

# LIBERALISM AS THE CORE OF SOCIAL RIGHTS

**Umut Omay**  
**Istanbul University**

## ÖZET

Bu bildiri de, sosyal haklar kavramı, “İnsan Hakları Evrensel Bildirisi” (İHEB) ve “Ekonomik, Sosyal ve Kültürel Haklar Uluslararası Sözleşmesinin” (ESKHUS) metinleri ile liberal düşüncenin temel ilkeleri karşılaştırılarak sorgulanmaktadır. Sosyal güvenlik sistemi, sağlık hizmetleri ve eğitim gibi sosyal hakların serbest piyasa ekonomisi unsurlarına dönüşerek özelleştirilmesinin bir sonucu olarak, bu dönüşümün nedenlerini ve dayandığı ilkeleri anlayabilmek için sosyal hakların uluslararası hukuksal dayanaklarının incelenmesi gerekmektedir.

Bu bildirinin amacı, hem İHEB hem de ESKHUS metinlerinin üstü örtülü bir biçimde liberalizm düşüncesinin etkisi altında hazırlanıp hazırlanmadığını tartışmaya açmaktır. Gerçekten, İHEB ve ESKHUS metinleri eleştirel bir bakış açısıyla incelendiğinde, bireycilik, karşılık ilkesi, toplumsal sözleşme, kendi mutluluğunu arama gibi liberal düşünceye ait bazı unsurların bulunduğunu ileri sürmeye yetecek bir dizi ipucu görülebilmektedir.

**Anahtar Sözcükler:** Liberalizm, Sosyal Haklar, Liberal Felsefe, Sosyal Hakların Özü.

## ABSTRACT

This paper questions the social rights concept by analyzing comparatively the texts of both “The Universal Declaration of Human Rights” (UDHR) and “International Covenant on Economic, Social and Cultural Rights” (ICESCR) and the concept of liberalism. It is evident that the international legal basis of social rights should be analyzed carefully in order to understand the reasons and core concepts of the current transition of the social rights which have begun to be acknowledged as free market economy issues, such as privatization of social security system, health services and education.

The purpose of this paper is to argue that on drafting of both UDHR and ICESCR might have been affected implicitly by the idea of liberalism. Hence, as looking through the texts of both ICESCR and UDHR, with a critical view, it is possible to argue that there are a number of clues enough to claim that the core ideas of social rights are eventually based on liberal ideas, such as individualism, reciprocity principle, social contract concept and right to seek own happiness.

**Keywords:** Liberalism, Social Rights, Liberal Philosophy, The Core of Social Rights.

## INTRODUCTION

The concept of Social Rights has been a popular research subject since the post World War II period. The popularity of the subject has been a result of the reconstruction and globalization of the economic and social order since that period. During that transformation, there have been many covenants and declarations on international basis in order to surmount difficulties which are the results of inequalities as well as poverty, so the concept of “social rights” had emerged. According to a common idea, the very acme of regulation of the social rights on the international basis has been the adoption of both the “Universal Declaration of Human Rights” (UDHR) and “The International Covenant on Economic, Social and Cultural Rights” (ICESCR) of the United Nations (UN).

## THE CONCEPT OF SOCIAL RIGHTS

Despite being so popular, social rights concept has been a controversial issue. Some authors have been lenient to conceptualize it by the key word “ability”, though some others by “poverty” and some others by “equal citizenship status” (Buğra, 2005: 8). According to T.H. Marshall, who has been famous as the forerunner of the concept, had preferred to conceptualize the term on the basis of “equal citizenship status” (Omay, 2011: 6). Thus, social rights had been the final and the compelling piece of the social transformation, related with the making of citizenship status -a social amalgamation-, depending on 3 main stages: In the first stage the civil rights were granted (in the 18th century), in the second stage the political rights were granted (in the 19th century) and as the final stage the social rights were granted (in 20th century) (Marshall, 1966: 106; Marshall, 2006: 6 – 9).

The transformation emphasized by T.H. Marshall, is the result of industrial revolution and so capitalism. Hence, as capitalism has transformed the social and economic structures as a whole, the existence of social rights, can simply be explained by the existence of capitalism, since it has transformed the social and economic structures as a whole (Omay, 2011). As a result of the transformation, new social classes, such as labour class which became the greatest portion of the population, appeared. Hence, the first issues taken into social rights had been related with the said class.

By the post World War II period, the issues taken into social rights have become widespread in order to cover the other disadvantaged groups in any given society such as women and children. As noted by Gülmez, the social rights should have been accepted as a compelling part of “human rights” (Gülmez, 2010: 27).

According to a common idea, the concept of social rights was first defined as the secondary phase of human rights defined in the “Universal Declaration of Human Rights” (UDHR) of the United Nations (UN) in 1948, whilst the universal definition was made in “The International Covenant on Economic, Social and Cultural Rights” (ICESCR) of UN in 1966 (Bulut, 2007: 77). On the other hand, according to some authors the regulations of European Commission and European Charter should be assumed as the very acme of the social right issues. Nonetheless, those regulations can be assumed as the expectation of an ideal state and also it is obvious that European Commission is a commission and European Charter is a charter only for the European related issues not for the world as a whole. In other words, although there are some other sources, such as European Commission and European

Social Charter, both UDHR and ICESCR, adopted by UN, are the most important and common sources of social rights.

As indicated above there is no consensus on what the concept of social rights covers. In order to highlight the concept, looking into the articles of ICESCR may help us to find out the context more explicit. According to ICESCR the social rights are,

1. The Right to Work (Article 6),
2. The Right of Everyone to the Enjoyment of Just and Favourable Conditions of Work (Article 7),
3. The Right of Unionization (Article 8),
4. The Right of Everyone to Social Security (Article 9),
5. The Right to Protect Family, Maternity, Children and Youth (Article 10),
6. The Right of Everyone to an Adequate Standard of Living (Article 11),
7. The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (Article 12),
8. The Right of Everyone to Education (Article 13),
9. Compulsory Primary Education (Article 14),
10. The Right to Take Part in Cultural Life (Article 15).

It is obvious that the rights which are stated in ICESCR are about economic, social and cultural rights. Nevertheless it is impossible to separate them uniquely. Hence, there is an ambiguity on which of the rights stands for economic rights or social rights or cultural rights. Yet, the committee itself, prefers mostly to interpret those articles as compelling pieces of the general concept of “economic, social and cultural rights”; therefore, those given above may be assumed as social rights.

## THE CORE IDEAS OF LIBERALISM

Liberalism may be defined as the result of the Enlightenment which in turn had been both the self-realization and emancipation project of bourgeoisie (see, Buhr et al., 2003: 7). Thus, Liberalism is known as the core of capitalism. The ideal state defined by liberalism is the equality among all of the members of the society which is defined by the motto of “freedom”. According to this brief idea, there should be no regulation which ruins the equality. All of the social relations depend on social contracts in which people seek their own happiness by using their equal rights. As a result of this belief, the concept of the free market economy is the ideal state in which people act only for the sake of their own interests (Omay, 2011: 34 -50).

In other words, being defined by the concepts and clichés such as individualism, rationality, freedom, justice, equality, interest, happiness, virtue and social contracts, liberalism offers a social construction in which the social relations should be carried on the basis of free competition rather than regulated by strict rules because all of the members of the society have the equal degree of ability and reason. Thus, there would be no injustice in the social relations (Buhr et al., 2003: 58-71, 78; Dochherty, 2000: 27-28; Omay, 2011: 44-47; Reill and Wilson, 2004: 509 - 512). So, it is obvious that in Liberalism, persons are to seek for their own betterment as they are equal. As a result of this idea, rationality has also been positioned at the heart of Liberalism.

However, the idea that the parties are equal of any given social contract is an illusion. In fact, most of the social contracts are enacted among discriminatory terms as the parties are not equal in reality. For instance, any employment contract, as a social contract, expected to be agreed on free-will. As Liberalism offers, it is assumed that the parties are armed with equal degree of rationality and capability though they are not. As Engels noted, the worker cannot bargain as the employer can, because he needs to earn wage in order to survive (Engels, 1976: 42 – 43).

**LIBERALISM AS THE CORE OF SOCIAL RIGHTS**

As aforementioned above, the goal of social rights is, to overcome the social and economics problems which have been the result of transformation caused by capitalism or at least to abate the pain that is caused by the transformation. Both UDHR and ICESCR are assumed as the core sources for existence and application of social rights. But as looking through the text of ICESCR and also the text of “Universal Declaration of Human Rights” (UDHR), with a critical view, it is possible to argue that there are a number of clues enough to claim that the core ideas of social rights are eventually based on liberal ideas, such as individualism, social contract concept and right to seek own happiness. This idea may be surprising because there has been a common belief that social rights are the rights to struggle with the poverty and deprivation, and also to improve the life-quality of, mostly disadvantaged, people. In other words, the main goal of social rights is to take care on the persons who suffer from capitalism.

In order to highlight the claim that liberalism might have been the core of social rights, it will be better to look over the foundation of the UN which is the main source of social rights on international basis.

The United Nations was founded in 1945 just after the end of World War II. Prior to the end of the War, the prospective triumphant - namely the USA, the UK, the USSR- signed a protocol in 1944 for the foundation of an international organization which would have overcome the future conflicts and struggles. One of the first issues undertaken by the United Nations was to prepare a declaration for the Universal Human Rights. The commission, which was responsible to prepare the draft of the declaration, was chaired by Elenaor Roosevelt, wife of Franklin D. Roosevelt, the late President of the USA who had been in charge during almost of the War Period. However, as the drafting carried on, the USSR protested the committee, claiming that individualism and so liberalism rather than collectivism were in the core of the declaration, and withdrew her delegates and also did not attend for the voting of the declaration with her coherent states. (Sears, 2008; Waltz, 2008: 19-23; Omay, 2010: 131). Indeed, the composition of the drafting committee seems questionable:

*“the Commission on Human Rights unanimously agreed that three of its members would prepare a draft of the international bill of rights using as a guide the verbatim transcript of the discussion in the full commission of which rights should be included. They assigned this task to ER [Elenaor Roosevelt], P.C. Chang [Delegate of pre-Maoist China], and Charles Malik [Delegate of Lebanon who was graduated from Harvard University], who would be assisted by the Secretary, John Humphrey [A Canadian Proffessor of International Law]. The full commission would then revise this draft at its next meeting in December” (Sears, 2008: 7-8).*

It should not be surprising that the core of the UDHR has been depended upon liberalism as it is obvious that Franklin D. Roosevelt’s famous Four Freedoms Speech is in the heart of the preamble of the declaration (see Table 1).

**Table 1. Comparison of Four Freedoms Speech and the Preamble of the UDHR.**

Four Freedoms Speech of Franklin D. Roosevelt	The First Two Paragraphs of the Preamble of the UDHR
<p>In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.</p> <p>The first is <u>freedom of speech and expression</u> -- everywhere in the world.</p> <p>The second is <u>freedom of every person to worship God in his own way</u> -- everywhere in the world.</p> <p>The third is <u>freedom from want</u> -- which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants -- everywhere in the world.</p> <p>The fourth is <u>freedom from fear</u> -- which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor-- anywhere in the world.</p>	<p>Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,</p> <p>Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy <u>freedom of speech and belief and freedom from fear and want</u> has been proclaimed as the highest aspiration of the common people,</p>

**References:** Roosevelt, Franklin Delano, “The Four Freedoms Speech”, **Annual Message to the Congress**, (<http://www.kentlaw.edu/faculty/bbrown/classes/HumanRightsSP10/CourseDocs/4THEFOURFREEDOMSSPEECH.pdf>), March 3rd, 2011. ; United Nations, “The Universal Declaration of Human Rights”, (<http://www.un.org/en/documents/udhr/index.shtml>), June 10th, 2011. (**Markings belong to me**).

But this not the only evidence: For example, some of the liberal philosophers, had argued that there should be only fundamental human rights which were named as Natural Rights. They offered that the fundamental Natural Rights were composed of only four components - liberty, property, security, and resistance to oppression - derived from the principle that “men are born and remain free and equal in rights” (Reill and Wilson, 2004: 143). It should also be noted that the open lines of the Declaration of Independence which was drafted by Thomas Jefferson,

*“provided the basic philosophy that justified the seizure of power by American colonists in their revolt against British rule. The famous opening lines of the Declaration—its references to self-evident truths and to equality among all ‘men,’ its definition of the natural rights (unalienable rights) of men as life, liberty, and the*

*pursuit of happiness, and its reference to the social contract theory of government—came directly from the intellectual traditions of the Enlightenment” (Reill and Wilson, 2004: 308).*

As aforementioned above, it is evident that liberalism is the core of social rights. It should not be surprising that the liberal ideal might have been taken into the very heart of social rights issues.

For instance, in the article 6 of ICESCR, the Right to Work is defined such as follows: “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right” (<http://www2.ohchr.org/english/law/cescr.htm>). In this text, two definitions are quite remarkable: “The opportunity to gain his living by work” and “Work which he freely chooses or accepts”.

Therefore, the phrase “the opportunity to gain his living by work” may refer to one of the basic liberal idea that is simply summarized by the phrase “tit for tat” as argued by Bauman:

*in order to get something which one needs to stay alive and happy, one must do something which is seen by others as valuable and worthy of being paid for; there are no ‘free lunches’, it is always quid pro quo, ‘tit for tat’; you need to give first, in order to be given later (Bauman, 2005: 5).*

The committee which has been charged to clarify the ambiguous statements of ICESCR, also interprets that article in a liberal sense:

*“The right to work is a fundamental right, recognized in several international legal instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR), as laid down in article 6, deals more comprehensively than any other instrument with this right. The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community” (UN, 2008: 139) (Markings belong to me).*

In the passage given above, the phrase “The right to work contributes at the same time to the survival of the individual and to that of his/her family...” is quite remarkable. Furthermore, the second phrase, “as work is freely chosen or accepted” may also be a reference to another liberal idea: Social contract. Social contract has been defined as a mutual consent in which all kind of relations in a given society can be taken on the basis of free will. Therefore, any social relation depended on social contract becomes legitimized (Edgar and Sedgwick, 2006: 359).

Thus, the conditional base of social rights which are defined in ICESCR, is evident. As it has been noted in the article 6 of ICESCR “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”

(<http://www2.ohchr.org/english/law/cescr.htm>) can be assumed as the core condition to deserve the other social rights, including the basic rights (see, Bulut, 2009: 68). Indeed, the Committee on Economic, Social and Cultural Rights (CESCR) has also emphasized the importance of “right to work”, in its general comment no. 18, that “the right to work is essential for realizing other human rights” (UN, 2008: 139). Therefore, it should be noted that, the interpretation of the committee for the definition of “the right to work” has the similar meaning (a striking feature) that of liberalism (or capitalism) offers the idea that the social relations should be depended on social contracts based on reciprocity principle; as noted by Bauman.

Another example may be viewed in the general comment no. 7 which is about “the right to adequate housing”:

*“the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost” (UN, 2008: 12).*

As noted in the interpretation of the article 11 (1) of the CESCR by the committee, “the adequate housing” is also defined as a conditional clause with the phrase “all at a reasonable cost”.

Thus, the social rights have not been defined on “free of charge” basis but on “free to all” basis which highlights the “reciprocity principle”. Indeed, in the 14th General Comment of CESCR, it is emphasized that “health facilities, goods and services must be affordable for all ...including socially disadvantaged groups” (CESCR, 2008: 80). And even, “the right to water”, which has been indicated in the 11th and 12th articles of ICESCR, has been defined on the “reciprocity principle” by CESCR, in its 15th General Comment, such as “water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable...” (UN, 2008: 99).

Therefore, as noted above, the social rights have been defined as conditional rights which are required to work in order to be deserved: A very appropriate feature of liberalism. In fact, Tuna argued that “right to work” should be viewed as a legitimate instrument of capitalism (Tuna, 2009: 135). In other words, the social rights have been designed appropriately to liberalist ideas, and “objectivism” which is its contemporary form. As noted by Peikoff, who is known as the inheritor of Ayn Rand, the founder of “objectivist philosophy”, it should be assumed as an “ill-will” to demand a right without paying it (Peikoff, 2009: 68). It is also evident that there are some kind of ambiguities and discrepancies (even) in the the social policy issues held by the European Commission. For instance, Koray argues that “the European Union tries to regulate its own social policies according to its economic priorities whilst it takes the issues related with the betterment of social conditions and increasing of the social solidarity only on discourse level” (Koray, 2002: 246). And also, European Social Policy have depended mostly onto the “working” related issues (Koray, 2002: 247).

## CONCLUSION

The concept of Social Rights has been a popular research subject since the post World War II period. The popularity of the subject has been a result of the reconstruction and globalization of the economic and social order since that period. During that transformation, there have been many covenants and declarations on international basis in order to surmount the difficulties which are the results of inequalities as well as poverty, so the concept of "social rights" had emerged. There has been a common belief that social rights are the rights to struggle with the poverty and deprivation, and also to improve the life-quality of, mostly disadvantaged, people. In other words, the main goal of social rights is to take care on the people who suffer from capitalism.

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But as looking through the text ICESCR and also the text of UDHR, with a critical view, it is possible to argue that there are a number of clues enough to claim that the core ideas of social rights are eventually based on liberal ideas, such as individualism, reciprocity principle, social contract concept and right to seek own happiness. Therefore, the current structure of social rights which depend on UDHR and ICESCR must be interrogated whether they cover benefits of disadvantaged persons or their purpose is to legitimate capitalism implicitly.

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