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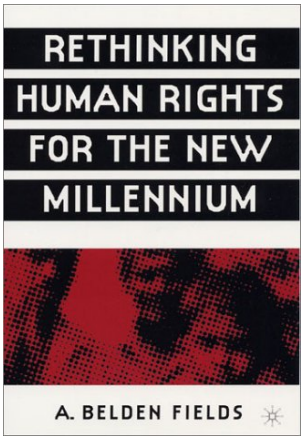

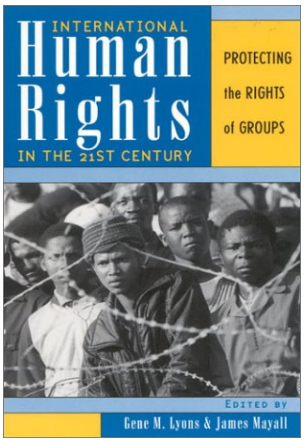

Whose Right is it Anyway? Rethinking a Group Rights Approach to International Human Rights

By Peter Zwiebach

Rethinking Human Rights for the New Millennium by A. Belden Fields. New York: Palgrave MacMillan, 2003. 244pp.

International Human Rights in the 21st Century: Protecting the Rights of Groups edited by James Mayall and Gene M. Lyons. Lanham, MD: Rowman & Littlefield, 2003. 240pp.

With few exceptions human rights have traditionally been conceived of as rights of individuals. In recent years, however, there has been an increased interest in the idea that human rights are possessed by groups, based on ethnicity, gender, class or other socially constructed characteristics. Unfortunately, rather than provide a way forward for human rights advocates, group rights prove to be a distraction from the pursuit of universal adherence to human rights standards. A group rights approach is usually inappropriate because it fails to achieve any substantive right not cognizable under an individual rights scheme; moreover, the assertion of group rights itself poses serious theoretical and practical difficulties, not the least of which are problems of defining the group, defining the right and determining how the right is to be enforced. Adherence to the individual rights model does not mean that the effects of race, class, gender, ethnicity or other socially determined identities must be ignored. Consideration of these group identities is crucial to any meaningful framework of human rights, but the ways in which these social identities are combined in each person make the individual rights model most appropriate.

The State We Are In

It sometimes appears that to advocate for human rights is to be continually frustrated, horrified and disillusioned. For all the struggle and superhuman efforts of those who labor valiantly to protect

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the fundamental dignity and rights of humanity, gross violations of those rights and that dignity occur daily—often, it seems, with impunity. Nevertheless, rights advocates push forward with courage and purpose, and it is only by virtue of their tenacity that human rights have remained at the forefront of political discourse at the national and international level.

Just how far we have come can be seen by the constantly expanding bodies of international treaties, reports, institutions and human rights declarations. Just how far we have to go, unfortunately, can be seen by a review of the morning newspaper or of any number of reports compiled by various NGOs and UN agencies. Therein lies the difficulty for those who practice or analyze human rights: the expansion of recognized rights and obligations is matched only by the continued failure to effectively enforce those rights. Some of the writers reviewed here assert that the best way to improve enforcement and to hasten the expansion of recognized rights is to change the framework of international human rights from its traditional focus on guaranteeing individual rights to a framework which also recognizes the rights of certain groups.[1]

One can identify numerous reasons for the failure to enforce human rights, but there are two root causes most responsible for the widespread violation of international human rights: one practical and one theoretical. The practical problem is the failure of political will and concomitant refusal of states to cede sovereignty to an international enforcement regime, making enforcement of international human rights difficult, and making negative repercussions for human rights violations a rarity. The theoretical problem is the inability to establish the meaning and extent of the rights themselves—including how human rights are affected by other rights and obligations—thereby making it difficult to agree on what constitutes a violation of a right and what remedy flows from a violation. A group rights framework, however, does not solve these two fundamental problems of human rights enforcement, although recognizing group membership of individuals remains indispensable to the articulation of a meaningful rights regime.

As an initial matter, a group rights theory does not help to address the problem of the lack of political will to enforce rights and the refusal of states to cede sovereignty to international human rights enforcement institutions. Expanding the number of entities that have a right enforceable against the state will not diminish the reluctance of states to cede sovereignty to international bodies. In fact, it is likely to create more resistance because many states, particularly those with large ethnic or cultural minorities, are likely to view group rights as a serious threat to their integrity. Recognition of group rights will not affect the willingness of nations to defend oppressed people regardless of the cost to themselves, nor deter those who are willing to violate human rights from committing their crimes.[2] As Chris Hedges (2003) has written:

[1] Group rights advocates do not favor the repeal of existing individual rights, but rather the extension of rights to additional entities. It is therefore appropriate to view the group rights argument as an argument for the expansion of the number of rights holders. It is, of course, possible to articulate a group rights theory that would contract the number of rights holders by replacing rights of individuals with rights of groups; however, this construction is disavowed by the overwhelming majority of group rights advocates and is certainly not advocated by any of the authors discussed here.

[2] Assuming, as I believe, that human rights violations can be deterred by the threat of punishment, such deterrence is created by swift and sure sanctions—not by the identity of the rights holder.

Hutu radio broadcasts from Kigali called on the Interahamwe in Rwanda to carry out genocide. The U.N. Belgian detachment, however, like the Dutch peacekeepers in Srebrenica, stood by and watched (16-17).

It is difficult to see how framing the issue as the group right of Tutsis would have solved the fundamental problem of the lack of political will to prevent the genocide. Moreover, those international institutions which do exist do not have the power to physically interfere with states absent a political decision of their constituent nations. Some of the group rights advocates discussed here, such as A. Belden Fields and Jennifer Jackson-Preece, seem to argue that this unwillingness to intervene is a direct or indirect result of the liberal tradition's individual rights scheme. Even if this is so (an assertion I dispute) it is unclear how, practically speaking, that criticism can be overcome with a group rights argument. States will have to cede their sovereignty in order to establish a new global rights framework, and states seem unlikely to do this in the foreseeable future. Group rights present no solution to this dilemma—and certainly no solution that is not equally plausible under an individual rights regime.

As to the problem of defining rights, the group rights framework does not help in reducing the inherent ambiguity of rights or in defining the interaction among competing legal claims. A statement of law or rights cannot possibly include within it all possible scenarios for its enforcement. Neither can such statement predict how the right will complement or conflict with other rights and obligations. While it is true, as group rights advocates claim, that in the existing individual rights framework human rights are balanced against other rights and obligations—such as property rights—and that this balancing can work to the detriment of human rights, this would be the case even were group rights introduced. In order to address these inevitable intersections and conflicts between rights, legal systems require an adjudicatory process.[3] Unfortunately for rights advocates, once any adjudication begins, neither an individual rights theory, nor a group rights theory, by itself, can guarantee that human rights will be accorded the proper respect.

For example, Article 7 of the International Covenant of Economic, Social and Cultural Rights guarantees, *inter alia*, "…the right of everyone to the enjoyment of just and favourable conditions of work...," including the right to fair wages and equal pay for equal work.[4] While these are vital rights and important statements of law, in order for them to be meaningful these guarantees must be further defined through adjudication that explores the reach of the rights and balances them against competing claims of right. "Fair wages" may mean one thing in London or New York City and another in Mombasa or Karachi. A "fair wage" in 1950 may not be a "fair wage" in 2003. The group rights framework does nothing to resolve these fundamental questions. Under either an individual rights or a group rights framework, "fair wage" could be limited to a wage sufficient for a minimum of food and shelter or expanded to an amount sufficient to provide a comfortable and secure existence. So, too, the existence of this right does not resolve how the right to a fair wage is balanced against other rights or obligations, such as property rights or a nation's obligation under trade

[3] I use the term "adjudicatory" to signify any forum in which rights and obligations are fleshed out and given meaning. This could be a court or tribunal, but could also be a working group or committee designed to issue rules or guidance.

[4] *International Covenant on Economic, Social and Cultural Rights*, 999 UNTS 3 (1966) (*entered into force* Jan. 3, 1976). I use this provision merely to illustrate the theoretical point, and therefore do not address the adjudicatory refinements of the ICESCR by the Committee on Economic, Social and Cultural Rights as set forth in the General Comments, for example.

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treaties to refrain from subsidizing certain industries. Stating that *workers* have a right to a fair wage, rather than that *each worker* has a right to a fair wage, does not resolve these ambiguities or answer the question of the proper balance between competing claims of justice. The holder of the right is irrelevant; the meaning of the right is vital.

A counter argument put forth by group rights advocates insists that the individual rights framework itself leads to devaluing rights, particularly economic, social and cultural rights, because the individual rights framework ignores the fact that human identity is shaped by social constructs such as race and gender, and because the individual rights framework is overly concerned with ensuring the liberty, as opposed to other human rights, of these atomistic individuals. These shortcomings, it is alleged, result in a failure to acknowledge the different voices and needs of individuals belonging to groups other than the dominant group and therefore to the denigration of social and cultural rights. Further, it is argued, the focus on individual liberty downplays the fact that a certain level of economic security is required to meaningfully exercise liberty. This critique—though an accurate description of the social nature of human identity and the requirement of economic security as a prerequisite to meaningful civil and political rights—misses the mark.

As an initial matter, far from resolving the difficulties created by the recognition of the social nature of rights, group rights raises a host of very difficult questions, such as what constitutes a group and group membership? What are the rights of individuals within the group? And, how can membership in multiple overlapping or mutually exclusive groups be reconciled? Perhaps most significantly, an assertion of group rights begs the question of why must we accept a social construction that has so often been defined and established by an oppressor group and force it upon an individual in order for that individual to realize his/her human rights? This last question casts serious doubt on whether such a scenario could ever be the basis for an effective vindication of human rights.

Furthermore, there is no reason that an individual rights framework need disregard the social construction of human identity and human rights. Asserting, for example, that freedom of association is an individual right does not mean that the law need be blind to the fact that issues of race, gender, class or other social constructs might affect the meaning of that right. The mere fact that it is possible to construct a libertarian, atomistic theory of individual rights that is consistent with liberal theory is not a reason to accept that view as determinative of the limits of the liberal rights framework. It is equally possible to construct an individual rights framework that incorporates humanity's social construction as well as due regard for the material prerequisites of meaningful exercise of human rights. And an understanding of the importance of economic, social and cultural rights is not the exclusive property of group rights advocates. As John Dewey eloquently put it more than a half-century ago:

> *…liberalism that takes its profession of the importance of individuality with sincerity must be deeply concerned about the structure of human association. For the latter operates to affect negatively and positively, the development of individuals.*
>
> *Today, it [liberty] signifies liberation from material insecurity and from the coercions and repressions that prevent multitudes from participation in the vast cultural resources that are at hand. The direct impact of liberty always has to do with some class or group that is suffering in some special way from some form of constraint exercised by the distribution of powers that exists in contemporary society* (1963: 41, 48).

Dewey recognizes that it is always "some class or group" that is oppressed, but also understands that it is "the importance of individuality" that must be protected. Therefore, an individual rights framework can acknowledge that rights are socially constructed, and can consider race, class, gender, ethnicity, and a whole host of other "group" factors when defining and enforcing human rights. These considerations may not be satisfactorily addressed in any particular individual rights scheme, but neither does a group rights framework ensure that these factors will be satisfactorily addressed, while such framework simultaneously creates a host of new problems.

Many, therefore, look to redress this imbalance and to see broader, more universal acceptance and enforcement of human rights. That is the purpose of A. Belden Fields' Rethinking Human Rights for the New Millennium, and Gene M. Lyons and James Mayall's compilation, International Human Rights in the 21st Century: Protecting the Rights of Groups. Fields' book and some of the authors in the Lyons and Mayall anthology seek to create a model for human rights based upon group identity.

In Rethinking Human Rights for the New Millennium, A. Belden Fields proposes a view of human rights he terms "holistic." Fields begins by laying out his version of the intellectual origins of human rights theory and criticizing these origins. He then sets forth his theory, first in a series of eleven general propositions, and then in chapters devoted to developing his argument for group rights, understanding that it is these proposals which are likely to need defending. When describing violations of human rights, the interrelationship among various rights and rights violations, and the social construction of rights and obligations, Fields' book is powerful and persuasive; his overarching concept of a "holistic" view of human rights will resonate with rights advocates. Propositions such as "[a]ll human beings have the potential for development" are ones that a broad range of advocates can readily agree to.

Where Fields ultimately fails is in his argument for recognition of group rights. This failure is, I believe rooted in three problems. First, Fields is vague about how exactly his proposals would work. Second, he tries to pigeonhole advocates of an individual rights framework as believers in an ultra-individualistic theory of rights *a la* Hayek or Nozick. This ignores the contributions of many thinkers and the texts of existing human rights documents. Third, Fields does not effectively link his argument that property rights—and in particular the rights of transnational corporations—should be subordinate to human rights to his argument in favor of group rights. This prevents him from addressing certain vexing issues both in theory and in practice that such a position raises, including questions of whether corporations are the only group which benefit from the recognition of property rights.

How Does it Work?

After reading Fields' book, one is unsure exactly which group rights are to be recognized and, infinitely more importantly, how such rights are to be vindicated and how they would improve the lives of those they aim to protect. For example, in discussing the systematic framing of African-Americans by the Philadelphia police force in the years 1988-1991, Fields writes:

> *[T]he victims of the Philadelphia police officers were not just random people….They were African-Americans…the nonrandom violation of due process is both a violation of the rights of the individual and a violation of the rights of the entire group that is being harmed* (103).

One can easily agree that the actions of the police in Philadelphia were not random and that African-Americans, as a group, were the target. Fields says so and then asserts that this was a violation of certain group rights, among which he cites the group right to due process and *habeas corpus*. "But the nonrandom violation of due process is both a violation of the rights of the individual *and* a violation of the rights of the entire group that is harmed" (103). Unfortunately, Fields ends his discussion there. He never moves to the next vital issue: if such due process violations violate some rights of the "entire group," then what is the remedy? And how is it different from an individual rights remedy? And who may seek the remedy? And how may they seek it? And to whom does the remedy flow? Failing to answer these questions creates a right without a remedy.

As passionate as Fields is when writing about human rights, it is impossible to believe that he is proposing so hollow a right. I do not believe that this is his intention, but it is unclear from his discussion what right has been given to the "entire group." Absent some guidance on these issues, the assertion of the right of the "entire group" is without meaning.[5] If Fields is arguing in purely philosophical or moral terms, claiming that, for example, systematic police violence against a specific group is a violation of the group's rights, we might agree and forego a critical examination of what consequences flow from such a right and its violations. But, Fields appears to be arguing that there should be real, enforceable legal rights in such cases. Perhaps. However, such an argument begs the questions: Whose right? How is it exercised? Against whom? Fields provides no clear answer.

Human Rights Violations: Liberalism's Offspring?

Fields essentially argues that the entire course of liberal thought is incapable of satisfying claims of human rights because the primacy of individual rights makes impossible the adequate recognition of any right not exercised solely by an individual, and thereby inevitably leads to the denigration of economic, social and cultural rights.

Fields' assertion that liberal theory is to blame for this denigration is unconvincing. As an initial matter, he ignores liberal thinkers like Dewey who wrote, "established material security is a prerequisite of the ends which it [liberalism] cherishes…" (1963: 57); and Charles Black: "[t]he possession of a decent material basis for life is an indispensable condition . . . to the pursuit of happiness" (1997: 133). In addition, he fails to acknowledge the possible differing interpretations of liberalism's founding works. For example, Fields takes issue with Jack Donnelly's interpretation that John Locke's work imposes constraints on property rights through Locke's strictures against permitting spoilage and taking more than one will use and the "general injunction" to preserve humanity as much as possible (16). In response, Fields asserts that Locke solves the problem of forbidding spoilage and hoarding by encouraging people to seize "unoccupied" land that was in fact occupied by Native Americans; therefore, Fields argues, Locke poses no limits on property. Fields then asserts that Locke's asserted "obligation" to preserve Man is something less than a right, and therefore something less than the property right Locke had identified.

[5] It should be noted that it would be possible under an individual rights scheme to address the effect of such systematized violence on a community. Those people not actually framed by the police, but who were the subject of the intimidation caused by the violations, might be permitted to assert a claim for a violation of their freedom of assembly and their freedom of movement, for example.

However, the mere fact that Locke did not consider the rights of Native Americans in the practical application of his theory is no reason to reject Donnelly's reading of Locke. Locke *did* recognize the issue of the possible scarcity of property and did *not* assert an unlimited property right regardless of the effect on other human beings. It is possible to read Locke as rejecting a right to hoard property or to use it wastefully to hurt others. So, too, while Locke does not assert a "right" to preserve Man as much as possible, Locke does refer to it as a "Fundamental Law of Nature" indicating, at the least, that the principle is very serious indeed. Many have used Locke to support a *laissez-faire* or neo-liberal economic and legal structure which does indeed privilege political rights over economic rights; the fact that they have done so, however, does not make it the correct interpretation. It is also possible to assert that, whatever the extent of property rights exist in Locke, they must be tempered by the good of the entire community and the well-being of all people.

Property Rights and Human Rights

Indeed it is this last point that really bothers Fields. His real quarrel with liberalism is classical liberalism's recognition of property rights. It is true that classical economic liberalism and neoliberal economics permit corporations to invoke property rights to evade obligations to workers and the community and to trample and render irrelevant the rights of others. This critique is well-founded, and I agree with it wholeheartedly. Absent a recognition that property rights cannot trump basic human needs neither group rights nor individual rights can achieve that security of human rights we all seek. But an individual rights framework can support such a claim. Indeed, even a liberal theorist can agree that economic rights must be given greater recognition, as when Charles Black argues for an "*affirmative constitutional duty* of Congress . . . to ensure. . . a decent livelihood for all" (1997: 133).

Moreover, as Hurst Hannum (among others) points out, property rights—both traditional property rights and intellectual property rights—are a central component to the group rights claims of some groups, particularly indigenous peoples. But even accepting Fields' position on property rights does not provide a basis for a group right. To illustrate the disjunction between Fields' economic rights argument and his insistence on a group rights solution, consider his poignant account of the ill-fated struggle of the workers at the A.E. Staley plant in Decatur, IL and their fight for dignity and workplace rights in the face of the ruthless greed of a transnational corporation. Fields details the all-too-true depredations of the company and its interlocking economic and political connections as it moves to crush the voices of its workers. But he does not say how a group rights approach would have aided these workers. Indeed he seemingly condemns the parent union of the workers:

> *When the union's local bargaining committee rejected the contract offer of the company that contained the twelve-hour work days and refused to present it to the membership, the national UPIU president overruled the decision and forced a vote by the membership. The contract offer was accepted on December 22, 1996, on a vote of 286-226. While more compliant local leadership had been voted in, to the satisfaction of the national UPIU, which was trying to weaken the resistance, it had not yet taken office. Since none of the sitting local officers would sign the contract, officers of the national union signed it* (210).

What these workers would have gained had their right to organize been a group right rather than an individual right, Fields does not say. In fact, those in the group he appears to agree with—the 226 "No" votes and local union officers—were outvoted by the group. The reason for the capitulation

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of the union was the primacy of private property rights in American law, not the fact that the right to join a union is an individual right. This primacy is well illustrated by the right of Staley to lock out its workers and hire scabs in their place. A group right of the Staley workers would have availed them but little in the face of this unhindered property right. Fields gives us the frustrated scream of anguish of the Staley workers. It is powerful and touching, but it is not an effective theory of human rights.

In the introductory chapter of International Human Rights in the 21st Century: Protecting the Rights of Groups, editors Gene M. Lyons and James Mayall state that their book may "raise more questions than answers" (18). This fine volume accomplishes that superbly, and the essays included also give full play to a number of authors who seek to explore group rights theory as it affects different groups. They are followed by two interesting essays by Marc Weller and Nicholas J. Wheeler on strategies to improve enforcement. The essays show the power and importance of recognizing group identity in analyzing rights, and the shortcomings of actually attempting to assign human rights to groups. At the end of the day, despite some lofty rhetoric, the authors seem to be arguing for a greater level of recognition of the social nature of rights and the expansion of economic, social and cultural rights. Indeed, in some essays the authors do little more than pay lip service to the idea of group rights before moving to a discussion of other issues.

The editors start off the book with an essay by Jack Donnelly, "In Defense of the Universal Declaration Model," which defends the individual rights approach (i.e., the "Universal Declaration Model"). Donnelly does not absolutely rule out a group rights approach and indicates some areas in which it might be appropriate, particularly in the case of indigenous people (Donnelly in Lyons and Mayall: 39). Donnelly sets forth seven questions for advocates of group rights to answer. They are: 1) how to identify those groups who hold human rights; 2) what specific rights the group should have; 3) who may exercise the rights; 4) how conflicts of rights are to be handled; 5) whether the rights are necessary; 6) whether group rights will succeed where individual rights have failed; and 7) whether group rights are the best way to protect the interest of the groups at issue (Ibid.: 33-34). Donnelly is quick to point out that none of these questions are necessarily dispositive of the issue—simply that they raise serious problems for group rights advocates. Donnelly argues, as I have here, that an individual rights approach is not identical to a completely decontextualized libertarian theory. Comparing the arguments of Fields and those in this volume following Donnelly, one cannot help conclude that the real issue at the heart of these calls for group rights is an insistence that systematic violations of rights have repercussions far beyond the immediate victims. That is clearly true, but having said that, there seems to be no good rationale for converting that insight into an enforceable human right.

Eva Brems, in her essay "Protecting the Human Rights of Women," argues forcefully for a "transformation" approach to women's rights. After summarizing a number of possible approaches to women's rights, including a "different voice" approach and a specific protection approach, Brems argues:

> *First, the transformation approach is more inclusive and shows more respect for difference. How seriously will the claims of women be taken if they are applicable to women alone? Real participation implies the power to*

> *change the general parameters, the power to contribute to the definition of what human rights are about, not only for women but for all. If it is true that, thus far, human rights reflect a male bias, then the inclusion of women must lead to questioning some of the concrete features of human rights that manifest this bias.*
>
> *Second, the integration of a women's perspective in international human rights should not lead to new types of exclusion….[G]ender itself is a construction…the idea of breaching the public/private divide correctly assumes that, as a rule, the private sphere is more important to women than the public sphere. Yet at the same time this is not a situation most feminists want to preserve. For many, an equal presence of men and women in both spheres is the goal* (Brems in Lyons and Mayall: 110-111).

Brems' approach takes account of the social construction of individuals and their membership in overlapping and even contradictory groups, yet does not require membership in a group in order to secure human rights. Rather these group identities serve as a means to understand all the different expressions of humanity and to expand human rights to encompass them all. Such an approach has the potential to provide for a tremendous expansion of human rights protections, without the problems associated with the group rights framework. Consider this passage:

> *[T]he public/private divide remains the main obstacle in designating sexual violence as a violation of human rights. If that can be surmounted, there is no reason why serious cases of domestic violence should not be qualified as torture. It has convincingly been demonstrated that in many cases, all the constitutive elements of torture are found and that from the victim's perspective, the experience is horribly similar* (Ibid.: 117-118).

Note that there is no claim here that domestic violence against *women* should qualify as torture in serious cases. Rather, the protection against torture by means of domestic violence is extended to all. It is the recognition of the collective experience of women that has brought forth the issue of the public/private divide, and it is that recognition of women's experience that is making protection from domestic violence an issue of human rights. The progress being made on these issues has enabled bold thinkers such as Eva Brems to begin making the human rights link between domestic violence and torture. But this protection is not, and should not be, limited to women.

Toward the end of her essay, Brems beautifully bridges the group rights/individual rights divide:

> *In principle, the above-discussed human rights claims of women and non-Western people are claims of groups, based on the communal features of their members that distinguish them from the dominant group. Yet, since the specificities of different groups are combined in individuals, the only way to avoid exclusion is to replace the group perspective with the perspective of the individuals concerned. Contrary to the abstract individuals on which the enlightenment conception of human rights relies, there should be contextualized individuals, with their relevant specificities* (Ibid.: 123).

Hurst Hannum contributes a chapter on the rights of indigenous people and he is, as always, remarkably thorough and insightful. Hannum claims that he "does not attempt to resolve the philosophical clashes over individual versus collective rights or majority versus minority rights" (Hannum in Lyons and Mayall: 94). Nevertheless he makes what I believe is the most compelling case for group rights, which is the case of indigenous peoples. Since indigenous rights are closely related to concepts of self-government, they *may* be rights which cannot be satisfied by an individual rights framework, such as a right to maintain a culture. Donnelly seems to agree, stating that "irreducibly group rights pose a real and significant challenge to the Universal Declaration Model" (Donnelly in Lyons and Mayall: 44, fn. 28). Hannum defines "indigenous" to mean those people who define themselves as indigenous, who exhibit a strong historical relation to precolonial cultures,

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and who continue to live in a traditional way, particularly as it relates to their attachment to the land. While ultimately Hannum leaves the precise definition of "indigenous" vague—a recurring problem with so many group rights arguments—his vagueness is different by virtue of its being deliberate and open. He has identified a sufficient launching point for the development of these rights and presents a coherent framework in which we can assess both the composition of the group and the extent of the group rights. Hannum cabins the potential explosion of this right by insisting on a strong focus on social, cultural and economic factors as a way to assist distinguish indigenous groups from an ethnic or linguistic minority. He contrasts, for instance, the Yanomani in Brazil with German speakers in South Tyrol, arguing that while the latter are clearly an ethnic minority whose social, cultural and economic status is all but identical to the majority group, the same cannot be said of the Yanomani.

A serious group rights approach is therefore most promising in the area of indigenous rights. If a coherent and specific framework of group rights can be articulated in the context of indigenous peoples, then the actual rights developed and the understanding of how these rights may be exercised might possibly find application elsewhere. At that point, group rights would need to be re-examined.

Ironically, Hannum's argument—the most serious case to be made for a group rights approach—also serves to undercut Fields' argument regarding the evils of property rights, for property rights (that is, the right to land) are central to the claims made by indigenous peoples. In summarizing the Organization of American States' declaration on the rights of indigenous peoples, Hannum points out the core right to "ownership and control over land and intellectual property" (Hannum in Lyons and Mayall: 79). Thus a central issue for indigenous peoples are property rights. Indeed, in the cases addressing indigenous rights cited by Hannum, property rights play a central role (Ibid.: 86, 88). Thus it is not only corporations who stand to benefit from a recognition of property rights. A group rights framework does nothing to resolve these difficult issues.

Jennifer Jackson Preece attempts to make a similar argument in regard to ethno-cultural minorities. She identifies two kinds of ethno-cultural minorities: Minorities by force and minorities by will. According to Jackson Preece, minorities by force are excluded by the majority from full participation in society. Traditional civil and political rights, she argues, are normally sufficient for the protection of such minorities.

As to minorities by will, Jackson Preece defines them as those who wish to preserve their ethnocultural distinctiveness. In cases involving minorities by will, Jackson Preece argues for certain rights like the right to language and to "make the cultural expressions and associations they genuinely value" (Jackson Preece in Lyons and Mayall: 56). She then summarizes current trends in extant minority rights. But these trends reveal that the idea of group rights appears again to be merely individual rights in a socially contextualized structure. Consider her example of the Copenhagen Document: "persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity" (Ibid.: 64.) The rights identified are based on an understanding of people as members of groups, yet the rights themselves inure to the individual.

As with indigenous peoples, the group rights are on much stronger ground in dealing with issues that relate closely to self-determination and autonomy. Indeed, Jackson Preece herself argues that

these "guarantees for national minorities should be properly understood as an extension of the already-recognized collective right to self determination. . ." (Ibid.: 68). Nothing in Jackson Preece's essay indicates a need to move away from an individual rights regime, except as issues of secession or established states are concerned.

The arguments for group rights bespeak of a well-deserved frustration with the status quo of human rights enforcement, but are often utterances of rage and frustration rather than a blueprint for ensuring dignity, freedom, autonomy and justice for all. The discussion is worthwhile, however, as all the authors force us to focus on the social, cultural and economic dimensions of human rights, which they are quite correct in pointing out are too often left by the wayside. What human rights advocates must do is to put aside arguments over group versus individual rights, and begin to analyze enforcement mechanisms, past and present, which have proved successful in compelling adherence to treaties. We must determine how those mechanisms can be harnessed to further the enforcement of international human rights, or, alternatively, what lessons we can learn in our attempt to devise new enforcement mechanisms. In addition, human rights advocates must conduct an analysis of international precedent and compare different legal systems in an attempt to develop adjudicatory systems that can mediate efficiently and fairly between competing rights and obligations in international law while providing a robust definition of rights, thereby ensuring that human rights are protected.

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