



THOMAS MEYER
WITH LEWIS HINCHMAN

THE THEORY
OF SOCIAL
DEMOCRACY

The Theory of Social Democracy

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Thomas Meyer
with
Lewis P. Hinchman

polity

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Introduction

Democratic theory as a framework

The theory of social democracy describes and explains the social conditions that support the legitimacy of modern democracy, showing both their connection to universal basic rights and their significance for democratic efficacy and stability. American researchers such as Lipset and Dahl have confirmed that social democratic policies and practices enhance the functionality and stability of democratic states.¹ Democracy's foundations remain weak and unstable as long as status inequalities contradict formal political equality and citizens disagree about what political justice requires.² In the long run democracy will lose ground if it is understood only as a set of institutions, i.e., without taking into account civic participation and accountability as well. Merely *delegative* democracy and "passive citizenship" are manifestations of *defective* democracy, detracting from the legitimacy of democratic commonwealths.³

As a theory, social democracy offers an account of the complex interplay among legitimacy, efficacy, and stability. As empirical science, it seeks to explain the functional deficiencies of *libertarian* democracy, which remains wedded to a purely formal, procedural notion of decision-making. Finally, the theory analyzes strategies and models for preserving social democracy in a globalizing world.⁴

Modern society is marked by a tension between two aspects of rights: their *formal validity*, which is implicit in their use as a standard to legitimize democracy (made explicit in the 1966 UN Fundamental Rights Covenants), and their *efficacy*, i.e., the social conditions that allow them to become meaningful in the "real world" and not just on paper. Therefore, the theory proposed here cannot merely interpret the norms that secure democracy's legitimacy and the institutions that embody it.

It must also analyze some of the prerequisites for the complete actualization of rights in practice. It must likewise explore the circumstances affecting democracy's continuity in the modern world, and show how its contemporary forms might live up to their own intrinsic standards.

These are all themes and tasks incumbent upon any rigorous theory of democracy.⁵ To achieve its goals, our investigation will proceed along several lines. It first addresses the *normative* dimension, which stresses the demands for legitimation placed on institutions and policies of a democracy. It then turns to the *empirical-analytic* dimension, inquiring how effectively democratic systems manage their social problems. Next, *stability studies* contribute expertise on the conditions that affect the continuity and durability of democracy. Then, *comparative* studies of democracy examine the success of various, country-specific solutions to the challenges facing popular rule. Finally, recent research on *defective* democracy completes the survey.⁶

Since these approaches converge on the same social and political reality, it should come as no surprise that areas which the scholarly division of labor has carefully distinguished turn out to be inextricably interwoven in practice. For example, the legitimacy of democratic systems affects their stability and capacity to solve problems, and vice versa. The characteristic feature of democracy is that its inputs, outputs, legitimation, efficiency, and opportunities for popular participation are never independent of one another.⁷

Two crucial concepts in social democratic theory are the *formal validity* and *real-world efficacy* of universal basic rights. In all subsequent contexts "*formal validity*" will connote both the formal status of the relevant rights under positive law and their status as universal human rights norms transcending positive law. By contrast, "*real-world efficacy*" refers to the enjoyment of the relevant rights in the practice of everyday life. It designates the de facto control a person has over opportunities to make use of his or her rights. The distinction may be illustrated by such differences as the right to a job versus having one actually available; or the right to an education versus the availability of concrete educational opportunities. The theory of social democracy asks what would have to be done to make fundamental rights as universally available in practice as they are qua formal legal principles.

The present theoretical sketch also attempts to conceptualize *social democracy* as one of the key components of political science by imbedding it in a more encompassing theory of democracy. In the latter, the notion of *social* democracy has clear affinities to and contrasts with both *liberal* and *libertarian* democracy. Following well-established intellectual traditions, we shall mean by liberal democracy a pluralistic regime that respects human rights and abides by the rule of law.⁸ It is legally and conceptually flexible enough to accommodate both subcategories: libertarian and social democracy. The former restricts the scope of

democracy and fundamental rights to the political sphere, and defines the self-regulating market and unregulated private property as the institutional counterparts of democracy in the economic and social sphere. Social democracy, by contrast, insists that democracy and its associated charter of rights must be extended into the social and economic spheres as well. Specifically, the social order must meet higher standards of democracy by allowing for well-regulated participation, a legal claim to social security, a distribution of wealth and income that takes justice into account, and a democratic state, the regulative and distributive policies of which accord with all of these values.⁹ One could also distinguish liberal from social democracy by emphasizing the former's commitment to economic liberalism, as ordinary language usage suggests.¹⁰ However, in the present theory the conceptual triad of *liberal*, *libertarian*, and *social* democracy will be employed consistently in line with the previous definitions.

Our argument is not normative in the sense that it depends on norms derived from any specific ethical system. Rather, because the theory makes a claim to universal validity, it seems prudent to base it on a more modest foundation, one that is "weak" in the sense of having very few assumptions. The theory will then be as independent as possible of any particular scientific, cultural, or political strategies of justification. Only in this way can its claim to universal validity be redeemed. The main principles of the theory construct their normative and democratic foundations exclusively on the United Nations Covenants on Human Rights (1966), which are a valid component of international law, having been ratified by 148 countries representing all cultural regions and levels of development. That document links *civil*, *political*, *social*, *cultural*, and *economic* rights, all formulated in culturally neutral terms, and employed so that they expressly acknowledge the different levels of development attained by diverse countries.¹¹

The UN Charter of Rights owes its origins to a distinct line of argument that enjoys a universal, culture-transcendent appeal. In terms of the *logic* of its validation, this argument is stronger than the covenants, because it provides solid reasons for the universal validity of fundamental rights. But in terms of the *politics* of validation it is weaker than they are, because it cannot bind dissenters. This line of argument will be pursued in chapter 1. The goal will be twofold: to clarify the content and meaning of rights by placing them in a broader context, and to justify their claim to universal validity through reasoning that does not depend on their status as part of positive law. Apropos of these normative foundations, the theory of social democracy will also try to ascertain the implications universal rights might have for democratic theory and politics as well as social policy. But even here, the core of the project remains empirical. Its most pressing concern is to clarify the prerequisites and consequences of fundamental rights thus anchored in international law

for specific areas of social action in the world as we know it or reasonably expect it to become.

Beginning from normative principles, the theory analyzes the set of institutional, cultural, and organizational strategies best suited to give basic rights concrete meaning in everyday life. We approach that task from three starting points. First, we identify the *empirical risks*, rooted in the social structure, that imperil the real-world efficacy of universal rights. Second, we examine the experiences of different regimes in managing such risks, and assess how efficacious their remedies have been. Third, we attempt to determine how rights could be made meaningful and effective under contemporary conditions. Inevitably, the theory will be contingent within certain limits. That is, its findings depend on empirical circumstances that can only partially be foreseen and reconstructed in practice.

In brief, our theory seeks empirically defensible answers to one complex question: *what kinds of institutions, forums, policies, participatory channels, and rights does a democracy have to create, in order to secure the universal fundamental rights of all its citizens against the structural risks inherent in modern economic and social life?*

There are many compelling reasons to ground social democracy on universal basic rights, not least their status as a relatively non-arbitrary set of assumptions. Rather than building on unavoidably controversial theories of society and justice, our approach begins from normative principles that have been almost universally incorporated into positive law and enjoy widespread support in the theory of democracy as well. In this manner the theory takes its bearings from the broadest possible sources of validation and recognition, ones that can claim to be politically and scientifically unassailable.

Social democracy and the social welfare state

A theory of social democracy has to worry about more than just presenting a theory of the social welfare state. It must ask what sorts of contributions social security, justice, and participation might make to improve the quality of democracy in a given society. It should also highlight the structures of societal democratization that operate outside of the official social security system. One decisive criterion for evaluating the political system, and indeed the entire field of social security, is whether the authors of political decisions are the same people who must obey them. Accordingly, the theory of social democracy has to expand its investigation beyond the social welfare state, while still making use of its research results.

Various subsystems of society must be included in the theory of social democracy because they contribute to the full enjoyment of universal rights under real-world conditions. Some of these are:

- 1 the political system
- 2 the system of fundamental rights
- 3 the political public sphere
- 4 political culture
- 5 civil society
- 6 subsystems of societal democratization
- 7 political economy
- 8 the educational system
- 9 transnational coordination.

The consequences of globalization and the problem of contingency

Political society today has become cosmopolitan in the sense that it is imbedded in broader contexts of regional and global influence. In fact, it is tempting to think of the theory of social democracy as a theory of action within the global arena. Unless global influences are taken into account, it is difficult to see how political, social, and economic rights can be guaranteed or how ultimate responsibility for making policy can be assigned. It may turn out that individual countries and regional political systems will have to adapt to conditions of economic and societal globalization that they cannot readily control.¹²

Initially, though, the prevailing conditions of capitalist democracies are assumed; only subsequently will the implications and exigencies of globalization be discussed. Yet the reader should bear in mind that the latter have been included as constitutive elements in the way that each area of theory is conceptualized. Globalization is implicitly “built into” the very analysis of social democracy’s problems and prospects.¹³

Part I

Political Theory

Social Rights, Risks, and Obligations

1.1 Contradictions in political liberalism

The legacy and aims of political liberalism

Since the Enlightenment the theory of liberal democracy has provided a virtually unchallenged source of legitimation for most regimes, at least in Europe.¹ By the nineteenth century it became apparent that liberalism had the potential to become more democratic both legally and institutionally. Eventually, the only norms capable of legitimizing political authority in modern societies were those derived from liberal political thought: universal human and civil rights; the rule of law; political power checked by constitutions; and popular sovereignty expressed as majority rule.² To be sure, these norms have often been ignored in practice. Nevertheless, with the exception of a few fundamentalist ideologies rooted in identity politics, their claim to universal validity is rarely challenged.³ In the wake of the collapse of its last great historical nemesis,⁴ Marxism-Leninism, the doctrine of political legitimacy implicit in liberalism has swept the field. In the post-metaphysical phase of modernity it has proven to be the only durable foundation of political authority and social order capable of mustering universal consent. Consequently, any modern democratic theory that stakes a claim to universal validity has to remain within its confines.

Even in its earliest form, in the writings of John Locke, political liberalism already offered universal justifications for the notions of a pre-political *equal liberty* for all and of *human rights* designed to preserve that freedom. Once the modern state was founded on democratic consent expressed in a social contract, those original notions led to the establishment of *equal civil rights*. The latter apply to all persons and define the meaning, purpose, and limits of the state's authority.⁵ The ideas that

legitimize the political and social order in the modern world derive from this liberal legacy: the equal dignity and worth of all persons, and the consequent equality of rights they enjoy in all decisions that affect both private and political autonomy.⁶ These rights are “absolute” in the sense that they are not to be balanced against other goods in a utilitarian calculus, i.e., not to be treated as relative to other ends. History justifies us in treating both principles – *private* and *political* autonomy, bonded indissolubly together – as the generative ideas of political liberalism. This is the case even though into the twentieth century the chief architects of liberal theory and party policy, hoping to shore up private property rights, struggled to evade the implication that liberalism ought to become more democratic.⁷ Restrictions on political participation such as property qualifications, gender, and educational levels gradually yielded to the evolving inner political logic of liberalism. The principle of equality triumphed over all such restrictions in its concrete forms as *equal liberty* for all citizens and the equal dignity of all persons. It is thus no longer possible to legitimize authority except by appealing to the norms of equality and their uniquely compelling claim to validity.

Within liberalism conflict has erupted over two *cardinal issues* that define the theory of social democracy: to what extent does recognition of human and civil rights shape the encompassing structures of society, and what standards must be met to justify the conclusion that these legitimating norms have been actualized in the real world?⁸

The theoretical tradition of political liberalism eventually split into *libertarian* and *social* wings, mainly due to differences over the way that the fundamental rights of personal freedom and private property ought to be ranked and balanced, and how the very notion of freedom should be defined.⁹ The answer to the latter question in turn will supply premises for a further argument about the gap between the *formal validity* and the *real-world efficacy* of rights. To emphasize the *formal validity* of such rights implies that one should take legal steps to secure individual freedom by establishing a legal sphere of privacy shielded from the intervention of third parties. By contrast, insisting on their *efficacy in the real world* means trying to add a dimension of freedom: All citizens should have sufficient control over elementary social and private goods to make their formal-legal freedom meaningful. This is the case only if they can reasonably expect to act in light of their own life plans, assuming these have been autonomously conceived.

The first liberal dilemma: freedom and property

Locke links the rights to freedom and property in a way that makes them appear mutually reinforcing; yet in the end their relationship proves to be ambiguous.¹⁰ He does not limit the notion of property merely to ownership of things. Rather, the term property in his theory

embraces three distinct relationships that are to some extent constitutive of freedom: control over one's own body or person, which implies the general freedom of action meant by private autonomy; liberty of thought and belief, especially in religion; and the right to dispose of one's own possessions.¹¹ The first two dimensions of Locke's concept of property involve reflexive relations with only one reference point: the relationship between a single person and him- or herself. Locke rejects the possibility that third parties might have legitimate interests to defend. But the third dimension raises the possibility of multiple reference points. Two or more persons might be involved in a case of legal ownership, since in principle its enjoyment could affect the rights not only of the property-owner, but of others as well.¹² When property is originally acquired prior to the establishment of civil society and government through a social contract, it involves only a binary relationship between the acquiring person and the thing itself, which Locke assumes belongs to no one and is simply "found" in nature, until labor endows it with the status of property. Only later in Locke's exposition does the ownership of things evolve into a multipolar relationship. Once the state is founded by property-owners, it may lay claims to their property through taxation. Moreover, property may be employed as a means of production, for the full utilization of which the labor of third parties is required. The previous two cases, taken together, suggest that a "mature" property relationship eventually includes four reference points: the owner, the things owned, any number of propertyless fellow-laborers, and the state. Individual property rights may conflict with the rights of the last two, thereby raising a variety of legitimation issues.

Although Locke alludes to all of these dimensions in his theory of property, he does not assign them equal weight or explore their connection to the universal right of equal liberty. Locke cites three reasons why people have a legitimate right to property in things.¹³ *First*, because individuals own their own bodies, what they acquire is the product of their own free agency. *Second*, property is an expression of *justice* in the dealings of free persons with one another, since each of them has acquired property in a lawful manner. *Third*, once it has been legitimately acquired, property satisfies one condition for the continuing exercise of freedom on the part of persons qua owners. Once one concedes that there was an original condition in which everyone faced an "unowned" nature unmodified by labor, the conclusion seems inescapable that the propertyless misused their freedom of action and so deserved their fate.

Given these premises, the legitimating relationship between freedom and private property is persuasive. For then it really would be a matter of individual choice whether one wished to work for someone else (except in the case of a slave).¹⁴ The question that Locke never

systematically poses is: what value does freedom have to someone who must transfer it to another in order to survive? Here it is not a matter of people having forfeited the right to life in an unsuccessful war, as in slavery, but of unmerited want and distress that drive them to desperate choices. In a property-based theory of freedom, voluntary alienation of one's liberty collides with the principle of an inalienable natural right to freedom, raising the question of how conflicts between rights of equal rank, distributed among different persons, ought to be balanced. This dilemma becomes even more acute once the state has been established. For from that time forward (except on the "frontier") everybody lives in an environment in which resources are less available to be converted into private property by personal labor, since most have already been appropriated by others.¹⁵

In civil society, in contrast to Locke's state of nature, one will find propertyless people who must depend on the property of others (e.g., by renting land or working for wages) to survive. Their freedom of choice will be hollow, because it will be dominated by the property-owners' priorities. As private individuals propertyless people depend on property-owners and are thus unequal to them in that respect. But as citizens of a state they are equal, albeit consigned to a passive civil status by the fiat of early liberal theorists. Thus the use of property entails a threefold relationship. *First*, property-owners have a connection to the things they own. *Second*, a relationship arises between the persons of the owner and the non-owner in the productive employment of these things. *Third*, all parties to the contract collectively manifested their will in defining the relationship between freedom and property and the procedures for adjudicating it.

Locke's theory of property concedes to the state a limited authority of co-disposition over the property of private persons because it acts in the name of all citizens united by the terms of the original contract. It must at least be authorized to tax private persons (with the consent of parliament), for otherwise it would lack the means to protect basic rights and would therefore be unable to carry out the tasks for which it was allegedly created in the first place. Thus, the grant of an absolute property right, which Locke's theory as a whole seems to imply as the state's ultimate end, would conjure up a paradoxical situation. Modern *libertarians* such as Nozick, Hayek, and Gray, who have radicalized Locke's historically ambiguous theory of freedom-as-property while remaining indebted to its principles, manifest this self-contradictory tendency.¹⁶ Their *minimal state* leaves the decisive question unresolved: how minimal is minimal, since that issue must always be decided politically?

Locke, unlike Hobbes, is concerned with more than the sheer physical survival of the citizenry; he wants firm guarantees of their freedom as property-owners. For that reason he cannot resolve the paradox of freedom by conceding to the state a general right over private property

as though it were itself a higher-order property-owner entitled to regulate or take property as it saw fit to perform its mandate. Locke's defense of a nearly absolute conception of property rights does not necessarily follow from the links he forges between freedom and property. Rather, his attitude is a function of the specific historical context in which he wrote, especially the defensive posture suggested to him by his experiences of the confrontations among liberalism, absolutism, and feudalism.¹⁷

The transition to modern libertarianism

Modern libertarians tend to reject Locke's view that people originally acquire property by extending their right of ownership in their own bodies to the objects in which they have invested their labor. Nevertheless, they insist that a theory of property, based on the right of ownership in one's own person, must be the *sine qua non* of freedom.¹⁸ While libertarians do indeed criticize some of the premises of Locke's conception of freedom, they also uphold his core principles, in spite of the fact that the practice of market capitalism has brought to light the tensions between this understanding of property and a universalistic conception of freedom. The libertarian view seals off Locke's once fluid conception of property against the implications of this experience with the market, thereby hardening it into an ideology. They interpret only one of the property relations discussed earlier as an expression of freedom – namely, the property-owners' use of their own possessions – forgetting that the other relations can also enhance freedom. This move effectively sidesteps the issue of how freedoms are actually experienced in the real world, since it now appears that rights and liberties can be fully assured via institutional guarantees provided by the state, and that nothing further needs to be done.

By limiting the scope of its theory of freedom as property to the formal-legal and institutional planes, political liberalism ends up facing a twofold dilemma. It cannot show how its *fundamental constitutive norms* can be realized in *actual practice* under real-world conditions. Nor can it plausibly explain how the state, which relies on those norms, can fully develop its *integrative capacity*.

The second liberal dilemma: negative and positive liberty

Isaiah Berlin's famous distinction between positive and negative liberty has always been interpreted so as to favor the latter as genuinely liberal, while dismissing the former as social democratic.¹⁹ One could characterize the notion of negative freedom as formal or defensive, and that of positive freedom as enabling or material.²⁰ But Berlin himself assigned absolute priority to negative liberty, because he believed that the irreducible pluralism of basic value-orientations left no alternative.²¹

Liberals (including Berlin) balk at giving equal weight to both kinds of liberty, even when the “positive” variety might seem indispensable to make negative liberty meaningful. Most do admit that the state has a right to tax its citizens (depriving them of a portion of their property and so freedom of choice) in order to finance public education and thereby the opportunities of less advantaged citizens. But once one has permitted that much intervention, why not allow even more? The state might try to make it easier for the less fortunate to use their freedom in positive ways by redistributing wealth and/or providing subsidies. Liberals see a slippery slope here. “Positive liberty” can be invoked to justify curtailment of negative liberties in two ways: by promoting the opportunities of the less well-off and by depriving others of the resources they previously had, in order to finance its redistributive schemes. In the end – and this is the point of the libertarian critique – expanding the concept of freedom to embrace its “positive” uses would jeopardize its more crucial “negative” meaning. Therefore, we must assign absolute priority to negative liberty to make sure that freedom itself rests on a solid foundation. On closer inspection, however, the claim that these two dimensions of freedom are antithetical, rooted as it is in Berlin’s “agonal liberalism,”²² is difficult to square with the premises of the liberal tradition.

According to the usual interpretations, traditional liberal freedom is a perfect match for negative liberty, since it is actually constituted by the ownership of tangible property with which third parties, particularly the state, are forbidden to interfere. But this is a mistaken reading. The core of the argument linking freedom to private property rests on the unstated assumption that the agents have already met the test for the positive enactment of their projects: namely, having private ownership of the items necessary to carry these plans to fruition. Thus, an essential element in the positive concept of liberty – having sufficient material resources to act – is illicitly imported into this argument as a condition of freedom itself.

What underlies this assumption is the expectation that in the state of nature, where goods are unowned, individuals wishing to follow their own plans will have enough material resources to do so. Under these special circumstances there is indeed a convergence of positive and negative aspects of liberty, since liberty qua freedom from interference by third parties means enjoying the material resources to act as one intends. However, once nature has been reshaped by labor, appropriated, and distributed, and once the property relations that result from these transformations have acquired a fixed legal status through the founding of the state in a contract, the situation changes radically. From now on only property-owners have direct control of the material resources for free action, whereas non-owners are bereft of such resources. An asymmetrical relationship ensues. Under the social contract, the state’s pledge not

to interfere in the individual's private sphere, i.e., the guarantee of negative liberty, now means radically different things to owners and non-owners, in terms of their opportunities to enjoy the goods afforded by their liberty. For property-owners, enjoying negative liberty is tantamount to having a guarantee that the chief prerequisite for their *positive* liberty, full control over the material resources they need to act as they see fit, has been granted. Whereas when negative liberty alone is given institutional backing, this means for the non-owners that their isolation from such material resources has simply been reinforced; they lack opportunities to enjoy positive liberty.

The *de facto* inequality that results when both groups are treated in formally equal ways is of only secondary importance here, since it mainly concerns the problem of justice.²³ The previous analysis of the relationship between freedom and property is intended to make a different point. The true, albeit concealed, meaning of the liberal notion of freedom must be sought in its positive dimension; the reason that the state strives to secure negative liberty against risk is to insure that citizens will enjoy positive liberty. Because the material conditions for positive liberty are so critical to their practice, priority must be given to insuring their availability. But in the liberal view this may only be done by giving institutional support to negative liberty.

This interpretation of freedom produces a paradoxical outcome. To safeguard the negative liberty of *all* citizens, liberal theory restricts positive liberty to only *some* of them, the owners of property. Yet it indirectly concedes that negative liberties exist for the sake of their positive enjoyment and use.

It is this characteristic asymmetry in the deeper layers of the liberal conception of freedom that has been rejected by liberals themselves. Critics of Berlin such as Ronald Dworkin now prefer to defend the claim that *both dimensions, positive and negative, ought to be given equal status*.²⁴ Only an integrative perspective is capable of bringing out the full, mutually reinforcing meanings of the political values of freedom and equality. They might *appear* to be in conflict, but that is only because they have been subjected to an inappropriate interpretation that limits them to particular contexts.²⁵

The asymmetry arises because negative liberty has been given priority *in principle*. However, universalistic arguments can support the claim that a *pragmatic* asymmetry also exists between the two. For liberty to have meaning in the real world, both dimensions of freedom must be actualized without compromising their essential parity. But in political applications negative freedom does enjoy a pragmatic and temporal priority, since the fundamental civil and political rights associated with negative liberty insure that free and equal citizens can deliberate about the best ways to institutionalize positive liberties, especially in the form of social and economic rights. The political path out of a state of affairs

in which only social and economic rights are achieved, toward one in which civil and political rights are also protected, has proved to be much thornier in practice than the reverse path from formal security of rights toward a regime of supplementary social security. But this *pragmatic, procedural argument* does not cover the case in which attempts are made to question or downgrade the entire principle of legal guarantees for positive liberties.

The inescapable dilemma faced by classical liberalism finds expression in three types of circumstances under which universal rights are violated. First, social and economic inequalities may begin to spawn relations of social and economic dependency. The latter may violate the dignity of the dependent individuals by undermining their *social autonomy*. In other words, the sphere of social action is here treated as neutral ground in which the validity claims of universal fundamental rights are to be suspended. But any systematic exclusion of the social sphere from the applicability of rights appears to violate the understanding of such rights endemic in the liberal tradition itself. Second, the exclusion of the social sphere from coverage by basic rights tends to infringe the *claims to private autonomy* of those who, qua economic agents, have fallen into a state of dependency inconsistent with human dignity, one that puts them at the mercy of third parties in ways that universal rights should not tolerate. Third, social, economic, and educational inequalities of a certain magnitude prevent those affected from making full use of their political or civil rights. The "political exclusion" argument maintains that liberalism, by permitting extreme inequalities, individual deficits in education and personal development, and relations of dependency, ends up *denying equal civil and political rights* to entire social classes, thereby vitiating their *political autonomy*.

In the end liberalism falls into irremediable contradictions between the formal validity claims inherent in its fundamental legitimating rights and the reality of its institutional commitments. This is the case to the extent that it persists in excluding empirical reality, especially the socio-economic sphere, from the range of validity claims implied by its guiding norm of equal rights.

Social democracy as democratic theory

There are two normative premises that unite all versions of social democracy. First, "libertarian particularism," grounded on the primacy of negative liberty, is rejected in favor of a universal conception of liberty that ranks negative and positive freedom at par. Second, the identification of freedom and property is jettisoned in favor of a universal conception of liberty that balances the liberties of all parties against a property relationship as if they were equivalent. The comprehensive theory presented here in outline attempts to do justice to both premises.

1.2 Social citizenship

How citizens reflexively establish a juridical order

Liberal political theory has shown how universal claims to legitimate political authority can be redeemed. The decisive criterion is to be found in the *political* equality of citizens as partners and stakeholders in the social contract, to which all political authority must ultimately be referred. Citizenship can be defined as a civil status that both legitimizes and obligates. It entails the right of every citizen to decide in common with all others about the rules that constitute the political commonwealth and to retain a permanent, equal right to participate in its future deliberations.

In the modern age political authority counts as legitimate when rights and duties are allocated equitably, consistent with the limits set by inalienable human and civil rights. To achieve a proper allocation, certain perennial, meta-political issues must be confronted: how are human and civil rights to be interpreted and balanced in cases of conflict? What should their scope be vis-à-vis the several dimensions of human conduct, such that they will retain their elementary meaning as guarantors of equal liberty in varying situations?²⁶ The status of citizen has proven to be the *conceptual and juridical focal point* for resolving conflicts between the formal validity and real-world efficacy of citizens' rights. This has been the case both in social-scientific debates and in the evolution of liberal rights and their contradictions in actual practice.

The concept of citizenship

The development of political and social rights has been a story of the growing awareness of the "barriers that separated civil rights from their remedies" and the political will to draw the appropriate conclusions and make those remedies available to all citizens.²⁷ The implicit universality of rights sets in motion a long-term process to reform social conditions in such a way that rights will be not only formally but also materially valid. In Thomas Marshall's terminology we might say that control over the means of securing fundamental rights has to become just as universal as the validity of the rights themselves.

In his reconstruction of the historical sequence in which civil, political, and social dimensions of citizenship emerged, Marshall shows how certain social experiences moved the entire process forward. The logic of the original, egalitarian standard of legitimation stimulated its evolution toward ever higher stages and degrees of universality.²⁸ His theory forms a bridge between the original liberal understanding of universal basic rights and currently accepted international law which

has enacted these rights – a sophisticated mix of negative and positive liberties – in the 1966 UN Covenants.

What makes Marshall's theory of the three components of the citizen status paradigmatic is neither his historical account of the successive emergence in history of each element, nor the scholarly justifications offered for it. Instead, he establishes an interpretative link between each stage of their historical unfolding and its respective legitimation, a step that combines explanation with justification. Marshall's *social citizenship theory* has had considerable impact on subsequent research for one principal reason. He shows that the aspect of basic rights being advanced in one stage only maintains its legitimating power by being preserved at the next-higher stage.

Behind the process of expansion in stages, then, lurks the universal validity claim implicit in the idea of fundamental rights, which is repeatedly renewed in the face of continued efforts to impede their enjoyment. Marshall's theory of citizenship has succeeded in reconstructing the developmental logic of universalism in basic rights under free market conditions. That logic is driven by the fact that it is the citizens who interpret their fundamental rights in light of new experiences. In this sense Marshall's theory of social rights likewise contains a theory of citizenship.

Under the egalitarian conditions of modern culture, citizenship becomes unavoidably reflexive, as is evident from the way Marshall has reconstructed its self-exegesis since the rise of political liberalism.²⁹

How the dimensions of rights develop historically

Marshall's reconstruction suggests that civil rights had to become more egalitarian and comprehensive in the eighteenth century in order to do justice to their own inherent validity claim.³⁰ To freeze the development of rights as interpreted by the citizens themselves at some arbitrarily chosen point would inevitably threaten their consolidation and weaken their validity claim. In the nineteenth century an equal right to political participation also had to be institutionalized; otherwise the latent universalism of rights would continue to be blocked by unjustifiable political restrictions. Twentieth-century experiences have revealed a further quandary. Neither political nor civil liberties can be fully realized as the rights of equals unless positive liberties are likewise included, which allow them to be actualized regardless of the social and economic status of the person who enjoys them.

Thus, as Marshall understands it, *social citizenship* designates the process by which citizens progressively reinterpret their own rights. They overcome obstacles encountered in their efforts to satisfy the claims of equal citizenship by learning to understand themselves and codify their basic rights in new ways. The superficial equality characteristic of

basic rights in their formal sense gradually provokes movements to give them a more positive underpinning. Thus, "the right to freedom of speech has little real substance if, from lack of education, you have nothing to say that is worth saying, and no means of making yourself heard if you say it. But these blatant inequalities are not due to defects in civil rights, but to lack of social rights."³¹ It proves necessary to create a new category of rights to meet the requirements of the fundamental principles of equal liberty and dignity, which rights are intended to express. Only by introducing a new category, social rights, can one draw out the potential inherent in the historically evolving categories of civil and political rights, thereby breathing new life into them.

The development of social rights in the twentieth century thus flows from the self-knowledge of citizens themselves. They realize that the legitimating norm of equality, implicit in the principle of fundamental rights, will surely lose its legitimating value under the prevailing conditions of social inequality unless it is reinterpreted and rendered concrete in light of the tacit norm of "equal social worth."³² Fundamental rights – and here we find the core juridical meaning of Marshall's social citizenship – can be justified in terms of accumulated historical experience only when they include a *basic right to "remedies" against their de facto denial*.

Postmodern critiques

Libertarians can of course attack Marshall's argument on the grounds that any codification of rights above and beyond the negative liberties amounts to an infringement on the rights of others, especially the property rights of third parties.³³ But theirs is not the only source of criticism. Postmodern egalitarian liberalism, which shares the notion of social citizenship in principle, has also joined the critical chorus. Keith Faulks fails to find in Marshall's own reasoning the consistency that the latter uncovered in his historical account of rights.³⁴ The first objection raised from the postmodern and feminist camp decries the "patriarchal orientations" implicit in any notion of social citizenship that does not thematize society's abridgements of fundamental rights for women.³⁵ His second objection complains that Marshall never seriously challenges the social class structure. His rights project can therefore be dismissed as a compromise among elites that is unreceptive to the egalitarian implications of citizenship and makes unwarranted concessions to a centralized, undemocratic state.³⁶ To postmodern critics Marshall's theory seems plagued by a twofold contradiction: a masculine paternalism that denies equal civil rights to both sexes and an elitist paternalism that refuses to extend equal rights to socially disenfranchised classes.

The feminist critique of Marshall's version of social rights discloses a weak point of his theory. Because it was the child of its time, that theory

focused almost exclusively on the historic clash between market capitalism and liberal rights. It never offered a general account of the way in which such rights might be violated in practice. Nevertheless, nothing in the theoretical structure of Marshall's argument prevents its being extended to cover such cases. Quite the contrary; Marshall himself laid the foundations for just such an extension. Whenever risks traceable to the social structure deprive identifiable groups of the means to make full use of their formal rights, the right to acquire those means must also be guaranteed. The structural conflict that grows from patriarchal gender dominance is sparked more by socio-cultural than by socio-economic factors. Nevertheless, gender conflict too is a product of an objective social structure that makes it harder for individuals to practice their rights. That is why patriarchal gender relations, as they affect the opportunities for self-determination among female citizens, have the same impact on the shape of rights as socio-economic class conflict. Every person has a social right to the prerequisites of full gender equality.

The nineteenth century identified deficits in equality for men and women; in the twentieth century these were addressed by enhancing the legal status of women in many areas. However, discrimination remains a reality in today's society. The gap between women's formal status and the reality of their diminished rights cannot be attributed solely to social stratification or economic interests. Therefore, we must include among the goals of social citizenship gender democracy and justice, both to be guaranteed by making available the full range of relevant social and cultural resources. In particular, the political strategy of "gender mainstreaming" must become a central goal of social democracy. It would insure that the priorities and needs of both men and women are consulted whenever political decisions are made. Ultimately, neither political topics nor resources are gender-neutral or gender-blind.³⁷

1.3 Universal fundamental rights

Comprehensiveness and universality of fundamental rights

In the aftermath of the experiences of World War II and the social crises that preceded them, the UN's Universal Declaration of Human Rights (1948) integrated the idea of *social* citizenship into its human rights language for the first time. Its authors implied that the promise of universal fundamental rights could not be kept unless the underlying social context in which those rights were to be exercised were likewise understood to involve issues of rights. It thereby gave expression to a *post-liberal* conception of rights even before the outbreak of the Cold War

and its tendency to compartmentalize the different categories of rights. Civil and political as well as social and economic rights were proclaimed in *one* single document.

Democratic and moral theories

The two UN Covenants of 1966 transformed universal fundamental rights into established international law embodying a consensus on two principles. *First*, it was acknowledged that human and civil rights should take effect in distinct social spheres or dimensions, *civil, political, cultural, social, and economic*, all of equal importance, although social and economic rights were understood as relative to the economic potential of any given country. The *second* principle expressed the agreement that all classes of fundamental rights ought to remain neutral vis-à-vis culture, religion, and world views. *This principle carries special weight in democratic theory, because it implicitly demonstrates that a consensus about the global validity of human rights may be reached without any accompanying consensus about the reasons for their validity.* That does not necessarily mean that the validity of human rights is independent of *any* sort of universalistic grounding at all, only that conflicts about reasons need not block agreement about the nature and validity of rights.

The independence of universal political validity from any consensus about its rationale does not prove the irrelevance of attempts to justify it. In fact, there are solid arguments in favor of the position that Rawls's principle of overlap applies by analogy to all parties assenting to a political consensus even in the global arena. While their convictions about the validity of a specific set of reasons for rights may not necessarily motivate their political assent rationally, it may do so cognitively.³⁸ That is why the strategy chosen here, grounding the normative orientation of the theory of social democracy on the *de facto* validity of universal basic rights, should not be dismissed as a logical mistake in the manner of legal positivism. Agreement about the basic values and rights that ought to guide the construction of society may be regarded as a second-order ethical and political imperative, one that operates below the threshold of philosophically competing claims to ultimate validity. Given profound differences about religion, world views, and cognition, that imperative may be the only way to enable common action and the actualization of the values under consideration.

The notion of social citizenship is now a positive legal norm, justified on universal grounds and solidly anchored in the UN Covenants as well as many constitutions of contemporary nation-states. By now fundamental rights owe their validity to a normative justification that has, in its essential outlines, almost acquired the status of global cultural patrimony. Thus, the normative foundations of that patrimony no longer have to be invoked for political practice. They draw on the traditions of