



palgrave pivot

Individual Rights over Economic Equality

How Individual Rights and Property Stand in Opposition to Working Conditions and Equality

John F. M. McDermott

palgrave
macmillan

Individual Rights over Economic Equality

John F. M. McDermott

Individual Rights over Economic Equality

How Individual Rights and Property Stand in
Opposition to Working Conditions and Equality

palgrave
macmillan

John F. M. McDermott
State University of New York
Old Westbury
Cambridge, MA, USA

With Contrib. by

Steven Colatrella
Padua, Italy

Frances A. Maher
Cambridge, MA, USA

Michael Meeropol
Cold Spring, NY, USA

ISBN 978-3-031-75102-8 ISBN 978-3-031-75103-5 (eBook)
<https://doi.org/10.1007/978-3-031-75103-5>

© The Editor(s) (if applicable) and The Author(s), under exclusive license to Springer Nature Switzerland AG 2024

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Cover illustration: © Melisa Hasan

This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG

The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

If disposing of this product, please recycle the paper.

ACKNOWLEDGMENTS

In his previous book, *Employers' Economics versus Employees' Economy* (Palgrave Macmillan, 2017), John acknowledged, among other people and institutions, the classic economic theorist Joseph Schumpeter, the *Review of Radical Political Economics*, and the *Journal of Post-Keynesian Economics*. He also gave thanks to two of the current editors, Steven Colatrella and Frinde Maher (his wife).

Were these his acknowledgments, we can presume he would again thank the above two, and add Michael Meeropol, the other editor, with whom he had many substantive conversations over the twenty years that they were colleagues and friends.

Adding to John's list above, we would like to especially thank Bronwyn Geyer, our editor at Palgrave Macmillan, and our indexer, Jim O'Brien. Bronwyn has guided us through the whole publication process most helpfully and expeditiously. And Jim has produced an excellent index, along with generous editorial help.

If John were alive, he would have many more people to thank than we can imagine.

We miss him.

Steven Colatrella
Fride A. Maher
Michael Meeropol

INTRODUCTION

John F. M. McDermott passed away on April 8th, 2022, shortly after completing the present work, “Individual Rights over Economic Equality.” Here, the editors want to put this, his last book, in a wider context, and mention a few of the major innovations in John’s previous work that are of great importance.

John’s first book, *The Crisis in the Working Class and Arguments for a New Labor Movement*, lives up to CLR James’ call to “Americanize Marxism”—to do for the US working class what the works of Marx, Lenin, Luxemburg, Engels, et al. do for European workers. The book, among its many other important contributions, shows how and why the rise of the modern corporation was primarily the result of the Pullman Strike of 1894 and why that strike showed that the working class could take power and run society.

Corporate Society (1991), his next book, is an indispensable analysis of the American corporation. It shows that corporations are forms of collective property, not private property, that they are the political form of the capitalist class as a whole to unite that class, that they give rise to the Professional-Managerial Class whose main role is to manage workers. This makes the working-class struggle more difficult, in that it must face two hostile classes and not just one as in the classic Marxist treatment. Moreover, corporations are not Weberian forms of bureaucracy, but rather are an organized set of social relations between these three classes: workers, the PMC and capitalists/top management. Corporations

manage the flows of and access to resources and the struggle over these by these three classes. The book shows that corporations *are* society now, that they construct and create society, and are no longer to be seen as anomalies in an otherwise liberal society of private property.

These theses show us how socialist, communist, Marxist, reformist, social democratic or even just democratic strategies need to be refashioned to address these realities.

John continued to analyze society with an eye to advancing the working-class struggle to change the world. But since he was always uncomfortable with labels, his work is more akin to that of people like Lewis Mumford, or Seymour Melman, or Naomi Klein, than it is to many other writers in the Marxist tradition.

His next book, *Economics in Real Time* (2004), is a major critique of the entire field of Economics. It brings the factor of time into the discussion of capitalist production, circulation and profit-making. It addresses recent innovations in making purchases, such as the fact that many contracts no longer bring with them full ownership of the commodity purchased. When you buy a computer or a car, you must also buy the continuing use of its software, its maintenance fees, its services and so on. In this way *Economics in Real Time* also challenges the idea of “private property” as such.

His last two books, *Restoring Democracy to America* and *Employers’ Economics versus Employees’ Economy*, are also major contributions to our knowledge of the struggle against capitalism.

Restoring Democracy to America (2010) rewrites the history of the struggle from 1848 to today in Europe and the US, showing why we were able, in a plethora of movements, to make major historical gains, why precisely the 1960s movements became too much of a threat, why we have had so little success in making gains since then, and how and why the capitalist class, organized in corporations and the governments, has gone in a different direction ever since. The book ends with John’s call for a new kind of working-class organization that is not instrumental but affective.

Next, *Employers’ Economics versus Employees’ Economy* (2016) completely uproots the entire field of Economics. The book demonstrates that there is no such thing as a separate private sector of the economy, that the public invests more in the so-called private sector than “private” investors do. It then shows that all the sophisticated mathematics used by the field of mainstream Economics is wrongly applied. It is trying

to make additions to Adam Smith’s “merchant model” of the economy, which is based on the faulty model of one buyer, one seller. Conventional Economics fails to reproduce or represent the actual economy, which requires looking at collective actors, not individual ones. Therefore, to construct even remotely useful economic models requires the use of set theory.

Such an analytical framework based on collective actors leads to the analysis of class relations and to the view of corporations discussed above. Thus it is anathema to conventional economists, in their roles as servants of capital. The book ends by showing that any relationship between capitalism and “freedom” is a lie, by looking at the rising conditions of dormitory factories around the world.

Finally, *Individual Rights over Economic Equality* provides a fitting capstone to the body of John’s work over the past 35 years. It extends his analysis of modern society, of corporate-made society, and of US society in particular, by addressing a central paradox of corporate society today. For decades in the US, the protected legal rights of women, of people of color and other minorities, of the very young and the very old, of gay persons, of consumers and of the handicapped, have been vastly expanded in the name of equality. But in the same period economic inequality has grown exponentially. Indeed, as many have noted, economic inequality has “exploded”. Then, more recently, abortion rights, affirmative action and other rights have begun to be rolled back by the Supreme Court, right-wing state legislatures and administrations in Washington.

The book explores the seeming contradiction between this expansion of rights and this explosion of economic inequality. It shows why the seeming rights revolutions were doomed to be inherently unstable, due to the philosophical basis on which rights have been conceptualized in the first place. Our ubiquitous “individual rights” philosophy offers the central ideological basis for the astronomical accumulations of wealth that produce this inequality to begin with. This is because, at the center of Natural Rights theorizing lies the “inalienable” right to private property, and the actual concepts and practices of the accumulation of property defeat other personal liberties at every turn.

These “rights” philosophies have thus allowed gross disparities in wealth, and therefore in power, ironically making possible the current rollback of rights themselves. The book analyzes how all this occurred, ultimately proposing some remedies.

Current political philosophers espousing Natural Rights, including the ultraliberal John Rawls and the conservative James M. Buchanan, share nearly identical premises. They fail to recognize that the freestanding individual, making rational choices, who stands at the center of mainstream theorizing in Economics and politics, simply does not exist. We are social animals, embedded in unequal networks of social and economic relations, requiring very different explanatory frameworks than those given by individual rights theorizing. Beyond exploring the defects of rights theory, the book analyzes the networks of contemporary corporate, business and financial power that control and limit specific groups of citizens' real lives and choices.

Individual Rights over Economic Equality is a fitting conclusion to John's work. Moving beyond Economics, here he engages with philosophical theories central to many Americans' basic cultural understandings of how our society works. He shows how these theories, focused on individual rights, actually underlie and justify the inequalities he was always seeking to challenge, critique and understand.

CONTENTS

1 As Rights Expand Equality Declines	1
<i>The De-coupling</i>	1
<i>Obscured Inequality</i>	3
<i>Inequality Plus</i>	6
<i>A Preliminary Look: The Labor System as “System”</i>	8
<i>An Employer Counteroffensive—And Victory</i>	11
<i>The Metaphysics of Natural Rights</i>	15
<i>The Road to “Serfdom” Has Been Paved in Gold</i>	15
<i>Back to Metaphysics</i>	18
<i>Rawls and Buchanan: Conservative Version</i>	22
<i>Rawls and Buchanan: Liberal Version</i>	24
<i>“Property” and “Person”</i>	25
<i>Rawls Ambushed</i>	26
<i>Liberty Always Outweighs Equality</i>	28

2 Ours Is Not a “Liberal” Society	33
<i>How We Produce Society</i>	33
<i>The Public Sector Produces the Private</i>	34
<i>Rethinking Our Categories</i>	35
<i>What Does a Not-Liberal Society Look Like?</i>	38
<i>Ideal-Types vs. Abstractions</i>	39
<i>Triadic Corporate Form</i>	41
<i>First Hypothesis: Individualism???</i>	45
<i>Second Hypothesis: Political Inequality</i>	47
<i>Third Hypothesis: Aggravating Differences</i>	49
<i>Fourth Hypothesis: Social Irrationality</i>	51
<i>Fifth Hypothesis: “Up” Versus “Down”</i>	52
<i>Sixth Hypothesis: Totalizing</i>	55
<i>Seventh Hypothesis: Creeping Elitism</i>	57
<i>Summing Up</i>	63
<i>Summary</i>	63
3 Inalienable Rights and the Abortion Wars	67
<i>Preface</i>	67
<i>A Politics of Scorched Earth</i>	68
<i>Scorched Earth and “Liberal” Society</i>	69
<i>Free Riders</i>	71
<i>A Historic Compromise</i>	72
<i>The Form of the Compromise</i>	74
<i>The Hidden Premise</i>	75
<i>On the Model of.....</i>	76
<i>Inalienable Social Rights</i>	77
<i>A Note to Both Sides</i>	78
<i>More on Ideological Blinders</i>	79
<i>Moving On</i>	80
4 Elements of a Theory of Social Rights	85
<i>That Strange “Individual”</i>	85
<i>Personhood</i>	87
<i>Person-Owner</i>	88
<i>Your Liberty Ends at My Property</i>	89
<i>Consent Versus Assent</i>	91
<i>Titled Rule</i>	93
<i>Personhood Equals Property-Owner Equals Inequality</i>	93
<i>Being Human</i>	95

<i>Thinking About Work</i>	95
<i>Equality of Person Revisited</i>	101
<i>Where Does That Leave Us?</i>	103
5 Looking at the Workplace	105
<i>But It Is the Employees' Economy!</i>	110
<i>Re-chartering the Corporation</i>	111
<i>Employment as a Purely Civic Relationship</i>	113
<i>A Living Wage</i>	115
<i>Planning—Indicative and Otherwise</i>	117
<i>Private Sector Investment Is Often Wasteful</i>	119
<i>Where Should We Plan?</i>	120
<i>Post Script: Planning as an Anti-racist Tool</i>	122
<i>"The Swamp"</i>	124
<i>Some Last Words (for Now) on Race and Racism</i>	125
6 Interregnū	127
<i>COVID and Post-COVID</i>	127
<i>The National/International Economy</i>	128
<i>The Return of Nuclear Weapons</i>	131
<i>And There Is China</i>	132
<i>International Free Enterprise and International Unfree Labor</i>	133
<i>The Wrong People Are Now in Charge</i>	135
<i>International and Democratic</i>	136
<i>An Internationalist Proposal</i>	137
<i>Seven Feckless Presidents ... and Trump the Reformer</i>	139
<i>Packing the Courts, the Congress and the Electorate</i>	141
<i>The Case for State Third Parties</i>	143
<i>Again the Subject Is Social Rights</i>	144
<i>What Is a Livable Wage?</i>	145
7 Afterword	149
Works Cited	157
Index	161



CHAPTER 1

As Rights Expand Equality Declines

THE DE-COUPLING

It is not supposed to be this way!! Over the recent half-century, US citizen rights have gone one way even while economic equality has gone another. Civic rights “up”! but economic rights, thus economic equality “down”! From roughly the mid-1960s there has been a dramatic gain in so many different kinds of citizen rights—on race, women, gay, handicapped, elderly, consumers, arrestees, students, voting, even child custody and more. And it is still I think part of the received wisdom that the sure path to a society of greater all-round equality is marked by those very changes. But... in that same 60-odd-year period, there has been a radical decline in economic rights and equality. The historic record is very clear on this, so much so that that divergence of Right from Equality fairly leaps out at the investigator. A similar divergence between Rights and Equality is also widespread internationally, though not everywhere as evident as in the US.¹

The divergence has not passed entirely unnoticed. In an excellent study going back to the French Revolution, Samuel Moyn (2018) shows that Equality and Rights have often gone opposite ways in the longer historical past and both Nancy MacLean (2006) and Nelson Lichtenstein (2013) very ably trace some of the workplace rights changes since *circa* 1970

that have abetted the US's growing economic inequality. In that sense the present work is a continuation of theirs but with two salient differences. First, I want to emphasize the de-valuing of equality issues which is implicit in the logic of Natural Rights theorizing. Here I will pay special attention to the mutual affinity of the philosophic outlooks of the arch-liberal theorist John Rawls with his arch-conservative counterpart, James M. Buchanan. And, (2) I will explore more carefully than usual the way in which a fundament of Natural Rights theorizing, the inalienable right to private property, effectively scuppers the rest of those other rights that we customarily hold equally inalienable. Personal liberty itself, along with other attractive and canonical rights, sits very ill with the concepts and practices of property in any form, so much so that the matter can be reduced more or less to a principle I'll often find reason to appeal to, to wit: *Your liberty ends at my property!*

I used the word “divergence” just above to characterize the tension between Rights and Equality. It is such a bland word. Hardly up to the task not only of registering the puzzle we’re talking about but, even more, of expressing the tragedy of societies like our present ones, the richest in the whole of human history—and yet with millions upon millions here, and billions overseas, forced to live at—and so often below—the margins of a human existence. In the absence of a better way to talk about this growing divergence between Rights and Equality, I’m going to talk about “the De-coupling”, that is, the rending asunder of two of what we conventionally think of as the main, most valuable and—to this point coupled—features of “the Good Society”.

Among people who consider themselves knowledgeable, thoughtful, liberal and concerned about social and political issues, who among them would not agree that an expansion in citizen rights and of economic equality of course should normally go hand in hand? Most, I think too, would agree that to extend greater equality to more people, a rights-oriented strategy, time-tested, sure and secure, is the way to go. But no, that doesn’t prove to be true. And on the evidence, perhaps even the reverse is true, namely that the De-coupling of Right from Equality is fundamental to that whole Natural Rights species of social theorizing. That, I do think, at least comes closer to the truth.

OBSCURED INEQUALITY

Aided by the *imprimatur* of the Harvard University Press and fulsome praise from Paul Krugman in his *New York Times* column, Thomas Piketty's 2014 *Capital in the Twenty-First Century* brought attention to a then nearly fifty-year era of growing economic inequality across the globe and especially to that occurring in the US. And, at that, not a small-bore inequality but, at one point, what Piketty himself characterized as an "explosion" of inequality. As a recent Federal Reserve report confirmed, over the last three decades alone the wealthiest 1 percent of Americans saw their net worth grow by \$21 *trillion*, while the wealth of the bottom 50 percent fell by \$900 *billion* (Cohen 2015: p. B1).

Piketty's study was epochal but even before its publication, editorial and scholarly shop-talk about his work was disturbing the liberal heavyweights of US public policy discussion. Paul Krugman did a book addressing economic inequality in 2007; Joseph Stiglitz followed in 2012 and, not to be outdone, Robert Reich in 2015. Other writers (and broadcasters) have also joined the chorus, but oddly, so far as I know only the three writers I cited earlier—Moyn, Lichtenstein and MacLean—have noted the De-coupling, an issue not included in the wider political and party-political dialogue.

In one sense that's not surprising. The ironclad coupling of greater Rights with greater Equality is embedded in our deepest notions of the good society—*Liberal Society*, *Meritocracy*, *Democratic Capitalism*, *Pluralist Society*. We widely think that that's the kind of superior society that has actually developed in the US and that we wish to continue (and that we like to export overseas to those who are, in Mark Twain's wonderful phrase, "people sitting in darkness").

But why did we not see such radically growing inequality? Especially so across a half-century in which the expansion of rights was not only uppermost in the social strategy of our reformers but was indeed regularly and systematically linked to the quest for greater equality? Arguably many were blinded by the solid success of the rights-based strategy for social change, especially on race and gender and especially as pursued in the courts—and perhaps because of that, of more matter to lawyers while less to politicians and voters and "talking heads". Nevertheless the changes in rights were so many and so socially important that some "big voices" should have been asking, to what social effect?

With the aid of “Google” I’ve done a timeline of the signal changes in the main categories of rights that have been expanded—and newly protected—since, say, that all-important Voting Rights Act of 1965. The number of items I found is simply enormous. Accordingly, what I’ve listed just below is only a selection. But it illustrates the scope and variety of the expansion since 1965. Some on the list are only state and not federal, some are legislative enactments, some governmental policy changes, some are court decisions:

1965 – the Voting Rights Act

1965 – in that same year, a spate of new protections for women—equal pay, no sex-based discrimination, other major gender rights for women

1965 – ban on prohibition of mixed race marriages

1966 – expansion of federal protection of voting rights

1966 – Miranda Rights for accused and arrested

1967 – Age discrimination in employment banned

1968 – Fair = no racial discrimination in housing

1968 – affirmative action extended to female hiring

1969 – no fault divorce introduced (California)

1969 – “Stonewall” uprising in NYC—triggers successful movement for LGBTQ rights

1972 – Title IX – legislation against gender discrimination in education and sports

1973 – *Roe v. Wade* on abortion

1975 – new protections on voting rights

1975 – no discrimination in selection of juries

1978 – airline deregulation: the initial federal consumer protection law.

1978 – no employment discrimination against pregnancy

1982 – more on voting

1984 – sex discrimination in private clubs outlawed

1986 – protection against hostile work environments

1990 – more against hate crimes

1990 – Americans with Disabilities Act—comprehensive rights and protections for the disabled

1991 – more on job-related discrimination

1994 – new protections re violence against women 2003—voiding the ban on sex between consulting adults

- 2003 – Medicare expands prescription drug coverage
- 2005 – voting rights, bi-lingual voters
- 2009 – hate crimes given special legal status and priority prosecution
- 2010 – “Don’t ask, don’t tell” repealed
- 2010 – “Obamacare” expands the right to health care
- 2013 – more on Equal Housing
- 2013 – ban on women in military combat lifted
- 2015 – another law against gender discrimination in education
- 2015 – states must accept same-sex marriage.

The list could be expanded to include major advances in the rights of children, of immigrants, of religious minorities, of the hospitalized and more.

It is both ideologically and of very great practical importance that in all this panoply of newly protected rights, the rights of employees *as employees with respect to their employers* are missing. In fact, in this same period there has been a notable decline—and that in multiple dimensions—of the rights of employees in the employment relationship *per se* and, in fact, a considerable expansion of the rights of employers themselves as against their workers. Obviously the twists and turns of that relationship have something to do with the poverty and prosperity of those whose jobs provide their sustenance. This is such an important subject that it deserves full treatment in its own right and not, as here, as a sidebar to another discussion. But we will return to it from time to time in the text and I will try to give an overall assessment of its considerable effects.

But the phenomenon of De-coupling stands in any case: the expansion of citizen rights, along with steps to make sure they are not merely *pro forma*, was at the very forefront of US public policy and legal evolution for just about a half-century. Until Trump—but that is another, though not unrelated story.

The drive to establish these extended rights was not without opposition. It re-animated the doctrine of “original intent” among conservative legal theorists, i.e., the intent of the Constitution’s Founding Fathers. And led to a major, well-organized, amply funded and to-date very successful attempt, organized by the Federalist Society, to stack the federal courts with judges who shun “judicial activism” in favor of “judicial restraint” in behalf of that “original intent” (Avery and McLaughlin 2013). In the event, abortion rights, immigration rights, voting rights and