

Speeches and messages: 1974 (2 of 2): [Amnesty for draft evaders]

Senator Daniel K. Inouye Papers

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news from

Senator DANIEL K. INOUE

topic:

SPEECH BY U. S. SENATOR DANIEL K. INOUE AT COMMENCEMENT
EXERCISES, IOLANI SCHOOL, JUNE 6, 1974

date:

MAY 24, 1974

release date: 5 P.M., THURSDAY, JUNE 6, 1974

Now that America's long tortuous struggle in Southeast Asia has become history, it is time for this nation to display wisdom and understanding in examining an issue that personally affects thousands of our youthful citizens. In competition with the momentous issue of presidential impeachment, the subject of amnesty for the draft evaders and military deserters of the Vietnamese conflict seems to have been forgotten or at least temporarily laid aside. It is a subject that has frequently been brought to the awareness of the public, but one that appears to fall short of the lasting impact needed to keep it alive. Today, I wish to revive this emotional, thought-provoking question by offering my personal views and define my position.

Briefly defined, amnesty is the official act of overlooking or forgetting a crime which has been committed by an individual or group of individuals. Amnesty is similar to pardon, in concept, in that both release the offender from the penalty imposed for a violation of the law. Whereas pardon may be extended to any type of offender and is usually granted after punishment has begun, amnesty has normally been granted to political offenders before the commencement of criminal proceedings or punishment.

Amnesty is usually divided into two categories. One is general amnesty, which covers all classes of offenders, and the other is particular amnesty, which is limited to special groups and sometimes with specific exceptions. Within the scope of either of these two categories, amnesty can be absolute, which imposes no conditions, or it can be conditional, which requires the fulfillment of certain conditions before the offender becomes eligible for its benefits.

The history of amnesty in the Western world has been varied. The governments of European nations granted amnesty long before the United States first applied the concept. In both the fifteenth and sixteenth centuries, French warriors and rioters were granted amnesty. In addition, grants of amnesty were extended in France on at least three occasions in the early and latter parts of the nineteenth century. Significant amnesties in England were extended in 1651 after the English Civil War and in 1660 after the reign of Charles II had been restored. Other instances of European amnesty from the mid-seventeenth century to the early nineteenth century involved the nations of Sweden, Poland, Germany, Austria, Russia, and Turkey. Some countries granted amnesties to political prisoners after World War I. Among them were France, Italy, Belgium, and Canada. In addition, France, Norway, Germany, Belgium, Japan and the Netherlands granted amnesties or pardons to persons who had been involved in "compromising activities" during World War II. More recently, after the ending of the Algerian conflict in 1962, France extended general amnesty to most of those who had illegally resisted the government's war policies.

Historically speaking, amnesty in the United States has usually been granted by the executive branch of government. Of thirty-five cases of American amnesty between 1795 and 1952, only seven were a result of Congressional initiative. Among American examples of amnesty or pardon are: (1) the full pardon by George Washington of participants in the 1794 Whiskey Rebellion; (2) the full pardon given by Thomas Jefferson to all deserters from the Army of the United States if they would surrender themselves within a stipulated period of time; (3) the full pardon offered by President James Madison to deserters during the War of 1812; (4) the conditional pardon extended in 1830 by Andrew Jackson to those charged with peacetime desertion; (5) the 1862 conditional release of many political prisoners by Abraham Lincoln at the outset of the Civil War. Also, in 1863 Lincoln conditionally pardoned military deserters who agreed to return to their regiments within a given period of time, and in 1864 he directed the War Department to reduce the sentences of some deserters from death to imprisonment and to return to duty those whose continuing service was deemed beneficial to the country. Further, as a result of Lincoln's Proclamation of March 11, 1865, the War Department on July 3, 1866, offered conditional amnesty to all regular army deserters who surrendered before August 15, 1866; (6) the issuing of full pardons

by President Andrew Johnson to former Confederate soldiers in 1865, and to other persons in 1867 and 1868; (7) the pardon by Woodrow Wilson in 1917 of approximately 5,000 persons in certain judicial categories unrelated to World War I, for which no general amnesty was declared; (8) the granting of amnesty by President Calvin Coolidge in 1924 to approximately 100 peacetime deserters; (9) the amnesty granted by Franklin Roosevelt in 1933 to violators of draft and espionage acts who had completed their sentences; and finally, (10) the individual pardons granted by President Truman in 1947 to 1,523 persons out of a total of 15,805 cases of those who had evaded or violated the Selective Service Act during World War II. These pardons were the result of recommendations of an Amnesty Review Board, established by the President in an executive order issued in December, 1946.

I believe that these illustrations of amnesty down through our history, conspicuously demonstrate that the American people have a tradition of providing amnesty or pardon both during and after periods of great national stress and upheaval. These cases show clearly that we are a nation with a forgiving and compassionate spirit -- willing to show mercy so that others may be given a chance to redeem themselves.

Abraham Lincoln displayed both wisdom and humanity in offering amnesties and pardons, especially at a troubled time when the nation was literally being torn apart by the fiery passions and hatred of the Civil War. Also, in granting over 1,500 pardons following World War II, President Truman typified the American spirit of fairness and understanding in carrying out the recommendations of an independent governmental panel. Thus, the question some of us ask at this time is: when will our present leadership also manifest such wisdom, fairness and compassion in dealing with an admittedly difficult, but human problem? Will our leaders bury their heads in the sand and wish the problem away, or will they act in the American tradition by recommending that some form of amnesty be granted, one which would free the nation of the bitterness and strife which was engendered by the Vietnam War.

In my judgement, conditional amnesty for American draft evaders and deserters is the only reasonable solution to this critical problem. The granting of conditional amnesty would effect a balance between two extremes. Some have proposed that no form of amnesty should be granted to Vietnam war resisters, while others have suggested that all offenders be granted amnesty on an unconditional absolute basis. I think the compromise of conditional amnesty could bridge the gap between these two positions and thereby create a national climate where the strong emotions and tensions which now prevail could be reduced. In my view, conditional amnesty should be predicated on the principle of good faith. Those who have conscientiously and in good faith opposed the Vietnam conflict should be given the option of performing some type of alternative national service.

Some draft evaders might be offered the opportunity to redeem themselves by performing alternative service with civic and/or volunteer associations, or with government organizations. These persons, for example, might be given the opportunity to work with the underprivileged and impoverished in an American ghetto, while others might be more useful in ministering to the needs of patients in a health facility. Other persons might not be allowed such opportunities because the circumstances in their individual cases may not warrant alternative service. A few draft evaders may wish to enter the military as a result of reappraising their personal situations. However, I am not suggesting here that the military services graciously accept into their ranks those whom they do not want or those who have demonstrated an unwillingness to accept the restrictions and discipline necessary for the proper and orderly functioning of a military society. Some military deserters might be allowed to return to their units without being marked for life by the stigma of a court-martial or dishonorable discharge. Others might not be allowed this opportunity because, similar to some charged with draft evasion, the circumstances in their cases may not warrant a return to duty. Such persons might be allowed to return to civilian life and also be given the opportunity to perform national service.

The key in resolving each individual case would lie in a determination of the motives associated with each. Is it fair to declare that all of those currently charged with draft evasion are cowards? Or, it is fair to believe that all of those persons currently charged with military desertion possessed treasonous motives? Could it not be that some of those charged with draft evasion rejected the military and refused to serve because of honest and sincere convictions that the Vietnam War was patently wrong and immoral? In the same manner, did not some of those charged with desertion do so because of what they deemed to be valid political reasons for turning their backs on their services?

Of the unknown thousands charged with draft evasion who are scattered in various parts of the world, many may have sincerely felt that they possessed valid moral or political reasons for rejecting the military and thus the conflict. Others may have avoided the draft, and consequently the conflict, out of a deep fear of the unknown. And still others may have been unwilling to enter the military because they did not wish to engage in combat per se, but did not question the political/ideological reasons for the war. Further, some of those charged with military desertion may have fled their units because of unresolved personal problems, disassociated from ideology, but conflicts, nevertheless, that may have appeared insurmountable at the time. To such individuals, escape from their existing environment may have seemed to be the best solution at the moment. Such persons could have been burdened with real or imaginary family, financial or other problems, unrelated to the rights or wrongs of American combat involvement in a distant land. Others, though, may have deserted for purely political reasons similar in vein to some of those charged with draft evasion. While I realize that many of these singular motives are speculative, what I wish to make unmistakably clear is that each draft evader or deserter is an individual and may have possessed a motive for his conduct somewhat different from all the others.

In many cases during the Vietnam conflict, draft resistance represented a form of civil disobedience. It followed the pattern of civil disobedience by civil rights groups in the 1960's. These groups and individuals by their courage and foresight actually helped to bring greater equality and fair treatment to America's black minority. Civil disobedience has an honorable history. We praise it in others as we did recently in the case of the brilliant Russian writer, Alexander Solzhenitsyn.

The principles of personal responsibility and individual conscience have been widely discussed and accepted--especially since the Nuremberg principles established following World War II. It was during these trials that American judges and lawyers held many former enemies guilty of carrying out inexcusable orders holding they should have refused and followed their conscience. Every American military man is schooled and reschooled in these principles.

Throughout the Vietnam conflict the media widely publicized crimes and atrocities by both sides. An average person might reasonably question the legality of certain operations which occurred in Vietnam and refuse to become implicated on the grounds of the Nuremberg principles. That today the man who was convicted of the murder of at least 22 old men, women and babies had his life sentence reduced to only a few years only further substantiates this point. That no officer higher than this lieutenant has ever been found guilty of the responsibility for this massacre further underscores this doubt. Even more recently, the Administration decided not to prosecute those former POW's who openly and knowingly assisted their North Vietnamese captors in propaganda and other efforts.

Some in Congress recently initiated proceedings to make the brilliant Russian writer Alexander Solzhenitsyn an honorary citizen of the United States. The Halls of Congress rang with praise of his personal courage and dedication to values in conflict with laws of his country. His civil disobedience and adherence to his own beliefs stand as an example for the world. Do our sons deserve any less understanding and tolerance?

I am recommending a policy of conditional amnesty be applied, not with a broad brush, but on a case-by-case basis. This would require the establishment of an independent amnesty board to weigh the circumstances in each individual case. Although I will agree that such a procedure would be time-consuming and somewhat burdensome for those involved, it seems to me to be in the best interests of all concerned, this divided country, and those of ours who are still alienated by the War.

Those charged with draft evasion and desertion did not do so collectively, so we may question why their cases should be handled this way. Conditional amnesty should be handled on a case-by-case basis because individual actions are very often best understood in the light of individual scrutiny. But I will not deny that draft evaders and deserters have broken laws and regulations of our society. Nor do I declare that all of the reasons behind their conduct were either honorable or dishonorable. Laws and regulations of our nation should not be obeyed or disobeyed selectively, but must apply to all in order that equity and impartiality remain basic to our judicial process. However, I do think that many of the considerations and extenuating circumstances that are often allowed other violators of the law should also be provided to those charged with draft evasion and desertion.

In conclusion, I do not believe that all of the draft evaders and deserters of the Vietnam conflict are heroes any more than I believe that all of them are of a criminal mind or intent. Those that are still outside our system

of justice have not yet been found guilty in any type of judicial proceedings, either civil or military, of breaking laws or regulations. This important point we need to remember. But the granting of conditional amnesty to those charged would alleviate in great measure the division, discord, accusations and recriminations that remain as an aftermath of Vietnam. The guilt, innocence, excuses, or lack of excuses of those charged with draft evasion or military desertion are not the real issues at this moment in our history. Of greater importance is the demonstration to all that America is a kind and forgiving nation and one that never loses sight of the pressing need to strive for a better world, free of distrust, anger and division. It is time that we give the question of amnesty to those who sought to avoid the Vietnam conflict our sincere consideration that we may further close that unfortunate chapter in our nation's history.