

The My Lai Massacre and Its Cover-up: Beyond the Reach of Law?

edited by Joseph Goldstein, Burke Marshall, Jack Schwartz

(The Free Press: 586 pp. : \$10.95/\$2.95)

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Thanks to the editors of this volume we now have, from a commercial publishing house, the text of the summary volume of the Peers Report. The Report, prepared by Lieutenant General William R. Peers, documents what happened before, during, and after the now infamous Mylai massacre of March, 1968. In particular, Peers reveals how Army officers tried to cover up or ignore what happened that day.

In addition to the Peers Report the editors present carefully selected legal materials from sources such as the Nuremberg trials, the *Geneva Convention Relative to the Protection of Civilian Persons in Times of War*, and the Army's own *Law of Land Warfare*. The focus of the legal materials is the limit of the power of the military and civil authorities to bring to justice those who were responsible for the Mylai massacre and the subsequent cover-up. Finally, the editors supply an introductory argument that civilian agencies will have to undertake responsibility for enforcing the laws of war.

The Peers Report, in a section entitled "Omission and Commission by Individuals," points out how many persons in the chain of command of the Americal Division ignored or disobeyed the Army's own regulations about the treatment of civilians during battle and the reporting of civilian deaths that occurred during combat. Very few of the persons mentioned in this section have been brought to trial. If the Army is unwilling to enforce its own directives, some civilian agency will have to enforce the directives for the Army. If no one enforces these rules, the United States can hardly claim that it is living up to some of the international conventions to which it is a signatory.

Before taking up this thesis explicitly, it is worth noting the way the Report confirms and challenges some of the paradigms we take for granted. For example, the Report confirms the usual model case of obedience to illegal or-

ders. Though it seems to have been possible to avoid participating in what went on in Mylai (if we are to believe some of the testimony that has appeared), illegal orders were given and a heavy burden placed on him who would disobey. Even today, if a soldier disobeys an illegal order, he risks a charge of insubordination even if it is shown that the order is illegal. Peers is disturbed by this fact. The editors think this risk should be removed.

However, the Report also challenges our paradigm on obedience insofar as it reports that clearly legal regulations and directives were disobeyed by many officers in the Americal division. It is this disobedience and the seeming unwillingness by the Army to do anything about it that turns out to be at least as threatening as the events at Mylai.

The fact is that a great many directives and regulations issued by General Westmoreland himself dealt with the protection of civilians. It would appear that someone was interested in civilian welfare. At the same time, when these regulations were ignored, officers were reluctant to punish their brother officers.

If we understand the military man in terms of the hero or warrior, then the role of the warrior was ignored that day in March, 1968, when the weak, who are supposed to be protected by the warrior, were slaughtered. Honor, too, was absent when the slaughter went unreported. If we understand the officer as a manager, then the manager ignored the regulations of the home office. Peers seems to be torn between these two views of the military man, but the managerial perspective appears to win. Peers is entirely right in his assumption that, if the regulations had been followed, Mylai would not have happened. The shortcoming of the Report is its failure to probe why these regulations were ignored.

The editors see the deeper problem. Precisely because they see it, one is

surprised at their solution. They call for Congressional investigation of their proposal to vest responsibility for the investigation, trial, and punishment of war crimes in a civilian court. It is not the principle of civilian responsibility for this task that is surprising; it is the failure to mention the need for civilian control much earlier in the process. The "Introduction" has the unfortunate effect of blaming the Army. The responsibility is wider than that, however.

I do not think the officer corps alone is to blame for what happened. The nature of combat in Vietnam threatened all the received values of the military. The warrior's role was dealt a severe blow when soldiers realized that persons ordinarily thought of as defenseless could and did kill soldiers. Soon Vietnamese became synonymous with enemy, except for those clearly fighting on "our side."

An officer who understood himself in the warrior's role may have been able to come to terms with this. However, when General Westmoreland chose and was allowed to choose (for whatever reasons) dead bodies as signs of success for the military manager, it became inevitable that only a dead Vietnamese was going to be important. How that person was killed, and his or her status when killed, became irrelevant. If one wishes to assert civilian control, it will have to be at points such as this. Political considerations determine not only the ends of war; in certain situations they put limits upon the means of war as well. If civilian officials permit the military to promote a criterion of success that conflicted with the political goals of the war, then effective civilian control is lost. (It should be pointed out that the "body count" generated a debate also within the military.) Thus we cannot blame the Army alone. When given conflicting goals (protecting Vietnamese and counting dead Vietnamese), it was inevitable that the most rewarded goal would take precedence.

The existence of the conflicting goals and the skewed reward system are the problem, and they are not solely problems for the military.

In addition, military prosecutors may not be able to act against certain participants in the Mylai massacre or against certain participants in the cover-up because of a Supreme Court decision some years ago ruling that the military could not try a discharged serviceman for crimes committed while in military service. This ambiguity about the power of the military could be cleared by Congressional mandate, but Congress has not acted.

All the legal rules and procedures, valuable as they are, will be useless if they do not create an ethos within which a plausible role for the military can again emerge, an ethos with which the military can identify. It is hard to imagine how this ethos can arise when even acts of courage are forgotten. As a symbol of what is wrong, one thinks of a citation that accompanied a medal

awarded for action at Mylai. It is ironic that WO1 Thompson, the airman who landed his gunship in order to evacuate civilians from Mylai and who threatened Lieutenant Calley's life if Calley tried to kill that particular group of civilians, was "rewarded" with a citation that spoke of his bravery under (nearly nonexistent) enemy fire. When a military institution reaches the point that it ignores or suppresses one of its honorable functions, a discussion of the ethos of that institution is called for. The point is not simply that heroes should expect rewards. The point is that decent action should be recognized for what it is, that we deceive ourselves not only when we do not call evil evil but also when we refuse to recognize the good as good. It is this continuing deception about what is the good that remains the most troublesome fact about what happened in Mylai on March 16, 1968. This book helps us understand how difficult it will be to construct a legal system that will not only constrain evil but might also honor the good.

down nearly three million rounds before they began to advance on the Somme. The trend of battle is toward mechanization—toward the cyborg.

Mr. Keegan's book has been very widely praised, and justly so. It is beautifully written, both in the sense that the writing gives us pleasure by its wit, rhythm, and eloquence, and in the deeper sense that the verbal play derives from an activity of mind and imagination, a questioning and probing of everything. He has a particularly brilliant introduction to the Battle of the Somme via its landscape; and he uses paintings to illuminate his words, in both senses. This is a very humane book. It makes military history into one of the humanities.

To give just one example, here is a typical sentence, though it is atypically short and simple. "Historians, traditionally and rightly, are expected to ride their feelings on a tighter rein than the man of letters can allow himself." Historians cannot be as emotional as novelists; but note how many fine amplifications are built into the idea by Mr. Keegan's phrasing. And note how elegantly the old-fashioned image of riding suits both the particular point being made and the general flavor of the book. Mr. Keegan is a professor at Sandhurst, England's West Point, and his style alludes to that very special environment, characterized by its equestrianism.

In many ways this book renews, for me, the image of the English gentleman at his best, so well-mannered and unpretentious, so much the man of action and responsibility, so cool and firm and thoroughly decent. It is a great relief for once to read a book of first-class quality that was not written by a member of the intelligentsia. And it is a special pleasure to be able to like a book by a gentleman, instead of one or other of the gentleman's enemies—who have had nearly all the talent for the last fifty years. Sandhurst is indeed a special place; Mr. Keegan tells us that it carries almost to extremes the English cult of good manners and that its cadets still look very like the Oxford undergraduates of prewar days—whom, needless to say, the Oxford undergraduates of today do not resemble. Moreover, military history has been traditionally humane in England, and military zealots traditionally rare.

Mr. Keegan is not a gentleman in the

The Face of Battle by John Keegan

(Viking; 354 pp.; \$10.95)

Martin Green

The first illustration in this book is one of the most eloquent death's heads I have ever seen. It is the head of a Swedish soldier killed in the Battle of Visby in 1361. The dead were buried in their armor, so that this grinning skull is still encased in the chain mail that attaches head to body. Two thousand such armored corpses were dug up recently. If we juxtapose to that image the nightmare specific to *our* time, the cyborg, the man half-converted into a machine for purposes of more-than-human power, then we will have the range and the theme of Mr. Keegan's book (not that he talks about cyborgs). Seen in terms of imaginative horror, these six hundred years of evolution seem merely cyclical and repetitive; but seen in terms of objective effectiveness, we have a definite advantage over our ancestors.

After a long and fascinating chapter on military historiography Mr. Keegan

devotes one chapter each to the battles of Agincourt (1415), Waterloo (1815), and the Somme (1916). He makes us see and feel what these battles were like for those who took part in them—for the officers and for the men. He restricts himself to the English experience, but asks what each level of the English army could have intended, what they could have seen, what they could have felt. Some of his major categories are: being wounded and treated, being taken prisoner, forcing men into the fight, the danger of different weapons, and the danger of accidents. In the last chapter, "The Trend of Battle," he reflects on the increasing scale of such events: in time of duration, in area devastated, in numbers of troops, in power of weapons, in numbers killed. Thus, for instance, Napoleon had twenty thousand rounds of ammunition with him at Waterloo, but the English laid