

A CASE FOR AMNESTY

by James Reston, Jr.

President Nixon has denied that there is a significant amnesty problem: He has insisted that "only a few hundred deserted the country" during the Vietnam conflict. Yet surely the President knows that nearly 100,000 men deserted the armed forces in the third year of his presidency alone.

The President has also insisted that amnesty means "forgiveness"—which he rightly said he was in no position to provide—rather than forgetfulness or legal oblivion. This further distortion has mired the amnesty discussion in moral obfuscation and has bought the President a little time.

In his press conference of March 2, 1973, the President introduced a new



Wide World

Nixon—Vindictive toward the weak.

Precisely because they dealt with an even graver offense than desertion, the amnesties granted after the Civil War, during Reconstruction, are relevant to our own post-Vietnam period. For Vietnam has so far been the most divisive war in the twentieth century, as the Civil War was the most divisive of the nineteenth. If the Civil War created first of all a geographical division, the Vietnam war created a generational one—that is, a breach between the young who fought the war and the old who directed it or were unaffected by it.

Admittedly, comparative history is a ticklish business: No two ages are alike. But the similarities between the post-Civil War and the post-Vietnam eras are unmistakable. In both periods a weak, insecure President presides over the reconciliation of the nation. Andrew Johnson's historical standing was enhanced by his generosity toward the South. Our own President has a similar opportunity in the amnesty issue.

THE UNITED STATES is now entering its second great period of reconstruction.

Six lessons drawn from the first reconstruction have direct bearing on current attempts at reconstruction:

- Moral standing: Andrew Johnson has the distinction of being the only Southern congressman who refused to follow his state into secession. As a Tennessean loyal to the Union, he was in a good position to make judgments of clemency concerning fellow Southerners who had become rebels.

- In trying to reconcile North and South after the war, Johnson was guided by three principles: First, he sustained the note of generosity that Lincoln had struck in his second inaugural address—"with malice towards none . . . charity for all." Second, both Lincoln and Johnson reserved the charge of treason for the leaders of the Southern rebellion, not the common foot soldier. Third, Johnson shared Lincoln's view that defection en masse from the Union required a special presidential solution.

- The impracticality of conditional amnesty: Andrew Johnson's first conditional amnesty, only seven weeks after Appomattox, pardoned the majority of Southerners except for some 20,000 from the Confederate leadership. He believed that Southerners had been betrayed into insurrection by their aristocracy and that the common man was thus exonerated from criminal responsibility.

He lavished his wrath on the planters first. To a meeting of Radical legislators, he said:

I can only say you can judge my policy by the past. . . . I hold this. Robbery is a crime; rape is a crime; murder is a crime; treason is a crime; and crime must be punished. The law provides for it, and the courts are open. Treason must be made infamous, and traitors must be impoverished.

But how was he to judge one instance of treason among thousands? What was to be the criterion for judgment?

Johnson demanded an oath of allegiance to the United States and tried to force the planters to petition him for leniency. He wanted the aristocracy to beg for mercy and "so realize the enormity of their crime."

- Remorse: Remorse is fundamental to a conditional amnesty. What followed



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Johnson—Pardoned all but the leaders.

interpretation: "If at the end of a war," he said, "we broke every precedent this country has had, this will be the first time in history that amnesty has been provided for those who deserted or evaded the draft."

Can American history simply be denied or rewritten in this way?

What the history books tell us is that nineteen American Presidents have declared or favored amnesty. Most of these instances were related to desertion. In the post-Civil War period, the offense was not desertion but treason—direct, armed, organized insurrection against the established American government. The offenses being considered for amnesty today are not nearly so grave.

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Johnson's first amnesty declaration was a flood of cynical applications for pardon. Initially the President granted only a few pardons. But as time went on, Johnson found that he needed the aristocracy to restore order in the South, and he began to issue pardons wholesale. He even delegated authority to a pardon clerk who was an ex-confederate colonel.

This gave rise to the infamous system of pardon brokers, people who, for \$150 to \$500, sped their clients' applications through the proper channels. Some brokers pressed their cases through Johnson's son Robert, who was a drunk. By July 1866 some 13,500 amnesty petitions had been approved.

- Reconstruction vs. restoration: The clash between President Johnson and the Radical Congress developed over differ-

ing ideas of what, exactly, "reconciliation" should entail and eventually led to impeachment proceedings. Johnson rejected the term *reconstruction*, preferring, instead, *restoration*. He did not see the need for fundamental social change in the South: With the institution of slavery abolished, the South needed only to be brought back into the Union as painlessly as possible.

* The inevitability of universal amnesty: As Andrew Johnson's political position deteriorated and as sentiment for impeachment grew, he sensed the need for decisive action. In 1866 he made his "swing round the circle," giving speeches in New York, Chicago, Cincinnati, and points in between. The tour was a disaster, for Johnson was humbled by a crude brand of political sabotage. The opposition planted hecklers in the crowds, and Johnson traded insults with them from the stump.

But the President's plea for reconciliation was genuine. In New York he expressed his view of the American "family":

[Southerners] are our brethren. They are part of ourselves. They are bone of our bone and flesh of our flesh. . . . We have come together again; and now, after having understood what the feud was, the great apple of discord removed, having lived under the Constitution of the United States, they ask to live under it in the future. . . .

In the last year and a half of his presidency, during the prolonged anguish of impeachment, Johnson was President in title only. Congress passed reconstruction legislation at will and easily overrode presidential vetoes. Still he continued to pardon. On September 7, 1867, he proclaimed a second amnesty, after which only about 300 men remained unpardoned; and on July 4, 1868, two months after the last effort at conviction failed, he declared an amnesty that, in effect, exempted only one man, Jefferson Davis.

Finally—and most significant for the post-Vietnam era—Andrew Johnson declared his universal amnesty proclamation of December 25, 1868. The country favored amnesty by then, but it did not thank Johnson for his action. Only history would do that.

* "Waving the bloody shirt": The chapter on amnesty after the Civil War might have ended with the destruction of the President and the reconstruction of the nation. But while Johnson's universal amnesty erased the possibility of criminal charges, it did not restore to pardoned persons the right to hold office. Only Congress could do that. So the amnesty debate dragged on. It continued, in fact, for more than thirty years.

President Grant recommended that

Congress restore all rights, but his proposal failed in the Senate because of the ploy known as "waving the bloody shirt." As the country wallowed in the corruption of the Grant administration and reconstruction degenerated, discredited Republican politicians harped on the 300,000 Union dead in the war. The tactic was intended to arouse old Civil War passions and thus prop up bankrupt policies.

In 1876 Sen. James G. Blaine of Maine gave the most famous bloody-shirt speech of all. He recalled the horrors suffered by Union soldiers held captive within the Confederacy's An-

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dersonville prison and compared them to the mass murders ordered by the Duke of Alva, the massacre of Saint Bartholomew, and the excesses of the Spanish Inquisition. His speech was a tour de force, and the amnesty bill of 1876 failed. Later Jefferson Davis said he did not want a "spurious amnesty" anyway. The matter lay dead for the next twenty-two years—until 1898—when Congress, under McKinley, passed the universal amnesty act.

Is this all academic? Perhaps it was in the days before Watergate. Then we had an all-powerful, arrogant President who seemed personally affronted by the suggestion of amnesty.

Today the President's moral stature is suspect. He can ill afford to pass judgment on others. He bears responsibility for four more years of war and for the continued bombing of Cambodia, which the American people oppose 2 to 1. For Nixon to take any stance that presumes moral superiority is absurd.

Unlike Andrew Johnson, he has in the past been vindictive, not toward powerful offenders, but toward the weak. And the war dissenters in exile, though powerless, will not submit to a conditional amnesty that assumes wrongdoing on their part and high moral standing on the part of the President and Congress.

If the exiled dissenters have been strident, it is only a just reaction to the President's contemporary version of waving the bloody shirt. At his March 2 press conference, he could think of "no greater insult to the memories of those who

fought and died" than to provide amnesty for those who resisted. But as Dalton Trumbo asks, "What do the dead say?" It's an old device: Pit one victim against the other, then no one asks whether all these victims were necessary in the first place.

THE PRESIDENT could effect a rapprochement with the American people by declaring universal amnesty. No one wants fanfare to attend repatriation. We expect only a quiet reassimilation of these men into American life.

More than ever, the amnesty issue must be cleared of emotional roadblocks, the first of which has to do with the notion of criminality. No compromise can come of the President's claiming the exiles are criminals under the draft or desertion laws and the exiles' claiming the President is a criminal under the Nuremberg statutes. The second roadblock is the idea that amnesty would be an admission by President Nixon that the blame was all his. Since he is congenitally incapable of admitting his mistakes, Nixon must be shown that he can follow the proper course of action without having to confess wrongdoing.

It is here that history becomes important: It can provide a way around the seemingly irreconcilable moral questions attendant on the amnesty debate. That a new age has begun, that the President must have a new image in peacetime, that reconciliation is the first priority after so long and divisive a war—these are arguments that get the President off the moral hook.

Reconciliation, to be sure, will require a measure of humility from the President. He may have to set aside some of his cherished views on the obligations of citizens, realizing that other Presidents have done so in the past for the good of the country—nineteen of them opting for amnesty.

Then, with this sense of history, with this urgent need for reconciliation and the restoration of faith in government, the second reconstruction can begin. It can begin with a speech that would follow Andrew Johnson's universal amnesty proclamation of 1868:

I, Richard Nixon, President of the United States, by virtue of the power and authority vested in me by the Constitution, and in the name of the sovereign people of the United States, do hereby proclaim and declare unconditionally and without reservation, to all and to every person who directly or indirectly refused cooperation in the late war in Vietnam, a full pardon and amnesty for the act of war resistance; namely draft evasion, desertion, or the stain of unfavorable military discharge, with the restoration of all rights, privileges, and immunities under the Constitution and the laws that have been made in pursuance thereof. □