havoc wreaked by Japanese troops in Nanjing. It reads, "Japanese troops had ravaged (arasu) Nanjing" (Yoshida, 2006: 47). In addition, the junior high school and high school textbook *Nihon no Rekishi* (ge) read: "Atrocities (zangyaku kōi) committed by our army at the time of the capture of Nanjing resulted in an all-out anti-Japanese struggle by the

Chinese." (Yoshida, 2000: 74) The phrasing in these textbooks used to narrate Nanjing Massacre closely mirrored the IMTFE's terms like "desecrate" and "atrocities".

Nevertheless, the textbook also reflected the IMTFE's substantive type of legal reasoning. Due to the U.S.' political considerations, the IMTFE did not charge Emperor Hirohito, who backed the decision of militarists to wage war against China in 1937. That omission has been likened to a "staging of Hamlet without the prince," as Osiel commented (1997: 139). As a result, textbooks emphasized that the military, instead of the Imperial Government and the Emperor, had dragged Japan into an unwanted war. For example, in *Course of the Nation*, it reads, "Although the government made every effort to end the incident and to maintain friendly relations with China, the military rapidly enlarged the fighting. Like a stone gathering momentum as it rolls down a slope, the incident got out of hand." History books for junior high school and high school students published by the Ministry of Education in 1946 similarly stated: "Atrocities in Nanjing, committed by our military when it occupied the city in December, served to stiffen the resistance of the Chinese people." (Yoshida, 2006: 47-48)

In fact, after the war, criticisms of the Imperial government's actions during World War II and Japanese Tennosei (the emperor system) were common. Consider, for example, the halls of higher education, *Rekishigaku Kenkyūkai* (or *Rekken*, the Historical Science Society of Japan), established in 1932. At the third postwar meeting of *Rekken* in January 1946,

discussion centered on criticisms of tennōsei (the emperor system), and the proceedings were published in February 1946 as “Rekishika wa tennōsei o dō miru ka” (“How Historians View the Emperor System”) (Yoshida, 2000: 74). Moreover, prominent figures like historian Hani Gorō, who was elected to the Upper House in 1947, strongly advocated that Japan must overthrow the emperor system because all of Japan’s wartime atrocities, in his judgment, were committed in the name of the emperor (Yoshida, 2006: 54-55). Despite the criticism of the Japanese Emperor system, parallel to the IMTFE, the textbooks chose not to mention Emperor Hirohito’s war responsibility. That left younger Japanese generations with a limited perspective and closed off the possibility of rejecting what the imperial government had done during the Showa era, in contrast to younger Germans who were united in denouncing the period of the Nazi regime in their collective history (Brook, 2001: 676).

To conclude, from the 1940s to 1950s, the IMTFE’s official judgment about the Nanjing Massacre managed to reach the public through textbooks. However, IMTFE’s decision not to try Emperor Hirohito was also reflected in the books. This contributed to a selective collective memory of the Sino-Japanese War and Nanjing Massacre – more specifically, a selective narration of who was truly accountable for war crimes.

### **From the 1950s to 1960s: The Disappearance of the Discussion of Nanjing Massacre**

During the 1950s, the Cold War significantly affected Japan’s political discourse. With growing anxiety over socialism and communism, the United States allied with conservative forces in Japan, which they had previously tried to discredit. Consequently, the Ministry of Education urged textbook authors to avoid harshly criticizing Japan’s role in the Pacific War. Additionally, the government found it inappropriate to refer to Japan’s invasion of China. As a result, from the mid-1950s until the 1970s, the Nanjing Massacre began to not be mentioned in school textbooks, reflecting the conservative shift of the Ministry of Education (Yoshida, 2000: 76). Thus, the IMTFE barely shaped Japanese collective memory through textbooks during these two decades. Its influence was overwhelmed by foreign policy and geostrategic interests.

### **The 1970s: The Reemergence of the Discussion of Nanjing Massacre**

The year 1971 marked a significant shift in the shaping of collective memory. Influenced by heightened awareness of the Vietnam War, China’s admission to the United Nations, and the burgeoning Japanese economy, educators started presenting Japan’s wartime history with an emphasis on the devastation the Japanese army wreaked on Asia. The judgment rendered during the trial on Japan’s wartime actions began to be reintegrated into Japan’s collective memory via textbooks. For instance, in 1977, the Jikkyo Shuppan high school history textbook described the atrocities by referring to the event where the military massacred (*gyakusatsu*) a vast number (*obitadashii*) of people in Nanjing. While these 1970s



textbooks incorporated IMTFE's judgment, however, the specific death toll estimates from the trial were omitted. That was due to a restriction from the Ministry of Education, which barred textbook authors from citing fatality figures of 200,000 to 300,000. Instead, the authors substituted specific figures with general terms like "a vast number" (*obitadashii*). Nonetheless, the partial acceptance of the IMTFE's narrative played a pivotal role in fostering a consciousness in Japan's collective memory referred to as "victimizer consciousness" (*kagaisya ishiki*)—a recognition of Japan not just as a victim but also as an aggressor responsible for events during the Asia-Pacific War (Yoshida, 2006: 88-89).

### **The 1980s: The Proliferation of the Historical Descriptions of Nanjing Massacre**

The 1970s saw a rising acceptance of the verdicts from the Tokyo Trials regarding the Nanjing Massacre, which addressed Japan's wartime aggression. However, this acceptance led to backlash from those who defended Japan's role in the war, arguing that Japan had helped free Asia from Western control. Controversy erupted in late June 1982 when the Asahi Shinbun national newspaper reported plans by the Ministry of Education to minimize Japan's wartime aggression in textbooks. Asahi Shinbun reported that the Ministry of Education was planning on deemphasizing and rationalizing Japan's wartime aggression (Asahi Shinbun, 1982). These reports stirred protests and criticisms from government officials and intellectuals of other nations, such as China and Korea.

A central issue was the terminology used in textbooks to depict Japan's wartime activities. For instance, controversy erupted over whether textbooks should use "invasion" (*shinryaku*), as the trial verdicts had determined, or "advance" (*shinshutsu*), a softer revisionist term. Asahi Shinbun, in August 1982, found that, in the widely used junior high school history textbooks published by Chūkyō Shuppan, the sentence "Japan regarded Manchuria as a lifeline and pursued aggression against China with military might" had been altered to read, "Japan tried to advance into the mainland with military might in order to protect its rights in Manchuria." It also revealed that since the mid-1950s, the Ministry of Education had been suppressing the use of "invasion" and requesting writers to use "advance" (Asahi Shinbun, 1982). The significance of this choice of words extended beyond semantics. It is symbolic in that it illustrates whether the trial-generated history is reflected in the collective memory of the government and textbook writers, and whether the IMTFE could continue to be the dominant factor in shaping the younger generation's collective memory.

As China voiced criticisms over how the Nanking Massacre was portrayed in Japanese textbooks, the topic became internationally debated. Under such international pressure, most Japanese textbooks began using "invasion" and incorporating references to the massacre, drawing heavily from details provided by the Tokyo Trials. And more details of the IMTFE's official record were incorporated into textbooks in the 1980s than in the previous periods. For example, in 1984, Tokyo Shoseki, the largest publisher of

junior high school history textbooks, began citing figures introduced by the Tokyo Trial. The text stated that those who were killed "are said to have been more than 200,000" (Yoshida, 2000: 93). Similarly, Jiyū shobō's high school history textbooks, Yōsetsu Nihon no Rekishi (1984) and New Japanese History (Shin Nihonshi) (1985) revised and expanded their footnote on the Nanjing atrocities. Like Tokyo Shoseki's textbook, it included estimates made by the IMTFE that approximately 200,000 people, including women and children, were massacred in Nanjing within a month after the fall of the city (Yoshida, 2000: 93; Yoshida, 2006: 95).

While the IMTFE judgment advanced acknowledgment of atrocities in textbooks, legal proceedings also restricted collective memory. IMTFE's adversarial nature produced a disrupted narrative. And the proceedings were influenced by non-legal factors which are highlighted in Justice Pal's dissenting opinion, the evidentiary rules, and the legislation. Those factors, I argue, made descriptions of the Nanjing Massacre ambiguous in history textbooks and paradoxically disrupted collective memory.

In an attempt to object to the textbook's reference to the trial's judgment and deny the existence of the Nanking Massacre, revisionist and denialist historians point to the influence of non-legal criteria at the IMTFE. For example, the "Tokyo trial version of history," as the revisionists termed it, that reemerged in the 1980s, disturbed many anti-Tokyo trial revisionists who were veterans such as Tanaka Masaaki and Unemoto Masami. On March 13, 1983, along with five other veterans, they filed a lawsuit

against the Ministry of Education, claiming that it allowed textbooks to include misrepresentations of the incident based on hearsay and other unreliable sources. Tanaka demanded the deletion of textbook allusion to "the Nanjing Massacre." In June 1984, he published *The Illusion of "the Nanjing Massacre"* (Nankin Gyakusatsu no Kyokō), where he criticized IMTFE for its problem of victor's justice to support his argument. He stated that:

*"The world first learned of the Nanjing incident at the Tokyo War Crimes Trial. Without a doubt, the Tokyo Trial was a tribunal at which victors unilaterally punished a defeated Japan. Thus, [the victors] concluded that the defeated nation must take all the responsibility for the war. They demonized Japan and propagandized Japan's alleged crimes through the tribunal. [The victors] fabricated the Nanjing incident, inventing atrocities committed by the Japanese military in order to create a counterpart to the Nazi crimes at Auschwitz. Therefore, in my view, the key to understanding the incident depends on revising our understanding of the Tokyo trial. Unmasking the trial and revealing its fabrications and errors would result in exposing the truth of the Nanjing incident. As long as "the Tokyo trial's historical view" (Tokyo saiban shikun) has not been refuted, neither the textbook accounts of Nanjing nor larger problems regarding the textbooks will be corrected. We must see things with Japanese eyes. We must analyze things the Japanese way. I believe that the*

*time has come no longer to be held hostage by the 'Tokyo Trial's historical view.' It is time to search for the truth of history from a broader viewpoint.*"(Tanaka, 1984: 357-58)

Thus, Tanaka argued that the substantive focus of law at IMTFE justifies rejection of the legal narrative in the textbooks. In his book, Tanaka also argued that textbook authors who believed in the existence of the Nanking massacre were fundamentally wrong for placing their complete trust in documents and testimonies put forward by the Chinese side and by prosecutors at the Tokyo Trial. By referring to Justice Pal's dissenting opinions, Tanaka condemned witnesses who testified for the prosecution, Dr. Xu Chuanyin and John Magee, as propagandists who intentionally exaggerated or distorted the evidence (Tanaka, 1984: 26-27; Yoshida, 2006: 52, 96). Higashinakano, a prominent denialist historian, also questioned and discredited Magee's version of events. He writes, "Normally, murderers are careful to kill all witnesses. Why were the children [Xia Shuqin and her sister] spared?" (Higashinakano, 2005: 156-163)

Moreover, another denialist, Satō Kazuko, argued that the trial had no jurisdiction to prosecute Japanese wartime leaders. According to him, the trial applied *ex post facto* law in prosecuting crimes against peace and crimes against humanity – neither of which had been in existence before 1945. Thus, he argues that the war was a legitimate act of state, and the Nanjing Massacre is a fabrication of a trial that was created to demonize Japan (Satō, 1985: 84, 86-87, 89; Yoshida, 2000: 112).

Additionally, since the IMTFE is an adversarial trial that gave the defense a chance to challenge the prosecution's narrative, the court proceedings inevitably invite revisionists to employ the tactics used by the defense in the trials and deny the Nanjing Massacre. One example is mentioned earlier about Tanaka Masaaki's usage of Matsui's defense to argue that no rape was committed in Nanking Safety Zone during the Nanjing Massacre. Further, by relying on the narratives of Defense attorney Lazarus and attorney Jodai Takuzen, Higashinakano argues that the war was just and that the Nanjing Massacre is a mere fabrication. (Higashinakano, 2005: 244-246).

Therefore, the trial's adversarial nature and its substantive focus stimulated a debate over the legitimacy of the IMTFE's ruling in the Nanjing Massacre. Most importantly, this debate resulted in an ambiguous description of the Nanjing Massacre in some history textbooks. For example, Fusōsya's textbook, written by a pro-Imperial revisionist organization called the Japanese Society for History Textbook Reform, avoided strong terms such as "atrocities" and stressed that the debate over Nanjing is ongoing and that the historical facts are unclear. They write, "The Japanese military believed that Chiang Kai-shek would surrender if Nanjing were captured, and they conquered Nanjing in December." In the footnote, the publisher added, "At this time, the Japanese military killed and wounded many Chinese soldiers and civilians (the Nanjing Incident). Moreover, various views and data exist regarding the historical facts, including the casualty estimate, and the debate continues to this day." (Kasahara, 2007: 2)

In sum, the IMTFE's legal judgment became a powerful force in reviving people's collective memory of the Nanjing Massacre in the 1980s. Indeed, mainstream textbooks started referring to more details of the Tokyo judgment. Thus, it is reasonable to say that the trial's documentation of the numbers and the details of atrocities keeps the Nanjing Massacre within the bounds of Japanese collective memory, thereby maintaining a specific identity with human suffering and defeat. Nevertheless, the trial's institutional logic, its adversarial structure, and the influence of non-legal rationales spurred debates over the Nanjing massacre that, in turn, introduced ambiguity in textbook descriptions and muddled the Japanese collective memory of its wartime past.

### **The 1990s and the 2000s: The Prevalence of the Historical Description of Nanjing Massacre**

During the 1990s, following the textbook controversy of the 1980s, history education in Japan began to give more prominence to the trial's perspective on history. This meant putting greater emphasis on admitting responsibility for war crimes while reducing the emphasis on Japan being seen as a victim. That was obvious in the descriptions of the Nanking Massacre in the textbooks, which provided more details, such as photographs of Japanese war crimes produced at IMTFE, the Chinese estimate of deaths of 300,000, and texts that elaborate how the Japanese army was irrational in rushing toward Nanking and aggressive in looting civilians' properties for food (Yoshida, 2006: 141).

In the 1997 edition of a junior high school textbook published by Tokyō Shoseki, which had more than 41 percent of the market, the Nanjing Massacre was described as follows:

*"On July 7, 1937, without a declaration of war, the Japan-China War began after an armed clash between the Japanese and the Chinese troops at the Marco Polo Bridge in a suburb of Beijing. The war expanded from North China to Central China. By the end of 1937, the Japanese military occupied the capital, Nanjing. At this time, the Japanese military killed as many as 200,000 Chinese, including women and children."* (Yoshida 2006: 139)

And in Jikkyō Shuppan's Japanese History B (Nihonshi B), published in 1994, the Nanjing Massacre was described as follows:

*"During the occupation of Nanjing, the Japanese military killed large numbers of Chinese, including those who had surrendered and prisoners of war. The military engaged in looting, arson, and rape. This event received international denunciation as the Nanjing Massacre. The number of Chinese killed during the few weeks before and after the occupation, including combatants, totaled as many as jūsuman [130,000-150,000]."* (Yoshida 2006: 140)

Textbooks during the 1990s mostly reflected the IMTFE's assessment of the Japanese army as the instigator of the Nanjing Massacre and acknowledged Japan's responsibility for the war. Additionally, in 1997, six out of seven junior high school history textbooks contained details provided

by the trial, verifying that around 100,000 to 200,000 Chinese individuals lost their lives during and after the conflict. This is a significant increase compared to previous years (Yoshida, 2006: 139-140).

However, due to the IMTFE's institutional logic of only targeting the leaders of Imperial Japan and the Japanese army, history textbook writing in the 1990s may have led the Japanese to distance themselves from the Nanjing Massacre and not feel deeply affected by Japanese wartime aggression, resulting in decoupling effects. In a survey that researched 88 available Japanese high school textbooks in 1995, the perpetrators of the Nanjing Massacre were generally referred to as "Japanese Army" (Barnard, 2000). For example, the textbook *Yoosetsu Nihon no Rekishi* says, "The Japanese army in December of 1937 occupied Nanking, the capital. The textbook *Shin Nihonshi* states that "The Japanese Army's occupation of Nanking: In December 1937 the Japanese army occupied Nanking, the capital of the Nationalist Government. At this time, the Nanking Massacre occurred." (Barnard, 2000: 159). IMTFE's limited focus of perpetrators may have contributed to the fact that the textbooks only ascribe the war responsibility to the Imperial Army rather than describing how the whole society and political environment at the time was complicit in contributing to the overseas expansion. As a result, the links between the Nanking Massacre and Japanese society at the time, as well as the links between Japan of 1937-38 and today, are severed. The trial's limited focus, grounded in the institutional logic of criminal law, unavoidably contributed to a crucial step in isolating the knowledge of

Nanking from Japanese people and their collective memory.

Despite continuing critiques of the usage of words that distance Japanese people from the memory of the Nanking Massacre (Gu, 2022), the progressive trend of textbook writing that took place in the 1990s continued in the 2000s. Although revisionist textbooks such as *New History Textbook* (Atarashii Rekishi Kyōkasho) that denied IMTFE's judgment and held China responsible for the Nanking Massacre were published, they did not garner a large proportion of the market and did not reach a large audience (Yoshida, 2006: 151-152).

## Conclusion

The analysis of the IMTFE and Japanese history textbooks demonstrates how the legal trials can contribute to collective memory. My findings align closely with the broader body of literature in the field of law and collective memory as laid out in the subsection "Law and Collective Memory". My research confirms and substantiates these theories by providing a compelling case study, thus adding a layer to the existing knowledge (Henry, 2013; Savelsberg and King, 2007; Sedgwick, 2009; Weber, 1976).

Firstly, for most periods between the 1940s and the 2000s, except for the 1950s and 1960s, textbook writers predominantly used the IMTFE's narrative of Japanese aggression in Nanjing as a reference point. The trial shaped how history textbooks narrated the Nanjing Massacre and cemented the trial's narrative as a prominent constituent of Japanese collective memory.



Secondly, collective memory, as portrayed in the textbooks, reflects IMTFE's institutional logic of focusing on a limited scope of perpetrators and thus deemphasizing broader societal forces, leading to a decoupling effect. As illustrated above, textbooks typically refer to perpetrators as the "Japanese military", neglecting to mention the role of other parts of Japanese society at the time. Such a narrative distances the knowledge of Nanjing from contemporary Japanese society and Japanese collective memory, failing to cultivate the victimizer's consciousness effectively.

Thirdly, the IMTFE's decision not to prosecute Hirohito results in his conspicuous absence as a perpetrator in textbooks spanning from the 1940s to the 2000s, causing younger Japanese generations to selectively remember the perpetrators of Sino-Japanese War and the Nanjing Massacre, unable to denounce deeds of the imperial government during the Showa era.

Fourthly, along with the adversarial nature of the IMTFE that inherently produced contested narratives, accusations surrounding the IMTFE's substantivized application of the law — including claims of victor's justice, the application of ex-post facto law, and biased evidence admissions — leave Japanese textbooks mired in controversy. Consequently, IMTFE's adversarial structure and its substantive focus of law have resulted in ambiguities in history books and muddled collective memory.

It is necessary to acknowledge a limitation concerning the accessibility of

first-hand resources of Japanese history textbooks due to geographical constraints. In addition, the analysis of Japanese history textbooks cannot fully reveal Japanese collective memory. Textbooks, after all, constitute only one mechanism for the transmission of collective memory. In addition, we do not know how much of textbook information is retained in the minds of students. Nevertheless, textbooks do constitute one important proxy for the collective memory of a nation. Future research, direct engagement with the texts, and supplements of surveys or observational techniques in Japanese classrooms can potentially uncover more detailed insights and foster a more comprehensive understanding of how the IMTFE affects Japanese collective memory (for the example of post-Apartheid South Africa, see Teeger 2024).

Additionally, a detailed analysis of the evolution of history book writing, shows that the influence of the IMTFE over Japanese collective memory is invariably influenced by the present-day political environment. While legal proceedings play a pivotal role in shaping collective memory, they are not the sole determinants. Present-day political and ideological interests constantly interplay with the creation of collective memory.

Regardless, it remains paramount to acknowledge the interrelation between legal proceedings and collective memory. By analyzing this interrelation, we can discern how members of social groups construct their understanding of events they have not experienced firsthand. Furthermore, this research underscores the importance of

addressing some key limitations of legal proceedings: while they might deliver a conclusive judgment that addresses past atrocities, they also contribute to selective memories of historical events and give rise to ambiguous historical narratives. This finding

invites us to reconsider how we can rectify such discrepancies in future post-mass violence situations.

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## Appendix

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