

In the Hollywood film Judgment at Nuremberg Spencer Tracy played the role of an American judge who initially had great misgivings about imposing a victor's justice upon the Nazi defendants. What changed his mind was not the legal argumentation presented before the Nuremberg tribunal, but rather the mass of specific evidence displaying in great detail the Nazi atrocities committed upon Jews and other captives in concentration camps. Part of the actual captured Nazi film footage relating to these atrocities is used in the film, and the audience is thereby persuaded, along with Spencer Tracy, that the penalty of death by hanging meted out to the Nazi defendants was an act of charity by the International Military Tribunal.

The human mind is probably like that. We can read all kinds of general statements and descriptions about brutalities and war crimes in a remote area like Vietnam and yet not be more than partially moved, in our busy day-to-day living, to protest against this war. Perhaps motivated in part by an understanding of this psychological necessity to drive home concrete details to an apathetic public, one of the world's greatest living philosophers, Bertrand Russell, sponsored a "tribunal" which heard extensive evidence—witnesses, commission reports, films, etc.—in Stockholm and Copenhagen and then summarized the testimony in one of the books under review. Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal is grisly reading. But unpleasant as it may be, Americans should be aware of the kinds of details present in the work as indicated by the following examples.

Item: In An Hoa, South Vietnam, helicopter leaflets were dropped on October 2, 1964, threatening the people with reprisals if they continued to refuse to abandon their homes and move to strategic hamlets. The next day a reconnaissance plane dropped smoke bombs in the Communal School courtyard. The teacher of a kindergarten class of sixty children tried to get them out of the classroom, but rockets burst into the room killing several children and blocking the exit. He then carried a number of children out the window, making ten trips under rocket and machinegun fire. Wounded before he could finish the job, he urged the children who were left to climb out [page 1034] the window, but they replied that the window was too high. Then the school was napalmed, killing the children remaining in it. On the outside, the children came out of their dugouts because they were afraid and tried to run home. The American helicopters hunted them down and machine-gunned them. FN2

Item: The internationally known Hansen's disease hospital at Quynh Lap in Nge An province, North Vietnam, was bombed 39 times. FN3 The famous Quinh Lap leprosarium—a regular city, not a hospital—was repeatedly bombed on June 12 and 13, 1965, after numerous reconnaissance flights in May 1965. There were thirteen bombing attacks in all up to June 21, 1965. FN4 "Why bomb a model leper colony?" Mary McCarthy asks in her book Hanoi. FN5 The answer, she suggests, is that the surviving lepers had to be distributed to ordinary district and provincial hospitals "where they are, to put it mildly, a problem, a pathetic menace to public health." FN6
Item: In bombing North Vietnam, American planes made extensive use of "mother bombs," a bomb that splits in the air ejecting 640 "ball bombs" which each explode sending 300 steel pellets in all directions. FN7 There is testimony throughout the Russell proceedings of the widespread use of antipersonnel bombs such as these in North Vietnam. FN8

Item: American officers interrogated a Viet Cong prisoner by placing field telephone wires on his sexual organs and then hand-cranking the telephone generator. FN9 This latter item is from the personal testimony of Peter Martinsen, former prisoner-of-war interrogator with the 541st Military Intelligence Detachment in Vietnam. FN10

The foregoing items are not isolated instances. Inquiry Commissions made up of doctors, lawyers, and scientists of various countries summarized their reports of the American bombing of North Vietnam in an appendix to the book under review. FN11 The following types of medical establishments, many clearly marked by a red cross, were bombed and strafed: twelve province hospitals, seven specialized hospitals, 22 district hospitals, 29 village infirmary-maternity homes, and ten others. FN12 Up to the end of 1966 the following types of schools had been attacked: 301 schools of the first and second degree, 24 schools of the third degree, 29 kindergarten schools, ten primary schools, 20 secondary schools, and three universities. FN13

The reconnaissance flights, the vaunted pin-point accuracy of American bombing, and the widespread use of antipersonnel bombs indicate that this type of bombing, in violation of the international laws of warfare, could not be "accidental" as the American hierarchy has claimed.

Of course, many can claim that the evidence presented to the Russell tribunal was not subject to cross-examination or other verification techniques, so that the entire "mock trial" should be discounted as a propaganda gimmick. FN14 In fact, Russell invited American and British leaders to send representatives to the proceedings to contest the evidence and cross-examine the witnesses, but he received only refusals from the British leaders and no answer at all from the American leaders. FN15

The allegation of "mock trial" is weakened if one compares the Russell tribunal with the actual proceedings at Nuremberg or in the Far East after the Second World War. In these famous trials, despite the trappings of judicial procedures, "judicial notice" was taken of a great mass of evidence—all the evidence, in fact, that was submitted "officially" by any of the Allied powers. Moreover, the judges took the fairly realistic position that even if some evidence was not authenticated, or even if many witnesses were being reported by deposition and not by testimony in court, FN16 nevertheless the very massiveness of the testimony, the repeated examples of war crimes, and the detail of the evidence were persuasive as to the guilt of the defendants. Along these lines, the Russell tribunal does not suffer much by comparison in its detailed and massive treatment of the available evidence. Finally, at Nuremberg and in the Far East, the greatest scrutiny of the evidence, understandably, occurred when war crimes were being linked to a particular Nazi defendant or to a particular Japanese warlord; there the question of intent had to be proved. The Russell hearings, properly concerned not with individual persons but with a pattern of warfare, should not be unfavorably compared with a criminal proceeding in which the rights of specific individuals are at stake.
On the other hand, the Russell tribunal clearly got carried away with itself. It handed down "verdicts" condemning the United States Government for "genocide against the people of Vietnam" FN17 and for "acts of aggression against Vietnam." FN18 Members of the panel often asked witnesses to make legal conclusions FN19 or to testify about irrelevant matters. There was no sense of restraint about the hearings; everything was thrown in which could make the American forces look bad, including evidence of racial discrimination among American soldiers. As a result, the entire effort has appeared to world public opinion as highly biased. Russell and his colleagues [page 1036] would have been much more effective, even if propaganda was their purpose, to stick to precise evidence of war crimes and to withhold all judgments, leaving it to the reader and world public opinion to draw their own conclusions.

At the end of the presentation of evidence, Jean-Paul Sartre presented a statement "On Genocide" FN20 which has been reprinted verbatim in the second book under review. He, too, does not leave it to the reader to draw conclusions. Rather, his statement is a well-written argument based upon evidence presented at the tribunal pointing to his conclusion that the United States is guilty of "imperialist genocide" in Vietnam. FN21

One might hope that Sartre's statements would also contain some new insights into the American involvement in Vietnam. Perhaps Sartre, a man who has written with such psychological incisiveness into the motivations of men, can articulate a single factor which throws great light on the reason for American participation in the Vietnamese civil war. Perhaps he can focus on an underlying reason where most experts see only the trees. In my opinion Sartre has accomplished this, even though the essence of what he says was previously stated by Bernard B. Fall in 1965. FN22

Sartre explicitly challenges the prevailing American view, espoused at every turn in frequent moments of candor by Washington officials, that we have blundered into Vietnam as the result of a series of political mistakes and kept escalating just to make the best of a bad situation and end it quickly. In the opinion of Sartre, and Fall before him, FN23 the American involvement in Vietnam is an explicit product of the capitalist-imperialist system that is attempting to set a pro-stability example to would-be liberators in other lands where we have economic interests. Sartre writes:

> In other words, this war has above all an admonitory value, as an example for three and perhaps four continents. (After all, Greece is a peasant nation too. A dictatorship has just been set up there; it is good to give the Greeks a warning: submit or face extermination.) This genocidal example is addressed to the whole of humanity. By means of this warning, six per cent of mankind hopes to succeed in controlling the other ninety-four per cent at a reasonably low cost in money and effort. FN24

The trouble with Sartre's essay is that its own logic carries it too far. His thesis may explain American presence in Vietnam, but it does not necessarily follow, as Sartre concludes, that total genocide is an unavoidable concomitant of that involvement. While the best example to dampen the causes of guerrillas of the future might be set by wiping Vietnam off the map, FN25 [page 1037] there are countervailing, limiting pressures and considerations at work on United States
policy. One of these is a desire to avoid the use of nuclear weapons, either from a fear of an all out nuclear war with Russia or more probably out of an unwillingness to set a further precedent for the use of such weapons. We have not used nuclear bombs—the cheapest and most dramatic "example"—against North Vietnamese cities despite suggestions by some militarists. Another limitation is our desire to avoid spreading the conflict to open warfare with China or Russia. This may account for our reluctance to bomb certain areas of North Vietnam such as the harbor of Haiphong because of the danger of hitting Russian or Red Chinese ships.

There is another mechanism—not explicitly considered by Sartre—which might help to explain our actions in Vietnam. Like Sartre, I do not think we blundered into Vietnam as the result of political mistakes and kept escalating just to make the best of a bad situation and end it quickly. Mistakes of this magnitude are unlikely in the real world even though many central participants may sincerely feel that things just moved along without conscious design. Rather, national decisions are made because certain decisionmakers have been selected by the system to be in a position to make the decisions and they have been psychologically conditioned, because of their successful selection, to make the "right" decisions for the system. The system which sets up these decisionmakers in the United States is one based on capitalism, getting the most out of a dollar, and status quo security. Politicians who are profoundly sympathetic to these values, whether they know it or not, tend to rise to the decisionmaking hierarchy, while those who have other values do not get beyond the intermediate administrative level.

Sartre, as well as Russell, may have drawn a clear bead on American imperialism, but they somehow seem insensitive to countervailing Soviet and Chinese imperialism. These countries, who profess to be more socialistic than we are, also have their internal imperialist logic. Indeed, judging from their amazing restraint, they may secretly be delighted that the United States is setting an example in Vietnam for the rest of the world.

Such deficiencies, however, should not blur the importance of the efforts of Sartre and Russell. They have at least engineered a hearing on the issue of war crimes and Vietnam. What have American lawyers and political scientists done about it? Law students by now could have set up hearings and tribunals, taking eye-witness testimony from the many American veterans of Vietnam combat service. They could have done this with no preconceptions but simply with a desire to investigate what their country is doing militarily in an underdeveloped land where American mass media are only permitted to report and view scenes that have been officially cleared. Short of this, we should at least consider the evidence which Russell and Sartre have presented.

It will be interesting to see whether, as this country begins to disengage from Vietnam, popular unrest will begin to come to the forefront in Latin America, Spain, Greece, and South Africa. If so, Vietnam's admonitory value—to accept Sartre's thesis—will have been short-lived. Hopefully, [page 1038] however, Russell and Sartre have helped to convince us never to replay the Vietnam disaster elsewhere; hopefully they have written works of history rather than of current politics.

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Footnotes

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FN1. French Existentialist philosopher, novelist, playwright, and political theorist.
FN2. AGAINST THE CRIME OF SILENCE: PROCEEDINGS OF THE RUSSELL INTERNATIONAL WAR CRIMES TRIBUNAL 560-61 (J. Duffet ed. 1968) [hereinafter cited as TRIBUNAL PROCEEDINGS].
FN3. Id. at 162.
FN4. Id. at 181-82.
FN6. Id.
FN7. TRIBUNAL PROCEEDINGS, supra note 2, at 260.
FN8. Id. at 135, 156, 162-66, 186, 221, 249, 251, 254, 257-58, 270-71.
FN9. Id. at 427.
FN10. Id. at 425.
FN11. Id. at 312a.
FN12. Id. at 312g.
FN13. Id. at 312i.
FN15. TRIBUNAL PROCEEDINGS, supra note 2, at 18-26.
FN16. Some of the witnesses were, indeed, held prisoner in Allied countries so that the defense could not question them or impeach their testimony.
FN17 TRIBUNAL PROCEEDINGS, supra note 2, at 650.
FN18. Id. at 309.
FN19. E.g., id. at 535.
FN20. Id. at 612-26.
FN22. "What we are buying is an example—for Latin America and other guerrilla- prone areas. What we're really doing in Viet-Nam is killing the case of 'wars of liberation.' " B. FALL, LAST REFLECTIONS ON A WAR 225 (1967).
FN23. Id.
FN24. J.P. SARTRE, supra note 21, at 71.
FN25. Sartre concludes that the best example the United States can set to dampen the causes of guerrillas of the future is to wipe Vietnam off the map. Unless there is total genocide, "someone might think that Vietnam's submission had been attributable to some avoidable weakness." Id.