

Lecture on Marx's critique of rights

Sociology of Human Rights

Lecture 2 Spring Term 2010

There is much confusion in the literature over the nature of Marx's critique of rights in general and the rights of man in particular. In this lecture I may well make more clouds than I clear, but my aim is to confront the dogma, often accepted for different reasons by Marxists and anti-Marxists alike, that Marx was some kind of legal nihilist who had no time for the idea of rights and basically saw the rights of man as an ideology of class rule (spreading among the exploited classes the illusion that they were free) and as a technique of class power (individuating and neutering the collective organisation of workers). Among current human rights activists and theoreticians this construction of Marx has sometimes led to the erroneous judgment that Marx is of little or no value to the student of human rights. I want to suggest that it is important to revisit Marx's contribution to the critique of the rights of man not just out of historical accuracy but also to recover for ourselves a radicalism that takes human rights seriously and places the idea of right at the centre of its concerns.

The young Marx's critique of rights

The tenor of Marx's own contribution to the understanding and critique of rights can be gleaned from his early writings as a young man when he attacked Prussian censorship laws in the name of the freedom of the press. He argued that censorship laws, in granting power to the censor, make the bureaucratic part of the state too powerful at the expense of the state as a whole. He maintained that a free press is vital because it is the medium through which the public spirit expresses itself whilst censorship can only create an 'oligarchy of the spirit' and act as a 'preventative measure of the police against freedom'. Censorship, he wrote, asks 'unlimited trust in the officialdom' but flows from 'unlimited distrust of all non-officials'.

In a similar vein Marx defended the traditional rights of the poor to gather wood from the forests against laws which were brought in by the Prussian state to turn dead wood into the privileged property of the landowners (Junkers). He argued that these theft laws (which were similar in content to the Black Act in England) corrupted the idea of the state itself by

privileging the private interests of the landowners over the idea of right and the freedom of all.

In his discussion of the Prussian state itself Marx attacked the privileged status of the landowners – especially in the institutions of the unelected Upper House of Parliament and the inherited monarchy - within the state as a whole. Whilst the rights of man marked the transition from a state based on privilege to a state based on the people, these institutions ensconced the power of landed property over the state. Marx maintained that the principle behind the Prussian ‘chamber of deputies’ (our House of Commons) was the ‘political constitution of civil society in the modern sense’, whilst the ‘chamber of peers’ (our House of Lords) ‘belongs to a constitution in the sense of the old estates’.

Marx also attacked the power of the Prussian bureaucracy which, he argued, passed itself off as a ‘universal class’ whose own interest was the interest of the state as a whole, but which was in reality a particular interest which held the state ‘in thrall as its private property’. This so-called universal spirit of the bureaucracy, Marx maintained, was in fact based on secrecy, hierarchy and corporate solidarity against the public. What was most distinctive about the Prussian sense of ‘public interest’ was that it was reserved for the officialdom and the real public had no involvement in it. Marx contrasted the backward Prussian constitution unfavourably to the French ‘rights of man’. He wrote:

‘The legislature made the French Revolution; in fact whenever it has emerged as the dominant factor it has brought forth great, organic universal revolutions.... In contrast to this, the executive has made all the petty revolutions, the retrograde revolutions, the reactions...’

Whilst the French attacked an antiquated constitution in the name of a new constitution, the Prussians fought against the idea of the constitution itself.

Now this defence of right against privilege in Marx’s early writings has not often been noticed in commentaries on Marx and when it has been noticed, it has been put down to a democratic youthfulness that Marx soon abandoned. I want to argue by contrast that this commitment to a philosophy of right was never abandoned by Marx – that it always informed his writings.

Marx on the Jewish Question

Let us turn to another text, written shortly after these spirited attacks on Prussian authoritarianism, on the Jewish question. Marx's essays 'On the Jewish Question', published in 1843 and 1844 were a response to two studies on the Jewish Question by a radical philosopher and friend of Marx, Bruno Bauer. The so-called Jewish Question was whether Jews in Germany should be emancipated, that is, granted equal civil and political rights, as they had been in France. Bruno Bauer was opposed to Jewish emancipation. He maintained that for Jews to become Prussian citizens on an equal footing with other citizens they first had to surrender their Judaism; that is, they had to convert. For Bauer there was something about Judaism that made Jews unfit to be full citizens. Their unfitness for citizenship had to do with their backwardness (their incapacity to evolve culturally or morally), their exclusivity and claims to privileged treatment (Jews, Bauer wrote, prided themselves on being the chosen people), their indifference to the happiness or freedom of other people, and their financial power over Europe. If 'the Jews' were hated in the Christian world, Bauer wrote, then they provoked this mistreatment since they had no interest in the progress of humanity at large and derived no universal moral principles from their own suffering.

Marx's opposition to Bauer was clearly stated: 'we do not tell the Jews that they cannot be emancipated politically without emancipating themselves from Judaism, which is what Bauer tells them'. He argued that whilst Bauer accepted the Prussian state as it was and confined himself to a (woefully misguided) criticism of the Jewish religion, he ignored the real substance of 'the Jewish question' which was political emancipation. Contrasting Prussia to France and America, where Jews were fully emancipated, Marx maintained that 'states which cannot yet politically emancipate the Jews must be rated by comparison with the perfected political state and shown to be under-developed'. It was not only the case that the so-called 'Christian state', as Bauer called Prussia, *could* emancipate the Jews but in the more advanced cases it had emancipated them in fact (HF 137-138).

The source of Bauer's confusion over the Jewish Question was that he had no understanding of political emancipation. When the Declaration of the Rights of Man and Citizen upheld freedom of religion, that is, the right to be religious or not in any way one wishes, this had nothing to do with freedom from religion. Rather religion became a private right and the state a secular state.

The political emancipation of the Jew, the Christian, the religious man in general is the emancipation *of the state* from Judaism, from Christianity, from religion in general. The state emancipates itself from religion by emancipating itself from *state* religion.

The rights of man turned religious distinctions into non-political matters. It abolished them as politically salient distinctions. Similarly, freedom of property did not mean the abolition of private property but the abolition of the privileges associated with landed property. It marked 'the contradiction between the modern representative state and the old state of privileges' (HF 143). For Marx, Bauer's confusion lay in his inability to recognise the significance of legal and political reform, since all that mattered to him was social conditions. Bauer rejected the declaration of the rights of man and citizen as the illusion of the masses.

Whilst Marx was not for Judaism or for any religion, he opposed absolutely the attempt to abolish religion by force from above. He wrote for example of the futility of the state trying to abolish religion by political means:

when the political state... comes violently into being out of civil society... the state can ... proceed to the abolition of religion, to the destruction of religion, but only in the same way as it proceeds to ... the abolition of life (that is, by the guillotine). At those times when it is particularly self-confident, political life attempts to suppress its *presupposition*, civil society... and to constitute *itself* as the real, harmonious species life of man. But ... the political drama necessarily ends up with the restoration of religion, private property and all the elements of civil society...' (MEW 222)

For Marx rights of man and citizen were a 'great step forward'. The private right to be religious (or not) in any way one wishes is the necessary first step toward freedom from religion as such. Freedom from religion presupposes freedom of religion. By emancipating the state from religion, it represented the first step in 'turn<ing> the affairs of the state into the affairs of the people'. Nothing could be further from this argument than the notion that Marx was a rights-nihilist, an antinomian who sought to trash the very idea of rights.

However, when Marx's essays on the Jewish Question are cited in the literature, a very different impression is usually offered. First, a passage is cited in which the idea of rights is associated with 'egoistic man', that is, with the bourgeois subject:

‘none of the so-called rights of man goes beyond egoistic man, man as a member of civil society, namely an individual withdrawn into himself, his private interest and his private desires.... separated from the community. The practical application of the right of man to freedom is the right of man to private property.

Second, a passage is cited in which political emancipation is associated with the emancipation of private property from all political constraints:

The perfection of the idealism of the state was at the same time the perfection of the materialism of civil society. The shaking off of the political yoke was at the same time the shaking off of the bonds which held in check the egoistic spirit of civil society. Political emancipation was at the same time the emancipation of civil society from politics, from even the appearance of a universal content.

The rights of man and citizen, in other words gave free rein in civil society to egoism, competition, the treatment of our fellow human beings as means to our own private ends. In short, ‘man was not freed from private property, he received the freedom of property’. Third, passages are cited in which Marx contrasts the limits of political emancipation to social or human emancipation. If political emancipation was a great step forward, it falls short of human emancipation:

The fact that you can be emancipated politically without completely and absolutely renouncing Judaism shows that political emancipation is by itself not human emancipation.

The rights of man and citizen seem to pale into insignificance next to social revolution.

What this shows is the danger of isolating quotations from their larger context and reading a text in accordance with one’s image of what Marx argued rather than allowing the text to shatter our preconceptions. The contrast Marx emphasised between *political* and *human* emancipation was designed not to subsume one to the other but to reveal the error behind Bauer’s proto-antisemitic argument. The grammar of Marx’s argument was this: if none of the so-called rights of man goes beyond egoistic man, then why pick on the Jews for exclusion on the grounds of their egoism? If political emancipation is at the same time the emancipation of civil society from political constraints, then why pick on the Jews for thinking only of their own interests. If political emancipation falls short of social or human emancipation, then why expect the Jews to emancipate themselves as human beings before

they can be granted political emancipation. The key to Marx's argument was to rebut the radicalism Bauer espoused: a radicalism that not only denied the rights of Jews but at once trashed the rights of man and citizen as such. What Marx stood for in the *Jewish Question* as in his earlier writings more generally was a philosophy of right. What he stood against was a spiritless radicalism that revealed its inhumanity not only through its hostility to Jews but also through its hostility to the idea of right.

I can hear one more objection to this reading of Marx. It is that he himself ultimately shared the view that Judaism is intimately linked with money, self-interest, profit, etc. and that the emancipation of Jews must mean the emancipation of humanity from Judaism. The passage that is cited comes from Marx's second essay.

What is the secular basis of Judaism? Practical need, self-interest. What is the secular cult of the Jew? Haggling. What is his secular God? Money. Well then! Emancipation from haggling and from money, i.e. from practical, real Judaism, would be the same as the self-emancipation of our age.... The emancipation of the Jews is in the last analysis the emancipation of humankind from Judaism. (MEW pp. 236-7)

The passage looks as if it is replete with anti-Jewish stereotypes, but the deeply ironic grammar of this passage should now be apparent. Whilst Bauer represented 'the Jew' as 'moneymen', in the bourgeois world 'money has become a world power'. Whilst Bauer imagined that money was 'the practical spirit of the Jews', money has become 'the practical spirit of the Christian peoples'. If money is the 'jealous god of Israel' before whom no other god may stand, as Bauer would have it, then the god of the Jews has become the god of the world. In short, if 'the Jews' are identified with money, self-interest, exclusivity, secrecy, financial power and all the rest, Marx turned the argument on its head: "The Jew, who is a particular member of civil society, is only the particular manifestation of the Judaism of civil society' (MEW 238).

Bauer illustrates what Julius Carlebach called 'the radical critique of Judaism'. Apparently he went on to promote the idea of shipping German Jews to 'the land of Canaan' and to represent them as 'white Negroes' incapable of conversion to Christianity (*Radical Critique of Judaism*, p.147). Marx not only repudiated Bauer's proto-antisemitism, he also sought to uncover the roots of his folly in his devaluation of human rights.

The mature Marx and the critique of human rights

By the mature Marx I refer to his work on *Capital* and his preparatory work on the *Grundrisse*. In these works Marx developed a critique of political economy in the sense of exploring what kind of society gives rise to an independent economic sphere of life in which everything has its price, money rules over the satisfaction of human needs, and wealth takes the form of capital. Marx offered a social critique of economic forms and not just an internal critique of one economic theory by another. His core argument was social relations of production constitute the base of society on which economic forms like value, money and capital are founded.

The additional hypothesis at the margins of Marx's work is that the same social relations of production that transform products of human labour into commodities, money and capital also transform producers into bearers of rights and legal subjects. If we pull together the fragmented pieces of Marx's argument, we find something like this.

Marx argued that the society that gives rise to the idea of rights is the same as that which gives rise to the commodity form. They are two sides of the same medal. It is a society based on production by *independent* producers whose contact with each other is mediated through the exchange of products on the market. These producers are formally *free* to produce what and how much they wish. They are formally *equal* in that no producer can force others to produce against their will or expropriate their products against their will. They are *self-interested* in that they are all entitled to pursue their own private interests regardless of what others think or do. Their contact with other producers takes the form of free and equal exchanges in which individuals exchange their property in return for the property of another and this exchange of unneeded things in return for useful things appears to be done for the *mutual benefit* of each party.

Exchange relations appear to be formed among free and equal property owners who enter a *voluntary contract* in pursuit of their own self-interest. Marx maintains that in exchange lies the clue to all modern conceptions of freedom and equal right.

Although individual A feels a need for the commodity of individual B, he does not appropriate it by force, nor vice versa, but rather recognise one another reciprocally as proprietors, as persons whose will penetrates their commodities. Accordingly, the juridical moment of the *Person* enters here... all inherent contradictions of bourgeois

society appear extinguished ... and bourgeois democracy even more than the bourgeois economists takes refuge in this aspect. (*Gr*:243, 251)

The parties to the exchange must place themselves in relation to one another as *persons* whose will resides in those objects and must behave in such a way that each does not appropriate the commodity of the other and alienate his own, except through an act to which both parties consent. Marx characterised this sphere of commodity exchange as 'a very Eden of the innate rights of man' – the realm of Freedom, Equality, Property and Bentham: 'Freedom because both buyer and seller of a commodity ... are determined only by their own free will.... Equality because each enters into relations with the other as with a simple owner of commodities and they exchange equivalent with equivalent. Property because each disposes only what is his own. And Bentham because each looks only to his own advantage. The only force bringing them together is the selfishness, the gain and the private interest of each. (*Capital* 1: 280)

Marx argued, however, that this idealised rendition of exchange relations make no reference to the circumstances in which individuals seek or rather are compelled to exchange. Instead, exchange simply appears as a self-sufficient relation, divorced from any particular relations of production. He argued that the organisation of production *forces* producers to exchange their products, since individuals cannot survive except by exchanging the products of their labour. Whilst the form of their interconnections with other commodity producers is that of a contract between two private parties based on the exchange of their property, the content, that is, the terms on which contracts are made, are beyond the will of individuals and become a power over them. Individuals appear independent only if we abstract them from the social conditions of their existence. 'Equal right', Marx argued, 'is a right of inequality in its content like every right' (Marx 1968: 320).

Marx went on to analyse how beneath the form of equal right the content changes with changes in relations of production. He looked at four progressive stages in the development of capitalist society: barter; generalised commodity production and exchange; capitalist production and exchange; the reproduction of capitalist relations of production.

a. Where commodity production is sporadic or peripheral and exchange takes the form of an occasional barter between communities, the terms of the exchange are determined by the producers themselves and each party has a right to defend its property by force of arms.

b. With the generalisation of commodity production, competition between producers ensures that commodities exchange at or around their values, that is, according to the 'socially necessary labour time' that enters their production. Since there is no guarantee that the actual labour-time taken by the producer corresponds with socially necessary labour-time for the goods in question, equal right in these circumstances entails that some producers exchange their commodities for more than their value and some for less. This inequality leads to the impoverishment of some and enrichment of others. Marx puts the matter ironically: 'if one grows impoverished and the other grows wealthier then this is of their own free will.' Under these circumstances producers may have to be 'forced to be free', that is, to recognise the rules governing the exchange of things.

c. The development of capitalism gives rise to a new relation between capitalists and wage-labourers. This capital-labour relation continues to take the form of free and equal exchanges but the content of this exchange changes. On the surface the relation between capitalist and worker is a simple exchange: 'a worker who buys a loaf of bread and a millionaire who does the same appear in this act as simple buyers ... all other aspects are extinguished' (*Gr* 251). The exchange between capitalist and worker *appears* like any other exchange, but is in fact distinguished by the entry into the market of a new commodity, labour power, whose historical presupposition lies in the 'double freedom' of individuals – freedom to own their body, mind and capacity to work, and freedom from access to means of subsistence or production other than their labour-power. The buyer of labour-power is no longer a simple buyer who wishes to use it as an object of personal consumption but a capitalist who uses it for the production of surplus value. The secret behind the exchange between capital and labour is that workers receive in the form of wages a value equivalent to the value of their labour-power (i.e. the labour time socially necessary for the reproduction of the labourer) and not equivalent to the value of the products they produce on behalf of the capitalist. In this context equal right is the form given to the expropriation of unpaid surplus labour.

d. Looked at individually, the exchange between capital and labour consists of the expropriation of part of the product of the workers' labour by the capitalist. The capitalist says that the capital which he exchanges with labour-power is his own property - perhaps because he worked hard for it or because it is the product of his own earlier labour. This may be true of primitive accumulation, though it ignores the role of robbery, terror and international pillage, but after several cycles of production the entire capital owned by the

capitalist will consist only of capitalised surplus value, that is, of the product of the labour of workers expropriated by the capitalist and turned into capital. Looked at collectively, it now appears that the exchange between capital and labour is no exchange at all, since the total capital is but a transmuted form of the expropriated product of workers from a previous period. On the surface, free and equal exchange carries on. Beneath the surface, however, there is the appropriation of the property of one class by another without equivalent. Marx put it thus:

‘Originally, the rights of property seemed to us to be grounded in man’s own labour... Now, however, property turns out to be the right on the part of the capitalist to appropriate the unpaid labour of others or its product and the impossibility of the worker of appropriating his own product. The separation of property from labour thus becomes the necessary consequence of a law that apparently originated in their identity.’ (*Capital 1*: 729)

The conclusion Marx reaches is that the law which presupposes that we own the products of our labour ‘turns... through a necessary dialectic into an absolute divorce of property and appropriation of alien labour without exchange’ (*Gr*: 514). The argument reaches its climax in the conclusion that in the context of an enduring capitalist society rights are a ‘mere semblance’, a ‘mere form’ alien to the content of the transaction between capital and labour.

Marx’s social theory of right was developed in fragments, but its core proposition (as I read it) is that the same social relations of production which give rise to the ‘value form’ of the products of human labour also give rise to the idea of having rights among the producers themselves. Put at its simplest, the imagery goes something like this:

Forms of the subject: Right - law - state

Social relations of production SCP - GCP - CP

Forms of the object Value - money - capital

(SCP = simple commodity production; GCP = generalised commodity production; CP = capitalist production)

If we take this account seriously, then we see that Marx offers us something very important for our understanding of human rights: not a new kind of natural law theory or a new kind of

legal positivism but a social theory of rights as the product of the development of capitalist relations of production.

Marx saw the development of rights as a great step forward compared with pre-capitalist forms of property. He maintained that in all societies there must be some form of property but that the right to private property only arises in the modern world. He maintained, for example, that in the ancient world of Greece and Rome the appropriation of land, tools, raw materials, etc. is done on the basis of the individual's existence as a member of the community: 'an isolated individual could no more have property in land and soil than he could speak . . . the individual can never appear here in the dot-like isolation in which he appears as mere free worker.' (*Gr*: 485). Marx argued that the modern idea of private property, that individuals have a right to own and exchange the products of their own labour, would have been alien to this world where the aim of production was the good citizen rather than wealth. Marx commented that the ancient world may appear 'lofty' in contrast to the modern world where production appears as the aim of mankind and wealth as the aim of production. However, Marx defended the ethos of the modern world: what is wealth, he asked, other than 'the universality of individual needs, capacities, pleasures, productive forces ... the full development of human mastery over the forces of nature, those of so-called nature as well as humanity's own nature?' (*Gr*:488). And he critiqued the limitations of antiquity. In antiquity those who did not belong to the community appear among the 'objective conditions of production' as slaves and in Roman law were distinguished 'only as *instrumentum vocale* from an animal which is *instrumentum semi-vocale* and from a lifeless implement which is *instrumentum mutum*' (*Capital* 1: 303). The loftiness of the ancient world did not dent Marx's appreciation of the rights granted by the modern world.

Why then does it often appear that Marx's critique of rights in his mature works is nihilist and negative? It is because Marx's focus on capital gives the impression that the *economic* forms of capitalist society (commodities, money, capital) are *real* whilst non-economic forms (rights, law, the state) are epiphenomenal, inessential, even illusory. This one-sided view of the capitalist social relations is obviously unconvincing to those who recognise that modernity also conveys ideas of personality, free will, rights, romantic love, moral agency, legal equality, etc. The individual is after all a moral, juridical, political and erotic subject as well as a bearer of economic forces. The difficulty Marx faced was how to move from the circuits of capital to capitalism as a whole. There is a sense in which Marx was still, to use a

phrase borrowed from Edward Thompson, 'trapped within the circuits of capital and sucked into the 'theoretical whirlpool of Political Economy' whose categories were interrogated and re-interrogated but whose premise, the possibility of isolating the economic from other fields of social study, was left intact (Thompson 1978:355).

Marx was aware of the limitations of a critique of rights in which 'the connection of political economy with the state, law, morality, civil life, etc. *is only dealt with in so far as Political Economy itself professes to deal with these subjects*'. He never abandoned the ambitious life-project of his youth: to 'present one after another a critique of law, of morality, politics, etc. ... and then finally ... to show the connection of the whole'. Marx's failure, however, to develop a critique of the legal forms of capitalist society akin to his critique of its economic forms not surprisingly led him to construct the value form as a 'real appearance' and idea of rights as a 'mere semblance'. If the surface form of an object is as real as its content, so the surface form of equal rights is as real as its unequal social content. Where does this leave us?