

Yamashita Precedent

By A. FRANK REEL

Twenty-five years ago the first American war-crimes trial resulted in the hanging of Gen. Tomyuki Yamashita. He was one of his defense counsel before the American Military Commission in Manila and before the Supreme Court in Washington.

General Yamashita was accused of violating "the laws of war." He was allegedly responsible for the indiscriminate murder of unarmed civilians, including helpless women and children. My colleagues and I listened to many witnesses describe how Japanese soldiers killed hundreds of innocent Filipino villagers, often throwing their bodies into a ditch either before or after their execution.

General Yamashita personally had nothing to do with any of the atrocities with which he was charged. There was no finding and there was no evidence that he had ordered or condoned them or knew about them. There was not even any charge leveled against him to this effect. The accusation—and later finding—was simply that he commanded all troops, including army, navy, and air force, in the Philippine Islands during the last ten months of the war, hence he was responsible for whatever they did because they had committed atrocities and crimes which he had not controlled. Whether or not he could have exercised control, whether or not he had or could have had any knowledge of the misdeeds, was held to be immaterial.

It is as though we were now to place on trial for complicity in the Mylai massacre not a lieutenant or captain, but Gen. Creighton W. Abrams or Gen. William C. Westmoreland or perhaps, even the Commander in Chief who is now a former President residing in Texas.

The Supreme Court affirmed the verdict. Chief Justice Harlan Fiske Stone, speaking for five of his colleagues, cited the appropriate strictures designed at The Hague in 1907 to protect civilians in a war zone, and rested on the rule that an armed force "must be commanded by a person responsible for his subordinates."

Justices Frank Murphy and Wiley Rutledge dissented. Protesting the repressive implications that arise from the theory of "command responsibility," Justice Murphy used these prophetic words: "No one in a position of command in an army from sergeant to general can escape those implications. Indeed, the fate of some future President of the United States and his chiefs of staff and military advisers may well have been sealed by this decision."

Has the time now come? Do we indeed hold a Commander in Chief and his staff accountable under a law we made? Or do we cynically admit that we have one law for the vanquished and another for ourselves?

In my opinion we should follow neither alternative. Although it is true that in view of the Yamashita precedent it is unjust to try the perpetrators and not their commanders, it seems to me that the whole exercise is hypocritical. Far better would it be to frankly face the fact that the Yamashita case and some of the other post-World War II war-crimes trials were essentially exercises in vengeance rather than law and created bad precedent.

In the first place it was a disgraceful departure from a fundamental protection of Anglo-Saxon law to hang a man, not for anything he did but because of a position he held. Secondly, inherent in the findings of "violation of the laws of war," is the assumption that there is a good way to kill and a bad way to kill. For example, that it is criminal to shoot unarmed civilians on the ground but legal to bomb them from the skies.

"The laws of war," like the rules of heraldry, serve to glorify war and

hide its true import. When Gen. Douglas MacArthur ordered the execution of General Yamashita, he enunciated these ancient rules of chivalry with fine disregard of 20th century reality: "The soldier, be he friend or foe," he said, "is charged with the protection of the weak and unarmed. When he violates this sacred trust he not only profanes his entire cult but threatens the fabric of international society."

It is akin to playing Pontius Pilate by describing the Vietnam business as a "dirty war," implying that there is some other kind. Man's long struggle to become civilized is impeded by such assumptions. It is time we grew up—and quit.

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