

AS FACULTY MEMBERS AT STANFORD WE FEEL WE HAVE A DUTY TO PROTECT THE TRADITIONS OF FREEDOM IN THE ACADEMIC COMMUNITY, TO ENCOURAGE STUDY, RESEARCH AND THE INTERCHANGE OF IDEAS, AND TO PROMOTE THE DEDICATION OF THE UNIVERSITY TO PEACEFUL PURSITS WHICH WILL IMPROVE THE QUALITY OF LIFE FOR ALL PEOPLES ON THIS PLANET. AT THIS TIME WE FEEL IT IS IMPERATIVE THAT WE PROTECT OUR RIGHTS TO PURSUE THESE AIMS BY DEMANDING THAT THE ADVISORY BOARD REFUSE TO MAKE POLITICAL CONFORMITY A CONDITION OF EMPLOYMENT AT THE UNIVERSITY, FOR PROFESSORS OR ANYONE ELSE. BECAUSE YOU, EVEN MORE THAN WE, HAVE A STAKE IN THE FUTURE OF THE UNIVERSITY AND THE WORLD, WE ASK YOU TO JOIN WITH US IN THIS FIGHT, FIRST BY INFORMING YOURSELF FULLY ON THE ISSUES AND THEN BY MAKING YOUR VIEWS KNOWN.

The material presented here is part of a set of position papers on issues raised by the Franklin case, originally distributed last spring by a group of faculty members.

- I. STANFORD AND THE NUREMBERG PRINCIPLES
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STANFORD AND THE NUREMBERG PRINCIPLES

1. PRINCIPLES OF NUREMBERG

In 1945, at the initiative of the United States, the General Assembly of the United Nations affirmed unanimously "the principles of international law recognized by the Charter of the Nuremberg Tribunal." In 1950, the International Law Commission formulated the Principles of Nuremberg, which offer the most complete set of guidelines presently available on the relationship between personal responsibility and war crimes.

PRINCIPLE I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

PRINCIPLE II

The fact the internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

PRINCIPLE III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

PRINCIPLE IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible for him.

PRINCIPLE V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

PRINCIPLE VI

The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

c. Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.

PRINCIPLE VII

Complicity in the commission of a crime against humanity as set forth in Principle VI is a crime under international law.

"If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would be unwilling to have invoked against us."--Justice Robert Jackson, Chief U.S. Prosecutor at Nuremberg.

It is now indisputable that crimes of war as defined by the Nuremberg Principles have been committed by the United States in significant number and over a long time period in Vietnam. In summarizing the published evidence to this effect in the New York Times March 28, 1971, Neil Sheehan states: "If you credit as factual a fraction of the information assembled here about what happened in Vietnam, and if you apply the laws of war to American conduct there, then the leaders of the United States for the past six years at least, including the incumbent President, Richard Milhous Nixon, may well be guilty of war crimes... The more perspective we gain on our behaviour, the uglier our conduct appears. At first it had seemed unfortunate and sad; we were caught in the quicksand of Indochina. Then our conduct had appeared stupid and brutal, the quagmire was of our own making, the Vietnamese were the victims and we were the executioners. Now we are finding out that we may have taken life, not merely as cruel and stubborn warriors, but as criminals... Looking back one realizes that the war crimes issue was always present. Our vision was so narrowly focused on the unfolding details of the war that we lacked perspective to see it, or when the problem was held up to us, we paid no heed. This lesson becomes clear in reading the proceedings of the Russell Tribunal now published in "Against the Crime of Silence." The proceedings were widely dismissed in 1967 as a combination of kookery and leftist propaganda. They should not have been. Although the proceedings were one-sided, the perspective was there. Crimes have occurred in each of the categories listed under Section B of Principle VI. In some instances the magnitude of the crime may substantially exceed those for which convictions were secured in Nuremberg and Tokyo war crimes trials.

The question is no longer the existence of war crimes. It is the establishment of responsibility for them. Responsibility goes beyond the military and governmental officials who initiate and execute criminal policy. Though not clearly established by precedent, this extension of responsibility to others is incorporated in Principle VII under the heading of complicity. For example, the German judges were tried at Nuremberg for enforcing national laws which were in violation of the Nuremberg Principles. This is an important example for it establishes that that which is legal by an internal or national judicial system if subordinate to the international principles of Nuremberg. It follows that people acting in opposition to internal law, but in accordance with the international principles are not acting illegally, and those who charge and try them for such action are acting illegally.

On the question of civilian responsibility, Richard Falk, Professor of Political Science at Princeton, states: "The idea of prosecuting war criminals involves using international law as a sword against violators in the military and civilian hierarchy of government. But the Nuremberg Principles imply broader human responsibility to oppose an illegal war and illegal methods of war. There is nothing to suggest that the ordinary citizen, whether within or outside the armed services, is potentially guilty of a war crime merely as a consequence of such a status. But there are grounds to maintain that anyone who believes or has reason to believe that a war is being waged in violation of minimum canons of law and morality has an obligation of conscience to resist participation in and support of that war effort by every means at his disposal. In that respect, the Nuremberg Principles provide guidelines

for citizen's conscience and a shield that can be used in the domestic legal system to interpose obligations under international law between the government and members of the society." Invoking this citizens' responsibility, President Roosevelt addressed the following appeal to the German people during World War II: "Hitler is committing these crimes against humanity in the name of the German people. I ask every German and every man everywhere under Nazi domination to show the world that he does not share these insane criminal desires...I ask him also to keep watch, and to record the evidence that will one day be used to convict the guilty."

Stanford University has been involved in the Vietnam War in many ways over many years. It has done research funded by the Department of Defense which has been directly applicable to the war in Vietnam, it has invested in war industry from which it has drawn profit, it has leased land to war industry from which it has drawn income, it has trained men for the military and for war industry and has provided special refresher courses for the latter, it has established a system whereby faculty income is in part dependent upon consultation for war industry, and many of its Trustees are owners and direct beneficiaries of war industry. In view of the advanced technology employed in the Vietnam war, and the dependence upon university-based research to develop such technology, the interlocking relationships between universities and the war can be said to be essential for the prosecution of the war. Howsoever the ultimate decision in individual cases may evolve, it is clear that a strong case exists for university complicity in the war. In view of the ready availability of information about War Crimes over the past few years, and of the clear moral choice available to the university to dissociate itself from relationship to the war (Nuremberg Principle IV), a case also exists for university complicity in war crimes.

The injunction against a university involving itself in war crimes, however indirectly, emanates not from international law alone. As an institution whose purpose is to analyze, extend and transmit the finest of human traditions and knowledge, the university violates its most fundamental purpose when it aligns itself with inhumane policies and actions. Such a relationship is no less abhorrent because it is indirect or covert. It is striking how accurately aspects of this and other campuses are characterized by the following description of the relationships of science to government in Nazi Germany by Dr. Alexander Mitscherlich, Head of the German Medical Commission to the United States Military Tribunal at Nuremberg. "Science and government alike have proliferated to a degree too vast to be encompassed. During the war years especially, their interests were so closely interwoven that often the individual was no longer able to check the effects of his work. What had been the fruits of scientific research but yesterday, suddenly turned into a weapon of war, an adjunct in the killing of men, found on Weltanschauung. Twilight pervaded the space in which all of us lived. Our guilt--the guilt of all of us--arises in consequence of our failure to find the strength to air out this murky atmosphere. Now we must make every effort to help one another to create a common realm of life in which the simplest stirrings of justice are no longer threatened with death, in which our work is no longer wrested from unresisting hands to service the powers of destruction, of contempt for the dignity of man... Only the secret kinship between the practices of science and politics can explain why throughout this trial the names of high-ranking men of science were mentioned--men who perhaps themselves committed no culpable act but who nevertheless took an objective interest in all the things that were to become the cruel destiny of defenseless men. A profound inhumanity has long been presaged. This is the alchemy of the modern age, the transmogrification of subject into object, or man into a thing against which the destructive urge may wreak its fury without restraint...To make amends is scarcely within our human powers. But to overcome error remains the worthiest task, for weak and strong alike. It has been our purpose to help those who do not shrink

from the sweat and shame it takes to learn from history, in the broad sense and the narrow...To dispare our guilt cannot be our concern, for we shall enjoy respect only if we have the strength to survive in the full knowledge of it." Can we at Stanford say any less?

We suggest that the following are incumbent on the University Administration:

1. Recognize, at the least, that there is an ambiguity in the relationship between freedom of speech which is invoked on behalf of Ambassador Lodge and the Principles of Nuremberg which are invoked on behalf of the disruptors of the Ambassador's speech, and withdraw the first charge against Professor Franklin.
2. Recognize the precedent established at Nuremberg whereby those who enforced internal law at variance with the Nuremberg Principles were subsequently charged and convicted of violation of those principles. This raises significant questions concerning University actions against opponents of the war.
3. Establish a Commission of Inquiry to determine the extent of and the reasons for the involvement of the university with the military and with war crimes in Vietnam.
4. Invoke discussion amongst different constituencies of the university concerning the report of the Commission of Inquiry and possible university responses to it. These constituency discussions will be a prelude to
5. The convening of a university-wide Assembly to draft and adopt policies and procedures which will prevent this university from becoming implicated in crimes of war.

ASPECTS OF COMPLICITY OF STANFORD UNIVERSITY IN THE WAR

Recognition of the fact that the warfare in Southeast Asia violates our laws and traditions, and has implicated this nation in crimes against humanity, is forcing a re-evaluation of the role of American universities in our society. We have held that scholars should be devoted to the pursuit and transmission of valid human knowledge, and that whatever our individual commitments, our academic institutions must not support more limited goals. Yet careful examination reveals that universities now often further narrow military and industrial policies and provide substantial aid to organizations whose goals are at variance with these traditional academic objectives.

Our entanglement in these questionable activities is the result of long-term trends. For most of our older members, the fascist threat to much that we held dear was so clear that we made our intellectual and institutional resources available to national governments fighting in the common cause. After World War II, scientists and engineers who had made that choice began to look to the federal government for research support on a scale to which academic institutions could not aspire. Under the pressures of the cold war this support took on a military aspect, leading in many institutions, and particularly at Stanford, to direct university commitment to classified military research. Fields of research which strengthened the evolving military technology, and which fed trained personnel into the expanding war industries and government bureaus, burgeoned here and elsewhere. The hypertrophy of such fields was guided primarily by the availability of funds, not by university policy. This pattern expanded into non-technological fields deemed useful to the government: the start of full-scale warfare in Vietnam found even traditional humanistic disciplines such as history drawing support for their graduate students from sources justified by military need (National Defense Education Act).

The gradual development of the military agencies of the federal government as a primary source of university funding rarely was opposed. The military tended to be not only more liberal with funds but also less concerned with picayune administrative detail than civilian agencies; overt political interference rarely surfaced as an issue. Consequently, when the government started a full-scale war without even asking Congress for the constitutionally required declaration, it was doubly difficult to recognize that the universities would have to pay the price for the easy money they had been uncritically accepting for many years. Many professors still sincerely believed that the universities were neutral territories for literary and humanistic studies, pure research, and professional training, free to follow the truth wherever it might lead, and uninvolved in the partisan conflicts of the day.

The process of uncovering and accepting the fact of university complicity in the war was a painful one. Both the administration and established faculty were reluctant to face the situation. The burden of forcing recognition of complicity into the consciousness of the community therefore fell on the shoulders of activist students and junior faculty. The methods employed were untraditional, but we should ask whether any other approach available at that moment would have shaken us from our lethargy. By now we have heard from counsel who participated in the trials at Nuremberg and Tokyo that our own leaders, past and present, could be convicted and executed if brought to trial on the basis of extant law and precedent. Even with this fact staring us in the face, some of our community are reluctant to press for disengagement of this university from the war.

The steps the university has taken to date toward disengagement have hardly been spontaneous. A small sit-in and the revelation that the university was harboring (in fact concealing) a Central Intelligence Agency project started the

Academic Council thinking about the issue of research policy. Years later, concerned attention was focused, by action, on the ongoing military role played by the Stanford Research Institute in Southeast Asia, and the lack of university control over the activities of that Institute. The issue was brought home by the peaceful occupation of a classified laboratory on campus (AEL). Unclassified documents from that laboratory made it clear that the university had made no effort to reveal (some would claim, had made an effort to conceal) the direct military implications of research in some of our academic departments. The limited response was to change the policy on campus research, and to abandon any hope of controlling SRI by severing it from the university. Although the faculty voted a no-credit ROTC policy during that period of heightened consciousness, the administration came back from Washington with a contract which implemented the position the faculty had voted down. The faculty accepted that reversal; it took a militant anti-ROTC movement and the reaction to the invasion of Cambodia to restart the phasing out of ROTC.

These actions, and the verbal positions taken at the time of Cambodia, hardly amount to a clear rejection of complicity in the war by this university. Indeed, we are so involved that it is a real question whether we could continue to survive in anything like our present configuration if we honestly tried to end our connections with the continuation of the war, and with the institutions which may lead to similar wars even if this one "winds" down and out of public consciousness. Fear that, if we actually disengage, we will lose so much federal and alumni support as to become non-viable as an institution may lie behind many rationalizations which are current, and help explain the substantial number among us who are willing to accept outright political suppression of our most vocal critics, especially Professor Franklin, in the name of "saving the university." But we would betray still further our academic heritage if we did not face this issue openly. The following questions about university policy are intended to show how deep the issue goes.

(1) All Department of Defense contracts last year were legally required to be directly relevant to each agency's military mission. Is there any way we can accept DOD support here without either accepting that requirement or being intellectually dishonest?

(2) Although we are supposed to have only trivial involvement in classified research, we maintain a facility clearance, and over 200 people still hold security clearance directly through Stanford University. Why?

(3) What controls, if any, do we have to insure that unclassified work subcontracted here is not playing a significant role in military programs elsewhere? Specifically, why did work excluded by policy change here get recontracted to SRI, and "acceptable" portions subcontracted back, with faculty approval? Why should the university allow professorial status here to provide a basis for military and government consulting?

(4) Do the recruitment of entering students into advanced ROTC courses, and the new graduate ROTC program, violate either the letter or the spirit of last spring's faculty action?

(5) What controls, if any, do we have to exclude military work from our Computation Center? We know it has already been used this year to plan amphibious landings in North Vietnam. Is there any way to learn when the next such misuse of our facilities takes place?

(6) Should the university own stock or other investments which draw profit from the war?

(7) Should we continue to rent our land to firms engaged in war work?

(8) Should we allow the military and war industries to recruit here, drawing people into positions which we now know may force them to commit war crimes or crimes against humanity?

(9) Can we find a way to provide adequate rebuttal to spokesman for the war invited here for ceremonial occasions, while still giving them a chance to express their opinions?

(10) Can we persuade the administration that one primary task at this point in history is to disengage the university from complicity in the war, and that political suppression of vocal opponents of the war must be abandoned?

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All of us who have signed this statement, and the others who believe as we do, would welcome the opportunity to discuss these views with you, either privately or in group discussions. To this end, if you can help to arrange a discussion group in your dorm, living group, organization, department, etc., or to arrange a public meeting or debate on the Franklin case or the future directions of the University, please call Mrs. Tamara Bonilla, 326-5549, between 4 and 8 p.m.