

H-France Review Vol. 3 (May 2003), No. 58

Stéphane Gacon, *L'Amnistie: De la Commune à la guerre d'Algérie*. Paris: Éditions du Seuil, 2002. 428 pp. Notes; bibliography; index. 25.00 € (pb). ISBN.

Review by John S. Hill, Immaculata University.

Judicial amnesty and pardon both relieve condemnation for crime. In legal theory, amnesty differs from a pardon in being collective (rather than individual), in wiping out the conviction of a crime (rather than just some or all of the penalty attending conviction), and in issuing from the legislature (rather than the executive.) In modern French practice, amnesty both has been limited in scope and much authority has been ceded by the legislature to the executive. Moreover, the legal obligation to forget the crime has clashed increasingly with the moral obligation to remember specific terrible crimes like genocide.

Although Gacon's account is presented chronologically by tracing the question of amnesty in three successive republics, the analysis develops four major themes. First, Gacon notes the recurring conflict between existing and emerging political forces. Thus, the left viewed the Third Republic as repressive when dealing with its enemies on either wing of the political system. Amnesty first served as an acknowledgement of the legitimacy of the socialists, then of the communists. Legitimation of these parties then cleared the way for the acceptance of further social rights. In this struggle the army came to appear as the natural target for demands for reform. The controversies surrounding the army in the Third Republic illustrate the political function of amnesty. Many of the officers had the reputation of being anti-republican and conscription was a broadly unpopular burden on the freedom of the individual. Questions of amnesty served as a weapon in the left's campaign against the military. As the likelihood of revision of the original verdict in the Dreyfus case became apparent to the supporters of the army, they began to make moot the utility of pairing it with a general amnesty for everyone else involved in the case. This would have headed off any searching examination of military misdeeds. First proposed when it appeared that Dreyfus would be acquitted at his retrial at Rennes, it became all the more pressing when he was re-convicted and people began to talk about hauling senior officers before the High Court. Prime Minister René Waldeck-Rousseau preferred to pardon Dreyfus and present a bill to parliament for a general amnesty, rather than suffer through months of tumultuous legal proceedings. Some of the Dreyfusards accepted the reasonableness of this solution. Compassionate for the poor devil sentenced to Devil's Island, and determined to get on with the larger reforms of the army and the congregations, the moderates saw the merits in clearing the path ahead at the expense of rigorous justice.

However, an important segment saw this as a capitulation to the enemies of the republic. For the latter, amnesty could only come after the contested issues had been resolved by a full legal inquiry and judgment by the courts. An amnesty granted merely to avert a fight in the courts would do nothing to resolve the fundamental conflict between the Republic and its opponents. For Zola, for example, granting an early amnesty would demoralize all present and future supporters of republican

government, while a vigorous prosecution would drain the poison of nationalist propaganda. In place of a steadfast defense of the republic against its enemies, the ideological Dreyfusards discerned in the pardon-amnesty of the government a Machiavellian preference for compromise over purity.

The High Court's conviction of Paul Deroulède and his followers for their failed coup d'état further complicated matters, for they were excluded from the amnesty. Already the anti-Dreyfusards had painted the government's amnesty as directed only at its friends, citing the libel case brought against Joseph Reinach by the widow of Colonel Henry. When Deroulède and the others were excluded from the amnesty, Edouard Drumont's *La Libre Parole* castigated it as an "*amnistie juive*." In the end, Deroulède and his followers received both a presidential pardon when the legislature tarried and a broader legislative amnesty granted to the reactionaries and a group of anarchists. Thus, the politics of amnesty encapsulated the diverse forces at work in the early Third Republic as its practical men navigated between the ideologues on either flank.

Another theme is that of the long pendular swings of the political center of gravity between right and left. These swings spurred political repression, on the one hand, and the subsequent re-absorbing of the repressed into the community, on the other. Gacon begins with the pendulum swinging to the left, under the Third Republic. The first great amnesty of the Third Republic was that proposed for the condemned of the Commune. Indeed, under the Third Republic, most of those repressed by it were drawn from the left: Communards and Communists, striking workers and mutinous soldiers. Gacon uses the struggle for an amnesty as a prism through which to observe the struggle between republicans and monarchists, the divisions among the republicans, and the revival of socialism within the Republic. The Radicals, in particular, used the issue as a weapon in appealing for a mass following while attempting to establish the legitimacy of the Third Republic. Gacon sees this as a symbol of the evolution of the Republic toward the left in the days before the Second World War. Since 1945, the amnesties have been granted to people on the right: those who collaborated with the Germans; soldiers and government officials who went beyond the limits of the permissible in the struggle against Algerian nationalism; and those who resisted de Gaulle's abandonment of the French presence in Algeria. Gacon finds it striking that few people were amnestied for acts in support of the National Revolution. His explanation is that, as comparatively few people were prosecuted for this, there were fewer to whom amnesty could be offered. These postwar amnesties testify to a long swing of the pendulum toward the right since the Second World War.

A third theme is the struggle between legislative and executive authority as revealed in debates on initiating, defining, and granting amnesty. Gacon carefully delineates the different types and degrees of amnesty, with each gradation both permitting a nuanced statement about the offense to be forgotten and leaving the ground open for further contests that vitiate the original purpose. In theory, amnesty is voted by parliament, while the executive is restricted to pardons and commutations. In practice, the executive has often taken a role in shaping any amnesty legislation. Between the two world wars, it was the legislature that dominated, as amnesty proposals were constantly debated and amnesty laws constantly refashioned by the legislators. Under the Fifth Republic, the power of the executive has been dominant. In 1962, Charles de Gaulle took the initiative in granting a partial amnesty to those in the forces of order who had committed crimes during the Algerian war. He argued that Algerians who had committed similar excesses were covered by the grant of independence to Algeria and, therefore, his action essentially was symmetrical. It fell to those in the legislature to make the case for amnestying Frenchmen and Algerians in France who had resisted the war by extra-legal means. De Gaulle's strong-minded determination to make clear decisions and his resistance to amending them gave an early sign that the Fifth Republic would have a far stronger executive than did the Fourth Republic. A decade later many Frenchmen would feel that the executive had grown excessively strong, crimping real democracy in the process.

A fourth theme is the changing nature of the crimes for which amnesty was sought or offered. Union organizers and strikers could be accommodated within the republican fraternity once unions and strikes were legalized. The Communist Party could be un-banned and Communist ministers admitted to the government once the important role of the Communist Party in the Resistance had established the patriotic credentials of the PCF. Yet, during the Second World War, the country passed a watershed in the nature of the crimes subject to amnesty. The German massacres, deportations to concentration camps, and genocide—crimes in which some Frenchmen had participated—created the new category of "crimes against humanity." These were crimes with no statute of limitations on prosecution and no forgiveness possible. The existence of such crimes has tended to undermine the legitimacy, hence the utility, of amnesty as a political strategy for renewal.

Gacon sketches a movement toward comparative history with brief passages on amnesty in post-fascist Italy, post-Franco Spain, in Latin America after the abandonment of military governments, and after the fall of the Soviet client regimes in eastern Europe. Unfortunately the discussions are abbreviated in the interests of concision in a text already almost four hundred pages long. Gacon is unable to fully explore the ways in which the amnesties have remained divisive issues in these societies rather than healing time's wounds. For instance, amnesty is sometimes extorted as the price of a withdrawal of the military from politics, rather than willingly granted as a means of overcoming the past. In other cases, the desire for revenge masks itself as the desire for truth and gets the better of the counsels of prudence, as may have been the case with "lustration" in post-Communist Poland and Czechoslovakia.

Finally, some interesting questions are left unexamined. For example, if amnesty serves to reintegrate the repressed into the political community, what forces have brought the French republic to be so prone to expel people in the first place? The German Kaiserreich repressed Catholics and Social Democrats, but later accommodated its victims within the system without having done anything that required an amnesty. The United States amnestied Confederates after an actual civil war, but why has France gone to the verge of civil war (and sometimes over it) more frequently than its sister republic? Surely one much-vaunted virtue of representative government is that it can resolve such crises without merely repressing them. Sixty years ago Anatole de Monzie published a little book at a critical moment for France.^[1] In it, De Monzie argued that French leaders historically had been pulled between the poles of persecution and tolerance. In case after case, from the time of the Regency onward, French statesmen had to choose between pursuing the supposed authors of some national catastrophe and letting the dead bury the dead. He clearly favored the latter policy and would have approved de Gaulle's amnesty in 1962. What sets him apart from Gacon, however, is his location of the key factor in the prudential judgment (or lack of it) of statesmen. Gacon has little to say on this subject, but it deserves further examination. Perhaps Gacon's excellent book will prompt other historians to investigate other aspects of the problem.

This book is based upon wide reading in the secondary literature and printed primary sources such as newspapers and parliamentary debates. Although this makes for dry reading, the author writes clearly and vigorously. Its bibliography provides an excellent starting point for those interested in the scholarship on memory as a historical problem. The book deserves a wide audience.

NOTES

[1] Anatole de Monzie, *La saison des juges* (Paris: Flammarion, 1943).

Immaculata College
JHill@Immaculata.edu

Copyright © 2003 by the Society for French Historical Studies, all rights reserved. The Society for French Historical Studies permits the electronic distribution of individual reviews for nonprofit educational purposes, provided that full and accurate credit is given to the author, the date of publication, and the location of the review on the H-France website. The Society for French Historical Studies reserves the right to withdraw the license for redistribution/republication of individual reviews at any time and for any specific case. Neither bulk redistribution/republication in electronic form of more than five percent of the contents of H-France Review nor re-publication of any amount in print form will be permitted without permission. For any other proposed uses, contact the Editor-in-Chief of H-France. The views posted on H-France Review are not necessarily the views of the Society for French Historical Studies. ISSN 1553-9172