

# **Universal Crime, Particular Punishment: Trying the Atrocities of the Japanese Occupation as Treason in the Philippines, 1947–1953**

**Konrad M. Lawson**

## **RESÜMEE**

Nach dem Ende der japanischen Besatzung der Philippinen 1945 wurden dort Prozesse zur Verfolgung von Kriegsverbrechen und von Landesverrat initiiert. Während im ersten Fall eine universalistische Kategorie von Verbrechen zur Strafe stand, ging es im zweiten Fall meist um den Verrat an der Nation, die als Opfer definiert wurde. Im Januar 1948 erklärte Manuel Roxas eine Präsidialamnestie für alle des Landesverrats Beschuldigten mit Ausnahme von Kollaborateuren aus dem Militär und der Polizei, Spionen, Informanten und gewalttätiger Verbrechen Beschuldigten. Die meisten der Fälle von Landesverrat, die diese Amnestie nicht umfasste, betrafen Personen, die Formen von Gräueln begangen hatte, die in Prozessen gegen Japaner als Kriegsverbrechen eingestuft wurden. Dieser Artikel untersucht den Prozess der gerichtlichen Aufarbeitung von Gewaltverbrechen und sexueller Gewalt, meist begangen durch Kollaborateure aus dem Militär und der Polizei, in den Philippinen nach 1945 gemäß dem Gesetz gegen Verrat. Im Mittelpunkt steht die Frage, inwiefern – ungeachtet der Tatsache, dass die Kriegsverbrecherprozesse der frühen Nachkriegszeit den Erwartungen in vielerlei Form nicht entsprachen – die alternative Kategorisierung von Brutalität im Krieg als Landesverrat nicht auch hochproblematisch war.

## **Introduction**

After the Second World War, prosecutors and judges of war crimes tribunals in Nuremberg and Tokyo, as well as in military tribunals and national courts around the world,

faced the accused in the name of humanity.<sup>1</sup> At the same time as Allied courts were adding new universal crimes to a roster listing violations of the rules of war, a parallel process of legal and extralegal retribution was being carried out against those accused of committing one of the oldest of crimes of betrayal, treason. Like the wartime leaders of the Axis nations, who were convicted for the crimes of underlings who followed their direct commands and carried out their policies, many of those accused of treason were powerful figures who served more or less reluctantly in brutal regimes established under military occupation. They often led security organs responsible for widespread torture and atrocities, or else were complicit in their violence through a failure to rein them in. Under the Japanese wartime occupation of the Philippines, from late 1941 to 1945, these included officials and local elites who worked with a “Philippine Executive Commission” and later served the Philippine Republic, which that was granted nominal independence by the Japanese in 1943. Others among the accused were at the bottom of the power hierarchy but confronted or participated in the daily violence of the Japanese occupation at close proximity, serving as auxiliaries, as soldiers, as informants, or in police and constabulary units. By an accident of birth, those who faced retribution were punished, for the most part, under the laws and rhetoric of treason rather than for committing the universal crimes represented in the world’s war crimes tribunals.

This article explores the process of trying the atrocities and sexual violence of military and constabulary collaborators with the 1941–1945 Japanese occupation of the Philippines under the law of treason and finds that, if early war crimes trials of the early postwar period fell short in many ways, punishing the brutality of war as betrayal was a deeply troubled alternative. These were Filipino citizens who, during the war, were called upon to carry out acts of extreme violence. These acts were justified as acts of sacrifice carried out in defense of both an Asian order their occupiers claimed to be the only bulwark against the injustices of Western imperialism, and on behalf of the new Philippine republic established under occupation. When the Philippines returned to American control and was once again granted independence in 1946, these same acts were denounced as examples of barbarity that breached universal laws. In the Philippine courts that tried them, however, it was more important to demonstrate disloyalty and betrayal than establish the scale and nature of their brutality in order to secure their convictions not for war crimes, but treason. The identity of the accused thus determined their crimes, while the prewar law of treason they were tried under defined the victim of their betrayal to be against not one, but two nation-states: a Philippine commonwealth that technically no longer existed, and the United States, the very colonial power a new Philippine republic was struggling to establish independence from.

1 In the Asia-Pacific, the most well known of these were the trials held under the International Military Tribunal for the Far East (IMTFE), also known as the Tokyo Trials. See Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy* (London; New York: Routledge, 2008) and Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, MA: Harvard University Asia Center, 2009).

The 1940s was a decade that saw many claims of liberation and independence in the Philippines. On the eve of the Japanese invasion of the archipelago in December 1941, the Philippines was an American colony that exercised limited autonomy under its Commonwealth President Manuel Quezon. Filipinos had been promised full independence by 1946 under the terms of the 1934 Tydings-McDuffie Act, but the arriving Japanese declared themselves agents of liberation come to help Filipinos cast off Western imperialism. Working closely with pre-occupation elites, who cooperated with the Japanese through a newly established Executive Commission and later a nominally independent Philippine Republic, the occupation authorities faced increasing resistance from a variety of U.S. supported, as well as independent, guerrilla forces.<sup>2</sup> Many of these groups radically increased the scale of their raids and the harassment of occupation forces after the return of U.S. forces in 1944.

The violence of the occupation itself is most memorably associated with the horrifying fate of surrendered Philippine and American soldiers in the Bataan Death March in the spring of 1942, the increasingly brutal counter-insurgency campaign of the Japanese military and its allies, and the atrocities of desperate Japanese forces defending Manila, especially in February, 1945.<sup>3</sup> War crimes associated with all of these atrocities would be the subject of trials of Japanese soldiers and officers after the war.<sup>4</sup> The collaboration of Filipinos with the Japanese occupation was handled separately. Formal investigations of collaborators were carried out by Counter-Intelligence Corps units attached to returning U.S. forces. The files related to these investigations were transferred to the Philippine government for use in treason trials of a newly established People's Court from late 1945. The resulting treason trials resulted in almost no convictions of major wartime officials and have received only limited attention from historians.<sup>5</sup>

In accounting for, and justifying, the leniency of the process, later historical accounts have tended to emphasize the colonial status of the Philippines and have juxtaposed the collaboration with the Japanese alongside the longstanding collaboration of Filipinos

2 On the often complex local dynamics of resistance and collaboration, see Alfred W. McCoy "Politics By Other Means": World War II in the Western Visayas, Philippines" in Alfred W. McCoy, ed., *Southeast Asia Under Japanese Occupation* (New Haven, Conn: Yale University Southeast Asia Studies, 1980) and Satoshi Ara, "Collaboration and Resistance: Catalino Hermosilla and the Japanese Occupation of Ormoc, Leyte (1942–1945)," *Philippine Studies: Historical and Ethnographic Viewpoints* 60(1) (2012): 33–68.

3 The most straightforward overview of the fall and recapture of the Philippines is still the U.S. official military history, Robert Ross Smith, *Triumph in the Philippines*, CMH Pub 5-10 (Washington, D.C: Center of Military History, U.S. Army, 1991).

4 In the Philippines, war crimes were tried in U.S. military trials and later in Philippine courts. See Richard L. Lael, *The Yamashita Precedent: War Crimes and Command Responsibility* (Wilmington, Del: Scholarly Resources, 1982), Sharon Williams Chamberlain, *Justice and Reconciliation: Postwar Philippine Trials of Japanese War Criminals in History and Memory* (Ph.D., United States, DC: The George Washington University, 2010) and Hitoshi Nagai, *Firipin to tainichi senpan saiban 1945-1953* [The War Crimes Trials and Japan-Philippines Relations, 1945-1953] (Tōkyō: Iwanami Shoten, 2010).

5 The treason trials in the Philippines, at least up to 1948, are treated in Augusto V. de Viana, *Kulaboretor!: The Issue of Political Collaboration During World War II* (Manila: University of Santo Tomas Pub. House, 2003) and David Joel Steinberg, *Philippine Collaboration in World War II* (Ann Arbor: University of Michigan Press, 1967).

with American rule.<sup>6</sup> In political debates and during the trials that followed Japanese defeat, however, the debate was rarely framed in post-colonial terms. Instead, wartime leaders of the Philippines leaned heavily upon the same two arguments, that local allies of military occupations employed around the world in their trials after the Second World War, from France to China: the “shield” defense, which claimed that collaboration mitigated the violence of the occupier, and the “double game” defense, which claimed that patriotic collaborators feigned allegiance to the enemy while secretly supplying aid to the resistance.<sup>7</sup>

These approaches achieved unparalleled success in the special Philippine People’s Courts for crimes of treason committed during the occupation set up in September, 1945, especially when combined with a compromised judiciary and weak support from the early postwar government of President Manuel Roxas. The crippled process is usually described as ending with a presidential amnesty signed by president Roxas as Proclamation Number 51, on January 28, 1948. The amnesty provided official validation for the “shield” defense, arguing that wartime collaborators believed in the necessity of their wartime roles. In the words of the amnesty, it “was their patriotic duty to execute them in the interest of the safety and well-being of their countrymen who were then at the mercy of the enemy” and they “did everything in their power to minimize the atrocities of the enemy...”<sup>8</sup>

The amnesty was not universal, however, declaring that, the “public sentiment” favoring mercy did “not extend to persons who voluntarily took up arms against the alleged nations or the members of the resistance forces, or acted as spies or informers of the enemy, or committed murder, arson, coercion, robbery, physical injuries or any other crime defined and punished in our penal laws.”<sup>9</sup> Anyone accused of these crimes would continue to face charges of treason, together with other crimes of violence, even after the dismantlement of the People’s Court system.

When the Philippine legislature debated the presidential amnesty in February, 1948, it was this contrast between the collaboration of the occupation’s governing elite and the informers and military collaborators that dominated the discussion. Was it fair, they asked, to punish thousands of largely poor and lower level collaborators who were at the site of the massacres, while exempting everyone higher up in the wartime apparatus? The legislature eventually ratified the amnesty by a large majority, but the trials of those

6 See, for example, Teodoro A. Agoncillo, *The Fateful Years: Japan’s Adventure in the Philippines, 1941-45* (Quezon City: R.P. Garcia Pub. Co, 1965) and Teodoro A. Agoncillo and Jorge B. Vargas, *The Burden of Proof: The Vargas-Laurel Collaboration Case* (Manila: University of the Philippines Press for the U.P.-Jorge B. Vargas Filipiniana Research Center, 1984).

7 For more on the framing of the treason debate in the Philippine legislature after the war see Konrad M. Lawson, *Wartime Atrocities and the Politics of Treason in the Ruins of the Japanese Empire 1937-1953* (Ph.D., United States, MA: Harvard University, 2012), 166-209.

8 Republic of Philippines “Proclamation No. 51 – A Proclamation Granting Amnesty” (January 28, 1948) <http://www.gov.ph/1948/01/28/proclamation-no-51-2/> (accessed 12 January, 2013).

9 Ibid.

who remained would reveal the challenges of punishing atrocities and wartime violence through trials dominated by the charge of treason.

### Military Collaboration in the Philippines

Who were the Filipinos who faced potential prosecution even after the 1948 amnesty? In the Philippines the two best known sources of armed support for Japanese occupation were the Bureau of Constabulary, which operated from around mid-1942 to its collapse as an (in)effective fighting force in the fall of 1944, and the League of Patriotic Filipinos, known by its abbreviated Tagalog name Makapili (Tagalog: Kalipunang Makabayan ng mga Pilipino, in Japanese: *firipin aikoku dôshi kai*), which was founded in November 1944 and lasted until the collapse of the Japanese occupation in the summer of 1945. There was also a number of other organizations, often with overlapping memberships.<sup>10</sup> The term Makapili referred to a concrete organization likely to number only a few thousand at most, but it was only one among many employed by the Japanese military in its final months on the archipelago. Increasingly, Makapili became a catch-all reference for those seen as the most enthusiastic lackeys of the Japanese occupation. At least one Japanese unit described their Makapili as an “assassination group”, though it is likely they carried out a variety of tasks, including labor.<sup>11</sup> In memoirs and histories of the Philippine occupation the word invokes horror, and is often associated, rightly or wrongly, with masked “magic eye” informers who pointed out suspected guerrillas to Japanese patrols.<sup>12</sup>

The largest and best, if still poorly equipped, force under arms in the occupied Philippines was the Bureau of Constabulary (BoC). The BoC, or just the Constabulary as it was more frequently called, was in many ways the successor to the Philippine Constabulary it was modeled upon, which had a long prewar history dating back to 1901.<sup>13</sup> Indeed, two

10 The *Yôin* (要員) is occasionally mentioned, although its members were most often engaged as laborers along the lines of the various auxiliaries that Japan employed all over occupied territories, often termed *heiho* (兵補). This organization was known to Filipinos, by a coincidence of pronunciation, as “United Nippon.” On various organizations that sometimes provided armed assistance to the Japanese in the final stage of the war, such as those under Aurelio Alvero and Artemio Ricarte, see Motoe Terami-Wada, “The Filipino Volunteer Armies,” in Setsuho Ikehata and Ricardo Trota Jose, eds., *The Philippines Under Japan: Occupation Policy and Reaction* (Quezon City: Ateneo de Manila University Press, 1999), 88–90 and Grant Goodman “Aurelio Alvero: Traitor or Patriot?” *Journal of Southeast Asian Studies* 27, no. 1 (March 1, 1996): 95–103.

11 Description of Makapili in captured Japanese Naval Defense Force Headquarters report, translated by Allied Translator and Interpreter Service (4 February 1945), Claude M. Owens Papers, Box 2, Hoover Library, Stanford, California.

12 For more on memories of the Makapili and the “magic eye” see Konrad M. Lawson, *Wartime Atrocities and the Politics of Treason*, 193–196.

13 The most detailed history of the Philippine Constabulary and related organs in the pre- and post-war periods, though not during the war, is Alfred W. McCoy *Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State* (Madison: University of Wisconsin Press, 2009). On the wartime constabulary see Ricardo Trota Jose, *Captive Arms: The Constabulary Under the Japanese, 1942–1944* (Manila: University of the Philippines, College of Social Sciences, 1997).

prewar heads of the Constabulary, Jose de los Reyes and Guillermo B. Francisco, were each made director, in turn, of its Japanese sponsored equivalent. The BoC was, however, structured somewhat differently from its predecessor in that it included all local police, and its military aspects were deliberately toned down by the Japanese military administration until the founding of the Republic in 1943.<sup>14</sup> The organization was established in early 1942, but it did not truly get off the ground until after the surrender of Bataan in April, when a large number of Philippine prisoners of war, many of them with prewar Constabulary experience, fell into Japanese hands.<sup>15</sup>

The BoC was never designed to fight alongside Japanese soldiers across its far-flung battlefronts in the manner of the Indian National Army that fought alongside the Japanese in Burma and across the border into India.<sup>16</sup> Instead they were to defend the homeland, carry out policing duties, and crush resistance to Japanese rule. The members of the BoC for the most part refused to fight the returning Americans in the fall of 1944 and deserted in large numbers; its total strength dropped from 18,000 in August to 7,500 in December before the Constabulary was completely disarmed in the spring of 1945.<sup>17</sup> Like Japan's local allies in occupied China, and others throughout its occupied territories, BoC officers did indeed widely engage in a "double game" before their mass desertion in 1944.<sup>18</sup> Even when they did serve, the ineffectual patrols of the BoC were usually preferred by the resistance to the more attentive ones by the Japanese.

At the same time it was equally clear that, prior to the fall of 1944, the BoC was increasingly active in Japanese-led mopping up operations and general "pacification" campaigns carried out at the behest of the Japanese military, or by order of other Filipino government officials.<sup>19</sup> A U.S. G-2 military intelligence report, which recorded the high potential of the BoC to turn on the Japanese, also noted their responsibility for the deaths of USAFFE guerrillas and that "to a limited extent" they had been employed as "undercover agents and spies" by the Japanese.<sup>20</sup> Japanese activity reports on mopping-up work collected by the American forces, while slim on details, are full of references to punitive raids being carried out, "in cooperation with the police," "aided by the police,"

14 Jose, *Captive Arms*, 3-7. Military ranks were restored after the independence of the Republic.

15 Most of the remainder were United States Armed Forces in the Far East soldiers who had served in either the prewar Philippine Division or the Philippine Scouts.

16 For an overview of the various armies that fought on Japan's side see Joyce Lebra-Chapman, *Japanese-Trained Armies in Southeast Asia: Independence and Volunteer Forces in World War II* (New York: Columbia University Press, 1977).

17 Jose, *Captive Arms*, 18. On the desertions of the BC from around September, 1944, see also Elmer Norton Lear, *The Japanese Occupation of the Philippines, 1941-1945* (Ithaca: Cornell University Press, 1961), 217. Then Foreign Minister Claro Recto claims that President Laurel, aware of the desertions, allowed up to 75% of Constabulary officers to freely desert. Claro M. Recto, *Three Years of Enemy Occupation*, 56.

18 See for example Ray C. Hunt and Bernard Norling, *Behind Japanese Lines: An American Guerrilla in the Philippines* (Lexington: University Press of Kentucky, 2000), 107.

19 Jose, *Captive Arms*, 7. Manuel E. Buenafe, *Wartime Philippines* (Manila: Philippine Education Foundation, 1950), 226.

20 General HQ United States Army Forces, Pacific Military Intelligence Section, General Staff Intelligence Activities in the Philippines during the Japanese Occupation: Documentary Appendices Volume II Intelligence Series, "G-2 Information Bulletin: Report on Conditions in the Philippine Islands" (June 1943), 29.

and “working [in] conjunction with the police unit.”<sup>21</sup> For this reason, it should not have been surprising to see them well represented in trials for the atrocities of treason in the aftermath of the war.

### **Trials After Amnesty**

The vast majority of accused Filipino traitors were dismissed for lack of evidence and other technicalities, even before the 1948 amnesty and the dismantlement of the People’s Court. Of the cases which remained, some convictions were appealed to the Philippine Supreme Court, and the rulings of at least 157 cases are readily accessible in numerous Supreme Court digests and legal databases.<sup>22</sup> Historians of the treason trial process Augusto V. de Viana and David J. Steinberg both claim that less than 1% of People’s Court treason cases were tried and reached conviction during the time of its existence, but it is not known how many of the remaining untried cases that were turned over to courts of first instance resulted in convictions of the same crime. The 156 convictions in their own count of cases, up to 1948, is extremely close in number to the count of 157 Supreme Court rulings I have identified, but it is less than half of the 323 wartime collaborators who would eventually receive a pardon in 1953. A closer examination of cases in the lower courts after 1948 would be necessary to fully compare post-amnesty conviction rates with those of the People’s Courts up until they were dismantled.

The majority of the post-amnesty treason cases in the Philippines worked their way through the regular criminal courts from 1948 to 1953, during the most violent period of postwar Philippine history. They continued through an increasingly violent insurgency known as the Huk rebellion, through elections plagued by corruption and the conclusion of the Philippine war crimes trials of accused Japanese in 1949. They continued through the suspension of *habeas corpus* under presidential emergency powers in 1950, through the sudden and controversial execution of over half a dozen Japanese war criminals in January 1951, the rural reconstruction movement of 1952, and the dramatic suppression of the Huk insurgents under the then Secretary of National Defense, Ramon Magsaysay.<sup>23</sup>

Well over half of treason cases ruled upon by the Philippine Supreme Court, some 92 in total, involved an accused member of the occupation period Bureau of Constabu-

21 The term “police” refers to the BoC, since the two were essentially merged by the Japanese by wartime. These examples are taken from a collection of translated mopping up reports from early 1944. See: General Headquarters, Far East Command, Military Intelligence Section, General Staff, Allied Translator and Interpreter Section, South West Pacific Area Current Translations No. 146 (January 31, 1945).

22 I have depended mostly on the copies of these rulings in the searchable Philippine Laws and Jurisprudence Databank, created by the Arellano Law Foundation, which is a non-profit institution specializing in legal education. <http://lawphil.net/>, hereafter LawPhil.

23 On this period see H. W. Brands, *Bound to Empire: The United States and the Philippines*, First Edition. (Oxford University Press, USA, 1992), 227-248 and Benedict J. Kerkvliet, *The Huk Rebellion: a Study of Peasant Revolt in the Philippines* (Berkeley: University of California Press, 1977).

lary (BoC), an alleged member of the organization known as the Makapili, Philippine employees of the Japanese military police, a “United Nippon” auxiliary member (*yōin*), a member of the Coastal Defense Corps (CDC, *kaigun jiyūtai*), or other unidentified uniformed military collaborator.

Table 1: Supreme Court Rulings on Military Collaboration 1947–1959<sup>24</sup>

Organization	No. of Cases (% of 157 total treason cases)	Affirmed Convictions (% of 92 military collaboration cases)	Reclusion per- petua or Death (% of 83 convictions)
Bureau of Constabulary	13 (8.3%)	9 (69.2%)	7 (77.8%, inc. 1 death sent.)
Makapili	48 (30.6%)	44 (91.7%)	37 (84.1%, inc. 1 death sent.)
Other Organizations	31 (19.7%)	30 (96.8%)	21 (70%)
Total Mil. Collaborators	92 (58.6%)	83 (90.2%)	63 (75.9%)

For years after the defeat of Japan, the Supreme Court was an awkward institution to deliberate upon the issue of collaboration. Five of its eleven early postwar members had served in the occupation government in some capacity, and three of its members, Ramon Ozaeta, Ricardo Paras, and Manuel V. Moran had served on the Supreme Court in the wartime republic.<sup>25</sup> In the postwar period the Supreme Court would be the final arbiter of state retribution in a host of violent crimes. As we examine their handling of cases involving wartime atrocities, however, it is important to note that the slow moving legal machine of the Philippines worked side-by-side with other legal and extralegal forms of political retribution. At the same time the Supreme Court was handing down rulings on leading cases of military collaboration and atrocities committed by traitors, a new rebellion by the most powerful wartime guerrillas, the Hukbalahap, was brewing on the plains of Luzon. Summary justice in the field, which reigned on all sides during the Japanese occupation, or in special military courts, together created an expansive space for violence against, and by, various insurgent groups that has continued, not only during the occupation and early postwar but, to a greater or lesser degree, down to the present day. For this reason, it is not terribly surprising if the unusual characteristics and legalistic complexities of postwar treason trials, and especially the more invisible post-amnesty trials, have escaped the historian’s notice. Nonetheless, as we shall see, the Philippine

<sup>24</sup> Statistics compiled by the author from rulings at LawPhil.

<sup>25</sup> The other members with service in the occupation period were Cesar Bengzon and Manuel Briones. See Hernando J. Abaya, *Betrayal in the Philippines* (Quezon City: Malaya Books, 1970), 82.



Supreme Court's treatment of murder as treason, and denying sexual crimes in war their political nature, both capture the legal and political field of moral calculation regarding wartime atrocities in the early postwar, and they reveal the difficulty in employing prosecutions for a crime against the nation as the means to punish atrocities in war.

### Complex Crimes and the Atrocities of Treason

In almost all of its rulings on wartime treason convictions, the Supreme Court corrected judges of the People's Court or courts of first instance, which had combined allegations of treason with murder or other violent crimes to charge the accused of having committed a "complex crime." The lower courts frequently ruled that military collaborators, informers, and spies were guilty of treason on the one hand and, separately, of violent crimes on the other. When these were compounded as "complex crimes" as defined by Article 48 of the Revised Penal Code of the Philippines, conviction guaranteed that the maximum penalty for the heavier crime would be given, which resulted in a relatively large number of death sentences before appeal to the Supreme Court. Thus, a military collaborator who joined a Japanese patrol and, say, beat or tortured an individual or robbed suspected guerrillas was, if convicted of the "complex crime" of treason and murder, automatically given the maximum penalty for treason: a death sentence.

The Supreme Court rejected this argument in case after case, usually referring to the precedent established by *People vs. Prieto*, a ruling issued the very day after the amnesty for political collaborators, on January 29, 1948.<sup>26</sup> In this case, Eduardo Prieto was accused of being an agent of the Japanese military police, who participated in raids on suspected guerrillas, of torturing suspects, himself bayonetting two guerrillas to death and also murdering a third. The lower People's Court had ruled that the accused was guilty of "the crime of treason complexed by murder and physical injuries" and sentenced him to death. Rejecting this compounding of the crime, the Supreme Court described the crime of treason in this way:

*The execution of some of the guerrilla suspects mentioned in these counts and the infliction of physical injuries on others are not offenses separate from treason...when the deed is charged as an element of treason it becomes identified with the latter crime and can not be the subject of a separate punishment, or used in combination with treason to increase the penalty...*<sup>27</sup>

In other words, in the context of an enemy occupation, assuming that adherence to the enemy could be demonstrated, the murder of a guerrilla was *the treason of murder*. It was not a traitor who committed a killing but a murder that made the traitor. Why did

26 All Supreme Court rulings below are from LawPhil. *People vs. Eduardo Prieto* LawPhil G.R. No. L-399 (January 29, 1948).

27 Ibid.

this matter? Besides the fact that the original “complex crime” would have guaranteed the harshest punishment, this Supreme Court ruling could be beneficial to the accused in other ways. Whereas a murder case required only a single credible witness to convict, murder which constituted treason required two, a requirement inherited by Philippine law from the treason law of the United States. It also prevented a suspect of being convicted of treason for providing aid and comfort to the enemy by accompanying soldiers on a raid and then being convicted of a separate count of murder, should the expedition have resulted in the death of any guerrillas.

Seen from the perspective of a victim’s call for justice, however, not only did the ruling make it more difficult to secure convictions for atrocities because of a two-witness rule originally designed to prevent a tyrannical government from overusing accusations of treason against its enemies, but the *political nature of the offense* came to dominate the arguments of the court. In each case, it was just as important, from a legal standpoint, to establish that the accused, in violation of a “duty of allegiance,” and “for the purpose and with the intent of giving aid and comfort to the enemy, did willfully, unlawfully, feloniously and traitorously” carry out each act, rather than to establish all the details of the violence itself, since adherence to Japan was as crucial to conviction as the overt act itself. In the political crime of treason the primary victim was the nation, and only particular brutality shown in a killing, rather than a “less painful method of execution” could serve as an aggravating circumstance to increase the penalty.<sup>28</sup>

In the broader historical terms of an international conflict, rulings on *murder as treason* detached the act from both its common criminal context, and also distinguished it from the kind of acts commonly committed by armed parties on all sides in war up to that time. Instead, its separate category confirmed the widespread domestic sentiments in recently liberated countries around the world in the aftermath of World War II that, during an occupation, there were in fact three different kinds of murder by a fellow citizen: killing for personal motives, killing for the cause of freedom, and treasonous murder. This may seem to be an obvious and natural division at the social and political levels, but in legal terms it was radically different from an approach to wartime violence based on the laws of war, either in the decades leading up to World War II, or within the scope of the new “crimes against humanity” prosecuted by the war crime courts of Nuremberg, Tokyo, and elsewhere.

Within the weak international legal environment created by the 1899 and 1907 Hague conventions and the 1929 Geneva Convention Relative to the Treatment of Prisoners of War, violence against those under the control of an occupier was classified according to the status of the victim: recognized belligerents treated as prisoners of war after capture, non-combatants, and unlawful combatants who were, in the absence of any explicit protections, generally subject to military justice, the speed and severity of which not

28 People vs. Eduardo Prieto G.R. No. L-399 (January 29, 1948) LawPhil.

only varied widely from conflict to conflict and army to army, but often showed a lack of consistency within them.

As in early postwar treason cases in other countries, however, no attempt was made by the Philippine courts to make a distinction between the war crime of killing innocent civilians and the execution of spies and guerrillas whose lives had never been effectively protected by international law.<sup>29</sup> When a Makapili auxiliary executed a guerrilla under Japanese orders, he was automatically guilty, by accident of birth, of the capital offense of treason, while a Japanese soldier might potentially go free under the laws of war for the same crime.

### A Crime Political in Nature

As we have seen, a collaborator's violent acts, including beatings, torture, and the massacre of civilians were considered not to be separate crimes or even special "complex crimes" that compounded sentencing but to themselves be manifestations of treason which provided aid to the enemy. In cases of rape or the abduction of women into sexual slavery, however, majority rulings of the Philippine Supreme Court held that neither acts constituted aid and comfort to the enemy. Instead, they were, at most, relegated to aggravating circumstances.

Sexual violence was a prominent feature of Japanese military conquest throughout East and Southeast Asia, with some variation, such as the opening stages of the occupation of the Dutch East Indies, when the Japanese command demonstrated an ability to limit its attacks on women.<sup>30</sup> By contrast, the occurrence of rape by Japanese soldiers in the Philippines from the earliest stages of the occupation was enough to cause the alarm of section chiefs of the Japanese Ministry of War in February, 1942, though the 14 rapes they saw as a "considerable" number came nowhere near the prevalence of rape noted in accounts of the occupation.<sup>31</sup> While a constant part of the campaign of violence and fear

29 A catch-all principle, known as the "Martens Clause", found in the preamble of the 1899 and 1907 Hague conventions calls for "cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience." A source of much debate in international law, it has been used to argue that unlawful combatants receive protection but according to Kevin Jon Heller, it was not employed in the early postwar war crimes trials. It has, however, become increasingly recognized as part of customary international law in recent decades. Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (New York: Oxford University Press US, 2011), 209. Yutaka Arai, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Leiden: Brill, 2009), 68-71.

30 While Dutch women were targeted for sexual violence, Toshiyuki Tanaka didn't find evidence of rapes of Indonesians in the opening stage, where he characterized the Japanese treatment of them as "relatively benign." Toshiyuki Tanaka, *Japan's Comfort Women: Sexual Slavery and Prostitution during World War II and the US Occupation* (London: Routledge, 2002), 63.

31 Yoshiaki Yoshimi and Suzanne O'Brien, *Comfort Women: Sexual Slavery in the Japanese Military during World War II* (New York: Columbia University Press, 2000), 78. For a collection of short oral accounts by women and the rape they confronted in the Philippines during the occupation see Angelito L. Santos and Renato Constanti-

in the counterinsurgency campaign against guerrillas throughout the archipelago, the widespread rapes during the battle for Manila in February, 1945, were among the many war crime counts at the military tribunal of General Yamashita Tomoyuki, held in the city later in the fall of the same year, which resulted in his conviction and execution.

Attempts to reduce the spread of venereal disease and arbitrary acts of sexual violence led to the formation of military brothels. According to one 1943 count, over a thousand women employed by deception and various degrees of coercion, including many Filipinas directly abducted by Japanese troops, served in these official ‘comfort stations’, while many more were taken and held as sex slaves by small isolated army units.<sup>32</sup> None of the Japanese soldiers or civilians was tried for the operation of the comfort women system, but the indictments of Japanese soldiers and civilians for war crimes trials carried out by Philippine courts did include 45 counts of rape, the third largest category of war crime behind the abuse of civilians (92 counts), and the killing of civilians (134).<sup>33</sup>

So how did the Supreme Court deal with cases of these atrocities when Filipino collaborators were the perpetrators, or indirectly complicit in the broader Japanese system of sex slavery? An example of its approach to sexual violence can be seen in a 1949 ruling on 14 counts of treason in the case of a Filipino agent of the Japanese military police, Antonio Racaza. Rape was seen only as an aggravating circumstance and not an overt act of treason, a finding that would set a precedent for later rulings.<sup>34</sup> Racaza’s other violent acts, in which he “willfully, unlawfully, feloniously and treasonably,” summarily shot, beheaded, and strangled suspected guerrillas, tortured detainees during interrogation, and guided Japanese soldiers on raids, constituted the very acts of his betrayal of the nation. However, his attempt to rape a woman who refused to offer information during a raid was explicitly reduced to aggravating circumstances which were seen as, “deliberately augmenting unnecessary wrongs,” without itself constituting an overt act of treason. In a separate opinion on the same case, Associate Justice Gregorio Perfecto (served 1945–1949) concurred with the conviction but argued that the attempted rape should not even be considered an aggravating circumstance:

*The attempted rape on the person of Silvina Cabellon may be considered as ground for the prosecution of a different offense, but cannot be considered as aggravating treason, a*

no, eds., *Under Japanese Rule: Memories and Reflections* (Quezon City: Foundation for Nationalist Studies, Inc. and BYSCH, Tokyo, 1992), 221–227. The texts of a number of reports of rape in the Philippines that have been preserved, along with reports expressing alarm at the negative effect these rapes had on Filipino sentiment towards the Japanese, can be found in Shiryōshū Nihongun ni miru Sei kanri to Sei bōryoku: Firipin 1941–45 [Documentary Collection of Sex Management and Sexual Violence as seen by the Japanese Military: Philippines 1941–45] (Tokyo: Nashinokisha, 2008), 59–73. One of the earliest reports of large-scale rape can be found in the January 1 entry in the diary of Pacita Pestaño-Jacinto. Pacita Pestaño-Jacinto, *Living with the Enemy: a Diary of the Japanese Occupation* (Manila: Anvil Pub., 1999), 14.

32 Tanaka, *Japan’s Comfort Women*, 47.

33 Hitoshi Nagai, *Firipin to tainichi senpan saiban 1945–1953* [The War Crimes Trials and Japan-Philippines Relations, 1945–1953] (Tōkyō: Iwanami Shoten, 2010), 220. The fourth, fifth and sixth largest number of counts were for the burning or destruction of property (23), looting (18) and cannibalism (15).

34 *People vs. Antonio Racaza* G.R. No. L-365 (January 21, 1949) LawPhil.

crime political in nature. *In the attempted rape there was nothing political and it had nothing to do with defendant's adherence and aid to the enemy.*<sup>35</sup>

Justice Perfecto was here trying to make a distinction between common crimes and the uniquely political crime that was treason. Sexual violence in war against a suspected guerrilla was not, he argued, like beatings, torture, or the killing of civilians, which constituted *political* crimes that provided aid and comfort to the enemy. Rape was thus neither treason nor a war crime but, alone among the acts of violence in this wartime context, considered a common crime.

If the court held that rapes did not themselves constitute acts of treasonous violence then neither would the abduction of women into sexual slavery. The Philippine Supreme Court ruling in the case against one Susano "Kid" Perez, which would also become a precedent in similar cases, offers an unusually detailed justification for the position that complicity in securing sexual slaves for the occupation forces did not constitute acts of treason.<sup>36</sup> It also offered a remarkable dissenting opinion, which revealed the glaring inconsistency in the court's argument. In all six counts of treason Perez was accused of "commandeering" women to serve as sexual slaves for Japanese officers, and sometimes raping the women himself. In some cases, deception was employed, as when Perez summoned women for the purported purpose of providing testimony against some accused suspect, or when he attempted to convince a reluctant woman who had already escaped once that a Japanese colonel merely wanted her to be his secretary. According to testimony in the trial, the same colonel would go on to rape or enslave more than half a dozen women provided for him by Perez. In one of the counts, Perez took a woman he had delivered to the Japanese colonel directly from one rape encounter to an uninhabited house where he then raped the traumatized woman himself. On other occasions, Perez abducted women from their homes and delivered them to banquets and dances where those who were "selected" were subsequently raped by Japanese officers in attendance. Even nurses working in the Cebu provincial hospital were targeted for these "invitations" at gunpoint.<sup>37</sup>

Perez appealed the treason conviction and its death sentence without denying any of the findings in the accounts. In his opposing brief the Solicitor General argued that the actions of Perez constituted treason because his acts helped the Japanese to "maintain and preserve the morale of the soldiers." The majority of Supreme Court judges disagreed. Their reasoning is worth quoting at some length:

*The law of treason does not prescribe all kinds of social, business and political intercourse between the belligerent occupants of the invaded country and its inhabitants... What aid and comfort constitute[s] treason must depend upon their nature, degree and purpose... As [a] general rule, to be treasonous the extent of the aid and comfort given to the enemies*

35 Ibid. Emphasis mine.

36 People vs. Susano Perez G.R. L-856 (April 18, 1949) LawPhil. Steinberg has also pointed out that this case set the precedent that securing women was not treason, see Philippine Collaboration, 155.

37 LawPhil People vs. Susano Perez

*must be to render assistance to them as enemies and not merely as individuals and in addition, be directly in furtherance of the enemies' hostile designs... His "commandeering" of women to satisfy the lust of Japanese officers or men or to enliven the entertainment held in their honor was not treason even though the women and the entertainment helped to make life more pleasant for the enemies and boost their spirit; he was not guilty any more than the women themselves would have been if they voluntarily and willingly had surrendered their bodies or organized the entertainment. Sexual and social relations with the Japanese did not directly and materially tend to improve their war efforts or to weaken the power of the United State[s]... Whatever favorable effect the defendant's collaboration with the Japanese might have in their prosecution of the war was trivial, imperceptible, and unintentional. Intent of disloyalty is a vital ingredient in the crime of treason...*<sup>38</sup>

This same argument employed by the court could also, of course, protect women who would be accused of treason for their relationships with the Japanese, whether they were intimate or not; and whether they were willing or were involved in varying degrees of coercion.<sup>39</sup> However, Perez, who freely admitted accusations that he had violently coerced women, deceived them, and knowingly participated in the procurement of sexual slaves for Japanese officers, would not receive any punishment for those specific acts, which were dismissed as "trivial, imperceptible and unintentional" in their effect. The judges never fully confronted the fact that Perez was not simply procuring reluctant dance partners for the Japanese but knowingly facilitating their rape. The death sentence and treason convictions were overturned, to be replaced with a conviction on only four counts of rape and a 10-17 year sentence for those encounters in which Perez directly attacked the women himself.

Associate Justice Guillermo Pablo (served 1945–1955), who had served as a judge in Cebu before the war and was one of the few Supreme Court judges at the time who had not served in it during the occupation, offered a lone dissenting opinion in this case.<sup>40</sup> He quoted from the Solicitor General's brief a rather uncomfortable comparison between the role of the United Services Organization (U.S.O.) in providing entertainment for the U.S. army in the Philippines and the "entertainment" provided for the Japanese Imperial forces. It appeared incomprehensible to him how the provision of women for the enemy could not be seen as an example of aid and comfort in wartime, and therefore treasonous. Pablo did not dance around the issue of the rape of the women who testified, and did not speak only in more vague terms of "entertainment." Instead, the violation of Philippine women was seen by Pablo as very much a "crime political in nature." How-

38 Ibid.

39 For the cases of Philippine women, including 'comfort women' being tried for treason for relations with the Japanese see Florina Yamsuan Orilos, "Preliminary Profile of Women 'Collaborators' in the People's Court Records," *Philippine Social Sciences Review* 57(1) (2010): 181–220.

40 Overview of Pablo's career on the Philippine Supreme Court E-Library <http://elibrary.judiciary.gov.ph/supreme-courtjustices/associatejustice/59> (accessed 1 January, 2013).

ever, by conceding its political nature, Pablo shifted the focus from the women who were the victims of violence we would today clearly identify as war crimes in order to argue that the crimes of rape and sexual slavery were an affront to the nation itself. He asked rhetorically whether there could be any greater treason than such acts. "They took over all of our resource production: everything in their path, but, by God, save the honor of our women."<sup>41</sup>

The fact that these sexual crimes of war were treated differently in the treason trials than the other crimes is a reminder that legal systems around the world, including that of early postwar Philippines, had yet to grapple fully with the relationship between acts of sexual violence and the environment of war. In the early postwar trials, the comfort system of sexual enslavement, which involved thousands of women throughout Japanese occupied areas, received the dedicated attention of a court only in the 1948 Batavia Military Tribunal trying Japanese for the rape and forced prostitution of one particular group of Dutch women.<sup>42</sup> Forced prostitution was a prosecutable crime along with rape and did find mention in trials records elsewhere. However, it was often buried in testimony that covered a wide range of atrocities, such as descriptions of the abduction of women into sexual slavery for German officers in Smolensk and in the nearby village of Bassmanova.<sup>43</sup> Mention of the high incidence of rape also appeared in the testimony of the war crimes trials in Tokyo and elsewhere, especially in relation to the atrocities in Nanjing after its capture in December, 1937. However, overall after World War II sexual assaults were given far less direct attention in terms of actual prosecutions.<sup>44</sup>

The Philippine Supreme Court was, as in all treason cases, not evaluating the issue in terms of the international laws of war but in a domestic legal context in which the sole choice was between the common crime of rape and the capital crime of treason. Rejecting the "political" nature of the crimes did not remove the possibility of punishment for some sexual crimes but it was a telling exception, given its other rulings which held all forms of violence in the service of the occupier as treason.

As the dissenting opinion of Justice Pablo suggests, "nationalizing" the crime of rape by including it as a form of treason would not have necessarily brought Philippine society any closer to confronting the issues of rape and sexual enslavement as weapons of war and expressions of occupation power. Instead of focusing on the women who survived the sexual violence, punishment for their enslavement in the form of a treason charge could easily transform the issue into a violation of the nation's honor. It would not be until the wars of Yugoslavia in the 1990s that the full range of these issues would begin to receive considerable attention in the academic, legal, and social realms.

41 People vs. Susano Perez (alias Kid Perez), G.R. L-856 (April 18, 1949), LawPhil.

42 Kelly Dawn Askin *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Hague: Martinus Nijhoff Publishers, 1997), 85. Yuma Totani, *The Tokyo War Crimes Trial: the Pursuit of Justice in the Wake of World War II* (Cambridge: Harvard University Asia Center, 2009), 14.

43 Askin, *War Crimes Against Women*, 66, 72. Theodor Meron, "Rape as a Crime Under International Humanitarian Law," *The American Journal of International Law* 87.3 (December, 1993), 426.

44 See *Ibid.*, 98.



## War Crimes Trials and the 1953 Pardons

The treason trials in the Philippines were carried out alongside the war crimes trials for Japanese occupation forces in the Philippines. From 1945 to 1947 American military courts tried war criminals, who were charged with conventional crimes of war (category B) and of the new crimes against humanity (category C), including the famous trials of generals Yamashita Tomoyuki and Homma Masaharu.<sup>45</sup> Numbering almost a hundred trials, and continuing after Philippine independence in 1946, they resulted in a 90% conviction rate and 69 executions.<sup>46</sup> Philippine-run war crimes trials under a National War Crimes Office began in August, 1947, and continued until December, 1949, convicting 138 Japanese soldiers and civilians out of 155 total arraigned in the trials, and sentencing some 79 of them to death.<sup>47</sup> Three executions were carried out in 1948 and over two years later, in January, 1951, another 14 were suddenly put to death. In the months that followed, sympathy for the plight of those imprisoned grew rapidly among the Japanese public, and Japanese, American, and even Chinese diplomatic representatives placed direct and indirect pressure on the Philippine government to put an end to the executions, and to consider a return of the remaining prisoners to Japan.<sup>48</sup> Domestically, leading occupation period officials such as former Makapili vice-Supremo Pio Duran and Senator Camilo Osias, who had both benefited from the 1948 amnesty, were active in supporting moves to release the Japanese war criminals.<sup>49</sup> Massive petition drives within Japan eventually totaling millions of signatures showed the breadth of mobilization efforts behind the issue, but there were concerns within the Philippines that Japanese war reparations to the Philippines would become tied to fate of the war criminals.<sup>50</sup>

On June 27, 1953, President Quirino announced that many Japanese war criminals would be among those included in his annual presidential pardons. The pardons took effect on 4 July and the decree would eventually lead to the return to Japan of 106 war criminals. However, while the pardons of the Japanese had the most significant international impact, they did not compose the largest number of individuals on the list of these 1953 pardons. Hundreds of Filipinos convicted of treason would also go free.<sup>51</sup>

45 On the U.S. military trials in the Philippines, and especially the importance of the Yamashita trial see Lael, *The Yamashita Precedent*.

46 There were 97 trials and 92 sentenced to death, but only 69 executed. Chamberlain, *Justice and Reconciliation*, 53. Some 140 out of about 150 Japanese war criminal suspects were convicted. Nagai Firipin to tainichi senpan saiban, 200. See Chamberlain's Appendix 1 for a list of cases and outcomes, Chamberlain, *Justice and Reconciliation*, 235-247.

47 *Ibid.*, 70.

48 *Ibid.*, 151-180.

49 *Ibid.*, 177. Duran was well known for his support for the Japanese war effort and was one of the leading officials of the Makapili. Grant K. Goodman, "Pio Duran and Philippine Japanophilism," *Historian* 32(2) (1970): 228-242.

50 Chamberlain, *Justice and Reconciliation*, 151-2.

51 The news was reported internationally as a side note. For example, "President Quirino also announced that 350 Filipinos convicted as wartime collaborators would be pardoned." See: "Philippines to Free Japanese Captives," *New York Times* (June 28, 1953), 2.



On July 4, 1953, 323 names of convicted traitors who were to be released that day were published.<sup>52</sup> The day the collaborators were released the American communist and a leading Huk fighter, who had been captured the year before, William Pomeroy, watched them make their way to freedom from the National Penitentiary in Muntinglupa prison.<sup>53</sup>

*As prisoners, the collaborators have been tolerated, their identities blurred in the orange mass of the prison population, but on the day the released group marches to the control gate, carrying their rolled-up possessions, the memory of their wartime behavior surges back. From the upper windows of buildings, water and missiles are poured down upon the collaborators. Prisoners strain at the bars, screaming, "Taksil! Taksil!" (Traitor! Traitor!). There is more respect for the thief and murderer here than for the traitor.<sup>54</sup>*

When the 1948 amnesty argued that "public sentiment did not extend" to those who waged war on the Philippines and carried out atrocities against the people, it set aside some acts of violence as fundamentally different in nature. It did this in a fashion not entirely dissimilar from the way war crimes trials around the world after World War II, including the Philippines, similarly struggled to create and foster an understanding of a *universally prohibited violence*. However, the trials for treasonous atrocities and war crimes trials differed in two fundamental ways: the retributive process created this space, or attempted to create this space, at the conclusion of a process of elimination rather than an active attempt to confront the horrors of the war as such.

Second, in each case, the violence at the heart of the charges was, as we have seen, everclouded by the primary crime they were judged for: a violation of an allegiance to the nation. When William Pomeroy noted that the traitors who walked out of prison on that July day in 1953 were more despised than thieves and murderers, one might have noted that almost all of those released by President Quirino's pardons were convicted of the treason *of murder*; each held responsible for the deaths of their countrymen at their own or Japanese hands, as a result of their collaboration.

Even if the violent crimes in the Philippine trials are considered without the obscuring veil of the treason charges that encapsulated them, the rules of the game when it came to command responsibility differed significantly from the most noteworthy war crimes trial held in the archipelago: the prosecution of General Yamashita Tomoyuki by a U.S. military court for the atrocities of his men. The Yamashita case of late 1945, which resulted in his conviction and execution, established a principle of strict liability in command responsibility for war crimes that would not be approached again in law until the 1977 Additional Protocol I to the 1949 Geneva Conventions, and not tested in the courts

52 The clipping from the July 4, 1953 issue of the Manila Times was an attachment to "List of Names of Filipino Prisoners Pardoned by President QUIRINO on July 4, 1953" (July 21, 1953) 796.00/7-1053 RG 59.

53 Pomeroy was a Communist Party USA education secretary in New York before World War II and wrote about his experiences fighting with the Huks in William J. Pomeroy, *The Forest, a Personal Record of the Huk Guerrilla Struggle in the Philippines* (New York: International Publishers, 1963).

54 William J. Pomeroy, *Bilanggo: Life as a Political Prisoner in the Philippines, 1952–1962* (Manila: UP Press, 2009), 80.

until the later stages of the war crimes trials in the former Yugoslavia.<sup>55</sup> Judges in the Yamashita case held that he could only have been ignorant of the widespread atrocities committed by soldiers under his command if this ignorance was a willing one.<sup>56</sup> However, the high bar set for treason convictions in the Philippines virtually guaranteed that any distance between the violence and the accused would result in a dismissal. Instead, the “small fry” collaborators who were patronizingly referred to as the “ignorant simple-minded credulous Filipino,” by congressman Lorenzo Sumulong in the 1948 debates over how broad the amnesty for treason should be, carried out their daily interactions with the Japanese occupier within earshot of the screams of the tortured, and as witnesses or themselves participants in the executions.<sup>57</sup>

When they evaded responsibility by claiming to be, “just following orders” to cooperate with the Japanese military, or to join in the urgent task of eradicating the “bandits” throughout the land, these excuses were, in the majority of cases, dismissed by the Supreme Court, as they were in the trials of Japanese or other Axis war criminals. However, unlike the trials of Axis power officers and political leaders, the responsibility for the atrocities that came with military collaboration rarely extended beyond the immediate scene of the crime.

This was a matter of course for those “political collaborators”, who were civilian heads of military organizations but who were not close to their day-to-day operations such as President Jose P. Laurel, who organized wartime “pacification” committees, and Pio Duran, who was nominally vice-supremo of the Makapili. However, it was just as true for leading military commanders. The surviving former head of the wartime Bureau of Constabulary, Guillermo Francisco, was acquitted, even though his “double game” behavior did not prevent him from overseeing “pacification” campaigns that resulted in atrocities. Even more remarkable was the inability to account for any kind of command responsibility in the trial of the head of the wartime Manila police, Antonio Torres. Francisco might have, albeit feebly, argued that the national scope of the Constabulary was such that he was completely ignorant of the fact that many of his units, even those who maintained strong connections to some resistance forces, were actively engaged in the suppression of Huks and other guerrillas, regularly employed torture, and that some units carried out summary executions. It is far harder to imagine that Torres could have

55 Charles Garraway, “The Doctrine of Command Responsibility” in Doria, José, Hans-Peter Gasser, and M. Cherif Bassiouni, eds., *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko*. (Hague: Brill, 2009), 713-723. The most infamous example of how far the liability of command responsibility had weakened in the decades after WWII is the 1971 failure to prosecute Captain Ernest Medina following the My Lai massacre in Vietnam.

56 Bruce D. Landrum, “The Yamashita War Crimes Trial: Command Responsibility Then and Now,” *Military Law Review* 149 (Summer 1995): 296. Landrum argues that two Nuremberg Trials of 1948 weakened command responsibility by adjusting the requirement from the idea that the officers “must have known” to a “should have known” standard, and thus “a commander’s knowledge of widespread atrocities within the command area was rebuttably presumed rather than irrebuttably presumed” *ibid.*, 298. This less harsh “should have known” standard is the one that is generally used by the International Criminal Court today.

57 Philippines Congressional Record: House of Representatives v. 3 no. 13 (Feb. 11, 1948), 243.

been wartime Manila police chief without being aware of the extensive cooperation between his officers and the Japanese military police, or their responsibility for the torture and execution of suspects being carried out by the secret service division of the Manila Police Department.<sup>58</sup>

As in the case of Francisco, the case against Torres was dismissed even before the 1948 amnesty. This exoneration of wartime guilt so emboldened the former police chief that he immediately proceeded to petition for the removal of his replacement, Eduardo Quintos, so that he might be rightfully restored as chief of police. The mayor of Manila turned down his request in 1948, but Torres pressed his case with a letter to President Quirino and then directly brought a legal case against police chief Quintos. The Supreme Court itself ruled on the case in April 1951, when the majority opinion rejected his arguments without noting the boldness of the claimant.<sup>59</sup>

### Beyond the Trials and Beyond Trial

Even if a principle of command responsibility had been adopted, establishing liability on either a narrow or broad level, the limited treason trials of military collaborators and perpetrators of atrocities could not hope to offer anything close to a full reckoning with the wartime, precisely because collaborators had no monopoly on these acts. The brutality of some guerrillas rivaled that of the worst atrocities of the occupying forces and their domestic allies. The American Ray Hunt, who became a mid-level guerrilla leader in Luzon, had great respect for the conduct of some of his fellow resistance leaders, but reserved harsh judgment for many of those who claimed to have joined the war against occupation,

*Many a Filipino "guerilla" was concerned mostly to take advantage of current confusion to avenge himself on old enemies, destroy some rival family, betray a political foe to the Japanese, or simply to indulge a taste for sadism. Cruel as the Japanese were to everyone else, cruel as some despicable Americans were to suspected Filipino collaborators, nobody exceeded the savageries various depraved Filipinos inflicted on their own countrymen.*<sup>60</sup>

Hunt struggled with the moral consequences of his own command responsibility. Some guerrillas under his command captured a spy who, in a public display to impress some villagers, was bled to death, roasted, and eaten. Hunt was disgusted but took no action against them, since "to have executed the whole guerrilla troop responsible would have demoralized all my men..."<sup>61</sup> Though responsible for a more horrifying scale of violence, similar words could have easily been uttered by Colonel Nagahama Akira, head of the military police in the occupied Philippines.

58 See for example testimony in *People vs. Pedro Santos Balangit*, G.R. L-1298 (May 31, 1949), *LawPhil*.

59 *People vs. Antonio C. Torres*, G.R. L-3304 (April 5, 1951), *LawPhil*.

60 Hunt and Norling, *Behind Japanese Lines*, 72.

61 *Ibid.*, 127.

During his American military war crimes trial Nagahama claimed that, despite an attempt to ban torture and enforce a more humane policy towards prisoners, “the tremendous weight of the forces which worked against any possible materialization of the good intentions I possessed,” robbed him of success and “each day that passed strengthened the hands of those who from the outset could not bring themselves to follow a course other than outright force and the imposition of fear.”<sup>62</sup> There was little evidence of Nagahama’s attempts to limit the widespread brutality, and his own claim to be a feeble “shield” was justifiably dismissed by the court. Nor has his argument earned the sympathy of many historians. However, it is worth reminding ourselves that the crimes seen as an affront to the dignity of all humanity in early postwar courts that war criminals like Nagahama were convicted of, were treated differently when the accused were either his Filipino allies or guerrilla opponents in contemporary courts, and continue to be remembered within a distinctly separate historical discourse.

Trials to punish the atrocities of Filipino citizens who served alongside the Japanese occupation appear almost nowhere in postwar histories of the Philippines, which usually conclude any discussion with the amnesty that excluded those most likely to be directly responsible for serious crimes of war. Wartime violence, tried in regular criminal courts under the laws of treason, took place outside the legal environment prosecuting war crimes around the world that referred to an emerging set of global legal practices, principles, and precedents. Citizenship alone, the only form of identity which mattered in the trials of those accused, transformed their atrocities into manifestations of their national betrayal and, as we have seen, this had direct consequences on their prosecution.

Though distinct from war crimes trials, however, this seemingly more localized process was no less global. Margherita Zanasi has shown the ways in which collaborationist trials in China played a similar political role and gave rise to many contemporary comparisons with the same process in France, and especially the trial of Vichy leader Philippe Pétain.<sup>63</sup> In many of the countries that emerged from occupation in 1945, the process of punishing collaborators accused of responsibility for acts of rape, torture, and massacre developed in a legal space that, like war crimes trials, suffered from a weak foundation. Outdated treason laws, or newly written ones, were summoned to prosecute disloyalty, but in former colonies such as India, the Philippines, and Korea, among others, there was also the awkward question of what nation really commanded legitimate loyalty at the moment alleged crimes of treason occurred. However, these trials need to be evaluated, not only as an arena for nationalist politics and purification, but as a process for retribution against extreme violence. As the trials discussed above show in the case of the Philippines, the primary focus on identity, loyalty, and the nation as the primary victim

62 Quoted in Syjuco, *Kempei Tai in the Philippines*, 83. Original in *U.S.A. vs. Akira Nagahama, Japanese War Crimes Trials*, Bundle No. 74 Vol. XII, pp. 22-23, Philippine National Archives, Manila.

63 Margherita Zanasi, “Globalizing Hanjian: The Suzhou Trials and the Post-World War II Discourse on Collaboration,” *The American Historical Review* 113, no. 3 (June 1, 2008): 731–751. For similar references to European trials in the Philippines see Konrad Lawson “Wartime Atrocities,” 168, 204.

submitted atrocities to charges of treason poorly equipped to confront the horrors of war.