

is, to begin with Nuremberg and Tokyo. I suspect, however, that ‘transitional justice’ has happened for many centuries previous. I would love to see more books published on ‘medieval’ transitional justice, for example.

Looking ahead, as I have suggested elsewhere,<sup>2</sup> the interface between systematic human rights abuses and market liberalism will become all the more tricky. Take climate change, for example, in which great pain will become inflicted on so many through conduct – by billions of people – that reflects short-term pursuit of economic development, personal comfort and quality of life. How to think of recompense for those other billions of people hurt, displaced, flooded and starved along the way? The etiology of global warming is not discrimination-based *mens rea* hate like much of the conduct that transitional justice has traditionally addressed. This etiology is one of daily acts pitched at a small scale. Yet, in their aggregate effects, these acts will trigger massive stability, sovereignty, human rights and security concerns. Relatedly, also as I have mentioned elsewhere,<sup>3</sup> conversations about corporate responsibility for international harms will continue to rotate in a very tightly redundant circle in the absence of radical reform of domestic corporate law in the national legal tapestries of states. Tragically, it seems that, in so many places where official transitional justice discourse has taken root, the immunized and protected status of corporations in national law has become reinforced rather than diluted. Thoughtful work like Zunino’s reveals the need to broaden conversations about transitional justice and systemic harms and recognize that our pivots and paeans about progress, profits, productivity and performance need to be seriously rethought.

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Ratna Kapur. ***Gender, Alterity and Human Rights: Freedom in a Fishbowl***.

Elgar Studies in Legal Theory. Cheltenham: Edward Elgar, 2018. Pp. 307. €90. ISBN 9781788112529.

Ratna Kapur’s latest book *Gender, Alterity and Human Rights: Freedom in a Fishbowl* explores the ‘imaginary possibility of freedom in the aftermath of the critique of human rights’ (at 1). It does this with a special focus on women, gender and alterity. The book, as shall be further discussed below, does not engage extensively – or in depth – with human rights as international law. It is largely a book about the life that human rights have developed beyond law. This is also why I find the book relevant for international human rights and law scholars. In order to understand human rights law and its development, it is important to understand the different and sometimes awkward roles that human rights play in global politics, social movements and critical scholarship.

Two metaphors – the fishbowl and the rope snake – guide Kapur’s critique of liberal or mainstream human rights advocacy and scholarship and her emphasis on self-scrutiny and alternative epistemologies for freedom. The pursuit of freedom through liberal rights is a pursuit

<sup>2</sup> ‘Mark Drumbl: “Law Cannot Solve the Biggest Problems We Face”’, *Justice Info.Net*, 16 July 2019, available at [www.justiceinfo.net/en/justiceinfo-comment-and-debate/in-depth-interviews/41932-mark-drumbl-law-cannot-solve-the-biggest-problems-we-face.html](http://www.justiceinfo.net/en/justiceinfo-comment-and-debate/in-depth-interviews/41932-mark-drumbl-law-cannot-solve-the-biggest-problems-we-face.html).

<sup>3</sup> *Ibid.*

within a fishbowl. It is a pursuit that is not 'free' but, rather, restricted by the boundaries of the 'bowl'. The boundaries of the bowl alter our view of what is outside; it makes the outside look dangerous and deviant, much like a rope that may give the illusory impression of being a snake from a distance. With the help of the metaphors and five distinct, but interconnected, examples, Kapur explores the failed expectation that human rights bring freedom and begins the articulation of alternative epistemologies for freedom. The first three examples focus on the shortcomings and unintended consequences of human rights advocacy and the roll out of human rights regimes, while the last two chapters of the book provide examples of how freedom can be sought beyond a re-articulation of rights and within other epistemologies, including spiritual epistemologies.

The first example explores how a bi-effect of the pursuit of recognition of women's and lesbian, gay, bisexual and transgender rights has been to cast those who do not readily fit within recognized rights as 'grotesque, unworthy and invariably illiberal' (at 46). The basic point is this: while the recognition of human rights can ensure greater legal protection, this recognition also results in greater self-regulation of those protected. The process of defining and acquiring rights involves defining rights' holders. While the benefits of having rights may be important, the process of defining rights' holders may over time limit the radical potential of social movements. Or, in Kapur's words, '[t]he pursuit of recognition through rights can erode and/or efface the subversive and radical possibilities of queer politics' (at 75).

Kapur's second example focuses on the use of 'rights' in the aftermath of the mass sexual assaults on New Year's Eve in 2015 in Cologne or the brutal rape of 23-year-old Indian medical student Joyti Singh Pandey on a bus in Delhi in 2012, as well as on the rise of what Kapur calls the 'sexual security regime' (Chapter 3). This example shows how 'rights' in these critical moments of mass mobilization against violence against women were used to shed light on, and resist, the pervasive sexual violence faced by women but, at the same time, to promote neoliberal security discourses and nationalist narratives that valorize tradition and promote 'a new kind of gender imperialism' (at 88). The mobilization against the sexual violence – in Cologne and Delhi – came to include different interlinked and contradictory threads. The feminist thread that focused on exposing, and creating debate about, violence against women became entangled with nationalist and/or anti-migrant rhetoric. What Kapur eloquently shows is that, when the protection of women and saving of women from sexual violence becomes the concern of all institutions and all spectrums of politics, the 'protection' and the 'saving' will inevitably end up serving diverse institutional and political interests, and some of these may have very little to do with what women want.

Kapur's third example focuses on the European Court of Human Rights case law concerning the veil. In these cases, the Court has generally accepted the argumentation by state parties that prohibitions against using the veil at universities, in public employment or even in public space are consistent with principles of the secular state and equality. This invariably also promotes, according to Kapur, 'two confident liberal assumptions: that *all* veiled Muslim women are oppressed ... and that Muslim women's systematic observance of certain religious practices is *always* an explicit obstacle to their realization of gender equality' (at 124; emphasis in original). The decisions take away from women the possibility of defining for themselves what it means for them to be free, as the Court is clearly identifying veiling as inconsistent with the principles of equality without reference to those who it affects. The case can also be taken to illustrate Kapur's metaphor of the fishbowl: the Court defines what is inside 'equality' and what cannot be included. The final two case studies analyse, first, not only the necessity but also the scholarly reluctance to let go of rights as a 'template for the procurement of lasting freedom' (at 152) and,

second, scholarly efforts to identify alternative epistemologies of freedom through a focus on reflection and spirituality.

Overall, Kapur's five examples, dealt with in the book's five substantive chapters, contribute to drawing a picture of human rights and especially human rights advocacy as tools that can serve many masters simultaneously. Although rights recognition can be important, it also forces compliance, often vilifying those who do not easily fit, or those who choose not to fit, within the boundaries of the 'bowl'. Kapur encourages human rights advocates and scholars to be attentive to the unintended consequences of using human rights as a tool for promoting recognition for groups that are marginalized in international politics and law.

*Freedom in a Fishbowl* is an important contribution to contemporary critical scholarship about human rights and, in particular, scholarship about the consequences of the expanding field of human rights and its offshoots, 'gender mainstreaming' and 'women, peace and security'. Having spent almost two decades commuting between academic work and advisory positions focused on human rights and gender in the context of the stabilization efforts in Afghanistan and the European Union (EU) crisis management, I am painfully aware of how an overreliance on rights-based advocacy risks marginalizing alternative strategies and solutions that exist outside the realm of individual rights and liberal notions of equality. I also know that using 'human rights' or 'gender equality' to open doors into security and defence sectors allows 'human rights' and 'gender equality' to be changed by the demands of those sectors. For example, Kapur's argument that human rights do not (always) deliver what they promise and that an overreliance on human rights can distort our view of both what is needed and what is actually going on is well exemplified by the ongoing debate about whether 'women's rights' should be a redline in possible peace talks with the Taliban. It goes without saying that women have an important stake in a possible peace process with the Taliban. However, the Taliban did not invent, nor are they the sole perpetrators of, the oppression of women in Afghanistan, and they are certainly not the only conservative misogynistic force in Afghan society and politics. The international community's randomly voiced concern that peace with the Taliban will compromise Afghan women's rights may contribute to hiding the existing resistance to Afghan women's struggles within the current Afghan government and the oppression that women face in both public and private realms. Such a narrative both creates and entrenches an inaccurate impression that political actors are either 'liberal' or 'Taliban', in which 'equality' is defined solely in terms of legal rights and not as socio-economic opportunities and freedom. This does not mean that legal rights are not important or that Afghan women merit less legal protection. However, staging the Afghan government as the defender and the Taliban as the opponent to women's rights marginalizes the day-to-day efforts by Afghan women throughout the conflict and the past decades' international stabilization project in Afghanistan. Many Afghan women work on a daily basis, and have worked painstakingly over the years, to create spaces for political expression and for nudging their and their families' lives away from conflict and poverty. These efforts, often done with no connection to internationally funded 'women's rights' or 'gender equality' projects, are seldom recognized and often overlooked in the debates about whether women's rights are ensured by the current government and whether rights will continue to enjoy protection after a possible peace deal with the Taliban.

Kapur's eloquent analysis of how 'women's human rights are increasingly absorbed into the hegemonic discourse of security, militarism and war that often has little to do with the realization of freedom' (at 101) resonates with my experience of integrating human rights and gender into EU crisis management. Human rights and, especially, the broad 'women, peace and security' agenda that draws on the United Nations Security Council resolutions on women, peace and security and the national action plans that have been adopted to implement the resolutions

have opened doors for women in the security and defence sectors. The greater representation of women in these sectors has certainly had positive effects, and it has shifted some policy positions and practices. However, walking through the door, shifting from a position of criticizing from the outside to a position of transforming from the inside, has also forced women or 'governance feminists' to change their position from one that is challenging defence industry interests and military solutions to one that is defending these interests in the hope of making 'wars safer for women'. This shift is not benign, and it is important, as Kapur notes, to persistently track how the work that is being done by human rights and gender advocacy 'may have little to do with advancing women's rights and freedom and more to do with legitimating discriminatory governance' (at 111).

In order to balance my praise of *Freedom in a Fishbowl*, I want to raise two critical points. The first relates to the fact that Kapur almost entirely fails to engage with human rights law and the role that human rights law has in regulating state behaviour. I raise this point somewhat unjustly, as Kapur clearly states that her focus is on human rights advocacy and scholarship and thereby not on human rights law. Kapur engages with ideas – the imaginary possibilities – of rights and not with international human rights and constitutional rights as normative frameworks regulating state action. However, *Freedom in a Fishbowl* would have been a more accessible read for lawyers and legal scholars, in my view, if Kapur had also acknowledged, or positioned herself in relation to, one of the core functions of human rights – namely, to create state obligations and regulate state behaviour. Some of Kapur's criticism of the complex workings of human rights advocacy could also have been balanced by more attention to how human rights law regulates state behaviour and the important function that law has for human rights watchdogs. For example, while I largely agree with Kapur's analysis of how 'the reactive core of the political project that informs human rights has become acutely evident in the post-9/11 period' (at 37), I think it is important to also draw attention to the massive amount of work undertaken by human rights organizations and individual lawyers criticizing war-on-terror policies, documenting violations and defending the rights of the many individuals who have been illegally detained and tortured. *Freedom in a Fishbowl* would have been a more complete read if Kapur had positioned herself more clearly *vis-à-vis* the core governance and watchdog functions of human rights.

The second point is less of a critical point than it is a point of encouraging efforts to engage with broader audiences and material. While Kapur does not define her audience, I get the impression that *Freedom in a Fishbowl* is written for her peers. It is written for an audience comfortable with scholarly and critical approaches to human rights and possibly, even more narrowly, to women's and gender rights. The benefit of this is that much knowledge can be assumed about human rights scholarship and law. Conversely, the challenge is that it is easy to revert, without questioning oneself, to assumptions and some taken-for-granted truths. For example, Kapur clearly situates *Freedom in a Fishbowl* in the 'aftermath of a critique of human rights' (at 1–2), but she does not introduce that critique to the readers. While I can understand that no book can retrace the full history of prior scholarship, Kapur could have chosen to help the readers a little more. Sometimes her failure to explain slips into assumptions, at least one of which I would contest. To illustrate, when describing the 'Nordic model' that criminalizes the clients of sex workers, Kapur notes – without any references – that '[i]t is well known that, in this model, the sex worker is recognised only as a victim to be rescued' (at 96). Having followed the development of this (Swedish rather than Nordic) model from its earliest public studies in the mid-1990s to today, I think it is important to recognize that the foundation of this law is not established by a model of individual rights or individual (economic) agency but, rather, by the Nordic social equality model that views inequality as structural, as built into the social and economic fabric of our societies. Having the Nordic

social equality model, guided by collective interests rather than individual rights, underpinning and informing the legal arrangements makes the Swedish prohibition of the buying of sexual services distinct from the international anti-trafficking campaigns that are focused on transborder trafficking and largely inspired by a mix of Anglo-American liberal and radical feminist agendas. Obviously, there are different opinions about the Swedish approach to criminalizing the buying of sexual services, but at least based on my knowledge, one of these opinions is not more ‘well known’ than another.

However, neither the lack of attention to how international human rights law contributes to controlling state behaviour nor the fact that *Freedom in a Fishbowl* is not an easy read for all audiences challenges fundamentally the quality of Kapur’s explorations. I recommend *Freedom in a Fishbowl* to both academic and practitioner colleagues interested in understanding the many workings of human rights and women’s rights in international politics and governance. In my own academic work on women’s rights and gender mainstreaming in the United Nations, I once cited from Margaret Atwood’s *A Handmaid’s Tale*: ‘Better never means better for everyone, he says. It always means worse, for some’.<sup>1</sup> Today, I would probably be more careful with using quotes from dystopian novels to introduce human rights topics, but, at the same time, I am convinced that when assessing the success of regulatory or governance regimes, including human rights, we need to be attentive to, and not shy away from, their unintended and sometimes negative consequences. We need to be aware that our assumptions about human rights and about what it means to be protected by human rights also contribute to creating assumptions about what is outside rights’ regimes and the threats against these regimes. Unintendedly, human rights can turn ‘ropes’ into ‘snakes’. Kapur’s *Freedom in a Fishbowl* challenges naive assumptions about human rights. Kapur clearly shows that the ‘civilising mission’ of human rights is not a thing of the past but, rather, a reality built into all use of ‘rights’. Kapur states that her ‘argument for “thinking freedom” outside the fishbowl and within non-liberal spaces is intended to push the dialogues within human rights discourses closer to the fundamental issues that continue to trouble feminists and critical legal scholars’ (at 235). This is an important intellectual exercise not only to understand the different usages of human rights in contemporary international politics and law but also to be attentive to alternative avenues for freedom.

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Emily Sipiorski. ***Good Faith in International Investment Arbitration***. Oxford: Oxford University Press, 2019. Pp. 304. £125. ISBN: 9780198826446.

Good faith and its counterpart – bad faith – play an important role in international economic law and public international law more generally. Good faith is widely accepted as one of the ‘general principles of law recognized by civilized nations’ within the meaning of the Statute of the

<sup>1</sup> S. Kouvo, *Making Just Rights? Mainstreaming Women’s Human Rights and a Gender Perspective* (2004), quoting M. Atwood, *The Handmaid’s Tale* (1985).