**GROUP RIGHTS** by Judith Baker, ed. (Toronto: University of Toronto Press, 1994).

This collection of essays comes out of a conference on group rights held at Glendon College York University in Toronto in February of 1992. The papers explore the viability of both the notion of a group right and the practical ramifications of embracing group rights in the political realm. While it is fair to say that the bulk of the ideas presented in the collection fall within the liberal analytical tradition, the collection seeks to transcend mere abstract theorizing about group rights and to address practical political problems. Thus, the book grapples at various points with the question of what abstract analytical theory has to offer to those seeking practical responses to lived conflicts. The collection draws largely from Canadian experience and expertise in articulating and negotiating group rights.

In what follows I shall give a very broad brush description of the arguments that are made in the various papers appearing in the collection. It should be noted that many of the papers are tightly reasoned with a degree of complexity and abstraction that will not be adequately reflected in my discussion of them. I will not seek to recapture the density and nuance of many of the arguments put forward but rather I will simply set out the gist of the ideas being explored.

## I. WILL KYMLICKA: "INDIVIDUAL AND COMMUNITY RIGHTS"[1]

The collection begins with a piece by Will Kymlicka. True to the ruling desire of his career, to achieve a conceptual rapprochement between liberalism and communitarianism, Kymlicka attempts to carve out and endorse a notion of a group right that is consistent with fundamental liberal commitments.[2] In the best tradition of his work, he deftly crafts a number of illuminating conceptual categories. He draws a distinction between collective rights and community rights. While he does not go into detail in setting out the existence conditions for a collective right (in illustrating the category he includes as examples both the rights of a trade union and the right of every citizen to clean air) it would appear that his category of collective rights encompasses all those rights having some group element to them. Community rights are that subset of collective rights which "involve the political recognition of ethnicity or nationality" and "are defended (in part) by appealing to the importance of cultural identity or membership."[3]

He then goes on to subdivide the category of community rights into group rights and special rights.[4] Special rights are those rights held by an individual by virtue of their membership in a group and group rights are those rights held by the group itself. Group rights are further subdivided into those rights that a group has as against a larger or more powerful group and those rights that a group has as against its own members. The

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1 W. Kymlicka, "Individual and Community Rights" in J. Baker, ed., *Group Rights* (Toronto: University of Toronto Press, 1994) 17.

2 See W. Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989).

3 Kymlicka, *supra* note 1 at 18.

4 *Ibid.*

category of group right which exists as against the larger group, however, seems inevitably to be exercised in such a way that it is indistinguishable from a special right held by the individual by virtue of their membership in the group.

Not surprisingly, the category of right that Kymlicka is concerned to reject is that which gives the group power over the individual in the face of the individual's objection and claims an interest by the community held separate and apart from the individuals that comprise it. Kymlicka is committed to rejecting such rights because his adherence to liberalism is such that he always objects to an authority wielding power over the individual so as to coerce the individual to adopt a particular conception of the good. Because the kind of "communities" that he is concerned with here — those that are based on ethnicity and are bound together by common cultural membership — may take on the essential characteristics of a state *vis-à-vis* their members, they are to be held to the standard liberal requirements for the legitimacy of the coercive state. Groups must, then, respect individual choice in those circumstances where the liberal state would do so. Where the good liberal state would decline to interfere, so must the group.

None of this is to say that Kymlicka rejects the notion of collective rights entirely. Rather, he is keen to embrace the idea of special rights which are held and exercised by the individual group member in relation to and as against the larger or dominant group. Such rights recognize the significance of group membership while ensuring that there is never discord between the exercise of the group right and the individual group member's interests as he or she perceives them. Thus, by embracing only this sort of collective right, Kymlicka seeks to transcend the question of whether the individual or the group should have primacy.

Kymlicka goes on to argue that recognition of special rights may be justified either by a commitment to equality or by historical circumstance.[5] With respect to the justification from equality, special rights to affirmative action may be justified by the fact of disadvantage, combined with a theory of equality that recognizes differential need.[6] Under the historical justification for group rights, agreements made in the past as compromise arrangements designed to ensure cultural self-determination of groups may legitimately form the basis of special rights.[7] Examples of the sort of historical agreement Kymlicka is concerned with here include the "special rights accorded to Francophones in the *Constitution Act, 1867* and the special rights accorded Indians under various treaties."[8] Recognizing that this justification of special rights might deny special rights to immigrant groups, Kymlicka argues that this result can be justified by reference to the liberal stand-by of consent, stating that such individuals, by immigrating, agree to give up the right of full cultural self-determination.

Kymlicka concludes on a hopeful note with optimism for a renewed Canadian federalism that embraces special rights justified on equality and historical grounds. He

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5 *Ibid.* at 24.
6 *Ibid.*
7 *Ibid.* at 25.
8 *Ibid.* at 26.

commends his argument as means of quieting the fears of those (including Pierre Trudeau) who would reject special rights because of the threat they are perceived to pose to the "primacy of the individual."[9]

## II. MELISSA S. WILLIAMS: "GROUP INEQUALITY AND THE PUBLIC CULTURE OF JUSTICE"[10]

In the next essay, Melissa Williams responds directly to Kymlicka's ideas and, while she is sympathetic to his goals, she is uneasy about his conclusions. She applauds his recognition of group membership as part of the good for the individual and points out that the failure to recognize such group identification as a significant aspect of the self has been a long standing failure of liberal thinkers. However, she is concerned with Kymlicka's foundational sense of entitlement to judge the justice of groups against the principles of western liberal democratic theory. The thrust of her criticism of Kymlicka is that he gives too much space to the demands of liberalism. It is ironic, therefore, that she proceeds to flesh out her critique of Kymlicka by focusing on his failure to give adequate consideration to the need for consent.

She points out that Kymlicka claims that justice of political arrangements is independent of consent to those arrangements. Thus, because of his faith in the ultimate justness of liberal constraints on the scope of legitimate coercive authority, he seeks to impose those limitations on groups that have not agreed to them. As we have seen, he does this by rejecting a notion of a group right to coerce the individual. Whether or not they have agreed or would agree, the outcome is just, since the limitations imposed are themselves just. Because he holds this idea of justice as an abstract relation independent of context, he is unconcerned that some other conception of justice within a group might be at odds with the limitations on coercive authority that he seeks to impose.

Kymlicka thinks he is right about justice. In the result, he feels entitled to override conceptions of justice emerging from other groups and in particular from other groups that do not share the western democratic tradition. Williams, by contrast, has doubts about whether it is possible to be right about justice. Rather, she argues that justice is culturally situated. Thus, although she does not state it so strongly, it is perhaps only by lapsing into the colonial mentality that Kymlicka can get from A to B (where A indicates the belief that western liberal institutions are just and B indicates the belief that it is just to impose western liberal institutions on other non-western groups with or without their consent).

Williams concludes with a visionary call to democratize the articulation of the notion of justice. Until minority groups have a voice in shaping just terms of co-existence and community in pluralist societies, political and social arrangements can be no more than a *modus vivendi*. She calls for fluid and renegotiable notions of justice that require all participants' consent at the level of moral agreement. Thus, she gives consent and non-coercion an even fuller voice in her argument than does Kymlicka and proposes an

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[9] *Ibid.* at 28.

[10] M.S. Williams, "Group Inequality and the Public Culture of Justice" in Baker, *supra* note 1 at 34.

even more fully liberal procedure for solving and negotiating the relations between illiberal minorities and a liberal majority.

## III. SHERENE RAZACK: "COLLECTIVE RIGHTS AND WOMEN: 'THE COLD GAME OF EQUALITY STARING'"[11]

Sherene Razack parts company with the endeavour to create a notion of group rights consistent with liberalism. Rather, she raises concerns about rights discourse itself from the point of view of women of colour. Drawing on the work of Patricia Williams, Razack appears to be caught in the paradox of "having, for survival, to argue for our own invisibility in the passive, unthreatening rhetoric of 'no-rights' ... juxtaposed with the CLS abandonment of rights theory...."[12] On the one hand, Razack embraces elements of the critique of rights put forward by critical legal scholars. In particular, she endorses the view that "rights talk" masks power relations and legitimates uses of power that would otherwise require a more direct justification. On the other hand, rights talk has been useful in securing some political gains for minorities and thus, women of colour may reject rights discourse at their peril. Another paradox seems to be woven through Razack's work: on the one hand women might be drawn to the notion of collective rights since women as a group could benefit from rights that speak to their reality; on the other hand, it is risky for women to embrace the idea of collective rights, since the community has often been the locus of women's oppression.

Razack sets up a discussion of the liberal value of choice by focusing on Kymlicka's justification for giving immigrant minority groups fewer special rights than those that could be claimed by Aboriginal groups and Quebec as a result of historical entitlement; *i.e.*, that in choosing to come to the country they give up some of their right to cultural self-determination. She rejects this argument, saying that the circumstances of many immigrants are such that it is wrong to assume that they have come to Canada as a result of an uncoerced choice. She notes that the liberal focus on choice abstracts out of the background conditions against which choices are made. It ignores the fact that power relations in society operate to confine the choice of some while facilitating the choice of others. Thus, she is wary of a theory of group rights grounded in choice that does not inquire into means of coercion which may be imperceptible to the members of the dominant group.

She concludes with a plea for a reality check in theorizing and in activism around collective rights. She expresses the hope that the negotiation of group rights for women and minorities will be informed by a full understanding of the way that lives are affected by rights claims. Arguments from choice must always be made with a full understanding of factors that constrain choice.

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[11] S. Razack, "Collective Rights and Women: 'The Cold Game of Equality Staring'" in Baker, *supra* note 1 at 66.

[12] P. Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991) at 158.

## IV. WAYNE J. NORMAN: "TOWARDS A PHILOSOPHY OF FEDERALISM"[13]

In this paper, Norman takes up the task of envisioning the shape of federal institutions that could sustain and support group rights. He notes that federal institutions have, to date, been crafted with a view to accommodating the pragmatic and materialistic motivations for entering into a federation. However, while a federalism of convenience has solved some of the conflicts of pluralist societies by allowing a minority to be a majority within a subsection of the territory of the state, it has also left many problems unsolved. In particular, such federal institutions have yet to offer adequate methods of protecting minority members outside the territory of the minority enclave and protecting minorities within the minority sub-state.

Norman argues that in the midst of these kinds of conflicts, harmony can only be achieved through the creation of federal institutions that are designed specifically to meet the needs peculiar to the social geography of a pluralist political community. He argues that a successful federal union must be based on more than purely pragmatic concerns and "must be accepted on the basis of some analogue of true love and mutual respect."[14]

Drawing on the work of John Rawls, Norman subscribes to the distinction between an overlapping consensus and a *modus vivendi*. A *modus vivendi* is a political arrangement that is consented to on the basis of self-interest. Norman notes that Rawls finds *modus vivendi* arrangements to be inadequate because they are unstable and new reasons for repudiating them crop up as self-interest evolves. An overlapping consensus, by contrast, is a political arrangement which, while motivated in part by self-interest, is also based on a "moral commitment to social union."[15] Norman argues that the challenge of new federal institutions, equal to the task of administering collective rights, is to recognize that federation must be more than a *modus vivendi*, but must nevertheless reject a "comprehensive, monolithic conception of shared identity and citizenship."[16]

Norman addresses the ways in which nationalism threatens federation. He notes further that the task of a renewed federalism is to temper strong nationalism without endorsing an assimilationist policy. This may be done by addressing the fear which is the root cause of nationalism rather than tackling nationalism head-on. While Norman begins by setting for himself a very practical task, he concludes with an array of idealistic admonitions. His essay has an almost spiritual quality to it in his aspiration to build political institutions characterized by love and trust, which seek to deliver their citizens from the destructive power of fear. To say that Norman's conclusions are idealistic and spiritual is not at all to dismiss his work. Rather, his essay points the way to much needed theorizing around federalism and visionary imagining of just

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13 W.J. Norman, "Towards a Philosophy of Federalism" in Baker, *supra* note 1 at 79.

14 *Ibid.* at 86.

15 *Ibid.* at 87.

16 *Ibid.* at 88.

institutions that would respond well to the practical political problems posed by the recognition of group rights.

## V. LESLIE GREEN: "INTERNAL MINORITIES AND THEIR RIGHTS"[17]

In this paper, Leslie Green addresses the question: what is the appropriate response of a liberal democratic state to the oppression by a group of a minority within that group? While he does not use the term "political correctness," its connotations are lurking below the surface of his argument. This is evident even in the quotation Green uses as an introduction to his paper:

> *Because* the persecuting majority is vile, say the liberal, *therefore* the persecuted minority must be stainlessly pure. Can't you see what nonsense that is? What's to prevent the bad from being persecuted by the worse?[18]

Green engages the public/private dichotomy to point out that just as the commitment to privacy in the family may camouflage the oppression of women and children, so too may a commitment to the privacy of groups, insulating them from interference in internal matters, act as a shelter of oppression within the group.

Green discusses some of the reasons that liberals might give for justifying their acquiescence in minority groups' violation of the individual rights of their members. First, liberals might argue that membership in a minority group is essentially voluntary, and while the state claims exclusive authority over all members of the political community without exception, groups may claim authority only over their members. Thus, if a minority is oppressed within a minority, that minority has the right and the opportunity of exit.

Green uses the case of *Thomas* v. *Norris*[19] to illustrate the difficulty with this argument. In this case, Thomas sued a number of band members for assaulting him in the process of forcing him to take part in a spirit dance. The defendants argued unsuccessfully that they had "a collective Aboriginal right to continue their traditions of spirit dancing, notwithstanding that this practice violated Thomas's rights to security."[20] Notwithstanding the ultimate result of the case, Green points out that membership in a group may not be entirely within the power of the individual to determine. Because the other band members ascribed membership to Thomas and also because the terms of the *Indian Act* ascribed membership to him, Thomas' autonomous power of exit was subject to question.

Green goes on to note that a further reason for a dominant liberal state's acquiescence in minority violation of internal minority rights might be that the minority

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17 L. Green, "Internal Minorities and Their Rights" in Baker, *supra* note 1 at 100.

18 C. Isherwood, *A Single Man* (New York: Farrar, Strause, Giroux 1964) at 72, as cited in L. Green, *ibid.* at 101.

19 [1992] 2 C.N.L.R. 139 (B.C.S.C.).

20 Green, *supra* note 17 at 109.

may not bear the same relation of power over its internal minorities that a majority bears over its minorities. It might be that the internal minority is in fact quite powerful in relation to the minority. Thus, the power relation between the minority and the internal minority would not mirror the relation between the minority and the majority. Green points to the internal minority of Anglophones within Quebec as an example of the relative weakness of a minority in relation to its internal minority. Ultimately, however, it would appear that he rejects this argument because he does not believe that minorities — powerless as against the majority though they may be — are also powerless against their own internal minorities. In speaking to the point about the Anglophone minority in Quebec, Green poses the rhetorical question: "[a]fter all, it is no solace to francophones that their language will always survive in Paris; why should English Montrealers feel reassured that their language will still be spoken in Boston?"[21]

Another strand of Green's argument, closely interwoven with the previous one, is that liberals might defend the acquiescence in minority violation of internal minority rights on the basis that such acquiescence might be necessary to preserve the integrity or existence of the minority itself. Green recognizes that such a situation would require a tragic choice. However, he concludes that within a liberal democracy that choice ought to be made in favour of protecting the rights of individuals threatened by the minority's coercive power. Citing fundamentalist religious communities as an example, he notes that it is not far-fetched to suppose that a minority might lose the coherence of its identity by respecting the rights of its internal minorities. However, he concludes that such a loss is the price of freedom.

## VI. DENISE G. RÉAUME: "THE GROUP RIGHT TO LINGUISTIC SECURITY: WHOSE RIGHT, WHAT DUTIES?"[22]

Denise Réaume's contribution to the collection is a densely reasoned and demanding text. Réaume begins with a defence of conceptual analytical theory noting that her "central concern here will be to explore whether any claims to group rights are valid and what consequences they have for others, not whether unsupportable claims may or are likely to be made."[23]

By way of a complex argument Réaume goes on to conclude that the idea of "an individual right to a participatory good is conceptually flawed."[24] The speaking of a language is, of course, a participatory good since it is done in community and with the participation of others. From there she goes on to ask whether a community could hold the right so that the right to the participatory good of language might be recognized as residing in the group or community itself rather than in the individual. By analogizing the community (composed of many individuals) to the individual (composed of many

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21 *Ibid.* at 113.

22 D.G. Réaume, "The Group Rights to Linguistic Security: Whose Right, What Duties?" in J. Baker, ed., *supra* note 1 at 118.

23 *Ibid.* at 118.

24 *Ibid.* at 119.

fragments of self), Réaume concludes that there is nothing which precludes recognition of a community as a right holder.

Réaume then asks who the correlative duty holder(s) would be in relation to a collective right to a participatory good. Here Réaume raises concerns about the duties to be imposed on both members and non-members of a group as a result of the recognition of a collective right. Réaume points out, however, that there is no reason to overstate the demands of the dichotomy between the individual and the collective as a consequence of recognizing collective rights. She notes that "since participatory goods are ultimately grounded in the well-being of human beings, as are individual goods, it cannot be objected that individuals are automatically more worthy than groups."[25] Thus, in balancing group and individual rights nothing in the nature of the notion of a collective good implies that either the collective good or the individual good should automatically take precedence.

Réaume then goes on to look more closely at the example of linguistic rights as an example of a collective right to a participatory good. She notes that in the modern world of multicultural states, protection of language is "frequently used as an imperfect proxy in the attempt to safeguard a culture."[26] She points out that the scope of a right to linguistic security will vary from situation to situation and that the assertion of such a right must always be consistent with a basic commitment to the notion of the equal worth of all human beings. Thus, a right to linguistic security could never automatically entail the right to the survival of a particular language at the expense of any others.

Using *Ford* v. *A.G. of Quebec*,[27] a case involving a French-only sign law in Quebec and a controversy arising out of a French-only policy for air traffic controllers in Quebec, Réaume fleshes out the implications of her theory. In her discussion of both of these examples, Réaume notes that because the claim that one language is superior to another is unavailable as a result of the principle of equal moral worth, the claim to protect the survival of the French language does not automatically hold sway. In analyzing *Ford*, Réaume advances the view that the Francophone interests secured by the sign law could not outweigh the threat posed to the Anglophone community by the law's real and symbolic effects. Likewise, with respect to the air traffic control controversy, Réaume argues that all of the interests at stake must be assessed and weighed. The claimed interest of passenger safety which purportedly supported the French-only rule for air traffic controllers would have to be assessed. That is, only if the risk to individual safety interest was real could it outweigh the collective interest of English-speaking air traffic controllers.

While Réaume would reject many of Kymlicka's conclusions, both essays seek to articulate and defend a notion of a collective right while quieting fears that the acceptance of such rights will result in a sacrifice of the primacy of the individual.

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[25] *Ibid.* at 126.

[26] *Ibid.* at 127.

[27] (1988), 54 D.L.R. (4th) 577 (S.C.C.) [hereinafter *Ford*].

Réaume, however, is more daring about vesting those rights directly in the collectivity itself.

## VII. JOSEPH CARENS: "THE RIGHTS OF IMMIGRANTS" [28]

In this paper, Carens asks a number of probing questions about the appropriate moral principles governing immigration policy in an affluent country like Canada. In particular, he asks whether it can be legitimate to refuse entry to immigrants on the basis of characteristics and whether exclusion on the basis of some characteristics is less objectionable than exclusion on the basis of others.

In attempting to answer these questions, Carens sets up a distinction between idealistic and realistic morality. He argues that meaningful discussion of the rights of immigrants must take place within the confines of a realistic morality. It is futile to attempt to craft solutions to the moral problems of immigration by first abstracting out of the existing injustice in present global circumstances. If we begin to address the problem of immigration from within an idealistic moral framework we would be hard pressed to come up with any justifications for the restriction of movement of individuals across state borders.

However, once we move into the realm of realistic morality we must take as given a number of conditions, including the fact that states assume entitlement to control entry into their borders. It is also true, however, that states generally accept some responsibility for sheltering refugees. A further principle that may be counted on in a realistic moral theory is that of family unity which is the assumption that families have a fundamental right to live together. Realistic morality, then, begins with the fundamentals of those existing conventional morality principles that are, in fact, embraced by sovereign states.

Carens then goes on to attempt to develop strategies for ensuring that states will bear their fair share of the burden of the claims of refugees. Again, his approach is pragmatic and contextual. Another lesson of Carens' realistic morality is that if too much is asked of a state in bearing responsibility for immigrants, less may be given than if initial requests had been more measured. Further, he argues that where possible, non-moral philosophical arguments should be used to induce states to accept refugees. In short, he is of the view that results are the ultimate test of arguments aimed at inducing states to accept immigrants from less prosperous countries. Context is therefore of primary importance since, for example, arguments that may be effective in Canada, given the Canadian historical context, may be totally ineffective in Japan and *vice versa*.

While Carens is concerned to demonstrate the futility of idealistic moral theorizing in this area he is also adamant that one moral principle must be unwaveringly insisted upon. This is the principle that "no state is morally entitled to discriminate against

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[28] J. Carens, "The Rights of Immigrants" in Baker, *supra* note 1 at 112.

potential immigrants on the basis of race or religion or ethnicity."[29] Carens notes that this principle is also one to which states are formally committed. Carens would, however, allow room for discrimination on the basis of linguistic and cultural compatibility, so long as these criteria are not utilized to indirectly pursue a program of racial, religious or ethnic discrimination. Of course, one of the consequences of colonialism is that a significant number of peoples of colour do speak European languages. Thus, making proficiency in French a strongly favoured characteristic for immigration to Quebec does not, as it happens, disproportionately exclude people of colour. Carens points out that this policy of the Quebec government results in the immigration to Quebec of Francophones from Asia and Africa.

However, the task of ensuring that discrimination on the basis of cultural compatibility does not slide into discrimination on the basis of religion or ethnicity appears to be formidable. Indeed, Carens gives an example of an immigration official preferring Francophone Lebanese Christians to Francophone Lebanese Muslims on the basis of cultural compatibility. Carens recognizes that allowing discrimination on the basis of cultural compatibility poses a difficulty since "most forms of discrimination are seen by the practitioners as issues of cultural compatibility."[30] Unfortunately, Carens does not provide examples of ways in which cultural compatibility could be used as a legitimate means of making choices about which potential immigrants to accept that would not involve the decision-maker in discrimination on the basis of race, religion or ethnicity.

## VIII. HOWARD ADELMAN: "REFUGEES: THE RIGHT OF RETURN"[31]

Adelman's paper is perhaps the most emotional in the collection and also perhaps the most overt in its stance embracing a particular group right. The paper addresses the question of whether Palestinians have a right of return to Israel. Adelman further poses the question of whether such a right is a human right. He answers both questions in the affirmative.

The essay has a complex analytical structure which at times is difficult to relate to the substantive points in the piece. Adelman begins by constructing a set of existence conditions for a human right which includes the requirement that they be "universal in possession, protection and use."[32] He then describes three paradoxes that arise out of these characteristics of human rights: the possession paradox, the protection paradox, and the utility paradox.[33] What he appears to be seeking to derive from the statement of these paradoxes is a conclusion that the non-exercise of a human right or the non-recognition of it by a state does not diminish that right nor does it entail its non-existence.

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29 *Ibid.* at 159.
30 *Ibid.* at 161-62.
31 M. Adelman, "Refugees: The Right of Return" in Baker, *supra* note 1 at 164.
32 *Ibid.* at 165.
33 *Ibid.* at 167-68.

From there Adelman goes on to examine a number of alternative justifications for the right of return as a human right. He first examines the natural rights justification which embraces the idea that human rights derive from human characteristics. If a deep attachment to the soil on which one was born is accepted as a fundamental human characteristic, then we may derive from that the fundamental human right to live and grow up on the soil on which one was born. Secondly, he addresses the contractarian justification for a human right of return. On this justification, the Palestinian right of return would be grounded in the international obligations held by Israel as a result of voluntarily undertakings.[34] Thirdly, the right of return as a human right might be justified by appeal to the fundamental right of families to live together.[35]

Adelman then returns to his analytical framework to argue that the right of return is a human right, noting that it shares with other human rights the essential feature that the absence of its exercise does not affect its existence. Proceeding from there, Adelman goes on to consider and to embrace the notion of a group right that is also a human right.

## IX. JAMES A. GRAFF: "HUMAN RIGHTS, PEOPLES, AND THE RIGHT TO SELF-DETERMINATION" [36]

In the final paper, James Graff explores some of the darker aspects of the assertions of peoples' rights of self-determination. Embracing a version of Kymlicka's distinction between group and special rights, he notes that a right of self-determination of peoples must, by its nature, be a true group right and not a right held by the individual as a consequence of membership in a group. This conclusion follows from the fact that the object of the right is control over the arrangements by which people are governed. Unlike Réaume, Graff is deeply sceptical about supporting the notion of a group right by an analogy between groups and individuals. Graff argues that individuals are natural entities whereas peoples are fictitious entities. Graff notes that peoples may be created by political leaders through various means including propaganda which induces identification by the individual with the group, personification of the group, and attribution of credit for the achievements of individual members of the group to the group as a whole.

Graff notes that the legacy of such ideas has been one of horror and bloodshed. Thus, he argues that notions of group rights to self-determination ought to be rejected on the basis that they are both theoretically and practically racist.[37] Following along with his rejection of the analogy from individual to group, Graff rejects the notion that a group's right to occupy territory may be analogized to a person's right of property in a home. The purpose of such analogies is to mask and legitimate the violent removal

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[34] *Ibid.* at 171.

[35] *Ibid.* at 174.

[36] J.A. Graff, "Human Rights, Peoples, and the Right to Self-Determination" in Baker, *supra* note 1 at 186.

[37] *Ibid.* at 195.

of squatters from the home territory.[38] He argues that the conflicting claims of two peoples to one piece of territory cannot be solved by arguments about the relative strength of the parties' claims to peoplehood. In situations of bitter conflict, he concedes that partition may be the least unjust solution.[39]

Speaking from a position of deep scepticism about the moral legitimacy of the ethnically-based sovereign state, Graff argues passionately and persuasively for the repudiation of such identifications. He perhaps most strongly rejects the notion of a group right by arguing that the rights of peoples ought always to be subordinate to concerns about the well-being of individuals. The juxtapositioning of this piece with the previous one is interesting particularly given that both Adelman and Graff are activists for refugees.

## X. CONCLUSION

This collection of essays is an interesting and engaging attempt to harness the power of analytical theory to address the practical political conflicts arising out of the claims of groups. With the exception of the paper by Sherene Razack, the collection is written from within the liberal tradition. This is not a criticism of the book, but it does raise the question of how theorists and activists writing outside the parameters of liberalism would respond to the questions posed by group claims. Such thinkers would perhaps not frame their analysis in terms of rights, nor would they be as preoccupied with the question of whether the limitations imposed on the liberal state ought equally to be imposed on groups. However, this thorough and interesting liberal exploration of the problems and dilemmas arising out of the conflicts between and among group and individual claims whets the appetite for a similar exploration by thinkers not tied to the conceptual confines of liberalism.

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[38] *Ibid.*

[39] *Ibid.* at 200.