

TV-Radio

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Guilt by Comparison

THE RECENT NET/BBC two-hour special television program *Nuremberg and Vietnam: Who Is Guilty?* was taped in an NBC studio shortly before it was aired in Britain and the United States. Several moments before the taping began, the director, in his off-camera control room, asked participants in New York, London, and Berlin (the Europeans took part in the program via international satellite) to check sound levels. In New York, Robert MacNeil, on-camera BBC anchorman for the special, quipped, "Never has there been such an international clearing of throats."

The remark was prophetic, because the program produced no more than an international clearing of throats on the question of U.S. war guilt and war crimes in Vietnam, whereas one had hoped that the result would be an international clearing of minds on the subject. This was hardly the creative fault of the producers or participants. The outcome was predictable if one but examined in advance the political realities that inevitably circumscribed the discussion.

An American and a German, former justices of the World Court, along with

an Englishman, formerly affiliated with that court, listened patiently to pro and con arguments on three subdivisions of the question of U.S. war guilt and then "summarized" or rendered judgments. All agreed that on the first question—the applicability of the Nuremberg tribunals to the U.S. involvement in Vietnam—the Americans were bound by the principles that they helped to establish at the conclusion of World War II, under which culpability for war crimes was extended to high military and civilian leaders. On the second and third charges the verdict of the judges was ambiguous. Was the U.S. guilty of war crimes? Yes and no. Should responsibility reach all the way to the top? Yes and no again. It all depended on circumstances and on proof of prior knowledge on the part of the accused.

Harsher summaries on the second and third counts would have been surprising; the former World Court justices are members of the legal hierarchies of current political and military allies of the United States. Had they been citizens of the Communist bloc of nations or of countries that are Cold War neutrals, different judgments might have been handed down. It is hardly likely that the NET/BBC

producers would have extended invitations to participate to nationals of Communist or neutral countries. The producers themselves are members of international communications elites whose roles predispose them toward making certain coalitions rather than others. However, the stacked deck, as it were, should not be permitted to detract from the great usefulness of the program, which illuminated the Vietnam questions that are increasingly troubling the American conscience.

Telford Taylor, U.S. Chief Counsel at Nuremberg (the program was spun off his deeply probing book *Nuremberg and Vietnam: An American Tragedy*), was cast in the discussion as prosecutor. He presented his charges that American troops have violated international law in Vietnam by the establishment of free fire zones, by the killing of civilians who harbored Vietcong, by the turning over of prisoners to the South Vietnamese, by command encouragement to rank and file to commit war crimes, and by the infliction of "intolerable death and destruction." He had a mass medium opportunity to place the war crimes question in a historical, moral, and legal context and to engage in very brief debates with a number of soldiers, political advisers to American Presidents, lawyers, and a journalist who defended our leaders and soldiers on all issues. But I suspect that Mr. Taylor is after bigger game than the nailing of his own country to the cross fashioned at Nuremberg. He said that the issue of aggressive war as a crime against peace could never be settled in a domestic forum. Who would disagree?

From Nuremberg, where the victors meted out death sentences to Nazi leaders, to Vietnam, where we agonize over the innocence of our own leaders, is a great step; but it is inconceivable that a nation, in victory or defeat, will ever voluntarily condemn its own top military or civilian chiefs for war crimes. As long as the world falls short of a genuine international order, attempts to try the leaders of sovereign nations (except when totally vanquished) can be hardly more than educational adventures.

By relating Vietnam to Nuremberg and Nuremberg to ancient traditions of chivalry and of pity for civilians, Taylor—in his book, and now on television—not only is troubling this nation's conscience but is helping to move us forward toward an ideal that promises not only to mitigate the horrors of war but perhaps to abolish it altogether. As an exercise in cleared throats, *Nuremberg and Vietnam: Who Is Guilty?* was tolerable; as a lesson in world peace through law, it was a gold mine.



WILDER

"This is your picture tube speaking. In ten minutes I'll burn out after six years of faithful service. Good-by, old friend."