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CONSTITUTIONAL AUTHORITY TO PARDON

English Heritage

Article II, Section 2 of the Constitution of the United States reads, in part, that the President "shall have the Power to grant Reprieves and Pardons for Offences against the United States, except in cases of impeachment."^{1/} By the time the Founding Fathers wrote the Constitution, they could draw upon their knowledge of English and colonial precedents in order to shape our own national constitution. The First Supreme Court opinion which considered the President's pardoning power expressly recognized the important link provided by our English heritage:

As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions our bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it. ^{2/}

To properly place and interpret the President's pardoning power, it is therefore appropriate to trace the development of the pardoning power in England.

Clemency during the Anglo-Saxon period, up until the Norman Conquest of 1066 was extremely vague. The king possessed relatively little power during this period, for the real authority lay with the clan chiefs, in whom the authority to pardon was vested. The privilege of pardon was a question of power, not yet a problem of law. ^{3/} Although the king technically had the authority to pardon, the existence of the right of private vengeance and retaliation, and the opposition of powerful nobles combined to confine the exercise of the clemency power to those offenses which were committed by members of the king's household, or to offenses which posed a personal threat to the security and authority of the king. ^{4/}

The Norman Conquest brought with it the belief that the pardon power was an exclusive prerogative of the sovereign. 5/ However strong this belief may have been in Norman political thought, it rarely was accepted by the groups contending for power with the king. Other contenders for the pardoning power includes the great earls 6/, the church (through the use of "benefit of clergy" 7/, and finally, parliament.

The fourteenth century witnessed a long series of parliamentary attempts to curtail the royal power. From time to time Parliament enacted laws restricting the king's power to pardon. In 1389, Parliament enacted a law 8/ which provided that no pardon for treason, murder, or rape could be allowed unless the offense were particularly specified in the pardon decree. In the case of murder, the pardon decree had to state whether the murder was committed by lying in wait, assault, or with malice. According to Sir Edward Coke, Parliament enacted such a statute in order to curtail the king's use of his pardon power when the enumerated felonies were committed. The king would be less likely to grant a pardon for these kinds of offenses if he publicly had to disclose it. 9/

During the reign of Henry VIII, the full pardon power shifted back to the King. In 1535 Parliament enacted a statute which provided the king with the exclusive authority to grant a pardon:

"No person or persons, of what estate or degree soever they be... shall have any power or authority to pardon or remit...but that the Kings' highness, his heirs and successors, kings of this realm, shall have the whole and sole power and authority thereof united and knit to the Imperial Crown of this realm, as of good right and equity it appertaineth..."10/

Within two-hundred years following this enactment, Parliament enacted three import restrictive measures on the kings authority to pardon: The Habeas Corpus Act of 1679 11/, the Bill of Rights 12/, and the Act of Settlement. 13/

Section eleven of the Habeas Corpus Act of 1679 prohibited arbitrary imprisonment and made it an offense against the King and his government "to send any subject of this realm of prisoner into parts beyond the seas." Any person committing such an offense could not receive a pardon from the King. The Bill of Rights Act of 1689 prohibited the granting of dispensations, by declaring it illegal for the Crown to claim its previously claimed power of the right to suspend a given law and also the right to disregard the law in the execution of a particular case. The Act of Settlement, enacted twelve years later, after the king abused his pardoning power by shielding his favorites from punishment, prohibited the use of pardon in cases of impeachment, although it did not prohibit its use after the impeachment had been heard.

In addition to the above limitations on the kings pardoning prerogative, it is also noted that the King could not pardon anyone who had harmed a private individual. The King could only pardon offenses against the crown or the public. 14/ By 1721, Parliament gave itself the authority to grant pardons. 15/

The Kings authority to grant pardons included the right to make such pardons conditional. Blackstone pointed out that "The king may extend his mercy upon what terms he pleases, and may annex to his bounty a condition, either precedent or subsequent, on performance where of the validity of the pardon will depend, and this by the common law." 16/

One particular situation where conditional pardons were utilized by the king was time of war. During time of war, pardons were generously granted, subject to the condition that the particular individual agreed to serve one year during the military. 17/ It was not necessary, however, that the criminal serve in a foreign land in order to secure a pardon during war time. Securance of the good offices of a nobleman who was in the service of the King overseas and/would testify as to the criminal's innocence, was sufficient. With the outbreak of hostilities, the King needed the support of the lords and bishops, and he was eager to do them a favor. 18/

Banishment was another form of conditional pardon utilized by the King. The individual being pardoned had to agree to transport himself to some foreign country, usually the American colonies, for life, or for a term of years. 19/ All felons under death could petition the king for a pardon on condition of their agreeing to transport themselves to the colonies either for life or for a specified term. The usual procedure was for the king, if he were willing to grant such a pardon on these terms, to require the felon to enter into a bond himself, and to provide sureties for his transportation. 20/ If the offender did not live up to the conditions, English judges were willing to hold that the condition upon which the original pardon was given was broken, with the offender remitted to his original punishment of death. 21/

Colonial and State Government Practice Prior to 1789

As the American colonies became settled, the English legal concepts of the seventeenth and eighteenth centuries were transplanted to the new world.^{22/} Included in these concepts was the principle of pardon and clemency for criminal offenders. An examination of the colonial charters reveals that the crown generally delegated the pardoning power in the colonies. However, the ultimate individual(s) who could grant a pardon pursuant to the King's delegation of authority varied from colony to colony, and sometimes changed within a given colony as new charters were written.

In the first Virginia charter no mention occurs regarding the pardoning power, but in the second charter there is granted:

unto the said treasurer and company, and their successors, and to such Governors, Officers, and Ministers, as shall be by our Council constituted full and absolute Power and authority to correct, punish, pardon, govern, and rule all such the subjects of us, . . . as shall from time to time adventure themselves in any Voyage thither . . . as well in cases capital and criminal, as civil, both Marine and other. So always as the said Statutes Ordinances and Proceedings as near as conveniently may be, be agreeable to the Laws, Statutes, Government,^{23/} and Policy of this our realm of England.

After Virginia became a royal colony the pardon power was exercised by the royal governor until the advent of the American Revolution. Likewise, in the royal colony of Maine the governor was given the authority to pardon, remit, and release all offenses and offenders

against any of the laws or ordinances.^{24/} Connecticut's pardoning authority did not rest solely with the royal governor. The Connecticut charter provided that the General Assembly, or the major part thereof, under their common seal could release or pardon offenders if the governor and six of the assistants were present in such assembly or court.

William Penn and other Quakers reserved the right of pardon to the person offended against. The Quakers provided that any person who should prosecute or prefer any indictment or information against others for any personal injuries or for other criminal matters (treason, murder, and felony only excepted) should be "master of his own process, and have full power to forgive and remit the person or persons offending against him or herself only, as well before as after judgment and condemnation, and pardon and remit the sentence, fine and imprisonment of the person or persons offending, be it personal or other whatsoever."^{25/}

The Bacon Rebellion was one of the more significant uprisings in the colonial period and its aftermath provides an example of the King's use of the pardoning power. Most historians (but not all) view Bacon as a patriot who exposed the inept leadership of Virginia Governor Sir William Berkeley. In 1676 Nathaniel Bacon formed a volunteer group to attack hostile Indians after Berkeley had failed to organize a militia force to pursue the Indians who had massacred a number of settlers.^{26/}

Berkeley termed Bacon a rebel and traitor and refused to issue him a military commission. There was much discontent with the Berkeley administration; Bacon and his supporters believed the king was not properly informed of the many problems plaguing Virginia and in September 1676 they revolted against the Governor. Bacon's forces attacked Berkeley and drove him from Jamestown, the capital.^{27/} Bacon died of natural causes in October and the insurrection faltered with the loss of his leadership. Berkeley mounted a force which suppressed the rebellion and he caused 37 of its leaders to be hung.^{28/} A royal commission that had been dispatched from England to look into Berkeley's conduct arrived with a general pardon for the rebels from Charles II,^{29/} but the rebel leaders had already been put to death.

A century passed before another serious uprising occurred. The War of the Regulation offers further insight into the practice of clemency in the English colonies. Nearly 2,000 North Carolinians, known as "Regulators", mounted protests against the laws of Governor William Tryon. In September 1768 the Governor promised a pardon to all "Regulators" except the leaders, upon the condition that they surrender and become law-abiding citizens.^{30/} Several subsequent Proclamations were issued by the Governor and in a Proclamation of June 1771 a new condition was added: to be eligible for pardon, one would have to subscribe to an oath of allegiance. Thirteen of the rebel leaders were adjudged guilty of treason and seven of these were hung.^{31/} One of the leaders of the North Carolina "Regulators", Herman Husband, surfaced again a quarter-century later as a participant in the Whiskey Rebellion.^{32/}

With the outbreak of the American revolution colonial governments were replaced by new state governments. Because the executive department in the state governments had not yet gained the confidence of the people, due to the lingering memories of royal governors and their opposition to colonial rights, most state governments provided that the powers of government would be concentrated in the legislature.^{33/} Accordingly, in New Hampshire, Massachusetts,

Pennsylvania, and Virginia, the pardoning power could be exercised only by the governor with the consent of the executive council.

Vermont, provided in its constitution of 1777 that the pardoning authority would be exercised by the governor and the executive council.^{34/} Rhode Island and

Connecticut made no changes in the administration of clemency and retained their charter form of government for many years.^{35/}

Georgia authorized the governor only to "repeive a criminal or suspend a fine until the meeting of the assembly, who may determine therein as they shall judge fit."^{36/} In the states of New York

The President's Grant of authority under the Federal Constitution:

By the virtue of English and colonial precedent,

The Founding Fathers had ample precedent to establish the pardoning power for the President. Little debate occurred on how the power should be utilized. Part of it was directed at the suggestion that the President would need the consent of the United States Senate before he could grant a pardon. That suggestion was rejected by a vote of 8-1. A journal^{38/} kept by James Madison on the day to day proceedings of the Federal Convention provides the following:

Saturday, August 25th, 1787

Mr. Sherman moved to amend the 'power to grant reprieves and pardons,' so as to read, 'to grant re-

prieves until the ensuing session of the Senate, and pardons with consent of the Senate.'

On the question, --Connecticut, aye, --1, New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no--8.

The words, 'except in cases of impeachment,' were inserted, nem, con. after 'pardons.'

Two days later, on August 27, 1787, a suggestion was made that the

President should have the authority to grant a pardon only after

the offender had been convicted. That suggestion was quickly

withdrawn, however, after an objection was made to it:

Monday, August 27th, 1787

In Convention, --Article 10, Section 2, being resumed, --

Mr. L. Martin moved to insert the words, 'after conviction,' after the words, 'reprieves and pardons.'

Mr. Wilson objected, that pardon before conviction might be necessary, in order to obtain the testimony of accomplices. He stated the case of forgeries, in which this might particularly happen.

Mr. L. Martin withdrew his motion.

Later, Edmund Randolph of Virginia proposed to add the words,

"except in cases of treason." His motion was rejected by a vote

of 8-2:



Saturday, September 15th, 1787

Article 2, Sect. 2. 'He shall have power to grant reprieves and pardons for offences against the United States,' &c.

Mr. Randolph moved to except 'cases of treason.' The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The traitors may be his own instruments.

Col. Mason supported the motion.

Mr. Gouverneur Morris had rather there should be no pardon for treason, than let the power devolve on the Legislature.

Mr. Wilson. Pardon is necessary for cases of treason, and is best placed in the hands of the Executive. If he be himself a party to the guilt, he can be impeached and prosecuted.

Mr. King thought it would be inconsistent with the constitutional separation of the Executive and Legislative powers, to let the prerogative be exercised by the latter. A legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that State; the next was equally disposed to pardon them all [Shays Rebellion]. He suggested the expedient of requiring the concurrence of the Senate in acts of pardon.

Mr. Madison admitted the force of objections to the Legislature, but the pardon of treasons was so peculiarly improper for the President, that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He would prefer to either, an association of the Senate, as a council of advice, with the President.

Mr. Randolph could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President and that body.

Col. Mason. The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur; and the President moreover can require two-thirds of both Houses.

in the second place, that it would generally be impolitic beforehand to take any step which might hold out the prospect of impunity: A proceeding of this kind, out of the usual course, would be likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.

Ultimately, the Founding Fathers concluded that there was no need, contrary to the English practice, to curtail the President's authority to grant pardons, except to one particular situation: cases of impeachment. As one supreme court decision noted:

The framers of our Constitution had in mind no necessity for curtailing this feature of the kings prerogative in transporting it into the American governmental structure save by excepting cases of impeachment. . . . (Ex parte Grossman, 267 U.S. 87, 113, 45 S. Ct. 332, 334, 69 L.Ed. 527 (1925).



On the motion of Mr. Randolph, --
Virginia, Georgia, aye--2; New Hampshire,
Massachusetts, New Jersey, Pennsylvania,
Delaware, Maryland, North Carolina, South
Carolina, no--8; Connecticut, divided.

Thereafter, Alexander Hamilton, in Federalist No. 74 presented
an argument that the legislative^{URE} should not have any control
over the pardoning power: 39/

But the principal argument for reposing the power of pardoning in this case in the chief magistrate, is this: in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquility of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recall. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction, would frequently be the occasion of letting slip the golden opportunity. The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed, that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the president; it may be answered in the first place, that it is questionable, whether, in a limited constitution, that power could be delegated by law; and

NOTES

Appendix

The Historical Perspective of Clemency
Chapter I, Constitutional Authority to Pardon

1. U.S. Const. Art II § 2.
2. United States v. Wilson, 32 U.S. (7 Pet.) 150, 160 (1833).
3. Attorney General's Survey of Release Procedures, Vol. III: Pardon, 27 (1939).
4. Grupp, Some Historical Aspects of the Pardon in England, 7 Am J. Legal History 51, 53-54 (Jan, 1963)
Jensen, The Pardoning Power in the American States 1 (1922).
"In cases of flagrant or aggravated injury vengeance was permitted without waiting for slow redress from law. If any one slew another openly, he was delivered over to the kindred of the person slain. If a man detected anyone with his wife or daughter, or with his sister or mother, within closed doors, or under the same coverlet, he might slay him with impunity." See Allen, Inquiry into the Rise and Growth of the Royal Prerogative in England () London.
5. In 1827 See Grupp, Historical Aspects of the Pardon in England, supra note at 57. Grupp, supra Note 4, at 55.
"As representative of the state, the king may frustrate by his pardon an indictment prosecuted in his name. In every crime that affects the public he is the injured person in the eye of the law, and may therefore, it is said, pardon an offense which is held to have been committed against himself." See Allen, supra Note 4, at 108.
6. The great Earls obtained the right to exercise a power of clemency within their jurisdiction. They had the same right as the king to remit and pardon treasons, murders, and felonies. By the act of 27 Henry VIII, c. 24, the greater part of the privileges that had belonged to them were taken away. See Allen, supra note 4 at 109.
7. Benefit of clergy "originally . . . meant that an ordained clerk charged with a felony could be tried only in the Ecclesiastical Court. But, before the end of Henry III's reign, the king's court, though it delivered him to the Ecclesiastical Court for trial, took a preliminary inquest as to his guilt or innocence . . . In time it [benefit of clergy] changed and became a complicated set of rules exempting certain persons from punishment for certain criminal offenses. It was extended to secular clerks, then to all who could read." -Humbert, -The Pardoning Power of the President, at 10. It arose out of the church-state conflict of the twelfth century. It remained in effect until abolished by statute.
8. 13 Richard II, St. 2 C. 1
9. Blackstone, Commentaries, Book IV, p. 401. - To circumvent this statute, the king claimed that he had the right to suspend the execution of a law and to dispense with its execution in particular cases. The use of the royal dispensing power was fairly common. It was apparently introduced into English Law by Henry III in about the year 1252. Parliament, in the English Bill of Rights enacted in 1689, declared that both of these alleged powers were illegal. Humbert, supra note 7 at 11, P. Brett, Conditional Pardons and the Commutation of Death Sentences, 20 Modern Law Review, 131, 133 (1957).

NOTES

Chapter I, (Contd)

10. 27 Henry VIII, C. 24. It should be noted that notwithstanding this particular statute, the King's pardoning authority was not absolute. As previously noted, all those who could claim the "benefit of clergy" were exempted from criminal responsibility, until it was abolished by statute in 1827. The institution of sanctuary also served as an encroachment upon the king's prerogative. If an offender left the realm, forfeited all of his goods and submitted to a life of banishment, he could obtain the same effect that a king's pardon would bestow upon him. See Grupp, Historical Aspects, supra note 4, at 57-58.
11. 31 Charles II, Stat. 11, c. 2.
12. 1 William and Mary, sess. II, c. 2.
13. 12 and 13 William III, c. 2.
14. As Blackstone put it, the king had no power to pardon "where private justice is principally concerned" under the doctrine of "non potest rex gratiam faceere cum injuria at damno aliorum" (the king cannot confer a favour by the injury and loss of others). Blackstone, Commentaries, supra note at 399. Blackstone also states that the king could not pardon a common nuisance while it remained unredressed. However, after the abatement of the nuisance, the king could remit the fine. Blackstone states that although the prosecution of a common nuisance is vested in the king so as to avoid multiplicity of suits, it is, until abated, more in the nature of a private injury to each individual in the neighborhood. In addition, the king could not pardon an offense against a popular or penal statute after information has been brought. Once a private individual has brought such information he acquires a private property right in his part of the penalty.
15. Stephen, New Commentaries on the Laws of England (London, 1903), Vol. II, p. 370. A pardon granted by Parliament had one particular feature that a pardon granted by the king did not. A pardon granted by an Act of Parliament had to be judicially noticed by a court. It did not have to be pleaded. However, if an individual received a pardon by the king under the Great Seal, the pardon had to be pleaded at a particular stage in the proceeding. An individual who failed to plead his pardon at the appropriate stage could be held to have "waived the pardon" and to be precluded from pleading it at a later stage. See Blackstone, supra note 10 at 402 and Brett, supra note 10 at 132.
7 George I, ch. 29 (172). "The power and jurisdiction of Parliament is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. It has sovereign and uncontrollable authority in the making, conforming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal."

NOTES

Chapter I, (Contd)

16. Blackstone, Commentaries, supra, note 10, at 401.
17. As soon as war was declared, it was the custom to issue a proclamation in which a general pardon of all homicides and felonies was granted to everyone who would serve for a year at his own cost. The terms were readily accepted, and the king increased his force by a number of men who would perhaps be inferior to none in courage, though they might not improve the discipline of the army. The rolls according abound with instances in which a pardon was alleged for military service, and allowed without dispute. Grupp, supra note 4, at 58.
18. See Attorney General's Survey, supra note 3 at 30.
19. Blackstone, Commentaries, supra note 10, at 401.
20. P. Brett, supra note 10, at 134.
21. Ibid.
22. Jensen, Pardoning Power in the Colonies, p. 3.
23. Ibid., at 4.
24. Ibid., at 5.
25. Ibid., at 6.
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27. Chitwood, Oliver Perry. A History of Colonial America. New York: Harper & Brothers.
28. Hale, Nathaniel C. The American Colonial Wars. Wynnewood, PA: Hales House
29. Morison, Samuel Eliot. The Oxford History of the American People. New York: Oxford University Press, 1965.
30. Powell, William S.; Huhta, James K.; and Farnham, Thomas J., eds. The Regulators in North Carolina. Raleigh, NC: State Department of Archives, 1971.
31. Van Doren, Charles; and McHenry, Robert., 3ds. Webster's Guide to American History. Springfield, Mass: G & C Merriam Co., 1971.
32. Morison.
33. Jensen.
34. Ibid., p. 10.
35. Constitution of New Hampshire, 1784; Massachusetts, 1780, Part II, chapt. ii, Sec. 1, Art. 8; New Jersey, 1776, Part IX; Pennsylvania, 1776, Sec. 20; Virginia, 1776, cited in Jensen, Ibid., at p. 10.
36. Ibid., at 10.
37. Ibid., at 10.
38. Tansill, (ed) Documents Illustrative of the Formation of the American States, Government Printing Office, Washington, D.C., at 620 (1927).
39. The Federalist No. 74, at 500 (J. Cooke Ed. 1961) - In Federalist No. 69, Hamilton summarized the proposed §2 powers, including the power to pardon, as "resembl[ing] equally that of the king of Great Britain and the Governor of New York." Ibid., at 464.

APPENDIX _____

THE HISTORICAL PERSPECTIVE OF CLEMENCY

II. Clemency During the Nation's Formative Years

- A. Continental Congress Recommends Compassion and Mercy
- B. Loyalists - the Early Dissenters
- C. Washington
- D. Adams
- E. Jefferson
- F. Madison
- G. Jackson

CLEMENCY DURING THE NATION'S FORMATIVE YEARS

Continental Congress Recommends Compassion and Mercy

An early offer of Congressional pardon is recorded in the Journals of the Continental Congress, April 1778. The offer was directed toward Americans who had joined the British forces.

The Resolution prompted Thomas Jefferson, then a member of the Virginia House of Delegates, to introduce a Bill offering "full and free pardon" on 13 May 1778¹. Jefferson's Bill was practically a verbatim recitation of the April Resolution that had been issued by the Continental Congress. In writing to Richard Henry Lee on 5 June 1778, Jefferson advised "We (the Virginia House) passed the bill of pardon, recommended by Congress, but the Senate rejected it"². The probable cause of failure to pass in the Virginia Senate was the unrealistic cut-off date; "penitents" being required to return by 10 June to be eligible for pardon. Jefferson's "Bill Granting Free Pardon to Certain Offenders" is quoted in its entirety:

Whereas the American Congress by their resolution passed on the 23d. day of April last past, reciting that persuasion and influence, the example of the deluded or wicked, the fear of danger or the calamities of war may have induced some of the subjects of these states to join aid, or abet the British forces in America, and who, tho' now desirous of returning to their duty, and anxiously wishing to be received and reunited to their country, may be deterred by the fear of punishment: and that the people of these

states are ever more ready to reclaim than to abandon, to mitigate than to increase the horrors of war, to pardon than to punish offenders: did recommend to the legislatures of the several states to pass laws, or to the executive authority of each state, if invested with sufficient power, to issue proclamations, offering pardon, with such exceptions, and under such limitations and restrictions, as they shall think expedient, to such of their inhabitants or subjects, as have levied war against any of these states, or adhered to, aided or abetted the enemy, and shall surrender themselves to any civil or military officer of any of these states, and shall return to the state to which they may belong before the 10th. day of June next: and did further recommend to the good and faithful citizens of these states to receive such returning penitents with compassion and mercy, and to forgive and bury in oblivion their past failings and transgressions.

Be it therefore enacted by the General assembly that full and free pardon is hereby granted to all such persons without any exception who shall surrender themselves as aforesaid, and shall take the oath of fidelity to this Commonwealth within one month after their return thereto.³

Loyalists--The Early Dissenters

At the time of the Revolutionary War, a significant portion of the American populace chose to support the King; they were called Loyalists or Tories. It became common practice to require suspected Loyalists to take an oath of loyalty to the United States. Refusal to renounce the King and swear allegiance to the United States often resulted in fine, imprisonment, loss of civil rights, or confiscation of private property. Even Washington is said to have been in favor of hanging a few prominent Loyalists!⁴

Sentiment against Loyalists was so pronounced that many voluntarily decided to leave their homes; some going into temporary exile, others permanently settling outside the United States. The majority of Loyalists who left the United States chose Canada, ^{while} a smaller number selected Great Britain or the West Indies.

The Peace Treaty of 1783 which granted independence to the thirteen United States attempted to end disharmony between the Loyalists and those who fought for independence. Article V of the Treaty stated in part:

It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties which have been confiscated,...and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail.
(emphasis added)

Article VI of the Treaty further provided:

That there shall be ^{NO} future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued. ⁵

While perhaps as many as 80,000 Loyalists left the States, their decision to migrate was a voluntary decision. A far larger number opted to remain in the states and many Loyalists who chose self-exile later elected to return.⁶

Animosity towards the Loyalists was not wholly abated by a termination of the fighting. But the passage of time, the tremendous challenge of building a new nation, and the common heritage of the early Anglo-Americans served to cool tempers and promote the "spirit of conciliation" which had been promised in the Paris Peace Treaty. Americans of the 1770's and 1780's--revolutionaries and counter-revolutionaries alike--shared too many common beliefs to become permanently estranged from one another. The dissonance of the 1770's gave way to unity of purpose after Great Britain acknowledged the independence of the United States.

Washington

The pardoning power of the President was first exercised by George Washington in his dealings with the insurrectionists of Western Pennsylvania. Many of the Western Pennsylvania mountain men operated stills to produce corn whiskey and they objected to the attempts of Federal revenueurs to collect an excise tax on the whiskey they distilled.

Their opposition to the tax grew into an armed rebellion in which the home of the District Inspector of Revenues was set ablaze.⁷ Treasury Secretary Hamilton urged prompt and firm action against the rebels, action that would clarify and strengthen the authority of the Federal government.⁸

Washington called for an end to the insurrection in a Proclamation issued 7 August 1774:

...I, ...do hereby command all persons being insurgents..., on or before the 1st day of September next to disperse and retire peaceably to their respective abodes.....⁹

The unrest continued and Washington found it necessary to mount an expedition against the rebels. (The Federal government's reaction to the Whiskey Rebellion brought a tangential issue to light--the merits of a standing army versus the merits of a militia that could be Federalized or could provide volunteers in time of need.) In a second Proclamation, issued 25 September 1774, Washington stated:

....the moment is now come when the overtures of forgiveness, with no other condition than a submission to law, have been only partially accepted; when every form of conciliation not inconsistent with the being of Government has been adopted without effect.....¹⁰

The President accepted his title of Commander-in-Chief literally; he took to the field, traveling to Carlisle, Pennsylvania to see first hand the troops that were being formed for the trek across the Alleghenies and into the Western counties of Pennsylvania. The encounter between the rebels and the Federal forces was rather anti-climactic, the rebels melted away upon the approach of the Federals.

In his third Proclamation relating to the Whiskey Rebellion, President Washington on 10 July 1795, granted a "full, free and entire pardon" to all insurrectionists except those under indictment. The two ringleaders of the rebellion were convicted of treason but were subsequently pardoned by the President.¹¹

In explaining to Congress his use of the President's constitutionally derived pardoning power, Washington said

"For though I shall always think it a sacred duty to exercise with firmness and energy the Constitutional powers with which I am vested, yet my personal feeling is to mingle in the operations of the government every degree of moderation and tenderness which the national justice, dignity, and safety may permit."

Adams

Like Washington, President Adams encountered a group of rebellious Pennsylvanians during his tenure in office. The trouble began when the Federal Government attempted to collect \$237,000 from Pennsylvanians by levying a tax against houses, land, and negro slaves.¹²

John Fries, an auctioneer well-known in the community, was the principal agitator and the calamity came to be known as Fries' Rebellion. Fries had served with the troops that put down the Whiskey Rebellion but he now found himself opposing the Federal Government.

The beginning of the Fries Rebellion is recounted in Adams' Proclamation of 12 March 1799 commanding the insurgents "to disperse and retire peaceably":

...the said persons, exceeding one hundred in number and armed and arrayed in a warlike manner, ...having impeded and prevented the commissioner...by threats and personal injury, from executing the said laws...¹³

In his 3 December 1799 address to the Sixth Congress, President Adams reported further on the Fries Rebellion:

...the people in certain counties of Pennsylvania (having) openly resisted the law directing the valuation of houses and lands... it became necessary to direct a military force to be employed....¹⁴

After the insurrectionists had freed prisoners taken by the US Marshal, Fries was arrested by Federal troops and charged with treason. He was found guilty and a death sentence was imposed. President Adams, however, pardoned him.¹⁵

By his Proclamation of 21 May 1800, President Adams pardoned all insurrectionists except those then under indictment or standing convicted. Adams stated that future prosecutions were unnecessary since "peace, order, and submission to the laws of the United States were restored,...the ignorant, misguided and misinformed counties (having) returned to a proper sense of their duty."¹⁶

Jefferson

Although Washington pardoned participants in the Whiskey Rebellion and Adams issued pardons to certain Pennsylvania insurrectionists, Thomas Jefferson was the first US President to grant a pardon to military deserters. Desertion from the Continental Army had been rampant throughout the Revolution but/ neither Washington nor Adams ordered action against war-time deserters.

On 15 October 1807, Jefferson offered deserters full pardon in exchange for their surrender to the military and return to duty.

The Proclamation in its entirety reads:

Whereas information has been received that a number of individuals who have deserted from the Army of the United States and sought shelter without the jurisdiction thereof have become sensible of their offense and are desirous of returning to their duty, a full pardon is hereby proclaimed to each and all of such individuals as shall within four months from the date hereof surrender themselves to the commanding officer of any military post within the United States or the Territories thereof. 17

Twelve days after signing the Proclamation, in his Seventh Annual Message to the Senate and House of Representatives, Jefferson cited circumstances which "seriously threatened the peace of our country." 18 Thus, it may be conjectured that Jefferson offered the pardons as a means of building up the size of the Army in a time of national peril.

Jefferson's inclination to favor clemency for deserters is reflected in a letter he wrote to General Washington in the spring of 1775 suggesting a pardon for a Revolutionary War soldier who had voluntarily turned himself over to Army authorities.

The bearer Horseley enlisted for 2 years. . . . In the winter now past, and before his time was out, he was unfortunate enough to desert from the service... I let him know that ...if he would come in I would venture to state the fact to your excellency that he might have all the benefit which a voluntary return to duty and resignation of his life into your hands would give him, and could not help hoping he would obtain your pardon if it could any way square with the rules you may have laid down....Having now discharged my promise and returned I hope a good soldier to the use¹⁹ of his country; the residue remains with your excellency. . . .

Madison

In 1812 the United States was ill-prepared to go to war. The Army ranks were so insubstantial in number as to be an almost totally impotent force. The defense policy of the new nation had been the maintenance of a small standing Army with the thought that, in time of actual war, the militia would be used. But many governors were hesitant to order out their troops for participation in "Mr. Madison's War"; a war they violently opposed. The New England States took the position that the militia were available as a Federal force only for the purposes of suppressing insurrection or repelling invasion. As they understood the Constitution, the militia should not be mobilized to participate into a foray into Canada. For the first time in our Nation's history, the idea of drafting men into the Army was proposed, but Daniel Webster and others spoke our forcefully against involuntary inductions.²⁰

The anti-war faction lost the national elections of December, 1812 and President Madison was re-elected. With many Governors refusing to call out the Militia, and with Congress unalterably opposed to conscripting an Army, it became necessary to offer land bounties to entice enlistments. This had the unfortunate result of causing soldiers to desert and then reenlist in another regiment under another name in order to collect another bounty.

Madison issued three amnesty proclamations that may have been intended to return deserters to duty so that they could participate in the war with Great Britain. These proclamations, --issued 7 February 1812, 8 October 1812, and 17 June 1814--were granted with the understanding that the deserters had "become sensible of their offense and desirous of returning to duty." ²¹ To receive pardon, deserters were required to surrender at a military post.

• The Army had been accustomed to dealing harshly with apprehended deserters. Just 10 days before Madison's 17 June 1814 pardon of deserters, Brigadier General Winfield Scott (at 27, the youngest general in the Army) had caused his troops to witness the execution of soldiers who had been convicted of desertion and sentenced to death. General Scott apparently thought that forcing his troops to witness this punishment would remove the temptation to desert. The 5 deserters under death sentence were placed next to open coffins and newly dug graves. The volley of fire by the appointed executioners killed 4 of the deserters. It had been earlier decided ^{that} the fifth--a teenager--would be spared and no live rounds were aimed at him. ²²

In December 1814, Massachusetts put out a call for the New England States to participate in a secret meeting that had as one of its purposes an earnest discussion of secession. This meeting came to be known as the Hartford Convention. Immediate secession was quickly ruled out and commissioners were named to proceed to Washington to discuss the Report and Resolutions of the Convention with President Madison. Many of those attending the Convention believed that if Congress failed to respond adequately to the demands of the Convention, secession would then take place. ²³

While enroute to Washington, the Commissioners learned of Jackson's Victory at New Orleans and, arriving in Washington, word reached them of the Treaty of Ghent. With the United States having avoided defeat and with peace at hand, the commissioners could only abandon their mission. One of the resolved clauses of the Report is of especial interest:

That it be and hereby is recommended to the legislatures of the several states represented in this Convention, to adopt all such measures as may be necessary efectually to protect the citizens of said states from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provisions, subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments, not authorized by the constitution of the United States.²⁴

Madison issued a fourth amnesty proclamation on 6 February 1815. The 1815 Proclamation is unique with respect to the class of offenders pardoned-- it is specifically addressed to Jean Lafitte's pirates:

. . . provided, that every person claiming full benefit of this pardon in order to entitle himself thereto shall produce a certificate in writing from the governor of the State of Louisiana stating that such person has aided in the defense of New Oreleans and the adjacent country during the invasion thereof as aforesaid.²⁵

While most amnesties have dealt with war dissenters, Madison amnestied pirates who came to the aid of their country. Lafitte's men had spurned a cash offer by the British, choosing instead to join with General Jackson at the Battle of New Orleans.

Jackson

President Andrew Jackson extended a form of Executive clemency to military deserters in 1830. Jackson's action was prompted by Congressional repeal of the law imposing the death penalty for peacetime desertion. War Department General Order Number 29, issued by Secretary of War Eaton on 12 June 1830, provided that deserters under sentence of death and all deserters remaining unapprehended were to be discharged from the Army and barred from future enlistment. Personnel who were under arrest for desertion were to be returned to duty. An excerpt from the General order suggests that forgiveness, compassion, and generosity were not the most compelling motives underlying the Executive clemency to deserters not then under military control:

It is desirable and highly important that the ranks of the Army should be composed of respectable, not degraded, materials. Those who can be so lost to the obligations of a soldier as to abandon a country which morally they are bound to defend, and which solemnly they have sworn to serve, are unworthy, and should be confided in no more. 26

The spirit of reconciliation generally found in acts of Executive clemency is absent from Jackson's Order. Rather, the deserters still at large were characterized as unworthy and undeserving of redemption through subsequent military service.

NOTES

Appendix

The Historical Perspective of Clemency

Chapter II, Clemency During the Nation's Formative Years

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APPENDIX

THE HISTORICAL PERSPECTIVE OF CLEMENCY

Chapter III. Civil War

A. Lincoln

1. Conscription
2. A Clemency-minded President

B. Johnson

1. Congress Attempts to Curtail Presidential Power to Amnesty
2. Union Army Deserters
3. Confederate Army Deserters
4. General Robert E. Lee

C. Grant

CIVIL WAR

Lincoln

Throughout the Civil War, President Lincoln was besieged with individual applications for Executive Clemency. Official War Department records (Adjutant General's Office Special Orders) are replete with Presidentially-directed pardons granted soldiers who had been convicted of desertion. Here is a sampling of individual actions taken by Lincoln during January 1864 concerning Union Army deserters:¹

- Jan 7. "This boy having served faithfully since is pardoned for the old desertion."
- Jan 12. "If David Levy shall enlist and serve faithfully for one year or until otherwise honorably discharged I will pardon him for the past."
- Jan 13. "If Henry Stork of, 5th. Pa. Cavalry has been convicted of desertion, and is not yet executed, please stay till further order & send record."
- Jan 21. ""Let the unexecuted portion of the sentence be remitted and the soldier be returned to duty with his regiment to serve his full enlistment including period of absence."
- Jan 23. "Pardon on condition of re-inlisting and faithfully serving a term."

Some deserters, knowing they were under death sentence, voluntarily appeared at the White House and placed themselves at the mercy of the President. Lincoln's practice was to telegraph a full pardon to the soldier's Commanding General with the understanding that the individual would faithfully serve out his term of enlistment.

2

One hundred forty one Union soldiers were executed for desertion. In a letter to Erastus Corning on 12 June 1863, Lincoln wrote:

Long experience has shown that armies cannot be maintained unless desertion shall be punished by the severe penalty of death. (But) Must I shoot a simple-minded soldier boy who deserts (and) not touch a hair of a wily agitator who induces him to desert? ²

The "wily agitator" was C. L. Vallandigham, former member of the U.S. House of Representatives. Lincoln believed "The enemy behind us is more dangerous to the country than the enemy before us" and he took the unusual step of having Vallandigham exiled to the Confederacy.

Vallandigham had been placed under military arrest on 5 May 1863 and the following day a Military Commission found him guilty of declaring "disloyal sentiments and opinions" and sentenced him to be kept in confinement "during the continuance of the war".³ Lincoln altered the sentence on 19 May 1863 by directing Vallandigham be delivered to the Confederate lines.

Conscription

As a Member of Congress, Vallandigham had spoken against the war, saying it ought not to continue, "not a day, not an hour".⁴ Vallandigham vigorously fought enactment of the Conscription Bill. In an impassioned plea to his fellow Representatives he said:

Behold here a stupendous Conscription Bill for a standing Army of more than three million men, forced from their homes, their families, their fields, and their workshops; . . . This bill is a confession that the people of the country are against this war.

3

The Conscription Bill became law and there were four national draft calls in 1863 and 1864. But there were many ways to avoid service even if one's name were drawn. Of the 776,827 names drawn, only 46,347 entered the military. A draft call consisted of a levy in each Congressional District and if sufficient volunteers signed up to meet the quota, there would be no involuntary inductions in that District. Wards and cities often offered bounties to recruits as a means of securing enough enlistments to forestall involuntary inductions. A conscript could gain exemption from duty by paying a \$300 commutation fee, or he could simply hire a substitute to take his place.

During the Civil War the exodus to Canada and other countries grew to such proportions that the President decreed that "no citizen liable to be drafted into the militia shall be allowed to go to a foreign country". In August 1862, Secretary of War Stanton ordered that draft eligibles who left their country or state to avoid a draft call would be arrested and summarily placed on military duty. The writ of habeas corpus was suspended for these "skedaddlers". Immediately upon apprehension, they were to be placed on military duty without further formalities. They were required to bear the expenses of their arrest and conveyance to the nearest military installation. Draft evaders apprehended and placed on military duty were to have \$5 deducted from their pay and given as a reward to the officer who arrested them.⁵

A Clemency-Minded President

On December 6, 1864, in his Annual Message to Congress, Lincoln spoke of clemency:

"A year ago general pardon and amnesty, upon specified terms, were offered to all, except certain designated classes; and, it was, at the same time, made known that the excepted classes were still within contemplation of special clemency. During the year many availed themselves of the general provision, and many more would, only that the signs of bad faith in some led to such precautionary measures as rendered the practical process less easy and certain. During the same time also special pardons have been granted to individuals of the excepted classes, and no voluntary application has been denied. Thus, practically, the door has been, for a full year, open to all, except such as were not in condition to make free choice-- that is, such as were in custody or under constraint. It is still so open to all. But the time may come--probably will come--when public duty shall demand that it be closed; and that, in lieu, more rigorous measures than heretofore shall be adopted." (emphasis added)

Abraham Lincoln was a clemency-minded President but the amnesties that he promised were limited in scope and conditional in nature. Lincoln's many acts of individual pardon testify to his compassionate nature. His amnesty proclamations attest not only to his desire to heal the nations wounds but also his political and military wisdom. Lincoln's first offer of pardon to Union Army deserters required that deserters must rejoin their units to benefit from the amnesty. Later in the same year (1863) Lincoln appealed to supporters of the Confederacy to abandon Jefferson Davis and swear an oath of allegiance to the United States. This entreaty to rebels to abandon their errant ways was surely an effort to weaken the Confederate forces. Confederate deserters were exempted from conscription; they also were barred from enlisting in the Union Army as recruits or as substitutes for conscripts.

During the confusion attendant to the early stages of the war, a great many persons were detained as political prisoners by the North. Some of those detained had aided the Confederacy, some had not; there were many among the first group who had second thoughts about their earlier support of the Confederacy. President Lincoln, acting through Secretary of War Stanton, issued "Executive Order No. 1, Relating to Political Prisoners" on 14 February 1862. In this Order, the President directed

that all political prisoners or state prisoners now held in military custody be released on their subscribing to a parole engaging them to render no aid or comfort to the enemies in hostility to the United States.

The Order promised "To all persons who shall be so released and who shall keep their parole the President grants an amnesty for any past offenses of treason or disloyal by which they may have committed".

The Confiscation Act of 17 July 1862 contained a section authorizing the President to amnesty persons "who may have participated in the existing rebellion."⁷ Such authority, of course, was superfluous inasmuch as Lincoln already possessed such powers through the Constitution.

By Presidential Proclamation on 10 March 1863, Lincoln commanded all soldiers absent without leave to return to their military units. Absent soldiers who responded by April 1863 were promised that they would suffer no punishment other than forfeiture of pay and allowances for the period of their absence.⁸

On 8 December 1863, President Lincoln offered pardon to certain individuals who had participated in the Rebellion. Such individuals could be pardoned by subscribing to the following oath of allegiance:

I _____, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and Union of the States thereunder.....

6

Lincoln specifically excluded Confederate Leaders from eligibility. The proclamation further provided that any Confederate State could be returned to the Union when subscribers to the oath equalled in number not less than 10 percent of the number of the State's voters in the 1860 Presidential election. Thus, Lincoln's Proclamation of 8 December 1863 appears to have been designed mainly as an instrument to take support away from the Confederate effort by offering conditions under which a seceded state could be restored to the Union. This proclamation was clarified on 26 March 1864 by specifying that certain persons (mainly prisoners of war) were not eligible for the amnesty offer.

Leaders of the Rebellion remained unamnestied until 1898 in the sense that the Fourteenth Amendment precluded them from holding military or civil office. Although never brought to trial, Jefferson Davis was imprisoned at Fortress Monroe from 10 May 1865 to 13 May 1867. Had it not been for the political disability imposed by the Fourteenth Amendment to the Constitution, Jefferson Davis most certainly could have served as a Senator from Mississippi after the Civil War. But it would have been necessary for him to seek a Presidential Pardon and he apparently was unwilling to public repent and take the necessary oath of allegiance. Davis was still barred from holding office at the time of his death in 1889.

9

Lincoln had been in the habit of responding favorably to requests for leniency in the cases of deserters under death sentence. He finally caused War Department General Orders No. 76 to be issued 26 February 1864 providing

... the sentences of all deserters who have been condemned by court-martial to death, and that have not been otherwise acted upon by him, be mitigated to imprisonment during the war...¹⁰

Provision was made for restoration to duty of deserters who commanding generals determined would be of service to the Army.

Lincoln's second--and last--offer of amnesty for Union Army deserters was contained in his Presidential Proclamation of 11 March 1865. Deserters were required to return to duty within sixty days and to serve a period of time equal to their original enlistment. This Proclamation was not the result of Presidential initiative; it was a response to an act of Congress (3 March 1865) requiring the President to issue a proclamation extending an offer of pardon to deserters. Congress took notice of draft evaders as well as deserters and acknowledged that some persons left the United States to avoid the draft:

...all persons who, being duly enrolled, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States with intent to avoid any draft into the military or naval service, duly ordered, shall be liable to the penalties of this Section.¹¹

Deserters not responding affirmatively to the Proclamation were deemed to have "voluntarily relinquished and forfeited their rights of citizenship".¹²

The War Department Provost-Marshal-General's Office reported on 11 September 1865 that only 1,755 deserters surrendered themselves under this Proclamation.

Johnson

Approximately five months after being elected Vice President, Andrew Johnson was sworn in as President succeeding the assassinated Lincoln. A few days after assuming the Presidency, Andrew Johnson wrote his Attorney-General (Speed) for guidance concerning Presidential powers of pardon and amnesty. The detailed response of the Attorney-General is found in The War of the Rebellion, Series III, Vol. V., (Washington: GPO, 1907):

ATTORNEY-GENERAL'S OFFICE,
May 8, 1865.

The PRESIDENT:

* * *

The power of exercising and extending mercy resides in some department of every well-ordered government. When order and peace reign its exercise is frequent and its influence valuable. Its influence is of value inestimable at the termination of an insurrection so widespread as the one which in our country is just being suppressed. Its appropriate office is to soothe and heal, not to keep alive or to initiate the rebellious and malignant passions that induced, precipitated, and sustained the insurrection. This power to soothe and heal is appropriately vested in the Executive Department of the Government, whose duty it is to recognize and declare the existence of an insurrection, to suppress it by force, and to proclaim its suppression.

* * *

When men have offended against the law their appeal is for mercy, not for justice. In this country and under this Government violators of the law have offended against a law of their own making; out of their own mouths they are condemned—convicted by their own judgments—and, under a law of their own making, they cannot appear before the seat of mercy and arrogantly claim the fulfillment of a promise of pardon they have refused and defied.

The excellence of mercy and charity in a national trouble like ours ought not to be undervalued. Such feelings should be fondly cherished and studiously cultivated. When brought into action they should be generously but wisely indulged. Like all the great, necessary, and useful powers in nature or in government, harm may come of their improvident use, and perils which seem past may be renewed, and other and new dangers be precipitated. By a too extended, thoughtless, or unwise kindness the man or the government may warm into life an adder that will requite that kindness by a fatal sting from a poisonous fang.

* * *

Society in the rebel States has not been and is not now in a normal condition, nor in harmony with the principles of our Government. That society has rebelled against them, and made war upon the principles and powers of our Government. In so doing it has offended, and stands a convicted culprit. Mercy must be largely extended. Some of the great leaders and offenders only must be made to feel the extreme rigor of the law—not in a spirit of revenge, but to put the seal of infamy upon their conduct. But the mercy extended to the great mass of the misguided people can and should be so used as to reorganize society upon a loyal and freedom-loving basis. It is manifestly for their good, and the good of mankind, that this should be done. The power of pardon and mercy is adequate to this end. Such conditions, precedent and subsequent, can legally and properly be appended as will root out the spirit of rebellion and bring society in those States into perfect accord with the wise and thoroughly tried principle of our Government.

If this power of pardon is wisely used, peace will be established upon a sure and permanent basis.

* * *

JAMES SPEED,
Attorney-General.

On

29 May 1865, just six weeks after becoming President, Johnson issued an amnesty proclamation directed toward those who had supported the Confederacy. In his Proclamation, Johnson stated the purpose of his grant of amnesty and pardon to be "in order that the authority of the government of the United States may be restored, and that peace, order and freedom may be established".¹⁴

Of the fourteen classes of persons excluded from the grant of amnesty,

two are of special interest:

...all persons who have been or are absentees from the United States for the purpose of aiding the rebellion.

...all persons who have voluntarily participated in said rebellion and the ¹⁵estimated value of whose taxable property is over \$20,000.

Of these two excluded classes, the first was aimed primarily at draft-evaders who had fled to Canada. The second arises from Johnson's belief the Civil War was of economic origin provoked by rich slave-owners.

Johnson's amnesty proclamations for rebels followed the policy set by his

Individuals in the excepted classes were eligible to make application for pardon to the President; the Proclamation promising "clemency will be liberally extended as may be consistent with the facts of the case and the peace and dignity of the United States."

Although the Civil War ended in the Spring of 1866, it was 7 September 1867 before Johnson announced a further amnesty for Confederates. As in his May 1865 Proclamation the taking of an oath was a precondition to receiving amnesty. While Johnson's first amnesty had fourteen classes of persons excepted from eligibility, few were excluded under the 1867 proclamation. Principal exclusions were high officials of the Confederacy, persons in confinement or on bail, and individuals involved in the assassination of Lincoln.

The Proclamation contained wording strongly supportive of a need for clemency:

Whereas a retaliatory or vindictive policy---could only tend to hinder reconciliation...and
Whereas...full and beneficent pardon...should be opened the further extended to a large number of the persons who....have been hitherto excluded from Executive clemency... 16

Shortly after his impeachment trial was concluded, Johnson discussed a further amnesty with his cabinet. The idea of a universal amnesty for all rebels was seriously considered but finally rejected. Jefferson Davis and others indicted for treason or felony were excluded from the amnesty announced 4 July 1868. A political motive can be perceived in this amnesty, since it was issued on the opening day of the Democratic National Convention. However, southerners apparently resented that the amnesty was not universal, and Johnson failed to receive the Democratic nomination. 17

The Independence Day 1868 Proclamation provided: --

...Whereas it is believed that amnesty and pardon will tend to secure a complete and universal establishment and prevalence of municipal law and order in conformity with the Constitution of the United States, and to remove all appearances or presumptions of a retaliatory or vindictive policy.....hereby proclaim and declare, unconditionally and without reservation, to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion, excepting such person or persons as may be under presentment or indictment in any court of the United States hereby

Jefferson Davis had earlier been released from prison but, being under indictment, he could not benefit from the 4 July 1868 amnesty. His trial had been postponed because of the impeachment proceedings against President Johnson. Johnson, nearing the end of his term, issued a universal and unconditional amnesty on Christmas Day 1868, thus setting the stage for dismissal of the indictment against the former President of the Confederacy.

This fourth and final rebel amnesty by Johnson extended

....to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion a full pardon and amnesty for the offense of treason against the United States or of adhering to their enemies during the late Civil War.....

Congress Attempts to curtail Presidential Power to Amnesty

In January, 1867 Congress enacted a measure intended to deprive President Johnson of his power to proclaim general amnesty. Congress had appointed a Joint Committee on Reconstruction in December 1865 and most of the testimony received by the Committee indicated that Johnson's clement attitude toward secessionists--an attitude expressed by his amnesty proclamation and his liberal grant of pardons--was impolitic. Johnson's opponents in Congress had been refusing to seat senators and representatives from the former Confederate States. The Joint Committee was of a same mind. The Committee held that only Congress could restore political rights and that the Confederate States were not entitled to representation in Congress.

The powers of conqueror are not so vested in the President that he can fix and regulate the terms of settlement and

Section Three to the Fourteenth Amendment to the Constitution (proposed 13 June 1866, ratification completed 9 July 1868) specifically invalidated any restoration of political rights by political pardon. Instead, it provided that the political disability imposed by Section Three could be removed only by a two-thirds vote in each House. Congressional action had removed the disability for 4,616 individuals by 4 March 1871. By subsequent Congressional action, the disability was removed for certain persons in 1872 and, in 1898 the disability imposed by Section Three was removed for all surviving Confederates.²¹

A conflict existed between Section Three of the Fourteenth Amendment and Section Thirteen of the Confiscation Act of 1862, inasmuch as the Confiscation Act provided

The President is hereby authorized at any time hereafter, by proclamation to extend to any persons who may have participated in the existing rebellion in any state or part thereof, pardon and amnesty....

Superimposed over this conflict was the already established Constitutional right of the President to grant pardons. Yet Congress displayed a clear intention to curtail the President's pardoning power and, perhaps less clearly, to reserve unto itself the power to grant amnesty.

Congress repealed Section Thirteen of the Confiscation Act in January 1867, Senator Trumbull of Illinois apparently having persuaded his colleagues that the Section unwisely broadened the powers of the President by authorizing the President to grant pardon and amnesty by proclamation. In Trumbull's judgment, the Constitution conferred on the President the right to grant individual pardons only; any power to issue amnesty proclamations would have to be bestowed upon the President by Congressional action. Senator Johnson of Maryland led the unsuccessful opposition to the legislative proposal; he argued the power to grant amnesty by proclamation belonged to the President by heritage as well as by Constitutional right.²²

President Johnson vetoed the legislation repealing the amnesty powers set out in the Confiscation Act, but Congress overrode his veto. Congress thus set the stage for one of the grounds of impeachment--the President's abuse of the pardoning power.

In 1866 the Supreme Court (Ex parte Garland) declared that the "power of the President is not subject to legislative control....Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders." Neither the Fourteenth Amendment nor the report of the Joint Committee had deterred Johnson from his policy of issuing pardons generously.

He advised the Senate on 18 January 1869

The resolution adopted (5 December 1868) requesting the President "to transmit to the Senate a copy of any proclamation of amnesty made by him since the last adjournment of Congress, and also to communicate to the Senate by what authority of law the same was made," has been received.

I accordingly transmit herewith a copy of a proclamation dated the 24 day of December last. The authority of law by which it was made is set forth in the proclamation itself, which expressly affirms that it was issued "by virtue of the power and authority in vested by the Constitution, and in the name of the sovereign people of the United States," and proclaims and declares "unconditionally and without reservation, to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion, a full pardon and amnesty...."

The Federal Constitution is understood to be and is regarded by the Executive as the supreme law of the land. The second section of article second of that instrument provides that the President "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." The proclamation of the 25th ultimo is in strict accordance with the judicial expositions of the authority thus conferred upon the Executive....²³

Union Army Deserters

With the ending of the war, great numbers of Union Army soldiers headed home without waiting for official release from service. President Johnson (on 3 July 1866) promised pardon without punishment except forfeiture of pay for deserters who return to duty by 15 August 1866. The Adjutant-Generals Office reported on 20 October 1866 that "three hundred and fourteen availed themselves of this act of clemency." ²⁴

In a report to the Secretary of War in March 1866, the Provost-Marshal-General spoke against leniency toward deserters:

...The want of adequate means for the arrest of deserters in the early part of the war, and the consequent impunity with which they returned to and remained at their homes, and the failure to administer prompt and adequate punishment for the worst phases of the crime, when occasion offered, contributed more, perhaps, than anything else to the evil of desertion.

...Lives sacrificed, battles lost, and war prolonged, in consequence of the depletion of the ranks of the armies by desertion, were the natural fruits of the want of rigor in dealing with this evil in the early stages of the war. Undue mercy to deserters was in reality harsh cruelty to those who remained true to their flag.²⁵

The Provost-Marshal-General's September 1869 report stated "two hundred and sixty thousand three hundred and thirty-nine men have been reported to this office as deserters from the Army". General Fray, the Provost-Marshal-General, further reported that "seventy-six thousand two hundred and fifty-three deserters have been arrested by this Bureau." Not included in the above figures, but nevertheless deserters under the law, were 161,286 conscripts who failed to report. General Fry estimated that 25 - 30% of these individual reported as deserters should not have been so recorded, thus making "the total number of deserters still at large 230,148." ²⁶

The Deserters Branch of the Provost-Marshal-General's Bureau reported "In 1863 the monthly desertions averaged 4,647; in 1864 they averaged 7,333; in 1865 they averaged 4,368." ²⁷

Confederate Deserters

Just as the United States put forth calls for Union Army deserters to return to duty, the Confederacy also appealed to its absent soldiers to come back to military control.

On 11 August 1863 a general pardon was offered to AWOL Confederate soldiers provided they returned to their duty posts within twenty days. The General Orders promulgating the offer of pardon also provided that "all men who have been accused or convicted, and undergoing sentence for absence without leave or desertion, excepting those who have been twice convicted of desertion, will be returned to their respective commands for duty."²⁸

According to Robert E. Lee, the 11 August pardon had just the opposite effect on the Confederate soldier from that for which it was designed. General Lee wrote President Jefferson Davis that many soldiers were enticed to desert by the amnesty:

Immediately on the publication of the amnesty, which I thought would be beneficial in its effects, many presumed on it, and absented themselves from their commands, choosing to place on it a wrong interpretation.I would now respectfully submit to your excellency the opinion that all has been done which forbearance and mercy call for, and that nothing will remedy this great evil which so much endangers our cause excepting the rigid²⁹ enforcement of the death penalty in future in cases of conviction.

Lee complained about leniency toward deserters again in a 30 October 1863 to the Secretary of War:

. . . a number of men were pardoned, and the consequence was a recurrence of desertion to a most alarming extent. A return to a sterner discipline was found to be absolutely necessary..... I fear that pardons, unless for the best of reasons, will not only make all the blood that has been shed for the maintenance of discipline useless, but will result in the painful necessity of shedding a great deal more....It must be remembered that the punishment of death for desertion is inflicted almost exclusively for the warning of others....³⁰

Toward the close of the Rebellion, Lee exhibited a somewhat different attitude. In early February 1865, the Congress of the Confederate States of America passed an act providing for appointment of a General-in-Chief to command the military forces of the Confederacy. General Lee was elevated to this new post and he immediately wrote Jefferson Davis concerning the problem of deserters from the Army of the Confederacy. President Davis responded:

Your proposition to issue a proclamation, calling all deserters and other absentees to return to their proper commands, on the ground of pardon, if they do so within a certain time, is approved.... It will be well to warn all soldiers that this is the last interposition by an amnesty for deserters; but the pardoning power, as used, is rather a revisory than a pardoning function.³¹

In his General Orders No. 2 of 11 February 1865 (G.O. No. 1 was the assumption of command order) Lee wrote of the need for "a sterner admonition to those who have abandoned their comrades in the hour of peril". The Order provided:

...By authority of the President of the Confederate States, a pardon is announced to such deserters and men improperly absent as shall return to the commands to which they belong within the shortest possible time, not exceeding twenty days from the publication of this order, at the headquarters of the department in which they may be.

Those who have deserted to the service of the enemy, or who have deserted after having been once pardoned for the same offense, and those who shall desert or absent themselves without authority after the publication of this order, are excluded from its benefits. Nor does the offer of pardon extend to other offenses than desertion and absence without permission.

By the same authority it is also declared that no general amnesty will again be granted, and those who refuse to accept the pardon now offered, or who shall hereafter desert or absent themselves without leave, shall suffer such punishment as the courts may impose, and no application for clemency will be entertained.³²

At the end of the month, Lee was obliged to report to the Secretary of

General Robert E. Lee

In 1970 an oath of amnesty executed by General Robert E. Lee in 1865 was belatedly uncovered. Following this discovery (some contend the oath was never lost and was on public display years ago) an effort to restore full citizenship rights to General Lee received much public attention.

President Andrew Johnson had issued an amnesty proclamation shortly after assuming the Presidency but Lee remained outside the pale of the amnesty inasmuch as he fell within several of the fourteen classes of persons who were excepted from Johnson's proclamation. However, the amnesty provided that such persons as were in the excluded classes could seek Presidential clemency and it was apparently with this thought in mind that Lee took the oath of allegiance. Johnson issued several subsequent amnesties but Section three of the Fourteenth Amendment to the Constitution continued to bar Lee from eligibility for State or Federal office.

The Virginia Congressional delegation approached President Nixon with a request that a Presidential pardon be issued to Lee. However, in 1898 when President McKinley signed into law the legislation removing the disability under Section three of the Fourteenth Amendment, the removal did not apply to deceased individuals (Lee died in 1870).

Upon failure to secure a posthumous pardon for Lee from President Nixon, Resolutions calling for restoration of the full rights of citizenship to Lee were then presented in both the Senate and the House. The legislation was passed unanimously in the Senate and by a vote of 407 to 10 in the House. Votes against the measure were generally votes of protest at the seeming reluctance of the House to issue a Congressional amnesty for Vietnam-era dissenters.

A House member voting against the Resolution stated his opposition was "because it is morally wrong to restore the rights of one man who has been dead for a century while we continue to deny these same rights to thousands of young Americans now living."³⁴ Another opponent of the Lee legislation said:

It is now proposed that we honor General Lee for following his conscience. Should we do not the same for the thousands of living Americans who followed their conscience (in opposing U.S. involvement in Vietnam) and whose actions have been vindicated by events?"³⁵

President Ford signed the measure in a public ceremony at the Custis-Lee Mansion with descendants of General Lee in attendance.

Grant

President Ulysses S. Grant is generally overlooked in treatises on Presidential amnesties, clemencies, and pardons for war-related offenses. Yet Grant extended pardon to Union Army deserters and he also leniency toward Confederate leaders. Grant's offer of pardon to deserters was extended by War Department General Orders No. 102 issued 10 October 1873:

The President of the United States commands it to be made known that all soldiers who have deserted their colors, and who shall on or before the 1st day of January, 1874, surrender themselves at any military station, shall receive a full pardon, only forfeiting the pay and allowances due them at the time of desertion, and shall be restored to duty without trial or punishment on condition that they faithfully serve through the term of their the term of their enlistment. ³⁶

Grant also demonstrated a clement attitude toward Confederate leaders. He lobbied for removal of the disability imposed on them by the Fourteenth Amendment. Section 3 of the Amendment read:

"No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability."

In his Third Annual Message to Congress (4 December 1871), Grant reminded the Senators and Representatives that:

More than six years having elapsed since the last hostile gun was fired between the armies then arrayed against each other...it may well be considered whether it is not now time that the disabilities imposed by the fourteenth amendment should be removed. ³⁷

Congress responded in the Spring of 1872 by removing the political disabilities imposed by Section 3 of the Fourteenth Article of Amendment from all persons "except Senators and Representatives of the Thirty-sixth and Thirty-seventh Congresses and officers in the judicial, military, and naval service of the United States, heads of Departments, and foreign ministers of the United States".³⁸

Grant's opponent in the Presidential election of 1872 was Horace Greeley, an advocate of unconditional amnesty for former Confederates.³⁹ Prior to receiving the Democratic nomination for the Presidency, Greeley had been put forth as the candidate of the Liberal Republicans. The Liberal Republican party platform called for "immediate and absolute removal of all disabilities imposed on account of the Rebellion...believing that universal amnesty will result in complete pacification in all sections of the country."⁴⁰

Grant's Fifth Annual Message to Congress contained a further plea for clemency toward those who had provided leadership to the Confederacy:

I renew my previous recommendation to Congress for general amnesty. The number engaged in the late rebellion yet laboring under disabilities is very small, but enough to keep up a constant irritation. No possible danger can accrue to the government by restoring them to eligibility to hold office.⁴¹

The Congress failed to favor Grant's request and it was not until June 1898 when President McKinley signed the final amnesty bill for Confederates.

NOTES

Appendix

Chapter III, Civil War

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31. Ibid., Series I, Vol. 46, Part 2.
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Appendix

Chapter III, Civil War

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35. Abzug, Bella (Rep. from NY). Quoted in Congressional Record, 22 July 1975, p. H7191.
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37. Ibid.
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APPENDIX _____

THE HISTORICAL PERSPECTIVE OF CLEMENCY

CHAPTER IV. Twentieth Century Amnesties

- A. T. Roosevelt
- B. Coolidge
- C. Franklin D. Roosevelt
- D. Truman
 - 1. 1945 Proclamation
 - 2. Amnesty Board
 - 3. 1952 Proclamations

-1-

TWENTIETH CENTURY AMNESTIES

T. Roosevelt

President Theodore Roosevelt issued a proclamation of general amnesty and pardon 4 July 1902 that was unique in many respects.

It dealt with the inhabitants of the Philippine Archipelago, a territory ceded to the United States at the close of the Spanish-American War.¹

Emilio Aguinaldo, a Filipino leader who had fought Spanish rule, urged his fellow Islanders to side with the Americans in the course of the Spanish-American War. Proclaiming himself head of a revolutionary government, Aguinaldo wrested control of the Philippines, except for Manila, from the Spanish. Following Dewey's successes and the American occupation of Manila, the Philippine Insurgents turned to resisting the Americans.

Quelling the Philippine Insurrection proved a formidable task; US forces committed to the Islands eventually reached a high of 70,000. But by 23 November 1899, General Arthur MacArthur was able to say

The so-called Filipino Republic is destroyed. The congress is dissolved. The President (Aguinaldo) of the so-called republic is a fugitive....²

MacArthur queried his superiors "...how would it do to issue a proclamation at an early date, offering complete amnesty to all who surrender within a stated time...." His suggestion, if adopted, might have precluded the next phase of the Insurrection, a turn from organized resistance to guerrilla warfare. Unfortunately

MacArthur became military governor of the Islands in May 1900, and on 21 June he offered amnesty to those who would renounce Filipino aspiration for nationality and accept American sovereignty.³ To take advantage of the offer, individuals were required to surrender within 90 days and take an oath of allegiance. Approximately 5,000 accepted MacArthur's offer.

The guerrilla phase of the Insurrection tied down a high percentage of the US Army until Aguinaldo was finally captured in March 1901. Aguinaldo took the oath of allegiance on 2 April and on the 19th of the same month he urged his compatriots to accept American rule.⁴ His appeal to Filipinos to accept American sovereignty brought the surrender of 1,500 Insurgents in the first five days and by September over 4,000 had surrendered.⁵ One Insurgent who did not surrender was Manuel L. Quezon, who was later captured and imprisoned for six months. Quezon's determination to see the Philippine s gain independence never waned; and years later he became the first President of the Philippine Commonwealth.

In a most extraordinary action, Roosevelt's 4 July 1902 Proclamation covered acts committed during a period (August 1896 - December 1898) when the Filipinos were under the domination of the Kingdom of Spain. In addition to granting amnesty for acts committed during the Insurrection against Spain, Roosevelt

also amnestied Filipinos for insurrectionary acts committed after the American occupation.

Roosevelt's Proclamation was neither universal nor unconditional. Excluded from the proclamation were crimes committed subsequent to May 1902 in islands then under civil government. No amnesty was granted to persons previously convicted of murder, rape, arson or robbery. However, persons in exempted classes could make special application for clemency.

To benefit from the amnesty and pardon, individuals were required to take an oath acknowledging the "supreme authority of the United States of America in the Philippine Islands".

President Coolidge

On 15 December 1923 President Coolidge pardoned all Federal prisoners who had been convicted under the Espionage Act of opposing the government and the Selective Service during World War One. The pardons were rooted in recommendations submitted to the President by a committee appointed by President Harding before his death in August 1923. The committee, composed of ex-Secretary of War Baker, Bishop Brent, and General Harbord, was formed after President Harding had been subjected to political pressure to release the prisoners. According to contemporary newspaper accounts, General Harbord was opposed to the Presidential pardoning.

Eight of those pardoned by Coolidge had refused an earlier offer of pardon by President Harding a year earlier because of the conditional nature of the pardon offered. At Christmas-time^{IN} 1921, Harding had commuted the term of Socialist Eugene Debs after Debs had served less than three years of a ten year sentence imposed for violating the Sedition Act of 1918. Debs, a perennial presidential candidate, had garnered nearly a million votes in the 1920 election even though then imprisoned.

The Coolidge decision, which affected only 31 prisoners, was announced after Presidential consultation with the Attorney General.⁶ Senators Pepper and Borah and the American Civil Liberties Union had led the pro-amnesty faction in this battle.⁷ Unaffected by Coolidge's decision was N. S. Sogg, a Mexican serving a ten year prison sentence for having aided an American to escape the World War One draft.

Franklin D. Roosevelt

In a 23 December 1933 Proclamation affecting only those who had ^{completed} prison terms for violating the Draft or Espionage Acts, President Franklin D. Roosevelt restored civil rights to about 1,500 war-resisters.⁸ There was no commutation of prison sentence as all affected by Roosevelt's "Christmas Amnesty Proclamation" had already completed their sentence. In discussing the intent and effect of his Proclamation, Roosevelt noted that "fifteen years have elapsed since the end of the war" and the individuals affected by the Proclamation "have paid the penalty that the law imposed on them".

Roosevelt's Proclamation provided no relief for those who had fled the country to avoid prosecution. The Proclamation had an unusual effect on the family of Mrs. Emma C. Bergdoll of Pennsylvania. Restoration of citizenship was provided for her son Erwin, who served a four year prison sentence for draft evasion. However, another son, Grover, remained un-amnestied since he had fled from the United States to avoid the draft.

President Truman

Between 1945 and 1952, President Truman issued four Proclamations granting Executive clemency to certain classes of individuals. One of the Proclamations dealt with WW II Selective Service violators, another dealt with peace-time deserters; Truman's other two Proclamations restored civil rights to war supporters, not war resisters.

1945 Proclamation

Truman's 1945 Christmas Eve Proclamation benefited several thousand former convicts. Truman acted on the recommendation of his Attorney General with Madison's pardoning of LaFitte's pirates was cited as a precedent.

The White House

pointed out

The men who will obtain the benefits of the proclamation are men who are now at liberty and whose honorable record in the armed services would seem to demonstrate their fitness to be restored to a respected place in society.⁹

The Presidential Proclamation restored citizenship rights to ex-convicts who had served at least one year in the military after 28 July 1941 and were subsequently awarded honorable discharges. Included in this amnesty were over 2,000 Federal prisoners who had been paroled for induction into the Army during World War II. In the statement accompanying the Proclamation, the White House said the clemency was "for the benefit of those ex-prisoners whose meritorious service in the Armed Forces has earned them a Presidential pardon for the offenses of which they were previously convicted". Thus. Truman's use of Presidential power of Executive

time of war. Truman stipulated that persons who had violated the laws for the government of the Army and Navy were not eligible for pardon. Conscientious objectors and persons standing convicted of violating the Selective Service laws were excluded from the benefits of the 1945 Proclamation.

Amnesty Board

An Amnesty Board was created by Truman by Executive Order No. 91814 on 23 December 1946. The Board was tasked to review the convictions of persons sentenced for violations of the Selective Service Act, and to report to the Attorney General whether Executive clemency should be granted or denied.

After hearing arguments from pro-amnesty factions and anti-amnesty factions, the Board determined that there should be no grant of clemency to classes of offenders but that a case-by-case review should be conducted and individual pardon recommended where appropriate. There was no admission that resisters were right and the government was wrong.

Of the 15,805 violators whose cases were brought to the attention of the Board, about 1,200 were in prison in January 1946 when the Board began its work. In December 1946 when the Board submitted its report there were 626 in custody; 550 of that number had been committed subsequent to the creation of the Board.

The Amnesty Board offered individual pardon to religious conscientious objectors, to evaders who subsequently served honorably in the military, to Japanese Nisei, and to persons whose violations were due to ignorance. ¹⁰

The Nisei were American citizens of Japanese ancestry who had been removed from their homes along the coast and placed in war relocation centers upon the outbreak of hostilities. The Board found that "Prior to their removal from their homes, they had been law-abiding and loyal citizens ... (who) deeply resented classification as undesirables."

Probably the most controversial action of the Board was its denial of blanket religious conscientious objector status to Jehovah's Witnesses. The Board declined to recommend clemency for those who witnessed only in their "spare or non-working time".

In refusing to recommend clemency for persons having a prior criminal record of one or more serious offenses, the Board noted "The Board would have failed in its duty to society and to the memory of the men who fought and died to protect it, had amnesty been recommended in these cases." The Board recommended Executive clemency for 1,523 individuals. Truman accepted the Board recommendations and granted a pardon to each of the 1,523 on 23 December 1947. Approximately 1,518 others either had received or would become eligible for pardon by virtue of their qualification under Truman's December 1945 amnesty. The 15,805 convictions under the Selective Service Act that were considered by the Board were categorized as follows:

| | |
|--------------------------|----------------------|
| Willful Violators (Non- | |
| conscientious Objectors) | approximately 10,000 |
| Jehovah's Witnesses | approximately 4,300 |
| Conscientious Objectors | approximately 1,000 |
| Other Types of Violators | approximately 500 |

Of the 15,805, there were 3,041 potential recipients of Executive clemency:

| | | |
|---|---------------|-------|
| Recommended by the Amnesty Board | | 1,523 |
| Previously pardoned (Dec 1945 Proclamation) | approximately | 618 |
| Entered Armed Forces and may receive pardon | approximately | 900 |

A partial remission of prison sentences was involved in only three cases; the remaining 1,520 pardoned had already completed their terms. ¹¹ The paucity of pardons recommended by the Amnesty Board was favorably commented on in a New York Times editorial:

It stated a principle that is fundamental in a democracy, where the majority rules with due regard for the rights of a minority, when it decided that it would not recommend restoration of civil rights to those persons who "thus have set themselves up as wiser and more competent than society to determine their duty to come to the defense of the nation." ¹²

Not all were in agreement with the Times. On the same day the editorial appeared (Christmas Day, 1947) pickets wearing convict costumes marched around the White House protesting the limited amnesty and clamoring for ¹² amnesty for all conscientious objectors.

400 citizens of Wichita, Kansas petitioned President Truman to grant a general amnesty in 1947. They called President Truman's attention to a statement he had made in a 1946 address to a Conference of the Federal Council of Churches: "Now that we have preserved our freedom of conscience ¹⁴ and religion, let us make full use of that freedom." The petitioners

urged Truman to put his words into action by releasing some 300 persons still imprisoned as a result of court-martial or for having been convicted of violating the Selective Service Laws. In requesting an amnesty be granted, the petitioners pointed out:

A general amnesty for violators of the Selective Training and Service Act of 1940 and war objectors court-martialed by the armed forces is the only possible way to free the men for whom we are concerned and to restore full civil rights to them and to the thousands already released. Continued punishment of these men violates our tradition of freedom of conscience and endangers the civil liberties of all citizens.¹⁵

Senator Capper presented the petition to the United States Senate and it was referred to the Armed Services Committee. However, the clemency issue was not acted on again until 1952.

1952 Proclamations

Two of President Truman's proclamations of pardon and amnesty were issued in the midst of the Korean War. They were reported to have been proposed by the Defense Department.¹⁶ On 24 December 1952 as he began to prepare to vacate the White House and return to private life, President Truman restored civil rights to all persons convicted of having deserted between 15 August 1945 and 25 June 1950. No pardon, remission, or mitigation of sentence was involved; the sole effect of Truman's action was to restore citizenship to an estimated 8,940 peace-time deserters.¹⁷

Truman's 1952 Christmas Message also contained the announcement of his decision to restore civil rights to Korean War veterans who had been convicted in civil courts prior to their military service. The Truman Proclamation on behalf of ex-convicts is seen to be related to the McCarran Immigration Act which became effective on the day the Proclamation



was issued. Without this restoration of citizenship, naturalized veterans having criminal records might have been deported. In wartime, no President could permit the deportations of soldiers who had fought in the war.

There were no further Executive clemencies for war-related offenses until President Ford's Proclamation of September 1974.

NOTES

Appendix

Chapter IV Twentieth Century Amnesties

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6. "Coolidge Releases All War Offenders as Christmas Gift", New York Times, 16 December 1923.
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17. Ibid.

The Australian Clemency Program

Because the issues of Vietnam and conscription affected Australia much like they did the United States, it is appropriate to consider the steps taken by the Australian government to "bind the nation's wounds" following disengagement of their military forces from Vietnam. Australia's release of jailed draft resisters, cancellation of indictments against National Service Act Violators, and the refusal to prosecute AWOL servicemen constituted acts of clemency similar to the actions taken by President Ford in 1974. Prime Minister Gough Whitlam's clemency program helped to promote reconciliation amongst a people who, like our own, had been deeply divided over the issues of Vietnam and conscription.

In 1964, conscription for unrestricted overseas service was adopted for the first time in Australian history. Its lottery system permitted 20-year-old voteless youths to be involuntarily inducted and assigned to military expeditionary forces. Full time service could be avoided by enlistment in the Citizens Military Force. Not long after the renewal of conscription, troop commitments were made to Vietnam. By 1968, nearly half of the Australian soldiers serving in Vietnam were draftees. Approximately 100,000 Australian males attained age 20 each year and from this group about 10,000 were selected annually by lottery for call-up.

Protests against Vietnam and conscription were of a nature entirely familiar in the United States: street demonstrations, peace vigils, draft card burnings, "selective" conscientious objection--the whole gamut of protest against war and involuntary military service. In the midst of all this, Australian fought side by side with our troops in Vietnam, acquitting themselves with valor and distinction. The Australian troop commitment to Vietnam reached a high of 8,000 men; as a proportion of national population this was the equivalent of our sending 100,000 troops to Vietnam. It constituted the largest Australian force dispatched overseas since World War II.

As public support shifted away from Australia's military role in Vietnam, dissatisfaction with conscription became more pronounced. Vietnam and conscription became dominant political issues, spurred by a lowering of the voting age from 21 to 18. The Australian Labor (ALP) Party/pledged withdrawal from Vietnam and stated that conscripts would be brought home immediately should its party come into power. This position was subsequently modified ^{when} the ALP came out in favor of conscription for overseas service, but only in time of declared war.

National elections on 5 December 1972 put the Australian Labor Party in power for the first time in twenty-three years. Vietnam and especially conscription had been contentious issues in the 1972 election and weighed heavily on many a voter's mind as he cast his ballot.

When Labor leader Gough Whitlam became Prime Minister on 8 December 1972, he acted immediately to end induction and grant unconditional clemency to draft resisters and deserters. Throughout the Australian draft, over 2% of all eligible men failed to register as required by law. However, by late 1972 no one had yet been convicted of that offense. And only 185 faced charges of failing to register. Six persons had been convicted of failing to report for induction, each receiving an eighteen month prison term. An additional 69 faced similar charges.

Prime Minister Whitlam, upon assuming office, immediately announced:

1. The cancellation of the previously announced call-up of 2,200 for involuntary military service.
2. The cancellation of National Service medical examinations.
3. The suspension of any further call-ups for involuntary service.
4. The revocation of all prior approvals for prosecution of offenses against the National Service Act.
5. The release of draft resisters who had been jailed for refusal to submit to military service.
6. A guarantee that conscripts who were AWOL would receive administrative discharges in absentia with no loss of civil rights.

Whitlam also decreed that draftees not desiring to complete their national service were free to leave the military. Conscripts choosing to shed their uniforms were placed on leave pending discharge in absentia. In addition, those individuals who were serving in the Citizens Military

Force as an alternative to full time National Service were offered the opportunity to resign.

At the time of the decree, Australian Army strength stood at 41,517, of which 11,843 were of the National Service. As a result of the opportunity to resign from the Army, the number of National Service personnel declined by 76% to 2,798 by the end of March 1973, lowering the total active duty Army strength to 33,501. Special compensation was offered as an inducement to draftees to stay in the Army, and their tours of service were reduced from 24 to 18 months.

Within ten days of assuming office, Whitlam also ordered the last Australian troops withdrawn from Vietnam.

The principal source documents for this monograph are

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Newspapers & Periodicals:

Official Transcripts of Parliamentary Proceedings (1972-73)

Australian Outlook

Australian Army Journal

AMEX

New York Times

This monograph was reviewed by the Australian Defence Attache to the US and his ~~prin~~ principal comments incorporated therein.

Appendix e

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APPENDIX _____: DATA ON PCB APPLICANT

Data

In order to collect adequate data on the PCB applicants, a sample was constructed of 1481 cases reviewed and disposed of by the Board. The selection process was not completely random, however, since the number of civilians and the types of military discharges were known from a complete survey. Approximately 11.5% of all PCB applicants were civilians and 88.5% were former military personnel. Of the military personnel, 55.9% were discharged as undesirable (UD) (49.5% of all applicants); 42.1% were discharged for bad conduct (BCD) (37.3% of all applicants); and 1.9 were discharged under the dishonorable classification (DD) (1.7% of all PCB applicants .) The sample consisted of 472 civilians cases and 1009 military cases - thus allowing an adequate sample of civilian and making our military data more reliable. However, the military cases could not be accurately controlled to fit the known discharge percentiles since only cases which had been disposed could be used and since random selectivity of the smaller, disposed universe varied in accordance with early applications.

The data was prepared for analysis in the Statistical Package for the Social Sciences program. Because the data collection was performed by a group of people whose specialities were legal and not demographic, we had an error rate of 3.2%.

We had to rely on case summaries for our data. While we could rely on them as accurate reflections of the case files (given our Quality control procedures) this did raise three methodological problems:

(1) Official records's were not always prepared in the same manner, (2) Much of the Data did not come directly from the applicant, but from a third party. (3) the information

included in case summaries was not included for the purpose of statistical analysis, but simply had to be relevant to the Board's Baseline formula and Factors.

Of course, relying on case summaries did have one advantage: Our statistics reflect our Board members views of our applicants. Usually, the case summary was the sole basis for a Board member's knowledge of an applicant.

In the remainder of this appendix, we list the findings of our survey.

"N" and Value Representations Table

| | Civilian | Military |
|--------------------------------------|----------|----------|
| Type of Application | | |
| N | 472 | 1009 |
| Civilian | 100% | -- |
| Army | -- | 62.3% |
| Navy | -- | 11.6% |
| Marine Corps | -- | 23.0% |
| Air Force | -- | 3.0% |
| Type of Discharge | | |
| N | -0-- | 1009 |
| Undesirable in Lieu of Court Martial | -- | 44.9% |
| Undesirable for Unfitness | -- | 15.6% |
| Undesirable by Court Martial | -- | .2% |
| Total Undesirable Discharges | -- | 60.7% |
| Bad Conduct Discharge | -- | 37.6% |
| Dishonorable Discharge | -- | 1.8% |
| Year of Birth | | |
| N | 469 | 1005 |
| 1934 to 1939 | -- | 1.5% |
| 1940 to 1944 | 4.9% | 6.6% |
| 1945 to 1949 | 55.8% | 47.0% |
| 1950 to 1954 | 38.9% | 41.0% |
| 1955 - 1956 | -- | 1.2% |
| Race | | |
| N | 394 | 993 |
| White | 87.1% | 74.5% |
| Black | 10.7% | 20.5% |
| Spanish Surname | 1.3% | 3.5% |
| American Indian | -- | 0.7% |
| Oriental | 0.8% | -- |
| Other | 0.3% | 0.3% |
| Childhood | | |
| N | 397 | 764 |
| With Both Parents | 69.0% | 52.0% |
| With One Parent due to Death | 8.8% | 10.7% |
| With One Parent due to Divorce | 10.1% | 10.2% |
| With One Parent due to Desertion | 2.3% | 5.2% |
| Parent Never Married | 0.3% | 1.0% |
| With One Step-Parent | 6.0% | 10.7% |
| With Other Relatives | 3.3% | 4.3% |
| With Non-Relatives | 1.3% | 3.1% |

| | Civilian | Military |
|-----------------------------|----------|----------|
| Childhood Residence | | |
| | N | |
| | 189 | 328 |
| Urban | 58.2% | 47.3% |
| Suburban | 10.5% | 12.2% |
| Rural non-farm (small town) | 17.5% | 32.0% |
| Rural farm | 5.8% | 8.2% |

| Regions of Childhood | Civilian | Military |
|--|----------|----------|
| | N | |
| | 399 | 789 |
| 1 1st Circuit: Maine, New Hampshire, Massachusetts, Puerto Rico, Rhode Island | 3.3% | 4.0% |
| 2 2nd Circuit: Vermont, Connecticut, New York | 6.3% | 9.0% |
| 3 3rd Circuit: Pennsylvania, New Jersey, Delaware, Virgin Islands | 9.5% | 9.2% |
| 4 4th Circuit: Virginia, West Virginia, Maryland, North Carolina, South Carolina | 7.0% | 11.6% |
| 5 5th Circuit: Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Canal Zone | 10.8% | 17.9% |
| 6 6th Circuit: Michigan, Ohio, Kentucky, Tennessee | 11.3% | 13.6% |
| 7 7th Circuit: Illinois, Indiana, Wisconsin | 8.8% | 7.1% |
| 8 8th Circuit: Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska | 6.3% | 8.6% |
| 9 9th Circuit: California, Montana, Idaho, Washington, Oregon, Nevada, Alaska, Hawaii | 25.1% | 8.7% |
| 10 10th Circuit: Wyoming, Utah, Colorado, Kansas, Oklahoma, New Mexico | 5.0% | 4.9% |
| 11 11th Circuit: District of Columbia | .3% | 1.1% |
| 12 Outside U.S. and Territories | 1.3% | 2.1% |
| 13 More than one inter-circuit moves before age 18 | 4.5% | 1.5% |

Evidence of Family Instability: Most Severe

| | Civilian | Military |
|---------------------------------|----------|----------|
| | N | |
| | 114 | 326 |
| 1 Evidence of child abuse | .9 | 3.4% |
| 2 Evidence of drug abuse | .9 | .3% |
| 3 Evidence of alcoholism | 12.3 | 9.5% |
| 4 Multiple marriages | 12.3 | 16.9% |
| 5 Serious family illness | 5.3 | 11.0 |
| 6 Serious family mental illness | 5.3 | 3.1 |
| 7 Parental promiscuity | 2.6 | 2.8 |
| 8 Lack of harmony | 40.4 | 35.9 |
| 9 Other | 20.2 | 17.2 |

| Evidence of Family <u>Instability</u> : Secondary | | Civilian | Military |
|---|---|----------|----------|
| | N | 52 | 124 |
| 1 | Evidence of child abuse | 3.8% | 7.0% |
| 2 | Evidence of drug abuse | --- | 2.3% |
| 3 | Evidence of alcoholism | 13.5 | 7.0% |
| 4 | Multiple marriages | 11.5 | 7.0% |
| 5 | Serious family illness | 3.8 | 14.0 |
| 6 | Serious family mental illness | 11.5 | 4.7 |
| 7 | Parental promiscuity | 1.9 | 0.8 |
| 8 | Lack of family harmony | 25.0 | 35.7 |
| 9 | Other | 28.8 | 21.7 |
| Evidence of economic instability | | | |
| | N | 130 | 245 |
| 1 | Low income | 23.1% | 33.1% |
| 2 | Itinerent residence patterns | 5.4% | 6.1% |
| 3 | Intermittent employment | 1.5% | 2.0% |
| 4 | Low income and intermittent employment | 1.5% | 5.3% |
| 5 | Low income and itinerent residence pattern | 1.5% | 8% |
| 6 | Itinerent residence pattern and intermittent employment | 1.5% | 1.2% |
| 7 | All elements noted (itinerancy, intermittant, employ, low income) | .8% | .8% |
| 8 | Other evidence of economo-instability | 6.9% | 25.3% |
| 9 | Evidence of economic stability | 57.7% | 25.3% |
| Number of Siblings | | | |
| | N | 428 | 897 |
| | None | 10.6% | 13.1% |
| | One | 15.9% | 11.1% |
| | Two | 22.0% | 15.8% |
| | Three | 21.7% | 16.4% |
| | Four | 11.4% | 13.0% |
| | Five | 6.5% | 12.9% |
| | Six or More | 12.2% | 17.1% |

| Highest Degree Earned | Civilian | Military |
|--------------------------------------|----------|----------|
| N | 435 | 941 |
| Grade School Graduate | 20.9% | 62.2% |
| High School Graduate | 56.8% | 23.9% |
| GED Received | 2.1% | 3.6% |
| GED Received in Service | — | 9.0% |
| GED Received in Prison | .2% | .6% |
| Post High School Vocational Training | 1.6% | .2% |
| Bachelors Degree | 14.3% | .2% |
| Advanced Degree (MA, MS, Phd) | 3.9% | .1% |
| Professional Degree (J.D. M.D.) | — | .1% |

AFQT Group (CM)

| N | N/A | 912 |
|---------|-----|-------|
| Group I | — | 2.1% |
| " " II | — | 15.8% |
| " " III | — | 49.4% |
| " " IV | — | 31.4% |
| " " V | — | .5% |

Religion

| N | 191 | 9 |
|--|-------|-----|
| CO-Jehovah's Witness | 49.7% | — |
| CO-Quaker | .5% | — |
| CO-Mennonite | — | — |
| CO-Muslim | 3.1% | (2) |
| CO-Bretheren | — | — |
| CO-Other | 12.0% | (2) |
| Non-CO-Conventional (Prot./Cath/Jews) | 21.5% | (4) |
| Non-CO Unconventional (Hare-Kreshane, etc) | 3.7% | — |
| Personal Meral Code | 9.4% | (1) |

CO Application

| N | 211 | 11 |
|--|-------|-----|
| Some Initiative Taken - No Application | 24.2% | (4) |
| Application Made - No Action Taken | 7.1% | — |
| Application Made - CO Draft Statue Awards | 21.3% | — |
| Application Made Before Ordered to Report, Denied | 24.6% | (2) |
| Application Made After Ordered to Report, Denied as Untimely | 13.7% | — |

| | Civilian | Military |
|---|----------|----------|
| 6 Application made after ordered to report-denied on the merits | 6.6 | — |
| 7 Application made in service, accepted and assigned to non-combat duties | 1.4 | — |
| 8 Application made in service, denied | — | (5) |
| Basis of CO decision | | |
| N | 137 | 6 |
| 1 Pre-Welsh-approved religion | 21.2% | — |
| 2 Pre-Welsh-denied moral or ethical | 6.6% | (2) |
| 3 Pre-Welsh-denied-selective objector | 2.9% | — |
| 4 Pre-Welsh-denied-other | 16.1% | (1) |
| 5 Post-Welsh-approved-religious | 13.9% | — |
| 6 Post-Welsh-approved-moral or ethical | 5.8% | — |
| 7 Post-Welsh-denied-moral or ethical | 11.7% | — |
| 8 Post-Welsh-denied-selective objector | 5.1% | (1) |
| 9 Post-Welsh-denied-other | 16.8% | (2) |

(Note: United States v. Welsh decided on June 15, 1970)

Civilian Convictions for non-qualifying offenses

| N | 472 | 1009 |
|------------------------------------|-------|-------|
| 0 No evidence of conviction noted | 96.0% | 88.2% |
| 1 Non-violent felony | 3.4% | 6.3% |
| 2 Violent felony | .2% | 3.1% |
| 3 Non-violent and violent felonies | .2% | 1.2% |
| 4 Multiple violent felonies | .2% | .6% |

Military Convictions for Non-Qualifying Offenses (Highest applicable) (Highest applicable)

| | N/A | 1009 |
|--|-----|-------|
| 0 No evidence of convictions noted | — | 42.4% |
| 1 NJP (s) for offense (s) particularly military in nature | — | 16.7% |
| 2 SCM (s) for offense (s) particularly military in nature | — | 6.7% |
| 3 SPCM (s) for offense (s) particularly military in nature | — | 29.3% |
| 4 GCM (s) for offense (s) particularly military in nature | — | .6% |
| 5 NJP (s) for offense (s) not particularly military in nature | — | .5% |
| 6 SCM (s) for offense (s) not particularly military in nature | — | .6% |
| 7 SPCM (s) for offense (s) not particularly military in nature | — | 1.6% |
| 8 GCM (s) for offense (s) not particularly military in nature | — | .2% |
| 9 UD - unfitness with no punished offenses | — | 1.3% |

| Non-Qualifying Offense Specifications or Charges At Time Of Discharge | Civilian | Military |
|--|----------|----------|
| N | N/A | 1009 |
| No evidence of other specifications or charges | — | 86.1% |
| Other pending charges for peculiarly military offenses | — | 2.4% |
| All other pending charges | — | .8% |
| Record of an NJP or SCM for peculiarly military offenses (in UD-unfitness cases only). | — | 2.2% |
| Record of any other NJP or SCM (in UD-unfitness cases only). | — | 1.3% |
| Court-martial conviction for a specification of a peculiarly military offense. | — | 6.9% |
| Court-martial conviction for any other specification of a non-qualifying offense | — | .3% |
| Most Severe Sentence Type for Non-Qualifying Offenses | | |
| N | 18 | 341 |
| Incarceration for more than one year | (7) | 15.0% |
| Incarceration for less than one year and probation: total over one year | (1) | 2.6% |
| Incarceration for less than one year | (1) | 70.4% |
| Probation for more than one year | (7) | 1.5% |
| Probation for less than one year | (2) | 10.3% |
| Time Sequence of Non-Qualifying Offenses | | |
| N | 18 | 534 |
| All prior to first qualifying offense | (7) | 68.0% |
| All prior to last qualifying offense | (3) | 16.7% |
| All between first and last qualifying offenses | — | 1.5% |
| All after first qualifying offense | (2) | .7% |
| All after last qualifying offense | (4) | 3.7% |
| All before first and after last qualifying offense | (2) | 4.3% |
| Before, between and after qualifying offenses | — | 5.1% |

| Year of First Qualifying Offense | Civilian | Military |
|----------------------------------|----------|----------|
| N | 126 | 631 |
| 1964 | — | 3.0% |
| 1965 | .8% | 4.3% |
| 1966 | 1.6% | 5.9% |
| 1967 | 3.1% | 7.1% |
| 1968 | 2.3% | 11.9% |
| 1969 | 19.5% | 16.2% |
| 1970 | 21.9% | 17.9% |
| 1971 | 22.7% | 16.5% |
| 1972 | 19.5% | 12.5% |
| 1973 | 6.3% | 3.0% |
| 1974 | .8% | — |

| Year of Last Qualifying Offense | Civilian | Military |
|---------------------------------|----------|----------|
| N | 455 | 995 |
| 1963 | .2% | — |
| 1964 | — | .8% |
| 1965 | 1.1% | 2.2% |
| 1966 | 1.8% | 3.5% |
| 1967 | 1.3% | 6.9% |
| 1968 | 5.5% | 7.5% |
| 1969 | 12.7% | 15.0% |
| 1970 | 24.3% | 16.8% |
| 1971 | 27.9% | 19.2% |
| 1972 | 17.5% | 16.0% |
| 1973 | 5.9% | 9.1% |
| 1974 | 1.3% | 2.1% |

| Most Severe Sentence Type for Qualifying Offense | Civilian | Military |
|--|----------|----------|
| N | 441 | 455 |
| Incarceration | 37.0% | 97.4% |
| Probation - Alternative Service | 44.8% | .2% |
| Probation - Fines or Forfeitures | 4.1% | .7% |
| Probation Only | 6.2% | .7% |
| Incarceration Suspended in Lieu Of Probation | 7.5% | 1.0% |
| Appeals Of Conviction | | |
| N | 472 | 1009 |
| None | 93.2% | 77.6% |
| Federal Court Appeals | 6.8% | .27% |
| Courts-Martial Appeal | - | |
| Appeal of Discharge | - | .8% |
| Type of Civilian Qualifying Offense | | |
| N | 464 | N/A |
| Failure to Register | 2.6% | - |
| Failure to Inform of Charge | 9.7% | - |
| Failure to Report for Physical | 3.7% | - |
| Failure to Report for Induction | 32.1% | - |
| Failure to Submit for Induction | 31.7% | - |
| Failure to Perform A/S | 13.4% | - |
| Combination Including Induction | 6.5% | - |
| Combination Not Including Induction | .4% | - |

Circuit of Conviction

| | Civilian | Military |
|--------------|----------|----------|
| N | 45% | N/A |
| 1st Circuit | 2.6% | - |
| 2nd Circuit | 5.9% | - |
| 3rd Circuit | 8.9% | - |
| 4th Circuit | 7.0% | - |
| 5th Circuit | 11.8% | - |
| 6th Circuit | 12.9% | - |
| 7th Circuit | 7.6% | - |
| 8th Circuit | 6.5% | - |
| 9th Circuit | 30.9% | - |
| 10th Circuit | 5.9% | - |
| 11th Circuit | -- | - |

Age at Enlistment or Induction

| | Civilian | Military |
|-------------|----------|----------|
| N | N/A | 1006 |
| 15 | - | .1% |
| 16 | - | .5% |
| 17 | - | 30.8% |
| 18 | - | 25.7% |
| 19 | - | 21.2% |
| 20 | - | 12.1% |
| 21 | - | 4.1% |
| 22 | - | 1.9% |
| 23 | - | 1.3% |
| 24 or older | - | 2.4% |

| Military Intake | Civilian | Military |
|-------------------------------|----------|----------|
| N | N/A | |
| Drafted | - | 15.6% |
| Enlisted for 2 years | - | 11.1% |
| Enlisted for 3 or more years | - | 46.0% |
| Reenlisted | - | 7.2% |
| Judicially Induced Enlistment | - | .4% |
| Enlistment Length Unknown | - | 19.7% |

Hardship Reassignment Requested

| N | N/A | 100 % |
|--|-----|-------|
| Temporary deferral from active duty, granted | - | .2% |
| Temporary deferral from active duty, denied | - | .1% |
| Compassionate leave, granted | - | .7% |
| Compassionate leave, denied | - | 1.4% |
| Compassionate reassignment, granted | - | .6% |
| Compassionate reassignment, denied | - | 1.6% |
| Hardship discharge, denied | - | 5.6% |
| None noted | - | 89.8% |

Vietnam Experience

| N | N/A | 100% |
|--|-----|-------|
| Volunteer, partial tour ending in injury | | .5% |
| Volunteer, partial tour ending in AWOL | | 1.1% |
| Volunteer, partial tour ending other reasons | | 1.1% |
| Voluntary full tour | | 6.3% |
| Non-volunteer, partial tour ending in injury | | 1.0% |
| Non-volunteer, partial tour ending for other | | 1.3% |
| Non-volunteer, partial tour ending for other reasons | | 2.3% |
| Non-volunteer, full tour | | 10.0% |
| More than one tour | | 3.0% |
| No tours | | 73.4% |

| | Civilian | Military |
|--|----------|--------------|
| Nature of Vietnam Service | | |
| Saigon | N | 219 |
| Country, non-combat | - | .5% |
| Country, combat, one campaign | - | 18.3% |
| Country; combat, two campaigns | - | 18.3% |
| Country, combat, three pr more campaigns | - | 9.6% |
| Country, combat, no record of campaigns | - | 26.5% |
| | | 26.9% |
| Decorations for Valor (Highest Awards Listed Increasing Order) | N | 72 |
| Vietnam Cross of Gallantry w/Palm and Frame | | 36.1% |
| (Service) Commendation Medal w/"V" device | | 23.6% |
| Air Medal w/"V" device | | 8.3% |
| Bronze Star w/"V" device | | 30.6% |
| Silver Star | | 1.4% |
| Type of Military Qualifying Offense | | |
| AWOL | N | 990 |
| Desertion | - | 89.9% |
| Missing Movement | - | 2.7% |
| AWOL and Desertion | - | .2% |
| AWOL and Missing Movement | - | 6.2% |
| Desertion and Missing Movement | - | .7% |
| | | .3% |
| Number of Unpunished AWOLs, etc. | N/A | Mean = 1.6 |
| Number of NJPs for AWOL, etc. | N/A | Mean = 1.9 |
| Number of SCMs for AWOL, etc. | N/A | Mean = 1.2 |
| Number of SPCMs for AWOL, etc. | N/A | Mean = 1.4 |
| Number of GCMs for AWOL, etc. | N/A | Mean = 1.008 |

| | | <u>Civilian</u> | <u>Military</u> |
|---|---|-----------------|-----------------|
| Circumstances of Last/Discharge Military Offense | | | |
| | | N/A | |
| | N | - | 823 |
| Left from Basic Training | | - | 6.9% |
| Left from advanced infantry training | | - | 10.1% |
| Left from stateside duty, not after Vietnam Service | | - | 51.9% |
| Left from stateside duty, after Vietnam Service | | - | 24.1% |
| Failed to return to Vietnam from R&R or other leave | | - | 1.3% |
| Left from non-combat area of Vietnam | | - | 2.2% |
| Left from combat area of Vietnam | | - | 1.2% |
| Left from actual combat | | - | 2.3% |

Criminal Intake of Last Qualifying Offense

| | | | |
|-------------|---|-------|----------------------|
| | N | 230 | 700 |
| Surrendered | | 71.3% | 700 52.2% |
| Apprehended | | 28.7% | 52.2% 47.8% |

| | Civilian | Military |
|---|----------|----------|
| Place While AWOL or Otherwise at Large | | |
| N | 181 | 397 |
| Immediate return to authorities | 6.6% | 2.5% |
| Hometown, not in hiding | 63.0% | 73.0% |
| Elsewhere in US, with family | 2.2% | 8.1% |
| Elsewhere in US, not with family, not in hiding | 14.4% | 5.3% |
| Elsewhere in US, in hiding (e.g., under assumed name) | 2.2% | 1.0% |
| In Canada | 6.6% | 2.0% |
| In the foreign country of military assignment | - | 6.0% |
| In another foreign country | 5.0% | 2.0% |
| Activities While AWOL or otherwise at Large | | |
| N | 112 | 284 |
| Employed, full-time, white collar | 23.2% | 2.3% |
| Employed, full-time, skilled blue collar | 20.5% | 32.1% |
| Employed, full-time, unskilled | 24.1% | 47.0% |
| Employed, part-time, white collar | - | - |
| Employed, part-time, skilled blue collar | 1.8% | .9% |
| Employed, part-time, unskilled | 7.1% | 3.7% |
| Employed intermittently | 14.3% | 5.1% |
| Unemployed | 7.1% | 7.9% |
| Other | 1.8% | .9% |

Secondary Reasons for Offense

| N | Civilian 204 | Military 649 |
|---|-----------------|-----------------|
| Religious objection to all war | 6.9 | .3% |
| Ethical or moral objection to all war (non-religious). | 18.1 | .8 |
| Specific political moral or ethical objection to the war in Vietnam (not religious) | 14.2 | 1.1 |
| Avoid going to Vietnam | 2.5 | 1.2 |
| Avoid going to overseas replacement station, not in Vietnam and not known to be Europe | - | .2 |
| Went AWOL from Vietnam | - | .5 |
| Failed to return to Vietnam from leave or R&R | - | .3 |
| Post combat psychological problems complained of. | - | 1.1 |
| Did not like service | 1.0 | 6.2 |
| Other, articulated or unarticulated opposition to war | 5.4 | .3 |
| Hindrance of CO application or failure to provide proper assistance | 2.9 | .3 |
| Denial of CO application | 3.2 | .3 |
| Hindrance of request for hardship discharge or compassionate reassignment. | - | 2.0 |
| Denial of hardship discharge or compassionate reassignment. | - | 1.2 |
| Improper recruitment into armed forces--enlistment in lieu of sentence by criminal authorities. | - | .2 |
| AFQT Category IV.--Project 100,000 | - | 4.0 |
| Breach of assignment preference or occupational choice. | .6 | 2.0 |
| Denial of request for leave. | .5 | 1.7 |
| Improper orders: Told to go home and wait orders; lost soldier. | - | .3 |
| Other Procedural Unfairness | 4.4 | 6.6 |
| Drug or alcohol problems/dependence | 1.6 | 2.3 |
| Personal medical problem; | 1.5 | 5.2 |
| Personal, emotional or psychological problem | 3.9 | 8.9 |
| Marital problem | 1.0 | 3.7 |
| Family Medical problem | 2.5 | 8.3 |
| Family emotional or psychological problem | .5 | 5.2 |
| Family problems with the law | .5 | .6 |
| Family financial problem | 2.0 | 15.1 |
| Other personal or family problems | 6.9 | 10.3 |
| Civilain convictions | 2.0 | .3 |
| Avoidance of punishment for other actions | - | .8 |
| Boredom, lack of satisfaction, sense of uselessness, | - | 1.4 |
| Went AWOL cause he wanted to go to Nam and they cou wouldn't let him go | - | .3 |
| Personal Problem w/law-not convictions | - | - |
| Selfish reasons | 5.4 | 4.5 |
| Immaturity | 2.9 | 2.3 |

| <u>Primary Reasons for Offence</u> | <u>Civilian</u> | <u>Military</u> |
|---|-----------------|-----------------|
| N | 431 | 926 |
| Religious objection to all war | 34.1% | .4% |
| Ethical or moral objection to all war (non-religious) | 23.2% | 1.0% |
| Specific political moral or ethical objection to the war in Vietnam (not religious) | 14.9% | 2.5% |
| Avoid going to Vietnam | .7% | 1.1% |
| Avoid going to overseas replacement station, not in Vietnam and not known to be Europe | - | .1% |
| Went AWOL from Vietnam | - | .5% |
| Failed to return to Vietnam from leave or R&R | - | .2% |
| Post combat psychological problems complained of. | - | 1.8% |
| Did not like service | .5% | 9.7% |
| Other, articulated or unarticulated opposition to war | 2.8% | .5% |
| Hindrance of CO application or failure to provide proper assistance. | - | - |
| Denial of CO application. | 3.2% | .2% |
| Hindrance of request for hardship discharge or compassionate reassignment | - | .2% |
| Denial of hardship discharge or compassionate reassignment. | .2% | 1.7% |
| Improper recruitment into armed forces--enlistment in lieu of sentence by criminal authorities. | - | .4% |
| AFQT Category IV.--Project 100,000 | - | 2.3% |
| Breach of assignment preference or occupational choice. | .2% | 2.6% |
| Denial of request for leave. | - | 1.1% |
| Improper orders: Told to go home and wait orders; lost soldier | - | .3% |
| Other procedural Unfairness | 2.3% | 4.6% |
| Drug or alcohol problems/dependency | .9% | 4.9% |
| Personal medical problem; | 1.9% | 3.6% |
| Marital problem | .2% | 8.4% |
| Family Medical problem | 1.9% | 11.1% |
| Family emotional or psychological problem | 1.2% | 2.6% |
| Family problems with the law | - | .1% |
| Family financial problem | 1.6% | 12.5% |
| Other personal or family problems | 2.1% | 6.4% |
| Civilian convictions | - | .3% |
| Avoidance of punishment for other actions | - | 1.0% |
| Boredom, lack of satisfaction, sense of uselessness | .2% | 1.7% |
| Went AWOL cause he wanted to go to Nam and they wouldn't let him go | - | .6% |
| Personal Problem 2/law-not convictions | .7% | .1% |
| Selfish reasons | 4.9% | 4.3% |
| Immaturity | .7% | 4.3% |

| | Civilian | Military |
|--|----------|----------|
| Last known family status (applicant's family) | | |
| N | 372 | 768 |
| Single, no dependents | 46.2% | 38.4% |
| Single, dependents | 2.7% | 2.3% |
| Widowed no dependents | - | .1% |
| Seperated, no dependents | .5% | .8% |
| Divorced, or seperated, dependents | 2.7% | 3.4% |
| Married, no dependents other than spouse | 23.7% | 15.2 |
| Married, dependents other than spouse. | 21.0% | 38.4% |
| Employment Activities at Time of Application | | |
| N | 360 | 316 |
| Employed, full-time, white collar | 26.1% | 6.6% |
| Employed, full-time, skilled blue collar | 16.9% | 22.2% |
| Employed, full-time, unskilled | 21.1% | 17.4% |
| Employed, part-time, white collar | .4% | - |
| Employed, part-time, skilled blue collar | 1.1% | .6% |
| Employed, part-time, unskilled | 2.5% | .6% |
| Employed intermittently | 2.9% | 1.6% |
| Unemployed | 2.1% | 11.1% |
| In trade school | .4% | .3% |
| In college | 7.5% | 2.5% |
| In graduate school | 1.8% | .3% |
| In trade school, employed part-time | - | .6% |
| In college, employed full-time | .7% | - |
| In graduate school, employed, part-time | 2.1% | .3% |
| Incarcerated, awaiting trial | .4% | .3% |
| Incarcerated, past conviction | 3.6% | 22.8% |
| Incarcerated, for qualifying offense (furloughed by Executive Order) | 7.5% | 11.4% |
| Mental or Physical Problems | | |
| N | 472 | 1009 |
| None Noted | 86.7% | 71.9% |
| Physical Problems, No Disability | 2.5% | 4.0% |
| Physical Problem, With Disability | 1.9% | 2.9% |
| Psychological Problems pertaining to Reaction to Authority | .8% | 5.0% |
| Other Psychological Problems | 5.7% | 10.3% |
| Problems with drugs | 1.7% | 5.0% |
| Problems with alcohol | .6% | 1.0% |
| Existence and Origin of Medical Problem | | |
| N | 472 | 1009 |
| None | 93.4% | 84.5% |
| Congenital | 1.3% | 2.1% |
| Pre-Military/Draft | 4.7% | 3.7% |
| Emanating from draft or military situation | - | 2.9% |
| Possibly emanating from Vietnam experience | - | .6% |
| Definitely emanating from Vietnam experience | - | 3.1% |
| Post-military/draft | - | .6% |
| Origin Unknown | .6% | 2.6% |

| | Civilian | Military |
|--|----------|----------|
| Existence and Origin of Psychological Problems | | |
| N | 472 | 1009 |
| None | 90.5% | 78.9% |
| Congenital | 1.9% | 2.1% |
| Pre-Military/Draft | 5.9% | 5.4% |
| Emanating from draft or military situation | 1.1% | 7.0% |
| Possibly emanating from Vietnam experience | - | 1.7% |
| Definitely emanating from Vietnam experience | - | 3.2% |
| Post-military/draft | - | .3% |
| Origin Unknown | .6% | 1.5% |
| Existence and Origin of Family Problems | | |
| N | 472 | 1009 |
| None | 86.9% | 60.2% |
| Congenital | .4% | 4.9% |
| Pre-Military/Draft | 7.2% | 12.1% |
| Emanating from draft or military situation | 4.2% | 15.8% |
| Possibly emanating from Vietnam experience | - | .4% |
| Definitely emanating from Vietnam experience | - | .1% |
| Post-Military/draft | .2% | 1.4% |
| Origin Unknown | 1.1% | 5.3% |
| Existence and Origin of Problem with the Law | | |
| N | 472 | 1009 |
| None | 71.8% | 75.8% |
| Pre-Military/Draft | 5.3% | .7% |
| Emanating from draft or military situation | 21.8% | 19.0% |
| Possibly emanating from Vietnam experience | - | .6% |
| Definitely emanating from Vietnam experience | - | 1.4% |
| Post-military/draft | - | 1.7% |
| Origin Unknown | 1.0% | .7% |
| Existence and Origin of Financial/Employment Problems | | |
| N | 472 | 1009 |
| None | 93.5% | 81.0% |
| Congenital | .2% | 1.2% |
| Pre-Military/Draft | 1.3% | 3.9% |
| Emanating from draft or military situation | 4.2% | 10.4% |
| Possibly emanating from Vietnam experience | - | .3% |
| Definitely emanating from Vietnam experience | - | .2% |
| Post-military/draft | .2% | .7% |
| Origin Unknown | .4% | 2.4% |