

The Guilt of My Lai

Dick Nolan

The more details which are disclosed concerning the My Lai massacre the more it appears that justice in this tragedy is, as a practical matter, impossible.

The basic case is that a massacre of civilians did indeed take place. There is no longer the slightest doubt of this. There is no longer the slightest doubt that the massacre occurred as a direct result of American Army policy in the Indochina war.

When a Congressional subcommittee largely conservative in makeup investigates My Lai, and adds its findings to the weight of the testimony thus far in the record, then the My Lai incident can no longer be wished away.

But who is guilty?

If we follow precedent in both international law and in the regulations governing our own armed services, then it is clear that guilt extends all the way from the line riflemen into the far reaches of the Pentagon and perhaps beyond.

This is not merely theory. These are the rules which we ourselves promulgated at the close of World War II.

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IF THESE RULES are to be honored now then it is obvious that a handful of low ranking servicemen cannot be tried and punished, not unless the process is extended to include the entire chain of command.

It happens that I personally witnessed the beginning of this line of reasoning when in 1945, in Manila, an Army court martial sentenced General Tomoyuki Yamashita to death by hanging.

Even then, as a young and not especially thoughtful Army captain, I was appalled by the Yamashita proceedings.

Yamashita, the "Tiger of Malaya," had come to grief in the Philippines. His forces had disintegrated. He himself was nothing more than a fugitive in the mountains by the time we dropped the first atomic bomb.

Yet Yamashita was on trial in Manila for massacres committed upon civilians by forces theoretically under his command. I say "theoretically" because at the time the massacres occurred Yamashita was no longer even in effective communication with his troops.

Nevertheless Yamashita was brought to trial on the charge that his troops were out of control, and that he, somehow, should have prevented the killings that occurred. In the finale of an especially brutal Pacific War, this seemed to me to be more than unrealistic.

I thought then and I think now that the American command was wreaking vengeance upon the Japanese general who had

humiliated the British at Singapore. I discounted the widely proclaimed nobility content in our action, and regretfully attributed it to spite.

Still, in Manila in 1945, a rather astonishing precedent was set. It was stated as a matter of law, upheld by our own Supreme Court, that a military commander was liable to capital punishment for deeds committed by troops under his command, even when he was out of communication with those troops, and had no personal knowledge of the acts committed.

In the July 18 issue of Saturday Review James B. Reston, Jr., son of the New York Times columnist, explores some of the significance of the Yamashita case as it bears on our legal problems in dealing with the My Lai massacre.

The younger Reston indulges in a great deal of lacework in attempting to pick out the pattern of American policy as set forth at Nuremberg, Manila and Tokyo.

But there is not all that much doubt about what we intended, at least in 1945, in the flush of victory. We were then the good guys, punishing the bad guys. If no rules existed to permit this, then we were quite prepared to improvise them on the spot.

It is rather more encouraging than not that the Army high command is showing signs of confusion about where to draw the line of guilt. Yamashita is not quite forgotten.

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YET THE FACT remains that the low ranking field soldiers are the ones who are charged and facing serious consequences. So far as the tragedy has affected the upper echelons of the command it has resulted only in transfers and reprimands.

Since it is obviously not possible, as a practical matter, to hang our own generals, it seems evident that eventually it will prove impossible to punish soldiers of lower rank. Unless justice is evenly applied it is not justice at all.

Long ago the philosophers of the German General Staff concluded very practically that warfare could not be conducted by rules and regulations or niceties. They were, of course, coldly correct.

The Nuremberg precedent, viewed all these years later, has to be seen as a device to be employed by victors. From this it follows that the Nuremberg precedent could only practically be enforced by our enemy.

There simply is no justice to be found. We are left with the expedient of sweeping the whole mess under the rug. Realistically, the most we can expect from the entire sorry affair is some kind of national resolve that it won't happen again.