Book Reviews

Governing Refugees: Justice, Order and Legal Pluralism

Kirsten McConnachie
Abingdon, UK: Routledge, 2014, pp. 200

In some ways the most important feature of Kirsten McConnachie's *Governing Refugees: Justice, Order and Legal Pluralism* is the author's manifest commitment to contextualizing refugees' experience of encampment from within their own perspective, ensuring that their voices are not only heard but dominate the discussion. By resisting the marginalization of refugee voices that is all too common in humanitarian discourse, the author highlights the agency that refugees can and do exercise and their resilience under even the most difficult conditions, and she also shows how these assets have enabled refugee communities to adapt and cope with exile. In this way, *Governing Refugees* adds to the growing body of scholarship promoting refugee-centred humanitarian policy based on refugee participation, community-based approaches, and an emphasis on fostering self-reliance that recognizes refugee camps as locations of potential social and economic development and transformation.

In contrast to a traditional bias in favour of a predominantly economic understanding of self-reliance, Governing Refugees addresses head-on the much overlooked issues of governance and justice within refugee camps, which are becoming ever more important in a world where the incidence of long-term encampment is increasing. Drawing on extensive fieldwork in Thailand with Burmese refugees from the Karen ethnic group, McConnachie offers readers a detailed, insightful examination of how order is produced and law created and implemented within the confines of the Karen refugee camps. Authority, or sub-national sovereignty, it is shown, is not neatly devolved from the host-state to a single power-holder but is instead a negotiated, "pluralistic and networked web of legal and political relationships" that extend beyond the camp's borders (3). These relationships in turn are influenced by and are the product of numerous interrelated factors ranging from the historical context and cultural traditions of the community, to the political structures existing in the host state and the state of origin, and the specific interactions between refugees, state authorities, and humanitarian actors.

Written essentially as an expansive socio-legal and anthropological case study of the situation of the Karen refugee camps in Thailand, Governing Refugees challenges the conventional understanding of the refugee camp as an anomic site of disorder and chaos and as a purely humanitarian and thus apolitical construct. Instead, the Karen refugee camps are revealed to be home to a highly political, culturally self-conscious and organized community with distinct norms, governance structures, and vibrant civil society where the administration of justice and governance both strive towards the same objective: the maintenance of order and social harmony. This emphasis on order and harmony is particularly important, as it underpins both Karen "law" (broadly understood) and morality and consequently influences not only the structure of Karen society within the camp but also how that society interacts with external forces such as humanitarian actors and the host state. As McConnachie explains, more than merely desirable objectives, the emphasis on maintaining order and harmony must be understood as arising from the cultural norms of "Karenness": honesty, peacefulness, and conflict avoidance (63). Thus preferences that might initially be perceived as representing moral positions are in fact revealed to be critical elements in the construction of a Karen ethno-nationalist identity and thus to have inherently political implications.

Throughout *Governing Refugees*, a dominant theme is indeed the way in which diverse influences combine to give form to different layers and types of authority in a refugee camp, which in turn overlap and intersect, on occasion

© Author(s), 2014. This open-access work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

Cette oeuvre en libre accès fait l'object d'une licence Creative Commons Attribution-NonCommercial 4.0 International.

strengthening each other but equally often undermining one another and creating confusion. A small sample of the specific influences discussed includes the colonial history of Burma, Christian and animist practices, the longstanding ethnic conflict between the Karen and the dominant Burman ethnic group, the authority of the Karen National Union, the unsettled relationship between UNHCR and the Royal Thai Government, the equally tumultuous relationship between the refugee community and humanitarian actors, international human rights norms, and recent resettlement initiatives. One particular example scrutinized in depth is the interaction between refugee justice systems and justice initiatives spearheaded by humanitarian organizations. This discussion of justice mechanisms exposes the substantial inconsistencies that characterize current refugee assistance initiatives, specifically the tensions between providing assistance and respecting the agency of refugees, between the influence of external norms and the importance of tradition and identity, and between charity and rights. By exploring the way in which the administration of justice is conceived and manifested within the camp, McConnachie provides the reader with insight into how refugees employ a combination of resistance, adaptation, and instrumentalization to negotiate this unstable terrain.

Interestingly, *Governing Refugees*' particular strengths are also what potentially opens it up to some minor criticism. On occasion, McConnachie's insistence on ensuring that the voices of the refugees themselves are given centre stage leaves the analysis feeling slightly unbalanced. While the perspectives of the Karen refugees are given a comprehensive analysis and relatively uncritical acceptance,[1] contrasting opinions from UNHCR and non-governmental organizations are often rejected out of hand. This is not meant to suggest that the author's conclusions are not correct; indeed, she has months of fieldwork to support her positions. Moreover, it is very true that we are often only too willing to view NGOs and international assistance as a panacea, when in fact the power dynamics of external intervention are inherently problematic.[2] Nevertheless, although it does nothing to undermine the important contribution being made by this book, some readers may feel that the author's apparent bias in favour of the refugee perspective detracts from her arguments at points.

A central feature of this book is its emphasis on the refugee community as the unit of analysis. The existence of a strong Karen community within the refugee camps is at the core of the argument in favour of self-governance. It is because of the existence of a strong and unified Karen community that the refugee governance structures exist and are able to function within the camps. Anyone who has had contact with the Karen people will be especially interested in McConnachie's chapter on the construction of identity, and in particular Karen identity, within the camp setting. However, what is missing from this analysis is an acknowledgement and examination of dissenting voices. Accepting the Karen community as a unitary entity means overlooking inequalities and tensions that exist within that group. McConnachie suggests that there is a lack of alternative narratives in the camp, but an example she uses that highlights the resistance to inter-ethnic marriages among the Karen seems to suggest that dissent may exist not far beneath the surface (151). It would be interesting to know how or if these divergent perspectives are manifested within the governance structures or, if there really are no alternative narratives, why this is the case.

While addressed briefly in the final chapter, one question that the reader is left with is to what extent this study can inform our understanding of and approach to other refugee situations. McConnachie's analysis of the Karen situation reveals the refugees' coping mechanisms and governance structures to be the product of the serendipitous conjunction of specific historical, cultural, and political factors, including Karen ethno-nationalism, Karen cultural values, the marginalization of UNHCR by the Royal Thai Government, and an initial period of loose control over refugees that left room for autonomous governance. Other than the general conclusion that some degree of self-governance is possible within refugee camps, is it possible to draw out any other lessons from this analysis, or is the case of Karen refugees in Thailand simply too singular? To fully answer this question is perhaps beyond the scope of this book, but it will be interesting to see if and how McConnachie's insights into the success of refugee self-governance in the Karen camps are applied in future scholarship in other contexts.

Ultimately, *Governing Refugees* makes two important contributions to refugee scholarship. First, it offers a detailed analysis of the dynamics of Karen society in exile, which is likely to be increasingly important, given the recent political changes in Burma, ongoing peace negotiations between the government of Myanmar and the Karen, and the increasing talk of refugee repatriation. Second, and most importantly, *Governing Refugees* is one of the first books to be entirely devoted to the governance and administration of justice in refugee camps. As such it contributes greatly to a burgeoning field of inquiry that in turn has the potential to substantially affect refugee-assistance policy and practice. Amid the discussions of institutions, authority, and power dynamics, *Governing Refugees* is ultimately about something very basic: the inherent dignity of the human person and the capability and right of refugees to be agents of their own destiny.

© Author(s), 2014. This open-access work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

Cette oeuvre en libre accès fait l'object d'une licence Creative Commons Attribution-NonCommercial 4.0 International.

Notes

1 For instance, while explaining how the emphasis on social harmony that is central to Karen ideology may assist in the maintenance of order within the refugee camp, the author fails to address in any meaningful way the common criticism that prioritizing community harmony in the administration of justice is often at the expense of individual rights and well-being (109).

2 See Barbara Harrell-Bond, "Can Humanitarian Work with Refugees be Humane?" *Human Rights Quarterly* 24 (2002): 51.

Anna Purkey is a member of the Quebec Bar Association and holds a BCL/LLB from McGill University, an LLM from University of Toronto, and is finishing her doctorate in civil law at McGill University. Her current research focuses on the legal empowerment of refugees in protracted refugee situations and includes a longstanding interest in the situation along the Thai-Burmese border. The author may be contacted at anna.purkey@mail.mcgill.ca.

The International Law of Migrant Smuggling

Anne T. Gallagher et Fiona David
Cambridge University Press, 2014: ISBN 987-1-107-01592-0 (Hardback), 783 p.

Les migrations internationales ont été – et demeurent toujours – un élément constant et influent de l'histoire humaine. Elles ont soutenu le processus de croissance économique mondiale, contribué à l'évolution des États et des sociétés et enrichi de nombreuses cultures et civilisations. Les migrations constituent un laboratoire privilégié de l'évolution du droit international général depuis les origines de cette discipline. Force est cependant de constater que la dialectique entre migrations et droit international est encore très largement insuffisamment connue. Le fossé grandissant entre la réalité du mouvement migratoire dans un monde de plus en plus interconnecté et son encadrement normatif demeure, à n'en point douter, un enjeu contemporain majeur. Malgré les travaux et les efforts entrepris depuis plus d'une décennie au plan international et l'accroissement considérable des activités des groupes criminels organisés en matière de trafic illicite de migrants portant gravement préjudice aux États et mettant en danger la vie ou la sécurité des migrants concernés, il n'y a aucun instrument universel qui porte sur tous les aspects du trafic illicite de migrants.

Rattrapé par l'actualité médiatique dramatique, le droit est confronté à un constat synchronique amer, ses règles et principes répondent mal aux problèmes auxquels les États sont confrontés surtout en ce qui concerne le contrôle de l'immigration, la prévention des trafics et la traite des êtres humains. Le durcissement progressif et quasi généralisé des politiques migratoires causé par la multiplication de mesures contre l'immigration irrégulière, diminue d'autant les possibilités légales de migration, créant ainsi un environnement propice à l'augmentation du trafic de migrants. En droit international, le trafic illicite de migrants désigne « le fait d'assurer, afin d'en tirer, directement ou indirectement, un avantage financier ou un autre avantage matériel, l'entrée illégale dans un État Partie d'une personne qui n'est ni un ressortissant ni un résident permanent de cet État »[1].

Pour autant, les évènements tragiques de ces dernières années, aggravés par les crises et les conflits actuels de toutes sortes, ont permis une prise de conscience par la communauté internationale de l'étendue et de la gravité du phénomène de la migration irrégulière et de ses conséquences, et l'urgence et la nécessité d'un cadre normatif institutionnel plus structuré. Cette prise de conscience s'est traduite par l'adoption le 15 novembre 2000 de trois instruments essentiels, mais dont l'efficacité peut être mise en doute dans le cadre de la lutte contre le trafic de migrants : la Convention des Nations Unies contre la criminalité transnationale organisée, le Protocole contre le trafic illicite de migrants par terre, air et mer et enfin le Protocole visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants[2].

L'intérêt de l'ouvrage d'Anne T. Gallagher et Fiona David, *The International Law of Migrant Smuggling*, est d'avoir approché le droit international du trafic illicite de migrants non pas en isolation clinique, mais dans le cadre plus général du droit international, fixant ainsi plus solidement la branche de l'immigration irrégulière au tronc plus robuste du droit international coutumier. Ils évitent au passage, le double écueil de l'empirisme stérile ou une description synchronique voire syncrétique des cas de trafic de migrants et du rationalisme abstrait, une analyse purement dogmatique de la normativité sans un effort de confrontation à la pratique étatique. L'ouvrage se propose donc d'appréhender

© Author(s), 2014. This open-access work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

Cette oeuvre en libre accès fait l'object d'une licence Creative Commons Attribution-NonCommercial 4.0 International.