



ORIGINS: KARL MARX ON JUSTICE AND LAW

John A. Gueguen

I: DESCRIPTION

Like Hegel, Karl Marx conceived of «critical philosophy» as a task; unlike him, Marx conceived of this task as a practical one, and specifically in the conditions of the day, as a practical task of negating the old philosophy (German idealistic philosophy, especially Kantianism), for rather than being practical it had been abstract and speculative. As he explained in *Toward the Critique of Hegel's Philosophy of Right* (1843), Marx viewed philosophy as a weapon for destroying enemies.

Having moved beyond Kant in making philosophy practical, Marx next materialized it; i. e., he embedded it in specific historical conditions. What needed to be done, he said in the same work, was «to overthrow all conditions in which man is a degraded, enslaved, neglected, contemptible being.» This new «categorical imperative» was the imperative of revolution. The material practice to which philosophy is dedicated is a «radical» or «fundamental» revolution (not merely a «political» one); it is aimed at the «universal human emancipation» or «redemption» of humanity. This is no «utopian dream,» Marx argued, for «no brand of bondage can be broken without every brand of bondage being broken.» The practice of philosophy, then, in the present conditions of the world (as «Marx viewed it in his mind) was nothing short of total revolution. Philosophy, he argued, is not a beginning, not a questioning, but an end point, «something to be actualized.» «Actuality must strive toward thought,» not vice-versa.

All this was succinctly summed up two years later in the *Theses on Feuerbach* (1845): «The question whether human

thinking can reach objective truth is not a question of theory but a *practical* question. In practice man must prove the truth» (thesis 2). «All social life is essentially *practical*. All mysteries which lead theory to mysticism find their rational solution in human practice and the comprehension of this practice» (thesis 8). «Circumstances are changed by men... The coincidence of the change of circumstances and of human activity or self-change can be comprehended and rationally understood only as *revolutionary practice* (thesis 3). «The standpoint of the new materialism is human society or socialized humanity» (thesis 10). «The philosophers (of the past) have only *interpreted* the world in various ways; the point is to *change* it» (thesis 11).

It is clear, moreover, that Marx placed man in the center of philosophy; Marxism is a humanism: «For man the root is man himself.» «Man is the highest being for man.» Who is this man? Marx answers, «*actual man*.» But from the context of his writings, it is clear that Marx was not concerned with specific, individual, personal human beings we encounter in ordinary life, but with the general, abstract, collective man he conceived in his mind. When he spoke of man's historical destiny, he meant that of mankind as a whole. In the doctrine of historical materialism it is the «masses» which constitute the moving force in history, and they are the ones who need to be made philosophically «conscious». It is the material needs of these idealistically conceived masses that constitute the «base» of the philosophical revolution: «Revolutions require... a material base.» (The passages in this paragraph are taken from *Toward the Critique of Hegel's Philosophy of Right*).

In these early writings (written when Marx was in his 20's), he clearly distinguished between two «classes» of humanity, made necessary by his careful observance of the supposed dialectical motion of history. As he explained in the same critique of Hegel, there is «a particular class» —«the class of emancipation»— which represents the true needs of «man» at a particular historical moment; therefore, it is in this class that «philosophy finds its material weapons,» its revolutionary material. That class, which is representative of the «general rights» of society as a whole, he names the «proletariat.»



Now according to the Hegelian dialectic, which Marx adopted as his own «logic,» there must be a negative for every positive. Hence the revolution required a counter-class: «If one class is to stand for the whole society, all the defects of society must conversely be concentrated in another class.» This «class of oppression... must stand for the notorious crime of society as a whole.» This class is named the «bourgeoisie.»

Finally, the emancipation of the one class from the grip of the other cannot (according to the dialectic) be brought about by gradual reform. The change must be abrupt, revolutionary.

We must have this background of elementary Marxian theory well in mind if we are to understand Marx's view of justice and law. Since the bourgeoisie, the oppressor class, is set in command of the whole social organization by Marx, its creator, justice and law must be nothing else than «the form of organization which the bourgeoisie by necessity adopts for both internal and external purposes as a mutual guarantee of their property and interests.» Law, along with the whole state apparatus, as Marx explains in *The German Ideology* (written in 1845-46 with the collaboration of Engels), «exists only for the sake of private property.»

Here Marx is both justifying his own prior dialectical conclusions and borrowing from a long sequence of European philosophers of law (Locke, Montesquieu, Hume) who viewed legal institutions in a close alliance with the protection of property. It was not a difficult matter for Marx to draw the conclusion that «civil law develops simultaneously with private property» and to use this as further evidence in justifying his revolutionary prescription for the overthrow of oppressive laws.

It is true that his predecessors, including Hegel, had reduced «right... to statute law,» as he says in *The German Ideology*, but Marx is not interested (as they may have been) in furthering philosophical speculation about justice, right, and law. While there is surely a hidden agenda in Locke, too, Marx proves to be the greater ideologist in using the speculations of others for his own immediate purposes. Justice and law did not interest him (nor did any subject) as an object of study. He viewed justice and law (and indeed every subject) in the context of

revolutionary change. This gave everything its «true» meaning. Thus he did not trouble himself to work out the kind of justice or legal institutions which would replace those of the bourgeoisie, once overthrown.

In the course of his treatment of law, Marx did insist, however, that law is not «mere will,» as it was for Kant. It is, rather, a material machinery of state oppression, a real instrument of power, and not a mere «abstraction.» Kant's law was nothing but a «juridical illusion,» Marx said in *The German Ideology*.

II: EVALUATION

The early writings of Marx form his «Hegelian» phase, when he was more philosophically than socially or economically oriented, and when he was concerned to distinguish himself from Hegel. Speaking, he said, for «the *practical* political party in Germany,» Marx assailed the idealist position as a «mystification,» as an abstraction from «*actual*» man. Quite to the point, Marx took Hegel to task for having «reversed the subject and the predicate» and making the Idea more real than its product: «He converted the subject of the Idea into a product, a predicate. He does not develop his thinking from the object, but he develops the object by a sort of thinking that *he* manages, and manages in the abstract sphere of logic. It is... a matter of... connecting political constitution with the abstract Idea... —an obvious mystification... If Hegel had proceeded from actual subjects as the bases of the state he would not need to let the state be subjectivized in a mysterious way» (*Critique of Hegel's Philosophy of the State*, 1843).

But Marx offends on the opposite extreme by pushing his analysis in the direction of materialism. As philosophy for him becomes a *praxis*, and indeed a revolutionary practice, humanism becomes in Marx's mind an atheistic humanism which is far more virulent than Hegel's.

Thus if Hegel can be accused of one sort of «mystification,» Marx can surely be accused of another —an equally



idealized abstraction from real persons and true reality (a composite of matter and spirit). Of the two, the Marxian abstraction is more dangerously illusory because of Marx's more radical intention to «transform» the world through revolution. Hegel may have been content to work in the inner depths of his mind, but Marx was determined to take from his mind a means to force history and politics into specific channels that would conform with his revolutionary purpose.

Marx took the manifold complexity and diversity of social and economic reality, for example, and reduced it by the force of his mind into two antithetical «classes.» By viewing man and social history in terms of these classes he necessarily distorted reality in the interest of preserving the logical «laws» of the dialectic. In *Toward the Critique of Hegel's Philosophy of Right* Marx had written: «As philosophy finds its *material* weapons in the proletariat, the proletariat finds its *intellectual* weapons in philosophy.» In other words, what must be forged for revolutionary purposes is the dialectical weapon; in this respect, Hegel's contribution to Marxism was invaluable.

Marx acknowledged his debt to Hegel's logic even while he condemned Hegel's incorrect (i. e. non-material) way of applying it. In the «Critique of Hegelian Dialectic and Philosophy in General» section of the *Economic and Philosophic Manuscripts* of 1844, we read: «Hegel... found only the *abstract, logical, speculative* expression of the movement of history, not the *actual* history of man as a given subject». And in the «Phenomenology» section of the same *Manuscripts* Marx added: «The great thing in Hegel's *Phenomenology* and its final result —the dialectic of negativity as the moving and productive principle— is simply that Hegel grasps the self-development of man as a process... Hegel's positive achievement here (in his speculative logic) is his view that *determinate concepts*, universal *fixed thought-forms* independent of nature and spirit, are a necessary result of the universal alienation of human nature and human thought.

It is the delirium of being plugged into and swept along by a dialectical inevitability that gives to Marx's materialism its potency as a revolutionary ideology. It gives to «the revolution» both a point to aim at and a justification for all interme-

diate steps (whatever the actual toll of human casualties). It also provides a contrast by which all contemporary events and regimes (with their legal and other institutions) can be criticized and condemned as counter-revolutionary or historically retrograde.

Specifically in the field of jurisprudence, Marx did furnish (in the *Critique of Hegel's Philosophy of the State*) a criticism of Hegel's «speculative philosophy» of law which allowed «the constitution to create the people» and made «man exist for the law.» But Marx's revolutionary preoccupation kept him from offering any positive teaching. Constitutions and laws —now or at any time— could have no positive value, for they are necessarily linked to moments in history which must be swept away when their material basis is no longer in tune with the dialectical advance.

Marxism is a product of Rousseau and Hegel, with assistance from Feuerbach's materialism. By itself, this statement is an over-simplification, and yet it contains an explanatory truth: Marx is a clear witness of how French romanticism and German idealism were able to bear fruits of revolutionary fervor. In Marx the earlier subjectivization and idealization of law is brought to the extreme point where law itself can be dismissed altogether as a stabilizing element in human life, addressing in itself a permanent social need.

I have tried to present very briefly the underlying reasons why considerations of justice could play no part in Marx's critique of capital (as Robert Tucker observed in his 1970 study of Marx's thought). His apparent indignation at the miseries of workers —which were real enough and continue so in many places— cannot be traced to the moral concerns we find in traditional philosophers and social critics. Nor could Marx look to legal institutions for remedies. For he viewed that suffering and its oppressive causes through the ideological lens of his own creation which superimposed a vision of a world utterly transformed.

More recently Allen E. Buchanan, in *Marx and Justice* (1982) has shown persuasively —for the same reasons, I believe— that Marx employs no juridical concepts of any kind, whether by way of explanation or critique. In other words, con-



siderations of justice and rights play no part in Marx's treatment of «capitalist» and «socialist» society, in his condemnation of the former and his anticipation of the latter.

We come, then, to the conclusion that Marxism, when understood as Marx himself understood it, cuts out the heart of social and political theories and policies that rely on juridical conceptions.

III: REFERENCES

- Fabro, Cornelio, *God in Exile* (mainly in Part V);
Wetter, Gustav, *Dialectical Materialism* (I, i-ii);
Maritain, Jacques, *Moral Philosophy* (chapter 10); *Integral Humanism* (chapter 2);
Voegelin, Eric, *From Enlightenment to Revolution* (10, 11);
Niemeyer, Gerhart, *Between Nothingness and Paradise* (III);
Friedrich, Carl, *The Philosophy of Law in Historical Perspective* (chapter 16).