

Amnesty for Draft Forces Asking Pardons Are Gathering Strength

By ANTHONY RIPLEY
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WASHINGTON, Jan. 29 — Like the Vietnam war itself, the issue of amnesty for those who refused to fight seems likely to be a divisive and emotional part of the American political scene for many years.

It raises once again the old catch phrases and stances that became such a familiar part of politics during the long war.

Backers of amnesty—church groups, antiwar and antidraft activists and civil libertarians—argue that, with the war over, it is only right to forgive and forget.

Opponents of amnesty—veterans groups, the Department of Defense and conservative politicians of both parties—argue that lawbreaking and disloyalty cannot be tolerated in American society.

This week, amnesty forces are gathering strength and making plans for an international conference of antiwar exiles to be held in Paris Feb. 19 through 22, according to Tod Ensign of the Safe Return Committee in New York City.

Opponents Bide Time

Opponents of amnesty, confident that they have the bulk of American society behind them, are biding their time.

Patrick E. Carr, commander in chief of the Veterans of Foreign Wars, was briefed on the question by his staff for a news conference in Washington. But the question never came up. The V.F.W. opposes general amnesty.

In Massachusetts, State Representative Peter Harrington introduced a bill to require the state to defend any draft resister who returned home and faced prosecution.

Jerome Riley, a 26-year-old former Vietnam paratrooper, later confronted Mr. Harrington and gave him medals and campaign ribbons "in memory of all my comrades who died there, who gave their lives so that you could make a mockery of justice and democracy and the American system."

Amnesty emerged as an issue in the Presidential campaign. Both candidates had trouble with it.

President Nixon was dogged by an early statement that he would be "very liberal" and yet demand that deserters and draft dodgers pay a price for breaking the law. He turned tougher as the campaign went along and "very liberal" was not heard again.

McGovern View Hardened

Senator George McGovern began a year before Election Day with a general call for amnesty. By September he excluded deserters and by October he was suggesting alternative service.

Each camp asserted its man stood firm. It was clear, however, that both candidates had found they were standing in a fire.

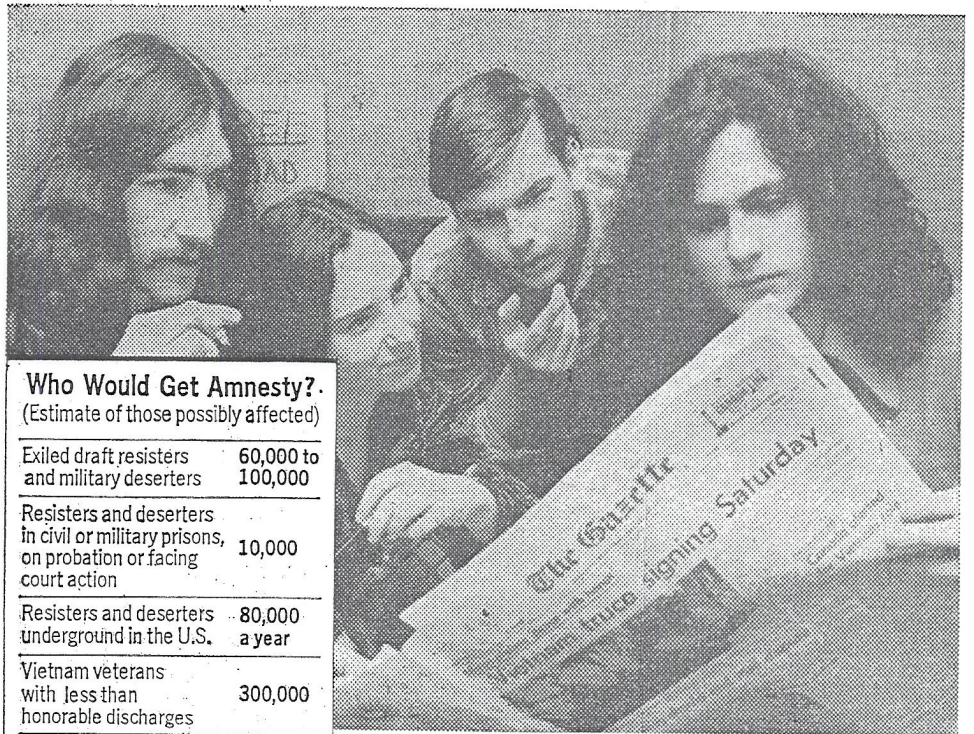
Their shifts were a signal that though seven years of war might be almost over, some of that war's central questions—bitter and divisive ones—remain facing the public and will not go away: Was it a just war? Were the young men who avoided the fighting cowards and traitors who betrayed their country or were they heroes and patriots who showed their country the way to a new high level of morality?

Positions on the matter are remarkable for their passion.

Henry Schwarzschild, of the American Civil Liberties Union project on amnesty, said failure to grant it would "ultimately wreak terrible damage to this country."

"It is an absurd and tragic irony if President Nixon can make peace with the enemy incarnate in Peking and Moscow and cannot make peace with the sons of our own country," he said.

Representative William H. B. Dorn, Democrat of South Carolina, told the House of Representatives in April: "Amnesty for those who broke the law and fled the country is an incredible proposal. Amnesty would be a severe blow to the



Who Would Get Amnesty?	
(Estimate of those possibly affected)	
Exiled draft resisters and military deserters	60,000 to 100,000
Resisters and deserters in civil or military prisons, on probation or facing court action	10,000
Resisters and deserters underground in the U.S.	80,000 a year
Vietnam veterans with less than honorable discharges	300,000
Civilians charged with antiwar acts	Unknown number

Source: National Interreligious Service Board for Conscientious Objectors

United Press International

At a Montreal coffeehouse, news of the cease-fire in Vietnam is read by a group of U.S. expatriates and counselors for the American Refugee Service.

defense of our nation during these critical times.

"Amnesty would undermine all law. It would be a step toward anarchy, chaos and a breakdown of all discipline so necessary for the survival of all our democratic institutions."

General Interest Stressed

Henry Steele Commager, the historian, told the Senate Subcommittee on Administrative Practice and Procedure last March 1 that the matter should not be decided on short-term politics or anger.

"A nation does not adopt important policies—policies affecting the lives of hundreds of thousands of its young people and affecting the whole fabric of the social and moral order—out of petulance or vindictiveness," he said. It bases its judgment rather on the interests of the commonwealth.

"Who knows what is ultimately just or what will ultimately satisfy the complex passions of a vast and heterogeneous society?"

"We should make our decisions on the question—complex enough to be sure—of what appears to be the long-range interest of the nation."

The word "amnesty" itself is legally ill-defined. It is not in the Constitution. It means granting "oblivion" a general pardon for a past offense and is generally used to cover a whole class of citizens. Pardon, in contrast, removes only the penalty for a past offense and generally is defined as being offered to a single individual.

The Supreme Court in *Brown v. Walker* in 1895 noted that the Constitution specifically gives the President power to pardon "for past offenses against the United States except in cases of impeachment." The Court added such language does not bar Congress from passing "Acts of general amnesty."

Five Bills Introduced

Amnesty for Vietnam war objectors has been promoted by churches and private groups. Five bills were introduced on the subject in the 92d Congress.

The bills ranged from universal, unconditional amnesty under the "War Resisters Exoneration Act of 1972," proposed by Representative Bella S. Abzug, Democrat of New York, to a limited amnesty bill proposed by Senator Robert Taft Jr., Republican of Ohio.

Senator Taft's bill would have left deserters to the mercy of military courts while offering amnesty to draft resisters if they volunteered for some alternative to combat, such as service in veterans' hospitals.

The number of men covered by any amnesty varies widely and in many categories is simply guesswork.

Warren W. Hoover of the National Interreligious Service Board for Conscientious Objectors named five categories of those possibly affected by amnesty.

They include exiled draft resisters and military deserters, estimated at 60,000 to 100,000; resisters and deserters in civil or military prisons, on probation or facing court action, 10,000; resisters and deserters underground in the United States, about 80,000 a year with many quickly returning; Vietnam-era veterans with less than honorable discharges, 300,000, and an unknown number of civilians charged with antiwar acts.

The largest of the categories is made up of those veterans with dishonorable, bad conduct, undesirable or general discharges from service. In the past, Mr. Hoover said, such men were not considered in amnesty actions. However, those who feel the war is immoral believe anyone who lost any measure of full civil rights because of it should be given amnesty, even convicted war criminals.

Almost all of those urging such a broad, plenary and unconditional amnesty, refuse to include in the amnesty those men convicted of crimes of violence.

History offers a President and the Congress at least 34

past amnesties to study. They stretch from the Whisky rebellion amnesty of 1795 under George Washington to the pre-Christmas amnesties granted by Harry S. Truman in 1945, 1947 and 1952.

Mr. Truman's last amnesty was for all convicted of deserting between the end of the World War II and June 25, 1950, when the Korean war broke out. It was done in the lame duck days when his Administration was leaving office. There was no amnesty after the Korean War.

Following World War II Mr. Truman had set up a special hearing board to look into 15,805 cases of draft evasion, desertion and like crimes of men who were in Federal custody. The board recommended case-by-case decisions and only 3,041 were pardoned.

In many ways, Vietnam is a unique situation.

There has never been a longer American war, and never a higher desertion rate.

Never before has there been such a broad definition of what constitutes legitimate conscientious objection: Moral and ethical objection to war, according to the Supreme Court in 1970.

It was a definition that changed during the progress of the war. Some conscientious objectors went to prison or to

Canada in the early days for beliefs that would have won them a draft deferment a few years later.

The courts changed, too. In 1967, the Justice Department prosecuted 996 cases of draft violation. Convictions that year ran 75 per cent with 89 per cent of the guilty going to prison. By 1971, 2,974 cases went to court. Only 35 per cent were convicted. Almost 63 per cent got probation.

The war poses other philosophical questions as well. Dr. Willard Gaylin, professor of psychiatry and law at Columbia University Law School said at the Senate hearings that the war resisters' crimes might have been that they were "premature prophets" who "raised a question and came to a conclusion which was at one time unpopular and now is the accepted view of the majority."

Responsibilities Cited

John H. Geiger, national commander of the American Legion told the committee that deserters and evaders had refused to accept their responsibilities as citizens—responsibilities that cannot be "applied to some and avaded by others."

"We cannot believe that the Congress will ever decide that those who violated the law have the superior moral position to the President, the Congress and to the men who served. If we establish this as the correct view, the day will arrive when there will be little further use for the Presidents, the courts or the Congress."

Former Rep. Charles O. Porter of Oregon has organized a group called Amnesty Now. He said in a telephone interview:

"We have to characterize this war. Was it a good war or a bad war? If it was a bad war, if the young men were right and the old men were wrong, then you've got to have amnesty. And only a strong nation can give it."

Mr. Hoover was optimistic about the amnesty question.

"I am certain chances would be better than after any previous American war experience," he said.

The Nixon Administration's view, endorsed by the President, was stated by Vice President Spiro T. Agnew in a speech before the Veterans of Foreign Wars in August.

He said: "On every ground I can think of—historical, legal moral and practical—the idea of general amnesty without penalty or alternative service is totally without merit."