

How the Fighting Man Learns to Obey

My Lai: A Question

By Telford Taylor

OPINION or "reaction" samplings taken shortly after the first news of the My Lai (more correctly, Song My) incidents revealed that nearly two-thirds of those interviewed denied feeling any shock. Some observers found this lack of public indignation or shame, as well as some of the comments recorded by the samplers, more upsetting than the killings themselves.

There was a widespread disposition to discount the My Lai stories on the ground that "incidents such as this are bound to happen in a war."

A
Personal
View

Those who resorted to this "sloughing-off" justification are, nonetheless, correct in assuming that unjustifiable killings of prisoners and civilians on a smaller scale are bound to and indeed do happen in a war, and what they overlook is that, in the U.S. Army, when detected they generally have not gone unpunished. During World War II many American soldiers were court-martialed and severely punished for killing or assaulting civilians in violation of local law or the laws of war.

Nevertheless, there is one respect in which the public reaction, insofar as those interviewed were slow to de-

nounce the troops who did the shooting at My Lai, is sound. The thought is rarely articulated, and yet may well be lurking in the back of the mind, that if there is criminal guilt in this episode, it does not lie most heavily on the shoulders of those who, at least up to now, are being brought to trial.

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CONSIDER the issues that are likely to confront a court-martial in the My Lai cases, bearing in mind that the defendants are represented by counsel, several of whom are not only able but also very prominent in legal circles. In its strictest form, "superior orders" as a defense depends on whether or not the defendant knew the order to be lawful.

Of course, it will first have to be determined what orders were in fact given to the troops entering My Lai but let us assume that the soldiers could reasonably have thought that they were being told or encouraged to kill the inhabitants. What did "unlawful" mean to them?

The very question leads to another very basic one: what, for present purposes, is an "order"? Everyone who has done military service knows that there are occasions when the rulebook does not fit the circumstances; no one is expected to follow it, and may even get into serious trouble if he does.

The ultimate question of "guilt" in the trials of the

The Author

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My Lai troops is how far what they did departed from general American military practice in Vietnam as they had witnessed it.

This may not be germane to the question of legality under the Geneva Conventions or the Articles of War. But the defense of superior orders has its true base not in technicality but in equity, and is properly invoked by the low-ranking soldier in mitigation of punishment for conduct, even though lawful, that is not too far removed from the behavior authorized or encouraged by his superiors in the force in which he serves.

Now, the searching feature of the situation is that this defense cannot be put forward or tested without, in substance, putting American military practice in Vietnam on trial. Who, other than the defendants and their counsel, is prepared to do that?

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DESPITE the careful wording of the standing orders about using fire power with care in populated areas, virtually all observers in Vietnam report death, destruction and troop attitudes that indicate that the restraint called for by the orders is not exercised.

If these observers are not to be trusted, there remains

of Orders

ly based on evidence given in hearings conducted by the Senate Judiciary Committee. The American Friends Service Committee estimates that some 150,000 civilians have been killed annually by combat operations.

The Saigon government reported 26,000 civilians killed and 74,000 wounded during 1967 in regions it controlled. To be sure, some of these were killed by the Viet Cong, but the disparity of fire power between the two sides and American monopoly in the air make it a certainty that we are responsible for the greater part of the civilian casualties.

During World War II, the German army in occupied Europe faced conditions that, in some countries, were not totally dissimilar to those prevailing in Vietnam, and had a like mission of "pacification."

There, too, villages were destroyed and the inhabitants killed, and after the war a number of field marshals and generals implicated in the actions were brought to trial at Nuremberg in the so-called "High Command Case." In summing up at the close of the trial, the prosecution dealt with this same issue of comparative responsibility between the troops and their leaders:

"Somewhere, there is unmitigated responsibility for these atrocities. Is it to be borne by the troops? Is it to be borne primarily by the hundreds of subordinates who played a minor role in this pattern of crime? We think it is clear that that is not where the deepest responsibility lies.

"Men in the mass, particularly when organized and disciplined in armies, must be expected to yield to prestige, authority, the power of example, and soldiers are bound to be powerfully influenced by the examples set by their commanders. That is why... the only way in which the behavior of the German

troops in the recent war can be made comprehensible as the behavior of human beings is by a full exposure of the criminal doctrines and orders which were pressed on them from above by these defendants and others.

"Who could the German army look, to other than Field Marshal Wilhelm von Leeb and the senior field marshals, to safeguard its standards of conduct and prevent their disintegration? If a decision is to be rendered here which may perhaps help to prevent the repetition of such events, it is important above all else that responsibility be fixed where it truly belongs."

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THE TROUBLE now is that the uncovering of My Lai is not being carried nearly far enough... so far as is publicly known, the Army has undertaken no general investigation of the killings themselves to determine the level of responsibility for the condition that gave rise to My Lai or the many similar though smaller incidents.

How much the President and his close advisers in the White House, Pentagon and Foggy Bottom knew about the volume and cause of civilian casualties in Vietnam, and the physical devastation of the countryside, is speculative.

Something was known, for the late John McNaughton (then assistant Secretary of Defense) returned from the White House one day in 1967 with the message that "We seem to be proceeding on the assumption that the way to eradicate the Viet Cong is to destroy all the village structures, defoliate all the jungles, and then cover the entire surface of South Vietnam with asphalt."

Whatever the limits and standards of culpability for civilians in Washington, the proximity and immediate authority of the military com-

the record of what has happened. Perhaps the Department of Defense has accurate totals of South Vietnamese civilians killed, maimed and made homeless by the war, but probably much of this misery has remained untabulated and is known only to the victims.

Early in 1968, Senator Robert Kennedy stated that our population transfers, village destruction and defoliation had created 2 million refugees in a country of 16 million people.

A year later Professor Gabriel Kolko of Buffalo put the figure of 3,153,000, apparent-

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manders ties the burden of responsibility much more tightly to their shoulders.

The divisional and other commands in Quang Ngai province, within which My Lai is situated and where civilian casualties and physical destruction have been especially heavy, were subordinated to the Third Marine Amphibious Force, commanded by Lieutenant General Robert E. Cushman, who in turn was directly responsible to the top Army headquarters in Vietnam, the Military Assistance Command Vietnam (MACV).

At the time of My Lai, General William Westmoreland headed MACV, with General Creighton Abrams as his deputy, and Lieutenant General William B. Rossen in charge of a headquarters of MACV in northern South Vietnam.

From MACV, the chain of command runs through the Commander-in-Chief Pacific (Admiral Ulysses Grant Sharp Jr.) to the Chiefs of Staff in Washington.

It is on these officers that command responsibility for the conduct of operations has lain.

From General Westmoreland down they were more or less constantly in Vietnam,

and splendidly equipped with helicopters and other aircraft which gave them a degree of mobility unprecedented in earlier wars and consequently endowed them with every opportunity to keep the course of fighting and its consequences under close and constant observation.

Communications were generally rapid and efficient so that the flow of information and orders was unimpeded.

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THESE circumstances are in sharp contrast to those that confronted General Tomoyuki Yamashita in 1944 and 1945, with his forces reeling back in disarray before the oncoming American military powerhouse.

For failure to control his troops so as to prevent the atrocities they committed, Brigadier Generals Egbert F. Bullene and Morris Handwerk and Major Generals James A. Lester, Leo Donovan and Russel B. Reynolds found him guilty of violating the laws of war and sentenced him to death by hanging.

The sentence was first confirmed by Lieutenant General William D. Styer, and then by General Douglas MacArthur, as commander-in-chief, U.S. Army Forces in the Pacific. In his statement on the confirmation, General Mac-

Arthur said of Yamashita:

"This officer, of proven field merit, entrusted with high command involving authority adequate to responsibility, has failed this irrevocable standard; has failed his duty to his troops, to his country, to his enemy, to mankind; has failed utterly his soldier faith.

"The transgressions resulting therefrom as revealed by the trial are a blot upon the military profession, a stain upon civilization and constitute a memory of shame and dishonor that can never be forgotten . . .

"I approve the findings and sentence of the commission and direct the commanding general, Army Forces in the Western Pacific, to execute the judgment upon the defendant, stripped of uniform, decorations and other appurtenances signifying membership with the military profession."

Whether or not individuals are held to criminal account is perhaps not the most important question posed by the Vietnam war today. But the My Lai courts-martial are shaping the question for us, and they cannot be fairly determined without full inquiry into the higher responsibilities.

Little as the leaders of the Army seem to realize it, this is the only road to the Army's salvation, for its moral health will not be recovered until its leaders are willing to scrutinize their behavior by the same standards that their revered predecessors applied to Yamashita 25 years ago.