

Calley: More Than Just a Scapegoat

News Analysis

By Morton Kondracke

WASHINGTON — (CST) — In Congress, in telegrams to the President, in street conversation, the word arose repeatedly last week, from Brinkley to Dellums, left and right.

The word: "Scapegoat."

So often was the word used, in reference to the My Lai murder conviction of Lt. William L. Calley Jr., that it seemed a unity of outrage had taken hold in this divided land.

Close reading of the "scapegoat" charges, however, reveals that the nation is as divided as ever.

One line of thought led to the conclusion that Calley should be freed, given a medal and invited to address a joint session of Congress.

Another felt that Calley should be freed, but that former President Johnson, President Nixon, their civilian war advisers and their military commanders should be tried for war crimes.

Monumental

Yet a third analysis concluded that Calley might be guilty but that the issues arising out of My Lai are so monumental that they cry out for a full-scale Congressional investigation or appointment of a presidential commission.

The latter solution attracted a significant portion of the nation's editorial writers, but only 21 Congressmen out of 456 are backing a resolution calling for an investigation, and even the 21 are divided on who should conduct it and how. No such resolution has been proposed in the Senate.

Among the confusion about what should be done, however, it seems possible to isolate four points of view that leads citizens and officials to believe Calley was unjustly convicted.

The first holds that "war is hell and no rules apply" — or, as Rep. Jack Brinkley (D-Ga.) said in the House: "Of course, none of us condones the promiscuous killing of women and children, or even of men, but war is war — and so, thus, certain things must be accepted."

This point of view, common among Americans when word of the My Lai massacre first surfaced, flies in the

face of a long tradition — as old as the ancient strictures against poisoning wells — that, bad as war is, its effects should be mitigated by rules.

Outrage

It also mocks the sense of outrage that Americans have felt when other nations committed atrocities — the Soviets at the Katyn Forest, the Nazis at Lidice and Malmedy, the Vietnamese Communists at Hue.

The United States is party to several treaties and conventions on warfare, and it led the way, after World War II, in punishing German and Japanese war criminals.

Associate Justice Robert H. Jackson, Chief U.S. prosecutor at the war-crime trials in Nuernberg, observed: "If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or whether 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."

A second "scapegoat" source last week was the belief that "what Calley did was right."

Or, as stated by Rep. Joe Waggoner, of Plain Dealing, La., Calley was convicted "in the death of 22 of the Viet Cong enemy which has, so far, murdered 40,000 American servicemen and wounded hundreds of thousands of others."

This analysis seems to fly in the face of the facts of what happened at My Lai and the law of land warfare.

Calley and others have asserted that it is impossible, in South Vietnam, to distinguish the enemy from the civilian population, that mines and grenades can be detonated by children; yet the facts seem clear from Calley's trial that, at the time of the massacre, the victims staged no resistance.

The Geneva Convention of 1949, as cited in Army Field

Manual 27-10, "The Law of Land Warfare," prescribes that "persons taking no part in hostilities, including members of the armed forces who have laid down their arms . . . shall in all circumstances be treated humanely . . ."

Orders?

A third point of view holds that Calley was "only obeying orders."

Whether Calley received direct orders to "kill every living thing" at My Lai is still in dispute. It may be settled when Calley's commanding officer, Capt. Ernest Medina, comes to trial.

If the order was given, is Calley excused from guilt?

The current Army Field Manual prescribes that "the fact that the law of war has been violated pursuant to an order . . . does not deprive the act . . . of its character of a war crime . . . unless (the accused) did not know and could not reasonably have been expected to know that the act ordered was unlawful."

Questions remain whether Calley knew the laws of war and whether the army adequately taught it to young officers before 1968. The questions may persist forever.

Yet the six members of the jury, all combat veterans, five with Vietnam service, unanimously concluded that the killing of unarmed women and children was so clearly unlawful that orders to that effect would be void.

Body Counts

The fourth point of view leading to a scapegoat charge is certainly the most difficult. It is: "Others have done the same kind of thing; why is Calley singled out?"

According to more than 30 books alleging "war crimes" in Vietnam and the testimony of more than 200 veterans U.S. troops have repeatedly bombed and shelled civilians without restraint — indeed, allegedly with encouragement — from superior military commanders.

In view of this, does it not seem unjust to hand a life sentence to one obscure and not very bright lieutenant? Is he not a "scapegoat"?

The questions lead to two other questions:

● If many persons have committed war crimes, does that absolve Calley?

● If Calley is punished, should not the others be punished also?

The fact that others have killed civilians would not seem to make Calley innocent. He did, all evidence shows, go from place to place at My Lai "wasting" women and babies and ordering his men to do so, and that is against the laws of war.

Yet elemental justice seems to demand that, if Calley is punished for acts committed by others also, others should be punished. The question is: Who? Everyone who has violated the laws of war?

That would involve very many persons.

According to the testimony of Vietnam veterans, thousands or tens of thousands of U.S. soldiers may have violated the same law under which Calley was convicted. Other thousands may be guilty of mutilating bodies, taking reprisals against villages and their residents, mistreating prisoners and destroying hospitals.

A commanding officer who orders war crimes to be committed, of course, can be punished under the laws of war.

That field manual also holds him responsible "if he has actual knowledge, or should have knowledge . . . that troops subject to his control are about to commit or have committed a war crime," and does not stop them or punish them.

After World War II, the United States executed the Japanese commander in the Philippines, Gen. Tomoyuki Yamashita, under an even more stringent rule. Yamashita was sentenced, not because he ordered his men to commit atrocities or even because he knew of them, but because he should have taken precautions to prevent them.

Under these rules, Telford

Taylor has said, responsibility for war crimes might extend as high as Gen. William Westmoreland, former commander in Vietnam and now Army Chief of Staff, and Gen. Creighton Abrams, the present commander.

The Yamashita rule would seem to include Maj. Gen. Samuel Koster, commander of the division in which Calley served. But Koster was never accused of anything more serious than covering up the massacre, and he has been freed of those charges.

And what of civilians?

After World War II, punishment for war crimes extended to nonmilitary cabinet ministers, and certainly would have extended higher if Hitler had not killed himself.

Presidents Johnson and Nixon have not been Hitlerian, to be sure, but the law holds that "every violation of the laws of war is a war crime," and they have dictated the tactics for the war in Vietnam.

The United States is not going to try its Presidents for war crimes, or its cabinet officers or Congresswomen who supported the war, and it is not going to try tens of thousands of Vietnam veterans.

So, what is to be done? The quandary has led the 21 Congressmen to call for a congressional inquiry into our military policy and the "responsibility" of civilian and military leaders for war crimes.

Yet none of the Congressmen, no matter how hostile to the war or the military, is suggesting high-level war crimes trials.

If none are held, Calley, Medina and the other My Lai defendants will bear the burden alone. They may all be guilty, but if they alone are held responsible, they may also be "scapegoats."