

國家應維護社會權嗎？

評當代反社會權論者的幾項看法

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本文從政治哲學的角度探討社會權的理論意涵，並針對當代反社會權論者的幾項看法，進行分析和評估。社會權的理論家們認為，社經基本需要之滿足必須視為是公民之基本權利，以及一項最基本的社經正義原則。反對者則認為社會權是一種「積極」權利而不應予以保障，因其違背了古典自由主義對權利與正義之「消極」理解及對國家角色之認定。批評者指出，社會權是一種施加於國家及第三人某些積極義務之權利，而此種積極權利的問題在於：請求稀少資源；內容、程度及實現與否難以判定；不具普遍性；所隱含的權利義務關係不夠明確；與私產權相衝突；以矯治後果或事態為目的。本文針對這些看法進行評估，並說明其為什麼是不成功的。本文認為，社經基本需要之滿足是一項正當的社經正義／權利主張，旨在釐清究竟哪些社經事務具有政治道德上的重要性，而必須予以高度關切。儘管社會權仍必須面對不少理論與實踐上的難題，但此種權利之「積極」或「消極」與否，並非其是否應予保障之問題關鍵。

關鍵詞：社會權、正義、積極權利、消極權利、自由主義

Ought Social Rights to be Protected by the State? On Some Contemporary Criticisms of Social Rights

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ABSTRACT

Social rights are widely viewed as a species of 'positive rights', namely rights that impose 'positive obligations' on the state and other people, demanding that they act in certain ways for the right-holders. According to some contemporary critics of social rights, 'positive rights' should not be enforced by the state and treated as a matter of justice. Being positive, social rights are said to be problematic in the following ways: they are inevitably asserted to scarce goods and therefore do not possess the property of compossibility; they are highly indeterminate and not easily ascertainable; they cannot claim the property of universality; they do not entail correlative obligations; their realization necessitates a redistribution of resources that violates rights of legitimate property-holders; and they involve an erroneous conception of justice. This article shows that none of these arguments has any significant force. The distinction between negative and positive rights is one thing; whether social rights ought to be protected by the state is quite another. The former has to do with different occasions for performance, not issues of moral importance.

Key Words: social rights, justice, positive rights, negative rights,
liberalism