

Ford Plan Departs From History

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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 were conditioned on an oath of allegiance by 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" from draft evaders and a renewed oath of loyalty by deserters, is a case-by-case administrative procedure on the Truman model of World War II's aftermath.

Yet the new Ford program differs significantly from Truman's and from most of the clemency measures adopted from the time of 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.

Thus, both sides of the polarized issue can argue from precedent. Proponents of all-out unconditional pardons can 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 of war."

The Greeks invented the word, *amnesia*, 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 participants in the "whiskey Rebellion" against liquor taxes and those who tried to collect them from farmers west of the Appalachians. President John 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 occupation 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 University law professor Harrop A. 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 "general pardons and amnesties," fostering confusion that has continued to this day. According to Freeman, the pardoning power is clearly executive but the amnesty power—mercy extended to whole groups of persons—is congressional.

It was Congress, Freeman noted, that established "the first truly universal amnesty" for all Civil War offenses—in 1898, too late to benefit many individuals.

Similar delays affected the lives of World War I draft and espionage law violators. President Franklin D. Roosevelt pardoned those who had served their sentences at Christmas in 1933.

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 which considered, on a case-by-case basis, the pardon applications of 15,000 draft violators.

The board's recommendation to pardon 10 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.

The last act of presidential amnesty or pardon occurred in 1952, when Truman pardoned Korean war veterans for nonmilitary crimes and restored citizenship and voting rights to military deserters between World War II and the Korean conflict.

Even President Ford's action is not a pardon or amnesty, but rather a series of directives to guide prosecutors and military authorities in the use of their discretion. Mr. Ford invoked not only his pardoning power, but all the executive powers listed in the Constitution, as the source of authority for his "earned re-entry" plan.