

We Must End the War

By BURKE MARSHALL

NEW HAVEN—Everyone who believes, as I have, in the rule of law as an expanding, organizing force in national and international governance, has now to face the implications of the Calley trial and verdict. I have tried to do so, and have found that I almost cannot.

Some parts of the matter are clear, and inescapable.

One is that once the facts of the Mylai killings got into the bureaucracy of public knowledge, investigation, accusation, trial, and adjudication, someone was going to be found guilty. That person now is Lieutenant Calley, and perhaps there may be others. The evidence is that they did in fact kill women, children, old men, civilians all, under circumstances that were unjustified, unlawful, indefensible, not only by the Nuremberg rules and the Geneva Convention, but even by the field manuals—the most routine rules of conduct—issued by the United States military, as well as by any conceivable articulated standards of human charity and decency.

What, then, is there about the Calley judgment that offends me, and offends almost everyone. And what conceivable escape is there for us all?

It seems to me plain that it is not an escape to say that Lieutenant Calley is not guilty, because he is. He admitted himself to the killing of civilians—to “wasting” them for lack of an appropriate mine field for them to test—and while I share the normal reluctance of lawyers, politicians, newspapers, and others to assume guilt when proceedings are pending, it also seems plain that Lieutenant Calley and others at Mylai violated all of the rules of war we purport to enforce and abide by.

The reaction against the Calley verdict, I think, or at least I hope, is not because it is wrong. It is because it is unfair. But if that is so, we are led into deeper and deeper waters.

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That is in Indochina. We also know, or at least we should know, that our entire weapons system, our whole strategic military planning, an enormous and preponderant part of our national budget, is designed, if ever used, to kill civilians. By the millions.

If this is true—and it is, inescapably, by the logic of events, certainly not by reason of any man's personal guilt, perhaps indeed as the only way of conducting affairs between the United States and the Soviet Union—how can we punish Lieutenant Calley personally for doing what we are doing now daily in Indochina, and threaten to do on a scale beyond personal imagination if the provocation is sufficient?

The answer, of course, lies in the traditional framework of criminal law. It is the rule of personal accountability. Lieutenant Calley, like those tried by us and our allies at Nuremberg, is not allowed to rely on his role in the system. It is his soul, his consciousness, his actions, judged against some moral concepts, that are at stake.

Those who accept the Calley verdict do so on that basis—that what he did was an individual act of brutality, for which he should be punished. He is

held personally accountable for acts personally done, against people personally seen.

I find it impossible myself to let the matter rest there. It is at the same time wrong to absolve Calley of guilt that is his, and unfair to punish him for what we are doing ourselves, in a less direct way, but still knowingly, consciously, intentionally, continually. The fact is that the Nuremberg experiment has failed. Its imposition of personal accountability for war, its effort to use a system of criminal justice and a rule of law as a way of teaching truth, as Socrates said should be done, has not worked. The dimensions of this failure are measured by our own acts, for we were the chief teacher and we have not learned the lessons we taught others, nor followed the rule of law we created.

It is therefore right and fitting that President Nixon should assume, as he has, a personal responsibility for Lieutenant Calley's punishment. He must deal with that case in a way that makes it clear that Calley is not being punished for deeds we have all participated in. For those that believe in the Nuremberg path of personal accountability, that would seem inevitably to lead to further trials, of generals and political leaders and military bureaucrats, as well as lieutenants and colonels. But I think now that that path is unwise as well as politically impossible. The accountability is national and the act of expiation that should accompany any diminution of Lieutenant Calley's punishment must be national. The only possible such act that meets the needs of our moral crisis would be an immediate cessation by the United States of all war-making in Indochina. That is the logic of events that Mr. Nixon will have to face; it is the only escape open to him and to us from an endless series of prosecutions, on the one hand, or a denial of plain guilt and any system of responsibility, on the other.

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