

Defining Amnesty for the Factually Impaired

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Introduction

Reasonable people may disagree about what is the best immigration policy, including what to do about the roughly twelve million [illegal aliens](#) now in the country, but what is indisputably, unambiguously clear is that to allow millions of illegal aliens to remain in the United States in violation of current law is the very definition of amnesty. To argue otherwise is either deliberate obfuscation or profound ignorance. That so many of our elected officials participate in this kind of dissembling or demonstrate such cluelessness should disturb all Americans.

Nothing epitomizes doublespeak more than attempts to deny that allowing illegal aliens currently residing in the United States to remain permanently constitutes amnesty.

The penalties for illegally entering the United States or overstaying a visa are removal from the country and a three- or ten-year bar from applying to reenter, depending on how long an illegal alien has resided in the United States. Those who cross the border without permission may also face criminal charges. Any legislation that waives these penalties is amnesty.

Origin and Meaning

The word “amnesty” comes from the Greek root *amnēstia*, which means “forgetfulness.” It shares the same root as “Mnemosyne,” the name of the Greek goddess of memory. Socrates likened memories to impressions made in soft wax; forgetting is wiping out and erasing those memories as if they never existed.¹ Envisioning memory as Socrates did is helpful to determine how amnesty is applied. A grant of amnesty erases the crime itself, and as a result the punishment associated with that crime is also forgotten.²

While some dictionaries define amnesty by using the word “pardon,” an amnesty is distinguished from a pardon in meaning and application. Pardon comes from the Latin *perdonare*, which means “to forgive,” or to “grant a gift.”³ In the American political system the president has the

¹ Plato, *Theaetetus*, 191d.

² Even if amnesty were granted for immigration violations, the aliens would still be inadmissible as immigrants and illegally present in the United States and unauthorized for work. Only Congress can change that status.

³ Leslie Sebba and Richard S. Frase, *Amnesty and Pardon*, *Encyclopedia of Crime and Justice*, Vol. 1 (2002), <http://www.encyclopedia.com/doc/1G2-3403000020.html>, accessed October 7, 2014.

executive power to grant a pardon, which expunges or commutes the specific punishment imposed on an individual for a specific crime. The main difference between a pardon and an amnesty is who has the power to grant it. Pardon power is granted to the president by the Constitution, and most state constitutions grant some form of pardon power to governors. The authority to grant an amnesty is not explicitly referenced in the Constitution but it exists as part of the legislative function. While Congress cannot pass retroactive laws in order to punish someone for a past act, it can pass laws that wipe away the punishment for a past crime.

How Dictionaries Define “Amnesty”

Black’s Law | A pardon extended by the government to a group or class of persons, usu[ally] for a political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted <the 1986 Immigration Reform and Control Act provided amnesty for undocumented aliens already present in the county>. Unlike an ordinary pardon, amnesty is usu[ally] addressed to crimes against state sovereignty — that is, to political offenses with respect to which forgiveness is deemed more expedient for the public welfare than prosecution and punishment. Amnesty is usu[ally] general, addressed to classes or even communities. Also termed general pardon.

Cambridge | A decision by a government to forgive people who have committed particular illegal acts or crimes, and not to punish them.

Collins | A pardon, esp. for political offenses against a government; a deliberate overlooking, as of an offense.

Macmillan | A situation in which a government agrees not to punish, or to no longer punish, people who have committed a particular crime.

Merriam-Webster | The act of an authority (as a government) by which pardon is granted to a large group of individuals.

Oxford | An official pardon for people who have been convicted of political offenses; an undertaking by the authorities to take no action against specified offenses or offenders during a fixed period.) by which pardon is granted to a large group of individuals.

In other words, an amnesty is a categorical pardon that applies to a group of people who fit into a set of defined legal parameters, and it removes the prescribed penalty for the commission of an unlawful act. A pardon does the forgiving but not necessarily the forgetting of the crime. An amnesty forgets the crime *ex post facto*, as well as the concatenate punishment. Amnesties have historically been granted after a political, economic, or military upheaval, such as the establishment of a new regime.

In recent times, “truth commissions” have been set up, such as in El Salvador following civil war, or in South Africa after the apartheid regime there was abolished. In both cases, amnesty was offered to many of those who had committed crimes or acts of violence prior to the establishment of these truth commissions. In the United States, amnesty was extended to most

former Confederates during Reconstruction, allowing them to vote and hold public office, which was previously denied to them by Congress in 1866.⁴

Tax amnesties, including one that allowed almost 15,000 U.S. taxpayers with hidden offshore accounts to come forward without having to pay steep IRS fines and risk criminal charges, are common.⁵ In particular, tax amnesties provide an interesting contrast to immigration amnesties. Under a tax amnesty, the Internal Revenue Service waives the penalties for not having paid the taxes one was supposed to, but the amnesty recipient is still required to comply with the law he broke and pay whatever taxes he should have paid in the first place. In an immigration amnesty, the violator may pay a small penalty but is exempted from compliance with the original law that he violated.

For Pro-Amnesty Politicians, There Is No Such Thing as Amnesty

In 1984, President Ronald Reagan said, “I believe in the idea of amnesty for those who have put down roots and who have lived here even though some time back they may have entered illegally.”⁶ Two years later, he signed the [Immigration Reform and Control Act \(IRCA\)](#) that granted a mass amnesty to illegal aliens, a process that was rife with fraud.⁷ This amnesty was enacted with the corresponding promise that the U.S. border with Mexico would be secured and that interior enforcement would be stringent. However, members of Congress like Chuck Schumer and John McCain prevented any real action to combat illegal immigration or unauthorized hiring by employers, while political advocacy groups like La Raza and the ACLU worked diligently to undermine enforcement efforts.

Is Illegal Immigration a Crime?

An alien who overstays a visa is an illegal alien who has committed a civil offense. An alien who crosses the U.S. border without permission is an illegal alien who has committed a criminal offense. It is true that most violations of immigration law are dealt with in a civil court and not in a criminal court, and an immigration judge is an administrative adjudicator who has authority under the Department of Justice’s Executive Office for Immigration Review to determine whether or not an individual is deportable under U.S. law. This procedure for handling immigration cases is designed to speed up the process of deportation; it should not be interpreted as an indication that illegal immigration is not a criminal violation. Because illegal aliens are not U.S. citizens, they are not entitled to the full panoply of rights and privileges under the Constitution, as are citizens. Thus, they can be held subject to a non-judicial ruling instead of a jury trial for their criminal violation of immigration law. By putting most illegal aliens through a civil proceeding, the federal government can expedite their removal from the United States.

See, Eric A. Ruark. “[Use of the Term ‘Illegal Alien’](#).” In Gans, J., et. al., eds. *Debates on U.S. Immigration*. Los Angeles: Sage Publications, 2012.

⁴ James A. Rawley, “The General Amnesty Act of 1872: A Note,” *The Mississippi Valley Historical Review* vol. 47, no. 3 (Dec. 1960): 480.

⁵ Lynnley Browning, “14,700 Disclosed Offshore Accounts,” *The New York Times*, November 17, 2009, http://www.nytimes.com/2009/11/18/business/global/18irs.html?_r=0, accessed September 18, 2014.

⁶ “A Reagan Legacy: Amnesty for Illegal Immigrants,” NPR, July 4, 2010, <http://www.npr.org/templates/story/story.php?storyId=128303672>, accessed September 23, 2014.

⁷ David North, “Before Considering Another Amnesty, Look at IRCA’s Lessons,” *Backgrounder*, Center for Immigration Studies, January 2013 (<http://www.cis.org/before-considering-another-amnesty-look-at-ircas-lessons>).

Today, with the failure of the 1986 amnesty glaringly obvious, politicians—including Schumer and McCain—who want to legalize illegal aliens, are loath to speak openly and honestly about the immigration policies they support, so they define amnesty in a narrow way in order to declare that they actually oppose it.

It's Not Amnesty Because We Say It Isn't

"I am not for amnesty. I am for replacing the illegal immigration system with a legal immigration system."

—REP. LUIS GUTIERREZ (D-ILL.)
JUNE 15, 2014

The main strategy of pro-amnesty activists seems to be to repeatedly insist that legalization is not amnesty. While this may be an unsophisticated technique, many traditional media outlets have uncritically accepted this argument, in lieu of accurate reporting. But denying that amnesty is really amnesty does not

change the facts, and is akin to saying, "I haven't robbed anyone; I only appropriated other people's property without their consent."

When faced with the actual definition of amnesty, pro-amnesty politicians simply deny the obvious. While automatic gainsaying may form the basis of a classic [Monty Python skit](#), it does not convince voters, which is why there has been an aggressive campaign by amnesty advocates to hide the true content of amnesty proposals by co-opting the term "comprehensive immigration reform," and coming up with euphemisms such as "pathway to citizenship," "earned legalization," and "getting right with the law."

Conditional Amnesty Is Not Amnesty, It's "Earned Legalization"

In order to confuse the issue, and erroneously argue that superficial distinctions make a profound difference, amnesty advocates claim that any condition placed on an amnesty negates the amnesty.

"Earned legalization is not amnesty... Amnesty is wiping the slate clean and not paying any penalty for having done something wrong."

—REP. PAUL RYAN (R-WIS.)
JUNE 12, 2013

Recent immigration "reform" bills have put numerous conditions on the amnesty, albeit very lenient ones that the Department of Homeland Security secretary has the discretion to waive. The American Immigration Lawyers Association adopts this tactic in its "[Earned Legalization Is Not an Amnesty](#)" talking points, which indicate that, "Amnesty, by definition, is an automatic pardon, or free pass, granted to a group of individuals without any consideration in return for the amnesty." This is a categorically false statement and is contradicted by AILA's own example of amnesty, IRCA. Despite AILA's characterizations to the contrary, IRCA placed conditions on individuals before granting them amnesty: they had to come forward and admit to being illegal aliens, prove they had lived in the United States for at least a year, pay fees, register for the draft, and were barred from receiving public assistance for five years. These were some of the same conditions that were in the amnesty legislation passed by the Senate in 2013.

This tactic, building on the false distinction between an “earned” legalization and amnesty, pretends that amnesty can only be a process that is automatic, easy to access, and grant a free pass. In reality, historical examples of amnesties have been time-consuming and, in at least the legislative language, required strict adherence to a set of conditions.⁸ An amnesty with conditions attached to it is a conditional amnesty, not “earned legalization.”

Limited Amnesty Is Not Amnesty, Especially if It’s “Temporary”

Some amnesties are total, meaning that there is no penalty for an unlawful act. Many amnesties are limited, or temporary, leaving some penalties intact, substituting another penalty, or expiring after a period of time. By describing a proposed amnesty to the existing law as a “sensible solution,” advocates seek to shift attention away from the original infraction. An amnesty can entail a limited change to an existing immigration law, and it may be temporary, but it remains amnesty.

To give an example, President Obama’s characterization of the Deferred Action for Childhood Arrivals program attempted to refute the amnesty characterization by claiming it was only a temporary measure that did not immunize recipients from future prosecution:

“Now, let’s be clear—this is not amnesty, this is not immunity. This is not a path to citizenship. It’s not a permanent fix. This is a temporary stopgap measure that lets us focus our resources wisely while giving a degree of relief and hope to talented, driven, patriotic young people.”⁹

While the president’s unilateral action stopped short of allowing DACA recipients to seek citizenship to stay and work in the United States permanently, it still changed enforcement of existing law by executive action, raising serious constitutional issues. DACA immunizes these individuals from prosecution for immigration crimes while it remains in effect. The [renewal of the DACA program](#) in 2014 also raises the question whether this program was, in fact, temporary, as was alleged at its inception.¹⁰ Having been implemented by executive fiat, it could be indefinitely extended. Beyond the misrepresentation of what this executive action actually does, the political defense is much more dangerous because it assumes that the president can assume the constitutional prerogative of the legislature and grant amnesty to illegal aliens in contravention of established immigration law.

⁸ Examples are the Nicaraguan Adjustment and Central American Relief Act of 1997, Haitian Refugee Immigration Fairness Act of 1998, and the Legal Immigration Family Equity Act of 2000.

⁹ Remarks by the President on Immigration, Press Release, White House, June 15, 2012, <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration>, accessed September 23, 2014.

¹⁰ FAIR Legislative Update, Obama Administration Announces DACA Renewal Process, June 11, 2014, <http://www.fairus.org/legislative-updates/legislative-update-6-11-2014#2>, accessed September 23, 2014.

The Myth of the De Facto Amnesty

The twisted logic here appears to be that so-called de facto amnesty should become de jure because the failure of the executive to enforce the law necessitates changing the law to accommodate lawlessness. In reality, the present situation, while far from ideal, means that as long as a general amnesty is not implemented, those who are in the United States illegally can be removed from the country, and many would leave on their own initiative if the president were to

“They’re not going home. And so why don’t we give them a path to citizenship. There are not enough buses to deport them. It’s de facto amnesty.”

—SENATOR JOHN MCCAIN (R-ARIZ.)
APRIL 23, 2014

enforce the law as written. The failure of President Obama, and previous presidents, to enforce the law is willful neglect and an abuse of power, but it is not amnesty.

Substituting a lesser penalty, such as requiring an illegal to pay a fine to become a legal resident

instead of removing that illegal alien from the United States, as the law currently requires, is amnesty. However, many politicians who have asserted that it’s better to be realistic since they are “already here,” support legislative actions that grant more than just amnesty; they seek to reward those who have broken the law. Instead of de facto amnesty, they seek “amnesty plus,” in the words of Kansas Secretary of State [Kris Kobach](#). On April 22, 2013, Kobach testified before the Senate Judiciary Committee that:

Declining to remove an unlawfully present alien is actually amnesty-plus because you’re giving, if you will—if you liken it to theft—you’re giving the person what he has taken, namely presence in the United States. He’s taken it unlawfully, so you’re not only declining to punish, you’re allowing the person to have what he’s taken. You could, in theory, define amnesty as not prosecuting, but this is more than just not prosecuting; this is not prosecuting and allowing the person to keep what he has unlawfully taken.¹¹

In other words, a border crosser is amnestied by forgetting the offense of illegal entry. To also give the very thing that amnestied person sought to obtain (legal residence) is an additional benefit, or so-called “amnesty plus.” There is also the forgiveness of a host of other crimes, such as identity fraud or theft, failure to pay income taxes or filing a false tax return, driving without a license or insurance, etc., etc. When viewed this way, the argument that legalization would be a burden for illegal aliens is laughable.

Conclusion

If one supports amnesty, why not argue the case on its merits? Even those who disagree will respect those who engage in an honest debate. The reason amnesty advocates avoid a

¹¹ Kris Kobach, Testimony, U.S. Senate Committee on the Judiciary, The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, 113th Congress, Apr. 22, 2013, <http://www.judiciary.senate.gov/meetings/updated-the-border-security-economic-opportunity-and-immigration-modernization-act-s744>, accessed September 24, 2014.

straightforward debate is because they know they cannot win on the facts or merits of their arguments.

Here are the facts:

- Amnesty occurs when an illegal alien subject to removal is spared from removal and has the three or ten-year bar from applying for reentry waived.
- Amnesty is a legislative act that removes in part or in toto the penalty for the violation of the law.
- While administrative amnesties do occur, under the parameters of the U.S. Constitution, only Congress can grant amnesty.
- Amnesty does not exclude partial amnesties in favor of only total amnesties.
- Amnesty should not be narrowly defined in a way that describes it as having no conditions, nor should it suggest that the process be easy or automatic.
- Labeling the status quo as amnesty does not make legislation that grants legal status to millions of illegal aliens—with or without a prescribed “pathway to citizenship”—any less of an amnesty.