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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.

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cisms. It should have a place in all libraries and Legal Aid Societies as illustrative of a monumental effort and high achievement attained by certain members of the Bar. It shows a substantial contribution to better community life and the improvement of the fare of that little man in the street. As Judge Albert Conway so well said, "All right-thinking men agree that a person requiring the advice or assistance of a lawyer should receive it whether or not he can afford it; that it is as necessary as that he have the services of a physician when ill, and that a grievance against the administration of justice can do more social harm than suffering on account of lack of hospital facilities."²

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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. Appleton, Wis.: C. C. Nelson. 1953. Pp. xvii, 305. \$4.50

I.

This is at the same time both a tedious and a provocative attempt at the indictment of the Western Alliance of World War II for the "crimes" of "uncivilized" warfare and the subsequent "mock trials" of Nuremberg. It is based upon a "trend analysis" descriptive of a "reversion to barbarism in warfare and war-trials," and predictive of a continued advance of barbarism throughout the length and breadth of the world community.

The author, F. J. P. Veale, is identified by his publishers as "an able English lawyer with . . . a competent command of the facts of military history . . . and high humanitarian principles." His method is described as that of "tracing the gradual 'civilizing' of warfare from the days when men of the glacial periods and stone age exterminated all their enemies to the introduction of humanitarian principles and procedure during the Age of Reason, [then revealing] with terrifying completeness and candor the manner in which we have reverted to the attitudes and practices of primitives, . . . [showing] plainly that the spiritual antecedents and cultural affinities of the war-crimes trials are to be found in (1) the torturing of captive wild beasts by primitive men; (2) the practices of savages who killed off their captured enemies . . . ; (3) the collecting of the heads of vanquished enemies by primitives . . . ; (4) the systematic Tartar slaughter of captured armies and civilian population, and (5) Marxian political biology and juristic euthanasia . . ." His purpose

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is set out as showing the "dire portent" of this "reversion" for the future—"and perhaps (a) not too distant future . . . [in which] nothing, however horrible . . . [will] be held back" by any "civilizing" restraints. In this context the pronouncement of doom and destruction is put forward with the implicit assurance of the scientific seriousness attributable to an expectation ". . . [resting] upon the extrapolation of past trends into the future" and hence set up as "a construct that is frankly imaginative though disciplined by careful consideration of the past."¹ One must inquire at starting, therefore, as to the degree to which the author's "frankly imaginative construct" is "disciplined by careful consideration of the past."

II.

F. J. P. Veale initiates his "study" by a portrayal of "primeval simplicity" in which the "enemy" represented, e. g., by a hated tiger or bear was upon capture "first reduced to complete helplessness by being deprived of food and . . . [was] then mocked, baited to frenzy, terrified by fireworks, and finally finished off in a slow and painful manner amid general rejoicings."² The inference which is then pressed on the reader as inescapable, is that "if the men of the Stone Age were accustomed to deal with animal enemies in this way, . . . it [is] . . . probable that, on occasion, they dealt with particularly feared and hated human enemies in the same way."³ The conclusion which "follows" directly from "the above reasoning" according to the author, is that "the practice of mock-trials recently introduced solemnly as an epoch-making innovation is nothing but a revival of a practice so long abandoned by civilized peoples that its origin in the remote past has become forgotten."⁴

Having laid this foundation, the author proceeds to a differentiation of "*primary warfare*, that is warfare between combatants at different stages of civilization" and "*secondary warfare*," that is warfare "between combatants at the same or approximately the same stage of civilization." Included in the latter categorization are all civil wars: in fact, "all the wars in this division are in essence only civil wars."⁵

"History" is then rapidly sketched for maximum diffusion of "enlightenment." A seemingly Nordic "Herrenvolk" is portrayed as bringing about a gradual "civilizing" of warfare. This

1. LASSWELL, THE ANALYSIS OF POLITICAL BEHAVIOUR 147 (1947).

2. VEALE, ADVANCE TO BARBARISM 14 (1953).

3. *Ibid.*

4. *Ibid.*

5. *Id.* at 23.

is characterized by the humanization of the treatment of the captive and the exclusion of the non-combatant from the scope of belligerent operations. The author recounts that in the Middle Ages, "Whatever his nationality, the European knight professed the code of the Christian warrior. With his reputation as such to maintain, a European knight could not afford to use the capture of a prisoner of the same class as himself as an opportunity to indulge his resentment against a helpless enemy either in the manner of an Assyrian King, by flaying or impalement, or, in the present-day manner, by a mock-trial followed by hanging."⁶

By the eighteenth century an operative belligerent code had come to be "based on one simple principle, namely that warfare should be the concern only of the armed combatants engaged . . . [N]on-combatants should be left entirely outside the scope of military operations."⁷

Veale contends that the World War II repudiation of his fundamental principle of civilized warfare, i. e. the "exclusion of non-combatants from the scope of hostilities" is primarily attributable to the British government. "It is one of the greatest triumphs of modern emotional engineering," he claims, "that . . . the British public, throughout the Blitz Period (1940-1941), remained convinced that the entire responsibility for the sufferings which it was undergoing rested on the German leaders."⁸ Veale knows better. The major responsibility for these sufferings, he declaims, rested on the British government. He recalls that on May 11, 1940 (at the height of the Nazi invasion of France and the Low Countries) the British Air Ministry revealed its "splendid decision" to engage in the massive bombing of population centers, by ordering eighteen R. A. F. bombers "to drop their bombs when they found themselves over western Germany in the hope that some of them might land on railway installations."⁹ He maintains that it was this act and this act alone which furnished the precedent for all subsequent acts of "uncivilized" warfare; in so doing he specifically exonerates the Nazis from all charges of acts of "uncivilized" warfare until that time. He goes on to assert that notwithstanding the enormity of this act of British provocation the "whole structure of civilized warfare as it had been gradually built up in Europe during the preceding two centuries"¹⁰ might still have been maintained, had it not been for a further act of insular truculence encompassed, this time, by greeting Hitler's peace overtures after the fall of

6. *Id.* at 59-60.

7. *Id.* at 65-66.

8. *Id.* at 120.

9. *Id.* at 122.

10. *Id.* at 128.

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France with "sulky silence."¹¹ The Nazis, at this tide of their affairs, are pictured as in too generous a mood "to set about paying off old scores."¹² The author perceives no inconsistency between such a "mood" and this well-known incident of the French defeat which he describes with apparent approval. Hitler, he recalls, "[w]ith his highly developed sense of historical fitness . . . insisted that the famous railway coach in the Forest of Compiègne, in which Marshal Foch had dictated terms of surrender . . . should be the scene of surrender of the Army which Foch had then led to victory."¹³

To its remaining enemies, the Third Reich offered an enticing peace.¹⁴

It was only when the proffered hand of friendship was rebuffed in "sulky silence" that the "splendid decision" became the effective cause in opening the floodgates of barbaric warfare.

The author appears to hint at the discovery of another possibility of Anglo-German reconciliation, presumably in the context of the Nazi-Soviet war. Without significant elaboration as to the origins of the new struggle, he blithely pictures Nazi Germany as responding to the Soviet threat "under the shadow of the Red Army."¹⁵ In the ensuing war, a war which exemplifies the author's concept of "primary warfare," i. e. "warfare between combatants at different stages of civilization" and hence productive of the neglect of chivalry, the Nazi armies appear as the standard bearers of occidental civilization. An undisclosed kind of Nazi ruthlessness is deemed justified under the circumstances. Veale approvingly quotes Field Marshal Keitel in justification of the "necessity" of the Nazi measures of warfare—against Russia—"Hier handelt es sich um die Vernichtung einer Weltanschauung (. . . 'it involves the destruction of the whole life philosophy of one side or the other')."¹⁶

He pours his contempt upon the response of Western leadership to the demands of the developing crisis. So far from comprehending the logic of the historical process that impelled the Nazis into Russian steppes as champions of Western civilization, the Western Allies acted as though the Nazis manifested a con-

11. *Id.* at 119.

12. *Id.* at 116.

13. *Ibid.*

14. *Id.* at 119: "Hitler's solution . . . was an offer to negotiate peace. 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 . . ."

15. *Ibid.*

16. *Id.* at 128-129; cf. Jessup, *International Law and Totalitarian War*, 35 AM. J. INT'L. L. 329 (1951).

crete threat to their existence as well as their way of life. They thus proceeded to drop an increasing quantum of explosive tonnage over Germany in pursuance of "the splendid decision" of May 11, 1940 and in violation of Veale's canons of civilized warfare.¹⁷ The flood-gates of barbarism were wide open. Veale hastens to note in this connection that henceforth the evolving barbarity was attributable not only to the cynicism of the British war lords or the inevitable savagery of "primary warfare" with the Soviet Union, but equally to what he diagnoses as American barbarity. The very participation in the war by the United States, is stigmatized as the product of the Machiavellian leadership of Franklin Roosevelt, who as a matter of domestic economic necessity, provoked the Axis into war by acts of unilateral intervention.¹⁸ Beyond that, American barbarity in battle is attributed to the fact that the United States, as a non-European power lacked the restraints of a tradition of "civilized" warfare and had, in fact, already manifested a "reversion to primary or total warfare" in the Civil War.¹⁹ The nadir of Allied villainy, however, was not reached until the conclusion of hostilities. This was signalized by the institution of the "mock trials" of Nuremberg. As viewed by the author the crown of thorns was thrust upon the Nazi leadership when, bowed in defeat, it was arraigned before the International Military Tribunal for what was in effect no worse a crime than being on the losing side. The war crimes trials are thus deemed to establish nothing more significant than the primitive law of vengeance: "*Being on the losing side* is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole."²⁰ The trials themselves are indicted as indistinguishable from proceedings of the G. P. U.²¹ The hanging of "distinguished prisoners of war" is "diagnosed" as "the culmination of a movement . . . noteworthy because it was a complete reversal of the [civilizing] trend which, with periodic fluctuations, had been going on since prehistoric times."²²

The inevitable conclusion to be drawn by civilized men under such circumstances should, of course, be in line with the author's declared preference, to wit that the Nuremberg judgment was a "reversion to primitive practice."²³

17. VEALE, *op. cit. supra* note 2, at 129.

18. *Id.* at 273-274; cf. HACKER, THE UNITED STATES IN THE 20TH CENTURY (1952).

19. VEALE, *op. cit. supra* note 2, at 89; see also *id.* at 90-94, 138-146.

20. *Id.* at 177.

21. *Id.* at 179.

22. *Id.* at 2.

23. *Id.* at 4.

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Veale then formally proceeds to setting up the "construct" of the triumph of barbarism as his imaginative projection of the contemporary "trends" in warfare and in war crimes trials. Unless reversed and repudiated, he inveighs, the emerging contemporary trend toward barbarism will submerge the remaining moral and material values of the West. The Nuremberg trials, he concludes, "made it inevitable that all the restraints which still survived the second World War would be thrown to the winds in the third . . . Since nothing worse can happen to a national war leader than to be disgraced, tortured and hanged, if defeated, there is no logical or psychological reason, for failing to throw in everything which may promise victory, however lethal and barbarous . . . In this way, a juridical procedure, which was designed to discourage war-time brutalities, has resulted in assuring war-time horror, beyond all precedent, and in removing every restraint on such action. Moreover, the war-trials and punishments have failed utterly to discourage warfare."²⁴

III.

Devious logic and shallow analysis provide the sole support to the unfolding presentation, compounded as it is of transparent half-truth and outright fiction. Since any rational and objective examination of its structure should bring about the collapse of its argument under its own weight, *Advance to Barbarism*, would not normally merit any attempt at a formal refutation. The abnormality of the times, however, is highlighted by the explicit need of all possible attempts in this direction. Today, fears of atomic war have produced a defensive appeasement of the Germans. A defensive appeasement of the Germans has in turn produced a pathetic eagerness to acquiesce in the exoneration of our new-found Allies from the taint of Nazi war crimes. In catering to the emerging emotional need of a "white-wash" by a "re-writing of history" in the tradition of the Communist and Nazi ideologies, Veale's effectiveness hinges primarily upon emotional rather than intellectual factors.

While we must assume that what "people will pay attention to and how they will act is determined in large measure by what they start with in the way of basic predispositions, beliefs, attitudes, biases and unconscious motivations,"²⁵ we can equally assume that "men's attitudes on questions of war and peace can be altered through information which is communicated to their minds"²⁶ on a conscious level.

24. *Id.* at 294; cf. JESSUP, A MODERN LAW OF NATIONS 157-187 (1950); Meltzer, *A Note On Some Aspects of the Nuremberg Debate*, 14 U. OF CHI. L. REV. 455 (1947).

25. DUNN, WAR AND THE MINDS OF MEN, 47 (1950).

26. *Id.* at 82.

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What then, are some of the significant facts of the recent past, in their bearing upon the thesis propounded by F. J. P. Veale's *Advance to Barbarism*?

Formal, detailed and rationally unimpeachable refutation of Veale's thesis has been provided by Drexel A. Sprecher, formerly Deputy Chief Counsel of the Office of the United States Chief of Counsel of War Crimes at Nuremberg.²⁷

Highlights of all too recent history, however, bear repetition at a time like ours.

The wantonness and deliberation of Nazi aerial strafing of civilian refugees upon French roads in the conquest of France in 1940 provided a startled world with Germany's unmistakable notice of the adoption of a hitherto unknown strategy of "total war,"²⁸ long before the taking of any alleged "splendid decision" by Britain. In short order a pattern of Nazi war crimes began to unfold in pursuance of a rationally determinable design strangely reminiscent of that attributable by Veale to the Allies, but established beyond reasonable doubt as the product of Nazi leadership:

War Crimes were committed on a vast scale, never before seen in the history of war. They were perpetrated in all countries occupied by Germany, and on the High Seas, and were attended by every conceivable circumstance of cruelty and horror. There can be no doubt that the majority of them arose from the Nazi conception of 'total war' . . . For in this conception of 'total war', the moral ideas underlying the conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the over-mastering dictates of war. Rules, . . . treaties all alike are of no moment; and so, freed from the restraining influence of international law, the aggressive war is conducted by the Nazi leaders in the most barbaric way.²⁹

A calloused world must be reminded that the Nazi methods of "total war", outside of the physical extermination of 6,000,000 Jewish men, women and children,³⁰ encompassed such character-

27. Sprecher, Book Review, 14 LA. L. REV. 447 (1954). A concise historical survey of the war at large is provided by COMMAGER, *THE STORY OF THE SECOND WORLD WAR* (1945).

28. See, e. g., MILLER, *HISTORY OF WORLD WAR II* 219 (1948); cf. LESKE, *I WAS A NAZI FLIER* (1941), chapter entitled "Why Not Bomb Civilians" at 25-34. See also SCHULTZ, *GERMANY WILL TRY IT AGAIN* (1944); e. g., *id.* at 185: "The war had barely started when we began hearing . . . about the crimes committed by the black-uniformed Schutzstaffel in Poland, in the wake of the regular army."

29. 1 TRIAL OF THE MAJOR WAR CRIMINALS 226-227 (1947).

30. See 22 TRIAL OF THE MAJOR WAR CRIMINALS 491-496 (1948); see also Turlington, *The Genocide Convention Should Be Ratified*, A. B. A., SECTION OF INTERNATIONAL AND COMPARATIVE LAW, PROCEEDINGS 26 (1949); Lemkin, *The U. N. Genocide Convention*, 95 CONG. REC. A 1224 (1949).

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istic behavior patterns as e.g. the 1944 shooting, upon recapture, of fifty RAF officers who escaped from a prisoner camp ("Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp");³¹ the issuance of the 1941 order that ". . . [the] Bolshevik soldier . . . has lost all claim to treatment . . . in accordance with the Geneva Convention,"³² the consequent enforcement of starvation diets for these prisoners,³³ and their occasional branding "with a special permanent mark" ("The brand is to take the shape of an acute angle of about 45 degrees, with the long side to be 1 cm in length, pointing upwards and burnt on the left buttock . . .");³⁴ the establishment of a system of compulsory deportation from occupied territories, described by Himmler as including, e.g., in Poland the ". . . [hauling] away of thousands, tens of thousands, hundreds of thousands" of human beings in "weather 40 degrees below zero";³⁵ the promulgation of the 1941 Night & Fog Decree, "under which persons who committed offenses against the Reich or the German forces in occupied territories, except where the death sentence was certain, were to be taken secretly to Germany and handed over to the SIPO for trial and punishment in Germany . . . After these civilians arrived in Germany, no word of them was permitted to reach the country from which they came, or their relatives; even in cases when they died awaiting trial the families were not informed, the purpose being to create anxiety in the minds of the family of the arrested person."³⁶

Perhaps the most serious crime committed by the Nazi regime was directed against the German population itself. It has thus been noted that "there was a widespread release of destructive drives . . . in the German people under the Nazi regime" and that the "ego structure" of the "people bred and integrated into the German social-cultural system" (who are to be our Allies in EDC) has been characterized by "a resentment of and a denial of reality" comparable to the "attitude of the paranoid individual in reference to reality."³⁷

31. 1 TRIAL OF THE MAJOR WAR CRIMINALS 229.

32. *Ibid.*

33. *Id.* at 231.

34. *Ibid.*; see also 10 TRIALS OF WAR CRIMINALS 1054-1055 (1951).

35. 1 TRIALS OF THE MAJOR WAR CRIMINALS 244.

36. *Id.* at 232-233. For complete official translation of the decree see, 11 TRIALS OF WAR CRIMINALS 196-197 (1950).

37. See Alexander, *The Molding of Personality Under Dictatorship*, 40 J. CRIM. L. AND CRIMINOL. 3, 16-19 (1949).

For a somewhat clearer analogy to primitive culture than that furnished by F. J. P. Veale, the reader may wish to consult Sigmund Freud's *The Totemic Feast*, reproduced in MEAD AND CALAS, *PRIMITIVE HERITAGE, AN ANTHROPOLOGICAL SURVEY* 22-26 (1953).

One must add in conclusion that these Nazi crimes were proved in the course of a prosecution marked by a high degree of procedural safeguards for the defense and unique in the history of criminal trials, if for no other reason than that it deliberately refused to offer in evidence the confessions of the accused, and relied, instead, upon the introduction of independent material evidence under exacting standards of proof:

Much of the evidence presented to the Tribunal on behalf of the Prosecution was documentary evidence, captured by the Allied armies in German army headquarters, government buildings, and elsewhere. Some of the documents were found in salt mines, buried in the ground, hidden behind false walls and in other places thought to be secure from discovery. *The case, therefore, against the defendants rests in a large measure on documents of their own making, the authenticity of which has not been challenged except in one or two cases.*³⁸ (Emphasis added)

We can cast aside, at this stage, consideration of the controversy of the retroactive application of the law of Aggressive War. Since the author appears predominantly concerned with the "trend" in warfare exemplified by the brutalization of ordinary war crimes, it suffices to note that, in this context, no defendant was hanged without being proved guilty of ordinary garden-variety murder, in these cases multiplied a one hundred or one-million fold. In the area of the traditional war-crimes it can therefore be fairly asserted that throughout the program of Nuremberg war crimes prosecution, the tribunals erred, if at all, upon the side of leniency to the accused. Three individual defendants and several indicted organizations were acquitted despite formidable proof of connection with the criminal enterprise in the first trial.³⁹ The pattern of the remaining twelve Nuremberg trials has been best summarized by Drexel A. Sprecher:

38. 1 TRIAL OF MAJOR WAR CRIMINALS 173 (1947); cf. JACKSON, THE NUREMBERG CASE viii (1947). See also Leventhal, Harris, Woolsey, Farr, *The Nuremberg Verdict*, 60 HARV. L. REV. 857, 860 (1947);

The several thousand documents ultimately introduced by the prosecution were the distillate of an estimated 100,000 screened by British and American teams—the vast majority captured from German sources. The documentary case which resulted was, therefore, impressive. The defendants themselves showed great respect for the captured documents and helped to authenticate important papers whose place of capture was unknown.

See also Terencz, *Nuremberg Trial Procedure and the Rights of the Accused*, 39 J. CRIM. L. AND CRIMINOL. 144 (1948).

39. See, e.g., 1 TRIAL OF THE MAJOR WAR CRIMINALS 307-310, 325-327, 336-338. Cf. discussion of acquittals of war crimes on a lower Allied level in Arens, *Nuremberg and Group Prosecution*, 1951 WASH. U. L. Q. 329 (1951). See also generally, Franklin, *Sources of International Law Relating to Sanctions Against War Criminals*, 36 J. CRIM. L. AND CRIMINOL. 153 (1945).

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In this . . . 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 spent already in confinement before and during the trial. In the two exclusively 'military' trials, in which twenty-two generals and one admiral were tried, none of the defendants were sentenced to death, and four were acquitted.⁴⁰

This description of the emerging pattern of leniency cannot be considered complete without mention of the numerous sweeping amnesties, decreed by the Western Allied administrations and resulting in the release of most of the war criminals under sentence.⁴¹

If judicial and administrative concern for the rights of the defendants in criminal litigation is to stand as the test of fairness and rationality one can but endorse the conclusion drawn by Drexel A. Sprecher, to wit, that "the danger of future war crimes trials of victors over vanquished is not that the precedents of Nuremberg will be followed but that they will not be followed."⁴²

But any attempt at rational analysis is quixotic if it is designed to overcome the subjective obstacle of emotional predisposition in favor of the Nazi cause and Nazi leadership—even if such a predisposition is rationalized in terms of a preferred policy of "chivalrous" forbearance toward the conquered foe as the only effective bar against the progressive brutalization of warfare.⁴³

IV.

It is clearly useless to pursue an examination of the "reversion to barbarism" as a trend in warfare and in war crimes trials any further upon the basis of the materials of the book.

It may be helpful, however, to attempt to verify the allegation of existing trends, independently of causation, in terms of an independent and rational trend analysis of our own. It is fitting that we inquire into the respect practices productive of patterns of individual rights under the impact of warfare in conditions of increasing industrialization, even if we are prodded into such an inquiry by the vituperation of F. J. P. Veale.

40. Sprecher, *supra* note 27 at 447, 466.

41. See, e. g., Arens, Book Review, 62 YALE L. J. 1274 (1953).

42. Sprecher, *supra* note 27 at 447, 467.

43. See, e. g., Franklin, Book Review, 27 S. CAL. L. REV. 232, 234 (1954): "With respect to the . . . [alternative]—to let the German leaders go free—there is much language in *Advance to Barbarism* to suggest that the author is sympathetic to this idea."

We may well note on a world-wide level that the creation of respect standards, productive of expanding "human rights" in the context of the "myth" of civil justice, has been paralleled by the creation of respect standards, destructive of "human rights" in the context of the "technique" of increasing garrison-state government.⁴⁴

The rise of the mass armies of the nation state since the French Revolution has tended to the progressive subjection of ever larger segments of the civilian population to some form of military rule. The individual had thus barely emancipated himself from the constraints of rigid feudal pyramidal stratification to find himself in the confinement of a comparable hierarchical structure established by the national war machine. As the size and number of armies continued to grow, ever larger segments of the national populace were drawn into the scope of effective military control. The growth of national military power thus cast its shadow upon the entire industrial world: "the size of armies has tended to increase during the modern period both absolutely and in proportion to the population."⁴⁵ A consequence of such an expansion has been that beyond the increasing absorption of civilians in the overt military establishment, "the bulk of the population . . . [has been] mobilized for some war work,"⁴⁶ in increasing degree. Militarization of all national life under such circumstances has become an established trend:

Where formerly 1 per cent of the population was a large number to mobilize, now over 10 per cent can be mobilized, of which a quarter may be at the front at one time. But 10 per cent mobilized requires most of the remaining adult population to provide them with the essentials of continuing operations. Thus instead of 1 per cent engaging in war and the rest pursuing their peacetime occupations of trade or agriculture, now the entire working population must devote itself to direct or indirect war service.⁴⁷

Paralleling the militarization of national life is the "nationalization of the war effort," i.e., "the extension of government

44. See, e.g., Lasswell, *The Interrelations of World Organization and Society*, 55 YALE L. J. 889 (1946). The words "myth" and "technique" are, of course, used in the technical sense of the contemporary social sciences. See, e.g., McDUGAL AND LASSWELL, *THE WORLD COMMUNITY AND LAW: A CONTEMPORARY INTERNATIONAL LAW* 5 (Yale Law School mimeographed materials, 1953);

In studying culture a distinction is drawn between *myth* and *technique*.

The *practices* which comprise an institution include *perspectives* and *operations*. (A voting practice has, for example, expectations about marking ballots, and a routine of marking.) All the perspectives are the myth; all operations are the technique.

Cf. generally McIVER, *WEB OF GOVERNMENT* c. 1 (1947).

45. 1 WRIGHT, *A STUDY OF WAR* 232 (1951).

46. *Id.* at 234.

47. *Id.* at 304-305.

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into the control of economy and public opinion.’⁴⁸ It is not unfair under these circumstances to conclude that “the military state has tended to become the totalitarian state”⁴⁹ and that to it the individual, whether soldier or civilian has increasingly surrendered his identity and thus forfeited the last claims to individualized consideration: “The moral identification of the individual with the state has given the national will priority over humanitarian considerations.”⁵⁰

It is not surprising, under the circumstances, that the continued rejection of “humanitarian considerations” and the consequent “exclusion of non-combatants from the scope of hostilities” as complained of by Veale⁵¹ should in part be reflected by the statistical trend toward the increasing geographical scope of wars coupled with the increased destructiveness of belligerent operations.

Quincy Wright’s analysis of 126 major wars fought between 1475-1940 brings out the following facts with reference to the number of participating belligerent sovereignties: “. . . the 42 [wars] which began in the late fifteenth and in the sixteenth centuries averaged 2.4 participants each; the 19 which began in the eighteenth century averaged 4.8 participants each; the 32 which began in the nineteenth century averaged 3.1 participants each; and the 11 which began in the twentieth century averaged 5.6 participants each. Thus, apart from the nineteenth century, in which there was a large number of imperial and civil wars, the trend was toward an increase in the number of participants.”⁵²

An increase in the number of both military and civilian casualties must also be noted. Sorokin’s studies, concluded before World War II casualty rates had become available, showed the increase in casualties exacted by the principal European wars over nine centuries by the following index figures:⁵³

48. *Id.* at 306.

49. *Ibid.*

50. *Id.* at 307.

51. VEALE, *op. cit. supra* note 2 at 128.

52. WRIGHT, *op. cit. supra* note 45 at 238.

53. See 3 SOROKIN, SOCIAL AND CULTURAL DYNAMICS 340, 345, 349 as presented by WRIGHT, A STUDY OF LAW 656. See also *id.* at 236-237;

A third trend has been toward an increase in the length of battles, in the number of battles in a war year, and also in the total number of battles during a century . . . The intensity of war, measured by frequency and duration of battles has certainly increased.

This conclusion is confirmed by Sorokin, who has compared by centuries the number of wars weighted to take account of duration of war, size of fighting force, number of casualties, number of countries involved and proportion of combatants to total population. His indices for the principal European wars during the last nine centuries are:

12th	13th	14th	15th	16th	17th	18th	19th	20th
18	24	60	100	180	500	370	120	3,080

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Country	12th	13th	14th	15th	16th	17th	18th	19th	20th
France	37	48	51	92
Great Britain	20	30	5	67
Germany	13	95
Austria	130	94	6	48
Russia	8	22	11	41
Italy	52
Spain	12	11	2
Netherlands	161	85	6	0
All Europe	2	5	8	10	15	37	33	15	54

The process of the progressive extinction of varying forms of individual identity in an increasingly industrialized world in and beyond the field of military organization has been rendered with refreshing vigor by Tibor Mende:

The spreading net of complex industrial society has caught up the citizen in the meshes of unexpected dangers and involuntary obligations from which only the remotest areas, like Tibet, the highlands of Peru, or some tribal areas of Africa, have so far, escaped. But, wherever the net has been spread, the individual has had less and less chance to stand up alone against the new forces of organization. Attempting to control an increasingly uncontrollable social environment, he has been driven to collective action. He became a voter, a trade unionist, a member of trade associations, a beneficiary of health or resettlement schemes, or one living on unemployment aid. Once decisions made at the top could influence the destinies of millions, his automatic response was to merge his interests with other millions in order to improve his chances of influencing those decisions . . .

Step by step, the more technologically developed the community became, the more the individual was relegated to the role of a cog in a machine whose tempo and purpose, increasingly escaped his control . . .

The persuasion, or influence, of people's thinking has gradually given way to the direction of their thoughts. Direction of thought has led to the calculated curtailment of the field of permissible ideas. Finally, the curtailment of the field of thoughts and ideas has been completed by the latest, and most terrifying, of techniques; the power of indoctrination to place selected groups of individuals beyond the bounds of compassion . . .

Modern society has progressed with breath-taking speed from the smashing of window-panes to the cremation alive of ideological rivals. We have descended, to varying depths, a long ladder of spiritual degradation. At the topmost rung, there was no more than the production of a general level of conform-

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ity. Further down, came new orthodoxies from which dissent meant peril. These were followed by dictatorial methods, rewarding mediocrity and silencing creative talent . . . ; finally, at the bottom rung, came the infernal perfection of techniques to create morbid humility and to promote it to the highest virtue, to breed abject and morally crippled individuals, and to weld them into a centrally manipulated instrument of a fanatical society.

By today, the vulture of forced conformity is hovering over mid-century humanity.⁵⁴

V

The enhanced danger to the maintenance of the physical and moral integrity of the individual, created by the twin trends of the increasing scope of belligerent destructiveness and the increasing "Gleichschaltung" of men as cogs in the machinery of government must give us pause.

A sharpening bipolar rivalry between the garrison-prison state of the East and the relatively free society of the West has already produced such consequences as the tightening of the existing garrison-prison state of the East and the occasional rise and spread of hitherto alien forms of garrison-state organization in the West. This development appears directly attributable to existing crisis:

An arena is military when the expectation of violence is high ;
civic—when low.⁵⁵

A continuing crisis, therefore, ensures a continuing trend toward garrison-state government:

As crisis continues, dominant power increases in both scope
and weight . . .

The crisis tends to make itself felt in everything that is
done in the situation: the more severe the crisis, the closer
the approach to "total war."⁵⁶

Extreme symptoms of pathological behavior patterns have long been observed as characteristic of the totalitarianism of the Soviet Union. It is noted today, however, that lesser symptoms of pathological behavior patterns have come to characterize increasing areas of the West. This is a familiar phenomenon to contemporary political and social science. Political crises, regardless of location, tend to impose a "dim-out on sources and

54. MENDE, *WORLD POWER IN THE BALANCE* 49-55 (1953). Cf. generally, FROMM, *ESCAPE FROM FREEDOM* (1941); KOHN, *THE TWENTIETH CENTURY* (1950).

55. LASSWELL AND KAPLAN, *POWER AND SOCIETY* 252 (1950).

56. *Id.*, 244; cf. generally, KISKER, *WORLD TENSION, THE PSYCHOPATHOLOGY OF INTERNATIONAL RELATIONS* (1951).

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channels of public information.’⁵⁷ Connected with this process, it has been observed, is “a thickening atmosphere of suspicion.”⁵⁸ In this atmosphere it appears inevitable that the existing political crisis, as most political crises, should be “complicated by the concurrent reactivation of specific primitive impulses.”⁵⁹

When such a state is reached it is high time that a democratic social order encourage the revival of a tradition of legitimate controversy and recognize anew the presence in its midst of both a “loyal” as well as a “disloyal” opposition—even upon such hallowed grounds as foreign policy.

There is no Hegelian or Marxist “inevitability” about human events, even those revealed in contemporary trends.

Demoralized or docile men, however, cannot be counted on to function effectively in the imaginative projection or exploration of policy alternatives in either peace or war in a bipolar crisis.

A healthy contemporary society should respond with urgent popular, candid and open debate on “means” and “ends” within the framework of the crisis at this stage of international affairs. No such debate, however, is perceptible in the present.⁶⁰ The ensuing silence is gravely disquieting. It is not broken by F. J. P. Veale’s “contribution” to learning. Even the *promise* of such a debate for the near or immediate future appears threadbare:

For lo, the winter is passed, the rain is over and gone, the
flowers appear on the earth, the time of the singing of birds
is come . . .

and the voice of McCarthy is heard in our land.

There remains the *hope* that other voices shall be heard in growing volume.

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57. LASSWELL, NATIONAL SECURITY AND INDIVIDUAL FREEDOM 30 (1950).

58. *Id.*, 31.

Cf. e. g., Mumford, Letter to the New York Times, New York Times, March 28, 1954, Section 4, p. 10E, Col. 6:

[Our] very need for secrecy . . . has produced pathological symptoms in the whole body-politic: fear, suspicion, non-cooperation, hostility to critical judgment.”

59. LASSWELL, THE POLITICAL WRITINGS OF HAROLD D. LASSWELL 179 (1951); see also generally, ALEXANDER, OUR AGE OF UNREASON (1942); RIESMAN, THE LONELY CROWD (1950); KLUCKHOHN AND MURRAY, PERSONALITY IN NATURE, SOCIETY AND CULTURE (1953). Cf. KISKER, *op. cit. supra* note 56.

60. A telling point to the self-same effect has been recently made by Mumford, note 58 *supra*, and Kirk, Letter to the New York Times, New York Times, April 2, 1954, p. 26, col. 2.