

# Ford's Clemency Plan Differs From Precedents

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In carrying out his pledge to propose Vietnam War clemency "in the same spirit that guided Abraham Lincoln and Harry Truman," President Ford has followed both predecessors in different directions.

Lincoln's Civil War pardons for Union deserters as well as Confederate soldiers was conditioned on an oath of allegiance for deserters and rebels alike. It worked across the board for entire classes of military men.

In contrast, the Ford program, while requiring some "acknowledgment of allegiance" for draft evaders and a renewed oath of loyalty for deserters, is a case-by-case administrative procedure on the Truman model of World War II's aftermath.

Mr. Ford's action is thus not a pardon or amnesty, but rather a series of directives to guide prosecutors and military authorities in the use of their discretion.

The new Ford program differs significantly from Truman's and from most of the clemency measures adopted from the time of F. George Washington. The chief differences are that the Vietnam War offender will not receive a pardon for his alleged crimes and he will be ordered to perform some form of alternative service in exchange for the benefits he does receive.

The historical fact, many experts agree, is that no two amnesties or clemency moves are precisely alike and that Presidents, historians and laymen all have caused confusion by failing to distinguish between amnesty and pardon.

This confusion allows both sides of the polarized issue to argue from precedent.

Proponents of all-out un-



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PRESIDENT FORD  
'A constructive step'

conditional pardons contend that their cause is "as American as apple pie" since the Republic was founded. Their opponents can reply, with conservative commentator William A. Rusher, that never in American history has there been "a general unconditional amnesty for individuals who dodged the draft or deserted in time or war."

The Greeks invented a word, amnestia, meaning oblivion or intentional overlooking and related to the forgetfulness of "amnesia." After the American Revolution it was Congress, rather than the President, that moved first with mercy, restoring civil rights to British loyalists who did not flee to Canada.

George Washington pardoned the participants in the "Whiskey Rebellion" against liquor taxes and those who tried to collect them from farmers west of the Appalachians. President Adams pardoned the Pennsylvania farmers who resisted at gunpoint a national tax on their dwellings.

Smugglers and military deserters won reprieves from President Madison during the War of 1812, the smugglers for taking time out from their occupations as pirates to harass the British in the Gulf of Mexico.

Both Congress and the President made clemency moves during the Civil War, a point made by Cornell law professor Harrop H. Freeman in contending — in the face of Justice Department opposition — that Congress shares the forgiveness power with the President and can go beyond any executive reprieves over Vietnam.

Freeman told a House Judiciary Subcommittee in March that Lincoln and Andrew Johnson labeled their actions as "general pardons and amnesties," fostering confusion that has continued to this day. According to Freeman, the pardoning power is clearly Executive but the manesty power — mercy extended to whole groups of persons — is Congressional.

President Truman's first post-World War II clemency initiative was to pardon honorably discharged servicemen for any nonmilitary crimes they may have committed. Later he created a three-member Amnesty Board that considered, on a case-by-case basis, the pardon applications of 15,000 draft violators.

The board's recommendation to pardon ten per cent of the applicants was approved by Truman in 1947. The precedent is cited by amnesty opponents to show the limits of previous pardon programs and by amnesty supporters to argue the futility of case-by-case handling of a much more massive Vietnam caseload.