

participated, the second as enablers of the traffic, the first as buyers and providers of the clothing, jewels, furs, and ornaments that circulated in this market.

Throughout the book Fontaine points to the ways that practices then mirrored contemporary realities, for example arguing that the *Monts de Piété* of the ancien régime mixed a logic of gift with that of the market just as do the systems of microcredit today. In her conclusion, she explicitly turns to the present, arguing that scholars have mistakenly characterized the “aristocratic” system as being more benign and somehow more just, because it was embedded in social relations. Instead, even though she by no means underestimates the injustices of modern capitalism, she argues that the traditional system was based upon a strictly hierarchical social order that excluded some people (women in particular), slowed economic growth, and trapped everyone in an endless cycle of debt.

This is a very valuable study, the product of years of research, wide reading, and deep thought. To be sure, there are grounds for a few complaints. Fontaine provides almost none of the institutional history that structured this history—law, the state and its credit requirements, or the business of higher finance. She does not attempt to explain how market culture became dominant, except by a way of an occasional remark about the deficiencies of traditional practices. In addition, some will surely find one of her claims too broad: that scholars searching for an alternative to the brutalities of modern capitalism have romanticized the economic culture of the ancien régime; feminist historians, to name just one group, long ago abandoned any notion that this was a golden age (for women). Finally, the book might have been more tightly written to avoid repetition and a sometimes too leisurely delivery of anecdotal material.

But the book’s strengths amply compensate for such weaknesses. It bears close reading by scholars and students, not just of pre-modern Europe, but of European economic history and, indeed, of economic culture more generally.

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Étienne Jaudel, *Le procès de Tokyo: Un Nuremberg oublié*. Paris: Odile Jacob, 2010. Pp. 160. €19. (ISBN 978-2-738-12541-5)  
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Had this work appeared ten years ago, or even just three or four years ago, it would have neatly accomplished its stated goal, which was to introduce and summarize for French-speaking audiences the two most important

English-language monographs on the 1946–48 Tokyo Trial of 28 of Japan's wartime political and military leaders. Jaudel himself rather sheepishly remarks that his text relies perhaps a bit too heavily on these two monographs: a journalistic treatment by Arnold Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trial* (1987), and on an iconic, polemical monograph by Richard Minear, *Victor's Justice: The Tokyo War Crimes Trial* (1971).

Even this notably modest objective has been almost completely obviated, however, by the recent appearance of two much more well-sourced, analytically-informed, and historically-grounded treatments in English: Neil Boister and Robert Cryer's *The Tokyo International Military Tribunal: A Reappraisal* (2008), and Yuma Totani's *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (2008). The Boister–Cryer work performs the same introductory function as Jaudel's but is much more thoroughgoing in discussing comparisons with Nuremberg and the wider context of legacies and underlying legal philosophy. Read together with Totani, who integrates a welcome survey of the Japanese-language literature on the trial, the Boister–Cryer team has also published a useful 2008 companion volume compiling several hundred of the most important documents relating to the Tokyo Trial. Together these three volumes offer the new starting point for informed debate about the trial.

A synthesis of Boister–Cryer and Totani in French might have made a certain amount of sense; a synthesis of Brackman and Minear no longer does. An additional weak point of Jaudel's treatment is how thinly-sourced it is. At barely more than 40,000 words, about the length of an American law review article, Jaudel's book deploys only four primary sources, including twelve references to the "Judgment" section of the trial's published transcript. Jaudel then references an additional 21 secondary sources, including a DVD and Wikipedia. These 25 sources are the sum total of his research base.

Indeed, over half of Jaudel's references to secondary work are either to Brackman or to Minear, with 40 citations to the Brackman book alone. The footnotes themselves are often incomplete, with books cited without their subtitles, for example, or with garbled titles, dropped co-authors, or other, smaller inaccuracies. This thin sourcing is all the more puzzling because Jaudel is clearly aware of the Boister–Cryer and Totani monographs, citing them once each without discussing how tapping into their much richer trove of primary and other sources might help readers gain some analytic distance on the decades-old, "classic" works on which he focuses.

In addition to the Brackman book, as noted, Jaudel relies heavily Richard Minear (1971), supplemented by Solis Horwitz (1950), and A. Frank Reel (1949) – all valuable work at the time, but long since "bracketed" by more recent scholarship, even before this notable 2008 efflorescence of publications on the Tokyo Trial. For researchers willing to root around a bit, there was

always work by B.V.A. Röling, the Dutch judge at the trial; a small but useful collection of law review articles, occasionally reprinted in surveys of international criminal law such as Gerry Simpson's *War Crimes Law* anthology (2004); and some recent work with various limitations such as Tim Maga's celebratory *Judgment at Tokyo: The Japanese War Crimes Trials* (2001) and Ushimura Kei's historiographical treatment, *Beyond The "Judgment of Civilization,"* available in English translation (2003).

Jaudel deftly smooths out the rather strident tone of the Brackman and Minear offerings and summarizes their analyses in a monograph that is really more of a synthetic, introductory essay. He offers chronologically-arranged chapters, usually of about 15 pages each, on the prologue to the trial in Occupation politics (chapter 1); the trial's main actors (chapter 2); the trial's opening presentations and overall organization (chapter 3); a discussion of various procedural problems such as translation and evidence (chapter 4); a discussion of how the charges of crimes against peace and conventional war crimes were litigated and decided (chapters 5 and 6); a discussion of the judgment and dissents (chapter 7); and a concluding chapter titled "truth or reconciliation." He also includes a short chronology of trial-related events, a chart listing the accused and matching them with the relevant charges and verdicts, and about a dozen photographs.

Jaudel's measured assessment introduces a kind of tone problem of its own, however: Minear's work was produced in the context of reaction against American involvement in Vietnam, and harshly criticizes the Tokyo Trial as an additional, earlier example of American arrogance and imperialism. Brackman's critique, however, has another kind of political valence: he argues that the trial was too soft on the defendants, was delegitimated by the American decision not to try the Emperor, and was distorted by the presence of what Brackman describes as "a ringer on the bench" in the person of the Indian Justice, Rahadbinod Pal. (Pal would bow respectfully to the defendants at the beginnings of sessions, for example, and in his 1000+ page dissent accepted defense arguments about a Pan-Asian, anti-communist struggle.) In common with other "cold warrior" commentators on the Tokyo (and Nuremberg) proceedings, Brackman also criticizes American Occupation authorities for agreeing to place a representative of Soviet Russia on the bench. These are not perspectives that harmonize easily, and Jaudel's treatment, although more even-keeled and legally-informed than either Brackman's or Minear's, lacks a normative center of gravity from which a coherent critique might be launched.

To be sure, as the scholar of modern Japan John Haley has recently argued, anything that raises awareness of the issues, and indeed the very existence, of the Tokyo Trial is on balance a welcome development. Haley explains that it is Tokyo, and not Nuremberg, that offers the most pointed precedent for thinking through issues of whether the opportunistic and pre-emptive use of armed

force may appropriately give rise to international criminal responsibility, for example, or whether individuals may justly be held accountable when they have apparent but not actual control over troops or political systems.

Jaudel's book was designed to address the harsh reality that until this work, a discussion of the Tokyo Trial was a kind of *trou noir* in French-language treatments of international criminal law. Until recently, the same was often said of English-language offerings, but as of 2008 this deficit has been definitively remedied. Accordingly, the most that can be said for Jaudel's rather idiosyncratic treatment is that it offers a quick and non-technical introduction to the Tokyo Trial for readers without access to English-language or Japanese-language scholarship on this topic.

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Susan Reynolds, *Before Eminent Domain. Toward a History of Expropriation of Land for the Common Good*. Chapel Hill: University of North Carolina Press, 2010. Pp. 192. \$40.00 (ISBN 978-0-807-83353-7). doi:10.1017/S0738248010001082

In a world in which land is frequently taken for the building of railways, roads, and airfields, the principle of its compulsory purchase for the public need ("eminent domain" in North American parlance) commands general social and political acceptance. In this little gem of a book, Susan Reynolds argues that such expropriation has been a feature of European law and custom for as far back as one can see. It has no obvious origins and was more or less taken for granted. Why people should accept it was rarely discussed before the seventeenth century.

Legal historians, says Reynolds, have been wrong to imagine that expropriation is essentially a modern phenomenon. It was clearly there as a principle in Roman Law (though curiously absent from the Theodosian Code). It was, according to the conventional view, in effect suppressed for much of the medieval period when seigneurs had property rights in all land and could take it at will. Only when towns began to acquire freedom, "government" replaced the caprice of the seigneur, and Roman Law was revived did the principle of compulsory purchase, as opposed to simple expropriation, come back. Thereafter it was given intellectual articulation and became an essential part of property law mediated through the modern state. Reynolds counters this view by showing that it is based upon some very old and wrong assumptions about the nature of property rights in the middle ages. The seigneur with property rights in