[40 years on Piccigallo’s ‘Japanese On Trial’ is still a useful text for War Crimes research](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/)

Posted on [March 21, 2019](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/)by [resjudicata](https://resjudicatablog.wordpress.com/author/resjudicatablog/) *Contemporary Issues in Administrative and Public Law ISSN 2206-3145*

This year marks the 40th anniversary of the publication of Phillip Piccigallo’s ‘Japanese on Trial’. At the time of its publication Piccigallo’s text was unique in the sense that up until that point no one had sought to undertake a comprehensive research project of the Allied war crimes military commissions that were conducted in the aftermath of the Pacific War. Despite its faults, this text still remains one of several texts that have withstood time and is an extremely useful reference for those who wish to gain a broad overview of the Allied war crimes program after the Pacific War.

In 1979, Philip Piccigallo completed his work entitled *The* *Japanese on Trial: Allied War Crimes Operations in the East*.[[1]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn1) Picigallo appears to be the first to provide a comprehensive commentary of the entire Allied war crimes trials—albeit contained within 265 pages. Piccigallo provides various statistical data in relation to the trials. These statistics include the number of trials conducted, the number of accused, the number of convictions, numbers relating to those who received the death penalty, numbers relating to life convictions, and those who were acquitted.[[2]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn2) Piccigallo warns of possible deficiencies with the numbers, however, particularly due to the exclusion of Soviet data due to the Cold War.

The lack of Soviet data does little to detract from the benefit of Piccigallo’s work; the major problem with Piccigallo’s work is his reliance on non-primary trial data—a sentiment echoed recently by Totani.[[3]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn3) Piccigallo mostly relies on secondary sources to substantiate his claims[[4]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn4) and this is perhaps a flaw in Piccigallo’s work. Piccigallo relies mostly on government publications, news accounts, and another author, John Appleman, *Military Tribunals and International Crimes*(Bobbs-Merrill 1954) for most of his statistics.[[5]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn5) Piccigallo does make the point, however, that his work does not ‘examine exhaustively’ the thousands of Allied war crimes trials conducted throughout the Far East; though he concedes that such a study is ultimately needed.[[6]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn6) One would need to keep this in mind when drawing any extrapolations from the numerical data he presents.

Although not a lawyer, one interesting observation Piccigallo offers is the temporal connection between the higher number of death sentences handed down at the beginning of the trials, versus the lower number of death sentences given— many of which were later commuted to prison terms—in the closing period of the trials. According to Piccigallo, this sentencing pattern reflects the level of aggrievement that the individual nation felt towards Japan in 1945 and that sentencing practices in the early part of the trials ‘reflected a greater intensity of wartime *passion*, and less tempered *compassion*’ than sentences in the later stages of the trials.[[7]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn7)

Piccigallo has been criticised by some that his analysis sorely ignores the myriad of deficiencies of the trials. This is despite Piccigallo’s express claims of objectivity, in the ‘Von Rankean’ tradition.[[8]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn8) Richard Minear is one such critic who argues that Piccigallo’s ‘entire book is an attempt to undermine criticism of the Tokyo trial and the many minor trials’.[[9]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn9)Minear makes this assertion on the basis that Piccigallo deliberately ignores ‘larger issues’, such as the causes of the Pacific War, the fact that Allies also committed war crimes, and that Piccigallo explores nothing of the alleged Japanese crimes themselves.[[10]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn10) Minear, an historian as opposed to a lawyer, is critical of Piccigallo due to Piccigallo’s non-critical approach to the Allied war crimes trials. In essence, Minear seems to be asserting that Piccigallo is an apologist for any errors or injustices that the Allies meted out against the Japanese after the war.

That Minear would make such a claim is understandable given the volatile context in which he wrote his seminal work, *Victor’s Justice*. Minear produced this oft-cited work at the time the US was embroiled in a bitter conflict in Vietnam. Minear’s criticism of the IMTFE and the Pacific trials seems somehow linked to Minear’s criticism of US foreign policy in relation to Vietnam, since, as Minear asserts, much of the foreign policy of the US in the 1950s and 60s stems from an emboldened and victorious US in the European and, especially, Pacific theatres of war.[[11]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn11)

There is some merit to Minear’s accusation that Piccigallo failed to critically reflect upon the Allied trials. Minear’s argument is supported by Piccigallo’s tendency to use emotive statements such as, the ‘Japanese waged … a ruthless and inhumane campaign against opposing military forces and local civilian populations.’[[12]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn12) The apparent irony that the same could be said about the Allies, particularly with the bombing of Japanese cities, appears lost on Piccigallo.

Another useful contribution that Piccigallo offers is the detailed way in which he describes the Allied ‘procedures’ and ‘machinery’,[[13]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn13) for naming, locating and prosecuting Japanese military personnel suspected of engaging in war crimes against each of the Allied nations.[[14]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn14)Piccigallo asserts that his study ‘seeks only to lay the groundwork for … further inquiry into Japanese war crimes trials … and makes no claim to definitiveness.’[[15]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn15) Piccigallo’s objective was to provide ‘sweeping overviews of each nation’s war crimes trials program’.[[16]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftn16) Piccigallo has thus left open the opportunity for others to pick up where he finished but, sadly, few have attempted the challenge. Piccigallo’s work stands as a useful introduction for understanding the trials, and as a platform for further research into the Allied war crimes trials of the Asia-Pacific.

It must be said that Piccigallo’s work has been influential on this work in so far as ‘Japanese on Trial’ provided a detailed overview of the Allied war crimes programme which in turn gave an indication as to the sorts of records that were available, albeit during the 1970s. It needs to be said, also, given that Piccigallo was not a lawyer, the legal analysis contained in ‘Japanese on Trial’ was general at best, and therefore allows scholars to explore in detail the legal intricacies of specific elements of law, as has been the objective with this project.

[[1]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref1) Piccigallo,  above n 33.

[[2]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref2) Ibid 264. Piccigallo provides two tables showing disputed figures – Table A from a Japanese source: *Homu Daijin Kanbo Shiho Hosei Chosabu: Senso hanzai saiban gaishi yo [General History of Trials of War Crimes, Tokyo 1973];*while Table B shows consolidated statistics taken from Allied governmental sources for American, British, and Australian trials. Despite the slight discrepancy of numbers in relation to certain categories, the numbers between the two groups of figures remain relatively close with a maximum statistical variance of approximately 5.5%.

[[3]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref3) Totani, above n 12, 5.

[[4]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref4) Fitzpatrick, above n 12, 329 (see, especially, footnote 11 at page 329).

[[5]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref5) Ibid, 274. Rome Statute of the International Criminal Court UN Doc A/CONF.183/9 138, 138–9. For example, Piccigallo cites, among others, the following to substantiate his statistical claims throughout the book: US Department of State, Occupation of Japan: Policy and Progress, Publication 2671 (Washington, DC, 1947); Supreme Commander for the Allied Powers, *Trials of Class “B” and “C” War Criminals. History of the Non-Military Activities of the Occupation of Japan* (Tokyo, 1952); John Appleman, *Military Tribunals and International Crimes*(Bobbs-Merrill, 1954); US Department of Navy, *Final Report,*v I; *Stars and Stripes*(Tokyo); US Department of State, *Foreign Relations of the United States, 1948, 17*October 1948; John R Pritchard, *The Nature and Significance of British Post-War of Japanese War Criminals, 1946–1948*; Australian Encyclopedia, *War Crimes Trials; United Nations War Crimes Commission, ‘History of the United Nations War Crimes Commission and the Development of the Laws of War’ (HMSO, 1948)*; and at least 16 different newspapers.

[[6]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref6) Piccigallo,  above n 95, xiii.

[[7]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref7) Ibid 66.

[[8]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref8) Ibid xv.

[[9]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref9) Richard Minear, *Victors’ Justice* (Princeton, 1971) 138.

[[10]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref10) Ibid 138–9. Although, Piccigallo does offer some reasons why the Japanese committed such acts of cruelty, ie, Japanese unyielding adherence to strict discipline; blind obedience; obsessive empire building; Japanese moral codes; or ‘the madness of war’ (Piccigallo xii).

[[11]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref11) Minear,  above n 115; On this point, see also, Yuma Totani, *The Pursuit of Justice in the Wake of World War II*(Harvard University Asia Center) 2 – Totani eloquently states that ‘Richard Minear treated the Tokyo trial as an early manifestation of the self-righteous foreign policy of the United States that culminated in the Vietnam War’. For another critical appraisal of the IMTFE, see also, Dayle Smith, *Judicial Murder? Macarthur and the Tokyo War Crimes Trial* (CreateSpace, 2013).

[[12]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref12) Piccigallo,  above n 19, xi–xii.

[[13]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref13) Terms used in the United Nation War Crimes Commission. See UNWCC, ‘History of the United Nations War Crimes Commission and the Development of the Laws of War’ (HMSO, 1948).

[[14]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref14) See also regarding a discussion on procedure, In re Yamashita 327 U.S. 1, 27 (1946) 640.

[[15]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref15) Piccigallo, above n 19, xi–xii.

[[16]](https://resjudicatablog.wordpress.com/2019/03/21/40-years-on-piccigallos-japanese-on-trial-is-still-a-useful-text-for-war-crimes-research/" \l "_ftnref16) Ibid xiv.