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Matthew S. Weinert on Truth Commissions and Procedural Fairness by Mark Freeman. Cambridge: Cambridge University Press, 2006. 400pp.

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Abstract

A review of:

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Keywords

Truth commissions, Democracy, Conflict transition, Transitional justice

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Truth Commissions and Procedural Fairness by Mark Freeman. Cambridge: Cambridge University Press, 2006. 400pp.

Despite the increasing employment of truth commissions as a means to help societies transition from war to peace, or from authoritarian rule to democracy—Mark Freeman lists 28 since 1982, 25 of which have been created since 1990—to date no legal text has systematically treated this phenomena, the mandates of which have authorized investigation, the issuing of reparations, the promotion of reconciliation, and even identification of perpetrators for eventual criminal prosecution. Truth Commissions and Procedural Fairness fills that void. No doubt the book's appearance will mark the beginning of a substantive and sustained dialogue on the efficacy and functioning of truth commissions as an internationally accepted mechanism of transitional justice.

This exceedingly well-written and engaging book begins with a cautionary note: Freeman's work is not an historical accounting of various truth commissions, though he deftly employs actual evidence to illustrate important technical matters. He does not consider all aspects of a truth commission's mandate or operation, especially considering the fact that no two truth commissions (or two political contexts) have ever been identical. Also, Freeman omits more controversial and atypical aspects of some recent truth commission mandates such as the truth-for-amnesty authority of the South African Truth and Reconciliation Commission, East Timor's assignation of community service to perpetrators of abuses, and even the compensation-granting powers of the Moroccan Commission (xv)—this is because, as he notes, he is concerned precisely with the non-adjudicative aspects, the groundwork, as it were, of truth commissions.

Despite his meticulous accounting of the book's omissions, Truth Commissions and Procedural Fairness is emphatically not a book of limited appeal to lawyers, human rights activists, or legislators and other government officials interested in establishing a truth commission. Rather, the book seeks to engage the widest possible audience by issuing recommendations that aim to ensure individuals who come before truth commissions of the procedural fairness standards that will be upheld. The book thus acts neither as the definitive statement on truth commissions, nor a blueprint for a proverbially ideal truth commission. Importantly, the volume serves as a starting point for dialogue. Freeman anticipates his book to serve as "a practical reference tool" for all concerned with the important work of truth commissions in generating conditions of peace, stability, order, and justice in post-conflict situations (xvi).

To this end, Part I treats the broader themes of transitional justice and truth commissions (the subjects of chapter 1) and procedural fairness (chapter 2). Here, Freeman demonstrates considerable intellectual prowess and remarkable ability to synthesize, literally, tens of thousands of pages of primary and secondary source material. The first chapter's footnotes alone number 382, which document an array of sources from United Nations Security Council resolutions, to specific cases from domestic courts and international and mixed tribunals, to various truth commission mandates. Mindful that there is no universally applicable theory of fairness, Chapter 2 concentrates on specific principles that guide truth commissions (including, among others, independence, impartiality, accountability, transparency, accessibility, and nondiscrimination) and competing procedural objectives (including efficiency, flexibility, victim-centeredness, accuracy, and comprehensiveness) within the constraints of time, human and financial resources, excessive caseloads, and security concerns.

This discussion grounds much of the more technical, though highly readable and absorbing, work in Part II, the individual chapters of which concern specific areas in which individuals may be guaranteed internationally recognized standards of procedural fairness. These include: the act of statement taking; subpoena power; search and seizure powers; public hearings; and the publication of findings of individual responsibility in a final report. Each section of each chapter in Part II concludes with a series of recommendations based on the past performances of truth commissions, all of which are recounted in the final chapter. For example, with regards to enforcement of subpoena powers, Freeman recommends that, as with the case of the South African Truth and Reconciliation Commission, a truth commission's mandate should "make it an offense to fail to comply with a subpoena without a reasonable excuse, to deliberately distort or conceal relevant information, or to commit perjury" (201). *Prima facie*, while this recommendation may seem indisputable, some in transitional societies may judge such a principle to potentially inflame passions and therefore may limit enforcement powers of truth commissions or, possibly worse, grant blanket amnesty in exchange for the truth.

Given a work of this sort, the reader is struck by the refreshing absence of any tone of moralizing self-righteousness. Freeman lays bare his recommendations mindful that they may and will be revised according to the contingencies of the situation, yet never budes on matters of principle: that for truth commissions to be recognized as fully legitimate responses to post-conflict, post-abusive situations, individuals must be assured the most fundamental standards of fairness recognized by international human rights law and many domestic legal systems.

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