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LEGAL RIGHT AND SOCIAL DEMOCRACY: ESSAYS IN LEGAL AND POLITICAL PHILOSOPHY. By *Neil MacCormick*. Oxford: Clarendon Press. 1982. Pp. x, 272. \$29.95.

Social democracy, as understood and defended by Professor Neil MacCormick,¹ represents a middle ground between the political philosophies of classical Liberal individualism and Marxist socialism. Classical Liberalism protects abstract legal liberty, but permits economic disparities among individuals which may undercut concrete freedom of choice. Marxist socialism addresses the economic realities of industrial society, but often at the expense of individual liberty. Social democracy attempts a synthesis. It is a theory of political organization in which the state provides individuals with maximum equal liberty subject to the constraint of economic fairness embodied in a program of distributive justice.

Legal Right and Social Democracy is a revised collection of previously published essays. MacCormick deals with broad issues such as "Law and Economics," "Civil Liberties and the Law" and "Law, Obligation and Consent." He also treats the nature of rights and duties on the narrower, individual level of contract and tort in essays such as "Voluntary Obligations" and "The Obligation of Reparation." The essays draw on and critique the works of philosophers past and present. MacCormick discusses the theories of Lord Stair, John Locke and Adam Smith. He attempts to define his ideas on rights and political obligation in relation to those of John Rawls and Ronald Dworkin.²

This diversity of subject matter makes it difficult to follow, if not to find, MacCormick's thesis. His arguments do not clearly build on each other from chapter to chapter. This can be disconcerting and confusing to readers without a solid background in political theory. The essays do, however, contain related themes. What MacCormick wishes to emphasize is that human beings have rights and that these rights are best satisfied under societal conditions of maximum equal liberty and economic fairness.

Assuming MacCormick is correct in asserting that social democracy is responsive to individual rights of liberty and material equality, he still must perform the primary and more difficult task of establishing why human beings have a moral claim to these rights.

1. Neil MacCormick is Regius Professor of Public Law and the Law of Nature and Nations at the University of Edinburgh.

2. MacCormick devotes an entire chapter to a critique of John Rawls' *A THEORY OF JUSTICE* (1971), and another chapter to an analysis of Ronald Dworkin's *TAKING RIGHTS SERIOUSLY* (1977).

For example, MacCormick asserts a "debt of justice" owed by the rich to the poor (p. 15), although it is far from clear how this debt arises.

MacCormick does not rely on a theory of natural rights. Natural rights, he argues, make "unsustainable ontological assumptions about the existence of objective and rationally discoverable principles of right" (p. 54). MacCormick also rejects John Rawls' contractual basis for rights although MacCormick's conception of social democracy is obviously akin to Rawls' "two principles of justice."³

MacCormick develops a convincing critique of Rawls' contract approach. He points out that the hypothetical conditions of fairness imposed on society members constrain their deliberations in a way that is favorable to the adoption of Rawls' principles of justice. MacCormick further doubts the propriety of deriving principles of justice from hypothetical contractual situations. Instead, he believes that principles of justice should be assessed by reference to the practical consequences of their adoption in much the same way a judge might decide a case on the basis of policy implications.

This hardly provides a moral basis for social democratic principles such as the redistribution of wealth. The strength of Rawls' work is that it attempts to provide moral justification for the principles of justice. MacCormick finds this justification lacking, but does not improve on or supplant it. It may appear socially desirable (to some) to redistribute wealth, but MacCormick must make redistribution take the form of a moral imperative.

MacCormick fares better in providing moral and legal bases for rights in his discussion of interpersonal relationships on the individual, rather than societal, level. He argues that voluntary or contractual obligations arise independently of legal rules. For MacCormick, the rules of contract are most aptly described as a formal response to the moral implications of promising and inducing reliance on the part of the promisee. In tort, moral and legal obligations of reparation to injured parties do not depend on the state of mind of the person committing the injury, but on the right of the injured party to be secure in his or her person and possessions.

These moral and legal rights in contract and tort are well recognized. But, if MacCormick's discussion does not break new ground, it does nicely work through some of the theoretical underpinnings of Anglo-American jurisprudence. However, MacCormick gets into trouble when he attempts to extend the obligation of reparation to illustrate how it comports with his ideal of distributive justice.

3. J. RAWLS, *A THEORY OF JUSTICE* 302 (1971). Rawls believes that people under hypothetical conditions of fairness would choose principles of maximum equal liberty and distributive justice to govern their political society. Because these principles are chosen under conditions of fairness they possess a moral claim to obedience.

MacCormick would impose an obligation on society to provide for individuals injured through no one's fault. But how does this obligation follow from the obligation of reparation? The obligation of reparation is triggered by an individual's breach of the duty of care — the correlative of the injured party's right to personal security. In the case of a person crippled by disease, for example, no duty has been violated. There is no right of reparation unless one assumes that society owes the individual a "debt of justice." But this is exactly what MacCormick has failed to establish.

In the end, MacCormick must rely on his own theories of property rights and human nature to justify the adoption of social democratic principles. These theories, while attractive, are ultimately contestable and will not persuade those who do not accept MacCormick's personal moral views.

MacCormick adopts the Kantian position that human beings must be respected as ends in themselves. It is this moral view that informs his advocacy of social democracy. The conditions of respect for human beings must include the liberty to pursue one's own conception of the good and a claim to a fair share of material wealth. According to MacCormick, to be human is to be free to define life plans for oneself and to enjoy a degree of material well-being to, at least, entertain such plans. These rights are intrinsic to our moral status as human beings and command the respect of the state. In this sense, the state owes a "debt of justice" to its citizens.

MacCormick's argument is subject to internal and external attack. First, one may believe that human beings have a right to liberty and economic fair shares and still wish to dispute that it is the duty of the state, as opposed to private organizations, to secure these rights. For example, MacCormick believes that children have a right to the best possible education; however, he admits that it is unclear who — parents, church, local authority, or central government — owes the duty of providing that education (p. 163).

More fundamentally, the moral view that human beings should be treated as ends is open to question. One may adhere to a system of utilitarian ethics in which the ultimate good is to maximize the total aggregate of happiness in society. Instead of believing that each individual should be accorded maximum equal liberty and economic fair shares, utilitarians would be morally committed to unequal liberty and large disparities in wealth if it could be shown that such a state of affairs would maximize total happiness.

MacCormick recognizes that he cannot convince everyone of his position. He states that, "[o]ne cannot believe in the category 'moral rights' unless one accepts in some form the principle that sentient beings ought to be respected as ends in themselves" (p. 161). That principle, part of the Kantian and Millian tradition, will appeal to

many with whom it is productive to enter into moral discourse. *Legal Right and Social Democracy* provides a forum for this discourse. Unfortunately, the disjointed nature of this collection of essays is such that clearer resolution of questions of right and social democracy will have to await a more sustained and focused work.