

THE WHITE HOUSE has been quite careful not to use the word "amnesty" in connection with President Ford's program "for the return of Vietnam era draft evaders and military deserters." It should have been, because the program is not amnesty by any stretch of the definition. It is, instead, a program of contrition and substitution. Those who fled to avoid military service during the war can avoid the customary criminal sanctions for such action by professing loyalty to the United States and by substituting civilian for military service.

In general, it seems to us, this strikes a reasonable balance between the view that calls for complete amnesty and the view that calls for no amnesty or clemency at all. Complete amnesty would be wrong for one of the reasons that the early pardon of former President Nixon was wrong: it would fail to provide equal justice or fundamental fairness to the whole class of persons involved. Complete amnesty would be just as unfair to those who did not flee to avoid Vietnam as the pardon of Mr. Nixon was unfair to those who had stood or must stand trial. Fortunately, President Ford did not attempt the political juggling act of offsetting the pardon of Mr. Nixon with a general amnesty for draft evaders; a second wrong would not have redeemed the first one. On the other hand, the tempering of justice with mercy, which the President demonstrated in his statement announcing the pardon of Mr. Nixon, is equally desirable in the affair of the draft evaders. Many, if not all, of those who fled the country or went into hiding did so because they believed that they were right about Vietnam and that former administrations were disastrously wrong—both morally and legally. A country that prides itself on the right of free thought and free speech had to reach an accommodation sooner or later with those young men who exercised both so

fully and, in many cases, at such great personal cost.

Nevertheless, it is the even-handed application of these same two principles—equal justice and justice with mercy—that raises some troubling questions about the details of the President's program. Recent reports in this and other newspapers indicate that the program may require more (in some cases much more) of those who take advantage of it than has been required of most of those who have already come back to take their chances with the criminal law. In the last 10 years, three out of five returnees charged with draft evasion were not convicted; many of these went into the armed forces and were soon discharged as unsuitable. Of those who were convicted, more than half were placed on probation, which often involved the kind of substitute service the President's program contemplates but for time periods of less than 24 months. Those charged with administering the new program are going to face a difficult task in setting the length of substitute service if they are to avoid a peculiar kind of unfairness.

The other troubling matter is the special oath of allegiance to be exacted of those who would return. Loyalty oaths have never had an appeal to us; the attempt to assure loyalty through the mouthing of a particular set of words is both futile and feudal. In this case, the proposed oath can be read to require those who take it to concede they have failed to give "allegiance" to the Constitution in the past. That is a lot to ask of people who believe in good conscience that it is not they but others who violated the Constitution. Surely the act of a young man in returning home and agreeing to perform substitute service—with no assurance of escaping prosecution until the prescribed service has been performed satisfactorily—is a sufficient demonstration of allegiance to the country and willingness to make amends.