

'Amnesty' But Not Generosity

By Tom Wicker

The unconditional preventive pardon that President Ford extended to Richard Nixon is not really relevant to the conditional, half-hearted, half-punitive amnesty Mr. Ford has offered to Vietnam war draft evaders and deserters. The Nixon pardon makes the amnesty plan look worse; but it does not really make it worse. It would have been a bad plan whatever had been done about Mr. Nixon.

As far back as Feb. 13, 1969, unconditional amnesty for Vietnam war resisters was proposed in this column as the best course for all concerned. That still seems true, even for Gerald Ford's political prospects. An unconditional amnesty would have provoked plenty of protest; but when the protest eventually died away, the issue would be largely over and done with. Mr. Ford's complex plan may well keep the passions and animosities of the war, as well as the amnesty issue itself alive for years to come.

Even a cursory reading of the Ford plan discloses all sorts of problems. If draft evaders are to report to Federal attorneys, and deserters to their respective branches of the armed services, and if the attorneys and military panels are then to decide how long the war resisters will have to undergo compulsory "alternative service," a lot of unequal "justice" is to be meted out. Some attorneys will be more "hard-nosed" than others; some military panels will hand out longer "sentences" than others. Moreover, there is

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likely to be an enarmous variation in the amount of time, effort, thought and investigation these different attorneys and military groups will put into the numerous cases that they handle.

The requirement for a pledge of allegiance, demanded of men who in most cases believe their refusal to fight in an unjust war was an act of high allegiance to their country, largely defeats the purpose of an amnesty. It is a clear demand that the war resister admit he was wrong and that he reassert an allegiance he had dropped.

This oath of allegiance was apparently what Attorney General Saxbe (who wanted to drop the investigation of the murders at Kent State) meant by "an act of contrition." War resisters will not only ask, "Contrition for what?" Since they believe themselves to have been right. They may legitimately ask why no "act of contrition" has been asked of those leaders who got the United States into an unjustified, inexplicable, bloody, divisive, costly war, of members of Congress (say, Gerald Ford and William Saxbe) who consistently and unquestioningly voted to support that war, or of the generals who planned and carried out its unparalleled destructiveness.

But for those war resisters who nevertheless turn themselves in, take the oath and agree to "alternative service," what about the right to counsel? What about family influence? Won't those who have either or both use them to get lighter terms? And will the "clemency discharges" ultimately to be given to deserters become another form of those "less than honorable" administrative discharges which already blight the lives of thousands of Americans never formally adjudged guilty of anything?

Indeed, the lack of due process in the Ford plan may be a legal flaw as grave as its political insensitivity and inequity. The Thirteenth Amendment to the Constitution says plainly that involuntary servitude is prohibited "except as a punishment for crime whereof the party shall have been duly convicted." Yet, a year or two years of forced service as a hospital orderly is a form of "involuntary servitude" and is clearly a penalty imposed upon someone who has not been "duly convicted" of anything.

That amendment has been held not to apply to "involuntary servitude" in the armed forces in wartime, but there is no war formally being fought now, and no draft. It might be argued that the penalty of "alternative service" is necessary to make some future wartime draft enforceable, but that would stretch the Thirteenth Amendment to the breaking point. Besides, if enforcing a future draft were the real problem, prosecuting past draft evaders would be the proper course.

In fact, evenhanded prosecution under the law would be a fairer and more defensible course than offering a supposedly generous amnesty hedged with one-sided "conditions," lacking in equity and due process, and tending to keep wartime animosities alive and heated. And how can generosity, the greatest of the human virtues, be made conditional?