



AMNESTY IN PERSPECTIVE

(A statement of the Sixth General Convention of The American Lutheran Church adopted October 9, 1972, by action GC72.9.149, as a statement of comment and counsel addressed to the members of the congregations of The American Lutheran Church to aid them in their decisions and actions.)

1. *Current discussion about amnesty.* The current interest and concern regarding amnesty in this nation has been occasioned by American involvement in the undeclared Vietnam war, the longest war in our history. Thousands of young American men have been convicted or have gone into exile abroad for actions of conscience related to this war. They include (1) those who are selective (particular war) objectors; (2) in-service objectors; (3) objectors to the draft system; (4) draft registrants subjected to punitive reclassification due to protest activities; (5) military deserters; (6) exiles who face criminal indictments should they return to this country; (7) those who have been or can still be prosecuted for alleged war crimes; (8) draft violators who have served sentences but still bear the stigma of criminal activity; and (9) those less than honorably discharged from the armed forces.

The issue of amnesty for resisters to the Vietnam war has been an increasingly outspoken concern of religious and other peace groups for the past several years. The issue was raised during the 1968 national election campaign. Amnesty has become a vocal issue during this presidential election year. Several amnesty bills have been introduced in this session of Congress. The White House staff is reported to be studying the issue with a view toward preparing amnesty options for future use by the president of the United States.

Our hope in this statement is to place the issue in perspective, as an aid to the members of The American Lutheran Church in recognizing the complexities and the moralities involved in amnesty.

2. *What is amnesty?* Amnesty is a legal term which refers, in the law of war, to a setting aside of an indictment for offenses connected with war. It is an act of government that grants remission of punishment for past high political offenses such as treason and is usually exerted in behalf of certain classes or groups of persons who are subject to trial but have not yet been convicted. The word amnesty is derived from a Greek word meaning to forget. In effect, amnesty overlooks past political offenses against a government and erases them from memory. Amnesty has been called a "blessed act of oblivion."

3. *Pardon and amnesty.* The power to pardon has been legally held to include the power to grant amnesty by proclamation. Pardon is governmental forgiveness

for an individual offense; amnesty is the decision not to punish for the offense. The United States Supreme Court has said: "Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness" (*Knote vs. U.S.*, 95 U.S. 149).

4. *A historical view of amnesty.* The power to grant amnesty on federal issues in this country lies historically within the discretion of the president. The Constitution of the United States, Article II, Section 2, confers upon the president the "power to grant reprieves and pardons for offenses against the United States. . . ." The word amnesty does not appear in that document. Presidential proclamations of amnesty have been made in American history, for example, by Presidents Washington, Adams, Madison, Lincoln, Andrew Johnson, Theodore Roosevelt, and Truman.

President Lincoln issued a series of amnesty proclamations while the Civil War was being waged. After that war, the greatest rebellion in nineteenth century American history, governmental policy concerning those in legal jeopardy because of the war did not impose any formal punishment, require any special service, or impose conditions contributing to the self-exile of such persons. This course was intended to heal and reconcile the nation.

American citizens have the right to appeal for amnesty, although amnesty is not a legal right. Regardless of one's views concerning amnesty in relation to the law of war, it is important to understand that no general amnesties have been granted in the United States in the twentieth century. After World War II, a President's Amnesty Board was established. It actually operated as a pardon board, considering offenses on a case-by-case basis. In 1947, President Truman granted pardon to 1,523 persons convicted of violating the Selective Training and Service Act of 1940. This was approximately one-tenth of those convicted. Virtually all of them had completed their sentences. In 1952, President Truman granted pardon to certain persons convicted by court-martial of desertion from the armed forces. Again, each case was reviewed individually.

5. *Questions concerning amnesty and related issues.* The current national discussions concerning amnesty indicate that heavy pressure will be brought for the granting of something like that amnesty historically granted by past American presidents, perhaps with certain conditions, when the Indochina war ends. Continuing questions concerning amnesty and related issues include: Why or why not? When? For whom? How much?

Some citizens argue that our government's participation in the Vietnam war has been unjust and immoral. This viewpoint maintains that the federal government has been wrong and therefore it should be asking forgiveness from those who refused to follow national policy concerning this war. Those holding this view state that amnesty must not be equated with forgiveness. They do not want the nation to forget the conscientious acts of potential amnesty recipients—except in the limited legal sense of forgetting to indict for such offenses.

6. *The range of viewpoints regarding amnesty.* The alternatives under discussion range from unconditional amnesty through amnesty with conditions (such as two to three years of alternate civilian service) to no amnesty at all. In timing, the proposals range from amnesty now, through sometime after the end of the war or the end of the military draft, to never.

Americans who now think the Vietnam war has been a serious national blunder tend to advocate broad amnesty, including remission of criminal penalties and elimination of criminal status for all those whose criminal acts were committed because of their reaction to the war. Americans who believe that our national

policy in the Vietnam war has been honorable tend to support narrower interpretations of amnesty or no amnesty at all for war resisters.

a. *Unconditional amnesty* would (1) allow those who left the United States to return permanently or to visit; (2) release all war resisters held in civilian or military prisons; (3) drop pending and potential legal actions against war resisters; and (4) restore civil and voting rights to those who have completed prison sentences, have received less than honorable discharge from military service, or have otherwise lost rights of citizenship due to their opposition to the war.

b. "*Conditional*" amnesty calls for various forms of civilian service in the national interest for a period of two or three years and perhaps the requirement of an oath of allegiance and amnesty for military deserters on a case-by-case basis.

c. *Congressional amnesty* seeks through legislation to enable Congress to grant amnesty in some form. Amnesty has historically been granted in our nation by the executive branch of government at the discretion of the president. Current amnesty discussions emphasize legislative amnesty more than executive or presidential amnesty.

Congress, as the legislative branch of government, can participate in amnesty considerations in several ways. For example, Congress can (1) introduce a bill testing the power of Congress to grant amnesty; (2) seek to adopt an act providing amnesty; or (3) provide the president now with additional support to grant fair and just amnesty when the time is considered right for such action.

7. Reasons commonly advanced for granting amnesty:

a. Several presidents of the United States have granted limited amnesty in connection with previous wars.

b. Most war resisters are not guilty of serious offenses against the federal government.

c. Granting amnesty could be part of the process of reconciling a divided nation by encouraging adjustments of personal and group feelings and attitudes shaped by the complexities of the Vietnam war.

d. Such amnesty could restore the possibility for draft emigrants to make a free choice between accepting whatever amnesty may be granted or remaining in other countries.

e. Amnesty could restore full citizenship rights to those convicted of felonies who have served their sentences and to those who have received less than honorable discharges from military service for offenses related to opposition to the war.

f. Amnesty would serve to improve our nation's reputation in international circles.

g. Amnesty would acknowledge and respect the courage of those who experienced imprisonment and exile, even though many citizens would disagree with such actions witnessing to one's beliefs.

h. Amnesty may serve to restore balance concerning the image of heroes in our wars.

8. Reasons commonly advanced against granting amnesty:

a. Amnesty would undermine the present draft system by allowing a situation to develop whereby many draftees would refuse induction, confident that they could anticipate a later privilege of amnesty.

b. Amnesty would be an affront to the memory of the more than 55,000 Americans who died in the Vietnam war as well as to their families and loved ones and the many thousands of wounded and disabled Vietnam veterans.

c. Amnesty would weaken our democracy and would be an injustice to those who now serve and formerly served in the armed forces.

d. No general amnesties were granted after World Wars I and II, therefore there is no American precedent in this century for a general amnesty after a particular war has ended.

e. A national government cannot survive if individual citizens decide what laws they will obey or what wars they will support.

f. The federal government can appreciate the courage and convictions of war resisters, but that does not pardon them from the consequences of violating provisions of the Selective Service Act, the Uniform Code of Military Justice, or both.

g. The possibility of a vindictive or revengeful attitude toward those who may receive amnesty at a future date by those opposed to amnesty for war resisters may endanger the prospects for the employment and social acceptance of such amnestied persons to the extent that amnesty would create further divisions rather than reconciliation among citizens.

9. *Amnesty and American public policy.* Amnesty has been granted as a matter of public policy when pardon for political offenses has been deemed more expedient for the public welfare than prosecution and punishment. A government grants amnesty in an effort to restore good will, to recover mutual trust, to foster a sense of shared national purpose, and to reconcile divided factions among its citizens. It is reasonable to assume, in the words of Columbia University law professor Louis Lusky "that the dominant concern for amnesty is a concern for the welfare of society as a whole. . . ."

Citizens continue to be confused about the distinction between amnesty and pardon. It would be in the public interest for the Congress and the president mutually to establish a committee to investigate the problem of amnesty and pardon. This issue has been unresolved since World War I. We now have the largest identifiable number of unamnestied and unpardoned political offenders in the history of our nation.

10. *Our special role as Christians.* As Christian citizens, we, too, should participate in gaining a clearer perspective on the complex problem of amnesty and related issues. Our concern is focused on understanding, acceptance, and reconciliation among American citizens who disagree about the Vietnam war. As Christians, we can (1) examine our feelings and opinions about amnesty for war resisters; (2) discuss such feelings and opinions with persons who have a variety of views and experiences related to this issue; (3) study and evaluate proposed legislation on amnesty and related concerns; (4) listen to persons and groups advocating differing views on amnesty; (5) ask candidates for political office to

state their views on amnesty at church or community gatherings; (6) vote our informed convictions on the issue if and when amnesty concerns are on the ballot; (7) discuss amnesty or pardon and its relation to reconciliation in Christ in local congregations and communities. This is where social concerns take root and spread.

a. *Our response in concern and action.* The Lutheran Council in the U.S.A. at its annual meeting on February 29, 1972, adopted a statement entitled "Toward Reconciliation." In this statement the council offered the following four particulars for resolving divisions and furthering national healing:

(1) We call for acts of reconciliation between those who believe they served their nation by supporting this war and those who believe they served their nation by refusing to support this war.

(2) We urge loving concern for those who conscientiously participated and now return to a society which may forget their service or give it only a negative meaning. We express our approval of new initiative from both government and private agencies in job training and placement, drug rehabilitation, and other helps toward re-entry to civilian life.

(3) We urge loving concern also for those who refused to participate for reasons of conscience, including those who chose to face prosecution or to leave our land and seek refuge in another. We express our approval of new initiative from both government and private agencies to resolve the question of amnesty and to provide services, in order to facilitate re-entry into the life of our nation.

(4) We transmit this statement to the participating church bodies with the hope that they will commend it to their congregations for a response in study, prayer, acts of reconciliation, and the resolve to be caring communities. Let all seek from God the strength to accept one another, the willingness to renew relationships, the commitment to faith in God's desire that his healing come to all men, and the trust that through God's guidance mankind may find peace and the means for its maintenance.

b. *Christian realism.* Christian people will need to be realistic in appraising the wisdom and statesmanship involved in dealing with the public discussions focusing on amnesty and related issues. Christians will continue to seek to achieve justice, love, peace, healing, and reconciliation among all persons, empowered by the spirit of God, the author and finisher of all that is good, in concert with all people of good will.

c. *Our ministry of healing and reconciliation.* Part of God's activity is to reconcile all persons to himself, to each other, and to his creation. He seeks to heal us and to enable us to become whole (Isa. 53:5; 1 Peter 2:24). This activity of God breaks down the barriers of our sinful condition—rebellion, pride, separation, division—in order that the sons and daughters of God may be restored to full participation and full citizenship in the family of God.

Jesus is our reconciliation with God (Eph. 2:14-18; Col. 1:19-20; Rom. 5:10-11; 2 Cor. 5:18-20). He joins together in himself God and humankind. Christ has given to us the ministry of reconciliation. If Christians do not proclaim Christ's message of reconciliation to our nation at this time, who will?

The printing and distribution of this statement by the:

Commission on Church and Society
The American Lutheran Church
422 South Fifth Street
Minneapolis, Minnesota 55415

has been authorized by the General Secretary of The American Lutheran Church.

Price: 6c per copy; 66c per doz.; \$5.40 per 100.