

Daphne Barak-Erez and Aeyal M. Gross (eds), ***Exploring Social Rights: Between Theory and Practice***. Oxford and Portland: Hart Publishing Ltd, 2007. Pp. 416. £45.00. ISBN: 9781841136134.

The book *Exploring Social Rights*, a collection of contributions to the subject from proven experts from all over the world, advances the view that social rights constitute 'a distinct category within the human rights system' (at 1). In general, this book aims at strengthening the protection of social rights as a legal category. It calls for a strong and active role of the state in assuring social rights. On this point it differs from most contemporary discussions which deny the importance of social rights and fear the expansion of judicial power.

The 15 contributions are reasonably organized into five parts, beginning with a consideration of theoretical aspects of the subject. Here in particular it is emphasized that strong civil and political rights are necessary to strengthen social rights. Different philosophical approaches which classify political and social rights as distinctive or as interrelated categories are also described in this part. Classifying rights into civil, political, and social rights often reflects a conservative notion of justice which goes hand in hand with a liberal economic point of view and is often seen as negatively impacting on the poorer regions of the world. For instance, Eva Brems' contribution, 'Indirect Protection of Social Rights by the European Court of Human Rights', illustrates that often the protection of civil rights, such as the right to life, enables the protection

of social rights such as the efficient provision of health care (at 144–145).

Some examples of poorer states are discussed in detail in the third part of the book, also in comparison with richer regions. The second part prepares for the third part and serves as a link between the theoretical aspects of the first part and the examples of the role of social rights in selected nations which are given in the third part. It does so by putting the discussion of social rights into the framework of a globalized and economized world, in which social rights are mainly socio-economic rights. From an economic point of view it might be argued that social protection is to be seen as risk management and should be the responsibility of each individual citizen. Social protection, according to this view, is assured by participation of the individual in the market. The role of the state under this economic paradigm is to facilitate everyone's access to markets and to create a framework in which markets can unfold their efficiency as freely as possible. But the tenor of this book is different. It does not regard the market as promoting social outcomes by definition, but sees a trade-off between efficiency of the market and social justice. Following this view, the free market must be limited and its outcome corrected to achieve a higher level of social justice.

Specific aspects of the protection of social rights in Europe are examined in the second part of the book too. It proceeds from globally applicable observations to a focus on specific regions. The third part then deals with selected states – Canada, India, Israel, and South Africa. The national examples again show how the protection of civil rights can promote the protection of social rights. They stress the linking of social and civil rights and reject the construction of a contradiction between them. The regional and national examples impressively show the different positions in the range between the two opposing opinions that the market outcome is social by nature or that it must be corrected to be social. In particular, the example of South Africa shows that a policy which gives preference to economic growth

over social reconstruction does not automatically lead to an optimal level of social security but must be supplemented by a policy of securing 'different forms of distributional decisions for the vulnerable within society' (D.M. Davis, 'Socio-Economic Rights: The Promise and Limitation. The South African Experience', at 212). Similarly, the Canadian example shows that limitations on government actions proposed by the liberal model of rights and by the idea that market efficiency is thus enhanced also limit the extent of social security. Israel is used as an example which shows the problems that arise when civil and social rights are artificially separated from each other. The Israeli Supreme Court does not recognize social rights in the same way as it recognizes civil rights. Social rights may be invoked in only the most extreme cases, and when they are associated with the right to existence with a minimum of human dignity. This is not true for civil rights; even non-enumerated civil rights are recognized by the court as derived from the general right to human dignity. The chapter thereby underlines the argument that these rights should be seen together (D. Barak-Erez and A.M. Gross, 'Social Citizenship: The Neglected Aspect of Israeli Constitutional Law', at 260–261).

The book's fourth part changes perspective. The focus shifts from the analysis of geographical regions to a selected number of specific social rights – the rights to education, to health, and to work – and how they can be implemented. There is a description and examination of various national and international experiences in a globalized setting. Here the economic perception emerges again. Health care, for example, can be seen as a right or as a commodity. In the latter case, it would be the role of the – preferably unregulated – market efficiently to provide citizens with this good. It can be shown, however, that the richer a citizen is, the more he benefits from such a system. If, on the other hand, health care is considered a right which demands equal access for everyone, existing inequalities can be reduced.

The fifth part of the book again changes perspective on the same subject. The focus here is

on groups of people, such as women and those with disabilities, against the background of the tension between the welfare approach and the liberal approach.

Exploring Social Rights is a well thought-out compilation of articles circling around the social rights complex. The chapters are appropriately and logically divided. The book commits itself clearly to the expansion of human welfare and the reduction of socio-economic inequalities. It consequently rejects the (neo-) liberal view that market outcomes are social by nature and favours governmental actions to correct the market and to assure and improve social rights. The liberal discourse on rights is not dismissed in the book, but it aims at a stable and balanced relationship between the welfare approach and the liberal approach. This objective is highlighted from various points of view which, when taken together, offer a thorough and exhaustive reflection on social rights. The purpose of the book is therefore clearly achieved. The book, although it is a compilation of articles, can be read like a monograph because all the articles harmonize well. At the same time, they offer wide-ranging and detailed insights into different aspects of the social rights debate.

Dennis M. Davis, Socio-Economic Rights: The Promise and Limitation – The South African Experience;
Patrick Macklem, Social Rights in Canada;
Daphne Barak-Erez and Aeyal M. Gross, Social Citizenship: The Neglected Aspect of Israeli Constitutional Law;
Yoram Rabin, The Many Faces of the Right to Education;
Aeyal M. Gross, The Right to Health in an Era of Privatisation and Globalisation: National and International Perspectives;
Guy Mundlak, The Right to Work – The Value of Work;
Neta Ziv, The Social Rights of People with Disabilities: Reconciling Care and Justice;
Daphne Barak-Erez, Social Rights as Women's Rights.

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Individual Contributions

Daphne Barak-Erez and Aeyal M. Gross, Introduction: Do We Need Social Rights? Questions in the Era of Globalisation, Privatisation, and the Diminished Welfare State;

Frank I. Michelman, The Constitution, Social Rights and Liberal Political Justification;

Upendra Baxi, Failed Decolonisation and the Future of Social Rights: Some Preliminary Reflections;

Lucie White, 'If you don't pay, you die': On Death and Desire in the Postcolony;

Yuval Shany, Stuck in a Moment in Time: The International Justiciability of Economic, Social and Cultural Rights;

Kerry Rittich, Social Rights and Social Policy: Transformations on the International Landscape;

Eva Brems, Indirect Protection of Social Rights by the European Court of Human Rights;

Jayma Kothari, Social Rights Litigation in India: Developments of the Last Decade;