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PRIVATE PROPERTY AND DEMOCRATIC SOCIALISM
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The institution of private property, which liberal thinkers have touted as liberating and empowering, is a central feature of liberal ideology. Marx and Engels, on the other hand, viewed private property as alienating and exploitative, and vigorously advocated its abolition. Today, many democratic socialists, while adhering to much of the Marxist analytic and of its critique of liberal society, have moved away from principled objection to private property.

In light of this trend, I want to examine the relationship between private property and democratic socialism. In the first section I argue that the distinction between formally private and formally public property regimes is largely illusory. The more relevant consideration is the extent to which decisionmaking regarding property is democratized. This is important in the development of socialism because many socialists, perhaps more so in the past than currently, have viewed formal state ownership of property as a key aspect of socialism, while paying insufficient attention to the democratization of the state and of decisionmaking in general.

The second section more fully examines democratic decisionmaking and the role of private property under democratic socialism. I conclude that individual rights have a prominent place under democratic socialism, and that whatever means are used to foster individual rights will entail formal or functional private property of some type.

Since private property is compatible with both democratic capitalism and democratic socialism, I then examine in the third section how they differ and argue that the major differences relate to the values they stress, the balance they strike between public and private decisionmaking, and the duties they impose on society toward its individual members. In particular, I argue that democratic capitalism overemphasizes the value of individualism as against the welfare of all, and that democratic socialism strikes a better balance between individual and communitarian values and thereby, ironically, requires the collective conferral of individual rights to a greater extent than democratic capitalism so as to promote the welfare of all.

In the final section I explore how the United States might evolve into democratic socialism. I argue that discontent with the inadequacies of democratic capitalism has given rise to new social movements such as the civil rights, feminist and environmental movements which, together with a revitalized workers’ movement, contain the seeds of democratic socialism.

I. THE PUBLIC-PRIVATE PROPERTY DISTINCTION

The first step is to distinguish private and public property. One approach is a structural analysis that focuses on formal title, another a functional analysis of who controls use and enjoyment. The structural approach is unhelpful in that nominally private and nominally public property regimes can be designed so as to differ in name only. The functional approach is more helpful in that it highlights the key public-private issue, namely the extent to which decisionmaking regarding the use and enjoyment of property is democratized.

The structural approach defines public property as things of value in which legal title is held by the government, and private property as things of value in which legal title is held by some nongovernmental entity. A major drawback to this approach is that it defines as different, situations which are similar or identical in practice. If private property is exploitative or inefficient or otherwise inadequate, those same inadequacies persist when the label is changed to public while the functional equivalency remains.

Compare, for example, a local government and a homeowners association. Although the former is nominally public and the latter nominally private, in fact they often operate quite similarly and could be designed identically. In addition to looking alike physically, both may have organizational charters specifying and limiting their powers, elected governing bodies, and revenue raising and regulatory authority over inhabitants and others within their territories. If the homeowners association poses problems of abuse of power, as when a developer retains authority which undercuts homeowner control or when a majority of homeowners tyrannize a minority or when an association excludes outsiders from moving in, all these problems have analogues in the local government context.

Another drawback to the structural approach is that focusing on formal title rather than control over use and enjoyment obscures the power relations underlying private and public property regimes. Formal title entails the power to control use and enjoyment. But this power can also exist apart from formal title. For example, the government as the public’s representative may limit the use and enjoyment of nominally private property through regulation, thereby creating a situation of mixed private and public control. Or virtually the same result could be achieved if the government held formal title and leased the property to a private party subject to use limitations identical to the regulation.
Consequently, since like results are achieved irrespective of where formal title lies, a functional analysis of who has power to and does in fact control use and enjoyment seems more fruitful in distinguishing the private and the public as regards property regimes. From this perspective the distinction between private and public is a matter of degree and vantage point. In most if not all real-world situations purely private or purely public decisionmaking does not exist, since decisions regarding use and enjoyment invariably entail both private and public control to a greater or lesser extent. And whether control is public or private to a particular party depends on the extent of one's participation in the decisionmaking process. Thus, in contrast to the formalism of the structural approach, the functional approach demands a contextual analysis of the private and public aspects of decisionmaking regarding the use and enjoyment of property irrespective of where formal title lies.7

For example, a homeowners association in which the developer runs the show until a certain number of units are sold, after which time the unit owners govern collectively, is from the owners' vantage point private during the initial stage and thereafter public. Likewise, a local government could be either private or public from the vantage point of its citizenry depending on how democratic it is in practice. In either case, although they may both be public to outsiders, from the vantage point of those who are not members of the homeowners association or citizens of the local government and who cannot participate in their governance, both are private.

Similarly, replacing capitalist enterprises with socialist worker cooperatives would not necessarily change society from either a structural or functional perspective.8 Structurally, a capitalist enterprise is private from the vantage point of outsiders in that formal title to the enterprise's assets is in a corporation which is formally owned by a limited (albeit often large) number of stockholders who represent their own interests. From the vantage point, though, of the stockholders who by virtue of their ownership have the right to participate in governance, a capitalist enterprise is formally democratic and thus at least partially public.9 Likewise, a worker cooperative which formally owns its assets and whose workers own its stock is structurally private to outsiders and public to those who own it. Or a functionally equivalent design could be achieved by leasing state-owned property to a non-stock cooperative in which membership is the basis of worker participation in governance.10

Moreover, capitalist enterprises and socialist cooperatives could be quite alike operationally. Both might have the incentive to maximize profits for their "owners," and therefore might react similarly in their dealings with consumers, suppliers, and other external parties. Both might face problems of management domination of decisionmaking, thereby undercutting stockholder and worker democracy. An argument for worker cooperatives is that worker democracy, when it functions well, will eliminate the incentive and ability to exploit workers as in capitalist enterprises. But not only is worker democracy possible in capitalist enterprises through government regulation," but exploitation is also possible in worker cooperatives if some workers are able to dominate decisionmaking. So even a decentralized socialism may need centralized regulation of the internal affairs of worker cooperatives so as to preserve democratic decisionmaking, as well as of their external affairs so as to protect against spillovers adverse to the general welfare. And such regulations might closely match the types of regulations that exist or are advocated under democratic capitalism.

More abstractly, contrast a system where unfettered control over use and enjoyment is vested in a single individual with one where control is vested in all members of a society acting unanimously. Functionally, the former system is purely private and the latter purely public. In the real world, however, neither of these situations will often if ever appear.

Individuals who are formally the owners of property may have substantial freedom to control use and enjoyment, but this freedom is invariably subject to at least minimal collective regulation. In some instances, as in the case of environmentally sensitive land, collective regulation may severely limit the nominally private owner's use and enjoyment.12 Moreover, since individual control ultimately derives from some form of collective decision to recognize private property rights, although not necessarily a fully democratic decision, there is always a public aspect to ownership. In fact, the collective always has the power to change the rules of the game and to declare its changes valid. At present, for example, the United States Constitution requires compensation for the taking of private property. This means that it is valid for the government to nationalize nominally private property so long as it pays for it, and that the private owner cannot refuse to sell and must accept collectively determined compensation. Moreover, it is possible to amend or interpret the Constitution to entitle the government to declare private property public without having to pay compensation at all.13

Acknowledging that private property originates in a collective decision to assign property rights to particular individuals, it might be said that once that decision is made property becomes private and remains so until collectively reclaimed. But it might just as well be said that by virtue of the collective's authority to reclaim or regulate property assigned to individuals, the institution of private property is in substance a trust arrangement under which public property is assigned to private parties to be managed in the public interest, and that society may remove property from private control when it determines resources would be better managed publicly.14
Public management might consist of direct decisionmaking as to use and enjoyment by all members of a society collectively, or of the assignment of management responsibility to a collectively responsible legislative or administrative body of some type. Direct decisionmaking could be subject to a requirement of unanimity or to some lesser standard such as majority rule. Where unanimity exists, at least when the participants are fully informed and consent is freely given, decisionmaking is purely public. On the other hand, where unanimity is required but lacking, decisionmaking is in effect private because one disserter can block any decision. Consequently, since unanimity is rarely achievable in a society of any size, majority (or sometimes supermajority) rule is usually adopted for collective decisionmaking. Different perspectives are possible regarding the publicness of less than unanimous decisionmaking. To those in the minority who think in individualistic terms, and especially to those who are repeatedly in the minority, majority rule may seem effectively private in that the majority controls the outcome. From a communal perspective, on the other hand, majority rule may seem public even to the minority, so long as all have a fair opportunity to participate in decisionmaking and especially when majority and minority status is comparable over time.

In any event, so many public issues arise in mass societies that direct decisionmaking as to all of them is practically impossible. Consequently, public management typically involves surrogates in the form of elected or appointed representatives acting on behalf of the public. This raises issues of responsiveness and accountability. To the extent that public officials make different decisions regarding the use and enjoyment of nominally public property or the regulation of nominally private property than the public approves, then to that extent there is a functional privatization of decisionmaking.

Nor does the fact that public officials are supposed to decide on the basis of what they deem to be the public interest, whereas the owners of nominally private property may decide on some other basis such as maximizing profits, necessarily make the former situation more public than the latter if the test of publicness is responsiveness and accountability to the public. For on the one hand nominally private decisionmakers may have to respond to public sentiment in order to maximize profits, while nominally public decisionmakers may abuse their power and make decisions in accordance with their own selfish interests. So without empirical analysis of how the political and market processes work in practice, it cannot fairly be said that nominally public property is functionally more public than nominally private property. This may explain why some commentators have characterized communist regimes as state capitalist in nature in that, though formally owned by the state, state property was functionally private since it was controlled by a bureaucracy which consisted of a relatively small segment of the populace and which exploited workers and was unresponsive and unaccountable to the public at large.

Thus, in the abstract there is no reason to favor either a formally public or formally private property regime since in theory both can be designed to achieve identical results from a substantive or functional perspective. Rather the question to be asked concerns the desired ends of social life and, since what is achievable in theory may not be achievable in practice due to a myriad of real-world constraints, which property regime is most conducive to those ends.

For example, while centrally planned and laissez faire market economies might in theory produce identical and desired results under certain ideal conditions, as a practical matter both approaches have unavoidable imperfections which will yield divergent and less than ideal results. Yet even if it could be shown that one approach would work better on balance than the other, ideological biases may make that approach politically unacceptable and the other alternative more feasible. Or perhaps experience shows that neither a centrally planned nor laissez faire economy works well in practice, and that the more promising approach is a mixed economy with some centralized and some decentralized planning, some laissez faire and some regulated markets. It is even possible that most of the world's nations are moving in this direction in fits and starts from different directions.

At some historical juncture, for example, it may be that societies as different as China and the United States will become functionally, if not structurally, quite similar. At one time the United States had as close to a laissez faire economy as has perhaps ever existed, whereas China has until recently had a centrally planned economy. Although the formally private marketplace still predominates in the United States, there is now substantial economic planning and market regulation at all levels of government, as well as substantial provision of governmental goods and services outside the market. And although governmental planning and nonmarket provision still predominate in China, there is now a burgeoning marketplace for goods and services containing both formally private and public participants.

The form may always differ. In China, due to a more statist and communal tradition, formally public entities may perform roles which are functionally like those performed in the United States by formally private but publicly regulated entities more in keeping with its individualistic and anti-government tradition. But substantively their economies may become increasingly alike. Meanwhile both societies have undergone democratic struggles throughout their histories, are still far from fully democratic, and thus are functionally more privatized in practice.
than formally appears.21 And here too, although the political structures may differ in form, we may well see an increasing functional convergence.

II. PRIVATE PROPERTY AND DEMOCRATIC SOCIALISM

I have used the term democracy to refer to collective decisionmaking by the people of a society at large or group decisionmaking by the participants of some entity therein. That is an incomplete conception of what democracy means. In this section I wish to expand on the concept and relate the discussion to the public-private property issue under democratic socialism.

Democracy has both a procedural and a substantive component, the two of which are interdependent. Procedurally, democracy consists of a decisionmaking methodology, an allocation of decisionmaking power within society. Substantively, democracy consists of those goods of social life to which people are deemed entitled for one reason or another.

Democracy's procedural and substantive components are interdependent in that fully democratic decisionmaking is a prerequisite to an adequate determination of substantive entitlements, while the substantive entitlements are a prerequisite to fully democratic decisionmaking. If fully democratic decisionmaking does not exist, for example if decisionmaking power is biased for or against certain classes of people, then decisions regarding substantive entitlements are likely to be similarly biased. Conversely, if the substantive entitlements on which fully democratic decisionmaking depends are not fairly distributed, then decisionmaking power will likely be biased accordingly. Consequently, since neither of the interdependent procedural and substantive prerequisites yet exists in full in any society, i.e., since entitlements are not now fairly distributed and decisionmaking power is in fact unbalanced, establishing full democracy in practice is a dialectical process which will entail political struggle in all its forms.

The institution of property implicates both the procedural and substantive components of democracy. Procedurally, property ownership is one means of allocating decisionmaking power in society. Every society striving to be democratic must decide which matters are to be decided by society at large and which individually or by smaller groups within the society.22 Indeed, it is unlikely that there has ever been a society where all decisions were made by society at large. Individuals, families and other groups have always had the authority to decide certain matters on their own. The question is which matters and whether private property should be used to allocate decisionmaking authority as to those matters. This is simply another way of asking whether a public-private distinction should be applied to property, and if so which aspects of decisionmaking regarding property should be private and which public.

It is not possible to adequately articulate a noncontentious standard as to how decisionmaking power should be allocated in society, as to which matters should be treated as public to be decided by society at large and which as private to be decided by individuals and groups on their own. All the more so the larger and more heterogeneous the society. All standards contain vague language which can be interpreted divergently, and there is no uninterested party which can neutrally and objectively resolve interpretive disagreements. Nevertheless the attempt to articulate standards to guide society and channel public discourse is an integral aspect of the struggle to democratize society.

I shall say that society is procedurally democratic when decisionmaking power is allocated such that those who have legitimate interests in matters to be decided have the right to participate in decisionmaking in accordance with their interests.23 So stated the democratic principle poses several unresolvable interpretive uncertainties.24 Thus alternative forms of democracy, all arguably consistent with democratic theory, are possible in practice.

Uncertainty arises in determining what constitutes a legitimate interest entitling someone to participate in decisionmaking. One argument for privatizing decisions is that only the individual or group is affected by the matter, or that the individual or group impact is so predominant that it outweighs competing societal interests. In a society as individualistic as the United States, there are many matters which it is claimed should be privatized for this reason, although not without contention. As shown in the abortion and gay rights issues, perhaps the foremost current examples, claims of legitimate societal interest can be made as regards the most intimate personal matters.25 Even the choice of whom to marry is not fully privatized in this society, being subject to prohibitions on the marriage of close relatives or people of the same sex or more than one person at the same time. In other more communal societies arranged marriages are common, although often the views of the individuals involved in the union are considered, and this practice is justified on the ground that the family has a legitimate interest.26 Arranged marriages may seem abhorrent in this society, but so might marital practices here seem abhorrent elsewhere.

There is simply no clear-cut line between matters of legitimate interest to individuals, groups and society at large. With respect to most if not all matters, plausible arguments are possible on more than one side. In a democratic society, though, the decision of who gets to participate in decisionmaking is ultimately collective. The
decision to privatize decisions concerning marriage, abortion, free speech, free exercise of religion, or choice of a career is collective and can be changed collectively to make those matters public. This does not mean that collective decisions about participation in decisionmaking are fully democratic, since collective decisionmaking may be fraught with imperfections. But even fully democratic societies may resolve participatory issues differently, since differing value systems in diverse cultures may produce varying approaches which are still compatible with democratic theory.

A further interpretive uncertainty, also lacking clear-cut criteria and subject to differing resolutions, concerns the level of participation someone who has a legitimate interest in a matter is entitled to. Thus it might be claimed that some have a greater interest than others in some matter, while acknowledging that others also have a legitimate interest of lesser magnitude, and that their greater interest entitles them to greater if not total control over the decision. This is a rationale for decentralizing political and economic decisionmaking. Thus one purpose of a federalized system with a central government and a multitude of lower level governments is to allocate greater although not exclusive decisionmaking power to the lower levels as regards those matters within their purview. The way this typically works is that initial decisionmaking authority concerning so-called local matters, i.e., matters of greater interest to the local level, is assigned to lower-level units of government. When the lower levels act in ways deemed contrary to the interests of the larger society, i.e., when the interests of the higher levels of government are deemed greater, the higher levels may intervene and override local decisionmaking either by regulating it or preempting it entirely. Similarly, capitalist enterprises and socialist worker cooperatives entail decentralized decisionmaking as to matters deemed of greater interest to those who control those entities, subject however to collective control ranging from regulation to dissolution or nationalization when the interests of society at large are deemed weightier.

Substantively, property ownership is a means of conferring on people the goods to which society deems them entitled. This leads to questions of what people's entitlements are, and what their appropriate distribution is. Again, it is not possible to articulate a noncontentious standard as to people's substantive entitlements, and alternative interpretations arguably consistent with democratic theory are possible. And, again, the decision as to substantive entitlements is ultimately collective, although in light of the power imbalances in the existing social order, it is not necessarily a fully democratic one and is thus an aspect of the on-going struggle to democratize society.

Standards as to substantive entitlements range from traditionally liberal standards such as equal rights and equal opportunity, to more expansive socialistic or communistic standards such as to each according to contribution or needs, to radically egalitarian standards such as total equality or sameness. Related issues are whether entitlements are unconditional and belong to people as people and as citizens, or are tied to merit or contributing to society in accordance with one's abilities or other factors. Moreover, differing standards may govern different entitlements. Some goods might be thought so fundamental to personhood, perhaps health care for example, that all are entitled to have their needs met unconditionally to the extent society is able to do so. Other goods, such as the pursuit of a chosen career, might be conditioned on performance because thought to be less fundamental or to implicate competing societal concerns of efficiency or quality or productivity.

There are also substantive implications to the distribution of entitlements. For one, a society's available resources will impact the entitlements it is able to accord people, while conceptions of what people are entitled to will impact what society is obliged to do to create those goods if not currently available. If everyone is entitled to a nutritious diet but there is not enough food to go around, then food may have to be distributed to meet an equitable proportion of everyone's needs and society may be obliged to devote its energies to increasing food supplies rather than to the creation of less important entitlements or goods to which people are not entitled.

In addition, what individual people are entitled to may be absolute as to some goods and relative to what others have or are entitled to other goods. While everyone may be entitled to a decent level of material well-being, it may be that material things need not be equally distributed because people's material needs and wants may differ and because society might deem it appropriate that material well-being be related to effort and productivity. Disparities in the quality of a basic education, on the other hand, might be thought inappropriate if this were to cause differential life chances, and society might consequently decide that democratic principles require the equal or comparable provision of this good. Similarly, disparities in people's entitlements might produce imbalances in political power inconsistent with democratic decisionmaking, and consequently lead society to limit such disparities or their political impact.

Property, then, is not an end in itself but a means by which society confers an opportunity the power to control or participate in decisions affecting themselves and society at large and access to those goods of social life to which society deems them entitled. The legal significance of property is the rights ownership entails as against others with respect to things of value. Ownership confers decisionmaking power over things, the right to determine how things are to be used and who may have access to them, which in turn means that others who do not have the right to
share therein, i.e., who are not co-owners, have the duty not to interfere with the owner's control. Ownership also confers entitlements on people, the right of access to and enjoyment of certain goods of social life, which in turn means that society at large has the duty not to restrict or interfere with access and enjoyment or to affirmatively provide those goods. 38

So ultimately property is a relation among people.39 If no others were around, one would still make decisions regarding things and would still enjoy the available goods of life, but there would be no need for a concept of ownership since issues of control and entitlement would not arise. Conferring property rights on people empowers them in their dealings with other people and society at large. And this is so as to both private and public property. Private property relations empower people to control things and have access to entitlements as individuals and groups, while public property relations empower people to control and have access as members of society at large.

Once property is seen in a relational sense, it resembles and can be analyzed like other relations among people based on the rights and duties they have and owe each other. Indeed, once one recognizes that things of value, broadly construed, include all the goods of social life, then in a sense all right-duty relations are a form of private property.40 The right to be free, for example, is tantamount to saying that one owns oneself and that others have a duty not to restrict one's freedom.41 If one owns oneself, then all aspects of the self-from the tangible products of one's labor, to the intangible ideas of the mind, to all the ways in which one expresses one's freedom-can be regarded as one's property.42 This is not to say that society should recognize all claims of right, since some claims may be anti-social and it may be necessary to reconcile competing claims. Nor need all things of value in social life be treated the same way, since individual, group and societal interests may differ with respect to different things.

But a democratic society in which people have no rights as individuals and groups, but only as members of society at large, is inconceivable in practice and if it were conceivable would be an undesirable state of affairs.43 It would be undesirable because individuals and groups do have legitimate interests which any society worthy of being called democratic must recognize and accord. It is inconceivable in practice because even a society in which all decisionmaking were collective would require some rules, if only those implicit in a seemingly spontaneous social order, regarding people's rights to participate in collective decisionmaking and the distribution of the social product. It is also inconceivable because social conditions will demand some form of individual and group rights or their functional equivalent as a means of resolving issues likely to arise in any real-world society, in particular conflict over scarce goods.44

Scarcity is in part an objective phenomenon in that there are some things which are indispensable to survival, but is also in large part subjective in that the desires which create scarcity are socially constructed. Scarcity might be minimized by producing enough of what is indispensable to meet everyone's needs and by constructing a social order with different (perhaps less acquisitive and less materialistic) values than prevail today.45 But a social order without any scarcity, if only the opportunity for privacy in a world of massive population is unlikely in the foreseeable future. Since by definition scarcity means not enough to go around, addressing scarcity demands some means of allocating rights of access to some as against others if only temporarily per some sort of time-sharing arrangement. These rights, when they relate to things of value are the functional equivalent of private property whether called that or not.

Even when people voluntarily share in the available goods of social life without conflict, their understanding as to how goods are to be parceled out for individual and group use functions as a private property arrangement.46 Even without conflict, ground rules expressing people's understandings are needed so as to avoid potential conflict. In fact, though, while conflict may be more prevalent under some social conditions than others, a society without at least minimal conflict among individuals and groups is a utopian fantasy. However conflict is resolved-from brute force among the contending parties to democratic mediation by society at large-when the outcome is to allocate rights of access to things of value among individuals and groups, private property relations obtain.

Most socialists hold that true socialism must be democratic and that individual and group rights of some type must have a prominent place under democratic socialism.47 Indeed, most socialists would likely find the rights generally accorded under democratic capitalism not to be far-reaching enough, in particular the absence of affirmative entitlements to welfare-type goods such as a guaranteed job and a fair share of the social product.48 Even formal private ownership of land is not especially controversial to socialists as regards, say, a family residence or self-sustaining farm or even a sole proprietorship. Even where the state formally owns all land, it will have to permit its use by individuals and groups for residential and other purposes. These permits are the functional equivalent of private property in that they confer use rights enforceable against others who might interfere with them and perhaps against the state itself to prevent arbitrary treatment.49

Matters become more controversial as regards the means of production due to issues of exploitation and domination. When Marx and Engels called for the abolition of private property, it is apparent that they were primarily concerned with these abuses.50 Even here, however, it may be that the formal or functional privatization of
some aspects of ownership and decisionmaking regarding the means of production is desirable under and consistent with democratic socialism.

Let's start with an individual's labor. There are strong arguments that people should have substantial, although not necessarily total, control over their own labor both for individualistic reasons in that control of one's labor is integral to one's full development as a person and for collective reasons in that people are likely to be most productive and to contribute the most to society when they control their own labor. Conferring on people the right to control their own labor need not mean, though, that they must be allowed to do exactly what they want irrespective of ability or training, since there are countervailing interests of others that they not be injured through incompetence and of society at large that socially useful activities be promoted. However, it does mean that people are entitled to choose from among the available options to which their talents are suited and that society is affirmatively obligated to afford people the opportunity to develop their talents and put them to use.

Nor need people be allowed to market or exchange their labor for whatever compensation they can obtain. Some may have unique skills which if subject to unfettered exchange could be used in socially undesirable ways, such as to extract monopolistic compensation or to exploit others in great need of that skill. And it may be that marketization is not in general the most socially useful way of allocating labor, and that collectivized methods which divorce labor from compensation but still allow people substantial control over their labor are preferable. Even required community service, as a way of preventing hierarchy and of ensuring the provision of unpleasant but socially needed tasks, may be acceptable so long as it is equitably apportioned and does not overwhelm people's general right to control their labor.

Of course, the major concern of socialists with the marketization of labor has not been abuses by the owners of labor but exploitation and domination of workers by the private owners of capital. But as argued here, formal ownership of capital by the state is not a solution to this problem where the state is undemocratic, state-owned property is functionally private, and workers are subject to exploitation and domination by the state. Moreover, as John Roemer has effectively demonstrated, exploitation and domination do not inhere in the private ownership of capital per se, but in the unequal distribution of wealth and capital. So if the concern is to eliminate exploitation and domination, this could in theory be accomplished through some form of formalized public ownership of capital subject to democratic decisionmaking or through the equal distribution of formally private capital subject to collective regulation. These two approaches could be designed to function virtually the same. In both, for example, worker cooperatives could be the major producers, in the one case through decentralized control of state capital and in the other through combined private capital.

Consequently, the choice of an approach would depend on practical as much as on theoretical considerations. If democratic socialism ever comes about in advanced capitalist societies, the most plausible scenario may be through an evolutionary process, although not likely an entirely peaceful one, under which the political process is increasingly democratized, the economic system is brought increasingly under public control, and people's entitlements are increasingly expanded. There are, however, impediments to such reforms.

For one, structural impediments to change make some options more feasible than others. Thus the constitutional protection of free speech may be interpreted to inhibit laws limiting the undue influence of private wealth in the political process, thereby channeling reform in other directions such as public financing and measures designed to enhance the voice of the less powerful. And constitutional requirements of compensation may inhibit nationalization of capitalist enterprises, thereby channeling economic reform in a regulatory direction or toward the creation of competing governmental enterprises. Moreover, some alternatives may be easier to implement than others. Thus difficulties in maintaining an equal distribution of private capital over time as a way to prevent exploitation may make state ownership a more viable approach. Or while viable in theory a centrally planned economy might be unworkable in practice due to the inability to collect and process the data needed for it to operate efficiently, whereas decentralization of some type, although also posing informational problems, might on balance be found more efficient. Or economies of scale and incentive factors may on balance speak to large, nonprofit government enterprises in one sector of the economy and smaller, profit-making businesses in another. Finally, the impact on people's thinking of capitalism's supportive ideology may inhibit change, thereby necessitating grassroots efforts to raise people's consciousness and organize reform movements.

III. SOCIALISM VERSUS CAPITALISM

If socialism can evolve out of capitalism, and if private property or rights which are the functional equivalent of private property are compatible with socialism, this raises questions about the differences between capitalism and socialism. My thesis is that the differences have as much to do with society's basic values as with its structure, and are matters of emphasis and degree rather than bright-line distinctions.
The differences between socialism and capitalism derive from their differing conceptions of the relationship between the individual and society. Both socialism and capitalism value democracy, but they differ in the degree to which decisionmaking should be public or private and in their approaches to entitlements. Both value a protected sphere of private decisionmaking as to personal matters, although they may differ as to what are personal matters. Democratic capitalism is oriented more toward private and democratic socialism more toward public decisionmaking regarding the mode and relations of production. Consequently, the private market and the values associated with it production for profit, competition, and materialism—are far more central to democratic capitalism, while democratic socialism emphasizes more heavily the public provision of goods, communitarianism, and non-material values.63

Both democratic socialism and democratic capitalism value people's negative entitlements, such as the right to be free from interference with their private spheres and from arbitrary deprivation of their rights. Both also value, although democratic socialism more so than democratic capitalism, affirmative entitlements such as societal assurance of access to the fundamental goods of social life. Their approaches to equality illustrate their differing perspectives on entitlements. Democratic capitalism emphasizes formal equality, meaning that all are to have comparable rights and that some may not without good reason be denied rights accorded others. Democratic socialism also stresses substantive equality, meaning that society must ensure to all a fair opportunity to exercise rights and an equitable share of the social product.64

It will not do, though, to analyze socialism and capitalism simply as economic systems, since economics and politics are interrelated. While there are real-world examples of what might be called authoritarian socialism and capitalism, in theory both imply some form of democracy.65

A socialized yet undemocratic society is a contradiction in terms. To socialize an economy is to bring it under public control, i.e., to democratize it. An authoritarian system in which all property is state-owned and managed is public in name only. The notion that a benign dictatorship can intuit the will of the people, or can in any event act in their best interests, is a dangerous fantasy. One cannot know the will of the people without interaction and feedback, nor can one act in people's best interests without knowing what their felt values and interests are. Humanity has no best interests in the abstract. Rather humanity's values and interests are what humanity individually and collectively discovers or wills them to be in the course of on-going public discourse throughout history.66

This is not to deny the role of leadership in stimulating public discourse and in carrying out the public will. But under true socialism a society's leader-ship as well as its economy must be socialized and thus under public control. Public control does not necessarily require mass elections and representative democracy as practiced, for example, in the United States. Forms of democratic centralism, although that approach has often been perverted in practice and may be difficult to implement properly, may be a workable means of public control.67 And citizen participation, the mobilization of people to participate in decisionmaking in all aspects of social life on an on-going basis, may be a necessary component of public discourse as a means of people's coming to understand and expressing their interests.68

Capitalism, too, implies democracy.69 Capitalist theory starts with the premise that individuals have interests of which the individual is the best judge, that they have the right to pursue those interests, and that society exists to protect individuals' rights and aid the pursuit of their interests. The private market, which enables people to signal their interests through their willingness to pay and thereby to stimulate producers to supply what they want, is the primary way of meeting individuals' interests. Profit making in turn is good because it shows that producers are in fact responding to people's interests, and competition is good because it impels producers to be responsive.

Thus the private market is seen as a form of direct democracy in that through their purchases individuals decide matters which are exclusively or primarily of legitimate interest only to themselves, and in that producers are directly accountable to the consuming public.70 Democratically controlled government intervention may be needed to facilitate the private market and to correct imperfections in its operation such as monopolization and harmful externalities, both of which undercut the responsiveness of the market. But since the government ordinarily operates by majority rule which overrides the interests of the minority, whereas the private market is a form of unanimity which satisfies everybody in that people buy only what they want, government intervention is to be minimized and the private market generally favored for the production of goods and services.

Democratic socialism finds several weaknesses in this way of thinking. First, since the private market is based not just on willingness but also on ability to pay, the wealth disparities resulting from production for profit lead the market to respond better to those with money than to those without, not because the latter are less deserving but because they have less money. To democratic socialism the central focus of the economy must be production for needs, which is undercut when people are unable to pay for what they need. Needs must take priority over other wants. Although the distinction between the two is often nebulous, in the extreme there are obvious examples. People surely need food, clothing and shelter more than other amenities of modern life. A market for goods, based

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on money or some other form of exchange, may have a place under democratic socialism as a way for people to prioritize their individual needs and wants.\textsuperscript{71} But there must also be an on-going public discourse about needs and wants, and the economy as a whole must be structured so as to give priority to the collectively determined needs of all.\textsuperscript{72}

Second, the drive for profit biases the capitalist economy toward the production of goods which can be commodified and toward commodification as the preferred means of providing goods.\textsuperscript{73} Production for profit does not adequately provide for collectively-enjoyed public goods which people want and are willing to pay for, such as clean air and other environmental amenities, but which require more coordination than is feasible for consumers in a profit-oriented market economy. Nor does production for profit adequately provide for privately-enjoyed non-material goods which people want but are not suited to commodification. Some goods, such as inactive leisure time, are passively enjoyed and thus do not demand the production of anything profitable to be used in their enjoyment. The commodification of other goods, such as love and other forms of intimacy, would undermine the very needs these goods serve.\textsuperscript{74}

Democratic capitalism underprovides public and non-material goods because the giant enterprises which dominate production for profit use their means to promote commodification and materialism and to devalue public and non-material goods. This happens not only through advertising and political influence, but also through the promotion of production for profit as a prime social value.\textsuperscript{75} Democratic socialism, on the other hand, since it is not driven by profit and has a more communal and less materialistic perspective than democratic capitalism, allows for a more balanced decision as between commodification and noncommodification and can thus better provide public and non-material goods.

So while both socialist and capitalist theory imply democracy, starting points and emphases differ. Democratic capitalism's starting point is the individual, with the community being an extension of individuals constructed by individuals in accordance with their interests and for mutual advantage.\textsuperscript{76} Democratic socialism also values the individual but sees individuals as largely, though not entirely, socially constructed.\textsuperscript{77} For the most part individuals' felt interests and life-styles result from being socialized in societies with certain values. Not everyone adopts society's prevailing values, but societies do consciously and spontaneously promote their values and attempt to indoctrinate their members into the prevailing value system. Consequently, there tends to be a bias in favor of the prevailing values and of the status quo.\textsuperscript{78} Those who adopt different values usually do so only when they have been socialized in subcultures somewhat insulated from the dominant culture, or when they have confronted and chosen to reject the prevailing values.

This does not make individuals' interests less valid or worthy of respect. But when there are power imbalances in social life, society's prevailing values are likely to be disproportionately influenced by and biased in favor of the interests of the more powerful. Society's values and people's interests might well differ with a different distribution of power.\textsuperscript{79} Since society's values are collectively determined, true respect for individuals' interests demands an egalitarian distribution of the power to influence society's values. This has implications for both the political process and the economic system. Since everything the government does influences society's values and individuals' felt interests, collective decision-making must be fully democratized and the political influence of disproportionate wealth and other power imbalances minimized. Likewise, since everything that happens in the economic system—from advertising, to the type of goods produced, to the organization of production—impacts values and interests, and indeed the entire social structure, power imbalances must be minimized there too.

Due to its individualistic starting point and its fostering of the private market, political and economic power imbalances are more acceptable under democratic capitalism.\textsuperscript{80} Attention to power imbalances is deflected by emphasizing people's formal political equality per universal suffrage and the one-person-one-vote principle,\textsuperscript{81} and their formal economic equality per everyone's opportunity to compete in the marketplace.\textsuperscript{82} To the extent acknowledged, power imbalances are justified as the earned reward for successful competition, for responding to people's interests and demands. This in turn induces the less successful to be more productive and more responsive. Power imbalances do not endure since successful competition allows for social mobility within and between generations and for shifting political fortunes and wealth patterns over time. In the meantime the benefits of capitalist productivity trickle down to most everyone, even the least well off members of society. To democratic socialism, on the other hand, imbalances in power are the driving force and the inevitable by-product of capitalism. Far from benefitting everyone, the competition for profit has led to increasing rigidity in the social structure, increasing wealth disparities world-wide and within advanced capitalist societies,\textsuperscript{83} and a political process dominated by monied interests.

Democratic capitalism's individualistic starting point, as against democratic socialism's view of the individual as socially constructed, also impact their different understandings of society's obligations toward the individual and of the meaning of equality. Democratic capitalism heavily emphasizes personal responsibility. The individual is
primarily responsible for success and failure in life. While some are born into poverty and others into wealth, examples of those who work their way up from poverty and those who fail despite their advantages show the validity of personal responsibility. That there is a relationship between family status and how people fare in life, that the poor and the well-off disproportionately remain such, is due in part to the refusal of the less-well-off to exercise the will power to pull themselves up by the bootstraps and in part to genetic or sociobiological factors in that people and distinct groups of people tend to reproduce in their offspring the characteristics tied to their own successes and failures. While the individual may not be personally responsible for one's genetic make-up, that make-up belongs to the individual who must make do with one's fate. Society's primary responsibilities, in turn, are to foster personal responsibility by establishing wide-ranging rights to freedom of action equally available to all, providing access to those goods such as a basic education which are needed to exercise personal responsibility, allowing those who fail to exercise their rights to best advantage to suffer the consequences, and punishing those who violate others' rights.

Democratic socialism, while not disregarding personal responsibility, stresses collective responsibility equally as much and far more so than does democratic capitalism. Since the individual is socially constructed, society is as responsible as the individual for individual success and failure. Society experiences rich and poor classes because society is structured so as to produce them. People's lack of success in life and their anti-social behavior are as much the result of the impact on their thinking and opportunities of the social conditions in which they find themselves as of their failure to exercise personal responsibility. Society is therefore obligated to restructure itself, by ameliorating and ultimately eliminating the disparities in social life which impede equal opportunity, so as to accord people not only formally equal rights of action but equal opportunity to exercise those rights.

Thus, while everyone under democratic capitalism may have the right to an education, wealth disparities greatly affect the opportunity to acquire this needed good in a society like the United States where it must be paid for directly or through tax districts of unequal wealth. Consequently, equal opportunity to acquire education and other goods to which the equal opportunity principle applies demands that they be provided without regard to ability to pay or that wealth be redistributed. Equal opportunity may even require that the less-well-off receive more of certain fundamental goods on which the opportunity to exercise other rights depends. It may not be enough to furnish all children with the same or a comparable education. Since poor families may be unable to assist their children's education as much as the well-off, and since poor children face more demoralizing environmental conditions, society must provide the less-well-off with the additional education and other goods and services they need to benefit equally from formal education.

Furthermore, since the social product results from the collective efforts of all society's members and since private market wages may not reflect the value of people's contributions, all who contribute to the social product to the best of their abilities are entitled to an equitable share therein based on effort or need or other factors collectively deemed relevant. Democratic socialism may need to deter malingering and other anti-social behavior by denying offenders a full share of the social product. But since society is at least partially responsible for creating that behavior and in any event needs everybody's contribution, it must also provide ample opportunity for rehabilitation. If genetic factors limit people's ability to contribute, they are still entitled to an equitable share of the social product. While society may not be responsible for creating genetic differences, democratic socialism's communitarian perspective would have society at large rather than the individual bear the cost of such fortuitous factors.

In short, despite democratic capitalism's individualistic focus, democratic socialism shows even higher regard for the individual because its communitarian perspective entails collective responsibility for the welfare and opportunity for self-realization of each and every member of society. Moreover, democratic socialism is more democratic than democratic capitalism because it understands that true democracy can flourish only when all the goods of social life, including both material well-being and the opportunity to participate in decisionmaking in all aspects of social life, are equitably distributed among all people.

IV. WHAT IS TO BE DONE?

But how are democratic socialism's communitarian and egalitarian values to come into play in the face of democratic capitalism's current world-wide hegemony? Marx believed that socialism would occur first in the advanced capitalist societies, and that the changeover was imminent. He assumed capitalism would create the capacity to produce sufficient material well-being as to make it possible for socialist values to take hold, would become so entangled with a supportive state bureaucracy as to be a kind of bourgeois socialism, and would generate such antagonistic relationships between capitalists and workers as to move the latter to seize power and convert to a workers' socialism. Although not so strongly emphasized, Marx also thought capitalism's burgeoning democracy, though dominated by the capitalist class, was helping set the stage for socialism by creating a means for the masses
to gain power politically and to develop the communal thinking and active public involvement needed for socialism to thrive.93

Despite the inaccuracy of these projections and capitalism's seeming triumph, there are still real possibilities for democratic socialism in advanced capitalist societies.94 The Soviet attempt at socialism, if it should even be credited as such, failed partly because of the inability of socialist states to succeed economically in a capitalist dominated world and partly because the absence of a democratic tradition led to an authoritarian approach inimical to socialism.95 It remains to be seen whether the incipient democratic capitalism in Russia and other ex-Soviet bloc states will continue to build, or whether their experiences under deformed socialism will lead to a movement for democratic socialism.96 It also remains to be seen whether the demands for democracy in China will be successfully revived and whether the privatization occurring there will become full-blown capitalism or will be subordinate to a dominantly socialist economy.97 The prospects for democratic socialism elsewhere, except perhaps on a small scale, seem remote.

If democratic socialism does come about under advanced capitalism, it will likely be through an evolutionary process driven by workers' and other social movements which progressively challenge and gradually transform the values and practices of democratic capitalism. At one time it seemed that the welfare state policies of the Western European social democracies, spurred by a strong workers' movement, might represent such an evolutionary step.98 With the decline, though certainly not the demise of social democracy,99 the new social movements-the civil rights, feminist and environmental movements-have come to the forefront in recent years and have brought about some reforms.100 Whether these and other movements will continue to foment progressive change, or whether their reforms will be subsumed under democratic capitalism or discarded with the current conservative backlash, is an open question. The struggle proceeds.

Movements arise when people become dissatisfied with the existing state of affairs. At first there may be just a sense that something is wrong, a generalized malaise, misdirected anger or spontaneous revolt (all of which are found in the United States today). In search of solutions people may come to see contradictions between society's professed values and its practices, and may attempt to bring them in line. Or they may begin to question the prevailing values and push for more radical reform.101 Marxists have referred to this situation as one of alienation.102 Alienation is a state of being estranged from oneself and others and an accompanying state of mind, a feeling of personal incompleteness or lack of fulfillment, a tension or antagonism in interpersonal relations. Alienation results from being subjected to or being overpowered by forces beyond one's control. While Marx focused mainly on the alienation caused by the disproportionate power of capitalists over workers, alienation is inherent in all situations of power imbalance. Thus not only workers' movements but the new social movements as well, since they aim to rectify power imbalances, are responses to alienation.

The civil rights and feminist movements, for example, focused initially on formal equality, on the right of ethnic minorities and women to be accorded the same rights as whites and men and on the right not to be discriminated against on account of race or gender. These rights, largely achieved on paper if not yet in practice, are easily subsumed under democratic capitalism since formal equality is one of its theoretical linchpins. Other reforms sought by these movements pose more of a challenge to democratic capitalism, which is why they are more controversial.

Thus affirmative action and comparable worth seek not just formal but a form of substantive equality, and in so doing directly challenge power imbalances in public and private decisionmaking. The premise of affirmative action is that ethnic and gender disparities in access to the goods of social life, such as higher education and jobs, demonstrate systemic institutional racism and sexism, without which there would be comparable representation.103 And the premise of comparable worth is that the job market undercompensates women for contributions equivalent to those for which men are paid more.104 Due to the scarcity of these goods, however, it is difficult to solve these problems under democratic capitalism without threatening the drive for profit and the ability of capitalists to dominate and exploit workers. Since there are not enough college seats or jobs to go around, providing more of these goods to minorities and women through affirmative action means less for whites and men, and therefore merely resituates the problem and creates a backlash from those who now have privileged access and stand to lose out. An alternative solution, more in keeping with democratic socialism's egalitarian outlook, is the provision of universal higher education and guaranteed employment as public goods.105 But as this would channel resources away from profit-making activities, capitalists can be expected to and have always opposed such measures.106 Likewise, comparable pay for women means either lower profits for private enterprises or higher taxes for public employers, which will obviously be resisted by monied interests, or more likely it means lower wages for men and a backlash in response. An alternative more in keeping with democratic socialism, but striking at the heart of democratic capitalism, is to regulate wages or do away with the labor market entirely and compensate all workers based on comparable worth, which if taken seriously might mean roughly equal wages for everyone, since at a deep level all contributions are comparable when people put forth their best efforts.
The environmental movement too challenges democratic capitalism. On one level environmentalism questions the prerogatives and sanctity of private ownership, promoting a more communal view of property as including the private owner's responsibility not to use property to society's detriment and the government's responsibility to retain ownership of and to manage certain resources for the public good. While regulating usage to prevent harmful externalities is consistent with democratic capitalism's emphasis on efficiency, environmental regulations are a greater threat to the drive for profit than traditional public controls, like zoning and subdivision regulation, which are consistent with a progrowth orientation. The environmental movement, in contrast, has stressed the limits of growth and the value of passive uses of the environment, thereby challenging the materialism which spurs production for profit.

The new social movements also challenge democratic capitalism's notion of the autonomous individual in pursuit of self-interest in favor of a more communitarian approach which situates individuals in groups, societies and a world-order on whose collective welfare the individual's welfare depends and whose collective responsibilities are also the individual members'. Thus a major thrust of the civil rights movement has been group rights, which seeks rectification by society as a whole of the continuing impact of past and present racism whether or not particular members of the group have suffered specific harm or particular members of society at large have practiced or benefitted from racism. And a major thrust of the feminist movement has been an ethic of care which emphasizes people's mutual interdependence and society's responsibility to nurture all its members. And the environmental movement has stressed the responsibility of the present to future generations and of the advanced nations not to appropriate a disproportionate share of the world's resources for themselves and to share their wealth with the less-well-off peoples of the world.

Presently missing from the scene is an active workers' movement once envisioned as the focal point of the struggle to establish socialism. Only a small percentage of workers now belong to unions. For the most part unions are content to seek higher wages and benefits and do not mount serious challenges to capitalism. And the working class has become increasingly fragmented due to the decentralization and internationalization of production. One area of activism has been opposition to plant closings, which does challenge capitalism by counterpoising to an owner's traditional right to close up shop an obligation to its workers and the community not to disrupt their lives without showing a strong business necessity and undertaking ameliorative measures. But these are isolated instances not tied to a broader workers' movement needed to complement the new social movements, whose further progress is hampered by the absence of enough jobs for all workers. Affirmative action does threaten white male job prospects, and limitations on growth do threaten to freeze out the dispossessed, in a stratified economy with a high rate of built-in unemployment. Under these circumstances there is bound to be resistance from those workers who feel threatened, even if that resistance is misdirected against others who are more victimized by the system.

Nevertheless, despite the current backlash, the potential does exist for a workers' movement for structural changes in the economy to assure everyone the opportunity to enjoy a decent life and contribute to society's well-being. One approach democratic socialists should consider advocating is the increased democratization of the workplace through such measures as: enlarging the scope of mandatory collective bargaining to include so-called business decisions traditionally reserved to management discretion; collective regulation of management decisionmaking to require consideration of the adverse impact of business decisions on workers, consumers and communities, and the inclusion of affected parties in decisionmaking structures; and the promotion of worker owned or managed enterprises. Not only is participation in decisionmaking by workers and other affected parties a check against abuse of power, but internal democracy is essential in all society's institutions because all who are so intimately affected by them have a legitimate interest in institutional decision-making.

Democratic socialists should also consider advocating guaranteed employment with the government providing public service jobs to cover the structural unemployment built in to production for profit. Not only could this furnish the community needed services which now are underprovided in such areas as education, health care and environmental protection, but it might help convince people of the overemphasis production for profit places on private goods and of the benefits of public goods and a more communal approach to social life. It might also help solve other social problems arising from the failure of production for profit to provide universal employment, and save money now being spent to sustain unproductive people on welfare and in prison. Moreover, guaranteed employment at a living wage should impel private employers to increase wages and defuse tension among workers competing for jobs in a scarce market, thereby facilitating coalitions among diverse social movements to attack the root of the problem: the inability of capitalist production for profit to produce a decent life for all.

V. CONCLUSION
If the new world order leads to capitalism's ever increasing dominance, then the future is likely to see ever increasing wealth disparities among and within nations, immense numbers of people in the world living in abject poverty, and world-wide conflict. Under those conditions fascism, whose roots can be seen in the Unites States today, is a definite possibility. Democratic socialism, if it is possible to move in that direction, is a more hopeful alternative because it recognizes that social harmony demands that the resources and productive capacity of the world be equitably shared among all nations and people. How to get there is another matter. No blueprint can be offered, and there is every reason to expect great practical difficulties in bringing about and carrying out democratic socialism.

Since the United States is so dominant in the world, a democratic socialist trend in this country would certainly help. The current conservative backlash does not mean that democratic socialism is impossible in the United States. The backlash is a sign of dissatisfaction and of social problems to which people are seeking solutions. It is up to democratic socialists to explain why the liberal social welfare programs of the past were inadequate, why dismantling the welfare state without economic restructuring will intensify rather than solve the country's social problems, and why what is needed is to deepen democracy and build a society more attuned to each and every person's welfare.

But democratic socialism cannot simply be sold to people by preaching the revealed truth to which they should adhere on faith. What is needed are workable solutions to real-world problems which people themselves must participate in developing and implementing, so that they can come to understand the values on which a vital society depends. The new social movements, coupled with a revitalized working class movement, are a good starting point because that is where the action is and because all ultimately question the viability of democratic capitalism.

The major battles, at least in the immediate future, are not likely to include the widespread nationalization of private property. Yet there must be fundamental changes in property relations and conceptions. On the one hand, the means of mass production must be brought more under public control, and private ownership must entail not just rights against others but also the duty to the community to use property in socially responsible ways. And property rights must be broadened to include the affirmative entitlements society owes all its members for adequate education, health care, employment, and other aspects of a fulfilling life.

If all the reforms implicit in the new social and workers' movements were to come about, along with the reorientation of values necessary for that to occur, it is questionable whether this society could legitimately be called capitalist anymore. It would certainly be far along the path to rejecting self-centered individualism in favor of the communitarian and egalitarian values and practices of democratic socialism.

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1See, e.g., Lawrence C. Becker, PROPERTY RIGHTS (1977)(property rights as promoting political liberties, individual happiness and the general welfare, and as rewarding people for and protecting the fruits of their labor); Stephen R. Manzer, A THEORY OF PROPERTY (1990)(property rights as supported by a pluralist theory which includes a principle of utility and efficiency designed to satisfy people's preferences for personal development, security and protection against domination and exploitation; a principle of justice and equality, deriving from the equal moral worth of persons, which requires minimum property for all and limits unequal property holdings; and a labor-desert principle which rewards people for embodying themselves in external things and for exercising moral character); Richard A. Posner, ECONOMIC ANALYSIS OF LAW 27-64 (1977)(property rights as promoting the efficient use of resources); Margaret Jane Radin, Property and Personhood, 34 Stan. L. Rev. 957 (1982) (property rights as assuring people control over those resources necessary to self-development because the ways in which people define or constitute themselves are tied to their relationship with those things); Jeremy Waldron, THE RIGHT OF PRIVATE PROPERTY (1988)(property rights as deriving from a principle of respect for persons' autonomy, self-realization and ethical development, and as therefore requiring property for all, although not necessarily equal property for all, to the extent necessary to effectuate the respect principle).

2Karl Marx & Frederick Engels, Manifesto of the Communist Party (1848) in MARX & ENGELS: BASIC WRITINGS ON POLITICS AND PHILOSOPHY 6, 21 (Lewis S. Feuer, ed., 1959) ("[T]he theory of the communists may be summed up in the single sentence: Abolition of private property"); Karl Marx & Frederick Engels, THE GERMAN IDEOLOGY 68 (1947)("With the appropriation of the productive total forces through united individuals, private property comes to an end").

3See works cited infra note 48.

4On the comparison between cities and homeowners associations, see Robert Ellickson, Cities and Homeowners Associations, 130 U. Pa. L. Rev. 1519, 1520 (1982) ("I discern only one important difference between the two forms of organization—the sometimes involuntary nature of membership in a city versus the perfectly voluntary nature of membership in a homeowners association"); Gerald Frug, Cities and Homeowners Associations: A Reply, 130 U. Pa. L. Rev. 1589, 1591 (1982) ("I can see no difference at all-no legitimate public/private distinction at all-between cities and homeowners associations").

5The problems may be resolved differently in the two contexts, however, due to the formal distinction between a local government as a public entity to which constitutional restrictions apply, as against a homeowners association as a private entity which is not similarly bound. See, e.g., City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432 (1985) (city's denial of special use permit for group home for mentally retarded violates equal protection); Omega Corporation of Chesterfield u. Malloy, 319 S.E.2d 728 (Va. 1985), cert. denied, 469 U.S. 1192 (1985) (restrictive covenants limiting uses in subdivision to "residential purposes" and "single-family" dwellings validly bar group homes for mentally retarded). Compare Gregory S. Alexander, Dilemmas of Group Autonomy: Residential Associations and Community, 75 Cornell L. Rev. 1, 60 (1989) (advocating judicial oversight of residential association rules per a reasonableness standard requiring them to conform to widely shared community values so as to promote inclusion, pursuant to a communitarian theory which rejects the view of
residential associations as private and autonomous and sees them instead as inextricably interconnected forms of community which "must accept a civic obligation to maintain community within our society").

The two situations are formally different in that the nominal private owner may have fee simple ownership which technically lasts forever, whereas a leasehold can ultimately revert to the nominal public owner. This difference fades to practical insignificance, however, in the case of very long-term leases or leases which are routinely renewed or never terminated.

The Supreme Court has on occasion adopted the functional approach so as to treat nominally private entities as public and nominally public entities as private for constitutional purposes. Recently it has struck the balance more in favor of privatization than publicization, so as to limit the reach of constitutional rights. In Marsh u. Alabama, 326 U.S. 501 (1946), the Court held the First Amendment to protect the distribution of religious literature on a sidewalk in a nominally private company town which was functionally like a public entity. But in Lloyd Corporation, Ltd. u. Tanner, 407 U.S. 551 (1972), the court declined to extend Marsh to the distribution of political handbills in the common areas within a privately-owned shopping mall which the Court found not to be the functional equivalent of a public business district. On the other hand, in Bull u. James, 451 U.S. 355 (1981), the Court held the one-person-one-vote principle inapplicable to a nominally public water reclamation district, which also sold electricity to hundreds of thousands of people but which limited voting eligibility to landowners and apportioned voting power according to the amount of land owned, in that the district was essentially a business enterprise, although under state law it was exempt from rate-regulation as a private utility due to its nominal public character.

The terms "capitalist" and "socialist" are contested, and are subject to varying definitions. Distinguishing between them based on formally private or public ownership of property is obviously inadequate to me. I shall say that society is capitalist to the extent that decisionmaking regarding economic and other internal matters is determined by privately owned property (or for that matter by collective decisionmaking which is functionally privatized). (Compare Stephen Cullenberg, Socialism's Burden: Toward a Thin' Definition of Socialism, 5(2) Rethinking Marxism 64, 68 (1992)(socialism as "collective appropriation" defined as "democratic decision-making concerning the appropriation of surplus labor").) This means, as will be more fully developed below, that a society could be partially capitalist and partially socialist, and that the distinction between the two is a question of degree rather than a bright line.

Large capitalist enterprises are often referred to as "public corporations;" perhaps because due to their size their actions so affect the public interest or perhaps because they often have such large numbers of stockholders. See David Millon, Theories of the Corporation, 1990 Duke L.J. 201, 201 (discussing historical views of corporations as private and autonomous enterprises serving the interests of shareholders or as quasi-public entities "with broad social and political ramifications that justify a body of corporate law that is deliberately responsive to public interest concerns"). In fact, a nominally private corporation would be fully public from a functional perspective if its stock were equally distributed among the public and if decisionmaking by the shareholders' elected representatives were truly responsive and accountable.

Worker cooperatives are possible in both dominantly capitalist and dominantly socialist systems, although perhaps referred to as collectives under socialism. See David P. Ellerman, THE DEMOCRATIC WORKER-OWNED FIRM: A NEW MODEL FOR THE EAST AND WEST (1990). Where economic decisionmaking is largely privatized, worker cooperatives could be seen as a socialist trend which incorporates more collective decisionmaking into the economy. When economic decisionmaking is more collectivized, worker cooperatives could be seen as a way of decentralizing collective decisionmaking.

 Mandatory collective bargaining, for example, is a form of worker democracy in that it involves workers in some aspects of workplace decisionmaking, although in light of the limits on the scope of collective bargaining it is an incomplete form of democracy. For more on collective bargaining and other forms of worker democracy, see infra note 117119 and accompanying text.

In the past courts sometimes upheld such regulations. See, e.g., Sibson v. State, 336 A.2d 239 (N.H. 1976) (upholding against taking claim denial of permit to fill wetlands thereby left with practically no pecuniary value); Just u. Marineti County, 201 N.W.2d 761(Wis. 1972) (upholding against taking claim ordinance limiting wetlands to minimal use). Recently, however, the Supreme Court has begun to strike down environmental regulations deemed to overly restrict private use. See infra notes 107, infra.

For example, when Congress nationalized the navigable airspace it did not compensate the underlying landowners, who under the common law ad coelum rule then followed in many jurisdictions were the formal owners of the superadjacent airspace to the center of the universe. One possible rationale for noncompensation is that the landowners could not feasibly use the nationalized airspace and therefore suffered no compensable loss or would receive an unjust enrichment if compensated. Another is that so many people had airspace taken that compensating them would require taxing the very people to be compensated, such that the end result would be substantially the same economically with and without compensation. The latter rationale might lend support to the uncompensated nationalization of all land in the United States.

Compare the public trust doctrine discussed in note 108, infra. How things are articulated matters because the articulation may influence people's thinking. For example, explaining private property as a recognition of society's duty to protect individuals' natural moral right to ownership versus the entrusting of communal property to individuals so as to promote the collective good may impact people's willingness to accept the nationalization of private property. Thus a major part of the struggle to change the way a society functions also entails a struggle to change the terms in which people think about the way society functions or ought to function. Compare Stathis N. Kalyvas, Hegemony Breakdown: The Collapse of Nationalization in Britain and France, 22(3) Politics & Society 316, 319-321 (1994)arguing that the democratic socialist emphasis on nationalization as central to its project was not so much "as a means of increasing state control ...given the presence of a state which already had an extraordinary interventionist capacity," but more for its symbolic potential as part of the "idea to consolidate and expand its hegemony". Compare Domenico Losurdo, Collapse of Existing Socialism' in Eastern Europe: Democratic Revolution or Restoration?, 7(2) Nature, Society, and Thought 195 (1994)arguing that state capitalism is at least potentially a movement away from private capitalism and toward socialism in that it may set the stage for a more but as yet unrealized democratic control of the economy. Compare Oskar Lange & Fred M. Taylor, ON THE ECONOMIC THEORY OF SOCIALISM 65, 99 (1938)(demonstrating that a centralized socialist economy with public ownership of the means of production and freedom of choice in consumption can in theory achieve economic results comparable to a private market economy in terms of satisfying people's preferences and efficiency of production through a planned trial and error method analogous to "how economic equilibrium is established by trial and error on a competitive market"); and arguing that a
democratically controlled socialist economy is preferable on practical grounds because it can more easily "distribute incomes so as to attain the maximum social welfare," and because the imperfections of the real world's monopolistic markets are likely to exceed those of a planned economy, especially since the private economy might be more efficient than socialist industry in some more truly competitive fields). Debates over the comparative imperfections of a private market versus a planned economy are, of course, at the heart of the debate over capitalism versus socialism.


19 See An Chen, Democratic Reform of Management Structures in China's Industrial Enterprises, 23(3) Politics & Society 369 (1995). Chen states that prior to the institution of private market reforms in the late 1980s, most enterprises in China were either state owned or collectively owned by their employees, with the former being the dominant form. Initially all these enterprises were controlled by the state, although much decisionmaking authority was of necessity delegated to local government and party officials subject to centralized oversight. In the 1980s a degree of decentralized worker democracy was instituted through worker election of enterprise directors and the empowering of worker congresses within enterprises. Chen questions the continuing vitality of these reforms in the aftermath of Tiananmen and the institution of quasi-capitalism.

20 See Paul Bowles & Xiao-yuan Dong, Current Successes and Future Challenges in China's Economic Reform, 208 New Left Rev. 49, 62 (1994)(characterizing China's industrial economy today as "a decentralized, developmental market-socialist system" in which privately owned enterprises play a significant role but which is still dominated by local state and collectively owned enterprises). There are varying views about the direction in which China is heading. See, e.g., Lin Chen, China Today: Money Dissolves the Commune," 201 New Left Rev. 34, 45 (1993)(characterizing China as "moving somewhere beyond either capitalism or socialism in the common understanding of these terms"); Satyana Davis Gabriel & Michael F. Martin, China: The Ancient Road to Communism?, 5(1) Rethinking Marxism 56, 74 (Spring 1992)(characterizing the how the collective enterprises serve as institutions which through growing cooperation among producers "may well serve as a catalyst in advancing an eventual transition to capitalism"); Richard Smith, The Chinese Road to Capitalism, 199 New Left Rev. 55, 96 (1993)("China is now well down the road toward capitalism"); Adrianna Vlachon, The Socialist Transformation of China: Debates Over Class and Social Development, 6(4) Rethinking Marxism 8, 35 (Winter 1993)(characterizing China as moving down "a kind of capitalist road").

21 The extent of democracy in a society, if seriously evaluated of whether the actual practices of a society conform thereto at a particular time and over time. Many would say, for example, that the fact of "free" elections in the United States makes it more democratic than a society, like China, where a sole ruling party controls the electoral process. However, it is arguable that elections in the United States are not nearly so free in practice as they may formally appear to be, and that factors such as money and entrenched power enable a ruling elite to confine people's choices to a very narrow range comparable to what exists in one-party states. It is also arguable that political and governmental structures in the United States impede a responsive exchange between the citizens and elected officials once in office, and that some one-party states where the ruling party perpetuates itself in power have mechanisms other than elections which produce a comparable or greater governmental responsiveness to citizen input. Moreover, it is arguable that some one-party states which may be less politically democratic than the United States are more democratic in other spheres of social life, such as the workplace to the extent that mechanisms for worker participation in decision making exist in China and other socialist countries, and party states where the ruling party perpetuates itself in power have mechanisms other than elections which produce a comparable or greater governmental responsiveness to citizen input. Moreover, it is arguable that some one-party states which may be less politically democratic than the United States are more democratic in other spheres of social life, such as the workplace to the extent that mechanisms for worker participation in decision making exist in China and other socialist countries.

22 Compare Robert A. Dahl, DILEMMAS OF PLURALISTIC DEMOCRACY 112, 114 (1982)(arguing that "a specific form of ownership is not a sufficient condition for a specific control relationship" and that "the question of control is theoretically prior to the question of ownership"); that "a capitalist order may be, but need not be, highly decentralized ...[while a socialist order may be, but need not be, highly centralized"]; and that every democratic society, whether capitalist or socialist, must confront the question of the appropriate degree of centralized control and decentralization in both the economic and political spheres of human life.

23 Compare Robert A Dahl, AFTER THE REVOLUTION 49 (1970, 1990) ("Everyone who is affected by the decisions of a government should have the right to participate in that government"). While noting the abstract appeal of his formulation, Dahl suggests that considerations of competence and practicality militate against implementing it in its pure form. For example, since all decisions of every level of government somehow, if not remotely, affect everyone both within and without their jurisdictions, Dahl's Principle of Affected Interests could be interpreted to require universal and equal participation in all governmental decisions, thereby preventing any decentralization of governmental decisionmaking. Similar considerations may impact my formulation of the democratic principle, and are discussed in the text which follows.

24 One of which is the issue discussed in the prior section of unanimity versus majority rule.

25 See Planned Parenthood u. Casey, 112 S.Ct. 2791 (1992) (government does not violate woman's liberty and privacy rights in prohibiting abortion after viability and requiring informed consent and 24 hour waiting period before abortion per societal interest in protecting potential human life, nor in requiring a minor to obtain parental consent or judicial by-pass per interest in assuring mature decision and protecting family stability); Bowers u. Hardwick, 478 U.S. 186 (1986)(criminalizing sodomy does not violate homosexuals' rights of liberty and privacy and is justifiable on grounds of community morality).


27 This is the justification for deviations from the one-person-one-vote rule in some voting rights cases. See, e.g., Bull v. James, supra note 7; Town of Lockport u. Citizens for Community Action, 430 U.S. 259 (1977)(referendum procedure for adoption of county charter requiring approval of majority of city dwellers and non-city dwellers voting separately, thereby giving the less populous non-city areas an opportunity to block charter despite majority approval of all county dwellers, justifiable on the ground that changes in county structure may impact noncity dwellers more due to greater degree of city autonomy).

28 See e.g., federal and state governments in the United States allocate power in somewhat this way. Under the Constitution states retain all powers not conferred on the federal government, whose laws override state law pursuant to the Supremacy Clause, although states have some autonomy from the federal government under the Tenth Amendment and to the extent that the federal government may not exceed its conferred powers. See Laurence H. Tribe, AMERICAN CONSTITUTIONAL LAW (1988). Under the home rule concept contained in many state
constitutions, cities may define their own powers to deal with matters of local concern without having to obtain specific authority from the state, but are subject to the general laws of the state, although occasionally courts disallow the state from overriding city power on the ground that a city has exceeded its power or issued ordinances patently void for lack of authority or improperly promulgated. See Osborne M. Reynolds, LOCAL GOVERNMENT LAW 95-122 (1982).

One of which goods is the right to make certain decisions in life for oneself, such that the procedural and substantive aspects of property ownership overlap.

Both libertarian and progressive liberal theorists support the notion of equal rights. See, e.g., Frederick A. Hayek, 3 LAW, LEGISLATION AND LIBERTY: THE POLITICAL ORDER OF A FREE PEOPLE 142 (1979)("The basic conception of classical liberalism, which alone can make decent and impartial government possible, is that government must regard all people as equal, however unequal they may in fact be, and that in whatever manner the government restrains (or assists) the action of one, so it must, under the same abstract rules, restrain (or assist) the actions of all others"); John Rawls, A THEORY OF JUSTICE 60 (1971)("Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others"). Many liberal theorists also support some formulation of a principle of equal opportunity, with some libertarians opposing it and others favoring a more formal or procedural equal opportunity, while progressives tend to incorporate it into some degree of substantive equality of opportunity. See, e.g., Frederick A. Hayek, 2 LAW, LEGISLATION AND LIBERTY: THE MIRAGE OF SOCIAL JUSTICE 129-131 (1976)."The aim of law should be to improve equally the chances of all... It is obvious that the endeavor to add indiscriminately to anyone's chances will not result in making everybody's chances the same. The chances will always depend not only on future events which the law does not control, but also on the initial position of any individual at the moment the rules in question are adopted... It is therefore not the one who the random process of history allays the starting point, and therefore also the prospects, of the different individuals will be different"); Robert Nozick, ANARCHY, STATE, AND UTOPIA 235 (1974)("[H]oldings to which... people are entitled may not be seized, even to provide equality of opportunity for others"); Rawls, at 83 ("Social and economic equalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity").

See, e.g., Karl Marx, A CRITIQUE OF THE GOTHA PROGRAM 8-9 (C.P. Dutt, ed. 1966) (distinguishing between the first, i.e. socialist, phase of communist society in which producers receive from society in proportion to the labor they supply and the higher phase when the bourgeois character will be: "From each according to ability, to each according to needs"); Allen W. Wood, Marx and Equality, in John Roemer (ed.), ANALYTICAL MARXISM 283 (1986)(arguing that Marx rejected the notion of equal rights as a bourgeois justification for inequality in favor of a notion of the full satisfaction of everyone's needs under full-fledged communism). For a sampling on the extensive literature on what the concept of need means and entails, see Len Doyal & Ian Gough, A THEORY OF HUMAN NEED (1991); Agnes Heller, (1976); Kate Soper, ON HUMAN NEEDS (1981).

See, e.g., G.A. Cohen, Back to Socialist Basics, 207 New Left Rev. 3, 11(1994)("The principle of equality says that the amount of amenity and burden in one person's life should be roughly comparable to that in any other's").

Compare Frank I. Michelman, Liberties, Fair Values, and Constitutional Method, 59 U. Chi. L. Rev. 9(1992)(analyzing the differential safeguards accorded constitutional rights, in particular free speech versus economic liberties, as based on functionalist or consequentialist rationales).

On the question of what equal educational opportunity means and requires, see, e.g., Amy Gutmann, DEMOCRATIC EDUCATION 127-171 (1987).

This is the rationale for the largely unsuccessful attempt in this country to limit campaign contributions and expenditures. See, e.g., Buckley v. Valeo, 424 U.S. 1 (1976)(striking down as a First Amendment violation limitations on expenditures by candidates themselves, by others on behalf of candidates, and in campaigns, while upholding limits on campaign contributions); First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978)(striking down laws on corporate contributions and expenditures regarding ballot measures as applied to referendum to authorize legislation to adopt graduated income tax).

Compare Laura S. Underkuffer, On Property: An Essay, 100 Yale L.J. 127 (1990)(arguing for a conception of property as collectively and contextually defined and limited rights which mediate between the individual and governmental power, and which include all those rights, liberties, powers and immunities important for collectively defined human well-being).

See Kenneth J. Vandevele, The New Property of the Nineteenth Century: The Development of the Modern Concept of Property, 29 Buff. L. Rev. 325, 359 (1980) (discussing the relational notion of property developed by Wesley Hohfeld in the early 1900s: "To say that one owned property was to say that the owner had some set of rights, privileges and powers and immunities. Moreover, one who did not own property had a set of no rights, duties, obligations, and liabilities relative to the owner").

For example, in entitling people not to be deprived of life, liberty or property without due process of law, the Constitution limits government's ability to interfere with people's enjoyment, and thereby confines on them quasi-ownership, of these goods. If, as some have proposed, the Constitution were interpreted to obligate government to affirmatively provide everyone the basic necessities of life (see, e.g., Frank I. Michelman, Foreword: On Protecting the Poor Through the Fourteenth Amendment, 83 Harv. L. Rev. 7 (1969)), then the right to receive those goods would be an entitlement which people could thus be said to own. Compare note 49, infra.

A point Marx well understood at a time when most theorists still had a highly formalistic view of property. See Karl Marx, 1 CAPITAL 766 (1867)("Capital is not a thing, but a social relation between persons, established by the instrumentality of things").

See Vandevele, supra note 37, at 362 (1980)("Once property was reconceived to include potentially any valuable interest, there was no logical stopping point. Property could include all legal rights."). Or, alternatively, property fades away as a meaningful or distinctive concept. See Thomas C. Grey, The Disintegration of Property, in J. Roland Pennock & John W. Chapman (eds.), PROPERTY: NOMOS XXII 69, 76-79, 81-88 (1980) (arguing that "the substitution of a bundle-of-rights for a thing-ownership conception of property has the ultimate consequence that property ceases to be an important category in legal and political theory"; and that "the dissolution of the traditional conception of property erodes the moral basis of capitalism" in that under the relational approach to property "state protection of property rights is more easily seen as the use of collective force on behalf of the have-nots", and also "undermine[s] traditional Marxism, and... suggest[s] that the natural development of industrial capitalism is toward a mixed economy" in that with the relational approach's focus on "actual practical control... it seems natural to suppose that under any social system a variety of individuals, institutions, and interests are likely to share both the legal and the actual power over anything so complex as a major productive enterprise").

Compare John Locke, THE SECOND TREATISE OF GOVERNMENT 27 ("E]very Man has a property in his own person"); Dred Scott v. Sanford, 60 U.S. (19 How.) 393, 400 (1856)(characterizing Dred Scott's suit as asserting "title to himself and his family to freedom").
utility/efficiency and justice/equality and is subject to such constraints as a duty not to waste or accumulate beyond one's needs or worsen the condition of others and that rights be commensurate with work done); Nozick, supra note 30, at 149-197 (arguing for a strong labor theory in that the libertarian principle that people are free to order their lives as they see fit leads to a maxim of "to each according to what he makes for himself," at 160, and to the impermissibility of redistributive measures as tantamount to "forced labor"); Waldron, supra note 1, at 171-207, 398-408 (critiquing the analytic coherence of Lockeian and Nozickian self-ownership, labor and desert theories of private property, while supporting private property on other grounds). Varied support for a labor theory of property can also be found in marxist and socialist writings. Compare Karl Marx, ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844 67-83 (1961) (arguing that the necessary result of capitalism is the accumulation of capital in the hands of a few capitalists whose ownership thereof enables them to exploit workers, such that a worker's labor "is not his own, but someone else's, that it does not belong to him, that in it he belongs, not to himself, but to another," at 73); G.A. Cohen, SELF-OWNERSHIP, FREEDOM, AND EQUALITY (1995)arguing, although aspects of the notion of personal autonomy are still integral to the socialist project, that strict adherence to a principle of self-ownership is inconsistent with egalitarianism and therefore must be rejected by socialists in its pure form).

43 Some critical legal scholars express skepticism toward a politics of rights, arguing that rights are indeterminate and thus provide only momentary advantage in on-going political struggles if the underlying power relations remain unchanged and rights unrealized as a fact of social life, that the recognition of rights can actually inhibit progressive change by coopting more radical change through the achievement of partial victories which pacify the forces of change and by creating an ideological barrier to the recognition of other rights more extensive than the existing rights structure, and that rights talk reinforces the intergenerational estrangement in social life that gives rise to rights struggles and thereby distances people from one another and constrains the active interconnections that constitute people's true togetherness. See, e.g., Peter Gabel, The Phenomenology of Rights-Consciousness and the Pact of the Withdrown Selves, 62 Tex. L. Rev. 1563 (1984); Mark Tushnet, An Essay on Rights, 62 Tex. L. Rev. 1363 (1984). Some critical race scholars find the critique of rights insufficiently attentive to the role of rights in overcoming racial oppression. See, e.g., Richard Delgado, The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?, 22 Harv. C.R.-C.L. L. Rev. 301 (1987); Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, 22 Harv. C.R.-C.L. L. Rev. 401 (1987). Others view rights talk as properly criticized when conceptualized as individualistic property rights, but as potentially productive when administrated activity and communal economic rights. See, e.g., James W. Stegmann, The Right to Public Property, 52 Ohio St. L.J. 975 (1991); James W. Stegmann, The Right to Public Property and Community Rights, 62 Tex. L. Rev. 1417 (1984). My perspective is that a society without the interpersonal conflicts which give rise to rights or their functional equivalent as a means of conflict resolution and avoidance is a utopian fantasy over the foreseeable future, particularly in a large and heterogeneous society where people have differing political and ethical views and where the face-to-face contact that would seem necessary to deal with conflict without resort to a rights-oriented approach is impracticable; and that the struggle for both individual and communal rights can help build needed solidarity among the disempowered and thereby contribute to power equalization and enhanced understanding and respect among different groups, provided that it guards against the potentially divisive aspects of rights talk and recognizes the insufficiency of formal rights as a means of enforcing rights.

44 Compare Garrett Hardin, The Tragedy of the Commons, 162 Science 1243 (1968)arguing that resource scarcity, which is true of many if not most resources, demands some means of limiting access lest everyone eventually suffer from overexploitation and depletion; and identifying as alternative means of addressing scarcity voluntary limited access, which is likely to be inadequate due to coordination and free-rider problems, a private property regime with access being controlled through the owners' right to exclude, and public allocation of access rights which are the equivalent of private property). But see note 45, infra, on the possibility of voluntary norms as a means of limiting access at least in some local contexts.

45 At times Marx spoke in utopian terms about the highest stage of communism, when productivity would be so great that there would be no scarcity and everyone's needs and wants would be satisfied. However, he also foresaw with communism a less materialistic and more spiritual approach to needs and wants than he thought under capitalism such that the demand on resources would presumably be far less and a state of abundance for all more feasible. See Jon Elster, MAKING SENSE OF MARX 68-71, 229-233 (1985); Wood, supra note 31, at 283. Along these lines the modern environmental movement has argued that while there are limits to what is possible in the highly developed societies, it may be possible to satisfy everyone's basic material needs provided the resource demands of the well-off are scaled down. See notes 110 & 114, infra. Some liberal commentators, as well, have argued for a less materialistic capitalism, the possibility of which Marx would no doubt contest. See, e.g., Richard B. Stewart, Regulation in a Liberal State: The Role of Free Will and Voluntary Values, 92 Yale L.J. 1537 (1983)arguing that voluntaristic social theory should not focus exclusively on wealth production and should nurture as well the noncommodity values of "aspiration, diversity, mutuality, and civic virtue").

46 See, e.g., Robert C. Ellickson, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 10 (1991) (a study of relations among local cattle raisers and commentary on other contexts in which "informal norms serve... to create property rights"); Veblen, supra note 2, at 65. Among local cattle raisers and commentary on other contexts in which "informal norms serve... to create property rights"); Veblen, supra note 2, at 65.

47 See, e.g., Norberto Bobbio, Why Democracy? in WHICH SOCIALISM 85 (1987) (democracy as desirable under socialism because self-governance fulfills the socialist aspiration of human emancipation, whereas against abuse of power concentrated in the socialist state, and facilitates the determination of collective needs); Norman Geras, DISCOURSES OF EXTREMITY 52 (1990)("any project of social revolution has to demonstrate its democratic credentials"); Ralph Miliband, The Plausibility of Socialism, 206 New Left Rev. 3 (1994)("Socialism itself must be viewed as part of a democratic movement which long antedated it, but to which socialism alone can give its full meaning").

48 See, e.g., Samuel Bowles & Herbert Gintis, DEMOCRACY AND CAPITALISM 178, 205 (1987)(stressing the importance of "democratization of the economy," the "attenuation of economic inequality," and the "dispacement of property rights with democratic personal rights"); Carol Gould, RETHINKING DEMOCRACY 55-71, 178-189 (1988)(arguing that the value of freedom includes the affirmative right to the social and material conditions necessary for realizing individual self-development, that the value of equality requires that this right be equally available to all, and that the conditions necessary for self development consist of both personal and social or common property rights); C.B. MacPherson, THE RISE AND FALL OF ECONOMIC JUSTICE 76, 84 (1987)(arguing that human rights such as the rights to a job and the means of a full and free life be treated as property rights because "property is so central to our society that... it is only if the human right to a full life is seen as a property right that it will stand much chance of general realization"); Bertell Ollman, DIALECTICAL INVESTIGATIONS 102,108 (1993)("the fundamental contradiction in the entire Constitution ...is the contradiction between political democracy and economic servitude").
administering largess); Goldberg v. Kelly, 397 U.S. 254 (1970)(welfare benefits are property for purposes of due process clause such that government must afford welfare recipients an evidentiary hearing before terminating benefits for cause); Perry v. Sindermann, 408 U.S. 593 (1972)(court's ability to regulate the political influence of private wealth. On the other hand, efforts to enhance the voice of the less powerful have also often been blocked. See, e.g., Lloyd u. Tanner, 407 U.S. 531 (1972)(First Amendment inapplicable to ban on distribution of political handbills in privately owned shopping center); Anderson u. City of Boston, 380 N.E.2d 628, appeal dismissed, 439 U.S. 1060 (1979)(upholding state ban on municipal expenditures regarding ballot measures as applied to referendum to authorize legislature to adopt differential property tax rates for different classes of property). On enhancing the voice of the less powerful, see Owen M. Fiss, Free Speech and Social Structure, 71 Iowa L. Rev. 1405 (1986)(advocating public financing, the fairness doctrine, and access to privately owned public facilities such as shopping centers as means of equalizing public debate); Owen M. Fiss, Why the State?, 100 Harv L. Rev. 781, 788 (1987)("The state must put on the agenda issues that are systematically ignored and slighted and allow us to hear voices and viewpoints that would otherwise be silenced or muffled.").

See, e.g., Gerald E. Frug, Property and Power: Hartog on the Legal History of New York City, 1984 Am. B. Found. Res. J. 673 (advocating that cities operate banks, insurance companies and other financial institutions as a means of influencing private investment, run cable television systems as a means of enhancing voice and democratic participation, run profit-making businesses both to generate income for needed services and to demonstrate alternative styles of business organization involving workplace democracy).

Roemer has suggested, as a means of maintaining an equal distribution of private capital, a system of coupon socialism under which all adults would receive from the state an equal amount of coupons which could only be used to purchase shares in mutual funds, which in turn would use the coupons to purchase shares of public firms, which in turn could exchange coupons with the state for investment funds. At death, an individual's mutual fund investments would be liquidated for coupons which would escheat to the state. On coupon socialism and its pros and cons, see John E. Roemer, A FUTURE FOR SOCIALISM (1994); Special Issue: Rethinking Socialism, 22(4) Politics & Society (1994).


This point is well illustrated in the debate over whether Rawls' progressive philosophy is ultimately "a philosophical apologia for an egalitarian brand of liberal welfare-state capitalism," Robert Paul Wolff, UNDERSTANDING RAWLS: A RECONSTRUCTION AND CRITIQUE OF "A THEORY OF JUSTICE" 195 (1977), or is consistent with the socialist project. See Jon Mandle, Rawls and the Left, 213(3/4) Socialist Rev. 155 (1991)(arguing that the achievement of Rawls' principles of justice may require the institution of some form of democratic market which extends those aspects of liberal democracy consistent with and supersedes those which detract from democratic socialism); Michael Harrington, SOCIALISM: PAST AND FUTURE 248-278 (1989)(viewing the socialist project as one of "visionary gradualism"); Ralph Miliband, DIVIDED SOCIETIES: CLASS STRUGGLE IN CONTEMPORARY CAPITALISM 206 (1991)(arguing the possibility of a scenario whereby "advanced capitalism will inevitably generate further and more acute class struggle from below, not only over immediate and specific grievances or demands, but also over larger aspirations involving the achievement of deep, 'structural' transformations in the social system in the direction of socialism"); John D. Stephens, THE TRANSITION FROM CAPITALISM TO SOCIALISM 11 (1980)(arguing for "the possibility of a gradual parliamentary democratic evolution to socialism," and that Marx envisioned this possibility). But compare Andre Gorz, Reform and Revolution, in Roger S. Gottlieb (ed.), AN ANTHOLOGY OF WESTERN MARXISM 218, 219 (1989) ("Socialism will not be achieved by a gradual reordering of the capitalist system, designed to rationalize its functioning and institutionalize class antagonisms... It can be brought about only by deliberate, long-term action of which the beginning may be a scaled series of reforms, but which, as it unfolds, must join into a series of trials of strength, more or less violent, some won and others lost, but of which the outcome will be to mold and organize the socialist resolve and consciousness of the working class.").

See note 55, supra, for examples of decisions limiting the government's ability to regulate the political influence of private wealth. On the other hand, efforts to enhance the voice of the less powerful have also often been blocked. See, e.g., Lloyd v. Tanner, 407 U.S. 531 (1972)(First Amendment inapplicable to ban on distribution of political handbills in privately owned shopping center); Anderson v. City of Boston, 380 N.E.2d 628, appeal dismissed, 439 U.S. 1060 (1979)(upholding state ban on municipal expenditures regarding ballot measures as applied to referendum to authorize legislature to adopt differential property tax rates for different classes of property). On enhancing the voice of the less powerful, see Owen M. Fiss, Free Speech and Social Structure, 71 Iowa L. Rev. 1405 (1986)(advocating public financing, the fairness doctrine, and access to privately owned public facilities such as shopping centers as means of equalizing public debate); Owen M. Fiss, Why the State?, 100 Harv L. Rev. 781, 788 (1987)("The state must put on the agenda issues that are systematically ignored and slighted and allow us to hear voices and viewpoints that would otherwise be silenced or muffled.").

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parallels between Marx’s theory and Rawls’ theory of social justice). The influence of marxist theory on liberal ideology also illustrates the point. See, e.g., Munzer, supra note 1, at 157-187 (incorporating aspects of Marx’s theory of alienation and exploitation, while ultimately rejecting it as insufficient). Into this liberal analysis of why the power imbalances which differences in property holdings can produce requires a minimum amount of property for all).

65 See, e.g., notes 73 & 74, infra: Cohen, supra note 32, at 9 (1994) (“I mean, here, by ‘community,’ the anti-market principle according to which I serve you not because of what I can get out of doing so but because you need my service”).

66 The U.S. Constitution, for example, has for the most part been interpreted to protect only people's negative entitlements to be free from arbitrary government interference with or deprivation of certain rights such as free speech, free exercise of religion, and life, liberty and property. Michelman, supra note 33, whereas the constitutions of the so-called socialist states often assured people affirmative entitlements (or at least “social aspirations”) such as the rights to work, health care, and social security, Cass R. Sunstein, On Property and Constitutionalism, 14 Cardozo L. Rev. 907, 909-910 (1993). This does not mean that the United States is devoid of affirmative entitlements, although it leaves them more to the winds of the political process and elevates the constitutionally protected negative entitlements to a higher plane. See Mark Tushnet, Civil Rights and Social Rights: The Future of the Reconstruction Amendments, 25 Loyola L. Rev. 1207 (1992-93)(arguing for the constitutionalization of social rights, the equivalent of what are referred to here as affirmative entitlements). Conversely, it may be that the socialist states did not fully provide the affirmative entitlements they proclaimed, although constitutionalizing such aspirations is ideologically significant and may well impact people's expectations in both existing and defunct socialist systems.

67 See, e.g., MacPherson, THE LIFE AND TIMES OF LIBERAL DEMOCRACY 108-114 (1977) (examining the preconditions for and the workings of a successful “pyramidal system” of direct democracy at the local level and delegate democracy at higher levels of society as a means of building a more participatory democracy).

68 See, e.g., Gould, supra note 48 (advocating a democratic socialism containing the fullest possible degree of participatory decisionmaking in all aspects of social life, with direct citizen decisionmaking where possible along with citizen participation components at all levels of representative government, with ownership, control and management of firms by their workers and democratically elected market-regulatory and planning commissions to protect against market abuses and guide the economy as a whole in accordance with general societal interests, and with the democratic distribution of income within firms together with societal distribution according to need through guaranteed education, health care and social insurance). Some progressive and community-oriented thinkers also emphasize the importance of widespread citizen participation in building strong institutions, communities and societies. See, e.g., Benjamin Barber, STRONG DEMOCRACY (1984); Jane Mansbridge, B EYOND ADVERSARY DEMOCRACY (1980); Hannah Pitkin & Sara Shumer, On Participation, 2 Democracy 43 (1982).

69 See, e.g., Milton Friedman, CAPITALISM AND FREEDOM 1-21 (1962)(arguing that competitive capitalism is a necessary condition for political freedom); Dietrich Rueschemeyer, Evelyne Huber Stephens & John D. Stephens, CAPITALIST DEVELOPMENT AND DEMOCRACY (1992)(concluding, based on cross-national empirical studies, that capitalism and democracy are positively correlated, not because they are intrinsically related but because capitalist development strengthens the economic power of the working and middle classes so as to enable them to promote democracy as a means of enhancing their political power); Sunstein, supra note 63, at 913-917 (arguing that private property promotes democracy).

70 See Friedman, supra note 69, at 13-15; 2 LAW, LEGISLATION AND LIBERTY, supra note 30, at 107-113 (1976); 3 LAW, LEGISLATION AND LIBERTY, supra note 30, at 65-77. See cites at note 18, supra.

71 Compare Nancy Fraser, Talking About Needs; Interpretive Contests as Political Conflicts in Welfare-State Societies, in Cass R. Sunstein (ed.), FEMINISM AND POLITICAL THEORY 159, 164 (1982)(“needs talk …as a site of struggle where groups with unequal discursive (and non-discursive) resources compete to establish as hegemonic their respective interpretations of legitimate social needs”).

72 See, e.g., Andre Gorz, CRITIQUE OF ECONOMIC REASON (1989) (identifying as dominant the “heteronomous” sphere of life in which economic rationality is defined as and measured by profit and which thus impels society into profit-oriented activities without regard to actually felt needs and quality of life; and arguing the possibility of and for a movement to create an “autonomous” sphere of life which excludes commodification and in which people fulfill themselves through activities freely chosen for their own sake).

73 A point made by both socialists and progressive liberals. See id. at 135-164 (arguing that "there are things one does that are not done for the purpose of exchange, activities which, as a result, have no price, no exchange value, 'work' that has no 'utility' and which consequently merges with the satisfaction its performance procures," at 136, and that "we must examine our activities more closely and ask what meaning the relations they allow us to establish with other people contain and whether these relations are compatible with economic rationality," at 137); Margaret Jane Radin, MarketIndiability.100 Harv. L. Rev. 1849,1884-1885 (1987)(arguing that the market rhetoric of universal commodification and alienability of all goods produces "an inferior conception of human flourishing" in that it "is also the rhetoric of alienation of ourselves from what we can be as persons" and "reduces the conception of a person to an abstract, fungible unit with no individuating characteristics").

74 See, e.g., Joshua Cohen & Joel Rogers, ON DEMOCRACY: TOWARD A TRANSFORMATION OF AMERICAN SOCIETY 47-70 (1983)(arguing that capitalist democracy is structured both economically and politically to the valuation and satisfaction of short-term material gain)

75 See, e.g., C.B. MacPherson, THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM (1962)(arguing that "possessive individualism," the notion that people are proprietors of their own persons and capacities and that human society consists of voluntary market relations, is the moral foundation of liberal-democratic theory, but that it is an inadequate theory of political obligation in the
modern era due to the heightened class consciousness of the working class and the extension of the franchise to others than the possessor class; Nozick, supra note 30, at 297-334 (presenting a utopian framework for a libertarian society as consisting of communities where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life but where no one can impose his own utopian vision on others," at 312).


77 Compare Gramsci's notion of "hegemony," as "the 'spontaneous consent' given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group." Antonio Gramsci, SELECTIONS FROM THE PRISON NOTEBOOKS 12 (1971). This is related to the notion of "false consciousness," which has been used by marxist analysts to explain why the working class has failed to recognize its exploitation and domination and to act to change society in accordance with its "true" interests. See, e.g., Michael Burawoy, MANUFACTURING CONSENT: CHANGES IN THE LABOR PROCESS UNDER MONOPOLY CAPITALISM (1979)(arguing that the organization of production under advanced capitalism secures the consent of workers to the values and practices of the system and thus to their own exploitation, thereby repressing struggles against the system); Ron Eyerman, FALSE CONSCIOUSNESS AND IDEOLOGY IN MARXIST THEORY (1981)(arguing that in the United States ideology and values are an individualistic consciousness which, while it may accurately represent and respect the realities of the social structure, is a false consciousness in that it inhibits the development among the working and middle classes of the class consciousness needed to change society so as to bring about what would then be recognized as a more fruitful existence).

78 Compare Ollman, How to Study Class Consciousness... and Why We Should, supra note 48, at 147,157 ("The main content of class consciousness, therefore, is not to be had by asking members of the class what they think or want, but by analyzing their objective interests as a group of people embodying a particular societal place and function... In this sense, and to this degree, class consciousness is a consciousness waiting to happen. It exists in potential, not an abstract potential but one rooted in a situation unfamiliar to our eyes, long before the understanding of real people catches up with it").

79 Compare Ollman, How to Study Class Consciousness... and Why We Should, supra note 48, at 147,157 ("The main content of class consciousness, therefore, is not to be had by asking members of the class what they think or want, but by analyzing their objective interests as a group of people embodying a particular societal place and function... In this sense, and to this degree, class consciousness is a consciousness waiting to happen. It exists in potential, not an abstract potential but one rooted in a situation unfamiliar to our eyes, long before the understanding of real people catches up with it").

80 See, e.g., 2 LAW, LEGISLATION AND LIBERTY, supra note 30, at 131 ("It is therefore inevitable that in the ongoing process of the catallaxy [i.e., the wealth creating game] the starting point, and therefore also the prospects, of the different individuals will be different... [N]othing we can do, short of establishing absolute equality of incomes, can alter the fact that a certain percentage of the population must find itself in the bottom of the scale"); MacPherson, supra note 67, at 77-92 (arguing that the prevailing paradigm of western democratic capitalism is a "pluralist elitist equilibrium model" which is based on an entrepreneurial market analogy and is not nearly as democratic as claimed due to the inequalities it produces and justifies).

81 See, e.g., Reynolds & Sims, 377 U.S. 533,565 (1964) (mandating one-person-one-vote for state legislative elections on the ground that "[J]ust and effective participation by all citizens in state government requires... that each citizen have an equally effective voice in the election of members of his state legislature"). As if formally equal voting power translates into an equal voice in elections, much less equal political power generally, given the influence of money and other unequally distributed sources of power.

82 See, e.g., 3 LAW, LEGISLATION AND LIBERTY, supra note 30, at 142 ("If the aim is to provide maximum opportunity to men as they are, without any arbitrary coercion, we can achieve our ends only by treating them according to the same rules irrespective of their factual differences, leaving the outcome to be decided by those constant restructurings of the economic order which are determined by circumstances nobody can foresee"). As if the formal opportunity to compete is equal in practice, given the unequally distributed sources of power which impact people's opportunities. See, e.g., Pierre Bourdieu, DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGEMENT OF TASTE (Richard Nice, trans., 1984) (analyzing the ways in which individual and class differences in "economic capital," "cultural capital" and "social capital" impact people's perceptions, choices and opportunities); Fiss, supra note 58 (arguing for state support of speech of the less powerful in light of the power imbalances which impede equal participation in the marketplace of ideas).

83 See, e.g., Giovanni Arrighi, World Income Inequalities and the Future of Socialism, 189 New Left Rev. 39, 48 (1991) (detailing and examining the causes of the widening income disparities within the world, as a result of which "the vast majority of the world's populations have fallen increasingly behind the standards of wealth set by the West"); Immanuel Wallerstein, HISTORICAL CAPITALISM (1983)(arguing that the increased average standard of living capitalism may have brought about in advanced societies, on the whole it has worsened people's material conditions world-wide).

84 See, e.g., Frederick A. Hayek, THE CONSTITUTION OF LIBERTY 21 (1960)("Liberty not only means that the individual has both the opportunity and burden of choice; it also means that he must bear the consequences of his actions and will receive praise or blame for them").

85 Although sociobiologists assert that their attempt to study scientifically the biological laws of social behavior is ethically and politically neutral (see, e.g., Charles J. Lumsden & Edward O. Wilson, PROMETHEAN FIRE: REFLECTIONS ON THE ORIGIN OF MIND 36-50 (1983)), others have found an ideological bias in sociobiology and on a popular level sociobiological rhetoric has been used to rationalize hierarchy. See, e.g., Herbert J. Gans, Positive Functions of the Undeserving Poor: Uses of the Underclass in America, 22(3) Politics & Society 269 (1994)(noting the positive functions which stereotyping the poor as undeserving due to their moral shortcomings has for the better-off, including the legitimation of the institutions and social structures of class hierarchy); Andrew Hacker, THE END OF THE AMERICAN ERA 77, 79 (1980)(despite the absence of jobs for all at a living wage, "[t]he successful majority continues to feel that the unemployed and the unemployable have only themselves to blame... While a rough-hewn Social Darwinism is no longer our official ideology, its canons remain ensconced in the public mind"); R.C. Lewontin, Steven Rose & Leon J. Kamin, NOT IN OUR GENES: BIOLOGY, IDEOLOGY, AND HUMAN NATURE (1984)(critiquing the sociobiological notion of biological determinism as an explanation for social inequality as scientifically unsound and as an ideological legitimation of hierarchy as inevitable and immutable).

86 2 LAW, LEGISLATION AND LIBERTY, supra note 30, at 70 ("The fact is simply that we consent to retain, and agree to enforce, uniform rules for a procedure which has greatly improved the chances of all to have their wants satisfied, but at the price of all individuals and groups incurring the risk of unmerited failure"); Nozick, supra note 30, at 213-231 (arguing against Rawls' notion that the moral arbitrariness of the distribution of people's natural talents requires treating them as a common asset in that moral arbitrariness "might" (read "does") mean that the unequal distribution of talents "is of no moral significance and has no moral consequences," at 227).

87 See, e.g., cites at note 48, infra; John Baker, ARGUING FOR EQUALITY (1987) 46, 49 (arguing that liberal "principles of equal opportunity help make systems of inequality seem reasonable and acceptable," that true equality requires society "to give everyone the means to develop their capacities in a satisfying and fulfilling way," and that this requires every person to have their basic needs met, the minimization of
economic inequality, the right to meaningful work, and the democratization of all aspects of social life). Within the broad framework of liberal ideology, there is a progressive strain which has advocated from within its individualistic perspective various aspects of the egalitarianism of the democratic socialist project. This overlap supports my thesis that democratic capitalism and democratic socialism diverge in emphasis and degree and that democratic socialism may yet emerge out of democratic capitalism. Perhaps progressive liberalism has had only modest success because it diverges from the core values of democratic capitalism toward democratic socialism, whether or not its advocates recognize that fact. See, e.g., William E. Forbath, Why Is This Rights Talk Different from All Other Rights Talk? Demoting the Court and Reimagining the Constitution, 46 Stan. L. Rev. 1771, 1790, 1792 (1994)(arguing that U.S. constitutional history and tradition, in particular the Reconstruction Amendments, strongly support an ideal of “equality addressed” as much to the polity as to the judiciary and encompassing the positive rights of “a broad duty of government to strive to shape our economic institutions to ensure decent work and an acceptable income for all,” and “a measure of democracy at work and in [people’s] economic lives”); Munzer, supra note 1, at 212-214, 227-253 (arguing that the principle of utility and efficiency favors a moderately equal distribution of private property, though not a strictly equal distribution in light of incentive and freedom of contract considerations; and that the principle of justice and equality requires sufficient property (to the extent society is able of provide it) to enable all to meet those basic needs and develop those basic capabilities necessary for a decent human life, as well as constraints on inequalities of wealth which so interfere with the positive features of ownership as to undermine a fully human life for all).

89 The United States Supreme Court has been unwilling to address the school finance issue. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)(upholding against equal protection challenge school financing system relying heavily on local districts of disparate wealth and producing far lower revenues in poorer districts despite higher tax rates). Several state courts have held similar violations of their state constitutions. See, e.g., Robinson u. Cahill, 303 A.2d 273 (N.J.1973); Serrano u. Priest, 557 P.2d 929 (Cal. 1976); Edgewood Independent School District v. Kirby, 777 S.W.2d 391 (Tex. 1989). It is doubtful, however, that judicial intervention has brought about anything more than modest amelioration of the financing disparities. See, e.g., Betsy Levin, Equal Educational Opportunity in School Finance Reform: What Went Wrong? Can (Should) It Be Fixed? in QUALITY EDUCATION FOR ALL IN THE 21ST CENTURY: CAN WE GET THERE FROM HERE? 129 (1994).

90 See, e.g., Otnamn, supra note 34, and as explicit in the communist ideal of “to each according to need.” Marx, supra note 31. Compare Roemer, supra note 55, at 139-147 (defining socialist exploitation as that inequality “attributable to differential skills after private property in the alienable means of production has been abolished”; and arguing, while socialist exploitation may be necessary as an incentive to productivity in the early stages of the transition to socialism, that “at some point, it will be possible to eliminate property rights in skills ... without destroying incentives”). Some progressive liberals also lean in this direction. See, e.g., Rawls, supra note 29, at 100-108 (arguing that the difference principle, which requires that society be organized such that social and economic inequalities redound to the benefit of society’s least advantaged members, entails “an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be”).

91 See, e.g., Cohen, supra note 125, at 298-299, 303-309(describing Marx’s views on whether the overthrow of capitalism would occur first in the most highly developed capitalist state (England) or might start in the less well developed ones (France, Germany, or even Russia once capitalism took hold) and spread from there).

92 See G.A. Cohen, KARL MARX’S THEORY OF HISTORY 197-215 (1978) (noting Marx’s thesis that socialism will come about only after capitalism has advanced society’s productive forces to the stage of being able to create abundance and will be brought about by the industrial working class created by capitalism); Elster, supra note 45, at 295-298, 303-309(describing Marx’s views on whether the overthrow of capitalism would occur first in the most highly developed capitalist state (England) or might start in the less well developed ones (France, Germany, or even Russia once capitalism took hold) and spread from there).

93 See Elster, supra note 45, at 443-446(describing Marx’s views on whether socialism could come about only through violent revolution or also through relatively peaceful means, and noting instances when Marx speculated about the possibility of a peaceful transition in the more democratized capitalist states).

For speculation about this issue, see, e.g., Michael Burawoy, Marxism Is Dead, Long Live Marxism!, 20(2) Socialist Rev. 7 (1990).

See supra note 20.

See, e.g., Gosta Esping-Anderson, POLITICS AGAINST MARKETS: THE SOCIAL DEMOCRATIC ROAD TO POWER (1985) (arguing that social democracy might revitalize itself and move beyond capitalism through a "wage-earner alliance" which broadens its political base to include white-collar as well as its traditional cadre of manual workers, accompanied by a program of "economic democracy" which enhances worker participation in workplace decisionmaking and increases public control over investment decisions through wage-earner funds and regulatory measures). But compare Adam Przeworski, CAPITALISM AND SOCIAL DEMOCRACY (1985) (arguing that social democracy cannot move beyond capitalism but can only moderate capitalism's harshness through welfare-state measures because of the need for socialist parties to appeal to and compromise with bourgeois elements in order to attain power and because the transition to socialism would produce at least a short-run economic crisis leading even the working class to reject the project).


On the new social movements and their relationship to each other and to the socialist project, see Isaac Balbus, MARXISM AND DEMOCRACY (1982); Ann Ferguson, The Intersection of Race, Gender and Class in the United States Today, 3(14) Rethinking Marxism 45 (1990); Ernesto Laclau & Chantal Mouffe, HEGEMONY AND SOCIALIST STRATEGY 149-194 (1985); Miliband, NEW SOCIAL MOVEMENTS AND CLASS STRUGGLE, supra note 57, at 95; Anne Phillips, "So What's Wrong with the Individual?" Socialist and Feminist Debates on Equality, in SOCIALISM AND THE LIMITS OF LIBERALISM, supra note 77, at 139; Special Section: Is That All There Is? Reappraising Social Movements, 20(1) Socialist Rev. 35 (1990); Special Section: Environment as Politics, 22(4) Socialist Rev. 7 (1992); Special Section: Radical Democracy, 23(3) Socialist Rev. 5 (1994); Howard Winant, Postmodern Racial Politics: Difference and Inequality, 20(1) Socialist Rev. 121 (1990); Ellen Meikins Wood, DEMOCRACY AGAINST CAPITALISM 256-283 (1995).

The intersection of race and class, as the crisis of the ruling class's hegemony, was referred to this state of affairs as "the crisis of the ruling class's hegemony," supra note 78, at 210; Habermas has referred to it as a "legitimation crisis," Jurgen Habermas, LEGITIMATION CRISIS (1975).

The nature of sources of alienation and its relationship to movements for social change, see, e.g., ECONOMIC AND PHILOSOPHIC MANUSCRIPTS, supra note 42, at 67-83; Elster, supra note 45, at 74-78,100-107; Bertell Ollman, ALIENATION 131-233 (1971).

See, e.g., Kimberle Williams Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimization in Antidiscrimination Law, 101 Harv. L. Rev. 1331 (1988) (arguing that while the formal equality of the antidiscrimination principle was an advance in the fight against overt racism, a colorblind norm enables a shift toward rationalization and subordination by creating an illusion of equal opportunity which is not actual); Charles R. Lawrence, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317, 356 (1987) (arguing that much racist practice results from unconscious racism culturally transmitted through a social system of laws, practices and mores which stigmatizes blacks and other nonwhites; and proposing as an alternative to the prevailing intent test in discrimination cases a "cultural meaning" test which evaluates whether governmental conduct conveys a symbolic message to which the culture attaches racial significance); Gary Peller, Race Consciousness, 1990 Duke L.J. 758 (identifying "integrationism" as the dominant approach to racism and as viewing racism as the arbitrary and irrational attribution of social significance to skin color to be remedied through traditional liberal norms of neutrality and objectivity, as against the "black nationalist" perspective which views liberal norms as an ideological subterfuge for status quo social and institutional practices of white supremacy; and discussing progressive-integrationist and black-nationalist strains underlying affirmative action as a remedy for race conscious discrimination and a means of transferring opportunities and resources so as to empower the black community and combat institutionalized hierarchy).

See, e.g., Rita Mae Kelly & Jane Bayes (eds.), COMPARABLE WORTH, PAY EQUITY, AND PUBLIC POLICY 240-241(1988) (advocating comparable worth, along with affirmative action and other measures to equalize opportunity, in the struggle against gender discrimination in the workplace: "The revolutionary aspect of the comparable worth idea lies in its basic challenge to the legitimacy of the marketplace as the sole determiner of the wage structure"); Donald J. Trumpf & Heidi L. Hartmann (eds.), WOMEN, WORK, AND WAGES: EQUAL PAY FOR Jobs OF EQUAL VALUE, 93 (1981)(a report of the National Research Council's Committee on Occupational Classification and Analysis concluding that "jobs held mainly by women and minorities pay less at least in part because they are held mainly by women and minorities"). For skeptical views of comparable worth, primarily due to the market impacts, see Michael Levin, COMPARABLE WORTH: The Feminist Road to Socialism, 108 Harv. L. Rev. 1728 (1986).

See Philip Harvey, SECURING THE RIGHT TO EMPLOYMENT (1989) (arguing for and detailing a program to guarantee a right to employment for all in the United States).

See id. at 95-117.

See, e.g., John Edward Cribbet, Concepts in Transition: The Search for a New Definition of Property, 1986 U. Ill. L. Rev. L 40 (noting recent developments in property law which have "resurrected the idea that the ownership of land involves societal responsibilities and duties as well as individual rights"). Recent Supreme Court decisions, however, have cut in the opposite direction. See, e.g., Dolan v. City of Tigard, 114 S.Ct. 2309, 2319-20 (1994) (conditioning building permit on dedication of land for flood control and traffic improvements violates taking clause unless city demonstrates per "rough proportionality" test that "the required dedication is related both in nature and extent to the impact of the proposed development"); Lucas v. South Carolina Coastal Council, 505 U.S.1003 (1992) (Beachfront Management Act's prohibition of construction in beachfront areas violates taking clause as applied to property acquired prior to passage unless such use constitutes a traditional common law nuisance). But compare John F. Hart, Colonial Land Use Law and Its Significance for Modern Takings Doctrine, 109 Harv. L. Rev. 1252,1281(1996)(arguing that "in the minds of Colonial legislators... the landowner's right to control and utilize land remained subject to an obligation to further important community objectives. Private ownership was 'not an absolute right that exempted the individual from corporate oversight,' but rather 'a right of stewardship that the public entrusted to an individual, for both private and public benefit'").

Compare the recent expansion of the public trust doctrine, a judicially created doctrine which vests ownership of certain natural resources in the government and requires the government to manage publicly owned resources and to regulate privately owned resources so as to promote the public interest See Joseph Sax, THE PUBLIC TRUST DOCTRINE: THEORETICAL AND PRACTICAL DIMENSIONS, 88 Harv. L. Rev. 471 (1970) (advocating expansion of the public trust doctrine); Richard J. Lazarus, Changing Conceptions of Property and Sovereignty in Natural Resources: Questioning the Public Trust Doctrine, 71 Iowa L. Rev. 631, 668 (1986)(noting the expansion of the public trust doctrine and arguing
that such is unnecessary and ill-advised in light of changing conceptions of property "marked by the steady erosion of private property's sanctity in the face of the sovereign police power's growth").

See, e.g., Kenneth E. Boulding, The Economics of the Coming Spaceship Earth, in Henry Jarrett (ed.), ENVIRONMENTAL QUALITY IN A GROWING ECONOMY 3, 9 (1966) ("The closed economy of the future might be called the 'spacesman' economy, in which the earth has become a single spaceship, without unlimited reservoirs of anything, either for extraction or for pollution, and in which, therefore, man must find his place in a cyclical ecological system which is capable of continuous reproduction of material form even though it cannot escape having inputs of energy"); J. Clark, What Is Social Ecology? in J. Clark (ed.), RENEWING THE EARTH: THE PROMISE OF SOCIAL ECOLOGY 5 (1990) ("The development of an ecological sensibility will create an awareness of the importance of cultural and spiritual richness: that which comes from ... all activities liberated from the deadening hand of productive and consumptive rationality"); Donella H. Meadows, Dennis L. Meadows, Jorgen Randers & William H. Behrens, THE LIMITS TO GROWTH 2324 (1972)(a report of the MIT project team of the Club of Rome concluding that "if the present growth trends in world population, industrialization, pollution, food production, and resource depletion continue unchanged, the limits to growth on this planet will be reached sometime within the next one hundred years" but that "it is possible to alter these growth trends and to establish a condition of ecological and economic stability that is sustainable far into the future...[and could be designed so that the basic material needs of each person on earth are satisfied and each person has an equal opportunity to realize his individual human potential").

In that they both challenge the materialism of production for profit, environmentalism and socialism are complementary. There is, though, a potential conflict between them to the extent that the environmental movement is insufficiently attentive to distributional issues. A feasible egalitarian socialism could not be as materialistic as is capitalism, since the world does not seem to have enough resources to provide for everyone the material goods available in the advanced capitalist societies and since the attempt to do so would likely produce intolerable environmental degradation. Yet a feasible egalitarian socialism does require the production of enough material goods to provide everyone with the basic necessities of life. And, since those whose material access to environmental values is not met will likely subordinate environmental values to survival values, any successful environmental movement must attend to everyone's basic needs. So long as it does so, the socialist and environmental movements seem quite compatible. On these issues, see, e.g., Ted Benton, Marxism and Natural Limits: An Ecological Critique and Reconstruction, 178 New Left Rev. 51 (1989); Reiner Grannand, The Ecological Challenge to Marxism, 187 New Left Rev. 103 (1991); Kate Soper, Greening Prometheus: Marxism and Ecology, in SOCIALISM AND THE LIMITS OF LIBERALISM, supra note 77, at 271; Andriana Vlachon, Reflections on the Ecological Critiques and Reconstructions of Marxism, 7(Red) Rethinking Marxism 112 (Fall 1994).

See, e.g., Richard H. Fallon & Paul C. Weiler, Firefighters u. Stotts: Confllicting Models of Racial Justice, 1984 S. Ct. Rev. 110-128 (distinguishing between an "individual justice" approach to racial discrimination which is premised on the free functioning of the labor market and is based on an antidiscrimination principle opposed to race-based decisionmaking and therefore to affirmative action, and a "group justice" approach which questions the justice of marketplace decisionmaking and views the role of civil rights law as including race-conscious relief available to all members of the class to undo the classwide effects of societal and historical racism); Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1709,1778 (1993)(arguing that whiteness is privileged in the law as a form of "status property" based on settled expectations of white privilege, and that affirmative action is so hotly contested because it constitutes a redistributive and destabilizing group entitlement which demands "a new and different sense of social responsibility in a society that defines individualism as the highest good"); Iris Marion Young, Polity and Group Difference: A Critique of the Ideal of Universal Citizenship, THROWING LIKE A GIRL AND OTHER ESSAYS IN FEMINIST PHILOSOPHY AND SOCIAL THEORY 114,115 (1990)(arguing for the development of "mechanisms of group representation" so as to insure "the inclusion and participation of everyone in public discussion and decisionmaking"). In recent years, however, the Supreme Court has rejected group rights and rectification of societal discrimination as a justification for affirmative action and other race-based decisionmaking. See, e.g., Shaw u. Reno, 113 S.Ct. 2816 (1993)(allegation that reapportionment plan includes district boundaries "of dramatically irregular shape" so as to create majority-black district raises viable equal protection claim); City of Richmond u. Croson, 109 U.S. 706 (1989)(race-based apportionment of government contracts violates equal protection when unsupported by compelling interest, which past societal discrimination alone is insufficient to establish).

See, e.g., Carol Gilligan, IN A DIFFERENT VOICE (1982) (arguing for a feminism based on an injunction to care, as against the prevailing masculine morality based on respecting the rights of others); Robin West, Jurisprudence and Gender, 55 U. Chi. L. Rev. 1 (1988)(arguing for a humanist jurisprudence based on respecting the role of men in production while retaining the concept of individual responsibility). The solution to this dilemma may be to emphasize the social construction of patriarchy and its interconnection with democratic capitalism, and to work towards a democratic socialism which derives support for its egalitarian practices from traditionally "feminine" values. See, e.g., Nancy Fraser, From Redistribution to Recognition? Dilemmas of Justice in a "Post-Socialist" Age, 212 New Left Rev. 68, 92 (1995)(arguing that "socialist economics combined with deconstructive cultural politics" is a more promising strategy for successfully addressing issues of class and identity than the progressive-liberal focus on welfare-state programs and multiculturalism, which are self contradictory in that the latter emphasizes people's differences while the former is premised on the more universal notion of the equal moral worth of all persons); Zillah R. Eisenstein, THE RADICAL FUTURE OF LIBERAL FEMINISM 5 (1981)(arguing that "full equality for women demands "a theory of individuality that recognizes the importance of the individual within the social collectivity," thus moving beyond capitalism, the ideology of competitive individualism which underlies it, and the patriarchal hierarchy associated with it); Young, The Limits of Dual Systems Theory, supra note 112, at 21, 33 (calling for a "feminist historical materialism" which "must explore the hypothesis that class domination arises from and/or is intimately tied to patriarchal domination").

See, e.g., Edith Brown Weiss, Our Rights and Obligations to Future Generations for the Environment, 84 Am. J. Int'l Law 198, 200 (1990)("The purpose of human society must be to realize and protect the welfare and well-being of every generation... This requires each generation to use scarce resources wisely to provide equitable access to the planet on in no worse condition than the one it receives and to use condition than the one it receives and to sustain the environment as a resource for all future generations").
opportunity to satisfy their aspirations for a better life... and the promotion of values that encourage consumption standards that are within the bounds of the ecologically possible and to which all can reasonably aspire.”

115 See, e.g., Joel Rogers, Divide and Conquer: Further “Reflections on the Distinctive Character of American Labor Laws,” 1990 Wis. L. Rev. 1 (discussing the structural and institutional factors which have contributed to the decline of unions and the fragmentation of the working class and have made it economically rational for workers to consent to their own exploitation).

116 See, e.g., Joseph William Singer, The Reliance Interest in Property, 40 Stan. L. Rev. 611 (1988)(arguing that courts should recognize workers’ property rights obligating companies to accord employees and the community various protections in connection with plant closings, based on a social relations approach to property under which property rights derive from the interconnectedness of social actors and the interdependencies and reliance interests resulting therefrom, as against the dominant and inadequate free market-possessive individualism model which views a plant as totally owned by the company, which consequently has unconstrained discretion to close-up shop without regard to the resulting social costs).

117 The current trend, however, is in the opposite direction. See, e.g., Katherine Van Wezel Stone, The Legacy of Industrial Pluralism: The Tension Between Individual Employment Rights and the New Deal Collective Bargaining System, 59 U. Chi. L. Rev. 575 (1992)(detailing the decline of union membership, and arguing that the new common law and legislative rights to job security of individual workers, accompanied by a regulatory contraction of the scope of collective bargaining, has contributed to a weakening of the union movement); Katherine Van Wezel Stone, Labor and Corporate Structure: Changing Conceptions and Emerging Possibilities, 55 U. Chi. L. Rev. 73 (1988)(noting examples of unions exercising their market power to attain participation in corporate decisionmaking, despite and as a consequence of a current interpretive trend to narrow the scope of collective bargaining and other sources of union power, and arguing for an expansion of such participation and for a reformed regulatory structure to facilitate it).

118 See, e.g., Karl E. Klare, Workplace Democracy and Market Reconstruction: An Agenda for Reform, 36 Cath. U. L. Rev. 1 (1988)(advocating the expansion of "democracy in work" and "democracy-enhancing market reconstruction" through enhanced collective bargaining to include areas of managerial prerogative and direct employee participation in enterprise decisionmaking, accompanied by union championing of the interests of nonunion and unpaid workers in the political process and raising the social minimum wage and benefits package); David Millon, Redefining Corporate Law, 24 Ind. L. Rev. 223 (1991)(discussing the trend toward new "directors’ duty statutes” which authorize management to consider the interests of employees, consumers and local communities, arguing that the statutes be interpreted to require directors to do so, and suggesting the necessity of directly including such affected parties in decisionmaking in order to adequately effectuate the duty to consider). But compare William H. Simon, What Difference Does It Make Whether Corporate Managers Have Public Responsibilities?, 50 Wash. & Lee L. Rev. 1697,1701,1702 (1993)(expressing skepticism toward the viability of the public responsibility approach if not accompanied by "reform of the surrounding structures of corporate organization," and because "without community ownership, an ambitious conception of community responsibility seems unworkable").

119 See, e.g., Henry Hansmann, When Does Worker Ownership Work? ESOPs, Law Firms, Codetermination, and Economic Democracy, 99 Yale L.J. 1749 (1990)(arguing that worker ownership is most viable in smaller enterprises where highly participatory democracy is feasible so as to avoid the problem of management overreaching when decisionmaking must be delegated due to the impracticality of direct democracy with large numbers of owners, and where members are highly homogeneous in terms of their interests so as to avoid the difficulty of reaching consensus due to a diversity of perspectives); Alan Hyde, In Defense of Employee Ownership, 67 Chi.-Kent L. Rev. 159 (1991)(arguing that employee ownership is likely to be most successful in terms of increasing productivity where cooperative arrangements between workers and management are impeded by lack of trust and high transaction costs). Thus it would seem that a major constraint to worker ownership under capitalism is that it may serve values, such as self-determination and equality, other than maximizing productivity and profit, and that enterprises pursuing these other values may not be able to compete effectively with the investor-owned firms which dominate under capitalism. Thus it may be that a democratic socialism in which other such values are prominent and profit is not the driving force of the economy is necessary for viable worker ownership. Yet even under democratic socialism the potential difficulties of worker decisionmaking on a large scale may limit the viability of worker ownership or cooperatives to smaller enterprises, while larger enterprises may be more suited to state management.

120 See Philip Harvey, supra note 105. Compare Andre Gorz, FAREWELL TO THE WORKING CLASS (1982)(arguing that advanced technology, at least in the highly developed societies, has made possible the production of the material necessities of life for all members of society with dramatically reduced labor time, thereby making it possible both to provide employment for all and to create a “sphere of autonomy” in which work has been abolished and individuals by themselves and in concert with others are free to fully develop their potentialities and pursue their interests outside the market). Although Gorz believes, because of the tendency for advanced capitalism to overwork some workers while underemploying others, that a centrally planned socialism is required for the production of material necessities, guaranteed employment as public good in the United States, coupled perhaps with the required reduction of the work day, could be seen as a movement in the direction of his vision or an alternative to it.