

Letters to the Editor

Laws of War

To the Editor:

The dilemma posed by the Mylai trials raises embarrassing questions that can best be met by a frank admission of past error.

Prof. Telford Taylor, former chief United States prosecutor at Nuremberg, is correct when he states (news article, Jan. 9) that Gen. William C. Westmoreland, the Army Chief of Staff, "might be convicted as a war criminal" under the rule of the case of General Yamashita — assuming, indeed, that atrocities did occur at Mylai.

Professor Taylor's only error is in the use of "might be." Under the Yamashita rule as set down by the United States Supreme Court, Westmoreland would be convicted.

Likewise with the statement of the general counsel of the Army who is quoted as saying that the Yamashita precedent does not apply because the Army believed that Westmoreland had taken "reasonable precautions" to prevent the alleged atrocities. Under the rule of the Yamashita case this is irrelevant.

The fact that General Yamashita had no knowledge and indeed could not have known of the atrocities in the Philippines was held to be immaterial, and the effectiveness of his precautionary advices was decreed to be foreign to the issue in his case.

The United States Supreme Court decided that the protection of civilians in a war zone rests on the rule that an armed force "must be commanded by a person responsible for his subordinates."

So simple and pointed was this finding of guilt based on the theory of "command responsibility" that the late Justice Frank Murphy wrote in his Yamashita dissent: "No one in a position of command in an Army from sergeant to general can escape those implications. Indeed, the fate of some



Detail From Goya's "Disasters of War."

future President of the United States and his Chiefs of Staff and military advisers may well have been sealed by this decision."

Shall we merely say "amen" to Justice Murphy's prophecy? Or shall we admit that we are horrified at the thought of trying General Westmoreland and former President Johnson for these capital crimes?

The concept of punishing a man, not for anything he has done but because of a position he has held, is abhorrent. It smacks of totalitarian tyranny rather than Anglo-Saxon law. The case of General Yamashita was a lone and disgraceful departure from this most important touchstone of human freedom.

The answer to the dilemma is not a cynical decree that we have one law for the vanquished and another for ourselves. Rather it is frankly to face the fact that the Yamashita case and also some other of the post-World War II war crimes trials were exercises in vengeance rather than law. The case of Yamashita was not only a grievous

miscarriage of justice—it made bad law.

Inherent in the World War II convictions for "violation of the laws of war" is the assumption that there are good ways to kill and bad ways to kill; that it is criminal to shoot unarmed civilians at point-blank range but legal to bomb them from the skies; indeed, that the slaughter of babies is acceptable if we are sufficiently revolted by the policies of the political leaders of the parents of those babies.

Even belated reversal of such hypocrisy would go far to solve our present dilemma. But more important, it would constitute a necessary step toward the understanding that we cannot progress in our long struggle to become civilized if we persist in attempting to legalize methods of conducting an essentially criminal pastime.

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