

# Democracy and Rights: American problems in comparative context<sup>1</sup>

**David Plotke**

New School University, New York

Rights are widely claimed and contested in the contemporary world. The prominence of rights in politics spurs debates about the sources of this prominence.

There are two main accounts of the political prevalence of rights and of claims about them. For one account, the spread of rights is due to forces that are external to many if not most of the countries in which this process has been occurring. In one version of this view the driving force has been a political and cultural effort by Western countries to spread their conceptions of rights. In another version, the United States bears primary responsibility for the massive growth of rights claims in the last half century.

The other main account of the growth of rights focuses on dynamics within countries where this has occurred. Sometimes this internal dynamic is viewed as a process of modernization, as legal and political systems gain greater autonomy and complexity. Other views emphasize democratization as the key source of expanding rights claims and political discourses about rights.

In my view the growth of rights derives mainly from democratization.<sup>2</sup>

1. This article is based on a talk given at "Rights – Civil, Human, and Natural," a Ph.D. Seminar of the Consortium for American Studies held at the Center for American Studies at the University of Southern Denmark in Odense, in October 1999. In that academic year I was Fulbright Chair at SINAS (Swedish Institute for North American Studies) at Uppsala University in Sweden. Thanks to Helle Porsdam for her comments.

My aim here is to show why and how democracy and democratization lead toward an expansion of rights and rights claims. These processes yield a politics of rights that is often tough and demanding, as with arguments about affirmative action, abortion, and education in the United States.

I have no interest in denying that other views of these difficult questions have merit. There are plausible reasons to consider the growth of rights as a process of Americanization. It stands out brightly in the United States, a country where lawyers and the law have always had a large political role. Many stories can be told to illustrate the Americanizing side of the spread of rights. A member of the Swedish Parliament reported to me that in his partly rural district people were appearing before the courts full of complaints about the unfairness of the system. They were demanding rights and specific procedures, baffling lawyers and judges who did not understand their claims. It turned out that these Swedish citizens had developed a strong sense of appropriate legal rights and procedures from watching American legal dramas on television. They often had more contact with these shows than with the actual Swedish judicial system. They came to court expecting their imagined rights to be recognized in particular ways, even when those practices do not exist in those forms in Sweden.

Yet to attribute the growth of rights mainly to the spread of American political and cultural influence risks turning a partial truth into a misunderstanding of what democracy now means. Rights claims and political arguments about them have arisen widely in the last few decades, including in countries such as South Africa and India where direct American influence has not been decisive. Moreover, for many decades during the Cold War the United States was willing to temper its interest in rights if that seemed prudent as regards sustaining anti-Soviet alliances.

What about broadening the explanatory claim to include not just the United States but "the West" as the source of the contemporary upsurge in rights? Democratic countries clearly do offer incentives and sanctions to encourage the spread of political practices for which rights are central.

2. In a very large literature, these books are especially relevant for my argument: Ronald Dworkin, *Taking Rights Seriously*; Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*; Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*; and Jeremy Waldron, editor, *Theories of Rights*.

Yet if "the West" is sponsoring an international effort to install regimes of rights, why does this effort show uneven results? A serious effort to explain why American and Western pressures sometimes pay off and other times make little difference would have to consider the internal features of various countries' politics. So there is probably more room for theoretical agreement than one would imagine from the most heated polemics on these matters.

In this article, however, I am not aiming to develop a synthesis. I want to explore relations between democracy and rights. My claim is that democratization and democracy powerfully encourage the growth of rights, including the emergence of a distinctive politics of rights. From a democratic perspective, the growth of rights and rights claims is on balance highly positive. Significant problems result, but the latter are hard to avoid if one wants to sustain democratic practices. I start with these questions: What is a right? Where does the expansion of rights come from historically?



## What is a right?

A right is a prohibition against interference. If I have a right to [x] then no one (including the government) can stop me from doing or having [x].

This sense of what it means to have a right is important but not sufficient. Here is a fuller conception: To have a right is to be authorized to engage in a political or social activity. Thus to say that [x] is a central democratic right fuses two claims. The first is that democracy requires that individuals be authorized to engage in [x]. The second is that individuals must be able to do (or have) [x] in order to engage in democratic politics.

In institutional terms, we could say that political rights are authorized forms of action that cannot be prevented through regular political processes. This is too broad, as other features of politics are similarly protected. Yet rights have properties that make phrases like "basic rights" or "fundamental rights" seem almost redundant. Individuals' rights enable them to act and to make choices about politics.

For those who believe in a strong doctrine of natural rights, political regimes can be assessed in terms of their practical capacity to recognize preexisting rights as real. For others – and thus for actual polities composed of people with varied views of rights – rights are developed via basic agreements about the shape of a decent politics. In this sense rights are like constitutions, treaties, or even contracts – such agreements have force as part of a network of political and social relations. Thus rights can not be declared unilaterally, and they are not reducible to the paper on which they are written. Proponents of thoroughly rationalistic conceptions of social relations have the same problem with rights that they are apt to have with constitutions, treaties, and contracts – why would opportunism not immediately defeat any such agreements? This famously difficult question can be answered, but not in this article. Here I will simply assert that agreements among social agents are possible, and that rights are a distinctive sort of agreement about the terms of action. They are a practical response to this proposal: "Let us arrange political and social relations so that individuals are authorized to engage in a specified set of actions without interference."

### **Where does the expansion of rights come from?**

The origins and meanings of rights are contested – do they come from nature, God, tradition, or reflection? Political arrangements have to take account of these disagreements. We have to figure out how people who define and understand rights differently can agree to recognize a particular set of rights.

As a social and historical matter there is no single origin of rights. This diversity may be partly responsible for the fluid and durable character of the concept. Socially, rights claims arose from popular movements as well as from more privileged groups whose members regarded themselves as unfairly excluded from political power and subject to its arbitrary exercise. Both sources were certainly important in the seventeenth and later centuries, and in this sense rights were a means of constraining power that was otherwise unaccountable. Rights claims also originated

from minorities who wished to be protected from the possible redistributive projects of democratic majorities.

In political terms, from the 17<sup>th</sup> to the early 20<sup>th</sup> century in Europe and North America rights were mainly a project of a secular and rationalist left. They were opposed in the name of liberties (Burke) or tradition (French and German conservatism). Critics charged that rights were abstract and formal. The implication was not that rights were therefore meaningless, but that they would corrode and disrupt valuable commitments and traditions.

In the second half of the twentieth century the expansion of rights had a number of sources. Rights have been a central concern for the United Nations and (new) international law, as in Article 1 of the 1948 Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

American power has been another source of rights claims, though not always directly. Over the twentieth century there was a deep shift in American (and international) thinking about the legitimacy of states. Legitimacy and sovereignty were once tightly linked, insofar as states capable of ruling were thereby deemed legitimate. Now legitimacy almost requires that a government show decent respect for civil and even political rights.

In the last quarter of the twentieth century an unprecedented number of countries underwent transitions to some form of democracy. In almost all cases, these transitions included the enactment of constitutions in which rights had a prominent role in defining the new regime.

The collapse of the Soviet Union and its allies has been another major source of the expansion of rights. Proponents of the Soviet project had made a positive argument alongside their critiques of the hollowness of rights in liberal democracies. They argued that durable democratic forms could arise from a substantive and nonformal conception and practice of governance. Thus in constitutions of the Soviet type the leading role of the Communist Party in political and social life was spelled out, and that role clearly dominated whatever rights appeared in the constitution. The leading party claimed legitimacy on grounds of the value of its substantive commitments and its capacity to realize them.

This conception could produce (some) economic growth and (limited)

social welfare. But no Soviet-type regime ever produced a reasonably democratic polity. This result<sup>3</sup> showed the grave difficulty if not impossibility of producing democracy without a strong core of recognized rights. It puts a great burden of proof on communitarians, religious fundamentalists, and others who claim that their substantive views rightly understood can sustain democracy without any very large reliance on rights.

### **How do rights and rights claim increase?**

This sketch of the historical and contemporary sources of rights underlines the variety of such sources. No single factor produced the great expansion of rights of the last half-century. This diversity is probably another source of the strong presence of rights and rights claims in contemporary politics.<sup>3</sup> I believe that a full inquiry into relations among these factors would result in attributing a major causal role to democracy and democratization in expanding rights. Here my aim is to show how this causal process works by analyzing how democracy contributes to the expansion of rights. I make three distinct claims. One is that processes of democratization create and expand rights. The second claim is that efforts to sustain and develop democratic practices increase rights. The third claim is that democracy increases complexity in political and social life, which in turn increases rights.

By democracy I mean a political form in which equal citizens choose their government in open elections. By democratization I mean the establishment of at least minimally democratic political procedures. By sustaining democracy I mean securing and developing democratic practices, as well as expanding the range of application of democratic principles

3. The variety and density of these sources of rights helps to explain why efforts to theorize democratic politics without much reference to rights have little practical effect in displacing rights and rights claims from political life. If definitions and understandings of rights are often tangled and sometimes appear to add little of value to political arguments, these problems will not cause the concept to disappear. Even if critics can produce a clearer and richer way to talk about people's basic capacities to undertake political and social action – and this has not occurred – concepts as deeply based in political experience and understanding as the concept of rights have to be replaced rather than rejected.

and norms. Sustaining democracy can occur along several dimensions. It can increase the number of citizens who are eligible to participate in choosing the government. It can expand the areas within society that are reached by a democratic polity. The process of sustaining democracy has a large normative dimension as regards democratic practices and commitments. The horizon is a condition in which democracy is the presumed mode of organizing social relations unless other modes are clearly required (as on functional grounds, as in a hospital) or strongly preferred by participants (as in a religious organization).

### **Democratization increases rights**

Rights expand as a result of moving from undemocratic to democratic forms of governance. This is especially clear in the case of an overall national change of regime.

From above, impulses to formalize rights arise as means of protecting positions that were enjoyed in undemocratic contexts. Elites fear that these positions will simply be taken away. Thus rights claims – often concerning property – are partly about protecting privileges when customary justifications and sheer force cannot do so.

From below, strong pressures act to expand the most democratic elements of the old regime. Thus African Americans in the United States demanded voting rights in the 1960s. They won the right to vote and opened new arguments about rights and fair representation.

Strong pressures from below also favor recognizing new rights. Thus new social and economic rights frequently appear in the constitutions of new democracies – they are meant partly to enhance the legitimacy of these regimes and mark them off sharply from their undemocratic predecessors.

The uncertainty that accompanies deep change also causes rights to expand. When democratization occurs it disrupts old arrangements and opens new possibilities. In this context many will regard rights as crucial for security, against familiar old forms of domination and potentially dangerous new majorities.

In sum, strong and varied forces encourage an elaboration of prior rights and a development of new ones in the course of democratization.

## **Sustaining democracy and rights**

In recent decades rights have notably expanded in more established democracies as well as in polities where democracy has recently been built. This is familiar territory for communitarian and conservative critics of American politics, who regard rights claims as an often-negative force that encourages selfish individualism, undermines communal ties, and hampers efficiency.

Yet the American rights explosion is not unique. When efforts are made to develop and expand democracy, additional rights claims emerge. What gives this dynamic force in the U.S., Western Europe, and elsewhere?

For the newest democracies, the opening of a democratic politics spawns arguments about rights as a key dynamic of political competition. After the first democratic election, the losers (as a new opposition) want to ensure that there will be another one in which they can compete seriously. Thus democratic competition, focused on succession, drives an expansion of rights claims.

Both for newer and for older democracies, the entry of previously excluded or marginal groups also plays a large role in expanding rights. New entrants urge that conditions be created to prevent any recurrence of their prior exclusion.

The expansion of democratic practices beyond choosing the government creates further pressures for rights to grow. As democratic forums multiply and potential participants increase, new claims can be made about what democratic politics requires. Many of these claims will invoke rights – to make a rights claim in these contexts is to say that I require [x] to participate fairly in democratic politics as a free or equal citizen or that if [y] happens I will not be able to participate fairly (or at all).

Finally, in democratic settings social change opens the possibility of



new political arguments with respect to the meaning of the changes that are underway. It has become routine for claims to be made about a right with respect to some new activity whose basic features were not even known fifteen or twenty years before, as with technical change and environmental problems.

## Complexity and rights

Democracy means more voices, more decisions, and more conflicts. It means more places where rights claims can be made. *Thus democracy increases complexity.* By complexity I mean: a large and increasing diversity of agents; impersonal political ties that cannot be sustained by direct relations of trust; and conflicting aims. Complexity grows along with and in response to democratization. Thus calls to reduce complexity in favor of directness and community imply a narrowing or decrease of democratic practices, though this is not usually intended.

Democracy causes both rights and complexity to increase. It is thereby responsible for the ensuing dynamic between expanding rights and growing complexity. As critics of rights note, the expansion of rights causes political and social interaction to become more complex. Under democratic conditions, growing complexity also creates pressures to expand rights. As democracy widens people can not plausibly regard most citizens as brothers and sisters in a practical sense. Among citizens who are mainly strangers, rights ensure one's capacity to act politically. Thus rights are means of coping with the uncertainties that result from the complexity generated by democratization.

Complexity strengthens rights claims in another way. To have rights means being able to assert the legitimacy of other spheres of life against politics, even the most democratic politics. A right to religious choice means that reasons of state cannot determine the shape or extent of people's religious activity. To recognize rights means rejecting the idea of a common evaluation of the appropriate role of political activity in a decent life. That is why rights make neo-republicans anxious, and why some of them try to show that a decent republican regime could secure

the benefits of rights without anyone having to assert them very vigorously.

In sum, democratic projects cause rights claims to increase. They also generate increased complexity, which adds further pressures toward the expansion of rights. The dynamics I have outlined would be effective even in a relatively homogeneous society. Thus it is predictable that very strong pressures toward rights claims will normally arise amid the great diversity that is actually present in most contemporary polities. Given varied group and cultural attachments, deep political understanding can be very hard to attain, while many people belong to actual or potential minorities. These elements will intensify perceived needs for the protections that rights can at least partially offer.

### **The American version of rights politics**

In the United States major features of our constitution and politics amplify the broad democratic tendency for rights to expand.

First, the Constitution is brief to the point of being austere. In practice it is very hard to amend. The brevity of the Constitution guarantees that there will be an extended politics of interpretation, as brief and general statements have to be applied to new circumstances.

It is almost impossible to change the Constitution on major issues (this was shown, for example, by the failure to pass the Equal Rights Amendment). The difficulty of changing the Constitution (due to its very demanding amendment requirements) encourages fights about rights. The result is a dense constitutional politics in which it is hard to distinguish between important national policies and what might be called non-constitutional basic rights.

Rights not named in the Constitution are defined and sustained through arguments about interpretation. The resulting political battles may seem to go on indefinitely. This is partly due to the depth of disagreements. It also registers the strategic situation of opponents of a newly established right. Because the Constitution was not changed to install that right, it is not necessary to amend the Constitution to limit or even revoke it. In this

context the lines between constitutional politics and policy fights are blurred and normal politics is drenched in arguments about rights.

A politics of rights is encouraged by a unified legal system, as no constitutional court is clearly separated from other courts. In the American legal setting constitutional issues can in principle always be raised. Of course they aren't always raised. But everyone knows that the possibility of doing so exists. This puts rights questions and constitutional politics in the room during much routine judicial and legal activity. It also puts rights questions directly in the legislative process at all levels, as legislators know that their legislation can readily be challenged and may well be invalidated.

Third, weak parties and a presidential system encourage movements and interest groups to address the courts. When such movements are frequent and large, a politics of rights is apt to expand even more vigorously.

The reason for this dynamic is straightforward. Movements that seek to gain political, social, and even cultural change will not find it easy to gain these changes via weak parties. As most such movements begin as minority movements, they usually face an executive that is primarily responsive to a different and often unfriendly majority.

In democratic polities the main alternative to courts is parliamentary politics. While American movements do enter the main parties, the obstacles to gaining results through that route are evident enough to keep legal options alive and attractive. Thus idea that a movement's appeal to the courts subtracts from an authentic and autonomous movement politics is misleading.

Finally, law is a compelling theme in American popular culture. This popularity partly registers the major historical role of the law and lawyers in American politics. As many have noted, legal conflicts can readily be expressed in the familiar forms of a dynamic and open popular culture. In this context, competing media forces stand to gain from making legal forms and language more accessible (as well as more lively and dramatic). On balance the results are democratic; whether this process involves degradation as well as popularization is debatable.

Popular culture's focus on the law is likely to have the indirect effect of expanding a politics of rights. The publicity afforded to legally based rights claims will make such claims appear even more widely as plausibly effective means of addressing serious problems. And the familiarity with

legal forms and procedures that results from their widespread presence in popular culture makes legal action seem less exotic and more feasible.

Taken together, the difficulty of amending the Constitution, a unified legal system, a presidential system with weak parties, and an energetic legally minded popular culture encourage a vigorous politics of rights in the United States. This country is not unique. Many countries have two or more of the features I have mentioned. Yet if democracy spawns rights claims everywhere, the force of this tendency in the United States is notable.

## **A politics of rights**

Rights and rights claims flow from democratization. They also derive from the ways that democracy increases complexity. Thus efforts to diminish complexity and to reduce rights claims will usually have a negative impact on democracy. Instead we should recognize the durable presence of a politics of rights. In the United States and elsewhere rights are contested. People argue about what counts as a right and how much it counts with respect to other rights. In a democratic context claims about rights do not end conversations or stop politics so much as they shift the debate from questions about who benefits to arguments about who can legitimately do what.

The expansion of rights means that politics often appears as a two-level conflict. It is about practical choices and about the proper bases for making those choices. Moreover there is always debate about which level we should be on. Thus rights claims do not diminish or derogate politics so much as they expand and complicate political life.<sup>4</sup>

As with other forms of politics, a politics of rights contains difficulties

4. The durable presence of this two-level politics, yields political forms different from those often expected by advocates and critics of rights. Many proponents and critics of rights converge in viewing the relation between political engagement and commitments to rights in hydraulic terms, so that a flow in one direction reduces the amount of activity and energy in the other sphere. They of course differ on whether shifting toward rights is a good or a bad thing. Critics charge that rights simply undermine and reduce politics by foreclosing debate on important matters. Advocates expect that rights claims, when recognized, will remove basic questions from political argument. Both views fail to recognize the degree to which political argument and conflict about relations among rights and about relations between rights and policies are sure to continue.

and hazards. One problem arises from tendencies toward a strategic expansion or even invention of rights claims. Those who expect to benefit may try to turn preferences and policies into rights in a purely instrumental way. Many political forces have an interest in seeking to do this. If [x] is my preference and it can be construed as a condition that is required for me to engage in democratic politics, then [x] must be implemented. Charges of tyranny then erupt when one group believes that another group's policy preferences have been imposed as rights.

In the United States answers to this problem are far easier to state than to attain. We might change normal politics to feature a more rapid processing of issues and clearer decisions. These changes might improve the quality of political life and attract more participation. The result might be to diminish the value of purely instrumental efforts to move questions onto a legal and constitutional terrain, because moves of this type might meet skepticism or even disdain.

Another answer – even harder to imagine – would be to make constitutional change easier. Because constitutional change is so difficult to achieve, it is hard to claim that the failure to make a proposal part of the Constitution proves that it does not concern an important right. If constitutional change were less demanding, then the outcome of a serious amendment effort could reasonably be taken to decide whether a right should be recognized.

A more transparent and engaging normal politics and less daunting amendment procedures might diminish tendencies to turn preferences into rights claims in purely opportunistic ways. Even then such tendencies would not disappear. The main remedy, in present or much improved conditions, is increased public awareness of this prospect. Such awareness would reduce the prospects of political forces whose proposals clearly make a game of claiming rights. This requires, of course, yet more public debate about rights.

## **Rights inflation**

Another problem with a politics of rights is rights inflation. The South African Constitution (of 1996) includes this passage:

- 26 (1) Everyone has the right to have access to adequate housing.  
 (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.  
 (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

This formulation of a social right is careful. It signals that while decent housing may be a right, South Africans should not expect it soon. To formulate such commitments as rights is an attractive route in countries where the legitimacy of new democratic institutions is uncertain. At times a constitution without such commitments would not appear to refer to a meaningful democracy.

Yet the danger of inflation is significant. If one has a right to housing and no house, nor any reasonable prospect of a house in the near future, what should one do? If rights cannot be claimed now, what sort of constitution is this? Such failures can encourage populist upsurges aimed against a constitution devalued as hollow and formalistic.

To define the possible results of successful policies (adequate housing for all) as rights can make it hard to distinguish between rights as real capacities and rights as hopes for a better future. Some will be tempted to urge trading off the first kind of rights (thus limiting capacities) to enhance the chances of progress on the second (thereby expanding housing or jobs). This can be justified on grounds that no right is absolute and tradeoffs have to be made.

In response to the dangers of rights inflation, the constitution can be divided between core and secondary rights. This can be a decent way to organize a new democracy if everyone understands what is going on.<sup>5</sup>

5. Americans who rely on this country's experience to preach the virtues of brief procedural constitutions may have relatively little to contribute in this area. The error is to think that in the United States we recognize only the procedures and political rights in the Constitution. In fact our constitution is now much thicker than the one created in the eighteenth century plus amendments. Centuries of interpretation and legislation have created a far more extensive set of constitutional commitments than a literal reading of the original document would suggest.

## Rights in conflict

A third problem concerns adjudicating among recognized rights. As rights expand, how should we sort out and order them? Even a small number of rights can not be arranged as an unambiguous list or schedule. When rights grow so does the need to order them. How should the conflicts among all these rights be settled? My earlier definition only suggests a framework for a response: if rights are required for agents to engage in an activity (in this case democratic politics), we can order them in terms of our understanding of what that activity requires.

In a politics of rights basic positions will be defined in terms of how people rank and relate different rights. Most people emphasize the primacy of one or another cluster of rights. One familiar way to identify groups of rights is based on their most direct referents. Thus it is common to distinguish among (1) political and civic rights, (2) property rights, and (3) social rights. Much conflict in the United States occurs among groups of people whose main rankings of rights are [1, 2, 3], [2, 1, 3], and [1, 3, 2]. Thus even to describe the positions of moderate liberals, conservatives, and left-liberals means specifying their views of how rights should be ordered.

In contemporary democracies conflicts among rights are unavoidable. They are a core part of a politics of rights. Yet there are bound to be problems. Conflicts about the priority of different rights can become abstract proxies for conflicts over very specific policies. As the terms of debate become more general and abstract, bases for practical compromise diminish. The resulting rigidity makes political settlements harder to achieve. No means exist, at least so far, for causing this problem to disappear rather than managing it in a more or less democratic way. Its presence is linked both to the protections supplied by rights and to the ways that rights allow contending parties to exit from fierce immediate conflicts of interest and commitment that cannot be resolved.

Given these difficulties and tensions, it is not surprising that the politics of rights normally includes a critique of rights. In the twentieth century several critiques were made. Most of the critiques made with democratic aims have gone astray in considering complexity and democracy as alternatives.

The radical democratic notion is that rights diminish politics as self-governance. But transparent and direct self-governance in the sense that radical democrats often propose is not plausible. Absent rights we are apt to get less political argument in our conflicts. The choice is very often between appeals to rights and threats of force as a way of settling deep conflicts, given great diversity and deep differences.

The populist notion is that rights empower judges and lawyers instead of the people. Rights do prevent leaders from acting however they wish on behalf of an allegedly unified people. Yet to enhance democracy we should mainly aim to democratize legal forms and practices, rather than seeking to reduce the role of law.

The communitarian complaint is that rights undercut obligations. It is true that if people have rights they can resist demands made on them in the name of institutional and cultural conventions. They can insist that obligations be justified, which often means reformulating them as commitments. This may create an uncomfortable situation for people who prefer that certain things simply be done without much contention or even reflection. I doubt that democrats should regret the rise of arguments about commitments in place of a less reflective performance of obligations.

## **Democracy, complexity, rights**

Few political actors set out primarily to expand the set of recognized rights or to turn normal political contests into battles about adjudication and constitutional interpretation. Yet rights continue to expand, along with battles about them.

The main dynamic that drives the expansion of rights arises from within polities: efforts to establish and sustain democracy are the primary cause of the growth of rights and rights claims. Democracy increases rights. Democracy also increases complexity, which in turn encourages the expansion of rights. Within a framework defined by these powerful dynamics, Western pressures and American cultural influence strengthen the growth of rights.



The resulting politics of rights combines constitutional, legal, and policy issues. We can not understand or engage this politics if we imagine that it can be greatly reduced (or even disappear) without also reducing the range and depth of democratic practices. The tight links among democracy, complexity, and rights may be discouraging for those who envision a simple, direct, and even communal politics. For other democrats these links pose a compelling challenge: how can a politics of rights be shaped in ways that make a positive contribution to sustaining democracy? This question points beyond the limits of the present article. It concerns vital theoretical and practical problems in all the varied countries where efforts to develop and sustain democracy are under way.