Book Reviews

Alston, Philip (ed.). ***Peoples' Rights: The State of the Art***. Collected Courses of the Academy of European Law. Oxford: Oxford University Press. 2001. Pp. 293. Hardback £45.00, Paperback £16.99; McCorquodale, Robert (ed.). ***Self-Determination in International Law***. The Library of Essays in International Law. Aldershot: Dartmouth Publishing Company, Ltd. 2000. Pp. 616. $245.00, £128.00.

'Is the human rights era ending?',[1] Michael Ignatieff asked in the *New York Times* in early 2002. As a post-September 11 syndrome spreads, deprioritizing civil liberties concerns, and as the international community grapples with the ever-expanding war on terrorism, it is easy to understand why he might have raised this question. Hence, the current climate provides a particularly challenging backdrop for an evaluation of the contemporary relevance of the so-called third generation human rights. The legitimacy of these collective rights has always been shakier in the West than that of civil and political rights, or even of economic, social and cultural rights when framed as individual rights. In a season when even previously uncontroversial (at least in theory) human rights norms on torture and arbitrary detention are coming under sustained attack, what hope is there for the right to peace or the right to solidarity? Faced with the challenges of 2003, can concepts of peoples' rights help us leap the myriad human rights hurdles of the early twenty-first century? Or are they merely an embarrassing holdover from the 1970s?

The books under review offer much raw material for considering such questions. Alston's *Peoples' Rights*, a collection of essays from the Academy of European Law of the European University Institute, provides an overview of the entire terrain, covering everything from the most historically entrenched of group rights, self-determination, to the political battleground that is the right to development, to the emerging right to environment. An excellent bibliography on related topics is appended, demonstrating the breadth of scholarship available. McCorquodale's compendium picks up where Alston's leaves off, bringing together a wide range of twentieth century works specifically focusing on the most mainstream group right, self-determination. It offers 616 pages of elaboration, which are both helpful and brilliant in places, though inevitably repetitive and somewhat confusing as a whole. What becomes clear from reading both works is that the future of group rights is not looking bright, that their past includes some victories (especially for self-determination) among the many failures, that their meanings are highly contested and not just politically, and most of all, that in addressing the difficulties with such concepts we should be very careful not to lose sight of the important impulses which inspired them.

Toward the end of *Peoples' Rights*' nearly 300 dense pages, one may be forgiven one's frustration on discovering that their editor, Philip Alston, is convinced that the topic of those same 300 pages, namely peoples' rights *qua* peoples' rights, 'will continue to diminish in importance'[2] in the future. Despite this gloomy prognosis, the book provides an excellent introduction to the subject. Incisive opening and closing essays by the editor are helpful in putting the subject in historical perspective.

[1] Ignatieff, 'Is the Human Rights Era Ending?', *NY Times*, 5 February 2002, AT A29.

[2] Alston, 'Peoples' Rights: Their Rise and Fall', in P. Alston (ed.), *Peoples' Rights* (2001) 292.

In Alston's view, group rights have evolved through four phases. In the 1940s, during the drafting of the UN Charter, crafted in the name of 'We the *peoples* of the United Nations', the notion of peoples was floated in a variety of contexts, but repeatedly 'neutralized'.[3] The period of 1950–1971 represents what he calls 'the heyday of self-determination',[4] leading to the third phase, from 1972–1989, the zenith of peoples' rights. Propelled by the works of scholars like Karel Vasak and Richard Falk and promoted by UNESCO and some NGOs, peoples' rights were enumerated during this period, *inter alia*, in the 1976 Algiers Declaration of the Rights of Peoples, in the General Assembly's declarations on the Right of Peoples to Peace (1984) and on the Right to Development (1986), and in treaty form in the African Charter on Human and Peoples' Rights (1981).

Yet, all this was followed, in Alston's most recent phase (since 1990), by the waning of peoples' rights in the face of political opposition engendered by their success, and due to a convergence of factors. These include the transformation of most liberation movements into governments, the end of the Cold War and globalization. He sees the post-1990 era as one in which such rights have 'greatly diminished significance', partly due to 'their failure to live up to any of the more ambitious expectations that their proponents harboured in the preceding phase'.[5] Today, rights which seemed to offer much promise have been denuded. As Alston wryly comments, 'a search of "right to peace" sites on the World Wide Web yields almost nothing which sheds any light on the issue but instead reveals a great number devoted to the right to peace and quiet!'[6] Alston's explanation for this is multi-faceted. In part, it inevitably resulted from the end of many socialist regimes, given that group rights were often officially championed by such governments and were therefore destined to be viewed with scepticism in our neo-liberal era. But Alston goes further than this accepted wisdom, to explain that:

> [m]uch of the fault lies with the way in which the proponents of these rights sought to dispense with any phase of progressive development of the relevant body of law and instead tried to vault over the *acquis* and establish a new paradigm which was, at best, poorly rooted in what had gone before.[7]

This is a reminder to well-meaning human rights lawyers that we had better do our homework. Human rights law is *law*, not a wish list or catalogue of dreams, and if we wish it to be accepted as such, it must be methodologically and conceptually sound.

Alston's volume offers a comprehensive overview of the state of international environmental law by Dinah Shelton; a useful schema of the variety of legal bases offered for rights of indigenous peoples by Benedict Kingsbury, and a glimpse of challenges in the area of minority rights by Peter Leuprecht. Outstanding articles include James Crawford's beautifully written 'The Right of Self-Determination in International Law: Its Development and Future', and Anne Orford's practically-minded 'Globalization and the Right to Development'.

Orford sketches the contentious history of the right to development, reveals the contours of the right, then looks at how, if at all, this right has impacted the policies of international financial institutions. In a dimension too often missing in contemporary human rights law writing, she inquires whether the concept is *actually* useful in today's globalized world. Though aware of the right's potential dangers (governmental misuse as justification for violations of civil and political rights, site of wasteful political struggle between North and South in international fora), she concludes that the right to development, in light of its emphasis on participatory decision-making and ability to implicate both national and transnational policy-making and practice, can ultimately be harnessed to 'effect change in the current agendas of states, international

[3] *Ibid.*, at 260.
[4] *Ibid.*, at 262.
[5] *Ibid.*, at 269.
[6] *Ibid.*, at 281.
[7] *Ibid.*, at 291.

economic institutions and foreign investors'.[8] Such potential should make it more, rather than less, compelling in our times of national bankruptcies, market fundamentalism and claims of a unipolar world order. Yet, these frameworks, like notions of peoples' rights in general, are bedevilled by vagueness in requirements and methodologies.

For example, Crawford grapples with self-determination's 'radical indetermina[cy]'[9] reminding us that we cannot make sense of it unless we come to understand both who is the 'self' (if a group of persons, which group? if not, the state?) and what exactly that entity is to determine (reform? democracy? autonomy? secession?) and how (by referendum? by force?). He paraphrases Ivor Jennings to the effect that 'to let the people decide is ridiculous because first someone must decide who is the people',[10] neatly catching a paradox that runs throughout concepts of peoples' rights. Ultimately, self-determination in the (largely) post-colonial era offers more questions than answers. In Crawford's words:

> An ethnic group, a group with a historical continuity and a consciousness, a group evidently entitled to respect, asserts: 'we are a people.' It seems to be so. And all peoples have the right of self-determination. The conclusion is obvious. But what is to be done with it?[11]

Yet, reminiscent of Alston, while he is somewhat sceptical about the concept overall, he suggests that much of its spirit should be maintained: 'despite the difficulties and uncertainties . . . , the continuing vitality and potential for expansion of the principle of self-determination, at least as a directive principle, should not be underestimated'.[12]

This brings us to a consideration of *Self-Determination in International Law*. With 616 pages, McCorquodale's volume is a helpful reference but a gruelling read. A number of standouts should not, however, be missed, including Nathaniel Berman's 1988 'Sovereignty in Abeyance: Self-Determination and International Law', Christine Chinkin and Shelley Wright's stunning feminist riff, 'The Hunger Trap: Women, Food and Self-Determination', Hannum's clear-thinking 'Rethinking Self-Determination', and Koskenniemi's wonderful 'National Self-Determination Today: Problems of Legal Theory and Practice'.

The book is part of the series: Library of Essays in International Law, of which McCorquodale is the general editor. In the series preface he writes that part of the purpose is, in the face of proliferating literature, to bring together many of the central articles on particular subjects, thereby easing the difficulties of staying on top of such material. However, a majority of the articles in this volume come from US law journals and are originally Anglophone, thus representing only a part of the global literature on the subject. To fulfil the series' mission, a great addition would be to make foreign language articles, which are much more difficult to obtain, available to the English reader in translation. Including more perspectives from Asia, the Arab World and Latin America (McCorquodale does include two articles by African scholars) would be a welcome addition to both this and Alston's volume. In addition, a conclusion with some attempt to summarize where we are in light of all of the literature's claims and counter-claims, and a subject index, could add to the McCorquodale book's usefulness, particularly for students.

Ultimately, the essential question posed by these two works is, 'do we need group rights?' Is there some need which these concepts synthesize that is not covered by other rights concepts? Carl Wellman, though not a proponent of solidarity rights overall, wrote that '[t]he introduction of this third generation of human rights has typically been justified as necessary for the realization of the first and second-generation human rights in a world of

[8] Orford, 'Globalization and the Right to Development', in Alston, *supra* note 3, at 184.

[9] Crawford, 'The Right of Self-Determination in International Law: Its Development and Future', in Alston, *supra* note 3, at 18.

[10] Alston, 'Introduction', in Alston, *supra* note 2, at 18.

[11] Crawford, *supra* note 10, at 39.

[12] *Ibid.*, at 65.

global interdependence'.[13] However, many have asked why, if group rights are but an aggregate of individual rights and hence can conversely be broken down into the individual right of each member of the group, a third-generation concept is necessary at all. Perhaps the most useful aspect of group rights is the questions which they provoke about the obstacles to enjoyment of civil, political, economic, social and cultural rights, and the platform they provide for making human rights claims against not only national but transnational actors.

Another question is whether, strategically, at this juncture when we may have moved from the era of human rights to the era of security, it is worth fighting to keep notions of peoples' rights within our human rights framework. A chain is only as strong as its weakest link. Ignatieff, in his recent *Human Rights as Politics and Idolatry*, argues that in the face of daunting challenges to human rights concepts, it is best to concentrate on a minimalist human rights agenda, a '"thin" theory of what is right, a definition of the minimum conditions for any kind of life at all'.[14] He underscores 'negative liberty', a framework that suggests emphasis on the individual civil and political rights which are currently thought to constitute *jus cogens* norms. While this has allure, it is perhaps in this most difficult of moments that the human rights movement must be most creative. Faced with widespread economic crisis and the attendant questioning of the 'Washington consensus', is this the time to retreat to the defence of a narrow individual rights paradigm? Confronted by terrorism and its symbiotic partner, counter-terrorism, should human rights law remain on the sidelines, limited to attempts to file off the roughest edges of each? Or can a group rights approach contribute to human rights law's continuing relevance in the face of such phenomena by emphasizing the resolution of outstanding peoples' rights issues — ending colonial domination, confronting the unfairness of the global economy and challenging militarism?

Alston himself concludes that 'a conception of human rights which has banished all dimensions of group and peoples' rights will be a greatly impoverished one and one which is ill-equipped to deal with some of the major challenges that are certain to confront it in the years ahead'.[15] He admonishes Western governments to reconsider their obligations vis-à-vis the ever-growing inequities associated with globalization and not to see the diminishing of peoples' rights concepts as a licence to consign such concerns to the waste-basket of history. While peoples' rights, including self-determination, suffer from vagueness and are fraught with some perils, the concerns which underlie them remain as relevant now as in the 1970s, if not more so. Perhaps it is no accident that culturally the 1970s are much in fashion at the moment.

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[13] Wellman, 'Solidarity, the Individual, and Human Rights', 22 *HR Quarterly* (2000) 650.

[14] M. Ignatieff, *Human Rights as Politics and Idolatry* (2001) 56–57.