

# Military Honor After Mylai

Wilson Carey McWilliams and Henry Plotkin

There was more than one crime involved in the tragedy of Mylai. Behind the immediate facts of the massacre lie a host of charges which ultimately amount to an indictment of America as a political society. Since we are prosecutors as well as defendants, we have been tempted to drop the charges and to lower the voice of outrage to a timorous whisper. But that murmur will be insistent and eventually maddening; nations, as well as individuals, can be pursued by the Furies. The accusations must be taken up and examined, for they reflect an inescapable crisis in our political life which taints the present and threatens the future.

It is essential, however, to begin by distinguishing between two different kinds of crimes, for each has its own appropriate tribunal and punishment. As a culture, we are ill-equipped to make that distinction. The great liberal doctrinaires who shaped so much of our tradition were determined to reduce law and politics to a "science," a set of rules and procedures which would, almost automatically, produce the political good. Knowing human frailty, they built on the baser qualities of human nature, deprecating as uncertain reliance on human judgment, civic virtue or punishments other than those which involve physical coercion. Most of us have accepted those ideas as our own. We regard law as embodied in general precepts, executed with a minimum of human interpretation and enforced by some variety of physical constraint. And we are still relatively confident that the proper remedy for any serious political problem is to "pass a law."

We tend to forget, however, that law in this nar-

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row sense presupposes a relatively clear and permanent relation between means and ends which enables us to prohibit some forms of conduct under any circumstances. When our courts determine that an accused has committed a legally punishable crime, they are asserting, in effect, that he has used perverse means which can have no good result. It is that conviction which gives the laws their moral authority. In any case, where that belief is lacking—for example, in that of a citizen who believes that good results *can* be obtained if he refuses to pay taxes to support an "immoral war"—the law is reduced to force.

Beyond the limited reach of formal law and rules of conduct lies the broad range of situations in which the relation between means and ends is not at all clear. Evil consequences can easily follow from errors of judgment, ignorance, negligence or pride, and since those consequences could have been avoided they can legitimately be called "crimes." The most serious political offenses are most often of this sort. Seeking peace, isolationists and pacifists may, like Neville Chamberlain, help encourage a more destructive war; hoping only for safety, political leaders may follow a path which leads to imperialism and aggression; Rousseau inspired Robespierre, and even Jesus bears a responsibility for Torquemada.

We do not try the perpetrators of such "political crimes" in court (and it is one of the horrors of totalitarian states that they so often do try "objectively criminal" acts of this kind), for we know the chances of error too well. *Ignorantia juris non excusat*, but ignorance of consequences is enough, in a broadly defined political sphere, to make us not guilty "before the law."

We do not, however, refrain from punishing such offenses; we merely use different procedures and penalties. In the case of political crimes, our justice is more concerned with substantive results than it is with the niceties of procedure.<sup>1</sup> When we punish a

political leader by opprobrium or a fellow citizen by obloquy, we are not required to prove our case "beyond a reasonable doubt." Quite the contrary: the most unreasonable suspicion is enough to begin a persecution, and "reasonable doubt" tends to convict rather than to acquit.

No one who remembers McCarthyism can possibly doubt the seriousness of political punishment; he will be more inclined to doubt the justice of such trials than their efficacy. Denying men our admiration, stripping away their dignity or treating them as moral lepers are stern penalties only slightly mitigated by the chance of reversal in a later "court." Often, human beings will risk or sacrifice their lives rather than suffer such sanctions; the Spartans, we are told, feared their women more than their enemies. Only to the extent that an individual is indifferent to his fellows is he immune; our political leaders, who need our support at the polls, are highly vulnerable. And total immunization is possible only at the price of total personal isolation, becoming "free" from the danger of opprobrium or rejection by inflicting those penalties on oneself.

It may be that political punishments are less effective today because Americans are, in so many ways, alone. But that would be cause for alarm as well as for sadness, for our point in this whole discussion is that the most critical political decisions—and especially those involving war—depend on human judgment and can be constrained only by political punishment.

In international law, it is hard enough to state general moral principles, but even if ends were clear, it is almost impossible to specify any but a few obligatory rules of conduct. The clear relation between means and ends which the formal judicial process presupposes requires an environment that is fairly stable and subject to control. In domestic life, those conditions have become doubtful enough, and we have succumbed to the temptation to delegate more and more authority to administrators, subject only to very general guidelines. International politics has no reliable ways of controlling events and seems nakedly exposed to the forces of change.<sup>2</sup>

It was partly with an eye to international politics that John Locke, despite his belief in limited government and the rule of law, argued for a prerogative power of acting "without the prescription of law and sometimes even against it."<sup>3</sup> Justice Jackson, our prosecutor at Nuremberg, felt that the old rules of war had probably been made obsolete by new weapons and techniques.<sup>4</sup> Rules once satisfactory prove inadequate in new times; unanticipated situations arise in which no rules exist. And though our domestic means for changing the statute law seem far too slow and cumbersome, they are lightning-fast compared with the process of international legislation.

Of course, there are some rules of conduct which seem relatively stable and binding on all states and

individuals. Laws dealing with diplomatic personnel and with prisoners-of-war, to take the obvious examples, have a continuing strength and validity. And certainly it is wise and obligatory for us to strengthen such laws where they exist, to insure the punishment of any violations, and even, where possible, to create new rules. We could have many goals inferior to the aim of creating an international order where such rules are "the rule" rather than the exception.

But exceptions they are in the international order today, especially in relation to war. Moral decision, in all but those few cases, requires political judgment, the assessment of appropriate means in the situation at hand. The terrible errors which can result need no exposition. But the inevitability of our dependence on human political judgment demands at least that we strengthen our ability to prevent and punish political crimes. Courts of law, however useful, will be inadequate; we will also be in need of courts of honor.

**M**ylai was only an incident in the larger tragedy of Vietnam, and it is inevitable that some guilt should be attached to those who planned and ordered the war. The argument that Vietnam is a specifically criminal war is, of course, of central importance to those who would try our erstwhile political leaders before a War Crimes Court. But whatever our feelings about Vietnam, it is doubtful that the war is a crime within the rules of law and evidence that apply in international law.

It would be virtually impossible to prove "beyond a reasonable doubt" that either side was the "aggressor" in Vietnam. The Pentagon Papers and similar studies may make American policy-makers more evidently reprehensible; they have not made the legal case clear. We cannot simply disregard the 17th parallel because it was not a permanent boundary, any more than we could or would do so with boundaries in Korea or Germany. Whose evidence would be accepted regarding the times and magnitude of North Vietnamese intervention in South Vietnam, Laos or Cambodia? Even if we conceded that the United States violated the Geneva Accords, breaking a treaty is not waging aggressive war, though it is an unlawful act. The problems could be multiplied endlessly; determining the meaning of "aggression" has been a task which has baffled international lawyers almost since it was attempted, except in very rare cases where the evidence was unambiguous. That, in fact, is one of the problems of appeal to the "Nuremberg precedent." At Nuremberg, there was no doubt as to which country had committed the acts of aggression and there was little more in Tokyo. The same certainty will almost surely never exist in relation to Vietnam.<sup>5</sup>

Whatever the legal defects of the case, the argument that the war is criminally aggressive has great political power—and an even better case might be

made for calling it criminally unjust. Some political penalties have been inflicted; the race of erstwhile hawks to recant their errors is indication enough. Of course, it is possible to argue that such penalties have been too gentle and too narrowly inflicted, but that is only an argument for more effective political prosecution. There may, in fact, be room for an unofficial war crimes trial—a better version of the late Bertrand Russell's Stockholm fiasco. Even the Stockholm trial, as *Commonweal* observed at the time, had a political effect in arousing protest,<sup>6</sup> and a new trial might serve to focus political sanctions on those who are criminals in the eyes of militant critics of the war.

But in any event, we should recognize that even if we regard the war as "aggressive," that alone is not enough to account for the crime of Mylai. It is possible to wage an illegal war in a lawful way. The criminality of the war, however serious we imagine it, does not excuse violation of the laws of war, any more than the inhumanity of Mylai is excused because similar (or worse) acts go unpunished. They certainly do; Dresden and Nagasaki were certainly "war crimes" in every sense of the word, and there are numberless crimes committed under the cover of war, including men who use the camouflage of combat to kill those they hate on their own side. Precisely because war offers so unbounded an opportunity for undetected crime, it is vital to be more severe with those criminals we do discover, not because they are uniquely detestable but because we wisely fear ourselves.

There is, however, another and more relevant sense in which Vietnam is a criminal war. Guerrilla war dissolves the distinction between "front" and "rear," combatant and non-combatant, old and young, and all those distinctions were critical elements in the traditional law of war. Guerrillas must violate at least that rule that requires soldiers to wear a uniform or some identifiable badge. It is notable that Professor Richard Falk, much of whose earlier work was concerned to argue that international law was applicable to internal wars, has contended that we should recognize that insurgents often have "no alternative but terror." But that accurate assessment of military necessity only indicates how far partisan war—socially, the most "total" of all wars—may erode the traditional laws of war.<sup>7</sup>

The nature of guerrilla war probably demands a limited relaxation of "normal" standards, especially in relation to evacuation of "free fire" zones. Evacuation, after all, is a humane measure given the nature of guerrilla war; had it been possible and carried out, the crime of Mylai would never have occurred. But we owe serious attention to the problem of finding and enacting new rules of war adapted to the situation of guerrilla conflict. It will not do to regard insurgents simply as bandits, nor for them to behave as though they were. An analysis of the extremely sophisticated literature regarding nuclear war will

suggest how far we have neglected possible rules for guerrilla combat. Just as it is possible for nuclear strategists to discuss the possibility of agreements to avoid "first use against cities," so it might be possible—at least where both parties have reasonable respect for the other's integrity—to develop rules for declaring "open areas" in guerrilla war.<sup>8</sup>

Even without such rules, however, the "criminality" of guerrilla conflict by traditional standards does not excuse every form of conduct in such a war. As Falk's argument suggests, any war is regulated by the principle of military necessity. The meaning of that precept is clear enough: it is an attempt to limit the inhumanity of war by excluding cruelty that is merely arbitrary or senseless. It is possible, in other words, for a guerrilla to plead "military necessity" in claiming exemption from many of the traditional rules of war. But because the United States possesses so vast an advantage in war materiel, it is not proper to claim that we are justified in reverting to the same standard as our opponents. The guerrilla may have to "fight dirty" or not at all; we are not faced with such a choice. Mylai, and any other events like it, are criminal acts. In fact, there is a proof of their guiltiness which is also reassuring: the testimony of the many observers and participants in the atrocity (which, as Telford Taylor points out, was far from clandestine) who regarded it as abnormal if not shocking, and no part of the "necessity of war."<sup>9</sup>

The principle of military necessity does, however, excuse or legitimate some otherwise reprehensible acts. It has been argued, for example, that aerial bombing in Vietnam is a crime as dreadful as Mylai. There is a truth in this: the impersonal dropping of lethal missiles is less human, in some respects less decent, than killing another human being face to face.<sup>10</sup> But the nature of the aerial weapon—especially jet aircraft—makes it terribly difficult to discriminate with any precision between a dangerous enemy and a harmless civilian or even between friend and foe. No one is suggesting that we try for "war crimes" those pilots who so frequently bomb or strafe our own lines.<sup>11</sup> Once the weapon is legitimated, some of the criminality associated with it is legitimated as well. But that does not excuse events like Mylai; no one argues that the murdered civilians were dangerous at the moment they were slain or that discrimination based on this fact would have been impossible.

It has been argued, however, that our generalized bombing did not reflect a "military necessity" and was itself a crime of war. Neil Sheehan, for example, has argued that the case for the B-52 raids depended on the presence of an insufficient number of ground troops in Vietnam. Had more men been available, the raids would have been needless; the bombings, Sheehan contends, were thus a "political expedient" rather than a "military necessity."<sup>12</sup>

This claim is true—but quite irrelevant. War is a

“political expedient,” and so is military necessity. Sheehan’s argument opens the door to fantasy: If we had sent several hundred thousand more men to Vietnam, the bombings would have been needless, but if we had evacuated the civilian population of South Vietnam to the United States, the war would have been needless. The more sensible part of Sheehan’s case, however, involves a paradoxical consequence. If the bombings were a crime made apparently necessary only by the political restrictions which prevented the dispatch of more troops to Vietnam, then those who created the restrictions, not those who responded within their limits, are guilty of the “crime.” Taken literally, the argument makes the anti-war movement “guilty,” and in a sense it is. But few of us, we hope, would proceed to a prosecution in a court of law, and not many more would initiate a political indictment for this particular offense.

Whatever may be true of this particular argument, however, we owe ourselves an investigation of the charges that we have treated prisoners with a disregard for the Geneva Convention and military necessity alike, of the claims that we have neglected our obligation to evacuees—more compelling because of our great wealth—and of the accusation that our Air Force “routinely bombed” clearly marked hospitals.<sup>13</sup> Such acts we had both the power and the duty to avoid, and any who engaged in them are guilty of legally punishable crimes of war.

But we bear some responsibility and have our own element of guilt in relation to any crimes of war in Vietnam. Military necessity can be defined only in relation to the *objective* of the war. Short of “absolute war,” in Clausewitz’s sense, there is no “absolute necessity,” and Clausewitz was wise enough to know that in the real world his abstractions would be modified.<sup>14</sup> One may do what is needful to avoid defeat, and probably whatever is required to win a victory, but both terms are relative. We won a victory over Japan though we yielded on the retention of the dynasty; had we insisted on republican institutions, as we did in 1918, “military necessity” would have justified more destruction, possibly even more nuclear bombing of the home islands. We “avoided defeat” in Korea on terms which would have been a defeat in relation to Nazi Germany, and so on.

Even these cases leave out of account the fact that some defeats are acceptable when what is lost is of less value than the cost of continued resistance, including the moral cost to oneself of continuing the war. Those who urged Kerensky to make peace at any territorial price to head off the danger of Bolshevism had a point, after all. And without some political decision on the meaning of acceptable defeat and unacceptable victory—for that too is an obvious category—there can be no measure of military necessity.

That the confusion of our leaders and our own domestic disagreement made any sense of political objective in Vietnam a very murky one gives us a

share of the guilt for what was done in the field. There were more than a few hints, after all, that something like an “Operation Total Victory” was what we sought in the war; as Theodore Lowi comments, it is almost impossible for a president to avoid the “rhetoric of victory” altogether. Our share of guilt does not, however, lessen that of the war criminal. Military necessity is a claim to exemption from binding rules in view of some “reason of state.” The burden of proof lies with those who make the claim; if political objectives are uncertain, the normal rules of war remain in effect. Not even the strongest partisan of conscience would argue that soldiers should not obey orders—and the rules of war are just that—not without a clear reason to disobey.

In part, we and our political leaders were articulate enough. There was no doubt that we did not regard the aim of the war as total enough to justify nuclear weapons, lethal gases, or the invasion of North Vietnam. But our ability to make such things clear makes it less excusable that so much was left uncertain. If we could not speak clearly, it was because our inner counsel was divided; those who verbally hoped for a negotiated settlement often dreamed of a peace of dictation, and those who lamented the toll of American lives sometimes luxuriated (not always secretly) in American defeat. It is not a crime for which any of us can be convicted in court; it is a political crime for which we all deserve to be held accountable in our varying degrees of responsibility.

The war and Mylai, however, also pose a challenge to the Army as an institution. To some extent, the Army can avoid responsibility by the classic plea that it was only obeying its civilian superiors. But the doctrine of *respondeat superior* is a complicated, Janus-faced doctrine, and the years of discussion before and after Nuremberg only indicate that almost any general principle of interpretation will prove to be inadequate. Obedience to superiors could never be an unqualified duty; if it were, James Stephen pointed out, a private would be obliged to obey his captain’s order to shoot his colonel.<sup>15</sup> For the American soldier, the laws, treaties and Constitution of the United States are the orders of the sovereign, the ultimate superior. Technically, in disobeying an “unlawful order,” the soldier is following, rather than breaking, the rule of superior orders.

But it has also seemed impossible to make the soldier absolutely liable for all orders that he obeys. Obviously, international law is little known and comparatively obscure in many points, and theorists of international law have conceded that a soldier may plead that he did not know that a given order was unlawful. Even if he suspected that it might be unlawful, it is also proper for him to obey if the pressure of combat allowed him no time to investigate the matter. Thus, the argument goes, a soldier has a

duty to disobey only those orders which are "manifestly illegal," those where there is reason to presume that he knew or ought to have known the rule of international law.<sup>17</sup>

Even in cases of "manifest illegality," however, international legal theorists have questioned whether a soldier can be required to disobey if he is under threat or compulsion. The Draft Code of Offenses Against the Peace and Security of Mankind (1954), for example, contains the marvelously ambiguous provision that a soldier must disobey an unlawful order "if in the circumstances at the time, it was possible for him not to comply with that order." In literal terms, that possibility always exists if one is prepared to suffer the consequences. The doctrine of *mens rea* which the Draft Code expresses, simply raises to the level of principle the practical conviction that we cannot require a soldier to act nobly, especially if his disobedience would have no effect other than his own suffering. If the Nuremberg precedent is indicative, officers would be required to disobey even at the risk of their lives if they are sufficiently important that such a sacrifice could be expected to be more than a pointless gesture.<sup>18</sup> That interpretation, however, hardly removes the ambiguity of the language of this Draft Code of Offenses Against the Peace and Security of Mankind.

The problems in formulating a rule of rightful obedience suggest the limitations of any rule of law in dealing with the most demanding military situations. Rules of law presume some sort of normal situation and seek to prescribe a normal response. But in war, all situations tend to be abnormal and extreme. The "normal," human response is all too likely to be less than morality requires; in fact, what we ask of soldiers in combat is routinely more than normal, and moral conduct in war—an environment filled with temptations toward brutality and dehumanization—requires conduct still further above the normal standard. Law may help in the task of seeking moral conduct, but at the boundaries it will never be enough.

The inadequacy of rules of law only increases the responsibility of those who command. *Respondeat superior* means literally that the superior must answer for the conduct of his subordinates, that under conditions of extreme stress, his order is a moral defense for those who obey and a burden he must bear himself. But while *respondeat superior* justifies me if I obey a "superior order" of dubious legality, it does not excuse me for giving orders which are illegal, no matter how logically they may follow from the command I have received. If my company commander orders me to shoot a prisoner, and I order a squad leader to do it, if he complies, I must answer—though of course, my captain must bear a more serious burden of guilt.

This may seem paradoxical to Americans, but only

because our tradition tells us so little about the idea and practice of authority. When a soldier gives his superior the authority to command—and it is a common and true observation that the laws of the Army and the state can only encourage him to do so—he trusts that superior with his *person*. "Life" is altogether too soft a word, for the commander can decide when the soldier's life must be sacrificed to further values of greater importance to the soldier than his own survival. The nature of authority makes that relationship personal.

It should be obvious that a commander must answer for many offenses which are not justiciable. If an officer makes a sincere error of judgment—MacArthur's estimate of Chinese capabilities and intentions at the Yalu, for example—he cannot escape being held to account for his mistake and the lives it cost, but we will probably not subject him to a court-martial. Military command, after all, is a variety of political authority with analogous liabilities.

In one case, however, the law must be *more* severe than the political order in judging the crimes of military authority. If a commander pleads that the "stress" of combat caused him to act "irrationally" (as opposed to a claim of insanity), we may be inclined to lessen our censure. The law cannot. Doing so would amount to a license we cannot afford to give, for all combat situations are extreme. The strain of combat may relax our definition of justiciable crimes, but not our standards of conviction when war crimes have been committed. "Command responsibility" is always partly a myth; kings and commanders assume the role of God in relation to those who obey, a responsibility they cannot completely fulfill. (And all authority, hence, is something of a crime, idolatry for those who obey, self-idolatry for those who rule.) He who accepts the prerogatives, however, cannot escape the burdens, whether it is law, opinion or his own conscience which dictates when "the king must die."

At least some of the responsibility for Mylai must be borne by the commanders who gave Calley his orders. Few would deny that the orders were almost purposefully vague. If Calley was not ordered to kill civilians, he felt able to interpret his orders to that effect. There is more than a suggestion in the whole tragedy of a familiar military scene, the commander who orders that a task be performed but says nothing about methods for accomplishing it. How many supply sergeants know that the order to make an inventory square with the records involves a commander who *knows*, but desires not to be told officially, that the ways of carrying out his order are illegal? And authority is guilty, though not always legally so, if it allows those who obey to believe—inaccurately—that it will wink at or even welcome the offense. That, after all, is the lesson of Henry II and Becket. In *honor*, if not in law,

authority must "stand by" its subordinates, and one of the more disgusting features of Mylai has been the desperate scrambling of superior officers to escape moral as well as legal blame for actions which took place under their command.

We are not, however, sympathetic to the new form of *respondeat superior* being developed on the Left, the argument that contends that Lt. Calley (and by implication, all officers) are no more than "moral automatons."<sup>19</sup> The argument is not only indecent—for it deprives a fellow human of his humanity—but it involves the possibility of excusing all military commanders. Logically, in fact, it might excuse everyone; we are all prisoners of "the situation," trapped by and subject to forces beyond our control. Probably the argument is made for that reason; we all desire innocence, acquittal for our secret guilts. Situations do limit us and we are all dependent, but there is some alternative in every situation. We are all increasingly "insignificant" in our own eyes and in truth, but that is scarcely a reason to encourage the development by raising it to the level of a moral principle.

For example, does a commander's emphasis on a "body count" constitute an *order* to take no prisoners? This argument has been made, and it is important to recognize that it goes far beyond the principle of "superior orders"; many German war criminals at least took the precaution of getting orders in writing, hardly expecting that they could plead the mood or unexpressed wishes of their commanders as legal imperatives.

It is quite true that a careerist might very well interpret his commander in this way. But it is vital to insist that careerism and morality are quite distinct, that law and honor must come before advancement in the mind of the soldier. There are sound military reasons for building that principle into military institutions, punishments and rewards. An officer who believes it even partly legitimate to lie in order to receive a good efficiency report has committed a crime only less justiciable than one who shoots prisoners to gratify his own ambitions. False information in war leads to the loss of lives, to defeat, and what is probably worse, to mistrust among men at arms. It is, at least, a high crime against the Army and its honor.<sup>20</sup>

Sometimes it is more than that. Those who engaged in the effort to "cover up" the Mylai incident cannot plead that they acted in order to protect the Army from hostile public opinion; vigorous prosecution would have achieved the same result and might even have created the impression (possibly the correct one) that the incident was unique. They acted to protect *themselves*, not the Army. And in any case, their action was a crime of war. A commander who has, or even one who *should have*, knowledge of war crimes is liable to investigate and prosecute; if he does not, even in cases where considerable extenu-

ation is involved, he is guilty by implication of the crimes committed, an accomplice in the crime. And in either civil or military law, he should be punished with the perpetrator.

It should be emphasized that not all crimes against military honor are punishable in courts, and fewer can be proved by legal standards. (This, incidentally, should give caution to those who would remake military law in the image of civilian law—where evidence is easier to come by, for example—or eliminate the "general articles" from the Code.) But that does not relieve the Army and its personnel of the obligation to punish such violations. If careerists who act dishonorably are rewarded, and men of honor are punished (if only implicitly), the Army becomes responsible for the growth of dishonorable conduct. Authority is *magisterial*, political life exists to teach and improve men, and if high commanders or the Army as an institution teaches badly, it is guilty of a political crime.

All of this is more important with the passing of time. Restraints on war no longer inhere in the physical environment; save for fear of retaliation, there are few physical limits on the conduct of war. That only emphasizes that conscious morality and human character must serve where once sheer inability prevented some of the more atrocious forms of conduct.

Yet frighteningly, those personal, moral constraints are themselves growing weaker for most men. Part of the lesson of Mylai is that we can no longer rely on early experience and education in society to produce soldiers who are moral men. Ward Just is eloquent in discussing the role of the church at West Point and the extent to which soldiers cling to it. But it is obvious that the traditional role of the church was based on the assumption that religion was a central force in the life of men. The Army, consequently, had to "domesticate" religion, to develop a theology which allowed men to make appropriate exceptions to the creed of the Nazarene. But it could take for granted that restraints on violence and inhumanity were planted in the spirit of the soldier. It can no longer do so. And the decay of moral standards in society, of which the decline of religion is only one example, involves the decay of traditional morality in the military.<sup>21</sup>

Just also refers to what he calls the "hypnotic fascination" of officers with the argument that Mylai and similar events were caused by a decline in the quality of personnel produced by anti-military sentiments among the best educated, the decline of ROTC, and the like. There is an element of truth in this view; those who hate the war are less likely to commit crimes than belligerent defenders of it, and many protesters show a sense of obligation and a feeling for community and personal duty quite unusual in America. These attitudes, however, are not as characteristic as we might like to believe; there are hundreds who have fled to Canada or sought

draft-exempt havens for every individual who has accepted the risks of disobedience or militant protest; there are thousands who are happy so long as no sacrifice on their own part is expected. Cravenness is more typical than courage, and in America today one need not look far to find an individualism run mad, a self-concern based on the most ignoble image of self. The soldiers who were fascinated by the "bad apples" argument were clinging to an old faith—that morality in America is fundamentally sound—but one which has only an uncertain foundation.<sup>22</sup>

That faith has been the linchpin which encouraged and allowed the Army to develop the style of political "neutrality," to justify its power in terms of bureaucratic expertise and technical rationality. But even that justification reveals the debatable character of American political morality and theory. Underlying it is the liberal creed that officialdom should be a "government of laws and not of men," where human character is reduced to the least possible importance in favor of skill in the "mastery of nature" by science, confident that such success and progress are equivalent with human liberty and fulfillment.

All of the bureaucratic tendencies visible in the Army are characteristic of all organized power in America. But the Army accentuates and exaggerates bureaucracy because it is a bureaucracy without competitors; conformity, careerism, cultivation of the right attitudes and the safe style become almost necessary obsessions, difficult for any but a very few to resist.

It is obvious that such tendencies greatly increase the moral responsibility of higher commanders. But the very nature of a great bureaucracy makes such commanders less able to exercise the burdens which command entails. They are themselves products of the system, trained to be safe, efficient subordinates. The very tendency of bureaucracy—and an aim of liberal theory—is to produce men with a desire to avoid responsibility and authority, who will fly to the safety of laws, rules and technique rather than imposing judgments of their own. And for the price that is involved, we all bear some burden of the guilt.

The issue today is not how we may make the Army more "effective" in some technical and scientific sense, though there will be a plethora of soldiers and civilians who will try to reduce it to those terms. It is rather to build or shore up the moral foundation of human character in the military, to create the basis for restraint in war and for military honor.

Military honor is an archaic term, obsolescent or absurd in the lexicon of liberalism. The "honor of our arms," like the "honor of the flag" or "honors of war," has no necessary relation to material utility, the mastery of nature or success or failure. In fact,

such terms are associated with brave but hopeless resistance. Such courageous defense has always ranked high in human values and does today—consider the response to the discovery of Masada. It involves the refusal to be reduced to a function, the unwillingness to allow force and fear to become sovereign over one's dignity, the insistence on being treated and recognized as a man. (It is, in this sense, very closely related to "non-violent resistance.")

In America, we have managed an uneasy synthesis of the sense of honor and liberal rationalism by always relating our admiration of military honor to *eventual* success. Our great moments, consequently, have been defeats early in wars for which we were unprepared—Bataan, for example—which is, as Just indicates, one reason why the "old Army" was secretly proud of its role as the "victim" of society.

But in an age where men feel themselves the prisoners of impersonal force, where human dignity has become evanescent, and where the liberal creed and its faith in progress and science have become a cruel joke, that synthesis has become untenable. Black Americans, at least, have helped us toward greater clarity with an insistence on personal honor, often in military terms, that is as admirable as it has been rare.

The role of blacks indicates an important element in honor, that it is not merely a question of individual resistance or will but something integrally related to community. As Hans Speier pointed out, "honor" presupposes those who *give* honor; it is human encouragement to what any community takes for virtue in its members, the reflection of the fact that weak beings need the encouragement, admiration, and reproof of their fellows to help them discover and practice their own standards of excellence.<sup>23</sup>

Once, the honoring community for the military was the world of the professional soldier, but that day is related to an international aristocratic class that no longer exists. Modern democracies have no desire to restore it, and no admiration for—and great fear of—the soldier who takes his honor from "outsiders." The mechanisms developed for the control of the military in America have always been wisely concerned with the mind of the soldier, with controlling him by controlling the sources of his honor. The soldier is always, to that extent, a citizen; the military exists within, not outside of, civilian society. (A fact, obviously, which makes one hesitant about "voluntary" military forces.)

Of course, there is a special bond between soldiers, the old phenomenon of the fraternity of battle. In America, that bond has been especially important in our life and memory. Fear of the enemy, after all, has buried fear of each other; the necessities of combat have compelled us to run the risks of trust, loyalty and solidarity; the isolating, estranging effects of civilian life have, in the great moments of human

drama, been overcome temporarily.

Yet the drama has also been tragedy. Battle involves death, and those who *need* battle to discover their comrades and find fraternity are also fratricides, inescapably bound to their own guilts. American society, in other words, affects even the military sources of military honor. So long as men serve, it is we who control honor and we who are, in the highest degree, responsible.

To have that responsibility involves citizens—and soldiers as citizens—in the *duty to confer honor*. That not only demands that we avoid scorn for soldiers, the kind of elitist anti-militarism that cannot repress a sneer at the rough idiom inseparable from democratic command. It demands that we praise as well as blame; for every Calley justly convicted, there must be a hero rewarded. And for those of us who act dishonorably—the draft dodger and the deserter—there must be penalties and opprobrium, not laudatory amnesty, just as there must always be praise and honor for those who have the courage to risk jail or injury by refusing to obey the call to arms; not all a country's soldiers serve her in the field. In the same spirit, we should expect military commanders to insist on their right to advise the President and the

Congress not only on the technical chances of success and failure in military operations but on the relation of such operations to military honor and our beliefs as a people.

This is merely to say that "fighting well," for soldiers of the United States, can only be measured in relation to values worthy of American devotion, that there are times when America must *refuse* to win when doing so is incompatible with its goals as a nation or the honor of its arms. Victory on such terms is in fact defeat, and to bury such a defeat in the effluents of success is to corrupt further the sources of civic morality.

Obviously, to ask America to dismantle the "liberal tradition" of "irrational Lockeanism" that has served her in place of either morality or thought is to demand a difficult, perhaps impossible task. But anything less may involve political and moral disaster. We may have few resources, but our position is not hopeless. Blacks have helped set millions of whites free in America; the few can move the many if they speak to things which are true in the nature of humankind. And perhaps the Army may, in its own interest, help to free civilian America to rediscover its own honor.

1. *Garrison vs. Louisiana*, 379 U.S. 1964.
2. See Theodore J. Lowi, *The End of Liberalism* (New York: Norton, 1969), pp. 158-188.
3. Locke, *Second Treatise on Civil Government*, ch. XIV, sect. 160.
4. Robert Jackson, "The Significance of the Nuremberg Trials to the Armed Forces," *Military Affairs*, X (1946), pp. 3-15.
5. On the whole issue, see John N. Moore in Richard Falk, ed., *The Vietnam War and International Law* (Princeton: Princeton University Press, 1968) I, p. 1069; Benjamin Ferencz, "War Crimes Law and the Vietnamese War," *American University Law Review*, XVII (1968), pp. 403ff.; Telford Taylor, *Nuremberg and Vietnam* (Chicago: Quadrangle, 1970), p. 103; and Wilson C. McWilliams, review of Ralph Stavins, et al., *Washington Plans an Aggressive War* (New York: Vintage, 1971) in *New York Times Book Review*, Sept. 26, 1971, pp. 5ff.
6. *Commonweal*, "The Dissent Ahead," LXXXVI (1967), p. 252.
7. Falk, *op. cit.*, II, p. 240; Taylor, *op. cit.*, pp. 133-137, 170-171.
8. Thornton Read, "Nuclear Strategy," in George Lanyi and Wilson C. McWilliams, eds., *Crisis and Continuity in World Politics* (New York: Random House, 1969), pp. 160-261.
9. Taylor, *op. cit.*, p. 128.
10. See John C. Bennett, ed., *Nuclear Weapons and the Conflict of Conscience* (New York: Scribner's, 1962), p. 102.
11. Taylor, *op. cit.*, p. 143.
12. Neil Sheehan, "Should We Have War Crimes Trials?," *New York Times Book Review*, March 28, 1971, p. 30.
13. *Ibid.*, p. 2.
14. R. A. Leonard, ed., *A Short Guide to Clausewitz on War* (New York: Putnam, 1967), pp. 201-202, 204-207, 211-222.
15. Lowi, *op. cit.*, p. 180.
16. James Fitzjames Stephen, *A History of the Criminal Law of England* (London: Macmillan, 1883), II, p. 205.
17. Yoram Dinstein, *The Defense of "Obedience to Superior Orders" in International Law* (Leyden: Sijthoff, 1965), pp. 8, 9, 26-37; Martin Redish, "Military Law; Nuremberg Rule of Superior Orders," *Harvard International Law Journal*, IX (1968), p. 169.
18. Wilson C. McWilliams, "On Violence and Legitimacy," *Yale Law Journal*, LXXIX (1970), pp. 623-646.
19. Sheehan, *op. cit.*, p. 31.
20. General Matthew Ridgeway, "The Ordeal of the Army," *New York Times*, April 2, 1971, p. 39.
21. Ward Just, *Military Men* (New York: Random House, 1970), pp. 26, 45.
22. *Ibid.*, p. 29.
23. Hans Speier, *Social Order and the Risks of War* (New York: George Stewart, 1952), pp. 26-52, 271.