

# Foreword

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‘We are not judges. We are witnesses. Our task is to make mankind bear witness to these terrible crimes and to unite humanity on the side of justice in Vietnam.’

With these words, Bertrand Russell opened the second session of the International War Crimes Tribunal, in November 1967. The American people were given no opportunity, at that time, to bear witness to the terrible crimes recorded in the proceedings of the Tribunal. As Russell writes in the introduction to the first edition, ‘... it is in the nature of imperialism that citizens of the imperial power are always among the last to know – or care – about circumstances in the colonies’. The evidence brought before the Tribunal was suppressed by the self-censorship of the mass media, and its proceedings, when they appeared in print, were barely reviewed.

Russell wrote that ‘it is in the United States that this book can have its most profound effect’. He expressed his faith in the essential decency of the American people, his faith that the ordinary man is not a gangster by nature, and will react in a civilized way when he is given the facts. We have yet to show that this faith is justified. Russell hoped to ‘arouse consciousness in order to create mass resistance ... in the smug streets of Europe and the complacent cities of North America’. By now, there are few who can honestly claim to be unaware of the character of the American war in Vietnam. There are few, for example, who can now claim ignorance of the ‘new Oradours and Lidices’ described, in testimony to the Tribunal, by a West German physician who spent six years in Vietnam (see p.306). But consciousness has yet to create mass resistance. The streets of Europe and the cities of North America remain smug and complacent – with the significant and honourable exception of the student youth. The record of the Tribunal stands as an eloquent and dramatic appeal to renounce the crime of silence. The crime was compounded by the silence that greeted its detailed documentation and careful studies. However, although no honest effort was made to deal with the factual record made public in the proceedings of the Tribunal, its work did receive some oblique response. The Pentagon was forced to admit that it was, indeed, using anti-personnel weapons in its attack against North Vietnam (though it could not resist the final lie that the targets were radar stations and anti-aircraft batteries). The hypocritical claim that the American bombing policy was one of magnificent restraint, that its targets were ‘steel and concrete’, was finally exploded beyond repair. A State Department functionary who had become an object of general contempt for his unending deceit regarding Vietnam demeaned himself still further by informing journalists that he had no intention of ‘playing games with a

94-year-old Briton', referring to one of the truly great men of the twentieth century. Those who were prepared to go beyond the mass media for information could learn something about the work of the Tribunal from such journals as *Liberation*, as could readers of the foreign press, in particular, *Le Monde*. The Tribunal Proceedings, along with the documentary study, *In the Name of America*, which appeared in the same year, and the honest and courageous work of many fine war correspondents, helped to crumble the defences erected by the government, with the partial collusion of the media, to keep the reality of the war from popular consciousness.

Though not reported honestly, the Tribunal was sharply criticized. Many of the criticisms are answered, effectively I believe, in Part 1 of this book. There are two criticisms that retain a certain validity, however. The participants, the 'jurors' and the witnesses, were undoubtedly biased. They made no attempt, in fact, to conceal this bias, this profound hatred of murder and wanton destruction carried out by a brutal foreign invader with unmatched technological resources.

A second and less frivolous criticism that might be raised is that the indictment is, in a sense, superfluous and redundant. This is a matter that deserves more serious attention.

The Pentagon will gladly supply, on request, such information as the quantity of ordnance expended in Indochina. From 1965 through 1969 this amounts to about four and a half million tons by aerial bombardment. This is nine times the tonnage of bombing in the entire Pacific theatre in the Second World War, including Hiroshima and Nagasaki – 'over 70 tons of bombs for every square mile of Vietnam, North and South ... about 500 pounds of bombs for every man, woman and child in Vietnam'.<sup>1</sup> The total of 'ordnance expended' is more than doubled when ground and naval attack are taken into account. With no further information than this, a person who has not lost his senses must realize that the war is an overwhelming atrocity.

A few weeks before the Tribunal began its second session, forty-nine volunteers of International Voluntary Services wrote a letter to President Johnson describing the war as 'an overwhelming atrocity'. Four of the staff leaders resigned. These volunteers had worked for many years in Vietnam. They were among the few Americans who had some human contact with the people of Vietnam. Their activities, and even the letter of protest, indicate their belief – surprisingly uncritical – in the legitimacy of the American effort in Vietnam.<sup>2</sup> In this letter they refer to 'the free strike zones, the refugees, the spraying of herbicide on crops, the napalm ... the deserted villages, the sterile valleys, the forests with the huge swaths cut out, and the long-abandoned rice checks'. They speak of the refugees 'forcibly resettled, landless, in isolated desolate places which are turned into colonies of mendicants'; of 'the Saigon slums, secure but ridden with disease and the compulsion towards crime'; of 'refugees generated not by Viet Cong terrorism, but by a policy, an American policy' – a process described by cynical American scholars as 'urbanization' or 'modernization'.

So effective is urbanization in Vietnam that Saigon is now estimated to have a population density more than twice that of Tokyo. Experts in pacification ('peace researchers', to use the preferred term) assure us that 'the only sense in which [we have demolished the society of Viet-

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<sup>1</sup> Edward S. Herman, 'Atrocities' in *Vietnam: Myths and Realities* (Pilgrim Press, 1970). In a careful analysis, he estimates South Vietnamese civilian casualties at over a million dead, over two million wounded, and he notes that two years ago the total number of refugees 'generated' mainly by the American scorched earth policy was estimated at almost four million by the Kennedy Committee of the 90<sup>th</sup> Congress.

<sup>2</sup> The letter appears as an Appendix in Don Luce and John Sommer, *Vietnam: the Unheard Voices* (Cornell University Press, 1969).

nam] is the sense in which every modernizing country abandons reactionary traditionalism'.<sup>3</sup> The methods of 'urbanization' are described, for example, by Orville and Jonathan Schell:

We both spent several weeks in Quang Ngai some six months before the [Song My] incident. We flew daily with the FACS (Forward Air Control). What we saw was a province utterly destroyed. In August 1967, during Operation Benton, the 'pacification' camps became so full that Army units were ordered not to 'generate' any more refugees. The Army complied. But search-and-destroy operations continued.

Only now peasants were not warned before an airstrike was called in on their villages because there was no room for them in the swamped pacification camps. The usual warning by helicopter loudspeaker or air-dropped leaflets were stopped. Every civilian on the ground was assumed to be enemy by the pilots by nature of living in Quang Ngai, which was largely a free-fire zone.

Pilots, servicemen not unlike Calley and Mitchell, continued to carry out their orders. Village after village was destroyed from the air as a matter of *de facto* policy. Airstrikes on civilians became a matter of routine. It was under these circumstances of official acquiescence to the destruction of the countryside and its people that the massacre of Song My occurred.

Such atrocities were and are the logical consequences of a war directed against an enemy indistinguishable from the people.<sup>4</sup>

Elsewhere, Orville Schell quotes a *Newsweek* correspondent returning from Quang Ngai: 'Having had experience in Europe during World War II, he said what he had seen was "much worse than what the Nazis had done to Europe".' Schell adds: 'Had he written about it in these terms? No.'<sup>5</sup> Vietnamese-speaking field workers of the American Friends Service Committee describe more recent stages of modernization, as seen from the ground:

In one such removal, during Operation Bold Mariner in January 1969, 12,000 peasants from the Batangan Peninsula were taken to a waterless camp near Quang Ngai over whose guarded gate floated a banner saying, 'We thank you for liberating us from communist terror.' These people had been given an hour to get out before the USS *New Jersey* began to shell their homes. After eight weeks of imprisonment they were ferried back to what was left of their villages, given a few sheets of corrugated metal and told to fend for themselves. When asked what they would live on until new crops could be raised, the Vietnamese camp commander said, 'Maybe they can fish.'<sup>6</sup>

Reports by Western observers are limited to areas more or less under American control. The most intensive attacks are therefore unreported in the West. We do, however, have Vietnamese reports, which will, perhaps, be given somewhat greater credence than heretofore now that the incident at Song My, which they described with accuracy at the time, has finally been made public. To select one such report virtually at random:

<sup>3</sup> Ithiel Pool, *New York Review of Books*, 13 February 1969, letters.

<sup>4</sup> *New York Times*, letter, 26 November 1969. The war in Quang Ngai and Quang Tin provinces is described in unforgettable detail by Jonathan Schell, *The Military Half* (Vintage Books, 1968).

<sup>5</sup> 'Pop me some dinks', *New Republic*, 3 January 1970.

<sup>6</sup> *Vietnam: 1969*, AFSC White Paper, 5 May 1969, 160 N. 15<sup>th</sup> Street, Philadelphia, Penna. 19102.

In Trang Bang on the evening of October 24 [1969], three flights of B52s made three sorties, killing 47 people, wounding many others (mostly children, and old folks), completely levelling 450 houses and devastating 650 hectares of fields. On the night of October 25, B52s flew nine attacks in Quang Tri and Quang Nam provinces, dumping more than 1,000 tons of bombs, killing 300 people, wounding 236 others, setting afire 564 houses and damaging hundreds of hectares of fields and orchards. In Pleiku, a fertile region, many flights of B52s came in on the morning of October 17 and released 700 tons of bombs which wrought havoc in hundreds of hectares of fields and orchards ...

In the area of Nui Ba and the villages of Ninh Thanh, Hiep Ninh Thanh, Hiep Ninh of the Tay Ninh Cao Dai persuasion, the US puppets resorted to toxic chemicals to destroy the crops and kill civilians. American hovercraft dumped tens of thousands of CS cans while helicopters dropped hundreds of thousands of toxic bombs on the villages. Moreover, enemy guns and mortars fired more than 5,000 gas shells affecting over 1,000 people, with 13 children under 13 killed (Ninh Thanh and Hiep Ninh villages) and more than 100 hectares of crops completely destroyed.<sup>7</sup>

And on and on, without end.

The facts are, of course, familiar in a general way to the highest authorities in the United States. The Under Secretary of the Air Force, Townsend Hoopes, wrote a memorandum in March 1968 in which he pointed out that:

...ARVN and US forces in the towns and cities are now responding to mortar fire from nearby villages by the liberal use of artillery and air strikes. This response is causing widespread destruction and heavy civilian casualties – among people who were considered only a few weeks ago to be secure elements of the GVN constituency. ... The present mode and tempo of operations in SVN is already destroying cities, villages and crops, and is creating civilian casualties at an increasing rate.<sup>8</sup>

He describes the savage American reaction to the conquest of many cities by the NLF in the Tet offensive in January 1968 – for example, in Saigon, where in an effort to dislodge the 1,000 soldiers who had taken the city, ‘artillery and air strikes were repeatedly used against densely populated areas of the city, causing heavy civilian casualties’; or in Hue, where the American reoccupation left ‘a devastated and prostrate city’. ‘Eighty per cent of the buildings had been reduced to rubble, and in the smashed ruins lay 2,000 dead civilians.’<sup>9</sup> ... Three quarters of the

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<sup>7</sup> *South Viet Nam: The Struggle*, publication of the NLF Information Commission, No.48, 15 November 1969.

<sup>8</sup> *Limits of Intervention* (McKay, 1969).

<sup>9</sup> The NLF claims that 2,000 victims of the American bombardment were buried in mass graves (see Wilfred Burchett, *Guardian*, 6 December 1969). This is consistent with Hoopes’s account. Hoopes states that, after ten days of fighting, 300 local officials and prominent citizens were found in a mass grave. This corresponds roughly with the estimate of Police Chief Doan Cong Lap, who estimated the total number executed as 200; he also gives the figure of 3,776 civilian casualties in the battle of Hue (Stewart Harris, *The Times*, 27 March 1968). Apart from Harris, I know of only one journalist who has given a detailed eye-witness report from Hue at the time, namely Marc Riboud. US authorities were unable to show him the mass graves reported by the US mission. Riboud reports 4,000 civilians killed during the reconquest of the ‘assassinated city’ of Hue (*Le Monde*, 13 April 1968). AFSC staff people in Hue were unable to confirm the reports of mass graves, though they reported many civilians shot and killed during the reconquest of

city's people were rendered homeless and looting was widespread, members of the ARVN being the worst offenders'. Elsewhere, the story was much the same:

Everywhere, the US-ARVN forces mounted counterattacks of great severity. In the delta region below Saigon, half of the city of My Tho, with a population of 70,000, was destroyed by artillery and air strikes in an effort to eject a strong VC force. In Ben Tre on 7 February, at least 1,000 civilians were killed and 1,500 wounded in an effort to dislodge 2,500 VC.

According to Hoopes, the combat photographer David Douglas Duncan, whose war experience covers the Second World War, Korea, Algeria and the French war in Vietnam, 'was appalled by the US-ARVN method of freeing Hue'. He quotes him as saying:

The Americans pounded the Citadel and surrounding city almost to dust with air strikes, napalm runs, artillery and naval gunfire, and the direct cannon fire from tanks and recoilless rifles a total effort to root out and kill every enemy soldier. The mind reels at the carnage, cost, and ruthlessness of it all.

Hoopes also reports that a 'sizable part' of the PAVN force of 1,000 escaped. Compare the figures on casualties, cited above.

These events occurred too late to be considered by the Tribunal. I need not elaborate on what has been revealed since. Some indications are given in my book, *After Pinkville*. For far more, see the book by Edward Herman, cited in footnote 1 on p. 11.

I have mentioned all of this in connexion with the question, raised earlier, as to whether it is necessary, today, to publicize the detailed reports of the Tribunal. Is it not true that by now the monstrous character of the war has penetrated the American consciousness so fully that further documentation is superfluous? Unfortunately, the answer must be negative. To see why, consider again the case of Townsend Hoopes, who is now a leading 'dove'.

A reviewer of his book in the *New York Times* describes it as the most persuasive presentation of the case for American withdrawal from Vietnam. It is instructive to compare his position with that of the 'hawks' on the one hand, and that of the Tribunal, on the other. Such a comparison shows how narrow is the gap between the 'hawks' and the 'doves', and how far removed the dove-hawk position still remains from the consciousness that Russell hoped would be aroused by the factual record and historical and legal argument of the Tribunal. I want to stress that Hoopes's is one of the most humane and enlightened voices to be heard within the mainstream of American opinion today, surely among those who have had any significant role in the formation and implementation of policy. For this reason, his views are important and deserve careful consideration.

America's early strategy, as Hoopes describes it, was to kill as many VC as possible with artillery and air strikes:

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the city (see the report by John Sullivan of AFSC, 9 May 1968). For attempts to evaluate government propaganda on mass killings in Hue, see D. Gareth Porter and Len E. Ackland, 'Vietnam: the bloodbath argument', *Christian Century*, 5 November 1969; *Vietnam International*, December 1969 (6 Endsleigh Street, London, W.C.1); Tran Van Dinh, 'Fear of a bloodbath', *New Republic*, 6 December 1969. The only other accounts I have seen merely convey information given out by American government sources.

As late as the fall of 1966... a certain aura of optimism surrounded this strategy. Some were ready to believe that, in its unprecedented mobility and massive firepower, American forces had discovered the military answer to endless Asian manpower and Oriental indifference to death. For a few weeks there hung in the expectant Washington air the exhilarating possibility that the most modern, mobile, professional American field force in the nation's history was going to lay to rest the time-honoured superstition, the gnawing unease of military planners, that a major land war against Asian hordes is by definition a disastrous plunge into quicksand for any Western army.

But this glorious hope was dashed. The endless manpower of Vietnam, the Asian hordes with their Oriental indifference to death, confounded our strategy. And our bombing of North Vietnam also availed us little, given the nature of the enemy. As Hoopes explains, quoting a senior US Army officer: 'Caucasians cannot really imagine what ant labour can do.' In short, our strategy was rational, but it presupposed civilized Western values:

We believe the enemy can be forced to be 'reasonable', i.e. to compromise or even capitulate, because we assume he wants to avoid pain, death, and material destruction. We assume that if these are inflicted on him with increasing severity, then at some point in the process he will want to stop the suffering. Ours is a plausible strategy – for those who are rich, who love life and fear pain. But happiness, wealth, and power are expectations that constitute a dimension far beyond the experience, and probably beyond the emotional comprehension, of the Asian poor.

Hoopes does not tell us how he knows that the Asian poor do not love life or fear pain, or that happiness is probably beyond their emotional comprehension.<sup>10</sup> But he does go on to explain how 'ideologues in Asia' make use of these characteristics of the Asian hordes. Their strategy is to convert 'Asia's capacity for endurance in suffering into an instrument for exploiting a basic vulnerability of the Christian West'. They do this by inviting the West 'to carry its strategic logic to the final conclusion, which is genocide'. The Asians thus 'defy us by a readiness to struggle, suffer, and die on a scale that seems to us beyond the bounds of humanity.... At that point we hesitate, for, remembering Hitler and Hiroshima and Nagasaki, we realize anew that genocide is a terrible burden to bear.'

Thus by their willingness to die, the Asian hordes, who do not love life, who fear no pain and cannot conceive of happiness, exploit our basic weakness, our Christian values which make us reluctant to bear the burden of genocide, the final conclusion of our strategic logic. Is it really possible that one can read these passages without being stunned by the crudity and callousness?

Let us continue. Seeing that our strategy, though plausible, has failed, the Air Force Staff worked out several alternative strategies, which they presented to the new Secretary of Defense, Clark Clifford, in March 1968. The Air Staff preferred the following:

an intensified bombing campaign in the North, including attacks on the dock area of Haiphong, on railroad equipment within the Chinese Buffer Zone, and on the dike system that controlled irrigation for NVN agriculture.

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<sup>10</sup> This is not quite accurate. He does provide a brief philosophical discussion of Buddhist beliefs, which tend 'to create a positive impetus towards honourable death'.

But Hoopes and Air Force Secretary Harold Brown demurred. Why? They felt ‘there was little assurance such a campaign could either force NVN to the conference table, or even significantly reduce its war effort’; furthermore, ‘it was a course embodying excessive risks of confrontation with Russia’. If they had any other objections to intensified bombing of the dike system of NVN, Hoopes does not inform us of them.<sup>11</sup> Hoopes himself preferred, rather, the following tactics:

a campaign designed to substitute tactical airpower for a large portion of the search-and-destroy operations currently conducted by ground forces, thus permitting the ground troops to concentrate on a perimeter defence of the heavily populated areas ... the analysis seemed to show that tactical air-power could provide a potent ‘left jab’ to keep the enemy in the South off balance while the US-ARVN ground forces adopted a modified enclaves strategy, featuring enough aggressive reconnaissance to identify and break up developing attacks, but designed primarily to protect the people of Vietnam and, by population control measures, to force exposure of the VC political cadres.<sup>12</sup>

In a letter of 12 February 1968 to Clark Clifford, Hoopes explains his preferences in similar terms. We should, he urges, stop the militarily insignificant bombing of North Vietnam and undertake a less ambitious ground strategy in the South, trying merely to control (the technical term is ‘protect’) the populated areas. This policy:

would give us a better chance to develop a definable geographical area of South Vietnamese political and economic stability; and by reducing the intensity of the war tempo, *it could materially improve the prospect of our staying the course for an added number of grinding years without rending our own society... [my italics]*.

Compare these recommendations with the tactics now being followed by the Nixon administration. Secretary of the Army Resor, testifying before the House Appropriations Committee,<sup>13</sup> refused to predict how long the war would last, but he sees time as ‘running on our side’:

Therefore, if we can just buy some time in the US by these periodic progressive withdrawals and the American people can just shore up their patience and determination, I think we can bring this to a successful conclusion.

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<sup>11</sup> As Gabriel Kolko notes, in testimony to the Tribunal, the barbarism of Seyss-Inquart in opening the dikes in Holland was considered one of the most monstrous crimes of the Second World War, and was prominent among the charges that led to his death sentence at Nuremberg. Note also Kolko’s discussion of the bombing of dikes in the Korean war, and the testimony given regarding American bombing of dikes in North Vietnam. Eye-witness reports of the bombing of dikes in the Red River Delta have appeared in the American press. See *Christian Science Monitor*, 8 September 1967, quoted in my *American Power and the New Mandarins* (Chatto & Windus, 1969), p.15.

<sup>12</sup> As we know from other sources, the VC political cadres thus ‘exposed’ were to be eliminated by ‘Operation Phoenix’, which, in the year 1968, is claimed to have killed 18,393 persons. See Senator Charles E. Goodell, New Republic, 22 November 1969 (cited in Herman, op. cit.), and also Judith Coburn and Geoffrey Cowan, ‘Training for terror: a deliberate policy?’, *Village Voice*, 11 December 1969. On ‘population control measures’, see William Nighswonger, *Rural Pacification in Vietnam* (Praeger, 1967). For earlier precedents during the Japanese occupation of Manchuria, see my *American Power and the New Mandarins*, pp. 195–203.

<sup>13</sup> 8 October 1969, released 2 December. Quoted in *I. F. Stone’s Weekly*, 15 December 1969.

To this remark General Westmoreland added: 'I have never made the prediction that this would be other than a long war.'

Thus the present Secretary of the Army agrees with the Hoopes letter of February 1968, that we may be able to stay the course for 'an added number of grinding years' if the American people will consent, if this policy will not rend our own society. And with this judgement, finally, Mr Hoopes disagrees:

Vietnam is not of course the only source of division in America today, but it is the most pervasive issue of our discord, the catalytic agent that stimulates and magnifies all other divisive issues. In particular, there can be no real truce between the generations – no end to the bitterness and alienation of even the large majority of our youth that is neither revolutionary nor irresponsible – until Vietnam is terminated.

This is the primary reason why, he urges, we must withdraw from Vietnam.

So the hawks and the doves divide: can the American people stay the course until victory, or will the polarization and discord in American society make this effort inadvisable, not in our national interest?

I do not want to suggest that the spectrum from Hoopes to Resor exhausts the contemporary debate over Vietnam, but there is little doubt that it represents the range of views and assumptions expressed within the mainstream of 'responsible' American opinion. With this observation, we can return to the Tribunal. Its assumptions, of course, fall entirely outside of this spectrum. It is unfortunate, but undeniable, that the central issue in the American debate over Vietnam, in respectable circles, has been the question: can we win at an acceptable cost? The doves and the hawks disagree. Hawks become doves as their assessment of the probabilities and costs shifts, and if the American conquest were to prove successful, they would, no doubt, resume their former militancy. The Tribunal is concerned with very different questions. It does not ask whether the US *can* win at an acceptable cost, but rather whether it *should* win, whether it should be involved at all in the internal affairs of the Vietnamese, whether it has any right to try to settle or even influence these internal matters by force. Until this becomes the unique and overriding issue, within the United States, the debate over Vietnam will not even have begun.

Inevitably, despite disclaimers, the Russell Tribunal will evoke memories of Nuremberg and Tokyo. With the revelation of the Song My atrocities, the issues raised in the War Crimes trials have become, at last, a matter of public concern. We can hardly suppress the memory of our initiative at Nuremberg and Tokyo, or the explicit insistence of the US prosecutor, Robert Jackson, that the principles of Nuremberg are to be regarded as universal in their applicability. After the trials, he wrote:

If certain acts and violations of treaties are crimes, they are crimes whether the United States does them or whether Germany does them. We are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us.<sup>14</sup>

It might be argued that the verdict of Nuremberg and Tokyo was merely the judgement of victors, who sought vengeance and retribution rather than justice. I think there is merit in this

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<sup>14</sup> Quoted in an article to which I return in a moment: Judith Coburn and Geoffrey Cowan, 'The war criminals hedge their bets', *Village Voice*, 4 December 1969.



accusation, but – right or wrong – it does not affect the broader question of the legitimacy of the principles that were recognized in the Charter of the War Crimes Tribunals. Legal niceties aside, the citizen is justified in taking these principles as his guide.

A classic liberal doctrine holds that: ‘Generally speaking, it is the drawn sword of the nation which checks the physical power of its rulers.’<sup>15</sup> It is the fundamental duty of the citizen to resist and to restrain the violence of the state. Those who choose to disregard this responsibility can justly be accused of complicity in war crimes, which is itself designated as ‘a crime under international law’ in the principles of the Charter of Nuremberg. This is, in essence, the challenge posed to us by the Russell Tribunal.

Richard A. Falk has written about this matter in an important recent article.<sup>16</sup> He points out that ‘Song My stands out as a landmark atrocity in the history of warfare, and its occurrence is a moral challenge to the entire American society’. Nevertheless, it would ‘be misleading to isolate the awful happenings at Song My from the overall conduct of the war’. Among the war policies that might, he argues, be found illegal, are these: ‘(1) the Phoenix Programme; (2) aerial and naval bombardment of undefended villages; (3) destruction of crops and forests; (4) “search-and-destroy” missions; (5) “harassment and interdiction” fire; (6) forcible removal of civilian population; (7) reliance on a variety of weapons prohibited by treaty.’ That these policies have been followed, on a massive scale, is not in question. Falk argues that: ‘if found to be “illegal”, such policies should be discontinued forthwith and those responsible for the policy and its execution should be prosecuted as war criminals by appropriate tribunals’. He also notes how broad was the conception of criminal responsibility developed, under American initiative, in the War Crimes Trials. In Falk’s paraphrase, the majority judgement of the Tokyo Tribunal held as follows:

A leader must take affirmative acts to prevent war crimes or dissociate himself from the government. If he fails to do one or the other, then by the very act of remaining in a government or a state guilty of war crimes, he becomes a war criminal.

And Falk emphasizes the obligation of resistance for the citizen, if the evidence is strong that the state is engaged in criminal acts.

It is correct, but irrelevant, to stress the vast differences in the political processes of America and the fascist states. It is correct, but hardly relevant, to point out that the United States has stopped short of carrying ‘its strategic logic to the final conclusion, which is genocide’ (Hoopes). Thus one cannot compare American policy to that of Nazi Germany, as of 1942. It would be more difficult to argue that American policy is not comparable to that of fascist Japan, or of Germany prior to the ‘final solution’. There may be those who are prepared to tolerate any policy less ghastly than crematoria and death camps and to reserve their horror for the particular forms of criminal insanity perfected by the Nazi technicians. Others will not lightly disregard comparisons which, though harsh, may well be accurate.

Nazi Germany was *sui generis*, of that there is no doubt. But we should have the courage and honesty to face the question whether the principles applied to Nazi Germany and fascist Japan do not, as well, apply to the American war in Vietnam. Recall the objectives of ‘denazification’, as formulated by those who were responsible for this policy. General Lucius D. Clay, in 1950,

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<sup>15</sup> Wilhelm von Humboldt, *The Limits of State Action*, 1792 (Cambridge University Press, 1969), J. W. Burrow (ed.).

<sup>16</sup> ‘The circle of responsibility’, *The Nation*, 26 January 1970. Falk is Milbank Professor of International Law and Practice, Princeton University.

described the primary objective as follows: ‘to safeguard the new German democracy from Nazi influence and to make it possible for anti-Nazi, non-Nazi and outspoken democratic individuals to enter public life and replace the Nazi elements which had dominated all life in Germany from 1933 to 1945’.<sup>17</sup> He reports that:

This was, perhaps, the most extensive legal procedure the world had ever witnessed. In the US Zone alone more than 13 million persons had been involved, of whom over three and two-thirds million were found chargeable, and of these some 800,000 persons were made subject to penalty for their party affiliations or actions. All this was, of course, apart from the punishment of war criminals many of whom were high-ranking Nazis.

Field-Marshal Sir Bernard Montgomery saw the objective of the allied forces in Germany as ‘to change the heart, and the way of life, of the German people’. Denazification involved a cultural and ideological change, to proceed side-by-side with economic reconstruction.<sup>18</sup> We can certainly ask whether three and two-thirds million Germans in the US Zone were more guilty of complicity in war crimes than any Americans. And we can ask whether a cultural and ideological change in the United States, at the very least, is not imperative if many others, who fear neither pain nor death, are not to be spared the fate of Vietnam.

Some of these questions arise in a revealing exchange between Townsend Hoopes and two young journalists who published an interview with him in the *Village Voice* (see note 14 above). Hoopes insisted that:

War crimes tribunals would be the worst thing that could happen in this country. That would amount to McCarthyism. You’re proposing a system of legal guilt for top elected officials. The traditional way to deal with these top officials is to throw the rascals out.

In an article in which he comments on ‘the curious piece of reporting’ of Coburn and Cowan, Hoopes explains further that ‘a democratic and an entirely elective form of retribution’ has already been visited upon Lyndon Johnson, and that his ‘closest collaborators’ may also be excluded from high office.<sup>19</sup> Hoopes does not say whether this form of ‘retribution’ would also have been more appropriate in the case of the Japanese and German war criminals should the West, then, merely have guaranteed a democratic election in which they might have been deprived of office? He does, however, reject the suggestion that civilian officials be held accountable for such incidents as the Song My massacre, or for the bombing of North Vietnam, or for such policies as those enumerated by Falk, cited above. In fact, Coburn and Cowan report that ‘in the friendliest possible terms, he accused our “generation” of wanting to impose a totalitarian system of morality’ which would lead to ‘universal anarchy’. Coburn and Cowan, in turn, ask:

If Tojo can be sentenced to be executed by an American war crimes tribunal for leading Japan into a ‘war of aggression’, should the only punishment for an American President be that he is voted out of office while his Secretary of Defense serves a secure term as President of the World Bank?

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<sup>17</sup> *The Present State of Denazification*, reprinted in Constantine Fitzgibbon, *Denazification* (Norton, 1969).

<sup>18</sup> Fitzgibbon, *op. cit.*

<sup>19</sup> ‘The Nuremberg Suggestion’, *Washington Monthly*, January 1970. Noam Chomsky.

This seems a not unreasonable question, certainly not unreasonable for those who take seriously the statement of Justice Jackson, quoted earlier. Nor do Coburn and Cowan appear unreasonable when they add that: ‘The “anarchists” who frighten us most are those who wield the big bombs, control the courts, and assume for themselves the power to declare all their enemies outlaws.’

Hoopes strongly disagrees. It is these strange conclusions that make the Coburn-Cowan article such ‘a curious piece of reporting’. To him it is ‘crystal clear ... that such views could not conceivably be held or expressed by anyone who was a young man during the Second World War or who was engaged in the mortal struggles of its aftermath – in Greece, in Germany, in Berlin, in Korea’. Only ‘sensitive, clever children’ could be moved to such harsh judgements, ‘unshaped by historical perspective and untempered by any first-hand experience with the unruly forces at work in this near-cyclonic century’. Those who designed our Vietnam policy were ‘struggling in good conscience to uphold the Constitution and to serve the broad national interest according to their lights’; they were, ‘almost uniformly, those considered when they took office to be among the ablest, the best, the most humane and liberal men that could be found for public trust’, and ‘no one doubted their honest, high-minded pursuit of the best interests of their country, and indeed of the whole non-Communist world, as they perceived these interests’. To be sure, they were deluded by the ‘tensions of the Cold War years’. The tragedy of Vietnam, as he sees it, is that these good men were unable to perceive that the triumph of the national revolution in Vietnam would be ‘neither a triumph for Moscow and Peking nor a disaster for the United States’. Furthermore, their policies received wide public support. ‘Set against these facts, the easy designation of individuals as deliberate or imputed “war criminals” is shockingly glib, even if one allows for the inexperience of the young.’ Similarly, it would be ‘absurd’ even to ask whether a war crimes tribunal, even in principle, should try Nixon and Kissinger as ‘war criminals’ (even though they continue to ‘buy some time in the US’ so that the war can be brought ‘to a successful conclusion’, in the words of the present Secretary of the Army).

One should, I believe, agree with Townsend Hoopes that ‘what the country needs is not retribution, but therapy in the form of deeper understanding of our problems and of each other’. No one, to my knowledge, has urged that those responsible for the massacre of the people of Vietnam, their forced evacuation from their homes,<sup>20</sup> and the destruction of their country, be jailed or executed, or even that ‘denazification’ procedures of the sort instituted against thirteen million Germans in the US Zone be applied to the American population. Let us, by all means, try rather to achieve a deeper understanding of our problems. Among these problems is the fact that one of the most liberal and enlightened commentators on contemporary affairs can assure us that Asian hordes care nothing of death, fear no pain and cannot conceive of happiness, while as for us – it is our Christian values that impel us to stop short of a final solution. Among our problems is the fact that the same spokesman can summon up the kind of ‘historical perspective’ that sees our intervention in Greece, in the 1940s, as a ‘mortal struggle’ (against whom?); or the fact that those who were, quite possibly, the most humane and liberal men that could be found for public trust could set out to annihilate the Vietnamese in the belief (whether honest or feigned – it hardly matters) that they were combating a communist monolith that included ‘Moscow and

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<sup>20</sup> Coburn and Cowan report the views of Ambassador Ellsworth Bunker, who says in a statement to Congress on the refugee situation that the figures may be misleading, since the war-torn Vietnamese are used to disruption and ‘have been moving around for centuries’. Since this is true, to a far greater extent, of the American population, there would presumably be even less reason to protest, if they were driven from their homes by a foreign invader.

Peking' (in 1965!). One of our problems is the doctrine developed by Mr Hoopes, in accordance with which – to take his words literally – no policy carried out by the best American leaders with wide public support could be criminal, could in principle demand any response other than 'to throw the rascals out'.

In fact, is it not a trifle naive (or even 'glib') of Mr Hoopes to suggest that we throw the rascals out? Did we vote the rascals in? Richard Barnet, in a recent study, writes:

Most of the men who have set the framework of America's national-security policy, as I found when I studied the background of the top 400 decision-makers, have come from executive suites and law offices within shouting distance of one another in fifteen city blocks in New York, Washington, Detroit, Chicago, and Boston. It is not surprising that they emerge from homogeneous backgrounds and virtually identical careers with a standard way of looking at the world. They may argue with one another about means but not about ends.<sup>21</sup>

No one who considers carefully the role of the executive in civil-military decisions in the post-war world, or the role of the private economic empires in determining national policy (either in their own protected domain, or within the parliamentary system itself), or the kinds of choices presented by the two competing candidate-producing organizations can so easily speak of 'throwing the rascals out'. It would require social revolution, leading to a redistribution of power throughout the industrial as well as the political system, for a significant change to take place in the top decision-making positions in American society. For this reason alone, one must fully accept the judgement that 'what the country needs is not retribution, but therapy in the form of deeper understanding of our problems' – and appropriate action to remedy these problems, which, given our enormous power, are problems of life and death for a good part of the world.

These problems should be on the agenda for any thinking person. More immediate, however, is the problem of bringing about a withdrawal of American force from Vietnam. There is no indication that any such policy is envisioned, at present. Rather, it is clear that the US government is hoping to stay the course until victory is achieved, adjusting tactics, where necessary, to buy some time at home. For this reason, the Proceedings of the Tribunal is a document of first importance; the spirit and convictions that underlie it must, as Russell hoped, become a part of the consciousness of all Americans.

Richard Falk concludes the article I quoted earlier, writing:

Given the perils and horrors of the contemporary world, it is time that individuals everywhere called their government to account for indulging or ignoring the daily evidences of barbarism... the obsolete pretensions of sovereign prerogative and military necessity had better be challenged soon if life on earth is to survive.

The Tribunal takes one step – small, perhaps, but significant. The Tribunal, or another like it, should turn to Czechoslovakia, to Greece, to a dozen other countries that are suffering in the grip of the imperialist powers or the local forces that they support and maintain. Still more important,

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<sup>21</sup> *The Economy of Death* (Atheneum, 1969). See also the detailed analysis by Gabriel Kolko, *The Roots of American Foreign Policy* (Beacon Press, 1969), Chapter 1.

the work initiated by the Tribunal should be carried further by groups of citizens who take upon themselves the duty of discovering and making public the daily evidences of barbarism, and the still more severe duty of challenging the powers – state or private – that are responsible for violence and oppression, looking forward to the day when an international movement for freedom and social justice will end their rule.

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Foreword  
1971

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In *Bertrand Russell War Crimes Tribunal on Vietnam*, 1971

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