

Reconciliation, Not Retribution

Universal Amnesty

by James Reston, Jr.

Amnesty for Vietnam resisters has suddenly become a live issue. The reasons for that are evident: Nixon says we're in a defensive posture in Vietnam, where our effort can be supported by volunteers; voters are looking to a postwar presidency; the draft calls in the fall and winter have been minimal; and amnesty supporters have been hammering on the point that this is the only logical course to take after an immoral war. There has been national publicity: Mike Wallace badgering families and friends and fellow townspeople of refugees in Canada; *Time* calling for conditional amnesty; *Newsweek* doing a cover story and taking a poll indicating that 63 percent of the American people favor a conditional or general amnesty.

President Nixon, who in November clipped a startling, flat "No" to a question of whether he would consider amnesty, vacillated in his recent TV interview with Dan Rather, saying he intended to be liberal with amnesty once the war is over. Senator Muskie is talking vaguely about a "national objective of repatriating these young people under some conditions which we will have to work out," but bases his timing not even on the end of the war, but on the end of the draft! Even Senator McGovern, who was first of the presidential contenders to advocate amnesty, has failed to say specifically whether he favors a universal or a general amnesty law, and if his idea is for general amnesty, what conditions he favors. And the astonished refugee community in Canada is complaining that it has been made into a political football.

However, no one has done more to advance amnesty than the most unlikely advocate of all, Senator Robert Taft of Ohio. His Amnesty Act of 1972 will be the focus of the upcoming debate in Congress. At first glance, it would seem splendid that a conservative should be taking the lead, and no doubt Taft's move has created an instant constituency for general amnesty. Unfortunately, his bill avoids the central moral question: what is right and appropriate for the sponsor of an immoral war to do with those in flight from it?

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What does Taft's bill say?

The price of repatriation for the evader is to be a three-year service (a) in the Armed Forces - that is to say, a denial of the purpose of exile - or (b) in Vista, VA or Public Health Service hospitals, or other unspecified federal service - a slur against Vista, as if the volunteers were the keepers of the poor, like the hospitals are the keepers of the sick. The alternative federal service is to be performed at the minimum pay grade and without eligibility for normal federal employee benefits. For the resister in jail, a plum is offered: he would be credited with up to two years of prison time to apply to his three-year service obligation. And for the deserter, as if conscientious flight once a person sees the horrors of our military and Vietnam policies from the inside is a higher crime, no provision is made. Taft feels normal military justice should take care of the deserters. Congressman Edward Koch of New York who is the longest-standing advocate of "options" for the exiles has offered a bill similar to Sen. Taft's, with the essential difference of a two-year instead of three-year alternative service. Congressman Koch dispenses with Taft's patronizing rhetoric about the "misguided victims of bad advice and poor judgment" but insists on the term "penalties."

The philosophy of retribution that underlies the Taft and Koch bills is based on two assumptions. First, universal amnesty (no penalty or condition for repatriation) would be unfair or disrespectful to the 55,000 American dead in Vietnam and the three million who served there. Second, universal amnesty would wreck the draft and the government would not be able to raise an army through conscription in future wars.

The first of these is the most galling, for it pits victims against victims. It is the Vietnam policy that has made casualties and mercenaries and POWs and jailbirds and legal evaders and exiles of an entire generation of young Americans. They are *all* casualties. But now, one victim, the Vietnam dead or the Vietnam returnee, is used against another, the refugee. Not that we should be surprised. Young soldiers were used against young protesters around public buildings in the mass protests of the late sixties and at Kent State. The POWs are used to justify a residual force of soldiers, which in turn insures the continuing captivity

of the POWs. Is it any wonder that the whole idea of national service out of patriotism has been destroyed for a generation?

No one is asking the mass of Vietnam veterans if they want their sacrifices used in this manner. The point is somehow missed that young veterans groups are the most active antiwar element on campuses today, now that the threat of the draft has diminished. More relevant, it has been barely reported that veterans groups have been in the front of the budding amnesty movement. On Christmas eve, the 103rd anniversary of Andrew Johnson's Universal Amnesty Proclamation of 1868, young veterans from New York, Pennsylvania and North Carolina presented petitions for universal amnesty to the White House with nearly 35,000 signatures. Another veteran-sponsored petition for repatriation is circulating in Florida. These are the only popularly based amnesty petitions in circulation.

What motivates the antiwar zeal of these veterans? Their inside knowledge of what our policies have meant to the people of Asia has led to rage over the efforts of the government and the press to sanitize the war news for the American people. They know that while they made a sacrifice of time and even lives, others of their generation made the moral point.

The second argument for repatriation penalties for exiles — that without penalties armies would be difficult to raise in the future — is debatable. It depends on how fresh the memory of Vietnam is. I, for one, hope that the memory of it never fades. For if Lyndon Johnson had thought it doubtful that he could have raised an army for the purpose he used it, his ambitions might have been checked. That he resorted to duplicity as evidenced by the Pentagon Papers, and thereby duped thousands of young Americans to join his army under false pretenses goes to the special bitterness of the veteran today. The memory of Vietnam might say to another generation that it is a duty of citizenship to decide conscientiously *beforehand* if the way it is asked to fight is just and consistent with basic American principles, and if it is not, to refuse to participate. The organization of the late thirties called "Veterans of Future Wars" might well be reactivated.

The Taft and Koch proposals are for domestic consumption, addressed to the Americans who feel some responsibility for the refugees, but who cannot face up to the bigger responsibility, in the Nuremberg sense, of what we have wrought abroad and at home by this war. The congressional proposals offer amnesty without accepting guilt. If none of the refugees returns to face Taft's harsh music, they can say, "We offered it to the bums, but they wouldn't take it. Tough luck."

If the guilt in Vietnam were conditional, then conditional amnesty, like Truman's after World War II, might be appropriate. But the national guilt is total in Vietnam, and if this country wishes to balance that

record with positive acts, it must wipe the slate clean.

Universal amnesty is the only alternative consistent with true reconciliation. But it is also the only option that is likely to get the refugees back in force. They have made it very clear that they will accept no imputation of criminal guilt, and they shouldn't.

Herein lies a curious, but persistent misconception both at home and in Canada: That amnesty implies "forgiveness." In fact, it means "forgetfulness" coming from the Greek "amnesia." The distinction is vital to the refugee, for forgetfulness means the possibility of prosecution is forgotten, an exercise in legal bookkeeping. This concept is affirmed in the case of *US vs. Burdick* (236 US 79) 1915. Burdick was the city editor for *The New York Tribune*. He was brought before a grand jury and asked to answer questions regarding investigations of his paper concerning city frauds. He refused to answer on the grounds of incrimination, whereupon President Wilson granted him a pardon from criminal prosecution. Burdick refused the pardon, stating still that answers might incriminate him. He was thereupon charged with contempt. The issue was whether the acceptance of the presidential pardon implied criminal guilt. In overruling the lower court and setting Burdick free, the Supreme Court stated: "If it be objected that the sensitiveness of Burdick was extreme because his refusal to answer was itself an implication of crime, we answer, not necessarily in fact, not at all in the theory of law. It supposed only a possibility of a charge of crime, and interposed protection against the charge, and reaching beyond it, against furnishing what might be urged or used as evidence to support it."

Thus, amnesty means clearing the books of charges made or anticipated for war resistance, placing the burden on the bookkeeper, not on the accused. As I wrote in these pages last October, the books on war resistance, incarnating the elaborate system of spying on antiwar individuals, should be thrown away altogether anyway, because their existence is a violation of freedom of speech and their effect on intellectual inquiry has been devastating. It is no good to wipe the books clean for dissent in one era, only to begin to fill them again with dissenters from the next.

Taft's proposal or any general amnesty variation, of which there are bound to be many in the upcoming debate, does not meet the moral requirement of this country, nor will it induce the refugees to return. The American public has shown its capacity to evade responsibility in the Mylai case. If it insists on the Taft proposal, and if that becomes law, we will follow the course of the Reconstruction amnesties after the Civil War, finding out as Andrew Johnson did that his three general amnesty proclamations were unworkable and inappropriate to the overriding need: to bind the wounds of the country. He found that only universal amnesty would meet that need, but it took him three years.