

2. Marx's critique of classical jurisprudence

Democratizing the rational state

Taken as a whole, theorists of classical jurisprudence demolished traditional conceptions of natural law but in their place naturalized positive law. They demonstrated the human origins of law, but concluded that it is in the nature of humans to 'posit' law. They subjected all traditional institutions to the test of reason, but presented bourgeois private property, law and state as the embodiment of reason. They attacked the isolation of reason from human history, but projected the achievements of human history as the realization of reason.

Marx began from here. He applauded the 'advance' made by classical jurisprudence, but saw it as incomplete. In his criticism of classical jurisprudence, Marx did not seek to return to the dogmas of traditional natural law theory – though occasionally he slipped back into this mode – but rather to radicalize the break already achieved by classical jurisprudence. Marx's own critique of liberalism did not come about in a flash of inspiration but as the organic outcome of a lifetime's theoretical and political activities: on the one hand there was no 'fundamental rupture' between early and late Marx, nor, on the other, did Marx have everything worked out in his early works. Both of these 'extreme' versions (put forward by Althusser and Colletti respectively) have won considerable attention, but both obscure the dynamic character of Marx's confrontation with liberalism and the deepening of his critique as time went on: the former tears Marx away from his liberal roots, while the latter dissolves Marx into radical liberalism. Marx's point of departure was classical jurisprudence and his journey away from it was accomplished only in stages, without a preconceived destination.

At first Marx accepted Hegel's notion of the 'rational state' as

an ideal against which to measure existing states. The task of the rational state appeared to Marx in the same way as it did to Hegel, as 'the realization of natural freedom', the synthesis of the universal will of the whole and the particular will of every individual. But he parted from Hegel's way of embodying the rational state. The nub of his criticism was that the Prussian constitutional monarchy – which appeared in Hegel's eyes to be close to the real embodiment of the rational state – failed entirely so to do.

In his critique of the censorship laws (1842) Marx argued that they made the bureaucracy – to which was granted the power to censor – too powerful, the result being that 'not so much the whole state, as part of the state, the "government", carries on a real political life.' How can the people be free when 'freedom of the press is the privilege of a few people' rather than 'the privilege of the human mind'? The free press is the medium through which the 'public spirit' may express itself. Censorship is the means by which the government substitutes its own private will for the universal will of the people; in place of the public spirit it creates an 'oligarchy of the spirit'; in place of freedom it is 'a preventative measure of the police against freedom'. It asks 'unlimited trust in the officialdom' but flows from 'unlimited distrust of all non-officials'. It means that the government 'hears only its own voice', which it mistakes for the voice of the people, while the actual voice of the people is suppressed by officialdom. It justifies itself by pointing to the imperfection of human beings, whom the state needs to save from themselves; but its solution is to fall on one's knees before certain privileged individuals. For Marx it is only the aggregate, and not a privileged official, that can remedy the imperfection of the individual: 'true censorship', he argues, 'is criticism', while official censorship is 'criticism as a government monopoly'. The rational state, in short, must guarantee the right of the free press, if the private will of the 'government' is not to masquerade as the universal will of the body politic as a whole. Marx's practical alternative at this stage is 'the rule of law. A censorship law he describes as an 'impossibility', since what is legal must be free. While a law can punish me only for my acts, the censor punishes me for my opinions; while a law is based on objective norms, the discretion of the censor is of indefinite scope; while the law is open and public, the censor works secretly and in

the dark. In opposition to the power of the bureaucracy, Marx pointed to the rule of law as the embodiment of the rational state. The worst thing about a censorship law is that people begin to think that 'what is lawless is free' and that 'what is legal is unfree'.¹

Similar themes ran through Marx's critique of the laws concerning the theft of wood (1843). These laws turned the 'traditional rights' of the poor to gather dead wood from forests into serious criminal offences and were passed at the behest of the landowners. Marx attacked these laws as an invasion by private interests into the universal sphere of the state. They turned the forest owner into the representative of the state – his warden was at once policeman, prosecutor, judge and punisher – and hence the state into an instrument of landed property.

These theft laws corrupt the 'state idea' itself by subordinating the general interest to the particular and elevating the freedom of the landowner over the freedom of all others. Marx formulated his indictment in terms of the ideals of rational law: 'private interest', he declared, 'has overruled right', while rational law 'is the conscious expression of the will of the people and therefore is made with the will of the people and by it'.²

In these early writings Marx used a Hegelian framework to break from Hegel and to offer a far more democratic rendering of what constitutes rational law and the rational state. The target of his critique was on the one hand the corruption of the universal will of the people by private interests, and on the other the substitution of the will of the government for the universal will of the people. In his critique of Hegel's *Philosophy of Right*, Marx followed through on these ideas in a more systematic way, attacking the methodological basis on which Hegel drew his conclusions.

Against Hegel's image of the rational state

Marx argued that Hegel's deduction of the Prussian constitutional monarchy from the idea of the universal was spurious. What he really did, Marx said, was to describe a particular state of affairs (like hereditary monarchy, a reformed bureaucracy, a bicameral parliament, the incorporation of the judiciary within the executive) and assign to it the logical attributes of universality. In this way Hegel idealized empirical reality, turning the existing state into the

embodiment of the universal: 'empirical reality is accepted as it is; it is even declared to be rational.' The deception practised by Hegel's idealism was to invert the relationship between subject and predicate. Instead of saying that the rational state is universal, Hegel says that universality expresses itself in the form of the state. The universal becomes the subject, while the actual state appears as its mere predicate. Marx reinstated the true relation between subject and predicate:

Hegel makes the predicates autonomous but hides this by separating them from their real autonomy, viz, their subjects. The real subject subsequently appears as a result whereas the correct approach would be to start with the real subject and then consider its objectification. The mystical substance therefore becomes the real subject, while the actual subject appears as something else, namely as a moment of the mystical substance.³

The point of departure, Marx argued, should not be the idea of universality but the actual state. The critical task is to investigate how universal are the specific forms of organization of the existing state; Hegel's sole concern, by contrast, 'is simply to rediscover "the idea" in every sphere of the state that he depicted'.⁴ Hegel's method was uncritical: 'it is very easy to fasten on what lies nearest at hand and prove that it is an actual moment of the idea.' For example, from the general need for an executive power to apply universal norms to particular cases, Hegel purports to deduce the rationality of the particular Prussian bureaucracy. But the deduction is false, since it proves nothing about the appropriateness of the latter: just as there is more than one way of skinning a cat, so too there is more than one way of exercising executive power: 'an explanation which fails to supply the differentia is no explanation at all. . . . Hegel uncritically accepts this inappropriate form [the bureaucracy] as a fully adequate reality.' Granted that some means must be found for applying general rules to particular circumstances, the question that Marx raises is the adequacy of the particular means employed in Hegel's version of the Prussian state. The same argument applied to Hegel's idealization of existing forms of representation, of parliament, of law and of monarchy: in each case the point is to begin with the real institution and assess its universality, not to begin with the idea of

universality and spuriously deduce these institutions from it.

The question Marx pursued in his *Critique of the Philosophy of Right* was how universal the actual state was; it was not yet how the actual state as it was had come into being: the actual state was still a starting point for him rather than something to be explained. His method allowed him to criticize the Prussian state's claim – as voiced by Hegel – to embody the universal, but not to explain the emergence of the Prussian state itself. He retained Hegel's idea that the 'essence' of the state lay in its universality and separation from particular interests and criticized only the identification of the Prussian state with the essence of the state. This way the meaning of his comment that Hegel ought not to be blamed 'because he describes the essence of the modern state as it is but rather because he presents what is as the essence of the state.'⁵ In other words Marx was still struggling with Hegel, impatient with his conservatism, which projected Prussian authority as the essence of the state, but committed none the less to the notion that the essence of the state lies in its universality. The point for Marx was to create a genuinely universal state and not pass off the shoddy material of the Prussian state as if it were the genuine article.

The core of Marx's critique was twofold: he attacked the intrusion of private interest into the running of the state, which Hegel sanctified under the illusion that it was the state that was intruding into private interests; and he attacked the alienation of the state from the actual will of actual people, which Hegel sanctified as the realization of the rational will of rational people. Either way, through the subordination of the state to private interests or through the elevation of the state as a special power above the people, the universality of the state was corrupted. Hegel's ideal state showed symptoms of both.

With respect to the intrusion of private interests into the state, Marx tore into the privileged political status which Hegel reserved for landed property, especially in the form of an unelected Upper House which was to comprise members of this estate alone and to create 'a surer guarantee of ripeness of decision' and 'less chance of the Estate being in opposition to the executive'. What this privilege really meant, Marx argued, was not the power of the state over private property but the power of 'true' private property – i.e. 'landed property' – over the state. Further, the selection of the

monarch from the landed estate by means of primogeniture meant that landed property wielded its private power at the very apex of the state. How, Marx asks, can this blatant instance of class privilege be rationally justified as the embodiment of the universal will? How indeed? This is what Marx referred to when he wrote that 'the political constitution at its highest summit is then the constitution of private property. The highest political opinion is the opinion of private property.'⁶ For Hegel, he said, 'independent private property', which means to say landed property, was 'not only the support of the constitution but the constitution itself'. This was Marx's way, not of demonstrating that bourgeois private property is the foundation of a state bereft of privileges, but of attacking a state which still rested on the privileges of landed property. At this stage of his development, Marx made no effort to incorporate an overall critique of private property into his critique of the state.

It was class privilege which Marx objected to here, not the existence of class itself; monarchy and a House of Lords were the direct expression of such privilege:

The chamber of deputies and the chamber of peers . . . are not different manifestations of the same principle. Instead they spring from two essentially different principles and social conditions. The chamber of deputies is the political constitution of civil society in the modern sense while the chamber of peers belongs to a constitution in the sense of the old estates.⁷

The 'old estates' refer to the traditional order, when the private power of landlords was fused with their political power as agents of the state. Hegel's insertion of a House of Lords into his rational state was a guarantee against the lower chamber 'as the political existence of empirical universality'. It was not parliament as such to which Marx objected but to its specific bicameral form in Hegel's system and in the Prussian state.

The other wing of Marx's attack was directed against the independence of Hegel's ideal state from the will of the people as a whole, and thus the corruption of the state as a private interest of its own. The separation of the state from the people was built into Hegel's theory, since it appeared that the interest of the state was the public interest: 'the abstract reality of the state consists in the fact that its end is the universal interest as such.' The 'formalism'

of the state lies in the semblance that the general will is embodied in the state whether or not the state accords with the particular 'will of all'. In Hegel and in the modern state, everything appears upside down: empirical consciousness – what people really think, feel and what – is subordinated to rational consciousness, i.e. what they would think, feel and want if they were rational. The state acts in the public interest but keeps the actual public at arm's length:

As long as the state-mind mystically haunted the ante-chambers, it was treated with obsequious courtesy. Where we meet it in person, it is scarcely heeded . . . 'matters of universal concern' already exist as the business of the state; they exist without really being matters of *universal* concern; they are in fact anything but that for they are of no concern to *civil society* . . . If they now really enter public consciousness and achieve 'empirical universality', this is purely formal . . . The truth of the matter is that the *implicit* 'matters of universal concern; are *not really universal* and the real, empirical matters of universal concern are purely formal . . . The matters of universal concern are now complete without having become the real concern of the people. The real affairs of the people have sprung into being without the interference of the people.⁸

(One may be reminded by these striking passages of a police mentality which declares that it serves the 'public interest' but which fears nothing worse than that the public should appear in person to assert its interests practically rather than formally: by holding the police accountable to themselves or by appropriating the functions of the police. This formalism may be taken to absurdity when the police suppress the empirical will of the real public in order to serve the rational will of the formal public.)

The alienation of Hegel's ideal state from the real will of the people, and its emergence as a particular private interest among other private interests, appear concretely in Hegel's constitutional proposals. The constitution itself, Marx argued, should not be treated apart from its human origins: it is 'not the constitution that creates the people but the people that create the constitution'. Just as the people create one constitution, so too they can dismantle and replace it: 'a constitution produced by past consciousness can become an oppressive shackle for a consciousness which has

progressed.' History reveals the emergence of new constitutions – including the Prussian one – based not on the gradual transformation of old constitutions by constitutional means (though this is not excluded) but on revolution. Hegel's category of 'gradual transition' first of all is historically false, and secondly fails to explain from where the constitution arises. Hegel explicitly elevated the constitution over the men who made it; for Marx, by contrast, 'man is the principle of the constitution.' It is a 'practical illusion' to suppose that the constitution always serves as the real expression of the will of the people. To the question – does the people have the right to make a new constitution? – Marx answers: definitely yes.

Marx's polemic against Hegel's monarchism was based not only on his refutation of hereditary rule but also on his rejection of the notion that the will of the state can be embodied in one person. In Hegel's eyes sovereignty of the people and sovereignty of the monarch were not opposed principles; rather it was through the monarch that the people acquired their being and organization. Marx rejected this identity as a mystique: 'sovereignty of the monarch or sovereignty of the people, that is the question'. Here were 'two completely opposed concepts of sovereignty', while the idea of constitutional monarchy is 'a hybrid thing which is thoroughly self-contradictory'. The constitution purports to reconcile the general interests of the community with the particular interests of the individual; monarchy turns the universal interest into the private property of an individual and subordinates the particular interests of all others to itself. Marx's conclusion is to do away with constitutional monarchy – which is but the expression of a compromise between the old order and the new – and so to abolish monarchy in all its forms.

The bureaucracy passes itself off as the universal class whose end is the end of the state, and this is the image which Hegel mirrors. In reality, Marx argues, 'the identity of the state interest and the particular private aim is established in such a way that the state interest becomes a particular aim opposed to the other private aims.' The bureaucracy identifies its own interests with those of the state as a whole but is in fact based on a definite kind of private property, one which is 'the essence of the state itself'. The bureaucracy 'holds the state in thrall as its private property'; it appears to itself 'as the ultimate purpose of the state' while 'the

purposes of the state are transformed into purposes of offices'.⁹ Beneath the surface of its pretensions, the bureaucracy isolates itself from the real will of the people. It covers its actions in a cloak of secrecy far from the public gaze:

The universal spirit of bureaucracy is secrecy; it is a mystery preserved within itself by means of hierarchy and appearing to the outside world as a self-contained corporation.¹⁰

Power is exercised not by the people from the bottom up but from the top down, breeding an ethos of 'passive obedience', 'worship of authority', and 'rigid principles, views and traditions'.

Hierarchical authority relations, which are intended to prevent individual abuse of power, are themselves the principle abuse:

The few personal sins of the official are as nothing compared to their necessary hierarchical sins. The hierarchy punishes the official when he sins against the hierarchy or commits a sin which is superfluous from the hierarchy's point of view, but it will come to his defence as soon as the hierarchy sins through him.¹¹

As for the individual bureaucrat, his commitment 'to the purpose of the state' soon turns into 'a private purpose, a hunt for promotion, careerism'.¹² Opening the opportunity to join the civil service to every citizen creates an identity between it and the public only in the sense of an 'identity of two hostile armies in which every soldier has the opportunity to join the hostile army'.¹³ What protection, Marx asks, is left for private citizens against the alien power of the bureaucracy? Hegel resorts to the moral uprightness of officials, selected for their character and educated in ethical conduct. But what guarantees do these qualities offer, when the bureaucrats' office provides them with their daily bread; when selection is organized by the hierarchy itself through an examination system that is like a 'masonic initiation'; and when education is organized by the hierarchy itself?

The idea that the state bureaucracy is a universal class is a mirage: its essence lies in its alienation from the people; its solution lies in its 'abolition'; but Marx's alternative was still obscure:

in a true state it is not a question of the possibility of every citizen devoting himself to the universal class as a particular

class but of the capacity of the universal class to be really universal, that is the class of every citizen.

Not too much should be read into this philosophical conclusion, but waiting within it is the idea – which Marx developed later – not that public functions would disappear (e.g. the function of policing would still be necessary) but that they should be performed by the people themselves rather than by an alien force separate from the people.

Marx's critique of representation – that is, of the election of deputies to a popular assembly – differed substantially from that offered by Rousseau. Rousseau attacked the whole idea of representation in the name of the ancient Greek ideal of direct participation by all free members of the state; Marx, by contrast, saw the necessity for representation arising in part out of the size of the modern state and in part out of the abolition of the classical distinction between citizen and slave. Rousseau's observation that 'all as individuals should wish to share in the legislature' proves that 'it is the will of all to be real active members of the state or . . . to give reality to their existence as something political'.¹⁴ Quite right too, Marx echoes. But, first, 'the question of quantity is not without importance'; the whole population cannot be squeezed into an assembly. Second, participation in the assembly is not the only way that one can participate in the state; to take part in the 'general concerns' of the people in any way is to participate in the state. It is only from 'the abstract view of the political state' that the legislature appears as the 'totality of the state'. It is when matters of general concern are alienated from the people in civil society, and when 'this single activity of legislation is the only political activity of civil society' that 'everyone both wishes and ought to share in it at once'.¹⁵ The true state is the body politic as a whole, comprising both the political state and civil society. The problem with Hegel's account was that 'the state exists only as a political state'; in fact political concerns are not limited to the sphere of the political state. Parliament does not possess a monopoly on matters of universal concern.

The real question with respect to Hegel concerned the limits which he imposed on popular representation. What was crucial, Marx argued, 'is the extension and the greatest possible universalization of the vote, i.e. of both active and passive suffrage'. The problem with the form of representation embodied in the Prussian

state and reflected in Hegel's system was how far short it fell from unrestricted active and passive suffrage.

The core of Marx's critique of Hegel's theory of representation was that it elevated deputies over the people who elected them and turned them into an elite insulated from public pressure. Instead of deputies being the servants of the people, mechanisms were instituted to turn them into masters. 'Parliamentary freedom' came to signify the freedom of parliament from the people rather than the freedom of the people through parliament; it was a form of representation whereby deputies, as soon as they are voted into office, are freed from dependence on their electors. Instead of being deputies of civil society, linked to their electors by an instruction, commission or mandate, they become alienated from their electors and responsible only to parliament. Instead of their being accountable to their electors, their representation is grounded 'on trust'. What Hegel presented as a guarantee required by the electors – that deputies be guardians of the general interest rather than representatives of particular interests – 'has been imperceptibly transformed into a *guarantee against* the electors'.¹⁶ Worst of all, the bureaucracy becomes the power which determines the general interest and vets the 'thoughts and opinions' of the deputies to ensure that they are 'its thoughts and opinions'. In this regard Hegel shows how 'thoroughly contaminated by the wretched arrogance of Prussian officialdom' he has become: in effect subordinating the legislature to the executive and identifying the executive with the political state in general. While the political convictions of civil society appear as mere 'opinion' and 'caprice', the deputies are supposed to have 'a better understanding of public affairs'; to have 'knowledge, skill and temperament'; and to have the capacity to reach universal decisions through parliamentary debate. Parliament appears as the people, while the real people outside appear as nothing but a formless mass. In this form of representation Marx finds two basic contradictions: a 'formal' one, in that the deputies of civil society 'should be *deputies* [i.e. tied to their electors by a 'commission'] but they are *not*'; and a 'material' one, in that deputies have authority as representatives of public affairs, 'whereas in reality they represent particular interests'. The elitism inherent in Hegel's conception – which is the fundamental conception of modern parliamentarism – drove Marx to an understandable despair: 'God help us all' was his final,

unanalytic comment before the manuscript broke off.

It is quite misleading to speak of Marx as offering a 'critique of representation'; his attack was aimed not at representation as such but at Hegel's restrictive form of representation. Marx sought, first, to create universal suffrage and an end to all privileges of the landowners; second, to create an 'active suffrage' in which deputies would be accountable to their electorate; and, third, to elevate the assembly – as the sphere of representation – into the totality of the political state. Far from attacking representation, Marx attacked the exclusion of the bureaucracy from representation. It was the narrowness of the sphere to which suffrage applied – legislative but not executive – that Marx found fault with and not the institution of suffrage itself.

The vantage point from which Marx directed his critique of Hegel was that of democracy: democracy was 'the essence of every state constitution', the 'resolved mystery of all constitutions'. By this Marx meant that all forms of law and the state rest not on God, nature, reason or any other alien force above the people, but on the people themselves. If this is the essence of every state, this essence is realized only when democracy in fact becomes the empirical form of state. Democracy is 'the true unity of the universal and the particular'. While Hegel was thus right – in the manner of classical jurisprudence as a whole – to identify the state and the people, he 'proceeds from the state and conceives of man as the subjectivized state'. True democracy 'proceeds from man and conceives the state as objectified man'. In the one 'man exists for the sake of the law' while in the other 'the law exists for the sake of man'. In Hegel, the democratic element is introduced in a form mediated by the abstraction of the rational individual; in true democracy, 'the constitution is founded on its true ground: real human beings and real people'.¹⁷

What was the 'true democracy' which Marx counterposed to Hegel's idealization of the Prussian state? It seems to me that Marx was far less clear on his positive alternative for the future than on his critique of what already existed. Indeed, he was soon to justify this approach in his critiques of utopian communism. In answer to the question 'what is your new world going to look like?', Marx argued for a 'new direction', not another blueprint for a perfectly democratic society but an analysis of that which already exists: 'we do not dogmatically anticipate the world but rather want to find

* the new world through criticism of the old.¹⁸ In his critique of Hegel, however, Marx did not leave the cupboard of the future entirely bare.

Colletti has argued that in his critique of the *Philosophy of Right*, Marx's conception of true democracy meant the withering away of the state in its entirety. There are passages which give this impression, but in general Marx's idea of democracy at this stage presupposed a state. 'Democracy' meant that on the one hand the political state must become a genuine expression of the will of the people, and on the other that it must become 'only . . . a particular form of existence of the people'; that is, it will take care of *some* matters of universal concern, but not *all* matters. The people will mediate some of its public affairs through the state but not all; the state will disappear only 'in so far as the political state as such, the constitution, is no longer *equivalent to the whole*.'¹⁹

Marx did not yet challenge Hegel's and his own identification of the rule of law as the embodiment of universal freedom. Accordingly, he identified the legislature – the body whose function it is to make universal, determinate and public laws – as the 'rational core' of the political state and wrote of it with great approval:

The legislature made the French Revolution; in fact, whenever it has emerged as the dominant factor it has brought forth great, organic, universal revolutions. It has not attacked the constitution as such but only a particular antiquated constitution; this is because the legislature acted as the representative of the people . . . In contrast to this, the executive has made all the petty revolutions, the retrograde revolutions, the reactions. Its revolutions were not fought against an old institution and on behalf of a new one; they were fought against the constitution itself, simply because the executive was the representative of the particular will, subjective caprice, the magical aspect of the will.²⁰

As it currently existed, the legislature 'embodies the energy of the will [of the people] in its theoretical and not its practical form'. The point, Marx argued, learning his lesson from Hegel, was 'not to substitute the will for the law' (i.e. not simply to discard law because it is formal or theoretical) but rather 'to discover and formulate the real law' (my emphasis).²¹

In the functions of the legislature – ruling through law and on the basis of representation – Marx found the proper sphere of authority for the political state. Such was the nature of the radical republicanism – only just beginning to look outward to the democratization of civil society – that Marx counterposed to the Prussian constitutional monarchy as the embodiment of the rational state. His break from the idea of a 'rational state' itself was still far from complete.

Civil society against the state

Marx's essay on the 'Jewish Question' took him one step further in his critique of the state. His immediate purpose was to defend the right of Jews to full political emancipation whether or not they retained their religious commitments; his immediate target was 'left-wing' currents represented by Bruno Bauer, who argued that Jews were not worthy of equal rights until they gave up their Judaism. Marx's political argument was twofold: first, while he was a critic of all religion, he affirmed the right of all to practise religion freely without state interference or discrimination and there was no reason to make an exception of the Jews; second, while the image of Judaism in particular was attached to 'the merchant' and 'the moneymen', in the modern world 'money has become a world power and the practical spirit of the Jews has become the practical spirit of the Christian peoples.'²² In short, the idea that the Jew is fundamentally more rooted in money-making and commerce than the Christian was as erroneous as the idea that the Jew is fundamentally less eligible for human and political rights. Marx's defence of freedom of religion expressed the close association which he drew – in contrast to some other radical and socialist currents – between democracy and socialism. The theoretical significance of this essay goes well beyond its immediate subject matter. The question he posed concerned the meaning of political emancipation: what kind of emancipation, he asked, is involved in the emancipation of the Jews? In answering this, he incorporated for the first time a critique of bourgeois private property into his theory of the state.

Freedom of religion, Marx argued, does not mean freedom from religion but rather the freedom to be religious in whatever way one likes: no religion is to be suppressed by the state and none to be

privileged. The liberal critique of religion was a critique of the power of the church over the state – either in the Catholic form of a competing authority or in the Protestant form of uniting its authority with that of the state – but it was not a critique of religion as such:

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 . . . A state can have emancipated itself from religion even if the overwhelming majority of the population is still religious . . . Political emancipation from religion is not complete and consistent emancipation from religion . . . political emancipation allows religion – but not privileged religion – to continue in existence . . . The right to be religious in whatever way one likes is expressly enumerated among the rights of man.²³

Since Marx, following on from Feuerbach, saw that religion is a form of human alienation in which people worship as their gods what are in fact objects of their own creation, 'complete and consistent emancipation' required emancipation from religion in general. The conclusion he was faced with was that 'political emancipation' falls short of 'human emancipation'.

Marx then extended his analysis from religion to private property. Political emancipation signifies the abolition of privileges for private property but not the abolition of private property; the end of the state recognition of private property but not of its actual existence. Thus the abolition of property qualifications for the right to vote by no means abolishes private property but only its expression in law:

The state as state annuls *private property*, man declares in a *political* way that private property is *abolished*, immediately the *property qualification* is abolished . . . And yet the political annulment of private property does not mean the abolition of private property; on the contrary it even presupposes it.²⁴

Similarly the abolition of *legal* inequality does not abolish inequality in fact:

The state in its own way abolishes distinctions based on birth, rank, education and occupation when it declares birth, rank,

education and occupation to be *non-political* distinctions . . . Nevertheless the state allows private property, education and occupation to *act* and assert their *particular* nature in *their* own way . . . Far from abolishing these *factual* distinctions, the state presupposes them in order to exist.²⁵

The key to the limitations of political emancipation lies in the abstract character of the universality which it establishes. Individuals are equalized in the eyes of the law and the state by means of their abstraction as 'citizens' from all the real differences and distinctions which mark them off in reality from one another. To become a citizen of the state, the human being must be 'divested of his real individual life and filled with an unreal universality'.²⁶ The formalism of the state is the secular analogue to the spiritualism of the Christian god – and finds the ideal philosophical expression in Hegel's concept of 'mind' dissociated from all bodily and social attributes – inasmuch as all are abstractions from the real conditions of civil society. As citizens, people appear 'devoid of any recognizable character'; the form in which they exist is that of 'pure, unadorned individuality' whereby all their determinations in civil society – whether they are Jews, Christians, capitalists, labourers or tradespeople – are given no political status. The conclusion Marx reaches is that in modern society men and women lead a double life: on the one hand as citizens of the state, free and equal before the law, and on the other, as 'bourgeois' members of civil society:

Where the political state has attained its true development, man leads a double life, a heavenly and an earthly one, not only in thought and consciousness but in reality, in life: one life in the *political community* where he considers himself a communal being and one life in civil society where he functions as a private person, regards other people as a means, degrades himself to a means and becomes the plaything of alien powers. The political state is spiritually related to civil society in the same way as heaven is to earth.²⁷

The image is drawn directly from Rousseau. But where Rousseau discovered a harmony between the general will and the particular, Marx saw nothing but an unresolved conflict between general interests and private interests, the political state and civil society,

the communal citizen and the bourgeois egoist.

The lesson Marx drew was that in order to establish a truly rational state, the conditions of civil society had to be subjected to theoretical critique and practical transformation. There was no natural law of private property. The problem with political revolution alone is that instead of 'revolutionizing' civil society, it regards it as 'its natural basis'. It is only when civil society is transformed and society 'succeeds in abolishing... the market and the conditions which gave rise to it,' it is only when political emancipation is accompanied by social emancipation that emancipation becomes complete. Political emancipation alone was a 'great step forward':

We do not tell the Jews that they cannot be emancipated politically without emancipating themselves from Judaism, which is what Bauer tells them. We say instead: the fact that you can be emancipated politically without completely and absolutely renouncing Judaism shows that political emancipation is *by itself* not human emancipation.²⁸

Marx was not saying here that the ideal of a democratic political state *in itself* is wrong, but only that *by itself* it is insufficient. He was not attacking the goal of a democratic republic, but arguing the need to ally a democratic republic with the social transformation of private property. A rational political state, in short, should not be treated as the totality of a rational society. *On the Jewish Question* was not a critique of the democratic republic as such, but only of the identification of the democratic republic with complete emancipation.

The achievement of political revolution was to end the separation between the life of the people and the state; it 'turned the affairs of the state into the affairs of the people... it constituted the political state as a concern of the whole people...'²⁹ Far from political democracy alienating the people from the state, Marx's position was that it overcame the old alienation of the people from the state. The limitations of political emancipation lay not in the state which it established but in its consequences for civil society:

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 had 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.³⁰

When Marx wrote of the 'emancipation' of civil society from politics, he was clearly being ironic. Far from being emancipatory, it gave free rein to egoism, competition, the treatment of one's fellow-human beings as means to one's own personal ends, to alien market forces over which people have no control; in short, to private property: 'he was not freed from private property, he received the freedom of property.' In this aspect of political emancipation - the release of private property from political constraints - Marx could see no advance. This came out sharply in his contrast between the 'rights of citizens' and the 'rights of man'. Whereas the former are political rights, exercised in common with others and involving participation in the community, the latter are private rights, exercised in isolation from others and involving withdrawal from the community.

Not one of the so-called rights of man goes beyond egoistic man... an individual withdrawn into himself, his private interest and his private desires... The practical application of the right of man to freedom is the right of man to private property.³¹

Marx offered little more at this stage than a moral critique of egoism, picking up on the dark side of private property - as already outlined by classical jurisprudence - but not yet incorporating into his theory the positive significance which classical jurisprudence saw in private property, both for individual liberty and for the general development of society. Marx's contrast between the rights of the citizen and the rights of man was quite artificial; the constitution of 1793 from which he quotes is itself entitled 'Declarations of the rights of Man and of the Citizen', and made no distinction.

For Marx, the relation between the state and civil society was depicted as a contradiction between two opposing principles: universality and egoism. The state is predicated on civil society only in the sense that it 'asserts its universality in opposition to the elements [of civil society]'.³² He addresses this contradiction in a

Hegelian fashion. The problem as he sees it is that the state is subordinated to civil society:

the citizen is proclaimed the servant of egoistic man . . . the sphere in which man behaves as a communal being is degraded to a level below the sphere in which he behaves as a political being . . . political life declares itself to be a mere *means* whose goal is the life of civil society.³³

In revolutionary times, when the political state is 'particularly self-confident', it may try to suppress civil society. But civil society is the 'presupposition' of the state; its suppression by the state can only mean violence and the guillotine; this 'political drama necessarily ends up with the restoration of religion, private property and all the elements of civil society.'³⁴ To bring about the dominance of the general interest over the particular, civil society has to be abolished – not by the state but by other means not yet specified.

The image of civil society on which this account was based was one of total unfreedom; the link between private property and individual liberty – vigorously defended by Smith and Hegel – appeared as a merely formal cover under which there actually lay generalized dependence.

The central problem lay in Marx and Engels's depiction of the capital-labour relation, the elements of which appeared in the *Economic and Philosophical Manuscripts* (1844). Workers were defined by their propertylessness, their relation to capital as one of propertylessness to property: 'workers sink to the level of a commodity, the most wretched commodity of all.' Workers themselves become a commodity since their labour, i.e. their life-activity, belongs not to themselves but to others: 'the external character of labour for the worker is demonstrated by the fact that it belongs not to him but to another, and that in it he belongs not to himself but to another.'³⁵ Who is this 'other' to whom workers and their labour belong? It is not God, nor nature, nor the instruments of production, but 'can be none other than man himself'. If the product of labour does not belong to the worker and if it confronts him as an alien power, this is possible only because it belongs to 'a man other than the worker'.³⁶ Alienated labour, in short, is the *social form* taken by labour when it is organized in such a way that it belongs to the non-worker and is expropriated from the worker.

Marx showed that the capital-labour relation is not a natural fact of life but a transitory and historical relation between human beings based on the monopolization of property by a small class of non-workers, and alienation from property on the part of the mass of the workers. The great strength of Marx's approach was to reveal the social content behind the seemingly natural categories of capital and labour as a relation between expropriators and expropriated. But its weakness was to neglect the *form* in which the relation between capital and labour is expressed – that is, as a relation between free, equal and consenting partners. The 'free' wage-labourer, unlike the slave, is not owned by any particular capitalist, even though he or she is dependent on the capitalist class as a whole. The real difference between them emerges legally to the extent that – under the impetus of the requirements of capital as well as the struggles of workers – wage-labourers become free to move from one place to another and from one capitalist to another, to possess a sphere of 'free time', to withdraw their labour, to associate with each other, and so forth; even though the exercise of these freedoms is subjected to economic constraints. In the 1844 *Manuscripts* Marx was not yet able to connect form and content, freedom and exploitation, in his analysis of civil society. In *On the Jewish Question*, then, Marx portrayed the relation between civil society and the state as an antagonistic one, based on their mutual opposition. Civil society appeared as the sphere of pure egoism and slavery, while the rational state appeared as the sphere of pure universality and freedom. Marx, however, was soon to abandon this formulation of the problem.