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ADVANCE TO BARBARISM - HOW THE REVERSION TO BARBARISM IN WARFARE AND WAR-TRIALS MENACES OUR FUTURE, by F. J. P. Veale. C. C. Nelson Publishing Company, Appleton, Wisconsin, 1953. Pp. xvii, 305. \$4.50.

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Book Reviews

ADVANCE TO BARBARISM—HOW THE REVERSION TO BARBARISM IN WARFARE AND WAR-TRIALS MENACES OUR FUTURE, by F. J. P. Veale. C. C. Nelson Publishing Company, Appleton, Wisconsin, 1953. Pp. xvii, 305. \$4.50.

The subtitle of this book, "How the Reversion to Barbarism in Warfare and War-Trials Menaces Our Future," purports to show its principal themes. The "reversion" in the conduct of warfare is ascribed mainly to the leading nations allied against Germany in the two World Wars. Germany and German leaders (both pre-Nazi and Nazi) run a poor second and, indeed, in a fair number of cases German leaders come off with unsullied reputations as the defenders of "civilized warfare." The second aspect of alleged "reversion" is the conduct, under various Allied auspices, of war crimes trials of both German and Japanese leaders after World War II (WW II). These trials are heralded as having left in ruins the principles of justice and as assuring horrors in future wars beyond all precedent. In developing his two points, or in going beyond them, the author engages in broad speculation on the specific causes of particular wars, on the motives of notable leaders on sundry domestic and international topics, and on numerous other questions of greater or lesser import.

The author, in the tone of a man upholding a neglected mission and demanding to be heard, punctuates his "facts" with satire and vituperation and passes readily from facile conclusion to quick condemnation as he jumps back and forth in man's history from the Stone Age to the Korean War. If many of the main arguments of this book were not tied so painstakingly and repetitively to the aggression and other misbehavior of Soviet Russia, the American edition would most likely meet as unresponsive a reception as did the original English edition, according to the author's own admission.¹ But in the context of the "cold war,"

1. Speaking of the original 1948 English edition, the author states that "the bulk of the British press, newspaper and periodical alike, rigidly ignored the appearance of *Advance to Barbarism*. Not one London newspaper with a nation-wide circulation reviewed the book at all." (p. xii) The author attributes this (to him) painful fact to what he calls the "Iron Curtain of Discreet Silence" and "The Historical Blackout" of the time.

many of the contentions and methods of this book will be met again and again. They are worth inquiring into because they fit into an all too common pattern of persuasion employed to catch the unwary and to confuse and distract those seeking sober assessments of our difficult problems, including the task of meeting the continuing threat of communist totalitarianism.²

I. "PRIMARY" VERSUS "SECONDARY" WARFARE

The author early develops several broad concepts concerning warfare which are later employed freely to bolster a number of his principal conclusions. From the time of the first dynasty in Egypt to the present, the author divides warfare into two types, "primary" and "secondary." "Primary warfare" covers all wars "between combatants at different stages of civilization" whereas "secondary warfare" characterizes all wars between combatants "at the same or approximately the same stage of civilization." The author early asserts that "[m]ost of the really important wars of history have been primary wars," and that all wars between combatants of about the same civilization "are in essence only civil wars," (p. 23) regardless of the fact that most modern wars have involved nation states. With but few exceptions, such as the invasions of Europe by the Mongols and the Turks, all European wars since the Dark Ages "must be classified as secondary wars," (p. 51) and hence as civil wars.

This definition of civil war leads the author to classify wars since the time of Louis XIV into European Civil Wars No. 1 through No. 8b. (pp. 54, 56) The author states that the First World War "is a plain misnomer It remained a civil war although two non-European Powers [Japan and the United States] joined in." (p. 56) The war which broke out in 1939 "was really only a continuation of the struggle which it was believed ended" in 1918; hence "the war 1914-1918 should be labelled European Civil War No. 8a, and the war 1939-1940 European Civil War No. 8b."³ The war 1940-1945 really merits the title of the First World War since during it, for the first time in history, continents came into conflict rather than mere countries."

2. The nature of the author's presentation invites a great many quotations. To avoid numerous short footnotes to the pages at which the book is quoted, the quotes in the text will be followed by the page numbers in parentheses.

3. Several times the author abbreviates his new concept as "E.C.W. No. 8b."

(p. 56)⁴ Why the author chooses 1940, when no new non-European countries became involved in the war, as the beginning of his "First World War," instead of 1941, when Germany invaded Soviet Russia and declared war upon the United States, is confounding and will be examined further below.

II. "CIVILIZED WARFARE" WITH LIMITATIONS

Another important concept projected by the author is "civilized warfare." He states that from the dissolution of the Roman Empire to the Middle Ages, warfare was "conducted with the most primitive savagery." (p. 41) In the Middle Ages, however, "chivalry had considerable influence on the conduct of warfare . . . although the influence was generally restricted in practice to dealings of the ruling classes with each other." (p. 61) In the eighteenth century the author finds that "wars ceased to be waged for vague undefined objects in a frenzy of emotion," but instead were fought "for limited objects" and "with limited means, that is to say, the means employed to wage them were limited according to a for long unwritten but generally recognized code" later known as "*civilized warfare*." (p. 65)⁵ In defining this term, the author states that "The exclusion of non-combatants from the scope of hostilities is the fundamental distinction between civilized and barbarous warfare." (p. 128) "So long as warfare in Europe continued to be warfare between Europeans, it was conducted in accordance with a recognized code." (p. 75) However, "Europeans have always in practice refused to admit that any rules which might exist governing European civil war had any application to Asiatics," (p. 86) and as to Asia, "methods of warfare have remained completely unchanged throughout the ages." (p. 87)⁶ "All appeared well, so

4. The author makes no reference to the participation of various non-European components of the British Commonwealth, such as Canada, South Africa, and Australia, in "the war 1939-1940."

5. The author idealizes war during the Age of Reason to no inconsiderable extent, stating that "the result of such wars could be awaited with indifference. The actual fighting would be done by long-service professional soldiers recruited from the dregs of the population—the scum of the earth as the Duke of Wellington frankly described them—guaranteed from acting otherwise than as machines by a ferocious discipline enforced by repeated flogging, led by officers who under no circumstances would forget that they were gentlemen first and officers afterwards." (p. 79)

6. The author concedes a number of exceptions to his European code even in the fighting between Europeans. However, in summary he states: "During the greater part of the eighteenth century and throughout the nineteenth, a rigid code of conduct was generally observed by the armed forces of the European countries, or, at least, when disregarded, was paid the tribute of indignant denials." (p. 3)

long as no non-European Power existed strong enough and presumptuous enough to take advantage of these European civil wars" and "so long as these civil wars were conducted in a comparatively good-humored spirit." (p. 137) But at the turn of the century, for reasons the author believes to have discovered, this condition began to deteriorate, "and the conditions of warfare reverted within the space of fifty years to their original pristine simplicity and barbarism." (p. 4)

III. THE COMPARATIVE ROLES OF LEADING MODERN STATES IN THE "REVERSION TO BARBARISM"

It is revealing of the author's analysis and beliefs, and perhaps of his motives, to gather and group a fairly large number of his statements roughly according to the role played by leading modern states or by their political leaders.

A. *Germany—1870 to 1914*

The author declares "that the peoples of Europe benefited by the German victory over France in 1870," (p. 98) and that thereafter Germany "preserved unbroken peace" in Europe for more than forty years while Germany's neighbors engaged in various "aggressive wars." Coming to World War I (WW I) the author finds that "the two main immediate causes of the first World War" were "the Russian desire for the Straits leading out of the Black Sea and the French desire for the return of Alsace-Lorraine." (p. 103) In a footnote the author states:

"Of course, the mercurial behavior and flamboyant rhetoric of the Kaiser were no true reflection of his attitude toward war in the concrete. When it came down to brass tacks in the summer of 1914, he lined up on the side of peace, but too late to check the rush to hostilities. His boasts and bravado were, actually, far less of a menace to peace than the personal antipathy of Edward VII to Germans generally and to the Kaiser in particular, and Edward's secret intrigues with the French." (p. 103)

B. *Germany—The Nazi Period*

The author's discussion of the conduct and motives of Hitler and the Nazi leadership during the entire period of the Third Reich contains a startling collection of half-truths and serious errors matched only by the author's omissions. The author finds that "Hitler's primary object was to free Germany from the

chains of the Versailles Diktat. From the first, world hostility had to be taken into account. As Göring put it, 'Guns are more important than butter.' Throughout the short existence of twelve years of Nazi dominion, this saying was indisputably true." (pp. 271-272) Hitler "by threats of force set aside one by one the main provisions of the Versailles Treaty." (p. 114) The German invasion of Austria in March 1938 is not called an act of force nor an aggression. The appeasing of Hitler at Munich is not criticized, nor is Hitler's breach of the Munich Agreement mentioned. Indeed, the invasion of Czechoslovakia in March 1939 is passed over entirely.

Coming to the fateful summer of 1939, the author sees Hitler as wanting merely to rectify the wrong of the Polish Corridor. Both Germany and Poland are viewed as "convinced that the other must be bluffing"; (p. 115) and hence came another "typical European War" offering "no features of general interest except that the point at issue was rather more frivolous than usual." (p. 116) Apparently the author accepts Hitler's public pretenses and chooses to overlook Hitler's confidential statements to his top assistants and generals. The author needed only to read the decision of the International Military Tribunal at Nürnberg to find such Hitler statements as the following, quoted from contemporaneous German documents:

"Now Poland is in the position in which I wanted her I am only afraid that at the last moment some Schweinehund will make a proposal for mediation." (Speech to Commanders-in-Chief, August 22, 1939)⁷

And:

"It was clear to me from the first moment that I could not be satisfied with the Sudeten German territory. That was only a partial solution. The decision to march into Bohemia was made. Then followed the erection of the Protectorate and with that the basis for the action against Poland was laid, but I wasn't clear at that time whether I should start first against the East and then in the West or vice versa." (Statement to Supreme Commanders on November 23, 1939)⁸

7. 1 Trial of the Major War Criminals before the International Military Tribunal 201 (Nürnberg 1947) (hereinafter Trial of the Major War Criminals before the I.M.T.).

8. Id. at 189. A collection of contemporaneous German documents concerning the aggression against Poland may be found in the official series: Trials of War Criminals before the Nürnberg Military Tribunals (1949-

C. *Great Britain—"The Splendid Decision" to Employ Strategic Bombing*

At the first page of his Preface the author states: "Previously [i.e., prior to the revelations and discoveries in the 1948 edition of his book], it had been universally assumed that Hitler was solely responsible for the air *Blitz* over England and the natural retaliation for this by the Allies over the Continent." (p. xi) At many points throughout this book we are told that, on the contrary, the British were responsible both for the *Blitz* and for the employment of strategic bombing generally with its horrors to non-combatants in large cities. This the author traces to "The Splendid Decision" which led to a bombing mission by eighteen British bombers over Western Europe on May 11, 1940, a raid supposedly directed at German railway installations. It is not pointed out that this raid occurred the day following the German invasion of the Netherlands, Belgium, and Luxembourg, nor is the event related to past Nazi offenses. Instead, the author proceeds to dispute with those who have asserted that the Allied bombing of civilian centers "was only a reprisal for the German bombing of Warsaw and Rotterdam." (p. 123) Here the author does succeed in finding a quotation in his support, quoting Captain Liddell Hart's conclusion that these German bombings "did not take place until the German troops were fighting their way into these cities and thus conformed to the old rules of siege bombardment.'" (pp. 123-124) Thus sharply distinguishing between Nazi warfare within the rules and this preliminary incident of British strategic bombing, allegedly outside the rules, the author proceeds to drive home his point and concludes that the British bombing "*was an epoch-making event since it was the first deliberate breach of the fundamental rule of civilized warfare that hostilities must only be waged against the enemy combatant forces.*" (p. 122)⁹ "*Their flight marked the end of an epoch which had lasted for two and one-half centuries.*" (p. 123)

1953) (hereinafter: Trials of War Criminals); 10 id. at 642-711 (1951) and 12 id. at 995-1081 (1951). These documentary collections are taken, respectively, from the evidence in "The High Command Case" and "The Ministries Case," two of the Nürnberg trials subsequent to the trial of Göring et al. before the International Military Tribunal.

9. The bombings of civilians by the German "Condor Legion" during the Spanish rebellion in 1937 and 1938 is, of course, not mentioned. See Taylor, *Sword and Swastika, Generals and Nazis in the Third Reich* 135-136 (1952).

D. Great Britain—Refusal to Make Peace with Hitler

The author declares that the escape of the larger part of the British Army at Dunkirk was possible only because of "Hitler's delusion" that Britain would come to its senses and give up the war to protect itself from the "menace of Asia." (p. 220) The author finds that the German victors were so intoxicated by the speed of their triumph in France that they "were in no mood to set about paying off old scores." (p. 116) At the surrender at Compiègne the Germans followed "military etiquette" punctiliously, and thereafter Hitler, full of a desire for peace, offered peace to Britain. But Britain's reply was "sulky silence" (p. 119) and further strategic bombing of Europe. Speaking of the good faith of Hitler's peace offer, the author has, as usual, a ready answer: "We need not consider whether this offer was sincere, since any other course from his point of view, would have been madness. He had achieved all and much more than all he had set out to achieve and Germany lay under the shadow of the Red Army." (p. 119)

Any who have given more than a casual glance to the captured German documents of the Nazi period must stand aghast at such trifling with the motives and planning of this conquering dictator and his collaborators.¹⁰

E. Germany and Soviet Russia

After ending his "European Civil War No. 8b" with Britain's refusal to enter a "Hitler Peace" in mid-1940, the author confronts substantial difficulties in getting his "First World War" (1940-1945) started in 1940. After all, Hitler did not invade Russia until June 1941 nor declare war upon the United States until December 1941. The author attempts to overcome this obstacle by disregarding it along with numerous pertinent historical facts. Although he states that "[i]mmediately hostilities had started, the U.S.S.R. set about realizing far-reaching plans for expansion at the expense of Europe," (p. 118) he fails to note that Germany gave Soviet expansion plans their initial chance for concrete realization by Germany's achievement of the Nazi-Soviet Non-Aggression Pact of August 23, 1939. This Pact

10. Concerning various phases of Nazi Germany's planning and expansion, an extensive collection of translated captured documents is reproduced in *Trials of War Criminals* along with testimony of various German participants, many of whom were defendants in the Nürnberg trials. See particularly 10 *Trials of War Criminals* ("The High Command Case") Section VI (1951) and 12 *id.* ("The Ministries Case") Section VI (1951).

was accompanied by a "Secret Additional Protocol" setting forth the boundaries of the "spheres of influence" to which both Nazi Germany and Soviet Russia would adhere "in the event of a territorial and political rearrangement in Eastern Europe."¹¹ To Hitler this was a second Munich, and he promptly went forward with the invasion of Poland as previously scheduled and let Soviet Russia expand into Eastern Poland and the Baltic states as contemplated.

In his text the author speaks several times of the "entry" of Soviet Russia into the war, but not of the fact that Germany invaded Russia. However, this matter is given the quick treatment in a footnote focused upon the Molotov-Hitler conferences of November 1940. Declaring that Hitler rejected Molotov's demand for a "protectorate over the whole of the Balkans" as the price for continued neutrality in the war, the author concludes that Hitler thenceforth "regarded a Soviet attack on Germany as merely a question of time and, nine months later, wisely or unwisely, decided to forestall this attack before the United States was ready to take an active part in the war." (p. 119) The German-Italian invasions of Albania, Greece, and Yugoslavia in 1939, 1940, and 1941 are passed over entirely in the author's analysis of the beginnings of his "First World War." Instead, our attention is diverted to Britain's position after the fall of France. The author states that thereupon "two urgent problems arose for the consideration of all Europeans—first, whether domination of Europe by the Soviet Union was too heavy a price to pay for the continuance of the civil war, and secondly, if this price was not too heavy, by what means was the war to be continued." (p. 119) According to the author, Hitler (presumably deciding for "all Europeans" then under the Nazi heel) was ready to make the proper election, but embattled Britain took the wrong turning, along with the numerous European governments in exile. The author's capacity for apologizing for the Nazi leadership is illustrated by a remark he makes concerning the Pact for the Outlawry of War and the Nazi leaders in the dock at the first Nürnberg trial:

"It is a curious fact that the Kellogg Pact could have been more logically invoked in defense of those accused at Nürnberg than exploited for their condemnation." (p. 182)

11. Reproduced in 12 *Trials of War Criminals* 1046 (1951).

F. *America—Its Contributions to “Total War” and the Trend Toward “Orwellian Warfare”*

Speaking of General Philip H. Sheridan’s visit to Prussia in 1870 during the Franco-Prussian war, the author quotes an alleged remark of Sheridan to Bismarck:

“You know how to hit an enemy as no other army does, but you have not learnt how to annihilate him. *One must see more smoke of burning villages, otherwise you will not finish off the French.*”¹² (p. 94)

On the concept of “total war,” the author states that “[t]he first extensive example of this departure from the European code of civilized warfare was the strategy of Lincoln and Grant in the American Civil War” (p. 80) when the North considered both effective and legitimate “the destruction of the enemy’s economic resources.” (p. 90) Groping for the reasons for this, the author finds that “[t]he North had endured much more bellicose contact with the Indians and was much less influenced by Europe than the South. The latter was culturally a European colony until after the Civil War. . . .” (p. 89)

With respect to WW I, the author declares that America entered “at the end mainly for the purpose of safeguarding the huge loans which she had made to Great Britain and France to buy munitions.” (p. 56) Other possible reasons for America’s entry are not even mentioned.

Particularly toward the end of this new “Book of Revelations,” the author makes a great number of statements and innuendos about American Presidents, American economic and political problems, and the relation of both to American participation in WW II and contemporary international affairs in general. Again it seems safest to quote directly from the book. “*It is possible to claim that Franklin D. Roosevelt was the first statesman in history to realize that such economic problems as overproduction and unemployment could be most readily solved in a modern state by the adoption of a war economy . . . Harassed by strikes and the opposition of business interests, . . . it may well be that his thoughts turned with longing to conditions in which emotional engineering could function most effectively. . . . The selection of an enemy thus became for him an economic neces-*

12. No citation is given for the source of this alleged remark, a failure which is noteworthy with respect to many of the “facts” marshalled in this book.

sity." (Italics supplied.) (pp. 272-273) The author asserts it to be a "fact that the Nazi Government had persistently ignored the various acts of provocation designed by President Roosevelt to involve the United States in the Second World War," (p. 180) and also that "[f]ailing in his efforts to provoke Hitler into hostile action, Roosevelt adopted an actively aggressive policy against Japan." (p. 274) Further, "Whether or not as a result of a reasoned resolve, it is unquestionable that, not later than 1938, Roosevelt adopted a design for war." (p. 273)¹³ Even before the European war began, Roosevelt "had succeeded in bringing about what would now be called a 'cold war' with Nazi Germany." (p. 274) This increased the production of munitions and supplies and "quickly solved the problems of over-production and unemployment. Incidentally, of course, they saved the President's waning political fortunes and those of the Democrat [sic] Party." (p. 274) "*It is probable that*, being the supreme opportunist that he was, he was quite content to solve his problems for the moment and to leave their final solution to his successors. . . . *Must it be assumed* that it was beyond his ability to realize that the Soviet economic system depended on the existence of an enemy, and once 'Fascism' had been eliminated, 'American Imperialism' would be adopted to serve this necessary role in the Soviet scheme of things? The Englishman, William Joyce, the Lord Haw-Haw of German propaganda broadcasting, constantly stressed the fact that even a child could realize that a war between the United States and the Soviet Union would be the inevitable result of Germany's defeat." (Italics supplied.) (p. 274) Speaking of the Orwellian trend toward "the establishment of a permanent war economy and a state of continuous cold or phony warfare," the author states:

"Some may find it hard to believe that this trend has developed as a result of deliberate discussion and philosophical formulation. In the United States, at any rate, it is an opportunistic affair, set in motion by that supreme opportunist, Franklin D. Roosevelt, and revived on a large scale by President Truman in March, 1947, when he instituted the 'cold war.'" (p. 281)

13. In leading us to this "unquestionable" conclusion, the author does not trouble with evidence or documents of the time. However, when Roosevelt sent Hitler his telegram requesting a "minimum period of assured non-aggression" on April 15, 1939 (just one month after Hitler had invaded Czechoslovakia), Hitler and Goebbels quite likely did consider this effort at pacification as a part of America's "design for war." The Roosevelt document is reproduced in 12 *Trials of War Criminals* 1003 (1951).

Coming to the developments after WW II and the growing antagonism and distrust of the victors, the author declares: "Ultimately Truman let loose a cold war which may well provide the entry into a hot third World War." (p. 294)

No attempt will be made herein to list the grave omissions in the author's speculative and accusatory analysis of American efforts to meet the expansionist policies and the actual aggressions of totalitarian powers before, during and after WW II. Needless to say, the author does not suggest, much less discourse upon, any specific remedies to the continued aggressive acts of Nazi Germany and Militaristic Japan before and during WW II. Nor does he impugn Hitler's "Lebensraum" objectives in any way. And although the author would like to appear to be second to none in speaking of the menace of further expansion by Soviet Communism, he nowhere proposes specific alternatives to the general course which America and the Western Powers have evolved in their attempt to curb aggression in the present "cold war." However, in concluding his remarks on the trend toward "Orwellian warfare" and the horrible results of a possible third World War, the author gives us, all in one lump, his general strategem:

"The real lesson to be drawn from all this is that, if we wish to escape from either the tyranny, intimidation, and austerity of a 'Nineteen Eighty-four' régime or reversion to the living conditions of the cave men, we must repudiate the cold-war strategem and imposture of 'perpetual war for perpetual peace,' and return to national sanity, diplomatic neutrality, and truly pacific internationalism." (p. 284)

The author does not give his view of the elements of "national sanity, diplomatic neutrality, and truly pacific internationalism." Nor are we told how, in our time, the people and leaders of either the Western Powers or the Iron Curtain countries are to "return" to these conditions. Nor are we informed of when or where these conditions existed so as to plot our "return."

*G. Striking a Balance on the Atrocities of Nazi Germany
and the Countries Allied in World War II*

This book steers away from the discussion of specific atrocities committed by the Nazis and from any analysis of the original orders, implementing directives, and other contemporaneous German reports on German atrocities and crimes against

humanity. Nor does it seek to bring into focus the ideological and "racial" characteristics of the Nazi regime which bred mass murder and other outrages in Germany, beginning in 1933, and in all territories occupied by Germany after 1938. This is not to say that the author does not admit that Nazi atrocities did occur on a broad scale, for early in his Preface he seeks to assure his readers that he is "fully aware of the nature and extent" of Nazi barbarities. He immediately adds, however, that "the *emotional* reactions to these Nazi outrages" led to acts of the same nature and to results "more horrible and destructive than the worst acts" committed by the Nazis. (p. xiv) Further, he concludes that atrocities were "about equally distributed between the Nazis and their opponents" and, indeed, that the Nazis have already been "outdone" in their wrongdoing. (p. xv) Having ventured this far, the author then proceeds at numerous points throughout the book to attempt to undo the record of German atrocities in various ways and to shift responsibility. "The originally comparatively friendly relations between the inhabitants of the occupied countries and the occupying forces had gradually disappeared as the resistance movements, organized and financed by Great Britain and the United States, increased in strength and daring." (pp. 153-154) Again we find that accusation that the British bombing mission of eighteen bombers over Western Germany in May 1940 tore away the keystone of civilized warfare "and, with the keystone removed, the whole structure of civilized warfare . . . collapsed in ruins. The assumption became general that a war waged by barbarous methods must inevitably end in a barbarous peace. Faced by this appalling prospect, each side felt any act justified, providing only that it served even remotely to stave off defeat. As the war proceeded and the prospects darkened, this became more and more openly the German attitude. The entry of the United States and the Soviet Union accelerated the headlong decline of civilized warfare, since, as non-European Powers, neither felt in any way bound to observe the rules of civil war adopted by the European aborigines." (p. 128) In connection with this explanation of the downfall of European "civilized warfare," we meet another of the principal concepts developed earlier by the author, that of "primary warfare":

"The entry [sic] of the Soviet Union into the war, of course, completely transformed its original character The cam-

paigns on the Eastern Front were primary warfare in its grimmest aspect." (pp. 128-129)

In connection with the horrors of warfare and occupation in Russia, fairness would require some reference to the "Commissar Order"¹⁴ and the "Barbarossa Jurisdiction Order,"¹⁵ and to the fact that these orders, with their provisions for "liquidation" of all who might be suspect of opposition to German occupation, were issued and implemented *before* the German invasion of Russia. But the author mentions neither these orders applied in Russia nor the "Night and Fog Decree"¹⁶ applied in occupied Western Europe. In discussing the systematic killings in German occupied territory, and especially in discussing the Kesselring and Manstein trials, (pp. 213-214; 235-236) the author comes to the defense of Nazi policy and practice by invoking, in summary fashion, the "hostage" and "reprisal" doctrines of international law. Readers interested in an analysis of the restrictive conditions and extensive safeguards to be observed before these doctrines may legally be employed, are referred to the judgment of the Nürnberg Tribunal in "The Hostage Case."¹⁷

IV. THE WAR CRIMES TRIALS

Both Mr. Justice Jackson and General Telford Taylor, the chief prosecutors for the United States in the Nürnberg trials, have admitted the likelihood of mistakes and inadequacies in these trials and have invited fair criticism.¹⁸ It is the more discouraging, therefore, to find this book particularly wanting in facts and fulsome in error in taking to task the Allied nations for the holding of war crimes trials after WW II. Given the predilections which the author demonstrates on many subjects, this abuse

14. Reproduced, with implementing directives, in 10 Trials of War Criminals 1054-1064 (1951).

15. *Id.* at 1113-1131.

16. 11 Trials of War Criminals 195-217 (1950). See also 3 *id.* ("The Justice Case") at 774-804 (1951).

17. 11 *id.* at 1243-1256 (1950). See also the judgment in "The High Command Case," *id.* at 528-529.

18. In his final report to President Truman on the first Nürnberg trial Mr. Justice Jackson's final words were: "In pursuit of it [his assignment as Chief of Counsel for the United States] many mistakes have been made and many inadequacies must be confessed. I am consoled by the fact that in proceedings of this novelty, errors and missteps may also be instructive to the future." See Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials (hereinafter International Conference) 440 (Dep't State publ. 1949). And General Taylor has stated that the "Nürnberg trials merit far more discussion and analysis than has thus far been accorded them." See Taylor, *The Krupp Trial: Fact v. Fiction*, 53 Col. L. Rev. 197 (1953).

would not be worrisome if the author did not discourage his readers from any attempt to pursue historical facts on their own¹⁹ and if he did not fail completely to cite any of the official records of the war crimes trials or the official reports concerning them. Accordingly, it seems appropriate hereinafter to supply some of the source materials for independent research while dealing with a few of the author's principal assertions.

A. *Origins of War Crimes Trials*

At the first page of his Preface the author asserts that the 1948 edition of this book mentioned "for the first time" a number of important matters, including "the fact that the origin of the war-crimes trials can be traced to the proposal of Stalin at the Teheran Conference in 1943" that a liquidation similar to the Katyn Forest Massacre should follow Allied victory. (pp. xi-xii) Having alleged such a discovery, it is not surprising that the author fails to mention such pertinent historical facts as the following: the recommendations of the Inter-Allied Commission on the Responsibility of the War (WW I) in March 1919; Articles 228-230 of the Treaty of Versailles providing for the trial of war criminals of WW I before military tribunals; the deliberations of a number of official and semi-official bodies between WW I and WW II on the establishment of an international criminal court to supplement the jurisdiction of the Permanent Court of International Justice at the Hague; the St. James Declaration of January 13, 1942, by which the representatives of nine of the countries allied in WW II (not including Russia) placed "among their principal war aims the punishment, through the channel of organized justice," of those guilty of war crimes by issuing orders, by perpetration, or by participation; President Roosevelt's Declaration of October 7, 1942, that American policy aimed at an armistice providing for "the surrender to the United Nations of war criminals" and that America was ready to join with other Allied governments "in establishing a United Nations War Crimes Commission for the investigation of war crimes" with the object of eventually establishing the criminal responsibility of individuals; the favorable Allied reaction to President Roosevelt's over-

19. "Except to students of the customs, practices, beliefs, and ideas of primitive man, the details of this unique trial [of Göring et al. before the International Military Tribunal] need not concern anyone who values his time." (p. 2) On the other hand, the author states a little later that "It is assumed that the reader is sufficiently familiar with the details of the Nürnberg proceedings of 1945-1946, so that there is no need to point out how closely primitive precedents were unconsciously followed in them." (p. 14)

ture and the formation, without Russian participation at any point, of the United Nations War Crimes Commission.²⁰

B. *The First Nürnberg Trial*

In discussing the trial of Göring and twenty-one other leaders of Nazi Germany before the International Military Tribunal (hereinafter I.M.T.) at Nürnberg, the author speaks of "Nürnberg with its collection of foreign hangmen" (p. 79) and declares that in such trials "the object was not to ascertain the truth but to secure a conviction." (p. 149) According to the author, the defendants were deprived "of the protection of the rules of evidence" (p. xv) and under the I.M.T. Charter the Tribunal "could admit 'any evidence which it deemed to have probative value,' that is to say, might help to support a conviction." (pp. 148-149)

From the beginning of official American consideration of the trial of Axis war criminals, the official documents show genuine concern for the matter of full and fair trial,²¹ and from the start of his important role in this field Mr. Justice Jackson declared that the purpose of any trial would be "to determine *the innocence or guilt* of the accused after a hearing as dispassionate as the times and horrors we deal with will permit, and upon a record that will leave our reasons and motives clear."²² (Italics supplied.)

The rules of evidence as well as the rules of criminal procedure generally vary widely, of course, between countries employing the adversary system (Great Britain and the United States) and the accusatorial system (followed with variations on the European continent). The author does not tell us which of "the rules of evidence," even as he may choose to understand them, were followed at Nürnberg and which were not. Nor are we referred to the deliberations at the London Conference in 1945 when the troublesome task of evolving a workable procedure occupied the greater part of many sessions of the conferees prior

20. For both source materials and commentary concerning the matters listed and related developments which the author omits to mention, see *History of the United Nations War Crimes Commission and the Development of the Laws of War*, cc. III-V (London 1948) (hereinafter *History UNWCC*). This official work is nowhere referred to by the author. A short summary of the "Origins and General Nature of War Crimes Trials" appears in Taylor, *Nürnberg Trials, War Crimes and International Law*, 450 *International Conciliation* 244-256 (1949).

21. See, for example, Sections I and IV of International Conference.

22. Report of Mr. Justice Jackson to President Truman, June 6, 1945, *International Conference* 42, 46.

to the signing of the London Agreement, to which was annexed the Charter of the I.M.T.²³ The record of the London Conference is illuminating to any student genuinely interested in the development of international legal machinery of any kind, for it demonstrates the unavoidable problems inherent in any composite set of rules which draws from several legal systems and still attempts to satisfy the basic expectancies of jurists of several nationalities with different training and experience in procedural matters. Needless to say, there were trying arguments with the Soviet and, to a lesser extent, the French representatives on the functions of the tribunal and the prosecution, the rights of the defense, and many other matters. But the procedures evolved²⁴ resulted in a division of responsibility between court and counsel closely parallel to that of our adversary system, with the burden of going forward placed clearly upon the shoulders of counsel rather than upon the court as is generally true under the accusatorial system; in the representation of the accused by learned counsel; in the right of defendants to take or not to take the witness stand under oath; in the right of the defendants to address the tribunal when not under oath, a practice borrowed from the accusatorial system; in elaborate procedures for the discovery of evidence on behalf of the defense; in months of court sessions dedicated to receiving hundreds of uncontested contemporaneous German documents and to the hearing of testimony; in a large number of written motions and rulings as well as lengthy arguments in open court by both prosecution and defense; in a soberly phrased decision and judgment of the tribunal;²⁵ and in a dissent by the Soviet member of the tribunal to practically all the acquittals of accused individuals and of accused organizations.²⁶

In commenting on the procedure before the I.M.T. and the I.M.T. judgment, the author for the most part avoids analysis of

23. The minutes of the sessions of the London conference as well as the text of preliminary drafts and the final agreement are set forth in "International Conference." Mr. Veale simply declares that the I.M.T. charter was "framed by cynical politicians and dominated throughout by a righteous indignation complex." (pp. 170-171)

24. The basic "Rules of Procedure" adopted by the I.M.T. are reproduced in 1 Trial of the Major War Criminals before the I.M.T. 19-23 (1947) and in 15 Trials of War Criminals 18-22 (1953). The evolution of uniform rules of procedure in the 12 Nürnberg trials following the I.M.T. case is shown by a comprehensive compilation of materials from the Nürnberg court archives reproduced in 15 Trials of War Criminals ("Procedure, Practice and Administration") Sections III-V (1953).

25. 1 Trial of the Major War Criminals before the I.M.T. 171-341 (1947).

26. *Id.* at 342-364.

the specific procedures and practices at Nürnberg. Rather he states: "It is no matter of surprise that the proceedings ended with a mass-hanging of the prisoners." (p. 156) The Nürnberg defendants "found themselves subjected to a protracted ordeal leading to a result which everyone assumed from the start was, in the circumstances, inevitable and which may well have come to many of the accused as a welcome release." (p. 166) "It must freely be admitted that the stage management at Nürnberg was excellent, far superior to that of many of the series of mock-trials which have been such a prominent feature of Russian political life under the Stalin regime." (pp. 184-185) If a Patagonian "had visited the Court during the proceedings, he might well have imagined that normal judicial processes were in operation—provided, of course, that he did not tarry too long. It would be outside the scope of this book to trace the course of the proceedings, to examine the various charges made, and to speculate on the reason why there was a departure from orthodox practice in disposing of certain of the prisoners." (p. 185)

But having asserted that the trial result was cast in advance, the author does not tell us that three of the twenty-two defendants tried were acquitted on all counts; that from two to thirteen defendants were acquitted under the individual counts; and that the tribunal refused to declare as criminal three of the seven organizations so charged.²⁷ The author's "mass-hanging" broadside attack is made without noting that of the nineteen convicted defendants three were sentenced to life and four to imprisonment for a term of years.

Speaking of the German defense counsel at the I.M.T. trial, the author states that the tribunal was "protected against embarrassment" from undue professional zeal "since only anti-Nazi barristers were then permitted to practice in Germany," since "the prisoners could choose counsel only from among their political enemies," and since German counsel could "instantly be sent to join the unhappy multitude of persons then being detained in concentration camps" of the Allies. (p. 163) These are fabri-

27. Defendants Schacht, von Papen and Fritzsche were acquitted on all counts. As to Count One (Conspiracy) 8 of 21 charged were found guilty. As to Count Two (Aggressive War), 12 of 15 charged were found guilty. As to Counts Three and Four (War Crimes and Crimes Against Humanity), in each case 16 of 18 charged were found guilty. The tribunal refused to declare as criminal organizations the Reich Cabinet, the Storm Troops (SA), and the General Staff and High Command of the German Armed Forces. The tribunal also prescribed its declaration of criminality as to the other Nazi organizations charged: The SS, SD, Gestapo and Leadership Corps of the Nazi Party.

cations. A number of the defendants, including Göring, asked for particular counsel and such requests were approved. Moreover, most of the defense counsel in all the Nürnberg trials were members of the Nazi Party, the SS, the SA, or other affiliated organizations of the Nazi Party, and there was no showing that the accused thought of their counsel as "enemies."²⁸ Indeed, no one familiar with the records of the Nürnberg trials can seriously question the zeal and aggressiveness of defense counsel. During the I.M.T. trial Dr. Marx, counsel for the defendant Streicher, called the attention of the I.M.T. to an article in the German newspaper "Berliner Zeitung" in which Dr. Marx was criticized severely for his conduct in cross-examining a prosecution witness and was threatened with ostracism in the future. The I.M.T. reprimanded the newspaper in open court, stated that it desired "to say in the plainest of language that such conduct cannot be tolerated," and asked that the Control Council for Germany "investigate the facts and to report to the Tribunal."²⁹

C. War Crimes Trials in General

The author's discussion of specific war crimes trials deals mainly with the I.M.T. trial, which concededly was the principal precedent for later trials, at least insofar as the Western Powers were concerned. There is no discussion of any of the other twelve trials held in Nürnberg³⁰ and no analysis of the detailed procedures evolved during those trials.³¹ The scholarly reports of the United Nations War Crimes Commission on a large number of war crimes trials go without mention.³² Although a few pages are devoted to several trials held elsewhere than at Nürnberg, the

28. Concerning the role of defense counsel at Nürnberg, see 15 Trials of War Criminals ("Procedure, Practice and Administration") Section XIII-G, pp. 302-338 (1953). General Taylor has reported in summary form on this topic in his "Final Report to the Secretary of the Army on the Nürnberg War Crimes Trials under Control Council Law No. 10" 46-49 (1949). This report includes tabulations showing the background and political affiliation of the Nürnberg defense counsel. *Id.* at 297-343.

29. Session of March 5, 1946, 8 Trials of Major War Criminals before the I.M.T. 532-533 (1947); 15 Trials of War Criminals 336-337 (1953).

30. Principal materials from the records of the 12 Nürnberg trials subsequent to the I.M.T. are reproduced in the 15 volume series, Trials of War Criminals (1949-1953).

31. For a comprehensive compilation of procedural materials on the Nürnberg trials as a whole, see 15 Trials of War Criminals ("Procedure, Practice and Administration") (1953). The materials from the records of the various trials in this volume are grouped topically and show the development of adjective law at Nürnberg over the course of nearly four years.

32. 1-12 Law Reports of Trials of War Criminals (London: published for the United Nations War Crimes Commission by His Majesty's Stationery Office, 1947-1949).

author for the most part is content with summary conclusions concerning what he prefers to call "war-trials." For example, he finds that "Throughout Europe, there began, in 1945, what in essence amounted to but thinly disguised dances around the torture stake" (p. 201) and that "during the eighteen months which followed the termination of hostilities, no less than 24,000 war-trials in various parts of Europe *are said* to have taken place." (Italics supplied.) (p. 202) The source of this minimum figure is not given.³³ The author does not appear to distinguish between war crimes trials of foreign nationals and trials of a country's own nationals for treason or collaboration with the Nazis (such as Quisling in Norway and Laval in France). The author finds it convenient for his purposes to lump into one big bundle genuine war crimes trials (patterned at least generally after the Nürnberg practice) and "trials" held or executive action taken with respect to alleged war criminals in Communist countries. But at least insofar as concerns the score of democratic nations which were signatories or adherents to the London Agreement, the full and fair trial of Nazi war criminals was intended to fortify the principles of democratic justice and to lay bare the pretenses of totalitarian "justice."³⁴

Concerning the precedent set by the war crimes trials, the author sees only dire results. These trials, he says, "assured that in future wars defeated leaders and generals would be shot, hung or otherwise liquidated." (p. 80) This canard cannot stand the most meager analysis of the judgments of the thirteen Nürnberg trials in which were tried the larger part of the top German leaders who faced trial before tribunals of the Allied countries. But as already noted, the author makes erroneous insinuations

33. In tabulating available statistics concerning war crimes trials, the United Nations War Crimes Commission readily admitted the difficulties of accurate statement because "No statistics are available regarding war crimes trials in Russia, the Soviet Zone of Germany, or in Hungary, Roumania or Bulgaria." From data available as of March 1, 1948, the commission lists 962 war crimes trials as having been conducted in Europe by the United States, Britain, France, Greece, the Netherlands, and Norway. See History UNWCC ("Statistics of War Crimes Trials") 515, app. IV.

34. For example, in his final report on the I.M.T. trial, Mr. Justice Jackson stated: "It is not too much to hope that this example of full and fair hearing, and tranquil and discriminating judgment will do something toward strengthening the processes of justice in many countries. . . . It has been well said that this trial is the world's first post mortem examination of a totalitarian regime. . . . The Nürnberg trial has put that handwriting [that destruction of liberty eventually destroys the offending government] on the wall for the oppressor as well as the oppressed to read." International Conference 438-439. One of the later Nürnberg trials was devoted exclusively to the prostitution of justice in Nazi Germany. See the materials in 3 Trials of War Criminals ("The Justice Case") (1951).

concerning the sentences passed in the I.M.T. case, and he skips the twelve later Nürnberg trials completely. In this latter group of trials, 177 persons stood trial. Of these, 142 were convicted on one or more counts; 35 were acquitted on all counts. Of the 142 convicted, 26 were originally sentenced to death, 20 to life imprisonment, and 98 to a term of years. Sixteen were sentenced to a term of less than four years, and 11 of these were released immediately after judgment by virtue of "credit" for the time already spent in confinement before and during the trial.³⁵ In the two exclusively "military" trials, in which twenty-two generals and one admiral were tried, none of the defendants was sentenced to death, and four were acquitted.³⁶ Apart from the I.M.T. case, there were death sentences in only three cases, and each of these involved the doings of the infamous SS and plain murder.³⁷ Statistics, admittedly, are no substitute for reasoned analysis of the judgments and records of these trials in passing upon the measure of justice reached, but an interesting feature is that the tribunals, collectively, held 1,321 daily sessions in the twelve trials.³⁸

Critics have raised points concerning the war crimes trials which indeed bear further reflection with a view to the strengthening of international penal law. The matter of judges of victorious nations sitting in judgment of the members of vanquished nations for violations of international law is indeed unfortunate. Its only justification was that no established and permanent judicial machinery was at hand to ascertain guilt and invoke sanctions. Further, the codification of international law by treaty and convention left much to be desired then, as it does now. In this connection His Holiness, Pope Pius XII, has recently declared

35. A large number of these sentences have since been commuted or reduced. For materials on the review of sentences by the Military Governor and the United States High Commissioner for Germany, see 15 *Trials of War Criminals* ("Procedure, Practice and Administration") Section XXV (1953).

36. Of the 19 convicted on one or more counts, 4 were sentenced to life imprisonment and 15 to imprisonment for a term of years. A number of these sentences have since been commuted or reduced. See "The High Command Case" and "The Hostage Case," 10 and 11 *Trials of War Criminals* (1951 and 1950).

37. See the "Medical," "Pohl" and "Einsatzgruppen" cases, 4 and 5 *Trials of War Criminals* (1950).

38. Three hundred eighty-three sessions were devoted principally to the case of the prosecution and 924 to the defense case. In the shortest trial, "The Milch Case," with a single defendant, there were 39 daily sessions. In the longest trial, "The Ministries Case," there were 169 daily sessions. For a table on the length of the respective cases, see 15 *Trials of War Criminals* 451 (1953).

the vital importance of establishing "a uniform penal code between states" providing for a court with jurisdiction over such crimes as the "making of a modern war which is not required by absolute necessity or self defense" and the taking of reprisal actions against innocent people.³⁹ But lacking such permanent international machinery, the danger of future war crimes trials of victors over vanquished is not that the precedents of Nürnberg will be followed but that they will not be followed.

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MORRIS ON TORTS, by Clarence Morris. The Foundation Press, Inc., New York, 1953. Pp. xxviii, 388. \$5.00.

"... they studiously avoid entering into the merits of the cause but are loud, violent, and tedious in dwelling upon all circumstances which are not to the purpose. For instance, in the case already mentioned, they never desire to know what claim or title my adversary hath to my cow; but whether the said cow were red or black, her horns long or short, whether the field I graze her in be round or square, whether she be milked at home or abroad, what diseases she is subject to, and the like; after which they consult precedents. . . ." A portion of Gulliver's explanation of the English legal system to the chief of the Houyhnhnms.

First year law students, not having even the governmental experience of the chief of the Houyhnhnms, have more difficulty in understanding the devious methods of the courts in expounding and administering the law of torts. Professor Morris has done an excellent job of explaining the classic torts and the trial process by means of parable and policy just as did Gulliver, but without the satire, thereby accomplishing his primary purpose of aiding his colleagues in the assignment of outside reading for beginning students as well as his secondary object of benefiting the practicing advocate. With these as his public the author practicably solves the perennial problem of how much emphasis

39. Address to the Sixth International Congress of Penal Law on "An International Code for the Punishment of War Crimes," October 3, 1953, translation reproduced in full in 28 St. John's L. Rev. 1 (1953).

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