

IN RE YAMASHITA

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IN RE YAMASHITA

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Those of us who know war
Other than through the medium
Of the printed page;
Those of us who have seen the thing
At close range;
Who have looked deep into its bloodshot eyes
Behind the bayonet;
Who have heard its belching roar
In the guns that flamed
Their message of death
On a hundred fronts,
Have learned to hate it
With an intense and bitter hatred.
Only the soldier knows
That war is more than hell.
It is a thousand hells
In simultaneous eruption.¹

¹John A. Hayes, An Old Rusty Bayonet (McDonough, Georgia: Press of the Deep South, 1951), pp. 2-3.

We have met the enemy and he is us.

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PREFACE

This paper has had its genesis, not simply in research, but rather in the practical experiences and serious questions raised by an attempt to carry out a ministry within the institutional framework of the Armed Forces. It has come to life in the tedium and terror of combat, as well as the pastoral ministry posited by service with Naval and Marine personnel ashore and at sea. It is written by one who stands at the very fringe of the Church, at the interface between the Church and the world. In short, it is written by one who like the Baptizer can only point from afar to the reality of the faith, or like the centurion at the cross, whose very confession itself is made problematical by the rendering of a Greek phrase: It is a word spoken from the gates. Insofar as this paper deals with command responsibility, and that is its purpose, it is written by one who can speak to the question only from observation and not from personal experience with the difficult, day-by-day, components of the loneliness of that responsibility. Having expressed these cautions, it must also be said that this paper is presented by one, who by virtue of ordination and call, is compelled both to speak and to accept responsibility before God for his words, and who by public law is required

to "advise the commanding officer" concerning matters of religion.

This paper is, then, an attempt to deal within an ethical perspective with the the responsibilities of command. The trial before Military Commission of General Tomoyuki Yamashita has been chosen as a vehicle for this exploration, because in this first of the war trials at the conclusion of the Second World War the primary point of contention was the limitation and breadth within which the concept of command responsibility should be read. As noted in the Introduction following, the major interest is not in the legal arguments and failures embodied in the trial, but in its ability to raise and elucidate the question of responsibility of command.

It is with both deep appreciation and profound respect that I acknowledge my debt to CAPT Herbert Fox Rommel, USN (RET.); LTCOL E. H. Deptula, USMC (RET.); LTCOL J. W. Perrin, USMC (RET); CAPT L. G. "Tiny" Graning, USN; CAPT James M. Faddis, USN; RADM David F. Emerson, USN; VADM Emmet Tidg, USN; and CAPT John H. Bell, USN, whose openness with a junior member of their various staffs permitted him to gain some insight into the ability and seriousness with which these officers approached their responsibility of command.

Appreciation is also expressed to Mrs. Sara Peterson, Assistant to the Research Librarian, Union Theological Seminary in Virginia, who shared in the frustrations of tracking down various documents, and to

Miss Dorothy Rountree, my typist, who converted my scribblings into something approaching the English language. Above all, I must express my appreciation to my wife Susan, my reality factor, who has in love willingly shared the life of a professional soldier. To her this brief effort is dedicated.

This paper was written in conjunction with the Naval Postgraduate Education Program under the sponsorship of the Superintendent, Naval Postgraduate School. The interpretations and opinions expressed herein in no way represent the official position of the Department of the Navy or the Government of the United States. They are, as they should be, my own responsibility.

CHAPTER I

INTRODUCTION

At midnight of the eighth of ^{May} March 1945 the war in Europe ground to a halt. Three months later on 14 August 1945 the Emperor of Japan accepted the terms of surrender and combat ceased. With the signing of the documents of surrender aboard USS MISSOURI in Tokyo Bay on 2 September the war was, at least, unofficially over. As the lights began to go on again all over the world, a calculation was begun of the cost of the nightmare which had seized virtually all of mankind. Even today it is virtually impossible to arrive at a quasi-accurate estimate of the expenditure of wealth and lives involved in the Second World War. This attempt has been hindered by the partial blackout of statistical material from the Communist nations, by the collapse of statistical collection agencies under wartime conditions, by destruction of irreplaceable records, the unreliability of procedures utilized by some countries, and the difficulty in ascertaining the number of civilian deaths directly attributable to the war. Of the countries for which we have records, we are able to estimate that some 84,000,000 men took part as combatants. Even this must be regarded as a conservative estimate, however, because it does not include

figures from the Soviet Union, Czechoslovakia, Denmark, France, Greece, Hungary, and Poland. A very stringent estimate of participants from these countries would indicate the total number of combatants in the neighborhood of 100,000,000 men and women. The belligerent forces suffered 14,942,962 deaths directly attributable to battle.¹ Estimates of the total number of deaths, including the execution of some 5.5 million Jews, vary from 35 to 60 million.² A study conducted by James H. Brady of American University, cited by the 1946 edition of the World Almanac and Book of Facts, placed direct expenditures by Allied and Axis governments in excess of one trillion dollars and property damage at an additional 231 billion dollars.³ These figures are, however, only statistics. They cannot indicate the human cost of the war in terms of bereavement, the destruction of families, the loss of potential and psychological scarring which took place. As the shards of civilization were being swept up, the question of explication of this overwhelming tragedy of the world arose. How was the Second World War to be explained? How was this tragic convulsion of civilization to be understood?

¹Dan Golenpaul, ed. Information Please Almanac, Atlas and Yearbook, 26th ed., (New York: Simon and Shuster, 1971), p. 701.

²Robert W. Coakley, "World Wars: Killed, Wounded or Missing," Encyclopedia Britannica, 1972, XXIII, 802J.

³Irvine E. Eastman, ed. The World Almanac and Book of Facts For 1946 (New York: The New York World-Telegram, 1946), p. 35.

Here I differ sharply with the school of thought represented by Freda Utley.⁴ The major war crimes trials held in Nuremberg and Tokyo were not a simple matter of vengeance, a legal charade for the execution of the leaders of a vanquished foe. These trials, which were much closer to Roman Law, in which the defendant is presumed guilty, than to English Common Law, were an attempt to make sense of the tragedy which had befallen mankind. In essence they were morality plays to establish in documentary form the contemporary conception of the immediately preceding historical events. The roots of this particular interpretation and of the trials themselves lie deep within the course of the war itself.

Eduard Benes, in an article in the Journal of Central and East European Affairs of April 1941 suggested

As essential condition of a peace based upon really moral principles will be a determined censuring of the barbarity and criminality of the totalitarian regimes, and an actual, as far as possible general, correction of all the injuries which have been done to individuals and nations, and the political punishment of those who are responsible for this war.

General Wladyslaw Sikorski, Prime Minister of Poland, in a speech delivered in London on 18 September 1941, predicted that "the day will come when Hitler's hangmen will pay for their crimes." Replying to a statement made by Franklin Delano Roosevelt on 25 October 1941, concerning atrocities committed by the Germans, Winston Churchill added that "retribution

⁴Freda Utley, The High Cost of Vengeance (Chicago: Henry Regnery Company, 1949), pp. 162-181.

for these crimes must henceforward take its place among the major purposes of the war." Hubert Pierlot, Prime Minister of Belgium, speaking in London on 21 February 1942, said,

Exemplary punishment to fit the greatness of the crime is a satisfaction urgently demanded by the conscience of the oppressed peoples, by their need for justice as well as their desire for security.

Vyacheslav M. Molotov on 27 April 1942 gave expression in Moscow to Soviet feeling in the following words:

The Hitler Government and its accomplices will not escape the stern responsibility and deserved punishment for all their unheard of crimes committed against the people of the USSR and against all freedom-loving peoples.

Sumner Welles, then Under Secretary of State, speaking in Arlington, Virginia, on 30 May 1942, said

I believe that these voices of the men who will make our victory possible will demand that justice be done, inexorably and swiftly to those individuals, groups, or peoples, as the case may be, that can truly be held accountable for the stupendous catastrophe into which they have plunged the human race.

Anthony Eden, then His Majesty's Secretary of State for Foreign Affairs, stated in a speech delivered at Leamington on 26 September 1942

Daily, new crimes are added to the list. We are resolved that they shall not go unpunished. We are not animated by a spirit of revenge, natural though such must be to many in Europe, but by the conviction that civilized justice will be restored to its rightful place only when the criminals who have sought to destroy it are made to answer for their deeds. Retribution must be swift, sure, and complete.

Similar thoughts were expressed by Pieter Gerbrandy, Prime Minister, The Netherlands; General Charles de Gaulle, then President of the French

National Committee; and Eelco N. Van Kleffers, Minister of Foreign Affairs, The Netherlands.⁵ It was the general consensus, not only that Germany had started the war, but that she had done so unjustly and in violation of international law. Secondly, it was felt that the decisions leading up to the war were the decisions of men and that these men could be held personally accountable for those decisions.

This consensus was given formal expression, first in terms of responsibility for criminal acts, in a joint declaration signed by Roosevelt, Churchill and Stalin issued by the Foreign Secretaries at the Moscow Conference. This document contained a solemn warning that

. . . those German officers and men who have been responsible for or have taken part in the above atrocities, massacres and executions will be sent back to the countries in which the abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein.

This declaration, the document goes on to explain is

. . . without prejudice to the case of German criminals, whose offenses have no particular geographical localization and who will be punished by a joint decision of the governments of the Allies.⁶

⁵United Nations Information Office, War and Peace Aims: Extracts from Statements of United Nations Leaders, Special Supplement No. 1 to the United Nations Review, 30 January 1943, pp. 29-33.

⁶Henry Steel Commager, ed., Documents of American History (5th ed.; New York: Appleton-Century-Crofts, Inc., 1949), p. 665.

In a progress report submitted to President Truman on 6 June 1945, prior to the Potsdam Conference, Justice Robert H. Jackson, who was later to become the chief United States prosecutor at Nuremberg, argued that

Our case against the major defendants is concerned with the Nazi master plan, not with individual barbarities and perversions which occurred independently of any central plan.

Later in the same report he maintained

Unless we write the record of this movement with clarity and precision, we cannot blame the future if in days of peace it finds incredible the accusatory generalities uttered during the war. We must establish incredible events by credible evidence. . . . ⁷

Article VI of the Charter of the International Military Tribunal at Nuremberg incorporated in an agreement signed on 8 August 1945 by representatives of the United States, France, Great Britain, and the Union of Soviet Socialist Republics for the prosecution and punishment of major war criminals established three categories of crimes.

⁷Harry S. Truman, Year of Decision, Vol. I of Memoirs (2 vols.: Garden City, N. J.: Doubleday & Company, Inc., 1955), p. 313. See also Robert H. Jackson, The Nurnberg Case (New York: Cooper Square Publishers, Inc., 1971; originally published New York: Alfred A. Knopf, Inc., 1947) and Office of United States Chief of Counsel For Prosecution of Axis Criminality, Nazi Conspiracy and Aggression (Washington, D. C.: United States Government Printing Office, 1948). The latter is, in the words of its subtitle, "a Collection of Documentary Evidence and Guide Materials Prepared by the American and British Prosecuting Staff." The official English language text of the proceedings against the major defendants at Nuremberg is the Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945--10 October 1946, published at Nuremberg in 42 volumes between 1947 and 1949.

- (a) Crimes against peace: namely, planning, preparation, initiation or waging a war in violation of international agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) War Crimes: namely, violations of the laws and customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian populations, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.⁸

Article VII of the Charter specifically disallows the defense argument that official position as Head of State or responsible officials in Government Departments should be considered as freeing the defendants from responsibility for Acts of State or mitigating punishment, a defense which Justice Jackson referred to in his report to President Truman as "a relic of the doctrine of the divine right of kings."⁹

The defense of action pursuant to order of Government or superior authority is disallowed by Article VIII, but is permitted to be judicially noted for consideration of mitigation of punishment.

⁸ Leon Friedman, ed., The Law of War: A Documentary History (New York: Random House, 1972), "Prosecution and Punishment of European Axis, August 8, 1945," pp. 886-7.

⁹ Truman, p. 312.

The selection of defendants for the trial of major war criminals was intended to be representative rather than exhaustive. Those tried included high government officials, party officials, diplomats, senior military personnel, propagandists and an industrialist. The selectivity and representative character of defendants is illustrated in the discussion concerning substituting Alfried Krupp von Bohlen und Halbach for his father when it was determined that the latter had become too senile to stand trial.¹⁰ In addition to the individuals designated as defendants, action was taken against specific organizations, which were held responsible as "corporate persons" for various alleged offenses listed in the indictment. These organizations included Die Reichsregierung (Reich Cabinet), Das Korps Der Politischen Leiter Der N.S.D.A.P. (the Leadership Corps of the Party), Die Schutzstaffeln Der N.S.D.A.P. (SS), Die Sicherheitsdienst (SD), Die Geheime Staatspolizei (Gestapo), Die Sturmabteilungen Der N.S.D.A.P. (SA), and the General Staff and High Command of the Armed Forces.

The Charter of the International Military Tribunal for the Far East, issued on 19 January 1946 by General of the Army Douglas MacArthur as Supreme Commander for the Allied Powers, follows the Nuremberg charter in its definition of crimes which come under the purview of the Tribunal.

¹⁰Eugene Davidson, The Trial of the Germans (New York: Macmillan Company, 1965), pp. 26-27.

Again the selection of defendants was intended to be representative.

The primary interest of both of these tribunals was the assessment of responsibility for the waging of an aggressive war. The legal concept of conspiracy, which is rooted in Anglo-Saxon jurisprudence and unfamiliar to practitioners of Roman law, became a key focal point. Richard H. Minear in a study of the Tokyo trial indicates five fundamental questions of international law which played a significant role in the trial, and in which the state of the law was at the very least uncertain and debated by experts. The concept of conspiracy had not arisen prior to Nuremberg. The issue of individual responsibility for acts of state was admitted even by the prosecution as an innovation. This concept had been specifically rejected by the United States representatives in Versailles in 1919. As late as 1944 the United States was unwilling to regard aggressive warfare as a crime in the legal sense. Both the Nuremberg and Tokyo Charters advance definitions of crimes which had not previously been recognized, violating the concept of nullum crimen sine lege, nulla poena sine lege¹¹ and resulting in virtual ex post facto legislation. The concept of negative criminality (failure to prevent a crime) had been repudiated by the United States in 1919, but was to play a significant

¹¹ Unless there is a law, there can be no crime; unless there is a law, there can be no punishment.

role in both Nuremberg and Tokyo.¹² The principles of international law formulated by the Nuremberg and Tokyo Charters were adopted by the United Nations General Assembly on 11 December 1946.¹³ In 1950 the International Law Commission formulated the principles of Nuremberg which offer the most complete set of guidelines currently available on the relationship between personal responsibility and war crimes.¹⁴ This formulation has yet to be officially adopted.

Thus the movement during the war appears to be from criminal responsibility for "conventional" war crimes to responsibility for the act of war itself. Additionally, the concept of "personal" responsibility and, therefore, of accountability was distinctively heightened. Molotov's reference to the "criminal deeds of the Hitlerites,"¹⁵ and the employment of "gangster"-referant language, as well as Winston Churchill's classic description of the "madman on a bicycle" may be taken as indicative of the general mood of the Allied Nations at the end of the war.

¹²Richard H. Minear, Victor's Justice: The Tokyo War Crimes Trial (Princeton, N.J.: Princeton University Press, 1971), p. 72.

¹³United Nations General Assembly Resolution 95 of 11 December 1946, Resolution Affirming the Principles of Law Recognized by the Charter of the Nuremberg Tribunal in Friedman, pp. 1027-28.

¹⁴See appendix 1.

¹⁵United Nations Information Office, p. 32.

Against this heightened background of personal responsibility for crimes of war the Yamashita case should be viewed. William Ruddock, an officer attached to General MacArthur's Judge Advocate General Staff summed up the primary issue in a dinner conversation with Frank Reel.

Yamashita is being charged as a war criminal because his men violated the laws of war. . . . They have nothing on him at all. They're trying to establish a new theory--that a commanding officer is responsible if his troops violate the laws of war, regardless of whether he ordered the violations or even knew of them. Under such a principle, I suppose even MacArthur should be tried.¹⁶

The nub of the case revolves around the concept of "negative criminality." In the sixty-four counts of the bill of particulars and the fifty-nine additional counts in the supplemental bill, there is no allegation that Yamashita either personally committed, directed or ordered the commission of any of the offenses. It is the contention that as commander it was incumbent upon him to insure that such offenses did not occur or, in the event of their occurrence, to take prompt and effective action against the perpetrators. In demonstrating personal responsibility it becomes critical that the commander has effective responsibility for the units involved, knowledge of the alleged events, and some degree of possibility of effecting the course of actions. It has been the purpose of this introduction to develop the historical framework within which this concept was discussed during the course of the trial and to explore the

¹⁶A. Frank Reel, The Case of General Yamashita (Chicago: The University of Chicago Press, 1949), p. 3.

mind-set with which both the prosecution and the defense had to deal.

General Yamashita was tried by a United States Military Commission convened by Lieutenant General Wilhelm D. Styer, USA, acting under the authority of General of the Army Douglas MacArthur. The Commission found General Yamashita guilty as charged. On 23 February 1946 he was stripped of all indications of military rank and honor and hanged in disgrace. In confirming the awarding of the death sentence, General MacArthur wrote in part:

This officer, of proven field merit and entrusted with a high command involving authority adequate to his responsibility, has failed this irrevocable standard; has failed his duty to his troops, to his country, to his enemy, and to mankind; he has failed utterly his soldier faith.¹⁷

The thrust of General MacArthur's remarks in this order underline the emphasis which he placed upon the concept of "duty," which is defined elsewhere in this same order as "protection of the weak and unarmed" and "sacrifice." In so writing, however, he also indicates that a relationship

¹⁷Order of General Douglas MacArthur Confirming Death Sentence of General Tomoyuki Yamashita, February 6, 1946 in Friedman, p. 1598. Military Law differs significantly from civil law in that the court martial, or military commission, is called into being by a "convening authority," who has administrative responsibility for the personnel involved in the particular allegations. The members of the court/commission, as well as the prosecution and defense are appointed by the officer holding this authority. It is his responsibility to review the findings of the court/commission, and is empowered to reduce, but not increase, the severity of the sentence. This authority is not analogous to the appellate process of civil law, provision for which is also found in military jurisprudence.

exist between the military commander and four definable groups of people-- the troops under his personal command, his country, his enemy, and mankind. It is this personal responsibility and these relationships with which this paper seeks to deal.

In examining these relationships it will be the intent of this study to view them within the framework of a Christian perspective. Chapter II will examine the trial of General Yamashita and the appeal of the results of this trial to the Supreme Court of the United States, in order to ascertain the critical events and decisions and to assay their ethical import for the concept of command responsibility. Chapter III will sketch briefly the particular ethical presuppositions which provide the framework for a consideration of command responsibility. Chapter IV will examine, in turn, each of the relationships defined by General MacArthur from this perspective.

It is not the purpose of this paper to discuss the legal points at issue, except insofar as they impinge upon the ethical substructure. Nor is it the intention of this paper to comment upon the conduct of the trial itself or to arrive at stated opinions concerning the guilt or innocence of General Yamashita.

CHAPTER II

IN THE MATTER OF YAMASHITA¹

At approximately two o'clock in the afternoon on the 2nd of September 1945 on a dusty mountain road near the High Commissioners Palace in Baquio, Mountain Province, Philippine Islands, General Tomoyuki Yamashita, Commanding General 14th Imperial Japanese Army, and his party were taken into custody by a detachment of Military Police under the command of Lieutenant Colonel Aubrey Kenworthy. The "Tiger of Malaya" had been brought to bay. In company with General Yamashita were his Chief-of-Staff, Lieutenant General Akira Muto, Admiral Denhite Okochi, Major General Naokata Utsunomiya, Rear Admiral Kaoru Arima, Commander Yamamoto, Lieutenant Colonel Nakahara, Lieutenant Colonel Kuriya,

¹ The primary documentary sources for the trial of General Yamashita are the original record of trial, United States vs Tomoyuki Yamashita, Washington National Record Center, Suitland, Maryland (Hereinafter referred to as TR); Adolf Frank Reel, The Case of General Yamashita (Chicago: University of Chicago Press, 1949); Supreme Commander For The Allied Powers, Government Section, "The Case of General Yamashita: A Memorandum by DGEN Courtney Whitney," Far Eastern Law Section, Library of Congress, Washington, D.C.; LTCOL Aubrey Saint Kenworthy, The Tiger of Malaya: The Story of General Tomoyuki Yamashita and "Death March" General Masaharu Homma, (New York: Exposition Press, 1953); and various contemporary news reports.

Captain Futaki, and various supporting personnel. General Yamashita and his party were held overnight at the High Commissioners Palace.

Formal surrender ceremonies were held at 11:45 on 3 September. Shortly before the designated time General Yamashita, accompanied by Admiral Okochi, General Muto, Admiral Arima and two Japanese interpreters were escorted into the dining room of the Palace and seated on one side of a long table. On the other side of the table, to receive the surrender was Major General Edmond Harrison Leavy, Special Representative of Lieutenant General William D. Styer, Commanding General, American Forces Western Pacific Area. General Styer and Major General Johathan M. Wainwright, who had surrendered all Allied Forces in the Philippines to the Japanese in May 1942, were to General Leavy's right. To his left were General Sir Arthur Percival, Commanding General of the British Empire Forces during the siege and fall in Singapore in February 1941, and General Woods, serving as Clerk of the Conference. General Woods read in English the surrender instrument, a translation of which had previously been made available to the Japanese officers. After being signed by each of the Japanese officers, the Document of Surrender was passed to General Leavy to sign on behalf of the United States Army. The fountain pen used by all the officers was presented to General Wainwright. The total elapsed time for the surrender ceremonies was sixteen minutes, at the conclusion of which the Fourteenth Imperial Japanese Army ceased to exist. Lieutenant Colonel Kenworthy was directed to assume custody of General

Yamashita and his party as prisoners of war and convey them to a place of safekeeping until relieved by competent authority. At three o'clock that afternoon General Yamashita and his party were flown to Manila and then taken by convoy to New Bilibid Prison in Montelupen, Rizal Province, approximately twenty miles southwest of Manila.

On the 1st of October, less than a month after his surrender, General Yamashita was charged as a war criminal on orders from General MacArthur, Supreme Commander Allied Forces Pacific, whose Headquarters were now in Tokyo. The function of conducting the trial was delegated to Lieutenant General Styer as Commander Army Forces Western Pacific, the subechelon which had been given jurisdiction over military installations in the Philippines. By his order, dated 1 October 1946, a Military Commission was appointed to conduct the trial and prosecution and defense staffs were established. As members of the Military Commission General Styer selected Major General Russel B. Reynolds as President and Law Member, Major General Leo Donovan, Major General James A. Lester, and Brigadier General^s Egbert F. Bullene and Morris G. Handwerk. Not a single one of these General Officers had held combat command or had legal experience. Major Robert Kerr and Captains D. C. Hill, M. D. Webster, William N. Calyer, and Jack M. Pace served on the prosecution staff. Major Glicerio Opinión, a Philippine national, was added to this staff to provide Philippine participation. The defense staff consisted of Colonel Harry E. Clarke; Lieutenant Colonel James D. Feldhaus, who was hospitalized

for a major portion of the trial; Major George F. Guy, who was absent interviewing character witnesses for the defense for the first month of the trial; Lieutenant Colonel Walter Hendrix, Captain Milton Sandberg, and Captain Adolf Frank Reed.² At General Yamashita's request General Muto and the Assistant Chief-of-Staff, General Utsonomiya, were appointed as associate counsel in order to provide during the course of the trial records and facts with which they alone were conversant. Masakatsu Hamamoto, a graduate of Harvard Class of 1927, General Yamashita's personal interpreter, was also permitted to accompany him into the court room.³

The arraignment took place 8 October 1945 in the former residence of the United States High Commissioner on Dewey Boulevard overlooking Manila Bay. The charge drawn against General Yamashita was short and to the point. It reads as follows:

Tomoyuki Yamashita, General Imperial Japanese Army, between 9 October 1944 and 2 September 1945, at Manila and at other places in the Philippine Islands, while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against the people of the United States and of its allies and dependencies, particularly the Philippines, and he, General Tomoyuki Yamashita, thereby violated the laws of war.⁴

²Headquarters, United States Army Western Pacific Special Order No. 112 of 1 October 1945.

³TR, pp. 27-29.

⁴TR, p. 31. ~

In connection with the charge a bill of particulars containing sixty-four counts was furnished by the prosecution. The bill alleged murder, massacre, rape, and pillage of innocent noncombatant civilians in Manila and various other places; mistreatment, starvation, and murder of American prisoners of war and civilian internees; and wanton devastation and destruction of public, private and religious property. Late Friday evening (26 October) before the scheduled opening of the trial on Monday, 29 October, a messenger delivered to the defense a supplemental bill of particulars containing fifty-nine additional counts. The bill of particulars and its supplement mention General Yamashita only in the opening paragraphs of each. Nowhere within these bills is it alleged that he either committed or directly ordered the commission of the specified crimes.⁵

Tomoyuki Yamashita was born 8 November 1885 in Shikocu, Japan, a village located on the upper reaches of the Yoshina River.⁶ The son of a country doctor, he did not follow in his father's footsteps, as did his elder brother. Instead, he matriculated in the Hiroshima District Military

⁵See appendix 2.

⁶The following account is based on a biography drawn up at the request of the defense by General Muto and translated by Hamamoto (Reel, pp. 57-63); a letter from General Muto to LTCOL Kenworthy dated 19 May 1946 (Kenworthy, pp. 14-21); and Yamashita's testimony before the Military Commission (TR, pp. 3519-3671).

School and ultimately the Cadet's Academy in Tokyo. Graduating with high honors, he was commissioned a second lieutenant of infantry in the Japanese Army in 1908, three years after the Russo-Japanese War. In 1911 he was appointed to the staff of the infantry school. From 1914 to 1917 he attended the army staff school, followed by a tour of duty with the General Staff. In 1919 he was transferred to the War Ministry where he remained for eighteen years, except for special assignments in the United States and Europe, including a short period as military attaché in Austria. General Muto draws a distinction between the General Staff, whose primary responsibilities lay in the area of military operations and command, and the War Ministry, which was responsible for negotiating matters of budget, personnel, and equipment with the civilian government and was thus more susceptible to influence by popular opinion. Yamashita served as a member of the War Affairs Section, dealing with mobilization and budget, from the time that he was a Captain until his attainment of the rank of Colonel in 1929. At that time he became chief of the section. While a member of this organization, he was involved with the development of the Ugaki plan for the reduction of personnel and armament, an action which brought him into disfavor with a large segment of the high command.

Yamashita was promoted to Major General in August 1934 and in 1936 left the War Ministry to command an infantry brigade in Korea. He was promoted to Lieutenant General in November 1937 and served as Chief-of-Staff, North China Expeditionary Force in 1938 and Commanding General,

4th Division, then located in Manchukuo, in 1939. In 1940 he was appointed as Inspector General of Aviation, but held the post for only a short time before being ordered on a six months inspection tour of Europe by General Tojo. Tojo was criticized for this action because it was interpreted by many as an effort on his part to remove Yamashita from the Tokyo political scene. Upon Yamashita's return, he reported that unless Japan immediately effected far-reaching improvements in the areas of air and mechanized warfare, communications, engineering, and chemical warfare, she could not hope to meet the requirements of modern warfare. In September 1941 he was suddenly transferred to the comparatively unimportant post of defense commander of the Kwangtung army in Manchukuo.

The following month he was placed in command of the 25th Imperial Japanese Army and, at the outbreak of war, was responsible for operations in Malaya and the capture of Singapore. Yamashita opposed more than 80,000 British and Australian troops at Singapore with a force numbering about 30,000. Concerned that the British would discover his relative weakness and not desiring to become engaged in costly street fighting, he insisted, during a meeting with General Percival in the teller's cage of a suburban bank, upon a cease fire at six o'clock that evening (15 February 1942). General Percival demurred, requesting until eight o'clock the following morning. During a long interchange between the harried Japanese interpreter, whose command of English was minimal, and General Percival, Yamashita interrupted, demanding a simple "Yes" or "No" answer. Newsmen

outside the teller's cage, speaking no Japanese, saw only Yamashita's shaking finger and heard the demand for a "Yes" or "No." The legend of the ferocious conqueror, the "Tiger of Malaya," was born. Acclaimed as a hero in Japan, he was not permitted by the Army high command to return to his homeland for recognition of his achievement or presentation to the Emperor.

During 1942, he served as Supreme Commander in Malaya and then was transferred to serve as Commander at Timor, Netherlands East Indies. Because of political antipathy on the part of the Tojo cabinet, Yamashita was then ordered to an unimportant assignment in Manchukuo.⁷

⁷Here a minor confusion develops in the sequence of events. Collier's Encyclopedia, 1961 ed., s.v. "Yamashita" reads, "In World War II he had charge of the Malayan campaign which ended in Singapore's capture in February 1942. He served as commander-in-chief of Japanese forces and chief of military administration in Malaya and Sumatra. Yamashita then assumed command of Japanese forces in the Philippines and captured Bataan Peninsula and Corregidor in the spring of 1942." The Columbia Encyclopedia, 3rd ed., s.v. "Yamashita" says, "In March, 1942, he relieved Homma in the Philippines and took Bataan and Corregidor." A contemporary account ("Quiet Room in Manila" Time, November 12, 1945, pp. 21-22) refers to him as the "Beast of Bataan," a term normally associated with General Homma. These accounts place Yamashita in the Philippines much too early. All historical accounts that I have consulted hold General Homma as Commander of the 14th Imperial Japanese Army at the time of the fall of Bataan and Corregidor. Homma was later placed on trial for the famed "Death March." Kenworthy (pp. 41-43) lists General Masaharu Homma in command of the 14th Army, which had primary responsibility for the Philippines, from 1941 until August 1942. Homma was relieved of command on orders from General Tojo and returned to Japan where he served as Vice-President of the Philippine Society of Japan. Relieving General Homma was General Shijuichi Tanaka, who remained in command until he contracted a serious case of malaria and was forced to return to Japan in April 1943. Lieutenant General Shigenori Kuroda assumed command on 5 May 1943. He was relieved by Yamashita on 9 October 1944.

After the fall of Saipan in July 1944, the Tojo cabinet resigned en bloc. With the fall of Peililiu and the approach of the American forces to the Philippines the situation became critical for Japan. It was under these circumstances that Yamashita was ordered to the command of the 14th Imperial Japanese Army. He departed Manchukuo on 27 September 1944, remaining in Tokyo just long enough to exchange his heavy uniforms for tropical clothing. His orders were only to relieve Lieutenant General Kuroda, a task which encompassed the defense of the Philippine Islands against the threatening American attack. He was subordinate to the Supreme Southern Commander, Field Marshall Terauchi, whose headquarters was then in Manila. Field Marshall Terauchi, jointly with the Japanese ambassador, retained control over all political and economic affairs.

General Yamashita arrived in Manila on 7 October 1944, immediately to be confronted by an impossible command situation. The defense of the Southern Philippines was entrusted to the 35th Army (roughly 100,000 men) under the command of Lieutenant General Sosaku Suzuki. This force was under General Yamashita's control. The 14th Army under Yamashita's direct command consisted of approximately 120,000 troops. In addition, there were operating in the area, but not subject to Yamashita's command, Army Air Force personnel (60,000), Naval Forces (65,000), Reserve units belonging directly to the Imperial General Headquarters or to the Supreme Southern Command (30,000), and Special Water Transport Units (10,000). A significant portion of the military personnel in the Philippines had to

be employed in small detachments throughout the area for the preservation of peace and order. The sudden expansion of the Japanese Army had led to a deterioration of both personnel and equipment. This was compounded by the long and debilitating service in a tropical climate which these units had experienced. A large number of the men available were casualties, men who had suffered the discouraging experience of having their transport sunk from under them. The defense plan prepared by General Kuroda was virtually worthless. Supplies, particularly rice and petroleum products, were scarce and unsystematically scattered over the islands. With establishment of American air supremacy daytime movement became almost impossible. Of General Kuroda's staff only three officers remained to assist with the transition of command, thereby destroying any institutional memory available to him. General Muto was ordered in as Chief-of-Staff at this time, but, like Yamashita's other staff officers, was totally unfamiliar with the tactical situation in the Philippines.

The American attack on Leyte began on 18 October 1944. General Yamashita's orders indicated that primary responsibility for meeting the attack would rest with the Navy and Air Force. His army personnel would merely "co-operate" with those branches as the need arose. The one division stationed on Leyte and regiments scattered on nearby islands of the Visayan group were considered satisfactory for dealing with the threat. On 22 October Yamashita was suddenly directed to send the greatest troop strength available to Leyte. Since this involved a fundamental alteration

in his battle plan, it was with the greatest difficulty that he endeavored to respond. Assembly of personnel, equipment, and supplies; procurement and co-ordination of transportation; and tactical considerations, all in the face of incessant and highly effective harassment by United States Naval and Air units, demanded the utmost command concentration. On 7 December American forces landed at Ormac on the inner side of the island, bringing the possibility of effective resistance to an end.

On 17 November Field Marshall Terauchi left Manila for Saigon. In December Yamashita gained control of the forces assigned to the Southern Command.⁸ On 1 January he was given command of the 4th Air Army.⁹ On 5 January he gained limited tactical control "when engaged in land operations" over Naval personnel.¹⁰ Gradually, during January and February, he succeeded to the command of the various maritime forces.¹¹

With the fall of Leyte General Yamashita turned his primary attention to the defense of Luzon. Realizing that it would be impossible to force a decisive battle against the highly mechanized United States forces, Yamashita opted for a holding operation based primarily on the mountainous areas. As outlined by Kenworthy, his plan of campaign was as

⁸TR, p. 3525.

⁹TR, pp. 2676, 3525, 3589.

¹⁰TR, pp. 2535, 2536, 2538, 3526, 3588.

¹¹TR, p. 3525.

follows:

1. The Americans were expected to land at Lingayen Bay with their main forces in the early part of January, while attempting at the same time, with minor forces, to land at Batangas and Bataan promontory with the object of marching on Manila City. It was also considered possible that an attempt should be made to land at Aparri or to occupy Cagayan Valley with parachute units.
2. The Japanese forces were to draw back upon three main positions, the first in the hilly district east of Manila, the second in the mountains west of Clark Field, and the third around Baguio and Balete Pass, all three groups co-ordinating their operations in such a way as was best calculated to restrain the American forces rushing on towards Manila and thereby to retard their ultimate employment in the attack upon the mainland of Japan or elsewhere.
3. One detachment was to be sent to Batangas peninsula to check the enemy's march on Manila.
4. One Army corps was to be dispatched to the vicinity of Aparri to stop the enemy's landing and to secure the Cagayan Valley.
5. The City of Manila was to be left outside the zone of battle.¹²

The decision to leave the city of Manila outside the battle zone is of critical import for the trial. Yamashita advanced three reasons for this decision. The population consisted of approximately one million people and the logistical burdens of feeding them would overwhelm his, already strained supply system. The buildings were highly inflammable and would constitute an additional hazard to the defenders. The terrain is flat, requiring a tremendous ratio of strength to defend it.¹³ To this we might add Yamashita's demonstrated reluctance to engage in costly

¹²Kenworthy, p. 18.

¹³TR, p. 3527.

street fighting. Yamashita issued an order in mid-December 1944 for the abandonment of Manila during the course of the next six weeks.¹⁴ All but fifteen or sixteen hundred Japanese Army troops, who were left to guard military supplies, were removed from the city. In addition to these troops there were twenty thousand naval personnel under the command of Rear Admiral Iwabuchi remaining in the city. Late in December Yamashita moved his headquarters from Fort McKinley, on the outskirts of Manila, to Baguio, a city high in the mountains of northern Luzon. With the move from Manila Army Group Shimbu (i.e., "mixed") under the command of Lieutenant General Yokoyama was activated. The mission of this army group was to effect the evacuation of Manila and to carry on defensive warfare from the hills east and south of the city. When the naval forces came under Yamashita's control on 5 January they were attached to this army group and came under the direction of the evacuation order.

On 9 January American forces under the command of Lieutenant General Walter Krueger landed at Lingayen Gulf against minor opposition. The first counterattack did not develop until the evening of the 10th and it became apparent that Yamashita did not plan to seriously contest the entire Central Plains-Manila Bay area. By 11 January all communication between Manila and Yamashita's headquarters in Baguio were cut off, except for radio traffic. Even the latter, the defense was to maintain in the trial, became problematic because of decreasing gasoline supplies for

¹⁴TR, p. 3527. Discussed in Reel, p. 22.

generators and deteriorating vacuum tubes and batteries. On 4 February United States forces entered the city of Manila. Contrary to General Yamashita's intention heavy fighting occurred in Manila itself, centering primarily south of the Pasig River in the main business district. The streets were mined, barricaded and covered by antitank guns. The ancient walled city of the Spaniards, Intramuros, was a particularly fortified strongpoint. The primary defenders were the naval personnel, reinforced by Army security forces commanded by Rear Admiral Iwabuchi. It was not until 13 February that Yamashita learned that the naval force was still in Manila. At that time Yamashita ordered Lieutenant General Yokoyama to direct Rear Admiral Iwabuchi to withdraw from the city. Iwabuchi either refused to obey the order¹⁵ or was incapable of doing so.¹⁶ Yamashita's attempted rescue mission on 14-15 February was repulsed and the section of the capital in which fighting was taking place was reduced to rubble before it was finally secured on 4 March. Thousands of civilians died during the course of the battle, many from atrocities committed by the Japanese. It was here that the most vicious atrocities took place, including rape and ritual murder, that weighed so heavily against Yamashita during the trial.¹⁷ From all indications these military personnel were

¹⁵Kenworthy, p. 20.

¹⁶Reel, p. 24.

¹⁷See items 14-18, 20, 34-39, 41, 48, 50-53, 60-64, 68, 93, 95, 97-101, 103, and 104 of the Bill of Particulars and Supplemental Bill of Particulars, appendix 2.

completely out of control.

A great deal of speculation has centered on Rear Admiral Iwabuchi's remaining in Manila. Both Reel and John Toland call attention to an extant naval order, issued by Vice Admiral Denshichi Okochi, Iwabuchi's immediate Naval superior, to destroy all port facilities and naval storehouses.¹⁸

During his testimony before the Military Commission, Admiral Okochi was asked

Q. Did you have command of any naval personnel operating in the Manila area after zero hours January 6, 1945?

A. I was in command as far as Naval Administration was concerned.

Q. Who was in tactical command of the troops?

A. The orders came from the Army.¹⁹

Q. You told him (RADM Iwabuchi) Navy land operation from then on were to be under the command of the Army, is that correct?

A. Yes, sir.²⁰

Q. Could General Yamashita supersede any order of yours as to other than land operations?

A. No. No, except those of land operations.²¹

There follows a discussion of the order for the destruction of harbor facilities and docks.²² Admiral Okochi was then asked

Q. Do you believe that Admiral Iwabuchi may have delayed his withdrawal because he had not yet completed the destruction of the harbors, docks and supplies?

A. Maybe there is something to that. That is my opinion.²³

¹⁸Reel, p. 24; and John Toland, The Rising Sun (New York: Random House, 1970), p. 677.

¹⁹TR, p. 2536. ²⁰TR, p. 2539. ²¹TR, p. 2546. ²²TR, pp. 2546-48.

²³TR, p. 2553.

Faced by a conflict in orders, Reel argues that it is normal to assume that Iwabuchi would choose to obey the directives of the Naval Ministry rather than those of a local army commander. Since Manila Harbor is one of the finest ports in the Western Pacific and could easily be utilized for support of operations, particularly against the Japanese home islands, its destruction was of paramount concern to the Navy. With the obliteration of Iwabuchi and his force in the liberation of Manila, this appears to be as close as we will be able to come to a definitive answer to the question. This, of course, does not excuse his loss of control over his force.

A second series of events of paramount concern for the trial are those centering around the treatment of alleged guerrillas.²⁴ The evidence supports the allegation that a number of forays were planned and executed with the specific purpose of dealing with the threat of guerrilla activity, especially in Batangas Province. On 11 October 1944 Yamashita issued a written order to his subordinates directing the "'subjugation' of 'armed guerrillas.'"²⁵ The use of the term "armed" is of particular significance here. Article I of the Annexed Regulations of Hague IV

²⁴See appendix 2. Many items of the Bill of Particulars and the Supplemental Bill of Particulars dealing with Batangas Province and other places, detailing the murder and massacre of civilians and the deliberate and wanton destruction of private, public and religious property, have reference to reprisal actions taken against guerrilla activity.

²⁵Reel, p. 107.

defines a belligerent force as one commanded by a person responsible for his subordinates, having a fixed visible emblem recognizable from a distance, carrying arms openly, and conducting operations in accordance with the laws of war. Article XLI specifies that "a violation of the terms of (an) armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of offenders or, if necessary, compensations for the losses sustained." Article L forbids the infliction of a general penalty on a population for "the acts of individuals for which they cannot be regarded as jointly and severally responsible."²⁶ Armed combat by men who neither wear uniforms nor distinctive emblems and who operate secretly in civilian guise is outlawed by the rules of war. Punishment, however, could only be directed against the guerrillas themselves and not against the population in general or selected representatives of the population.

To demonstrate the magnitude of the problem confronted by Yamashita it is necessary to cite only two incidents. When the American forces landed at Lingayen Bay, there was a great deal of concern over a reported Japanese minefield blocking the bay. Naval minesweepers were unable to locate a single mine. During the two month period between the landing on Leyte and that at Lingayen, Filipino guerrillas, under the

²⁶"Laws and Customs of War on Land (Hague IV) of 18 October 1907" in Friedman, pp. 308-27.

command of Lieutenant Colonel Russell Volckmann, had removed over 350 mines, disassembled the horns, boosters, and detonators, scooped out the explosive for use against the Japanese, and converted the cases into washtubs. The second incident occurred on the morning of 29 January. Lieutenant A. F. Tadena of the guerrillas was able to inform Rear Admiral Arthur D. Struble, commander of the Attack Group off San Antonio, near Subic Bay, that the entire area was already in friendly hands and that the Stars and Stripes had been raised on the beach. The airstrip at nearby San Marcelino had been seized by the guerrillas three days earlier in anticipation of the "invasion."²⁷

The normal procedure used by the Japanese in a guerrilla-infested area followed several patterns. Most often the inhabitants of a barrio were herded into the church or other large building. They were ordered to leave through one exit. A Filipino collaborator would then point out those involved in guerrilla activity or suspected of rendering aid to the guerrillas. Execution was ordinarily by sword or bayonet to conserve ammunition. Punitive raids on villages suspected of harboring or otherwise aiding guerrillas often resulted in indiscriminate slaughter. Colonel Fujishige, in command of troops in Batangas Province, readily admitted to issuing orders "to kill all persons who opposed the Japanese, including

²⁷ Walter Karig, Russell L. Harris, and Frank A. Manson, Battle Report: Victory in the Pacific (New York: Rinehart and Company, Inc., 1949), pp. 208-10.

'even women and children.'"²⁸ The question arises as to the extent of moral guilt adhering to a military commander whose subordinates execute a military mission with fanatical thoroughness and ferocity beyond the limitation of orders received.

A third group of incidents consists of mistreatment and execution of prisoners of war. The most famous occurrence during the war in the Philippines was the so-called "Palawan incident."²⁹ In December, 1944, one hundred fifty-one American prisoners of war were being used as a labor battalion for the construction of an airfield on the island of Palawan. On 14 December, fearful of air attack, the Japanese ordered all of the prisoners into air raid shelters, poured gasoline over them and ignited it. Some of the men burned to death. Those fleeing the flames were met by a hail of machine gun bullets. Nine of the prisoners of war escaped by swimming five miles to another island.³⁰ Here was a clear cut violation of the Geneva Convention of 1929.

To cite this incident against General Yamashita, however, as was done during the trial, begs several important considerations. The

²⁸Reel, p. 110.

²⁹See item 9 in appendix 2.

³⁰Reel, p. 115. This allegation is supported by a number of affidavits included among the exhibits furnished by the prosecution and accepted by the Commission as a part of the Trial Record.

perpetrators of this particular incident were members of the Army Air Force. At the time that the massacre took place, 14 December 1944, the Army Air Force operating in the Philippines was not yet under his command. As indicated earlier, General Yamashita did not gain control of Air Force personnel until 1 January 1945.

Those incidents maintaining mistreatment of prisoners of war, particularly with relation to the amount and quality of food provided, would have to be adjudicated on the basis of comparison of the food available to the Japanese for their own use. Integral to the question from the command point of view would be the provision of direct inspection and supervision to insure equitable distribution.³¹

The trial of General Yamashita opened on 29 October 1945. Sentence was passed on 7 December, the fourth anniversary of Pearl Harbor. Testimony was given by 286 people in eleven languages or dialects. The trial record runs 4,055 pages. A total of 423 exhibits were submitted, including official documents of the United States Government and the Commonwealth of the Philippines, affidavits, captured enemy documents, diaries of Japanese personnel, photographs, a propaganda film, and Manila newspapers. With few exceptions there is little contention by either side concerning the truth of the testimony, that the atrocities happened as

³¹See items 2, 4, 6-8, 13, 67, 69, 73-76, 83, 86, 87, 89, 106, 109 and 122 of the Bill of Particulars and Supplemental Bill of Particulars, appendix 2.

described before the Commission, or that such were properly construed to be war crimes. The point at issue, simply stated, is "What does this have to do with General Yamashita?" To what extent could he be held accountable and criminally responsible for these events? How far does command responsibility extend and what factors might legitimately be seen as limiting it?

Major Kerr in his presentation of the prosecution's case³² argued that the crimes detailed in the Bill of Particulars and the Supplemental Bill were so extensive and widespread, both as to time and to area that they must have either been willfully permitted or secretly ordered. Orders issued by subordinate officers, presented during the course of the trial, as well as direct testimony of the officers involved, demonstrated that they at least had ordered the execution of civilians under the guise of eliminating guerrilla activity. Concerning civilian internees and prisoners of war, Major Kerr argued criminal neglect. The major point at issue here was the failure of higher command to detect and prevent cruel and inhuman treatment accorded by local commanders and guards. Summarizing his argument, Major Kerr said

We contend, sir, that the evidence also shows clearly, conclusively, that during that period of time the Accused did unlawfully disregard and fail to discharge his duty as such commander to control the operations of his command and that he permitted members of his command to commit brutal atrocities

³² TR, pp. 3991-4055.

and other high crimes against people of the United States and its allies and dependencies, particularly the Philippines.³³

The question then arises, was the Accused responsible for the acts of those troops which he commanded, the acts which resulted in these atrocious crimes?

The crimes having been committed, the atrocities having been established, of course the next question is, Who is responsible?

We contend that clearly under the laws of war, under international law, the commanding officer of those troops, who was in the theater, who owed the admitted duty to control those troops so that they would not commit those acts, is responsible.³⁴

Concerning command of the Naval forces involved in Manila, prosecution argued that Manila was a land operation in every sense of the word and that the troops were therefore under Yamashita's tactical control.³⁵

In the defense summation³⁶ Colonel Clarke argued

The evidence adduced by the Prosecution, therefore, does not establish that General Yamashita or his headquarters issued orders directing the commission of the atrocities set forth in the Bill of Particulars, nor does it establish that General Yamashita had any knowledge thereof, nor that General Yamashita or his headquarters permitted the commission thereof, nor that under the circumstances then existing General Yamashita unlawfully disregarded and failed to discharge his duties as Commanding General of the 14th Area Army in controlling the operations of the members of his command, thereby permitting them to commit atrocities.³⁷

In its finding the Military Commission pointed out

This accused is an officer of long years of experience, broad in its scope, who has had extensive command and staff duty

³³TR, p. 3992.

³⁴TR, p. 3995.

³⁵TR, p. 3995.

³⁶TR, pp. 3908-

³⁷TR, p. 3985.

in the Imperial Japanese Army in peace as well as war in Asia, Malaya, Europe and the Japanese Home Islands. Clearly, assignment to command military troops is accompanied by broad authority and heavy responsibility. This has been true in all armies throughout recorded history. It is absurd, however, to consider a commander a murderer or rapist because one of his soldiers commits a murder or rape. Nevertheless, where murder and rape and vicious revengeful actions are widespread offences, and there is not effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his troops, depending upon their nature and the circumstances surrounding them. Should a commander issue orders which lead directly to lawless acts, the criminal responsibility is definite and has always been so understood. The Rules of Land Warfare, Field Manual 27-10, United States Army, are clear on these points. It is for the purpose of maintaining discipline and control, among other reasons, that military commanders are given broad powers of administering military justice. The tactical situation, the character, training and capacity of staff officers and subordinate commanders as well as the traits of character, and training of his troops are other important factors in such cases.³⁸

The Commission concluded that a series of atrocities and other high crimes had been committed by members of General Yamashita's command; that they were not sporadic in nature, but in many cases were supervised by Japanese officers and noncommissioned officers; and that during the period in question he failed to provide effective control of his personnel as required by circumstances.³⁹ The Commission found him guilty as charged and sentenced him to death by hanging.

Concurrent with the trial, another drama was being enacted.

³⁸"Decision of the United States Military Commission at Manila, December 7, 1945," in Friedman, pp. 1596-98.

³⁹Ibid., p. 1598.

Feeling that trial before a Military Commission did not serve to protect General Yamashita's civil rights, the defense filed a writ of habeas corpus with the Supreme Court of the Commonwealth of the Philippines, the court having original jurisdiction. Several issues were argued by the defense before the Court. The original contention was that the charge failed to specify a violation of law by the accused. The argument was that command responsibility had not been so construed in the past, and to define it as was being done by the prosecution amounted to virtual ex post facto legislation. Additionally, defense argued that since the Philippines were liberated, that all combat operations had ceased, and that local courts were open and functioning in an area where the United States exercised sovereignty, Yamashita should be tried by civilian court and not by military commission. Thirdly, defense argued that notice of not less than three weeks before commencement of the trial had not been given to Switzerland, serving as the protecting power for Japan, as required by the Geneva Convention of 27 July 1929 relative to prisoners of war. Finally, defense argued against the right of the Commission to receive in evidence affidavits, depositions, opinions of the prosecutors, gossip, hearsay, and sound films. The defense cited the twenty-fifth Article of War, forbidding reception of even the more formal depositions in a capital case (one in which the death penalty may be adjudged) and the twenty-eighth Article of War, which delegates authority to the President of the United States to establish rules of evidence for military

tribunals.⁴⁰ The Philippine Supreme Court demurred in interfering with the conduct of the trial by the Military Commission.⁴¹

A petition for certiorari was filed with the United States Supreme Court. When the death sentence was announced, the defense feared that it would be executed before the Supreme Court could act on their petition. They, thereupon, sent the following unprecedented cablegram:

GENERAL TOMOYUKI YAMASHITA SENTENCED TO HANG. IT IS FEARED SENTENCE WILL BE EXECUTED BEFORE COURT CAN ACT ON PETITION FOR WRIT OF HABEAS CORPUS NOW BEFORE COURT AND ON PETITION FOR WRIT CERTIORARI NOW ENROUTE TO YOU. WE URGENTLY REQUEST COURT TO ORDER SECRETARY OF WAR TO STAY EXECUTION UNTIL COURT CAN ACT ON BOTH PETITIONS.⁴²

Colonel Clarke, Captain Reel and Captain Sandberg, of the original defense staff, argued the case before the Supreme Court. They maintained that the military tribunal was not the proper forum in which to try General Yamashita, that he had not been found guilty of an offense previously defined as being in violation of the laws of war, and that under the rules of evidence accepted by the military commission, General Yamashita had been denied a fair trial.⁴³ In a 6 to 2 decision,⁴⁴ In Re Yamashita,⁴⁵

⁴⁰Reel, pp. 189-95.

⁴¹Reel, p. 195.

⁴²Reel, p. 203.

⁴³Reel, p. 211.

⁴⁴"A Word for Yamashita," Time, February 11, 1946, p. 21.

⁴⁵327 U.S. 1 (1946), in Friedman, pp. 1599-1623.

the Supreme Court upheld the sentence. Writing the majority opinion Chief Justice Stone answered the defense contentions point by point. On the question of the right of military commission to try the petitioner after cessation of war between the United States and Japan, he cited an earlier decision of the Court, Ex parte Quirin,⁴⁶ which recognized the "military commission" appointed by military command as the "appropriate tribunal for the trial and punishment of offenses against the law of war."⁴⁷ Citing Article 15 of the Articles of War⁴⁸ and the Espionage Act of 1917,⁴⁹ he pointed out that

the provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions . . . or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be triable by such military commission.⁵⁰

He also held that

In the present cases it must be recognized throughout that the military tribunals which Congress has sanctioned by the Articles

⁴⁶317 U.S. 1 (1942).

⁴⁷Friedman, p. 1600.

⁴⁸10 U.S.C., paras. 1471-1593.

⁴⁹50 U.S.C., para. 38.

⁵⁰Friedman, p. 1601.

of War are not courts whose rulings and judgments are made subject to review by this Court.⁵¹

Next, Justice Stone turned his attention to the question of authority to create the commission and its right to try Yamashita. Concerning this he wrote

The Congressional recognition of military commissions and its sanction of their use in trying offenses against the law of war to which we have referred, sanctioned their creation by military command in conformity to long established American precedents. Such a commission may be appointed by any field commander, or by any commander competent to appoint a general court-martial, as was General Styer, who had been invested with that power by order of the President.⁵²

The trial and punishment of enemy combatants who have committed violations of the law of war is thus not only a part of the conduct of war operating as a preventive measure against

⁵¹Ibid. The thrust of this argument is that military tribunals are "tribunals whose determinations are reviewable by the military authorities either as provided in the military orders constituting such tribunals or as provided by the Articles of War." "Congress," he points out, "conferred on the courts no power to review their determinations save only as it has granted judicial power 'to grant writs of habeas corpus for the purpose of an inquiry into the cause of the restraint of liberty.'" He then goes on to say, "If the military tribunals have lawful authority to hear, decide, and condemn, their action is not subject to judicial review merely because they have made a wrong decision on disputed facts. Correction of their errors of decision is not for the courts but for the military authorities which are alone authorized to review their decisions." He cites as precedence for this ruling Ex parte Vallandigham, 1 Wall. 243, 17 L.Ed. 589; In re Vidal, 179 U.S. 126, 21 S. Ct. 48, 45 L. Ec. 118; and Ex parte Quirin. This, of course, does not remove from the courts the right to inquire into the authority of a military commission as would properly fall within the limits of habeas corpus.

⁵²Friedman, p. 1602.

such violations, but as an exercise of the authority sanctioned by Congress to administer the system of military justice recognized by the law of war.⁵³

The extent to which the power to prosecute violations of the law of war shall be exercised before peace is declared rests, not with the courts, but with the political branch of the Government, and may itself be governed by the terms of an armistice or the treaty of peace. Here, peace has not been agreed upon or proclaimed. Japan, by her acceptance of the Potsdam declaration and her surrender, has acquiesced in the trials of those guilty of violations of the law of war.⁵⁴

The defense had maintained that the charge presented no violation of the law of war specifically attributable to General Yamashita. The Court here found the gist of the Charge to be an unlawful breach of duty in permitting personnel under his command to commit the atrocities specified.

The question then is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result. That this was the precise issue to be tried was made clear by the statement of the prosecution at the opening of the trial.⁵⁵

Citing Haage IV of 1907 and the Geneva Convention of 1929, the opinion of the Court continues

These provisions plainly imposed on petitioner, who at the time specified was military governor of the Philippines,

⁵³Ibid., p. 1603.

⁵⁴Ibid., p. 1604.

⁵⁵Ibid., p. 1605.

as well as commander of the Japanese forces, an affirmative duty to take such measures as were within his power and appropriate in the circumstances to protect prisoners of war and the civilian population. This duty of a commanding officer has heretofore been recognized, and its breach penalized by our own military tribunals.⁵⁶

The Court, therefore, concluded that, tested by any reasonable standard, the Charge did adequately allege a violation of the law of war within the competence of the Commission to try.

In response to the defense contention that the rules of evidence adopted by the Commission (i.e., the introduction of depositions, affidavits, opinions of prosecutors, etc.) precluded a fair trial, the Court engaged in an extremely intricate rendering of Articles 2, 12-15, 25 and 38 of the Articles of War. The gist of the Court's opinion was that the Articles of War created one form of military commission, but that the commission was competent to try two classes of people. To the first class, which included, among others, members of our own military forces, the rights and provisions of Article 2 applied. The second class, which the Court held to include enemy combatants, could not claim the benefits of Article 2.⁵⁷

Justice Murphy and Justice Rutledge dissented from the opinion of the Court. In his opinion Justice Murphy saw the primary issue before the Court as a question of the procedural rights of an accused person as

⁵⁶Ibid., p. 1606.

⁵⁷Ibid., p. 1606-7.

guaranteed by the Constitution, especially with reference to the due process clause of the fifth Amendment.

The answer is plain. The Fifth Amendment guarantee of due process of law applies to 'any person' who is accused of a crime by the Federal Government or any of its agencies. No exception is made as to those who are accused of war crimes or as to those who possess the status of an enemy belligerent.⁵⁸

Concerning the right of the Commission to try Yamashita and the nature of the Charge on which he was tried, he wrote

A military commission was appointed to try the petitioner for an alleged war crime. The trial was ordered to be held in territory over which the United States has complete sovereignty. No military necessity or other emergency demanded the suspension of the safeguards of due process. Yet petitioner was rushed to trial under an improper charge, given insufficient time to prepare an adequate defense, deprived of the benefits of some of the most elementary rules of evidence and summarily sentenced to be hanged. In all this needless and unseemly haste there was no serious attempt to charge or to prove that he committed a recognized violation of the laws of war. He was not charged with personally participating in the acts of atrocity or with ordering or condoning their commission. Not even knowledge of these crimes was attributed to him. It was simply alleged that he unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit the acts of atrocity. The recorded annals of warfare and the established principles of international law afford not the slightest precedent for such a charge. This indictment in effect permitted the military commission to make the crime whatever it willed, dependent upon its biased view as to petitioner's duties and his disregard thereof, a practice reminiscent of that pursued in certain less respected nations in recent years.⁵⁹

⁵⁸Ibid., p. 1608.

⁵⁹Ibid., p. 1609.

Justice Rutledge, in his dissent, reluctantly took issue with the majority of the Court on a number of issues. This trial was, in his view, an historical and legal novelty.

This trial is unprecedented in our history. Never before have we tried and convicted an enemy general for action taken during hostilities or otherwise in the course of military operations or duty. Much less have we condemned one for failing to take action. The novelty is not lessened by the trial's having taken place after hostilities ended and the enemy, including the accused, had surrendered. Moreover, so far as the time permitted for our consideration has given opportunity, I have not been able to find precedent for the proceeding in the system of any nation founded in the basic principles of our constitutional democracy, in the laws of war as in other internationally binding authority or usage. . . . The proceedings in this case veer so far from our time-tested road signs that I cannot take the large strides validating them would demand.⁶⁰

Justice Rutledge then argued that even if the provisions of Articles 25 and 38 of the Articles of War were not binding by their own force as acts of Congress, they would still be applicable by virtue of the terms of Articles 60 and 63 of the Geneva Convention of 1929.⁶¹ With Justice Murphy, he held that the due process clause of the Fifth Amendment was applicable to this case.⁶²

The proceedings of the trial were reviewed by General Styer as the convening authority and by General MacArthur. On 6 February 1946 General MacArthur signed an order confirming the death sentence of General Yamashita.⁶³ As noted in Chapter I, MacArthur found that Yamashita had

⁶⁰Ibid., p. 1618.

⁶¹Ibid., p. 1620.

⁶²Ibid., pp. 1622-23.

⁶³Douglas MacArthur, Reminiscences (New York: McGraw-Hill Book Company, 1964), pp. 295-96.

"failed his duty to his troops, to his country, to his enemy, to mankind."⁶⁴ In his review of the case of General Homma, issued on 21 March 1946, General MacArthur reflected on the minority opinions expressed by Justices Murphy and Rutledge. "The rules of war and the military law resulting as an essential corollary therefrom," he wrote, "have always proven sufficiently flexible to accomplish justice within the strict limitations of morality."⁶⁵ Throughout this order General MacArthur displays a marked antipathy toward the technical rules of evidence normally accepted by courts.

At 1:30 A.M. on the morning of 23 February 1946, Yamashita, Colonel Seichi Ohta, a former Commanding Officer of the Kempetai, and Takuma Higashiju, a civilian interpreter convicted of torturing Filipinos, were taken to a rehabilitation camp at Los Baños. Dressed in an Army fatigue uniform, stripped of all medals and indications of rank, General Yamashita walked up the 13 steps of the scaffold. He reportedly voiced a wish "for the Emperor's long life,"⁶⁶ and was hanged at 3:02 A.M. Ohta was hanged at 3:41 A.M., and Higashiji at 4:17 A.M. The bodies were buried at Los Baños in three unnamed, but numbered graves.⁶⁷

⁶⁴ Ibid., p. 295.

⁶⁵ Ibid., p. 297.

⁶⁶ "I Thank You," Time, March 4, 1946, p. 23.

⁶⁷ Kenworthy, pp. 87-88.

In the last written statement before his execution, which we have only in a very poor translation, Yamashita said:

I don't ashame (sic) in front of God for what I have done when I have died. But if you say to me, "You do not have any ability to command Japanese Army," I should say nothing for it, because it is my own nature. Now our war-criminal trial going on in Manila Supreme Court, so I wish to be justify under your kindness and right.

I know that all you Americans and American military affairs officers always have tolerance and rightful judgment. . . . I never forget what they have done for me, even if I have died. I don't blame my executioners. . . .

I thank you.⁶⁸

Was General Yamashita guilty as charged? This is a question which is still debated among practitioners of military law. Do considerations of the technical rules of evidence take precedence or should we follow the opinion expressed in the New Republic, "Yamashita was in charge of operations in the Philippines, and if he did not know what was going on, he should have."⁶⁹

General Courtney Whitney in his memorandum, written in response to the proposal to have Reel's book translated and published in Japan, draws an interesting parallel between the trial and British and Canadian military regulations. Regulations 10 (3) (4) and (5) of the War Regulations of Canada and Regulation 8 (ii) of the British Royal Warrant make the following provisions:

⁶⁸"I Thank You," Time, March 4, 1946, p. 23.

⁶⁹"Two Japanese War Criminals" New Republic, February 25, 1946, p. 269.

Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, the evidence given in any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime.⁷⁰

Given the tenor of the times and hearing, day after day, witnesses relate the brutal events which they had suffered, it would have been difficult to achieve the dispassionate weighing of evidence demanded of a court of law in the case of General Yamashita. The outcome of the proceedings was not as simple a case of "lynch-mob justice" as Reel would have us to believe in his well-argued presentation of the defense. There are a number of factors directly related to command responsibility arising from the Yamashita trial.

One of the most fundamental issues is the extent of knowledge that Yamashita had of the events detailed in the Bill of Particulars and its Supplement.

'If those crimes were committed,' Yamashita insisted, 'I positively and categorically affirm that they were against my wishes and in direct contradiction to all my expressed orders, and, further, if they were committed, they occurred at a place and at a time of which I had no knowledge whatsoever.'⁷¹

⁷⁰ Supreme Commander For the Allied Powers, Government Section, "The Case of General Yamashita: A Memorandum by BCEN Courtney Whitney," Far Eastern Law Section, Library of Congress, Washington, D.C., p. 48.

⁷¹ Reel, p. 24-25.

With the achievement of air supremacy and, later, with control of the lines of communication between Yamashita's headquarters and subordinate units, United States forces compelled his dependency on radio communications. It was argued, during the course of the trial, that these were faltering and unreliable, because of the lack of gasoline for generators and deteriorating vacuum tubes and batteries. An examination of the communications logs, if they were in existence at the time of the trial would have given some indication as to the extent of contact held with subordinate units. That some contact was indeed maintained would seem to be indicated by the fact that he was able to contact General Yokoyama in the Manila area on 13 February, and that Yokoyama was, in turn, able to establish contact with Admiral Iwabuchi in Manila. It must be remembered, however, that with the deteriorating tactical situation almost all radio traffic would be concerned with operational matters of the highest urgency. The second factor involved in the process of communications is the filtering which takes place as information moves from one level of command to another. It is not reasonable to expect that a subordinate commander will notify his superior that he is about to take action contrary to the express wishes of that superior or to inform him of such actions after the event, unless there is, in the subordinate's opinion, valid mitigating circumstance. Thus the command is to some extent isolated and dependent for information upon the decisions of his sources. The question of knowledge then devolves into two critical issues--the

knowledge available to the command upon which decisions are made and courses of action determined, and the responsibility of command to seek out information within the limits permitted by the tactical situation. Thus the responsibility for knowledge of events derogatory to the preservation of good order would be different for a command operating under peace time conditions and one operating under the pressure of tactical considerations. It would, in my opinion, be necessary, in order to establish moral responsibility, to demonstrate knowledge of the events in question or responsibility for such knowledge. Did the command in question have such knowledge? Should it have? Could it have? This is the order in which the questions should be raised.

The second fundamental issue raised by this particular trial involves command and control. It must be remembered that this was a deteriorating tactical situation. The decision made by General Yamashita to revert to a holding operation in the mountains appears to have been strategically correct in consequence of Japan's needs at that particular stage of the war. It is specifically this type of situation, however, that von Clausewitz notes as most restrictive to the powers of the commander to exercise control and requiring the highest degree of self-reliance on the part of subordinates. "In mountains he has too little command over the separate parts and the direction of all is beyond his powers. . . ." ⁷² At what point, the question arises, does a superior

⁷² Carl (Karl) von Clausewitz, On War, trans. J. J. Graham, intro. and notes F. N. Maude (London: Routledge and Kegan, Paul, 1965), vol. 1, p. 180.

commander no longer have effective control of his force. The relationship between Yamashita and Iwabuchi may be taken as an example. That Yamashita was in operational control of the force commanded by Iwabuchi, insofar as it was engaged in land operations, appears to be established by testimony before the commission. By 13 February, however, Iwabuchi either was unable or chose not to respond to directions from Yamashita. The question then arises as to the extent that Yamashita might be held morally culpable for subsequent actions of a force over which he no longer exercised effective control. At what particular time he lost control of the unit is a moot point. That he did not have effective control during the final hours of fighting in Manila seems to be established from the record. The issue here is at what point does moral responsibility for events pass from the senior in command to subordinate commanders. It would be argued, in the light of the Yamashita trial, that it does so at that point when the senior no longer has effective control over the force involved.

A subsidiary question involved in this issue is that of the enforcement of the wishes of the command upon a subordinate commander. In order to retain responsibility at the command level, the United States Armed Forces permits, within limitations, the removal of a subordinate "for cause" and "not for cause." This does not seem to have been the case in the Japanese Army. When charges of mistreatment of civilians were brought against Colonel Hagahanna, Commander of the Kempetai (Military

Police), Yamashita sought to replace him. The request for his removal had to be submitted to the War Ministry via the Supreme Southern Commander, whose headquarters were then in Saigon. It was not until 1 February that he was replaced by Major General Masuoba.⁷³ Such tenuous control over subordinates would appear to be detrimental to the function of command discipline. The commander, by virtue of his dependence on his subordinates, must have the power to remove those in whom he no longer has confidence.

A third issue raised by the Yamashita case having direct bearing on command responsibility is the amount of time that he had to effect changes in the command to which he succeeded. Yamashita relieved General Shigenori Kuroda on 9 October 1944. In describing Kuroda, Kenworthy says

Kuroda was not considered a strong character and had a rather bad reputation among the Filipinos as well as among the Japanese nationals residing in the Philippines. It is alleged that he spent a large part of his time drinking and consorting with rather questionable people.⁷⁴

If we can take at face value General Muto and General Yamashita's descriptions of the state of the Army upon Yamashita's arrival, coupled with the fact that within a matter of days Yamashita was compelled to make basic alterations in his concept of battle with the change ordered in his role in the Leyte campaign, the question arises as to the physical possibility

⁷³Kenworthy, pp. 72-73.

⁷⁴Kenworthy, p. 43.

of effecting far-reaching changes in the posture of his force. This, too, must be considered as a mitigating factor in the moral culpability devolving upon Yamashita. It would appear that a share of the responsibility must be apportioned to General Kuroda.

To be in command is to be responsible. Over the last few pages we have discussed the events leading up to the trial of Yamashita, some of the significant ground covered in that trial and its aftermath, and have attempted to point up some of the issues which have import for command responsibility. Now we may ask, to what extent Christian ethics can illuminate the wider context of command responsibility. Before we can turn our attention to this question, however, we must briefly outline the perspective of Christian ethics which will guide and form a basis for our discussion.

CHAPTER III

A DEFINITION OF CHRISTIAN ETHICAL PERSPECTIVE

Dietrich Bonhoeffer maintains in the opening paragraph of his fragmentary Ethics that "the knowledge of good and evil seems to be the aim of all Christian ethics."¹ If this is true, then the whole science of ethics is based on a fundamental irony; for the search of man for the knowledge of good and evil is the basis of the Fall of man in the Genesis narrative. It is this fundamental irony, the wry smile that it directs to all discussion of man's goodness, that makes the study of ethics so appealing. It immediately calls into question the possibility of the existence of Christian ethics as a "speculative" discipline, and renders it to some extent chimerical, and most certainly critical in nature.

To attempt to construct a general theory of ethics in a paper of such limited scope, as is this, would be both impossible and presumptive. In order, however, to give consideration to the question of command responsibility within a Christian context, it is necessary to outline some of the

¹Dietrich Bonhoeffer, Ethics, ed. Eberhard Bethge, trans. Neville Horton Smith (New York: Macmillan Company, 1955), p. 17.

major dynamics and parameters of Christian ethical thought and to indicate, briefly, their relationship to the question of war. The structure of Christian ethics is intimately related to the structure of dogmatics itself, and to adequately describe the course of ethical thought it will be necessary to deal responsibly with the factors of separation, judgment, grace, the formation of community, and responsibility in community.

Since the knowledge of good and evil, which Bonhoeffer perceives as the objective of ethical reflection, is intimately related to the fall of Man and reflects his separation from God, insofar as it strives after such knowledge ethical reflection is a continuation of this separation. For this reason, in Bonhoeffer's words, ethical reflection, "must be invalidated."² It is only with reluctance, he points out, that the Bible discusses God Himself as the One who knows good and evil. The usurpation of this knowledge by man in order to become "like God"³ resulted in man's "becoming a god against God,"⁴ or it can be expressed, as McGeachy does in The Gospel According to Andy Capp, "1. Man is created in the image of God. 2. He has forgotten it."⁵

²Ibid.

³Genesis 3:5.

⁴Bonhoeffer, Ethics, p. 19.

⁵D. P. McGeachy, III, The Gospel According to Andy Capp (Richmond: John Knox Press, 1973), p. 102.

In his construction of a metaphysics of moral responsibility, Immanuel Kant moves this separation to the very center of the "categorical imperative." The principle of autonomy is to him the "sole principal of morals;" for by an analysis of the concept of morality it is shown that "its principle must be a categorical imperative and that the imperative commands neither more nor less than this very autonomy."⁶ Kant then defines will as the causality of living things and introduces the concept of freedom as that property of causality which can be effective independently of foreign causation. By this negative definition of freedom, he sought to rescue human activity from a mechanistic determinism. Flowing from this negative definition, he found a positive concept of freedom, which though not established by pure reason, could be elucidated by practical reason.

Since the concept of causality entails that of laws according to which something, i.e., the effect, must be established through something else which we call cause, it follows that freedom is by no means lawless even though it is not a property of the will according to laws of nature. Rather it must be a causality according to immutable laws, but of a peculiar kind. Otherwise a free will would be an absurdity. Natural necessity is, as we have seen, a heteronomy of efficient causes, for every effect is possible only according to the law that something else determines the efficient cause to its causality. What else, then, can the freedom of the will be but autonomy, i.e., the property of the will to be a law to itself? The proposition that the will is a law to itself in

⁶Immanuel Kant, Critique of Practical Reason and Other Writings in Moral Philosophy, trans. and ed. Lewis White Beck (Chicago: University of Chicago Press, 1949), p. 97.

all its actions, however, only expresses the principle that we should act according to no other maximum than that which can also have itself as a universal law for its object. And this is just the formula of the categorical imperative and the principle of morality. Therefore a free will and a will under moral laws are identical.⁷

As Beck points out in the introduction to his compilation of Kant's moral teachings, this method of arguing that freedom is the ratio essendi of morality is in its turn the Copernican revolution effected by Kant in the field of morals, comparable to his distinguishing the proper fields of man as knower and as known in the realm of critical philosophy.⁸ Insofar as man exists as a rational being, he exists as a sovereign being. As a sovereign being, he gives law to himself, which subjectively is translated into respect for law. Action which is done from respect for law, and thus is an attestation of his freedom, is the "key to the universality and necessity of moral precepts, which would be variable and contingent if they depended upon particular ends."⁹ Freedom, then, is the determinant of moral responsibility. Here Kant raises a critical issue for ethics, which once again illuminates the fundamental irony of ethical reflection. If man is not autonomous in his actions, if he is not capable of acting in freedom from external causality, he lapses into a mechanistic determinism, and, therefore, cannot be held responsible for his actions. If he

⁷ Ibid., p. 102.

⁸ Ibid., p. 14.

⁹ Ibid., p. 21.

operates in freedom, in complete autonomy, he is totally responsible for his actions, but that freedom in which he operates is a freedom over against God; for man, qua autonomous man, exists in separation from God. This separation, or autonomy, is, as Brunner describes it "the original source of all sin."¹⁰ I have deliberately structured the issue in this way in order to move the discussion from the field of philosophical to theological ethics, with due apologies to the virtual unfairness which it represents to the seminal thought of Kant. Man is not morally responsible except in so far as he acts in freedom, and by acting in freedom, qua man, he places himself in opposition to God. Before continuing our consideration of this question, however, we would explore some of the concomitants of this separation.

In the past the account of the Fall in Genesis has too often been treated as a metaphysic of the origin of evil. The opening words of the chapter "The serpent was more subtle than any other creature"¹¹ would indicate that it is the intention of Scripture to completely by-pass the question of the origin of evil. From a reading of the context of the book of Genesis in which the Fall narrative fits, it would appear that the intention of these first, prehistorical chapters is to demonstrate the

¹⁰ Emil Brunner, The Divine Imperative, trans. Olive Wyon (Philadelphia: Westminster Press, 1947), p. 72.

¹¹ Genesis 3:1.

inextricable spread of corruption of the good, which had been created, throughout the totality of the physical world (spatially) and throughout the extent of human relationships.

Bonhoeffer describes man in his separateness from God as the experience of "shame." Shame is defined as "man's ineffaceable recollection of his estrangement from the origin; it is grief for this estrangement, and the powerless longing to return to unity with the origin."¹² The existentialist school of novelists and playwrights, centering primarily on Sartre, have explored this conception of separation at great length and often revert to emotional expressions which somewhat parallel Bonhoeffer's concept of shame. As Camus expresses it in The Fall, "Ah mon cher, for anyone who is alone, without God and without a master, the weight of days is dreadful."¹³ Arthur Miller has Quentin say in After the Fall

That I was moving on an upward path toward some elevation-- God knows what--I would be justified, or even condemned--a verdict anyway. I think now that my disaster really began when I looked up one day--and the bench was empty. No judge in sight. And all that remained was the endless argument with oneself--this pointless litigation of existence before an empty bench.¹⁴

¹²Bonhoeffer, Ethics, p. 20.

¹³Albert Camus, The Fall, trans. Justin O'Brien (New York: Random House, Vintage Books, 1963), p. 133.

¹⁴Arthur Miller, After the Fall (New York: The Viking Press, Bantam Book, 1965), pp. 4-5.

Sartre's use of the term "nausea" (*La Nausée*) both in his first novel in 1938 and in his discussion of the Body as Being-For-Itself in L'Être et le néant, insofar as it expresses a reaction to the contingency or facticity of existence, carries some of the same emotional import as does the concept of shame.¹⁵

Shame, according to Bonhoeffer results in a twofold reflexive action: concealment and exposure.

Shame implies both a positive and negative attitude to man's disunion, and that is why man lives between covering and discovering, between self-concealment and self-revelation, between solitude and fellowship.¹⁶

It is a reflection of the concealment and confession of the Fall Narrative, which appears to be inherent in man in his separation from God. Adam, knowing the difference between good and evil, can no longer stand before his Creator. Having transgressed his limits, he denies it and becomes like God, without a limit.

But just as in shame he reluctantly acknowledges the limit of the other person, so he unwillingly agrees with God his Creator by fleeing from him, by hiding from him.¹⁷

It is to this concept of concealment from God that Bonhoeffer attaches the idea of conscience. Rather than being a "voice of God," the conscience

¹⁵ Jean-Paul Sartre, Being and Nothingness, trans. Hazel E. Barnes (New York: Philosophical Library, 1956), pp. 306-39.

¹⁶ Bonhoeffer, Ethics, p. 22.

¹⁷ Dietrich Bonhoeffer, Creation and Fall, trans. John C. Fletcher (New York: Macmillan Company, 1965), p. 80.

perceives the separation from God and allows man to feel secure in his hiding place. "Here distant from God, man plays the judge himself and just by this means he escape's God's judgment."¹⁸

The second concomitant of man's separation from God is the destruction of community. Immediately, in the Fall Narrative there is a destruction of the relationship between man and wife¹⁹ and expulsion from the Garden into the world.²⁰ This is followed by destruction of the family²¹ and continued to the corruption of the entire human community.²² In spite of the almost total destruction of the world, the corruptive effects of man's separation from God hardly paused,²³ ultimately resulting in the "scattering" of the entire human community.²⁴ Bonhoeffer points out that with sin, and its related autonomy, ethical atomism enters into history. The original "form" of community continues to exist but it is a corruption of itself.

The original community of love, as the repose of wills in mutual action, is destroyed when one will exchanges the movement of love for an egocentric movement. And it is of the nature of the situation that the one who sees everyone around him abandoning the unbroken community and adopting an egocentric direction should himself take the same direction, for he sees that his own movement towards community is empty, and without response.²⁵

¹⁸Ibid., p. 81.

¹⁹Genesis 3:12.

²⁰Genesis 3:24.

²¹Genesis 4:8.

²²Genesis 6:5.

²³Genesis 9:20.

²⁴Genesis 11:8.

²⁵Dietrich Bonhoeffer, The Communion of Saints (New York: Harper and Row, Publishers, 1963), p. 81.

To be responsible man must exist in freedom, but to exist in freedom means to stand in opposition to God and under the judgment of God. This is the krisis of man's existence. From the very moment that man begins to ask the moral question, ignominy lies in wait for him. In his very striving after the good "man makes shipwreck and cannot save himself."²⁶ He condemns himself to death by his question about the good, "because the only certain answer is that he, man, is not good, and from the viewpoint of the good is powerless."²⁷ It is through the very inescapability of this doom, the "No" of God's judgment upon the totality of the affairs of men that we come upon the reality of God standing over against human existence. The judgment of God is inextirpable. Amos, the first of the prophets to commit his message to writing, gives warning to the children of the covenant, "Prepare to meet your God!"²⁸ In his exegesis of the Day of the Lord, he not only makes clear that man's meeting with God is a meeting in judgment (the Day of the Lord is a day of darkness and not of light), but also that it surrounds man and ultimately engulfs him. It is "as if a man fled from a lion, and a bear met him; or went into the house and leaned against the wall and a serpent bit him."²⁹

²⁶Karl Barth, "The Problem of Ethics Today" The Word of God and the Word of Man, trans. Douglas Horton (London: Hodder and Stoughton Limited, 1928), p. 163.

²⁷Ibid., p. 167.

²⁸Amos 4:19.

²⁹Amos 5:18-19.

Finally, like the remnant of a plague-infested city, man can only say "Hush! We must not mention the name of the Lord," lest we call his attention to us.³⁰ As Bonhoeffer points out in the Ethics, man is formed in the likeness of the Crucified, and this means to be under the sentence of God.

In his daily existence man carries with him God's sentence of death, the necessity of dying before God for the sake of sin. With his life he testifies that nothing can stand before God save only under God's sentence and grace.³¹

If we understand the Sermon on the Mount correctly, its thesis and demand is contained in its concluding words of chapter 5, "You, therefore, must be perfect, as your heavenly Father is perfect."³² The sentence of God, thus, stands not simply over against the sinfulness of man, but against the totality of man's existence insofar as it resides in separation from God. Karl Barth, following St. Paul, can pronounce the judgment of God against man's very religiousness.

Religion compels us to the perception that God is not to be found in religion. Religion makes us to know that we are competent to advance no single step. Religion, as the final human possibility, commands us to halt. Religion brings us to the place where we must wait, in order for God to confront us.³³

³⁰Amos 6:10. ³¹Bonhoeffer, Ethics, p. 81. ³²Matthew 5:48.

³³Karl Barth, The Epistle to the Romans, trans. Edwyn C. Hoskyns (London: Oxford University Press, Geoffrey Cumberlege, 1933), p. 242.

It is "precisely at the point when action arises from the purest motives, when the most pious and selfless deeds are performed" that the danger is the greatest, that this very act is the "ungodly antithesis to the will of God which resembles the will of God to the point of being indistinguishable from it."³⁴ The Pharisee is condemned not for wrong-doing, for there is no indication in the parable that Jesus intended to present either His actions or motives in any other than the most pristine purity, but because He would justify Himself.

Man stands under the judgment of God and in his existence (Old English: conversation) experiences the "No!" of God. "The ring of cause and effect," we would say with Barth, "is completely closed." Yet, this very circle may "be both closed up and sustained by the incomprehensible mercy of God."³⁵ Through Jesus Christ the krisis under which man stands can be both negation and affirmation, both death and life.³⁶ It is for this reason that Barth can interpret the law as a form of the gospel. "God's judgment in his commandment, the essence of all temporal realization of his decree, is essentially identical with reconciliation."³⁷ At the moment when man recognizes the krisis of his existence, when he turns

³⁴Bonhoeffer, Ethics, p. 48.

³⁵Barth, Romans, p. 75.

³⁶Ibid., p. 69.

³⁷Karl Barth, Church Dogmatics, vol. 2 The Doctrine of God, ed. G. W. Bromiley and T. F. Torrance, trans. G. W. Bromiley, et al. (Edinburgh: T. & T. Clark, 1957), II: 2, 819.

to "hate evil and love good," he is confronted by the perhaps! which rests at the heart of the writings of the prophet Amos. "It may be that the Lord, the God of hosts, will be gracious to the remnant of Joseph."³⁸ Under the judgment of God, man can only wait for God to speak the next word in the conversation of existence.

It is here, precisely at the point at which no action of man can effect the outcome, that "God was in Christ reconciling the world to Himself."³⁹ The Crucifixion, to which man was conformed through Christ under the sentence of God, is superceded by the Resurrection, through which in conformity to Christ man is raised up to newness of life. The exploration of this theme is the genius of the Reformation. In the establishment of the pro nobis of the Resurrection, Luther sees as the beneficia of Christ that the freedom of man is established.⁴⁰ Here and only here the problem of freedom necessary to responsibility and autonomy over against God is resolved. Man becomes a free being in Christ. This is the sole basis for moral action before God. It is from this stance, or within this context that man is able to live. "He who through faith is justified shall live."⁴¹ Good, then, in the radical sense in which

³⁸ Amos 5:15.

³⁹ II Corinthians 5:19.

⁴⁰ Martin Luther "The Freedom of a Christian Man" Selected Writings of Martin Luther, ed. Theodore G. Tappert, (Philadelphia: Fortress Press, 1967), p. 20; and Calvin, Institutes, III: XIX, 1.

⁴¹ Romans 1:17.

it is employed in Scripture is not a question of "doing good," but of "being good."⁴² Life is lived out in dependence upon God, not in search for God.⁴³

The reconciliation between God and man is a reestablishment of community. Just as sin had systematically destroyed the network of relationships in which man exists, so it is the function of reconciliation to reestablish these relationships. This is what God is doing in the world and it is this context which establishes the realm of activity of the Christian. That this activity is exemplified in the Church, as the Sanctorum Communio of which Bonhoeffer has so ably written, is only the partially visible activity of God which embraces the totality of the world. It is for this reason that the Church is only the most visible manifestation of what Paul Lehmann refers to as the "political activity of God,"⁴⁴ that the line between the Church and the world is so inexplicit, the one shading into the other.

Within the formation of community, the reestablishment of relationship between God and man, and between man and man through God, man himself is brought into being as truly human. Outside of the community there is no true humanity, and it is into this community, this process of humanization that man is called into being as a new creature. It is this issue of

⁴² Brunner, p. 163.

⁴³ Ibid., p. 77.

⁴⁴ Paul Lehmann, Ethics in a Christian Context (New York: Harper & Row, Publishers, 1963), pp. 83, 85.

humanization which Dr. Lehmann holds to be the decisive issue of Christian ethics.⁴⁵

How does a Christian exercise responsibility within the community? This raises the question of principles and rules, and ultimately the use of the law of God. What is man's relationship to the "ought." Much of the debate on this particular issue in the Lutheran communion has centered around the question of the "third use" of the law (tertius usus legis). Calvin held that no man could argue that the law is superfluous for believers, "since it does not stop teaching and exhorting and urging them to do good. . . ." ⁴⁶ Luther, in many ways seems to have held to much the same view in his sermon on Good Works though recognizing the freedom in Christ from the demands of the law. The controversy came into sharp focus through the teaching of Johann Agricola and Otto of Herzberg. In the Altenburg colloquy of 1568-69 adherents of the latter advanced, among others, the theses that "the Law does not teach good works, nor should it be preached in order that we might do good works," and "a believing Christian is above all Law and all obedience." This position was rejected in the Negative of Article Six of the Formula of Concord. In the Affirmative theses the Formula contends that insofar as the believer has been redeemed he should exercise himself in the law and thus that the law rightly should

⁴⁵Ibid., p. 283.

⁴⁶Calvin, Institutes III: XIX, 2.

be preached to the believer as well as to the unbeliever. Since regeneration and renewal is incomplete in this world, it is necessary that the law of God constantly light the way of the unbeliever in his struggle against the flesh. Finally, the Formula maintains, that the law must be recognized as the unchangeable will of God, valid alike for the regenerated as well as the unregenerated man. The distinction, rather than in the law, is in man himself; the unregenerate doing the law of God out of coercion and the regenerate with a willing spirit.⁴⁷

There are two concepts of the use of the law at work in the Formula's treatment of the tertius usus legis. The first is the theological use of the law (usus arguens) which continually calls attention to the lack of perfection within which the believer yet remains and forces reliance upon the gospel. The second use is the pedagogical use which speaks to what the believer should do. Helmut Thielicke in his approach to the problem points out that the Christian is, to be sure, free from the dominion and curse of the law to the extent that he has wholly "except into Christ." Yet, the question arises as to whether or not that kind of Christian exists in reality.⁴⁸ He then introduces the concept of a "quantitative" consideration of justification, of which he says "does not

⁴⁷ Die Bekenntnisschriften der evangelisch-lutherischen Kirche (Göttingen: Vandenhoeck & Ruprecht, 1959), Epitome VI: 793-95 und Solida Declaratio VI: 962-72.

⁴⁸ Helmut Thielicke, Theological Ethics, vol. 1: Foundations, ed. William H. Lazareth (Philadelphia: Fortress Press, 1966), p. 126.

the perfect tense of my having been justified (justificatum esse) imply a being justified more and more (magis et magis justificari)?"⁴⁹ Quoting Luther from the Third Disputation against the Antinomians, he argues that it is only "to the extent that they are (in quantum sunt tales) justified" that the law is not to be preached to the Christian. Following the pedagogical understanding of the law put forward by Melancthon and accepted by the Formula, he defines the law as a "loving reminder,"⁵⁰ a "comfort in time of doubt (i.e., that I need to be summoned to seek, not myself, but God),"⁵¹ and a servant of love in the political realm."⁵² Werner Elert would reduce the third use of the law completely to the theological use.

The third use of the law does not differ from the first and second in the kind of validity, it differs functionally with reference to the area of validity. According to the usus spiritualis the law applies to the justificandi (those about to be justified) and not to the justificati (the just). It is not intended for the new but the old creature. Because the new man always lives in personal union (Personalunion) with the old man, the tertius usus implies validity of the law for the individual. Functionally it does not differ in any respect from the usus spiritualis, i.e., proprius or theologicus.⁵³

This reduction by Elert of the tertius usus legis to the usus theologicus would appear to destroy the basis for a principle or norm approach to law

⁴⁹ Ibid., p. 127.

⁵⁰ Ibid., p. 133-39.

⁵¹ Ibid., pp. 139-41.

⁵² Ibid., pp. 141-46.

⁵³ Werner Elert The Christian Ethos, trans. Carl J. Schindler (Philadelphia: Muhlenberg Press, 1957), pp. 299-300.

and to bring to the forefront once again the Reformation understanding of the freedom of the Christian man. It suggests that the relationship to the law, rather than the use of the law should receive primary attention.

The Christian in his relationship to the law is not lawless, but freely submits to the governance of the law inasmuch as it is an exemplification of his relationship to God and expressive of his community with the neighbor. Since the Christian yet remains in sin, that is, that justification is not fully worked out in him, he still stands under the judgment and thus cannot do the will of God. Insofar as he is found in Christ his actions become transparent, possibilities for the sign of God in his work of creating community and the humanization of man. "What can and must be said is not what is good once and for all," Bonhoeffer writes, "but the way in which Christ takes form among us here and now."⁵⁴ The Christian lives in the penultimate sphere in which he must make decisions affecting himself and other people. For the sake of God, and of the neighbor, those decisions must be made responsibly. The Christian, therefore, utilizes that which is at hand to inform himself, not of the most prudential course, but of the best course possible under the given circumstances. Having no absolute law or absolute good standing before him, except, as Bonhoeffer expresses it, conformity with the Body of

⁵⁴ Bonhoeffer, Ethics, p. 85.

Christ, the Christian must act as Luther suggested in his letter to Melanchthon concerning Melanchthon, a layman, preaching in the Church, "pecca fortitius, sed fortius fide et gaude in Christo. Even if a Christian's actions must lead him into fields in which there are no clear guiding lights, he is to sin boldly, but hope and rejoice even more boldly in Christ. The Christian exercises faith in action. Faith itself "exists only in the actuality of decision," as something which must constantly be wrestled for at the edge of unbelief.⁵⁵

Over against this background, we can view the concept advanced by H. Richard Niebuhr of man-the-responder first of all as man-the-hearer. Primary to the relationship is man's first hearing the pronouncement of God's "Yes" in Christ in which the conversation between man and God reaches its fulfillment. Better than the ruling concepts of man-the-maker (homo faber) and man-the-citizen (homo politicus), that of man-the-hearer/responder best expresses the personal relationship in which man is held by God. Niebuhr's schema of 1) response, 2) interpretation, 3) accountability, and 4) solidarity provides a conceptual framework for describing the on-going relationship between the activity of God and the activity of man in his world and with his neighbor.⁵⁶

⁵⁵Brunner, p. 80.

⁵⁶H. Richard Niebuhr, The Responsible Self, intro. James H. Gustafson (New York: Harper & Row, Publishers, 1963), pp. 56-65.

The Christian, being informed by a different context, exists in a reciprocal relation to society. He is society's child in that he is of his time and hears responsibly along with and on behalf of society for the formation of community. As a hearer, however, he also stands over against society, by his existence pronouncing judgment on both the goals and means of the common life. In his own action, which itself stands under judgment, he hopes for the impossible possibility of God's action, a redeeming of the time.

The concept of response-ibility seems to be in accord with the concept of "obedience" as found in the Old and New Testaments. This concept, as outlined by Gerhard Kittel, cannot be viewed in a vacuum apart from the other words used to give expression to the dynamics of a life in Christ. It is the outward manifestation of the "renewal of the mind"⁵⁷ that takes place when a person "puts on Christ." It is a presentation of the body "as a living sacrifice"⁵⁸ which constitutes worship of God. Most striking is the use of the word ὑπακούω in the New Testament to represent the concept of obedience. For the Greek mystery religions, as well as oriental gnosticism, sight was of paramount importance in man's apprehension of God. In the Eleusian mysteries the climatic moment occurred in the appearance of a bright light in the dark telestrion and

⁵⁷Romans 12:2.

⁵⁸Romans 12:1.

the witnessing of a divine manifestation.⁵⁹ The emphasis of Old Testament theology, and later, in the faith of Judaism which developed from it, is entirely different. These religions are religions of the word which is either heard or intended to be heard.⁶⁰ Visual manifestations of the divinity are uncommon occurrences and tend to be underlined by the text as events out of the ordinary. This is felt so strongly that when Moses saw the "face of God" and talked with him "face to face"⁶¹ it was felt necessary to ~~tone~~ ^{tone} down the statement to an indication that he saw only the back of God⁶² for man cannot see God and live.⁶³ Seeing God is treated by the Old Testament literature as an eschatological event which takes place when Yahweh comes to Zion and men are no longer of unclean lips.⁶⁴ It is at that point that his glory will be seen.

For the Old Testament the decisive religious statement is "Hear the Word of the Lord."⁶⁵ This hearing is not simply an act of perception, but rather, in Hebrew psychology is completed in action. The word engenders response. The link between hearing and obedience is maintained not only in Old Testament Hebrew, but also in Greek (ἀκούω), Latin,

⁵⁹ Gerhard Kittel, ed. Theological Dictionary of the New Testament, 8 vols. (Grand Rapids, Michigan: Wm. B. Eerdmans' Publishing Company, 1964), I: 217.

⁶⁰ Ibid. ⁶¹ Exodus 33:11; Numbers 12:8. ⁶³ Kittel, I: 217-18.

⁶⁴ Isaiah 60:1ff.

⁶⁵ Isaiah 1:10; Jeremiah 2:4; Amos 7:16.

(preserving the root audire), and also modern German (Gehorsam). This identity is an essential feature of biblical religion.

Within later Judaism there are two distinct lines of development. In Apocalyptic literature primary emphasis is placed on contemplation of eschatological symbols. While these are themselves bound up with words which are to be heard and which help bring out their meaning, this assumes a secondary role. In Rabbinic literature hearing is related to the Word of God given in the sacred book. The strength of the underlying awareness that all hearing is referred to God and His Will emerges most clearly in the use of the sch^ema, "Hear, O Israel" as a daily confession.⁶⁶

Against this Old Testament background the use of ἰκούειν and ἀκούω acquires its force. The New Testament revelation too is a word to be heard. It is a message, a proclamation. Throughout the New Testament "hearing" is emphasized, even more so in many cases than seeing. While the New Testament often reports events that were seen, these usually acquire their true significance in what is heard and become themselves central to the message which is to be proclaimed. In the apostolic era ἀκούω becomes a technical term for preaching without which faith cannot exist.⁶⁷ As is only natural, the content of hearing is determined by the content of the proclamation. In the New Testament this is the offering of salvation and the ethical demand, a blending of the indicative

⁶⁶Kittel, I: 218.

⁶⁷Ibid., I: 220.

and the imperative. There thus arises the crowning concept of obedience,

ὕπακοη πρωτεύουσ.⁶⁸ It is in keeping with the Old

Testament model that throughout the New Testament eschatology is described in terms of seeing rather than hearing. The risen Lord is, for example "seen."⁶⁹

Obedience (ὕπακοη) in the New Testament first relates to persons, such as children, slaves, or wives, who stand in a divinely willed relation of subordination.⁷⁰ It can also be used to describe the relation of demons⁷¹ or nature⁷² to the omnipotence of Jesus and the authoritative faith of the disciples.⁷³ In the same sense, the term can be used to express the position of man in relation to dominant moral or religious powers, whether in the good sense or in the bad.⁷⁴ ὕπακοη, except in Philemon 21, is always used in connection with religious decision. When used alone the word also signifies the believing state of Christians as this consists in obedience.⁷⁵

The New Testament sees as basic to a life of obedience the hearing of the Word. The word which is to be heard, the ultimate word spoken by

⁶⁸Romans 1:5; 16:26. ⁶⁹I Corinthians 9:11; 15:5ff.

⁷⁰Ephesians 6:1, 5; Colossians 3:20,22; I Peter 3:6.

⁷¹Mark 1:27. ⁷²Mark 4:41. ⁷³Luke 17:6. ⁷⁴Romans 6:16.

⁷⁵Romans 15:18; 16:19. See Kittel, I: 223-24.

God, is Christ. The New Testament reveals an interesting development in the presentation of the word that is to be proclaimed and heard. The Baptism of Jesus⁷⁶ concludes with the formulary "You are my beloved son in whom I am well pleased." At the Transfiguration⁷⁷ this formulary is expanded by the words "hear him" in the sense that this one who is presented is the one who is to be heard, the subject of hearing. By the time of Peter's Pentecostal sermon⁷⁸ it is precisely the crucifixion and resurrection which are to be heard. It is then this proclamation of the crucifixion and resurrection which becomes the constitutive element of apostolic preaching.⁷⁹

In the process of his suffering and death, Christ Himself is called upon to hear in the sense of an obedient response to his messianic task. In a passage dealing with the humiliation and exaltation of Christ Paul can speak of Christ emptying Himself out, becoming obedient to death, even the death of the cross.⁸⁰ It is this hearing/response that here underlies the concept of obedience. This thought is also reflected by the author of Hebrews as he speaks of Christ learning obedience by the things which He suffered.⁸¹

⁷⁶Mark 1:11 and parallels.

⁷⁷Mark 9:7 and parallels.

⁷⁸Acts 2:22-24.

⁷⁹I Corinthians 15:1-4.

⁸⁰Phillipians 2:8.

⁸¹Hebrews 5:8.

Faith is defined by the New Testament as a response to hearing the word of God.⁸² It is intrinsically linked to obedience by Paul.⁸³ In the negative sense those who are without faith are those who have not obeyed the Gospel.⁸⁴ Obedience can thus be linked with salvation which is worked out in fear and trembling through which God works to will and to do his good pleasure.⁸⁵ It is no longer an obedience to passions, but to righteousness.⁸⁶

Having been set free for slavery to righteousness, obedience then in contrast to the formal requirements of late Judaism can radicalize the law. "You have heard that it was said to the men of old, 'You shall not kill' . . . but I say to you that everyone who is angry. . . ." ⁸⁷ It can be non-specific as to content as in the call of the disciples "Follow me and I will make you fishers of men"⁸⁸ or situational as in the parable of the Good Samaritan. Ultimately, the hearing which results in doing can be the separating factor between those who are and who are not redeemed.⁸⁹

The basic thought of the New Testament in its understanding of hearing is that expressed by James, "But be doers of the Word and not hearers only, deceiving yourselves . . . being no hearer that forgets but

⁸²Romans 10:17.

⁸³Romans 1:5-6.

⁸⁴Romans 10:16.

⁸⁵Philippians 2:12.

⁸⁶Romans 6:12f.; 16ff.

⁸⁷Matthew 5:21ff.

⁸⁸Matthew 4:19.

⁸⁹Matthew 25:31-46.

a doer that acts, he shall be blessed in his doing.⁹⁰

How, then, is war, and especially modern war with its innate ability to precipitate a virtual Armageddon, to be viewed against this perspective. Historically, the Church has normally adopted one of two stances. It has either absolutized the sanctity of human life or it has constructed for itself some form of the just war doctrine. The concept of a just war was not of major concern to the New Testament writers or to the earliest Church fathers. The political situation of the early Church gave it little opportunity to effect the disposition of governmental affairs. Thus the New Testament presupposes warfare as a phenomenon of this present age.⁹¹ In place of warfare it exalts peace.⁹² It was not until the Church gained stature as a political entity that it became necessary to deal specifically with the theological presuppositions of warfare. The doctrine of the just war was formalized by Augustine⁹³ and refined by Thomas Aquinas⁹⁴ and the Scholastics. Basically, two questions must be answered: What are the norms that govern recourse to the violence of war and what are the norms that govern the measure of violence in war?

⁹⁰James 1:22, 25.

⁹¹Mark 13:7.

⁹²Romans 12:18ff.; I Timothy 2:2; I Peter 2:20ff.

⁹³Augustine, *The City of God*, trans. Gerald G. Walsh, et al.; ed. and intro. Vernon J. Bourke; forward Etienne Gilson (Garden City, N. Y.: Doubleday & Company, Image Books, 1958), book XIX.

⁹⁴Aquinas, *Summa Theologica*, II.40, arts. 1-4 and other places.

The doctrine of just war assumes the moral principle that "the order of justice and law cannot be left without adequate means of its own defense."⁹⁵ At the same time it assumes a warping of the shape of life in which love can at times only be practiced by involving one's self in actual conflict with the forces which threaten one's neighbor.⁹⁶ Warfare must, in order to be moral, have at its base a just cause. A just cause is present when "under vital threat a state exhausts all peaceful and diplomatic means of avoiding war."⁹⁷ The understanding of a necessity for a "vital threat" to exist would preclude the legitimacy of aggressive warfare in any form. The decision of the state to become involved in warfare must be openly arrived at and declared as the policy of state. The declaration is to insure that the decision is conscientiously arrived at and to submit this decision to the judgment of mankind. Inherent to the doctrine of the just war is a concept of the limitation of violence. The violence of warfare, and, therefore, the instruments used, must be limited to the minimum necessary to insure the accomplishment of the goal. The cost of warfare in terms of destruction must be ascertained; for the theory requires that the evil involved in warfare not exceed the

⁹⁵ John Courtney Murray, "War and Conscience," A Conflict of Loyalties, ed. James Finn (New York: Pegasus, 1968), p. 29.

⁹⁶ Helmut Thielicke, Theological Ethics, vol. 2: Politics, 2 vols. (Philadelphia: Fortress Press, 1969), p. 461.

⁹⁷ Ibid., p. 459.

good expected to result. Finally, the state must weigh the possibility of success.

The doctrine of just war is an appealing one and has been ably argued by Paul Ramsey.⁹⁸ The assumption of this doctrine moves the Christian from a stance of absolute pacifism to that of applying a discerning conscience. Luther, though he accepted a doctrine of justifiable warfare, calls the doctrine into question in a single sentence in his brief essay "Whether Soldiers, Too, Can Be Saved." He writes, "I do not trust, however, in the justice of my cause, but in your grace and mercy."⁹⁹ If the justice of the cause cannot be argued, and if man stands under the judgment of God, he cannot appeal to his own righteousness, then the concept of a justifiable war is destroyed. Even self-defense, when viewed from a Christian perspective, becomes a debatable issue. Must then the Christian revert to a doctrine of absolute pacifism? The doctrine of absolute pacifism, however, appears to be an argument from autonomy in that it fails to recognize the neighbor's need. It is conceivable that life in this present age can become warped to the extent that the demands

⁹⁸See Paul Ramsey, War and the Christian Conscience, Lilly Endowment Research Program in Christianity and Politics (Durham, N.C.: Duke University Press, 1961) and The Just War: Force and Political Responsibility (New York: Charles Scribner's Sons, 1968).

⁹⁹Martin Luther, "Whether Soldiers, Too, Can Be Saved," Luther's Works, vol. 46: The Christian in Society III, ed. Robert C. Schultz (Philadelphia: Fortress Press, 1967), p. 123.

of love do require engagement in conflict precisely for the sake of the neighbor. Since wars arise from historical and economic considerations, war for the Christian must be literally the ultima ratio, the final appeal. For this reason, the option of pacifism must be maintained as a check on the too easy appeal to trial by combat. War must, like all human action, stand under the judgment of God; and there find the possibility of becoming transparent to the activity of God. The aim of war can only be the establishment, or reestablishment of community. Within this framework the Christian must make decisions. As Reinhold Niebuhr argues in An Interpretation of Christian Ethics

In the Christian interpretation of moral evil guilt is attached not only to actions in which the individual is free to choose a higher possibility and fails to do so, but in which higher possibilities, which the individual is not free to choose, reveal the imperfections of the action which he is forced to take. Thus the simple moral guilt of conscious evil is transmuted into a sense of religious guilt which feels a general responsibility for that which the individual agent cannot be immediately responsible. While the ascription of guilt to actions which are derived from the necessities of nature may lead to moral and religious morbidity, it is true, nevertheless, that moral complacency toward them is even more false to the human situation. Forces over which we have no control may drive our nation into war. Shall we accept all the moral alternatives which war makes inevitable as forced upon us by an ineluctable fate?¹⁰⁰

¹⁰⁰ Reinhold Niebuhr, An Interpretation of Christian Ethics (New York: Harper & Brothers, 1935), pp. 77-78.

CHAPTER IV

COMMAND RESPONSIBILITY AS RELATIONSHIP

The military commander lives in a world of decision which must take into account the capabilities of the subordinate commanders and personnel serving under him. It is a world which deals with the parameters of logistics, weapons selection, target determination, massing of force, and all of the other components of decision-making in modern warfare. These decisions are "real world," "real time" decisions often made, of necessity, on the basis of incomplete and limited knowledge. To what extent can Christian ethics provide a context for and illuminate these decisions of command? In discussing the concept of "double effect" (i.e., any act may and often must accomplish two ends-- the good end intended and an evil end not willed but unavoidable in the accomplishment of the good) within the framework of modern atomic-biological-chemical warfare, Walter W. Sikes raises the question of "how many Russians is a decision-maker allowed to destroy in cold calculation but 'unintentionally' in order to prevent the Soviet occupation of West Berlin?"¹ This is a question, he says, which is proper and necessary to

¹Walter W. Sikes, "Is an Ethic of War Possible?" Encounter, 33 (Winter 1972); 104.

the decision-maker but totally outside the realm of Christian ethics. Yet, if ethics cannot comment on such issues, which are of primary concern in modern, discriminate warfare, it has failed utterly in its task of providing meaningful discourse with the military commander. Here, Paul Ramsey, at least, is honest in his evaluation of issues, and, though we must disagree with some of his basic presuppositions, we must acknowledge the forthrightness with which he has confronted the problems raised by modern warfare.

Much has been written within the theological discipline concerning warfare, but almost without exception theology has addressed itself either to the question of war and the actions of nations (just war theory, etc.) , or has addressed itself to the place of the individual (pacifism, selective conscientious objection). There has been little serious theological reflection directed to the question of the military commander and his position in the issue of war. In consideration of the question of war or the question of the individual, he has primarily been viewed as a functionary, from above as the instrument through which policies of state are carried out or from below as the representative of the policies of government.

In addressing himself to the Yamashita case, General MacArthur outlined the series of relationships in which a military commander exercises his role. It will be the attempt of these few concluding pages to raise the question of the theological issues involved in the commander's

confrontation with his troops, his country, his enemy, and mankind.

He failed his duty to his troops

The commander and the personnel serving under him exist in a symbiotic relationship. As noted in an article by Lieutenant Colonel Philip M. Flammer, USAF,² the individual soldier first existed in fealty to an individual general or lord. At the time of the French Revolution supreme allegiance was transferred from the general, admiral or head of state to the state itself. It was not until the rise of the modern nation-state that the state itself gained sufficient definition to serve as the object of such loyalty. With this shift of allegiance military duty became a question of moral obligation. "This meant that everyone from the lowest fighting man to the loftiest general now had a 'mission' which transcended their earlier relationships."³ In this manner the modern concept of patriotism was born.

The difference between a military force and an armed mob is the discipline inherent in the structure of the former. When the line troops consisted of an assembly of riff-raff, it was necessary, as Friedrich II ordered his generals, to insure that the troops on the firing line were more afraid of the non-commissioned officers behind them than they were of

² Philip M. Flammer, "The Military Critic," Naval Institute Proceedings, 99 (March 1973); 23-36.

³ Flammer, p. 31.

the enemy to the front. For this reason also the former iron discipline practised aboard naval vessels was necessary to keep the uncomprehending seamen from reverting to an ineffective mob. That this situation has changed with the advent of the technician-soldier is reflected in the far-reaching changes which have been effected in the administration of discipline within the armed forces. The changes, however, touch the administration of discipline, and not the necessity for discipline itself. With the assumption of a higher level of education and, hopefully, of comprehension, it is the intention of most of the recent directions of command thought to transfer, as much as possible, the administration of discipline to self-discipline.

The nature of the task of the commander is to command. It is his responsibility both to be under authority and to represent authority. He must be under authority in that his commands do not represent arbitrary decisions on his part, but are contributive to the goals which he has been assigned to accomplish on behalf of the state. In his decisions he stands not only before the judgment of his superiors, but, also, in the exercise of his responsibility, before the judgment of God. At the same time, as a representative of authority, it is his task to enforce his will upon his subordinates. It is in the assumption that he is acting responsibly that the obedience of subordinates is postulated.⁴ That this obedience

⁴That this assumption is not, of necessity, valid has been recognized in the Basic Army Field Manual: Rules of Land Warfare since 15

is expected, and, under the Universal Code of Military Justice, enforceable is a requirement of the very structure of a military force, and of paramount concern to the commander.

A second factor is the virtual isolation of command. It is both possible and expected that a platoon lieutenant will know each of the men assigned to him, not only in terms of his military capabilities, but also in terms of personal factors of family problems, disciplinary history, etc. Where failings of junior officers have been noted in commands with which I

November 1944. The original passage had read "Individuals of the armed forces will not be punished for these offenses (acts which violate the unchallenged rules of land warfare and outrage the general sentiments of humanity) in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authorities they are committed by the troops may be punished by the belligerent into whose hands they may fall." This was changed on the above date to read "Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished." The assumption lying behind this change is the right and duty of the individual to disregard orders which are unlawful. It is interesting to note that the German Field Manual, Militaerstrafgesetzbuch in Kriegsstrafrechtsordnung lists under "Militaerische Verbrechen und Vergehen" "1) If carrying out an order in the course of duty should violate a law, only the superior who gives the order is responsible. However, the subordinate who obeys it is punishable as a participant: a. if he goes beyond the given order or b. when he knows that the superior's order would have the aim of leading to a military or other crime or violation." See notes in Davidson, p. 14.

have been associated, it has not been primarily in the realm of their technical and professional knowledge, but in the knowledge of the personnel under their control. This intimate knowledge of the personnel of the command decreases in inverse ratio to the level of command. Both in terms of the capabilities of his force and the reality of the command situation in which he is functioning, the senior commander is almost totally dependent upon his personal staff and his subordinates. It is not possible for a division commander to have the same intimate knowledge of his personnel that is expected of the platoon leader. For this reason the senior commander must construct for himself a staff sensitive to and capable of ascertaining the true state of affairs and of passing an honest assessment of the situation to the commander for purposes of information and decision. Since it is the commander himself who sets the tone for his staff, his receptivity to adverse comment is a critical factor. This relationship of subordinate and staff, so basic to the question of knowledge, is an unexplored factor in the Yamashita case. Granted adequate time and power to effect change in his personal staff and subordinates, or if relief of the latter was impractical under the current Japanese military regulations, to develop alternate channels of information, Yamashita could be held culpable for his lack of knowledge of the events transpiring within the area of his command.

Of the relationship between commander and subordinate, the discipline of Christian ethics inquires as to the possibility of the formation of

community within the military unit. Each individual military organization has an existence as a community which extends beyond the particular personnel attached to it at any given time. In Vietnam the Fourth Marine Regiment carried in its symbols and its institutional memory a record of its pre-World War II service in China. Within this on-going community, Christian ethics inquires as to the possibility of humanization. Modern warfare is a dehumanizing experience. The constant association with death and the withdrawal of normal external restraints of family, church, school, community, etc., permit a brutalization and reversion to an almost animal state. The events of My Lai as attested by the court martial of Lieutenant William F. Calley are an example of the former.⁵ Two notes from my own experience serve to highlight the latter. In a search and destroy mission in the mountains to the northwest of Hue, South Vietnam, our battalion came across an area in which a preceding unit had defecated over a wide area in a clearing in the jungle and left the feces unburied where they had fallen. It was a constant effort on the part of our own battalion commander to entice the personnel of the command to attend to their own personal hygiene. The often criticized order of General George Patton that members of his command "dress like soldiers" was not given simply to

⁵See William Calley, Lieutenant Calley; His Own Story: As Told To John Sack (New York: Viking Press, 1971) and Richard Hammer, The Court Martial of LT Calley (New York: Coward, McCann and Geoghegan, Inc., 1971).

enhance discipline, but to recall his people from the dehumanizing effects of combat. It is in the preservation and effecting of this humanization both in combat and within the burcaucratic structure of the modern military force that Christian ethics sees the role of the commander.

He failed his duty to his . . . country. . . .

In a letter to von Brauchitsch dated 16 July 1938, reflecting on the dismissal of Commander-in-Chief of the Army General Werner von Fritsch, on the basis of alleged homosexual offenses, and Minister of War Werner von Blomberg, for dishonoring the officer corps by marrying a woman with a police record, Generaloberst (Colonel General) Ludwig Beck advanced the thesis that the supreme commander of military forces should be appraised of all basic decisions concerning a war in being or in prospect. If a refusal to obey is ethically indicated, such refusal must begin here. It is this issue that underlay the dismissal of Fritsch and Blomberg and the ultimate capitulation of the German officer corps to the National Socialist Party. Beck goes on to say

History will charge these leaders (the senior military commanders) with bloodguiltiness if they do not act according to their professional and political insight and judgment. Their soldierly obedience must end where their insight, judgment, and conscience forbid the carrying out of a command. If their advice and warnings are not heeded, they have the right and the duty, before the nation and before history, to resign their offices . . . If they act in concert with resolute will, the prosecution of the war is impossible. . . . It betokens a lack of stature and of understanding of his task if a soldier in high position in such times sees his duties exclusively in terms of the limited sphere of his military task

without any awareness of his supreme responsibility to the nation as a whole. Extraordinary times demand extraordinary acts.⁶

Upon commissioning, the naval officer takes an oath to

support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God.⁷

The military officer is an officer of the government, serving at the pleasure of the President, charged with the carrying out of the policies of the state. At the same time by virtue of his oath of office he is called to an allegiance which reaches beyond all transient policies. It is this dual role that the discipline of ethics calls upon him to fulfill.

It is the latter role which is of utmost difficulty for the military officer to fulfill. Basil H. Liddell Hart, a distinguished veteran of World War I and a diligent student of military history has commented

Military criticism is the least popular of professions. The critic has so much to gain by conforming to the prevailing dogmas--if he but clothe the conventional tenets in fresh verbiage, his wisdom will be applauded--and so much to lose if he emphasizes his inherent isolation by standing against the current. Thus, subtract from the few the fearful and the residue of true critics may well be zero.⁸

⁶Quoted in Thieliicke, Politics, pp. 416-17.

⁷"Appointment As Reserve Officer In United States Navy" Bureau of Naval Personnel Form 962, revised August 1959.

⁸Flammer, p. 28.

That he spoke from experience is evidenced by the fact that his great contributions to armored warfare were finally and reluctantly acknowledged by his being knighted, appearing on the annual Queen's List preceded by the Beatles.⁹

In his article on the Military Critic, Flammer points out that the "basic culture in which the germ of unquestioning obedience can be grown and nourished has continued to exist essentially undisturbed."¹⁰

"All that it needs to blossom," he goes on to say, "is one or more of what we might gently call 'human weaknesses'"¹¹ Among these weaknesses, most critical in the present military organization, he lists "concern for image,"¹² "unwillingness to admit error,"¹³ and the "general lack of moral courage."¹⁴

In a time when the military services are experiencing a high level of external criticism, it is a natural reaction to desire to close ranks and meet the threat from without. Such external criticism is not entirely unprecedented.

⁹Ibid.

¹⁰Ibid., p. 31.

¹¹Ibid.

¹²Ibid.

¹³Ibid., pp. 31-32.

¹⁴Ibid., p. 32.

For it's Tommy this, an' Tommy that, an' "Tommy, wait outside;"
But it's "Special train for Atkins" when the trooper's on the tide.

For it's Tommy this, an' Tommy that, an' "Chuck him out, the brute!"
But it's "Savior of 'is country" when the guns begin to shoot;

An' it's Tommy this, an' Tommy that, an' anything you please;
An' Tommy ain't a bloomin' fool--you bet that Tommy sees!¹⁵

The external critic, while offering the possibility of a fresh point of view, cannot, in light of the high level of confidentiality demanded for reasons of national security in modern warfare, replace the internal critic. The responsibility of the military officer to advise the civilian leadership of changes in the geo-political situation from a military point of view is an on-going necessity and would allow for the reconsideration of decisions previously taken in the light of changing circumstances. That Yamashita, if we can accept the testimony of General Muto concerning Yamashita's relationship with the Tojo government as valid, did to some extent exercise the role of critic would seem apparent.

He failed his duty . . . to his enemy . . .

Of primary consideration throughout the Scriptures is the position of the neighbor. The relationship to the neighbor is seen as second only

¹⁵Rudyard Kipling, "Tommy," Departmental Ditties and Barrack-Room Ballads; as quoted in George B. Woods, Homer A. Watt, George K. Anderson, and Karl J. Holzknrecht, eds. The Literature of England, vol. 2; 4th ed. (Chicago: Scott, Foresman and Company), p. 387.

to the relationship to God. Consideration of this relationship occupies a large portion of the Commandments, is the subject of parables of Jesus, and appears to be a determinate factor in the Last Judgment. The very stress which Scripture places upon the neighbor would argue that the "natural" relationship is anything but the expression of love. Sartre, writing in No Exit, defines hell as "other people,"¹⁶ and in Being and Nothingness devotes a long section to the "other" who stands over against us.¹⁷ It is the neighbor standing over against us as "enemy" that reveals to us our true relationship to the neighbor. "Unattractive, crochety, impenitent, . . . the incarnation to us of the unteachableness of the known man of the world who presents us with ever recurring new varieties of provocation,"¹⁸ the enemy stands over against us as a limiting factor. In the enemy "all the surly misgivings and pessimistic judgments which we harbour concerning our fellow man seem to be justified."¹⁹ The enemy is

not merely a rival or an unpleasant person, an opponent or an oppressor, but the man who to my horror is engaged before my very eyes in the performance of objective unrighteousness, the man through whom I am enabled to have actual experience of the known man of this world and to perceive him to be evil.²⁰

¹⁶ Jean-Paul Sartre, No Exit (New York: Vintage Books, 1949), p. 47.

¹⁷ Sartre, Being and Nothingness, pp. 221-252.

¹⁸ Barth, Romans, p. 469.

¹⁹ Ibid., p. 471.

²⁰ Ibid., p. 472.

The enemy demonstrates specifically and finally the character of the known man as evil, and, as a limiting factor of my existence, we discover ourselves. As Pogo so whimsically put it, "we have met the enemy and he is us." We are joined together in a peccatorum communio, both standing under the judgment of God and in this judgment presenting conjoint opportunity for the activity of God. Thus in the command to love our enemy there is an over-reaching of the state of conflict which expresses itself in the admonition "if your enemy is hungry, feed him; if he is thirsty, give him drink"²¹ (render aid and comfort to the enemy, the definition of--treason!). Here hatred and blood lust have no part. The community which is commanded is not the comradeship of brothers-in-arms during a lull in battle or the chivalry of a pre-total war era, but a true community based upon our common (fallen) humanity and the possibility of reconciliation reaching beyond all conflicts of this present aeon.

From this it follows not only that our behavior is restricted when by wounds or falling prisoner he has crept in among us and ceases to be the enemy, but also while he yet remains our enemy. The practical implications of this doctrine have only partially been explored in the treatment of wounded and prisoners in the Geneva Conventions and the outlawry of weapons designed solely to increase pain (the so-called "dum-dum" bullet) or weapons which are inherently uncontrollable (mustard gas,

²¹Romans 12:20.

biological warfare elements). On the practical level it raises the question of the selection of weaponry (e.g., the use of tactical nuclear weapons, napalm, etc.) from the level of tactical and strategic decision to ethical decision. The ultimate goal of our relationship to our enemy is not his destruction, but his conversion to neighbor.

If thy enemy ^{hunger}hunger, feed him; if he thirsts, give him drink; for by so doing you will heap coals of fire upon his head. Barth interprets this final phrase as punishment,²² but might we not dare to be speculative at this point and give it a metaphorical interpretation as the "blush of shame"--for we have unenemied him.

He failed his duty . . . to mankind.

It would be impossible to estimate the number of wars that have been fought since the dawn of history. Ranging from tribal skirmishes to total world involvement, they have been an almost constant companion of man's experience of life. If Scripture is to be taken as a true witness, wars and rumours of wars, in spite of man's best efforts to find other means of solving his disputes, will continue to be a part of his experience until the end of the age. War is, for some inexplicable reason, an integral part of this present aeon, a visible sign of the demonic forces with which man has infused the structure of his world. Even in this time

²²Barth, Romans, pp. 474-75.

of peace some thirty wars are raging or sputtering across the face of the globe. Peace on earth yet remains the angels' promise rather than an actuality. It's definition has come to mean that one's own Armed Forces momentarily are not engaged in actual conflict.

With this all-encompassing experience of war it would seem appropriate to ask what has warfare accomplished down through the ages of recorded history. It has, most certainly, changed the alignment of borders, destroyed empires, consumed the productivity of nations, destroyed the epitome of young manhood, layed waste to vast areas, affected the birthrate of nations, taught the experience of suffering to countless generations; all of these it has certainly accomplished. Even in times of peace, the standing forces, necessary for protection and deterrence, consume a significant portion of the wealth of the world without adding a proportionate increase in productivity. The dollars and rubles spent for the pleasure of staying alive feed no hungry, clothe no nakedness, release no prisoner from captivity. Thus it must be asked again, what is the goal of warfare? Hugo Grotius, writing in De Jure Belli ac Pacis,^b styles the proper end of war as peace.²³

In the very heat of war the greatest security and expectation of divine support must be in the unabated desire, and invariable prospect of peace as the only end for which hostilities

²³Hugo Grotius, The Rights of War and Peace, trans. A. C. Campbell; intro. David J. Hill (Washington: M. Walter Dunne, Publisher, 1901), p. 17.

can be lawfully begun. So that in the prosecution of war we must never carry the rage of it so far, as to unlearn the nature and dispositions of men. . . . On whatever terms peace is made, it must be absolutely kept.²⁴

Clausewitz defines war as "an act of violence intended to compel our opponent to fulfill our will."²⁵ "Whence comes war?" Plato asks, "Wars are occasioned by the love of money, and money has to be acquired for the sake of and in the service of the body."²⁶

At its very basis "war is a crystallization of the situation of the world in general."²⁷ By its very existence it gives evidence of the conflict inherent in the human situation. What then is the goal of war and what does mankind attempt to achieve through war? The goal of war

²⁴Ibid., pp. 417-18.

²⁵Joseph I. Greene, ed., The Living Thoughts of Clausewitz (Philadelphia: David McKay Company, The Living Thoughts Library, 1943), p. 150. It is interesting to read Grotius, the father of International Law, and Clausewitz, the father of strategy, side by side. The first seeks to restrict the inherent evil of warfare, the latter strives to explore how wars may be won. Shortly after the passage cited above, Clausewitz, denigrating "the imposed restrictions, almost imperceptible and hardly worth mentioning, termed usages of International Law," goes on to say, "it follows that he who uses force unsparingly, without reference to the bloodshed involved, must obtain a superiority if his adversary uses less vigor in its application. The former then dictates the law to the latter, and both proceed to extremities to which the only limitations are those imposed by the amount of counteracting force on either side." This is the thought that gives one pause when considering the present state of the art of war.

²⁶Plato, Phaedo, 66.

²⁷Thielicke, Politics, p. 413.

itself is an attempt to establish community. In all of the wars that have been fought throughout the recorded history of mankind (even the most imperialistic of wars) there has been an attempt to establish some form of modus vivendi with our fellow man. The fragility of peace which comes as a result of war is an attestation of the impossibility to establish true community by force of arms. "The very action which was intended to overcome the disunion of man in good and evil," Bonhoeffer writes concerning the Pharisees, "does not achieve this aim but only aggravates the disunion still further."²⁸ War, as an attempt to establish community, is an exercise of the demonic existence of man; for

The Bible does not wish man's own deed to be set side by side with the deed of God, even as a thankoffering or sacrifice, but it sets man entirely within the actions of God and subordinates human action to God's action.²⁹

Thus in the human state of war it always remains problematic whether or not this state will become transparent to the activity of God.

The humanization of one's people, the loyal service of the state and the criticism of its policies, the conversion of the enemy and the establishment of community, these are the demands which the discipline of Christian ethics raises for the one who would exercise command responsibility.

²⁸Bonhoeffer, Ethics, p. 31.

²⁹Ibid., p. 43.

APPENDIX 1

APPENDIX 1

PRINCIPLES OF NUREMBERG

In 1945, at the initiative of the United States, the General Assembly of the United Nations affirmed unanimously "the principles of international law recognized by the Charter of the Nuremberg Tribunal." In 1950, the International Law Commission formulated the Principles of Nuremberg, which offer the most complete set of guidelines presently available on the relationship between personal responsibility and war crimes.

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible for him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

c. Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against humanity as set forth in Principle VI is a crime under international law.

APPENDIX 2

APPENDIX 2

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

Before the)	UNITED STATES OF AMERICA
MILITARY COMMISSION)	
convened by the)	
COMMANDING GENERAL,)	vs
United States Army Forces,)	
Western Pacific)	TOMOYUKI YAMASHITA
1 October 1945.)	

BILL OF PARTICULARS

Pursuant to order of the Commission, the Prosecution respectfully submits this, its Bill of Particulars, as follows:

Between 9 October 1944 and 2 September 1945, at Manila and other places in the Philippine Islands, members of Armed Forces of Japan under the command of the Accused committed the following:

1. During the period from 9 October 1944 to 1 May 1945, undertaking and putting into execution a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity.

2. During the period from 9 October 1944 to 2 February 1945, at Santo Tomas Internment Camp at Manila, deliberate and wilful failure and refusal to provide food, medicine, clothing and other necessities to the civilian internees there confined, with consequent starvation and malnutrition, and deaths, of such internees; brutal mistreatment, beating and torture of H. F. Wilkins and other civilian internees; torture, beating and summary execution of more than six (6) internees for minor infractions of rules; cruel mistreatment, torture and brutal execution, without cause or trial, during the period from 23 December 1944 to 2

February 1945; of Carol C. Grinnell, Alfred F. Duggleby, Clifford Larson and B. B. Johnson, all civilian internees.

3. During the months of October, November and December 1944, brutally mistreating and torturing numerous unarmed noncombatant civilians at the Japanese Military Police Headquarters located at Cortabitarte and Mabini Streets, Manila.

4. On about 30 October 1944, at Corigara, Leyte, cruelly mistreating, torturing, mutilating and subsequently executing and, without cause or trial, killing Private Wade E. Gensemer, a member of the Armed Forces of the United States of America, then in captivity of the Armed Forces of Japan as a prisoner of War.

5. During November 1944, in northern Cebu Province, massacre, without cause or trial, of more than 1,000 unarmed noncombatant civilians.

6. During November and December 1944, at Cabanatuan, Nueva Vizcaya Province, brutal mistreatment, torture, maiming, execution and killing, without cause or trial, of members of the Armed Forces of the United States of America, then held captive as prisoners of war by Armed Forces of Japan; wilfull failure and refusal to provide for such prisoners of war adequate food, living quarters and facilities, clothing, medical treatment or supplies, and other necessities; looting and stealing the contents of, and wilfully failing to deliver or make available, Red Cross packages and supplies intended for such prisoners of war.

7. On about 20 October 1944, at Batan Island, Batanes Province, the brutal mistreatment, torture, execution and killing, without cause or trial, of Captain William Burgh, Phillip Maurice Martin, and one other person whose name is unknown, all members of the Armed Forces of the United States of America and then in captivity of Armed Forces of Japan as prisoners of war.

8. During the month of November, 1944, in the town of Lipa, Batangas Province, brutally mistreating, torturing, and killing, without cause or trial, eleven (11) members of the Armed Forces of the United States of America, then held captive as prisoners of war by Armed Forces of Japan.

9. On about 14 December 1944, at or near Puerto Princesa, Palawan Island, brutally mistreating, assassinating and killing, by burning, bayonetting or shooting, without cause or trial, T/Sgt Jewett F. Adams, Corporal Robert A. Adkins, 1st Lieutenant Carl C. Mango, and 138 other members of the Armed Forces of the United States of America, then prisoners of war held in captivity by Armed Forces of Japan, and brutally mistreating, wounding and attempting to kill, without cause or trial, Corporal William J. Balchus, Pfc Ernest J. Koblos, and seven (7) other members of the Armed Forces of the United States of America, all then prisoners of war held in captivity by Armed Forces of Japan.

10. During the period from 18 December 1944 to 31 December 1944, both dates inclusive, in Manila, brutally mistreating, torturing and

killing, without cause or trial, Dr. Jose Enriquez, J. Allen Enriquez, and Julia Seibert Enriquez, all unarmed noncombatant civilians.

11. On about 29 December 1944, at the Barrio of Dapdap, Ponson Island, Camotes Islands, brutally mistreating and then killing, without cause or trial, more than 300 unarmed noncombatant civilians, and brutally mistreating, wounding, maiming and attempting to kill, without cause or trial, more than 50 unarmed noncombatant civilians, being the entire population of that Barrio.

12. During the period from 1 January 1945 to 17 February 1945, both dates inclusive, fortification of an installation of military objectives on the premises of the Philippine General Hospital, Ermita, Manila, then in use as a civilian hospital, with consequent killing of patients and civilian refugees by shellfire.

13. On about 28 January 1945, at Los Baños Internment Camp, Iaguna Province, brutally mistreating and then summarily executing, and, without cause or trial, killing George James Louis, an unarmed noncombatant civilian subject of the United States of America, then interned and held captive by Armed Forces of Japan.

14. On about 10 February 1945, at the Nurses' Home of the Philippine General Hospital, Ermita, Manila, rape of civilian women.

15. During the period from 1 January 1945 to 1 March 1945, both dates inclusive, deliberately, wantonly and without justification or military necessity, devastating, destroying, and pillaging and looting of large areas of the city of Manila, including public, private and religious buildings and other property, and committing widespread theft of money, valuables, food and other private property in that city.

16. On about 4 February 1945, at the Dy-Pac Lumber Yard in Manila, brutally mistreating and killing two unarmed noncombatant male civilians.

17. During the period from 7 February 1945 to 14 February 1945, both dates inclusive, at and in the vicinity of De La Salle College, 1501 Taft Avenue, Manila, brutally killing, without cause or trial, Judge Jose R. Carlos and Brother Xavier, Rector of that College, both of whom were unarmed noncombatant civilians; brutally killing, without cause or trial, Antonio Carlos, Ricardo Bartolome, Dr. Antonio Cojuangco, and 38 other men, women and children, all unarmed noncombatant civilians, brutally mistreating, wounding, maiming and attempting to kill, without cause or trial, Father Francis J. Cosgrave, Dionisia Carlos, Servillano Awuino, and fourteen (14) other unarmed noncombatant civilians; rape of two female civilians; attempted rape of one female civilian; and attempt to have carnal intercourse with the body of one dead female civilian.

18. On about 7 February 1945, at Malate, Manila, killing, without cause or trial, Arsenic Escudero, Jr., and Jose Herman, Jr., and brutally mistreating and attempting to kill, without cause or trial, Jose Herman, Sr., all unarmed noncombatant civilians.

19. During the period from about 6 February 1945 to about 8 February 1945, both dates inclusive, at and in the vicinity of the National Psychopathic Hospital, Mandaluyong, Rizal Province, brutally mistreating and then killing, without cause or trial, Tomas Aguinaldo, Tomas Corpus, Father Lafarrier, Isidro Lagucillos, and 17 other persons, all unarmed noncombatant civilians; and the rape and subsequent brutal killing, without cause or trial, of one (1) civilian female doctor.

20. On about 10 February 1945, at Malate, Manila, killing, without cause or trial, Angel Gajo; and brutally mistreating, wounding and attempting to kill, without cause or trial, Eutiquio Antipolo, Dimes Antipolo and Feliciano Lamactud, all unarmed noncombatant civilians.

21. On about 11 February 1945, at Pasay, Rizal Province, brutally mistreating and thereafter killing, without cause or trial, Henry Daland and Tony Daland, citizens of the United States of America, Caferino Alayso and Romula Daro, Filipinos, and Jacinto de la Vera and Gregorio Mondoz, citizens of Spain, all unarmed noncombatant civilians; and wantonly and deliberately and without military necessity burning and destroying private property, the houses and homes of civilians.

22. On about 11 February 1945, near Singalong Church, Manila, brutally killing, without cause or trial, Lazar Braun, an Austrian citizen, Robert Markus, a German citizen, and Alexander Farmakowski, a Russian, all unarmed and noncombatant civilians.

23. On about 7 February 1945, near Singalong, Manila, brutally mistreating and torturing and thereafter executing and killing, without cause or trial, Lt. Col. Alejo Valdes and Lt. Col. Jose Guido, disarmed and demobilized former members of the Philippine Army, and Raymond Valdes, Ernesto Mirillo, Justo Guido, Jose Guido, Jr., Raymond Guido, and thirteen (13) other persons whose names are unknown, all unarmed and noncombatant civilians.

24. On about 7 February 1945, at Paco, Manila, brutally mistreating and thereafter killing, without cause or trial, Bartolome Pons, Rosario Garcia Pons, Eva V. Pons, Edward King, Pacita King, Dolfín Marquez, and two (2) other persons whose names are unknown, all unarmed and noncombatant civilians.

25. During the period from 1 January 1945 to 1 March 1945, deliberately planning and undertaking, without cause or trial, the extermination, massacre and wanton, indiscriminate killing of large numbers of unarmed noncombatant civilian men, women and children, inhabitants of the City of Manila and its environs, brutally mistreating, wounding, mutilating, killing and attempting to kill, without cause or trial, large numbers of such inhabitants, and raping or attempting to rape large numbers of civilian women and female children in that city.

26. On about 12 February 1945, at 914 Indiana Street, Malate, Manila, brutally mistreating and killing, without cause or trial, Alexander Bachrach, Antonio Irlanda, Vonancio Quintero, Eduardo de los Reyes, Jose

Vallo, and five other persons whose names are unknown, all unarmed non-combatant civilians.

27. On about 9 and 10 February 1945, in and in the vicinity of the San Morcelino Church and the Saint Vincent de Paul House, Ermita, Manila, brutally mistreating and killing without cause or trial, Father Jose Aguirroche, Father Luis Egoda, Father Jose Fernandez, Father Julio Ruiz, Father Adolfo Soto, Father Jose Tojada, all Spanish Vincentian Catholic priests, and 21 other persons, all unarmed noncombatant civilians; and brutally mistreating, wounding and maiming and attempting to kill, without cause or trial, Co Ching, an unarmed noncombatant Chinese civilian.

28. On about 10 February 1945, at the corner of Taft Avenue and Padre Faura Street, Ermita, Manila, killing, without cause or trial, Supreme Court Justice Anacleto Diaz and his two sons, Folino Angelos, Jose Angelos, Roman Ardon, and 33 other persons, and wounding and attempting to kill Juanito De Los Reyes, Dolfin De Los Paz, Antonio De Mayo, and six (6) other persons and attacking and attempting to kill, Paul J. Akot, Ah Soo Chua, and 11 other persons, all unarmed noncombatant civilians, and all without cause or trial.

29. On about 10 February 1945, at Paco, Manila, massacring and killing 12 unarmed noncombatant civilians and wounding, maiming and attempting to kill 3 unarmed noncombatant civilians, all without cause or trial, and unnecessarily and wantonly burning and destroying private property, the houses and homes of civilians.

30. On about 10 February 1945, at and in the vicinity of the Philippine Red Cross Building, Isaac Peral and General Luna Street, Manila, massacring and killing, without cause or trial, more than 53 men, women and children, and wounding, maiming and attempting to kill four persons, all unarmed and noncombatant civilians; and unnecessarily and wantonly burning and destroying the said building and its furniture, fixtures and contents.

31. On about 7 February 1945 at and in the vicinity of 1462 Taft Avenue in Pasay, Rizal Province, cruelly and brutally mistreating and thereafter massacring and killing more than 100 Filipino and French civilians without cause or trial, all being unarmed noncombatant civilians; wounding, maiming and attempting to kill, without cause or trial, seventeen unarmed noncombatant Filipino civilians; raping and thereafter killing unarmed noncombatant civilian women; unnecessarily and wantonly burning and destroying private property of civilians, the house and home of Mrs. Dona Concepcion Soblador Campos; and seizing, confiscating and stealing money, jewels, watches and other private property of civilians.

32. On about 9 February 1945, at and in the vicinity of St. Paul's College, Malate, Manila, cruelly and brutally mistreating Marcelino Punzalon, Meneloo Carlos, Sr., Estelita Bonito, and approximately 600 other persons, including men, women and children, all unarmed noncombatant civilians; brutally massacring and killing without cause or trial, Bruno Acuna, Celia

Aguas, Jose Aquino, and 370 additional persons, including men, women and children, all unarmed noncombatant civilians; wounding, maiming and attempting to kill, without cause or trial, Colostina Antipolo, Zeila Antipolo, Cornelia Ayson, and 24 other persons including men, women and children, all unarmed noncombatant civilians; unnecessarily, deliberately and wantonly burning and destroying buildings, together with fixtures, furniture and other contents thereof, and dedicated to religion, art and science and not used for military purposes, of the aforesaid St. Paul's College; and seizing, confiscating and stealing money, jewels and other private property of civilians.

33. On about 9 February 1945, in the vicinity of Dana Perfume Factory, Pasay, Rizal Province, cruelly beating, torturing and thereafter killing, without cause or trial, Eugene Andrewitz Kremloff, Russian, Julian Jawaia and Alfredo Gana, Filipino, all unarmed noncombatant civilians.

34. During the period from 9 February 1945 to 17 February 1945, both dates inclusive, at and in the vicinity of Bay View Hotel, Alhambra Apartment Hotel, Miramor Apartment Hotel and Manila Hotel, all in Ermita, Manila, cruelly mistreating and abusing approximately 400 women, all unarmed and noncombatant civilians; cruelly mistreating, abusing and repeatedly raping more than 40 women and female children, and cruelly mistreating, abusing and attempting to rape more than 36 other women and female children; unnecessarily and wantonly burning, damaging or destroying the said buildings, private property, their furniture, fixtures and contents.

35. On about 8 and 9 February 1945, in Malate, Manila, killing, without cause or trial, Africa Canillas, Amparo Canillas, Charles Canillas, Elvira Canillas, and five (5) other members of the Felipe Canillas family, and Zoillo Llave, all unarmed noncombatant civilians; pillaging and unnecessarily and wantonly burning and destroying private property, the house and home of Felipe Canillas.

36. On about 13 February 1945, in the vicinity of No. 1609, Taft Avenue, Malate, Manila, cruelly mistreating and subsequently killing, without cause or trial, Albert P. Delfino, Venezuelan Consul in Manila, then known by the perpetrators to be such, Francis A. Delfino, Maria Dolores Delfino, and John Doo Ching, all unarmed noncombatant civilians; cruelly mistreating, wounding, and attempting to kill, without cause or trial, Ignidio Ramos, and a woman whose name is unknown; unnecessarily and wantonly burning and destroying private property, including the house at 1609 Taft Avenue and numerous other buildings in that area, together with the furniture, fixtures and contents thereof.

37. On about 11 February 1945, at 1580 Taft Avenue, Malate, Manila, killing, without cause or trial, Vassanmal Popardes and three (3) other British Indians, and Emilio Tubayano and three (3) other Filipinos, all unarmed noncombatants; unnecessarily and wantonly burning and destroying

private property, the house and home of Hashmatrai Hatchand, together with the furniture, fixtures and contents thereof.

38. On about 7 February 1945, near the Syguia Apartments in Malate, Manila, killing, without cause or trials, Father Peter Fallon, Father John Honaghan, Father Patrick Kelly and Father Joseph Monaghan; Priests of the Malate Catholic Church and Convent, and Jose Chico, Gerardo Rictra, Jack Sullivan, Conrado Vallenias, Victor Velasco, Bertito Zamora, Marcial Zamora, and Cristi Malaban, all unarmed noncombatant civilians.

39. On about 9 February 1945, at 515 Dakota Street, Malate, Manila, killing, without cause or trial, Kishinchand Mirahandani, Devji al Changomal Lalivani, Thelma Parrish and Carl Parrish, Jr. (infant child), all unarmed noncombatant civilians.

40. On about 20 February 1945, in the Iloguin District approximately $2\frac{1}{2}$ kilometers east of Pasig, Rizal Province, brutally mistreating and robbing, and subsequent killing, without cause or trial, of Candido Jabson, and the brutal mistreatment, robbery, wounding and attempt to kill of Raymunda Jabson and Dofina Jabson, all unarmed noncombatant civilians; attempt to rape Raymunda Jabson; robbery, seizing, confiscating and stealing watches, clothes and other private personal property; and pillage of private property.

41. On about 12 February 1945 at 150 Vito Cruz Street, Singalong, Manila, brutal mistreatment, torture, burning alive or otherwise killing Carlos Perez Rubio, Sr., Lopita Perez Rubio, Javier Perez Rubio, Herbert Fox, Mrs. Herbert Fox, Marina Padua, Alphonso Pahodpod, and more than twenty-two other persons including men, women and children, and brutally mistreating, attempting to burn alive and wounding Jose Balboa, Ignacio Bustamante and other persons; all unarmed and noncombatant civilians; unnecessarily, deliberately and wantonly burning and destroying private property, the house and home of Carlos Perez Rubio, Sr.

42. On about 28 February 1945, at the Town of Bauan, Batangas Province, brutally mistreating and subsequently massacring and killing without cause or trial, Enrique Martinez, Maximino Brual, and more than 400 other persons, including men, women and children, all unarmed noncombatant civilians; brutally mistreating, wounding and attempting to kill, Dr. Francisco Manigbas, Gemeniano M. Brual, and more than 100 other persons, all unarmed noncombatant civilians; and pillaging, unnecessarily and wantonly devastating and destroying public, religious and private property.

43. During the period from 16 February 1945 to 18 February 1945, both dates inclusive, at the Town of Taal, Batangas Province, brutally mistreating, massacring and killing, without cause or trial, Benjamin Morono, an infant 1 year of age, Andres Brionos, Alberto Martol, Pablo Marasigon, Dalmacio Luna, Concordia Barrion, Alicia Barrion, together with more than 2,000 other men, women and children, all unarmed noncombatant

civilians; in the Barrios of San Nicolas and Sinturisan, pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying all houses and other buildings.

44. On about 19 February 1945, in the Town of Cuenca, Batangas Province, brutally mistreating, massacring and killing Jose M. Lague, Esteban Magsomdol, Jose Lunbo, Felisa Apuntar, Elfidio Lunar, Victoriona Romo, and 978 other persons, all unarmed noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying large areas of that town.

45. On about 20 February 1945, at the Town of San Jose, Batangas Province, brutally mistreating, massacring and killing, without cause or trial, Vinancia Romo, Vincente Frank, Jose Talog, Roman Unali, and more than 500 other persons, all unarmed noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying large areas of that town.

46. On about 19 February 1945, at the Town of Mataasnakahoy, Batangas Province, brutally mistreating, massacring and killing approximately 200 men, women and children, the names of whom are not yet determined, all being unarmed noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly devastating, burning and destroying large areas of that town.

47. During the period from 16 February 1945 to 19 March 1945, both dates inclusive, at the Town of Santo Tomas, Batangas Province, brutally mistreating, massacring and killing Paz Austria, Adeleida Castro, Caladia Cabrera, Rodolfo Talad, and more than 1500 other men, women and children, all unarmed and noncombatant civilians; pillaging and unnecessarily, deliberately and wantonly burning, damaging and destroying all public buildings and private homes.

48. On about 10 February 1945, in the Paco District of Manila, brutally mistreating, torturing, mutilating and killing, without cause or trial, Regina Alcid, Bonifacio Bogamesbod, Ricardo Baja, Eugeni Ballera, and more than 300 other persons; brutally mistreating, torturing, mutilating, wounding and attempting to kill, without cause or trial, Vicente Alcid, Eustaquio Batoctoy, Eugene Boyot and more than 100 other persons; all unarmed noncombatant civilians; deliberately and wantonly burning and destroying, without military necessity, private property, a house at 1195 Singalong Street, Manila.

49. During the period from 16 February 1945 to 19 March 1945, both dates inclusive, in the Town of Lipa, Batangas Province, brutally mistreating, wounding and killing, without cause or trial, Ricardo Caringal, Francisco La Torre, Pedro La Torre, Sovero Lubrica, Santiago Limatok, and more than 12,000 other men, women and children, all unarmed noncombatant civilians; and pillaging, deliberately, and wantonly and without military necessity devastating, burning, damaging and destroying public and private buildings and property, including property devoted to religious purposes.

50. On about 8 February 1945, at Santa Rosa College, Intramuros, Manila, the abduction and subsequent brutal mistreatment and killing of Aida Aplin, Leo Gump, Kenneth Huebch, Edgar Christianson, Father Cornelius Van Russell, William Mitchell, Valoriano Cueva, and other persons, all unarmed noncombatant civilians.

51. On about 10 February 1945, at or near the Santa Rosa College, and at Manila Armory, Manila, the abduction and subsequent brutal mistreatment and killing, without cause or trial, of Bartolome Pinilio, Evencio Piguoro, Adriano Ramos, Leon Ulit, Anastacio Montano, Juanito Tabal, Armanda Ebanes, and 54 other men, women and children, all unarmed noncombatant civilians; brutal mistreatment, wounding and attempt to kill, without cause or trial, of Conrado Tauro, Mama Moro, and Wong Ling, all unarmed noncombatant civilians.

52. During the period from 10 February 1945 to 23 February 1945, at Fort Santiago, Intramuros, Manila, brutal mistreatment, starvation, torture, wounding, maiming, burning alive, massacre and killing, without cause or trial, of more than 4,000 unarmed noncombatant civilians.

53. On about 17 February 1945, at Santo Domingo Church, Intramuros, Manila, brutally mistreating and killing, without cause or trial, Dr. Cecilio Noriega, Dr. Manuel Lahoz, Conrado Pili, Lazero Cordero, Dado Pili, and other persons, all unarmed noncombatant civilians.

54. On about 10 February 1945, in the town of Tanauan, Batangas Province, brutally mistreating and killing, without cause or trial, 500 unarmed noncombatant civilians, and deliberately and wantonly and without military necessity devastating and destroying public and private property.

55. On about 12 February 1945, at Calamba, Laguna Province, massacre, without cause or trial, of more than 7,000 unarmed noncombatant civilians, and rape of 37 civilian women.

56. On about 9 April 1945, at the Town of Pingus, Laguna Province, massacre, without cause or trial, of 41 unarmed noncombatant civilians.

57. On about 13 March 1945, at the Town of Rosario, Batangas Province, massacre and killing, without cause or trial, of Lorenzo Masilungan, Sakeo Tolentino, Marcela Tolentina, Ilias Garcia, Saturnina Barcelos, and more than 45 other persons, including men, women and children, all unarmed noncombatant civilians; and pillaging and unnecessarily and wantonly devastating and destroying public, religious and private property.

58. On about 6 March 1945, at Los Banos, Laguna Province, massacring and killing, without cause or trial. Ang Kai, and 26 other Chinese, and brutally mistreating, wounding, maiming and attempting to kill, without cause or trial, Elisa Ang and Kim Ling Ang, unarmed and noncombatant civilians; and brutally mistreating and attempting to kill, without cause or trial, all of the unarmed and noncombatant Chinese civilians of that town.

59. On about 12 February 1945, at Pax Court, Pasay, Rizal Province, brutally mistreating, torturing and killing, without cause or trial, Antonio Villa-Real, a retired Justice of the Philippine Supreme Court, Melchora Oulima, Maria Peronilla, and twelve (12) other persons, and brutally mistreating, torturing, wounding and attempting to kill, without cause or trial, Dr. Walter K. Frankel, Hans Albrecht, Luhrse, Alice Stahl, and other persons, and deliberately, wantonly and without military necessity burning and destroying private property, the house at 168-B Balagtas Street, Manila, and the furniture, fixtures and contents thereof.

60. On about the night of 19-20 February 1945, at and in air raid shelters near Plaza McKinley, Intramuros, Manila, brutally mistreating and killing, without cause or trial, Gaudencio Castrillo, Victor Gonzales, Benigno Cano, and more than 100 other Catholic priests, citizens of Spain, and other persons, and brutally mistreating, wounding and attempting to kill, without cause or trial, Laurentino De Pablo, Jose Manjabacas, Jose M. Barrulo, Father Belarmino de Celis, Julio Rocamura, and other persons, all unarmed noncombatant civilians.

61. During the period from 6 February 1945 to 22 February 1945, both dates inclusive, brutally mistreating, and imprisoning in St. Augustine Church, Intramuros, Manila, without food, medical supplies or other necessities, and unnecessarily and deliberately exposing to shell fire in an in the vicinity of that Church, approximately 6,000 men, women and children, all unarmed noncombatant civilians, by reason whereof a large number of such civilians died of starvation, disease and mistreatment.

62. During the period from 6 February 1945 to 22 February 1945, both dates inclusive, at the St. Augustine Church in Intramuros, Manila, brutally mistreating and killing, without cause or trial, Sister Felisa Anza and more than 50 other persons, all unarmed noncombatant civilians.

63. On about 23 February 1945, in the vicinity of St. Augustine Church, Intramuros, Manila, killing, without cause or trial, Dr. Seguenza and other persons, and wounding and attempting to kill, without cause or trial, Ester Aenello, and other persons, all unarmed noncombatant civilians.

64. During the period from 6 February 1945 to 23 February 1945, both dates inclusive, in and in the vicinity of St. Augustine Church and Convent, Intramuros, Manila, brutally abusing, raping and attempting to rape numerous women and female children; wounding, killing and attempting to kill, without cause or trial, unarmed noncombatant civilians; pilfering, stealing and looting personal property of civilians confined therein, including watches, money, clothing, food, medical supplies, jewelry, and other personal belongings; installing, maintaining, and operating, in and on the premises of the Church and Convent, military weapons and other military objectives, despite the exclusively religious purpose and non-military use of those buildings; and deliberately and wantonly, without

military necessity, devastating, burning and destroying the Convent and damaging the Church, together with the furniture, fixtures, religious library and other properties therein.

8 October 1945

Respectfully submitted,

/S/ Robert M. Kerr
ROBERT M. KERR
Major, Infantry
PROSECUTOR

A TRUE COPY:

/S/ Robert M. Kerr
Major, Infantry

SUPPLEMENTAL BILL OF PARTICULARS

The Prosecution respectfully submits this, its Supplemental Bill of Particulars, as follows: In addition to the acts specified in the Bill of Particulars heretofore filed, members of the armed forces of Japan, under the command of the Accused, were permitted to commit the following during the period from 9 October 1944 to 2 September 1945 at Manila and other places in the Philippine Islands:

65. During the period from 9 October 1944 to about 31 October 1944, at the Towns of Medillan and Daanbantayan, Cebu Province, brutal mistreatment and massacre of men, women and children, all unarmed non-combatant civilians; raping of women; looting and pillage; devastation and burning, without military justification, of houses and other property.

66. During the period from 9 October 1944 to about 1 February 1945, at Cavite City, Imus, and elsewhere in Cavite Province, brutally mistreating, torturing, and killing or attempting to kill, without cause or trial, unarmed noncombatant civilians.

67. During the period from 9 October 1944 to about 5 February 1945, at and in the vicinity of Davao Penal Colony, City of Davao, Mindanao Island, brutal mistreatment, torture, starvation, killing, and attempting to kill, large numbers of persons then and there held as prisoners of war or as civilian internees; willful failure and refusal, without justification, to provide for such prisoners of war and internees proper and adequate shelter, food, water, clothing, sanitation, medical care, and other essentials; abandoning, and leaving without any care or attention whatever, helplessly sick, wounded or starved prisoners of war and internees; and deliberately profaning the bodies of dead prisoners of war and internees.

68. During the period from 9 October 1944 to about 10 February 1945, at and in the vicinity of Fort Santiago, Intramuros, Manila, brutal mistreatment, starvation, torture, wounding, poisoning, burning alive, and killing, without cause or trial, of numerous unarmed noncombatant civilians.

69. During the period from 9 October 1944 to about 23 February 1945, failure and refusal without justification to provide for Oscar P. RHUDID and other American noncombatant civilians then detained and interned at Los Banos Prison Camp, Laguna Province, adequate or proper quarters, bedding, food, clothing, sanitation facilities, medical care, and other essential facilities and supplies.

70. During the period from 9 October 1944 to about 1 May 1945, in Cebu Province, deliberately terrorizing, brutally mistreating, torturing,

wounding, and killing, without cause or trial, large numbers of unarmed noncombatant civilians; raping civilian women; looting and pillaging; wantonly and without military justification devastating, burning and destroying private and public property, including property devoted exclusively to religious, hospital, or educational purposes.

71. During the period from 9 October 1944 to about 31 August 1945, at and in the vicinity of Manila and other places, compelling non-combatant civilians to construct fortifications and entrenchments and otherwise take part in the operations of armed forces of Japan against the country of those civilians.

72. During the period from 9 October 1944 to about 1 September 1945, in the Philippine Islands generally, deliberately undertaking to terrorize, brutalize, massacre and exterminate noncombatant civilian men, women, and children, and to pillage, loot, devastate, burn and otherwise destroy towns, cities and other settlements, and public and private property, including property used exclusively for religious, educational, hospital, scientific and charitable purposes.

73. During the period from about 21 October 1944 to about 13 December 1944, at Old Bilibid Prison, Manila, brutal mistreatment and deliberate neglect of, and failure and refusal, without justification, to provide proper and adequate quarters, food, water, clothing, sanitation facilities, medical care, and other essential facilities and supplies, to Colonel William D. NORTH, Colonel Jack W. SCHWARTZ, Lt. Colonel Roy L. BODINE, JR., Major Robert E. CONN, and more than 2,200 other persons, all then and there held as prisoners of war; on about 13 December 1944, at Manila, deliberately subjecting 1,600 of said prisoners of war to public humiliation.

74. On about 22 October 1944, at Manila, summary execution, without cause or trial, of three (3) members of armed forces of the United States of America then held as prisoners of war.

75. On about 24 October 1944, near the Town of Concepcion, Tarlac Province, brutal mistreatment, torture, and subjecting to public humiliation, of an American prisoner of war, name unknown.

76. During the period from about 31 October 1944 to about 15 January 1945, at Sakura Prisoner of War Camp, Ft. McKinley, near Manila, grossly improper imprisonment of Thomas Eugene HARRELL, a member of armed forces of the United States of America then held as a prisoner of war, together with 400 other such prisoners of war; and failing and refusing, without justification, to provide such prisoners of war with adequate or proper quarters, shelter, bedding, food, water, sanitation, clothing, medical care, and other essential facilities and supplies.

77. During the month of October or November 1944, exact date unknown, brutally mistreating and executing, without cause or trial, at North Cemetery, Manila, Mabel JURIKA, citizen of the United States of America, and four (4) other women, names unknown, all unarmed noncombatant civilians.

78. On about 5 November 1944, at Imus, Cavite Province, brutally mistreating and killing, without cause or trial, Elpidio ESTERIS and other persons, all unarmed noncombatant civilians.

79. On about 12 November 1944, at the Town of Solano, Nueva Vizcaya Province, brutally mistreating and killing, without cause or trial, Leon Mina PASCUA, Alejandro GROSBE, Quidit Victorio QUINES, Juan GARCIA, and other persons, all unarmed noncombatant civilians.

80. During the month of November 1944, exact date unknown, at North Cemetery, Manila, brutally mistreating and killing, without cause or trial, 26 unarmed noncombatant civilians, names unknown.

81. On about 1 December 1944, at Calapan, Mindoro Province, brutally mistreating and killing, without cause or trial, unarmed noncombatant civilians; confiscating and stealing food and other supplies essential for the survival of civilians; deliberately and wantonly, without military justification, devastating and burning houses and other property.

82. On about 10 and 11 December 1944, at the Village of Polò and the Town of Obando, Bulacan Province, brutal mistreatment and massacre, without cause or trial, of 400 unarmed noncombatant civilians.

83. During the period from about 15 December 1944 to about 24 December 1944, in the vicinity of Olongapo, Zambales Province, and during the period from about 24 December 1944 to about 27 December 1944, en route therefrom to Manila, brutal mistreatment, neglect, and deliberate failure and refusal, without justification, to provide proper quarters, transportation, food, water, clothing, sanitation, medical care, and other essential facilities and supplies, to Colonel William D. NORTH, Colonel Jack W. SCHWARTZ, Lt. Colonel Roy L. BODINE, JR., Major Robert E. CONN, and more than 1,600 other persons, all members of armed forces of the United States of America then and there held as prisoners of war by armed forces of Japan; deliberately and unnecessarily exposing said prisoners of war to gunfire and other hazards; and on about 27 December 1944, at Manila, deliberately subjecting said prisoners of war to public humiliation.

84. On about 16 December 1944, at Dasmariñas, Cavite Province, brutally mistreating and killing, or wounding and attempting to kill, without cause or trial, Reynaldo BUENAVENTURA, Jose RAMIREZ, JR., and other persons, all unarmed noncombatant civilians.

85. On about 16 December 1944, at Imus, Cavite Province, brutally mistreating and imprisoning, without cause or trial, Dr. Andres DOMINGUEZ, Dr. Lazaro ILANO, Dr. Jose SAPINOSO, Dr. Modesto MASCARDO, Dominador CAMERINO, and all the other male inhabitants of Imus; thereafter abducting said physicians and imprisoning them at Military Police Headquarters at Cortabitarte and Mabini Streets, Manila, and subsequently killing them, all without cause or trial.

86. On about 28 and 29 December 1944, en route from Camp Holmes Internment Camp near Baguio, Mountain Province, to Old Bilibid Prison Camp, Manila, brutal mistreatment of, and failure and refusal, without justification, to provide food and water for, James Douglas TYSON, his wife and son, Mrs. Edna May BARZ, her husband and son, and other men, women and children, all noncombatant American civilians then detained and interned by armed forces of Japan.

87. During the period from 29 December 1944 to 4 February 1945, at Old Bilibid Prison Camp, Manila, detention and internment of Mrs. Edna May BARZ, Carl ESCHBACK, and more than 475 other American noncombatant civilian men, women and children, without adequate or proper quarters, or shelter, bedding, food, water, sanitary facilities, clothing, medical care, and other essential facilities and supplies, and deliberate failure and refusal, without justification, to provide such facilities and supplies.

88. During the month of December 1944, at North Cemetery, Manila, brutally mistreating and killing, without cause or trial, Herario CRUZ, Lauro CERIO, Francisco HERNANDEZ, Pedro REYES, Cristobal GOMEZ, Santiago RAMOS, Godofredo LUNA, Gonzalo CRUZ, Comel MANUEL, Eduardo AVILIDO, Ernesto PEREZ, Pulaviano ALCANTARA, Joestada MENDOZA, and more than 2,000 other persons, all unarmed noncombatant civilians.

89. During the month of December 1944, at Manila, with respect to Macknal HOOVER, Henry Guy LINDBLOOM, Estorito ARGUINO, and other prisoners of war, subjecting to trial without prior notice to a representative of the protecting power, without opportunity to defend, and without counsel; denying opportunity to appeal from the sentence rendered; failing to notify the protecting power of the sentence pronounced; and executing a death sentence without communicating to the representative of the protecting power the nature and circumstances of the offense charged.

90. On about 19 January 1945, at the Towns of San Fernando and San Juan, La Union Province, brutal mistreatment and massacre, without cause or trial, of unarmed noncombatant civilians, and rape of civilian women.

91. During the period from about 25 January 1945 to about 17 February 1945, at and in the vicinity of the Manila Hotel, Manila, brutally mistreating, and detaining without food, water, medical care or other essential facilities and supplies, John Vincent JAMES, Erlinda QUERUBIN, and more than 2,000 other persons, including men, women and children, all unarmed noncombatant civilians; stealing from such civilians watches, jewelry, and other personal property; and deliberately and without military necessity exposing said civilians to gunfire and other hazards, with consequent killing or wounding of a large number thereof.

92. During the months of January and February 1945, in and at the vicinity of Manila, assassinating, attempting to assassinate, and treacherously wounding or killing and attempting to wound or kill, members of armed forces of the United States of America.

93. On about 3 February 1945, in the vicinity of the Dy-Pac Lumberyard, Juan Luna Street, Tondo, Manila, brutally mistreating and killing, without cause or trial, Alberto ANTONIO, Arturo ANTONIO, Cecilia ANTONIO, Dominador ANTONIO, and 111 other men, women and children, all unarmed noncombatant civilians; and brutally mistreating, torturing, wounding, maiming, and attempting to kill, all without cause or trial, Jose LACSON, Ricardo MENDOZA, Ricardo SAN JUAN, and Ricardo TRINIDAD, all unarmed noncombatant civilians.

94. On about 3 February 1945, at Old Bilibid Prison, Manila, then in use by armed forces of Japan as a place of internment of unarmed non-combatant civilians, deliberately and without military justification installing and maintaining therein military weapons and objectives, and unnecessarily exposing the internees to gunfire and other hazards.

95. During the period from about 3 February to about 12 February 1945, in Manila, bombarding and attacking, without military justification, Old Bilibid Prison Camp, then an undefended, nonmilitary locality housing a large number of unarmed noncombatant civilians there interned.

96. On about 3 and 4 February 1945, at and in the vicinity of New Bilibid Prison, Muntinlupa, Rizal Province, brutal mistreatment and killing, without cause or trial, of more than 47 unarmed noncombatant civilians.

97. During the period from about 4 February 1945 to about 7 February 1945, at and in the vicinity of Manila Cathedral, Intramuros, Manila, brutal mistreatment and abuse of civilian women; and the deliberate and wanton destruction, without military justification, of Manila Cathedral, an institution devoted exclusively to religious purposes.

98. On about 10 February 1945, in and in the vicinity of the German Club, on San Luis Street near San Marcelino Street, in Ermita, Manila, brutally mistreating, torturing, mutilating and killing, without cause or trial, Ada ARTIGAS, Rafael ARTIGAS, Tony ARTIGAS, Felisa BAO, Emilio BUENO, Gonzalo BUENO, Bernardino CALUB, SR., Bernardino CALUB, JR., Bulchand DHANAMAL, and more than 500 other men, women and children, including American, Filipino, French, Spanish, British-Indian, and German subjects, all unarmed noncombatant civilians; brutally mistreating, torturing, wounding, maiming, and attempting to kill, without cause or trial, Francisco LOPEZ, Engracio LOSA, Asuncion R. MARBAS, Helena RODRIGUEZ, and Inez STREEGAN, and other persons, all unarmed noncombatant civilians; deliberately contaminating and poisoning a well of water, the sole source of potable drinking water for a large number of civilians; repeatedly raping numerous civilian women and female children; deliberately and wantonly, without military necessity, devastating, burning and destroying the said German Club and other buildings nearby, together with the furniture, fixtures and contents thereof, and other private property.

99. On about 10 February 1945, at the Dr. PRICE House, 535 Colorado Street, Ermita, Manila, brutal massacre and killing, without

cause or trial, of Concepcion ALTAVAS, Enrique ARRASTIA, Dolores Bastida BARTA, George BARTA, and more than 100 other men, women and children, all unarmed noncombatant civilians; brutal mistreatment and wounding of, and attempting to kill, without cause or trial, Adoracion AGOSAJOS, Elvira ALTAVAS, Jose C. BARTA, and more than ten other persons, all unarmed noncombatant civilians; deliberately and wantonly, without military justification, burning and destroying houses and other private property.

100. On about 10 February 1945, at Manila, bombarding and attacking, without military justification, Santo Tomas Internment Camp, then a nonmilitary locality housing a large number of unarmed noncombatant civilians there interned.

101. On about 11 February 1945, at and in the vicinity of the Tabacalera Cigar and Cigarette Factory and the Shell Service Station, Isaac Peral and M. de Comillas Streets, Ermita, Manila, brutal mistreatment and killing, without cause or trial, of Lu Fu CHIN, Dominga SEDRO, Hee CHUA, Hung SO, and 39 other unarmed noncombatant civilians; brutal mistreatment of and attempting to kill, without cause or trial, Bernardo ANGELES, Chi Chang WONG, and ten other unarmed noncombatant civilians.

102. On about 11 February 1945, in the Pasay District, Rizal, brutal mistreatment, torture, and burning alive of Pedro, last name unknown, an unarmed noncombatant civilian; brutal mistreatment and killing, without cause or trial, Dr. Luis REYES and Maria SEQUERA, both unarmed noncombatant civilians; attempting to kill, without cause or trial, numerous unarmed noncombatant civilians, names unknown; deliberately and wantonly, without military justification, devastating, burning and destroying houses and other property.

103. On about 13 February 1945, in the vicinity of the intersection of Vermont Street and Florida Street, Malate, Manila, brutally killing, without cause or trial, Felix ISLA, Angel FRANCISCO, and three (3) other unarmed noncombatant civilians; wounding and attempting to kill, without cause or trial, Silverio T. BRAGANZA.

104. On about 17 February 1945, at 417 Isaac Peral Street, Manila, brutally mistreating, torturing and killing, without cause or trial, Carlos Garcia BUCK, Asuncion CEDRON, Maria Luisa C. de CHICOTE, Prudencio CHICOTE, JR., Aurora de la CRUZ, Carlitos de la CRUZ, Gabriela de la CRUZ, Lolita de la CRUZ, and more than 30 other men, women and children, and brutally mistreating, wounding and attempting to kill, without cause or trial, Prudencio CHICOTE, Victorio FERLA, Florentina E. H. GONZALEZ, Mary GONZALEZ, Carlos GARCIA, JR., Pelegia LARAYA, and more than 25 other men, women and children, all unarmed noncombatant civilians; and deliberately and wantonly burning and destroying private property without military justification.

105. On about 24 February 1945, at and in the vicinity of San Pablo, City of San Pablo, Laguna Province, brutally mistreating and killing, without cause or trial, 730 men, women and children, all unarmed noncombatant civilians; brutally mistreating, wounding and attempting to kill

without cause or trial, Yat Tek SE, Tan Tek CHU, Sia Suy SENG, and other unarmed noncombatant civilians.

106. During the month of February 1945, exact date unknown, at Nichols Field, Rizal Province, brutally beating and killing, without cause or trial, a member of the armed forces of the United States of America, name unknown, then held as a prisoner of war by armed forces of Japan.

107. During the months of February and March 1945, in and in the vicinity of the City of Baguio, Mountain Province, deliberately and wantonly and without military justification devastating, burning and destroying private and public property, looting, and stealing from civilians food and other personal property.

108. On about 25 March 1945, at the Town of Solano, Nueva Vizcaya Province, brutally mistreating and killing, without cause or trial, more than 14 unarmed noncombatant civilians, names unknown.

109. On about 26 March 1945, at Cebu City, Cebu Province, brutally mistreating, torturing and killing, without cause or trial, Paul MANSELLA, Lawrence FOX, and SCOTT, full name unknown, all members of armed forces of the United States of America then held captive as prisoners of war by armed forces of Japan; brutally mistreating, torturing and killing, without cause or trial, Roberto TAN and four (4) other men, all unarmed, non-combatant civilians.

110. On about 29 March 1945, at the Town of Famy, Laguna Province, brutally mistreating and killing, without cause or trial, unarmed non-combatant civilians.

111. During the month of March 1945, exact date unknown, at the Town of Bayombong, Nueva Vizcaya Province, brutally mistreating and killing, without cause or trial, VELASQUES and MACABADBAD, first names unknown, and more than 27 other persons, all unarmed noncombatant civilians.

112. During the month of March 1945, at Cebu City, Cebu Province, brutal mistreatment and massacre, without cause or trial, of twelve members of the PALICTE Family, and other persons, all unarmed noncombatant civilians; multiple rape of civilian women; deliberate and wanton devastation, burning, and destruction, without military justification, pillage and looting of large areas of that City.

113. On about 7 April 1945, at and in the vicinity of the Barrios of Pingas, Uinig, Liko, and Santa Ana, and the Municipality of Paete, all in Laguna Province, brutal mistreatment and massacre, without cause or trial, of Aura ADAO, Juan ADAO, Estanislawa ADAO, Damaso AFUNGOL, Miling ASTRONIMO, Gregorio BAGUI, Maria SALCEDO, Marcosa VALENCIA, and more than 50 other men, women and children, and wounding and attempting to kill, without cause or trial, Mateo ADES, Meliton BALQUIEDRA, Ernesto BALQUIEDRA, Aurora VALENCIA, and other persons, all unarmed noncombatant civilians; deliberately and wantonly, without military justification, burning and destroying private property.

114. On about 16 April 1945, at Nanipil, Mountain Province, deliberately, wantonly, and without military justification, burning and destroying the settlement, together with numerous items of personal property; and killing, without cause or trial, Alico PABLONOT and other persons, all unarmed noncombatant civilians.

115. On about 16 April 1945, in the vicinity of Titig Mountain, Mountain Province, brutally mistreating and beheading, without cause or trial, Alphonso SUNGA, Lino GABLAD, Jose BANEZ, Soledad RAMOS, Pedro LA MADRID, and other persons, and maiming and attempting to kill, without cause or trial, Juanito ALIMES, Samuel TOVERA, and other persons, all unarmed noncombatant civilians.

116. On about 18 April 1945, near the City of Baguio, Mountain Province, brutal mistreatment and killing, without cause or trial, of 83 men, women and children, and wounding and attempting to kill Marcelo ARRIETA and other persons, all unarmed noncombatant civilians.

117. On about 10 May 1945, at Or. in the vicinity of Basco, Batan Island, Batanes Group, torturing and killing, without cause or trial, Januario VALONES and other persons, all unarmed noncombatant civilians.

118. On about 10 May 1945, at Matina Pangí, Davao City, Mindanao Island, brutally mistreating and killing, without cause or trial, Herculano GEMPESAW, Hermes GEMPESAW, Arestes GEMPESAW, Carlos PINGOL, Manuel BONLEON, Antonio PAMILAR, Corazon PAMILAR, Felecio BONLEON, Felecitas GEMPESAW, Maria GEMPESAW, Clara GEMPESAW, Purificacion GEMPESAW, Eduardo PINGOL, and other persons, all noncombatant civilians.

119. During the period from about 1 May 1945 to about 1 September 1945, on Batan Island, Batanes Group, brutally mistreating, torturing, killing and attempting to kill, without cause or trial, unarmed noncombatant civilians; wantonly and without military justification devastating, burning and destroying homes and other property; confiscating and stealing food, crops, and other supplies essential to the survival of civilians.

120. During the period from about 30 June 1945 to 4 July 1945, both dates inclusive, at Tapal, Cagayan Province, brutal mistreatment, massacre and killing without cause or trial, of more than 200 men, women, and children, and brutal mistreatment, wounding and attempting to kill, without cause or trial, of more than 50 men, women and children, all unarmed noncombatant civilians.

121. On about 10 July 1945, at Basco, Batan Island, Batanes Group, torturing and killing, without cause or trial, more than 54 men, women, and children, all unarmed noncombatant civilians.

122. On about 20 January 1945, at Los Banos Internment Camp, Laguna Province, killing, without cause or trial, Patrick HELD, also known as Patrick HELL, a noncombatant civilian citizen of the United States of America, then and there interned by armed forces of Japan.

123. During the month of January 1945, at and in the vicinity of

the City of Iloilo, Panay Island, brutally mistreating and killing, without cause or trial, Crispino UMADHAY, Juan GOLING, MASIONG, full name unknown, Imay, full name unknown, and other persons, all unarmed noncombatant civilians; on about 22 March 1945, at and in the vicinity of the City of Iloilo, Panay Island, brutally mistreating and killing, without cause or trial, CRISPIN, full name unknown, and other persons, all unarmed noncombatant civilians.

26 October 1945

Respectfully submitted,

/s/ Robert M. Kerr
ROBERT M. KERR
Major, Infantry
PROSECUTOR

A TRUE COPY:

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