

Needed: A Grand Reconciliation

Not a determination of who was more moral on the war

By James Reston Jr.

For four years I've argued the case for universal amnesty for war resisters, and often I've been asked, mischievously I'm sure, if I were for amnesty for Nixon. I never thought I'd have to address the question seriously. Amnesty for the powerful as well as the powerless—instinctively I react against it. I've always turned the question aside with a mischievous reply, something like, Nixon has not suffered quite enough yet, for I know full well how much the Vietnam exiles have suffered.

But now I wonder. Richard Nixon has departed, humiliated politically and personally, perhaps as humiliated as any figure in history. His financial future is in doubt, not that that is my particular concern. Congress may consider whether he deserves the emoluments of a normal ex-president. More important, under Articles I and II of impeachment, the Judiciary Committee found clear and convincing evidence for charging Nixon with violations of at least 15 criminal laws. And there is the tax matter, for which Nixon, the private citizen, may well be hauled into tax court.

Nonetheless, immunity for Nixon is a political matter rather than a simple legal matter. The sensibilities of the American people have to be considered. Two years of Watergate have followed 11 years of Vietnam. Are we really intent upon prolonging the agony still more by an extended criminal prosecution of an ex-President?

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Newday Drawing by Bob Newman

American Bar Association say yes; the ADA recently passed a resolution expressly opposing immunity for Nixon, calling upon Congress to reject any such proposal and thereby "preserve the integrity of our system of justice." And the ABA wants everyone, regardless of their past position, to be subject equally to the law. I'm sure most in the amnesty movement applaud these positions. But others are saying resignation under fire and disgrace is punishment enough. I have often used the same argument in relation to the war resisters. Forced exile is punishment enough, as Richard Nixon will soon find out.

With Gerald Ford, the mood toward reconciliation has dramatically changed. In his inauguration speech, the President spoke of "binding up the internal wounds of Watergate," calling them "more painful and more poisonous than those of foreign wars." Perhaps that is true for the political world. Perhaps the consequence of Watergate could have been the demise of our Constitution. But it is not true for a whole generation of young Americans who suffered through the Vietnam era. Watergate never had the concrete consequence of a weekly body count as high as 300 dead. But let's not dwell on old statements. Ford's amnesty initiative is laudable; at least now, the discussion is where it should be: not whether amnesty, but what kind.

Immunity for Nixon alone is unthinkable. But I can support it, if it is part of a grand reconciliation of the nation after Vietnam and after Watergate. We have this one last great problem remaining from the Vietnam era. Ford should be sure that his amnesty proposal is not so complicated that it brings back all the old rhetoric over the rightness or wrongness of the Vietnam war. Embarking on a system of trying to determine who was more moral than somebody else will surely do that. Nobody was particularly moral in that era, certainly none in the executive or legislative branch, including Gerald Ford. Ford has no moral standing to impose conditions on the return of the resisters.

Immunity for the resisters is a good flat term, appro-

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priate for the situation. Removing the possibility of prosecution is all that amnesty has ever meant. There is no legal difference between amnesty and immunity. The only difference lies in the misplaced, moral overtones that the word "amnesty" has taken on in the past few years: all that mixup about who is forgiving whom for what.

Immunity for Nixon started as a political tradeoff: immunity in exchange for resignation. Since resignation, the discussion has shifted to whether Nixon evinces enough remorse for his actions. This latest talk, like the earlier, misses the point. It is unrealistic to ask Richard Nixon to engage in a public *mea culpa*, just as it is unrealistic to ask the thousands of Vietnam exiles to admit that they were victims of bad advice, requiring them to "work their way back." The investment in their course of action in both cases is too great for that. Nor should granting of amnesty for either be dependent on it. The point is: What is best for the country in the aftermath?

Congress nobly, if begrudgingly, took on the duty of impeachment. It must likewise take on the duty of ending the Watergate mess cleanly. This talk of the powerlessness of Congress to act on immunity is Congress acting in its old way. In the case of Vietnam, however, Congress has been far less responsible. Indeed, the effort to impeach the President for the secret bombing of Cambodia failed because the Judiciary Committee members saw the hypocrisy of it: Congress had always acquiesced in the President's argument that he could do anything that might "protect American troops." How could they impeach him for their own failure to superintend his abuses? Acting on immunity for the President and for the war resisters in a general immunity package could complete the job of ending Watergate and also make up for long-standing lapses on Vietnam.

But if Congress insists on its impotence, then, as embarrassing as it may be, given his past positions on Vietnam as well as his way of coming to power, President Ford will have to act on a general immunity. Ford has said that the "public will not stand" for him pardoning his predecessor, but if there is anything that the public can stand now it is a little reconciliation. If the pardoning covers the Vietnam and Watergate eras together, the move would be seen as a grand gesture of magnanimity. When Andrew Johnson declared his universal amnesty of 1868, removing the possibility of criminal prosecution from all southerners, including Jefferson Davis, it was difficult. Few asked, "Is Jefferson Davis above the law?" Quite a few people wanted him hanged.

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One devilish problem remains with this proposal: What to do about the Nixon subordinates? Can you grant immunity to the President and not include those

men who followed his orders? What about Mitchell, Ehrlichman et al? For them, I cannot accept immunity. That would strike too deeply at the philosophical basis for amnesty. These men are the antithesis of the war resisters. Whereas the war resister said "no" to authority for reasons of conscience, the Nixon men said "yes," simply because the leader ordered. The leader's orders became their conscience, and that is an intolerable principle among men who hold a public trust in a democracy.

Furthermore, there is no overriding political reason why the "integrity of our system of justice" should be waived in their case. Their clemency comes in their ability to plea bargain, something the Vietnam exiles have never had. The Nixon men are not sufficiently high in position nor large in numbers to warrant a political solution. Their only punishment—paltry as it has been for many of them—comes at the bar of the courts. Nixon suffered through the extralegal process of impeachment; the exiles suffered an exile whose sentence could be indefinite. And the cases of these underlings do not relate to reconciliation after Watergate, because as functionaries they have no constituency.

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Newsday

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