10-1-2012

From Oblivion to Memory: A Blueprint for the Amnesty

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Crim Law and Philos (2012) 6:467–477
DOI 10.1007/s11572-012-9168-7

BOOK REVIEW

From Oblivion to Memory: A Blueprint for the Amnesty

Mark Freeman: Necessary Evils: Amnesties and the Search for Justice, Cambridge University Press, New York, 2009, 352 pp, ISBN 978-0-521-89525-5 (hardback)

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Published online: 8 July 2012

Abstract This Review Essay examines Mark Freeman's thoughtful book, *Necessary Evils: Amnesties and the Search for Justice*. One of the book's core arguments is that amnesties from criminal prosecution, however unpalatable to liberal legalist sensibilities, should not be entirely purged from the toolbox of post-conflict transitions. Although advancing this argument, Freeman also struggles with it, and ultimately builds a very restrained and heavily technocratic defense of the amnesty. This Review Essay weighs this argument, among others, on its own terms and also within the context of recent events that post-date the book's publication. The result is a vibrant exposition of the limits of law, and the limits of politics, in transcending episodes of massive human rights violations.

Keywords Human rights · International crimes · Peace · Amnesties · Reconciliation · Justice

Introduction

International law increasingly exhorts that those persons who bear considerable responsibility for massive human rights violations face criminal prosecution and, if convicted, endure imprisonment. This means that, rather than overlooking the past, transitions from abusive regimes are—through judicialized legalism—to force historical reckonings and invoke a coming to terms.

Unsurprisingly, then, the amnesty has become a *bête noire* to international lawyers. By amnesty is meant, in most general terms, a decreed inability to initiate legal process, in particular criminal charges.

To be sure, other epistemic communities may not share international lawyers' reticence regarding amnesties. Political scientists and humanitarian workers tend to view them

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through a utilitarian lens. After all, in the short term amnesties may serve as bargaining chips to encourage brutal leaders to relinquish power, go away, or mend their ways.

If amnesties work to end violence or, better still, deliver a sustainable peace then, indeed, a case can be made that they are the lesser evil, however unpalatable they may appear at first blush. But international law articulates a deontological view—the amnesty is distasteful in that it denies justice and, hence, is unjust. The amnesty offends moral sensibilities regarding right and wrong. Shielding a perpetrator from a day of reckoning in court is seen as encouraging impunity. Since, *arguendo*, the threat of criminal prosecution deters the commission of human rights abuses, the amnesty—insofar as it blocks such prosecution—falls short even of its avowed utilitarian goals. Lawyers therefore marry both deontological and consequential rationales in their disdain for the amnesty.

Mark Freeman—a distinguished international lawyer—steps into this conversation, albeit in heterodox fashion. Against the grain, he urges a second look at the amnesty. In *Necessary Evils: Amnesties and the Search for Justice*, Freeman argues that the push in international criminal law to banish the amnesty should not smugly see itself as self-evident. According to Freeman, law should leave some room for human rights abusers to barter their criminal liability in exchange for peace. For Freeman, the quest to close the amnesty debate, therefore, is both misguided and premature (xiii).

Along the way, Freeman reproaches international lawyers for their successes. He notes how international lawyers' approach to amnesties—although only one perspective among many—"has dominated amnesty debates thus far" (xiv). For Freeman, "amnesty is too serious to be left to the legal profession" (xiv). He affirms that he "could never oppose an amnesty on the basis of law alone" since such opposition "would be legalism of the worst sort" (9). I am sympathetic to Freeman's caution regarding the dominance of law as well as the externalities triggered by this dominance. I, too, have raised these concerns, for instance, by expressing misgivings that, iconically, international criminal law—courtrooms and jail-houses—have come to represent the first-best instantiation of international criminal justice, to the subordination of other accountability modalities, such as truth commissions, restorative ceremonies, and community service (Drumbl 2007, 2009). On this note, Freeman's widely acclaimed first book, *Truth Commissions and Procedural Fairness* (Cambridge University Press, 2006), represents a sustained effort to evaluate the standards and principles that ought to inform the activities of truth commissions within the framework of transitional justice.

What is an Amnesty?

Let us begin with terms of reference. Freeman adopts the following as a working definition of amnesty:

> Amnesty is an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offenses irrespective of whether the persons concerned have been tried for such offenses in a court of law (13).

Freeman distinguishes the amnesty from other forms of transitional political compromise, such as pardons, reduced sentence measures, statutes of limitations, and immunities.

Insofar as Freeman's focus lies with criminal proceedings at the national level, the scope of his analysis is relatively narrow. I say narrow because some jurisdictions, such as South Africa, extended the amnesty to cover civil liability in the case of political offenses for which perpetrators had provided full disclosure. Amnesties from civil suit, lustration,

truth and reconciliation commissions, or customary reintegration mechanisms fall outside the remit of Freeman's definition and framework. He is concerned only with amnesties for criminal liability. Yet, in many post-conflict transitions, perpetrators additionally may wish to obtain amnesty from a wider scope of liabilities and from a broader array of processes. How should those claims be approached, if at all?

Amnesties Under International Law

In any event, international lawyers should not be too sanguine, or too glib, about the unacceptability of the amnesty to criminal prosecutions as a strict matter of international law. Regardless of their policy preferences, one of Freeman's major goals is to unpack how international lawyers' denunciation of the amnesty is, truth be told, not too solidly grounded in the black-letter of international law itself. According to Freeman, "when it comes to amnesty, there is much more ambiguity in the legal realm than many legalists are prepared to acknowledge …" (7).

In what is among the most valuable of the book's contributions, Freeman canvases state practice to demonstrate ongoing recourse to the amnesty. He creates an "amnesty database" (xiv), the content of which he posits as demonstrating state practice as well as general principles of law. Freeman appropriately posits this vivid recourse as indicative of the amnesty's continued vitality. Paraphrasing Mark Twain, Freeman underscores that "amnesty has not left the scene, and reports of its death are … exaggerated" (4). In fact, "[a]mnesties are as prevalent today as at any time in modern history …" (4).

Freeman opens with one of international law's hidden histories, to wit, that in 1983 the United Nations (UN) Sub-Commission on Prevention of Discrimination and Protection of Minorities engaged noted French magistrate Louis Joinet to author a study in light of "'the importance that the promulgation of amnesty laws could have for the safeguard and promotion of human rights and fundamental freedoms'" (1–2, quoting language of Res. 1983/34). In 1991, however, the same UN Sub-Commission asked Joinet to undertake a study that "was expected to show how amnesties contributed to impunity rather than to the safeguard of human rights" (2). Whereas the first study is, according to Freeman, shrouded in history—published as it was "before the age of the Internet and seldom cited today"—the second study has come to reflect conventional wisdom (2). Elsewhere, Freeman notes that "the current formulation of the UN position stands in stark relief with the organization's own previous and longstanding practice. It also marks a major rupture with previously prevalent opinions about the issue in general" (91, footnotes omitted).[1]

Why this *volte-face*? According to Freeman, the rise of international criminal law and international human rights law—and the proliferation of global legalism in general—have "made it impossible to see the amnesty issue in purely political terms" (1). What is more, the expansion of global civil society, along with the reach of social media and the concomitant democratizing effect on participatory access to public discourse, have come to facilitate mobilization around a simple equation, namely, that amnesties equal impunity.

This *volte-face*, however, may be inspired more by wishful *lex desiderata* than by tangible *lex lata*. Freeman does well to distinguish best practices from general practices

[1] According to Freeman, "adherence to the current UN position would effectively prevent states from adopting the South African model or any comparable variant thereof. In other words, the model that rightly or wrongly inspired so many around the world—not least, as of 1998, the UN Secretary-General himself—is in direct violation of the UN position" (92).

(45). He faults international legal scholarship that engages in selection bias in terms of its reporting of state practice regarding amnesties. More specifically, he notes the trend to overlook examples of "broad amnesties adopted in a wide range of countries [that] were positive factors at crucial historical moments" (27). He draws from a wide range of case-studies in this regard, including Spain, Mozambique, France, Nigeria, Uruguay, Cambodia, and Aceh (Indonesia). Moreover, Freeman emphasizes that, in these jurisdictions, recourse to amnesties was neither bitter nor grudging. On the contrary, amnesties attracted positive perceptions. Although these jurisdictions did not go on to become "paragon[s] of virtue and decency," they did become "better places in the post-amnesty period than in the pre-amnesty period" (27–28). Interestingly, as time passes, some of these jurisdictions have begun to chip away at amnesties previously granted by permitting a broader variety of legal actions. Such is the case even in South Africa—a jurisdiction whose reliance on amnesties Freeman underscores—where, incrementally, disaffected national constituencies have, through concerted litigation efforts, challenged and contracted the reach of previously accorded amnesties.

A large part of Freeman's book is given over to presenting how international law actually handles the amnesty. Freeman surveys treaties, expert commentaries, other non-treaty sources, international judgments, the work of regional courts and commissions, and national case-law. On this latter note, he considers the South African *AZAPO* case and its distinction of duties to prosecute in internal matters as opposed to in international conflict (a distinction that is itself contested and, increasingly, is becoming archaic). With some exceptions, national judicial practice tends to uphold the constitutionality of amnesties. The 2011 judgments of national courts in Uganda, events that post-date the publication of Freeman's book and to which I return at the conclusion of this review essay, offer yet another set of examples.

Freeman devotes considerable attention to the Rome Statute of the International Criminal Court (ICC), which he emphasizes "does not prohibit, discourage, or encourage amnesties" (75). This is true. That said, in practice, it is clear that ICC officials would view amnesties with considerable skepticism. Presumably, the ICC (as had been the case with the Special Court for Sierra Leone) would have little respect for amnesties, certainly in cases of state parties or situations referred to it by the UN Security Council.[2] At a minimum, activities of international courts and tribunals would contribute to the operational marginalization of the amnesty in the context of leaders most responsible for the commission of extraordinary international crimes, certainly in the case of those suspects who fall within the jurisdiction of those courts and tribunals. It is helpful at this juncture to recall that the Rome Statute textually dispenses with the relevance of official personal immunities (Rome Statute 1998, art. 27).[3]

That said, it may well be that ICC officials would remain agnostic about amnesties as applied to persons other than those persons that they themselves have indicted or in whom they retain an interest in indicting. Hence, as a matter of international law—particularly as applied outside of the jurisdiction of international criminal courts and tribunals—recourse to amnesties is far from impermissible. In a post-conflict society subject to multiple levels of judicialization, an international institution could spite a national amnesty for its targeted

[2] The question whether the ICC would respect amnesties issued by non-parties in situations other than those referred by the Security Council is more contested. Freeman touches on this aspect (79).

[3] This also reflects the position of the Special Court for Sierra Leone. That said, customary international law accords incumbent heads of state personal immunity from prosecution by foreign national courts asserting universal jurisdiction over extraordinary international crimes.

defendants while a national institution, supported in this regard by its international counterpart, could respect a national amnesty for defendants that fell within its remit. Arguably, Uganda is an example of this layering, assuming the three ICC indictees still living—including the now virally infamous Joseph Kony—ever are brought into custody. The ICC Office of the Prosecutor spurns claims that, pursuant to national legislation that had been adopted in Uganda, these three indictees could benefit from an amnesty that would be opposable to ICC proceedings. In short, the ICC is simply not bound by national amnesty determinations. This is not to say that the existence of national amnesties never would inform conversations that might otherwise occur within the framework of deferrals of prosecution, or admissibility, or prosecutorial discretion undertaken in the interests of justice (Rome Statute 1998, arts. 16, 17, and 53). It is, rather, to say that, as a matter of law, in the Ugandan situation the ICC is not under an obligation to respect such amnesties and, in the end, they represent no obstacle to the exercise of the ICC's jurisdiction.

I applaud Freeman's critique of selection bias and the omission of dissident facts in academic or institutional (i.e., UN) writing. I note similar drafting tendencies, for example, in the approach of UN entities when it comes to child soldiers, where policy advocacy may reductively simplify complex data and the experiences of child soldiers that depart from pre-determined narratives. Hence, those child soldiers who articulate their experiences as not fitting the model of faultless passive victimhood become ignored or, even, see their voices overridden since, putatively, they do not know any better because, after all, they are just incapable children (Drumbl 2012). These tendencies ultimately lead to ineffective policy. David Koller also warns of the dangers that inhere when "accuracy in empirical description is sacrificed to advance normative prescriptions," a tendency he views as compatible with "an underlying discourse of progressive development which is at the heart of the dominant narrative of modern international law […]" (Koller 2012, pp. 100, 104).

In the case of amnesties, moreover, a double standard emerges. Whereas states such as Spain encourage other jurisdictions, for example in Latin America, not to pursue amnesties, Spain as it currently stands is the product of official forgetfulness (the so-called Pacto del Olvido) in terms of the abuses of the Civil War and the repressiveness of the subsequent Franco era. This forgetfulness is only recently (and haltingly) unraveling—amid controversy—many decades after the fact.[4] It may well be that officialized forgetfulness facilitated Spain's transition to democracy and rule of law (Slye 2000, p. 107).[5]

Freeman also queries whether the UN disdain regarding the amnesty "imposes an unfair distribution of the burden of compliance on weak states for what is, in fact, a global public good … it is questionable for the international community to insist on extreme risk taking in support of a rule for which it will bear little of the human costs" (97). His point is well-taken. Nonetheless, societies in "weak states" do not necessarily speak with a singular voice. Many constituencies in "weak states" may themselves reject amnesties and, instead, crave criminal judgment even in cases where obtaining such judgment may roil domestic political stability.

[4] Spanish judge Baltasar Garzón reportedly was disbarred on charges that he overstepped his jurisdiction when he began to investigate these alleged abuses; in a fascinating turn of events, human rights lawyers have filed process under universal jurisdiction in Argentina regarding Franco-era crimes (Valente 2012).

[5] Slye specifically notes: "Post-Franco Spain is the best illustration of the assertion that forced amnesia, whether through a formal amnesty or an informal system of impunity, provides a stable peace. Spain responded to the end of the Franco regime not by engaging in inquiries and prosecutions for clear violations that occurred under the dictator but by refusing to even acknowledge that violations occurred" (Slye 2000, p. 107).

When to Grant an Amnesty?

Freeman describes his position as "polemical" (xiii) and anticipates the push-back his work might receive. In an operative sense, however, his proposal is actually quite restrained. Freeman sets a very high bar for the permissibility of amnesty bargains. His qualifications are exigent and his conditions burdensome. In this regard, Freeman's corrective may be more rhetorical than actual. What is more, his challenge to the prevailing *Zeitgeist* is quite defensive.[6] The kinds of amnesties that would survive his requirements appear to be strikingly few in number, frail in mettle, and thin in scope. His requirements aim "to ensure that amnesties pursue a legitimate end, are minimally entrenched in the domestic legal system, confer the minimum amount of leniency on the beneficiaries, impose the maximum conditions on them, and offer the greatest likelihood of being effectively administered" (xv). In the end, we are left with an amnesty in practice that bears no resemblance to the Greek term *amnēstia*—meaning, "to cast into oblivion"—to which it etymologically traces its origin (4). Freeman gingerly frames the debate as:

> [B]etween those who privilege the human dignity and interests of victims of past abuse through opposition to amnesties for serious crimes, and those who privilege the human dignity and interests of victims of verifiable current abuse and inevitable future abuse through tolerance of amnesties for serious crimes in exceptional cases (109).

Only a sliver of space may separate these two positions. In fact, Freeman adheres to the viewpoint that "it should not be seen as automatically a contradiction—in human rights terms—to be simultaneously pro-prosecutions and pro-amnesties" (109).

Freeman further caveats his normative claims by focusing on national criminal proceedings in the afflicted state. He does not challenge the expungement of amnesty by international criminal tribunals in cases where they prosecute the most serious offenders. Nor does he consider the legitimacy of an amnesty before foreign national courts, even in cases of universal jurisdiction (where policy motivations of international comity might lend a further justification to recognizing an amnesty). Nor does he examine the relationship of amnesties to transitional justice modalities other than criminal trials that may be implemented nationally. National civil proceedings, too, are excluded. Fundamentally, then, this book is about preserving amnesties in truly exceptional situations in cases only of national criminal proceedings. In fact, Freeman expressly invokes the availability of all these other forms of justice to legitimize the continued possibility of amnesties from criminal liability in national courts (181).

For Freeman, amnesties can be damaging and, hence, an amnesty "should be adopted only as a last recourse" (xv, 111, 183).[7] Freeman posits that a finding of last recourse hinges upon satisfaction of at least three criteria: existence of a situation urgent and grave enough to merit consideration of a potential amnesty; an exhaustion of any options that might be appropriate (including the use of armed force) to end the urgent and grave human

[6] For example, Freeman describes his design requirements as helping to "limit the harm [amnesties] cause to the international rule of law and victims' rights" (xv). This description falls well short of a forceful justification for the greater good that the necessary evil of the amnesty might yield. He begins his chapter on the design of amnesties with the following: "Accepting the regrettable fact that new amnesties will continue to arise and tend to remain in force years and decades later, this part of the book presents an original amnesty design methodology to help limit the damage that amnesties exact …" (110).

[7] *See also* Freeman at 184 (underscoring the importance of his methodology to "better contain" the "ill effects" of amnesties on the international rule of law and victims' rights).

rights situation that facilitates amnesty blackmail; and third, failing the ability to end the urgent and grave situation, all leniency options, short of amnesty, should be exhausted (111).[8]

Once past the "last recourse" threshold, Freeman's overarching test regarding the merit of any amnesty for human rights crimes is as follows:

> [A]n amnesty generally deserves to be respected or supported if it is crafted in good faith and in a manner than promises to fulfill a state's transitional justice obligations to the greatest extent possible in the particular context while impairing them as little as possible (71).

How to implement this test? Freeman develops six criteria. Drawn directly from Freeman's language (111), these six are:

1. The process for adopting the amnesty should be as consultative and democratic as possible.
2. The amnesty should be entrenched as minimally as possible in the legal system.
3. The amnesty should pursue a legitimate end.
4. The amnesty should confer the minimum leniency possible on the beneficiaries.
5. The amnesty should impose the maximum conditions possible on the beneficiaries.
6. The amnesty should be designed in a manner that is maximally viable in practice, not only in the sense of having a well-designed supervisory structure but also in the sense of being accompanied—where possible—by transitional justice mechanisms and a range of other peacebuilding measures.

Freeman then attaches a dizzying array of subcriteria (which he describes as "design choices") to these general criteria. Elaborating upon these subcriteria occupies a broad swath of the book (122–182). Helpfully, he includes a bullet-point summary in an appendix (Appendix 1, 189–191).[9] Throughout, Freeman peppers his discussion with references to actual amnesty practice in a large number of jurisdictions, thereby grounding his advice in practice and his prescriptions in history.

The first criterion, the legitimate process, is parsed from the appendix discussion, but is elaborated upon earlier. Here Freeman emphasizes consultation of broad sectors—not only elites—and their engaged participation. He praises the usefulness of population surveys and focus group interviews, along with ethnographic studies. Participation by the international community is encouraged. Although consultation does not speak to the legality of an amnesty, it does inform the legitimacy of an amnesty. Once negotiated, an amnesty ought to be democratically adopted and, ideally, reviewed by the judicial sector. Specifically on the question of democratic adoption, however, Freeman shies away from a requirement of a public referendum and even questions the appropriateness of such a

[8] At 112–122, Freeman provides further details regarding what "last recourse" would mean in practice. He particularizes five types of leniency options that are preferable to amnesty: omission of criminal accountability, reduced sentence schemes, alternative sentence schemes, use immunity schemes, and third-country asylum. I remain somewhat perplexed by his suggestion that third-country asylum is preferable to amnesty from a leniency avoidance perspective. To me, third-country asylum conjures up stereotypical images of ex-dictators, living in opulent villas strung along distant sun-kissed beaches, and comfortably ensconced beyond the reach of penal jurisdiction or the tensions—as hauntingly unfurled in Roman Polanski's adaptation of Dorfman's *Death and the Maiden*—in having to coexist with survivors back home.

[9] A second appendix contains selected excerpts from international legal instruments that are germane to amnesties. A third appendix presents sections of three judicial decisions that discuss amnesties (albeit in one case, Prosecutor v. Kondewa [Special Court for Sierra Leone Appeals Chamber], a separate opinion).

measure. His reticence is sensible. In cases where a defined minority of the population was targeted, a majority vote may ensconce an amnesty despite its deep tension with human rights norms. This debate has parallels with naturalism versus positivism conversations about sources of law, concerns about the tyranny of the majority, and the potential benefits of consociational political arrangements. On the other hand, when a state targets most civilians, or does so indiscriminately, then concerns over the divisiveness and exploitative nature of referenda might dissipate—a wrinkle that Freeman recognizes. Requiring the legitimacy of amnesties to hinge on democratic approval is tricky. Would such a requirement intimate that prosecutions and punishment also must be grounded in democratic approval? Independent of normative considerations, as a matter of practice, no international criminal tribunal or court yet has been subject to a popular public plebiscite among persons afflicted by the offensive conduct before being established or becoming operative.

For the second criterion, minimum legal entrenchment, Freeman would have policymakers consult the nature of the legal instrument, whether it is permanent or temporary in character, and the relation between the amnesty and other laws.

As to legitimate end, attention is drawn to the explicit objectives mentioned in the preamble and references to sources of international law.

The fourth criterion, minimum leniency, is informed by reference to five subcriteria: (1) the crimes or acts that are expressly eligible or ineligible for amnesty[10]; (2) the persons who are expressly eligible or ineligible for amnesty[11]; (3) the express legal consequences of the grant of amnesty for the beneficiary[12]; (4) the geographic scope of application; and (5) the temporal scope of application.

The fifth criterion, maximum conditions, looks at the conditions for obtaining amnesty and for retaining amnesty. By conditions for obtaining amnesty, Freeman means a variety of requirements: to submit an individual application; to meet a deadline; of full and accurate disclosure of crimes; of apology; of public hearing; to participate in tradition-based justice process; of restitution and community service; of relocation and supervision; of participation in disarmament, demobilization, and reintegration program; of renunciation of violence; of release of hostages and prisoners of war; and of cooperation with law enforcement authorities. These conditions, which distinguish qualified amnesties from blanket amnesties, are to be as demanding as possible (164). To be sure, these requirements are neither cumulative nor conjunctive. Similarly, Freeman offers subcriteria to inform the meaning of legitimacy in terms of the conditions for retaining amnesty. These are: requirement of nonbreach of amnesty's preconditions, requirement of compliance with prospective prohibitions, requirement of nonrecidivism, and parallel requirement of pledges by the larger group.

[10] Freeman lists the following as further guidelines to inform the understanding of this sub-criterion (so, in a sense, as sub-subcriteria): (1) the distinction between political and ordinary offenses; (2) express exclusion of human rights crimes; (3) express exclusion of crimes motivated by greed; (4) express exclusion of crimes motivated by malice; and (5) express exclusion of selected context-specific crimes.

[11] Sub-subcriteria here are: (1) distinctions according to affiliations and subaffiliations; (2) distinctions according to rank; (3) distinctions according to forms of criminal participation; (4) express exclusion of beneficiaries of prior amnesties; (5) express exclusion of foreign mercenaries; and (6) express exclusion of specific individuals.

[12] Sub-subcriteria here are: (1) immunity of individuals from prospective forms of liability; (2) effect on ongoing investigations, subpoenas, warrants, and trials; (3) effect on prior judgments and sentences; (4) effect on personal records; (5) effect on third parties; and (6) variation in legal consequences depending on crime or rank.

Finally, as to maximum viability, Freeman would have us look to the supervisory board and its mandate, contestation of amnesty decisions by victims, and contestation of amnesty decisions by rejected applicants.

In light of the sheer number of evaluative factors that enter the proposed taxonomy, and their tensions *inter se*, I was left with a lingering sense that, ultimately, the test for overseeing the legitimacy of an amnesty was somewhat overwhelming and, perhaps, even unwieldy. On the other hand, Freeman should be lauded for resisting the allure of reductionist parsimony. After all, amnesties, as with all tools of political transition, are intractably complex. Too much legal scholarship is given over to peddling cure-alls and quick-fixes. Freeman approaches the challenge multi-dimensionally: he moves through the *macro*, wades into the *meso*, and trudges through the *micro*. And, in the end, he abides by the normative conclusion that "even a broad and unconditional amnesty may deserve our support when, but for its adoption, there would be social cataclysm" (181). It may be that such a cataclysmic ticking time-bomb scenario is entirely fictional or fanciful. Still, Freeman is courageous to set out how he would approach it.

When to Junk an Amnesty?

One of the strengths of Freeman's work is that he looks at amnesties longitudinally. In other words, he views them not as frozen at the moment they are granted, but as evolving over time and through time.[13] Circumstances change and may lead to the erosion of an amnesty and the paring down of its impermeability. To some degree, these developments have occurred in South Africa, as well as in Chile, Argentina, and El Salvador.[14] In other places, however, amnesties may prove durable. They may harden and even expand as more time elapses from the initial episodes of massive human rights abuses.

Freeman is open to revisiting an existing amnesty, especially if it is illegitimate and unjust. He would place challenges to such amnesties within a broader rule of law framework and, presumably, equate the erasure of an illegitimate amnesty as consonant with emboldening a culture of rule of law.

One aspect that Freeman underexplores, however, is how rule of law may be bolstered by protecting an amnesty, even potentially one that is illegitimate and unjust. Voiding any existing amnesty, after all, could amount to breaking a promise, changing one's mind, escaping an obligation, and exiting a settled bargain.

Events in Uganda after Freeman published his book offer a case-in-point. In 2008, Uganda established an International Crimes Division in its domestic courts to prosecute rebel Lords' Resistance Army (LRA) fighters. The LRA has been engaged in a two decades-long military conflict with the Ugandan government in the northern regions of the country. The civilian toll has been immense. The LRA is notorious for massive human rights abuses, wide-scale rape, and abduction of child soldiers. Its leader, Joseph Kony, is the subject of global denunciation by virtue of the Kony 2012 campaign. He is wanted by the ICC. The LRA is currently in a severely weakened state and is no longer in Uganda,

[13] "[W]e also should recall that an amnesty's adoption does not represent the definitive end even of domestic prosecution possibilities. It may mark instead the beginning of a long period of amnesty contestation through national courts and legislatures" (182).

[14] The erosion may involve political action or judicial intervention or (as was the case in Chile) an admixture of both.

having relocated—in tatters—to neighboring states. Kony is reputed to be in the Democratic Republic of the Congo.

Colonel Thomas Kwoyelo, who is among the mid- to high-level LRA leadership, was the first person prosecuted domestically before Uganda's International Crimes Division. Kwoyelo had previously been granted an amnesty (pursuant to national legislation—the Amnesty Act—adopted in 2000) in exchange for renouncing violence. In Kwoyelo's case, he was captured in 2010 and subsequently entered a declaration renouncing rebellion (Ajetunmobi 2012). At trial, Kwoyelo raised this amnesty as a defense. The 2000 legislation was intended to resolve the conflict and encourage the reintegration of LRA combatants into their home communities. Over 20,000 rebels have received the amnesty, ranging from leaders to young abducted children. These broad amnesties certainly helped weaken the LRA.

In September 2011, Uganda's Constitutional Court respected Kwoyelo's claimed amnesty and ordered his release. It held that Kwoyelo's equal protection rights were denied when he was prevented from recourse to the amnesty policy since he in fact qualified for amnesty. The Court of Appeals affirmed in November 2011. Kwoyelo, however, remains in custody (Onoro 2011). His file has been referred to the Amnesty Commission. In February 2012, the Director of Public Prosecution declined to grant Kwoyelo a certificate of amnesty on the grounds that no amnesty can be given to someone accused of committing war crimes in contravention of the Geneva Conventions. Litigation and appeals will continue. The situation remains fluid. The Amnesty Act was extended in April 2012 for an additional two years, albeit not all aspects thereof as pertains to the grant of amnesty. As an aside, Kwoyelo had first entered the LRA as a teenage child soldier.[15]

The debate over Kyowelo's amnesty reveals tension within branches of the same state, to wit, Uganda's constitutional imperatives to equal treatment of its citizens, on the one hand, and Uganda's prosecutorial obligations to punish perpetrators of serious international crimes, on the other. Both branches pursue what they believe to be the rule of law. As it currently stands, prosecutions of LRA rebels for war crimes are impossible because of the amnesty. But it remains unclear whether rule of law only can be furthered by voiding the amnesties. Multiple rules of law may co-exist within a post-conflict society. Pursuing rule of law for past injustice may prove incompatible with seeding rule of law for future constitutional order. In fact, reneging on an amnesty previously granted might amount to a rule of law denial and, thereby, imperil constitutional legitimacy. Respecting a painful and unattractive bargain may signal a firm commitment to promise and predictability. In this vein, upholding ugly bargains may prettify a new constitutional order, whereas scuttling them, however appealing, may come to blight constitutional credibility in the long term.

[15] Although Kwoyelo assumed senior status within the LRA, his family turns to the narrative of the helplessness of the child soldier to encourage his release. "His mother […] [said] "'…God knows that Kwoyelo was also snatched from us like other child soldier[s], and deserves forgiveness from everyone, because he did not choose that life, he was forced into it and also it was the Uganda government that let him down.'" (Onoro 2011). A similar narrative has been spun by supporters of Dominic Ongwen, an LRA leader indicted by the ICC, who had initially been forcibly abducted into the LRA at the age of eight. The ICC Office of the Prosecutor is skeptical of the persuasiveness of such argumentation in the case of a person recruited as a child but who commits crimes as an adult. If Ongwen were to surrender and be granted an amnesty domestically in Uganda, this amnesty would have no effect upon the ICC's indictment or ability to prosecute him.

Conclusion

Freeman's accessible and comprehensive book deserves to attract a wide readership of scholars, policy-makers, and citizens concerned with political transition from periods of atrocity. The book is profoundly humanistic in that it recognizes that, at times, pursuing the greater good may hinge upon stomaching some injustice. To be sure, the book can be chided for retreating in its actual model from the initial promise of its reformist agenda. The kinds of amnesties Freeman would actually preserve as legitimate would be scant. Although fearful of legalism, Freeman's suggested reforms themselves are deeply legalistic and would encumber amnesties with a complicated series of bureaucratic tests and sterile standards.

At its core, this book reflects a much-needed departure from tired orthodoxies, a sobering second look at what should not yet be settled, and a detailed and profoundly well-researched missive underscoring the complexity of justice. It is a must read.

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