

## Sharpening the Vigilance of the World: Reconsidering the Russell Tribunal as Ritual

To resuscitate the tradition of a Russell Tribunal is . . . necessary . . . to do today . . . It does not have a juridical or judicial status by any State, and it consequently remains a private initiative. Citizens of different countries have agreed among each other to conduct, as honestly as possible, an inquiry into a policy, into a political project and its execution. The point is not to reach a verdict resulting in sanctions but . . . to sharpen the vigilance of the citizens of the world.

—Jacques Derrida<sup>1</sup>

### Introduction

International criminal law has long suffered accusations of ineffectuality. Realist scholars of international relations often scoff at legal petitions to courts on behalf of small states as the “protests of the weak” unable to secure their interests through other means. Others lament the major international tribunals’ lack of enforcement mechanisms, limited jurisdictional scope, inability to extradite suspects from noncompliant states, consistent underfunding, and notorious sluggishness in producing verdicts. Alternatively, postcolonial critics of international criminal law often acknowledge the effects of the tribunals’ work but judge them pernicious institutions: tribunals serve as “courts of the victors,” selectively applying justice while ignoring the violence of major Western state actors and their allies; tribunals remove justice concerns from local jurisdictions and disrupt more “traditional” frameworks for postconflict reconciliation; international indictments stifle domestic peace processes by mitigating the ability of accused groups to participate in negotiations; and the case law of the tribunals codifies a body of precedent that systematically criminalizes the actions of less technologically advanced actors, while providing exceptions for the “targeted killings” of the most sophisticated militaries.<sup>2</sup>

In one sense, these criticisms of international criminal law are part of a longer legacy of critique. Leftists—at least since Marx’s famous treatment of the Declaration of the Rights of Man and Citizen in “On the Jewish Question”—have long excoriated the formalism of liberal legal institutions for denying their own imbrication with political and social powers.<sup>3</sup> The critical turn in historiography on international human rights—of which Samuel Moyn’s work is perhaps best known—similarly seeks to expose the alleged political “neutrality” of the 1970s proliferation of human rights discourse; Moyn’s work instead diagnoses the appeal to international human rights in

this period as a more insidious means for promulgating a watered-down liberalism that broke with socialist and anticolonialist struggles.<sup>4</sup>

In the case of the International Criminal Court (ICC), one might similarly note the Court's late historical emergence in the post-Cold War era and its selective case roster as indicators of its Western, liberal bias. While African state parties may have assisted in the drafting of the Rome Statute, many argue that Western legal experts largely determined its language and have managed its institutional existence.<sup>5</sup> Critics of the Court thus note its neocolonialist attempts to "force" African compliance with Western legal standards through "knowledge-sharing" provisions of the doctrine of complementarity.<sup>6</sup> Others also highlight how its "neutral" legal interventions produce political biases on a grand scale (consider, for example, the continued controversy over the Court's narrow focus on African cases, highlighted in recent controversies over indictments in Kenya and, most infamously, in debate surrounding South Africa's fraught attempt to withdraw from the Court's jurisdiction).<sup>7</sup>

A robust literature has emerged debating the "political" status of international legal tribunals, and it is not my purpose to intervene into such debates.<sup>8</sup> Rather, I offer this brief—and somewhat polemical—portrayal of objections to modern international criminal law in order to draw a contrast. Contemporary institutions of international criminal law remain objects of persistent critique in their commitment to certain principles of neutrality, legal formalism, and "Western" standards of justice; this set of commitments, however, does not equally characterize the entire twentieth- and twenty-first-century history of invocations of international criminal law.

In this essay, I assess the work of a specific international "tribunal" that offered an alternative vision for the role of international legal justice: the Russell-Sartre Tribunal on War Crimes in Vietnam.<sup>9</sup> The work of the Russell Tribunal has often been ignored—or dismissed as political theater—by scholars of political theory and international law.<sup>10</sup> Despite its detractors, advocates of international legal accountability have emulated the Tribunal's model for nearly half a century. Subsequent gatherings have included tribunals on human rights violations in Latin America, civil liberties in West Germany, the military coup in Chile, violations of human rights in the practice of psychiatry, and, more recently, the invasion of Iraq and the Israeli occupation of Palestine.<sup>11</sup> Innovations by the Asia Floor Wage campaign have also expanded the work of international peoples' tribunals to address violations of fundamental socioeconomic and labor rights.<sup>12</sup>

I reflect on the practices of the original Russell Tribunal in order to reassess its legacy. I consider how we might reexamine the work of the Tribunal—and the later peoples' tribunals that it inspired—through the lens of "ritual." This analysis departs from an assessment of the Tribunal's success as a "legitimate" institution of international criminal law, for example, determining whether its judgment adequately applied the 1948 Convention on the Prevention and Punishment of Genocide to the facts of the case. Indeed, critics of the Tribunal have already (and often correctly) diagnosed its inadequacies in applying legal precedents.<sup>13</sup> I instead deploy anthropologist Talal Asad's nuanced discussion of "ritual" to consider how we might assess the Tribunal's judgment as a kind of *political practice*. To this end, I analyze Sartre's critical judgment of American culpability for the crime of genocide at the concluding session of the

Tribunal as an example of a practice geared toward producing political “virtue” in its participants and onlookers. Sartre’s verdict, of course, does not encompass the whole of the Tribunal’s work; in its sessions scholars, activists, and experts also documented instances of mass violence through photographic evidence, witness testimony, and additional legal analysis.<sup>14</sup> I focus on Sartre’s verdict, however, both because of its historical status as the most widely disseminated document from the Tribunal, and also because its conceptualization as a form of ritual may be less obvious than the Tribunal’s other activities.

My goal in examining Sartre’s verdict as the invention of a new ritual of international law is thus twofold: first, I reflect on the Tribunal’s genocide verdict as an alternative way of thinking about international criminal prosecutions of genocide; second, I locate the “difference” that marks the alternative by considering the practices, affects, and forms of analysis that accompanied the Tribunal’s work. In conclusion, I assess how the theoretical framework of ritual might also open new vistas for interpreting the work of subsequent peoples’ tribunals. While the immediate legacy of the Tribunal proved limited in scope, it offered an imitable model that inspired a host of ad hoc “peoples’ tribunals.” These institutions continue to face many of the same critiques and ambivalences that accompanied the original Tribunal. Reconsidering these tribunals through the framework of ritual, however, allows us to shift the register in which they are evaluated. Understood as ritual practice, the Russell Tribunal and its progeny offer fertile ground for reexamination of the aims and purposes of international criminal and human rights law. In this sense the Tribunal’s “practice” of international law exceeds the model of formalistic professionalism. Following Asad, we might describe participation in peoples’ tribunals as training in virtue; those who participate in the tribunals’ work come to embody a commitment to holding powerful states accountable to the collective values of an imagined humanity.

### **The Tribunal and its Legacy**

Established in 1966 by the nonagenarian British philosophical giant Bertrand Russell and existentialist left-wing stalwart Jean-Paul Sartre, the Tribunal held two major sessions between 1966 and 1967 in Stockholm and Copenhagen.<sup>15</sup> It gathered an eclectic group of socialist lawyers, student movement leaders, philosophers, medical experts, former United States military officers, and Vietnamese victims of atrocities, to assess the then-ongoing U.S. military actions in Vietnam according to principles of international law.<sup>16</sup> The jury was composed of leading intellectuals of the time, including A. J. Ayer, Lelio Basso, Simone de Beauvoir, Isaac Deutscher, Vladimir Dedijer, Mahmud Ali Kasuri, and David Dellinger.<sup>17</sup> Derided as a “kangaroo court” by its detractors in the United States, France, and United Kingdom, the Tribunal nevertheless endeavored to follow strict standards of legal precedent for the presentation of evidence and witness testimony. It espoused a principle of “complete openness” insofar as it offered to hear the testimony of any and all who wished to participate.<sup>18</sup>

In contrast to the contemporary concern about international legal tribunals’ lack of enforcement mechanisms, the Russell Tribunal’s participants proclaimed its “powerlessness . . . [as] the guarantee of . . . [their] independence.”<sup>19</sup> Indeed, Sartre

reflected on the work of the Tribunal in order to articulate a distinction within a leftist account of legal practice: one might imagine tribunals not as the ultimate dispensers of judgment and justice that determine appropriate punishments and applications of state violence but rather as critical spaces for reflection, gathering of testimony, and documentation that then require additional political processes to determine what actions ought to follow from their findings.<sup>20</sup>

Concern over the refusal of accused state parties to participate—while allegedly undermining the legitimacy of the Tribunal—overlooks the theoretical and practical innovations of the Tribunal. Instead of insisting that legal institutions gain legitimacy by appeal to an abstract principle of neutrality or state sanction, the Tribunal offered an alternative conception of legitimation for public international law: international law serves its aim of securing peace and protecting human rights when it functions as a partisan tool for oppressed peoples and directly challenges the legitimacy of powerful states to use arbitrary and wanton violence in pursuit of such peoples' subjugation. Russell made this point in his inaugural message to the Tribunal by contrasting its work to that of the "official organs" of international law governed by states:

Powerful states and ruling groups have created institutions such as the United Nations and the World Court, but it is these same states and ruling groups which exploit cruelly the peoples of the world. This is why their institutions cannot echo the demands of the oppressed.<sup>21</sup>

Sartre, in a parallel move, insisted that it was precisely due to political domination of international institutions by capitalist powers that "the principles of Nuremberg" had not been applied appropriately. International law, he contended, ought to serve the interests of "humanity," understood as those oppressed groups suffering from the exploitation of post-Fordist capitalist production and neo-imperialist military interventions. In a move reminiscent of Marxist philosophy of history, Sartre then offered an a posteriori principle of legitimacy for the Tribunal.<sup>22</sup> Its legitimacy cannot be judged from the outset but must be assessed in light of its ultimate role in a politics of struggle against domination and inequality. In this sense, he characterizes the members of the Tribunal as "only a jury," with the task of judgment left to the "people of the world, and in particular the American people."<sup>23</sup>

In a reflection in 2014, the writer and public intellectual Tariq Ali—who also participated in the Russell Tribunal—described it as a "moral" rather than "legal" endeavor, designed to bring notice of crimes in Vietnam to the public attention.<sup>24</sup> In this way, Ali underlines the limitations of extant legal frameworks for recognizing certain mass atrocities. In returning to these early statements by Russell and Sartre about the Tribunal's focus, however, I suggest that its legacy may also be interpreted differently. The Tribunal's founders saw its work as extending and expanding the framework of international justice inaugurated at Nuremberg.<sup>25</sup> In this way, Russell and Sartre did not imagine the Tribunal merely as a "moral" instrument but used it to articulate an *alternative vision of how to actualize the purpose of international criminal law*.

What is the political imaginary associated with this alternative concept of international law? What notions of justice, politics, impartiality, and judgment are made

possible when one decouples a tribunal's "legitimacy" from considerations of "enforcement capacity" and "political neutrality"? What happens when one conceives of the temporality of legitimacy from the backward glance of a tribunal's historical effects rather than from the perspective of its founding authority? What avenues for rethinking the practice of international law become available when its exercise is extricated from the purview of state-sanctioned officials, and instead, juries of intellectuals, social movement leaders, and victims of atrocities are tasked with collecting and evaluating evidence of mass violence? What ways of "enacting" and "enforcing" a tribunal's findings must be imagined when final judgment moves from the formal legal space of a court to a "people's public sphere"?<sup>26</sup> These questions allow for the conceptualization of a leftist theory of international criminal law that radically differs from the dominant liberal cosmopolitan vision. They also suggest that the Tribunal's work should not be evaluated merely in terms of its application of legal standards. Rather, the Tribunal could be considered as a radical practice aimed to spur and support political action and resistance. This does not mean that it is merely trivial that the Tribunal spoke in the language of international law and voiced its claims to justice by an appeal to treaties and conventions. Rather, it encourages reconsideration of international law's function when its purposes and goals are differently imagined.

The Tribunal's legacy, however, also evinces the difficulties that accompanied its alternative vision of international criminal law. Scholars have noted the relatively modest reception of the Tribunal among leftists at the time.<sup>27</sup> Others have suggested that its "biased" character fundamentally undermined its mission and public reception.<sup>28</sup> Undoubtedly, these critiques contain a good deal of truth—they also demonstrate how difficult it is to posit an alternative practice of international law. Nevertheless, the Tribunal did not merely fade into history but created a legacy that persists to this day. Participants from the original Tribunal have extended the project's work to new sites of struggle. For example, one jury member, Lelio Basso—an Italian lawyer and socialist politician—went on to establish both the second Russell Tribunal on human rights violations in Latin America and the Italian-based Permanent Peoples' Tribunal.<sup>29</sup> The first Tribunal provided many activists with a framework and vision for holding powerful actors responsible for grave atrocities when official legal instruments proved ineffectual. The psychiatrist Thomas Szasz made use of the model of the Russell Tribunal to document perceived human rights abuses by psychiatric institutions.<sup>30</sup> Most recently, advocates for the rule of international law adopted the framework of the Russell Tribunal to challenge American military intervention in Iraq and the Israeli occupation of Palestine.<sup>31</sup>

While each tribunal in turn faced criticism for its operation outside the sanction of state institutions, nonstate actors continue to stage Russell tribunals in the name of international law. The Russell Tribunal on Palestine, for example, described itself as "reaffirm[ing] the supremacy of international law as the basis for a solution to the Israeli Palestinian conflict."<sup>32</sup> These statements—which mirror Sartre's and Russell's early descriptions of the first Tribunal—might initially seem in tension with Ali and others' accounts of them as primarily "moral" institutions. How are we then to understand the tribunals' affirmations—and reaffirmations—of their commitment to international law in light of their continued and explicit lack of recognition by official

institutions of international law? Appreciating the work of the tribunals through the lens of ritual helps illuminate this apparent tension. The work of the tribunals in “reaffirming” the supremacy of international law, I argue, constitutes a legal and political *ritual practice*. This practice of rendering judgments based on principles of international law both allows the tribunals to “sharpen” their participants’ “vigilance” in protecting against mass atrocities and simultaneously makes possible new ways of conceptualizing international criminal and human rights law’s purpose.

### Rethinking the “Ritual” of Genocide Labeling

Talal Asad provides a theoretical framework through which to reconsider the work of the Russell tribunals.<sup>33</sup> Asad traces how the modern anthropological notion of ritual as “symbolic activity” became dominant.<sup>34</sup> From the nineteenth century, anthropologists began to classify rituals as a kind of activity through which some feature of a particular religion or culture was “represented” through a symbolic act that required decoding:

Ritual is now regarded as a type of routine behavior that symbolizes or expresses something and, as such, relates differently to individual consciousness and social organization. That is to say, that it is no longer a script for regulating practice but a type of practice that is interpretable as standing for some further *verbally definable*, but tacit, event.<sup>35</sup>

On this view, the reading of rituals requires an interpretive move to discern the “inner meaning” of the “outward signs” of a cultural or religious performance. This way of understanding ritual, Asad implies, entails a particular way of thinking about subjectivity that arose in the context of Western European modernity. He traces its development to early Renaissance critiques of courtly life, the work of Francis Bacon, and more general theories of dissembling that necessitated the concealing of “private feelings” from “public scrutiny.”<sup>36</sup> Asad argues that this understanding of ritual obscures the early Christian notion of ritual as a kind of lesson in *discipline* or *virtue* in which the body became trained and habituated: “ritual is therefore directed at the apt performance of what is prescribed, something that depends on the intellectual and practical disciplines but does not itself require decoding . . . apt performance involves not symbols to be interpreted but abilities to be acquired.”<sup>37</sup>

When ritual is understood as an exercise in bodily training and habituation, the division between a truth and its expression is less at stake. Asad proposes expanding this appreciation of practice to contest the privatization of affect and emotion more generally, to see affective relations as conditioned and produced by practices in social life:

An experience of the body becomes a moment in an experience . . . body, discourse and gesture are viewed as part of the social process of learning to develop aptitudes, not as orderly symbols that stand in an objective world in contrast to contingent feelings and experiences that inhabit a subjective one.<sup>38</sup>

Asad’s account of ritual presupposes a theory of immanence in which the ritual’s purpose concerns proper discipline and performance. There is not a latent meaning

to be discovered but rather a kind of habituation and affective relation to be embodied and attained. The “truth” of rituals on this account lies not in their meaning but rather in their role in transforming the affective lives of their performers through practice. In parallel to a tradition of virtue ethics in the work of Alasdair MacIntyre, Asad highlights how this approach can be described as “training in virtue.” The practice of ritual is a teaching through doing, in which the affective lives of its participants are shaped. This model of habituation may be described as inculcating certain virtues—virtues one acquires precisely through the performance of ritual practice.

Asad’s theory of ritual allows reassessment of the role of the Russell Tribunal. The work of the Tribunal can be seen as a kind of practice directed toward influencing participants and onlookers, rather than sanctioning wrongdoing. And in issuing its judgment, the Tribunal undertook a public performance that cultivated certain embodied sensibilities and encouraged political mobilization.

Understanding the first Tribunal’s focus on genocide is key for appreciating its role in shaping the affective lives of its participants and observers. Indeed, historically, the Tribunal itself may have been essential in establishing the place of genocide in the contemporary political imaginary. The term had only circulated in popular discourse for two decades since its invention by the jurist Raphael Lemkin in his seminal work *Axis Rule in Occupied Europe* (1944).<sup>39</sup> At the time the Tribunal held its first session, only a handful of other mass atrocities had been labeled as genocides.<sup>40</sup> While disputes about whether to recognize particular mass killings as genocides plagued analysis of many postwar mass atrocities, the Nazi Holocaust remained—almost universally—viewed as a case of genocide par excellence.<sup>41</sup> Recognition of a particular atrocity as genocide thus, at the very least, counted as admission into the category of crimes to which the Holocaust belongs.<sup>42</sup> In promulgating the term and applying it to the actions of an Allied power, the Tribunal helped inaugurate a ritual practice of public accountability.<sup>43</sup>

On an affective register, genocide has come to function as a critical term for affirmation and recognition of victim groups’ suffering. Additionally, naming a conflict as genocide entails an essential political implication: doing so characterizes the regime responsible for the crime as fundamentally illegitimate and helps generate normative demands that call for its overthrow or radical transformation. In Sartre’s explication of U.S. violence in Vietnam as genocide, one can see the affective work of the judgment as a legitimation of the suffering of the victims, and also as an attempt to generate outrage and motivate political rejection of the U.S. government. As a practice, this sort of analysis functions not only to offer a legal judgment but to extend the scope of the Tribunal’s work into the spheres of politics and history. Labeling an act of violence as genocide engages the affective sensibilities of the Tribunal’s participants, witnesses, and onlookers as well.

### **Sartre’s “On Genocide” as Ritual Practice of International Criminal Law**

Every case of genocide is a product of history and bears the stamp of the society which has given birth to it. The one we have before us for judgment is the act of the greatest capitalist power in the world today. It is as such that we must try to analyze it—in other words, as the simultaneous expression of the economic

infrastructure of that power, its political objectives and the contradictions of the present situation.

—Jean-Paul Sartre, “On Genocide,”  
Finding of the Russell Tribunal<sup>44</sup>

Sartre began his assessment of whether the United States could be considered guilty of committing genocide in Vietnam by addressing the question of “genocidal intent.” He made reference to Article 2 of the 1948 Convention on the Prevention and Punishment of Genocide, which describes genocide as an act committed “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”<sup>45</sup> Yet Sartre also insisted that the question of determining intentionality must itself be *historicized*. He argued that the Convention’s own emphasis on intentionality referred to “memories which were still fresh,” and that its explicitly legal formulation responded to the Nazi exterminations. To understand the ongoing conflict in Vietnam, and whether it too could be understood as a genocide, required a rethinking of the judgment and determination of intentionality: one must not simply look to the explicit statements of the regime or try to uncover its hidden documentary record. Rather, one should assess the particularity of the historical situation as the outcome of developments in modern techniques of warfare and domination. Thus Sartre asked: what does it mean to understand Vietnam as a “war of example” according to the United States’ own military doctrine? And how do the techniques of war and the overall strategy of the superpower evince intentionality in its military and political practice?<sup>46</sup>

Paige Arthur’s account of Sartre’s postcolonial politics characterizes his writing of “On Genocide” as the implementation of his theory of the dialectic. She suggests that Sartre’s account of “integral humanity,” developed in his late work, provides a basis for the claim of universal responsibility that he advanced through the Tribunal. This notion, she argues, allowed Sartre to develop an ethical norm of affirmative obligation to preserve humanity’s values. The framework of ritual allows us to see additional dimensions of Sartre’s action that may have exceeded his own philosophical self-understanding, in highlighting the affective registers on which practices also function.

By way of Asad’s framework, then, we can understand Sartre’s analysis of the nature of culpability and “criminal intent” in terms of historical practices and social determinations of actions. I am taking some liberty here with Asad’s use of the term “ritual” in also applying it to the “object” of the Tribunal’s investigation—the violence of the U.S. regime during the war in Vietnam—rather than just the “discipline” of the Tribunal on its own performers. Sartre presented the crime of genocide as the historically and socially conditioned ritualization of violence, rather than as an individualized crime determined solely by the mental state of its perpetrators. Genocidal violence is part of a “social process” that works on and through the actions of its perpetrators.

In Sartre’s account, wars of liberation engage the entire population in an armed struggle for political, social, and economic self-determination. The American war against Vietnam took the form of an attempt to quash or limit such self-determination and so it was conducted against the entire population. Sartre positioned his analysis

of the American genocide in Vietnam in relation to a history of counterinsurgency and anticolonial struggle:

It is no accident that people's war, with its principles, its strategy, its tactics and its theoreticians, appeared at the very moment industrial powers pushed total war to the ultimate . . . since it was the unity of an entire people which held the conventional army at bay, the only anti-guerrilla strategy which could work was the destruction of the entire people, in other words, of civilians, of women and children.<sup>47</sup>

He also connected his analysis to a longer history of colonial domination in which "massacres" and "violence by example" were used to subdue the resistance of native populations. The larger point, however, concerned the very nature of the conflict: a confrontation in which a major capitalist power sought to challenge a popular uprising.

Sartre did not conceive of the "intent" to destroy the population of Vietnam as a hidden motive or clandestine plan to be uncovered in the minds of individual perpetrators:

The genocidal intent is implicit. It is necessarily premeditated. Perhaps in bygone times . . . acts of genocide were perpetuated on the spur of the moment and in fits of passion. But the anti-guerrilla genocide which our times have produced requires organization, military bases, a structure of accomplices, budget appropriations. Does this mean they are thoroughly conscious of their intentions? It is impossible to decide . . . at any rate, we don't need to play this game of psychological hide-and-seek. The truth is apparent *on the battlefield*.<sup>48</sup>

Sartre saw genocidal intent as a necessary political entailment of the nature of the struggle and attributed this intent to the American military and political apparatus itself rather than to individuals. Moreover, he eschewed questions of "psychological hide-and-seek," in favor of an analysis of "the battlefield," that is, the particularity of the execution of the violence. Such an analysis contrasts with discourses on genocide that seek to explain the phenomenon by looking for "primordial ethnic tensions" or hidden racial prejudices in the minds of the accused.<sup>49</sup> The intent to destroy—expanding upon Asad—is recognizable as a ritual performance of the kind of violence that is undertaken to suppress a mass popular uprising. Sartre proposed that we begin to look for criminality in *actions* rather than hidden *motives* and read intentionality as *expressed in practice* rather than *concealed in private consciousness*.

The point becomes sharper when one turns to Sartre's refutation of potential objections to the genocide charge. Here he considered the claim that the United States could not be accused of committing genocide since it offered the Vietcong the option of surrender. Sartre addressed what he described as the "two objectives" that American officials gave for the war: the first was one of "self-defense" against communist overreach and the alleged expansion of Chinese influence in the region; the second was "an economic" motivation to demonstrate to the guerillas that "war does not pay."<sup>50</sup> In this latter reason, Sartre found another manifestation of "the genocidal intent." For whom, he asked, could the war be considered "an example"? His answer was that the

United States wished to demonstrate to “all of Latin America . . . and all of the Third World” that they would be crushed if they chose to establish socialist societies: “this genocidal example is addressed to the whole of humanity.”<sup>51</sup> The question of the “conditional” nature of the genocide rose to the fore:

“In fact,” the American government says “all we have ever done is to offer the Vietnamese . . . the option of ceasing their aggression or being crushed.” It is scarcely necessary to mention that this offer is absurd, since it is the Americans who commit the aggression . . . But this absurdity is not undeliberate: the Americans are ingeniously formulating, without appearing to do so, a demand which the Vietnamese cannot satisfy. They do offer an alternative: Declare you are beaten or we will bomb you back into the stone age. But the fact remains that the second term of this alternative is genocide. They have said: “genocide, yes, but conditional genocide.” Is this juridically valid? Is it even conceivable?

Sartre then, perhaps curiously, appealed to the 1948 Convention again as “offering no loopholes . . . genocide by blackmail remains genocide.”<sup>52</sup> Today, complications arise around demonstrating that an agent possesses the special intent requirement of genocide. Defenses have been offered that insist a group was killed or evacuated for “strategic” or “economic” reasons—desire for land, or territory; in certain cases this defense has been effective in reducing criminal sentences from genocide to “lesser” crimes against humanity and war crimes. In Sartre’s analysis, such “legal loopholes” were rejected in favor of a consideration of the implications of American military policy on the ground. One of two outcomes is acceptable for the Americans: either they will annihilate the resistance (a clear case of genocide, once “accomplished”), or they will force a surrender and transformation of social life in Vietnam.

Sartre insisted that the latter result would also amount to “genocide” in its annihilation of a way of life and the practice of self-determination. He considered what “capitulation” to America would entail: “It means that the United States would destroy, through private investments and conditional loans, the whole economic base of socialism. And this too is genocide . . . The ‘national group’ Vietnam would not be physically eliminated, yet it would no longer exist. Economically, politically, and culturally it would be suppressed.”<sup>53</sup> By including in his account of genocide the destruction of a way of life, and of the larger conditions of possibility that make ways of life possible, Sartre pushed the conditions for recognition of violence beyond the parameters of individual culpability and opened up questions about forms of structural and economic violence that also yield genocidal effects.

This analysis of genocide cannot be divorced from the context of its publication and dissemination. The Tribunal held open sessions, and Sartre and Russell engaged in an extensive media campaign to disseminate its findings publicly.<sup>54</sup> The historian Harish Mehta observes that—despite the extensive U.S. media campaign designed to discredit it—the Tribunal “succeeded in its goal of impacting the image of the U.S. government through worldwide press publicity of U.S. war crimes.”<sup>55</sup> His account the Tribunal—coupled with Russell’s and Sartre’s public advocacy on behalf of the North Vietnamese—played a role in galvanizing the late 1960s and 1970s antiwar movement.<sup>56</sup> “On Genocide” should thus be read as much as a performative act as a

philosophical treatise. Sartre's rendering of judgment and public advocacy turned public condemnation of U.S. military violence into a powerful ritual. Speaking, writing, and naming the atrocities became a mode of producing accountability that later tribunals would in turn enact. Even the philosophical analytic that emphasized the social determination of action and the historicity of mass violence operated as a ritual performance: drawing attention to these factors stimulated critical awareness of the political conditions that were the preconditions for genocide. This action may be read as a "training in virtue" through which sensibilities and affects of attention are cultivated.

Derrida later described the work of Russell tribunals as institutions concerned not with enacting sanctions but with "sharpen[ing] the vigilance of the citizens of the world." The concept of vigilance exceeds the mere acceptance of a moral belief about or intellectual recognition of mass violence. Proper exercise of vigilance may constitute a "virtue" in the Asadian sense: it entails a cultivation of particular sensibilities and dispositions that enable different affects to be triggered when one learns of mass atrocities. Each tribunal demands that its participants develop and practice virtues of vigilance and judgment in their response to mass atrocities and that they share the lessons of their observations with a broader humanity.

### **Conclusion: Ritualizing Public Responsibility for Mass Violence**

How do peoples' tribunals function as rituals designed to inculcate recognition of widespread responsibility for the cessation and prevention of mass violence? In the conclusion of "On Genocide," Sartre returned to the question of guilt but did not single out any "individual perpetrators" as responsible. Rather, he insisted that it was "the American government . . . [that was] guilty."<sup>57</sup> The government had committed itself to a policy of genocide instead of a policy of peace and in turn perpetuated a radical "global blackmail" in which all popular socialist uprisings were threatened with annihilation. One might take issue with the notion of attributing intentions or guilt to a government on the basis that this carries with unnecessary abstractions. However, Sartre connected the question of criminality and intention to large-scale military and political practices and found evidence for that criminality not in individual consciousness but in a systematic policy. Given that the Tribunal gathered no specific "accused" nor sought any punishment or retribution, it did not strive to produce any individual convictions. As a practical matter, this analysis may also draw activists' attention to international legal questions of state responsibility doctrine as a necessary supplement to individual criminal liability for mass atrocities.<sup>58</sup> More specifically, however, it encourages us to evaluate the success of peoples' tribunals by considering their ritual function and potential influence on their participants and onlookers.

In the Russell Tribunal, the charge against a "government" shifted the question of responsibility onto all citizens whom that government purports to represent. Sartre claimed that the Tribunal "worked for" the American people—but it also endeavored to "work on them." In claiming the actions of the government itself to be genocidal, the Tribunal sought to resist that government's practices and actions; by placing the responsibility for resisting state violence on citizens, Sartre's verdict hoped to catalyze active popular resistance and challenge the impunity of powerful states.

Legal scholars of peoples' tribunals emphasize how they promote international norms on the prohibition of the use of force and raise public awareness of mass violence. The various iterations of Russell tribunals have certainly contributed toward these aims, but peoples' tribunals also have the potential to do more than this. In promulgating a previously lost piece of documentary footage from the original Tribunal, Ali noted that its work "should speak to us strongly today as we watch the crimes being committed in Gaza."<sup>59</sup> In calling our attention to mass atrocities the tribunals impart skills and virtues in how "we watch" the commission of mass atrocities; they provide a critical forum and space for the cultivation of the sensibilities necessary to recognize atrocities as such and to take responsibility for them. In so doing, they ritualize, and thereby concretize, a practice of speaking in the language of international law. The notion that these rituals take place communally, as acts that posit shared responsibility for mass violence, also renders them political. The rituals of the tribunals enact the very collective—"humanity"—in whose name they seek to transform the world.

The fact that the Russell tribunals had inherently political purposes should not lead us to discount the significance of their adoption of the framework of international law. The significance of the tribunals' vision of justice instead encourages reconsideration of the purposes and possibilities inherent in *different* conceptions of international law. The tribunals remind us that the destiny of modern international criminal and human rights law remains open. Indeed, the practice of international law emerges through a contest between political forces that imagine its purpose in radically different ways. Through their ritual performance of collective accountability for mass atrocities the Russell tribunals persistently contest dominant visions of international law's purpose—and through their enduring practice new futures for international justice may yet emerge.

#### NOTES

1. Jacques Derrida, "For a Justice to Come: An Interview with Jacques Derrida," April 5, 2004, available online at <http://archive.indymedia.be/news/2004/04/83123.html>.

2. In response to such accusations, advocates of international criminal law make a wide array of counterarguments. Payam Akhavan's work, for example, seeks to justify international criminal law on the instrumentalist grounds that it provides deterrence against future acts of mass violence. For him, international criminal law functions as a kind of "global governmentality" designed to transform the subjectivity of potential war criminals into that of morally culpable political agents. See Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?," *American Journal of International Law* 95, no. 1 (January 2001): 7–31; and "Are International Criminal Tribunals a Disincentive to Peace? Reconciling Judicial Romanticism with Political Realism," *Human Rights Quarterly* 31, no. 3 (August 2009): 624–54.

3. For a more recent account that ties this critique specifically to international law, see China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Chicago: Haymarket Books, 2004).

4. See Samuel Moyn, *The Last Utopia* (Cambridge, Mass.: Harvard University Press, 2010).

5. What counts as "African" or "Western" in these debates itself proves highly fraught. Histories of postcolonial states' engagements with the drafting of international legal instruments

are themselves variegated and complex. While the simple presence of large delegations from post-colonial states may not in and of itself guard against the overextension of Western norms in the formulation of international law—after all, postcolonial delegates may themselves express “Western bias,” be trained in elite Western legal institutions, and have gained their diplomatic privilege and status precisely by conforming to certain sets of expectations and behaviors—it nonetheless complicates the story of the development of human rights and international criminal law in the postwar period as one of externally imposed Western political domination. For a more nuanced and historically adept account that works with Foucault’s notion of governmentality as an alternative framework to that of mere domination, see Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2007).

6. For a discussion of complementarity, see Mohamed M El Zeidy, “The Principle of Complementarity: A New Machinery to Implement International Criminal Law,” *Michigan Journal of International Law* 23, no. 4 (2001/2002): 869–975; Jann K. Kleffner, “The Impact of Complementarity on National Implementation of Substantive International Criminal Law,” *Journal of International Criminal Justice* 1, no. 1 (2003): 86–113; Bartram Brown, “Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals,” *Yale Journal of International Law* 23 (1998): 383.

7. For coverage, see Norimitsu Onishi, “South Africa Reverses Withdrawal from International Criminal Court,” *New York Times*, March 8, 2017. For an example of earlier political controversy surrounding the Court’s role in Uganda, see H. Abigail Moy, “International Criminal Court’s Arrest Warrants and Uganda’s Lord’s Resistance Army: Renewing the Debate over Amnesty and Complementarity,” *Harvard Human Rights Journal* 19 (Spring 2006): 267.

8. For a brief sampling of some legally focused discussions of these issues, see Richard J. Goldstone, “Peace Versus Justice,” *Nevada Law Journal* 6, no. 2 (Winter 2005/2006): 421; Eric Blumenson, “The Challenge of a Global Standard of Justice: Peace, Pluralism, and Punishment at the International Criminal Court,” *Columbia Journal of Transnational Law* 44 (2006): 801; Darryl Robinson, “Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court,” *European Journal of International Law* 14, no. 3 (2003): 481–505.

9. As a matter of common practice I will subsequently refer to the tribunal simply as the “Russell Tribunal,” although Sartre and Russell were, arguably, equal partners in developing the institution. There have been two major contemporary resuscitations of the Russell Tribunal model that are fascinating in their own right: the Iraq Tribunal, and the Russell Tribunal for Palestine. Although I do not address the work of either tribunal in depth here, they also provide alternative models for international criminal law, but, I suggest, are less radical and explicit in their effort to link their work to political practices.

10. Some notable exceptions include Andrew Byrnes and Gabrielle Simm, “People’s Tribunals, International Law and the Use of Force,” *UNSW Law Journal* 36, no. 2 (2013): 711–44, and the more comprehensive study by Arthur Jay Klinghoffer and Judith Apter Klinghoffer, *International Citizens’ Tribunals: Mobilizing Public Opinion to Advance Human Rights* (New York: Palgrave, 2002).

11. For an account of the West German Tribunal, see Hugh Mosley, “Third International Russell Tribunal on Civil Liberties in West Germany,” *New German Critique* 14 (Spring 1978): 178–84; for the World Forum on Iraq, see Richard Falk, “The World Speaks on Iraq,” *Guild Practitioner* 62, no. 2 (2005): 91–94; for an account of Basso’s work in establishing the Latin

American tribunals and permanent people's tribunal, see Francois Rigaux, "Lelio Basso ei Tribunali d'opinione," *Il Velcro*, no. 5–6 (September-December 1999): 509–18.

12. For more information about this fascinating campaign to hold both states and corporate entities responsible for failure to pay living wages, see <http://www.cleanclothes.org/livingwage/permanent-peoples-tribunal-on-living-wages>.

13. For an assessment of Sartre's legal analysis of the commission of genocide, see Lawrence J. LeBlanc, "The Intent to Destroy Groups in the Genocide Convention: The Proposed U.S. Understanding," *American Journal of International Law* 78, no. 2 (April 1984): 381–82.

14. For an account of the Tribunal's work toward these ends, see Harish C. Mehta, "North Vietnam's Informal Diplomacy with Bertrand Russell: Peace Activism and the International War Crimes Tribunal," *Peace and Change* 37, no. 1 (January 2012): 64–94.

15. A collection of the Tribunal's major discussions and findings were published by the Bertrand Russell Peace Foundation in 1968. I will mainly reference individual selections of text from this volume where available. See *Against the Crime of Silence: Proceedings of the Russell International War Crimes Tribunal, Stockholm, Copenhagen* (New York: O'Hare Books, 1968) (hereafter ACS, with document and page number, unless otherwise noted).

16. See the discussion in Ralph Schoenman's foreword to the work of the Tribunal, ACS, 6–7.

17. For a full list of participants, see the ACS for details of participants in session sections.

18. See Russell's letters to Lyndon B. Johnson, Roy Jenkins, and Harold Wilson in 1967, ACS, 19–22.

19. See Sartre's "Inaugural Statement," ACS, 43.

20. The significance of Sartre's leftism and anticolonial politics is best discussed in Page Arthur's excellent book *Unfinished Projects: Decolonization and the Philosophy of Jean-Paul Sartre* (London: Verso 2010), and Ben Etherington, "An Answer to the Question: What Is Decolonization? Franz Fanon's *Wretched of the Earth* and Jean-Paul Sartre's *Critique of Dialectical Reason*," *Modern Intellectual History* 13, no. 1 (April 2016): 151–78.

21. Russell, "Letter to the Tribunal," ACS, 39.

22. In her study of Sartre's postcolonial politics Arthur argues that he considered the Tribunal a "forum for putting political morality into practice" (Arthur, *Unfinished Projects*, 157). Arthur suggests that Sartre's work in the Tribunal tracked his own late philosophical development in the wake of the *Critique of Dialectical Reason*. Her study provides insight into the role of the Tribunal in Sartre's own moral and political projects and also offers an important contextualization of its work and reception in late 1960s France. My account here, however, departs from both her analysis and Sartre's own framework for appreciating the Tribunal's work. In shifting the theoretical frame of analysis to "ritual" and "ritualism" this essay hopes to extricate an assessment of the Tribunal's practice from the context of the "failure" of late 1960s revolutionary politics.

23. Sartre, "Inaugural Address," ACS, 44–45.

24. Tariq Ali, "Anatomy of a War: Video of a Forgotten Tribunal against U.S. Crimes in Vietnam," *Jacobin* (online), 2014, accessed September 23, 2017, <https://www.jacobinmag.com/2014/08/anatomy-of-a-war/>.

25. See Sartre's and Russell's opening statements to the Tribunal, ACS, 19–30, 29–45.

26. The phrasing is borrowed from Sartre's address, ACS, 44–45.

27. Arthur recounts the reception of the Tribunal and “On Genocide” in France, noting that they received little attention outside of a few publications by the communist workers’ journal *Humanité!*, Arthur, *Unfinished Projects*, 164–66; Mehta offers a more optimistic account and details the dissemination of the Tribunal’s publications in Europe and the United States (Mehta, “North Vietnam’s Informal Diplomacy,” 65–68).

28. For details on the relative success of the U.S. campaign to discredit the Tribunal on these grounds, see Mehta, “North Vietnam’s Informal Diplomacy,” 78–86.

29. Basso’s work has received very little attention in the English-speaking academy. For a record of documents associated with his work, see a list of available publications from the Basso Foundation, available at <http://www.fondazionebasso.it/2015/publicazioni/>.

30. For an account of Szasz’s work, see Ian Parker, “Russell Tribunal on Human Rights in Psychiatry & ‘Geist Gegen Genes,’ June 30 – July 2, 2001, Berlin,” *Psychology in Society* 27 (2001): 120–22.

31. For an account of the Iraq Tribunal, see Falk, “The World Speaks on Iraq.” For the record of the Palestine Tribunal, see its website, available at <http://www.russelltribunalonpalestine.com/>.

32. Russell Tribunal on Palestine, “About,” available at <http://www.russelltribunalonpalestine.com/en/about-rtop>.

33. See Talal Asad, “Towards a Genealogy of the Concept of Ritual,” in *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993).

34. *Ibid.*, 55.

35. *Ibid.*, 57.

36. *Ibid.*, 65–72.

37. *Ibid.*, 62.

38. *Ibid.*, 77.

39. Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington, D.C.: Carnegie Endowment for International Peace, 1944).

40. See Dan Stone, “The Historiography of Genocide: Beyond Uniqueness and Ethnic Competition,” *Rethinking History* 8, no. 1 (March 2004): 127–42.

41. For many scholars, jurists, and political activists the crime of genocide stands without equal. Identified as “the crime of crimes”—initially by Raphael Lemkin and later by the International Criminal Tribunal of Rwanda—genocide has, in both legal and political discourse, often achieved recognition as “the worst of all evils” (see International Criminal Tribunal for Rwanda cases *Kambanda*, Case No ICTR-97-23, para. 16, and *Serashugo*, Case No ICTR-98-39, para. 15). The international legal scholar William Schabas makes perhaps the most emphatic statement that genocide belongs “atop the hierarchy of evils” in international criminal law. William Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), 9. However, others have offered more critical perspectives on the “privileging” of genocide as a crime without peer and the political stakes associated with its application to certain conflicts. Mahmood Mamdani, for example, decried the “politics of naming” surrounding genocide. Comparing the Western reaction to violence in Darfur and the civil war between Sunni and Shi’a during the U.S. invasion and occupation of Iraq, he argued that “genocide has become a label to be stuck on your worst enemy, a perverse version of the Nobel Prize, part of a rhetorical arsenal that helps you vilify your adversaries while ensuring impunity for your allies” (Mahmood

Mamdani, "The Politics of Naming: Genocide, Civil War, Insurgency," *London Review of Books*, March 8, 2007). It seems much less controversial, however, to follow Eyal Weizman in suggesting that the term marks the contemporary threshold for the "unacceptable" or "intolerable." Eyal Weizman, "From Figure to Ground: A Conversation on the Politics of the Humanitarian Present," *Qui Parle* 22, no. 1 (Fall/Winter 2013): 167–92.

42. For an interesting discussion of this issue, see the historian Dirk Moses's work, for example, "Conceptual Blockages and Definitional Dilemmas in the 'Racial Century': Genocides of Indigenous Peoples and the Holocaust," *Patterns of Prejudice* 36, no. 4 (2002): 7–36.

43. As a historical matter, however, substantial ambiguity remains about exactly when genocide accountability had been framed as a "human rights" issue. A thorough assessment of the relationship between international criminal law and international human rights law exceeds the scope of this present analysis—nevertheless, it is worth noting that in the late 1960s Sartre and the Tribunal's other leading activists did not, for the most part, rely on the framework of human rights violations to indict the United States' conduct in Vietnam.

44. *Jean-Paul Sartre on Genocide* (Boston: Beacon Press, 1968).

45. Article II, UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948, the language of which is reproduced nearly verbatim in all statutes establishing and governing international criminal tribunals with jurisdiction over the crime of genocide.

46. Toward this end, Sartre traced a brief genealogy of the rise of total war. He summarized six key factors of this phenomenon: (1) the growth of bourgeois nationalism that results from industrial nations' competition for new markets; (2) the development and proliferation of weapons of mass destruction that make it difficult to maintain distinctions between civilians and combatants; (3) the new military objective of destroying factories and elements of economic life that are spatially integrated into urban environments and centers of population; (4) that the threat to economic life requires a mobilization of the entire population—workers, soldiers, peasants, women—in support of the nation; (5) the democratic façade of bourgeois constitutional orders requires the participation of "the masses" in politics, which in turn promotes forms of mass media manipulation and the dissemination of propaganda; (6) the integration of economies across the world and the forming of military alliances that imply that military conflicts are likely to expand to a global scale (Sartre, *On Genocide*, 59–61).

47. Sartre, *On Genocide*, 65–66.

48. *Ibid.*, 79.

49. See, for example, numerous debates in International Criminal Tribunal for Yugoslavia case law, including *Jelisić*, Appeals Chamber, Case No. IT-95-10, para. 49, and *Jelisić*, Trial Chamber, Case No. IT-95-10, para. 108.

50. Sartre, *On Genocide*, 69–70.

51. *Ibid.*, 71.

52. *Ibid.*, 73.

53. *Ibid.*, 76.

54. See Mehta, "North Vietnam's Informal Diplomacy," 67–68.

55. *Ibid.*, 65.

56. *Ibid.*, 70–77. Mehta also highlights a divergence in political philosophy between Sartre and Russell in-so-far as Russell did not believe class struggle the only viable framework for resistance to imperialism and colonialism.

57. Sartre, *On Genocide*, 83.

58. For a discussion of this problematic in the context of contemporary case of Serbian accountability for genocide in Srebrenica, see my short coauthored comment “Convicting Individuals Isn’t Enough Accountability for Mass Violations of International Law,” *Just Security* April 1, 2016, accessed September 23, 2017, available at <https://www.justsecurity.org/30364/accountability-mass-violations-intl-law/>.

59. Ali, “Anatomy of a War.”