Book Review

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NECESSARY EVILS
Amnesties and the Search for Justice
Mark Freeman

MARK FREEMAN, NECESSARY EVILS: AMNESTIES AND THE SEARCH FOR JUSTICE (CAMBRIDGE UNIV. PRESS 2009)

The debate over amnesties tends to raise ambivalent feelings as to their place in the promotion of human rights. While not all amnesties directly challenge notions of justice, most raise serious questions regarding the best way to promote peace for a country in conflict. Proponents of amnesties often point to the South African Truth and Reconciliation Commission as a measure of the extent to which amnesties can prevent further bloodshed and engender a legal environment for national healing. In contrast, critics can choose from any number of coerced, self-serving, or unpopular amnesties to illustrate their role in promoting impunity and preventing international justice.

Necessary Evils: Amnesties and the Search for Justice takes a careful look at the balancing of peace and justice in the granting of amnesties. Divided into three parts, the book begins with an overview of historical and modern perspectives of international law on the function of amnesties as a tool to promote, or undermine, peace and justice; part two introduces the framework within which modern amnesties should be constructed and considered; the book ends with a brief survey of legal options available to challenge unwanted amnesties. The author, Mark Freeman, is the Director of External Relations with the International Crisis Group and has written extensively on legal approaches to international human rights. In addressing this topic, Freeman discusses prior amnesties, current trends in the granting of amnesties, and several alternative approaches in how to implement amnesties.

Freeman opens with “The Debate on Amnesties,” in which he quickly rejects other textbook definitions of “amnesty,” and proposes his own:

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 offences irrespective of whether the person concerned have been tried for such offences in a court of law.¹

To support this definition, Freeman comprehensively surveys the debate over the legality and modern role of amnesties, including opinions from the International Court of Justice (ICJ), UN studies, and academics. He also introduces other legal remedies available to the surrendering party during conflict resolution, such as pardons or exile. Freeman then evaluates the approach to amnesties by international bodies such as the International Criminal Court (ICC) and the ICJ. These bodies, he explains, outright reject amnesties that are granted for violations of jus cogens norms such as genocide, crimes against humanity, and torture. Yet, using the example of the role of ICC indictments of leaders of the Lord’s Resistance Army in the dissolution of the Ugandan peace talks, Freeman stipulates that unequivocal rejection of amnesty options may lead to further conflict and undermine peace negotiations. Ultimately, says Freeman, in order to advocate for its people, a state must be permitted, on a case-by-case basis, to grant amnesties so long as they are carefully constructed to “extend the minimum leniency possible, while imposing the maximum accountability on the beneficiaries.”²

Freeman details how to balance these goals in “The Design of Amnesties,” in which he carefully sets out and explores the parameters for the creation of such a viable amnesty. These parameters include legitimate process, minimum legal entrenchment, legitimate ends, minimum leniency, maximum conditions, and maximum viability. Legitimate process requires a legal and democratic approach that includes the people of the country in which the amnesty will be implemented, through means such as a survey of public opinion for or against the grant of absolute amnesties, and other possible alternatives to traditional punishment methods. Freeman advocates keeping the amnesty as non-legally binding as possible, explaining that while some governments have opted to make amnesties part of their constitutions, those that have sought the minimum legal entrenchment — by executive order, for example — have been able to reassess the continued grant of amnesty at a later date. Legitimate ends for an amnesty include reconciliation, conflict prevention, or the furthering of democratic principles; in other words the “stated aim of the amnesty [should] genuinely match the reality on the ground.”³ This is especially important for an amnesty to be a credible means of promoting peace and justice rather than a tool of impunity, maintaining peace at the expense of justice.

Crucial to addressing the concerns of critics, the principle of minimum leniency means cutting out as many concessions as possible by not including prior amnesties, specifying the groups covered, and providing strict beginning and end dates for both the amnesty application period and the period in which the amnesties occurred. Maximum conditions correlate directly to minimum leniency and include requiring applications for amnesty, participation in truth and reconciliation commissions, full disclosure of all acts prior to the amnesty grant, or even revocations for any acts of recidivism. Finally, Freeman discusses how...
to achieve maximum viability by including DDR (disarmament, demobilization, and reintegration), job training, relocation, “focused amnesties” (extremely limited amnesties for specific events that occurred during a conflict), and in extreme cases, asylum-based exile. While some of the limits proposed by Freeman appear obvious, many existing amnesties do not adhere to these parameters.

“Final Considerations: on the Perennial Contestation of Amnesties” is a quick look at states’ attempts to challenge unwanted amnesties. In some cases, where there has been little legal entrenchment and there is a strong will to do so, states are able to legislatively repeal prior amnesties. Freeman advocates this approach, even while acknowledging the low chance of actually overcoming unprincipled amnesties. He indicates that, even if these amnesties cannot be subsequently rejected via legal or political process, the attempt may help bring greater awareness of prior violations, open new dialogue regarding the offences, and invigorate victims’ associations.

Freeman is an engaging writer who, while clearly an advocate for amnesties, provides a holistic analysis of current amnesty trends. He carefully constructs a book that links the academic insights to thorough and insightful application. Yet, despite mentioning the international consensus that rejects amnesties for violations of jus cogens norms, Freeman neglects to seriously consider how amnesty trends will evolve in international and domestic law, and the challenges this evolution will pose to the goal of peace and the desire for justice. While this is an important read for anyone interested in the peace and justice debate, Freeman leaves the reader with more questions than answers regarding the future use of amnesties.

Anna Maitland, a J.D. candidate at the American University Washington College of Law and an Articles Editor for the Human Rights Brief, reviewed Necessary Evils: Amnesties and the Search for Justice.

Shadi Mokhtari, After Abu Ghraib: Exploring Human Rights in America and the Middle East (Cambridge Univ. Press 2009)

The brutalities committed at Abu Ghraib prison are inseparable from U.S. involvement in the Middle East. Images of a man wearing a black hood with electric wires attached to his hands are more easily recalled in the Middle East than the atrocities committed by Saddam Hussein. Despite Abu Ghraib’s notorious memorialization, the U.S. government and American NGOs continue to use human rights rhetoric to justify questionable attitudes and policies towards the Middle East.

In After Abu Ghraib: Exploring Human Rights in America and the Middle East, Shadi Mokhtari discusses the role of human rights in the aftermath of the Iraq War. Using interviews with NGOs and analyzing rhetoric used by leaders in the United States, Jordan, and Yemen, Mokhtari draws conclusions about the evolving nature of human rights discourse and recommends that NGOs use human rights rhetoric more effectively to create actual change. First, Mokhtari studies current American human rights discourse and NGO advocacy responses to the abuses at Abu Ghraib. Then, Mokhtari describes Middle Eastern governmental and NGO responses to U.S. involvement in the region. Finally, Mokhtari concludes by analyzing actual policy shifts in both the U.S. and the Middle East.

Mokhtari begins by discussing U.S. manipulation of human rights rhetoric and legal language to serve the Bush administration’s agenda. By employing human rights rhetoric and misdirected legal arguments, the U.S. attempted to legitimize its actions in Iraq and Guantánamo. U.S. leaders justified the Iraq invasion with a human rights-based narrative that they were saving Iraqis from Saddam Hussein. The infamous torture memos justified unlawful detention and torture, arguing that potential terrorists did not qualify for protections under either international or domestic law. Furthermore, Mokhtari analyzes the U.S. self-image as an exception to the United States managed to advance its ultimate agenda of keeping institutions such as the prison at Guantánamo semi-legal.

The abuses at Abu Ghraib occurred at a critical moment in the midst of this rhetorical campaign and challenged prior U.S. justifications. In the book’s first section, Mokhtari cites the campaign against Alberto Gonzales’s confirmation as Attorney General and the passage of the McCain Anti-Torture Amendment as examples of the post-Abu Ghraib backlash against American exceptionalism. While Mokhtari acknowledges the impact of these two events, she also criticizes the human rights movement for its narrow-minded agenda. NGOs did not use the momentum of their campaign to look inward and condemn human rights abuses occurring at home, but rather, in the same way as the government, often employed American exceptionalism by refusing to deal with domestic human rights violations.

Mokhtari’s assessment of U.S. domestic human rights agendas is most enlightening because not much has changed since the end of the Bush administration. Mokhtari refers several times to broadening human rights rhetoric and refocusing U.S. action to comply with international standards under President Obama, reflecting the hope of the era. More telling, however, is the fact that, over a year into the Obama administration, the prison at Guantánamo continues to exist in legal limbo while the NGO movement has not changed its attitude or approach to ensuring accountability against torture. Mokhtari’s optimism about the future reflects the way American NGOs grasp a hopeful, but seemingly empty promise for the future, while continuing to push against the same policy stalemate.
Mokhtari spends the remainder of the book analyzing responses from the Middle East to the abuses at Abu Ghraib and U.S. human rights rhetoric. In summary, the abuses at Abu Ghraib both mobilized and stagnated human rights work in the Middle East. Middle East-based NGOs felt emboldened by the human rights violations and started attacking the United States more vigorously. Furthermore, in light of changes in the U.S. approach, Middle Eastern governments expanded their human rights rhetoric and increased opportunities for NGOs to operate. At the same time, the abuses at Abu Ghraib also caused NGOs and governments in the Middle East to distance themselves from the United States, including refusing U.S. funding for NGOs. Middle Eastern governments used this opportunity to create human rights ministries that were mere façades and used the U.S. Patriot Act as a basis to pass their own restrictive laws in the name of battling terrorism. However, Mokhtari insists that, despite the failures in the Middle Eastern human rights agenda, the abuses at Abu Ghraib ultimately advanced human rights NGOs dialogue, which outweighed any repercussions.

Though Mokhtari insists that Abu Ghraib changed the human rights landscape, much of what she writes or neglects to write still contradicts that assertion. While the abuses at Abu Ghraib certainly increased criticism of the United States, Mokhtari does not fully address its impact on human rights in the Middle East. She does note that Middle East-based newspapers cited domestic incidents of torture, but besides the publication of some subtly critical articles, she provides little substance to support the argument that human rights in the region have actually improved. Though NGOs operate with greater freedom, it is unclear if this freedom has any meaningful effects on government policy. Additionally, in her section on the United States, Mokhtari addresses domestic NGOs’ use of Abu Ghraib to bring attention back to human rights violations in the United States, such as the use of Taser weapons, or the United States’ unwillingness to subscribe to international human rights mechanisms. However, in this section, Mokhtari does not cite any tangible changes as a consequence of changed rhetoric; perhaps because there have been none.

Mokhtari concludes by proposing recommendations for the human rights agenda. Ultimately, Mokhtari recommends that American NGOs move away from using a language of hegemony highlighting the U.S. dominance in world affairs to justify its human rights interventions. Otherwise American NGOs become like the U.S. government by using empty rhetoric to justify narrow goals. Finally, she emphasizes the relationship between power and human rights, reflecting the theme of the book and the real questions it raises: what role, if any, should the United States have in promoting international human rights and should it be subject to the standards it claims to promote?

Soumya Venkatesh, a J.D. candidate at the American University Washington College of Law and an Articles Editor for the Human Rights Brief, reviewed After Abu Ghraib: Exploring Human Rights in America and the Middle East.

ENDNOTES: Book Reviews

1 Mark Freeman, Necessary Evils: Amnesties and the Search for Justice 13 (Cambridge Univ. Press 2009).
2 Id. at 13.
3 Id. at 127.
4 Shadi Mokhtari, After Abu Ghraib: Exploring Human Rights in America and the Middle East (Cambridge Univ. Press 2009)