A LESSON IN DEMOCRACY

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by

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Justice is on trial in many countries of the world today. Unique concepts of what constitutes a fair trial are being tried out under different new systems of government. Conviction is more important today than enforcing the law fairly and impartially and punishing offenders justly. Fitting the crime to the deed after the event is found more convenient than enacting the law beforehand into which to fit the facts. Condemning the accused by influencing public opinion and through propoganda and then making the trial a mere formality are more in the vogue of the day. Making the rules as the trial progresses but always being assured of conviction to preserve the dignity of the state is the new order of the day. Making law for the other fellow which we neither like nore wish to have applied to ourselves has become an established policy to which we have committed ourselves. Subscribing to International executive agreements by treaties, conventions and covenants which provide for fewer rights to those accused of crimes than the constitution of the United States guarantees has become more than a possibility. It is a reality. These and many other equally alarming developments are based upon observations made after three years' association with the Nuremberg and Tokyo trials.

I should like to elaborate on a few of the dangers into which the present tendency may lead us if we continue to follow our immediate course. Lawyers and men of the press of America are about the only remaining organs of public expression and of thought today conscious of what is happening to these hidden fields. Even they, themselves, must be awakened now and then as to what is happening. There are many well-meaning individuals occupying high places in our government, especially in our Department of State, others who are directing the International affairs of other nations of the world, who think nothing of sacrificing an ideal or principle here and there, or safeguards to freedom, liberty, independence, or national sovereignty, in order to promote some pet plan, program or theory of social reform or social justice which seems more important to them at the time.

The press and the bar must work together with a farsighted view to prevent those current moves which will compromise or destroy our inalienable rights. We must be cautious about attempting to draw the backward nations of the world up to our standard of justice lest we be drawn down to their level instead. We will only lower our own standards in the struggle. Our system of Justice is on trial today and has been for the past three years. At Nuremberg in 1945 four nations - Russia, France, Britain and the United States joined hands to prosecure the German leaders under a principle of law which was nonexistent except for their own sayso. The defendants should have been charged with violations of rules of land warfare only, offenses less grandiose and high sounding, perhaps, but well defined, and recognized by all civilized nations. No one would have complained had an orderly trial, conducted under established procedure universally recognized, been held for the prosecution of individuals for crimes which they individually committed or personally ordered.

It was the creation of new crimes, such as crimes against peace and crimes against humanity, and conspiracy to wage wars of aggression, which was wrong, especially coining and defining these crimes after they were alleged to have been committed. However vehemently Justice Jackson and later the Tribunal tried to deny it, it was legislation after the event and ex-post-facto, and contrary to the highest principles of justice. These Major War Crimes cases were based on a false premise and were destined to establish a bad precedent. Our people are beginning to realize this more every day. The recent trial of the Cardinal and Clergymen in Europe, and the threatened trial of Madame and Kiang Kai Shek have brought this subject closer to our door.

Even before the Nuremberg experiments had been completed, the President of the United States appointed Joseph B. Keenan as Chief of Counsel to prosecute the Japanese leaders who had surrendered their country's arms and fighting forces after the dropping of the atom bomb at Nagasaki and Hiroshima. Through executive agreements which have not even been made public to date, General MacArthur was either authorized or directed to set up a court and follow the Nuremberg example for the trial of Tojo and his 27 associates. On January 19, 1946, the General issued a procolamation in which he established an International Military Tribunal for the trial of Far Eastern War Criminals. This spontaneous move should be contrasted with the years of debate and parliamentary maneuvering which preceded our adherence to the World International Court.

As a result of the issuance of the January 19th proclmation and the publication of General Order No. 1, the International Military Tribunal for the Far East was established, the new crimes were outlined and eleven judges, nominated by their respective countries, were subsequently appointed and thus the Tribunal was constituted. In the meantime, without any independent investigation by the United Nations Security Council or any other investigative agency, Mr. Keenan, with the assistance of prosecutors of the other ten nations, India, the Philippines, Canada, New Zealand, Australia, China, France, Holland, Great Britain and Russia returned an indictment covering 55 counts against 28 defendants charging them with three categories of crimes, crimes against peace, crimes against humanity, and conspiracy to commit such crimes. Each nation set out its specific charge and the charges were then joined together.

In his opening address, 58 pages prepared for press, radio, newsreels and for general distribution, more for the enlightenment of the public than for the court, Mr. Keenan explained the purposes of the trial.

The first object, he said, was to convince the Japanese people that their leaders misled them into war. The secondary purpose was to deter the leaders of other nations of the world from ever starting or even planning or preparing for another war. The third purpose, and the one with which we shall be concerned at this time, was "to teach the nations of the world a lesson in democracy."

The first object of the trial was defeated when former Prime Ministers, Generals, Admirals, members of the Japanese nobility and

the leading statesmen of pre-war Japan formed a parade to the witness box to testify in favor of the position taken by Tojo and the other 27 former leaders of Japan whom the prosecution sought to discredit. National loyalty, lifetime friendships and genuine patriotism could not be written off so easily as the allied prosecution had thought. The Japanese people generally were more convinced than ever that their leaders had no alternative but to go to war in 1941, but they were still determined that they had waited too long. The present turmoil in China had them pretty well convinced that Japanese intervention in China was also quite essential. At least the position of the allies was far more vulnerable after the trial than before. The Pearl Harbor reports and congressional investigations and appearance of "Frankly Speaking" and such writings, including Churchill's memoirs, have thrown much light on the events leading up to the war.

W hen the defendants testified in their own behalf, they merely asserted why they had acted and voted as they did. There was no apology, remorse, or attempt at excusing themselves expressed or implied. Instead they were adamant and firm in accepting full responsibility for their deeds, and all were very careful that no blame should be placed at the door of the Emperor of Japan. In this respect their attitude was consistent.

There was some disagreement between a few of the defendants but this merely served as a tonic and gave some variety and life to the otherwise very dull proceeding. Tojo's performance on the witness stand was by far the highlight of the trial. His affidavit of 243 pages became a best seller in Japan. Thousands of copies were sold in several different editions after he left the witness box. His statement was brief, concise, clear and convincing, and was understandable to the Japanese people.

The secondary object of the trial, which was to deter other national baders from breaking the peace, was lost before the trial had progressed very far. Even in China, Japan's nearest neighbor, peace never became a reality. As soon as the Japanese guns were silenced at their surrender, the weapons and ammunition were taken over by the Chinese communists and civil war for control of China, or the part occupied previously by Japan, began, while Russia occupied Manchuria, the port cities, the Kurile Islands and part off Korea north of the 38th parallel, the communists began moving south. Adhering to American policy to aid the Nationalists government, we poured new millions in aid to the Chang Kai Shek regime. We sent envoys, including General Marshall, to China to negotiate peace, but with no success. War continued.

In relation to the situation in the Philippine Islands, in the face of obtaining freedom and national sovereignty, guerillas fought on in the Philippines. Dutch forces were killing their own subjects in the Dutch East Indies after the Allies had promised freedom to those opporssed peoples. Around the world and in the meetings of the United Nations Assembly permanent peace moved farther away and former allies began choosing up sides. If there was to be another war, the hanging of Ribbentrop and Tojo would certainly be no deterrent. The second object or purpose of their trials was definitely lost. Millions of dollars and much prestige were sacrificed by our country in this futile attempt.

Let us see then if there was anything left from which to salvage the third purpose of the trials, "to teach the people of the world a lesson in Democracy." This object was defeated more completely than the other two.

In the first place, the trial lasted over two and one half years and cost nearly 20 million dollars, with a record of 50,000 pages. No nation, winner or loser, could ever afford to stage such trials again. No defendants could afford to employ high powered counsel to defend them in such a long trial. The leaders of a nation might not hesitate to start a war for fear of arrest and conviction and execution, but they certainly would not surrender if they thought that by doing so the victors would put them on trial. It would be a fight to the finish.

Was the Tokyo trial a democratic one, from which the nations in the world could take a lesson in democratic justice? It was not even acceptable to the United Nations or to the American Bar Association. An attempt was made to obtain favorable action by the Sixth Committee of the United Nations sanctioning the principles of the War Crimes trials. The measure was lost.

The group responsible for the prosecution of the German and Japanese leaders recommended a resolution to the House of Delegates of the American Bar Association at their convention in Seattle last September. It was shouted down.

An attempt is being made presently to wedge through the United Nations a convention on Genocide which attempts to state under a novel name the object sought in the Nuremberg trials. We should not accept this convention, even if Mrs. Roosevelt does recommend it. Its evils will be mentioned later.

Death penalty on majority vote. Is that democratic?

What is democratic about .....

Trial by absent judges?

Changing rules as trial progresses?

Presumption of guilt rather than innocence?

Evidence by written affidavit?

Witnesses not present in court?

No appeal or review of the facts or law?

No chance to challenge judges who were biased, prejudiced and bound by prejudgment?

No rules of evidence to prevent lies, gossip, rumor, unreliable evidence from forming the bases of conviction?

Abuse and mistreatment of defense counsel, witnesses, defendants and associate counsel?

No assistance in getting witnesses or evidence, no power of subpoena or discovery of evidence?

No limitation on the extent of the inquiry or the scope of the area in which deeds must be done?

No chance to justify deeds or prove excuse?
No chance for release on bail before, during and at the trial?
These are just a few of the common, ordinary decent rights which any accused has in our country but which were denied the Japanese.

Can democrary advocate one method of treatment for the white man and another for the yellow man, and teach its splendors and advantages? We taught the Japanese more definitely how things should not be done.

It was only a very short time after the trial began that the handwriting appeared on the wall. Some of the judges were prejudiced, biased, and had their minds made up. No judge can sit through a case for even six months and keep an open mind. It is humanly impossible. With this came two sets of rules, a liberal set for the prosecution and a very strict set for the defense.

The judges and the members of the prosecution staffs of their countries were constantly in close association and collaborated together.The favoritism shown to the prosecution was so apparent that it was a disgrace to the legal profession or democratic nations.

The lawyers for the defense were restricted at every turn. Nothing could be accepted into evidence which would reflect upon the national honor of any of the allied nations represented on the court. The attempt to show that the allies encircled Japan, provoked the attack and put on an economic blocade was suppressed at every move. Even General Marshall's affidavit to the effect that the United States and Britain were preparing for war with Japan long before the Pearl Harbor attack was rejected.

When the prosecution had closed its case and had rested, the court requested privately that they reopen and furnish more proof.

Of the 34 requirements for a fair trial,as we understand them in the United States, not one was carried out in the Tojo trial. The major defects in the trial were these:

1. It failed in its purpose to convince even the Japanese that they were misled.

2. The allies failed to show themselves free from the crimes for which they held the Japanese.

3. The charter of the trial was a very feeble attempt at stating the law.

4. A fair trial could not be attained under the rules. The rules were made to fit each occasion as it arose.

5. The rules of evidence and procedure were changed during the trial.

6, The prosecutors were irresponsible, ruthless, and used "get conviction at all cost" methods, rather than fairness.

7. Elven nations were joined without any treaty, agreement or convention to permit it.

8. No appeal or review was available before a higher court to correct the injustices of such an unfair trial.

The United States Supreme Court refused to entertain an action to test General MacArthur's authority.

9. There was no Statute of Limitations to limit the extent of the inquiry.

10. Some of the judges were incompetent, unqualified, biased, prejudiced and bound by prejudgment.

11. The issues were vague, uncertain and abstract, and any Japanese citizen could have been charged and found guilty. The nation itself, not the individuals alone, was on trial.

12. The defendants were selected because of the official positions they held during the critical years 1928 - 1945, and not just for what they did to cause atrocities or cruelties to the Prisoners of War.

13. The greatest evil of the trial was the elimination of the Emperor, and Kurusu and Nomura, and the conviction of their subordinates.

To extend the command responsibility over troops beyond the officer who actually orders the wrong to be done, and to make a cabinet officer responsible for the conduct of troops in the field or in charge of Prisoners of War, is wrong. Such a rule of law is ridiculous. Indirect criminal responsibility is a vicious innovation.

The strangest feature of the whole trial and the one single factor which did more to destroy the attempt to teach the world a lesson in Democracy was the presence on the court of a Russian judge and a bevy of Russian prosecutors at the counsel table. This was not such a strange signt at first but after Britain abandoned Greece and we recognized the issue and after the fall of Czechoslovakia and we began branding Russian moves as aggressive, criminal, contrary to the Potsdam agreement, the paradox grew by leaps and bounds. The Japanese cannot understand to this day how communism and capitalism represented on the same court comes out with democracy as the common denominator.

The most undemocratic act of which the allies were guilty in

connection with the whole trial, and one which made us the laughing stock of our enemies to whom we preach democracy, was the arrest and imprisonment of 19 Generals, Admirals and former Cabinet Members in 1945 and 1946. After holding them incommunicado for three years in some cases, without bail, under constant questioning and without counsel, with no charges filed, they were released without so much as an appearance before a court to plead or prove their innocence. One prosecutor said of them just before they were released, "You know they are just beginning to break down and tell us a few things." Who wouldn't after three years in prison? Some of these 19 were fellow Cabinet Members with Tojo, held high positions on the army and navy general staffs. Excuse for not trying them - "Too expensive and would be necessary to set up new courts." (Mr. Keenan) Consider our inconsistent position when we insist that the Japanese adopt our Bill of Rights with all of its constitutional safeguards and at the same time give such an example by our daily conduct. Many other examples of our inconsistency are recorded.

We have spent millions of dollars in Japan to sell them or teach them democracy. Anyone should know that democracy is something which comes from within more than from without. When the Solicitor General of the United States told the Supreme Court in the recent hearing on the application for a writ of habeas corpus filed in behalf of one of the convicted Japanese Generals that General MacArthur would not have to obey an order of the United States Supreme Court in the Tojo case, if he were directed to do so, the Japanese respect for our conception of law and order went down immensely.

When an American officer recently told an American woman in Germany that when she left the United States she left her constitutional rights behind, it caused great concern everywhere in the world where the United States flag flies. If our armed forces are to occupy various countries of the world and maintain military government through civilian personnel, civil rights and protection as guaranteed by the constitution must be extended to them. The Supreme Court was mistaken when it refused to question General MacArthur's authority to order Tojo hanged. The officer in Germany was wrong when he said Americans leave their constitution behind when they leave their country. Our American courts just haven't caught up with our military occupation forces and the constitution is lagging a little behind our foreign operations, but it will catch up and then will be the day of reckoning. Our military is having its holiday from the laws of Congress and the constitutional bill of rights, but the time must come when our three branches of government run parallel to one another, both at home and abroad. The fundamental purpose of the division of powers in our government "is not to promote efficiency but to preclude the exercise of arbitrary power."

If the actual trial defeated the announced purposes and failed to convince the Japanese people of their sins and had no effect as a deterrent to others, besides failing as a lesson in democracy, were there any wholesome effects?

It is very safe to say that any American who had close contact with the trial returned to these United States with more respect for

our National and local system of courts, our constitutional privileges and safeguards, and the ethics of the legal profession which is charged with protecting the rights of the public, than he had before. State and Federal judges are subject to challenge if they are prejudiced. Our rules give the benefit of the doubt to the accused in criminal cases and our courts of appeal are cautious about preserving the safeguards against forced convessions, voluntary statements under pressure and conviction on unreliable proof. Our American system of justice, although under attack from all sides, is our greatest distinction from the other systems of government which prevail in the less progressive countries of the world today.

In Tokyo it was eleven judges, unknown in International affairs, unschooled in International Law, who were appointed to judge the wisdom and honesty and patriotism of the men who governed a nation of 80 million people for over two decades. It was a difficult task and an impossible one for these judges to place themselves in the position of Prime Ministers, Admirals and full Generals, and speak with authority on what the Jap leaders should or should not have done. Even in their shabby clothes and in the prisoners' dock the defendants proved themselves statesmen, scholars and true patriots of their country. It was like a Justice of the Peace or County Judge telling a Congressman, a Senator and the President of the United States how his political judgment should have been exercised during pre-war days. In reality this was the real question and here is how Tojo reasoned it.

If Congress, the Cabinet and the Chief advisers of the President all ex-Presidents, and the President, himself, should decide that the Internal and External Security of our country was in danger and that other nations were placing embargoes on our activities in export and import while at the same time attempting to tell us where we could station our troops and establish our bases in North and South America and elsewhere, and were also telling us how we could preserve peace in this western hemisphere, should some improvised international court years later be permitted to question the wisdom of the decision to go to war to break that pressure, to destroy the circle and to prevent interference with the plans for the hemisphere or continent? Should all of these officials be tried and executed if their political judgment was wrong or because they were overpowered in the contest? The Japanese leaders believed that once Congress, the President and his advisers decided to go to war no court in the world presently existing could later question the wisdom of that political decision. Our supreme court could decide the moot question of whether Congress had power to make and declare war but such a decision would be a formality. They surely would not be permitted to substitute their political sense for that of the duly elected or chosen representatives of the people. The Japanese did not question the power of the allies to determine the wisdom of their decision to go to war. The winning of the war decided that. They only complained of the legal right of the allies to set up a court and try them for exercising a right which was enjoyed by every civilized nation in the world, that is, to declare and make war. They just couldn't understand how our law makers could declare war if they wished and were the final word and yet deny that same privilege to another government. They decided that their only offense was in losing the war.

In addition to having our faith in our own American system of laws, judges, courts and justice reinforced, many of us in the defense came to the conclusion that we can never prevent wars by punishing the vanquished leaders after the war is lost, even though the convicted are the men responsible for making the decision to go to war. We must adopt some means of correcting through cooperative measures the economic, social and political problems of nations before they crystallize into armed conflict. The leaders of a nation will never admit their mistake and the people of a nation will not, if they are worthy of the name, admit to the winners that their leaders were wrong or misled them into war. Their only condemnation is of the lack of ability to win. If the Japanese had won - is there anyone here so unrealistic as to believe that the Japanese people could have been convinced that their leaders were wrong in their war aims?

There is no pattern or form by which an approaching war can be identified. But when one is imminent, should those who must make the decision desert their state, resign, or make solemn declarations that the war which they are embarking upon is not an aggressive one, and secure the admission from the potential enemy that it will be so considered by them, before they vote "aye" or order the attack? The decisions in the Tokyo trial would force a Premier or President to resign, if he had good reason to believe that a court, after the war, would declare his nation aggressive. We must have a better way to deter politicians and international statesmen from participating in war, or leading their nation into war, or forget this new concept of individual responsibility for its commencement.

We should not prescribe a course of conduct or measure of responsibility for decisions of statesmen of other countries which we would not wish to live by ourselves in the event the war went against us. The precedent we have set at Nuremberg and Tokyo, until it is repudiated, will come back to haunt us some day, if it has not already.

Another lesson in democracy which we might learn from the Tokyo trial is that when we undertake to provide a trial for our enemies, we should give them just as fair and as impartial a trial as we would give our own folks at home, for treason or any other infamous crime, not one of the standard given to the Japanese with every requirement of a fair trial either missing or violated beyond recognition. We should be consistent, not hypocritical.

Too, we should play the game according to the rules as we both understand them, or announce the rules at the beginning of the trial and adhere to them throughout the proceeding. This was not done in Tojo's trial.

When one reviews the conduct of the American, British, and other prosecutors of the allied powers, it is a revelation to compare the objectivity and fairness of prosecutors guaranteed under our American system of trial procedure. Prosecution by irresponsible and unscrupulous prosecutors,bent on conviction alone can be a most vicious process. This is what we had in Tokyo. If an American lawyer were seen constantly in the company of the Judge before whom he was trying a case, any defendant would feel that a little undue pressure was being exerted or attempted. The independent and detached attitude of our judiciary is something else to be proud of.

In America we would think it very strange if Iowa, Illinois, Kentucky, Louisiana, Georgia, Florida, Texas and California all joined in one action against a group of New York labor leaders involved in a race riot. If upon the trial each judge would insist upon his idea of human and civil rights, the Iowa Judge would naturally insist upon the highest standards of justice. The Texas Judge would insist on a quick trial and then hang them. Depending on their color and citizenship, the Georgia and Florida judges would use the southern standard of civil rights, while the Louisiana Judge would insist upon the application of the old French civil code. Well, that's about the way it was in Tokyo, and confusion reigned, chaos resulted. No one knew from one day to the next whether British, American or French procedure was being adopted. It depended, as the President of the court said, "upon which judges are present or absent on a given day," and which system made it tougher on the accused. There is not and there should not be, any provision in our law for several sovereign states to prosecute the same individ uals in a joint action or common trial. We can't even join two countries in the same criminal action; the defendant must be tried where the crime is committed. The confusion which resulted in the conflicting systems employed at Tokyo emphasized the illegality of joining eleven nations in one trial. By operation of law it was only the United States vs. Tojo, with ten invitees because when it came time to pay the costs of the trial the other ten nations suggested that their constitutions would not permit them to participate financially in such a proceeding. This is not authentic nor is it final, but it is the latest and best information I have on the subject, and it sounds like a good, sound legal argument of non-liability.

The highest standards of democratic justice provide an avenue of appeal and review from the injustices of an unfair trial, but where you have one man, General Douglas MacArthur, Supreme Commander for the Allied Powers, creating the court, writing and passing the laws, creating and defining the crimes, making the rules of procedure, appointing the Judges, and then acting as reviewing officer, supreme court, executioner, board of parole, and permanent jailer, it is difficult to learn any lesson in democracy from such a fiasco. But that is the way it was, regrettable as it is.

In America we usually charge a criminal with a violation of the law when we discover it and try and punish the offender while the evidence is available and the witnesses can recollect what happened. We also have a Statute of Limitations which provides that unless action is taken within three years, the crime is outlawed, unless the culprit cannot be found. Instead of having such a statute in Tokyo, the Allies tried General Minami for his part in the Manchurian Incident, which occurred fifteen years before the trial. He smiled and remarked that if the allies had waited a few more years it would have been too late. All of his contemporaries and associates were dead and the official documents of his era had been destroyed, but the allied prosecutors went far back into archives to bring up and revive the old sores and attempted to settle old scores which long ago had been determined and recorded in the history books of another day. No public official should be held criminally responsible for his official political acts of state after a reasonable period after he leaves office. He certainly should not be held for those of his predecessors

and successors simply because he failed to publicly repudiate them while in office.

Trial by absent, incompetent, temperamental, impretinent judges in America would be grounds for a new trial, but in Tokyo it was the rule; of the 419 days of trial there were 469 absences from the court. One judge was absent 102 days during the trial. One absented himself during the final arguments, which consumed six weeks. The conduct of the judges was disgraceful, especially that of the American repres dntative. The Dutch judge preferred skiing, horseback riding, and tennis to his court attendance. The Canadian took a vacation during the trial and was absent 14 court days at one time during the Pearl Harbor phase of the case. The Russian was absent at the same time. There was difficulty getting a quorum during the final days of the trial. The President of the court went back to sit on the high court of Australia for a month while the major defendants were on the witness stand. He had a job to protect,he said in substance. He said he could read the transcript . One paper called this "mail order justice". He definitely lost the respect of the other members of the court, of the Supreme Commander of all the counsel, and court attendants. The Japanese never had any respect for him. He was the meanest, most sarcastic, intolerant, provincial presiding judge I have ever encountered. He did more than any other single factor to reduce the trial to the farce which it ultimately turned out tobe. I admit I am a little critical and severe, but every defense counsel has declared himself in this vein many times during and after the trial. Off the bench he was a most charming, gracious, cultured Australian gentleman. His dissenting opinion was a model expression of mugwump. He said the Emperor should have been tried, if anyone should have been. That statement is true. The selection of the judges and composition of the court and appointment of an Australian as presiding officer were the greatest mistakes of a long comedy of errors committed before, during and after the trial. As one judge put it, "We are eleven prima donnas". The American judge is credited with this statement.

There was only one real issue in the case. Was it a crime to attack Pearl Harbor, and, if so, who was responsible for the offense?" This issue could have been resolved in three months and the world would have accepted the result, but when all eleven nations began airing their grievances of two decades standing, the trial became a political football with each trying to outdo the other for the title of "Most Japanese-Abused Nation in the Far East." China won out, but Russia put up a great contest, if volume of evidence and time consumed to present it was any criterion.

Although it may not have appeared so in the beginning, granting immunity to the Emperor and trying his ambassadors who should have been given immunity instead was one of the most illogical and inconsistent features of the trial. The last man in a position to say "No" when war was declared kept silent.

Now, a word about the trial in relation to present day problems. Weeks of time were consumed during the trial to prove that Germany, Italy, and Japan sought through a Military Pact to oppose any European aggressor who might attack them. The present Atlantic defense

pact is almost identical with the pact proposed between Germany, Japan and Italy. When Germany, Italy and Japan made such an agreement to control and frighten Russia by demonstrating solidarity, it was sinister. Now that we are making one, it is purely defensive. Can Russia not make the same claim against the European powers as the allied powers made in the Tokyo trial against Japan?

There is now pending before the Commission on Human Rights a Covenant for the adoption by the 58 nations of the world. Its provisions do not give Americans any greater rights than we already have under our constitution. Should we join other nations in such a covenant to secure to ourselves rights which we already enjoy? It is useless. We must not enter compacts which place us in a position of matching our rights with 57 other nations. We will be drawn down to their level or standard of human rights long before we can ever pull 57 other nations up to ours. Our association in the Tokyo and Nuremberg trials should be sufficient warning that we cannot maintain our standard of human rights in group action. When the rest of the nations of the world, through their national systems, raise their standards for their own people, then it is time enough for us to join hands with them Unless we practice our own standards on the nations we defeat, there is no use advocating them for others.

A convention on Genocide is also being considered by the United Nations. This convention provides that citizens charged with race crimes shall be tried by their own courts or by an International Court to be provided. Here is where the danger lies. We must be very careful never to subscribe to any system of international courts which will subject our citizens to trial by judges of enemy, unfriendly or foreign countries.

No American should ever be tried before a court organized or operated on the international level. We do not need international penal tribunals to punish offenders against any law. When we get to the point where we have to delegate to international courts the trial of Americans for offenses against the United Nations, against our own laws or citizens, then we are folding up as a nation and merging our sovereignty with 57 others. We should wait to see how effective it is going to be before we start giving up our sovereign rights to an organization of nations with such limited authority and possibility of performance.

Our leaders on the United Nations level are committing us to compacts, conventions, covenants and agreements, and by- passing Congress, the people and public opinion, and have been for several years. Once we permit such a course to develop we might as well withdraw the provision of our constitution that treaties must be approved by the senate. Instead of sitting idly by and allowing our controls on our international representatives to become more liberal, we should strengthen these controls by requiring that the office of Secretary of State be made elective and United Nations representatives selected democratically by both houses of Congress on a geographical representation basis. We should destroy the secrecy in the conduct of our international affairs. The public ought to know what is going on and have a chance to express itself. As the senate holds public hearings so should our delegations to the United Nations. We must

distinguish our policy from that of nations where one voice responds with all of the answers. Without alertness by the people there can be no enduring democracy. It is by vigilance over its representatives that democracy proves itself.

The Magna Carta came about in 1215 as a result of the demands of the oppressed when the tyrant was unable to resist their claims. The declaration of Independence accompanied by a revolution against injustice, and our constitutional Bill of Rights followed. The Fourteenth Amendment came into being when one part of our nation fought against another. The Rules of land warfare were enacted between two vicious wars and were adopted by really all civilized nations. Orderly law making can bring about reform and respect for law. Perhaps some good can come of the Tokyo and Nuremberg trials, if during the period between wars some legis lative body duly authorized by all of the potential belligerent nations can adopt some plan which is acceptable to all of the people for fair and impartial trials of those accused of crimes. Even though the Tokyo trial was conducted under a system of law and procedure which is not acceptable to our American standards, it may be that by now calling attention to the mistakes of the trial, some system will be devised which does not have the evils which it has shown. As law develops by trial and error and justice moves slowly, the sacrifice of human life upon the altar or jurisprudence is as worthy a sacrifice as anyone can make.