No Objection To Declassification in Full 2012/02/13 : LOC-HAK-240-11-6-6

[illegible] the [illegible] minister, [illegible] the America [illegible] and the [illegible] President Thieu [illegible]

The war disputes Mr. Nixon's landslide victory, but was it a mandate to bomb Hanoi? Since Dr. Henry Kissinger assured the American people only twelve days before the election that peace was "at hand" and since Mr. Nixon echoed that view that night in Ashland, Ky.; since George McGovern did his best between then and election to call the supposed peace agreement a fraud, it could as well be argued that the landslide was a mandate for peace, and on the Oct. 26 terms at that.

But, in fact, by Mr. Nixon's own testimony, there was no agreement for peace on Oct. 26—or if there was, the Administration reneged on it after the election on Nov. 7. That became clear, if it had not been before, after Mr. Nixon's meeting with members of Congress last Friday, when one who was there quoted him as saying that "we should know fairly quickly next week [illegible] political road, [illegible] holds no [illegible] courses, [illegible] elected members of Congress to question him, whose [illegible] not just Dr. Kissinger and Secretary Rogers but hired and supposedly responsible public servants like Admiral Kidd from testifying before duly constituted Congressional committees, and who now rejects even the twentieth century custom of delivering personally his State of the Union message—"upon what meat doth this our Caesar feed, that he is grown so great?"

Suppose the military, that Congress should vote to cut off funds for the war; what power could make Mr. Nixon acquiesce, rather than claim that as Commander in Chief he had the authority to proceed on his own? Or suppose the likely, that the Paris talks should fail again; what power could stop him from doing what he once boasted he had the power to do —destroy the vital North Vietnam dikes and dams in a week?

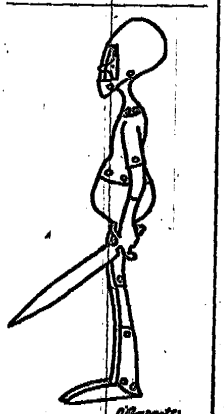
In either case, the answer is "none."

In yesterday's Times, James Reston implied incorrectly that Secretary of State Rogers refused to invite Francis Sayre, dean of the Washington cathedral, to an official luncheon because the dean had led an antiwar march to the White House. Mr. Rogers says he did not even know that Dean Sayre had participated in such a demonstration. Mr. Reston regrets the error.

Tougher Sentencing

By Russell Baker

OBSERVER



WASHINGTON, Jan. 10—Some people are saying Governor Rockefeller goes too far in wanting to lock up every drug dealer forever. Some say President Nixon's Justice Department shows too much love for the noose in asking Congress to bring back the death penalty, even for hijacking.

The issue is debatable, hotly. What is not debatable, however, is the inequity of getting tough with only a few select crimes such as hijacking and drug dealing.

There is something elitist in these two huge, rich governments selecting drug dealers and hijackers to get tough with. The drug racket and airline hijacking are crimes particularly annoying to big shots who run governments. Here is a classic case of power being used to indulge its own peeves.

What about the dozens of other crimes and misdemeanors which do not affect great men but still make life miserable for those without power to command headlines and Congresses? Why is there no outcry from the top for harder punishments in these cases?

To take a small example, consider double parking. The chief miscreants are trucks, post office vehicles and doctors, three power blocs (Hoffa, postmen, the A.M.A.) which happen to enjoy the patronage of Republican governments.

If hijackers are to hang and drug dealers to be caged eternally because they try the patience of powerful men, then these double parkers who compound the misery of urban life should also suffer punishment more medieval than the occasional ticket left by permissive policemen.

A suitable punishment would be the old torture of "squassation." It would not be used against the vehicle's driver, of course; America is not yet ready to go all the way. It would be applied only to the offending car.

During the witch hunts in Germany, squassation was used to produce confessions. It usually worked. The person under suspicion was bound with arms extended above head. Heavy dangling weights were attached to his feet. Pulleys raised him, arms up, high off the floor. From a high elevation, his body was then allowed to fall free until it stopped with an abrupt jerk just before the attached weights could touch the floor.

After a few post office trucks and doctors' Cadillacs had been subjected to squassation, it is a safe bet that double parking would not be committed quite so cavalierly.

Capital punishment for many minor crimes existed in England well after Elizabeth. For trivial offenses, hands were hacked off, noses slit, ears chopped, cheeks branded.

If we are to get tough, some of this same spirit must be breathed into punishments for offenses which governments now blink at. What about coin machines that grab your silver and give you neither orange soda pop nor change?

Under present namby-pamby sentencing, these thieves have only an occasional kick or punch to fear. No wonder their thefts become increasingly brazen. If governments passed mutilation laws requiring mandatory disfigurement by ax of all machines caught stealing from a human, we would soon have some law and order among these rogues.

Drawing and quartering would not be too hard a punishment for those criminal buses that spew poisonous gases over anyone who dares drive behind them. We can hang muggers and imprison addicts for life, but until the law provides something like drawing and quartering for buses, there will always be crime in the streets.

If we are going to get tough with a few lawbreakers, let's get tough with all. That must be our principle. For false advertisers, the Turkish bastinado. For false advertisers on television, the Chinese bell torture. The electric telephone for household contractors who fail to finish the job; and for businessmen who bribe governments, the Iron Maiden. For bribe-takers, the pillory near a fruit market. If punishment doesn't stop the crime, vengeance at least may satisfy our frustration.

Defining War Crimes

By Telford Taylor

The North Vietnamese Government has consistently charged that American military operations in Vietnam are "war crimes," and this accusation plays a very important part in the way they describe the war, both to themselves and to others. In 1965 and 1966, when American bombing in North Vietnam began, their Government repeatedly threatened to try captured American airmen as war criminals, under the Nuremberg precedents, but in recent years this intention, if ever seriously entertained, appears to have been abandoned.

However sincerely the North Vietnamese today hold the belief that the American bombing is "criminal," I think it is clear that the practical value of this concept for them is primarily for internal morale and external propaganda purposes, and there is little likelihood that the American prisoners will ever find themselves on trial before a North Vietnamese court.

While the North Vietnamese war-crimes literature covers American military operations in both North and South Vietnam, in recent months, the emphasis has been almost exclusively on our aerial bombardments in the North.

The Vietnamese case does not rest exclusively on the antipersonnel bombs, but rather embraces the entire program of aerial bombardment, with emphasis on the civilian casualties. To assess this charge carries the judge into highly controversial areas in which the "law" is far from clear, and requires that Hanoi and Haiphong be considered not in isolation, but in conjunction with other cities that have suffered the same or worse fates—Coventry, Hamburg, Berlin, Dresden, Tokyo, Hiroshima and other memorials to the art of war.

The results of our bombing undoubtedly are horrible, but Hanoi is not the only city that has undergone such horror. Immoral and senseless this bombing may well be, but where is the law under which to call it criminal?

When I put this question to the North Vietnamese lawyers, they gave two answers. The first was that our bombing is part of an aggressive war launched by the United States against their country. Even assuming the truth of the premise, this is not a satisfactory analysis, for if aggression alone is the test of criminality, every military operation carried out by the aggressor would be a war crime — a view put forward and rejected, I believe rightly, at Nuremberg. It would also follow that the North Vietnamese, who on their assumption are not aggressors, would be legally justified in bombing Saigon into bloody ruins.

Their second and more substantial response is that the laws of war cannot remain frozen at the Nuremberg level, but must respond to the march of events, and that by now the futility and inhumanity of "strategic" bombing has been so clearly demonstrated that it must be outlawed, much as poison gas was after the First World War. To this I can only say amen, but objectivity obliges the response that efforts to formulate such a law have failed for over half a century, and that the demand for it has come chiefly from countries that do not have strategic air power at their disposal. I am, I fear, too much of a legal traditionalist to accept this argument in its full sweep.

But surely the bombing of Hanoi does raise serious legal questions under the principle of "proportionality" —the rule that there must be a reasonable relation between the military objective and the damage and suffering which its attainment will entail. A single enemy soldier is a legitimate target whether he is in the front line or on home leave, but to level a city block to kill him at home is beyond the bounds of proportionality.

It is under this principle that our bombing operations at Hanoi appear most vulnerable to the charge of criminality. The military objectives, even as described by the Pentagon, seem so trivial, and so remote from our shores, that the death and destruction we inflict appear as wanton. This impression is underlined by the, to me, inexplicable use of B-52's, with their carpet-bombing technique, to strike at small targets in urban areas.

Confronted with the appalling consequences, a legal approach to these events is bound to provoke impatience. Whether or not Bach Mai and Khan Thien are "crimes" is of small moment to the victims. Why are we doing what we are doing? Both at home and abroad millions are asking that question, and it is the grave responsibility of the American Chief Executive to answer it.

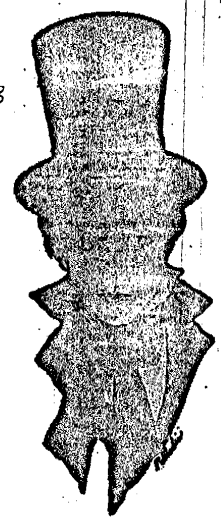
Telford Taylor, professor of law at Columbia and former chief U.S. prosecutor at the Nuremberg war crime trials, was in Hanoi during the recent bombings.

[illegible] horror at all the [illegible] buildings," [illegible] once, etc. But when this moment of transition is past—and it is passing—a new and even more typical New York will reveal itself, is revealing itself already, with a consistent new huge scale. (The Pan Am Building, first to blot the sky above 42d Street, is already accepted as a dowdy montage at the end of Park Avenue looking down or up at its hub.)

Most daringly theatrical is Gordon Bunshaft's slow curving upward dark slim tower of brown glass outlined in stone (straddling 57th and 58th Streets). The divisions are so slim between the panes, the occasional more solid facings to demarcate floor divisions so subtle in change of density, that this shift can only be picked out at certain distances. The buildings seem smoke solidified: how Romantic can you get?

Another improvement, a serious shift in configuration, has come about through revised rules. In exchange for additional height permitted—the World Trade Center twins are each 110

NYT
Jan. 11, 1973



Nine o'clock sch

Sunday evening at nine, a Victorian classic becomes t television when the Masterpiece Theatre dramatization of T Days begins on PBS. Channel 13 in New York.

The story, as you probably know, deals with a young boy' his first years at Rugby in the 1820s. A top hat and frock co costume, but don't let that fool you. The curriculum is pler the ragging by upper-formers.

Tom takes a lot from that bully Flashman. He's a plucky t severes. And, needless to say, he winds up the better man

Tom Brown's School Days is fine entertainment, produce quality that continues to set these Masterpiece Theatre pro so much other television.

We share that regard. We've been getting high marks fo 106 years ourselves.

See truth and bravery triumph. See Tom Brown win out. quiet, when the bell rings on Sunday at nine.

Mobil

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